



June 30, 2010

VIA ELECTRONIC FILING

Mr. Donald S. Clark
Secretary
Federal Trade Commission
Room H-135 (Annex E)
600 Pennsylvania Avenue, NW
Washington, DC 20580

RE: COPPA Rule Review, P104503

Dear Secretary Clark:

Microsoft appreciates the opportunity to provide these comments on the Commission's Rule implementing the Children's Online Privacy Protection Act ("COPPA").¹ COPPA provides the Commission with ample authority to update COPPA as new online services emerge and technologies advance, and we commend the Commission for its diligence in periodically reviewing the COPPA Rule to ensure that it is keeping pace with the evolving online environment.

In the last ten years since it became effective, the COPPA Rule has helped raise awareness of the importance of protecting children's privacy online. However, there are six important steps the Commission should take to account for technology advancements and other developments over the last decade:

- Clarify how COPPA applies to new forms of online interactions;
- Work with technology companies, consumer advocates, and other stakeholders on age-verification and authentication issues;
- Approve verifiable parental consent methods that are more parent-friendly and scalable;

¹ 15 U.S.C. §§ 6501-6508.

- Provide clear guidance on how companies should comply with COPPA in a way that meets not only the letter, but also the spirit, of COPPA;
- Recognize that in some circumstances the limited collection and use of children’s information can actually enhance children’s privacy and safety online; and
- Play a role in coordinating approaches to children’s privacy worldwide to ensure a more harmonized approach to children’s privacy.

In considering how to take these steps, some of which would involve changes to the COPPA Rule, the Commission should be guided by COPPA’s objectives of “~~enhanc[ing]~~ parental involvement in a child’s online activities in order to protect the privacy of children” while also “preserv[ing] the interactivity of children’s experience on the Internet [and] access to information in this rich and valuable medium.”² Microsoft strongly supports these objectives, and, as described in more detail below, is deeply committed to achieving them through our own privacy practices.

I. Microsoft Has a Longstanding Commitment To Protecting Children’s Privacy and Safety Online and Increasing Parental Involvement in Children’s Internet Activities.

Microsoft has taken a comprehensive approach to protecting children’s privacy and safety online and to increasing parental engagement in children’s online activities. Examples of our efforts include the following:

(A) Incorporating privacy features and parental control technologies and tools into a broad range of our products and services. Microsoft proactively requires parental consent and offers parental controls for many of our products and services, including Xbox Live, Spaces, Messenger, and Hotmail. Each of these services requests age information in a neutral manner during the registration process. If a child indicates that he or she is under 13 years of age, Microsoft obtains parental consent before allowing the child to register and participate in the service’s interactive activities. In addition, parental controls for Windows 7, Windows Live, Xbox 360, Zune, and other services help parents make granular choices about how their children share personal information online. For example, the Windows Live Family Safety tool enables parents to limit their children’s searches; block websites based on content; restrict whom their children can communicate with through Windows Live Spaces, Messenger, or Hotmail; and access detailed activity reports that show which websites their children have visited and which games and other applications they have used. These family safety settings are designed to roam across different devices.

(B) Providing guidance and educational resources for parents, teachers, and children regarding these important issues. We support a number of educational

² 144 Cong. Rec. S12785 (1998) (statement of Sen. Bryan).

initiatives that encourage parents to talk to their children about online privacy and to help parents make informed choices about their children's Internet use. These efforts range from informational websites and Internet safety curricula to public information campaigns. For instance, Microsoft supports GetNetWise.org, which offers resources to help parents and children make informed decisions about Internet use. We also are an active participant in the National Cyber Security Alliance and its website Stay Safe Online, which encourages parents and children to discuss topics such as the disclosure of personal information in Internet chat rooms, emails, and websites. And we provide parents with a wide variety of educational resources about the steps they can take to protect their children's privacy and safety online.³

