

Marketplace  
Risk.

# MARKETPLACE MONITOR



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## The Marketplace Monitor - Issue 3!

August 6, 2024

Hello, and welcome to the third issue of the Marketplace Monitor!

We bring you big news from California, Congress, and around the world this week. In California, the Supreme Court upheld Proposition 22, in Congress, regulating AI and children's online safety were major areas of focus, and the EU's AI Act went into force. These, and other top stories are below. As always, we'd love to hear from you. Please reach out with your questions, and let us know if you're tracking anything not yet on our list by sending Heather a quick note: [hstewart@marketplaceassociation.org](mailto:hstewart@marketplaceassociation.org).

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### AMERICAN STATES



Photo credit: Courtesy of Canva Commons

#### California State Supreme Court Upholds Proposition 22

The California Supreme Court upheld Proposition 22, which allows app-based drivers and delivery workers to remain classified as independent contractors. This decision is a significant victory for transportation network companies (TNCs) and delivery network companies (DNCs) like Uber, Lyft, and DoorDash, as well as for the workers who prefer the flexibility of independent contracting. You can read the Marketplace Industry Association's amicus brief [here](#).

Proposition 22, passed by voters in 2020, exempts these companies from AB5, a law that reclassified many independent contractors as employees. The court's ruling overturned a previous decision that had declared Prop 22 unconstitutional, ensuring that the law remains in effect. However, the court did find that certain provisions of Prop 22, which limit the legislature's ability to amend the law, were unconstitutional. These provisions can be severed, allowing the rest of the law to stand.

Read more [here](#).

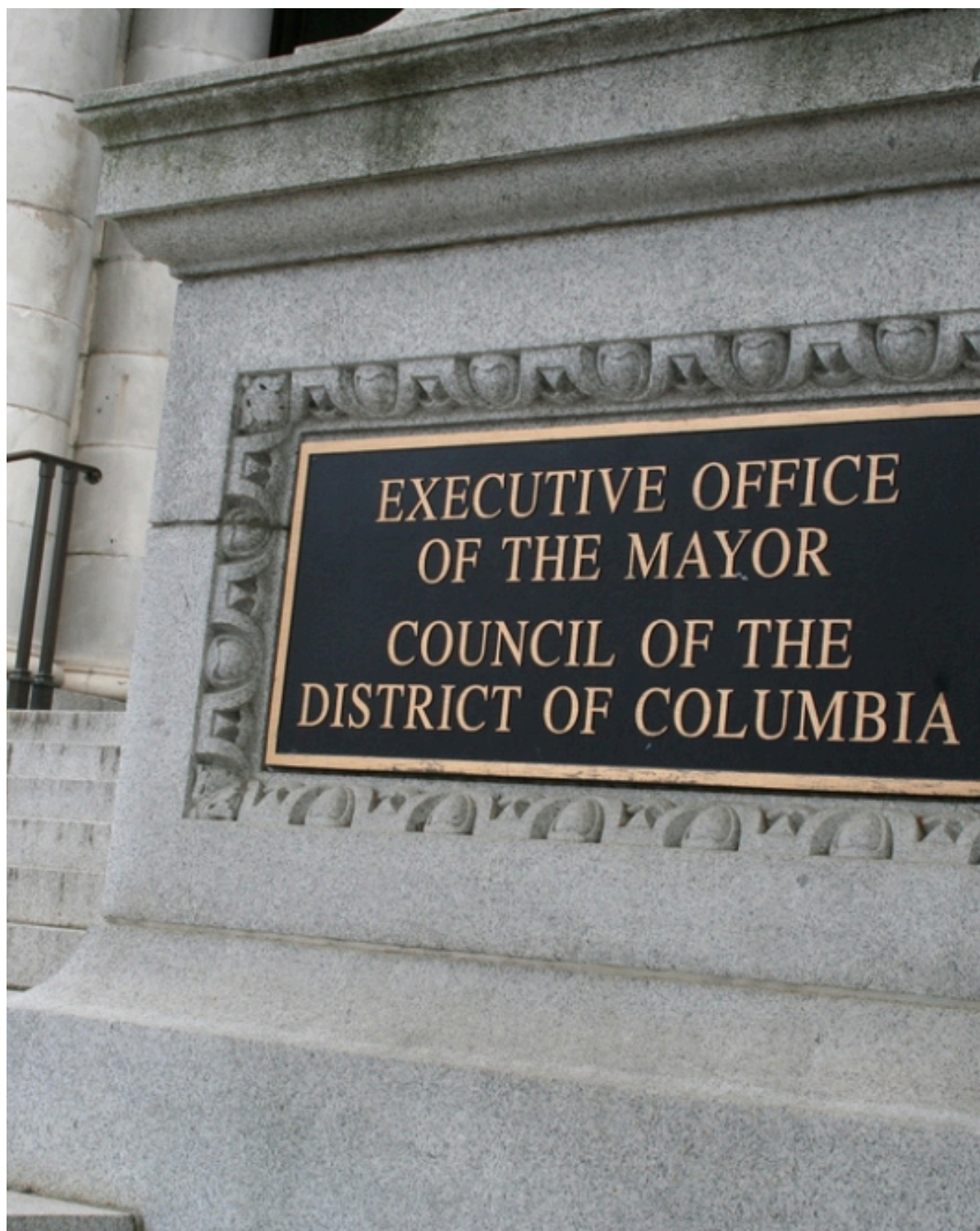
## California's Ninth Circuit Hears Oral Arguments in NetChoice v. Bonta



