

Written Testimony of Gaia Bernstein, Technology Privacy and Policy Professor at Seton Hall University School of Law, Before the Vermont House Commerce & Economic Development Committee, April 8, 2025

Good afternoon senators. I am Gaia Bernstein. I am a law professor and Co-Director of the Institute for Privacy Protection and the Gibbons Institute of Law Science and Technology at Seton Hall Law School. I am also the author of the book: “Unwired: Gaining Control over Addictive Technologies.” My legal scholarship focuses on addictive technology platforms and the regulation of social media.

Thank you for having me testify before you again. In the year since I last testified an important movement emerged. It is both a grassroots movement of parents and a legal-political movement. This movement has made significant inroads, protecting kids from compulsive screen use and online harms. As a result, multiple U.S. states and cities as well as countries adopted laws to ban use of phones in schools. In addition, states across the country as well as Congress considered and passed laws to protect kids from online harms, particularly on social media.

In my testimony today, I will first discuss the business model, which many technology companies follow, and how it leads them to design their products to addict kids. Second, I will explain why laws like the Vermont Age-Appropriate Design Code Act can destabilize this business model and protect kids from excessive screen time and other online harms. Third, I will explain why the tech industry will not self-regulate but instead tries to shift the blame and responsibility to parents. Finally, I will talk about why the Vermont Act does not violate the First Amendment.

First to the business model. We all know that we and our kids spend many hours on screens a day. Teens spend an average eight and half hours on screens. This is not a coincidence, but the result of the business model, which emerged on the Internet over two decades ago. Tech companies give us products for free. They give us Gmail for free; they give us Instagram for free, but we pay with our time and our data. While most industries rely on physical materials as their resources, the tech industry is different. It uses us as its resource. Tech companies need to keep us online for as long as so they can collect as much data as they can on us. They then need to keep us on so they can target advertising at us because their revenues depend on us purchasing the services and products advertised. The tech industry makes especially large profits from keeping our kids online. A recent study revealed that social media companies alone make eleven billion dollars a year from revenues derived from minors.

To keep us on for as long as possible the tech industry manipulates our deepest human vulnerabilities. For example, they take away our stopping cues through a design feature called the infinite scroll. If you go on Instagram or X there is never an end to a page, you keep going and going, there is no natural place to stop. The design is based on a well-known psychology experiment. Researchers gave one group a regular bowl of soup, and they gave another group a bottomless bowl of soup. The group that got the bottomless bowl ate 73% more soup and didn’t even realize it. They had no stopping cues. By using the infinite scroll, the tech industry took away our stopping signals all over the Internet.

Extending users time online is crucial for tech companies. They use their algorithmic feed to determine what keeps us online and expose us to that. For example, when they learnt that anger keeps users online for longer, they exposed them to what makes them angry. When they learnt that kids are attracted to risks, the algorithm exposed kids to risky activities like the infamous Tik Tok choking challenge, which led some kids to their death.

When you become an industry resource your best interests are irrelevant. In fact, in a recent lawsuit against Meta, an internal company email dated 2018 was made public. In the email, Meta put the value of a thirteen-year-old at \$270. This means that they manipulatively take over so many of our kids waking hours to eventually make \$270.

Now let's turn to the second point - why are laws like the Vermont Age-Appropriate Design Code Act important in addressing the issue? Since the business model is based on the collection of data, extending users time online; and targeting advertising, any laws that restrict these activities destabilize it. These kinds of restrictions make this business model less lucrative and less profitable and can incentivize tech companies to shift away from this harmful business model.

The Vermont Age-Appropriate Design Code Act is designed to do just that. It makes it harder to collect kids' data. For example, it requires tech platforms to make the highest privacy options a default option. Studies show that people don't tend to change the default option. Partly because it takes too much effort to study the alternatives, and partly because they assume the default is the recommended best option. Setting privacy protection as a default at the highest level would make it much harder for tech companies to collect data. As a result, advertising online for kids would be less targeted and less profitable.

