



**Comments in Response to the Vermont Attorney General's Office
Solicitation of Public Comment Regarding Implementation of the Vermont
Age-Appropriate Design Code**

Respectfully submitted,

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Introduction.

Common Sense Media is the leading non-profit organization dedicated to protecting and preparing children, teens, and their families in the digital and AI world. Our mission is to improve the lives of children and families by providing the trustworthy information, education, and independent voice they need to thrive. Our ratings, research, and resources reach more than 150 million users worldwide, over 1.5 million educators, and more than 100,000 schools worldwide every year. Backed by the research that forms the foundation of everything we do, we champion quality media that entertains and inspires, and support legislation and regulations aimed at closing the digital divide and holding social media and AI platforms accountable for their effects on minors. We encourage students and educators to think critically about technology and become responsible digital citizens. And we help safeguard children's health and well-being by supporting the protection of their data privacy and reducing potential online harms.

Common Sense Media is pleased to submit these comments in response to the Vermont Attorney General's Office's (AGO's) request for public comment and feedback regarding implementation of the Vermont Age-Appropriate Design Code (AADC). As a trusted global organization dedicated to improving the lives of children and families, Common Sense welcomes the opportunity to bring our experience and perspective to this important rulemaking process. We strongly support the AGO's efforts to protect children's safety, privacy, and well-being online and offer the following recommendations to help ensure that the regulations provide meaningful, practical protections for Vermont's children and teens.

Risks Abound for Kids Online.

Children and teens spend a substantial amount of time online, and social media has become a significant part of their daily lives. According to the U.S. Surgeon General's 2023 advisory, [Social Media and Youth Mental Health](#), up to 95% of youth ages 13-17 report using social media, with more than a third saying they use social media "almost constantly." Our [research](#) has shown teens spend an average of 4.5 hours per day on their phones, with about a quarter of them spending 5 to 8 hours in front of their screens every day. Our report also revealed that kids and teens struggle to set their own boundaries when managing notifications from apps on their smartphones. Teens connect through social media platforms at higher rates than any other group. They also report that these platforms form a larger part of their social life, more so than any other age group. Once they start using these technologies, they find it more difficult to stop. Younger children, such as those aged 11-12, may spend less time online unsupervised, but they too face the same age-inappropriate exposure risks on social media platforms as older children—exposures that can have a significant impact on their well-being.

Common Sense Media's [research](#) on girls and social media use reveals that, despite many girls' positive perceptions of social media's overall impact on their lives, a significant proportion of girls report challenges in regulating their use. This research also shows that numerous social media design features, such as algorithmic video recommendations, endless scrolling, constant notifications, and autoplay, can make these platforms difficult to stop using. At the same time, our research demonstrates the complicated relationship between social media and girls' well-being. Girls identified important benefits, including access to "information and resources, social connection, self-expression, and identity affirmation," while also reporting risks including "exposure to harmful content, bullying and drama, unwanted contact by strangers, negative social comparisons, and interference with sleep."

Scope of Covered Design Practices and Potential Harms.

The AGO should evaluate a design practice based on its effect on minors, not on how a company characterizes its intent. Common Sense Media has long witnessed company practices that exploit cognitive biases and developmental vulnerabilities to undermine user autonomy as "manipulative design." This approach is consistent with the statute itself, which focuses on practices that "lead to compulsive use or subvert or impair user autonomy, decision making, or choice." 9 V.S.A. § 2449f(b).

Social media platforms use manipulative design features to increase engagement and, in turn, generate greater advertising revenue. These companies process enormous amounts of behavioral data and use sophisticated algorithms to personalize the content presented to each user. Personalized feeds, dark patterns, autoplay, infinite scroll, and similar design features can keep young users continuously engaged, while repeated notifications—or "nudges"—draw them back to platforms and extend the amount of time they spend online. These features should be evaluated based on how they operate and affect minors, regardless of whether a company describes them as intended to improve engagement, personalization, or the user experience.

Important Considerations for Design Features. We support the regulations' use of the phrase "including, but not limited to" when identifying relevant design features. This language appropriately recognizes that technologies and design practices will continue to evolve and may create new mechanisms that encourage compulsive use or undermine user autonomy. A flexible, effects-based approach will help ensure that the regulations remain effective as online products and services change over time.

