

Publications

KOSA and COPPA Pass the Senate, but What is Next in Children's Privacy?

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Last month, the United States Senate passed the [Kids Online Safety Act](#) (KOSA) and the [Children and Teen's Online Privacy Protection Act](#) (COPPA 2.0) with overwhelming bipartisan support (91-3). KOSA and COPPA 2.0 are the first major federal bills that have been passed since the original COPPA in 1998 that are geared towards protecting children on the internet.

If enacted, COPPA 2.0 would significantly enhance and expand COPPA. For instance, COPPA currently only applies to children under the age of 13, however, COPPA 2.0 would extend these protections to include children up to the age of 16. Additionally, COPPA 2.0 would prohibit targeted advertising, grant parents and children the right to erase personal information online, and establish a Youth Marketing and Privacy Division within the Federal Trade Commission (FTC). Notably, COPPA 2.0 would eliminate the previous COPPA framework that allowed companies to mitigate their compliance obligations by claiming a lack of "actual knowledge" of a user's age.

KOSA would further enhance the protections afforded to children online by establishing a duty of care for covered platforms. This duty of care would require covered platforms to implement reasonable measures in the design of their products to mitigate potential harms like online bullying. "Covered platforms" include online platforms, online video games, messaging applications, or video streaming services that connect to the internet and are used or reasonably likely to be used by a minor. Covered platforms would also be required to default to the most protective privacy settings for kids and give kids options to protect their information, such as the option to delete personal data. Users would also have the option to limit or disable personalized algorithm recommendations. Finally, KOSA would establish parental controls such as the ability to review privacy and account settings, restrict purchases, and limit the time spent on covered platforms.

While the bills passed with bipartisan support, they face strong opposition. This divisiveness stems from concerns raised by interest groups like digital rights groups, claiming that the bills chill free speech on online platforms. Nevertheless, these bills are now in the hands of the House of Representatives where their future remains uncertain as the bills were not brought to the floor for a vote prior to Congress going on a six-week recess.

Irrespective of whether COPPA 2.0 or KOSA are signed into law, the FTC has made clear that they will continue to step up enforcement issues surrounding children's privacy. Just last week, the FTC and Justice Department filed a federal lawsuit against TikTok and its parent company for alleged violations of COPPA. The lawsuit alleges various COPPA violations including that TikTok knowingly permitted children to create regular TikTok accounts and retained children's personal information without any involvement from parents – effectively violating each of the key components of COPPA. A copy of the Justice Department's press release and the complaint can be found [here](#).

For further information about the bills or privacy laws in general, please contact John Landolfi, Chris Ingram, Chris LaRocco, Gretchen Rutz Leist, Nikkia Knudsen, or your Vorys attorney.