

September 24, 2012

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

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

To Whom It May Concern,

We, like the Federal Trade Commission, are very concerned about maintaining online privacy for digital technology users of all ages. Our community of researchers, educators, service providers, innovators, and other thought leaders has put years of effort into learning more about how students interact with various technologies and platforms to become more critical thinkers, more engaged citizens, and better learners. We know that the same technologies and social processes that have powered the transformations in social, political, and economic life can provide the next generation with learning experiences that open doors to academic achievement, economic opportunity, and civic engagement.

With the help of powerful technology and engaged adults, we now have the capability to reimagine where, when, and how learning takes place; to empower and motivate youth to pursue knowledge and develop expertise at a pace, to a degree, and on a path that takes advantage of their unique interests and potential; and to build on innovations across a growing spectrum of learning institutions able to support a range of learning experiences for youth that were unimaginable even 15 years ago.

### *Recommendations*

We are very concerned that the proposed rule to expand the scope of COPPA to place further restrictions on content and ways for students to access learning materials and experiences is not going to improve learning or online privacy protection, and instead will build more barriers between children and learning opportunities on the Internet. Specifically, we are concerned that:

- by incorporating online “plug-ins” provided by third-party creators into the COPPA structure, existing sites will be further encouraged to limit the services they are willing to provide to young people;
- the new proposed definition of “Web site or online service directed to children” could be very complicated for operators to respond to and for parents to navigate; and
- schools would have to enter into highly complicated efforts to obtain comprehensive parental sign-offs, leading to the unintended consequence of inhibiting school use of critical digital resources.

The relationship between learning and the Internet has evolved dramatically since COPPA was first enacted. Instead of this short-term step to expand COPPA at this time, the FTC should invest in a study to be conducted examining the efficacy of COPPA legislation and rules after nearly fifteen years of implementation in order to fully understand the best path for the future.

### *Rationale*

A range of researchers, practitioners, and policy and technology makers have developed a model of learning that is keyed into the opportunities that today's digital and networked media offer for expanding and supporting access to learning. We call this new approach to learning "connected learning" — anchored in research, robust theories of learning, and the best of traditional standards, but also designed to mine the learning potential of the new social and digital media domain. Connected learning is interest-powered, peer-supported, and academically-oriented, harnessing and integrating the different kinds of learning that students pursue.

Effectively realizing and supporting connected learning requires open and extensive network infrastructures that enable children and youth to share knowledge, connect with communities of knowledge and expertise, circulate their work to relevant audiences and institutions, and develop a presence in public life. In order for young people to become effective learners and productive citizens in today's networked age, we believe it is critical that they are able to exercise agency as well as be supported in making wise choices about their online participation and how they manage social relationships online. Online information and social communities provide an unprecedented opportunity to broaden access to interest-driven and expertise-oriented learning, but this can only happen if young people are able to access these opportunities.

And while we support efforts that protect users of all ages from theft, fraud, or exploitation, we also feel strongly that privacy initiatives should not come at the cost of learning. We know from a robust body of existing research that efforts to eliminate choice and exploration in youth activity have the unfortunate side-effect of limiting opportunity and learning or forcing young people to engage in activities "under the radar" of adult oversight.

We also know that policies that limit access to knowledge and relationships disproportionately impact children and youth who are dependent on public access infrastructures through schools, libraries, and other community institutions. If young people are not supported in accessing learning-relevant content and relationships online, they are limited in their ability to pursue knowledge and interests. Privacy efforts should be pursued in a manner that encourages use of the best technologies available to engage young people and advance learning outcomes. These efforts should also take care to allow for researchers to study and assess youth learning — in a safe and ethical manner — to better understand how we can improve and invest in the future of education for young people.

The immense potential in initiatives that harness the power of social networking, streaming video, and other online resources depends on youth having access to these resources. While we support taking well-meaning steps toward protecting their privacy, it should not come at the expense of limiting this access. We therefore do not support expanding the COPPA provisions beyond the current scope.

