

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO**

NETCHOICE, LLC,)
)
 Plaintiff,)
)
 v.) Case No. _____
)
 DAVE YOST, in his official capacity as)
 Ohio Attorney General,)
)
 Defendant.)

**DECLARATION OF MICHAEL MASNICK
IN SUPPORT OF PLAINTIFF’S MOTION FOR
TEMPORARY RESTRAINING ORDER AND FOR PRELIMINARY INJUNCTION**

I, Michael Masnick, declare as follows:

1. **Identity of Declarant.** I am the founder and CEO of Floor64, Inc., a California small business that operates a widely-read blog at Techdirt.com (Techdirt), which for over 25 years has been chronicling developments in technology law and policy and their convergence with civil liberties. Floor64 also operates the Copia Institute, a think tank that works to help bring together people to learn about and discuss issues related to technology, law, and policy. I am also the founder and editor of Techdirt. I am over 18 and make this declaration from personal knowledge and a review of Techdirt’s and Floor64’s records kept in the ordinary course of business.

2. **Techdirt’s Expression.** Since our founding in 1997, we have published more than 70,000 articles on Techdirt regarding subjects such as freedom of expression and platform liability, as well as copyright, trademark, patents, privacy, innovation policy, and more. The Techdirt site often receives more than a million page views per month. We also publish a daily newsletter

emailed to subscribing readers, and under Techdirt's editorial auspices, we produce an original podcast linked from its website that reacts to cutting-edge technology issues in greater depth.

3. Techdirt's expressive content is authored primarily by a team of employees, freelance writers, and other contributors. Its own content is also augmented by the contributions of readers, who have posted nearly two million comments on Techdirt articles since the site launched. (Readers posted approximately 68,000 comments on 3,000 articles in 2023 alone). These comments, as well as the additional discussions happening in other online forums hosted for Techdirt readers, are themselves expression that advances discovery and discussion, and we regularly highlight those comments that convey particular insight or humor. See Leigh Beadon, "Funniest/Most Insightful Comments Of The Week At Techdirt," TECHDIRT (Dec 17, 2023), <https://perma.cc/V2XH-SENL> (last visited Jan. 04, 2024).

4. With Techdirt, my company, Floor64, and I are able to be a key contributor to online conversations around technology law and policy issues, not just as a central source for related news and information, but also as the host of a community of readers who feel equally empowered to participate in the dialogue. My personal goal, and our business goal, is to keep expanding Techdirt's online influence, audience, and community, as well as ensure that the public has a platform available to debate and discuss the latest technological news of the day, in order to positively affect the policy issues at the heart of this discourse.

5. **Engaging with Techdirt's Expression.** The majority of Techdirt's expression is free and publicly available to anyone on the internet anywhere in the world. No accounts are needed to read articles, listen to podcasts, or even to submit user comments. Although Techdirt asks readers for their names and email addresses before they comment, Techdirt does not require this information, and, accordingly, many users leave anonymous comments without this

information. We consider user-generated comments—both anonymous and non-anonymous—to be an essential and vibrant part of the online discourse we seek to foster in furtherance of our own expressive interests.

6. Although Techdirt does not require visitors to create an account to access articles or leave comments, users may do so if they wish to create a public profile on the site. With that account, they can more easily track all the comments they have made. Techdirt also offers several subscription tiers to “Techdirt Insiders,” who are readers who financially support the site, to provide them with additional perks in exchange for their support. Tiers currently include the “Crystal Ball” tier, which gives subscribers early access to unpublished posts, and the “Watercooler” tier, which enables subscribers to contribute to an online forum for Techdirt readers to chat with Techdirt staff and contributors. Accounts are needed to be able to benefit from these additional features.

7. **Techdirt’s Readership.** Techdirt is a website aimed generally at the public. It does not, however, deliberately invite the attention of readers younger than 13, and in its privacy notice it forbids users under 13 from registering for a Techdirt account or submitting any personally identifiable information.

