

September 25, 2023

RE: The STOP CSAM Act Jeopardizes Free Expression and Privacy

The Honorable Chuck Schumer
322 Hart Senate Office Building
Washington, D.C. 20510

Dear Leader Schumer,

We, the undersigned groups, including civil rights groups and groups representing LGBTQ+ individuals, sex workers, journalists, and libraries, write to share our opposition to S. 1199, the Strengthening Transparency and Obligations to Protect Children Suffering from Abuse and Mistreatment Act (STOP CSAM Act). Like the Eliminating Abusive and Rampant Neglect of Interactive Technologies Act (EARN IT) Act, this legislation would lead apps and websites to surveil every single word, image, and video its users post, censor First Amendment protected speech, and stop offering services that are critical for enabling secure, private conversations.

The STOP CSAM Act Would Lead to More Censorship of Information About Reproductive Rights and Sexual Orientation and Gender Identity

We believe that the STOP CSAM Act will lead to censorship of First Amendment protected speech, including speech about reproductive health, sexual orientation and gender identity, and personal experiences related to gender, sex, and sexuality. Even today, platforms regularly remove content that has vague ties to sex or sexuality, for fear of liability, and this would only increase if STOP CSAM incentivized apps and websites to exercise a heavier hand at content moderation.

The STOP CSAM Act, as amended, enables the victims of child exploitation to sidestep Section 230 to bring a civil lawsuit against a platform for “intentionally, knowingly, or recklessly” hosting child sexual abuse material (CSAM), or facilitating a violation of CSAM laws.¹ This means a court can find an app or website liable for hosting CSAM even if the app or website did not *know* it was hosting CSAM. In order to avoid such liability, apps and websites are likely to scan all of the content on their platforms and remove any content that a state court could find, even wrongfully, is CSAM.

Websites focused on sex education and LGBTQ issues are regularly swept up in attempts to block sexual content. In 2021, a research study by Top10VPN found that 92% of parental control apps on Google play were wrongly blocking at least one LGBTQ or sex-education website, including the Trevor Project and It Gets Better, as “adult content.”² Worse

¹STOP CSAM Act, S.1199 Sec 5 (d)(2) (2023)

²Jamie Wareham, *92% of Top Parental Control Apps Wrongly Block LGBTQ and Sex-Ed Sites*, Forbes (January 19, 2022), <https://www.forbes.com/sites/jamiewareham/2022/01/19/92-of-top-parental-control-apps-wrongly-block-lgbtq-and-sex-ed-sites/?sh=6f47b6c78444>; Molly Spryregen, *Parental Control Apps*

still, some parental control apps notified parents when their children tried to access wrongfully blocked websites, potentially outing them. In addition, Rogue Valley Pepper Shakers, which posts abortion resources, had a post about LGBTQ rights removed for violating “minor safety.”³ And Twitter initially removed a trailer from a stock footage company showing queer couples drinking coffee, holding hands, and playing with children for containing “sensitive content.”⁴

Examples of platforms censoring reproductive health related speech are also plentiful. Websites and apps including Instagram, Facebook, TikTok, and Google ads have removed posts, ads, and even the entire account for Plan C, an advocacy organization and resource for accessing at-home reproductive health care.⁵ Instagram also labeled Planned Parenthood maps showing where abortion was safe and legal as potentially containing violent or graphic content, and removed the account of Aid Access -- which helps connect people seeking reproductive healthcare with virtual healthcare providers.⁶

Sometimes, apps and websites also remove content where an individual shares their own experiences, because of the topic at hand. For example, TikTok removed a trans activist’s posts discussing her experience being bullied because of hateful comments posted in response.⁷ Furthermore, Tripadvisor repeatedly deleted a woman’s review of a hotel discussing how the hotel’s security guard raped her - preventing others from learning of that potential danger.⁸

It is worth noting that while many of these examples come from large platforms, Section 230’s protections apply to any entity that manages an app or website that hosts third party content, including libraries, charities, workforce centers, and small businesses. Thus, if the

are Outing Kids to their Parents & Blocking them from LGBTQ Resources, LGBTQNation (January 19, 2022), <https://www.lgbtqnation.com/2022/01/parental-control-apps-blocking-kids-lgbtq-resources-outing-parents/>

³Katie Baskerville, *Is TikTok Censoring Pro-Abortion Content*, Refinery29 (June 9, 2021), <https://www.refinery29.com/en-gb/2021/06/10500889/abortion-pro-choice-censoring-tiktok>

⁴Lauren Zoltick, *Why is Social Media STILL Censoring the LGBTQIA+ Community?*, Storyblocks (June 15, 2021), <https://blog.storyblocks.com/storyblocks-features/why-is-social-media-still-censoring-the-lgbtqia-community/> and watch the video in question here:

<https://twitter.com/StoryblocksCo/status/1393234701142298626>;

⁵Jessica Lucas, *Instagram has Emerged as a Major Front in the Fight for Abortion Rights*, Input (September 10, 2021), <https://www.inverse.com/input/culture/abortion-rights-plan-c-pills-instagram-shutdown-texas-sb8>; Victoria Elliott, *TikTok Keeps Removing Abortion Pill Content*, Wired (June 24, 2023), <https://www.wired.com/story/tiktok-abortion-content-censorship/>

