



March 11, 2024

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Suite CC-5610 (Annex E)
Washington, DC 20580

Re: News/Media Alliance Comments on COPPA Rule Review, Project No. P195404

I. EXECUTIVE SUMMARY

Americans – including young readers – rely on newspapers, magazines, and their associated websites and mobile applications (collectively, “news media”) to stay current on the latest local, national, and international news, political developments, and culture. Accordingly, members of the News/Media Alliance (“N/MA”) play a unique and vital role in supporting a healthy democracy, local communities, and the economy. N/MA members encourage civic engagement by providing audiences of all ages with trusted, curated, and high-quality journalism.

N/MA commends the Federal Trade Commission (“FTC” or “the Commission”) for taking a measured and considered approach to updating the Children’s Online Privacy Protection Act Rule (“COPPA Rule” or “Rule”) to “respond to changes in technology and online practices.”¹

As the Commission has reviewed and modified the COPPA Rule over time, the Rule’s definitions have remained well-understood and provide much-needed certainty to news media operators. However, the N/MA welcomes the FTC’s additional clarifications to the Rule, particularly since many of COPPA’s core definitions and concepts are included in children’s privacy legislation currently being considered at the federal and state levels. The proliferation of privacy and children’s online safety bills that refer to or enshrine COPPA definitions and concepts only underscores the importance (and potential impact) of the Commission’s COPPA Rule review.²

N/MA appreciates the consideration the Commission has always given to news media, and hopes that when deliberating modifications to the COPPA Rule, the Commission will consider whether

¹ *Children’s Online Privacy Protection Rule*, 89 Fed. Reg. 2034, Notice of Proposed Rulemaking (Jan. 11, 2024).

² *Kids Online Safety Act*, S.1409, 118th Cong. (2023).



such modifications would adversely affect the public’s access to news media, and that any such modifications continue to allow readers of all ages to retain access to high-quality online journalism.

II. ABOUT THE NEWS/MEDIA ALLIANCE

N/MA welcomes the opportunity to submit comments to this Notice of Proposed Rulemaking regarding proposed changes to the COPPA Rule, consistent with the requirements of the Children’s Online Privacy Protection Act.

N/MA is a nonprofit organization headquartered in Washington, D.C., representing the newspaper, magazine, and digital media industries. N/MA represents over 2,200 diverse publishers in the United States and internationally, ranging from the largest news and magazine publishers to hyperlocal newspapers, and from digital-only outlets to papers that have printed news since before the Constitutional Convention. N/MA advocates for its members on a broad range of current issues affecting them, including consumer privacy laws and regulations that relate directly to our members’ trusted relationships with their readers.

In total, N/MA’s membership accounts for nearly 90 percent of the daily newspaper circulation in the United States, over 500 individual magazine brands, and dozens of digital-only properties. Across formats, news media entities combat misinformation, encourage democratic engagement, strengthen community ties, and educate the public – including young people – on matters of import and interest. The availability of high-quality journalism benefits readers of all ages and, in turn, benefits society.

Our members publish quality journalism and creative content that covers natural disasters, conflict zones, financial markets, school boards, city halls, town halls, entertainment, the arts, food, wellness, and other matters of public interest to local, national, and international communities. Given the nature of members’ content, most N/MA members operate “general audience” websites and services that are not “directed to children.” Further, as part of their online operations, most N/MA members do not typically have “actual knowledge” of the age of each reader.

N/MA commends the Commission for its work to protect children’s privacy online, and welcomes the Commission’s clarifications to further streamline the COPPA Rule, where appropriate. N/MA also appreciates the Commission’s ongoing support for news media and understanding – now, more than ever – the importance of providing all Americans (including young readers) access to news and information from trusted, curated, and well-respected news media websites and applications.

III. COPPA RULE DEFINITIONS SHOULD REMAIN CONSISTENT, BUT N/MA WELCOMES FURTHER CLARIFICATION FROM THE COMMISSION.

N/MA supports the Commission’s measured approach to reviewing and revising COPPA’s definitions, as they are generally well-understood by operators. Through this COPPA Rule review, the Commission also plays an important role in protecting children’s privacy more broadly, as many state

and federal bills incorporate or build upon COPPA’s definitions and concepts. By maintaining clear and well-understood definitions, the Commission is helping to ensure that children across the country benefit from consistent and uniform protections.

