

The Honorable Dick Durbin  
Chairman  
Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, District of Columbia 20510

The Honorable Lindsay Graham  
Ranking Member  
Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, District of Columbia 20510

Dear Chairman Durbin and Ranking Member Graham:

Thank you for the opportunity to provide input on the Committee's February 14th hearing titled "Protecting our Kids Online." ACT | The App Association is a global trade association for small and medium-sized technology companies. Our members are entrepreneurs, innovators, and independent developers within the global app ecosystem that engage with verticals across every industry. We work with and for our members to promote a policy environment that rewards and inspires innovation while providing resources that help them raise capital, create jobs, and continue to build incredible technology.

Our members are deeply concerned about privacy and the protection of children online. We believe that a safe online space will ensure both children's mental health and the safety and privacy of individuals. We also believe that the Kids Online Safety Act (KOSA) should be amended to align its scope and definitions to better fit its purposes, and we are working on more specific feedback to guide Congress in that regard. Meanwhile, the Eliminating Abusive and Rampant Neglect of Interactive Technologies (EARN IT) Act may have unintended consequences for technical protection measures like end-to-end encryption regardless of its scope. Instead, we strongly urge the adoption of general privacy legislation that preempts state laws, similar to the American Data Privacy and Protection Act (ADPPA).

The foundation of strong privacy legislation that protects all Americans, including children, is a clear definition of the type of data covered and the type of entity that must protect that data. Without properly tailored definitions, many businesses that are not social media companies under common definitions will be swept up in regulation. For example, KOSA's definition of "online platform" includes "any public-facing website, online service, online application, or mobile application that primarily provides a community forum for user generated content."<sup>1</sup> Although the bill's scope is now more tailored than the previous version to the kinds of risks to kids that give rise to the concerns the Committee seeks to address, the definitions still encompass a larger group of platforms than we believe the drafters intend to regulate. Much of the consternation regarding children's online safety stems from the practices of online community platforms that serve a wide, public base of individual users and rely on

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<sup>1</sup> Kids Online Safety Act (S. 3663, 117th Cong.)

surveillance-based advertising for revenue. It is well known that children are a regular by-catch in these environments. Unfortunately, many smaller app developers that do not cater to an audience primarily consisting of children could be required to comply with KOSA in light of its broad definitions, which would likely add further barriers and compliance costs for small businesses that already operate with limited resources.

The problem this broad wording creates for small businesses is essentially a compliance regime on top of that required under the Children's Online Privacy Protection Act (COPPA). Consider, for example, an automotive manufacturer's augmented reality app consumers download to closely examine virtual representations of cars and compare notes with other car shoppers in a user-generated content forum. We can easily imagine a 15-year-old (a minor under KOSA) scoping out their dream car using the app. KOSA may require the app's developer, prior to granting the minor access to the app, to seek express affirmative acknowledgement from the minor's parents for downloading this app when deciding what trim they would like on their dream car. Such an app is unlikely trigger COPPA's requirements, but it is "reasonably likely" to expect that a high school student may use it to shop for cars. To comply with KOSA, this app would now need to have the minor (user) sign up, make a reasonable attempt to get a parent's contact information from the minor, and then wait for the parent to acknowledge receipt of the required information. Additionally, it is unclear how the developer can confirm whether a person really is the parent of the minor without using a verifiable parental consent (VPC) mechanism, which would essentially only layer onto the existing COPPA regime with a mechanism that is similar but not quite the same. Having to comply with both is impractical for consumers and businesses of all sizes.

In a similar manner, the EARN IT Act as introduced in the 117th Congress would create additional burdens for companies in removing child sexual abuse material (CSAM), while leaving the method of addressing CSAM to each individual state.<sup>2</sup> Leaving such a choice up to the states would result in a patchwork of regulation that is significantly more difficult for companies to comply with than a federal standard. Unfortunately, by ultimately handing the development of CSAM best practices to the Department of Justice (DoJ), EARN IT as introduced in the 117th Congress would likely result in dramatically increasing the costs of or effectively eliminating end-to-end encryption or device encryption to which a manufacturer does not maintain a key. In our view, a better approach for the Committee would be to prohibit attempts by law enforcers to weaken encryption. Legislation like the Ensuring National Constitutional Rights for Your Private Telecommunications (ENCRYPT) Act (H.R. 3520, 117th) would prohibit state and local attempts to weaken technical protection measures, setting federal rules of the road to ensure children are safe from attempts by bad actors to crack encryption.

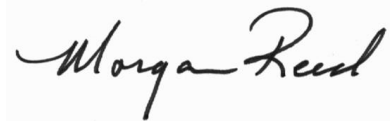
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<sup>2</sup> Eliminating Abusive and Rampant Neglect of Interactive Technologies Act (S. 3538, 117th Cong.)

Many consumers rely on the safety of such encryption for their personal communication, and companies that can provide such encryption have an advantage over their competitors. Such encryption keeps kids safe from online predators every day, but it also protects whistleblower communications, financial transactions, and other sensitive information. Compromising encryption would mean less safety for consumers and less trust for businesses. Instead, a strong national privacy bill would increase safety and trust while allowing for cooperation with law enforcement where necessary.

The App Association and our members take the privacy and protection of children seriously. I hope that members of the Committee will take into consideration the points I have raised here and ensure that any new legislation strikes the appropriate balance between protection of children online and protection of other users and their privacy rights.

Sincerely,

A handwritten signature in black ink that reads "Morgan Reed". The signature is fluid and cursive, with the first name "Morgan" and last name "Reed" clearly distinguishable.

Morgan Reed  
President  
ACT | The App Association