By incorporating online “plug-ins” provided by third-party creators — such as embedded video, widgets, or other features — into the COPPA structure, existing sites will be even further encouraged to limit the services they are willing to provide to young people.

[Research shows](#) that despite many websites responding to COPPA by banning children under age 13, millions of under-13 children are on Facebook and other social networking sites — often with parental consent and support. Many parents see the 13+ age restriction as a kind of ratings guideline they can overrule, and not as official policy. However, by choosing to access these sites and resources in spite of the age ban — often for positive educational or social reasons — parents and children are forced to forgo COPPA’s privacy protections.

We are also concerned that this new proposed definition of “Web site or online service directed to children” will end up incorporating a vast array of Web sites and online services, or could even be expanded to include user-generated content and text messaging. This definition and its enforcement could be very complicated for operators to respond to, and for parents to navigate.

Additionally, digital learning tools such as digital textbooks and apps are becoming increasingly present in K-12 schools today. Educators are incorporating these innovative resources into the classroom to engage students in new ways and teach the 21<sup>st</sup> century skills that will be necessary to succeed. We are concerned that the proposed new COPPA rules could both inhibit the development of K-12 educational resources and complicate efforts by schools to obtain parental permission for the collection of student personal information. Under the terms of the Children’s Internet Protection Act, schools must develop AUPS or IUPs to govern the appropriate use of school technology and online resources. Through these policies, schools establish ground rules for student use of technology and online resources and, pursuant to COPPA, often obtain express parental consent for student online data collection that occurs in conjunction with the use of certain online educational resources and services.

It appears that, if the proposed rules are codified, schools would have to expand their AUP or IUP permissions to extend beyond the primary online content providers, with whom they either have contractual privity and/or are aware of their policies and practices regarding data collection, to encompass third party plug-ins, apps, social networking functions, etc. that are incorporated into that content. This becomes a problem for school systems because they may have no actual idea of the existence of such third party providers, much less their data collection methods and policies. Thus, educators would be asking parents to grant data collection permissions to unknown resources, with potentially unforeseeable consequences. This could complicate efforts

to obtain comprehensive parental sign-offs, and an unintended consequence would be an inhibition on schools' use of digital resources. Expanding the scope of COPPA to place further restrictions on content and ways for students to access learning materials and experiences is not going to improve learning or, as explained above, online privacy protection. As a matter of fact, nothing in the new proposed Rule does anything to address the problem of students lying about their age. This Rule would merely build more barriers between children and the Internet.

We do think that instead of expanding COPPA at this time, the FTC should invest in a study to be conducted examining the efficacy of COPPA legislation and rules after nearly fifteen years of implementation. As Congress considers revisiting privacy laws for child and young adults, stakeholders should be made aware of the value of the current policies. An efficacy study should examine research questions such as:

- In which ways has COPPA prevented Web sites from accruing personal information on children under 13 without gaining parental consent?
- In which ways is the personal information of children under 13 still at risk of exploitation?
- What have been the unintended consequences of COPPA, particularly for sites that allow for online learning, and how might they be remedied in future iterations of the law and its Rules?
- To what degree has COPPA enabled or stifled the development of websites for children, and, in particular, websites that help children learn?
- How and to what degree does COPPA help educate children and parents about protecting privacy?

We believe that a study that provides the public with a deep and broad understanding of the current state of play would lead to stronger decision making about changing the laws or rules to effectively protect users of all ages from theft, fraud, or exploitation, while also supporting and expanding learning opportunities.

We look forward to working further with the FTC and with our peers and colleagues in this field to improve the online experiences and safety of all Internet users, while maintaining a web with engaging connected learning opportunities for all learners. If you have any questions, please contact Jason Schultz at (510) 642-1957 or [jschultz@law.berkeley.edu](mailto:jschultz@law.berkeley.edu).

Sincerely,

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