We also appreciate the AGO's consideration of asymmetry and agree that the regulations should address asymmetric design practices that make protective choices more difficult, burdensome, or less accessible than choices that benefit the platform, including where those differences exist across devices.

Similarly, we support the AGO's consideration of friction, including whether a platform removes the natural stopping points that help young people disengage and self-regulate. [Common Sense Media research](#) has shown that popular social media apps such as TikTok provide low-friction

access to an effectively endless stream of personalized content, which can short-circuit opportunities for young people to pause and make deliberate decisions about whether to continue engaging.

In evaluating whether a design practice is manipulative, we believe the AGO should also consider factors including:

- **Defaults.** Does the default setting favor greater engagement or otherwise benefit the developer rather than protect the minor? Research examining the [effectiveness of safety tools](#) offered by social media companies underscores the importance of defaults: users tend to leave default settings unchanged, while protections that require users to independently discover and activate them are substantially less likely to be used. A safety feature that exists but is buried or turned off by default may therefore provide little meaningful protection.
- **Developmental vulnerabilities.** Does the design exploit or disproportionately affect characteristics associated with children's and adolescents' developmental stage, including impulsivity, difficulty distinguishing advertising from other content, or emotional attachment to characters or influencers? Minors' executive functioning skills, which are critical to directing attention and resisting impulsive behavior, [are still developing throughout childhood and adolescence](#). The prefrontal cortex which is associated with higher-level functions such as planning, problem solving, reasoning, and impulse control, will not mature until closer to adulthood, so children and teens may be particularly susceptible to targeted advertising and data-driven personalization. [Teens are less able than adults](#) to identify targeted advertising and may not fully understand the extent to which algorithmic personalization depends on collecting and processing their data. Children are developmentally vulnerable to designs that exploit their natural drive to form relationships. In particular, AI chatbots can quickly cultivate strong emotional attachments by nature of being always available, sycophantic in reply, and in many cases, using [dark patterns](#) to prioritize engagement. Younger children are more likely to [engage in magical thinking and believe in animism](#) – making them particularly vulnerable to designs that would lead them to seeing a chatbot as alive and capable of emotions. Older children, who may be grappling with the complexities of real-world relationships, will be more vulnerable to chatbots' engagement-boosting [designs to encourage teens to maintain secrecy](#) with or [rely solely on the chatbot and isolate](#) from adults and peers. Kids are still developing critical thinking and emotional regulation, and have a strong drive to build attachments and feel understood, so simulated relationships can [distort judgment](#) and cause children to equate inappropriate or harmful outputs with trusted guidance, making it more difficult for children to recognize harm or disengage from the product. Over time, this emotional attachment gives the system undue influence as the outputs feel more like personal advice from a friend, instead of [probabilistic responses](#).
- **Reward structures.** Does the product use immediate, intermittent, or variable rewards to encourage repeated engagement? Social media platforms can employ reward structures similar to those used in gambling environments, where uncertainty about when the next

rewarding piece of content, notification, “like,” or other social feedback will appear encourages continued engagement. [Common Sense Media’s research](#) on adolescent gambling further demonstrates the importance of considering how reward-based design can contribute to compulsive behaviors.

Taken together, these factors would allow the AGO to focus on the real-world operation and effect of a design practice on minors, rather than requiring proof of a company’s subjective intent or allowing platforms to avoid scrutiny simply by characterizing engagement-maximizing features in benign terms.

Foreseeability. We support the regulations’ recognition that foreseeability should be evaluated based on the facts and circumstances of each case. In assessing whether harm was reasonably foreseeable, the AGO should consider the full range of information reasonably available to a business, including consumer and parent complaints, published research, internal research or testing, prior enforcement actions, and evidence concerning how minors actually use the product or feature. A business should not be permitted to avoid responsibility for foreseeable harms simply because it did not affirmatively investigate risks that were otherwise apparent from available evidence.

Scope of Covered Businesses.

