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Age Verification and Parental
Consent in a Digital
World: The Legal Landscape
After the Supreme Court's
Decision in *Free Speech
Coalition v. Paxton*

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Agenda

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Overview of Recent Developments

- States across the country have passed sweeping laws that regulate how minors use social media.
- These laws require minors to obtain parental consent before making accounts on social media platforms or accessing certain features.
- Most of these laws require the platforms to verify *all* users' ages with commercially reasonable methods.
- Many of these laws expressly exempt video games, but some can be read to cover them — especially if the game has a “social” component.
- American and European regulators have taken different approaches.

Importance to Gaming Companies

- Recent trends at the Supreme Court point towards a narrowing of First Amendment rights for platforms and content creators.
- Although the Court in *Brown* invalidated a law restricting the sale of violent video games to minors, three Justices from the majority are no longer on the Court.
- Justice Thomas dissented in *Brown*, and he recently wrote the majority opinion in *Free Speech Coalition* upholding an age-verification law.
- If current social media laws are upheld, slippery slope to games is possible—especially modern games with a social component and in-app purchases.
- There is no easy way to comply with these laws.

Constitutional and Legal Framework (U.S.)

- The platforms covered by these laws allow individuals to share and receive speech or other expressive content
- Thus, laws that restrict how individuals access and use these platforms implicate the First Amendment
- Three Supreme Court cases provide the basic legal framework: *Brown*, *Free Speech Coalition*, and *Moody*.

Constitutional and Legal Framework: *Brown*

- In *Brown*, the Court struck down a law that prohibited the sale of violent video games to minors.
- The Court explained that strict scrutiny applied because the law facially restricted the distribution of video games—and children’s access to those games—based on their content.
- Justice Thomas dissented, asserting “that ‘the freedom of speech,’ as originally understood, does not include a right to speak to minors (or a right of minors to access speech) without going through the minors’ parents or guardians.”

Constitutional and Legal Framework: *Free Speech Coalition*

- In *Free Speech Coalition*, the Court upheld a law requiring adult websites to verify users' ages.
- The Court recognized the law was content-based, but it did not apply strict scrutiny because the law was aimed at shielding children from obscene content. It explained that the government has unquestionable power to prohibit children from accessing material that is obscene to them.
- Because the age-verification requirement imposed an incidental burden on adults' speech, it was subject to intermediate scrutiny, which requires a law to be tailored to serve an important government interest.
- The Court concluded that shielding children from obscene content is an important interest and that the law was sufficiently tailored because it would be much less effective without age verification.

Constitutional and Legal Framework: *Moody*

- In *Moody*, platforms challenged laws restricting content moderation, arguing that their choices regarding the content allowed on their platforms reflected their expressive choices.
- The majority appeared sympathetic, but did not reach the merits, and instead clarified how facial First Amendment challenges to internet regulations should be evaluated.
- First, the court must “asses the state laws’ scope.” Second, the court must decide which applications violated the First Amendment and “measure them against the rest” to determine whether “a substantial number” of the law’s applications are unconstitutional.
- In other words: The court must determine whether the unconstitutional applications “substantially outweigh” the constitutional ones, which requires an inquiry into all of the law’s applications.
- Bottom line: *After Moody*, states have additional objections to facial challenges.

Survey of Social Media Laws

- Numerous states have enacted laws that require social media platforms and similar online services to verify users' ages and/or obtain parental consent for minors, including: Arkansas, California, Florida, Georgia, Louisiana, Mississippi, Nebraska, New York, Ohio, Tennessee, Texas, Utah, and Virginia
- These law vary along three dimensions: (1) the types of platforms and services they cover, (2) the substantive requirements they impose, and (3) their standards for verifying age and obtaining parental consent

