



July 12, 2010

Office of the Secretary
Federal Trade Commission
Room H-135 (Annex N)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Request for Public Comment on the Implementation of the Children's Online Privacy Protection Act (COPPA) through the Children's Online Privacy Protection Rule

Dear Secretary:

The Internet Commerce Coalition ("ICC") appreciates the opportunity to respond to the Federal Trade Commission's ("Commission") request for public comment on its implementation of the Children's Online Privacy Protection Act ("COPPA"), through the Children's Online Privacy Protection Rule ("COPPA Rule" or the "Rule").

The ICC includes leading Internet Service Providers (ISPs), e-commerce sites and technology trade associations. Members include Amazon.com, AOL, AT&T, Comcast, eBay, ITAA, Monster.com, Time Warner Cable, Verizon, and the U.S. Telecom Association. The ICC advocates reasonable rules governing liability and regulation of technology that will allow e-commerce and communications technology to flourish.

We strongly support the Commission's goal of guarding the privacy of children who use the Internet and we emphatically agree with COPPA's mandate against unfair and deceptive trade practices involving the collection of and use of children's personal information online. However, we believe that the current COPPA Rule furthers that purpose, and we caution against broadening the definition of "personal information" or unnecessarily imposing additional regulations on entities that offer online content to children.

A. General Comments on the COPPA Rule

We believe that the COPPA Rule in its current form continues to effectively protect children's privacy online. We are concerned that some proposed changes, particularly those with respect to the definition of "personal information," may impose undue burdens on website operators without offering any substantial privacy benefits.

As currently defined in the COPPA Rule, "personal information" includes:

- (f) A persistent identifier, such as a customer number held in a cookie or a processor serial number, where such identifier is associated with individually identifiable information; or a combination of a last name or photograph of the individual with other information such that the combination permits physical or online contacting; or

(g) Information concerning the child or the parents of that child that the operator collects online from the child and combines with an identifier described in this definition.
(16 C.F.R. 312.2).

Subsections (f) and (g) to the definition of “personal information” operate as “catch-all” provisions, and reflect COPPA’s mandate against “unfair and deceptive acts and practices in connection with the collection and use of personal information from and about children.”¹ In particular, subsections (f) and (g) address the compilation of various bits of information in a manner that enables a site operator to identify a particular child or to directly contact a particular child.

We are concerned, however, that expanding the scope of the COPPA Rule to restrict the collection or use of IP addresses, when not in combination with other identifying information, will unnecessarily encumber website operators and ISPs. We are also concerned that the imposition of additional regulations, particularly those concerning online advertising, will negatively impact the quality and availability of free educational content currently available to children on the Internet.

B. IP Addresses

We do not believe that IP address itself, when not in combination with personal identifiers, should be treated as “personal information. Such a radical departure in U.S. law and policy could significantly hinder the way that most websites operate. IP addresses are an integral part of how website operators provide content to site visitors’ computers.

Collection of IP addresses is not only integral to the operation of all websites, it is also central to website operators’ compliance with COPPA requirements. Indeed, websites must identify and use IP addresses to deliver content to computers. If an IP address were to suddenly be treated personal information for purposes of COPPA, then as soon as a child visited a website, that site would be “collecting” personal information.² Such an approach is too restrictive and unworkable. It would be impracticable, if not impossible, to “obtain verifiable parental consent prior to any collection, use, and/or disclosure of personal information from children,” as required by COPPA, since Web site operators will not know in advance that a particular child will visit their sites.³ Further, Web site operators need to collect IP addresses to prevent children under 13 who have previously visited a site (and registered as a child), from returning to the site and re-registering as an adult.

¹ 8 U.S.C. § 103.

² “Collects or collection means the gathering of any personal information from a child by any means.” 16 C.F.R. 312.2.

³ (16 C.F.R. 312.3(b)).

In addition, there is an important distinction between the transmission and collection of an IP address to provide content to a user and using an IP address, in conjunction with personal information, to profile a child so that the child can be “tracked” or sent targeted advertising. The former is necessary to effectuate the purpose of the website — i.e., to deliver content to the child; the other practice (if it exists) is more intrusive. Thus, the key question for purposes of the FTC's inquiry should be whether an IP address has been combined with other personal information to enable contacting or profiling particular children.

