

October 2, 2026

Attorney General's Office
ATTN: Vermont Age-Appropriate Design Code Act
109 State Street
Montpelier, VT 05609

**Comments of the Entertainment Software Association
Regarding the Vermont Age-Appropriate Design Code Rulemaking**

The Entertainment Software Association¹ ("ESA") appreciates the opportunity to submit comments regarding the Vermont Attorney General's Office's ("AGO") proposed rules under the Vermont Age-Appropriate Design Code Act ("AADC").² As discussed in our March comments, ESA shares the AGO's interest in promoting policies that will allow Vermonters of all ages to enjoy access to online experiences that are safe, fun, and rewarding.³ ESA respectfully provides the following comments to help the AGO develop policies that will advance these important policy goals.

As expressed in our March comments, to keep kids safe online, in our experience it is important for regulations to be flexible and proportionate and to help parents decide what is right for their families. We recommend that the AGO remove the proposed age assurance mandate because such requirements go beyond the authority granted in the AADC and would prompt unnecessary collection of personal information. We also recommend clarifying the limits on the use of age information to allow for beneficial safety purposes beyond age assurance and updating the proposed rules to ensure that any deletion requirements allow for reasonable safety operations (and avoid creating user friction that could undermine safety). Additionally, we suggest modifying the rules regarding monitoring and notifications to reduce potential user confusion and ensure that basic game functionality, including safety functions, are not unintentionally impeded. Further, we suggest stronger measures to protect content and expressive activity under the First Amendment. We would be glad to discuss these views and our experience with the AGO.

¹ ESA is the U.S. trade association for companies that publish interactive entertainment software for video game consoles, handheld devices, personal computers, and the internet. Our members not only create some of the world's most engaging interactive experiences for consumers, but also develop novel technologies that are at the cutting edge, such as virtual, augmented, and mixed reality hardware and software as well as the latest consoles and handheld video game devices.

² Vt. Age-Appropriate Design Code Rulemaking, Off. of the Vt. Att'y Gen., <https://ago.vermont.gov/vermont-age-appropriate-design-code-rulemaking>.

³ Comments of the Ent. Software Ass'n, Age-Appropriate Design Code Rulemaking Feedback (Mar. 16, 2026), [https://ago.vermont.gov/sites/ago/files/2026-08/ESA%20Vermont%20AADC%20Comments%20-%20203.16.2026%20\(final-signed\)%20\(1\).pdf](https://ago.vermont.gov/sites/ago/files/2026-08/ESA%20Vermont%20AADC%20Comments%20-%20203.16.2026%20(final-signed)%20(1).pdf).

I. Video games are a popular pastime for Vermonters of all ages and from all backgrounds.

Research shows that people from all walks of life play video games for fun, and that video games can benefit a person's mental, emotional, and social well-being in remarkable ways, as discussed in our March comments. Our subsequently released 2026 industry report affirms these benefits, including the reasons why parents appreciate video games.⁴

Our prior comments noted the popularity and wide-ranging benefits of video games for users. For many households, playing video games has become a regular and invaluable way to engage, upgrading passive screen time with memorable moments for adults and kids alike. For example, two-thirds of Americans – people of all ages, ethnicities, races, gender identities and backgrounds – play video games.⁵ An Oxford University study involving more than 80,000 players reported that their findings “corroborate what qualitative research and reports from video game players around the world have long suggested: people feel good playing games.”⁶ Other research has noted that “video gameplay gives gamers the chance to develop techniques for dealing with conflict, working out various resolutions, interacting with their friends, and experiencing different emotions”⁷ and that “[c]ognitive skills such as perception, attentional control, and decision-making improve when subjects were trained with video games.”⁸ We also noted that video games are a unique medium that can empower players to visualize themselves in a story, which can be especially powerful for players from underrepresented backgrounds.⁹

ESA's 2026 industry report further illustrates how Vermonters turn to video games to relax, unwind, and connect with friends and family. Year after year, we see Americans shaking up stereotypes about who is and who can be a “gamer.” Today, more than 212.3 million Americans play video games regularly, including men and women at nearly equal rates and

⁴ ESA, 2026: Essential Facts About the U.S. Video Game Industry, <https://www.theesa.com/wp-content/uploads/2026/06/2026-Essential-Facts-Booklet-05-27-26.pdf>.

⁵ *Inclusion and Belonging*, Ent. Software Ass'n, <https://www.theesa.com/issues/inclusion-belonging>.

