

September 10, 2025

*Submitted via electronic form at  
<https://coag.gov/privacy-protections-for-childrens-online-data/>*

The Honorable Philip J. Weiser  
Attorney General  
Colorado Department of Law  
Ralph L. Carr Judicial Building  
1300 Broadway, 10<sup>th</sup> Floor  
Denver, CO 80203

**Re: Proposed Draft Amendments to the Colorado Privacy Act Rules**

Dear Attorney General Weiser,

On behalf of the Network Advertising Initiative (“NAI”), thank you for the opportunity to comment on the proposed draft amendments to the Colorado Privacy Act (“CPA”) Rules (“Proposed Draft Amendments”).<sup>1</sup> We have appreciated the opportunity to provide written comments throughout your rulemaking initiatives under the CPA, and we support the Department of Law’s efforts to craft updated Rules that implement the statutory changes to the CPA enacted in Senate Bill 24-041 (“Children’s Privacy Amendment” or “Amendment”)<sup>2</sup> pertaining to privacy protections for Minors’ online data.

The NAI is pleased to again provide written comments concerning implementation of the Children’s Privacy Amendment and is generally supportive of the Proposed Draft Amendments issued by the Department of Law on July 19, 2025. Particularly, the NAI supports the avoidance of any regulatory language that could be interpreted as an affirmative requirement to implement age verification systems.

However, as part of the knowledge standard, the NAI urges the Department to require Controllers that operate websites and services to determine if those website and services, or portions thereof, are directed to minors, and to signal this determination consistent to the way such businesses are already doing for websites and services directed to children under the Children’s Online Privacy Protection Act (COPPA). In conjunction, the NAI recommends further clarity that it is the responsibility of other Controllers [and processors] to recognize these signals, consistent with the practices applied under COPPA.

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<sup>1</sup> Colorado Department of Law Proposed Draft Amendments to the Colorado Privacy Act Rules, Colo. Code Regs § 904-3 (proposed July 29, 2025) (hereinafter “Proposed Draft Amendments”) <https://coag.gov/app/uploads/2025/07/CPA2025ProposedRuleAmendments-1.pdf>.

<sup>2</sup> Children’s Privacy Amendment, S.B. 24-041, 74th Gen. Assemb., Reg. Sess. (Colo. 2024) (enacted May 31, 2024) [https://leg.colorado.gov/sites/default/files/2024a\\_041\\_signed.pdf](https://leg.colorado.gov/sites/default/files/2024a_041_signed.pdf).

These steps can serve to create a working framework that is clear, effective, consistent with current federal requirements, and well-aligned with the text of the Children’s Privacy Amendment. To this end, the NAI offers the following detailed recommendations. Attached to these comments are a set of proposed amendments to the draft regulations (Exhibit A).

- I. The Regulations should include an affirmative requirement for controllers that operate a website or service to (a) make the determination as to whether that website or service, or portion thereof, is directed to minors, and (b) communicate that determination to any third-party controllers that may collect and process personal data on that website or service.**

Digital advertising businesses, including but not limited to NAI members, work in partnership with a wide range of websites and services in providing digital advertising services and, thus, are not well-positioned to make a determination about the intended audience of a specific website or service. As currently drafted, the regulations risk placing an unreasonable requirement on all controllers that partner with websites and services to make this determination.<sup>3</sup> Even worse, there may be cases where multiple controllers make disparate and conflicting determinations as to whether a website or service, or portion thereof, is directed to minors. For example, a controller that operates a website and has determined the website is directed to minors may fail to communicate this determination to the third-party controllers it partners with, resulting in the third-party controllers reaching disparate conclusions as to the target audience of the website.

In the absence of additional amendments, there will be substantial uncertainty amongst controllers as to the status of websites and services with which they partner, and the regulations will not have their desired effect of adequately designating sites and services as *directed to minors*.

