Livestream Gambling: How Past Regulation Protecting Youth Can Guide Policymakers in Safeguarding Internet-Savvy Generations Within First Amendment Constraints

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“As much as many gambling streamers like to tell viewers not to gamble—or just to watch them gamble, instead—there’s obviously an element of encouragement to this streaming entertainment, and one that could cause real-life harm. These streamers flash huge winnings in front of viewers whose lives could be seriously affected by the loss of a couple hundred dollars, if not less.”

I. INTRODUCTION

There are approximately 5 billion active internet users worldwide, with young people being 1.24 times more likely than any other age group to connect online. The massive presence of the internet and social media in today’s society has subsequently created new legal challenges for policy makers and legal analysts. While some social media sites have promulgated guidelines to remedy any legal

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2. See Worldwide Digital Population July 2022, STATISTA (Sept. 20, 2022), https://www.statista.com/statistics/617136/digital-population-worldwide/ [https://perma.cc/JM6F-MR9L] (explaining statistical number of internet users equates to 64.6% of global population); Youth Internet Use, INT’L. TELECOMM. UNION, https://www.itu.int/en/ITU-D/reports/statistics/2021/11/15/youth-internet-use/ [https://perma.cc/67LQ-Q944] (showing young people more connected than rest of population). Out of this total number of internet users, 4.7 billion are social media users. See Worldwide Digital Population July 2022, supra (demonstrating prevalence of internet and social media in modern society). In 2020, 71% of the world’s youth between the ages of fifteen to twenty-four were using the internet, while only 57% of people in other age groups were. Youth Internet Use, supra.

issues they may experience, other sites, such as Twitch, have been slow to adequately regulate alarming issues like adolescent online gambling.4

Twitch is a leading “livestreaming platform” where creators can stream various content for viewers to watch in real time.5 While the site is primarily used to stream eSports events, video gaming, and lifestyle content such as makeup and cooking tutorials, there is a dangerous portion of Twitch content that consists of streamers gambling online for a live audience.6 Despite its obvious dangers, 21% of Twitch users are between thirteen and seventeen years old.7 As a result, streamers—who are paid to promote these services—are introducing underage


5. See Werner Geysen, What Is Twitch?: All You Need to Know About the Leading Live Streaming Platform, INFLUENCER MKTG. HUB (Apr. 26, 2021), https://influencermarketinghub.com/what-is-twitch/ [https://perma.cc/4E9J-T53Z] (explaining basics of using Twitch). Twitch does not have any parental controls or methods to block streams, and while users can use filters to block inappropriate chats, it is not foolproof. Frannie Ucciferri, Parents’ Ultimate Guide to Twitch, COMMON SENSE MEDIA (Mar. 1, 2020), https://www.commonsensemedia.org/articles/parents-ultimate-guide-to-twitch# [https://perma.cc/98YA-5DR2] (describing “massively popular” site to parents). On Twitch’s own guide for parents and educators, it claims that there are a “number of tools” for parents to keep their child safe, but the site only lists two: chat filters and moderation. See Guide for Parents and Educators, TWITCH, https://safety.twitch.tv/s/article/Guide-Parents-Educators [https://perma.cc/VH53-LKYV] (showing limited ways parents can control Twitch content for their child). Yet only the streamer, individuals appointed by the streamer, or Twitch employees can moderate a Twitch chat, meaning only the person who is providing the content has the power to determine what is censored unless a Twitch employee intervenes. See Guide to Building a Moderation Team, TWITCH, https://help.twitch.tv/s/article/guide-to-building-a-moderation-team [https://perma.cc/WDSU-U7AX] (suggesting how to select moderators and build “mod” team); How to Manage Harassment in Chat, TWITCH, https://help.twitch.tv/s/article/how-to-manage-harassment-in-chat [https://perma.cc/5BZF-HHAD] (describing limited power users possess to block unwanted content). All Twitch users can block or report other users and turn on chat filters, but only channel owners can appoint moderators, require users to agree to channel rules, require that chatters be email-verified, and more. See How to Manage Harassment in Chat, supra (outlining what users, channel owners, and channel moderators can do). While important tools, these moderation methods ultimately allow the streamers to decide what is and what is not appropriate for their streams without larger oversight. See id. (detailing harassment management done by users and channel owners).

6. See Geysen, supra note 5 (explaining content on Twitch); Fahey, supra note 1 (noting harmful presence of gambling streamers).

viewers to online gambling sites. Further, these young viewers are likely unaware that streamers are not playing with their own money. Due to a recent string of controversies and ongoing criticism over its gambling content, on October 18, 2022, Twitch enacted new guidelines prohibiting gambling on sites that are not licensed in the United States or other jurisdictions with sufficient customer protection.

Children and teens today require protection from online gambling similar to the protections enacted to prevent underage drinking and smoking. Although multiple countries have codified online gambling laws to prevent underage gambling, there are still ways around these regulations that allow Twitch streamers to continue to gamble online for an underage crowd. For example, streamers can move to countries where they may continue to skirt these regulations. Additionally, viewers can useVPNs, which allow internet users to hide activity from internet service providers (ISPs) by connecting users to a remote server in

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8. See id. (describing earnings streamers make from gambling sites to stream themselves gambling). It is worth noting that Twitch’s policy for advertising content prohibits the promotion of alcohol and tobacco products but does not address the promotion of gambling at all. See Twitch Advertising Guidelines and Acceptance Policies, Amazon Ads, https://advertising.amazon.com/resources/ad-policy/twitch [https://perma.cc/F9U4-NTF9] (providing overview and prohibited ad content); List of Prohibited Games, Twitch, https://help.twitch.tv/articles/list-of-prohibited-games (last visited July 31, 2022) (listing restricted games due to adult-only rating or violation of community guidelines).

9. See D’Anastasio, supra note 7 (warning against young viewers not learning perils of losing money by gambling); Michael Gwilliam, Trainwrecks Explains Why People Shouldn’t Gamble While Gambling on Twitch, DEXERTO (May 11, 2021), https://www.dexerto.com/entertainment/trainwrecks-explains-why-people-shouldnt-gamble-while-gambling-on-twitch-1571626/ [https://perma.cc/BVK4-DNPU] (reporting popular gambling streamer telling viewers not to gamble while streaming himself gambling). The streamer exclaimed, “Just watch me gamble, don’t gamble. This is very bad.” Gwilliam, supra. He even continued to say that if any “degenerates” were going to avoid his warning and gamble anyway, then they should use his promo code to do so. Id. (claiming to denounce gambling but providing promotional code for viewers to gamble).


13. See D’Anastasio, supra note 7 (highlighting streamer conversations indicate streamers plan to move to unregulated countries).
a country where gambling laws are lax.14 While Twitch’s new policy attempts to remedy some of these concerns, Twitch’s ban is not ironclad.15 In order to more fully protect adolescents from the inherent dangers of online gambling, Congress must enforce and expand current legislation regulating the internet.16

This Note covers the history of regulations in America aimed to protect adolescents, as well as the history of the internet, social media platforms, and online gambling.17 Further, this Note explores how the complexity of VPNs adds to the difficulty of regulating Twitch content.18 This Note then compares the regulation of underage drinking and smoking with the regulation of underage online gambling to explore how best to remedy the issue.19 After examining recent efforts by streaming platforms to prevent adolescents from viewing online gambling, this Note asserts that corporate action is insufficient to protect youth online, so Congress must instead take action within First Amendment restraints.20

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15. See Twitch Policy Tweet, supra note 10 (providing language of Twitch’s gambling policy updates). Even though Twitch promised to crack down on slots, roulette, and dice games that are not licensed in the United States or jurisdictions with adequate consumer protection laws, Twitch has yet to explain further. See id. (illustrating lack of explanation by Twitch); Amanda Yeo, Twitch Will Ban Some Gambling, but Sports Betting and Poker Are Still Fair Game, MASHABLE (Sept. 21, 2022), https://mashable.com/article/twitch-gambling-policy-slicker-scam [https://perma.cc/SNU3-HVY3] (noting unclear terms of Twitch’s policy and whether other games fall under rule).


17. See infra Part II (discussing history of past adolescent regulation, internet, social media, online gambling, and VPNs).

18. See infra Section I.E (dissecting VPNs).

19. See infra Part III (comparing past regulation to suggest remedies).

20. See infra Part III (emphasizing why new policy still not enough and suggesting congressional solutions); U.S. CONST. amend. I. The First Amendment reads as follows: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.” U.S. CONST. amend. I.
II. History

A. Past Regulations Protecting Adolescents in the United States

1. Underage Drinking Regulations

Alcohol consumption in the United States has a storied past consisting of regulation for religious, familial, and public health reasons.\(^\text{21}\) As early as 1820, “perfectionist” movements, such as the temperance movement, began in the United States due to a revival in religious ideals.\(^\text{22}\) In 1893, the Anti-Saloon League started to enforce existing temperance laws, enact further antialcohol legislation, and gather public support for policies restricting alcohol use.\(^\text{23}\) By 1917, President Woodrow Wilson instituted a temporary prohibition in order to conserve grain due to food shortages caused by World War I.\(^\text{24}\) That same year, Congress submitted the Eighteenth Amendment for ratification, which quickly received national support in just eleven months.\(^\text{25}\) Many Americans were eager to support Prohibition because alcohol sales benefitted large business interests at the expense of families who experienced addiction, poverty, and abuse due to


\(^{22}\) See Prohibition, supra note 21 (highlighting how religious wave led to early temperance legislation). The term “perfectionist movement” refers to the Protestant revival known as the Second Great Awakening, where religious communities sought to create a utopia. See Oneida Community (1848-1880): A Utopian Community, SOC. WELFARE PROJECT, https://socialwelfare.library.vcu.edu/religious/the-oneida-community-1848-1880-a-utopian-community/ [https://perma.cc/Q2CM-EAE9] (discussing religious utopian communities). In 1838, Massachusetts banned the sale of spirits in less than fifteen-gallon quantities. See Prohibition, supra note 21 (outlining Massachusetts’s early prohibition efforts). Even though Massachusetts repealed the law two years later, it set a precedent for further temperance legislation. See id. (explaining importance of precedent). In 1846, Maine became the first state to pass prohibition laws and enacted stricter laws in 1851. See id. (discussing Maine’s prohibition history). Other states followed suit by 1861 when the Civil War began. See id. (examining evolution of temperance laws over time).

