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June 26, 2023

The Honorable Tom Umberg
Chair, Senate Committee on Judiciary
Hon. Members of the Committee
1021 O Street, Room 3240
Sacramento, CA 95814

Re: SUPPORT AND CO-SPONSORSHIP OF AB 1394 (WICKS AND FLORA)

Dear Chair Umberg and Honorable Committee Members:

Consider, please, the following two examples underscoring the urgent need to require social media platforms – especially Facebook – to do far more to prevent the worst crimes against children imaginable; crimes involving child rape, sexual abuse, and sex trafficking.

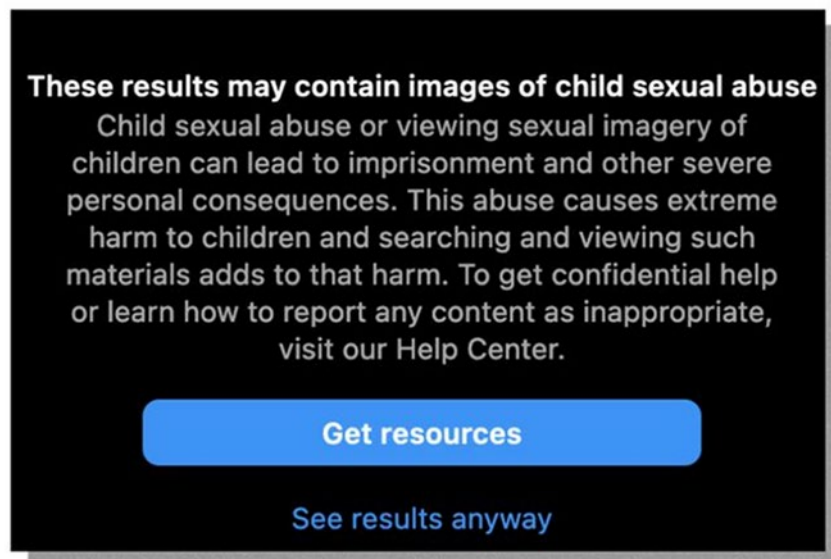
As you read these two examples, please remember that Facebook's net profit in 2022 was \$23 billion.¹

EXAMPLE 1: FACEBOOK'S INSTAGRAM PROMOTES "BRAZEN" PEDOPHILIA, EVEN CHILD BEASTIALITY CONTENT. On June 7, 2023, *The Wall Street Journal* published an investigative report titled "Instagram Connects Vast Pedophile Network." The story documented how a mere three academics at Stanford University and the University of Massachusetts Amherst working part time with only the public's access to Instagram were easily able to find the following:

- "[T]he sexualized accounts on Instagram are brazen about their interest."
- "Some menus include prices for videos of children harming themselves and 'imagery of the minor performing sexual acts with animals'"

¹ <https://www.businessofapps.com/data/facebook-statistics/#:~:text=Facebook%20reported%20%2423.1%20billion%20net,%2439.3%20billion%20made%20in%202021.>

- “The researchers found that Instagram enabled people to search explicit hashtags such as #pedowhore and #preteensex and connected them to accounts that used the terms to advertise child-sex material for sale.”
- “At the right price, children are available for in-person ‘meet ups.’”
- “Since receiving the *Journal* queries” – again, queries that were based on research done from publicly available sites by just three academics – “the platform said it has blocked thousands of hashtags that sexualize children, some with millions of posts, and restricted its systems from recommending users search for terms known to be associated with sex abuse.”
- As *The Journal* documented, even when Facebook identified sex abuse content, it knowingly permitted users to “See results anyway”:



- The *Journal*’s conclusion: **“Instagram doesn’t merely host these activities. Its algorithms promote them. Instagram connects pedophiles and guides them to content sellers via recommendation systems that excel at linking those who share niche interests[.]”**²

EXAMPLE 2: INNOCENT COLLEGE PROFESSOR INQUIRY LEADS TO PEDOPHILE PROMOTING CONTENT. FACEBOOK TURNS BLIND EYE WHEN REPORTED.

