States’ attempts to age-gate the Internet blocked by constitutional hurdles

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Courts have started blocking some US states’ earliest attempts to age-gate the Internet. Yesterday, courts ordered preliminary injunctions blocking a Texas law requiring ID to access websites featuring adult entertainment, as well as an Arkansas law requiring ID to access some social media platforms. Both laws otherwise would’ve taken effect today.

While the Texas law was more narrowly aimed at restricting minors from accessing specific content that’s not age-appropriate, Arkansas’ law—the Social Media Safety Act—was much broader, stopping minors from creating accounts without parental permission on social media platforms that generate more than $100 million annually. It was also, according to the court, poorly researched, vaguely defined, and likely unconstitutional.

Bizarrely, Arkansas’ Social Media Safety Act would apply to some obvious platforms, like Facebook or TikTok, but not to other more popular platforms for kids, like YouTube. Netchoice, a trade group representing platforms likely impacted by the law—including Facebook, Instagram, Twitter, TikTok, Snapchat, Pinterest, and Nextdoor—sued to block the law, partly because the law was too vague. Some platforms, like Snapchat, weren’t even sure if the law applied to them,

Netchoice argued.

Ultimately, US district judge Timothy Brooks granted the preliminary injunction to temporarily stop Arkansas Attorney General Tim Griffin from enforcing the law—finding that it was unconstitutionally vague and perhaps violating the First Amendment by restricting access to speech. In his opinion, Brooks wrote that the state itself wasn't even sure if the law applied to Snapchat.

That ambiguity poses a problem for platforms since they could face a $2,500 fine for each violation, and compliance costs were equally steep. Nextdoor, which must comply with the law, told the court that compliance would raise its costs by up to 3,000 percent.

Confusion arose when the state's witness, Tony Allen—an expert in age-verification standards for the United Kingdom who worked on the UK's Online Safety Bill—testified that the Social Media Safety Act applied to Snapchat, then the state's attorney later contradicted Allen. Neither could agree on Snapchat's primary purpose. Was the app primarily for "interacting socially with other profiles and accounts"—as a covered social media platform under the law—or was it primarily for direct-messaging, which the law exempts? Nobody knew for sure.

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Partly because of this exchange, Brooks ruled that Arkansas' law "is unconstitutionally vague because it fails to adequately define which entities are subject to its requirements." And because the law could potentially deter free speech, Brooks wrote that the court's duty to block enforcement was greater because it "is critical 'to ensure that ambiguity does not chill protected speech.'"

Arkansas' AG Griffin's statement said that he was "disappointed" in the ruling and planned to "continue to

vigorously defend the law and protect our children."

Netchoice has argued that parental consent laws like Arkansas' law—which some states like Georgia are currently weighing and other states like Texas and Utah have already passed—unconstitutionally burden Internet users' First Amendment rights. These laws require all Internet users to provide identifying information to access platforms—either by uploading official government documents or submitting to biometric scans—which would likely discourage many users who value their privacy from using sites.

"The Court agrees," Brooks wrote. "It is likely that many adults who otherwise would be interested in becoming account holders on regulated social media platforms will be deterred—and their speech chilled—as a result of the age-verification requirements." It also follows, Brook wrote, that the law would "obviously burdens minors' First Amendment rights."

The preliminary injunction will stop Arkansas from enforcing the law until the case is litigated. Based on Brooks' opinion, Arkansas will likely struggle to defeat claims of unconstitutionality, as Brooks wrote that, as currently written, the law "is not targeted to address the harms it has identified, and further research is necessary before the State may begin to construct a regulation that is narrowly tailored to address the harms that minors face due to prolonged use of certain social media."

"We're pleased the court sided with the First Amendment and stopped Arkansas' unconstitutional law from censoring free speech online and undermining the privacy of Arkansans, their families, and their businesses as our case proceeds," Chris Marchese, director of the NetChoice Litigation Center, said in a statement. "We look forward to seeing the law struck down permanently."

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NYPD using drones to check out noisy backyard parties over Labor Day weekend

Getty Images | Richard Newstead

reader comments

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The New York City Police Department said it will use drones to check out backyard parties when neighbors call to complain about large crowds this weekend.

“The drones are going to be responding to non-priority calls and priority calls,” NYPD Assistant Commissioner Kaz Daughtry said at a press conference yesterday. “For example, if we have any 311 calls on our non-emergency line where if a caller states there’s a large crowd, a large party in the backyard, we’re going to be utilizing our assets to go up, to go check on the party, to make sure if the call is founded or not, and we’ll be able to determine how many resources we need to send to that location for this weekend. So we will have our drone teams out there starting tonight, all the way into Monday morning.”

