

MYTH *vs.* FACT

The Eliminating Abusive and Rampant Neglect of Interactive Technologies Act (“EARN IT Act”)

Co-Sponsors: Rep. Sylvia Garcia (D-TX) and Rep. Ann Wagner (R-MO)

Background: As shown in recent New York Times investigations, online platforms have fueled the extreme and unprecedented proliferation of child sexual abuse material (“CSAM”).¹ Children are groomed, enticed, exploited, trafficked, and abused online through platforms we use every day, a problem that law enforcement has repeatedly warned is increasing during the COVID-19 pandemic.

Despite clear and demonstrated ramifications, online child sexual exploitation has not received a consistent and forceful response from the tech industry, drastically evident in the contrast of Facebook submitting millions of reports to the National Center for Missing & Exploited Children (“NCMEC”) in 2019 compared to Amazon submitting just a few cases.² CSAM is one of the starkest harms presented by the internet, and the tools to help fight against online child sexual exploitation are often freely-available and effective for anyone committed to the fight. There should be no excuse for inadequate and inconsistent efforts to stop this appalling abuse from the largest and most technologically sophisticated companies in the country.

Throughout this process, opponents of the bill have noted that while child protection advocates supporting the EARN IT Act have the worthy goal of stopping the exploitation of children online, EARN IT is not the solution to this serious problem. As such, on October 1, 2020, these groups sent an opposition letter to Members of Congress dated September 9, 2020, where they outlined their reasons to oppose the EARN IT Act as passed unanimously out of the Senate Judiciary Committee. Below is a series of quotes raised in the opponents’ letter and responses with respect to each claim.

¹ <https://www.nytimes.com/interactive/2019/09/28/us/child-sex-abuse.html>

² *Id.*

MYTH: *“Unfortunately, the bill is not the solution to this serious problem.”*

FACT: NCMEC, as national clearinghouse for missing and exploited children for over 36 years, joined by scores of other child advocacy groups would not be supporting EARN IT unless it was a serious part of the solution to online CSAM.

MYTH: *“If the bill causes platforms to eliminate online communities and other methods for sharing information and maintaining health and safety, the EARN IT Act could place sex workers’ lives at risk. This would be unacceptable.”*

FACT: This is false—impacted statutes are all specifically directed to “the sexual exploitation of minors” (18 USC 2252) and “child pornography” (18 USC 2252A). To suggest the bill in any way impacts sex workers or “health and safety” information is knowingly untrue, and frankly seriously undermines credibility. Allowing videos of child rape to be posted and circulated endlessly online without consequence is not only “unacceptable,” but also runs counter to our basic societal commitment to protect children from abuse.

MYTH: *“To be clear, we are not concerned about platforms censoring CSAM.”*

FACT: CSAM is per se illegal – this is not censorship; this is holding everyone accountable for laws that have existed for decades.

MYTH: *“[T]he effect of the changes EARN IT would make to Section 230 could be similar to, and even more harmful to online speech, than those made by SESTA/FOSTA.”*

FACT: SESTA/FOSTA passed and was enacted into law – it is not productive to try to re-legislate and re-argue this law 2 ½ years later. Additionally, the EARN IT Act solely addresses the sexual exploitation of children online, which is not online speech. There is no data to support this hypothetical concern that EARN IT will impact legal speech.

MYTH: *“[P]latforms censored a great deal of speech in an attempt to guard against the legal risk of losing Section 230’s protection.”*

FACT: This is a complaint that should be directed to the platforms – if platforms exercised their independent business judgment to act in a way that opposing groups think had a negative impact, then this should be raised with the platforms, not with Congress. SESTA/FOSTA didn’t direct any platform to censor legal speech or legal activities, such as postings by the LGBTQ community or relating to the health/safety of sex works at risk, etc. – it only directed platforms to not knowingly facilitate the sale of children for sex.

MYTH: *“Platforms may again ban and censor sex-related speech, especially if it relates to youth” and advocacy that “discusses or relates to matters involving sex and sex education,” which “harms LGBTQ youth, who often first explore their identities by seeking information and building community online.”*

FACT: Opposing groups know the statutes at issue involve “the sexual exploitation of minors” and “child pornography” – not sex education, exploring identities, building community, etc. This is about stopping circulation of images and videos of children, many who are toddlers and cannot even speak, who are being raped and sexually tortured.

MYTH: *“EARN IT also threatens to disincentivize platforms from providing strong encryption....”*

FACT: This argument is directed to the first version of the *Leahy* amendment – now it’s clear that EARN IT (House version) is neutral as to encryption.

MYTH: *“EARN IT Act would also create a National Commission...but no representation from the LGBTQ, sex worker, or other impacted communities.”*

FACT: Sex worker communities are not impacted by “the sexual exploitation of minors” or “child pornography” which are the sole issues addressed by EARN IT. The impacted communities – survivors of CSAM – are included to serve on the Commission.

MYTH: *“To actually address child sexual exploitation, Congress should adopt numerous reforms advocated by experts, including investing in prevention, reallocating existing enforcement resources, or expanding services and assistance to victims.”*

FACT: NCMEC and other child protection groups are experts and are advocating for EARN IT. Opposing groups and tech companies do not want legislative solutions but offer no alternatives or solutions to this real ongoing problem that experts say is exacerbated amid the pandemic. Increased funding for prevention, law enforcement and survivor services is always beneficial, but merely seeks to treat the existing problem of CSAM – not to stop the horrible abuse these children suffer through online sexual exploitation.