

Implementing the
Children's Online Privacy
Protection Act

A Report to Congress

Federal Trade Commission
February 2007

Federal Trade Commission

DEBORAH PLATT MAJORAS	Chairman
PAMELA JONES HARBOUR	Commissioner
JON LEIBOWITZ	Commissioner
WILLIAM E. KOVACIC	Commissioner
J. THOMAS ROSCH	Commissioner

Lydia B. Parnes	Director, Bureau of Consumer Protection
Mary Koelbel Engle	Associate Director, Division of Advertising Practices
Thomas B. Pahl	Assistant Director, Division of Advertising Practices
Karen Mandel Muoio	Division of Advertising Practices
Phyllis H. Marcus	Division of Advertising Practices
Mamie Kresses	Division of Advertising Practices
Carol A. Kando-Pineda	Division of Consumer and Business Education

I. EXECUTIVE SUMMARY

In 1998, Congress enacted the Children’s Online Privacy Protection Act (“COPPA” or “the Act”) to address privacy and safety risks created when children under 13 years of age (“children”) use the Internet. To protect children, the Act imposes requirements on operators of websites or online services directed to children, and other operators with actual knowledge that they have collected personal information from children. The Act generally mandates that such operators must provide notice of their privacy policies; obtain verifiable parental consent prior to collecting personal information from children; allow parents to review and delete personal information that their children have provided; and establish and maintain reasonable procedures to protect the security of personal information collected from children.

The Act required the Federal Trade Commission (“Commission,” “FTC,” or “agency”) to promulgate a rule implementing COPPA. In 1999, the Commission issued its Children’s Online Privacy Protection Rule (“COPPA Rule” or “the Rule”), which closely tracks the language and requirements of the Act. The Rule became effective in April 2000.

Both the Act and the Rule mandate that the Commission commence, within five years of the Rule’s effective date, a review of the Rule’s effectiveness that addresses the effect of COPPA’s implementation on practices relating to the collection, use, and disclosure of information from children online, children’s ability to obtain access to online information of their choice, and the availability of websites directed to children. The Commission is required to submit a report to Congress setting forth the results of its review. This report fulfills that requirement.

The FTC commenced this mandatory review of the Rule in 2005, along with its periodic regulatory review to determine whether the Rule should be modified. Based on the information the Commission received during this review, and its extensive experience in enforcing the Rule, the FTC concludes:

- No changes to the Act or Rule are necessary at this time.
- The Act and the Rule have been effective in helping to protect the privacy and safety of young children online. The proliferation of general audience websites, however, that may appeal to younger audiences, highlights the need for supplemental solutions, such as age verification technologies, that can provide additional measures of security for children as they increasingly engage in online activities.
- The Commission should continue law enforcement efforts by targeting significant violations and seeking increasingly larger civil penalties, when appropriate, to deter unlawful conduct.

- The FTC’s substantial, ongoing, commitment to business education has facilitated voluntary compliance with the Rule within the online industry.
- COPPA’s innovative approach of allowing a “safe harbor” from law enforcement action for website operators that comply with a Commission-approved COPPA self-regulatory program has been a cost-effective means of promoting Rule compliance.
- The Commission should continue to educate consumers, including parents and children, about privacy and security risks online generally, and about COPPA specifically, to increase awareness of these risks and actions that consumers can take to decrease them.
- The Act and the Rule do not appear to have adversely affected the number of websites directed to children or the ability of children to access online information of their choice.
- The agency’s approach thus far has proven effective in applying the flexible standards of the COPPA Rule to new online services, such as social networking sites. Education and enforcement challenges may present themselves, however, as, for example, the means by which children access the Internet increasingly move from stand-alone computers to mobile devices.

The FTC believes that its integrated program of rulemaking, law enforcement, and outreach to businesses and consumers during the Rule’s first five years has encouraged a culture of privacy and safety without imposing undue costs on website operators. The Commission expects that its approach to COPPA can continue to provide these protections, even in the dynamic online environment. The Commission recognizes that the online environment changes rapidly in response to technological change, and that the agency must respond accordingly and in a timely fashion. The FTC will remain vigilant in monitoring technological and other developments to ensure that the Rule continues to provide robust protections for children without imposing undue costs.