\(^{23}\) See Anti-Saloon Museum, supra note 21 (listing goals of Anti-Saloon League). The League promoted their cause by publishing tracts, pamphlets, songs, stories, cartoons, magazines, and more. See id.

\(^{24}\) See National Prohibition Act, ch. 85, 41 Stat. 305-323 (1919), repealed by U.S. CONST. amend. XXI (enacting war-time Prohibition); Prohibition, supra note 21 (describing national Prohibition against alcohol). This statute was referred to as the War Time Prohibition Act. See Schrad, supra note 21 (explaining reason for “dry” America prior to Prohibition).

\(^{25}\) See U.S. CONST. amend. XVIII, repealed by U.S. CONST. amend. XXI (passing Prohibition); Prohibition, supra note 21 (noting states quick to support ratification); Schrad, supra note 21 (discussing why Americans supported Prohibition).
alcohol use. Additionally, alcohol consumption among young people was relatively sparse because of the cultural and societal norms of this era.

After Prohibition ended in 1933, states started regulating alcohol consumption, and most set the drinking age at twenty-one to coincide with the voting age at the time. Later in the 1960s, the Vietnam War raised the question as to whether the drinking age should be lowered to instead coincide with the draft age; as a result, twenty-nine states lowered their drinking age. Between 1970 and 1984, state laws varied on the legal drinking age, and highway deaths among teenagers and young adults skyrocketed.

Notable change began in 1980 after a drunk driver killed a thirteen-year-old girl in a hit-and-run auto accident. Her mother, enraged to learn that the judicial system did not take drunk driving seriously, started Mothers Against Drunk Driving (MADD), which sought to humanize the societal devastation of drunk driving. By 1982, MADD had around 100 chapters, and in 1984, their activism encouraged Congress to pass the National Minimum Drinking Age Act, which required states to have a minimum drinking age of twenty-one to receive federal highway funds. As a result, the legal drinking age in every state has been twenty-one since 1984. Today, there is still a large effort to combat underage drinking through legislation, education, and research because of underage drinking’s devastating effects on developing children.

26. See Schrad, supra note 21 (opining reason Prohibition garnered large amount of support); Women Led the Temperance Charge, supra note 21 (describing abuse women experienced due to alcohol).

27. See id. (stating less youth alcohol consumption around Prohibition).

28. See id. (justifying setting legal consumption age to coincide with voting age). Prohibition ended in February 1933 after it was clear the Eighteenth Amendment was a policy failure that had increased crime and done little to curb alcohol consumption. See Christopher Klein, The Night Prohibition Ended, HAB. (Mar. 28, 2023), https://www.history.com/news/the-night-prohibition-ended [https://perma.cc/SD5W-R6DG] (outlining events ending Prohibition).

29. See id. (discussing tensions between drinking age and draft age). After two decades of efforts to lower the voting age, the Vietnam War propelled consensus into action, and Congress passed the Twenty-Sixth Amendment, lowering the voting age from twenty-one to eighteen. See U.S. CONST. amend. XXVI (lowering voting age); Katharine Silbaugh, Developmental Justice and the Voting Age, 47 FORDHAM URB. L.J. 253, 267 (2020) (detailing history of voting age). “If a boy is old enough to fight and die for his country, why isn’t he old enough to vote?” was a popular phrase at that time. See id., supra note 21.

30. See id. (noting start of change in drinking legislation).

31. See id. (explaining formation of MADD).

32. See id. (explaining history of legal drinking age in states); see also Underage Drinking Laws, supra note 11 (showing each state’s enforcement of underage drinking laws).

2. **Smoking Regulations**

Cigarette smoking is a similar issue that historically affected public health and the wellbeing of young people.\(^{36}\) In 1948, researchers Richard Doll and A. Bradford Hill developed a study comparing lung cancer patients to healthy subjects and found a strong correlation between cigarette smoking and lung cancer.\(^{37}\) Throughout the 1960s, the U.S. government began to recognize this proven link, and, in 1965, Congress passed the Federal Cigarette Labeling and Advertising Act, requiring warning labels on cigarette packaging.\(^{38}\) In the 1970s and 1980s, legislation limiting smoking on planes and in restaurants began to emerge as well.\(^{39}\) Then, in 1984, Congress passed the Comprehensive Smoking Education Act, which required additional health warning labels on cigarette packaging and advertising.\(^{40}\)

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\(^{40}\) See *Comprehensive Smoking Education Act of 1984, Pub. L. No. 98-474, 98 Stat. 2200* (codified as amended at 15 U.S.C. §§ 1331-1341) (establishing program to increase information about health consequences of smoking); *Smoking and Tobacco Use: Legislation, supra note 38* (listing notable tobacco legislation). The Comprehensive Smoking Education Act requires four rotating warning labels: smoking causes lung cancer, heart disease, and may complicate pregnancy; quitting smoking now greatly reduces serious risks to your health; smoking by pregnant women may result in fetal injury, premature birth, and low birth weight; and cigarette smoke contains carbon monoxide. See *Smoking and Tobacco Use: Legislation, supra note 38* (outlining Act’s label requirements); Comprehensive Smoking Education Act, 15 U.S.C. § 1333(4)(a) (providing mandatory labels).
Regulating cigarette promotions became essential to prevent children from smoking, as many antismoking advocates blamed flashy advertisements for encouraging children to smoke.41 Because of their young age, teenagers are more likely to struggle with insecurity and are subject to greater social pressure from advertising that exaggerates the prevalence of smoking.42 Thus, antismoking groups and organizations targeted advertising in order to protect children from the dangers of cigarettes.43 In 2009, Congress passed the Family Smoking Prevention and Tobacco Control Act to regulate the distribution, manufacturing, and marketing of tobacco products—especially tobacco marketing and sales to children.44

The effort to regulate cigarette advertisements, however, was met with pushback from tobacco companies.45 To demonstrate, in Lorillard Tobacco Co. v. Reilly, tobacco companies filed suit challenging the Massachusetts Attorney General’s regulations on advertising cigarettes, smokeless tobacco, and cigars, asserting that the regulations violated their First Amendment rights.46 The Court held that the Massachusetts outdoor and point-of-sale advertising regulations for smokeless tobacco and cigars violated the First Amendment, reasoning that the Attorney General failed to show that outdoor advertising regulations were not more extensive than necessary to advance the Commonwealth’s substantial interest in preventing underage tobacco use.47

41. See Paralus, supra note 36, at 91-92 (analyzing why children and teens smoke). In 1987 in the United States, the RJ Reynolds tobacco company’s Joe Camel cartoon character “hooked millions of kids on Camel tobacco products.” Tobacco Control Milestones, supra note 38. The Joe Camel campaign increased the number of teens who smoked Camels from 3% to 13%, while there was no change in adults. See Paralus, supra note 36, at 102 (noting effect of Joe Camel advertising only significant for teenagers).


43. See supra note 41 and accompanying text (providing reason to criticize advertising practices).


46. See 533 U.S. 525, 532 (2001) (stating facts of case). Tobacco companies challenged notable regulations that prohibited outdoor advertising within 1,000 feet of a school or playground and restricted the location and distribution of tobacco products. See id. at 534-35 (providing challenged regulations). For regulation on commercial speech to be constitutional under the First Amendment, it must concern lawful activity, and any regulation of such activity must directly advance a government interest in a way that is not more extensive than necessary to serve that government interest. See Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n, 447 U.S. 557, 566 (1980) (setting precedential standard); see also Lorillard, 533 U.S. at 554 (quoting standard of review from Hudson).

47. See Lorillard, 533 U.S. at 566 (noting failure of intermediate scrutiny test); see also Langvardt, supra note 45, at 363-67 (discussing Lorillard).
Recent efforts to reduce smoking among children and teens include studying their access to cigarettes and educating them on the dangers of smoking.\textsuperscript{48} Because almost 90% of adult daily smokers started by the age of eighteen, the Food and Drug Administration (FDA) launched its first tobacco prevention campaign, called “The Real Cost,” in 2014 to help prevent at-risk teens from smoking.\textsuperscript{49} After the FDA saw success, the administration subsequently created multiple campaigns to combat teen smoking.\textsuperscript{50}

B. The Emergence of the Internet and Internet Regulation

In addition to long-standing parental concerns regarding drinking and smoking, the emergence of the internet in the late 1960s has created yet another subset of issues for its young users and their caregivers.\textsuperscript{51} In 1991, computer scientist Tim Berners-Lee invented the World Wide Web, which is the internet we know and use today.\textsuperscript{52} By 1993, the web became more accessible to nonacademics, and the number of websites grew from 130 to over 100,000 by 1996, making the internet an established part of society.\textsuperscript{53}

Due to the rapid growth of the internet, the government was quick to regulate American broadband with the Telecommunications Act of 1996, which marked


\textsuperscript{49} Sharpless & Zeller, \textit{supra} note 48 (detailing public education campaigns targeted to prevent kids from starting to smoke).

\textsuperscript{50} See id. (describing recent campaigns). Between February 2014 and November 2016, the Real Cost campaign prevented approximately 587,000 youths ranging from ages eleven to nineteen from initiating smoking. See id. (demonstrating causation between campaign initiative and decreased teenage smoking). In 2016, the program expanded its message to include smokeless tobacco use and did so again in 2018 to tackle the vaping epidemic. See id. (examining recent expansions in antitobacco campaign). The FDA’s two additional young adult campaigns are called “Fresh Empire” and “This Free Life,” and are grounded in science. See id. (explaining marketing strategies targeting teenagers).

\textsuperscript{51} See Anita L. Allen, \textit{Minor Distractions: Children, Privacy, and E-Commerce}, 38 Hous. L. Rev. 751, 752 (2001) (highlighting potential harm of too much internet access for children). Reasons why internet use can harm young families include: (1) excessive use can distract children from more productive activities like exercise and homework; (2) unmonitored browsing may expose children to inappropriate content such as sex, violence, and hate—which can even undermine parental values; (3) the ability to “make friends” on the internet can facilitate sexual exploitation of minors by adult predators; and (4) children are often indifferent or unaware of online privacy or data protection. Id. at 755-57.

