



POLICY & ACTION FROM CONSUMER REPORTS

December 23, 2011

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Room H-133 (Annex E)
Washington, DC 20580

**Comments of Consumers Union
on
“Children’s Online Privacy Protection Rule: Proposed Rule; Request for Comment”**

16 CFR Part 312, Project No. P104503

Consumers Union,¹ the public policy and advocacy division of *Consumer Reports*®, appreciates the opportunity to comment on the Federal Trade Commission’s (FTC) notice, “Children’s Online Privacy Protection Rule: Proposed Rule; Request for Comment.” Consumers Union supports the FTC’s goal to protect children’s privacy online, while taking into consideration the rapid changes in online technology.

More children are accessing the Internet today than ever before. The total number of children 2-11 years of age using the Internet increased by 18% from 2004 to 2009, with children in that age group representing nearly 10% of the entire online community.² Furthermore, the time children spent online increased nearly 65% over that five year period.³ Internet adoption is also on the rise in the United States, with nearly two-thirds of homes equipped with high-speed Internet.⁴ These statistics suggest that Internet use by children is steadily increasing. With easier access to the Internet and higher usage rates among children, we must continue to focus on ensuring children’s privacy online.

¹ Consumers Union of United States, Inc., publisher of Consumer Reports®, is a nonprofit membership - organization chartered in 1936 to provide consumers with information, education, and counsel about goods, - services, health and personal finance. Consumers Union’s publications and services have a combined paid - circulation of approximately 8.3 million. These publications regularly carry articles on Consumers Union’s - own product testing; on health, product safety, and market place economics; and on legislative, judicial, - and regulatory actions that affect consumer welfare. Consumers Union’s income is solely derived from the - sale of Consumer Reports®, its other publications and services, fees, noncommercial contributions and - grants. Consumers Union’s publications and services carry no outside advertising and receive no - commercial support. -

² See Lance Whitney, “Nielsen: Kids’ online time leaps dramatically,” *CNET*, Jul. 8, 2009, - http://news.cnet.com/8301-10797_3-10281882-235.html (last viewed on Nov. 10, 2011). -

³ See *id.* -

⁴ See John Horrigan, “Home Broadband Adoption 2009,” Pew Internet and American Life Project, Jun. 17, - 2009, <http://www.pewinternet.org/Reports/2009/10-Home-Broadband-Adoption-2009.aspx> (last viewed on - Nov. 10, 2011). -

The Children's Online Privacy Protection Act (COPPA), passed in 1999 and implemented through the COPPA Rule, provides a solid framework for kids' privacy by empowering parents to make informed choices about the types of information companies can collect about their children. The FTC's current review builds and improves upon that baseline. The revised Rule will ensure that COPPA remains relevant in light of recent technological advancements, while also encouraging innovation in online services for children.

Consumers Union supports the FTC's proposal to amend the COPPA Rule, and offers some additional comments and suggestions in the discussion below.

The definition of "Internet" is device neutral

The FTC is correct to clarify that the definition of "Internet" does not depend on the device used to access the Internet. This clarification is extremely important in light of newly evolving technologies that allow individuals to surf the Web using computers, mobile devices, and online gaming platforms. As long as a service is available over the Internet, or connects to the Internet or a wide-area network, it must be covered under COPPA.

However, we encourage the FTC to make a determination that SMS and MMS services are also covered by COPPA. Numerous applications are currently being developed that allow users to send and receive both short messages and multimedia messages via the Internet connection on their mobile devices instead of through their carrier's networks. In essence, these services are the functional equivalent of VoIP, which is covered under COPPA, according to the proposed rule.⁵ Since so many children now have cell phones,⁶ the FTC should consider assessing SMS and MMS technologies, to ensure that children receive the full protections afforded by the law.

The passive tracking of children online should be covered by COPPA

Consumers Union applauds the FTC for its amended definition of "collection" to include passive online behavioral tracking of children. Without this crucial protection, companies would be permitted to track children's activities online, making record of the sites they visit, the online games they play, and the terms they search for. This aggregated information could be used to create a profile of the child, so that the company may better target that child with various ads and offers. We agree with the Commission that parents should be the ones deciding whether companies may track and behaviorally target their underage children.

In addition, we support the FTC's amended definition of "personal information" to include persistent identifiers such as cookies and IP addresses. These identifiers can

⁵ See 76 FR 59807. -

⁶ Amanda Lenhart, Rich Ling, Scott Campbell, and Kristen Purcell, "Teens and Mobile Phones," Pew - Internet and American Life Project, Apr. 20, 2010, <http://pewinternet.org/~media/Files/Reports/2010/PIP-Teens-and-Mobile-2010.pdf> (last viewed on Nov. 15, 2011). -

permit online operators to contact a specific child, especially since devices today are often associated with one single individual. We also believe that the Commission's stated exception for identifiers used in the ordinary operation of Web sites is appropriate and narrowly drawn.

Geolocation information is "personal information"

We strongly support the Commission's determination that geolocation data is already included in the definition of "personal information." Pew estimates that around 66% of children receive a cell phone before the age of 14.⁷ As more and more phones feature geolocation services, there is serious concern that marketing companies are tracking and recording children's location information. Since a child's physical address is already considered personal information under COPPA, geolocation data, which provides precise information about a child's whereabouts at a specific point in time, must also necessarily be covered.

