

September 24, 2012

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 Information and Communications Technology (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 further comment on four specific areas of the Children's Online Privacy Protection Rule: COPPA's Definition of a Child, the Proposed Definition of Operator, the Proposed Definition of Web Site or Online Service Directed to Children, and the Proposed Expanded Definition of Personal Information.

1) COPPA's Definition of a Child

ITI wishes to reiterate its support for the FTC's decision to maintain COPPA's definition of a child as "an individual under the age of 13." ITI believes that the current definition is adequate for protecting young children, and expanding coverage would serve only to generate privacy and practicality problems, something both the FTC and companies recognize.

2) Proposed Expanded Definition of Operator

ITI is concerned that the Commission's proposal to revise COPPA's definition of an *operator* is an expansion of the definition that goes far beyond the law's intent. This new definition states that an entity is an operator when "*Personal information is collected or maintained on behalf of an operator*". We are concerned that this definition could be interpreted to include entities that are application distribution platforms. Such entities merely act as a transaction facilitator and therefore should not be expected to be responsible for the collection of personal information that is requested by the mobile app developer. An app user's primary relationship is with the mobile app manufacturer and, as such, is responsible for the personal information of their users - not the application distribution platform. As such, ITI requests that the Commission clarify that it does not intend for application distribution platforms to be responsible for information collected by mobile app manufacturers on their platforms.

3) Proposed Definition of Web Site or Online Service Directed to Children

ITI also has serious concerns with the Commission's proposal to modify its definition of *Web site or online service directed to children*. As stated in our previous comments, ITI supports the maintenance of the "actual knowledge" standard and finds the move to a "reason to know" standard highly problematic. ITI believes the current standard gives operators clear guidelines on when they should provide notice and obtain consent from parents when they collect personal

information. Changing this standard would naturally involve the collection of more data from users to determine their age, create uncertainty without any additional security for children, and generate a completely new host of questions on what operators should do with this new information. Under the revised definition, it is also unclear when an operator would have a “reason to know” that it was collecting personal information.

By mandating, or at least strongly incentivizing, the collection of more information than that which is currently collected, FTC is contravening one of its key goals on privacy – that of minimizing data collection.

4) Proposed Expanded Definition of Personal Information

Our final concern with the FTC’s proposed COPPA changes relates to the modification of the “personal information” definition, which is expanded in 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 ordinarily utilized to personally identify an individual, nor do they necessarily enable “the physical or online contacting of a specific individual” as required by 15 USC Section 6501(8)(F). Indeed, these tools only indicate the activity on a computer, computing device, or browser that may be shared by several individuals (for example, a family computer would be used by a parent and child). These persistent identifiers do not have the capacity to distinguish between parents and children living in the same household and therefore would not enable operators to contact or identify specific individuals. 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, and are therefore not a permanent form of identification.

While ITI appreciates that the FTC has attempted to narrow the instances of persistent identifiers being included within the ambit of personal information by excluding persistent identifiers used for “internal operations”, such exclusion does not go far enough. Congress declared that a unique identifier should only be deemed “personal information” under COPPA where such identifier “permits the physical or online contacting of a specific individual”. (See 15 U.S.C. Section 6501(8)(F)). The FTC would be exceeding its rule-making authority by not including this important requirement. Indeed, for user names or screen names, the FTC’s proposal falls within its rule-making authority by declaring that such data is only “personal information” under COPPA where the user name or screen name “functions in the same manner as online contact information.” For purposes of COPPA, the only significant difference between a screen name/user name and a persistent identifier is the former is selected by the end user whereas the latter is assigned by technology. To be consistent, and within its rule-making authority, we strongly urge the FTC to limit persistent identifiers as personal information in only those instances “where it functions in the same manner as online contact information.”

By having a broader definition, this standard could be interpreted to require users to log-in to a website or a third-party embedded service in order to use a third-party embedded service. Currently, video stream websites allow users to view embedded videos on any website without having to sign-in to the video stream’s site. Requiring users to sign-in to view embedded videos would facilitate the collection of more personal information, again contradicting the FTC’s goal of minimizing the collection of data.

COPPA was created to foster a safe and secure online experience; this will not happen by mandating that companies increase the amount of data they collect on children. Under the current standard 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 and third-party embedded services will be strongly incentivized to collect children and parents' personal information, and not rely on persistent identifiers that are not personally identifying, in order to obtain consent and comply with other obligations under COPPA.

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 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,

Andrew Halataei
Director of Government Relations
Information Technology Industry Council