II. THE GOALS OF COPPA

A. Congress’s Enactment of COPPA

Congress enacted COPPA following an extensive Commission effort to identify and educate industry and the public about issues concerning the online collection of personal information from children and adults. In both June 1996 and June 1997, the Commission held

public workshops to learn how the rapidly developing online marketplace was affecting consumers' privacy.¹

In March 1998, the Commission conducted an extensive survey of more than 1,400 commercial websites, including 212 sites that appeared to be directed at children and teens under 16. The goal of the survey was to learn the extent to which site operators were disclosing their information practices, and, with regard to the children- and teen-directed sites, the extent to which they were providing parents with notice of, and obtaining parents' consent to, the collection, use, and disclosure of their children's personal information. The Commission reported the results of its survey to Congress in June 1998 and recommended that Congress enact legislation to protect children's online privacy.²

Congress enacted COPPA³ in 1998 to prohibit unfair or deceptive acts or practices in connection with the collection, use, or disclosure of personal information from children under 13 on the Internet, with widespread support from industry and consumer groups. The stated goals of the Act are: (1) to enhance parental involvement in their children's online activities in order to protect children's privacy in the online environment; 1.00n-n 0.00000 1.00000 82c0c0 0.00000 1.00000 TD(dn

¹ More information about the 1996 and 1997 privacy workshops are available at www.ftc.gov/privacy/privacyinitiatives/promises_wkshp.html.

² FTC, *Privacy: A Report to Congress*, June 1998, available at www.ftc.gov/reports/privacy3/priv-23a.pdf.

³ 15 U.S.C. §§ 6501-6508.

⁴ 144 Cong. Rec. S12741 (Oct. 7, 1998) (Statement of Sen. Bryan).

⁵ Narrow exceptions to the Act's general notice and consent requirements permit operators to collect a child's or a parent's name or email address to facilitate such notice and consent; to allow limited communication between operators and children; and to protect themselves or their visitors in specific instances. 15 U.S.C. § 6503(b)(2).

The Act also requires operators to post prominent links on their websites to a notice of how they collect and use personal information from children.⁶ In most circumstances, the Act requires operators to notify parents directly that they wish to collect personal information from the parents' children. In addition, the Act requires operators to give parents the opportunity to review and delete any personal information provided by their children and prevent further collection of information from their children.⁷

COPPA prohibits operators from conditioning a child's participation in online activities on providing more information than is reasonably necessary to participate in those activities.⁸ This provision was intended to prevent operators from using games and activities, such as contests or clubs, as a means of obtaining copious amounts of children's personal information. The Act further requires operators to establish procedures to protect the confidentiality, security, and integrity of the personal information they collect online from children.⁹

In addition, the Act established a "safe harbor" for participants in Commission-approved COPPA self-regulatory programs.¹⁰ The goal of the safe harbor provision is to provide flexibility and promote efficiency in complying with the Act's substantive provisions by encouraging industry members or groups to develop their own COPPA oversight programs.¹¹ Operators that participate in a COPPA safe harbor program will, in most circumstances, be subject to the review and disciplinary procedures provided in those guidelines in lieu of formal FTC investigation and law enforcement.

B. The Commission's Issuance of the Rule

To implement COPPA's provisions, the Act mandated that the Commission issue rules prohibiting unfair and deceptive acts and practices in connection with the collection, use, and disclosure of personal information from and about children online. The Commission published its proposed Rule for public comment in April 1999.¹² The Commission received 147 comments on a broad range of issues, many of which contained suggestions that the Commission

⁶ See *id.* § 6502(b)(1)(A)(i).

⁷ See *id.* § 6502(b)(1)(B).

⁸ See *id.* § 6502(b)(1)(C).

⁹ See *id.* § 6502(b)(1)(D).

¹⁰ See *id.* § 6503.

¹¹ 64 *Fed. Reg.* 59888, 59906 (Nov. 3, 1999).

