



November 16, 2023

Via Electronic Submission

Alan Davidson
Administrator
National Telecommunications and
Information Administration
Department of Commerce

Re: Initiative to Protect Youth Mental Health, Safety & Privacy Online

Dear Administrator Davidson:

The U.S. Chamber of Commerce (“Chamber”) respectfully submits these comments to the above referenced proceeding, the Department of Commerce’s (“Commerce”) Notice and Request for Comments (“Notice”) to gather information and input on issues pertaining to children’s online safety, as well as the formation of the Task Force on Kids Online Health & Safety (“Task Force”).¹ Protecting children’s personal privacy and ensuring their online safety is a priority, and it is critical that policy provide certainty to children, parents, and affected members of business community.

I. National Standard for Children’s Online Safety

To provide that certainty, we believe policymakers should establish a national standard to help ensure children’s online safety. Unfortunately, many states have enacted and are considering separate laws, creating an expanding patchwork of inconsistent laws that are not aligned with the interstate nature of Internet commerce, making it difficult for businesses to comply. In 2023 alone state legislators have introduced more than 60 bills, with new laws being enacted in California, Arkansas, Utah, Texas, and Louisiana.² This underscores the need for a national standard for children’s online safety.

In light of this situation, any federal law must include explicit state preemption to be effective.³ Floor preemption is insufficient. Congress must set a national

¹ 88 Fed. Reg. 67733 available at [https://www.federalregister.gov/documents/2023/10/02/2023-21606/initiative-to-protect-youth-mental-health-safety-and-privacy-online#:~:text=On%20May%202023%2C%20the,Task%20Force%20\(Task%20Force\)](https://www.federalregister.gov/documents/2023/10/02/2023-21606/initiative-to-protect-youth-mental-health-safety-and-privacy-online#:~:text=On%20May%202023%2C%20the,Task%20Force%20(Task%20Force).).

² <https://www.cato.org/blog/state-kids-online-safety-legislation-end-2023-2024-state-legislature-session-0>

³ See e.g. S. 1409, 118th Congress.

standard to avoid creating an environment in which businesses face a patchwork of conflicting laws. In fact, a U.S. Chamber report found that most small businesses are concerned about rising litigation and compliance costs resulting from a patchwork of out-of-state technology regulations.⁴

II. Public and Private Partnerships

In addition to needed Federal policy and national standards, appropriate guardrails also need the cooperation of responsible actors in a public-private partnership. The business community has taken numerous voluntary actions to promote children’s online safety and to partner with governments, civil society, and other key stakeholders to achieve the same objective. The Task Force should prioritize reaching solutions that facilitate public-private partnerships on topics including increasing parental/guardian awareness, education on children’s online safety issues, and building awareness of existing tools that allow parents to exercise control over their children’s online activities. These solutions should be prioritized over any binding regulatory approaches as an initial first step.

III. Consider Existing Limits on Agency and Constitutional Authority

Any agency action and rulemaking must be grounded in agency authority based upon a legal grant of power by Congress and the Constitution. On the federal level, there is no law that clearly authorizes any agency to broadly pursue online children’s safety regulation. The Children’s Online Privacy Protection Act (“COPPA”)⁵ provides a targeted set of online privacy protections for children under 13 years old but is still limited in scope. Over the last few years, some agencies, including the Federal Trade Commission (“FTC”), have pursued expansive rulemaking that frequently lacks sufficient statutory authority. The Task Force should avoid making recommendations or encouraging agencies, including the FTC, to act on children’s online safety regulations given no clear statutory authority.

In addition, many state laws have raised constitutional concerns, even if they provide explicit authority for regulations. In September 2023, a district court granted a preliminary injunction against California’s Age-Appropriate Design Code, holding that the law likely violates the First Amendment.⁶ Courts have blocked similar laws in Texas and Arkansas on similar grounds.⁷ Policymakers must ensure that any

⁴ <https://americaninnovators.com/wp-content/uploads/2023/09/Empowering-Small-Business-The-Impact-of-Technology-on-U.S.-Small-Business.pdf>.

⁵ 15 U.S.C. 6501, *et al.*

⁶ <https://netchoice.org/wp-content/uploads/2023/09/NETCHOICE-v-BONTA-PRELIMINARY-INJUNCTION-GRANTED.pdf>.

⁷ <https://therecord.media/federal-judges-block-childrens-online-safety-laws-texas-arkansas>.

legislation or regulations are constitutionally sound to avoid similar challenges that these states currently face.

IV. Ensure Tailored and Sound Public Policies

Any children's online safety legislation and regulations need to be appropriately tailored and address concrete harms. First, there are a wide range of online platforms and include functions and purposes as varied as text, social, chat, dating, shopping, art, games, music, and video. Each platform may thus present different issues and feature diverse design elements, which should be considered by policymakers. Second, any policies must address concrete harms that are causally linked to the use of an online tool.

V. Appropriately Pursue Codes of Conducts

Industry codes of conduct are one potential solution to address children's online safety issues. However, the development and use of codes of conduct must contain certain guardrails to ensure these codes do not become binding regulations. A key guardrail includes providing sufficient opportunity for public comment and expert input, including multi-stakeholder sessions to establish a robust record.

Conclusion

The Chamber thanks the Department of Commerce for considering this comment to inform the Task Force's ongoing efforts. If you have any questions, please reach out to Matt Furlow, Policy Director, at mfurlow@uschamber.com and Jordan Crenshaw, Senior Vice President, at jcrenshaw@uschamber.com.

Sincerely,



Jordan Crenshaw
Senior Vice President
Chamber Technology Engagement Center
U.S. Chamber of Commerce