

116TH CONGRESS
2D SESSION

S. 3411

To keep children safe and protect their interests on the internet, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 5, 2020

Mr. MARKEY (for himself and Mr. BLUMENTHAL) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To keep children safe and protect their interests on the internet, 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 “Kids Internet Design
5 and Safety Act” or the “KIDS Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Children increasingly consume digital enter-
9 tainment on the internet and are uniquely suscep-
10 tible to manipulation online, given their lack of im-

portant neurological and psychological mechanisms which are developed later in adulthood.

(2) Today’s digital media environment, which is constantly evolving and now includes high-tech experiences, such as augmented reality and virtual reality, is largely designed in non-transparent ways to ensure children interact with content that reflect the interests and goals of content creators, platforms, and marketers.

(3) Artificial intelligence, machine learning, and other complex systems are used to make continuous decisions about how online content for children can be personalized to increase engagement.

(4) Online companies gather, analyze, and use data for behavioral marketing directed at children.

(5) Companies employ sophisticated strategies, including neuromarketing, to affect consumer behavior and manipulate decision making.

(6) Branded content in various forms of multimedia, including native advertising and influencer marketing, exposes children to marketing that is inherently manipulative or purposely disguised as entertainment or other information.

SEC. 3. DEFINITIONS.

(a) IN GENERAL.—In this Act:

1 (1) AUGMENTED REALITY.—The term “aug-
 2 mented reality” means an application or web-based
 3 experience utilizing a camera to change or enhance
 4 the user’s view of the real world.

5 (2) BRANDED CONTENT.—The term “branded
 6 content” means commercial content created for, and
 7 distributed on, a platform in such a way that the
 8 line between entertainment and advertising becomes
 9 unclear in order to generate a positive view of the
 10 brand.

11 (3) COMMISSION.—The term “Commission”
 12 means the Federal Trade Commission.

13 (4) COVERED USER.—The term “covered user”
 14 means an individual under the age of 16.

15 (5) DIRECTED TO CHILDREN.—The term “di-
 16 rected to children” means the targeting of covered
 17 users by a platform, as demonstrated by, with re-
 18 spect to such platform—

19 (A) its subject matter;

20 (B) its visual content;

21 (C) the use of animated characters or
 22 child-oriented activities for children and related
 23 incentives;

24 (D) music or other audio content;

25 (E) the age of models used;

1 (F) the presence of—

2 (i) child celebrities; or

3 (ii) celebrities who appeal to covered
4 users;

5 (G) the language used;

6 (H) advertising content used on, or used to
7 advertise, such platform; or

8 (I) reliable empirical evidence relating to—

9 (i) the composition of the audience of
10 such platform; and

11 (ii) the intended audience of such
12 platform.

13 (6) HOST-SELLING.—The term “host-selling”
14 refers to commercial video content that features the
15 same characters or individuals as in the adjacent
16 noncommercial content.

17 (7) INFLUENCER MARKETING.—The term
18 “influencer marketing” means a tactic by which a
19 brand or agency or publisher works with individuals
20 who are deemed to have the potential to create en-
21 gagement, drive conversation, or sell products or
22 services with the intended target audience, in order
23 to drive brand messages.

24 (8) MANIPULATION.—The term “manipulation”
25 means design strategies, product settings, and prod-

uct architecture targeted to cognitive vulnerabilities with the intention or effect of pushing the user to make choices to their detriment and the operator’s benefit.

(9) NATIVE ADVERTISING.—The term “native advertising” means a form of paid media where the advertising experience follows the natural form and function of the user experience in which it is placed.

(10) NEUROMARKETING.—The term “neuromarketing” means a subfield of marketing that attempts to predict and potentially manipulate consumer behavior and decision making based on analysis of brain patterns.

(11) OPERATOR.—

(A) IN GENERAL.—The term “operator” means any person who operates a platform, including any person offering products or services for sale through that platform, involving commerce—

(i) among the several States or with one or more foreign nations;

(ii) in any territory of the United States or in the District of Columbia, or between any such territory and—

(I) another such territory; or

1 (II) any State or foreign nation;

2 or

3 (iii) between the District of Columbia

4 and any State, territory, or foreign nation.

5 (B) EXCEPTION.—The term “operator”

6 does not include any nonprofit entity that would

7 otherwise be exempt from coverage under sec-

8 tion 5 of the Federal Trade Commission Act

9 (15 U.S.C. 45).

10 (12) PERSON.—The term “person” means any

11 individual, partnership, corporation, trust, estate, co-

12 operative, association, or other entity.

