

Statement to the FTC re: 2010 Children's Online Privacy Protection Act Rule Review

Submitted July 12, 2010 by Rebecca Newton, Chief Community & Safety Officer, Mind Candy Ltd. (moshimonsters.com)

Since I began working with young people online in 1994, the internet has experienced phenomenal web growth. COPPA (1998) was the result of a forward-thinking group of people who understood the internet would be significant to our every day lives and wanted to ensure the privacy rights of children under the extraordinary circumstances of a world wide web with very little regulation. At the time, relatively few parents were online. Scientists, technicians, computer scientists and pioneer entrepreneurs were the most web savvy among us, and though the virtual gold rush was in its infancy, it was clearly about to explode. In 1994, 16 million people, total, around the world had access to the internet.

Fast forward to 2010. 1.7 billion people around the world have internet access. Nearly 85% of the US population under 18 have internet access. Approximately 34 million people under 17 are online every day in the US. 15 million of these young people are under the age of 12, uploading and downloading content daily. The days of controlled chat rooms with a 23 user limit are few and far between. The most popular online Virtual Worlds, games and communities have no less than 12-15K concurrent users during peak hours. Some gaming sites claim 6 figures in concurrent users, such as World of Warcraft, which, in 2009, claimed 1 million concurrent users on their English-speaking servers alone. The net is a completely different virtual place than it was in 1998 and it will likely only continue to grow in the number of users and content shared.

Clearly, Site Operators (SOs) of kids' sites have the monumental responsibility of managing extraordinary numbers of users within their business walls.

Parents, Guardians & the Internet

We are in a unique period in history where, for the first time since the internet went public, many US parents are as experienced in the online world as their children. Teens I worked with in the mid 90s are now IT Directors, Community Managers, Web Designers, internet moguls and CEOs of international web companies. Some of the teens now have children of their own who are completely immersed in web technology. 400 million Facebook users speaks loudly of the number of people (of all ages) who are web-savvy. The argument regarding parents remaining in the dark about "this thing called the internet" doesn't really stand up against published stats and certainly doesn't stand up to the arguments regularly used in calling for tighter regulations on the net.

The problem of the uninvolved parent or guardian, which has been well-

researched in the US, is in part due to non-engaged parents offline, which naturally transfers to non-engaged parenting online. In addition to the uninvolved parent or guardian, it could be argued that the plethora of resources and information is daunting, at best, and is actually counter-productive. A search using the phrase "COPPA" on a popular search engine returns no less than 7.45 million results . Input "online safety" and the number rises to 245 million listings. I propose the real argument is not that parents are living under a rock or net-phobic, rather, they can find no reasonable way to become educated about what COPPA, privacy and online safety really means. The primary source for such information, other than word of mouth, generally involves sensationalist media.

"Reasonable Methods" of Verifiable Parental Consent (VPC)

COPPA requires site operators with sites directed at under 13s (U 13s) or any site that *knowingly* has under 13s registered as users, to obtain verifiable parental consent (VPC) if any personally identifying information (PII) is being collected or can be publicly shared (for instance, via chat, text messages, etc.). Under particular circumstances (e.g., allowing site content [chat, photos, vids, sound, etc.] that is **not** pre-determined or pre-moderated), the 'highest level' of VPC must be obtained before the U 13s user is allowed to participate. COPPA lists several methods as 'reasonable methods' to obtain the 'highest level' of VPC. The list includes, but is not limited to: the 'print and send' method, a credit card transaction, Toll-free phone verification, and digital signatures via e-mail.

It is not feasible or scalable for SOs to obtain the "highest level" of VPC when using many of the methods listed above, and to remain in, let alone grow, their online business. My place of business receives between 70,000 and 100,000 registrations each day. The usual methods as listed above are neither scalable nor affordable methods when faced with processing and verifying 70,000-100,000 pieces of paper (electronic or hard copy), phone calls, or instant messenger videos every day. Credit card fraud is at an all-time high and not truly viable as a form of VPC. SOs asking for ssn or DL numbers would have to ask for more personally identifying information than is currently required (at a minimum a full name and likely an address), just to verify the SSN or DL number is legit to that user's parent. We're then in a situation where SOs have quite a bit more PII than originally wanted or needed in most cases. (see below "The Privacy Problem")

I propose SOs should be able to work with their Safe Harbor providers to determine "reasonable methods " of VPC. Industry has traditionally stepped up to the plate and developed systems and methods online when necessary. I propose it is reasonable to ask industry to work with the Safe Harbor providers to develop methods and systems that the Safe Harbors determine are reasonable. We (industry and Safe Harbor providers) are faced with 3 questions when addressing the VPC requirement and finding reasonable methods of VPC.

The 3 questions we must address include:

- 1) Can the method or system scale
- 2) Will parents take the initiative necessary, and
- 3) Can we (industry) afford the method or system

In addition to industry creating reasonable methods addressing the questions above, there are a handful of existing technology services where parents would only need to register once, and provide reasonable identification to ensure VPC. The technology providers would then hold participating SOs to a standard and U 13s would automatically be allowed in the participating site(s). This method is not yet the norm at this point in our net age, however, there is a solid argument in support of encouraging industry leaders to come together and require such technology as part of their registration systems.

If, in the future, enough industry leaders decide to get together and centralize their VPC efforts, it is highly likely that an economic, scalable method (which also provides value to the parent or guardian) would emerge. The result would be a win-win situation for COPPA, SOs, parents/guardians and Under 13s (U13s).

