Before the
Federal Trade Commission
Washington, D.C. 20580

In the Matter of	)	
	)	
COPPA Rule Review	)	Project No. P104503
16 C.F.R. Part 312	)	

SUPPLEMENTAL COMMENTS OF THE NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION AND THE MOTION PICTURE ASSOCIATION OF AMERICA, INC.

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The National Cable & Telecommunications Association (NCTA)[1] and The Motion Picture Association of America, Inc. (MPAA) hereby jointly submit comments in response to the Supplemental Notice of Proposed Rulemaking, Request for Comment ("*Supplemental Notice*") issued by the Commission in the above-captioned proceeding.[2] In the *Supplemental Notice*, the Commission proposes to revise its earlier proposals regarding the Children's Online Privacy Protection Rule ("COPPA Rule" or "the Rule"), which was issued pursuant to the Children's Online Privacy Protection Act ("COPPA" or "the Act").[3]

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[1] NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 90 percent of the nation's cable television households and more than 200 cable program networks. The cable industry is the nation's largest provider of broadband service after investing over $185 billion since 1996 to build two-way interactive networks with fiber optic technology. Cable companies also provide state-of-the-art competitive voice service to more than 23 million customers.

The MPAA, together with the Motion Picture Association ("MPA") and MPAA's other subsidiaries and affiliates, serves as the voice and advocate of the American motion picture, home video, and television industries in the United States and around the world. MPAA's members are the six major U.S. motion picture studios: Walt Disney Motion Pictures Studios; Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Twentieth Century Fox Film Corporation; Universal City Studios, LLC; and Warner Bros. Entertainment Inc.

[2] *See In re Children's Online Privacy Protection Rule,* Supplemental Notice of Proposed Rulemaking, Request for Comment, 77 Fed. Reg. 46643 (Aug. 6, 2012) ("*Supplemental Notice*"); *see also In re Children's Online Privacy Protection Rule,* Proposed Rule; Request for Comment, 76 Fed. Reg. 59804 (Sept. 27, 2011) ("*Notice*").

[3] *See generally* Children's Online Privacy Protection Act of 1998, 15 U.S.C. §§ 6501-6506.

INTRODUCTION AND SUMMARY

In comments submitted to the Commission late last year, we explained that the cable and film industries are committed to helping protect children's privacy online while providing high quality content for children and families.[4] Our member companies have expended significant time and resources to develop engaging and innovative online content for children and families in a responsible and COPPA-compliant manner. We explained that, based on the experiences of our member companies, the COPPA Rule has achieved a workable balance of protecting children while maintaining the integrity of children's interactive experiences on the Internet.[5]

Last year's *Notice* proposed significant changes to the COPPA regime without providing a record of evidence that such dramatic changes were needed. NCTA urged the Commission to "proceed cautiously, to ensure that any changes to the COPPA Rule are consistent with the Act, are technologically appropriate, reflect sound public policy, and truly foster children's interests . . . without overburdening the development of new creative content or triggering other problematic effects."[6] Likewise, MPAA explained that "the existing COPPA Rule continues to provide a workable regulatory framework that protects and safeguards children. There is no need for amendment of the Rule that could curtail the benefits of the Internet without any corresponding benefit to child safety."[7] NCTA's initial comments cautioned the Commission that expanding the Rule's reach beyond the Act's original intention "could adversely impact the

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4 *See* NCTA Comments at 3; MPAA Comments at 1.

5 NCTA Comments at 2.

6 *Id.* With its adoption of the Rule in 1999, the Commission took "very seriously the concerns expressed about maintaining children's access to the Internet, preserving the interactivity of the medium, and minimizing the potential burdens of compliance on companies, parents, and children." *In re Children's Online Privacy Protection Rule*, Final Rule, 64 Fed. Reg. 59888, 59889 (Nov. 3, 1999) ("*1999 Statement of Basis and Purpose*"). The Commission should likewise follow this approach as it takes steps to modernize the COPPA regime.

