



**1 Bridge Street, Suite 56 (IMPS)
Irvington-on-Hudson, NY 10533
201-463-8663
a 501c-3 corporatio**



**Parry Aftab, Esq.
The Kids Internet Lawyer**

Federal Trade Commission
Office of the Secretary
Room 159-H (Annex C)
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Filed electronically on June 27, 2005

Re: Comment: COPPA Rule Review 2005, Project No.P054505

Gentlemen:

The Federal Trade Commission (the "FTC") has requested public comment on its implementation of the Children's Online Privacy Protection Act ("COPPA"), 15 U.S.C. 6501-6508, through the Children's Online Privacy Protection Rule ("the Rule"). The FTC has requested comment on the costs and benefits of the Rule as well as on whether it should be retained, eliminated, or modified. The Commission also requests comment concerning the Rule's effect on: practices relating to the collection and disclosure of information relating to children; children's ability to obtain access to information of their choice online; and the availability of websites directed to children. This comment is being provided to the FTC on all of these matters and is being provided by me in my capacity as an Internet privacy and security lawyer specializing in the kids Internet industry and on behalf of WiredSafety.org, the world's largest Internet safety and help group.

Summary of this Comment:

When COPPA was enacted the Internet was a very different place. It was largely composed of US content, with only 6 million US children under the age of 18 online. When it became effective on April 21, 2000 the number of US children online had jumped to 18 million. It now tops two or three times that number, with preteens (8-13 year olds) making up almost half.

It was adopted in response to the kids Internet industry's failure to adhere to responsible marketing and data collection practices, and to protect children too young to understand the ramifications of sharing personal information online from Internet sexual predators. (A more thorough description of COPPA's history and snapshot of the kids Internet industry is included in my testimony before the House Commerce Committee on COPPA from October 2000, which is attached hereto and incorporated by reference as Appendix A.)

COPPA has been very successful in improving the data collection practices and curtailing unscrupulous interactive marketing practices of commercial websites. It has taught websites to consider the privacy implications of their information collection practices and how to keep parents informed. The cost of COPPA compliance in this regard is outweighed by the benefit to children.

But it has not been as successful in its second mission of protecting children from sharing personal information with third parties. And, ironically, by making it harder for the children's websites to provide interactive moderated communities for kids and tweens, has forced them to use general audience websites where they are more at risk than ever.

There are many fewer websites for children. And because of this, it is much harder for children to find the resources and information they need in a form designed for them.

The cost of obtaining verifiable parental consent for interactive communications is very high, estimated at more than \$45 per child, and even at that price difficult to obtain. Only schools have successfully managed to provide COPPA consent to a commercial website on behalf of parents, often without the parents' knowledge or consent. This has to change.

COPPA needs to be modified to provide a safe harbor for children's websites that provide safe communication tools in a moderated environment. Waiting for parents to prioritize their children's Internet safety and be willing to take the extra steps necessary to provide the requisite level of consent for interactivity has been fruitless. By providing a safe harbor for sites that qualify under a safe communications standard (which could be qualified under existing or new seal programs), preteens can communicate with each other under the watchful eye of responsible members of the kids Internet industry. Kids are safer. They don't have to resort to lying about their age and joining general audience sites designed for older teens and young adults. And the kids Internet industry would be able to recover and flourish. It satisfies the intent of COPPA, encourages best practices and innovation at the same time.

This would encourage more children's websites and safe communities, as well as make more child-directed information available online.

We are also troubled at the movement among certain other advocacy groups to extend COPPA beyond its current mandate. They had been active in the early pre-COPPA days in attempting to bring TV advertising standards to the Internet. While their early efforts failed, they are now attempting a second bite at the apple. WiredSafety.org opposes all unethical advertising practices. It supports parents control over collection of personally identifiable information from their children. But WiredSafety.org is concerned that we are confusing credible name brands

with predators. We are confusing cereal with tobacco products and alcohol. In seeking to protect children online, we have made it difficult to find ways to fund quality content. We respectfully request that the FTC be very cautious before extending TV advertising guidelines to the Internet, or even (assuming jurisdiction is found therefor) interactive TV and new interactive technologies.

It is important that credible studies are conducted to find out what parents really want, what help they need and the success or failure of certain aspects of COPPA and the Rule. It is also crucial that the FTC consider carefully any attempts to further encumber the fledgling kids Internet industry and ways to support the development of quality web content and safe communities for preteens.

A snapshot of the kids Internet environment from October 1998 when COPPA was enacted to date:

In 1998 there were three tiers of websites and services for children, 1. the large multinational entertainment and Internet industry groups, 2. the middle tier of Internet-only youth entertainment companies and web-service programs created by offline technology and education companies and 3. mom and pop sites. Now the Internet is dominated by the big entertainment company sites. While they provide wonderful and entertaining websites for kids, tweens and their families, the diversity of the earlier web is gone.

The third tier websites were killed off by a combination of the lack of a viable business model for the kids Internet industry, the Internet crash of March 2000, the cost of compliance and retooling their sites to comply with COPPA and parents' failure to provide the requisite consent to enable the sites to comply with COPPA and still maintain an interactive community under the COPPA regulatory environment. And some wonderful websites were lost, sites like Freezone, Headbone, SurfMonkey and others. These sites had controlled the tween market, providing moderated chat, discussion boards and community spaces designed for tweens. Once they were gone, no websites were able to pick up the slack. Without interactivity, the tweens had no reason to remain loyal to one site. They drifted to gaming sites, social networking websites and general audience chats and discussion boards instead.

COPPA wasn't responsible for the demise of these sites, but when combined with the other factors tipped the balance. Ironically, because of the crash and parents' unwillingness to provide the requisite consent for interactivity, the law designed to protect kids from predators online had pushed the kids from the more protected environment of a kids online community site to a general audience website, where they were forced to lie about their age and had to look out for themselves.

Who are we?

I was often called the "Kids Internet Lawyer" because of my legal representation or advisory relationship with most of the kids Internet industry. Since 2002 I have devoted most of my time to Internet safety, privacy and responsible use policy work. This includes running the all volunteer WiredSafety.org, the world's largest Internet safety and help group. I now only handle

a few select clients in COPPA-compliance and Internet privacy and security matters, when the needs arise. I am the author of the leading books for parents on Internet safety and generally considered one of the leading experts in kids online.

WiredSafety.org and Wired Kids, Inc. (the formal name for the WiredSafety.org charity) is filing this comment jointly with me, from its perspective as a safety, education and help organization. WiredSafety.org is the world largest Internet safety, education and help group. It is comprised of thousands of volunteers worldwide and dedicated to promoting safe, private and responsible Internet use. Rather than attempt to deny kids access to the Internet, it encourages children, tweens and teens to “use the filter between their ears.” WiredSafety.org’s parents Internet education programs teach thousands of parents every year how to supervise their children online and make responsible decisions about their use of technology.

Together WiredSafety and I promote safe, private and responsible technology use, information and digital literacy. We believe that the single greatest risk children face in connection with the Internet is being denied access. By educating the Internet industry, families and children themselves, we can help children (and users of all ages) surf more safely and privately.

