

The Facebook logo, consisting of the word "facebook" in a white, lowercase, sans-serif font, centered within a solid blue rectangular background.

July 12, 2010

Mr. Donald S. Clark
Secretary
Federal Trade Commission
Room H-135 (Annex E)
600 Pennsylvania Avenue, N. W.
Washington, D.C. 20580

RE: COPPA Rule Review P104503

Dear Secretary Clark:

These comments are submitted by Facebook, Inc. ("Facebook" or the "Company") in response to the request for public comment on Federal Trade Commission's ("FTC or "Commission") implementation of the Children's Online Privacy Protection Act ("COPPA") through the Children's Online Privacy Protection Rule ("COPPA Rule" or "the Rule").¹

Facebook started in 2004 as a social networking site for college and university students. Over time, our users grew to include teens and adults. While you must be 13 years of age or older to join Facebook, we take our responsibility to safeguard the Internet's youngest users seriously, and built the service with COPPA in mind. Accordingly, we require those attempting to enter Facebook.com for the first time to type in their age on the very first screen. This birth date field prevents children who indicate that they are under the age of 13 from establishing an account, and the technology places a persistent cookie on the device used to attempt to establish an account, preventing the user from modifying their birth date on a subsequent attempt. When Facebook becomes aware of accounts established by children under 13, we terminate those

¹ Request for Public Comment on the Federal Trade Commission's Implementation of the Children's Online Privacy Protection Rule, 75 Fed. Reg. 64 17089 (April 5, 2010), *available at* <http://www.ftc.gov/os/2010/03/100324coppa.pdf>.

accounts and delete all the information uploaded by that account holder. Facebook has also participated in many online safety initiatives around the world, such as the US State Attorneys General Internet Technical Task Force, the UK Home Office Task Force on Child Safety, the EU Safer Internet initiative, the Australia Attorney General's Online Safety Working Group and others.

In enacting COPPA, Congress sought to “enhance parental involvement in a child’s online activities” to protect their privacy and safety online “in a manner that preserves the interactivity of children’s experience on the Internet and preserves children’s access to information in this rich and valuable medium.”² The Rule respects and promotes the Congressional goal of enhancing child safety on the Internet without undermining interacting, constraining content creation, or chilling innovation, and should be retained in its current form. In our experience, the current Rule gives the Commission sufficient flexibility to respond to changes in technology that affect online privacy and safety. Material expansion of the Rule, in particular, by expanding coverage to teens, imposing liability based on a “constructive knowledge” standard, or by stretching the definition of personal information to encompass the use of non-personally identifiable information to provide an anonymous but tailored user experience - would both be inconsistent with the intent of Congress and likely to undermine the goals of COPPA by discouraging ongoing private sector innovation to identify new and better ways to promote child online safety and privacy. Rather, Facebook encourages the Commission to use this Rule review to promote responsible exploration of new ways to enhance parental involvement, secure parental consent, and educate children and parents about online privacy and safety. Further, Facebook encourages the Commission to use this Rule review to incentivize the creation of more effective privacy safeguards for the online environment and to facilitate the introduction of innovative mechanisms for acquiring parental consent when required by the statute.

Innovating to Enhance Online Privacy and Safety

While Facebook does not permit registration by children under 13, the Company has, from its inception, sought to provide a safer environment for teens and adults than was generally available on the Internet. In addition, as our user base grew to include high school students, Facebook invested particularly in innovations designed to deliver a safer online experience for our teenage users. In December, Facebook created a Safety Advisory Board consisting of representatives from five leading online safety organizations (Childnet International, Common Sense Media, ConnectSafely.org, the Family Online Safety Institute, and WiredSafety), to provide independent advice on teen online safety.

Facebook was the first major web service that required people to build their profiles and networks using real names. The Facebook culture of authentic identity enables users to be more connected, but also makes them more accountable for their conduct. Facebook is safer because its real name culture makes the service less attractive to predators and other bad actors and increases the likelihood that users will adhere to the community rules.³

² Statement of Sen. Bryan, 144 Cong. Rec. at S11657 (Oct. 7, 1998).

³ Facebook’s community rules are set out in our Statement of Rights and Responsibilities (“SRR”), *available at*: <http://www.facebook.com/terms.php?ref=pf>

At the same time, Facebook adopted a “user control” model to protect privacy and safety, and built innovative tools that empower users to exercise direct control over what they share, with whom they share, and when they share. The user decides whether or not to accept a request from another user to be connected, and can simply ignore any friend request that he or she feels uncomfortable about. Even after accepting a friend request, a Facebook user can “de-friend” someone who becomes annoying, spamming, harassing, and/or dangerous, which terminates the connection altogether.⁴ A user may also “block” another user in order to prevent further contact.