7 MPAA Comments at 20.

quality and viability of age-appropriate online content, or make it less appealing to children," which could, in turn, "inadvertently drive children to websites and platforms that have far less (if any) age-appropriate content and fewer protections for children."[8] Because the points made in those earlier filings remain applicable to the instant issues, we incorporate them by reference herein.

We appreciate that the *Supplemental Notice* attempts to address some of the issues raised by industry commenters. However, as explained below, some of the new proposals either compound our earlier concerns or present new issues. Several aspects of the latest set of proposals would significantly extend the reach and the burdens of the COPPA regulatory regime -- actions that would likely adversely impact both the quality and viability of age-appropriate content for children online, or risk driving children to websites and platforms that may not incorporate protections designed for them.

In particular, certain proposals related to what data is deemed to be "personal information" need further revision, and proposals that would expand when an entity is considered to be an "operator" subject to the COPPA obligations risks significant unintended consequences -- consequences that could ultimately function to the detriment of websites directed to children and families. With respect to the proposed changes to the definition of "directed to children," we believe that an elective safe harbor built into the COPPA Rule can address regulatory uncertainty related to whether a website is "directed to children," but urge the Commission to expressly clarify that its proposal does not impose regulation on general audience websites and does not upend the Commission's totality of the circumstances test. Finally, the

[8] NCTA Comments at 2.

Commission must implement any new COPPA regulations on a reasonable schedule that reflects the significant burdens that such action will impose on operators.

I. PROPOSALS REGARDING THE DEFINITION OF "PERSONAL INFORMATION" NEED FURTHER REVISION.

We appreciate that the Commission has addressed several concerns with respect to the definition of "personal information" that were raised in earlier comments.[9] For example, recognizing that the Commission's original screen-name proposal "would unnecessarily inhibit functions that are important to the operation of child-directed websites and online services" and the benefits of minimizing data and utilizing single sign-in identifiers across sites and services, the Commission now proposes that a screen or user name should be considered "personal information" pursuant to COPPA "only in those instances in which a screen or user name rises to the level of *online contact information.*"[10]

We support the revised approach with further clarification in the actual text of the Rule that will preserve these well-established and beneficial uses of anonymous screen names. As described in our initial comments, and as noted in the *Supplemental Notice*, some websites directed to children have been carefully designed to use anonymous user names consistent with COPPA while still allowing children to enjoy "an interactive, autonomous, and individualized experience" including features such as user-generated content; forums; leader boards; blogs; canned, filtered or monitored chats; content personalization; and other activities.[11] To preserve the ability for websites to provide such features without obtaining prior parental consent (or requiring the websites now to obtain parental consent for millions of anonymous user names

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9 *See Supplemental Notice* at 46646-48.

10 *Id.* at 46646 (emphasis in original).

11 *See* NCTA Comments at 11-12; *Supplemental Notice* at 46646, n.25 (citing to NCTA Comments at 12; Disney Comments at 21).

created over a decade), we ask the Commission to clarify that anonymous screen or user names that appear online related to such activities like identifying the source of a post, the participant in online chat, or a game player, or other functionality occurring within the website or online service would not be deemed to allow "online contact" under the online contact information definition, and thus would not be considered "personal information" pursuant to COPPA for these uses. Specifically, a screen or user name should be considered "personal information" only if it incorporates or consists of an identifier that permits direct contact with a person online (*e.g.*, email address, instant messaging user identifier, a voice over internet protocol (VOIP) identifier, a video chat user identifier, or the like).[12]

The Commission's proposed approach to persistent identifiers remains problematic. Under current regulations, the Commission has deemed persistent identifiers to be personal information only when associated with other individually identifiable information or personal information that permits physical or online contacting.[13] In a departure from this approach, last year the Commission reformulated the instances where a persistent identifier would be considered personal information.[14] In initial comments, we explained why the Commission's proposal to classify persistent identifiers (standing alone) as personal information would exceed

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[12] *See Notice* at 59810 (proposing to define "online contact information" as "an email address or any other substantially similar identifier that permits direct contact with a person online, including but not limited to, an instant messaging user identifier, a voice over internet protocol (VOIP) identifier, or a video chat user identifier"). In the alternative, the Commission could reinstitute an "internal operations" exception that would explicitly allow screen names to be used to provide support for internal operations of a related websites and online services.

