



Dear Senator,

We, the undersigned civil society organizations, write to express our concerns with the Kids Online Safety Act (KOSA), as currently drafted. News reports indicate that the Senate is considering bringing KOSA to the floor for a vote in the near future. We share the goal of keeping kids safe online, and appreciate that there have been positive changes made to the legislation to reduce many concerns raised by civil society, LGBTQ communities, and grassroots advocates. We urge you to continue that process of engagement and, prior to voting on this legislation, to make additional changes to the bill to mitigate still extant concerns that it will censor valuable speech and undermine the privacy rights of everyone online.

We continue to have concerns that this bill will be misused to target marginalized communities and politically divisive information, concerns that have not been fully addressed in the revised draft. Even under that draft, online services will still be required to take measures to restrict their services from recommending content that meets the government's view of what will harm youth mental health. As a result, companies looking to reduce their legal risk will remain incentivized not to recommend content on young people's feeds that they fear legislators and enforcers could claim relate to negative mental health outcomes, including content related to sexual health and reproductive care, racial justice, and LGBTQ+ issues, even though such content can be critically important to many young people and their safety and security.

We also worry that some provisions are worded in such a way that they would permit parents to broadly surveil their kids online, especially since parents and their kids do not always have supportive relationships. As currently drafted, parents have the right to "manage" settings for both teens and children in the preambulatory text in Sec. 103(b)(2)(A), and then rights to "view" (for teens) or "change" (for children) settings in clauses (i) and (ii). It is not clear, however, if the right to "manage" in the preambulatory text gives parents of teenagers additional controls. Amendments are necessary to clarify that it does not.

While we have outstanding concerns with KOSA, we have been encouraged that negotiations to improve the bill have continued. Many of our organizations have offered redlines that could improve it and significantly reduce our concerns. Moreover, Senator Wyden has proposed adding the following to Sec. 102(b) [Limitations to the Duty of Care]:

3. The mere display or recommendation of content to a minor as a result of a covered entity's use of a personalized recommendation system that is not predominantly designed to encourage or increase the frequency of use or time spent on the covered platform by minors over other qualities of the recommendation system.

4. any minor from using privacy-enhancing technologies or designs.

This change, if accepted, would reduce some concerns around the bill's potential to lead to censorship of valuable speech, by ensuring that online services using certain personalized recommendation systems could not be held liable simply for delivering certain content.

Other changes might be made to further improve the duty of care and safeguard it against the potential for misuse and constitutional challenges. Those might include edits that would raise the *mens rea* requirement for design features that recommend content related to mental health harms. Alternatively, they could include a bounded definition of "design feature" that did not include the recommendation of particular content, such as vague categories of content potentially related to emotional harms, but instead focused on content neutral features of the services. There might be many ways to approach this issue. We recommend, welcome, and encourage that conversation.

Beyond the duty of care, additional amendments to the bill to ensure parents have access to tools to protect their children's privacy, but do not have broader abilities to surveil or control the content that particularly their teen kids view, are also needed. Changes to address this concern would ensure young people's privacy was respected, while also empowering parents to protect their children.

The Kids Online Safety Act, as currently drafted, continues to raise free expression and privacy concerns. However, changes are possible to improve the bill and reduce these concerns while keeping kids safe online. We urge you to continue improving the legislation before bringing the bill to the floor.

Sincerely,

American Civil Liberties Union
Center for Democracy & Technology
Electronic Frontier Foundation
Fight for the Future
New America's Open Technology Institute

