
Filed online at regulations.gov

November 16, 2023

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U.S. Department of Commerce
1401 Constitution Avenue NW
Washington, DC 20230

Re: Comments on the Kids Online Health and Safety Request for Comment (docket NTIA–2023–0008)

On behalf of the Future of Privacy Forum (FPF), we are pleased to provide comments and recommendations to the National Telecommunications and Information Administration (NTIA), in conjunction with the Department of Commerce and the other members of the United States government’s Task Force on Kids Online Health & Safety, regarding the Kids Online Health and Safety Request for Comment.

FPF is a global non-profit organization dedicated to advancing privacy leadership, scholarship, and principled data practices in support of emerging technologies.¹ FPF is focused on advancing responsible data practices and has deep expertise regarding privacy and data protection, particularly concerning online services that impact young people and digital health services. We know that privacy is foundational to trust in patient-provider interactions and ongoing care, and even more so in evolving digital spaces and technologies.²

Summary of Comment

We commend the Administration and Task Force for continuing to discuss the privacy, safety, and health implications of minors’ online experiences through the detailed background and questions provided in the Request for Comment.³ Our comment responds to the request for input on the emerging privacy harms and benefits arising from minors’ use of online platforms and focuses primarily on efforts to mitigate harms and promote benefits to young people. FPF’s comments do not discuss the merits and risks of using legal, policy, and technical tools for *all* individuals using a service; some of these tools can limit access to services and place disproportionate privacy risks

¹ The views expressed in this comment are those of FPF and do not necessarily reflect the views of FPF’s supporters or Advisory Board.

² Billie Murray and Susan McCrone, *An integrative review of promoting trust in the patient-primary care provider relationship*, 71 J. Adv. Nurs. 3 (2015), <https://pubmed.ncbi.nlm.nih.gov/25113235/>; Paige Nong, et al., *Discrimination, trust, and withholding information from providers: Implications for missing data and inequity*, 18 SSM Popul. Health 101092 (2022), <https://pubmed.ncbi.nlm.nih.gov/35479582/>; Matthew Ridd et al., *The patient–doctor relationship: a synthesis of the qualitative literature on patients’ perspectives*, 59 Br. J. Gen. Pract. e116 (2009), <https://pubmed.ncbi.nlm.nih.gov/19341547/>.

³ Throughout this document, we use the term minor to describe individuals under the age of 18. We also use the term parent to encompass parents or guardians.

and burdens on adults, teens, and children. Instead, we confine our analysis to the privacy risks and benefits to young people arising from technological features, which vary significantly between uses, services, and audiences.

Accordingly, we address the following:

1. Children and teens have varying privacy needs across developmental stages, and overgeneralized restrictions may exacerbate health risks and undermine the developmental benefits of social online experiences. In particular, limitations on access to content and connecting with peers may have negative consequences on the ability of adolescents to explore and develop independence and identity.
2. While many stakeholders agree on high-level policy goals, such as extending heightened protections to both children and teens or minimizing unnecessary data collection, there is little consensus on how best to implement broadly agreed-upon policy goals. In some areas, such as age assurance, there is significant disagreement on how best to grapple with conflicting equities on privacy and safety.
3. Companies building new features to protect the privacy and safety of minors online currently take into account the varying developmental stages of minors and the interaction between minors' autonomy and parental involvement. These two considerations inform how companies balance privacy and safety before introducing new features and reviewing existing tools as research and societal norms evolve.
4. FPF recommends additional research investigating minors using online services for educational purposes versus recreation, shifts in privacy risks at different ages and stages of development, and the relationship between privacy and safety in applying heightened protections to teens. This research is necessary to identify appropriate safeguards for minors online in both policy and practice.

I. CHILDREN AND TEENS HAVE VARYING PRIVACY NEEDS ACROSS DEVELOPMENTAL STAGES, AND OVERGENERALIZED RESTRICTIONS MAY EXACERBATE HEALTH RISKS AND UNDERMINE THE DEVELOPMENTAL BENEFITS OF SOCIAL ONLINE EXPERIENCES. IN PARTICULAR, LIMITATIONS ON ACCESS TO CONTENT AND CONNECTING WITH PEERS MAY HAVE NEGATIVE CONSEQUENCES ON THE ABILITY OF ADOLESCENTS TO EXPLORE AND DEVELOP INDEPENDENCE AND IDENTITY.

Young people increasingly engage with their peers online and use digital services for entertainment, education, and other purposes. In 2022, the Pew Research Center found that 46% of teens said they used the internet “almost constantly,” an increase from the share of teens surveyed in 2014-2015.⁴ Whereas 31% of adults say they are online “almost constantly.”⁵ Social media usage has become common and is continuing to increase, with teens using YouTube (95% of teens use the platform), TikTok (67%), Instagram (62%), and Snapchat (59%).⁶ Given increasing use by minors, there is a growing international interest in youth online data privacy and in

⁴ Emily A. Vogels, Risa Gelles-Watnick & Navid Massarat, *Teens, Social Media and Technology 2022*, Pew Research Center (Aug. 10, 2022),

<https://www.pewresearch.org/internet/2022/08/10/teens-social-media-and-technology-2022/>.

⁵ Andrew Perrin & Sara Atske, *About three-in-ten U.S. adults say they are ‘almost constantly’ online*, Pew Research Center (Mar. 26, 2021),

<https://www.pewresearch.org/short-reads/2021/03/26/about-three-in-ten-u-s-adults-say-they-are-almost-constantly-online/>.