[13] *See* 16 C.F.R. § 312.2.

[14] *See Notice* at 59810-13 (proposing to expand the provision to deem as personal information "a persistent identifier, including but not limited to, a customer number held in a cookie, an Internet Protocol (IP) address, a processor or device serial number, or unique device identifier, where such persistent identifier is used for functions other than or in addition to support for the internal operations of, or protection of the security or integrity of, the Web site or online service").

its statutory authority and expressed concern that the definition of "support for internal operations" was too narrow.[15]

In response to concerns raised by an "overwhelming majority of the comments filed by website operators, industry associations, privacy experts, and telecommunications companies,"[16] the *Supplemental Notice* includes revised proposed definitions of "persistent identifier" and "support for internal operations."[17] We appreciate the Commission's effort to recognize and accommodate the use of IP addresses and persistent identifiers needed for important operational purposes such as analytics, authentication, network communication, contextual advertising and the personalization of content and features. These uses are essential for the development and maintenance of engaging and innovative digital content for children. Even as revised, however, the Commission's proposal remains overly restrictive. At the outset, we do not believe that the Commission should define persistent identifiers, standing alone, as "personal information." However, if the Commission pursues this approach, we encourage it to adopt a more flexible "support for internal operations" definition that sets forth an illustrative -- rather than exhaustive -- list of operational purposes. Such added flexibility is critical to accommodate new technologies and functionalities that are implemented by a website or service and/or across any related websites or services.

Indeed, the online environment is characterized by innovation and rapid change. To illustrate the point: a few short years ago, no one anticipated that smartphone, laptop, and tablet users could access streamed video content for children as part of their subscription with a video provider. Today, however, content providers are working with video distributors like cable

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[15] *See* NCTA Comments at 13-15; MPAA Comments at 12-14.

[16] *Supplemental Notice* at 46647.

[17] *See id.* at 46647-48.

operators and satellite providers to deliver video programming via the content providers' websites to authenticated subscribers of the cable operator or satellite provider.[18] This type of technological advance benefits parents and children by making quality content available to them on a wide variety of platforms, including those directed to children and families. It is clearly in the public interest – and consistent with Congressional goals of encouraging the distribution of such content over multiple devices and platforms – to ensure that such innovation is allowed to blossom on all websites and services. While some innovations likely are covered by the proposed definition of "support for internal operations" today, adopting an exhaustive list as part of the regulation risks leaving families and children out of the next generation of exciting new developments if providers cannot fit the new innovation into existing regulatory definitions.

The Commission's proposed changes to the treatment of persistent identifiers are intended to address new privacy sensitivities not originally contemplated under COPPA by restricting collection and use of persistent identifiers through "'parental notification and consent prior to the collection of persistent identifiers *where they are used for purposes such as amassing data on a child's online activities or behaviorally targeting advertising to the child.*'"[19] Instead of writing a proposed rule to address its stated goals, the Commission has proposed overly broad language that sweeps in many benign and beneficial activities that utilize persistent identifiers. Rather than attempting to address its concerns with a broad brush, the Commission should study approaches to address those concerns in a more tailored fashion that will not needlessly result in overbroad regulation or stunting innovation on websites for children and families. At the least, the Commission should provide clear guidance on what activities are prohibited.

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[18] *See, e.g.*, Todd Spangler, *Time Warner Cable Inks 'TV Everywhere' Deal With Viacom*, Broad. & Cable, Sept. 10, 2012, *available at* http://www.broadcastingcable.com/article/489285-Time_Warner_Cable_Inks_TV_Everywhere_Deal_With_Viacom.php.