(C) Working with government officials, consumer advocates, and our industry partners around the world to help protect children's privacy and safety online. Microsoft partners with government officials, industry members, law enforcement agencies, and child advocates to address children's privacy and safety issues. This includes working with law enforcement agencies and other partners to offer tools and training to help apprehend and prosecute criminals who use the Internet to harm children. For example, Microsoft works closely with the International Center for Missing and Exploited Children and many other organizations that focus on making the Internet safer for children.⁴

Our efforts to protect children are part of a much broader commitment to increasing trust and safety online and to protecting consumer security and privacy. For example, Microsoft has long advocated for comprehensive federal privacy legislation in the United States and strong public policies worldwide to protect the privacy of all consumers, including children. We have led the industry in adopting privacy notices that are clear, concise, and understandable. We have released a set of privacy guidelines designed to help developers build meaningful privacy protections into their software programs and online services that explicitly addresses children's privacy.⁵ And we have made significant investments in privacy in terms of dedicated personnel and training and by building robust privacy standards into our product development and other business processes.

II. The COPPA Rule Has Been Effective in Raising Awareness of Children's Privacy Issues, But Should Be Updated for New Technologies.

Over the last decade, the COPPA Rule has been tremendously effective in raising awareness of the importance of children's privacy among online operators, parents, and children themselves. The COPPA Rule has led many websites that are targeted to children to post children's privacy policies online that clearly describe their privacy practices and to implement mechanisms for obtaining parental consent for the collection, use, or disclosure of children's

³ See, e.g., <http://www.microsoft.com/protect/family>.

⁴ See, e.g., <http://microsoft.com/protect/community.aspx>.

⁵ See Microsoft's Privacy Guidelines for Developing Software Products and Services, http://download.microsoft.com/download/0/8/2/082448D8-2AED-45BC-A9A0-094840E9E3A2/Microsoft_and%20Privacy_guidelines_for_developers.doc.

personal information. And a number of general audience websites and online services have instituted neutral age-gating and parental consent mechanisms, thereby creating valuable opportunities for parents to talk with their children about the importance of online privacy and to help ensure a safe online experience. Microsoft, for example, goes beyond the COPPA Rule's requirements by employing neutral age gates on its websites and online services that are attractive (but not directed) to children and obtaining parental consent for any users who indicate that they are under the age of 13.

However, in order to achieve COPPA's objectives, the COPPA Rule should be updated to account for children's evolving Internet activities and advancements in technology. For example, children are using new technologies to access the Internet, such as mobile devices and interactive gaming platforms. In light of these new technologies, Microsoft encourages the Commission to clarify how COPPA applies to new forms of online interactions, to work with technology companies, consumer advocates, and other stakeholders on age-verification and authentication issues, and to leverage existing technologies by approving more parent-friendly and scalable methods for obtaining verifiable parental consent.

A. The Commission Should Interpret COPPA Broadly To Accommodate New Types of Interactions Online.

Microsoft believes that COPPA provides the Commission with ample authority to interpret COPPA broadly to apply to the many new ways in which children are accessing websites and online services through the Internet and in which operators are collecting, using, and disclosing children's personal information online. However, we also encourage the Commission to update the COPPA Rule so that its requirements remain meaningful in the context of these new technologies and activities. In some cases, the Commission may need to provide additional flexibility and greater clarity on how operators can comply with the COPPA Rule.

For example, it can be difficult to provide notice and obtain parental consent on the wide variety of devices that children now use to access the Internet. Mobile phones typically have small screens, which can make it challenging for online services offered through mobile devices to provide all the requisite disclosures in a direct notice to the parent as required under the COPPA Rule.⁶ In the mobile phone scenario, there may also be different or unique ways to determine age and consent, as when a carrier sets up family or child accounts. And covered services offered through Internet-enabled gaming devices may lack certain features, such as printing functionality, that rule out certain parental consent methods that have been approved by the Commission, such as the "print-and-send" method.

⁶ See 16 C.F.R. § 312.4(c).

B. The Commission Should Work with Technology Companies, Consumer Advocates, and Other Stakeholders on Age-Verification and Authentication Issues.

