

**PREPARED STATEMENT OF
THE FEDERAL TRADE COMMISSION**

ON

“Protecting Children’s Privacy in an Electronic World”

Before the

HOUSE COMMITTEE ON ENERGY AND COMMERCE

SUBCOMMITTEE ON COMMERCE, MANUFACTURING AND TRADE

Washington, D.C.

October 5, 2011

I. Introduction

Chairman B

¹ While the views expressed in this statement represent the views of the Commission, my oral presentation and responses to questions are my own and do not necessarily reflect the views of the Commission or any individual Commissioner.

² The Commission's COPPA Rule was promulgated pursuant to the Children's Online Privacy Protection Act of 1998, 15 U.S.C. §§ 6501-6506. The text of the COPPA Rule can be found at 16 C.F.R. Part 312.

an aggressive schedule of regulatory reviews and has sought public comment to improve its regulatory review program.³

This testimony first provides a brief legislative and regulatory overview of the COPPA statute and Rule. It next summarizes the Commission's efforts to enforce the COPPA Rule and to educate businesses and consumers about the law. Finally, it discusses the proposed changes to the Rule that the Commission announced in mid-September.

II. A Brief COPPA Overview

A. The Legislation

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³ See Press Release, Federal Trade Commission, FTC Enhances Longstanding Regulatory Review Program to Increase Public Participation and Reduce Burden on Business (July 7, 2011), available at <http://www.ftc.gov/opa/2011/07/regreview.shtm>.

⁴ See 144 Cong. Rec. S11,651 (Oct. 7, 1998) (Floor Statement of Sen. Bryan, co-sponsor of the Act).

only limited exceptions, obtain verifiable parental consent *prior* to the collection, use, or disclosure of personal information from children. Operators also must give parents the opportunity to review and delete personal information their children have provided. Operators

⁵ 15 U.S.C. §§ 6502(b)(1)(C), 6502(b)(1)(D).

⁶ 15 U.S.C. § 6503.

⁷ 16 C.F.R. § 312 (2011).

⁸ 15 U.S.C. §§ 6502(c), 6505(a), (d); 15 U.S.C. § 57a(a)(1)(B).

⁹ 15 U.S.C. § 6504. To date, only Texas has filed law enforcement actions under COPPA.

information from, and created blog pages for, 1.7 million child users – without first obtaining their parents’ permission.¹¹

Since then, the Commission has brought a steady stream of cases against operators seeking to engage children in the Web 2.0 world. In December 2008, Sony BMG Music Entertainment agreed to pay a \$1 million civil penalty to resolve allegations that the company knowingly and improperly collected a broad range of personal information from at least 30,000 children who registered on 196 of its general audience music fan sites.¹² In 2009, Iconix Brand Group, Inc., the owner and marketer of several apparel brands popular with children and teens, agreed to pay a \$250,000 penalty for allegedly collecting and storing personal information from approximately 1,000 children, and for allegedly enabling girls to share personal stories and photos publicly online on one of the sites, without first notifying their parents or obtaining parental consent.¹³

In May of this year, the Commission settled charges against Playdom, Inc., a leading developer of online virtual worlds, and its principal, who were alleged to have collected from and disclosed personal information (such as full names, email addresses, instant messenger IDs,

¹¹ *United States v. Xanga.com, Inc.*, No. 06-CIV-6853 (S.D.N.Y., Sept. 11, 2006) (consent decree).

¹² *United States v. Sony BMG Music Entertainment*, No. 08 Civ. 10730 (S.D.N.Y., Dec. 15, 2008) (consent decree).

¹³ *United States v. Iconix Brand Group, Inc.*, No. 09-CV-8864 (S.D.N.Y., Nov. 5, 2009) (consent decree).

and locations) of hundreds of thousands of children who registered on Playdom sites. The Commission's \$3 million civil penalty set a new record for COPPA cases.¹⁴

Most recently, in the Commission's first COPPA case involving mobile applications, the Commission charged mobile app developer W3 Innovations, LLC with violating COPPA by collecting and maintaining thousands of girls' email addresses, and also allowing girls to publicly post information, including personal information, on in-app message boards for their "dress up" and "girl world" apps.¹⁵ This case, which included a \$50,000 civil penalty, made

¹⁴ *United States v. Playdom, Inc.*, No. SA CV-11-00724 (C.D. Cal., May 24, 2011) (consent decree).

