

TechAmerica hereby submits these comments to the Federal Trade Commission (“Commission”) in regard to the Commission’s “rule review” of the Children’s Online Privacy Protection Act (“COPPA”). TechAmerica’s members have a vested interest in protecting children when they are online and also ensuring that the Internet remains a vibrant medium of communication and e-commerce. TechAmerica is pleased to be able to file comments on their behalf in this proceeding.¹

TechAmerica is the leading voice for the U.S. technology industry, which is the driving force behind productivity growth and jobs creation in the United States and the foundation for the global innovation economy. Representing approximately 1,200 member companies of all sizes from the public and commercial sectors of the economy, TechAmerica is the industry’s largest advocacy organization and is dedicated to helping members’ top and bottom lines. It is also the technology industry’s only grassroots-to-global advocacy network, with offices in state capitals around the United States, Washington, D.C., Europe (Brussels) and Asia (Beijing). TechAmerica was formed by the merger of the American Electronics Association (AeA), the Cyber Security Industry Alliance (CSIA), the Information Technology Association of America (ITAA) and the Government Electronics and Information Association (GEIA).

TechAmerica’s members include: manufacturers and suppliers of broadband networks and equipment; consumer electronics companies; ICT hardware companies; software and application providers; systems integrators; Internet and e-commerce companies; Internet service providers; information technology government contractors; and information technology consulting and sourcing companies.

TechAmerica welcomes this opportunity to provide the Commission with a viewpoint shared by such a diverse membership.

COPPA Today

TechAmerica believes that the Commission's implementation of COPPA since 2000 ("COPPA Rule") has provided the Internet industry with relatively certain guidelines and parameters within which to work.

The Internet industry has successfully protected the privacy of children online since COPPA's inception. Industry members have a vested interest in ensuring that their online operations are safe for all users, especially children and their parents, and will continue to diligently do so. The Commission's use of a safe harbor for qualified industry self-regulation proposals is especially helpful in this regard. Indeed, a number of TechAmerica member companies have designed innovative parental control tools to address parental concern about children's digital media and communications use and protect families from unwanted online contact and content.

Congress, too, in drafting COPPA, provided the Commission with sufficient flexibility to conform the law to evolutionary technological changes over time. While compliance costs incurred may be high for certain industry participants, there is a general recognition among TechAmerica's members that the law works relatively well as written, as it is technology-neutral and allows for innovation.

TechAmerica, therefore, does not believe a comprehensive overhaul of the COPPA Rule is needed. Rather, TechAmerica requests that the Commission exercise caution when reviewing the COPPA Rule in light of certain technological changes in the marketplace.

COPPA Going Forward

The Commission seeks comment on whether certain definitional terms should be expanded or modified in order to accommodate technological changes. TechAmerica is concerned that changes to core terms within the COPPA Rule could lead to unintended consequences. First, TechAmerica reiterates its support for the “actual knowledge” standard written in the COPPA statute, whereby it is unlawful for an operator of a website not directed at children to collect a child’s personal information only if it has actual knowledge that it is doing so. It has been suggested that the standard be changed to a constructive knowledge standard, but that would be unnecessarily burdensome on Internet companies. Under such a standard, industry would need to expend additional resources to collect and analyze information to determine a particular user’s actual age; not only would this be unnecessarily onerous since there is no currently existing technology that allows an operator to “verify” a child’s age online, but it would also contradict the privacy principle of data-minimization. The “actual knowledge” standard has been applied well since COPPA’s inception and provides Internet companies the necessary clear standard to develop appropriate innovative business models.

In this vein, the Commission requests comment on whether the term “Internet” should be applied to “mobile communications, interactive television, interactive gaming, and similar activities.”² The current definition of “Internet” in the COPPA Rule need not be changed to take into account mobile and/or interactive activities. The term is sufficiently broad as written to take into account alternative methods of accessing an interconnected world-wide network. Further, TechAmerica cautions the Commission

from expanding the term “operator” to include the purveyors of hardware and software components that act as mere conduits for a person to access the Internet (e.g., “smartphones,” gaming consoles, and TV set-top boxes), or those companies providing back end services to website operators which do not have the primary relationship with the end user, as was discussed during the Commission’s COPPA Roundtable on June 2, 2010. Imposing COPPA rules and restrictions on such entities would assuredly stifle innovation and impose unnecessary regulatory costs on these products.

Additionally, the Commission inquires as to whether it should define the term “online service” and, if so, what should be included in the definition.³ This topic was discussed at the Commission’s Rule Review Roundtable on June 2. At that time it was asked whether third-party application providers should be regulated as an “online service” under the COPPA Rule. If such applications are to be regulated under the COPPA Rule, TechAmerica believes strongly that platform providers should not be held responsible for the actions of third party application providers. Doing so would stifle innovation, as platform providers would have to assume a policing role in reviewing third party applications to ensure they are consistent with COPPA.

The Commission also seeks comment on whether the term “personal information” should be expanded to include “persistent IP addresses, mobile geolocation information, or information collected in connection with online behavioral advertising.”⁴

With regard to “persistent IP addresses,” TechAmerica notes that IP addresses, in and of themselves, are not generally considered personally identifiable information. Including an IP address by itself under the definition of covered “personal information,”

fails to take into consideration the beneficial use of these addresses. Indeed, to treat them as covered would severely impact cyber security companies, which constantly monitor and collect IP addresses for purposes of watching the Internet for harmful activity and updating security software,⁵ as well as companies that rely on IP addresses for identity verification so appropriate website operational actions can be taken. It is only when an IP address is combined with other traditional personal information of a user that COPPA should be triggered and the COPPA Rule's current definition of "personal information" accommodates that distinction under subsection (f) of the definition. No further changes are needed.

Conclusion

TechAmerica believes COPPA and the COPPA Rule work relatively well in today's Internet environment. While it is true that the Internet marketplace is changing rapidly, the COPPA Rule need not change drastically to accommodate such changes. Rather, the COPPA statute itself contemplated technological evolution and the Commission should exercise extreme caution when reviewing the COPPA Rule so as to not unnecessarily disrupt the balance struck in the law between protecting children's privacy online and ensuring Internet operators can continue to innovate.

¹ *Request for Public Comment on the Federal Trade Commission's Implementation of the Children's Online Privacy Protection Act*, 75 FED. REG. 17089 (April 5, 2010).

² *Id.*

³ *Id.* at 17090.

⁴ *Id.*

⁵ Additionally, at times, cybersecurity companies will combine an IP address with geolocation information when formulating a "reputation score" for an individual bad actor.