On July 17, a Ninth Circuit panel heard oral arguments in the case of NetChoice v. Bonta, which challenges the constitutionality of the California Age-Appropriate Design Code (AADC). The District Court had previously enjoined the AADC, finding its obligations constitutionally suspect under the First Amendment. The Ninth Circuit's oral arguments focused on the AADC's data protection impact assessment (DPIA) requirements. Judges were skeptical of the State's claim that the AADC regulates "data management practices" rather than content, especially regarding the requirement to mitigate or eliminate children's exposure to harmful content identified by a DPIA.

The judges also discussed severability, noting that much of the bill is tied to the DPIA requirements. They considered how the Act would function if only the DPIA provisions were struck down, acknowledging that severability is a state issue and suggesting the possibility of certifying the matter to the California Supreme Court.

Additionally, both parties were questioned about the impact of the recent SCOTUS decision in Moody v. NetChoice, which provides guidance for courts analyzing facial challenges to laws, relevant to the AADC case. (As a reminder, the Marketplace Industry Association joined Etsy, eBay, and OfferUp in filing an amicus brief in the Moody v. NetChoice matter.)



## A Near-Copycat of Washington's My Health My Data Act Introduced in Washington DC

On July 12, Attorney General Schwalb introduced the Consumer Health Information Privacy Protection Act of 2024 (CHIPPA) in the District of Columbia. The bill shares many features with the Washington State My Health, My Data Act (MHMDA) of 2023, such as a broad definition of "consumer health data," inclusion of any processing under "collect," two tiers of consent, and a private right of action tied to the state's unfair and deceptive practices law.

However, CHIPPA is more restrictive than MHMDA. While MHMDA allows businesses to collect health data if necessary to provide a requested service, CHIPPA requires organizations to obtain consent before collecting any health data.

The DC Council is currently on recess and will return on September 16.

Photo credit: Washington DC Executive Office of the Mayor and Council, courtesy of Canva Commons

## Florida Posts Proposed Rules for Social Media Age Verification

On July 23, the Florida Department of Legal Affairs posted proposed rules to implement the new social media use for minors law (HB 3), effective January 1, 2025. The law requires social media platforms to verify the age of all account holders, prohibit minors under 14 from opening accounts, and to obtain parental consent for 14- and 15-year-olds. The law also mandates the permanent deletion of personal data associated with minors' accounts.

The proposed rules define “commercially reasonable age verification” as methods regularly used by the government or businesses for age and identity verification. For “reasonable parental verification,” the draft suggests a process involving collecting a parent’s contact information from the child, verifying the relationship through documents, and using commercially reasonable methods to confirm the parent’s identity and age.

However, ambiguities remain, such as whether both verification steps are necessary and the relevance of verifying a parent’s age. The timeframe for permanent data deletion is also unclear. Stakeholders have 21 days from publication to request a hearing on the proposed regulations.

## California’s Various Active Marketplace & AI Bills

### [AB1791: Digital Content Provenance](#)

Status: Engrossed. In committee, referred to the suspense file. (July 1, 2024)

Summary: AB 1791 focuses on digital content provenance. The bill aims to establish standards for verifying the authenticity and origin of digital content, particularly to address issues related to deepfakes and other manipulated media.

### [AB2013: Artificial Intelligence Training Data Transparency Act](#)

Status: Rereferred to the Committee on Appropriations (July 3, 2024)

Summary: AB2013, the Artificial Intelligence Training Data Transparency Act, will significantly influence marketplace companies using AI by introducing transparency requirements. Companies must disclose the training data for their AI systems, enhancing consumer trust and necessitating compliance with new transparency standards. This may involve revising data management practices to ensure privacy and proprietary information are protected. The act aims to provide consumers with detailed information about AI systems, fostering informed decision-making and greater accountability for AI-driven platforms.

### [SB707: Responsible Textile Recovery Act of 2024](#)

Status: Referred to the Committee on Appropriations (July 3, 2024)

Summary: SB707 introduces an Extended Producer Responsibility (EPR) program, affecting marketplace companies and consumers. If the bill were to pass, producers and sellers, including those on online



Photo credit: California State Legislature, courtesy of Canva Commons



marketplace platforms, must join a Producer Responsibility Organization (PRO) to manage textile recycling. Online marketplaces will have increased reporting duties for high-revenue sellers. Consumers will likely see a shift towards sustainable products, and the environment may benefit from reduced textile waste. The bill promotes a circular economy but may also lead to higher operational costs and compliance requirements for sellers.