\textsuperscript{52} See The Invention of the Internet, Hist. (Oct. 28, 2019), https://www.history.com/topics/inventions/invention-of-the-internet [perma.cc/LK2Q-ZH8T] (outlining characteristics of World Wide Web). In 1992, a group of students and researchers at the University of Illinois developed what would later become Netscape, which allowed users to navigate the web with scrollbars and clickable links. See id. (describing creation of Netscape). Meanwhile, Congress realized the web’s commercial use as e-commerce emerged; companies set up their own websites and entrepreneurs used the internet to sell goods directly to buyers. See id. (emphasizing importance of internet in commerce).

the beginning of the internet age. Title V of the Telecommunications Act is referred to as the Communications Decency Act (CDA) of 1996, which sought to protect children by limiting broadcasts of sexually-oriented programming during periods when children were more likely to be viewing. But—as seen with the regulation of cigarette advertising—the Act’s opponents challenged it on


Promoting competition, innovation and investment in broadband services and facilities; supporting the nation’s economy by ensuring an appropriate competitive framework for the unfolding of the communications revolution; encouraging the highest and best use of spectrum domestically and internationally; revising media regulations so that new technologies flourish alongside diversity and localism; and providing leadership in strengthening the defense of the nation’s communications infrastructure.


55. See Telecommunications Act of 1996 § 501; Communications Decency Act, 47 U.S.C. § 230; Ruth Ann Strickland, Telecommunications Act of 1996, The FIRST AMEND. ENCYCLOPEDIA (2009), https://www.mtsu.edu/first-amendment/article/1095/telecommunications-act-of-1996 [https://perma.cc/W9DC-PQNM] (highlighting Supreme Court’s interpretation of Act’s provisions); Allegra D’Virgilio, The U.S. Government’s Role in Regulating Social Media Disinformation, NE. UNIV. POL. REV. (May 19, 2022), https://www.nupoliticalreview.com/2022/05/19/the-us-governments-role-in-regulating-social-media-disinformation/ [https://perma.cc/Q987-NYL-B] (explaining history of government’s role in social media regulation). The CDA attempted to “protect children from the dangers of certain adult-oriented user groups” by requiring pass codes and credit cards to prove the user’s age. See Dominé Andreao, Comment, Cyberspace: How Decent Is the Decency Act?, 8 ST. THOMAS L. REV. 593, 594 (1996) (describing forms of child protection). In section 230, Congress provides the rationale behind enacting its provisions: to “promote the continued development of the internet and other interactive computer services,” “encourage development of technologies that maximize user control over what information is received” by users, and “remove disincentives for the development and utilization of blocking and filtering technologies” to allow parents to prevent their children from accessing objectionable or inappropriate content. 47 U.S.C. § 230(b). In section 230(d), Congress requires interactive computer service providers to notify their users that parental control protections such as computer hardware, software, and filtering services are available to assist them in limiting a minor’s access to harmful material. Id. § 230(d). The provider is also required to identify or provide access to information on such protections. Id. An interactive computer service provider is any person or entity responsible for the creation or development of information provided through the Internet. See id. § 230(t)(2). Although there is little litigation on the meaning of this section, there has been an attempt to hold the application (app), Snapchat, liable for not having any parental controls, using section 230(d) as the basis for the claim. See Jeffrey Neufanger, Liability Under CDA Section 230? Recent Lawsuit Tries to Flip the Script Against Social Media Service, NEW MEDIA & TECH. L. BLOG (Sept. 8, 2016), https://newmediawarn.proskauer.com/2016/09/08/liability-under-cda-section-230-recent-lawsuit-tries-to-flip-the-script-against-social-media-service/ [https://perma.cc/C3CT-4RZ2] (summarizing how claim against Snapchat falls under section 230(d)); Critics of section 230 claim that the statute is long overdue for an update or revision. See Michael D. Smith & Marshall Van Alstyne, It’s Time to Update Section 230, HARV. BUS. REV. (Aug. 12, 2021), https://hbr.org/2021/08/its-time-to-update-section-230 [https://perma.cc/6E7Q-GC8E] (arguing for section 230 update); Kathleen Kingsbury, Opinion, Joe Biden: Former Vice President of the United States, N.Y. TIMES (Jan. 17, 2020), https://www.nytimes.com/interactive/2020/01/17/opinion/joe-biden-nytimes-interview.html [https://perma.cc/2NL-5SNW] (providing transcript of interview with Joe Biden regarding necessary section 230 revisions).
First Amendment grounds. 56 In Reno v. American Civil Liberties Union, 57 in a landmark decision, the Supreme Court held that the internet is entitled to as much First Amendment protection as the print medium. 58 Three years later, in United States v. Playboy Entertainment Group, 59 the Playboy Entertainment Group challenged section 505 of the Telecommunications Act on similar First Amendment grounds—arguing that regulating when Playboy could transmit its programming was too content-based and restrictive. 60 As a result, the Supreme Court held that Congress should seek a less restrictive method of shielding children from inappropriate material, such as allowing viewers to block the programming on a household-by-household basis. 61

Another notable case is Ashcroft v. ACLU, 62 in which internet content providers filed suit challenging the constitutionality of COPA, which sought to criminalize certain internet speech. 63 The Court once again held that the government failed to show how the provision provided the least restrictive means for making the internet safe for minors because other remedies, such as blocking and filtering software, were available. 64 In the majority opinion, Justice Kennedy noted

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56. See Strickland, supra note 55 (noting early First Amendment case law after passage of Act).
58. See id. at 870 (explaining and giving rationale for holding). The Court in Reno discussed the constitutionality of two provisions in the CDA intended to protect minors from unsuitable internet content by criminalizing the intentional transmission of “obscene or indecent” messages and regulating the depiction of “sexual or excretery activities or organs” in an offensive matter. See id. at 858-60 (quoting language of two provisions in question). The Reno Court felt the CDA lacked the required precision needed to regulate content of speech under First Amendment constraints; to deny minors from accessing the harmful material, the CDA effectively suppressed speech that adults have a constitutional right to see. See id. at 874 (reasoning less-restrictive alternatives available to achieve same purpose). In 1998, after the Reno decision, Congress took the Court’s decision into consideration and passed the Child Online Protection Act (COPA), which resolved some of the concerns. See Child Online Protection Act of 1998, Pub. L. No. 105-277, § 1402, 112 Stat. 2681–736, invalidated by ACLU v. Gonzales, 478 F. Supp. 2d 775 (E.D. Pa. 2007); Byrin Romney, Article, Screens, Teens, and Porn Scenes: Legislative Approaches to Protecting Youth from Exposure to Pornography, 45 VT. L. REV. 43, 98-99 (2020). The American Civil Liberties Union (ACLU) sought an injunction against COPA, and the legislation failed the narrow-tailoring prong of the strict scrutiny analysis. See Romney, supra, at 99 (summarizing efforts since Reno to find less restrictive ways of protecting minors).
60. See id. at 814 (discussing requirement of least restrictive solution); Strickland, supra note 55 (analyzing Reno and Playboy). Congress attempted to require cable television providers whose channels displayed sexually oriented programming to either block those channels or limit transmission hours to when children were less likely to be viewing. See Playboy, 529 U.S. at 806.
61. See Playboy, 529 U.S. at 814-15 (affirming standard of review and suggesting less-restrictive solutions). When section 505 of the CDA—the section at issue in Playboy—became effective, most operators had “no practical choice” but to cut parts of their programming during the regulated hours that children were more likely to be watching or risk the penalties imposed. See id. at 809. Many operators complied with the enactment; however, because 30-50% of adult programming is viewed prior to 10 p.m., Playboy saw a significant reduction in revenue. See id. (examining revenue penalties incurred by operators due to section 505 of CDA).
63. See id. at 661-63, 666-67 (discussing Act’s provisions, respondent’s grievances, and alternatives).
64. See id. at 661, 666-67 (concluding less-restrictive alternatives available). The Court in Ashcroft felt that filters were less restrictive than the Act’s provisions because they create the ability to restrict speech “at the
that content-based restrictions must be minimally restrictive on speech because they have “the constant potential to be a repressive force in the lives and thoughts of a free people,” and “to guard against that threat, the Constitution demands that content-based restrictions on speech be presumed invalid.”

C. Social Media Growth and Regulation

1. Myspace and Facebook

As the internet continued to grow, people began to realize its ability to connect people, and social media was born. In 1997, the first “true” social media site, known as SixDegrees.com, allowed people to set up a profile page, create lists of connections, and send messages. Myspace—one of the most notable early social media sites—emerged in 2003 and permitted users to link their customizable public profiles to other users’ profiles and express their interests by posting pictures and music. The site became popular among young people, and users and parents quickly became aware of the dangers of posting online.

In a series of California cases, young girls between the ages of thirteen and fifteen were sexually assaulted by men they had met on Myspace and, subsequently, sued Myspace for negligence, gross negligence, and strict product liability. The California Court of Appeals, pursuant to the landmark decision of Zeran v. America Online, Inc., held that an important aspect of section 230 of the CDA is that it creates federal immunity from any cause of action that would make internet service providers liable for what users do on their sites. Thus,
platforms are generally not responsible for the actions of its users, especially where the objectionable behavior happens offline; consequently, Myspace was protected from liability. Although Myspace enjoyed immunity, the site still enacted regulations to help safeguard their younger users, such as automatically setting all accounts owned by fourteen- and fifteen-year-old users to “private,” prohibiting users from soliciting personal information from anyone under eighteen, and listing safety tips and cautions.

