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## Meeting the Challenges of Adoption in an Internet Age

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# MEETING THE CHALLENGES OF ADOPTION IN AN INTERNET AGE

MARY KATE KEARNEY\* AND ARRIELLE MILLSTEIN\*\*

## I. INTRODUCTION

The Internet, and more specifically social networking sites such as Facebook, has changed the adoption process dramatically. The trend from closed to open adoptions has given Facebook and other social network tools a critical role in the process. Now, biological parents, adoptive parents, and adopted children can access information about and communicate directly with each other.<sup>1</sup> This means, for example, that adopted children can have relationships with their biological parents without the adoptive parents' knowledge or consent.<sup>2</sup> This Article explores the legal ramifications of this issue and offers recommendations about how to protect the privacy interests of all parties involved.

Part II traces the history of open adoptions in the United States. Open adoptions have gradually replaced closed adoptions, in which the involved parties lacked communication with and access to information about each other.<sup>3</sup> The philosophy of open adoptions is that the parties—the adoptee, the biological parents, and the adoptive parents—should interact during, and often after the adoption process.<sup>4</sup> This part explores the forms that

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<sup>1</sup> EILEEN FURSLAND, *FACING UP TO FACEBOOK 2* (2010) (referencing a foreword by John Simmonds, Director of Policy, Research and Development, BAAF).

<sup>2</sup> Carrie Craft, *Tips for Better Handling Social Media, Your Teenager and Adoption Reunions*, ABOUT.COM, <http://adoption.about.com/od/parenting/qt/Tips-For-Better-Handling-Social-Media-Your-Teenager-And-Adoption-Reunions.htm> (last visited Oct. 1, 2012).

<sup>3</sup> Leigh Gaddie, *Open Adoption*, 22 J. AM. ACAD. MATRIMONIAL L. 499, 499 (2009).

<sup>4</sup> Rosemary Cabellero, *Open Records Adoption: Finding the Missing Piece*, 30 S. ILL. U. L.J. 291, 291 (2006) (noting biological parents may be actively involved with adoptees

(continued)

open adoption can take and the social reasons for the shift from closed to open adoptions.

Part III explains how domestic adoptions worked in a pre-Internet era. This part first discusses the eligibility standards for adoptive parents and then sets forth the steps adoptive parents must take during the adoption process.

Part IV introduces the effect of the Internet on the adoption process. It focuses on the Children's Online Privacy Protection Act, a federal law that seeks to protect children's safety and privacy on the Internet.<sup>5</sup> This part then examines the interplay between Facebook and COPPA, and concludes that, despite prohibitions against children under thirteen from using Facebook, many children use it and other social networking sites. This part then identifies twin dangers of children using social networking sites in the context of adoption. First, an adopted child may contact a biological parent without the adoptive parents' knowledge. Second, and even more troubling, a biological parent may contact the child they have placed for adoption without either the knowledge or approval of the adoptive parents.

Part V explores more completely the ramifications of Facebook and social networking in the adoption realm. This part first discusses how either a biological parent or child might use Facebook to locate each other. The part next evaluates both the negative and positive consequences of a biological parent contacting an adopted child via Facebook. The section then considers the effects on an adopted child of contacting a biological parent, which has serious implications for the biological parents and the adoptive parents. Finally, this part analyzes the effects of the adoptive parents' use of the Internet to search for and contact the biological parents.

Part VI encourages the use of post-adoption contact agreements to address the problems raised in Part V of the Article. This part recognizes the problems inherent in enforcing such agreements, but concludes that they are surmountable. In the end, the authors conclude that the benefits of such agreements, particularly to adoptees, outweigh any enforcement issues.

Part VII recommends how all parties involved can take steps to protect their privacy interests. This part focuses on measures that adoptive parents

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as they grow up); Amy L. Doherty, *A Look at Open Adoption*, 11 J. CONTEMP. LEGAL ISSUES 591, 592 (1997).

<sup>5</sup> Sasha Grandison, *The Child Online Privacy Protection Act: The Relationship Between Constitutional Rights and the Protection of Children*, 14 UDC/DCSL L. REV. 209, 211 (2011).

can take to monitor unpermitted contact on social networking sites between an adopted child and the birth parents. Using post-adoption contact agreements is one such measure, and others will develop as the use of social networking sites in adoptions grows.<sup>6</sup> The Article concludes that while social networking presents many challenges, particularly to adoptive parents, it also presents opportunities to enrich relationships among the parties.

## II. OPEN ADOPTION

Traditionally, the United States embraced closed adoption.<sup>7</sup> In a closed adoption, the biological parents do not know or communicate with the adoptive parents.<sup>8</sup> Adoptees in a closed adoption do not have access to any information pertaining to their original birth certificate or biological parents.<sup>9</sup> The purpose of closed adoptions is to prevent future emotional trauma by protecting the confidentiality of the biological parents, the adoptee, and the adoptive parents.<sup>10</sup>

Today, the notions of closed adoption reside in the past as trends move towards open adoption.<sup>11</sup> Unlike closed adoption, open adoption allows the biological and adoptive parents to interact with each other throughout the adoption process.<sup>12</sup> An open adoption allows the biological mother and

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<sup>6</sup> See Michele Fried, *Adoption and Social Media: Recommendations for Healthy Ongoing Communication*, ADOPTION STAR, <http://www.adoptionstar.com/child-placement/adoption-and-social-media-recommendations-for-healthy-ongoing-communication/> (last visited Oct. 1, 2012).

<sup>7</sup> Cabellero, *supra* note 4, at 291–92 (“Although historically, the adoption process was open, over the years adoption laws moved toward the other end of the spectrum, and the adoption process became closed and secret.”); Gaddie, *supra* note 3, at 499 (stating that formal adoptions have historically been “deemed closed”).

<sup>8</sup> Doherty, *supra* note 4, at 591. See also Jessica R. Caterina, Note, *Glorious Bastards: The Legal and Civil Birthright of Adoptees to Access Their Medical Records in Search of Genetic Identity*, 61 SYRACUSE L. REV. 145, 150 (2010) (stating that closed adoption ensures the anonymity of all parties involved).

<sup>9</sup> Cabellero, *supra* note 4, at 291.

<sup>10</sup> Doherty, *supra* note 4, at 591.

<sup>11</sup> ADAM PERTMAN, ADOPTION NATION 15 (Harvard Common Press, 2d ed. 2011) (“Adoption agencies and attorneys who arrange ‘closed’ adoptions have become an endangered species.”); Alison Fleisher, Note, *The Decline of Domestic Adoption: Intercountry Adoption as a Response to Local Adoption Laws and Proposals to Foster Domestic Adoption*, 13 S. CAL. REV. L. & WOMEN’S STUD. 171, 181 (2003).

<sup>12</sup> Caballero, *supra* note 4, at 291 (“By contrast, the open adoption process involves more interaction between the adoptive parents and the biological parents.”).

adoptive parents, prior to adoption, to share their identities with each other, helping the biological mother to choose the adoptive parents she sees fit.<sup>13</sup> In addition, the biological mother and adoptive parents will negotiate a post-adoption contact agreement outlining the parameters of the biological mother's post-adoption relationship and contact with the child and adoptive parents.<sup>14</sup> The current trend with these agreements is to establish the biological mother's involvement early in the adoption process.<sup>15</sup>

#### A. *The Spectrum*

The types of open adoption fall on a spectrum, ranging from semi-open to open adoption.<sup>16</sup> The level of openness encompasses the interests and needs of each party involved in the adoption process.<sup>17</sup> An open adoption's range fluctuates depending on the biological mother's contact and involvement with her child and the adoptive family after finalization of the adoption.<sup>18</sup> Upon deciding where the adoption should fall on the spectrum, the parties should specify their exact expectations of communication.<sup>19</sup>

##### 1. *Semi-open Adoption*

Semi-open adoption allows for limited contact between the biological parents and adoptive family.<sup>20</sup> Limited contact pertains to the communication between the biological mother and adoptive parents during the adoption screening process and after placement of the child with an adoptive family.<sup>21</sup> During the screening process, prior to the child's placement, some biological parents and adoptive parents may only want to

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<sup>13</sup> See Doherty, *supra* note 4, at 592 ("Open adoption differs from closed adoption in three primary respects: the birth mother and adoptive parents know the identities of each other prior to the adoption; the birth mother exercises significant control over the choice of adoptive parents . . .").

<sup>14</sup> *Id.*

<sup>15</sup> Fleisher, *supra* note 11, at 183.

<sup>16</sup> See Gaddie, *supra* note 3, at 500.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 501.

<sup>20</sup> *Semi-Open Adoption*, ADOPTION.COM, <http://semi-open.adoption.com/> (last visited Oct. 1, 2012).

<sup>21</sup> *Id.*

share identifying information about each other.<sup>22</sup> In this situation, the biological mother may choose only to review applications and résumés of the prospective adoptive parents. Other biological mothers may want to meet and approve of the adoptive parents prior to transferring their parental rights.<sup>23</sup>

After the screening process and upon placement of the child with an adoptive family, some biological mothers may want to continue to communicate with the adoptive family.<sup>24</sup> Communication after placement includes, but is not limited to, the adoptive parents sending photographs, e-mails, and letters to the biological mother that document the child growing up.<sup>25</sup>

## 2. *Open Adoption and Court Imposed Visitation*

Open adoption takes a liberal approach to contact between the parties.<sup>26</sup> Open adoption allows the biological mother and child to maintain ongoing personal contact with each other, involving regular correspondence and visitation.<sup>27</sup> Regular visitation not only occurs through an open adoption agreement between the biological mother and adoptive parents, but can also be court-imposed.<sup>28</sup> The majority of court-imposed open adoptions are statutory and focus on visitation rights or requests of third parties.<sup>29</sup> The court establishes visitation rights for nonparent relatives, siblings, and even biological parents when adoptive parents object to open adoption.<sup>30</sup>

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<sup>22</sup> Doherty, *supra* note 4, at 592–93. See also Naomi Cahn, *No Secrets: Openness and Donor-Conceived “Half-Siblings,”* 39 CAP. U. L. REV. 313, 322 (2011) (“Information about children’s birthparents is now routinely shared with prospective adoptive parents and vice-versa.”).

<sup>23</sup> Fleisher, *supra* note 11, at 183.

<sup>24</sup> *See id.*

<sup>25</sup> *See id.*

<sup>26</sup> *See generally* Doherty, *supra* note 4, at 593.

<sup>27</sup> *Id.*; Fleisher, *supra* note 11, at 183.

<sup>28</sup> See Annette Ruth Appell, *Reflections on the Movement Toward a More Child-Centered Adoption*, 32 W. NEW ENG. L. REV. 1, 5–6 (2010).

<sup>29</sup> *Id.* at 6 (citing *In re Adoption of Vito*, 728 N.E.2d 292, 301–02 (Mass. 2000)).