Insight into the kids Internet industry:

I have been practicing law in the kids Internet industry from the time it was first created. The Web was launched in 1993. I began practicing Internet law in 1994. My clients made up the bulk of the middle tier of kids Internet companies. (I also provided consulting services for some select multinational entertainment and Internet companies.)

The middle tier were either websites and services created by companies formed for that purpose (i.e. Headbone, E-Pals, Freezone, SurfMonkey, etc.) or online services offered by large offline companies for a special audience, such as Princeton Review’s Homeroom.com, or Chancery Software’s K-12 Planet). Disney, Fox, Viacom and Time-Warner represent the types of companies constituting the upper tier of the kids Internet industry, comprised mostly of entertainment companies. And the mom and pop websites and services as the third tier of websites targeted at children and tweens.

Every year our children’s program, Wired Kids holds a summit in Washington, at which awards are given, inter alia, to the “Best of the Web” sites that are favorites of the kids, approved by parents and determined to be privacy compliant by our privacy team and me. Since it was first instituted in 1999, children have nominated thousands of their favorite websites. While the big entertainment company websites were always an important part of the award recipient list, they shared the honors with a number of smaller, less well-known websites, such as Bonus, SurfMonkey, Freezone and Headbone.

This year, for the first time, all the award recipients came from the large entertainment and educational industry. No middle tier websites ranked among the most popular with the tweens. And at the presentations I do for middle and grammar school students across the United States every year, no middle tier website was identified as one of their favorite websites. This is telling.

Six months following COPPA's effective date, in October 2000, I testified before the House Commerce Committee on COPPA. At that time, I lamented the lack of middle tier websites and services (which had provided some of the most valuable and innovative content and services for kids and tweens). (A copy of my testimony is attached as Appendix A.¹) I testified that, sadly, due to a series of circumstances (including the failure of parents to provide the requisite COPPA consents for interactivity), many sites in the middle tier were already out of business at that time. Even more sadly, the survivors I referenced in my testimony as leaders in the kids and tween online industry circa 2000 are now largely gone as well. They have either shutdown entirely or were gobbled up by larger companies.

There are few sites for children and tweens, and fewer still every day. And, unfortunately the kids and tweens are filling the void with general audience sites. But general audience sites aren't designed to keep kids safe or private. They often don't know that kids are using their site (with the kids quickly learning to lie about their age) and don't want them there. With kids come risks, responsibilities and irate parents. So, many websites set ages high enough to keep them off the site. When they discover that they have underage children on their website, the responsible sites remove them.

Preteens quickly learned that if they say they are under thirteen they will be prohibited from using many sites. So they regularly lie about their age everywhere online. They have learned this as young as 8 years old, based on what these young children tell me in face to face presentations at their school. They don't understand about COPPA, but have quickly caught on to the magical age of thirteen.

Why haven't mechanisms to obtain parental consent succeeded?

In essence kids and tweens need interactivity to be loyal to a site. While they enjoy games online and learning about their favorite subjects, they want a community that is theirs. But community involves interactivity, which in turn involves verifiable parental consent. And parents aren't taking the time (or are too unaware) to give verifiable parental consent and distrust most of the mechanisms designed to authenticate it. Parents do not trust a site to use their credit card to verify their consent. They barely trust online credit card use when they want to buy something. And none of the technologies in 1998 and 2000 we thought would be developed were ever developed. And if they were developed, they weren't adopted.

In conclusion:

The more difficult we make the consent mechanism, the fewer parents we will get to consent. In addition, we must educate parents about COPPA and the need to be more involved in their preteens' Internet activities. To date, awareness and educational outreach about COPPA has been non-existent. That must change if we are going to get parents more involved in helping their children make good choices online.

¹ To avoid confusion, I have updated the testimony to remove the name of my former firm and replace the former name of our charity with its current name.

Mechanisms, such as our proposed Central Site Registry, were never launched. There weren't enough websites left to support a central COPPA consent mechanism. It has been difficult to be innovative in the face of the challenges faced by the kids Internet industry and parents unwillingness to be more involved.

The FTC and Congress should have studies conducted to find out what help parents need and want and ways to create more COPPA awareness. It is crucial that at this tentative stage for the kids Internet industry we don't do anything to make its survival more difficult. We should be looking at easy to encourage safer communities for preteens and innovations to help create fun, entertaining and educational content for kids online.

The recommendations we made in October 2000 are as pertinent today as when they were made five years ago. We respectfully request that they and the rest of the testimony be reviewed, and that Appendix A and the appendix thereto are incorporated herein in their entirety.

We would like to extend our thanks for all the FTC does to help protect kids and for all it has done to create a better Internet for all. The leadership of the FTC as our unofficial "Internet agency" has been crucial in the battle against unscrupulous marketing schemes and bad players online. We sincerely hope that our comments are not seen as a criticism of the FTC or COPPA, but rather insight into how we may improve the Rule and ways of enhancing safety and privacy for children in the United States. We remain committed to our joint mission of a safer and more valuable Internet experience for everyone.

And, as always, we remain willing to assist in any way we can.

Respectfully submitted.

PARRY AFTAB,
Individually and as Executive Director,
WiredSafety.org and Wired Kids

TESTIMONY OF

PARRY AFTAB, ESQ.
(THE KIDS INTERNET LAWYER)

BEFORE THE

**U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON
TELECOMMUNICATIONS, TRADE, AND CONSUMER
PROTECTION**

**OCTOBER 11, 2000, 10:00 A.M.
RAYBURN HOUSE OFFICE BUILDING, ROOM 2123**

Parry Aftab, Esq.
[contact information has been updated]
Email: parry@aftab.com
www.aftab.com

TABLE OF CONTENTS

Summary	1
Testimony	2
Snapshot of The Children’s Internet Industry	2
The Children’s Internet Industry is facing difficult times	3
Kids Online Privacy, the FTC and COPPA	9
Potential Solutions in Connection with COPPA	13
Appendix - COPPA Development and Analysis	17
Parry Aftab’s Bio	Appendix
Truth-in-Testimony Disclosure	Appendix

Summary

The children's Internet industry is facing tough times with finding a viable and consistent revenue model, getting parents involved with what their children are doing online, keeping children (and investors) happy, and navigating the regulatory waters.

It's important that we understand that this is a complicated combination of factors, and no one is to blame. Coincidentally COPPA came into effect shortly following the falloff of Internet stocks and venture capitalist interest and because of this, COPPA and the FTC are being unfairly blamed for problems being encountered by the children's Internet industry generally.

That doesn't mean that COPPA couldn't be fixed to provide solutions to the real problems encountered by children online, such as unethical marketing practices, the collection of their personal information, and online predators, in a more industry-friendly way. The best way to do that is to provide the FTC with more discretion, rather than less. This would encourage sites to become safer and guard their children visitors' privacy more carefully, in exchange for reduced regulatory obligations. It would allow the FTC to tailor compliance requirements to the sites' use of personal information from children and level of safety measures used in designing interactive features. (That means the FTC would be able to approve certain chat programs, if they use moderators to supervise the children's chat activities and use technology designed to screen out children's use of real identities online in open chatrooms.) This would allow sites who actually cared about children's safety and privacy to be more innovative, and be rewarded with not having to obtain full-fledged verifiable parental consent.