In March 2022, a college professor described in WIRED magazine how her searching for “Facebook groups with names including 10, 11, or 12” concerning “the 10th, 11th, or 12th wards of the city of Pittsburgh” instead served up to her dozens of “groups targeting children of those ages” with “over 81,000 members” openly soliciting children for sexual exploitation. One 9,000-member

² <https://www.wsj.com/articles/instagram-vast-pedophile-network-4ab7189>

group appearing in the search results was named “Buscando novi@ de 9,10,11,12,13 años”—i.e., “[l]ooking for a 9-year-old girlfriend.”

It gets worse. When the professor “used Facebook’s on-platform system” to report this group, an “automated response came back” stating “[t]he group had been reviewed and did not violate any ‘specific community standards.’” And, despite (or because of) her reporting this group, along with others, Facebook’s AI algorithms caused “new child sexualization groups” to be “recommended to [her] as ‘Groups You May Like.’”³

AB 1394 (WICKS AND FLORA)

The Children’s Advocacy Institute at the University of San Diego School of Law, which for 30 years has worked to improve the well-being of children in California through regulatory, legislative, and judicial advocacy, is pleased to co-sponsor AB 1394. As the basis of its co-sponsorship with Common Sense Media, the Institute endorses these observations of the President and CEO National Center for Missing & Exploited Children, presented to Congress this past February:

It is no longer feasible to rely solely on online platforms to adopt voluntary measures, especially given their near complete immunity for activity on their sites, or to hope that they will design their platforms to avoid precipitating dangers to children from sexual exploitation, enticement, and revictimization. ... If the United States is going to commit to protecting children online, legislation is our only path forward to update current laws, regulate the design of online platforms to require child safety measures, create meaningful transparency in efforts to combat online child sexual exploitation, and provide new remedies for survivors.⁴

I. CHILD SEXUAL EXPLOITATION: A WINDOW INTO ANOTHER, HORRIFYING WORLD WHERE OUR MOST VULNERABLE CHILDREN – FOSTER CHILDREN, QUEER CHILDREN, CHILDREN OF COLOR ESPECIALLY -- ARE TARGETED FOR PROFIT.

The average age of child sex trafficking victims is 13–14.⁵ These are not children passing for being 18-plus years of age. To our collective shame, in the U.S., 60% of domestic child trafficking victims have a history in the child welfare system.⁶

Keeping these children away from their exploiters is a life-and-death matter for them as “*the average life expectancy of an exploited child is a shockingly short time: seven years*. Homicide and HIV/AIDS account for a majority of the deaths.”⁷ Girls of color are especially at-risk. “According to the FBI, 57.5% of all juvenile prostitution arrests are Black children” And,

³ Lara Putnam, *Facebook Has a Child Predation Problem*, WIRED (Mar. 13, 2022), available at <https://www.wired.com/story/facebook-has-a-child-predation-problem/>

⁴ [https://www.missingkids.org/content/dam/missingkids/pdfs/Senate%20Judiciary%20Hearing%20-%20NCMEC%20Written%20Testimony%20\(2-14-23\)%20\(final\).pdf](https://www.missingkids.org/content/dam/missingkids/pdfs/Senate%20Judiciary%20Hearing%20-%20NCMEC%20Written%20Testimony%20(2-14-23)%20(final).pdf), at pp. 1–2 (emphasis added).

⁵ *Facts & Figures*, YOUTH UNDERGROUND, <https://youth-underground.com/facts-figures/> (last visited Nov. 19, 2022).

⁶ *Child Sex Trafficking*, CHILDREN’S RIGHTS, <https://www.childrensrights.org/newsroom/fact-sheets/child-sex-trafficking/#:~:text=The%20average%20age%20of%20child%20sex%20trafficking%20victims%20is%2015,were%20sexually%20abused%20as%20children> (last visited March 17, 2022).

⁷ Kate Walker, *Ending The Commercial Sexual Exploitation of Children: A Call For Multi-System Collaboration in California*, CALIFORNIA CHILD WELFARE COUNCIL (2013) at 15, <https://www.chhs.ca.gov/wp-content/uploads/2017/06/Committees/California-Child-Welfare-Council/Council-Information-Reports/Ending-CSEC-A-Call-for-Multi-System-Collaboration-in-CA-February-2013.pdf>.

