

Powerplant Program, Part 1 of the Bombardier CL-600-2B19 MRM CSP-053; for related information.

Issued in Renton, Washington, on March 19, 2010.

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Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010-6850 Filed 4-2-10; 8:45 am]

BILLING CODE 4910-13-P

FEDERAL TRADE COMMISSION

16 CFR Part 312

Request for Public Comment on the Federal Trade Commission's Implementation of the Children's Online Privacy Protection Rule

AGENCY: Federal Trade Commission.

ACTION: Request for public comment.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") requests public comment on its implementation of the Children's Online Privacy Protection Act ("COPPA" or "the Act"), through the Children's Online Privacy Protection Rule ("COPPA Rule" or "the Rule"). The Commission requests comment on the costs and benefits of the Rule, as well as on whether it, or certain sections, should be retained, eliminated, or modified. All interested persons are hereby given notice of the opportunity to submit written data, views, and arguments concerning the Rule.

DATES: Written comments must be received by June 30, 2010.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form, by following the instructions in the Invitation To Comment part of the "SUPPLEMENTARY INFORMATION" section below. Comments in electronic form should be submitted by using the following weblink: (<https://public.commentworks.com/ftc/2010coppauleview>) (and following the instructions on the web-based form). Comments in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex E), 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326-2252.

FOR FURTHER INFORMATION CONTACT: Phyllis Marcus, (202) 326-2854, or Mamie Kresses, (202) 326-2070, Attorneys, Federal Trade Commission, Division of Advertising Practices, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION:

Section I. Background

The COPPA Rule, issued pursuant to the Children's Online Privacy Protection Act, 15 U.S.C. § 6501, *et seq.*, became effective on April 21, 2000. The Rule imposes certain requirements on operators of websites or online services directed to children under 13 years of age, and on operators of other websites or online services that have actual knowledge that they are collecting personal information online from a child under 13 years of age (collectively, "operators").¹ Among other things, the Rule requires that operators provide notice to parents and obtain verifiable parental consent prior to collecting, using, or disclosing personal information from children under 13 years of age. The Rule also requires operators to keep secure the information they collect from children and prohibits them from conditioning children's participation in activities on the collection of more personal information than is reasonably necessary to participate in such activities. Further, the Rule contains a "safe harbor" provision enabling industry groups or others to submit to the Commission for approval self-regulatory guidelines that would implement the Rule's protections.²

Section II. Rule Review

COPPA and § 312.11 of the Rule required the Commission to initiate a review no later than five years after the Rule's effective date to evaluate the Rule's implementation. The Commission commenced this mandatory review on April 21, 2005. After receiving and considering extensive public comment on the Rule, the Commission determined in March 2006 to retain the COPPA Rule without change.³ However, the Commission believes that changes to the online environment over the past five years, including but not limited to children's increasing use of mobile technology to access the Internet, warrant reexamining the Rule at this time.

In this notice, the Commission poses its standard regulatory review questions to determine whether the Rule should be retained, eliminated, or modified. In addition, the Commission identifies several areas where public comment would be especially useful. First, the Commission asks whether the Rule's current definitions are sufficiently clear and comprehensive, or whether they might warrant modification or

expansion, consistent with the COPPA statute. Among other questions, the Commission asks for comment on the application of the definition of "Internet" to mobile communications, interactive television, interactive gaming, and similar activities. Further, the Commission asks whether the Rule's definition of "personal information" should be expanded to include other items of information that can be collected from children online and are not currently specified in the Rule, such as persistent IP addresses, mobile geolocation information, or information collected in connection with online behavioral advertising.

The Commission also seeks comment on the use of automated systems for reviewing children's web submissions (*e.g.*, those that filter out any personally identifiable information prior to posting). In addition, the Commission asks whether change is warranted as to the Rule provisions on protecting the confidentiality and security of personal information, the right of parents to review or delete personal information, and the prohibition against conditioning a child's participation on the collection of personal information. Finally, the Commission seeks comment about its role in administering the Rule's safe harbor provisions.

Section III. Questions Regarding the COPPA Rule

The Commission invites members of the public to comment on any issues or concerns they believe are relevant or appropriate to the Commission's review of the COPPA Rule, and to submit written data, views, facts, and arguments addressing the Rule. All comments should be filed as prescribed in the Invitation To Comment part of the "SUPPLEMENTARY INFORMATION" section below, and must be received by June 30, 2010. The Commission is particularly interested in comments addressing the following questions:

A. General Questions for Comment

1. Is there a continuing need for the Rule as currently promulgated? Why or why not?

a. Since the Rule was issued, have changes in technology, industry, or economic conditions affected the need for or effectiveness of the Rule?

b. What are the aggregate costs and benefits of the Rule?

c. Does the Rule include any provisions not mandated by the Act that are unnecessary or whose costs

¹ 16 CFR Part 312.

