



July 10, 2025

The Honorable Phil Weiser  
1300 Broadway St.  
Denver, CO 80203

## Re: Requests for Input on Rules Governing Children's Online Data Amendments

Dear Attorney General Weiser:

The Computer & Communications Industry Association (CCIA) is pleased to respond to the Colorado Office of the Attorney General (OAG)'s request for input on the Colorado Privacy Act (CPA) rules governing children's online data amendments ("the proposed Rules").<sup>1</sup> As the OAG weighs potential modifications to the proposed Rules, CCIA offers the following proposals to guide deliberation:

### 1. System Design Features

When defining system design features, preserving freedom of expression is of paramount importance. System design features are not only a crucial tool for websites seeking to best serve their users — they are also a protected form of free expression, just as an author's choice to end a book's chapter on a cliffhanger to encourage the audience to continue reading would be. The Supreme Court has affirmed this principle twice in recent years: In 2023, the Court held in *303 Creative LLC v. Elenis* that "The First Amendment prohibits Colorado from forcing a website designer to create expressive designs speaking messages with which the designer disagrees."<sup>2</sup> In 2024, it held in *Moody v. NetChoice LLC* that "The government may not, in supposed pursuit of better expressive balance, alter a private speaker's own editorial choices about the mix of speech it wants to convey."<sup>3</sup> Well-intentioned regulations aimed at a small number of online services may nonetheless sweep in a broad array of protected speech, including online books, music, news, and educational resources. System design feature regulations must be written carefully to avoid prohibiting Colorado minors from being able to scroll to the next chapter in the online edition of a book, or online services from suggesting additional books or videos on a historical topic a minor might be researching.

For similar reasons, the proposed Rules should preserve websites' ability to institute personalized recommendation systems. Not only do such systems help websites reach their intended audience, they also help guard users against harmful content with no expressive purpose. They help screen out age-inappropriate content, and are a useful bulwark against the proliferation of unwanted content like spam. It is easier for bad actors to fill a user's feed with such spam if the feed must be shown in reverse chronological order. The proposed Rules

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<sup>1</sup> CCIA is an international, not-for-profit trade association representing a broad cross section of communications and technology firms. For more than 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy.

<sup>2</sup> 143 S. Ct. 2298, 2303 (2023).

<sup>3</sup> 144 S. Ct. 2383, 2403 (2024).

should therefore carefully distinguish artistic choices that keep users engaged from harmful material with no expressive purpose.

To do this, the OAG should specify that not every increase in the amount of time a minor spends using a product or service constitutes a “significant increase.” Instead, the proposed Rules’ scope should be limited to cases where (1) a system design feature uses deceptive and/or misleading means to increase time spent using the product, service, or feature; (2) the design feature harms consumers; and (3) restricting use of the system design feature would not infringe on freedom of expression. These rules would ensure that spam designed to increase engagement is distinguished from an artistic expressive choice.

Regarding countervailing measures, there is no one-size-fits-all approach. Every online service will have a different user base, with different portions at different age levels. Many large online services craft their own countervailing measures tailored to their own user bases.<sup>4</sup> Those that serve children and teens should be required to assess their own design practices based on best practice research. The OAG should work with industry leaders and online safety experts to develop such guidelines. A showing of reasonable care to comply with these guidelines should in turn constitute a safe harbor that allows online businesses to establish that they have not designed their system’s features in a deceptive or misleading manner.

Rules regarding consent should mirror those in established state law. Section 6-1-1303(5) of the CPA already defines “consent” and excludes consent obtained through “dark patterns.” To avoid creating content-based restrictions on speech, the OAG should preserve this definition for all rules established pursuant to the CPA.

## 2. Willful Disregard

Online services should be deemed to have willfully disregarded that a consumer is a minor only upon showing that they have deliberately ignored clear evidence that a consumer is a minor. Consistent with established standards under COPPA, if an online service ignores a user’s direct statement in their own profile that they are a minor, or if the online service’s own marketing materials state that they are treating a consumer as a minor for marketing purposes, it can be said to have willfully disregarded that the consumer is a minor.

