



<sup>15</sup> C ’ O A  
1998, S. 2326, 105th Cong. § 3(a)(2)(iii) (1998).

<sup>16</sup> 15 U.S.C. 6502.

<sup>17</sup> G ’  
453.7091 T 029 T T(6; T I 954 45 (( /T1-0. 67 52 249.9091 T (11)TC 2T , 5 0.0

document are located at :// . . / /  
/ 2010/ . . .

Comments have been numbered based upon alphabetical order. Comments are cited herein identified by commenter name, comment number, and, where applicable, page number.

<sup>11</sup> 15 U.S.C. 6502(1).

<sup>12</sup> Andrew Bergen (comment 4); Common Sense Media (comment 12).

<sup>13</sup> Sharon Anderson (comment 2); Kevin Brook (comment 6); Center for Democracy and Technology (“CDT”) (comment 8), at 5; CTIA (comment 14), at 10; Facebook (comment 22), at 2; Elatia Grimshaw (comment 26); Interactive Advertising Bureau (“IAB”) (comment 34), at 6–7; Harold Levy (comment 37); Motion Picture Association of America (“MPAA”) (comment 42), at 4; National Cable & Television Association (comment 44), at 5 n.16; NetChoice (comment 45), at 2; Promotion Marketing Association (“PMA”) (comment 51), at 5; Berin Szoka (comment 59), at 6; Toy Industry Association of America (comment 63), at 5. Five commenters urged the Commission to consider lowering or eliminating COPPA’s age to permit younger children access to a variety of educational online offerings. Eric MacDonald (comment 38); Mark Moran (comment 41); Steingreaber (comment 58); Karla Talbot (comment 60); Daniel Widrew (comment 67).

<sup>14</sup> Institute for Public Representation (comment 33), at 42.

<sup>24</sup> 15 U.S.C. 6503(a)(1).

<sup>25</sup> MPAA (comment 42), at 10 (“Congress deliberately selected the actual knowledge standard because it served the objective of protecting young children without constraining appropriate data collection and use by operators of general audience Web sites. This standard was selected to serve the goals of COPPA without imposing excessive burdens—including burdens that could easily constrain innovation—on general audience sites and online services”).

<sup>26</sup>The original scope of COPPA, as indicated in S. 2326 and H.R. 4667, would have applied to any commercial Web site or online service used by an operator to “knowingly” collect information from children. *C. O. A. 1998*, S. 2326, 105th Cong. § 2(11)(A)(iii) (1998); *E. B. A. 1998*, H.R. 4667, 105th Cong. § 105(7)(A)(iii) (1998). Under federal case law, the term “knowingly” encompasses actual, implied, and constructive knowledge. *v. FMA A*, 398 F.3d 995, 997 (8th Cir. 2005); *F*, 398 F.3d

used for functions other than or in addition to support for the internal operations of a Web site or online service. The Commission also proposes including identifiers that link the activities of a child across different Web sites or online services, as well as digital files containing a child's image or voice, in the definition. Part V.A.(4).

<sup>35</sup> 2010 Rule Review, note 7, at 17090.

<sup>36</sup> CDT (comment 8), at 2; Edward Felten, Dir. and Professor of Computer Sci. and Pub. Affairs, Princeton Univ. (currently Chief Technologist at the Federal Trade Commission), Remarks from *T*

*A* *CO A' D* *AI* *,"*  
*B* *,"* *DO* *" N' D* *,"*

*T* Panel at the Federal Trade Commission's Roundtable: Protecting Kids' Privacy



---

1000 / Vol. 76, No. 187 / Tuesday, September 27, 2011 / Proposed Rules 4, 0

ability to collect such information from children for those purposes. However, the Commission also recognizes that such identifiers may be used in more expansive ways that affect children's privacy. In the sections that follow, the Commission sets forth the parameters within which operators may collect and use screen names and persistent identifiers without triggering COPPA's application.<sup>60</sup>

The Commission proposes to revise the definition of "support for the internal operations of Web site or online service" so that it states:

means those activities necessary to maintain the technical functioning of the Web site or online service, to protect the security or integrity of the Web site or online service, or to fulfill a request of a child as permitted by § 312.5(c)(3) and (4), and the information collected for such purposes is not used or disclosed for any other purpose.

#### (5) Online Contact Information

Section 312.2 of the Rule defines "online contact information" as "an e-mail address or any other substantially similar identifier that permits direct contact with a person online." The Commission proposes to clarify this definition to flag that the term covers identifiers that permit direct contact with a person online, and to eliminate any inconsistency between the stand-alone definition of online contact information and the use of the same term within the Rule's definition of "personal information."<sup>61</sup> The revised definition set forth below adds commonly used forms of online identifiers, including instant messaging user identifiers, voice over internet protocol (VOIP) identifiers, and video chat user identifiers. The proposed definition makes clear, however, that the identifiers included are not intended to be exhaustive, and may include other substantially similar identifiers that permit direct contact with a person online.

Therefore, the Commission proposes to amend the definition of "online contact information" to state:

<sup>60</sup> *J.*

<sup>61</sup> The Rule currently defines as personal information "an e-mail address or other online contact information, including but not limited to an instant messaging user identifier, or a screen name that reveals an individual's e-mail address." 16 CFR 312.2 (paragraph (c), definition of "personal information"). The Commission also proposes removing the listing of identifiers from the definition of personal information and substituting the simple phrase "online contact information" instead. Part V.A.(4)(a). By doing so, the Commission hopes to streamline the Rule's definitions in a way that is useful and accessible for operators.

O means an e-mail address or any other substantially similar identifier that permits direct contact with a person online, including but not limited to, an instant messaging user identifier, a voice over internet protocol (VOIP) identifier, or a video chat user identifier.

#### (6) Personal Information

The COPPA statute defines personal information as individually identifiable information about an individual collected online, including:

- (A) A first and last name;
- (B) A home or other physical address including street name and name of a city or town;
- (C) An e-mail address;
- (D) A telephone number;<sup>62</sup>
- (E) A Social Security number;
- (F) Any other identifier that the Commission determines permits the physical or online contacting of a specific individual; or
- (G) information concerning the child or the parents of that child that the Web site collects online from the child and combines with an identifier described in this paragraph.<sup>63</sup>

As explained below, the Commission proposes to use this statutorily granted authority in paragraph (F) to modify, and in certain cases, expand, upon the Rule's definition of "personal information" to reflect technological changes.

a. Online Contact Information (Revised Paragraph (c))

The Commission proposes to replace existing paragraph (c) of the Rule's definition of "personal information," which refers to "an e-mail address or other online contact information including but not limited to an instant messaging user identifier, or a screen name that reveals an individual's e-mail address," with the broader term "online contact information," as newly defined.<sup>64</sup> Moreover, as discussed immediately below, the Commission

proposes to move the existing reference to a "screen name" to a separate item within the definition of "personal information."

b. Screen or User Names (Revised Paragraph (d))

Currently, screen names are considered "personal information" under COPPA only when they reveal an individual's e-mail address. The Commission proposes instead that screen (or user) names be categorized as personal information when they are used for functions other than, or in addition to, support for the internal operations of the Web site or online service. This change reflects the reality that screen and user names increasingly have become portable across multiple Web sites or online services, and permit the direct contact of a specific individual online regardless of whether the screen or user names contain an e-mail address.<sup>65</sup>

