

What's the Latest on Social Media Litigation in the US and Abroad?

Richik Sarkar, Dinsmore & Shohl LLP, Cleveland, Ohio, USA

George R. Wray, Borden Ladner Gervais LLP, Toronto, Ontario, Canada

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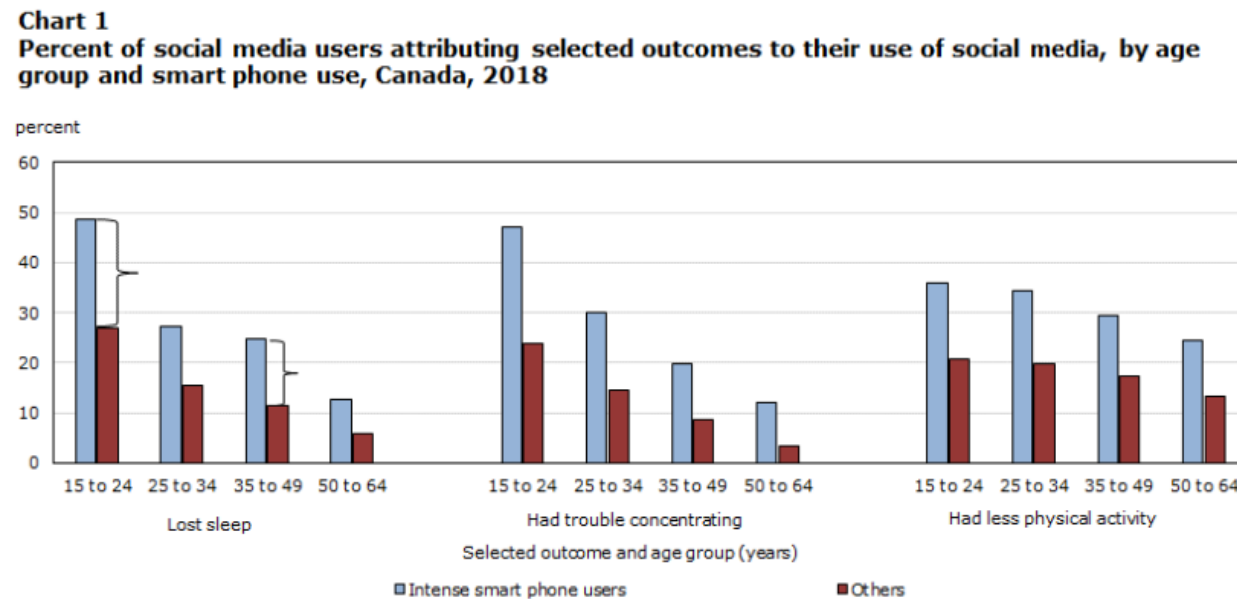
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Background: Social Media Use