⁶ Emily A. Vogels, Risa Gelles-Watnick & Navid Massarat, *supra* note 4.

maximizing the benefits of online connectivity while minimizing risks to youth mental and physical health.⁷

The American Psychological Association has emphasized that social media is “not inherently beneficial or harmful to young people,” noting that there are limited findings to support cause-and-effect conclusions about adolescent social media use.⁸ Social media has given minors unprecedented access to one another, and the ability to form and maintain connections in digital spaces has been particularly beneficial for young people of marginalized backgrounds or those experiencing health crises.⁹ Creating these connections requires adolescents to develop self-disclosure skills, a normal part of adolescent identity development.

Privacy risks and harms for minors online and in social media are both distinct and related to the health risks of social media. Dr. Kaveri Subrahmanyam at California State Los Angeles notes, “too much self-disclosure is a problem when it occurs online because, for one, the digital record never vanishes.”¹⁰ Dr. Subrahmanyam emphasizes that this self-disclosure issue can be particularly concerning for adolescents, some of whom may be inclined towards impulsivity while seeking connection on social media; this may result in teens sharing deeply personal data without considering the potential privacy harms, including experiencing or committing cyberbullying and harassment related to this personal information sharing.¹¹ Because adolescents engage in social media at a time when their cognitive development centers around building social connections and fitting in with their peers, they may also be especially vulnerable to content that reinforces harmful social stereotypes about health, disordered eating, negative body image, and self-harm,

⁷ *Surgeon General Issues New Advisory About Effects Social Media Use Has on Youth Mental Health*, U.S. Department of Health and Human Services (May 23, 2023), <https://www.hhs.gov/about/news/2023/05/23/surgeon-general-issues-new-advisory-about-effects-social-media-use-has-youth-mental-health.html>; Jack Resneck Jr., *AMA applauds Surgeon General Advisory on social media*, American Medical Association (May 23, 2023), <https://www.ama-assn.org/press-center/press-releases/ama-applauds-surgeon-general-advisory-social-media>; Mark Scott and Rebecca Kern, *How a British baroness is shaping America’s tech laws for kids*, Politico (June 15, 2023), <https://www.politico.com/news/2023/06/14/british-baroness-online-safety-laws-00101854>.

⁸ *Health advisory on social media use in adolescence*, American Psychological Association (May 2023), <https://www.apa.org/topics/social-media-internet/health-advisory-adolescent-social-media-use>.

⁹ *Health advisory on social media use in adolescence*, American Psychological Association (May 2023), <https://www.apa.org/topics/social-media-internet/health-advisory-adolescent-social-media-use>; *APA chief scientist outlines potential harms, benefits of social media for kids*, American Psychological Association (Feb. 14, 2023), <https://www.apa.org/news/press/releases/2023/02/harms-benefits-social-media-kids>; *Media Use in School-Aged Children and Adolescents*, American Academy of Pediatrics (Nov. 1, 2016), <https://publications.aap.org/pediatrics/article/138/5/e20162592/60321/Media-Use-in-School-Aged-Children-and-Adolescents?autologincheck=redirected>.

¹⁰ Summer Allen, *Social media’s growing impact on our lives (Part 2)*, American Psychological Association (Sep. 27, 2019), <https://www.apa.org/members/content/social-media-research-series>.

¹¹ Mayo Clinic Staff, *Teens and social media use: What’s the impact?*, Mayo Clinic (Feb. 26, 2022), [https://www.mayoclinic.org/healthy-lifestyle/tween-and-teen-health/in-depth/teens-and-social-media-use/art-20474437#:~:text=Because%20of%20teens%27%20impulsive%20natures,these%20consequences%20or%20privacy%20concerns](https://www.mayoclinic.org/healthy-lifestyle/tween-and-teen-health/in-depth/teens-and-social-media-use/art-20474437#:~:text=Because%20of%20teens%27%20impulsive%20natures,these%20consequences%20or%20privacy%20concerns;); *Teen Brain: Behavior, Problem Solving, and Decision Making*, American Academy of Child & Adolescent Psychiatry (Sep. 2017), https://www.aacap.org/AACAP/Families_and_Youth/Facts_for_Families/FFF-Guide/The-Teen-Brain-Behavior-Problem-Solving-and-Decision-Making-095.aspx.

among other maladaptive behaviors.¹² With more than half of teenagers claiming that it would be hard to give up social media and nearly half of teenagers spending all day on the internet, restraining content consumption and data sharing may be difficult.¹³

Overgeneralized restrictions and over-surveillance of minors across developmental stages may interfere with privacy and its role in developing independence and identity during adolescence.¹⁴ The health benefits and risks of social media use vary not just from young person to young person but also for the same child or teenager at different stages of development and ages. The variability in how each child experiences social media and the variability in developmental appropriateness presents a challenge for legislators and regulators seeking to alleviate the adverse effects of social media use broadly across all age groups and minors experiences. The United States (U.S.) has sought to establish children’s online privacy protections for those under 13 through the Children’s Online Privacy Protection Act (COPPA).¹⁵ However, in the absence of federal legislative action on broader consumer privacy concerns, it is valuable to appropriately update and strengthen privacy protections for minors, as many favor digital interactions in addition or as an alternative to face-to-face engagement with peers.¹⁶

II. WHILE MANY STAKEHOLDERS AGREE ON HIGH-LEVEL POLICY GOALS, SUCH AS EXTENDING HEIGHTENED PROTECTIONS TO BOTH CHILDREN AND TEENS OR MINIMIZING UNNECESSARY DATA COLLECTION, THERE IS LITTLE CONSENSUS ON HOW BEST TO IMPLEMENT BROADLY AGREED-UPON POLICY GOALS. IN SOME AREAS, SUCH AS AGE ASSURANCE, THERE IS SIGNIFICANT DISAGREEMENT ON HOW BEST TO GRAPPLE WITH CONFLICTING EQUITIES ON PRIVACY AND SAFETY.

