Before the
Federal Trade Commission
Washington, D.C.

In the matter of
COPPA Rule Review
16 C.F.R. Part 312, Project No. P195404

COMMENTS OF
COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION

Pursuant to the request for public comment issued by the Federal Trade Commission ("FTC" or "Commission") on the implementation of the Children's Online Privacy Protection Rule ("the Rule" or "COPPA Rule"), the Computer & Communications Industry Association ("CCIA") submits the following comments.[1]

CCIA is an international nonprofit trade association representing a broad cross section of large, medium, and small companies in the high technology products and services sectors, including computer hardware and software, electronic commerce, telecommunications, and Internet products and services. Our members employ more than 750,000 workers and generate annual revenues in excess of $540 billion.[2]

I. Introduction

The protection of children's privacy online is a crucial policy priority and CCIA applauds the Commission's decision to undertake an early review of the Children's Online Privacy Protection Rule in light of emerging technologies and business practices. Since going into effect in April 2000, the Rule has admirably supported COPPA's twin aims of protecting children's privacy and promoting the availability of innovative educational and entertainment online

[1] Federal Trade Commission, *Request for Public Comment on the Federal Trade Commission's Implementation of the Children's Online Privacy Protection Rule*, Project No. P195404, *available at* www.regulations.gov/document?D=FTC-2019-0054-0001.
[2] A complete list of CCIA's members is available online at www.ccianet.org/members.

services for children.[3] These goals have been realized through active multi-stakeholder collaboration and results-oriented application of the Commission's toolkit. CCIA is encouraged that the Commission has maintained this course by seeking broad stakeholder feedback and hosting a public workshop on the future of the COPPA Rule as part of its review process.[4]

In the modern economy, consumers are taking advantage of an ever expanding range of innovative digital services and products including interactive services hosting user-generated third-party content, applications for mobile and handheld devices, "Internet of Things" technologies, voice-activated personal assistants, and augmented/virtual reality interfaces. Users, including children, interact with many of these devices and services differently than they did with the websites and online services that existed when COPPA was originally drafted, leading to areas of uncertainty about the application and scope of the COPPA Rule. In order to ensure that the Rule continues to protect children's privacy and promote the development and availability of high-quality children's educational and entertainment content, the Commission should seek to provide greater certainty about the application of the COPPA Rule to the full ecosystem of online services and explore ways to further enable operators to develop context-appropriate, low-friction mechanisms for fulfilling COPPA requirements such as verifying age and obtaining parental consent.

As a final general matter, a key factor in the success of the Rule has been the application of the "directed to children" and "actual knowledge" bases for coverage under COPPA.[5] CCIA urges the Commission to ensure that any proposed rulemaking would not have the effect of blurring the distinction between these separate standards or shifting the Rule towards a "constructive knowledge" approach to coverage. Such changes would be in tension with the statutory requirements and purpose of COPPA and would create significant uncertainty and costs for operators of online services.

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[3] *See* 144 Cong. Rec. S12787 (daily ed. Oct. 21, 1998) (statement of Sen. Bryan) ("The legislation accomplishes these [privacy] goals in a manner that preserves the interactivity of children's experience on the Internet and preserves children's access to information in this rich and valuable medium.").
[4] Federal Trade Commission, *The Future of the COPPA Rule* (Oct. 7, 2019), https://www.ftc.gov/news-events/events-calendar/future-coppa-rule-ftc-workshop.
[5] Children's Online Privacy Protection Rule, 16 C.F.R. § 312.2.

The following sections respond to specific questions posed in the Commission's request for comment.

II. Definitions

Question 12: *Persistent Identifiers*

The inclusion of persistent identifiers as a category of personal information in the 2013 revisions to the COPPA Rule served the widely held goal of excluding children from interest-based advertising. However, persistent device identifiers represent a fundamentally different type of information than the categories of personal information originally included in COPPA, such as name, address, and telephone number.[6] The unique nature and uses of persistent identifiers in online products and services have produced difficulties for companies that are required to meet COPPA provisions initially drafted to apply to more traditional categories of personal information.

