

118TH CONGRESS
1ST SESSION

S. 3314

To require certain interactive computer services to adopt and operate technology verification measures to ensure that users of the platform are not minors, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 15, 2023

Mr. LEE introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To require certain interactive computer services to adopt and operate technology verification measures to ensure that users of the platform are not minors, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Shielding Children’s
5 Retinas from Egregious Exposure on the Net Act” or the
6 “SCREEN Act”.

7 **SEC. 2. FINDINGS; SENSE OF CONGRESS.**

8 (a) FINDINGS.—Congress finds the following:

1 (1) Over the 3 decades preceding the date of
2 enactment of this Act, Congress has passed several
3 bills to protect minors from access to online porno-
4 graphic content, including title V of the Tele-
5 communications Act of 1996 (Public Law 104–104)
6 (commonly known as the “Communications Decency
7 Act”), section 231 of the Communications Act of
8 1934 (47 U.S.C. 231) (commonly known as the
9 “Child Online Protection Act”), and the Children’s
10 Internet Protection Act (title XVII of division B of
11 Public Law 106–554).

12 (2) With the exception of the Children’s Inter-
13 net Protection Act (title XVII of division B of Public
14 Law 106–554), the Supreme Court of the United
15 States has struck down the previous efforts of Con-
16 gress to shield children from pornographic content,
17 finding that such legislation constituted a “compel-
18 ling government interest” but that it was not the
19 least restrictive means to achieve such interest. In
20 Ashcroft v. ACLU, 542 U.S. 656 (2004), the Court
21 even suggested at the time that “blocking and fil-
22 tering software” could conceivably be a “primary al-
23 ternative” to the requirements passed by Congress.

24 (3) In the nearly 2 decades since the Supreme
25 Court of the United States suggested the use of

1 “blocking and filtering software”, such technology
2 has proven to be ineffective in protecting minors
3 from accessing online pornographic content. The
4 Kaiser Family Foundation has found that filters do
5 not work on 1 in 10 pornography sites accessed in-
6 tentionally and 1 in 3 pornography sites that are
7 accessed unintentionally. Further, it has been proven
8 that children are able to bypass “blocking and fil-
9 tering” software by employing strategic searches or
10 measures to bypass the software completely.

11 (4) Additionally, Pew Research has revealed
12 studies showing that only 39 percent of parents use
13 blocking or filtering software for their minor’s online
14 activities, meaning that 61 percent of children only
15 have restrictions on their internet access when they
16 are at school or at a library.

17 (5) 17 States have now recognized pornography
18 as a public health hazard that leads to a broad
19 range of individual harms, societal harms, and pub-
20 lic health impacts.

21 (6) It is estimated that 80 percent of minors
22 between the ages of 12 to 17 have been exposed to
23 pornography, with 54 percent of teenagers seeking it
24 out. The internet is the most common source for mi-
25 nors to access pornography with pornographic

1 websites receiving more web traffic in the United
2 States than Twitter, Netflix, Pinterest, and
3 LinkedIn combined.

4 (7) Exposure to online pornography has created
5 unique psychological effects for minors, including
6 anxiety, addiction, low self-esteem, body image dis-
7 orders, an increase in problematic sexual activity at
8 younger ages, and an increased desire among minors
9 to engage in risky sexual behavior.

10 (8) The Supreme Court of the United States
11 has recognized on multiple occasions that Congress
12 has a “compelling government interest” to protect
13 the physical and psychological well-being of minors,
14 which includes shielding them from “indecent” con-
15 tent that may not necessarily be considered “ob-
16 scene” by adult standards.

17 (9) Because “blocking and filtering software”
18 has not produced the results envisioned nearly 2 dec-
19 ades ago, it is necessary for Congress to pursue al-
20 ternative policies to enable the protection of the
21 physical and psychological well-being of minors.

22 (10) The evolution of our technology has now
23 enabled the use of age verification technology that is
24 cost efficient, not unduly burdensome, and can be
25 operated narrowly in a manner that ensures only

1 adults have access to a website’s online pornographic
2 content.

