

**Re: Concerns with S. 4213's Threats to Minors' Privacy and Safety Online**

**Dear Chairwoman Cantwell, Ranking Member Cruz, and Members of the Committee,**

We, the undersigned civil rights, digital rights, and civil liberties organizations, write to express our significant concerns with the [Kids Off Social Media Act \(S. 4213\)](#), introduced by Senators Schatz and Cruz. While protecting children online is imperative, this bill—if enacted—would severely impact the privacy, safety, and First Amendment rights of children and ultimately harm the privacy of all users. We have three major concerns with the Kids Off Social Media Act.

1. The bill will incentivize schools to spy on children.

The bill's expansion of Children's Internet Protection Act ([CIPA](#)) requirements threatens to codify invasive and unproven software in schools. Although CIPA's monitoring requirement never [intended](#) for children and families to be surveilled, [research](#) has shown that schools have interpreted CIPA's past requirements to require AI-driven, persistent monitoring of students, despite the bill being enacted long before this technology even existed. This misinterpretation has given tech companies the opportunity to sell [dangerous](#) and [discriminatory](#) online activity monitoring technologies to be used against kids in schools. The language in the Eyes on the Board section of the bill reinforces a school's ability to access E-Rate funding, which provides discounts for internet services, as being tied to language that education agencies may misinterpret as requiring the installation and use of AI-powered spyware to surveil what students are doing online during and outside of school hours—scanning messages and documents, tracking websites visited, and even enabling real-time access to devices.

Moreover, this bill will disproportionately [impact students](#) who have been historically marginalized, including those who [rely more](#) on school-provided internet and devices to access online services. Reinforcing the misconception that it is mandatory to use these surveillance and filtering technologies on school-provided devices will exacerbate the digital divide by limiting these students' ability to access certain sites outside of the classroom. Student activity monitoring spyware has been shown to have a [chilling effect](#) on student expression, and [polling conducted](#) by the Center for Democracy & Technology (CDT) shows that it has also resulted in negative outcomes for students. [Two-thirds of teachers](#) whose schools use student activity monitoring technology report that students have been disciplined as a result of a monitoring alert or how the student reacted when confronted about an alert. Teachers also report that this impact falls disproportionately on students with disabilities and LGBTQ students. In some cases, the adoption of monitoring technologies led to increased encounters with law enforcement for students: 38 percent of teachers report that a student was contacted by law enforcement as a result of this technology, with licensed special education teachers reporting this at an even higher rate of 46 percent. Additionally, almost one in four teachers whose school uses this technology reports that their school automatically shares this information with law enforcement outside of school hours. For LGBTQ students, this technology has a unique impact: 19 percent of students whose schools use monitoring technology report that a student at their school has been outed as a result, showing a six percentage point increase from the previous year.

Parents are also increasingly concerned with subjecting their children to greater monitoring both in and outside the classroom, leading to [decreased support](#) for the practice: 71 percent of parents report being concerned with schools tracking their children's location, 68 percent of parents are concerned about schools monitoring what students post on social media, and 66 percent of parents are concerned with their children's data being shared with law enforcement (including 78 percent of Black parents in particular). Between the 2021-2022 and 2022-2023 school years, parent and student support of student activity monitoring fell eight and 11 percentage points, respectively.

Under the threat of lost E-Rate funding, schools also turn to these tech companies for content filtering technologies that are known to be overly restrictive of students' ability to access critical information, even for things like schoolwork. [CDT polling](#) revealed that nearly 75 percent of students whose school uses this technology had trouble completing assignments because of it, with LGBTQ students more likely to report this challenge. Teacher accounts confirmed this, as approximately half of them reported the same. Teachers also reported that this impacts marginalized students more, with about one-third agreeing that content associated with LGBTQ students or students of color is more likely to be filtered or blocked.

2. The bill has a significant, potentially unconstitutional, restriction for young people's access to online services.

All U.S. residents have the First Amendment right to speak out and to gather information. Even minors are "entitled to a significant measure of First Amendment protection [...] and only in relatively narrow and well-defined circumstances may the government bar public dissemination of protected materials to them."<sup>1</sup> Today, the internet is our nation's primary marketplace of ideas, and a social media account is usually needed to participate in that marketplace by posting content, or accessing information on a particular platform. By preventing kids under 13 from creating social media accounts, this legislation would violate those minors' First Amendment rights.

