

Protecting Kids on Social Media

The better path for teens, parents, and states

Carl Szabo - Vice President & General Counsel NetChoice

What is the goal?

Is there harm? Not necessarily



Home Research Study People News & Events About Search

OII > NEWS & EVENTS > NEWS >

No evidence linking Facebook adoption and negative well-being: Oxford study



OXFORD INTERNET INSTITUTE

Published on 9 Aug 2023

The largest independent scientific study ever conducted investigating the spread of Facebook across the globe found no evidence that the social media platform's worldwide penetration is linked to widespread psychological harm.

Written by Andrew Przybylski and Matti Vuorre

UNIVERSITY OF CAMBRIDGE
Study at Cambridge About the University Research at Cambridge Quick links Search

Research / News / Scientists find that the impact of social media on wellbeing varies across adolescence

Research

Research home News Our people Spotlights About research Business and enterprise Research impact Animal research

Scientists find that the impact of social media on wellbeing varies across adolescence

Published 28 Mar 2022
Image
Boy using a smartph

Panicking About Your Kids' Phones? New Research Says Don't

A growing number of academics are challenging assumptions about the negative effects of social media and smartphones on children.

Share full article 137



RESEARCH TOPICS ALL PUBLICATIONS METHODS SHORT READS

Home > Research Topics > Internet & Technology > User Demographics > Teens & Tech

REPORT | NOVEMBER 16, 2022



Connection, Creativity and Drama: Teen Life on Social Media in 2022

Majorities of teens credit social media with strengthening their friendships and providing support while also noting the emotionally charged side of these platforms

BY MONICA ANDERSON, EMILY A. VOGELS, ANDREW PERRIN AND LEE RAINIE



(FatCamera/Getty Images)

Winners and Losers of Bans on Social Media

Winners

- Attorneys
- Plaintiffs Bar
- Companies looking to get notice of competitor's actions
- Data thieves

Losers

- Parents
- Teens
- At risk communities
- Privacy
- Rule of law
- Security

Little Bit of History

Why is COPPA 13?

- Originally supposed to be 16yrs
- Turns out it came down to marginalized communities:
 - worried about stopping gay teens from learning more about themselves
 - worried teens who wanted to keep a child or consider other options



Treating Everyone as a Child

- “business that provides an online service, product, or feature likely to be accessed by a child.”
“Child” is defined as under-18
- Government is getting between what a parent may want and their 17 year old
- Giving parents a false sense of security



Collecting MORE information?

Social media Bans demands MORE data collection from every user

- Need to verify the age of every user or treat everyone on the internet like an infant
- Identity authentication functionally eliminates anonymous online activity
- Harming many communities, such as minorities concerned about revealing their identity (e.g., LGBTQ), pregnant women seeking information about abortions, and whistleblowers.
- Just think about protestors who must tell the government who they are.