A. “Personalization” and “internal operations” (Questions 9, 15)

In its review, the Commission concluded that further changes to the definition or enumerated “internal operations” activities are not needed, and N/MA supports this finding. Operators like news media publishers need the ability to personalize their services, whether that personalization is “user-driven” or “operator-driven.”

Digital news publications, websites, and apps provide readers with flexibility and options that they simply did not have in print. Online readers can bookmark or “favorite” articles so they are easy to find, follow specific reporters, and curate their own lists of articles or topics. Indeed, many readers prefer these options and expect them to be offered. This type of “user-driven” personalization gives readers meaningful choice and enables easy access to news and information that interests them. These user-driven actions also enable publishers to engage in safe and appropriate “operator-driven” content personalization, such as suggesting articles on the same or other topics read by other users, or designing a more personalized interface where the topics readers are most interested in are made more prominent.

This type of “operator-driven” personalization allows news media publishers to disseminate important, and often timely, news and information, while enabling readers to more easily find the content they are looking for. While these types of user-driven and operator-driven actions arguably maximize a reader’s engagement with news media, these features do not present harm to the reader. This type of personalization is wholly and materially different than the proverbial “rabbit hole” of user-generated content that is often served by addictive social media platforms.

B. “Website or online service directed to children” (Question 11)

N/MA agrees with the Commission that the definition of “website or online service directed to children” should remain unchanged, and that the FTC should not amend the definition to specify that a certain percentage of child users would make a site or service “directed to children.” N/MA is not opposed to adding an exemption for websites or services that fall below a certain percentage threshold, but we believe that the current multi-factor test is more appropriate and responsive to societal and technological change.

As the Commission notes, the current definition of “website or online service directed to children” already positions the Commission to consider empirical evidence of the number of child users on a site. Further, the fact that an operator’s website or online service does not qualify for the percentage exemption (which the Commission itself notes will be “very low”) should not otherwise prejudice the operator under the multi-factor test. Websites, apps, and services that do not qualify for the percentage exemption should still be able to be considered “general audience” under the multi-factor test. Otherwise, imposing a percentage exemption could effectively serve as a proxy to capture

sites and services that are not truly directed or targeted to children. This would effectively change COPPA’s “knowledge” standard and, therefore, would exceed the Commission’s statutory authority.

N/MA also suggests that, to the extent that a percentage exemption is considered further, that any percentage exemption takes into account the data collection and analysis required to assess the percentage threshold. Any new percentage exemption should respect the principles of data minimization and should not force operators to age-gate or collect additional information from users in an effort to avail themselves of the exemption. To satisfy the percentage exemption, operators should be allowed to submit general audience statistics or internal studies since many news media publishers do not actively collect information about the age of their users. N/MA also encourages the Commission to consider whether adding a percentage exemption might unintentionally incentivize operators to purchase or otherwise obtain personal information from third-party data sources to learn more about their audiences (a practice that would also conflict with the core tenets of data minimization and thus children’s privacy).

C. “Marketing or promotional materials or plans” (Question 11, General Comment)

N/MA supports the Commission’s proposed additions to the non-exhaustive list of examples of evidence the Commission will consider in analyzing audience composition and intended audience, and welcomes further clarifications (*e.g.*, “marketing or promotional materials or plans, representations to consumers or to third parties, reviews by users or third parties, and the age of users on similar websites or services”). N/MA agrees with the Commission’s conclusion that a publisher’s marketing materials and its own representations about the nature of its sites and services are relevant to the Commission’s audience composition and intended audience analysis. News media publishers recognize the importance of responsible advertising and take great care to ensure that their internal and external marketing materials (to partners, advertisers, and readers) are truthful and accurate, reflecting the publisher’s understanding of its content and readership.

However, N/MA encourages the Commission to revisit its addition of “reviews by users or third parties” and “the age of users on similar websites or services,” to the non-exhaustive list of examples of evidence the Commission will consider when analyzing audience composition and intended audience. It is our members’ experience that reviews by users and third parties are often subjective and tend to be imprecise. Further, reviews are unlikely to provide the Commission with additional relevant information that is not otherwise addressed under the multi-factor test.