While some content on social media services may be inappropriate for children, much of it is newsworthy, educational, artistic, or otherwise beneficial. Limiting children from accessing beneficial content in order to keep them from seeing content that may be harmful to them is overbroad and likely won't withstand constitutional challenges, as such a move is not narrowly tailored to withstand the level of scrutiny the court would have to apply. An outright ban is far from the least restrictive means to prevent children from seeing content.

As arts and extracurricular programming is cut from education budgets and books are being banned in schools, equipping young people with the ability to access a wide array of information online is critically important for young peoples' [literacy rates](#), [empathy](#), [development](#), and even their [health](#). Additionally, educational settings can and should teach students digital literacy skills, including navigating social media. Students and teachers [agree](#) that, much like [book](#)

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<sup>1</sup> ERZNOZNIK v. CITY OF JACKSONVILLE 422 U.S. 205 (1975)

[bans](#), blocking and filtering technology can [undermine learning](#). Given that the majority of [adults](#) and [youth](#) use social media to access news, schools can and should support students in becoming critical consumers of all media.

Even more, this legislation bars schools receiving E-Rate funding from allowing access to social media on their “supported services, devices, and networks.” Unfortunately, this provision will reach far beyond school grounds. Today, [schools](#) often provide students with computers, hotspots, and other networking equipment. However, these devices are [disproportionately](#) used outside of school by low-income households, who [struggle to afford](#) a device or broadband connection on their own. In fact, for many low-income households, a child’s school-provided device is the only device in the home and is consequently shared by the entire household. Because the social media ban applies to any supported devices and networks from E-Rate schools, regardless of where the device is physically located, all members of families using school-provided devices would be blocked from accessing social media—even at home. Because higher income households are more likely to have their own devices, this legislation would create a world that enables wealthier households to access social media at home, while lower income households cannot. Social media access generally can allow for adults to connect with family, receive news, and engage in political speech.

3. The bill will likely undermine existing child safety efforts.

The bill also imposes a ban on social media services’ ability to use recommendation systems to show content to those under 17 years of age. The updated language of the bill provides several exceptions, including the use of filters that create user-friendly and age-appropriate experiences. However, the language is still significantly broad. Many online services already offer users the ability to view a [chronological feed](#). Banning the use of these recommendation systems will inadvertently undermine a covered social media services’ ability to create age-appropriate online experiences and make available relevant and beneficial content.

The protection of young people online is an important and urgent goal for all. Similarly, it is crucial to ensure that young people are prepared to navigate a digital world in responsible and healthy ways as they become adults. Tracking their every move online and significantly restricting their ability to create accounts on popular social media services that allow them to communicate, read, write, and grow may impede the critical development that ensures their safety in the long run.

We continue to believe that the best way to move forward in protecting children’s privacy and security online is to protect everyone’s privacy and security, which can be accomplished by working on a bipartisan bicameral comprehensive privacy bill—as Congress has already begun to do. We stand ready to work with the sponsors of the Kids Off Social Media Act as well as all other members of Congress to enact policies that ultimately empower minors online and protect privacy for everyone. Please feel free to reach out to David Morar ([morar@opentechinstitute.org](mailto:morar@opentechinstitute.org)) or Aliya Bhatia ([abhatia@cdt.org](mailto:abhatia@cdt.org)) with any questions.

**Signatories**

Access Now

ACLU

American Library Association

Center for Democracy & Technology

Chamber of Progress

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Disability Rights Education & Defense Fund

EFF

Equality New Mexico

Fight for the Future

Free Press Action

Freedom of the Press Foundation

Freedom Oklahoma

Indivisible Bellingham

Indivisible Plus Washington

Indivisible Whidbey Island

InnovateEDU

Kapor Center

LGBT Tech

Massachusetts Transgender Political Coalition

National Center for Learning Disabilities

New America's Open Technology Institute

Olympia Indivisible

PEN America

Privacy Rights Clearinghouse

Public Knowledge

SIECUS: Sex Ed for Social Change

Snohomish County Indivisible

Student Press Law Center

The 6:52 Project Foundation, Inc.

Transgender Education Network of Texas (TENT)

WA People's Privacy