The proposed definition exempts screen or user names that are used solely to maintain the technical functioning of the Web site or online service. This qualification is intended to retain operators' ability to utilize screen or user names a Web site or online service (absent the collection, use, or disclosure of personal information) without obtaining prior parental consent. Accordingly, an operator may allow children to establish screen names for use within a site or service. Such screen names may be used for access to the site or service, to identify users to each other, and to recall user settings. However, where the screen or user name is used for purposes other than to maintain the technical functioning of the Web site or online service, the screen name becomes "personal information" under the proposed Rule.

c. Persistent Identifiers (Revised Paragraph (g)) and Identifiers Linking a Child's Online Activities (New Paragraph (h))

The existing Rule includes as personal information "a persistent identifier, such as a customer number held in a cookie or a processor serial number, where such identifier is associated with individually identifiable information."<sup>66</sup> In its 1999 Statement of Basis and Purpose, the Commission discussed persistent identifiers that automatically are collected by Web sites, such as static IP addresses and

<sup>62</sup> The term "telephone number" includes landline, web-based, and mobile phone numbers.

<sup>63</sup> 15 U.S.C. 6502(8). The Federal Trade Commission originally used the authority granted under Section 6502(8)(F) to define personal information under the COPPA Rule to include the following pieces of information not specifically listed in the statute:

- Other online contact information, including but not limited to an instant messaging user identifier;
- A screen name that reveals an individual's e-mail address;
- A persistent identifier, such as a customer number held in a cookie or a processor serial number, where such identifier is associated with individually identifiable information; and,
- A combination of a last name or photograph of the individual with other information such that the combination permits physical or online contacting.

<sup>64</sup>

Part V.A.(4)(a).

<sup>65</sup> . . . OpenId, Windows Live ID, and the Facebook Platform.

<sup>66</sup> paragraph (f) to the definition of "personal information." 16 CFR 312.2.

---

<sup>67</sup> 1999 Statement of Basis and Purpose, 64 FR 59888, 59892–93.

<sup>68</sup> Commission staff recognized in its 2009 online behavioral advertising report that, “in the context of online behavioral advertising, the traditional notion of what constitutes PII versus non-PII is becoming less and less meaningful and should not, by itself, determine the protections provided for consumer data.” FTC Staff Report: Self-Regulatory Principles for Online Behavioral Advertising, 21–22 (Feb. 2009), <http://www.ftc.gov/085400>. Similarly, the Federal Trade Commission 2010 Staff Privacy Report cited widespread recognition among industry and academics that the traditional distinction between the two categories of data heuDr tropro, (Feb. 2009) [www.ftc.gov/085400](http://www.ftc.gov/085400).



<sup>78</sup> Common Sense Media, *D* =  
K ? T I M E  
A ' K , F , (Apr. 2010),  
:// . /  
(citing a study from the  
NPD Group, Inc. finding that 20% of U.S. children  
ages 4–14 owned a cell phone in 2008); N. Jackson,  
“More Kids Can Work Smartphones Than Can Tie  
Their Own Shoes,” *The Atlantic* (Jan. 24, 2011),  
available at :// . - - - /  
/2011/01/ - - - /70101/; S.  
Smith, “Now It’s Personal: Mobile Nears the  
Privacy Third Rail,” *Behavioral Insider* (Apr. 22,  
2011), :// . /  
? =A . A & /

( . )T-0.0028 T T

:M I .

C ( /)T T -

T D

on children's Web sites, Steven Stecklow, *O*  
*C F I T*, Wall St.  
J., Sept. 17, 2010), the Commission notes that the self-regulatory guidelines cited by the commenters do not expressly require prior parental consent for such advertising to occur. Rather, operators who adhere to such guidelines are merely cautioned that they should comply with COPPA when engaging in online behavioral advertising.

*O B A*,  
note 85, at 16-17 ("Entities should not collect 'personal information', as defined in the Children's Online Privacy Protection Act ('COPPA'), from children they have actual knowledge are under the age of 13 or from sites directed to children under the age of 13 for Online Behavioral Advertising, or engage in Online Behavioral Advertising directed to children they have actual knowledge are under the age of 13 except as compliant with the COPPA"). Moreover, the self-regulatory standards cited by commenters do not collectively represent all operators subject to COPPA.

<sup>87</sup> In addition to the personal information that may be viewable in a photograph or video, geolocation data is commonly embedded as hidden "metadata" within these digital images. These data usually consist of latitude and longitude coordinates, and may also include altitude, bearing, distance, and place names. Such geolocation information may be used by operators and may also be accessed by the viewing public. The Commission proposes to specifically enumerate "geolocation information" as a separate category of "personal information" under the Rule. Part

V.A.(4)(e).  
<sup>88</sup> M. Geuss, "Facebook Facial Recognition

.00in th th1detafndn1roftthef the  
V.AL Rule.

.pdf.4Creepy: new facat EPIC152 247. 19ren mbe886 0 Ts Web sites, 399o2171\_2 1 Tf 0 Tw (see )Tj /T1\_1 1 Tf -0.0028 Tw 12.98on that

28

the definition because the Commission does not believe that any one of these items of information, alone, permits the physical or online contacting of a specific individual. However, the Commission seeks input as to whether the of date of birth, gender, and ZIP code provides sufficient information to permit the contacting of a specific individual such that this combination of information should be included in the Rule as "personal information."<sup>97</sup> Moreover, there is a question whether an operator's collection of "ZIP+4" may, in some cases, be the equivalent of a physical address. "ZIP+4 Code consists of the original 5-digit ZIP Code plus a 4-digit add-on code that identifies a geographic segment within the 5-digit delivery area, such as a city block, office building, individual high-volume receiver of mail, or any other unit that would aid efficient mail sorting and delivery."<sup>98</sup> The Commission seeks input on whether ZIP+4 is the equivalent of a physical address and whether it should be added to the Rule.<sup>99</sup>

#### g. Other Collections of Information

Taking a different view of "personal information," one commenter argued that the Commission should move away from identifying new particular individual items of personal information, and instead add to the definition "any collection of more than twenty-five distinct categories of information about a user."<sup>100</sup> This proposed definition is based on the premise that above a certain quantity threshold, the information an operator holds about a particular user becomes sufficiently identifying so as to be "personal." The Commission recognizes the potential for collections of diverse bits of information to permit the identification of a specific individual; however, the record is not sufficiently developed at this time to support a quantity-based approach to defining personal information. Without greater specificity, a quantity-based approach would not provide operators with sufficient certainty to determine which collections and combinations of information trigger the Rule's

requirements and which do not. As a result, this standard would be difficult for operators to implement, as well as for the government to enforce.<sup>101</sup> The Commission believes that setting bright-line categories of personal information, while potentially both over- and under-inclusive, provides greater certainty for operators seeking to follow the Rule.