⁶ ESA, Power of Play: 2025 Global Video Games Report (2025), <https://www.theesa.com/resources/the-global-power-of-play-report> (quoting Vuorre, M., Ballou, N., Hakman, T., Magnusson, K., & Przybylski, A. K. (2023). Affective uplift during video game play: A naturalistic case study. [PREPRINT]); see also *id.* (“[G]aming may be among the most efficient and effective means by which children and youth generate positive feelings.”) (quoting Granic, I., Lobel, A., & Engels, R. C. (2014). The benefits of playing video games. *American Psychologist*, 69(1), 66–78)).

⁷ ESA, Power of Play: 2025 Global Video Games Report (2025), <https://www.theesa.com/resources/the-global-power-of-play-report> (quoting Markey, P. M., Ferguson, C.J., & Hopkins, L.I. (2020). Video game play: Myths and benefits. *American Journal of Play*, 13(1), 87–106)).

⁸ ESA, Power of Play: 2025 Global Video Games Report (2025), <https://www.theesa.com/resources/the-global-power-of-play-report> (quoting Reynaldo, C., Christian, R., Hosea, H., & Gunawan, A. A. S. (2021). Using video games to improve capabilities in decision making and cognitive skill: A literature review. *Procedia Computer Science*, 179, 211–221)).

⁹ *Inclusion and Belonging*, Ent. Software Ass'n, <https://www.theesa.com/issues/inclusion-belonging>.

players from every generation.¹⁰ The top two reasons that Americans play video games are to relax and to have fun.¹¹ Older generations also like to play to keep their minds sharp.¹² These findings affirm the appeal of video games and their wide-ranging benefits.

This report also notes that 75% of parents play video games, and of those who do, 81% have played video games with their children.¹³ A majority of these parents reports that they play video games with their children because it is fun for the whole family, a good opportunity to socialize, and a great way for the family to spend time together.¹⁴ More than 7 in 10 parents prefer their child to spend time playing video games than on social media and say playing video games offers more potential benefits for their children compared to social media.¹⁵ These findings demonstrate the appeal of video games for families and how parents take an active role in their children’s video game experiences.

II. The video game industry employs leading protections for privacy and online safety.

The video game industry is proud to have implemented leading consumer privacy and online safety measures, as also discussed in our March comments. Indeed, the Federal Trade Commission (“FTC”) has lauded the industry’s efforts on these fronts and noted that the video game industry “outpaces” other entertainment sectors in having the “strongest self-regulatory code” and “high compliance” with that code.¹⁶ Our subsequently released 2026 industry report underscores how families value these measures to help ensure that children have safe and positive experiences playing video games.

For example, the Entertainment Software Rating Board (“ESRB”), the video game industry’s self-regulatory body since 1994, operates Privacy Certified, a privacy compliance and certification program, which offers two seals that certify a member’s compliance with digital privacy laws. These are the ESRB Privacy Certified Seal (“General Seal”)—for video game products and services aimed at adults, including those used by teens—and Kids Seal, for such offerings directed or targeted to children. The FTC has approved the Kids Seal as a Children’s Online Privacy Protection Act (“COPPA”) Safe Harbor Program.¹⁷

¹⁰ ESA, 2026: Essential Facts About the U.S. Video Game Industry, <https://www.theesa.com/wp-content/uploads/2026/06/2026-Essential-Facts-Booklet-05-27-26.pdf>.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Player Safety*, Ent. Software Ass’n, <https://www.theesa.com/issues/player-safety>.

¹⁷ *Id.*

Both the General and Kids Seals incorporate a range of important privacy and safety standards. The General Seal Requirements are based on federal and state laws, regulatory enforcement, and best practices, incorporating principles such as transparency and notice, consent and choice, data minimization, and accountability. For General Seal approval, companies must give consumers clear and accurate information regarding (i) how their personal information is collected, used, and shared, and (ii) how to make privacy choices and exercise relevant consumer data rights.¹⁸ The Kids Seal Requirements integrate the General Seal's core privacy protections and add COPPA's provisions, insights from FTC and state enforcement actions, FTC guidance, and principles from state children's privacy law. The latest Kids Seal Requirements contain several "beyond COPPA" provisions that generally track state privacy laws like the Vermont AADC and provide substantive protections (e.g., high privacy defaults and "special care" to avoid a "heightened risk" of harm to children). There are similar provisions in the teen safeguard section of the General Seal Requirements.

