

**RAFFI VO:** Earlier this season, you heard me speak with Frances Haugen. She was a data engineer at Meta, and joined the company in 2019, which was then just called Facebook.

In 2021, she anonymously leaked a trove of internal documents to the Wall Street Journal, which got Congress's attention. Shortly afterwards, she gave an exclusive on 60 Minutes, and testified before Congress herself.

The leaks revealed how the company had misled regulators, and the public, on a number of issues. One thing that got a lot of attention was Meta's attitude towards kids on Facebook and Instagram.

Teenagers, yes, but...even younger children.

**CLIP (C-SPAN, [Frances Haugen testimony 10-05-2021; 0:35:35-0:35:46; 35:52-35:56] Haugen):** *Facebook knows that its amplification algorithms, things like engagement-based rankings on Instagram, can lead children from very innocuous topics like healthy recipes to anorexia-promoting content over a very short period of time.*

**RAFFI VO:** And this led to a lawsuit.

**CLIP [PBS Anchor]:** *More than forty states plus the District of Columbia, have sued Meta, the parent company of Facebook and Instagram, accusing the tech giant of building addictive features into its popular social media platforms that contribute to a youth mental health crisis.*

**Frances Haugen:** They want to figure out how to make Instagram or Facebook, uh, something that you can't separate from. So in the case of those teenage girls, yes, they are incentivizing you to share a lot of information, but I would guess it's not so much they can monetize you, because they don't actually make that much money off of teenagers.

**RAFFI VO:** In an internal email from September 2018, Meta characterized its youngest users in terms of their lifetime value, LTV. That's the cumulative total profit expected per teen. The lifetime value of a thirteen-year-old? Two hundred and seventy dollars.

**FRANCES HAUGEN:** They want to lock people in now, because if they don't get you in the habit of socializing online, they don't get to monetize you when you buy your first home, or when you have your first kid, or when you're trying to figure out where to go on spring break in college.

**RAFFI VO:** Setting aside, just, the basic grossness of putting a dollar amount on children, it's shocking to read documents where Meta admits that the *real* strategy for profiting off kids is to hook them. For as long as possible. That's what they're willing to do in order to make...not even three hundred bucks.

The lawsuit alleges that a number of design features on Meta's apps.... like push notifications, infinite scrolling, and feeds that are based on engagement, and not simply chronological, are all aimed at making it harder and harder to stop using the app. The complaint brings up an internal presentation from June 2018, where the company acknowledges that certain aspects of Facebook quote, "make it difficult to limit one's use."

**SEN. RICHARD BLUMENTHAL:** Kids are more in danger and more damaged than ever before by what they see and hear in their online lives.

**RAFFI VO:** That is Senator Richard Blumenthal, the co-sponsor, along with Senator Marsha Blackburn, of a bill currently on the floor in Congress called the Kids' Online Safety Act. And he's been working on this bill for a while.

**SEN. RICHARD BLUMENTHAL:** My involvement in this issue goes back literally decades. I was Attorney General of the State of Connecticut when the great threat was MySpace. Very few of your listeners are going to know what MySpace was, but essentially I have been on this cause for many years.

**RAFFI VO:** But things kicked into a new gear when Frances Haugen, the Facebook whistleblower, started whistleblowing.

**SEN. RICHARD BLUMENTHAL:** And then we had a whistleblower, very courageous young woman named Frances Haugen, who came forward with documents. That showed these suspicions about the business model were real and in fact it was so graphic and dramatic to see in their own words how big tech executives knew of the harms they were causing and knew how they were making money and wanted to do more of it. And Francis Haugen testified before our committee.

**CLIP [C-SPAN, Frances Haugen testimony 10-05-2021;1:55:50-1:56:07) Haugen]:** *In the documents that I read, Facebook articulates the idea that parents today are not aware of how dangerous Instagram is and they, because they themselves did not live through these experience, they can't coach their kids on basic safety things.*

**SEN. RICHARD BLUMENTHAL:** And like a tsunami, the outpouring of emotion from parents, particularly, but also from kids, in response to her testimony was just overwhelming.

**RAFFI VO:** If you've been listening to our show this season, you already know this, but, we don't have a national data privacy law in the U.S.

Now look, there is a renewed effort going on in Congress right now, centered around a draft bill called the American Privacy Rights Act, the APRA. Things are actively developing on Capitol Hill, and I promise we'll be talking about that soon.

But the point is even with no data privacy law, we still think that protecting children's data privacy, is so important that it's worth doing separately.

So on today's episode we're gonna talk about kids and their data. We'll hear about how young people interact with the platforms, and what problems this poses for protecting their privacy. And we'll hear about some very real harms that kids are suffering, and how culpable the tech companies are in this.

Then, in the second half of the show, we're gonna talk about some ongoing proposals to address these problems, mainly two: the Kid's Online Safety Act, or KOSA, and the Children's Online Privacy Protection Act, or COPPA. And just a note, as of this episode's release, this is a *very fluid* situation. These bills are being debated and marked up and amended right now.

So, hey, it's a great time to get acquainted with them. We're in this together.

I'm Raffi Krikorian...and from Emerson Collective, this is Technically Optimistic.

### **THEME MUSIC**

**ROSALIND WISEMAN:** So. I've only had one job my entire life, which is to listen to young people and then translate that and then tell it to adults. And that means that I always think of young people as the subject matter experts of their lives.

**RAFFI VO:** This is Rosalind Wiseman. She is a writer, teacher, and consultant, and is sought after for her decades of expertise on young people.

**ROSALIND WISEMAN:** I've written nine books. I have spoken and speak all around the world, and I started off when I was 22. The first thing I did was I was really looking at the world of girls. So many adults didn't seem to understand not only the world of girls, but take it seriously and understand the impact of the dynamics that girls were learning at younger ages onto the people that they became as they matured. And so that book was *Queen Bees and Wannabes*. And that book has gone on to become this perpetual motion machine. It became the book that *Mean Girls*, the movie, the musical, and now the movie musical, is the source material for.