A. Going Beyond COPPA to Provide Heightened Protections to Teens

¹² APA chief scientist outlines potential harms, benefits of social media for kids, American Psychological Association (Feb. 14, 2023), <https://www.apa.org/news/press/releases/2023/02/harms-benefits-social-media-kids>; Surgeon General Issues New Advisory About Effects Social Media Use Has on Youth Mental Health, U.S. Department of Health and Human Services (May 23, 2023), <https://www.hhs.gov/about/news/2023/05/23/surgeon-general-issues-new-advisory-about-effects-social-media-use-has-youth-mental-health.html>; Health advisory on social media use in adolescence, American Psychological Association (May 2023),

<https://www.apa.org/topics/social-media-internet/health-advisory-adolescent-social-media-use>; Reducing social media use significantly improves body image in teens, young adults, American Psychological Association (Feb. 23, 2023), <https://www.apa.org/news/press/releases/2023/02/social-media-body-image>.

¹³ Emily A. Vogels, Risa Gelles-Watnick & Navid Massarat, *supra* note 4; Mary Madden, Amanda Lenhart, et al., *Teens, Social Media, and Privacy*, Pew Research Center (May 21, 2013), <https://www.pewresearch.org/internet/2013/05/21/teens-social-media-and-privacy/#:~:text=Some%2060%25%20of%20teens%20ages,their%20profile%20is%20completely%20public>.

¹⁴ Social Media’s growing impact on Our lives (part 2), American Psychological Association, <https://www.apa.org/members/content/social-media-research-series> (last visited Nov 1, 2023).

¹⁵ Children’s Online Privacy Protection Act of 1998 (COPPA), 15 U.S.C. § 6501–6506.

¹⁶ Summer Allen, *Social media’s growing impact on our lives*, American Psychological Association (Sep. 20, 2019), <https://www.apa.org/members/content/social-media-research>.

Lawmakers continue to introduce legislation to expand protections for the privacy and safety of minors beyond the existing COPPA framework.¹⁷ In particular, expanding privacy protections to teens has been a high legislative priority in recent years.¹⁸ However, adopting a one-size-fits-all approach to developing policies for minors online presents challenges, as protections that are appropriate for very young children may not be suitable for older teenagers with greater agency and autonomy. The demographic of “all individuals under 18” varies greatly in their developmental stages, understanding, digital literacy, and need for access to online services.¹⁹

Including additional privacy protections for teens inevitably raises differences in parental controls and supervision methods appropriate for a teen versus very young children. Additionally, it is worth recognizing that expanding protections for teens will inevitably require considering impacts on all individuals, given that teens and adults sometimes frequent the same online spaces, and distinguishing older teens from adults can be difficult. With these considerations in mind, instead of expanding the definition of “child” to individuals up to age 17, we encourage the Administration to consider the creation of a separate category of “adolescents,” whose personal information receives heightened protections by default yet are empowered as the primary agent making decisions about their privacy and access to information.

Currently, some companies operating globally have accounted for the privacy of minors of all ages as a result of global developments, such as the U.K. Age Appropriate Design Code, Irish Fundamentals, and varying ages of digital consent globally.²⁰ Additionally, while federal privacy legislation has not passed, other U.S. developments inform company practices on teen privacy, such as the previously enacted, and since litigated, California Age-Appropriate Design Code²¹

¹⁷ See Bailey Sanchez et al., *Connecticut Shows You Can Have It All*, Future of Privacy Forum (Jun. 9, 2023), <https://fpf.org/blog/connecticut-shows-you-can-have-it-all/>; see also Tatiana Rice et al., *Shining a Light on the Florida Digital Bill of Rights*, Future of Privacy Forum (May 13, 2023), <https://fpf.org/blog/shining-a-light-on-the-florida-digital-bill-of-rights/>.

¹⁸ *Id.* See also Miles Light et al., *Policy Brief: A Comparison of Federal Child Privacy Bills*, Future of Privacy Forum (Sep. 2022), <https://fpf.org/wp-content/uploads/2022/09/FPF-Policy-Brief-Child-Privacy-Federal-Bill-Comparison-R8.pdf> (Comparative chart of 4 federal bills each introducing protections for those over 13); California Age-Appropriate Design Code Act, Cal. Civ. Code § 1798.99.28–1798.99.40 (2022) (A law enacted in California intended to apply to those up to 18).

¹⁹ For more on digital literacy, how it is defined globally, and what factors determine a child’s digital literacy, see Fabio Nascimbeni & Steven Vosloo, *Digital Literacy for Children: Exploring Definitions and Frameworks*, UNICEF (Aug. 2019), <https://www.unicef.org/globalinsight/media/1271/file/%20UNICEF-Global-Insight-digital-literacy-scoping-paper-2020.pdf>.

²⁰ See Children’s Code: Age Appropriate Design Code 2020 (U.K.), <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/childrens-information/childrens-code-guidance-and-resources/age-appropriate-design-a-code-of-practice-for-online-services/>; Data Protection Comm’n, *Fundamentals for a Child-Oriented approach to Data Processing*, (2021) https://www.dataprotection.ie/sites/default/files/uploads/2021-12/Fundamentals%20for%20a%20Child-Oriented%20Approach%20to%20Data%20Processing_FINAL_EN.pdf; Cansu Caglar, *Digital Age of Consent Under the GDPR*, euConsent (Oct. 26, 2021) <https://euconsent.eu/digital-age-of-consent-under-the-gdpr/>.