Following the success of Myspace and other social media websites, Facebook emerged in 2004. On Facebook, users can create profiles, upload photos, join and start groups, browse a “timeline” of content posted by others, and chat with other users by commenting on posts or messaging privately. As with Myspace, Facebook had safety concerns, especially after introducing the “News Feed” in 2006, which publicly documented every change a person made to their profile. After a public outcry from users, Facebook implemented privacy controls where users could monitor what others see from them in the News Feed. Facebook faced more privacy issues in 2010 when it introduced facial recognition in photo “tagging,” meaning Facebook would use technology to analyze a face in a photo and suggest that the user who posted the photo “tag,” or link, the person in the photo to their profile. As Facebook grew and evolved, the site created extensive community standard guidelines to combat issues such as privacy, violent

73. See id. at 157 (discussing Myspace’s immunity and relevant case law regarding offline abuse); see also Jeff Kosseff, The Lawsuit Against America Online That Set Up Today’s Internet Battles, SLATE (July 14, 2020), https://slate.com/technology/2020/07/section-230-america-online-ken-zeran.html [https://perma.cc/XNV7-CDF9] (describing balance between free speech and harm of speech). Author Jeff Kosseff wrote a book, The Twenty-Six Words That Created the Internet, in which he explores Zeran and the court’s decision to interpret the “26-word provision in the law”—referring to section 230 of the CDA—to provide “sweeping protections to online services for the words that their users post.” See Kosseff, supra. See generally Jeff Kosseff, THE TWENTY-SIX WORDS THAT CREATED THE INTERNET (Cornell Univ. Press ed., 1st ed. 2019) (exploring landscape of First Amendment case law relating to internet).

74. See Doe II, 96 Cal. Rptr. 3d at 150 (relaying overview of Myspace). Other safeguards that Myspace put in place include: warning against posting anything one would not want the world to know (i.e., phone number, address, and whereabouts), cautioning users that strangers are not always who they say they are, and linking a “Tips for Parents” page. See id. at 150 (delineating safeguard measures of Myspace).

75. See Samur, supra note 67 (compiling pivotal moments of social media growth).


77. See id. (noting privacy concerns).

78. See id. (discussing privacy issues Facebook addressed).

79. See Patel v. Facebook, Inc., 932 F.3d 1264, 1267 (9th Cir. 2019) (considering whether facial recognition violates privacy laws). The court held that “Because the privacy right protected by [the Biometric Information Privacy Act] is the right not to be subject to the collection and use of such biometric data, Facebook’s alleged violation of these statutory requirements would necessarily violate the plaintiff’s substantive privacy interests.” Id. at 1274. Facebook also launched a short-lived service in 2017 called Beacon that allowed Facebook friends to see what products a Facebook user was purchasing from certain companies, but this quickly failed due to members feeling that this service encroached on their privacy. See Hall, supra note 76 (explaining perceived privacy violations of members caused Beacon’s demise).
and criminal behavior, safety, objectionable content, authenticity, and intellectual property.\footnote{See Facebook Community Standards, supra note 4 (laying out Facebook’s standards).}

2. **YouTube and Twitch**

In 2005, former PayPal employees created YouTube where users could post video content.\footnote{See Christopher McFadden, *YouTube’s History and Its Impact on the Internet*, INTERESTING ENOUGH (May 20, 2021), https://interestingengineering.com/youtubes-history-and-its-impact-on-the-internet [https://perma.cc/3VDW-A67S] (discussing YouTube’s history); Cyrus John, *As YouTube Turns 14, Here’s What Its Founders Are up to These Days*, THE QUINT (Feb. 14, 2019), https://www.thequint.com/tech-and-auto/tech-news/youtube-turns-14-youtube-founders-steve-chen-jawed-karim-chad-hurley-2019 [https://perma.cc/8VZ5-4YWR] (discussing YouTube founders and YouTube’s success).} YouTube users create a “channel”—essentially a homepage for their account that showcases their public videos—and encourage viewers to subscribe to their channel so they can be notified about new releases.\footnote{See Brett Gosssett, Note, *Scrolling, Trolling, and Uploading: YouTube’s Impact on Modern Public Discourse, Internet Regulation, and Free Speech*, 38 CARDOZO ARTS & ENT. L.J. 505, 509 (2020) (explaining evolution of YouTube).} Since its creation, the site has become one of the largest and most popular platforms on the internet, with an estimated 500 hours of video content uploaded to YouTube every minute.\footnote{See Dean Takahashi, *YouTube Game Videos Were Viewed for 50 Billion Hours in 2018*, VENTURE BEAT (Dec. 8, 2018), https://venturebeat.com/2018/12/08/youtube-game-videos-were-viewed-for-50-billion-hours-in-2018/ [https://perma.cc/NW8D-XZUD] (interviewing Ryan Wyatt, global head of gaming, virtual reality, content, and partnerships at YouTube Gaming). In 2018, people watched more than 50 billion hours of gaming videos on YouTube—“almost twice the total time Americans spend commuting to work in a year.” See id.} Like Facebook, YouTube’s popularity meant that extensive community guidelines were necessary in order to protect its users; among these guidelines is YouTube’s child safety policy, which disallows content that “endangers the emotional and physical well-being of minors.”\footnote{See Child Safety Policy, supra note 4 (providing child safety guidelines); see also Community Guidelines, YOUTUBE, supra note 4 (listing guidelines for spam, deceptive practices, sensitive or dangerous content, regulated goods, and misinformation).}

One of the largest sectors of YouTube is the video-gaming community, where more than 200 million people view gaming content every day.\footnote{See Asha Romaine, *Top 10 Gamers on YouTube*, LINEUPS (July 6, 2020), https://www.lineups.com/esports/top-10-gamers-on-youtube/ [https://perma.cc/YE64-SHG2] (listing top gamers in industry). Top gamers on YouTube see earnings and subscriber numbers in the millions, and views on their videos range in the billions. See id.; see, e.g. VideogameDunkey, YouTube, https://www.youtube.com/user/videogamedunkey [https://perma.cc/H6CS-LC78] (displaying home page of popular gamer and critic).} Popular gamers like PewDiePie, Ninja, and Dunkey became YouTube stars by posting videos of themselves playing and reviewing games.\footnote{See #commentary, YouTube, https://www.youtube.com/hashtag/commentary [https://perma.cc/M4CG-8FS3] (highlighting current commentary videos).} Another subset of YouTube is commentary videos, where users post their opinions on a range of topics and current events.\footnote{See #commentary, YouTube, https://www.youtube.com/hashtag/commentary [https://perma.cc/M4CG-8FS3] (highlighting current commentary videos).} One prominent commentator, Ethan Klein, often uploads videos of
himself highlighting issues on YouTube and the general online community, speaking out against gamers and streamers who promote dangerous content such as streams that encourage underage gambling. ⁸⁸

Perhaps piggybacking off YouTube’s success, the site Twitch emerged in 2011, allowing people to livestream their videos. ⁸⁹ Today, Twitch has a large niche audience of online gamers, and the majority of its users are those who host eSports. ⁹⁰ Many gamers who started on YouTube have since moved to Twitch due to its live aspect that allows viewers to watch users game in real time. ⁹¹

D. Online Gambling

I. History of Online Gambling Targeting Youth

The first gambling website began in 1995, but the industry didn’t experience real growth until the small Caribbean island nation of Antigua and Barbuda implemented laws that allowed online casinos. ⁹² Around the same time, Microgaming became the first online gambling software provider. ⁹³ Internet gambling was

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⁸⁸ See h3h3Productions, YouTube, [https://www.youtube.com/channel/UCDWtIvJwLJ5e4LGIJnt2b9Q](https://www.youtube.com/channel/UCDWtIvJwLJ5e4LGIJnt2b9Q) (containing Klein’s YouTube home page called h3h3Productions). See generally h3h3Productions, Deception, Lies, and CSGO, YouTube (July 3, 2016), [https://www.youtube.com/watch?v=_8fU2QGjV0](https://www.youtube.com/watch?v=_8fU2QGjV0) (discussing others’ practice of introducing gambling to young viewers). Ethan Klein has since created another YouTube channel called the H3 Podcast, where he hosts weekly podcasts and continues to discuss issues within the online community. See H3 Podcast, YouTube, [https://www.youtube.com/c/H3Podcast](https://www.youtube.com/c/H3Podcast) (displaying home page of H3 Podcast).

⁹⁹ See Geyser, supra note 5 (describing emergence and purpose of Twitch). Created by founders Justin Kan, Emmet Shear, Michael Seibel, and Kyle Vogt, Twitch started as “Justin.tv,” which was essentially a smaller-scale version of what the site would become. See Twitch History: From Beginning to Now, STREAMER’S PLAYBOOK, [https://streamersplaybook.com/twitch-history-from-beginning-to-now](https://streamersplaybook.com/twitch-history-from-beginning-to-now) (discussing Twitch’s beginnings and growth). Founders Kan and Shear quickly realized that the fastest-growing niche on the platform was gaming and eSports, and the platform officially became known as Twitch in 2011 when the company launched a new design specifically for gaming. See id (justifying new design direction). Within a year, Twitch had 20 million visitors a month. Id. The site was solely a gaming site until 2016, when Twitch pivoted to also allow video blogging. See Nicole Carpenter, Non-Gaming Content Is Now Allowed on Twitch, and Soon You’ll Be Able to Stream from Your Phone, DOT ESPORTS (Dec. 15, 2016), [https://dotesports.com/business/news/nongaming-content-is-now-allowed-on-twitch-and-soon-youll-be-able-to-stream-from-4106](https://dotesports.com/business/news/nongaming-content-is-now-allowed-on-twitch-and-soon-youll-be-able-to-stream-from-4106) (detailing growth of Twitch content).

⁹⁰ See Geyser, supra note 5 (noting Twitch world’s largest online game streaming platform).


estimated to have more than doubled between 1997 and 1998, and, in 2005, the online gambling market grossed approximately 6 billion dollars.\textsuperscript{94}

In 2006, President Bush signed into law the Unlawful Internet Gambling Enforcement Act (UIGEA), which was designed to prevent the transfer of funds from financial institutions in the United States to online gambling operations, thereby eliminating the primary source of funding for online gambling.\textsuperscript{95} American financial institutions bore the burden of preventing these transactions, and the Act did not criminalize online gambling at the customer level.\textsuperscript{96} The gambling industry initially took a large hit, but by 2010, the United States alone was back to grossing nearly 6 billion dollars, and the UIGEA’s only effect was that U.S. gamblers had to use offshore websites.\textsuperscript{97}

In the last few years, cryptocurrency in the online gambling world has seen an enormous boom, as the gaming industry tackled online-security challenges and directed its focus to a younger audience.\textsuperscript{98} Cryptocurrency is digital currency that operates without a centralized bank, and there are a variety of currencies to choose from, such as Bitcoin and Ethereum.\textsuperscript{99} This change to cryptocurrency gambling is another recognizable strategy to use pop culture’s influence on young adults to attract and cater to their target audience by capitalizing on the younger generation’s use of technology and distrust of banks.\textsuperscript{100} Twitch’s new

\textsuperscript{94} See Nelson, supra note 92, at 44 (highlighting uptick in online gambling).