Recognizing that persistent identifiers such as IP addresses and cookie data enable many necessary and beneficial functions that do not present privacy implications, the Commission created an exception to prior parental consent for the collection of persistent identifiers used only for the "internal operations" of a website or service.[7] The Commission should consider whether additional exceptions to the COPPA Rule for persistent identifiers would further enable operators to provide and improve online services without impacting consumer privacy. Specifically, CCIA recommends expanding the exception for persistent identifiers to COPPA's deletion obligations. This will give operators certainty that they can use this information for important purposes such as data security, fraud monitoring, and compliance with tax and accounting obligations. The addition of this exception would also harmonize the COPPA Rule with emerging best practices and international privacy regimes.[8] The Commission could further support these necessary and beneficial practices by exempting additional categories of information retained solely for tax, fraud, and accounting purposes from the Rule's deletion requirement.

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[6] Children's Online Privacy Protection Act, 15 U.S.C. § 6501(8).
[7] 16 C.F.R. § 312.5(c)(7).
[8] For example, both the General Data Protection Regulation ("GDPR") and California Consumer Privacy Act ("CCPA") include similar carve-outs. *See*, CCPA, Cal. Civ. Code § 1798.105.(a); GDPR, Art. 5 (1)(e).

Question 13: *Personal Information*

In considering the addition of new categories of personal information to the Rule, the COPPA statute requires the Commission to determine that a proposed identifier would "permit[] the physical or online contacting of a specific individual."[9] It is not clear that the categories of biometric information listed in the request for comment would meet this standard. Furthermore, given the uncertainty and costs that resulted from the expansion of the definition of "personal information" in the Rule's 2013 amendments,[10] the Commission should take great care in considering further expansions to the definition. The Commission should ensure that any changes to the definition of personal information meet an articulable goal of protecting children's privacy while also supporting the development and availability of child-directed technologies and content.

Other potential changes to the definition of personal information discussed in the request for comment are unnecessary and would create uncertainty if adopted, potentially impeding the development of new services. For example, including personal information inferred about children is unnecessary because the COPPA Rule's requirements governing the "use" of personal information from and about children already cover the processing of personal information to derive inferences about a specific user.[11] Additionally, the use of aggregated data that does not relate to a specific user is clearly outside the scope of COPPA's definition of personal information.

Finally, the Commission should use this opportunity to clarify the meaning of "images" under the Rule's definition of personal information. The Rule defines personal information to include "[a] photograph, video, or audio file, where such file contains a child's image or voice."[12] The Commission should exclude from the definition of personal information images that are either de-identified or that do not contain a child's face or likeness, such as an image of a child's hand. Allowing anonymized and non-identifiable images with no possibility of being re-identified and containing no inherently personal likenesses to be retained would not conflict

[9] 15 U.S.C. § 6501(8)(F).
[10] *See, e.g.*, Jessica Meyers, *Sweating the details of kids' privacy*, Politico (June 4, 2013), https://www.politico.com/story/2013/06/online-privacy-children-coppa-rules-092162.
[11] *See* 16 C.F.R. § 312.3, 312.5(a).
[12] 16 C.F.R. § 312.2.

with the Rule's intended goal of protecting children's privacy and safety. This clarification would support innovation in services and technologies that can be controlled by gestures and other non-touch interactions that increasingly rely on machine learning techniques to develop and improve their detection and processing capabilities.

Question 14: *Support for Internal Operations*

In the modern digital ecosystem, the processing of certain information is necessary for the basic operation and delivery of websites and digital services. Therefore, the COPPA Rule carve-out for the support of internal operations is necessary for the reliable functioning and availability for all manner of children's content. Given the importance of this provision, the Commission should ensure that the "internal operations" definition clearly describes the activities and processes to which the exception applies. The internal operations recognized by the Rule are comprehensive; however, the Commission should consider modifications to provide greater clarity on qualifying operator activities regarding monetization, product improvement, and personalization of child-directed content. Providing regulatory certainty in these areas will encourage greater innovation, investment, and market entry, thereby expanding the availability of high-quality child-directed content.

CCIA recommends three clarifications to the Rule's "internal operations" definition.[13] First, the definition should be amended to explicitly cover the full lifecycle of the provision of contextual advertisements. Specifically, the Rule should be updated to include not just the service of contextual advertisements, but also attribution, measurements such as click/conversion tracking, advertisement modeling, and similar practices. In the absence of interest-based advertising, it is necessary for operators and content creators to have confidence in the availability of a sustainable means to support their creation of child-directed content. Second, the Rule should specify that information may be used not just to "maintain or analyze," but also to "improve" the functioning of a website or online service. This will give more certainty to operators seeking to develop products and services to compete in the marketplace for child-directed content. Finally, the Rule should be modified to include examples of permissible

[13] *See* 16 C.F.R. § 312.2 "*Support for the internal operations of the Web site or online service means*" (1)(i).

personalization to a user, such as the recommendation of content based on prior activity on the website or online service. Such personalization is useful for ensuring that users enjoy an age-appropriate experience with a website or service.

