

# Guarding the Playground

## Enforcement Actions, Court Battles, and Studying AI in Children's Privacy

**FRESHFIELDS**

# Introduction

## Panelists



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## Today's Discussion

- Why is there a need to guard the playground?
- The evolution of COPPA and its new, stricter requirements.
- The federal privacy landscape, including COPPA 2.0., KOSA, and KOSMA.
- The wave of state-level legislation and the resulting patchwork of compliance obligations.
- The ongoing First Amendment court battles defining the legal boundaries of age verification and content moderation.
- The next frontier of AI chatbot regulations and disclosure requirements.

# Why Guard the Playground?

## Number of kids with devices

- **Smartphones:**  
~53–55% of US children ages 11 and under have their own smartphone.  
~95% of US teens (13–17) have access to a smartphone; ~90% own one.
- **Tablets/Laptops:**  
~70%+ of households with children report at least one tablet or laptop used by kids for schoolwork.

Sources: NCES; Common Sense Media (2023); Pew Research Center (2023).

## Age of first device

- **Average age of first smartphone: 10–11 years old** (declining over time).
- **First internet-connected device (tablet/shared phone):** often ages 6–8.

Sources: Common Sense Media (2023); Pew Research Center (2023).

## Kids on the internet/using chatbots for school

- **Internet use:**  
~97% of US teens (13–17) and ~75–80% of children under 12 use the internet regularly (daily or near-daily).
- **Chatbots/AI for school:**  
~25–30% of teens report using AI chatbots (e.g., for homework help, research, drafting) at least occasionally for school.  
Among high school students, usage is higher (~35–40% in some surveys).

Sources: Pew Research Center (2023-2024); Stanford HAI & Common Sense Media surveys (2023–2024).

## Kids with social media & hours of use

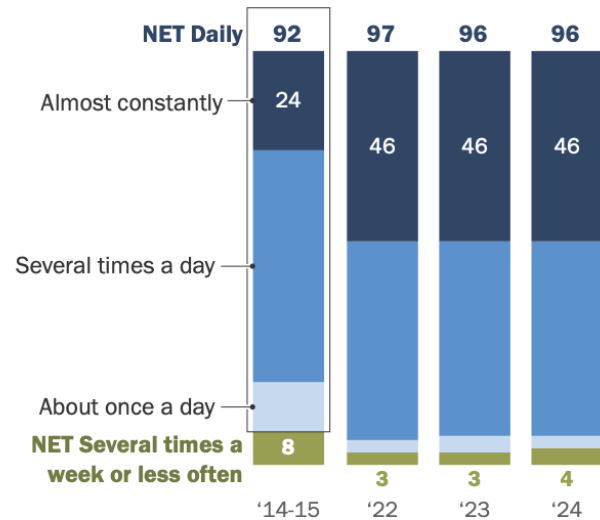
- **Social media adoption:**  
**Ages 13–17:** ~60–65% use social media platforms regularly.  
**Ages 10–12:** ~35–45% report having used social media (despite platform age rules).
- **Time spent:**  
**Tweens (8–12):** ~1–1.5 hours/day on social media (among users).  
**Teens (13–18):** ~3–4.5 hours/day on social media alone (higher when including video platforms).

Sources: Common Sense Media (2023); Pew Research Center (2023).

# Why Guard the Playground?

## Nearly half of teens say they are online 'almost constantly,' up from 24% a decade ago

% of U.S. teens ages 13 to 17 who say they use the internet ...