Survey of Social Media Laws: Types of Platforms and Services

Only “Addictive” Platforms	All Social Media Platforms, But Many Exemptions	Many Different Platforms, Possibly Including Video Games
<ul style="list-style-type: none"> • CA, FL, NY • Cover platforms with an “addictive feed,” i.e., a website or application that recommends and displays content based on user data • FL law requires a specific “addictive feature,” e.g., infinite scroll, push notifications, or video streaming. 	<ul style="list-style-type: none"> • AR, GA, LA, MS, TN, UT, VA • Cover social media platforms, i.e., websites or apps where users create profiles, share content, and view content from and connect with other users (some require friend lists) • These laws exempt platforms for video games, as well as platforms for email, news, sports, and entertainment 	<ul style="list-style-type: none"> • OH, NE, TX • NE and TX laws cover social media platforms • OH law covers any website “reasonably anticipated to be accessed by children” • These laws exempt email, cloud storage, and other enterprise sites, but have no express exemptions for video games

What About Europe? Survey of Existing Laws

EU-wide:	National laws in EU:	UK
<ul style="list-style-type: none">• GDPR• AVMSD• DSA	<ul style="list-style-type: none">• France - Law no. 2023-556 (the SREN Act)• Germany - JMStV and JuSchG	<ul style="list-style-type: none">• UK GDPR• Age Appropriate Design Code• Online Safety Act

Survey of Social Media Laws: Florida HB 3

- To be covered, must be an “online forum, website, or application” and meet four criteria:
 - Platform allows users to upload content or view uploaded content of others;
 - Ten percent or more of daily active users under 16 on averages 2 hours per day or longer on the platform in last 12 months;
 - Platform employs algorithms that analyze data about users to select content for them;
 - Platform has one of five “addictive” features: (1) infinite scrolling; (2) push notifications; (3) auto-play video; (4) live-streaming; or (5) interactive metrics reflecting reactions to content (e.g. like buttons)
- If law applies, it:
 - Prohibits anyone under 14 from becoming an account-holder;
 - Requires parental consent for 14 and 15 year olds to become account holders;
 - Adds other regulatory requirements, including around account termination.

Survey of Social Media Laws: Nebraska LB 383

- To be covered, must be a “website or Internet application” that:
 - Allows a person to create an account; and
 - Enables an account holder to communicate with other account holders and users through posts.
- Exceptions for broadband internet services; email services; internet services where interactive functionality is incidental to preselected content; online shopping services; career development services; cloud storage and cloud computing services; technical support and product review services; and peer-to-peer payment platforms.
- If law applies, it:
 - Requires the platform to use a reasonable age verification method to verify the ages of all account holders;
 - Prohibits persons under 18 from becoming account holders without consent, which must be an oath, affirmation, or form delivered by common carrier, fax, or electronic scan;
 - Adds other regulatory requirements, including around privacy settings.

Survey of Social Media Laws: Substantive Requirements

Minors cannot use certain features without parental consent	Minors cannot have accounts at all without parental consent	Other measures to protect minors
<ul style="list-style-type: none"> • CA, NY, VA • Platform cannot provide a user with certain features unless it determines the user is not a minor or it has obtained consent from the user's parent • Restrictive features include addictive feeds, push notifications in evenings, "likes" • VA limits to one hour of use per day without parental consent 	<ul style="list-style-type: none"> • AR, FL, GA, LA, MS, NE, OH, TN, UT • Platform must verify age of all individuals who attempt to create account • Minors cannot create account without express parental consent • FL provides that users under 14 can never access 	<ul style="list-style-type: none"> • Must provide parents of minors with access to posts and control of settings (CA, GA, NE, OH, TX, UT) • Must limit collection of PII from minors (GA, MS, TX, UT) • Must limit exposure of minors to certain harmful materials (MS, TX)

Survey of Social Media Laws: Standards for Age Verification and Parental Consent

Age Verification	Parental Consent
<ul style="list-style-type: none">• AR requires use of a third-party vendor and allows a digitized ID card, a government-issued ID card, or any commercially reasonable method• Most simply require “commercially reasonable” methods (GA, LA, MS, NE, TX, VA) or do not provide any guidance (CA, FL, OH, TN)• Some require State agencies to issue regulations (NY, UT)	<ul style="list-style-type: none">• NE requires a signed form transmitted by email, fax, or carrier• Several allow a signed form, a call on a toll-free number, a video call, an email, or other commercially reasonable methods (GA, LA, MS, OH)• Some simply require “commercially reasonable” methods (TX, VA) or do not provide any guidance (AR, CA, FL, TN)• Some require State agencies to issue regulations (NY, UT)