[SB942: California Artificial Intelligence Transparency Act \(CAITA\)](#)

Status: Approved by the Assembly Committee on Judiciary (July 2, 2024)

Summary: SB 942, known as the California AI Transparency Act, aims to enhance consumer protection by ensuring transparency in AI-generated content. The bill requires providers of generative AI systems to:

- Create and make available an AI detection tool that allows users to query whether content was generated by AI.
- Include clear and conspicuous disclosures in AI-generated content, identifying it as such.
- Revoke licenses of third-party users who modify AI systems

## AMERICAN NATIONAL

### The U.S. Senate Passes Two Pieces of Legislation Aimed At Protecting Kids Online

Last week, the U.S. Senate overwhelmingly passed two pieces of legislation aimed at protecting children and teens online: the Children and Teens’ Online Privacy Protection Act (COPPA 2.0) and the Kids Online Safety Act (KOSA).

#### **COPPA 2.0:**

- Bans online companies from collecting personal information from users under 17 without consent.
- Prohibits targeted advertising to children and teens.
- Introduces an “eraser button” for parents and kids to delete personal information online.
- Establishes a Youth Marketing and Privacy Division at the FTC.

#### **KOSA:**

- Provides tools, safeguards, and transparency to protect against online harms.
- Requires online platforms to activate the most protective settings for kids by default.
- Allows minors to protect their information, disable addictive features, and opt-out of personalized algorithmic recommendations.

The bills will head to the House next for review and mark up.

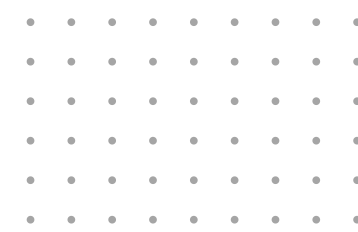
### The Senate Unanimously Passes the Disrupt Explicit Forged Images and Non-Consensual Edits (DEFIANCE) Act

Last week, the Senate passed the DEFIANCE Act, a significant piece of legislation aimed at combating non-consensual sexually explicit deepfakes. This act allows victims to sue those who create, distribute,



Photo credit: Senator Maria Cantwell and Chair of the Senate Committee on Commerce, Science, and Transportation

or possess such deepfakes, providing a federal civil remedy for these cases. The bill, introduced by Senators Dick Durbin and Lindsay Graham, now moves to the House for consideration.



## Senate AI Bills

The Senate Commerce Committee held a meeting last week to mark up and approve numerous AI bills, including:

The Future of AI Innovation Act: This bill has passed out of committee and aims to formally authorize the US AI Safety Institute, create AI evaluation programs, and develop international coalitions to support AI standards.

Senators Todd Young and John Hickenlooper added an amendment that would establish a Foundation for Standards and Metrology at NIST, similar to the EPIC Act from Representatives Jay Obernolte and Haley Stevens in the House.

The Validation and Evaluation for Trustworthy (VET) AI Act: This act promotes the development of technical guidelines for conducting in-house and third-party evaluations of AI models to mitigate harms and protect privacy.

The CREATE AI Act: This act would authorize the National AI Research Resource (NAIRR), providing essential computing resources to researchers for AI evaluations and studies on trustworthy AI.



Photo credit: Senator Dick Durbin in 2023, Drew Angerer, Getty Images.

The amended TEST AI Act: This act would establish AI testing facilities to identify vulnerabilities in AI systems that could impact critical infrastructure or national security.

The AI Research, Innovation, and Accountability Act: This act, advancing out of committee, would require companies to self-certify their compliance with best practices.

## INTERNATIONAL

### The EU AI Act Has Entered into Force

On August 1, 2024, the European Artificial Intelligence Act (AI Act) officially came into force. This landmark legislation aims to foster responsible AI development and deployment across the EU, addressing potential risks to citizens' health, safety, and fundamental rights.

The AI Act introduces a risk-based approach with different requirements for AI systems based on their risk levels:

- Minimal risk: Systems like spam filters face no obligations but can adopt voluntary codes of conduct.
- Specific transparency risk: Systems like chatbots must inform users they are interacting with a machine.
- High risk: Systems such as AI-based medical software must comply with strict requirements, including risk mitigation and human oversight.

- Unacceptable risk: Systems that allow “social scoring” are banned due to their threat to fundamental rights.

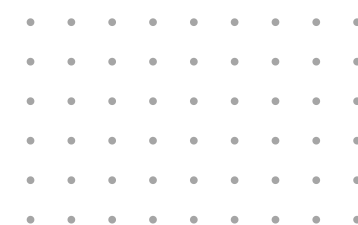


Photo credit: European Parliament, Reuters, May 2023.

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