\textsuperscript{96} See Thompson, supra note 93, at 243 (stating purpose and provisions of UIGEA).

\textsuperscript{97} See id.; Carlson, supra note 92, at 155-56 (illustrating impact of UIGEA).

\textsuperscript{98} See Nicole Bastos, Note, A Change on the Horizon for the Gaming Industry: Trends, Blockchain Technology, and Cryptocurrency, 10 UNLV GAMING L.J. 117, 117 (2020) (noting industry response to technology); see also Ross Chalmers, The Future of Blockchain and Crypto in the Online Gambling Industry, YAHOO (Dec. 2, 2021), https://www.yahoo.com/video/future-blockchain-crypto-online-gambling-230159349.html [https://perma.cc/G4PF-E6R4] (emphasizing security reasons justify gamblers’ switch to Bitcoin). Many people feared getting hacked or becoming a victim of fraud if they invested in online casinos, so cryptocurrencies now allow users to use online casinos without real cash. See Chalmers, supra (justifying use of cryptocurrency over legal tender). Users can instead use digital currencies from their digital wallet; thus, they do not have to provide personal information to conduct transactions with casinos. See id.

\textsuperscript{99} See Bastos, supra note 98, at 120-21 (explaining cryptocurrency).

policy bans crypto casinos and crypto gambling on its site, but it is worth noting that slots, roulette, and dice gambling can still be seen live on Twitch, just in a diluted and licensed form.\textsuperscript{101} Thus, crypto casinos can modify their content to offer accepted categories under Twitch’s new policies and still provide crypto gambling on their own site for Twitch users to discover.\textsuperscript{102}

Perhaps one of the most alarming developments in online gambling that initially targeted young players comes from the online game developed by Valve called Counter-Strike: Global Offensive (CS:GO).\textsuperscript{103} In that game, players can acquire collectible virtual items called “skins” that make players more identifiable and can be bought, traded, or sold.\textsuperscript{104} To acquire these skins, players must buy a “key” that costs $2.50 in order to open a crate that randomly drops into the game, which operates and looks almost exactly like a slot machine when opened.\textsuperscript{105} As a result of this game and subsequent websites related to it, a 2016 class action lawsuit—among others—commenced, claiming Valve knowingly supported illegal gambling by allowing users to link their individual Steam accounts to third-party websites, which created an unregulated gambling system that targets teenagers with no oversight.\textsuperscript{106}

...
Relevant to the lawsuits were popular YouTubers, Thomas Cassell (whose YouTube persona is “Pro Syndicate”) and Trevor Martin (known on YouTube as “TmarTn2”), who posted multiple YouTube videos—with titles like “How to Win $13,000 in 5 Minutes (CS:GO Betting)” —showcasing themselves winning large amounts of money on a site called CS:GO Lotto, which allowed users to trade CS:GO skins.107 Not only did these YouTubers post videos that mimic and encourage gambling, but the YouTubers premised their videos by pretending they just decided to “try it out.”108 The YouTubers failed to disclose they owned CS:GO Lotto and, therefore, were able to control or fake results to make viewers believe large winnings were possible.109 The controversy resulted in CS:GO

107. See Deception, Lies, and CSGO, supra note 88, at 3:41:5:40 (highlighting questionable practices of YouTubers involved); Assael, supra note 103 (discussing CS:GO YouTube videos and computer programmer who challenged their premise). The original video by Martin has since been deleted. See TmarTn2, YouTube, https://www.youtube.com/watch?v=CSGO [https://perma.cc/U92S-5B2T] (showing search of YouTube Martin’s homepage resulted in no videos with title). Another internet user and computer programmer who goes by the name HonorTheCall started to notice Martin’s excessive time spent on CS:GO Lotto and investigated further, ultimately finding incorporation records showing that Martin and Cassell were the site’s owners. See Assael, supra note 103 (describing “How to Win $13,000 in 5 Minutes (CS:GO Betting)” video).

108. See Nathan Grayson, YouTubers Behind Counter-Strike Gambling Scandal Get Sued, KOTAKU (July 7, 2016), https://kotaku.com/youtubers-behind-csgo-lotto-scam-get-sued-1783300898 [https://perma.cc/VMK4-QMKV] (highlighting YouTubers’ lies and attempts to cover up ownership of site). Martin attempted to say that he disclosed his ownership of the site; however, in past videos, Martin said he “found this new site called CS:GO Lotto.” See Deception, Lies, and CSGO, supra note 88, at 09:19 (providing commentary on Martin’s contradictory statements regarding ownership); eSports Addict, WINNING BIG $$$!!! (CS GO Betting), DAILY MOTION (Nov. 26, 2018), https://www.dailymotion.com/video/x515ojq (showing video of Cassell gambling). HonorTheCall found that Martin and Cassell in fact owned CS:GO Lotto and accused the two of peddling gambling to children: “These kids, man, they look up to you. They think if their idols can make $13,000 in five minutes, they can too. But we all know that’s not true.” See Assael, supra note 10 (summarizing CS:GO controversy). Online influencers are expected to disclose any financial relationship with a promotion pursuant to the Federal Trade Commission’s (FTC) Endorsement Guides to protect consumers and ensure that endorsements are honest and not misleading. See The FTC’s Endorsement Guides: What People Are Asking, FED. TRADE COMM’N (Aug. 27, 2020), https://www.ftc.gov/business-guidance/resources/ftcs-endorsement-guides-what-people-are-asking [https://perma.cc/SZ4L-7X9D] (discussing Endorsement Guides and applicable online activity); FTC Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 C.F.R. § 255.1 (2023) (showing FTC’s guidelines for endorsements). Martin and Cassell settled with the FTC on charges alleging that they deceptively endorsed CS:GO Lotto while failing to disclose that they both owned the company. See Press Release, Fed. Trade Comm’n, CSGO Lotto Owners Settle FTC’s First-Ever Complaint Against Individual Social Media Influencers (Sept. 7, 2017), https://www.ftc.gov/news-events/news/press-releases/2017/09/csgo-lotto-owners-settle-ftcs-first-ever-complaint-against-individual-social-media-influencers [https://perma.cc/FY3M-VAKP] (providing settlement details). The FTC cited the misrepresentation using videos that the influencers posted with titles like “INSANE KNIFE BETS! (CS:GO Betting)” and “ALL OR NOTHING! (CS:GO Betting).” Id. The two also allegedly paid other influencers thousands to promote CS:GO Lotto on YouTube, Twitch, and Facebook without requiring that the influencers disclose the sponsorship. See id. (noting additional misrepresentations made by Martin and Cassell via others). The settlement requires Martin and Cassell to clearly disclose any endorsements going further. Id.

109. See supra note 108 (discussing controversy).
Lotto gambling sites being shut down in 2016 after Valve issued a cease and
desist letter due to the lawsuits.\textsuperscript{110}

2. Gambling on Twitch

Mirroring the CS:GO controversy, and due to its live format, Twitch saw a
contentious gambling boom fueled by the rise of crypto casinos where sites like
Stake paid popular streamers to play casino games on their channels, sometimes
offering tens of thousands of dollars per hour.\textsuperscript{111} And while these streamers were
required to disclose their sponsorships, they did not always note that they were
given money and extra “luck” with which to gamble.\textsuperscript{112} Keith Whyte, executive
director of the National Council on Problem Gambling, stated that it “is a fairly
common tactic in the unregulated gambling industry to inflate win rates.”\textsuperscript{113}

Although Twitch created community guidelines for its site, many users and
streamers argue that Twitch has yet to correctly combat issues like harassment,
racism, inconsistent application of rules, and questionable work-life balance.\textsuperscript{114}
And, most notably, the site has been criticized by prominent gaming journalists
and internet personalities for its lax regulation of gambling streams.\textsuperscript{115}


\textsuperscript{111} See D’Anastasio, \textit{supra} note 7 (describing “shady” gambling streams on Twitch). One gambling website
apparently offered streamer Adin Ross between $1.4 and $1.6 million a month to stream slots on Twitch. \textit{Id.}

\textsuperscript{112} See Grayson, \textit{supra} note 12 (emphasizing Twitch’s popular streamers’ deceptive behavior).

\textsuperscript{113} See D’Anastasio, \textit{supra} note 7 (explaining danger of inflated win rates). The National Council on Prob-
lem Gambling is an organization that promotes comprehensive policies to support healthy, legal gambling. \textit{See About Us, NAT’L COUNCIL ON PROBLEM GAMBLING}, https://www.nCPGAMBLING.org/about-us/ [https://perma.cc/-S5HU-MKSC] (stating mission of council).

\textsuperscript{114} See Nathan Grayson, \textit{Twitch’s New Safety Advisory Council to Focus on Work-Life Balance, Protect-
ing Marginalized Groups}, Kotaku (May 14, 2020), https://kotaku.com/twitchs-new-safety-advisory-council-to-
focus-on-work-li-1843461788 [https://perma.cc/2Y3V-9CTY] (analyzing efforts by Twitch to address racism
and harassment concerns); \textit{see also} Community Guidelines, Twitch, \textit{supra} note 4 (listing guidelines and rules
for site). Multiple stories have substantiated these allegations against Twitch. \textit{See, e.g.}, Nathan Grayson, \textit{Twitch Still Hasn’t Fixed Its Racism Emote Problem}, Kotaku (June 4, 2019), https://kotaku.com/twitch-still-hasnt-fixed-
its-racism-emote-problem-1835253131 [https://perma.cc/FFoY-5K3F] (noting some Twitch users spam emotes
of Black people to make racist jokes); Nathan Grayson, \textit{Body Painting Streamer Banned for Nudity Despite
Efforts to Stay Within Twitch’s Rules [Update]}, Kotaku (Feb. 21, 2020), https://kotaku.com/body-painting-
streamer-banned-for-nudity-despite-effort-1841835187 [https://perma.cc/4A2P-WFRT] (criticizing Twitch’s
inconsistent application of sexual content based on gender); Cecilia D’Anastasio, \textit{For Twitch Streamers Who Spend
Their Lives on Camera, It’s Hard to Know When to Stop}, Kotaku (Feb. 14, 2017), https://kotaku.com/for-twitch-
streamers-who-spend-their-lives-on-camera-i-1792351731 [https://perma.cc/CWV2-HVXU] (asserting stream-
ers struggle to stay healthy and often combat anxiety, depression, and sleep deprivation).

