

MINNESOTA KIDS CODE

Why is the Minnesota Kids Code necessary?

- Data gathering and processing determines every feature and common practice of the digital world. Design features that children and teens deal with daily nudge them into risky behaviors, expose them to predators, recommend harmful material, and encourage compulsive behavior. The Minnesota Kids Code will mandate that companies design in kids' best interest.
- With this bill, Minnesota can lead the way in making the digital world safe by design for American children. If passed, children and their parents would no longer be left alone to address the unfair handling of children's data at the hands of data-hungry companies.
- In countries where an age-appropriate design model is in effect, data protection forces companies to change their service and give children a high level of protection, like making sure real-time location information is not released and stopping adults from contacting children they don't know.

How does the Code protect kids' mental health? Does it stop manipulative practices?

- Data, how it is used and manipulated, is the driving force behind the manipulative practices tech companies deploy. Design, and how it relates to and uses data, shapes the content children are fed, encourages endless engagement, and drives how they are sent friend recommendations by stranger adults based on their location. Even online retailers' 'frequently bought together' features manipulate data and often pushes the purchase of products that are not legal for minors.
- Minnesota's children deserve better protection:
 - o 59% of US teens have been bullied or harassed online, and a similar share says it's a major problem for people their age.¹

¹ [Pew Research Center - A Majority of Teens Have Experienced Some Form of Cyberbullying](#)

- o The suicide rate for girls aged 10 to 14 has tripled since 1999, with 12.5 percent of African American girls and 10.5 percent of Latina girls in high school having attempted suicide at least once in the past year.² Research shows that for youth who have shown interest in mental health topics TikTok's algorithms recommend suicide content within 2.6 minutes of searching mental health topics or hashtags.³
- o Internal Meta research highlights links between social media and girls' body image issues, with 32% of teen girls reporting that when they felt bad about their bodies, Instagram made them feel worse. The very design of these products results in this harm with recommendation systems flooding teen girls' feeds with the 'ideal' body and using data-based profiling to target girls as young as 13 with eating disorder content.⁴
- o Recently revealed Meta data shows 1 in 8 users under the age of 18 had experienced unwanted sexual advances on Instagram over the previous 7 days.⁵
- o A 2022 Survey by Girlguiding found just how difficult being a young woman online can be, with 79% of 13 to 21-year-old girls and young women reporting that they experienced online harms in the last year. These harms included: sexist comments (35%); cyberflashing (22%); sexual harassment (20%); catfishing (20%); pressure to share nude photos (16%); and cyberstalking (13%). 94% of these girls and young women reported that these experiences resulted in negative emotions, with 76% saying it made them feel anxious, angry, scared, depressed, or less confident in themselves.⁶
- o Boys also experience sexual harm online, with a recent global survey finding 48% of reported experiencing online sexual harm before age 18, including inappropriate interaction with adults and being asked something sexually explicit or being sent sexually explicit content.⁷
- o Recent research by Thorn has found that LGBTQ+ minors were two to three times more likely to have experienced unwanted or risky interactions online than their straight-identifying peers.⁸

² [CDC Youth Risk Behavior Survey](#)

³ Center for Countering Digital Hate [Deadly by Design](#)

⁴ Meta's [internal research](#). Risky By Design Case Study: [Recommendation Systems](#).

⁵ Arturo Bejar [whistleblower data](#).

⁶ Girlguiding Online Harms [Policy Briefing](#)

⁷ WeProtect Global Alliance [Estimates of Childhood Exposure to Online Sexual Harms and Their Risk Factors](#)

⁸ Thorn 2023 [LGBTQ+ Youth Perspectives](#)

- The bill calls for companies to contemplate their known audiences and apply common sense product safety practices to all online products, services, or features offered to the public that children are reasonably likely to access. The past two decades have shown that Big Tech won't do the right thing on their own. This bill will balance the best interests of children and teens against the powerful companies exploiting them.

Will tech companies be able to comply with a Kids' Code?

