

Making Smartphones and App Stores Safer for Kids

What Congress Can Do

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The device-and-app-store industry has been virtually unregulated to date, especially for child safety. Today's devices, smartphones and tablets, and the app stores they host have been greatly harmful to children. Below we recommend several possible solutions for federal lawmakers to implement, which would ensure that devices and their app stores are safer for children and bring much-needed accountability to this industry. Recently, there has been significant attention given to the harms of social media and online pornography for children, galvanizing lawmakers. At the federal level, three bipartisan bills to better protect kids online have gained momentum, the Kids Online Safety Act (KOSA), COPPA 2.0, and the EARN IT Act. These measures are all critical; however, they only address one level of the current problems: the website (or platform). We fully support and have effectively contributed to this policy work, but argue that it is now necessary to open up another front to address the threats to child safety online—directing attention toward the devices that serve as children's main portals to the internet and social media platforms (and a myriad of other apps).

Devices are, in effect, both products and markets simultaneously. Apple and Google, which dominate the smartphone and tablet industry, bundle their devices with app stores, giving them a duopoly in the app store market. This gives them extraordinary authority over the nature of apps, which are accessed or purchased exclusively through their app stores. But like the devices themselves, the app stores are totally unregulated for child safety. Under normal market conditions, even for consumers who are considered adults, labels that accurately reflect the contents of the product are required to assist in making an informed purchase. Big Tech's app stores on devices operate under no such rules. Apple and Google have essentially become the "gatekeepers" to what children are accessing and viewing online, yet their app stores are extremely deceptive for consumers, especially parents, and their devices are not designed with child safety in mind. Consequently, making smartphones safe for children also requires policymakers to address the issues in the app store market.

Therefore, Congress should consider legislating the following requirements for device manufacturers and app stores:

1. Verify Age on the Device:

Age verification at the device level is the best technical anchor for any subsequent device-level protections. In setting up a new smartphone, the user is already required to establish an Apple or Google ID and enter their birth date. Age verification could easily be tacked on to this set-up process for any smartphone or tablet. After a user enters her birth date, the next step in the

device set-up process could be an age-verification requirement. No method of age verification is impervious to deception; nevertheless, confirming the ages of users by offering several reasonable age-verification methods should help align the vast majority of minors with age-appropriate products. Congress could either require age verification for all new devices manufactured going forward or require that device manufacturers provide an operating system update

that would require age verification on all new and existing devices that are still supported.

2. Require Device Obscenity Filters and Parental Approval for App Downloads:

Built-in device filters for obscenity should be the automatic default setting for all new devices, smartphones, and tablets, unless age verification on the device proves the user is over the age of 18. Apple and Google already have the ability to block pornography (videos, website, images) on device browsers. It should be the mandated default that obscene material is blocked for all device users not verified as over 18. Congress could go one step further than an obscenity filter to also require parental approval for apps downloaded to the device for all users under 18.

3. Prohibit Apps and App Stores from Displaying Obscene Ads to Children:

A narrow requirement Congress could impose by law is to prohibit apps rated as appropriate for children from displaying obscene ads, since obscenity is not protected speech under the First Amendment and the government has a compelling interest in protecting children from it. Congress could also narrowly prohibit app stores from displaying obscene ads to children, or from promoting and advertising obscene apps to children.

4. Amend FCC Device Certifications:

Congress could amend the Communications Act to mandate that any device requiring certification from the Federal Communications Commission (FCC) must be equipped with an operating system that has certain systems in place to protect children, such as built-in parental controls, as well as the defaults mentioned above: namely, device filters for obscene content and requiring parental consent for app downloads to prevent children from accessing apps with harmful features.

5. Amend the Federal Trade Commission (FTC) Act:

Congress could open up more litigation against device companies for their harms to children by encouraging more aggressive Federal Trade Commission (FTC) enforcement actions against app stores and apps. This can be accomplished by amending the FTC Act's prohibition against "unfair or deceptive acts or practices in or affecting commerce" to include an explicit prohibition for app stores and apps from abusively marketing their goods to children and deceptively age rating their apps.

6. Pass a Law to Open Up Competition in the App Store Market:

Congress should also consider passing a law requiring interoperability for devices with third-party apps and app stores in order to open up competition in the app store market. One such federal bill that has already been introduced is the bi-partisan Open App Markets Act (OAMA) by Senators Blumenthal (D-CT) and Blackburn (R-TN), which seeks to address the problem of overly-centralized authority under the Apple and Google app store duopoly. The bill would require app market operators to allow for the download of third-party applications and app stores (requiring interoperability of third-party apps and app stores with their device software), which would decentralize the control of app stores (and their preferencing and promoting of their own apps) to break Apple and Google's control of every app that goes on a device. This decentralization would then allow for more family-friendly and child-safe app stores to arise as competitors. Third-party app stores could become a viable option and could decide to be more like a toy store than a general store to curate and offer only kid-safe apps. Parents could then choose a family-friendly app provider and download it to their child's device rather than being forced to go through Apple and Google's built-in default app stores.