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## Written Testimony for the Maryland Senate Finance Committee Senate Bill 780, Internet-Connected Devices and Internet Service Providers – Default Filtering of Obscene Content

### **Background on the problem**

This bill aims to mitigate children's access to pornographic content online. 53% of kids have a smartphone by the age of 11 and 69% have one at age 12. Nearly 20% of 8-year-olds have smartphones.<sup>2</sup> Pornography is not only on pornography websites but exists on social media platforms and other websites. Pornography websites use age attestation to "verify" its users are 18 and older. All it takes is anyone willing to say they are 18 and over to get through the check point. Bots, spam, and many legitimate accounts that feature pornographic content flood social media to entice curious users to click links for more content on external sites.

Among kids between the ages of 13 and 17, 58% use TikTok, 51% use Snapchat, 47% use Instagram, and 19% use Facebook.<sup>3</sup> These platforms' search bars act as internet browsers that enable users to find content, and the platforms are not sufficient at preventing or eliminating obscene content.

Roughly 80% of children between the ages of 12 and 17 have come across pornography and over 50% seek it out. Nearly 40% of children between ages 9 and 11 have seen porn.<sup>4</sup> Ease of access to smartphones and tablets where users can hide their activity and consume content without the watchful eyes of parents and other caregivers increases the odds of children coming across or seeking this inappropriate content.

The harms of pornography are well-documented. Children's minds are being molded, and what they learn, see, and experience can be immensely beneficial or damaging to their psyche. Frequent exposure to pornography can cultivate unhealthy views of sexuality and members of the opposite sex and increase propensities for sexual violence.<sup>5</sup>

<sup>4</sup> Barna, Report: Teens & Young Adults Use Porn More Than Anyone Else, January 28, 2016,

<sup>&</sup>lt;sup>1</sup> Annie Chestnut Tutor serves as a policy analyst at The Heritage Foundation. The views expressed herein are my own and do not reflect an institutional position for The Heritage Foundation or its Board of Trustees. (March 11, 2014).

<sup>&</sup>lt;sup>2</sup> Michael Robb, "Tweens, Teens, and Phones: What Our 2019 Research Reveal," Common Sense Media, October 29, 2019, <u>https://www.commonsensemedia.org/kids-action/articles/tweens-teens-and-phones-what-our-2019-research-reveals - :~:text=Tech%20use%20is%20aging%20down%20as%20young%20people,to%2019 %25%20in%202019%20from%2011%25%20in%202015. (March 11, 2014).</u>

<sup>&</sup>lt;sup>3</sup> Jennifer A. Kingston, "Pew: Many teens use social media "almost constantly"," Axios, December 11, 2023, <u>https://www.axios.com/2023/12/11/social-media-teens-pew-tiktok-youtube-instagram-facebook-bereal-snapchat</u> (March 11, 2024).

https://www.barna.com/research/teens-young-adults-use-porn-more-than-anyone-else/ (March 11, 2024). <sup>5</sup> Bravehearts, "Age verification and online pornography," January 7, 2020, <u>https://bravehearts.org.au/age-verification-and-online-pornography/ - :~:text=A%20recent%20Bravehearts'%20research%20report,their%20 propensity%20towards%20sexual%20violence.</u> (March 11, 2024).

Device filters are not foolproof, and parents—if determined to let their children use smartphones—should consider providing them smartphones without internet access, as well as monitor their activity if and when children use the internet, including social media. It is unfathomable to think pornographic content is appropriate for children. I am pleased that some in the Maryland Senate are making an effort to mitigate this problem and hope others will join their effort.

### Affirmative comments on the bill

The definition of "harmful to minors" is consistent with the standard for obscenity established by the Supreme Court in *Miller v. California*.<sup>6</sup>

The legislation includes all internet-connected devices assigned to minors, which is necessary to encompass any and every device a minor may have. Other state bills limit the filter requirement to smartphones and tablets and exclude laptop and desktop computers, smart watches, etc. A minor who has their own computer may have the means to access adult content in these instances.

The legislation is enforced through existing authorities and treats a violation (a manufacturer selling an internet-connected device without a filter to a minor) an unfair, abusive, or deceptive trade practice under Title 13 of the Maryland Consumer Protection Act. It would be inappropriate and excessive to penalize a minor who effectively disabled the filter.

#### **Concerns and recommendations**

The legislation allows an individual 18 years or older to disable the filter. This is good in the context of a filter unnecessarily filtering out content and would allow a parent to disable the filter at their own determination. However, this solution has its downsides. For example, it also means that a child (say a 17-year old) could ask their 18-year old friend to disable the filter. An alternative means would be to assign the parent or guardian with a password to unblock content. The parent or guardian could also assign additional adults of their choosing with the authority to unblock content.

Furthermore, the bill does not detail or define "a qualifying age verification procedure." It is important that any procedure is not simply age attestation and that any data processed or collected is secure and cannot be used for any other purposes. See the data security and age verification measure provisions in the federal bill the SCREEN Act, S. 3314.<sup>7</sup>

In addition to the parental controls for disabling content, consider adding a provision that requires parental consent for mobile application downloads above a certain rating or without a rating. This helps ensure obscene content mitigation does not solely rely on the filter.

The legislation does not provide clear standards for the filters. Without greater specificity, this requirement leaves the door wide open for manufacturers to install ineffective filtering software

<sup>&</sup>lt;sup>6</sup> Miller v. California, 413 US 15 (1973). [U.S. Supreme Court]

<sup>&</sup>lt;sup>7</sup> SCREEN Act, S. 3314, 118<sup>th</sup> Congress, 1<sup>st</sup> session (2023).

that fails to meaningfully protect kids, while giving the illusion of safety and compliance. In order to promote transparency, accountability, and compliance, add a requirement for explainability for how the filter works, what data it captures, if data is processed, collected, or retained, and how it is used. This is also important for maintaining user privacy.

Lastly, ensure that the filter will be used on all mobile applications, search engines, and web browsers by specifying this in the bill language. The definition of filter says, "through the internet." It may help to say something like, "through mobile applications, search engines, web browsers, and any internet connection through cellular data or Wi-Fi."

### Conclusion

This legislation is a step in the right direction. I respectfully submit these comments in order to help legislators understand the underlying problem of children's access to pornographic content, ramifications of this problem, the positive elements of this bill, and what could be improved.