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# Youth Online Safety: Evaluating Regulatory Enforcement and Litigation Risks in an Uncertain Legal Landscape

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# I. Youth Online Safety

Legal developments

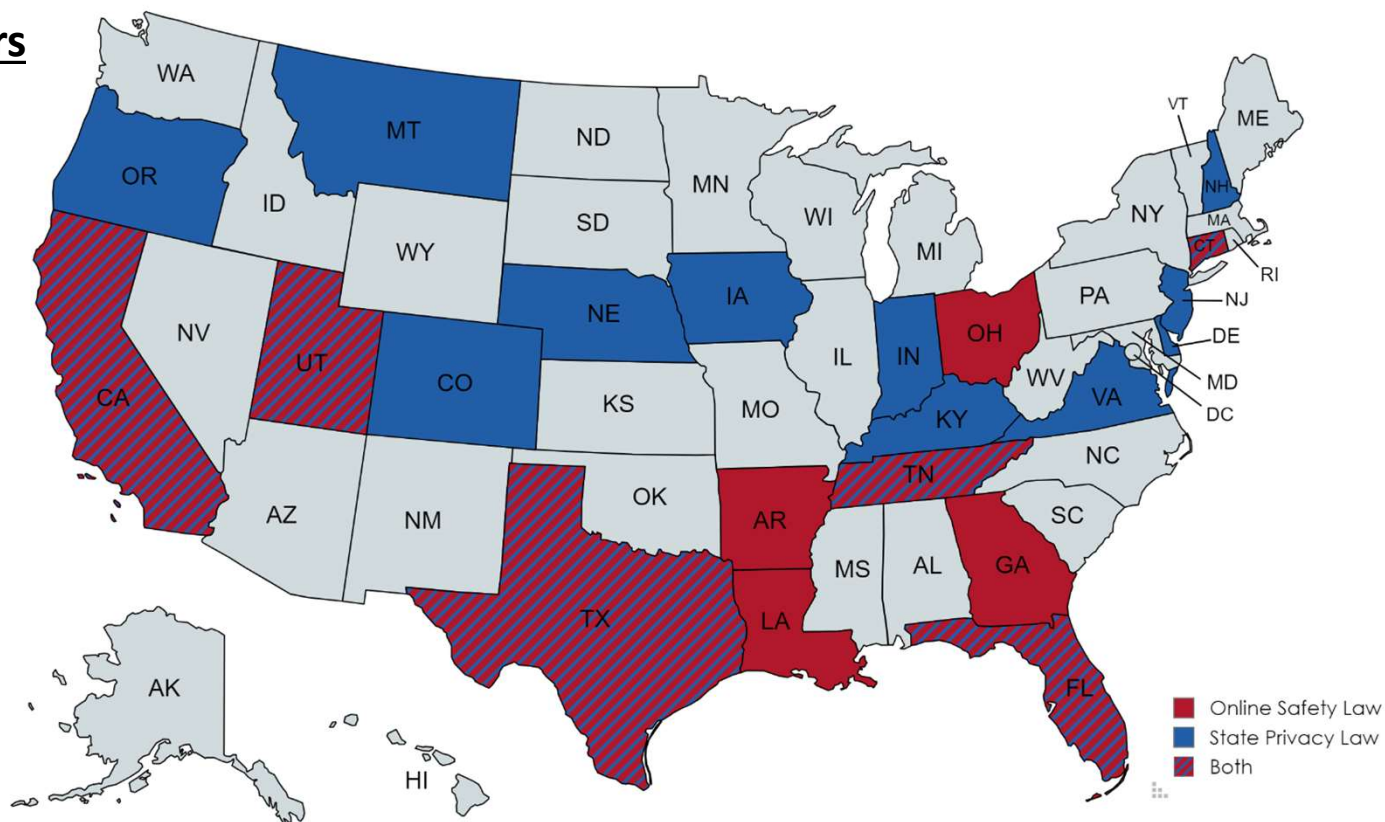
# US Law Developments

## States Rush to Protect Minors

- Online Safety Laws
- State Privacy Laws
- Harmful Materials Laws

## Feds, too

- COPPA
- Proposed: *KOSA*, *COPPA 2.0*, *Kids Off Social Media Act*, *Verifying Kids' Online Privacy Act*