#### (7) Web Site or Online Service Directed to Children

The Commission also considered whether any changes needed to be made to the Rule's definition of "website or online service directed to children." The current definition is largely a "totality of the circumstances" test that provides sufficient coverage and clarity to enable Web sites to comply with COPPA, and the Commission and its state partners to enforce COPPA.<sup>102</sup> Few commenters addressed the definition. However, one commenter, the Institute for Public Representation, suggested that the Rule be amended so that a Web site should be deemed "directed to children" if audience demographics show that 20% or more of its visitors are children under age 13.<sup>103</sup>

The current definition of "website or online service directed to children" already notes that the Commission will consider competent and reliable empirical evidence of audience composition as part of a totality of circumstances analysis. The Commission's experience with online audience demographic data in both its studies of food marketing to children and marketing violent entertainment to children shows that such data is neither available for all Web sites and online services, nor is it sufficiently reliable, to adopt it as a legal standard.<sup>104</sup>

<sup>101</sup> Professor Ohm acknowledges that "most websites probably do not count their data in this way today, so the regulation will require some websites to expend modest new resources to comply. Moreover, every time a website decides to collect new categories of information from users, it needs to recalculate its count." *I*, at 8-9.

<sup>102</sup> *SA CV-11-00724 (C.D. Cal., filed May 11, 2011) (finding defendants' Pony Stars Web site to be "directed to children"); I v. I K, I, No. CV-08-0639 (N.D. Cal., filed Jan. 28, 2008); I v. MG, I, No. CV-04-1050 (C.D. Cal., filed Feb. 17, 2004); I v. B, I, No. CV-04-1048 (C.D. Cal., filed Feb. 17, 2004).*

<sup>103</sup> Institute for Public Representation (comment 33), at iii (urging the Commission to adopt the same threshold, 20%, used in the Commission's 2007 food marketing Orders to File a Special Report).

<sup>104</sup> In the context of the Commission's food marketing studies, food marketers were required to identify and report Web site expenditures targeted to children based on a number of criteria, one of which was whether audience demographic data indicated that 20% or more of visitors to a Web site were children ages 2-11. Fed. Trade Comm'n,

Accordingly, the Commission declines to adopt a standard akin to the 20% standard proposed by the Institute for Public Representation.

However, the Commission proposes minor modifications to the definition, as follows. First, as part of the totality of the circumstances analysis, the Commission proposes modifying the term "audio content" to include musical content. In addition, the Commission proposes adding the presence of child celebrities, and celebrities who appeal to children, within the non-exclusive set of indicia it will use to determine whether a Web site or online service is directed to children. In the Commission's experience, both music and the presence of celebrities are strong indicators of a Web site or online service's appeal to children. Finally, the Commission proposes reordering the language of the definition so that the terms "animated characters" and "child-oriented activities and incentives" are addressed alongside the other indicia of child-directed content.

Therefore, the proposed definition of "Web site or online service directed to children" reads:

means a commercial Web site or online service, or portion thereof, that is targeted to children. Provided, however, that a commercial Web site or online service, or a portion thereof, shall not be deemed directed to children solely because it refers or links to a commercial website or online service directed to children by using information location tools, including a directory, index, reference, pointer, or hypertext link. In determining whether a commercial Web site or online service, or a portion thereof, is targeted to children, the Commission will also consider competent and reliable empirical evidence regarding audience composition, and evidence regarding the intended audience.

#### B. N (16 CF 312.4)

The linchpins of the COPPA Rule are its parental notice and consent requirements. Providing parents with clear and complete notice of operators' information practices is the necessary activities

Order to File Special Report, B-3, note 14 (July 31, 2007) *:// . . . /6 \_ /*  
6 /070731 . There,  
the 20% threshold was not used as a basis to impose legal liability for a Rule violation.

<sup>97</sup> Part X, at Question 9(b). Commenter Paul Ohm cites to several studies finding that a significant percentage of individuals can be uniquely identified by the combination of these three pieces of information. Paul Ohm (comment 48), at 3, note 7.

<sup>98</sup> United States Postal Service, Frequently Asked Questions, ZIP Code Information, [http://faq.usps.com/eCustomer/iq/usps/search "ZIP Code Information"](http://faq.usps.com/eCustomer/iq/usps/search%20ZIP%20Code%20Information); then follow "ZIP Code Information" hyperlink (last visited September 12, 2011).

<sup>99</sup> Part X, at Question 9(c).

<sup>100</sup> Paul Ohm (comment 48), at 2.

from parents. COPPA requires that parents be notified in two ways: on the operator's Web site or online service (the "online notice," which typically takes the form of a privacy policy), and in a notice delivered directly to a parent whose child seeks to register on the site or service (the "direct notice"). The current Rule requires that operators provide extensive information about their children's privacy practices in

---

<sup>105</sup> 1999 Statement of Basis and Purpose, 64 FR 59888, 59897.

<sup>106</sup> Protecting Consumer Privacy in an Era of Rapid Change, note 23, at 57-59.

<sup>107</sup> The proposed changes to the direct notice provision, discussed in Part V.B.(2), would reverse the Commission's guidance that operators may truncate the information in the direct notice by providing a hyperlink to their online privacy policy. note 105 and accompanying text.

<sup>108</sup> No changes are proposed to § 312.4(a) ("general principles of notice").

---

<sup>109</sup> The Commission poses a question whether the Rule should be modified to require operators to post a link to their online notice in any location where their mobile applications can be purchased or otherwise downloaded. Part X. at Question 14.

<sup>110</sup> This language mirrors the statutory requirements for the online notice. 15 U.S.C. 6503(b)(1)(A)(i).

<sup>111</sup> Protecting Consumer Privacy in an Era of Rapid Change, note 23, at 7.



information from children first obtain verifiable parental consent.<sup>115</sup> “Verifiable parental consent” is defined in the statute as “any reasonable effort (taking into consideration available technology), including a request for authorization for future collection, use, and disclosure, described in the notice.”<sup>116</sup> In paragraph (b)(1), the Rule provides that operators:

must make reasonable efforts to obtain verifiable parental consent, taking into consideration available technology. Any method to obtain verifiable parental consent must be reasonably calculated in light of available technology to ensure that the person providing consent is the child’s parent.

The Rule then sets forth a non-exclusive list of methods that meet the standard of verifiable parental consent.<sup>117</sup> Specifically, paragraph (b)(2) states:

Methods to obtain verifiable parental consent that satisfy the requirements of this paragraph include: Providing a consent form to be signed by the parent and returned to the operator by postal mail or facsimile; requiring a parent to use a credit card in connection with a transaction; having a parent call a toll-free telephone number staffed by trained personnel; using a digital certificate that uses public key technology; and using e-mail accompanied by a PIN or password obtained through one of the verification methods listed in this paragraph.<sup>118</sup>

The Rule’s enumerated consent mechanisms were discussed in-depth at the Commission’s June 2, 2010 COPPA roundtable and also were addressed by

<sup>115</sup> Paragraph (a) of §312.5 reads:

(1) An operator is required to obtain verifiable parental consent before any collection, use, and/or disclosure of personal information from children, including consent to any material change in the collection, use, and/or disclosure practices to which the parent has previously consented.

(2) An operator must give the parent the option to consent to the collection and use of the child’s personal information without consenting to disclosure of his or her personal information to third parties.