“[c]ompared to their racial counterparts, Black girls are more likely to be trafficked at a younger age.”⁸ The data are shocking:

The hyper-sexuality of young women of color has also deeply affected the way the law responds to crimes against their bodies. A 2017 study by Georgetown Law’s Center on Poverty and Inequality found that adults view Black girls as less innocent and more adult-like than their white peers. Black girls are also viewed as in need of less nurturing, less protection, less comfort and are more independent and know more about adult topics like sex. **These attitudes and stereotypes make them more vulnerable to trafficking and less likely to be identified or seen as victims.** Data can be found across the country of a large majority of “solicitation” arrests are of young women of color where they only make a small demographic of the entire population. According to Right4Girls, “Black children account for 57% of all juvenile prostitution arrests — more than any other racial group.”⁹

So, too, are our queer youth uniquely at-risk. “Nearly 1 in 3 LGBTQ+ minors (32%) reported an online sexual encounter with someone they believed to be over 18, ten percentage points higher than their non-LGBTQ+ peers (22%).”¹⁰

Child sexual abuse (including trafficking) takes a terrible toll on a child’s overall health, increasing the risk not only for the expected depression, anxiety, substance abuse, post-traumatic stress disorder, and suicidal ideation but also for enduring diseases like high blood pressure and other chronic illness.¹¹

Part of the reason for the endurance of their trauma is that for survivors, the abuse never really ends because, “[o]nce an image [of their abuse] is on the Internet, they are irretrievable and can continue to circulate forever.” The child is re-victimized as the images are viewed again and again.¹²

This is made worse because criminals often purposefully produce material where children are seen smiling, leading survivors to worry that others will assume their enjoyment or implicate them in the abuse. Survivors report that perhaps the most difficult part of their re-victimization is a victims’ knowledge that their images may be used to groom future victims as a way to normalize the abusive behavior.¹³

⁸ <https://www.cbcfinc.org/wp-content/uploads/2020/05/SexTraffickingReport3.pdf>.

⁹ <https://www.endslaverynow.org/blog/articles/intersections-of-human-trafficking> (emphasis supplied).

¹⁰ https://info.thorn.org/hubfs/Research/Responding%20to%20Online%20Threats_2021-Full-Report.pdf at p. 11.

¹¹ See CENTERS FOR DISEASE CONTROL AND PREVENTION, NATIONAL CENTER FOR INJURY PREVENTION AND CONTROL, DIVISION OF VIOLENCE PREVENTION, PREVENTING SEXUAL VIOLENCE (last reviewed by the CDC on Jan. 17, 2020), available at https://www.cdc.gov/violenceprevention/sexualviolence/fastfact.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fviolenceprevention%2Fsexualviolence%2Fconsequences.html. The paradigm shift from tangible to digital CSAM has exacerbated these effects. Von Weiler, J., Haardt-Becker, A., & Schulte,

S. Care and treatment of child victims of child pornographic exploitation (CPE) in Germany, 16 J. OF SEXUAL AGGRESSION 211, 216 (2010).

¹² <https://www.justice.gov/criminal-ceos/child-pornography> Sadly, these feelings usually persist and even intensify over time over time. U.S. DEP’T OF JUSTICE, THE NATIONAL STRATEGY FOR CHILD EXPLOITATION AND PREVENTION AND INTERDICTION, 11 at D-12 (2010), available at <http://www.justice.gov/psc/docs/natstrategyreport.pdf> (finding that almost ninety-five percent of CSAM victims suffer lifelong psychological damage and may never overcome the harm, even after lifelong therapy). The problem has taken on a new dimension as CSAM involves increasingly younger victims and is becoming more violent and graphic over time.

¹³ PALMER, T. & STACEY, L., JUST ONE CLICK: SEXUAL ABUSE OF CHILDREN AND YOUNG PEOPLE THROUGH THE INTERNET AND MOBILE PHONE TECHNOLOGY (Barkingside, UK: Barnardo’s, 2013); *United States v. Williams* (11th Cir.2006) 444 F.3d

It is challenging in a public document to describe how horrifying these videos and images can be.