13 (13) PLATFORM.—The term “platform” means

14 a website, online service, online application, or mo-

15 bile application which is operated for commercial

16 purposes.

17 (14) VIRTUAL REALITY.—The term “virtual re-

18 ality” means an application or web-based experience

19 utilizing a camera to create an immersive environ-

20 ment that mimics the real world, usually via a head-

21 set.

1 **SEC. 4. REGULATION OF ACTS AND PRACTICES ON CHILD-**
2 **DIRECTED PLATFORMS.**

3 (a) PROHIBITION ON CERTAIN FEATURES.—It is un-
4 lawful for an operator of a platform directed to children
5 to incorporate any of the following features:

6 (1) Any auto-play setting that, without input
7 from the covered user, commences additional video
8 content directly following the video content initially
9 selected by the user.

10 (2) Push alerts that urge a covered user to
11 spend more time engaged with the platform when
12 they are not actively using it.

13 (3) Displaying the quantity of positive engage-
14 ment or feedback that a covered user has received
15 from other users.

16 (4) Any design feature or setting that unfairly
17 encourages a covered user, due to their age or inex-
18 perience, to make purchases, submit content, or
19 spend more time engaging with the platform.

20 (5) Any feature that provides a covered user
21 with badges or other visual award symbols based on
22 elevated levels of engagement with the platform.

23 (b) PROHIBITION ON AMPLIFICATION OF CERTAIN
24 CONTENT; USER REPORTING MECHANISM.—It shall be
25 unlawful for an operator of a platform directed to children,

1 or a platform for which the operator has constructive
 2 knowledge that covered users use its platform, to—

3 (1) amplify, promote, or encourage covered
 4 users' consumption of videos and other forms of con-
 5 tent that involve—

6 (A) sexual material;

7 (B) physical or emotional violence, includ-
 8 ing bullying;

9 (C) adult activities, including gambling; or

10 (D) other dangerous, abusive, exploitative,
 11 or wholly commercial content; or

12 (2) fail to implement a mechanism for users to
 13 report suspected violations of any requirement under
 14 paragraph (1).

15 (c) PROHIBITION ON CERTAIN ADVERTISING METH-
 16 ODS.—

17 (1) IN GENERAL.—It shall be unlawful for an
 18 operator of a platform directed to children to—

19 (A) direct content that includes host-selling
 20 to covered users;

21 (B) expose covered users to program-
 22 length advertisements;

23 (C) direct branded content or native adver-
 24 tising to covered users;

1 (D) direct online advertising or material
 2 with considerable commercial content involving
 3 alcohol, nicotine, or tobacco to covered users;

4 (E) expose covered users to online adver-
 5 tising or material with considerable commercial
 6 content with any imbedded interactive elements
 7 that take advantage of covered users' in experi-
 8 ence or credulity in noncommercial child-di-
 9 rected content; or

10 (F) direct content that includes product
 11 placement to covered users.

12 (2) PROGRAM-LENGTH ADVERTISEMENT.—The
 13 term “program-length advertisement” shall be de-
 14 fined by the Commission through regulation or other
 15 public guidance.

16 (d) PROHIBITION ON USE OF PERSONAL INFORMA-
 17 TION.—It shall be unlawful for an operator of a platform
 18 directed to children to use age verification information col-
 19 lected from covered users for any commercial purpose.

20 (e) REGULATIONS.—The Commission shall promul-
 21 gate regulations in accordance with section 553 of title
 22 5, United States Code, to require any operator of a plat-
 23 form directed to children to incorporate online visual ele-
 24 ments or other indicators that distinguish commercial con-
 25 tent from noncommercial content.

1 **SEC. 5. MARKETING AND COMMERCIALIZATION.**

2 (a) **CONTENT LABELING SYSTEM REPORT.**—Not
3 later than the date that is 1 year after the date of enact-
4 ment of this Act, the Commission shall submit to Congress
5 a report—

6 (1) containing recommendations for a labeling
7 system to allow parents to identify noncommercial,
8 educational, and enriching content for covered users
9 online; and

10 (2) address considerations regarding how such
11 labeling system should—

12 (A) analyze content based on evidence-
13 based criteria;

14 (B) employ an easy-to-understand visual
15 cue for parents to identify content described in
16 paragraph (1);

17 (C) receive regular review to determine its
18 effectiveness; and

19 (D) develop a mechanism for users to re-
20 port to the Commission complaints of mis-
21 labeled content and for the Commission to rem-
22 edy such instances of mislabeled content.

23 (b) **CONSULTATION.**—The report described in sub-
24 section (a) shall be developed by the Commission in con-
25 sultation with an advisory board, to be created and con-

1 vened by the Commission, which is comprised of experts
2 in child development, child health, education, and media.

