

February 5, 2025

The Honorable Ted Cruz
United States Senate
167 Russell Senate Office Building
Washington, DC 20510

The Honorable Brian Schatz
United States Senate
722 Hart Senate Office Building
Washington, DC 20510

The Honorable Chris Murphy
United States Senate
136 Hart Senate Office Building
Washington, DC 20510

The Honorable Katie Britt
United States Senate
502 Hart Senate Office Building
Washington, DC 20510

Re: Kids Off Social Media Act, S. 278

Dear Senators Cruz, Schatz, Murphy, and Britt,

We write to express our concerns about the Kids Off Social Media Act.¹ As introduced, the act would coerce websites into mandatory age verification, make children less safe, cut teens off from public discourse, and unconstitutionally infringe on platforms' editorial discretion.

I. Age verification is de facto required by KOSMA

KOSMA's Section 103 prohibits social media platforms from allowing any user "to create or maintain an account or profile if it knows that the individual is a child" under age thirteen. Section 104 prohibits social media platforms from making personalized recommendations "to display content if the platform knows that the user or visitor is a child or teen [under age seventeen]." KOSMA defines knowledge as either actual knowledge or "knowledge fairly implied on the basis of objective circumstances." Like other organizations, we believe that any standard short of actual knowledge will lead platforms to age verify all users because, to avoid liability, the only safe course for compliance would be for the site to engage in age verification.² Platforms face astronomic civil penalties—in theory, hundreds of trillions of dollars—if they fail to prevent access by children

¹ Kids Off Social Media Act, https://www.britt.senate.gov/wp-content/uploads/2025/01/kosma_text.pdf.

² Software & Information Industry Association Letter on S.1291 (Apr. 30, 2024), <https://www.siiia.net/wp-content/uploads/2024/04/SIIA-Letter-on-S.-1291.pdf>.

under 13 or use personalized recommendation systems for other teens.³ Given such potential bet-the-company liability, platforms will rationally choose to *verify* all users' ages to foreclose allegations that they had knowledge "fairly implied" that a given user was under seventeen.

By opening platforms up to this risk, KOSMA makes age verification the best—indeed the only reasonable— option to avoid liability. KOSMA attempts to avoid this problem by expressly stating that it does not require age verification, but because the "knowledge fairly implied" standard is so vague, risk-averse platforms will likely require age verification anyway. To determine whether platforms have knowledge fairly implied, the act instructs enforcers to consider "competent and reliable evidence," including "whether a reasonable and prudent person" would have known that the user was a child or teen. It is not clear what this requires of platforms with respect to individual users. Must platforms scan user bios for ages? Should they monitor whether a user posts about school or grades? Are platforms to use algorithmic age estimation technology on a user's pictures? Under KOSMA, the most "reasonable and prudent" course of action available to platforms would be to implement mandatory age verification up front.

Age verification chills constitutionally protected speech on the Internet. Online age verification generally involves uploading a government issued ID document or submitting to invasive biometric scans. Americans are rationally concerned that uploading such information exposes them to hacks or leaks—that age verification technology increases the risk that a user's actual identity will be publicly linked with their social media presence. This risk chills *all* speech, especially anonymous speech, on social media.⁴

³ Section 106 authorizes the FTC to impose civil penalties as it can for any violation of an FTC rule under 15 U.S.C. § 57a(a)(1)(B), which means \$53,088 per "violation." Fed. Trade Comm'n, [Adjustments to Civil Penalty Amounts](#) (Jan. 17, 2025). This could be calculated on the basis of each user. *See, e.g.*, Comments of TechFreedom in [Petition for Rulemaking](#) to Prohibit the Use on Children of Design Features that Maximize for Engagement at 7 (Jan. 18, 2023). Thus, if just 2% of a platform with, say, 100 million users were estimated to be teens, the site could face \$106,176,000,000 in civil penalties.

⁴ *ACLU v. Mukasey*, 534 F.3d 181, 197 (3d Cir. 2008). These chilling effects are not limited to purely anonymous speech—they extend to semi-anonymous speech as well. Social media users often include some personal details without actually identifying themselves; they may post pictures without their name or include only a first name or nickname. These users are not actually anonymous—they could be identified with enough work—but that doesn't mean the user would be happy to submit to age verification and link their real identity to their account.

We have opposed state and federal age verification mandates for just this reason.⁵ Anonymous speech is a core First Amendment right, and to preserve that right online, “speakers must ‘believe the system’s assurance of anonymity.’”⁶ In *Ashcroft*, the Third Circuit struck down an age verification requirement because it would “likely deter many adults from accessing restricted content, because many Web users are simply unwilling to provide identification information in order to gain access to content, especially where the information they wish to access is sensitive or controversial.”⁷ KOSMA raises the same concerns and more: rather than impacting only the right to receive information, KOSMA directly impacts the right to *speak* itself.

