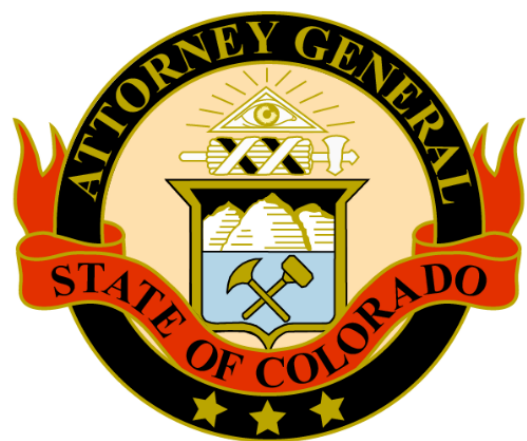


**SOCIAL MEDIA, FENTANYL & ILLEGAL DRUG SALES:
A REPORT FROM THE COLORADO DEPARTMENT OF LAW**



§ 24-31-116, C.R.S. (2022)

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Foreword by Colorado Attorney General Phil Weiser

Today, Coloradans live their lives increasingly online. That creates exciting opportunities—access to individuals and information like never before—and considerable challenges, too.

As innovative online services and platforms weave their way into nearly every aspect of our lives, they also threaten to fuel a dangerous killer—the increasing ease of access to dangerous substances, including fentanyl.

Fentanyl overdose (including fentanyl poisonings¹) is now the leading cause of preventable death among adults under 45, outpacing suicide, gun violence and car accidents. On average, an American dies of fentanyl-related causes every seven minutes. Our youth appear to be especially susceptible to fentanyl poisoning, as unsuspecting teens are uniquely vulnerable to taking what turn out to be counterfeit prescription pills containing lethal doses of fentanyl. And our state’s overdose rates appear to track national trends—in 2021, at least 1,881 Coloradans died of a drug overdose, roughly half of whom died of fentanyl.

Unfortunately, the rising influence of social media and the escalating fentanyl crisis are painfully interconnected. Due to their ubiquity, convenience, and lack of regulation, social media platforms have become a major venue for drug distribution. Where once a teen might have had to seek out a street dealer, hassle friends, or learn to navigate the dark web to access illicit drugs, young people can now locate drug dealers using their smartphones—with the relative ease of ordering food delivery or calling a ride-share service.

The availability of illicit substances, particularly fentanyl, on the Internet is deeply troubling. This scourge, however, is also solvable through collaboration among actors in state and federal government as well as with companies, particularly social media platforms, through which illicit substances readily flow in staggering volume. This report identifies and recommends potential solutions, including (i) the development of best practices for social media companies around illicit drug activity on their platforms; (ii) supporting important federal legislation regulating social media companies; and (iii) new Colorado legislation focused on protecting consumers.

¹ The official statistics fail to distinguish between fentanyl overdoses and fentanyl poisonings, classifying all deaths by fentanyl as “overdoses.” However, as this report explains, many fentanyl-caused deaths result from poisoning where an individual is given what is believed to be an authentic prescription pill—say, a Xanax or Adderall—but is actually a counterfeit pill containing fentanyl.

In Colorado, we have taken important actions to create new forms of regulation to oversee major Internet platforms. Over the last few years, we have enacted legislation to promote public safety by ending the practice of anonymous sales of obviously stolen goods online as well as to protect Coloradans' data privacy. We have also opened and led nationwide investigations addressing competition on the Internet and the mental health harms to teenagers attributable to social media.

We are committed to confronting the painful and deadly challenges of fentanyl distribution in Colorado. That means we will use all tools at our disposal to address this crisis, including pressing the federal government to address the flow of such deadly drugs into our community. As we do so, we will build partnerships with those committed to saving lives and protecting public safety, including the many governmental entities working with our department, to invest the over \$740 million we received from taking on the pharmaceutical companies who fueled the opioid crisis we are now confronting.

As we do this important work, we will remain mindful of those parents who have lost children to fentanyl poisoning and fentanyl overdoses. Each loss of life is a tragedy with traumatic reverberations. And those parents have asked our office to look into the impact of fentanyl distribution via social media platforms. This report reflects that inquiry and calls for new action that will save lives.



Philip J. Weiser

Attorney General, State of Colorado

Executive Summary

This report was written in accordance with section 24-31-116, C.R.S. (2022), which directs the Colorado Department of Law (DOL) to “study the use of the internet, including retail, payment, and social media platforms, for the purpose of trafficking fentanyl, fentanyl analogs or compounds thereof, synthetic opiates, and counterfeit prescription drugs.”² This report and its findings focus primarily on social media platforms as major venues for illicit drug activity, in large part because these platforms present challenges more capable of redress by legislation and policy interventions than most other sectors of the Internet.

In connection with this report, the DOL gathered information from a variety of sources, including government reports, academic publications, public health data, and recent news articles. Also, as directed by statute, the DOL consulted with the United States Attorney for the District of Colorado, whose staff provided valuable insights into the activities of online drug sellers. The DOL further spoke with numerous community stakeholders, including:

- Representatives of Meta, Snapchat, and TikTok
- Nonprofit advocacy organizations
- Federal, state, and local law enforcement officers
- Federal and state prosecutors
- Public health experts
- Substance abuse recovery groups
- Harm reduction advocates
- Youth leaders
- Former drug users and sellers
- Affected friends and family members of overdose victims

This report highlights how the online market for illicit substances, in its present form, arises from the convergence of two major sea changes in American society within the last 30 years. The first of these is the evolution of the Internet, and particularly the rise of social media platforms. In a relatively short span, online platforms transformed from a scrappy entertainment novelty in the tech world to an integral part of nearly every aspect of our lives—crucial for work, education, and social and cultural interactions. Social media has morphed into a sprawling ecosystem, populated in large part by millions of younger users, that remains underregulated.

² C.R.S. § 24-31-116, the statute outlining the parameters of this report, has been reproduced in full in Appendix A.

The second of these major social changes is the progression of the opioid epidemic—starting with rampant over-prescription of powerful painkillers in the late 1990s, to the rise of heroin in 2010 when opioid prescriptions became subject to tighter controls, to the recent upsurge of fentanyl. **Today, the chief driver of addiction and overdose deaths in our country is undeniably fentanyl—a highly potent, synthetic opioid that is 50 times more potent than heroin and has become the leading cause of preventable death among Americans aged 18–45.** Fentanyl can be diverted from legitimate medical settings (“pharmaceutical” fentanyl), manufactured in dangerous, unregulated laboratory settings (“illicit” fentanyl), or synthesized into novel fentanyl-related substances that circumvent drug scheduling laws (“fentanyl analogs”). Due to its low price and high potency, some users seek out fentanyl intentionally, either by itself or cut into other illicit substances like cocaine, heroin, and methamphetamine. Unfortunately, other users experiment with counterfeit prescription pills unaware that they contain fentanyl in toxic amounts, resulting in death by fentanyl poisoning. **Today, as many as 6 in 10 counterfeit prescription pills contain a potentially lethal dose of fentanyl.** This epidemic has posed significant challenges for public health officials and law enforcement alike.

The simultaneous rise of social media and the worsening of our present fentanyl crisis share painful interconnections. The availability of fentanyl and other illicit substances online is staggering. Given limited access to the underlying data of online services and platforms, the exact scope of the online illicit substance market is impossible to precisely quantify. Yet, the research in this report suggests that drug sellers and end users turn to the Internet as a primary vehicle for drug transactions, and to social media platforms in particular. Sellers and users alike have come to prefer the convenience and discretion afforded by transacting over social media, and they rely on the companies’ inability (or, in some cases, apparent unwillingness) to prevent drug activity on their platforms.

Drug sellers use creative, and often coded, methods of marketing and selling drugs on Internet platforms. Using special slang terms, emojis, and methods of redirecting end users to drug content (e.g., hyperlinks and QR codes), drug sellers can advertise and offer illicit substances for sale in ways designed to maximize their reach to online customers while evading platforms’ content moderation tools.

Drug sellers also rely on certain Internet platform designs and features to facilitate drug sales. The same built-in features that platforms use to enable legitimate

commercial activity and social interactions between users—such as encrypted messaging, ephemeral content, and anonymous communications—are also exploited by drug sellers to market and sell illicit substances. Some platforms are premised on these types of features (e.g., Snapchat’s self-destructing “Snaps,” Kik’s “public groups” messaging feature, and publicly available user profiles on dating apps like Tinder, Bumble, Hinge, and Grindr), and research from this report suggests these platforms have gained significant notoriety as spaces preferred by drug sellers and end users.

Online access to illicit substances is a “whole-of-Internet” challenge. Often drug sellers are active on multiple social media platforms, Internet sites, and dark web accounts simultaneously, and they break up their transactions across multiple platforms (e.g., drug sellers advertising products on Instagram, but listing their WhatsApp or Snapchat handles for inquiries) in order to evade detection by platforms and law enforcement. Any attempt to address the challenge posed by the online illicit substance market therefore must be considered broadly, but careful attention should be given to how certain types of platforms present particular risks.

While most social media companies reviewed have adopted policies banning the use of their platforms to promote, advertise, buy, or sell illicit substances, and have made some efforts to work with law enforcement to address the issue, **companies’ responses to drug activity on their platforms generally have been both uneven in their application and limited in effectiveness.** In the absence of effective regulation and oversight, social media companies have enjoyed broad discretion to decide:

- What kinds of drug-related content or conduct are prohibited on their platforms
- Which content moderation and enforcement tools to use in response to drug activity
- What kinds of data they will publish about drug activity on their platforms
- The extent to which they will support law enforcement investigations

And frustratingly, while the available published research and anecdotal evidence both demonstrate that social media platforms are a major source of drug activity, robust research on the exact prevalence of online illicit substance transactions remains scarce, largely because social media platforms do not provide transparent access to the relevant data.

At the same time, drug sellers remain technologically agile—constantly developing creative, stealthy marketing and selling tactics online, and exploiting built-in features of social

media platforms to facilitate drug transactions. **Accordingly, gaining access to illicit drugs via social media—including dangerous substances containing fentanyl—is nearly as convenient as using one’s phone to order a pizza or call an Uber.** For example, one community member was able to demonstrate to the report’s authors just how easy it was to find drugs on the Kik messaging app. Using Kik’s “public groups” feature to search for innocuous terms like “Denver” and “Boulder” returned dozens of search results for groups dedicated to drug buying and selling. Connecting with a local dealer took mere minutes.

The online illicit substance market is constantly evolving. Continuous surveillance and research are needed to characterize trends in product availability and identify new strategies used by drug sellers to attract end users and evade content moderation. In an effort to begin to address the issues of the online illicit substance market, **federal and state lawmakers have proposed and enacted legislation employing various innovative strategies to combat the online illicit substance market.** Among other things, these include:

- Laws promoting increased access to platform data for research purposes
- Laws creating limits or carveouts to Section 230’s liability protections
- Laws requiring platforms to establish policies prohibiting drug activity and/or to engage in transparency reporting
- Laws establishing special protections for minors online
- Laws defining new criminal offenses or increasing penalties for online drug activity

Other closely related, non-legislative strategies—including civil litigation, governmental investigations, and foreign regulatory frameworks—also offer valuable lessons about creative ways to hold social media platforms accountable for the harms they cause.

Yet, much more needs to be done to curtail the market for illicit substances online. **This report identifies a series of recommendations for potential policy and legislative interventions designed to combat the online illicit substance market.** Briefly, these include:

Executive Summary

- Social media platforms should adopt a uniform, robust set of best practices to prevent and respond to illicit drug activity.
- Colorado should consider legislation similar to California's A.B. 587 and A.B. 1628, requiring social media platforms to clearly disclose their policies on drug activity and to publish regular transparency reports providing data on their enforcement activities.
- Social media companies should enter into a memorandum of understanding (MOU) with the DOL that sets forth their commitment to implementing identified best practices for addressing illicit substances activity on their platforms, subject to penalties for failure to follow the terms of the MOU.
- More resources should be provided to support existing law enforcement efforts to combat drug distribution online.
- Access to substance abuse treatment and harm reduction resources specifically targeted for teens and young adults should be more readily available.
- There should be increased focus on investing in Internet and social media literacy for parents and caregivers.
- A federal agency should be empowered to oversee social media platforms.
- Federal legislation requiring greater access to social media platforms' data transparency should be enacted.

Acknowledgments

The Department of Law thanks the following individuals,³ agencies, organizations, and companies for their contributions to this report. By submitting to in-depth interviews, providing key data, facilitating introductions to relevant stakeholders, and freely sharing their experiences, expertise, and feedback, they gave the Department of Law critical insights into the online illicit substance ecosystem. We are grateful for their collaboration.

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³ Those who agreed to be interviewed for this report did so based on their own expertise, observations, and experiences in their respective fields. Their statements and opinions do not necessarily represent the positions of their employing agencies or organizations.

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Colorado Opioid Abatement Conference

Colorado Opioid Abatement Council
August 15–16, 2022

NAGTRI Fentanyl Training

National Association of Attorneys General
October 18–19, 2022

Youth Fentanyl Awareness Campaign Briefing

Ad Council
October 27, 2022

Snapchat Law Enforcement Summit

Snap, Inc.
December 7, 2022

Fentanyl Virtual Townhall

Department of Law
January 19, 2023

The Myths & Facts of Fentanyl

Parent Engagement Network (PEN)
Parent and Peer Recovery Consulting
January 19, 2023

Day at the Capitol

Colorado Student Government Council
January 27, 2023

The Internet's Midlife Crisis

Silicon Flatirons Center
February 5–6, 2023

Youth Wellbeing Forum

Rise Above Colorado
Boys & Girls Clubs in Colorado
February 7, 2023

“Clearnet” – also known as “open Internet”; includes sites publicly accessible and viewable on the Internet

“Dark web” – also known as the “Deep Web” or “Darknet”; includes content and sites that are not indexed and therefore cannot be found by general online search functions

“Drug sellers” – those who advertise and sell illicit substances via the Internet

“End users” – those who buy illicit substances via the Internet for personal consumption

“Fentanyl” – a highly potent synthetic opioid that can be prescribed to manage severe pain (“pharmaceutical fentanyl”) or trafficked for recreational and non-medical use (“illicit fentanyl”); for more details, *see* section I.A, *infra*

“Fentanyl analogs” – synthetic opioids that closely mimic fentanyl in both chemical structure and potency; for more details, *see* section I.A, *infra*

“Illicit substances” – fentanyl, opioids, controlled substances, and other narcotics or dangerous drugs

“Internet” (or “online”) – refers collectively to social media platforms, social messaging platforms, websites (both clear web and dark web), and payment apps/gateways

“Social media platform” – websites and apps through which users create personal profiles and interact with online communities and networks to share information, ideas, messages, and other content (e.g., photos or videos)

“Social messaging platform” – websites and apps through which users communicate directly, either via one-on-one messaging or in groups

“Substance abuse” – a pattern of using a drug that causes significant problems or distress (i.e., in connection with an addiction)

“Substance misuse” – the use of a prescription drug outside of its intended purpose (i.e., for recreational or non-medical purposes)

“Opioids” – a class of highly potent drugs used to manage moderate to severe pain; “opioids” may refer either to “natural opioids” extracted from the opium poppy plant (*Papaver somniferum L.*) or to “synthetic opioids” (defined below)

“Overdose” – injury or death resulting from using more than the safe or recommended amount of a drug

“Poisoning” – injury or death resulting from inadvertent exposure to a drug

“Precursor chemicals” – the compounds, chemicals, solvents, and raw materials used in the manufacture of a drug

“Synthetic opioids” – opioids synthesized in a laboratory setting that act on the same brain receptors as natural opioids; some synthetic opioids, such as fentanyl and methadone, are approved for medical use, while others, (i.e., fentanyl analogs), are illicitly manufactured in an effort to avoid criminal penalties associated with the use, possession, or distribution of closely related, but banned substances

Clarification on Terminology Usage in This Report

While the terms “overdose” and “poisoning” are both forms of injury associated with using a drug in toxic amounts, in this report:

- “**Overdose**” refers to an overdose resulting from intentional substance misuse.
- “**Poisoning**” refers to an overdose resulting from unintentional, unsuspecting substance use.

While the terms “adulterated,” “contaminated,” “laced with,” or “spiked with” all generally relate to a drug containing another unwanted substance (i.e., fentanyl), in this report:

- “**Adulterated**” or “**contaminated**” refers to a substance unintentionally added to a drug by incidental contact, inadequate safety measures, and/or lack of quality control.
- “**Laced with**” or “**spiked with**” refers to a substance intentionally added to a drug to alter its potency or effects.

While the terms “drug distribution” and “drug trafficking” are often used interchangeably to imply the movement of illicit substances for sale, in this report:

- “**Drug distribution**” refers to the sale of smaller quantities of drugs for personal use.
- “**Drug trafficking**” refers to the movement of large, wholesale quantities of drugs across state lines or national borders.

This report was created in accordance with C.R.S. § 24-31-116 and provides information on the use of the Internet, including retail, messaging, payment, and social media platforms, for the purpose of trafficking fentanyl, fentanyl analogs or compounds thereof, synthetic opiates, and counterfeit prescription drugs.

Online access to illicit substances—which includes opioids, synthetic opioids, illicit drugs and narcotics, and other controlled substances—is a well-established public health threat and can contribute to substance misuse, substance abuse, injury, or death. Other risks include facilitating initiation and progression of substance use disorder; providing direct access to substances that are medically unnecessary, illegal, or illegitimate; and exposing the public to dangerous counterfeit prescription drugs. This critical public health challenge has been accelerated due to the unprecedented fentanyl crisis, which has fueled an ongoing, substantial increase in drug-related overdoses and poisonings in the United States.

As evidenced by published research, investigative journalism, and reports from regulators, law enforcement, and technology companies, many different Internet technologies facilitate illicit substance sales.^{4, 5, 6} These Internet sources include websites, social media or social messaging platforms, chatrooms, and the dark web (see below). These platforms offer convenience, anonymity, and communication features that enable drug sellers and end users to interact online and directly transact to buy and sell illicit substances.⁷

⁴ See generally Tim K. Mackey, et al., *Twitter-Based Detection of Illegal Online Sale of Prescription Opioid*, 107 AM. J. PUB. HEALTH 1910–15 (2017).

⁵ See generally Tim K. Mackey, *Opioids and the Internet: Convergence of Technology and Policy to Address the Illicit Online Sales of Opioids*, 11 HEALTH SERVS. INSIGHTS 1–6 (2018).

⁶ See generally Jiawei Li, et al., *A Machine Learning Approach for the Detection and Characterization of Illicit Digital Drug Dealers on Instagram: Model Evaluation Study*, 21 J. MED. INTERNET RSCH. 1–13 (2019).

⁷ See generally Charlotte Moureaud, et al., *Purchase of prescription medicines via social media: A survey-based study of prevalence, risk perceptions, and motivations*, 125 J. HEALTH POL. 1421–1429 (2021) (finding that many online users now turn to the Internet and social media platforms to source both prescription drugs and illicit drugs, and that prescription opioids are at the top of the list of drugs most frequently misused for non-medical purposes).

Type of internet-based technologies	Examples of platforms
Web-based platforms	<ul style="list-style-type: none"> • Search engines (e.g., Google, Bing, Baidu) • Online pharmacies • Marketing affiliate sites • Internet service providers • Domain registrars / registries • Online payment apps (e.g., PayPal, Venmo, Cash App, Zelle)
Social networking platforms	<ul style="list-style-type: none"> • Facebook • Instagram • Twitter • Tumblr • YouTube • BeReal • Wink • Pinterest • Reddit • Quora • LinkedIn • TikTok • Gas
Social messaging platforms	<ul style="list-style-type: none"> • Kik • Wickr • Telegram • Discord • Confide • Yik Yak • Facebook Messenger • Snapchat • WhatsApp • Signal • WeChat • GroupMe • Whisper
Dating applications	<ul style="list-style-type: none"> • eHarmony • OkCupid • Match • Tinder • Bumble • Hinge • Grindr
E-commerce marketplaces	<ul style="list-style-type: none"> • Amazon • Craigslist • Alibaba (group of platforms) • Etsy • eBay • Facebook Marketplace
Dark web	<ul style="list-style-type: none"> • Specific Dark Web marketplaces accessible on the Tor browser • Clearnet sites / posts that redirect to dark web sites

Moreover, the ubiquity of smartphone ownership⁸ and social media platform usage⁹ among Americans (and particularly youth)¹⁰ is a likely contributor to the rise of the online illicit substance market in recent years.

The availability of illicit substances on the Internet is well documented, and countless news reports have highlighted personal tragedies of poisoning deaths involving children and young adults who unknowingly purchased fake prescription drugs laced with fentanyl on social media platforms. The victims of fentanyl poisoning highlighted in this report are merely a small collection of some of the tragic stories of individuals and families devastated by this challenge.

⁸ See *Mobile Fact Sheet*, Pew Research Center (Apr. 7, 2021), available at <https://www.pewresearch.org/internet/fact-sheet/mobile/>.

⁹ See *Social Media Fact Sheet*, Pew Research Center (Apr. 7, 2021), available at <https://www.pewresearch.org/internet/fact-sheet/social-media/>.

¹⁰ See generally *The Common Sense Census Media Use by Tweens and Teens*, Common Sense Media (2021), available at https://www.common sense media.org/sites/default/files/research/report/8-18-census-integrated-report-final-web_0.pdf.

Impact Stories

Kade Webb. “Shortly after Kade Webb, 20, collapsed and died in a bathroom at a Safeway Market in Roseville, Calif., in December, the police opened his phone and went straight to his social media apps. There, they found exactly what they feared.

Mr. Webb, a laid-back snowboarder and skateboarder who, with the imminent birth of his first child, had become despondent over his pandemic-dimmed finances, bought Percocet, a prescription opioid, through a dealer on Snapchat. It turned out to be spiked with a lethal amount of fentanyl. . . .”

Zachariah Plunk. “At around 1:30 a.m. on Aug 15, 2020, Zachariah Plunk, 17, a star high school football player from Mesa, Ariz., contacted a dealer through Snapchat, seeking a Percocet.

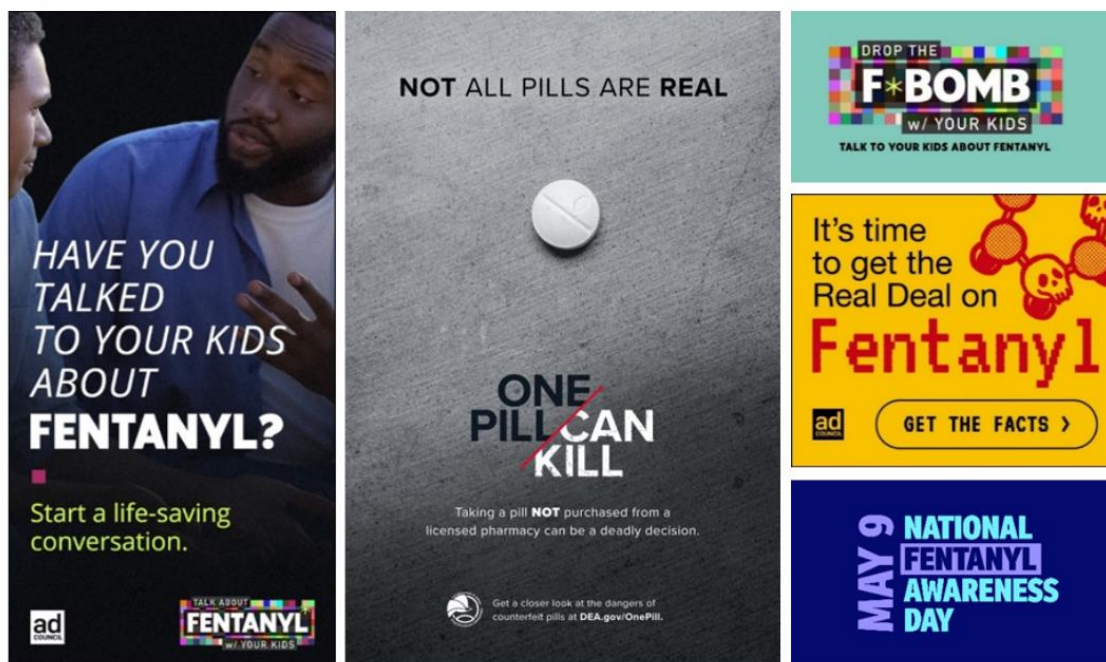
As footage from the family’s home security camera would reveal, the dealer dropped off drugs around 3 a.m. Zach went outside, swallowed a pill and fell to the curb. At 5 a.m., a 15-year-old neighbor found him dead.

To Wendy Plunk, Zach’s mother, the ease with which dealers can evade detection is particularly devastating. The man who sold her son the fatal pills remains on Snapchat, she said, adding, ‘I keep an eye on the guy. Every time he gets kicked off, he changes his name a bit and gets on again, with the same picture.’ . . .”

Charlie Ternan. “By the time the kid goes to college, his friends all have prescription bottles in their backpacks—they’re used to sharing pills,’ Ed Ternan said. ‘The drug traffickers know that.’ In May 2020, his 22-year-old son, Charlie, three weeks away from college graduation, bought what he thought was a Percocet for back pain from a drug dealer he connected with on Snapchat. Thirty minutes after ingestion, Charlie, 6-foot-2 and 235 pounds, was dead from fentanyl poisoning.”

—Jan Hoffman, Fentanyl Tainted Pills Bought on Social Media Cause Youth Drug Deaths to Soar, *New York Times* (May 19, 2022), available at <https://www.nytimes.com/2022/05/19/health/pills-fentanyl-social-media.html>.

These tragedies have catalyzed the formation of numerous family and victim advocacy groups, heightened public service announcements and campaigns (e.g., National Fentanyl Awareness Day, the DEA’s “One Pill Can Kill” campaign, and Ad Council’s “Real Deal on Fentanyl” and “Drop the F*Bomb” campaigns), and increased calls for legislative and policy action to curb illegal sales and hold Internet and social media platforms accountable.



Images above: (left) a website banner from the Ad Council’s “Drop the F Bomb” campaign, which encourages parents and caregivers to talk to their children about the dangers of fentanyl; (center) a poster from the DEA’s “One Pill Can Kill” campaign, warning that prescription pills obtained from unauthorized sources may in fact be counterfeit; (right, from top to bottom) social media promotional graphics from the Ad Council’s “Drop the F* Bomb” and “Real Deal on Fentanyl” campaigns, as well as a promotion for National Fentanyl Awareness Day (scheduled this year on May 9, 2023).*

Despite clear public health threats, data describing the scope, magnitude, and specific risk characteristics associated with online illicit substance access remains incomplete, hampering the ability for stakeholders to develop evidence-based interventions and policy solutions to address this national public health emergency.

Nevertheless, for purposes of this report, the DOL gathered information from a variety of sources, including government reports, academic publications, public health data, and recent news articles. Also, as directed by statute, the DOL consulted with the United States Attorney for the District of Colorado, whose staff provided valuable insights into the activities of online drug sellers. The DOL further spoke with numerous community stakeholders, including:

- Representatives of Meta, Snapchat, and TikTok
- Nonprofit advocacy organizations
- Federal, state, and local law enforcement officers
- Federal and state prosecutors
- Public health experts
- Substance abuse recovery groups
- Harm reduction advocates
- Youth leaders
- Former drug users and sellers
- Affected friends and family members of overdose victims

This report proceeds as follows:

- First, the report provides a broad overview of fentanyl and its profound impacts on public health and public safety.
- Second, it provides a detailed examination of the availability and accessibility of illicit substances (particularly fentanyl) on the Internet, with a special focus on social media platforms.¹¹
- Third, it assesses existing social media platform policies and practices designed to prevent or address illicit substance online access.
- Fourth, it provides a summary of federal and state laws that may impact availability and regulation of illicit substance transactions on social media platforms.
- Fifth and finally, the report concludes with recommendations for a set of best practices for social media companies to prevent and address drug activity on their platforms, suggested state-level policy actions, and federal legislative actions that can help address this challenge.

¹¹ While this report addresses the use of the Internet broadly for illicit substance transactions, it focuses primarily on the use of social media platforms for these transactions, as they are a major venue for these transactions and present challenges most readily addressable by legislative and policy reforms. The dark web is another significant source of illicit substances transactions. However, information on dark web transactions is extremely difficult, if not impossible to obtain. Additionally, given the structure of the dark web, regulatory and policy interventions to disrupt illicit substance transactions are not readily identifiable.

Impact Stories

Josiah Velasquez. “Josiah ‘Joe’ Velasquez was just beginning to make friends. But after years of being bullied and lonely, the crowd he chose to hang with turned out to be a tough fit for a shy 15 year old who could not say no. Last May, Velasquez joined his new friends at the 64th and Wadsworth Dairy Queen. Left alone in the lobby, he collapsed from the stool he was sitting on after swallowing a wedge of a fentanyl pill. His mother, Christina Luna, is still angry that it took 15 minutes before anyone noticed. ‘Not the people working behind the counter. Not his new so-called friends,’ she said.”

Aviyana Montoya Casias. “Aviyana Montoya Casias was just 1 year old when she died on the second day of 2022. Brighton police found the child unresponsive after they were called to her home where her parents were dealing fentanyl disguised as Oxycodone pills, according to a 17th Judicial District grand jury indictment.” Alonzo Montoya, 32, and Nicole Casias, 31, are now facing six criminal charges, including child abuse resulting in death.

James Weatherbee II. “James Weatherbee II, of north Colorado Springs, drowned Jan. 23 after ingesting fentanyl and meth. . . . Weatherbee had struggled with addiction, but for the last several years [his mother] said he had been ‘living a healthy life.’ She said he was an assistant manager at a Wendy’s, and was always good about sending money. He saw his sons regularly.”

Shondella Silas. “Shondella Silas was full of life. ‘She had so many more years to give. It was cut short,’ said her niece, Janille Mills. Silas was 44 years old when she was found dead in a Cortez hotel March 4, a victim of a fentanyl overdose. She was with two friends who also died. Assistant Cortez Police Chief Andy Brock said late that night officers responded to a complaint from a manager of the National Nine Inn about a loud disturbance coming from a single room. The three people inside were already dead. ‘One was slumped over in a chair and two were lying on the floor,’ said Brock. ‘It was as if they went to sleep.’”

Tyler Collins. “Tyler Anthony Collins loved cars, his niece Skylar and cooking. The 24 year old died of acute fentanyl toxicity in La Junta on Feb. 17, 2022. His autopsy showed that he also had marijuana and alcohol in his system. His mom, Candace Giltner Collins, who is a nurse, found him in his room in the home they shared. He was face down, his glasses smashed. When the paramedics came, it took seven men to place Tyler on a gurney and walk him down the stairs. ‘I was shattered. I remember throwing myself over him, in my front yard, while the fire department chaplain prayed over him with us.” Giltner Collins said her son was on track to start nursing school and had big ideas. ‘He dreamed of owning his own food truck,’ she said.”

Jacqueline Rivas. “Days after Jacqueline Rivas of Grand Junction was found dead of a fentanyl overdose, her mom found the Mother’s Day card she had meant to send in her backpack. It was stamped and signed. ‘Mom you’re as brave as you are beautiful. Any time I talk about you everyone knows I’m talking about my hero.’ Rivas, the mother of three, was found May 23 in a doorway between two rooms in her home ‘as if she was trying to get help,’ said her mom, Valerie Valdez Decker.”

Alexandra Elizabeth Turner. “Alexandra Elizabeth Turner lived a life as charmed as her name. . . . The stunning 31-year-old was an interior designer and financial analyst who had started her own company just six months before she died. On Aug. 7, after a night of partying, Alexandra ingested a fatal dose of fentanyl in a \$1,200 per night room at Aspen’s Little Nell. When she fell unconscious, her roommate called their friends in a panic and started posting on social media—instead of dialing 911.”

—Carol McKinley, Colorado’s 462 faces of fentanyl, Colorado Gazette (Oct. 28, 2022), available at https://gazette.com/premium/colorados-462-faces-of-fentanyl/article_2f17af12-56e9-11ed-b614-07d45ef87fd6.html.

I. Background on Fentanyl, and Its Impact on Public Health and Public Safety

Main Takeaways

- Fentanyl is a powerful synthetic opioid that takes several forms. “Pharmaceutical” fentanyl is prescribed in legitimate medical settings but can be diverted for non-medical or recreational use. “Illicit” fentanyl is manufactured in unregulated (and often unsafe) settings and can be used either by itself or cut into other illicit substances like cocaine, heroin, and methamphetamine. Chemically similar versions of fentanyl—“fentanyl analogs”—are also synthesized in an effort to circumvent drug scheduling laws.
- Worryingly, fentanyl is also a common ingredient in counterfeit “pressed pills.” These pills are made to resemble authentic prescription pills like Oxycodone, Xanax, Percocet, and Adderall. Users may take pressed pills unaware that they contain lethal amounts of fentanyl, resulting in death by fentanyl poisoning. The DEA has reported that as many as 6 in 10 counterfeit pills contain a potentially lethal dose of fentanyl.
- Fentanyl has emerged as a major public health threat. Given its high potency, fentanyl is lethal even in tiny amounts. The CDC has reported that 107,622 Americans died of a drug overdose in 2021; roughly two-thirds of those deaths were caused by fentanyl. Alarmingly, fentanyl is now the leading cause of death for Americans aged 18–45. And Colorado’s overdose numbers appear to track national trends.
- Fentanyl also poses significant challenges for law enforcement. Mexican cartels import fentanyl and its precursor chemicals from China, then process, package, and traffic fentanyl and fentanyl-laced substances into the United States through ports of entry at the southern border. This trafficking activity has proven extremely difficult to detect and disrupt. Similarly, law enforcement faces significant hurdles when investigating drug activity online. The built-in features of some social media platforms, the tactics employed by drug sellers, and the platforms’ uneven levels of cooperation with law enforcement all frustrate investigative efforts.

A. Fentanyl, Fentanyl Analogs, Synthetic Opioids, and Counterfeit Prescription Drugs

Fentanyl¹² is a highly potent, synthetic opioid originally introduced in the 1960s for surgical and cancer patients. It is roughly 50 times more potent than heroin, 100 times more potent than morphine and, similar to other opioids, produces an intense “high” in the user along with feelings of relaxation, euphoria, pain relief, and sedation.¹³ Fentanyl can also cause numerous side effects, including confusion, drowsiness, dizziness, nausea and vomiting, slowed breathing, reduced blood pressure, fainting, seizures, and death.¹⁴

Generally speaking, fentanyl exists in two main types—pharmaceutical and illicit. Prescription-grade, “pharmaceutical” fentanyl is used to manage severe pain (typically from advanced cancer or terminal illness), and is administered in the form of tablets, sprays, injections, skin patches, or lollipop-like lozenges. While pharmaceutical fentanyl has a long-standing history of legitimate medical use, it can also be diverted for recreational and non-medical use.

By contrast, “illicit” fentanyl is generally manufactured in clandestine, unregulated laboratories overseas and trafficked into the United States in the form of powder or pills.¹⁵ Fentanyl is used recreationally for its strong heroin-like effect, and it is often cut into other street drugs such as heroin, cocaine, and methamphetamine—with or without the user’s knowledge. Fentanyl is also frequently distributed in the form of counterfeit “pressed pills” that closely resemble authentic prescription pills such as Xanax, Percocet, Adderall, and especially Oxycodone (AKA “M30s” or “blues”). Some users may unwittingly consume pressed pills containing dangerous amounts of fentanyl, believing that they are taking authentic, diverted prescription

¹² See generally Julie Vitkovskaya & Courtney Han, *Why is fentanyl so dangerous?*, WASHINGTON POST (Dec. 12, 2022), available at <https://www.washingtonpost.com/nation/2022/11/03/fentanyl-opioid-epidemic/>; *Opioid Basics – Fentanyl*, U.S. Centers for Disease Control and Prevention (last updated June 1, 2022), available at <https://www.cdc.gov/opioids/basics/fentanyl.html>.

¹³ *Drug Fact Sheet – Fentanyl*, U.S. Drug Enforcement Administration (Oct. 2022), available at <https://www.dea.gov/sites/default/files/2022-12/Fentanyl%202022%20Drug%20Fact%20Sheet.pdf>.

¹⁴ *Id.*

¹⁵ For additional details, see Section I.C, *infra*.

pills. Other users often deliberately seek out pressed pills, understanding (and desiring) that the counterfeit prescription pills they buy contain fentanyl. Recently, the U.S. Drug Enforcement Administration (DEA) announced that in 2022, roughly six out of every ten ostensibly prescription pills seized from drug sellers and lab-tested in fact contained a potentially lethal dose of fentanyl.



Images above, courtesy of DEA: (left) authentic Oxycodone tablets on top, vs. counterfeit “M30s” containing fentanyl on bottom; (center) authentic Adderall tablets on top, vs. counterfeit tablets containing methamphetamine on bottom; (right) authentic, white-colored Xanax tablets vs. counterfeit, yellow-colored tablets containing fentanyl.



Images above, courtesy of DEA: (left) an unauthorized pill press machine; (center) a high volume of counterfeit Xanax tablets produced by an unauthorized pill press machine; (right) metal “M30” stamps used in pill press machines to make counterfeit Oxycodone tablets.

Within the last year, fentanyl has also been detected in the United States in the form of brightly colored “rainbow fentanyl” pills. Rainbow fentanyl became a source of great public concern after the DEA announced that the pills’ bright coloring, along with the street nicknames “Sweet Tarts” and “Skittles,” was a deliberate marketing campaign by cartels and traffickers to make the pills “look like candy to children and young people.”^{16, 17} However, it is somewhat unlikely that rainbow fentanyl emerged as a strategy to attract and hook children on fentanyl. Much more likely, rainbow fentanyl was a variation on a branding tactic commonly used by dealers—i.e., giving their pills unique colors, stamps, shapes, and other markers meant to signal to users that the pills contain fentanyl, and “to distinguish their product from other products on the street.”^{18, 19}



Images above, courtesy of DEA: rainbow fentanyl pills, dyed with bright colors and stamped with “M30” as a likely branding signal to users.

¹⁶ Press Release, *DEA warns of brightly-colored fentanyl used to target young Americans*, U.S. Drug Enforcement Administration (Aug. 30, 2022), available at <https://www.dea.gov/press-releases/2022/08/30/dea-warns-brightly-colored-fentanyl-used-target-young-americans>.

¹⁷ Kate Snow & Safia Samee Ali, *Young people are being targeted with brightly colored ‘rainbow fentanyl,’ government drug agency warns*, NBC NEWS (Sept. 26, 2022), available at <https://www.nbcnews.com/news/us-news/young-people-are-targeted-brightly-colored-rainbow-fentanyl-government-rcna49503>.

¹⁸ Brian Mann, *Is ‘rainbow fentanyl’ a threat to your kids this Halloween? Experts say no*, NPR (Oct. 11, 2022), available at <https://www.npr.org/2022/10/11/1127168627/is-rainbow-fentanyl-a-threat-to-your-kids-this-halloween-experts-say-no>.

¹⁹ Paul Farhi, *The media and the Halloween ‘rainbow fentanyl’ scare*, WASHINGTON POST (Oct. 26, 2022), available at <https://www.washingtonpost.com/media/2022/10/26/rainbow-fentanyl-halloween-scare/>.

Meanwhile, a third, closely related category of fentanyl includes fentanyl analogs (FAs), such as acetylfentanyl, furanylfentanyl, and carfentanil, which are very similar in chemical structure to fentanyl. Illicit manufacturing of FAs poses a major challenge to law enforcement.²⁰ Chemists can slightly alter FAs to make versions of fentanyl that are just as potent (if not more), but are not specifically enumerated in the federal Controlled Substances Act's drug-scheduling scheme (and thus, not technically banned by law). As federal officials race to identify and ban FAs, chemists continue to develop new ones.

Given its extreme potency, fentanyl in all these forms poses a high risk of death by overdose or poisoning. Just two milligrams of fentanyl—a tiny amount that fits on the tip of a pencil—is considered a lethal dose for an adult of average size. And carfentanil—the most potent FA detected in the United States, and commonly used as a large animal tranquilizer—is approximately 100 times more potent than fentanyl and is potentially lethal at just one-fifth of a milligram. Under the federal Controlled Substances Act, the DEA lists fentanyl as a Schedule II narcotic (i.e., drugs with a high potential for abuse, but with currently accepted medical uses subject to strict controls), it and lists most FAs as Schedule I (i.e., drugs with a high potential for abuse, and with no currently accepted medical use in the U.S.).



Images above: (left, courtesy of DEA) A potentially fatal dose of fentanyl resting on the tip of a pencil; (right, courtesy of New Hampshire State Forensic Lab) vials containing lethal amounts of fentanyl and carfentanil, compared with a lethal amount of heroin.

²⁰ See 'Why is fentanyl so dangerous?', *supra* n.12.

Fentanyl MythBusters

Robert Valuck, PhD, RPh, Executive Director, Colorado Consortium for Prescription Drug Abuse Prevention

Myth 1: “If fentanyl is in the room, and I touch it or inhale it, I’m going to overdose and die.” That is not true. Fentanyl is not a highly volatile compound. So it doesn’t sublime (become vapor). It’s really hard to get fentanyl into your body unless you directly snort it into your nose, directly drink it or inject it with a needle. Because otherwise it just doesn’t go through the skin very well.

Myth 2: “Being near fentanyl causes serious effects.” After finding out they are near fentanyl, some people report being anxious or feeling like their heart rate increases, that a panic attack is occurring or that they are going to pass out. This is a myth. What happened was they hyperventilated, and they passed out from anxiety about fentanyl, not from fentanyl. We call it the nocebo effect. People don’t realize how strong the power of suggestion is: your expectation of a good thing or your expectation of a bad thing, and then it actually manifests.

Myth 3: “I will get hurt trying to render aid in an overdose situation.” Naloxone is very effective and can save a life. Don’t let the presence of fentanyl keep you from helping a friend, family member or stranger with an overdose. We can’t afford that. We had over 2,000 people in Colorado die last year from drug overdoses. More than half of them involved fentanyl. We can’t afford to have people be afraid to render aid for a reason that is unwarranted.