Loss of Anonymity

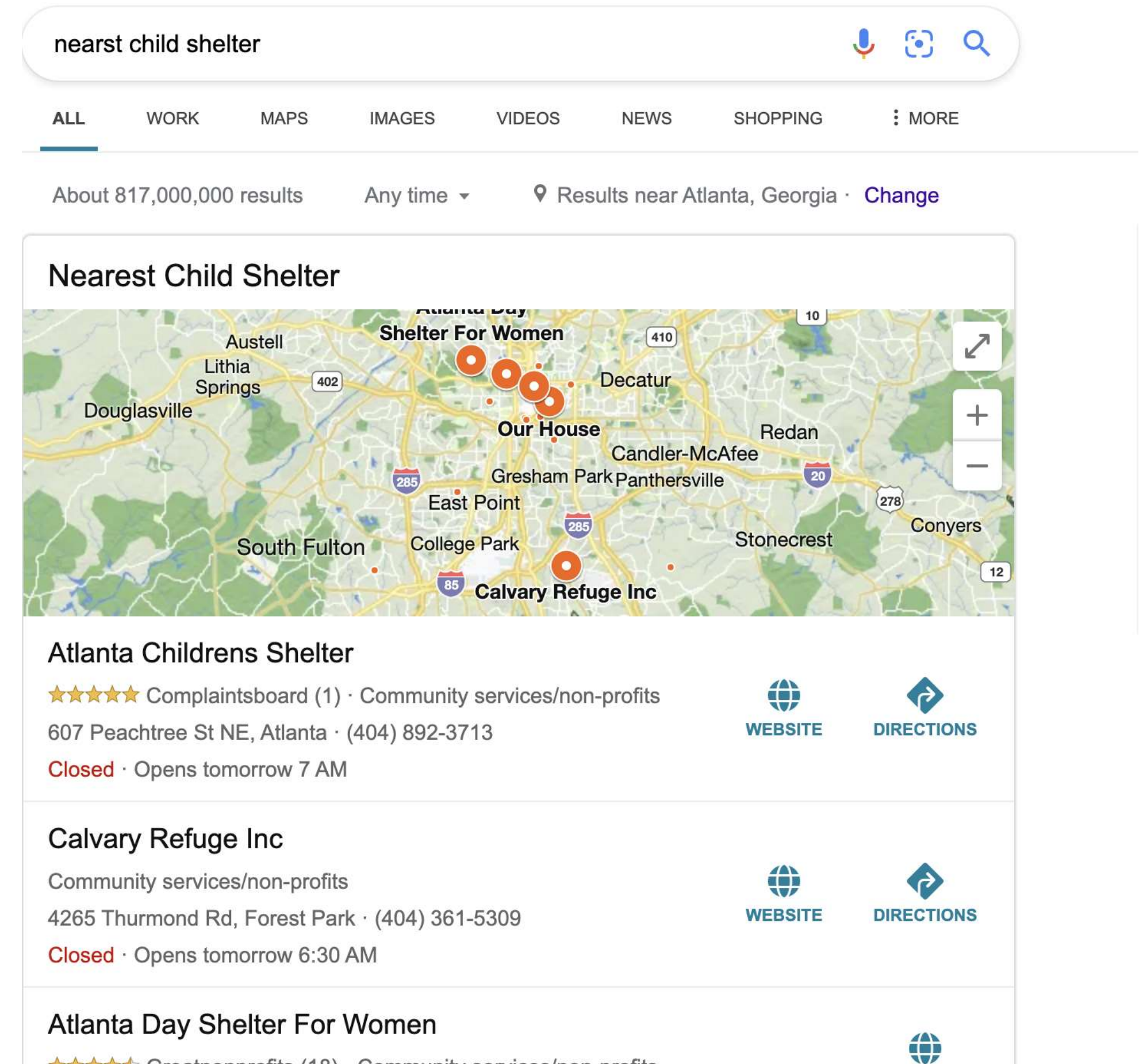
And a honey pot of PI

- Since the law has “might be” or “could be” for 17 year-olds, businesses must get confirmation of the user and their age
- This would require some yet unknown tools to verify the user is NOT under 18 - perhaps collecting a Driver's license and more information?



