

October 2, 2026

The Honorable Charity R. Clark
Attorney General
109 State Street
Montpelier, VT 05609

RE: Proposed Rules for Sections 2249f of the Vermont Age-Appropriate Design Code

Dear Attorney General Clark,

The Network Advertising Initiative ("NAI") respectfully submits these comments in response to the proposed rules implementing Vermont's Age Appropriate Design Code ("VTAADC"), concerning Prohibited Data and Design Practices ("Draft Rules"). The NAI appreciates the opportunity to provide technical and policy perspective on these important regulations, which will have significant practical implications for the digital advertising ecosystem and for the ad-supported services that consumers across Vermont—and across the country—rely on every day.

Founded in 2000, the NAI is the leading non-profit, self-regulatory trade association for advertising technology companies, including nearly 80 members that span the ad-tech industry. For over 25 years, the NAI has promoted strong consumer privacy protections, a free and open Internet, and enabled small businesses to thrive by promoting the highest voluntary industry standards for the responsible collection and use of consumer data.¹ For example, prior to the proliferation of state-level consumer privacy laws, the *NAI Code of Conduct* prohibited NAI member companies from knowingly processing children's data for targeted advertising without parental consent.² In 2025, the NAI adopted a new Privacy Framework that superseded and replaced our longstanding Code of Conduct, with the goal to help member companies better understand their myriad existing legal obligations on state and federal privacy laws, and to enhance their privacy and data governance programs.³

NAI members have a direct and substantial interest in the Draft Rules. The digital advertising industry funds the open, ad-supported internet. Regulations governing how covered businesses may process data of covered minors, or when it is known that minors are present will therefore affect the economic viability of an extraordinarily wide range of online content and services. Where advertising revenue is foreclosed because of the inability to perform even the most fundamental digital advertising practices, content providers and app developers lose the primary revenue source that enables them to offer free, accessible services to all users.

¹See History of the NAI, The Network Advertising Initiative, <https://thenai.org/about-the-nai-2/history-of-the-nai/>.

² See 2020 NAI Code of Conduct § II.D.1 ("The Code prohibits member companies from creating segments for Tailored Advertising specifically targeted to children under 16 without obtaining verifiable parental consent.").

³ See "NAI Announces Framework for New Era of Digital Advertising Self-Regulation," <https://thenai.org/press/nai-announces-framework-for-new-era-of-digital-advertising-self-regulation/>.

The NAI supports the Vermont Legislature's goals of protecting minors from harmful data practices and manipulative design. Responsible digital advertising is entirely compatible with these goals. Our concerns are focused narrowly on provisions of the Draft Rules that, as written, are inconsequential to achieve the VTAADC's objective to protect minors from profiling and related ad-targeting while likely having significant unintended consequences for the ad-supported services that all consumers depend on.

These comments recommend two categories of changes. In Section I, the NAI recommends that the Draft Rules align more closely with the Children's Online Privacy Protection Act (COPPA) in two key respects: to include an exception for low-risk data sharing for essential advertising to sustain digital media; and to allow for verifiable consent for secondary uses.

In Section II, the NAI recommends a series of tailored amendments to enable compliance by businesses without undermining the core protections established by the law. These recommendations include: limiting the conspicuous monitoring signal requirement to active tracking features; and incorporating statutorily defined terms "personal data" and "de-identified data" to align more effectively with the VTAADC.

I. Align the Draft Rules with the COPPA in Two Key Areas: (1) Include an Exception for Contextual Advertising and Essential Programmatic Ad Practices; and (2) Allow for Verifiable Consent to Authorize Secondary Uses Otherwise Prohibited by the Draft Rules.

The Draft Rules define "necessary to provide a service" as data collection or use that is "strictly required to provide a specific feature directly responsive to an express and unambiguous request" and "cannot reasonably be achieved through less data-intensive means." The definition explicitly lists what is excluded from "necessary to provide a service," including: using data to "tailor, prioritize, recommend, or modify media" based on behavioral data or inferred preferences; "engagement optimization;" "advertising;" and "non-essential analytics."