Myth 4: “Fentanyl is everywhere, and every pill is laced, even cannabis.” Not true. We also haven’t seen anything yet in vaping. It would be really hard to vape fentanyl because the boiling point to get it into vaporizing is about 875 degrees, and most of the vape pens heat to about 400 or 425 degrees, maximum. Your lungs would be severely damaged at those temperatures. As for cannabis, there’s no marketing advantage with some of these prevalence myths.

—Matthew Hastings, Fentanyl and Counterfeit Prescription Drugs: Facts and Myths, CU Anschutz Medical Campus (Nov. 1, 2022), available at <https://news.cuanschutz.edu/news-stories/fentanyl-and-counterfeit-prescription-drugs-facts-and-myths>.

B. Public Health Challenges Posed by Fentanyl, Including for Youth

Broadly speaking, the United States experienced three major “waves” of opioid deaths.²¹ The first wave, beginning in the late 1990s, involved users overdosing on prescription opioids like OxyContin and Vicodin. The second wave began in 2010, when users turned to heroin after national crackdowns on opioid over-prescribing dramatically reduced the supply of pills available for diversion. And the third wave began in 2013, when fentanyl overdoses increased dramatically. In 2016, fentanyl first surpassed heroin as the opioid most responsible for opioid deaths in the U.S.²² Today, despite clear overdose and poisoning risks, user motivations for seeking out opioids through unauthorized or illicit channels vary widely—e.g., users who are chemically dependent on opioids and/or fentanyl; users struggling with untreated or undertreated mental health ailments; or users seeking prescription medications for health conditions but high costs and social stigmas prevent them from obtaining access through legitimate channels.

Most recently, national data from U.S. Centers for Disease Control and Prevention’s (CDC) National Center for Health Statistics indicated that an estimated 107,622 Americans died of a drug overdose in 2021 (the latest year for which such data is available).²³ Alarming, synthetic opioids like fentanyl were responsible for more than two-thirds of these overdose deaths. That same year, fentanyl killed more

²¹ Steven Rich, et al., *How the opioid epidemic evolved*, WASHINGTON POST (Dec. 23, 2019), available at https://www.washingtonpost.com/graphics/2019/investigations/opioid-pills-overdose-analysis/?itid=lk_interstitial_manual_66.

²² See generally Holly Hedegaard, et al., *Drugs Most Frequently Involved in Drug Overdose Deaths: United States, 2011–2016*, 67 NAT’L VITAL STATS. REPS. 1–13 (Dec. 12, 2018), available at https://www.cdc.gov/nchs/data/nvsr/nvsr67/nvsr67_09-508.pdf.

²³ See generally *U.S. overdose deaths in 2021 increased half as much as in 2020—but are still up 15%*, NAT’L CTR. FOR HEALTH STATS. (May 11, 2022), available at https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2022/202205.htm; *Provisional Drug Overdose Death Counts*, NAT’L CTR. FOR HEALTH STATS. (last visited Jan. 11, 2023), available at <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>.

Americans than were killed in Vietnam, Afghanistan, and Iraq military operations combined.²⁴

And currently, fentanyl is the leading cause of preventable death for Americans ages 18 to 45—surpassing suicide, gun violence, and car accidents^{25, 26}—and, on average, one person dies of a fentanyl overdose in the United States every seven minutes.²⁷ In addition, drug-related overdose death has disproportionately

²⁴ Norah O'Donnell, *DEA targets social media as teen deaths from fentanyl triple since 2019*, CBS NEWS (Dec. 15, 2022), available at <https://www.cbsnews.com/video/dea-targets-social-media-as-teen-deaths-from-fentanyl-triple-since-2019/#x>.

²⁵ See Nick Miroff, et al., *Cause of death: Washington faltered as fentanyl gripped America*, WASHINGTON POST (Dec. 12, 2022), available at https://www.washingtonpost.com/investigations/interactive/2022/dea-fentanyl-failure/?itid=lk_inline_manual_1.

²⁶ Robin Abcarian, *Column: The end of 'harmless' recreational drug experimentation*, LOS ANGELES TIMES (Dec. 4, 2022), available at <https://www.latimes.com/opinion/story/2022-12-04/fentanyl-deaths-overdose-drug-experimentation>.

²⁷ See Courtney Kan, et al., *Overview: From Mexican labs to U.S. streets, a lethal pipeline*, WASHINGTON POST (Dec. 15, 2022), available at https://www.washingtonpost.com/investigations/interactive/2022/fentanyl-crisis-mexico-cartel/?itid=hp-top-table-main_p001_f001.

impacted certain ethnic minority groups in recent years, thereby dramatically exacerbating health disparities.^{28, 29, 30, 31}

Colorado's recent overdose statistics appear to track national trends. Data from the Colorado Department of Public Health and Environment indicate that at least 1,881 Coloradans died of a drug overdose in 2021—912 of whom died of fentanyl.^{32, 33}

Youth appear to be particularly vulnerable to fentanyl poisoning—i.e., as unsuspecting users experimenting with what turn out to be counterfeit prescription pills.³⁴ Between 2019 and 2021, the number of adolescent deaths from fentanyl

²⁸ See *Provisional Drug Overdose Death Counts – United States*, U.S. CENTERS FOR DISEASE CONTROL AND PREVENTION, available at <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>. While the highest absolute numbers of overdose deaths occurred in among non-Hispanic white Americans, in 2020, overall drug overdose death rates were highest among non-Hispanic American Indian/Alaska Native individuals (41.9 per 100,000), followed by non-Hispanic Black individuals (35.4 per 100,000), non-Hispanic white individuals (32.8 per 100,000), Hispanics (17.6) and non-Hispanic Asian/Other Pacific Islander (5.5) populations. From 2015-2020, drug overdose deaths rates increased dramatically among non-Hispanic Black American (190%) and non-Hispanic American Indian/Alaska Native (98%) populations compared to overdose death rates among non-Hispanic white people (55%).

²⁹ Deidre McPhillips, *Drug Overdose Death Rates Highest among American Indian People and Middle-Age Black Men, Study Shows*, CNN (Sept. 20, 2022), available at <https://www.cnn.com/2022/09/20/health/drug-overdose-death-rates-racial-ethnic-groups/index.html>.

³⁰ Beth Han, et al., *Racial and Ethnic Disparities in Drug Overdose Deaths in the US During the COVID-19 Pandemic*, 5 JAMA NETWORK OPEN e2232314, (Sept. 20, 2022), available at <https://doi.org/10.1001/jamanetworkopen.2022.32314>.

³¹ Rhitu Chatterjee, *U.S. death toll from drug overdoses is rising fast among Black and Indigenous people*, NPR (July 20, 2022), available at <https://www.npr.org/sections/health-shots/2022/07/20/1112331075/u-s-death-toll-from-drug-overdoses-is-rising-fast-among-black-and-indigenous-peo>.

³² See *Colorado Drug Overdose Data Dashboard*, CDPHE STATE UNINTENTIONAL DRUG OVERDOSE REPORTING SYSTEM, available at <https://cdphe.colorado.gov/center-for-health-and-environmental-data/registries-and-vital-statistics/state-unintentional-drug>.

³³ See Elise Schmelzer, *Colorado's rate of drug overdose deaths nearly doubles in 4-year period, fueled by fentanyl and meth*, DENVER POST (Aug. 29, 2022), available at <https://www.denverpost.com/2022/08/29/colorado-drug-overdose-deaths-2021/>.

³⁴ See 'Fentanyl tainted pills bought on social media,' "Introduction" Section, *supra*.

more than tripled in the U.S. (from 253 to 884).^{35, 36} And during the same period, fentanyl poisonings among American children under 14 years old increased faster than that among any other age group.³⁷

C. Public Safety, Law Enforcement, and National Security Challenges Posed by Fentanyl

Fentanyl poses unique challenges for law enforcement along at least two major fronts—(i) the international trafficking of both fentanyl and its chemical precursors, and (ii) the time-sensitive, highly technical investigation of illicit online substance sales, particularly those involving counterfeit, fentanyl-laced pills.

The international trade and trafficking of fentanyl and its precursor chemicals is an important risk factor of the fentanyl crisis. As a synthetic opioid, fentanyl requires precursor chemicals to manufacture, and illicit manufacturing from overseas clandestine, Mexican cartel-controlled³⁸ laboratories has reportedly increased. Based on unclassified and publicly available reports issued by the DEA, the flow of fentanyl and its precursor chemicals into the United States through ports of entry

³⁵ See generally Joseph Friedman, et al., *Trends in drug overdose deaths among US adolescents, January 2010 to June 2021*, 327 JAMA NETWORK OPEN 1398–1400 (Apr. 12, 2022), available at <https://jamanetwork.com/journals/jama/fullarticle/2790949>.

³⁶ See Spencer Kimball, *Drug overdose deaths among teenagers surged during the pandemic driven by illicit fentanyl*, CNBC (Dec. 19, 2022), available at <https://www.cnbc.com/2022/12/19/fentanyl-drug-overdose-deaths-surged-among-teenagers-during-pandemic.html>.

³⁷ *The Changing Faces of Fentanyl Deaths*, FAMILIES AGAINST FENTANYL (Jan. 12, 2023), available at <https://www.familiesagainstfentanyl.org/research/fentanyl-by-age-and-cause-report>.

³⁸ See Kevin Sieff, *A DEA agent tracked the source of fentanyl in Mormon Country—a Mexican cartel*, WASHINGTON POST (Dec. 13, 2022), available at <https://www.washingtonpost.com/investigations/interactive/2022/utah-fentanyl-crisis-mexico-cartel/>.

often originates from international sources,^{39, 40, 41, 42, 43} primarily Mexico (for fentanyl powder and pills) and China (for precursor chemicals), though India⁴⁴ may also be emerging as a source.

Preventing the trafficking of illicit fentanyl into the United States has created special challenges⁴⁵ for law enforcement and national security officials, in part because:

- Fentanyl is much cheaper and more abundant than its opioid predecessors like heroin, largely because it can be synthesized in days from readily available chemicals rather than having to be cultivated and extracted from natural plant sources over several months.
- Fentanyl is odorless and more compact than other illicit substances (especially in pill and powder form), making it much easier to transport and smuggle in high volumes.
- Federal agency efforts to detect illicit substances at our nation's official border ports of entry—far and away the most active channels for drug

³⁹ *DEA Intelligence Report: Fentanyl Flow to the United States*, U.S. DRUG ENFORCEMENT ADMINISTRATION (Jan. 2020), available at <https://www.dea.gov/documents/2020/2020-03/2020-03-06/fentanyl-flow-united-states>.

⁴⁰ See 'Overview: From Mexican labs to U.S. streets,' *supra* n.27.

⁴¹ *China Primer: Illicit Fentanyl and China's Role*, CONG. RSCH. SERV. (Dec. 8, 2022), available at <https://crsreports.congress.gov/product/pdf/IF/IF10890>.

⁴² Statement of Paul E. Knierim, *Stopping the Poison Pills: Combatting the Trafficking of Illegal Fentanyl from China*, U.S. SENATE CAUCUS ON INT'L NARCOTICS CONTROL (presented Oct. 2, 2018), available at

https://www.justice.gov/sites/default/files/testimonies/witnesses/attachments/2018/10/09/stopping_the_poison_pills_combatting_the_trafficking_of_illegal_fentanyl_from_china.pdf.

⁴³ Lisa Desjardins, *Senate hearing on fentanyl outlines international supply chain that brings drugs to U.S.*, PBS (Feb. 15, 2023), available at <https://www.pbs.org/newshour/show/senate-hearing-on-fentanyl-outlines-international-supply-chain-that-brings-drug-to-u-s>.

⁴⁴ See Natalie Tecimer, *The Dangerous Opioid from India*, CTR. FOR STRATEGIC & INT'L STUDS. (Jan. 19, 2018), available at <https://www.csis.org/npfp/dangerous-opioid-india>.

⁴⁵ Brian Mann, *Politicians say they'll stop fentanyl smugglers. Experts say new drug war won't work.*, NPR (Feb. 21, 2023), available at <https://www.npr.org/2023/02/21/1158300583/fentanyl-smuggling-border-mexico-overdose-drug-war>.

importation—have suffered from slow response, severe under-resourcing, and lack of effective strategies specific to fentanyl.⁴⁶

- Other countries' efforts at controlling domestic cartel activity (esp. the Sinaloa and Jalisco New Generation cartels in Mexico) have largely failed, and international law enforcement cooperation efforts to address such activity have been severely limited in recent years.^{47, 48}

Regulating the international manufacturing and importation of precursor chemicals used to manufacture fentanyl has posed its own set of complex challenges,⁴⁹ including:

- Many chemical precursors have other legitimate manufacturing, medical, and research uses, rendering their importations for illicit vs. innocuous purposes difficult to distinguish.
- Other countries may have different methods of drug scheduling (i.e., determining which chemicals constitute drugs or substances that have a potential for abuse, and subjecting them to legal regulation or prohibition), such that novel precursor chemicals may either be scheduled differently or not at all.⁵⁰

⁴⁶ See 'Cause of death: Washington faltered,' *supra* n.25.

⁴⁷ See Mary Beth Sheridan & Nick Miroff, *They call him the Eagle: How the U.S. lost a key ally in Mexico as fentanyl took off*, WASHINGTON POST (Dec. 12, 2022), available at <https://www.washingtonpost.com/investigations/interactive/2022/the-eagle-mexico-drug-cartels/>.

⁴⁸ See Rebecca Morin, *Biden is in Mexico City. His first action? Asking the Mexican president for help with fentanyl*, USA TODAY (Jan. 9, 2023), available at <https://www.usatoday.com/story/news/politics/2023/01/09/biden-mexico-lopez-obrador-immigration-fentanyl/11013731002/>.

⁴⁹ See Mary Beth Sheridan, et al., *Inside the daunting hunt for the ingredients of fentanyl and meth*, WASHINGTON POST (Dec. 13, 2022), available at https://www.washingtonpost.com/investigations/interactive/2022/precursor-chemicals-fentanyl-meth/?itid=lk_inline_enhanced_storyend-morestories_4.

⁵⁰ The International Narcotics Control Board (INCB)—an independent expert body that monitors government compliance with international drug control treaties—lists fentanyl-related substances with no currently known legitimate uses and can add new fentanyl precursor chemicals under international control. However, traffickers can adapt their approach to use alternative precursor chemicals for fentanyl manufacturing. This, in turn, can lead to different means and levels of regulation, scheduling, and control of fentanyl analogs in different countries. See Chao Wang, et al.,

- International trade and trafficking of chemical precursors are extremely difficult to detect, and may involve repackaging and transport through multiple countries, thereby hampering law enforcement efforts (see example below).

In August 2019, a federal “Manufacturing Advisory” also warned about the illicit activity and methods related to the manufacture of fentanyl and synthetic opioids, including that they are “widely available for sale online through both domestic and international sellers on the Internet.”⁵¹ **There is growing understanding that the international trafficking of fentanyl and its precursor chemicals is facilitated through the Internet including on the dark web or searchable websites, though empirical research on the topic is limited.**

Impact Stories

China has placed restrictions on fentanyl classes of drugs and certain precursors that may limit importation into the United States. However, finished fentanyl pills and precursors may still be shipped from China to Mexico and then trafficked across the border into the United States, often by Mexican organized crime and cartels. (i) Additionally, the imposition of Chinese restrictions on fentanyl manufacture may have led vendors to shift to online operations which are harder to regulate. The limited information available suggests that Chinese vendors may attempt to sell fentanyl and related chemicals via online networks, social media channels (e.g., Facebook, LinkedIn, Twitter), and e-commerce platforms (Alibaba) and advertise that they ship directly to customers in the United States, Europe and Mexico via international mail. (ii)

– (i) Vanda Felbab-Brown, *China and synthetic drugs control: Fentanyl, methamphetamines, and precursors*, Brookings (Mar. 2022), available at <https://www.brookings.edu/research/china-and-synthetic-drugs-control-fentanyl-methamphetamines-and-precursors/>; (ii) Emily Feng, ‘We Are Shipping to the U.S.’: Inside China’s Online Synthetic Drug Networks, NPR (Nov. 17, 2020), available at <https://www.npr.org/2020/11/17/916890880/we-are-shipping-to-the-u-s-china-s-fentanyl-sellers-find-new-routes-to-drug-user>.

The Evolving Regulatory Landscape for Fentanyl: China, India, and Global Drug Governance, 19 INT’L J. ENV’T RSCH. & PUB. HEALTH 1–11 (2022).

⁵¹ *Advisory to the Chemical Manufacturing Industry on Illicit Activity and Methods Related to the Manufacturing of Fentanyl and Synthetic Opioids* (Aug. 21, 2019), available at <https://trumpwhitehouse.archives.gov/wp-content/uploads/2019/08/Fentanyl-Advisory-Manufacturing-Tab-A.pdf>.

In addition, federal, state, and local law enforcement agencies have variously reported on the difficulties of investigating and preventing fentanyl-related transactions. In 2022, the DEA announced that it had seized over 50.6 million fentanyl-laced, counterfeit prescription pills and more than 10,000 pounds of fentanyl powder during the calendar year.⁵² **In total, the DEA confiscated more than 379 million potentially lethal doses of fentanyl—an amount sufficient to kill every single American.^{54, 55} And the DEA seized more than double the number of fentanyl pills than it had the previous year.**

Moreover, between May and September 2022, the DEA conducted 390 drug-poisoning investigations; of those, 129 had direct ties to social media.⁵⁶

Closer to home, the DEA Rocky Mountain Division—which covers Colorado, Montana, Utah, and Wyoming—announced a record number of fentanyl seizures in 2022, having confiscated nearly two million fentanyl pills and more than 150 pounds of fentanyl powder.⁵⁷ And these numbers likely represent only a small portion of the total amount of fentanyl trafficked.

These difficulties are compounded dramatically by the ability of drug sellers and end users to transact easily online. **As technological advances become more rapid, so too does drug sellers’ use of available technology. They have remained technologically agile and adapt new methods to market and sell their products**

⁵² Press Release, *Drug Enforcement Administration announces the seizure of over 379 million deadly doses of fentanyl in 2022*, U.S. DRUG ENFORCEMENT ADMINISTRATION (Dec. 20, 2022), available at <https://www.dea.gov/press-releases/2022/12/20/drug-enforcement-administration-announces-seizure-over-379-million-deadly>.

⁵³ *Id.*

⁵⁴ Johnny Diaz, *U.S. Drug Agency Doubles Its Catch of Fentanyl-Laced Pills in 2022*, NEW YORK TIMES (Dec. 20, 2022), available at <https://www.nytimes.com/2022/12/20/us/fentanyl-drug-dea-seizure.html>.

⁵⁵ *Id.*

⁵⁶ Devlin Barrett, *Poison pill: How fentanyl killed a 17-year-old*, WASHINGTON POST (Nov. 30, 2022), available at <https://www.washingtonpost.com/national-security/2022/11/30/fentanyl-fake-pills-social-media/>.

⁵⁷ Press Release, *DEA Rocky Mountain Division announces record fentanyl seizures in 2022*, U.S. DRUG ENFORCEMENT ADMINISTRATION (Jan. 9, 2023), available at <https://www.dea.gov/press-releases/2023/01/09/dea-rocky-mountain-division-announces-record-fentanyl-seizures-2022>.

online, forcing law enforcement to play a constant game of technological catch-up.⁵⁹

Dark web marketplaces, for instance, give their users anonymity and require neither geographic proximity nor physical contact—drugs are generally paid for using difficult-to-trace cryptocurrencies or retail gift cards, and can be delivered almost anywhere in the world through postal services without the couriers’ knowledge.⁵⁹ Law enforcement, in turn, are forced to devote significant resources to learning the identity and location of a target drug seller before they are able to take enforcement action against them.

Clearnet websites, apps, and social media platforms similarly pose law enforcement difficulties. **Given the high lethality of fentanyl, its frequent inclusion in counterfeit prescription pills and street drugs without users’ knowledge, and the convenience and speed with which drugs can be obtained online, local officers have reported that the speed and urgency of their drug investigations have greatly accelerated compared with investigations involving other dangerous, but less-lethal substances.**

Further, local officers have reported that while social media platforms’ procedures⁶⁰ for requesting user information pursuant to court orders, warrants, or subpoenas are relatively clear and straightforward, the platforms’ production of user information is often problematic in at least four senses:

- As a policy matter, platforms frequently notify users that law enforcement has requested information from their accounts, thereby tipping off drug sellers that they are the targets of narcotics investigations.

⁵⁸ For more details about the specific methods and tactics employed by drug sellers online, see Section II.A, *infra*.

⁵⁹ Deepti Govind, *The Dark Side of the Web: Drug Trafficking on the Darknet Grew Nearly Fourfold Recently*, BIOMETRICA (Aug 9, 2021), available at <https://www.biometrica.com/the-dark-side-of-the-web-drug-trafficking-on-the-darknet-grew-nearly-fourfold-recently/>.

⁶⁰ For more details about the specific policies of social media platforms pertaining to law enforcement requests, see Section III.A.3, *infra*.

- Both smartphones and social media profiles generate massive amounts of data, which are then produced by platforms in media files too impracticably large and disorganized for law enforcement investigators to parse.
- The platforms’ long turnaround times for producing information—anywhere from three weeks, up to three months—render time-sensitive intelligence about drug sellers’ activities long outdated by the time it is finally produced.
- Some platforms’ retention policies and built-in features⁶¹—such as encryption, ephemeral/disappearing content, and anti-screenshot measures—may render data entirely unavailable for later reference.

And finally, local officers have reported a frustrating “whack-a-mole” effect on social media platforms, whereby drug sellers either create new profiles as soon as their existing ones are suspended or removed, or they maintain multiple profiles across numerous platforms simultaneously.

Impact Stories

On February 20, 2022, five close friends were found dead of fentanyl poisoning in a Commerce City apartment—Sabas “Sam” Daniel Marquez (24), Humberto Arroyo-Ledezma (32), Karina Joy Rodriguez (28), Stephine Sonya Monroe (29), and Jennifer Danielle Cunningham (32). The DEA reported that, at the time, this was the country’s largest ever mass fentanyl overdose event.

“From everything the detectives could piece together in the first days, no one at the party had meant to buy fentanyl. Whoever brought what they thought was just cocaine into the apartment had meant to share it for an evening of fun with friends. There was so much fentanyl in the white powder that the drug-testing device did not initially detect cocaine. By snorting the drug commonly sold in counterfeit pill form, the group ingested the fentanyl in one of the most dangerous ways because it hit the bloodstream faster. . . .”

“Investigators didn’t know precisely when they died. But they knew that they all fell to the ground suddenly—so quickly that no one had a chance to reach for their nearby cellphones.”

—Sari Horowitz, et al., Five down in Apt. 307: Mass fentanyl deaths test a Colorado Prosecutor, Washington Post (Dec. 15, 2022), available at <https://www.washingtonpost.com/investigations/interactive/2022/fentanyl-poisoning-colorado/>.

⁶¹ For more details about the types of social media platform features that enable and facilitate illicit substance sales, see Section II.B, *infra*.

II. Overview of the Illicit Online Drug Ecosystem

Main Takeaways

- **Drug sellers use creative, and often coded, methods of marketing and selling drugs on social media platforms. The special language, symbols, and posting methods they employ are designed to maximize their reach to online customers while evading platforms' content moderation tools.**
- **Drug sellers also rely on certain social media platform designs and features to facilitate drug sales. The same built-in features that platforms use to enable legitimate commercial activity and social interactions between users—such as encrypted messaging, disappearing content, and anonymous communications—are also exploited by drug sellers to market and sell illicit substances.**
- **Online access to illicit substances is a “whole-of-Internet” challenge. Often drug sellers are active on multiple social media platforms, Internet sites, and dark web accounts simultaneously, and they break up their transactions across multiple platforms (e.g., drug sellers advertising products on Instagram, but listing their WhatsApp or Snapchat handles for inquiries) in order to evade detection.**
- **Research is scarce on the prevalence of drug activity on social media platforms. This is due, in large part, to researchers' limited access to platform data. Nevertheless, the information presently available from government reports, published academic research, and anecdotal evidence strongly suggest that social media platforms have become major venues for drug activity.**
- **The online illicit substance market is constantly evolving. Continuous surveillance and research are needed to characterize trends in product availability and identify new strategies used by drug sellers to attract end users and evade content moderation.**

This section provides a broad overview of how drug sellers leverage social media to locate, communicate with, and transact with end users seeking illicit substances. First, it explains the various marketing and selling tactics drug sellers employ, along with accompanying real-world examples and screenshots of these tactics. Next, it identifies some of the built-in platform designs and features exploited by drug sellers to facilitate their transactions. And finally, this section summarizes the current state of research on the online illicit substance market, along with opportunities and challenges for future research in this area.

A. Advertising, Selling and Engagement Tactics Commonly Utilized by Drug Sellers Online

Using drug terminology, slang words, codewords, and emoji icons.

- Drug terminology uses the formal spellings of proprietary or brand names to refer to drugs; by contrast, slang words use informal or “street” names to refer to drugs.
- Codewords can be common drug terms or slang; however, they are abbreviated, misspelled, or use numbers or special characters in place of letters when referenced in written posts or comments.
- Emoji icons are often substituted for specific terminology and codewords. One emoji can represent several different drug products or types of transactions. Emojis can also be hard to moderate because they can have both drug-related and innocuous meanings, depending on context.
- Drug terminology, slang words, codewords, and emoji icons are very important in helping drug sellers and end users find and interact with each other on social media platforms. Frustratingly, this language is in constant flux and has great regional variation.



EMOJI DRUG CODE | DECODED

COMMON EMOJI CODES

FAKE PRESCRIPTION DRUGS

PERCOCET & OXYCODONE



XANAX

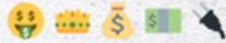


ADDERALL



DEALER SIGNALS

DEALER ADVERTISING



HIGH POTENCY



UNIVERSAL FOR DRUGS



LARGE BATCH



OTHER DRUGS

METH



HEROIN



COCAINE



MDMA & MOLLIES



MUSHROOMS



COUGH SYRUP



MARIJUANA



This reference guide is intended to give parents, caregivers, educators, and other influencers a better sense of how emojis are being used in conjunction with illegal drugs. Fake prescription pills, commonly laced with deadly fentanyl and methamphetamine, are often sold on social media and e-commerce platforms - making them available to anyone with a smartphone.

#ONEPILLKANKILL
dea.gov/onepill

Disclaimer: These emojis reflect common examples found in DEA investigations. This list is not all-inclusive, and the images above are a representative sample.



Image above, courtesy of DEA: An infographic educating parents, caregivers, educators, and others about emojis commonly used to solicit and advertise illicit drugs on social media.

Slang Terms for Common Drugs

Oxycodone: blues, berries, 30s, M30s, perks, roxies, Roxy shorts

Xanax: carts, goofballs, hulks, sharks, yellows

Adderall: Addys

Cocaine: snow, snowflake, Snow White, yay, yayo

MDMA: Molly, X, ecstasy

Psilocybin(i): shrooms, mushies, caps, buttons, Alice

Fentanyl: blues, China town, China white, fent, fatty, feti

Heroin: black, tar, roofing tar

Methamphetamine: clear, bump, crystal, shards

(i) Pursuant to Colorado Proposition 122, psilocybin is not an illegal substance under Colorado law, but it remains an illegal substance under the federal Controlled Substances Act.

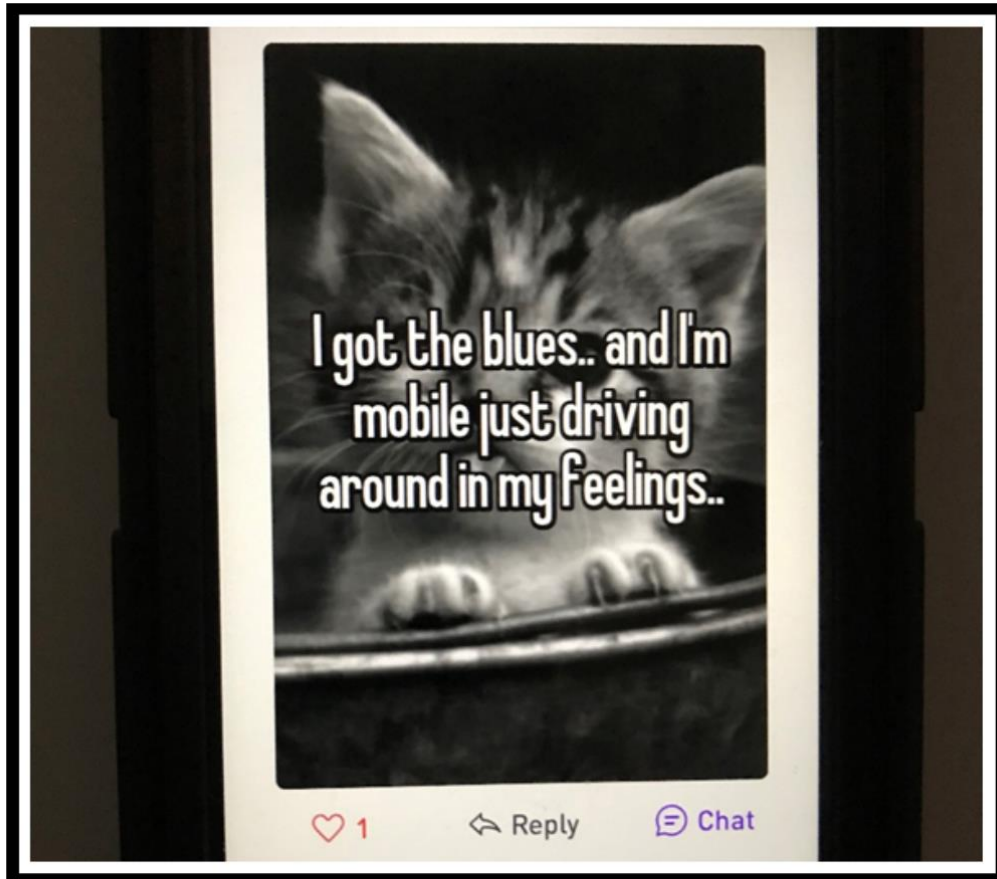


Image above, courtesy of Colorado State Patrol: A Whisper app post with coded language indicating that a drug seller has “the blues” (Oxycodone) and that they are “mobile” (able to deliver drugs locally).

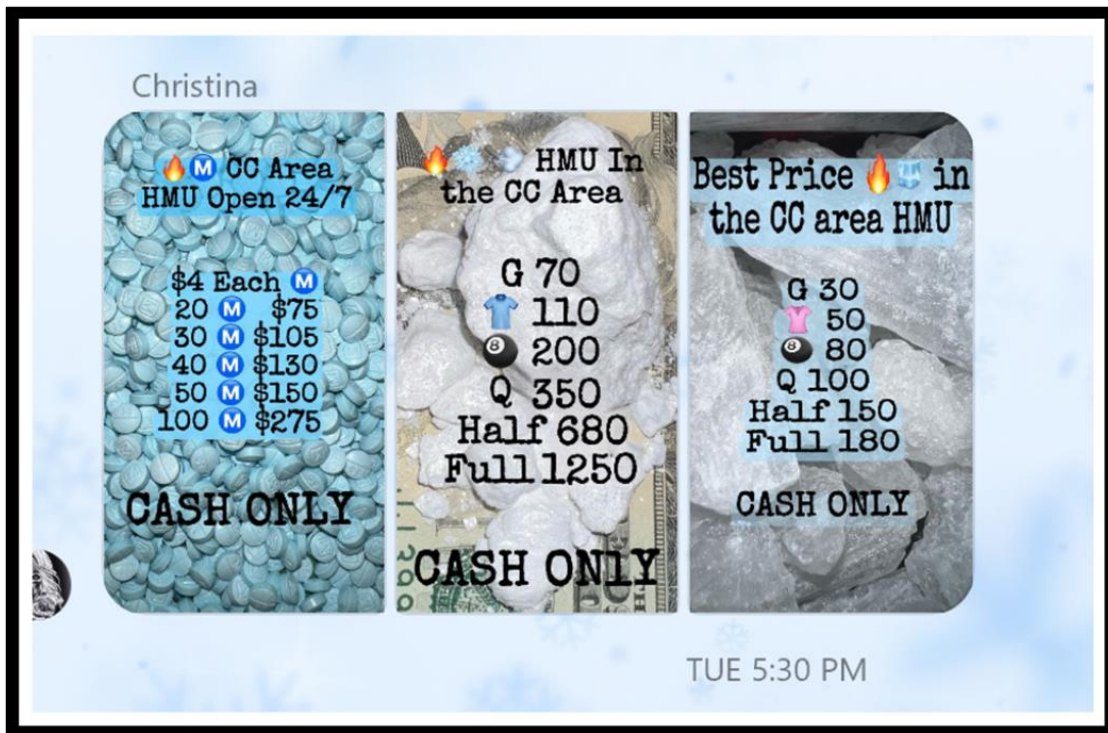
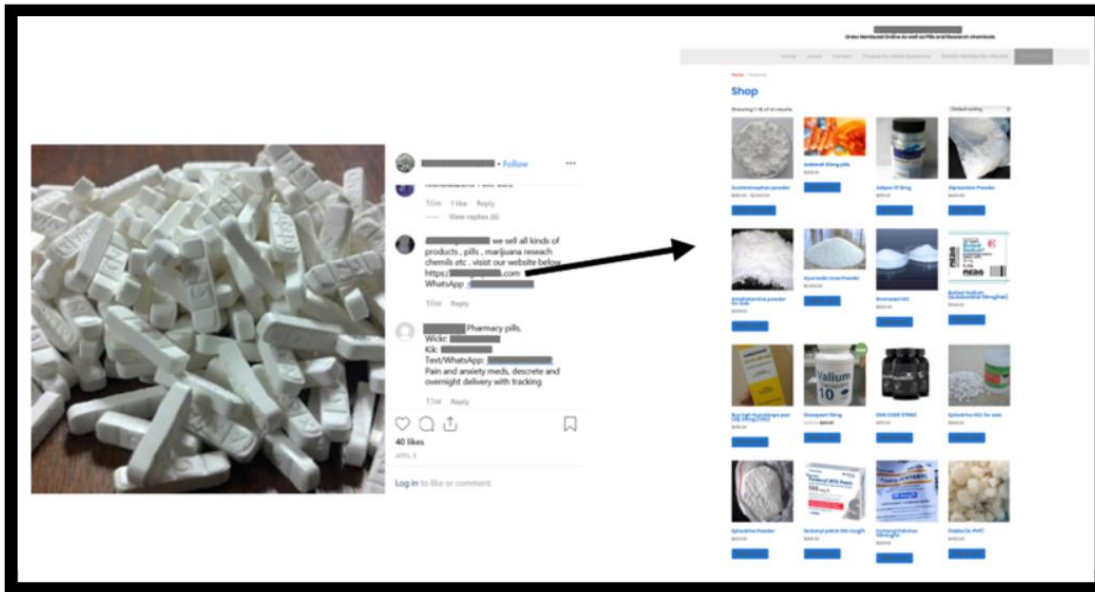


Image above, courtesy of Wheat Ridge Police Department: A drug seller's menu transmitted through private messaging, which contains coded language and emojis indicating the pricing of available drugs (from left to right, Oxycodone, cocaine, and methamphetamine). "G" = one gram; "t-shirt" = 1/16 oz.; "eight-ball" = 1/8 oz.; "Q" = 1/4 oz.

Selling drugs in individual posts and comments.

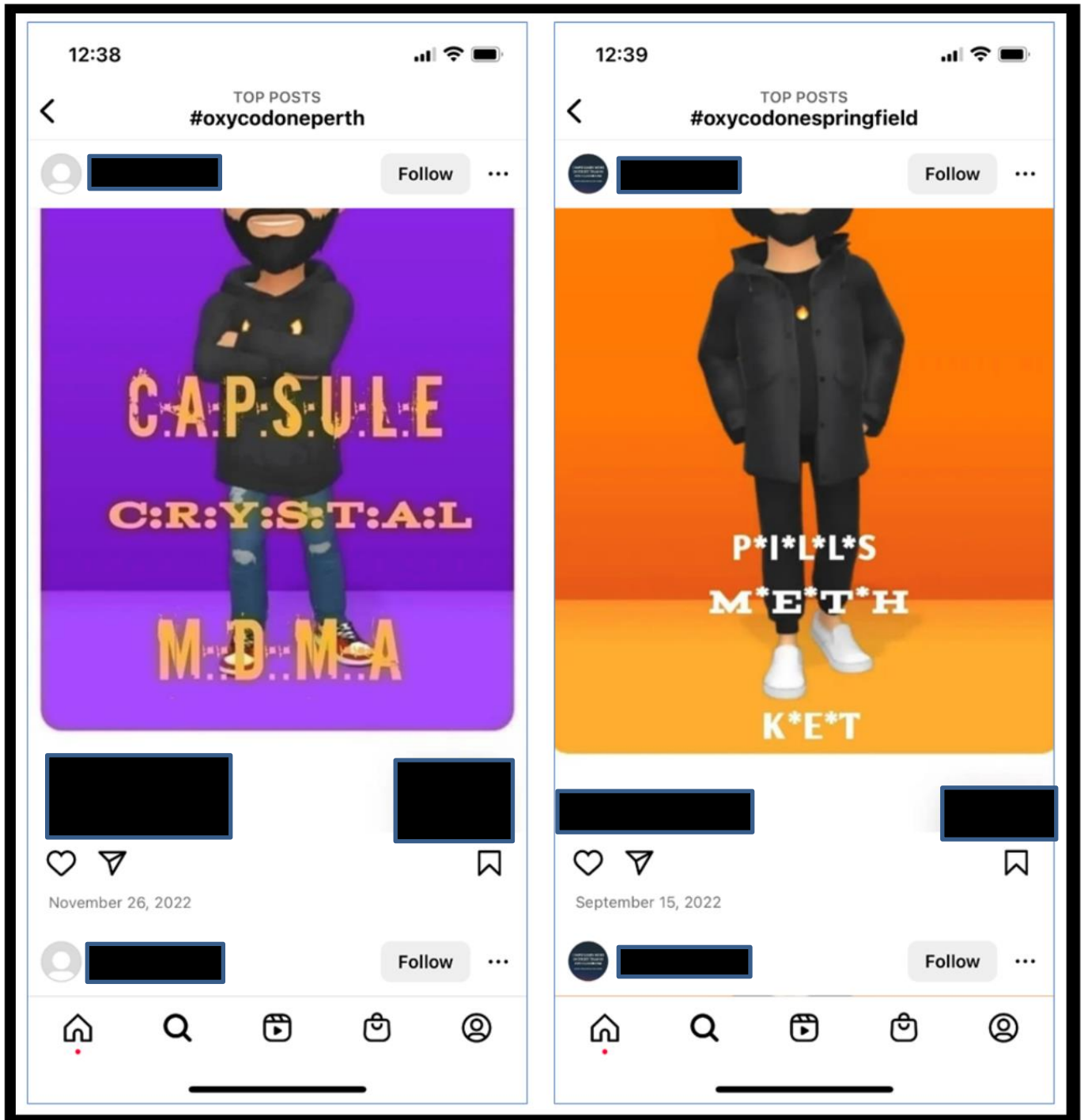
- Drug sellers use social media platforms both to create their own content (e.g., posts, reels, stories, or similar content) and to comment on others' drug-related content.
- Drug sellers may also post content that is not specifically drug related, but that allows them to increase engagement with their accounts and connect with potential new end users.
- Drug sellers may also use spam- or bot-like activities to generate large numbers of comments on social media posts using certain illicit substance-related hashtags or keywords.
- Compared to other drug marketing and selling tactics on social media, overtly selling illicit substances in posts and comments is easier for content moderation systems to detect, especially as automated tools continue to learn new slang words and coded terminology. For this reason, this selling tactic has become somewhat uncommon.



Images above: Advertising drugs in individual posts and comments, and also providing hyperlinks to off-platform websites that sell drugs directly to end users.

Posting text-free images and videos.

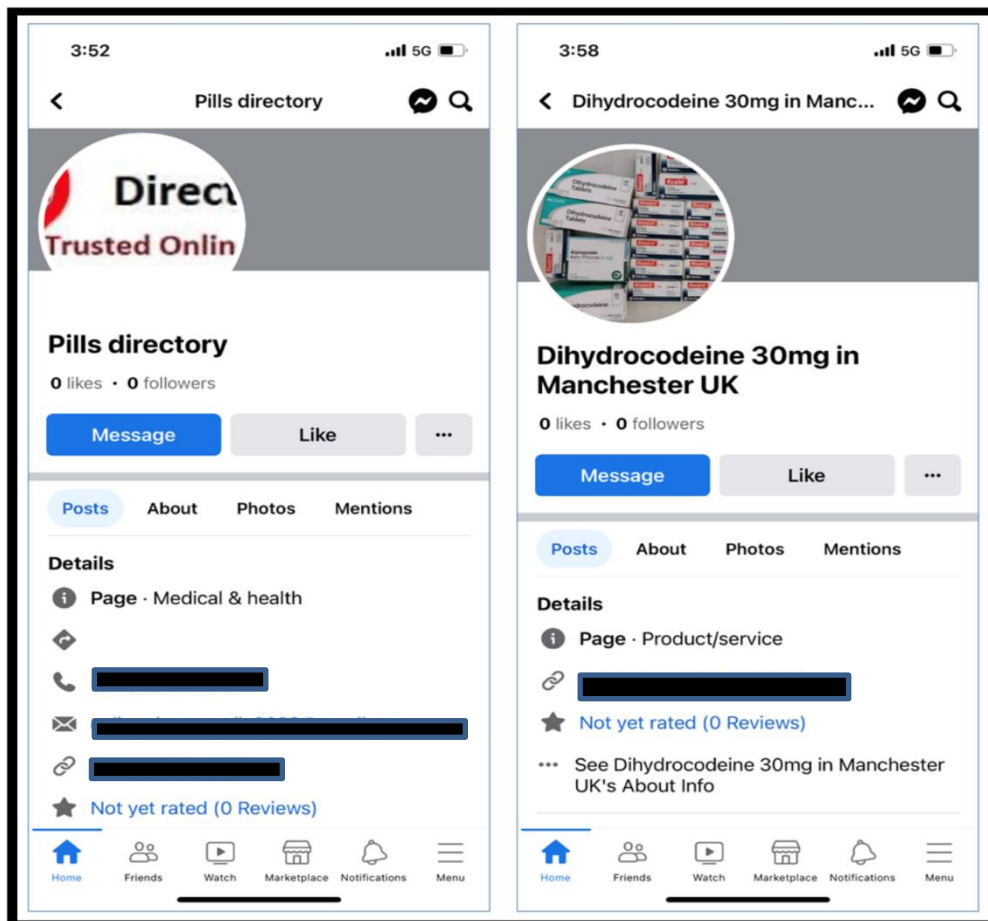
- Drug sellers create posts, reels, or stories that contain only images or videos. While the post is devoid of text or metadata, the drug seller's contact information can be found within the image itself and/or in the post's comment section. The content may provide cues to encourage an end user to view a drug seller's profile or to message the drug seller privately.
- This method often allows drug sellers to avoid detection by automated content moderation tools that rely on text.