3 (b) SENSE OF CONGRESS.—It is the sense of Con-
4 gress that—

5 (1) shielding minors from access to online por-
6 nographic content is a compelling government inter-
7 est that protects the physical and psychological well-
8 being of minors; and

9 (2) requiring interactive computer services that
10 are in the business of creating, hosting, or making
11 available pornographic content to enact technological
12 measures that shield minors from accessing porno-
13 graphic content on their platforms is the least re-
14 strictive means for Congress to achieve its compel-
15 ling government interest.

16 **SEC. 3. DEFINITIONS.**

17 In this Act:

18 (1) CHILD PORNOGRAPHY; MINOR.—The terms
19 “child pornography” and “minor” have the mean-
20 ings given those terms in section 2256 of title 18,
21 United States Code.

22 (2) COMMISSION.—The term “Commission”
23 means the Federal Trade Commission.

24 (3) COVERED PLATFORM.—The term “covered
25 platform”—

1 (A) means an entity—

2 (i) that is an interactive computer
3 service;

4 (ii) that—

5 (I) is engaged in interstate or
6 foreign commerce; or

7 (II) purposefully avails itself of
8 the United States market or a portion
9 thereof; and

10 (iii) for which it is in the regular
11 course of the trade or business of the enti-
12 ty to create, host, or make available con-
13 tent that meets the definition of harmful to
14 minors under paragraph (4) and that is
15 provided by the entity, a user, or other in-
16 formation content provider, with the objec-
17 tive of earning a profit; and

18 (B) includes an entity described in sub-
19 paragraph (A) regardless of whether—

20 (i) the entity earns a profit on the ac-
21 tivities described in subparagraph (A)(iii);
22 or

23 (ii) creating, hosting, or making avail-
24 able content that meets the definition of
25 harmful to minors under paragraph (4) is

1 the sole source of income or principal busi-
2 ness of the entity.

3 (4) HARMFUL TO MINORS.—The term “harmful
4 to minors”, with respect to a picture, image, graphic
5 image file, film, videotape, or other visual depiction,
6 means that the picture, image, graphic image file,
7 film, videotape, or other depiction—

8 (A)(i) taken as a whole and with respect to
9 minors, appeals to the prurient interest in nu-
10 dity, sex, or excretion;

11 (ii) depicts, describes, or represents, in a
12 patently offensive way with respect to what is
13 suitable for minors, an actual or simulated sex-
14 ual act or sexual contact, actual or simulated
15 normal or perverted sexual acts, or lewd exhi-
16 bition of the genitals; and

17 (iii) taken as a whole, lacks serious, lit-
18 erary, artistic, political, or scientific value as to
19 minors;

20 (B) is obscene; or

21 (C) is child pornography.

22 (5) INFORMATION CONTENT PROVIDER; INTER-
23 ACTIVE COMPUTER SERVICE.—The terms “informa-
24 tion content provider” and “interactive computer
25 service” have the meanings given those terms in sec-

1 tion 230(f) of the Communications Act of 1934 (47
2 U.S.C. 230(f)).

3 (6) SEXUAL ACT; SEXUAL CONTACT.—The
4 terms “sexual act” and “sexual contact” have the
5 meanings given those terms in section 2246 of title
6 18, United States Code.

7 (7) TECHNOLOGY VERIFICATION MEASURE.—
8 The term “technology verification measure” means
9 technology that—

10 (A) employs a system or process to deter-
11 mine whether it is more likely than not that a
12 user of a covered platform is a minor; and

13 (B) prevents access by minors to any con-
14 tent on a covered platform.

15 (8) TECHNOLOGY VERIFICATION MEASURE
16 DATA.—The term “technology verification measure
17 data” means information that—

18 (A) identifies, is linked to, or is reasonably
19 linkable to an individual or a device that identi-
20 fies, is linked to, or is reasonably linkable to an
21 individual;

22 (B) is collected or processed for the pur-
23 pose of fulfilling a request by an individual to
24 access any content on a covered platform; and

1 (C) is collected and processed solely for the
2 purpose of utilizing a technology verification
3 measure and meeting the obligations imposed
4 under this Act.

