

September 24, 2012

VIA ELECTRONIC FILING

Mr. Donald S. Clark
Office of the Secretary
Federal Trade Commission
Room H-135 (Annex E)
600 Pennsylvania Avenue, NW
Washington, DC 20580

RE: COPPA Rule Review: FTC File No. P104503

Dear Mr. Clark,

Thank you for the opportunity to comment on the Federal Trade Commission's latest proposed modifications to the Children's Online Privacy Protection Rule. We appreciate the continued opportunity to share our feedback on these important developments.

This comment is intended to supplement our previously-submitted comment (dated December 23, 2011) and is in direct response to the most recent proposed changes announced by the FTC on August 1, 2012.

As a reminder, the views expressed herein reflect the views of the kidSAFE® Seal Program (also referred to as "KSP" or "we"), and not necessarily the views of our members. Also, unless noted otherwise, all references to the term "COPPA" are meant to refer to the FTC Rule implementing COPPA (i.e., the COPPA Rule). And all references to the term "website" or "site" (by itself) is meant to include online services, as well.

The remainder of this comment is organized according to the FTC's most recent proposal in the Federal Register notice. For ease of understanding, our comments are provided in a simple bullet-list format. For each area, we indicate whether we support or oppose the proposed revision, provide a description of our comments or concerns, and (in some instances) propose revised wording for the language of the law itself (shown in boxes).

We commend the Federal Trade Commission for its ongoing efforts to update COPPA to address new and evolving technologies. As you review our comment, please know that we would be happy to answer any follow-up questions you may have.

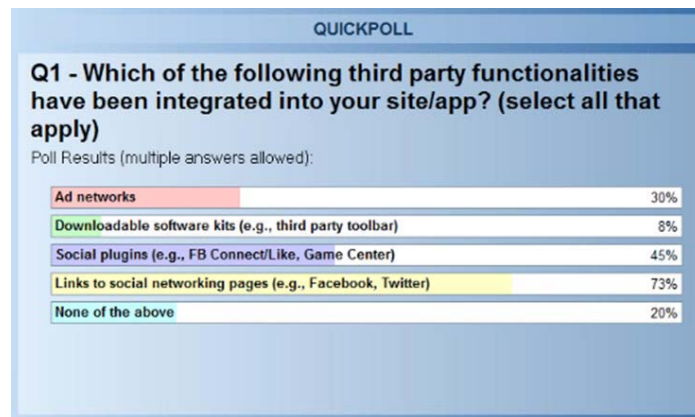
Sincerely,

—
Shai Samet, CIPP
Founder & President
kidSAFE® Seal Program

A. DEFINITION OF “OPERATOR”

In general, KSP is not opposed to the idea of expanding the definition of “operator” to include integrated third party functionalities (such as social plug-ins, downloadable software kits, etc.); however, KSP recommends modifying the criteria for determining whether a third party feature is, in fact, treated as an “operator”.

- Under the FTC’s proposed change, the criteria for determining whether a third party feature is treated as an “operator” is based on whether the underlying site operator receives “benefit” from integration of the third party feature. This standard appears to be too flexible and vague. Instead, it would seem more plausible to treat third party features as operators only when the underlying child-directed site *has access to the personal information collected via the third party feature (i.e., when tangible benefit is received)*. This narrower standard would not compromise the FTC’s concerns about the proliferation of third party plug-ins on child-directed sites. It is our understanding that most popular social plug-ins features today are designed to share information back with the website that has implemented them. Therefore, these features would still be covered.
- It is our understanding, even with the most recent proposed changes, that merely linking over to third party websites (including third party social networking sites and fan pages, many of which are intended for parents) would not be considered an “operator” scenario and would therefore not warrant parental notice and consent. This is further supported by Section 15 U.S.C. 6501(10) of the original COPPA statute, which the FTC referenced in the Federal Register notice. Nonetheless, it is requested that the FTC further clarify this point. As illustrated from the industry survey below¹, a large percentage of kid-directed sites provide outbound links to third party social networking pages, and therefore, this point of clarification is essential.