<sup>116</sup> 15 U.S.C. 6501(9).

<sup>117</sup> 16 CFR 312.5(b).

<sup>118</sup> Paragraph (b)(2) continues:

Until the Commission otherwise determines, methods to obtain verifiable parental consent for uses of information other than the “disclosures” defined by §312.2 may also include use of e-mail coupled with additional steps to provide assurances that the person providing the consent is the parent. Such additional steps include: Sending a confirmatory e-mail to the parent following receipt of consent; or obtaining a postal address or telephone number from the parent and confirming the parent’s consent by letter or telephone call. Operators who use such methods must provide notice that the parent can revoke any consent given in response to the earlier e-mail.

A discussion of paragraph (b)(2) follows in Part V.C.(2).

a number of commenters.<sup>119</sup> While several persons acknowledged that no one method provides complete certainty that the operator has reached and obtained consent from a parent, they generally agreed that the listed methods continue to have utility for operators and should be retained.<sup>120</sup> A great number of commenters also urged the Commission to expand the list of acceptable mechanisms to incorporate newer technologies.<sup>121</sup> After careful consideration, the Commission proposes several significant changes to the mechanisms of verifiable parental consent set forth in paragraph (b) of §312.5, including: Adding several newly recognized mechanisms for parental consent; eliminating the sliding scale approach to parental consent; and, adding two new processes for evaluation and pre-clearance of parental consent mechanisms.

#### (1) Mechanisms for Verifiable Parental Consent (Paragraph (b)(2))

A number of commenters made suggestions for strengthening, modernizing, and simplifying the Rule’s mechanisms for parental consent. For example, commenters asked the Commission to recognize additional methods of obtaining parental consent, such as by sending a text message to the parent’s mobile phone number,<sup>122</sup> offering online payment services other than credit cards,<sup>123</sup> offering parental controls in gaming consoles,<sup>124</sup> offering a centralized parents’ opt-in list,<sup>125</sup> and

<sup>119</sup> Federal Trade Commission’s Roundtable: Protecting Kids’ Privacy Online at 195, 208–71 (June 2, 2010), <http://www.ftc.gov/ftc/protecting-kids-privacy-online>.

<sup>120</sup> DMA (comment 17), at 10, 12; Microsoft (comment 39), at 7; Toy Industry Association, Inc. (comment 63), at 3; WiredSafety.org. (comment 68), at 18.

<sup>121</sup> Boku (comment 5); DMA (comment 17), at 11–12; EchoSign, Inc. (comment 18); Entertainment Software Association (comment 20), at 7–9; Facebook (comment 22), at 2; Janine Hiller (comment 27), at 447–50; Mary Kay Hoal (comment 30); Microsoft (comment 39), at 4; MPAA (comment 42), at 12; RelyID (comment 53), at 3; TRUSTe (comment 64), at 3; Harry Valetk (comment 66), at 6; WiredSafety.org (comment 68), at 53; Susan Wittlief (comment 69).

<sup>122</sup> BOKU (comment 5); Entertainment Software Association (comment 20), at 11–12; TRUSTe (comment 64), at 3; Harry A. Valetk (comment 66), at 6–7. discussion Part IV, regarding COPPA’s application to mobile communications via SMS messaging.

<sup>123</sup> WiredSafety.org (comment 68), at 24 (noting that operators are considering employing online financial accounts such as iTunes for parental consent).

<sup>124</sup> Entertainment Software Association (comment 20), at 9–10; Microsoft (comment 39), at 7.

<sup>125</sup> Entertainment Software Association (comment 20), at 12; Janine Hiller (comment at 27), at 31.

permitting electronic signatures.<sup>126</sup> Upon consideration of each proposal in light of the existing record, the Commission determines that the record is sufficient to justify certain proposed mechanisms, but insufficient to adopt others.

First, the Commission notes that the collection of a parent’s mobile phone number to effectuate consent via an SMS text message would require a statutory change, as the COPPA statute currently permits only the collection of a parent’s “online contact” information for such purposes, and a phone number does not fall within the statute’s definition of “online contact information,” . . . , “an e-mail address or another substantially similar identifier that permits direct contact with a person online.”<sup>127</sup> There are advantages to using SMS texting as a method of contacting the parent and obtaining consent—among them that parents typically do not have multiple mobile phone numbers, and generally have their mobile phones with them at all times. Some commenters opined that this method was as reliable as use of a credit card or fax;<sup>128</sup> others compared the use of SMS text messaging to the “e-mail plus” method permitted under the Rule’s sliding scale approach to parental consent.<sup>129</sup> The Commission believes the more apt analogy is to the e-mail plus method in that the operator sends a notice to the parent via the parent’s mobile phone number and requests opt-in consent by a return message in some form. In this way, the use of SMS text messaging for parental consent would suffer from the same inadequacies as does e-mail plus, which, as described below, the Commission proposes to eliminate. Just as with an e-mail address, there is no way to verify that the phone number provided by a child is that of the parent rather than that of the child. For these reasons, the Commission declines to add use of SMS text messaging to the enumerated list of parental consent mechanisms.

With respect to expanding the Rule to permit the use of online payment services for verifying consent in lieu of a credit card, the Commission finds that the record is insufficient to warrant adding online payment services as a consent mechanism. The Commission notes that no commenters provided any

<sup>126</sup> DMA (comment 17), at 12; EchoSign (comment 18); Entertainment Software Association (comment 20), at 10; Toy Industry Association (comment 63), at 11.

<sup>127</sup> 15 U.S.C. 6502(12).

<sup>128</sup> Boku (comment 5); Entertainment Software Association (comment 20), at 11–12.

<sup>129</sup> Boku (comment 5).

---

<sup>130</sup> EPIC (comment 19), at 5. (“Alternative methods may not be as heavily regulated as more

<sup>144</sup> The Commission poses a question whether operators should be required to maintain a record that parental consent was obtained. Part X., at Question 17.

<sup>145</sup> Children’s Online Privacy Protection Rule, 71 FR 13247, 13253, 13254 (Mar. 15, 2006) (retention of rule without modification) (requirement that the credit card be used in connection with a transaction provides extra reliability because parents obtain a transaction record, which is notice of the purported consent, and can withdraw consent if improperly given); Fed. Trade Comm’n., Frequently Asked Questions about the Children’s Online Privacy Protection Rule, Question 33, [http://www.ftc.gov/ftc/privacy/faq/faq33.htm](#).

<sup>146</sup> 2010 Rule Review, note 7, at 17091.

<sup>147</sup> The Commission was persuaded by commenters’ views that internal uses of information, such as marketing to children, presented less risk than external disclosures of the information to third parties or through public postings. 1999 Statement of Basis and Purpose, 64 FR 59888, 59901. Other internal uses of children’s personal information may include sweepstakes, prize promotions, child-directed fan clubs, birthday clubs, and the provision of coupons.

<sup>148</sup> . . . at 59,902 (“[E]mail alone does not satisfy the COPPA because it is easily subject to circumvention by children.”).

<sup>149</sup> . . . at 59,901 (“The Commission believes it is appropriate to balance the costs imposed by a method against the risks associated with the intended uses of the information collected. Weighing all of these factors in light of the record, the Commission is persuaded that temporary use of a “sliding scale” is an appropriate way to implement the requirements of the COPPA until secure electronic methods become more available and affordable”).