²¹ See generally California Age-Appropriate Design Code Act, Cal. Civ. Code § 1798.99.28–1798.99.40 (2022).

and recent FTC enforcement actions requiring protections for teens.²² In recent years, over ten states have passed baseline consumer privacy legislation, and a few of these states created special protections for teens ages 13-15.²³ We urge the Administration to consider what place additional protections for minors might have within a broader privacy law that applies to all individuals.

B. Determining If, When, and Where Age Assurance Is Appropriate

Age assurance has recently become a high-priority issue as lawmakers globally seek to extend protections to teens online. It is challenging to verify someone's age without collecting additional, and often sensitive, personal information.

Age assurance can be used for a variety of goals, including facilitating parental consent, limiting access to an age-restricted service or providing age-appropriate content, verifying an individual's exact age, or placing individuals within an age band or age range. Many highly accurate age assurance methods are highly invasive, and some less invasive methods can be less accurate. Depending on the goal and the needs of the individual company, some lower accuracy methods may be appropriate. Deploying age assurance must be assessed and weighed against the risks of collecting such information.²⁴ While a number of methods for determining age exist, the best method must be matched for each use case in order to balance the benefits of the service, privacy risks, business costs, and accuracy. Some companies currently use age assurance in a layered approach. For example, at initial sign-up, if the experience is lower risk, an age gate may be appropriate. If a teen engages with a higher-risk feature, the company may choose to request more privacy-invasive age verification information, such as a government ID.

Rigid mandates governing teens' access to online services place this flexibility at risk. While age assurance is not a new concept, it is important to note that age assurance technologies and practices are still developing. Each age assurance method has tradeoffs for privacy and accuracy. Credit cards and government ID are two of the leading methods of verifiable parental consent under COPPA in the United States, but there is no leading method for age assurance. New methods will likely develop as this remains an active policy area. For example, the French data protection authority, the CNIL, partnered with researchers on a pilot method after sharing a blog

²² See *United States v. Epic Games, Inc.*, No. 5:22-CV-00518-BO (W.D.N.C. Dec. 19, 2022) (order granting preliminary injunction).

²³ Keir Lamont & Melis Ulusel, *Effective Dates of New State Privacy Laws*, Future of Privacy Forum (Jun. 30, 2023) <https://fpf.org/blog/effective-dates-of-new-state-privacy-laws/> (List of enacted state privacy laws); California Consumer Privacy Act, Cal. Civ. Code § 1798.120(c) (West 2023) (prohibiting the selling or sharing of data for consumers aged less than 16 years but older than 13 years unless consent is provided by either the consumer themselves or the consumer's parent or guardian); Conn. Gen. Stat. Ann. § 42-520(a)(7) (West 2023) (prohibits the sale of data and the processing of data for personal advertising without the consumer's consent where the consumer is at least 13 years old but younger than 16 years old).

²⁴ See Bailey Sanchez & Jim Siegl, *New FPF Infographic Analyzes Age Assurance Technology & Privacy Tradeoffs*, Future of Privacy Forum (Jun. 26, 2023), <https://fpf.org/blog/new-fpf-infographic-analyzes-age-assurance-technology-privacy-tradeoffs/>.

post stating that no current methods were both accurate and privacy-preserving.²⁵ Given that age assurance is highly contextual, specific calls for verifying the age of all individuals may result in introducing privacy risks, inequitable access to services, or limiting legitimate access to services.

C. Evaluating Advertising Practices for Minors

The current landscape of the tech industry includes robust conversations around targeted and behavioral advertising for and the profiling of minors.²⁶ U.S. lawmakers have frequently included prohibitions against targeted advertising in proposed legislation, and large tech companies include similar policies in their practices.²⁷ Child development research has shown that children of different ages have different abilities to understand what an advertisement is, the level of persuasion involved, the data shared when an advertisement is clicked, and the way that their data can be used for persuasion.²⁸ COPPA does not allow the collection of personal information from a person under 13 without verifiable parental consent, including cookies and other persistent identifiers, but it does not apply to minors who are 13 or older.²⁹

Advocates and policymakers have called for more restrictions on advertising to minors due to alleged negative effects on the mental health and well-being of young individuals. Industry

²⁵ *Online age verification: balancing privacy and the protection of minors*, French CNIL (Sep. 22, 2022) <https://www.cnil.fr/en/online-age-verification-balancing-privacy-and-protection-minors>; *Age control for access to pornographic sites*, French CNIL (Feb. 21, 2023) <https://www.cnil.fr/fr/controle-de-lage-pour-laces-aux-sites-pornographiques>.

²⁶ For the purposes of this comment, targeted or personalized advertising refers to an individual receiving advertising targeted to their online activity and interests using personal information collected for the purposes of such advertising. Contextual advertising is an alternative, non-targeting form that involves placing advertising on web pages that relates to the context of that web page. The distinction between the two types of advertising is that targeted/personalized ads gather information about the individual and place ads based on the individual's information, while contextual ads place ads based on the content of the web page. For example, a targeted ad may serve an individual an ad to buy high-heeled shoes while they are on a gardening site because the individual was shopping online for shoes the day before, while a contextual ad may serve an individual an ad to buy fertilizer while they are on a gardening site because it is relevant to the web page's content.

²⁷ For example, Apple prevents targeted advertising to children through AppleID. See *Family Privacy Disclosure for Children*, Apple, <https://www.apple.com/legal/privacy/en-ww/parent-disclosure/>, (last visited Nov. 2, 2023). Lawmakers have also included restrictions on targeted advertising in passed legislation including in Texas (HB 18) and Florida (SB 262). See H.B. 18, 88th Leg. Sess. (Tex. 2023), <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=88R&Bill=HB18>; see also 2023 Fla. Law ch.2023-201, <https://laws.flrules.org/2023/201> (hereinafter S.B. 262).

