



October 1, 2020

The Honorable Frank Pallone  
Chairman  
United States House of Representatives  
Committee on Energy & Commerce  
Washington, DC 20515

The Honorable Greg Walden  
Ranking Member  
United States House of Representatives  
Committee on Energy & Commerce  
Washington, DC 20515

The Honorable Jerry Nadler  
Chairman  
United States House of Representatives  
Committee on the Judiciary  
Washington, DC 20515

The Honorable Jim Jordan  
Ranking Member  
United States House of Representatives  
Committee on the Judiciary  
Washington, DC 20515

*Re: Industry Concerns with H.R. 8454*

Dear Chairman Pallone, Ranking Member Walden, Chairman Nadler, and Ranking Member Jordan:

The undersigned organizations have concerns that H.R. 8454 will impair lawful speech and conduct, threaten the privacy of law-abiding citizens, hinder law enforcement’s efforts against online child exploitation, and limit innovation.<sup>1</sup> Our industry remains committed to combating online child exploitation, and we welcome the opportunity to work with members of the House to address these concerns. Because of the vital interests at stake and the myriad of potential unintended consequences detailed below, we respectfully request that you oppose H.R. 8454 and that the bill not be given further consideration.

The technology sector takes seriously its responsibility to address harmful content online, including child sexual abuse material (CSAM). Pursuant to existing federal criminal law addressing CSAM, industry works proactively to remove and report harmful content and routinely engages with law enforcement to assist and respond to valid requests for information pertaining to criminal activity online.<sup>2</sup> Industry invests significant resources in addressing these important issues.<sup>3</sup> We also welcome greater emphasis from law enforcement. While industry

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<sup>1</sup> Industry expressed these and a variety of other concerns in letters sent to the Senate on the companion S. 3398, which is nearly identical to H.R. 8454. See Letter from CCIA, CTA, IA, i2Coalition, and NetChoice, Re: Concerns with Eliminating Abusive and Rampant Neglect of Interactive Technologies Act of 2020 (Mar. 5, 2020), available at <https://www.cciagnet.org/wp-content/uploads/2020/03/Tech-Assn-EARNIT-Letter.pdf>; Letter from CCIA, CTA, i2Coalition, and NetChoice, Re: Requesting Delay of Markup of S. 3398 (July 1, 2020), available at <https://www.cciagnet.org/wp-content/uploads/2020/07/Tech-Assn-3398-Letter.pdf>; Letter from CCIA, CTA, Engine, IA, i2Coalition, and NetChoice, Re: Industry Concerns with S. 3398 (Sept. 18, 2020), available at <https://www.cciagnet.org/wp-content/uploads/2020/09/2020-09-18-Industry-Letter-on-S.-3398.pdf>.

<sup>2</sup> 18 U.S.C. § 2258A.

<sup>3</sup> For example, the Technology Coalition recently announced Project Protect, a plan to combat CSAM online. The Technology Coalition Announces Project Protect (June 10, 2020), <https://www.technologycoalition.org/2020/05/28/a-plan-to-combat-online-child-sexual-abuse/>.

makes tens of millions of CSAM reports to authorities every year, fewer than 1500 prosecutions have occurred annually, and that number has declined in recent years.<sup>4</sup>

The application of consistent and predictable national standards for intermediary liability has powered the U.S. tech sector and digital economy. We are concerned that exempting state laws broadly concerning CSAM from intermediary protections would subject companies to litigation under an unpredictable patchwork of state laws with various reduced and untested scienter requirements. As a result, companies would lose legal certainty in their efforts to combat objectionable third-party content and protect their users. This may lead to services not introducing new features or shutting down entirely due to uncertainty over liability risks.<sup>5</sup>

Furthermore, services that continue to host third-party content despite expanded liability and legal uncertainty may be incentivized to engage in increased filtering of content to mitigate potential legal exposure. Internet users, including marginalized communities, would be harmed if companies are compelled to excessively filter user-generated content, significantly limiting the scope and diversity of free speech online.

We are also concerned that the bill would enable state legislatures to enact new laws restricting the ability of services to design and implement features that protect the privacy and security of users.<sup>6</sup> These state laws could have the effect of compelling services to conduct searches for CSAM content, raising potential “state actor” problems that would make prosecuting criminal activity more difficult.

While we have concerns about H.R. 8454, we are committed to combating online child exploitation, and look forward to working with members of the House on these serious issues.

Sincerely,

Computer & Communications Industry Association  
Engine  
Internet Association  
Internet Infrastructure Coalition

Cc: Members of the House Committee on Energy & Commerce, Members of the House Committee on the Judiciary

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<sup>4</sup> See Table D-2—U.S. District Courts—Criminal Federal Judicial Caseload Statistics (Mar. 31, 2020), <https://www.uscourts.gov/statistics/table/d-2/federal-judicial-caseload-statistics/2020/03/31>.

<sup>5</sup> Aja Romano, *A new law intended to curb sex trafficking threatens the future of the internet as we know it*, Vox (July 2, 2018), <https://www.vox.com/culture/2018/4/13/17172762/fosta-sesta-backpage-230-internet-freedom>; Samantha Cole, *Craigslist Just Nuked Its Personal Ads Section Because of a Sex-Trafficking Bill*, Vice (Mar. 23, 2018), [https://www.vice.com/en\\_us/article/wj75ab/craigslist-personal-ads-sesta-fosta](https://www.vice.com/en_us/article/wj75ab/craigslist-personal-ads-sesta-fosta).

<sup>6</sup> Keir Lamont, *New Look ‘EARN IT’ Act Poses Same Threats to Online Safety*, Disruptive Competition Project (Oct. 1, 2020), <https://www.project-disco.org/privacy/100120-new-look-earn-it-act-poses-same-threats-to-online-safety/>.