Question 15: *Web site or online service directed to children*

The COPPA Rule's multifactor test for determining whether a website or online service is directed towards children articulates a comprehensive and appropriate set of criteria that is based on both content and contextual factors.[14] CCIA opposes changing the definition of "web site or online service directed to children" to expand the scope of the COPPA Rule to websites and services that do not include traditionally child-oriented activities but that may have large numbers of child users. Such an amendment would be (1) inconsistent with the COPPA statute, (2) superfluous and disruptive to the COPPA Rule's well-established approach to determining applicability, and (3) unduly burdensome to operators and ineffective in practice.

COPPA applies to websites and online services, or parts thereof, that are "directed toward children," which is further defined as "targeted to children."[15] The statute does not grant the Commission authority to alter this definition through rulemaking.[16] Therefore, unless the "actual knowledge" prong applies, some degree of upfront design or intent on the part of the operator to include children in a website or online service's audience is necessary to fall under COPPA. Expanding COPPA coverage based solely or primarily on after-the-fact evidence of child users would amount to an end-run around the statutory basis for assessing whether a website is child-directed and is not supported by the text of the statute.

The proposal is also unnecessary because the Rule already includes "competent and reliable empirical evidence regarding audience composition" as a factor to consider in determining whether a website or online service is directed to children.[17] The Commission's longstanding position on COPPA holds that determining whether or not a service is child-directed "depends on various factors" and requires an analysis of the totality of the

[14] 16 C.F.R. § 312.2 "*Web site or online service directed to children*" (1).
[15] 15 U.S.C. § 6501(10).
[16] *See id.*
[17] 16 C.F.R. § 312.2 "*Web site or online service directed toward children*".

circumstances.[18] Excluding the other factors articulated by the Rule's balancing test such as visual and audio content and the presence of traditionally child-directed activities to instead make determinations involving COPPA coverage on the basis of a single-factor would upset this careful balance and long-standing precedent.

Finally, the proposed expansion of COPPA applicability would create significant uncertainty and financial burdens for operators of non-child-directed content. Audience metrics alone are a poor basis for determining COPPA applicability because they can shift over time, may be highly responsive to fads, cannot necessarily be predicted by an operator at the outset of launching a website or online service, and cannot be reliably calculated.[19] The operational burden of these difficulties would likely be compounded for small content creators and operators. Furthermore, there would be no neutral way to establish bright-line determinations for the gross number or percentage of child users that would trigger COPPA applicability. In practice, operators would likely be forced to respond to such an amendment by instituting disruptive age-gating mechanisms and collecting additional personal information on users in order to ensure that their audience figures would not cause them to fall under COPPA. Such steps would negatively affect the quality of general audience services, restrict adults' access to and use of key product features, and limit the growth of online services.

Question 16: *Flexibility in methods for determining the age of users*

The 2013 COPPA Rule revision permitting mixed-audience websites to distinguish between users appropriately recognizes that it is reasonable to treat users as adults who have been neutrally age screened.[20] CCIA supports this exception to the definition of "directed to children" and the Commission's associated guidance on designing neutral age screening

[18] *See e.g.*, Musical.ly Case No. 2:19-cv-01439 at ¶ 25 (2019), https://www.ftc.gov/system/files/documents/cases/musical.ly_complaint_ecf_2-27-19.pdf; Children's Online Privacy Protection Rule, 78 Fed. Reg. 31,341, Jan. 17, 2013, *available at* https://www.govinfo.gov/content/pkg/FR-2013-01-17/pdf/2012-31341.pdf.
[19] *See* Andrew Green, *Audience Measurement in the Data Age*, Ipsos (July 2016), https://www.ipsos.com/en/audience-measurement-data-age ("[D]igital audience data has its own set of challenges… Sites can report on the number of 'unique' device IDs which have opened any page over a given period.... But they cannot distinguish between people and devices. Somebody can visit on multiple devices and will be counted separately for each visit.").
[20] 16 C.F.R. § 312.2 *Web site or online service directed to children* (3).

mechanisms.[21] As evolving digital technologies can create new opportunities to fulfill statutory requirements, the Commission should avoid introducing rigidity into the Rule that would have the potential to stifle innovative methods of conducting context-appropriate age screening. Furthermore, reasonable approaches to asking users for age information in a neutral manner will necessarily vary depending on the nature of the website or online service and the Rule must remain flexible as applied to different and emerging technologies.

