

**Before the
Federal Trade Commission**

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COMMENTS OF eBay Inc.

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December 22, 2011

eBay Inc. (“eBay”) hereby submits these comments to the Federal Trade Commission (“Commission”) in response to the questions posed in the Commission’s proposed Children’s Online Privacy Protection (COPPA) Rule Review. eBay appreciates the opportunity to provide our thoughts and feedback on issues as important as creating a safe and secure online environment for children.

Founded in 1995 in San Jose, Calif., eBay (NASDAQ:EBAY) connects millions of buyers and sellers globally on a daily basis through eBay, the world’s largest online marketplace, and PayPal, which enables individuals and businesses to securely, easily and quickly send and receive online payments. We also reach millions through specialized marketplaces such as StubHub, the world’s largest ticket marketplace, and eBay classifieds sites, which together have a presence in more than 1,000 cities around the world. Currently, we have over 97 million users worldwide and last year alone \$57 billion in goods were traded on our site. We are also an engine for small business growth and development, with hundreds of thousands of small businesses in the United States using our platform to reach a global consumer base.

Due to the fact that eBay Inc. touches so many lives and so many aspects of the Internet marketplace, we take the quality of the privacy protections we provide to our users very seriously. The success of our community is based on trust, which is strengthened by our ability to provide our users with a level of transparency and control concerning the collection and use of information about them and their activities. Because of our strong privacy protections, Privacy International rated eBay one of the best companies for privacy on the Internet¹ and eBay was the most trusted company in 2009 for privacy as rated by U.S consumers².

eBay strongly believes that innovation in the Internet economy depends on consumer trust and that maintaining consumer privacy, including the privacy of the youngest Internet users, is essential to the continued growth of the Internet. eBay supports the effort of the FTC to find a reasonable and constructive framework to protect children, without overly burdening the Internet community. Therefore, we applaud the Commission’s efforts to conduct a comprehensive review of the effectiveness of the current COPPA framework.

Challenges in Providing Robust Protection

As the FTC outlined in the notice for comment, there are many challenges that currently face policymakers, website operators, and parents as they try to protect children from certain risks online.

Over the years, many website operators have found it necessary to include age limitations in their user agreements, to ensure that children are not viewing age inappropriate material. However, as children and young adults become more and more technologically savvy and interested in various sites and services that the web can offer at the click of a mouse, it has become increasingly more difficult for website operators to verify the age of their users. Website operators can, and do, take numerous steps to try and determine the age of an online user, but there are privacy and technological constraints that make it difficult to ascertain verifiable proof from site users.

¹ Privacy International Consultation Report, 2007 Available at: <http://www.privacyinternational.org/issues/internet/interimrankings.pdf>

² Survey conducted by Ponemon Institute and TRUSTe in September 2009. See www.truste.com, Press room, Archives, September 16, 2009 : [2009 Most Trusted Companies In Privacy Announced](#)

In addition, websites that offer services geared towards children oftentimes find it difficult to verify that the parental consent they receive is in fact from a parent or legal guardian, especially if it is in a just in time format. For the same reasons that it is difficult to verify a user's age, it is also difficult to verify that an individual giving consent is even an adult with the ability to grant said consent.

In light of this difficulty of verification and the rapid evolution we are witnessing in the online world, parents have found it harder and harder to introduce their children to the Internet in a controlled and safe environment.

Working Towards a Solution

One of eBay's core principles is to empower consumers through increased access, choice, and control. That principle applies to products and services as well as our consumers' information. We believe that this simple principle can be applied to parents trying to introduce their children to the Internet without raising serious concerns for their safety and privacy. Therefore, eBay and PayPal have decided to take a deeper look into the challenges of children's online privacy. With the hope of leveraging our unique position based on the breadth of our business model and our dedication to consumer privacy, it is our goal to work towards a program that would introduce children and teens to eCommerce in a protected and parent controlled environment.

After years of hearing from parents and policymakers about the difficulties surrounding child interaction online, technology and privacy experts in the eBay Inc. family are in the process of developing a model that we feel could potentially help parents feel more secure and provide children a unique lesson in money matters. We want to ensure that the FTC guidelines enable us to continue with an innovative business based approach to solve the problems COPPA seeks to address.

Our potential model that could help set a standard for online age appropriate use looks like this:

PayPal, which is part of the eBay family, is a secure online payments provider that links a user's online account with their offline credit cards and bank accounts. In its user agreement, PayPal requires that a user must be at least 18 years of age. PayPal has not experienced the same amount of user age fraud as other online companies, because PayPal accounts must tie to financial instruments and PayPal relies on financial controls for age verification. In order to apply for a credit card and independent bank account, a person must be at least 18 years old, therefore helping to provide verification of age.

Because PayPal is a payments provider for the eBay marketplace, we could leverage the age verification tool inherent in PayPal's business model and create an eBay Inc. youth account program that would be linked directly to verified adult account. Therefore, our goal is to create a program that allows a verified PayPal/eBay account holder to create a sub-account that would be tied directly to the parent accounts. The parent then has the ability to place money into their child's account and enable permission for children to buy and sell online - including permission and limits based on different levels of activities. This permission can be used for commerce sites within the eBay Inc. family - such as eBay.com.