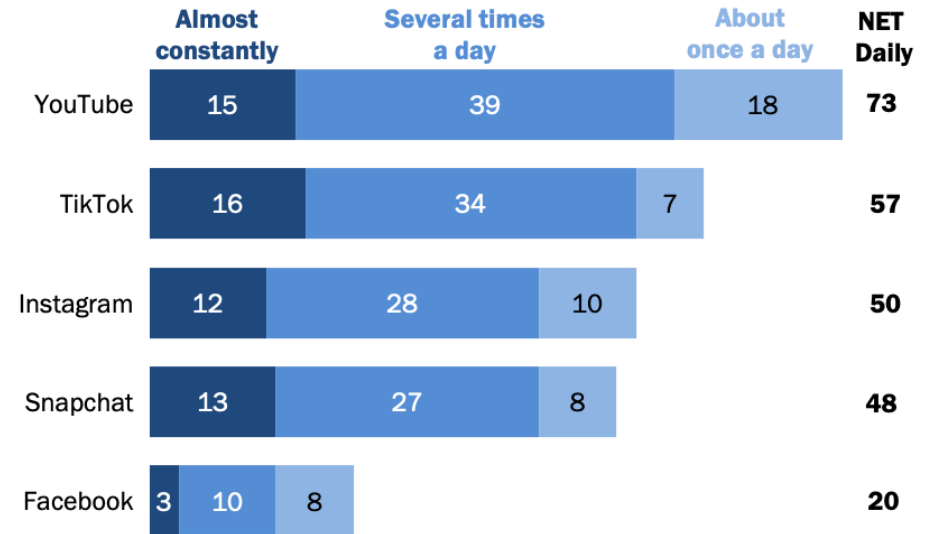
Note: Figures may not add up to NET values due to rounding. Those who did not give an answer are not shown.

Source: Survey of U.S. teens conducted Sept. 18-Oct. 10, 2024. "Teens, Social Media and Technology 2024"

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## Roughly three-quarters of teens visit YouTube daily, while around 6 in 10 say this about TikTok

% of U.S. teens ages 13 to 17 who say they visit or use the following apps or sites ...



Note: Figures may not add up to NET values due to rounding. Those who did not give an answer or gave other responses are not shown.

Source: Survey of U.S. teens conducted Sept. 18-Oct. 10, 2024. "Teens, Social Media and Technology 2024"

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# Why Legislatures are Passing Child Safety Laws?

Legislatures are passing laws to establish a legal framework that mandates protection for minors online, driven by several factors:

- **Protecting vulnerable populations**
- **Responding to evolving digital risks**
- **Reflecting parental and public expectations**
- **Reducing foreseeable online harms**
- **Embedding responsibility into platform architecture**

# Why Companies Invest in Children's Safety?

Companies invest in children's online safety for a combination of ethical, experiential, and regulatory reasons:

- **Meeting ethical responsibility**
- **Building user trust and enhancing product experiences**
- **Complying with legal and regulatory requirements**
- **Responding to market and customer expectations**

#1.

The Evolution of  
COPPA and its New,  
Stricter Requirements.

# The Children's Online Privacy Protection Act (COPPA)

## April 2026 COPPA Rule Amendments

- **Heightened Transparency Obligations:**
  - Mandatory disclosure of third-parties data recipients
  - Prominent posting in online privacy policy
- **Dual Parental Consent:**
  - Consent for data collection
  - Separate consent for third-party data sharing
- **Expanded Definition of Personal Information:**
  - Biometric identifiers (e.g., voiceprints, fingerprints, gait)
  - Government-issued identifiers (e.g., SSN, passport number)
- **Data Minimization and Retention Limits:**
  - Written information security programs
  - Data retention only as long as reasonably necessary
- **Education Technology:**
  - School authorization exception not included in final rule
  - Continued COPPA enforcement in the ed tech context

## COPPA Enforcement Policy Statement

- **The Historic Conflict:**
  - Collecting personal data from minors required prior parental consent
- **New “Safe Harbor” Logic:**
  - The Commission will not enforce COPPA against platforms collecting data for age estimation without prior parental consent
  - Applies to general and mixed audience online operators
- **The Compliance Mandate:**
  - Data only used to determine user age
  - Method or third party used for age verification is likely to provide reasonably accurate results
  - Requires deletion following age check

# Recently Proposed Children's Online Privacy and Safety Bills

## COPPA 2.0

- Passed the Senate by unanimous consent on March 5, 2026.
- Bipartisan legislation, led by Senators Ed Markey and Bill Cassidy.
- **Core Focus:** Expands COPPA from children to teens and modernizes data-privacy obligations for minors.
  - Prohibits targeted advertising to children and teenagers (up to age 16).
  - Requires teen consent for data collection (ages 13-16).
  - Provides a deletion right (“eraser button”).
  - Revises the “actual knowledge” standard.