Images above: two public Instagram posts with no text in their captions. The images themselves contain references to the drug sellers' inventory in a manner difficult to detect by automated content moderation tools. The posts also include QR codes redirecting users to the drug sellers' Snapchat accounts to arrange drug sales.

Using hyperlinks to redirect end users to other sources of drug access.

- Drug sellers frequently create multiple, empty accounts without any personal information or content. Their profile bios contain only a link to an off-platform, external website (e.g., an illegal online pharmacy) where end users can purchase illicit substances.
- If the drug seller's account contains any content, it may not include posts explicitly offering drugs for sale; instead, the drug seller may post content alluding indirectly to the sale and availability of drugs, and then provide information directing users to where they are selling drugs on the Internet (commonly through other e-commerce or online pharmacies they operate).
- These profiles are challenging for platforms to detect since they are generally not searchable when querying illicit substance-related keywords.



Images above: empty, drug-related Facebook pages with zero posts, likes, or followers. The pages contain only links to off-platform, illegal online pharmacies and the drug sellers' contact information.

Using QR codes to redirect end users to drug seller accounts, product menus, and other sources of drug access.

- Similar to hyperlinks, QR codes provide direct access to an online source of information once a phone camera is used to scan the QR code.
- Drug sellers post QR codes to redirect end user to product menus, photos of current inventory, pricing information, and access points to other drug selling platforms.
- Like hyperlinks, QR codes are generally difficult for platforms to detect because they are not searchable when querying illicit substance-related keywords.

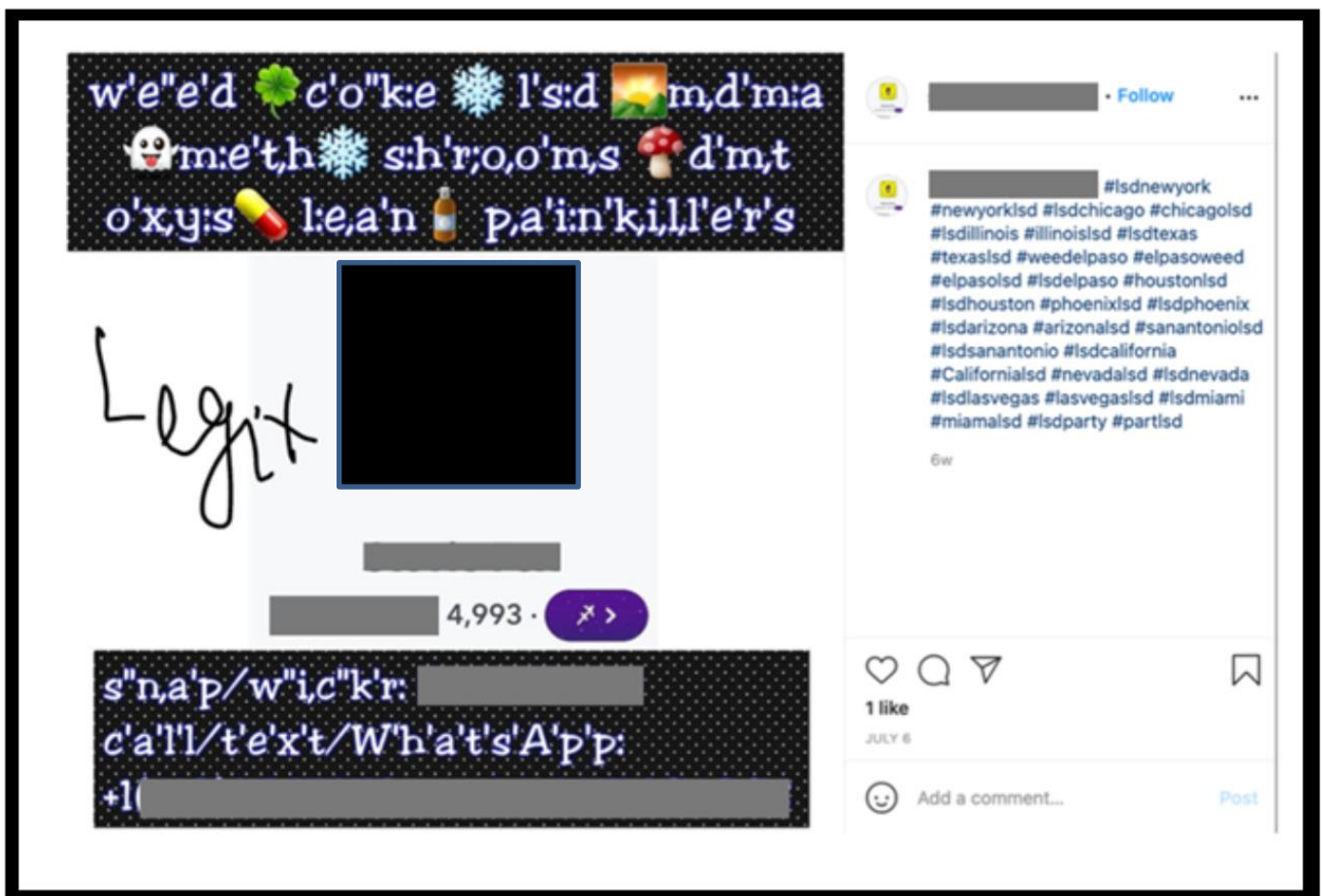
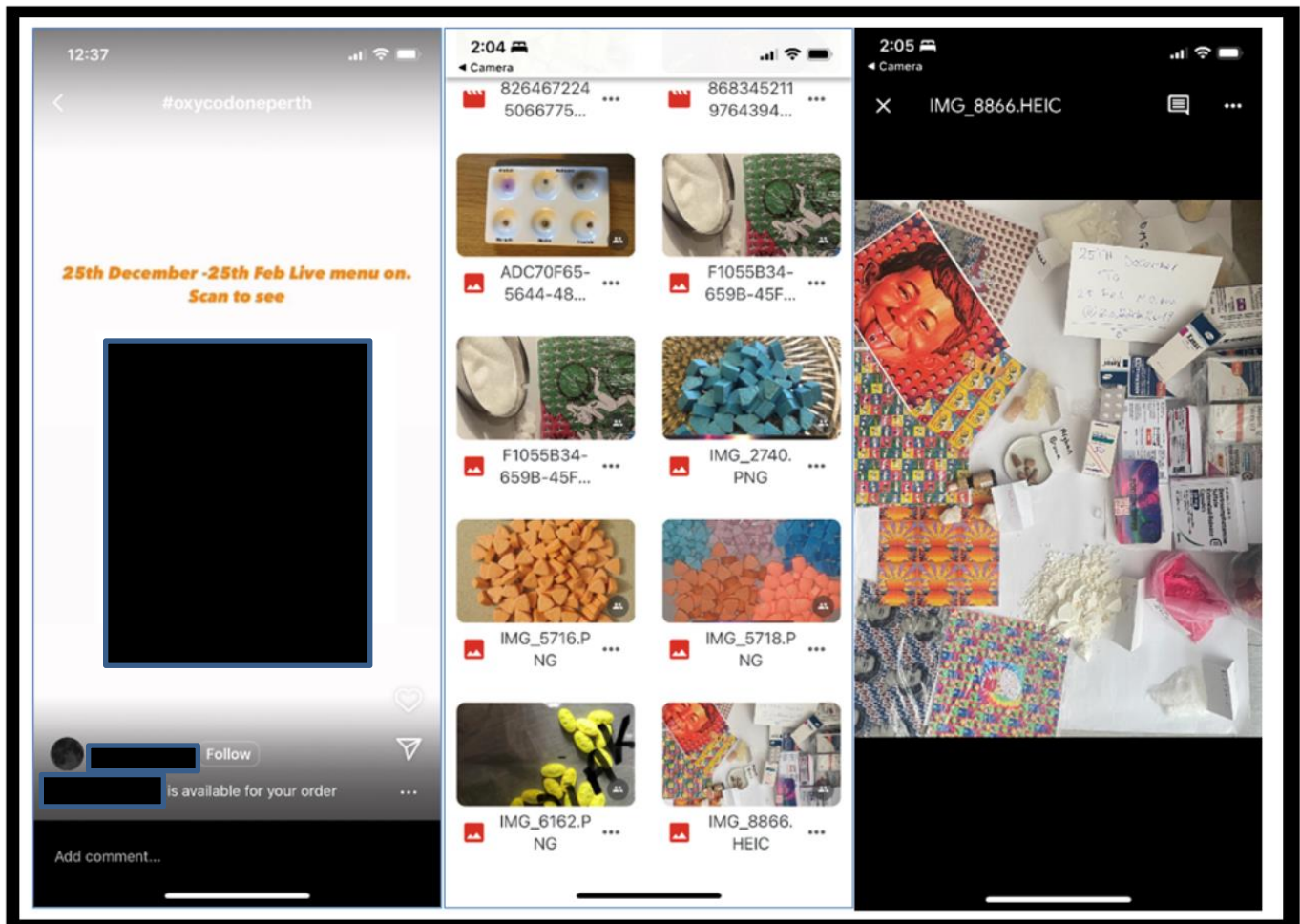


Image above: A Snapchat QR code redirecting users to menus, accounts, and other sources of drug access.

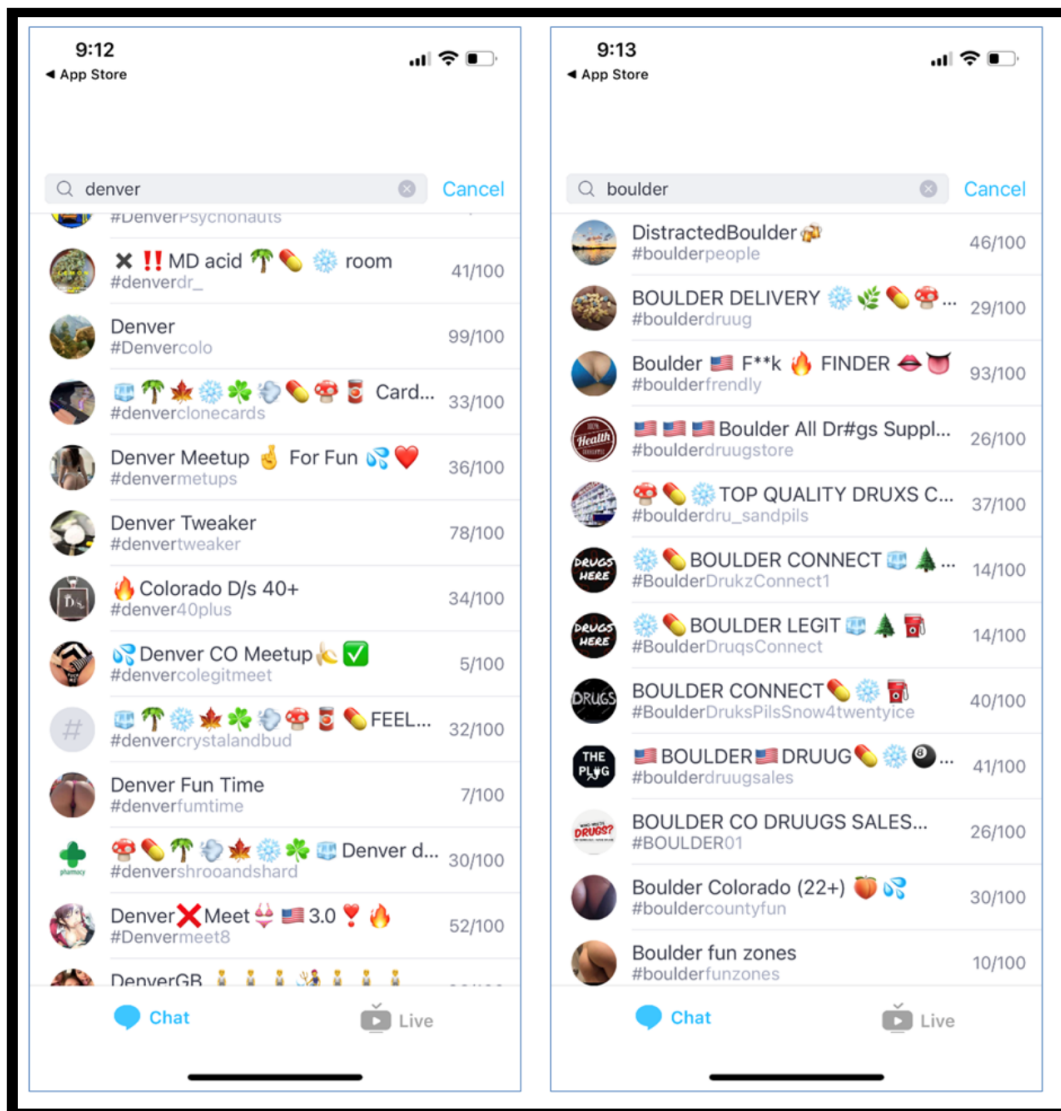


Images above: (left) a drug seller's QR code posted on Instagram; (center) scanning the QR code redirects customers to a Google Drive folder containing photos and videos of the drug seller's current inventory; (right) one of the photos, depicting the availability for sale of Xanax, Adderall, ketamine, cocaine, and LSD tabs, among other substances.

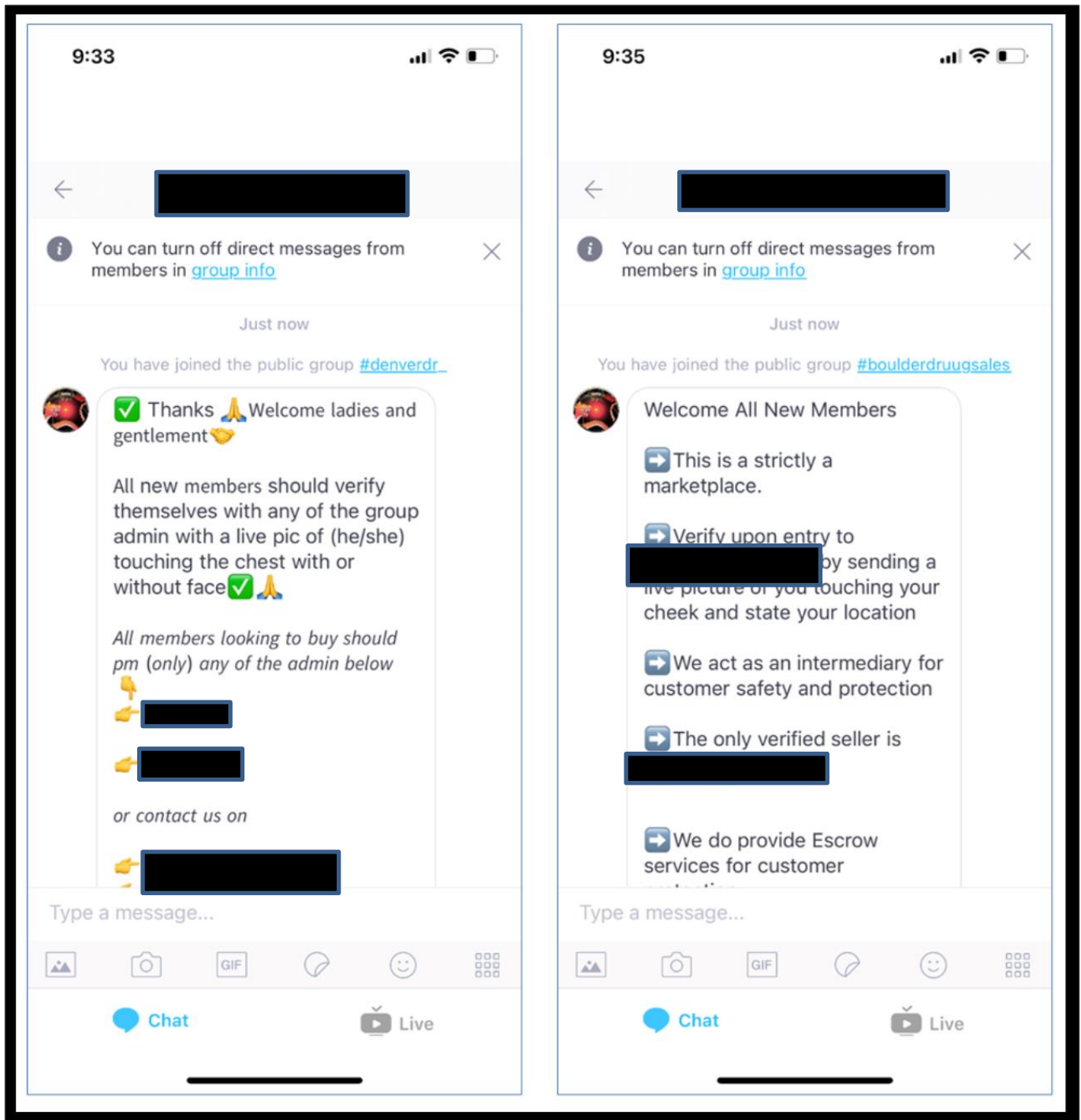
Creating and soliciting to groups, group pages, or group chats (both public and private).

- Drug sellers and end users often create their own groups within larger social media platforms to openly solicit and market illicit substances to other group members.
- Some drug buying/selling groups are public and can be located and joined by anyone. Often, though, group hosts or moderators ask new group members to “verify” themselves (i.e., proving that they are not scammers or law enforcement officers) by first sending the hosts direct messages or photos of themselves.

- Other drug buying/selling groups are private and/or hidden and are comprised of closed networks of trusted members. New members must be invited or added to the group by current members, which generally requires a prospective member to know someone with connections to the private group.
- Relatedly, online user groups are spaces similar to group chats or message boards (e.g., Reddit, Telegram, or Discord) where multiple users can engage in online discussions. Drug sellers use online user groups to market directly to people discussing illicit substances.



Images above: Search results for public groups in the Kik messaging app using only the terms “Denver” and “Boulder” (with no reference to illicit drugs) returned dozens of local drug buying/selling groups open to the public.



Images above: When a new member joins a drug buying/selling group on Kik, a group admin often instructs the member to verify themselves through photos or private messages, and also provides information on approved sellers, drop-off or delivery options, and payment instructions.

Dozens of parents across the metro area are learning their children belonged to a secret Facebook group created to facilitate the purchase and sale of illegal drugs.

An investigation by the Jefferson County District Attorney's Office discovered the group called "Fly Society 420" in February. Drugs mentioned in the group included marijuana, marijuana concentrate, prescription drugs, LSD and meth and ecstasy, among others.

Michael Harris, an investigator with the D.A.'s Child Sex Offender Internet Investigations Unit, said he learned of the secret group after he was contacted by a mother of a 15-year-old who'd been using drugs and was suspended from school.

"She was vigilant, checking her daughter's Facebook page," Harris said. The mother discovered the Facebook group, hidden from everyone except its own members.

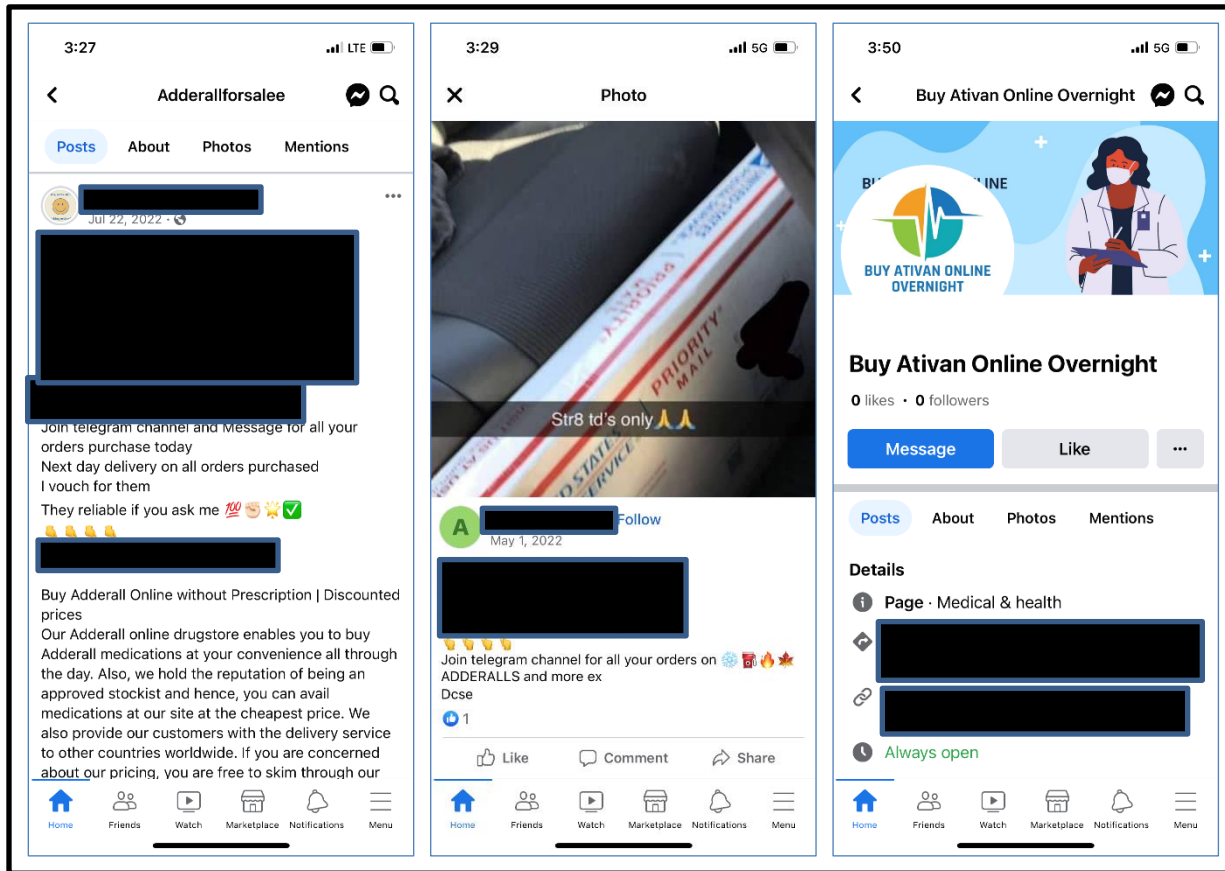
"That's why they're secret," Harris explained. "You can't find them. You can't search for them and find them. The only people who have access to it, [are] the members that are already accepted into the group."

Investigators said there were at least 900 members of "Fly Society 420," and 171 of them students from at least 55 different high schools and middle schools across the metro area...

—Local students bought drugs from secret Facebook group, 9News Denver (May 4, 2016), available at <https://www.9news.com/article/news/local/local-students-bought-drugs-from-secret-facebook-group/73-171794439>.

Employing “selling cues,” customer reviews, and other guarantees of seller trustworthiness and legitimacy.

- Much like legitimate online vendors, drug sellers use specific “selling cues”—i.e., advertising signals related to price, convenience, availability, quality, etc.—to market illicit substances online. These selling cues are used to differentiate a drug seller and assure potential customers that the seller is not a scammer or law enforcement officer.
- Drug sellers may post purported customer reviews or proof-of-product delivery. Reviews indicate that a seller has successfully sold illicit substances to a customer and that there is positive feedback on the transaction and/or product. Proof of delivery indicates that a package containing illicit substances has been successfully shipped to an end user by a courier service.



Images above: Facebook pages with hyperlinks redirecting users to illegal online pharmacies offering to sell drugs without a prescription. The pages include various assurances of low drug prices, convenient overnight or worldwide delivery, and discreet shipping.

Locating potential customers who post content adjacent to substance use or mental illness.

- Drug sellers are often aggressive in their marketing tactics and specifically target younger or vulnerable social media users as potential new customers.
- Using a platform’s public search capabilities, a drug seller may query certain keywords and hashtags that are tangentially related to substance use (e.g., a user’s public posts discussing their struggles with anxiety, depression, ADHD, chronic pain, or other health issues). Then, the drug seller establishes contact with the original poster via their comments or private messages and, unsolicited, provides information about drug availability and ways to purchase from them.
- This tactic allows drug sellers to “push” illicit substance content to potential end users who were otherwise not seeking out drugs.

Impact Stories

The drug trade is booming on social media, according to Kathleen Miles, who works for the [Alliance to Counter Crime Online]. “I think social media can be great, but it also has a really dark side of it,” Miles said... .

In her experience, Miles said teenagers on social media are two degrees of separation away from a drug dealer.

CBS News asked Miles to create two fake profiles across Instagram, Snapchat, and TikTok, claiming they were 18, but publicly identifying as high school students.

One was actively searching for drugs and found an apparent dealer within 48 hours.

The second account used different hashtags like #depression, #sad and #anxiety. While all three social media programs provided some mental health resources, posts about marijuana and cigarettes also appeared on Instagram.

“By the third day, on Instagram,” Miles said, “we were fully immersed into drug culture.” For her, this culminated in a picture of someone appearing to snort cocaine.

—Tom Hanson, Teens have easier access to drugs as illegal trade booms on social media, CBS News (Nov. 30, 2021), available at <https://www.cbsnews.com/news/social-media-teens-drug-access/>.

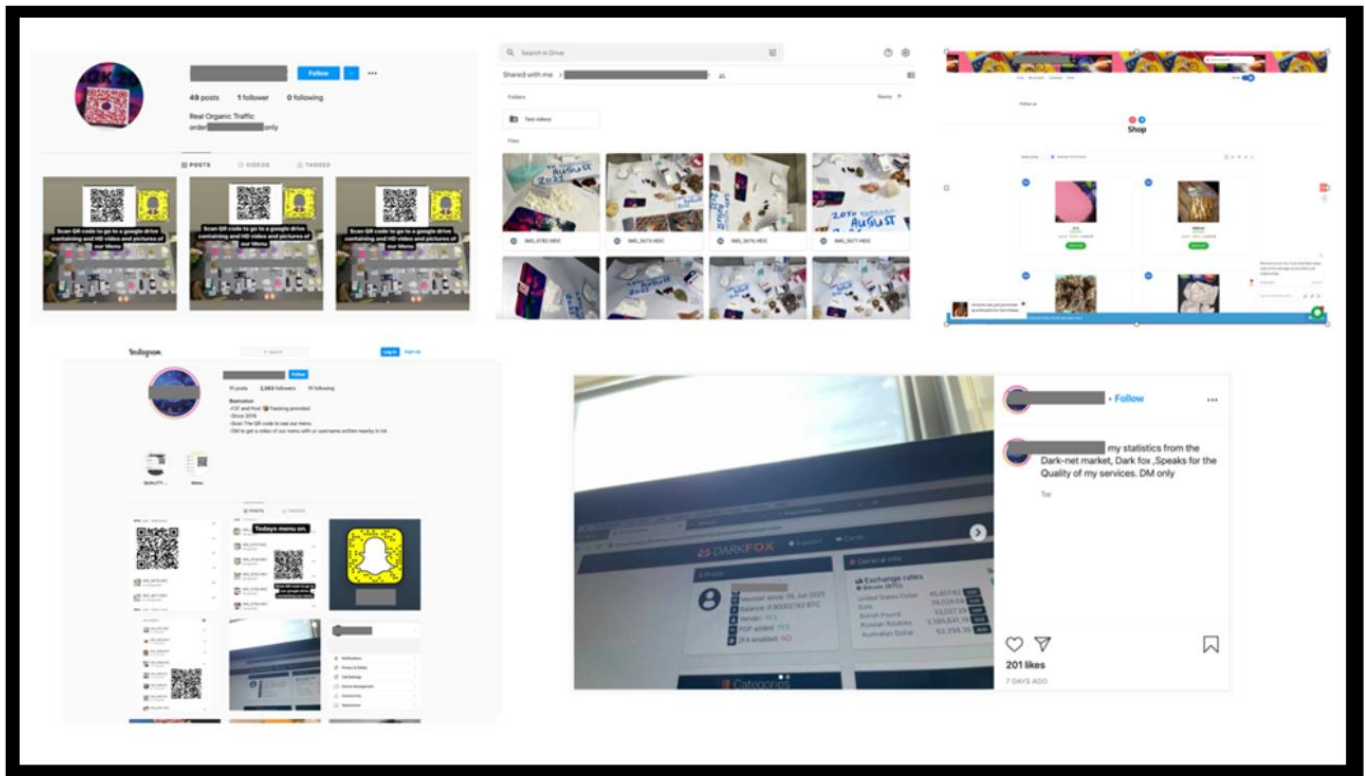
B. Platform Design Features Commonly Exploited by Drug Sellers to Facilitate Illicit Substance Sales

Aside from the “content-based” tactics employed by drug sellers to market their products online, drug sellers commonly exploit certain built-in features of social media platforms to facilitate sales.

Multi-platform transactions.

- Sellers commonly use multiple social media platforms, encrypted communication platforms, and other Internet sites (e.g., their own websites) to engage in multi-channel marketing for illicit substances.
- A drug selling post may originate on a popular social media platform but also contain information on how to contact the seller via an encrypted

communication application or chat, another social media account, or through an email or phone number. Sellers often post selling details and contact information on multiple platforms.



Images above: (top left) use of QR codes on a drug seller profile; (top center) redirecting end users to file storage sites like Google Drive, which contain photos of drug inventory and pricing; (top right) a drug seller’s website offering illicit substances for sale; (bottom left) a drug seller’s user profile listing multiple handles and QR codes to other platforms involved in illicit substance sales; (bottom right) a drug seller’s purported dark web account with sales statistics.

Publicly available user profiles and content, especially on dating apps.

- Some drug sellers favor social media and social messaging platforms that make their users’ profiles and content publicly available, thus enabling users to search for, view, and communicate with other users freely even without having to be formally “friended,” “added” or “approved” by the recipient user.
- Popular mobile dating apps (e.g., Tinder, Bumble, Hinge, and Grindr) appear to be especially vulnerable to this method of platform exploitation. Drug sellers often create dating profiles signaling to large numbers of local users (via special codewords and emojis in their bios) that they have illicit substances available for sale.

- A recent review of 200 dating app users’ bios (evenly split between men and women) in each of the 25 largest U.S. cities revealed that 15% of Denver dating app users’ bios included at least one mention of illicit drugs or alcohol.⁶²

Impact Stories

Sixty people have been arrested, and warrants have been issued for eight more, after a Florida sheriff’s office investigation found that drug dealers were using dating apps like Grindr, Taimi, and Scruff to sell illegal narcotics.

The six-month investigation by the Polk County Sheriff’s Office, dubbed “Swipe Left for Meth,” began in July 2021 following a tip to Heartland Crime Stoppers, according to a release from the department.

Polk Co. Sheriff Grady Judd said the dealers would use ice cream cone and birthday cake emojis to signal they were selling drugs as well as code words like “party” and “Tina,” which he said stood for methamphetamine.

“It was a shock to us that they were openly advertising,” Judd said. “Can you believe that? They were openly advertising that they were selling dope on a dating app.”

Undercover narcotics detectives set up profiles on the apps and struck up conversations with people selling methamphetamine, fentanyl, LSD, ecstasy, marijuana, and cocaine, the release said.

“It was clear during the conversations and ensuing undercover drug buys that the suspects’ primary purposes for being on the dating app were to sell drugs—not to find a date,” according to the release.

—‘Swipe Left for Meth’: Florida Sheriff’s Investigation Found Dating Apps Used to Sell Meth, Cocaine, LSD, CBS News (Jan. 31, 2022), available at <https://www.cbsnews.com/miami/news/swipe-left-for-meth-florida-sheriffs-investigation-found-dating-apps-used-to-sell-meth-cocaine-lsd/>.

⁶² *An Analysis of Drug & Alcohol Mentions in Dating App Profiles*, AM. ADDICTION CTRS. (Aug. 2, 2022), available at <https://americanaddictioncenters.org/blog/drug-and-alcohol-mentions-in-dating-profiles>.

End-to-end encryption.

- On some social messaging platforms, all chats, including their text and any files or media, are encrypted as the data travels between users' devices.
- “Encryption” converts data into scrambled, unreadable text that can only be decoded with a secret key. The secret key is a unique number generated for each individual message, and it is created and exists only on the two sending and receiving devices. The key is deleted from the sender's device when the encrypted message is created, and deleted from the receiver's device when the message is decrypted.
- The social messaging platform itself generally does not have access to encryption keys, so the platform cannot read its users' communications.
- Drug sellers use social messaging platforms with encryption to communicate with end users and arrange sales without fear of their conversations being detected by the platform or intercepted by law enforcement.

Ephemeral content.

- Some social media companies include ephemeral or “disappearing” content capabilities on their platforms. Snapchat, for instance, is designed primarily around sending “Snaps” (a photo or video that is deleted as soon as the recipient opens and views it) and posting “Stories” (a photo or video that the platform automatically deletes 24 hours after it is posted).
- Content ephemerality assures that drug sellers' illicit drug content and conversations will not be retained or available for law enforcement purposes (at least for significant periods).
- At least one relatively new social messaging platform, Confide, takes the concept of ephemerality a step further—it guarantees users that no content is ever stored on its app or servers, that all messages are encrypted and self-destruct as soon as they are read, and that the app's design makes any screenshotting or saving of messages impossible.

Your Confidential Messenger

Communicate digitally with the same level of privacy and security as the spoken word.

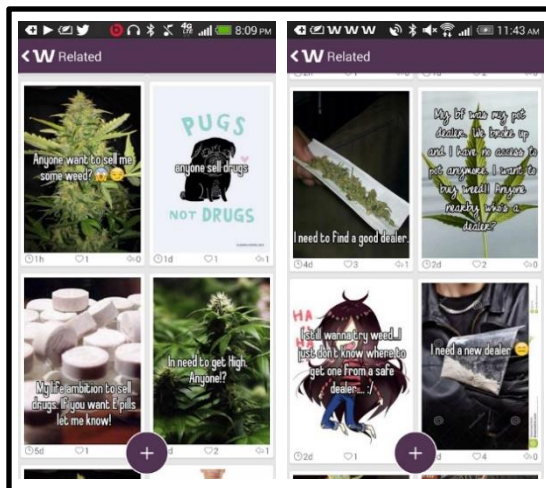
With encrypted, self-destructing, and screenshot-proof messages, Confide gives you the comfort of knowing that your private communication will now truly stay that way.

DOWNLOAD FOR FREE

Image above: the Confide app's strong guarantees of messaging privacy and ephemerality.

Anonymous engagement.

- Social media platforms allowing users to engage with online communities anonymously can embolden drug sellers to advertise illicit substances openly, and end users to solicit such substances openly, without fear of stigma or detection. Some of these platforms include private messaging capabilities where drug sellers and end users can connect directly.
- Examples of such platforms include Whisper (where users can post photo and video content anonymously), Gas (where users, generally high school students, can anonymously “gas up” or compliment other users), and Yik Yak (where users, generally college students, can connect anonymously with all other users within a five-mile radius).



Images above: anonymous posts on Whisper where users attempt to solicit and offer drugs for sale.

Geolocation mapping.

- Some social media platforms—and notably, Snapchat’s “Snap Map” feature—allow a user to share their real-time location with friends on a worldwide map, along with photos or stories revealing what the user is doing at that location.
- Users can also use Snap Map to look at “hotspots” where crowds of users are gathering and view stories shared in that area; while hotspot stories are publicly available, they do not show user details.
- Using Snap Map, drug sellers can post public stories indicating the availability of drugs and their location, and they can also use the map to locate and connect with end users nearby.



Image above: a still from Snapchat’s “Snap Map” feature, showing individual users’ real-time locations and stories as well as hotspots where large number of users have converged.

Algorithmic amplification.

- Social media platforms employ algorithms that analyze a user’s search terms and other activity on the platform to curate and recommend other users’ profiles and content. In theory, such algorithms expand a user’s potential network and audience, connecting the user with other like-minded users.
- As a user searches for terms related to drug activity (e.g., usernames and group pages with “opioids” in their names), the platform’s algorithm automatically surfaces such users and groups (e.g., as “suggested contacts” or “recommended for you”).⁶³
- Over time, the platform’s content curation algorithm assures that the user does not have to affirmatively search for drug-related terms anymore— instead, the drug content “searches for” the user.
- Similarly, as platform algorithms amplify some content to the exclusion of others, users repeatedly exposed to harmful content may behave in increasingly harmful ways (e.g., consistent drug content exacerbating a user’s substance use disorder).

C. Summary of the Current State of Anecdotal and Academic Research on the Online Illicit Substance Market, and Opportunities and Challenges for Research Moving Forward

The exploitation of different Internet sites, and more specifically social media platforms, as a means of selling and purchasing illicit substances has increased as the number and diversity of Internet and social media platforms has expanded.⁶⁴ Furthermore, following the social isolation and mental health challenges posed by

⁶³ Elizabeth Dwoskin, *Instagram has a drug problem. Its algorithms make it worse.*, WASHINGTON POST (Sept. 25, 2018), available at https://www.washingtonpost.com/business/economy/instagram-has-a-drug-problem-its-algorithms-make-it-worse/2018/09/25/c45bf730-bdbf-11e8-b7d2-0773aa1e33da_story.html.

⁶⁴ Brianna Baughman, *Social Media and Its Impact on the Illicit Drug Market* (accessed Oct. 25, 2022), available at <https://iu.pressbooks.pub/perspectives2/chapter/social-media-and-its-impact-on-the-illicit-drug-market/>.

the COVID-19 pandemic, the online illicit drug market has exploded as a convenient means for sellers to market and sell drugs.⁶⁵ Due to increased attention around the issue, there has also been an increase in multidisciplinary research that focuses on examining online sales of illicit substances. However, the total volume of articles on the subject remains low relative to other areas of public health research. For example, since 2013, only about 30 articles have been published on the topic (which is significantly lower than publication rates on other public health topics).

The available research tools have also advanced—researchers have increasingly utilized data mining, topic modeling, machine learning, and AI-assisted methods to study online drug selling networks. **Despite these advances, the ability of researchers to fully characterize the breadth and scope of all online illicit substance selling activity remains limited, largely due to lack of data availability. More specifically, open-source data on illicit substance sales is scarce, and collecting reliable, fully transparent data directly from social media platforms is largely impossible at present.**

⁶⁵ Andréanne Bergeron, et al., *The Success Rate of Online Illicit Drug Transactions during a Global Pandemic*, 99 INT’L J. DRUG POL. 103452 (2022).

Aside from published studies, news articles from various media outlets and advocacy groups have identified various aspects of the illicit substances market.^{66, 67, 68, 69, 70, 71} For example, articles have highlighted victim families who have lost children to fentanyl poisoning, observed behaviors on a wider array of platforms compared to what is reported in published studies, and also provided additional information on the behaviors of drug sellers and end users. Such reporting sheds important light on the diverse and expanding online illicit substance market, but it is difficult to rely solely on this reporting to definitively identify patterns and trends.

Similarly, some anecdotal research outside of published, peer reviewed studies suggests strongly that social media is gaining traction as a convenient marketplace for illicit drugs, particularly among young people. In 2019, for instance, researchers conducted an international survey of 358 respondents who had either sourced drugs or considered sourcing drugs through a mobile phone app.⁷² Those who had not purchased drugs on media explained that anxieties around transacting with unknown suppliers for drugs of unknown safety or quality (68.3%), potential detection or encounters with law enforcement (65.2%), and that it was “hard to find the drug I am after” (34.7%) as primary reasons for refraining from using apps to

⁶⁶ See ‘Fentanyl tainted pills bought on social media,’ “Introduction” Section, *supra*.

⁶⁷ Nitasha Tiku, *One Woman Got Facebook to Police Opioid Sales On Instagram*, WIRED MAGAZINE (Apr. 6, 2010), available at <https://www.wired.com/story/one-woman-got-facebook-to-police-opioid-sales-on-instagram/>.

⁶⁸ Jane Lytvynenko, *Social Networks Are Losing A Deadly Battle With Illegal Online Pharmacies*, BUZZFEED NEWS (June 1, 2018), available at <https://www.buzzfeednews.com/article/janeltyvynenko/social-networks-are-losing-a-deadly-battle-with-illegal>.

⁶⁹ VICE Staff, *How Dealers Are Selling Drugs over Instagram and Snapchat*, VICE (Feb. 6, 2020), available at <https://www.vice.com/en/article/n7j75k/buying-pills-coke-mdma-instagram-snapchat>.

⁷⁰ Jeff Elder, *Snapchat has become an on-demand delivery app for teens to score illegal drugs. Some kids are dying after taking one pill.*, BUSINESS INSIDER (Apr. 16, 2021), available at <https://www.businessinsider.com/snapchat-instagram-drug-dealers-fentanyl-counterfeit-pills-teen-deaths-2021-3>.

⁷¹ Olivia Solon, *Tech companies meet with FDA to discuss how to curb sale of opioids online*, NBC NEWS (Sept. 10, 2021), available at <https://www.nbcnews.com/tech/tech-news/tech-companies-meet-fda-discuss-curb-sale-opioids-online-rcna1963>.