COPPA's current definition of “personal information” is already broad enough to cover profiling activities. The definition makes reference to “[a] persistent identifier, such as a customer number held in a cookie or a processor serial number, where such identifier *is associated with individually identifiable information . . . [or] permits physical or online contacting.*” 16 C.F.R. 312.2 Thus, there is no need to change this aspect of the COPPA Rule to amend the already broad definition of “personal information.”

The fact that information such as an IP address has the potential to identify an individual, when tied to other personal information, does not mean that it qualifies as personal information, especially when a concerted effort can be made to avoid using the information in personally identifying form. It is important to remember that all websites must identify and use an IP address to deliver content to a user's computer. Thus, protecting children's privacy in this context means ensuring that there are adequate protections for the usage or disclosure of an IP address *when tied to a particular child.*

We recognize that the introduction IPv6 has increased concerns about the collection and use of IP addresses. The impending transition from IPv4 to IPv6 has raised some privacy concerns because IPv6 will rely more heavily on persistent or static IP addresses. The use of persistent IP addresses has led to concern an individual IP address can be linked to a particular device, associated with a particular user, which, in turn makes it easier to track the activity of such device and hence the sessions in which the device user participates.

There are strong public policy reasons for launching IPv6. The explosive growth in mobile devices, including mobile phones, notebook computers, and wireless handheld devices, has created a great need for additional IP addresses. The number of IP addresses available under the current IPv4 framework is estimated to be exhausted in less than two years.⁴ In order to accommodate this growing demand, the market is undergoing a (somewhat slow) transition to IPv6, a new generation of IP addresses. IPv6 will, among other things, substantially increase the number of unique IP addresses available and decrease the use of dynamic IP addresses.

We caution the FTC against implementing any COPPA framework that would encumber the adoption of IPv6 by website operators and ISPs. It is also important to understand that even IPv6 addresses can be masked for users accessing the Internet behind an Ethernet connection, a Blackberry device or a variety of other connections.

⁴ IPv4 Address Report, <http://www.potaroo.net/tools/ipv4/index.html> (last accessed July, 12, 2010).

C. Behavioral Advertising

Online advertising subsidizes, and, in some instances, completely finances the availability of free content on the Internet. Such content includes educational games, instructional information and other valuable content for children. In fact, many of the sites listed as “Great websites for Kids” by the American Library Association are supported at least in part by advertising revenue. For example, National Geographic Kids, <http://kids.nationalgeographic.com/kids/>, is supported at least in part by advertising revenue and is also a “Parent’s Choice Recommended website. The Discovery Education website <http://puzzlemaker.discoveryeducation.com/> also makes the ALA list. It is impracticable to impose blanket restrictions on Internet advertising to children; further, it would likely decrease the amount and quality of free educational content for children.

In addition, there is a significant difference between targeted and contextual behavioral advertising. Contextual advertising displays ads by virtue of the fact that a user has visited a particular site; in other words, it is not the identity of the user itself but rather the content of the site that is the driving force in determining which ads to display to users. Pushing contextual ads to users of public websites does not encroach upon individual privacy.

Thus, the mere existence of online advertising on a particular website should not be a determining factor in determining whether a site is engaging in unfair and deceptive acts and practices in connection with the collection and use of personal information related to children under 13. This is because displaying advertisements on a website, and collecting personal information about a site visitor, are distinctly different activities. One activity is essentially a “push” of information to a user, while the other is essentially a “pull” of information about a user. COPPA is intended to regulate the “pull” of personal information from children.

Targeted behavioral advertising, on the other hand, involves tracking user activity such as purchase history, or other observed behavior, to determine which ads should be displayed to users. But when the determination as to which ads should be displayed has nothing to do with an individual child, and everything to do with the content on the website itself, the practice does not involve the “collection, use, and/or disclosure of personal information from and about children on the Internet.” In sum, in its review of the COPPA Rule, the Commission should note the value of advertising revenue for websites that offer free children’s content and take into account the distinction between contextual and behavioral advertising.

We thank you for considering our views, and are eager to continue to work with you in a constructive fashion as you reexamine the COPPA Rule.

Sincerely,

Heidi Salow
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Counsel to the Internet Commerce Coalition