¹² 64 *Fed. Reg.* 22750 (Apr. 27, 1999).

regulations; and any effects that technological advancement may have had on the rule. Because of the similarity of the issues to be addressed, the FTC therefore decided to place the Rule on its 2005 regulatory review calendar and address the agency's standard regulatory review questions in the context of the statutorily mandated review described above.²⁸

In April 2005, the FTC sought public comment on all aspects of the Rule, including the three questions posed by Congress in COPPA, as well as additional questions about the Rule's application.²⁹ These questions were designed to elicit information about the particular issues that Congress directed the Commission to evaluate, the general costs and benefits of the Rule, and the effectiveness of each of the Rule's key provisions. The Federal Register Notice ("FRN") further asked about practical issues that may have arisen since the Rule's inception, including whether it is clear how to determine if a website is directed to children, whether age-falsification has become an enforcement problem, and whether the use of credit card transactions remains an acceptable method of obtaining verifiable parental consent. The FRN also repeated a set of questions about the Rule's sliding scale approach to obtaining verifiable parental consent from a January 2005 Notice of Proposed Rulemaking ("NPR")³⁰ to provide the public with an additional opportunity to comment on that issue.

2. Analysis of Costs and Benefits

In response to the April 2005 FRN and the January 2005 NPR, the Commission received a total of 116 comments from privacy advocates, website operators, parents, teachers, industry groups, and the general public.³¹ Commenters uniformly stated that the Rule has succeeded in providing greater protection to children's personal information online, that there is continuing need for the Rule, and that the Rule should be retained. They also agreed that COPPA's requirements have improved operators' information practices concerning children and that they continue to play an important role in protecting children's online safety and privacy. Members of industry emphasized that the Rule provides operators with clear standards to follow, and that the cost of compliance has not been overly burdensome or disproportionate to the Rule's benefits. Website operators and COPPA-approved safe harbors reported that they receive few complaints

²⁸ 70 *Fed. Reg.* 2074 (Jan. 12, 2005) (Regulatory Review Calendar), available at www.ftc.gov/os/2005/01/050107pubcommentsfrn.pdf.

²⁹ 70 *Fed. Reg.* 21107 (Apr. 22, 2005), available at www.ftc.gov/os/2005/04/050420coppacomments.pdf.

³⁰ 70 *Fed. Reg.* 2580 (Jan. 14, 2005), available at www.ftc.gov/os/2005/01/050112coppafrn.pdf.

³¹ Comments on the January 2005 NPR are available at www.ftc.gov/os/comments/COPPARulereview/index.htm. Comments on the April 2005 FRN are available at www.ftc.gov/os/comments/COPPA%20Rule%20Ammend/Index.htm.

³⁶ *See* note 40, *infra*.

³⁷ Social networking is discussed in greater detail in Part IV.A.,

www.ftc.gov/os/comments/COPPArulereview/516296-00021.htm.

⁴⁰ Commission staff obtained Nielsen/NetRatings demographic information of the websites whose audience was comprised of children ages 2-12. Ranked in order of unique audience composition, the top 20 sites for COPPA-covered children for the month of October 2006 were: psc.disney.go.com/abcnetworks/toondisney/index.html (Toon Disney), www.pokemon.com, www.millsberry.com, www.clubpenguin.com, myscene.everythinggirl.com (Myscene), www.funbrain.com, play.toontown.com (ToonTownOnline), www.everythinggirl.com, pollypocket.everythinggirl.com

⁴² 16 C.F.R. § 312.2. These factors include: subject matter; visual and audio content; age of models; language or other characteristics; advertising appearing on or promoting the site or service; competent and reliable empirical evidence of audience composition; evidence

of Basis and Purpose and in later Commission guidance.⁴⁶ The Statement of Basis and Purpose explains that a general audience website operator has the requisite actual knowledge if it “learns of a child’s age or grade from the child’s registration or a concerned parent. . . .”⁴⁷ An operator may have the requisite knowledge if it asks age, grade, or other age-identifying questions.⁴⁸

Commenters on this issue generally agreed that the term “actual knowledge” is sufficiently well-defined and does not need to be modified. Some commenters expressed concern, however that, children are evading general audience sites’ age screening mechanisms by

⁴⁶ See *Actual Knowledge: Not Just for Kids’ Sites*, available at www.ftc.gov/bcp/online/pubs/alerts/coppabizalrt.htm.

⁴⁷ See 64 *Fed. Reg.* 59892.

