

BLISSFUL UNACCOUNTABILITY: THE NONREGULATION OF
PRECARIOUS NETWORK MARKETING SCHEMES ON SOCIAL
MEDIA

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ABSTRACT

More often than not, multilevel marketing schemes prove treacherous for those involved with them. Social media platforms allow these schemes to thrive by providing the perfect venue to advertise, sell products, and recruit new “members.” This Comment focuses on the regulatory measures currently in place for network marketing and concludes that such regulations are generally ineffective. The discussion goes on to outline suggestions and proposals for changes that Congress, the Federal Trade Commission, the State of Delaware, and individual social media platforms should implement to safeguard unsuspecting social media users against harmful network marketing schemes. Precisely defined regulations, accountability, and transparency must become a priority in the realm of social media network marketing.

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I. INTRODUCTION

In recent years, social media has become a standard component in many of our daily lives. According to the Pew Research Center, the number of American adults using at least one social networking platform increased from around 5% in 2005 to over 70% in 2021.¹ While many use social media to keep up with friends, meet new people, stay up-to-date with current events, or just purely for entertainment, others view social media as a platform for monetary gain. Network marketing, also commonly known as direct marketing or multilevel marketing, has become increasingly common over the past decade.² The Direct Selling Association's 2021 Industry Overview reported that direct retail sales rose from approximately \$29.9 billion in 2011 to about \$42.7 billion in 2021.³ This form of multi-level or network marketing has become more and more prevalent with the rise of social media.⁴ Unsurprisingly, the COVID-19 pandemic sparked a substantial increase in network marketing sales, as lockdowns left many searching for ways to earn income from the safety of their homes.⁵ Because network marketing companies depend on interpersonal communications, social media platforms provide a perfect venue for these businesses to thrive.

Unfortunately, multilevel marketing schemes ("MLMs"), may cause more harm than good. According to a 2018 study conducted by AARP, 47% of MLM participants reported that they lost money due to their involvement, and another 27% earned only enough to even out the investments required to join their respective company.⁶ With the wide expanse of social media, dangerous MLMs can easily reach more people than ever before.⁷ This Comment focuses on the insufficient regulation of and striking lack of accountability surrounding social media network marketing schemes. Further, the discussion draws attention to the role of social networking platforms in perpetuating the damaging effects of such

¹ *Social Media Fact Sheet*, PEW RESEARCH CENTER (Apr. 7, 2021), <https://www.pewresearch.org/internet/fact-sheet/social-media/#find-out-more>.

² See *Direct Selling in the United States 2021 Industry Overview*, DIRECT SELLING ASSOCIATION, <https://www.dsa.org/statistics-insights/overview> (last visited Dec. 4, 2022).

³ *Id.*

⁴ Marguerite DeLiema et al., *AARP Study of Multilevel Marketing: Profiling Participants and their Experiences in Direct Sales*, AARP 2 (Aug. 2018), <https://www.aarp.org/aarp-foundation/our-work/income/multilevel-marketing/> (scroll to the subheading "Multilevel Marketing Research: The Breakdown"; then click the "To see more research results, download the report here." button).

⁵ Christopher Bradley & Hannah E. Oates, *The Multi-Level Marketing Pandemic*, 89 TENN. L. REV. 321, 324 (2022).

⁶ DeLiema et al., *supra* note 4, at 3.

⁷ See DeLiema et al., *supra* note 4, at 2.

schemes on those who fall victim to them. As addressed below, MLMs are permitted to fly under the radar by both the law and social networking platforms.⁸ Network marketing schemes, whether legal or not, pose a substantial risk to social media users, and the law must go further to regulate them. Social networking companies must take responsibility for cultivating a perfect breeding ground for these schemes while failing to protect innocent users from potential financial and social ruin.

