

The Heritage Foundation  
214 Massachusetts Ave NE  
Washington, DC 20002

March 11, 2024

The Honorable Lina Khan  
Chairwoman  
Federal Trade Commission  
600 Pennsylvania Ave NW  
Washington, DC 20580

Dear Chairwoman Khan,

The Heritage Foundation respectfully submits a public comment in support of the COPPA Rule Review, Project No. P195404. As the Federal Trade Commission (Commission) noted in its proposal, 2013 was the last time it revised the COPPA Rule.

The Heritage Foundation supports many of the changes proposed by the Commission. For one, the proposal prohibits platforms from sending push notifications and other prompts to encourage kids to continue using the platform without parental consent. The addictive features of social media have been well documented, and kids are particularly vulnerable. In 2021, kids eight to 12 on average spent five hours and 33 minutes on screens for entertainment purposes.<sup>1</sup> Push notifications serve to notify users of activity on the application and entice them to return. Notifications activate dopamine-driven feedback loops causing dependence and even addiction to smartphones.<sup>2</sup> For these same reasons, adding an opt-in for third-party sharing or targeted advertising is prudent. Parental consent requests should be clear and not read like a complicated terms of service agreement that is easily ignored and accepted without thorough review. Consent requests also should not trick parents into accepting. For example, many cookie notices make it easier to click “accept all” rather than “confirm my choices.” Lastly, we agree that soliciting consent through texting is similar to email and has similar risks of a child circumventing true parental consent. For example, a child could provide their own email address or phone number or accessing their parents’ phone before them, etc.). The risks of undetected spam from text may be higher, but there are strategies platforms can employ to avoid this, such as directing the recipient to respond “yes” or “no” instead of clicking a link.

We encourage the Commission to be permissive and not prescriptive in its requirements for obtaining parental consent. The proposal discusses age or identity verification measures such as re-entry of a password, biometrics such as use of fingerprint, voice print, or device PIN. Use of credit or debit card for parental verification should be permissible but not required. As the Commission considers expanding the definition of personal information and mechanisms for

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<sup>1</sup> Common Sense Media, The Common Sense Census: Media Use by Tweens and Teens, 2021, p. 3, [8-18-census-integrated-report-final-web\\_0.pdf \(commonsensemedia.org\)](https://www.commonsensemedia.org/8-18-census-integrated-report-final-web_0.pdf) (March 11, 2024).

<sup>2</sup> Trevor Haynes, “Dopamine, Smartphones & You: A battle for your time, Harvard Kenneth C. Griffin Graduate School of Arts and Sciences “Science in the News,” [Dopamine, Smartphones & You: A battle for your time - Science in the News \(harvard.edu\)](https://www.harvard.edu/news/dopamine-smartphones-you-a-battle-for-your-time-science-in-the-news) (March 11, 2024).

parental consent, protecting children's data privacy must be prioritized. The Heritage Foundation supports requiring businesses to disclose if and when they are collecting information from a child to support internal operations, what operational purpose this serves, and affirm that it is not used for targeted advertising. Prescribing a specific time frame for data retention creates a ceiling and encourages operators to use the maximum time allowed. An alternative approach that encourages minimal retention prohibits operators from retaining personal information for no longer than what is minimally necessary to demonstrate. Operators should also be encouraged to process information where possible instead of collecting then retaining information.

The commission stated that an individual's geolocation falls outside of the Rule's scope, but later it states that the law considers an individual's address or phone number (which could encompass multiple people) as personal information. How is a precise geolocation any different? Several websites and services capture a user's location, even when the location is irrelevant to the service. For these reasons, we challenge whether geolocation is "inferred data" and think the Commission should reconsider whether it fits the definition of personal information.

The ways in which children under 13 use the internet has evolved, and unfortunately, this includes easy access to websites not intended for anyone under 13. COPPA requires platforms to have actual knowledge that its users are under 13 in order to be compelled to comply. If the service or product is intended and directed for children under 13, then platforms are required to comply regardless of actual knowledge. The Commission determined that it does not have the statutory authority to change the actual knowledge standard to constructive knowledge. The Heritage Foundation urges the Commission to consider how social media platforms can and do have actual knowledge users are under the age of 13 and therefore be required to follow COPPA. Because social media platforms and similar services are successful for-profit entities, we are not compelled by the argument that a constructive knowledge standard would "lead to a reduction in available online content because operators may decide to withdraw content intended for teenagers and young adults to avoid the risk of interacting with children." (*see page 14*) It is problematic that platforms like TikTok, Facebook, Instagram, Snapchat, Discord, X and many others get away with not complying with COPPA. The use of age attestation rather than true age verification is one of the reasons social media platforms have failed to protect kids under 13 and sufficiently keep them off their platforms. Age attestation is ineffective and allows platforms to easily skirt COPPA compliance.

The Commission notes the increased use of online education technology and considers whether teachers or administrators should determine which technology is used and how involved parents should be. Schools should understand and be clear with parents on what products and services they are using in their classrooms. Parents should know what technology products their child is using and have the power to opt-out if they decide the product is not appropriate for their child. The proposed rule prohibits educational technology providers from using children's personal information for commercial purposes. We agree that educational technology providers should not be permitted to sell children's data, but does the Commission's limit go too far and prohibit providers from suggesting a similar or alternative product based on data it collects?

This rule is a step in the right direction. The Heritage Foundation asks the Commission to

carefully consider its positions, questions, and concerns. Social media platforms and other tech companies, in neglecting to institute genuine age verification practices, have failed kids and parents alike and must be held accountable. This revision would help.

Respectfully,  
The Heritage Foundation

by:

/s/ Annie Chestnut Tutor

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