

The EARN IT Act of 2022

Sponsored by Senators Graham and Blumenthal

The EARN IT Act: Myth vs. Fact

The EARN IT Act (Eliminating Abusive and Rampant Neglect of Interactive Technologies Act) creates new incentives for the tech industry to take online child sexual exploitation seriously.

The EARN IT Act creates a new exemption to Section 230 of the Communication Decency Act (CDA) for federal and state laws related to the possession and distribution of child sexual abuse material (CSAM). This exemption would allow state enforcers and survivors to hold tech companies accountable for enabling the spread of images and videos of the abuse of children.

The EARN IT Act also creates a Commission to issue voluntary best practices for online platforms on preventing and reporting the grooming, exploitation, trafficking, and abuse of children. Finally, it provides more resources to tech companies and enforcers to improve technologies and efforts to detect and investigate the spread of CSAM online.

The reporting of CSAM and online child sexual exploitation provides law enforcement with vital information on active predators and ongoing cases of rape and abuse.

More reports, and more accurate information within those reports, means more children freed from one of the most horrific and life-changing crimes imaginable. When the most profitable and technologically sophisticated corporations in the world fail to take their moral and legal obligations seriously, they imperil investigations into the exploitation of children, contribute to predators staying on the street, and impede our national fight against the abuse of children.

MYTH:

- Given that some tech companies report significant amounts of CSAM to the National Center for Missing and Exploited Children (NCMEC) and provide technical resources to address child exploitation, the tech industry is doing enough to address this crime.

FACT:

- For tech companies that are already taking clear steps to report CSAM, little will change under this bill.
- But the select companies that are vigorous and consistent partners in the fight against online child sexual exploitation show how far behind too many in Big Tech are.
- According to NCMEC's 2020 statistics on reports of the online exploitation of children, while Facebook issued over 20 million reports that year, in contrast Amazon (which hosts a significant percentage of global commerce and web infrastructure) reported 2,235 cases.
- There is a sustained problem of underreporting and neglect of legal obligations by some tech companies. During a Senate Judiciary Committee hearing on the EARN IT Act, NCMEC disclosed that it had reported nearly nine times more cases of CSAM material hosted on Amazon to Amazon, than Amazon had found itself, and that Amazon had not taken legally required action on those cases.

- Before introducing the EARN IT Act, a bipartisan group of Senators sent detailed questions to more than thirty of the most prominent tech companies. The responses showed that even startups and small firms were willing and able to build safety into their platform using automated tools. Meanwhile, some large companies like Amazon admitted that they were not even using common and free tools to automatically stop CSAM despite substantial and known abuse of their platforms by predators.
- It is clear that many tech companies will only take CSAM seriously when it becomes their financial interest to do so, and the way to make that a reality is by permitting survivors and state law enforcement to take the companies to court for their role in child exploitation and abuse.

MYTH:

- This bill opens up tech companies to new and unimaginable liability that necessitated CDA Section 230's unqualified immunities two decades ago.

FACT:

- The EARN IT Act creates a targeted carve out for the specific, illegal act of possession or distribution of child sexual abuse material.
- Any tech company that is concerned that its services or applications could be used to distribute CSAM has plenty of tools and options available to prevent this crime without hindering their operations or creating significant costs.
- The detection, prevention, and reporting of CSAM is one of the most easily addressed abuses and crimes in the digital era. There are readily accessible, and often free, software and cloud services, such as PhotoDNA, to automate the detection of known CSAM material and report it to NCMEC.

MYTH:

- Requiring companies to be on the lookout for child abuse will harm startups and nascent businesses.

FACT:

- No other type of business in the country is provided such blanket and unqualified immunity for sexual crimes against children.
- Startups and small businesses have a critical role in the fight against online CSAM. Smaller social media sites and messaging applications, such as Kik Messenger, are routinely used by abusers.¹ The EARN IT Act will ensure that abusers do not flock to small platforms to evade the protections and accountability put in place on larger platforms.
- Moreover, there are simple, readily accessible, and often free, software and cloud services, such as PhotoDNA, that can be used by any tech company to automate the detection of known CSAM material and report it to NCMEC.

MYTH:

- The EARN IT Act violates the First Amendment.

FACT:

- Child sexual abuse is not protected speech. Possession of child pornography is a criminal violation and there is no defensible claim that the First Amendment protects child sexual abuse material.

MYTH:

- The EARN IT Act is simply an attempt to ban encryption.

FACT:

- The EARN IT Act does not target, limit, or create liability for encryption or privacy services. In fact, in order to ensure the EARN IT Act would not be misconstrued as limiting encryption, specific protections were included in the bill to explicitly state that a court should not consider offering encryption or privacy services as an independent basis for legal liability.
- Stopping the abuse of children is not at odds with preserving online privacy. Some online platforms have been using automated tools to check images and videos against CSAM databases for more than a decade without endangering privacy or creating consumer concerns. As Facebook has testified to the Senate Judiciary Committee, tech companies can readily implement tools to detect child sexual abuse while offering strong encryption tools.

MYTH:

- The Commission created by the EARN IT Act will empower a new government bureaucracy to mandate how tech companies can act.

FACT:

- The Commission cannot set rules or standards or require companies to do anything.
- The sole mission of the Commission is to convene tech platforms, survivors, law enforcement, and experts to issue reports on the latest best practices in stopping online child sexual exploitation. Adopting these best practices is completely voluntary. The reports are intended to inform tech companies (especially smaller companies) about the tools available and educate lawmakers and law enforcement about development and shortcomings in the fight against child abuse.

MYTH:

- Since CDA 230 already exempts federal crimes, the solution to this problem is increasing resources for law enforcement and hiring more federal prosecutors.

FACT:

- We support increasing resources for law enforcement officials fighting sex crimes against children. But no amount of money can compensate for the disengagement of the online platforms actually hosting this material.
- Hiring more federal investigators cannot replace having companies committed to the fight against child abuse, especially when it comes to monitoring the content posted on online platforms and checking closed groups for abuse.
- By requiring that only the Department of Justice can bring criminal cases for child sexual exploitation crimes, CDA Section 230 drastically limits the number and types of cases that are brought.
- States and survivors have a well-established role in holding offenders accountable, especially with respect to child sexual exploitation, for a reason: under enforcement of child protection laws fails victims and fosters more abuse.
- The EARN Act would ensure that there is more than one cop on the beat by enabling states and civil litigants to seek justice against those who enable child sexual exploitation.