II. WHAT IS NETWORK MARKETING?

Network marketing companies, or MLMs, recruit individuals frequently referred to as distributors to sell their goods or services to end consumers.⁹ Rather than selling through retail outlets or employed salespersons, distributors for MLMs fill their inventory by purchasing products directly from the company.¹⁰ These members earn commissions based either on sales of those products directly to consumers or on the sales of other distributors that they recruited into the MLM.¹¹ Tupperware, Mary Kay, and Avon are some of the most widely-known examples of companies using the MLM model.¹² In the 1970s, MLMs began to rise in popularity, and distributors frequently hosted home parties to sell their products and recruit new members.¹³ In recent years, most MLM networking takes place on social media rather than the distributor's living room.¹⁴

Subsequent analysis will delve deeper, but to understand network marketing's background, it is important to mention the distinction between legitimate multilevel marketing companies and pyramid schemes. The most notable difference is that pyramid schemes are entirely illegal; MLMs, although potentially engaged in controversial practices, are permissible under the law.¹⁵ Both Delaware courts and the Federal Trade Commission ("FTC"), conclude that a network marketing company becomes an illegal pyramid scheme when distributor income stems

⁸ See *infra* Part III.

⁹ *Multi-Level Marketing Businesses and Pyramid Schemes*, FED. TRADE COMM'N (July 2022), <https://consumer.ftc.gov/articles/multi-level-marketing-businesses-pyramid-schemes>.

¹⁰ DeLiema et al., *supra* note 4, at 3.

¹¹ DeLiema et al., *supra* note 4, at 3.

¹² Camille H. Mangiaratti, *Big Dreams and Pyramid Schemes: The FTC's Path to Improving Multi-Level Marketing Consumer Protection in Light of AMG Capital Management and the 2016 Herbalife Settlement*, 30 J.L. & POL'Y 228, 239 (2021).

¹³ Bradley & Oates, *supra* note 5, at 344.

¹⁴ Bradley & Oates, *supra* note 5, at 357–58.

¹⁵ See Mangiaratti, *supra* note 12, at 231–32.

primarily from recruitment of new members, rather than actual sales.¹⁶ Pyramid scheme companies frequently require distributors to purchase a minimum amount of inventory on a regular basis.¹⁷ The distributors are usually unable to sell enough product or recruit enough distributors to make any profit, and will end up leaving the company with surplus inventory and less money than they started with.¹⁸ Although the prohibition on pyramid schemes grants consumers some level of protection, even MLM schemes deemed legitimate by the law can be detrimental to participants.¹⁹ This fact, when paired with the ill-defined line between legitimate MLMs and pyramid schemes, results in many questionable network marketing companies remaining unchecked.²⁰

A. How does Network Marketing Affect Social Media Users?

For some social media users, the presence of MLMs is simply an annoyance, but for many others, it can be detrimental. According to a 2018 AARP report on multilevel marketing, one in thirteen adults aged eighteen and over in the United States have been a member of at least one MLM company.²¹ As previously mentioned, almost half of the MLM participants involved in the AARP study reported financial loss due to their MLM involvement.²² Several characteristics of network marketing lend to its questionable and potentially fraudulent nature. First, many MLMs seeking new recruits target groups who are more vulnerable to fraud such as the elderly or those in need of supplemental income, particularly women supporting families and those in communities with high levels of unemployment and underemployment.²³ Social media users seeking a sense of community may also be more susceptible to MLM recruitment.²⁴ The starting expenses of MLM membership especially hazard recruits joining out of financial necessity, many of whom fund the supposed investment with credit cards, hoping to earn enough profit to repay the debt.²⁵ Unfortunately, success in this endeavor is rare, and because

¹⁶ See *infra* Part III.A–B.

¹⁷ *Multi-Level Marketing Businesses and Pyramid Schemes*, *supra* note 9.

¹⁸ *Multi-Level Marketing Businesses and Pyramid Schemes*, *supra* note 9.

¹⁹ See Annie Blackman, *Regulating the Reluctant: Policies that Benefit Vulnerable Participants in Multi-Level Marketing* 25 U. PA. J.L. & SOC. CHANGE 83, 92 (2021).

²⁰ See *id.* at 90.

²¹ DeLiema et al., *supra* note 4, at 3.

²² DeLiema et al., *supra* note 4, at 3.

²³ Corey Matthews, *Using a Hybrid Securities Test to Tackle the Problem of Pyramid Fraud* 88 FORDHAM L. REV. 2045, 2055–56 (2020); Mangiaratti, *supra* note 12, at 243.

²⁴ Mangiaratti, *supra* note 12, at 243.