5 **SEC. 4. TECHNOLOGY VERIFICATION MEASURES.**

6 (a) COVERED PLATFORM REQUIREMENTS.—Begin-
7 ning on the date that is 1 year after the date of enactment
8 of this Act, a covered platform shall adopt and utilize tech-
9 nology verification measures on the platform to ensure
10 that—

11 (1) users of the covered platform are not mi-
12 nors; and

13 (2) minors are prevented from accessing any
14 content on the covered platform that is harmful to
15 minors.

16 (b) REQUIREMENTS FOR AGE VERIFICATION MEAS-
17 URES.—In order to comply with the requirement of sub-
18 section (a), the technology verification measures adopted
19 and utilized by a covered platform shall do the following:

20 (1) Use a technology verification measure in
21 order to verify a user's age.

22 (2) Provide that requiring a user to confirm
23 that the user is not a minor shall not be sufficient
24 to satisfy the requirement of subsection (a).

1 (3) Make publicly available the verification
2 process that the covered platform is employing to
3 comply with the requirements under this Act.

4 (4) Subject the Internet Protocol (IP) address-
5 es, including known virtual proxy network IP ad-
6 dresses, of all users of a covered platform to the
7 technology verification measure described in para-
8 graph (1) unless the covered platform determines
9 based on available technology that a user is not lo-
10 cated within the United States.

11 (c) CHOICE OF VERIFICATION MEASURES.—A cov-
12 ered platform may choose the specific technology
13 verification measures to employ for purposes of complying
14 with subsection (a), provided that the technology
15 verification measure employed by the covered platform
16 meets the requirements of subsection (b) and prohibits a
17 minor from accessing the platform or any information on
18 the platform that is obscene, child pornography, or harm-
19 ful to minors.

20 (d) USE OF THIRD PARTIES.—A covered platform
21 may contract with a third party to employ technology
22 verification measures for purposes of complying with sub-
23 section (a) but the use of such a third party shall not re-
24 lieve the covered platform of its obligations under this Act
25 or from liability under this Act.

1 (e) RULE OF CONSTRUCTION.—Nothing in this sec-
2 tion shall be construed to require a covered platform to
3 submit to the Commission any information that identifies,
4 is linked to, or is reasonably linkable to a user of the cov-
5 ered platform or a device that identifies, is linked to, or
6 is reasonably linkable to a user of the covered platform.

7 (f) TECHNOLOGY VERIFICATION MEASURE DATA SE-
8 CURITY.—A covered platform shall—

9 (1) establish, implement, and maintain reason-
10 able data security to—

11 (A) protect the confidentiality, integrity,
12 and accessibility of technology verification
13 measure data collected by the covered platform
14 or a third party employed by the covered plat-
15 form; and

16 (B) protect such technology verification
17 measure data against unauthorized access; and

18 (2) retain the technology verification measure
19 data for no longer than is reasonably necessary to
20 utilize a technology verification measure or what is
21 minimally necessary to demonstrate compliance with
22 the obligations under this Act.

23 **SEC. 5. CONSULTATION REQUIREMENTS.**

24 In enforcing the requirements under section 4, the
25 Commission shall consult with the following individuals,

1 including with respect to the applicable standards and
2 metrics for making a determination on whether a user of
3 a covered platform is not a minor:

4 (1) Individuals with experience in computer
5 science and software engineering.

6 (2) Individuals with experience in—

7 (A) advocating for online child safety; or

8 (B) providing services to minors who have
9 been victimized by online child exploitation.

10 (3) Individuals with experience in consumer
11 protection and online privacy.

12 (4) Individuals who supply technology
13 verification measure products or have expertise in
14 technology verification measure solutions.