Any legislative scheme that leaves age verification as a platform's best option to avoid liability is, despite any provisos to the contrary, a de facto age verification *requirement*, and thus an infringement on Americans’ protected speech online. We thus encourage the Committee to adopt only an actual knowledge standard in KOSMA.

II. KOSMA undermines child safety and parental rights

Because KOSMA requires that platforms prohibit accounts for children under thirteen and delete existing accounts of child users, and because the act makes no exception for parent-managed kid-safe accounts,⁸ the act would inadvertently make children *less* safe. It would ban platforms that allow supervised child access—like YouTube Kids. And by mandating chronological-only feeds for teens, KOSMA inhibits the ability of a platform to cultivate a safer online space—e.g., by downranking controversial or distasteful content that a teen has requested.

III. Children have First Amendment rights

KOSMA infringes on children’s First Amendment rights to access information and speak out.⁹ Teens, like all Americans, have First Amendment rights: they are “entitled to a significant

⁵ TechFreedom, [Letter to State Lawmakers Opposing Age Verification](#) (Jan. 31, 2025); Ari Cohn, [Desperate to Justify Unconstitutional Social Media Law, Utah Officials Blunder Through False Equivalencies](#) (May 11, 2023); [Brief of TechFreedom as Amicus Curiae in Support of Plaintiff](#), *Bonta v. NetChoice, LLC*, 23-2969 (Feb. 14, 2024); TechFreedom, [Letter to Gov. Spencer Cox on Utah Social Media Bills](#) (Feb. 16, 2023); <https://techfreedom.org/wp-content/uploads/2023/07/KOSA-July-26-2023-TechFreedom-Letter.pdf>.

⁶ Amicus Curiae Brief of TechFreedom at 8.

⁷ *ACLU v. Ashcroft*, 322 F.3d 240, 259 (3d Cir. 2003).

⁸ The definition of “user” does exclude situations in which the an individual who “registers an account or creates a profile on the social media platform” is an adult, but this is irrelevant to the operation of Section 103, which forbids a platform “to permit *an individual* to create *or maintain* an account or profile if it knows that the individual is a child.” The same goes for Section 104.

⁹ Other groups share the same concerns. *See* Letter from Civil Liberties Organizations Re: Concerns with S. 4213’s Threats to Minors’ Privacy and Safety Online (May 16, 2024),

measure of First Amendment protection.”¹⁰ Online speech *is* protected speech, and the circumstances in which the government can bar its dissemination are, as the Court says, “relatively narrow.”¹¹ Many social media sites already prohibit, through their terms of service, accounts for children under thirteen. Those private decisions do not implicate the First Amendment. *Government* prohibitions, however, *do*. KOSMA’s goal—protecting children—is laudable. But that does not give the state free rein to restrict children’s access to protected speech, and much—if not most—speech on social media is protected even as to children. The state’s power to protect children, the Supreme Court instructs, “does not include a free-floating power to restrict the ideas to which children may be exposed.”¹²

If enacted, KOSMA would surely be challenged, and courts would likely strike it down. Consider, for instance, a child who wished to access President Trump’s posts on Truth Social. Truth Social allows minors to have accounts with permission from a parent or guardian.¹³ President Trump’s speech is of interest to everyone, including children under thirteen. KOSMA would restrict access to that important speech. It is the business of parents and platforms, *not* the government, to set terms for children’s access to social media.

IV. KOSMA infringes on platforms’ editorial discretion

KOSMA would ban “personalized recommendation systems” for teens on social media. Recommendation systems represent editorial judgments and are, as the Supreme Court recently held in *NetChoice*, protected speech. “In constructing certain feeds,” the Court said, “platforms make choices about what third-party speech to display and how to display it... And we have repeatedly held that laws curtailing [platforms’] editorial choices must meet the First Amendment’s requirements.”¹⁴ KOSMA would infringe on protected speech by forcing platforms to deliver content in the *state’s* preferred order—that is, without any personalization at all. This is no less an infringement for applying to content delivered to teens, and it is unlikely to withstand First Amendment scrutiny.

https://newamericadotorg.s3.amazonaws.com/documents/Re_Concerns_with_S_4213s_Threats_to_Minors_Privacy_and_Safety_Online.pdf

¹⁰ *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 212 (1975).

¹¹ *Id.* at 213.

¹² *Brown v. Entertainment Merchants Assn.*, 564 U.S. 786, 795 (2011).

¹³ Truth Social Terms of Service, <https://help.truthsocial.com/legal/terms-of-service/>.

¹⁴ *Moody v. NetChoice, LLC*, 603 U.S. ___ (2024) (slip op. at 4).

Protecting children is an important goal, and one which we support. But we believe that efforts to protect children must respect the First Amendment rights of everyone—children, adults, and platforms alike. Ignoring the First Amendment risks long legal battles and chills free speech in the meantime. We stand ready to assist you in protecting both minors and the First Amendment.

Sincerely,

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