[19] *Supplemental Notice* at 46647 (citing *Notice* at 59812 (emphasis added)).

II. THE PROPOSAL TO EXPAND THE DEFINITION OF "OPERATOR" WOULD RESULT IN SIGNIFICANT UNINTENDED CONSEQUENCES.

In its periodic reviews of the COPPA requirements, the Commission has consistently concluded that COPPA has been a success largely because the Rule provides website operators with clear standards to follow.[20] The Commission's new approach to the definition of "operator" would significantly damage this clarity. In addition to muddying the compliance waters, the proposal risks many serious negative consequences for websites directed to children and families, as described in more detail below. The Commission should reject the proposal and maintain its current approach – whereby COPPA compliance obligations are the responsibility of the entity that collects, owns, and/or controls user data. At the very least, the Commission must build a record to justify such a significant change before proceeding.

The Commission proposes to expand the definition of "operator" by including a statement providing that "Personal information is *collected or maintained on behalf of* an operator where it is collected in the interest of, as a representative of, or for the benefit of, the operator."[21] The result of this change would be that "first party" operators of child-directed sites or services would be subject to COPPA obligations when a third party operating on the child-directed site or service collects "personal information" as defined in the Rule. Indeed, under an aggressive interpretation, the *Supplemental Notice* could suggest that such "first party" operators would be strictly liable, in at least some cases, for both the information the first party might collect, as well as for the information that the third party might collect. The Commission claims this approach is justified because the "first party" operator "is in the best position to know that its site or service is directed to children and can control which plug-ins, software downloads, or

[20] *See, e.g.*, Fed. Trade Commission, *Implementing the Children's Online Privacy Protection Act, a Report to Congress*, Feb. 2007 at 7.

[21] *Supplemental Notice* at 46644.

advertising networks it integrates into its site."[22] Further complicating matters, the Commission proposes to deem third parties, such as advertising networks or plug-ins, "co-operators" when such a third party "knows or has reason to know" it is collecting personal information through a host website or online service directed to children.[23]

The new proposed definition of "operator" and the co-operator concept for third party operators would eviscerate the clarity of the COPPA regime and exceed the Commission's authority. The Commission has introduced a vague "knows or has reason to know" standard and has proposed to expand liability to third party services that are not operators "targeted to children" as the Act requires.[24] When paired with the Commission's proposals to expand what is deemed to be "personal information," the proposed new definition of "operator" would impose burdensome COPPA obligations and the accompanying liability on far more websites and services – including many services primarily intended for general audience websites -- than permitted under the Act.

This turn of events is particularly unexpected given that less than a year ago, the Commission described a much simpler, straightforward interpretation of which websites and online services were "operators" subject to COPPA, explaining that:

The COPPA statute applies to two types of operators:

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[22] *Id.* at 46644.

[23] *See id.* at 46644-45.

[24] *See* 15 U.S.C. § 6501(10)(A), (B). Although the Commission claims that it has "broad rulemaking authority" under COPPA, *Supplemental Notice* at 46644, & n.8, Congress did not grant the Commission such broad latitude. The Commission's rulemaking authority is limited to promulgating certain regulations governing "the operator of any website or online service directed to children that collects personal information from children or the operator of a website or online service that has actual knowledge that it is collecting personal information from a child." 15 U.S.C. § 6502(b)(A). Action by the Commission to extend the COPPA obligations to other operators would defy Congressional intent and be contrary to law. *See Chevron v. NRDC*, 467 U.S. 837, 842-43 (1984) ("If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.").