<sup>150</sup> Children’s Online Privacy Protection Rule, 71 FR 13247, 13255, 13254 (Mar. 15, 2006) (retention of rule without modification).

<sup>151</sup> WiredSafety.org (comment 68), at 21 (“We all assumed [email plus] would be phased out once digital signatures became broadly used. But when new authentication models and technologies failed to gain in parental adoption, it was continued and is in broad use for one reason—it’s simple”).

<sup>152</sup> Rebecca Newton, Chief Cmty. & Safety Officer, Mind Candy, Inc., Remarks from *E A M* Panel at the Federal Trade Commission’s Roundtable: Protecting Kids’ Privacy Online at 211–13 (June 2, 2010), [http://www.ftc.gov/ftc/privacy/roundtable/20100602/RemarksRebeccaNewton.cfm](#) (e-mail plus is as reliable as any other method);



However, as explained below, given the proposed discontinuance of e-mail plus, and in the interest of spurring innovation in parental consent mechanisms, the Commission proposes a new process by which parties may voluntarily seek Commission approval of a particular consent mechanism, as explained below.

(3) Commission and Safe Harbor Approval of Parental Consent Mechanisms (New Paragraphs (b)(3) and (b)(4))

Under the Rule, methods to obtain verifiable parental consent “must be reasonably calculated, in light of available technology, to ensure that the person providing consent is the child’s parent.”<sup>155</sup> This standard provides operators with the opportunity to craft consent mechanisms that meet this standard but otherwise are not enumerated in paragraph (b)(2) of § 312.5. Nevertheless, whether out of concern for potential liability, ease of implementation, or lack of technological developments, operators have been reluctant to utilize consent methods other than those specifically set forth in the Rule.<sup>156</sup> As a result, there appears to be little technical innovation in any area of parental consent.<sup>157</sup>

To encourage the development of new consent mechanisms, and to provide transparency regarding consent mechanisms that may be proposed, the Commission proposes to establish a process in the Rule through which parties may, on a voluntary basis, seek Commission approval of a particular consent mechanism. Applicants who seek such approval would be required to present a detailed description of the proposed parental consent mechanism, together with an analysis of how the mechanism meets the requirements of § 312.5(b)(1) of the Rule. The Commission would publish the application in the *Federal Register* for comments protecting (1) the child; and (2) the parent providing consent (voluntarily or otherwise).

<sup>155</sup> 16 CFR 312.5(b)(1).

<sup>156</sup> The June 2, 2010 Roundtable and the public comments reflect a tension between operators’ desire for new methods of parental verification and their hesitation to adopt consent mechanisms other than those specifically enumerated in the Rule. Remarks from Federal Trade Commission’s Roundtable: Protecting Kids’ Privacy Online at 226–27 (June 2, 2010), [http://www.ftc.gov/ftc/COA](#); CDT (comment 8), at 3 (“innovation in developing procedures to obtain parental consent has been limited as websites choose to use the methods suggested by the FTC out of fear that a more innovative method could lead to liability”).

<sup>157</sup> Children’s Online Privacy Protection Rule, 71 FR 13247, 13250 (Mar. 15, 2006) (retention of rule without modification).

<sup>158</sup> MPAA (comment 42), at 12; Rebecca Newton (comment 46), at 2; Privo (comment 50), at 2; PMA (comment 51), at 5; Berin Szoka (comment 59), Szoka Responses to Questions for the Record, at 56; TRUSTe (comment 64), at 3; WiredSafety.org (comment 68), at 31–32.

<sup>159</sup> 15 U.S.C. 6503(b)(2); 16 CFR 315.5(c).

<sup>160</sup> The Act and the Rule currently permit the collection of a parent’s e-mail address for the limited purposes of: (1) obtaining verified parental consent; (2) providing parents with a right to opt-out of an operator’s use of a child’s e-mail address for multiple contacts of the child; and (3) to protect a child’s safety on a Web site or online service. 15 U.S.C. 6503(b)(2); 16 CFR 312.5(c)(1), (2), and (4).

<sup>161</sup> At least a few online virtual worlds directed to very young children already follow this practice. Because the Rule does not currently include such an exception, these operators technically are in violation of COPPA.

<sup>162</sup> This proposed new exception is mirrored in the proposed revisions to the direct notice requirement of § 312.4. Part V.B.(2).

or disclosed for any other purpose. In such cases, the operator must make reasonable efforts, taking into consideration available technology, to ensure that the parent receives notice as described in § 312.4(c)(2).

The Commission also proposes minor technical corrections to the Rule's current exceptions provisions. First, in § 312.4(c)(1), the Rule permits an operator to collect "the name or online contact information of a parent or child" to be used for the sole purpose of obtaining parental consent. The clear intent of this provision is to allow for the collection of the online contact information in order to reach the parent to initiate the consent process. Therefore, the Commission proposes to amend § 312.5(c)(1) to clarify the language so that it reads:

Where the sole purpose of collecting a parent's online contact information and the name of the child or the parent is to provide notice and obtain parental consent under § 312.4(c)(1). If the operator has not obtained parental consent after a reasonable time from the date of the information collection, the operator must delete such information from its records.

Second, § 312.5(c)(3) provides that an operator may notify a parent of the collection of a child's online contact information for multiple contacts via e-mail or postal address. The Commission proposes to eliminate the option of collecting a parent's postal address for notification purposes. The collection of postal address is not provided for anywhere else in the Rule's notice requirements, and is clearly outmoded at this time. Therefore, the Commission proposes to amend § 312.5(c)(3), now renumbered as § 312.5(4), so that it reads:

Where the sole purpose of collecting a child's and a parent's online contact information is to respond directly more than once to the child's specific request, and where such information is not used for any other purpose, disclosed, or combined with any other information collected from the child. In such cases, the operator must make reasonable efforts, taking into consideration available technology, to ensure that the parent receives notice as described in § 312.4(c)(3). An operator will not be deemed to have made reasonable efforts to ensure that a parent receives notice where the notice to the parent was unable to be delivered.

Finally, in various places in § 312.5(c), the Commission proposes to emphasize that the collection of online contact information is to be used for the limited purpose articulated within described information for multiple contacts via e-mail or postal address. Where the sole purpose of collecting a child's and a parent's online contact information is to respond directly more than once to the child's specific request, and where such information is not used for any other purpose, disclosed, or combined with any other information collected from the child. In such cases, the operator must make reasonable efforts, taking into consideration available technology, to ensure that the parent receives notice as described in § 312.4(c)(3). An operator will not be deemed to have made reasonable efforts to ensure that a parent receives notice where the notice to the parent was unable to be delivered.

<sup>164</sup> This exception does not require an operator to provide notice to a parent.

<sup>165</sup> 15 U.S.C. 6503(b)(1)(D).



---

<sup>180</sup> “Seeding” a participant’s database means registering as a child on the Web site or online service.

Commission proposes adding language to the revocation of approval paragraph to require currently approved safe harbor programs to propose modifications to their guidelines within 60 days of publication of the Final Rule amendments in order to come into compliance or face revocation.<sup>189</sup> Finally, the proposed revision would move to the end of this section the Rule's provision on the effect of an operators' participation in a safe harbor program.