<sup>30</sup> *Id.*

### 3. *The Gray Area Between Semi-open Adoption and Open Adoption*

Between semi-open adoption and open adoption sits a gray area that allows a biological mother to maintain a more liberal form of contact with the adoptive parents without the regular visitation of an open adoption.<sup>31</sup> The more liberal form of open adoption allows the biological mother to visit occasionally with the adoptive child, rather than regularly or not at all.<sup>32</sup>

#### *B. The Move Towards Open Adoption*

Open adoption is now a regular adoption practice.<sup>33</sup> Domestic adoption currently embraces open adoption in formal and informal adoption agreements.<sup>34</sup> Out of thirty-five adoption agencies administering formal adoption agreements between 1987 and 1989, 65% did not offer the option of open adoption.<sup>35</sup> Several years later in 1993, only 23% of these agencies did not offer the open adoption option.<sup>36</sup> Today, adoption agencies across the United States embrace open adoption due to increased client demand.<sup>37</sup>

A number of factors contributed to the shift towards openness; most notably, the shift of power during the early stages of the adoption process from the adoptive parents to the biological parents.<sup>38</sup> Recently, biological parents have pushed for more openness.<sup>39</sup> In a high-demanding market for

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<sup>31</sup> See Doherty, *supra* note 4, at 593 (giving examples of desired contact between adoptive parents and biological parents).

<sup>32</sup> See *id.*; Cahn, *supra* note 22, at 323 (“In states that recognize open adoptions, the adoptive family is the child’s legal family, but the biological parents retain rights, such as visitation or annual updates.”).

<sup>33</sup> Appell, *supra* note 28, at 4.

<sup>34</sup> JOAN HEIFETZ HOLLINGER, 3 ADOPTION LAW & PRACTICE app. 13–B, at 2 (2011) (citing HAROLD D. GROTEVANT & RUTH MCROY, OPENNESS IN ADOPTION: EXPLORING FAMILY CONNECTIONS 35 (1998)). See generally Appell, *supra* note 28, at 25 (“Open adoption is becoming normal and represents one type of family among many others created . . .”).

<sup>35</sup> See Naomi Cahn, *Birth Relationships*, 17 WIS. WOMEN’S L.J. 163, 187–88 (2002).

<sup>36</sup> *Id.* at 188.

<sup>37</sup> *Id.* See generally Ellen Waldman, *What Do We Tell the Children?*, 35 CAP. U. L. REV. 517, 526 (2006) (“Birth mothers in fully open adoptions reported higher satisfaction levels than birth mothers in confidential or mediated adoptions and lower levels of adoption-related distress.”).

<sup>38</sup> HOLLINGER, *supra* note 34 (noting the rarity of shifting powers in adoption).

<sup>39</sup> *Id.* at 2–3.

healthy, white infant adoptees, the competition between “would-be” adoptive parents has intensified, causing the adoption market to become more of a “seller’s market.”<sup>40</sup> This shift in power allows the biological parents to negotiate terms of the adoption agreement to meet their needs and expectations.<sup>41</sup>

Another factor in the movement towards open adoption stems from adult adoptees wanting to identify their biological parents.<sup>42</sup> Adult adoptees’ desire initially encompassed opening their closed adoption records, but now has evolved into a push for future adoptions to begin as open rather than closed adoptions.<sup>43</sup> As this evolution globalized, it further encouraged opening closed adoptions. Adoptive parents can now petition to open their closed adoptions in an effort to help their adopted child understand where the child came from.<sup>44</sup>

#### *1. Open Adoption and Post-Adoption Contact Agreements and State Laws*

Adoption is mainly statutory.<sup>45</sup> Today, twenty-two states enforce, primarily by statute, open adoption and post-adoption contact agreements between adoptive parents and biological parents.<sup>46</sup> Courts will only enforce a post-adoption contact agreement in these states if the parties negotiated it into the original adoption decree.<sup>47</sup> The twenty-two states are: Arizona, California, Connecticut, Florida, Indiana, Louisiana, Maryland, Massachusetts, Minnesota, Montana, Nebraska, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Vermont, Washington, and West Virginia.<sup>48</sup>

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<sup>40</sup> *Id.* at 2.

<sup>41</sup> See generally Fleisher, *supra* note 11, at 182–83 (discussing the increase in biological mothers’ bargaining power).

<sup>42</sup> *Id.* at 182.

<sup>43</sup> *Id.*

<sup>44</sup> See Gaddie, *supra* note 3, at 501.

<sup>45</sup> See HOLLINGER, *supra* note 34, at 4–5.

<sup>46</sup> 23 PA. CONS. STAT. ANN. § 2733 (West Supp. 2012); HOLLINGER, *supra* note 34, at 7–17. Hollinger identifies twenty-one states that enforce post-adoption contact agreements. HOLLINGER, *supra* note 34, at 7–17. However, Pennsylvania also enforces such agreements, which brings the count to twenty-two states. § 2733.

<sup>47</sup> See HOLLINGER, *supra* note 34, at 4.

<sup>48</sup> § 2733; HOLLINGER, *supra* note 34, at 7–17.



Another portion of states recognize nonbinding open adoption agreements.<sup>49</sup> Thirteen states either: (1) passed statutes that allow voluntary, but virtually unenforceable open adoption agreements, or (2) do not have any statutes or laws addressing these agreements.<sup>50</sup> These thirteen states are: Alaska, Colorado (done through common law), Maine, Michigan, Missouri, Nevada, New Hampshire, New Jersey, North Carolina, Ohio, South Carolina, Tennessee, and Vermont.<sup>51</sup>

According to the Child Welfare Information Gateway, seventeen other states do not have statutes that address open adoption: Alabama, Arkansas, Colorado, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Michigan, Mississippi, New Jersey, North Dakota, Utah, and Wyoming.<sup>52</sup> In these states, the open adoption policy remains uncertain.<sup>53</sup>

Open adoption between adoptive parents and biological parents is not mandatory.<sup>54</sup> The parties that partake in open adoption do so willingly, and currently no state forces unwilling parties to choose open adoption.<sup>55</sup>

## 2. *Pennsylvania Law*

On October 27, 2010, Pennsylvania amended its Adoption Act to make open adoptions legally enforceable through post-adoption contact agreements.<sup>56</sup> The changes to the Adoption Act went into effect on April 25, 2011.<sup>57</sup>

The change of the Adoption Act is codified in Chapter 27 of the Pennsylvania Consolidated Statutes, section 2733.<sup>58</sup> It states, “A prospective adoptive parent of a child may enter into an agreement with a birth relative of the child to permit continuing contact or communication between the child and the birth relative or between the adoptive parent and

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<sup>49</sup> HOLLINGER, *supra* note 34, at 18.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 18–21 (citing and giving snippets of each state’s post-adoption contact agreement statutes).

<sup>52</sup> CHILD WELFARE INFO. GATEWAY, U.S. DEP’T OF HEALTH & HUMAN SERVS., POSTADOPTION CONTACT AGREEMENTS BETWEEN BIRTH AND ADOPTIVE FAMILIES 6–48 (2011), [www.childwelfare.gov/systemwide/laws\\_policies/statutes/cooperative.pdf](http://www.childwelfare.gov/systemwide/laws_policies/statutes/cooperative.pdf).

<sup>53</sup> *See id.* at 5.

<sup>54</sup> Doherty, *supra* note 4, at 593.

<sup>55</sup> *Id.* at 593–94.

<sup>56</sup> Letter from Cathy A. Utz, Acting Deputy Sec’y, Office of Children, Youth, and Families, to Colleague (Apr. 22, 2011) (on file with authors).

<sup>57</sup> *Id.*

<sup>58</sup> 23 PA. CONS. STAT. ANN. § 2733 (West Supp. 2012).

the birth relative.”<sup>59</sup> Section 2733 also gives siblings who were not adopted into the child’s adoptive family a voice in the development of post-adoption contact agreements.<sup>60</sup> Under this amendment, adoption agencies must notify prospective adoptive parents and biological parents that entering into voluntary post-adoption contact agreements is an option.<sup>61</sup> If an adoptive child is twelve years of age or older, no post-adoption contact agreement can be entered into without that child’s consent.<sup>62</sup>

Pennsylvania subjects all post-adoption contact agreements to court approval before finalization.<sup>63</sup> In addition, every party involved in the adoption must enter into the agreement voluntarily and knowingly, and the agreement must be in the best interest of the child.<sup>64</sup> Pennsylvania courts consider six factors to determine whether the agreement is in the best interest of the child.<sup>65</sup> These six factors include the following: (1) the circumstances and length of time the child has been under the adoptive parents’ care; (2) the interaction and relationships that the adoptive child has with the birth relatives; (3) the adoptive child’s adjustment to a new home, community, and education; (4) the biological parents’ ability to respect the developing bond between the adoptive parents and the adoptee; (5) the adoptive parents’ ability to respect and appreciate the bond between the biological parents and the adoptee; and (6) the evidence, if any, that the adoptive child has been abused or neglected.<sup>66</sup>

Pennsylvania courts will enforce a post-adoption contact agreement only if it is in writing, it received court approval on or before the date in the adoption decree, and the child consented to the agreement (if twelve years of age or older when the agreement was executed).<sup>67</sup> The enforceability of any agreement stops once the adoptee reaches the age of eighteen, unless the written agreement states otherwise.<sup>68</sup> Further, a child who is twelve or older can file an action with the court to discontinue an

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<sup>59</sup> *Id.* § 2733(a).

<sup>60</sup> *Id.* § 2733(b).

<sup>61</sup> *Id.* § 2733(c).

<sup>62</sup> *Id.* § 2734.

<sup>63</sup> *Id.* § 2735(b).

<sup>64</sup> *Id.* § 2735(b)(1)–(2).

<sup>65</sup> *Id.* § 2735(b)(2)(i)–(vi).

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* § 2738(c)(1)–(3).

<sup>68</sup> *Id.* § 2738(e)(1).

already finalized agreement.<sup>69</sup> The court may grant discontinuance of the agreement if it is in the child's best interest.<sup>70</sup>

### III. ADOPTION PRE-INTERNET

#### A. *Eligibility to Adopt*

In domestic adoptions, states determine adoptive parents' eligibility to adopt based on the age, residency, and marital status.<sup>71</sup> In addition, states decide who may place a child for adoption.<sup>72</sup>

##### 1. *Age*

In many states, the adoptive parents must be at least eighteen or twenty-one years old; these states include: Kentucky, New Jersey, Louisiana, Tennessee, Washington, Colorado, Delaware, and Oklahoma.<sup>73</sup> In Georgia and Idaho, the adoptive parents must be at least twenty-five.<sup>74</sup> Some states further require the adoptive parents to be ten to fifteen years older than the child adopted; these states include: California, Georgia, Nevada, New Jersey, South Dakota, Utah, Idaho, and Puerto Rico.<sup>75</sup>

##### 2. *Residency*

Every state varies on the residency requirements for adoptive parents. Seventeen states require that the adoptive parents reside in the state for sixty days to one year prior to pursuing an adoption.<sup>76</sup> A few states have exceptions to this requirement, and allow nonresidents to adopt children with special needs (South Carolina and Indiana), or to adopt through an adoption agency (Mississippi, New Mexico, Illinois, and Rhode Island).<sup>77</sup>

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<sup>69</sup> *Id.* § 2739(a).

