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Children's Online Privacy: An Overview of How Young People Use Social Media and How Lawmakers Seek to Better Protect and Empower Families Online

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**GATOR TEAMCHILD
JUVENILE LAW CLINIC**

Children's Online Privacy:

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Use Social Media and How Lawmakers
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Families Online

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The goal of this white paper is to provide an overview of current and pending children's online privacy legislation and a summary of online social media platforms commonly used by children and teens.

Introduction

In the Spring of 2022, the Gator TeamChild Juvenile Law Clinic at the University of Florida Levin College of Law (hereinafter referred to as "Clinic")¹ explored how the United States attempts to protect children's privacy online. Through this exploration, interns studied current legislation aimed at regulating online platforms, met with a lawmaker trying to update COPPA,² and collaborated with advanced students in other disciplines exploring the changing nature of social networking.³ Clinic interns reviewed pending bills in the United States House of Representatives and United States Senate that aim to improve outcomes for children and teens who utilize online platforms. Clinic interns also examined international approaches to online safety and privacy. What follows is a report outlining the Clinic's findings.

Overview of the Children's Online Privacy Protection Act (COPPA)

Congress enacted the Children's Online Privacy Protection Act (COPPA) in 1998 due to the rapid proliferation of online content targeting children, directing the Federal Trade

¹ Students enrolled in the Gator TeamChild Juvenile Law Clinic provide representation to children in dependency, education, and delinquency related matters as well as work on systemic policy issues affecting children and families.

² Congresswoman Kathy Castor, Virtual Conversation Relating to Children's Online Privacy (Feb. 17, 2022).

³ Ethan Wilson, Ph.D. Candidate in the Computer Science Program at the University of Florida, Presentation on the Metaverse and How it Can Impact Childhood Wellbeing (Mar. 24, 2022).

Commission (“FTC”) to issue rules and regulations that concern children’s online privacy.⁴ The FTC enacted the initial COPPA Rule in 2000 and further amended the Rule in 2013.⁵

COPPA’s primary goal is to assist parents in controlling the online collection of their young children’s information.⁶ The FTC attempts to meet this goal by identifying operators who have contact with young children and then regulating that contact.

The COPPA Rule applies to “operators of commercial websites and online services directed to kids under 13 that collect, use, or disclose personal information from children. . . .”⁷ The Rule also applies to “operators of general audience websites or online services.”⁸ To come under the purview of COPPA, operators of general audience websites or online services must have “actual knowledge” that the operator itself or users from another website are collecting, using, or disclosing personal information from children under 13.⁹

The operators that fall within the COPPA Rule must perform the following:

1. Post a clear and comprehensive online privacy policy describing their information practices for personal information collected online from children;
2. Provide direct notice to parents and obtain verifiable parental consent, with limited exceptions, before collecting personal information online from children;
3. Give parents the choice of consenting to the operator’s collection and internal use of a child’s information, but prohibiting the operator from disclosing that information to third parties (unless disclosure is integral to the site or service, in which case, this must be made clear to parents);
4. Provide parents access to their child’s personal information to review and/or have the information deleted;
5. Give parents the opportunity to prevent further use or online collection of a child’s personal information;
6. Maintain the confidentiality, security, and integrity of information they collect from children, including by taking reasonable steps to release such information only to parties capable of maintaining its confidentiality and security;
7. Retain personal information collected online from a child for only as long as is necessary to fulfill the purpose for which it was collected and delete the information using reasonable measures to protect against its unauthorized access or use; and
8. Not condition a child’s participation in an online activity on the child providing more information than is reasonably necessary to participate in that activity.¹⁰

⁴ *Complying with COPPA: Frequently Asked Questions*, FED. TRADE COMM’N. (July 2020), <https://www.ftc.gov/tips-advice/business-center/guidance/complying-coppa-frequently-asked-questions-0#A.%20General%20Questions>.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

Additionally, COPPA protects the use of children’s personal information.¹¹ The COPPA Rule defines personal information as:

First and last name; home or physical address including street name and name of city or town; online contact information; a screen or user name that functions as online contact information; telephone number; Social Security number; persistent identifier that can be used to recognize a user over time and across different websites or online services; photograph, video, or audio file, where such file contains a child’s image or voice; geolocation information sufficient to identify street name and name of a city or town; or information concerning the child or the parents of that child that the operator collects online from the child and combines with an identifier described above.¹²

Overview of Pending U.S. Legislation

The authors wish to emphasize that the following section includes pending legislation that has not been enacted. These are fluid proposals that are subject to significant changes prior to becoming law.

Kids PRIVCY Act

In 2021, Florida Congresswoman Kathy Castor sponsored the Kids PRIVCY Act,¹³ which seeks to update COPPA by expanding its protections.¹⁴ Congresswoman Kathy Castor explained that “online and digital technology, tracking and data gathering have outpaced current privacy protections for children and consumers Companies shouldn’t be allowed to unreasonably track and target children.”¹⁵ Therefore, the suggested updates to COPPA include: expanding the protected ages to cover teenagers thirteen to seventeen-years-old, protecting teenagers on all sites they frequent, expanding the categories of “personal information” to include “physical characteristics, biometric information, health information, education information, contents of messages and calls, browsing and search history, geolocation information, and latent audio or visual recordings,” and prohibiting companies from targeting online advertisements to children and teenagers based on their personal information.¹⁶

The Kids PRIVCY Act would also incorporate key elements of the UK’s Age-Appropriate Design Code.¹⁷ These elements include expanding protections to cover sites likely visited by children and teenagers, requiring a Privacy and Security Impact Assessment, and

¹¹ *Id.*

¹² *Id.*

¹³ S. 1628, 107th Cong. (2021), <https://www.congress.gov/bill/117th-congress/senate-bill/1628/text>.

¹⁴ *Id.*

¹⁵ Press Release, Kathy Castor, U.S. Representative, 14th District of Florida, Rep. Castor Reintroduces Landmark Kids PRIVCY Act to Strengthen COPPA, Keep Children Safe Online (July 29, 2021), <https://castor.house.gov/news/documentsingle.aspx?DocumentID=403677>.

¹⁶ *U.S. Rep. Castor Reintroduces Kids PRIVCY Act with Updated Provisions*, HUNTON ANDREWS KURTH PRIVACY & INFORMATION SECURITY LAW BLOG (Aug. 2, 2021), <https://www.huntonprivacyblog.com/2021/08/02/u-s-rep-castor-reintroduces-kids-privcy-act-with-updated-provisions/>.

¹⁷ Castor, *supra* note 15.

directing operators to make the best interests of children and teenagers a primary design consideration.¹⁸ Ultimately, the goal of the Kids PRIVCY Act is to expand and update regulations to better prioritize and protect children online.