To encourage users to make informed choices about their activities on the site, we introduce all new users to our privacy “help centre,” which explains how to designate a privacy setting for each piece of content the user shares. We have learned that Facebook users are passionate about privacy, and in December 2009, we introduced an unprecedented privacy dialog, which required every Facebook user, worldwide, to stop and consider their privacy settings before they could use the service further. As a result of that process, an additional one-third of our users customized their privacy settings. In May 2010, Facebook introduced further innovation in the privacy space. The Company made it easier for users who want to select their privacy settings once for all activities by offering a vastly simplified set of tools that allow a user to select a “band” of privacy within which they are comfortable, coupled with a commitment that any such selection would be automatically applied to new products launched by Facebook. Finally, in May of 2010, Facebook gave users the ability to opt-out - with one-click - of sharing any personal information whatsoever with third parties, including websites or applications.

Facebook has also developed and deployed sophisticated proprietary technologies that facilitate ongoing authentication checks, including technical and community verifications of users’ accounts, and that help us to identify – based on analysis of aggregate user data – anomalous behavior for further inquiry.⁵ And, of course, any user may at any time use our ubiquitous “report” button to draw Facebook’s attention to inappropriate behavior, content, or messages.

Finally, Facebook has introduced a number of innovations specifically designed to enhance the privacy and safety of our teenage users. In addition to our COPPA-compliant age screening process designed to prevent registration by children under 13, Facebook restricts contact between adults and minors in a manner that is designed to reduce opportunities for adults to pose as minors. For example, before a minor who is new to our service can accept a friend request, we might interpose a message asking “Is this someone whom you know from your school?” or “Is this someone whom you or your parents know from your community?” We also limit the number of friend requests that anyone can send in a set period of time to further reduce unwanted contacts between unrelated users. While those over 18 on Facebook can share information with everyone, Facebook automatically restricts users under 18 from doing so, and

⁴ De-friending and blocking occurs without notification, so the connection is simply, elegantly, electronically severed without drawing attention to the ending of the connection.

⁵ For example, if an adult sends an unusual number of friend requests to unrelated minors that are ignored or rejected, our systems could be triggered, sending up a red flag and initiating a Facebook inquiry and remedial actions. To avoid compromising these technologies, Facebook generally does not discuss them in detail.

automatically limits their sharing to a much smaller subset of users, such as the minor’s friends, friends of those friends, and their verified networks, generally associated with their schools. This limitation substantially reduces the visibility of minors to non-minors whom they do not know. In addition, Facebook has a number of specific programs related to suicide prevention, cyberbullying, runaways, and missing children.

Expansion of the COPPA Rule would Chill Innovation

Expanding the definition of “personal information” in the Rule to include non personally identifiable information (“Non-PII”) used to tailor the content or format in which information is presented to online users would chill innovation and result in a less satisfying online experience without promoting privacy or safety. Similarly, expanding COPPA to cover teens, or to impose liability on site operators or service providers based on a “constructive knowledge” standard (which, in each case, would require Congressional action) would eliminate the clarity and certainty provided by the current Rule and would, as a result, create serious disincentives for site operators and service providers to explore and invest in innovative privacy enhancing policies and technologies such as those described above.

COPPA Requirements Should Not be Expanded to Teens Online

Some participants in this proceeding have urged the expansion of COPPA or COPPA-like requirements to cover the collection of personally identifiable information from teens.⁶ As described above, Facebook has taken specific steps to enhance privacy and safety awareness among its teenage users, and continues to explore new and innovative approaches to address teen-related privacy and safety concerns. But Congress was correct over a decade ago, when it considered and rejected calls to apply COPPA to the collection or disclosure of information from children under 17.⁷ The negative consequences of applying COPPA in the context of teenage users would be even greater today, when the Internet has become “a central and indispensable element in the lives of American teens and young adults” and when nearly all American teens use the Internet one or more times each day for communication, education, research, and entertainment purposes.⁸

As a practical matter, expanding the definition of a child under COPPA to cover teens would require Congressional action. In addition, the cost of acquiring verifiable parental consent

⁶ “Comments of the Center for Digital Democracy et al.” in response to FTC Request for Comments at 22 (June 30, 2010).

