



**Comments in Response to the Office of the Attorney General Colorado
Department of Law Rulemaking to Implement Senate Bill 24-041
*The Colorado Privacy Act Amendments Pertaining to Privacy and Safety
Protections for Minors Online***

Respectfully submitted,

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Comments in Response to the Office of the Attorney General Colorado Department of Law Rulemaking to Implement Senate Bill 24-041 *The Colorado Privacy Act Amendments Pertaining to Privacy and Safety Protections for Minors Online*

Introduction.

On behalf of Common Sense Media, we are pleased to submit these comments in response to the Colorado State Office of the Attorney General's (OAG) rulemaking to implement the Colorado Privacy Act (CPA), Senate Bill 24-041. We strongly support Colorado's OAG's efforts to protect children's safety while ensuring their privacy, and we offer constructive suggestions to achieve this balance below.

Common Sense Media is the leading nonprofit organization dedicated to improving the lives of all children and families by providing the trustworthy information, education, and independent voice they need to thrive in the 21st century.

Teens and kids are being surveilled by platforms and having their behavior tracked, packaged, and sold to third-parties at an alarming rate—and their privacy is at risk. **According to the U.S. Surgeon General's advisory, Social Media and Youth Mental Health: The U.S. Surgeon General's Advisory, up to 95% of youth ages 13-17 report using social media, with more than a third saying they use social media "almost constantly."**¹ The advisory noted that children and adolescents who spend more than 3 hours a day on social media face double the risk of mental health problems including experiencing symptoms of depression and anxiety. This is concerning as a recent survey showed that teenagers spend an average of 4.8 hours a day on social media.² And when asked about the impact of social media on their body image, 46% of adolescents aged 13-17 said social media makes them feel worse.³

Research further suggests that kids' internet usage is at an all-time high.⁴ Teens are spending an average of 4.5 hours per day on their phones, with about a quarter of them spending as much as 5 to 8 hours in front of their screens every day. Nearly half of teens report that they feel addicted to their phones.⁵ Teens connect with each other through these platforms at higher rates than any other group, report that these platforms form a larger part of their social life than any other group,

¹ U.S. Dept. of Health and Human Services, *Social Media and Youth Mental Health: The U.S. Surgeon General's Advisory* (2024), <https://www.hhs.gov/surgeongeneral/priorities/youth-mental-health/social-media/index.html#:~:text=The%20Surgeon%20General's%20Advisory%20on.%2C%20technology%20companies%2C%20researchers%2C%20and>.

² Jonathan Rothwell, *Teens Spend Average of 4.8 Hours on Social Media Per Day* (Oct. 13, 2023), <https://news.gallup.com/poll/512576/teens-spend-average-hours-social-media-per-day.aspx>.

³ The Digital Wellness Lab's Pulse Survey, *Adolescent Media Use: Attitudes, Effects, and Online Experiences* (August 2022), https://digitalwellnesslab.org/wp-content/uploads/Pulse-Survey_Adolescent-Attitudes-Effects-and-Experiences.pdf.

⁴ Jenny S. Radesky et al., *Constant Companion: A Week in the Life of a Young Person's Smartphone Use*, Common Sense (2023).

⁵ Kim Chronister, *Teen Phone Addiction*, Key Healthcare (May 4, 2022).

and have outsized levels of difficulty stopping technology use once they've started.⁶ In addition to time spent on social media, kids and teens must regularly use education technology products in school that also capture their data, meaning that K-12 students don't have the option to avoid tech and the data privacy concerns it raises.

Even more concerning, social media companies utilize our kids and teens data in coordination with several addictive design features in order to get kids and teens to engage and view the platforms for longer in order to make more money. This push for more engagement on the platforms has had an increasingly devastating effect on children and teenagers; spending more time on social media has been tied to significantly higher rates of youth depression, anxiety, suicidal ideation, and self-harm.