III. Notice

Question 18: *The COPPA Rule's notice requirements are clear and appropriate*

The COPPA Rule's existing notice requirements and Commission guidance are comprehensive and clear, covering essential categories such as information collection, use, and disclosure that are consistent with global privacy regimes.[22] Any changes to the notice requirements will necessarily create compliance costs for operators and should therefore be justified by a corresponding tangible privacy supportive outcome. The request for comment's proposed amendments to the Rule's notice requirement do not appear likely to result in additional clarity or the inclusion of more relevant information in COPPA notices to parents and guardians. For example, the proposal to include "information about the categories of third parties" is redundant because the Rule already requires operators to provide notice of the "disclosure of personal information from children,"[23] which directs operators to include information about categories of third-party disclosures where appropriate.

Encountering lengthy and repetitive privacy notices can cause "notice fatigue" and decrease user understanding of the data practices presented.[24] The 2013 Amendments to the Rule's notice requirements were intended to streamline the delivery of timely and relevant

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[21] *See* Federal Trade Commission, *Complying with COPPA: Frequently Asked Questions* (Mar. 20, 2015) at G.3, www.ftc.gov/tips-advice/business-center/guidance/complying-coppa-frequently-asked-questions.
[22] *See, e.g.*, Health Insurance Portability and Accountability Act, 45 C.F.R. § 164.520 (2019); GDPR, Art. 13(1)(a)-(f); Personal Information Protection and Electronic Documents Act, 2000 S.C., c. 5 4.8.2(a)-(e).
[23] 16 C.F.R. § 312.2.
[24] *See, e.g.*, Luis Alberto Montezuma & Tara Taubman-Bassirian, *How to avoid consent fatigue*, IAPP (Jan. 29, 2019), https://iapp.org/news/a/how-to-avoid-consent-fatigue; Centre for Information Policy Leadership, *Comments by CIPL on the Article 29 Data Protection Working Party's Guidelines on Consent* (Jan. 28, 2018), https://www.informationpolicycentre.com/uploads/5/7/1/0/57104281/cipl_response_to_wp29_guidelines_on_consent-c.pdf.

information to parents, in part by removing "extraneous information" from COPPA notices.[25] This was a beneficial development consistent with widely recognized best practices for privacy notices that should not be unraveled through the current Rule review.[26] In addition to being potentially redundant, prescriptive requirements that increase the volume of information contained in COPPA notices may decrease the quality and effectiveness of existing notices. The Commission should instead focus on providing guidance for effective ways to deliver the most pertinent and relevant information to consumers, especially as consumers increasingly use innovative technology products such as smart devices which may be largely screenless at the primary point of interaction.[27]

IV. Parental Consent

Question 20: *Encouraging the development of new methods of parental consent*

The Commission has taken care to craft appropriate context-specific flexibility for obtaining verifiable parental consent ("VPC") when required by COPPA.[28] However, several of the existing pre-approved VPC methods such as using facsimile or entering payment card details entail high-friction interactions that may encourage disengagement and circumvention. Furthermore, the simplicity of completing the primary VPC methods is unequal across different types of digital services, may require the collection of sensitive personal information, and may be more difficult for some families to complete than others due to socioeconomic factors.[29]

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[25] Children's Online Privacy Protection Rule, 78 Fed. Reg. 31,341, Jan. 17, 2013, *available at* https://www.govinfo.gov/content/pkg/FR-2013-01-17/pdf/2012-31341.pdf ("The Rule amendments also streamline and clarify the direct notice requirements to ensure that key information is presented to parents in a succinct 'just-in-time' notice… The Commission sees great value for parents of streamlined online notices and continues to believe that the removal of extraneous information from such notices will further this goal.").

