

COMMENT ON PROPOSED RULE

Children's Online Privacy Protection Rule

16 CFR 312

The Sliding Scale of Requirements of Obtaining Parental Consent (Project No. P054503)

AGENCY: Federal Trade Commission ("FTC" or the "Commission")

This comment is submitted by the Council of American Survey Research Organizations, Inc. ("CASRO") in response to the Commission's Notice of Proposed Rulemaking; Request for Public Comments (the "NPRM") dated January 12, 2005 with respect to the sliding scale of verifiable parental consent (the "sliding scale") as set forth in the Children's Online Privacy Protection Rule ("the Rule").

CASRO is a not-for-profit industry and professional association representing nearly 250 research companies and institutions engaged in survey research regarding a wide variety of public policy, forensic, health, scientific, economic and other public and private areas of inquiry. Its members are responsible for the overwhelming majority of the survey research conducted each year in the United States and a major portion of global survey research.

Survey research contributes significantly to the public interest by providing reliable, verifiable analyses of a wide variety of public policy, sociological, legislative, regulatory, political, forensic, scientific, public health and economic areas of inquiry. Survey research is an invaluable and irreplaceable tool of behavioral science used to measure, track, analyze and predict public attitudes, opinions, awareness and preferences. Survey research is virtually the only source of statistically reliable and verifiable information of this type, on which government, business and private interests rely to formulate their actions and decisions.

Among the principal missions of CASRO is the establishment, maintenance and enforcement of professional and ethical standards in survey research and the protection of the privacy interests of those who participate in survey research. These principles reflect the social utility of survey research and the need to protect and respect the industry's most valuable resource -- its survey respondents.

As one of the leading representatives of the U.S. survey research industry, CASRO has an interest in articulating the compelling public, governmental and business need for protecting not only survey research, but also the rights and concerns of the public and survey respondents. We believe that privacy is one of these important concerns. Accordingly, CASRO supports the Commission's proposal to extend the sliding scale of obtaining parental consent for a specific period of time.

The Children's Online Privacy Protection Act ("COPPA") was passed by Congress in 1998, and went into effect on April 21, 2000. COPPA set forth requirements for those web sites or online services directed to children under thirteen years of age that collect personal information from children or general audience web sites that have actual knowledge that they collect personal information from children. COPPA directed the FTC to promulgate rules to enforce the provisions of COPPA, which the FTC did on November 3, 1999. Included within the FTC Rule was a requirement that website operators or online services obtain verifiable parental consent prior to collecting, using, or disclosing personal information from children under 13 years of age.

The Rule as originally adopted by the Commission set forth a sliding scale approach to obtaining verifiable parental consent. If the website operator is collecting personal information for its internal use only, the Rule allowed verifiable parental consent to be obtained through the

use of an e-mail message to the parent, coupled with additional steps to provide assurances that the parent is providing the consent. Such additional steps include sending a confirming e-mail to the parent after receiving consent or obtaining a postal address or telephone number from the parent and confirming the parent's consent by letter or telephone call. However, if the child's personal information is being obtained for disclosure to third parties, the Rule required a more reliable method of obtaining parental consent, such as print-and-sign forms that can be faxed or mailed back to the website 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; or using e-mail accompanied by a PIN or password obtained through one of the above methods.

When the Rule was originally promulgated the Commission intended the sliding scale to be a temporary means of compliance. Initially, the sliding scale mechanism was to expire on April 21, 2002. However, technology that would allow web site operators to more reliably obtain verifiable parental consent was not available by that date, so the Commission extended the mechanism for three additional years, through April 21, 2005. To date, however, this technology has still not become widely accepted, and thus the Commission is now seeking comment on whether to extend the sliding scale again. In the NPRM, the Commission invites comment on whether the sliding scale should be extended or become a permanent portion of the Rule. As an organization that has a considerable interest in both protecting consumers' privacy and allowing the collection of information from individuals based upon informed consent CASRO hereby responds to, and supports the extension of the sliding scale for a period of three years while technology continues to be developed that will allow website operators and online services to more efficiently and reliably obtain parental consent.

Generally, CASRO recommends that the Commission promulgate rules that are consistent with the Act's legislative intent and the policy of the FTC and other federal agencies in administering national privacy regulations; i.e., that such regulations should be carefully applied so that they continue to protect the privacy interests of consumers, but still allow the survey researchers that comprise CASRO's membership to obtain critical survey information from businesses and individuals.