⁷² Leah Moyle, et al., *#Drugsforsale: An exploration of the use of social media and encrypted messaging apps to supply and access drugs*, 63 INT’L J. DRUG POL. 101–10 (2019).

source drugs. Meanwhile, those who had purchased drugs on social media described this method of sourcing as “more convenient to organize a transaction” (78.8%), citing “the speed at which drugs can be obtained” (58.6%) and “the wide range of drugs available” (23.4%) as clear advantages to brokering deals on apps rather than seeking out street dealers, relying on friends, or navigating complex dark web platforms and cryptomarkets. The most frequently used apps and commonly purchased substances are summarized in two of the report’s tables, reproduced below:

Table 2 Mobile Phone Applications Used to Access Illicit Drugs (n = 222).		Table 3 Drugs Recently Purchased Through Mobile App (n = 214).	
Mobile phone applications	'Yes'	Drug	n (%)
Snapchat	169 (76.1%)	Marijuana	138 (64.5%)
Instagram	48 (21.6%)	LSD	17 (7.9%)
Wickr	37 (16.7%)	Ecstasy/MDMA	14 (6.5%)
Kik	28 (12.6%)	Mushrooms	10 (4.7%)
Whatsapp	24 (10.8%)	Cocaine	8 (3.7%)
Facebook / Facebook Messenger	22 (9.9%)	Prescription stimulants	7 (3.3%)
Telegram	18 (8.1%)	Speed/Powder methamphetamine	4 (1.9%)
Tinder	14 (6.3%)	Prescription opioids	4 (1.9%)
Whisper	10 (4.5%)	Prescription benzodiazepines	4 (1.9%)
Grindr	6 (2.7%)	Heroin	3 (1.4%)
Yik Yak	5 (2.3%)	Ketamine	3 (1.4%)
"Other" (Twitter, GroupMe, Signal)	17 (7.7%)	Ice/Crystal methamphetamine	2 (.9%)

In an earlier survey, researchers polled 2,424 15- to 25-year-olds (half from the United States, and half from Spain) in an effort to identify risk factors associated with buying drugs online.⁷³ The 2018 survey indicated that, of the U.S. respondents who had purchased drugs online, 69% of them did so through social media sites, and the remaining 31% did so through darknet services. Additionally, respondents were given the opportunity to indicate several services where they purchased drugs online; in the U.S. at that time, respondents reported that the most common sites to source drugs were Instagram (42%), Facebook (38%), and Craigslist (19%).

Further, in 2019, a survey of over 2,000 16- to 24-year-olds in the UK revealed that one in four young people had seen illicit drugs advertised for sale on social media.⁷⁴

⁷³ Atte Oksanen, et al., *Social Media and Access to Drugs Online: A Nationwide Study in the United States and Spain among Adolescents and Young Adults*, 13 EUR. J. PSYCH APPLIED TO LEGAL CONTEXT 29–36 (2021).

⁷⁴ Liz McCulloch & Scarlett Furlong, *DM for Details: Selling Drugs in the Age of Social Media*, VOLTEFACE (Sept. 2019), available at <https://volteface.me/app/uploads/2020/08/Volteface--Social-Media-report-DM-for-Details.pdf>.

The data further indicated that there is an association between frequency of social media use and the likelihood of seeing drugs advertised for sale. The baseline of seeing drugs advertised for sale (24%) increased (to 29%) among those who use social media every hour, compared to those who use social media just once a day (14%). **A follow-up survey conducted in 2021 revealed that 35% of young people had seen drugs for sale online.**⁷⁵ When broken down by age group, this figure was as high as 58% for 18-year-olds, and children as young as 13 also reported seeing drugs for sale online.

Some surveys of Colorado middle- and high-school students have gathered robust data on young Coloradans' substance awareness, interest in trying substances, ease of access, and self-reported use.^{76, 77} These surveys, however, did not specifically gather data on young peoples' exposure to illicit substances on social media, or where users had obtained substances.

For purposes of this report, the DOL also conducted various public listening sessions, interviews with community stakeholders, and confidential conversations with former drug users and sellers.⁷⁸ **These discussions broadly indicated that a significant portion of illicit substance transactions occur at least in part online, and on social media platforms in particular.**

Rigorous academic research in this space, however, remains significantly limited. Research specific to identifying the characteristics of illicit substance online markets primarily examine only a few popular social media platforms or solely examine how drugs are sold via online pharmacies. The majority of studies published focus on finding ways to detect drug-related social media posts or

⁷⁵ Megan Townsend, *Behind the Screens: Drugs and Social Media*, VOLTEFACE (Nov. 2, 2022), available at <https://volteface.me/drugs-young-people-social-media/>.

⁷⁶ *Rise Above Colorado Youth Survey* (Sept. 2022), available at <https://riseaboveco.org/images/2022%20Rise%20Above%20CO%20Youth%20Survey%20Results.pdf>.

⁷⁷ *Healthy Kids Colorado Survey* (2021), available at https://drive.google.com/file/d/1GPp_4xOOHKNNQmbUj3wbRfMBnAOTXd3w/view.

⁷⁸ For more details on the various discussions' participants, see "Acknowledgements" Section, *supra*.

identifying which keywords are relevant to find drug sellers, and only a few studies characterize how sales occur. The predominant platforms used for these studies^{79,80, 81, 82} included Twitter, Instagram, and a sample of websites marketing and selling illicit substances. Other social media platforms such as Facebook, Snapchat, TikTok, Telegram, and YouTube have not been the subject of significant study.⁸³ The reasons for this vary, but in general, these platforms do not readily provide academic researchers access to data or may have privacy restrictions that restrict what publicly available data can be viewed.

Similar to other public health studies that use social media as a data source,⁸⁴ Twitter has been a common platform used for illicit drug studies, largely due to the availability of Application Programming Interfaces (API)⁸⁵ that provide access to a sample of Twitter data. Other platforms do not provide such data access, and even

⁷⁹ See 'A Machine Learning Approach,' *supra* n.6.

⁸⁰ Ahmed Al-Rawi, *The fentanyl crisis & the dark side of social media*, 45 *TELEMATICS & INFORMATICS* 101280 (2019).

⁸¹ Conference Paper, Anamika Paul Rupa & Aryya Gangopadhyay, *Multi-modal Deep Learning Based Fusion Approach to Detect Illicit Retail Networks from Social Media*, *INT'L CONF. ON COMPUT. SCI. & COMPUT. INTEL.* 238–243 (presented Dec. 16–18, 2020), available at <https://doi.org/10.1109/CSCI51800.2020.00047>.

⁸² Conference Paper, Chuanbo Hu, et al., *Detection of Illicit Drug Trafficking Events on Instagram: A Deep Multimodal Multilabel Learning Approach*, *30TH ACM INT'L CONF. ON INFO. & KNOWLEDGE MGMT.* 3838–46 (presented Oct. 30, 2021), available at <https://doi.org/10.1145/3459637.3481908>.

⁸³ One qualitative study examined social media drug dealing in Nordic countries and found a high volume of drug-dealing activity reported by respondents on Facebook, Instagram, Snapchat, and Facebook Messenger, but it did not directly examine content on the platforms themselves. See Jakob Demant, et al., *Drug dealing on Facebook, Snapchat, and Instagram: A qualitative analysis of novel drug markets in the Nordic countries*, 38 *DRUG & ALCOHOL REV.* 377–385 (2019).

⁸⁴ Tim K. Mackey, et al., *Advancing Infodemiology in a Digital Intensive Era*, 2 *JMIR INFODEMOLOGY* e37115 (2022).

⁸⁵ APIs are programming code that enables data transmission between one software/computer and another. Twitter is likely the most often studied platform given its more open research access policies. In contrast to Twitter, other platforms often do not have data available through APIs or their APIs may not be as accessible, necessitating the use of free and fee-based web services or web-scraping approaches that automatically collect data using a computer program. For brief explanations, see Jason Radford, *Collecting social media data for research*, *SAGE OCEAN* (Apr. 29, 2019), available at <https://ocean.sagepub.com/blog/collecting-social-media-data-for-research>; see also Cécile Zachlod, et al., *Analytics of social media data – State of characteristics and application*, 144 *J. BUS. RSCH.* 1064–76 (2022).

Twitter data may only provide a sample of data on drug sales. Some researchers have also accessed social media data by relying on third-party, subscription-based data providers.⁸⁶ Lack of data access hampers the ability of researchers to identify, measure, and assess the scope and magnitude of the problem.

Further, many new platforms are emerging as online venues to sell illicit substances, and many have yet to be studied empirically. For example, newer platforms such as Telegram and Discord have recently been featured in news headlines due to their discreet messaging features that make them ideal for illicit substance sales; however, challenges associated with accessing data and general lack of awareness about these platforms may explain why studies are not being conducted.⁸⁷

Research also tends to focus on one platform at a time and, to our knowledge, only one study analyzed data on illicit substance sellers from multiple platforms (e.g., Google Groups, Instagram, Twitter, Reddit, and Tumblr), which examined characteristics of how drug sellers advertise.⁸⁸ This means that little to no published research exists that quantifies or analyzes the way in which drug sellers utilize and coordinate multiple platforms. **This lack of cross-platform research also means that no studies to our knowledge have been conducted that measure overall changes in the illicit substance market over an extended period of time.** Given the complexity of data collection on one platform, validating drug selling activity on multiple platforms and cross validating drug sellers is challenging.

Generally, research examining the online sale of illicit substances falls under a broader umbrella of studies that have attempted to identify how drugs (both

⁸⁶ Ahmed Al-Rawi, *The fentanyl crisis & the dark side of social media*, 45 *TELEMATICS & INFORMATICS* 101280 (2019).

⁸⁷ Navene Elangovan, *Selling Narcotics over Telegram: An inside look at a drug raid*, *SINGAPORE TODAY* (accessed Oct. 25, 2022), available at <https://www.todayonline.com/singapore/selling-narcotics-over-telegram-inside-look-drug-raid>.

⁸⁸ Michael Robert Haupt, et al., *The influence of social media affordances on drug dealer posting behavior across multiple social networking sites (SNS)*, 8 *COMPUTS. IN HUM. BEHAV. REPS.* 100235 (2022).

prescription medications and illicit substances) are sold online or how drug use is discussed on social media.^{89, 90, 91}

Some other studies do not focus on online sales specifically, but rather rely on focus groups or surveys to identify purchasing and access behaviors as reported by users of illicit substances.^{92, 93, 94, 95} Only one study has been identified which discussed ways to translate online illicit substance research into commercial solutions, with the aim of assisting with platform content moderation and law enforcement activities.⁹⁶ Lastly, one study discussed the value of using publicly available data (e.g., on social media, encrypted communication applications, the dark web, and in media reports) to understand how people use drugs and identify people who supply drugs.⁹⁷ Ultimately, research in this space remains limited and there are significant gaps in understanding illicit online markets that would benefit from additional research.

Specific to illicit substance chemical precursors, only a few studies have been published. The two primary studies include a 2020 study that used web crawling on

⁸⁹ Tim K. Mackey, et al., *Solution to Detect, Classify, and Report Illicit Online Marketing and Sales of Controlled Substances via Twitter: Using Machine Learning and Web Forensics to Combat Digital Opioid Access*, 20 J. MED. INTERNET RSCH. e10029 (2018).

⁹⁰ Jamee Ahmed, et al., *A critical review on the availability of substandard and falsified medicines online: Incidence, challenges and perspectives*, 6 J. MED. ACCESS 23992026221074548 (2022).

⁹¹ Abeed Sarker, et al., *Mining social media for prescription medication abuse monitoring: a review and proposal for a data-centric framework*, 27 J. AM. MED. INFORMATICS ASS'N 315–329 (2019).

⁹² See ‘Purchase of prescription medicines via social media,’ *supra* n.7 (discussing drug sourcing from the Internet and the dark web).

⁹³ See ‘The success rate of online illicit drug transactions,’ *supra* n.66 (discussing self-reporting of drug transactions on the dark web).

⁹⁴ See ‘#Drugsforsale,’ *supra* n.73 (examining drug sourcing from smartphone social media apps).

⁹⁵ See ‘Social Media and Access to Drugs Online,’ *supra* n.74 (examining online drug buying behaviors among respondents in the United States and Spain); see also Conference Paper, Atte Oksanen, et al., *Illicit Drug Purchases via Social Media Among American Young People*, INT’L CONF. ON HUM.-COMPUT. INTERACTION 278–88 (presented on July 10, 2020), available at https://link.springer.com/chapter/10.1007/978-3-030-49570-1_19.

⁹⁶ See ‘Solution to Detect, Classify, and Report,’ *supra* n.90.

⁹⁷ Oskar Enghoff & Judith Aldridge, *The value of unsolicited online data in drug policy research*, 73 INT’L J. DRUG POL. 210–18 (2019).

several novel psychoactive substance (NPS)⁹⁸ websites and identified a high volume of fentanyl analog discussions, including online discussion about novel and previously undescribed NPS. A separate 2017 study identified finished fentanyl and fentanyl powder being sold online from online classified ads, illicit online pharmacies, and user forums.⁹⁹ Given the scope of the issue and its impact on the international importation of illicit substances, more research is required. However, without more international cooperation and recognition of the unique challenges posed by the online illegal precursor chemical market, research will remain difficult to conduct.

Though methods in data science are advancing to better identify drug sellers from certain platforms, existing research is nevertheless limited in coverage of where, how, and what volumes of illicit substance sales are occurring. Specifically, most published studies only examine data for a specific time period, use a limited set of keywords/codewords that may not be representative of all the terms used across different online drug selling marketplace, and thus have results that are limited in generalizability. Additionally, though several studies have examined the utility of natural language processing and machine learning approaches to classify illicit substance selling-related content and have models that achieve high performance¹⁰⁰, the availability of data to scale this activity to larger and more diverse datasets as online drug markets change, is likely a challenge.

Ultimately, there is much that remains unknown from a research perspective on this topic, particularly with respect to how illicit substance sales propagate and link across multiple platforms at the same time. Further, no studies have successfully quantified the total number of illicit sellers operating on social media or other parts of the Internet. While social media platforms may or may not have this information

⁹⁸ Novel psychoactive substances (NPS) are those substances that are not controlled by the United Nations 1961 Single Convention on Narcotic Drugs or by the Psychotropic Substances Conventions. NPS legislation and scheduling may vary by country, and many are designed to mimic existing established recreational drugs. See Davide Arillotta, et al., *Novel Opioids: Systematic Web Crawling Within the e-Psychonauts' Scenario*, 14 FRONTIERS IN NEUROSCIENCE 149 (2020).

⁹⁹ Research Note, Tim K. Mackey & Janani Kalyanam, *Detection of illicit online sales of fentanyls via Twitter*, F1000 RESEARCH [version 1, peer review: 3 approved] (2017).

¹⁰⁰ Janani Kalyanam & Tim K. Mackey, *A Review of Digital Surveillance Methods and Approaches to Combat Prescription Drug Abuse*, 4 CURRENT ADDICTION REPS. 397–409 (2017).

internally, none of them work readily with researchers seeking this information. As a result, the scale of the market is unknown.

Another unknown area of risk is drug selling and buying activity that is occurring via private messages, chats, and encrypted communication applications where person-to-person illicit substance selling has been observed and reported. Not only is much of this data structurally unavailable given the nature of the platforms, but open access to this data also remains very limited. These gaps in research and evidence may hamper education, policy, and advocacy efforts to address illicit substance sales online.

“We are in the midst, in my view, of an overdose crisis, and the counterfeit pills are driving so much of it. The drug dealer isn’t just standing on a street corner anymore. It’s sitting in a pocket on your phone. Social media is not doing enough to deal with this.”

—DEA Administrator Anne Milgram, 2021

“This young culture is used to ordering up a pizza or an Uber and you can order up a pill just that easily. There’s so much of it out there, and it’s coming packaged in this deceptive way.”

—Jon Epstein, father of Cal, who died from fentanyl poisoning

III. Analysis of Platform Policies and Practices Applicable to Illicit Substance Transactions

Main Takeaways

- Most social media companies have adopted policies prohibiting illegal conduct and drug activity on their platforms. However, these policies vary widely in specifying what conduct constitutes prohibited drug activity. Likewise, many social media companies have adopted policies outlining what enforcement actions the platform will take in response to drug content, the circumstances under which the platform will cooperate with law enforcement investigations, and the mechanisms available for users to report drug activity—all to varying degrees of specificity.
- Social media companies appear to have different tolerances for drug activity. Some have adopted a “zero tolerance” policy, where an illicit substance transaction will result in the user’s immediate removal from the platform. Others employ a “strike” system, with escalating penalties for multiple drug-related offenses.
- Social media platforms have taken various approaches to content moderation. These may include automated/machine learning tools, human reviewers, blocking content or search results, and user reporting. Each of these tools has its own set of strengths and weaknesses; their combined use appears to be much more effective.
- The effectiveness of platforms’ drug-related policies and content moderation strategies is unclear. Social media platforms enjoy broad discretion in enforcing their own policies and curating content, and given the sheer number of users and high volume of user content, policy enforcement is likely limited or uneven. Further, some platforms release robust transparency reports disclosing data on their responses to drug-related content and accounts—but unfortunately, not all of them do this.

A. Overview of Social Media Platform Policies

1. Terms & Conditions—Organic, User-Generated Content

All major social media platforms require users to agree to “terms and conditions” when they create an account in order to participate or use features on their platforms, even though the overall use of these platforms is generally free.¹⁰¹ Frequently included among these requirements is some reference to what types of content, services, or products are prohibited on the platform, while further explanation of such prohibited activities is spelled out in specific “community guidelines.”

Platform	Policy Generally Prohibiting Illegal Conduct	Policy Specifically Prohibiting Drug Activity	Policy Describing Enforcement Actions after Prohibited Content or Conduct is Detected	Policy Describing Cooperation with Law Enforcement	User Reporting Mechanisms Specifically for Flagging Drug Content or Activity
Amazon	✓	✓	✓	✓	✗
Discord	✓	✓	✓	✓	✗ ~
Kik	✓	✗	✓	✓	✗
LinkedIn	✓	✓	✓	✓	✗
Meta	✓	✓	✓	✓	✓
Pinterest	✓	✓	✓	✓	✓
Reddit	✓	✓	✓	✓	✓
Signal	✓	✗	✓	✓	✗
Snapchat	✓	✓	✓	✓	✓
Telegram	✓	✗	✓	✓ *	✗ ~
TikTok	✓	✓	✓	✓	✓
Tumblr	✓	✓	✓	✓	✓

¹⁰¹ Social media platforms mainly generate revenue from selling ads delivered to their users. However, platforms may also charge or generate revenue from subscription-based services, additional fee-based features, developer fees, or other transaction fees.

Twitter	✓	✓	✓	✓	✗
Whisper	✓	✓	✓	✓	✗ ~
Wickr	✓	✗	✓	✓	✗ ~
YouTube	✓	✓	✓	✓	✓

* Only promises cooperation on terrorism-related activity.
~ Only provides an “Other” write-in option for unenumerated violations, or a link to email the platform’s trust & safety team.

Table above: Common policies and guidelines employed by major social media platforms and social messaging platforms relevant to online drug activity.

Notably, there is near unanimity in prohibiting use of the platforms to facilitate illegal conduct,¹⁰² and many platforms specifically prohibit drug activity or drug-related content. For instance, Meta¹⁰³ prohibits illicit substance content on its platforms in clear, explicit terms along with illustrative examples—banning the buying, selling, and trading of “non-medical drugs” and “pharmaceutical drugs,” as well as any “positive speech” describing the benefits of or encouraging others to use “non-medical drugs.”

To view some of the major platforms’ policies prohibiting illegal conduct and/or drug activity, please refer to **Appendix B**.

Platforms also generally have policies outlining the potential consequences of violating their terms and policies. Typical enforcement options employed by platforms for users’ policy violations may include written warnings; post/content removal, de-prioritization, or demonetization; temporary account suspension; or permanent account removal. Some platforms are clear that action will be taken against a user’s posts or account if drug content is detected. Other platforms do not clearly articulate their decisional processes for removing content or accounts. **And even in the presence of clear policies, platforms generally give themselves**

¹⁰² Other typically prohibited goods and services include firearms, alcohol, tobacco, gambling, counterfeit products, paid sex work, endangered or exotic animals, fraudulent financial services (i.e., “get rich quick” schemes), and falsified documents or currency. These prohibited goods and services may also vary country-to-country.

¹⁰³ *Restricted goods and services*, META TRANSPARENCY CENTER, available at <https://transparency.fb.com/policies/community-standards/regulated-goods/>.

immense discretion on which enforcement measures to take against users who post drug-related content or engage in drug activity.

Moreover, social media companies appear to have widely different tolerances for drug activity on their platforms. Some platforms, such as Snapchat, have adopted a firm “zero tolerance” policy, where an illicit substance transaction will result in the user’s immediate removal from the platform.

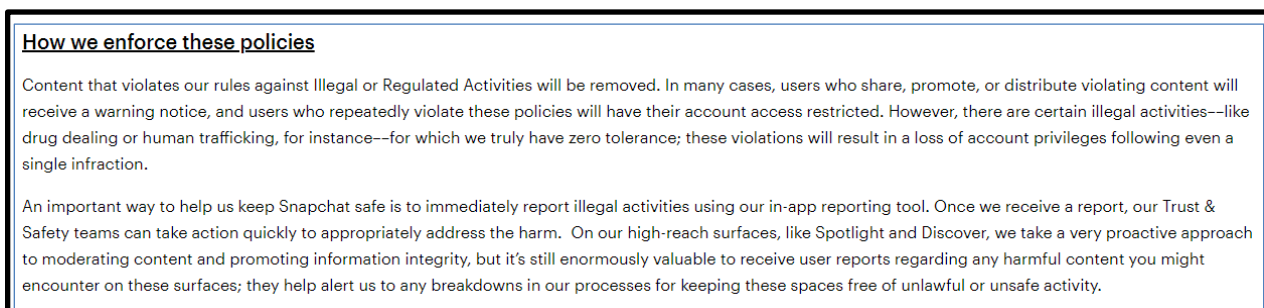


Image above: Snapchat’s enforcement policy—an example of a “zero tolerance” approach to online drug activity.

Other platforms, such as Meta, TikTok, and YouTube, employ a “strike” system, with escalating penalties for multiple offenses. **Under such a strike system, a user could conceivably post offers to sell drugs numerous times before finally accumulating enough strikes to warrant removal from the platform.**

Indeed, on February 23, 2023, Meta announced¹⁰⁴ an updated strike system outlining the potential penalties a policy violator may face—from “one strike” up to “ten or more strikes.” In implementing this update, Meta explained that, “[u]nder the new system, we will focus on helping people understand why we have removed their content, which is shown to be more effective at preventing re-offending, rather than so quickly restricting their ability to post.”¹⁰⁵ And particularly relevant here, Meta indicated that, “[f]or more serious violations: posting content that includes terrorism, child exploitation, human trafficking, suicide promotion, sexual exploitation, *the sale of non-medical drugs* or the promotion of dangerous

¹⁰⁴ Monica Bickert, *How We’re Improving Facebook’s Penalty System*, META NEWSROOM (Feb. 23, 2023), available at <https://about.fb.com/news/2023/02/meta-is-improving-facebooks-penalty-system/>.

¹⁰⁵ *Id.*

individuals or organizations, we will continue to apply immediate consequences, including account removal in severe cases.”¹⁰⁶ While this language suggests that Meta’s strike system does not apply with as much lenience for drug-related offenses on its platforms, the language fails to specify what “immediate consequences” will apply when drug activity is detected, or which drug-related offenses constitute sufficiently “severe cases” to warrant the account’s removal.

Restricting accounts

UPDATED FEB 23, 2023

For most violations, your first [strike](#) will result in a warning with no further restrictions. If Meta removes additional posts that go against the [Facebook Community Standards](#) or [Instagram Community Guidelines](#) in the future, we’ll apply additional strikes to your account, and you may lose access to some features for longer periods of time.

These restrictions generally only apply to Facebook accounts, but they may also be extended to Pages that represent an individual, like a celebrity or political figure. (Note that while we count strikes on both Facebook and Instagram, these restrictions only apply to Facebook accounts.)

For most violations on Facebook, strikes will lead to the following restrictions:

- **One strike:** You’ll get a warning since this is your first strike.
- **Two to six strikes:** You’ll be restricted from specific features, like posting in groups, for a limited amount of time.
- **Seven strikes:** You’ll get a one-day restriction from creating content, which includes posting, commenting, creating a Page, and more.
- **Eight strikes:** You’ll get a 3-day restriction from creating content.
- **Nine strikes:** You’ll get a 7-day restriction from creating content.
- **Ten or more strikes:** You’ll get a 30-day restriction from creating content.

Image above: Meta’s recently updated enforcement policy—an example of a “strike” system which may accommodate multiple offenses.

¹⁰⁶ *Id.* (emphasis added).

To view some of the major platforms' policies outlining the enforcement actions taken after illegal conduct and/or drug activity is detected, please refer to **Appendix C**.

2. Terms & Conditions—Paid Advertising and Sponsored Content

Platforms, with near universality, also have terms and conditions or policies and guidelines specific to paid advertising content. Such requirements for advertising on social media platforms include prohibitions on selling or promoting the use of illicit substances. These ad-specific policies are different from general policies on prohibited content arising from user-generated content.

This policy applies to Twitter's paid advertising products.

What's the policy?

Twitter prohibits the promotion of drugs and drug paraphernalia.

Examples of drugs and drug paraphernalia include:

- Illegal drugs
- Recreational and herbal drugs
- Accessories associated with drug use
- Drug dispensaries
- Depictions of hard drug use

Drugs and Tobacco

We prohibit the depiction of illegal drug use or the recreational use of pharmaceuticals.

We allow some limited ads for cannabis, CBD and related products, where legal, with appropriate targeting.

We do not allow the depiction of smoking or vaping, except in the context of public health messaging or smoking cessation.

Meta wants to protect people from illicit or potentially unsafe drugs, products or supplements that may be harmful to them. This is why we don't allow advertisers to run ads that promote the sale or use of illicit or recreational drugs, or other unsafe substances, products or supplements, as determined by Meta technologies.

Unsafe substances include but aren't limited to:

- Anabolic steroids
- Chitosan
- Comfrey
- Dehydroepiandrosterone
- Ephedra
- Human growth hormones

Note that under this policy we also prohibit ads that promote drug-related paraphernalia, including bongos, rolling papers and vaporized delivery devices.

Images above: Paid advertisement policies for Twitter (top), Snapchat (center), and Meta (bottom).

Specifically, online advertising content (e.g., keywords/AdWords, marketing text or images) are generally reviewed by platforms through machine automation and potentially human review for compliance purposes prior to being disseminated. As a result, illicit substance content rarely makes it into paid advertisements. By contrast, user-generated content (i.e., nonpromotional content created organically by users) may or may not undergo a review process, but instead is subject to less rigorous content moderation. Platforms use different approaches, as discussed below, to filter, review, and screen content for possible removal, but such review tends to not be as meticulous; accordingly, user-generated content involving the sale or promotion of illicit substances is much more likely to evade review than advertising content. As platforms directly generate revenue from ad-related content, there is generally a higher degree of review and scrutiny to avoid possible liability, such as the \$500 million forfeiture levied against Google Inc. for allowing online Canadian pharmacies to place advertisements through its AdWords program that resulted in unlawful importation into the United States of controlled substances.¹⁰⁷

¹⁰⁷ Press Release, *Google Forfeits \$500 Million Generated by Online Ads & Prescription Drug Sales by Canadian Online Pharmacies*, U.S. DEPARTMENT OF JUSTICE (Aug. 24, 2011), available at <https://www.justice.gov/opa/pr/google-forfeits-500-million-generated-online-ads-prescription-drug-sales-canadian-online>.

3. Policies Associated with Law Enforcement

All platforms reviewed (with the exception of Telegram¹⁰⁸) also have some form of law enforcement cooperation policy which outlines how law enforcement agencies can make requests for data or enforce court orders, but lack detail on the average processing time for requests or how data production decisions are made.¹⁰⁹

Generally, publicly available posts without audience restrictions can be viewed and accessed by law enforcement without court authorization, along with any publicly available information on the user's profile.¹¹⁰ Pursuant to the Stored Communications Act, social media platforms may also disclose non-public information about users and their communications¹¹¹ to law enforcement upon receipt of a valid warrant, subpoena, or court order.¹¹² Further, social media platforms may proactively share information with law enforcement normally considered protected under the Stored Communications Act if they believe that there is a risk of "imminent danger of death or serious physical injury to any person."¹¹³ And federal law also requires platforms to report child sexual exploitation and child sexual abuse material, which sets an important precedent for proactive disclosure of other forms of illegal conduct.¹¹⁴ In all other cases, social

¹⁰⁸ In fact, Telegram's hands-off approach to content moderation appears to be a promoted feature for joining the platform. See Farzaneh Badiei, *The Tale of Telegram Governance: When the Rule of Thumb Fails*, THE JUSTICE COLLABORATORY (Jan. 28, 2022), available at <https://law.yale.edu/sites/default/files/area/center/justice/document/telegram-governance-publish.pdf>.

¹⁰⁹ Jon Bateman, et al., *How Social Media Platforms' Community Standards Address Influence Operations*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE (Apr. 1, 2021), available at <https://carnegieendowment.org/2021/04/01/how-social-media-platforms-community-standards-address-influence-operations-pub-84201>.

¹¹⁰ *Law Enforcement and Technology: Using Social Media*, CONG. RSCH. SVC. (Jan. 11, 2022), available at <https://sgp.fas.org/crs/misc/R47008.pdf>.

¹¹¹ Note that the Stored Communications Act only applies to users' private electronic communications that are not publicly available, but some communications may nevertheless be granted protection depending upon the platform's identification as an electronic communication service or a remote computing service.

¹¹² See 'Law Enforcement and Technology,' *supra* n.111.

¹¹³ *Id.*

¹¹⁴ *Id.*

media companies are free to establish their own internal policies¹¹⁵ for voluntarily sharing non-public information with law enforcement if they are not prohibited from doing so by the Stored Communications Act or their platforms' privacy policies.

Law enforcement may also file requests for social media companies to preserve data for a certain period of time (typically 90 days) in order to obtain court authorization for access.¹¹⁶ However, this presents a challenge for messaging platforms like Snapchat, where content is automatically deleted, often after a set period of time or once it is viewed by a user.¹¹⁷ Such posts have such a short retention period that by the time law enforcement is made aware of the content, it likely has already been removed or deleted. Likewise, social messaging applications that use end-to-end encryption may be limited in what information they can share because the platforms themselves cannot access the encrypted content.

Law enforcement faces an additional hurdle posed by platforms' user notification policies. Often, as a matter of transparency or due process, a platform will notify a user when law enforcement has made an information request or preservation request related to the user's account. This allows the user to petition to quash the subpoena or otherwise contest the data's production. But it also tips off drug sellers that they have become the targets of narcotics investigations, thus allowing them to take evasive measures like abandoning their accounts.

Overall, platforms' law enforcement policies run the gamut in terms of specificity. Meta, for example, provides some general details on laws and practices that inform law enforcement request processes, and guides law enforcement requests towards an online portal it has designed to handle such requests.¹¹⁸ Conversely, Telegram only offers three sentences in its privacy policy about potential cooperation if the investigation relates to a "terrorism suspect"; Telegram does not appear to have a

¹¹⁵ Notably, Snapchat has reported that, as a matter of internal policy, it considers any drug activity on its platform involving fentanyl to be a risk of "imminent danger of death or serious physical injury to any person" warranting proactive reporting to law enforcement.

¹¹⁶ *Id.*

¹¹⁷ *Information for Law Enforcement: Snapchat Law Enforcement*, SNAPCHAT SAFETY & PRIVACY HUB, available at <https://values.snap.com/safety/safety-enforcement>.

¹¹⁸ *Information for law enforcement authorities*, FACEBOOK SAFETY CENTER, available at <https://www.facebook.com/safety/groups/law/guidelines>.

law enforcement request system, nor even a dedicated email for law enforcement inquires.¹¹⁹

To view some of the major platforms' policies outlining when and how they will cooperate with law enforcement investigations, please refer to **Appendix D**.

B. Advantages and Shortcomings of Prevention Approaches

1. General Platform Approaches to Prevention

Moderating content via automated tools and/or human review.

In furtherance of the terms and conditions and content moderation policies reviewed above, social media platforms may use a combination of tools to detect, block, and decrease users' exposure to drug-related content, as well as to other prohibited platform activity. If an illicit substance-related post is created and displayed publicly, both platform human content reviewers and methods of automation can identify and monitor it. Automation can include hard-coded programming that applies clear rules to content moderation and the use of machine learning approaches that enable more fluid content moderation responsive to data inputted over time.¹²⁰ Sometimes content is immediately removed through automation; other times the content is flagged by automation and redirected to human reviewers.

In either event, once content is identified as potentially prohibited or violating terms and conditions by either automation or human reviews, platform trust and safety teams may review content and then decide whether to remove a post, suspend a user account, or take other action (e.g., proactively prevent the user from creating another account or post with similar registration information). However,

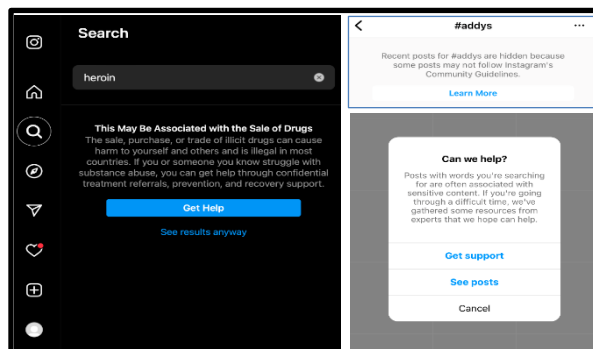
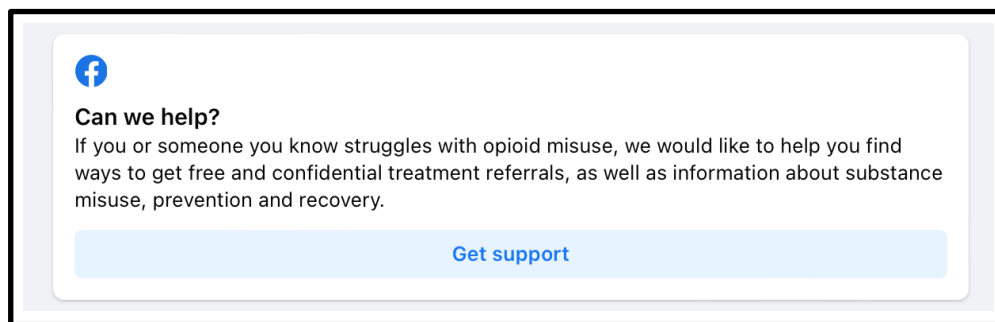
¹¹⁹ *Legal Ground for Processing Your Personal Data*, TELEGRAM PRIVACY POLICY, available at <https://telegram.org/privacy?setln=fa#2-legal-ground-for-processing-your-personal-data>.

¹²⁰ Vaishali U. Gongane, et al., *Detection and moderation of detrimental content on social media platforms: current status and future directions*, 12 SOC. NETWORK ANALYSIS & MINING 129 (2022).

with some exceptions,^{121, 122} there is a general lack of transparency on how moderation decisions are made and whether they are consistently applied, including in the context of illicit substance-related content.

Blocking keyword search results.

Another approach is to initially block certain search results from appearing when certain keywords or codewords related to illicit substances are inputted. When these keywords are inputted, the listed content from the search results are redirected to public service announcements or to information on how to contact the U.S. Substance Abuse and Mental Health Services Administration (SAMHSA) National Helpline for referral to treatment or other harm reduction resources. However, under these redirection tools, there often still remains an option to view results by simply clicking on a link that is available on the initial blocked search results.



Images above: search redirects on Instagram and Facebook that hide drug content and include warnings about substance use disorder.

¹²¹ *How Meta prioritizes content for review*, META TRANSPARENCY CENTER (Jan. 26, 2022), available at <https://transparency.fb.com/policies/improving/prioritizing-content-review/>.

¹²² *Our approach to policy development and enforcement philosophy*, TWITTER HELP CENTER (accessed Feb. 16, 2023), available at <https://help.twitter.com/en/rules-and-policies/enforcement-philosophy>.

[Encouraging user reporting.](#)

Users can also help in identifying prohibited drug activity by flagging it for social media platforms. Specifically, platforms often use in-app reporting functions that refer content or accounts to a human moderator for review and possible action. The specificity of these reporting functions varies widely. Some platforms' "flagging" features specifically allow users to indicate that a post is engaged in the sale or promotion of illicit substances, or that a user's account is suspected of habitual drug activity. Depending on the platform, however, a user may need to navigate through multiple menus before finally reaching options allowing the user to report drug activity.

Other platforms allow users to flag general "prohibited conduct" for human review (e.g., spam, harassment, threats, nudity), but not specifically drug activity. Still other platforms provide only bare user reporting mechanisms, such as listing a public email address for users to contact the platform's trust and safety team.

[To view some of the major platforms' available mechanisms for reporting drug activity to the platform, please refer to **Appendix E**.](#)

2. Limitations to Prevention Approaches

Policies that prohibit illicit substance transactions for both user-generated and paid advertising content are nearly ubiquitous across social media platforms, and all platforms use some combination of content moderation tools. However, simple searches of these platforms for illicit substance-related content, as documented by family advocacy groups, news outlets, and researchers (discussed in Section II, *supra*), provide evidence that current detection and removal measures are inadequate. **In other words, although social media platforms have active policies in place that explicitly prohibit drug activity, enforcement of these policies may be limited or applied unevenly.**

In general, the terms and conditions or community guidelines users must agree to before using a social media platform contractually give platforms the right to remove a user's content or account if it violates conditions or policies. Additionally, making conditions of participation explicit allows compliant users to have a readily accessible reference and rationale for reporting prohibited content. However, the clear limitation to these policies is assessing how effectively and consistently they

are implemented and enforced. **Importantly, platforms frequently do not specify how their “prohibited goods” policies are enforced, and instead may highlight selective content moderation successes rather than disclosing how they make content moderation decisions specific to illicit substances (see below).**

Lack of specificity in content moderation policies includes:

1. What specific conduct does the platform consider to be prohibited “drug activity”? (e.g., mentions of drugs and/or drug use, depictions of drugs and/or drug use, posts speaking positively about drug use, posts instructing others on making, buying, or using drugs, posts seeking to buy drugs, posts offering to sell drugs)
2. How does the platform distinguish “prohibited” drug activity from “acceptable” drug content? (e.g., posts raising awareness about drug dangers, discussions about recovery and harm reduction strategies, substance abuse resources, in memoriam posts related to overdose or poisoning victims)
3. What specific enforcement action(s) does the platform take after detecting drug activity (e.g., warning, content removal, de-prioritization, demonetization, account suspension or removal)? For any given drug-related violation, what criteria does the platform use in deciding which enforcement tool(s) to use?
4. What actions are available to users who encounter drug activity on the platform? Are users able to report accounts suspected of ongoing drug activity, or only flag specific drug-related posts? How does the platform respond to user reports?
5. What types of content does the platform consider to be a risk of “imminent danger of death or serious physical injury to any person” warranting proactive reporting to law enforcement under the Stored Communications Act?
6. How does the platform prioritize detection and removal of drug-related content, relative to other prohibited content?

With billions of social media users globally creating or sharing content on a daily basis, reviewing for prohibited content, like illicit substance transactions, has its challenges.¹²³ **While it is likely inevitable that illicit substance content will be available even with the strongest and most advanced content**

¹²³ Sungwon Yoon, et al., *Patterns of use and perceived value of social media for population health among population health stakeholders: A cross-sectional web-based survey*, 21 BMC PUB. HEALTH 1312 (2021).

moderation strategies and technology, coordination between human reviewers, automation tools, and users who flag and report prohibited content is all the more important.

The need for coordination is best understood when examining the strengths and weaknesses of each content moderation approach (see table below). For example, the relationship between automation and human review can allow for greater breadth of detecting prohibited content, and when feasible, human reviewers can add context and deeper understanding of the meaning of illicit substance communications and trends. This, in turn, can help to improve machine learning approaches to better automate detection of prohibited content, particularly if drug sellers change their marketing strategies.

Table below: Strengths and weaknesses of various platform content moderation methods.

Type of Content Moderation	Strengths	Weaknesses
Human review	Human communication can be sophisticated and require an understanding of context not easily replicated at high precision with automation. Human review allows for better contextualization of content if content moderators are given sufficient time to review and make decisions about prohibited content. This can lead to better detection and appropriate removal of content.	Human review has certain limitations including speed in comparison to automation, costs of employing human reviewers, and possible inconsistency in decisions about content. Human reviewers may also suffer from work-related fatigue, mental health challenges, or burnout due to the nature of content reviewed.
Automation (e.g., machine learning)	Automation generally provides the benefits of scalability, consistency, lower costs, and the ability for machine learning to constantly improve in effectiveness.	Automation may not as readily respond to new trends and strategies used by illicit substance sellers and suffer from lack of precision or accuracy. Results from automation (e.g., removing a post or suspending an account) may also require human review to confirm platform policy violations.
Blocking keywords from searches	Blocking keyword searches prevents users from accessing potentially harmful illicit substance content and can redirect users to online resources for and information about substance use disorder (e.g., national hotlines). Generally establishing a set of terms to block and redirect users to other search results can be implemented more easily than other approaches.	Blocking searches can make it harder for law enforcement to find illicit substance content. It may also unintentionally block beneficial content about substance use disorder if not applied correctly. Illicit substance sellers may also bypass blocking by simply using new keywords, codewords, or misspelling of drug names widely known to the community. Additionally, blocking keywords alone does not remove prohibited content that

		can be discovered by users in other ways.
Users self-reporting violations	Users who have first-hand knowledge of illicit substance-related content can flag content for platforms using tools made available. This allows for platforms to generate community-based reports and further review them for prohibited content. User surveillance can help detect content that otherwise evades content moderation approaches.	Relying on users to self-report illicit substance content is subject to several limitations if not used in conjunction with other approaches. Users may lack the ability or training to distinguish prohibited content, users may not want to report prohibited content or lack the knowledge of how to do so, and users may report false violations or be biased in reporting. Furthermore, relying on users to self-report ignores the responsibility of the platform to ensure compliance of users to its own terms and community guidelines.