Overview of Current Age Verification Methods

- **Credit card verification**
 - Relies on understanding that minors cannot obtain credit cards.
- **Third-party database checks**
 - Cross-referencing information with credit agencies or other trustworthy databases.
- **Uploading ID**
 - Likely to satisfy regulators, but cumbersome and not everyone has an ID.
- **Leveraging biometric technology**
 - Arguably more privacy invasive; creates litigation/regulatory risk under biometric privacy laws.
- **Age Assurance**
 - New technology that looks at post-account creation usage to estimate age.

First Amendment Challenges

- NetChoice and CCIA have challenged 10 of the 13 laws
- Courts fully enjoined the AR, FL, GA, OH, MS, TX, & UT laws. But the Fifth Circuit stayed the injunction of the MS law and the Supreme Court declined to intervene.
- The Ninth Circuit declined to enjoin the core provisions of the CA law but enjoined several minor provisions.
- The Middle District of Tennessee declined to enjoin the TN law.
- The Middle District of Louisiana has not yet ruled on the LA law
- NetChoice has not challenged the NE, NY, and VA laws, which do not go into effect until 2026

First Amendment Challenges: FL

- The challenge to the FL law, which applies only to platforms with an “addictive feature,” succeeded for slightly different reasons. The court held that the law was not content based—and was therefore subject to intermediate scrutiny—because whether a platform has an “addictive feature” depends on its technical characteristics, not the content it displays.
- To survive intermediate scrutiny, a law must be tailored to serve an important government interest. The court expressed skepticism that protecting children from “compulsive use of social media”—i.e., protecting them from “too much speech” is an important interest.
- Regardless, the court held that the law was not sufficiently tailored because it completely bans minors under a certain age and imposes onerous restrictions on others without explaining why lesser restrictions—e.g., parental controls—are insufficient.
- The court concluded that a facial challenge was appropriate because the law applied the same way to all covered platforms.

First Amendment Challenges: CA

- Unlike the other challenged laws, the CA law does not restrict minors from holding accounts. Instead, it denies them access to “addictive feeds” without parental consent.
- The Ninth Circuit held NetChoice had no standing to pursue facial or as-applied challenges to addictive feed provisions based on free speech rights of the platforms.
- The Ninth Circuit held that one of the law’s restrictions, which regulated “like” counts, was a content-based restriction and could not survive strict scrutiny.
- However, the Ninth Circuit held that the law’s requirement that minors remain in “private mode” survived intermediate scrutiny.

First Amendment Challenges: TN

- The court did not reach the merits of NetChoice's challenge to the TN law. Instead, it held that NetChoice had failed to establish irreparable harm.
- As an initial matter, it stated that NetChoice cannot assert irreparable harm on behalf of its members' users.
- It then held that NetChoice had failed to show that the government was likely to enforce the law against its members. It explained that there was no history of past enforcement (or even warning letters), that enforcement would not be easy, and that the government had not refused to disavow enforcement while the challenge was pending.

First Amendment Challenges: AR, GA, MS, OH, TX, and UT

- The challenges to the AR, GA, MS, OH, TX, and UT laws were successful in district court for largely the same reasons.
- In each case, the court held that the relevant law was content based—and therefore subject to strict scrutiny—because it regulated “social speech” but not speech on other topics, including news, sports, and entertainment.
- Several courts also relied on *Brown* and held that laws restricting minors’ access to non-obscene speech are always subject to strict scrutiny. As one court put it, there is “no free-floating power to restrict the ideas to which children may be exposed.” *NetChoice v. Griffin* (quoting *Brown*).