<sup>70</sup> *Id.* § 2739(b).

<sup>71</sup> CHILD WELFARE INFO. GATEWAY, U.S. DEP'T OF HEALTH & HUMAN SERVS., WHO MAY ADOPT, BE ADOPTED, OR PLACE A CHILD FOR ADOPTION 2-3 (2009), [www.childwelfare.gov/systemwide/laws\\_policies/statutes/parties.pdf](http://www.childwelfare.gov/systemwide/laws_policies/statutes/parties.pdf).

<sup>72</sup> *Id.* at 4.

<sup>73</sup> *Id.* at 2.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 2-3.

<sup>77</sup> *Id.*

### 3. *Marital Status*

Applicants to adopt may be either single or married.<sup>78</sup> Although traditionally it was not easy for a single person to adopt a child, single-parent adoptions have become more common over the past decade.<sup>79</sup> Even so, single applicants who are homosexual may still encounter difficulty because of many adoption agencies' expectation that such prospective adoptive parents justify their lifestyle.<sup>80</sup> Despite the obstacles, 5%–10% of the United States citizens adopting are single men and women.<sup>81</sup>

### 4. *Who Can Place a Child for Adoption?*

Some states require that an agency or state department, such as the Department of Human Services or the Department of Social Services, place a child up for adoption.<sup>82</sup> A majority of states permit non-agency placement; this refers to private or independent adoptions.<sup>83</sup> Private adoption involves the direct placement of the adoptee by the biological parents with the adoptive parents.<sup>84</sup> States that allow direct placement resort to statutory regulations to protect the interest of all the parties involved in an adoption.<sup>85</sup> In these states, any parent who wants to privately adopt must receive approval or notify the appropriate department or court, unless a birth relative adopts the child.<sup>86</sup> A few states allow attorneys to act as an intermediary in arranging private placement.<sup>87</sup>

### B. *Steps of the Adoption Process*

The Child Welfare Information Gateway lists seven steps to help adoptive parents understand the basics of the adoption process: (1) educate yourself; (2) understand the law; (3) explore your options and select an

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<sup>78</sup> *Id.* at 2.

<sup>79</sup> *Single Parent Adoption*, ADOPTION SERVICES, [http://www.adoption-services.org/adoption\\_special/adoption\\_single.htm](http://www.adoption-services.org/adoption_special/adoption_single.htm) (last visited Nov. 16, 2012).

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> CHILD WELFARE INFO. GATEWAY, U.S. DEP'T OF HEALTH & HUMAN SERVS., WHO MAY ADOPT, BE ADOPTED, OR PLACE A CHILD FOR ADOPTION? 4 (2009), [www.childwelfare.gov/systemwide/laws\\_policies/statutes/parties.pdf](http://www.childwelfare.gov/systemwide/laws_policies/statutes/parties.pdf).

<sup>83</sup> *Id.* at 5.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

agency; (4) complete a home study; (5) engage in the placement process; (6) file necessary legal documents; and (7) parent your child.<sup>88</sup>

*1. Educate Yourself*

Prospective adoptive parents should educate themselves on adoption. A variety of resources are available at adoption exchanges, adoption agencies, and hospitals. Adoption support groups will also help prospective adoptive parents understand the adoption process.<sup>89</sup>

*2. Understand the Law*

Adoption is state regulated, and laws in each state differ.<sup>90</sup> Prospective adoptive parents should learn the regulations and laws on adoption in their state to avoid obstacles down the road.<sup>91</sup>

*3. Explore Your Options and Select an Agency*

Adoption presents a variety of options. Prospective adoptive parents should decide whether they want to adopt domestically or internationally. If parents choose to adopt a child domestically, the next step is determining whether to adopt through a public or private agency.<sup>92</sup> In addition, prospective parents must think about the characteristics they seek in a child and how long they are willing to wait for a child.<sup>93</sup>

*4. Complete a Home Study*

All prospective adoptive parents are required to complete home studies.<sup>94</sup> A home study consists of numerous meetings between an adoption agency, a social worker, and the prospective adoptive parents to ensure that the family and their home are equipped for an adoptive child.<sup>95</sup>

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<sup>88</sup> CHILD WELFARE INFO. GATEWAY, U.S. DEP'T OF HEALTH & HUMAN SERVS., ADOPTION: WHERE DO I START? 2-6 (July 2010), [http://www.childwelfare.gov/pubs/f\\_start.pdf](http://www.childwelfare.gov/pubs/f_start.pdf) [hereinafter ADOPTION: WHERE DO I START?].

<sup>89</sup> *Id.* at 2.

<sup>90</sup> *See id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at 3.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* See also PERTMAN, *supra* note 11, at 55 (explaining what is involved in a home study).

<sup>95</sup> CHILD WELFARE INFO. GATEWAY, U.S. DEP'T OF HEALTH & HUMAN SERVS., THE ADOPTION HOME STUDY PROCESS 9 (2010), [http://www.childwelfare.gov/pubs/f\\_homestu.pdf](http://www.childwelfare.gov/pubs/f_homestu.pdf).

Each meeting takes place in the parents' home, with every occupant of the home present.<sup>96</sup> Each state's home study has its own requirements and training, but ordinarily, the prospective adoptive parents must supply the agency social worker with birth certificates, marriage licenses, and personal references. In addition, the prospective parents must have child abuse clearance.<sup>97</sup> This process can take anywhere from two months to ten months to complete.<sup>98</sup>

##### 5. *Engage in the Placement Process*

After completing the home study, the prospective adoptive parents receive the adoptee's specific identifying information.<sup>99</sup> Specific identification can vary depending on whether the adoption method is foster care, private agency, or independent adoption.<sup>100</sup>

Parents who choose to adopt through foster care can access information about the number of foster children that are waiting for placement.<sup>101</sup> Many adoption agencies have television or video clips of foster children, photo-listing services, and adoption events to help parents decide on the right foster child for them.<sup>102</sup> Adoption agencies give parents the opportunity to get to know the prospective adoptee through pre-placement visits before the adoptee moves into the home.<sup>103</sup>

Biological parents choose prospective adoptive parents from a list of several families when the adoptive parents adopt through a licensed private agency.<sup>104</sup> Prospective adoptive parents using the independent adoption method receive the help of an attorney or facilitator to identify the biological parents.<sup>105</sup> Prospective parents can also find the biological parents on their own depending on their state's laws.<sup>106</sup>

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<sup>96</sup> Nat'l Adoption Cent., *Domestic Information on Adoption: Ten Steps*, ADOPT.ORG, [http://www.adopt.org/assembled/overview\\_howto.html](http://www.adopt.org/assembled/overview_howto.html) (last visited Oct. 1, 2012).

<sup>97</sup> *Id.*

<sup>98</sup> ADOPTION: WHERE DO I START?, *supra* note 88, at 4.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *See id.* at 5.

<sup>102</sup> *Id.* at 4.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

#### 6. *File Necessary Legal Documents*

The court system must finalize domestic adoptions.<sup>107</sup> An adoptive child must live with the adoptive parents for a minimum of six months before the adoptive parents can legally finalize the adoption.<sup>108</sup> Over this six-month period, a social worker frequently visits the adoptee's new home to ensure that the adoptive parents are adequately caring for the child.<sup>109</sup> During these visits, the social worker drafts the required court reports.<sup>110</sup> Once the six months have expired, the adoption agency submits a written recommendation to the court approving the adoption.<sup>111</sup> Finally, the adoptive parents and their attorney can file the completed paperwork with the court.<sup>112</sup>

#### IV. THE CHILDREN'S ONLINE PRIVACY PROTECTION ACT

The Internet poses safety and privacy risks to children around the world by compiling personal identifying information that many children are more than willing to share with the World Wide Web.<sup>113</sup> In response to the growing privacy concern, Congress drafted the Children's Online Privacy Protection Act (COPPA) based on the findings of the Federal Trade Commission (FTC).<sup>114</sup> COPPA's four internet privacy goals are as follows:

- (1) [T]o enhance parental involvement in a child's online activities in order to protect the privacy of children in the online environment;
- (2) to enhance parental involvement to help protect the safety of children in online fora such as chatrooms, home pages, and pen-pal services in which children may make public postings of identifying information;
- (3) to maintain the security of personally identifiable information of children collected online; and
- (4) to protect children's privacy by limiting the collection

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<sup>107</sup> *Id.* at 5.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> Grandison, *supra* note 5, at 209.

<sup>114</sup> *See id.* at 211.

of personal information from children without parental consent.<sup>115</sup>

On October 21, 1998, Congress enacted COPPA, tailoring the Act to alleviate two main problems: (1) the large amount of solicitation aimed directly at children; and (2) the collection of a child's personal identifying information, which is shared with advertising companies, marketing companies, and online predators who could use this information to locate a child.<sup>116</sup>

COPPA prohibits websites from collecting personal information from children under the age of thirteen without verifiable parental consent.<sup>117</sup> Further, COPPA's restrictions are triggered when "a website operator has . . . 'reasonable knowledge' that a child under the age of 13 is using their website."<sup>118</sup> A child's personal information includes: first and last names, home or other physical addresses, e-mail addresses, telephone numbers, Social Security number, information that would facilitate physical or online contact of the child, and any other information that would cause concerns if collected by a website operator.<sup>119</sup> COPPA's statutory language defines the duty to gain verifiable parental consent as any reasonable effort by the operating website to notify the parents of the information collection, use, and disclosure practices, and actually gain the parents' authorization to collect and use the child's personal information before it is collected.<sup>120</sup>

COPPA has been around for over a decade but has yet to be aggressively enforced.<sup>121</sup>

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<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> Mary Kay Hoal, *Impact of Social Networking on Adoption*, ADOPTION TODAY, June 2011, at 14 [hereinafter Hoal, *Impact of Social Networking*]. See also Anita L. Allen, *Minor Distractions: Children, Privacy and E-Commerce*, 38 HOUS. L. REV. 751, 758 (2001); Grandison, *supra* note 5, at 211 ("The requirements of the COPPA address the privacy and safety concerns children face with Internet use.").

<sup>118</sup> Telephone Interview with Mary Kay Hoal, Founder, President, and COO of Yoursphere.com and YoursphereForParents.com (Oct. 24, 2011) [hereinafter Hoal Interview].

<sup>119</sup> 15 U.S.C. § 6501(8)(A)–(G) (2006).

<sup>120</sup> *Id.* § 6501(9).

<sup>121</sup> Hoal Interview, *supra* note 118.