## Kids Online Safety Act (KOSA)

- Passed Senate previously; reintroduced and under active consideration by 119th Congress.
- **Core Focus:** Imposes product-design and duty-of-care obligations on platforms to mitigate harms to minors under 17 years old.
  - Imposes a “duty of care” to mitigate specific harms to minors.
  - Requires default safety settings, limits on addictive design features, and parental controls.
  - Heavily incentivizes age-assurance mechanisms (No age verification mandate)
  - **Enforcement:** FTC and State Attorneys General (no private right of action).

## Kids Off Social Media Act (KOSMA)

- Bipartisan bill introduced by Senator Schatz and Representative Luna.
- **Core Focus:** Restricts minors’ access to social media and limits algorithmic amplification for teens.
  - Prohibits accounts for children under 13.
  - Bans personalized recommendation algorithms for users under 17.
  - Requires schools receiving federal funding to block social media access on their networks and devices.
  - **Enforcement:** FTC and State Attorneys General (no private right of action); 1-year implementation period if enacted.

# Recent FTC COPPA Enforcement Actions

## U.S. v. Disney

- **Conduct at Issue:** Failure to accurately designate child-directed content, enabling downstream collection of children’s data.
- **FTC Theory / Order:** Content providers cannot rely on platform defaults or tools to satisfy COPPA obligations.
- **COPPA Takeaway:** FTC is narrowing the “general audience” category and extending COPPA responsibility upstream to entities that enable data collection through design choices.

## FTC v. NGL Labs

- **Conduct at Issue:** Collection and indefinite retention of children’s personal information without verifiable parental consent, failure to honor deletion requests.
- **FTC Theory / Order:** Remedy imposed age-based access restrictions and mandated product-design changes.
- **COPPA Takeaway:** FTC orders may exceed statutory COPPA requirements and impose structural, forward-looking compliance obligations.

## U.S. v. Apitor

- **Conduct at Issue:** Third-party collection of children’s geolocation data through an internet-connected toy.
- **FTC Theory / Order:** COPPA liability extends to companies that permit third-party data collection through their products.
- **COPPA Takeaway:** Companies remain responsible for vendor and partner data practices involving children.

## FTC v. Cognosphere

- **Conduct at Issue:** Collection of persistent identifiers from children without verifiable parental consent.
- **FTC Theory / Order:** Persistent identifiers constitute personal information under COPPA.
- **COPPA Takeaway:** “Invisible” or passive data collection can independently trigger COPPA obligations

#2.

# State Child Online Safety Regulations and First Amendment Challenges

Plaintiffs are moving from “harmful speech” to “harmful conduct” theories of harm to get around setbacks from First Amendment scrutiny of state regulations.

# First Amendment Challenges to State Regulations

## NetChoice v. Bonta (California Age-Appropriate Design Code)

- **Bill Requirements:**
  - Age-appropriate default settings, DPIAs, and age estimation for minors.
- **NetChoice's Argument:**
  - Law compels speech, restricts lawful content, and violates the First Amdt.
- **Ninth Circuit Decision:**
  - Enjoined data use restrictions, dark pattern prohibition, and “speech code” provisions.
  - DPIA and age estimation provisions are enforceable.

## NetChoice v. Brown (Maryland Kids Code)

- **Bill Requirements:**
  - Age-appropriate design default settings, DPIAs, and youth-protective data practices.
- **NetChoice's Argument:**
  - Law unconstitutionally regulates protected speech and forces product-design changes.
- **District Court Decision:**
  - NetChoice alleged plausible First Amendment claims.
  - Mandates speech-affecting design choices based on an indeterminate “best interests” standard.
  - Law remains in effect as litigation continues.

## Free Speech Coalition v. Paxton (Texas House Bill 1181)

- **Bill Requirements:**
  - Mandatory age verification to access online pornographic content.
- **FSC's Argument:**
  - Law burdens protected speech and chills adult access in violation of the First Amendment.
- **SCOTUS Decision:**
  - Law upheld.
  - Age-verification requirement permitted to protect minors.
  - Viewed as access regulation, not speech ban.