Kids Online Safety Act

The Kids Online Safety Act was proposed in the United States Senate on February 16, 2022.¹⁹ The Kids Online Safety Act would apply to commercial software applications or electronic services that connect to the internet and are likely to be accessed by minors.²⁰ The Kids Online Safety act would place a duty on those platforms to consider the best interests of a minor using their product or service.²¹ One of the actions encompassed by the best interest duty is to prevent and mitigate heightened risks of harms to minors posed by materials on the platform.²² Consequently, the Kids Online Safety Act would require a platform to provide safeguards to control a minor's experience and personal data on the platform.²³

If passed, the Kids Online Safety Act would require the platform to default to the strongest safeguard option available for any user the platform knows or reasonably believes to be a minor.²⁴ The platform would also have to provide parental tools, including the ability to control privacy and account settings, restrict purchases, and track the total amount time spent on the platform.²⁵ Additionally, the Kids Online Safety Act would require platforms to create an accessible infrastructure to allow minors and parents to submit reports of any harms the child may have suffered while using the platform.²⁶

The Kids Online Safety Act would also require a broad transparency requirement. Platforms would be required to issue public reports identifying foreseeable risks of harm to minors at least once a year and include any prevention and mitigation measures taken to address these risks.²⁷ The Kids Online Safety Act would create a program that allows researchers to have extensive access to platforms' information to interpret the general safety concerns for minors online.²⁸

Further, the Kids Online Safety Act would require the Federal Trade Commission to establish guidelines for platforms that conduct market- and product-focused research on minors

¹⁸ *Id.*

¹⁹ Kids Online Safety Act, S.3663, 117th Cong. § 2 (2022).

²⁰ *Id.*

²¹ *Id.* § 3.

²² *Id.*

²³ *Id.* § 4. These safeguards include features that would allow minors to: limit the ability of other users to contact or find them, prevent other users from viewing their personal data by restricting public access to personal data, limit features that increase, sustain, or extend use of the covered platform (i.e., automatic playing of videos, rewards for spending time on the platform, etc.), opt out of algorithmic recommendation systems that use a minor's personal data, delete their account and request removal of personal data, restrict the sharing of their location and provide notice when someone is tracking their location, and limit time spent on the platform. *Id.* § 4(a)(1).

²⁴ *Id.* § 4.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* § 6.

²⁸ *Id.* § 7.

or individuals it reasonably believes to be minors.²⁹ The Kids Online Safety Act would also provide for the creation of a study to evaluate the most feasible options for developing systems to verify age at the device or operating system level.³⁰

The FTC and state attorneys would be tasked with the enforcement of the Kids Online Safety Act, and a violation of this act would constitute a violation of section 18(a)(1)(B) of the Federal Trade Commission Act, subject to the penalties provided in that act.³¹ Lastly, this act would create the Kids Online Safety Council to provide advice on the implementation of the Kids Online Safety Act.³²

KIDS Act

On September 9, 2021, Senator Edward Markey from Massachusetts sponsored the Kids Internet Design and Safety Act (“KIDS Act”).³³ The purpose of the KIDS Act is to keep children safe and protect their interests on the internet.³⁴ The KIDS Act would require the Federal Trade Commission (“FTC”) to set stricter protection regulations than the current COPPA framework.³⁵

The KIDS Act would require the FTC to submit a yearly report to Congress. The FTC, along with an advisory board comprised of experts in “child development, child health, education, and media,”³⁶ would create a report with recommendations for a system that will label internet content and how parents and covered users could use that system.³⁷ The KIDS Act would also place regulations and prohibitions for operators who run child-directed platforms. Some of the prohibitions proposed in the KIDS Act include the presence of certain interface elements, such as auto-play or anything that encourages a user to share their personal information, and algorithmic processes that amplify, promote, or encourage the consumption of inappropriate content for children.³⁸ The KIDS Act would direct the FTC and state Attorneys General to enforce the act.³⁹

²⁹ *Id.* § 8.

³⁰ *Id.* § 9.

³¹ *Id.* § 10.

³² *Id.* § 11. The Kids Online Safety Council would include participation from parents, academic experts, health professionals, members of civil society, youth representatives, representatives from covered platforms, state attorneys general, and representatives from the National Telecommunications and Information Administration, the National Institute of Standards and Technology, the Federal Trade Commission, and the Department of Justice. *Id.* § 11(b).

³³ KIDS Act, S.2918, 117th Cong. (2021).

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

Children and Teens Online Safety Act

On March 13, 2021, Senator Markey and Senator Cassidy introduced the Children and Teens' Online Privacy Protection Act.⁴⁰ In its current form, the act would expand COPPA to prohibit internet companies from collecting personal information from children ages thirteen and fifteen⁴¹ without the child's consent.⁴² It would also require operators to create a publicly available portal that allows users to request the removal of a child's personal information from the operators' site.⁴³ The act would prohibit targeted marketing directed at children and would prohibit targeted marketing directed at teens without their consent.⁴⁴ Finally, the Children and Teens' Online Privacy Protection Act would sharply limit the data collected by operators: they would only be permitted to collect data that is necessary to "fulfill a transaction or provide a service requested by the child or minor; or required or specifically authorized by law."⁴⁵

This pending legislation would sharply limit children's independent access to messaging apps that verify and collect a user's personally identifiable information, such as their cell phone number. It would require the verifiable consent of a parent for any operator to collect the child's data.⁴⁶ For teens, the impact would be negligible. Additionally, given the ease with which operators can draft sweeping authorizations, it is unlikely that the operators would prohibit collecting and analyzing data entirely. Nevertheless, the act entirely prohibits providers from targeting advertisements to kids (ages twelve and younger) and providers could only target advertising at teens who provided informed consent.⁴⁷ Consequently, it is possible that providing messaging or other services to children would not result in an immediate economic payoff for operators.

⁴⁰ Children and Teens' Online Privacy Protection Act, S. 1628, 117th Cong. (2021), <https://www.congress.gov/bill/117th-congress/senate-bill/1628/text>.

⁴¹ *Id.* § 3(a)(6).

⁴² *Id.* § 3(a)(4).

⁴³ *Id.* § 7(b)(1).

⁴⁴ *Id.* § 6.

⁴⁵ *Id.* § 4(1).

⁴⁶ *Id.* § 3(a)(3).

⁴⁷ *Id.* § 6.

How Young People Use Social Media

The following section summarizes a selection of the platforms minors often use to engage with others online.

Discord

Discord is an app that allows people to communicate via text, voice, and video.⁴⁸ As of May 2021, the app has over 140 million monthly active users.⁴⁹ Users talk on “servers,” which are open to anyone or invite-only.⁵⁰ Anyone is allowed to create a new server and invite people to join.⁵¹ Servers are organized into text and voice “channels.”⁵² In text channels, users can post messages, share images, and upload files.⁵³ In voice channels, users can send audio messages or video call.⁵⁴ Users can also share their screen in voice channels through a feature called “Go Live.”⁵⁵ Discord users can “Go Live” in both servers and direct messages (DM).⁵⁶ Through DMs, users send private messages to each other.⁵⁷ Users are allowed to create Group DMs with a maximum of ten people.⁵⁸ Group DMs are private and require an invitation from someone in the group to join.⁵⁹

The app provides a premium subscription service called “Discord Nitro” that gives users access to several benefits.⁶⁰ The subscription service is \$9.99 per month or \$99.99 per year.⁶¹ Nitro subscribers can customize their Discord Tag and use custom emojis in servers.⁶² Subscribers have higher video and audio quality and may upload higher file sizes.⁶³ Subscribers receive two “Server Boosts,” which are tokens that can be spent to upgrade servers.⁶⁴ Non-Nitro subscribers may buy server boosts for \$4.99 per month.⁶⁵ This allows non-nitro subscribers access to custom emojis, better video and audio quality, and the ability to create a custom invite link.⁶⁶

⁴⁸ *What is Discord?*, DISCORD, <https://discord.com/safety/360044149331-What-is-Discord> (last visited Feb. 7, 2022).

