



Written by [Joe Wolverton, II, J.D.](#) on March 21, 2020

## **EARN IT ACT: Bipartisan Bill Gives Government Backdoor to Encrypted Data**

A bill with broad bipartisan support is working its way through Congress and if passed would substantially impair safety and privacy online. How did such a bill become so popular? The way so much similar measures make it through the legislative process: the promise of protecting the children.

The measure — the Eliminating Abusive and Rampant Neglect of Interactive Technologies (EARN IT) Act — removes legal protection from many of the Internet’s most popular uses, including blogs, social media, instant message services, apps, and sites whose content is created by the public (think Wikipedia, for example). Should the EARN IT Act become the law, the Internet will be changed forever.



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Of course, the bill’s sponsors insist that such drastic changes to such a broad spectrum of the U.S.’s digital information infrastructure are necessary to prevent child sex trafficking. “We’re not going to live in a world where a bunch of child abusers have a safe haven to practice their craft. Period. End of discussion,” said Senator Lindsey Graham (R-S.C.), EARN IT’s GOP co-author.

Unless companies demonstrate that they are using “best practices” to protect children from being exploited online, they will forfeit any legal immunity. To that end, the EARN IT Act mandates that tech companies build backdoor access into all their encrypted offerings. Basically, this back door would give the government ultimate control over almost every public place on the Internet.

Remarkably, the bill would provide no additional power to victims to punish people preying on children online, nor would it give law enforcement any improved tools for investigating such despicable behavior. Nope. Not surprisingly, the only “protection” afforded by this act is that it gives the government the power to suspend the rights of free speech and privacy for any organization it — the government — deems irresponsible.

As the Naked Security blog explains:

If passed, the legislation will create a “National Commission on Online Child Sexual Exploitation Prevention” tasked with developing “best practices” for owners of Internet platforms to “prevent, reduce, and respond” to child exploitation online. But, as the EFF [Electronic Frontier Foundation] maintains, “Best practices” would essentially translate into legal requirements:

If a platform failed to adhere to them, it would lose essential legal protections for free speech.



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The blog additionally pointed out that “the best practices would be subject to approval or veto by the Attorney General (currently William Barr, who’s issued a public call for backdoors), the Secretary of Homeland Security (ditto), and the Chair of the Federal Trade Commission (FTC).”

Here’s the Verge’s take on the measure and its likely effects:

For starters, it’s not clear that companies have to “earn” what are already protections provided under the First Amendment: to publish, and to allow their users to publish, with very few legal restrictions. But if the EARN IT Act were passed, tech companies could be held liable if their users posted illegal content. This would represent a significant and potentially devastating amendment to Section 230, a much-misunderstood law that many consider a pillar of the internet and the businesses that operate on top of it.

The Section 230 referred to in the Verge story is Section 230 of the Communications Decency Act (CDA). The Electronic Frontier Foundation (EFF) summarized Section 230’s protections: “Section 230 enforces the common-sense principle that if you say something illegal online, you should be the one held responsible, not the website or platform where you said it (with some important exceptions).”

In other words, if a person publishes something on the Internet, the author alone wouldn’t be responsible, but the platform on which the targeted content was posted would be held legally liable, as well.

It’s called the chilling effect. Such statutes would keep people from posting anything on the Internet that could be subjected to second-guessing by bureaucrats in D.C.

The blog Protocol lays out the bureaucratic hurdles that would be placed between content providers, publishers, and the right to free speech and privacy:

The EARN IT Act would establish the National Commission on Online Child Sexual Exploitation Prevention, a 19-member commission, tasked with creating a set of best practices for online companies to abide by with regard to stopping child sexual abuse material. Those best practices would have to be approved by 14 members of the committee and submitted to the attorney general, the secretary of homeland security, and the chairman of the Federal Trade Commission for final approval. That list would then need to be enacted by Congress. Companies would have to certify that they’re following those best practices in order to retain their Section 230 immunity. Like FOSTA/SESTA before it, losing that immunity would be a significant blow to companies with millions, or billions, of users posting content every day.

The question now is whether the industry can convince lawmakers that the costs of the law outweigh the benefits. It’s a debate that will test what tech companies have learned from the FOSTA/SESTA battle — and how much clout they even have left on Capitol Hill.

The federal government — in the form of the 19-man commission — would be granted unfettered, unfiltered, unobstructed, decrypted access to any all online communication. All messages would be forced to pass federal muster. Of course, the supporters of the EARN IT Act reiterate that the committee would only exercise control over content that affects the ability of children to go online without being subjected to sexual exploitation.

As with most such schemes, the government asks for an inch of authority over a small segment of online activity, but will end up exercising a mile of tyranny over any content the ruling regime considers objectionable.



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A report on the bill by EFF accurately predicts the likely latitude that will be given to the bill's bureaucratic overlords:

The Commission won't be a body that seriously considers policy; it will be a vehicle for creating a law enforcement wish list. Barr has made clear, over and over again, that breaking encryption is at the top of that wish list. Once it's broken, authoritarian regimes around the world will rejoice, as they have the ability to add their own types of mandatory scanning, not just for child sexual abuse material but for self-expression that those governments want to suppress.

Once it develops in the body politic, the muscle of tyranny never atrophies.

*Photo: anyaberkut/iStock/Getty Images Plus*

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