### A. Facebook and COPPA

For a website operator, verifying parental consent can be very costly and can involve an abundance of paperwork,<sup>122</sup> as a result, many websites, particularly social networks, do not permit children less than thirteen years of age to access their services.<sup>123</sup> Facebook is among these networks.<sup>124</sup>

Facebook's "Registration and Account Security" section in its "Statement of Rights and Responsibilities" agreement states, "You will not use Facebook if you are under 13."<sup>125</sup> The site's only method of age screening is to ask for the applicant's birth date upon initially signing up; if the applicant appears below the legally required age of thirteen, the site rejects the child.<sup>126</sup> Although Facebook provides this applicant screening process to prevent children under the age of thirteen from using the social network, children can easily bypass the restrictions by lying about their age.<sup>127</sup>

A consumer report published in June 2011 uncovered the number of children under the age of thirteen using Facebook.<sup>128</sup> The social network caters to twenty million actively using minors.<sup>129</sup> Among these young users, 7.5 million are younger than the minimum age of thirteen, directly violating COPPA.<sup>130</sup> Of the 7.5 million underage users, 2.5 million users range from ten to twelve years old, and more than five million users are ten years old or younger.<sup>131</sup>

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<sup>122</sup> Dorothy A. Hertz, *Don't Talk to Strangers: An Analysis of Government and Industry Efforts to Protect a Child's Privacy Online*, 52 FED. COMM. L.J. 429, 441 (2000) (citing FTC, CHILDREN'S ONLINE PRIVACY PROTECTION RULE PUBLIC WORKSHOP (July 20, 1999)) ("One estimate of the cost related to obtaining parental consent was two dollars a child or fifty to sixty thousand dollars a year.").

<sup>123</sup> Luke Gilkerson, *Underage Linking*, COVENANT EYES (July 21, 2011), <http://www.covenanteyes.com/pureminds-articles/underage-linking>.

<sup>124</sup> *Id.*

<sup>125</sup> *Statement of Rights and Responsibilities*, FACEBOOK, <http://www.facebook.com/legal/terms> (Provision 4—Registration and Account Security, citing term 5) (last visited Sept. 20, 2012).

<sup>126</sup> *That Facebook Friend Might Be 10 Years Old, and Other Troubling News*, CONSUMER REPORTS, June 2011, at 30.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

Facebook claims it does not have “reasonable knowledge” that children under the age of thirteen are using its portal,<sup>132</sup> but use of the search bar atop the network’s page proves different. Any person can type “middle school” or “elementary school” into Facebook’s search bar and the search will reveal a variety of grammar schools.<sup>133</sup> The Facebook members of these elementary school groups consist of current students—students under the age of thirteen.<sup>134</sup> The mere existence of elementary or middle school groups creates “reasonable knowledge” of underage usage on the social media giant. “If a member of Facebook can [search], why doesn’t Facebook use it’s [sic] own search tool to delete memberships of those under 13 [appearing in these groups]?”<sup>135</sup>

#### *B. Parents and Children Ignoring COPPA*

Many parents believe that social networking can enhance their children’s education, creativity, and networking skills,<sup>136</sup> and thus set aside the potential risks to allow their children to create Facebook profiles.<sup>137</sup> Parents have a duty to educate themselves before allowing their children to create Facebook pages.<sup>138</sup>

Parents that are aware of the dangers of the Internet and do not allow their underage children to join the social media giant may feel pressure from their children.<sup>139</sup> Many children who lack parental permission to

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<sup>132</sup> See, e.g., Audrey Watters, *Mark Zuckerberg Wants Kids Under 13 to Join Facebook, Uses Bogus Excuse to Explain Why They Can’t*, HACK EDUCATION (May 20, 2011), [www.hackeducation.com/2011/05/20/mark-zuckerberg-wants-kids-under-13-to-join-facebook-uses-bogus-coppa-excuse-to-justify-why-they-cant/](http://www.hackeducation.com/2011/05/20/mark-zuckerberg-wants-kids-under-13-to-join-facebook-uses-bogus-coppa-excuse-to-justify-why-they-cant/) (reporting that the Facebook creator wants children under the age of thirteen to have access to his social networking site and that he will, at some point, challenge COPPA). See also Hoal Interview, *supra* note 118.

<sup>133</sup> Hoal Interview, *supra* note 118.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> See Mary Kay Hoal, *The Value Social Networking Provides Our Children*, YOURSPHERE (Jan. 11, 2012), <http://internet-safety.yoursphere.com/2012/01/the-value-social-networking-provides-our-children-2/> (discussing the additional benefits of social networking for children, such as digital literacy, shared interest, and validation and acceptance).

<sup>137</sup> Gilkerson, *supra* note 123.

<sup>138</sup> Hoal Interview, *supra* note 118. See also Allen, *supra* note 117, at 753 (“COPPA’s partial failure is also suggested by the limited degree of parental involvement in monitoring children’s Internet use.”).

<sup>139</sup> Gilkerson, *supra* note 123.

create a Facebook account go behind their parents' backs. In these situations, parents do not have the opportunity to educate their child on the safety issues of Facebook, such as receiving a friend request from an online predator, or in an adoptive child's case, a potential biological parent.<sup>140</sup>

Mary Kay Hoal, the Founder, President, and COO of YourSphere Media, Incorporated, suggests six precautions that adoptive parents should take to protect their children from premature contact from a biological parent.<sup>141</sup>

First, parents must remember that "less is more."<sup>142</sup> On a social networking website, the less identifying information that a child provides, the less likely a stranger will breach the child's privacy.<sup>143</sup>

Second, use privacy settings.<sup>144</sup> Parents should evaluate the privacy settings of social networks that their children want to use. If a child, of any age, is a member of a social network, the child's account settings should be private, which will prevent unwanted biological parent intrusions. It can be overwhelming for a parent to keep up with Facebook's continuously changing privacy settings. Luckily, there are websites, such as YoursphereForParents.com, that can help inform parents of these changes.<sup>145</sup>

Third, only allow children to have memberships on kid-centric social networks.<sup>146</sup> Parents should research child-friendly social networks that allow their children to have a membership account similar to that of Facebook's. Websites built for kids and teens encourage a positive, rewarding, and age appropriate online experience, while simultaneously making a child's privacy and safety a priority.<sup>147</sup>

Fourth, parents should educate themselves on the rules and consequences of social media.<sup>148</sup> Researching the benefits and pitfalls of

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<sup>140</sup> *Id.*

<sup>141</sup> Hoal Interview, *supra* note 118.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.* See also Mary Kay Hoal, *Introducing Your Child to Social Networking: Ten Must-Know Tips for Parents*, YOURSPHERE (Sept. 26, 2011) [hereinafter Hoal, *Ten Must-Know Tips for Parents*], <http://internet-safety.yoursphere.com/2011/09/introducing-your-child-to-social-networking/>.

<sup>147</sup> Hoal Interview, *supra* note 118.

<sup>148</sup> *Id.*

social networking in small steps will guarantee their children a fun and safe experience with social media. In addition, parents should establish rules about technology use at home and enforce with consequences if children break these rules.<sup>149</sup>

Fifth, block biological parents.<sup>150</sup> If adoptive parents know the identity of their child's biological parent, adoptive parents can search the biological parent's name on Facebook and block them. The block feature on Facebook prevents the name of the blocked individual from appearing to the searcher or searchee, preventing the child or biological parent from finding one another.<sup>151</sup> However, this does not prevent the adoptive child from viewing the individuals that the adoptive parents blocked.

Finally, parents should choose COPPA compliant sites. This is because "[a]t the end of the day it's up to the parents to protect their children" and "COPPA compliant sites like Yoursphere [can] help them do so."<sup>152</sup> A website that properly complies with COPPA's provisions will assure that joining the network is fun and easy for children, and will not encourage children to lie about their age.<sup>153</sup>

#### V. FACEBOOK AND SOCIAL NETWORKING IN THE ADOPTION REALM

Before closed adoptions became less prevalent, adopted children did not have direct contact with their biological mothers until adulthood.<sup>154</sup> Today, open adoption is not the only method that allows continuous direct contact between parties to an adoption.<sup>155</sup> Due to the explosion of the Internet and social networking sites, such as Facebook, the landscape of adoption has changed.<sup>156</sup> An adoptive family that potentially wants to put

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<sup>149</sup> *Id.* See also Hoal, *Ten Must-Know Tips for Parents*, *supra* note 146 (stating in tip number five that parents should be encouraged to set limits to technology use ensuring that children enjoy a "healthy dose of outside activities").

<sup>150</sup> Hoal Interview, *supra* note 118.

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> FURSLAND, *supra* note 1, at 6.

<sup>155</sup> *Id.*

<sup>156</sup> See PERTMAN, *supra* note 11, at 103 ("The Internet is a central player in the adoption revolution.").

the adoptive child's biological family in the past can no longer realistically do so with the presence of a social media giant like Facebook.<sup>157</sup>

In the age of Facebook and social networking, adoption faces a frightening turn in an uncertain direction, widely opening the doors of communication between adoptive parties and affecting almost every chapter of adoption law.<sup>158</sup> In addition, social networking sites are also beginning to contribute to search and reunion efforts between biological parents and adoptive children.<sup>159</sup>

#### A. Searching on Facebook

Although Facebook contains over 800 million users worldwide,<sup>160</sup> the website makes it extremely easy to search for individuals by name. An individual can type a specific name into the site's search engine and the website will display a list of possible matches.<sup>161</sup> In addition to the searched name, depending on the privacy settings established by the particular user, the search displays a user's default profile picture along with the user's geographical location or educational network.<sup>162</sup>

After this search, obtaining information on Facebook becomes relatively easy, allowing the searcher to click on another user's profile and look through identifying information and pictures.<sup>163</sup> Although a user's privacy settings may limit the viewing of identifying information, a

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<sup>157</sup> Ki Mae Heussner, *Facebook Fuels Honesty, Unpredictability in Adoption*, ABC NEWS (June 25, 2010), <http://abcnews.go.com/Technology/article/facebook-fuels-honesty-unpredictability-adoption/story?id=11010443#.UFNeoHKrII4>.

<sup>158</sup> See Lisa Belkin, *I Found My Mom Through Facebook*, N.Y. TIMES, June 26, 2011, at ST1; Telephone Interview with Adam Pertman, Exec. Dir., Evan B. Donaldson Adoption Inst. (June 1, 2011) [hereinafter Pertman Interview].

<sup>159</sup> Pertman Interview, *supra* note 158. See generally PERTMAN, *supra* note 11, at 100 (“[A] steadily growing number of us while away the hours scouring the Internet in search of . . . our family trees.”).

<sup>160</sup> Todd Wasserman, *Facebook to Hit 1 Billion User Mark in August [STUDY]*, MASHABLE (Jan. 12, 2012), <http://mashable.com/2012/01/12/facebook-1-billion-users/> (stating that Facebook hit 800 million users in September 2011 and is expected to hit 1 billion users by August 2012).

<sup>161</sup> See FURLAND, *supra* note 1, at 48 (explaining how to search for someone on Facebook).