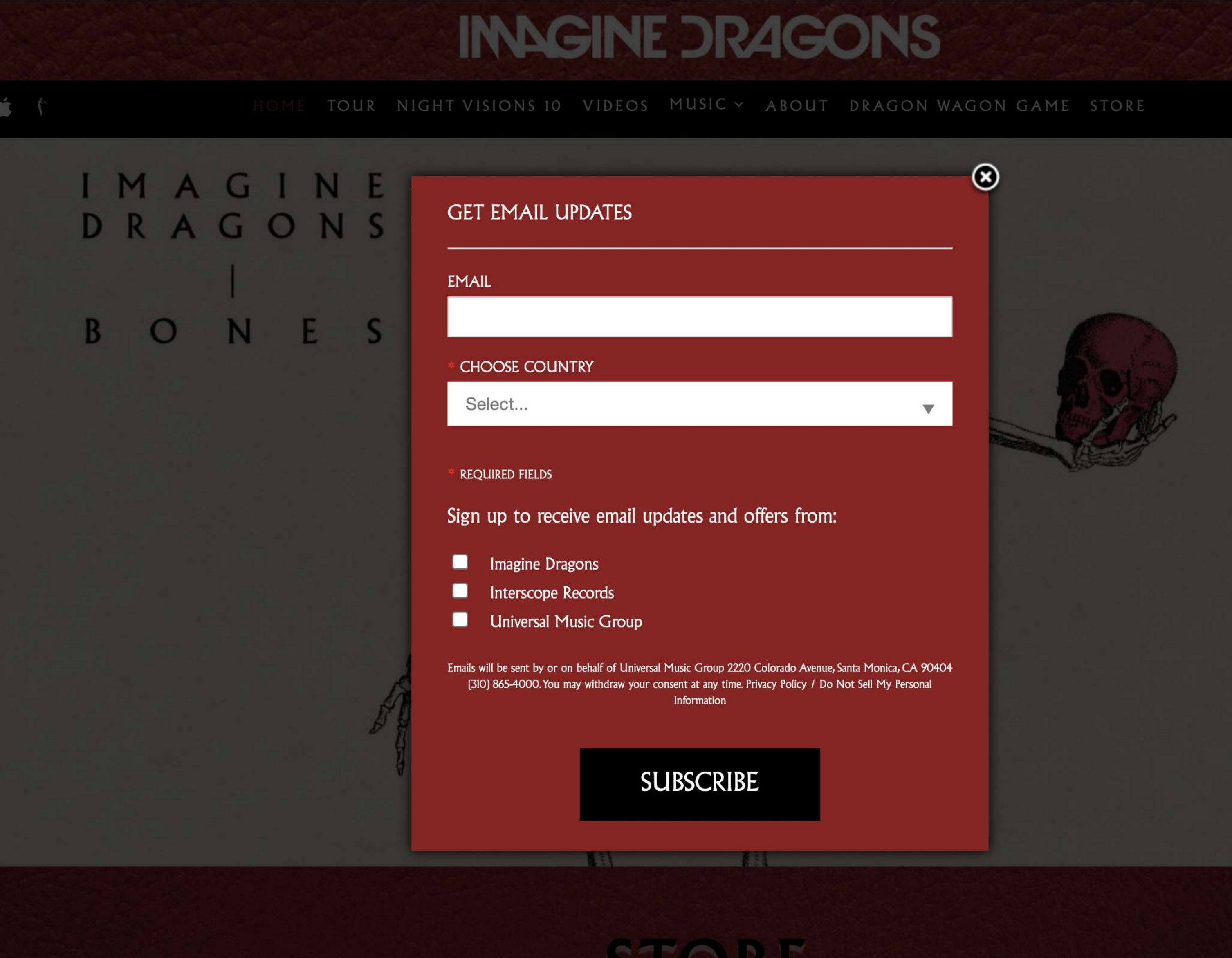
Test Case - Internet Search

- Collect, sell, or share any precise geolocation information of children by default unless the collection of that precise geolocation information is strictly necessary for the business to provide the service, product, or feature requested and then only for the limited time that the collection of precise geolocation information is necessary to provide the service, product, or feature.
- Directions to a halfway house
- “Phone number for Child Protective Services”



