

There Is No User in the Living Room

Ambient household devices and the user-relative architecture of the People-First Chatbot Act

Every operative duty in the People-First Chatbot Act runs through one term. A provider may process data only to fulfill an express request by a user who consented; must protect a user it knows to be a minor; is strictly liable to a user injured through use. The Act then defines that term, at Section 5(22), as "an individual, regardless of age." That is a genus without a differentia. It defines nothing. The defect is invisible on a phone, where the person holding the device and the person the statute regulates are the same. It becomes dispositive on an ambient household device: a child who walks past a camera-equipped speaker made no request, consented to nothing, and yet her face is already being processed.

A parent is at the sink. A child walks in. The device captures her face before she says a word.

The microphone does not stop; on the device now entering the category it is designed to **listen and speak at the same time**. It captures her face, her voice if she speaks, and transmits both to a server. It may infer her age from her voice and her emotion from her expression, because the models that power such systems can.

The Act is a bill about exactly this kind of processing. It cannot answer the question posed by the child in the kitchen. The reason is a single word.

"The term 'user' means an individual, regardless of age."
People-First Chatbot Act § 5(22)

Every operative duty runs through "user": process only to fulfill a user's request; protect a user known to be a minor; strict liability to a user injured through use. **Remove the term and the statute has no addressees.**

The definition names a genus and supplies no differentia. Read against the provisions around it, every one presupposes a person who reached out and touched the machine. **The child provided nothing and did not reach out. The machine reached her.**

Against the only nationwide children's privacy statute in existence, the bill does not meet COPPA's floor.

ONE • THE PATHOLOGY

User-relativity as a structural drafting defect, distinct from overbreadth and vagueness, and requester-keyed versus data-subject-keyed statutes, with COPPA as comparator.

TWO • THE CONSENT DEFECT

The Act permits **one individual to authorize the processing of another individual's biometric data**, the result its own definition of affirmative consent was written to foreclose.

THREE • THE REPAIR

Three amendments, **each drawn from existing federal law**, that close the gap without disturbing the bill's structure.

The User-Relative Architecture

Load-bearing, not incidental, and it held only while one person held the device

On a phone, the person whose data is processed and the person who asked are the same person. Ambient devices break that identity.

The class whose data is processed is everyone in range. The class who asked is often empty. Between them sits a child.

On a phone the two classes are one class, so the statute can key every duty to that person; there is no one else in the frame. **Ambient devices break the identity**, and the household member most likely to be in range and least likely to be holding the device is a child.

BREAKING IN LITIGATION, NOT THEORY

The estate of **Suzanne Adams (83)** sued the provider for her wrongful death after months of conversation cultivated her son's delusions and aimed them at her. She never used the product. A statute that keys every duty to the requester was drafted for a world in which that sentence could not be written.

The Definition That Defines Nothing

A statutory definition earns its place by narrowing. This one names a genus and stops.

Construction must proceed from context, and context points away from the child.

Six provisions, one picture: a user is a person who does something to the machine.

§ 5(13)	input data is "provided to" a chatbot "by a user." To provide is to act.	§ 2(a)(1)(A)	processing to fulfill "an express request made by a user." To request is to act.
§ 2(b)(2)	notice that "the user is interacting with" a chatbot.	§ 2(a)(2)(A)	chat log furnished "to the user upon request by the user."
§ 2(a)(1)(G)	no retaliation "for refusing to consent," presuming a user who was asked.	§ 4(d)	injury "caused through the use" of the chatbot by the user.

| *The one counterweight, "regardless of age," addresses age. It does not address relation. The child did nothing to the machine.*

The Fork

If the child is a user, the product is unlawful per se. If she is not, the Act does not reach her.

A fork whose horns are per se prohibition and near-total exclusion is evidence the term is doing no work.

HORN ONE • SHE IS A USER

A camera plus voice-age inference satisfies the knowledge predicate by operating as designed. But the Section 5(2) standalone written consent is **unobtainable by a screenless device in a shared room**. The device violates continuously and cannot cure, rendering the category per se unlawful, a result no court reaches on a construction the text does not compel.

HORN TWO • SHE IS NOT A USER

§§ 2(a)(1)(B), (C), 2(c)(3), 4(d) all fall away, each reaching "a user." She keeps at most a § 2(a)(1)(A) claim as a "person injured," recovering **up to \$10,000 with no floor** against the user child's mandatory \$50,000, rising to \$250,000.

Same device, same camera, same data on the same server. The difference is that one child spoke to the machine and the other was merely in front of it.

Consent That Belongs to Someone Else

The Act requires the requester's consent, not the data subject's

One individual's consent authorizes the processing of a second individual's biometric data. Section 5(2) was drafted to prevent exactly this.

"Ticket prices, please" does not make a faceprint of the child necessary. The Act permits only what is necessary.

The exception has two conditions: processing "necessary to fulfill an express request made by a user" **and** that user's affirmative consent. Consent alone does not open it. A parent asks for theme-park ticket prices, with a consenting user at arm's length.

WHAT THE REQUEST REQUIRES

The content of the question. **Not a faceprint of the child, not an age inference from her voice, not an emotional classification of her expression.** The exception fails on the limiter even with a consenting user present.

The Act attaches a consent instrument of unusual rigor, then hands it to the wrong individual.

The exception runs on the consent of "that user," not of the individual whose data is processed. So one person's consent authorizes the processing of a second person's biometric data. **Section 5(2) insists consent be specific, informed, from an individual who received a standalone disclosure**, every condition describing a person's relationship to their own data.

