



1350 Eye Street NW, Suite 350, Washington, DC 20005 | 202-768-8950 | [fpf.org](https://fpf.org)

September 10, 2025

**Via Electronic Submission**

Attorney General Phil Weiser  
Office of the Attorney General  
Colorado Department of Law  
1300 Broadway, 10th Floor  
Denver, CO 80203

**RE: Rulemaking Considerations for the Colorado Privacy Act Children's Privacy Amendment.**

Dear Attorney General Weiser,

Thank you for your work and the opportunity to provide input on the ongoing rulemaking process concerning the child protection amendments to the Colorado Privacy Act ("CPA").<sup>1</sup> The Future of Privacy Forum ("FPF") is a non-profit organization dedicated to advancing privacy leadership, scholarship, and principled data practices in support of emerging technologies in the United States and globally. FPF seeks to support balanced, informed public policy and equip regulators with the resources and tools needed to craft effective regulation.<sup>2</sup>

Given the importance of balancing children's privacy and online safety with autonomy and access, we write addressing two parts of the rulemaking for the Department's consideration:

- First, the Department's proposal to apply a COPPA-style "directed to minors" factor within the CPA's "actual knowledge" standard, combined with expanding protection to all minors under 18, risks conflating distinct frameworks.
- Second, we provide questions for the Department to consider regarding which types of features may be subject to the law's system design requirements. The proposed rules give two factors using the language "whether a system design feature has been *shown to...*" cause particular conditions, and our comments are intended to guide the Department's evaluation of system design features.

---

<sup>1</sup> Colo. Dep't. of Law, Proposed Rule Amendments to Colorado Privacy Act, 4 Colo. Code Regs. § 904-3 (proposed July 29, 2025), <https://coag.gov/app/uploads/2025/07/CPA2025ProposedRuleAmendments-1.pdf> [hereinafter Proposed Rule].

<sup>2</sup> The opinions expressed herein do not necessarily reflect the views of FPF's supporters or Advisory Board.

**I. Including “directed to minors” as a factor in determining what constitutes willfully disregarding that a user is a minor may lead to confusion rather than harmonization with existing guidance under COPPA, particularly given the broader age range covered by the CPA.**

The Department’s proposal to apply a COPPA-style “directed to minors” factor within the CPA’s “actual knowledge” standard, combined with expanding protection to all minors under 18, risks conflating distinct frameworks and creating significant uncertainty. The CPA’s 2024 amendment created expanded protections for those under 18 but retained the CPA’s existing knowledge standard, or the level of obligation a controller has to know the age of consumers. Like leading state privacy law frameworks, the CPA uses an “actual knowledge or willfully disregards” standard. This approach does not require controllers to investigate consumers’ ages proactively, but does impose heightened protections when they *know* – or willfully disregard – that a consumer is a minor.<sup>3</sup> Aside from the Florida Digital Bill of Rights, no other state privacy law defines “actual knowledge or willfully disregards.”<sup>4</sup> While there were no statutory changes to the CPA’s knowledge standard, the proposed rule aims to provide controllers with factors that may be considered when determining if a controller “willfully disregards” that a consumer is a minor pursuant to the CPA.<sup>5</sup>

The proposed rule includes whether “...the Controller has directed the website or service to Minors, considering different factors such as subject matter, visual content, language, and use of Minor-oriented activities and incentives”<sup>6</sup> – appearing to mirror the “directed to children” factors included in COPPA’s implementing regulations.<sup>7</sup> While we recognize the Department’s attempt to harmonize the CPA with parts of longstanding guidance under COPPA, there are some important distinctions to note.

First, COPPA applies to operators of websites or online services that are directed to children, or where the operator has actual knowledge that they are collecting information from children under the age of 13 (emphasis added).<sup>8</sup> COPPA’s actual knowledge standard is a fact-based inquiry with no definition or explicit list of factors. Instead, the FTC has taken an evolving,

---

<sup>3</sup> Jordan Francis, Anatomy of State Comprehensive Privacy Law: Surveying the State Privacy Law Landscape and Recent Legislative Trends at 8 (Nov. 2025), [https://papers.ssrn.com/abstract\\_id=5309115](https://papers.ssrn.com/abstract_id=5309115).

