



**Before the  
Federal Trade Commission  
Washington DC, 20580  
In the Matter of the Request for Comment on Updates to the  
Children’s Online Privacy Protection Rule, (Released Jan. 11, 2024)**

**Comments of the American Consumer Institute**

The American Consumer Institute is a nonprofit 501(c)(3) education and research organization. Its mission is to identify, analyze, and protect the interests of consumers in legislative and rulemaking proceedings in information technology, health care, insurance, and other matters. The American Consumer Institute hereby submits these comments in response to the above-captioned proceeding.

Since the rise of the internet, there have been concerns about data privacy, especially for children. The Children’s Online Privacy Protection Act, otherwise known as COPPA, was passed in 1998 to create a framework for determining when websites can and cannot knowingly collect and use data obtained from minors.<sup>1</sup> As the internet has evolved, COPPA has undergone updates to better reflect the changing nature of how content is accessed online, with the latest update occurring in 2013.<sup>2</sup> These comments to the Federal Trade Commission (FTC) are meant to address areas of the proposed rulemaking related to the process of determining whether a website is age-appropriate. They are also intended to weigh in on privacy and the feasibility of obtaining parental consent verified through facial recognition technology.

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<sup>1</sup> Children’s Online Privacy and Protection Act 15 U.S. Code Chapter 91, <https://www.law.cornell.edu/uscode/text/15/chapter-91>.

<sup>2</sup> FTC Press Release, “Revised Children’s Online Privacy Protection Rule Goes into Effect Today,” *FTC.gov*, published July 1, 2013, accessed March 4, 2024, <https://www.ftc.gov/news-events/news/press-releases/2013/07/revised-childrens-online-privacy-protection-rule-goes-effect-today>.

Since COPPA is specifically designed to protect the privacy of children under the age of thirteen, it is primarily targeted to websites whose audience is mostly children. To determine whether a website must comply, the FTC mandates a multi-factor approach to user authentication.<sup>3</sup> Under the current version of the rule, several factors can be used to determine whether the website targets children. Among these factors are the subject matter, use of celebrities who appeal to children, and empirical evidence that the website is intended to appeal to children or has a large underage audience.<sup>4</sup>

The FTC would like to add two additional factors to this list including third-party reviews and the age of users on similar websites.<sup>5</sup> Unfortunately, such a requirement could prove very difficult for website operators to meet, as it would rely heavily on outside actors who have no knowledge of which reviews or websites are relevant.

Specifically, website operators do not have access to user data on other websites. This lack of information leaves companies unsure of whether their website is violating COPPA. Therefore, including these factors in the process of determining whether a website is intended for children needs clearer definitions or to be dropped entirely to maintain the current standard.

The proposed rule also suggests implementing methods for parents to give affirmative permission for their children to use a service. One of these methods involves parents submitting a picture of their government ID along with a picture of their face to compare the two and verify that they, and their child, are permitted to use the website.<sup>6</sup> While this method would solve the issue of age verification for COPPA, it comes with significant issues to user privacy and could be a massive burden for affected companies.

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<sup>3</sup> “Complying with COPPA: Frequently Asked Questions” *Federal Trade Commission*, July 2020, accessed March 4, 2024, <https://www.ftc.gov/business-guidance/resources/complying-coppa-frequently-asked-questions>.

<sup>4</sup> Ibid.

<sup>5</sup> Children’s Online Privacy Protection Rule, January 11, 2024, <https://www.federalregister.gov/documents/2024/01/11/2023-28569/childrens-online-privacy-protection-rule>.

<sup>6</sup> Ibid.

The rule would, by necessity, collect far more personal information from users than is currently standard. Rather than using a birthdate that may or may not be accurate, moving to a facial recognition system would provide companies with data about a person's race, ethnicity, age, gender, and other identifiable information gained from either the submitted photo or government ID.

In addition, the language of the rule suggests that this verification process would need to be conducted manually by a trained professional.<sup>7</sup> With more people having to see and process the data there are more opportunities for mishandling said data. Even with strict requirements for companies to delete this data once the process has been completed, such a requirement would introduce more risk. It's not hard to imagine someone using the street address on a government ID to target a particular user or a data leak occurring due to improper data management. In addition, requiring so much demographic information could lead to discrimination, even if unintended. As it stands, this method would collect far more data than necessary to accomplish its purpose and should be dropped from the updated rule.

In addition to concerns about privacy, the proposed rule states that only human users can review and approve ID verifications.<sup>8</sup> The workload this would create, and the number of workers companies would need to hire as a result, would be enormous.

A prime example is the video game *Fortnite*, which the FTC has already acknowledged is popular with children.<sup>9</sup> According to *Fortnite's* website, the game regularly hosts over one million players at a time and has previously hosted more than eleven million at once.<sup>10</sup> Given that a significant number of these players are likely children, the proposed rule would require *Fortnite* to obtain parental permission before

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<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> "FTC Finalizes Order Requiring Fortnite maker Epic Games to Pay \$245 Million for Tricking Users into Making Unwanted Charges," *FTC.gov*, March 14, 2023, Accessed March 5, 2024, <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-finalizes-order-requiring-fortnite-maker-epic-games-pay-245-million-tricking-users-making>.

<sup>10</sup> "Fortnite Player Count," *Fortnite.gg*, accessed March 5, 2024, <https://fortnite.gg/player-count>.

allowing them to play. It would pose a significant challenge to approve even a fraction of these players in a timely manner.

Remaining compliant with the rules would prove costly as it would require companies to hire many new workers or divert resources. Small businesses would struggle to keep up, as they may not have the time or resources to comply with these regulations.

As technology evolves, so should the law. However, it is important to carefully weigh the impact that any new law may have on businesses. Clarifying the rule on whether a website is age-appropriate as well as reconsidering the provision on parental permission through photos would go a long way toward guaranteeing consumer safety and establishing a predictable regulatory environment for businesses.