The Draft Rules further prohibit covered businesses from collecting, retaining, using, selling, or sharing personal data of minors unless these practices fall within the definition of "necessary to provide an online service, product, or feature." Combined with the explicit exclusion of all "advertising" from that definition, these provisions effectively prohibit covered businesses from processing *any* personal data in connection with the delivery of digital advertising when minors may be present—regardless of whether the advertising involves targeting, profiling, or other practices that may pose a meaningful risk to minors.

A. COPPA's Internal Operations Exception Permits Limited Advertising Activities

For over two decades, COPPA and its implementing regulations have grappled with precisely the question the Draft Rules now address: what data processing is legitimate and necessary in the context of services that are directed to children? Current federal regulations under COPPA permit the collection and processing of persistent identifiers for a limited set of advertising practices that are essential to child-directed websites and services but do not entail retention of children's personal information or its use in behavioral targeting or profiling.⁴ COPPA's internal operations exception also provides for the use

⁴ See 16 C.F.R. § 312.2 (definition of support for the internal operations of the website or online service).

of these identifiers to measure and cap the frequency of ad serving on a specific device, as well as enabling necessary security measures, such as preventing ad click-fraud.

COPPA defines "support for the internal operations of the website or online service" to include a defined set of data processing activities that are permissible even for the child-directed services that COPPA applies to.⁵ These permissible internal operations include activities related to a carefully delineated set of advertising practices that do not pose significant risks to children. Specifically, COPPA permits:

- Contextual advertising—serving ads based on the content of the current page or application, not based on a behavioral profile of the user;⁶
- Frequency capping—limiting how many times an individual ad is shown to a given user or device;
- Ad performance and reach measurement—tracking whether and how many times an ad was served, without building individual behavioral profiles;
- Logging the number and type of ads served on a particular day to a particular website, application, or device; and
- Billing and related administrative reporting on ad delivery.

These are not incidental or marginal activities; they are essential to the operation of the ad-supported internet. Further, these practices are fundamentally different from the practices that both COPPA and the VTAADC are designed to prevent: behavioral targeting; profiling, and retargeting based on a user's history across sites and applications.⁷

The FTC last revisited this issue when it considered updates to the COPPA Rule in 2024, reaffirming an acceptable set of low-risk uses of personal information to enable essential digital advertising practices.⁸ As a result of that process, the FTC's updated COPPA rule, published in January 2025, reaffirmed contextual advertising as a permissible purpose that is compatible with child-protective data regulations, retaining the practice as an integral component of internal operation.⁹

Congress has similarly recognized the importance of preserving this distinction in proposed bipartisan, bicameral federal legislation addressing children's online privacy. Both branches of the federal government responsible for children's digital privacy protection have, with careful deliberation, also concluded that a limited set of non-profiling advertising activities may continue when children are present.¹⁰

⁵ *Id.*

⁶ Notably, contextual advertising relies on an ad delivery and accountability infrastructure that requires limited use of pseudonymous identifiers, such as cookies. These identifiers are necessary to frequency cap, prevent fraud, and measure whether an ad was viewed. The COPPA Rules understands this reality by allowing for the collection and processing of persistent identifiers when used for the sole purpose of providing "support for internal operations." See 16 CFR 312.5(c)(7).

⁷ See *e.g.*, 9 V.S.A. § 2449c(b)(2) (establishing a duty of care to prevent the use of a covered minor's personal data that may result in reasonably foreseeable compulsive use of an online service, product or feature).

⁸ FTC Children's Online Privacy Protection Rule, 89 Fed. Reg. 2043 (proposed Jan. 11 2024) (codified at 16 C.F.R. pt. 312) (rejecting argument against exception allowing persistent identifiers for children used in internal operations, because "the privacy benefits of such an approach outweigh the potential harm.").

⁹ 16 C.F.R. § 312.2 (2026).

¹⁰ See S. Rep. No. 119-99 (2026); KIDS Act, H.R. 7757, 119th Cong. (2026).

