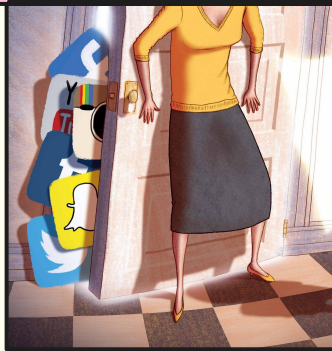


Gus J. Solomon
Inn of Court

Children and Social Media

Introduction

Sam Zeigler, Tyler Beyerlein



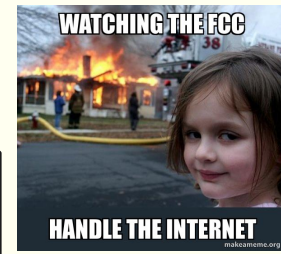
Stratton Oakmont, Inc. v. Prodigy Servs. Co.,
1995 WL 323710 (N.Y. Sup. Ct. 1995)



- In *Stratton Oakmont*, a New York trial court found an internet service provider could be liable for the content of its subscribers' posts, as the publisher of the content. The court relied heavily on the fact that the provider advertised its practice of controlling content on its service and actively screened and edited material posted on its message boards.
- Section 230 of the Communications Decency Act sought to remove the “grim choice” created by *Stratton Oakmont*: A provider that voluntarily filtered content would be responsible for all posts, while “providers that bur[ied] their heads in the sand and ignore[d] problematic posts would escape liability altogether.” *Fair Hous. Council v. Roommates.com, LLC*, 521 F.3d 1157, 1163 (9th Cir. 2008).

Origins of the Communications Decency Act of 1996

Title 47—Telecommunications Chapter 5—Wire or Radio Communication



Communications Act of 1934:

- Foundational law, regulating telecommunications.
- Created the Federal Communications Commission (FCC).
- Regulates overall communication industry.

Telecommunications Act of 1996:

- Significantly amended the 1934 Act.
- Aimed to ensure affordable access to telecommunications services for all.
- Included Title V—Communications Decency Act.

Communications Decency Act (47 U.S.C. §230):

- Introduced by Reps. Christopher Cox (R-CA) and Ron Wyden (D-OR).
- Regulates online content considered indecent or obscene, particularly when accessed by minors.
- Section 230, provides immunity to online platforms for content posted by users.

“Good Samaritan” Provision (47 U.S.C. §230(c))



- “No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” 47 U.S.C. §230(c)(1).
- “No provider or user of an interactive computer service shall be held liable on account of-
 - (A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise; or
 - (B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph.” 47 U.S.C. §230(c)(2).

Definitions

47 U.S.C. §230(f)



“Interactive computer service”: Any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions. 47 U.S.C. §230(f)(2).

“Internet”: The international computer network of both Federal and non-Federal interoperable packet switched data networks. 47 U.S.C. §230(f)(1).

“Information content provider”: means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service. 47 U.S.C. §230(f)(3).

Section 230(c)(1) immunity



- Immunity under sub-section 230(c)(1) **does not apply unless** the answers to the following questions are “yes”:
 - 1. Is the defendant a provider or user of an interactive computer service?
 - 2. Does the plaintiff seek to hold the defendant liable as a publisher or speaker?
 - 3. Does the plaintiff’s claim arise from information provided by another information content provider?

If the answer to any of these questions is “no,” Section 230(c)(1) will not bar liability.

The Ninth Circuit's *Barnes* test (Does Section 230 apply?)