<sup>4</sup> Fla. Admin. Code Ann. R. 2-3.003 (2024).

<sup>5</sup> Proposed Rule 6.13(A).

<sup>6</sup> *Id.* at Rule 6.13(A)(2).

<sup>7</sup> See Fed. Trade Comm’n, *Complying with COPPA: Frequently Asked Questions* (2020), <https://www.ftc.gov/business-guidance/resources/complying-coppa-frequently-asked-questions>.

<sup>8</sup> *Complying with COPPA: Frequently Asked Questions – A: General Questions About The COPPA Rule*, Federal Trade Commission, (accessed Sep. 9, 2025), <https://www.ftc.gov/business-guidance/resources/complying-coppa-frequently-asked-questions#H.%20General%20Audience%20and%20Teen%20Sites>.

expansive approach to actual knowledge. In its' FAQs, the FTC details some instances where actual knowledge *may* be ascertained, such as a parent alerting a website that a child is on the service, or a child announcing their age on a platform where user posts are monitored.<sup>9</sup> In enforcement, the FTC approaches actual knowledge by considering circumstances and what situations or use cases are covered by the standard, such as in one recent COPPA enforcement action, where the FTC considered factors such as demographic data, advertising and marketing, and internal statements.<sup>10</sup> In contrast, the Department's proposal appears to blur the distinction between COPPA's separate "directed to children" category and its fact-based "actual knowledge" standard, creating regulatory confusion between the two regimes.

Second, applying the "directed to minors" factor may require controllers to infer what appeals to minors generally, rather than relying on specific knowledge about their users, creating the risk of overbroad or assumption-driven application. Such inferences may not be based upon actual knowledge of a minor's use of the controller's online service, product, or feature or willful disregard of such knowledge, but instead upon stereotypical assumptions about what may or may not appeal to minors under 18. Under COPPA, "directed to children" and actual knowledge are separate assessments for applicability, with "directed to children" serving as a broad, service-level evaluation based on design and other site elements. In contrast, actual knowledge is a fact-based inquiry generally about *individual users*. Conflating the service-level "directed to minors" assessment within the CPA knowledge standard under this Proposed Rule may cause challenges in both compliance and application.

Lastly, the "directed to" language in COPPA is specifically targeted towards children under 13, a more objective standard than determining content directed to teens (in contrast to "young adults"). Content and features that appeal to older teens often overlap with those appealing to young adults, making it less straightforward to distinguish services "directed to minors" under the CPA. For example, would the Department consider a free fantasy football website (with no betting component) directed to teens? Or an athleisure retail site or shopping sites focused on pop culture apparel and blind boxes? Although we acknowledge the efforts to harmonize the CPA with existing federal guidance, further refinement is needed if the Department moves forward in retaining this factor alongside the expanded scope of protections.

---

<sup>9</sup> Complying with COPPA: Frequently Asked Questions – H: General Audience and Teen Sites or Services, Federal Trade Commission, (accessed Sep. 9, 2025), <https://www.ftc.gov/business-guidance/resources/complying-coppa-frequently-asked-questions#H.%20General%20Audience%20and%20Teen%20Sites>.

<sup>10</sup> Complaint, Epic Games, FTC Docket No. 5:22-CV-00518 (Dec. 19, 2022); See also Stacey Feuer, *Wrapping Up 2022 with a Huge (Epic) Fortnite Privacy Case*, ESRB, (Dec. 21, 2022) <https://www.esrb.org/privacy-certified-blog/wrapping-up-2022-with-a-huge-epic-fortnite-privacy-case/>.