B. The Draft Rules Prohibition on All Advertising Functions is More Restrictive and Not Required by the VTAADC

The VTAADC does not mandate the categorical prohibition on advertising-related processing that the Draft Rules would impose. The VTAADC directs the Attorney General's Office ("AGO") to prohibit data processing and design practices that "lead to compulsive use or subvert or impair user autonomy"—a clear focus on manipulative and harmful practices. The Act neither defines or makes reference to digital advertising, not to mention further requiring that all types of advertising should be excluded from what is deemed "necessary to provide a service." The Act also does not instruct the AGO to prohibit data processing that does *not* implicate compulsive use or present significant risks of harm from data processing.

Therefore, the Draft Rules' explicit exclusion of all "advertising" activities from the definition of "necessary to provide a service" sweeps far more broadly than the law's mandate. Contextual advertising—serving an ad based on the content of a web site or platform—does not lead to compulsive use. It does not rely on the creation of behavioral profiles or impair user autonomy in any way. Rather, contextual advertising is a more privacy-protective alternative to behavioral targeting that regulators at both the federal and state levels have consistently treated as the permissible baseline for advertising in child-protective contexts. For example, ads for toys related to the content of a child-directed website are more relevant than random advertising that smaller publishers would default to in the absence of contextual advertising. In addition, random advertising may even increase the likelihood that a minor encounters content that may be harmful to them in a way the statute seeks to prevent, such as a gambling service.¹¹

By prohibiting all advertising-related data processing, the Draft Rules effectively eliminate the ability of covered businesses to generate revenue through advertising delivered when a minor is present—even contextual advertising that does not pose a significant risk to minors. This overbroad prohibition on data processing represents a significant regulatory overreach that will have serious unintended consequences, such as depriving small and medium-sized web and app publishers from generating sufficient advertising revenue and therefore decreasing competition with the largest platforms that have various avenues to derive revenue.¹²

C. An Overbroad Ban on Advertising Practices Would Have Unintended Consequences

If implemented as currently drafted, the categorical exclusion of all advertising—including contextual advertising—from permissible data processing would unnecessarily disrupt the ad-supported services that minors benefit from, without any meaningful gain to safety.

¹¹ 9 V.S.A. § 2449c(b)(2).

¹² Johnny Ryan, *Update (Six Months of Data): Lessons for Growing Publisher Revenue by Removing 3rd Party Tracking*, Brave (July 24, 2020), <https://brave.com/blog/publisher-3rd-party-tracking/> (reporting that after Dutch public broadcaster NPO and its ad sales house Ster stopped using third-party tracking and switched to contextual targeting, sales of display impressions grew 174% and sales of video impressions grew 26% in the first six months of 2020 compared with the same period in 2019). While the NAI questions the findings that contextual advertising creates greater publisher revenue than targeted advertising, it is unquestionable that it provides greater revenue than undifferentiated advertising.

The practical consequences of categorically prohibiting *all* advertising-related data processing when minors are known to be present cannot be overstated. A broad prohibition would:

- **Undermine the business model for free, ad-supported content.** The vast majority of free internet services—news sites, educational resources, gaming platforms, and entertainment applications—are funded through advertising. This allows consumers to receive access to vast amounts of digital content and services at no cost, which is a model that 95% of consumers prefer over paying for websites and apps.¹³ If these services cannot serve even contextual ads when a minor is present, they face a stark choice: implement aggressive age verification to exclude minors entirely, charge subscription fees that will be inaccessible to many minor users, or reduce or eliminate certain services entirely. None of these outcomes serves minors' interests.
- **Eliminate security and fraud-prevention infrastructure.** Many of the data flows involved in legitimate digital advertising also serve critical security functions, including ad verification, click-fraud prevention, and brand safety monitoring. Prohibiting advertising-related data processing would compromise this infrastructure, which protects both publishers and users—including minors—from fraudulent and malicious advertising.

