

Can social media companies engage in self-regulation?¹

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Executive Summary

The public outcry over the consequences of social media on children and teens has continued to grow. Legislation will be the most likely option given the perception of the slow responses from the industry. With pressures mounting from government and civil society actors to make online experiences safer for children and teens, social media companies may find themselves with the same high stakes experienced by the movie, music, and gaming industries. These latter industries succumbed to calls to make their content safer for minors by collaborating within their respective sectors on labeling and rating systems. But unlike these companies, social media platforms vary greatly in their features and purpose, which have made it more difficult to craft a one-size-fits-all approach to content moderation. But this does not mean that it's impossible.

This paper argues that social media companies should work together, under a self-regulatory framework, to signal their bolstered interest in responding to public complaints, and take these actions in addition to regulation, which is more than likely going to happen. By surveying and comparing how the movie, music, and gaming industries established institutional labeling and ratings systems, this paper proposes that social media companies exercise the following recommendations:

¹ Thanks to BBB National Programs' Center for Industry Self-Regulation for its financial support of this paper. The views and opinions represent those of the author alone.

- Establish a principled-based framework that shares the relative and achievable value propositions of social media companies that can be followed regardless of business practice or focus.
- Convene an independent body that involves a multistakeholder process (i.e., industry, government, and civil society) to develop strategies, including labeling and/or rating systems, to keep children and teens safe online.
- Agree on standards of reasonable and acceptable use and exposure for content geared toward children and teens, which still enable access by their stages of development and curiosity.

These, and other recommendations inspired by the paper, can potentially address children's online safety from with industry-wide goals, and work to bring more transparency to impacted populations.

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I. Introduction

Social media companies have been under constant scrutiny to change how their platforms interact and influence young people, particularly those under the expressed age of consent. Since their inception, most social media companies have been subjected to both positive and negative public responses to their online platforms. Early on, many early-stage social media companies were commended for how they connected various stakeholders with likeminded interests. At times, social media companies have made space for other types of activities, including sending AMBER alerts to help find missing children.² But over time, this appeal following some of the global events surrounding data privacy breaches, or global election interference, has waned with social media companies being subjected to scathing opposition by groups with complaints about their handling of free speech and more recently children's online safety. More conservative groups also have accused certain social media platforms of censoring their ideologies over others, and in the United States, set off a firestorm of public outrage. Some parents, who use the wide range of social media platforms themselves for personal and professional uses, are angered by the perceived vulnerability of their children to the vast amount of online content available on their platforms. Such growing opposition to social media companies, which have been largely focused on content moderation, are making way for either prescriptive regulation, or outright bans on their use as the only remedies for addressing such grievances.

² Emily Vacher, "Introducing AMBER Alerts on Facebook," Meta, January 13, 2015, <https://about.fb.com/news/2015/01/introducing-amber-alerts-on-facebook/>.

The bipartisan call for legislation is steadily increasing with proposals to break up social media companies with ties to China, subject these companies to greater anti-trust enforcement, or impose stricter age-restrictions on minors. While some social media companies have acknowledged that they might be able to employ more self-regulatory models to address rising concerns, a few other companies, particularly Meta, have expressed some willingness to be regulated provided that these laws offer more certainty for their business practices and future expectations. But with the slow pace of Congress to come to any type of bipartisan agreement on legislating social media companies, the latter is highly unlikely – at least for now.

The gap in legislative attention has encouraged federal regulators, like the Federal Trade Commission (FTC), to step in and pursue allegations of deceptive advertising and practices targeted to minors. Individual states have also jumped into the debate absent a federal solution, asserting their own legislative guidance, and in more stringent circumstances, overall bans on social media. More recently, the White House expressed the urgent need for labeling social media content as harmful to deter the online exposure of children and teens. The executive office’s 2023 labeling proposal from the U.S. Surgeon General was complemented by a “Social Media and Youth Mental Health” advisory guide, which offered a plethora of evidence surrounding the negative consequences of social media on youth mental health.³

Acts to curb social media’s perceived abuse of children’s privacy have been added to growing concerns about these platforms. In July 2024, the Senate passed both the Kids Online Safety Act (KOSA) and the Children and Teens’ Online Privacy Protection Act (COPPA 2.0)⁴ in

³ “Social Media and Youth Mental Health: The U.S. Surgeon General’s Advisory,” U.S. Department of Health and Human Services, 2023, <https://www.hhs.gov/sites/default/files/sg-youth-mental-health-social-media-advisory.pdf>.

⁴ “Senate Overwhelmingly Passes Children’s Online Privacy Legislation,” U.S. Senate Committee on Commerce, Science, & Transportation, July 30, 2024, <https://www.commerce.senate.gov/2024/7/senate-overwhelmingly-passes-children-s-online-privacy-legislation>.

an overwhelmingly bipartisan 91-3 vote.⁵ KOSA broadly aims to protect minors from platform-mediated harms, including sexual exploitation and cyberbullying by establishing a duty of care for platform companies. It also has opt-out options to limit the use of recommender systems and targeted advertising, restrict the collection of their personal data, and disable addictive features. Meanwhile, COPPA 2.0 requires users under 17 years old to consent before platforms collect their personal information and allows a minor or their guardian to delete their personal information from databases.

Children privacy legislation, and the other prior concerns have fermented the complaints of policymakers, and parents who have been persistent in showing up at congressional hearings to lobby their elected federal, state, and local leaders. But this paper acknowledges that not all social media companies and their platforms operate with the same goals and business practices – despite them being increasingly characterized as such by external stakeholders who sweepingly box them together when it comes to norms, standards, and practices. Notwithstanding, opportunities can exist for these companies to engage in some industry-wide thinking around effective and collaborative self-regulatory practices when it comes to children and teens – at least, before they are largely prescribed to them by legislators who can also oblige regulatory enforcement.

Historically, other industries, including the movie, music, and gaming industries, have appeared to set their business and behavioral differences aside to explore more self-regulatory models and practices and to create and increase the trust of online users. What this paper argues is that the time may now be ripe for social media companies to do the same, and perhaps the

⁵ Rebecca Klar, “Senate passes long-awaited bills to boost online safety, privacy for kids,” The Hill, July 30, 2024, <https://thehill.com/policy/technology/4792890-senate-passes-bills-kids-online-safety/>.

areas of most consensus might be around what they could gather from external stakeholders around the most appropriate content for children and teens. Such actions could potentially signal their responses to the growing opposition, while still offering online contents that meets the developmental interests of young people online – all in the interest of their safety, too.

The paper relies on secondary analyses of publicly available information to explore what could be different for social media companies if they worked more closely to establish bolder baseline criteria and best practices to effectuate increased safety and greater efficiencies in managing children's content. It is also the interest of this analysis to demonstrate the appeal of creating and obliging more harmonized goals on aspects of their individual missions and functions to reduce the heat that they are currently experiencing from the public, legislators, and regulators in the U.S. and abroad. What a self-regulation model could possibly look like for social media companies is explored here, especially one that takes some type of principled approach with common industry standards and practices.

By analyzing the ratings and labeling systems developed and encouraged by the movie, music, and gaming industries, the paper demonstrates the timeliness of more collaboration among social media companies to keep more vulnerable populations safe on their platforms, especially minors. While Congress and regulators can quickly impose their desired guardrails, the internal guidance from the industry can be useful in determining how these platforms can balance the needs of individual consumers with public interest concerns. More specifically, this paper suggests that the concerns of legislative and civil society bodies might be, at least, partially addressed if self-regulation mitigates concerns of age-appropriate content, provides uniform enforcement across the industry, and offers standards that align these companies around the technical design and applications of content oriented toward children and teens.

The paper concludes with a call to action for social media companies to collaborate on a framework to maintain children's safety and privacy, while allowing for some flexibility in how they meet the address the content requests of children versus teens to give some agency to young users over what they want to consume, provided it is safe. In some instances, the justification of inserting parental consent could be viable, despite this not being a primary focus. Raising the bar on protecting minors from harmful and inappropriate content should be shared goals among social media companies and their platforms. That is why comparisons with other industries faced with constant public scrutiny are both intriguing and perhaps applicable.

Notwithstanding some of the accurate portrayals of the illicit behaviors of certain social media companies, the paper also does acknowledge that some form of government regulation will be needed and concludes with proposals that call for an independent body or entity to design and implement a principle-based framework, standards, and other guidance that lean into a more collaborative approach toward social media ratings and labeling systems. Such recommendations could explore paths to least resistance for these companies.

II. Not all social media companies are created equal

Compared to other industries like the movie, music, and gaming industries, the prescription of wholesale regulatory guidance on social media companies and their platforms will be difficult. That is because they are not all the same in terms of products, services, and in some cases, business models. Despite the public's perceptions, wide and small gradations of differences are apparent when it comes to the primary focus, areas of engagement, and targeted users of the online platforms. For example, some social media companies are more focused on professional connections like LinkedIn, while others may have social networking tethered to gaming applications, including apps like Discord. With such variations in the product and

customer, it may be more difficult to lean into a one-size-fits-all policy when it comes to regulating social media. This is not letting these companies off the hook but acknowledging up front the difficulties of my arguments. Currently, policy proposals and potential regulations that treat them the same have been highly ineffective. For example, some states have taken on this approach and developed a range of fragmented regulations hoping to reel in the harms to minors when it comes to outward facing products, services, and benefits.⁶ In this same vein, social media companies will be subjected to more disparately unfolding federal and state legislation, which could be both hard to follow, oblige, and legally enforce. It will be the differences among social media types that will make uniform self-regulatory actions difficult, as well as comprehensive mandatory regulation.

