



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

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

<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.