¹⁵ *United States v. W3 Innovations, LLC*, No. CV-11-03958 (N.D. Cal., Sept. 8, 2011) (consent decree).

compliance, regularly updating business education materials and responding to inquiries from operators and their counsel.¹⁶

The Commission's consumer education materials inform parents and children about the protections afforded by the Rule and also provide them with general online privacy and safety information. The Commission's consumer online safety portal, OnGuardOnline.gov, provides information in a variety of formats – articles, games, quizzes, and videos – to help consumers guard against Internet fraud, secure their computers, and protect their personal information.¹⁷ In 2008, Congress directed the FTC to expand OnGuardOnline.gov to cover online safety for children. The agency responded by developing a guide for parents, *Net Cetera: Chatting with Kids About Being Online*, as well as the *Net Cetera Community Outreach Toolkit* to help people share the *Net Cetera* information.¹⁸

¹⁶ To facilitate COPPA compliance, the Commission maintains a comprehensive children's privacy section of its online Business Center. See <http://business.ftc.gov/privacy-and-security/children%E2%80%99s-online-privacy>. In addition, the FTC staff provides individual website operators with fact-specific guidance on COPPA issues as they arise through phone calls placed to the FTC's COPPA Hotline.

¹⁷ Currently, 16 federal agencies are partners on OnGuardOnline.gov, contributing content and helping to promote and disseminate consistent messages. OnGuardOnline attracts approximately 100,000 unique visitors each month.

¹⁸ See OnGuardOnline, "Net Cetera: Chatting With Kids About Being Online," available at http://onguardonline.gov/sites/default/files/articles/pdf/NetCetera_ChatingwithKids.pdf. *Net Cetera* focuses on the importance of communicating with children about cyberbullying, sexting, social networking, mobile phone use, and online privacy. The Commission has distributed more than 8.5 million English language, and over 900,000 Spanish language, copies of the guide since it was introduced in October 2009. The FTC has distributed almost 40,000 Net Cetera Community Outreach Toolkits to community-based organizations around the country since it was introduced in October 2010.

IV. The Current Regulatory Review

A. Background

In 2005, the Commission commenced a statutorily required review of its experience in enforcing COPPA and the Rule.¹⁹ After completing that review, the Commission concluded that there was a continuing need for COPPA's protections, and that the Rule should be retained without change.²⁰ At that time, however, the Commission also acknowledged that children's growing embrace of mobile Internet technology and interactive general audience sites, including social networking sites, without the concomitant development of suitable age verification technologies, presented challenges for COPPA compliance and enforcement.²¹

Although the Commission generally reviews its rules on a rotating ten-year calendar, the continued rapid-fire pace of technological change, including an explosion in children's use of mobile devices and participation in interactive online services, led the agency to accelerate its subsequent review of COPPA. Accordingly, in April 2010, the Commission published a Federal Register Notice seeking public comment on whether technological changes to the online

¹⁹ In particular, the statute and the Rule mandated that the FTC's review address the Rule's effect on three issues: (1) operators' practices relating to the collection, use, and disclosure of children's information; (2) children's ability to obtain access to information of their choice online; and (3) the availability of websites directed to children. *See* 15 U.S.C. § 6507; 16 C.F.R § 312.11.

²⁰ *See* Children's Online Privacy Protection Rule, 71 Fed. Reg. 13,247 (Mar. 15, 2006) (retention of COPPA Rule without modification). The Commission reported to Congress on the results of its COPPA review in 2007. *See* Fed. Trade Comm'n, *Implementing the Children's Online Privacy Protection Act: A Report to Congress* (2007), available at http://www.ftc.gov/reports/coppa/07COPPA_Report_to_Congress.pdf.

²¹ *See* *Implementing the Children's Online Privacy Protection Act*, *id.* at 28-29.

²² See Request for Public Comment on the Federal Trade Commission’s Implementation of the Children’s Online Privacy Protection Rule (“2010 Rule Review”), 75 Fed. Reg. 17,089 (Apr. 5, 2010), *available at* <http://www.ftc.gov/os/fedreg/2010/april/P104503coppa-rule.pdf>.

²³ *Id.*

²⁴ Information about the June 2, 2010 COPPA Roundtable is available at <http://www.ftc.gov/bcp/worksho>

provide an overview of the principal changes, which are intended to update the Rule to meet changes in technology, assist operators in their compliance obligations, strengthen protections over children’s data, and provide greater oversight of COPPA safe harbor programs. All of these proposed changes are to the Commission’s Rule and are consistent with the original mandates in the COPPA Act. The Commission will take public comments on this proposal until November 28, 2011. The Commission expects to hear from a wide variety of stakeholders during this time; often, the Commission makes changes to an initial proposal based on the public comments.