Other industries have taken on self-regulation in response to rising resistance from individuals and civil society groups and attempted to do so before mandated regulation and enforcement by government, and other regulators. For example, movie, music, and gaming industries have established some type of industry-led entity to craft their current rating and labeling processes. As more social media companies are subjected to calls to mitigate the challenges posed directly or indirectly by their products and services, they also might take cues from these other industries, especially in how they managed to govern and navigate through the firestorm of complaints.

Self-regulated content rating systems have both standardized acceptance of certain content streams, while offering assurances for more vulnerable groups of the potential consequence of the content, such as rating movies by maturity or games by their violent nature.

⁶ Kyooeun Jang, Lulia Pan, and Nicol Turner Lee, “The fragmentation of online child safety regulations,” Brookings, August 14, 2023 <https://www.brookings.edu/articles/patchwork-protection-of-minors/>.

How might the social media industry exhibit more self-awareness with some level of agreement on standards and other self-regulatory codes of conduct? In what way could these efforts help to shape the more responsible conduct and potential regulation? These are questions that I hope to explore in this paper.

Rather than social media companies essentially waiting for Congress to act, they could collaborate on establishing their own principle-based framework, and a set of standards that guide their conduct in partnership with government and civil society. But considering the differences among social media types, these self-regulatory best practices would have to be widely defined to avoid the differentiation that exists within the sector. If not, there could be one collaborating body that sets the standards for professional social media companies, another for platforms intensely focused on video, another for short-text outlets, and so on. While similar critiques were argued during the iterative processes undertaken by the other industries, they were ultimately able to find some agreement around the outward reputation that they wanted to present in terms of being more responsible, and ethical in their content prescriptions.

The next section of the paper explores the current debates over broad regulation of online content and provides proposals for ways in which both could ideally operate.

III. The push toward regulation

Much of the debates around the conduct of social media companies center on a broader concept of human decency, which has been at the core of the backlash of other industries faced with similar complaints around their engagement with minors. Beginning with its first failed attempt at self-regulation in 1926, the National Association of Broadcasters (NAB) quickly

realized that federal legislation was the only effective solution to the chaos of self-regulation.⁷ In response to this failure, Congress passed the Radio Act of 1927, giving the government authority to regulate airwaves through the Federal Radio Commission (FRC). While this sequence of events set the tone for the future of self-regulation early in NAB's youth, the true failure stemmed from the tension between the enforcement of self-regulation and corporate interests. This tension between industry and individual interests led the FRC to evaluate the character of broadcasters when distributing its limited number of licenses. The NAB actively responded to prevent the industry disruption of the FRC by establishing its own self-regulatory code proposed self-regulation in 1929. The *NAB Code of Ethics and Standards of Commercial Practice* prohibited "offensive material, fraudulent, deceptive, or obscene matter, and false, deceptive or grossly exaggerated advertising claims."² The NAB's code also paved the way for self-regulation for other industries, but by the 1980s, constitutional and antitrust challenges, combined with an anti-regulatory political environment, disrupted the code's reach.²

Section 230 of the Communications Decency Act of 1996 has largely protected social media companies from government regulations, granting them immunity from liability for user-generated content.⁸ But they are still subjected to other regulations not connected with their user content, such as privacy laws and competition laws. The legislation continues to experience increased skepticism. In 2018, documents obtained by The New York Times, The Observer of London, and The Guardian proved that Cambridge Analytica, a data firm owned by right-wing billionaire Robert Mercer with former Trump aide Steve Bannon on its board, misused Facebook

⁷ Mark M. MacCarthy "Broadcast self-regulation: The NAB codes, family viewing hour, and television violence," Cardozo Arts & Entertainment, March 2013 <https://www.cardozoaelj.com/wp-content/uploads/2013/03/MacCarthy-Broadcast-Self-Regulation.pdf>.

⁸ Michael A Cusumano, Annabelle Gawer, and David B Yoffie, "Social Media Companies Should Self-Regulate. Now." Harvard Business Review, January 19, 2021, <https://hbr.org/2021/01/social-media-companies-should-self-regulate-now>.

data from tens of millions of users to create voter profiles.⁹ Additionally, the resulting investigation of Cambridge Analytica revealed ties to Russian oil company Lukoil, which wanted to know how data was being used to target American voters. Not only had Cambridge Analytica managed to steal the data of tens of millions of Facebook users, but the data firm had also endangered democracy by dealing with foreign adversaries. Consequently, in 2019, the FTC fined Facebook \$5 billion¹⁰ and sued Cambridge Analytica, reaching a settlement later that year.¹¹

The Cambridge Analytica and Facebook (now Meta) scandal rippled waves of confusion and fear from social media users. In response to upticks in election skepticism and conspiracies of fake news, along with the consequences of the January 6th attempted insurrection, social media companies, including Twitter, Facebook, Apple, Google, and Amazon, have attempted to preserve the integrity of their platforms.⁴ This has involved adding built-in mechanisms to flag misinformation and explicit content to users and even temporarily banning Trump from platforms. Companies like X (formerly Twitter) and Meta have added user-populated fact-checking features under many posts to thwart the spread of misinformation and explicit content. However, the caveat is that these new features have drawn controversy for allegedly undermining free speech and disenfranchising content creators and advertisers.¹² Others argue

⁹ Nicholas Confessore “Cambridge Analytica and Facebook: The Scandal and the Fallout so Far,” The New York Times, April 4, 2018, <https://www.nytimes.com/2018/04/04/us/politics/cambridge-analytica-scandal-fallout.html>.

¹⁰ Federal Trade Commission, “FTC Imposes \$5 Billion Penalty and Sweeping New Privacy Restrictions on Facebook,” July 24, 2019, <https://www.ftc.gov/news-events/news/press-releases/2019/07/ftc-imposes-5-billion-penalty-sweeping-new-privacy-restrictions-facebook>.

¹¹ Federal Trade Commission, “FTC Grants Final Approval to Settlement with Former Cambridge Analytica CEO, App Developer over Allegations they Deceived Consumers over Collection of Facebook Data,” December 18, 2019, <https://www.ftc.gov/news-events/news/press-releases/2019/12/ftc-grants-final-approval-settlement-former-cambridge-analytica-ceo-app-developer-over-allegations>.

¹² Miles Klee, “Twitter’s Scummy Advertisers Are Getting Wrecked by Community Notes,” Rolling Stone, January 12, 2024, <https://www.rollingstone.com/culture/culture-news/twitters-remaining-advertisers-roasted-community-notes-1234946004/>.

that these fact-checking efforts do little to reduce the spread of misinformation and explicit content, instead they provide a lackluster attempt to quell public relations issues.

Many who still oppose the updated content moderation practices of social media companies, including those in Congress, remain skeptical of the possibility of these and other self-regulatory changes instituted by individual social media companies, largely due to the ongoing exposures and impacts children and teens. In January 2024, in response to outcries from parents, researchers, and advocacy groups surrounding the harmful effects of social media on the mental health and safety of youth, the CEOs of Meta, X, and TikTok were compelled to testify in a U.S. Senate hearing and confront the families of victims.¹³ Pointing to intentional design choices and failures to respond to clear issues of trust and safety over the pursuit of user engagement and profit, the Senate asked Meta CEO Mark Zuckerberg if any victims or families have been compensated. Zuckerberg replied with, “I don’t think so,” apologizing directly to the families of victims sat right behind him at the request of the Senate, saying, “I’m sorry for everything you have all been through. No one should go through the things that your families have suffered.”⁷ Despite assurances from Zuckerberg that Meta is investing in “industrywide efforts” to protect youth, the combined voices of parents, researchers, and advocates continue to amplify what they consider to be the perceived irresponsiveness of social media companies to quell the increasing effects of their products on youth mental health.

The evolving debates over children’s privacy

¹³ Barbara Ortutay and Haleluya Hadero, “Meta, TikTok and Other Social Media CEOs Testify in Heated Senate Hearing on Child Exploitation,” AP News, February 1, 2024, <https://apnews.com/article/meta-tiktok-snap-discord-zuckerberg-testify-senate-00754a6bea92aad62585ed55f219932>.

Amid such skepticism of industry efforts, federal and state legislatures have continued to envelop these concerns under the umbrella of data privacy. More recent, congressional members on both sides of the aisle have introduced bills that include:

- the Protecting Kids on Social Media Act (PKSMA)¹⁴ to require age verification for social media and ban the use of recommender systems on minors,
- the Children and Teens' Online Privacy Protection Act (COPPA 2.0)¹⁵ to amend a 1998 law to extend online protections for minors to mobile apps and increase restrictions on the use of their personal data, and
- the Kids Online Safety Act (KOSA)¹⁶ to comprehensively mitigate online harms for minors like sexual exploitation and cyberbullying, curtail recommender systems and advertising, and restrict the collection of their personal data.

Although the Senate passed a package of the last two bills in late July of 2024, the legislation faces an uncertain future in the House, with one leadership aide saying that the combined bill “cannot be brought in its current form.”¹⁷ Some social media platforms support these bills, including X,¹⁸ Microsoft,¹⁹ and Snap.²⁰ Even companies that are not normally considered under the social media umbrella because of their networking of interests around objects and things have opined on the recent actions by Congress. Pinterest CEO Bill Ready said that “[r]egulation to

¹⁴ Sen. Brian Schatz, “S.1291 - Protecting Kids on Social Media Act,” April 26, 2023, <https://www.congress.gov/bill/118th-congress/senate-bill/1291/text>.

¹⁵ Sen. Edward Markey, “S.1418 - Children and Teens' Online Privacy Protection Act,” May 3, 2023, <https://www.congress.gov/bill/118th-congress/senate-bill/1418/text>.

¹⁶ Sen. Richard Blumenthal, “S.1409 - Kids Online Safety Act,” May 2, 2023, <https://www.congress.gov/bill/118th-congress/senate-bill/1409>.