[26] *See, e.g.*, Better Business Bureau, *Does Your Privacy Policy Need A Tune-Up?*, https://www.bbb.org/council/for-businesses/toolkits/data-privacy-for-small-businesses/does-your-privacy-policy-need-a-tune-up ("Your privacy policy should be clear, concise and written in plain language so that your customers can readily understand how you're handling their information.").

[27] This challenge has already been recognized by the FTC in its 2015 report on the Internet of Things, noting the "practical difficulty of providing choice when there is no consumer interface, and recognizes that there is no one-size-fits-all approach." FTC Staff, *Internet of Things: Privacy & Security in a Connected World* (Jan. 2015), https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-staff-report-november-2013-workshop-entitled-internet-things-privacy/150127iotrpt.pdf.

[28] *See* 16 C.F.R. § 312.5;

[29] For example, some families are unbanked or lack government-issued identification. *See, e.g.*, Federal Deposit Insurance Corporation, *2017 FDIC National Survey of Unbanked and Underbanked Households* (Oct. 2018), https://www.fdic.gov/householdsurvey/2017/2017report.pdf; Vanessa M. Perez, *Americans With Photo ID: A*

Therefore, during the Rule Review, the Commission should consider and solicit research on privacy protective and cost-effective additions to the list of approved VPC methods.

The Commission should also consider Rule revisions to support a regulatory environment more hospitable to the development of new methods of obtaining VPC. For example, the Commission could streamline the process of approving new VPC mechanisms by revisiting the duration of the 120-day public comment period. The possibility of a quicker turnaround would encourage companies to develop innovative consent mechanisms and solicit feedback from the Commission with greater frequency. Such changes would also reflect the fast-shifting business practices and innovation in the modern digital economy.

V. Exceptions to Verifiable Parental Consent

Question 23: *Formalizing exceptions to parental consent for the use of education technology by schools*

The use of education technology ("Ed Tech") in schools has increased dramatically since the COPPA Rule was last revised in 2013, providing significant benefits for both the teaching and learning processes.[30] However, as the Commission recognized in 2017, the expanding use of Ed Tech has raised a number of questions about the application and intersection of COPPA and the Family Educational Rights and Privacy Act of 1974 ("FERPA").[31] The Rule review provides an important opportunity for the Commission to formalize and clarify longstanding precedent and guidance on the roles that educators, parents, and educational technology providers can play in enabling children's safe and appropriate access to Ed Tech, both in the classroom and for homework.[32]

Breakdown of Demographic Characteristics, Project Vote (Feb. 2015), http://www.projectvote.org/wp-content/uploads/2015/06/AMERICANS-WITH-PHOTO-ID-Research-Memo-February-2015.pdf.

[30] *See, e.g.*, Omidyar Network, *Scaling Access & Impact: Realizing the Power of EdTech* (Mar. 2019), https://www.omidyar.com/sites/default/files/Scaling_Access_Impact_Realizing_Power_of_%20EdTech.pdf; Tony Wan, *US Edtech Investments Peak Again With $1.45 Billion Raised in 2018*, EdSurge (Jan. 15, 2019), https://www.edsurge.com/news/2019-01-15-us-edtech-investments-peak-again-with-1-45-billion-raised-in-2018.

[31] Press Release, *FTC and the Department of Education to Host Workshop on Student Privacy and Ed Tech; Seeking Public Comments* (Dec. 1, 2017), https://www.ftc.gov/system/files/attachments/press-releases/ftc-department-education-announce-workshop-explore-privacy-issues-related-education-technology/ftc_edu_privacy_workshop_announcement.pdf.

[32] *See* COPPA Rule Statement of Basis and Purpose, 64 FR 59888, 59903 (Nov. 3, 1999) (The Rule "does not preclude schools from acting as intermediaries between operators and schools in the notice and consent process, or

Specifically, in order to harmonize legal frameworks, CCIA recommends that the Commission create a formal exemption to parental consent under COPPA that is explicitly aligned with the FERPA "school official" exception for the use of Ed Tech by schools.[33] The school official exception contains robust safeguards for the use of student information by providers and is well-suited to protecting the privacy of student data in the Ed Tech context.[34] Formally recognizing this exception will establish consistent expectations for schools, parents, and Ed Tech providers alike, further facilitating the ability for schools to develop curriculums that integrate modern education tools in a safe and privacy protective manner.