To address these potential pitfalls, and promote certainty amongst controllers that work in partnership with operators of websites and services, the Proposed Draft Amendments should place a clear requirement on the controllers that operate websites and service to (a) make the determination as to whether that website or service is directed to minors, and (b) communicate that determination to any third-party controllers and processors that may collect and process personal data on that website or service. The NAI elaborates further on this recommendation in the following paragraphs.

- a. The Regulations should require that operators of websites and services are solely responsible for determining whether a website or service, or portion thereof, is directed to minors.**

Similar to other state privacy statutes, Colorado’s definition for “Controller” is broadly defined to include any person that, alone or jointly with others, determines the purposes for and means of processing personal data.<sup>4</sup> In its efforts to preserve privacy as a fundamental right to Coloradans,<sup>5</sup> having a broad definition for “Controller” is essential. However, in the context of determining whether a website or service is directed to minors, the concept of a “Controller” is so broad, it risks encompassing various third-party controllers that work in partnership with websites and services that are, in many cases, ill-equipped to make a determination as to whether a website or service is directed to minors.

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<sup>3</sup> See Proposed Draft Amendments at Rule 6.13(A)(2).

<sup>4</sup> See Colo. Rev. Stat. § 6-1-1303(7).

<sup>5</sup> See *id.* at § 6-1-1302(a)(II).

To establish a distinction between first-party controllers that operate websites and services and third-party controllers, such as NAI members that provide digital advertising services, the NAI recommends requiring controllers that operate websites and services to make a determination as to whether it has directed a website or service, or portion thereof, to minors. To achieve this, the Department of Law may consider adopting a definition for “Operator” similar to the definition used under COPPA.<sup>6</sup> This approach would enable the Department of Law to more easily distinguish between first-party publisher controllers (the providers of websites and services that interact directly with consumers) from third-party controllers (such as advertising technology companies that, in most cases, do not interact directly with consumers). This would also support harmonization with federal laws and regulations, such as COPPA and its implementing regulations substantially.

Nonetheless, distinguishing those controllers that operate a website or service from those controllers that serve only as partners is essential for minimizing uncertainty amongst controllers as to the status of websites and services with which they partner.

**NAI Recommendation:** Modify the Rules to establish a distinction between first-party controllers that operate websites and services from those third-party controllers that serve only as partners to the first-party controller. *See Exhibit A for redlined provision.*

**b. The Regulations should add “or portion thereof” language to be consistent with COPPA and allow flexibility for controllers that operate large websites or services to segment sections of their website or service as directed to minors.**

Under COPPA, a “website or online service directed to children” is defined to include that portion of a commercial website or online service that is directed to children. The inclusion of the “or portion thereof” language allows operators of large platforms (e.g. YouTube) to designate portions of their platform to be child-directed without classifying the entire platform as such.<sup>7</sup> This flexibility is essential for large websites and services to effectively monetize those portions of a website or service that are directed to a general audience while avoiding collecting personal data on portions of the website or service that are directed to children.

This “or portion thereof” concept was recently reiterated in a complaint filed against Disney, where the FTC alleged that Disney failed to appropriately label videos it had posted on YouTube as “Made for Kids,” acknowledging that YouTube includes portions of its website that are specifically directed to children.<sup>8</sup> The NAI recommends that the regulations take a similar approach and appropriately adopt the “or portion thereof” language where necessary to allow for this flexibility.

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<sup>6</sup> For example, the Department of Law could define “Operator” to mean a Controller who operates a website or service. As a Controller is already defined in the CPA, it would be unnecessary to produce a definition identical to the definition of “Operator” under COPPA. *See* 15 U.S.C. § 6501(2).

<sup>7</sup> *See* 16 C.F.R. § 312.2 (2025) (defining “Website or online service directed to children”) (available at <https://www.ecfr.gov/current/title-16/chapter-I/subchapter-C/part-312>).