**RAFFI VO: And if you've seen *Mean Girls* in any of its several iterations, that whole anthropology motif, where the teenage girl is sort of treated as a wild, sometimes violent creature...that very much comes from Wiseman.**

***Queen Bees and Wannabes* is about to be re-released in its fourth edition this year, 22 years after its original publication. So how does the experience of being a teenager now compare to being a teenager two decades ago?**

**ROSALIND WISEMAN:** There are evergreen issues. Like every generation before us, you will have experiences of betrayal. Relationships are still incredibly important to you. Friendships are incredibly important to you.

You need meaningful interactions with people. You need a sense of purpose. You will be rejected, conflict is inevitable, and pretty much you're going to have power dynamics with adults that are really frustrating and annoying to you that you feel disrespected. Those dynamics are evergreen.

What is different is that our definition of privacy is obliterated and I don't know how people in social media and technology companies feel about the fact that young people know that people in these companies deliberately knew that they were going to harm young people's mental health and they did it anyway.

And that is a significant contributor to young people feeling like they can't trust people in positions of power. The tool that young people have been given, that has given them so much in some ways, has also come at such a high cost to them. And they know it.

**RAFFI VO: Rosalind consults with a number of advisors. And these are young people, from elementary to high school aged kids. She pays them for their help.**

**And so.. she hears firsthand about how kids really engage with social media.**

**ROSALIND WISEMAN:** Scrolling through Instagram. And having to like things because you're worried that other people will see that you don't like that or they'll ask you and you have to do it immediately because if you don't do it, people are going to wonder why you didn't do it immediately.

All of those mental gymnastics that you're doing are terrible for you. And it doesn't take away from the fact that young people are getting amazing amounts of news from Tiktok that they cannot get from school now, that they literally cannot get from school. So, I would hope that people who are in the tech field understand that this cannot be solved with within tech alone, that they have to work with people who are working with young people, so that we can have

some empathy and sympathy for everybody and compassion for everyone because fixing a technical problem is not going to fix the problem.

**FRANCES HAUGEN:** This document was talking about how teenagers socialize tweens to use Instagram.

**RAFFI VO:** Again, Facebook whistleblower Frances Haugen.

**FRANCES HAUGEN:** Older siblings were teaching their younger siblings that because information can stay on the internet forever, you should have some discretion when you post. And the way they framed it was, that they were spreading dangerous myths. That you couldn't be your authentic self online.

**RAFFI VO:** In conversations with high school seniors, Rosalind heard about similar behavior: older teens expressing concern for their younger siblings, and the effects that the platforms were having on them.

**ROSALIND WISEMAN:** They would like adults to use their authority more effectively and that would be to put some constraints and limitations on the amount of advertising that they are receiving and the kind of content that they are receiving.

Because they do feel that they are getting things that are inappropriate for them to be getting. And they really have very strong feelings about how much more mature their younger siblings are being forced to be, and being even more worried about the younger generation than they are in some ways about themselves.

**RAFFI VO:** As harmful as Rosalind says social media might sometimes be, the most powerful forces of surveillance in teenagers' lives today aren't from Big Tech.

**She says the real surveillance...is right there at home.**

**ROSALIND WISEMAN:** I'm very concerned about young people's having grown up in an environment where they are constantly being surveilled by their parents. I mean, we can talk about, you know, social media companies and technology companies surveilling them, but their parents are the most active. And parents have gotten it into their heads that good parenting means doing surveillance on your children. And that having the most amount of information about your children and, and violating their privacy on a pretty constant basis is the definition of good, responsible parenting. And I really disagree with that. . . .

There's been a parenting movement that has really, and it's been going on for a while, that really is saying to parents that you are the only one that can really help your child, that can really

advocate for your child, that will protect your child, that will have your best child, your child's best interests at heart.

And that means that all of a sudden, all these people like teachers and, and, um, coaches and all different kinds of people that are in your child's life, they become not really your team. And that's just not the way we do this. If we're going to have healthy children who are not addicted to their phones and seeking meaning and relationships on their phones, because that's what they will do, young people need to be seen, and they need to be seen by other adults who value and respect their place in the community. And that's what really is going to be the thing that offsets our concerns about, our very real concerns about young people's interaction with and relationship to social media and technology.

**RAFFI: So kids need relationships with adults who care about them that's not just their parents.**

**ROSALIND WISEMAN:** Yes, you are much more succinct than me.

**RAFFI: I mean, I'm amazed I landed that. I was just like throwing something out there.**

**ROSALIND WISEMAN:** [LAFF]

**RAFFI:** But then does that mean all these things we've been reading about the harms of social media are overblown?

**ROSALIND WISEMAN:** I don't think social media is the reason that young people are suffering today. I think it is much easier to look at social media and blame it than to look at ourselves and our own behavior and our own relationships. So, no, I don't think that young people's use of social media is the cause of all of the things that sort of is laid at the fault of social media. I think that it is part of it, it is a component part of it, but I think that we have a lot more honest conversations we need to be having before we even begin to get to a place where we can actually understand its contribution in our children's lives and in our lives, in our family's lives.

**RAFFI VO: By a number of different measures, we are in the midst of a teen mental health crisis.**

**CLIP (CNN YT 0:28-0:35) [Anchor]:** *U.S. data now shows a stark rise in rates of teen depression over the last decade, particularly for girls.*

**RAFFI VO: And there's ongoing debate about whether smartphones, or social media use are to blame.**

**CLIP (CNN YT 0:39-0:56) [Anchor]:** *According to Facebook's own research reported by the Wall Street Journal, their platforms make body image issues worse for one in three teenage girls. And among teens who report suicidal thoughts, 13% of British users and 6% of American users trace those feelings to Instagram.*

**RAFFI VO:** On the one hand, Rosalind Wiseman echoes what some other observers say, that social media might be a *factor* in teen mental health...but perhaps it's not the *primary* factor.

There hasn't been any conclusive scientific study showing a causal link between social media use and teen depression.

On the other hand, Frances Haugen showed us that for some people inside of Meta, the causal link was, apparently, assumed.

