



**Office of the New York State  
Attorney General Letitia James**

# **SAFE for Kids Act**

Advanced Notice of Proposed Rulemaking pursuant  
to New York General Business Law section 1500 *et seq.*

---

*August 1, 2024*

# Advanced Notice of Proposed Rulemaking pursuant to New York General Business Law section 1500 *et seq.*

The New York State Office of the Attorney General (OAG) is issuing this Advanced Notice of Proposed Rulemaking (ANPRM) to solicit comments, data, and other information to assist the office in crafting rules to protect children from the harms of addictive social media feeds, pursuant to New York General Business Law section 1500 *et seq.* (GBL section 1500).

The New York legislature passed the Stop Addictive Feeds Exploitation (SAFE) for Kids Act because New York children are in the midst of a mental health crisis caused by harmful social media use. The legislature found that social media companies have created feeds personalized by algorithms. These feeds can track tens or hundreds of thousands of data points about users to create a stream of media that is a perfect drip of dopamine. Such feeds can keep children scrolling for dangerously long periods of time (2024 N.Y. Laws ch. 120, section 2) Children, who are less capable than adults of exercising self-control, have been particularly susceptible to these addictive feeds. Many spend hours each day scrolling through social media feeds (*Id.*). The legislature found that these hours spent on social media have caused harm to New York children. The time spent on social media is ten times more dangerous than other kinds of screentime. Greater time spent on social media is correlated with increased rates of depression, anxiety, suicidal ideation, and self-harm (*Id.*).

To address this public health crisis, the SAFE Act prohibits social media platforms from providing minors with an addictive feed that uses data concerning that child (or the child's device) to personalize the material the child sees, thereby extending time spent on social media to unsafe levels (GBL section 1500(1)). The legislature defined addictive feeds to not include personalization based on information "not persistently associated with the user or user's device" that "does not concern the user's previous interactions with media generated or shared by other users." In addition, a feed is **not** addictive if it is based on "user-selected privacy or accessibility settings, or technical information concerning the user's device;" express and unambiguous requests for "specific media, media by the author, creator, or poster of media the user has subscribed to, or media shared by users to a page or group the user has subscribed to;" or requests to block, prioritize, or deprioritize, such media, or where the media is "direct, private communications," search results, or the "next in a pre-existing sequence." (GBL section 1500(1)). The obligations in the law apply to a "website, online service, online application, or mobile application, that offers or provides users an addictive feed as a significant part of [its] services" (GBL section 1500(2)).

In addition to restricting social media platforms' ability to provide addictive feeds to minors, the SAFE for Kids Act also includes provisions that ensure users will be able to obtain the benefits of the act without compromising their experience of social media or their privacy. Information used to determine age or obtain parental consent must not be used for any other purpose "and shall be deleted immediately after" such use (GBL section 1501(3), (5)). In addition, social media platforms may not "withhold, degrade, lower the quality, or increase the price" of their services because of their inability to provide a user an addictive feed (GBL section 1504).

The legislature also found that overnight notifications presented a public health risk. The SAFE for Kids Act therefore also prohibits social media platforms from sending “notifications concerning an addictive feed” to a known child between 12 and 6 a.m. without obtaining parental consent (GBL section 1502).

The legislature has charged OAG — which has significant experience with the harms of social media, privacy, and complex technical issues through its investigations and litigations, and through its in-house research and analytics team — with promulgating regulations before the statute can go into effect. The legislature gave OAG an express directive to promulgate regulations in three areas:

- » Social media platforms are required to use “commercially reasonable and technically feasible methods” to determine if a user is a child before providing them with an addictive feed. The OAG is charged with promulgating regulations identifying such commercially reasonable and technically feasible methods, taking into consideration a number of factors (GBL section 1501(1)(a), (2)).
- » If a user is a child, the social media platform must obtain “verifiable parental consent” before providing such with an addictive feed. The OAG is also charged with promulgating regulations identifying methods of obtaining verifiable parental consent (GBL section 1501(1)(b), (4)).
- » The OAG is charged with promulgating any needed language access regulations (GBL section 1506).