For over three decades, the ESRB has been assigning age and content ratings to video games, and awareness and use among parents are consistently high.¹⁹ Today, ESRB ratings also include upfront notices about interactive elements to ensure that parents are informed about features like player-to-player communications ("Users Interact") or the ability to spend money on virtual items ("In-Game Purchases") in games they may be considering for their families.²⁰

Vermont families benefit from a variety of safety controls that ESA member companies have developed, such as filtering by age rating; limiting the visibility of personal information; managing the time or money kids can spend playing video games; and restricting, blocking, or reporting player-to-player communications (including customized options for muting certain words). ESRB further provides a centralized place with step-by-step parental control guides for consoles, Windows computers, and other platforms.²¹ Companies also promote "positive play" so that players enjoy a game experience based on sportsmanship, camaraderie, and mutual respect, such as through codes of conduct and mechanisms to encourage positive values (e.g., incentive systems for positive behaviors, penalties for offensive chats, or warning systems to address disruptive players).²² ESA members enhance their safety protocols by integrating

¹⁸ *Privacy Certified Seals*, Ent. Software Rating Bd., <https://www.esrb.org/privacy-certified-seals>.

¹⁹ Patricia E. Vance, *Research: No News is Good News When It Comes to Appropriate Video Games*, Ent. Software Rating Bd. (Nov. 11 2025), <https://www.esrb.org/blog/research-no-news-is-good-news-when-it-comes-to-appropriate-video-games>.

²⁰ *Ratings Guide*, <https://www.esrb.org/ratings-guide>

²¹ *Tools for Parents*, Ent. Software Rating Bd., <https://www.esrb.org/tools-for-parents/parental-controls/>

²² *Trust and Safety: Setting guidelines for acceptable online behavior*, Ent. Software Ass'n, <https://www.theesa.com/trust-safety/codes-of-conduct>.

research, new design approaches, and insights from players.²³ And ESA and its members partner with organizations to facilitate information sharing and coordination.²⁴

Parents highly value the video game industry’s privacy and safety resources, as reflected in our 2026 industry report. For example, nearly 80% of parents say they check the age rating “every time” or “most of the time” when buying or downloading a new game for their children.²⁵ And nearly 80% of parents use parental controls on a video game device.²⁶ More than two-thirds of parents say ESRB ratings and content descriptors help them to better understand what their kids see when playing video games compared to social media.²⁷ These findings affirm that existing practices in the video game industry help children and families to have safe and rewarding experiences playing video games.

III. Flexible and proportionate age assurance requirements will make young Vermonters safer and help them to enjoy positive online experiences.

In our experience, as expressed in our March comments, it is important for online safety regulations to be flexible and proportionate and to help parents decide what is right for their families. The proposed rules for age assurance could be strengthened by implementing these principles further. Specifically, we recommend removing the age assurance mandate, which is unauthorized under the AADC, and adjusting the purpose limit and deletion requirements for age data. These changes would help to make young Vermonters safer and broaden access to positive online experiences.

We applaud the AGO’s efforts to take a flexible and proportionate approach to age assurance because this type of approach is essential to maintaining children’s online privacy and safety. For example, requests for age information, beyond self-declaration, can be privacy-invasive and often result in a company collecting or sharing more information than otherwise needed to provide a product or service. Given the risk of data breaches and the sensitivity of information involved, the level of age assurance and information collected should be proportionate to the risk to the user associated with the activity or when needed to provide the service (e.g., for certain data processing activities). Moreover, regulations that are overly

²³ Some companies use artificial intelligence to detect cheating or help with blocking chats that violate codes of conduct (e.g., hate speech, discriminatory language, or harassment). Companies are also using image-hashing technology and machine learning to look out for harms like child exploitation. *Artificial Intelligence*, Ent. Software Ass’n, <https://www.theesa.com/issues/ai>.

²⁴ These organizations include groups like the National Center for Missing & Exploited Children, Family Online Safety Institute, Games for Change, Raising Good Gamers, Safer Internet Day, and Fair Play Alliance *Protecting players by working together*, Ent. Software Ass’n, <https://www.theesa.com/trust-safety/working-in-partnership>.

²⁵ ESA, 2026: Essential Facts About the U.S. Video Game Industry, <https://www.theesa.com/wp-content/uploads/2026/06/2026-Essential-Facts-Booklet-05-27-26.pdf>.

²⁶ *Id.*

²⁷ *Id.*

prescriptive run the risk of undermining online safety. For example, safety measures are most effective when requirements account for user behavior and buy-in. If users experience too much friction from new requirements, they may begin to utilize services or technology in unintended ways (e.g., users might use VPNs to avoid age assurance, or parents could share accounts to avoid hassle).

