



June 24, 2025

The Honorable Ted Cruz  
Chair  
Senate Committee on Commerce,  
Science, & Transportation  
Washington DC, 20510

The Honorable Maria Cantwell  
Ranking Member  
Senate Committee on Commerce,  
Science, & Transportation  
Washington DC, 20515

RE: Concerns with Children and Teens' Online Privacy Protection Act (S.836)

Dear Chair Cruz, Ranking Member Cantwell, and other members of the Committee,

The Electronic Frontier Foundation (EFF) writes to share our concerns with the current text of the Children and Teens' Online Privacy Protection Act (S. 836).<sup>1</sup> While we admire the sponsor's longstanding commitment to protecting the privacy of children and adults and we believe the goals of the bill are laudable, we are concerned that the current version of the legislation would have some unintended consequences that could ultimately jeopardize the same people the bill seeks to protect. Therefore, EFF suggests a change to the bill as the Committee begins consideration.

EFF is a member-supported, non-profit civil liberties organization that works to protect free speech and privacy in the digital world. Founded in 1990, EFF has over 30,000 members. EFF represents the interests of technology users in both court cases and broader policy debates surrounding the application of law to technology.

EFF applauds that the bill provides greater privacy protections to more young people than under the current law, by increasing the age of the covered user from under 13 to under 17. This bill also recognizes that teens need some amount of privacy and autonomy by allowing children between 13-16 to consent to data collected for commercial purposes, rather than requiring those teens to get their parents' consent.<sup>2</sup>

However, the bill's big change from current law is likely to result in increasing privacy and security risks for young people online. Under COPPA, a service must obtain verifiable parental consent before collecting personal information from children under 13 if it either (1) directs its services to children or (2) has actual knowledge that the user is a child. The bill would amend the actual knowledge standard to a much lower standard: "knowledge fairly implied on the basis of objective circumstances"<sup>3</sup> is defined for purposes of the bill as "whether a reasonable

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<sup>1</sup> Children and Teens' Online Privacy Protection Act, S. 836. 119<sup>th</sup> Congress, first session. Sponsored by Senator Ed Markey. <https://www.congress.gov/119/bills/s836/BILLS-119s836is.xml>

<sup>2</sup> Page 19, line 14-16, line 22-25, page 20, line 1-4

<sup>3</sup> Page 4, line 17-20; Page 14, line 10-19; Page 16, line 1; Page 18, line 12-14



and prudent person under the circumstances would have known that the user is a child or teen.”<sup>4</sup>

We oppose this change because we fear online services will implement burdensome and privacy invasive age-verification gates to comply with the bill's lower knowledge standard. The bill's “knowledge fairly implied” standard is essentially a negligence standard, which is one of the lowest mental standards recognized by law. This means that the FTC could enforce the bill against an online service even if the service did not actually have direct knowledge that a user was a minor. To avoid that potential legal risk, general-audience services not specifically directed to minors are likely to implement age-verification gates for *all users* to remove any doubt as to which of its users are, in fact, minors.

To be sure, the bill does not require online services to implement age-verification gates to comply. But that could be the effect. How does a site comply with a law that says not to collect personal information on specific ages of users without knowing anything about the age of its users? It's not possible to both not collect information about users' ages, either by age-gating or other collection methods, and also avoid collecting personal information only from minors who use the service. Therefore, litigation-averse companies are likely to implement some kind of age-verification process to avoid running afoul of the law.

Age-verification gates create their own privacy and data security problems because, by definition, these tools require collecting and retaining more information on all their users. The more information a website collects about visitors as part of this age-verification scheme, the more chances there are for such data to get into the hands of a criminal or other bad actor, a marketing company, or someone who has filed a subpoena for it. So-called “anonymized” data can be reassembled to identify individuals, especially when it consists of data-rich government IDs together with browsing data like IP addresses.

Data breaches are a fact of life. Once governments insist on creating these ID logs for visiting websites with certain types of content, those data breaches will become more dangerous for users, leaving them vulnerable to phishing, blackmail, or identity theft, in addition to the loss of anonymity and privacy. Requiring users to upload government documents—some of the most sensitive user data—will hurt all users, including the children this bill is meant to protect.

Moreover, while age-verification systems may sound promising on the surface, no current method of age verification is both privacy-protective and entirely accurate. Solutions often involve offering a variety of age determination options, but this only glosses over the fact that every solution has serious accuracy and/or privacy and security problems.

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<sup>4</sup> Page 35, line 15-25; Page 36



Once this information is shared, there's no way for a website visitor to be certain that the data they're handing over is not going to be retained and used by the website for some other purpose, or further shared or even sold, especially in the absence of a comprehensive, user-focused federal consumer data privacy law with a strong private right of action.

Separate from the privacy and security problems, age-verification gates can burden freedom of speech by blocking or making it logistically difficult for internet users from being able to access other people's expression online, or to speak out themselves.

EFF continues to advocate for comprehensive consumer data privacy legislation,<sup>5</sup> for Americans of all ages, which would protect all users' privacy without also implicating the free speech rights of adults. At minimum, Congress should not incentivize general audience websites to go in the opposite, privacy-invasive, direction.

Thank you for your consideration of our concerns. If you have any questions, please contact India McKinney, EFF's Director of Federal Affairs, at [india@eff.org](mailto:india@eff.org).

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<sup>5</sup> Privacy First: A Better Way to Address Online Harms, by Corynne McSherry, Mario Trujillo, Cindy Cohn, and Thorin Klosowski. November 14, 2023. <https://www.eff.org/wp/privacy-first-better-way-address-online-harms>