



August 23, 2022

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

Dear Mr. Soublet:

Common Sense Media (Common Sense) submits these comments on the California Privacy Protection Agency's (Agency) proposed regulations that, if finalized as proposed, would implement the California Privacy Rights Act (CPRA). Common Sense is 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 harness the power of media and technology as a positive force in children's lives.

While the CPRA strengthened the California Consumer Privacy Act (CCPA), even stronger protections are needed for kids and teens. Under existing law, parents do not know whether their children's privacy is protected. For kids and teens under 16, they have rights only when a firm has "actual knowledge" of their age. In other words, even when the largest social media firms have a strong inference of their users' age—based on millions of data points about them—these firms can continue to sell and share children's personal information as long as they avoid obtaining direct information about age. While our comments below speak directly to the proposed regulations, we urge the Agency to support legislation that grants kids and teens the protections they need.

Common Sense appreciates the opportunity to provide the Agency with the following comments, which are limited to those proposed regulations pertaining to consumers under 16.

Comments to §§ 7070 and 7071.

1. *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 (Act) 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.” The Agency’s proposed regulations sections 7070 and 7071, however, make no 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 Agency’s proposed regulations consistent with the California Consumer Privacy Act (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.”

2. *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) of the Act 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 proposed regulations.

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

3. *We recommend the Agency correct the definition of “COPPA” under section 7000(g) because the term is used in its proposed regulations sections 7070 and 7071.*

We offer the following edits for consideration:

“‘COPPA’ means the Children’s Online Privacy Protection Act, 15 U.S.C. sections 6501 to 6506~~08~~ and 16 Code of Federal Regulations part 312.5.”

First, we recommend striking 6508 and replacing it with 6506 because the Children’s Online Privacy Protection Act is codified at 15 U.S.C. sections 6501 to 6506 (i.e., sections 6507 and 6508 do not exist). Next, section 7001(g) should define “COPPA” to include all regulations promulgated under the federal statute. Under the existing section 7001(g), “COPPA” is defined to mean the federal statute in its entirety and only a single regulation, despite multiple regulations having been promulgated. We recommend the Agency resolve this discrepancy. Finally, we recommend that the Agency define “COPPA” to include language that would account for any amendments made to the federal statute, and any amended or new regulations promulgated thereunder.

Comments to § 7070.

1. 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.

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

~~“When a business receives an affirmative authorization~~ **Within 48 hours 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.

1. We recommend the Agency amend the title of proposed regulation section 7071. Section 7071 is entitled “Consumers 13 to 15 Years of Age.” Yet, subsections (a) and (b) reference “consumers 13 years of age and less than 16 years of age.”

We recommend the Agency retitle this section to “Consumers between 13 and 16 Years of Age” to make clear that the section applies to teens until the day that they turn 16 years of age.

2. *We recommend 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), when a business receives an opt-in request from consumers between the age of 13 and 16, the business must inform them of their right to opt-out “at a later date.” We believe that it is critical for these consumers – who are still minors – to know their right to opt-out in a timely fashion. Without a set timeframe, the Agency would implicitly allow businesses to indefinitely delay providing this information.

Conclusion

Common Sense appreciates the Agency’s work on these 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 proposed regulations pertaining to consumers under 16. Thank you for your consideration of these comments.

Respectfully submitted,

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