⁴⁸ *Id.*

⁴⁹ See comments of Parry Aftab, available at www.ftc.gov/os/comments/COPPARulereview/516296-00021.htm, and the Washington Legal Foundation, available at www.ftc.gov/os/comments/COPPARulereview/516296-00027.pdf.

⁵⁰ See comments of the Direct Marketing Association, et al., available at www.ftc.gov/os/comments/COPPARulereview/516296-00017.pdf and Time Warner, Inc., available at www.ftc.gov/os/comments/COPPARulereview/516296-00019.pdf.

⁵¹ See comment of the Washington Legal Foundation, note 49, *supra*.

permitted to participate on the site, may invite age falsification. By contrast, a site that allows visitors to enter any date of birth, and does not indicate why it is seeking such information, may be able to more effectively screen out children under age 13.⁵² Commission guidance also encourages sites to use tracking mechanisms, such as a session or permanent cookie, to prevent children from back-clicking to change their birth date once they realize that they will be blocked from the site based on their age.⁵³

None of these mechanisms is foolproof, however. Continued concerns about children's online safety may prompt the more rapid development of age verification technology. The Commission will monitor closely any such developments, and will update its business guidance accordingly if and when such technology becomes more widespread.

c. Use of a Credit Card to Obtain Parental Consent

Several commenters addressed the use of a credit card transaction to obtain verifiable parental consent. The Rule specifies that operators can verify that the person providing consent is the parent by collecting the parent's credit card number.⁵⁴ But in public comments, operators also

⁵² Note that a site that collects age or grade information during the registration process and fails to screen out children under age 13 or obtain parental consent from such children may be deemed to have the requisite actual knowledge under COPPA. *See U.S. v. Xanga.com, Inc.*, note 78, *infra*.

⁵³ Frequently Asked Questions about the Children's Online Privacy Protection Rule, Question 39, available at www.ftc.gov/privacy/coppafaqs.

⁵⁴ 16 C.F.R. § 312.5(b).

⁵⁵ 71 *Fed. Reg.* 13247 (Mar. 15, 2006), available at www.ftc.gov/os/2006/03/P054505COPPARuleRetention.pdf.

5. The Sliding Scale Approach to Obtaining Verifiable Parental Consent

The Rule provides that “[a]ny 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.”⁵⁶ The Commission held a public workshop during the original COPPA rulemaking to determine what verifiable parental consent technologies are reasonable. The workshop revealed that electronic consent methods more reliable than an email were not widely available or affordable.⁵⁷

To bridge the technological gap, the Commission adopted a sliding scale approach to obtaining verifiable parental consent. In adopting this approach, the FTC balanced the costs imposed by different consent methods against the risks associated with internal and external uses of children’s information.⁵⁸ The Commission found that because disclosure of children’s information poses the greatest risk to children, COPPA always requires operators who disclose information to use the articulated more reliable consent methods or their equivalent.⁵⁹

⁵⁶ 16 C.F.R. § 312.5(b)(1).

⁵⁷ See press release announcing workshop and transcript thereof, *available at* www.ftc.gov/opa/1999/06/kidswork.htm and www.ftc.gov/privacy/chonlpritranscript.pdf.

⁵⁸ 64 *Fed. Reg.* at 59901-02.

⁵⁹ *Id.* Such methods include, but are not limited to: using a print-and-send form that can be faxed or mailed back to the operator; 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 email accompanied by a PIN or password obtained through one of the above methods. 16 C.F.R. § 312.5(b)(2).

⁶⁰ The follow-up contact can be made by letter, telephone call, or delayed email.

⁶¹ 64 *Fed. Reg.* at 59902.

⁶² 16 C.F.R. § 312.5(b)(2).

B. Law Enforcement

Over the past five years, the

⁶⁸ Press releases concerning each of the cases are available at www.ftc.gov/privacy/privacyinitiatives/childrens_enf.html. In addition, a case brought shortly after the effective date of the Rule included an allegation that the defendants collected personal information from children without obtaining prior parental consent in violation of COPPA, but did not include civil penalties. *See FTC v. Toysmart.com LLC*, No. 00-11341-RGS (D. Mass. filed July 10, 2000, amended July 21, 2000).