An online service should not be deemed to have willfully disregarded that a consumer is a minor merely because it makes products or services that minors could use in theory. For instance, TVs, phones, and computers may be present in homes with minors and may have multiple user profiles. The mere presence of an internet-enabled device in a home containing minors does not establish that minors are using such devices. Even when a minor profile is created or used, the proposed Rules should not require online services to assume that the device’s other users are minors as well. Similarly, online services should never be required to infer that a user is a minor because they consume content intended for children — adults often

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<sup>4</sup> See Competitive Enterprise Institute, *Children Online Safety Tools*, <https://cei.org/children-online-safety-tools/> (last updated Feb. 19, 2025).

watch entertainment designed for younger audiences, and much online content is designed to appeal to a wide array of age groups.<sup>5</sup>

Moreover, this standard should not place an online service in legal jeopardy for failing to verify its users' ages. Forcing online services to collect more data about minors conflicts with data minimization principles ingrained in standard federal and international privacy and data protection compliance practices.<sup>6</sup> Determining a user's age and verifying parental consent inherently requires collecting additional sensitive data from those users, and any document capable of verifying a user's age will likely contain sensitive information. Such excessive monitoring has been shown to negatively affect young people's mental health and development.<sup>7</sup> Furthermore, not all minors will have a parent or guardian who can provide verifiable consent (such as adopted children, children in foster care, or those whose parents have remarried). Additionally, many federal courts have blocked mandatory age verification laws on First Amendment grounds, as they impose content-based barriers to protected speech on both children and adults.<sup>8</sup> For these reasons, the CPA correctly does not require age verification, and the proposed Rules should take care not to define "willful disregard" in a manner that effectively forces online services to adopt it.

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Online service providers have the greatest knowledge of their own user base and are therefore best placed to design their systems to minimize exposure to harmful content based on the risks their users will most likely face. They are already heavily incentivized to shield users from such content — a website overrun by such content will quickly become unusable. Many regulatory frameworks reflect this reality, and reject one-size-fits-all policies that apply to online services with vastly different user bases, as these inflexible approaches further endanger minors' privacy and fail to address the harms the CPA was designed to address.

We appreciate the OAG's consideration of these comments. CCIA looks forward to continuing to participate in the OAG's ongoing regulatory process, including reviewing and providing feedback on the series of proposed Rules. We hope the OAG will consider CCIA a resource as these discussions progress.

<sup>5</sup> See, e.g., Bill Dubiel, *13 Reasons Why Bluey Is So Popular With Adults*, ScreenRant (Sept. 17, 2023), <https://screenrant.com/bluey-popular-adults-reason/>.

<sup>6</sup> See, e.g., *Fair Information Practice Principles (FIPPs)*, Fed. Privacy Council, <https://www.fpc.gov/resources/fipps/>; see also *Principle (c): Data Minimisation*, U.K. Info. Comm'r Off., <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/data-protection-principles/a-guide-to-the-data-protection-principles/data-minimisation/>.

<sup>7</sup> See, e.g., Hannah Quay-de la Valle, *The Chilling Effect of Student Monitoring: Disproportionate Impacts and Mental Health Risks*, Ctr. for Democracy & Tech. (May 5, 2022), <https://cdt.org/insights/the-chilling-effect-of-student-monitoring-disproportionate-impacts-and-mental-health-risk/> (finding that "Monitoring programs, if not carefully implemented, can stifle growth and leave students vulnerable to the chilling effect, placing their mental health at risk").

<sup>8</sup> See, e.g., *NetChoice v. Yost*, No. 2:24-cv-00047, 2025 WL 1137485 (S.D. Ohio Apr. 16, 2025); *NetChoice v. Griffin*, No. 23-cv-05105, 2025 WL 978607 (W.D. Ark. Mar. 31, 2025); *NetChoice v. Carr*, No. 1:25-cv-2422 (N. D. Ga. June 26, 2025); *NetChoice v. Bonta*, No. 24-cv-07885, 2025 WL 28610 (N.D. Cal. Jan. 2, 2025); *NetChoice v. Bonta*, No. 22-cv-08861, 2024 WL 5264045 (N.D. Cal. Dec. 31, 2024); *CCIA v. Uthmeier*, No. 24-cv-438, 2025 WL 1570007 (N.D. Fla. June 3, 2025); *NetChoice v. Fitch*, No. 1:24-cv-170, 2025 WL 1709668 (S.D. Miss. June 18, 2025); *CCIA v. Paxton*, 747 F. Supp. 3d 1011 (W.D. Tex. 2024); *NetChoice v. Reyes*, No. 23-cv-00911, 2024 WL 4135626 (D. Utah Sept. 10, 2024).



Sincerely,

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