- The *Barnes* test, created in *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096 (9th Cir. 2009), is a foundational three-part test used to determine if Section 230 applies at all.
- **A defendant is entitled to protection under Section 230(c)(1), if:**
 - **(1) the defendant is a "provider or user of an interactive computer service";**
 - **(2) is treated by claim against it as a "publisher or speaker" of the content in question; and**
 - **(3) the content at issue is provided by another "information content provider," meaning the defendant is not responsible for creating or developing the content.**

Material Contribution Test



- Material contribution test: A website operator will be responsible for the development of the information at issue in the case if it **directly and materially** contributes to what made the content itself unlawful.
Henderson v. Source for Pub. Data, L.P., 53 F.4th 110, 127 (4th Cir. 2022).
- Conversely, websites do not create or develop content when they “merely provide a neutral means by which third parties can post information of their own independent choosing online.” *Rigsby v. GoDaddy, Inc.*, 59 F.4th 998, 1008 (9th Cir. 2023).

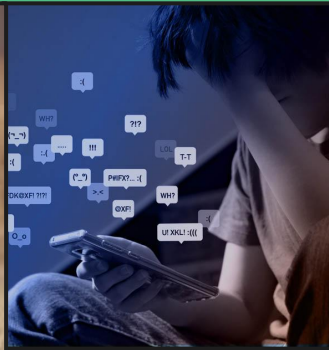
Doe v. Fenix International,
22-cv-62176-ALTMAN/Strauss (S.D. Fla. Jan. 29, 2025)



- The plaintiff, "Doe," argued that Fenix International should be held liable for not adequately moderating content on their platform.
- Court found that Fenix International qualified for Section 230 protection, which shields online platforms from liability for content posted by their user.

Mental Health Implications

Jennifer Morrissey, Brian Hickman, Bailee K. Bruun



Expert child psychologist, Brian Hickman, testifies on the mental health implications of unregulated social media



What has changed in social media usage patterns among children and adolescents in the post-COVID-19 era, and what are the impacts on children's mental health?

13

- Roughly 95% of teens report having a smartphone or access to one. 95% also report using the internet daily with 45% saying they are online “almost constantly”.
 - 2009 – 50% use social media daily
 - 2017 – 85%
 - 2022 – 95%
- 22% of 10th grade girls spend 7+ hours/day
- Of the Big 4 – YouTube, TikTok, Snapchat and Instagram, YouTube is the most used, then TikTok, Snapchat and Instagram.
- 1 in 5 teens say they are on YouTube or TikTok “almost constantly”.

What specific mental health risks, such as anxiety and depression, have been exacerbated in children because of increased social media exposure?

14

- From 2010 to 2021 the percentage of 12th graders who reported sleeping 7 or fewer hours per night rose from 1/3 to nearly 1/2. This is at an age when you are supposed to get 9 hours of sleep a night. That lack of sleep, alone, may cause mental health problems.
- Since 2010, anxiety, depression and loneliness have all been on the rise, not just in self-reporting or objective symptoms, but also in behaviors such as acts of self-harm or attempted suicide.
- One of the largest studies in this area occurred during the rollout of Facebook. Researchers found an almost immediate uptick in mental health issues – such as depression and anxiety – after Facebook became available.

Social media use and impact on sleep

15

- Frequent social media use is associated with decreased academic achievement. One survey of almost 1500 middle schoolers found an inverse correlation between social media usage and grades. In other words, the more you use social media, the worse your grades are going to be
- Researchers believe there are two things going on... social media use as a distraction, leaving less time for school; plus social media's tendency to disrupt healthy family functioning and peer relationships. Without healthy family functioning and peer relationships, academic performance naturally begins to suffer.

Social media's contribution to negative body image.

16

- Studies have shown that browsing on Instagram is associated with lower levels of body appreciation, likely tied to a tendency to compare oneself to social media influencers and others who portray an idealized image of themselves online. Interestingly, as compared to browsing on Instagram, commenting on others' looks and posting content were not associated with body dissatisfaction.
- Multiple studies have concluded that Instagram is making body issues worse for teenage girls mainly by contributing to unhealthy social comparison. Specifically, teens experience distress, are dissatisfied with their bodies, and feel the pressure to look perfect on social media, especially when confronted with thin ideals [12–14].
- One thing to keep in mind is that Instagram provides its users with the opportunity to edit their content before posting it on their profiles. This results in what we call self-presentation behaviors, where a person is trying to create an idealized image of themselves. Studies taken over multiple years have found that browsing through other users' idealized images leads to higher depression levels over time.