15 (5) Individuals with experience in data security
16 and cryptography.

17 **SEC. 6. COMMISSION REQUIREMENTS.**

18 (a) IN GENERAL.—The Commission shall—

19 (1) conduct regular audits of covered platforms
20 to ensure compliance with the requirements of sec-
21 tion 4;

22 (2) make public the terms and processes for the
23 audits conducted under paragraph (1), including the
24 processes for any third party conducting an audit on
25 behalf of the Commission;

1 (3) establish a process for each covered plat-
2 form to submit only such documents or other mate-
3 rials as are necessary for the Commission to ensure
4 full compliance with the requirements of section 4
5 when conducting audits under this section; and

6 (4) prescribe the appropriate documents, mate-
7 rials, or other measures required to demonstrate full
8 compliance with the requirements of section 4.

9 (b) GUIDANCE.—

10 (1) IN GENERAL.—Not later than 180 days
11 after the date of enactment of this Act, the Commis-
12 sion shall issue guidance to assist covered platforms
13 in complying with the requirements of section 4.

14 (2) LIMITATIONS ON GUIDANCE.—No guidance
15 issued by the Commission with respect to this Act
16 shall confer any rights on any person, State, or lo-
17 cality, nor shall operate to bind the Commission or
18 any person to the approach recommended in such
19 guidance. In any enforcement action brought pursu-
20 ant to this Act, the Commission shall allege a spe-
21 cific violation of a provision of this Act. The Com-
22 mission may not base an enforcement action on, or
23 execute a consent order based on, practices that are
24 alleged to be inconsistent with any such guidelines,

1 unless the practices allegedly violate a provision of
2 this Act.

3 **SEC. 7. ENFORCEMENT.**

4 (a) UNFAIR OR DECEPTIVE ACT OR PRACTICE.—A
5 violation of section 4 shall be treated as a violation of a
6 rule defining an unfair or deceptive act or practice under
7 section 18(a)(1)(B) of the Federal Trade Commission Act
8 (15 U.S.C. 57a(a)(1)(B)).

9 (b) POWERS OF THE COMMISSION.—

10 (1) IN GENERAL.—The Commission shall en-
11 force section 4 in the same manner, by the same
12 means, and with the same jurisdiction, powers, and
13 duties as though all applicable terms and provisions
14 of the Federal Trade Commission Act (15 U.S.C. 41
15 et seq.) were incorporated into and made a part of
16 this title.

17 (2) PRIVILEGES AND IMMUNITIES.—Any person
18 who violates section 4 shall be subject to the pen-
19 alties and entitled to the privileges and immunities
20 provided in the Federal Trade Commission Act (15
21 U.S.C. 41 et seq.).

22 (3) AUTHORITY PRESERVED.—Nothing in this
23 Act shall be construed to limit the authority of the
24 Commission under any other provision of law.

1 **SEC. 8. GAO REPORT.**

2 Not later than 2 years after the date on which cov-
3 ered platforms are required to comply with the require-
4 ment of section 4(a), the Comptroller General of the
5 United States shall submit to Congress a report that in-
6 cludes—

7 (1) an analysis of the effectiveness of the tech-
8 nology verification measures required under such
9 section;

10 (2) an analysis of rates of compliance with such
11 section among covered platforms;

12 (3) an analysis of the data security measures
13 used by covered platforms in the age verification
14 process;

15 (4) an analysis of the behavioral, economic, psy-
16 chological, and societal effects of implementing tech-
17 nology verification measures;

18 (5) recommendations to the Commission on im-
19 proving enforcement of section 4(a), if any; and

20 (6) recommendations to Congress on potential
21 legislative improvements to this Act, if any.

22 **SEC. 9. SEVERABILITY CLAUSE.**

23 If any provision of this Act, or the application of such
24 a provision to any person or circumstance, is held to be
25 unconstitutional, the remaining provisions of this Act, and

- 1 the application of such provisions to any other person or
- 2 circumstance, shall not be affected thereby.

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