

## Minnesota Age Appropriate Design Code FAQs

### Is this 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, Minnesota 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.
- The UK AADC has shown that data protection forces companies to make changes to their service and give British children a high level of protection, like making sure real time location is not released and stopping adults contacting children they don't know. But it can only be enforced in the UK.
- With the passage of AB 2273 (2022), California became the first state to enact the AADC in the US, showing such a model can work in the American legal landscape. However, the law will only apply to California's children. Why do Minnesota's youth 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.<sup>1</sup>
  - 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.<sup>2</sup>
- The bill calls for companies to contemplate their known audiences and apply common sense product safety practices before offering online products, services, or features that children are likely to access to the public. The past two decades have

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

<sup>2</sup> <https://www.cdc.gov/mmwr/volumes/69/su/su6901a6.htm>

shown that big tech won't do the right thing on their own. This bill will balance the best interests of youth against the powerful companies that are exploiting them.

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

- They already are complying in the UK:
  - Instagram has announced it will not allow unknown adults to direct message users under 18.<sup>3</sup>
  - All TikTok users under the age of 16 will have the accounts set to private by default.<sup>4</sup>
  - Google have made SafeSearch the default browsing mode for all under 18s.
  - YouTube have turned off autoplay for all users under 18 and break and bedtime reminders are turned on by default.<sup>5</sup>
  - The Google Play Store now prevents under 18s from viewing and downloading apps rated as adult-only.
  - 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.
  - 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.
  - Instagram have introduced positive nudges prompting children to take a break and suggesting they set reminders to take more breaks in the future.
  - 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

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<sup>3</sup> <https://about.instagram.com/blog/announcements/continuing-to-make-instagram-safer-for-the-youngest-members-of-our-community>

<sup>4</sup> <https://newsroom.tiktok.com/en-us/strengthening-privacy-and-safety-for-youth>

<sup>5</sup> <https://5rightsfoundation.com/Raftoftechchangestoprotectchildrenasnewrulescomeintoforce.pdf>

modifying their platforms to abide by a local jurisdiction's privacy protections, while not extending those protections beyond where required by law.<sup>6</sup>

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

## Likeliest challenges to specific elements of the Code

### 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.
- The UN recognizes children as those under 18 and teenagers are certainly vulnerable online; the UK 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?

- You have to protect children where they are, not where you 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 Minnesota 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.<sup>7</sup>
  - 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.<sup>8</sup>

<sup>6</sup> <https://fairplayforkids.org/wp-content/uploads/2022/07/design-discriminations.pdf>

<sup>7</sup> Instagram's internal research showed [66% of teen girls and 40% of teen boys experience negative social comparison on Instagram](#).

<sup>8</sup> ['The Dangerous Experiment on Teen Girls'](#) by Professor Jonathan Haidt, The Atlantic, November 2021

- ‘Likely to be accessed’ means that if it is more probable than not that a child would access your service, 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),<sup>9</sup> Ireland,<sup>10</sup> California’s AADC, and the UK’s Online Safety Bill.<sup>11</sup>
- 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.

#### What does ‘best interests of the child’ mean?

- In the event of a conflict between the commercial interests of a business and the best interests of children likely to access an online service, the business must prioritize the best interests of the child.
- 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.

#### 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 [15 standards](#) for the protection of youth online. The differences between the three Codes were carefully crafted to create a

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<sup>9</sup> <https://eaca.eu/news/oecd-protecting-children-in-the-digital-age/>

<sup>10</sup> [https://www.dataprotection.ie/sites/default/files/uploads/2021-12/Fundamentals%20for%20a%20Child-Oriented%20Approach%20to%20Data%20Processing\\_FINAL\\_EN.pdf](https://www.dataprotection.ie/sites/default/files/uploads/2021-12/Fundamentals%20for%20a%20Child-Oriented%20Approach%20to%20Data%20Processing_FINAL_EN.pdf)

<sup>11</sup> [https://publications.parliament.uk/pa/jt5802/jtselect/jtonlinesafety/129/12908.htm#\\_idTextAnchor143](https://publications.parliament.uk/pa/jt5802/jtselect/jtonlinesafety/129/12908.htm#_idTextAnchor143)

uniform standard between the three jurisdictions, while accounting for each jurisdiction's differing legal and statutory landscapes.

- The California Code created the California Children's Data Protection Working Group to report to the Legislature to evaluate best practices for the implementation of the Code.

**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 "age estimation" for sites likely to be accessed by children, and that age estimation needs to be relative to the risk of harm to children.
- Age estimation can be done in a multitude of ways and does not have to be invasive. The Code ensures that age estimation practices are the least invasive possible and require that any personal information used for the purposes of age estimation is not used for any other purpose and is deleted.
- 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 psychological conditions they do not want others to know about are protected from their personal information being bottled and sold throughout the internet.