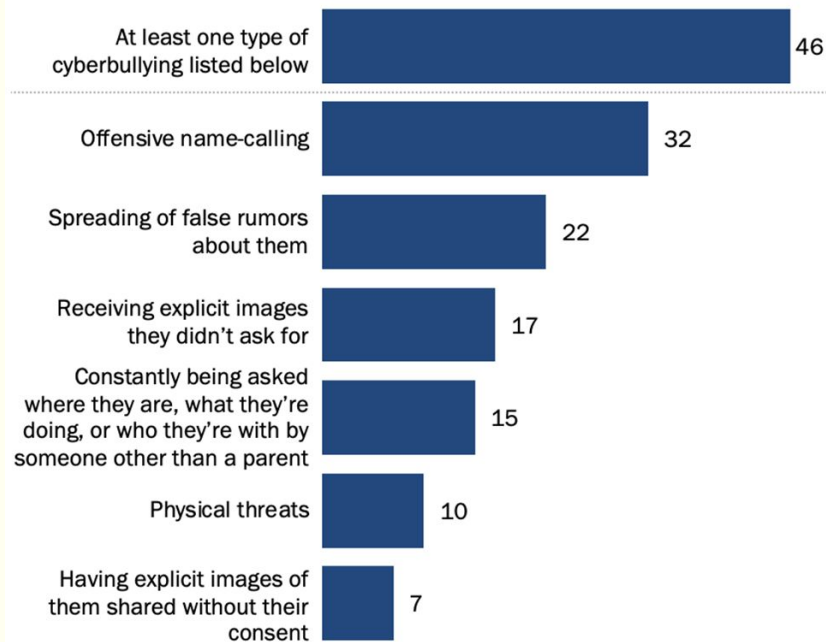
Social media and cyberbullying

17

- Nearly half of US teens report being bullied or harassed online.. Teen girls, in particular, report online abuse tied to their appearance.
- This is impacting our most vulnerable the hardest. Specifically, poor teens report more harassment.
- Almost 75% of teens say that the gov't and social media sites are not doing enough to curb harassment. In other words, the adults are failing them.
- About 1/2 teens support permanent social media bans and/or criminal charges for online harassers.

Nearly half of teens have ever experienced cyberbullying, with offensive name-calling being the type most commonly reported

% of U.S. teens who say they have ever experienced ___ when online or on their cellphone



Note: Teens are those ages 13 to 17. Those who did not give an answer are not shown.

Source: Survey conducted April 14-May 4, 2022.

"Teens and Cyberbullying 2022"

PEW RESEARCH CENTER

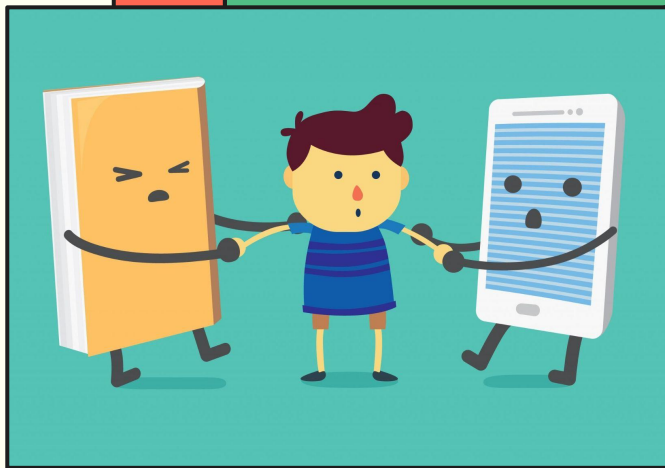
Good news?

