



September 25, 2023

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

RE: Oppose the STOP CSAM Act, the EARN IT Act, and the Cooper Davis Act

Dear Leader Schumer,

We, the undersigned civil society organizations, write to share our opposition to the STOP CSAM Act, the EARN IT Act, and the Cooper Davis Act because they threaten the civil rights of Black, Brown, and LGBTQ+ people, including by undermining encryption technologies and contributing to over-policing and surveillance. Although we respect and applaud the intention to combat child sexual abuse material, dangerous drugs, and other harmful online content, these three bills contain dangerous provisions that threaten the freedom and safety of communities of color online and offline.

These Bills Threaten the Private, Secure Communications that are Essential to Communities of Color.

The right to private communications is a cornerstone of free expression and is essential to the fight for racial justice. The “inviolability of privacy” is “indispensable to preservation of freedom of association.”¹ Today, private, secure messaging online made possible by encryption is essential for activists organizing racial justice movements and vulnerable communities seeking spaces online to communicate without being subjected to hate or harassment. They are a lifeline for immigrant communities fearful of government surveillance. And particularly following the overturning of *Roe v. Wade*, private communications are essential for those seeking reproductive and gender-affirming healthcare.

End-to-end encryption is a best practice in data privacy and security, protecting individuals’ private communications from undue surveillance or censorship. Encryption is especially crucial for those who have the most to lose by having their privacy violated, whether LGBTQ+ individuals who communicate but would suffer harm from being outed, or individuals under the threat of prosecution under draconian state laws. Impairing encryption will directly harm racial justice activists and other activists who are routinely targeted for surveillance and abuse by law enforcement.² It will also make it easier for employers to surveil and discriminate against employees.

¹ *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958).

² Russell Brandom, *How Police Laid Down a Dagnet for Kenosha Protestors*, The Verge (2021), <https://www.theverge.com/22644965/kenosha-protests-geofence-warrants-atf-android-data-police-jacob-blake>.

All three of these bills will limit the ability for online platforms to offer end-to-end encryption. The STOP CSAM Act, the EARN IT Act, and the Cooper Davis Act all permit criminal or civil liability to be imposed on platforms that offer end-to-end encryption.³ Moreover, the Cooper Davis Act permits and, in some cases, requires a broad array of sensitive information to be given to law enforcement, including the contents of communications and users' identities.⁴ Provisions in these bills purport to exempt end-to-end encryption, but they are too narrow to provide meaningful protection, permitting the use of encryption to still be introduced as evidence against a provider.⁵ The liability risks and reporting mandates of these bills pose a real danger of destroying the ability for platforms to offer encrypted communication. Platforms will inevitably restrict such services to shield themselves from legal liability or to surveil and censor user inputs to comply with the mandates of these bills.

We believe that this is unacceptable. In seeking to mitigate and prevent the awful harms of drugs or child sexual abuse material, these bills risk opening a Pandora's box that could radically reshape the internet at the expense of communities of color, activists, and other vulnerable individuals who rely on encryption and the safety of private communications to gather and share information freely.

Privacy rights are civil rights, and encryption is a necessity for privacy in an always-online world.

These Bills Expand Surveillance of Communities of Color and Increase Law Enforcement's Warrantless Access to Personal Information.

These bills would dramatically increase the surveillance of all communications across online platforms. Though these proposals are aimed at increasing online safety, they can undermine these objectives by incentivizing platforms to collect and share *more* information about users. As a result, these proposals will significantly require platforms to monitor and disclose content while creating greater opportunities for law enforcement to evade warrant requirements for accessing personal information.

STOP CSAM and Cooper Davis, in particular, expand voluntary and mandated reporting requirements.⁶ These provisions will undermine existing warrant protections and expand law enforcement access to private personal information, placing communities of color at risk of government surveillance and criminalization.

These expanded disclosure requirements will harm communities of color and exacerbate existing disparities in the criminal justice system. The criminal legal system has always disproportionately surveilled Black and Brown communities and prosecuted them more often and more harshly.⁷ These bills

³ STOP CSAM Act, S. 1199, 118th Cong., sec. 5, § 2255(g)(2); EARN IT Act, S. 1207, 118th Cong., sec. 5, § 230(e)(7)(B); Cooper Davis Act, S. 1080, 118th Cong., sec. 2, § 521(g)(4).

⁴ Cooper Davis Act, S. 1080, 118th Cong., sec. 2(a)(1), § 521(c)(1).

⁵ STOP CSAM Act, S. 1199, 118th Cong., sec. 5, § 2255(g)(2); EARN IT Act, S. 1207, 118th Cong., sec. 5, § 230(e)(7)(B).

⁶ STOP CSAM Act, S. 1199, 118th Cong., sec. 4(a)(1), § 2258A(a); Cooper Davis Act, S. 1080, 118th Cong., sec. 2(a)(1), § 521(b)(1).

⁷ Susan Nembhard and Lily Robin, *Racial and Ethnic Disparities throughout the Criminal Legal System*, Urban Institute (2021), <https://www.urban.org/sites/default/files/publication/104687/racial-and-ethnic-disparities-throughout-the-criminal-legal-system.pdf>.

exacerbate that disparity. Additional collection, monitoring, and reporting requirements will likely be disproportionately targeted at people of color due to algorithmic or human bias.⁸ Creating new avenues to surveil private online activity and prosecute individuals will only create new online harms and make platforms less safe for communities of color.

Civil rights cannot be collateral damage in the effort to improve online safety. The solution to preventing child sexual abuse and illicit drug trafficking is not to place greater power in the hands of online platforms and task them to moderate and interfere with private communications. Platforms are not qualified to determine how and when to report personal information to law enforcement. Recent history clearly shows that platforms will make content moderation decisions based primarily on their private financial interests, rather than that of the greater public good.⁹

Passing comprehensive consumer privacy legislation is the most effective way for Congress to protect children and all vulnerable communities online. A robust consumer privacy bill would limit the amount of data that online platforms can collect, process, and share, restricting the ability for online platforms to target harmful content towards both children and adults. Such a bill would also give children and parents new tools for ensuring online safety, including control over personal data and transparency requirements about how platforms use personal data.

For the reasons summarized above, we urge you to oppose the STOP CSAM, EARN IT, and Cooper Davis Acts and prevent their text from being included in any legislative package. Thank you for your consideration of this matter. For any questions or further discussion, please contact Alex Ault, policy counsel at the Lawyers' Committee for Civil Rights Under Law, at aault@lawyerscommittee.org, or Cody Venzke, senior policy counsel at the ACLU, at cvenzke@aclu.org.

Sincerely,

Access Now

American Civil Liberties Union (ACLU)

Center for Democracy & Technology

Center for Law and Social Policy (CLASP)

Color Of Change

Electronic Frontier Foundation

Fight for the Future

Lawyers' Committee for Civil Rights Under Law

The Leadership Conference on Civil and Human Rights

New America's Open Technology Institute

Public Knowledge

Sikh American Legal Defense and Education Fund (SALDEF)

United Church of Christ Media Justice Ministry

⁸ Ángel Díaz and Laura Hecht-Fejella, *Double standards in social media content moderation*, Brennan Center for Justice (2021), <https://www.brennancenter.org/our-work/research-reports/double-standards-social-media-content-moderation>.

⁹ Liu, Yi and Yildirim, Pinar and Zhang, Z. John, *Implications of Revenue Models and Technology for Content Moderation Strategies* (November 23, 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3969938.