⁴⁹ Salvador Rodriguez, *Discord is Rapidly Expanding Beyond Gaming, Attracting Suitors Like Sony and Microsoft*, CNBC (May 8, 2021, 12:07 PM), <https://www.cnbc.com/2021/05/08/what-is-discord-chat-service-fosters-community-expands-beyond-gaming.html>.

⁵⁰ *What is Discord?*, *supra* note 48.

⁵¹ *See id.*

⁵² *Id.*

⁵³ Rodriguez, *supra* note 49.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *What is Discord?*, *supra* note 48.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Michael Andronico, *Discord is the One App You Need to be Using – Here’s What You Need to Know*, CNN (Jan. 28, 2021, 2:31 PM), <https://www.cnn.com/2021/01/28/cnn-underscored/discord-app/index.html>.

⁶² *What is Discord?*, *supra* note 48.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

Discord also has “Student Hubs” that allow users to connect their Discord account with their school email.⁶⁷ This creates “an exclusive hub for students at their school.”⁶⁸ In the Hub, users can communicate with other verified students, join study servers, and create their own servers.⁶⁹ A concern with the Student Hubs is that they are ran by the students and not managed by the school.⁷⁰ Students may also include non-students in their servers.⁷¹

Despite its intended uses, experts warn that Discord is a dangerous place for young users.⁷² Discord lacks parental control features and is linked to human trafficking and other crimes.⁷³ In 2019, seven people were arrested in Pinellas County, Florida for “sexually exploiting two teens.”⁷⁴ One of the teens met the preparators on Discord via video game servers.⁷⁵ The app is also linked to racist memes, cyberbullying, and “politically incorrect jokes.”⁷⁶

Users “can block unwanted messages and friend requests, restrict the people they allow into their server and turn on a filter to block explicit content in direct messages.”⁷⁷ Another concern with the app is that Discord does not verify the age or identity of their users.⁷⁸ The company only collects users’ screen names and email addresses.⁷⁹ Users can also enter servers that contain adult content, like pornography, by simply clicking a button that says they are 18.⁸⁰

Instagram

Instagram is a prevalent social media platform that allows users to post photos, videos, and stories.⁸¹ Users can follow friends, send messages through direct messaging, and comment on others’ pictures or videos.⁸² One of the risks associated with Instagram is related to direct

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ See generally *Discord Student Hubs FAQ*, DISCORD, <https://support.discord.com/hc/en-us/articles/4406046651927-Discord-Student-Hubs-FAQ> (last visited Apr. 9, 2022) (explaining how students can find other classmates that have joined the hub and add their servers to the hub).

⁷¹ *What is Discord?*, *supra* note 48.

⁷² Isabella Colello, *Teens Should Not Use ‘Discord’ App for Private Messaging, Experts Warn*, NEWS 10 (Sept. 13, 2021, 4:00 PM), <https://www.news10.com/news/teens-should-not-to-use-discord-app-for-private-messaging-experts-warn/>.

⁷³ *Id.*

⁷⁴ Sarah Hollenbeck, *Deputies Warn Parents Discord App Potential Dangers*, ABC ACTION NEWS (Jan. 15, 2019, 5:37 PM), <https://www.abcactionnews.com/news/region-pinellas/deputies-warn-parents-about-discord-app-potential-dangers>.

⁷⁵ *Id.*

⁷⁶ Julie Jargon, *The Dark Side of Discord, Your Teen’s Favorite Chat App*, WALL ST. J. (June 11, 2019, 6:07 PM), <https://www.wsj.com/articles/discord-where-teens-rule-and-parents-fear-to-tread-11560245402>.

⁷⁷ *Id.*

⁷⁸ See generally *What is Discord?*, *supra* note 48 (lacking an age verification).

⁷⁹ Julie Jargon, *The Dark Side of Discord, Your Teen’s Favorite Chat App*, WALL ST. J. (June 11, 2019, 6:07 PM), <https://www.wsj.com/articles/discord-where-teens-rule-and-parents-fear-to-tread-11560245402>.

⁸⁰ *Id.*

⁸¹ Christine Elgersma, *Parents’ Ultimate Guide to Instagram*, COMMON SENSE MEDIA (Mar. 10, 2021), <https://www.commonsensemedia.org/blog/parents-ultimate-guide-to-instagram>.

⁸² *Id.*

messaging. Users can send messages to other users, including people that he or she does not follow, exposing children and even young adults to frightening situations. For example, in *United States v. Baston*,⁸³ the defendant approached a girl with hopes of being a model through Instagram's direct messaging feature.⁸⁴ The defendant invited the girl to travel to the defendant's location so he could assist the girl in starting her modeling career.⁸⁵ When the girl arrived to the defendant's location, however, the defendant forced the girl into prostitution.⁸⁶ This is just one of many examples of how platforms like Instagram are being used for sex trafficking and other crimes.

Another risk associated with Instagram is how the platform manages children users.⁸⁷ COPPA sets strict guidelines for platforms that know or have reason to know that there is a presence of children under the age of thirteen on their site.⁸⁸ In line with COPPA, Instagram's terms of service states that a user must be thirteen years or older to sign up for the platform.⁸⁹ However, Instagram offers no age-verification process to sign up.⁹⁰ Without this verification process, children under the age of thirteen could easily access the application by lying about their age.⁹¹ When a child selects an age over thirteen, COPPA's strict guidelines no longer apply.⁹² The absence of an age-verification feature is a common way for platforms like Instagram to avoid the COPPA guidelines. Moreover, the absence of an age-verification feature exposes allows children under the age of thirteen to mature content and access to strangers, while also exposing them to marketing ploys and data collection of private information (actions that are normally protected under COPPA).⁹³

Another way children, teens, and young adults are using Instagram is through "rinstas" and "finstas."⁹⁴ These terms stand for "real Instagram" and "fake Instagram," respectively, and allow users to post varying content depending on the account's purpose.⁹⁵ For instance, users of "rinstas" are very selective and careful about what they post.⁹⁶ Users of "rinstas" allow a vast array of individuals, including complete strangers, to access their account.⁹⁷ On the other hand, users of "finstas" post photos that are not as discerning as their "rinsta" counterparts.⁹⁸ The audience of "finstas" is usually the user's friends.⁹⁹

⁸³ 818 F.3d 651 (11th Cir. 2016).

⁸⁴ *Id.* at 664.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Nicole Coccozza, *Instagram Sets a Precedent by an "Insta" Change in Social Media Contracts & Users' Ignorance of Instagram's Terms of Use May Lead to Acceptance by A Simple "Snap"*, 15 J. HIGH TECH. L. 363, 377 (2015).

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Elgersma, *supra* note 81.

⁹¹ *Id.*

⁹² Nicole Coccozza, *Instagram Sets A Precedent by an "Insta" Change in Social Media Contracts & Users' Ignorance of Instagram's Terms of Use May Lead to Acceptance by A Simple "Snap"*, 15 J. HIGH TECH. L. 363, 377 (2015).

⁹³ Elgersma, *supra* note 81.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

Since “finstas” are usually for users’ friends, users lower their guard when posting on their “finsta” account. Surrounded by familiar users, it is easy to forget that once something is posted on the Internet, it is often very difficult to remove. Therefore, pictures, videos, and other information posted on these accounts may eventually become available to strangers. This leads to safety concerns because “finsta” users may overshare personal information, like their frequently visited locations, or the “finsta” users may overshare their interests, which strangers with ill-intentions could use to get closer to the account holder and build trust.