Daughtry spoke near the end of a press conference (see video) about safety and security measures for J’Ouvert, a

“traditional street festival honoring the vast heritage and culture of the Caribbean diaspora,” and the West Indian Day Parade.

The drone plan “drew immediate backlash from privacy and civil liberties advocates, raising questions about whether such drone use violated existing laws for police surveillance,” an Associated Press report said. A privacy advocate said using drones to examine backyard parties appears to violate a New York City law called the Public Oversight of Surveillance Technology (POST) Act.

“It’s a troubling announcement and it flies in the face of the POST Act… deploying drones in this way is a sci-fi inspired scenario,” New York Civil Liberties Union privacy and technology strategist Daniel Schwarz said, according to the AP.

NYPD policy doesn’t mention parties

The POST Act requires the NYPD to publish impact and use policies for the surveillance technologies it uses. As The Verge pointed out, the NYPD’s impact and use policy for drones doesn’t mention using the devices to examine backyard parties. The NYPD document says that “a UAS [Unmanned Aircraft System] will not be used in areas where there is a reasonable expectation of privacy without NYPD personnel first obtaining a search warrant that explicitly authorizes the use of a UAS,” except in “exigent circumstances.”

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The policy says the NYPD may use drones for “search and rescue operations, documentation of collisions and crimes scenes, evidence searches at large inaccessible scenes, hazardous material incidents, monitoring vehicular traffic and pedestrian congestion at large scale events, visual assistance at hostage/barricaded suspect situations, rooftop security observations at shooting or large scale events, public safety,

emergency, and other situations with the approval of the Chief of Department."

"In situations where deployment of NYPD UAS has not been foreseen or prescribed in policy, the highest uniformed member of the NYPD, the Chief of Department, will decide if deployment is appropriate and lawful," the document says. "In accordance with the Public Oversight of Surveillance Technology Act, an addendum to this impact and use policy will be prepared as necessary to describe any additional uses of UAS."

We asked the NYPD today how using drones to check out backyard parties would fit into the required impact and use policy. An NYPD spokesperson responded to our email but didn't answer the question.

The AP reported that when it contacted Mayor Eric Adams' office, a spokesperson "shared a link to new guidelines that make it easier for private drone operators to fly in the city, but which do not address whether the NYPD has any policies for drone surveillance."

Albert Fox Cahn, founder and executive director of the Surveillance Technology Oversight Project, told the AP that "one of the biggest concerns with the rush to roll out new forms of aerial surveillance is how few protections we have against seeing these cameras aimed at our backyards or even our bedrooms." Cahn called for more transparency and guard rails on drone use and said that "flying a drone over a backyard barbecue is a step too far for many New Yorkers."

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Texas law requiring age verification on porn sites ruled unconstitutional [Updated]

Aurich Lawson | Getty Images

reader comments

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The day before a Texas antiporn law that requires age verification to access adult websites was set to take effect, the state's attorney general, Angela Colmenero, has been at least temporarily blocked from enforcing the law.

US District Judge David Alan Ezra granted a preliminary injunction temporarily blocking enforcement after the Free Speech Coalition (FSC) joined adult performers and sites like Pornhub in a lawsuit opposing the law. Today, they convinced Ezra that Texas' law violates the First Amendment and would have "a chilling effect on legally-protected speech," FSC said in a press release.

"This is a huge and important victory against the rising tide of censorship online," Alison Boden, FSC's executive director, said. "From the beginning, we have argued that the Texas law, and those like it, are both dangerous and unconstitutional. We're pleased that the court agreed with our view that [the law's] true purpose is not to protect young people, but to prevent Texans from enjoying First Amendment protected expression. The state's defense of the law was not based in

science or technology, but ideology and politics."

Now, Texas will have to wait until this lawsuit is litigated to enforce the law.

Ars could not immediately reach FSC, Pornhub, or Colmenero for comment. [**Update:** A spokesperson for Pornhub's parent company Aylo told Ars, "We are pleased with the court's decision today, which reaffirms our position that the age verification law implemented in Texas is unconstitutional. We have publicly supported mandatory age verification of viewers of adult content for years, but any method of age verification must preserve user privacy and safety.

"The only solution that makes the Internet safer, preserves user privacy, and stands to prevent children from accessing age-inappropriate content is performing age verification at the device level," Aylo's spokesperson said. "We are pleased that the court recognizes the severity of compelled speech and its presence in this law that Texas has implemented. We are proud to fight for our industry and the performers that use it to legally earn a living, and we are glad to see the court recognize that this law is unconstitutional and would have required adult entertainers to falsely imply that their content poses health risks."

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The Texas Office of the Attorney General's director of communications, Paige Willey, told Ars, "The Office of the Attorney General will move to stay the injunction and will appeal this decision."]