Determining Use by Minors. The statute’s “reasonably likely to be accessed” test includes a 2% minor-audience threshold (9 V.S.A. § 2449a(26)). We believe this should be read broadly to reach traditional social media, AI chatbots and companions, video streaming, gaming, and messaging services. In determining whether that threshold is satisfied, the AGO should consider the totality of the circumstances and the full range of information reasonably available to a business about the composition of its audience. Relevant evidence may include a service’s actual audience data, information used or provided for advertising purposes, internal analytics, age-assurance results, and complaints or other information received from parents and users.

The analysis should not turn on whether a business affirmatively intended to attract minors. If a business knows or should know that minors constitute a sufficient portion of its audience to satisfy the statutory threshold, the statute should apply regardless of whether the company designed the service specifically for minors or contends that young users independently gravitated to the product.

Digital Products. The regulations should apply to the full range of public-facing websites, online services, and applications that satisfy the statutory definition and are reasonably likely to be accessed by minors. See 9 V.S.A. § 2449a(20), (26).

This should include, where the statutory threshold is met: social media platforms, AI chatbot and AI companion products, messaging services, video and streaming services, gaming products, and digital platforms through which users make purchases. [Our research](#) has also highlighted the need to pay particular attention to gaming products that incorporate in-app currencies, variable

rewards, and other gambling-like mechanisms designed to encourage repeated spending or engagement. These features are especially concerning because they can introduce children to gambling-like behaviors within games that may otherwise appear innocuous or age-appropriate, creating the potential for real-world harms that extend beyond the game itself.

Consistency Across Interfaces. The AGO should also ensure that the regulations apply consistently across different versions of the same service. A child should not receive weaker protections simply because the child accesses a service through a mobile application rather than a web browser, or vice versa. Where a covered business offers substantially the same service across multiple devices or interfaces, the protections available to minors should follow the user across those interfaces.

Physical Products. The statute excludes physical product sales. See 9 V.S.A. § 2449a(20). That exclusion should be construed narrowly to encompass activities necessary to complete the sale and delivery of a physical good. It should not extend to separate digital features associated with that product or retailer, including companion applications for connected toys or devices; retailer applications incorporating feeds, streaks, or loyalty games; or in-app advertising and social features. A business should not be able to avoid otherwise applicable protections for its digital products merely because it also sells physical goods.

Age Assurance.

In 2024, as states increasingly considered laws requiring age assurance, Common Sense Media published a [white paper on age assurance](#) examining how age assurance requirements can be implemented effectively while protecting users' privacy and access to information. We believe the principles and recommendations outlined in that paper may be particularly instructive as the AGO considers many of the same issues in developing its proposed age assurance framework.

Following the U.S. Supreme Court's decision in *Free Speech Coalition v. Paxton*, Common Sense Media published a [follow-up analysis](#) addressing the decision and its implications for the development of age assurance requirements going forward. We encourage the AGO to consider these resources together as it develops an approach that is effective, privacy-protective, and appropriately tailored to the risks presented by different products and services.

The New York Attorney General's [SAFE for Kids Act implementing regulations](#) also provide a useful point of reference. New York established quantitative performance benchmarks for age assurance methods, including standards addressing false-positive rates, overall accuracy, and inconclusive outcomes. Clear, measurable performance standards can provide businesses with greater certainty regarding compliance while helping ensure that age assurance methods are sufficiently accurate and reliable to provide meaningful protections for minors.

Age Assurance Requirements. We additionally offer the following specific recommendations regarding the AGO's proposed age assurance requirements:

- **Provide objective guidance regarding acceptable error rates.** The regulations prohibit the use of age assurance processes that create a "material risk of misclassification," but do not explain how businesses should evaluate whether that standard has been met. We recommend establishing measurable performance benchmarks or identifying factors the Attorney General will consider when assessing accuracy. Objective guidance would improve compliance while promoting more consistent enforcement.
- **Establish a clearer timeframe for resolving appeals.** The regulations require businesses to resolve appeals "promptly" and within a "reasonable period of time." We recommend specifying a maximum timeframe for appeal resolution or identifying factors that determine reasonableness. Providing a clearer timeline would improve accountability and ensure users have timely access to an effective appeals process.