The Vermont Age-Appropriate Design Code Act also imposes a duty of care on tech platforms to prevent compulsive use. It even specifically prohibits sending notifications at night. A study found that an average teen gets 237 notifications in 24 hours. If tech companies cannot manipulatively keep kids online, through sending constant notifications or other addictive design methods, then they can collect less data on them. Once again, this would make the advertising less targeted and profitable. Further, if kids are online for shorter periods, they will see fewer ads and are less likely to turn to the products or services advertised. This again makes the business model less profitable.

To conclude this second point, the Vermont Age-Appropriate Design Code Act has many mechanisms that each pokes another hole in the tech industry's business model. Research shows that this business model is associated with many harms to kids, including deteriorating mental health; delays in cognitive development; attention difficulties, lack of sleep and obesity. The tech industry's business interests are deeply entrenched here. But these restrictions coming from Vermont and many other states will apply pressure to start envisioning a different Internet for our children.

Turning to my third point - tech companies will not self-regulate and make these changes on their own. In my book: *Unwired: Gaining Control over Addictive Technologies*, I looked back into the battle against tobacco; against junk food. I also looked at the tech industry and the fight to protect privacy. My research shows that there are certain strategies that these industries used. A main one is shifting the responsibility for the harm to their consumers. For example, when smokers sued the

tobacco industry, cigarette companies argued that the smokers chose to smoke and, therefore, they were responsible for their health problems. The tobacco industry also came up with solutions, like the filtered cigarette, which it advertised as exactly what the doctor prescribed!

The technology industry is now implementing this strategy. Tech companies are trying to place the responsibility on us, especially on parents for the time their kids spend online. They do so by giving parents parental controls. The idea is that if parents have the tools and their kids still spend so much time online, then the parents are to blame. Still, tech companies go even further.

While tech companies prefer no regulation at all, if forced to select regulation, they prefer laws that place the sole responsibility on parents by mandating parental control tools. They do so because once again this lets them shift the responsibility to parents. But also, as I explain in my new article *Gatekeeping Screen Time*, tech companies know that parents cannot alone effectively protect their kids. While parents have done their best using parental controls for years, kids' screen time just keeps trickling up.

I want to emphasize here that The Vermont Age-Appropriate Design Code Act does not fall prey to this tactic. It does something important – it keeps the responsibility to protect kids where it belongs – with the tech industry.

In the last part of my comments, I want to briefly address the First Amendment challenges. As you know the technology industry challenged different laws designed to protect kids online on First Amendment grounds. This is not surprising. In recent years, corporations exceedingly use the First Amendment as a legal sword to avoid regulation. But we must remember that the First Amendment was crafted to protect freedom of speech not abusive designs.

Laws that restrict tech companies' designs do not regulate speech or content. They are in essence a set of safety regulations like those regulating the paint on kids' toys. For example, going back to the infinite scroll; regulating a design feature that does not let you ever get to the end of the page does not burden expressive speech.

The tech industry's argument that laws regulating harm to kids violate the First Amendment is out of line with deeply embedded legal traditions. States have always used their police power to protect kids' health and well-being. If states cannot do so, will they no longer be able to prohibit kids from gambling? From buying cigarettes? From vaping?

I would like to end on a personal note, taking off my law professor hat for a moment. I am also the mother of three kids who were born into an era of online connectivity, smartphones and social media. My kids' generation has been in front of screens for over a decade, plus a pandemic, and they are paying the price for this. We need to act fast.

In the last year we saw significant progress, as well as setbacks, as the tech industry fought back to avoid regulation. We have also learnt a lot. We learnt which laws that protect children can pass First Amendment scrutiny. And importantly we have learnt that this is a bipartisan cause because all parents care about their children.

Eventually Congress may pass a federal law, as it nearly did last year, when the Senate passed the Kids Online Safety Act (KOSA) with an overwhelming 91-3 majority. But until this happens, we do not have the luxury of waiting any longer. By enacting the Vermont Age-Appropriate Design Code, Vermont can be an integral part of this movement, and act now to protect the current generation of kids, who have been sitting in front of their screens for far too long. Thank you.