D. The Draft Rules Should be Amended to Include a Limited Exception for Contextual Advertising and Ad Serving and Measurement Activities

The NAI recommends that the AGO amend the definition of "necessary to provide a service" to include a limited exception for contextual advertising and basic ad measurement activities—activities that COPPA permits and that do not implicate the harms the VTAADC is designed to address. This exception should not apply to targeted advertising and profiling, thereby preserving the core of the Draft Rules' protective framework while eliminating the overbroad prohibition on non-harmful advertising activities. The NAI recommends an amendment to the Draft Rules to add the following definition or an equivalent to the proposed rules:

"Ad serving and measurement" means processing personal data to serve an advertisement on a website or application, and to measure and report the frequency and performance of advertising, but not for purposes of targeted advertising based on user behavior or the development of user profiles for advertising purposes, including but not limited to: statistical reporting; traffic analysis; optimization of ad placement; ad performance, reach, and frequency metrics (including frequency capping); sequencing of advertising creatives; billing; and logging the number and type of ads served on a particular day to a particular website, application, or device.

The NAI further recommends that the definition of "necessary to provide a service" be amended to explicitly state that processing personal data for "ad serving and measurement" as defined above falls within the scope of this term.

"Necessary to provide a service" means the collection, use, or processing of personal data that is strictly required to provide a specific feature or directly responsive to an express and unambiguous request by a covered minor and cannot reasonably be achieved through less data-intensive means. Personal data use is not necessary to provide an online service, product,

¹³ See IAB, The Free and Open Ad-Supported Internet 10 (2024), <https://www.iab.com/wp-content/uploads/2024/01/IAB-Consumer-Privacy-Report-January-2024.pdf>.

or feature where it is used to tailor, prioritize, recommend, or modify media, features, or a covered minor's experience based on behavioral data, inferred preferences, or prior activity, or where it is used for engagement optimization, advertising based on behavior profiles or the development of user profiles for advertising purposes, ~~or analytics not essential to the requested functionality~~. Personal data use shall not be considered unnecessary ~~if solely because it is used solely for "ad serving and measurement,"~~ supports security, fraud prevention, accessibility, or other functions reasonably undertaken in the best interests of covered minors and essential to the operation of the requested online service, product, or feature.

In conjunction with these modifications, the NAI recommends that the definition of "secondary use" be amended accordingly:

"Secondary use" means any use not necessary to provide the service or not reasonably expected by a covered minor, which includes profiling, recommendations, cross-service use, targeted advertising based on behavior profiles or the development of user profiles for advertising purposes, and model training, and applies regardless of disclosure. This term does not apply to "ad serving and measurement."

This approach will preserve the Draft Rules' prohibition on behavioral targeting, profiling, and personalized advertising—practices that present a heightened risk of harm to minors—while permitting the limited, non-profiling advertising activities that are essential to the ad-supported internet and that federal law expressly allows. This approach will align Vermont's regulatory framework with COPPA's carefully considered baseline and avoid the significant unintended consequences described above.

The recommended amendment would not weaken the Draft Rules' prohibitions on harmful design practices. The prohibitions on autoplay, continuous media feeds, engagement-based notifications, reinforcement mechanisms, and social pressure features all remain intact. The amendment simply ensures that the data-minimization provisions do not inadvertently prohibit contextual advertising and related ad measurement that do not pose significant risk to minors.

If the AGO remains concerned about possible misuse of data for these advertising practices, the NAI recommends considering additional requirements, such as the accountability framework adopted by the FTC in 2025 in conjunction with the updated COPPA Rule. Under the amended Rule, operators relying on the internal operations exception must now comply with additional transparency requirements to disclose in their privacy policies (a) the specific internal operations for which they collect personal information from children, and (b) the means they use to prevent the use of those identifiers to contact individuals or to build behavioral profiles.¹⁴

E. The Draft Rules Should be Amended to Allow for Verifiable Consent to Authorize Secondary Uses Currently Prohibited

The Draft Rules provide that consent does not permit secondary use of a covered minor's personal data beyond the original purpose for its collection. While the NAI supports strong data minimization principles, this categorical prohibition would deprive minors and parents of meaningful authority over the processing of their own or their children's data respectively.