Most members of the public will never see [child sexual abuse material] ... The images and videos that are reported are not merely sexually suggestive or older teenagers who “look young.” **This content depicts crime scene activity. Children — including those who are too young to call for help — are raped, abused, and exploited in this imagery. ... They are revictimized every time a sexually abusive image or video in which they are depicted is traded online and a new predator takes personal gratification in their anguish or uses the imagery to entice another child into sexual abuse.**¹⁴

II. THE PROBLEM OF SEXUAL EXPLOITATION OF CHILDREN IS A CALIFORNIA PROBLEM.

California is a big part of the problem. According to the Los Angeles County Department of Public Health, “[Commercial sexual exploitation of minors, abbreviated CSEC] is a rampant and fast-growing problem: Three of the nation’s 13 high-intensity child prostitution areas as identified by the FBI are located in California: Los Angeles, San Francisco and San Diego metropolitan areas.”¹⁵ Unfortunately, the actual rate at which children are trafficked is underreported, so the full extent to which California’s and the nation’s children are under threat of this emotional trauma and physical violation is unknown. The National Human Trafficking Resource Center Hotline received the highest number of reports on cases or victims of human trafficking from California.¹⁶

III. SOCIAL MEDIA PLATFORMS FACILITATE UNLAWFUL SEXUAL EXPLOITATION OF CHILDREN — AND THEY KNOW IT. CASE STUDIES OF FACEBOOK AND TIKTOK.

“So, where is child sex trafficking happening? You might suspect a dark alley, the local swimming pool, or even a shopping mall parking lot. The most alarming news is a child can be trafficked right in the comfort of their own home.

“**I think the biggest risk is through social media,**” said Michael Syrax, FBI Special Agent, Violent Crimes Against Children Division.

‘Some of these children are recruited through Facebook, Instagram, and other social media outlets, much in the same way that a person would interact with them in real life,’ Syrax said.¹⁷

Data supports the opinion of FBI Agent Syrax. During the time that, for example, Instagram went from one million users to one billion, there has been **“a 9,000% jump in abuse images** online,

1286, 1290 (“Our concern is not confined to the immediate abuse of the children depicted in these images but is also to enlargement of the market and the universe of this deviant conduct that, in turn, results in more exploitation and abuse of children.”).

¹⁴ [https://www.missingkids.org/content/dam/missingkids/pdfs/Senate%20Judiciary%20Hearing%20-%20NCMEC%20Written%20Testimony%20\(2-14-23\)%20\(final\).pdf](https://www.missingkids.org/content/dam/missingkids/pdfs/Senate%20Judiciary%20Hearing%20-%20NCMEC%20Written%20Testimony%20(2-14-23)%20(final).pdf), at pp. 2–3 (emphasis added).

¹⁵ *Commercial Sexual Exploitation of Children and Youth Fact Sheet*, L.A. CNTY. DEP’T OF MENTAL HEALTH (2014), http://file.lacounty.gov/SDSInter/dmh/211312_2014_DMH_CSEC_Fact_Sheet_FINAL.pdf.

¹⁶ <https://htcourts.org/california/>.

¹⁷ <https://www.wtnh.com/news/child-sex-trafficking-reality/children-of-color-at-a-higher-risk-of-child-sex-trafficking/> (emphasis added).

according to the U.S. National Center for Missing and Exploited Children, a nonprofit, and COVID-19 lockdowns saw a surge in reports about online child sexual abuse.”¹⁸

Fully one-quarter of 9-to 17-year-olds report having had an online sexually explicit interaction with someone they believed to be an adult.¹⁹

A. FACEBOOK.

Unsurprisingly given the examples offered at the beginning of this letter, Facebook has known about traffickers ambitiously and openly using its products since at least 2018, leaked documents show. It got so bad that in 2019, Apple threatened to pull Facebook and Instagram’s access to the App Store, a platform the social media giant relies on to reach hundreds of millions of users yearly.²⁰ A CNN report stated that: “A report distributed internally [within Facebook] in January 2020 found that **‘our platform enables all three stages of the human exploitation lifecycle (recruitment, facilitation, exploitation) via complex real-world networks[.]’**”²¹

