



July 26, 2023

The Honorable Maria Cantwell
Chair
Senate Committee on Commerce, Science,
and Transportation
511 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Ted Cruz
Ranking Member
Senate Committee on Commerce, Science,
and Transportation
167 Russell Senate Office Building
Washington, D.C. 20510

Re: Markup of S.1409 and S.1418

Dear Chair Cantwell, Ranking Member Cruz, and Honorable Members of the Committee on Commerce, Science, and Transportation:

Startups are creating new and innovative products that better the lives of users of all ages, improving the way individuals learn, work, and play. As a nonprofit that works to advance a policy environment where startups can succeed, we appreciate your attention to issues important to them, including the experiences of their customers. Startups take seriously their commitments to their users to create beneficial products and services while protecting their privacy and working to ensure a safe, relevant, and healthy user experience, including by upholding their obligations under current law and employing industry best practices.

We have serious concerns about S.1409, the Kids Online Safety Act, and S.1418, the Children and Teens' Online Privacy Protection Act, and their implications for cybersecurity risks, additional privacy-invasive data collection, third-party content available on startups' services, and increased costs of compliance, all of which undermine startup competitiveness and diminish user experience.

The Children and Teens' Online Privacy Protection Act replaces the current, clear "actual knowledge" standard, instead making startups assess which users are "reasonably likely" to be children or teens. In practice, these changes mean companies will need to surveil their users more—not less—and rely on problematic age verification technologies¹ or collect additional data—that startups don't need or want—²to analyze which users might not be adults. These options

¹ See, e.g., Clare Cho, *Challenges with Identifying Minors Online*, Congressional Research Service (Mar. 27, 2023). <https://crsreports.congress.gov/product/pdf/IN/IN12055>.

² *Privacy Patchwork Problem*, 13 Engine (April 2023), <https://static1.squarespace.com/static/571681753c44d835a440c8b5/t/6414a45f5001941e519492ff/1679074400513/Privacy+Patchwork+Problem+Report.pdf>; *Comments of Engine Advocacy in response to Commercial Surveillance ANPR*, §V Engine (Nov. 21, 2022), <https://static1.squarespace.com/static/571681753c44d835a440c8b5/t/638526cc3d868e2a6337b3d2/1669670605521/Engine+-+FTC+Privacy+ANPRM+Comments.pdf>.

are costly for startups,³ fail to create additional clarity, undermine user privacy,⁴ and create new security risks—⁵none of which are desirable for startups or their users. We have similar concerns about the Kids Online Safety Act, which—both as introduced and under recent proposed changes—includes a knowledge standard that would require companies to collect additional, otherwise unnecessary data about all of their users to verify their age or risk running afoul of the law.

We're also concerned that the bill's "duty of care" will push companies to preemptively and over-broadly block users's access to legal third-party content out of abundance of caution. Startups that host third-party content—a wide range that extends far beyond "social media" and includes review websites, photo sharing, classified listings, and more—already spend significant time and resources to moderate user content so that they're online spaces are safe, healthy, and relevant for their users.⁶ Pushing startups to remove legal content will not only require small companies with limited budgets to spend more on content moderation efforts, it also risks making startups' platforms less useful and vibrant corners of the Internet for their users.

Alternatively, some startups may decide they do not want to bear the legal risk or they cannot afford to assess the likely age of their users. In response, these companies may pivot to market offerings that can only be construed as not directed to nor reasonably likely to be used by children or teens. Limiting, pivoting, and redesigning products can be costly for startups and diminish their competitiveness while leaving only the companies and their products that policymakers are most worried about in the marketplace.

We appreciate the Committee's work to bolster consumer protections online, especially for young users, and strongly support efforts to create uniform federal privacy standards that provide clarity for startups and strong protections for their users of all ages. We encourage the committee to pursue legislation that protects consumers while avoiding the unintended consequences to startups, consumer privacy, data security, and online expression described above, and we are eager to be a resource in continuing conversations.

Sincerely,

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³ See, e.g., Joshua Levine, *COPPA 2.0: The Costs of Layering on Liability*, American Action Forum (May 18, 2023), <https://www.americanactionforum.org/insight/coppa-2-0-the-costs-of-layering-on-liability/>.

⁴ See, e.g., Adam Smith, *Hidden loopholes and privacy risks loom over online age check laws*, Context (Jan. 18, 2023), <https://www.context.news/big-tech/hidden-loopholes-and-privacy-risks-loom-over-online-age-check-laws>.

⁵ See, e.g., Shoshana Weissman, *If platforms are required to have your government IDs and face scans, hackers and enemy governments can access them too*, RStreet (May 22, 2023), <https://www.rstreet.org/commentary/if-platforms-are-required-to-have-your-government-ids-and-face-scans-hackers-and-enemy-governments-can-access-them-too/>.

⁶ *Startups, Content Moderation, & Section 230*, Engine (December 2021), <https://static1.squarespace.com/static/571681753c44d835a440c8b5/t/61b26e51cdb21375a31d312f/1639083602320/Startups%2C+Content+Moderation%2C+and+Section+230+2021.pdf>.