²⁵ Blackman, *supra* note 19, at 92.

network marketing relies on distributors to recruit and sell product to their social network, members inevitably run out of friends and family to engage with the business.²⁶

B. *Recognizing Multilevel Marketing Schemes on Social Media*

As with any danger, an essential component in avoiding harm from involvement in MLMs is the ability to recognize it. MLMs on social media may offer a wide variety of goods and services, but many share several recognizable features. As a general rule, MLMs entice new participants by promising access to a lucrative financial opportunity that they can participate in from their own homes and on their own schedules.²⁷ On social media, some focus their posts on selling a “miracle” product or program that, (according to the distributor) is a groundbreaking remedy to a common problem or a tried-and-true method for improving your life.²⁸ This tactic may appear on the distributor’s profile page, inviting users to reach out via direct message or to visit a linked website to receive more information on how they can purchase the product, access the program, or join the distributor’s “team.”²⁹

Apart from the similarities in the content shared by MLM promoters on social media, there are also several visual and contextual clues that may suggest MLM involvement. As evidenced by observation of several purported network marketing coaches on Facebook, it appears that most of their posts utilize a particular style formula.³⁰ The posts start with a single sentence, in a bold, Cambria font, with each sentence separated by several empty lines.³¹ The posts are often accompanied by a “photo” consisting of a colorful background and text that makes a claim about their services, poses a question, or contains some other comment intended to catch the reader’s attention.³² These posts, as well as many of the comments posted under them, may also use emoticons such as fire, green check marks, and red Xs.³³ Because MLMs depend on a network of

²⁶ Alex Chumbley, *Brick by Brick: Deconstructing Pyramid-Like Companies by Requiring Disclosures from Multilevel Marketing Schemes*, 13 WM. & MARY BUS. L. REV. 867, 877 (2022).

²⁷ See Bradley & Oates, *supra* note 5, at 323.

²⁸ I based these assertions on my observations of the social media accounts of several purported network marketing coaches and distributors. For privacy reasons, I conceal their identities throughout this Comment.

²⁹ See *supra* text accompanying note 28.

³⁰ See *supra* text accompanying note 28.

³¹ See *supra* text accompanying note 28.

³² See *supra* text accompanying note 28.

³³ See *supra* text accompanying note 28.

distributors to promote their products or services, it is common to see the same group of distributors liking, sharing, and commenting on each other's social media posts.³⁴ These users rely on each other to boost social media engagement, help their content become more visible, and to essentially convince potential consumers and recruits that what is being offered is worthwhile.³⁵

Distributors may also reach out to potential customers and recruits directly through private messages.³⁶ If you are a frequent social media user, you may have received a message from an old high school acquaintance or from a friend of a friend that claims that you would “love” a certain product or that you would be a “perfect fit” for their team; this is another tactic commonly used by MLM distributors on social media to appeal directly to potential recruits and customers.³⁷

III. WHAT REGULATIONS EXIST TO COMBAT THE DANGERS OF NETWORK MARKETING ON SOCIAL MEDIA?

Clearly, significant risks are associated with legal MLMs and pyramid schemes alike. The crucial question is this: what protections are available to prevent vulnerable social media users from falling victim to network marketing schemes?

A. *The Federal Response*

The FTC has authority to prevent unfair and deceptive practices affecting commerce under Section 5 of the FTC Act.³⁸ The Act grants the FTC the power to conduct proceedings against persons or corporations whom it believes are engaged in such practices.³⁹ The FTC enforces FTC Act violations on a fact-specific, case-by-case basis.⁴⁰ Orders obtained from such enforcement actions are not binding on others within the

³⁴ See *supra* text accompanying note 28.

³⁵ See *supra* text accompanying note 28.

³⁶ See *supra* text accompanying note 28.

³⁷ See *supra* text accompanying note 28; see Blackman, *supra* note 19, at 87 (discussing the negative response of social media users who receive direct messages from MLM participants).

³⁸ See 15 U.S.C. §§ 41–58. Commonly known as “the FTC Act,” for more background, see also FED. TRADE COMM’N, <https://www.ftc.gov/legal-library/browse/statutes/federal-trade-commission-act> (last visited Feb. 7, 2023).

³⁹ 15 U.S.C. § 45(b).