**FRANCES HAUGEN:** In internal discussions, Meta employees discuss the fact that Meta's recommendation algorithms tend to pull young users into negative spirals and feedback loops, whereby algorithmic sequencing of content has detrimental effects on the well being of young users. Internal Meta documents reveal Meta knew its recommendation algorithms trigger intermittent dopamine releases in young users whose developing brains are especially susceptible to such tactics. Like, they literally had a document in 2020, describing the efforts to understand adolescent biology and neuroscience to gain valuable, unchanging insights to inform product strategy today.

**RAFFI VO:** But even if the jury's still out on *how* responsible social media platforms are, it's easier to agree that it's time to do something to help struggling young people, given the tons of anecdotal evidence.

And Frances isn't the only former employee who's come forward as a whistleblower, asking the government to step in.

**FRANCES HAUGEN:** So there was another high profile whistleblower from Meta.

**RAFFI VO:** His name is Arturo Bejar, and he testified before the U.S. Senate in November 2023.

**FRANCES HAUGEN:** He worked at Facebook from 2009 to 2015, retired to focus on his family. Uh, he noticed that his 14 year old daughter was having a truly horrible experience on the platform. She was being sent, um, lewd photos from adult men. She was getting contacted by strangers all the time. There were just a bunch of these problems where, where he, he was like, Oh, something Facebook must not know.

So he rejoins Facebook, uh, to work specifically on Instagram and teen well being, and He's really shocked at what he finds.

**CLIP (C-SPAN, KOSA Rally 01-31-24, 36:12-36:23; 36:57-37:05) [Arturo Bejar]:** *I used to work for this company. I used to be the person responsible for all of these areas for the company for many years. It is very straightforward and not difficult for them to reduce the amount of harmful content that teens get exposed to.*

**FRANCES HAUGEN:** He was really shocked that Instagram was launching features that were supposed to be addressing things like bullying or mental health or eating disorders, any of these things. And when he'd ask about this, he was told that there was no interest inside the company.

He said, Okay, let's actually just ask kids about their experiences. And one of the questions that he asked, you know, hundreds of thousands of teen girls, under the age of 16, was "Have you had an unwanted, um, sexual communication in the last, uh, seven days?" And one in eight girls under the age of 16 said yes. And so what he said in his Senate testimony was . . .

**CLIP (C-SPAN, Bejar testimony, November 7, 2023 1:07:15-1:07:36) [Bejar]:** *My hope is, and what I believe will change their behavior, is this: the moment that Mark Zuckerberg, when he declares earnings, he has to say, "Last quarter we made \$34 billion," and the next thing he has to say is, "And, in Instagram, this is the percentage of teens that experienced unwanted sexual advances," that number would go down very quickly.*

**RAFFI VO:** **If tech companies had to publicly acknowledge the communities of kids who are harmed on their platforms, then they might face real, public pressure to do something about the problem. But, as things are, the fact that victims remain relatively invisible, means there's less incentive to change. And this is something that Tiera Tanksley, a research fellow at UCLA, knows deeply.**

**TIERA TANKSLEY:** If there are communities who are often invisible or who experience a lot of different systems of domination, these populations don't regularly kind of come to mind when you're thinking of the average tech user, if you're designing with their unique experiences, you realize, oh my gosh, you know, I can build this feature that takes into account those experiences and that end up benefiting everyone else as well.

So in order for us to understand issues and really go for equity, we have to remember that racism is a central design feature of the US, right? Like, historically it was a design feature and the systems that we set up are still very much embedded into policies and practices.

**RAFFI VO:** **Tiera's research focuses on young people's experiences with new technology, particularly members of historically marginalized communities. She's taught classes on race and AI to high-school-aged kids, who mostly come from communities of color. And**

**she says that when she covers topics like algorithmic discrimination, her students recognize this phenomenon immediately from their own experience.**

**TIERA TANKSLEY:** They all come in with the lived experience. They all come in with an awareness that something is not right, and often lacking the language to name what's going on. Like TikTok is racist. They'll say, I'm like, "What do you mean? Say more about that."

**RAFFI** Wait, what do they mean?

**TIERA TANKSLEY:** They say, oh, I posted about Black Lives Matter. And then my post gets deleted and I get a message from Instagram saying you violated community guidelines. But my post said that "Black Lives Matter." So how does that violate community guidelines?

**RAFFI VO:** Kids are using social media to fight for social justice, to organize, and connect with each other. But their posts make them the targets of harassment, and that can trigger content moderation.

**And that's shocking, considering the graphic images and videos which don't get taken down.**

**TIERA TANKSLEY:** I was online when images of Philando Castile went viral.

**CLIP (CNN YT - 0:00-0:07; 0:17-0:21) [Don Lemon]:** *I want you to sit down and watch this, uh, because it is shocking. It's shocking dashcam video, it's been released, of the fatal police shooting of Philando Castile. You probably remember the Facebook Live video taken inside the car by Philando Castile's girlfriend...*

**TIERA TANKSLEY:** I suffered a lot of trauma from seeing those images unexpectedly. At that time, images were circulating without sensor warnings, without safety screens. The videos were on autoplay. I still have images of that scene in my head. I would have panic attacks. It was a lot, right? I was really afraid to walk to campus because we had a lot of police on campus and at protests and things.

So I was simultaneously experiencing the power of social media to bring attention to issues that I cared about and to really raise awareness and also a lot of this like trauma around seeing Black death and dying all the time, no matter where I went on social media. And so I decided to interview other Black girls, activists, and just see what their experience was. What are the strengths of social media? Why do you use social media? Have you ever had a negative experience on social media?

And so, they're telling me they have digital harassment happening. People are threatening to lynch them. People are threatening to assault them. People are doxing them, you know, for simply posting that Black Lives Matter. And they're telling me simultaneously their content is

being taken down. And I'm seeing the content, they're showing me the images and the content is like, you know, a Black Power fist. Or one of the students made a post about the movie Get Out and that ended up being taken down or triggering all of this harassment. And, you know, I'm like, "Well, did you report these things? Did you report the harassment?" They're like, "Yes, it was, it didn't count as hate speech. It didn't count as harassment. It didn't count as violations of community guidelines."

How can this be? How can the same algorithms that are designed to protect you from hate speech and violence, take down like text-based posts about Black Lives Matter, but then images of people literally bleeding out to die are going viral constantly?