⁷ The authors of COPPA initially proposed to require parental notification for the collection of personal information from children under 17. See S. 2326.IS, 105th Congress, 2nd Session (July 17, 1998) <http://thomas.loc.gov/cgi-bin/query/z?c105:S.2326>. See, e.g., Written testimony of Deirdre Mulligan, Staff Counsel, Ctr. For Democracy & Technology, before the Subcommittee on Commerce, Science, and Transportation Subcommittee on Commerce, U.S. Senate (Sep. 23, 1998) <http://www.cdt.org/testimony/testimony-deirdre-mulligan-senate-committee-commerce-science-and-transportation-subcommitt> (recommending that the definition of “child” in COPPA should be lowered from 16-13 to protect First Amendment, privacy, and access to information rights of teenagers).

⁸ Report of the Pew Internet & American Life Project, *Social Media and Young Adults* (February 2010) (reporting that that Fully 95% of American teens aged 14-17 are online and use the Internet to communicate with friends, follow current events, shop, or get health, dieting, and physical fitness information, including “information about health topics that are hard to discuss with others such as drug use and sexual health topics”) http://pewinternet.org/~media/Files/Reports/2010/PIP_Social_Media_and_Young_Adults_Report_Final.pdf.

remains high,⁹ and any such expansion is likely to raise costs for general audience web sites and artificially constrain content delivery choices. Many popular general audience web sites would be forced to comply with COPPA either by prohibiting registration by teens or by offering a more generic, less interactive experience.¹⁰ For instance, many national newspapers make content available free online to registrants who provide basic information, including year of birth.¹¹ If COPPA covered information about teenagers, these news providers would either have to change their business model to reflect the cost of obtaining verifiable parental consent, block teens from registering, or cease collecting age information. The negative consequences of making it more difficult for teens to use online newspapers is fairly obvious, but the alternative of not collecting limited demographic data, which is used by sites and services to enhance user experience, to deliver appropriate advertising and other content, and to conduct important site or service related research and development, also would have negative consequences.¹² Facebook, for example, could not implement the enhanced protections for teenage users such as verification reminder messages, if we did not know their age!

Finally, research shows that teens are both concerned and proactive about online privacy, and that many parents are in fact aware of and involved in their teen's online activities. For instance, the Pew Internet & American Life Project reports that "[m]ost teenagers are taking steps to protect themselves online from the most obvious areas of risk," actively managing the circumstances under which they disclose personal information.¹³ Likewise, Pew reports that the majority of parents review their teen's online activities and are aware of their teen's participation

⁹ The FTC cited a 2005 estimate of \$45/child as the cost of obtaining verifiable parental consent for child-oriented sites to comply with COPPA. See *Comments of Parry Aftab, Request for Public Comment on the Implementation of COPPA and COPPA Rule's Sliding Scale Mechanism for Obtaining Verifiable Parental Consent Before Collecting Personal Information from Children* at 2, June 27, 2005, www.ftc.gov/os/comments/COPPArule/516296-00021.pdf. According to Ms. Aftab, average cost now is approximately \$15 per consent. See, comments of Parry Aftab, WiredKids, at the June 2, 2010 COPPA Roundtable, Session IV, Transcript at 7-8.

¹⁰ See *Baren Szoka and Adam Thierer, COPPA 2.0: The New Battle Over Privacy, Age Verification, Online Safety & Free Speech* (June 2009) at 22 (arguing that providers' likely response to expansion would likely involve attempts to block all adolescents, efforts to avoid actual knowledge, and/or age verification with all users); Comments of Center for Democracy & Technology, The Progress & Freedom Foundation, and Electronic Frontier Foundation In the Matter of Implementation of the Children's Online Privacy Protection Rule; FTC Docket No. 339; Project No. P104503 (June 30, 2010) at 6-8 (citing likelihood of increased "false positives" when applying "directed to children" standard to sites intended for older minors).

¹¹ See, e.g., www.washingtonpost.com, www.newyorktimes.com,

¹² Accurate demographic information about users is particularly important with respect to information and news delivery sites, where the extent to which content is appropriately tailored for a specific demographic may affect the educational value of the material itself. According to a study conducted by the Newspaper Association of America Foundation, a "healthy component" of web usage by those age 15 – 29 is information related. *Youth Media DNA: In Search of Lifelong Readers* (2008) ("Of young people who reported using Web sites at least once a week, information sites were visited by 35 percent of the group, 29 percent said they visited online news aggregators such as Google or MSN or Yahoo, and 20 percent said they visited online newspaper sites. Online TV or radio news sites were visited by 19 percent of those frequent Web site users.") The group has concluded that to maintain readership, newspapers must address specific preferences related to promotion, content, and design to retain younger readers. <http://www.naa.org/docs/Foundation/Research/Youthmediadna.pdf>