In addition, OAG is charged with promulgating regulations to effectuate and enforce the Act as a whole.\*

\*The SAFE for Kids Act also provides OAG with authority to “promulgate such rules and regulations as are necessary to effectuate and enforce” the Act. GBL section 1505.

# Questions for Public Comment



The OAG is issuing this ANPRM to solicit comments, including personal experiences, research, technology standards, and industry information that will assist OAG in determining what rulemaking will be most important to effectuate the purposes of the SAFE for Kids Act. The OAG seeks the broadest participation in the rulemaking, and encourages all interested parties to submit written comments. In particular, OAG seeks comment from interested parties — including New York parents and children, consumer advocacy groups, privacy advocacy groups, industry participants, and other members of the public — on the following questions. Please provide, where appropriate, examples, data, and analysis to back up your comments.

Submit comments to [ProtectNYKidsOnline@ag.ny.gov](mailto:ProtectNYKidsOnline@ag.ny.gov) by September 30, 2024.

## Commercially reasonable and technically feasible age determination methods

1. The SAFE for Kids Act requires social media platforms to use “commercially reasonable and technically feasible methods” to determine if a user is under the age of 18 (GBL section 1501(1)(a)). What are the key desired properties of an age determination method? What are key challenges to assessing any age-determination method?
2. Currently, age determination can be carried out via a number of methods, including biometric assessment; assessment based on analyzing user activity; government-issued ID; attestation from a reliable third-party business with pre-existing age information, such as a bank via an issued credit card; attestation from other users; self-attestation; and cognitive tests.
  - » How accurate is each of these methods at determining whether a user is under the age of 18?
  - » What is the risk of falsification for each?
  - » How much does each cost, and how is cost assessed?
  - » How do these methods ensure that the privacy of user data is preserved?
  - » What data do they require to function?
  - » What are the risks of bias for each of these methods?
  - » Are these answers potentially different for social media platforms, or for certain kinds of social media platforms? Would it be more or less reliable to have other users attesting for your age in the social media context than in other online contexts?
  - » Are there other age-determination methods currently available? What are they? How do they compare to those previously listed?
  - » What age-determination methods are likely to be available in the near future? How do they compare to the methods we have listed?

3. The OAG is considering a framework that would provide users a variety of options from which to select, including biometric assessment; assessment based on analyzing user activity; government-issued ID; attestation from a reliable third-party business with pre-existing age information, such as a bank via an issued credit card; attestation from other users; self-attestation; and cognitive tests. If such an approach is adopted, what would make it effective, secure, private, affordable, quick, and easy to use?
4. Can any existing third-party age-determination services be used by a social media platform without needing additional efforts by the platform? What data do these services rely on? What data do they retain after age determination has taken place? How do these services demonstrate to outsiders that they have deleted information, where they represent that such deletion has occurred?
5. What methods do social media platforms currently use to determine (or attempt to determine) age? Do these methods vary based on the specific industry or focus of the social media platform, or are they based on other factors?
6. Some social media platforms presently attempt to determine user ages for a variety of internal purposes based on information other than self-attestation. For what purposes do such platforms currently attempt to determine age? What processes do they use to attempt to determine age? What data do these methods use to infer age? How accurate, and how precise, are such determination attempts? What factors increase or decrease the accuracy of such determination attempts?
7. Many existing users of social media platforms have already self-attested to being 18 years of age or older. What data exist on the accuracy of such self-attestations? How does this compare to the accuracy of users currently self-attesting to being 13 years old?
8. A number of entities currently have access to information that may reliably convey age, including banks, email providers (who may know how old an email address is), telecommunications companies, and smartphone operators. How could OAG's regulations ensure that age determination based on attestation from such entities is secure and protects user privacy?
9. How, if at all, should OAG regulations incorporate clear boundaries (bright lines) around specified levels of accuracy in assessing what age-determination methods are commercially reasonable and technically feasible? What bright lines might be appropriate? Should those bright lines vary based on characteristics of the platform in question? If so, how and why?
10. What obligations should OAG regulations specify concerning how social media platforms can request age determination? How can OAG ensure that users are effectively informed of the substance of the age-determination process without creating an undue burden?
- » Should OAG regulations require notice about the harms of addictive feeds? If so, what form should the notice take? What content should it include?