**RAFFI VO: It may be that social media is not real life, but real life shows up on social media all the time. And that means there will be content that is graphic, disturbing, and even potentially traumatic to younger users, just from the news.**

**But the idea that that content is less of a violation of community norms than, for example, the racist harassment of young, Black activists, is really troubling.**

**FRANCES HAUGEN:** So one of the things that Meta invested a lot of money on was trying to tell people there was only one way to address any kind of online harm. Which was content moderation.

**RAFFI VO: Content moderation on social media platforms is...messy, to put it mildly. Rules and policies are often vague and difficult to enforce consistently.**

**And so, Frances's point is that, if content moderation is seen as the only available response to children being harmed on the platforms, it's no wonder that things seem hopeless.**

**FRANCES HAUGEN:** So, if you see a problem, I'm so sorry, uh, we have to decide between free speech and safety, which do you want? And understandably, when, when you frame the problem that way, People get very, very hesitant to want to do anything, right? Like we think you don't have any options, you don't demand anything.

**RAFFI VO: But there are plenty of people out there who know that there are options. For parents, and for regulators. One of those people is Jim Steyer, the CEO of Common Sense Media.**

**JIM STEYER:** I founded Common Sense Media 20 years ago to be the most powerful voice for children in the United States, to create the most important advocacy group for kids and families in this country. We decided to build a media platform that basically was a consumer reports guide to media for kids. Movies, TV, video games, books, music, et cetera. . . .

Now, 20 years later, obviously, the world has completely changed. So in addition to being the leading child advocacy group in the United States, Common Sense, has focused a lot of our work on how to help kids and families navigate this 24-7 digital world that we are all living in.

There were no rules of the road. There was no basic, simple driver's ed for the internet. And that's how we looked at it. And it's not just the kids, Raffi, it's also their parents and teachers.

**RAFFI:** (How do we know what's best for kids? Is this a place where reasonable people can disagree, or is there just one thing that we should be doing?)

**JIM STEYER:** This is definitely a place where reasonable people can disagree. And there's a tremendous amount of information now that we have to impart to young people, as well as teachers and parents, about this new digital age. There are different perspectives on stuff. And we don't always make black and white recommendations for people.

So, for example, what age should you give your kid a smartphone? Well, if you're in our family, you don't get it until you go to high school. Too bad. If you're a member of the Steyer family. But obviously there are many families in this country who are giving kids smartphones when they're seven or eight years old. Would I recommend that? I would not. And we give guidance, but we don't want to make people feel bad.

**RAFFI VO:** Jim comes at these issues from a unique perspective. Yes, he's the head of an advocacy organization. He's a parent himself. But also...

**JIM STEYER:** I teach constitutional law at Stanford.

**RAFFI VO:** And as a civil rights attorney, he was an early voice in the wilderness for data privacy.

**JIM STEYER:** So I remember when I started Common Sense in 2003 and nobody was talking about privacy. That essentially what Facebook and Google were doing at the time was making you and me the product.

**RAFFI VO:** In 2010, he wrote *Talking Back to Facebook*, which aimed to spread information about all that the big tech companies were taking from us.

**JIM STEYER:** The digital media revolution was reshaping kids' lives, but it was about privacy, because basically they were hoovering up our data and our private personal information and then selling it to advertisers.

By 2010, 2011, it was clear to me, particularly in the context of Facebook, which hadn't acquired Instagram at that point, right? So Facebook was the platform that kids were still on, that privacy was a fundamental issue. Because as a con law professor, I know that privacy is a fundamental right, we started realizing the idea of privacy laws. The truth is there were none.

**RAFFI VO: Common Sense Media has advocated for several state privacy laws, one of which was the California Consumer Privacy Act. That passed in 2018, and it put California way ahead of the rest of the country.**

**JIM STEYER:** I could give you quote after quote from the leaders of the companies like Facebook and Google from Eric Schmidt, who was then the CEO of Google, sort of poo-pooing privacy, saying that's passé, it doesn't matter, who cares about privacy.

The industry got away with murder, if you will, on privacy. They just hoovered up all your data and all your private personal information. They just shared it. They sold it to advertisers and data brokers.

**RAFFI VO: And of course, like any true advocate for data privacy, Jim doesn't just want to inform people what they should do and not do...Jim wants to see some laws passed.**

**JIM STEYER:** We do not believe that the tech industry is gonna regulate itself. And if you believe that the tech industry is going to regulate itself, then I have a bridge called the Golden Gate Bridge that I own and I'll sell you for a hundred dollars.

**RAFFI VO: We'll be right back...after a short break.**

**MIDROLL**

**RAFFI VO: Welcome back to Technically Optimistic. I'm Raffi Krikorian. We're talking about kids and the important but difficult task of protecting their data privacy. We've heard about the harms kids suffer on the platforms, and now we're about to get into the weeds.**

**Because I've been talking with Jim Steyer, CEO of Common Sense Media, who supports new legislation for children's data privacy, and he's about to drop some acronyms.**

**JIM STEYER:** We are big supporters of KOSA, and it's been on the table now for two or three years in Congress, and they've not been able to get their act together to pass it.

**RAFFI VO: KOSA, recall, is the Kids' Online Safety Act. It is, as of this taping, currently being debated in the House Energy & Commerce committee, but KOSA began in the Senate, having been first introduced in 2022.**

**JIM STEYER:** COPPA, the Children's Online Privacy Protection Act, was written in the '90s and it was updated one time, but the legislation has not been redone.

**RAFFI VO:** Unlike KOSA, COPPA is not a proposal. It's already U.S. law, and has been since 1998.

**JIM STEYER:** There's a bill now called COPPA 2.0 . . . It hasn't passed either.

**RAFFI VO:** There are a couple different ongoing efforts to modernize and update this old law, which we'll talk about.

But first, I get to talk with one of KOSA's two original sponsors, Senator Richard Blumenthal. He has been fighting *hard* for KOSA's passage, even as the bill has faced criticism. It underwent significant revision in February of this year, and its supporters hope it can get through Congress before the election.

Here's Senator Blumenthal, just grilling tech CEOs at a hearing this past January.