Test Case – ImagineDragons.com

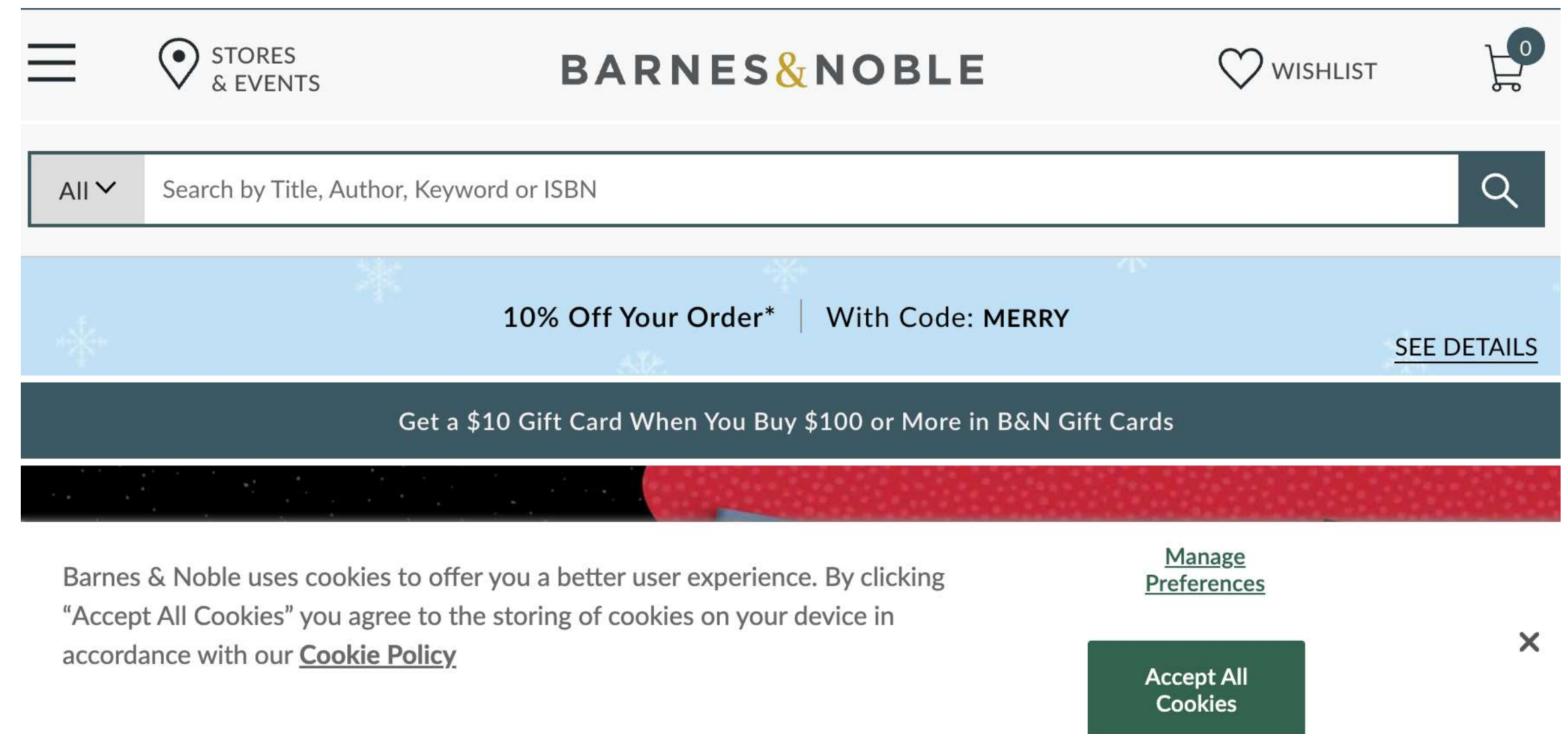
- Likely to be accessed by a 17 year-old?
- Can't have the Email popup
- Perhaps can't link to Twitter



The screenshot shows the Imagine Dragons website with a dark red header and a black navigation bar. The main content area is dark grey with the text "IMAGINE DRAGONS | BONES" in a light grey font. A red popup window titled "GET EMAIL UPDATES" is overlaid on the page. The popup contains an "EMAIL" input field, a "CHOOSE COUNTRY" dropdown menu with "Select..." as the current selection, and a "REQUIRED FIELDS" section. Below this, there is a "Sign up to receive email updates and offers from:" section with three checkboxes: "Imagine Dragons", "Interscope Records", and "Universal Music Group". At the bottom of the popup, there is a "SUBSCRIBE" button. The background of the website is dark with a skull illustration on the right side.