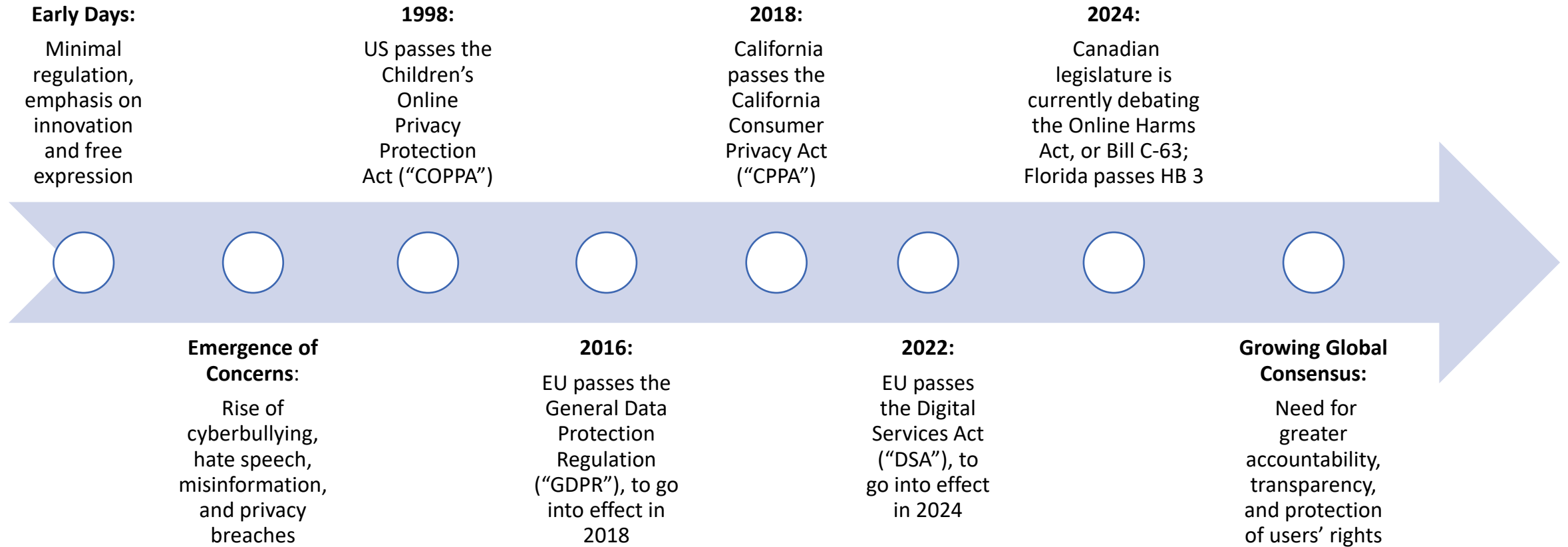
- In the United States (US), around 95% of teens aged 13-17 reported using social media: around 1/3 reported using social media “almost constantly”.
- In 2022, 91% of Canadians aged 15 to 24 used social networking sites.
- Consistent social media use is increasingly being alleged to impact the well-being of young people.

Background: Social Media Use

- Studies indicate younger social media users were far more likely than older users to report:
 - (a) Loss of sleep;
 - (b) Trouble concentrating on tasks or activities;
 - (c) Feeling anxious or depressed; and,
 - (d) Feeling envious of the lives of others.



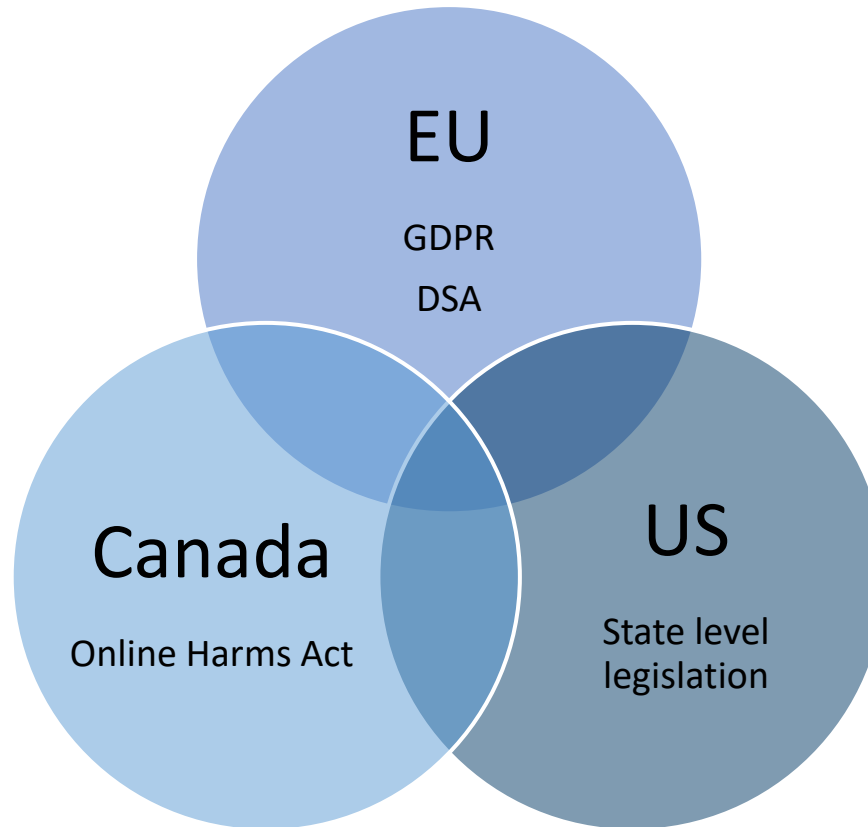
Setting the Stage: The Evolution of Social Media and Its Regulatory Landscape



US Surgeon General Warning – June 2024

- June 17, 2024 – US Surgeon General Dr. Vivek Murthy issues advisory and calls for a warning label on social media platforms:
 - Engage in a multifaceted effort to maximize the benefits and reduce the risk of harm posed by social media, with actions taken by groups across the spectrum: policymakers, technology companies, researchers, families, and children and adolescents themselves.
- US history of protecting consumers (CPSC, FDA, NHTSA, etc.).