**CLIP (C-SPAN, Senate Judiciary Committee 01-31-24; 2:02:32-2:03:29; exchange between Blumenthal and 4 CEOs)**

**[Sen. Blumenthal]:** Who will support the Kids Online Safety Act? Yes or no? Mr. Citron.

**[Jason Citron]:** There are parts of the act that we think are great.

**[Sen. Blumenthal]:** No, it's a yes or a no question. I'm assuming the answer is no if you can't answer yes.

**[Jason Citron]:** Senator, with some changes we can support it.

**[Sen. Blumenthal]:** *In its present form do you support it? Mr. Zuckerberg?*

**[Mark Zuckerberg]:** Senator We support the age appropriate content standards but would have some suggestions about how to implement it.

**[Sen. Blumenthal]:** Yes or no, Mr. Zuckerberg? Do you support the Kids online safety act?

**RAFFI VO:** As Senator Blumenthal explained, though he's very focused on KOSA right now, he'd love a larger national data privacy bill.. for kids and adults.

**SEN. RICHARD BLUMENTHAL:** I'm in favor of a data privacy law. I've worked on trying to achieve one. We haven't really succeeded in getting a bipartisan bill that we think has sufficient support, but we're not giving up. We're going to continue to work on it.

**RAFFI VO:** And, like I said at the top of the show, this situation is developing. The House Committee on Energy & Commerce has just held markup hearings for both KOSA and the new American Privacy Rights Act, in draft form.

**SEN. RICHARD BLUMENTHAL:** Kids need to understand that so much is recorded and collected and kept these days. I'm deeply worried about it. It cuts against my sense of what privacy ought to be. And part of a privacy bill, I think, should be that this data cannot be collected without consent. Now, that's not the Kids Online Safety Act.

**RAFFI: Sure, sure.**

**SEN. RICHARD BLUMENTHAL:** But what is urgent and necessary now is protection of children because we're losing lives, literally. To eating disorders, bullying, suicide, all kinds of harms that are driven at children by the black box algorithms of social media. It's part of their business model, in effect, to harm kids because the longer they can retain those kids watching, the more eyeballs they have, the more money they make and the more data they can collect.

**RAFFI VO RT: Senator, how much of the pressure to do something about kids' online safety has to do with the fact that—and no disrespect here—but with social media we kinda dropped the ball?**

**SEN. RICHARD BLUMENTHAL:** Great question, and I think the answer is that part of our inaction in the United States Congress is not just the complexity of the topic, but also quite bluntly, the armies of lawyers and lobbyists that big tech can throw against us.

**RAFFI: Hmm.**

**SEN. RICHARD BLUMENTHAL:** And so they've been able to resist any kind of protective regimen here. And I have fought over years against the untruths and the distortions that social media and big tech has been able to throw at members of Congress, not to mention campaign contributions.

**RAFFI VO RT: Senator, tell our listeners: what are the most important features of this bill?**

**SEN. RICHARD BLUMENTHAL:** You know, rather than just characterize what I think is important, I'll tell you a little bit about what I have heard from young people. I've been holding round tables around the state of Connecticut. And what has surprised and really exhilarated me is how strong the reaction is. This kids online safety bill is the direct result and product of kids themselves participating.

**RAFFI VO: There are three big components of KOSA that Senator Blumenthal wanted to point out. The first one? Is changing the defaults.**

**SEN. RICHARD BLUMENTHAL:** The idea of disconnecting from the algorithms, making that disconnection a default, giving them power back over their online lives, empowering them to make choices. Remember, we are not censoring here, we are not blocking any content. When people say, well, you're going to take down some of this content? No, we want to give young people the choice.

**RAFFI VO:** This point, that KOSA does not block content, and so it's not a censorship bill, is really important to Senator Blumenthal. Not everyone agrees with him. And we're gonna come back to this. But the second component is the duty of care.

**SEN. RICHARD BLUMENTHAL:** The idea of a duty of care really strikes a chord. Because right now, of course, the social media companies are held accountable to no one even when they know of harms, even when they know that there are underage users. Remember, we're not doing age verification. It's only if they know then they have a responsibility to do something. That's a duty of care.

**RAFFI VO:** The text of KOSA contains a list of online harms. For example, bullying, promotion of self-harm, abuse...and there are more.

**But the bill says that the platforms must take care to ensure that their products prevent or mitigate those harms for underage users. That's the duty of care.**

**It's not age verification, though some people worry this will lead to age verification. And I'll come back to that in a second.**

**The third key feature? Shining some light into the black boxes.**

**SEN. RICHARD BLUMENTHAL:** And of course, transparency. Young people say, Well, we have no idea how these algorithms work. You do, don't you? And I say, I don't. No one does. Because they are black boxes. So making them more transparent.

**Raffi:** So I know you mentioned that age verification, age gating, is not in the bill as currently written, but how do you think about the fact that, you know, I used to be a VP at one of the platform companies a long time ago, 10 years ago, so don't blame me. But how do you think about the fact that it might be inevitable that a tech company is going to want to implement it in order to try to be compliant with what you're putting out there?

**SEN. RICHARD BLUMENTHAL:** If they want to do some kind of age verification, the law would not prohibit it. I think we need to protect privacy and to forbid the selling and monetizing of the data that they collect. And if they know someone is underage, then they have an obligation to do something.

**Raffi:** Yeah.

**SEN. RICHARD BLUMENTHAL:** You know, I'll be blunt. Age verification is hard to do.

**RAFFI:** 100%.

**SEN. RICHARD BLUMENTHAL:** And if data can be collected that, in fact, constitutes age verification, either the companies or the government has even more data and very private information about young people. And it's just more that they can monetize or that the government can use to do surveillance. So I'm very wary about the means of age verification and that's why the kids online safety act does not impose age verification requirements or mandate that platforms collect more data. In fact, the bill states explicitly that it does not require age gating or age verification or the collection of additional data from users.

**RAFFI VO:** Age verification, or age-gating, is a very contentious issue. If you require IDs for *all* users in order to screen for minors, you're going to wind up introducing a barrier for adults, as well. Not that that has to be a bad thing. But, accessing the platforms anonymously would be over.

Also, your ID is itself a collection of very sensitive personal data on you. So that's a bad look, from a data privacy point of view.

