

AMENDMENT NO. _____ Calendar No. _____

Purpose: To establish a safe harbor for research on online platforms.

IN THE SENATE OF THE UNITED STATES—119th Cong., 1st Sess.

S. 1829

To combat the sexual exploitation of children by supporting victims and promoting accountability and transparency by the tech industry.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. COONS to the
amendment (No. _____) proposed by Mr. HAWLEY

Viz:

1 At the appropriate place, insert the following:

2 **SEC. ____ . ESTABLISHING A SAFE HARBOR FOR RE-**
3 **SEARCH ON PLATFORMS.**

4 (a) DEFINITIONS.—In this section:

5 (1) COVERED INFORMATION.—The term “cov-
6 ered information” means—

7 (A) publicly available information, includ-
8 ing publicly available information recommended,
9 targeted, or otherwise amplified or de-amplified
10 to an individual or research account; and

1 (B) information about advertisements
2 shown on the platform.

3 (2) COVERED METHOD OF DIGITAL INVESTIGA-
4 TION.—The term “covered method of digital inves-
5 tigation” means—

6 (A) the collection of information from a
7 platform’s user-facing interface, including by
8 navigating the interface or the use of a browser
9 extension or plug-in to collect information from
10 the interface, through automated means; and

11 (B) the creation or use of research ac-
12 counts, including accounts designed to observe
13 information that is recommended, targeted, am-
14 plified, or de-amplified to minors.

15 (3) JOURNALISM.—The term “journalism” in-
16 cludes the gathering, preparing, collecting,
17 photographing, recording, writing, editing, reporting,
18 or investigating news or information that concerns
19 local, national, or international events or other mat-
20 ters of public concern for dissemination to the pub-
21 lic.

22 (4) PLATFORM.—The term “platform” means
23 any public-facing website, online service, online ap-
24 plication, or mobile application that predominantly
25 provides a community forum for user-generated con-

1 tent, such as sharing videos, images, games, audio
2 files, or other content, including a social media serv-
3 ice, social network, or virtual reality environment.

4 (5) PUBLICLY AVAILABLE INFORMATION.—

5 (A) IN GENERAL.—The term “publicly
6 available information” means any information
7 that a person has a reasonable basis to believe
8 has been lawfully made available to the general
9 public from—

10 (i) widely distributed media; or

11 (ii) a website or online service made
12 available to all members of the public, for
13 free or for a fee, including where all mem-
14 bers of the public can log in to the website
15 or online service.

16 (B) CLARIFICATIONS; LIMITATIONS.—

17 (i) AVAILABLE TO ALL MEMBERS OF
18 THE PUBLIC.—For purposes of this para-
19 graph, information from a website or on-
20 line service is not available to all members
21 of the public if the individual to whom the
22 information pertains has restricted the in-
23 formation to a specific audience or main-
24 tained a default setting that restricts the
25 information to a specific audience.

1 (ii) RULE OF CONSTRUCTION.—For
2 the purposes of this paragraph, the term
3 “specific audience” does not include an au-
4 dience limited only by age or by the coun-
5 try in which the audience is located.

6 (iii) OTHER LIMITATIONS.—The term
7 “publicly available information” does not
8 include any of the following:

9 (I) Any obscene visual depiction
10 (as such term is used in section 1460
11 of title 18, United States Code).

12 (II) Biometric information.

13 (III) Genetic information.

14 (IV) Intimate images, authentic
15 or generated by a computer or by arti-
16 ficial intelligence, known to be non-
17 consensual.

