

**PREPARED STATEMENT OF
THE FEDERAL TRADE COMMISSION**

**“AN EXAMINATION OF CHILDREN’S PRIVACY: NEW TECHNOLOGY
AND THE CHILDREN’S ONLINE PRIVACY PROTECTION ACT”**

**SUBCOMMITTEE ON CONSUMER PROTECTION,
PRODUCT SAFETY, AND INSURANCE
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE**

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I. Introduction

Chairman Pryor, Ranking Member Wicker, and members of the Subcommittee, my name is Jessica Rich, and I am the Deputy Director of the Bureau of Consumer Protection at the Federal Trade Commission (“Commission”).¹ I appreciate the opportunity to appear before you today to discuss the Commission’s implementation of the Children’s Online Privacy Protection Act of 1998 (“COPPA”).²

The Federal Trade Commission is deeply committed to helping to create a safer, more secure, online experience for children. As such, the agency has actively engaged in law enforcement, consumer and business education, and rulemaking initiatives to ensure that knowledge of, and adherence to, COPPA is widespread. In the past ten years, the Commission has brought fourteen law enforcement actions alleging COPPA violations and has collected more than \$3.2 million in civil penalties. In addition, in light of significant changes to the online environment, including the explosion of social networking and the proliferation of mobile web technologies and interactive gaming, and the possibility of interactive television, the Commission has recently initiated an accelerated review of COPPA’s effectiveness.

This testimony first provides a brief legislative and regulatory overview of COPPA. It next summarizes the Commission’s efforts to enforce COPPA and to educate businesses and consumers about the law. Finally, it discusses the Commission’s current initiative to review its

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 See Children’s Online Privacy Protection Act of 1998, 15 U.S.C. §§ 6501-6508 (2009). The Commission’s implementing regulations (the “COPPA Rule”) are found at 16 C.F.R. Part 312 (2009).

COPPA Rule in order to determine whether the Rule should be modified to address changes in technology that may affect children’s privacy.

II. A Brief COPPA Overview

A. The Legislation

Congress enacted COPPA in 1998 to address the unique privacy and safety risks created when young children – those under 13 years of age – access the Internet. COPPA’s legislative history reveals several critical goals: (1) to enhance parental involvement in children’s online activities in order to protect children’s privacy; (2) to protect children’s safety when they visit and post information on public chat rooms and message boards; (3) to maintain the security of children’s personal information collected online; and (4) to limit the collection of personal information from children without parental consent.³

COPPA applies to operators of websites and online services directed to children under age 13, and to other website operators that have actual knowledge that they are collecting personal information⁴ from such children (collectively, “operators”). The statute generally mandates that operators covered by the Act provide notice of their information collection practices and, with only limited exceptions, obtain verifiable parental consent *prior* to the collection, use, or disclosure of personal information from children. Operators also must give

³ See 144 Cong. Rec. S12741 (Oct. 7, 1998) (statement of Sen. Bryan).

⁴ COPPA defines personal information as individually identifiable information about an individual collected online, including: a first and last name; a home or other physical address including street name and a name of a city or town; an e-mail address; a telephone number; a Social Security number; any other identifier that the Commission determines permits the physical or online contacting of a specific individual; or information concerning the child or the parents of that child that the website collects online from the child and combines with an identifier described in this paragraph. 15 U.S.C. § 6501(8).

parents the opportunity to review and delete personal information their children have provided. Operators are required to establish and maintain reasonable procedures to protect the security of personal information collected from children, and must not condition children's participation in website activities on the disclosure of more personal information than is reasonably necessary.⁵

COPPA contains a safe harbor provision enabling industry groups or others to submit to the Commission for approval self-regulatory guidelines to implement the statute's protections.⁶ The statute provides that operators who fully comply with an approved safe harbor program will be "deemed to be in compliance" with the Commission's COPPA Rule for purposes of enforcement.⁷

B. The Commission's COPPA Rule

COPPA mandated that the Commission promulgate and enforce regulations to implement the Act. The Commission published for public comment a proposed Rule in April 1999, and in November 1999 published its final Rule, which went into effect on April 21, 2000.⁸

The Rule closely follows the statutory language, requiring operators to provide notice of their information practices to parents and, with limited exceptions, to obtain "verifiable parental consent" prior to collecting, using, or disclosing personal information from children under the

⁵ 15 U.S.C. § 6503(b)(1).