THE VISITOR

The neighbor's child at a birthday party is exposed by a consent given by an adult with no authority to give it. Under COPPA the operator needs her parent's verifiable consent, and her parent is not there. **Sound and light do not stop at the property line, and a birthday party is not an edge case. It is a Saturday.**

The Counting Problem

The Act denominates damages in violations, and never defines a violation

One afternoon in one household ranges across four orders of magnitude on a question the text does not answer.

The DMCA and Illinois BIPA already ran this experiment. Both ended at the courts, then the legislature.

PER OPERATION One frame is used, stored, disclosed, and analyzed. Four operations per face, before asking what the analysis inferred.	PER DATA SUBJECT The count is the number of children. No judicial counting practice to borrow: COPPA runs by consent decree.	PER COURSE OF CONDUCT One continuous practice, so a household recovers \$10,000 total for a decade in fifty million homes.
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Cothron held a claim accrues on every scan, called the exposure annihilating, and the legislature reversed to one recovery per person within eighteen months. The lottery resolves to the house.

Same afternoon, same house, same facts. The Act's answer runs from \$10,000 to over \$5 million.

PER OPERATION > \$5M hundreds of operations, past the ceiling, times the willfulness multiplier.	PER DATA SUBJECT \$150K fifteen children at the ceiling, and a court may award far less, no floor.	PER COURSE OF CONDUCT \$10K one practice, one recovery, for the whole household.
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Not a function of any disputed fact, but of a word Congress used forty-one times in Section 4 and never defined. It sets not a price but a lottery.

Sources H.R. 9619, §§ 4(c)(1)(B)(i), 4(c)(2); Wakefield v. ViSalus, Inc., 51 F.4th 1109 (9th Cir. 2022); Gilly, sec. VI.C–D.

A camera capturing a child inside a private home is intrusion upon seclusion, and state courts are not bound by Article III.

TransUnion is serious in federal court and weaker here: the traditional analogue is intrusion upon seclusion, a stronger privacy analog than most data claims that have failed. **The visitor's position is stronger, not weaker:** the tort reaches private affairs, not merely private spaces, and her face and voice are her private affairs in any room.

THE WORKAROUND IN THE TEXT

Section 4(c)(1) authorizes suit "in an appropriate State court." **State courts are not bound by Article III;** the statutory injury element remains, the constitutional overlay does not.

Whose Data It Is vs. Whose Request It Was

COPPA and the GDPR key on the data subject. The Act keys on the requester.

The counting problem is downstream of the keying choice: a relation does not come pre-individuated.

DATA-SUBJECT KEYED • COPPA, GDPR

One question: how old is the person whose data is collected. **Reaches the child automatically**, because she is the data subject and nothing else is required.

REQUESTER KEYED • THE ACT

Three conditions through a person who may not be the data subject. **Must reason its way to her through someone else's relationship**, which on an ambient device may not exist.

The counting problem is downstream of the keying choice. A data subject is a countable unit; a relation is not, and does not come pre-individuated. Both defects are one defect.

The regulator's ceiling is more than five times the family's ceiling. The family is the only party that was harmed.

\$53,088

COPPA regulator ceiling, to the Treasury

\$50,000

Act floor, child who spoke first

\$10,000

Act ceiling, bystander child, no floor

The Act does give the family what COPPA never has: a path into a courtroom, with fees, a real advance. But federal law here **is not a floor beneath the states; it is a basement beneath Illinois and the only thing standing in the other forty-nine.**

Sources 15 U.S.C. § 6502(c)–(d); 90 Fed. Reg. 5,580 (Jan. 17, 2025); OMB M-26-11 (Apr. 17, 2026); 740 Ill. Comp. Stat. 14/10, 14/20; Gilly, sec. VII.C.

The safety provision, applied to this device, can be satisfied only by conduct the privacy provision prohibits.

NOTICE IN A FONT SIZE

Disclosure "not smaller than the largest font size of other text" on the interface.
A screenless device has no font size, no other text, no interface in the sense the provision assumes.

DISABLE "FOR THAT USER"

One speaker, one room, no accounts. To apply per-person settings the provider must **identify each individual, the very biometric processing § 2(a) restricts.**

"The Commission can fix it by rulemaking" fails after *Loper Bright*: an agency construing operative terms gets no deference, so the definitions are litigated de novo in the first enforcement action, a bet on the next several administrations placed with other people's children.

None disturbs the bill's structure. Each already exists in federal law.

1

REKEY TO THE DATA SUBJECT

Bar processing an under-18 individual's data without their parent's verifiable consent, no reference to who requested. **COPPA's model; the category ships through it.**

2

SUPPLY A COUNTING RULE

Per affected individual per day is one determinate answer. **What Congress cannot do is leave it open**, as the DMCA did.

3

FIX THE FLOOR, INDEX IT

Not less than the FTC Act § 5(m)(1)(A) amount, **\$53,088 today and moving with it.** Fix consent to the data subject; strike "to inform chatbot outputs."

Sources 16 C.F.R. § 312.5(c)(9); H.R. 9619, §§ 5(22), 2(a)(1)(A), 4(c)(1)(B)(i); 15 U.S.C. § 45(m)(1)(A); Gilly, sec. IX.

The machines now entering American homes do not wait to be addressed. They occupy rooms.

They watch and listen across the entire population of the room, and the members who did not choose to be there, did not consent, and cannot leave are the smallest ones.

The Act's answer to the child in the kitchen is that she is an individual, regardless of age. **That is the whole of what the statute has to say about her, and it is not enough to tell a court whether her face belongs to her.**

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