# Online Safety Laws: A Moving Target



14 new Online Safety Laws passed in 10 states in 2023-2024 (four of which were enjoined and/or repealed)

State	Statute	Effective Date	Age	Scope
Arkansas – <b>ENJOINED</b>	<a href="#">Social Media Safety Act, SB396; Act 689</a>	09/01/2023	< 18	Social media platform (\$100M+ gross rev) with minor accountholders (age verified)
Ohio – <b>ENJOINED</b>	<a href="#">Parental Notification by Social Media Operators Ohio Rev. Code Ann. § 1349.09</a>	01/15/2024	< 16	Interactive social sites that <u>targets</u> or is <u>reasonably anticipated</u> to be accessed by children
California – <b>ENJOINED</b>	<a href="#">Age Appropriate Design Code, Cal. Civ. Code §§ 1798.99.28–40</a>	07/01/2024	< 18	Online services ("business" per CCPA) <u>likely to be accessed</u> by a child
Connecticut (§7)	<a href="#">An Act Concerning Online Privacy, Data and Safety Protections SB3, §7, Conn. Gen. Stat. 42-528</a>	07/01/2024	< 18	Social media platform with known minor accountholders
Florida	<a href="#">Protection of Children in Online Spaces Fla. Stat. § 501.1735</a>	07/01/2024	< 18	Social media, online game, gaming platform <u>likely to be predominantly accessed</u> by children
Louisiana	<a href="#">Secure Online Child Interaction and Age Limitation Act La. Stat. Ann. §§ 51:1751–59</a>	07/01/2024	< 16	Social media platform (5M+ accountholders) with minor accountholders (age verified)
Texas	<a href="#">Securing Children Online Through Parental Empowerment (SCOPE) Act, Tex. Bus. &amp; Com. Code Ann. §§ 509.001–152</a>	09/01/2024	< 18	Social / Interactive media service with known minors
Utah – <b>REPEALED</b>	<a href="#">Social Media Regulation Act Utah Code Ann. §§ 13-71-101-101</a>	10/01/2024	< 18	Social media (5M+ accountholders) with minor accountholders
Utah (HB 464) - <b>NEW</b>	<a href="#">Social Media Amendments, §§ 78B-3-1101-1106</a>	10/01/2024	< 18	Algorithmically curated social media service
Utah (SB 194) – <b>NEW</b>	<a href="#">Social Media Regulation Amendments §§ 13-71-101 – 104</a>	10/01/2024	< 18	Social media service with known minor accountholders (age assurance)
Connecticut (§8-13)	<a href="#">An Act Concerning Online Privacy, Data and Safety Protections SB3, §8-13, Conn. Gen. Stat. 42-529</a>	10/01/2024	< 18	Online service, product or feature, with actual knowledge, or willful disregard, of minors
Florida - <b>NEW</b>	<a href="#">An Act Relating to the Online Protections for Minors, HB3, §501.1736</a>	01/01/2025	<15	Social media platform with <u>addictive features</u> and 10% or more of the daily active users who are younger than 16 spend on average 2+ hours/day on the platform
Georgia - <b>NEW</b>	<a href="#">Protecting Children on Social Media, HB 351, GA Code § 39-6-1</a>	07/01/2025	<16	Social media platform with known minor accountholders (age assurance)