- Yes! These are global companies that already comply with varying laws in different countries. As a result of AADC model becoming law overseas, they made significant improvements, including:
 - o Instagram has announced it will not allow unknown adults to direct message users under 18.⁹
 - o All TikTok users under the age of 16 will have their accounts set to private by default.¹⁰
 - o Google has made SafeSearch the default browsing mode for all under 18s.
 - o YouTube has turned off autoplay for all users under 18 and break and bedtime reminders are turned on by default.¹¹
 - o The Google Play Store now prevents under-18s from viewing and downloading apps rated as adult-only.
 - o Children aged 13-15 on TikTok do not receive push notifications after 9 p.m., and children aged 16-17 will have push notifications disabled starting at 10 p.m.
 - o Messenger Kids has developed an in-app activity that uses child-appropriate language to educate children on the kind of information people can see about them. This includes inter-personal privacy, what controls parents have, and what information about the child is saved when they use the app.
 - o Instagram has introduced positive nudges prompting children to take a break and suggesting they set reminders to take more breaks in the future.
 - o On TikTok, a pop-up now appears when children under the age of 16 are ready to publish their first video, asking them to choose who can view it.
- While some companies made these changes globally, others haven't been done here because we don't have a law requiring them to do so. Without our own law, we have no legal basis to enforce adequate protections for Minnesota's children.

⁹ [Instagram Announcement](#) about Youth and Teen Safety Updates

¹⁰ [TikTok Announcement](#) about Youth and Teen Safety Updates

¹¹ 5Rights Foundation [Summary of Changes](#) resulting from the UK AADC

- Additionally, research conducted by Fairplay for Kids found significant variation between countries on seemingly identical platforms, including WhatsApp, Instagram, and TikTok – highlighting the ways tech companies are modifying their platforms to abide by a local jurisdiction's privacy protections, while not extending those protections beyond where required by law.¹²
- As a result, children and teens in Minnesota are left with less protection than children and teens in the UK and tech companies will not provide additional protections until the law requires it. Minnesota's children and teens should not be left more vulnerable than those in the UK.
- A Minnesota code would drive compliance and uphold a robust interpretation of the AADC model.

Why does it apply to under-18s, not to under-13s like in COPPA?

- Ask any parent whether their 13-year-old is an adult, and they will say, "No, not yet."
- US law recognizes minors as those under the age of majority, which in most states is 18. A handful of states set their age of majority at 21 (Indiana and Mississippi) and 19 (Alabama, Colorado, Maryland, and Nebraska). States recognize that teenagers are certainly vulnerable online. As a result, the AADC model covers all children up to 18.

Isn't it more straightforward to talk about services 'directed at children', as we currently have in COPPA, rather than 'reasonably likely to be accessed' by children?

- We must protect children where they are, not where we want them to be.
- The internet is open to all: from nursery rhymes on YouTube to Roblox to Google searches that land children on porn sites, Minnesota's kids are accessing online spaces every day that are not directed at them and are impacted by many services that are not designed for them. For example:
 - Frances Haugen's testimony to Congress brought to light some of the devastating effects that Instagram has on teens, particularly about body dysmorphia and low self-esteem.¹³
 - Arturo Bejar, former Meta engineer, in testimony to Congress reported that that 1 in 5 kids were witnessing and 1 in 10 were experiencing unwanted sexual advances on Instagram.¹⁴
 - Recent research by 5Rights revealed Instagram and TikTok recommending

¹² FairPlay Research on [Global Design Differences](#)

¹³ [Wall Street Journal reporting](#) on Instagram's Internal Research Highlighting Comparison Harms

¹⁴ [Testimony from Arturo Bejar](#) before the US Senate Judiciary Committee Subcommittee on Privacy, Technology and the Law on Nov. 2, 2023

self-harm, pornography, and pro-suicide material to children.