Solutions need to come from Congress, the FTC and the industry itself. And parents' and children's interest use and concerns need to be studied to make all the solutions more effective and relevant. The last thing we need to recognize is that teaching children safe surfing practices and teaching parents how to understand what their children are doing online is the real answer. Education is far more important in this field than more regulation.

Snapshot of The Children's Internet Industry

There is no more exciting or rewarding industry than the children's Internet industry. Where else can you have fun, help children and change the world at the same time? When you deal with children, safety, quality content and privacy are good business. Parents are partners in this. But, as exciting and potentially rewarding as it is, the children's Internet industry is facing many challenges, these days, and they need help from both within the industry and from regulators, in order to face those challenges and make sure that what's best for children is always foremost.

Who are the players?

The children's Internet industry is largely dominated by U.S. sites. They typically fall into three categories, (i) large, well-recognized leaders in children's entertainment and media, such as Disney (disney.com), Viacom (Nickelodeon, nick.com, and nickjr.com, and MTV, mtv.com), Fox, PBS (pbs.org/kids), Sesame Workshop (the new name for Children's Television Workshop – Sesame Street, sesamestreet.org), Sports Illustrated (sikids.com), Nintendo (nintendo.com), and Cartoon Network (cartoonnetwork.com), (ii) new players to children's media, which came from the Internet, as opposed to traditional entertainment media, such as Surfmonkey (surfmonkey.com), MaMaMedia (mamamedia.com), Freezone (freezone.com)), Bonus (bonus.com), Alfy (alfy.com and cleverisland.com), Zeeks (zeeks.com), Lycoszone (Lycos's kids site, lycoszone.com), Yahoooligans (Yahoo's kids site, yahoooligans.com) and, until recently, Headbone (headbone.com), and (iii) sites that are linked to educational services, media and products, such as Chancery Software (k12planet.com), Discovery Channel (discoverykids.com), Scholastic (scholastic.com), Weekly Reader (weeklyreader.com), National Geographic (nationalgeographic.com/kids), Princeton Review (homeroom.com), Big Chalk (bigchalk.com and homeworkcentral.com) and ePALS (epals.com, a penpal service for schools using e-mail rather than traditional postal mail).

How do they operate?

Generally the children's Internet industry operates on a B to C business model. That means they are businesses delivering services to consumers. Essentially they offer kids content, games and interactivity to children. Most sites are free. Some sites require that children register to be able to access certain content and services. That registration may require personally identifiable information and therefore parental consent under the new children's online privacy law, The Children's Online Privacy Protection Act ("COPPA," described later in this testimony and the appendix), but many only require that a child inputs a user name (using anything they want) and password. Some sites operate on a subscription model, charging parents, sponsors and in some cases even parents' employers (see Kids Online America, kola.net), for subscriptions to special services and content for children.

But B to C models have fallen into disfavor with the venture capitalists, recently. Therefore, some children's Internet industry members have recently changed their model (or gone back to their original models) to a B to B model, offering their services to other businesses, even within the children's Internet industry itself. Most notable among these

is, perhaps, Surfmonkey (surfmonkey.com) which started out as a technology company, specializing in browser technology and content management. When the market (and venture capitalists) cried out for portals, it repositioned itself as a children's portal, providing content, branded media and interactive features to children. It's now designing a special browser that provides content management to preapproved content, allowing parents to select content filters, and manage their children's access to chatrooms, instant messaging, e-mail and other interactive tools and even their time online. This is being offered to other children's sites to allow them to have interactive communities, without having to jump through the regulatory hoops.

The Children's Internet Industry is facing difficult times.

Last month, there was an industry-wide conference for members of the children's Internet industry. A representative of one well-known children's site commented to a panel (that included me) on COPPA compliance in the kids Internet industry. This woman stated that if you are involved in the kids space, your primary obligation is safety and privacy. She said that all children's sites need to be obsessed with safety and privacy of their site visitors. A representative of another well-known children's site stood up, and said although they cared deeply about online safety and privacy for children, they were "obsessed" with the bottom line.

I have never heard a comment repeated within the industry as often as this response. That's because it spoke to the hearts of all members of the children's Internet industry. While most of the industry is focused on online safety and privacy and doing what's right for children, many have forgotten to stay focused on staying in business. There are several solutions for this, and no one area to blame. One essential solution is to educate sites on business models and help them work with others to stay successful. In response to this, we are forming the first children's Internet industry trade association, to operate in alliance with an existing umbrella non-profit dedicated to children's equitable access, education online resources and safety and privacy issues, WiredKids.org. This organization is creating KITA, the Kids Internet Trade Association, to help sites address these issues, learn what they need to know to keep their businesses operating and help them network with others within the industry and government on these issues. It will include filtering companies, ISPs, technology companies, educational services, content providers, media providers and others involved either directly or indirectly with this industry. But although a help to the sites, this will not address all of the issues faced by the industry.

Problems faced by the Children's Internet Industry:

While children are online more and more (roughly 25 million in the U.S. alone under the age of 18), few children's sites have been able to find a single business and revenue model that works in the kids space. (Children's sites for the purposes hereof are directed at children and preteens.) While children may be loyal site visitors, parents aren't supporting the industry in sufficient numbers. The key to success of the children's Internet industry is to get parents to understand the value of their children's online activities, and support them.

Most sites in the kids space are using a combination of several revenue models that are helping them stay afloat until parents find a compelling reason to support the children's Internet industry. (This will come over the next few years with the delivery of educational services, games, videos, online music delivery and new media and programmable toys that can only be programmed online.) When we can find the model that parents find compelling, the kids space will be very successful. But during this interim period, between the earlier excitement over the children's Internet industry and finding the right revenue model and what parents find compelling, the industry is facing hard and lean times.

This makes the industry particularly vulnerable to other factors and outside influences. Prime among outside factors are: tech and Internet stocks are down, the IPO market for the Internet industry has slowed, and the venture capitalist money in the Internet space has been drying up or directed at currently profitable e-ventures, generally. Many sites that were planning on rounds of financing after February, 2000, found themselves without funding because of the market downturn last Spring. Several proposed mergers and combinations that involved some of the kids space leaders fell through, causing these sites to waste months and even years in discussions. Time that would have been better spent, in hindsight, developing revenue models and maintaining their dominance in the space.

In addition, being involved in kids content development and delivery is very costly and particularly time intensive for sites other than Disney, Fox, Nickelodeon and the like, whose business is the development of content online and offline for children. Couple this with the high cost of maintaining a safe site for children (with moderators in chatrooms and oversight of what the children are doing and posting at the site), confusion over the years as to what the market needed (largely driven by the venture capitalists) and the speedbumps caused by regulations make it very difficult and costly to operate a children's site and it's no wonder many are struggling to stay afloat. Some wonderful sites have already lost and are losing that battle.