⁶ 15 U.S.C. § 6504. 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 ("CARU"), the Entertainment Software Rating Board ("ESRB"), TRUSTe, and Privo, Inc. For information on the Commission's COPPA safe harbor process, *see* http://www.ftc.gov/privacy/privacyinitiatives/childrens_shp.html.

⁷ 15 U.S.C. § 6504(b)(2).

⁸ 16 C.F.R. § 312 (2009).

age of 13. Verifiable parental consent, as set forth in the Rule, means that operators must use a consent method that is reasonably calculated, in light of available technology, to ensure that the person providing consent is the child's parent.⁹ The COPPA Rule sets forth a sliding scale approach to obtaining verifiable parental consent based upon the risks posed by the intended uses of the child's information.¹⁰ Under this approach, operators who keep children's information internal, and do not disclose it publicly or to third parties, may obtain parental consent by methods such as sending an email to the parent and then following up to confirm consent.¹¹ By contrast, operators who disclose children's personal information to others must use a more reliable method of parental consent – either one of the methods outlined by the Commission, or an equivalent method designed to ensure that the operator is connecting with the child's parent.¹²

COPPA authorizes the Commission to enforce the Rule in the same manner as it does rules promulgated under Section 18(a)(1)(B) of the Federal Trade Commission Act prohibiting unfair or deceptive acts or practices.¹³ This permits the Commission to obtain civil penalties

⁹ 16 C.F.R. § 312.5(b)(1).

¹⁰ 16 C.F.R. § 312.5(b)(2).

¹¹ The sliding scale mechanism, which initially was designed to expire in April 2002, was subsequently extended by the Commission. In 2006, the Commission announced that it would extend the sliding scale approach indefinitely. *See* 71 Fed. Reg. 13247 (Mar. 15, 2006), available at www.ftc.gov/os/2006/03/P054505COPPARuleRetention.pdf.

¹² 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).

¹³ 15 U.S.C. §§ 6503(c), 6506(a), (d); 15 U.S.C. § 57a(a)(1)(B) (2009).

against operators who violate the Rule. COPPA further authorizes state attorneys general to enforce compliance with the Rule by filing actions in federal court with written notice to the Commission.¹⁴

III. The Commission’s COPPA Enforcement and Education Efforts

A. Enforcing COPPA

In the ten years since the Rule’s enactment, the Commission has brought fourteen (14) COPPA enforcement actions that cut to the core of COPPA’s goals – ensuring that parents are informed and have the right to say “no” before their young children divulge their personal information. These rights are especially important when, with the mere click of a mouse or the touch of a screen, a child’s personal information can be viewed by anyone. Together, the Commission’s actions have garnered more than \$3.2 million dollars in civil penalties.¹⁵

In 2006, as social networking exploded onto the youth scene, the Commission redoubled its efforts to enforce COPPA. That year, the Commission obtained an order against Xanga.com, a then-popular social blogging site alleged to have knowingly collected personal information from, and created blog pages for, 1.7 million underage users – without obtaining their parents’ permission. The Xanga.com settlement included a \$1 million civil penalty.¹⁶

¹⁴ 15 U.S.C. § 6505. To date, only the state of Texas has filed law enforcement actions under the COPPA statute. *See* News Release, Office of Texas Attorney General Abbott Takes Action Against Web Sites That Illegally Collect Personal Information from Minors: Millions of Children Registered With The Popular Sites; Texas first state to take action under COPPA (Dec. 5, 2007), <http://www.oag.state.tx.us/oagNews/release.php?id=2288>.

¹⁵ News releases detailing each of the Commission’s COPPA cases are available at www.ftc.gov/privacy/privacyinitiatives/childrens_enf.html.

¹⁶ *United States v. Xanga.com, Inc.*, No. 06-CIV-6853(SHS) (S.D.N.Y.) (final order Sept. 11, 2006).