**II. The Department should provide further guidance for how companies can evaluate which system design features are shown to increase “use or engagement with an online service, product, or feature beyond what is reasonably expected” and “addictiveness.” FPF offers practical policy questions the Department should consider in supporting the implementation and enforcement of this requirement.**

The Department should consider clarifying key policy questions regarding what constitutes “increased engagement beyond reasonable expectation” and “addictiveness.” The present rulemaking effort addresses the CPA’s new consent requirement for system design features by providing three factors to consider in making such determinations. We write with attention to two of these factors:

“(2) Whether the system design feature has been *shown to* increase use of or engagement with an online service, product, or feature beyond what is reasonably expected of that particular service, product or feature absent the system design feature;

(3) Whether the system design feature has been *shown to* increase the addictiveness... or otherwise harm minors when deployed in the specific context offered by the controller.”<sup>11</sup>

System design features are becoming a common subject of scrutiny by laws and regulations aiming to protect children online. Despite this trend, the implementation of these regulations across the U.S. is still relatively nascent and complicated by the careful constitutional boundaries of targeting online design choices and protected expressive content.<sup>12</sup> As a result, there is no pre-established, normative sense amongst stakeholders for how to properly evaluate whether a system design feature is “shown to increase use or engagement with an online service, product, or feature beyond what is reasonably expected” or “shown to increase addictiveness” under safety and privacy frameworks like the CPA and its implementing regulations. To provide further guidance on increased engagement beyond reasonable expectations and addictiveness, the Department should take into consideration the following practical policy questions:

- What does the Department consider “addiction/addictiveness” under the CPA? Addiction or addictiveness can have different definitions across differing medical and scientific contexts.<sup>13</sup> Therefore, it would be beneficial for the Department to provide a definition or

---

<sup>11</sup> Proposed Rule 6.14(A)(2), Rule 6.14(A)(3).

<sup>12</sup> See e.g., *303 Creative LLC v. Elenis*, 600 U.S. (2023); N.Y. Gen. Bus. Law §§ 1500–1508 (2025) (New York enacted the “Stop Addictive Feeds Exploitation (SAFE) For Kids Act” in June 2024, but this law has not gone into effect because the New York Attorney General’s Office has not promulgated rules as required by the statute); *NetChoice LLC v. Bonta*, No. 25-146, slip op. (9th Cir. Sept. 9, 2025) (California passed a law in September 2024 regulating personalized feeds for minors – this law is currently the subject of active litigation).

<sup>13</sup> See e.g., Laurie Chassin, et al., *What is Addiction?: Age-Related Differences in the Meaning of Addiction*, 87 Drug & Alcohol Dependence 30 (2007) <https://www.sciencedirect.com/science/article/abs/pii/S037687160600281X?via%3Dihub>;

framework for assessing “addiction” or “addictiveness” for the purposes of complying with the CPA, similar to the types of harms outlined in the Colorado Privacy Act Rules for consideration in completing risk assessments.<sup>14</sup> Identifying a clear definition or framework of addiction in this context could further guide stakeholder efforts to determine whether specific design features may be shown to increase these conditions and what evidence could guide such determinations.

- *What metrics and thresholds should be used to determine whether a system design feature significantly increases engagement beyond reasonable expectations or increases addictiveness?* A key component of many online services, products, and features is an engaging interface, providing consumers with engaging products, services, and features. As a result, without further example or guidance, it may be tricky for stakeholders to reliably and consistently distinguish between system design features that are good and engaging and system design features that reach the point of increasing engagement beyond reasonable expectation or addictiveness pursuant to these Rules. Establishing guidelines that offer greater clarity to stakeholders on the metrics and thresholds for engagement beyond reasonable expectation and addictiveness could benefit from more consistent and reliable policy outcomes.

\* \* \*

Thank you for this opportunity to provide comment on these proposed regulations. We welcome further opportunities to provide resources or information to assist in this important effort. If you have any questions regarding these comments and recommendations, please contact Daniel Hales at [dhales@fpf.org](mailto:dhales@fpf.org).

Sincerely,

Daniel Hales  
Policy Fellow, U.S. Legislation

Bailey Sanchez  
Deputy Director, US. Legislation

---

<sup>14</sup> 4 Colo. Code Reg. § 904-3, Rule 8.04.