

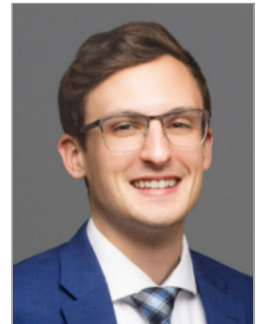
Utah Social Media Restrictions Reach Into Uncharted Territory

By **Luke Schaetzel** (April 26, 2023, 5:59 PM EDT)

On March 24, Utah became the first U.S. state to enact laws aimed at directly regulating larger social media websites — specifically aimed at regulating minors' use of social media websites — when Gov. Spencer Cox signed two new state laws.

The laws, dubbed the Social Media Regulation Amendment and the Social Media Usage Amendments, step into previously uncharted territory.

Perhaps the flashiest headline is that the new Utah state laws require social media platforms to obtain a parent or legal guardian's prior consent before anyone under the age of 18 joins the social media site.



Luke Schaetzel

However, the headline that will have a larger impact is that the new Utah state laws also require social media platforms to implement several controls that will restrict the ability of users under the age of 18 to freely engage and use the in-scope social media platforms — something now that is commonplace.

The prescriptive controls — along with the required consent and verification requirements — could fundamentally shift how social media platforms engage their younger users. Both laws take effect March 1, 2024.

The Social Media Regulation Amendment is the most far-reaching of the new Utah state laws.[1]

Not only does the Social Media Regulation Amendment require express consent from parents for users under the age of 18 before they create an account, but it also requires social media companies to verify the age of existing and new Utah account holder, and to verify that existing Utah account holders have provided the requisite consent if they are under the age of 18.

The Social Media Regulation Amendment also require social media platforms to implement specific controls intended to protect minors holding accounts on the platform even after the necessary parental or guardian consent is obtained.

The second new Utah state law, the Social Media Usage Amendments, creates enforcement and regulatory structures.[2]

Importantly, the Social Media Usage Amendments create a private right of action through which Utah residents could have an avenue to make claims against social media companies for harm incurred by users under the age of 18.

Scope and Applicability

Both laws govern and regulate the activities of social media companies.

Determining what entities fall within the definition requires a two-prong analysis: Does the entity provide a social media platform that has at least 5,000,000 account holders worldwide and is the entity an interactive computer service?

If the answer is yes to both, the entity is likely a social media company.

Under the first prong, a social media platform includes those online forums that companies make available to individuals who can create accounts and:

- Create a profile;
- Upload posts;
- View the posts of other account holders; and
- Interact with other account holders or uses.

There are numerous exceptions to what constitutes a social media platform, including, for example, direct text messaging services and forums, applications that allow for photo and video to be sent directly between devices, email services, e-commerce, interactive gaming websites and cloud service providers.

Under the second prong, an interactive computer service means an information service, information system or information access software provider. It includes a web service, web system, a website, a web application or a web portal.

The first prong of the definition will be where most of the analysis occurs for most entities as the vast majority of entities operating in the online world likely fall within the second prong.

However, both prongs must be met for an entity to be subject to the new Utah laws.

Social Media Regulation Amendment

Under the Social Media Regulation Amendment, all social media companies need to obtain prior express consent from parents or legal guardians before any Utah user under the age of 18 is allowed to sign up or continue using their account.

However, there are also other broad and potentially onerous requirements.

Social media companies must also configure their platforms to meet the following obligations for any account held by a Utah resident under the age of 18:

- Prohibited from allowing direct messaging between any account not link to the minor's account through "friending";
- Prohibited from showing the minor's account search results for any user not linked to the minor's account through friending;
- Prohibited from displaying any advertising in the minor's account;
- Prohibited from collecting or using any personal information from any posts, messages, or other content or usage activities of the minor's account other than that information which is necessary to comply with law; and
- Prohibited from using targeted or suggested groups, services, products, posts or accounts to the minor's account.

The foregoing requirements essentially bar social media companies from providing features and functionality that are commonplace among social media platforms.

The Utah laws prohibit those features and related activities — such as advertising and suggested groups or friends, etc. — for accounts held by Utah users under the age of 18.

This will require in-scope platforms to drastically rethink how they engage, and offer their platforms to, younger users. And it will not be an easy task considering younger users are often the key target

demographic for social media platforms.

Inevitably, this may lead social media platforms to rethink some of their core business strategies.