Global Legal Landscape: A Comparative Analysis



The European Union (EU): Leading the Way in Regulation (Again...)



GDPR:

- Strict data protection for EU citizens.
- Impacts data collection, consent, and transparency.

DSA:

- Tiered responsibilities for platforms.
- Emphasis on transparency, accountability, and illegal content removal.
- Protection of fundamental rights.
- Increased oversight and potential fines.
- Potential for increased litigation and new legal challenges.

Current Regulatory Landscape in Canada

- Regulatory landscape for social media protection in Canada is limited.
- No legislation in Canada places safety standards on social media use. However, there are laws pertaining to the collection and disclosure of personal information, or misleading advertising, from social media platforms.
- Most relevant protections include legislation and common law that address certain aspects of social media use and related harms.

Current Regulatory Landscape in Canada

- **Applicable legislative and common law protections include:**
 - Defamation law (as amended by Article 19.17 of CUSMA);
 - Competition law;
 - Anti-spam legislation;
 - Various privacy torts;
 - Public disclosure of private facts
 - Publicity placing a person in a false light
 - Privacy law;
 - *Criminal Code* provisions that cover the publication of intimate images without consent (s. 162.1); and,
 - Provincial legislation that creates civil actions for non-consensual distribution of intimate images.

BILL C-63: The “*Online Harms Act*”

- **Purposes include:**
 - (a) Promoting the online safety of persons in Canada;
 - (b) Protecting children’s physical and mental health; and
 - (c) Mitigating the risk that persons in Canada will be exposed to harmful content online while enabling their full participation in public discourse and respecting their freedom of expression.
- **Imposes duties on operators of regulated “social media services”:**
 - (a) To act responsibly;
 - (b) To protect children;
 - (c) To make certain content inaccessible in certain circumstances, specifically (i) content that sexually victimizes a child or revictimizes a survivor, and (ii) intimate images posted without consent; and,
 - (d) To keep records necessary to demonstrate compliance with the *Act*.

Online Harms Act: The Harms



- **Act targets seven forms of harmful content:**
 1. Intimate content communicated without consent;
 2. Content that sexually victimizes a child or revictimizes a survivor;
 3. Content that induces a child to harm themselves;
 4. Content used to bully a child;
 5. Content that foments hatred;
 6. Content that incites violence; and,
 7. Content that incites violent extremism or terrorism.

Online Harms Act: Regulatory Framework

- **Act would establish a regulatory framework consisting of three actors:**
 1. Digital Safety Commission of Canada (“Commission”): administer and enforce the *Act*;
 2. Digital Safety Ombudsperson of Canada (“Ombudsperson”): provide support to social media users and advocate for public interest; and,
 3. Digital Safety Office of Canada (“DSO”): support the Commission and Ombudsperson in fulfilling their respective mandates.

Online Harms Act: Regulatory Framework

- The *Act* will establish significant fines for non-compliance.
- The *Act* proposes amendments to the (a) *Criminal Code*, (b) *Canadian Human Rights Act*, and (c) *Mandatory Reporting Act*.



Online Harms Act: Commentary & Controversy

- First reading of Bill C-63 was completed on February 26, 2024 and was the subject of considerable debate.
 - The Canadian Civil Liberties Association (CCLA) raised concerns about the “*overbroad violations of expressive freedom, privacy and protect rights, and liberty*”.
 - Others do not believe the *Act* goes far enough to safeguard democracy.
 - The proposed criminal sanctions of the *Act* have received considerable commentary.

Online Harms Act: Commentary

- *Act* may provide a basis for future litigation against social media companies.
- Future enforcement actions likely to be brought against social media companies by the Commission.
- New statutorily mandated duties and forms of harmful content may create grounds for future claims against social media companies for failure to comply.
- Social media companies may bring challenges themselves against the *Act*, such as what is covered under “harmful content”.