Another issue pertains to parents sharing their children’s information on the internet. Also known as “sharenting,” Instagram allows parents and other family members to post pictures of children, causing additional privacy concerns.¹⁰⁰ For example, “[c]hildren have no control over the dissemination of their personal information by their parents . . . [therefore the] [i]nformation shared on the Internet has the potential to exist long after the value of the disclosure remains, and therefore disclosures made during childhood have the potential to last a lifetime.”¹⁰¹

Lastly, a child using Instagram, without proper protection afforded by the child’s parents, could result in that child striving for unrealistic perfection.¹⁰² Children can easily access celebrity accounts.¹⁰³ This could lead to children setting impractical goals for what their bodies and lives should look like.¹⁰⁴ To meet these goals, children may create oversexualized photos or develop eating disorders like anorexia.¹⁰⁵ Ultimately, when children cannot meet these goals, these same children have access to inflammatory information relating to suicide.¹⁰⁶

In sum, there are many issues and risks specifically related to Instagram. How children access and interact with this platform must be considered to protect the safety of future generations.

TikTok

TikTok, a popular social media application, originated in 2016 after two social media giants merged: Musical.ly and ByteDance.¹⁰⁷ TikTok allows users to create content in the form of 15-second, 60-second, 3-minute, or for some users, 10-minute-long videos.¹⁰⁸ The content is then published for public or private viewing.¹⁰⁹ If the content is published for public viewing, it

¹⁰⁰ Stacey B. Steinberg, *Sharenting: Children's Privacy in the Age of Social Media*, 66 EMORY L.J. 839, 842 (2017).

¹⁰¹ *Id.* at 846.

¹⁰² Elgersma, *supra* note 81.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Joe Tidy & Sophia Smith Galer, *TikTok: The story of a social media giant*, BBC NEWS (Aug. 5, 2020), <https://www.bbc.com/news/technology-53640724>.

¹⁰⁸ Todd Spangler, *TikTok Bumps Up Max Video Length to 10 Minutes*, VARIETY (Feb. 22, 2022), <https://variety.com/2022/digital/news/tiktok-maximum-video-length-10-minutes-1235191773/>.

¹⁰⁹ *Safety & Privacy Controls*, TIKTOK, <https://www.tiktok.com/safety/en/account-settings/> (last visited Apr. 10, 2022).

may appear on other users' "For You Page."¹¹⁰ TikTok curates what content a user views on their "For You Page."¹¹¹

TikTok "suggest[s] content after taking into account user preferences as expressed through interactions with the app, like posting a comment or following an account."¹¹² In curating content, TikTok also considers a user's device and account settings.¹¹³ One account setting that TikTok may consider is a user's age.¹¹⁴

When creating an account, TikTok asks users to disclose their age.¹¹⁵ TikTok identifies the users who are thirteen-years-old or younger and places them in the "Younger Users experience," which TikTok claims has "additional privacy and safety protections designed specifically for this [younger] audience."¹¹⁶ TikTok claims it will remove users thirteen-years-old or younger who are not using the Younger Users experience.¹¹⁷ However, TikTok does not specify how it determines which users are thirteen-years-old or younger at the registration stage, nor the method by which it determines whether a user thirteen-years-old or younger is failing to use the Young Users experience.

Within the Young Users experience, TikTok offers a "Youth Portal" which children can use to learn how to limit comments on their videos, how to filter certain comments that use unwanted words, and how to keep their accounts on private or public.¹¹⁸ TikTok also allows children to control who may "Duet" or react to their videos,¹¹⁹ and does not allow anyone under the age of sixteen-years-old to send or receive direct messages.¹²⁰ Lastly, the app offers a "Family Pairing" setting in which parents or guardians can see the child's screen time management, access restricted mode, and gatekeep who can send their child direct messages.¹²¹ The feature does not allow parents or guardians to see what videos the child has watched, see any messages or comments the child sent or received, or the accounts the child has interacted with.¹²² Unfortunately, this feature is not yet available in the United States.¹²³ While the United States waits for the family pairing feature to become available, it is recommended that parents check their child's settings to ensure that they claim to be the correct age, check commenting preferences, check to see who can message the child, and who can view, duet, and react to the child's videos.¹²⁴

¹¹⁰ See *How TikTok recommends videos #ForYou*, TIKTOK (June 18, 2020), <https://newsroom.tiktok.com/en-us/how-tiktok-recommends-videos-for-you/>.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Guardian's Guide*, TIKTOK, <https://www.tiktok.com/safety/en/guardians-guide/> (last visited Feb. 6, 2022).

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Define your public presence*, TIKTOK, <https://www.tiktok.com/safety/youth-portal/define-your-public-presence?lang=en> (last visited Feb. 6, 2022).

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Define your public presence*, *supra* note 118.

¹²³ Maressa Brown, *Is TikTok Safe for Kids?*, PARENTS (Jan. 28, 2022), <https://www.parents.com/kids/safety/internet/is-tiktok-safe-for-kids/>.

¹²⁴ *Id.*

There are many concerns with children using TikTok including child predators, inappropriate content, and cyberbullying.¹²⁵ Children often use the app to lip sync and perform dances.¹²⁶ Unfortunately, predators may sexualize these videos.¹²⁷ If a child predator interacts with a child's video, the TikTok algorithm will then send more child videos to that predator's "For You Page." Ultimately, child predators could have access to unlimited numbers of videos of children dancing, for example.¹²⁸ Predators can send private messages and comment on the videos of children who lie about their age on the app.¹²⁹ These actions allow predators to commence grooming behaviors.¹³⁰ While it is true that parents can simply monitor their child's settings on the app, not all children have parents, let alone parents with the time, effort, and knowledge to check. Additionally, not all parents feel comfortable with checking their child's phone. TikTok may have some measures in place to ensure safe viewing for younger users, but their response to adults using the app to find children is more reactive than proactive.¹³¹

MeetMe

MeetMe's slogan is "Meet, chat, and have fun with new people."¹³² MeetMe provides a platform for users to meet new people online and view the location of other users nearby.¹³³ When registering, MeetMe will ask the user if he or she will use the app to find friends or use it for dating purposes.¹³⁴ MeetMe also asks the user for his or her first and last name and the user's zip code.¹³⁵ MeetMe asks for this information because the app matches users based on similar geographic location.¹³⁶ The app also asks the user's permission to access the user's device location services so that when the user travels, the app can continue to find other users nearby.¹³⁷

¹²⁵ *Id.*

¹²⁶ Ryan Broderick, *TikTok Has A Predator Problem. A Network Of Young Women Is Fighting Back.*, BUZZFEED NEWS (June 26, 2020, 9:54 AM), <https://www.buzzfeednews.com/article/ryanhatesthis/tiktok-has-a-predator-problem-young-women-are-fighting-back>.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *See id.*

¹³⁰ *See id.*

¹³¹ *See id.* (discussing community responses to TikTok's failure to monitor adult interactions with younger audiences). In one instance, TikTok users took it upon themselves to expose a predator accused of messaging children uncomfortable videos of himself without a shirt and licking his lips. *Id.* After his activity came to light, the user's account was not deleted by TikTok, and neither those responsible for exposing that user nor the user himself were ever contacted by TikTok. *Id.* He was eventually banned from the platform, but TikTok does not have a way of ensuring that banned persons do not make another account under a different name. *Id.*

¹³² MEETME, <https://www.meetme.com/#home> (last visited Feb. 6, 2022).