Additionally, the Commission should specify that the exception extends to all COPPA obligations, not just consent. This is important because schools are in the best position to evaluate how they are using the educational technology and the need for processing of student personal information, particularly where such educational software is used to track student progress. For example, when a school has provided consent to an Ed Tech vendor under this exception, parents should direct access and deletion requests concerning personal information used by that vendor to their child's school, consistent with equivalent FERPA regulations.[35] Furthermore, if Ed Tech providers are required to obtain verifiable parental consent, they would need to collect additional personal information in a manner that is contrary to the data minimization principle and not necessary for the provision of services to the educational institution and its students. As Ed Tech becomes increasingly prevalent in the classroom, requiring parental consent for every online service used in the classroom would quickly become administratively and practically unwieldy for parents and schools alike, with the resulting consent fatigue decreasing the availability of beneficial technologies and services to all students.

The application of the COPPA Rule in school-related contexts would benefit from additional clarification from the Commission on several other issues. First, the Commission

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from serving as the parents' agent in the process") *and* Federal Trade Commission, *Complying with COPPA: Frequently Asked Questions* (March, 2015) at M.1. ("Many school districts contract with third-party website operators to offer online programs solely for the benefit of their students and for the school system… In these cases, the schools may act as the parent's agent and can consent to the collection of kids' information on the parent's behalf.").

[33] *See* 34 C.F.R. § 99.31(a)(1)(i).

[34] *Id*.

[35] 34 CFR 99.20.

should provide additional clarity on what data processing activities are within the scope of the "educational context" requirement.[36] The most natural approach would be to align permissible Ed Tech operator data uses for the "use and benefit of the school" with the Rule's existing "support for internal operations" exemption. An equivalent provision would bar the use of student information for clearly inappropriate commercial purposes such as serving personalized ads, but allow for analytics, content personalization, and product development, maintenance, and improvement uses that benefit students and schools. This would also align with FERPA's flexible approach of allowing schools to use the personal information of students where "the school has determined that they have 'legitimate educational interest' in the information."[37] Second, given the enterprise-to-enterprise nature of school contracts for Ed Tech learning tools, the Commission should develop specific guidance as to what should be contained within the notices that operators are required to provide to schools to meet COPPA obligations.

Finally, in order to reduce confusion for all education stakeholders and to increase the ease of school and Ed Tech provider compliance processes, the Commission should explicitly recognize that the COPPA Rule preempts state laws that impose different requirements with regard to the collection, use, and disclosure of children's personal information obtained through a school's use of online technology or contractual relationship with an Ed Tech provider.[38] The Rule should also align, as discussed above, with FERPA's "school official" exception to provide consistency across federal statutes and avoid conflicting obligations.[39] This is an area where a single federal standard is sorely needed, as the burden of complying with both federal and state laws may leave operators in an unmanageable position. A federal standard will also decrease confusion faced by schools and school districts in creating the necessary notices, disclosures,

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[36] Federal Trade Commission, *COPPA FAQs* at M.1.
[37] U.S. Department of Education, *FERPA General Guidance for Students* (June 26, 2015), https://www2.ed.gov/policy/gen/guid/fpco/ferpa/students.html.
[38] National Conference of State Legislatures, *Student Data Privacy* (Oct. 26, 2018), http://www.ncsl.org/research/education/student-data-privacy.aspx.
[39] Under FERPA, a school may not generally disclose personally identifiable information from an eligible student's education records to a third party unless the eligible student has provided written consent. However, there are a number of exceptions to FERPA's prohibition against non-consensual disclosure of personally identifiable information from education records. Under these exceptions, schools are permitted to disclose personally identifiable information from education records without consent, though they are not required to do so. One of the exceptions to the prior written consent requirement in FERPA allows "school officials," including teachers, within a school to obtain access to personally identifiable information contained in education records provided the school has determined that they have "legitimate educational interest" in the information.

contracts and other documents to meet requirements that may not presently align on the state and federal levels.[40]

Question 24: *Use of audio files containing a child's voice*

As the Commission's request for comments notes, the growth in consumer use of voice-enabled connected devices has triggered questions about the application of the COPPA Rule. The Commission's 2017 Policy Statement recognizes that voice-enabled devices can provide significant benefits to consumers, including children who have not learned to write or who are disabled, and entail minimal privacy risk where appropriate governance exists for the retention of recorded audio.[41] The Commission should provide further certainty to operators and ensure the continued functionality and availability of modern voice-enabled online services by codifying into the COPPA Rule a technology-neutral, risk-based exception to prior parental consent for audio information. Consistent with equivalent exceptions in the Rule, this exception should explicitly permit the retention of audio data that has been deidentified, as well as audio files that are used solely for internal operations. Finally, given that for emerging technologies, voice-activated commands may not necessarily serve as a "replacement" for existing services that use written words, the exception should apply to "voice data" generally.

