

The EARN IT Act: Myth vs. Fact

Children are groomed, exploited, and abused online through platforms we use everyday. Despite clear and demonstrated ramifications, online child sexual exploitation has not received a consistent and forceful response from the technology industry. 48% of all child sexual abuse materials (CSAM) flagged for removal by the Canadian Centre for Child Protection had previously been reported to the ISP.¹ The Eliminating Abusive and Rampant Neglect of Interactive Technologies Act (EARN IT) creates new incentives for the technology industry to proactively address online child sexual exploitation. The bill amends section 230 of the Communications Decency Act (CDA) to carve out federal and state CSAM laws (18 U.S. Code § 2252 and 2252A, and state analogues). The bill also establishes a commission of survivors, technology companies, privacy and civil rights experts, and other stakeholders to create recommendations and voluntary best practices for tech companies to prevent, remove, and block CSAM.

Myth	Fact
Child pornography distribution is a victimless crime.	<p>The distribution of child sexual abuse material or CSAM (also known as child pornography) drives the demand for new material, which can only be met by the further abuse of children. Offenders often request new images that have not been seen before from other offenders they meet online. Offenders then look to children they have access to (family, neighbors, online) to fulfill these requests.</p> <p>Also, children victimized and seen in these images have to live with the recurring trauma of knowing that offenders view their abuse images and often use these images to groom other children into sexually abusive situations on and offline.</p>

¹ Canadian Centre for Child Protection Inc. (2021). *Project Arachnid: Online availability of child sexual abuse material*. Canadian Centre. https://protectchildren.ca/pdfs/C3P_ProjectArachnidReport_en.pdf

	<p>In 2020 alone, the National Center for Missing and Exploited Children (NCMEC) received over 65 million files containing CSAM. These files are actual crime scene recordings of children being sexually abused. According to the US Sentencing Commission, sixty percent of CSAM producers are related to or otherwise maintained a position of trust over the minor victim, whether through familial relationships or by virtue of the offender’s role as a teacher or a coach. Children in these images endure sadistic abuse, including being penetrated, bound, gagged, and tortured.</p>
<p>The Earn It Act will motivate tech companies to shut down online spaces frequently used by sex workers and, therefore, put them in harm’s way by pushing the sex trade underground or onto the street.</p>	<p>Following the passage of SESTA-FOSTA in 2018 and the shutdown of Backpage and Craigslist’s personals (two of the largest online platforms for commercial sex advertisements in the United States), opponents of the bill made this same argument. However, research published since then has shown that the shutdown of these pages did not bring about the harms opponents had feared and most of the advertisers and users of Backpage and Craigslist’s personals moved to other commercial sex advertising websites.² Additionally, this bill specifically targets images and videos of children (under the age of 18). Children are not, and can never be sex workers, they are victims of sexual abuse.</p>
<p>The EARN IT Act violates internet users’ privacy.</p>	<p>Put simply, the EARN IT Act will remove immunity provisions for companies that</p>

² Zeng, Helen (Shuxuan), and Brett Danaher . Rep. [Internet Governance Through Site Shutdowns: The Impact of Shutting Down Two Major Commercial Sex Advertising Sites](#) , n.d.

	<p>knowingly allow CSAM to be distributed on their platforms. Companies will have the ability to choose how to remove CSAM from their platforms. This can be accomplished in ways that preserve user privacy.</p> <p>Currently, all companies scan for malware and spyware; the process of scanning for CSAM is identical to other existing tools that help secure platforms and protect privacy.</p> <p>Additionally, the EARN IT Act will actually incentivize technology companies to enhance user privacy, especially for children. Currently, technology companies, such as Facebook, use what's called "recommendation algorithms" to push content to users that the company thinks the user will like or engage with. This helps support a revenue-based advertising model for these companies. As explained in the 2021 60 Minute interview with Facebook whistleblower Frances Haugen, "Facebook has realized that if they change the algorithm to be safer, people will spend less time on the site, they'll click on less ads, they [Facebook] will make less money,"³</p> <p>This recommendation algorithm works the same way with sex offenders. For offenders who have an interest in eight-year-old girls, they are shown more and more content and user profiles of young girls. These offenders then contact the children online and solicit CSAM from them, sometimes even</p>
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³ Pelley, S. (n.d.). Facebook Whistleblower Frances Haugen: The 60 Minutes Interview. other. Retrieved October 3, 2021, from <https://www.youtube.com/watch?v=Lx5VmAdZSI>.

	<p>sex torting them to send increasingly graphic images. This violates children's privacy and puts children directly in harm's way. The EARN IT Act will incentivize companies to protect children's privacy, especially actual CSAM victims whose abusive images are being distributed across the internet.</p>
<p>Removing immunity for technology companies will break the internet.</p>	<p>There is only one way to actually break the internet, and this bill doesn't do it. This bill will incentivize technology companies to report and remove child sexual abuse material. Many companies already do this and the internet did not break.</p>
<p>The EARN IT Act will coerce platforms into censoring speech that will go well beyond illegal CSAM.</p>	<p>Technologies that tech companies use to scan for CSAM, such as PhotoDNA, do not scan the actual photos but compare the hash - the unique digital fingerprint - of a photo to a known list of child sexual abuse image hashes. In addition, these technologies only detect hashes that are associated with known CSAM reported to NCMEC. Therefore, communications and free speech should not be hindered; legal images/videos aren't detected/flagged by these technologies.</p>
<p>The EARN IT Act will transform social media providers into "agents of the government" for purposes of the Fourth Amendment, with potentially disastrous consequences for CSAM prosecutions.</p>	<p>The distribution of CSAM is a federal crime. Internet Service Providers and social media platforms are private businesses with terms of service agreements that every user must accept and abide by to use these services and platforms. One of the terms of service is that every user agrees not to post or otherwise distribute illegal material. Every internet business reserves the right to terminate a user's account if they violate their terms of service. In business, this is called risk mitigation.</p>

	<p>The EARN IT Act does not require platforms to conduct searches that would require a warrant if conducted by law enforcement; rather, it simply removes the special liability protection granted by Section 230 for causes of action related to CSAM. For a court to deem an entity an “agent” of law enforcement for Fourth Amendment purposes, the entity must act with the intention to assist law enforcement rather than further its own interests.⁴ Should platforms decide, on their own, to search users' content in an attempt to avoid civil liability, such searches would be to further their own financial interests.</p> <p>Facebook Community Standards - Child Exploitation and Abuse</p> <p>Twitter Child Sexual Exploitation Policy</p>
<p>The EARN IT Act would infringe on the ability of smaller platforms, such as local news websites, hobby blogs, and email services, to thrive due to liability concerns</p>	<p>Only companies that “knowingly” facilitate the distribution of child sexual abuse material will be subject to liability. If your hobby blog provides access to images of sexually abused children and you know that those images are on your hobby blog, or are advertising that these images are on your hobby blog, then you will be liable.</p> <p>The word “knowingly” in law means consciously or with knowledge or complete understanding of the facts or circumstances.</p> <p>The “knowledge” standard applies to all</p>

⁴ See *U.S. v. Silva*, 554 F.3d 13, 18 (1st Cir. 2009); *State v. Steigler*, 318 F.3d 1039 (11th Cir. 2003).

	<p>federal cases and 49 of 50 states in the U.S. Only one state, Illinois, uses a reckless disregard standard.</p>
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