

The Honorable Lindsey Graham
Chairman, Senate Committee on the Judiciary
226 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Richard Blumenthal
Senate Committee on the Judiciary
226 Dirksen Senate Office Building
Washington, D.C. 20510

March 23, 2020

Dear Senators Graham and Blumenthal,

**Eliminating Abusive and Rampant Neglect of Interactive Technologies Act
(EARN IT Act)**

Thank you for your leadership in bringing the important issue of child sexual abuse prevention to Congress through your introduction of the EARN IT Act. We especially appreciate the fact that the *prevention* of online sexual exploitation of children is identified as the first purpose of the bill, and strongly recommend that a prevention approach be emphasized throughout discussion and debate on this bill.

We respectfully request participation and input from sexual violence prevention experts moving forward. While there does not appear to have been any contribution from these experts in developing the EARN IT Act, it is critical to include them now in developing a response better tailored to preventing online sexual exploitation—rather than merely responding to it. As specialists in sexual violence prevention, including perpetration prevention, we therefore offer what we hope may be some useful suggestions about how Congress can better achieve all of the stated purposes of the EARN IT Act.

From a prevention perspective, the chief problems with the approach of the EARN IT Act are threefold: first, the National Commission on Online Child Sexual Exploitation would not include any child sexual abuse prevention practitioners, but only those with expertise in dealing with the aftermath of sexual exploitation after it has already been perpetrated. This is a blind spot for the Commission that will make it more difficult to identify recommendations that could seize on opportunities to interrupt potential at-risk and vulnerable situations, and steer people away from offending. This lack of prevention expertise in the Commission will act as a barrier in identifying flaws in suggested best practices, and may result in recommendations that could conflict and even impede the work of prevention experts.

The second problem is that even if prevention-informed recommendations were to emerge from the Commission, the requirement that these recommendations be approved by the Attorney General and passed by Congress inherently politicizes this process, which will jeopardize its scientific neutrality. While our political system has many strengths, the nuanced discussion of issues around child sexual abuse prevention is not one of them. This is not isolated to the political system, but this difficulty discussing and addressing sexual abuse crosses into all institutions. We fear that because recommendations to strengthen enforcement are politically “safer” for representatives to support than those that could prevent offending in the first place, the latter will face tougher scrutiny in Congress even if they are better supported by experts.

The third problem arises from the breadth of the problems that the EARN IT Act seeks to address, which include not only the elimination of child sexual abuse material (CSAM), but also “enticement, grooming, sex trafficking, and sexual abuse.” Not all of these crimes are most effectively addressed through the technological measures that the Act is designed to enforce. By limiting itself to measures that can be implemented by technology companies, the law may prematurely cement into place technological practices that have a high cost but no demonstrated effectiveness in reducing abuse. An example mentioned during the Judiciary Committee hearing on March 11 was the use of AI algorithms to prevent sexual grooming.

Given the problems mentioned above, we cannot support the EARN IT Act in its present form.

We do agree that the technology sector should be voluntarily making more extensive use of existing mature technologies such as PhotoDNA to detect the misuse of their services for the distribution of known child sexual abuse material. We also agree with John Sheehan of NCMEC who testified at the March 11 hearing that the transparency of this system should be improved. A narrower bill devoted towards improving the accuracy, transparency, and ease of implementation of this system by Internet platforms of all sizes would be worthy of our support.

Beyond this, the sexual exploitation of children is not primarily a technological problem, even when it manifests itself online, but rather a social one which calls for an evidence-based, public health approach. More than 90% of people who commit sexual abuse against a child are not previously known to the criminal justice system. There is no way for Internet platforms to detect who an abuser might be until that person has already taken steps to perpetrate their abuse. By then, it is often too late to prevent the victimization or revictimization of a child.

Most researchers, clinicians, and other professionals who are devoted to the prevention of sexual offending against children promote an holistic approach that includes the provision of comprehensive sexual education, training and education for bystanders, support to those who are at risk of offending, and the treatment and management of those who have previously offended, among other interventions. The detection and prosecution of perpetration is also important—but it cannot be our sole priority if our objective is truly to prevent children from suffering abuse, rather than merely to provide justice to those who have already been harmed.

It isn’t a matter of Internet platforms being unwilling to provide a comprehensive response to the problem—they simply can’t. And no matter how the EARN IT Act may attempt to compel them to do

so, and no matter how popular this approach may be in the climate of the present “teclash,” it is ultimately bound to fail. As stated above, we do support measures to improve takeup of systems for Internet platforms to scan uploaded content against a database of verified CSAM images. This is a task of which platforms are capable, and there is much that can be done to increase their adoption of this widely agreed best practice.

But we would be reckless to trust technology companies to solve the range of other problems that the EARN IT Act correctly identifies. This demands a different approach which should be evidence-based and led by scientists and educators. Congress should support this mission, but should not try to micromanage it through legislation. The inclusion of 2 million dollars for prevention in the Fiscal Year 2020 Labor-HHS-Education Funding Bill is a good start, but more is needed. Doubling that budget is another measure that we could wholeheartedly support.

We need to give more than lip service to prevention. Although "prevention" is referenced in this bill, the principles and calls to action do not adequately address this. While some others who oppose EARN IT say that more money needs to be placed into enforcement, we urge you to match any new enforcement budget with a budget for prevention. If the EARN IT Act could do this, it will be far likelier to earn our support. We would also be happy to connect you with a prevention expert to testify at any future committee hearing on the bill.

Yours sincerely,

Prostasia Foundation

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