⁶⁹ Section 5 of the FTC Act sets forth the following factors that the Commission is required to consider in determining an appropriate civil penalty amount in each case: (1) the defendant's degree of culpability; (2) any history by the defendant of prior such conduct; (3) the defendant's ability to pay; (4) the penalty's effect on the defendant's ability to continue to do business; and (5) such other factors as justice may require. A chart listing the cases and their civil penalty amounts is attached to this report as Table 1.

⁷⁰ Prior to that time, the FTC staff conducted an online surf of websites directed to children to determine adherence to COPPA's provisions, issuing warning letters to those sites found to have compliance problems. *See* "Web Sites Warned to Comply With Children's Online Privacy Law: FTC Also Works to Educate Children's Sites About Law's Privacy Protections" (July 17, 2000), available at www.ftc.gov/opa/2000/07/coppacompli.htm.

⁷¹ *U.S. v. Monarch Services, Inc.*, Civil Action No. AMD 01 CV 1165 (D. Md., filed Apr. 21, 2001) (\$35,000 in civil penalties); *U.S. v. Bigmailbox.com, Inc.*, Civil Action No. 01-606-B (E.D. Va., filed Apr. 21, 2001) (\$35,000 in civil penalties); *U.S. v. Looksmart Ltd.*, Civil Action No. 01-605-A (E.D. Va., filed Apr. 21, 2001) (\$35,000 in civil penalties).

⁷⁵ 15 U.S.C. § 6503(a)(1); 16 C.F.R. § 312.3.

⁷⁶ 16 C.F.R. § 312.3; *see also Actual Knowledge: Not Just for Kids' Sites*, available
at

⁷⁹ See, e.g., the Commission's first Internet privacy case, *Geocities*, FTC Dkt. No. C-3849 (Feb. 12, 1999) (respondent settled charges of deceptively collecting personal information from children and adults); *Liberty Financial Companies, Inc.*, FTC Dkt. No. C-3891 (Aug. 12, 1999) (respondent allegedly deceptively promised to maintain only anonymous information collected from minors online). In addition, some COPPA complaints have contained allegations that the operators also violated the FTC Act by making false or misleading statements in their privacy notices. E.g., *Bigmailbox.com, Inc.*, note 71, *supra*, and *Lisa Frank, Inc.*, note 72, *supra*.

⁸⁰ The public can obtain free information or file a complaint by visiting the FTC's website (www.ftc.gov) or by calling toll-free the Commission's Consumer Response Center, 1-877-FTC-HELP (1-877-382-

⁸² See, e.g., www.caru.org/about/links.asp; www.epic.org/privacy/kids/#resources; www.nocpa.org/privacy/kidsprivacy.html.

⁸³ Available at www.ftc.gov/bcp/online/pubs/buspubs/coppa.htm.

⁸⁴ Available at www.ftc.gov/bcp/online/pubs/online/kidsprivacy.htm.

⁸⁵ Available at www.ftc.gov/privacy/coppafaqs.htm.

⁸⁶ Available at

site operators and online service providers determine when they must comply with the Rule's requirements.⁹⁷

The Commission believes that the FTC's educational materials and the staff's informal compliance guidance have promoted compliance and avoided imposing unnecessary burdens on website operators.

D. COPPA Safe Harbor Programs

As part of its five-year review of the Rule, the Commission sought public comment on

⁹⁷ Available at www.ftc.gov/bcp/online/pubs/alerts/coppabizart.htm.

⁹⁸ 16 C.F.R. § 312.10.

⁹⁹ See *id.* § 312.10(b)(1).

¹⁰⁰ See *id.* § 312.10(b)(2)(i)-(iv). Acceptable methods for assessing compliance include periodically reviewing a participant's information practices; seeding a participant's databases by submitting fictional information and tracking what happens to that information, when accompanied by periodic reviews of the participant's information practices; or any other equally effective independent assessment mechanism. *Id.* "Seeding" a participant's database means registering on the site as a child and then monitoring the participant to ensure that it complies with the Rule's requirements.