\textsuperscript{115} See Fahey, \textit{supra} note 1 (arguing Twitch not doing enough); Grayson, \textit{supra} note 12 (questioning
whether Twitch’s efforts to remedy issues enough); H3 Podcast Highlights, \textit{The Twitch Gambling Issue (xQc,
Trainwrecks & Rosh)}, YouTube (July 10, 2021), https://www.youtube.com/watch?v=dtAGbd8usUM&t=67s
In an attempt to combat criticism, Twitch announced a new rule in 2021 that prohibited streamers from sharing links or referral codes to sites that offer real-money slots, roulette, or dice games.\textsuperscript{116} Some streamers did not seem at all concerned over the new guidelines, either because it was such a small part of their profits, or, as critics believe, they could find ways around the regulation.\textsuperscript{117}

Due to the continued criticism, Twitch announced on September 20, 2022 that it is updating its gambling policy to prohibit streaming of gambling sites that include slots, roulette, or dice games that are not licensed either in the United States or other jurisdictions with sufficient consumer protection, effective October 18, 2022.\textsuperscript{118} The announcement named websites such as Stake.com, Rollbit.com, Duelbits.com, and Roobet.com as prohibited gambling websites.\textsuperscript{119} Many speculate that Twitch was heavily pressured to update its policies after a streamer, who goes by the Twitch handle “ItsSlicker” (Slicker), admitted to borrowing large amounts of money from fans and other streamers under false pretenses in order to fund his gambling addiction.\textsuperscript{120} Notably, this 2022 ban does

\textsuperscript{116} See Fahey, supra note 1 (arguing Twitch should instead ban gambling streams altogether). Twitch noted that it prohibited the sharing of links or referral codes to gambling sites to prevent scams created by questionable gambling services sponsoring Twitch content. See id. The site promised to continue to monitor gambling-related content and update their policies as needed, delaying enforcement of its new policies until August 17, 2021 to give streamers time to remove prohibited content. See id. (providing justification for delay).

\textsuperscript{117} See Mollie Taylor, Twitch Attempts to Curb ‘Gambling Meta’ by Banning Promotion, but Some Streamers Say It Isn’t Enough, PC GAMER (Aug. 12, 2021), https://www.pcgamer.com/twitch-gambling-meta-gambling-statements/ [https://perma.cc/G7XE-25GU] (discussing community reaction to new Twitch guidelines). Twitch streamer “Trainwrecks” told Klein that “he made $250,000 from referral codes alone, calling the earnings ‘nothing.” See Taylor, supra. Twitch’s guideline to ban streaming links and referral codes did not financially hurt gambling streamers because their main income is from gambling site sponsorships, rendering Twitch’s commitment to crack down on gambling seem virtually empty. See Fahey, supra note 1 (noting Twitch’s ban on referrals hardly affects overarching problem). Twitch’s current 2022 update to their policies is more comprehensive, though there are still questions. See Yeo, supra note 15 (highlighting unclear terms of Twitch’s policy and whether other games fall under rule).

\textsuperscript{118} See Twitch Policy Tweet, supra note 10 (providing language of Twitter’s policy update).

\textsuperscript{119} See id. (stating websites Twitch specifically named).

\textsuperscript{120} See Nathan Grayson, Twitch Cracks Down on Gambling, but Streamers Aren’t Sure It’s Enough, WASH. POST (Sept. 21, 2022), https://www.washingtonpost.com/video-games/2022/09/21/twitch-gambling-ban-pokimane-mizkif-saqe/ [https://perma.cc/783X-KDUF] (discussing “week of pure chaos” on Twitch, possibly resulting in new policy). Slicker lied by claiming his bank account had been frozen, stating he needed money to keep him afloat until he received his paychecks; in reality, he gambled away around $200,000 and never paid his friends...
not affect a significant portion of gambling sites and makes no promise to regulate sports betting and poker.\textsuperscript{121} The policy is also unclear on the meaning of jurisdictions providing “sufficient consumer protection,” though the policy lists a few examples.\textsuperscript{122}

As social media platforms, such as Twitch, try to navigate issues within their own sites, their shortcomings provide reason for Congress to consider enacting stronger federal policy within First Amendment restraints.\textsuperscript{123} Significantly, social media sites are considered private networks, and the First Amendment only applies to federal, state, and local government actors and entities.\textsuperscript{124} Even if gambling streamers are upset with recent rule changes on Twitch, they have no basis to sue on First Amendment grounds because Twitch is a private company.\textsuperscript{125}

E. Gambling Regulations and Circumventing Regulations

As for online gambling regulation in the United States, Congress has passed certain safeguards such as the Internet Gambling Regulation, Consumer
Protection, and Enforcement Act, which, among other things, “[p]rohibits any person from operating an [i]nternet gambling facility that knowingly accepts bets or wagers from persons located in the United States without a license issued by the Secretary.”

Perhaps one of the oldest and most notable regulations on online gambling is the Wire Act, which prohibits three types of “wire” transmissions in interstate or foreign commerce.

Generally, the U.S. government allows states to make their own rules about gambling.

There are a number of federal and state laws requiring U.S. gambling sites to have a license to operate in individual states; nevertheless, VPNs clearly complicate enforcement of those laws. A VPN allows for online privacy and anonymity by creating a private network and masking one’s internet protocol (IP) address so their online actions are virtually untraceable. The origins of VPNs can be traced back to Microsoft in 1996, when employees developed point-to-point tunneling protocol—a method of creating a secure network between users through encrypting data. VPNs became increasingly popular due to their ability to secure information, protect against hackers, and allow for access to foreign content and media. As useful and important as VPNs are, however, their...


127. See 18 U.S.C. § 1084 et seq. The three types of wire transmissions are: (1) bets, wagers, or information assisting in the placing of bets or wagers on any sporting event or contest; (2) communications that entitle the recipient to receive money or credit as a result of bets or wagers; and (3) information assisting in the placing of bets or wagers. See id. § 1084(a) (setting forth applicable wire transmissions for Act); see also Benjamin Miller, The Regulation of Internet Gambling in the United States: It’s Time for the Federal Government to Deal the Cards, 34 J. Nat’l Ass’n Admin. L. Judiciary 527, 533 (2014) (describing Wire Act and its implications).


132. See id. (listing reasons to use VPNs). If someone lives in Europe and replaces their IP address with an address of an American VPN, they can watch American Netflix. See id. (providing examples of benefits to VPNs). Similarly, one can use a VPN to view YouTube content that is blocked in their own country. See id.
ability to change a person’s online location can create complications for governments.\textsuperscript{133}

Naturally, Twitch users quickly discovered they could use VPNs to avoid regulations within their own country.\textsuperscript{134} Even though promoting unlawful gambling sites to U.S. residents may constitute promoting illegal gambling, by using VPNs, streamers and gamblers can easily circumvent website warnings and restrictions.\textsuperscript{135} Twitch banned sites like Stake.com for this reason, but, given the loose language of their new guidelines, it is unclear how VPNs will affect the future of gambling streams.\textsuperscript{136} While the ability to circumvent protections is a large concern, streamers depend on VPNs to protect their IP addresses because having a massive number of online followers can make them a target.\textsuperscript{137} It is illegal, however, to use a VPN to circumvent a site’s gambling rules in order to place bets.\textsuperscript{138} But punishment varies depending on which country the VPN is located in and the website they are gambling on.\textsuperscript{139}

III. ANALYSIS

Although the internet created new issues that policy makers and government entities had never dealt with before, there are similarities between historical regulations of underage drinking and smoking and possible solutions to the modern issue of underage online gambling.\textsuperscript{140} While modern technology has created a plethora of complications, these comparisons can at least serve as a guide to navigating the uncertain legal territory of regulating internet content within First Amendment constraints.\textsuperscript{141}

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\textsuperscript{133} See Eric Manpearl, Adapting U.S. Electronic Surveillance Laws, Policies, and Practices to Reflect Impending Technological Developments, 69 CATH. U. L. REV. 53, 78-83 (2020) (discussing complications location-spoofing technology creates for government); Kaechele, supra note 14, at 62 (questioning personal jurisdiction concerns when using VPNs). Perhaps the most alarming fact about VPNs is that ISIS and al-Qaeda have advised their followers to use them and even have detailed manuals educating their followers on technologies that hide their location. See Manpearl, supra, at 79-80 (describing use of VPNs in terrorism operations).

\textsuperscript{134} See D’Anastasio, supra note 7 (explaining ways to avoid legal barriers to streaming gambling).

\textsuperscript{135} See id. (debating legality of VPN use).

\textsuperscript{136} See Taylor-Hill, supra note 14 (highlighting no mention of VPNs in new ban and suggesting Twitch disfavor streamer VPN support).

\textsuperscript{137} See Mindaugas Lu, Do Streamers Use a VPN in 2023? Here’s the Answer, CYBERWATERS (Apr. 15, 2023), https://cyberwaters.com/do-streamers-use-vpn/ [https://perma.cc/EV9Y-B9VD] (noting pros and cons of different VPNs); Manpearl, supra note 133 (detailing governmental concern over VPNs).


\textsuperscript{139} See id. (demonstrating many complications of gambling laws depending on location).

\textsuperscript{140} See supra notes 28-30, 33 and accompanying text (outlining history of alcohol regulation, state inconsistency, and solution); supra notes 38-40, 44 and accompanying text (discussing legislation on cigarette warning labels and concern for flashy ads catered to children).

\textsuperscript{141} See supra Part II (analyzing regulation of underage smoking and drinking, internet, social media, online gambling, and VPN complications).
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A. Holding Twitch to Higher Standards to Protect Youth Using Section 230

Social media platforms today have become industry giants, and Twitch—with an estimated daily active user count of 15 million people—is no exception. Despite criticisms of Twitch’s lackluster response to the current trend of underage gambling on its site, Twitch has nevertheless continued to find success by skirting the issue of underage-gambling regulation and by avoiding the enactment of stricter policies on gambling streams. Similar to pre-prohibition concerns that large businesses were profiting off of alcohol addiction and the need to take drunk driving more seriously to advance public safety, Congress must examine Twitch’s current conduct in order to protect American families, many of whom have already been victims of lax gambling regulation and gambling addiction. Instead of enacting new legislation, Congress can accomplish this goal by simply encouraging the FCC to ensure that Twitch abide by section 230(d) of the CDA.