The Commission invites interested persons to submit written comments on any issue of fact, law, or policy that may bear upon the proposals under consideration. Please include explanations for any answers provided, as well as supporting evidence where appropriate. After evaluating the comments, the Commission will determine whether to issue specific amendments.

Comments should refer to "COPPA Rule Review: FTC File No. P104503" to facilitate the organization of comments. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC Web site, at

Comments must be received on or before the deadline specified above in the **DATES** section in order to be considered by the Commission.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before November 28, 2011. Write "COPPA Rule Review, 16 CFR Part 312, Project No. P104503" on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at

As a matter of discretion, the Commission tries to

requirements of the Rule's safe harbor provisions prior to revoking their approval.

<sup>189</sup> Therefore, the Commission proposes to amend paragraph (f) of the safe harbor provisions of the Rule to read:

(f) The Commission reserves the right to revoke any approval granted under this Section if at any time it determines that the approved self-regulatory program guidelines or their implementation do not meet the requirements of this part. Safe harbor programs that were approved prior to the publication of the Final Rule amendments must, within 60 days of publication of the Final Rule amendments, submit proposed modifications to their guidelines that would bring them into compliance with such amendments, or their approval shall be revoked.

remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment doesn't include any sensitive personal information, such as anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment doesn't include any sensitive health information, if birth or oth. In

<sup>190</sup> In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. FTC Rule 4.9(c), 16 CFR 4.9(c).

<sup>191</sup> Questions for the public regarding proposed revisions to the Rule are found at Part X.

<sup>192</sup> 5 U.S.C. 603-04.

<sup>193</sup> 5 U.S.C. 605.

responsibilities for all entities covered by the Rule. The Commission believes that a number of operators of Web sites and online services potentially affected by the revisions are small entities as defined by the RFA. It is unclear whether the proposed amended Rule will have a significant economic impact on these small entities. Thus, to obtain more information about the impact of the proposed Rule on small entities, the Commission has decided to publish the following IRFA pursuant to the RFA and to request public comment on the impact on small businesses of its proposed amended Rule.

A. D T  
A A I B C

As described in Part I above, the Commission commenced a voluntary review of the COPPA Rule in early April 2010, seeking public comment on whether technological changes to the online environment warranted any changes to the Rule.<sup>194</sup> After careful review of the comments received, the Commission concludes that there is a need to update certain Rule provisions. Therefore, it proposes modifications to the Rule in the following five areas: Definitions, Notice, Parental Consent, Confidentiality and Security of Children's Personal Information, and Safe Harbor Programs. In addition, the Commission proposes adding a new Section to the Rule regarding data retention and deletion.

B. O  
L B

The objectives of the amendments are to update the Rule to ensure that children's online privacy continues to be protected, as directed by Congress, even as new online technologies evolve, and to clarify existing obligations for operators under the Rule. The legal basis for the proposed amendments is the Children's Online Privacy Protection Act, 15 U.S.C. 6501 .

C. D E  
N E A

The proposed amendments to the Rule will affect operators of Web sites and online services directed to children, as well as those operators that have actual knowledge that they are collecting personal information from children. The proposed Rule amendments will impose costs on entities that are "operators" under the Rule.

The Commission staff is unaware of any empirical evidence concerning the number of operators subject to the Rule. However, based on our compliance monitoring efforts in the area of children's privacy, data received by the Commission in connection with preparing its most recent studies of food marketing to children and marketing of violent entertainment to children, and the recent growth in interactive mobile applications that may be directed to children, the Commission staff estimates that approximately 2,000 operators may be subject to the Rule's requirements.

Under the Small Business Size Standards issued by the Small Business Administration, "Internet publishing and broadcasting and web search portals" qualify as small businesses if they have fewer than 500 employees.<sup>195</sup> The Commission staff estimates that approximately 80% of operators potentially subject to the Rule qualify as small entities. The Commission staff bases this estimate on its experience in this area, which includes its law enforcement activities, oversight of safe harbor programs, conducting relevant workshops, and discussions with industry and privacy professionals. The Commission seeks comment and information with regard to the estimated number or nature of small business entities on which the proposed Rule would have a significant economic impact.

D. D O  
C

The proposed amended Rule would impose reporting, recordkeeping, and other compliance requirements within the meaning of the Paperwork Reduction Act, as set forth in Part VIII of this Notice of Proposed Rulemaking. Therefore, the Commission is submitting the proposed requirements to OMB for review before issuing a final rule.

The proposed Rule likely would increase the recordkeeping, reporting, and other compliance requirements for covered operators. In particular, the proposed requirement that the direct notice to parents include more specific details about an operator's information collection practices, pursuant to a revised § 312.4 (Notice), would impose a one-time cost on operators. The Commission's proposed elimination of the sliding scale for acceptable mechanisms of obtaining parental

consent, pursuant to a revised § 312.5 (consent mechanisms for verifiable parental consent), would require those operators who previously used the e-mail plus method to now use a more reliable method for obtaining parental consent. The addition of proposed language in § 312.8 (confidentiality, security, and integrity of personal information collected from children) would require operators to take reasonable measures to ensure that service providers and third parties to whom they release children's personal information have in place reasonable procedures to protect the confidentiality, security, and integrity of such personal information. Finally, the proposed Rule contains additional reporting requirements for entities voluntarily seeking approval to be a COPPA safe harbor self-regulatory program, and additional reporting and recordkeeping requirements for all Commission-approved safe harbor programs. Each of these proposed improvements to the Rule may entail some added cost burden to operators, including those that qualify as small entities.

The estimated burden imposed by these proposed amendments is discussed in the Paperwork Reduction Act section of this document, and there should be no difference in that burden as applied to small businesses. While the Rule's compliance obligations apply equally to all entities subject to the Rule, it is unclear whether the economic burden on small entities will be the same as or greater than the burden on other entities. That determination would depend upon a particular entity's compliance costs, some of which may be largely fixed for all entities ( . . . Web site programming) and others variable ( . . . Safe Harbor participation), and the entity's income or profit from operation of the Web site itself ( . . . membership fees) or related sources ( . . . revenue from marketing to children through the site). As explained in the Paperwork Reduction Act section, in order to comply with the rule's requirements, Web site operators will require the professional skills of legal (lawyers or similar professionals) and technical ( . . . computer programmers) personnel. As explained earlier, the Commission staff estimates that there are approximately 2,000 Web site or online services that would qualify as operators under the proposed Rule, and that approximately 80% of such operators would qualify as small entities under the SBA's Small Business Size standards. The Commission invites

<sup>195</sup> U.S. Small Business Administration Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at <http://www.sba.gov> .

<sup>194</sup> 75 FR 17089 (Apr. 5, 2010).







should not impose any additional capital or other non-labor costs.

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside party to any Commissioner or Commissioner's advisor, will be placed on the public record. 16 CFR 1.26(b)(5).

The Commission is seeking comment on various aspects of the proposed Rule, and is particularly interested in receiving comment on the questions that follow. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted. Responses to these questions should cite the numbers and subsection of the questions being answered. For all comments submitted, please submit any relevant data, statistics, or any other evidence, upon which those comments are based.