8. Techdirt has, however, historically welcomed readers between the ages of 13 and 16 and allowed them to register for accounts. We anticipate that teenagers may read our articles and potentially want to respond via comments because we know from past experience that many areas of Techdirt’s coverage are relevant to them. For example, Techdirt’s reporting on issues such as online harassment, teenagers’ use of social media, and schools’ attempts to restrict social media— or, indeed, laws like this very one—are likely of significant interest to teenage users whose lives are directly affected by these issues firsthand. In fact, over the years, Techdirt has been

contacted by high school students about its articles because they were aware of, and concerned by, how the subject matter bore on their own interests and speech rights. In our experience, the 13-16 audience is often just as conversant in Techdirt's core areas of coverage as any other demographic and just as interested in looking to Techdirt for breaking technological news and related issue advocacy because they understand how it so directly affects them.

9. **Supporting Techdirt's Expressive Activities.** In order to ensure that Techdirt's expression can remain available to the public at large, and for free as much as possible, its expressive activities need to be underwritten via other methods. These methods include the aforementioned subscriptions, donations collected via Patreon (a service that enables creators who provide content to obtain financial support from audiences), third-party partnerships, and merchandise and services sold through <http://deals.techdirt.com>. At times, Techdirt has also depended on advertising, although no ads are currently displayed (except for those advertising products and services sold on the Techdirt website). All of these methods require Techdirt, or the third parties they depend on, to be able to have the operational infrastructure needed to make them possible.

10. **Data Collection and Sharing.** We believe we foster a better relationship with our readers when we minimize the amount of data we collect from them. However, to operate, maintain, and provide Techdirt's features and services, Techdirt does collect limited user data, such as any information provided when making a purchase through Techdirt's store and information like IP addresses and website visitation details. Techdirt also collects information connected to accounts when supplied by readers. In limited circumstances, Techdirt shares this information with third parties for them to perform various tasks associated with the operation and maintenance of the site in order to provide its features and services.

11. **Age Verification.** Techdirt does not track or collect data confirming the age of its readers, nor does Techdirt require readers to verify their ages before accessing content on the site. By not collecting such information in the first place, there is no risk of such sensitive information inadvertently ending up in the wrong hands. Mandating readers provide such information would also interfere with our expressive desire, and practice, of facilitating discourse among anonymous discussants by requiring us to collect identifying information.

12. Techdirt lacks the technology needed to change its current practice in order to verify the ages of all of its readers, nor does it have the resources to put such technology in place. Such a change would require fundamentally redesigning Techdirt's publication to be one that requires the public to sign up—and in the process submit sensitive personal information—in order to read it, instead of the generally accessible publication that it is today. Reconfiguring Techdirt's interface to accommodate the submission, collection, and secure storage of sensitive personal information would be extremely difficult and expensive to implement. Techdirt could not absorb the cost of fundamentally rearchitecting its data management practices without a devastating economic impact on the site and its ability to convey expression.

13. Redesigning our publication to verify the ages of our readers would also compromise our deliberate practice to minimize how much data we collect and retain about our readers to both limit our obligations that would arise from the handling of such data as well as preserve trust with our readers. It would require us to undermine our relationship with our readers of any age, including teenagers, by subjecting them to technologies that are, at best, unreliable, and at worst, highly privacy-intrusive (such as via facial recognition). Moreover, because a sizeable portion of Techdirt's readership consists of casual readers who access the site for information and news, any requirement that forces users to submit extensive personal information

simply to access Techdirt's content risks driving away these readers and shrinking Techdirt's audience.