<sup>8</sup> *See United States v. Disney*, Case No. 2:25-cv-08223 (C.D. Cal. 2025), 9/2/2025 Complaint; *see also* Disney to Pay \$10 Million to Settle FTC Allegations the Company Enabled the Unlawful Collection of Children’s Personal Data, Federal Trade Commission (Sept. 2, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/09/disney-pay-10-million-settle-ftc-allegations-comp-any-enabled-unlawful-collection-childrens-personal>.

**NAI Recommendation:** Modify the Rules to allow operators of websites and services to designate portions of their website or service as directed to minors. *See Exhibit A for redlined provision.*

- C. The Regulations should require controllers that operate a website or service, or portion thereof, directed to minors to communicate that determination to any third-party controllers that may collect and process personal data on that website or service.**

Additionally, controllers that operate websites and services should be required to communicate the minor status of the website or service, or portion thereof, to the third-party controllers and processors that may collect and process personal data on that website or service, as it is necessary to accomplish the objectives of the Children’s Privacy Amendment and maximize compliance. This requirement is also supported by precedent under COPPA.<sup>9</sup>

The online advertising industry has widely embraced the use of the “COPPA flag” to provide third-party partners a signal that the first-party controller’s target audience is children.<sup>10</sup> In short, the COPPA flag is an attribute within an advertising bid request that signals to third-party advertising technology companies that the website is directed to children under COPPA. Accordingly, the NAI recommends that the regulations require a similar type of notice for websites or services directed to minors to ensure third-party controllers are properly notified.

**NAI Recommendation:** Add a provision under the Rules that ensures a controller that operates a website or service is required to communicate the minor status of the website or service, or portion thereof, to any controllers or processors it shares personal information with. *See Exhibit A for the recommended provision.*

- II. The relevant factors for determining whether a controller has directed a website or service to minors should be tailored and refined to minimize the risk of encompassing websites and services that are directed to a general audience.**

Whether a website or service is directed to minors has been identified as a key factor to determine if a controller has willfully disregarded that a consumer using a website or service is a minor. However, this approach must be balanced with the reality that it can also be an unreliable indicator for presuming any single viewer is a minor, as many online services and types of content have mixed-age audiences. As such, clarity and specificity in this area is essential. In our previous comments, we distinguished children (under the age of thirteen) from the broader group of minors (under the age of eighteen), and encouraged the Department of Law to consider these distinctions when developing factors for the knowledge standard.<sup>11</sup>

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<sup>9</sup> *E.g. United States v. Microsoft*, 2023-cv-00836 (W.D. Wash.) 6/5/2023 Stip. Ord. at 13 (FTC requiring Xbox live to “at each instance when Disclosing Personal Information from a Child Microsoft Account to any video game publisher on such service, indicate to such party (such as through an API) that the user is a child under age 13.”), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/microsoftproposedstiporder.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/microsoftproposedstiporder.pdf).

<sup>10</sup> See generally Guide to Navigating COPPA, Interactive Advertising Bureau (Oct. 2019), [https://www.iab.com/wp-content/uploads/2019/10/IAB\\_2019-10-09\\_Navigating-COPPA-Guide.pdf](https://www.iab.com/wp-content/uploads/2019/10/IAB_2019-10-09_Navigating-COPPA-Guide.pdf).

<sup>11</sup> Comment Letter from Network Advertising Initiative (NAI) to Philip J. Weiser, Colo. Att’y Gen., Re: Pre-Rulemaking Considerations for the Colorado Privacy Act Children’s Privacy Amendment (submitted electronically on July 11, 2025), <https://thenai.org/wp-content/uploads/2025/07/NAI-Comment-on-CO-Childrens-Privacy-Rulemaking.pdf>.

As previously noted, there is a substantial difference between sites and services directed to children under the age of thirteen and those intended for teenagers. Even more challenging, there is substantially less difference between what interests a covered seventeen-year-old and an adult at the age of eighteen. For these reasons, the NAI recommends tailoring and refining the factors proposed in the rulemaking for determining whether a controller has directed a website or service to minors to minimize the risk of encompassing websites and services that may be directed to a general audience.

