

September 21, 2021

The Honorable Maria Cantwell
Committee on Commerce, Science, and
Transportation
United States Senate
Washington, D.C. 20510

The Honorable Frank Pallone, Jr.
Committee on Energy and Commerce
United State House of Representatives
Washington, D.C. 20515

The Honorable Roger F. Wicker
Committee on Commerce, Science, and
Transportation
United States Senate
Washington, D.C. 20510

The Honorable Cathy McMorris Rodgers
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515

Re: Children's Internet Protection Act

Dear Senator Cantwell, Senator Wicker, Representative Pallone, and Representative McMorris Rodgers:

Our organizations urge Congress to protect student privacy, expression, and safety by updating the Children's Internet Protection Act (CIPA or the Act) to clarify that CIPA does not require broad, invasive, and constant surveillance of students' lives online, or by asking the Federal Communications Commission (FCC) to clarify the Act. Recent research we conducted indicates that 81% of teachers report that their schools use software that tracks students' activity, and school districts cite a provision in CIPA as a driving force in this surveillance.¹

Student activity monitoring software can permit school staff to remotely view students' computer screens, open applications, block sites, scan student communications, and view browsing histories. It may utilize untested algorithmic technology to flag student content for review, and security flaws have also permitted school personnel to access students' cameras and microphones without students' permission or awareness.

School administrators report that they have adopted monitoring software largely to comply with CIPA, protect student safety, and promote academic achievement. Those beliefs, however, are misplaced:

- CIPA does not require the invasive surveillance of students. The Act does not define the term "monitoring"² and includes an express "disclaimer" that "[n]othing" in the statute "shall be construed to require the tracking of Internet use by any identifiable minor or adult user."³

- Companies' claims that monitoring software can protect student safety or support academic achievement are largely unproven.⁴ Instead, monitoring software may perpetuate the very harms it seeks to prevent. Systematic monitoring of online activity can reveal sensitive information about students' personal lives, such as their sexual orientation, or cause a chilling effect on their free expression, political organizing, or discussion of sensitive issues such as mental health.⁵ These harms likely fall disproportionately on already vulnerable, over-policed, and over-disciplined communities and may be exacerbated when monitoring occurs on devices and services used off-campus, including in students' homes.

Congress should safeguard against these harms by ensuring that implementation of CIPA is tethered to Congress's original intent that "monitoring" does not require "tracking" or broad, invasive surveillance.⁶ Congress should clarify that "monitoring" is narrow and limited to the minimal amount of data collection needed to achieve CIPA's goals, both on- and off-campus. For example, schools may limit the data they obtain by collecting only aggregate information whenever possible and minimizing where and when monitoring is occurring, such as by monitoring aggregate traffic on the school network, rather than over individual devices. This clarification is long overdue,⁷ and Congress should act to protect the privacy and safety of students or ask the FCC to do so.

We thank you for your work on behalf of the nation's students and their families.

Sincerely,

American Civil Liberties Union
Center for Democracy & Technology
The Center for Learner Equity
Getting Smart
Hispanic Technology & Telecommunications Partnership
InnovateEDU
Next Century Cities
State Educational Technology Directors Association

¹ Center for Democracy & Technology, Student Activity Monitoring Software: Research Insights and Recommendations 2 (2021), available at <https://cdt.org/insights/student-activity-monitoring-software-research-insights-and-recommendations/>; DeVan L. Hankerson et al., Center for Democracy & Technology, Online and Observed 11-12 (2021), available at <https://cdt.org/insights/report-online-and-observed-student-privacy-implications-of-school-issued-devices-and-student-activity-monitoring-software/>.

² 47 U.S.C. § 254(h)(5)(B)(i) (requiring schools receiving funds under the Federal Communications Commission’s E-Rate program to enforce “ a policy of Internet safety for minors that includes monitoring the online activities of minors”).

³ Consolidated Appropriations Act, 2001, Pub. L. 106–554, app. D, div. B, title XVII, sec. 1702(b), 114 Stat. 2763, 2763A–336 (2000), available at <https://www.congress.gov/bill/106th-congress/house-bill/4577>; 47 U.S.C. § 254 Note. As suggested by contemporaneous reports, “tracking” includes the gathering of data from activity online and connecting it with other data to make inferences about the user. See Federal Trade Commission, Online Profiling: A Report to Congress 3-6 (2000), available at <https://www.ftc.gov/sites/default/files/documents/reports/online-profiling-federal-trade-commission-report-congress-part-2/onlineprofilingreportjune2000.pdf>.

⁴ Lois Beckett, *Under Digital Surveillance: How American Schools Spy on Millions of Kids*, The Guardian (Oct. 22, 2019), <https://www.theguardian.com/world/2019/oct/22/school-student-surveillance-bark-gaggle>; Faiza Patel & Rachel Levinson-Waldman, *Monitoring Kids’ Social Media Accounts Won’t Prevent the Next School Shooting*, Washington Post (Mar. 5, 2018), <https://www.washingtonpost.com/news/posteverything/wp/2018/03/05/monitoring-kids-social-media-accounts-wont-prevent-the-next-school-shooting/>.

⁵ Nasser Eledroos & Kade Crockford, *Social Media Monitoring in Boston: Free Speech in the Crosshairs*, Privacy SOS (2018), <https://privacysos.org/social-media-monitoring-boston-free-speech-crosshairs>; Jonathon W. Penney, *Whose Speech Is Chilled by Surveillance?*, Slate (July 07, 2017), <https://slate.com/technology/2017/07/women-young-people-experience-the-chilling-effects-of-surveillance-at-higher-rates.html>.

⁶ 47 U.S.C. § 254 Note; see 146 Cong. Rec. S5823-45 (daily ed. June 27, 2000) (statement of Sen. Leahy), available at <https://www.congress.gov/congressional-record/2000/06/27/senate-section/article/S5823-8> (“[N]ot too many kids are going to go pulling up inappropriate things on the web sites when their teachers, their parents, and everybody else are walking back and forth and looking over their shoulder.”).

⁷ The FCC has long declined to clarify CIPA’s terms and ignored requests that it do so in recent proceedings. See *Establishing Emergency Connectivity Fund to Close the Homework Gap*, CDT Comments, WC Docket 21-93, at 2-9 (2021); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Report and Order, 26 FCC Rcd 11819, 11822-23, para. 8 (2011); *Children’s Internet Protection Act*, CC Docket No. 96-45, Report and Order, 16 FCC Rcd 8182, 8199, 8202, 8204 paras. 41, 47-48, 54-55 (2001).