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

searcher may message or “friend request” any person, making communication easy.<sup>164</sup>

Today, Facebook and social networking affect the interests of all parties in the adoption process: the biological parent, the minor adoptee, and the adoptive parents.<sup>165</sup> With the right determination, any of these parties prepared to invest time in a search process may uncover pieces of information leading to potential reunions or heartache.<sup>166</sup>

### *1. Biological Family Searching*

A common misconception is that biological parents want to remain anonymous to their biological child.<sup>167</sup> However, many biological parents do not want to remain separated from a child forever, and would actually like to partake in their child’s future.<sup>168</sup> The end of an adoption process can cause a rollercoaster of emotions for a biological mother, including anger, depression, and guilt.<sup>169</sup> Sometimes, these emotions may fester if the biological mother is unable to move on after giving her child up for adoption.<sup>170</sup> This could potentially lead to a biological mother searching for her child.<sup>171</sup>

With the move towards open adoption and statutorily enforced post-adoption contact agreements, biological parents potentially have access to their biological child’s surname, physical appearance, or current home address.<sup>172</sup> This valuable information can enable a biological mother to perform efficient searches on the Internet and social networking websites.<sup>173</sup>

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<sup>164</sup> *Id.*

<sup>165</sup> *See id.* at 4.

<sup>166</sup> *See id.* at 49 (stating that the child’s surname is not necessary to conduct searches for the child on the internet, specifically social media sites).

<sup>167</sup> Cabellero, *supra* note 4, at 297.

<sup>168</sup> *Id.* at 297–98.

<sup>169</sup> *Id.* at 297.

<sup>170</sup> *Id.* at 297–98 (“[I]t seems almost impossible for birth parents to put the experience completely behind them.”).

<sup>171</sup> *Id.*

<sup>172</sup> *See generally* HOLLINGER, *supra* note 34, at 2.

<sup>173</sup> *See* Victoria Macdonald, *Adopted Children Face Anguish as Birth Parents Stalk Them on Facebook: Social Networking Sites Being Used to Flout Rules Leading to ‘Intrusive and Unplanned’ Contact*, THE GUARDIAN/THE OBSERVER (May 22, 2010), [www.guardian.co.uk/technology/2010/may/23/birth-parents-stalk-adopted-facebook?INTCMP=SRCH](http://www.guardian.co.uk/technology/2010/may/23/birth-parents-stalk-adopted-facebook?INTCMP=SRCH).

Today, Google makes it easy for biological parents to conduct in-depth searches for their biological child.<sup>174</sup> Some biological parents resort to tribute websites—posting messages about their child’s death and receiving condolences from other parents.<sup>175</sup> If a child “Googled” his or her birth name, any tribute site containing the child’s name would appear as a result.<sup>176</sup> On tribute sites, children could discover a picture of themselves, along with detailed information about their biological parents.<sup>177</sup> In addition, biological parents turn to missing persons websites.<sup>178</sup> In this instance, parents try to track down their biological child by posting messages for them on these websites asking for their child’s response.<sup>179</sup> Finally, biological parents may resort to claims of abduction, and post pictures of their biological child on open domain websites, with headlines stating, “Have you seen this child?”<sup>180</sup>

Nonetheless, Facebook currently appears to be the primary method used by biological parents to search for their biological child. In many cases, biological parents rely on the pictures of their biological child supplied by the adoptive parents through letters.<sup>181</sup> In these cases, the biological parents often set the biological child’s photograph as their main picture on their Facebook account.<sup>182</sup> If an adoptive parent maintains a Facebook account, a biological parent equipped with the adoptive parents’ names can get access to the family’s location, pictures posted by the adoptive parents, or even access to their biological child’s Facebook page

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<sup>174</sup> FURSLAND, *supra* note 1, at 33.

<sup>175</sup> *Id.* at 26.

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> *Id.* (noting that biological parents in the United Kingdom also resort to hate campaigns against social workers in an effort to regain parental rights).

<sup>181</sup> *See id.* at 25.

<sup>182</sup> *Id.* (noting a case study of a couple in the United Kingdom who recently became adoptive parents and conducted a Facebook search for their son’s biological parents). They discovered that the biological mother’s profile picture was a close-up photograph of their son. *Id.* The adoptive parents rechecked the biological mother’s Facebook page months after finalization of the adoption and the picture of their son remained. *Id.*

if the adoptive parents disclose the child's name or are "Facebook friends" with their child.<sup>183</sup>

Under many circumstances, an adoptee's biological or half sibling makes contact with the adoptee.<sup>184</sup> Many siblings resort to Facebook to make these connections.<sup>185</sup>

## 2. *Effects of Biological Parent Searches on Facebook*

Biological parents who yearn to contact their child through Facebook and biological parents who communicate with the adoptive parents in an open adoption experience similar emotional and psychological effects.<sup>186</sup> The biological parents' contact with the child can have either positive or negative emotional and psychological effects.<sup>187</sup>

### a. *Pros*

Biological parents deal with deep pain and anguish after giving their child up for adoption.<sup>188</sup> While open adoption contact helps to ease the pain and anguish,<sup>189</sup> contact via Facebook can serve the same purpose. Facebook allows the biological parents to participate in their biological child's life by giving them access to pictures of the child's growth. Similarly, in an open adoption, adoptive parents send letters and pictures of the child's progress in life. In addition, Facebook contact reassures biological parents that they made the right decision to give the child up for

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<sup>183</sup> *Id.* at 64 (noting that Google may make tracking people in the future easier with their new service called "Goggles," which uses an image of an individual rather than words to search the web).

<sup>184</sup> *Id.* at 72.

<sup>185</sup> *Id.* (noting a British case study demonstrating when half siblings interact). Amy, a sixteen-year-old British adoptee, had contact with her biological brother, which led to gaining her biological mother's contact information. *Id.* Amy prepared with post-adoption teams in the United Kingdom prior to making contact with her biological mother, but before these preparations were complete Amy's biological mother contacted her via message on Facebook. *Id.*

<sup>186</sup> See generally Gaddie, *supra* note 3, at 508–09.

<sup>187</sup> *Id.*

<sup>188</sup> See Shirley Darby Howell, *Adoption: When Psychology and Law Collide*, 28 *HAMLIN L. REV.* 29, 45–46 (2004) ("Most [biological mothers] cope with their residual emotions about the adoption by engaging in denial, fantasy, and repression. . . . She may feel guilt, may be unable to achieve another pregnancy, and may experience a heightened need for psychotherapeutic services.").

<sup>189</sup> Gaddie, *supra* note 3, at 508.



adoption by allowing the biological parents to view photos that present the child with a loving new family.<sup>190</sup>

*b. Cons*

Although contact through open adoption and Facebook presents emotional benefits for biological parents, coping with the emotions presented throughout the adoption process can also be more difficult.<sup>191</sup> Contacting a child on Facebook after the adoption can prevent the biological parents from moving forward.<sup>192</sup> Facebook can initiate a simple meeting with the adoptive child, but can lead to biological parents wanting more contact with the child over time.<sup>193</sup>

*3. Minor Adoptees Searching*

Many adoptive children experience grief and loss at some point in their lives over not knowing their biological parents.<sup>194</sup> Studies show that a majority of minor adoptees, with or without directly contacting their biological parents, express strong emotional interests in finding or getting to know their biological parents.<sup>195</sup> These emotions produce curiosity that drives many adoptees to use the Internet or Facebook to search for their biological parents.<sup>196</sup>

*a. Effects of an Adoptee's Search on the Adoptee*

In a generation of open adoptions, many adoptees, both minor and adult, know or can easily learn their biological parents' names; this allows adoptees to successfully search for their biological parents on Facebook

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<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> See FURSLAND, *supra* note 1, at 73.

<sup>195</sup> See Appell, *supra* note 28, at 23 (stating that a minority of children experience distress from contact with parents, but are comfortable maintaining contact with biological relatives and siblings).

<sup>196</sup> See generally PERTMAN, *supra* note 11, at 59 (“Nearly all adults who grew up knowing they were adopted will now tell you that they were curious about their backgrounds, a little or a lot, occasionally or constantly.”); Eileen Fursland, *Facebook Has Changed Adoption Forever*, THE GUARDIAN/THE OBSERVER (June 19, 2010), [www.guardian.co.uk/lifeandstyle/2010/jun/19/facebook-adoption-tracing-birth-mother?INTCMP=SRCH](http://www.guardian.co.uk/lifeandstyle/2010/jun/19/facebook-adoption-tracing-birth-mother?INTCMP=SRCH) [hereinafter Fursland, *Facebook Has Changed Adoption Forever*] (noting that searching on Facebook is initiated by young adoptees).

and ease their curiosity.<sup>197</sup> Minor adoptees may resort to searching for their biological parents not only out of curiosity, but also due to boredom or encouragement by their friends.<sup>198</sup> Adopted children who contact their biological parents through Facebook do not realize the consequences or psychological effects that their actions have on the biological parents, their adoptive parents, or themselves.<sup>199</sup>

If children contact birth relatives via Facebook or other social networking websites, it is nearly impossible for the children to have a surrounding support system, third-party social workers, or the guidance necessary to mediate them through an extremely vulnerable time.<sup>200</sup> “Kids, at the most vulnerable time for developing identity, are plugged in online,”<sup>201</sup> and minor adoptees do not possess the maturity to realize the implications of immediate, unguided contact with their biological parents on Facebook.<sup>202</sup> Reestablishing contact with a birth relative does not always result in a fairytale ending for the adopted child; rather, contact may cause the communication process to move too quickly, fade out over time, or become abusive.<sup>203</sup>

Most contact made via Facebook moves rather quickly, transitioning from messaging and talking on the phone, to meeting the biological parent

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<sup>197</sup> See Belinda Luscombe, *Finding Mom on Facebook*, TIME MAGAZINE, Aug. 16, 2010, at 45, 46.

<sup>198</sup> FURSLAND, *supra* note 1, at 74–75.

<sup>199</sup> In *Facing up to Facebook*, Fursland notes that a post-adoption British social worker counseled a biological mother who gave her child up for adoption, but later had more children and was concerned about the children making contact with the adoptee. *Id.* at 29–30. The social worker and the biological mother talked about ways the biological mother could monitor the situation. *Id.*

<sup>200</sup> Heussner, *supra* note 157.

<sup>201</sup> Belkin, *supra* note 158, at ST1.

<sup>202</sup> FURSLAND, *supra* note 1, at 75.

<sup>203</sup> See *id.* at 75–76. The following occurred during a case study in the United Kingdom:

A boy and girl adopted into the same family were contacted by an older birth brother. Without telling their adoptive parents, they arranged to travel into London to meet their brother. They were very excited. But within half an hour of meeting up, the brother said he had to leave and that he would be back later. He never came back. They were left feeling bitterly disappointed and rejected.