**But... Senator Blumenthal insists: no one thinks age verification even works, anyway.**

**SEN. RICHARD BLUMENTHAL:** What the reaction of kids is in these roundtables and when we consult with them. And I posed to them in a very kind of neutral way, you know, I don't think age verification really works. And they all laugh and say. . . you know, age verification?

Do you really think age verification works? Then they start talking about their six year old younger sister or their nine year old younger brother who in literally an instant gets around age verification.

**RAFFI:** Fair point.

**SEN. RICHARD BLUMENTHAL:** So let's be real here. We're not censoring or blocking or removing any content. Uh, we're targeting the harms that online platforms cause through their own product and their business decisions and how they design their products and applications.

**RAFFI VO:** This bill goes after design features of these platforms. Those are the things that we know, from documents Frances Haugen leaked, have actually been designed to make these sites addictive.

So, for example: endless scrolling. Combined with a recommendation algorithm that shows you more and more new content based on searches you've done, that's a design feature. And with KOSA, it would be banned for minors.

**SEN. RICHARD BLUMENTHAL:** If a parent wants to disconnect from an algorithm, parents are informed how to do it, and they're given tools how to do it. So you know, parents have an

obligation to protect their kids, but the tech companies have an obligation to give parents tools to do that kind of protection.

Right now, parents feel they have no place to go. If you talk to the parent, they'll have grievances, but they feel powerless. We want to empower them.

**RAFFI VO RT: But Senator, I have to wonder, how might this change what it's like to be a kid? You know, that experience of finding a real community online, maybe for the first time, those spaces where kids can go and explore away from their parents? Will those spaces just have to go away?**

**SEN. RICHARD BLUMENTHAL:** You know, connections among communities. That's a great thing that the internet does.

**Raffi: Sure. Yeah.**

**SEN. RICHARD BLUMENTHAL:** That's the genius of the internet. It brings communities together, sometimes very specialized communities, that wouldn't change. And by the way, we have listened to some of those communities.

**RAFFI VO: This has been a big deal, and one of the main sources of opposition to this bill. Marginalized communities, particularly representatives of the LGBTQ community, are worried about what KOSA might inadvertently allow.**

**But Senator Blumenthal says that he has heard the objections from LGBTQ advocates, and that he has taken some of their feedback and worked it into the bill.**

**SEN. RICHARD BLUMENTHAL:** The LGBTQ community, for example, has made very constructive suggestions so that we provide for access to kinds of services, we enable those communities to continue to connect and we have limited the kinds of harms that the Internet companies have a duty to address. And we've provided explicit protection for support services, like suicide prevention organizations.

**RAFFI VO: But activists also had concerns about the way to prosecute an operator for violating KOSA. Originally, the bill gave enforcement powers to state attorneys general.**

**But, depending on what state you're talking about, in this particular political climate, the attorney general might be quite unsympathetic to LGBTQ youth, and so, potentially less likely to fight against harms done to them.**

**But, in the February revision, KOSA's enforcement procedures changed.**

**SEN. RICHARD BLUMENTHAL:** Enforcement is very, very important. You're speaking to a former attorney general.

**Raffi:** [LAFF] Exactly.

**SEN. RICHARD BLUMENTHAL:** Initially, we gave enforcement authority to State Attorneys General. And then some of the groups made the point, which unfortunately is very well taken, that the hard right and it's effort to censor can sometimes be the work of state attorneys general.

And we've seen state attorney generals, unfortunately, adopt this role. And they have sued to stop, for example, laws that protect LGBTQ people. They have taken action to make abortion unavailable. Whether you agree or disagree with their stances on those issues, they certainly use their position as an ideological platform in a way that Attorneys General in my day didn't do. That's a view that initially we were not as perhaps sensitive to as we should have been.

And the groups came to us with this concern. And as I thought about it, we felt that maybe that was not the best way to enforce the law. State attorneys general who run for office, who are elected officials, who have voters they want to impress are not as perhaps respectful for the law and individual rights as the FTC would be and the Department of Justice. So that is part of our thinking.

**RAFFI VO RT:** So, I appreciate you walking us through that. You're telling me that you heard from advocacy groups, they raised concerns, and after deliberation, you said, you know what? Those are good concerns. Let's change the bill.

**But I have to ask, Senator...what do you make of the fact that groups like the ACLU and the EFF are still opposed to KOSA, even this new, changed version? They are still putting out press releases and fact-sheets trying to say to the public, like, don't support this bill, it's censorship in disguise?**

**SEN. RICHARD BLUMENTHAL:** Well, first, uh, I have enormous respect for the ACLU. We work together on a lot of stuff. And, I regret that they still, in my humble opinion, misunderstand the bill. It's not about censorship. We're not blocking content. I've probably said that at least five times already. I apologized for repeating it, but my experience with the bill is that we just keep working with groups and individuals to try to enlighten them.

And so far, and I'm knocking on wood, the ACLU's criticism have been heard, but they haven't swayed my colleagues to oppose the bill, with good reason, because the criticisms, very simply are not accurate.

**Raffi:** And so, bluntly and plainly, like, this is not a bill to chill speech in the way that like, KOSA opponents are claiming it does?

**SEN. RICHARD BLUMENTHAL:** Absolutely not.

**RAFFI VO:** It's worth mentioning, though, that the language in the draft bill has been criticized by some privacy advocates as "too vague." Here's what KOSA says: Platforms have a duty to take steps to prevent and mitigate certain harms by exercising "reasonable care" in the creation and implementation of any design feature.

But it's not clear how much care is "reasonable" and, it's kind of a mystery what counts as "taking steps" to mitigate harms, and lots of things could count as "design features."

These aren't just linguistic nitpicks. Ambiguity around these terms is dangerous. It could either enable censorship on, like, an authoritarian scale, or render the whole thing toothless. In fact, during a recent House subcommittee meeting held to mark up KOSA, Congressman Jay Obernolte called this vague language quote "lazy legislating."

Organizations like the ACLU and the EFF are worried that online platforms would wind up having to censor speech that's usually protected under the First Amendment. For example, the list of harms in KOSA includes "substance abuse." In order to comply with the bill, platforms might restrict minors' access to all kinds of content, including posts that could, potentially, help young people struggling with addiction.

