



National District Attorneys Association
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March 11th, 2020

The Honorable Lindsey Graham
Committee on the Judiciary
United States Senate
Washington, D.C., 20002

The Honorable Richard Blumenthal
Committee on the Judiciary
United States Senate
Washington, D.C., 20002

Dear Chairman Graham & Senator Blumenthal,

I am reaching out on behalf of the National District Attorneys Association (NDAA), the oldest and largest national organization representing state and local prosecutors in the country. With more than 5,500 members nationwide, NDAA is recognized as the leading source of national expertise on the prosecution function and is a valuable resource for the media, academia, government, and community leaders. Today, I write in support of the *Eliminating Abusive and Rampant Neglect of Interactive Technologies Act (EARN IT Act)*.

As you know, NDAA participated in a hearing on “Protecting Innocence in a Digital World” on July 9th, 2019. During this hearing, we highlighted the substantial risk the Internet and online platforms pose to the wellbeing of our children. According to the National Center for Missing & Exploited Children (NCMEC) over 18.4 million reports were made to their Cyber Tipline in 2018. Further, a study conducted by NCMEC in 2017 found that of the total reported offenders, 98% were individuals seemingly unknown to the child. Even as new tools and resources become available to the prosecutor and law enforcement communities, we still face significant challenges, often due to hurdles enacted by these online and technology companies. Following the hearing, the Senate Judiciary Committee came to the correct conclusion that legislation is required to ensure these online providers take reasonable steps to protect the public as they interface with their products on a daily basis.

NDAA is confident that the *EARN It Act* takes an appropriate initial step in holding technology companies and online providers accountable for addressing and preventing child sexual exploitation on the Internet. First, your legislation creates a necessary incentive for the technology industry by amending Section 230 of the Communications Decency Act to remove civil immunity for those companies that refuse to take child exploitation as the serious and growing problem that it is. For too long, the online and technology industry has used its Section 230 “shield” to avoid responsibility for illegal activities that continue unabated on their platforms. By establishing a new “National Commission on Online Child Sexual Exploitation Prevention” to set best practices, the *EARN It Act* accomplishes its stated intent of ensuring the technology industry takes basic steps to address the ongoing sexual exploitation of children on their online platforms.

Although our members support the ongoing efforts of the Committee to address online child sexual exploitation, we also do not view the *EARN It Act* as a solution to the underlying

encryption debate and ask that your offices continue to work toward a solution involving lawful access of devices for prosecutors and law enforcement. As prosecutors, our job is, in part, to protect the constitutional rights of all of our citizens, including people charged with crimes. Our Constitution provides a privacy right in peoples' homes and, of course, in their cell phones and computers. This right, however, gives way to a lawful search warrant backed by probable cause and authorized by a neutral and detached judge. Every day, law enforcement officers execute lawful court orders that allow them to search through the most intimate areas of criminal suspects' homes and effects. Court orders allowing law enforcement to search cell phones and computers should also be enforced. Yet technology companies have chosen to deny law enforcement access regardless of lawful process and judicial decision in clear compliance with the Fourth Amendment. If we want prosecutors and law enforcement to effectively investigate and prosecute child exploitation, we must allow them to execute search warrants on criminals' smartphones as well as their houses by mandating the technology industry to comply with court orders.

Over the past decade, one of the most significant change in the criminal justice system has been the expansion of the use of technology by criminals to engage in illegal conduct and avoid justice. We no longer live in an exclusively brick and mortar world. Instead, our society is faced with new platforms that allow criminals to interact with our children without ever physically stepping inside our homes. We must think differently about this growing threat than we have in the past and our members are confident that your ongoing legislative efforts recognize this concern. The safety of our children depends on it and the technology industry must have a legal responsibility to assist in protecting the most vulnerable of our society.

The *EARN It Act* places only a reasonable burden on online platforms to take steps to protect the children who use their products, a fair and equitable cost for doing business within our communities. We thank you both for your tireless efforts to support child victims and look forward to working alongside you and your staff to ensure law enforcement and advocates have the tools needed to root out online child sexual exploitation.

Sincerely,

A handwritten signature in black ink that reads "Duffie Stone". The signature is written in a cursive, flowing style with a large initial "D".

Duffie Stone,
President