- Finally, KSP is concerned that applying a “strict liability” standard to operators who integrate third party features may be too rigid, especially for small website owners and app developers. Small businesses may not be familiar with COPPA’s requirements and may never receive notice of such requirements from larger third party providers, especially if such third party providers have no affirmative obligation to

¹ This survey was conducted on August 30, 2012 during an industry-wide webinar hosted by KSP to discuss the FTC’s latest round of proposed modifications to the COPPA Rule. The webinar was attended by approximately 100 industry contacts from a diverse set of both large and small companies, including operators of kid-directed websites, virtual worlds, online social networks, tablet devices, and mobile apps. The results of other polls conducted during this webinar are shared throughout this comment document.

investigate where their functionalities are being integrated. A strict liability standard would seem to create an unfair and imbalanced share of liability for child-directed website operators.

B. DEFINITION OF “WEBSITE OR ONLINE SERVICE DIRECTED TO CHILDREN”

1. OPERATORS WHO COLLECT PERSONAL INFO THROUGH CHILD-DIRECTED WEBSITE OR ONLINE SERVICE

See comments under Section A above.

2. WEBSITES AND ONLINE SERVICES DIRECTED TO CHILDREN AND FAMILIES

In general, KSP is not opposed to the creation of defined categories under the definition of “website or online service directed to children”; however, KSP recommends several wording improvements to these categories, as well as the creation of an additional category.

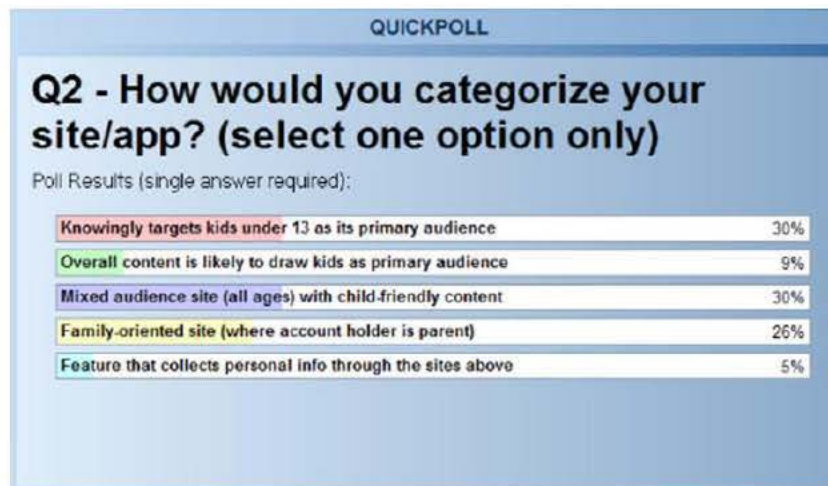
- First, KSP requests that the FTC clarify whether, in light of these proposed changes, the “actual knowledge” standard would continue to stay intact, and if so, in what form.
- In regards to category (c) (i.e., the category intended for “child-friendly mixed audience sites”), KSP expresses the following concerns:
 - First, the terminology used for this category (i.e., “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”) is extremely confusing and not well understood by industry. This clause would likely require significant effort on the part of the FTC to explain and is inconsistent with the rest of the COPPA Rule, which is generally easy to understand. Instead, we recommend using terminology which is consistent with the actual meaning of the clause as explained by the FTC in the federal register notice. See the modified wording proposed in the box below.
 - Second, under sub-letter (i) of this category, it is unclear whether the “prior age collection” requirement must stand alone (i.e., on its own screen) or can be integrated on a screen with other data collection fields.
 - Third, under sub-letter (ii) of this category, it is unclear whether this clause allows for a mixed audience site to lock out under-13 users entirely or requires that they allow for children’s participation albeit with prior verifiable parental consent.
 - To address these concerns, KSP recommends modifying the wording of category (c) as follows:

*(c) based on the overall content of the website or online service, is likely to attract a mixed audience, including a large percentage of children under age 13; provided however that such website or online service shall not be deemed to be directed to children if it: (i) does not collect **and store** personal information from any visitor prior to collecting age information; and (ii) prevents the collection, use, or disclosure of personal information from visitors who identify themselves as under age 13 **or obtains verifiable parental consent before the collection, use, or disclosure of personal information from such visitors.***