The effectiveness of the COPPA Rule's verifiable parental consent requirement has been hampered by the fact that no effective age-verification and authentication technologies and infrastructures have emerged.⁷ Microsoft therefore urges the Commission to work closely with technology companies, consumer advocates, and other stakeholders to understand the policy challenges associated with age-verification and authentication methods as they might be applied in the context of the parental consent process. If policy makers decide to build upon processes that facilitate offline proofing for the online environment, then technology can enable the online use of the proofing in a privacy enhancing way.

There currently is no reliable way to verify a child's age online. Instead, operators have no choice but to rely on the user's self-reporting, which may be unreliable for at least two reasons. First, some children may regularly falsify their age online in order to protect their privacy and safety, particularly as precise age information is otherwise not needed to use many social networking or e-commerce services. Second, children are increasingly sophisticated Internet users who may quickly learn that the burden and delay associated with the parental consent process can be avoided by falsifying age information. This is especially true of children who fall within the upper range of ages covered by COPPA.

There also are no effective mechanisms for authenticating that the person providing parental consent is, in fact, the child's parent. As the Berkman Center has found, "[a]ny system that relies on remote verification of information has potential for inaccuracies," in part because "it is never certain that the person attempting to verify an identity is using their own actual identity or someone else's."⁸ In the context of obtaining parental consent, authentication is even more complicated because not only does the operator need to establish that the person is using his or her own actual identity, but also must confirm a parental relationship between that person and the user who is requesting access to the website or online service.

Microsoft recognizes that there are no easy solutions to these issues. Therefore, multiple methods for requesting age information and obtaining parental consent should be permitted that align with the level of assurance that policymakers deem appropriate. We believe that the Commission's COPPA Rule review provides a good opportunity to begin a productive dialogue between stakeholders and the Commission about how technology might help support offline processes that prove a custodial relationship between a child and the person claiming to be the child's parent or guardian and how this technology can be aligned with social, political and economic interests.

⁷ *Id.* § 312.5(b)(1).

⁸ The Berkman Center for Internet & Society at Harvard University, *Enhancing Child Safety & Online Technologies: Final Report of the Internet Safety Technical Task Force, Appendix D: Technology Advisory Board Report* 10 (Dec. 31, 2008), at http://cyber.law.harvard.edu/sites/cyber.law.harvard.edu/files/ISTTF_Final_Report.pdf.

For example, Microsoft and others in the industry have been working on new technologies for authentication and identity management, and these technologies could, in theory, be used to help pass a particular attribute, such as parental identity.⁹ Digital identity cards represent one of these technologies. Digital identity cards could be issued through existing offline processes where in-person identity verification of a parent-child relationship already occurs. There should be clear and effective privacy safeguards to govern the use of identity data collected by the offline parties providing such verification. Once a digital identity card has been issued, website operators and online service providers could obtain parental consent by requesting that parents and children provide their digital identity cards before accessing interactive services and features.

Microsoft appreciates that these stronger authentication and online identity technologies can themselves impact privacy. For this reason, we believe that the use of these systems should be carefully tailored to the context in which the information will be shared with an operator and the purpose for which the identity information will be used. Specifically, these digital identity systems should work in tandem with technologies that enable users to limit the personal information they disclose. For instance, Microsoft is working on technology that relies on cryptographic protocols and tokens to enable parents and children to better manage their identities online in a privacy enhancing way. When combined with the use of digital identity cards, these technologies could allow parents and children to disclose only that information that is necessary (such as parental status or age, but not name or other personal information) to enable children's access to and use of websites and online services.¹⁰

These identity management technologies offer prospects for creating a more robust method of passing proof of parental consent to service providers. Microsoft believes that it would be productive to foster further dialogue among the public sector, other technology leaders, and consumer advocates to evaluate the social, political, and economic issues associated with the use of these technologies as part of a comprehensive approach to protecting children's privacy online.

