

House Energy & Commerce Committee  
2125 Rayburn House Office Building  
Washington, D.C. 20515

June 27, 2024

**Re: Letter For the Record for House Energy & Commerce Committee Markup On Kids Online Safety Act (H.R. 7891)**

Dear Chair McMorris Rodgers, Ranking Member Pallone, and Members of the House Energy & Commerce Committee,

We, the undersigned civil society organizations, submit this letter for the record to express our concerns with the Kids Online Safety Act (KOSA), H.R. 7891, as currently drafted. We share the goal of keeping kids safe online. Nevertheless, we believe that the harm that would be caused by the broad duty of care is too great to advance this legislation without amendment and we oppose the bill in its current form. We urge you to amend the bill so that it would serve its intended goal, while mitigating the strong likelihood that the bill would otherwise censor valuable speech and undermine the privacy rights of all users online.

As Ranking Member Pallone said in the last House subcommittee hearing on H.R. 7891, the duty of care would likely cause additional harm to all Americans because it would incentivize social media companies to over-filter content over fear of legal risks. That is what happened in the wake of the passage of [FOSTA-SESTA](#), a pair of bills to fight online sex trafficking that contained broad language and strong incentives to filter content. Platforms responded by restricting access to critical information related to LGBTQ+ identity for all users. KOSA poses significant First Amendment concerns because it would likely result in platforms restricting access even to content that legislators and researchers agree young people should be able to see, due to fear of liability and the error-prone nature of content filtering tools.

Content filtering technology is unable to parse intent or nuance and is trained on keywords or associations between text to detect and take action at scale. If a content filter is trained to detect and prevent recommendation of content with the hashtag #thinspo or #skinnygirlhacks for example, is [likely](#) to remove not only content that uses those hashtags to promote an eating disorder, but also content that [condemns eating disorders](#). As such, KOSA could prevent users from accessing important content they need because of errors in moderation made by increased dependence on blunt content filtering tools to address what are very careful and context-dependent decisions.

Removing the duty of care that broadly incentivizes social media companies to use content filtering tools would be an important step to enable young people to access critical information they may need to keep themselves safe. Striking the duty of care could also help shield KOSA from future enforcement of the broad language, which could be used to censor all types of content, from content about guns to vaccines to transgender issues to abortions.

Alternatively, the Committee should at minimum amend the duty of care to safeguard against the potential for misuse and constitutional challenges. Such edits could include raising the mens rea requirement for design features that recommend content related to mental health harms. In addition, the definition of “design feature” should not include “personalized recommendation systems,” which are fundamentally content delivery systems, but instead focus on content neutral features of the services such as “autoplay” or screen time limits. There might be other ways to approach this issue. We recommend, welcome, and encourage that conversation.

One additional worry is that some provisions are worded in such a way that they could be interpreted to permit parents to broadly surveil their kids online, especially since parents and their kids do not always have supportive relationships. As currently drafted, parents have the right to “manage” settings for both teens and children in the preambulatory text in Sec. 103(b)(2)(A), and then rights to “view” (for teens) or “change” (for children) settings in clauses (i) and (ii). It is not clear, however, if the right to “manage” in the preambulatory text gives parents of teenagers additional controls. Amendments are necessary to clarify that it does not. Additional amendments to the bill can ensure parents have access to tools to protect their children’s privacy, but do not have broader abilities to surveil or control the content that particularly their teen kids view.

The Kids Online Safety Act, as currently drafted, continues to raise free expression and privacy concerns. However, changes are possible to improve the bill and reduce these concerns while keeping kids safe online. We have been encouraged by lawmakers’ continued engagement on the legislation and urge you to continue improving the bill before advancing it to the floor of the House.

Sincerely,

American Civil Liberties Union  
Center for Democracy & Technology  
New America’s Open Technology Institute  
Fight for the Future