- There's metadata to suggest that large-scale 'depression' in teen girls can be attributed to social media.¹⁵
- 'Reasonably likely to be accessed' means that if it is more probable than not that a child would access your online product, service, or feature, you are in the scope of the Code. It is a common-sense application, and crucially important for the future regulation of the digital space.
- 'Likely to be accessed' is a concept first introduced in the UK AADC. Still, it has since been applied in other policy contexts, including the Organisation for Economic Co-operation and Development (OECD),¹⁶ Ireland,¹⁷ California's AADC, and the UK's Online Safety Bill.¹⁸
 - The Minnesota Kids Code has been amended to add a reasonableness standard to this concept. Reasonableness is a legal term of art stemming from the common law of courts - it gives the court the authority to do a reasonableness analysis based on an objective person standard. This means, were an action to be taken against a company under the Minnesota Kids Code, the Court would apply a reasonableness analysis to their determination of whether the online product, service, or feature was likely to be accessed by children, and thus within the scope of the Minnesota Kids Code.
- The probability of a child accessing a service can be measured through a service's own research about its users, through academic and market research, by considering what children are interested in or if children are known to like similar services. The Minnesota Kids Code provides several factors within the text of the proposed statute for companies to consider when conducting this analysis.

What does 'best interests of the child' mean?

- The Minnesota Kids Code requires companies to design their online services, products, and features in a way that considers the best interest of the child against the company's use of the child's personal data. This occurs by requiring the company to weigh several considerations against the provided definition of the best interests of the child through the Data Privacy Impact Assessment required through the code. The Minnesota Kids Code defines the best interests of the child as meaning: the use, by a business, of the personal data of a child or the design of an online service, product, or feature in a way that: will not benefit the business to the detriment of the child; and, will not result in: reasonably foreseeable and material physical or financial harm to the child; reasonably foreseeable and severe psychological, or emotional harm to the child; a highly offensive intrusion on the reasonable privacy expectations of the child; or discrimination against the child based upon race, color, religion, national origin, disability, sex, or sexual

¹⁵ ['The Dangerous Experiment on Teen Girls'](#) by Professor Jonathan Haidt, The Atlantic, November 2021

¹⁶ [OECD Recommendation on Protecting Children in an Online Environment](#)

¹⁷ [Irish Fundamentals](#)

¹⁸ [UK Online Safety Act](#)

orientation.

- The Minnesota Kids Code requires that In the event of a conflict between the commercial interests of a business and the best interests of children reasonably likely to access an online service, the business must prioritize the child’s best interests.
- The bill frames the issue in a practical way, it offers valuable guidance to businesses during the design phase of their online products related to their obligations to their likely audience.

What about targeted advertising?

- This bill would not prohibit targeted advertising as a whole, but some aspects limit how much children can be profiled and targeted with advertising.
- Provisions like detrimental use of data, profiling, data minimization, data sharing and even geolocation (which drives a lot of advertising) narrow the band of opportunities to target advertising to a child.
- Specific forms of targeted advertising, such as profiling 13-15-year-olds to sell them age-restricted products, would violate the Minnesota Kids Code.

Are there any substantial differences between the Minnesota Kids’ Code, the California Kids’ Code and the UK Code?

- All three Codes are based on the same core principles for protecting youth online. The differences between the three Codes were carefully crafted to create core standards between the three jurisdictions, while accounting for each jurisdiction’s differing legal and statutory landscapes.
- Through conversations with stakeholders during the 2023 legislative session and ongoing work during the legislative recess, the Minnesota Kids Code has been updated to clarify ambiguities and better reflect the United State’s First Amendment jurisprudence. As a result of these updates the Minnesota Kids Code has several differences from the California Kid’s Code. Key differences include the following, among other changes:
 - The Minnesota Kids Code defines the best interests of the child, as discussed above.
 - The Minnesota Kids Code relies on a “reasonably likely to access” standard.
 - The obligations and prohibitions placed on companies due to the Code have been clarified and connected to the “best interests of the child” definition.
 - Companies no longer have to complete the DPIA before a new product, service or feature is offered to the public. However, to be eligible for the right

to cure provision contained in the code, a DPIA must be completed before new products, services, or features are launched.

- o Profiling has been redefined to clarify that it does not include the processing information that does not result in an assessment or judgment about a natural person.
- o Removes requirements related to age estimation and prohibits companies from collecting additional data for determining the age of their consumers.
- o The Minnesota Kids Code now specifies that nothing in the code prevents kids from affirmatively searching for the content they want.

