

ONE HUNDRED NINETEENTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-3641
Minority (202) 225-2927

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MEMORANDUM

TO: Members, Subcommittee on Commerce, Manufacturing, and Trade
FROM: Committee Majority Staff
RE: Subcommittee on Commerce, Manufacturing, and Trade Hearing

I. INTRODUCTION

The Subcommittee on Commerce, Manufacturing, and Trade has scheduled a hearing on Wednesday, March 26, at 10:00 a.m. (ET) in 2123 Rayburn House Office Building. The hearing is entitled, “The World Wild Web: Examining Online Harms.”

II. WITNESSES

- Ms. Dawn Hawkins, Senior Advisor, National Center on Sexual Exploitation
- Ms. Yiota Souras, Chief Legal Officer, National Center for Missing and Exploited Children
- Ms. Clare Morell, Fellow, Ethics and Public Policy Center
- Honorable Rebecca Kelly Slaughter, Former Commissioner, Federal Trade Commission (*Minority*)

III. BACKGROUND

Since the origin of the World Wide Web several decades ago, consumers have gained new ways to communicate across the globe and access nearly all recorded information in human history with a single click. As digital technologies have become more widely adopted and embedded in Americans’ lives, the reach and accessibility of the internet, through social media, mobile applications, and consumer devices, has expanded the types of information and content consumers create, share, and view.

From the internet’s early days, Congress has sought to balance the significant benefits of innovative digital technologies with greater protections for consumers, especially children. Then, as now, codifying consumer protections creates tension with the rights guaranteed by the First Amendment. In 1996, Congress passed the *Communications Decency Act* (CDA), designed to protect minors from “indecent” and “patently offensive” communications, by prohibiting the

“knowing transmission of obscene or indecent messages” on the internet.¹ In *Reno v. ACLU*, the Supreme Court found that these content-based restrictions abridged the First Amendment’s guarantee of freedom of speech.² Following this decision, Congress enacted the *Child Online Protection Act* (COPA), a second attempt at preventing minors from accessing obscene materials online.³ COPA too was challenged on free speech grounds.⁴ After years of litigation, the Supreme Court upheld a ruling that found COPA unconstitutional.⁵

By contrast, federal privacy protections have proven more durable. In 1998, Congress enacted the *Children’s Online Privacy Protection Act* (COPPA), which prohibits certain websites and online services from collecting personal information from a child without parental consent.⁶ The Federal Trade Commission (FTC) promulgates rules to implement COPPA and enforces its protections. In January 2025, the FTC finalized amendments to its COPPA rules, the first in a decade.⁷

Public concern has also grown regarding the potential negative impacts of social media on minors’ development and wellbeing. A 2023 advisory from the U.S. Surgeon General detailed significant evidence of social media’s negative impacts on children.⁸ For example, the advisory highlights that children who spend more than three hours a day on social media face double the risk of developing poor mental health outcomes, such as anxiety and depression. The advisory also notes that kids between the eighth and tenth grades spend an average of three-and-a-half hours on social media every day.⁹

To date, the online conversation has rightly focused on greater protections for children. But adults are also vulnerable to the misuse of digital technologies. New generative artificial intelligence tools can be used to create lifelike, but fake, depictions of real people, including non-consensual intimate images (NCII).¹⁰ In January 2024, in less than a day, an NCII of Taylor Swift received 45 million views, along with hundreds of thousands of likes, bookmarks, and reports before being taken down by online platforms.¹¹ While this is only one notable example, numerous women and girls across the country have been and continue to be targeted in a similar fashion for malicious purposes with few options for recourse. Of particular concern, survivors do

¹ See Ronald Kahn, *Reno v. American Civil Liberties Union* (1997), FREE SPEECH CENTER (Aug. 6, 2023), <https://firstamendment.mtsu.edu/article/reno-v-american-civil-liberties-union/> (last updated Jan. 3, 2025).

² *Reno v. American Civil Liberties Union*, 521 US 844 (1997).

³ See Elizabeth R. Purdy, *Child Online Protection Act of 1998* (1998), FREE SPEECH CENTER (Aug. 8, 2023), <https://firstamendment.mtsu.edu/article/child-online-protection-act-of-1998/> (last updated on Jan. 3, 2025).