⁴⁰ *Business Guidance Concerning Multi-Level Marketing*, FED. TRADE COMM’N, (Jan. 2018), <https://www.ftc.gov/business-guidance/resources/business-guidance-concerning-multi-level-marketing> [hereinafter *Business Guidance*].

industry, though many MLMs view them as guidelines for avoiding potential liability.⁴¹ The FTC deems a representation, omission, or practice deceptive if it is likely to mislead the consumer, and if it is material, or likely to affect the consumer's decision-making process.⁴² Material representations made by MLMs to current or prospective participants that are false, misleading, or unsubstantiated violate the FTC Act.⁴³ However, as long as the MLM does not use numerical values to misrepresent earnings, the FTC has permitted wildly exaggerated and extravagant claims promising participants a chance at the life of their dreams.⁴⁴

In an FTC decision regarding Amway Corporation, it was determined that the company was not an illegal pyramid scheme.⁴⁵ This decision was based on three main factors: First, the company did not pay members "headhunting fees" for recruiting new distributors.⁴⁶ Second, Amway implemented a "buy-back" policy under which the company repurchased excess inventory from distributors to avoid the inventory loading issue commonly associated with illegal pyramid schemes.⁴⁷ Third, in order to receive a monthly performance bonus, Amway required distributors to sell products to at least ten different retail customers and sell at least 70% of the inventory that they purchased that month.⁴⁸ These factors classified Amway as a legitimate MLM and not an illegal pyramid scheme by demonstrating a primary focus on sales rather than recruitment.⁴⁹ However, as previously noted, these are not official guidelines because FTC enforcement action orders are not binding on the industry as a whole.⁵⁰ The FTC has not provided much additional guidance concerning MLMs that are harmful despite not being classified as a pyramid scheme.⁵¹ Further, the FTC prefers allowing MLMs to regulate themselves, and even when it pursues enforcement actions, the alleged violations are difficult to prove.⁵²

⁴¹ *Id.*

⁴² *FTC Policy Statement on Deception*, FED. TRADE COMM'N, (Oct. 14, 1983), https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf.

⁴³ *Business Guidance*, *supra* note 40.

⁴⁴ *In re Amway Corp.*, 93 F.T.C. 618, 730 (1979), 1979 WL 198944, at *80. I am including the Westlaw citation in addition to the official reporter, as it is the only easily electronically searchable version of this decision at this time.

⁴⁵ *Id.* at 700, 1979 WL 198944, at *58; Bradley & Oates, *supra* note 5, at 345.

⁴⁶ *Amway Corp.*, 93 F.T.C., at 700, 1979 WL 198944, at *58.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Bradley & Oates, *supra* note 5, at 345.

⁵⁰ *Business Guidance*, *supra* note 40.

⁵¹ Blackman, *supra* note 19, at 92.

⁵² See Mangiaratti, *supra* note 12, at 253–54; see also Matthews, *supra* note 23, at 2062–63 (explaining the difficulty in proving FTC Act violations).

B. Delaware's Response

Delaware outlaws the use of pyramid schemes through the Delaware Pyramid or Chain Distribution Schemes Act (the "Pyramid Schemes Act").⁵³ The Pyramid Schemes Act expressly prohibits promoting, selling, and offering or granting participation in these types of schemes.⁵⁴ Delaware defines pyramid schemes as follows:

a sales device whereby a person, upon a condition that the person part with money, property or any other thing of value, is granted a franchise license, distributorship or other right which person may further perpetuate the pyramid or chain of persons who are granted such franchise, license, distributorship or right upon such condition.⁵⁵

Delaware courts interpret this to mean that a pyramid scheme exists where the actor charges a person (the distributor), in exchange for the right to further the chain by recruiting more distributors.⁵⁶ However, much like the FTC, Delaware does not provide much insight into the protections that it offers against non-pyramid MLMs. Companies such as these may be held liable for the use of deceptive trade practices such as misrepresenting the qualities or benefits of a product or engaging in practices that create a likelihood of confusion for consumers.⁵⁷ While some MLMs engage in deceptive trade practices, the law is not tailored to address the issue of harmful MLMs, and network marketing schemes are able to fly under the radar so long as they do not qualify as pyramid schemes and do not engage in deceptive trade practices as defined by statute.⁵⁸ Both Delaware law and the FTC regulatory scheme fail to recognize that even legally permissible MLMs can cause significant harm to vulnerable and unsuspecting parties.

⁵³ DEL. CODE ANN. tit. 6, § 2561 (West).