The US: A Patchwork of State Laws and Federal Considerations

State Legislation Examples:

- Age verification laws (efficacy and debate).
- Parental consent and its limitations.

California's Legislation:

- CCPA and its impact on data collection.

Florida HB 3:

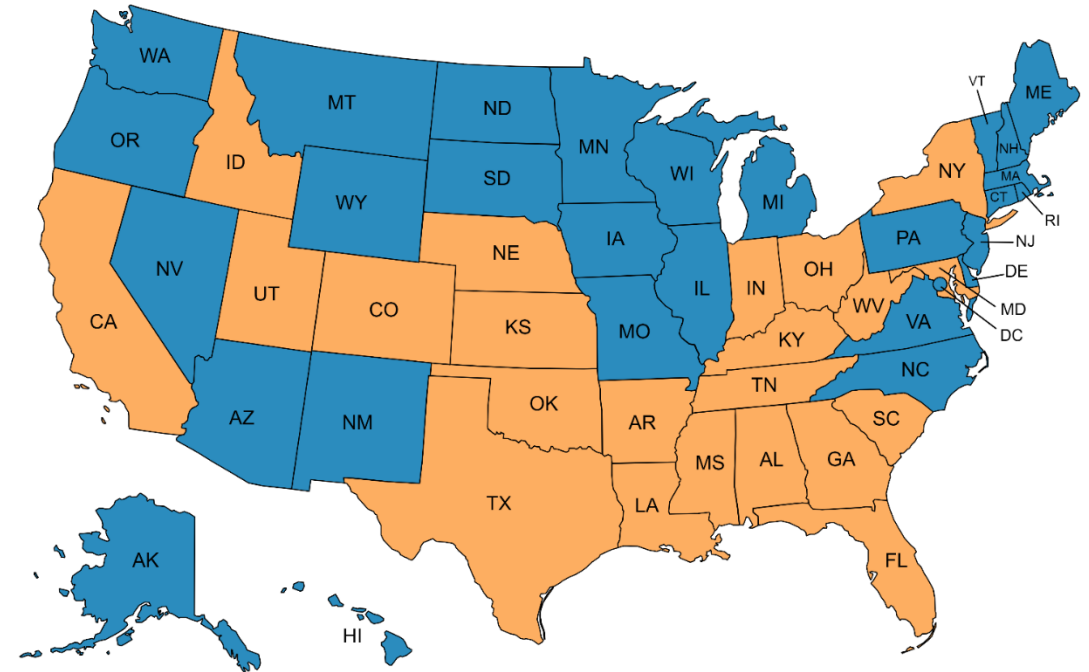
- First Amendment concerns.

COPPA:

- Protecting children's online privacy.

State Level Legislation Focused on Minors:

- Efforts to address child privacy and online safety in the absence of significant federal regulation.



Child Online Safety Laws

Social Media Design Code Laws:

- Inspired by California's Age-Appropriate Design Code Act, which mandates high privacy settings and data protection assessments for minors. Despite challenges, similar laws are being introduced in other states.

Social Media Age Verification Laws:

- Require parental consent and age verification for minors signing up for social media. While some states' laws face legal challenges, others remain unchallenged.

Child-Focused Comprehensive Amendments:

- These amendments to consumer privacy laws add specific protections for children's data, including parental consent and restrictions on data sales and targeted advertising.

Refocused New Enactments:

- States are adjusting their laws to avoid legal challenges, such as Utah's new laws focusing on algorithmic harms and Florida's restrictive prohibitions on social media platforms for minors.

Case Studies: High-Profile Litigation and Landmark Decisions

EU:

- Cases involving GDPR compliance, challenges to the DSA, and lawsuits against “gatekeeper” platforms.

Canada:

- Litigation related to cyberbullying, defamation, and platform liability for harmful content.

US:

- Supreme Court decisions on First Amendment issues, lawsuits against platforms for various harms (e.g., mental health impacts, election interference).