While many are now blaming the FTC and COPPA, however, this isn't fair and isn't a true reflection of the situation. It is a complicated combination of factors that is making the life of a children's Internet site precarious. Since many of these factors came to bear after the March downturn in the market, and COPPA came into effect in April, COPPA is an easy target for blame. But there is no *one* culprit here. And if there is, it isn't COPPA. COPPA plays a role in the problem, but more as a result of parental lassitude and in the lack of flexibility and discretion given to the FTC to administer COPPA and provide carveouts for other safe models.

There are seven issues that are creating special challenges for the industry: (i) no clear revenue model has been generally identified as working for the kids Internet industry, (ii) parents say they care about children's online safety and privacy, but aren't taking the time and effort to do anything about it and are unwilling to pay for most online content, (iii) the venture capitalists, angel funding and public security markets have become more

cautious since the Spring 2000 downturn of the Internet markets, (iv) content development is very costly and time-consuming, (v) children are not candidates at this time for viable e-commerce and direct purchasing online, (vi) parents are often unwilling to use credit cards and other adult verifiers online, without a compelling reason to do so, and (vii) regulations pose difficulties when preteen-interactivity is involved, which decreases traffic, which further decreases the likelihood of obtaining financing. Each of these points, either individually or in combination with one or more of the other points, is examined below.

No generally identified business and revenue model exists yet for the children's Internet industry:

Currently the children's Internet industry is struggling to discover a viable generally-applicable business model for supporting children's content and features online. At this time, most are using a combination of revenue models to support the high cost of maintaining entertaining and fresh content for children and preteens. Some good sites, which children enjoyed and parents approved of, have been unable to survive during this difficult time for the children's Internet industry. Even the ones that have survived the downturn on e-commerce and Internet investments, the falloff of the IPO markets, the high costs of safety and privacy safeguards and legal compliance, and the lack of parental enthusiasm and support, are struggling to find a viable and consistent business and revenue model.

Advertising:

Advertising, while a portion of most site's business models, isn't able to support the costs of maintaining children's online content. Advertisers are currently seeking a new interactive model for Internet-based advertising that may be more effective with children, but the advertising typically used (click-thru banners) isn't producing the results advertisers are seeking. This will, hopefully change. Children, while capable of influencing offline and online purchases, are not yet participating in e-commerce. This both affects the advertising rates and the ways in which advertisers are willing to work with children's sites.

E-Commerce:

Children, for the most part, don't purchase products online. They research products and services, but are not purchasing them online. Teens are starting to become an e-commerce force online, but this has not extended to children and preteens. Children and preteens influence offline spending of their parents in large amounts, however. While a few kids e-commerce sites exist (relying largely on the gift registry and gift certificate concept, such as iCanBuy.com, RocketCash.com and doughNET.com), this isn't generally a standalone viable business model at this time for the children's Internet industry, either. E-commerce for children isn't compelling enough yet for parents to support in large enough numbers. This will change over the next few years when services and products that children want most are only available online (such as programmable toys, computer games and, to serve the desires of parents, educational services; for an example, see Homeroom.com, offered by Princeton Review).

Sponsorship:

Sponsorship is a business model used by many children's websites during the last few years. Some use it to handle the costs of a particular feature or section of their own site. Others use it to design sites for other companies. Some large brick and mortar, offline corporations have paid for the development of special sites directed at children. Fleet Kids (designed by Headbone, one of the saddest casualties of the children's Internet industry) is a notable example of how the offline industry can join forces with the children's Internet industry to develop educational and entertaining resources for children. But, the revenues raised through sponsorships are generally insufficient to defray the costs of running an entire children's site. Some notable specialists in the area of kids website designs for other companies are Media Jelly, which designed the Magic School Bus site for Scholastic and Goosebumps, among other award winning sites (www.mediajelly.com), and Zeeks (formerly a popular child portal and now using their expertise to create sites for others).

Marketing and Collecting Data:

One model many general audience sites use is collecting marketing and demographic information about site users. They may have site registrants provide personal information, such as income, occupation, educational levels, addresses, telephone numbers and e-mail addresses and pair this with their surfing practices, marketing preferences and buying practices. Many members of the children's Internet industry had been collecting personally identifiable information from children at their site. When parents learned about this, they reacted strongly. This is one of the abuses COPPA was designed to prevent.

But marketing and demographic aggregate information not tied to a specific child could be a partial business model for popular sites. While children's sites could easily collect and aggregate non-personally identifiable information and still be in compliance with the law, most either don't know how to do this, or haven't discovered the value of sharing their expertise about children's preferences with marketers, in aggregate demographic mode. For example, Nike wouldn't need to know that Billy Smith from 100 Main Street in Englewood, N.J. who attends fourth grade at the Englewood Grammar School likes blue sneakers more than black ones. They need to know that fourth grade boys in the NY metropolitan area prefer blue sneakers to black ones. This lets them market to all fourth grade boys, rather than directing ads to Billy via his e-mail or by directing special ads to him when he surfs online. This isn't as valuable to advertisers that may be seeking direct marketing opportunities, but it may help increase revenues. And here, COPPA levels the playing field between those sites willing to collect and mine personally identifiable data from children, and those that refuse to use their young site visitors in that way. With advertisers limited in what can be collected and shared without verifiable parental consent, the sites find it easier to direct them to aggregate demographic information options.

Subscription-Based Models:

The subscription model hasn't been successful to date. Parents are unwilling, generally, to pay for children's online content. Some new sites will be offering special features and content, which may hopefully change this. Alfie, one of the leading kids content Internet sites is launching its new subscription-based model, cleverisland.com. Disney is focusing again on its Disney Club Blast! (disneyblast.com) subscription site (the site has been in existence for several years and is now entirely made-over). This has the additional parental attraction (and therefore, potential for success) of being Disney content. Junionet (junionet.com) has been a subscription-based service since its launch in 1997, and was the first of the new types of closed access services, which provide selected Internet content within a "walled garden" rather than from the Internet itself.

The experts see the subscription model as one of the most hopeful for the children's Internet industry, at least until software, games and educational services are regularly delivered online (about two to three years down the road) and parents are forced through market pressure to pay attention to their children's online activities.

Parental Involvement:

Parents care about privacy and online safety, but they aren't interacting with the sites or supporting the sites that protect their children's safety and privacy. It may be that they are intimidated, or just plain too busy. But the children's online laws depend on obtaining parental consent, and if parents aren't bothering to provide consent, sites are running into problems.

Bonus's experience is a case in point. It found that out of the parents who were asked for their consent for Bonus to use children's information internally, 51% never replied, 31% provided consent and 5% said "no." (13% are still pending from this sample group.) This was a six to one ratio of parents allowing their children to use those services, over those who wouldn't allow them to share the information. But the 51% of parents not bothering to respond is frightening.

Bonus is losing more than half of the children who want to participate. And Bonus doesn't have chat, e-mail, e-commerce, on instant messaging. Bonus is a site that has games for children, and sends newsletters to their site visitors. This is a typical situation faced by many children's sites.