²⁸ See Brian L. Wilcox et al., *Report of the APA Task Force on Advertising and Children*, Am. Psych. Ass'n (2004), <https://www.apa.org/pubs/reports/advertising-children>; see also *Protecting Kids From Stealth Advertising in Digital Media*, F.T.C., <https://www.ftc.gov/news-events/events/2022/10/protecting-kids-stealth-advertising-digital-media> (last visited Nov. 5, 2023). For more information on targeted advertising's impact on minors, see Cami Goray & Sarita Schoenebeck, *Youths' Perceptions of Data Collection in Online Advertising and Social Media*, 6 Ass'n for Computing Machinery (2022), <https://dl.acm.org/doi/10.1145/3555576>.

²⁹ 15 U.S.C. § 6502. COPPA.

practices are slowly adjusting in response to this call.³⁰ Limited targeting policies may only allow third-party advertisers to use an individual's age and location for targeting while excluding other data, like gender, that the company allows for targeted marketing to adults. Some companies may turn off personalized advertisements by default as a setting that cannot be changed on a child's account.³¹

In addition to concerns around targeted advertising, leading companies consider whether advertising on their site is appropriate and relevant for minors. Some companies have created features to allow teens to modify the types of ads they see.³² Depending on the type of online service, design features can provide more consistency in protection. Companies can create pop-up notices that engage when a minor is leaving a section of a site or service that is safe and age-appropriate to another part of the site or service that features targeted advertising and/or drops ad trackers. Many services currently configure ad trackers to avoid collecting data from individuals under 13 in compliance with COPPA. Some companies may be able to include age-appropriate tags on ads for distinguishing in the technical creation of the service.

D. Data Minimization and Use As a Core Industry Practice

Data minimization is a fundamental data protection principle derived from the Fair Information Practice Principles (FIPPs). Requirements for data minimization are included in COPPA and are frequently in broader privacy legislation such as the General Data Protection Regulation (GDPR),³³ and the California Privacy Rights Act (CPRA).³⁴ Children's data is often categorized as sensitive data in state privacy laws, but there is not a consensus on what age children's data no longer becomes sensitive.³⁵ Still, data minimization is a core principle for the protection of sensitive data, and it has been widely accepted to prioritize data minimization for minors. It is common practice in the industry to avoid the use of personal information of children under 13 for any purpose other than the reason it was collected unless there is a compelling reason.³⁶ Some online service providers have extended this principle throughout their design for all minors.

Data minimization and retention practices are especially important as they relate to sensitive personal information collected from minors for age verification purposes. For example, some companies use an age verification tool that requires minors to upload IDs like a driver's license or

³⁰ For example, Meta has limited targeted advertising to teens, while Google has stated they do no targeted advertising to teens. See Press Release, Meta, Continuing to Create Age-Appropriate Ad Experiences for Teens, (Jan. 10, 2023), <https://about.fb.com/news/2023/01/age-appropriate-ads-for-teens/>; see also Mindy Brooks, *Giving Kids and Teens a Safer Experience Online*, Google (Aug. 10, 2021), <https://blog.google/technology/families/giving-kids-and-teens-safer-experience-online/>.

³¹ E.g., *Family Privacy Disclosure for Children*, Apple, <https://www.apple.com/legal/privacy/en-ww/parent-disclosure/>, (last visited Nov. 2, 2023).

³² See Press Release, Meta, Continuing to Create Age-Appropriate Ad Experiences for Teens, (Jan. 10, 2023), <https://about.fb.com/news/2023/01/age-appropriate-ads-for-teens/>.

³³ Council Regulation 2016/679, General Data Protection Regulation, 2016 O.J. (L 119) 1 (EU).

³⁴ California Consumer Privacy Act, Cal. Civ. Code § 1798.100-199-100 (West 2023) (as amended by the CPRA).

³⁵ See Colorado Privacy Act, Colo. Rev. Stat. Ann. § 6-1-1301–1313 (West 2023); Conn. Gen. Stat. Ann. § 42-515–525 (West 2023).

³⁶ See *generally* Children's Online Privacy Protection of 1998 (COPPA), 15 U.S.C. § 6501–6506.

identification card for teens ages 13 - 17.³⁷ This provides a strong signal regarding a teen's age so the company can provide teens with age-appropriate experiences and protect them from material that may not be age-appropriate. Some companies also allow teens to upload a selfie video to verify a teen's age. Once the video is uploaded, it is shared with a third-party age assurance service.³⁸ This service then analyzes the individual's facial features to estimate their age. Afterward, the online platform and the third-party service delete the image, and the technology cannot recognize the individual's identity. Deletion practices such as these help mitigate the risk of unexpected data usage. Preventing the technology from being able to recognize identities prevents the use of biometric data to identify underage individuals and reduces risks that would arise from biometric data being stored about their identity.

III. COMPANIES BUILDING NEW FEATURES TO PROTECT THE PRIVACY AND SAFETY OF MINORS ONLINE CURRENTLY TAKE INTO ACCOUNT THE VARYING DEVELOPMENTAL STAGES OF MINORS AND THE INTERACTION BETWEEN MINORS' AUTONOMY AND PARENTAL INVOLVEMENT. THESE TWO CONSIDERATIONS INFORM HOW COMPANIES BALANCE PRIVACY AND SAFETY BEFORE INTRODUCING NEW FEATURES AND REVIEWING EXISTING TOOLS AS RESEARCH AND SOCIETAL NORMS EVOLVE.

A. Consider the Developmental Stage of Minors and the Associated Risks when Configuring Default Settings for Minors' Accounts.