*Id.*

in person sometimes within a matter of days.<sup>204</sup> This fast pace can cause an adoptee to feel pressured and scared that the communication escalated too quickly.<sup>205</sup>

Over time, adoptees may notice that communication with their biological parents dissipates due to the biological parents' loss of interest in reconnecting; once adoptees learn this, they may realize that a lasting relationship is not sustainable.<sup>206</sup> Adoptees' loss of another relationship with their biological parents may produce feelings of rejection or emotions similar to those experienced throughout their lives.<sup>207</sup>

In some cases, communication with the biological parents could become severely damaging to the adoptive child due to continuous verbal or physical abuse.<sup>208</sup> Such situations could potentially lock the adoptee into a harmful position, preventing escape from the biological parents' unpleasant and traumatic behavior despite outside advice to break the communication chain.<sup>209</sup> Because adolescent adoptees lack the maturity and experience necessary to reestablish contact with their biological parents, they may feel that their adoptive parents' efforts to block communication with their biological parents "let them win" or allow them to run away from their problems.<sup>210</sup>

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<sup>204</sup> *Id.* at 75.

<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

<sup>207</sup> *See id.*

<sup>208</sup> *Id.* The following case study shows abuse in the context of social media: A fourteen-year-old British adoptee Katie, traced her biological grandparents on the Internet, wrote to them, and received a phone call from her birth father only days later. *Id.* Her birth father seemed wonderful at first, but this quickly changed:

He would phone every night when he was drunk and rant at me. My birth father is not a nice guy. He and one of my birth sisters send abusive messages to me on Facebook. My birth sister used to email me every day, saying I was dirt and I should die. They try to manipulate me by telling me things that aren't true. Once he put my birth mother on the phone but I could tell she was being forced to talk to me. I was desperate for them to like me even when they rejected me and treated me like dirt. My birth parents had told everyone in the family that I was dead.

*Id.*

<sup>209</sup> *Id.*

<sup>210</sup> *Id.*

Adoptees need guidance from professionals when reestablishing contact with their biological parents to prevent the psychological consequences of unmediated contact on Facebook.<sup>211</sup>

*b. Effect on the Biological Mother*

When a minor adoptee unexpectedly contacts a biological parent on Facebook, many questions and emotions run through the parent's mind. An adoptee's first attempt to contact a biological parent may come as an emotional shock, prompting the biological parent to ask, "Should [I] respond or not?"<sup>212</sup> Following an adoption, many biological parents wonder whether they will see their child again; so when this contact occurs, some choose to respond, while others refrain due to lack of interest, simply not wanting to respond, or the belief that it would not be in the child's best interests.<sup>213</sup>

An adoptee's unexpected contact does not only cause shock, it can also put the biological parents at risk.<sup>214</sup> Unmediated contact presents the biggest concern to biological parents,<sup>215</sup> especially biological mothers who moved on from a past adoption and gave birth to other children. These biological mothers may constantly worry that their adopted child will locate current children on Facebook, especially if the biological parent did not tell her new family about a past adoption.<sup>216</sup> Biological mothers also face the risk that over the years, an adolescent adoptee has become angry with the biological mother for abuse or neglect.<sup>217</sup> A biological mother may experience traumatic or painful memories if the birth of the child was the result of rape.<sup>218</sup> In addition, some biological mothers may have emotional instability, mental or physical health issues, or even learning disabilities that can hinder their ability to cope with such unexpected contact with the child.<sup>219</sup>

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<sup>211</sup> *Id.* at 29.

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

<sup>214</sup> *Id.* at 30.

<sup>215</sup> *Id.* at 29.

<sup>216</sup> *Id.* at 30.

<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

<sup>219</sup> *Id.* See generally Craft, *supra* note 2 ("Social media contact may trigger past abuse issues for some children.").

With Facebook on the rise, these risks remain concerns of biological parents because adoption agencies do not provide them with guidance or support concerning how to handle unexpected contact.<sup>220</sup>

*c. Effect on Adoptive Parents*

Adoptive parents similarly experience shock upon discovering their adoptive child searched for and contacted the biological parents through e-mail, text, or telephone calls, but the level of emotions differ.<sup>221</sup> Some adoptive parents experience pain, anger, sadness, and even great anxiety after discovering the initial communication.<sup>222</sup> These emotions surface in connection with both the difficult process of taking in another person's child as well as the difficult process of remedying any effects adoption may have had on the child's personality.<sup>223</sup>

In addition, adoptive parents may feel threatened when biological parents resurface in the adoptive child's life.<sup>224</sup> This can cause the adoptive parents to relive the feelings of doubt they may have experienced during the initial adoption process and feel as though they have been deprived of their parental authority.<sup>225</sup> Adoptive parents may also believe that this new contact with the biological parents may jeopardize relationships they have established with their child.<sup>226</sup>

A child's newfound relationship with a biological parent may cause adoptive parents to feel excluded.<sup>227</sup> The child constantly talking about or communicating with the biological parent on the Internet can cause this emotion to surface.<sup>228</sup>

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<sup>220</sup> See FURSLAND, *supra* note 1, at 29.

<sup>221</sup> *Id.* at 78. See also Fursland, *Facebook Has Changed Adoption Forever*, *supra* note 196 (stating that a social worker at North Yorkshire County in the United Kingdom receives phone calls every week from parents in a panic after discovering secret contact between their adoptive child and their biological parent).

<sup>222</sup> FURSLAND, *supra* note 1, at 78.

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> *Id.* See also Gabrielle Banks, *Breaking Down Open Adoptions*, PITTSBURGH POST-GAZETTE (Mar. 29, 2012, 8:47 AM), <http://www.post-gazette.com/stories/business/legal/breaking-down-open-adoptions-277448/> (stating that a biological mother posted comments on her biological child's Facebook page when she believed a photo or comment was inappropriate).

<sup>226</sup> FURSLAND, *supra* note 1, at 78.

<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

Another common feeling among adoptive parents that results from this new communication is fear.<sup>229</sup> Many adoptive parents experience anxiety that the child may leave the adoptive parents' home and move in with the biological parents.<sup>230</sup> As a result, adoptive parents may feel as though the child never really believed that he or she was a part of the family; instead, the child may have believed the adoptive parents were only taking care of the child until the biological parents resurfaced.<sup>231</sup>

#### 4. *Adoptive Parents Searching*

Biological parents and adoptive children are not the only parties resorting to the Internet to locate each other; adoptive parents also turn to the Internet to locate their child's biological parents.<sup>232</sup> Today, adoptive parents turn to Google and Facebook to find out about their child's biological parents and conduct periodic searches for information.<sup>233</sup> Adoptive parents also use Facebook to find out what their child may discover if the child decides to search for his or her biological parents.<sup>234</sup>

Because Facebook allows users to choose their profile privacy settings, adoptive parents utilize numerous tactics to obtain access to biological parents' Facebook pages.<sup>235</sup> These tactics include creating fictitious profiles with a pseudonym to friend request the biological parents, using the child's Facebook page to search the biological parents, or creating a separate e-mail account to contact the biological parents.<sup>236</sup> The benefit to adoptive parents establishing a fictitious Facebook account, which is normally prohibited by the social network's rules, is that it allows parents to protect their privacy against the biological parent. In some circumstances, adoptive parents use this tactic to print pictures of the biological parents from their pages to show their child later in life.<sup>237</sup>

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<sup>229</sup> *Id.*

<sup>230</sup> *Id.* at 79.

<sup>231</sup> *Id.*

<sup>232</sup> *Id.* at 54 (noting a case study with a positive ending). A British adoptive mother turned to Facebook to find a picture of her adopted daughter's birth father to put in her daughter's life storybook. *Id.* The adoptive parent remained mindful of the internet's ability to track searches and used a friend's Facebook page to conduct the search for her daughter's biological father. *Id.*

<sup>233</sup> See Belkin, *supra* note 158.

<sup>234</sup> FURSLAND, *supra* note 1, at 54.

<sup>235</sup> *Id.*

<sup>236</sup> *Id.* See also Belkin, *supra* note 158.

<sup>237</sup> FURSLAND, *supra* note 1, at 54.

Many adoptive parents frown upon this tactic and view it as unethical, while others believe it is in the best interest of their child.<sup>238</sup>

When an adoptive parent falsifies an account on Facebook, the adoptive parent must understand the potential consequences. Adoptive parents do not realize that this behavior could potentially damage any positive contact their child may have with the biological parents in the future.<sup>239</sup> In addition, how will adoptive parents explain their actions to their child later in life?<sup>240</sup>

## VI. POST-ADOPTION CONTACT AGREEMENTS

Today, post-adoption contact agreements, also known as post-termination contact, between the adoptive and biological parents are extremely common.<sup>241</sup> Open adoptions utilize post-adoption contact agreements primarily in an effort to tailor the adoption to the specific wants and needs of the adoptive child and parents.<sup>242</sup> Each agreement establishes unique specifications that will likely continue throughout the entire adoption or until the parties agree to go their separate ways.<sup>243</sup> The specifications can include: communication between the biological parents and the adoptive child; visitations with the biological parents or other biological relatives; learning about cultural backgrounds and customs; and receiving medical information and other information that may benefit the child in a healthy developmental upbringing.<sup>244</sup>

Post-adoption contact agreements are recognized in some states, but not others.<sup>245</sup> The states that recognize these agreements have strong public policy and legal concerns justifying their recognition.<sup>246</sup> The main policy questions include: (1) must the court approve this type of agreement; (2) when will the court enforce the specified terms of the

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<sup>238</sup> *Id.*

<sup>239</sup> *Id.*

<sup>240</sup> *Id.*

<sup>241</sup> See Solangel Maldonado, *Permanency v. Biology: Making the Case for Post-Adoption Contact*, 37 CAP. U. L. REV. 321, 348 (2008).

<sup>242</sup> Gaddie, *supra* note 3, at 502. See also PERTMAN, *supra* note 11, at 60 (“[I]n most cases it [the specific conditions] should probably be left to the wisdom and instincts of the people involved.”).

<sup>243</sup> Gaddie, *supra* note 3, at 502–03.

<sup>244</sup> *Id.* at 502.

<sup>245</sup> *Id.*

<sup>246</sup> *Id.* at 503.

agreement; and (3) when, if ever, can the court terminate or modify an agreement?<sup>247</sup>

*A. Enforcement of a Post-Adoption Contact Agreement*

*1. Enforcement of Agreement Based on Parental Rights*

In some states, the privilege of entering into a post-adoption contact agreement depends on how the biological parents' parental rights were terminated—whether voluntarily or involuntarily.<sup>248</sup> Some states enforce post-adoption contact agreements only when the biological parents voluntarily terminated their parental rights and agreed to surrender their child for adoption.<sup>249</sup> In contrast, parental rights terminated involuntarily will likely result in a court not enforcing a post-adoption contact agreement.<sup>250</sup> If state law does not address a rule regarding involuntary termination of biological parents' rights, the biological parents will be unable to enter a post-adoption contact agreement.<sup>251</sup>

*2. Court Enforcement of Agreements*

A court will initially approve a post-adoption contact agreement if: (1) the agreement is in writing and contains the signatures of both parties, and (2) the court approves the terms of the agreement.<sup>252</sup> Court approval varies by state.<sup>253</sup> Some states require the agreement to be fully incorporated into the final adoption decree, while others allow the agreement to stand on its own as an independent contract.<sup>254</sup> If the child is over twelve years old, the written consent of the adoptee is required before approval of an agreement can occur.<sup>255</sup>

Aside from these two requirements, courts rely on one determining factor when approving the terms of a post-adoption contact agreement—the best interest of the child.<sup>256</sup> In determining whether the terms are in the best interest of the child, courts look to the “emotional bonding and other

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<sup>247</sup> *Id.*

<sup>248</sup> *See, e.g.,* Maldonado, *supra* note 241, at 349.