# Online Safety Private Actions

- **Breadth of plaintiffs & harms:** Thousands of private family claims alleging depression, anxiety, eating disorders, self-harm, and suicide, alongside targeted school-district and public-entity actions.
- **MDL size & posture:** ~2,300–2,500 coordinated federal cases, with early rulings allowing core design-defect and failure-to-warn claims to proceed.
- **Bellwether function:** Early trials testing causation, damages, and allocation will shape settlement dynamics across the docket.

## Theories of Harm

**Product Liability/Design Defect** – Claims that platforms intentionally design features that are addictive and harmful to minors.

**Public Nuisance** – Claims that platforms unreasonably interfere with youth health, safety, and welfare.

**Consumer Protection/Deception** – Claims that platforms misrepresent safety risks to users, parents, and regulators.

# New State Regulatory Models

## Greater Focus on Design-Driven Harm (Not Just Data)

- Increased scrutiny of algorithmic amplification, engagement loops, infinite scroll, and notifications
- Regulators framing harms as foreseeable outcomes of design choices, not user misuse

1.

## Shift From “Best Interests” Standards to Objective Controls

- Moving away from vague “best interests of the child” mandates
- Emphasis on specific, behavior-linked requirements (e.g., disabling personalization for minors)

2.

## Use of Consumer Protection and Deceptive Practices Theories

- State AGs using existing unfairness and deceptive theories
- Allegations focusing on misrepresentations about safety and mental-health impacts

3.

## Product-Safety Framing Over Speech Regulation

- Regulators increasingly describing platforms as consumer products with safety obligations
- Design restrictions framed as risk mitigation, not content control (to withstand First Amendment scrutiny)

4.

# New State Regulatory Models

## Alabama

### Limitations on Social Media “Addictive Feeds”

- HB 171 (2026)
- Key design focus: Limits personalized feeds, notification curfew, requires transparency of algorithms used to prioritize content

## Indiana

### Protecting Kids from Addictive Social Media

- HEA 1408 (2026)
- Key design focus: Limit addictive features like auto-scroll, personalized, engagement-driven feeds, parental consent required for users under 16 years old

## North Carolina

### Social Media & AI Safety

- HB 301 (2025-2026)
- Key design focus: If platform employs “addictive features” then must ban accounts for minors under 14 years old, parental consent for users aged 14–15.

## California

### Protecting Our Kids from Social Media Addiction Act

- SB 976 (2024)
- Key design focus: Default to chronological feed, parental consent before exposing minors to personalized algorithmic feeds, notification curfews

## Connecticut

### Youth Social Media Protections

- SB 5 (2026)
- Key design focus: Parental consent before exposing minors to personalized algorithmic feeds, notification curfews, sensitive content ban

## Illinois

### Children’s Social Media Safety Act

- HB 5511 (2026)
- Key design focus: Limits personalized algorithmic feeds, notifications curfews, default safety settings

#3.

# Chatbots and Disclosures

The Next Frontier

# Chatbots and Disclosures: The Next Frontier

## State-Level Regulation

- **Rapid Movement:** States are quickly enacting regulations for companion & consumer-facing AI chatbots
- **Focus Areas:** Disclosures, warnings, safety protocols, heightened obligations for minors
- **Key States:** CA, CO, CN, ID, NY, UT, WA

I.

## FTC Scrutiny

- **Priority:** Protecting children and teens online remains a high priority for the Commission
- **Section 6(b) Study:** Issued to 7 major AI chatbot developers (e.g., OpenAI, Meta Platforms) to assess
  - Chatbot safety as companions
  - Efforts to limit negative effects on minors
  - User/parent risk communication
- **Interests:** Impact on children, mitigation actions, COPPA compliance

II.

## Enforcement & Legal Actions

- **Private Litigation:**
  - *Garcia v. Character Technologies (FL):* Product liability claims proceeding despite First Amendment/Section 230 defenses (alleged emotional/sexual abuse, suicide)
- **State AG Actions:**
  - *Kentucky AG v. Character.AI:* UDAP enforcement targeting chatbot design and effects on children (sexual content, substance abuse encouragement)
  - 44-State Coalition: Formal warning to major AI companies regarding protection of children from harmful AI chatbot practices

III.

Thank You.  
Questions?

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