C. The Commission Should Identify Additional Parental Consent Methods That Are Parent-Friendly and Scalable.

In the meantime, Microsoft requests that the Commission identify additional parental consent methods that leverage existing technologies and satisfy the verifiable parental consent standard under COPPA. Today's technologies and the realities of Internet use require simple, pragmatic, and effective methods for parental verification that are more parent-friendly and that scale for popular services.

⁹ See Microsoft Corp., *Digital Playgrounds: Creating Safer Online Environments for Children* (2008), <http://download.microsoft.com/download/2/8/4/284093f4-5058-4a32-bf13-c12e2320cd73/Digital%20Playground.pdf>; Scott Charney, Vice President Trustworthy Computing, Microsoft, "The Evolution of Online Identity," 7 IEEE SECURITY AND PRIVACY 56–59 (2009).

¹⁰ Microsoft Corp., *Microsoft U-Prove Technology Release: Open Standards and Community Technology Preview* (2010), <http://www.microsoft.com/mscorp/twc/endoendtrust/vision/uprove.aspx>.

Section 312.5 of the COPPA Rule requires that operators obtain verifiable parental consent before knowingly collecting, using, or disclosing children’s personal information online. Microsoft agrees with the FTC’s “sliding scale” approach to obtaining parental consent, but since the COPPA Rule was issued over a decade ago, the Commission has explicitly identified only five methods for obtaining parental consent for the disclosure of a child’s personal information online: (1) providing a form for parents to print, sign, and mail or fax back to the company; (2) requiring parents to use a credit card in connection with a transaction; (3) maintaining a toll-free telephone number staffed by trained personnel, which parents can call to provide consent; (4) obtaining a digital certificate using public key technology; and (5) requiring parents to send an email along with a PIN or password that they have obtained through one of the first four methods.

These methods have proven useful in many contexts and should be preserved; that said, they present several challenges, especially in the context of new technologies. For example, they can be cumbersome for parents and children. Few parents today rely on fax machines to communicate and conduct transactions. And very few consumers currently use digital certificates. Moreover, these methods do not scale for popular services. The print-and-send method, for instance, involves long delays in receiving and processing the consent forms. As children increasingly access websites and online services through mobile devices — where providing notice and obtaining parental consent present additional issues — these challenges will become even more pronounced.

Consequently, the Commission should identify additional parental consent methods that meet the requirements of COPPA. Such methods should take advantage of existing technologies, ease the burden on parents, and scale for popular websites and online services that have millions of users. The Commission should also consider what types of parental consent mechanisms are appropriate for mobile devices, video game consoles, and other new Internet-enabled devices. Microsoft looks forward to working closely with the Commission as it identifies and analyzes additional parental consent methods as its COPPA review process moves forward.

III. The Commission Should Provide Clear Guidance on How Companies Can Better Meet Both the Letter and the Spirit of COPPA.

Many websites and online services that are directed to a general audience but that are attractive to children comply with the letter of the law but undermine COPPA’s objectives by blocking children’s participation online. These operators tend to fall within two different categories. Some general audience websites and online services that are attractive to children adopt a “head in the sand” approach, based on language buried in the Terms of Use that users must be over 13 years old to use the website or online service, by not asking age information. Others websites and online services that are attractive to children use neutral age gates, but then block users who indicate that they are under 13 from participating rather than obtaining parental consent. For example, there is ample evidence to suggest that children under 13 are taking advantage of social media sites; however, many social media services simply block children who indicate they are under 13. Both approaches, while arguably compliant with COPPA and the COPPA Rule, undermine COPPA’s objectives of increasing parental involvement in a child’s

online activities in order to protect their privacy and of preserving children's access to online content and interactive services in at least three ways.

First, by attempting to block children from the site or service, these operators prevent children from accessing services and content from which they could benefit. The Internet provides children with —unlimited potential for . . . growth and development” and enables —children to reach out to new resources of knowledge and cultural experiences.”¹¹ Obtaining Internet proficiency at an early age is a —critical and vital skill that will be necessary for academic achievement in the next century.”¹² And research has shown that children gain important educational and social benefits by engaging in interactive activities online, including increased opportunities for learning and creativity.¹³ The Commission recognized these benefits when it first issued the COPPA Rule, stating that it had —taken very seriously the concerns expressed about maintaining children's access to the Internet” and —preserving the interactivity of the medium.”¹⁴ Yet these important benefits cannot be realized if children are not allowed to participate.