The solution is two-fold. One we need to teach parents how important they are to their children's safe and private online experience. They often feel that since their children understand the technology, they don't have to get involved. But they need to recognize that, although their children's technological skills may exceed their own, their children haven't yet developed the requisite judgment for handling communications with strangers online safely, at a younger age. Kids have better tech skills, but parents have better judgment.

We need them to understand the real risks children face online. Parents need to see the Internet as the telephone, rather than the television. While they may be concerned about too much sex and violence on television, parents are rarely compelled to take action in

connection with what their children see on TV. Yet, all parents feel compelled to make sure our children do not talk to strangers. None of us would allow our child to talk on the phone with an adult stranger for two hours. Yet, their children often do just that, online in chatrooms and using instant messaging. Once we can get parents to see their children's safety and privacy in terms they understand, such as the telephone calls with stranger, they can use common sense to help their children learn how to surf safely. (Detailed information on all aspects of online safety for children can be found in my new book, *The Parent's Guide to Protecting Your Children in Cyberspace*, McGraw-Hill, 2000 (retail price \$12.95), copies of which will be provided to the Subcommittee.)

Two, we need to make it easy for parents. If they need to provide consent to ten sites their children visit, separately, they just won't do it. We have worked on this issue as well, by developing a central site registry where parents can make a donation to Wired Kids via credit card, and register at one time for as many member sites as they want. A second service for parents is being developed with Wired Kids, where parents give noted online safety experts the right to approve sites for their children, based on certain criteria set by the parents, such as moderated chatrooms.

But these are a drop in the bucket, and more intensive parental consent mechanisms need to be developed. Offline consent, obtained at certain store locations from parents may be one possible solution. Parents who are shopping at a store may be able to use an offline consent gathered there to give the level of consent for their children's online interactivity. Schools are another place to collect consents.

Schools are being used by large sites for parental collection systems already. Big Chalk works with more than 26 million children in more than 42,000 schools. Chancery Software (k12planet.com) works with 20 million children in US schools. Under existing regulations and guidelines, sites are permitted to rely on the school's representation that the parents have consented to the student providing the personally identifiable information or using interactive features at the site. If schools make this representation, the site has millions of registered children and has complied with COPPA without having to deal directly with the parent. This is creating a risk management issue for schools, however, which may or may not have actually obtained the parents' verifiable consent.

Sources of Funding and Financing:

Venture capitalists have pulled back from the children's Internet industry. A couple years ago, venture capitalists first became interested in the children's Internet industry. Until then, their main focus had been in e-commerce, but as more and more children got online (with a growth from 6 million in 1996 to more than 25 million today in the United States alone), the children's portion of the industry became more attractive. But the venture capitalists were looking for potential IPOs, and the IPO market has been dry for most of the Internet industry. Without IPO potential, and with no presently viable generally-recognized business model, venture capital dried up, and the chance for many children's sites to survive largely dried up with it.

Many sites had periodic financing schedules. Those that managed to raise their financing prior to the market correction this past spring are sitting pretty in the kids space. Others have international investment and business and revenue models. This too gives them more flexibility. But many found their expectations of being able to raise the financing they needed, as they always had raised them, unrealistic. Depending on how long they had waited in the financing cycle, many found themselves unable to keep their doors open. Most cut staff, changed operations and looked to other avenues for revenue. Licensing content and strategic alliances were seen as potential new revenue models, and have helped several sites survive and have brought others a higher profile outside of the traditional kids space. Brick and mortar children's industry players became more important and educational resources, which had additional value to bring to the mix, became more prominent.

Kids Online Privacy, the FTC and COPPA:

While there is a substantial focus on COPPA today, and the costs of compliance and to the industry, it is also important that we remember why COPPA was passed in the first place, and the serious risks to children it was intended to address.

COPPA was intended to address two separate concerns, (i) over-marketing to children and collection of personally identifiable information from children that is shared with advertisers and marketers, and (ii) children sharing information with online predators who could use it to find them offline. Both are valid concerns and need to be addressed.

Children's Online Marketing Practices:

The FTC has conducted several surveys of websites, both sites directed at children and general audience sites. In each survey they learned that sites were collecting personal information from children, not informing the site visitors about their information collection practices and what they did with the information collected, and in many cases sharing this information with marketers and advertisers. While the bulk of the credible online community took this issue very seriously and drafted clear privacy policies and instituted ethical collection practices when children were involved, far too many sites ignored the FTC's warnings and plea for self-regulation from the children's Internet industry itself.

Interestingly enough, the practice of collecting and sharing personally identifiable information about children has been almost entirely eradicated. No credible children's site is currently collecting personal information from children for outside marketing, and none are knowingly sharing information collected with third parties. So COPPA works in this respect. It has changed an industry practice – one that parents wanted changed.

A sunset provision has been adopted and is in effect until April, 2002, that allows sites to collect personally identifiable information from children (this includes e-mail addresses, as well as what we would normally consider personally identifiable information) for internal use only with less than full-fledged "verifiable parental consent" (which is

currently, typically, via telephone, credit card or debit card verifiers, regular postal mail or fax). During the sunset period, parents can provide their consent via e-mail, provided that the e-mail requesting this consent is delivered in such a way as to make it more likely that the parent and not the child will receive the e-mail and provide consent, and providing that the email consent is confirmed in some way. This is an “opt in” model that only permits the child’s information to remain on file and be used if the parents affirmatively consent to it, by replying to the notice. As discussed in more detail later, we describe the actual statistics obtained from a leading children’s site, Bonus. Bonus reports that more than 51% of the parents don’t bother to respond to this e-mail. Of those who do respond, there is a six to one ratio of those providing consent, as opposed to refusing it.

Protecting Children from Online Predators:

The second concern intended to be addressed by COPPA was children being lured and stalked by online predators who gather information about them from chatrooms, instant messaging, e-mails, websites and the like.

This is a very real risk, and one that should be addressed. Last year the FBI’s Innocent Images Unit (charged with investigating crimes against children online) opened 1500 new cases of suspects who were attempting to lure a child into an offline meeting for the purposes of sex. Based upon my experience, about the same number of cases were opened by state and local law enforcement agencies last year for the same crime. Out of 25 million underage Internet users from the U.S., 3,000 cases may not seem like very much (especially when often it is a law enforcement agent posing as a child who is being lured, not a real child victim), but one is too much and all of these cases are currently avoidable. Also, most child molesters have a history of abusing children, so each case represents harm done to more than one child. Our children go willingly to offline meetings with these people. They may think they are meeting a cute fourteen year old boy, but find that they are meeting a 47- year old child molester instead. Teen People has an article I worked on with them, on this very issue, in its new November issue, now out on the stands.

Law enforcement is not aware of anyone who is using the information children provide online to seek them out offline, by hiding behind a bush or grabbing them on their way home from school. But it’s only a matter of time before this happens, since universal access to the Internet means that even violent sexual offenders who are online can use it for their own horrible purposes.