⁵⁴ *Id.*

⁵⁵ tit. 6, § 2561(2).

⁵⁶ *State v. Ferro*, 1988 WL 39996 at *2 (Del. Super. Ct. Apr. 15, 1988).

⁵⁷ DEL. CODE ANN. tit. 6, § 2532(a)(5), (12) (West).

⁵⁸ *See id.*; tit. 6, § 2561.

C. Social Media Platform Policy

Social media platforms generally establish guidelines for their users detailing what content is and is not permissible on each site.⁵⁹ Meta, the company owning and controlling Facebook and Instagram, has established a “Transparency Page” on its website where the community guidelines of each platform are available to the public.⁶⁰ Under Facebook’s community guidelines, users are prohibited from posting fraudulent or deceptive content, explicitly noting that pyramid schemes and investment scams are impermissible.⁶¹ The guidelines claim that such posts will be removed from the platform.⁶² Meta outlines the technology used to detect violations of these guidelines, as well as the review teams tasked with making the final decision when the technology is unsure.⁶³ This system may be effective when applied to impermissible content such as nudity and hate speech, but considering the fine line between pyramid schemes and MLMs, this technology may have difficulty detecting schemes that violate platform guidelines. Meta’s website also explains that users may report posts that potentially violate the community guidelines.⁶⁴ However, the review teams making the final determinations on reported content base their decisions on Facebook’s policies,⁶⁵ and as previously noted, the policy does little more than state that pyramid schemes are impermissible.⁶⁶

Even when these policies effectively remove harmful MLMs and pyramid schemes, according to Meta’s Platform Terms page, users agree to indemnify the companies from all liability stemming from their activities on the platforms.⁶⁷ Due to the difficulty in identifying fraudulent

⁵⁹ See, e.g., *Community Guidelines*, INSTAGRAM, https://help.instagram.com/477434105621119/?helpref=hc_fnav (last visited Mar. 17, 2022); *Facebook Community Standards*, META, <https://transparency.fb.com/policies/community-standards/> (last visited Mar. 17, 2022).

⁶⁰ *Transparency Center*, META, <https://transparency.fb.com/> (last visited Mar. 17, 2022). Because Meta owns both Facebook and Instagram, the website links to a shorter version of Instagram’s guidelines which includes links to Facebook’s policy pages for clarification. See *id.* It appears that both platforms generally adhere to the same guidelines. See *id.*

⁶¹ *Fraud and Deception*, META, <https://transparency.fb.com/policies/community-standards/fraud-deception/> (last visited Mar. 17, 2022).

⁶² *Id.*

⁶³ *How Technology Detects Violations*, META, (Jan. 19, 2022), <https://transparency.fb.com/enforcement/detecting-violations/technology-detects-violations/>.

⁶⁴ See *Transparency Center*, *supra* note 60.

⁶⁵ *Helping Reviewers Make the Right Calls*, META, (Jan. 19, 2022), <https://transparency.fb.com/enforcement/detecting-violations/making-the-right-calls/>.

⁶⁶ *Fraud and Deception*, *supra* note 61.

⁶⁷ *Meta Platform Terms*, META, (Feb. 8, 2022), <https://developers.facebook.com/terms#indemnification>.

network marketing schemes, vague community guidelines and policies, and the lack of accountability on behalf of the social media platforms, this regulatory system is unlikely to have any substantial impact on the presence of questionable and harmful MLMs on social media. Users who fall victim to these schemes are essentially left unprotected, because the only remedy that the platforms offer is removal of the content from their sites.⁶⁸ It is also important to note that legally permissible MLMs that do not amount to fraudulent scams or pyramid schemes do not violate Meta's policies.⁶⁹ Such companies and their promoters may freely utilize the platforms without facing any repercussions despite the financial harm that they may inflict on unsuspecting users.