In June 2020, the U.S. Department of State published its Trafficking in Persons Report (June 2020, 20th Ed.).⁷⁶ The report notes how “[t]he media reported in 2018 that trafficking gangs increasingly used social media sites, particularly Facebook, to buy and sell women and girls for sex and labor exploitation.”²²

On June 8, 2021, the Human Trafficking Institute published its 2020 Federal Human Trafficking Report. The report provided numerous statistics concerning human trafficking in the United States and internationally. One of the “key takeaways from 2020” was that 59% of online victim recruitment (and 65% of child victim recruitment) in active sex trafficking cases occurred on the Facebook and Instagram social media platforms:²³

The Wall Street Journal and *Wired* revelations discussed at the outset are not new. In March of 2020, the Tech Transparency Project (“TTP”) published an analysis that found hundreds of U.S. cases in which suspected pedophiles used Facebook to groom minors and trade images of their sexual abuse.²⁴ Most tellingly for this bill, the report further concluded that Facebook’s systems are failing to do the minimum things needed to reduce such abuse. In the vast majority of the criminal cases of child sex trafficking and exploitation involving Facebook, Facebook was not the source of the tip off to law enforcement about such heinous crimes occurring on its own platform, on its own supposed watch.. In fact, “[o]nly 9% of the criminsl involving child sex crimes through Facebook cases were initiated because Facebook or the National Center for Missing and Exploited Children (which receives cyber tips from Facebook) reported them to authorities.

¹⁸ <https://www.reuters.com/legal/litigation/can-an-eu-law-save-children-harmful-content-online-2022-07-12/>.

¹⁹ *Responding to Online Threats: Minors’ Perspectives on Disclosing, Reporting, and Blocking*, THORN (May 2021), https://info.thorn.org/hubfs/Research/Responding%20to%20Online%20Threats_2021-Full-Report.pdf, at 18.

²⁰ Clare Duffy, *Facebook Has Known It Has a Human Trafficking Problem For Years. It Still Hasn’t Fully Fixed It*, CNN (Oct. 25, 2021), <https://www.cnn.com/2021/10/25/tech/facebook-instagram-app-store-ban-human-trafficking#:~:text=A%20report%20distributed%20internally%20in,accounts%20to%20help%20with%20detection>.

²¹ *Id.* (emphasis added).

²² *Id.* at 269.

²³ <https://traffickinginstitute.org/wp-content/uploads/2022/01/2020-Federal-Human-Trafficking-Report-Low-Res.pdf>, at p. 44. (Emphasis added)

²⁴ <https://www.techtransparencyproject.org/articles/sexual-exploitation-children- facebook>.

B. TIKTOK.

Similarly, multiple investigative reports have documented how TikTok permits users to urge children to commit sexual or sexualized acts. For example, in 2022:

A *Forbes* review of hundreds of recent TikTok livestreams reveals how viewers regularly use the comments to urge young girls to perform acts that appear to toe the line of child pornography — rewarding those who oblige with TikTok gifts, which can be redeemed for money, or off-platform payments to Venmo, PayPal or Cash App accounts that users list in their TikTok profiles.

It’s “the digital equivalent of going down the street to a strip club filled with 15-year-olds,” says Leah Plunkett, an assistant dean at Harvard Law School and faculty associate at Harvard’s Berkman Klein Center for Internet & Society, focused on youth and media. Imagine a local joint putting a bunch of minors on a stage before a live adult audience that is actively giving them money to perform whatever G, PG or PG-13 activities they request, she said. “That is sexual exploitation. But that’s exactly what TikTok is doing here.”²⁵

“Clearly, what once was improbable [about sex trafficking of children] has been made possible through social media.”²⁶

An astonishing 65% of underage sex trafficking victims recruited online in active criminal sex trafficking cases in 2020 were recruited through Facebook, while 14% were recruited through Instagram, and 8% were recruited through Snapchat.²⁷ Since 2000, traffickers have recruited 55% of sex trafficking victims online, usually through social media platforms.²⁸