COPPA in Practice

Parents have told me that having to provide verifiable consent is a burden, although they are grateful that someone is notifying them of their children’s online activities. They are also complaining that their children cannot use the interactive tools immediately upon obtaining their consent, given the current process which is largely offline. They object to

using their credit card information, and credit card companies are unhappy that their verification systems are being used for this purpose. The charge to a site for credit card verification, for these purposes, is \$.10 to \$.20 per verification (generally per child). Sites are also being pressured not to use the merchant account systems for this purpose.

Obviously, the issues that COPPA was designed to address are still of great importance. But many of the problems cited in connection with COPPA could be handled easily if the FTC had more discretion in approving exceptions to full verifiable parental consent for safe applications and site practices. The law, as finally adopted, gave the FTC little or no discretion in this regard. It is the lack of flexibility, rather than the law itself, which presents the greatest problem.

While COPPA has received much criticism from members of the children's Internet industry, whether or not it is warranted, the FTC deserves only praise. The FTC has been outstanding in trying to inform the industry of what COPPA provides and how to comply with COPPA. They have been available for private meetings with site operators, have held a clinic on COPPA and how to comply, and have been active speaking at industry conferences on the law and how it affects the children's industry and general audience sites.

Cost of COPPA-compliance:

We have polled most of the mid-sized children's websites for the cost of COPPA-compliance, in hard dollars, not as to any lost revenue or loss in traffic. This can run from more than \$115,000 per year to \$290,000 per year, depending on whether the site is fully interactive, with chatrooms, etc. and what level of consent they collect. Here's what they told us:

- \$10,000 - 15,000 for legal, including audits and construction of privacy practices and policy
- Cost of toll-free telephone and dedicated fax service
- \$35,000 in engineering costs to make the site compliant
- \$2,500 - \$10,000 monthly for professional chat moderators (price differs depending on training, hours of operation and organization)
- \$35-60,000 per year for one person to oversee offline consent, respond to parents' questions, review phone consents, and review permission forms.
- \$35-60,000 per year for person to oversee compliance, database security, respond to verification and access requests.

One specific example of a site and how it is dealing with COPPA is ePALS.

ePALS Classroom Exchange™ is the world's largest online classroom community and the leading provider of collaborative classroom technology. ePALS pioneered the collaborative classroom concept in 1996 and now connects more than 2.5 million students and teachers in 182 countries worldwide.

ePALS Community members use a set of free, collaborative tools to meet and correspond online, combine professional expertise, join interactive projects, and develop international friendships. This tool set includes extensive profile creation and search functions, monitored email with profanity filters, moderated discussion boards, private chat, and soon, photo sharing technology. ePALS works to balance participation in the global community and learning through collaboration against the safety concerns of our educational community.

Educators turn to ePALS for a safe, creative way to integrate technology into the curriculum and to introduce students to the skills they'll need to participate in the global community. The ePALS commitment to safety is an ongoing success story.

ePALS has developed a simple COPPA consent package for American teachers who are already registered with ePALS. Teachers download this package directly from www.epals.com, print it and distribute consent forms to their students to take home to their parents. Only when all the consent forms have been received is the teacher free to carry on with ePALS activities. For all new teacher registrations, ePALS requires teachers to collect consent forms before they can set up monitored email accounts for their students.

All individuals registering with ePALS must now submit their birth date and citizenship. If the individual is under 13 and from the United States, the registration process requests the parent's email address to complete the sign-up. Without the email address, the registration cannot be completed. If the child does provide his/her parent's email address, ePALS sends the parent a copy of the ePALS privacy policy (http://www.epals.com/privacy/index_en.html) and a consent form, which must be signed and returned via fax or post. Parents may also use a special toll-free number to provide their consent. ePALS will not activate a child's account without verifiable parental consent.

Beyond securing parental consent, the ePALS site offers three additional layers of security:

- 1) All profiles submitted to ePALS must be read and approved by a trained Site Support Coordinator before they are added to the site. Suspicious profiles are refused immediately.
- 2) The profile creator, the teacher or parent, is the first point of contact for anyone interested in a class/group profile. The teacher or parent can decide to refuse any communication.

The teacher or parent has comprehensive access to ongoing communications for his/her group of children. He/She can read every incoming and outgoing piece of email before it is received or sent, or simply choose to read specified pieces -- ones with attachments, profanity, etc. The choice is up to the teacher or parent.

An example of what had to be undertaken to make ePALS COPPA-compliant:

- Massive revision of registration system to capture age, nationality, and parent/guardian information, send data to parent/guardian, and restrict access to appropriate users
- Revisions of Privacy Policy
- Creation of COPPA consent forms
- Installation of dedicated phone and fax system
- Hiring and training of Site Support staff to administer COPPA consent process
- Ongoing legal counsel
- Teachers cannot use ePALS in their classrooms until parental consent is received

Potential Solutions in Connection with COPPA

As discussed in more detail at the end of this section, solutions will come from three areas.

First is from Congress itself:

- We need studies conducted about how children use the Internet, and what help parents want and need.
- We also need funding for Internet safety education in schools and community groups.
- We need governmental support of leading Internet safety advocates to help them do their job in educating parents and children, and providing helplines for those who run into trouble online.
- We need more funding for law enforcement, to fight crimes against children online.
- We need more training of state and local law enforcement agencies to help fight crimes against children online.
- We need more discretion given to the FTC, and practical and reasonable carevouts from COPPA, or reduced consent levels, for sites that can demonstrate that they care about children's privacy and online safety.
- The FTC needs more funding to hire and retain quality staff experienced in this field. (The FTC staff is stretched too thin, and its staff members are too often recruited and hired by Internet industry members who need experienced advisors.)

Second is from the FTC itself, many of which are already implemented:

We need more education of the industry in how COPPA works, and how sites can comply. (The FTC held an unprecedented clinic on compliance in August 2000, and has been outstandingly proactive in this area.)

- We need a close interaction between the industry and the FTC in the area of online safety and privacy, and new technologies. (Here, too, the FTC deserves

praise for its accessibility to the industry and its willingness to keep open dialogue with members of the children's Internet industry, large and small.)

- We need more FTC staff in the area of privacy and Internet consumer protection issues.
- Once more discretion is given to the FTC, we need it to address other methods of protecting children's safety and privacy under COPPA, which may allow sites to avoid the offline consent mechanisms.
- We need help in educating parents and children about online safety and privacy.

Third is from the industry:

- We need to work together to form solutions, such a central registries, and joint consent mechanisms, and consent mechanisms where parents set the standards and allow a trusted third party to select the sites which satisfy the guidelines approved by the parents.
- We need to educate the children's Internet industry on business and revenue models and provide them with skills they need to run their businesses profitably. (The new trade association will help address that.)
- We need to educate parents about online safety and privacy, and educate children on safe surfing practices and how to exercise critical thinking online.
- We need to develop new technologies that make Internet safety and privacy as seamless as offline safety and privacy.
- We need to share our concerns and recognize that, as an industry, we survive or fall together.
- We need to share our expertise with Congress and the FTC. No one knows kids better than members of the children's Internet industry. The more we share our knowledge and expertise, the better Congress can legislate in this area, and the better the FTC can administer those regulations and advise Congress.

