

# Summary of Age Verification Model Bill

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## DEFINITIONS

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- When defining a covered platform, we recommend against using the one-third threshold (33%) of a site containing material harmful to minors because of vagueness. It will be a challenge for a court to determine what sites have more than 33% of this content. It is clearer to use a definition of “in the regular course of the trade or business of the entity to create, host, or make available content that meets the definition of material harmful to minors,” which will target major pornography websites specifically.
- Don’t exclude interactive computer services from the definition (that would exclude Pornhub and all sites where user-generated porn is uploaded, etc). But do exclude internet service providers/search engines.
- To avoid potential Section 230 preemption do not tie any damages to harms from CONTENT but to a failure to age guard/age verify *access* to the content.

## METHODS OF AGE VERIFICATION

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- The model includes several methods and options for verification for a website to choose from, you may even decide not to list all of these options in your specific state bill, but we do recommend that you include digital ID, as an increasingly available option that is very protective of user privacy, and also at the end a provision for “any other commercially reasonable means or method that reliably and accurately can determine a user of a covered platform is a minor and prevent access by minors to the content on a covered platform,” since new methods for verification continue to develop and become available that are anonymous and privacy-protecting for adults, like hand motions or other biometrics.

## PRESUMED DAMAGES

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- The reason why we recommend any bill include presumed damages is that otherwise the plaintiff will have to prove injury. That is very difficult to do in the circumstances of a child accessing porn, for a parent to prove specific injury from the access. By enacting laws with presumed damages, a plaintiff would not need to prove that a child was harmed by accessing a porn site.

- Proving and quantifying how a child was harmed by visiting a porn site is difficult. A plaintiff would have to show that he was injured in a certain financial amount. Presumed damages eliminate this problem and allow compensation for these generalized hard to measure harms from porn access. This is an easier and more effective way to hold porn sites accountable.
- There is no magic number to use when deciding how much to fine sites for violations. The model bill currently uses \$10,000 per violation to ensure that the penalty is impactful, but other values could also be acceptable.

## ENFORCEMENT

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- We recommend always including a private right of action to empower parents to bring lawsuits for violations where their child was able to gain access to a pornography website.
- Some states may want to consider only having a private right of action, as the only means for enforcement, to prevent possible injunctions. This is a procedural consideration regarding review of the law. If there is state enforcement then because of potential damages, the companies can sue to enjoin the law before it goes into effect. They would have legal standing to enjoin it. However, if the only enforcement is private civil actions then a company doesn't know whether or not they will be sued under the law, so they don't have legal standing to sue to preliminarily enjoin the law before it goes into effect. This allows the law to go forward for the time being. This is what happened with Utah's age-verification law. A suit was filed against the law but the District Court Judge dismissed the case because the law only had a private right of action, so plaintiffs did not have standing to sue.
- However, some states may want to also include state enforcement in addition to a PRA in order to give the law more teeth, so the state can bring suits on behalf of their citizens against pornography sites for violations.