¹⁷ Emily Brooks, “Kids online safety bill that had broad Senate support hits roadblock in House,” The Hill, August 14, 2024, <https://thehill.com/homenews/house/4826544-kids-online-safety-bill-kosa-house-roadblock/>

¹⁸ Taylor Hatmaker, “Microsoft, X throw their weight behind KOSA, the controversial kids online safety bill,” TechCrunch, January 31, 2024, <https://techcrunch.com/2024/01/31/x-microsoft-kosa-kids-online-safety-bill/>.

¹⁹ Ibid.

²⁰ Rebeca Klar, “Snap endorses Kids Online Safety Act ahead of tech CEO hearing,” The Hill, January 25, 2024, <https://thehill.com/policy/technology/4429897-snap-endorses-kids-online-safety-bill-ahead-of-tech-ceo-hearing/>.

protect young people online is long overdue, and we at Pinterest support the Kids Online Safety Act... we applaud the Senate's action.”²¹ However, NetChoice, a tech industry trade association whose membership also includes many companies that applaud bills like KOSA (i.e., Meta, TikTok, and notably X, Snap, and Pinterest)²² have come out strongly *against* the bill’s passage, with Vice President & General Counsel Carl Szabo saying that “Parents need solutions that are legal and meaningful, but KOSA is neither. KOSA’s data privacy, cybersecurity, censorship, and constitutional risks remain unaddressed.”²³ While the paper later explores the role of NetChoice in existing and future litigation, some civil liberties groups, including Fight for the Future²⁴ and the ACLU, have also come out against the bill, with ACLU Senior Policy Counsel Jenna Leventoff saying that “KOSA compounds nationwide attacks on young peoples’ right to learn and access information, on and offline.”²⁵

Other draft legislation may also indirectly address the conduct of social media companies, including bills, such as:

- the Algorithmic Accountability Act²⁶ to require companies that use automated decision-making in critical quality-of-life sectors to perform impact assessments of their algorithms and report results to the FTC,

²¹ “What They Are Saying: Championing Senate Passage of the Kids Online Safety Act,” Office of Senator Richard Blumenthal, July 30, 2024, <https://www.blumenthal.senate.gov/newsroom/press/release/what-they-are-saying-championing-senate-passage-of-the-kids-online-safety-act>.

²² “About Us,” NetChoice, <https://netchoice.org/about/#association-members>.

²³ Robert Winterton, “NetChoice Laments Senate Passage of Harmful and Unconstitutional KOSA,” NetChoice, July 30, 2024, <https://netchoice.org/netchoice-laments-senate-passage-of-harmful-and-unconstitutional-kosa/>.

²⁴ “Reject online censorship. Tell lawmakers to oppose KOSA!” <https://www.stopkosa.com/>.

²⁵ Jenna Leventoff, “ACLU Slams Senate Passage of Kids Online Safety Act, Urges House to Protect Free Speech,” July 30, 2024, <https://www.aclu.org/press-releases/aclu-slams-senate-passage-of-kids-online-safety-act-urges-house-to-protect-free-speech>.

²⁶ Rep. Yvette Clarke, “H.R.5628 - Algorithmic Accountability Act of 2023,” September 21, 2023, <https://www.congress.gov/bill/118th-congress/house-bill/5628/text>.

- the DELETE Act²⁷ which would create a centralized system to allow users to delete their personal information from all data brokers, and
- the Banning Surveillance Advertising Act²⁸ which would forbid targeted advertising based on personal information.

On and off, national data privacy legislation is once again on the table with the American Privacy Rights Act (APRA).²⁹ Among other provisions, APRA would give Americans sweeping control of their personal data, allow them to opt out of targeted advertising and automated decision-making, establish annual algorithm reviews, and allow individuals to sue for violations. Finally, in a rare bout of action on social media regulation, in April 2024, Congress passed a bill that would ban TikTok unless parent company ByteDance sells it within the next nine months.³⁰

States are also proposing their own legislation

In the backdrop of these congressional proposals are the initiatives of individual states, who have also been introducing their own bills to increase safety and accountability for social media platforms, in particular. Provisions in these bills include requiring age-limits for social media use and restrictions on collecting minors' personal data (Oklahoma HB 3914³¹) protecting minors by restricting the use of their personal data and criminalizing intentional or negligent

²⁷ Rep. Lori Trahan, "H.R.4311 - DELETE Act," June 22, 2023, <https://www.congress.gov/bill/118th-congress/house-bill/4311/text>.

²⁸ Rep. Lori Trahan, "H.R.4568 - TLDR Act," July 11, 2023, <https://www.congress.gov/bill/118th-congress/house-bill/4568>.

²⁹ Rep. Cathy McMorris Rodgers, "H.R.8818 - American Privacy Rights Act of 2024," June 25, 2024, <https://www.congress.gov/bill/118th-congress/house-bill/8818/text>.

³⁰ Rob Wile and Scott Wong, "Congress approved a TikTok ban. Why it could still be years before it takes effect," NBC, April 23, 2024, <https://www.nbcnews.com/business/tiktok-ban-bill-why-congress-when-takes-effect-rcna148981>.

³¹ Rep. Chad Caldwell and Sen. Ally Seifried, "HB 3914," Oklahoma State Legislature, March 27, 2024, <http://www.oklegislature.gov/BillInfo.aspx?Bill=hb3914&Session=2400>.

exposure to harmful content that is detrimental to their well-being (Pennsylvania HB2017³²), and reconfiguring platforms to be less manipulative of users' attention (Minnesota HF4400³³).

Some states have gone further than Congress and passed some of these into law. Utah passed a law requiring age verification and parental consent/supervision for minors (S.B. 194³⁴) and a Florida law prohibits minors under 14 from holding social media accounts with increased content restrictions for 14- and 15-year-olds (HB 3³⁵). California has been particularly active, passing laws holding platforms liable for knowingly facilitating child sexual exploitation (AB-1394³⁶), requiring disclosure to the government of how the company deals with distribution of controlled substances on their platform (AB-1027³⁷), allowing users to order such content removed from the platform (SB-60³⁸), and improving transparency of payment for campaign endorsements on platforms (SB-678³⁹).

The flurry of state bills appears to be gaining traction in more conservative places, where social media content is being outright banned for use. But more progressive cities, like New

³² Rep. Brian Munroe et al., "An Act amending Title 50 (Mental Health) of the Pennsylvania Consolidated Statutes, providing for protection of minors on social media; and imposing penalties," March 19, 2024, https://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?year=2023&sind=0&body=H&type=B&bn=2017.

³³ Rep. Zack Stephenson and Rep. Kristin Bahner, "Prohibiting Social Media Manipulation Act," February 28, 2024, <https://www.revisor.mn.gov/bills/bill.php?b=House&f=HF4400&ssn=0&y=2023>.

³⁴ Sen. Michael K. McKell and Rep. Jordan D. Teuscher, "S.B. 194 Social Media Regulation Amendments," February 5, 2024, <https://le.utah.gov/~2024/bills/static/SB0194.html>.

³⁵ Rep. Chase Tramont et al., "Online Protections for Minors," January 5, 2024, <https://www.flsenate.gov/Session/Bill/2024/3/?Tab=BillText>.

³⁶ Assemb. Buffy Wicks et al., "An act to amend Section 3345.1 of, and to add Title 22 (commencing with Section 3273.65 to Part 4 of Division 3 of, the Civil Code, relating to social media platforms," February 17, 2023, https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=202320240AB1394.

³⁷ Assemb. Cottie Petrie-Norris, "An act to amend Sections 22677 and 22945 of, and to add and repeal Sections 22945.7 and 22945.9 of, the Business and Professions Code, relating to social media platforms," February 15, 2023, https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=202320240AB1027.

³⁸ Sen. Tom Umberg, "An act to add Section 22945.5 to the Business and Professions Code, relating to social media platforms," December 21, 2022, https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=202320240SB60.

³⁹ Sen. Tom Umberg, "An act to add Section 64513 to the Government Code, relating to the Political Reform Act of 1974," February 16, 2023, https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=202320240SB678

York, are similarly advancing their own proposals to reel in what they perceive as the effects of social content on minors.

The outright political and community advocacy efforts are not scenarios that have played out among solely tech companies. In fact, history has demonstrated that any new form of media and technology face opposition, and resistance at some point in their introduction to evolution. That is why I am undergoing a comparative analysis of industries that have been similarly opposed like film, music, and gaming.

IV. Public influence and self-regulation in other industries

When parents and advocates have historically demanded the protection of youth from the harmful effects of explicit content and misinformation in media, certain industries have responded by instituting their own parent-centered, self-regulated content rating systems. Retaining free speech and protecting youth, these content rating systems have helped the movie, music, and gaming industries attempt to thwart the criticism of Congress, parents, researchers, and advocates. The next part of this paper delves into the histories behind the rating systems of these other industries to glean what led up to their collaboration, and how government and communities responded.

Movie industry

In 1968, in response to backlash regarding free speech, the Motion Picture Association of America (MPAA) replaced the moral censorship “Hays Code” guidelines – which included prohibitions on depicting childbirth as painful, ridicule of clergy, and the consumption of alcohol when not central to the plot⁴⁰ – with a new parent-centered rating system. This new system,

⁴⁰ Motion Picture Association of America, “G is for Golden: The MPAA Film Ratings at 50,” November 2018, <https://www.motionpictures.org/wp-content/uploads/2018/11/G-is-for-Golden.pdf>, p. 9.

administered by the Classification & Rating Administration (CARA) through a board of an independent group of parents, was formed independent of the government.⁴¹ MPAA president Jack Valenti met with diverse stakeholders all across the industry in order to create widespread acceptance of the new system within only two years. In 2018, then-chairwoman of CARA Joan Graves said that “the fact that he was able to convince all those different parties – the makers of films, the exhibitors of films, and the censors of films, and the church groups to take a chance on this – seems even more remarkable today than it was then.”⁴² Upon establishing this rating system, Valenti pushed newspapers across the country to regularly inform readers about the ratings and their meanings.