14. **Impact of Section 1349.09 on Techdirt's Expression.** Techdirt understands that Section 1349.09 will require covered businesses to obtain verifiable parental consent for any registration or sign-up, or the creation of a unique username to express themselves on Techdirt. This would cover every age from 0 to 16 despite the substantial differences in developmental readiness and ability to engage in the world around them throughout that nearly two-decade age range. This entire endeavor results in the State directly interfering with my company's and my own expressive rights by limiting to whom and how we can communicate to others. I publish Techdirt with the deliberate intention to share my views (and those of other authors) with the public. This law will inhibit my ability to do so in concrete and measurable ways.

15. In addition to its overreaching impact, the law's prohibitions also create chilling ambiguity. For example, while the site does not deliberately "target children," as noted earlier, we do expect that some teenagers interested in the topics we cover, including the impact of social media on teenagers, are likely to visit the site. The law's vague "reasonably anticipated to be accessed by children," is vague enough that it is unclear if we would be required to go through the impossibly expensive process of setting up an age verification and parental control system to comply with the law. While the law does not directly mandate an age verification system, it appears that the only way to comply with the requirements for many teenagers who might access the site would be to first verify their ages.

16. Similarly, while it is possible that Techdirt might qualify for the exemption in the law for "an established and widely recognized media outlet," the lack of clarity or definitions regarding "established" or "widely recognized," leave it vague and unclear as to whether or not

we qualify under the law. That ambiguity alone creates significant risk of liability, and would put pressure on us to either put in place this impossibly expensive and potentially unnecessary infrastructure (if we are so exempt), or to seek to block any expression from anyone in Ohio (which would require its own expensive infrastructure implementation).

17. It is, also, unclear why the law should only be exempt for “established and widely recognized media outlets.” Given the possibility that we might not qualify as “widely recognized” given the lack of clear definitions, it would then further violate our 1st Amendment rights by impermissibly discriminating against us and other media outlets that are determined not to be “widely recognized,” while granting those deemed as such special privileges not available to newer or less widely recognized media websites.

18. Additionally, the law requires that covered sites “present” to the guardians of a child “a list of features... related to censoring or moderating content, including any features that can be disabled for a particular profile.” While Techdirt has a variety of moderation tools focused on blocking unsolicited commercial messages (commonly known as “spam,”) it also relies heavily on community voting for its content moderation decisions, rather than by the staff of Techdirt, and thus does not fit neatly into the paradigm that appears anticipated by this law that all moderation tools are managed by the sites themselves.

19. It is further unclear whether 1349.09 was written to apply only to Ohio children and parents/guardians, but even if it is so limited, Techdirt cannot feasibly customize or limit its expressive offerings to readers in a single state. Creating a completely separate service just for Ohio users (or just for those Ohio users under age 16) would be expensive and impractical. In addition, Techdirt is not aware of any reliable technology capable of ensuring that an Ohio user

could not evade any geographic blocking. If Techdirt must adjust its services to comply with 1349.09, it would need to do so in a way that affects every single reader anywhere in the world..

20. Beyond the direct impact on the Techdirt platform, Section 1349.09 might also negatively impact third party services that Techdirt and its community rely on to express ourselves and to communicate with others. Techdirt relies on services such as Wordpress.com to host our content, Soundcloud to host our podcasts, Patreon to help enable community support, and Discord to host real-time conversations for supporters. Given the nature of Section 1349.09, even if the law does not directly impact Techdirt's own platform, the law's impact on those other services that we rely on might similarly limit our own expressive interests.

21. Ultimately the demands of Section 1349.09 inflict on Techdirt far more than business-altering technical burdens and economic costs. They fundamentally threaten Techdirt's expressive ability and its freedom to exercise editorial autonomy over its content, build ties to its readers, and foster the online conversations that define Techdirt's identity as an expressive entity. They also will limit Techdirt's ability to explore new editorial-related partnerships with third-party services that would benefit itself and its reader community.

* * *

I declare under penalty of perjury under the laws of the United States of America, pursuant to 28 U.S.C. § 1746, that the foregoing to be true and correct to the best of my knowledge. Executed on this 4th day of January in Redwood City, CA.

Michael Masnick
