To keep children safe and protect their interests on the internet, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. MARKEY (for himself and Mr. BLUMENTHAL) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To keep children safe and protect their interests on the internet, and for other purposes.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Kids Internet Design and Safety Act” or the “KIDS Act”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Children increasingly consume digital entertain-
ment on the internet and are uniquely suscep-
tible to manipulation online, given their lack of im-
important neurological and psychological mechanisms which are developed later in adulthood.

(2) Today’s digital media environment, which is constantly evolving and now includes high-tech experiences, such as augmented reality and virtual reality, is largely designed in non-transparent ways to ensure children interact with content that reflect the interests and goals of content creators, platforms, and marketers.

(3) Artificial intelligence, machine learning, and other complex systems are used to make continuous decisions about how online content for children can be personalized to increase engagement.

(4) Online companies gather, analyze, and use data for behavioral marketing directed at children.

(5) Companies employ sophisticated strategies, including neuromarketing, to affect consumer behavior and manipulate decision-making.

(6) Branded content in various forms of multimedia, including native advertising and influencer marketing, exposes children to marketing that is inherently manipulative or purposely disguised as entertainment or other information.

SEC. 3. DEFINITIONS.

(a) In General.—In this Act:
(1) AUGMENTED REALITY.—The term “augmented reality” means an application or web-based experience utilizing a camera to change or enhance the user’s view of the real world.

(2) BRANDED CONTENT.—The term “branded content” means commercial content created for, and distributed on, a platform in such a way that the line between entertainment and advertising becomes unclear in order to generate a positive view of the brand.

(3) COMMISSION.—The term “Commission” means the Federal Trade Commission.

(4) COVERED USER.—The term “covered user” means an individual under the age of 16.

(5) DIRECTED TO CHILDREN.—The term “directed to children” means the targeting of covered users by a platform, as demonstrated by, with respect to such platform—

(A) its subject matter;

(B) its visual content;

(C) the use of animated characters or child-oriented activities for children and related incentives;

(D) music or other audio content;

(E) the age of models used;
(F) the presence of—

   (i) child celebrities; or

   (ii) celebrities who appeal to covered

users;

(G) the language used;

(H) advertising content used on, or used to

advertise, such platform; or

(I) reliable empirical evidence relating to—

   (i) the composition of the audience of

such platform; and

   (ii) the intended audience of such

platform.

(6) **HOST-SELLING.**—The term “host-selling”

refers to commercial video content that features the

same characters or individuals as in the adjacent

noncommercial content.

(7) **INFLUENCER MARKETING.**—The term

“influencer marketing” means a tactic by which a

brand or agency or publisher works with individuals

who are deemed to have the potential to create en-
gagement, drive conversation, or sell products or

services with the intended target audience, in order

to drive brand messages.

(8) **MANIPULATION.**—The term “manipulation”

means design strategies, product settings, and prod-
uct architecture targeted to cognitive vulnerabilities
with the intention or effect of pushing the user to
make choices to their detriment and the operator’s
benefit.

(9) NATIVE ADVERTISING.—The term “native
advertising” means a form of paid media where the
advertising experience follows the natural form and
function of the user experience in which it is placed.

(10) NEUROMARKETING.—The term
“neuromarketing” means a subfield of marketing
that attempts to predict and potentially manipulate
consumer behavior and decision-making based on
analysis of brain patterns.

(11) OPERATOR.—

(A) IN GENERAL.—The term “operator”
means any person who operates a platform, in-
cluding any person offering products or services
for sale through that platform, involving com-
merce—

(i) among the several States or with
one or more foreign nations;

(ii) in any territory of the United
States or in the District of Columbia, or
between any such territory and—

(I) another such territory; or
(II) any State or foreign nation;

or

(iii) between the District of Columbia and any State, territory, or foreign nation.

(B) EXCEPTION.—The term “operator” does not include any nonprofit entity that would otherwise be exempt from coverage under section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

(12) PERSON.—The term “person” means any individual, partnership, corporation, trust, estate, cooperative, association, or other entity.

(13) PLATFORM.—The term “platform” means a website, online service, online application, or mobile application which is operated for commercial purposes.

(14) VIRTUAL REALITY.—The term “virtual reality” means an application or web-based experience utilizing a camera to create an immersive environment that mimics the real world, usually via a headset.
SEC. 4. REGULATION OF ACTS AND PRACTICES ON CHILD-DIRECTED PLATFORMS.

(a) Prohibition on Certain Features.—It is unlawful for an operator of a platform directed to children to incorporate any of the following features:

(1) Any auto-play setting that, without input from the covered user, commences additional video content directly following the video content initially selected by the user.

(2) Push alerts that urge a covered user to spend more time engaged with the platform when they are not actively using it.

(3) Displaying the quantity of positive engagement or feedback that a covered user has received from other users.

(4) Any design feature or setting that unfairly encourages a covered user, due to their age or inexperience, to make purchases, submit content, or spend more time engaging with the platform.

(5) Any feature that provides a covered user with badges or other visual award symbols based on elevated levels of engagement with the platform.

(b) Prohibition on Amplification of Certain Content; User Reporting Mechanism.—It shall be unlawful for an operator of a platform directed to children,
or a platform for which the operator has constructive knowledge that covered users use its platform, to—

(1) amplify, promote, or encourage covered users’ consumption of videos and other forms of content that involve—

(A) sexual material;

(B) physical or emotional violence, including bullying;

(C) adult activities, including gambling; or

(D) other dangerous, abusive, exploitative, or wholly commercial content; or

(2) fail to implement a mechanism for users to report suspected violations of any requirement under paragraph (1).