Test Case - Barnes & Noble

- Collect, sell, share, or retain any personal information that is not necessary to provide an online service...unless the business can demonstrate a compelling reason that ... retaining ... is in the best interests of children
- Retain past book purchases...or make recommendations based on past views or orders



Illegal

- Preempted by Children's Online Privacy Protection Act ("COPPA"), 15 U.S.C. §§ 6501
- Violates First Amendment
- Violates Due Process



COPPA collision

- Preempted by Children’s Online Privacy Protection Act (“COPPA”), 15 U.S.C. §§ 6501
- COPPA expressly preempts state regulations “inconsistent with the treatment of those activities or actions under this” framework. *Id.* at § 6502(d).
- *ACLU v. Johnson*, 194 F.3d 1149, 1162 (10th Cir. 1999) (invalidating New Mexico online child pornography law partly because it “subjects the use of the Internet to inconsistent regulations”);
- *Am. Libraries Ass'n v. Pataki*, 969 F. Supp. 160, 181 (S.D.N.Y. 1997) (New York online sexual exploitation law “unconstitutionally subjects interstate use of the internet to inconsistent regulations”);

First Amendment Requirements

- Compelling governmental interest
 - What is the exact problem we are trying to solve?
- Narrowly tailored
 - Definitions unclear
 - Why these hours?
 - Why not non-profits?
 - Why just these businesses?
- Least restrictive means
 - Educational alternatives are just one example
 - Parental empowerment



First Amendment Problems

- Don't know what is or is illegal *Smith v. People of the State of California*, 361 U.S. 147, 153 (1959) (holding invalid an ordinance prohibiting booksellers from possessing “obscene or indecent” writings because it would “impose a severe limitation on the public’s access to constitutionally protected matter”). Applying *Smith*, courts have held that “any statute that chills the exercise of First Amendment rights must contain a knowledge element.” *Am.-Arab Anti-Discrimination Comm. v. City of Dearborn*, 418 F.3d 600, 611 (6th Cir. 2005).
- Prohibits covered businesses from exercising their own discretion as to which viewpoints they deem worth sharing with their audiences. *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974) *Reno v. ACLU*, 521 U.S. 844, 870, 874 (1997).
- Minors do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Tinker v Des Moines Ind.*, 393 U.S. 503, 506 (1969)

Content, Speaker, and Viewpoint discrimination

Trifecta of 1A violations

- Content discrimination
 - Allows certain types of content to be posted but not others
- Speaker based discrimination
 - Treats the same speech on social media differently than other mediums like TV or libraries
- Viewpoint discrimination
 - Certain types of social media platforms are okay like online shopping and interactive gaming

Violates Due Process

Void for Vagueness

- There are colorable arguments that parts of AB 2273 are unconstitutionally vague, as they do not define key terms or requirements and leave regulators with unbridled discretion to impose massive penalties on businesses.
- The void-for-vagueness doctrine “guarantees that ordinary people have ‘fair notice’ of the conduct a statute proscribes” and “guards against arbitrary or discriminatory law enforcement by insisting that a statute provide standards to govern the actions of police officers, prosecutors, juries, and judges.”
Sessions v. Dimaya, 138 S. Ct. 1204, 1212 (2018); see also *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972)
- Fails to make clear what is/is not “addiction”
 - Doesn’t even mirror what’s in the DSM or other Psychiatric Associations
- Doesn’t define clearly what is “harmful to minors”

“so vaguely and broadly written that it will almost certainly lead to widespread use of invasive age verification techniques that subject children (and everyone else) to more surveillance while claiming to protect their privacy”

Evan Greer

Fight for the Future

Better Path

- Help teens and parents navigate this, don't try to take over
- Educational Campaign
- Genius Bar for Parents
- Virginia & Florida laws
 - Requires education in schools on social media



Carl Szabo | NetChoice
Vice President & General Counsel
cszabo@netchoice.org
202-420-7485