The Commission has requested replies to specific questions in connection with this portion of the NPRM. CASRO respectfully offers the following in response to those questions:

Question 1: *Are secure electronic mechanisms now widely available to facilitate verifiable parental consent at a reasonable cost? Please include comments on the following:*

- (a) digital signature technology;*
- (b) digital certificate technology;*
- (c) other digital credentialing technology;*
- (d) P3P technology; and,*
- (e) other secure electronic technologies.*

Answer: We believe that there are some electronic mechanisms available for facilitating parental consent; however, it is our belief that the majority of these products are not widely used by consumers from whom web site operators will be seeking parental consent. Instead, most of these products are used by commercial entities for verifying documents and information. For example, digital signature and digital certificate technology is used regularly by commercial entities sending electronic documents and information to other commercial entities. It is our belief that most consumers don't know what these technologies are or how to use them. Similarly, while P3P technology appears to be gaining acceptance by commercial web sites it is,

however, unclear whether consumers have begun utilizing this technology. Once consumers begin to adopt P3P technology, we believe that it will provide an effective and cost efficient method for controlling the disclosure of consumers' personally identifiable information. This technology will allow web sites to display their privacy policies to consumers in a manner that consumers will understand and will allow consumers to easily compare those policies to their own concerns and desires with respect to the sharing of personally identifiable information. However, there has been no sign of consumer comfort with any of the technological alternatives discussed, nor does it appear that widespread acceptance by consumers will occur in the foreseeable future. As a result, web site operators are still in need of the sliding scale implemented and extended by the Commission to allow them to efficiently obtain parental permission to collect information about children.

Question 2: Are infomediary services now widely available to facilitate verifiable parental consent at a reasonable cost?

Answer: We do not believe that infomediary services are widely available to facilitate obtaining verifiable parental consent. There are very few of these services available, and those that are available are largely unknown to consumers. As a result, infomediary services do not appear to be able to take the place of the current methods of verifying parental consent utilized by web site operators.

Question 3: When are secure electronic mechanisms and/or infomediary services for obtaining verifiable parental consent anticipated to become available at a reasonable cost? To what extent would the Commission's decision to eliminate, make permanent, or extend the sliding scale mechanism affect the incentive to develop and deploy these means of obtaining verifiable parental consent?

Answer: We cannot predict when new methods for obtaining verifiable parental consent will become available and gain widespread acceptance by web site operators and consumers. However, we believe that if the Commission was to make the sliding scale rule a permanent part of the Rule, it could potentially have a chilling effect on the development and deployment of new technology designed to allow for web site operators to more easily obtain verifiable parental consent. Extending the sliding scale for a definite period of time would not dissuade the development of new technologies, and could possibly provide incentive for the development of more efficient, easily implemented technology designed for obtaining verifiable parental consent.

Question 4: What effect would eliminating the sliding scale have on the information collection and use practices of web site operators? For example, would the elimination of the sliding scale mechanism encourage web site operators to collect children's personal information for uses other than the operators' own internal use because the cost of obtaining parental consent would be the same for internal as well as external uses?

Answer: We believe that eliminating the sliding scale could have a negative impact on web sites that collect children's personal information purely for their own internal use. These sites have designed their privacy policies and business practices with the expectation that they would be able to meet the lowered requirements in place for internal use of this information. Requiring these sites to undertake a more time consuming and costly method of obtaining parental consent to collect children's personal information could increase costs and otherwise adversely affect such sites due to this additional burden. Additionally, the elimination of the sliding scale would eliminate the deterrent effect on collecting personal information about children under the Act for distribution to third parties, which would lead to more direct marketing to these children.

Question 5: *Is there any evidence that the sliding scale mechanism is being misused or is not working effectively?*

Answer: We are not aware of any indication that the sliding scale method currently in place under the Rule has been misused or has been ineffective. The Commission has not indicated that there have been an excessive number of complaints arising from misuse of the sliding scale method, nor has it commenced widespread enforcement actions against web sites for violations of the sliding scale.

Question 6: *Should the sliding scale mechanism be extended? If so, why and for how long?*

Question 7: *Should the sliding scale mechanism be eliminated? If so, why?*

Question 8: *Should the sliding scale mechanism be made permanent? If so, why?*

Answers: We believe that the current sliding scale mechanism should be extended, but should not be made permanent. This mechanism has provided web site operators with a reasonable means to verify parental permission to collect information about children based on available technology. While new technology to aid in obtaining verifiable parental consent is being developed, it is not yet widely accepted by consumers or available to website operators at a reasonable cost, and as such, it would be unreasonable to require operators to employ them in order to verify consent for internal collection of information about children. As it does appear that this technology will be come readily available to and accepted by the public at some point, we do not think that the sliding scale mechanism should become a permanent portion of the Rule. Such a step could result in a chilling effect on the development of new technologies in this area. Instead, extending the sliding scale for a set period of time would provide an incentive to develop more efficient, more effective and cheaper methods of obtaining parental consent.

Therefore, we believe that the current sliding scale methodology should be extended for an additional period of three years, as the Commission has previously done. This extension would allow for the continuing development, availability and acceptance of new technologies, and at the same time, provide web sites with an incentive to adopt standards and practices to comply with the sliding scale mechanism within the Rule.

CASRO applauds the work the Commission has done in protecting the specialized needs of children's personal information, and believes that until technology is developed and accepted, the sliding scale methodology best protects the interests in all those affected by this Rule.

Respectfully submitted,

The Council of American Survey Research Organizations

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