¹⁴ See 16 C.F.R. § 312.4(c)(3).

Under COPPA, "verifiable parental consent" is defined at 15 U.S.C. § 6501(9) as "any reasonable effort (taking into consideration available technology) to ensure that before personal information is collected from a child, a parent of the child "receives notice and authorizes the collection, use, and disclosure. The FTC's recently updated implementing regulations at 16 C.F.R. § 312.5 specify approved methods for obtaining verifiable parental consent, including signed consent forms, credit card transactions, video conferences, and other mechanisms designed to confirm that the consenting individual is actually the child's parent or legal guardian.

This is not a low bar. Congress and the FTC designed verifiable parental consent to be a meaningful, reliable mechanism precisely so that it could serve as a predicate for broader data use—use that parents have specifically reviewed and affirmatively authorized on behalf of their children.

The Draft Rules' categorical prohibition on consent-based secondary uses eliminates this mechanism entirely, effectively holding that a parent's informed, verified authorization consistent with COPPA carries no weight under Vermont law, creating a direct conflict with the federal framework Congress designed, and that the FTC and state Attorney Generals actively enforce. The categorical prohibition on consent-based secondary uses is also inconsistent with the VTAADC's intended application, whereby the law explicitly states that nothing related to the duty of care "...shall be construed to require a covered business to prevent or preclude a covered minor from accessing or viewing any piece of media or category of media."¹⁵ As the Draft Rules are currently constructed, they would preclude a covered minor from receiving tailored advertising, even if they chose to do so.

The NAI therefore recommends that the Draft Rules be amended to clarify that verifiable parental consent obtained under COPPA, 15 U.S.C. § 6502, is permitted under current law for specifically disclosed uses in accordance with that statute. The NAI further recommends that the Draft Rules be amended to align with legal frameworks that allow for informed consent directly from certain categories of covered minors to provide for a covered business to process that covered minor's personal data for secondary uses otherwise prohibited by the draft rules.¹⁶

These proposed amendments would not undermine the Draft Rules' protective purposes. Rather, they would allow for additional data use through a rigorous consent mechanism federal law has established, rather than prohibiting such uses even where they have been knowingly approved.

II. Adopt Tailored Amendments to the Draft Rules to Enable Compliance by Businesses Without Undermining the Core Protections Established by the Law

The following recommendations are also important for covered businesses engaging in digital advertising and are proposed to make the rules both more tailored to address the potential harms and more enforceable for regulators.

¹⁵ 9 V.S.A. § 2449c(d).

¹⁶ See, e.g. N.Y. Gen. Bus. Law § 899-ff(1)(b)(allowing processing and third-party collection of a minor's personal data if the minor is older than thirteen and provides informed consent).

A. The Conspicuous Signal Requirement for Monitoring Should be Limited to Active Tracking Features, But it Should Not Apply to the Data Processing and Analytics Described Above that Facilitate Advertising, Related Measurement and Analytics

The Draft Rules require covered businesses to display a "clear, continuous, real-time, and unavoidable visual indicator" whenever a covered minor is being "monitored," which the rules define broadly to include virtually any observation of user behavior including "clicks, scrolls, dwell time, viewing history, and navigation patterns."

As drafted, this requirement would mandate a persistent visual indicator for virtually any website or application that uses standard analytics, stripping the signal of the ability to provide any meaningful awareness or privacy benefit. Nearly every website or app uses some form of session analytics—page views, time on page, scroll depth—to understand how users interact with content, improve usability, and identify technical problems. Requiring a "continuous, real-time, and unavoidable" visual indicator for all such analytics would produce an experience so cluttered with warning indicators as to be meaningless for users, while imposing implementation burdens that are entirely disproportionate to the privacy risk.

Conversely, the conspicuous signal requirement serves a legitimate, valuable notice function when applied more narrowly to active, persistent behavioral tracking of the kind that builds individual profiles for targeting or manipulation. Adopting the current application applied to routine, session-level analytics that every website and app performs, including for basic digital ad-serving functions or for security and fraud-prevention purposes would be counterproductive.