IV. SOCIAL MEDIA PLATFORMS MAKE IT DIFFICULT FOR SURVIVORS TO REMOVE UNLAWFUL IMAGES AND VIDEOS OF THEIR EXPLOITATION.

A 2020 report by the Canadian Centre for Child Protection revealed that social media companies design their products in a way that makes reporting and removing images and videos portraying their exploitation difficult, if not impossible, for survivors. As one survivor told the Center, “I spend hours every day searching for my own content, reporting thousands of accounts and posts sharing CSAM. When platforms don’t actively look for or prevent this content from being uploaded, the burden falls on me to have these images removed.”²⁹

²⁵ Alexandra S. Levine, *How TikTok Live Became ‘A Strip Club Filled With 15-Year-Olds’*, FORBES, (Apr. 27, 2022), at <https://www.forbes.com/sites/alexandralevine/2022/04/27/how-tiktok-live-became-a-strip-club-filled-with-15-year-olds/?sh=75efad7b62d7>.

²⁶ *How Sex Traffickers Use Social Media to Contact, Recruit, And Sell Children*, FIGHT THE NEW DRUG (Aug. 11, 2021), <https://fightthenewdrug.org/how-sex-traffickers-use-social-media-to-contact-recruit-and-sell-children-for-sex/>.

²⁷ *Id.*

²⁸ <https://traffickinginstitute.org/wp-content/uploads/2022/09/2021-Federal-Human-Trafficking-Report-WEB-1.pdf>, at p. 4.

²⁹ Canadian Centre for Child Protection, *Reviewing Child Sexual Abuse Material Reporting Functions on Popular Platforms*, https://protectchildren.ca/pdfs/C3P_ReviewingCSAMMaterialReporting_en.pdf.

V. AB 1394 (WICKS AND FLORA): HOW IT WORKS.

It is self-evident that unless social media platforms devote far more of their resources to the morally compelled but unprofitable task of preventing their spaces from being used by those seeking to exploit children sexually, we will never successfully reduce the sexual exploitation of children. This need to establish legal minimum requirements is especially true and urgent during a time when the largest platform is laying off tens of thousands of workers to increase its profits.³⁰

To that end, AB 1394 has two parts.

Part One: Prevention. Financially Motivating Multi-billion Dollar Platforms To Do Far More By Clarifying Their Accountability When They “Facilitate, Aid, Or Abet” Child Sex Trafficking Or Exploitation.

Part one amends current law (Civil Code section 3345.1) that already permits survivors of child sexual exploitation to sue in civil court those who have exploited or trafficked them. The bill logically extends such liability to when a platform “knowingly, recklessly, or negligently facilitated, aided, or abetted” the child sexual exploitation.

These words are defined. According to the bill, facilitated, aided, or abetted” means platforms being a “*substantial factor in causing minor users to be victims of commercial sexual exploitation.*”³¹ If a platform does not act in ways that make it a “substantial factor” in children being sexually abused, they are not liable under this part of the bill at all.

For knowingly or recklessly being a substantial factor in child rape and other sexual abuse, the statutory damages on these multi-billion dollar corporations is \$5 million per violation. Statutory damages range from \$1 million to \$4 million for otherwise breaking the law in ways that cause child rape and sex abuse.

AB 1394’s Statutory Damages For Causing Child Rape and Other Sexual Abuse vs. The Fines For Littering Imposed On Working Californians. To get a fair sense of proportionality of these statutory damages, please consider: the maximum financial penalty for littering of \$1,000 is 1.6% of an average Californian’s salary. AB 1394’s maximum statutory damage of \$5 million for a platform knowingly or recklessly being a substantial factor in child rape would be .004% of Facebook’s annual earnings.³²

³⁰ <https://techcrunch.com/2023/03/14/meta-to-cut-another-10000-jobs-zuckerberg-says/>.