In 2008, the Commission obtained orders against two other operators of social networking sites. In January of that year, operators of the child-directed social networking site, Imbee.com, paid \$130,000 to settle charges that they allegedly violated COPPA by collecting and maintaining personal information from over 10,500 children without first obtaining parental consent.¹⁷ Later that year, Sony BMG Music Entertainment paid 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 underage children who registered on 196 of its general audience music fan sites.¹⁸

Most recently, the Commission charged Iconix Brand Group, Inc., the owner and marketer of several apparel brands popular with children and teens, with collecting and storing personal information from approximately 1,000 children without first notifying their parents or obtaining parental consent. The Commission's complaint further alleged that on one of its brand websites, Iconix enabled girls to share personal stories and photos publicly online. Iconix agreed to pay a \$250,000 civil penalty to settle the Commission's charges.¹⁹

B. Consumer and Business Education

Although law enforcement is a critical part of the Commission's COPPA program, enforcement alone cannot accomplish all of the agency's goals in administering COPPA and the Rule. A crucial complement to the Commission's formal law enforcement efforts, therefore, is

¹⁷ *United States v. Industrious Kid, Inc.*, No. 08-CV-0639 (N.D. Cal.) (filed Jan. 29, 2008).

¹⁸ *United States v. Sony BMG Music Entm't*, No. 08-CV-10730 (S.D.N.Y.) (final order Dec. 15, 2008).

¹⁹ *United States v. Iconix Brand Group, Inc.*, No. 09-CV-8864 (S.D.N.Y.) (final order Nov. 5, 2009).

educating consumers and businesses about their rights and responsibilities under the law. By promoting business and consumer education, the Commission seeks to help the greater online community create a culture that protects children's privacy and security.

The Commission's business outreach goals focus broadly on shaping prospective practices. The agency devotes significant resources to assisting website operators with Rule compliance, regularly updating business education materials and responding to inquiries from operators and their counsel.²⁰

The Commission's consumer education materials aim to 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 practical and plain language information in a variety of formats – including articles, games, quizzes, and videos – to help computer users guard against Internet fraud, secure their computers, and protect their personal information.²¹ The Commission's booklet, *Net Cetera: Chatting With Kids About Being Online*, is a recent addition to OnGuardOnline.gov. This guide

²⁰ To facilitate COPPA compliance, the Commission maintains a comprehensive children's privacy area on its website where businesses can find useful publications, including *How to Comply with the Children's Online Privacy Protection Rule; You, Your Privacy Policy and COPPA*; and *How to Protect Kids' Privacy Online*, as well as answers to Frequently Asked Questions (or "FAQs"). See <http://www.ftc.gov/privacy/privacyinitiatives/childrens.html>. Periodically, the Commission issues guidance on specific topics, like the Rule's requirements for the content of online privacy notices, and the COPPA "actual knowledge" standard for operators of general audience websites. In addition, the agency maintains a COPPA Hotline, where staff members offer fact-specific guidance in response to questions from website operators.

²¹ The OnGuardOnline.gov website is the central component of the OnGuardOnline consumer education campaign, a partnership of the federal government and the technology community. Currently, 13 federal agencies and a large number of safety organizations are partners on the website, contributing content and helping to promote and disseminate consistent messages.

gives practical tips on how parents, teachers, and other trusted adults can help children reduce the risks of inappropriate conduct, contact, and content that come with living life online. *Net Cetera* focuses on the importance of communicating with children about issues ranging from cyberbullying to sexting, social networking, mobile phone use, and online privacy.²² The Commission has partnered with schools, community groups, and local law enforcement to publicize *Net Cetera*, and has distributed more than 2.5 million copies of the guide since it was introduced in October 2009.

IV. The Current Regulatory Review

In 2005, the Commission commenced a statutorily required review of its experience in enforcing COPPA.²³ Specifically, Congress directed the Commission to evaluate: (1) operators' practices as they relate to the collection, use, and disclosure of children's information, (2) children's ability to obtain access to the online information of their choice; and (3) the availability of websites directed to children. At the same time, the Commission sought public comment on the costs and benefits of the Rule, including whether any modifications to the Rule were needed in light of changes in technology or in the marketplace.

