



**Questions for the Record from Senator Peter Welch (D-VT)
U.S. Senate Committee on the Judiciary
Subcommittee on Crime and Counterterrorism
“Ending the Scourge: The Need for the STOP CSAM Act”**

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**Response Questions for the Record from Ms. Michelle DeLaune
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1. Recently there has been multiple lawsuits filed that raise questions about the responsibility of artificial intelligence (AI) companies when developing chatbots, especially when the technology is overwhelmingly marketed towards children. What guardrails need to be put in place to ensure children who engage with AI chatbots are protected online?

AI chatbots are designed to simulate human interaction between a user and a computer program within an intimate conversational environment. The sophistication of AI chatbots to create authentic exchanges, combined with the difficulty in discerning real vs. computer-generated conversation (especially for a child), creates significant challenges to child safety without appropriate guardrails in place.¹ NCMEC supports regulations, laws, and best practices that require effective safety by design, implement shared age assurance responsibilities, and incentivize risk management by creating liability when AI chatbots cause harm to children.

The competitive environment around AI product development has spurred a rush to market where many AI chatbots are created and scaled quickly, often without basic screening of material used to train the underlying LLM, red-teaming to ensure products are built safely, or basic child safety considerations. It has been widely reported that many AI chatbots have engaged with children in sexualized, dangerous, and deadly ways, despite AI chatbots being marketed as entertainment or fun

¹ The Australian eSafety Commissioner recently released an online safety advisory relating to AI chatbots and risks to children and young people that highlighted as a risk that “AI companions can share harmful content, distort reality and give advice that is dangerous. In addition, the chatbots are often designed to encourage ongoing interaction, which can feel ‘addictive’ and lead to overuse and even dependency.” February 18, 2025, <https://www.esafety.gov.au/newsroom/blogs/ai-chatbots-and-companions-risks-to-children-and-young-people#:~:text=the%20United%20States,-.What%20are%20the%20risks%3F,to%20overuse%20and%20even%20dependency.>

activities to appeal to children.² Laws and regulations are needed to require safety by design as an essential component of developing an AI chatbot.

Implementation of shared age assurance measures is also a necessary guardrail to protect children online, including when they are interacting with AI chatbots. Developers of AI products, app stores, and online platforms that incorporate AI chatbots share responsibility for ensuring that these products are appropriately age gated. NCMEC believes that an “all of the above” strategy is needed to enforce shared responsibility between those who create, distribute, and platform AI chatbots. A single category of stakeholder acting alone – whether an online platform, device/app store operator, or parent/guardian – cannot effectively protect children online.

As further discussed in response to Question #2 below, NCMEC also supports liability, including a private right of action, when AI chatbots cause harm to children. Incentivizing AI chatbot developers to weigh liability as part of their risk management approach to marketing a new product is an essential component of the layered approach needed to keep children safe online.

2. Can you please describe how Section 230 may or may not apply to generative artificial intelligence?

Section 230 does not apply to developers of generative artificial intelligence (GAI) products. Section 230 provides immunity to providers that host third party content created by individual users. GAI products actively partner with a user to create content together with the user. As such, the developer of a GAI product “is responsible, in whole or in part, for the creation or development of information....” and Section 230 immunity does not apply.

3. Can you please describe how Section 230 may or may not apply to AI chatbots?

Please see response to #2 above. An AI chatbot engages with a user to create conversational interactions based on prompts and self-generates questions and comments in joint content creation with a user. As a GAI product that actively partners with a user to create content, Section 230 immunity would not apply to an AI chatbot.

4. A developing concern is AI generated child sexual abuse material (CSAM), which is an issue that has escalated and continues to evolve. Do you believe that new legislation is needed to provide law enforcement and prosecutors the tools to prosecute AI CSAM?

NCMEC anticipates that courts will apply existing child pornography and obscenity statutes equally to both actual depictions of children engaged in sexually explicit conduct and to depictions of AI CSAM. NCMEC is tracking the first federal prosecutions involving AI CSAM that are now proceeding through the courts and is available as a resource if adjustments to existing laws are needed as these cases progress.

² Angela Young, *Lawsuit claims Character.AI is responsible for teen's suicide*, NBC NEWS, October 23, 2024, <https://www.nbcnews.com/tech/characterai-lawsuit-florida-teen-death-rcna176791>; *US FTC refers complaint about Snapchat use of AI chatbot to Justice Department*, REUTERS, January 16, 2025, <https://www.reuters.com/technology/us-ftc-refers-snapchat-complaint-over-ai-chatbot-justice-dept-2025-01-16/>.

While GAI CSAM is covered under current laws, nude and sexually exploitative images of children, both real and GAI-generated (including images created with nudify apps), are not. NCMEC supports the TAKE IT DOWN Act, passed by the Senate in February, which would criminalize the distribution of this type of material. NCMEC is grateful to the Senate for its quick passage of the TAKE IT DOWN Act and anticipates House passage in the near future.

5. Do you believe Section 230 should be rescinded?

Section 230 requires extensive updates and revisions to enable online child safety measures to be impactful. However, NCMEC's position is that a full rescission would be harmful and is not needed. Section 230 contains a critical "Good Samaritan" provision that provides that interactive computer services, including online platforms, cannot be held civilly liable for removing "material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected." 47 U.S.C. §230(c)(2)(A). This provision facilitates online platforms' crucial proactive measures to detect, report to NCMEC, and remove from their platforms child sexual exploitation material without concern of liability for their actions. Protections for efforts to combat online child sexual exploitation and curb the proliferation of CSAM online must remain in place.

6. If Congress were to impose civil liability for social media companies that host child sexual abuse material, what do you believe the requisite level of knowledge should be (e.g. negligence, recklessness, or knowing) and why?

NCMEC supports legislation to provide survivors of online child sexual exploitation with a private right of action to bring a civil lawsuit against all parties – including online platforms – that facilitate and are involved in their harm. NCMEC is aware of the nuance involved in crafting this legal remedy. We support a level of knowledge that can provide as many child victims as possible with access to justice and ensure sufficient support to pass Congress. Child victims would benefit if a civil right of action carried a lower mens rea, such as recklessness or negligence. NCMEC is aware that many entities, including online platforms, have lobbied extensively for a much higher standard (i.e., knowingly). A knowingly mens rea will make it difficult for a majority of child victims to file a case, though some cases will succeed in meeting this standard and result in remedies for child victims. A lower standard, especially a negligence standard, while enabling more child victims to file cases, is likely to face insurmountable lobbying challenges and fail to pass, thus providing no remedy at all to child victims. It is important to note that creating a private right of action for child victims is also intended to drive online platforms to engage in internal reform and operational improvements – not just create lawsuits. If online platforms can be sued by child victims when they are harmed by online sexual exploitation, then platforms will be compelled to undertake more rigorous risk management reviews of their operations and platforms, which ultimately should result in safer online environments and less possibility for children to be victimized.

Despite the difficulties in drafting a civil right of action for victims of child sexual exploitation, online platforms must be held legally responsible when their actions cause or perpetuate the sexual exploitation of a child, just as every other industry in America is held responsible when their action or inaction causes harm. NCMEC is available as a resource to assist in crafting legislation that will give victims their day in court and also can garner enough support this Congress to become law.