



March 5, 2024

Via Electronic Filing

Presiding Officer Foelak
c/o Federal Trade Commission
Office of the Secretary
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

Re: Reviews and Testimonials Rule (16 CFR Part 465) (Project No. P214504)

Presiding Officer Foelak:

In response to your March 4 order, the Interactive Advertising Bureau (IAB) submits the attached exhibits in support of its witness's testimony to take place during the hearing session on March 6, 2024.¹ The sole disputed issue of material fact at this hearing will be “whether the compliance costs for businesses will be minimal.”² The Commission's Preliminary Regulatory Analysis estimated that in a “heightened compliance review” scenario, large companies will spend approximately \$492 “conducting a one-time review of the proposed Rule and notifying employees whose role involves creating new product pages, managing the company's social media presence, and any other relevant practices covered by the proposed Rule.”³

To determine whether the Commission has significantly underestimated the compliance costs associated with the proposed rule, IAB surveyed its member companies that host consumer reviews on their websites, use consumer reviews to market their products, or both. Nineteen member companies responded, and the survey results are attached to this submission. IAB only had a short amount of time to survey its members and analyze the results, but even given those constraints, the results indicate that the Commission's estimation of compliance costs in the Preliminary Regulatory Analysis is not well supported and requires further development for the Commission to meet its statutory obligations under 15 U.S.C. § 57b-3(b)(1).

To gather information about estimated compliance costs, the survey first asked respondents to consider whether they would adopt or alter their business practices in order to comply with the proposed rule, including procuring updated technology, creating new policies, and enhanced support from staff (“responsive practices”). These are practices that companies state they would implement or change in response to the rule, and thus are additive to any efforts needed to comply

¹ Orders of Presiding Officer Foelak, Rule on the Use of Consumer Reviews & Testimonials, Rulemaking Proceeding (March 4, 2024).

² *Id.*

³ Rule on the Use of Consumer Reviews and Testimonials, 88 Fed. Reg. 49,364, 49,386 (July 31, 2023).

with pre-existing law. The majority of members would adopt or strengthen at least one business practice in response to the rule, with many anticipating the need to adopt or strengthen several practices in order to comply. A summary of these results is included in the chart below:

Practice	Number and Percentage of Companies Stating They Anticipate Implementing the Practice for the First Time, or Strengthening or Increasing their Usage of the Practice
Technology designed to monitor, detect, and prevent submission, publishing and possible further dissemination of fake reviews or testimonials at scale	8/19 respondents or approximately 42%
Identity collection and other vetting processes and tools for users submitting reviews and testimonials	6/19 respondents or approximately 32%
Tools for collecting reports of abuse from external parties	6/19 respondents or approximately 32%
Creation and maintenance of public facing policies addressing practices prohibited by the rule that align with relevant local regulations	8/19 respondents or approximately 42%
Staff tasked to moderate reviews according to your business’s policies and investigate reports of abuse or other signals detected by proactive mechanisms	6/19 respondents or approximately 32%
Enforcement policies and mechanisms that address actions of bad actors	6/19 respondents or approximately 32%
Creation of internal policies, contractual obligations, and/or training programs for employees, officers, and agents to prevent them and any of their relatives from writing reviews about the business without appropriate disclosure	7/19 respondents or approximately 37%
Technology, processes and staffing to monitor, investigate and enforce internal policies when employees, officers, agents or their family members violate them	7/19 respondents or approximately 37%
Audit and testing capabilities	7/19 respondents or approximately 37%
Legal support to ensure compliance with local regulations as applicable and/or to take actions against bad actors violating your business’s policies	8/19 respondents or approximately 42%

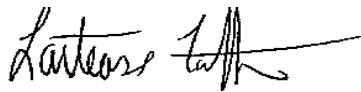
The survey then asked about the costs to implement the identified practices. The estimates provided in response to these questions clearly demonstrate that the cost of compliance will be considerably higher than “minimal.” For example, of those respondents who provided an estimate of how much it would cost to have employees or contractors spend the time necessary to implement responsive practices, the median estimated cost was \$121,000—a figure significantly higher than the Commission’s \$492 estimate in the Preliminary Regulatory Analysis. Five members also estimated that it would cost them from \$5,000 to up to \$200,000 to build or acquire new tools, equipment, software, or other materials to implement these practices. Additionally, of the thirteen companies that anticipated needing to consult counsel, five of the seven that provided an estimated number of hours counsel would spend advising on the proposed rule expected to need at least fifteen (and up to 4,000) hours of counsel’s time to advise on their response to the proposed rule.

The survey also brings to light elements of the cost to comply with the proposed rule that the Commission did not consider in its Preliminary Regulatory Analysis. For example, seven respondents—of ten that answered the relevant question—anticipated that they would need to hire new employees to implement these practices. The cost of hiring and training new employees was notably absent from the Commission’s cost estimates in the Preliminary Regulatory Analysis. Likewise, the Commission failed to consider the cost to *maintain* responsive practices once they have been implemented. The survey shows that at least some members anticipate ongoing annual costs. Seven members estimated that it would cost the company over \$20,000 annually to have employees or contractors maintain the responsive practices, with four of those estimates surpassing \$100,000. Additionally, six members estimated that they would spend upwards of \$15,000 annually to maintain tools, equipment, software, or other materials necessary to maintain the responsive practices.

These survey results show that the cost of complying with the proposed rule is more complicated than the Commission’s estimate. The results demonstrate that there is a broad range of responsive practices that different businesses will specifically need to implement to comply with the proposed rule, on top of any current practices they might already conduct. In addition, factors such as long-term, ongoing costs must be considered in any thorough analysis of the proposed rule’s impact. As IAB has explained in prior submissions, these high costs are likely driven by many of the vague terms and overbroad provisions included in the proposed rule, which create uncertainty and risk for many legitimate companies. If the Commission had conducted a more robust analysis of compliance costs, and properly assessed reasonable alternatives, it would be clear that a more narrowly tailored rule focused on the activities of bad actors could achieve the same benefits the Commission seeks, while imposing a significantly lower compliance burden on legitimate companies. But because of the flawed analysis of costs in the Commission’s Preliminary Regulatory Analysis, the Commission has not been able to engage in a reasoned analysis of the potential alternatives and their associated costs and benefits.

IAB thus respectfully submits the attached evidence to facilitate a robust hearing on March 6. IAB also respectfully submits the evidence it gathered as part of the survey discussed in its February 20, 2024 submission. In light of all this evidence, IAB urges the Presiding Officer to conclude that the compliance costs in this matter will be significantly higher than the Commission has estimated.

Sincerely,

A handwritten signature in black ink, appearing to read "Lartease M. Tiffith", with a long horizontal flourish extending to the right.

Lartease M. Tiffith, Esq.
Executive Vice President for Public Policy
Interactive Advertising Bureau