After completing that review, in 2007 the Commission reported to Congress that, in keeping with the legislative intent, the Rule: (1) played a role in improving operators' information collection practices and providing children with greater online protections than in the era prior to its implementation; (2) provided parents with a set of effective tools for becoming involved in and overseeing their children's interactions online; and (3) did not overly

²² See OnGuardOnline, "Net Cetera: Chatting With Kids About Being Online," available at <http://www.onguardonline.gov/pdf/tec04.pdf>.

²³ See 15 U.S.C. § 6506(1).

burden operators' abilities to provide interactive online content for children. Accordingly, the Commission concluded that there was a continuing need for those protections, and that the Rule should be retained without change.²⁴ At that time, 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.²⁵

Although the Commission generally reviews its rules approximately every ten years, the continued rapid-fire pace of technological change, including an explosion in children's use of mobile devices and participation in interactive gaming, and the possibility of interactive television, led the agency to accelerate its COPPA review by five years, to this year.²⁶

Accordingly, on March 24, 2010, the Commission announced the start of a public comment period aimed at gathering input on a wide range of issues relating to the COPPA Rule, including:

- The implications for COPPA enforcement raised by mobile communications, interactive television, interactive gaming, and other similar interactive media and whether the Rule's definition of "Internet" adequately encompasses these technologies;

²⁴ 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.

²⁵ See *id.* at 28-29.

²⁶ The Commission recently concluded a series of privacy roundtables exploring the challenges posed by the array of new technologies that collect and use consumer data. The Commission also sought public comment on these issues and currently is examining the comments and information developed at the roundtables. In addition, the Commission expects that information gathered during the course of the COPPA Rule review will help inform this broader privacy initiative. See Exploring Privacy: A Roundtable Series, <http://www.ftc.gov/bcp/workshops/privacyroundtables/index.shtml>.

- Whether operators have the ability, using persistent IP addresses, mobile geolocation data, or information collected from children online in connection with behavioral advertising, to contact specific individuals, and whether the Rule’s definition of “personal information” should be expanded accordingly;
- How the use of centralized authentication methods (such as OpenId) will affect individual websites’ COPPA compliance efforts;²⁷
- Whether there are additional technological methods to obtain verifiable parental consent that should be added to the COPPA Rule, and whether any of the methods currently included should be removed; and
- Whether parents are exercising their rights under the Rule to review or delete personal information collected from their children, and what challenges operators face in authenticating parents.²⁸

The period for comment on these questions will close on June 30, 2010. On June 2, before the comment period closes, the Commission will host a public roundtable at its Washington, DC Conference Center to hear from stakeholders – children’s privacy advocates,

²⁷ Centralized authentication methods offer a means for users to log on to different services using one digital identity. Services such as OpenId replace the common login process on individual websites with a single authenticated identification to gain access to multiple software systems. As a result, children who obtain an OpenId authentication might be able to gain back-door access to websites that otherwise would have provided them with COPPA protections or prevented their entry.

²⁸ See Request for Public Comment on the Federal Trade Commission’s Implementation of the Children’s Online Privacy Protection Rule, 75 Fed. Reg. 17089-93 (Apr. 5, 2010); see also News Release, Fed. Trade Comm’n, “FTC Seeks Comment on Children’s Online Privacy Protections; Questions Whether Changes to Technology Warrant Changes to Agency Rule” (Mar. 24, 2010), <http://www.ftc.gov/opa/2010/03/coppa.shtm>.

website operators, businesses, academics, and educators and parents – on these important issues.²⁹

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 from stand-alone PCs, to handheld devices, and potentially beyond.

Thank you for this opportunity to discuss the Commission’s COPPA program. I look forward to your questions.

²⁹ See News Release, Fed. Trade Comm’n, “Protecting Kids’ Privacy Online: Reviewing the COPPA Rule” (Apr. 19, 2010), <http://www.ftc.gov/opa/2010/04/coppa.shtm>.