For example, platforms will not be able to allow their site to suggest friends to minor users nor will the site be allowed to collect certain categories of personal information that the user otherwise provides through the platform, e.g., through messages, posts, etc.

A consideration all in-scope social media platforms will now be faced with, in addition to rethinking commonplace engagement practices, is whether they will specifically build out a compliance program specific to Utah minor users, or more broadly to all minor users regardless of their residence.

Related to the parental and legal guardian consent, social media companies will also be required to provide to parents or legal guardians who grant consent for Utah users under the age of 18, access to that minor's account.

Social Media Usage Amendments

The Social Media Usage Amendments focus on granting broad government enforcement powers to the state and on allowing Utah residents to take legal action against social media companies themselves through a private right of action.

Specifically, under the Social Media Usage Amendments, social media companies are prohibited from using any practice, design or feature on their social media platform that the social media company knows, or should have reasonably known, would cause Utah users under the age of 18 to have an addiction to the social media platform.

Under the Social Media Usage Amendments, "addiction" is defined as meaning "use of a social media platform that indicates a user's substantial preoccupation or obsession with" the platform or the "user's substantial difficult to cease or reduce use of" the social media platform, and causes "physical, mental, emotional, developmental or material harms" to the user.

Any social media company found to be in violation of the above will be subject to a fine of \$250,000 for each practice, design or feature shown to have caused addiction, and a fine of up to \$2,500 per Utah user under the age of 18 who is shown to have been exposed to any such designs or features found to have caused addiction.

The Social Media Usage Amendments also provide affirmative defenses to any such claims.

Social media companies can establish affirmative defenses if they maintain a program of at least quarterly audits of the platform's practices, designs, and features to detect those that might have potential to cause, or contribute to, addiction; and correct, within 30 days of a completed audit, any component of the platform shown to present material risk of violating the requirements.

The Social Media Usage Amendments also create a private right of action.

Beginning in March, 2024, any Utah resident can file a claim against a social media company to recover damages incurred by a Utah user under the age of 18 for any "addiction, financial, physical, or emotional harm suffered as a consequence of using or having an account on the social media company's" platform.

New Laws in Context

This is not the first foray a government — or a U.S. state government — has looked at implanting social media regulations.

In the EU, the Digital Markets Act^[3] and Digital Services Act,^[4] which come into effect in late 2023 and 2024 respectively, regulates anticompetitive behavior and unfair and deceptive practices.

In the U.S., California passed a law that goes into effect on July 1, titled the Age-Appropriate Design Code Act.^[5]

Unlike the new Utah state laws, the Age Appropriate Design Code Act goes is broader in terms of scope, but narrower in approach as it applies to a broader set of businesses — e.g., online services, products or features likely to be accessed by children — but requires a narrower set of nonprescriptive requirements.

The Age Appropriate Design Code Act requires business, websites and mobile applications designed or targeting those 18 years old or younger to be designed to better secure the privacy of minor users.

It also requires all in-scope businesses to engage in regular data privacy impact assessments.

This contrasts with the approach the Utah Legislature took, which went much further in that the new Utah state laws require a broad swath of specific controls and use restrictions in place for minor users as well as implementing a private right of action that is sure to spur a number of lawsuits against large social media platforms.

Takeaways

Like in the data protection space — where the federal government has failed to seriously consider omnibus data protection regulations — U.S. states are not sitting idly by while the federal government has also stagnated in the social media regulatory space. And Utah is an excellent example.

In 2022, Utah became the fourth state in the U.S. to pass a comprehensive state protection law. There are now six, with Iowa passing such a law in recent weeks.[6]

But Utah did not stop there as the new amendments discussed above represent further legislating in the technology and information space. Expect more states to follow in 2023 and beyond.

Luke Schaetzel is an associate at Benesch Friedlander Coplan & Aronoff.

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[1] <https://le.utah.gov/~2023/bills/static/SB0152.html>

[2] <https://le.utah.gov/~2023/bills/static/HB0311.html>

[3] https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-markets-act-ensuring-fair-and-open-digital-markets_en

[4] <https://eur-lex.europa.eu/legal-content/en/TXT/?qid=1608117147218&uri=COM%3A2020%3A825%3AFIN>

[5] https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB2273

[6] <https://www.legis.iowa.gov/legislation/BillBook?ba=SF%20262&ga=90>