

# Kids Online Safety Act (KOSA) 2022

VS.

## KOSA 2023

March 18, 2023

### Online Harms Prevention (OHP) Work Group, Screen Time Action Network

By: Sharon Winkler, Member, OHP; Survivor Parent, Web Publisher: Social Media Harms,  
<https://socialmediaharms.org>

Section	No Change	Modified	New Content	Notes
<b>#1. Short Title; table of contents</b>			X	New Sections Added, One Section Deleted
<b>#2. Definitions</b>			X	<b>New:</b> See Comments Below for New Definitions
<b>#3. Duty of Care</b>		X		<b>Modified:</b> See Comments Below for New Definitions
<b>#4 Safeguards for minors</b>		X		<b>New:</b> Dark Patterns Prohibition; Rules of Construction
<b>#5 Disclosure</b>		X		<b>Modified:</b> Registration; Parental Notification; Algorithmic Recommendation System; Advertising and Marketing Information and Labels; <b>New:</b> Rule Making Provision
<b>#6 Transparency</b>		X		<b>New:</b> Scope of Application (10M active users/month); Privacy Safeguards; Location; Rulemaking <b>Modified:</b> Systemic Risks Assessment
<b>#7 Independent Research</b>				<b>New:</b> De-identified Data; Non-Commercial Purpose; Public

		X		Interest Research Program Relating to Identified Harms to Minors; Application Requirements; <b>Modified:</b> Safe Harbor for Collection of Data for Public Interest Research Regarding Identified Harms to Minors
<b>#8 Market Research</b>		X		<b>New:</b> Timing
<b>#9 Age Verification Study and Report</b>	X			No Changes
<b>#10 Enforcement</b>	X			Section 11 in KOSA 2023 - No Changes
<b>#10 Guidance -2023 Version</b>			X	<b>Entire Section New</b>
<b>#11 Kids Online Safety Council</b>		X		Section 12 in KOSA 2023. <b>New:</b> added representatives from socially disadvantaged individuals of the Small Business Act; Activities <b>Modified:</b> Council established 180 days after enactment of Act vice 1 year
<b>#11 Enforcement 2023</b>	X			No Changes from KOSA 2022
<b>#12 Authorization of Appropriations</b>				Deleted in KOSA 2023
<b>#12 Kids Online Safety Council</b>		X		See Above
<b>#13 Effective Date</b>	X			
<b>#14 Severability</b>	X			Section 15 of KOSA 2023
<b>#14 Rules of Construction and Other Matters -2023</b>			X	<b>New:</b> Relationship to Other Laws; Protections for Privacy; Compliance

# New/ Modified Definitions

- **Section 2-Definitions (New):**

- **Child** - The term "child" means an individual who is age 12 or younger.
- **Compulsive Usage** - The term "compulsive usage" means any response stimulated by external factors that causes an individual to engage in repetitive behavior reasonably likely to cause psychological distress, loss of control, anxiety, depression, or harmful stress responses.
- **Online Platform** - The term "online platform" means any public-facing website, online service, online application, or mobile application that primarily provides a community forum for user generated content, including sharing videos, images, games, audio files, or other content.
- **Sexual Exploitation and Abuse** - The term "sexual exploitation and abuse: means any of the following: (A) Coercion and enticement, as described in section 2422 of title 18, United States Code. (B) Child sexual abuse material, as described in sections 2252, 2252A, and 2260 of title 18, United States Code. (C) Trafficking for the production of images, as described in section 2251A of title 18, United States Code. (D) Sex trafficking of children, as described in section 1591 of title 18, United States Code.
- **Targeted Advertising** - The term "targeted advertising" means displaying an advertisement to an individual where the advertisement is selected based on personal data collected from the individual.
- **Mental Health Disorder.**- The term "mental health disorder" has the meaning given the term "mental disorder" in the Diagnostic and Statistical Manual of Mental Health Disorders, 5th Edition (or the most current successor edition). ***DSM-5 definition: Definitions of mental disorders in the DSM-5 consider these 5 factors:***
  - i. A behavioral or psychological syndrome or pattern that occurs in an individual
  - ii. Reflects an underlying psychobiological dysfunction
  - iii. The consequences of which are clinically significant distress (e.g., a painful symptom) or disability (i.e., impairment in one or more important areas of functioning)
  - iv. Must not be merely an expected response to common stressors and losses (ex. the loss of a loved one) or a culturally sanctioned response to a particular event (ex. trance states in religious rituals)
  - v. Primarily a result of social deviance or conflicts with society
- **Modified Definition:** Covered platform. (A) In General-The term "covered platform" means a social media service, social network, video game (including educational games), messaging application, video streaming service, or an online platform that connects to the internet and that is use, or is reasonably likely to be used, by a minor. (B) Exceptions - The term "covered platform" does not include - (i) a common carrier subject to the Communications Act of 1934 (47 U.S.C. 151 et seq.) and all Acts amendatory thereof and supplementary thereto; (ii) an organization not organized to carry on business for its own profit or that of its members; and (iii) any public or private preschool, elementary or secondary school, or any institution of vocational, professional, or higher education.

- **Modified Definition: Duty of Care**

- (a) Prevention of Harm to Minors.-A covered platform shall act in the best interests of a user that the platform knows or should know is a minor by taking reasonable measures in its design and operation of products and services to prevent and mitigate-(1) mental health disorders or associated behaviors, including the promotion of exacerbation of suicide, eating disorders, and substance use disorders, consistent with evidence-based medical information; (2) patterns of use that indicate or encourage addiction-like behaviors; (3) physical violence, online bullying, and harassment of the minor; (4) sexual exploitation and abuse; (5) promotion and marketing of narcotic drugs (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), tobacco products, or other financial harms.
- **New Addition to Definition: Duty of Care:** Limitation - Nothing in subsection (a) shall be construed to require a covered platform to prevent or preclude any minor from deliberately and independently searching for, or specifically requesting, content.