3 **SEC. 6. TRANSPARENCY AND AUDITING.**

4 (a) **TRANSPARENCY.**—The Commission shall promul-
5 gate regulations in accordance with section 553 of title
6 5, United States Code, requiring an operator of a platform
7 which is directed to children to publish and maintain a
8 publicly accessible digital record of the viewable or play-
9 able content of each such platform.

10 (b) **ANNUAL PLATFORM AUDITS.**—The regulations
11 promulgated pursuant to subsection (a) shall include the
12 establishment of an annual audit process, to be conducted
13 during the 5-year period subsequent to the date of enact-
14 ment of this Act, for each of the 25 platforms directed
15 to children with the highest total number of child users,
16 to evaluate the level of compliance by each such platform
17 with respect to the requirements under this Act.

18 (c) **REPORT.**—The Commission shall issue annual re-
19 ports to Congress based on the audits described in sub-
20 section (b) that—

21 (1) describe the level of compliance by the plat-
22 forms described in such subsection with respect to
23 the requirements under this Act; and

1 (2) provide recommendations for such legisla-
2 tion and administrative actions as the Commission
3 determines appropriate based on the audit findings.

4 **SEC. 7. GRANT PROGRAM.**

5 (a) ESTABLISHMENT.—

6 (1) IN GENERAL.—The Secretary of Commerce
7 shall provide grants to eligible persons to foster the
8 creation and promotion of advertisement-free and
9 educational online content for covered users, such as
10 videos and applications.

11 (2) ELIGIBLE PERSON.—For purposes of this
12 section, the term “eligible person” means a person
13 that has submitted an application, as approved by
14 the Secretary of Commerce pursuant to the eligi-
15 bility requirements developed under subsection (b),
16 for the creation and promotion of advertisement-free
17 and educational online content for covered users.

18 (b) ADVISORY COUNCIL.—The Secretary shall estab-
19 lish and convene an Advisory Council on Children’s Online
20 Content, which shall be—

21 (1) comprised of experts in education, child de-
22 velopment, psychology, online media, and other re-
23 lated disciplines; and

24 (2) tasked with developing evidence-based cri-
25 teria for grant eligibility and grant distribution.

1 (c) AUTHORIZATION OF APPROPRIATIONS.—

2 (1) IN GENERAL.—To carry out this section,
3 there is authorized to be appropriated—

4 (A) for fiscal year 2021, \$4,000,000;

5 (B) for fiscal year 2022, \$8,000,000;

6 (C) for fiscal year 2023, \$10,000,000; and

7 (D) for fiscal year 2024, \$12,000,000.

8 (2) AVAILABILITY OF FUNDS.—Any amount ap-
9 propriated under this subsection for any fiscal year
10 shall remain available for the purposes of carrying
11 out any application approved during such fiscal year
12 for an additional period of 1 year after the end of
13 such fiscal year.

14 **SEC. 8. ADMINISTRATION AND ENFORCEMENT.**

15 (a) IN GENERAL.—This Act shall be enforced by the
16 Commission under the Federal Trade Commission Act (15
17 U.S.C. 41 et seq.).

18 (b) ACTIONS BY COMMISSION.—

19 (1) IN GENERAL.—The Commission shall pre-
20 vent any person from violating this Act or any regu-
21 lation promulgated by the Commission under this
22 Act in the same manner, by the same means, and
23 with the same jurisdiction, powers, and duties, as
24 though all applicable terms and provisions of the
25 Federal Trade Commission Act (15 U.S.C. 41 et

1 seq.) were incorporated into and made a part of this
2 Act.

3 (2) PENALTIES AND PRIVILEGES.—Any person
4 that violates this Act or any regulation promulgated
5 under the Act shall be subject to the penalties and
6 entitled to the privileges and immunities provided in
7 the Federal Trade Commission Act in the same
8 manner, by the same means, and with the same ju-
9 risdiction, power, and duties, as though all applica-
10 ble terms and provisions of the Federal Trade Com-
11 mission Act were incorporated into and made a part
12 of this Act.

13 (c) CIVIL PENALTY.—A violation of the Act, or a rule
14 promulgated under the Act, shall be treated as a violation
15 of a rule defining an unfair or deceptive act or practice
16 prescribed under section 18(a)(1)(B) of the Federal Trade
17 Commission Act (15 U.S.C. 57a(a)(1)(B)).

18 (d) EFFECT ON OTHER LAWS.—Nothing contained
19 in this Act shall be construed to limit the authority of the
20 Commission under any other provisions of law.

○