



December 21, 2011

Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Avenue, NW  
Room H-113 (Annex E)  
Washington, DC 20580

RE: COPPA Rule Review, 16 CFR Part 312, Project No. P104503

The Information Technology Industry Council (ITI) represents fifty of the nation's leading information and communications technology companies, including computer hardware and software, Internet services, and wireline and wireless networking companies. ITI is the voice of the high tech community, advocating policies that advance U.S. leadership in technology and innovation, open access to new and emerging markets, support e-commerce expansion, and enhance domestic and global competition.

ITI welcomes the opportunity to provide comments on this matter, which is of great importance to the ICT sector and appreciates the Federal Trade Commission's thoughtful approach on this and many other issues related to the technology industry. We wish to comment on three specific areas of the Children's Online Privacy Protection Rule: COPPA's Definition of a Child, COPPA's "Actual Knowledge" Standard, and the modifications to the definition of "Personal Information."

1) COPPA's Definition of a Child

ITI supports the FTC's decision to maintain COPPA's definition of a child as "an individual under the age of 13." We believe that expanding coverage in this area by increasing the age would serve only to engender a multitude of problems concerning privacy and practicality. ITI affirms that COPPA's current definition is adequate for protecting young children and functions effectively principally because of the age bracket involved. An increase in the age above 13 would take COPPA into adolescent territory, a demographic that could not be relied on to provide operators with parental contact information, as is required by COPPA.

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We agree with the FTC that adolescents are more likely to falsify parental information or their ages to use certain websites. This would lead to COPPA becoming an unreliable tool in the battle to protect children online and protect their privacy.

Expanding COPPA to cover teenagers also presents First Amendment concerns because limiting their access to online resources encroaches on their free speech rights, which may not be on par with adults but have been recognized by courts. In addition, young adults over the age of 13 spend much more time online than their younger counterparts, and their web interests tend to converge with adults. This means that expanding COPPA coverage would undoubtedly create practical problems because it would have to be applied with much greater frequency and may encroach on the rights of responsible adults whose online habits overlap with adolescents. Accordingly, ITI agrees that the current definition of a child should remain unchanged.

## 2) COPPA's "Actual Knowledge" Standard

ITI also supports the maintenance of COPPA's "Actual Knowledge" Standard. This standard means that those who operate websites are required to collect personal information only when they have "actual knowledge" that the user is under the age of 13. This standard is important because it gives operators clear guidelines on when they should collect personal information from users. Any change in this standard would provoke great uncertainty among operators with respect to the law's application. Operators could find themselves in the position of having to make estimates on a user's age or would have to prevent large groups of users from accessing the website in question because of the risk that the operator would be violating COPPA.

Furthermore, changing the standard would naturally involve the collection of more data from users to determine their age and would generate a whole new host of questions on what operators should do with this new information. Maintaining this standard allows web operators to offer services to users without requiring that they log into an account or provide additional information that might be necessary to determine whether COPPA applies under a standard other than "actual knowledge." The new standard thus contradicts



a core FTC goal on privacy – that of minimizing data collection. For those reasons, we welcome the FTC’s decision to maintain the “actual knowledge” standard.

### 3) Persistent Identifiers

Our main concern with the FTC’s proposed COPPA changes relate to the modification of the “personal information” definition, which expands its scope to include personal identifiers. Inclusion of an IP address, cookie, or device ID in the definition of “personal information” is problematic because none of these tools are able to personally identify an individual. Indeed, these tools only indicate the activity on a computer or computing device that may be shared by several individuals (for example, a family computer would be used by a parent and child). They do not have the capacity to distinguish between parents and children living in the same household and therefore would not provide the reliable personal information the FTC is looking for. Similarly, unlike the other types of information defined as “personal information” under the current rule, such as a home address or phone number, persistent identifiers considered under the proposed rule, such as cookies, can be easily changed by a user, e.g. by clearing the cookies in a browser.

Furthermore, expanding the definition of “personal information” in this fashion runs counter to the core objectives of COPPA by requiring website operators to collect more data from children in order to identify them. More data, including personal information of a child and parent, will have to be collected by operators of child-directed sites to provide notice and obtain consent under COPPA (to comply with the proposed Rule). Under the status quo, operators of child-directed sites can offer services using persistent identifiers without requiring that a user sign-in and provide personal information. Under the proposed Rule, operators will have to collect children and parents’ personal information, and not rely on persistent identifiers that are not personally identifying, in order to obtain consent.

Many modern websites provide dynamic content by third parties, such as embedded video or other gadgets, and these services require data collection across websites (e.g. the collection of an IP address to operate or cookie to offer personalized content on the primary site). The Proposed Rule would make it difficult for such services to operate because the third party is not offering an authenticated service and cannot reasonably obtain consent to



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collect the non-personally identifying persistent identifiers, ultimately reducing the availability of rich online resources for children.

ITI appreciates the FTC's commitment to industry outreach and engagement with stakeholders to produce effective policy. In particular, we appreciate the opportunity to comment on the proposed changes and we hope that our proposals are useful and will receive due consideration as you continue your review of COPPA. We remain available at any time to elaborate on our comments and suggestions.

Sincerely,

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Andrew Halataei

Director of Government Relations

Information Technology Industry Council