Ontario School Board Litigation

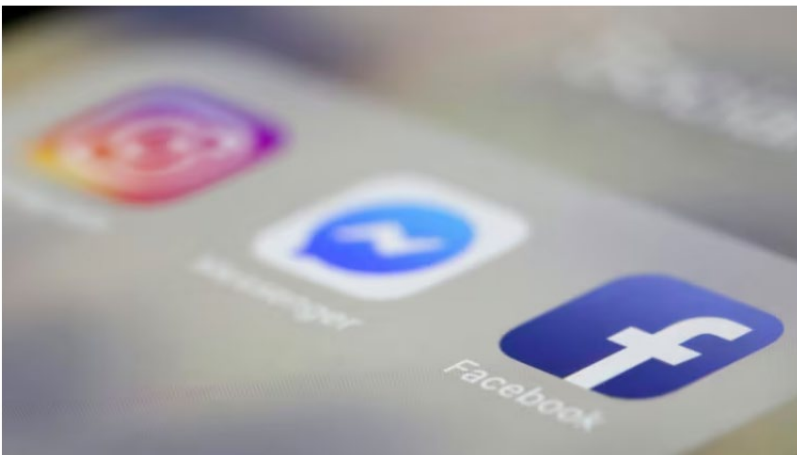
Canada • Analysis

Ont. school boards are trying to knock down the social media giants. Do their cases stand a chance?

School boards seeking \$4.5 billion in damages



Mark Gollom • CBC News • Posted: Apr 07, 2024 4:00 AM EDT | Last Updated: April 7

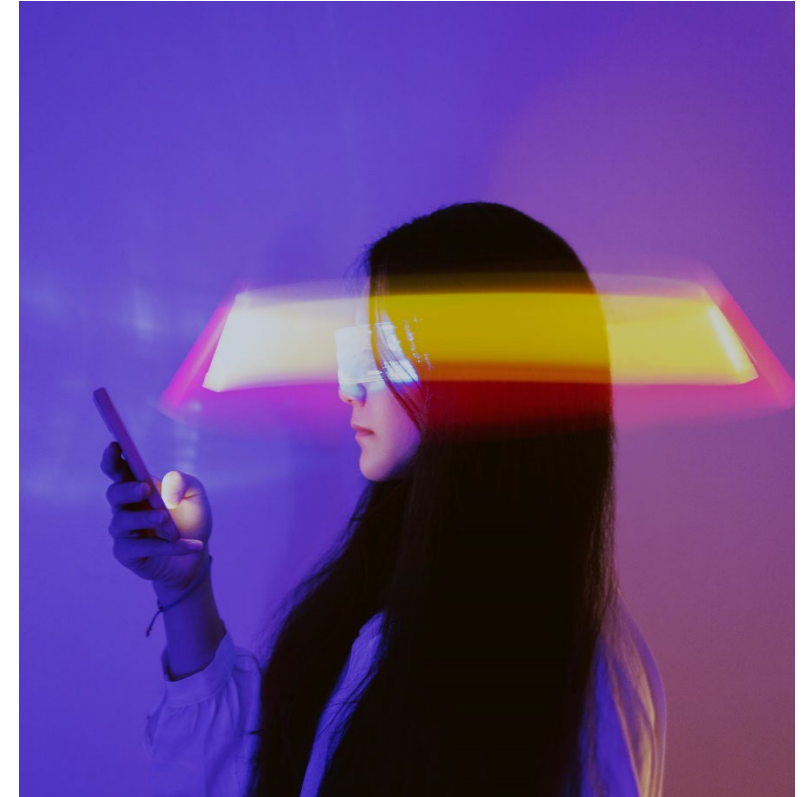


Meta Platforms Inc., which owns Instagram and Facebook, has been named in a lawsuit initiated by four major Ontario school boards alleging these apps, alongside Snapchat and TikTok, are harming students and the broader education system. (Jenny Kane/The Associated Press)

- A total of fourteen related claims have been brought by Ontario school boards and private schools against major social media companies.
- These claims are being pursued as mass tort proceedings, not class actions.

Ontario School Board Litigation

- Plaintiffs claim the Defendants' alleged misconduct has forced them to expend and divert resources to deal with consequences of social media use, including:
 - (a) An unprecedented **youth mental health crisis**;
 - (b) Youth **anti-social behaviours**;
 - (c) A rise in **cyber-bullying**; and,
 - (d) **Serious** (including **violent**) incidents related to social media.



