

Re: Concerns with S. 1291's Threats to Minors' Privacy and Safety Online

Dear Chairwoman Cantwell and Ranking Member Cruz and members of the Committee,

We the undersigned civil rights, digital rights, and civil liberties organizations write to express our concerns with the Protecting Kids on Social Media Act (S. 1291) introduced by Senator Schatz. Senator Cotton, Senator Murphy and Senator Britt that will be marked up in the coming weeks in the Senate Commerce Committee. While the goal of the bill is laudable, the bill's approach imperils young peoples' ability to access a wide range of online services, could undermine existing child safety efforts, and subjects all users (including adults) to further data collection. Although we appreciate that what we understand to be the Manager's amendment to the bill has significantly improved on the introduced version, our remaining concerns are significant.

The bill significantly restricts young peoples' access to a wide range of online services

While the bill targets social media services in particular, the broad definition of "social media" limits young peoples' access to a wide range of services such as YouTube Kids and message-board services like Geneva, PlayTalk, and others that pre-teens use to stay in touch with school groups and [friends during the holidays](#). Changing the scope of covered services may help to narrow the bill to achieve its intended effect without sweeping in child-directed services.

Even so, restricting access to online services hurts young people and their development. It is also likely unconstitutional. Courts have previously held that laws proposed in Arkansas and Texas that ban children from accessing online platforms without parental consent [violated the First Amendment](#), a restriction similar to the prohibition at issue in this legislation. 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 be seen by a court as being narrowly tailored to withstand the level of scrutiny the court would have to apply.

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](#).

The bill will result in increased privacy invasive practices on all users, including adults

To restrict those under 13 from creating accounts on social media services and curb the use of recommendation systems for those under 18, online services will need to determine the ages of all of its users, adults and children alike. This will result in further data collection, retention, and processing on all users as well as imperiling the ability of even adults to access content [anonymously](#).

Social media services will be [incentivized to comply](#) by estimating the ages of its users by using age assurance technology in order to avoid liability, both of which will require further data collection and processing. Age estimation methods include facial scanning, voice analysis, or behavioral analysis which are imprecise techniques that are likely to lead to erroneous conclusions, especially for disabled users, non-binary users, and non-white users. Requiring the use of age verification which uses hard-identifiers like government IDs to guarantee users' ages will increase private social media services' access to sensitive documents and make them vulnerable to future data breaches.

We support the need for a study on age verification technology. However, advancing a pilot initiative to create a government-credential based system to verify users' ages will pose serious barriers to access information for users without government IDs (including children, undocumented immigrants, and people experiencing homelessness) and raise privacy and security concerns as well.

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 those under 18 content. However, this ban is likely to undermine the use of filters that create user-friendly and age-appropriate experiences. The recommendation systems social media services use to surface content that may be harmful to children are the same as the ones that demote or downrank content that is inappropriate, spammy, and outright harmful. In fact, given the scale of content hosted by social media services, the use of some type of recommendation system is inevitable and necessary to make services usable, even if displaying content solely chronologically.

Many online services already offer users the ability to view a [chronological feed](#), although researchers studying social media feeds say that [many users opt out](#) of using the chronological feeds when given the opportunity to choose. 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. This provision also raises significant First Amendment concerns, as it prevents covered social media services from using their editorial judgment to determine what content to prioritize in children's feed and would also, therefore, need to be narrowly tailored to directly advance a compelling government interest. An outright ban is unlikely to meet that test.

The protection of young people online is an important and urgent goal, as is ensuring young people are set up to navigate the digital economy in responsible and healthy ways in the future. 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.

Parents want their children to have access to the internet too. A Pew study on parents views on YouTube finds that [97 percent of parents](#) believe that the platform keeps their kids entertained and almost 50 percent think it encourages learning. More than 80 percent of Black and Latinx parents in particular argue that these technologies expose their children to different ideas and cultures. Researchers have also found that young people derive great benefits from online services including [finding peer support](#) and adapting new [skills](#) to better navigate the digital environment.

In light of these factors, the best way Congress can protect children is by [protecting everyone's privacy](#) and [listening](#) to them. The Protecting Kids On Social Media Act does not achieve those goals in its current form. Our coalition stands ready to work with the sponsor of the Protecting Kids on Social Media Act as well as all other members of Congress to enact policies that empower minors online and protect privacy for everyone. Please feel free to reach out to Aliya Bhatia, abhatia@cdt.org, with any questions.

Signatories:

American Civil Liberties Union
Center for Democracy & Technology
Electronic Frontier Foundation
Fight for the Future
R Street Institute
TechFreedom