First Amendment Challenges: AR, GA, MS, OH, TX, and UT

- To survive strict scrutiny, a law must be the least restrictive means to furthering a compelling government interest. Several courts questioned whether the purported justifications for the laws—e.g., protecting minors’ mental health—were compelling interests.
- Regardless, each court concluded that the law was not narrowly tailored. As one court put it, prohibiting minors “from accessing all content on websites that the Act purports to cover, absent affirmative parental consent, is a breathtakingly blunt instrument.” *NetChoice v. Yost*.
- Citing *Brown*, several courts held that the laws were underinclusive—because they failed to cover many other websites that could be harmful to minors—and overinclusive—because they restrict access to content that is not harmful and apply to all minors regardless of maturity level.
- Several courts also emphasized that the laws place incidental burdens on adults’ speech by requiring them to submit identification.

First Amendment Challenges: AR, GA, MS, OH, TX, and UT

- In addition to addressing the merits of the core First Amendment challenges, the courts in these cases addressed several issues that are likely to recur
- Several courts held that facial challenges were appropriate under the standard set forth in *Moody*. They reasoned that, unlike the law in *Moody*, which applied to some websites that did not involve expressive content, the laws in these cases applied *only* to platforms that involved the sharing and viewing of expressive content. Additionally, it was unnecessary to compare how the laws applied to different platforms because the laws were designed to discriminate against platforms based on content.
- Several courts also held that terms in the laws were void for vagueness. For instance, the court assessing the OH law held that whether a platform is “reasonably anticipated to be accessed by children” is unconstitutionally vague because it does not provide platform operators with sufficient notice about whether the law applies to them.

First Amendment Challenges: AR, GA, MS, OH, TX, and UT

- In *NetChoice v. Fitch*, the case dealing with a challenge to the MS law, the Fifth Circuit stayed the district court's injunction without providing any reasoning.
- NetChoice filed an emergency application in the Supreme Court asking the Court to lift the Fifth Circuit's stay.
- The Supreme Court denied NetChoice's application. Justice Kavanaugh issued a statement concurring in the denial of the stay, noting that "NetChoice has not sufficiently demonstrated that the balance of harms and equities favors it at this time."
- Justice Kavanaugh noted, however, that NetChoice has "demonstrated that it is likely to succeed on the merits—namely, that enforcement of the Mississippi law would likely violate its members' First Amendment rights under this Court's precedents." He cited *Moody* and *Brown* as the two most relevant precedents.

What's Going on in Europe? Enforcement and Litigation

- EU:
 - European Commission investigations under DSA into 4 major porn providers
 - France – Conseil D'Etat judgment July 2025 re SREN Act
 - Germany- class action filed against social media platforms citing addictive design/breach of AI Act
- UK
 - Ofcom investigations under OSA into 9 porn services
 - ICO enforcement action for breach of Article 8, and current investigations into use of age assurance tools
 - Complaint filed with CMA concerning age ratings on app stores

Takeaways and Next Steps (US)

- States across the country are regulating social media platforms.
 - The outcome of these challenges will produce precedent on how video games be regulated.
 - California's more sophisticated law, which focuses on technical features, has largely survived a challenge and thus may become a model if other laws are struck down.
- Although challenges to these laws have largely been successful, the Supreme Court has not yet ruled on the merits of any of these challenges. And as discussed, recent trends at the Court point towards a narrowing of First Amendment rights for platforms and minors.
- Justice Thomas in particular has shown an interest in giving States more authority to regulate minors' access to speech. His dissent in *Brown* expressed that minors have limited rights to access speech and he has advocated for overturning First Amendment precedent.
- If current social media laws are upheld, slippery slope to games is possible—especially modern games with a social component and in-app purchases.

Takeaways and Next Steps (Europe)

- Shift in EC's attitude towards age verification:
 - Final EC guidelines on protection of minors
 - Age verification app pilot & EU Digital Wallet
- Digital Fairness Act
- Push for ban on child use of social media
- Watch out for Ofcom reports under OSA:
 - Highly Effective Age Assurance – July 2026
 - Content harmful to children – October 2026
 - Role of app stores – January 2027
- Enforcement against non-porn services?
- Consumer litigation to expedite change?