Twitch’s competitors—YouTube and Facebook—prohibit online gambling streams that have not been reviewed, whereas Twitch displays gambling-related categories on its site with no requirement that it be properly labeled to help prevent younger viewers from watching. Currently, Twitch’s only policy

142. See Geyser, supra note 5 (noting numbers show Twitch one of major platforms).
143. See Fahey, supra note 1 (opining Twitch’s ban on referrals hardly affects problem); Taylor, supra note 117 (highlighting regulation not doing enough).
144. See supra notes 26, 31-33 and accompanying text (illustrating support for prohibition and MADD’s influence on drunk driving harm); supra notes 104-105 (highlighting youth affected by gambling).
145. See Communications Decency Act, 47 U.S.C. § 230 (listing Act’s language). Section 230(d) of the CDA states:

(d) Obligations of Interactive Computer Service. A provider of interactive computer service shall, at the time of entering an agreement with a customer for the provision of interactive computer service and in a manner deemed appropriate by the provider, notify such customer that parental control protections (such as computer hardware, software, or filtering services) are commercially available that may assist the customer in limiting access to material that is harmful to minors. Such notice shall identify, or provide the customer with access to information identifying, current providers of such protections.

Id. § 230(d). There is little litigation to define the meaning of this section, besides its use to try and hold Snapchat liable for not having parental controls. See Neuberger, supra note 55 (discussing claim). The Act’s language suggests that providers must notify users of available parental controls to assist in limiting minor’s access to harmful content, but it does not clarify whether the provider has to offer the service itself. See 47 U.S.C. § 230(d). Because the Act was written prior to Twitch’s existence, and because there are no outside services that could provide parental controls to Twitch’s site, the Act arguably reads that Twitch must offer its own parental controls and notify its users of their availability. See id. (providing language of Act); Ucciferri, supra note 5 (discussing lack of parental controls). The language “shall . . . notify that such parental control protection . . . are commercially available” [emphasis added] provides that Twitch is obligated to make users aware that such controls exist, thus, if there are none that are applicable to the service provider’s site, they must create their own. See § 230(d).

146. See supra note 5 (showing Twitch lacks parental controls and attempting to guide parents whose children are using Twitch); D’Anastasio, supra note 7 (highlighting Twitch’s terms, unlike YouTube and Facebook, do not ban gambling). Some streams might at least have “18+” in the title, but nothing else is done to ensure minor protection. D’Anastasio, supra note 7. In contrast, large sites like YouTube and Facebook have taken it
regarding minors on its site is that users must be over the age of thirteen; there are no specific restrictions on accounts depending on the age of the account holder like those that Myspace and others have implemented.\textsuperscript{147} Considering this lack of age-based restrictions—combined with the fact that Twitch does not have any parental controls or methods to block certain streams—Twitch is not complying with section 230(d), and Congress and the FCC can enforce section 230(d) obligations onto Twitch by, for example, requiring that the site enact household-to-household blocking software.\textsuperscript{148} One such remedy would be to allow parents to create a child lock on their child’s Twitch account that blocks certain streamers or content.\textsuperscript{149} Doing so would not raise First Amendment concerns because, as seen in \textit{Playboy} and \textit{Ashcroft}, filtering and blocking software that is available on a household-by-household basis is a less restrictive way to advance the substantial interest—preventing underage gambling.\textsuperscript{150} Thus, Twitch must provide filtering and blocking software based on section 230(d) of the CDA to remedy its blatant disregard for the law and the regulations that other sites of its caliber have enacted.\textsuperscript{151}

Twitch argues that section 230 gives its site federal immunity from liability for user activity on its site, but this argument has no merit due to Twitch’s failure to demonstrate good faith and abide by section 230(d), as evidenced by its non-existent safeguards.\textsuperscript{152} While Twitch’s recent changes have begun to address the promotion of illegal gambling, the updated policy still fails to provide basic

upon themselves to enact their own parental controls, supporting the conclusion that this is what is expected under section 230(d). \textit{See supra} note 145 (interpreting section 230(d)).

147. \textit{See Children on Twitch}, supra note 4 (showing Twitch’s child policy only requires age of users thirteen years and up); \textit{supra} note 74 and accompanying text (discussing Myspace and Facebook policy for younger users).

148. \textit{See Guide for Parents and Educators}, supra note 5 (showing no mention of available parental controls on Twitch). Twitch may argue that its site offers user controls, but these are not sufficient for young users. \textit{See id} (listing current tools Twitch offers). Twitch only allows users to filter chats and block other users—which does nothing to combat the content of streams—and only streamers have additional tools for requiring specific rules for their channel—which also does nothing to combat the content of streams unless a Twitch employee intervenes. \textit{See id} (providing solely blocking and filter chats as remedies for safety concerns).

149. \textit{See supra} note 65 and accompanying text (detailing recommendations passing First Amendment analysis).

150. \textit{See supra} notes 60, 63-65 and accompanying text (describing First Amendment litigation and Court’s discussion of less restrictive means in cases protecting youth). Preventing underage gambling is a substantial state interest because young people are susceptible to peer pressure and can easily get carried away by the advertised thrills of gambling. \textit{See supra} note 42 and accompanying text (targeting advertisements which exploit youth); \textit{supra} notes 103-104 (highlighting real stories of young, addicted gamblers). These interests are similar to those expressed by Americans during Prohibition—if nothing is done, big business interests are protected at the expense of American families struggling with poverty and addiction. \textit{See supra} note 26 and accompanying text (explaining support for Prohibition and concerns of poverty, addiction, and abuse). It is also important to note that children may still be able to escape parental controls using VPNs, so Twitch needs to do more than just add parental controls to combat the issue. \textit{See What Is a VPN and What Does It Hide from Parents?}, \textit{supra} note 130 (warning children can use VPN to avoid parental controls).

151. \textit{See D’Anastasio}, \textit{supra} note 7 (noting Twitch’s terms do not ban gambling and comparing Twitch to YouTube and Facebook).

152. \textit{See supra} note 145 (arguing Twitch required to provide more safeguards under CDA).
blocking mechanisms that the site should have in place. Should Twitch continue to walk amongst social media giants like YouTube, the site must expect to be held to similar standards of accountability, and Congress should ensure Twitch’s compliance with section 230(d).

B. Requiring Pre-Stream Warnings and Disclosures on Twitch and Using the School System to Educate Children and Parents

Streamers and journalists have widely deemed Twitch’s response to ban streamers from sharing referral codes or links to gambling websites and unlicensed crypto gambling as insufficient to curb the dangers of underage gambling. To effectively warn and shield young viewers—as the site claims it wants to do—Congress must require Twitch to imitate educational campaigns like the FDA’s response to smokers who began smoking before the age of eighteen. In today’s modern age, this educational “campaign” can simply entail implementing online warning signs every time a user opens or starts a gambling stream that clearly state: the dangers of gambling; why minors are prohibited from gambling; and the winnings made are not reflective of real life earnings. This will decrease the number of young viewers who are unaware of the inflated winnings and possibly devastating results of gambling and will remedy failures such as CS:GO Lotto’s failure to disclose bias and real-life chances of winning.

Congress can require these extra steps under section 230 because the United States has a vested interest in maximizing user control over what information internet users receive. The simple technology of automated warnings falls into this category because it allows users the freedom to ignore such warnings, while still providing the full information needed to make an informed decision. A federal automated warning requirement passes First Amendment scrutiny

153. See Twitch 2022 Policy, supra note 10 (providing updated policy without mention of blocking tools).
154. See YouTube, Community Guidelines, supra note 4 (stating YouTube’s extensive policy for online protection).
155. See Fahey, supra note 1 (labeling ban of referral links useless to stop encouragement of gambling); Taylor, supra note 117 (noting streamers find policy change banning promotions insufficient).
156. See supra notes 48-50 and accompanying text (discussing FDA’s “The Real Cost” campaign).
157. See supra note 38 and accompanying text (providing smoking legislation on warnings and labels).
158. See Fahey, supra note 1 (discussing danger of “flash[ing] huge winnings” to impressionable viewers); Confronting Adin Ross on Twitch Gambling, supra note 115 (challenging gambling streamer for receiving “ill-gotten” money); Kemp, supra note 115 (highlighting Hasan Piker’s argument about dangers of pushing gambling to young viewers); supra notes 103-104, 109 (displaying stories of minors addicted to gambling and CS:GO Lotto’s lack of disclosure).
159. See Communications Decency Act, 47 U.S.C. § 230(b)(3). The Act states that it is the United States’ policy to “encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services . . .”
160. See supra notes 55 and 58 (summarizing First Amendment jurisprudence and not impeding adult constitutional rights).
because the means are the least restrictive—mirroring past congressional acts that required additional labeling on tobacco products.\textsuperscript{161}

As an alternative remedy to curb online gambling, lawmakers should consider offering subsidies to states that provide gambling addiction curricula in schools—similar to the FDA’s “The Real Cost” campaign against smoking and the National Minimum Drinking Age Act that provided states with incentives to reduce drunk driving.\textsuperscript{162} Due to the internet’s established role in society, children are more and more likely to discover harmful content and therefore must be prepared with the knowledge to understand the consequences.\textsuperscript{163} Additionally, by including online gambling awareness in schools, parents will be given notice of this issue and have the requisite tools and understanding to protect their child in a way they see fit, like implementing blocking software on their child’s Twitch account.\textsuperscript{164}

\textbf{C. Limiting Gambling Advertisements and Recommendations to Underage Users Pursuant to the First Amendment}

In addition to increasing public awareness on Twitch about the truth of online gambling streams, Congress must also ban the harmful ads and recommendations to children within First Amendment constraints.\textsuperscript{165} Congress may impose restrictions on gambling advertisements—without running up against First Amendment protections—by using the blocking software required by section 230(d) to ensure that flashy advertisements do not cater to an underage population in an effort to get them to gamble.\textsuperscript{166} If allowed to continue to disregard regulating gambling promotions, Twitch may be in danger of promoting illegal conduct because one-fifth of Twitch’s audience is under the legal gambling age.\textsuperscript{167}

