



May 23, 2024

Dear Chairs McMorris Rodgers, Pallone, Bilirakis, Walberg and Ranking Member Schakowsky of the House Subcommittee on Innovation, Data, and Commerce,

In advance of the markup in the House Innovation, Data, and Commerce Subcommittee tomorrow, we, the undersigned civil society organizations, write to express our concerns with the Kids Online Safety Act (KOSA), H.R. 7891, as currently drafted. 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 to continue making additional changes to the bill to mitigate still extant concerns that it will censor valuable speech and undermine the privacy rights of everyone online as you prepare for a full committee markup.

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 H.R. 7891, as introduced. Even with key changes to the duty of care to limit its application to “high impact online companies,” KOSA still requires services that users depend on 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 relates to negative mental health outcomes, including content related to sexual health and reproductive care, racial justice, LGBTQ+ issues, and other politically divisive content, 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 by lawmakers’ continued engagement on the legislation. Additional amendments to the bill can 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. 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 does not include the recommendation of particular content, such as vague categories of content potentially related to emotional harms, but instead focuses on content neutral features of the services. There might be many ways to approach this issue. We recommend, welcome, and encourage that conversation.

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,

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