Online service settings are the most privacy-protective of minors' data when they are configured to the type of platform and the potential privacy risks that may arise from the service. For example, online services that provide social functionalities may create varying levels of default settings for accounts of minors under the age of 18, 16, 13, and 10 in regards to whether their account is publicly viewable or private by default and whether their accounts can receive messages or requests from accounts that are not their friends/followers.³⁹ Older teens may have higher levels of digital literacy and understand better how a stranger can find their account, their intentions in requesting to follow, and the privacy risks associated with posting pictures and information publicly.⁴⁰

³⁷ For example, Instagram states that the ID will be stored securely on a company's servers and deleted within 30 days. Roblox states that it does not store raw ID documentation. See *Safety & Civility at Roblox*, Roblox, <https://en.help.roblox.com/hc/en-us/articles/4407444339348-Safety-Civility-at-Roblox> (last visited Nov. 2, 2023); see also Press Release, Meta, Introducing New Ways to Verify Age on Instagram (Jun. 23, 2023), <https://about.fb.com/news/2022/06/new-ways-to-verify-age-on-instagram/>.

³⁸ Yoti is a digital identity and biometric technology company. Yoti provides third-party services to companies for identity verification, age verification, and estimation, eSignatures and authentication. See Matt Prendergast, *Helping Instagram Provide New Ways to Verify Age*, Yoti (Jun. 24, 2022), <https://www.yoti.com/blog/helping-instagram-offer-new-ways-to-verify-age/>.

³⁹ For example, Instagram "permits people aged 18 and 19 to send private messages to their peers within a two-year age gap to allow for connections between classmates and friends, for example, a 19 year old may message teens aged 17 and older." See *Continuing to Make Instagram Safer for the Youngest Members of Our Community*, Instagram, <https://about.instagram.com/blog/announcements/continuing-to-make-instagram-safer-for-the-youngest-members-of-our-community> (last visited Nov. 15, 2023).

⁴⁰ See Mary Madden et al., *Teens, Social Media, and Privacy*, Pew Rsch. Ctr. (May 21, 2013), <https://www.pewresearch.org/internet/2013/05/21/teens-social-media-and-privacy/>; see also Nicholas D.

Online platforms have also incorporated various forms of digital literacy education for parents and minors of varying ages in an effort to advance minors' understanding of the privacy features accessible on the service, the potential risks in using the service, and the parental controls available. This education can be as simple as providing teens with resources on the service's site about how to stay safe online⁴¹ or as complex as an interactive experience.⁴²

Another emerging trend is for companies to develop structured technical designs tailored to the age and developmental stage of the minor. Some online platforms require parental oversight for a child to use the service.⁴³ Others include strict default settings for accounts of individuals under 13 who do not have verified parental consent.⁴⁴ This second method incorporating default settings allows young individuals to participate online regardless of parental involvement or availability while still implementing privacy and safety measures. These strict default settings can include the disabling of purchasing, email marketing or push notifications, custom display names, communications with players using voice chat or free text chat, and recommendations based on past activity.⁴⁵

Leading companies are currently balancing the unique risks and features of their online service when determining what default settings would be privacy-protective for minors with the benefits of using the service. What is a privacy-protective default setting will inevitably differ between platforms, even when a social media site and an online game both allow chat features. For example, a social media site may use default settings to prevent teens from sharing their location, and sharing settings are defaulted to only friends and phone contacts without the individual's ability to expand the settings to share with strangers,⁴⁶ whereas an online game may or may not be able to access an individual's phone contacts and may be less likely to have features that enable sharing location. Still, company practices have some commonalities in sending reminders to minors to check their privacy and security settings or to be aware of their screentime.⁴⁷

Santer et al., *Early Adolescent's Perspective on Digital Privacy*, Mass. Inst. Tech. (Jun. 29, 2021), <https://wip.mitpress.mit.edu/pub/early-adolescents-perspectives-on-digital-privacy/release/1>.

⁴¹ See generally *Raising Digitally Smart Families*, Lego, <https://www.lego.com/en-dk/sustainability/children/digital-child-safety?locale=en-dk> (last visited Nov. 2, 2023); see also *Get Digital!*, Meta, <https://www.facebook.com/fbgetdigital/> (last visited Nov. 2, 2023); see also *Youth Portal*, TikTok, <https://www.tiktok.com/safety/youth-portal?lang=en> (last visited Nov. 2, 2023).

⁴² See *Doom the Gloom*, Lego, <https://www.lego.com/en-us/kids/campaigns/doom-the-gloom> (last visited Nov. 2, 2023).

⁴³ See *Amazon Kids+*, Amazon, <https://www.amazon.com/ftu/home> (last visited Nov. 15, 2023).

⁴⁴ For example, Epic Games has created "Cabined Accounts" that provide an age-appropriate experience for individuals under the age of 13 in the U.S. The account can become "uncabined" once the verified parental consent process is completed and the account settings can be personalized by the parent. See *How Epic Games Cabined Accounts Work in Fortnite*, Epic Games (Dec. 7, 2022), <https://www.fortnite.com/news/how-epic-games-cabined-accounts-work-in-fortnite>.

⁴⁵ *Id.*

⁴⁶ See *Safeguards for Teens*, Snapchat, <https://parents.snapchat.com/safeguards-for-teens> (last visited Nov. 2, 2023).