¹³³ Chris McKenna, *MeetMe*, PROTECT YOUNG EYES, <https://protectyoungeyes.com/apps/meetme-parental-controls/> (last visited Feb. 6, 2022).

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *6 Adult Dating Apps Teens Are Using Too*, HUFFINGTON POST (Feb. 18, 2015, 4:15 PM), https://www.huffpost.com/entry/6-adult-dating-apps-teens-are-using-too_b_6681622.

¹³⁷ *Id.*

MeetMe allows users to post pictures, add friends, message and call other users, view livestreams, and even make money from receiving views on livestreams.¹³⁸ In 2020, MeetMe offered a new “Quick” feature which “allows a private video stream where [one user] and only one other [user] can view the feed.”¹³⁹ When using the platform to “match” with locals, users may refine their matches by gender, age range, location, and relationship status.¹⁴⁰

MeetMe claims that it protects users from sexual predators by matching screen names to lists of registered sex offenders.¹⁴¹ Nevertheless, registered sex offenders could avoid being barred from the site by simply using a different name.¹⁴² In fact, sexual predators have performed sex crimes against children on the platform.¹⁴³ Joseph Meili, a twenty-two-year-old, was charged and convicted for third-degree child molestation of an eleven-year-old girl he met on MeetMe.¹⁴⁴ Although the minimum age to use the app without parent permission is seventeen-years-old, children under the age minimum can circumvent the age shield by lying about their age.¹⁴⁵ There is no age verification.¹⁴⁶

The Meet Group (MeetMe’s parent company) claims that a team of more than 500 people scan the platform daily to remove harmful or abusive content.¹⁴⁷ Content involving minors is one of the most common reasons for content removal,¹⁴⁸ even though MeetMe’s Content and Conduct Policy explicitly states that content depicting minors (eighteen-years-old or younger) in any form, sexual or otherwise, is strictly prohibited.¹⁴⁹ Any platform that allows users to communicate with one another provides an opportunity for cyberbullying, that being said, sex crimes against children on this app appears to be its most significant issue.

Chat Apps and iMessaging

There is a plethora of messaging applications available to children in the United States. Some platforms seek to give parents more direct control over what messages their children can send or receive, while others have an ineffective age gate based solely on self-verification. Nevertheless, the best that many platforms provide is an option for other users to flag a user below the age minimum.

¹³⁸ *MeetMe Review*, DATING SITES REVIEWS (Oct. 9, 2020, 12:42 PM)

<https://www.datingsitesreviews.com/staticpages/index.php?page=meetme-reviews>.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ Reed Albergotti, *This social network app says it screens for sex offenders. It gave one VIP status*, WASH. POST (Dec. 12, 2019), <https://www.washingtonpost.com/technology/2019/12/12/social-networking-app-meetme-says-it-screens-sexual-offenders-gave-one-vip-status/>.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Our Commitment to Safety*, THE MEET GROUP, <https://www.themeetgroup.com/safety-practices/> (last visited Feb. 6, 2022).

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

Apple's iMessage service remains one of the first hooks for many people into the Apple ecosystem. iMessage is the default messaging service between iPhones, and Apple is the largest single smartphone brand in the United States as of December 2021.¹⁵⁰ Among teens, surveys indicate that the overwhelming majority own an iPhone; one survey with 10,000 participants found that 87% of teens own an iPhone.¹⁵¹ Given its default status on the market-leading device, iMessage is a regular part of teen life.

In August 2021, Apple announced a new feature called "Communication safety in Messages."¹⁵² This feature allows parent accounts to turn on notifications for child accounts ages twelve-years-old and younger. When the child account receives and elects to view an image marked by a machine learning algorithm as sexually-explicit, the parent accounts receives a notification.¹⁵³ The analysis of the image would be performed on the child's device.¹⁵⁴ Apple implemented this feature in iOS 15.2¹⁵⁵ on December 13, 2021.¹⁵⁶

The announcement was heavily criticized by LGBTQ+ and privacy advocates.¹⁵⁷ Historically, LGBTQ+ content has been heavily restricted by machine learning algorithms and human enforcement alike.¹⁵⁸ Training on-device intelligence using current training datasets will likely yield similar results absent a careful review of LGBTQ+ content. If LGBTQ+ content is flagged as sexually explicit, it may expose a child exploring their sexuality to parental abuse.¹⁵⁹

Snapchat

Snapchat is one of the many social media platforms minors are currently using, and arguably the most suspect of them all. Snapchat is a smartphone app where users can send each other pictures or messages that 'disappear' after they are opened.¹⁶⁰ If the recipient of the photo/message takes a screenshot to try to capture the content of the message, the sender is alerted, but the recipient of the message now has a copy.¹⁶¹ In recent years, the app has expanded and now includes additional features including: photo filters, news and entertainment, and games.¹⁶² Snapchat also has a "Story" feature, where users can share images with the users on their friends lists or any other Snapchat user (depending on their privacy settings) for twenty-four

¹⁵⁰ *What brand is your (primarily used) smartphone*, STATISTA (Dec. 22, 2021), <https://www.statista.com/forecasts/997241/smartphone-by-brand-in-the-us>.

¹⁵¹ *Fall 2021 Survey: Taking Stock with Teens*, PIPER SANDLER & CO., <https://www.pipersandler.com/1col.aspx?id=6216> (last visited Feb. 14, 2022).

¹⁵² *Expanded Protections for Children: Frequently Asked Questions*, APPLE (Aug. 2021), https://www.apple.com/child-safety/pdf/Expanded_Protections_for_Children_Frequently_Asked_Questions.pdf.

¹⁵³ *Id.* at 3.

¹⁵⁴ *Id.*

¹⁵⁵ *Expanded Protections for Children*, APPLE, <https://www.apple.com/child-safety/> (last visited Feb. 2, 2022).

¹⁵⁶ *Apple Security Updates*, APPLE, <https://support.apple.com/en-us/HT201222> (last visited Feb. 2, 2022).

¹⁵⁷ See Jillian C. York, *How LGBTQ+ Content is Censored Under the Guise of Sexually Explicit*, ELEC. FRONTIER FOUND. (Aug. 18, 2021), <https://www.eff.org/deeplinks/2021/08/how-lgbtq-content-censored-under-guise-sexually-explicit>.

¹⁵⁸ Ari Ezra Waldman, *Disorderly Conduct*, SSRN (Aug. 17, 2021), <https://ssrn.com/abstract=3906001>.

¹⁵⁹ York, *supra* note 157.

¹⁶⁰ Christine Elgersma, *Parents' Ultimate Guide to Snapchat*, COMMON SENSE MEDIA (Mar. 9, 2021), <https://www.commonsensemedia.org/articles/parents-ultimate-guide-to-snapchat>.