Unlike the Hays Code, which set rules for filmmakers and only allowed for the distribution of “moral” movies, this new system did not regulate movie distribution, instead preserving free speech by informing parents through a self-regulated, age-based, standardized content rating system. However, despite widespread industry consensus around the new rating system and growing cascades of court rulings overturning such censorship, some state and local censorship boards held on for decades, with the final holdouts – the Maryland State Board of Censors and the Dallas Motion Picture Classification Board – being disbanded in 1981 and 1993 respectively.⁴³

Inevitably, controversies sprang up as films stretched the limits of CARA’s new rating system, and these controversies required the system to change. For example, in response to the PG film *Indiana Jones and the Temple of Doom* featuring graphic human sacrifice, the PG-13

⁴¹ “History of Ratings,” Filmratings.com, Accessed April 9, 2024, <https://www.filmratings.com/History>.

⁴² Motion Picture Association of America, “G is for Golden: The MPAA Film Ratings at 50,” November 2018, <https://www.motionpictures.org/wp-content/uploads/2018/11/G-is-for-Golden.pdf>, p. 10.

⁴³ Ibid, p. 11.

designation was created.⁴⁴ Over time, movies rated from PG to R gained “descriptors” to provide parents with more information on the content and appropriateness of a film for their children.⁴⁵

In an important shock to the self-regulatory regime, media reports blaming the Columbine shooting on violent films prompted calls for a government-mandated rating system for the entire entertainment industry. While a government system was never implemented, President Clinton announced that movie theaters would begin requiring ID from young people attempting to see R-rated movies to verify their age.⁴⁶

Through various other reforms, CARA’s scheme eventually became the G, PG, PG-13, R, and NC-17 rating system that moviegoers are familiar with today. Although today’s system has its own issues⁴⁷, it has certainly allowed for some continuity and consensus from the industry on content appropriateness.

Music industry

Until the 1980s, the music industry had neither self-administered nor government-enforced regulation around content labeling. However, this began to change when Prince released *Purple Rain* in 1984. In response to its surprising and “vulgar” lyrics, the National Parent Teacher Association (National PTA) mounted a campaign to give parents more control over the music their children listened to.⁴⁸ They proposed a rating system like that of CARA, with ratings like “V” denoting violence, “X” for sexual themes, “D/A” denoting drugs and alcohol, and “O” for “occult.” The Parents Music Resource Center (PMRC) formed from

⁴⁴ Ibid, p. 12.

⁴⁵ Ibid, p. 13.

⁴⁶ Ibid, p. 13.

⁴⁷ Timothy Noah, “The 7 Percent Solution,” Slate, February 24, 2011, <https://slate.com/business/2011/02/mpaa-ratings-and-independents-bias-proved.html>.

⁴⁸ Martin Chilton, “The Filthy Fifteen: Censorship, Gore And The Parental Advisory Sticker,” uDiscoverMusic, September 19, 2023, <https://www.udiscovermusic.com/stories/filthy-fifteen-pmrc-censorship/>.

members of the National PTA to build broader support among parents. Suddenly, influential people across the country, including Susan Baker, wife of the Treasury Secretary, were finding letters in their mailboxes warning of songs that would later be called the “Filthy Fifteen,” which included songs like Twisted Sister’s “We’re Not Gonna Take It” and Black Sabbath’s “Trashed.”⁴⁹ Baker assembled a group of influential women – later dubbed the “Washington Wives” – that lobbied on behalf of the PMRC. They testified in high-profile Senate hearings featuring Frank Zappa and John Denver.

Although record labels initially resisted age-appropriate labeling, following the hearings in 1985, the Recording Industry of America (RIAA) partnered with the National PTA and the PMRC to address these concerns from these groups surrounding explicit content in music, creating the Parental Advisory Label (PAL).⁵⁰ Although the PAL did not have the CARA-like, letter-based rating system – only a sticker that stated “Parental Advisory - Explicit Lyrics” – the label soon featured on albums nationwide. Organizations participating in this voluntary program agreed to disclose explicit lyrics surrounding violence, sex, or substance abuse under a PAL to inform parents’ listening choices for their children. Music stores initially denied minors from buying labeled records or even refused to sell them at all, but the label’s influence waned over time.⁵¹

⁴⁹ Ashawnta Jackson, “Parental Advisory: The Story of a Warning Label,” JSTOR Daily, September 19, 2020, <https://daily.jstor.org/parental-advisory-the-story-of-a-warning-label/>.

⁵⁰ “Parental Advisory Label,” RIAA, April 5, 2023, <https://www.riaa.com/resources-learning/parental-advisory-label/>.

⁵¹ Ashawnta Jackson, “Parental Advisory: The Story of a Warning Label,” JSTOR Daily, September 19, 2020, <https://daily.jstor.org/parental-advisory-the-story-of-a-warning-label/>.

Gaming industry

Since the 1970s, Congress has been raising concerns surrounding the impact of explicit content in video games, particularly violence, on youth.⁵² Outrage boiled over in 1993, when Congress threatened regulatory action in response to a particularly controversial *Mortal Kombat* video game. In response to these threats, the Entertainment Software Rating Board (ESRB), formerly called the Interactive Digital Software Association (IDSA), created the ESRB rating system in 1994, establishing age-based rating categories and content descriptors to inform parents of explicit content in entertainment and gaming software.⁵³ In 1997, after creating the Advertising Code of Conduct in 1995, the ESRB created a new, online-specific rating system and the Online Rating Notice to warn consumers of user-generated content. Later, in 2000, the ESRB created the Advertising Review Council to ensure compliance with industry marketing and advertising guidelines and the ESRB enforcement system to impose sanctions on companies out of compliance. Soon after, in 2001, the FTC created and sanctioned the ESRB Privacy Online certification service, giving it “Safe Harbor” status under the Children’s Online Privacy Protection Act. In 2003, the ESRB online-specific rating system was discontinued, merging the ESRB rating system into one entity. In 2009, ESRB Privacy Online created the E.U. Privacy Seal Certification program, and the FTC separately reported to Congress that the ESRB had “the strongest self-regulatory code” of any entertainment industry with an 80% store policy compliance rate, later increasing to 87% in 2013.⁵⁴

In 2011, the ESRB also created an automated rating assignment process for downloadable games, the U.S. Supreme Court confirmed that video games are protected by the

⁵² Tiffany Hsu, “When *Mortal Kombat* Came under Congressional Scrutiny,” *The New York Times*, March 8, 2018, <https://www.nytimes.com/2018/03/08/business/video-games-violence.html>.

⁵³ “Our History,” ESRB Ratings, May 26, 2023, <https://www.esrb.org/history/>.

⁵⁴ *Ibid.*

First Amendment and may not be restricted by law, recognizing the efficacy of the ESRB rating system, and the ESRB was commissioned by the Cellular Telecommunications Industry Association (CTIA) to create a rating system for mobile apps.⁵⁵ In 2012, the ESRB created a digital rating service that provided no-cost ratings for digital games. In 2013, the International Age Rating Coalition (IARC) was formed, now consisting of rating authorities across the world. Later, in 2018 and 2020, the ESRB began assigning Interactive Elements to inform consumers of the in-game purchases, location sharing, user interaction, and internet access capabilities of games. Finally, in 2022, the ESRB created the Family Gaming Guide to help parents manage their children's video game experiences.⁵⁶

Ratings versus awareness among the three industries

Commonly, the movie, gaming, and music industries avoided legislative regulatory action, along with its potentially devastating impacts on free speech, by leaving the responsibility of consent to parents through content information. While these age-based, self-regulatory content-rating systems operated almost entirely independent of government, they have been highly effective. The MPAA and the ESRB both instituted tiered rating systems that allowed for content to be created and protected under the First Amendment, leaving the choice to parents. The RIAA took a simpler approach, informing parents of the presence of a broad range of explicit content in music recordings, while also maintaining the First Amendment. In fact, the FTC commended the ESRB's enforcement of its rating system, despite the user interaction guidance simply flagging the possibility of exposure to uncensored user-generated content.

⁵⁵ Ibid.

⁵⁶ Ibid.

Can a similar self-regulated content rating system be applied to social media, which almost entirely consists of user-generated content? Additionally, social media platforms require users to be 13 years old or older, but it is difficult to clarify the compliance and impact of this age barrier, which could be the subject of a much longer paper.

One key difference between the MPAA, ESRB, and RIAA rating systems is how much they restrict minors' ability to access media deemed inappropriate for their age group. The MPAA system involves the strictest enforcement of the three, requiring that children under 17 be accompanied by a parent or adult guardian to R-rated movies—of course, this restriction only applies in practice to movie theaters, not streaming. The ESRB also includes a restriction that video games are not sold to children outside of their approved age range, although this too has become particularly difficult to enforce as brick-and-mortar video game stores have largely given way to online marketplaces. The RIAA system, which involves a “Parental Advisory” label affixed to the album art of recordings with “explicit lyrics,” is effectively purely informational, particularly as the marketplace for downloading or streaming music has moved almost entirely online, just like the markets for movies and video games. While the MPAA, ESRB, and RIAA systems exemplify the spectrum of transparency, each system has become defanged by the digital age, suggesting that a potential social media rating system must take a different approach or risk being immediately out of touch.⁵⁷ However, they do provide some explanatory guidance for social media companies seeking to engage in more collaborative and uniform self-regulation standards and best practices.

Other considerations

⁵⁷ Ashwanta Jackson, “Film and TV Ratings in the Streaming Age,” JSTOR Daily, May 8, 2022, <https://daily.jstor.org/film-and-tv-ratings-in-the-streaming-age/>.