Second, attempting to block children from the site or service also avoids the COPPA Rule's verifiable parental consent requirement. Consequently, these operators miss an important opportunity to help foster conversations between parents and their children about privacy and safety online and to increase parental involvement in the child's online activities.

Third, the practice of using an age-neutral age gate to block a child's participation in an online activity, rather than to obtain parental consent, has the perverse incentive of encouraging children to falsify their age information because doing so is the *only* way the child may gain access. As noted above, many children under 13 are increasingly sophisticated Internet users who quickly learn that they can access services with age gates by falsifying age information. As a result, children continue to use the website or online service, but none of the COPPA Rule's privacy protections apply unless the company otherwise learns that the child is actually under the age of 13.

To help ensure that operators are following the spirit, and not only the letter of COPPA, Microsoft encourages the Commission to provide clear guidance on how operators can better meet COPPA's objectives of increasing parental involvement to protect children's privacy and safety online, while preserving children's access to beneficial websites and online services.

¹¹ 144 Cong. Rec. S8482 (Statement of Sen. Bryan).

¹² *Id.*

¹³ See, e.g., Carly Shuler, Joan Ganz Cooney Center at Sesame Workshop, *Pockets of Potential: Using Mobile Technologies to Promote Children's Learning* 13-14, App. A, B (2009), http://www.joanganzcooneycenter.org/pdf/pockets_of_potential.pdf.

¹⁴ 64 Fed. Reg. 59,889 (Nov. 3, 1999).

IV. The Commission Should Recognize That in Some Circumstances, the Limited Collection and Use of Information from Children Is Necessary To Protect Children's Privacy and Safety Online.

Microsoft believes that the COPPA Rule is broad enough to cover online advertising scenarios where the operator collects, uses, or discloses children's personal information online. However, Microsoft cautions that expanding the categories of ~~personal information~~ to more explicitly address the issue of behavioral advertising may have unintended consequences that actually put children at risk. COPPA defines ~~personal information~~ broadly as ~~individually identifiable information about an individual collected online,~~ including not only name, address, and social security number, but also ~~any other identifier that the Commission determines permits the physical or online contacting of a specific individual~~ and ~~information concerning the child or the parents of that child that the website collects online from the child and combines with an[other] identifier.~~¹⁵ Over the years, the Commission has expanded this definition and clarified its application and meaning.¹⁶ The Commission is now considering whether the definition of ~~personal information~~ should be further revised to more explicitly cover behavioral advertising activities.¹⁷

Microsoft goes well beyond the COPPA Rule's requirements and does not target advertising to users whom it knows are under the age of 13. But some limited collection and use of information collected online from children can actually enhance the privacy and safety of children online. Knowing a child's age and IP address or cookie ID, for example, can enable operators to prevent inappropriate advertisements, such as those for alcohol, from being displayed to children.

Therefore, to the extent that the Commission determines that expansion of the definition of ~~personal information~~ is necessary, Microsoft encourages the Commission to proceed cautiously and make clear that the limited collection and use of children's information for the sole purpose of protecting the child's privacy and safety online does not violate the COPPA Rule.¹⁸ Otherwise, the Commission could unintentionally undermine attempts to protect children from inappropriate content online.

Significantly, both the Commission's behavioral advertising guidelines and the industry's self-regulatory standards already limit how children's information may be used for online behavioral advertising. For example, the Commission's Self-Regulatory Principles for Online Behavioral Advertising require affirmative express consent before sensitive information, including data about children, can be used for behavioral advertising.¹⁹ Furthermore, the 2008

¹⁵ 15 U.S.C. § 1302(8).

