

The Distributor's Burden

Platform verification duties, privacy-preserving age assurance, and the constitutional ceiling on online child-safety design

The public argument over children and online platforms is fought on the wrong axis. Whether a video reaches a child is decided by a classification that, on the largest platforms, runs on creator self-report, and self-report is a sieve. A May 2026 field study found roughly a third of surveyed children had already bypassed age checks, some with a drawn-on moustache, some by pointing a camera at a video-game character. This paper argues the burden belongs to the distributor, and shows what a lawful version looks like.

1/3

of surveyed children had bypassed age checks within a two-month window, false birthdates, a makeup-pencil moustache, a camera pointed at a video-game character.

Self-report is a sieve, and the misdeclarer is exactly who the gate exists to stop.

Both the "prominence" fight and the "verify everyone" fight point away from the party that actually decides what reaches a child. **That party is the platform.**

Two Wrong Answers

The constitutional ceiling on verifying the audience, and the bar on prominencing the feed

Paxton is a doorway cut into the wall for one category. It is not a demolition of the wall.

Paxton sustained age checks only for material **obscene as to minors**, and expressly reserved general-audience content and method. A general-audience platform is the opposite site: its content is protected for minors and adults alike.

The year since has been an injunction wave, **Miyares** and parallel cases enjoined verify-every-user mandates as content based and not tailored. **Brown**: no free-floating authority to restrict the ideas children may see.

2.6M

adult citizens hold no government photo ID at all.

20%

of disabled adults lack a
current license

6%

of non-disabled adults

An ID requirement is not a neutral formality. It is a barrier that tracks disability and poverty.

Needing ID to obtain ID compounds the burden for those least able to absorb it. A universal gate makes that a condition on **the entire lawful internet**; a narrow tier bounds it to one small category.

A State may not conscript a platform to rebalance the speech market.

Moody holds that curation is protected editorial judgment, algorithms included; a platform's choice of what its feed shows is its own expression.

So a mandate to surface government-designated broadcasters over the platform's own ranking is a state rebalancing of the market, **the precise object Moody forecloses.**

The Symmetry Principle

The feed as the platform's own speech, in both postures at once

The feed cannot be the platform's own expression for protection and someone else's speech for accountability.

MOODY • THE SHIELD

Curation is protected first-party expression. The platform invokes this whenever a government reaches for its recommender.

ANDERSON • THE SWORD

The same first-party curation is accountable conduct; §230 does not bar a claim for the platform's own expressive recommendation.

Candor about the edge: Anderson is in tension with the older matching-algorithm line, and Moody reserved the no-human-in-the-loop question. **So the duty must not depend on Anderson winning everywhere.**

The Distributor Verification Duty

Verify your own classifications; gate a narrow adult tier with proof that reveals nothing

It already scans every second of a video, to protect an advertiser.

Whole-video classification against a taxonomy is a built, running capability. The child-safety version is the same pipeline, pointed at the child instead of the brand. **The gap is priority.**

THE SHIFT THE DUTY MAKES

Uploader's
checkbox



**Determination the platform
must stand behind**

A verification duty makes the priority a legal one.

Attach the duty to a fact the law already requires the platform to determine.

BONTA • NOT COMPELLED OPINION

Opining on "potentially harmful content" is compelled speech on contested issues, strict scrutiny, struck. **So: verify a factual classification, not an opinion about harm.**

GRIFFIN • NOT VAGUE

"Should have known" about a user's sensitivities is void for vagueness. **So: run to a specified, pre-existing standard, applied prospectively.**

A duty to verify "made for kids" designations against the COPPA rule's own factors threads both, **an audit of a fact, not an opinion on a harm.**

A flat “inspect everything” rule crowns the incumbent it means to discipline.

A universal scan is a rounding error for the largest platform and an existential cost for a small host or nonprofit. **Index the threshold to capacity and revenue, not a nominal user count a startup crosses before it can afford the machinery.**

Whole-catalog verification from the global platform that has already shown the capability; **proportionate diligence from the small host.** The duty-of-care models on both sides of the Atlantic already scale this way.

A zero-knowledge token returns one bit: old enough, or not. It stores nothing.

✓ ZERO-KNOWLEDGE TOKEN

Wallet proves age ≥ 18 without sending a birthdate, name, or document. In market (Google Wallet), prototyped by CNIL and the EU.

✗ FACIAL ESTIMATION

Error band of 3–6 years straddles the 17/18 line, and children beat it with a drawn moustache. A gate is only as strong as its weakest path.

✗ SSN

No signed birthdate to prove from, never an authenticator, and ~147M exposed in Equifax alone. The most-breached identifier in the country.

Not a compromise that dissatisfies each constraint a little. It satisfies each one.

Ceiling Gates only Paxton's category; floor stays open.	Autonomy No carriage or elevation compelled; clears Moody's bar.	Drafting Fact not opinion, standard not sensibility.	Privacy Token stores nothing; no honeypot.	Access Only the narrow tier needs a credential.
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Four honest limits: the general-audience middle stays ungated; the credential-less residual persists; the \$230 tension is unreconciled; and Moody's machine-learning attribution question is inherited.

Verifying the audience collides with Paxton's ceiling; prominencing the feed collides with Moody's autonomy. The party that classifies, distributes, and profits sits between them, and the doctrine now speaks to it in both registers: the feed is its expression when it seeks protection, and its conduct when the question is responsibility.

A platform that will scan every second of a video to protect an advertiser can be required to do the same to protect a child.

Table of Authorities

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