⁴ *Id.*

⁵ *Ashcroft v. American Civil Liberties Union*, 542 US 656 (2004).

⁶ Child Online Protection Act of 1998, 15 U.S.C. § 6502.

⁷ 16 C.F.R. § 312 (2025).

⁸ See United States Department of Health and Human Services, *Social Media and Youth Mental Health: The U.S. Surgeon General’s Advisory* (2023), <https://www.hhs.gov/sites/default/files/sg-youth-mental-health-social-media-advisory.pdf>.

⁹ *Id.*

¹⁰ See Julie Jargon, *Fake Nudes of Real Students Cause an Uproar at a New Hersey High School*, WALL STREET JOURNAL (Nov. 2, 2023), https://www.wsj.com/tech/fake-nudes-of-real-students-cause-an-uproar-at-a-new-jersey-high-school-df10f1bb?mod=wknd_pos1.

¹¹ See Jess Weatherbed, *Trolls have flooded X with graphic Taylor Swift AI fakes*, THE VERGE (Jan. 25, 2024), <https://www.theverge.com/2024/1/25/24050334/x-twitter-taylor-swift-ai-fake-images-trending?ref=404media.co>.

not have sufficient legal remedies against the individuals who create NCIIIs or the online services that facilitate their distribution.

IV. THE FEDERAL AND STATE LANDSCAPE

A. Congress

In recent years, Congress has considered several proposals to address online harms, especially those suffered by children. These proposals have sought to empower parents, protect children's personal information, and require online services to implement new safeguards. Given increased use of digital technologies by minors, it is widely understood that COPPA should be updated to protect children who are older than thirteen years of age.¹² Congress has also considered the *Kids Online Safety Act*, which would require online platforms to implement certain safeguards, and the *Kids Off Social Media Act*, to prevent certain minors from accessing these platforms altogether.¹³

Empowering parents is also critical. Congress has considered bills to grant parents new tools to understand how their children use online services and make choices to safeguard them.¹⁴ Minors, for example, are generally unable to enter into enforceable contracts. Yet they regularly agree to mobile applications' terms of service. Congress has examined, through the *App Store Accountability Act*, whether parental consent—supported through app store-based age verification—should be required for minors downloading or purchasing mobile applications.¹⁵

The *TAKE IT DOWN Act* would implement much-needed protections for adults and children alike.¹⁶ The bill seeks to address the current crisis of NCII targeting women and girls by (1) criminalizing the publication of NCIIIs in interstate commerce, including AI or computer-generated pornographic images that depict identifiable people, including children; (2) permitting good faith disclosure of NCIIIs, for example to law enforcement; and (3) establishing a notice-and-take-down system where victims can request that websites take down NCIIIs, with the FTC overseeing and enforcing this regime.¹⁷ The bill has widespread bipartisan support in Congress, the administration, and over 100 civil society organizations representing a broad range of stakeholders.¹⁸

B. States

States are also taking steps to address consumer online harms, although many of these laws face legal challenge on First Amendment grounds. In January 2025, the Supreme Court heard oral arguments in *Free Speech Coalition v. Paxton*, which concerns a Texas law requiring

¹² Children and Teens' Online Privacy Protection Act, H.R. 7890, 118th Cong. (2024); Children's Online Privacy Protection Rule, 89 Fed. Reg. 2034 (proposed Jan. 11, 2024) (to be codified at 16 C.F.R. pt. 312).

¹³ H.R. 7891, 118th Cong. (2024); S. 2073, 118th Cong. (2024); S. 278, 119th Cong. (2025).

¹⁴ H.R. 5778, 118th Cong. (2023).

¹⁵ H.R. 10364, 118th Cong. (2024).

¹⁶ H.R. 633, 119th Cong. (2025); S. 146, 119th Cong. (2025).