According to FSC, in addition to free speech concerns, the law needed to be blocked because it would have exposed consumers to "significant privacy risks" by forcing adult-website visitors to show digital IDs.

Pornhub has been protesting similar laws in Louisiana and even took the unexpected step of blocking access to its website

when Utah, Mississippi, and Virginia passed age-verification laws. Earlier this year, Pornhub posted a long statement on X, formerly Twitter, explaining that while US officials acting to prevent children from accessing adult content is “great,” the way that “many elected officials have chosen to implement these laws is haphazard and dangerous.”

SC’s Boden previously warned that these laws give states “the power to harass and censor legal businesses” and that allowing states “to suppress certain speech by requiring invasive and burdensome systems that consumers refuse to engage with is simply state censorship.” The cost to adult sites in Texas found violating age-verification laws could be significant, FSC said.

“The law, set to take effect September 1, would have given the Attorney General the power to fine a site with adult content more than $3 million per year if it did not require visitors to present a digital ID or undergo background checks to establish age,” FSC’s press release said.

In his Texas order today, Ezra wrote that “the state has a legitimate goal in protecting children from sexually explicit material online,” but that “does not negate this Court’s burden to ensure that the laws passed in its pursuit comport with established First Amendment doctrine.” Ezra said that while a “preliminary injunction is an extraordinary remedy,” it was necessary because the court found the law unconstitutional.

Further, Ezra agreed with FSC and Pornhub that Texas could achieve its goal of protecting children from adult content by other means. FSC recommended that “parental filters are a less restrictive and more effective method of protecting minors.”

“There are viable and constitutional means to achieve Texas’ goal, and nothing in this order prevents the state from pursuing those means,” Ezra wrote.

FSC said it’s encouraged by the finding that Texas’ law was unconstitutional but that plaintiffs had predicted that the Texas challenge might present “the most straightforward path to securing a ruling like this.” Securing similar rulings in other states may not be as easy, but “the issues are the same whether in Utah, Louisiana or Virginia,” FSC said.

“Anyone who attempts to bring a case in those jurisdictions faces little hope of success,” FSC predicted, and as for Texas, FSC is “confident that the law will ultimately be struck down permanently.”

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Thorny AI ownership questions have Copyright Office seeking public input

reader comments

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On Wednesday, the US Copyright Office began seeking public comment on issues surrounding generative AI systems and copyright. The public comment period, which starts on August 30, aims to explore the complex intersection of AI technology with copyright laws, and it closes on November 15. The comments could inform how the agency decides to grant

copyrights in the future.

Outlined in a 24-page document published as a PDF file by the Federal Register, the “Notice of inquiry and request for comments” asks questions with far-reaching consequences for intellectual property in America.

Specifically, the Office is interested in four main areas: the use of copyrighted materials to train AI models and whether this constitutes infringement; the extent to which AI-generated content should or could be copyrighted, particularly when a human has exercised some degree of control over the AI model’s operations; how liability should be applied if AI-generated content infringes on existing copyrights; and the impact of AI mimicking voices or styles of human artists, which, while not strictly copyright issues, may engage state laws related to publicity rights and unfair competition.

Comments are sought to address these concerns because, in a relatively short period, we’ve seen the arrival of generative AI tools with surprising capabilities that can render images and video, imitate voices, answer questions, and compose text on demand. AI models have spawned hype and backlash, heavy corporate investment, and lawsuits. Those instances have put the Copyright Office on high alert as the frequency of AI-related copyright incidents increases:

> *Over the past several years, the Office has begun to receive applications to register works containing AI-generated material, some of which name AI systems as an author or co-author. At the same time, copyright owners have brought infringement claims against AI companies based on the training process for, and outputs derived from, generative AI systems.*
>
> *As concerns and uncertainties mount, Congress and the Copyright Office have been contacted by many stakeholders with diverse views. The Office has publicly announced a broad*

> *initiative earlier this year to explore these issues. This Notice is part of that initiative and builds on the Office's research, expertise, and prior work, as well as information that stakeholders have provided to the Office.*

Listed among the incidents noted in the Copyright Office document are stories we've reported on in the past, including the first registration of latent diffusion artwork to Kris Kashtanova, which was granted in September and conditionally revoked in February; an attempt to register an AI-created artwork solely to a machine by Stephen Thaler (who has attempted similar things with patents), which a judge declined this month; and a copyright lawsuit against OpenAI on behalf of Sarah Silverman regarding the company's use of her copyrighted works in ChatGPT training data. Additionally, artists sued Stability AI, Midjourney, and DeviantArt as a class action in January for alleged copyright violations.

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In response to similar copyright concerns, several news organizations (including Ars Technica's parent company, Conde Nast) recently took steps to block OpenAI's web crawler, hoping it will prevent OpenAI from scraping data used to train future AI models. Most large language models, such as the ones that power ChatGPT, learned about the world by absorbing billions of documents found openly online—typically without consulting copyright holders.