This potential program gives Parents the opportunity to place limits on bidding, purchases, category browsing, and chat and other open communication. Limits could be in the form of

parental alerts, where approval is required before an action can be taken, or it can be finer tuned with dollar or category limits specified by parents.

Parents could also use this tool to help their child raise money for various projects or big purchases, therefore teaching them the importance of money management and the spirit of entrepreneurship. Parents could enable their child to sell various items on the various eBay platforms, while still having ultimate control over the good sold and the amount it is sold at.

Furthermore, we're contemplating expanding the program to include a dashboard where parents could provide permission for youth to access other sites on the Internet. While this is roughly contemplated - the key here is that a third party site could query eBay to see if permission was granted, thus solving challenges with receiving parental consent. With any consent dashboard, the parent always has control to revoke the consent.

eBay and PayPal are still in the developing stage of this program, we see this endeavor as a unique opportunity to overcome many of the challenges that policymakers, parents, and website operators are facing with protecting child privacy online.

Positive Proposed Changes to COPPA

While eBay and others continue to look for ways to provide greater protection to kids and greater control to parents through business approaches, we applaud the FTC for their thoughtful review of this important law. Although we fully understand the challenges that the FTC faces with updating this statute to reflect the ever-changing Internet ecosystem and its technologies, we believe that a number of the proposals included in the FTC's review provide a balanced approach to this issue.

1. *Actual Knowledge Standard:* As stated above, current privacy and technological constraints have made it difficult for many website operators to verify the age of their users. eBay agrees that maintaining the current actual knowledge standard is critical to providing legal certainty to website operators that are trying to act in good faith of the law. We believe that the current standard in COPPA provides a workable model and ensures that websites aren't unduly burdened.
2. *Safe Harbor:* eBay believes that oftentimes, the creation of a regulatory safe harbor program with a balanced enforcement mechanism can provide the flexibility, transparency, and adaptability that a pure regulatory or legislative regime cannot. Safe Harbors ensure that public policy can keep pace and evolve with technological advances and societal changes, without being subjected to the federal bureaucratic process. These types of programs help to promote innovation and creativity, while still offering protection, safety and security. eBay supports the FTC's preservation of the COPPA Safe Harbor and for the creation of a Safe Harbor program related to parental consent mechanisms. It is critical that private industry and federal policymakers continue to work together to create a voluntary system that works for all stakeholders.
3. *Internal Operations Carve Out:* eBay appreciates and supports the FTC's carve out for data collection for a website's internal operations. To ensure the safety and security of the Internet and its users, website operators must collect certain data points to protect against fraud, security threats, and user abuse. Impeding that ability would surely lead

to some serious online security risks, which would jeopardize the safety of every Internet user.

Potential Areas of Concern

Although eBay is supportive of the FTC's efforts to increase children's privacy and safety online, we do have some concerns with some of the proposed changes that were included in the FTC's review and the precedent it would be creating for the Internet as a whole.

1. *Expansion of Personal Information Definition:* eBay has concerns with the FTC's proposal to expand the current definition of personal information. What was once a much more targeted definition has now been broadened to include many data points that if individually collected, would not reveal the identity of the user, or the child in this instance. For example, screen/user names, audio files, and geo-location information by itself could not reasonably provide the identity or other sensitive information related to a child. As long as companies take care to ensure that personal information is not added, appended, or combined with the other data that is not identifiable, that system should not be treated as having personal information.
2. *Inclusion of IP address in Personal Information Definition:* eBay also has concerns with the proposal to include IP address in the definition of personal information. All operators of a computer will share one IP address. Determining that the IP address is tied to a child's identity doesn't make sense technically, as the IP could be just as easily the adult's PII. It would be eBay's recommendation to exclude IP address from the definition all together.
3. *Expansion of Parental Notice:* Although eBay believes that it is critical for website operators to clearly post their privacy policy on their website in a readable format and provide just in time notice to parents, eBay is concerned that the expansion of parental consent in this context could have implications for the Internet community as a whole. For instance, the requirement for website operators to post a prominent link to an online notice on not only the home page, but on every page where information is being collected could quickly turn into a case of over notification. Oftentimes we have seen consumers that are constantly bombarded by notices become desensitized and develop notice apathy. We need to be creating notices that are transparent, easy to access, and easy to read, which will in turn lead to a more informed populous that is in control of their choices. In addition, being too prescriptive on parental notice obligations will stifle innovative ways that could be beneficial for consumers in the future.

Conclusion

eBay thanks the Commission for its commitment to encouraging greater protection for online child privacy and for the opportunity to provide comments on the policy concerns outlined in the Commission's review. eBay is dedicated to assisting the Commission in moving the dial forward in regard to promoting innovation while restoring consumer trust in online commerce. eBay looks forward to working with the Commission in the months and years ahead on these important issues.