+ Tennessee HB 1891 signed on 05-02-2024

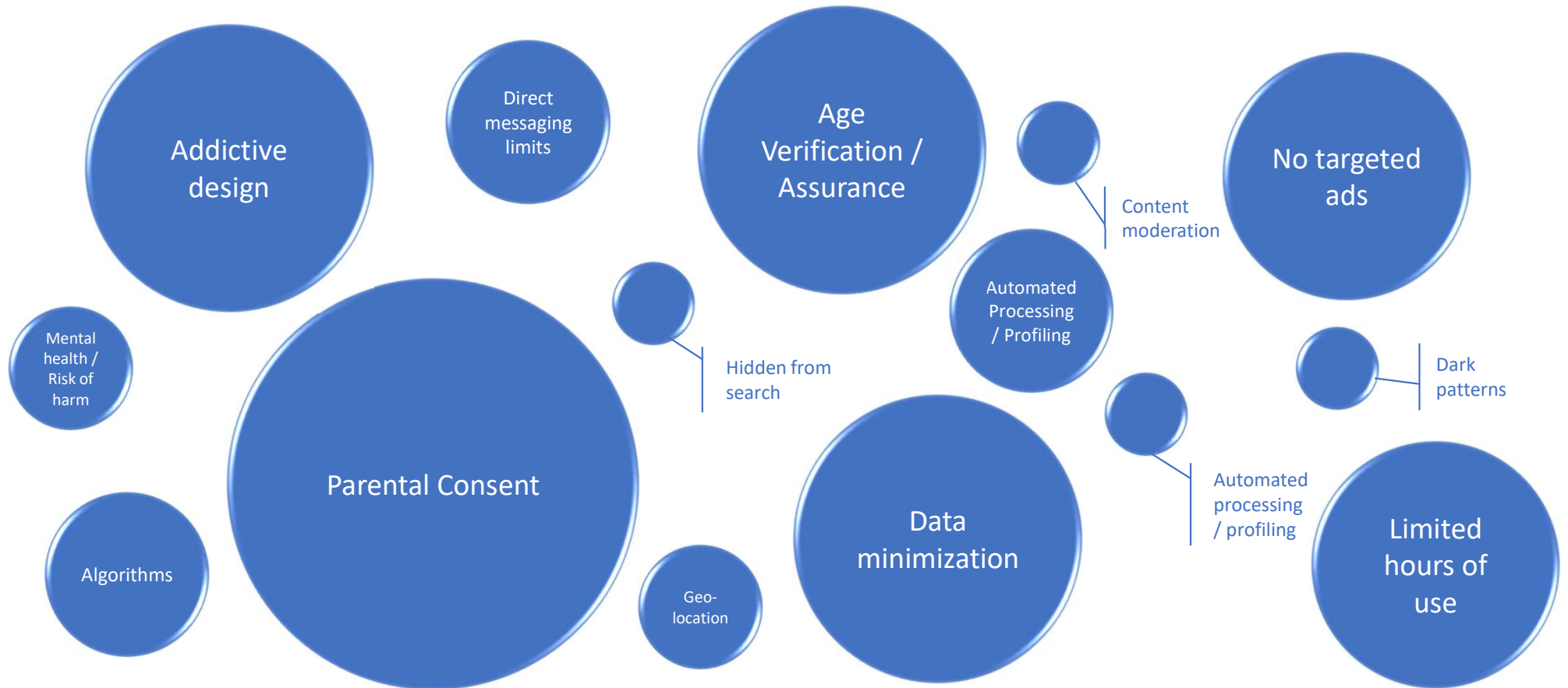
# Stay Up to Date



To track the latest updates, see: <https://www.orrick.com/en/Insights/Youth-Online-Safety-Laws-US-State-Law-Tracker>