⁶Queenie Wong, *Instagram Fumbles in its Moderation of Abortion Content*, CNET (June 29, 2022), <https://www.cnet.com/news/social-media/instagram-fumbles-in-its-moderation-of-abortion-content/>; Madison Pauly, *Why Do Social Media Platforms Keep Removing Posts about Safe and Legal Abortion Pills*, Mother Jones (May 13, 2022), <https://www.motherjones.com/politics/2022/05/twitter-instagram-facebook-google-abortion-pills-roe-ban/>

⁷Shannon Raphael, *Reice Hodges aka Miss Reice Accused TikTok of Censoring Videos about her Trans Experience*, Distractify (February 13, 2020), <https://www.distractify.com/p/who-is-reice-hodges-on-tiktok>

⁸Woman Who Says TripAdvisor Removed Post about Rape Speaks Out, CBS News (November 2, 2017), <https://www.cbsnews.com/news/woman-accuses-tripadvisor-removing-post-about-alleged-rape-at-mexico-resort/>

STOP CSAM Act is enacted, a workforce center could be held liable for something posted on its job board, or a charity could be held liable for what a user posts in a virtual support group.

The STOP CSAM Act Would Enable The Government and Others to Eavesdrop on Private Communications

If enacted, the STOP CSAM Act will also make it more difficult to communicate without the interference of the government, hackers, or anyone else, through the use of end-to-end encryption. End-to-end encrypted communications cannot be read by anyone but the sender or recipient – that means government actors, malicious third parties, and even platforms themselves are unable to access messages as they're transmitted. Offering encrypted services could open apps and websites up to liability, because a court could find that end-to-end encryption services are likely to be used for CSAM, and merely offering them is reckless.

A world without encryption would harm journalists who use encrypted messages to contact their sources, doctors who use it to speak with patients, domestic violence victims who rely on completely private communications to escape dangerous situations at home, and businesses discussing finances with clients. But there would also be severe consequences for groups that are being targeted by some state governments, like those seeking reproductive care, and LGBTQ+ persons.

As more and more states criminalize abortion, prosecutors are likely to take advantage of unencrypted communications to more easily prosecute people receiving reproductive healthcare. For example, a UK court handed down a 28-month prison sentence to a mother who took abortion pills, based in part on the woman's internet searches and messages.⁹

It is not hard to imagine a world in which state governments could use the content of messages to prosecute LGBTQ+ people. This year a slew of states including Arkansas, Florida, Idaho, Kentucky, Tennessee, and Montana introduced or enacted legislation targeting drag shows.¹⁰ Other states, like Texas, focused on banning gender affirming care.¹¹ Absent encryption, governments could deputize platforms to scan messages looking for evidence of newly criminalized behavior.

Ultimately, the STOP CSAM Act, like the EARN IT Act, will severely jeopardize the rights of Americans to communicate online freely, and privately. "What's more, is that some of our nation's most vulnerable populations will be most affected by these wrongs. We urge you to

⁹Claire Cohen, *The Weaponisation of Women's Social Media Use in Abortion Cases*, Elle (June 15, 2023), <https://www.elle.com/uk/life-and-culture/a44209948/weaponisation-of-womens-social-media-abortion-cases/>

¹⁰Solcyre Burga, *Tennessee Passed the Nation's First Law Limiting Drag Shows. Here's the Status of Anti-Drag Bills Across the U.S.*, Time (March 5, 2023), <https://time.com/6260421/tennessee-limiting-drag-shows-status-of-anti-drag-bills-u-s/>

¹¹*Mapping Attacks on LGBTQ+ Rights in U.S. State Legislatures*, ACLU, <https://www.aclu.org/legislative-attacks-on-lgbtq-rights> (last accessed August 24, 2023).

vote “no” on both bills, either as standalone legislation, or as part of a comprehensive package. The risks are simply too great.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to reach out to Jenna Leventoff (JLeventoff@aclu.org).

Sincerely,

Access Now
Advocacy for Principled Action in Government
American Civil Liberties Union
American Humanist Association
American Society of Journalists and Authors (ASJA)
Assembly Four
Association of Research Libraries (ARL)
Center for Democracy & Technology
Chamber of Progress
comun.al. Digital Resilience Lab
Convocation Research + Design
Decriminalize Sex Work
Defending Rights & Dissent
Demand Progress
Developers Alliance
EFF-Austin
Electronic Frontier Foundation (EFF)
Electronic Frontiers Georgia (EFGA)
Equality New Mexico
Fight for the Future
Foundation for Individual Rights and Expression
Free Speech Coalition
Freedom Network USA
Freedom of the Press Foundation
Freedom Oklahoma
goodworks: north alabama harm reduction
Government Information Watch
Indivisible Plus Washington
Indivisible Washington's 8th District
JCA-NET(Japan)
LGBT Technology Partnership
Library Futures
Mozilla
National Coalition Against Censorship
New America's Open Technology Institute

New Moon Network
NYCD16 Indivisible
OfferUp Inc.
OpenMedia
Organization for Identity & Cultural Development
Organization for Transformative Works
PEN America
Public Health Solutions
Public Knowledge
Restore The Fourth
S.T.O.P. - The Surveillance Technology Oversight Project
SIECUS: Sex Ed For Social Change
Surveillance Technology Oversight Project (S.T.O.P.)
Tech for Good Asia
TechFreedom
The Ali Forney Center
TransOhio
Tutanota
Unitarian Universalist Association
University of Michigan - MSA
WA People's Privacy
WCLA - Choice Matters
Whidbey Indivisible
Woodhull Freedom Foundation
X-Lab
Yale Privacy Lab