<sup>249</sup> *Id.* at 350.

<sup>250</sup> *Id.*

<sup>251</sup> *Id.* at 350–51.

<sup>252</sup> Gaddie, *supra* note 3, at 503.

<sup>253</sup> *Id.* at 503–04.

<sup>254</sup> *Id.*

<sup>255</sup> *Id.*

<sup>256</sup> *Id.* at 504.



circumstances” of the relationship between the child and the biological parent, and not the legal consequences of the relationship.<sup>257</sup>

### 3. *Issues with Enforcement*

Adoptive and biological parents who enter into post-adoption contact agreements normally do so without issue; however, problems can still occur over time.<sup>258</sup> The most common problem is when one party believes that the terms of the agreement are no longer necessary, but the other party still wants to continue pursuant to the original agreement.<sup>259</sup> In this situation, the adoptive parents may no longer believe that continued contact with the biological parents is in the best interest of the child, and as a result, the biological parents must turn to the court to remedy this dispute.<sup>260</sup>

Several states enforce post-adoption contact agreements by statute, requiring the biological parents or party seeking enforcement of the agreement to attempt to mediate the dispute before turning to the court.<sup>261</sup> If courts ultimately hear the disputes, they usually defer to the adoptive parents in making permanent enforcement decisions.<sup>262</sup> This is because the adoptive parents usually know what is in the best interest of the child.<sup>263</sup> However, some courts will disregard the adoptive parents’ opinion if the court, when first enforcing the post-adoption contact agreement, found that both parties agreed that the agreement was in the best interest of the child.<sup>264</sup>

### 4. *Unenforceable Post-Adoption Contact Agreements*

Several states do not recognize post-adoption contact agreements as legally valid and provide two specific public policy reasons as support. The first policy reason is that post-adoption contact agreements appear contrary to adoption laws.<sup>265</sup> Specifically, such agreements allow

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<sup>257</sup> *Id.*

<sup>258</sup> *Id.* at 502–03.

<sup>259</sup> *Id.* at 503.

<sup>260</sup> *Id.* at 503–04. *See also* PERTMAN, *supra* note 11, at 63 (“[M]ost open adoptions go through intervals of more and less contact, depending on the needs of the child, the chemistry among the parents, and other unpredictable elements of life.”).

<sup>261</sup> Gaddie, *supra* note 3, at 504.

<sup>262</sup> *Id.* at 504–05.

<sup>263</sup> *Id.*

<sup>264</sup> *Id.* at 505.

<sup>265</sup> *Id.* at 507.

biological parents visitation rights after their legal parental rights have been terminated and transferred to the adoptive parents.<sup>266</sup>

The second policy reason is that the post-adoption contact agreements threaten the unity and independence of the adoptive family.<sup>267</sup> State courts reason that the purpose of adoption is to create a new legal family for the adoptive child, yet visitation rights afforded to the biological parents through these agreements incorporate the adoptee's old family into the adoptee's new family.<sup>268</sup>

### *B. Benefits of Post-Adoption Contact Agreements*

Post-adoption contact agreements can be beneficial, particularly in preventing psychological problems that adoptive children may develop because of adoption.<sup>269</sup> Many adoptees experience feelings of rejection; they wonder about their biological families and want to know why they were put up for adoption.<sup>270</sup> Post-adoption contact agreements help put these feelings to rest by maintaining contact between the adoptee and biological parents, and by giving the adoptee an opportunity to understand why.<sup>271</sup>

In addition, an adoptee's continued contact with a biological parent helps develop a healthy identity. Adoptive children, as opposed to non-adoptive children, experience more identity issues during their adolescent years because of the lack of information adoptees have about their biological parents.<sup>272</sup> The emotions that spawn from this can include shame, low self-esteem, and rejection, ultimately leading to behavioral problems.<sup>273</sup> Post-adoption contact agreements serve as a remedy to these misguided emotions, allowing adoptees to come into their own identity by incorporating the current relationship they share with their biological

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<sup>266</sup> *Id.*

<sup>267</sup> *Id.*

<sup>268</sup> *Id.*

<sup>269</sup> See Maldonado, *supra* note 241, at 325.

<sup>270</sup> *Id.*

<sup>271</sup> *Id.* (“[S]ocial science literature suggest[s] that openness in adoption might be in children’s best interest.”).

<sup>272</sup> See generally Banks, *supra* note 225 (suggesting that if adoptive children, as they age, are not given more information about their biological parents, “they may think, ‘It must have been something wrong with me.’”).

<sup>273</sup> Maldonado, *supra* note 241, at 326.

parents into their future lives.<sup>274</sup> Further, contact with a biological parent after adoption can contribute to the continued well-being of the adoptee.<sup>275</sup>

Post-adoption contact agreements serve an even greater importance to foster children,<sup>276</sup> most of whom lived or had past contact with their biological parents prior to adoption.<sup>277</sup> Because foster children sustained contact with their birth families in the past, the foster child will likely already have a psychological connection to their biological parents.<sup>278</sup>

Foster children, once adopted, usually express a desire to maintain contact with their biological parents.<sup>279</sup> In many instances, foster children lose contact with their birth families, and then resist adoption in an effort to remain loyal to their biological parents or because they fear that the loss of contact will be permanent.<sup>280</sup>

The psychological effects that foster children face pertain mostly to conflicting emotions.<sup>281</sup> These conflicting emotions result from the foster children wanting to see their biological parents, but having anger towards them for the neglect and abuse they have suffered.<sup>282</sup> This causes foster children to blame themselves for their biological parents' inability to care for them.<sup>283</sup> Many experts believe that post-adoption contact agreements serve as a building block for foster children, allowing them to learn why their biological parents could not provide for them, which in turn helps decrease the foster child's feelings of anger or self-blame.<sup>284</sup>

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<sup>274</sup> *Id.* at 326–27.

<sup>275</sup> *Id.* at 327 (“[S]tud[ies] based on interviews with adolescent adoptees found that those who had contact with their birth mothers were more satisfied with the contact status than adolescents who had no contact.”).

<sup>276</sup> *Id.* at 328. *See also* Banks, *supra* note 225 (noting that foster children have the potential for more difficulty with adoption).

<sup>277</sup> Maldonado, *supra* note 241, at 328.

<sup>278</sup> *Id.*

<sup>279</sup> *Contra* PERTMAN, *supra* note 11, at 117–19. Mesha was adopted after years in foster care; her mother was a prostitute that locked her and her brother in the basement when she had customers and allowed many of her customers to sexually abuse Mesha. *Id.* Today, Mesha claims “[s]he wants nothing to do with her birth mother again . . . .” *Id.*

<sup>280</sup> Maldonado, *supra* note 241, at 328. *See generally* Banks, *supra* note 225 (“A lot of children fear being adopted because they fear losing contact with their birth relatives.”).

<sup>281</sup> Maldonado, *supra* note 241, at 329.

<sup>282</sup> *Id.*

<sup>283</sup> *Id.*

<sup>284</sup> *Id.*

## VII. RECOMMENDATIONS

Social networking sites burst onto the Internet with no warning for parents that have gone or were going through the adoption process. In the past, agencies never provided new adoptive parents with training on how to handle the throws of social networking giants like Facebook.<sup>285</sup> Today, agencies have implemented precautionary training for adoptive parents,<sup>286</sup> but many experts still do not know how to mitigate effectively situations in which a Facebook message is the first contact between an adoptee and a biological parent.

### A. Adoptive Parents

Previously, many adoptive parents asked themselves, “Should I let my child use Facebook or MySpace?”<sup>287</sup> Since Facebook, Twitter, and MySpace exploded onto the Internet, the world has changed, along with the questions many adoptive parents considered.<sup>288</sup> Many adoptive parents gave in to the social networking craze and now ask themselves, “How should I monitor my child on Facebook?”<sup>289</sup>

#### 1. Monitoring Internet Precautions

Larry Rosen, Ph.D., author of *Me, MySpace, and I: Parenting the Net Generation*, offers a workable, strategic, and honest model for adoptive parents to use to protect their children from the dangers of social networking.<sup>290</sup> His model is called T.A.L.K.: (1) Trust, (2) Assess, (3) Learn, and (4) Communicate.<sup>291</sup>

“T” stands for *Trust*.<sup>292</sup> Parents should create a trusting relationship with their adoptive child by refraining from spying on the child’s internet activity, including not installing spyware programs to monitor internet usage.<sup>293</sup> Parents should not “friend” their child on Facebook because it

<sup>285</sup> See FURSLAND, *supra* note 1, at i.

<sup>286</sup> See, e.g., *Is That My Birth Mom On Facebook?*, ADOPTION LEARNING PARTNERS (Sept. 10, 2010), <http://www.adoptionlearningpartners.org/catalog/webinars/is-that-my-birth-mom-on-facebook.cfm>.

<sup>287</sup> Larry Rosen, *Much Ado About Facebook: Parenting the iGeneration and the Net Generation*, ADOPTION TODAY, June 2011, at 26, 26.

<sup>288</sup> *Id.*

<sup>289</sup> *Id.*

<sup>290</sup> *Id.* at 26, 28.

<sup>291</sup> *Id.* at 26–27.

<sup>292</sup> *Id.* at 26.

<sup>293</sup> *Id.*

gives the impression that the parents are spying on the child.<sup>294</sup> Instead, parents should ask their child to give them a tour of the child's Facebook page, and ask questions about their child's specific "friends."<sup>295</sup> If parents encounter something that makes them uncomfortable, they should wait to discuss the issue with their child until the Facebook tour has ended.<sup>296</sup>

"A" stands for *Assess*.<sup>297</sup> Parents should monitor their child's use of the technology that is readily available to them today.<sup>298</sup> Adoptive parents should inventory the various ways their child communicates—whether by cell phone, Internet, or online interactive video games.<sup>299</sup> This information can help notify adoptive parents of how a biological parent or their adoptive child may initiate contact.

"L" stands for *Learn*.<sup>300</sup> Knowledge is power, and in a time when the Internet is entertainment, adoptive parents should educate themselves on their child's use of the Internet and other technology. With the surge in social media participation also came a surge of websites geared towards protecting children from online dangers: yoursphereforparents.com, safekids.com, safeteens.com, connectsafely.org, and netsmartz.org. Parents should utilize these websites to better educate themselves.<sup>301</sup>

"K" stands for *Communication*.<sup>302</sup> In today's world, adoptive parents must be more proactive. This may entail having regular family meetings and dinners, communicating with the parents of their child's friends, and establishing penalties that incrementally increase in severity with each infraction.<sup>303</sup>

Dr. Rosen's model can be used to develop a basic framework suitable for every family; however, with federal law governing the legal age requirement for children to use social media sites, more drastic precautions may be necessary. Some adoptive parents may want to set boundaries for their child's Internet use and move computers from private bedrooms to main living areas. Adoptive parents with a child under the age of thirteen

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<sup>294</sup> *Id.* at 27.