The NAI recommends that the AGO narrow the "monitoring" definition or the conspicuous signal requirement to apply only to real time tracking, including:

- Location tracking, cross-session behavioral data collection used to build individual profiles for purposes of recommendation, targeting, or engagement optimization; and
- Active features—such as live session replay tools or continuous biometric monitoring—that a reasonable user would not expect as part of standard website operation.

This narrowing would focus the notice function where it can do meaningful work—alerting minors to the kind of active, profile-building surveillance the Act is designed to address—without burying that notice in an avalanche of indicators for routine, non-harmful analytics.

B. Align the Proposed Rules with the VTAADC by More Explicitly Incorporating Statutorily Defined Terms such as “Personal Data” and “De-identified Data”

To better aid with compliance, we encourage tailored amendments to better incorporate statutorily defined terms from the VTAADC into the Proposed Rules. As currently drafted, key provisions create significant ambiguity as to whether the practice concerns “personal data,” “de-identified data,” or both.

As an example, it is unclear whether a covered business processing solely behavioral data would be subject to the data minimization and secondary use provisions of the proposed rules, as those provisions

are scoped primarily to “personal data” and it is ambiguous whether “behavioral data” is a form of “personal data.”¹⁷

Further, the Proposed Rules define “Monitoring” to include “observing, collecting, recording, analyzing, or processing a covered minor’s activity, behavior, or interactions with an online service, product, or feature, including through automated or algorithmic means, and includes both real-time and retrospective observation or analysis of a covered minor’s activity.”¹⁸ Notably, the definition omits any use of statutorily defined terms, such as “personal data” and “de-identified data.” Clarity regarding the definition of “monitoring” is essential for compliance, as the practice imposes an obligation on covered businesses to maintain an unavoidable visual indicator when any monitoring or tracking is occurring.¹⁹ For this reason we encourage the AGO to clarify the definition of “monitoring” by incorporating statutorily defined terms, such as “personal data” and “de-identified data.”

To this end, we recommend amending the definition of “monitoring” in the following ways:

“Monitoring” means observing, collecting, recording, analyzing, or processing the personal data of a covered minor’s activity, behavior, or interactions with an online service, product, or feature, including through automated or algorithmic means, and includes both real-time and retrospective observation or analysis of a covered minor’s activity.

1. Monitoring includes, but is not limited to:
 - i. Tracking personal data related to a covered minor’s interactions, such as clicks, scrolls, dwell time, or navigation patterns;
 - ii. Collecting or analyzing engagement-related personal data, including session duration, frequency of use, or media consumption;
 - iii. Recording the personal data of a covered minor’s behavior across sessions, devices, or contexts;
 - iv. Generating or using persistent identifiers or device-level identifiers to associate activity with a covered minor or device; or
 - v. Collecting or analyzing personal data of signals used to infer preferences, interests, or behavioral patterns.
2. Monitoring shall be deemed to occur regardless of whether a covered minor’s activity, behavioral ~~data~~, or engagement personal data is:
 - i. Stored, retained, or ephemeral;
 - ii. ~~Linked to an identified or identifiable covered minor; or~~
 - iii. Used directly or indirectly to influence media, features, or experience.

¹⁷ See 9 V.S.A. § 2449a(21)(A)–(B) (defining “personal data” and explicitly excluding “de-identified data”); Proposed Rules at “CP ____ Data Minimization” and “CP ____ Secondary Use” (limiting data minimization and secondary use restrictions specifically to “personal data of a covered minor”); *id.* at “CP ____ Definitions”(b), (defining “behavioral data” without clarifying whether it is a form of “personal data”).

¹⁸ See Proposed Rules at “CP ____ Data Minimization”(i).

¹⁹ See *id.* at “CP ____ Monitoring and Tracking”(a).