⁴⁷ See *Use Parental Controls on Your Child's iPhone, iPad, and iPod Touch*, Apple, <https://support.apple.com/en-us/HT201304> (last visited Nov. 2, 2023); see also *Parental Supervision*, Instagram, <https://help.instagram.com/309877544512275> (last visited Nov. 2, 2023); *Screen Time*, LEGO, <https://www.lego.com/en-us/sustainability/digital-child-safety/screen-time> (last visited Nov. 2, 2023); *Screen Time*, TikTok, <https://support.tiktok.com/en/account-and-privacy/account-information/screen-time> (Nov. 2,

Another consideration for companies is whether to make privacy-protective default settings available for an account holder's control or whether some settings should be more embedded in the service as a technical control. Depending on the age of the minor, some services allow default settings to be changed by the minor, by the minor with their parent's consent, by the parent, or not at all.⁴⁸ Leading companies may require individuals to be 18 or older to use live video features.⁴⁹ Other companies may limit the discoverability of minor accounts, the suggestion of adding minor accounts as a friend, and the ability of suspicious adults to contact minors. These privacy features are technical measures that a minor may not be able to alter rather than changeable settings. An online service may choose to incorporate privacy measures by design that are not alterable because the service provider determines that risks associated with not including that feature are not proportionate to the benefits of a minor changing that setting, even with the consent of a parent.

B. The Implementation of Parental Controls and Involvement in Minors' Online Experiences Involves a Balancing of Teen Autonomy, Inequities in Familial Structures, and Obligations Placed on Parents.

Leading companies implement privacy-protective features during the design of their products and use parental controls or supervision as an additional measure for specificity to the individual rather than relying solely on parental controls as the protection measure. Parents may not understand the functionalities of the online service, the potential risks of different features, or the benefits that a child gains from having access to the service. Some parents may also struggle to understand the available parental controls, how to access them, or how they impact a minor's experience. Online services that rely on parental controls to implement privacy protections place a burden on parents to protect the privacy and safety of their children. Designing services with privacy in mind and creating a baseline of privacy protections proportionate to the individual's

2023); *Safeguards for Teens*, Snapchat, <https://support.tiktok.com/en/account-and-privacy/account-information/screen-time> (last visited Nov. 2, 2023); *Safer Experience*, YouTube, <https://www.youtube.com/kids/safer-experience/> (last visited Nov. 2, 2023).

⁴⁸ See *Epic Games Cabined Accounts*, Epic Games, <https://www.epicgames.com/site/en-US/cabinedaccounts> (last visited Nov. 2, 2023) (imposing strict default settings for individuals under 13 years of age until a parent or guardian provides permission for that child to access age-restricted features or content); see also *Safeguards for Teens*, Snapchat, <https://support.tiktok.com/en/account-and-privacy/account-information/screen-time> (last visited Nov. 2, 2023) (describing the strong default settings placed on teen Snapchat accounts, which includes preventing messages from strangers, turning off location-sharing by default, and sending teens reminders about privacy settings); see also *Account Settings*, TikTok, <https://www.tiktok.com/safety/en/account-settings/> (last visited Nov. 2, 2023) (describing policy of making accounts of individuals under 16 years of age private by default); see also *Giving Young People a Safer, More Private Experience*, Instagram (Jul. 27, 2021), <https://about.instagram.com/blog/announcements/giving-young-people-a-safer-more-private-experience> (announcing that profiles of individuals ages 13-16 years old will be automatically set to private).

⁴⁹ For example, TikTok's "suggest account to others" setting is turned off by default for individuals ages 13-17 and this setting is changeable. While their settings allowing other individuals to download a minor's content is turned off by default for individuals ages 13-17 and this setting is not changeable if the account is held by a 13-15 year old. See *Teen Privacy and Safety Settings*, TikTok, <https://support.tiktok.com/en/account-and-privacy/account-privacy-settings/privacy-and-safety-settings-for-users-under-age-18> (last visited Nov. 15, 2023).

ability and risks of using the service allows a minor to be protected regardless of whether they have a parent who is knowledgeable of the technology, available to exercise parental controls, and interested in their child being able to use the service. With privacy protections implemented by design, parental controls are able to be configured to allow parents to tailor the privacy settings to their child, family, and experience.

Common parental tools include choices about who a minor can talk to via chat features, limiting screen time, sharing of content by their child, and controlling spending.⁵⁰ Online services with younger minors may include parental controls that are more restrictive than they are for older teens, such as viewing contact lists, accounts the minor has blocked or reported,⁵¹ viewing browsing history,⁵² restricting web search,⁵³ and limiting who can contact or interact with their child's account.⁵⁴

A key consideration for many companies is balancing the autonomy and privacy of teens when evaluating potential parental involvement in their online experiences. Research shows that teens have a stronger understanding of their technology use and its impact on their well-being than adults typically assume.⁵⁵ Teens also experience different developmental stages than younger children, and respecting their privacy and autonomy requires differences in design. Parental controls and supervision features must not only consider the developmental differences for teens but also take into account the variety of familial structures and cultures that are implicated. Minors may not have parents who are involved in their lives, supportive of their use of technology, understand what the platform is and how to use it, or be available. Thus, leading companies are considering whether online services should be accessible to all minors and privacy-protective regardless of whether there is a parent to engage with parental controls.⁵⁶

When a parent must maintain their own account to access parental control features, this necessarily requires additional data collection, but the benefits can include easier operability and

⁵⁰ See *Parental Supervision*, Instagram, <https://help.instagram.com/309877544512275> (last visited Nov. 2, 2023).

⁵¹ *Id.*

⁵² See *Managing Content*, Amazon, https://www.amazon.com/b/ref=s9_acss_bw_cg_ftuobm_1b1_w/ref=s9_acss_bw_cg_ftuonb_1b1_w?node=15282062011&pf_rd_m=ATVPDKIKX0DER&pf_rd_s=merchandised-search-4&pf_rd_r=KMH0NXT73B08BZ2A5J0N&pf_rd_t=101&pf_rd_p=4fb9978b-0206-4056-898f-5e1c4ff46c26&pf_rd_i=15282061011&pf_rd_m=ATVPDKIKX0DER&pf_rd_s=merchandised-search-2&pf_rd_r=9D33VXS0W5GSKWSCAASF&pf_rd_t=101&pf_rd_p=ce737529-b9a8-460c-87bc-f6e28696535b&pf_rd_i=17395968011 (last visited Nov. 2, 2023).