Notably, there are nuances to enforcement once detection occurs and judgment on whether a violation of policy occurred. As previously noted, assuming the platform determines the content violates its policy, the platform could decide to remove the content, remove and/or suspend the user, and or report the content to law enforcement. However, due to the self-regulatory nature of social media platforms, it is unclear how decisions to remove, suspend, and report content are made in relation to illicit substance selling online. Removed accounts and their associated registration information (e.g., email, phone number, device, IP address) may or may not be blacklisted or prevented from future account creation. While some platforms self-report that they do block IP addresses, emails, and phone numbers from new account creation, such approaches are relatively simple to evade, and it is unclear how consistently these blocking approaches are used.

Whether this type of content moderation actually deters illicit substance selling through the action of removing or suspending an account without proactively working with victim families and law enforcement is also not well established. Though platforms may have policies that prohibit drug-related content and employ strategies and tools to identify and remove it, it remains unclear if content moderation alone can sufficiently mitigate the online illicit

substance market—principally due to lack of availability of data and case studies to support assessment.

3. Limited Information on Law Enforcement Cooperation

Similarly, it is unclear how helpful platforms have been in cooperating with law enforcement to aid criminal investigations of drug sellers operating on their platforms. Law enforcement generally must provide a valid warrant, subpoena, court order to access data, although they may also source social media data using the information that is publicly available, known as open-source intelligence (OSINT).¹²⁴ It is difficult to assess not only the usefulness of data produced in response to law enforcement requests, nor how responsive social media platforms are to such requests in general, because of the sensitive nature of ongoing investigations and investigational techniques. **Local law enforcement has variously noted that companies may not respond to law enforcement requests with enough time for the provided information to be useful; that they may not answer all subpoenas and court orders; that information is produced in disorganized, unwieldy formats; and that information is sometimes unavailable given the platform’s ephemerality or encryption features.**

Having clear contact information for a platform-dedicated law enforcement liaison and standardization of procedures for submitting data requests by law enforcement, while also articulating a willingness to cooperate when criteria are met, should be minimum requirements for these types of policies. Likewise, clear data retention policies are important. **As pa best practice, generally, even if data is deleted by a user, removed by a platform, or automatically deleted, the underlying data should still be retained on a platform’s relevant servers for a certain period of time.**

¹²⁴ OSINT is the collection and analysis of data gathered from open sources, including the Internet, media, government and commercial data, and other published literature and reports, to produce actionable intelligence.

4. Responses from Social Media Platforms

In response to growing public scrutiny regarding illicit substance sales occurring on social media platforms, companies have issued periodic transparency reports. Some of these reports have been in direct response to issues raised at congressional hearings^{125, 126, 127} or in response to media reporting.

In these transparency reports, some platforms self-report the amount of illicit substances content (sometimes broadly referred to as “prohibited goods and services” content, or “regulated or illegal activities” content) that was flagged and removed. While it is not possible to verify this data, the following table illustrates what selected platforms reported during each of their most recent reporting periods:

¹²⁵ Rep. David McKinley, *Rep McKinley Questions Mark Zuckerberg on Illegal Opioid Sales on Facebook*, YOUTUBE (Apr. 11, 2018), available at <https://www.youtube.com/watch?v=B18BAD2vY4k>.

¹²⁶ Rep. David McKinley, *Energy and Commerce Hearing: Social media’s role in promoting extremism and misinformation*, YOUTUBE (Mar. 25, 2021), available at <https://www.youtube.com/watch?v=qBEoLsm7Bfs&t=12s>.

¹²⁷ Lauren Feiner, *Snapchat’s role in fentanyl crisis probed during House roundtable: ‘It’s a Snap-specific problem,’* CNBC (Jan. 25, 2023), available at <https://www.cnbc.com/2023/01/25/snapchats-role-in-fentanyl-crisis-probed-during-house-roundtable.html>.

Platform	Reporting period	Number of monthly active users (MAU)	Number of units of content and/or accounts actioned	Category of content violation	Proactive removal rate of violative content ¹²⁸
Facebook	Oct–Dec 2022	2.96B MAU ¹²⁹	5.4M units ¹³⁰	Restricted Goods and Services—Drugs	99.1% ¹³¹
Instagram	Oct–Dec 2022	<i>unreported</i> ¹³²	3.1M units ¹³³	Restricted Goods and Services—Drugs	98.8% ¹³⁴
TikTok	Jul–Sept 2022	1B MAU ¹³⁵	3.1M videos ¹³⁶	Illegal activities and regulated goods—Drugs, controlled substances, alcohol, or tobacco	93.9% ¹³⁷

¹²⁸ “Proactive removal rate” refers to the percentage of violative content that was removed by the platforms prior to users reporting the content.

¹²⁹ *Meta Reports Fourth Quarter and Full Year 2022 Results*, META INVESTOR RELATIONS (Feb. 1, 2023), available at <https://investor.fb.com/investor-news/press-release-details/2023/Meta-Reports-Fourth-Quarter-and-Full-Year-2022-Results/default.aspx>.

¹³⁰ For Meta platforms (i.e., Facebook and Instagram), “actioned” refers to content that was removed or covered with a visual warning. See *Restricted Goods and Services*, META TRANSPARENCY CENTER, available at <https://transparency.fb.com/policies/community-standards/regulated-goods/#takedown-experience>.

¹³¹ *Id.*

¹³² Meta does not specify the monthly active users on Instagram, but it does report the family monthly active people (MAP), including all of Meta’s products, which accounts for 3.74 billion people. See *Meta Reports Fourth Quarter and Full Year 2022 Results*, *supra* n.130.

¹³³ See *Restricted Goods and Services*, *supra* n.131.

¹³⁴ *Id.*

¹³⁵ *Thanks a billion!*, TIKTOK NEWSROOM (Sept. 27, 2021), available at <https://newsroom.tiktok.com/en-us/1-billion-people-on-tiktok>.

¹³⁶ For TikTok, “actioned” refers to the number of videos removed. *Community Guidelines Enforcement Report*, TIKTOK (2022), available at <https://www.tiktok.com/transparency/en/community-guidelines-enforcement-2022-3/>.

¹³⁷ *Id.*

Snapchat	Jan–June 2022	750M MAU ¹³⁸	270.8K units, 200K accounts ¹³⁹	Drugs	<i>unreported</i>
Discord	Jul–Sept 2022	<i>primary data unavailable</i> ≈140M MAU, ≈6.7M active servers ¹⁴⁰	37.2K accounts, 6.9K servers ¹⁴¹	Regulated or Illegal Activities	63% (for servers) ¹⁴²

Wickr and Telegram do not disclose information about their respective units of drug-related content actioned. Of note, Wickr acknowledges that the information stored on Wickr servers is encrypted and undecipherable,¹⁴³ thus making any data regarding the scope of illicit substance content on their platforms impossible to identify. Telegram, which advertises itself as an end-to-end encryption platform, is renowned for its privacy features, including “self-destructing” messages.^{144, 145} As of this report’s publication, Telegram has not released any transparency reporting disclosing the prevalence of illicit activity on its platform.

¹³⁸ *750 Million and Counting!*, SNAPCHAT NEWSROOM (Feb. 16, 2023), available at <https://newsroom.snap.com/en-US/750-million-and-counting>.

¹³⁹ For Snapchat, “actioned” means the videos were removed and the accounts were deactivated. See *Transparency Report*, Snapchat Privacy and Safety Hub (2022), available at <https://values.snap.com/en-US/privacy/transparency>.

¹⁴⁰ Nina Trentmann & Sarah Needleman, *Chat Startup Discord Hires Its First Finance Chief to Boost Growth*, WALL STREET JOURNAL (Mar. 18, 2021), available at <https://www.wsj.com/articles/chat-startup-discord-hires-its-first-finance-chief-to-boost-growth-11616086771>.

¹⁴¹ For Discord, “actioned” means the accounts and servers were deactivated. See *Transparency Reports*, DISCORD BLOG, available at <https://discord.com/tags/transparency-reports>.

¹⁴² *Id.*

¹⁴³ *Information Request Report*, AWS WICKR (August 3, 2022), available at <https://wickr.com/wp-content/uploads/2022/08/Wickr-Information-Request-Report-Q3Q4-2021.pdf>.

¹⁴⁴ *Telegram Becoming Drug Dealing Marketplace of Choice in Argentina*, INSIGHT CRIME (Nov. 8, 2022), available at <https://insightcrime.org/news/telegram-drug-dealing-marketplace-argentina/>.

¹⁴⁵ *Telegram FAQ*, TELEGRAM, available at <https://telegram.org/faq#q-there-39s-illegal-content-on-telegram-how-do-i-take-it-down>.

On October 13, 2022, West Virginia Attorney General Patrick Morrisey published open letters¹⁴⁶ addressed to several social media companies—Meta, Twitter, Snapchat, Pinterest, TikTok, Discord, and Telegram—urging the companies to provide “detailed information regarding the steps [they] have taken and will take in order to combat drug trafficking” on their respective platforms. In response, three of the platforms—Snapchat,¹⁴⁷ Meta,¹⁴⁸ and TikTok¹⁴⁹—wrote back to offer insights into how the platforms are combatting the online illicit substance market. These platforms’ responses largely corresponded with the measures already discussed in this section and generally included: (i) restatement that their terms and community guidelines prohibit depiction, promotion, and/or sales of illicit substances; (ii) incorporating updated, drug-related codewords and emojis into trainings for human reviewers and trust and safety teams; (iii) blocking search results for drug-related keywords or hashtags; (iv) blocking links to certain websites that facilitate the sale of drugs; and (v) blocking accounts engaged in drug activity (although sometimes only after repeat violations). Platforms may also restrict the use of certain services (e.g., direct messaging) to those above a certain age (e.g., 16+).

Platforms also highlighted their law enforcement outreach activities and campaigns to increase public awareness about the dangers of fentanyl. Further, in their responses to the West Virginia Attorney General’s inquiry, there is some mention of platforms’ work with external vendors and, in some cases, cooperation among multiple social media platform companies to identify and block illicit substance sellers.

Notably missing from their responses were details on the platforms’ respective levels of resources specifically devoted to combatting the online illicit substance market, details on how the platforms proactively work with law enforcement to

¹⁴⁶ Press Release, *Attorney General Morrisey Pushes Social Media Giants to Take Action to Prevent Fentanyl Proliferation*, W. VA. ATTY GEN. OFFICE (Oct. 18, 2022), available at <https://mailchi.mp/wvago/wva-agpushes-social-media-giants-to-take-action-to-prevent-fentanyl-proliferation>.

¹⁴⁷ Letter from Snap, Inc. to West Virginia Attorney General Patrick Morrisey (Nov. 23, 2022), available at <https://ago.wv.gov/Documents/2022.11.23%20Letter%20from%20Snap.pdf>.

¹⁴⁸ Letter from Meta to West Virginia Attorney General Patrick Morrisey (Nov. 28, 2022), available at <https://ago.wv.gov/Documents/2022.11.28%20Letter%20from%20Meta.pdf>.

¹⁴⁹ Letter from TikTok to West Virginia Attorney General Patrick Morrisey (Dec. 5, 2022), available at <https://ago.wv.gov/Documents/2022.12.05%20Letter%20from%20TikTok.pdf>.

share data or trends on drug activity, and detailed statistics on how many accounts have been removed or referred to law enforcement officials. Additionally, as of this report's publication, it is unclear whether some of the requested platforms have even responded to the West Virginia Attorney General's inquiry.

Hence, even though some platforms have provided information about their efforts around drug activity, there remains a greater need for transparency and accountability in this regard. Platform responses generally have only provided highlights of their anti-drug actions, but lack any objective analysis of whether these approaches are effective and whether the efforts have successfully helped law enforcement and victim families take action against those continuing to use the platforms to distribute illicit substances online. Ultimately, independent external review is likely required to ensure that platforms are doing what is necessary to enforce their terms and community guidelines and are devoting enough resources to address the issue proactively.

"Congressman, we don't want any of this content on our platforms, and I agree with you that this is a huge issue. We have devoted a lot of resources that have built systems that are largely quite effective at finding and removing the content, but I just think that what we all need to understand is that if the scale that these communities operate where people are sharing millions or, in messages, billions of things a day, it is inevitable that we will not find everything, just like a police force in a city will not stop every single crime."

—Mark Zuckerberg, Co-founder, Chairman and CEO of Meta (2021)

"We have stepped up, and we have deployed proactive detection measures to get ahead of what the drug dealers are doing. . . .They are constantly evading our tactics. Not just on Snapchat but on every platform."

—Jennifer Stout, Vice President of Global Policy at Snap, Inc. (2022)

IV. Review of Applicable Federal and State Laws that Impact the Sale of Illicit Substances Online

Main Takeaways

- Future legislation and policy interventions must be carefully crafted in view of existing legal and constitutional constraints. Among other factors, regulating social media platforms will likely be bounded by the immunities afforded by the Communications Decency Act (“Section 230”), the restrictions on disclosing private electronic messages set forth in the Stored Communications Act, as well as the protections enshrined in the First Amendment and applicable data privacy laws.
- Proposed and enacted federal and state laws suggest numerous strategies to combat the online illicit substance market. Common categories of legislation include laws promoting increased access to platform data for research purposes; laws creating limits or carveouts to Section 230’s liability protections; laws requiring platforms to establish policies prohibiting drug activity and/or to engage in transparency reporting; laws establishing special protections for minors online; and laws defining new criminal offenses or increasing penalties for online drug activity.
- Aside from policymaking, other legal tools to address online drug activity are worth exploring. Various civil lawsuits have sought to hold social media companies accountable, often creatively asserting claims in an attempt to circumvent Section 230. Likewise, various states and the federal government have conducted investigations scrutinizing social media platforms’ role in facilitating access to illicit substances. And the European Union’s newly enacted Digital Services Act may provide useful guidance for American policymaking efforts in this space.
- Developments in the U.S. Supreme Court should be carefully monitored. Florida’s S.B. 7072 and Texas’s H.B. 20 are both the subject of current litigation; should the Supreme Court opt to review them, social media platforms’ broad discretion to curate and editorialize user content may shift drastically. Likewise, the Court’s eventual rulings in *Gonzalez v. Google, LLC* and *Taamneh v. Twitter, Inc.* may significantly impact whether and how Section 230’s immunities apply to social media platforms.

A. Overview and Brief Discussion of Potential Legal Obstacles around Legislation

The federal government and state governments share certain powers related to regulating content and activities of online commerce (and, more specifically, the sale of illicit substances via Internet-based platforms). Both levels of government have proposed and enacted legislation to address a multitude of policy issues that may impact the online illicit substance market. Accordingly, the policy environment is diverse, and includes laws and regulations that address platforms' liability for content they host, rules around privacy and sharing of user data, the regulation of Internet-based platform speech, and specific protections for younger social media users. Though some of these policy issues do not directly address online illicit substance transactions, they nevertheless impact the regulation of social media and other Internet-based platforms. How these platforms are regulated as a byproduct may impact online sales of illicit substances or, at least in some cases, provide a model for developing specific, illicit substance-tailored legislation.

Future legislative reform on both the federal and state level requires an understanding of existing legal frameworks which limit the potential scope of new legislative efforts. Failure to understand these frameworks can create interpretive confusion, as well as weaker and even legally invalid laws.

“Section 230”

[Communications Act of 1934, 47 U.S.C. § 230 \(also known as the “Communications Decency Act”\)](#).

Section 230—the most widely discussed law regarding the regulation of social media—is a federal law providing that “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” It further shields such providers and users from civil liability resulting from good-faith content moderation or editorial actions taken on the platform.

In effect, Section 230 immunizes website hosts, including search engines and social media platforms, from legal liability for hosting and moderating content created and

posted by their users. Litigation¹⁵⁰ continues around the exact breadth of immunity related to third-party content, and limited statutory carveouts to Section 230’s liability protections have been enacted in recent years (e.g., SESTA-FOSTA¹⁵¹, which removes immunity under Section 230 for the hosting of content facilitating prostitution and sex trafficking).

Stored Communications Act

18 U.S.C. §§ 2701–2713.

The Stored Communications Act is a federal law that criminalizes unauthorized access to an electronic communication service’s facility, thereby allowing one to “obtain[], alter[], or prevent[] access to a wire or electronic communication while it is in electronic storage.”

In effect, the Act protects social media users from having their private communications disclosed by providers that facilitate and store such communications. It also restricts social media platforms from disclosing the contents of users’ communications, any metadata, or their personally identifying information unless an enumerated exception applies (e.g., disclosure to the government pursuant to a lawful court order, warrant, or subpoena, or if there is a risk of “imminent danger of death or serious physical injury to any person”).

The First Amendment

U.S. CONST., amend. I.

The First Amendment of the United States Constitution applies to government regulation of speech. Whether and how the First Amendment applies to laws

¹⁵⁰As discussed more fully in Section IV.D.1, *infra*, the U.S. Supreme Court heard two cases in February 2023—*Twitter, Inc. v. Taamneh* (21-1496) and *Gonzalez v. Google LLC* (21-1333)—that could dramatically change how immunity is afforded to Internet and social media platforms under Section 230. While both these cases concern content related to terrorism and violent extremism, the resulting decisions regarding whether ranked, recommended, or personalized content has immunity could impact how platforms approach moderation of illicit substance content. The Court’s rulings could also support future court decisions or carveouts finding that content facilitating illicit substance transactions, which could be viewed as very harmful and clearly violative of federal law (e.g., the Ryan Haight Act), enjoy no Section 230 immunity.

¹⁵¹ The federal Allow States and Victims to Fight Online Sex Trafficking Act (“FOSTA”) and the Stop Enabling Sex Traffickers Act (“SESTA”) were enacted in 2018 and specifically amend Section 230 safe harbors to exclude immunity protection for content facilitating prostitution and sex trafficking.

regulating social media moderation practices is currently being litigated, with social media companies arguing that their moderation decisions are an expression of free speech.

State and Federal Data Privacy Laws

The Privacy Act of 1974 (5 U.S.C. § 552a) governs the collection, maintenance, use, and dissemination of personal data held by federal agencies. Aside from this law, however, no single comprehensive federal law governs data privacy in the United States. In the absence of clear federal guidance on this issue, a few states have enacted their own data privacy laws. Colorado is one such state—the Colorado Privacy Act (“CPA”) (C.R.S. §§ 6-1-1301 to -1313) will take effect on July 1, 2023, and will grant Coloradans certain rights over their personal data, including:

- The right to opt out of targeted advertising, the sale of their personal data, or being profiled;
- The right to access the data a company has collected about them;
- The right to correct data that’s been collected about them;
- The right to request the data collected about them is deleted; and
- The right to data portability (i.e., to take one’s own data and move it to another company)

Once enacted, the CPA will have significant effects on the manner in which social media platforms may handle users’ personal data which, in turn, may affect the availability or character of certain user data for law enforcement investigations or public health research related to the online illicit substance market.

B. Federal Legislation Relevant to Prevention of Online Illicit Substance Transactions

There is limited enacted and proposed federal legislation that directly aims to curtail online illicit substance transactions; the enacted Ryan Haight Act and the proposed Cooper Davis Act (both discussed below) appear to be unique in this category. However, various federal efforts seek to regulate third-party content hosted on websites and social media platforms. While these efforts may not directly prevent online illicit substance transactions, they often require social media platforms to engage in greater data transparency, which in turn would provide law

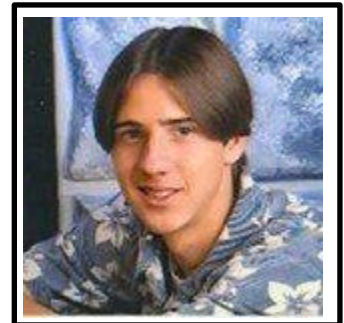
enforcement, researchers, and policymakers with the information necessary to understand the online illicit substance market and craft more appropriate interventions. Note also that the majority of federal legislation tangential to online illicit substance transactions are only proposed and have not been enacted. But in any event, federal legislation could open the door for accompanying state legislation, regulation, and enforcement that otherwise may not have been possible (e.g., federal legislation limiting Section 230 immunity, which would allow states to create private causes of action for harms resulting from social media use).

Ryan Haight Online Pharmacy Consumer Protection Act

21 U.S.C. § 829(e).

Status: Enacted

Named after a California teenager who died from overdose of prescription painkillers sold on an unregulated online pharmacy, the Ryan Haight Act amended the federal Controlled Substances Act to provide that “[n]o controlled substance that is a prescription drug . . . may be delivered, distributed, or dispensed by means of the Internet without a valid prescription.” The Act prohibits healthcare providers from prescribing controlled substances to patients online without at least one in-person medical examination, though there are certain flexibilities and waivers for the “in-person” requirement (e.g., when prescribing controlled substances via telemedicine, or remotely during public health emergencies). The Act also requires online pharmacies to comply with certain requirements, including valid licensure, site disclosures, and other notifications.



Perhaps most importantly, the Ryan Haight Act makes it “unlawful for any person to knowingly or intentionally use the Internet . . . to advertise sale of, or to offer to sell, distribute, or dispense, a controlled substance” illegally (e.g., as a drug seller pushing diverted prescription pills online). As such, the Act makes clear that online drug sellers’ conduct is already prohibited under federal law.

Integrity, Notification, and Fairness in Online Retail Marketplaces for Consumers Act (“INFORM Consumers Act”)

Consolidated Appropriations Act of 2023, Pub. L. No. 117-328.

Status: Enacted

The INFORM Consumers Act recently became law as part of the FY 2023 omnibus spending bill. The Act applies to online marketplaces—broadly defined to include “consumer directed” platforms that “facilitate or enable third party sellers to engage in the sale, purchase, payment, storage shipping or delivery of a consumer products.” Under the Act, online marketplaces must collect and verify bank account numbers, government-issued identification, tax identification numbers, and contact information for “high-volume third party” sellers on their platforms—i.e., sellers who conduct 200 or more transactions resulting in total revenues of \$5,000 or more during a 12-month period. Online marketplaces must also make such sellers’ names and contact information available to consumers, along with methods to report a seller’s fraud or suspicious activity on their platforms.

To whatever degree that illicit substance transactions are conducted via formal online marketplaces, the INFORM Consumers Act could prove useful to consumers and law enforcement.

Safeguarding Against Fraud, Exploitation, Threats, Extremism, and Consumer Harms Act (“SAFE TECH Act”)

S. 299, 117th Cong. (2021).

Status: Proposed

The SAFE TECH Act would curtail Section 230 immunity for providers of interactive online services (e.g., social media platforms) for claims related to content created by third parties (e.g., platform users). Specifically, the Act would make Section 230 immunity applicable to claims arising from third-party *speech* rather than third-party *information*, and such immunity would be inapplicable to paid advertising content—that is, if the platform either (1) accepts payment to make the speech available, or (2) creates or funds the speech, in whole or in part. More generally, the Act would remove liability protection for requests for injunctive relief arising from a platform’s failure “to remove, restrict access to or availability of, or prevent dissemination of material that is likely to cause irreparable harm.” It would also remove liability protection for suits arising under civil rights law; antitrust law; stalking, harassment, or intimidation law; and civil actions for wrongful death.

While not specifically aimed at preventing illicit substance transactions online, the SAFE TECH Act could potentially be leveraged to remove content related to drug activity and allow for civil lawsuits when drugs obtained online lead to fatal overdoses or poisonings.

Platform Accountability and Consumer Transparency Act (“PACT Act”)

S. 797, 117th Cong. (2021).

Status: Proposed

The PACT Act would require a provider of online interactive services (e.g., a social media platform) to prominently publish an “acceptable use policy” explaining the types of content permissible on the service, explain in detail how the platform engages in content moderation, and provide a system for users to submit complaints about content that violates the policy or involves illegal activity. Further, the platform must establish a process for removing content and notifying the user about the removal, including a mechanism to appeal the removal. The platform must also publish a report every six months that details the instances in which it took action with respect to violative or illegal content (e.g., removing content, demonetizing content, or suspending or removing user accounts). And finally, the PACT Act would remove Section 230 immunities if the company has actual knowledge of illegal content on its service and fails to remove it within a specified time frame.

While not directly related to the prevention of drug activity online, the PACT Act may promote increased transparency for platforms, as they would be required to demonstrate that they are enforcing their policies pertaining to prohibited content (including any actions they took to respond to illicit substance transactions on their platforms).

Social Media Privacy Protection and Consumer Rights Act

S. 1667, 117th Cong. (2021).

Status: Proposed

The Act would require social media platforms to inform a user, prior to the user creating an account or otherwise using the platform, that the user’s personal data produced during the online behavior will be collected and used by the platform and/or third parties (with options for the user to specify privacy preferences). The Act would also require the platform to (1) offer a user a copy of the user’s personal data, free of charge and in electronic format; and (2) notify a user within 72 hours of becoming aware that the user’s personal data has been transmitted in violation of

the platform’s security policies. Further, the Act would consider violations to be unfair or deceptive acts or practices under the Federal Trade Commission Act (enforceable by the FTC), and would empower states to bring civil actions regarding such violations.

While not specifically aimed at preventing illicit drug activity online, the Social Media Privacy Protection and Consumer Rights Act provides a general example of how social media platforms might be federally regulated.

Domain Reform for Unlawful Drug Sellers Act (“DRUGS Act”)

H.R. 6352, 117th Cong. (2021).

Status: Proposed

The DRUGS Act would require an internet registry operator or domain name registrar¹⁵² to take down a domain name should it receive an eligible notification from a “trusted notifier” (i.e., a designated government agency, or a qualifying private or nonprofit entity) that a domain name is being used to facilitate illegal online drug sales. The Act would require the registrar, upon receiving notice, to lock the domain name within 24 hours and suspend the domain name within seven days (subject to an appeals process).

The DRUGS Act is an example of “lock and suspend” legislation that would enable third-party or government agency watchdogs to notify and request removal of domains that sell illicit drugs quickly and efficiently. It is unclear, however, how this would apply to domain names owned and operated by social media companies.

Eliminating Abusive and Rampant Neglect of Interactive Technologies Act (“EARN IT Act”)

S. 3538, 117th Cong. (2022).

Status: Proposed

The EARN IT Act has existed in various forms in recent years but, broadly speaking, it would establish the National Commission on Online Child Sexual Exploitation Prevention, which would be charged with developing robust best practices for providers of online interactive services (e.g., social media platforms) to prevent, reduce, and respond to the online sexual exploitation of children. Previous

¹⁵² A “registry” is an authoritative master database of the domain names registered in a top-level domain, while a “register” manages the registration of domain names.

versions of the Act would also have tied a platform’s Section 230 immunity to the platform complying with certain standards—e.g., by reporting to the National Center for Missing and Exploited Children any “facts and circumstances sufficient to identify and locate each minor and each involved individual” in crimes concerning child sexual abuse, and by preserving violative content for law enforcement investigations for specified time frames.

Of note, while other proposed federal bills have sought to utilize a “carveout” approach that would remove Section 230 protections for certain content, some versions of the EARN IT Act have sought to employ an alternative, “bargaining chip” system that would make Section 230 immunity contingent on meeting certain standards. Moreover, any future legislation addressing the online illicit substance market could mandate the development of a similar set of best practices for platforms to prevent and respond to drug activity.

Kids Online Safety Act

[S. 3663, 117th Cong. \(2022\).](#)

Status: Proposed

The Kids Online Safety Act would require a “covered platform” (i.e., an Internet application or service that is likely to be used by minors) to act in the best interest of minors using the platform, and it would impose a duty on the platform to prevent and mitigate heightened risks of harms to minors that may arise from the platform’s use (e.g., mental health disorders, “addiction-like behaviors” arising from certain platform features, bullying, harassment, violence, sexual exploitation, and drug activity). The Act would require a covered platform to implement certain safeguards to protect minors’ personal data and provide parents with tools to supervise their children’s platform use. The Act would also require a covered platform to disclose information related to how the platform uses algorithms or advertising to target youth. And finally, the Act would require a platform to (1) allow minors and parents to report certain harms, (2) refrain from facilitating advertising of products or services that are illegal to sell to minors, and (3) annually report on any foreseeable risks of harm to minors posed by use of the platform.

While not specifically aimed at preventing illicit drug activity online, the Kids Online Safety Act would mandate heightened duties of care for platforms and create specific protections for minors on social media, who are perhaps the most habitual users of these platforms.

Digital Platform Commission Act

S. 4201, 117th Cong. (2022).

Status: Proposed

This bill would create a new federal agency to oversee and regulate online platforms—the Federal Digital Platform Commission—with its own dedicated staffing and resources, and specific directives to protect consumers, promote competition, and assure the fairness, transparency, and safety of platform features and algorithms, among other areas. The Commission would be led by five Commissioners appointed by the President who are empowered to hold hearings, pursue investigations, conduct research, and engage in public rulemaking. The Commission would also be empowered to designate “systemically important digital platforms” subject to extra oversight, reporting, and regulation. And the Act would create a Code Council staffed by technology experts and other industry stakeholders to formulate specific technical standards, behavioral codes, and other policies for the Commission’s consideration.

Given the current significant scope of other existing federal agencies, a new and distinct federal agency with specific jurisdiction over online platforms may be key to addressing the broader, more novel concerns posed by social media platforms, including online drug activity.

Cooper Davis Act

S. 4858, 117th Cong. (2022).

Status: Proposed

Named after a Kansas teenager who died from fentanyl poisoning after taking a counterfeit prescription pill. The Cooper Davis Act would require social media platforms and other electronic communication service providers to promptly report actual knowledge of drug activity on their platforms to the DEA—i.e., identifying information about the involved individuals, historical reference information, geolocation information, data related to the transaction (e.g., symbols, photos, videos, emojis/icons, or direct messages), and complete communications (e.g., message transcripts, file attachments, and metadata). The DEA, in turn, would serve as an information clearinghouse for federal, state, local, and foreign law enforcement agencies investigating drug activity online. A platform’s failure to report known drug activity would result in fines. The Act would also permit data



sharing between law enforcement agencies, mandate that platforms preserve drug activity-related data for at least 90 days, and prohibit platforms from notifying “target users” that their accounts are the subject of law enforcement information or preservation requests.

Mandating detailed, timely reporting of information about online illicit drug activity, and preserving that information in a centrally accessible manner, would empower law enforcement to investigate and prosecute drug sellers who operate on social media platforms.

Platform Accountability and Transparency Act (“PATA”)

[S. 5339, 117th Cong. \(2022\).](#)

[Status: Proposed](#)

PATA would require an Internet platform (including websites, desktop and mobile applications, and augmented or virtual reality applications) to respond to independent research requests and disclose certain “qualified data and information” (subject to privacy and cybersecurity protections) if the National Science Foundation approves a university- or nonprofit-affiliated researcher’s project proposal to study activity on the platform for noncommercial, public interest-related purposes. The “qualified researcher” would then be able to examine the platform’s data and release their findings publicly. A platform’s failure to comply with PATA could result in loss of Section 230 immunity for any harms resulting from nondisclosure of validly requested data, and it may also constitute “an unfair or deceptive act or practice” under the Federal Trade Commission Act. PATA would also give the FTC authority to require platforms to proactively make certain information available to researchers and the public, and it may protect researchers from liability associated with collecting data as part of a newsgathering or research project on a platform.

While not directly related to the prevention of drug activity online, PATA may provide better access to the platform data necessary to inform legislation and other policy interventions aimed at addressing the online illicit substance market.

American Data Privacy and Protection Act

H.R. 8152, 117th Cong. (2022).

Status: Proposed

The American Data Privacy and Protection Act would establish requirements for how companies, presumably including social media platforms, handle individuals' personal data. Specifically, the Act would require most companies to limit the collection, processing, and transfer of personal data to that which is reasonably necessary to provide their products or services, and it would generally prohibit companies from transferring individuals' personal data without their affirmative express consent. The Act would also require companies to implement security practices to protect and secure personal data against unauthorized access. And finally, the Act would establish consumer data protections, including:

- The right to access, correct, and delete one's own personal data;
- The ability to opt out of a company's targeted advertising;
- Heightened protections with respect to the personal data of minors; and
- Prohibitions against using personal data to discriminate on the basis of protected characteristics.

If enacted, the Act would constitute the first comprehensive federal privacy framework, and it could have significant consequences for social media platforms' ability to collect, preserve, and share user data (e.g., in furtherance of law enforcement investigations of online drug activity).

Combatting Harmful Actions with Transparency on Social Act (“CHATS Act”)

H.R. 8469, 117th Cong. (2022).

Status: Proposed

The CHATS Act would direct the FBI, through its uniform crime reporting program, to collect and report data on Internet platforms used in connection with certain criminal activities. The Act would also establish data collection guidelines—i.e., when local law enforcement files a police report, they would indicate whether a social media platform is suspected to have been involved in the crime, and list which platform was involved. And the Act would direct the U.S. Attorney General to publish an annual statistical report detailing which Internet platforms were connected to which crimes, with special emphasis on offenses committed against children.

While not specifically aimed at preventing illicit substance transactions online, the CHATS Act could potentially result in the collection of actionable data on the incidence of crimes on social media platforms, including drug activity. This data, in turn, could inform future policymaking efforts to combat online criminality.

C. State Legislation Relevant to Prevention of Online Illicit Substance Transactions

States also possess certain legislative authority to enact laws addressing aspects of online illicit substance transactions. Starting in 2021, the increased public awareness of the dangers of fentanyl and the availability of drugs online resulted in heightened state legislative efforts in this area. While not all of the legislative examples below directly address online drug activity, aspects of these laws may impact online illicit substance transactions and could be specifically tailored to address the market. For instance, states seeking to prevent and respond to online drug activity may seek to clarify and strengthen existing laws that prohibit the counterfeiting, manufacturing, and trafficking of illicit substances and specifically apply these laws to online transactions.

1. *Colorado*

Fentanyl Accountability and Prevention Act

House Bill No. 22-1326

Status: Enacted

This law substantially alters the criminal penalties for possessing fentanyl, as follows:

- Possessing less than 1 gram of a “fentanyl compound” (a drug mixture containing any amount of fentanyl) remains a Level 1 drug misdemeanor.
- Possessing between 1–4 grams of a fentanyl compound is a Level 4 drug felony punishable by up to 180 days in jail and up to two years of probation.
- Possessing between 4–50 grams of a fentanyl compound (i.e., an amount sufficient to constitute possession with intent to distribute) is a Level 2 drug felony punishable by a prison term of 4–16 years.
- Possessing more than 50 grams of a fentanyl compound is a Level 1 drug felony punishable by a prison term of up to 32 years.

The law also alters the criminal penalties for certain other fentanyl-related offenses. Notably, under the law, a person commits a Level 1 drug felony (punishable by a prison term of up to 32 years) if the distribution of a fentanyl compound results in someone’s death, if the drugs originated from outside of Colorado, or if the person also possessed a pill press or other unauthorized drug manufacturing equipment. And finally, the law allocates approximately \$40 million during FY 2023 toward efforts to prevent fentanyl-related deaths and to respond to the opioid epidemic.

While not specific to addressing the online illicit substance market, this law represents an important measure in holding drug sellers accountable for distributing dangerous substances—including those containing fentanyl in lethal amounts.

Imitation and Counterfeit Controlled Substances Act

C.R.S. §§ 18-18-419 to -424

Status: Enacted

This law criminalizes the manufacture, distribution, or possession with intent to distribute an imitation controlled substance, even when the imitation product is not actually illegal (e.g., selling baking flour as cocaine). The law also criminalizes the manufacture, distribution, or possession with intent to distribute a counterfeit controlled substance (e.g., fake prescription pills) or related equipment (e.g., pill punches, dies, or plates) reproducing the authentic substance’s trademark, trade name, or other unique identifying colors, shapes, imprints, etc. without authorization. And finally, the law criminalizes any public advertisement or solicitation (“to place in a newspaper, magazine, handbill, or other publication,” or “to post or distribute in a public place”) where the person knows that the ad will promote the distribution of imitation controlled substances.

A baseline of illegality in the manufacture or distribution of illicit substances (and their imitations and counterfeits) is a crucial building block to prevention of online illicit substance transactions. Note, however, that drug sellers may be unaware that the illicit substances they are selling have been adulterated or counterfeited.

Colorado Food and Drug Act

C.R.S. §§ 25-5-401 to -426

Status: Enacted

This law criminalizes the manufacture, sale, delivery, holding, or receipt of adulterated or misbranded substances. “Adulterated” substances include prescription and non-prescription drugs that are kept in unsanitary conditions, contain an added substance rendering it injurious to health, or fail to meet certain standards of quality, purity, or potency. “Misbranded” substances, broadly speaking, are mislabeled, misidentified, or lack approved instructions and warnings.

As with the Imitation and Counterfeit Controlled Substances Act (discussed above), the Food and Drug Act provides a baseline of illegality in the manufacture or distribution of certain hazardous drugs. Relevant to the online illicit substance market, controlled substances purchased online can be (and often are) “adulterated” or laced with dangerous substances like fentanyl.

Part 14. Online Marketplaces

C.R.S. §§ 6-1-1401 to -1404

Status: Enacted

Part 14 of Title 6, Article 1 is Colorado’s state-law version of the federal INFORM Act (discussed above). It amended the Colorado Consumer Protection Act to require “high-volume third-party sellers” (i.e., those conducting 200 or more discrete sales totaling \$5,000 or more in revenue during a continuous 12-month period) on an online marketplace to disclose certain identifying and financial information.

This legislation could be helpful to whatever degree that online illicit substance transactions are occurring in high volume on a single, public-facing online marketplace. Of note, it is unlikely that criminal actors would voluntarily or accurately disclose data about their business.

1. *New York*

Assembly Bill No. 7865

Status: Enacted

A.B. 7865 requires social media companies to provide and maintain clear, easily accessible mechanisms for users to report “hateful conduct” on their platforms (i.e., vilifying, humiliating, or inciting violence against a group or class of persons on the basis of protected characteristics).

Most major social media platforms already have user reporting mechanisms for content that violates terms and conditions (which usually includes hate speech and illicit substances), but smaller, less mainstream platforms may not have such mechanisms in place.

2. *Florida*

Senate Bill No. 7072

Status: Enacted

Among other provisions, this law prohibits social media platforms from suspending or “de-platforming” political candidates; using an algorithm to prioritize or deprioritize political candidates’ posts; or de-platforming a journalistic enterprise based on the content of its publications or broadcasts.

S.B. 7072 is currently the subject of litigation and has been enjoined by the Eleventh Circuit.¹⁵³ A petition for certiorari review is pending in the U.S. Supreme Court with regard to a series of cases challenging S.B. 7072 and Texas’s H.B. 20 (discussed below); on January 23, 2023, the Court requested briefing from the U.S. Solicitor General on the questions presented.¹⁵⁴ Social media companies have argued the law violates their First Amendment speech rights and Section 230 liability protections (particularly with regard to their abilities to freely editorialize or moderate platform content). Should the Court grant review, any ultimate decision could be useful in determining the limits of social media companies’

¹⁵³ See generally *NetChoice, LLC v. Moody*, 34 F.4th 1196 (11th Cir. 2022).

¹⁵⁴ Orders of Monday, January 23, 2023, 598 U.S. ____ (referencing 22-277, 22-393, and 22-555).

autonomy in content moderation, potentially opening the door for moderation requirements related to illicit drug activity.

3. California

Chapter 22.8. Content Moderation Requirements for Internet Terms of Service

[Assembly Bill No. 587](#)

[Status: Enacted](#)

A.B. 587 requires a social media platform to publicly post its terms of service and submit semiannual transparency public reports to the California Attorney General's Office. These transparency reports must include, among other things, the platform's policies on certain categories of violative content (e.g., hate speech, racism, terrorism or violent extremism, disinformation, harassment, and foreign political interference), current enforcement data (i.e., metrics on actions taken against violative content), and details on the platform's automated and human content moderation processes. And a platform's failure to comply with these reporting requirements may be subject to civil penalties of up to \$15,000 per violation, per day, as well as injunctive relief.

Requiring transparency like that provided in A.B. 587 can enable researchers, advocates, and policymakers to develop better recommendations to address illicit substance transactions online. State-specific transparency reports (i.e., on Colorado users) could also provide information on more localized challenges and can ensure greater accountability by platforms in tracking and taking action against illicit content.

Chapter 31.5. Drug Safety Policies on Social Media Platforms

[Assembly Bill No. 1628](#)

[Status: Enacted](#)

A.B. 1628 requires a social media platform that operates in California to create and publicly post a policy statement that includes:

- The platform's policy on the use of the platform to distribute controlled substances illegally;
- A general description of the platform's content moderation policies related to illicit substances;

- A link to government-provided mental health and drug education resources;
- A link to the platform’s user reporting mechanism for illegal or harmful content or behavior observed on the platform; and
- A general description of the platform’s procedures for responding to law enforcement inquiries.

While most major social media platforms already have policies regarding prohibiting illicit substance transactions on their platforms as well as user reporting mechanisms, A.B. 1628 may promote platform accountability and policy standardization (especially for those smaller and less mainstream platforms without detailed policies in place).

Social Media Platform Duty to Children Act

[Assembly Bill No. 2408](#)

[Status: Proposed](#)

A.B. 2408 would prohibit a social media platform from using a design or feature “that the platform knew, or which by the exercise of reasonable care should have known, causes child users to become addicted to the platform.” In this context, “addiction” refers not to chemical dependency from drugs obtained on the platform but, rather, to “preoccupation or obsession with, or withdrawal or difficulty to cease or reduce use of, [the] social media platform” itself in a manner that “causes physical, mental, emotional, developmental, or material harms to the user.”

A.B. 2408 may have marginal benefits for decreasing illicit substance transactions online if it can reduce time spent on social media platforms where drugs may be obtained. This legislation also provides an example of holding platforms accountable without affecting Section 230 immunity—here, by requiring redesign or discontinuance of platform features associated with addiction.

