

Children's Data Privacy Update: Kids Online Safety Act Gains Momentum in the Senate

After a series of Congressional hearings, the latest version of the Kids Online Safety Act ("KOSA"), introduced in 2024, is gaining momentum. On Feb. 27, 2024, a group of 15 new co-sponsors announced support for KOSA. The new co-sponsors include Sen. Angus King (I-Maine), Sen. John Fetterman (D-Pa.), and Sen. Ted Cruz (R-Texas), among others. This added support for KOSA resulted in 63 co-sponsors, which would be enough for the bill to pass the Senate if it comes to a vote.

Versions of KOSA were introduced by Sens. Marsha Blackburn (R-Tenn.) and Richard Blumenthal (D-Conn.) in both 2022 and 2023. KOSA aims to enhance online safety for children and minors by imposing regulations on internet platforms and services that children and minors use. It intends to protect them from harmful content, such as pornography, violence, and exploitation, by requiring platforms to implement measures like age verification, parental controls, and content filtering. Kids Online Safety Act ("KOSA"), S. 1409, 118th Cong. The most recent iteration of KOSA has been crafted to limit the ability of state attorneys general to enforce the "duty-of-care" provision to address concerns of LGBTQ+ advocacy groups about online censorship. (For more information on the origins of the Kids Online Safety Act, see "Children's Data Privacy Roundup: Congress Revives Children's Online Privacy Protection Act; Kids Online Safety Act Creates Controversy Over Censorship" in the Summer 2023 issue of the *Silha Bulletin*.)

In the bill, children are defined as individuals under the age of 13, while minors are individuals under the age of 17. KOSA § 2(1), (8). The fiercest debate has been over the bill's "duty of care" provision, which requires covered platforms to "take reasonable measures in the design and operation of any product, service, or feature" to prevent a litany of specified harms to minors. KOSA § 3. These harms include various mental health disorders, substance abuse, physical violence, harassment, sexual abuse, and "[p]redatory, unfair, or deceptive marketing practices." KOSA § 3(a). The Act would grant considerable discretion to state attorneys general and the Federal Trade Commission ("FTC") to punish platforms for violations of the Act. KOSA § 11. However, a proposed change from Sens. Blumenthal and Blackburn would prohibit state attorneys general from enforcing KOSA's duty of care provision while still allowing the FTC to enforce it.

Additionally, KOSA currently lacks a House companion bill. The full text of KOSA, as introduced in the Senate, is available online at: <https://z.umn.edu/KOSA2024>.

The Washington Post summarized the main obligations that KOSA would impose on technology companies:

- “Exercise reasonable care” when designing features to avoid causing or intensifying depression, bullying, or harassment.
- Limit who can talk to minors through their online accounts.
- Limit design features, such as infinite scrolling or notifications.
- Streamline the account and data deletion processes for minors.
- Make accounts for minors default to the highest privacy settings.
- Create parental controls to allow parents to change their children’s privacy settings.
- Allow parents to see the amount of time children are spending on platforms.

The Post’s article is available online at: <https://z.umn.edu/WaPoKOSA>.

On Feb. 16, 2022, Sens. Blackburn and Blumenthal introduced a previous version of KOSA. Kids Online Safety Act, S. 3663 117th Cong. (2022). That bill would have required platforms that connect to the internet and are likely to be used by minors to institute additional safeguards. Online platforms would have been required to restrict access to children’s data and provide parents with the tools to supervise their children’s use of a platform. Parents and guardians would have access to tools that would allow them to limit minors’ screen time and protect their data. The platforms would have been required to disclose how targeted advertising and algorithms functioned with respect to minors and restrict the usage of each. The bill also would have established an obligation for companies to halt the promotion of self-harm, bullying, and eating disorders. “What we’ve seen is gut-wrenchingly a sense of powerlessness, a loss of control from kids themselves,” Sen. Blumenthal said during a February 2022 news conference. “What we’re doing in this bill is empowering those children and their parents to take back control and the power over their lives online.” The 2022 version of KOSA passed the Commerce Committee unanimously, but it failed to advance any further before the end of the legislative session. The 2022 version of the bill is available online at: <https://z.umn.edu/KOSA2022>. A *Washington Post* article containing Sen. Blumenthal’s quote, along with other reporting on the 2022 version of KOSA, is available online at: <https://z.umn.edu/KOSA2022WaPo>.