18 (6) REASONABLE MEASURES TO PROTECT INDIVIDUAL
19 PRIVACY.—The term “reasonable measures
20 to protect individual privacy” includes reasonable
21 measures to—

22 (A) avoid the collection and retention of
23 publicly available information that would readily
24 identify an individual, alone or in combination

1 with other information, that is extraneous to
2 the research or journalism project;

3 (B) prevent the theft and accidental disclo-
4 sure of any information collected;

5 (C) ensure that the relevant information is
6 not used for any purpose other than the pur-
7 pose of informing the general public about mat-
8 ters of public concern; and

9 (D) restrict the publication or other disclo-
10 sure of any information that would readily iden-
11 tify an individual, alone or in combination with
12 other information, except if such individual is—

13 (i) an advertiser and the information
14 concerns an advertisement;

15 (ii) a public official, candidate for
16 public office, or public figure; or

17 (iii) an adult and the individual has
18 provided consent that is freely given, spe-
19 cific, informed, and express to the publica-
20 tion or disclosure.

21 (7) RESEARCH ACCOUNT.—The term “research
22 account” means an account on a platform that is
23 created and used solely—

24 (A) for the purpose of a journalism or re-
25 search project on the platform; and

1 (B) for no longer than is necessary to com-
2 plete such project.

3 (8) USER.—The term “user” means a person
4 that uses a platform for any purpose, including ad-
5 vertisers and sellers, regardless of whether that per-
6 son has an account or is otherwise registered with
7 the platform.

8 (9) WIDELY DISTRIBUTED MEDIA.—The term
9 “widely distributed media”—

10 (A) means information that is available to
11 the general public, including information from a
12 telephone book or online directory, a television,
13 internet, or radio program, the news media, or
14 an internet site that is available to the general
15 public on an unrestricted basis; and

16 (B) does not include an obscene visual de-
17 piction (as such term is used in section 1460 of
18 title 18, United States Code).

19 (b) SAFE HARBOR.—

20 (1) IN GENERAL.—No cause of action may be
21 brought or maintained by a platform, or by the
22 owner or operator of a platform, in any proceeding
23 against any person for collecting covered informa-
24 tion, as part of a journalism or research project on

1 the platform, notwithstanding that such collection
2 may violate the terms of service of the platform, if—

3 (A) the information is collected through a
4 covered method of digital investigation;

5 (B) the purpose of the project is to inform
6 the general public about matters of public con-
7 cern; and

8 (C) with respect to any such information
9 collected—

10 (i) the information is not used, re-
11 tained, disclosed, or transferred for any
12 purpose other than the purpose described
13 in subparagraph (B); and

14 (ii) the person who collects the infor-
15 mation takes reasonable measures to pro-
16 tect individual privacy.

17 (2) CLARIFICATION.—A person shall not be
18 considered to be accessing without authorization or
19 exceeding the authorized access of a platform solely
20 based on the collection of covered information on the
21 platform through a covered method of digital inves-
22 tigation that complies with the conditions of this sec-
23 tion.

24 (c) RULEMAKING.—

1 (1) IN GENERAL.—Not later than 180 days
2 after the date of enactment of this Act, the Sec-
3 retary of Commerce shall issue regulations to fur-
4 ther clarify the terms defined in subsection (a) and
5 ensure that—

6 (A) with respect to the use of research ac-
7 counts, reasonable measures have been taken to
8 avoid misleading individuals on a platform; and

9 (B) reasonable measures have been taken
10 to avoid materially burdening the technical op-
11 eration of the platform.

12 (2) EXCEPTION.—A regulation issued under
13 this subsection may not further define the term
14 “journalism” as defined under paragraph (3) of sub-
15 section (a) or the phrase “matters of public con-
16 cern” as used in this section.

17 (d) RULE OF CONSTRUCTION.—This section shall not
18 be construed to create or expand liability under any law
19 for any person.

20 (e) PROHIBITION AGAINST COMPELLED DISCLOSURE
21 TO GOVERNMENT ENTITIES.—A person who otherwise es-
22 tablishes entitlement to the safe harbor described in sub-
23 section (b) may not be required (by a subpoena, court
24 order, or otherwise) to divulge to a department or agency
25 of the United States or any State or political subdivision

- 1 thereof in furtherance of an investigation or legal process
- 2 about an individual any information related to such indi-
- 3 vidual obtained from a platform under this section.