An analysis of COPPA, how it works and why it was adopted is included in the appendix. I divide the issues addressed into two areas: data collection and interactivity.

Sites should have to jump through many hoops before they are permitted to collect and share personally identifiable information from children. They don't need to collect personally identifiable information, other than e-mail addresses. And sites should have a very good reason before being allowed to collect more. Parents agree wholeheartedly.

But it would be very helpful for Congress to enable a study on what information is being collected, how it is being used and what parents really want. Most of what exists is more anecdotal than scientific. Parents send me about 600 e-mails a day, in my role as author of the leading book for parents on children's Internet safety and privacy, *The Parent's Guide to Protecting Your Children in Cyberspace* (McGraw-Hill, 2000), and in my position as Executive Director of {WiredSafety.org} (the world's largest Internet safety, help and education group), and President of WiredKids.org (which includes UNESCO's online safety project for the U.S.). They care about finding reliable and safe sites for their children to enjoy online. They care about spam (unsolicited junk e-mail, often linking to

adult content sites), more than any other single issue. They care very much about their own and their children's privacy. I am not sure that they care about providing offline consent, or online credit card or similar identifiers for their children to be able to chat or use interactive community tools at sites that have adopted safety guidelines and procedures.

With respect to interactivity, requiring the highest level of consent from parents before children can use chat, e-mail, instant messaging, and the like was designed to address the danger posed by pedophiles and other bad actors. But there are two things that can address it even more effectively.

One is educating our children on smart surfing practices. We, at WiredKids.org, working with [WiredSafety.org], are designing a curriculum for teachers to use in the classroom to teach safe chatting and online communication skills. Congress can be very effective in helping promote online safety education, especially for children. Our Teenangels program educates teens to teach other teens and children about safe surfing. This can be expanded nationally, with support from schools and community groups. Our new online safety video for children and teens will teach practical safe surfing tips. But we need more programs like this and funding for these programs, in order to be effective.

Two is getting sites to use safe surfing practices, such as moderated chat, and parental approved e-mail and instant messaging correspondent lists. Closed list of permitted correspondents, like the Buddy list used by AOL and the Cyberfriends list used by Surfmonkey are good examples of how parents can pre-clear certain real life friends for communication, while locking out strangers. These kinds of interactivity, when designed with children's safety in mind, should be permitted without having to get parental consent. Not, in my opinion, that parent's won't give the consent if they took the time to focus and respond, but because parents aren't bothering to respond. This is an issue that providing the FTC with more discretion can resolve.

Perhaps, by providing the FTC with more discretion in this area, the sunset provision for "email plus" consent may be extended, and certain types of activities at safe sites can be permitted with a reduced level of consent or notification. Sites could submit their practices to either the FTC or a safe harbor entity for approval. This would allow sites the flexibility they need and provide incentives for adopting safe surfing and ethical privacy practices.

For example, the FTC should have been permitted to allow sites which have designed a safe chatting setting, such as clear site rules, trained chatroom moderators and use of technology to filter out certain prohibited terms, to avoid the onerous task of getting prior parental consent. Sites should have been permitted the option of presenting a package safety and privacy solution and approach to the FTC for approval, and for exceptions to the prior verifiable parental consent rule.

The way it currently operates, a site can get parental consent to any interactivity, no matter whether it is designed with the child's safety in mind. This actually provides a

disincentive for safety and privacy practices at the site. And given the cost of moderating children's chatrooms, it is a choice many sites are making.

If the FTC had more discretion, it could approve these systems and permit the sites that use them to avoid the full-fledged verifiable consent mechanisms. It would encourage more innovation in this area, and keep our children safer at the same time. Sites which were approved could boost traffic by providing chat and interactive features children enjoy, which would in turn improve their financial position. This would provide further incentive for developing safe programs for children.

Offline consent mechanisms, digital signature development, school-related programs, and central registries are essential to helping the children's Internet industry navigate the current challenges it faces. But giving the FTC more discretion to provide exceptions to the verifiable consent requirement is one of the most important changes that could occur, and one of the most important things that this Subcommittee can recommend.

Our children are worth it, and so is the Internet. Too often blamed for everything from the Black Plague to the sinking of the Titanic, the Internet is a wonderful tool for learning, communication and entertainment. It levels the playing field between the haves and the have-nots. All children look alike online. No one is classified by their race, ethnic origin, religion, accent or physical ability. Online they are all just children. And like it or not, the Internet is here to stay.

We're all in this together. Let's work together to make the Internet fun, safe, private and educational for children. And let's work together to make sure that the children's Internet industry, which has so much to offer our children, flourishes!

For the children.

I remain willing to help, and provide input and expertise in any way this Subcommittee can use my help and expertise.

I wish to thank the Subcommittee, its chairman and all its members for inviting me to present this testimony on such an important subject.

Parry Aftab, Esq.

APPENDIX

COPPA DEVELOPMENT AND ANALYSIS

The Children's Online Privacy Protection Act ("COPPA"), and the regulations thereunder which took effect on April 21, 2000, require all commercial sites to take special measures when they collect personal information from children or allow children to use interactive features, such as e-mail, instant messaging and chat (if they could share personal information with others using those tools). Many sites are confused about what the law provides, since it uses the word "collection" and they see that as something affirmative they are doing. But "collection" includes letting children use e-mail accounts or post messages publicly through a chat room or discussion board, as well as fill out forms. And it has nothing to do with adult content children may see online.

While the regulations are aimed principally at the children's Internet industry, they are fully effective against general interest sites with actual knowledge that a child is using their services. Few lawyers, even among experienced cyberspace practitioners, understand the children's Internet industry and the regulations and safety concerns that apply to it. But failing to understand what information can be collected from children, how it can be used, and what must be accurately disclosed to parents has cost many companies dearly.

There are two issues dealt with by COPPA and the existing consumer protection authority of the FTC. One is privacy, the other is safety. Both are regulated by the FTC, although states are permitted to enforce consistent local laws. In brief, privacy relates to the collection, maintenance, or use of personally identifiable information from children 12 years old and under. Safety is impacted, legally, when a child under the age of 13 is able to share personally identifiable information with others online.

The safety concern is that someone such as a pedophile may be able to contact the child either online or offline because the child has shared such contact information, whether intentionally or not. Last October, the FTC promulgated its final regulations implementing the Children's Online Privacy Protection Act of 1998 (COPPA). Yet few were aware that the FTC already had the ability to enforce the privacy and safety concerns noted above, and has expressly set forth the parameters of that authority since mid-1997.

The salient document is the " Kids-Com Letter." Online since February 1995, KidsCom was one of the first children-only sites on the Internet. It did not use "cookies"-which glean data about site visitors-to gather information, but collected data through registration forms, contests, and pen pal programs. It was directed at children from ages four to 15 and came under criticism for its collection practices. (As a result of the FTC investigation, KidsCom revamped its site and is very popular among parents and children.)