The combination of date of birth, gender, and zip code should be considered "personal information"

Privacy experts have repeatedly shown that a significant percentage of Americans can be uniquely identified using only their date of birth, gender, and zip code.⁸ As a result, companies collecting these three pieces of information from children could ultimately use them to re-identify the child in question. We urge the FTC to consider including date of birth, gender, and zip code, in combination, in the definition of "personal information."

The definition of "child" remains appropriate, although the FTC should also protect teens

Consumers Union agrees that the statutory definition of a child remains appropriate. Children under 13 do not possess the level of knowledge or judgment to make appropriate determinations about when and if to divulge personal information over the Internet. As a result, COPPA's parental notice and consent approach, which gives parents control over the collection and use of young children's information online, is appropriate.

However, we strongly urge the FTC to also consider addressing privacy challenges facing teens online.

⁷ Amanda Lenhart, Rich Ling, Scott Campbell, and Kristen Purcell, "Teens and Mobile Phones," Pew - Internet and American Life Project, Apr. 20, 2010, <http://pewinternet.org/~media/Files/Reports/2010/PIP-Teens-and-Mobile-2010.pdf> (last viewed on Nov. 15, 2011). -

⁸ Anderson, Nate, "*Anonymized" data really isn't—and here's why not,*" ArsTechnica, 2009. - <http://arstechnica.com/tech-policy/news/2009/09/your-secrets-live-online-in-databases-of-ruin.ars> (last viewed on Nov. 17, 2011). -

Over 90% of teens currently use the Internet.⁹ Of that group, nearly one third use the Internet to research health, dieting, and fitness information, with 17% seeking information about topics they consider too difficult to discuss with others, such as sexual health.¹⁰ Because teens are treated as adults the day they turn 13, their online activities can easily be tracked and monitored by advertising companies eager to provide ads promoting things such as diet pills or sexual enhancement solutions. While adults may understand that the ads are simply being generated based on their recent searches and page views (and we are not convinced this is always true), teens may feel bombarded by constant reminders that they should lose weight or enhance their sexual performance.

Furthermore, teens are often more impulsive than adults tend to be. This can lead to poor judgment when it comes to sharing information online. For example, teens may readily accept and download content or mobile applications that purport to be “free of charge,” without realizing that, in exchange, they have allowed the company in question to track and record their online or mobile activities.

Today’s teens have also grown up in a culture of ubiquitous “online sharing.” As of 2009, nearly three quarters of teens used social networking sites.¹¹ As a result, teens are more prone to divulging personal information online and rarely understand how doing so could affect them. Few teens are likely to read or understand obscure privacy policy notices, so even though they expect information to be shared only with their “friends,” this may not always be the case.

Although CU agrees that the parental notice and choice model is both unwieldy and inappropriate for teens, we strongly urge the FTC to develop and implement some common sense rules that would provide teens with heightened privacy protections online.

The actual knowledge standard allows companies to turn a blind eye to underage users

While the legal definition of actual knowledge is clearly defined and easily applied, we remain concerned that it allows many websites to simply claim they are directed at the general public (by requiring users to be 13 and over) and at the same time turn a blind eye to the many children actually using their services. For example, *Consumer Reports*® estimates that nearly 7.5 million children under the age of 13 use Facebook by lying about their age.¹² Under the actual knowledge standard, “operators of general audience

⁹ See Amanda Lenhart, Kristen Purcell, Aaron Smith and Kathryn Zickuhr, “Social Media & Mobile - Internet Use Among Teens and Young Adults,” Pew Internet & American Life Project, Feb. 3, 2010, - <http://pewresearch.org/pubs/1484/social-media-mobile-internet-use-teens-millennials-fewer-blog> (last viewed on Nov. 10, 2011). *Note that Pew defines teens as being between 12 and 17 years old. Under COPPA, a 12 year old would be treated as a child. -

¹⁰ See *id.* -

¹¹ See *id.* -

¹² See “That Facebook friend might be 10 years old, and other troubling news,” *Consumer Reports*, Jun - 2011, <http://www.consumerreports.org/cro/magazine-archive/2011/june/electronics-computers/state-of-the-net/facebook-concerns/index.htm> (last viewed on Nov. 14, 2011). -

Web sites are not required to investigate the ages of their users.”¹³ Therefore, sites like Facebook can simply claim they do not allow children on their site and thus do not need to comply with COPPA standards. This attitude, however, ignores reality and leaves millions of children at risk and without protection. Although we do not propose simply doing away with the “actual knowledge” standard, we encourage the FTC to explore ways in which general audience websites with a sizeable number of underage subscribers can be required to comply with COPPA requirements in order to protect the privacy of those children.

New models of parental consent will spur innovation

In order to keep up with technological advancements, Consumers Union agrees with the Commission that companies should be permitted to explore innovative means of obtaining verifiable parental consent. Under the proposed rule, companies will be able to approach the Commission, on a voluntary basis, and seek approval of a particular consent mechanism. That mechanism would then be evaluated by the FTC and would be submitted to the public for comment. We agree that this new approval process will foster innovation in the marketplace, and hope operators will take advantage of this opportunity to put forth better and more efficient parental consent mechanisms.

Conclusion

Consumers Union would like to thank the Commission for its commitment to the protection of children’s privacy online. We support the proposed changes to the COPPA rule, but urge the Commission to also focus on developing a common sense framework for providing teens with heightened protections online. Consumers Union looks forward to working with the Federal Trade Commission in the future on this issue.

Sincerely,



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¹³ 76 FR 59806.