Sens. Blackburn and Blumenthal reintroduced a revised bill on May 2, 2023. The bill is similar to the version introduced in 2022, with clarifying

language added to the definitions section. The bill still requires platforms to disable addictive product features, allow minors to opt out of algorithmic recommendations, and give parents increased control over their children's internet usage. The bill also still states specific harms that platforms must attempt to mitigate. Those include posts promoting suicide, eating disorders, substance abuse, and others. In the current version, a provision was added to limit the duty of care requirements for platforms, as a response to critiques about undue censorship. That limitation clarifies that the bill would not prevent "(1) any minor from deliberately and independently searching for, or specifically requesting content; or (2) the covered platform or individuals on the platform from providing resources for the prevention or mitigation of the harms described in subsection (a) [specified mental health disorders], including evidence-informed information and clinical resources." KOSA § 3(b). The bill is available online at: <https://z.umn.edu/KOSA2023>.

The revised bill drew considerable ire from free speech groups, LGBTQ+ groups, and other organizations. Despite the revised duty of care portion of the bill, activists still have concerns. "The bill still contains a duty of care that covers content recommendation, and it still allows state Attorneys General to effectively dictate what content platforms can recommend to minors," Evan Greer, director of digital rights for the nonprofit Fight for the Future, told CNBC. Greer and others fear that state attorneys general will use KOSA to restrict minors' access to topics that they deem inappropriate. The full CNBC article is available online at: <https://z.umn.edu/CNBCKOSA>.

Other opponents of KOSA have raised concerns that state attorneys general could suppress content relating to transgender health care. The main concern is that state attorneys general would have the power to decide what kind of content is "harmful" to children. With that kind of control, many worry that it could be used to target transgender youth. Advocacy groups pointed out that Sen. Blackburn told an interviewer that KOSA should be a priority for conservatives because they should be "protecting minor children from the transgender in this culture." A link to a recording of the interview is available online at: <https://z.umn.edu/BlackburnTransComment>.

Attorneys general are not the only ones in control; critics have expressed displeasure that platforms will become more powerful arbiters. "[T]he bill would legitimize platforms' already pervasive data collection to identify which users are minors when it should be seeking to curb those data abuses," ACLU Senior Policy Counsel Cody Venzke told CNBC.

On Dec. 6, 2023, 200 organizations sent a letter to Senate Majority Leader Chuck Schumer (D-N.Y.), urging him to schedule a vote on KOSA when the legislature reconvened in 2024. The letter cited broad bipartisan support in both chambers of Congress and by the public at large. “The onus must be on the companies to make their products safe and not designed to fill kids’ feeds with posts that promote eating disorders, suicide, drug use, or sexual abuse,” the letter said. The signatories include the National Education Association, the American Academy of Pediatrics, and the American Psychological Association, among others. The full letter is available at: <https://z.umn.edu/KOSALetterSchumer>.

On Jan. 31, 2024, senators grilled the chief executives of major social media platforms, including Meta, Snap, Discord, X, and TikTok at a congressional hearing convened by the Senate Judiciary Committee to discuss five child safety bills, including KOSA. The committee reserved dozens of seats in the Senate chambers for parents of children whose deaths allegedly were linked to social media use. Sen. Lindsey Graham (R-S.C.) told reporters in a press conference after the hearing, “To all those who held a photo today, if we’re able to be successful, your loved one did not die in vain.” The committee pressed executives on their alleged failure to protect minors from harmful content and bullying on their platforms. Meta CEO Mark Zuckerberg has declined to endorse KOSA and other legislative efforts aimed at regulating internet platforms’ handling of children’s online activities. More on Zuckerberg’s stance is available online at: <https://z.umn.edu/VarietyKOSA>.