² See 16 CFR Part 312.10; 64 FR at 59906-59908, 59915.

³ See 71 FR 13247 (Mar. 15, 2006).

2. What effect, if any, has the Rule

certificate that uses public key technology; and using email accompanied by a PIN/password obtained through one of the other enumerated verification methods.

a. To what extent are operators using each of the enumerated methods? Please provide as much specific data as possible, including the costs and benefits associated with each method described.

b. Are there additional methods to obtain verifiable parental consent, based on current or emerging technological changes, that should be added to § 312.5 of the Rule? What are the costs and benefits of these additional methods?

c. Should any of the currently enumerated methods to obtain verifiable parental consent be removed from the Rule? If so, please explain which one(s) and why.

d. Are there methods for delivering a signed consent form, other than postal mail or facsimile, that would meet the Rule's standards for verifiable parental consent? Should these be specified in the Rule?

e. Are there current or emerging forms of payment, other than the use of a credit card in connection with a transaction, that would meet the Rule's standards for verifiable parental consent? Should these be specified in the Rule?

f. The Rule permits use of a credit card in connection with a transaction to serve as a form of verifiable parental consent. Is there data available on the proliferation of credit cards, debit cards, or gift cards among children under 13 years of age? What challenges, if any, does children's use of credit, debit, and/or gift cards pose for Rule compliance or enforcement?

g. Are there current or emerging forms of oral communication, other than the use of a toll-free telephone number staffed by trained personnel, that would meet the Rule's standards for verifiable parental consent? Should these be specified in the Rule?

19. Section 312.5(b)(2) also sets forth a mechanism that operators can use to obtain verifiable parental consent for uses of information other than "disclosures" (the "email plus mechanism"). The email plus mechanism permits the use of an email coupled with additional steps to provide assurances that the person providing consent is the parent, including sending a confirmatory email 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. In 2006, the Commission announced that it would

retain the email plus mechanism indefinitely. See (<http://www.ftc.gov/os/fedreg/2006/march/060315childrens-online-privacy-rule.pdf>).

a. Does the email plus mechanism remain a viable form of verifiable parental consent for operators' internal uses of information?

b. Are there other current or emerging forms of communications, not enumerated in § 312.5(b)(2), that would meet the Rule's standards for verifiable parental consent for operators' internal uses of information? Are any changes or modifications to this Part warranted?

E. Exceptions to Verifiable Parental Consent

20. COPPA and § 312.5(c) of the Rule set forth five exceptions to the prior parental consent requirement. Are the exceptions in § 312.5(c) clear? If not, how can they be improved, consistent with the Act's requirements?

21. Section 312.5(c)(3) of the Rule requires that operators who collect children's online contact information for the sole purpose of communicating directly with a child after the child has specifically requested such communication must provide parents with notice and the opportunity to opt-out of the operator's further use of the information (the "multiple contact" exception).

a. To what extent are operators using the multiple contact exception to communicate or engage with children on an ongoing basis? Are operators relying on the multiple contact exception to collect more than just online contact information from children?

b. Should the multiple contact exception be clarified or modified in any way, consistent with the Act's requirements, to take into account any changes in the manner in which operators communicate or engage with children?

c. Under this Part, acceptable notice mechanisms include sending the opt-out notice by postal mail or to the parent's email address. Should § 312.5(c)(3) be modified to remove postal mail as a means of delivering an opt-out notice to parents?

d. Should § 312.5(c)(3) be otherwise clarified or modified in any way to reflect current or emerging technological changes that have or may expand options for the online contacting of children or options for communications between operators and parents?

22. Section 312.5(c)(4) of the Rule requires an operator who collects a child's name and online contact information to the extent reasonably necessary to protect the safety of a child

participant in the website or online service to use reasonable efforts to provide a parent notice and the opportunity to opt-out of the operator's use of such information. Such information must only be used to protect the child's safety, cannot be used to re-contact the child or any other purpose, and may not be disclosed.

a. To what extent, and under what circumstances, do operators use § 312.5(c)(4) to protect children's safety?

b. Are the requirements of § 312.5(c)(4) clear and appropriate? If not, how can they be improved, consistent with the Act's requirements?