The flexible arm of the law

Enlarge / The cover of “Zarya of the Dawn,” a comic book created using Midjourney AI image synthesis in 2022 and subject to a copyright dispute.
Kris Kashtanova

While US copyright law is fixed, its interpretation of emerging technology is nuanced and can change depending on how regulators (and judges) feel about the topic, which depends partially on public sentiment.

As the interpretation stands, AI artwork may be copyrighted in the US as part of a larger, human-authored work, but not individually. And we’ve seen that copyright does not extend to creative works without any human authorship. However, there are still unresolved questions about what degree of human involvement would trigger the threshold for copyright registration, similar to questions that arose upon the invention of the camera in the 19th century.

In 1884, the defendant in *Burrow-Giles Lithographic Co. v. Sarony* claimed that photographs could not be subject to copyright because a photo is “a reproduction on paper of the exact features of some natural object or of some person.” They argued that a photo is the work of a machine and not a creative expression. But the court ruled that photos can be

copyrighted because they are “representatives of original intellectual conceptions of [an] author.”

The question today is: What action in using a machine learning tool counts as the “original intellectual conception of an author?” Is it the selection of the particular AI tool? The input of a prompt? The curation or editing of the resulting machine-generated output? While current US copyright guidelines seem to sidestep these questions, the Copyright Office is open to hearing the public’s opinions.

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Also, the Copyright Office would like to hear opinions about the unsettled issue over the inclusion of copyrighted material in training data sets, notably writing, “the Office is aware that there is disagreement about whether or when the use of copyrighted works to develop datasets for training AI models (in both generative and non-generative systems) is infringing.”

But that’s not all. The original 24-page request document is a fascinating look into the minds of current US copyright regulators, and it includes 34 multi-part questions of interest for the Copyright Office that would take another 24-page document to straighten out in detail.

The deadline for written comments is October 18, and they can be submitted online through a Regulations.gov form. Reply comments must be submitted to the Copyright Office by November 15.

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FCC says “too bad” to ISPs complaining that listing every fee is too hard

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The Federal Communications Commission yesterday rejected requests to eliminate an upcoming requirement that Internet service providers list all of their monthly fees.

Five major trade groups representing US broadband providers petitioned the FCC in January to scrap the requirement before it takes effect. In June, Comcast told the FCC that the listing-every-fee rule “impose[s] significant administrative burdens and unnecessary complexity in complying with the broadband label requirements.”

The five trade groups kept up the pressure earlier this month in a meeting with FCC officials and in a filing that complained that listing every fee is too hard. The FCC refused to bend, announcing yesterday that the rules will take effect without major changes.

“Every consumer needs transparent information when making decisions about what Internet service offering makes the most sense for their family or household. No one wants to be hit with charges they didn’t ask for or they did not expect,” FCC Chairwoman Jessica Rosenworcel said.

Yesterday’s order “largely affirms the rules… while making

some revisions and clarifications such as modifying provider record-keeping requirements when directing consumers to a label on an alternative sales channel and confirming that providers may state ‘taxes included’ when their price already incorporates taxes,” the FCC said.

ISPs don’t want to list all fees

Comcast and other ISPs objected to a requirement that ISPs “list all recurring monthly fees” including “all charges that providers impose at their discretion, *i.e.*, charges not mandated by a government.” They complained that the rule will force them “to display the pass-through of fees imposed by federal, state, or local government agencies on the consumer broadband label.”

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As we’ve previously written, ISPs could simplify billing and comply with the new broadband-labeling rules by including all costs in their advertised rates. That would give potential customers a clearer idea of how much they have to pay each month and save ISPs the trouble of listing every charge that they currently choose to break out separately.

Rejecting the broadband industry’s request, the FCC order yesterday said:

> *[W]e affirm our requirement that providers display all monthly fees with respect to broadband service on the label to provide consumers with clear and accurate information about the cost of their broadband service. We thus decline providers’ request that they not disclose those fees or that they instead display an “up to” price for certain fees they choose to pass through to consumers.*

Specifically, “providers must itemize the fees they add to base monthly prices, including fees related to government

programs they choose to ‘pass through’ to consumers, such as fees related to universal service or regulatory fees,” the FCC said.

The FCC was ordered by Congress to implement broadband-label rules. The FCC is requiring ISPs to display the labels to consumers at the point of sale and include information such as the monthly price, additional fees, introductory rates, data caps, charges for data overages, and performance metrics. The FCC rules aren’t in force yet because they are subject to a federal Office of Management and Budget (OMB) review under the US Paperwork Reduction Act.

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OpenAI disputes authors’ claims that every ChatGPT response is a derivative work