But, Senator Blumenthal seems more concerned with empowering parents, giving them some way to respond if they see harmful things on their kids' screens.

**SEN. RICHARD BLUMENTHAL:** It is about the design of the product. Think of it like . . . a toaster. If a toaster is designed to explode when someone turns it on, you wouldn't say to people, you can't buy a toaster just because one brand happens to be defective.

Well, it's the same thing with social media. If you have an algorithm that drives this content without people making choices. And the designer of the product knows it's going to harm people, then you'd want to give people the choice to say, no, we don't want that product. We don't want that content, but you would say the Consumer Product Safety Commission or the FTC ought to do something about it.

**RAFFI VO:** And speaking of the FTC doing something...

In December of 2023, the agency announced that they were revising the rules associated with COPPA, the law from 1998 aimed at protecting children's privacy. The FTC obviously can't just make the law—that's Congress's job—but they can make rules that cover how they will act, as an agency, to interpret the law that Congress wrote.

So, how big a deal are these revised COPPA rules gonna be?

**MANMEET DHINDSA:** My name is Manmeet Dhindsa, and I'm an attorney in the FTC's Division of Privacy and Identity Protection.

**RAFFI VO:** As Munmeet helped me understand, there are, broadly, three things that the FTC is responsible for.

**MANMEET DHINDSA:** So there is rulemaking, which I know has kind of spurred this conversation, like the COPPA rulemaking. So for example, with the COPPA rule, where we just put out the proposal, that's going to apply to any companies that fall under COPPA's jurisdiction.

**RAFFI VO:** And we'll come back to that one. The other two are educating consumers and businesses about all this stuff, and then, importantly, what they call enforcement actions.

**MANMEET DHINDSA:** Those are actions that we take against particular company or companies when we believe that they have violated a law that falls under the FTC's jurisdiction. So, under the FTC Act, you know, the FTC has the authority to address unfair or deceptive acts or practices in the marketplace.

**RAFFI VO:** So if you're out there being unfair or deceptive in the marketplace, then the FTC can figure out how to make you stop, and make you pay, thanks to the broad mandate of the FTC Act. And when they do an enforcement action, it has ripple effects.

**MANMEET DHINDSA:** One thing that it does do as far as moving privacy forward in the United States is that it kind of signals things to the marketplace. So, it kind of tells the marketplace what we consider to be some best practices with regards to privacy.

**RAFFI VO:** Take, for example, what happened in 2023 with the online therapy company, BetterHelp.

**MANMEET DHINDSA:** So BetterHelp, when consumers went on to the website, they would sign up for the service by first taking an intake questionnaire that asked them some sensitive health information. And then the consumer would go forward and sign up for an account. And the FTC alleged that BetterHelp made a number of representations that the information would not be used or disclosed except for specific purposes, none of which included marketing.

So the FTC alleged that BetterHelp violated the FTC Act under both our unfairness and deception authorities because they used and disclosed that information without first obtaining consumers' affirmative express consent. And they also did it contrary to representations that they had made to consumers.

**RAFFI VO:** Next came the enforcement action. It starts with the FTC issuing an order, kind of like a court order, addressed to BetterHelp.

**MANMEET DHINDSA:** We allege that you violated the law in these ways, here's an order that you'll need to comply with going forward. And so the order says going forward, you can't make these misrepresentations. There were a number of things that BetterHelp had to do, including instituting a privacy program that included a number of different safeguards. There was a requirement to institute a data retention policy. They had to implement training for their employees. There were data deletion requirements.

**RAFFI VO:** Oh, and, they had to pay a bunch of money.

**MANMEET DHINDSA:** The order includes redress that has to go back to consumers who were affected by the privacy practices at issue and that was \$7.8 million.

**RAFFI VO:** So now, the FTC gets to monitor BetterHelp.. to make sure they stay in compliance. And this fact can put all sorts of other companies on guard to make sure they stay off the FTC's radar. So, in other words, by going after BetterHelp, the FTC is encouraging companies not to be deceptive, or unfair, in the marketplace.

**Now let's think about that as a way to make sure Big Tech makes products that are safer for children.**

**MANMEET DHINDSA:** So COPPA is the Children's Online Privacy Protection Act. And it's a federal statute that was enacted by Congress in 1998. The primary goal of that statute was really to place parents in control of the information collected online from their children. It also directed the FTC to promulgate regulations under the statute. So we then were required to issue regulations.

**Raffi:** Mm-hmm.

**MANMEET DHINDSA:** We actually initiated in 2019 just because we were seeing changes in the marketplace that seemed to indicate that maybe we should be looking at things a little bit earlier, making sure that the COPPA rule is still staying up to date with those technological changes.

Was it working? Was it not working? Is it having positive effects? Is it having negative effects?

**RAFFI VO RT:** Ok so let's get down to brass tacks. What are the changes that are being made?

**MANMEET DHINDSA:** So we are proposing to actually make changes to almost every single section of the COPPA rule. And some are more substantive than others. I think the overarching goal that we really had with these changes was to make sure that operators, rather than the parents, were the ones that were responsible for ensuring that these digital services are safe and secure for children. One of the big things that we're doing is relating to third party sharing.

So we are attempting to put parents more in control over the sharing of personal information collected from their children.

**Raffi:** Mm-hmm.

**MANMEET DHINDSA:** And we're attempting to do that in kind of two ways. So first, we're proposing requiring operators to implement an opt-in for behavioral advertising and other third party disclosures. And under the language we proposed, operators are required to obtain the separate verifiable parental consent. And they can't condition access based on that consent.

**RAFFI VO:** And Manmeet said that this parental consent would have to be a separate thing, in addition to the usual privacy policy that you mindlessly agree to.

**MANMEET DHINDSA:** And what we also propose to do is to make explicit within the language of the rule that personal information collected online from a child cannot be retained indefinitely.

**RAFFI VO:** Platforms are gonna have to draft children-specific data retention policies, and make them public. So consumers should be able to see what data the company's holding onto, for how long, and for what purpose.