The hearings were contentious, as Sen. Josh Hawley (R-Mo.) pressed Zuckerberg to turn around and apologize to the families of victims in attendance. “I’m sorry for everything you have all been through,” said Zuckerberg. “No one should go through the things that your families have suffered.” A *Washington Post* article on the hearings, including quotes from Zuckerberg and Graham, is available online at: <https://z.umn.edu/KidsSafetyHearingTakeaways>.

Not long after the hearings, on April 15, 2024, Zuckerberg won the dismissal of several lawsuits leveraged against him in the U.S. District Court for the Northern District of California. U.S. District Judge Yvonne Gonzalez Rogers, of Oakland, Calif., dismissed 25 of the lawsuits alleging that Zuckerberg’s social media platforms are addictive to minors. The lawsuits are part of a large multi-district litigation effort, with hundreds of plaintiffs suing multiple platforms, including the companies that own Google, Facebook, Instagram, TikTok, and Snapchat. The plaintiffs sought to hold Zuckerberg personally liable for allegedly designing Meta’s platforms to be addictive to children. They claimed

that Zuckerberg and Meta fostered a false impression of safety, despite warnings from psychologists that the social media platforms were dangerous to children due to their addictive nature. The litigation seeks for Meta to halt the practices that the plaintiffs say are harmful, as well as damages for the harm stemming from social media use, which they allege to include anxiety, depression, and even suicide. The full order is available online at: <https://z.umn.edu/ZuckerbergDismissalOrder>.

Other executives were more amenable to the proposed legislation, taking a different approach than Zuckerberg. Snap's chief executive Evan Spiegel announced his support for KOSA in his opening testimony. Snap owns the popular photo messaging app Snapchat. X's CEO Linda Yaccarino endorsed KOSA as well as several other proposals, including Sen. Dick Durbin's (D-Ill.) Strengthening Transparency and Obligations to Protect Children Suffering from Abuse and Mistreatment Act ("STOP CSAM Act"). S. 1199, 118th Cong.

Some found the hearings to be a major step forward in enacting meaningful, protective legislation. "Similar to the tobacco industry, it took a series of embarrassing hearings for tobacco — but finally Congress acted," said Jim Steyer, president of Common Sense Media, a nonprofit child advocacy group. "The dam finally broke," he told *The New York Times*. The *Times* article is available online at: <https://z.umn.edu/KOSAhearingNYT>. Following the hearing, Sen. Blackburn told reporters that "[KOSA] is going to be that first piece that gets across the finish line," according to NBC News. The NBC News reporting is available online at: <https://z.umn.edu/NBCNewsKOSAhearings>.

Others remained skeptical. Hany Farid, a professor at the University of California, Berkeley, who created technology used by social media platforms to detect child pornography, told *The Times* that he had seen similar attempts at protecting children online fail in the past. "This is one thing we should be able to agree on: that we have a responsibility to protect kids," Farid said. "If we can't get this right, what hope do we have for anything else?"

Pressure on legislators continued following the January 31 hearing. On Feb. 8, 2024, another letter addressed to Sen. Schumer was published as a full-page advertisement in *The Wall Street Journal*. This letter, signed by hundreds of parents who claimed that their children committed suicide after being cyberbullied, exposed to pro-suicide content, or sextorted online, urged Sen. Schumer to bring KOSA to a vote, "We have paid the ultimate price for Congress's failure to regulate social media. Our children have died from social media harms,"

the letter read. The full text is available online at: <https://z.umn.edu/SchumerLetterKOSA>.

Critics have raised a variety of concerns, ranging from the suppression of LGBTQ+ voices online to the censorship of student journalists. One critique has been on KOSA's "duty of care" that requires an online platform to act in the "best interests" of a user whom the platform knows, or reasonably should know, is a minor, by taking reasonable measures in its design and operation of products and services to prevent and mitigate harms to minors, including anxiety, depression, eating disorders, substance use disorders, and suicidal behaviors. KOSA § 3.