¹⁰¹ See *id.* § 312.10(b)(3)(i)-(v). Effective incentives include mandatory public reporting of disciplinary action taken against participants by the safe harbor program; consumer redress; voluntary payments to the United States Treasury; referral of violators to the Commission; or any other equally effective incentive. *Id.*

marketplace. The second goal of the safe harbor provision is to reward good faith efforts to comply with COPPA. The Rule therefore provides that operators fully complying with an approved safe harbor program will be “deemed to be in compliance” with the Rule for purposes of enforcement.¹⁰² Therefore, in lieu of formal enforcement actions, such operators instead are subject first to the safe harbor program’s own review and disciplinary procedures.

Since the Rule went into effect, the Commission has approved four COPPA safe harbor programs. The programs are administered by: the Children’s Advertising Review Unit of the Council of Better Business Bureaus (“CARU”); the Entertainment Software Rating Board (“ESRB”); TRUSTe; and Privo.¹⁰³ The FTC evaluated each of the programs’ applications and proposed programs and determined that they met each of the Rule’s requirements, discussed immediately above, for approving a safe harbor program. In 2005, the Commission also approved ESRB’s application to modify several provisions of its COPPA safe harbor program.¹⁰⁴

The FTC concludes that the safe harbor programs have benefitted the FTC in administering COPPA, as well as consumers and businesses. The programs have helped the FTC in numerous respects, from monitoring the Internet and educating operators and consumers, to bringing sites into compliance. Members of the public have lauded the safe harbor programs in these and other respects. One commenter stated that they “are an important educational resource on children’s privacy issues, and serve to heighten awareness of children’s privacy issues more generally.”¹⁰⁵ Another stated, “the Safe Harbor program demonstrates the benefits of a self-regulatory scheme and mechanism for industry to maintain high standards with limited

¹⁰² *Id.* The Commission may take action against websites that are in compliance with an approved safe harbor program only if the FTC approved the program’s guidelines based on inaccurate or incomplete representations, or did not approve a material change made to the guidelines.

¹⁰³ Materials related to each of the COPPA safe harbor programs are available at www.ftc.gov/privacy/privacyinitiatives/childrens_shp.html. In addition to serving as a Commission-approved COPPA safe harbor, CARU’s procedures permit referral to the Federal Trade Commission of website operators that CARU finds to have violated the organization’s guidelines.

¹⁰⁴ 16 C.F.R. § 312.10(c)(3). Under the Rule, any material changes to Commission-approved COPPA safe harbor program must be published for public comment. Statement of Basis and Purpose, 64 *Fed. Reg.* at 59911. The Commission determined that ESRB’s proposed changes were not material because they did not substantively alter its guidelines or the rest of its safe harbor program.

¹⁰⁵ Comment of The Direct Marketing Association, *available at* www.ftc.gov/os/comments/COPPAruleview/index.htm.

government intervention.”¹⁰⁶ The Commission has not received any negative comments about the program. The Commission’s experience with the approved programs indicates that industry self-regulation has been successful in complementing the FTC’s enforcement of COPPA and should be given continued support.

IV. NEW AND EMERGING ISSUES IN CHILDREN’S ONLINE PRIVACY

Children’s participation in online activities has changed significantly since COPPA’s enactment. Data show that the proportion of 8-to-18-year-olds who could access the Internet from their homes increased from 47% in 1999 to 74% in 2004; the proportion of 8-to-18-year-olds who had Internet access in their bedrooms rose from 10% in 1999 to 20% in 2004.¹⁰⁷ In 2001, 31.4% of children ages 5 to 7, and 53.5% of children ages 8 to 10, used the Internet.¹⁰⁸ By 2004, children between the ages of 8 and 10 spent an average of 25 m

¹⁰⁶ Comment of Mattel, Inc., *available at* www.ftc.gov/os/comments/COPPAruleview/index.htm.

¹⁰⁷ See Kaiser Family Foundation, “Generation M: Media in the Lives of 8-18 Year-olds” (2005), *available at* www.kff.org/entmedia/upload/Generation-M-Media-in-the-Lives-of-8-18-Year-olds-Report.pdf.

¹⁰⁸ See National Center for Education Statistics, “Computer and Internet Use by Children and Adolescents in 2001 – Statistical Analysis Report,” *available at* nces.ed.gov/pubs2004/2004014.pdf.