» Should OAG regulations require notice about specified information concerning methods, such as how fast the method takes, what data it will require, its error rate, and any bias?

11. How should OAG regulations account for technological changes in available age-determination methods, or changes in users' willingness to use certain methods?

12. If OAG regulations require social media platforms to monitor browser or device signals concerning a user's age or minor status (similar to the do-not-track or universal-opt-out signals some browsers or devices presently employ), what factors should OAG consider when specifying an appropriate standard for those browser or device signals?

13. How, if at all, do online platforms currently determine age for compliance with laws against online gambling? How do platforms currently determine age for compliance with laws regarding online pornography, or the ability to enter into contracts?

14. New York laws require age determination or verifying identity in many contexts offline, such as for gambling, accessing some library services, or purchasing alcohol. How accurate are these age-determination methods? What protections ensure that the data collected in age and identity determinations are not used for other purposes?

15. While some social media platforms are open to the general public for all purposes, many are focused on a specific audience, such as professional networking or discussion of specific hobbies. In some cases, users may be significantly more likely to be an adult, or more likely to accurately self-attest concerning their age. How should OAG's regulations assess the audience of a given social media platform when assessing the cost and effectiveness of age-determination methods?

16. Social media platforms' commercial and technical capabilities vary widely. What information should OAG consider for purposes of "commercially reasonable and technically feasible" concerning the size, financial resources, and technical capabilities of a social media platform platform's ability to use some or all age-determination methods?

17. How, if at all, should OAG regulations incorporate bright lines around the size, financial resources, or technical capabilities of a social media platform when assessing what age determination methods are commercially reasonable and technically feasible? What bright lines might be appropriate?

18. What impact, if any, would using age-determination methods have on the safety, utility, and experience of New Yorkers using social media platforms?

- » Are there some age determinations methods that would have more significant, or less significant risks?
- » Are there some age determination methods that have higher risks of falsification?
- » Does this vary based on the nature of the social media platform?
- » Are there given classes of users, such as immigrants or LGBTQ+ users, who may be affected differently by some or all age-determination methods than other communities of New Yorkers? How can OAG regulations mitigate such impacts?

19. Some New Yorkers, such as immigrant and LGBTQ+ users, may be concerned about supplying sensitive personal information for age determination. How can OAG regulations assure such New Yorkers that such information will be immediately and securely deleted?

20. What are the considerations OAG should consider to ensure the security of data used in age determination?

- » Are there technical mechanisms such that a user could verify that their information was successfully deleted?
- » In crafting regulations, what is the best way to protect against first-party data mismanagement?
- » What is the best way in crafting regulations to protect against third-party data mismanagement?
- » What have we learned from experiences in other states and Europe about the most effective way to ensure that data collected for one purpose is not used for another purpose?
- » What have we learned from other data-minimization-enforcement regimes about the most effective, enforceable rules regarding not retaining data beyond specified purposes? In what other contexts are online services trusted to immediately delete data after a single use?
- » If OAG regulations required social media platforms to disclose that they would be fined up to \$5,000 each time they failed to immediately delete information used for age determination, would this help assure users that their personal information will be deleted?

21. Taking all the foregoing into account, what are the most effective, secure, private, affordable, quick, and easy-to-use, commercially reasonable, and technically feasible current methods for any form of online age determination?