<sup>295</sup> *Id.*

<sup>296</sup> *Id.*

<sup>297</sup> *Id.*

<sup>298</sup> *See id.*

<sup>299</sup> *Id.*

<sup>300</sup> *Id.*

<sup>301</sup> *Id.* (noting that parents should educate themselves on internet buzz words such as "cyberbullying").

<sup>302</sup> *Id.*

<sup>303</sup> *Id.*

should cancel the child's membership to any social networking site; if the adoptee is older than thirteen, then adoptive parents should review and change the privacy settings on their child's social networking pages to make the page as private and undetectable as possible.<sup>304</sup>

The Internet contains a plethora of personal identifying information about almost every individual.<sup>305</sup> A biological parent can easily locate a child they gave up for adoption by inserting small pieces of information into an internet search engine; today, Facebook adds to the level of ease.<sup>306</sup> If adoptive parents know that their adoptive child is on Facebook, it is necessary to use the "T" in Dr. Rosen's model to ensure that the child does not post their first and last name, home address, school information, birth date, or phone number on Facebook, allowing members access to their personal information.<sup>307</sup> It is important for adoptive parents to monitor the information their child posts because even a minimal amount of information could enable biological parents to identify the child they gave up for adoption.<sup>308</sup> Additionally, adoptive parents should ensure that their child's default profile picture on Facebook is one that a biological parent will not recognize. Parents should talk their children into using a cartoon or illustration instead.<sup>309</sup>

Adoptive parents should search their child's Facebook page for the biological parents of their adopted child, and if necessary, block them. In addition, parents should caution their child not to accept Facebook friend requests from individuals the child has never physically interacted with or who lack mutual friends.<sup>310</sup>

Adoptive parents are equally susceptible to searches by their adopted child's biological parents. Adoptive parents who want to shield their lives from a biological parent should caution their friends about tagging them and their adoptive child in any pictures or posts on Facebook, blogs, or other websites.<sup>311</sup> If, at the other end of the spectrum, an adoptive parent is looking to reach out to their child's biological parents on Facebook, it is

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<sup>304</sup> Hoal, *Impact of Social Networking*, *supra* note 117, at 15.

<sup>305</sup> *See id.* at 14.

<sup>306</sup> *See Rosen*, *supra* note 287, at 26.

<sup>307</sup> *See FURLAND*, *supra* note 1, at 52; Hoal, *Impact of Social Networking*, *supra* note 117, at 15.

<sup>308</sup> *See, e.g., FURLAND*, *supra* note 1, at 52 (suggesting adoptive parents encourage their children to spell their names in different ways).

<sup>309</sup> *Id.*

<sup>310</sup> *Id.*

<sup>311</sup> *Id.* at 55.

necessary to think about what is in the best interest of the adoptee. If adoptive parents decide to establish contact with a biological parent on Facebook, parents should be wary of what they post to Facebook and how it could affect the adoption process. Today, communication through social networking sites could continue indefinitely.<sup>312</sup>

## 2. *Legal Precautions*

Adoption laws do not yet account for social media contact and the Internet, but adoptive parents and biological parents can take legal precautions during the adoption process that will prevent disaster caused by social media later. In an open adoption, prospective adoptive parents should communicate their concerns about future contact through Facebook to potential biological mothers, discussing both parties' worries, along with the benefits and consequences that social media could produce. All parties involved in the adoption should agree—from the start—that if communication through Facebook becomes excessive or emotionally overwhelming, it will immediately end with no hurt feelings.<sup>313</sup>

Setting terms through post-adoption contact agreements can effectively help adoptive parents and biological parents establish communication boundaries on social networking websites. The communication boundaries can specifically regulate “friend requests,” and mandate going through an adoption agency before establishing contact on Facebook in an effort to acquire the proper precautionary training; or can generally prohibit communication through social networking sites all together.

Adoptive and biological parents can discuss with their adoption agency the correct and safe ways to initiate contact through Facebook. Adoption agencies have trained professionals that can efficiently educate, support, and help advise parties that want to or already have established contact through social networking sites.<sup>314</sup> Reaching out to an adoption agency could help suppress adoptive or biological parents' fears about Facebook contact. In addition, once contact through Facebook is made, adoptive parents may suggest meeting in a supervised environment, such as an adoption agency.<sup>315</sup>

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<sup>312</sup> Fried, *supra* note 6.

<sup>313</sup> See, e.g., Danya Lynd, *Keeping Connected: An Adoptive Mom and a Birth Mother Reach Out to Each Other Through Facebook*, ADOPTION TODAY, June 2011, at 18, 20.

<sup>314</sup> Fried, *supra* note 6.

<sup>315</sup> FURSLAND, *supra* note 1, at 80.

### 3. *Understanding the Communication Precautions*

Not only do adoptive parents need to worry about contact from biological parents, but they must also consider their adoptive child's desire to initiate contact through social networking.<sup>316</sup> Just because an adoptee appears uninterested and has never discussed making contact, it does not mean that the child has not already conducted Facebook searches to locate information.<sup>317</sup> Adoptive parents should take the opportunity to open the lines of communication with their child about potential contact with his or her biological parents on Facebook—before contact is made.<sup>318</sup> Understanding whether an adoptee wants to refrain from making contact with biological parents allows the adoptive parents to provide guidance and support for their child.<sup>319</sup> This helps adoptive children understand that their adoptive parents want to help them contact their biological parents.<sup>320</sup> This trust could open the door in the future to safety precautions, such as accompanying their child during a first meeting with the biological parent.<sup>321</sup>

#### B. *Adoption Agencies*

The most simple and effective way to deal with the social networking surge is to start from the ground up—that is, starting with adoption agencies.<sup>322</sup> Adoption agencies stand at the forefront of information and guidance to prospective adoptive parents; therefore, it is crucial that agency professionals and experts are thoroughly educated and informed on new technological developments affecting the adoption process.<sup>323</sup>

##### 1. *Educational Precautions*

“It’s a new world, so we need to develop curriculum.”<sup>324</sup> Adoption agencies must teach adoption professionals how to efficiently answer questions and educate prospective adoptive parents about communicating through social media. This education should take place prior to

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<sup>316</sup> See, e.g., Craft, *supra* note 2.

<sup>317</sup> *Id.*

<sup>318</sup> Fried, *supra* note 6.

<sup>319</sup> Luscombe, *supra* note 197, at 46.

<sup>320</sup> See, e.g., *id.*

<sup>321</sup> FURSLAND, *supra* note 1, at 80.

<sup>322</sup> Pertman Interview, *supra* note 158.

<sup>323</sup> *Id.*

<sup>324</sup> *Id.*



commencing the adoption process. Further, adoption professionals should hold educational seminars explaining what to do if a child and biological parents locate each other on the Internet. Adam Pertman, Executive Director of the Evan B. Donaldson Adoption Institute and author of *Adoption Nation*, believes that in order to provide these beneficial workshops to adoptive parents, “we need to be thoughtful” and recognize there is no “right route or wrong route; . . . we [need to think] it through and . . . consider[] the implications on the children . . . on the family, and act[] accordingly. Right now . . . what is happening is people are finding each other and winging it.”<sup>325</sup>

Some adoption agencies started taking precautionary measures by issuing advisories to the public about how to handle contact made through social networking.<sup>326</sup> Currently, many agencies advise adoptive parents not to prohibit their children from using and accessing the Internet because it can have a damaging effect and lead to rebellious behavior.<sup>327</sup> Instead, adoption agencies instruct adoptive parents to monitor their children’s online activity, and help their children understand why finding their biological parents on Facebook without support and guidance could have serious consequences.<sup>328</sup>

## 2. *Legal Precautions*

Adoption agencies, like adoptive parents, can institute legal precautions to help protect prospective adoptive parties from unwanted contact through social media websites. Adoption agencies could offer optional contracts prior to initiating the formal adoption process that would include terms preventing all parties from using all social media websites to communicate during finalization of the adoption.<sup>329</sup>

Social networking sites are virtually re-crafting the chapters written on adoption, and adoption professionals are frantic about how to remedy the damaging effects. However, using Facebook, MySpace, and other social

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<sup>325</sup> *Id.* See generally Luscombe, *supra* note 197, at 46 (“Even in the best of cases, you want a little knowledge first . . . you want to [reunite birth parents] thoughtfully and methodically. With Facebook, you don’t have any of that.”).

<sup>326</sup> Luscombe, *supra* note 197, at 46.

<sup>327</sup> *Id.* See also FURSLAND, *supra* note 1, at 80.

<sup>328</sup> Luscombe, *supra* note 197, at 46.

<sup>329</sup> Macdonald, *supra* note 173.

media sites to reconnect with a biological parent does not always result in negative consequences.<sup>330</sup>

Finding a way to reconnect past relationships can be difficult, regardless of whether the relationships are in the adoption context. Facebook has taken the pressure off reconnecting by making it easy to click on a “friend request” button and “[t]he screen provides connection, but also distance, a way to tiptoe through what can be the awkward in-between territory of reconnection.”<sup>331</sup> Facebook allows parties in an adoption to help dispel any guilt or pain suffered in the past by an adoptee or biological parent before they meet one another.<sup>332</sup> The dissipation of these difficult feelings can lead to a healthy and continuous relationship in the future.<sup>333</sup> Social media sites can also make search and reunion efforts for adoptive parties much easier for adoption agencies. When all other traditional methods of searching for a family member have failed, Facebook allows a small amount of information to go a long way.<sup>334</sup> In an area of the law that used to be shrouded in secrecy, Facebook now forces parents to be open with their children about their adoptive status.

Finally, in open adoptions, Facebook communication can ensure that adoptive families stick to the commitments that they made to a biological parent, such as sending photographs or occasional updates about the child’s health and welfare.<sup>335</sup>

## VIII. CONCLUSION

The Internet has given people unprecedented access to information, and very few areas of our lives have been untouched by it. The adoption arena is no exception. Social networking by biological parents, their biological children, and adoptive parents, offers new opportunities for communication among these groups, yet it presents challenges about how to protect the privacy interests of all parties involved. Protecting all parties in the adoption process requires that social networking be monitored, and in some cases, even restricted. This way, social networking enables the

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<sup>330</sup> See, e.g., Belkin, *supra* note 158, at ST1–ST2 (giving examples of reconnections with positive results).

<sup>331</sup> *Id.* at ST2.

<sup>332</sup> See, e.g., *id.* (noting examples of one connection where there was guilt and pain involved).

<sup>333</sup> See generally *id.* at ST1–ST2.

<sup>334</sup> FURSLAND, *supra* note 1, at 54.

<sup>335</sup> Lori Kerrigan, *Adoptive Family Social Networking*, ADOPTION TODAY, June 2011, at 16.

participants in the adoption process to construct healthy relationships and protect against destructive ones.