Social media companies must seriously consider implementing self-regulated content-rating systems that preserve free speech on their platforms, while simultaneously protecting children, as the movie, music, and gaming industries have done. Time also has passed since the early adoption of the other rating and labeling systems, and multiple laws are being considered for enforcement, including anti-trust. For social media companies to be effective in designing and employing some type of self-regulatory model, they will need either verification from the FTC that proposed collaborations would likely not violate antitrust, or, if necessary, some type of exemption from the antitrust laws. However, such a discussion is an entirely different conversation from this paper.

Other potential actions that could be taken by social media companies could include those found in the Safe Online Standards for Kids' Mental Health (S.O.S.) initiative, a multiyear project started in 2023 to develop a rating system for social media, search engines, and gaming platforms.⁵⁸ The initiative—developed by The Mental Health Coalition, founded by fashion designer and mental health advocate Kenneth Cole—generated headlines with its announcement, which claimed that S.O.S. would begin piloting standards in 2024 and aim for implementation in 2025, but has published no press releases in the eight months since, so the outcome of its pilot program remains to be seen. If the initiative publishes the results of its effort to test safety standards for 13- to 34-year-olds, however, it could be a step forward toward developing an ESRB-like rating system for social media platforms.

⁵⁸ Rebecca Ruiz, "New S.O.S. initiative online rating system targets teen safety," Mashable, September 14, 2023, <https://mashable.com/article/online-safety-for-kids-standards>; The Mental Health Coalition, "SOS," <https://www.thementalhealthcoalition.org/sos/> (Accessed May 2, 2024).

V. Why self-regulation should be welcomed at this time

State lawsuits and other complaints

Social media companies are currently embroiled in a series of state lawsuits blaming them for the deteriorating mental health of youth on their platforms. On February 14, 2024, NYC Mayor Adams announced that the city is suing TikTok, Instagram, Facebook, Snapchat, and YouTube for the mental health effects of their platforms on youth.⁵⁹ California proposed a bill in January 2024, that would prohibit social media companies from sending “addictive” content to minors without parental consent and from notifications to minors from midnight to 6 am and 8 am to 3 pm on school days without parental consent.⁶⁰ The bill would also set a one-hour default time limit daily that could only be adjusted by parents. The bill would also set minors’ accounts to private and give the state AG authority to set regulations and enforce compliance.⁶¹ A previous attempt by the California legislature to protect children online, the California Age-Appropriate Design Code Act, was unanimously passed in September 2022 but enjoined by a federal judge in September 2023 who found that the law likely violated the First Amendment through its restrictions on social media companies’ speech.⁶² The law would have required social media companies to estimate users’ ages and provide strict privacy settings specifically for minors or for all users.⁶³

⁵⁹ “Mayor Adams Announces Lawsuit against Social Media Companies Fueling Nationwide Youth Mental Health,” NYC, February 14, 2024, <https://www.nyc.gov/office-of-the-mayor/news/125-24/mayor-adams-lawsuit-against-social-media-companies-fueling-nationwide-youth-mental-health#0>.

⁶⁰ “California Bill Would Change the Way Minors Consume Social Media,” Senator Nancy Skinner, January 31, 2024. <https://sd09.senate.ca.gov/news/20240131-california-bill-would-change-way-minors-consume-social-media#:~:text=California%20bill%20would%20change%20the%20way%20minors%20consume%20social%20media,January%2031%2C%202024&text=A%20new%20California%20bill%20would,of%20a%20parent%20or%20guardian.>

⁶¹ Lauren Feiner, “Meta sued by 42 attorneys general alleging Facebook, Instagram features are addictive and target kids,” CNBC, October 24, 2023 <https://www.cnbc.com/2023/10/24/bipartisan-group-of-ags-sue-meta-for-addictive-features.html>

⁶² Jonathan Stempel, “Judge blocks California law meant to protect children’s online safety,” Reuters, September 18, 2023 <https://www.reuters.com/legal/judge-blocks-california-law-meant-protect-childrens-online-safety-2023-09-18/>

⁶³ Ibid.

Other states with similar intent have been more granular in their efforts. Florida passed a bill on February 22, 2024, banning social media for youth under 16, even if they have parental consent.⁶⁴ At first, Governor DeSantis vetoed the bill due to concerns regarding parental consent, as Florida lawmakers ignored his requests to add this. This original bill looked at fining social media companies \$50,000 per violation and \$10,000 if they do not delete accounts at parents' requests. A more revised version of the bill with the age of 14 as a cutoff was recently signed by DeSantis, where 14- or 15-year-olds can still create accounts with parental approval.⁶⁵ Recent Supreme Court decisions in *NetChoice v. Paxton* and *Moody v. NetChoice*, which involved challenges to Texas and Florida bills prohibiting social media companies from "blocking, removing, or demonetizing content based on the users' views," vacated the original Circuit Court rulings, sending the cases were sent back down to their respective courts to be reconsidered in light of the Supreme Court's guidance.⁶⁶

The Biden administration also requested that the Supreme Court temporarily block an order by a federal judge limiting communications with the White House, government agencies, and social media companies regarding content moderation, with the federal judge ruling that the federal government "engaged in a massive effort to suppress disfavored conservative speech."⁶⁷ The Court concluded in June 2024 that the White House can indeed urge social media platforms

⁶⁴Molly Bohannon "What to Know about Florida's Social Media Ban for Kids under 16-Which Desantis May Veto," Forbes, February 23, 2024 <https://www.forbes.com/sites/mollybohannon/2024/02/23/what-to-know-about-floridas-social-media-ban-for-kids-under-16-which-desantis-may-veto/?sh=6a2767527566>.

⁶⁵ Natasha Singer, "DeSantis Signs Social Media Bill Barring Accounts for Children Under 14," The New York Times, March 25, 2024 <https://www.nytimes.com/2024/03/25/business/florida-social-media-ban-desantis.html#:~:text=of%20Kids%20Images-.DeSantis%20Signs%20Social%20Media%20Bill%20Barring%20Accounts%20for%20Children%20Under.and%2015%2Dyear%2Dolds>

⁶⁶ Julien Berman, "The Supreme Court Rules on Social Media First Amendment Cases," Lawfare, July 1, 2024, <https://www.lawfaremedia.org/article/the-supreme-court-rules-on-social-media-first-amendment-cases>.

⁶⁷ Amy Howe, "Justices allow federal government continued communication over social media content moderation," SCOTUSblog, October 20, 2023, <https://www.scotusblog.com/2023/10/justices-allow-federal-government-continued-communication-over-social-media-content-moderation/>.

to remove disinformation.⁶⁸ Utah was the first to sign a law requiring parental consent for minors to create social media accounts,⁶⁹ with both Arkansas and Ohio following suit. However, these last two were both blocked by federal judges due to appeals by NetChoice.⁷⁰ Both judges argued that this “age-gating” is ineffective due to its lack of affirmative parental consent and that the content of platforms is the true concern. Bills in Arkansas and Ohio have experienced legal holdups. NetChoice praised the Arkansas court’s decision, arguing that the law was unconstitutional and censored online free speech.⁷¹ However, NetChoice members have recently faced increased scrutiny for failing to address the effects of social media on teen mental health and the dangers of human trafficking, adding tension to the debate among age-gating, parental consent, and content moderation. In June 2023, Meta announced that it was adding new parental controls to mitigate these effects, but critics argue these do little to effectively address the teen mental health epidemic caused by social media.⁷²

The role of NetChoice

It is important to consider the role of NetChoice in any decision of social media companies to cooperate around principles and practices. Despite the several state laws that have

⁶⁸ John Fritz and Brian Fung, “Supreme Court allows White House to press social media companies to remove disinformation,” CNN, <https://www.cnn.com/2024/06/26/politics/social-media-disinformation-supreme-court-ruling/index.html>.

⁶⁹ “Utah’s new social media law means children will need approval from parents,” NPR, March 24, 2023, <https://www.npr.org/2023/03/24/1165764450/utahs-new-social-media-law-means-children-will-need-approval-from-parents>.

⁷⁰ Andrew Demillo, “Judge Blocks Arkansas Law Requiring Parental OK for Minors to Create Social Media Accounts,” AP News, September 1, 2023 <https://apnews.com/article/arkansas-social-media-parents-consent-kids-64db48ec94517911a4d2498f60841500>; Julie Carr Smyth, “A Judge Has Temporarily Halted Enforcement of an Ohio Law Limiting Kids’ Use of Social Media,” AP News, January 9, 2024 <https://apnews.com/article/ohio-social-media-apps-children-parental-consent-9f8c25602d0c9c8e1df06d83ace6c503>; Andrew Demillo, “Tech Group Sues Arkansas over Law Requiring Parental OK for Minors Creating Social Media Accounts,” AP News, June 29, 2023 <https://apnews.com/article/trade-group-suing-arkansas-social-media-4f74c116ceaf50c1c052d629dc4bd5f>.

⁷¹ Krista Chavez, “District Court Halts Unconstitutional Arkansas Law in NetChoice v. Griffin,” NetChoice, August 31, 2023, <https://netchoice.org/district-court-halts-unconstitutional-arkansas-law-in-netchoice-v-griffin/>.

