



September 17, 2024

The Honorable Cathy McMorris Rodgers  
Chair, Committee on Energy & Commerce  
Washington, D.C. 20515

The Honorable Frank Pallone  
Ranking Member, Committee on Energy & Commerce  
Washington, D.C. 20515

The Honorable Gus Bilirakis  
Chair, Subcommittee on Innovation,  
Data, and Commerce  
Washington, D.C. 20515

The Honorable Jan Schakowsky  
Ranking Member, Subcommittee on Innovation,  
Data, and Commerce  
Washington, D.C. 20515

**Re: H.R. 7890 (“COPPA 2.0”) for Full Committee Markup, to be held on Sept. 18, 2024**

Dear Chair Rodgers, Ranking Member Pallone, Chair Bilirakis, and Ranking Member Schakowsky,

The Main Street Privacy Coalition (MSPC)<sup>1</sup> and its 20 national trade association members appreciate the significant efforts you have made in developing H.R. 7890, the Children and Teens’ Online Privacy Protection Act (a.k.a., “COPPA 2.0”) that would amend the Children’s Online Privacy Protection Act of 1998 (COPPA). However, we have two significant concerns with the sponsors’ amendment in the nature of a substitute (AINS) to be considered at your full committee markup tomorrow morning regarding the reversal of state law preemption in COPPA by the Senate and the removal of the actual knowledge standard for many of the Main Street businesses we represent. Additionally, consistent with our [letter](#) to the Committee of June 26, 2024, we also strongly oppose amending COPPA to add the American Privacy Rights Act (APRA) in a form that does not preempt related comprehensive state privacy laws to establish a uniform national standard.

The MSPC members represent a broad array of companies that line America’s Main Streets and interact with consumers on a daily basis. These businesses can be found in every town, city, and state, providing jobs, supporting our economy, and serving Americans as a vital part of their communities. Collectively, the industries that MSPC trade groups represent directly employ approximately 34 million Americans and constitute one-fifth of the U.S. economy by contributing \$4.5 trillion to the U.S. gross domestic product.

**Reversal of COPPA’s Preemption of State Law**

We are concerned that the AINS would preserve the Senate’s reversal of a 25-year preemption standard already existing in COPPA, a federal law which preempts inconsistent state laws, with new language altering COPPA’s relationship to state law by instead making it a federal “floor” for children’s privacy legislation from which each state may regulate up. This very significant reversal of a key provision of federal privacy law for a quarter-century could create 51 different legal standards for the same personal data processed in interstate commerce, which would unduly burden Main Street businesses lawfully complying with COPPA that operate across state lines. It would also result in children and teens being treated differently depending on the state in which they live, a condition over which these individuals would typically have no control. The MSPC has consistently endorsed federal preemption of state laws to establish uniform national standards for consumer data privacy, including comprehensive federal privacy legislation like the APRA. We ask Committee members to support maintaining COPPA’s existing preemption clause, and to reject the Senate’s reversal of this federal law’s preemption of inconsistent state laws that would open the door to a myriad of conflicting state laws. We very much appreciate Congressman Walberg’s support for a preemptive COPPA 2.0 and urge committee members and other members of the House to improve the bill, before it receives a floor vote, by preserving the same preemption provision that has existed in COPPA since the federal law was enacted in October of 1998.

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<sup>1</sup> The Main Street Privacy Coalition website and member list may be accessed at: <https://mainstreetprivacy.com>.

## Removal of the “Actual Knowledge” Standard for Main Street Businesses

We are also concerned that the AINS includes a three-tier definition of “knowledge” that significantly impacts the potential lawful compliance with COPPA for thousands of Main Street businesses. While we greatly appreciate Congressman Walberg’s efforts to improve the knowledge standard in the Senate’s version of COPPA 2.0 to create more certainty for stakeholders, we believe three tiers is “one too many” based on the hearing record before the Committee, which predominantly documented serious abuses by Big Tech social media companies (not Main Street businesses) in how they treat children and teens.

It is wholly appropriate for the Committee to adopt a constructive knowledge standard for Big Tech social media companies that have a history of abuses and collect significant amounts of highly sensitive data about their subscribers, including the content of their communications, which provides the context in which they can be fairly held to comply with a constructive knowledge standard. Main Street businesses, on the other hand, do not have this type of data, the context, or the history of abuse that would justify altering their standard away from the “actual knowledge” standard in COPPA to a more subjective one. Most importantly, the standard the AINS would apply to businesses meeting paragraph (B) of its new “knowledge” definition would subject these companies to an untested knowledge standard for COPPA compliance that does not retain or build upon the well-understood legal standard of “actual knowledge” but instead replaces it with the unprecedented and untested phrase “knew or acted in willful disregard of the fact that the individual is a child or teen.” Notably, this new knowledge standard does not use the key legal term “actual,” and the canons of statutory interpretation would suggest that courts interpret “knew” differently from “actual knowledge,” the standard that is retained for entities captured by paragraph (C).

This divergence in knowledge standards is significant for Main Street businesses such as retailers, chain restaurants, and other franchised businesses selling a vast amount of goods to consumers in very high volume on a daily and nationwide basis because thousands of them would be captured by the overbroad thresholds in paragraph (B) for applying this new knowledge standard. The thresholds are lower (or more inclusive) than the thresholds for a “Large Data Holder” in the prior American Data Privacy Protection Act, a definition to which we previously objected and offered redlined edits. For instance, considering the volume and cost of goods in the retail industry alone, we estimate that paragraph (B) would likely cover nearly two thousand separate retail companies that would meet the threshold of \$200 million or more in “annual gross revenue,” which is notably not a measurement of profits that are much lower than those in the tech industry and other sectors. Grocery stores, for example, have profit margins averaging about 1% - 2% of annual gross revenues, which would make paragraph (B) apply to small groceries generating as little as \$2 - \$4 million in profit, a far cry from some Big Tech social media companies with profit margins over 30% and annual profits exceeding \$100 million. Additionally, the second threshold for the application of paragraph (B) requiring that a business “collects the personal information of 200,000 individuals or more” is not bounded by any time period, and it is highly likely an equivalent number of Main Street businesses covered by the annual gross revenue threshold will have also collected personal information from over 200,000 individuals in the lifetime of their companies given their volume of sales.

For these reasons, we urge members to support striking paragraph (B) from the definition of “knowledge” (and redesignating the remainder) to establish a two-tiered knowledge definition that is supported by the Committee’s hearing record and retains an actual knowledge standard for non-social media companies.

While we cannot support the bill in its current form, we appreciate your consideration of our significant concerns as outlined above and we look forward to continuing to work constructively with Congressman Walberg, the other sponsors of H.R. 7890, and you to avoid any unintended consequences negatively impacting Main Street businesses that have long-supported and complied with COPPA.

Sincerely,

Main Street Privacy Coalition

cc: Members of the Committee on Energy and Commerce