



November 21, 2022

California Privacy Protection Agency
c/o Brian Soublet
2401 Arena Blvd
Sacramento, CA 95834
via email at regulations@coppa.ca.gov

Dear Mr. Soublet:

Common Sense Media submits these comments on the California Privacy Protection Agency's (Agency) modified proposed regulations that, if finalized, would implement the California Privacy Rights Act (CPRA), which strengthened the California Consumer Protection Act (CCPA). We are the nation's leading independent nonprofit organization dedicated to helping kids and families thrive in an increasingly digital world. We empower parents, teachers, and policymakers by providing unbiased information, trusted advice, and innovative tools to help them ensure that media and technology are positive forces in children's lives.

On August 23, 2022, Common Sense Media submitted comments (August Comments) in response to the Agency's July 8, 2022 Proposed Regulations. On October 21, 2022, the Agency issued Modified Proposed Regulations, which included a correct citation for "COPPA" and a retitled section 7071 to make clear that it protects teens until the day that they turn 16 years old. While we are pleased to see two of our recommendations followed, we are concerned that the Agency disagreed with our more substantive recommendations. We applaud the Agency's efforts to solicit comments on its Modified Regulations and we appreciate the opportunity to provide additional detail on our August Comments.

Comments to §§ 7070 and 7071.

We recommend the Agency define the term "actual knowledge" to include the meaning of "willfully disregard." Section 1798.120(c) of the CCPA, as amended by the CPRA, mandates certain requirements when a business has "actual knowledge" that a consumer is under 16 years of age. It also provides that "[a] business that willfully disregards the consumer's age shall be deemed to have had actual knowledge of the consumer's age." This makes California's privacy law stronger than the federal Children's Online Privacy Protection Act (COPPA), which does not include "wilful

disregard,” language, allowing a firm to bury its head in the sand and claim it did not know kids were on its platform while touting to advertisers about its kids audience.¹

Sections 7070 and 7071 of the Modified Proposed Regulations do not include any reference to the “willfully disregard” language. The Agency’s regulations should make clear that if a business purposefully, deliberately, or intentionally disregards a consumer’s age, it would be deemed to have actual knowledge. To make the regulations consistent with CCPA, as amended by the CPRA, we offer the following definition for consideration:

“‘Actual knowledge’ means actual awareness, understanding, or recognition of a fact. The term also includes willful, purposeful, deliberate, or intentional disregard of a fact.”

Defining “actual knowledge” to include conduct that amounts to a “willful disregard” is essential to make clear that a business cannot turn a blind eye to minors that use its platform. CCPA’s broader definition of “actual knowledge” to include “willful disregard” better ensures the protections it lays out to kids and teens are effective by covering the businesses it should. As a result, it is imperative this knowledge standard is clear in both the Act and the Agency’s regulations.

We recommend that the Agency make clear the responsibilities of a business once it has actual knowledge that a consumer is under 16 years of age. Section 1798.120(c) provides:

Notwithstanding subdivision (a), a business shall not sell the personal information of consumers if the business has actual knowledge that the consumer is less than 16 years of age, unless the consumer, in the case of consumers between 13 and 16 years of age, or the consumer’s parent or guardian, in the case of consumers who are less than 13 years of age, has affirmatively authorized the sale of the consumer’s personal information.

This implies that a business may continue to sell or share a consumer’s personal information until it has actual knowledge that the consumer is under the age of 16. It also implies that the business must stop selling or sharing such information until it obtains consent.

The Agency should make these two implications explicit in its modified proposed regulations. This is necessary guidance that would give businesses a better understanding of how to comply with the children and teens’ protections in the Act. Explicit guidance can help prevent businesses from unintentionally violating the Act because they were unsure of the specifics of compliance. We offer the following for consideration:

“Once a business has actual knowledge that a consumer is under 16, it must immediately stop selling or sharing personal information about the consumer. A business cannot resume selling or sharing personal information unless it has obtained consent from: (1) the

¹ See e.g. [Press Release, Federal Trade Commission, Google and YouTube Will Pay Record \\$170 Million for Alleged Violations of Children’s Privacy Law](#) (Sept. 4, 2019).

parent or guardian of consumers under the age of 13; or (2) consumers if they are between the age of 13 and 16.”