⁷² Barbara Ortutay, “Instagram and Facebook Are Adding More Parental Controls. Critics Say They Aren’t Enough,” AP News, June 27, 2023 <https://apnews.com/article/instagram-facebook-messenger-teens-parents-social-media-9ebdc7ff4b112161e9757e89bfe0648c>.

emerged to address these issues, including age-gating, parental consent, and usage limits, NetChoice has largely been successful in stopping these laws as soon as they are signed. Launched in 2001, NetChoice’s mission is to “make the Internet safe for free enterprise and free expression,” with core values of choice, limited government, and competition. The trade association has over thirty members, including some of tech’s biggest players.⁷³ However, it appears that social media companies are using NetChoice to preserve engagement and profits through the First Amendment and its free speech provisions. While social media companies have claimed to be taking internal content moderation action, critics have argued that these efforts do little to address the dire teen mental health issues that have been under fire, particularly in 2024.⁷⁴ For example, the California bill is the most comprehensive, addressing addictive content and privacy through time limits and parental consent, but this bill will likely be challenged using the First Amendment, like other bills. While NetChoice successfully argued against age-gating and parental consent in its First Amendment-backed challenges to state laws, the proposed alternative of content moderation has also gained little leeway, with the remanded Texas and Florida challenges in the Supreme Court fighting against content moderation due to allegations of political bias. Similar views have also challenged the role of the government in coordinating with social media companies regarding content moderation.

While social media companies have precedents from other industries, calls for action from Congress, bills from states, and lawsuits from local governments and advocacy groups all appear to be challenging any regulation with the First Amendment. Is it the place of the Supreme

⁷³ “About Us,” NetChoice, <https://netchoice.org/about/#our-mission>.

⁷⁴ Kalhan Rosenblatt, Daysia Tolentino, Jason Abbruzzese, Saba Hamedy, Ben Goggin, Kate Snow, Jonathan Vanian, and Lora Kolodny, “Senate hearing highlights: Lawmakers grill CEOs from TikTok, X and Meta about online child safety,” January 31, 2024, <https://www.nbcnews.com/tech/live-blog/senate-hearing-online-child-safety-big-tech-live-updates-rcna136235>.

Court to decide on content moderation when legislation is passed? Is the power in the people through the legislature or in the judiciary? On the flip side, efforts by social media companies to moderate and personalize content have been met with fire from states claiming political motivations against conservative views, so is self-regulated moderation legally possible? The issues of misinformation, disinformation, explicit content, and free speech will all be impacted by any legislative action, regardless of the aim of the legislation. Currently and into the unknown future, these blanket bans will continue to be challenged in court. Social media companies are doing something never seen at this scale before challenging Congress. Despite the CEOs of member companies Meta and Snap apologizing to the families of victims, NetChoice continues to push against legislative action, raising the question of whether social media can truly be regulated by external entities. While NetChoice members have individually implemented internal safeguards, these are not universal and are viewed by many critics as negligible.

Federal government backlash

Social media platform TikTok has become one of the most sensationalized flashpoints in this clash between Congress and tech companies. In April 2024, President Biden signed into law a bill that would ban TikTok in the United States unless it is sold by its Chinese owner, ByteDance.⁷⁵ The practical result of this law remains to be seen, especially in light of the First Amendment lawsuit that TikTok brought against the U.S. government in May 2024.⁷⁶ An appeals court is expected to hear oral argument for the case in September 2024, with the goal of reaching a ruling by December 6th to enable the Supreme Court to review the decision before the

⁷⁵ Sapna Maheshwari and David McCabe, “Congress Passed a Bill That Could Ban TikTok. Now Comes the Hard Part,” The New York Times, April 23, 2024, <https://www.nytimes.com/2024/04/23/technology/bytedance-tiktok-ban-bill.html>.

⁷⁶ Sapna Maheshwari and David McCabe, “TikTok Sues U.S. Government Over Law Forcing Sale or Ban,” The New York Times, May 7, 2024, <https://www.nytimes.com/2024/05/07/business/tiktok-ban-appeal.html>.

January 19th divestment deadline.⁷⁷ However, the lawsuit may prove more complicated, with TikTok requesting that the court reject the Department of Justice’s attempt to file part of its case in secret.⁷⁸ Meanwhile, the leaders of the House Select Committee on the Chinese Communist Party have requested an FTC investigation into whether TikTok’s lobbying effort to oppose the bill’s passage violated COPPA or Section 5 of the FTC Act through what the Committee alleges were “intrusive and deceptive pop-up messages” that were pushed to “a reportedly large number of users, including children,” asking them to call members of Congress on TikTok’s behalf.⁷⁹ The FTC itself proposed changes to the rules underlying COPPA in December 2023 that would require targeting advertising for children under 13 to be disabled by default and prohibit services from using “personal data to bombard young children with push notifications,” according to the New York Times.⁸⁰

Unfortunately, the state and federal actions, along with the intensive lobbying efforts, make it more difficult to standardize approaches by social media companies to the backlash. But perhaps, some level of consensus through a more deliberate and concerted effort among some, if not most, of the companies may send a signal of their willingness to respond. But the intense scrutiny waged on some social media companies over others – like in the case of Tik Tok – may

⁷⁷ David Shepardson, “US court to hear challenges to potential TikTok ban in September,” Reuters, May 28, 2024, <https://www.reuters.com/legal/us-court-hear-challenges-potential-tiktok-ban-september-2024-05-28/>.

⁷⁸ David Shepardson, “TikTok says court should reject DOJ secret filings in divestiture suit,” Reuters, August 5, 2024, <https://www.reuters.com/legal/tiktok-says-court-should-reject-us-justice-secret-filings-divestiture-suit-2024-08-05/>.

⁷⁹ John Moolenaar and Raja Krishnamoorthi, “Letter to FTC re TikTok,” May 2, 2024, https://www.documentcloud.org/documents/24630724-letter-to-ftc-re-tiktok_522024; Kyle Stewart, “House China panel asks FTC to probe whether TikTok violated child privacy law,” NBC News, May 2, 2024 <https://www.nbcnews.com/politics/congress/house-china-panel-asks-ftc-probe-whether-tiktok-violated-child-privacy-rcna150203>.

⁸⁰ Natasha Singer, “U.S. Regulators Propose New Online Privacy Safeguards for Children,” The New York Times, December 20, 2023, <https://www.nytimes.com/2023/12/20/technology/ftc-regulation-children-online-privacy.html>

present more difficult obstacles to consensus. That is because no company wants to be the target of blanket lawsuits, regulation, and possibly legislative recourse.

VI. Self-regulatory content labeling and an independent body for social media companies

While the film, music, and gaming industries have centralized bodies for self-regulation to protect consumers (particularly minors) from harmful content, the problem is that there is no analogous body to protect consumers in the social media industry. Indeed, the near-total immunity afforded to American platforms by judicial interpretation of Section 230, paired with ad revenue-based business models that boost outrage-inducing content to maximize engagement⁸¹, create perverse incentives for content moderation on platforms.⁸² However, Section 230 would not block the federal KOSA bill, which was mentioned earlier and created to update children’s data privacy laws. In the face of these disparate, ambiguously enforced policies and the lack of a self-regulatory body for certifying adherence to industry-wide standards, other organizations have stepped up to encourage self-regulation. These organizations advance harm mitigation both overall and in specific areas like privacy and advertising.

The International Association of Privacy Professionals (IAPP) is the world’s largest global information privacy community, providing resources and certifications for professionals looking to advance data privacy rights within technology organizations. To draw attention to data privacy and promote responsible self-regulation, they also provide annual awards to recognize exceptional individuals and organizations.⁸³ The Advertising Association (AA) promotes

⁸¹ Steven Lee Myers, “How Social Media Amplifies Misinformation More Than Information,” The New York Times, October 13, 2022, <https://www.nytimes.com/2022/10/13/technology/misinformation-integrity-institute-report.html>.

⁸² Mary Graw Leary, “Prepared Written Testimony,” Where We Are Now: Section 230 of the Communications Decency Act of 1996, House Committee on Energy and Commerce, April 11, 2024 https://d1dth6e84htgma.cloudfront.net/04_11_24_Graw_Leary_Testimony_d29497ee89.pdf.

⁸³ “About the IAPP,” International Association of Privacy Professionals, <https://iapp.org/about/>.

responsible advertising both in the UK and internationally by linking advertisers and governments, including through their Online Regulation program.⁸⁴ The Electronic Frontier Foundation (EFF) takes a broader view, advocating for privacy, free speech, and innovation online, even litigating against platforms and governments alike to protect users.⁸⁵ The Digital Trust and Safety Partnership (DTSP) is one of the closest organizations to being a self-regulatory body like the MPAA, convening companies from Google to Meta to Reddit in order to disseminate best practices and promote a better online environment.⁸⁶

Going forward, social media companies might come to some agreement on establishing some type of harmonized body or uphold one of the prior organizations as critical to their missions. For example, an area that could be a natural lead for a self-regulatory body could be focused on the process of labeling content as opposed to rating it when it comes to online content directed at children and teens.

Such labeling processes are not new to some social media companies. Some platforms already have labeling mechanisms flagging potentially false information. A prominent example is X's crowdsourced fact-checking feature called Community Notes, in which users can add additional context to claims they think are false or misleading. Such fact-checks appear prominently under the post. TikTok recently rolled out labeling for AI-generated content, while YouTube labels videos published by state-controlled media.⁸⁷ Meta, the parent company of Facebook and Instagram, came under fire in 2020 for its reluctance to combat election

⁸⁴ "Online Regulation," Advertising Association, <https://adassoc.org.uk/our-work-category/online-regulation/>.

⁸⁵ "Legal Cases," Electronic Frontier Foundation, <https://www.eff.org/pages/legal-cases>.

⁸⁶ "Digital Trust and Safety Partnership," Digital Trust and Safety Partnership, <https://dtspartnership.org/>.