Even though its language is focused on websites and services directed to *children*, the COPPA Rule provides an established precedent that can be used to inform the development of factors for determining whether a controller has directed a website or service to minors.<sup>12</sup> As such, we recommend the CPA regulations use COPPA's factors to determine "whether a website or online service, or a portion thereof, is directed to children" as a guide for crafting factors to determine whether a "Controller has directed the website or service to Minors[.]" For example, the NAI agrees with the Department of Law that certain activities and incentives could be indicative of whether a website or service may be directed to minors. But here, the NAI recommends specifying that any activity or incentive must be *directed* to minors as opposed to *oriented*. The NAI believes this distinction is necessary because, similar to subject matter, there is risk that some activities and incentives that are enjoyed by a general audience may be incorrectly considered minor-oriented. For example, minors might interact with some content despite the content appealing to a general audience.<sup>13</sup>

The COPPA Rule also identifies both "the age of models" and "presence of child celebrities" as factors that are indicative of whether a website or service, or portion thereof, may be directed to children. As these factors have proven workable for both regulators and operators for decades,<sup>14</sup> the NAI recommends incorporating a modified version of these factors in place of "visual content" for determining whether a website or service is directed to minors. "Visual content" is an overly broad factor when applying to teenage minors, despite being more applicable to content targeting young children.<sup>15</sup>

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<sup>12</sup> See generally 16 C.F.R. § 312.2 (2025) (defining "Website or online service directed to children") (available at <https://www.ecfr.gov/current/title-16/chapter-I/subchapter-C/part-312>).

<sup>13</sup> See *YouTube Channel Owners: Your Content Directed to Children?*, FTC Business Guidance Blog (Nov. 21, 2019) ("To be clear, your content isn't considered "directed to children" just because some children may see it. However, if your intended audience is kids under 13, you're covered by COPPA and have to honor the Rule's requirements."), <https://www.ftc.gov/business-guidance/blog/2019/11/youtube-channel-owners-your-content-directed-children>.

<sup>14</sup> E.g. *United States v. Cognosphere*, No. 2:25-cv-447 (C.D. Cal. 2025), 1/17/2025 Complaint (alleging defendant hired online child influencers to market and promote the Genshin Impact game, which suggests the use of young celebrities to appeal to children), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/cognosphere\\_complaint.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/cognosphere_complaint.pdf).

<sup>15</sup> The FTC has considered "visual content" in several enforcement actions where bright colors and animated characters were used in games and content directed to children. However, for minors that are thirteen and older, the lines become blurred when evaluating "visual content" as some programs, such as *South Park* or *Family Guy*, incorporate bright colors and animated characters, and thus may visually appear to be directed to minors, despite clearly targeting an adult audience. See FTC Business Guidance Blog, *supra* note 14 ("[J]ust because your video has bright colors or animated characters doesn't mean you're automatically covered by COPPA. While many animated shows are directed to kids, the FTC recognizes there can be animated programming that appeals to everyone."), <https://www.ftc.gov/business-guidance/blog/2019/11/youtube-channel-owners-your-content-directed-children>; see also *FTC v. Retro Dreamer*, Case No. 5:15-cv-2569 (C.D. Cal. 2015), 12/17/2015 Complaint, (determining that Defendant operates online services directed to children under the age of 13 due to the use of "brightly colored, animated characters" coupled with their "subject matter, which includes washing smiley, cheerful dishes, collecting cats, moving ice cream, and causing cartoons to sneeze"); *FTC v. Lai Systems*, Case No. 2:15-cv-9691 (C.D. Cal.