¹⁶¹ *Id.*

¹⁶² *Id.*

hours.¹⁶³ A feature that causes public concern is the “Snap Map” feature, where users can share their location with other users on their friends lists (again, this is dependent on the user’s privacy settings and can be disabled).¹⁶⁴

According to Snapchat’s terms of service, users must be thirteen years of age or older.¹⁶⁵ If the user is under eighteen-years-old, the user must obtain parent permission.¹⁶⁶ Users are required to enter their date of birth when creating an account, but there is no further age verification.¹⁶⁷ Consequently, the age minimum is generally unenforceable.¹⁶⁸

Besides the obvious inference that Snapchat can be used for sexting, there are a few other areas of concern regarding minors’ use of Snapchat. The first is the belief that messages, and photos, actually disappear. Children may easily forget that although the messages disappear from their screen, it does not mean the person receiving the message did not take a screenshot (in which case the sender would be alerted) or use a third-party app to screen record the image/message (in which case the sender would likely not be alerted).¹⁶⁹

Another area of concern is the app’s game-like feature set. Specifically, Snapchat has a “Snapstreak” feature which rewards users for snapchatting back and forth within a 24-hour period for a minimum of three consecutive days.¹⁷⁰ This may lead users lead to feel pressure, anxiety, and compulsion leading to increased use of the app.¹⁷¹

Lastly, depending on the user’s privacy settings, the app may collect data about the user’s habits inside and outside of the app.¹⁷² Snapchat may also share that user data with third parties.¹⁷³

Facebook

Facebook is also commonly used by minors. However, one 2018 study indicated Facebook is declining in popularity among minors and is no longer the most popular online platform among teens, with only fifty-one percent of minors between thirteen and seventeen-years-old using the social media site, a decline of twenty percent from 2015.¹⁷⁴

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Snap. Inc. Terms of Service*, SNAP INC. (Nov. 15, 2021), <https://www.snap.com/en-US/terms>.

¹⁶⁶ *Id.*

¹⁶⁷ Elgersma, *supra* note 160.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *See id.*; *Snap. Inc. Terms of Service*, SNAP INC., <https://www.snap.com/en-US/terms> (last visited Feb. 6, 2022).

¹⁷⁴ Monica Anderson & Jingjing Jiang, *Teens, Social Media and Technology 2018*, PEW RESEARCH CENTER (May 31, 2018), <https://www.pewresearch.org/internet/2018/05/31/teens-social-media-technology-2018/>.

Facebook allows users to connect with people, post content (including photos, text, or videos), watch videos, instant message, play games, and more.¹⁷⁵ To create an account, users must be at least thirteen-years-old and have a valid email address.¹⁷⁶ Age is verified using an “age screen” scheme, where users are asked to enter their birthdays, and people who repeatedly try to enter different birthdays are blocked from creating an account.¹⁷⁷ Facebook also offers an option for other users to report suspected underage users.¹⁷⁸ Content reviewers flag reported accounts and will delete a user’s account if the user cannot prove he or she meets the minimum age requirement.¹⁷⁹ Recently, Facebook announced they are developing AI technology to assist in detecting users’ ages.¹⁸⁰

The content users view on Facebook is highly dependent on the user’s friends list and what those friends choose to share or post. Some concerns with Facebook include cyberbullying, oversharing, and cyberstalking.¹⁸¹ Specifically, there have been instances of suicide attempts and murders live-streamed on this social media site,¹⁸² potentially exposing minors to graphic content. Notably, Facebook implemented policies and machine learning to assist in identifying users at risk of self-harm either through a user’s posts or on a live-stream.¹⁸³ The identified user is then provided resources.¹⁸⁴ Nevertheless, these efforts do not always prove effective.¹⁸⁵

Facebook (now Meta) also owns Messenger, a messaging app that works in conjunction with Facebook and allows users to communicate via text, phone calls, and video calls.¹⁸⁶ There are several concerning Messenger features. A user can chat with anyone on their Facebook friends list, even if the user does not have that person’s actual phone number.¹⁸⁷ Users can also send money to other users, share their current location to anyone in their contact list, and enable “Vanish Mode.”¹⁸⁸ “Vanish Mode” allows users to send chats that will disappear after users leave the chat.¹⁸⁹ Notably, this app has an in-app pop-up warning for potentially harmful messages from scammers, impersonators, or adults targeting underage users, making it more

¹⁷⁵ *What is Facebook*, GCF GLOBAL, <https://edu.gcfglobal.org/en/facebook101/what-is-facebook/1/> (last visited Apr. 10, 2022).

¹⁷⁶ Pavni Diwanji, *How Do We Know Someone Is Old Enough to Use Our Apps?*, META (July 27, 2021), <https://about.fb.com/news/2021/07/age-verification/>.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *See id.* (indicating use of AI technology to estimate someone’s age by reading birthday posts from other users and comparing the age provided to Facebook with other apps run by Meta).

¹⁸¹ *See* Erin Brereton, *Facebook*, COMMON SENSE MEDIA, <https://www.commonsensemedia.org/website-reviews/facebook> (last visited Feb. 6, 2022).

¹⁸² *Id.*; *See, e.g.*, Jane Wakefield, Friend challenges Facebook over Ronnie McNutt suicide video, BBC (Sept. 20, 2020), <https://www.bbc.com/news/technology-54176205>.

¹⁸³ Wakefield, *supra* note 182.

¹⁸⁴ *Id.*

¹⁸⁵ *Suicide Prevention*, FACEBOOK, <https://www.facebook.com/safety/wellbeing/suicideprevention/> (last visited Feb. 6, 2022) ; *but see* Wakefield, *supra* note 182 (indicating one user’s friend reported a livestream to Facebook half an hour before the user committed suicide).

¹⁸⁶ Dana Anderson, *Messenger*, COMMON SENSE MEDIA, <https://www.commonsensemedia.org/app-reviews/messenger> (last visited Feb. 6, 2022).

¹⁸⁷ *See id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

difficult (but not impossible) for underage users to view unsolicited or harmful photos or messages.¹⁹⁰

International Approaches to Children's Online Safety

The United Nations Convention on the Rights of the Child and General Comment Number 25

The United Nations Convention on the Rights of the Child (“UNCRC”) is “the most complete statement of children’s rights ever produced and is the most widely-ratified international human rights treaty in history.”¹⁹¹ The UNCRC includes “54 articles that cover all aspects of a child’s life and set out the civil, political, economic, social and cultural rights that all children everywhere are entitled to.”¹⁹² Article 31, for example, recognizes “the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.”¹⁹³ The UNCRC requires that parties to the agreement “respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational, and leisure activity.”¹⁹⁴ Article 13 recognizes that a child “shall have the right to freedom of expression” including the “freedom to seek, receive and impart information and ideas of all kinds...either orally, in writing, or in print, in the form of art, or through any other media of the child’s choice.”¹⁹⁵ The UNCRC was adopted by the United Nations in 1989,¹⁹⁶ but some have argued that its ratification date does not preclude the UNCRC’s application to the digital age.¹⁹⁷ The Committee on the Rights of the Child¹⁹⁸ (“Committee”) recognizes as much.

In March of 2021, the Committee published General Comment No. 25 (2021), regarding children’s rights in relation to the digital environment.¹⁹⁹ The Committee’s objective was to provide “guidance on relevant legislative, policy and other measures to ensure full compliance...under the Convention...in light of the opportunities, risks and challenges in promoting, respecting, protecting and fulfilling all children’s rights in the digital environment.”²⁰⁰ In Comment No. 25, the Committee recognized four principles that “should serve as a guide for determining the measures needed to guarantee the realization of children’s

¹⁹⁰ *See id.*

¹⁹¹ *How We Protect Children’s Rights with the UN Convention on the Rights of the Child*, UNICEF, <https://www.unicef.org.uk/what-we-do/un-convention-child-rights/> (last visited Mar. 20, 2022).

¹⁹² *Id.*

¹⁹³ G.A. Res. 44/25, *Convention on the Rights of the Child*, at ¶ 31 (Nov. 20, 1989).

