

September 22, 2012

Donald S. Clark
Secretary
Federal Trade Commission Office of the Secretary
Room H-113 (Annex E)
600 Pennsylvania Ave., N.W. Washington, DC 20580

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

Dear Mr. Clark:

I appreciate the opportunity to comment on the proposed amendments to the Children's Online Privacy Protection Rule ("COPPA Rule" or "Rule").

I strongly encourage the Commission to reconsider its proposal to expand the COPPA Rule's definition of "Personal Information" to include persistent identifiers such as IP address, unique device identifiers, and cookie information. The proposed definition seeks to conflate two distinct concepts: data that may be used to identify and permit contact with an individual with data that merely may be used to temporarily identify a computer or other device used by more than one person.

As other commenters have noted, the proposed definition of Personal Information is a significant expansion of what is generally considered to be personally identifiable information under established federal and state law. Moreover, the proposed definition may exceed the Commission's statutory authority under COPPA. Congress expressly limited the Commission's discretion to add new identifiers only if they permit the contacting of "a specific individual." As referenced above, the data that the Commission seeks to include under its proposed definition of Personal Information falls squarely outside of the parameters provided by Congress.

Moreover, the proposed definition of Personal Information under COPPA appears to signal a larger policy shift from the Commission. In recent Commission privacy reports, the FTC has recognized "the blurring of the distinction between personally identifiable information and supposedly anonymous or de-identified information."¹ In other words, the privacy framework offered by the Commission over the past few years has moved away from making a bright line distinction between PII and Non-PII. Conversely, in the COPPA Rule, the Commission is clearly advocating a bright line test between PII and Non-PII.

¹ See e.g., FTC Staff Report "Protecting Consumers in an Era of Rapid Change: A Proposed Framework for Business and Policymakers" *page iv*.

This apparent policy shift in an important area has already negatively impacted both privacy and innovation as companies struggle to refine practices not knowing if this new, bright line test may be applicable only to COPPA; or if the Commission's long term plan is for it to apply to other areas as well. Utilizing COPPA – a law designed to regulate a relatively narrow set of practices – to signal a policy shift of this magnitude would set a dangerous precedent and create a number of unintended consequences.

If the Commission is truly attempting to shift its policy regarding Personal Information, I would respectfully suggest that there are more appropriate means for it to do so.

Respectfully,

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Alan Chapell
Chapell & Associates