³¹ The jury instruction explaining the test can be found here: <https://www.justia.com/trials-litigation/docs/caci/400/430/>

³² Cal.Veh. Code § 42001.7: “(a) Every person convicted of a violation of Section ... 23112 ... shall be punished by a mandatory fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) upon a first conviction, by a mandatory fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) upon a second conviction, and by a mandatory fine of not less than seven hundred fifty dollars (\$750) nor more than one thousand dollars (\$1,000) upon a third or subsequent conviction.” The average annual salary of a Californian is \$61,026. (<https://www.ziprecruiter.com/Salaries/--in-California>) In 2022, Facebook earned \$116 billion US dollars. (<https://www.statista.com/statistics/268604/annual-revenue-of-facebook/>) The maximum fine for facilitating, aiding, abetting the sexual violation of children for Facebook under AB 1394 is 0.004% of its annual income. In 2022, Snap earned **\$4.6 billion**.⁽³²⁾ <https://www.macrotrends.net/stocks/charts/SNAP/snap/revenue>) The maximum fine for facilitating, aiding, abetting the sexual violation of children for Snap under AB 1394 is 0.11%. In 2022, TikTok’s annual revenue from ads registered at \$11 billion. (<https://www.oberlo.com/statistics/tiktok-ad-revenue#:~:text=In%202022%2C%20TikTok's%20annual%20revenue,times%20higher%20than%20in%202021.>) The maximum fine for facilitating, aiding, abetting the sexual violation of children for Snap under AB 1394 is 0.05% of its annual income.

Even a financial consequence of not \$5 million dollars *but \$5 billion* was not enough to motivate Facebook to obey a settlement agreement with the FTC, according to the FTC,, which as a last resort is seeking a blanket prohibition Preventing Facebook from monetizing child data:

This is the third time the FTC has taken action against Facebook for allegedly failing to protect users' privacy. The Commission first filed a complaint against Facebook in 2011, and secured an order in 2012 barring the company from misrepresenting its privacy practices. But according to a subsequent complaint filed by the Commission, Facebook violated the first FTC order within months of it being finalized – engaging in misrepresentations that helped fuel the Cambridge Analytica scandal. In 2019, Facebook agreed to a second order—which took effect in 2020—resolving claims that it violated the FTC's first order. Today's action alleges that Facebook has violated the 2020 order, as well as the Children's Online Privacy Protection Act Rule (COPPA Rule).

The 2020 privacy order required Facebook to pay a \$5 billion civil penalty.³³

Beginning in February of next year, a platform that fails to remove this kind of unlawful content in the European Union can face a maximum fine of up to **6% of its annual gross income**.³⁴ By this measure, the financial consequences in AB 1349 imposed on a platform are exceedingly modest.

Closer to home, such financial consequences are preceded in far less compelling circumstances. For example, Business & Professions Code section 5116.2 permits the Board of Accountancy, which also in part regulates vast corporations (the “Big Four” Accounting firms), to assess a penalty of up to \$1 million for a first violation and not more than \$5 million for subsequent violations.³⁵ Surely, motivating compliance to prevent children from being sexually exploited and prevent them, if exploited, from being re-victimized is not less worthy.

Safe harbor for platforms just for doing what they should be doing. Under the bill, no matter how egregiously a platform was a substantial factor in child rape and sex abuse, the platform can escape liability under this part of the bill entirely – including for the statutory damages-- if it simply does what it should be doing anyway, knowing its product is being used for such unlawful and awful purposes. There is no liability at all under this part of the bill if the platform (i) instituted and maintained a program of at least quarterly audits of its operations that have the potential to cause or contribute to child sexual predation; (ii) the platform fixes problems found within a month after finding them; (iii) the audit included the participation of an expert independent nonprofit or law enforcement agency; and (iv) the platform provided to each member of the social media platform's board of directors a true and correct copy of each audit.

³³ <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-proposes-blanket-prohibition-preventing-facebook-monetizing-youth-data>

³⁴ <https://www.reuters.com/legal/litigation/can-an-eu-law-save-children-harmful-content-online-2022-07-12/>.

³⁵ Likewise, Business & Professions Code section 16755 imposes a maximum penalty of \$1 million for corporations that conspire against free trade. Other examples of fines up to \$1 million are found in the Labor, Financial, and Health & Safety Codes, to name a few.

Part Two: Preventing Repeated Trauma.

