

March 11, 2024

Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

**Re: COPPA Rule Review, Project No. P195404**

To the Federal Trade Commission:

The Consumer Technology Association (“CTA”) is writing on behalf of its members in response to the Federal Trade Commission’s (“FTC” or “Commission”) Notice of Proposed Rulemaking to update the Children’s Online Privacy Protection Rule (“NPRM” or “Proposed Rule”).<sup>1</sup> CTA is North America’s largest technology trade association. Our members are the world’s leading innovators—from startups to global brands—helping support more than 18 million American jobs. CTA owns and produces CES® —the most powerful tech event in the world. At CES® 2024, privacy policy featured prominently during a panel discussion on the U.S. Privacy Landscape and in one-on-one conversations with Commissioners, both of which were part of the Innovation Policy Summit.<sup>2</sup>

CTA recognizes how important privacy is for consumers, which is why we support a federal privacy law to ensure consistency and clarity for consumers and innovators when it comes to protecting consumers’ personal information.<sup>3</sup> We also continue to engage with the FTC on data privacy issues, including comments<sup>4</sup> to the agency in response to the *Advance Notice of Proposed Rulemaking on Commercial Surveillance and Data Security*.<sup>5</sup> CTA also previously

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<sup>1</sup> Children’s Online Privacy Protection Rule, Notice of Proposed Rulemaking, 89 Fed. Reg. 2034 (Jan. 11, 2024).

<sup>2</sup> Press Release, CES, *U.S. Sens. Rosen, Lujan, & Lummis, Other Senior U.S. Government Officials to Headline Policy Discussions at CES 2024* (Dec. 21, 2023), <https://www.ces.tech/news/press-releases/ces-press-release.aspx?NodeID=62ce22b6-274f-4000-958c-ca25f03e4d2c>; CES, *The U.S. Privacy Landscape – Consumers Deserve Better Than a Patchwork of Confusion* (Jan. 11, 2024), <https://videos.ces.tech/detail/video/6344707610112/the-u.s.-privacy-landscape---consumers-deserve-better-than-a-patchwork-of-confusion> (video of privacy panel); CES, *“Conversation with a Commissioner” CES Edition* (Jan. 10, 2024), <https://videos.ces.tech/detail/videos/innovation-policy-summit/video/6344639323112/conversation-with-a-commissioner-ces-edition?autoStart=true> (video of FTC Commissioner panel).

<sup>3</sup> CTA, *Advocacy – Privacy*, <https://www.cta.tech/Advocacy/Issues/Privacy> (last visited March 11, 2024).

<sup>4</sup> Comments of CTA, Docket No. FTC-2022-0053 (filed Nov. 21, 2022).

<sup>5</sup> *Advance Notice of Proposed Rulemaking on Trade Regulation Rule on Commercial Surveillance and Data Security*, FTC, 87 Fed. Reg. 51273 (Aug. 22, 2022).

commented<sup>6</sup> on children’s privacy in 2019 in response to the FTC’s *Request for Public Comment on the Implementation of the Children’s Online Privacy Protection Rule*.<sup>7</sup>

In the current proceeding, CTA is concerned that the definitions and proposed rules in the NPRM create confusion for operators and present significant compliance burdens. CTA requests that the FTC clarify proposed rules for evaluating whether a website or online service is directed to children and obtaining parental consent. We also ask the Commission to revise the effective date of the proposed rules to give businesses adequate time to comply.

#### Definition of “Directed to Children” and “Mixed Audience”

The basis of the Children’s Online Privacy Protection Act (“COPPA”) is that the rules apply to websites or online services directed to children under the age of 13.<sup>8</sup> The Proposed Rule attempts to skirt this baseline by creating a confusing definition of a “mixed audience website or online service.” Under the Proposed Rule, a website or online service is designated as “mixed audience” if it is determined to be child-directed under the Rule but does not target children as its primary audience and does not collect personal information from any visitor prior to collecting or ascertaining age information.<sup>9</sup> Confusion exists as to whether it is permissible to collect information necessary to determine age. CTA asks the FTC to clarify that the Proposed Rule allows operators to collect information prior to age determination if needed to verify age and is not used for any other purpose.

