

Kids' Privacy and Safety Redux: Amended KOSA and COPPA 2.0 Advance By Voice Vote

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Last year, the Senate Commerce Committee marked up two bipartisan bills to protect kids' privacy and safety – the Kids Online Safety Act (KOSA), and the Children and Teens' Online Privacy Protection Act (COPPA 2.0) – amidst high hopes that the bills would get a vote on the Senate floor. With comprehensive privacy legislation still tripped up over preemption and private rights of action, policymakers thought that legislation to protect kids would have the best chance of passage. The bills never made it to the floor, however, and they died in the 117th Congress.

This year, the bills' sponsors are trying again and, on July 27, the Committee marked up amended versions of both bills. (The markups came up on heels of President Biden's once again [urging passage](#) of these bills in public remarks.) The amendments to the bills address policy concerns that various groups have continued to raise since the bills were introduced last year. We watched the July 27 hearing to see what we might learn about the prospects for the bills' passage in 2023.

Brief Background on the Bills, as Amended

For those in need a reminder, KOSA (sponsored by Senators Blumenthal (D-CT) and Blackburn (R-TN)) is a kids and teen *safety* bill, designed to reduce harmful content on social media and to give minors and parents more tools and controls to block or filter such content. The bill has [strong support](#) from members of the child safety, medical, and consumer advocacy communities. At the same time, however, [other consumer advocates](#), as well as the tech community, have criticized features of the bill that they believe would block minors' access to content (including about LGBTQ+ and abortion issues) and/or potentially require the collection of more data from or about minors to determine their age. To address these concerns, the new version of the bill amends various definitions, as well as the standard governing when companies are expected to know who is minor, among other changes.

COPPA 2.0 (sponsored by Senators Markey (D-MA) and Cassidy (R-LA)), by contrast, is a *privacy* bill, the primary purpose of which is to extend privacy protections to teens 13 through 16 and change COPPA's "actual knowledge" standard so that websites and apps have greater obligations to know when they are dealing with minors. Like KOSA, various groups have expressed concern about whether the proposal would lead to restrictions on content available to minors. Also like KOSA, the new version of the bill includes various changes, including revisions to the knowledge standard proposed in last year's version.

The Markup

The markup this year was part of a full Committee [Executive Session](#) considering multiple bills on a range of topics. At the session, the Committee approved both of the amended kids' bills, as well as several additional amendments to each of them (most of which were relatively minor). While there wasn't extensive discussion surrounding these bills, Committee Members took the opportunity to highlight the importance of kids' privacy and safety, as well as future actions that they're contemplating in this area. Here's our rundown of notable moments from the hearing:

Chair Cantwell (D-WA) led the session, addressing the multiple bills being considered (including, e.g., legislation on the topics of satellite waste in space and AM radio capabilities in cars). With regard to children's privacy, she described COPPA 2.0 as a "vital upgrade" to protect minors, closing loopholes and protecting teens 13 through 16. KOSA, she explained, is also long overdue, as there is an ongoing mental health crisis related to social media's impact on children. Cantwell acknowledged, however, that there are still outstanding concerns among groups who would be affected by the legislation (including members of the LGBTQ+ community), requiring additional work before the bills reach the floor. She added that these bills are "not the last" of the privacy issues that the Committee will consider and that she hopes, when the Committee returns in September, that it will consider other privacy issues as well.

Ranking Member Cruz (R-TX) offered support for both bills advancing out of the Committee. The Internet hasn't come without cost, he said, especially for children. He further chided Big Tech companies for failing to protect children or give parents the safeguards and controls they need to protect their kids. Finally, he suggested adding a potential preemption clause to KOSA, as multiple states have passed laws that may be inconsistent with parts of the bill.

Senator Schatz (D-HI) gave an impassioned speech about protecting children, stating that we are in a crisis – an epidemic of teen mental illness due to the algorithmic boosting of harmful content online. He cited a study from the CDC showing that two thirds of high-school girls feel persistently sad or hopeless, and that 22% of all high-school students have seriously considered suicide. Due to his concerns about these issues, Schatz initially offered an amendment to KOSA – his [Protecting Kids on Social Media Act](#) – which would prohibit users under the age of 13 from accessing social media platforms, require parental consent for children 13 through 17, and ban the recommendation of content using algorithms to all minors under 18. However, he later withdrew his amendment, noting "productive conversations" he'd had with Cantwell and Cruz. For their part, Cantwell and Cruz expressed eagerness to work with Schatz on these issues in the fall.

Senator Thune (R-SD) offered an amendment to KOSA that would require platforms to notify users if they are using an algorithm, which passed by voice vote. **Senators Blackburn** (R-TN) and **Klobuchar** (D-MN) both expressed frustration about how long it has taken to address kids' privacy and safety issues and said now is the time for action. Other Members, such as **Senators Sullivan** (R-AK) and **Welch** (D-VT), expressed support for the bills and their commitment to protecting children's safety. Finally, **Senator Markey** (D-MA) confirmed his commitment to address concerns raised by the LGBTQ+ community and others, but expressed confidence that he would be able to resolve them.

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Bottom line: While the Committee approved both bills, there will likely to more changes before either bill reaches the Senate floor. Further, while President Biden and [Senate Majority Leader Schumer](#) (D-NY) have both stated (at times) that these bills are a priority, the clock in the 118th Congress is ticking.