*G*

1. Please provide comment on any or all of the provisions in the proposed Rule. For each provision commented on please describe (a) The impact of the provision(s) (including any benefits and costs), if any, and (b) what alternatives, if any, the Commission should consider, as well as the costs and benefits of those alternatives.

in Part V.C.(1). of the Notice of Proposed Rulemaking?

19. The Commission proposes eliminating the "email plus" mechanism of parental consent from § 312.5(b)(2). What are the costs and benefits to operators, parents, and children of eliminating this mechanism?

20. Proposed § 312.5(b)(3) would provide that operators subject to Commission-approved self-regulatory program guidelines may use a parental consent mechanism determined by such safe harbor program to meet the requirements of § 312.5(b)(1). Does proposed § 312.5(b)(3) provide a meaningful incentive for the development of new parental consent mechanisms? What are the potential downsides of this approach?

C I C F ( 312.8)

21. Proposed § 312.8 would add the requirement that an operator "take reasonable measures to ensure that any third party to whom it releases children's personal information has in place reasonable procedures to protect the confidentiality, security, and integrity of such personal information."

a. What are the costs and benefits to operators, parents, and children of adding this requirement?

b. Does the language proposed by the Commission provide sufficient guidance and flexibility to operators to effectuate this requirement?

D D ( 312.10)

22. The Commission proposes adding a requirement that an operator retain personal information collected online from a child for only as long as is reasonably necessary to fulfill the purpose for which the information was collected. The operator must delete such information using reasonable measures to protect against unauthorized access to, or use of, the information in connection with its deletion.

a. Does the language proposed by the Commission provide sufficient guidance and flexibility to operators to effectuate this requirement?

b. Should the Commission propose specific time frames for data retention and deletion?

c. Should the Commission more specifically delineate what constitutes "reasonable measures to protect against unauthorized access to or use of the information"?

H ( 312.11)

23. Proposed § 312.11(b)(2) would require safe harbor program applicants to conduct a comprehensive review of

all member operators' information policies, practices, and representations at least annually. Is this proposed annual review requirement reasonable? Would it go far enough to strengthen program oversight of member operators?

24. Proposed § 312.11(c)(1) would require safe harbor program applicants to include a detailed explanation of their business model, and the technological capabilities and mechanisms that will be used for initial and continuing assessment of member operators' fitness for membership in the safe harbor program. Is this proposed requirement reasonable? Would it provide the Commission with useful information about an applicant's ability to run a safe harbor program?

25. Proposed § 312.11(d) would require Commission-approved safe harbor programs to submit periodic reports to the Commission regarding their oversight of member Web sites.

a. Should the Commission consider requiring safe harbor programs to submit reports on a more frequent basis, . . . annually?

b. Should the Commission require that safe harbor programs report to the Commission a member's violations of program guidelines immediately upon their discovery by the safe harbor program?

A

26. The Commission solicits comments on whether the changes to the notice requirements (§ 312.4) and to the safe harbor requirements (§ 312.11), as well as the new data retention and deletion requirement (§ 312.10), constitute "collections of information" within the meaning of the Paperwork Reduction Act. The Commission requests comments that will enable it to:

a. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

b. Evaluate the accuracy of the agency's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;

c. Enhance the quality, utility, and clarity of the information to be collected; and,

d. Minimize the burden of the collections of information on those who must comply, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

312

Children, Communications, Consumer protection, Electronic mail, E-mail, Internet, Online service, Privacy, Record retention, Safety, Science and Technology, Trade practices, Web site, Youth.

For the reasons discussed above, the Commission proposes to amend Part 312 of Title 16, Code of Federal Regulations, as follows:

**PART 312 CHILDREN'S ONLINE PRIVACY PROTECTION RULE**

1. The authority citation for part 312 continues to read as follows:

15 U.S.C. 6501-6508.

2. Amend § 312.2 by revising the

contact with a person online, including but not limited to, an instant messaging user identifier, a voice over internet protocol (VOIP) identifier, or a video chat user identifier.

\* \* \* \* \*

means

individually identifiable information about an individual collected online, including:

- (a) A first and last name;
- (b) A home or other physical address including street name and name of a city or town;
- (c) Online contact information as defined in this Section;
- (d) A screen or user name where such screen or user name is used for functions other than or in addition to support for the internal operations of the Web site or online service;
- (e) A telephone number;
- (f) A Social Security number;
- (g) A persistent identifier, including but not limited to, a customer number held in a cookie, an Internet Protocol

not otherwise collect, use, or disclose children's personal information; and, (ii) That the parent's online contact information will not be used or disclosed for any other purpose;

(iii) That the parent may refuse to permit the operator to allow the child to participate in the Web site or online service and may require the deletion of the parent's online contact information, and how the parent can do so; and,

(iv) A hyperlink to the operator's online notice of its information practices required under § 312.4(b).

(3) C

312.5( ) (4)

(N O , I C M T ) This direct notice shall set forth:

(i) That the operator has collected the child's online contact information from the child in order to provide multiple online communications to the child;

(ii) That the operator has collected the parent's online contact information from the child in order to notify the parent that the child has registered to receive multiple online communications from the operator;

(iii) That the online contact information collected from the child will not be used for any other purpose, disclosed, or combined with any other information collected from the child;

(iv) That the parent may refuse to permit further contact with the child and require the deletion of the parent's and child's online contact information, and how the parent can do so;

(v) That if the parent fails to respond to this direct notice, the operator may use the online contact information collected from the child for the purpose stated in the direct notice; and,

(vi) A hyperlink to the operator's online notice of its information practices required under § 312.4(b).

(4) C

312.5( ) (5)

(N I O C , ) This direct notice shall set forth:

(i) That the operator has collected the child's name and the online contact information of the child and the parent in order to protect the safety of a child;

(ii) That the information will not be used or disclosed for any purpose unrelated to the child's safety;

(iii) That the parent may refuse to permit the use, and require the deletion, of the information collected, and how the parent can do so;

(iv) That if the parent fails to respond to this direct notice, the operator may use the information for the purpose stated in the direct notice; and,

(v) A hyperlink to the operator's online notice of its information practices required under § 312.4(b).

4. Amend § 312.5 by revising paragraph (b)(2), by adding new paragraphs (b)(3) and (b)(4), and by revising paragraph (c), to read as follows:

312.5 P , ,

\* \* \* \* \*

(b) \* \* \* (2) Existing methods to obtain verifiable parental consent that satisfy the requirements of this paragraph include: providing a consent form to be signed by the parent and returned to the operator by postal mail, facsimile, or an electronic scan; requiring a parent to use a credit card in connection with a monetary transaction; having a parent call a toll-free telephone number staffed by trained personnel; having a parent connect to trained personnel via video-conference; or, verifying a parent's identity by checking a form of government-issued identification against databases of such information,

the parent's identification is deleted by the operator from its records promptly after such verification is complete.

