



455 Massachusetts Ave., NW, 7th Floor  
Washington, D.C. 20001  
Telephone: (202) 347-3375  
Fax: (202) 347-3690

December 19, 2011

Donald S. Clark, Secretary  
Federal Trade Commission  
Room H-113 (Annex E)  
600 Pennsylvania Avenue, NW  
Washington, D.C. 20580

**RE: Amendment of the Children's Online Privacy Protection Rule—  
Comment, P104503**

Dear Secretary Clark:

Pursuant to the Request for Comment ("RFC") published in the Federal Register on September 27, 2011 (76 Fed.Reg. 59,804), I submit these comments on behalf of the Association of American Publishers ("AAP") regarding the Federal Trade Commission's proposed amendments to the rule implementing the Children's Online Privacy Protection Act of 1998 ("COPPA").

As the principal national trade association of the U.S. book publishing industry, AAP represents more than 250 member companies and organizations that include most of the major commercial book publishers in the U.S., as well as many small and non-profit publishers, university presses and scholarly societies. While AAP members publish hardcover and paperback books in every field, many AAP members also create and publish interactive online digital content, assessments, and databases for the education industry.

Our members are committed to renewing American competitiveness by providing online educational tools that deliver personalized learning for students of all ages. In fact, our members have invested billions of dollars since COPPA's enactment to develop a range of products and services that help teachers, administrators, parents, and students reach national, local, and personal educational goals—and have truly pioneered the use of technology in personalized learning for the K-12 grade levels. The viability of these investments, however, has been inseparable from the Commission's limitation of COPPA's regulation of online educational programs provided within the school context.

That said, AAP's interest in the above-referenced amendments to the Commission's rule

implementing COPPA stems from our members concern about the continuing validity of COPPA FAQs #54 and #55:

54. Does the Rule place requirements or restrictions on schools regarding the collection or disclosure of students' personal information on the Internet?

COPPA allows, but does not require, schools to act as agents for parents in providing consent for the online collection of students' personal information within the school context. See Statement of Basis and Purpose," 64 Fed. Reg. 59888, et seq., available at [www.ftc.gov/os/1999/10/64fr59888.pdf](http://www.ftc.gov/os/1999/10/64fr59888.pdf), p. 59904. In this regard, schools also must consider their obligations under the Family Educational Rights and Privacy Act (FERPA), which is administered by the U.S. Department of Education. For general information on FERPA, see [www.ed.gov/policy/gen/guid/fpc/ferpa](http://www.ed.gov/policy/gen/guid/fpc/ferpa).

Many schools have implemented Acceptable Use Policies (AUPs) or other measures to educate parents and students about in-school Internet use. For example, a school may use the AUP to inform parents of what online services are provided to students, and the school's policies regarding students' use of the Internet.

55. Does COPPA apply to website operators that contract with schools to provide online services involving the collection, use or disclosure of students' personal information?

Many school districts contract with third-party website operators to offer online programs solely for the benefit of their students and for the school system, e.g., homework help lines or web-based testing services. COPPA does not apply to the website operator's collection of personal information from participating children where a school has contracted with an operator to collect personal information from students for the use and benefit of the school, and for no other commercial purpose. Thus, the operator is not required to obtain consent directly from parents, and can presume that the school's authorization for the collection of students' personal information is based upon the school having obtained the parents' consent. The operator should, however, provide the school with full notice of its collection, use, and disclosure practices, so that the school may inform parents of these practices in its Acceptable Use Policy.

The following comments are in support of AAP's suggestion that the Commission preserve the above referenced FAQ responses in a more durable fashion, either in the Final Rule or in a formal industry guidance document.

### **General Concerns**

From its inception, AAP has recognized and supported the basic purpose of COPPA in preventing the exploitation of children through the online collection of their personal

information. However, AAP has also been concerned that COPPA could undermine the development of the digital teaching tools that will help American students compete in the 21<sup>st</sup> century. The Commission's answers in FAQs #54 and #55 have addressed many of AAP's previous concerns. Now, however, with the prospect of thorough changes to the existing rule, our members are concerned that without codification of FAQs #54 and #55 in the amended rule, uncertainty about the applicability of these pre-amendment interpretations of the Commission's rule will stifle the creation, adoption, and further development of online educational tools.