Ontario School Board Litigation

- **Primary causes of action:**

- General negligence;
- Product liability; and,
- Public nuisance.

- **Plaintiffs seek the following:**

- General and special damages;
- Aggravated damages; and,
- Punitive and exemplary damages.

Analogous Litigation: “Addictive” Video Games

Quebec:

- In December 2020, the Quebec Superior Court authorized (i.e., certified) a class action against Epic Games.
- Class action is for a class of Quebec residents who developed an alleged addiction after playing Fortnite.
- Epic Games unsuccessfully appealed the authorization.

British Columbia:

- A class action against Epic Games in March 2023, alleging the game was intended to be addictive for children.
- There are three proposed classes, including those who suffered harm because of an adverse dependence on Fortnite.
- This class action has yet to be certified.

US Supreme Court Sends Social Media Laws Back to Lower Courts

US Supreme Court Action:

- Sent cases about state laws restricting social media content curation back to lower courts.
- Unanimously ruled that there isn't enough information on how Texas and Florida's laws apply to major tech companies.
- Marked a partial victory for industry groups advocating the right to moderate their platforms.

Context of the Laws:

- Both laws aim to prevent online platforms from removing specific types of political speech.
- These laws respond to claims that platforms like Facebook and YouTube censor conservative viewpoints.

Points to Note:

- Justice Elena Kagan's majority opinion compares social media platforms to newspapers.
- Established that social media platforms have First Amendment rights and that protection extends not just to human discretion but to the algorithms that control the vast majority of content curation.

Stakeholder Perspectives: Diverse Voices, Competing Interests

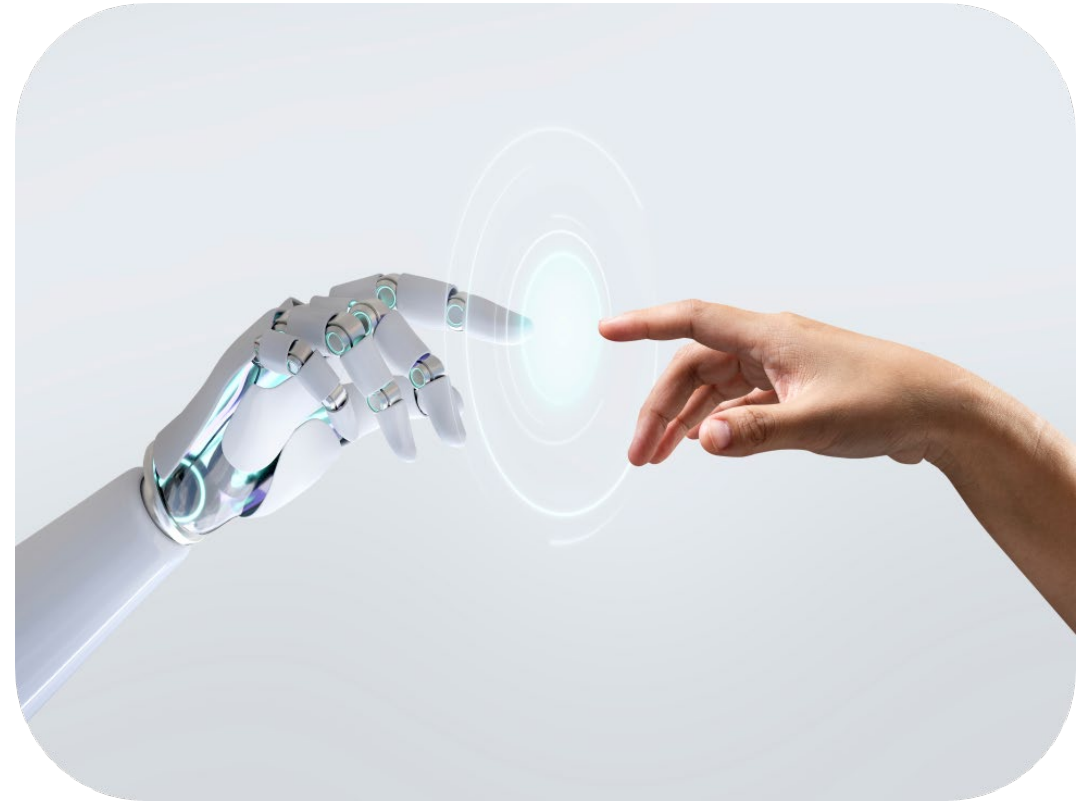
Key Points:

- **Regulators:** Concerns about protecting users, safeguarding democracy, and ensuring fair competition.
- **Social Media Companies:** Emphasis on innovation, free expression, and self-regulation.
- **User Advocates:** Demands for greater transparency, accountability, and control over personal data.
- **Academics:** Research-based insights into the social, economic, and legal implications of regulation.
- **Industry Representatives:** Perspectives on the practical challenges and economic impacts of regulation.