(3) C

. Interested parties may file written requests for Commission approval of parental consent mechanisms not currently enumerated in paragraph (b)(2). To be considered for approval, parties must provide a detailed description of the proposed parental consent mechanism, together with an analysis of how the mechanism meets paragraph (b)(1). The request shall be filed with the Commission's Office of the Secretary. The Commission will publish in the , a document seeking public comment on the request. The Commission shall issue a written determination within 180 days of the filing of the request.

(4)

. A safe harbor program approved by the Commission under § 312.11 may approve its member operators' use of a parental consent mechanism not currently enumerated in paragraph (b)(2) where the safe harbor program determines that such parental consent mechanism meets the requirements of paragraph (b)(1).

(c) E

. Verifiable parental consent is required prior to any collection, use, or disclosure of personal information from a child as set forth in this paragraph:

(1) Where the sole purpose of collecting a parent's online contact information and the name of the child or the parent is to provide notice and obtain parental consent under

§ 312.4(c)(1) of this part. If the operator has not obtained parental consent after a reasonable time from the date of the information collection, the operator must delete such information from its records;

(2) Where the sole purpose of collecting a parent's online contact information is to provide notice to, and update the parent about, the child's participation in a Web site or online service that does not otherwise collect, use, or disclose children's personal information. In such cases, the parent's online contact information may not be used or disclosed for any other purpose. In such cases, the operator must make reasonable efforts, taking into consideration available technology, to ensure that the parent receives notice as described in § 312.4(c)(2);

(3) Where the sole purpose of collecting a child's online contact information is to respond directly on a one-time basis to a specific request from the child, and where such information is not used to re-contact the child or for any other purpose, is not disclosed, and is deleted by the operator from its records promptly after responding to the child's request;

(4) Where the sole purpose of collecting a child's and a parent's online contact information is to respond directly more than once to the child's specific request, and where such information is not used for any other purpose, disclosed, or combined with any other information collected from the child. In such cases, the operator must make reasonable efforts, taking into consideration available technology, to ensure that the parent receives notice as described in § 312.4(c)(4). An operator will not be deemed to have made reasonable efforts to ensure that a parent receives notice where the notice to the parent was unable to be delivered;

(5) Where the sole purpose of collecting a child's name, and a child's and a parent's online contact information, is to protect the safety of a child, and where such information is not used or disclosed for any purpose unrelated to the child's safety. In such cases, the operator must make reasonable efforts, taking into consideration available technology, to provide a parent with notice as

agencies or for an investigation on a matter related to public safety; and, where such information is not be used for any other purpose.

5. Revise § 312.8 to read as follows:

312.8 C

The operator must establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children. The operator must take reasonable measures to ensure that any third party to whom it releases children's personal information has in place reasonable procedures to protect the confidentiality, security, and integrity of such personal information.

6. Revise § 312.10 to read as follows:

312.10 D

An operator of a Web site or online service shall retain personal information collected online from a child for only as long as is reasonably necessary to fulfill the purpose for which the information was collected. The operator must delete such information using reasonable measures to protect against unauthorized access to, or use of, the information in connection with its deletion.

7. Revise § 312.11 to read as follows:

312.11 S

(a) Industry groups or other persons may apply to the Commission for approval of self-regulatory program guidelines ("safe harbor programs"). The application shall be filed with the Commission's Office of the Secretary. The Commission will publish in the a document seeking public comment on the application. The Commission shall issue a written determination within 180 days of the filing of the application.

(b) C

Proposed safe harbor programs must demonstrate that they meet the following performance standards:

(1) Program requirements that ensure operators subject to the self-regulatory program guidelines ("subject operators") provide substantially the same or greater protections for children as those contained in §§ 312.2 through 312.8, and § 312.10.

(2) An effective, mandatory mechanism for the independent assessment of subject operators' compliance with the self-regulatory program guidelines. At a minimum, this mechanism must include a comprehensive review by the safe harbor program, to be conducted not

less than annually, of each subject operator's information policies, practices, and representations. The assessment mechanism required under this paragraph can be provided by an independent enforcement program, such as a seal program.

(3) Disciplinary actions for subject operators' non-compliance with self-regulatory program guidelines. This performance standard may be satisfied by:

(i) Mandatory, public reporting of any action taken against subject operators by the industry group issuing the self-regulatory guidelines;

(ii) Consumer redress;

(iii) Voluntary payments to the United States Treasury in connection with an industry-directed program for violators of the self-regulatory guidelines;

(iv) Referral to the Commission of operators who engage in a pattern or practice of violating the self-regulatory guidelines; or,

(v) Any other equally effective action.

(c) C

A proposed safe harbor program's request for approval shall be accompanied by the following:

(1) A detailed explanation of the applicant's business model, and the technological capabilities and mechanisms that will be used for initial and continuing assessment of subject operators' fitness for membership in the safe harbor program.

(2) A copy of the full text of the guidelines for which approval is sought and any accompanying commentary;

(3) A comparison of each provision of §§ 312.2 through 312.8, and § 312.10 with the corresponding provisions of the guidelines; and,

(4) A statement explaining: (i) how the self-regulatory program guidelines, including the applicable assessment mechanisms, meet the requirements of this part; and, (ii) how the assessment mechanisms and compliance consequences required under paragraphs (b)(2) and (b)(3) provide effective enforcement of the requirements of this part.

(d)

Approved safe harbor programs shall:

(1) Within one year after the effective date of the Final Rule amendments, and every eighteen months thereafter, submit a report to the Commission containing, at a minimum, the results of the independent assessment conducted under paragraph (b)(2), a description of any disciplinary action taken against any subject operator under paragraph (b)(3), and a description of any approvals of member operators' use of

parental consent mechanism, pursuant to § 312.5(b)(4);

(2) Promptly respond to Commission requests for additional information; and,

(3) Maintain for a period not less than three years, and upon request make available to the Commission for inspection and copying:

(i) Consumer complaints alleging violations of the guidelines by subject operators;

(ii) Records of disciplinary actions taken against subject operators; and

(iii) Results of the independent assessments of subject operators' compliance required under paragraph (b)(2).

(e)

Approved safe harbor programs must submit proposed changes to their guidelines for review and approval by the Commission in the manner required for initial approval of guidelines under paragraph (c)(2). The statement required under paragraph (c)(4) must describe how the proposed changes affect existing provisions of the guidelines.

(f)

The Commission reserves the right to revoke any approval granted under this Section if at any time it determines that the approved self-regulatory program guidelines or their implementation do not meet the requirements of this part. Safe harbor programs that were approved prior to the publication of the Final Rule amendments must, within 60 days of publication of the Final Rule amendments, submit proposed modifications to their guidelines that would bring them into compliance with such amendments, or their approval shall be revoked.

(g) O

An operator will be deemed to be in compliance with the requirements of §§ 312.2 through 312.8, and § 312.10 if that operator complies with Commission-approved safe harbor program guidelines. In considering whether to initiate an investigation or bring an enforcement action against a subject operator for violations of this part, the Commission will take into account the history of the subject operator's participation in the safe harbor program, whether the subject operator has taken action to remedy such non-compliance, and whether the operator's non-compliance resulted in any one of the disciplinary actions set forth in paragraph (b)(3).

By direction of the Commission.

[FR Doc. 2011-24314 Filed 9-26-11; 8:45 am]

BILLING CODE 6750 01 P