These recommendations would bring the definition of “monitoring” more in line with the text of the statute by incorporating the term “personal data” to determine the scope of covered data under the VTAADC—a term that is also universally defined under comprehensive state privacy laws.²⁰

Similarly, the proposed rules should distinguish “de-identified data” as a type of data whose processing is generally outside the scope of a covered business’s obligations under the proposed rules. Nearly twenty state comprehensive privacy laws—including Virginia, Colorado, Connecticut, Texas, and Montana—expressly exclude de-identified and aggregated data from the definition of “personal data,” reflecting a broad legislative consensus that such data does not implicate individual privacy in the way that identified or identifiable personal data does.²¹ Vermont’s comprehensive consumer privacy law also understands this by placing de-identified data generally outside the scope of a controller’s obligations.²²

Capturing non-identifying performance metrics and aggregate analytics under broad mandates, such as requiring a real-time unavoidable visual indicator will impose severe compliance hurdles and dilute the purpose of providing a “conspicuous signal” to be virtually meaningless.²³

De-identification removes the individual privacy interest that the VTAADC is designed to protect. Aggregate data, by definition, cannot be used to surveil, target, or manipulate individual minors. Including such data within the scope of the Draft Rules’ prohibitions would impose significant compliance costs without any corresponding privacy benefit. We encourage the AGO to recognize the universal consensus that de-identified data does not implicate individual privacy in the way that identified or identifiable personal data does, and incorporate the term where appropriate in the Proposed Rules.

In addition to “monitoring,” we have identified the following terms defined in the Proposed Rules that present ambiguity by failing to relate to the statutorily defined term, “personal data.” We recommend the following amendments:

1. “Behavioral data” should be amended to mean “personal data reflecting a covered minor’s activity, interactions, or engagement with an online service, product, or feature, including clicks, scrolls, dwell time, viewing history, and navigation patterns, but excluding preferences or characteristics inferred from such activity.”
2. “Tracking” should be amended to mean “processing personal data to determining a covered minor’s location or following a covered minor’s behavior across services, including cross- site tracking and location signals.”

²⁰ See e.g. California Consumer Privacy Act (CCPA), Cal. Civ. Code § 1798.140(v) (defining “personal information” under the CCPA); Conn. Gen. Stat. § 42-515(26); Md. Code, Com. Law § 14-4701(w).

²¹ See Colo. Rev. Stat. § 6-1-1303(17)(b) (defining “personal data” to specifically exclude de-identified data); see also Conn. Gen. Stat. § 42-515(27); Mont. Code Ann. § 30-14-2802(19)(b); Tex. Bus. & Com. Code Ann. § 541.001(19); Va. Code Ann. § 59.1-575.

²² See Vt. Stat. Ann. tit. 9, § 2415a(b)(35)(B) (eff. Jan. 1, 2028).

²³ For example, without clear exclusion of “de-identified data,” a covered business merely counting page views without the use of any personal data would be required to display a signal similar to another covered business tracking the precise geolocation data of a covered minor.

Conclusion

The NAI strongly supports the AGO's efforts to protect minors from harmful data practices and manipulative digital design. These are important and legitimate regulatory objectives, and the NAI's members are committed to responsible practices that advance these goals. Our recommendations are intended to help the AGO achieve those goals more precisely, without inadvertently sweeping in activities that pose no identified risk to minors and that are essential to the functioning of the ad-supported internet.

The most urgent of these recommendations—and the one with the greatest potential impact on the broader digital media ecosystem—is the amendment to the definition of "necessary to provide a service" to permit contextual advertising and basic ad measurement, along with related amendments. These tailored amendments would align Vermont's regulations with COPPA's carefully considered internal operations framework, which was just reconfirmed in updated rules finalized in January 2025. These proposed tailored amendments would avoid creating a conflict with federal law, and preserve the revenue streams that enable free, ad-supported digital services to exist.

The NAI and its members welcome the opportunity to work collaboratively with the Vermont AGO on these regulations and to provide additional technical information, examples, or data that would be helpful in the rulemaking process. We would be pleased to discuss these comments at the convenience of the AGO and can be reached at david@thenai.org.

Respectfully submitted,



David LeDuc

Vice President, Public Policy