- In addition to the concerns raised above, KSP strongly urges the FTC to add another category to the definition of “website or online service directed to children” that specifically addresses the growing trend of family-oriented sites. These are not sites such as Disney.com (which may appeal separately to both adults and kids), but rather sites that are intended exclusively to be used by parents and children together as one unified experience. Examples of true family-oriented sites/services include (among others): (i) financial educational websites (such as ChorePay.com, Tykoon.com, and AgentPiggy.com), (ii) learning websites with parent-directed reporting features (such as PBSKidsPlay.org), (iii) kid-friendly browsers (such as KidZui.com and KidBox.net), (iv) family-directed social networks (such as KinValley.com and BloggleBeans.com); and, (v) kid-friendly tablet devices (such as LeapFrog’s LeapPad and Fuhu’s Nabi Tablet). Often, these sites/services are designed to be used by young children (such as preschoolers) with the parent or other adult being the primary registrant or account holder (or even the initial visitor to the site/service). It is therefore impractical or overly burdensome to require prior verifiable parental consent in these types of scenarios where it can be safely assumed that any data collection is coming from a parent (not a child). For this reason, we recommend that the FTC add a separate, special category for family-oriented sites/services and also create a carve-out for this category similar to the one under category (c). The proposed wording for this new category is provided below:

based on the overall content of the website or online service, is likely to attract families, including children under age 13 and their parents or other close relatives; provided however that such website or online service shall not be deemed to be directed to children if it directs all requests for personal information to parents or

- It is worth noting that this category of “family-oriented” sites is not insubstantial, as illustrated from the industry-wide survey below.



(continued on next page)

C. DEFINITION OF “PERSONAL INFORMATION”

1. SCREEN OR USER NAMES

KSP supports expanding the ways in which screen names can be used in anonymous form without the requirement for prior verifiable parental consent. While it appears that the latest FTC changes to the definition of “screen or user names” are intended to achieve this outcome, the actual wording of the newly-proposed definition does not seem to be consistent with this outcome. For this reason and the other concerns expressed below, KSP recommends minor but important modifications to the proposed definition of “screen or user names” (see box below).

- It appears that the newly proposed definition of “screen or user name” is intended to allow the use of an anonymous screen name as a single login mechanism across multiple sites and services or across multiple devices/platforms. What remains to be clear, however, is whether these types of login IDs can only be used across sites and services belonging to the same company or also across the sites/services belonging to different companies. It appears that the latter is the intended outcome, so long as the login ID does not rise to the level of “online contact information”, but we kindly request that the FTC further clarify this matter for industry.
- The newly proposed definition (which now suggests that a screen name would be considered “personal information” if it functioned in the same manner as *online contact information*) appears to contradict previous guidance from the FTC suggesting that screen names could be used to identify users within public areas of a site/service (e.g., chat room, online forum, etc.). In other words, if a screen name is now considered personal information simply based on whether it can be used to contact a person online, then this would possibly render screen names used to identify users inside a chat rooms and other online forum as “personal information” and necessitate prior verifiable parental consent. For this reason, and the other concerns expressed above, we urge the FTC to revise the wording of the definition to be more reflective of what the FTC intended, as set forth below:

(d) A screen or user name where it contains online contact information, as defined in this Section.

2. PERSISTENT IDENTIFIERS AND SUPPORT FOR INTERNAL OPERATIONS

KSP supports the changes made to these definitions, as they provide additional clarity to businesses regarding which practices are considered “support for internal operations” and therefore exempt from parental consent. However, the FTC still has left a key term under the definition of “persistent identifier” undefined, creating uncertainty regarding the extent of permissible tracking activities.

- More specifically, the FTC has not clarified what is meant by the phrase “across *different* websites or online services” in the context of persistent identifiers. Are different sites belonging to the same company considered “different” or are only sites belonging to different companies considered “different”? The meaning of this term could have a significant impact on industry practices. Per our comments filed on December 23, 2011, we recommend that this phrase be revised to say “different *unrelated* websites or online services”. Please refer to our original comment for additional information.

ADDITIONAL RESULTS FROM INDUSTRY-WIDE SURVEYS CONDUCTED BY THE KIDSAFE SEAL PROGRAM

To further help inform the outcome of the FTC’s COPPA review, we have included the results of some additional industry-wide surveys below. If you have any questions regarding these polls, please feel free to contact us.