At this time, our members have contracts to provide tailored educational content and services to schools in practically every school district in America. Therefore, certainty about the continued validity of the Commission's interpretation of its rule in FAQs #54 and #55 is essential, not only to the future of online educational product development, but to provision of personalized education today.

Included below is an overview of the types of innovative products and services that our members are contracting to provide to schools to facilitate personalized learning. These examples also demonstrate the non-exploitative nature of our members' products and service and make clear the fundamental difference between commercially created educational products and other online services "operated for a commercial purpose."

### **Online Educational Products and Services**

As noted in our comments to the Commission's original Notice of Proposed Rulemaking to implement COPPA—computers and the Internet already play a significant role in education, and their influence is growing exponentially. When the Commission's COPPA rule was enacted, AAP could only envision the creation of interactive digital technologies, which would improve and enrich student learning and achievement. Today, however, our members have not only created interactive educational tools, but have also created adaptive tools, which use student data to customize content delivery and assessment to the individual student's needs. These tools are helping to break down barriers of location, time, and resource access in order to empower educators, families, and students to create personalized educational experiences through:

- Flexible access to content made possible by online learning platforms;
- Broader access to teaching resources, ranging from user generated to publisher and open educational resources, some of which is provided through metadata-optimized web search and retrieval services;
- Real-time assessment and recording of student educational progress;
- Adaptable content delivery designed to increase interest, time-on-task, and critical thinking using multiple content formats, ranging from multimedia to interactive text to adaptive learning games;
- "Two-way Learning," which allows the educational program to assess student



- performance and adapt content delivery format and pace to meet a student's needs;
- Online collaboration portals, which harness the positive aspects of social networking for use in the school environment for group projects and teamwork exercises.

The benefits of these interactive and adaptable online educational tools include: (1) enhanced student productivity and engagement due to individualized pacing and content format; (2) more efficient use of class time and school resources; (3) increased access to learning tools for students and teachers; and (4) greater information on student educational progress allowing teachers and parents to recognize and address learning challenges earlier.

Additionally, our members have developed web-based systems that integrate student learning and assessment platforms with teacher grade books and educational progress portfolios. While each student receives individually targeted learning games or assessments, the teacher receives a detailed report about each student's educational challenges and achievements that could not be gathered in a time-efficient manner by the teacher alone. Hence, our members' educational products are providing teachers with better information about student learning and more time and resources to develop customized class instruction. Therefore, it is essential that teachers continue to have access our members educational products and services.

### **Recommended Actions**

**AAP supports the Commission's intentions of updating the rule to reflect changes in technology, and we also hope that the Commission will acknowledge the positive uses of technology in education, pioneered by our members. Therefore, AAP respectfully proposes the Commission either preserve FAQs #54 and #55 in an amendment to the text of the Final Rule or in a formal industry guidance document. AAP believes this action is necessary given the nature of our members' online educational products and services and because these tools are designed to improve America's school systems.**

To be sure, our members' educational tools are collecting data from children. However, as explained above, this data is used to provide students with content that suits their interests and skill level in order to increase engagement with programs and achievement of learning goals. Furthermore, the earlier overview of the nature of our members' online educational products and services clearly articulates the additional beneficial uses of these tools for parents, teachers, and administrators.


Moreover, the fact that our members' customized learning tools are used by virtually every school district in America evidences not only the demand for these tools, but more importantly, the acceptance of our members' products and services as safe and education-oriented—not exploitative or threatening to children 12 and under. Thus, even though

these tools are created by commercial enterprises, our members' online educational products and services are not like other websites "operated for a commercial purpose." Instead, over the past decade, our members have invested billions of dollars in developing and delivering tools that help American students reach their true intellectual potential.

Therefore, AAP believes that the Commission's adoption of either of our proposed actions—preserving FAQs #54 and #55 in an amendment to the text of the Final Rule or in a formal industry guidance document—would not only be consistent with the purpose of COPPA, but would also support the reinvigoration of America's educational system.

AAP looks forward to assisting the Commission in whatever way it can to achieve continued implementation of COPPA without jeopardizing the opportunities for children to fully benefit from online educational programs.

Respectfully Submitted,

  
Jay Diskey, Executive Director  
AAP School Division

*\*AAP thanks legal intern Rachel Fertig (George Mason Law School) for her assistance preparing this document.*