



California Social Media Law Enacted as Courts Confront Similar Texas and Florida Laws

[U.S. TECH LAW UPDATE](#)¹

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I. Introduction

On September 13, 2022, California governor Newsom signed AB 587 (the “Social Media Law”) into law, requiring social media companies to publicly post terms of service that address hate speech, disinformation, harassment, and extremism policies. The Social Media Law further requires social media companies to report data on enforcement of such policies to the California Attorney General on a biannual basis. Upon signing the bill, California’s governor Newsom asserted that, “Californians deserve to know how [social media] platforms are impacting [California’s] public discourse, and this action brings much-needed transparency and accountability to the policies that shape the social media content [Californians] consume every day.”²

The Social Media Law is set to take effect no later than January 1, 2024. Companies in violation of the Social Media Law are liable for penalties up to fifteen thousand dollars (\$15,000) per violation per day.³ Penalties may be imposed for failure to post a compliant terms of service, failure to submit the required report biannually to the California Attorney General, or for material omissions or misrepresentations within the required report.⁴

Yet, whether the Social Media Law will survive legal challenges in the U.S. court system remains unclear. Similar laws implemented by other states are currently unsettled within U.S. courts. Last year, Texas passed a law prohibiting social media platforms from banning users based on the users’ “viewpoint” and requiring such platforms to publicly report information about content removal and account suspensions.⁵ On December 21, 2021, the U.S. District Court for the Western Division of Texas, Austin Division blocked the Texas law from taking effect, asserting that the First Amendment of the U.S. Constitution protects social media platforms’ exercise of editorial discretion.⁶ However, on September 16, 2022, the U.S. Court of Appeals for

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² [Governor Newsom Signs Nation-Leading Social Media Transparency Measure](https://www.gov.ca.gov/2022/09/13/governor-newsom-signs-nation-leading-social-media-transparency-measure/), OFFICE OF GOVERNOR GAVIN NEWSOM (Sept.13, 2022), <https://www.gov.ca.gov/2022/09/13/governor-newsom-signs-nation-leading-social-media-transparency-measure/>.

³ The Social Media Law, Section 22678 (a)(1).

⁴ The Social Media Law, Section 22678(a)(2).

⁵ See [Texas House Bill 20](#) (2021).

⁶ See the order from the U.S. District Court for the Western Division of Texas, Austin Division [here](#).



the Fifth Circuit (the “Fifth Circuit”) upheld the Texas law, contending that “corporations [do not] have a freewheeling First Amendment right to censor what people say.”⁷

However, a similar law passed in Florida called the Stop Social Media Censorship Act did not receive the same treatment at the appeals level.⁸ In May 2022, the U.S. Court of Appeals for the Eleventh Circuit (the “Eleventh Circuit”) upheld a lower court ruling that blocked the Florida law, claiming that the law was “substantially likely” to violate social media platforms’ First Amendment rights.⁹ On September 21, 2022, the state of Florida asked the U.S. Supreme Court to revive the state law, arguing that the conflict between the Fifth Circuit and the Eleventh Circuit’s divergent approaches to the largely similar laws necessitates review by the nation’s top court.¹⁰

California’s Social Media Law shares some similarities with Texas’ and Florida’s respective laws regulating social media platforms, including by imposing disclosure requirements on social media platforms and requiring changes to existing content moderation practices. Thus, California’s Social Media Law enters a murky legal landscape marked by uncertainty, and a U.S. Supreme Court decision on either Texas’ or Florida’s respective social media laws may ultimately signal how U.S. courts will approach California’s law.

II. Applicability

The Social Media Law will apply to social media companies generating at least one hundred million dollars (\$100,000,000) in gross revenue during the preceding calendar year.¹¹ Under the law, a “social media company” is a person or entity that owns or operates one or more “social media platforms”, defined as public or semi-public internet based services or applications that has users in California that meets both of the following criteria:¹²

- A substantial function of the service or application is to connect users in order to allow users to interact socially with each other within the service or application (excluding services or applications that provide email or direct messaging services exclusively)
- The service or application allows users to (a) construct a public or semipublic profile for the purposes of signing into and using the service or application, (b) populate a list of other users with whom an individual shares a social connection within the system, and (c) create or post content viewable by other users

However, the Social Media Law specifically excludes internet-based services or applications for which interactions between users are limited to direct messages, commercial transactions, consumer reviews of products, sellers, services, events, or places, or any combination hereof, from regulation under the law.¹³

⁷ See the Fifth Circuit’s decision [here](#).

⁸ See Florida’s Stop Social Media Censorship Act [here](#).

⁹ See the Eleventh Circuit’s decision [here](#).

¹⁰ See Florida’s Petition for a Writ of Certiorari [here](#).

¹¹ The Social Media Law, Section 22680.

¹² The Social Media Law, Section 22675(d), (e).

¹³ The Social Media Law, Section 22681.

III. Required Terms of Service Updates

Under the Social Media Law, social media platforms are required to post terms of service for each social media platform owned or operated by the company.¹⁴ In addition, a social media company's terms of service must include the following:¹⁵

- Contact information for the purpose of allowing users to ask the company questions about the terms of service
- A description of the process that users must follow to flag content, groups, or other users that they believe violate the terms of service, and the social media company's commitments on response and resolution times
- A list of potential actions the company may take against an item of content or a user, including, but not limited to, removal, demonetization, deprioritization, or banning

IV. Required Biannual Reporting to California Attorney General

The Social Media Law requires social media companies to complete a "terms of service" report for submission to the California Attorney General twice a year. The terms of service report must include:¹⁶

- The current version of the terms of service of the social media platform
- A complete and detailed description of any changes to the terms of service since any previous report
- A statement of whether the current version of the terms of service defines each of the following categories of content, and, if so, the definitions of those categories, including any subcategories:
 - Hate speech or racism
 - Extremism or radicalization
 - Disinformation or misinformation
 - Harassment
 - Foreign political interference
- A detailed description of content moderation practices used by the social media company for that platform, including, but not limited to:
 - Any existing policies intended to address the above categories of content
 - How automated content moderation systems enforce terms of service of the social media platform and when these systems involve human review
 - How the social media company responds to user reports of violations of the terms of service
 - How the social media company would remove individual pieces of content, users, or groups that violate the terms of service, or take broader action against individual users or against groups of users that violate the terms of service

¹⁴ The Social Media Law, Section 22676(a).

¹⁵ The Social Media Law, Section 22676(b).

¹⁶ The Social Media Law, Section 22677.



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- The languages in which the social media platform does not make terms of service available, but does offer product features (e.g., menus and prompts)
- Information on the content flagged by the social media company as content belonging to any of the above categories, including:
 - The total number of flagged items of content
 - The total number of actioned items of content
 - The total number of actioned items of content that resulted in action taken by the company against the user or groups of users responsible
 - The total number of actioned items of content that were removed, demonetized, or deprioritized by the company
 - The number of times actioned items of content were viewed by users
 - The number of times actioned items of content were shared, and the number of users that viewed the content before it was actioned
 - The number of times users appealed social media company actions taken on that platform and the number of reversals of social media company actions on appeal disaggregated by each type of action