¹⁷ *Id.*

¹⁸ See U.S. Senate Committee on Commerce, Science, and Transportation, *Sens. Cruz, Klobuchar, Reps. Salazar, Dean Continue Fight to Pass TAKE IT DOWN Act* (Jan. 16, 2025), .

websites with obscene content to verify their users' ages.¹⁹ Eighteen other states have enacted similar restrictions on access to obscene or harmful content.²⁰

In 2022, California passed the country's first *Age Appropriate Design Code Act* (CAADCA) to establish protections for minors online. Based on a United Kingdom regulation by the same name, the CAADCA requires a covered business to complete a data protection impact assessment before it offers any new online product, service, or feature likely to be accessed by children.²¹ In *NetChoice v. Bonta*, the Ninth Circuit Court of Appeals upheld an injunction against the law, finding its requirement for covered businesses to identify and mitigate the risk of children being exposed to harmful or potentially harmful content to violate the First Amendment.²² On March 13, 2025, the District Court for the Northern District of California, on remand, enjoined the entire law from going into effect.²³ Maryland's *Age Appropriate Design Code* is facing a similar legal challenge.²⁴

Alongside content-based restrictions, states are considering app store age verification requirements. On March 5, 2025, Utah's state legislature passed the *App Store Accountability Act*, requiring app stores to verify a user's age prior to the user downloading or purchasing a mobile application.²⁵ The bill would give parents new tools to provide consent before their minor children agree to an online platform's terms of service.²⁶ This is a notable development for agreeing to online terms of service, reflecting the principle that minors generally may not consent to enforceable contracts without a guardian's consent in many states. States have also taken important steps to protect consumers from malicious deepfake pornography.²⁷

Against this growing patchwork, Congress has the responsibility to review the federal role in fostering a safer online ecosystem for children and adults alike. This hearing will provide an opportunity for members to assess what consumer protections exist, how best to remedy gaps in the law, and how federal action could help to ensure protections are in place for Americans to guard against exploitation and other online harms.

V. KEY QUESTIONS

- Given the wide variety of online harms, how are consumers, parents, and other stakeholders navigating the current digital landscape?

¹⁹ *Free Speech Coalition v. Paxton*, No. 23-1122 (U.S. argued Jan. 15, 2025).

²⁰ See Amber C. Thomson, Howard W. Waltzman, Kathryn Allen, and Megan P. Von Borstel, *Children's Online Privacy: Recent Actions By The States And The FTC*, MAYER BROWN (Feb. 25, 2025), <https://www.mayerbrown.com/en/insights/publications/2025/02/protecting-the-next-generation-how-states-and-the-ftc-are-holding-businesses-accountable-for-childrens-online-privacy>.

²¹ Cal. Civ. Code §§ 1798.99.28 *et seq.*

²² *NetChoice, LLC v. Bonta*, 113 F.4th (9th Cir. 2024).

²³ *NetChoice, LLC v. Bonta*, No. 22-CV-08861-BLF, 2025 WL 807961 (N.D. Cal. Mar. 13, 2025); See also Cobun Zweifel-Keegan, *A view from DC: Checkmate for NetChoice in California AADCA legal battle*, IAPP (Mar. 14, 2025), <https://iapp.org/news/a/a-view-from-dc-checkmate-for-netchoice-in-california-aadca-legal-battle>.

²⁴ Complaint, *NetChoice, LLC v. Brown*, Case No. 1:25-cv-003220RDB (Feb. 3, 2025).

²⁵ S.B. 142, 66th Leg. (2025), <https://le.utah.gov/~2025/bills/static/SB0142.html>.

²⁶ *Id.*

²⁷ See Bill Kramer, *Most States Have Enacted Sexual Deepfake Laws*, MULTISTATE (Jun. 28, 2025), <https://www.multistate.ai/updates/vol-32>.

- How can Congress enact new consumer protections that are also within the bounds of the First Amendment? What lessons can be learned from the implementation of recent state laws and legal challenges?
- Which tools would be most effective in empowering parents to understand their children's use of online services and make informed choices to safeguard them?
- In what ways has malicious deepfake pornography been used to exploit or harm Americans, and what steps can Congress take to hold bad actors accountable and provide survivors with greater recourse?
- What role is there for age verification in strengthening safeguards for children and which entities are best positioned to conduct verification?

VI. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Giulia Leganski, Brannon Rains, or Evangelos Razis of the Committee Staff at (202) 225-3641.