(c) Prohibition on Certain Advertising Methods.—

(1) In general.—It shall be unlawful for an operator of a platform directed to children to—

(A) direct content that includes host-selling to covered users;

(B) expose covered users to program-length advertisements;

(C) direct branded content or native advertising to covered users;
(D) direct online advertising or material
with considerable commercial content involving
alcohol, nicotine, or tobacco to covered users;

(E) expose covered users to online adver-
tising or material with considerable commercial
content with any imbedded interactive elements
that take advantage of covered users’ inexperi-
ence or credulity in noncommercial child-di-
rected content; or

(F) direct content that includes product
placement to covered users.

(2) PROGRAM-LENGTH ADVERTISEMENT.—The
term “program-length advertisement” shall be de-
defined by the Commission through regulation or other
public guidance.

(d) PROHIBITION ON USE OF PERSONAL INFOR-
MATION.—It shall be unlawful for an operator of a platform
directed to children to use age verification information col-
lected from covered users for any commercial purpose.

(e) REGULATIONS.—The Commission shall promul-
gate regulations in accordance with section 553 of title
5, United States Code, to require any operator of a plat-
form directed to children to incorporate online visual ele-
ments or other indicators that distinguish commercial con-
tent from noncommercial content.
SEC. 5. MARKETING AND COMMERCIALIZATION.

(a) CONTENT LABELING SYSTEM REPORT.—Not later than the date that is 1 year after the date of enactment of this Act, the Commission shall submit to Congress a report—

(1) containing recommendations for a labeling system to allow parents to identify noncommercial, educational, and enriching content for covered users online; and

(2) address considerations regarding how such labeling system should—

(A) analyze content based on evidence-based criteria;

(B) employ an easy-to-understand visual cue for parents to identify content described in paragraph (1);

(C) receive regular review to determine its effectiveness; and

(D) develop a mechanism for users to report to the Commission complaints of mislabeled content and for the Commission to remedy such instances of mislabeled content.

(b) CONSULTATION.—The report described in subsection (a) shall be developed by the Commission in consultation with an advisory board, to be created and con-
1 vened by the Commission, which is comprised of experts 2 in child development, child health, education, and media. 3

3 SEC. 6. TRANSPARENCY AND AUDITING.

4 (a) TRANSPARENCY.—The Commission shall promul-
5 gate regulations in accordance with section 553 of title
6 5, United States Code, requiring an operator of a platform
7 which is directed to children to publish and maintain a
8 publicly accessible digital record of the viewable or play-
9 able content of each such platform.

10 (b) ANNUAL PLATFORM AUDITS.—The regulations
11 promulgated pursuant to subsection (a) shall include the
12 establishment of an annual audit process, to be conducted
13 during the 5-year period subsequent to the date of enact-
14 ment of this Act, for each of the 25 platforms directed
15 to children with the highest total number of child users,
16 to evaluate the level of compliance by each such platform
17 with respect to the requirements under this Act.

18 (c) REPORT.—The Commission shall issue annual re-
19 ports to Congress based on the audits described in sub-
20 section (b) that—

21 (1) describe the level of compliance by the plat-
22 forms described in such subsection with respect to
23 the requirements under this Act; and
(2) provide recommendations for such legisla-
tion and administrative actions as the Commission
determines appropriate based on the audit findings.

SEC. 7. GRANT PROGRAM.

(a) Establishment.—

(1) In general.—The Secretary of Commerce
shall provide grants to eligible persons to foster the
creation and promotion of advertisement-free and
educational online content for covered users, such as
videos and applications.

(2) Eligible person.—For purposes of this
section, the term “eligible person” means a person
that has submitted an application, as approved by
the Secretary of Commerce pursuant to the eligi-
bility requirements developed under subsection (b),
for the creation and promotion of advertisement-free
and educational online content for covered users.

(b) Advisory Council.—The Secretary shall estab-
lish and convene an Advisory Council on Children’s Online
Content, which shall be—

(1) comprised of experts in education, child de-
development, psychology, online media, and other re-
lated disciplines, and

(2) tasked with developing evidence-based cri-
teria for grant eligibility and grant distribution.
(c) Authorization of Appropriations.—

(1) In general.—To carry out this section, there is authorized to be appropriated—

(A) for fiscal year 2021, $4,000,000;
(B) for fiscal year 2022, $8,000,000;
(C) for fiscal year 2023, $10,000,000; and
(D) for fiscal year 2024, $12,000,000.

(2) Availability of Funds.—Any amount appropriated under this subsection for any fiscal year shall remain available for the purposes of carrying out any application approved during such fiscal year for an additional period of 1 year after the end of such fiscal year.

SEC. 8. ADMINISTRATION AND ENFORCEMENT.

(a) In General.—This Act shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(b) Actions by Commission.—

(1) In general.—The Commission shall prevent any person from violating this Act or any regulation promulgated by the Commission under this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties, as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.).
(2) Penalties and Privileges.—Any person that violates this Act or any regulation promulgated under the Act shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties, as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this Act.

(c) Civil Penalty.—A violation of the Act, or a rule promulgated under the Act, shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(d) Effect on Other Laws.—Nothing contained in this Act shall be construed to limit the authority of the Commission under any other provisions of law.