State	Statute	Effective Date	Age	Age Verification / Assurance Mechanism	Social Media Ban	Parental Consent / Rights	Direct Messaging	Hidden from Search	Targeted Ads	Geolocation	Data Minimization	Algorithms	Automated Processing / Profiling	Limited Hours of use	Mental Health/Risk of Harm	Dark Patterns	Addiction	DPIA	Content Moderation
Arkansas	Social Media Safety Act SB396, Act 680	09/01/2023 <sup>1</sup>	<18	Age Verification		✓													
Ohio	Parental Notification by Social Media Operators Ohio Rev. Code Ann. § 1349.09	01/15/2024 <sup>1</sup>	<16	Unclear		✓													✓
California	Age Appropriate Design Code Cal. Civ. Code §§ 1798.99.28-40	07/01/2024 <sup>2</sup>	<18	Age Assurance		✓				✓	✓	✓	✓		✓	✓		✓	
Connecticut (S7)	An Act Concerning Online Privacy, Data and Safety Protections SB3, S7	07/01/2024	<18	None		✓													
Florida	Protection of Children in Online Spaces Fla. Stat. § 501.1735	07/01/2024	<18	Age Assurance		✓			✓	✓	✓		✓		✓	✓	✓		
Louisiana	Secure Online Child Interaction and Age Limitation Act La. Stat. Ann. §§ 51:1751-59	07/01/2024	<16	Age Assurance (minor) Age Verification (parent)		✓	✓		✓		✓			✓					
Texas	Securing Children Online Through Parental Empowerment (SCOPE) Act Tex. Bus. & Com. Code Ann. §§ 509.001-152	09/01/2024	<18	Self-reported (minor) Age Verification (parent)		✓			✓	✓	✓	✓		✓			✓		✓
Utah <sup>3</sup> <b>REPEALED</b>	Social Media Regulation Act Utah Code Ann. §§ 13-71-101-109	10/01/2024	<18	Age Verification		✗	✗	✗	✗		✗	✗	✗	✗			✗		
Utah (HB 464) <sup>4</sup> <b>NEW</b>	Social Media Amendments §§ 78B-3-1101-1106	10/01/2024	<18	None		✓					✓		✓	✓			✓		

# Common Themes



# State Comprehensive Privacy Laws, too



Seventeen (17) of State Comprehensive Privacy Laws cover kids/teens to some extent

State	Effective Date	Scope	
		Children < 13	Teens
California	1/1/2020	✓	13-16 (under 16)
Virginia	1/1/2023	✓	
Colorado	7/1/2023	✓	
Connecticut	7/1/2023	✓	13-16 (under 16)
Utah	12/31/2023	✓	
Florida	7/1/2024	✓	Under 18
Oregon	7/1/2024	✓	13-15 (not older than 15)
Texas	7/1/2024	✓	
Montana	10/1/2024	✓	Under 16

State	Effective Date	Scope	
		Children < 13	Teens
Iowa	1/1/2025	✓	
Nebraska	1/1/2025	✓	
New Hampshire	1/1/2025	✓	
Tennessee	1/1/2025	✓	
Delaware	1/1/2025	✓	Under 18
New Jersey	1/1/2025	✓	Under 17
Indiana	1/1/2026	✓	
Kentucky	1/1/2026	✓	

## 13 states have passed "Harmful Materials" laws that require age verification

- Scope: Commercial sites that contain a *substantial portion* (33+%) of material that is harmful to minors.
  - "**Harmful to minors**" is material that the average person would find to "appeal to prurient interest"; material that exploits or principally consists of "actual, simulated or animated" depictions of "nipple, public hair, anus, genitals, touching caressing or fondling of same, sexual intercourse, masturbation, etc. in a manner that is offensive to minors, *and* the material lacks literary, artistic, political and scientific value to minors."
- Requires: Age verification, typically using government identity documents. For example:
  - Reasonable age verification methods shall require the individual to:
    - (A) provide a digital identification;
    - (B) comply with a commercial age verification system that verifies age using:
      - government issued ID; or
      - a commercially reasonable method that relies on public or private transactional data (including records mortgage, education and employment records) to verify the age of the person
  - And/or: "verification through an independent, 3dP age verification service that compares PI entered by the individual to data from commercially-available database that is regularly used by government agencies and businesses for age verification." (*Utah*)



# For Those Keeping Count ...

Number of new laws that include compliance obligations for teen audience:

State Online Safety Laws
<i>Arkansas</i>
<i>California</i>
Connecticut (2)
Florida (2)
Georgia
Louisiana
<i>Ohio</i>
Tennessee
Texas
Utah (2)

10

State Comprehensive Privacy Laws	
California	New Hampshire
Colorado	New Jersey
Connecticut	Montana
Delaware	Oregon
Florida	Tennessee
Indiana	Texas
Iowa	Utah
Kentucky	Virginia
Nebraska	