> (1) Those who operate Web sites or online services directed to children and collect personal information, and
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> (2) those who have *actual knowledge* that they are collecting personal information from a child under age 13.[25]

The Commission recognized that this approach is consistent with both the letter and the spirit of COPPA, stating that COPPA "was never intended to apply to the entire Internet, but rather to a subset of Web sites and online services."[26] With respect to the actual knowledge standard, the Commission concluded that it "remains the correct standard" and noted that it is "far more workable, and provides greater certainty, than other legal standards that might be applied."[27] Consistent with the language of the Act, the Commission has also consistently recognized that some parts of a website or online service might be considered child-directed while other parts would not.[28]

In addition to calling into question the Commission's statutory authority to apply COPPA in such a broad manner, such a change of course would be bad policy. To create a rich user experience, websites and services directed to children incorporate features requiring the involvement of third parties. Due to the potential liability burdens under the proposal, including the need for an operator to continually analyze all third party activity to ensure COPPA compliance, first party operators of child-directed websites and services would be hesitant to

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[25] *Notice* at 59806; *see also* 15 U.S.C. § 6502(b)(1)(A).

[26] *Notice* at 59806.

[27] *Id.* The Commission specifically rejected "imposing a lesser 'reasonable efforts' or 'constructive knowledge' standard [that] might require operators to ferret through a host of circumstantial information to determine who may or may not be a child." *Id.*

[28] *See* 15 U.S.C. § 6501(10)(A)(ii) (defining "website or online service directed to children," in part, as "that portion of a commercial website or online service that is targeted to children"); *1999 Statement of Basis and Purpose* at59893 ("[I]f a general audience site has a distinct children's 'portion' or 'area,' then the operator would be required to provide the protections of the Rule for visitors to that portion of the site.").

incorporate such innovative features.[29] Furthermore, a third party providing a plug-in, software, or other feature (particularly those that are created for a much broader constituency and are not designed to provide notice and obtain parental consent) may block websites directed to children from utilizing their technology because they do not want to share in potential liability under COPPA. Thus, a first party operator of a child-directed website or service may not even have the opportunity to incorporate third party features.

As NCTA and others have explained, the development of quality content for children and families is costly and advertiser support is often imperative.[30] If the new "operator" proposal is adopted, advertisers may choose to steer clear of websites and services directed to children, for fear of the COPPA compliance burdens and potential liability. Without advertiser support, websites and services directed to children may be forced to evolve into subscription services. Alternatively, such websites may be left with few resources and become much less appealing to children, encouraging children to pursue more innovative content on websites that are not intended for them.

The Commission's proposed definition of "operator" also raises practical implementation problems. The underlying assumption rooted in the Commission's proposal that there is typically a close working relationship between first and third party operators is incorrect. In fact, such close relationships are not the norm, and it may be exceedingly difficult, if not impossible,

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[29] This is further complicated by the narrow scope of the proposed "internal operations" exception within the definition of "persistent identifiers." *See* Supplemental Notice at 46647-48; *see also* discussion *supra* Part I. The primary use of an IP address by a third party, for example, may be used consistent with the "internal operations" exception, but a secondary use may run afoul of COPPA. It is not workable for a first party operator to monitor such behavior of a third party on an ongoing basis.

[30] *See, e.g,* NCTA Comments, *In re General Comments and Proposed Marketing Definitions*, Project No. P094513 (July 14, 2011) at 3, 14-16; Cyma Zarghami, President of Nickelodeon and the MTV Networks Kids & Family Group, Before the U.S. Senate Committee on Commerce, Science and Transportation, *Rethinking the Children's Television Act for a Digital Media Age*, July 22, 2009, at 6 *available at* http://commerce.senate.gov/public/?a=Files.Serve&File_id=512afa5c-b479-43a1-81f2-1906f4e9b875.

for the first party operator of a child directed website to collaborate with a third party entity that has created a plug-in or software that is deployed to a broad constituency. Rather than assume potential risk for COPPA compliance, third parties are more likely to simply avoid engaging with first party operators of child directed websites and services.[31]