⁸⁷ Jack Nassetta and Kimberly Gross, "State media warning labels can counteract the effects of foreign misinformation," Harvard Kennedy School Misinformation Review, October 30, 2020, <https://misinforeview.hks.harvard.edu/article/state-media-warning-labels-can-counteract-the-effects-of-foreign-misinformation/>.

misinformation on Facebook.⁸⁸ The platform now labels state-controlled media⁸⁹ and Meta recently announced that it will implement a labeling system for tackling AI-generated content on its platforms. Beginning in 2024, the company will start applying “Made with AI” labels to synthetic videos, images, and audio, with more conspicuous labels appearing on content generated or modified by AI that could deceive users on matters of great public importance.⁹⁰ If robustly enforced, this policy could help stem the tide of disinformation expected⁹¹ to plague platforms in this crucial global election year. Although Meta’s control of two of the world’s largest platforms⁹² will make its labeling efforts extremely impactful, fully protecting users from synthetic deceptive content more broadly will require an industry-wide approach. In these examples, social media companies could form a technical advisory, which could independently compile and interrogate their processes currently underway to address labeling systems. Given the more recent calls to action by the Executive Office, these companies could focus an independent body around the process of labeling.

The White House’s call for labeling

In June 2024, Surgeon General Dr. Vivek Murthy called for a mandatory surgeon general’s warning label for social media platforms – similar to those on alcohol and tobacco products – saying that “social media is associated with significant mental health harms for

⁸⁸ Vera Bergengruen and Bill Perrigo, “Facebook Acted Too Late to Tackle Misinformation on 2020 Election, Report Finds,” TIME, March 23, 2021, <https://time.com/5949210/facebook-misinformation-2020-election-report/>

⁸⁹ Nick Clegg, “How Meta Is Planning for Elections in 2024,” Meta, November 28, 2023, <https://about.fb.com/news/2023/11/how-meta-is-planning-for-elections-in-2024/>

⁹⁰ Reuters, “Facebook and Instagram to label digitally altered content ‘made with AI,’” The Guardian, April 5, 2024, <https://www.theguardian.com/technology/2024/apr/05/facebook-instagram-ai-label-digitally-altered-media>.

⁹¹ Brandy Zadrozny, “Disinformation poses an unprecedented threat in 2024 – and the U.S. is less ready than ever,” NBC, January 18, 2024, <https://www.nbcnews.com/tech/misinformation/disinformation-unprecedented-threat-2024-election-rcna134290>.

⁹² “Most popular social networks worldwide as of April 2024, ranked by number of monthly active users,” Statista, April 29, 2024, <https://www.statista.com/statistics/272014/global-social-networks-ranked-by-number-of-users/>.

adolescents.”⁹³ While he has not explicitly stated how the label would appear or under what conditions a platform would be required to display it, such an approach could have a positive large impact; for example, one study found that 76% of Latino parents said that a label would make them limit or monitor their children’s social media use.⁹⁴ Dr. Murthy’s proposal received bipartisan support from senators Richard Blumenthal (D-CT) and Marsha Blackburn (R-TN), the primary authors of KOSA. This is important, since, although Murthy is the nation’s foremost doctor, only Congress can implement a surgeon general’s warning label.

Although the label could be helpful, the Surgeon General emphasized that it would only be a partial solution, and that creating a truly healthy social media experience for minors would require further society-wide action from legislators, schools, parents, and public health officials. While the Surgeon General’s proposal waits for congressional action, a self-imposed, privacy-respecting approach to delivering age-appropriate content through labeling and filtering could create a healthier online experience for minors. Just like the marketplaces for movies, music, and games contain content of varying age-appropriateness, so do the informational marketplaces of social media platforms. Labeling and filtering content individually could help users, especially children and adolescents, better understand and respond to the effects of specific elements of their social media experience.

As Congress moves to impose more regulation on these companies around their conduct with teens and younger minors, social media companies should consider the helpfulness of the proposed labeling process. It could be beneficial, especially if it also identified thresholds for

⁹³ Vivek H. Murthy, “Surgeon General: Why I’m Calling for a Warning Label on Social Media Platforms,” *The New York Times*, June 17, 2024, <https://www.nytimes.com/2024/06/17/opinion/social-media-health-warning.html>.

⁹⁴ Gabriel R. Sanchez, “Latino parents support policies addressing social media’s impact on children’s mental health,” *Brookings*, February 8, 2024, <https://www.brookings.edu/articles/latino-parents-support-policies-addressing-social-medias-impact-on-childrens-mental-health/>.

more developmentally appropriate content on online platforms. The American Psychological Association (APA) delivered research findings around the science of social media platforms' effects on children's behaviors. In their report, the APA suggests that AI can be used to develop more appropriate *recommendation* systems that are staged to meet young people at their developmental stage, and that there should be a desensitization to the need for approval metrics on these sites to quell more harmful behaviors and outcomes for young people.⁹⁵ The report also presents that ads for young people be similarly scanned to ensure their relevance, and safety to online minors.⁹⁶ While online content labeling may not be wholly effective in controlling the velocity and depth of misinformation delivered to young people, the act of provisioning age-appropriate, less harmful content could trigger a response from young users, and their parents and shift the norms when it comes to social media consumption.

There are several potential benefits to voluntarily implementing such labeling ahead of a congressional mandate. First, it could increase public trust in the tools that pervade social life. Second, it could allow social media companies to iteratively discover, research, and receive feedback on the technical best practices for content labeling, which could then inform government legislation. Finally, it could create a smoother regulatory transition for both users and companies once laws are passed. Ultimately, moving before the government allows tech companies to do what they do best: agile and iterative development of new technologies.

Before Congress passes prescriptive legislation, social media companies could act to form a multistakeholder, self-regulatory body just focused on content labeling and explore similarly aligned values and practices that can be widely accepted. Taking on such an initiative

⁹⁵ American Psychological Association, *Potential Risks of Content, Features, and Functions: A Closer Look at the Science Behind How Social Media Affects Youth*, April 2024, [psychological-science-behind-youth-social-media.pdf](#)

⁹⁶ Ibid .

could increase public trust in the digital tools that pervade social life, both for individual companies and for the industry.

Toward an independent body for social media companies

Generally, the purpose of a self-regulated body could allow social media companies to iteratively discover, research, and receive feedback on the technical best practices for content labeling, which could then inform government legislation. Industry-wide standardization of these best practices could also create a more consistent user experience. Further, it could develop a smoother regulatory transition for both users and companies once laws are passed. Ultimately, moving before the government allows tech companies to do what they do best: agile and iterative development of new technologies.

Labeling, age-relevant integration of AI tools, and best practices around the protection of children's privacy could have profound impact on the trust and safety of their platforms and related products. A new and/or repurposed independent convening body can advance principles, values, and technical cadence by gathering industry experts, or a combined body of industry, academic, and civil society leaders. The body could also be convened through third-party organizations to focus on developing best practices among a range of stakeholders and advancing more resilient and ethical AI models for children and teens. Whatever the form, any consortium of social media companies must start with these values:

- Agreed on rules of road around online content for all users and more specific diligence regarding teens and younger minors.
- Grounded expectations for age-appropriate conduct, including widely accepted and adopted red lines of behaviors and conduct.

- Children privacy preserving models and practices that leverage AI for developmental and relevant phases of engagement, i.e. from the early to high school engagement.
- The establishment of principled-based frameworks that share the relative and achievable value propositions of social media companies that can be followed regardless of business practice or focus.

Taken together or in individual statements of work, social media companies can lean into more self-regulatory approaches and a new, independent that make sense for their industry.

Industry self-regulation, and some level of expectation of effective corporate governance, has been known to help drive more ethical, legal, and trustworthy frameworks, which can ultimately address reputational and financial risks, while permitting some evolution of standards, and other best practices exercised by similarly situated entities. In some research, self-regulation is known to have payoffs as companies find themselves less exposed to public angst about their products and services.⁹⁷

In addition to the highlighted industries in this paper who have focused primarily on ratings for young people, groups like the Financial Industry Regulatory Authority (FINRA) effectively found ways to avert industry vulnerabilities.⁹⁸ FINRA regulates the financial industry, more specifically broker-dealers – entities “in the business of buying or selling securities” – through rulemaking, enforcement, and investigations. At the same time, FINRA is regulated by and works with the Securities and Exchange Commission, creating a hybrid model

⁹⁷ “Industry Self-Regulation: Role and Use in Supporting Consumer Interests,” OECD Committee on Consumer Policy, March 23, 2015, [https://one.oecd.org/document/DSTI/CP\(2014\)4/FINAL/en/pdf](https://one.oecd.org/document/DSTI/CP(2014)4/FINAL/en/pdf); Neil Malhotra, “Why Self-Regulation Can Pay Off,” Forbes, March 4, 2019, <https://www.forbes.com/sites/neilmalhotra/2019/03/04/why-self-regulation-can-pay-off/>.

⁹⁸ Ibid.

of self-regulation.⁹⁹ This public-private partnership for financial regulation may be a large part of FINRA's success, with its relationship with the government both symbolically and formally legitimizing its role.

For social media companies, and others with volatile responses by the organized groups, like early tobacco conglomerates, the road will not be easy simply because their reputational erosion has already begun. The images of packed congressional hearing rooms with discouraged parents holding photos of their children who they are convinced died by suicide due the direct social and neural effects of these platforms will be long-standing, reputational remnants for these companies.¹⁰⁰ That is why these companies will not be exempt from leveraging social regulation without some form of legislative or regulatory enforcement. It may be too late in the game compared to the other industries of movie, music, and gaming.

VII. What Self-Regulation Won't Accomplish

Although industry-wide self-governance for social media platforms would be a step in the right direction, there are public-interest objectives that such an approach likely will not or in fact cannot accomplish. One such issue is that victims of harm facilitated or caused by social media will continue to lack avenues for legal redress. As mentioned above, interpretation of Section 230 provides near blanket immunity to platforms. This has largely dismissed nearly 30 years of lawsuits against platforms, preventing both any chance of recourse for victims and the development of appropriate jurisprudence for a nuanced approach to platform-mediated harms.¹⁰¹

⁹⁹ Jessica Goedtel, "What Is FINRA?" *Forbes Advisor*, May 21, 2024, <https://www.forbes.com/advisor/investing/financial-advisor/what-is-finra/>.

