



MARYLAND KIDS CODE

Is the Maryland Kids Code really needed?

- Data gathering and processing determines every feature and common practice of the digital world. Common features nudge children into risky behaviors, expose them to predators, recommend harmful material, and encourage compulsive behavior.
- With this bill, Maryland has the chance to lead the way for making the digital world safe by design for American children. If passed, children and their parents would no longer be left 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, like the UK and Ireland, data protection forces companies to make changes to their service and give British and Irish 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. But it can only be enforced in the UK and Ireland.
- With the passage of AB 2273 (2022), California became the first state to enact the AADC in the US, showing the potential of such a model within the American legal landscape. However, the law will only apply to California's children. Why do Maryland's children deserve anything less?

The Code is about data privacy but what about children's mental health and getting at algorithms and the manipulative practices where kids are particularly vulnerable, isn't that where we should focus?

- Data, how it is used and manipulated, is the driving force behind the manipulative practices tech companies deploy. It shapes the content children are fed; it encourages endless engagement; it also drives how they are sent friend recommendations by stranger adults based on their location; and even online retailer's 'Frequently bought together' features often push the purchase of products that are not legal for minors.
- American children deserve better protection:
 - 59% of US teens have been bullied or harassed online, and a similar share say 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 reported 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 cyber stalking (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 Sexual harms online also impact boys, with a recent global survey finding 48% of reported experiencing online sexual harms 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 that are exploiting them.

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

- TYes! These are global companies that are already complying with varying laws in different countries. Specifically, they already are complying with the Code in the UK and great changes are underway:
 - 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 the 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 9pm, and children aged 16-17 will have push notifications disabled starting at 10pm.
 - o Messenger Kids have developed an in-app activity that uses child-appropriate language to educate children on the types 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 have 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 the video.
- Other countries have no legal basis to enforce these rules, unless they have passed their own 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

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

protections beyond where required by law.¹²

- As a result, children and teens in Maryland are left with less protection than children and teens in the UK and tech companies will not be providing additional protections until the law requires it. Maryland's children and teens should not get a worse deal than those in the UK.
- Having a Maryland code would drive compliance and uphold a robust interpretation of the AADC.

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 it's clear that the age of adulthood does not begin at 13.
- 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) and teenagers are certainly vulnerable online. As a result, the AADC covers all children up to 18.

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

- We have to 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, every day kids in Maryland are accessing online spaces 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 in relation to 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 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

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

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

- ‘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 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, but 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 Maryland AADC has been amended to add a reasonableness standard to this concept. Reasonableness is legal term of art that 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 AADC, 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 scope of the Maryland AADC.
- The probability of a child accessing a service can be measured through a service’s own research about their users, through academic and market research, by considering what children are interested in or if children are known to like similar services. The Maryland AADC provides a number of 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 Maryland AADC requires companies 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 a number of considerations against the provided definition of best interests of the child through the Data Privacy Impact Assessment required through the code. The Maryland AADC defines best interests of the child as meaning: the use, by a covered entity, 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 covered entity 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 reasonably privacy expectations of the child; or discrimination against the child based upon race, color, religion, national origin, disability, sex, or sexual orientation.
- The Maryland AADC 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 best interests of the child.

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

¹⁷ [Irish Fundamentals](#)

¹⁸ [UK Online Safety Act](#)

- The bill frames the issue in a practical way and offers useful guidance to businesses during the design phase of their online products related to their obligations to their likely audience.

What about targeted advertising?

- Targeted advertising as a whole would not be prohibited by this bill but there are some aspects of the bill which limit the extent to which 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.
- Certain forms of targeted advertising, such as profiling 13-15 year olds to sell them age restricted products would be a violation of the Maryland AADC.

Are there any substantial differences between the Maryland Kids' Code, the California Kids' Code and the UK Code?

- All three Codes are based on the same core principles for the protection of 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 Maryland AADC has been updated to clarify ambiguities and better reflect the United State's First Amendment jurisprudence. As a result of these updates the Maryland AADC has a number of differences from the California Kid's Code. Key differences include the following, among other changes:
 - The Maryland AADC defines the best interests of the child, as discussed above.
 - The Maryland AADC relies on a "reasonably likely to access" standard.
 - The obligations and prohibitions placed on companies as a result of the Code have been clarified and connected to the "best interests of the child" definition.
 - The Data Protection Impact Assessments no longer must be completed before an online product, service, or feature may be offered to the public, but rather within 90 days after it begins being offered to the public. Furthermore, companies will have to update their Data Protection Impact Assessments whenever a material change is made to the online product, service, or feature instead of doing so on a biennial basis.

- o Profiling has been redefined to clarify that it does not include the processing of 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 Maryland AADC 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 18th, 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 Maryland AADC, is not seeking to moderate content online, rather 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 suggests that any regulation, including that, like the AADC, 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 rights of children to be protected from surveillance and predatory online conduct. We do not agree 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 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 the preservation and expansion of corporate power and will continue to support the fight to protect the AADC in the Ninth Circuit.
- As discussed above, prior to the District Court's decision an effort was already underway to update and strengthen the AADC to better reflect First Amendment jurisprudence and other concerns. These amendments do not address every issue raised by the District Court but do address reasonable First Amendment concerns. Maryland should continue to advance this updated version of the AADC and not let efforts to protect the data privacy of Maryland'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 the ease with which adults use the internet?

- Assertions that the Code requires identity verification of every user on every website are simply 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 Maryland AADC prohibits companies from collecting additional data for making 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 is a bill 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 it design and operations of products and services to prevent certain 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 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:
 - *Who is protected by the law.* As federal legislation, KOSA would protect all US children aged 16 or younger. The AADC covers children under 18 years of age and only applies (currently) to California residents and potentially the residents of any Maryland, though companies may choose to implement the law’s requirements for all children.
 - *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 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, the Attorney General is responsible for enforcing the AADC.

For Further Information:

- **See Our Website:** <https://marylandkidscode.com>
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