E-mail Plus: PII and Internal use versus Public Disclosure

The 'E-mail Plus' system, which applies to SOs who collect PII for internal use only, requires the SO send an e-mail to the registered parent e-mail address and the SO must take an additional step to verify the parent is, in fact, a parent. (see COPPA FAQs #32). Until industry has access to affordable, widely-adopted technology, the 'e-mail plus' system remains a "reasonable" exception. 'E-mail plus' is particularly useful as a best practice for SOs offering chat, text, and UGC (which requires obtaining the highest level of VPC) except when meeting certain conditions (see below "Pre-Determined Content..").

Industry professionals recognize the 'E-mail Plus' system isn't perfect. There are valid arguments that challenge the efficacy of the 'E-mail Plus' system. For instance, the argument regarding U 13s who get around 'E-mail Plus' by lying about their age during registration. Not surprisingly, industry stats reflect a high number of 14 and 15 year old users on social networking sites, in Virtual Worlds and on gaming sites. While 'E-mail Plus' may not be the ideal system, it's what we have available to us that fits the definition of "reasonable" at this time. We never really know who's behind any of the listed methods and there is most definitely a percentage of U 13s who want to do the right thing, in my experience.

Perhaps the issue that we (the industry, Safe Harbors and the FTC) should collectively address is the potential public disclosure of PII versus the internal collection of PII. Maybe we explore the need for a more rigorous method of VPC where the potential for public disclosure of PII is of concern. So Public Disclosure might mean Safe Harbors require 'E-mail Plus' *and* additional reasonable methods to address public disclosure, where internal collection of PII (that is not shared with third parties) at present continues to require no VPC (and

rightly so). This would allow industry to set the standard and define "reasonable methods."

'Pre-Determined' Content

COPPA states that kid site SOs must use the 'highest level of VPC' unless the site provides "pre-determined chat." "Pre-determined chat" is commonly recognized within the industry as "whitelisted" chat (or in some instances, "canned chat," which is normally a drop down menu listing common phrases such as "hello" and "what's up?" - also known as 'certain death' to SOs). Whitelisted chat is a list of pre-moderated and pre-determined and approved words, characters and phrases. When using whitelisted content, the user can only type and send what has been determined as acceptable content by the SO. According to COPPA, there is no need for VPC when a site uses "pre-determined chat." However, it is considered best practice by industry professionals to use the 'E-mail Plus' system in tandem with "pre-determined chat."

While whitelisted chat is not perfect, like 'E-mail Plus', it's the most reasonable available technology to date and should remain a viable alternative post-moderated chat/content. There are, no doubt, innovative methods which will emerge that are as effective as whitelists. These methods will not emerge until SOs feel legally covered to develop and implement them. Safe Harbors should work with SOs to determine whether a SO's methods used to control PII are "reasonable" and effective.

The General Standard and "Available Technology"

Though one of the challenges COPPA faces is to keep up with technology, the Act was, in fact, written to consider technological advances. COPPA's General Standard [for Verifiable Parental Consent] states "Operators must make reasonable efforts to obtain verifiable parental consent, **taking into consideration available technology.**" If industry were to take available technology into consideration, exactly what does it mean to do so?

In addition to whitelists (mentioned above), we have current "available technology" which allows SOs to monitor U13s in sites where we actually have control and can educate the U13 at the time of the PII disclosure. This also allows sites to contact parents to let them know their child may need more education regarding online safety and netiquette. There are proprietary software tools and commercial tools available to manage such disclosure. As the need arises, more vendors will provide such software, which will make it affordable and available to industry (as mentioned before). The FTC might consider allowing industry to set the standard for what meets the standard, again working with the Safe Harbors.

The Privacy Problem

The potential use of a parental consent service (as described above, via third party vendors) or requiring additional VPC brings with it valid concerns about privacy. There has been plenty written on this subject - no need for me to reiterate. A compelling argument for less rigorous VPC methods can be found at: <http://www.pff.org/issues-pubs/pops/2009/pop16.11-COPPA-and-age-verification.pdf> written by Berin Szoka and Adam Thierer.

To counterpoint, it is also argued that the use of third-party vendors obtaining VPC would result in less PII shared with SOs across the web. The PII would be contained within the third-party vendor's database and an assigned pin number, for example, would be required for U 13s registering with all participating SOs. Resulting in less PII sharing across the web.

The bottom line is that all sides agree that the least amount of PII involved is the best outcome for users, for industry and for the FTC.

Suggestions for Consideration

As a practitioner for over 16 years in every aspect of the online kids world, I submit the following for consideration:

1) Define "taking into consideration available technology" for site operators. Allow Safe Harbors and SOs to work together to set the standard for "reasonable methods" of VPC and "reasonable methods" to address non-disclosure of PII. The industry trusts the FTC to evaluate "reasonable methods" and the FTC would then truly support the Safe Harbor providers, allowing them to do and be what they were originally designed to do and be.

2) Safe Harbors should require Site Operators to clearly define the difference between 'privacy' and 'safety.' As danah boyd et al stated, most users think the two terms to be synonymous.

danah boyd, Urs Gasser, and John Henry, which can be found at: http://cyber.law.harvard.edu/sites/cyber.law.harvard.edu/files/COPPA_Hearing_Statement_boyd_Gasser_Palfrey_4-29-10.pdf

3) Develop and implement an ongoing, high profile, public awareness campaign to bring COPPA understanding and awareness into the mainstream. The EU's 'Safer Internet Day' campaign is a fine example to research and consider. This has also been suggested by several other organizations and individuals.

Thank you for encouraging industry and citizens to submit comments and thank you for your continued work.

Respectfully submitted,

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