In an effort to better protect children and teens, the Colorado legislature passed the amendments to the Colorado Privacy Act (CPA) in Senate Bill 24-041.

Comments.

Common Sense Media applauds the Colorado OAG for working to craft a knowledge standard in the amendments that will hold companies accountable for when they know they are dealing with children, and not enable them to turn a blind eye to kids on their services for legal purposes while at the same time profiting off of them.

Common Sense Media agrees that all of the factors listed in Rule 6.13 A and B are of critical importance to protecting kids and teens online. Common Sense Media offers the following comments regarding Rule 6.13 *Duty Regarding Minor Data - Knowledge Standard*:

- Common Sense Media understands that the factors to be considered in 6.13(A) to be “including, but not limited to” factors (as the proposed rule states “the following factors may be considered”).
- Additionally, we recommend broadening the example in section 6.12(A)(1)(e) to ensure user provided information that companies collect and consider is accounted for, whether or not it is provided in the profile or account set up:
 - "6.12(A)(1)(e). Example: A Consumer provides relevant indicia that they are a Minor, such as year of birth or grade level, in the profile or account set up of a service or in other user-provided content the Controller processes."

Common Sense Media commends the Colorado OAG for recognizing system design features that are utilized by controllers in order to extend or maximize minor's engagement.

Common Sense Media believes the list of factors to be considered under the CPA under Rule 6.14(A) and (B) are a thorough listing of factors to be considered when evaluating whether an

⁶ *Id.*

online service, product, or feature should be included in the scope of the rule. However, we offer the following comments regarding Rule 6.14 *Duty Regarding Minor Data - System Design Features*:

- As was noted above in section Rule 6.13(A), we suggest that the factors to be considered in 6.14(A) are reflected as “including, but not limited to” (again because the proposed rule indicates that “the following factors may be considered”).
- We also recommend replacing the word “addictiveness” in Rule 6.13(A)(3) to “use of or engagement with an,” and also adding “increases the risk of harm to minors” striking “harm minors” from that same section. This change reflects that although it remains somewhat controversial whether at this time there is sufficient evidence to show that these platforms are in fact “addictive,” as the Surgeon General indicated in his 2023 Mental Health Advisory “adolescents who spent more than 3 hours per day on social media faced double the risk of experiencing poor mental health outcomes including symptoms of depression and anxiety.”⁷
- Additionally, we recommend removing or narrowing Rule 6.13(B)(3) from the listing of system design features that will “likely not be found to significantly increase, sustain, or extend a Minor’s use of an online service, product, or feature.” We believe this exception is too vague and will allow platforms to claim that any design feature is “one that is necessary to the core functionality” of the online service, product, or feature.
- In order to clarify that Rule 6.14 does not discriminate among users based on age, we recommend using language such as: “A Controller shall not withhold, degrade, lower the quality, or increase the price of any product, service, or feature, other than as necessary for compliance with the provisions of this rule or any rules or regulations promulgated pursuant to this article, to a Minor due to the Controller not being permitted to provide system design features that significantly increase, sustain or extend a Minor’s use of an online service, product, or feature.”⁸
- To make clear that this section does not interfere with speech protected under the First Amendment, we recommend that Rule 6.14(B)(1) include a limitation stating that “nothing in this provision requires Controllers to limit, in any manner, the availability of content.”
- Finally, we recommend clarifying that nothing in this section shall be construed as preventing any action taken in good faith to restrict access to or availability of media that the Controller considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected.⁹

Conclusion.

Common Sense Media is grateful for the opportunity to provide comments during this rulemaking if you have any questions or would like to engage further please contact:

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⁷ *Social Media and Youth Mental Health: The U.S. Surgeon General’s Advisory* (2024), at page 6.

⁸ See, NY Stop Addictive Feeds Exploitation (SAFE) for Kids Act ([SB 7694](#)), signed into law on 6/7/24.

⁹ *Id.*