17

State "Harmful Content" (Pornography) Laws	
Arkansas	Mississippi
Florida	Montana
Georgia	North Carolina
Indiana	Texas
Kansas	Utah
Kentucky	Virginia
Louisiana	

13

# Proposed Update to COPPA Rule



## ➤ **Notice of Proposed Rulemaking on December 20, 2023**

- Expand definition of Personal Information to include "biometric identifiers"
- Add verifiable parental consent mechanisms: (1) knowledge-based authentication and (2) facial recognition to compare selfie to identity document
- Clarify requirements for operators providing educational services with school authorization
- Prohibit *nudging* to "encourage or prompt the use of a website or online service" without consent
- Maintain a written children's personal information security program and children's personal information retention policy
- Obtain *separate* verifiable parental consent for non-necessary disclosure of child's PI to third parties

## ➤ **Comment Period Ended March 11, 2024**

- 730 Comments Received
- Comments in process of review

## II. Online Safety and Children's Privacy Enforcement Mechanism

# Online Safety: AG Enforcement



Typically, a violation of Online Safety Laws is considered a deceptive or unfair trade practice under state law, enforceable by the Attorney General

- Injunctive relief
- Civil or administrative penalties range from \$1,000, \$2,500, \$5,000, \$7,500 for each violation

## But Florida calls for exceptionally stiff penalties

- Florida (§501.1735(4)(a)) - In addition to other remedies available under consumer protection law, Florida AG may seek a civil penalty of up to \$50,000 per violation of Protection of Children in Online Spaces law. Civil penalties may be tripled for any violation involving a Florida child who the online platform has actual knowledge is under 18 years of age.
  - Statute does not specify age screen or age verification, but requires an "age estimate [that is ] proportionate to the risks and data practices of an online service, product or feature." So, in most instances, an operator could have "actual knowledge" a user is under 18.
- Florida (§501.1736(5)) - A knowing or reckless violation is an unfair and deceptive practice (UDAP) under Florida's consumer protection law; Florida AG may seek injunctive or a civil penalty of up to \$50,000 per violation under consumer protection law and reasonable attorneys' fees. When the social media platform's failure to comply is a consistent pattern of knowing or reckless conduct, punitive damages may be assessed against the social media platform.

# Private Right of Action – Online Safety



No private right of action in GA, OH, CT, FL, CA.

## Florida (§501.1736(6)(a))

- If the social media platform violates the statute (permitting account holders under 14, or account holders 14-15 without parental consent), an action can be brought on behalf of a minor. The court may award up to **\$10,000 per minor** plus costs and fees.

## Texas (§509.152) (*limited*)

- Parents or guardians of known minors can bring a cause of action seeking an injunction or declaratory judgment.

## Utah (§78B-3-1103) (HB 464)

- A Utah minor account holder or their parent may bring a case against a social media company for an **adverse mental health outcome** arising, in whole or in part, from the minor's **excessive use** of the social media company's service. Court may award **\$10,000** per each incidence of adverse mental health outcome or actual damages, whichever is greater, plus fees and court costs.
  - There is a **rebuttable presumption** that (1) the minor's adverse mental health outcome was caused by the minor's excessive use of the platform, and (2) that the excessive use was caused by the algorithmically curated social media service's algorithm and engagement-driven design.
  - There is an **affirmative defense** if the social media service implements parental consent, daily limit and time of day restrictions and disables engagement driven design elements.

# Enforcement – Harmful Materials



## AG Enforcement

- Failure to age-screen can be subject to civil penalty of \$5,000/day; \$10,000 for each knowing violation. *See, Louisiana*
- Civil penalties up to \$10K/day that the entity is in violation of age verification requirements or retains identifying information from the age verification. Up to \$250K total if minors access the site. *See, Texas.*

## Private Right of Action

- Shall be liable to an individual for damages resulting from a minor's access to the materials, including court costs and attorneys' fees. *See, e.g., Louisiana, Utah.*
- Liable for civil penalties, injunction, punitive damages, costs and fees for any minor who was allowed to access the material or an individual whose PII was retained. *See North Carolina.*