1. Definitions

a. Personal Information

COPPA requires operators to obtain verifiable parental consent before collecting personal information from children online. The COPPA statute defines “personal information” as individually identifiable information about an individual collected online, and lists a set of identifiers deemed by Congress to be personal, including “any other identifier that the Commission determines permits the physical or online contacting of a specific individual.”²⁷ Based on this statutory authority, the FTC proposes to update the Rule’s definition of personal information as follows:

First, the Commission proposes adding to the list persistent identifiers (*e.g.*, numbers held in cookies, user IDs, IP addresses, processor or device serial numbers, or unique device identifiers), as well as screen and user names, where they are used for functions other than “support for the internal operations of a site or service.”²⁸ The Commission also proposes

²⁷ 15 U.S.C. § 6501(8)(F).

²⁸ See Notice of Proposed Rulemaking, *supra* note 26, at 59,812.

²⁹ *Id.*

³⁰ Behavioral advertising is the tracking of a consumer's online activities over time – including the searches the consumer has conducted, the web pages visited, and the content viewed – in order to deliver advertising targeted to the individual consumer's interests. *See FTC Staff Report: Self-Regulatory Principles for Online Behavioral Advertising*, at 52 (F

city or town, the Commission proposes making geolocation information a stand-alone category within the Rule.³²

Finally, given the prevalence and popularity of posting photos, videos, a

³² *Id.*

³³ *Id.*

³⁴ 16 C.F.R. § 312.2.

The Commission proposes changes to streamline and clarify these notices. Outside of the COPPA context, the Commission recently has begun to urge industry to provide consumers with notice and choice about information practices at the point consumers enter personal data or before accepting a product or service.³⁷ The analogous point of entry under COPPA would be the direct notice, which has the potential to provide parents with the best opportunity to consider an operator's information practices and to determine whether to permit their children to engage with such operator's website or online service. Therefore, the Commission proposes to revise the notice requirements to reinforce COPPA's goal of providing complete and clear information in the direct notice, and to rely less heavily on the online notice as the means of providing parents with information about operators' information practices.³⁸

First, the Commission proposes specifying, for each different form of direct notice required by the Rule, the precise information that operators must provide to parents. The Commission also proposes that each form of direct notice provide a hyperlink to the operator's online notice of information practices. The Commission believes these changes will help ensure that parents receive key information up front, while directing them online to view any additional information contained in the operator's online notice.

Second, with respect to the content of the online notice, the Commission proposes eliminating the Rule's current lengthy recitation of an operator's information collection, use, and

<http://www.ftc.gov/os/1999/10/64Fr59888.pdf>.

³⁷ See *A Preliminary FTC Staff Report on Protecting Consumer Privacy in an Era of Rapid Change: A Proposed Framework for Businesses and Policymakers* 57-59 (Dec. 1, 2010), available at <http://www.ftc.gov/os/2010/12/101201privacyreport.pdf>;

³⁸ See Notice of Proposed Rulemaking, *supra* note 26, at 59,815.

disclosure practices in favor of a simple statement of: (1) what information the operator collects from children, including whether the website or online service enables a child to make personal information publicly available; (2) how the operator uses such information; and (3) the operator's disclosure practices for such information.³⁹ In the Commission's experience, privacy policies are often long and difficult to understand, and may not be the most effective way to communicate salient information to consumers, including parents.⁴⁰ By proposing to streamline the Rule's online notice requirements to reflect the basic language of the COPPA statute, the Commission seeks to encourage operators to provide clear, concise descriptions of their information practices. This should have the added benefit of being easier to read on smaller screens (*e.g.*, those on Internet-enabled mobile devices) by the very parents who need to receive such information.

3. Parental Consent

A central element of COPPA is its requirement that operators seeking to collect, use, or disclose personal information from children first obtain verifiable parental consent. The Rule provides that operators "must make reasonable efforts to obtain verifiable parental consent, taking into consideration available technology," and that "any method to obtain verifiable parental consent must be reasonably calculated in light of available technology to ensure that the

³⁹ This language mirrors the statutory requirements for the online notice. *See* 15 U.S.C. 6502(b)(1)(A)(i).