What about the California AADC lawsuit?

- The California AADC was challenged through litigation brought by NetChoice, a Big Tech trade association, in December of 2022. On September 18, the District Court for the Northern District of California granted NetChoice's request for a preliminary injunction, finding the California AADC probably violates the First Amendment.
- The California AADC, and the Minnesota Kids Code, are not seeking to moderate content online. Instead, it requires platforms to take simple, additional measures to conceal the data and protect the privacy of underaged users.
- The implications of the District Court's decision suggest that any regulation, including that, like the AADC model, which is not focused on content or speech, violates the First Amendment. This overreaching interpretation of the First Amendment grants companies' business practices the status of First Amendment speech and prioritizes those practices over the children's rights to be protected from surveillance and predatory online conduct. We disagree with this interpretation and do not believe it will withstand further scrutiny.
- Attorney General Bonta also disagrees with the District Court's interpretation of the First Amendment, and has appealed the ruling to the 9th Circuit Appellate Court.
- The Constitution does not make privacy protections impossible, but this District Court's decision is trying to do that. The freedom to speak is not the freedom to siphon data from unsuspecting internet users and use that data against them for profit. We reject NetChoice's view that the First Amendment is a tool for preserving and expanding corporate power and will continue to support the fight to protect the CA AADC in the Ninth Circuit.
- As discussed above, before the District Court's decision an effort was already underway to update and strengthen the Minnesota Kids Code to reflect First Amendment jurisprudence and other concerns better. These amendments do not address every issue raised by the District Court but do address reasonable First Amendment concerns. Minnesota should continue to advance this updated version of the Minnesota Kids Code and not let efforts to protect the data privacy of Minnesota's children be chilled by Big

Tech's legal strategy and the decision of a single district court.

We accept the need for special protections for children, but will the bill impact adults' internet use?

- Assertions that the Code requires identity verification of every user on every website are untrue. The Code only requires sites to determine whether they are reasonably likely to be accessed by children; they do not need to know the age of every consumer.
- Companies have a variety of methods to determine whether they fall within the “reasonably likely to be accessed by children” category. The Minnesota Kids Code prohibits companies from collecting additional data for this determination, ensuring strong privacy protections.
- Assertions that the Code will eliminate anonymous browsing on the internet are also patently false. By mandating privacy protections by default, the Code will ensure that vulnerable communities or people with medical or physiological conditions they do not want others to know about are protected from their personal information being bottled and sold throughout the internet.

What about KOSA?

- The Kids Online Safety Act was introduced in the U.S. Senate in 2023. It requires that social media companies, online video games, messaging applications, video streaming services, and online platforms connected to the internet that are used, or reasonably likely to be used, by minors act in the best interest of the minor by taking reasonable measures in its design and operations of products and services to prevent specific harms, such as violence, sexual exploitation, bullying, harassment, patterns that encourage addiction-like behaviors, certain mental health disorders, promotion of narcotic drugs,, tobacco products, gambling, and alcohol, and specified financial harms.
- The AADC model and KOSA similarly focus on establishing a ‘duty of care’ for companies to address online harms and risks to children through targeting the design, settings, and other controls of online platforms and services. However, they differ in several key ways:
 - o *Who the law protects.* As federal legislation, KOSA would protect all US children aged 16 or younger. The AADC model covers children under 18 years of age and only applies to Minnesota residents, though companies may choose to implement the law’s requirements for all children.
 - o *Companies that are subject to the law.* KOSA applies to social media companies, online video games, messaging applications, video streaming services and online platforms connected to the internet that are used, or reasonably likely to be used, by children 16 and younger. AADC applies to online offerings that are “reasonably likely to be accessed by children.” This includes offerings that target children as defined by COPPA, contain advertisements marketed to children, or where data indicates a significant

amount of users is made up of children. However, small companies and non-commercial sites that do not collect, sell, or share personal information are exempt from the AADC model per a threshold eligibility requirement established within the text of the code.

- o *Enforcement and rulemaking.* KOSA will be implemented and enforced by the Federal Trade Commission. In states that pass the AADC model, the Attorney General is responsible for enforcing the code.