

## COMMENTS OF THE ELECTRONIC PRIVACY INFORMATION CENTER

to the

### OFFICE OF THE ATTORNEY GENERAL COLORADO DEPARTMENT OF LAW

#### Rulemaking to Implement Senate Bill 24-041 Colorado Privacy Act Amendments Pertaining to Privacy and Safety Protections for Minors Online

September 5, 2025

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The Electronic Privacy Information Center (EPIC) submits these comments in response to the rulemaking to implement the amendments to the Colorado Privacy Act governing privacy protections for children's online data. EPIC is a public interest research center in Washington, D.C., established in 1994 to focus public attention on emerging privacy and civil liberties issues.<sup>1</sup> EPIC is committed to minors' online privacy and safety, and has provided courts, legislators, and attorneys general with guidance about the constitutional, privacy, and access questions implicated by kids' online privacy and safety legislation and regulations.<sup>2</sup>

EPIC applauds the important changes to Colorado Privacy Act (CPA) enacted by Senate Bill 24-041 that strengthen privacy and safety protections for minors online. The proposed rulemaking is a critical step to ensure that the amended provisions are implemented effectively. Current data use and design practices are causing serious harm to minors online. Many companies collecting troves of data from minors also employ design features that use minors' data to figure out the best way to

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<sup>1</sup> EPIC, *About EPIC*, <https://epic.org/about/>.

<sup>2</sup> EPIC, *Platform Governance Laws and Regulations*, <https://epic.org/issues/platform-accountability-governance/platform-governance-laws-and-regulations/>.

manipulate each minor into staying on the platform as long as possible.<sup>3</sup> The proposed rule will strengthen the ability of the Colorado Attorney General to enforce the CPA, incentivizing big tech to change these harmful business practices and improve minors' privacy, autonomy, and safety online.

The proposed rule includes useful changes that clarify the scope of various terms in the CPA. For example, the proposed rule explains that the term sensitive data includes inferences from precise geolocation information. Many apps, websites, toys and games that children and teens use are set to automatically collect precise geolocation information even when it is not relevant to the function of the online service or connected game. Just this week, the Federal Trade Commission announced a settlement with a robot toy maker for illegally collecting geolocation information about children.<sup>4</sup> Precise geolocation information can infer and reveal sensitive data about minors, and the collection and retention of such sensitive data is largely out of context and unbeknownst to consumers.

The proposed rule also helpfully clarifies the knowledge standard by illustrating the factors to consider whether a controller “willfully disregards” that a user is a minor. The rule describes three likely scenarios where ignoring information would be considered willfully disregarding a user's status as a minor: directly receiving information indicating the user is a minor, directing services to minors, or categorizing a user as a minor for marketing, advertising, or business purposes. By providing examples of these scenarios, the rule improves compliance and supports a knowledge standard that accurately reflects the reality for controllers online. Many controllers already know whether a user is a minor from determining the age of users for placing advertisements or for other internal business purposes. The rule makes explicit that a controller cannot ignore that information

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<sup>3</sup> See Arvind Narayanan, Understanding Social Media Recommendation Algorithms, The Knight First Amendment Institute at Columbia University 20–22 (2023), [https://s3.amazonaws.com/kfai-documents/documents/4a9279c458/Narayanan—Understanding-Social-Media-Recommendation-Algorithms\\_1-7.pdf](https://s3.amazonaws.com/kfai-documents/documents/4a9279c458/Narayanan—Understanding-Social-Media-Recommendation-Algorithms_1-7.pdf).

<sup>4</sup> Stipulated Proposed Order, *United States v. Apitor Technology Co. Ltd.*, 3:25-cv-07363-MMC (Sept. 2, 2025), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/Apitor-JointMotion-StipOrder.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/Apitor-JointMotion-StipOrder.pdf).

and must provide required safeguards based on their existing knowledge that a user is a minor. To make this provision more privacy protective, EPIC encourages the Attorney General to expand the limitation in Rule 6.13(C) to not require any additional data collection to determine whether a user is a minor.

Under the CPA, controllers are prohibited from using design features to extend or maximize engagement without opt-in consent. The rule provides more information about factors that can be used to determine if a design feature “significantly increases, sustains, or extends a Minor’s use of an online service, product or feature [...]” such that the use of that feature would require opt-in consent. It also lists design features that likely would not extend or maximize engagement. The listed examples and limitation provision make clear that a controller can still provide a personalized experience for minors. The rule envisions a user experience for minors that is not surveillance-based, but one that enhances user autonomy and choice, giving minors control of their own user experience. To further improve this provision of the rule, the Attorney General should consider allowing controllers to take into account a broader set of minors’ explicit preferences, like requesting a specific category of media.<sup>5</sup>

Finally, to clarify that the entire section of the statute does not interfere with protected First Amendment speech, EPIC recommends that the rule include a limitation that nothing in the provision requires companies to monitor for, edit, remove, downrank, or otherwise limit the availability of any user-submitted media.

EPIC applauds the Attorney General’s attention to the important issues facing privacy, security, and safety for minors and adults online. EPIC is eager to engage with the Attorney General

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<sup>5</sup> See Vermont Age-Appropriate Design Code, 2025 VT. Acts & Resolves 63 (§299f(A)(4)), <https://legislature.vermont.gov/Documents/2026/Docs/ACTS/ACT063/ACT063%20As%20Enacted.pdf>.

further on any issues raised in this comment. Please contact EPIC Counsel Suzanne Bernstein at [bernstein@epic.org](mailto:bernstein@epic.org) with any questions.

Respectfully submitted,

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