⁴⁰ *See Protecting Consumer Privacy in an Era of Rapid Change*, *supra* note 37, at 7.

person providing consent is the child's parent."⁴¹ To aid operators, the Rule then sets forth a non-exclusive list of methods that meet the standard of verifiable parental consent.⁴²

The Commission proposes several changes to the mechanisms of verifiable parental consent. First, the Commission proposes expanding the list of approved mechanisms by adding electronic scans of signed parental consent forms, video conferencing, and use of government-issued identification checked against a database (provided that the parent's ID is deleted promptly after verification is completed).⁴³

Second, the Commission proposes eliminating the Rule's sliding scale, or "email plus," approach to parental consent. Under the sliding scale, an operator, when collecting personal information only for its *internal* use, may obtain verifiable parental consent through an email from the parent, so long as the email is coupled with an additional step. Such additional steps have included: obtaining a postal address or telephone number from the parent and confirming the parent's consent by letter or telephone call, or sending a delayed confirmatory email to the parent after receiving consent.⁴⁴ When the Commission issued the original COPPA Rule in 1999, it provided for the email plus option to sunset after two years, out of recognition, expressed by many businesses, that email plus is not as reliable as the other enumerated methods of verifiable parental consent.⁴⁵ The Commission found this lower cost method acceptable as a

⁴¹ 16 C.F.R. § 312.5(b)(1).

⁴² 16 C.F.R. § 312.5(b)(2).

⁴³ See Notice of Proposed Rulemaking, *supra* note 26, at 59,818.

⁴⁴ 16 C.F.R. § 312.5(b)(2).

⁴⁵ See 1999 Statement of Basis and Purpose, *supra* note 36, at 59,902.

temporary option, in place *only* until the Commission determined that more reliable (and affordable) consent methods had adequately developed.⁴⁶

While email plus has enjoyed wide appeal among operators, who commend its simplicity, many commenters challenged the method's reliability.⁴⁷ The Commission believes that the continued reliance on email plus has inhibited the development of more reliable methods of obtaining verifiable parental consent.⁴⁸ In addition, although internal uses may pose a lower risk of misuse of children's personal information than the sharing or public disclosure of such information, *all* collection of children's personal information merits effective verifiable parental consent. Indeed, the COPPA statute does not distinguish between the types of parental consent required for internal versus external uses of children's personal information.⁴⁹ In light of this, the Commission believes that email plus has outlived its usefulness and should no longer be a recognized approach to parental consent under the Rule.⁵⁰

⁴⁶ *Id.* at 59,901. In 2002, the Commission extended the use of the email plus option for an additional three years when more reliable methods of parental consent had not developed. *See* Children's Online Privacy Protection Rule, 67 Fed. Reg. 18,818, 18,819-21 (Apr. 17, 2002). In 2006, the Commission extended use of the sliding scale indefinitely, stating that the agency would continue to monitor technological developments and modify the Rule should an acceptable electronic consent technology develop. *See* Children's Online Privacy Protection Rule, 71 Fed. Reg. 13,247, 13,254-55 (Mar. 15, 2006) (retention of Rule without modification).

⁴⁷ In particular, commenters noted that operators have no real way of determining whether the email address provided by a child is that of the parent, and that there is no requirement that the parent's email response to the operator contain any additional information providing assurance that it is from a parent. *See* Notice of Proposed Rulemaking, *supra* note 26, at 59,819, n.153.

⁴⁸ *Id.*

⁴⁹ *See* 15 U.S.C. § 6502(b)(1)(A)(ii). Instead, that distinction was created by the Commission when it promulgated the COPPA Rule. *See* 16 C.F.R. § 312.5(b)(2).

⁵⁰ *See* Notice of Proposed Rulemaking, *supra* note 26, at 59,819.

In the interest of spurring innovation in parental consent mechanismsTw(53)TjET1.00000 0.00000 0.00000

⁵¹ *Id.* at 59,820.

⁵² *Id.* at 59,821.

⁵³ *Id.* at 59,822.

⁵⁴ 15 U.S.C. § 6503.

⁵⁵ *See* 16 C.F.R. §§ 312.10(a) and (b)(4).

⁵⁶ Since the Commission's COPPA Rule took effect on April 21, 2000, four groups have received Commission approval of their safe harbor programs: the Children's Advertising Review Unit of the National Advertising Division of the Council of Better Business Bureaus, the Entertainment Software Rating Board, TRUSTe, and Privo, Inc. Another safe harbor application, that of Aristotle International, Inc., currently is pending before the Commission. For information on the safe harbor

the Commission to better evaluate safe harbor applications, and to improve the accountability and transparency of COPPA safe harbor programs that have been approved. At the same time, the changes to the consent mechanisms, discussed above, would provide greater flexibility to such programs as they develop their requirements and manage compliance.

V. Conclusion

The Commission takes seriously the challenge to ensure that COPPA continues to meet its originally stated goals, even as children's interactive media use moves and changes at warp speed. Thank you for this opportunity to discuss the Commission's COPPA program and our proposed updates to the Rule. I look forward to yve