## Parental consent

1. The SAFE for Kids Act permits social media platforms to provide children with an addictive feed or overnight notifications only when the platform had obtained “verifiable parental consent” (GBL sections 1501(2), 1502). What methods do websites, online services, online applications, mobile applications, or connected devices presently use to determine whether an individual is the parent or legal guardian of a given user? What costs — either to the parent or to the website, online service, online application, mobile application, or connected device — are associated with these methods? What information do they rely on?
2. What methods do websites, online services, online applications, mobile applications, or connected devices currently use to process and verify parental requests for their child’s data to be deleted? How might these procedures prove effective or ineffective for obtaining verifiable parental consent?
3. What obligations should OAG regulations specify concerning how social media platforms request verifiable parental consent? How can OAG ensure that parents are effectively informed of what they are being asked to consent to without being unduly burdened?
  - » How can OAG ensure that parents are likely to understand the risks before providing consent?
  - » Should OAG regulations require notice about the harms of addictive feeds?
  - » What lessons can be learned from regulations regarding other harmful products, like cigarettes, alcohol, and gambling, about communicating harms and limiting promotion to children?
  - » Should OAG regulations require that consent be requested in a standalone fashion, disconnected from any other requests?
  - » Should OAG regulations mandate that parents must be able to give, reject, or withdraw consent without having to create a social media account?
  - » What methods should OAG regulations specify may or must be made available to parents to provide, reject, or withdraw consent?
4. How can OAG regulations ensure that requests for verifiable consent, and any accompanying disclosures, are understandable and effective for parents from all New York communities?
5. Many of the same concerns about protecting user privacy while determining age exist for parental consent. How can OAG regulations assure New Yorkers that information provided for parental consent will be immediately and securely deleted?
6. What are the most effective and secure methods that currently exist for any form of obtaining parental consent?
7. Are there other factors or considerations related to obtaining verifiable parental consent that OAG regulations should consider?



## Addictive social media platform

1. To be an addictive social media platform under GBL section 1500(2), the addictive feed must be a “significant part of the services provided” by that platform.

- » When assessing what constitutes significance, which of the following factors may be relevant: the amount of time users spend on the addictive feed compared to other parts of the social media platform, the total amount of time an average user spends on the addictive feed, how prominent the addictive feed is on the website or online service, or whether the addictive feed is a defining feature of the social media platform?
  - » What other factors may be relevant?
  - » There may be other factors that, while not direct measures of the addictive potential of a social media platform, may provide useful information for assessing the importance of the addictive feed to the social media platform. One such factor is the portion of the platform’s revenue attributable to the addictive feed. How should such factors be incorporated into OAG regulations? What other, similar factors may be relevant?
  - » Are some factors more relevant than others? Why?
- » What are the costs and benefits of assessing significance based on a totality-of-the-circumstances test guided by the specified relevant factors?
- » What are the costs and benefits of assessing significance based on whether a certain number of factors exceed a specified threshold? Are there thresholds that OAG regulations should select for certain factors? How many factors should be satisfied for a platform to be deemed an addictive social media platform?
- » What other possible tests should OAG consider in defining what is “significant?” What are the costs and benefits of these tests?
- » How should the regulations address platforms that have multiple functions in terms of assessing significance?
- » How should the regulations address platforms that use addictive feeds as ancillary features, such as a news service that includes a personalized feed of user comments as an add-on to each article?
- » How should the regulations address multi-device platforms that satisfy the significance test when used on one device (i.e. a tablet), but not on another (i.e., a desktop browser)?
- » How should the regulations address platforms that use addictive feeds primarily to assist in recommending or facilitating time spent engaging in activities away from the feed, such as recommending what games to play or what items to purchase?
- » “Significant part” is a term regularly used in many areas of law. For instance, the Endangered Species Act defines an “endangered species” as “any species which is in danger of extinction throughout all or a significant portion of its range. . . .” (16 U.S.C. section 1532(6)). In copyright, infringement can exist if

a qualitatively significant part of a work is used even where this is not a large part of the work. Is there anything we can learn from legal standards or rulemaking in those other legal areas that could guide OAG's rules in this area?

## **Addictive feed**

1. The definition of an addictive feed in GBL section 1500(1)(c)-(d) includes exceptions for personalization in response to “user-selected privacy or accessibility settings, or technical information concerning the user’s device.” Are there specific kinds of settings or technical information of particular importance that may require express permission in OAG regulations?

## **Language access**

1. GBL section 1506(1), which requires requests for parental consent to be made available in the 12 most commonly spoken languages in New York, grants OAG authority to promulgate regulations adding additional requirements. What, if any, regulations should OAG draft concerning language access. Why?

2. Should OAG require disclosure in specific dialects of languages? If so, which dialects? Why?

## **General questions**

1. What information concerning the harms of addictive feeds to minors should OAG consider when drafting its regulations?

2. What factors or considerations should OAG take into account to preserve existing safeguards for children on social media platforms?