Currently, tobacco and alcohol products cannot be promoted on Twitch, and other prohibited ad content includes pornography; cannabis products; certain prohibited games; fireworks; and any product or service that violates applicable

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\item See supra notes 56-65 and accompanying text (discussing First Amendment litigation and Court’s analysis of less restrictive means in cases protecting youth); supra note 44 and accompanying text (considering Family Smoking Prevention and Tobacco Control Act).
\item See supra notes 48-50 and accompanying text (summarizing FDA “The Real Cost” campaign success in early prevention); supra notes 33-36 and accompanying text (evaluating National Minimum Drinking Age Act).
\item See supra note 2 and accompanying text (showing youth most likely to use internet); Romney, supra note 58, at 109 (highlighting rapid evolution of technology and adolescent internet use). About 95\% of children have access to a smart phone with internet capabilities, and the average teen is using a screen nearly 7.5 hours a day—not including school and homework use. Romney, supra note 58, at 109.
\item See supra note 5 (providing parental guidance to navigating online concerns).
\item See supra notes 41-42 and accompanying text (discussing necessity to limit harmful messages to children).
\item See United States v. Playboy Entm’t Group, 529 U.S. 803, 814-15 (2000) (arguing least restrictive means for First Amendment); supra note 145 (arguing section 230(d) requirement for blocking software).
\item See supra notes 7-8 (discussing young Twitch population).
\end{enumerate}
\end{footnotesize}
laws or any content that features, encourages, offers, or solicits illegal activity.\textsuperscript{168} While there is language suggesting that encouraging illegal activity is not allowed, gambling is not explicitly mentioned in Twitch’s advertising guidelines, and gambling advertisements are not per se illegal.\textsuperscript{169}

Simply requiring Twitch to prohibit the promotion of gambling to underage accounts would pass First Amendment muster and align with Twitch’s current policy of prohibiting alcohol and tobacco products and banning ad content that solicits illegal activity.\textsuperscript{170} This can be achieved by labeling gambling advertisements and streams as “18+” and implementing blocking software that does not allow those ads and streams to be seen or accessed by underage accounts that have applied the blocking software.\textsuperscript{171} The requirement to label gambling streams and promotions as “18+” is least restrictive in that it demands little energy on behalf of Twitch and its streamers, and it aligns with Twitch’s own policies to refrain from promoting illegal activity—not to mention, it aligns with U.S. law that states gambling is prohibited for minors.\textsuperscript{172}

Similar to the decisions in Lorillard, Playboy, and Ashcroft, limiting gambling promotion strictly to those with blocking software passes First Amendment muster because the restriction is narrowly tailored; the content is still available to those who are of age or who decide not to implement blocking software for their account.\textsuperscript{173} The content restriction advances a substantial interest to prevent underage gambling by only blocking content when the user has expressly noted that they are not of age to see it.\textsuperscript{174}

The above method is complementary to the requirement of pre-stream warnings and disclosures on all gambling streams.\textsuperscript{175} Similar to warning ads on tobacco products, pre-stream messages highlighting the dangers of gambling—especially underage gambling—will serve to educate the entirety of Twitch users, regardless of whether their accounts have blocking software or not.\textsuperscript{176} By providing warnings in all situations, Twitch can ensure that even if an underage user is

\textsuperscript{168} See Amazon Ads, supra note 8 (providing overview and prohibited content); List of Prohibited Games, supra note 8 (listing restricted games due to adult-only rating or violation of community guidelines).

\textsuperscript{169} See supra note 168 (showing prohibited content).

\textsuperscript{170} See Amazon Ads, supra note 8 (stating current policy prohibits promotion of alcohol, tobacco products, and illegal products and services). Currently, the advertising policy does not explicitly prohibit gambling, but it could fall under encouraging illegal activity. See id.

\textsuperscript{171} See supra note 142 (arguing Twitch required to provide more blocking and filtering software); supra note 38 (discussing tobacco labels least restrictive means to advance public health).

\textsuperscript{172} See Amazon Ads, supra note 8 (showing prohibition on encouraging illegal activity).

\textsuperscript{173} See supra notes 45-47 and accompanying text (revisiting Court discussion in Lorillard); supra notes 59-61 and accompanying text (analyzing Court discussion in Playboy); supra notes 62-64 and accompanying text (exploring Court discussion in Ashcroft).

\textsuperscript{174} See supra notes 59-62 and accompanying text (explaining least-restrictive requirement).

\textsuperscript{175} See supra Section III.B (arguing need to require warnings on streams).

\textsuperscript{176} See supra text accompanying notes 157-58 (articulating achieved objective with minimally restrictive methods).
able to access gambling streams, they are still on notice of its potential dangers in the least restrictive way possible.177

D. Expanding Section 230(d) and Looking to the Future

While online gambling is regulated by a combination of state and federal laws, the U.S. government generally leaves it up to states to make their own rules about gambling within their boundaries.178 U.S. gambling websites need a license to operate in individual states, but casinos in foreign countries may nonetheless operate in the United States without a license through VPNs.179 While the problem may not be completely solvable, the federal government should look to the success of the Uniform Drinking Age Act to consider expanding section 230(d) to create more uniform regulation amongst states.180 In addition, a streamlined national policy on online gambling practices could be the first step towards a global policy on online gambling.181

To do so, however, Congress must evaluate the downfall of UIGEA and reconsider the approach it took.182 The failure of UIGEA to limit the online gambling market by targeting financial institutions indicates that young Americans will continue to gamble online.183 Congress should instead learn from this by providing clear gambling guidelines in section 230, specifically delineating what is required and how these rules will further be enforced nationwide.184

Instead of targeting financial institutions, Congress should focus on the conduct of sites, such as Twitch, and expand section 230(d) to specifically address a minor’s access to harmful ads and recommendations.185 To accomplish this goal,

177. See supra text accompanying notes 157 and 158 (discussing minimally restrictive methods).
178. See Online Gambling in the United States in 2021, supra note 129 (explaining gambling laws and their differences state by state).
179. See D’Anastasio, supra note 7 (questioning legality and suggesting U.S. promoters possibly open to scrutiny); supra Section IIE (discussing online gambling regulation with complexity of VPNs).
180. See Main, supra note 21 (correlating lowering of drinking age with highway deaths among teenagers and youth adults); supra note 33 and accompanying text (providing support for remedy for dispersed legislation).
181. See KING, supra note 100, at 74 (describing similar concerns but in Australia).
182. See supra notes 96-97 and accompanying text (providing Act’s failure to prevent online gambling); Carlson, supra note 92, at 152-54 (noting Act’s three weaknesses).
183. See supra notes 96-97 and accompanying text (asserting Act’s failure).
184. See supra note 10 (discussing criticisms of Twitch policy change).
185. See Carlson, supra note 92, at 153-54 (emphasizing Act’s weakness regarding its target). Many intellectuals argue that it is time for section 230 to be updated, considering it was last updated in 1996—long before the advent of social media and its novel issues. See Smith & Van Alstyne, supra note 55 (arguing for section 230 revision). So much has changed since 1996, resulting in “desperately out of date” protections and many questions about how to handle current issues:

To what degree should Facebook be held accountable for the Capitol riots, much of the planning for which occurred on its platform? To what degree should Twitter be held accountable enabling terrorist recruiting? How much responsibility should Backpage and Pornhub bear for facilitating the sexual exploitation of children? What about other social-media platforms that have profited from the illicit sale of pharmaceuticals, assault weapons, and endangered wildlife? Section 230 just didn’t anticipate such questions.
Congress can expressly codify in section 230(d) the requirement to implement minimal warnings on all objectionable content where applicable, and block certain streams—like those that involve gambling—to users with blocking software. 186 By focusing on the conduct of creating warnings and blocking promotions to users with blocking software, Congress can implement clear regulations without any meaningful First Amendment pushback because the law does not target speech. 187 Further, any restriction on speech content is narrowly tailored to apply only to accounts who have implemented software to expressly state that they are not of age or they do not want to see that type of content. 188 Critics of section 230 often state that it is short and out of date. 189 It is time for Congress to implement additional guidelines in section 230 to account for modern issues like underage online gambling, and Congress can easily do so within the limits of the First Amendment. 190 Further, by doing so, the U.S. government can finally take a firm stance on online gambling regulation and be a pioneer in the global regulation of internet gambling. 191

IV. CONCLUSION

Twitch gambling streams raise multiple concerns about underage viewers being exposed to and harmed by online gambling. While this does not mean that Twitch should ban these streams outright, the site must be required to look more closely at its practice of allowing these streams. By holding Twitch to a higher standard, lawmakers will enact safeguards for underage gambling that are similar to what has historically been done to shield children from drinking and smoking. And while the internet age creates new issues that make this goal more complicated, there are solutions that can pass First Amendment muster.

Congress can and must enforce section 230(d) by requiring that Twitch offer adequate filtering and blocking software for its younger users. Additionally, Congress should articulate the need for proper warnings before users view potentially dangerous content in order to fully educate its user and allow them to make the decision for themselves. As seen with legislation regulating tobacco advertising and labeling, this serves a legitimate government interest and passes

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186. See supra Section III.C (discussing codified remedy for Twitch gambling streams).
187. See BRANNON, supra note 124 (noting conduct regulation allows less strict standard).
188. See supra text accompanying notes 173 and 174 (arguing content-based restriction not concerning).
189. See Smith & Van Alstyne, supra note 55 (advocating for section 230 revision); Kingsbury, supra note 55 (interviewing Joe Biden on revoking section 230).
190. See supra Sections II.B-II.C (articulating Twitch requirements and suggestions for section 230 passing First Amendment muster).
191. See, e.g., KING, supra note 100, at 73 (discussing similar concerns but in Australia); Smith, supra note 100 (showing British government’s need to address similar gambling concerns).
First Amendment scrutiny. Incentives for states to provide online-gambling curriculum in schools would further boost awareness to children and their parents, increasing the likelihood that parents implement blocking software on their children’s accounts to protect them. Similar to the incentives that led states to increase their drinking age, these incentives could see nationwide success. Finally, Congress must expand section 230 to codify these solutions and hopefully set the stage for global regulation of online gambling.