

117TH CONGRESS
1ST SESSION

S. RES. 138

Urging the European Parliament to exempt certain technologies used to detect child sexual exploitation from European Union ePrivacy directive.

IN THE SENATE OF THE UNITED STATES

MARCH 25, 2021

Mr. COTTON (for himself, Mr. BOOZMAN, and Ms. MURKOWSKI) submitted the following resolution; which was referred to the Committee on Foreign Relations

RESOLUTION

Urging the European Parliament to exempt certain technologies used to detect child sexual exploitation from European Union ePrivacy directive.

Whereas ensuring the safety of children online is a global issue that nations must address together;

Whereas the online trafficking of child sexual abuse material (referred to in this preamble as “CSAM”) and online enticement of children (also known as “grooming”) are pervasive problems that are growing at dramatic rates;

Whereas crucial tools in detecting CSAM and grooming online and protecting children using online platforms from child predators are hashing, PhotoDNA, and anti-grooming technologies that are voluntarily used by electronic

service providers (referred to in this preamble as “ESPs”) to detect, report, and remove CSAM;

Whereas the use of hashing, PhotoDNA, and anti-grooming technology by ESPs has generated millions of reports annually to the CyberTipline of the National Center for Missing & Exploited Children;

Whereas the CyberTipline is a global hotline for reports related to child sexual exploitation that was authorized by Congress in 1998;

Whereas in 2019, more than 69,000,000 images, videos, and files related to child sexual abuse were reported to the CyberTipline, with more than 3,000,000 of these images, videos, and files related to an offender or child victim in the European Union (referred to in this preamble as the “EU”);

Whereas in a Communication to the European Parliament, dated July 24, 2020, the European Commission noted, “the EU has become the largest host of child sexual abuse material globally (from more than half in 2016 to more than two thirds in 2019)”;

Whereas in 2018, an EU Directive extended the scope of prohibitions on processing personal data in the electronic communications sector to cover interpersonal communications, such as messenger services and e-mail;

Whereas this EU Directive caused ESPs to lose the legal basis to use hashing, PhotoDNA, and anti-grooming technologies to detect and report CSAM and online enticement of children to the CyberTipline;

Whereas this EU Directive took effect on December 21, 2020, without any derogation to exempt the voluntary practice of using these technologies to detect and report

distribution of CSAM and enticement of children for sexual abuse;

Whereas the prohibition on the use of hashing, PhotoDNA, and anti-grooming technologies will have dire consequences for children in Europe and globally;

Whereas, since the EU Directive took effect, reports to the National Center for Missing and Exploited Children’s CyberTipline from the EU decreased by 51 percent during the 6-week period immediately following the Directive’s implementation compared to the same period in 2020;

Whereas it is unclear whether ESPs—

(1) will be able to partition the use of hashing, PhotoDNA, and anti-grooming technologies to carve out users in the EU; and

(2) will decide to abandon the voluntary use of these technologies in the United States and globally;

Whereas since children in the United States can be harmed by online predators in the EU through grooming, enticement, and the dissemination of CSAM images among EU offenders, such material should be detected, reported, and removed;

Whereas if the use of hashing, PhotoDNA, and anti-grooming technologies for detecting CSAM and grooming is stopped, the exploitation of children globally will largely go undetected and continue to proliferate; and

Whereas Congress agrees with the European Commission that “immediate action must be taken to address this issue”: Now, therefore, be it

1 *Resolved*, That the Senate—

1 (1) finds that hashing, PhotoDNA, and anti-
2 grooming technologies are essential in detecting
3 child sexual abuse material and exploitation online,
4 including known and new CSAM, and grooming of
5 children globally; and

6 (2) urges the European Parliament to enact
7 legislation that amends the EU Directive to allow
8 electronic service providers to continue their current
9 voluntary activities of using hashing, PhotoDNA,
10 and anti-grooming technologies for the purpose of
11 detecting child sexual exploitation.

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