D. Can Social Networking Companies Be Held Liable?

Social media provides an ideal venue for network marketing companies to thrive.⁷⁰ As established above, network marketing schemes are highly unregulated by the law.⁷¹ Even when they do rise to the level of illegality, the vague policies and inefficient regulatory schemes established by social media platforms do little to protect unsuspecting users.⁷² When such platforms fail to remove content promoting unlawful MLMs from their sites, can they be held liable for the resulting harm to their users? Unfortunately, absent legislative action to address this issue, it appears that the answer is no.⁷³

Congress has recognized that interactive computer services such as social networking websites provide a platform for the free flow of ideas protected by the First Amendment.⁷⁴ To avoid dampening online speech by imposing liability on such services for harmful speech posted on their websites, Congress enacted Section 230 of the Communications Decency Act, ("Section 230").⁷⁵ Under Section 230, interactive computer service providers are not to be considered publishers of information posted on their sites by information content providers and cannot be held civilly liable for efforts to filter objectionable content.⁷⁶ Several cases have established that social media companies qualify as interactive computer

⁶⁸ See *Fraud and Deception*, *supra* note 61.

⁶⁹ See *Fraud and Deception*, *supra* note 61.

⁷⁰ See DeLiema et al., *supra* note 4, at 2; see also Bradley & Oates, *supra* note 5, at 355–59 (discussing the rise of MLMs on social media in relation to the COVID-19 pandemic).

⁷¹ See *supra* Part III.A–C.

⁷² See *supra* Part III.A–C.

⁷³ See *infra* note 81 and accompanying text.

⁷⁴ See *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997).

⁷⁵ 47 U.S.C. § 230(a)(3).

⁷⁶ § 230(e)(1)–(2).

service providers and that users of such platforms are information content providers under Section 230.⁷⁷ This essentially means that although social media sites enable damaging network marketing schemes to flourish,⁷⁸ those injured by such schemes cannot place blame on the platforms.⁷⁹

Section 230's grant of immunity for providers' efforts to filter objectionable material not only means that they cannot face liability for restricting or removing their users' posts,⁸⁰ but it also protects them from liability for harm caused by failure to detect and remove such content, even when company policy explicitly prohibits that material.⁸¹ Additionally, Section 230 instructs that no state law inconsistent with its terms may impose liability on such internet service providers.⁸² In sum, regardless of the role of social networking platforms in facilitating MLMs and pyramid schemes, they cannot be held accountable under the law for the harm that these schemes cause their users.

IV. LOOKING FORWARD: WHAT CHANGES CAN BE MADE TO PROTECT SOCIAL MEDIA USERS IN THE FUTURE?

Regulation of network marketing on social media is scarce, vague, and ineffective across the board.⁸³ Both the FTC and Delaware prohibit pyramid schemes but fail to recognize the real damage caused by non-pyramid network marketing companies.⁸⁴ The FTC's reluctance to concretely define the characteristics of unlawful network marketing companies allows many MLMs using questionable practices to go undetected and unregulated.⁸⁵ Social media platform policies may prohibit content promoting pyramid schemes, but the filtering mechanisms implemented by such companies are likely ineffective in detecting and identifying this content, and even effective filtering results only in the content's removal from the website.⁸⁶ Like the legal regulatory schemes, the policies of these social media companies do not address non-pyramid

⁷⁷ See, e.g., *Martillo v. Twitter, Inc.*, No. 21-11119-RGS 2021, WL 8999587, at *2 (D. Mass. Oct. 15, 2021); *Sikhs for Justice, Inc. v. Facebook, Inc.*, 144 F. Supp. 3d 1088, 1093 (N.D. Cal. 2015).

⁷⁸ See DeLiema et al., *supra* note 4, at 2; see also Bradley & Oates, *supra* note 5, at 355–59.

⁷⁹ See *supra* note 76 and accompanying text.

⁸⁰ 47 U.S.C. § 230(c).

⁸¹ *Green v. Am. Online, Inc.*, 318 F.3d 465, 471 (3rd Cir. 2003) (quoting *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997)).

⁸² 47 U.S.C. § 230(e)(3).

⁸³ See *supra* Part III.

⁸⁴ See *supra* Part III.A–B.

⁸⁵ See Blackman, *supra* note 19, at 92; see generally *Business Guidance*, *supra* note 40.

⁸⁶ See *supra* Part III.C.