Proposed Civil Code § 1714.48

[Senate Bill No. 287](#)

[Status: Proposed](#)

Similar to A.B. 2408 (discussed above), S.B. 287 would prohibit a social media platform from “us[ing] a design, algorithm, or feature that the platform knows, or which by the exercise of reasonable care should have known, causes child users to” receive content or messages that lead to a child purchasing fentanyl, harming themselves or others, developing an eating disorder, dying by suicide, or

experiencing “addiction” to the platform (defined the same way as in A.B. 2408). For knowing and willful violations, the bill would fine social media companies up to \$250,000 per violation, plus litigation costs and attorney’s fees.

S.B. 287 provides an example of legislation imposing monetary penalties for harms posed by social media—including exposing children to illicit substance content. If the fines for violations are sufficiently severe, this approach could be quite effective in shaping the behaviors of profit-motivated social media companies. By contrast, if the fines are too low, they may be perceived by companies as a necessary cost of doing business rather than serving as a meaningful deterrent.

Alexandra’s Law

Senate Bill No. 350

Status: Proposed

Named after a California teenager who died from fentanyl poisoning after taking a counterfeit prescription pill.

Alexandra’s Law would impact defendants convicted of the possession, sale, distribution, or manufacturing of a controlled substance. Similar to California’s sentencing advisement law for DUIs, it would require trial courts to advise the defendant during sentencing that partaking in the above drug activities could result in the death of another human being and lead to homicide charges. The advisory is intended to deter the defendant from reoffending and potentially expose the defendant to higher sentencing in the future, should they opt to reoffend. This is so because a second-degree murder charge in California requires a showing that the defendant knew that his or her drug activity was dangerous to human life.



While Alexandra’s Law would not directly address the online illicit substance market, it serves as a measured example of holding drug sellers accountable while providing second chances, and it could prove crucial in prosecuting repeat drug offenders if their drug activity results in overdose or poisoning death.

4. Texas

House Bill No. 20

Status: Enacted

Among other provisions, this law prohibits a social media platform from censoring a user, a user's expression, or a user's ability to receive the expression of another person based on their viewpoints or location in any part of Texas. This includes removal, moderation, or labeling posts with warnings or disclaimers.

Like Florida's S.B. 7072 (discussed above), H.B. 20 is currently the subject of litigation. Although it has been upheld by the Fifth Circuit,¹⁵⁵ its enactment is subject to a stay pending the U.S. Supreme Court's determination whether to grant certiorari in a series of cases challenging H.B. 20 and S.B. 7072. H.B. 20 also implicates social media companies' freedom to editorialize or moderate content under the First Amendment and Section 230 and, should the Court grant review, any ultimate decision could give way to the states' ability to legislate content moderation requirements related to illicit drug activity.

D. Other Approaches in the Fight Against the Online Illicit Substance Market

1. Civil Litigation

Civil lawsuits filed by impacted individuals provide a potential mechanism to address online illicit substance transactions.

A handful of recent cases have been brought against social media platforms alleging liability for facilitating access to illicit substances. For instance, the Social Media Victims Law Center has, to date, filed civil lawsuits against Snap, Inc. (the parent company of Snapchat) on behalf of 26 families across 11 states.¹⁵⁶ In one of the

¹⁵⁵ See generally *NetChoice, LLC v. Paxton*, 49 F.4th 439 (5th Cir. 2022).

¹⁵⁶ Press Release, *Social Media Victims Law Center amends lawsuit against Snap, Inc. for Snapchat's role in facilitating the sale of deadly fentanyl-laced pills*, SOCIAL MEDIA VICTIMS LAW CENTER (Jan. 31, 2023), <https://socialmediavictims.org/press-releases/smvlc-amends-fentanyl-lawsuit-against-snap-inc/>.

lawsuits filed in California state court,¹⁵⁷ the plaintiffs (parents and caregivers of fentanyl poisoning victims who were children or young adults) have argued that Snapchat’s platform design and features were unreasonably addictive and enabled drug sellers to distribute deadly illicit substances to the decedents, thus rendering the company liable under theories of product liability, negligence, violations of consumer protection law, unjust enrichment, invasion of privacy, and public nuisance. As with other pending litigation (discussed below), the outcome of this case and how it will be adjudicated in the context of Section 230 remain unclear.

Cases have also been brought against social media platforms outside of the context of illicit substance distribution. The theories advanced in these cases and their eventual outcomes, however, may be considered in the context of access to illicit substances on social media platforms.

For instance, in a federal case pending in the Central District of California,¹⁵⁸ the surviving parents of two teenage boys killed in a car crash while using Snapchat sued Snap, Inc. under a negligent design theory. Specifically, until 2021, Snapchat had a feature called “Speed Filter,” which allowed users to capture how fast they were moving and share their recorded speed with friends on the app for bragging rights. The parents have alleged that Snapchat should have known that Speed Filter’s design would encourage users to drive at excessive speeds or engage in other reckless behaviors. While the district court initially dismissed the suit pursuant to Section 230,¹⁵⁹ the Ninth Circuit reversed, finding that Section 230’s liability protections extended to claims based on user content, but not the platform’s negligent design.¹⁶⁰ The case continues to be litigated, but if the parent plaintiffs are successful and other cases follow suit, private and governmental attorneys may be able to leverage the negligent design theory with regard to platform designs and features facilitating illicit substance transactions, thereby circumventing Section 230’s protections.

¹⁵⁷ See generally Complaint, *Neville, et al. v. Snap, Inc.*, No. 22STCV33500 (Cal. Sup. Ct., Los Angeles Cnty., filed Oct. 13, 2022).

¹⁵⁸ See generally Complaint, *Lemmon et al. v. Snap, Inc.*, No. 2:19-CV-04504 (C.D. Cal, filed May 23, 2019).

¹⁵⁹ See generally Order Re: Motion to Dismiss First Amended Complaint, *Lemmon, et al. v. Snap, Inc.*, 440 F.Supp.3d 1103 (C.D. Cal., Feb. 25, 2020).

¹⁶⁰ See generally *Lemmon v. Snap, Inc.*, 995 F.3d 1085 (9th Cir. 2021).

In addition, two recent federal cases—*Gonzalez v. Google, LLC* (21-1333) and *Twitter, Inc. v. Taamneh* (21-1496)—have challenged the application of Section 230’s immunities to social media platforms. Both cases arise from Anti-Terrorism Act (“ATA,” 18 U.S.C. § 2333) damages suits claiming that Google, Twitter, and Facebook facilitated terrorist attacks and violent extremism by recommending ISIS propaganda to certain users on their respective platforms. The U.S. Supreme Court heard argument in both *Gonzalez* and *Taamneh* in February 2023. In *Gonzalez*, the Court weighed whether Section 230 immunizes a social media company when it makes targeted recommendations of content created by third-party users, or whether such immunity only applies when the company is engaging in traditional editorial functions (e.g., displaying or removing content). In *Taamneh*, the Court considered two issues: (1) whether a social media company knowingly provides substantial assistance to terrorists under the ATA if it fails to remove terrorist accounts and content from its platform, and (2) whether the company aids and abets a specific “act of international terrorism” under the ATA for failing to remove terrorist accounts and content.

How the Supreme Court ultimately rules on *Gonzalez* and *Taamneh* could have far-reaching consequences for the viability of future lawsuits against social media platforms for recommending or algorithmically amplifying dangerous and illegal content. More specifically, a ruling that limits Section 230 immunity for social media platforms could open the door for private and government lawsuits alleging harms where platforms have recommended user-created, illicit substance content. Litigators and lawmakers alike should watch the outcomes of *Gonzalez* and *Taamneh* closely.

2. Governmental Enforcement Actions

Aside from civil litigation brought by private parties, suits and investigations initiated by governmental entities may also prove useful as a mechanism to hold social media platforms accountable for their role in facilitating online drug activity.

Federal lawmakers and law enforcement, for instance, have expressed recent concern over the availability of illicit substances on social media platforms. In January 2023, the U.S. House of Representatives Committee on Energy and Commerce hosted a roundtable to study the role of social media (and especially

Snapchat) in exacerbating the fentanyl epidemic.¹⁶¹ That same month, Bloomberg reported that the U.S. Federal Bureau of Investigation (FBI) and U.S. Department of Justice (DOJ) had initiated an investigation into Snapchat's role in the distribution of counterfeit prescription drugs that resulted in fentanyl poisoning deaths.¹⁶²

Similarly, state attorneys general wield important investigative and enforcement powers to address the online illicit substance market and other harms posed by social media.¹⁶³ This authority has been used in other contexts and could be a key mechanism for accountability in this space. For example, state attorneys general from across the country together sued unscrupulous opioid manufacturers and distributors and reached historic settlements which brought hundreds of millions of dollars back to states to combat the opioid crisis.¹⁶⁴ Currently, all 50 states are also working together to investigate Meta¹⁶⁵ and TikTok¹⁶⁶ for the harms their platforms have caused to teen mental health. The ability of state attorneys general to bring multi-state investigations and pursue lawsuits collectively is an important tool to protect consumers in each state and across the nation.

3. *Foreign Regulatory Schemes*

Two recently enacted laws in the European Union (EU)—the Digital Services Act (DSA) and the Digital Markets Act (DMA)—represent landmark, comprehensive

¹⁶¹ See 'Snapchat's role in fentanyl crisis probed,' *supra* n.128.

¹⁶² Olivia Carville, et al., *FBI Examines Snapchat's Role in Fentanyl Poisoning Deaths*, BLOOMBERG (Jan. 25, 2023), available at <https://www.bloomberg.com/news/articles/2023-01-25/fbi-questions-snapchat-s-role-in-fentanyl-poisoning-deaths?leadSource=uverify%20wall>.

¹⁶³ See Matthew Lewis, *The Role of the Attorney General in Reforming Social Media for Children*, NYU J. LEG. & PUB. POL'Y QUORUM (2022).

¹⁶⁴ See, e.g., *Opioids Investigations, Litigation, and Settlements*, NAT'L ASS'N OF ATT'YS GEN. (accessed Feb. 21, 2021), available at <https://www.naag.org/issues/opioids/>.

¹⁶⁵ See, e.g., Press Release, *AG Healey Co-Leads Nationwide Investigation into Instagram's Impact on Young People*, MASS. OFF. ATT'Y GEN. (Nov. 18, 2021), available at <https://www.mass.gov/news/ag-healey-co-leads-nationwide-investigation-into-instagram-impact-on-young-people>.

¹⁶⁶ See, e.g., Press Release, *AG Healey Co-leads Bipartisan, Nationwide Investigation into TikTok*, MASS. OFF. ATT'Y GEN. (Mar. 2, 2022), available at <https://www.mass.gov/news/ag-healey-co-leads-bipartisan-nationwide-investigation-into-tiktok>.

efforts to regulate the conduct of internet hosting services, marketplaces, and online platforms with users in the EU.

Most relevant to this discussion, the DSA aims to protect the fundamental rights of Internet users and establish a transparency and accountability framework that applies to “digital services” uniformly across the EU. It imposes obligations differently, depending on the size of the company and the nature of the services it offers. Broadly speaking, the DSA requires all online companies to implement and enforce robust, plain-language terms and conditions outlining their policies about content moderation, algorithmic decision-making, and user reporting procedures. All companies must also publish yearly transparency reports and establish “notice-and-takedown” mechanisms to inform users of when and why their content was removed. In addition to these core obligations for all companies, online platforms (i.e., social media) must also present certain information about the ads they display, refrain from targeting ads based on profiling of sensitive data or children’s data, refrain from designing their online interfaces in ways intended to shape user behavior in harmful ways, disclose information about their content recommendation and prioritization practices, and offer mechanisms for users to report illegal content. And finally, online platforms designated as “very large online platforms” (VLOPs) or “very large online search engines” (VLOSEs) (i.e., digital services with users totaling more than 10% of the EU population) must comply with additional transparency requirements and conduct mandatory risk assessments evaluating any foreseeable risks of harm associated with the platform’s use.

While the DSA and DMA emerged in the specific context of European Union law and strong norms around human rights, aspects of this new Internet regulation framework may be valuable for future study and adoption in American jurisdictions—particularly with respect to DSA provisions governing illegal activities or harmful conduct occurring on social media platforms.

Impact Stories

When his father opened the door to Zach Didier's bedroom, the boy seemed asleep at his desk, still wearing plaid pajama bottoms and a yellow T-shirt. His head rested in the crook of his left arm, near his soccer trophies and the computer where he played Minecraft with friends.

But Chris Didier sensed something was terribly wrong.

"As I got within two feet of him, I didn't feel what I would normally feel," he said. "When you approach a dead body, there is a void there, and I'd never sensed that before, and that's when my world was destroyed." . . .

Two days before his death, Zach had celebrated Christmas with his family. He was a 17-year-old Eagle Scout, a soccer player and the star of his school musical. He liked to challenge his father to push-up contests.

On December 27, 2020, he became one of the last of nearly 93,655 Americans to die that year of a drug overdose—a record wave fueled partly by what officials say is a scourge of fake prescription pills that contain fentanyl, a powerful chemical opioid that kills by overpowering the body's natural instinct to breathe. . . .

In many cases the pills are purchased on social media sites like Facebook or Snapchat.

—Devlin Barrett, "Poison pill: How fentanyl killed a 17-year-old," Wash. Post (Nov. 30, 2022), <https://www.washingtonpost.com/national-security/2022/11/30/fentanyl-fake-pills-social-media/>.

V. Recommended Actions for Addressing Illicit Substance Sales Online

Main Takeaways

- Social media platforms should adopt a uniform, robust set of practices to prevent and respond to illicit drug activity. Chief among these practices is the establishment of clear, unambiguous prohibitions against promoting, purchasing, selling, or advertising illicit substances, with zero tolerance for violations of this policy. Other important guidelines involve collaborating with other platforms to detect drug sellers transacting across multiple platforms; fully cooperating with law enforcement investigations, and submitting to independent external oversight.
- Colorado should consider legislation similar to California's A.B. 587 and A.B. 1628. These laws would require social media platforms to clearly disclose their policies on drug activity and cooperation with law enforcement, and to publish regular transparency reports providing data on their enforcement activities.
- Social media companies should enter into a Memorandum of Understanding with the Colorado Department on Law (DOL) that sets forth their commitment to following identified best practices. Platforms are invited to enter into an MOU with the DOL agreeing to three primary terms: (1) that they maintain certain identified community guidelines and terms of service that disincetivize and discourage the market for illicit substances on their platforms; (2) that they will fund an annual third-party audit of their compliance with the identified community guidelines and terms of service; and (3) that as a public commitment to their users, any failure to comply with the MOU will constitute a violation of the Colorado Consumer Protection Act.
- More resources should be provided to support existing law enforcement efforts to combat drug distribution online. Local law enforcement often lacks sufficient personnel and resources to pursue online narcotics cases. Increasing resources targeted at supporting recruitment and retention in law enforcement generally, especially in rural jurisdictions, is critical to addressing the challenges raised in this report.
- Access to substance abuse treatment and harm reduction resources specifically targeted for teens and young adults should be more readily available. The risks posed to youth by easy access to illicit substances on social media are particularly acute. Ensuring both that teens and young adults struggling with substance abuse disorder have the specialized resources they need to recover, and that those young people who opt to use substances are empowered to do so in relative safety, are paramount.

- There should be increased focus on investing in Internet and social media literacy for parents and caregivers. Many of the platforms most popular for drug transactions are used primarily by adolescents and teens, and their parents or caregivers are typically unaware of how these platforms function (if they are aware of the platforms at all). Providing Internet and social media literacy education to parents and caregivers with a focus on how these platforms are used to facilitate drug transactions could serve as a critical tool in addressing this crisis.
- A federal agency should be empowered to oversee social media platforms. Emerging social media technologies pose novel challenges that require focused attention and resources. A federal agency equipped with dedicated funding, staffed with tech policy experts, and with the ability to operate in an entrepreneurial manner would be best suited to regulating this unique and constantly evolving sector of our economy, and would avoid pitfalls of conflicting state regulatory schemes.
- Federal legislation to improve social media platforms' data transparency should be enacted. Crafting effective interventions to combat the online illicit substance market has proved challenging in large part because social media platforms do not provide access to data that would shed light on the scope of drug activity on their platforms. Providing data access to qualified researchers would give rise to robust research informing future policymaking.

In response to the relevant data and input from community stakeholders, this report suggests three major avenues of potential reform: (i) guidelines and best practices for adoption by social media platforms; (ii) Colorado-specific policy and legislation recommendations; and (iii) broad policy recommendations focused on federal action.

A. Platform Best Practices

What follows is a short list of best practices and guidelines that social media companies should consider implementing voluntarily in an effort to thwart drug activity on their platforms. While these suggestions are not, strictly speaking, legislative or policy recommendations—as some of them may be amenable to inclusion in new legal mandates, but not others—they nevertheless represent important measures platforms can take to combat the online illicit substance market. These suggestions arise from input provided by law enforcement, advocacy groups, and available research, and they echo and incorporate the previous suggestions of other stakeholders.^{167, 168}

1. ***Develop clear, unambiguous policies prohibiting the promotion, purchase, sale, or advertisement of illicit substances.*** The majority of platforms have policies and guidelines in place that classify illicit substance sales as prohibited content. Nonetheless, platforms should take the extra step of stating unequivocally in their terms of service and community guidelines that illicit substance sales are a special class of prohibited goods, that violating users can face lifetime suspension and removal, and that activities may be reported to relevant law enforcement agencies for further action. These enhanced terms should apply evenly and with the same rigor across both organic user-generated content as well as paid advertising content.

¹⁶⁷ See ‘Law Enforcement and Technology,’ *supra* n.111.

¹⁶⁸ *Best Practices to Rid Social Media of Drug Trafficking*, P’SHIP FOR SAFE MEDS. (2022), available at <https://www.safemedicines.org/2022/09/september-26-2022-advocates-release-best-practices-to-rid-social-media-of-drug-trafficking.html>.

2. ***Allocate sufficient resources to prevent, detect, and take action against illicit drug activity.*** Given the immense public health toll of illicit substance sales online and their direct link to drug trafficking and overdose death (discussed in Section I, *supra*), platforms should substantially augment, equip, and train their trust and safety teams to empower them to find and remove illicit substance content proactively, and to work with law enforcement, users, and victim families proactively.

3. ***Prioritize illicit drug activity in content moderation.*** As illustrated below, platforms may have internal processes to assess what content they should prioritize for human review. In conjunction with paragraphs #1 and 2 above, it's recommended that illicit substance sales always be prioritized in content moderation operations given their criminal nature, their clear violation of platform policies, and the severity of the harm they can cause. That prioritization should be complemented by policies and procedures that ensure violating content is removed quickly and retained for potential law enforcement investigations (e.g., some experts have suggested that content be removed within 10 days or less¹⁶⁹), and that adjudication processes to identify and remove content are carried out consistently and with urgency.

Prioritizing factors for human review

When determining which content our human review teams should review first, we consider 3 main factors:

<p>SEVERITY</p> <p>How likely is it that the content could lead to harm, both online and offline?</p>	<p>VIRALITY</p> <p>How quickly is the content being shared?</p>	<p>LIKELIHOOD OF VIOLATING</p> <p>How likely is it that the content in question does in fact violate our policies?</p>
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Because we want to prevent as much harm as possible, our review systems use technology to prioritize high-severity content with the potential for offline harm and viral content which is spreading quickly.

Image above: Meta's prioritization factors for human review (not specific to illicit substances).

¹⁶⁹ *Id.*

4. ***Utilize a multi-lateral, cross-platform approach to proactive content moderation.*** Content moderation should be proactive, anticipating when, where, and how illicit substances are sold on different social media platforms and other linked websites, forums, and other parts of the Internet. A combination of human reviewers, automation tools, processes for users to report prohibited content, and third-party monitoring and oversight of content moderation practices and performance should be utilized to effectively prevent the distribution of dangerous substances online. Moreover, social media platforms should collaborate with each other as well as law enforcement to share general, data privacy-protected trends and intelligence on illicit drug activity occurring across multiple platforms.

5. ***Fully cooperate with law enforcement investigations.*** Platforms should ensure that the processing of any law enforcement data requests is costless, convenient, and uses online systems (i.e., designated law enforcement portals) to process requests quickly and with appropriate standardization. Law enforcement requests for information related to illicit drug activity should always be addressed and treated with urgency to mitigate potential harm to the public. Unfortunately, at present, some requests go completely unanswered. To ensure responsiveness to law enforcement, platforms should commit to a minimum time frame to respond to law enforcement requests and should submit to third-party audits to measure this performance. Any data produced to law enforcement, moreover, should be reasonably manageable in terms of volume, organization, and format. Platforms should also explore internal processes that proactively flag and report to law enforcement any illicit substance selling accounts that have high levels of interaction with other users or otherwise pose an elevated risk of harm. Finally, platforms should establish processes to preserve and archive content related to illicit substance selling for purposes of cooperating with law enforcement agencies, regulators, courts, and victims' families.¹⁷⁰

¹⁷⁰ *Id.*

6. ***Allow interfacing with third-party content moderation***

applications. A number of applications have been developed to allow parents to limit harmful content from appearing when their children access social media content.¹⁷¹ Allowing for interoperability between platforms will allow third parties to better reduce exposure to harmful content, like the sale of illicit substances, for minors and adults who choose to use such filtering apps. Allowing for third-party access in this way is especially important given the incentive structures of social media platforms versus third party moderation apps. While social media platforms may be incentivized by increasing user numbers, time spent on the platform, and advertisement revenue, third-party moderation apps are more likely to seek the filtering out of inappropriate content.¹⁷²

7. ***Submit to independent, external oversight.*** Platforms should voluntarily agree to third-party oversight, monitoring, audit, and evaluation of their policy compliance, content moderation, and law enforcement cooperation practices in relation to illicit substance sales. This oversight should also include ensuring that platforms carry out all necessary hiring and training of trust and safety team members to effectively implement these policies. While platforms have disclosed some of this data, there are no firm commitments to do so regularly and, in general, any disclosure is at the discretion of the platforms. By instituting independent external audits, researchers and others can gain access to more trustworthy, impartial information that is not open to question because of financial or institutional conflicts of interest. With respect to release of this information, however, all released data should be aggregated and reviewed to ensure they do not interfere with ongoing law enforcement investigations or compromise user privacy.

¹⁷¹ *Id.*

¹⁷² Pinar Yildirim, Z. John Zhang, & Yi Liu, *How Social Media Firms Moderate Their Content*, KNOWLEDGE AT WHARTON (Jan. 24, 2022), available at <https://knowledge.wharton.upenn.edu/article/social-media-firms-moderate-content/>.

B. Colorado Policy Recommendations

While federal legislation is required for a comprehensive national approach to combat the online illicit substance market, state legislation and policy changes are important tools as well. Countless Coloradans use social media platforms each day, and the Colorado legislature and other state officials are well positioned to enact policies to help protect consumers from drug sellers pushing dangerous products online. Yet, the exact nature of the online market is not well understood because of the data access constraints detailed above. An important first step towards combatting the online illicit substance market is to require both more transparency from social media platforms and clearer policies, especially as it relates to how platforms cooperate with law enforcement. Other crucial mechanisms to disrupt this market include augmented resources for law enforcement to investigate online drug activity, augmented substance abuse treatment and harm reduction resources specifically tailored for young people, and targeted education campaigns to raise technology and social media literacy among parents and caregivers. The below recommendations^{174, 175} focus on actions that facilitate these changes and create an enforcement structure to ensure better accountability from social media platforms.

1. Require disclosure of policies on illicit substance transactions and related enforcement data.

As noted, while most social media platforms have policies that address the use of the platform to distribute illicit substances, these policies vary, and some emerging platforms do not have policies addressing this issue at all. Even where clear policies exist, social platforms have immense discretion on when, how, and if they enforce their own policies. Available information is limited on enforcement follow-through, and platforms differ in what enforcement information they make public. For example, Snapchat publishes how many accounts were taken down for violations of their illicit substances policy, but similar regular and updated information is not publicized by companies such as Meta and TikTok. Variation across platform policies incentivizes those dedicated to purchasing or selling illicit substances to prefer platforms with more lenient policies. Lack of data on the issue more broadly, and lack of data on enforcement of existing policies more specifically, also makes it difficult for policymakers to identify risks to their communities and effective interventions.

Most platforms also have policies addressing how law enforcement can request information from the platforms pursuant to court orders, warrants, or subpoenas. However, the platforms' production of responsive information is often difficult to maneuver and their long turnaround times for producing information—anywhere from three weeks, up to three months—render time-sensitive intelligence about drug sellers' activities long outdated by the time it is finally produced. Platforms also do not have clear policies on when and how they proactively report illicit substances activity to law enforcement. Some platforms, like Snap, consider the use of their platforms for these activities an “imminent risk of death or serious bodily injury”; posts pertaining to drug activity receive heightened attention from the platform's trust and safety teams and are more likely to be passed along to law enforcement. Platforms who differently categorize these posts rarely, if ever, proactively conduct law enforcement outreach regarding drug activity on their platforms. These systems hamper efforts by law enforcement to use existing legal tools.

To address some of these changes, legislation¹⁷³ could be considered requiring social media platforms¹⁷⁴ that have users within Colorado to:

1. **Create and publicly post an easily accessible policy statement** that includes the platform's policies on:
 - a. use of the platform for the promotion, purchase, sale, or advertisement of illicit substances¹⁷⁵;
 - b. how law enforcement can request the preservation or disclosure of a platform's account records; and

¹⁷³ California has passed two bills substantially similar to this recommendation: Assembly Bill No. 1628 and Assembly Bill No. 587. Any implementation of this recommendation should consider the details of these bills as a point of reference.

¹⁷⁴ How a “social media platform” is defined should be carefully considered. While bills seeking to regulate these platforms often account for platform size based on user base or revenue, many smaller platforms that use encryption are heavily used for illicit substance transactions, such as Wickr and Kik.

¹⁷⁵ The definition of “illicit substances” should be broad. As discussed in Section II, *supra*, it should not be limited only to opioid-derived illicit substances or synthetic opioids such as fentanyl, but should also include illicit substance precursor chemicals, all substances regulated and scheduled under the Controlled Substances Act, and have legislative flexibility to address emerging illicit substances such as novel psychoactive substances and new fentanyl analogs.

c. how and when the platform proactively provides information to law enforcement, including what types of content are considered a risk of “imminent danger of death or serious physical injury to any person” under the Stored Communications Act.

2. Submit annual reports to the DOL that include detailed information on:

- a. The number of items of content¹⁷⁶ identified as involving the promotion, purchase, sale, or advertisement of illicit substances, and the number of times these posts were shared and viewed;
 - i. For identified items of content, how the items of content were flagged (e.g., by company employees or contractors, artificial intelligence software, community moderators, civil society partners, or platform users).
- b. The number of items of content removed for involving the promotion, purchase, sale, or advertisement of illicit substances, as well as the time it took between posting and removal, and the number of times these posts were shared and viewed;
- c. The number of accounts removed for violating platform’s policies around illicit substances, the number of removed accounts reinstated after appeal, and the number of accounts that did not receive an action after being reviewed;
- d. The number of times the platform proactively provided information to law enforcement based on content pertaining to the promotion, purchase, sale, or advertisement of illicit substances; and
- e. The number of requests for information received from law enforcement (e.g., via warrants, court orders, or subpoenas), the number of such requests that went unanswered (and the reasons why), and the average response and resolution time. These should include both:

¹⁷⁶ How “items of content” is defined should be carefully considered. For reference, California Assembly Bill No. 587 (discussed above) defines “content” as “statements or comments made by users and media that are created, posted, shared, or otherwise interacted with by users on an internet-based service or application, and excludes “media put on a service or application exclusively for the purpose of cloud storage, transmitting files, or file collaboration.”

- i. The number of requests made pursuant to the platform’s regular, nonemergent information-request procedures.
- ii. The number of emergency requests for information made outside of the platform’s normal information-request procedures.

Such legislation should include meaningful enforcement mechanisms, providing that any social media platform which violates the terms of the legislation is liable for a civil penalty¹⁷⁷ and may be enjoined in any court of competent jurisdiction. Ideally, the DOL would have express authority to enforce the provisions of the legislation.

2. Structure enforceable best practices for community guidelines and terms of service.

As currently structured, platforms have autonomy to craft community guidelines and terms of service as they see fit. However, as detailed in Section III, *supra*, certain community guidelines and terms of service are better suited to preventing illicit substance sales activity on social media platforms. Consider, for example, that of the companies surveyed in this report, they almost universally maintain that the purchase or sale of illegal substances on their platforms is a violation of either terms of services or community guidelines. However, there was a wide spectrum of policies about the implications of such violations. Some platforms, such as Snapchat, have a “zero-tolerance policy” which provides that if a drug transaction were attempted and identified on the platform, the drug seller’s account would be immediately removed and protocols activated in an effort to ensure that the violating user could not create a new account. An account removal in this case would be subject to an appeal by the user. Other platforms, such as Facebook, Instagram, TikTok, and YouTube, allow users who attempt to market or sell illicit substances to remain on the platform, and such users may be allotted multiple “strikes” before their account is finally removed. Certainly, a policy allowing a platform user to have multiple chances to sell illicit substances before being removed facilitates the online drug market more than a zero-tolerance policy.

¹⁷⁷ The analogous California law, A.B. 587, subjects platforms in violation to a penalty of \$15,000 per violation, per day.

In an effort to encourage best-practice policies which minimize the use of social media platforms as a mechanism to purchase and sell illicit substances and promote transparency and accountability, platforms are strongly encouraged to enter into a memorandum of understanding (MOU)¹⁷⁸ with the DOL through which they agree to three primary terms: (1) that they maintain certain identified community guidelines and terms of service that disincentivize and discourage the market of illicit substances on their platforms; (2) that they will fund an annual third-party audit of their compliance with the identified community guidelines and terms of service; and (3) that, as a public commitment to their users, any failure to comply with the terms of the MOUs constitutes a violation of the Colorado Consumer Protection Act (CCPA).

The exact contours and details of each term would be determined in the development of the MOU through a multi-stakeholder process led by the DOL. Recommendations for the broad contours of these terms are identified below. In all cases, these MOUS would provide for greater oversight and transparency regarding how social media companies address the distribution of dangerous substances on their platforms. In so doing, they would follow the adage of Justice Brandeis—“sunlight is said to be the best of disinfectants.”¹⁷⁹

Community Guidelines and Community Standards.

Under the terms of the MOU, these should generally include:

- An unambiguous ban on the use of the social media platform to buy, sell, promote, or advertise illicit substances (along with a robust definition of the kinds of substances covered by the policy);
- The immediate, zero-tolerance removal of an account identified as promoting, buying, selling, or advertising illicit substances, subject to an appeal process;

¹⁷⁸ This report does not recommend legislation that dictates the precise terms or language of policies pertaining to illicit substance transactions. Given the current lack of understanding of how the policies work in practice due to the transparency issues discussed in this report, the complexity of the issue, and the variability of how the issue presents itself across platforms, suggests that a monolithic mandate might create unintended consequences. An MOU provides a more flexible instrument.

¹⁷⁹ Louis D. Brandeis, *What Publicity Can Do*, HARPER'S WEEKLY (Dec. 20, 1913), available at https://www.sechistorical.org/collection/papers/1910/1913_12_20_What_Publicity_Ca.pdf.

- Clear and transparent policies for how platforms respond to law enforcement requests for information pursuant to warrants, subpoenas, and court orders, as well as policies governing when platforms proactively share relevant leads with law enforcement; and
 - Such policies should provide that the manner in which data is shared with law enforcement is manageable in volume and format.
 - Such policies should also provide target response times and a plan for achieving the response times.
- An explicit commitment to significant resources allocation towards responding to law enforcement requests.
 - Content moderation policies should designate content pertaining to the promoting, buying, selling, or advertising illicit substances as posing a risk of “imminent danger of death or serious physical injury to any person” under the Stored Communications Act.
 - Such policies should include a clear framework for how content flagged as an “imminent threat” is handled by the social media platform and when such content is proactively sent to law enforcement.

Third-Party Auditing.

Under the terms of the MOU, the third-party audit should be conducted annually, paid for by the platform, and conducted by a third party mutually acceptable by the platform and the DOL. The results of the audit should be publicly available.

Colorado Consumer Protection Act Violation.

Violations of the MOU would constitute a violation of the CCPA and, as a result, would be subject to injunctive relief and civil penalties.

3. Provide increased resources to support local law enforcement efforts to investigate online narcotics cases.

There is a suite of state and federal laws that provide a comprehensive structure for criminal liability for online drug distribution. However, the primary driver of the challenge related to the online illicit substance market is the difficulty in obtaining sufficient evidence to prosecute individuals under these laws. As addressed above, one of the primary impediments in obtaining this evidence is the social media platforms’ policies and responses to law enforcement requests.

Another, related impediment is a lack of resources for local law enforcement to pursue these cases. Due to the complexities of data access and volume, online narcotics investigations are difficult and resource intensive. While there is an infrastructure of cooperation between federal and local law enforcement, local law enforcement often lacks sufficient personnel and resources to pursue these cases. Increasing resources targeted at supporting recruitment and retention in law enforcement generally, especially in rural jurisdictions, is critical to addressing the challenges raised in this report. Many agencies pursue online narcotics cases through multi-jurisdictional task forces, with participating agencies committing particular officers' time to task force cases. When agencies are understaffed, participation on these task forces is often reduced. As a result, greater resource allocation to law enforcement recruitment and retention generally will help provide agencies with the capacity necessary to participate in the types of investigations that will help curtail the online market for illicit substances.

To further support law enforcement efforts, a statewide multidisciplinary whole-of-state approach to combatting the online illicit substance market may be warranted. The Colorado Information Analysis Center (and its Colorado Preventing Targeted Violence Program) is an example of such a holistic approach to addressing all forms of targeted violence within the state. A similarly structured effort focused on online drug distribution could be an important means to coordinate efforts within the state and build capacity of agencies, particularly smaller, rural agencies that might not otherwise have capacity to investigate these types of cases.

4. Increase investment in substance abuse treatment and harm reduction resources specifically targeted for teens and young adults.

By its nature, this report focuses primarily on supply-side policy interventions for eradicating the online illicit substance market. But given the unique dangers posed by fentanyl and counterfeit prescription pills, it is equally critical to address the demand for these substances on social media—both for youth experimenting with substances recreationally, and for those using substances more habitually.

In recent years, Colorado has made remarkable progress in increasing access to substance use treatment and harm reduction resources. For example, through the 2021 multistate settlement with major pharmaceutical manufacturers and

distributors whose actions helped fuel the opioid crisis (discussed in Section IV.D.2, *supra*), Colorado has received more than \$740M for use in supporting urgently needed and accessible drug treatment for impacted Coloradans. Likewise, through the Fentanyl Accountability and Prevention Act (discussed in Section IV.C.1, *supra*), Colorado appropriated \$19.7M for the bulk purchase and distribution of opioid antagonists (i.e., naloxone and naltrexone), \$600K for non-laboratory synthetic opiate detection tests (i.e., fentanyl test strips), \$3M for treatment and recovery resources in county jails, \$6M for a new harm reduction grant program, \$7M for a grant program to support law enforcement investigations of fentanyl poisonings, and \$10M for treatment and detox centers.

Yet, despite these significant strides, fewer resources have been identified focusing on providing youth-specific treatment opportunities and harm reduction strategies.¹⁸⁰ As this report demonstrates, the risks posed to youth by easy access to illicit substances on social media are particularly acute. Closely related, the unique risk factors driving young people to seek out and use substances—e.g., low social connectedness, poor school performance, and difficult home environments or parental relationships—require tailored, age- and developmentally-appropriate solutions. Ensuring that both teens and young adults struggling with substance use disorder have the specialized resources they need to recover, and that those young people who opt to use substances are empowered to do so in relative safety, are paramount. This may include, for instance, increased investment in youth-centered residential and community-based treatment facilities, medication-assisted therapy, school-based behavioral health supports, adolescent peer recovery groups, and naloxone trainings (accompanied by wider availability of live-saving naloxone). Increasing resources towards these youth-specific recovery and harm reduction interventions is critical to addressing the challenges outlined in this report.

5. Increase Internet and social media literacy for parents and caregivers of adolescents and teens.

As detailed in this report, the risk of purchasing illicit substances online is significant. These risks include not only the inherent dangers of substance use, but

¹⁸⁰ See, e.g., Andrew J. Finch, et al., *Recovery and Youth: An Integrative Review*, 40 J. ALCOHOL RSCH. 1–16 (2020).

also the risk that purported prescription pills contain a potentially lethal dose of fentanyl. These risks are compounded by the design features inherent in online platforms that increase the distribution capacity and visibility of drugs. Often individuals, particularly teens, see drug-related content even when they are not looking for it. Moreover, many Americans are unaware of the ease of accessing illicit substances online—allowing dealers to hide in plain sight. These challenges elevate the need for increased education and awareness, not only of the risks of available substances generally, but about the skills and tools necessary to respond to the availability of drugs online.

There are a variety of nationwide education efforts attempting to address the risks posed by illicit substances generally, and fentanyl in particular. Such campaigns include National Fentanyl Awareness Day, the DEA’s “One Pill Can Kill” campaign, and Ad Council’s “Real Deal on Fentanyl” and “Drop the F*Bomb” campaigns. There is also a significant effort underway to develop a Colorado-specific education campaign focused on the risk of addiction and overdose related to opioids and fentanyl. The campaign, run by the Department of Law, will be targeted at middle school and high school students and their parents and caregivers. The Colorado Consortium for Prescription Drug Abuse Prevention has also launched an overdose prevention campaign that is targeted towards 18- to 35-year-old people.

These efforts are important steps to build capacity of Coloradans to resist drug distribution efforts online. Yet, additional work remains to be done focused on educating Coloradans about the unique risks of purchasing drugs on social media. Public awareness about just how easy it is to purchase drugs online is limited, and there is minimal understanding of how the social media applications work (i.e., how content is organized and promoted, how the design features may be exploited by drug distributors, etc.), *particularly amongst parents and caregivers of adolescents and teens*. Parents and caregivers across the board consistently express surprise and significant alarm to learn of the ease of access of drugs online. Parents of youth who have died of poisoning or overdose often have reported the first time they knew that their children purchased substances online was after their child’s death.

Many of the platforms most popular for drug transactions are used primarily by adolescents and teens, and their parents or caregivers are typically unaware of how these platforms function (if they are aware of the platforms at all). Providing Internet and social media literacy education to parents and caregivers with a focus

on how these platforms are used to facilitate drug transactions could serve as a critical tool in addressing this crisis. With a more robust understanding of the platforms and their functions, parents would be better equipped to craft support systems and interventions appropriately curated for their own family. But any education must be coupled with information about how to effectively support youth struggling with substance abuse, and ensuring that any education can proactively connect parents with local resources and support systems is also critical. When a teen is struggling with substance use, supporting an entire family unit is a necessary component to successful recovery.

C. Federal Policy Recommendations

The challenges created by the online illicit substance market are ubiquitous, touching all corners of our country. The challenges are also constantly evolving and require policy approaches that are flexible, yet robust. This section provides two core federal policy recommendations that, if implemented, would provide the necessary groundwork for a vigorous national response to this crisis.

2. Empower a federal regulatory agency to oversee social media platforms.

The online illicit substance market involves a set of complex, multivariate, and constantly evolving issues, and no single law or policy will fully mitigate the harms emanating from this market. For these reasons, any policy intervention must be carefully crafted to target criminal activities online while also being flexible enough to adapt to changing technologies and forms of communication.

Historically, regulatory regimes and agencies have been established by Congress when novel technologies created similarly complex systems and threats to public safety, health, or welfare. The Federal Communications Commission (FCC), for instance, was created after the rising use of the radio spectrum and took over the

existing regulatory oversight of the telephone network.¹⁸¹ The rise of social media platforms and the attendant challenges such as online drug activity call for a federal regulatory response, which should include empowering a federal agency to respond to the evolving challenges related to the use and misuse of social media platforms, including for the purchase and sale of illicit substances.

To be sure, state enforcers have undertaken important actions to address public health and public safety issues related to social media platforms, but effective oversight will ultimately require a nationwide framework. Such a framework should embrace state authority as a partner in any such regime—as the federal antitrust laws do, for example—and not preempt or undermine the states’ traditional police powers to protect our citizenry.¹⁸²

Such a framework should empower a new federal agency to provide focused and specialized regulatory oversight of social media platforms. Much like the Federal Trade Commission (FTC) or the Securities and Exchange Commission (SEC), such an agency could be staffed by policy and technology experts and could focus on the wide range of issues emanating from social media platforms, including online drug activity. This agency would have the expertise and rulemaking and enforcement authority necessary to engage in meaningful, independent oversight, including of how algorithms operate, carry out enforcement activities, and craft targeted interventions.¹⁸³

¹⁸¹ *History of Commercial Radio*, U.S. FEDERAL COMMUNICATIONS COMMISSION (Apr. 12, 2021), available at <https://www.fcc.gov/media/radio/history-of-commercial-radio>.

¹⁸² See Attorneys General Phil Weiser (Colo.) and Josh Shapiro (Pa.), *Letter to the U.S. Congress* (Oct. 6, 2021), available at <https://coag.gov/app/uploads/2021/10/Internet-Regulation-Letter-to-US-Senate-10.0.21-Final.pdf>.

¹⁸³ As mentioned in Section IV.B, *supra*, this is the goal of the Digital Platform Commission Act sponsored by Senator Michael Bennet (D-CO). It seeks to create a five-member body of commissioners selected by the president and confirmed by the U.S. Senate. It would have the authority to hold hearings, conduct investigations, create rules, and impose penalties in order to promote and protect the public’s interest on social media sites and other digital platforms. Whether such an agency would be an existing one or a new one, it is critical that it be chartered to operate using “entrepreneurial administration.” See Philip J. Weiser, *Entrepreneurial Administration*, 97 B.U. L. REV. 2011 (2017). It also merits note that some bills have been introduced addressing some aspects of social media regulation—such as the Social Media Privacy Protection and Consumer Rights Act, and the Kids Online Safety Act—that provide enforcement authority to the FCC. While

3. Create federal regulation to improve information transparency from social media platforms.

A central barrier to understanding the issue of drug activity on social media platforms, specifically, and larger social harms caused by the platforms more broadly, is that the information necessary to fully understand these issues is controlled by the platforms themselves.