19

- Social media can be of benefit, even to teens.
- Youth who experience significant anxiety or struggle in social situations can use social media as a safe way to interact with others. It can also help teens who feel like they don't fit in find a peer group. Online peer groups can be especially important to marginalized groups, such as LGBTQ+ teens. A connection even if online, can help mitigate against feeling completely alone.

The Present

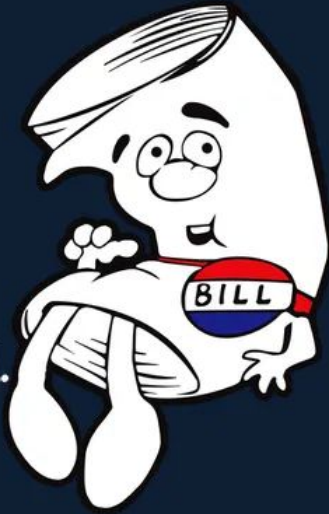
Stephan Warner, Lee Wyatt,
John Haub



California - 2022

21

I'm just a
bill. Yes,
I'm only a
bill. And
I'm sitting
here on
Capitol Hill.

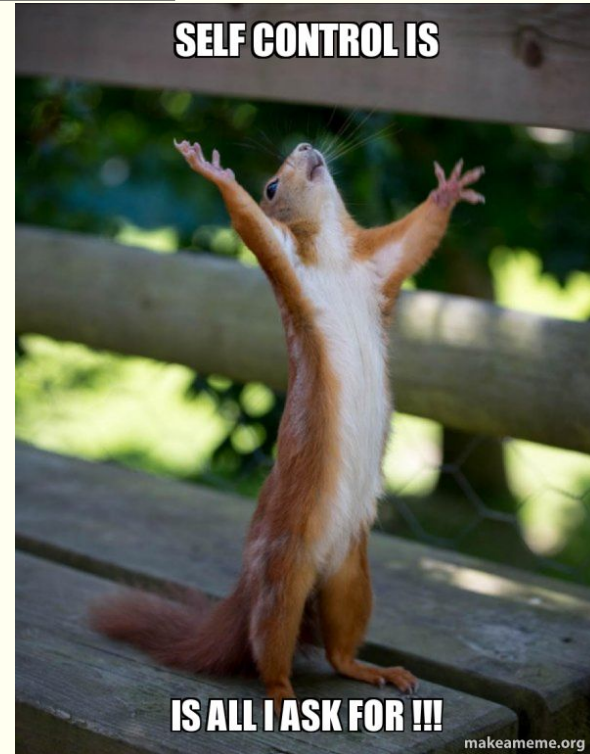


- Assembly Bill 587 - Intended to ensure a range of disclosure and openness requirements.
- Signed into law in September of 2022.
- Requires the publication and ensures the ready availability of Terms of Services for social media companies, as well as requiring yearly reporting obligations.

California - 2022

22

- Intended to use transparency and public accountability, and not specific regulations of content, to hold Social Media Companies accountable to self regulate their services.
- On January 7th, 2025, Meta announces it is moving away from 3rd party fact Checking.



California - Other Legislation

23

A 787 - 2023 Pending

Requires a review and understanding of how schools are integrating digital citizenship and media literacy education into their curriculum, and the creation of best practices regarding the implementation of such curriculum.

A - 836 2023 Pending

Declares Social Media Platforms shall be considered a transitional First Amendment Forum, and those that are established in the state to develop policies to address unprotected speech.

A 1282 - 2024 Enacted

Requires Mental Health Services Oversight and Accountability Commission to investigate the persons and populations that use social media and the negative mental health risks associated with social media, amongst other things.