III. AN ELECTIVE SAFE HARBOR WOULD ADDRESS THE REALITY THAT WEBSITES DIRECTED TO CHILDREN FALL ALONG A CONTINUUM.

The Commission proposes to modify the definition of "website or online service directed to children" to include a safe harbor that promotes age screening – thus addressing a concern raised by Disney and to "better reflect the prosecutorial discretion it has applied."[32] Disney has explained that the current definition "does not adequately address the reality that Web sites or online services directed to children fall along a continuum, targeting or appealing to children in varying degrees," and that this regulatory uncertainty results in an awkward situation where even those sites or services that are directed to a larger audience of children and families must treat all visitors as children.[33] The proposed modification would recognize a new class of "family-friendly" websites (specifically, those websites or services that are "likely to attract an audience that includes a disproportionately large percentage of children under age 13 as compared to the percentage of such children in the general population") that would be allowed to age screen all users.

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[31] For example, many plug-ins are offered on a "take it or leave it" basis. *See* CDT Comments at 5-6 (explaining that many providers of social plugins and embeddable media content "provide their services free of charge and without much meaningful contact with the first-party operator" and that if these operators "could find themselves facing COPPA compliance obligations simply by virtue of offering their services in conjunction with a click-through agreements[sic], these operators would likely refuse to do business with sites directed to children or with sites generally, out of fear that a COPPA-covered site might place the widget or content on its site and thereby expose the service provider to independent COPPA-compliance obligations").

[32] *Supplemental Notice* at 46646.

[33] *Id.* at 46645.

As described by the Commission, the effect of the proposed changes set forth in the *Supplemental Notice* would be that

> sites and services at the far end of the ''child-directed'' continuum, *i.e.*, those that knowingly target, or have content likely to draw, children under 13 as their primary audience, must still treat all users as children, and provide notice and obtain consent before collecting any personal information from any user. Those sites and services with child-oriented content appealing to a mixed audience, where children under 13 are likely to be an over-represented group, will not be deemed directed to children if, prior to collecting any personal information, they age-screen *all* users. At that point, for users who identify themselves as under 13, the site or service will be deemed to have actual knowledge that such users are under 13 and must obtain appropriate parental consent before collecting any personal information from them and must also comply with all other aspects of the Rule.[34]

Consistent with the foregoing text, the Commission should expressly clarify that the proposed amended rule does not impose new regulations (such as a requirement to age screen all users) on general audience websites. An interpretation encompassing general audience websites would expand the reach of COPPA beyond the boundaries established by Congress. To avoid this unintended interpretation, the Commission should make clear that its proposal establishes a compliance path for sites that would be considered directed to children under the Commission's current totality of the circumstances test, but that target users of all ages. In addition, the Commission should clarify that the safe harbor in proposed subsection (c) should also extend to websites described in subsection (b). Such an approach could satisfy the Commission's goals by providing some measure of regulatory certainty to operators interested in electing such a safe harbor, and would avoid potential unintended consequences of the language proposed by the Commission. In particular, such an approach would not codify potentially confusing language

[34] *Id.* at 46646 (emphasis in original).

that could create a disincentive for websites to incorporate content that might attract children and families.[35]

The *Supplemental Notice* suggests that the Commission intends to continue to apply its "totality of the circumstances" test to determine whether a website or online service is "directed to children."[36] We support that approach. Unfortunately, for websites that are not "directed to children," the language in sections (b) and (c) of the new proposed definition of "website or online service directed to children" appears to stray from the "totality of the circumstances" approach. This new language, which focuses only on the audience a particular website or service is likely to attract, introduces unnecessary vagueness and establishes unworkable standards if applied to general audience websites or services. Thus, the Commission should clarify that it did not intend to undermine its existing totality of the circumstances test and confirm, consistent with its previous statements, that it "will look at the overall character of the site – and not just the presence or absence of one or more factors – in determining whether a website is directed to children."[37]

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[35] Online content is typically dynamic. As a result, for one week (or day, or hour, or other period of time) a website might be more appealing to children than on another week. For example, a website about books might one week feature books for children, and the next, feature books for college students. Determining when the COPPA requirements might apply, and satisfying those requirements, would be a compliance nightmare for both a first party operator and any potential third party operators that might have "reason to know" that the underlying website is, at that time, directed to children and subject to COPPA.