¹⁰⁹ See Kaiser Family Foundation report, note 107, *supra*.

¹¹⁰ See Pew Internet & American Life Project Report, *Youth are Leading the Transition to a Fully Wired and Mobile Nation* (July 27, 2005), *available at* www.pewinternet.org/pdfs/PIP_Teens_Tech_July2005web.pdf.

¹¹¹ *Id.*

¹¹² Coolwatch, Kidscreen, Sept. 2006, at 126.

¹¹³ Nielsen/NetRatings website demographic information lists the following sites as the top 20 most visited sites by children age 13-17 and the top 20 most visited sites by children age 18-24.

sites to identify, contact, and exploit them.¹¹⁷ To help parents and their children address the sites' potential for significant risk, in May 2006 the Commission issued two sets of tips for safe social networking, one directed at parents and the other directed at teens and tweens.¹¹⁸

The Commission has posted its social networking materials on the www.ftc.gov site and on www.OnGuardOnline.gov.¹¹⁹ The OnGuardOnline site was developed by the FTC through a partnership with cybersecurity experts, consumer advocates, online marketers, and other federal agencies. The FTC chose to make OnGuardOnline unbranded to encourage other organizations to adopt the information and then disseminate it themselves in ways that could reach more consumers. Most recently, in late October 2006, the FTC added "Buddy Builder," an interactive quiz on social networking that tests users' online savvy as cyber-strangers attempt to "friend" the player at a fictional social networking site.¹²⁰ The FTC also has encouraged the social networking sites themselves to link to its safety tips, and several have.

COPPA, of course, applies to social networking sites that knowingly collect personal information from children under age 13 without first notifying parents or obtaining parental consent, and has proven to be a powerful tool in the online safety arsenal. The Commission's 2006 action against Xanga.com¹²¹ should alert other social networking and general audience sites that their failure to implement COPPA protections for their under-13 members results in

¹¹⁷ See, e.g., *Michigan Teen Home Safe & Sound: Authorities Say 16-Year-Old Flew To Mideast For 'MySpace' Rendezvous* (June 12, 2006), available at www.cbsnews.com/stories/2006/06/09/tech/main1697653.shtml; Tehani Schneider & Adam Teliencio, *Free Expression Blooms in Risk-laden MySpace*, *Morristown Daily Record*, May 14, 2006.

¹¹⁸ See "Do You Know Who Your Kids Are Talking To? Safety Tips for Social Networking Online" (May 9, 2006), available at www.ftc.gov/opa/2006/05/socialnetworking.htm.

¹¹⁹ See *Social Networking Sites: A Parent's Guide* and *Social Networking Sites: Safety Tips for Tweens and Teens*, available at www.onguardonline.gov/socialnetworking.html.

¹²⁰ See "The Buddy System for Safe Social Networking Online: New Game Tests Who to Approve and Who to Remove" (Oct. 31, 2006), available at www.ftc.gov/opa/2006/10/fyi0669.htm and at www.onguardonline.gov/socialnetworking.html

¹²¹ See note 78, *supra*.

substantial risk to children's online privacy and safety, and may result in the Commission taking legal action against them.

In June 2006, the Commission testified on both its consumer education and law enforcement efforts in the area of social networking at a hearing before the House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations.¹²² Testifying on behalf of the Commission, FTC Commissioner Pamela Jones Harbour detailed the agency's efforts,

¹²² Prepared Statement of the Federal Trade Commission On Social Networking Sites, before the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce of the United States House of Representatives, presented by Commissioner Pamela Jones Harbour (June 28, 2006), *available at* www.ftc.gov/os/2006/06/060626socialnetworking.pdf.

¹²³ See John Biggs, *Courting a Hot Market with Cool Phone Service*, NY TIMES, July 13, 2006, at www.nytimes.com/2006/07/13/technology/13basics.html (last accessed Jan. 8, 2007); see also Castleman, *2016: A 10-year-old's Odyssey*, KIDSCREEN, Jan. 2006 at 38-39.