¹⁶ *See, e.g.*, 16 C.F.R. § 312.2.

¹⁷ *See* 75 Fed. Reg. 17089, 17091 (Apr. 5, 2010).

¹⁸ Significantly, the child-safety exception for prior parental consent allows only the collection of ~~a child's name and online contact information,~~ and it is unclear whether this exception is broad enough to cover the alcohol advertising example provided above. *See* 16 C.F.R. § 312.5(c)(4).

¹⁹ *FTC Staff Report: Self-Regulatory Principles for Online Behavioral Advertising* 42, 47 (February 2009), <http://www.ftc.gov/os/2009/02/P085400behavadreport.pdf>.

Network Advertising Initiative's Principles prohibit the use of information, including information that is personally identifiable, to create an online behavioral advertising segment specifically targeting children under 13, absent verifiable parental consent.²⁰ And the Self-Regulatory Principles for Online Behavioral Advertising, adopted by a coalition of industry groups in July 2009, focuses not only on segments targeting children but also on any targeted advertising directed to individuals known to be children. Specifically, Section VI(A) of the principles prohibits engaging in online behavioral advertising directed to children whom companies ~~have~~ actual knowledge are under the age of 13 except as compliant with the COPPA [statute].²¹

V. The Commission Should Help Coordinate Efforts Globally to Ensure a More Harmonized Approach to Children's Privacy Protection.

Countries around the world are increasingly adopting laws and imposing regulations to address the issue of children's online privacy. These approaches, however, are far from uniform. For example, guidance in the United Kingdom suggests that companies are exempt from parental consent requirements where ~~it~~ is reasonable to believe the child clearly understands what is involved and they are capable of making an informed decision.²² Other countries may prohibit collection of certain categories of information even with parental consent. In Spain, for example, collecting information from children about their parents or families, including information related to their parents' occupations, is prohibited.²³ France also prohibits collecting information about the parents' ~~lifestyle~~.²⁴ Furthermore, countries require different mechanisms for obtaining consent, and in some cases require collection of information that in other countries might violate privacy regulations. In Switzerland, for example, website operators can obtain parental consent by requesting that minors who register to use the website provide their parents' mailing address, rather than online contact information.²⁵ The website then requests the parents' consent by mail and in writing. Finally, although many countries limit the law's applicability to a specified age group, these countries often have varying age limits.

These differing standards can stifle innovation by forcing companies to comply with conflicting requirements. Microsoft urges the Commission, perhaps in conjunction with other agencies such as the Department of Commerce, to play a role in coordinating a more

²⁰ Network Advertising Initiative, *2008 NAI Principles*, Section III.4(a), http://www.networkadvertising.org/networks/2008%20NAI%20Principles_final%20for%20Website.pdf.

²¹ *Self-Regulatory Principles for Online Behavioral Advertising* 16-17 (July 2009), <http://www.ana.net/advocacy/getfile/15279>.

²² *Data Protection Good Practice Note*, Information Commissioner's Office 4 (June 5, 2007), www.ico.gov.uk/upload/documents/library/data_protection/practical_application/collecting_personal_information_from_websites_v1.0.pdf.

²³ Royal Decree 1720/2007, Art. 13(2) (April 19, 2008).

²⁴ See French Data Protection Authority, Questions and Answers, <http://www.cnil.fr/en-savoir-plus/questionsreponses/?faq%5Buid%5D=71>.


²⁵ See Federal Data Protection and Information Commissioner 2008-2009 Annual Report, <http://www.edoeb.admin.ch/dokumentation/00445/00509/01551/index.html?lang=en> (selected sections in English translation).

harmonized response to children's privacy and safety online. Better coordination will ensure that multinational companies can implement an effective global approach to children's privacy.

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Microsoft appreciates the opportunity to provide these comments to assist the Commission with its review of the COPPA Rule. We are committed to protecting children's privacy and safety online, and we look forward to working with the Commission toward this common goal.

Sincerely,


Michael D. Hintze
Associate General Counsel
Microsoft Corporation