[36] The current test considers a variety of factors, including: subject matter, visual or audio content, age of models, language or other characteristics, whether advertising promoting or appearing on the website or online service is directed to children, empirical evidence regarding audience composition; evidence regarding the intended audience; and whether a site uses animated characters and/or child-oriented activities and incentives. *See* 16 C.F.R. § 312.2. In the *Notice*, the Commission specifically rejected defining a website or service as child-directed by utilizing only audience composition data. *See Notice* at 59814 ("The Commission's experience with online audience demographic data . . . shows that such data is neither available for all Web sites and online services, nor is it sufficiently reliable, to adopt it as a *per se* legal standard. Accordingly, the Commission declines to adopt a standard akin to the 20% standard proposed by the Institute for Public Representation.").

[37] *1999 Statement of Basis and Purpose* at 59893.

IV. THE IMPLEMENTATION PERIOD FOR ANY NEW RULES MUST BE REASONABLE AND ACCURATELY REFLECT THE SIGNIFICANT BURDENS THAT WILL BE IMPOSED ON OPERATORS.

NCTA recently submitted evidence to the Commission illustrating the burdens that would result from the proposals set forth in the *Notice*.[38] NCTA explained that the Commission had greatly underestimated the impact the proposed changes would have on industry and provided examples of the costs and burdens related to redeveloping child-directed websites, including consultant fees, expenses related to obtaining parental consent, equipment and software costs, attorney's fees for redrafting of privacy policies and terms of service agreements, data storage costs, and expenses related to new hires.[39] The latest set of proposals exacerbates the problem by extending the costs and burdens of COPPA compliance to many more websites and online services.

As NCTA explained in its initial comments, if the Commission ultimately concludes that substantial Rule changes are warranted, it must provide a reasonable amount of time for operators to implement the new requirements. New COPPA obligations would likely involve extensive changes to existing websites and online services. Likewise, new websites and online services will have to be designed with the COPPA requirements in mind. Moreover, as the Commission has acknowledged, many small businesses will be impacted by any significant changes.[40] Operators will require a substantial amount of time not only to redesign their websites in light of any new COPPA requirements, but also to conduct a deeper vetting and due

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[38] *See* NCTA Comments at 23-24.

[39] *See id.* at 23, nn.69-70.

[40] *See Supplemental Notice* at 46649 ("[T]he Commission anticipates that the proposed changes to the Rule addressed in this Revised COPPA NPRM will result in more Web sites and online services being subject to the Rule and to the Rule's disclosure, reporting, and compliance requirements. The Commission believes that a number of operators of Web sites and online services potentially affected by these revisions are small entities as defined by the RFA.").

diligence of existing service providers and third party operators to address any unintended consequences or liabilities that may exist with any expansions of what is considered "personal information."

Indeed, many of the proposed changes to the COPPA regime would break new ground. Time must be built into the compliance schedule to educate businesses and consumers about any new requirements. Given the complexity of the proposed new COPPA regime, and that systems do not exist today that can deal with such complexity, the Commission must provide a significant amount of time for operators to come into compliance with any new requirements.

CONCLUSION

We appreciate that the Commission has attempted to address some of the issues raised by industry commenters in this proceeding. However, as explained herein, some of the new proposals either compound our earlier concerns or present new ones. Several proposals in the *Supplemental Notice* would significantly extend the reach and the burdens of the COPPA regulatory regime -- actions that would likely adversely impact both the quality and viability of age-appropriate content for children online, or risk driving children to websites and platforms that may not incorporate protections designed for them. Moreover, such actions would exceed the authority granted to the Commission under the Act. Consistent with the foregoing, we ask that the Commission not take such unauthorized action that could ultimately be detrimental to the quality of online experiences for children and families.

Respectfully submitted,

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