



EARN-IT Act Overview

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Link to full bill text:

<https://www.congress.gov/bill/117th-congress/senate-bill/3538>

Purpose:

Establishes a commission developed to recommend best practices that online platforms may choose to implement to prevent, reduce, and respond to online child sexual exploitation (CSE) and the spread of child sexual abuse materials (CSAM). This commission will be called the National Commission on Online Child Sexual Exploitation Prevention and will have 19 members. Each member serves for a five-year term.

Background and Concerns:

What is Section 230?

Section 230 says that "**No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider**" ([47 U.S.C. § 230](#)). It also protects the rights of interactive computer services to screen, filter, and block objectionable materials. For a better understanding of the complexities of online free speech as described in Section 230, see [What Is Section 230?](#)

Fighting Online Child Sexual Exploitation

Interpol maintains an international database of child sexual abuse materials which allows specialized investigators in more than 64 countries to share data, identify CSAM via non-visual data markers, and collaborate to identify and respond to victims. This database is one of several similar databases in use for CSAM investigations, currently includes 2.7 million images, and has helped to identify 23,564 victims worldwide. ([Interpol](#)) A [2018 report about the contents of this database](#) identified some key information about the prevalence and nature of online CSE:

- While the majority of images are of girls, 35% of the images included at least one boy, and CSAM with male victims depicted more severe or brutal abuse.
- This report indicates that "increased media attention and public awareness surrounding the risks associated with young people's use of technology and the Internet" may have contributed to an assumption that most CSAM is older adolescents. In reality, 4.3% of the images were of infants and toddlers, 56% were of pre-pubescent children, and 14.1% included children of different age categories.
- The younger the victim, the more severe the abuse was likely to be, and 84.2% of the videos contained abuse that was at a [COPINE](#) level 6 or above. 46.61% was at a COPINE level of 8 or above, and 7.14% was at a COPINE level of 10.

EARN-IT aims to develop a series of best practices for prevention, reduction, and response to this horrific form of abuse. Importantly, it aims to consider best practices that are achievable, and *allows* (but does not require) the commission to consider concerns such as impacts on privacy, technical limitations on implementation, and current state of the technology. It also makes the symbolic yet essential step of changing all references to “child pornography” in Federal law (which leads to victim-blaming and a misunderstanding of the violent nature of CSAM) to “child sexual abuse materials.”

Concerns

- **Alarmingly, EARN-IT includes a provision in which companies could lose their *federal* Section 230 protections based upon *state* laws. This means that state legislatures that regularly pass discriminatory laws restricting reproductive health access, anti-2SLGBTQIA+acts, and that incentivize vigilantism could pass state laws that reduce online privacy for citizens across the nation.**
- EARN-IT allows reporters of CSAM to “preserve the CSAM materials for longer than 180 days for the purpose of reducing the proliferation of online CSE or preventing online CSE.” This does not include a provision for survivors to opt out or have their materials destroyed.
- There has not yet been a study of the impacts of 2018 changes to Section 230 to determine if it is effective at preventing trafficking or to determine the scope and magnitude of impacts on other vulnerable and marginalized populations. Making additional changes without evaluation of practices or impacts introduces risk of additional harm to survivors and other affected populations.
- Age gating systems are notoriously unreliable and regularly flag 2SLGBTQIA+ content and sexual health education as inappropriate for minors. ([Forbes](#))
- Offering four positions that are filled by a survivor *or* a victim service provider (VSP) does not ensure adequate survivor representation, or that survivors will hold diverse identities, perspectives, or experiences with online platforms.
- With only 14 members required to approve measures, votes by the entire block of survivors or VSPs could be easily overridden. Similarly, the experts in civil liberties could also be overridden easily.
- EARN-IT will have significant impacts on 1) 2SLGBTQIA+ communities and 2) sexual health educators, and 3) reproductive health advocacy, and these three populations are not each given comparable representation on this committee to other involved groups: investigators, survivors/VSPs, security/privacy experts, or technology companies. Survivors are part of all of these communities, and there is evidence for [comprehensive sexuality education as a strategy to prevent child sexual violence](#). In the absence of comprehensive sexual health education, many youth rely on online sources to learn how to protect their sexual and reproductive health.
- EARN-IT is being marketed as a bill to prevent online CSE, and yet there is no requirement for participation from Health and Human Services (HHS) or related violence prevention experts on the commission, and no funding for primary prevention. The National Survivor Network advocates for a public health approach to trafficking and exploitation, and HHS is the appropriate government agency for health and violence-related issues. EARN-IT creates a National Commission on Online Child Sexual Exploitation Prevention at the *Department of Justice*. Violence prevention strategies should be housed under HHS as part of an emphasis on

primary prevention, and should prioritize expertise in public health prevention rather than criminal justice response, both as a matter of effectiveness and as a racial justice priority.

- The National Child Sexual Exploitation Prevention and Interdiction Strategy (also housed at the Department of Justice instead of HHS) was recently updated with feedback from dozens of subject matter experts, and included recommendations for prevention of online CSE. EARN-IT and any potential commission recommendations should be cross-walked against this existing expertise before any vote, release, or implementation measures.
- EARN-IT does not require platforms to scale up their customer service to the number of users served, which is a practice that would improve ability to screen for and promptly remove CSAM without removing Section 230 protections, free speech, or privacy.