As previously discussed, such platforms often restrict access to their data and have resisted sharing even the most basic information.^{184, 185, 186} Many platforms have not, for example, published information on the amount of drug-related content detected or removed, the number of accounts suspended or removed for violating the platforms' drug policies, the frequency of proactive law enforcement reporting, the average reach of posts marketing drugs, or the level of user engagement with posts marketing drugs, to name a few. Rather, most of what we know comes from leaked information, incomplete data sets or summaries in transparency reports released by the platforms, and academic research hamstrung by limited data access.

Consequently, state and federal policymakers are largely left in the dark as they work to craft interventions to address issues related to the use of social media platforms, including for the sale and purchase of drugs. This creates a unique set of challenges for law enforcement, public health experts, policymakers, and researchers, including that they are unable to effectively evaluate the full extent of drug activity online as they have access to, at best, incomplete data and limited information.

analysis of those bills is outside the scope of this report, we encourage a more unified framework to addressing the multitude of challenges related to social media platforms.

¹⁸⁴ See Nathaniel Persily & Joshua A. Tucker, *How to fix social media? Start with independent research.*, BROOKINGS INSTITUTE (Dec. 1, 2021), available at <https://www.brookings.edu/research/how-to-fix-social-media-start-with-independent-research/>.

¹⁸⁵ Laura Edelson & Damon McCoy, *How Facebook Hinders Misinformation Research*, SCIENTIFIC AMERICAN (Sept. 22, 2021), available at <https://www.scientificamerican.com/article/how-facebook-hinders-misinformation-research/>.

¹⁸⁶ Robert Gorwa & Timothy Garton Ash, "Democratic Transparency in the Platform Society," in *Social Media and Democracy: The State of the Field and Prospects for Reform* (pp 286–312), CAMBRIDGE UNIVERSITY PRESS (2020).

While state attorneys general have commenced investigations and litigation aimed at addressing some of the harms associated with social media, these efforts, too, are hamstrung at the outset by the broad lack of access to relevant data. And obtaining and releasing information through discovery is, at best, a limited tool for addressing the broader issue of overall transparency.

To provide greater transparency on the actions and impact of social media companies in addressing illicit substance sales activity on their platforms, federal legislation is required to facilitate a more open research ecosystem and allow for independent oversight in this area. In so doing, Congress could lay the foundation for sound public policy and provide an accountability mechanism for social media platforms.

Independent researchers are uniquely positioned to provide critical insights to inform policymakers in crafting targeted, relevant interventions to address the issues raised by the rise of social media platforms. Enacting proposed federal legislation that recognizes this unique role of academic research and could effectively leverage the existing accountability structure of internal review boards would be an important step towards greater transparency.¹⁸⁷

¹⁸⁷ As mentioned in Section IV.B, *supra*, one potentially effective structure for such legislation is the Platform Accountability and Transparency Act (PATA). Under PATA, independent researchers could submit IRB-approved proposals to the National Science Foundation. If a request is approved, a “target” social media company would be required to provide requested data subject to privacy protections. PATA also would require that platforms proactively make certain information available to researchers or to the public on an ongoing basis. Importantly, PATA is crafted with careful guardrails to protect user data privacy and cybersecurity. This type of mutually protective structure is a necessary step in facilitating data-sharing to promote the public interest.

Impact Stories

In life, it's common that grief never settles and love never fades.

"Like you would hear her before you saw her. She had this loud voice," said Feliz Sanchez Garcia. "You always hear, like, oh they were bright, they lit up a room. She really did."

As time passes fond memories with Karina Joy Rodriguez feel like yesterday. It's been a year since she and four others died inside a Commerce City apartment on Feb. 20, 2022. They took cocaine that they did not know was laced with fentanyl.

"It's hard when you talk to someone every day, all day, to just go about your life like normal," said Mileiah Rodriguez.

Life hasn't been normal since Feliz and Mileiah lost their baby sister Karina a year ago.

"I think it's been probably the fastest but longest time ever. It's really hard to describe," Feliz said.

The memories of this past year aren't easy when Feliz and Mileiah look at their sister through her children. Whether it's 11-year-old Josiah or 15-month-old Aria.

"She is just the funniest little baby and she's so happy. I just—it's like all these happy moments are filled, like, they're always going to come with this sadness that comes to them," Feliz said.

Karina and her boyfriend Sam Marquez aren't here to witness these moments.

"They were a young couple, they were happy. They had their stuff together," Feliz said.

—Darius Johnson, et al., Family of Karina Joy Rodriguez reminisces 1 year after she was poisoned by fentanyl, 9NEWS (Feb. 20, 2023), available at <https://www.9news.com/article/news/local/commerce-city-fentanyl-deaths/73-97d79b5c-2935-4222-94ea-9e60aede618b>.

Conclusion

The challenges presented in this report sit at the intersection of many urgent social issues—mental illness, substance use disorder, the current iteration of the opioid crisis, rapid (and underregulated) technological innovation, and corporate accountability. Accordingly, progress in any one of these issues will advance progress in combatting the online illicit substance market as a whole. While interventions specifically targeting this market are challenging to identify and implement, these challenges are not insurmountable. As Colorado continues to invest in addressing the opioid crisis using a range of tools—including education, public health, and criminal justice—we will succeed in creating safer communities that are more resilient and resistant to the harms posed by drug distribution online.

Likewise, while disruptions to the online illicit substance market cannot be made by any single actor unilaterally, Colorado is, thankfully, a state known for its collaboration and entrepreneurship. By bringing together the best efforts of state and federal policymakers, law enforcement, public health experts, and tech companies, we can meet the threat of online illegal drug distribution and protect our communities from the devastating effects of the fentanyl epidemic. As governments at all levels take important steps to protect social media users, we urge social media companies to recognize the opportunity to make clear policy changes and devote substantial resources and efforts to meaningfully and effectively curtail drug activity on their platforms. Through this partnership, we can build a safer, healthier online landscape for all Coloradans.

Appendix A: C.R.S. § 24-31-116

C.R.S. § 24-31-116. Online fentanyl trafficking—study—report—appropriation—
repeal

Effective: July 1, 2022

- 1) The attorney general shall study the use of the internet, including retail, payment, and social media platforms, for the purpose of trafficking fentanyl, fentanyl analogs or compounds thereof, synthetic opiates, and counterfeit prescription drugs.
- 2) The study must, at a minimum:
 - a. Examine the prevalence of the availability and accessibility for fentanyl, fentanyl analogs or compounds thereof, synthetic opiates, and counterfeit prescription drugs through the internet;
 - b. Identify website policies and practices intended to prevent the use of the website for trafficking fentanyl, fentanyl analogs or compounds thereof, synthetic opiates, and counterfeit prescription drugs;
 - c. Identify laws implemented by other states or the federal government intended to prevent the use of the internet for trafficking fentanyl, fentanyl analogs or compounds thereof, synthetic opiates, and counterfeit prescription drugs; and
 - d. Examine any other relevant data, information, or resources, as deemed necessary by the department of law, concerning the use of the internet for trafficking fentanyl, fentanyl analogs or compounds thereof, synthetic opiates and counterfeit prescription drugs.

- 3) By March 1, 2023, the attorney general shall complete and publish a report of its findings pursuant to subsection (2) of this section. The report must also include recommendations for potential state legislation:
 - a. To prevent the use of the internet for trafficking, distributing, or supplying fentanyl, fentanyl analogs or compounds thereof, synthetic opiates, and counterfeit prescription drugs;
 - b. Concerning criminal and civil liability for the use of the internet for trafficking, distributing, or supplying fentanyl, fentanyl analogs or compounds thereof, synthetic opiates, and counterfeit prescription drugs;
 - c. Regarding consumer reporting mechanisms for reporting to law enforcement or the online platform the use of a website or online account for trafficking fentanyl, fentanyl analogs or compounds thereof, synthetic opiates, and counterfeit prescription drugs; and
 - d. Regarding any other public policy changes necessary to reduce or eliminate the use of the internet for trafficking, distributing, or supplying fentanyl, fentanyl analogs or compounds thereof, synthetic opiates, and counterfeit prescription drugs.
- 4) The attorney general shall invite the United States attorney for the district of Colorado to collaborate, consult, or provide any available assistance in the performance of the attorney general's duties pursuant to this section.
- 5) By March 1, 2023, the attorney general shall submit the completed report pursuant to to subsection (3) of this section to the house of representatives and senate judiciary committees, or any successor committees.
- 6) For the 2022-23 state fiscal year, the general assembly shall appropriate at least one hundred fifty thousand dollars to the department of law for the purposes of this section.
- 7) This section is repealed, effective July 1, 2023.

Appendix B: Major Platforms' Policies Related to Illegal Conduct and/or Drug Activity

Illegal activities

Don't post content that encourages illegal activity like:

- Violence
- Illegal drug use
- Underage drinking
- Child or animal abuse
- Fraud

We don't allow content that advocates or threatens physical or financial harm to yourself or others. This includes terrorism. Jokes or sarcastic comments about causing harm aren't allowed.

It's also not allowed to offer fraudulent goods, services, promotions, or schemes (make money fast, pyramid).

It's not allowed to encourage the dangerous misuse of a product.

Figure 1. Amazon

- **Do not organize, promote, or engage in any illegal or dangerous behavior**, such as sexual solicitation, human trafficking, and selling or facilitating the sale of prohibited or potentially dangerous goods (firearms, ammunition, drugs, and controlled substances). These activities are likely to get you kicked off Discord, and may get you reported to law enforcement.

Figure 2. Discord

Legal and Acceptable Use. You agree to use our Services only for legal, authorized, and acceptable purposes. You will not use (or assist others in using) our Services in ways that: (a) violate or infringe the rights of Signal, our users, or others, including privacy, publicity, intellectual property, or other proprietary rights; (b) involve sending illegal or impermissible communications such as bulk messaging, auto-messaging, and auto-dialing.

Figure 3. Signal

Illegal Activity

- Don't use Snapchat for any illegal activity — including to promote criminal activity; facilitate or participate in cybercrime; or to buy, sell or facilitate sales of illegal or regulated drugs, contraband, weapons, and counterfeit goods or documents.
- We prohibit the promotion of regulated goods or industries, including illegal gambling, tobacco products, and alcohol.

Figure 4. Snapchat

Terms of Service

By signing up for Telegram, you accept our [Privacy Policy](#) and agree not to:

- Use our service to send spam or scam users.
- Promote violence on publicly viewable Telegram channels, bots, etc.
- Post illegal pornographic content on publicly viewable Telegram channels, bots, etc.

We reserve the right to update these Terms of Service later.

Citizens of EU countries and the United Kingdom must be at least 16 years old to sign up.

Figure 5. Telegram

Drugs, controlled substances, alcohol, and tobacco

We do not allow the depiction, promotion, or trade of drugs or other controlled substances. The trade of tobacco and alcohol products is also prohibited on the platform.

Do not post, upload, stream, or share:

- Content that depicts or promotes drugs, drug consumption, or encourages others to make, use, or trade drugs or other controlled substances
- Content that offers the purchase, sale, trade, or solicitation of drugs or other controlled substances, alcohol or tobacco products (including vaping products, smokeless or combustible tobacco products, synthetic nicotine products, E-cigarettes, and other ENDS [Electronic Nicotine Delivery Systems])
- Content that provides information on how to buy illegal or controlled substances
- Content that depicts or promotes the misuse of legal substances, or instruction on how to make homemade substances, in an effort to become intoxicated

Figure 6. TikTok

- **Unlawful Uses or Content.** Don't use Tumblr to conduct illegal behavior, like fraud or phishing. That should be pretty obvious to you, a decent human being. Don't use Tumblr for any kind of exchange of regulated drugs, substances, devices, goods, or weapons. Don't use Tumblr to buy them, sell them, trade them, or to share instructions for manufacturing them. This includes firearms, firearm parts, 3D-printed firearms or parts, explosives, ammunition, or anything else designed to hurt others.
[Report sale of drugs or prohibited materials](#)
[Report phishing](#)

Figure 7. Tumblr

Illegal, dangerous, and inappropriate commercial activity

Last updated: 2 months ago

We don't allow individuals or entities to engage in inappropriate or unsafe commercial transactions on our platform. We remove content that promotes, distributes, facilitates access to, or attempts to sell illegal or regulated goods and services.

Examples of illegal, dangerous, and inappropriate commercial content ^

- Providing direct-to-purchase links and/or private contact information to facilitate the sale of illegal or dangerous goods or services such as
 - Weapons and firearms
 - Recreational drugs and paraphernalia
 - Prescription drugs and pharmaceuticals, subject to our [Advertising policies](#)
 - Alcohol and tobacco products
 - Human body parts, organs, and fluids
 - Live animals, livestock, or animal parts
 - Gambling sites and services
 - Counterfeit items
 - Pirated software and media
 - Fabricated official documents, scraped member data, and/or financial instruments
- Any content that promotes or facilitates human trafficking, exploitation, or criminal sex acts, including escort, prostitution, or mail-order bride services
- Monetization and/or exploitation of a sensitive global event, such as famine, natural disaster, pandemic, or economic collapse
- Sweepstakes, giveaways, lotteries, and contests

Figure 8. LinkedIn

Can I do illegal things on Kik?

Hell nope.

It is against our terms of service to use Kik to break the law, to promote an illegal activity (including terrorism or organized crime), or to send sexual or inappropriate content involving anyone under 18, including yourself. If you do, we work with law enforcement as needed.

Figure 9. Kik

Non-medical drugs (drugs or substances that are not being used for an intended medical purpose or are used recreationally to achieve an altered mental state.)

Content that:

- Attempts to buy, sell, trade, co-ordinate the trade of, donate, gift or asks for non-medical drugs.
- Admits to buying, trading or co-ordinating the trade of non-medical drugs by the poster of the content by themselves or through others.
- Admits to personal use without acknowledgment of or reference to recovery, treatment, or other assistance to combat usage. This content may not speak positively about, encourage use of, coordinate or provide instructions to make or use non-medical drugs.
- Coordinates or promotes (by which we mean speaks positively about, encourages the use of, or provides instructions to use or make) non-medical drugs.

Pharmaceutical drugs (drugs that require a prescription or medical professionals to administer)

Content that:

- Attempts to buy, sell or trade pharmaceutical drugs except when:
 - Listing the price of vaccines in an explicit education or discussion context.
 - Offering delivery when posted by legitimate healthcare e-commerce businesses.
- Attempts to donate or gift pharmaceutical drugs
- Asks for pharmaceutical drugs except when content discusses the affordability, accessibility or efficacy of pharmaceutical drugs in a medical context

Marijuana

Content that attempts to buy, sell, trade, donate or gift or asks for marijuana.

Figure 10. Meta

Dangerous goods and activities

Pinterest isn't a place for trading or selling of certain regulated goods—products or substances that can cause harm when used, altered or manufactured irresponsibly—or for the display or encouragement of dangerous activities. We limit the distribution of or remove such content and accounts, including:

- Individuals and unlicensed retailers offering to sell, purchase or trade alcohol, tobacco, drugs and weapons, including firearms and accessories, firearm parts or attachments, or ammunition
- Content from or about unverified, unapproved or rogue online pharmacies
- Offers, attempts, or instructions to bypass purchasing laws and regulation
- Instructions for creating lethal or toxic substances
- Instructions for creating lethal weapons, like bombs or grenades, including 3d printed weapons
- Commercial sales of marijuana, marijuana products and paraphernalia
- Commercial sales of certain weapons and attachments
- Harmful pranks or challenges that risk imminent physical harm or extreme emotional distress, especially if showing or encouraging the participation of minors

Figure 11. Pinterest

Reddit's policy against transactions involving prohibited goods or services

1 year ago · Updated

Content is prohibited if it uses Reddit to solicit or facilitate any transaction or gift involving certain goods and services.

You may not use Reddit to solicit or facilitate any transaction or gift involving certain goods and services, including

- **Firearms, ammunition**, explosives, legally controlled firearms parts or accessories (e.g., bump stock-type devices, silencers/suppressors, etc.), or 3D printing files to produce any of the aforementioned;
- **Drugs**, including **alcohol and tobacco**, or any **controlled substances** (except advertisements placed in accordance with our **advertising policy**);
- Paid services involving physical sexual contact;
- Stolen goods;
- Personal information;
- Falsified official documents or currency
- Fraudulent services

Figure 12. Reddit

April 2019

You may not use our service for any unlawful purpose or in furtherance of illegal activities. This includes selling, buying, or facilitating transactions in illegal goods or services, as well as certain types of regulated goods or services.

Twitter takes the safety of our users seriously. In an effort to address the potential for real-world harm, we do not allow the use of Twitter for any unlawful behavior or to further illegal activities. This includes selling, buying, or facilitating transactions in illegal goods or services, as well as certain types of regulated goods or services. In some cases, we may ask you to contact a law enforcement agency and have them contact us via our law enforcement request page to ensure we have enough context to enforce this policy. In addition to reports received, we proactively surface activity that may violate this policy for human review.

Goods or services covered under this policy include, but are not limited to:

- counterfeit goods and services*;
- drugs and controlled substances;
- human trafficking;
- products made from endangered or protected species;
- sexual services;
- stolen goods; and
- weapons, including firearms, ammunition, and explosives, and instructions on making weapons (e.g. bombs, 3D printed guns, etc.)

Figure 13. Twitter

Drug use ^

The following types of content are not allowed on YouTube. This isn't a complete list.

- **Displays of hard drug uses:** Non-educational content that shows the injection of intravenous drugs like heroin or huffing/sniffing glue.
- **Making hard drugs:** Non-educational content that explains how to make drugs.
- **Minors using alcohol or drugs:** Showing minors drinking alcohol, using vaporizers, e-cigarettes, tobacco or marijuana, or misusing fireworks.
- **Selling hard or soft drugs:** Featuring drugs with the goal of selling them. If you're using links in your description to sell hard drugs, your channel will be terminated.
- **Steroid use:** Non-educational content that shows how to use steroids for recreational purposes (like bodybuilding).

Note: If this type of content is educational, documentary, scientific, or artistic, we may still age-restrict it. For example, a documentary about intravenous drug use that shows the injection of drugs may be allowed, but it won't be available to all audiences. If your content shows items used for taking drugs, it may also be age-restricted.

Figure 14. YouTube

3. **Don't Use Whisper to Break the Law.** Please don't post pictures you don't have the rights to. If you are not sure, don't post it. Don't post nude or intimate pictures. Do not use Whisper to engage in or promote illegal behavior such as selling controlled substances or solicitation. If you solicit

Figure 15. Whisper

8. USAGE RULES; PROHIBITED CONDUCT & USES

Wickr was founded upon the belief that private communications are a universal human right, and our Services are designed to enable secure end-to-end communication. While we don't have the technical capability to monitor Wickr Services accounts or our users' messages, we reserve the right to suspend or terminate accounts if we learn they violate the following terms.

YOU MAY NOT USE, OR FACILITATE, OR ALLOW OTHERS TO USE THE WICKR SERVICES:

- for any illegal or fraudulent activity;
- to violate the rights of others;
- to engage in the targeted harassment of others;
- to threaten, incite, promote, or actively encourage violence, terrorism, or other serious harm;
- for any content or activity that promotes child sexual exploitation or abuse;
- to send or disseminate other people's private and confidential information, such as credit card numbers or Social Security/National Identity numbers, without their express authorization and permission;
- in any manner that infringes patents, trademarks, trade secrets, copyrights, or any other proprietary or intellectual property rights;

- to distribute, publish, send, or facilitate the sending of unsolicited mass email or other messages, promotions, advertising, or solicitations (or "spam");

- to impersonate others in a manner that does or is intended to mislead, confuse, or deceive others;
- to remove, circumvent, disable, damage or otherwise interfere with security features of the Wickr Services, including any technical measures we may use to prevent or restrict unauthorized access to the Wickr Services, features that prevent or restrict use or copying of any content accessible through the Wickr Services, or features that enforce limitations on use of the Wickr Services;
- to intentionally interfere with or damage operation of the Wickr Services or any user's enjoyment of them, including by uploading or disseminating viruses, worms, or other malicious code;

- to violate the security, integrity, or availability of any user, network, computer or communications system, software application, or network or computing device;

- to use any robot, spider, scraper or other automated means to access the Wickr Services without our express written permission;
- to modify the Wickr Services in any manner or form; or
- to sell, transfer or allow another person to access your account password or Wickr Services account.

Figure 16. Wickr

Appendix C: Major Platforms' Policies Related to Consequences of Users' Policy Violations

Consequences for violations

Violations of our guidelines make the community less trustworthy, safe, and useful. If someone violates the guidelines, we may:

- Remove their content
- Limit their ability to use community features
- Remove related products
- Suspend or terminate their account
- Withhold payments

If we find unusual reviewing behavior, we might limit the ability to submit reviews. If we reject or remove someone's review because it violates our [promotional content guidelines](#), we won't accept any more reviews from them for the same product.

If someone violates state and federal laws, including the Federal Trade Commission Act, we might take legal action that results in civil and criminal penalties.

Figure 17. Amazon

When our Trust & Safety team confirms that there has been a violation of our [Community Guidelines](#), the team takes immediate steps to mitigate the harm. The following are actions that we might take on either users and/or servers:

- Removing the content
- Warning users to educate them about their violation
- Temporarily banning users for a fixed amount of time as a "cool-down" period
- Permanently banning users from Discord
- Disabling a server's ability to invite new users
- Removing a server from Discord

Discord also works with law enforcement agencies in cases of immediate danger and/or self-harm. In particular, we swiftly report child abuse material content and the users responsible to the National Center for Missing and Exploited Children.

Figure 18. Discord

Enforcement

We have a variety of ways of enforcing our rules, including, but not limited to

- Asking you nicely to knock it off
- Asking you less nicely
- Temporary or permanent suspension of accounts
- Removal of privileges from, or adding restrictions to, accounts
- Adding restrictions to Reddit communities, such as adding NSFW tags or [Quarantining](#)
- Removal of content
- Banning of Reddit communities

Figure 19. Reddit

Professional Community Policy enforcements

Last updated: 2 months ago

We remove content that violates our [Professional Community Policies](#). When we do this, we also send you a notice that your content violates our policies, how, and the action we're taking. If you believe your content has been removed in error, you'll have the opportunity to ask for a second look.

Repeated violations may result in account restriction. We provide the opportunity to appeal an account restriction, and we may reinstate a restricted account if the member agrees to comply with these Professional Community Policies. Continued violations will result in permanent restriction from the LinkedIn platform.

For certain egregious violations of our Professional Community Policies (e.g., child sexual abuse material, terrorism, extremely violent content, egregious sexual harassment), we may permanently restrict your account after a single violation.

Content that would normally violate the letter of our policies may be allowed in cases where the content is being shared for awareness or to condemn. In these cases, we may label and obscure the content for members who may find this content sensitive or disturbing, or otherwise do not want to view it. However, we won't remove the content or penalize the author for posting it.

Figure 20. LinkedIn

Taking down violating content

UPDATED SEP 9, 2022

If your content goes against the [Facebook Community Standards](#) or [Instagram Community Guidelines](#), Meta will remove it. We'll also notify you so you can understand why we removed the content and how to avoid posting violating content in the future.

We use a [strike system](#) to count violations and hold you accountable for the content you post. Depending on which policy your content goes against, your previous history of violations and the number of strikes you have, your account may also be [restricted](#) or [disabled](#).

Figure 21. Meta (for action against content)

Counting strikes

UPDATED OCT 4, 2022

If you post content that goes against the [Facebook Community Standards](#) or [Instagram Community Guidelines](#), we'll remove it and may then apply a strike to your Facebook or Instagram account. Whether we apply a strike depends on the severity of the content, the context in which it was shared and when it was posted.

Figure 22. Meta ("strike" system)

Restricting accounts

UPDATED OCT 4, 2022

For most violations, your first [strike](#) will result in a warning with no further restrictions. If Meta removes additional posts that go against the [Facebook Community Standards](#) or [Instagram Community Guidelines](#) in the future, we'll apply additional strikes to your account, and you may lose access to some features for set periods of time.

These restrictions apply to Facebook accounts, but they may also be extended to Pages that are used to speak in the singular voice of an individual. (Note that while we count strikes on both Facebook and Instagram, these restrictions only apply to Facebook accounts.)

For most violations on Facebook, strikes will lead to the following restrictions:

- **One strike:** Warning and no further restrictions.
- **2 strikes:** One-day restriction from creating content, such as posting, commenting, using Facebook Live or creating a Page.
- **3 strikes:** 3-day restriction from creating content.
- **4 strikes:** 7-day restriction from creating content.
- **5 or more strikes:** 30-day restriction from creating content.

Figure 23. Previous Meta strike system for action against accounts (as of Oct. 4, 2022)

Restricting accounts

UPDATED FEB 23, 2023

For most violations, your first [strike](#) will result in a warning with no further restrictions. If Meta removes additional posts that go against the [Facebook Community Standards](#) or [Instagram Community Guidelines](#) in the future, we'll apply additional strikes to your account, and you may lose access to some features for longer periods of time.

These restrictions generally only apply to Facebook accounts, but they may also be extended to Pages that represent an individual, like a celebrity or political figure. (Note that while we count strikes on both Facebook and Instagram, these restrictions only apply to Facebook accounts.)

For most violations on Facebook, strikes will lead to the following restrictions:

- **One strike:** You'll get a warning since this is your first strike.
- **Two to six strikes:** You'll be restricted from specific features, like posting in groups, for a limited amount of time.
- **Seven strikes:** You'll get a one-day restriction from creating content, which includes posting, commenting, creating a Page, and more.
- **Eight strikes:** You'll get a 3-day restriction from creating content.
- **Nine strikes:** You'll get a 7-day restriction from creating content.
- **Ten or more strikes:** You'll get a 30-day restriction from creating content.

Figure 24. Recently updated Meta strike system for action against accounts (as of Feb. 23, 2023)

To keep the Pinterest community safe, we may suspend accounts that violate our [Community Guidelines](#) . If your account was suspended, you'll see a suspension notice when you try to log in.

How it works

We make sure content meets our [Community Guidelines](#) through both automated processes and human review. Pins, comments, photos, messages, or accounts dedicated to policy-violating content can result in account suspension.

Accounts may be suspended due to single or repeat violations of our Community Guidelines concerning:

- Pinner Safety (for example: hateful speech, pornography, graphic imagery and misinformation)
- Account security (including impersonation and third-party logins)
- Spam
- Intellectual property

Figure 25. Pinterest

How we enforce these policies

Content that violates our rules against Illegal or Regulated Activities will be removed. In many cases, users who share, promote, or distribute violating content will receive a warning notice, and users who repeatedly violate these policies will have their account access restricted. However, there are certain illegal activities—like drug dealing or human trafficking, for instance—for which we truly have zero tolerance; these violations will result in a loss of account privileges following even a single infraction.

An important way to help us keep Snapchat safe is to immediately report illegal activities using our in-app reporting tool. Once we receive a report, our Trust & Safety teams can take action quickly to appropriately address the harm. On our high-reach surfaces, like Spotlight and Discover, we take a very proactive approach to moderating content and promoting information integrity, but it's still enormously valuable to receive user reports regarding any harmful content you might encounter on these surfaces; they help alert us to any breakdowns in our processes for keeping these spaces free of unlawful or unsafe activity.

Figure 26. Snapchat (“zero tolerance” policy)

Why we're updating the current account enforcement system

Our existing account enforcement system leverages different types of restrictions, like temporary bans from posting or commenting, to prevent abuse of our product features while teaching people about our policies in order to reduce future violations. While this approach has been effective in reducing harmful content overall, we've heard from creators that it can be confusing to navigate. We also know it can disproportionately impact creators who rarely and unknowingly violate a policy, while potentially being less efficient at deterring those who repeatedly violate them. Repeat violators tend to follow a pattern – our analysis has found that almost 90% violate using the same feature consistently, and over 75% violate the same policy category repeatedly. To better address this, we're updating our account enforcement system as we look to support our creator community and remove repeat offenders from our platform.

How the streamlined account enforcement system will work

Under the new system, if someone posts content that violates one of our [Community Guidelines](#), the account will accrue a strike as the content is removed. If an account meets the threshold of strikes within either a product feature (i.e. Comments, LIVE) or policy (i.e. Bullying and Harassment), it will be permanently banned. Those policy thresholds can vary depending on a violation's potential to cause harm to our community members – for example, there may be a stricter threshold for violating our policy against promoting hateful ideologies, than for sharing low-harm spam. We will continue to issue permanent bans on the first strike for severe violations, including promoting or threatening violence, showing or facilitating child sexual abuse material (CSAM), or showing real-world violence or torture. As an additional safeguard, accounts that accrue a high number of cumulative strikes across policies and features will also be permanently banned. Strikes will expire from an account's record after 90 days.

Figure 27. TikTok (“strike” system)

If we conclude that you are violating these guidelines, you may receive a notice via email. If you don't explain or correct your behavior, we may take action against your account. Repeat violations of our Community Guidelines may result in permanent blog or account suspension. We do our best to ensure fair outcomes, but in all cases we reserve the right to suspend accounts, or remove content, without notice, for any reason, but particularly to protect our services, infrastructure, users, and community. We reserve the right to enforce, or not enforce, these guidelines in our sole discretion, and these guidelines don't create a duty or contractual obligation for us to act in any particular manner.

Figure 28. Tumblr

What happens if you violate this policy?

The consequences for violating this policy depends on the severity of the violation and the account's previous history of violations.

If you violate this policy more than once and/or if your account is dedicated to the sale of illegal or regulated goods and/or services, your account may be suspended permanently.

Accounts that appear to be using misleading account information in order to engage in spamming, abusive, or disruptive behavior to promote the sale of illegal and regulated goods and/or services may be subject to suspension under our [platform manipulation and spam](#) policy.

If you believe that your account was suspended in error, you can [submit an appeal](#).

Figure 29. Twitter

Our enforcement philosophy

We empower people to understand different sides of an issue and encourage dissenting opinions and viewpoints to be discussed openly. This approach allows many forms of speech to exist on our platform and, in particular, promotes counterspeech: speech that presents facts to correct misstatements or misperceptions, points out hypocrisy or contradictions, warns of offline or online consequences, denounces hateful or dangerous speech, or helps change minds and disarm.

Thus, **context matters**. When determining whether to take enforcement action, we may consider a number of factors, including (but not limited to) whether:

- the behavior is directed at an individual, group, or protected category of people;
- the report has been filed by the target of the abuse or a bystander;
- the user has a history of violating our policies;
- the severity of the violation;
- the content may be a topic of legitimate public interest.

Figure 30. Twitter (factors governing enforcement actions)

Warning

We understand mistakes happen and you don't mean to violate our policies — that's why the first violation is typically only a warning. You only get one warning, and this warning remains on your channel. The next time your content is found to violate the Community Guidelines, you'll get a strike. Sometimes a single case of severe abuse will result in [channel termination](#) without warning. If you think we made a mistake, you can [appeal the warning](#).

First Strike

If we find your content doesn't follow our policies for a second time, you'll get a strike.

This strike means you will not be allowed to do the following for 1 week:

- Upload videos, live streams, or stories
- Start a scheduled live stream
- Schedule a video to become public
- Create a Premiere
- Add a trailer to an upcoming Premiere or live stream
- Create custom thumbnails or Community posts
- Create, edit, or add collaborators to playlists
- Add or remove playlists from the watch page using the "Save" button

Your scheduled public content is set to "private" for the penalty period duration. You have to reschedule it when the freeze period ends.

After the 1-week period, we restore full privileges automatically, but the strike remains on your channel for 90 days.

Second Strike

If you get a second strike within the same 90-day period as your first strike, you will not be allowed to post content for 2 weeks. If there are no further issues, after the 2-week period, we restore full privileges automatically. Each strike will not expire until 90 days from the time it was issued.

Third Strike

3 strikes in the same 90-day period results in your channel being permanently removed from YouTube. Each strike will not expire until 90 days from the time it was issued.

Figure 31. YouTube ("strike" system)

These rules help us make Kik a more respectful and fun place. Just in case someone isn't into following these guidelines, we have a moderation and trust and safety team to enforce these community standards.

If you see something that goes against the rules, you can use our in-app reporting feature to let our moderation team know. This team takes action against reported users that aren't paying attention to or following our community standards. How do we do this? If someone isn't following the rules they can have their profile picture removed, be banned from public groups, be temporarily or permanently banned from Kik, or even reported to the police. As the Kik community grows and evolves, so will our community standards, and we reserve the right to enforce them as we see fit.

Thanks for helping us make Kik a safe and more fun place to be!

Figure 32. Kik

substances or solicitation. If you solicit minors for any reason or post sexually explicit pictures of minors, we will suspend your account and report you to the National Center for Missing and Exploited Children. Do not make threats of violence, we may share your IP address, location, and other information with law enforcement if we think you have made a threat to the safety of others. We can be required by law to disclose your information if we receive a subpoena, court order, or search warrant.

We actively moderate the service and ban users who violate these rules. We reserve the right to suspend accounts or remove content for violating these guidelines or for any reason, but particularly to protect our users and community.

Figure 33. Whisper

12. VIOLATIONS; TERMINATION

You agree that Wickr may terminate or suspend your access to the Wickr Services without prior notice and without liability if such termination or suspension is based on (a) Wickr's good faith belief you have violated any of the terms and conditions of this Agreement, (b) Wickr's determination that you repeatedly infringe or have infringed the copyrights of others, (c) extended periods of inactivity with respect to any of the Wickr Services. These remedies are in addition to any other remedies Wickr may have at law or in equity. Wickr reserves the right to terminate Free Accounts and free access to Wickr Services at any time, with or without notice without any liability of any kind.

Wickr reserves the right to terminate any account considered as squatting on a username, or accounts that are deemed as spammers, or violate any laws of the U.S. Wickr may terminate or suspend its services at any time, and for any reason without any liability.

Figure 34. Wickr

4. Termination

4.1. Compliance with the Terms

Failure to comply with the Telegram Terms of Service may result in a temporary or a permanent ban from Telegram or some of its services. In such instances, you might lose the benefits of Telegram Premium and we will not compensate you for this loss.

4.2. Unilateral Termination

Telegram can decide to stop offering subscriptions at any time, including in response to unforeseen circumstances beyond our control, or to comply with a legal requirement; in this case we will cancel your subscription and refund the prorated portion of any prepaid subscription fee equal to the remaining unused term of the subscription.

Figure 35. Telegram

Ending these Terms. You may end these Terms with Signal at any time by deleting Signal Messenger from your device and discontinuing use of our Services. We may modify, suspend, or terminate your access to or use of our Services anytime for any reason, such as if you violate the letter or spirit of our Terms or create harm, risk, or possible legal exposure for Signal. The following provisions will survive termination of your relationship with Signal: "Licenses," "Disclaimers," "Limitation of Liability," "Resolving dispute," "Availability" and "Ending these Terms," and "General".

Figure 36. Signal

Appendix D: Major Platforms' Policies Related to Law Enforcement Cooperation

Security and Privacy ›

Law Enforcement Information Requests

Amazon knows customers care deeply about privacy and data security, and we optimize our work to get these issues right for customers.

- Amazon does not disclose customer information in response to government demands unless we're required to do so to comply with a legally valid and binding order. Unless prohibited from doing so or there is clear indication of illegal conduct in connection with the use of Amazon products or services, Amazon notifies customers before disclosing content information.
- Where we need to act to protect customers, we do. We have repeatedly challenged government demands for customer information that we believed were overbroad, winning decisions that have helped to set the legal standards for protecting customer speech and privacy interests. We also advocate in Congress to modernize outdated privacy laws to require law enforcement to obtain a search warrant from a court to get the content of customer communications. That's the appropriate standard, and it's the standard we follow.
- While we recognize the legitimate needs of law enforcement agencies to investigate criminal and terrorist activity, and cooperate with them when they observe legal safeguards for conducting such investigations, we oppose legislation mandating or prohibiting security or encryption technologies that would have the effect of weakening the security of products, systems, or services our customers use, whether they be individual consumers or business customers. For AWS clients, we offer strong encryption as one of many standard security features, and we provide them the option to manage their own encryption keys. We publish security best practices documents on our website and encourage our clients to use these measures to protect sensitive content.
- We are members of numerous associations focused on protecting privacy and security, and AWS in particular has achieved a number of internationally recognized certifications and accreditations demonstrating compliance with third-party assurance frameworks. AWS clients have control over their content and where it resides.

Figure 37. Amazon

Discord provides user information to law enforcement when we are in receipt of enforceable legal process. Discord works with law enforcement agencies in cases of immediate danger and/or self-harm, pursuant to 18 U.S.C. § 2702. We swiftly report child abuse material and the users responsible to the National Center for Missing and Exploited Children.

Figure 38. Discord

Kik is located in California, USA, and as such is governed by United States law. We disclose account records and certain user non-content data in accordance with our Terms of Service and applicable law and must receive a legal order to consider disclosing content data in accordance with applicable law. This means to compel any user-data law enforcement is required to cooperate with the US federal, state, or local governments through an appropriate legal mechanism for the type of data being sought. Kik will only accept valid legal process (warrant or subpoena/summons) from a US federal, state, or local governmental entity or court. Further, Kik evaluates all requests as they relate to content or noncontent information.

Figure 39. Kik (for regular requests)

For emergency cases involving the *imminent* danger of death or serious physical harm to a person, we have established an Emergency Disclosure Request process to allow the release of limited basic subscriber data.

Figure 40. Kik (for emergency requests)

Reporting Out

If we have reasonable grounds to believe Kik has been used to commit a child pornography offense, we'll file a report with NCMEC and/or the appropriate legal authorities.

Figure 41. Kik (for proactive reporting)

LinkedIn Law Enforcement Data Request Guidelines

Last updated: 3 months ago

We know you count on us to safeguard your personal information, and to provide the transparency you've come to expect, even when it comes to law enforcement requests for member data. We respect the laws that apply to our business operations, but we put our members first by requiring that such requests follow established legal procedures and by notifying members of requests for their data unless prohibited by statute or court order. We also believe in being transparent about the number and type of requests we receive, and we issue a [Transparency Report](#) twice a year.

How our process works:

Follow the Law. Except in limited emergency situations, law enforcement agents seeking information about member accounts must be made through formal U.S. legal procedures, such as subpoenas, court orders, and search warrants. Please note that certain types of member data, including messages, invitations and connections, have a high bar for disclosure and can only be disclosed pursuant to a valid search warrant from an entity with proper jurisdiction.

Figure 42. LinkedIn

How Meta works with law enforcement

UPDATED JAN 19, 2022

Meta works to ensure safety in our community, online and offline, including by working with law enforcement. We may provide information to law enforcement that will help them respond to emergencies, including those that involve the risk of immediate harm, suicide prevention and the recovery of missing children.

We take the privacy of your information very seriously. We scrutinize every government request we receive to make sure it's legally valid. When we comply, we produce narrowly tailored information to respond to that request. We strive to notify people when their data has been requested, and we publish a transparency report on government requests we receive.

We also report apparent child sexual exploitation from anywhere to the [National Center for Missing and Exploited Children \(NCMEC\)](#), which refers cases to law enforcement authorities around the world.

Figure 43. Meta

For U.S. Law Enforcement

To compel Pinterest to provide any user's information, you must obtain a valid subpoena, court order or search warrant ("Law Enforcement Request"). To compel Pinterest to provide any user's content, you must obtain a valid search warrant.

Figure 44. Pinterest

User notifications of requests

Our policy is to notify users of Law Enforcement Requests by providing them with a complete copy of the request before producing their information to law enforcement. We may make exceptions to this policy if:

- we are legally prohibited from providing notice (e.g. by an order under 18 U.S.C. § 2705(b))
- an emergency situation exists involving a danger of death or serious physical harm to a person or place
- we have reason to believe notice wouldn't go to the actual account holder (e.g. an account has been hijacked or email address is invalid)

If we receive a National Security Letter (NSL) from the U.S. government that includes an indefinite non-disclosure order, our policy is to ask the government to seek judicial review of the order pursuant to the USA FREEDOM Act.

In cases where notice isn't provided because of a court order or emergency situation, our policy is to provide notice to the user once the court order or emergency situation has expired.

Note: Officer authored affidavits, descriptions, cover letters or similar statements are not sufficient to preclude notice to our users. You must provide a court order issued in accordance with 18 U.S.C. § 2705(b) or cite an applicable statute if you wish to prohibit user notice of your Law Enforcement Request.

Figure 45. Pinterest (regarding user notice)

Non-Emergency Requests for Account Information

Requests for account information must be directed to Reddit, Inc. in San Francisco, California. (For service instructions, see *How to Submit Account Information Requests*).

Reddit may disclose account information in response to requests from law enforcement or government agencies only in accordance with or when required by applicable law. We generally attempt to provide users with prior notice before disclosing their information unless we are legally prohibited from doing so (more details may be found in the User Notice section below).

Reddit carefully reviews all legal process and disclosure requests to ensure facial validity and legal sufficiency under applicable laws. Reddit will only disclose Basic Subscriber Information (see above) to law enforcement in response to a subpoena, court order, or other valid legal process, or in response to a valid Emergency Disclosure Request. Disclosure of other non-content records requires an 18 U.S.C. § 2703(d) order or equivalent legal process. Reddit will only disclose the Contents of Communications pursuant to a valid search warrant or as otherwise authorized by relevant law.

Reddit also reviews all legal process and requests to ensure they are not objectionable for other reasons, such as requests that are vague or overbroad, seek privileged or confidential information, or where the circumstances give rise to concerns around the chilling of free speech or other human rights infringements.

All requests for account information must be narrowly tailored and specifically identify the account(s) at issue by including the relevant u/username and the specific information sought.

Figure 46. Reddit (for regular requests)

Emergency Disclosure Requests for Account Information

In accordance with applicable law and our [Privacy Policy](#), Reddit may disclose limited account information to law enforcement without legal process if Reddit has a good faith belief that disclosure is necessary to prevent imminent death or serious bodily harm to a person.