¹³ Amanda Lenhart and Mary Madden, *Teens, Privacy & Online Social Networks: How teens manage their online identities and personal information in the age of MySpace*, Pew Internet & American Life Project (April, 2007). http://www.pewinternet.org/~media/Files/Reports/2007/PIP_Teens_Privacy_SNS_Report_Final.pdf

in social networking sites.¹⁴ And, according to a MacArthur Foundation Study, participation by teens in interactive sites online is helping them to acquire “social and technological skills they need to fully participate in contemporary society.”¹⁵ For all of these reasons, it makes little sense to erect barriers to full use of the Internet by American teens.

The Definition of “Personal Information” Should Not be Modified

The COPPA Rule defines “personal information” as “individually identifiable information about an individual collected online,” such as first and last name, street/city name, email address, phone number, social security numbers, or persistent identifiers associated with personally identifiable information (“PII”).¹⁶ The statute permits the Commission to expand this list to include other information that “permits the physical or online contact of a specific individual.” Some participants in the Rule review have encouraged the Commission to expand the definition of personal information to include IP addresses and other unique but anonymous identifiers on the theory that such identifiers, in combination with other Non-PII, can be used for personalization and that such personalization, at least to the extent it involves the delivery of targeted advertising, amounts to “online contact.”¹⁷

Facebook urges the Commission to reject this proposal. The definition of “personal information” in the current Rule protects the online privacy and safety of young children while permitting the kind of personalization that can greatly enhance an online user’s experience. In the absence of a clearly identified problem, the Commission should exercise caution about expanding the concept of PII to encompass anything that permits content personalization, which would up-end well established privacy policy and, create uncertainty about fundamental aspects of the free, advertising supported Internet business model, and reduce access by children to rich, interactive content online.

Notwithstanding the assumption that sophisticated information science techniques may permit identification of a specific individual by combining various Non-PII elements in a data set, it remains true, as the Commission staff acknowledged in its revised guidelines for behavioral targeting, “[w]hether information ‘reasonably could be associated’” with a particular consumer or device will depend on the factual circumstances and available technologies.”¹⁸ Nothing in the legislative history of COPPA suggests that Congress intended the Commission to

¹⁴ *Id.* (“Despite the stereotype of the clueless parent, parents of today’s online teens are staying involved in their children’s online lives. Some 65% of parents report that after their child has been on the internet, they check to see what websites he or she viewed. In addition, almost three quarters of parents (74%) can correctly identify whether or not their online teen has ever created his/her own social networking site profile that others can see at sites such as MySpace or Facebook.”) <http://pewresearch.org/pubs/621/parents-teens-and-technology>.

¹⁵ John D. and Catherine T. MacArthur Foundation, *Living and Learning with New Medias: Summary of Findings from the Digital Youth Project*, at 2, available at: <http://digital.youth.ischool.berkeley.edu/files/report/digital-youth-White-Paper.pdf>.

¹⁶ Children’s Online Privacy Protection Rule, 16 CFR Part 312, §312.2; 64 FR 59888, 59912

¹⁷ Comments of the Center for Digital Democracy et al. at 26 (“When advertiser uses information . . . to display an advertisement chosen to appeal to that person at that time, the Advertiser is contacting the specific individual online” — even if they do not know who that person is).

¹⁸ <http://www.ftc.gov/os/2009/02/P085400behavadreport.pdf>

abandon fundamental privacy concepts by re-interpreting the concept of PII, which applies to information that permits association, identification, or contact with an identifiable individual, to encompass the delivery of tailored content to a unique but anonymous user.

Moreover, advocates of this expansion have not created a record that demonstrates the existence of a problem that requires fixing. The record does not contain evidence that suggests that online site operators or service providers are using IP addresses or geolocation data to identify, target, or contact young children online, and participants in the FTC's Roundtable on the COPPA Rule acknowledged, for example, that behavioral targeting is not generally used to advertise to young children.¹⁹ Moreover, this is an area where self-regulatory groups are already taking a pro-active approach. For example, the Network Advertising Initiative's code of conduct prohibits its members – which include the largest online advertising platforms – to use either PII or non-PII to create advertising segments for children under thirteen without verifiable parental consent.²⁰ According to comments filed with the FTC December, 2009, NAI members accounted for over 85% of online behavioral advertising related activity on the top 100 U.S. web sites. Likewise, Industry has developed self-regulation principles for online behavioral advertising that requires parental consent for advertising to consumers known to be under 13 or on child directed sites.²¹ Moreover, Trustee's representative told Workshop participants that the use of behavioral information to target young users was susceptible to monitoring.²² The Commission should refrain from using the COPPA Rule review to effect a fundamental change in the definition of PII, particularly in the absence of a demonstrated problem and in light of pro-active self regulatory efforts.