⁵³ See *Use Parental Controls on Your Child's iPhone, iPad, and iPod Touch*, Apple, <https://support.apple.com/en-us/HT201304> (last visited Nov. 2, 2023).

⁵⁴ *Account Settings*, TikTok, <https://www.tiktok.com/safety/en/account-settings/> (last visited Nov. 2, 2023).

⁵⁵ See Emily Weinstein & Carrie James, *Behind Their Screens: What Teens Are Facing (And Adults Are Missing)*, (Mass. Inst. Tech. Press ed. 2022),

<https://pz.harvard.edu/resources/behind-their-screens-what-teens-are-facing-and-adults-are-missing>.

⁵⁶ An emerging trend that promotes these considerations is online services creating teen privacy guides or hubs on their websites that include digital literacy resources and information on accessing privacy features similar to guides created for parents. This type of guidance can be especially helpful in informing teens of their options if a service creates features that can be changed with parental consent for individuals under 13 or without parental involvement for teens. See *Youth Safety*, Meta, <https://about.meta.com/actions/safety/audiences/youth> (last visited Nov. 2, 2023); see also *Youth Portal*, TikTok, <https://www.tiktok.com/safety/youth-portal?lang=en> (last visited Nov. 2, 2023).

increased digital literacy. Leading companies take a variety of approaches on whether a parent account is needed, and some companies only allow for a child account if there is a parent account tied to it.⁵⁷ Requiring a parent account for every service will involve increased data collection from the parent. However, when a parent exercising control is required to maintain their own account on the service, it may increase the parent's digital literacy and provide the parent with context around the features and interactions the minor uses. It may also facilitate conversations between parents and children. Additionally, it may be easier for technical teams to build the services' operations to include parental controls, supervision, and insights when there is a parent account. This balancing of equities is highly dependent on the individual service.

Regardless of the specific features or practices implemented, it is worth distinguishing parental controls and supervision created for teens from the parental involvement for an individual under 13 under COPPA. FPF does not recommend merely raising COPPA's age of application in the U.S. from under 13 because there are significant concerns about the risks posed to teens by parental consent and access requirements.⁵⁸ There are many privacy and safety features commonly used for individuals under 13 that could be modified to enhance the protections afforded to teens. However, there are also features that may be less appropriate for older teens, such as parents having complete access to teen social media accounts or messaging. Teens have differing needs for autonomy and privacy from parents than young children, and this is a vital consideration for every online service designed with minors in mind.

IV. FPF RECOMMENDS ADDITIONAL RESEARCH INVESTIGATING MINORS USING ONLINE SERVICES FOR EDUCATIONAL PURPOSES VERSUS RECREATION, SHIFTS IN PRIVACY RISKS AT DIFFERENT AGES AND STAGES OF DEVELOPMENT, AND THE RELATIONSHIP BETWEEN PRIVACY AND SAFETY IN APPLYING HEIGHTENED PROTECTIONS TO TEENS. THIS RESEARCH IS NECESSARY TO IDENTIFY APPROPRIATE SAFEGUARDS FOR MINORS ONLINE IN BOTH POLICY AND PRACTICE.

Additional research is necessary to appropriately address privacy risks as they impact minors of different ages and stages of development. As noted in the Request for Comment, research has been conducted on the effects of minors using social media platforms or their general technology use. Research involving a larger variety of online services and platforms would be beneficial due to the wide array of privacy and safety features specific to each service. Specifically, we recommend additional research investigating:

1. Time spent by minors online for educational purposes, including extracurricular activities and homework, versus unstructured use for non-educational purposes, and whether educational use impacts a minor's online experience. For example, improving rates of

⁵⁷ For example, Epic Games does not require a parent to have their own account to provide verifiable parental consent and use parental controls on their child's account. Alternatively, Amazon requires that a parent have an Amazon account to use parental controls on an Amazon Kids account, but the parent account can be a free, non-Prime, account. See *Epic Games Parental Controls*, Epic Games, <https://www.epicgames.com/site/en-US/parental-controls> (last visited Nov. 15, 2023); and *Amazon Parent Dashboard*, Amazon, <https://parents.amazon.com/intro> (last visited Nov. 15, 2023).

⁵⁸ For more on the considerations for the age of consent, see *The State of Play: Is Verifiable Parental Consent Fit for Purpose?*, Future of Privacy Forum (June 22, 2023), <https://fpf.org/wp-content/uploads/2023/06/FPF-VPC-White-Paper-06-02-23-final2.pdf>.

digital literacy for minors and parents, changes in the likelihood of minors choosing to engage in data privacy settings, and differences in health outcomes.

2. The privacy impacts on kids and teens of different ages with different family structures and cultural practices, as well as any shifts in which privacy risks are the most prevalent throughout the stages of a child's development.
3. The relationship and tradeoffs between privacy and safety in applying heightened protections to teens. Privacy measures can be used to achieve safety, but some safety measures can come at the detriment of privacy, and the comparative impact of each is unclear.

Thank you for this opportunity to respond to the request for comment. We welcome any further questions or the provision of additional information to assist in the Task Force's efforts to promote kids' online health and safety. Please contact Chloe Altieri at caltieri@fpf.org (cc:info@fpf.org) with any requests regarding this comment.

Sincerely,

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