About commission membership:

				<i>This position is appointed by:</i>
1. Attorney General (chairperson of the Committee)				<i>President</i>
2. Secretary of Homeland Security				<i>President</i>
3. Chairman of the Federal Trade Commission				<i>President</i>
4. Investigator*	8. Survivor <i>or</i> VSP*	12. Security*	16. Tech*	<i>*Senate Majority Leader</i>
5. Investigator•	9. Survivor <i>or</i> VSP•	13. Security•	17. Tech•	<i>• Senate Minority Leader</i>
6. Investigator°	10. Survivor <i>or</i> VSP°	14. Security°	18. Tech°	<i>° Speaker of the House of Representatives</i>
7. Investigator^	11. Survivor <i>or</i> VSP^	15. Security^	19. Tech^	<i>^House Minority Leader</i>

The commission shall be composed of the Attorney General (AG, who is the chairperson), Secretary of Homeland Security (HS), Chairman of the Federal Trade Commission (FTC), and 16 other members.

- Four with experience with criminal investigations of online CSE - “Investigators” in the above chart
 - Two law enforcement investigators of CSE
 - Two prosecutors of CSE
- Four survivors of online CSE or current experience in providing non-governmental victim services for survivors of online CSE (VSP; does not specify that it must be nonprofit)
- Four Security/Privacy
 - Two with current experience with consumer protection, civil liberties, civil rights, or privacy;
 - Two with current experience in computer science or software engineering related to cryptography, data security, or artificial intelligence in a non-governmental capacity.
- Four individuals who work for “interactive computer service” companies
 - Two with current experience in addressing online CSE and promoting child safety at an interactive computer service with 30,000,000 or more monthly users.

- Two with current experience addressing online CSE and promoting child safety at an interactive computer service with fewer than 10,000,000 monthly users.

These positions are appointed by the Senate Majority Leader, Senate Minority Leader, Speaker of the House of Representatives, and Minority Leader of the House of Representatives, each of whom can appoint one person in each category.

These positions are unpaid, with only travel and per diem covered.

What does this commission do?

Within 18 months of majority of members have been appointed, the commission must develop and submit a set of recommended best practices to the Attorney General, which will be published publicly by 30 days after they're submitted and updated at least every five years.

These best practices that “providers of interactive computer services may choose to engage in to prevent, reduce, and respond to online CSE should also include alternative best practices based on 1) size; 2) type of product and business model of platform; 3) whether it is public-facing or primarily responsible for hosting, storage, display, and retrieval; and 4) whether the type of product, business model, product design, or other factors could make a product or service susceptible to the use and facilitation of online CSE. *The last criterion for these suggests a means for explicitly targeting legal online platforms for commercial sex work.*

How are decisions about the recommendations made?

The commission may only recommend best practices if at least 14 members support the best practices.

What should best practices include?

Best practices should address:

- Preventing, identifying, disrupting and reporting online child sexual exploitation;
- Coordinating with nonprofits and platforms to “preserve,” remove from view, and report online CSE;
- Retaining CSE content and related user identification and location data;
- Receiving and managing reports for online CSE by users;
- Implementing a standard rating and categorization system to identify the type and severity of child sexual abuse materials (CSAM);
- Training and supporting content moderators who review content;
- Preparing and issuing transparency reports in terms of service;
- Coordinating with voluntary platform services addressing online CSE;
- Employing age rating and age gating systems to reduce online CSE;
- Offering parental control products that enable customers to limit the types of websites, platforms, and content accessible by children;

Relevant issues the commission can consider include:

- Cost and technical limitations of implementation;
- Impact on competition and product quality and privacy;
- Impact on investigations and prosecutions;

- Current state of technology.

Revisions to section 230

[What is section 230?](#)

This bill will update section 230 to specifically exclude the following:

- Any claim in a civil action brought against a platform based on online CSE federal code;
- Any charge in a criminal prosecution brought against a platform under *State* law regarding CSAM;
- Any claim in a civil action brought against a platform based on *State* law regarding CSAM.

Encryption technologies (meaning, the platform does not even have the ability to view the message itself or screen its contents due to end-to-end encryption) would not cause a company to or prevent a company from being held responsible under the above claims.

Removes “child pornography” from law

EARN-IT includes consistent removal of the term “child pornography” to be replaced by “child sexual abuse material” throughout federal statutes and case law.

Changes to time a reporter may keep or preserve CSAM materials

Under EARN-IT, the amount of time a reporter is allowed by law to keep/preserve CSAM materials is changed from 90 days to 180 days. It provides the following exception: Someone who provides a report to the CyberTipline may voluntarily preserve the CSAM materials for longer than 180 days for the purpose of reducing the proliferation of online CSE or preventing online CSE.

Amendments to the Juvenile Justice and Delinquency Prevention Act

This act will be amended to:

- Develop IT solutions to implement updates, improvements, and modernization needed to enhance efforts to combat online CSE and make sure that consistent information is provided to law enforcement agencies;
- This shall be done after soliciting input from all partners in the effort to combat online CSE including ICAC, task forces, FBI, DHS, ICE, HSI, and US Marshalls Service;
- At least \$1,000,000 for this task per year.

Additional Provisions

Funds can be appropriated to carry out the EARN-IT Act.

If any provision of this act or amendment is later found to be unconstitutional, the remainder of the provisions shall not be affected.