Reddit evaluates Emergency Disclosure Requests (EDRs) on a case-by-case basis and may request additional information to further contextualize the nature of the emergency, clarify overly-broad requests, or validate the identity of the law enforcement official making the request. Reddit does not commit to producing records under any set of circumstances or within a particular timeline.

Figure 47. Reddit (for emergency requests)

User Notice

Will users be notified of a request for their account information?

Reddit will attempt to notify users about legal requests seeking disclosure of their account information, unless prohibited by law from doing so or under limited exceptions. Exceptions include exceptional emergency, exigent, or counterproductive circumstances (such as certain child safety or terrorism investigations) where Reddit may exercise its discretion to forgo user notice prior to production.

Wherever possible, Reddit will try to provide affected users with a reasonable period of time to file an objection before producing responsive records. Where a statute or court order prohibits notice for a limited time period, Reddit attempts to provide notice upon expiration of that period. Non-disclosure orders should contain an expiration date; failure to include one may result in a processing delay.

Figure 48. Reddit (regarding user notice)

Other instances where Signal may need to share your data

- To meet any applicable law, regulation, legal process or enforceable governmental request.
- To enforce applicable Terms, including investigation of potential violations.
- To detect, prevent, or otherwise address fraud, security, or technical issues.
- To protect against harm to the rights, property, or safety of Signal, our users, or the public as required or permitted by law.

Figure 49. Signal

Law Enforcement and the Snap Community

Guidance for Users, Parents, and Educators

At Snap, we take our commitment to protecting Snapchatters from misuse of our platform very seriously. As part of that, we work with law enforcement and governmental agencies to promote safety on our platform.

Guidance Around Users' Privacy Concerns

Snap is committed to assisting law enforcement while respecting the privacy and rights of our users. Once we have received and established the validity of a legal request for Snapchat account records, we respond in compliance with applicable law and privacy requirements.

How to Promote Safety

While it's true that we value ephemerality, some account information may be retrieved by law enforcement through valid legal process. At times, this could mean assisting law enforcement with preventing illegal activities and actioning accounts for violations of Snap's Terms of Service. We also assist with exigent situations and imminent threats to life, such as school shooting threats, bomb threats, and missing persons cases.

Share with your community how they can report to Snap!

- In-App Reporting: You can report inappropriate content to us right in the app! Just press and hold on the Snap, then tap the 'Report Snap' button. Let us know what's going on — we'll do our best to help!
- Email Us: You can also email a report to us right through our [Support site](#).

Figure 50. Snapchat

8.3. Law Enforcement Authorities

If Telegram receives a court order that confirms you're a terror suspect, we may disclose your IP address and phone number to the relevant authorities. So far, this has never happened. When it does, we will include it in a semiannual transparency report published at: <https://t.me/transparency>.

Figure 51. Telegram

Q: What is TikTok’s approach to handling data requests from law enforcement authorities?

TikTok is committed to cooperating with law enforcement while respecting the privacy and other rights of our users. To achieve this, we have internal policies and procedures governing how we handle and respond to law enforcement requests. These require that we disclose user data only where a request is based on a valid legal process or in emergency circumstances.

All requests received undergo a case-by-case assessment by TikTok’s dedicated law enforcement response team before any user data is disclosed. This team is trained to evaluate requests from law enforcement authorities and frequently engages in outreach to communicate TikTok’s requirements for disclosing user data to law enforcement authorities.

Figure 52. TikTok

Requirements for Requests for Non-Public Information

Tumblr may disclose data that is identified with sufficient particularity through valid legal process, and that we are reasonably able to locate and retrieve.

All requests must accurately identify the specific Tumblr user account by an email address associated with the account, or an account name or URL. Tumblr will not respond to general, vague, overbroad, or imprecise requests.

Requests must also clearly identify the specific information requested, and the relationship of that information to the applicable investigation.

An order of sufficient legal scope is required for disclosure. For example, a valid subpoena issued in connection with an official criminal investigation is required to compel disclosure of basic subscriber records, as defined in 18 U.S.C. Section 2703(c)(2). Such records include length of service, registered email address(es), and IP login(s), if available. Tumblr does not collect name or address information from its users, and therefore cannot provide this information to law enforcement.

A search warrant issued under the procedures described in the Federal Rules of Criminal Procedure or equivalent state warrant procedures, based on a showing of probable cause, is required to compel disclosure of the stored contents of any account, such as blog posts or messages.

Requests must come from appropriate government or law enforcement officials; Tumblr will not respond to requests from other sources.

Finally, please provide a valid law enforcement email address with your request, so that we can communicate with you upon receipt. Tumblr will not respond to any law enforcement requests sent from a non-law enforcement email address.

Figure 53. Tumblr (for regular requests)

Emergency Requests

If law enforcement officials believe there is an emergency involving death or serious physical injury to any person, and Tumblr may have information necessary to prevent the harm, they can submit an emergency disclosure request with the subject line EMERGENCY DISCLOSURE REQUEST. Such requests should include all of the following:

- Identity the individual in danger of death or serious physical injury;
- Nature of the emergency;
- Tumblr username/URL of the individual (e.g., <http://staff.tumblr.com>) of the account(s) containing information necessary to prevent the emergency;
- Links to any specific posts containing relevant information;
- The specific information requested and why that information is necessary to prevent the emergency; and
- Any other relevant details or context regarding the particular circumstances.

Tumblr users aware of an emergency situation should contact local law enforcement officials for assistance.

Figure 54. Tumblr (for emergency requests)

User Notice

Tumblr respects its users' rights and privacy. Tumblr's policy is to notify its users about requests for their information, and to provide them with copies of the legal process underlying those requests. This sort of notice is necessary so that affected users have the chance, if they wish, to challenge those requests. In some cases, Tumblr may be prohibited by law from providing notice, such as when we receive a non-disclosure order pursuant to 18 U.S.C. § 2705(b). In these situations, Tumblr's policy is to notify the affected users after the non-disclosure period has elapsed.

In exceptional circumstances, such as cases involving the sexual exploitation of a child, Tumblr may elect not to provide user notice before complying with the request. If an investigation involves such an exceptional circumstance, law enforcement should provide a description of the situation for us to evaluate. In these exceptional circumstances, Tumblr's policy is to notify the affected users 90 days after the time we respond to the request.

Figure 55. Tumblr (regarding user notice)

Private information requires a subpoena or court order

Non-public information about Twitter users will not be released to law enforcement except in response to appropriate legal process such as a subpoena, court order, other valid legal process, or in response to a valid emergency request, as described below.

Contents of communications requires a search warrant

Requests for the contents of communications (e.g., Tweets, Direct Messages, photos) require a valid search warrant or equivalent from an agency with proper jurisdiction over Twitter.

Figure 56. Twitter (for regular requests)

Emergency disclosure requests

In line with our [Privacy Policy](#), we may disclose account information to law enforcement in response to a valid emergency disclosure request.

Twitter evaluates emergency disclosure requests on a case-by-case basis in compliance with relevant law. If we receive information that provides us with a good faith belief that there is an exigent emergency involving a danger of death or serious physical injury to a person, we may provide any available information necessary to prevent that harm.

Figure 57. Twitter (for emergency requests)

Will Twitter notify users of requests for account information?

Yes. For purposes of [transparency and due process](#), Twitter's policy is to notify users (e.g., prior to disclosure of account information) of requests for their Twitter or Periscope account information, including a copy of the request, unless we are prohibited from doing so (e.g., an order under [18 U.S.C. § 2705\(b\)](#)). We ask that any non-disclosure provisions include a specified duration (e.g., 90 days) during which Twitter is prohibited from notifying the user. Exceptions to our user notice policy may include exigent or counterproductive circumstances, such as emergencies regarding imminent threat to life, child sexual exploitation, or terrorism.

Figure 58. Twitter (regarding user notice)

REQUIREMENTS TO COMPEL USER INFORMATION

Whisper is a U.S. company, headquartered in Venice, California, and requires valid legal process from a U.S. governmental entity or court. Except in certain emergency situations described below and consistent with its Terms of Use and Privacy Policy, Whisper does not disclose user information or communications content to a U.S. governmental entity unless it is presented with a valid subpoena, court order, search warrant, or other legal process issued by a United States court or entity that is sufficient under U.S. law to compel the information sought. If you are a foreign governmental entity or law enforcement, you will need to cooperate with the U.S. government through an appropriate legal mechanism to seek information from Whisper.

Figure 59. Whisper (for regular requests)

HOW TO SUBMIT LIFE-THREATENING EMERGENCIES

Whisper may disclose information U.S. governmental entities when Whisper believes, in good faith, that an emergency involving a danger of death or serious physical injury to any person requires disclosure without delay.

Figure 60. Whisper (for emergency requests)

USER NOTICE OF GOVERNMENTAL ENTITY LEGAL PROCESS AND REQUESTS

Unless prohibited by a court order issued under 18 U.S.C. § 2705 or other applicable statute, Whisper may provide notice to the affected users of governmental entity legal process or requests for their information consistent with its Terms of Use and Privacy Policy.

Figure 61. Whisper (regarding user notice)

Required Legal Process

Wickr will not release customer information without a valid and binding legal demand properly served on us, such as a subpoena, search warrant, or other legal process. Wickr objects to overbroad or otherwise inappropriate demands as a matter of course.

Figure 62. Wickr (for regular requests)

Emergencies. Wickr reserves the right to respond immediately to urgent law enforcement requests for information in cases involving a threat to public safety or risk of harm to any person. These requests must be submitted through the ALERT by selecting the emergency request button. During the emergency, ALERT will grant law enforcement temporary account access.

Figure 63. Wickr (for emergency requests)

Requests from US government agencies in civil, administrative, and criminal cases

The Fourth Amendment to the US Constitution and the Electronic Communications Privacy Act (ECPA) restrict the government's ability to force a provider to disclose user information. US authorities must at least do the following:

- **In all cases:** Issue a subpoena to compel disclosure of basic subscriber registration information and certain IP addresses
- **In criminal cases**
 - Get a court order to compel disclosure of non-content records, such as the To, From, CC, BCC, and Timestamp fields in emails
 - Get a search warrant to compel disclosure of the content of communications, such as email messages, documents, and photos

Figure 64. YouTube

Notifying users of requests for information ^

When we receive a request from a government agency, we send an email to the user account before disclosing information. If the account is managed by an organization, we'll give notice to the account administrator.

We won't give notice when legally prohibited under the terms of the request. We'll provide notice after a legal prohibition is lifted, such as when a statutory or court-ordered gag period has expired.

We might not give notice if the account has been disabled or hijacked. And we might not give notice in the case of emergencies, such as threats to a child's safety or threats to someone's life, in which case we'll provide notice if we learn that the emergency has passed.

Figure 65. YouTube (regarding user notice)

Appendix E: Selected Platforms' User Reporting Mechanisms

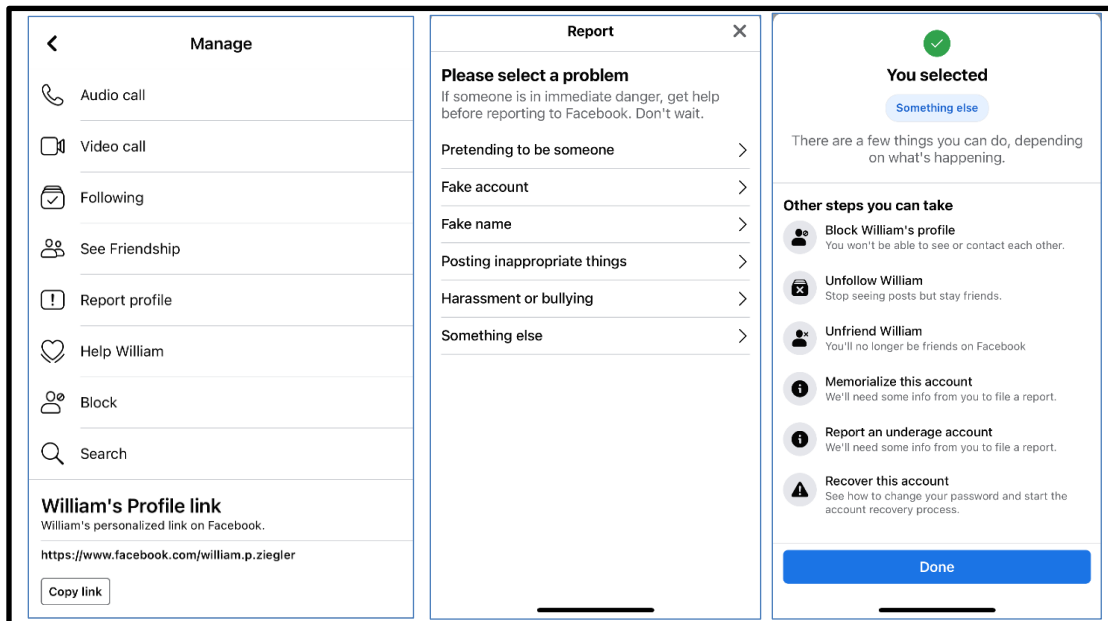
(Adapted from *Best Practices to Rid Social Media of Drug Trafficking*, P'SHIP FOR SAFE MEDS. (2022), available at <https://drive.google.com/file/d/1ZCwP9f-RpELpRdUYFAhr8t4aD-rplo6I/view>.)

1. Facebook (report account)

Panel 1: On a user's profile, tap the three dots in the top-right corner, then tap "Report Profile."

Panel 2: A menu of options appears for the user to specify the problem. Tap "Something else."

Panel 3: A menu of options appears for steps the user can take—none of which allow the user to report that the profile is being used for drug activity.



2. Facebook (report content)

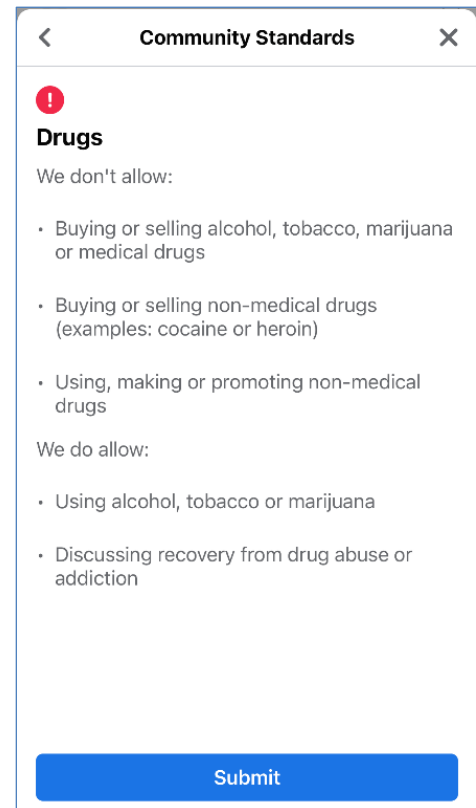
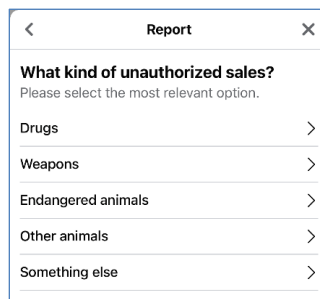
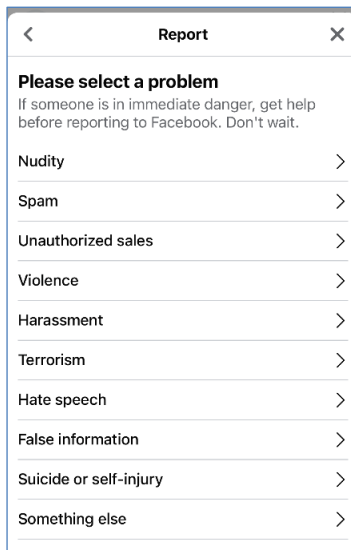
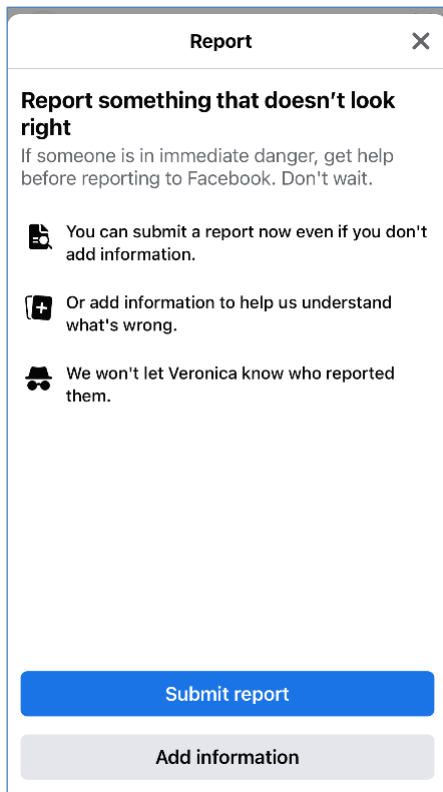
Panel 1: On a post, tap the three dots in the top-right corner, then tap "Report Post," then "Submit Report."

Panel 2: A menu of options appears for the user to specify the problem.

Panel 3: Scroll down the menu to reach "Unauthorized Sales."

Panel 4: The next menu allows the user to select "Drugs."

Panel 5: The user is presented with Facebook's drug policy and given the opportunity to submit the report.



3. Instagram (report account)

Panel 1: On a user's profile, tap the three dots in the top-right corner, then tap "Report."

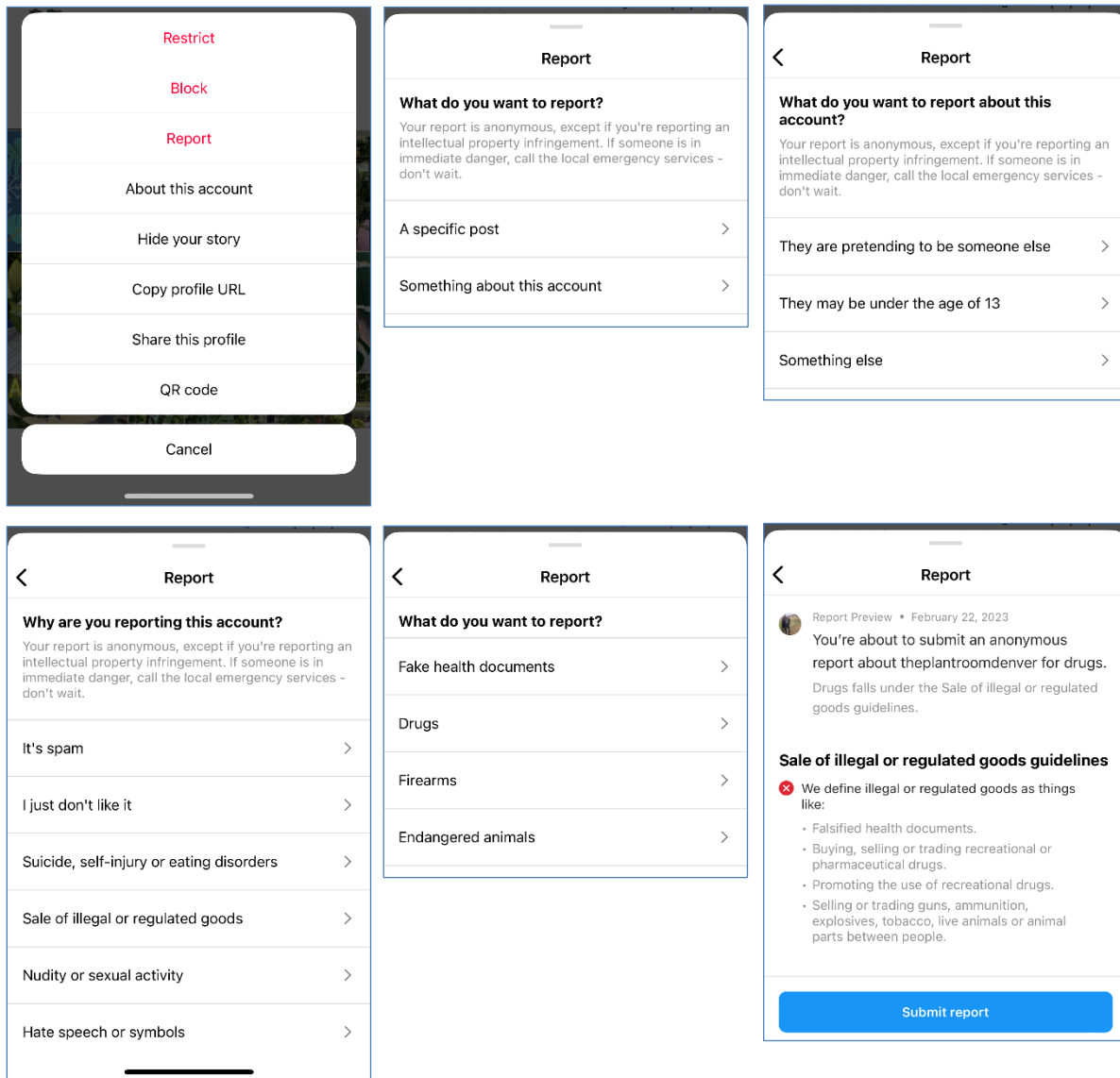
Panel 2: When asked what the user wants to report, tap "Something about this account."

Panel 3: A menu of options appears for the user to specify the problem. Tap "Something else."

Panel 4: Tap "Sale of illegal or regulated goods."

Panel 5: Tap "Drugs."

Panel 6: The user is presented with Instagram's drug policy and given the opportunity to submit the report.



4. Instagram (report content)

Panel 1: On a post, tap the three dots in the top-right corner, then tap “Report.” A menu of options appears for the user to specify the problem.

Panel 2: Scroll down the menu to reach “Sale of illegal or regulated goods.”



Panel 3: The next menu allows the user to select “Drugs, alcohol, or tobacco.”

Panel 4: The user is presented with Instagram’s drug policy and given the opportunity to submit the report.

Report	
Why are you reporting this post?	
Your report is anonymous, except if you're reporting an intellectual property infringement. If someone is in immediate danger, call the local emergency services - don't wait.	
I just don't like it	>
It's spam	>
Nudity or sexual activity	>
Hate speech or symbols	>
Violence or dangerous organizations	>
Bullying or harassment	>
False information	>
Scam or fraud	>
Suicide or self-injury	>

Report	
Why are you reporting this post?	
Your report is anonymous, except if you're reporting an intellectual property infringement. If someone is in immediate danger, call the local emergency services - don't wait.	
Violence or dangerous organizations	>
Bullying or harassment	>
False information	>
Scam or fraud	>
Suicide or self-injury	>
Sale of illegal or regulated goods	>
Intellectual property violation	>
Eating disorders	>
Something else	>

Report	
Why are you reporting this post?	
Fake health documents	>
Drugs, alcohol or tobacco	>
Firearms	>
Weight loss products or cosmetic procedures	>
Animals	>

Report	
 Report Preview • February 14, 2023 You're about to submit an anonymous report about adrianandplants's post for selling drugs, alcohol, or tobacco. Selling drugs, alcohol, or tobacco falls under the Sale of illegal or regulated goods guidelines.	
Sale of illegal or regulated goods guidelines	
 We define illegal or regulated goods as things like: <ul style="list-style-type: none"> • Falsified health documents. • Buying, selling or trading recreational or pharmaceutical drugs. • Promoting the use of recreational drugs. • Selling or trading guns, ammunition, explosives, tobacco, live animals or animal parts between people. 	
<div style="background-color: #007bff; color: white; padding: 5px; display: inline-block;">Submit report</div>	

5. Snapchat (report account)

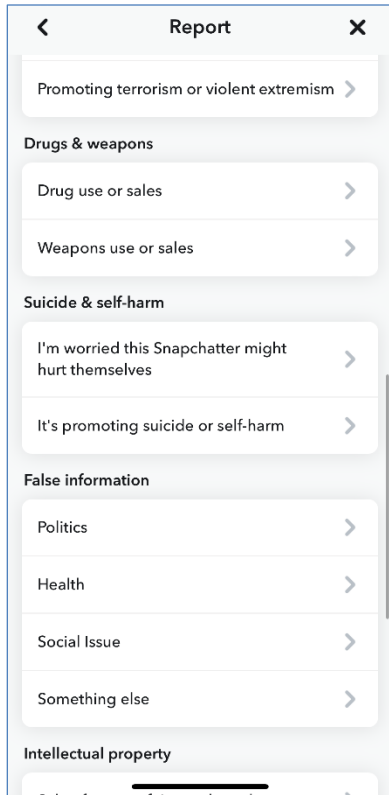
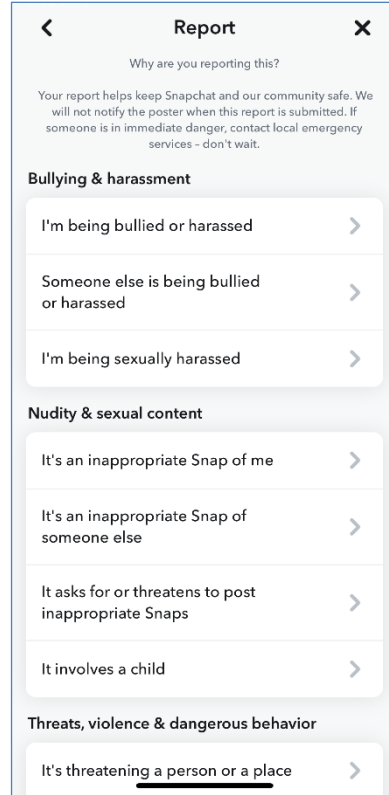
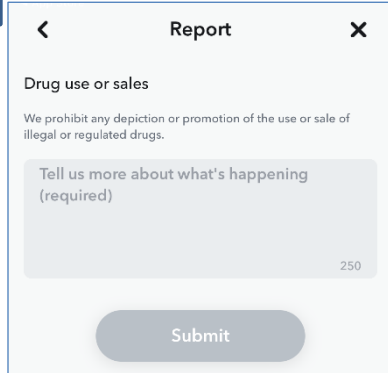
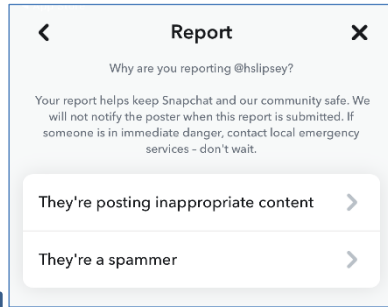
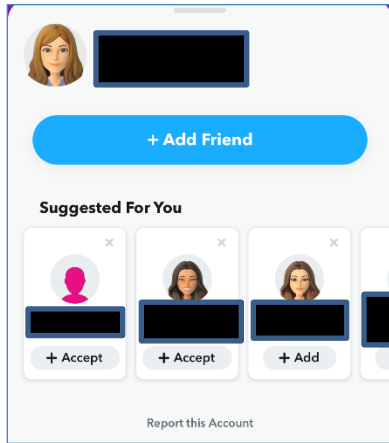
Panel 1: Tap on a user's Bitmoji (personal avatar), then tap "Report this Account."

Panel 2: When asked what the user wants to report, tap "They're posting inappropriate content."

Panel 3: A menu of options appears for the user to specify the problem.

Panel 4: Scroll down the menu to reach "Drug use or sales."

Panel 5: The user is presented with Snapchat's drug policy and given the opportunity to provide additional details before submitting the report.

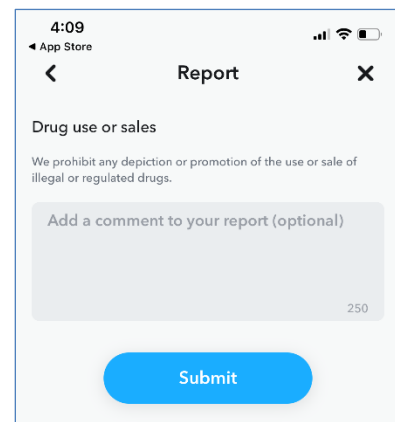
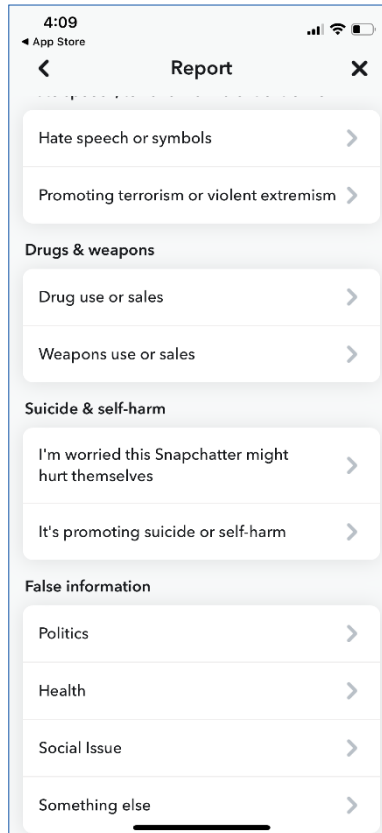
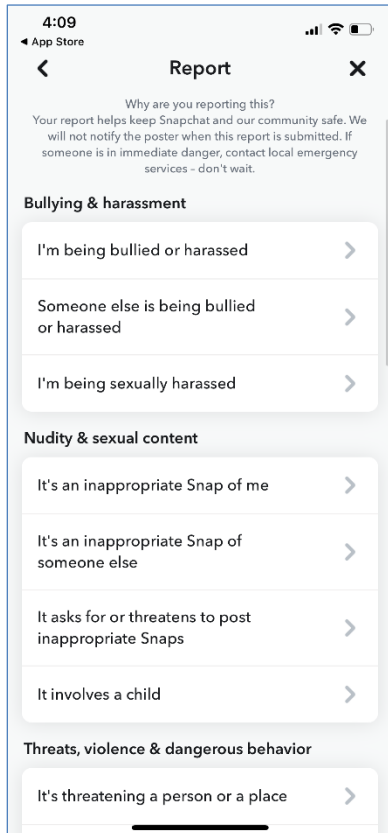


6. Snapchat (report content)

Panel 1: On a Snap, press and hold the phone screen, then tap “Report.”

Panel 2: Scroll down the menu to reach “Drug use or sales.”

Panel 3: The user is presented with Snapchat’s drug policy and given the opportunity to provide additional details before submitting the report.



7. TikTok (report account)

Panel 1: On an account page, tap the three dots in the top-right corner. Then tap “Report” in the bottom left corner.

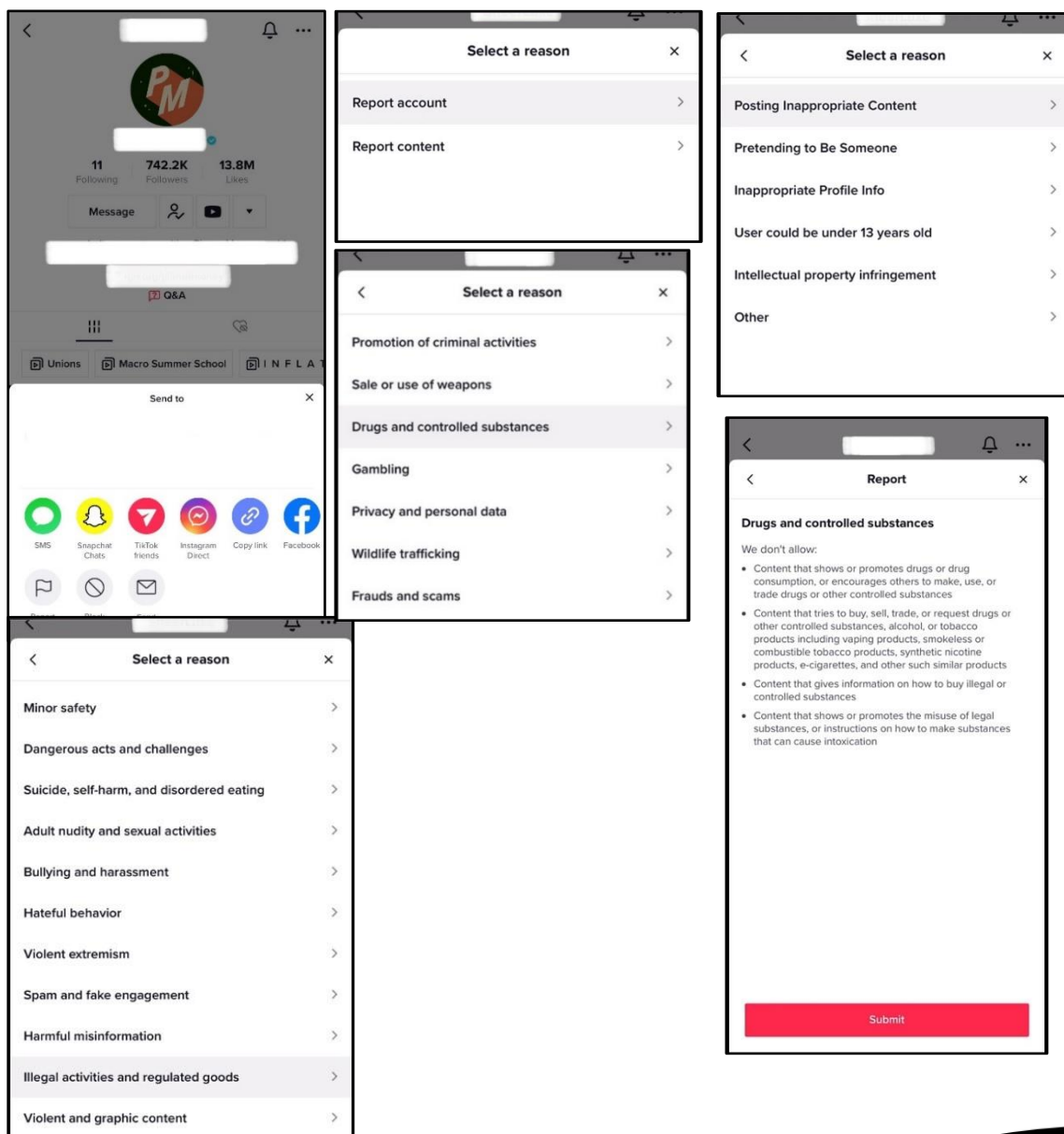
Panel 2: Select “Report account.”

Panel 3: Select “Posting inappropriate content.”

Panel 4: Scroll down and select “Illegal activities and regulated goods.”

Panel 5: Select “Drugs and controlled substances.”

Panel 6: The user is presented with TikTok’s drug policy and given the opportunity to submit the report.



8. TikTok (report content)

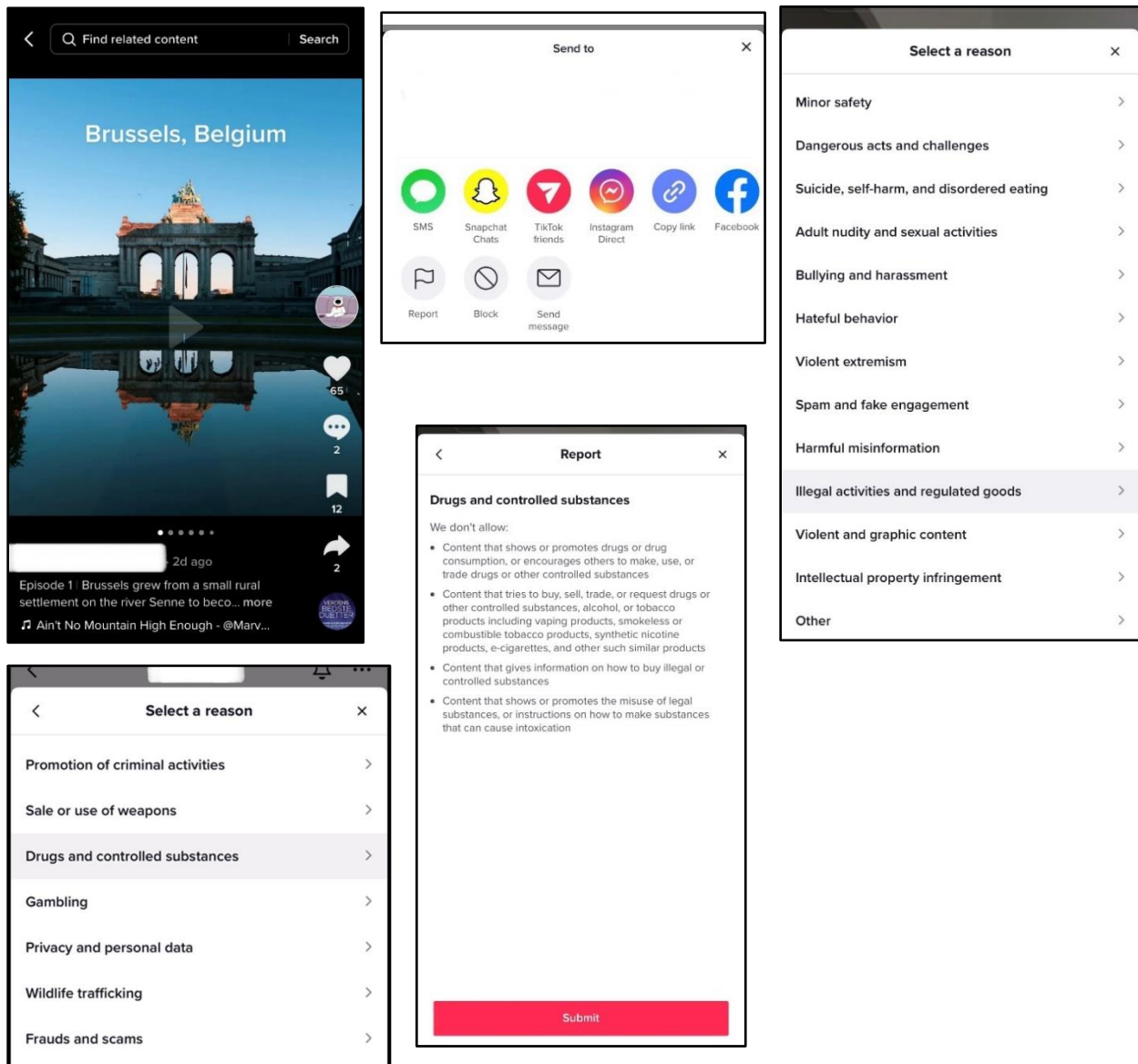
Panel 1: In the bottom right corner, when viewing a TikTok video, the user has the option to click the “share” icon, directly below the bookmark tab.

Panel 2: In the bottom left corner, the user must select the “report” icon.

Panel 3: On the next screen, the user can select “illegal activities and regulated goods.”

Panel 4: Then, select “drugs and controlled substances.”

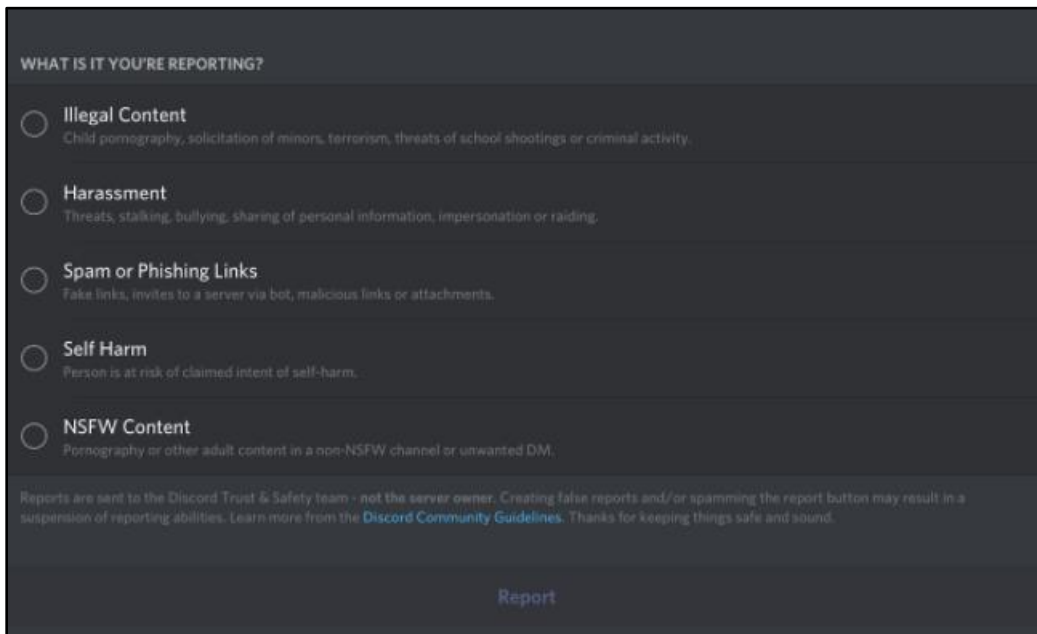
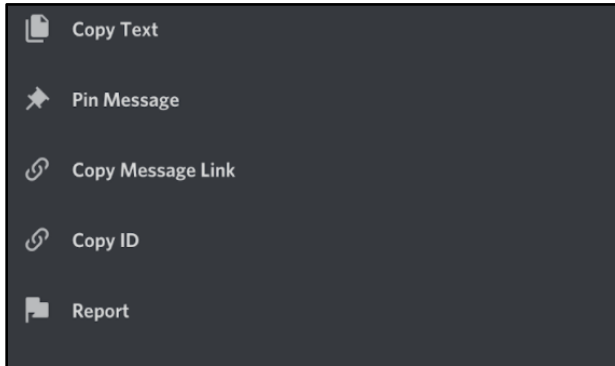
Panel 5: The user is presented with TikTok’s drug policy and given the opportunity to submit the report.



9. Discord

Panel 1: From within a Discord server, the user can report a message by clicking on the “report” icon.

Panel 2: The user is prompted with a link to the Discord Community Guidelines and a list of reporting options. There is no delineated category for drug abuse, but the user can select “Illegal content” and submit the report.



If you or anyone you know is struggling with substance use or is seeking confidential, free support, the [Colorado Attorney General's Office Opioid Response Resources](#) page aggregates resources from around the state for both the public and local and regional governmental partners.

For immediate help for an emotional, mental health, or substance use crisis, call [1-844-493-TALK \(8255\)](#).