¹²⁴ See Castleman, *id.*

Guidelines for Cross-Carrier Mobile Content Programs” in November 2006.¹²⁵ These revised guidelines address the need to proceed cautiously when marketing new technologies to children. Among other things, the Mobile Marketing Association’s best practices document includes a section on marketing to children, stating “All industry participants are expected to comply with all applicable laws dealing with children and marketing, including COPPA and regulations regarding age restrictions for particular products.”¹²⁶ This guidance document sends a clear message to the mobile industry that it must be mindful of COPPA’s requirements when developing new products and services, especially in light of children’s wholehearted embrace of these new technologies.

To address the issue of wireless services, as well as numerous other technological developments, the Commission convened public hearings in early November 2006 entitled “Protecting Consumers in the Next Tech-ade.”¹²⁷ The hearings featured experts from all sectors, including industry, technology, consumer advocacy, academia, government, and law enforcement, and explored how technological convergence and commercial globalization impact consumer protection. The hearings provided an opportunity to examine changes in marketing and technology over the past decade, and garnered experts’ views on coming challenges and opportunities for consumers, businesses, and government. A report on the Tech-ade hearings is expected to be issued in March 2007.

V. CONCLUSION

The first five years of COPPA’s implementation show that the Rule has provided a workable system to help protect the online safety and privacy of the Internet’s youngest visitors. Commenters overwhelmingly support the Rule and its requirements. They state that the Rule has provided children with greater online privacy and safety than in the era prior to its implementation, that there is a continuing need for those protections, and that the Rule should be retained. The Rule’s standards appear to have played a role in improving operators’ information practices for children online, and neither operators nor parents have found the standards to be overly burdensome. Operators have been able to use the COPPA standards successfully in providing interactive online content for children. The standards also have provided parents with a set of effective tools, among others, for becoming involved in and overseeing their children’s interactions online.

¹²⁵ The Mobile Marketing Association’s Best Practices document, issued November 27, 2006, is available at www.mmaglobal.com/bestpractices.pdf.

¹²⁶ *Id.*

¹²⁷ More information about the Commission’s Tech-ade hearings is available at www.ftc.gov/bcp/workshops/techade/index.html

Since the Commission first started looking at privacy online, and children's privacy in particular, it appears that many website operators have brought their children's information practices into compliance with the Rule. Still, the emergence of social networking sites, and other general audience sites that are attractive to tweens – without the concomitant development of suitable age-verification technologies – presents challenges to website operators and parents, as well as the Commission. Moreover, the failure to develop more secure electronic mechanisms or infomediaries to verify parental consent poses an additional t

TABLE 1**FTC COPPA CIVIL PENALTY AMOUNTS**

CASE	YEAR	AMOUNT
<i>U.S. v. Xanga.com, Inc.</i> , Civil Action No. 06-CIV-6853(SHS) (S.D.N.Y.)	2006	\$1,000,000
<i>U.S. v. UMG Recordings, Inc.</i> , Civil Action No. CV-04-1050 (C.D. Cal.)	2004	\$400,000
<i>U.S. v. Bonzi Software, Inc.</i> , Civil Action No. CV-04-1048 (C.D. Cal.)	2004	\$75,000
<i>U.S. v. Mrs. Fields Famous Brands, Inc.</i> , Civil Action No. 2:03 CV205 JTG (D. Utah)	2003	\$100,000
<i>U.S. v. Hershey Foods Corp.</i> , Civil Action No. 4:CV03-350 (M.D. Penn.)	2003	\$85,000
<i>U.S. v. The Ohio Art Company</i> , Civil Action No. 02-CV-7203 (N.D. Ohio)	2002	\$35,000
<i>U.S. v. American Popcorn Co.</i> , Civil Action No. 02-CV-4008 (N.D. Iowa)	2002	\$10,000
<i>U.S. v. Lisa Frank, Inc.</i> , Civil Action No. 01-1516-A (E.D. Va.)	2001	\$30,000
<i>U.S. v. Monarch Services, Inc.</i> , Civil Action No. AMD 01 CV 1165 (D. Md.)	2001	\$35,000
<i>U.S. v. Bigmailbox.com, Inc.</i> , Civil Action No. 01-606-B (E.D. Va.)	2001	\$35,000
<i>U.S. v. Looksmart Ltd.</i> , Civil Action No. 01-605-A (E.D. Va.)	2001	\$35,000