Where part one of the bill is about ensuring certain vast corporations have a financial reason aggressively to prevent their platforms from being used to facilitate sexual trafficking and exploitation of children, the second part of the bill is about helping survivors deal with the consequences of their exploitation when platforms fail to help them.

Thus, the second part of the bill requires platforms, when notified by a survivor, to render images or videos of children who have been sexually exploited permanently invisible³⁶, helping survivors to reduce their lifelong fear of repeated exploitation. The bill requires the platforms to honor the survivor's request within a month's time — remember, these images and videos depict crimes against children and should never be posted in the first place — or face statutory damages of up to \$250,000 per violation. The reason for this part of the bill is documented by the 2020 Canadian Centre for Child Protection report already cited above and heartbreaking personal stories such as this one:

Graphic sexually abusive images and videos depicting two female children from ages 5–12 years old and 16–17 years old being abused by 2 adult offenders have been identified in content seized by law enforcement from over 8,000 offenders. This abuse originally occurred 21–24 years ago. The younger child has been approached in public by strangers who recognized her from the sexually abusive material, which predators have posted to the dark web with the child's real name and photos of the child as an adult.³⁷

Moreover, platforms “are not required to engage in efforts to combat revictimization, and currently there is no civil recourse for survivors when [platforms] refuse to engage in these efforts.”³⁸

The bill seeks to ensure that survivors seeking to remove images and videos documenting their abuse – these are images of a crime – are treated with a bare minimum of respect, especially given the heinousness of what is portrayed. Quoting the analysis from the Assembly Privacy Committee:

“This bill establishes a comprehensive process for users to report material that they reasonably believe to be (i) CSAM, (ii) in which the users themselves are depicted as identifiable minors, and (iii) displayed, stored, or hosted on a social media platform. Following a report, a platform would have 30 days (with a potential extension to 60 days, if required by factors beyond the platform's control) to verify whether the material is CSAM, and if it is, block it from appearing on the platform.” That analysis also highlights some features of this part of the bill:

- “Social media platforms would only be required to block the specific CSAM reported by users.”

³⁶ Current law offers consumers the right to have information about them, including images and videos, deleted (Civil Code section 1798.105) but not made invisible. If information is deleted the platform can't detect its re-posting. That deletion is different than the requirement to make unlawful content invisible is affirmed by the fact that Legislative Counsel did not key this bill as an amendment to the CPRA which enacted section 1798.105.

³⁷ [https://www.missingkids.org/content/dam/missingkids/pdfs/Senate%20Judiciary%20Hearing%20-%20NCMEC%20Written%20Testimony%20\(2-14-23\)%20\(final\).pdf](https://www.missingkids.org/content/dam/missingkids/pdfs/Senate%20Judiciary%20Hearing%20-%20NCMEC%20Written%20Testimony%20(2-14-23)%20(final).pdf), at p.14.

³⁸ *Id.* at p. 3.

- “Social media platforms must acknowledge user reports and keep reporting users updated on the progress of their requests.”
- “Social media platforms can use a third-party service to collect CSAM reports, and thereby avoid incurring liability that might arise from coming into possession of CSAM, particularly CSAM that is not already present on their systems.”
- “Social media platforms would retain the ability to pursue users who make fraudulent reports.”
- “Standalone services that provide end-to-end encryption for direct messages are exempted from the bill’s requirements.”

Likewise with the prescribed financial consequences for a platform’s failure to remove horrifying images and videos upon a survivor’s request: \$250,000 for each failure to heed the survivor’s plea and half (\$125,000) if the material was blocked but the platform ignored the law in doing so. Courts are instructed to reserve the highest dollars for the most willfully unlawful conduct.

Given that what is being asked to be removed shows crimes being committed and should not be visible under any system minimally responsive to survivors, these statutory damages are modest.

VI. CONCLUSION.

Unless platforms devote far more time and resources to preventing and fixing the child sexual exploitation they are facilitating in the first place, children will continue to be sexually exploited in ever-increasing numbers. Please support these children and survivors by supporting AB 1394 (Wicks and Flora).

Sincerely,



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CC: Hon. Buffy Wicks, Hon. Heath Flora