The Actual Knowledge Standard Supports Privacy and Safety Innovation

A number of participants in the COPPA Rule Review have called on the Commission to relax the standard by which a site operator's or service provider's "actual knowledge" is measured. Senator Bryan's original draft legislation applied only to sites and services "directed to children." When the proposal was broadened to include general audience sites and services, Congress deliberately selected the "actual knowledge" standard - which requires "direct and clear knowledge of a fact" and which is distinguished by courts from implied or constructive knowledge, which is knowledge that can be "reasonably inferred from a known fact."²³ Adoption of a constructive knowledge standard, or enforcement of the Rule based on an "implied actual knowledge" standard would make it far riskier for web site operators and service providers to experiment with privacy and safety enhancing technologies and would require operators of general audience sites to investigate the ages of their site's visitors, conduct age screening in sites

¹⁹ Comment of Jules Polenetsky, COPPA Roundtable (June 2, 2010), Session III, Transcript at 19; Comment of Kathryn Montgomery, COPPA Roundtable (June 2, 2010), Session III, Transcript at 21-22; Comment of Maureen Cooney, COPPA Roundtable (June 2, 2010), Session III, Transcript at 21.

²⁰ 2008 NAI Principles; Requirement 4.a)
http://www.networkadvertising.org/networks/2008%20NAI%20Principles_final%20for%20Website.pdf

²¹ *Self Regulatory Principles for Online Behavioral Advertising* (July 2009), available at:
<http://www.the.dma.org/government/ven-principles%2007-01-09%Final.pdf>

²² Comment of Maureen Cooney, COPPA Roundtable (June 2, 2010), Session III, Transcript at 21.

²³ See Black's Law Dictionary (8th ed. 2004).

on general audience sites and, as a result, increase data collection and reinforce undesirable activity by children.²⁴

Conclusion

The COPPA Rule faithfully implements the intent of Congress to enhance privacy and safety protections for young children online without imposing burdens on web site operators and online service providers that would undermine the quality of content or interactivity in the online environment. On the one hand, it is not perfect, because reliable, low cost age verification mechanisms have not emerged, and the cost of acquiring verifiable parental consent remains prohibitive for most ad-supported sites and services.²⁵ On the other hand, today's "digital natives" and their parents have grown more aware of online privacy and safety issues, and online content and service providers have developed new tools to empower users to make well informed decisions about sharing information online. All in all, the current Rule strikes a workable balance that promotes greater privacy and safety for young children by encouraging parental involvement, without preventing children to enjoy the Internet's benefits, and without imposing unsustainable burdens on web sites and Internet services providers. Rather than adopting burdensome new requirements likely to upset this balance, Facebook urges the Commission to use the COPPA Rule review now underway to encourage and facilitate the introduction and approval of new mechanisms for acquiring verifiable parental consent and to support innovation to enhance online privacy and safety for all through greater use of the authority Congress gave it to interpret COPPA requirements, "flexibly, encompassing 'reasonable effort' and 'taking into consideration available technology.'"²⁶

Respectfully submitted,

Timothy Sparapini
Director, Public Policy

²⁴ See, e.g., Szoba and Thierer, *Supra* Note 10 at 22 (positing that to minimize potential liability, operators would block all adolescents, take steps to avoid actual knowledge, or conduct age verification across a broad range of general audience web sites); "Comments of Center for Democracy & Technology" at 4 and 6 (noting that COPPA compliance increases costs and creates "higher barriers to entry for innovators" in the space that have "forced some operators to stop providing services for children or risk going out of business" and that expansion of COPPA coverage to teens would require operators either to collect more information from users or seek to exclude teens altogether).

²⁵ Szoba and Thierer, *Supra* Note 10 at 13 (noting that while most Internet content and service are child-oriented sites are free, many "child-oriented" sites charge admission fees in order to "recoup the costs of obtaining parental consent.")

²⁶ Statement of Sen. Bryan, 144 Cong. Rec. S11657 (Oct. 7, 1998)