Lastly, some controllers incorporate terminology that would be a strong indicator as to whether the website or service is directed to minors. For example, incorporating the word “teen,” such as teenvogue.com, provides a clear indicator the website is directed to minors. For this reason, the NAI recommends adding a factor to this effect—that use of terminology such as “teen” or “kids” would serve as a strong indicator that the target audience of a website or service is minors.

**NAI Recommendation:** Refine the factors described in the Rules to more effectively capture sites and services that would be directed to minors. *See Exhibit A for redlined provision.*

### **III. Conclusion**

The NAI appreciates the opportunity to comment on the Proposed Draft Amendments to the CPA Rules. If we can provide any additional information, or otherwise assist your office as it continues to engage in the rulemaking process, please do not hesitate to contact me (david@thenai.org) or our privacy counsel, Nick Meyer (nick@thenai.org).

Respectfully Submitted,

David LeDuc  
Vice President, Public Policy  
Network Advertising Initiative (NAI)

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2015), 12/17/2015 Complaint, (“LAI’s kids’ apps contain brightly colored, animated characters including dogs and children... and involve only simple play.”).

## EXHIBIT A

The Department of Law's proposed amendments are illustrated by *red text* and ~~red-strikethroughs~~. NAI Recommended Changes are illustrated by green underline for recommended additions and ~~purple-strikethrough~~ for recommended deletions.

### Rule 6.13 DUTY REGARDING MINOR DATA – KNOWLEDGE STANDARD

A. The following factors may be considered when determining if a Controller willfully disregards that a Consumer is a Minor as contemplated in C.R.S. § 6-1-1308.5:

1. If the Controller has directly received information from a parent or Consumer indicating that the Consumer is a Minor.

a. Example: A Controller requires or allows Consumers to provide their date of birth at sign up and the Consumer indicates they are a Minor.

b. Example: A Controller requires Consumers to provide their date of birth at sign up, which can be edited once registration is completed. A Consumer uses a fake birthdate to sign up and subsequently revises their birthdate after registration to indicate that they are a Minor.

c. Example: A Controller receives a credible report from a parent about a Minor using the service.

d. Example: A Consumer provides their age in the bio section of the profile on a Consumer's service indicating that they are a Minor.

e. Example: A Consumer provides relevant indicia that they are a Minor, such as year of birth or grade level, in the profile or account set up of a service.

2. If the Controller that operates a website or service has directed ~~the~~that website or service, or portion thereof, to Minors, ~~considering different factors such as subject matter, visual content, language, and use of Minor-oriented activities and incentives.~~

~~a. Example: A Controller creates and distributes marketing and promotional materials related to the website or service that specifically appeal to Minors.~~

3. If a Controller receives a signal from the Controller that operates a website or service that it has directed that website or service, or portion thereof, to Minors.

~~43.~~ If the Controller has categorized a Consumer as a Minor for marketing, advertising, or internal business purposes.

a. Example: A Controller uses Consumer data (such as user-generated content or data provided by a third party) to estimate a Consumer's age, which indicates that they are a Minor, and the Controller serves ads to them based on that estimation.

B. In addition to the factors included in this part 4 CCR 904-3, Rule 6.13, Controllers may consider statutes, administrative rules, and administrative guidance concerning age knowledge standards from other jurisdictions when evaluating the appropriateness of treating a Consumer as a Minor

as contemplated in C.R.S. § 6-1-1308.5.

C. Consistent with C.R.S. § 6-1-1304(3)(f), nothing in this part shall require a Controller or Processor to implement an age verification or age-gating system or otherwise affirmatively collect the age of consumers.

D. When determining if a controller that operates a website or service has directed that website or service, or portion thereof, to Minors, the following factors may be considered:

- Any use of terminology that specifically references minors. E.g. a website that incorporates “teen” or “kids” in its title.
- Use of activities and incentives directed specifically to Minors.
- Use of minor models.
- Presence of minor celebrities.

E. A controller that operates a website or service directed to Minors shall communicate the minor status of the website or service, or portion thereof, to any controllers or processors it shares personal information with.