Comments to § 7070.

We recommend the Agency establish a specific time by when a business must inform parents or guardians of consumers under the age of 13 of their right to opt out of the sale or sharing of their personal information. Under section 7070(b), a business must inform the parent or guardian of consumers under 13 that they may opt-out of the sale or sharing of personal information on behalf of their child “when” a business receives consent to the sale or sharing of personal information. We believe that “when” suggests that the parent or guardian must receive this information at the same time or close in time to the business’s receipt of parental consent. Establishing a specific time frame in which the business must inform parents or guardians of the right to opt out emphasizes to businesses that they must not delay in providing this notice and gives them an easy-to-understand deadline. A required period of time would ensure parents and guardians receive this information in a timely manner while clarifying to businesses that they do not have to provide this information at the same moment they receive consent to the sale or sharing of personal information.

To make clear a business’ responsibilities under this section, we offer the proposed edits for consideration.

“~~When a business receives an affirmative authorization~~ **Within [a period certain] of receiving consent to the sale or sharing of personal information** pursuant to subsection (a), the business shall inform the parent or guardian of the right to opt out **of sale/sharing** and of the process for doing so on behalf of their child pursuant to section 7026, subsections (a)-(f).”

Comments to § 7071.

We recommend the Agency amend § 7071(b) again to make clear that businesses must inform consumers between the ages of 13 and 16 of their opt-out right when the opt-in request is received. In our August comments, we recommended that the Agency establish a specific timeframe by when a business must inform consumers between the age of 13 and 16 of their right to opt out of the sale or sharing of their personal information. Under section 7071(b) of the Act, when a business receives an opt-in request from consumers between the age of 13 and 16, the provision states the business must inform them of their right to opt-out “at a later date.”

The modified provision now states “...the business shall inform the consumer of their **ongoing** right to opt-out of sale/sharing at **any point in the future** ~~a later date~~...” In its explanation of the modified proposed regulations, the Agency states that its revision of the subsection was intended to clarify that “businesses must notify consumers, at the moment the opt-in request is received, that the consumer has an ongoing right to opt-out of sale/sharing at any point in the future.” Unfortunately, the revision of the text still creates some confusion for businesses and consumers, which could result in businesses delaying when they notify consumers of their right to opt-out. Although “at

any point in the future" is intended to refer to the consumer being free to exercise their right to opt-out of sale/sharing at any time, it could also be misinterpreted to mean the business can, at any time the business chooses in the future, notify the consumer of the opt-out right.

To make clear that section 7071(b) requires businesses to inform consumers between the ages of 13 and 16 of their opt-out right when the opt-in request is received, we offer the proposed edits for consideration.

~~"When a business receives~~ **Within [a period certain] of a business receiving** a request to opt-in to the sale or sharing of personal information from a consumer at least 13 years of age and less than 16 years of age, the business shall inform the consumer of their ongoing right to opt-out of sale/sharing at any point in the future a later date and of the process for doing so pursuant to section 7026."

This proposed edit would clarify that businesses must inform consumers of their opt-out right in a timely manner.

Additionally, while the modified proposed regulations made revisions to section 7071(b), which pertains to a business' requirement to inform minors between the ages of 13 to 16 of their right to opt out, it did not make revisions to section 7070(b), which lays out the business' same obligation to parents or guardians of consumers under the age of 13. The Agency must specify in the modified proposed regulations the time frame in which businesses must inform both of these groups to clearly show they owe the same responsibility to both.

Conclusion

Common Sense appreciates the Agency's work on these modified proposed regulations to implement the CPRA, and urges the Agency to take the steps recommended in these comments to revise and provide further clarity to the regulations pertaining to consumers under 16. Thank you for your consideration of these comments.

Respectfully submitted,

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