

February 14, 2005

Via Electronic Filing

Mr. Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Sliding Scale 2005, Project No. P054503 (re: COPPA)

Dear Secretary Clark:

The signatories to this letter include a wide range of trade associations and business coalitions (hereinafter “Associations”). These Associations collectively represent thousands of companies across a diverse cross-section of industry. Many of the companies that comprise our associations offer fun and educational Web site content for children.

These Associations share the Federal Trade Commission’s (“Commission”) commitment to protecting children’s privacy online. Some of these Associations may also submit comments separately in this proceeding, 70 Fed. Reg. 2580, Jan. 14, 2005, but all agree on a set of common principles discussed in this letter. The Associations also collectively submitted comments on the earlier Notice of Proposed Rulemaking, 66 Fed. Reg. 54963, Oct. 31, 2001.

We strongly support the Commission’s proposal to extend indefinitely the current sliding scale standard for obtaining verifiable parental consent. The five-year trial period for the sliding scale has demonstrated that this approach is working effectively. Further, we believe that retaining this standard will protect children while encouraging Web site operators to invest more resources in developing children’s content on the Internet. The sliding scale approach has proven an effective means for allowing interactivity at children’s Web sites without unduly burdening Web sites with costly parental consent mechanisms that could have the unintended effect of reducing children’s content on the Internet. A flexible range of consent mechanisms depending on the use to which an operator puts the information has proven fully consistent with the statutory purpose of protecting child safety for those Web site activities that may present the most concerns about child safety.

The Associations believe that extending indefinitely the sliding scale mechanism for obtaining verifiable parental consent will have no negative implications. To our knowledge, new technologies have not yet been developed and to facilitate verifiable parental consent at a reasonable cost. Consistent with the statutory mandate, which provides that verifiable parental consent must be reasonably calculated “*taking into consideration available technology*,” 15 U.S.C. § 6501(9) (emphasis added), to ensure that the person providing the consent is the child’s parent, the sliding scale approach affords a readily available and viable means of obtaining consent.

Moreover, many of the Associations’ constituent companies with Web sites directed to children have created content whose continued existence is dependent upon the acceptable consent mechanisms under the sliding scale approach. If the sliding scale were to be phased out, these sites may be forced to retool their Web sites, undertaking more difficult and costly parental consent mechanisms. Ironically, the net effect of a sliding scale phase-out could be to eliminate some of the innovative interactive opportunities for children at these Web sites and/or a significant reduction in the amount of children’s content available over the Internet.

The parameters of the sliding scale approach are clear, providing Web sites with meaningful guidance on how to structure their activities around a preferred consent mechanism. Adopting the sliding scale permanently would help ensure the continued existence of meaningful children’s Web site content, and likely would foster the development of additional such content because it would encourage companies to make the types of investments in children’s content that they have been hesitant to make to date given the temporary nature of the sliding scale.

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For these reasons, the undersigned associations urge that the Commission extend the sliding scale standard indefinitely. For additional information, please contact Stuart Ingis at DLA Piper Rudnick Gray Cary US LLP, at (202)-861-3900.

Sincerely,

American Association of Advertising Agencies
Association of National Advertisers
Association of American Publishers
The Direct Marketing Association, Inc.
Magazine Publishers of America