Similarly, the N/MA cautions the Commission against allowing for “the age of users on similar website or services” to be used as evidence of audience composition or intended audience for the site or service it is evaluating. While news media websites and apps may, on their face, appear to cover the same topics or serve the same audiences, they can vary widely in audiences to which they appeal, their internal operations, marketing, and how or to what extent they support user-generated content. N/MA often sees this variability between and among its own members. Without further defining the criteria

for “similar website or services,” N/MA is concerned that comparing sites may result in an arbitrary, subjective, and unreliable assessment.

While N/MA supports the Commission’s further clarification of “marketing or promotional materials or plans,” we would discourage the Commission from adding “reviews by users or third parties” or “the age of users on similar websites or services,” to the non-exhaustive list of examples of evidence the Commission will consider when analyzing audience composition and intended audience.

IV. THE COMMISSION SHOULD PRESERVE THE USE OF CONTEXTUAL ADVERTISING PRACTICES AND AVOID ANY MODIFICATIONS TO THE COPPA RULE THAT COULD EXACERBATE ANTICOMPETITIVE PRACTICES (QUESTIONS 10, 13)

Contextual advertising is a vital revenue resource for news media. News and magazine publishers, from the hyperlocal to those on the international stage, significantly rely on digital advertising revenue to support their investments in journalism and to ensure that their content remains readily and widely available. Further, such revenue serves to keep the press: (i) free from government control; (ii) affordable to all, such as by providing free or reduced-fee access for users who cannot afford a subscription, including young readers (not just to those who can afford a subscription); and (iii) at the highest level of integrity that the people of the United States (and the world) have come to depend on.

Well-reported and easily-accessible news media facilitates readers’ ability to engage with a broader range of news sources, which ultimately creates a more informed democratic society. News media that provide general audience websites and services (and that do not have actual knowledge of a child user) should be able to continue serving contextual advertising. Any further restrictions on contextual advertising would adversely impact the availability of quality content and diverse viewpoints, and the reach of news media in local markets, both of which would ultimately impact young readers. Such a change would also assume that contextual ads tailored to readers’ interests cannot be helpful or beneficial.

Contextual advertising is one of the more privacy-centric advertising practices. In addition, not all advertising on news media sites is for commercial products and services – nonprofit organizations whose mission is to help youth, including to support them in furthering their education or that focus on other important youth issues, also advertise their services on news media websites and online services. More troubling, as discussed in our November 21, 2022 comments filed with the FTC in its Advance Notice of Proposed Rulemaking for a Trade Regulation Rule on Commercial Surveillance and Data Security, N/MA believes that further restrictions on advertising could encourage dominant





platforms to continue unfair advertising and data collection practices, and exacerbate anti-competitive market conditions.³

News media rely on contextual advertising to keep high-quality journalism widely available and affordable. When considering revisions to the COPPA Rule and any proposed changes to restrict responsible advertising, N/MA urges the Commission to remember the vital role contextual advertising plays in supporting high-quality journalism.

IV. CONCLUSION

N/MA appreciates the opportunity to provide these comments to the Notice of Proposed Rulemaking for the Children’s Online Privacy Protection Rule and commends the Commission’s thoughtful and measured approach.

We urge the Commission to ensure that any changes to the COPPA Rule will continue to preserve publishers’ ability to fulfill their vital First Amendment function and allow readers of all ages to benefit from widely available, ad-supported journalism.

Respectfully submitted,

A handwritten signature in black ink that reads "Regan Smith".

Regan Smith
Senior Vice President & General Counsel
News/Media Alliance

A handwritten signature in black ink that reads "Emily Emery".

Emily Emery
Vice President – Government Affairs
News/Media Alliance

³ See Commercial Surveillance Advance Notice of Proposed Rulemaking (R111004), Comments of News/Media Alliance (submitted Nov. 21, 2022); see also Commercial Surveillance Advance Notice of Proposed Rulemaking (R111004), Comments of Hal J. Singer and Augustus Urschel (submitted Nov. 21, 2022).

