

December 8, 2022

The Honorable Maria Cantwell,
Chairman,
U.S. Senate Committee on
Commerce, Science, and
Transportation
254 Russell Senate Office
Building
Washington, D.C. 20510

The Honorable Roger Wicker
Ranking Member,
U.S. Senate Committee on
Commerce, Science, and
Transportation
512 Dirksen Senate Office
Building
Washington, D.C. 20510

AMERICAN COMMITMENT

Dear Chairman Cantwell and Ranking Member Wicker:



We, the undersigned organizations, support federal online safety protections for children. We therefore commend Senators Richard Blumenthal (D-CT), Marsha Blackburn (R-TN) and the nine other co-sponsors of S.3663, the Kids Online Safety Act (KOSA)¹, for their leadership on this important issue.



While we support the goals of KOSA, however, we also urge you to make commonsense changes to ensure that the bill targets harmful online practices by certain platforms known to have caused harms to children without imposing needless regulatory burdens, undermining online competition and incentivizing frivolous litigation.

Specifically, the bill currently unreasonably sweeps human-curated content, which by definition has already been screened for objectionable content, into the same category as “user-generated content” (UGC), which by definition enters the online realm unvetted.



KOSA seeks to address a variety of harms impacting children and teenagers: cyberbullying, sexual exploitation and victimization of minors, and exposure to content that glorifies drug use, eating disorders and more.

The substantial investigations and hearings conducted by Congress show that youth are exposed to such material on social media platforms that are driven by UGC. KOSA’s definition of “covered platform,” however, would include other types of services that offer carefully vetted, human-curated and rated content, including non-UGC streaming services, libraries, academic databases and videogame-distribution services.



¹ Kids Online Safety Act, S.3663, 117th Cong. (2022).
<https://www.congress.gov/bill/117th-congress/senate-bill/3663>



Simply put, services that are driven by UGC are radically different from human-curated services where accountable professionals decide what programming to offer users, which are subject to long-standing parental controls and rating systems.² In almost all cases, content on those services is vetted by humans, not algorithms, *before* it is disseminated, through a process that considers whether it is age-appropriate, truthful or harmful.



In contrast, platforms that host UGC receive so many submissions that they could never evaluate content in the same manner. That lack of equivalent vetting is a major reason why children are harmed by UGC in the first place.

In light of the fact that the harms motivating KOSA occur almost entirely with UGC, it's therefore illogical to impose the bill's regulatory burdens on services that don't offer UGC.

Importantly, while UGC and non-UGC platforms differ significantly in their practices and vetting of programming options, they compete for the same eyes and ears in the "attention economy."



Additionally, the Big Tech platforms most popular with children and teenagers, such as TikTok and YouTube, possess vastly greater resources to comply with burdensome regulation than their smaller competitors like Kidoodle or PBS Kids. Saddling those smaller companies with needless compliance costs would therefore only entrench the market position of Big Tech platforms. Perversely, that would undermine not only the underlying goals of KOSA, but also broader efforts by the Senate Commerce Committee to increase competition with Big Tech and curtail social media overuse among kids.



Finally, we're concerned that KOSA's "duty of care" standard would enable activist attorneys general to punish licensed platforms whose content they find objectionable merely for political reasons. We've already seen cancel culture spill over into the regulatory and policy arenas, with government officials using lawsuits, investigations and the tax code to target companies and organizations whose content they find objectionable. We're particularly concerned that these attorneys general could target conservative, libertarian or religious children's content providers, such as the Daily Wire, for providing content that they label as "harmful to children" simply because they disagree with the content's messages or themes.

² See: "The Film Rating System," *The Classification and Rating Administration*, <https://www.filmratings.com/>, (Ret'd. Nov. 19, 2022), "TV Parental Guidelines," *TV Parental Guidelines Monitoring Board*, (Ret'd. Nov. 19, 2022), "ESRB Ratings," *Entertainment Software Rating Board*, (Ret'd. Nov. 19, 2022), <https://www.esrb.org/>

Given these concerns, we urge the Senate to amend the bill to cover only UGC-driven platforms and social media networks, not human-curated streaming services. Ensuring the safety of kids online understandably draws a passionate reaction, but we cannot let that passion become the enemy of effective legislation. With commonsense adjustments to the language, KOSA can address the harms caused by practices that are harmful to kids without imposing counterproductive regulation that undermines competition and the goals of the bill.

Sincerely,

American Commitment
Consumer Action for a Strong Economy
Consumer Choice Center
Center for Individual Freedom
Committee for Justice
Independent Women's Voice
Innovation Economy Institute
Institute for Liberty
Institute for Policy Innovation

cc:

Sen. Amy Klobuchar	Sen. Marsha Blackburn
Sen. John Thune	Sen. Jon Tester
Sen. Rich Blumenthal	Sen. Todd Young
Sen. Roy Blunt	Sen. Krysten Sinema
Sen. Brian Schatz	Sen. Mike Lee
Sen. Tex Cruz	Sen. Jacky Rosen
Sen. Ed Markey	Sen. Ron Johnson
Sen. Deb Fischer	Sen. Ben Ray Lujan
Sen. Gary Peters	Sen. Shelley Moore Capito
Sen. Jerry Moran	Sen. John Hickenlooper
Sen. Tammy Baldwin	Sen. Rick Scott
Sen. Dan Sullivan	Sen. Raphael Warnock
Sen. Tammy Duckworth	Sen. Cynthia Lummis