Given that the AADC does not authorize mandatory age assurance, and in light of the importance of proportionality, the AGO's rules should remove the age assurance mandate and allow covered businesses to pursue age assurance among their arsenal of other safety measures.²⁸ The AADC's rulemaking delegation is to "identify[] commercially reasonable and technically feasible methods" for age assurance, not mandate deployment.²⁹ Notably, the AADC expressly does not require age assurance for all such services, products, or features. Instead, it defines a "[c]overed minor" based on actual knowledge of the user's age or having used "age assurance methods."³⁰ Additionally, video game companies in particular often have legitimate reasons to not conduct age assurance. For example, a particular user experience may be premised on treating all users as minors. Overbroad requirements to conduct age assurance would result in the unnecessary collection of personal information.

We also recommend clarifying that a covered business has flexibility to use the output of age assurance for certain purposes beyond age assurance. The proposed rules limit the use of age assurance data to age assurance purposes, which could create confusion about whether this data can be used for certain other legitimate purposes, such as implementing safety defaults.³¹ A covered business should have reasonable flexibility to use age assurance data for other safety and security purposes, eliminating the need to collect this age information multiple times. A repetitive collection process would result in the unnecessary collection of additional personal information from players, undermining privacy, and would also result in user frustration and friction, further undermining the age assurance process and safety. We therefore suggest that the rules clarify that age assurance data can be used for other purposes where appropriate consent is obtained and the underlying, raw personal information is appropriately deleted.

Additionally, the AGO should revise the proposed data deletion requirements to resolve a conflict with FTC guidance and reflect technical limits on data deletion, which will support efficiency and consistent compliance to better protect Vermonters. The proposed rules would

²⁸ See Proposed Rule for Section CP _ Applicability (c), Vt. Att't Gen., <https://ago.vermont.gov/sites/ago/files/2026-07/AADC%20rules/2026.07.08%20-%202449g%20Age%20Assurance%20Privacy%20-%20FINAL%20DRAFT.pdf> ("A covered business shall implement proportionate age assurance measures for any online service, product, or feature reasonably likely to be accessed by covered minors.").

²⁹ 9 V.S.A. § 2449g(b).

³⁰ *Id.* § 2449a(12).

³¹ See Proposed Rule for Section 2449g at CP _ Prohibited Uses, Retention, and Disclosure of Age Assurance Data (a)-(b), Vt. Att't Gen., <https://ago.vermont.gov/sites/ago/files/2026-07/AADC%20rules/2026.07.08%20-%202449g%20Age%20Assurance%20Privacy%20-%20FINAL%20DRAFT.pdf>.

require deleting age information “immediately,”³² but the FTC has established a different, more flexible approach, conditioning enforcement policies on an instruction not to retain information “longer than the period necessary to fulfill the Age Verification Purposes” and to “delete[] such information promptly thereafter.”³³ The FTC’s approach on this point is sensible because “immediate” deletion may not always be possible or serve the safety of users. For example, it can be technically challenging to delete information “immediately” at scale without introducing the risk of errors. Maintaining information for at least a brief period of time may also be necessary to allow for an efficient process if a user quickly appeals or seeks to redo the process. Indeed, in some circumstances, it could create user friction if the underlying basis for an age determination is not at least briefly maintained, undermining safety measures. As also noted, in some circumstances, a covered business may legitimately need to collect age information for multiple purposes. An alternative standard could require deleting age information within a “reasonable” period of time (and only if the information was collected solely for the purpose of age assurance), which would promote more consistent compliance and better safety outcomes by establishing standards that are achievable and allow for legitimate safety operations. These adjustments will make data more secure and Vermonters of all ages safer, particularly children.

IV. Flexible and proportionate requirements for data and design practices are also important to help young Vermonters have safe and positive online experiences.

We also believe that the proposed rules regarding data and design practices could be strengthened by emphasizing flexibility and proportionality, as well as doing more to help parents decide what is best for their families. We suggest adjusting the restrictions on monitoring and notifications to reduce the risk of inhibiting basic game functions, and we also suggest clarifying that the rules may not be interpreted to regulate content or other expressive activity. These changes would help to make young Vermonters safer and promote access to positive online experiences.