# COPPA Enforcement



## **Civil Penalties:**

- \$51,744 per violation
- For a continuing violation, each day in a violation constitutes a separate violation

## **Injunctive Relief:**

- Generally, the FTC seeks prohibitions of the same activities that the FTC alleged were violations of COPPA (e.g., failing to obtain verifiable parental consent, deleting or refraining from using improperly collected information)

## **Equitable Relief:**

- Deletion; Algorithmic Disgorgement; Notice
- Proactive compliance enhancements, e.g., retention policy, comprehensive privacy and security program

## **State AG Enforcement:**

- State AGs authorized to bring actions under COPPA but must give FTC notice and option to intervene prior to bringing an action

## III. Enforcement Themes and Risks



# COPPA Enforcement History

## 1. FTC COPPA penalties have been increasing

- Microsoft (2023) - **\$20 million**
- Amazon (2023) - **\$25 million**
- Edmodo (2023) - **\$6 million\***
- Epic Games (2022) - **\$275 million**
- OpenX (2021) - **\$7.5 million\***
- Kuuuub (2021) - **\$3 million**
- Hyperbeard (2020) - **\$4 million\***
- YouTube (2019) – **\$136 million**
- Musical.ly (2019) - **\$5.7 million**
- inMobi (2016) - **\$4 million\***

*\*Some or all of penalty suspended due to inability to pay*

## 2. State AGs have pursued COPPA cases

- New Mexico: Google (2021) - settlement \$1.6M to state and \$3.8 M to establish NM Kids Initiative.
- Washington: Super Basic and Maple Media (2020) - \$500K
- New York:
  - YouTube (2019) (dual FTC/NY case) - \$34M to NY
  - Oath (2018) - \$4.95 M
  - Viacom, Mattel, Hasbro, Jumpstart (2016) - \$850K
- Texas: Juxta Labs (2016)

## Common Enforcement Themes

- ✓ EdTech
- ✓ IoT devices
- ✓ Games and gaming platforms
- ✓ AdTech
- ✓ Collection by other operators
- ✓ Lengthy retention of PI
- ✓ "Directed to" services

# Future Enforcement Themes?



- **Protections for young teens beyond COPPA**
- **Dark Patterns**
- **"Addictive" design or practices intended to extend use of site**

# Age Verification vs. Privacy / Fairness



## Implications?

- A digital service provider may not allow a user to create an account unless the person has "registered the person's age." (TX Scope Act).
- Social media platform must implement age assurance system, which means "measures reasonably calculated to enable a social media company to identify whether a current or prospective Utah account holder is a minor with an accuracy rate of at least 95%." (UT SB 194)
- A social media company shall verify the age of an individual at the time the individual attempts to become an accountholder. (TN HB 1891)

- ✓ Biometric privacy laws
- ✓ COPPA
- ✓ Unfairness
- ✓ Disparate impact

# Speakers



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# Resources



# Resources



- Orrick Youth Online Safety Laws: U.S. State Law Tracker, last updated May 6, 2024, available at: <https://cm-public.orrick.com/Insights/Youth-Online-Safety-Laws-US-State-Law-Tracker>
- Sign up for FTC Business Alerts ([link](#))
- Notice of Proposed Rulemaking, 16 CFR Part 312: Children's Online Privacy Protection Rule, January 11, 2024, available at <https://www.federalregister.gov/documents/2024/01/11/2023-28569/childrens-online-privacy-protection-rule>
- The Federal Trade Commission 2023 Privacy and Data Security Update, December 2023, available at: [https://www.ftc.gov/system/files/ftc\\_gov/pdf/2024.03.21-PrivacyandDataSecurityUpdate-508.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/2024.03.21-PrivacyandDataSecurityUpdate-508.pdf)
- Advanced Notice of Proposed Rulemaking, Trade Regulation Rule on Commercial Surveillance and Data Security, August 22, 2022, available at <https://www.federalregister.gov/documents/2022/08/22/2022-17752/trade-regulation-rule-on-commercial-surveillance-and-data-security>