Technological Challenges: Navigating the Intersection of Law and Technology

Key Points:

- **The Role of AI:** Potential benefits and risks of using AI in content moderation and other regulatory processes.
- **Challenges:** Bias in algorithms, limitations of automated decision-making, need for human oversight.
- **Ethical considerations:** Balancing the use of AI with transparency, accountability, and human rights.



Future Predictions: The Road Ahead for Social Media Regulation

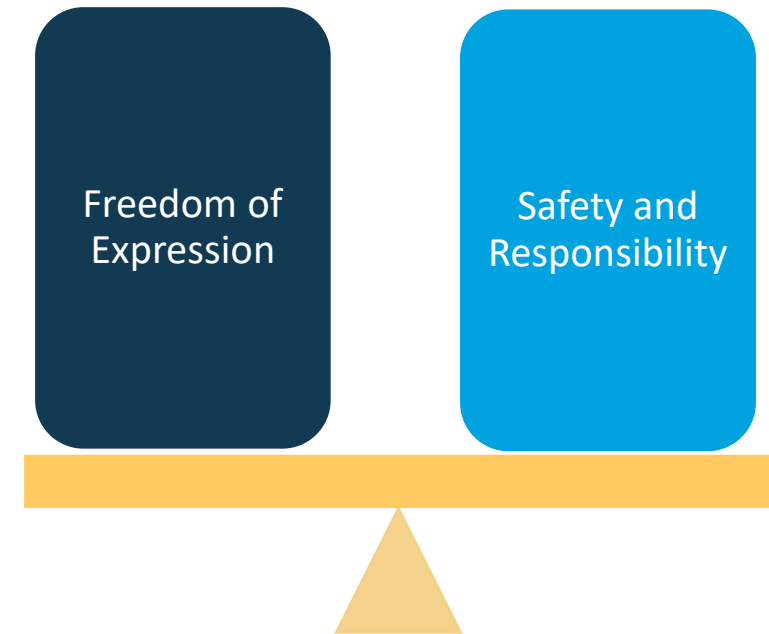
Key Points:

- **Global Harmonization:** Increased cooperation and coordination among different jurisdictions.
- **Focus on User Empowerment:** Giving users more control over their data and online experiences.
- **Evolving Regulatory Models:** Exploring new approaches like co-regulation and industry standards.
- **The Role of Emerging Technologies:** Adapting to the challenges and opportunities of Web3, AI, and other innovations.

Ethical Considerations: Balancing Freedom, Safety, and Responsibility

Key Points:

- **Balancing Act:** Balancing the competing values of free speech, online safety, and platform responsibility.
- **Censorship Concerns:** The risks of overregulation and the chilling effect on free expression.



Global Cooperation Efforts: Building a Harmonious Digital Future



Key Points:

- **Current Initiatives:** International collaborations and forums on social media regulation.
- **Challenges:** Balancing national sovereignty with the need for global cooperation.
- **Benefits:** Shared knowledge, harmonized standards, and collective action to address global challenges.

Conclusion: Navigating the Complexities, Embracing the Opportunities

Key Points:

- **Embrace the Challenge:** Social media regulation is a complex but essential field for legal professionals.
- **Stay Informed:** Keep abreast of evolving legislation, case law, and technological developments.
- **Advocate for Solutions:** Work collaboratively to shape regulations that protect users, promote innovation, and uphold fundamental rights.



Contact Information



Richik Sarkar
Dinsmore & Shohl LLP
(216) 413-3861
Richik.Sarkar@dinsmore .com



George R. Wray
Borden Ladner Gervais LLP (BLG)
(416) 367-6354
Gwray@blg.com

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