23. Section 312.5(c)(5) of the Rule permits operators to collect a child's name and online contact information to protect the security or integrity of the site, take precautions against liability, respond to judicial process, or to provide information to law enforcement agencies or in connection with a public safety investigation.

a. To what extent, and under what circumstances, do operators use § 312.5(c)(5)?

b. Are the requirements of § 312.5(c)(5) clear and appropriate? If not, how can they be improved, consistent with the Act's requirements? For example, should § 312.5(c)(5) of the Rule be clarified to allow operators to collect and maintain a child's name and/or online contact information for the purpose of preventing future attempts at registration?

F. Right of a Parent to Review and/or Have Personal Information Deleted

24. Section 312.6(a) of the Rule requires operators to give parents, upon their request: (1) a description of the specific types of personal information collected from children; (2) the opportunity to refuse to permit the further use or collection of personal information from the child and to direct the deletion of the information; and (3) a means of reviewing any personal information collected from the child. In the case of a parent who wishes to review the personal information

further use or collection of personal information from the child and to direct the deletion of the information?

c. To what extent are parents exercising their rights under § 312.(a)(3) to review any personal information collected from the child?

d. Do the costs and burdens to operators or parents differ depending on whether a parent seeks a description of the information collected, access to the child's information, or to have the child's information deleted?

e. Is it difficult for operators to ensure, taking into account available technology, that a requester seeking to review the personal information collected from a child is a parent of that child?

f. Should § 312.6(a)(3) enumerate the methods an operator may use to ensure that a requestor seeking to review the personal information collected from a child is a parent of that child? Should these methods be consistent with the verification methods enumerated currently or in the future in § 312.5(b)(2) of the Rule?

g. Are the requirements of § 312.6 clear and appropriate? If not, how can they be improved, consistent with the Act's requirements?

G. Prohibition Against Conditioning a Child's Participation on Collection of Personal Information

25. COPPA and § 312.7 of the Rule prohibit operators from conditioning a child's participation in an activity on disclosing more personal information than is reasonably necessary to participate in such activity.

a. Do operators take this requirement into account when shaping their online offerings to children?

b. Has the prohibition been effective in protecting children's online privacy and safety?

c. Is § 312.7 of the Rule clear and adequate? If not, how could it be improved, consistent with the Act's requirements?

H. Confidentiality, Security and Integrity of Personal Information

26. Section 312.8 of the Rule requires operators to establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from a child.

a. Have operators implemented sufficient safeguards to protect the confidentiality, security, and integrity of personal information collected from a child?

b. Is § 312.8 of the Rule clear and adequate? If not, how could it be

improved, consistent with the Act's requirements?

I. Safe Harbors

27. Section 312.10 of the Rule provides that an operator will be deemed in compliance with the Rule's requirements if the operator complies with Commission-approved self-regulatory guidelines (the "safe harbor" process).

a. Has the safe harbor process been effective in enhancing compliance with the Rule?

b. Should the criteria for Commission approval of a safe harbor program be modified in any way to strengthen the standards currently enumerated in § 312.10(b)?

c. Should § 312.10 be modified to include a requirement that approved safe harbor programs undergo periodic reassessment by the Commission? If so, how often should such assessments be required?

d. Should § 312.10(b)(4) of the Rule, regarding the Commission's discretion to initiate an investigation or bring an enforcement action against an operator participating in a safe harbor program, be clarified or modified in any way?

e. Should any other changes be made to the criteria for approval of self-regulatory guidelines, or to the safe harbor process, consistent with the Act's requirements?

J. Statutory Requirements

28. Does the commenter propose any modifications to the Rule that may conflict with the statutory provisions of the COPPA Act? For any such proposed modification, does the commenter propose seeking legislative changes to the Act?

Section IV. Invitation to Comment

All persons are hereby given notice of the opportunity to submit written data, views, facts, and arguments pertinent to this rule review. Written comments must be received on or before June 30, 2010, and may be submitted electronically or in paper form. Comments should refer to "COPPA Rule Review, 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 website, at (<http://www.ftc.gov/os/publiccomments.shtm>).

Because comments will be made public, they should not include any sensitive personal information, such as any individual'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. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . ." as provided in Section 6(f) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).⁴

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (<https://public.commentworks.com/ftc/2010coppauleview>) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it at (<https://public.commentworks.com/ftc/2010coppauleview>). If this document appears at (<http://www.regulations.gov/search/Regs/home.html#home>), you may also file an electronic comment through that website. The Commission will consider all comments that [regulations.gov](http://www.regulations.gov) forwards to it. You may also visit the FTC website at (<http://www.ftc.gov>) to read the document and the news release describing it.

A comment filed in paper form should include the "COPPA Rule Review, P104503" reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex E), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to

⁴The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See FTC Rule 4.9(c), 16 C.F.R. 4.9(c).