¹⁰⁰ Barbara Ortutay and Haleluya Hadero, "Meta, TikTok and other social media CEOs testify in heated Senate hearing on child exploitation," *AP*, January 31, 2024, <https://apnews.com/article/meta-tiktok-snap-discord-zuckerberg-testify-senate-00754a6bea92aad62585ed55f219932>.

¹⁰¹ *Supra* n. 41

In individual self-regulatory settings, where companies are not part of a larger self-governing body with strong enforcement mechanisms, social media platforms can, at the very least, be expected to self-regulate to the degree that it helps them maintain public trust. Scandals and other public controversies are not good for the bottom line. In the first year of Elon Musk's controversial acquisition of X, the site lost 13% of its daily active users.¹⁰² In the first month after the Cambridge Analytica scandal surfaced, Facebook actions, such as likes, shares, and posts, decreased by 20%,¹⁰³ and the company lost (but later recovered) \$134 billion in market value.¹⁰⁴ After a whistleblower revealed in 2021 that Facebook consistently prioritized profit over child safety, the company implemented new safeguards.¹⁰⁵

These company examples demonstrate that public opinion can be a powerful incentive to drive more responsible platform design. While these were welcome changes, privately known harms needed public scrutiny before they were remediated. In general, since the illusion of trustworthy practices is just as profitable as actual trustworthiness, it is important that social media platforms have independent oversight with transparent access to company practices. Otherwise, consumers may not be adequately informed about the safety of the products that shape their social and informational lives.

Even in regimes where platforms are part of a larger self-governing body, the standards set by this body could be self-serving. For example, if body membership were a mark of industry

¹⁰² Alex Kantrowitz, "The Elon Effect," Slate, <https://slate.com/technology/2023/10/twitter-users-decline-apptopia-elon-musk-x-rebrand.html> October 23, 2023.

¹⁰³ Alex Hern, "Facebook usage falling after privacy scandals, data suggests," The Guardian, June 20, 2019 <https://www.theguardian.com/technology/2019/jun/20/facebook-usage-collapsed-since-scandal-data-shows>.

¹⁰⁴ Anthony Mirhaydari, "Facebook stock recovers all \$134B lost after Cambridge Analytica data scandal," CBS News, May 10, 2018 <https://www.cbsnews.com/news/facebook-stock-price-recovers-all-134-billion-lost-in-after-cambridge-analytica-datascandal/>.

¹⁰⁵ Anne D'Innocenzio, "Facebook offers new safeguards for kids after damning whistleblower testimony," Fortune, October 11, 2021 <https://fortune.com/2021/10/11/facebook-offers-new-safeguards-for-kids-after-damning-whistleblower-testimony/>.

legitimacy, member companies could create onerous admission standards to entrench their market position and prevent competition. In general, group self-governance, even when combined with public trust incentives, might fail to adequately manage the incentives of corporate interest. While something like expulsion from a potential trade association could be a strong sanction, one does not currently exist.

In both the FINRA and the NAB models, the organizations also had compliance and enforcement authority over bad actors. FINRA was able to impose such enforcement via fines and suspensions from the business. Before it was dismantled, NAB could refuse the broadcaster the ability to air the NAB code of approval. As this paper does not imply that government should not impose its own regulation on social media companies, a key question will be the need for a social media regulator and what type of enforcement power will be required, if any. To date, Meta has its own oversight board, although its members have been appointed by the company making it appear to be less independent.¹⁰⁶

The proposals for social media companies to establish standard processes and practices around labeling, and an independent body that reinforces this and future commitments, could initially direct their ability to regain the public trust. But again, as more increased pressures are facing these companies in the U.S. and abroad, the window in which self-regulation was more welcomed may have passed. A note about how the European Union (EU) is mitigating the risks of social media companies is worth mentioning.

The EU's lack of tolerance

¹⁰⁶ Steven Levy, "Inside Meta's Oversight Board: 2 Years of Pushing Limits," Wired, November 8, 2022, <https://www.wired.com/story/inside-metas-oversight-board-two-years-of-pushing-limits/>.

As with other areas of digital regulation, the EU is a world leader in legislation to protect children online. Article 24 of the Charter of Fundamental Rights of the European Union, focused on the rights of the child, states that “[c]hildren shall have the right to such protection and care as is necessary for their well-being” and “[i]n all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration.”¹⁰⁷

Based on this and other principles in the Charter, such as the right to protection of personal data, the EU established the Digital Services Act (DSA) in 2022. The DSA requires large platforms and search engines to assess risks to young users, such as the likelihood of finding age-inappropriate content and the addictiveness of various design features. To mitigate these risks, platforms must enact measures from parental controls and age verification where appropriate to tools to help minors report abuse. The DSA also requires special data privacy and security settings to be active by default and prohibits targeted advertising for children.¹⁰⁸ Shortly after its adoption of the DSA, the EU also announced a new strategy for a Better Internet for Kids, with key pillars of “Safe digital experiences,” “Digital empowerment,” and “Active participation.”¹⁰⁹

Children also have special digital rights under the Generalized Data Protection Regulation (GDPR). “Information society services” can process the data of users over 16 years old without asking. However, users under 16 must have consent from their parent or guardian.¹¹⁰

¹⁰⁷ “Charter of Fundamental Rights of the European Union,” EUR-Lex, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>, Article 24.

¹⁰⁸ “The Digital Services Act (DSA) explained,” European Commission, 2023, <https://op.europa.eu/en/publication-detail/-/publication/f3556a65-88ea-11ee-99ba-01aa75ed71a1>.

¹⁰⁹ “New EU strategy to protect and empower children in the online world,” European Commission, May 11, 2022, https://ec.europa.eu/commission/presscorner/detail/en/ip_22_2825.

¹¹⁰ “Conditions applicable to child’s consent in relation to information society services,” Intersoft Consulting, <https://gdpr-info.eu/art-8-gdpr/>.

The use of children’s data in marketing and personality profiles has special protections,¹¹¹ and the GDPR also requires relevant services to write privacy notices in simple language so that children can understand their rights and how their data are used.¹¹² These protections are on top of the general personal data rights provided by the GDPR, including the rights to access, correct, and erase personal data and the right to object to its processing.¹¹³

How platforms could get started

Clearly, there are stark differences between the EU and U.S. in the handling and governing of social media platforms. For these reasons, social media companies should take preliminary steps in the U.S., and begin the conversation around more harmonized, self-regulatory practices, especially at a time when harsher penalties could be assessed against them and their content moderation practices. For this paper, I conclude with three proposals that might be interesting to pursue around content labeling, and potentially rating systems. Through a more consensus on what companies should be at the table on these and related topics, social media companies could:

- Establish a principled-based framework that shares the relative and achievable value propositions of social media companies that can be followed regardless of business practice or focus.
- Convene an independent body that involves a multistakeholder process (i.e., industry, government, and civil society) to develop strategies, including labeling and/or rating systems, to keep children and teens safe online.

¹¹¹ “Special Protection of Children's Personal Data,” Intersoft Consulting, <https://gdpr-info.eu/recitals/no-38/>.

¹¹² “The Principle of Transparency,” Intersoft Consulting, <https://gdpr-info.eu/recitals/no-58/>.

¹¹³ “Children and the GDPR,” UK Information Commissioner’s Office, May 25, 2018, <https://ico.org.uk/media/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/children-and-the-gdpr-1-0.pdf>.

- Agree on standards of reasonable and acceptable use and exposure for content geared toward children and teens, which still enable access by their stages of development and curiosity.

These, and other recommendations inspired by the paper, can begin the process of normalizing children's online safety, which is a widely agreed premise among most social media companies.

The third recommendation could be one with inclusive representation by student advocate organizations, the APA, and other intellectual and caring organizations that understand that the rights of young people still matter in how they select and navigate content in an online world. For example, research conducted by LGBTQ advocacy organizations point to the increased need to respect the openness and protections that social media platforms offer to youth who have not officially come out to their family members and friends.¹¹⁴

The broader point of this paper is that platforms may not necessarily get to consensus on these and other issues, but they might want to try in the backdrop of increasingly contentious threats of more severe regulations that threaten to completely upend their business models. Proposals and entities that are granularly focused on much needed, grounded strategies and best practices to identify, mitigate, and potentially address the larger question of content moderation for children and teens should be welcomed. Faced with similar challenges of other industries at this time in history, the examples of the movie, music, and gaming industries provide some level of understanding for potential best practices, and responses to calls for labeling and rating systems, at best.

¹¹⁴ Shae Gardner, "KOSA: LGBTQ+ Concerns and Considerations," LGBT Tech, June 3, 2024, <https://www.lgbttech.org/post/kosa-lgbtq-concerns-considerations>.

VIII. Conclusion

Social media companies have some historical guidance from other industries on what cooperation could look like when confronted with viral calls to fix how online content is affecting young users. To date, many of these companies are operating within their own siloes to address and potentially redress some of the tensions about their current products and services, as well as their possible futures. Yet in the stage of current maturation of these platforms, it seems obvious that the time is ripe for them to get together and develop some well-established and agreed upon norms and values – ones that can offer a threshold to regulators who may ultimately impose more enforceable rules. The case to protect young people is strong in the United States, but unlike the European Union where the counter has been definitive laws, the counter argument is that their rights still matter. Getting closer to collaboration may ultimately end up as the outcome of a more formal or informal self-regulatory body with more important norms, standards, and practices that can be followed by everyone. This could help to shape thoughtful regulation, while promoting effective business principles and practices, which ultimately create safer spaces for the online engagement of minors on their platforms.

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