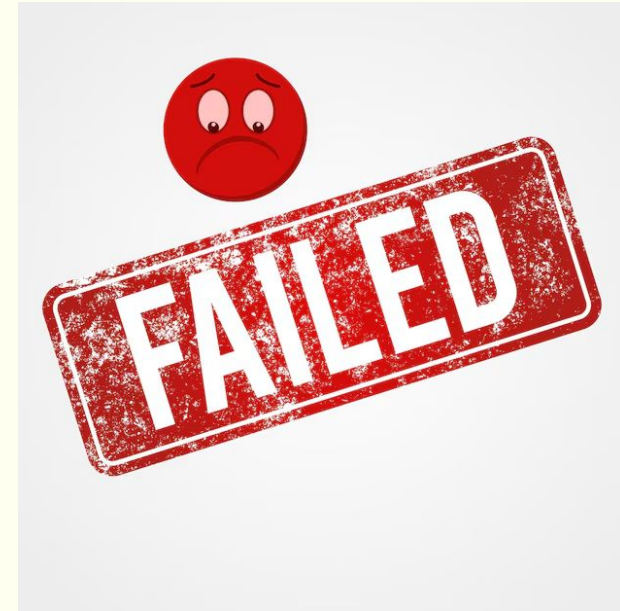
A 1800 - 2024 Failed

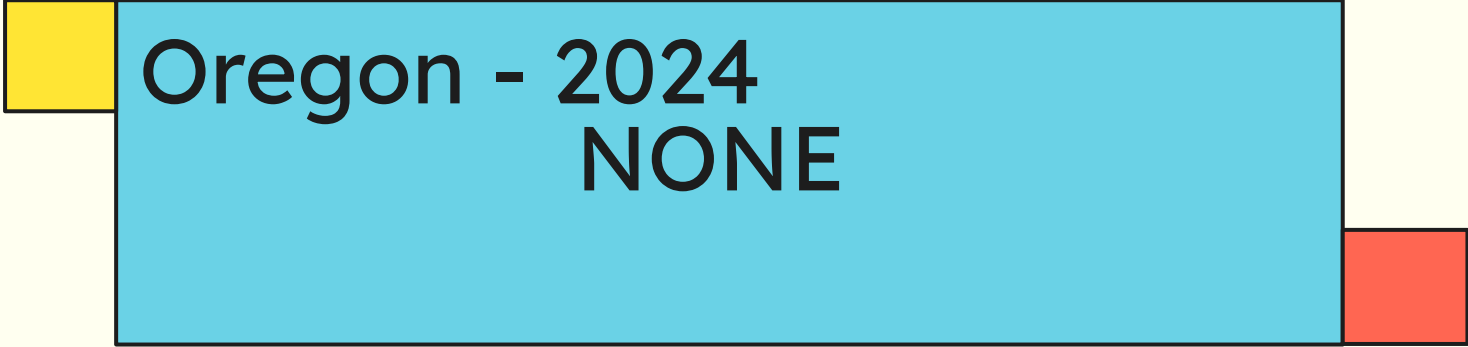
Entitles a person who suffers injury that is proximately caused by the illegal purchase of a controlled substance through a social media platform to recovered damages if it is shown the injury was occasioned by the lack of ordinary care of the platform.

Oregon - 2023

24

- H 3071: Requires Health Authority to study the effect of Social Media and cell phone use among youth. - Failed
- S 196: Requires businesses that provide online produces, services or features that a child is reasonably likely to access to identify, evaluate and mitigate risks to the child from their services. - Failed.
- S 257: Requires age verification prior to access of adult content before granting access. - Failed.





Oregon - 2024
NONE

Recent Litigation

- Recent years, there has been a rise of class action claims against social media companies.
- Claim they knew of the mental health impacts and addictive nature of their products, and failed to act.
- On February 6, 2025, San Diego County Leaders announced legal action against Facebook, Instagram, Snap, TikTok, Youtube and their parent companies.
- Claiming the media apps caused addiction crisis among California youths by deliberately designing addictive features like endless scrolling and autoplay.

The Future

Madyson Carpenter, Bonnie Calhoun



Kids Off Social Media Act

28

Legislation

Senators Ted Cruz (R-TX), Brian Schatz (D-HI), Chris Murphy (D-CT), and Katie Britt (R-AL)

- Prohibits users under the age of 13 from using social media entirely;
- Prohibits recommendation algorithms for users under the age of 17; and
- Requires schools to restrict social media access on federally funded networks.