**MANMEET DHINDSA:** One of the things that we're requiring through this data retention policy is that the data retention policy has to state the business need for retaining that information. So if a company says, hey, I want to retain this piece of information for 15 years, well, why? They're going to have to explain that in their data retention policy, which I think is helpful for consumers to understand. It's helpful for parents to understand. It's helpful for frankly us to understand.

**RAFFI VO:** And there are other tweaks that Manmeet told me about. The definition of personal data is being expanded to include biometric data. And there's new rules around educational technology that mandates any EdTech provider be more transparent with schools about their data collection.

These things may seem like obvious little provisions, too boring to be a big deal. But remember, the FTC's got that enforcement power, too. So it's not just "hey, you have to comply." It's comply with these rules, or we will look over your shoulder forever, and make you pay.

And if you're thinking that beefing up the rules around how to handle children's data might scare some companies away from children's data altogether? That might be part of the point here.

**MANMEET DHINDSA:** Some of the requirements that the COPPA rule imposes actually does just prevent operators from collecting personal information from a child because it's too burdensome. And so they would rather just not collect personal information from children. Again, the goal is to protect children's privacy. And frankly, I do find that to be a privacy

protective result.

**RAFFI VO: So...we good here? Can a revived COPPA save the day?**

**MANMEET DHINDSA:** I don't think we actually touched on this earlier, but COPPA's scope as far as who it applies to is relatively limited. So COPPA applies to kind of two buckets of operators. There's operators of child directed websites or online services. And then there's operators that have actual knowledge that they're collecting personal information from a child. So those are pretty limited buckets.

**RAFFI VO: And then of course there's the fact that the FTC is not Congress, and so they can only do so much.**

**MANMEET DHINDSA:** Yes, you're right. Like we are limited by our statutory authority, which we get under the COPPA statute. So that is kind of the contours of what we can look at when we're thinking about what we can change. I frequently heard the comment that COPPA is outdated. COPPA doesn't do enough. COPPA doesn't address so many issues that are problematic with children's privacy. And you know, I, frankly, I don't think COPPA gets enough credit. It's not perfect. I'll admit that, but I don't think it gets enough credit. I mean, like, this was a law that was enacted in 1998,

**RAFFI: [LAFF]**

**MANMEET DHINDSA:** (And it actually includes a ton of the privacy controls and the privacy protections that we still find really important today. I mean it includes access rights, it has deletion rights, it has data minimization principles. It really has a lot of protections and it's kind of miraculous.

**RAFFI VO: Maybe it was miraculous. In 2023, Senator Ed Markey introduced a new bill, that's actually a series of amendments and additions to the original COPPA.**

**CLIP (C-SPAN, Ed Markey on Senate floor 02-27-2024) [Sen. Markey]:** *Mr. President, I rise today in support of the Children and Teens' Online Privacy Protection Act, or, as it's known, COPPA 2.0. . .*

**RAFFI VO: Very recently, the bill known as COPPA 2.0 was absorbed into the new, larger overall data privacy framework, the American Privacy Rights Act. COPPA 2.0, or a limited version of it, is now "Title Two" of the APRA draft.**

**SEN. RICHARD BLUMENTHAL:** The bill was a great advance forward.

**RAFFI VO: Senator Blumenthal is a COPPA fan.**

**SEN. RICHARD BLUMENTHAL:** And . . . I'm a co sponsor.

You know, I think there is a temptation when you're a legislator to say, I see a big problem and I'm going to deal with it all at once. It is much harder to deal with a problem all at once than to deal with pieces of it when the Congress is so deeply divided, as it is right now. A step by step incremental process has to be done and our bill, the Kids Online Safety Act does not deal with all the problems of social media or the Internet by any means.

**RAFFI VO:** **Regulating children's online experience is a double-edged sword. On the one hand, you need to—that's what we adults do, protect our children. On the other hand, by giving parents more control over their kids' digital lives, we might be protecting their data privacy at the expense of their overall privacy.**

**And, according to Rosalind Wiseman, children still need privacy, and will keep seeking private spaces, away from surveillance, either digital, or parental.**

**ROSALIND WISEMAN:** For young people, there's, I think, for so many of them, this feeling of, my privacy is going to be constantly violated. And, so, naturally, developmentally, they are going to search for ways to create privacy in their lives and they are going to search for ways to have a place where people cannot violate their privacy.

I'm not taking away the fact that adults need to be in children's lives. What I am saying is that we have to be very strategic about where to do it and how to do it. Otherwise our very well meaning attempts to communicate with them or to understand what they're doing in their social media lives is going to disengage them from us and we are going to not have a relationship of trust, but we are going to have a relationship of mistrust and of surveilling children and then them trying to circumvent those efforts.

It's not pathological for them to want to carve out their own space, it is developmentally appropriate, it gives them much more autonomy, it gives them a sense of being separate people.

We don't like to do that. It makes us really uncomfortable. But the reality is, is that young people are going to develop, whether we like it or not. And they need us and the irony is the more we push and the more we try and infiltrate the more they developmentally appropriately resist.

**RAFFI VO:** **So will these laws protect our kids from all possible harms? No, probably not. And we adults can reasonably disagree on how to define what a "design feature" is, or what constitutes a "reasonable" amount of care.**

**But one thing that's clear is that, taking children's experiences seriously, and doing *something* about the harms they're suffering is essential, if we want our kids to believe in us.**

**ROSALIND WISEMAN:** We desperately need young people to believe in adults. And what works for them, no matter what, is we take their lives seriously, we give them a place of feeling, a sense of purpose, instead of deciding what they're going to do, creating a lot of moral panic around it, a lot of fighting amongst adults.

But we tend as adults to not do things that are logical. We tend to do things that sort of make us feel like it's going to fix the problem in the moment. So we are confused. We are very very confused.

**RAFFI VO:** Next time, on *Technically Optimistic*. . . .

**We're taking a look around the world to bring you a few stories about how the data economy has changed life on the ground in south Asia and for immigrant tech workers in America, as well.**

**Plus, we speak with the United Nations Secretary-General's Envoy on Technology, Amandeep Singh Gill.**

**That's next time...on *Technically Optimistic*.**

**[CREDITS]**

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**I'm Raffi Krikorian. Thanks for listening. See you next time.**