Rep. Maxwell Frost (D-Fla.), although acknowledging the importance of protecting children online, nevertheless opposes KOSA. Frost told NBC News that the bill "contains major, detrimental loopholes that are going to empower states with extremist leaders, like in my home state of Florida, to use [KOSA] to bully and try to erase the existence of LGBTQ+ and particularly trans people online." He also expressed concerns in an email to his constituents that KOSA would limit the First Amendment rights of LGBTQ+ people online by empowering states to censor content they disagree with or find to be "harmful or threatening" to children, or requiring them to upload their ID to verify their age and use online platforms. A link to the announcement is available online at: <https://z.umn.edu/FrostEmail>.

Caitlin Vogus, the Deputy Director of Advocacy at the Freedom of the Press Foundation, argued that KOSA could cause platforms to remove news content that could be depressing or anxiety-inducing for minors, under KOSA's duty of care. Vogus cited an example of Facebook removing the accounts of Syrian journalists reporting during the Syrian civil war to moderate its content after moderators labeled the posts as "terrorist content." Vogus's comments are available online at: <https://z.umn.edu/VogusKOSA>.

In a separate article, Vogus outlined her concerns about the possible suppression of student journalists. She argued that under KOSA's current language, platforms would be forced to either block content related to suicidal behavior or verify the ages of all users. Vogus posited that stories on eating disorders, violence against LGBTQ+ children, and even climate change could be covered by the duty of care provision, forcing online platforms to mitigate or remove those stories. Vogus's article is available online at: <https://z.umn.edu/VogusKOSA2>.

On Feb. 15, 2024, Sens. Blumenthal and Blackburn announced a series of changes to KOSA's text. Several definitions were clarified, but the largest change was regarding enforcing "duty of care." The newest version of the bill removed the ability of state attorneys general to enforce the duty of care, shifting sole authority to the Federal Trade Commission. This change is intended to address concerns by LGBTQ+ groups that some state attorneys general might have used the duty of care provision to target LGBTQ+ individuals online. Sens. Blumenthal and Blackburn remain optimistic about the future of KOSA. "With new changes to strengthen the bill and growing support, we should seize this moment to take action," they told *The Washington Post* in a joint statement. *The Post's* article is available online at: <https://z.umn.edu/WaPoKOSA>.

A joint letter from advocacy groups that support LGBTQ+ youth, including The Trevor Project, GLAAD, and the Human Rights Campaign, endorsed the changes. "The considerable changes that you have proposed to KOSA in the draft released on February 15th, 2024, significantly mitigate the risk of it being misused to suppress LGBTQ+ resources or stifle young people's access to online communities," the groups wrote. The full text is available online at: <https://z.umn.edu/VergeNewKOSA>.

Other advocacy groups were not persuaded. Greer, of Fight for the Future, has been a strong critic of the bill. "As we have said for months, the fundamental problem with KOSA is that its duty of care covers content-specific aspects of content recommendation systems, and the new changes fail to address that," Greer told *The Verge*.

Nonprofit organization Electronic Frontier Foundation ("EFF") continues to oppose KOSA. EFF activism director Jason Kelley said KOSA "would still let federal and state officials decide what information can be shared online and how everyone can access lawful speech. It would still require an enormous number of websites, apps, and online platforms to filter and block legal and important speech."

Jeffrey Westling, director of technology and innovation policy at the American Action Forum, commented on the updated language in KOSA on the organization's website. Westling expressed concerns about the new duty of care, arguing that it would probably require age verification. "As a result, users regardless of age will need to provide more information to platforms to use the service, raising additional privacy concerns," Westling said. This, Westling argued, would chill online free speech. Westling also was wary of KOSA's definition of harm, which he said could lead to overly zealous removal of online

content by moderators who must comply with the enforcement actions of the FTC. Westling's full post is available online at: <https://z.umn.edu/AAFKOSA>.

The future of KOSA remains uncertain. No timeline has been announced, but Sen. Schumer told *The Post* that he planned to work to “advance” it. Steyer, chief executive of Common Sense Media, told *The Post* that the House “will either join the Senate . . . or they will be viewed as the reason Congress failed to make the internet healthier and safer for kids, teens, and families.” A link to the article is available online at: <https://z.umn.edu/WaPoKOSA>.

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