As drafted, the restrictions on “monitoring” are overbroad, resulting in unintended consequences. Under the rules, whenever a covered business engages in “monitoring,” the covered business must provide a conspicuous signal to the user.³⁴ “Monitoring” is defined in part as “observing, collecting, recording, analyzing, or processing a covered minor’s activity, behavior, or interactions with an online service, product, or feature.”³⁵ The definition applies

³² *Id.* at CP _ Data Minimization in Age Assurance (d), <https://ago.vermont.gov/sites/ago/files/2026-07/AADC%20rules/2026.07.08%20-%202449g%20Age%20Assurance%20Privacy%20-%20FINAL%20DRAFT.pdf>.

³³ FTC, Enforcement Policy Statement Promoting the Adoption of Age-Verification Technology (Feb. 25, 2026), <https://www.ftc.gov/legal-library/browse/enforcement-policy-statement-promoting-adoption-age-verification-technology>.

³⁴ See Proposed Rule for Section 2449f at CP _ Monitoring and Tracking (a), Vt. Att’t Gen., <https://ago.vermont.gov/sites/ago/files/2026-07/AADC%20rules/2026.07.08%20-%202449f%20Prohibited%20Data%20and%20Design%20Practices%20-%20FINAL%20DRAFT.pdf>.

³⁵ *Id.* at CP _ Definitions (i).

regardless of “whether a covered minor’s activity, behavioral data, or engagement data is linked to an identified or identifiable covered minor.”³⁶ This broad structure could capture even service improvement activities that rely solely on anonymous data. Indeed, under this definition, simply loading a webpage to play a video game constitutes “monitoring” because the server records the page request. Consequently, a conspicuous signal would be needed essentially at all times, creating confusion, undermining the signal’s informative value, and reducing safety.

We suggest a few changes to address this concern. At a minimum, the AGO could remove “[l]inked to an identified or identifiable covered minor” from the definition of “monitoring.” Alternatively, an exception should be added to permit the collection and processing of truly anonymous data for activities that might otherwise fall within the scope of monitoring without requiring a conspicuous signal. Separately, because certain security-related activities (including fraud detection and anti-cheat technologies) could also fall within the “monitoring” definition, we would support an additional exception or carveout for these legitimate security-related use cases, allowing them to occur without triggering the conspicuous signal requirement.

Additionally, we suggest amending the proposed limits on notifications to allow for basic communicative and safety functions. The proposed rules would prohibit, at any time of day, “any notifications” or “notification features designed or reasonably likely to encourage, increase, prolong, or reinitiate a covered minor’s engagement with an online service, product, or feature through the use of personal data, behavioral data, or inferred preferences.”³⁷ This approach creates a problem because almost any notification could possibly be construed to be reasonably likely to “reinitiate” engagement, given that any notification will serve as a reminder of the existence of a service and provide information about the service. And, in turn, the phrase “through the use of personal data” captures essentially all useful notifications because nearly all useful notifications rely on personal data—they reference something specific to the child.

To help illustrate the issue, for example, an alert might communicate information about a message received from a friend on the platform or a security issue that needs to be addressed. Indeed, when parents affirmatively enable notifications for their children at certain hours, this could render the notifications conducted “through the use of personal data” (the child’s schedule), overriding parental choice. Accordingly, ESA and its members are concerned that the rules would limit these basic communicative and safety functions. We therefore suggest narrowing the range of notifications covered under the rules, giving parents a clearer role in helping children to manage notifications, and providing clear exceptions from the rules for basic communicative and safety functions that do not primarily operate to pull a user back on a service.

The final regulations should also support creativity and free expression, as discussed in our March comments. Video games allow users to explore other worlds and be awed by epic

³⁶ *Id.*

³⁷ *Id.* at CP _ Engagement-Based Notifications (a).

stories. The First Amendment protects the speech rights of video game players and developers. The Supreme Court has explained that video games are expressive works, much like newspapers, books, movies, or music in this respect.³⁸ As the Supreme Court noted, video games “communicate ideas—and even social messages—through many familiar literary devices (such as characters, dialogue, plot, and music) and through features distinctive to the medium (such as the player’s interaction with the virtual world).”³⁹ The rules should avoid a chilling effect on content and expressive activity.

Conclusion

In sum, Vermonters of all ages enjoy video games and benefit from the video game industry’s leading privacy and online safety measures. Regulations that are flexible, proportionate, and empower parents will help to keep young Vermonters safe online. ESA welcomes the opportunity to discuss these views and our experience with the Attorney General.

Respectfully submitted,



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³⁸ *Brown v. Ent. Merchants Ass’n*, 564 U.S. 786, 790 (2011).

³⁹ *Id.*