

July 2, 2020

The Honorable Lindsey Graham
Chairman, Senate Committee on the Judiciary
United States Senate
Russell Senate Office Building 290
Washington, D.C. 20510

The Honorable Dianne Feinstein
Ranking Member, Senate Committee on the Judiciary
United States Senate
Hart Senate Office Building 331
Washington, D.C. 20510

Dear Chairman Graham and Ranking Member Feinstein:

The undersigned organizations and individuals write to express our opposition to the *Eliminating Abusive and Rampant Neglect of Interactive Technologies Act of 2020* (EARN IT Act). In light of the drastic changes in the manager's amendment, the Committee should postpone the markup to give interested parties an opportunity to work with the Committee on the new language. While many parties have continued to work with the Committee on different amendment language throughout this process, civil society has not yet had the chance to review in detail this latest proposal and the potential impact it may have.

The manager's amendment would effectively make the EARN IT Act into an entirely different bill. The amendment correctly identifies that forcing companies to adhere to a list of recommended best practices raises a significant amount of constitutional questions, and rightly seeks to eliminate the legal authority of the Commission. However, most worrisome, the new language would amend Section 230 to exclude state civil and criminal laws from its protection. While it may seem like an innocuous change, the new language makes no mention of the scienter requirement of those state laws. If a state law makes it illegal to negligently or recklessly transport CSAM, interactive computer services will likely be unable to host user-generated content at all.

Worse, the new language potentially allows for state lawmakers to target important user-privacy features like end-to-end encryption. By excluding violations of state laws from the protections of Section 230, courts may make rulings that undermine the use of end-to-end encryption..

The Committee is right to look to drastic changes to the bill. However, a large segment of civil society has yet had the opportunity to examine the proposed changes, and those who have had

little, if any, opportunity to work with the Committee in any capacity to address the new language and the concerns it raises. Therefore, the Committee should postpone the markup so that interested parties can examine the proposed amendments in more detail, and work with the Committee to address potential concerns.

We appreciate the willingness to engage the Committee has shown thus far to improve the EARN IT Act, and hope the Committee provides the same opportunity moving forward.

Sincerely,

R Street Institute
Access Now
Americans for Prosperity
The App Association
Center for Democracy & Technology
Defending Rights & Dissent
Freedom House
Jess Miers, Santa Clara University School of Law*
National Association of Criminal Defense Lawyers
National Coalition Against Censorship
New America's Open Technology Institute
Prostasia Foundation
Restore the Fourth
The Internet Society
Woodhull Freedom Foundation

**Affiliation listed for identification purposes only*