Question 25: *Allowing a rebuttal of the presumption that all users of child-directed content are children*

Adults may wish to interact with child-directed content for a variety of reasons, including nostalgia or to find content suitable for their children or students. Given that many interactions that make using interactive services engaging and rewarding such as posting comments could be

[40] Stephen Noonoo, *States Issue Privacy Ultimatums to Education Technology Vendors*, EdSurge (Mar. 12, 2018), https://www.edsurge.com/news/2018-03-12-states-issue-privacy-ultimatums-to-education-technology-vendors (noting that under some state privacy laws individual school districts are responsible for creating their own contracts between Ed Tech vendors, which requires costly negotiations, as well as requiring consent for each and every vendor a district wishes to utilize).

[41] Federal Trade Commission, *Enforcement Policy Statement Regarding the Applicability of the COPPA Rule to the Collection and Use of Voice Recordings* (Oct. 20, 2017), https://www.ftc.gov/system/files/documents/public_statements/1266473/coppa_policy_statement_audiorecordings.pdf ("[T]he Commission recognizes the value of using voice as a replacement for written words in performing search and other functions on internet-connected devices. Verbal commands may be a necessity for certain consumers, including children who have not yet learned to write, or the disabled.").

prevented under COPPA, it is appropriate for the Rule to allow general audience services that have reasonably age-screened users to treat adult users interacting with child-directed content as adults. Considering the fast pace of emerging technology, the Commission should adopt an adaptable, standards-based approach to reasonable age-screening in this context. In addition to the use of neutral age screening accompanied by periodic password reauthorization suggested in the request for comment,[42] the Commission should consider verification methods that may be appropriate in additional contexts, such as submitting a voiceprint or device PIN.

The availability of a rebuttable presumption should not be tied to a requirement that an operator actively screen user-generated content for child-directed material. As seen in multiple contexts, content filtering at scale has serious costs and limited effectiveness.[43] Instead, the makers of user-generated content are in the best position to designate whether or not their content is child-directed. Further, the creation of such a requirement would threaten to collapse the "actual knowledge" standard for COPPA applicability into a "constructive knowledge" approach, which would contravene Congressional intent and has long been recognized as placing an unreasonable burden on operators and chilling investment into and production of quality child-directed content.[44]

VI. Conclusion

Many of the potential Rule modifications raised in the Commission's request for comment are common-sense proposals to clarify and operationalize existing COPPA requirements in the context of new and emerging technologies. Integrating these changes would support the continued success of COPPA's twin aims of protecting children's privacy and supporting the development of high-quality child-directed content. Other proposals, while

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[42] Federal Trade Commission, *supra* note 1, Question 25.

[43] *See, e.g.*, Alexander Gann & David Abecassis, *The Impact of a Content Filtering Mandate on Online Service Providers*, Allied for Startups (June 2018), https://alliedforstartups.org/wp-content/uploads/sites/3/2018/06/Impact-of-a-content-filtering-mandate-2018-06-07.pdf ("A content-filtering mandate would impose high costs on those platforms for which limited solutions already exist, while the possibilities of developing additional technologies to comply with the proposed legislation are fraught with difficulty and potentially extremely costly.").

[44] 78 Fed. Reg. 31,341 (finding that it is reasonable to hold an online service liable under COPPA "only where it has *actual knowledge* that it is collecting personal information directly from users of a child-directed site or service." (emphasis in original)).

well-intentioned, would fall short in this regard, either by restricting the availability and function of new privacy protective technologies and processes or by upsetting the original Congressional balancing determinations for COPPA's scope and applicability.

The Commission's review has the potential to provide greater certainty for operators of their COPPA obligations, spurring both entry and innovation in the market for high-quality child-directed content. The Commission should be congratulated for taking a proactive and ambitious approach to reviewing the COPPA Rule. CCIA looks forward to continued multi-stakeholder engagement with the FTC to ensure that childrens' privacy protections remain appropriate given the risks and opportunities of modern technology.

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Respectfully submitted,

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