Opposition

Center for Democracy & Technology, ACLU, New America's Open Technology Institute, Fight for the Future, Electronic Frontier Foundation

- Significant, potentially unconstitutional, restriction on young people's access to online services
- Threatens speech and privacy due to age verification for everyone
- Incentivizes invasive surveillance of children (i.e., by schools)
- May undermine existing child safety efforts (i.e., drive teens to unmonitored platforms; algorithms could be helpful to keep kids away from harmful content)

Status

Will it pass?

Originally a 2024 bill; revived in 2025. Senate Commerce Committee advanced the bill in early February 2025 to the full Senate.

Kids Online Safety Act

29

Legislation

Senators Marsha Blackburn (R-Tenn.) and Richard Blumenthal (D-Conn).

- Creates a “duty of care” for online platforms minors will likely use
- Requires social media companies to show that they are taking “reasonable measures” to protect minors from harms online;
- Give minors the option to turn off features that encourage “addiction-like” use of the platform and algorithm-based content recommendations

Opposition

National Coalition Against Censorship, ACLU, Fight for the Future, Electronic Frontier Foundation, LGBTQ groups

- Too vague on what is “harmful content”
- Potential expansion of FTC’s powers
- Could be used to target marginalized communities (particularly LGBTQ communities)
- Unconstitutionally censors free speech & makes it harder for teens to look up controversial topics (racism, climate change).
- Implements ID-based age verification systems

Status

First introduced in 2022. Passed the Senate 91-3 in 2024 but did not make it to the President’s desk. Blackburn and Blumenthal recently announced they had reached an agreement with Elon Musk to modify KOSA.

Lawsuits

30

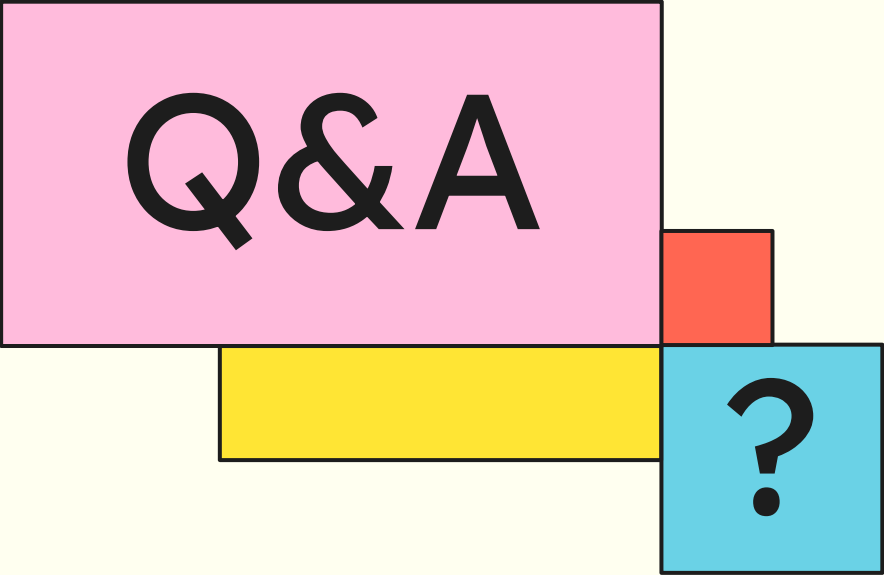
TikTok - October 2024

13 states and the District of Columbia (led by CA & NY) claim it was deliberately designed to keep young people hooked on the service which violated consumer protection laws and contributed to a teen mental health crisis.

Meta - October 2023

40+ states claim Meta deliberately designed products that are addictive and fuel the youth mental health crisis. The case has survived Meta's motion to dismiss





Q&A

?