In May 1996, the Center for Media Education, a consumer watchdog group, filed a petition with the FTC requesting that the agency investigate KidsCom and bring an

enforcement action against it. CME asserted that KidsCom's data collection practices violated Section 5 of the FTC Act's "anti-deception" laws in two ways. First, KidsCom collected information from children without accurately disclosing the purpose, and second, KidsCom failed to disclose that it was paid to endorse certain products. In July 1997, the FTC issued its findings in a letter. The FTC determined that KidsCom's disclosure was "likely" inadequate and misleading, but declined to take any punitive action against KidsCom since the company had already changed its data collection practices and cooperated in the FTC investigation. The FTC discovered that KidsCom was sharing information collected from children with third parties, though this information was provided only in an aggregate form (e.g., 10-year-old boys from New York preferred baseball over football).

In issuing this ruling, the FTC for the first time publicly announced its guidelines for data collection from children on the Internet. Relying on '5 of the FTC Act, which prohibits unfair and deceptive practices in or affecting commerce, the FTC stated: "It is a deceptive practice to represent that a Web site is collecting personally identifiable information from a child for a particular purpose (e.g., to earn points to redeem a premium), when the information will also be used for another purpose which parents would find material, in the absence of a clear and prominent disclosure to that effect."

Second, the FTC stated, when collecting personally identifiable information, "adequate notice" of such practices must be given to a parent because of a child's limited ability to understand the disclosure. "Adequate notice" requires disclosure of: (1) who is collecting the personally identifiable information; (2) what information is being used and for what purpose it is being used; (3) whether it will be disclosed to third parties, and if so, to whom and in what form; and (4) how parents can prevent the "retention, use or disclosure" of that information.

Third, the FTC articulated its "unfairness" test for Internet child safety, noting that the disclosure of children's personal information to third parties is of particular concern, and that parents must be given adequate notice of such use and the opportunity to deny their consent to it. The FTC has had broad regulatory powers when dealing with safety issues, under its unfairness authority in section 5. Under that section, a practice is unfair if it causes or is likely to cause substantial injury to consumers that is not reasonably avoidable and not outweighed by countervailing benefits to consumers or competition.

In its fourth and final principle, the FTC criticized KidsCom's endorsement practices as misleading and deceptive. KidsCom had "New Product" areas, where products were reviewed and endorsed. What it had not disclosed was the fact that, in exchange for an endorsement, product manufacturers had to contribute at least \$ 1,000 worth of product, which was used for premiums and prize redemptions. The passing off of an advertisement as an independent review or endorsement is a deceptive practice under '5 of the FTC Act. KidsCom failed to clearly and conspicuously disclose that the product information was solicited from manufacturers and printed in exchange for in-kind payment.

Following the issuance of the KidsCom Letter, the FTC broadened its principles to include offline consent for children 12 and younger anytime their personal information may be shared online in chat rooms or similar third-party communications, and before any site collects and stores their personal information, even an e-mail address.

The adoption of COPPA was in direct response to the lack of industry compliance with the law as articulated by the FTC in the KidsCom Letter.

In June 1998, the FTC presented its Privacy Online Report to Congress, documenting the online collection of personal information from children. The FTC rearticulated its prior concerns that collection of personal information from a child under the age of 13 without informed parental consent would be a deceptive trade practice. The FTC reported to Congress that even in chat rooms, children innocently and without request may reveal where they live or go to school or their real e-mail addresses. The FTC informed Congress that parents need to understand the risks and consent to any such collection and disclosure of personal information. Congress apparently agreed, and wasted no time in acting on the FTC's report. Within months, COPPA was law.

COPPA requires that commercial Web sites obtain verifiable parental consent before collecting personal information from a child under the age of 13. Failure to obtain such consent is an unfair and deceptive trade practice and can result in fines of up to \$11,000 per occurrence.

COPPA applies to commercial Web sites, online services "targeted at children," and any online service operators with actual knowledge that they collect personal information from a child. (Actual knowledge can be as simple as a child's sharing her grade or age in a monitored general audience chat room on a site, or can be supplied by an e-mail or phone call from concerned parents who object to the collection practices on behalf of their child.) Personal information includes such items as full name, home address, e-mail address, telephone number, Social Security number, or any other information that the FTC determines "permits the physical or online contacting of a specific individual."

The regulations require covered operators to:

1. Provide notice on the Web site of what information is collected from children, how information is used, and the Web site operator's disclosure practices for such information (notice this applies to all information, not just "personal information");
2. Obtain verifiable parental consent (which requires more than a mere e-mail consent from the parent) to collect, use, or disclose children's personal information before it is collected from the child, with certain exceptions and special rules for newsletters and internally used information;
3. Upon request, provide parents with a description of the types of information collected from their child, or the actual information obtained from their child, and the opportunity to refuse to permit the further use, maintenance, or future collection of the child's

personal information. Thus, in addition to having to obtain initial consent from the parents, if a parent withdraws consent at any time, the operator must remove that child's personal information from the system;

4. Cease conditioning the child's participation in games, contests, or any other activity upon the disclosure of more information than is reasonably necessary to participate, including permitting parents to allow the site to collect personal information but refusing to let the site share the information with third parties;

5. Maintain reasonable procedures "to protect the confidentiality, security, and integrity of personal information collected from children."

The law also details three different levels of consent, as well as the various types of notices required under the statute, which cover everything from the content of those rules to the look and placement of the link to the privacy policy displayed at the site, as well as the technical requirements for obtaining "verifiable" parental consent.

All websites need to look hard and thoroughly at their collection practices. Even if COPPA doesn't apply to the site, they may still run afoul of the FTC Act if their privacy policy does not accurately and completely disclose what personal information they collect from their users and what they do with that information. If they collect personal information that includes a person's age or grade or similar information, they may then have actual knowledge that they are collecting personal information from a "child" and need to comply with the full panoply of COPPA regulations. Even if they don't overtly request that information, if they have monitored chat rooms or discussion boards at which a user may disclose information from which the site should know they are under 13, that may provide the requisite knowledge under COPPA.

If the site collects any personally identifiable information from its users or provides any means of public disclosure of such information (such as through an e-mail service, chat room, discussion boards or instant messenger service), and the site is alerted that a particular user is a statutory "child," then the site must also comply with COPPA.

Banner advertisers and network advertising companies are covered by COPPA and its regulation if they advertise at children's sites and collect personal information from children who click through from such sites. They are also covered if they have ownership or control over such information collected directly at the children's sites. Advertisers at general audience sites may also be covered by COPPA if they collect personal information from people who click through, and that information discloses that the visitor is a child.

We have learned that many companies are collecting data from their Web site visitors without knowing why they are collecting it or if they are using it properly. Unless companies are under investigation or have heard of another company under investigation, their legal departments rarely communicate with Webmasters. With this new law on the books, all commercial Web sites must be vigilant in ensuring that the rights of parents to

notice and consent are honored. If such companies ignore parents' concerns regarding privacy and advertising, they will have to face more than the FTC they will be facing the even tougher scrutiny of a disgruntled parent.