MLMs.⁸⁷ Although social media companies provide a breeding ground for dangerous network marketing schemes, they are immune to liability for the harm that such schemes cause.⁸⁸

The necessity of regulating social media network marketing is obvious. These schemes present a unique issue. They target vulnerable parties searching for income and community and leave many of them in a worse financial state than they started with.⁸⁹ These victims are offered very little protection,⁹⁰ and even when the law does afford them a remedy, many may not have the resources to pursue legal action. The wide expanse of social media has allowed network marketing to reach further than ever before.⁹¹

The law should recognize that non-pyramid multilevel marketing schemes are potentially just as dangerous as pyramid schemes. The FTC should create clear guidelines establishing the line of illegality in network marketing practices. It should not only suggest that MLM companies implement safeguards such as buy-back programs and consumer sales quotas, but *obligate* them to do so. However, drastic changes such as these take copious amounts of time and consideration. In the meantime, I would suggest that Congress require social media platforms to provide users with information on the dangers of network marketing and how to recognize it. Simply making users aware of these hazardous companies may decrease their likelihood of falling victim to them. This form of notice is not unheard of. Section 230 requires social networking companies to inform users of the availability of commercial parental control protections to restrict minors' access to harmful material online.⁹² Requiring the provision of educational materials would not heavily burden social media providers and could help users avoid being lured in by perilous network marketing schemes.

Beyond this, social media platforms could be obligated to place warnings on content that is potentially promoting a pyramid or network marketing scheme. As previously mentioned, social media platforms use tools such as technology and review teams to screen the material posted to their sites.⁹³ It has also been noted that because pyramid schemes and MLMs are vaguely defined, such screening mechanisms may struggle to determine what content to remove. I would suggest that this technology be

⁸⁷ *Fraud and Deception*, *supra* note 61.

⁸⁸ *See supra* Part III.D.

⁸⁹ Matthews, *supra* note 23, at 2055–56; Mangiaratti, *supra* note 12, at 243.

⁹⁰ *See supra* Part III.

⁹¹ DeLiema et al., *supra* note 4, at 2; *see also* Bradley & Oates, *supra* note 5, at 355–59.

⁹² 47 U.S.C. § 230(d).

⁹³ *See supra* Part III.C.

used to detect any material displaying elements of network marketing and that, when identified, the platform place an informational pop-up on the content. Several social media platforms already utilize this method of providing information; Facebook and Instagram use artificial intelligence technology to recognize posts referencing the COVID-19 pandemic and place pop-ups providing COVID-19 resources on those posts.⁹⁴ Additionally, Instagram screens its platform for sensitive content that may be offensive or upsetting, despite permissibility under the Community Guidelines.⁹⁵ The company then limits the content's visibility and may provide a warning, giving users an opportunity to choose not to view it.⁹⁶ This same technology could be used to detect and warn users of potentially dangerous network marketing material, regardless of its classification under the law.

Lastly, Congress could require MLM promoters on social media to provide a disclaimer that they are promoting a network marketing business and could even require that they include a link to the FTC website for information on MLMs and pyramid schemes. This could be done on the distributor's social media page, on the MLM company's website, or even included in an information packet given to those interested in joining the business. Requiring disclosures from MLM businesses is also not unprecedented; the FTC previously enacted the "Franchise Rule" which mandates disclosure of certain financial information and litigation history from companies that require a \$500 initial investment within six months of joining the business.⁹⁷ Unfortunately, many MLMs were able to circumvent this rule.⁹⁸ Absent further legal regulation of these companies, the best available safety measure is awareness.

V. CONCLUSION

Network marketing companies must be subject to additional regulation. These schemes have been permitted to cause financial harm to innocent people for far too long, and the rise of social media has given them a perfect medium for furthering their businesses and recruiting more

⁹⁴ See Kang-Xing Jin, *Keeping People Safe and Informed About the Coronavirus*, META, (Jan. 30, 2020), <https://about.fb.com/news/2020/12/coronavirus/> (providing information on Facebook and Instagram's response to the COVID-19 pandemic).

⁹⁵ See *What is the Sensitive Content Control?*, INSTAGRAM, <https://help.instagram.com/1055538028699165> (last visited Mar. 17, 2022).

⁹⁶ *Id.*

⁹⁷ Blackman, *supra* note 19, at 106 (explaining that the implementation of this rule had little or no effect on most MLMs).

⁹⁸ Blackman, *supra* note 19, at 106.

and more members. The law needs to evolve to recognize that this problem is larger than pyramid schemes alone and should hold social networking platforms accountable for their role in perpetuating multilevel marketing's detrimental effect on the American public.