¹⁹⁴ *Id.*

¹⁹⁵ *Id.* at ¶ 13.

¹⁹⁶ *How We Protect Children’s Rights with the UN Convention on the Rights of the Child*, *supra* note 191.

¹⁹⁷ *See* Larry Magid, *UN bringing child rights into the digital age*, CONNECTSAFELY (Sep. 13, 2014), <https://www.connectsafely.org/un-bringing-child-rights-into-the-digital-age/> (stating that “The UNCRC is a living document, subject to modern interpretation”).

¹⁹⁸ The Committee is made of ten experts of high moral standing who are tasked with reviewing reports on the measures taken by member parties to effectuate the UNCRC. *Convention on the Rights of the Child*, at ¶ 43–44.

¹⁹⁹ U.N. Committee on the Rights of the Child, *General comment No. 25 (2021) on children’s rights in relation to the digital environment*, U.N. CRC/C/GC/25 (Mar. 2, 2021).

²⁰⁰ *Id.* at ¶ 7.

rights in relation to the digital environment:” (1) non-discrimination; (2) the best interests of the child; (3) the right to life, survival and development; and (4) respect for the views of the child.²⁰¹

With respect to non-discrimination, the Committee requires that all parties “ensure that all children have equal and effective access to the digital environment. . . .”²⁰² The Committee emphasized that discrimination exists if a certain group of children are excluded from using technologies, and children may face unwarranted discrimination via digital technology in the absence of regulation.²⁰³ The Committee stated that “[s]pecific measures will be required to close the gender-related digital divide for girls and to ensure that particular attention is given to access, digital literacy, privacy and online safety.”²⁰⁴

As for the best interests of the child, the Committee recognized that the online community plays a vital role in children’s lives.²⁰⁵ When adopting regulations regarding the design, management, or use of the digital environment, the Committee requires the best interest of the child to be the primary concern, taking into account children’s rights to “seek, receive and impart information”²⁰⁶

The Committee also stated that parties “should take all appropriate measures to protect children from risks to the right to life, survival and development.”²⁰⁷ These risks include “violent and sexual content, cyberaggression and harassment, gambling, exploitation and abuse,” or other risks such as the promotion of suicide.²⁰⁸ In addition, the Committee suggested paying specific attention to the effects of technology on children whose brains are still developing.²⁰⁹

Lastly, the Committee indicated that access to a digital environment provides children opportunities to have their voices heard.²¹⁰ The Committee identified two ways in which legislation on the rights of the child regarding digital technologies should incorporate respect for the views of the child.²¹¹ First, the Committee stated that parties “should promote awareness of, and access to, digital means for children to express their views and offer training and support for children to participate . . . anonymously where needed, so that [children] can be effective advocates for their rights”²¹² Secondly, the Committee suggested involving children and listening to their needs in developing legislation on children’s rights in the digital environment.²¹³

²⁰¹ *Id.* at ¶ 8–18.

²⁰² *Id.* at ¶ 9.

²⁰³ *Id.* at ¶ 10.

²⁰⁴ *Id.* at ¶ 11.

²⁰⁵ *Id.* at ¶ 12.

²⁰⁶ *Id.* at ¶ 13.

²⁰⁷ *Id.* at ¶ 14.

²⁰⁸ *Id.*

²⁰⁹ *Id.* at ¶ 15.

²¹⁰ *Id.* at ¶ 16.

²¹¹ *Id.* at ¶ 16–17.

²¹² *Id.* at ¶ 16.

²¹³ *Id.* at ¶ 17.

States that have ratified the UNCRC must submit reports to the Committee regarding the situation of children within a state's borders and the measures taken by the State to realize their rights.²¹⁴ While ratification of the UNCRC demonstrates a state's commitment to the full realization of children's rights, the only enforcement procedure of the UNCRC is the submission of these reports every five years.²¹⁵ The United States has not ratified the UNCRC, so it is unlikely to enforce the UNCRC.²¹⁶

European Union Privacy and Data Protection Laws

The General Data Protection Regulation ("GDPR") is "a legal framework that requires businesses to protect the personal data and privacy of European Union (EU) citizens for transactions that occur within EU member states."²¹⁷ It was adopted by the EU in April 2016.²¹⁸ The GDPR applies to all companies handle the data of EU citizens.²¹⁹ Article 8 of the GDPR discusses consent by children to the processing of their personal data.²²⁰ The GDPR acknowledged that the personal data of children needs more protection because children are more likely to be unaware of the risks, safeguards, and general rights regarding their data.²²¹

Article 8 of the GDPR states that the collection of children's data under sixteen-years-old is "lawful only if and to the extent that consent is given or authorized by the holder of parental responsibility to the child."²²² The GDPR allows Member States to have domestic laws that lower the age of consent, but it cannot be lowered below thirteen-years-old.²²³ Germany and Romania follow the GDPR's age requirement.²²⁴ France and Greece require consent of a legal guardian for children under fifteen-years-old.²²⁵ Spain, Denmark, Portugal, Sweden, and the United Kingdom²²⁶ set the consent age as thirteen-years-old.²²⁷

²¹⁴ *Implementing and monitoring the Convention on the Rights of the Child*, UNICEF, <https://www.unicef.org/child-rights-convention/implementing-monitoring> (last visited Mar. 20, 2022).

²¹⁵ *Id.*

²¹⁶ See Sarah Mehta, *There's Only One Country That Hasn't Ratified the Convention on Children's Rights: US*, ACLU (Nov. 20, 2015), <https://www.aclu.org/blog/human-rights/treaty-ratification/theres-only-one-country-hasnt-ratified-convention-childrens>.

²¹⁷ Andrew Rossow, *The Birth of GDPR: What is it and What You Need to Know*, FORBES (May 25, 2018), <https://www.forbes.com/sites/andrewrossow/2018/05/25/the-birth-of-gdpr-what-is-it-and-what-you-need-to-know/?sh=6bad8c1855e5>.

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ See Council Regulation 2016/679, art. 8, 2016 O.J. (L 119) 37, 38 (EU).

²²¹ Council Regulation 2016/679, 2016 O.J. (L 119) 7 (EU).

²²² Council Regulation 2016/679, art. 8, 2016 O.J. (L 119) 37, 38 (EU).

²²³ See LAW LIBR. OF CONG., CHILDREN'S ONLINE PRIVACY AND DATA PROTECTION IN SELECTED EUROPEAN COUNTRIES 2 (2021).

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.* at 1. The United Kingdom incorporated EU law into a body of domestic law called "retained EU legislation."

²²⁷ *Id.* at 2.

The UK is the only European country with a code specifically relating to the protection of children online. The title of the code is the “Age Appropriate Design: A Code of Practice for Online Services.”²²⁸ It became effective September 2021.²²⁹ The code applies to any “information society services likely to be accessed by children.”²³⁰ It applies to UK-based companies and foreign companies that process the data of children located in the UK.²³¹

Other International Approaches

According to the Child Online Safety Index (“COSI”), which is a real-time measurement tool to help nations better understand their children’s online safety status, Spain is the safest country for children online.²³² This calculation was based on six pillars: Cyber Risks, Disciplined Digital Use, Digital Competency, Guidance & Education, Social Infrastructure, and Connectivity.²³³ These pillars were further subdivided into actionable areas.²³⁴ Specifically, Spain performed very well in limiting cyber threats, supporting parental guidance, and managing screen time.²³⁵ To understand why Spain performed so well in these particular areas, it is important to review Spain’s endeavors regarding children’s online safety.