Separately, CTA supports the FTC’s conclusion that the COPPA Rule’s “actual knowledge” requirement should not be modified to include “constructive knowledge,” and should apply only when an operator has actual knowledge that it is collecting or maintaining personal information from a child.<sup>10</sup>

#### Parental Consent

CTA supports the proposal to amend the COPPA Rule’s definition of “online contact information” to include “an identifier such as a mobile telephone number provided the operator uses it only to send a text message.”<sup>11</sup> This type of communication is consistent with COPPA’s legislative intent which allows the use of any reasonable consent mechanism based on

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<sup>6</sup> Comments of CTA, Docket No. FTC-2019-0054 (filed Dec. 9, 2019).

<sup>7</sup> *Request for Public Comment on the FTC’s Implementation of the Children’s Online Privacy Protection Rule*, FTC, 84 Fed. Reg. 35842 (July 25, 2019).

<sup>8</sup> 16 C.F.R. § 312.2.

<sup>9</sup> *Notice of Proposed Rulemaking on Children’s Online Privacy Protection Rule*, FTC, 89 Fed. Reg. 2047 (Jan. 11, 2024).

<sup>10</sup> 16 C.F.R. § 312.3.

<sup>11</sup> *Notice of Proposed Rulemaking on Children’s Online Privacy Protection Rule*, FTC, 89 Fed. Reg. 2047 (Jan. 11, 2024).

available technology. It also meets consumers where they are, as they increasingly use mobile devices such as smartphones to communicate.<sup>12</sup>

However, the NPRM stops short of explicitly recognizing consent by parental text message as a pre-approved mechanism for obtaining verifiable parental consent that would be similar to the circumstance in which “email plus” is permitted. The COPPA Rule also does not refer specifically to “online contact information” in any of the enumerated pre-approved methods for verifiable parental consent.<sup>13</sup> CTA requests that the FTC add language to Section 312.5(b)(2) of the rule to clarify that having a parent reply to a text message sent using the parent’s online contact information is an approved method to obtain verifiable parental consent.<sup>14</sup> Adding this language to the rule would allow operators to obtain parental consent by “text plus” in the same way that the rule allows for “email plus.”

### Effective Date

For operators to have sufficient time to comply with new requirements, the effective date of the proposed rules should be at least two years after publication of the rule in the Federal Register. To comply with new rules, operators would potentially need to modify how websites and services are engineered and redesign user interfaces. For CTA members this type of project needs to be planned with a year or more of lead time. The European Union (“EU”) General Data Protection Regulation (“GDPR”) provided two years for operators to comply,<sup>15</sup> and CTA respectfully requests that the FTC apply the same timeline.

In conclusion, CTA appreciates the opportunity to respond to the NPRM and shares the FTC’s commitment to protecting children’s privacy. We remain concerned about the lack of clarity in the Proposed Rule.

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<sup>12</sup> According to CTA’s 2023 U.S. Consumer Technology Ownership & Market Potential Study, smartphone ownership and use continues to increase among consumers. CTA, 2023 U.S. Consumer Technology Ownership and Market Potential Study (May 2023), [https://shop.cta.tech/products/2023-u-s-consumer-technology-ownership-and-market-potential-study?pr\\_prod\\_strat=e5\\_desc&pr\\_rec\\_id=0c7847ab4&pr\\_rec\\_pid=7778360950954&pr\\_ref\\_pid=6745660260522&pr\\_seq=uniform](https://shop.cta.tech/products/2023-u-s-consumer-technology-ownership-and-market-potential-study?pr_prod_strat=e5_desc&pr_rec_id=0c7847ab4&pr_rec_pid=7778360950954&pr_ref_pid=6745660260522&pr_seq=uniform).

<sup>13</sup> 16 C.F.R. § 312.5(b).

<sup>14</sup> *Suggested language for Section 312.5(b)(2)(ix)*: Provided that, an operator that does not “disclose” (as defined by § 312.2) children’s personal information, may use a text message to a parent’s mobile telephone number, coupled with additional steps to provide assurances that the person providing the consent is the parent. Such additional steps include: Sending a confirmatory text message to the parent following receipt of consent, or obtaining a postal address or email address from the parent and confirming the parent’s consent by letter or by email, or through a telephone call. An operator that uses this method must provide notice that the parent can revoke any consent given in response to the earlier text message.

<sup>15</sup> Regulation (EU) 2016/679 of Apr. 27, 2016, General Data Protection Regulation, art. 99, 2016 O.J. (L. 127).

Sincerely,

/s/ J. David Grossman

J. David Grossman  
Vice President, Regulatory Affairs

/s/ Rachel Nemeth

Rachel Nemeth  
Sr. Director, Regulatory Affairs