The SIC-SPAIN 2.0 Project “Safer Internet Centre Spain” is a project co-financed by the European Union (“EU”).²³⁶ The project’s three main objectives are: raising awareness on the safe use of technology by children, creating a national helpline for questions relating to children’s online safety, and forming a reporting channel for dangerous content.²³⁷ One of the beneficiaries of SIC-SPAIN is Internet Segura for Kids (“IS4K”), which is in line with the EU’s Better Internet for Kids strategy.²³⁸ Under this strategy, an internet portal provides specific and directed information relating to safer and better internet for children.²³⁹ Specifically, the information targets major “internet stakeholders” including children and young people, teachers and educators, parents and caretakers, organizations and industry, and researchers and policymakers.²⁴⁰ It appears that Spain champions online safety for children by disseminating actionable information to the public.

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Introduction to the Age Appropriate Design Code*, INFO. COMM’RS OFF., <https://ico.org.uk/for-organisations/guide-to-data-protection/ico-codes-of-practice/age-appropriate-design-code/> (last visited Apr. 5, 2022).

²³¹ *Id.*

²³² *Spain Country Report Card*, DQ INSTITUTE, <https://www.dqinstitute.org/wp-content/uploads/2020/02/25.-Spain.pdf> (last visited Feb. 6, 2022).

²³³ *Id.*

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *SIC-SPAIN*, INCIBE, <https://www.incibe.es/en/european-projects/sic-spain2> (last visited Feb. 6, 2022).

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *BIK Portal*, BETTER INTERNET FOR KIDS, <https://www.betterinternetforkids.eu/home> (last visited Feb. 6, 2022).

²⁴⁰ *Id.*

According to COSI, Australia ranked number two as the safest country for children online.²⁴¹ Australia performed particularly well in constructing a legal framework, managing digital footprints, and fostering digital empathy.²⁴² Again, to understand why Australia performed well in these areas of children's online safety, it is important to review Australia's policies that allow for a safer Internet.

Australia's most notable legislative action is the Online Safety Act 2021 supported by Australia's eSafety Commissioner.²⁴³ The Online Safety Act: "broadens the Cyberbullying Scheme for children to capture harms that occur on services other than social media . . . updates the Image-Based Abuse Scheme that allows eSafety to seek the removal of intimate images or videos shared online without the consent of the person shown . . . gives the existing Online Content Scheme new powers to regulate illegal and restricted content no matter where it's hosted . . ."²⁴⁴ Furthermore, the Act requires social media platforms, electronic messaging services, and internet service providers to develop new codes that will detect and remove illegal content like child sexual abuse.²⁴⁵ The codes are also intended to put a greater responsibility on the media industry to shield children from age-inappropriate content.²⁴⁶ For example, the Act suggests online service providers use the mandated codes to educate parents on how to supervise and control children's access to online material so that children may be shielded from age-inappropriate content.²⁴⁷ In sum, Australia appears to champion children's online safety mainly through legislative action and direction.

Future Areas of Research

As discussed above, one current area of concern is Facebook's lack of age authentication. In October of 2021, Facebook officially changed its name to Meta to showcase the company's vision of creating a metaverse, which is a virtual world of socializing that exists alongside physical reality.²⁴⁸ Two months later, Facebook opened Horizon Worlds to Facebook Oculus virtual reality ("VR") users who are eighteen years or older.²⁴⁹ Horizon Worlds boasts it is "the most collaborative platform in VR."²⁵⁰

Although Facebook does not allow minors to use Horizon Worlds, any pitfalls of Facebook's policies that attempt to restrict minors using their platform will transfer to new

²⁴¹ *Australia Country Report Card*, DQ INSTITUTE, <https://www.dqinstitute.org/wp-content/uploads/2020/02/1.-Australia.pdf> (last visited Feb. 6, 2022).

²⁴² *Id.*

²⁴³ *Learn About the Online Safety Act*, ESAFETY COMM'R, <https://www.esafety.gov.au/whats-on/online-safety-act> (last visited Feb. 6, 2022).

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ Salvador Rodriguez, *Facebook Takes a Step Toward Building the Metaverse, Opens Virtual World App to Everyone in U.S.*, CNBC (Dec. 9, 2021, 1:00 PM), <https://www.cnbc.com/2021/12/09/facebook-opens-horizon-worlds-vr-metaverse-app.html>; Nathan Dufour Oglesby, *Facebook and the True Meaning of 'Meta'*, BBC (Nov. 14th, 2021), <https://www.bbc.com/future/article/20211112-facebook-and-the-true-meaning-of-meta>.

²⁴⁹ Rodriguez, *supra* note 248.

²⁵⁰ *Horizon Worlds*, META QUEST, <https://www.oculus.com/horizon-worlds/>, (last visited Feb. 14, 2022).

systems the company releases. For example, if a minor lies about their age when creating a Facebook page, they can explore Horizon Worlds VR and, eventually, the metaverse Facebook creates.

This concern does not stop at Facebook's newest innovations. Artificial intelligence ("AI") is increasingly intertwined in consumer products. As AI-powered interactive experiences become more common, it is likely we will discover more causes for protection of minors using these products. Adaptive safeguards for minors will be needed for an ever-changing and fast-growing market for AI-powered interactive products.

An example of a current interactive product is the Amazon Alexa – a voice AI product also known as a smart speaker.²⁵¹ A 2019 survey estimated one in four Americans owned some type of smart speaker.²⁵² Amazon released a preview of its Super Bowl commercial where an Amazon Alexa reads the minds of celebrity couple Scarlett Johansson and Colin Jost.²⁵³ Though the commercial is fictional, with Alexa figuring out what wine the pair wants chilled or what mouthwash they will use in the morning,²⁵⁴ Alexa continues to transform with each passing year. This playful exaggeration of Alexa may become reality. There are parental guides that can be set, but as Alexa upgrades, so should the safeguards to protect children with access to a product like this or any similar AI-based smart product.

Technological advancements in social platforms and consumer products will only continue as the Internet grows and evolves. It will be necessary to create new safeguards and adapt existing protections for children that meet the new needs accompanying emerging technologies.

The Gator TeamChild Juvenile Law Clinic and the Center on Children and Families at the University of Florida Levin College of Law welcome opportunities to engage in interdisciplinary collaboration at the intersection of children's rights, law, and technology. To become involved or to make suggestions for further areas of study, please contact Professor Steinberg at steinberg@law.ufl.edu.

²⁵¹ See generally *What is Alexa?*, AMAZON ALEXA, <https://developer.amazon.com/en-GB/alexa> (last visited Apr. 10, 2022) (explaining Alexa's features).

²⁵² Greg Sterling, *Roughly 1 in 4 Adults Now Owns a Smart Speaker, According to New Report*, MARTeCH (Jan. 9, 2020, 2:09 PM) <https://martech.org/roughly-1-in-4-u-s-adults-now-owns-a-smart-speaker-according-to-new-report/>.

²⁵³ Kurt Schlosser, *Amazon Super Bowl Ad Stars Scarlett Johansson and Colin Jost — and Alexa as a Mind Reader*, GEEKWIRE (Feb. 7, 2022, 8:40 AM), <https://www.geekwire.com/2022/amazon-super-bowl-ad-stars-scarlett-johansson-and-colin-jost-and-alexa-as-a-mind-reader/>.

²⁵⁴ *Id.*