



December 21, 2011

Federal Trade Commission
Office of the Secretary
Room H-113 (Annex E)
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: COPPA Rule Review, 16 CFR Part 312, Project No. P-104503

The Marketing Research Association (MRA) hereby submits these comments in response to the proposed amendments to the COPPA rules.

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A. Introduction

MRA respectfully submits these comments in response to the Federal Trade Commission's ("the Commission") request for comment on the proposed amendments to the Children's Online Privacy Protection Act (COPPA).

B. Survey and Opinion Research

MRA, a non-profit national membership association, is the leading and largest association of the survey and opinion research profession. MRA promotes, advocates and protects the integrity of the research profession and strives to improve research participation and quality.

The research profession is a multi-billion dollar driver of the worldwide economy, comprised of pollsters and government, public opinion, academic and goods and services researchers, whose companies and organizations range from large multinational corporations to small or even one-person businesses. In fact, U.S. government entities like the Commission are, as a group, the single largest purchaser/user of research from the survey and opinion research profession.

Survey and opinion research is the scientific process of gathering, measuring and analyzing public opinion and behavior. On behalf of their clients – including the government (the world’s largest purchaser), media, political campaigns, and commercial and non-profit entities -- researchers design studies and collect and analyze data from small but statistically-balanced samples of the public.¹ Researchers seek to determine the public’s opinion regarding products, services, issues, candidates and other topics. Such information is used to develop new products, improve services, and inform policy.

C. Background

COPPA applies to: (1) operators of commercial websites or online services “directed to children” under 13 that collect personal information from children; and (2) operators of general audience sites that knowingly collect personal information from children under 13.

MRA’s biggest concern before the release of the proposed amendments was the age threshold, a key target of many activists. The Commission thankfully did not propose raising the age threshold from under 13 to under 18. COPPA requirements would be less effective for minors 13 or older – in fact, enforcement would likely have been either overboard or impossible. It would likely have required age verification of every single Internet user in order to verify the true identity of every user. Moreover, the constitutional concerns about free speech rights remain the same as they did when COPPA was first written.

MRA has for years recommended to survey and opinion researchers, as a best practice, that they aim to apply the COPPA principles to research interactions with anyone under the age of majority, whether online or offline. In some cases, parental notification and consent may be feasible and sensible for a research interaction with a teenager – in others, not so much. The key point of such encouragement is to leave the researchers the flexibility to determine how best to meet such goals and in what context.

D. Dismantling the sliding scale

In the original COPPA rule, the Commission set a sliding scale approach to the practice of collecting information from children. Information that the website operator would keep for internal purposes is subject to less meticulous consent methods than information subject to external distribution to the public or a third party. Internal purposes would allow verifiable parental consent to be obtained through the use of an e-mail message to the parent, coupled with additional steps to provide assurances that the person providing the consent is, in fact, the parent (e.g., sending a delayed confirmatory e-mail to the parent after receiving consent or obtaining a postal address or telephone number from the parent and confirming the parent’s consent by letter or telephone call).

¹ A “sample” is a subset of a population from which data is collected to be used in estimating parameters of the total population.

The Commission has proposed to revoke this so-called “email plus” provision, saying that it has “outlived its usefulness and should no longer be a recognized approach to parental consent.” The Commission believes that “continued reliance on email plus has inhibited the development of more reliable methods of obtaining verifiable parental consent. In fact, the Commission notes that few, if any, new methods for obtaining parental consent have emerged since the sliding scale was last extended in 2006.”

Compliance with this proposal would certainly be a jarring and costly adjustment for the research profession. It is not clear to MRA why the Commission believes that “email plus” explains the lack of new reliable consent verification methods. Online identity verification is not at all easy. The research profession grapples with this problem more broadly every day, in attempting to ensure the veracity of participants in online research panels. “Email plus” happens to be the most effective and affordable approach for parental consent verification at this time and it is not clear that simply rescinding that option will automatically result in greater and better ones coming along.

Moreover, the proposal to allow verification through the collection of government-issued identification or social security numbers sounds helpful, but MRA has serious reservations about the mixed message the proposal sends to consumers and businesses. At the same time as consumers and businesses are rightly being told to limit the collection and use of such sensitive information, the Commission proposes to have consumers submit it in a wide variety of contexts over likely insecure channels.

E. Data security expectations

As the Commission notes, “COPPA already requires operators to establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children.” COPPA also requires operators to state in their online privacy policies if third parties that might receive covered data have “agreed to maintain the confidentiality, security, and integrity of the personal information they obtain from the operator.”

Now, the Commission is proposing that, “an operator must take reasonable measures to ensure that any service provider or third party to whom it releases children’s personal information has in place reasonable procedures to protect the confidentiality, security, and integrity of such personal information. This provision is intended to address security issues surrounding business-to-business releases of data.”

Very little research, whether conducted in person, over the phone, or online, is or can be conducted entirely within a single organization. Although no personally identifiable data is shared with the clients requesting a study without the consent of the research participants, identifiable data must be transferred between various companies involved in conducting the study in order to complete the work. The average research study requires multiple organizations that divide the labor: one company is hired by a client to conduct a study and it contracts with others to get the study completed.

For instance, one company might do the recruitment of research participants or provide the “sample”, another would collect the data, yet another might translate any responses from foreign languages, one more would process and analyze the data – all before the original hired company turns the study results (presenting aggregate de-identified data) into a report for the client.

So, such sharing is essential to research operations. Thus, vouching for third-parties’ data security would be required regularly for any researchers involved in research with children. It is unclear that such a standard could be easily met. MRA suspects that, while large companies may be able to verify and approve the data security procedures of their partners and service providers, smaller organizations will not. At best, self-regulatory organizations could serve as independent arbiters and auditors. However, MRA is concerned that this proposal could too easily lead to the Commission or some other federal entity being charged with making such determinations and micromanaging data security processes and procedures for all research organizations.

F. Data minimization

The proposed amendments stipulate that, “operators shall retain children’s personal information for only as long as is reasonably necessary to fulfill the purpose for which the information was collected... [and] an operator must delete such information by taking reasonable measures to protect against unauthorized access to, or use of, the information in connection with its deletion.”

As a broad principle, not collecting or maintaining more data than necessary to fulfill a given purpose makes sense. However, data collection limits and retention periods specifically directed by the FTC could be intensely problematic. Within various modes and methods of data collection, and across many different purposes, the need to collect and retain data will vary, and should be properly subject to those needs, not an arbitrary decision by a regulatory body unfamiliar with the processes and practices of those modes, methods and purposes.

As a broad principle, not collecting or maintaining more data than necessary to fulfill a certain purpose makes sense. However, data retention periods specifically set by the FTC could be quite problematic for research. Within various modes and methods of survey and opinion research, the need to retain data will vary, and should be properly subject to those needs, not an arbitrary decision by a regulatory body unfamiliar with the processes and practices of research. Additionally, a major objective of research is to understand attitudes, behaviors and opinions over-time. The collection and analysis of this information often leads to new theories over time, requiring the re-visiting of older data. Because of this, prescribed retention periods would diminish the long-term value of data collected for research purposes.

MRA would thus be concerned about the FTC setting time constraints without being familiar with the processes and practices of all businesses that would be impacted by their

implementation, including the many processes and practices of survey and opinion research.

MRA hopes that the Commission will similarly heed the concerns of Congress on this issue. During the July 20 markup of H.R. 2577, the “SAFE Data Act”, the Energy & Commerce Subcommittee on Commerce, Manufacturing and Trade approved an amendment from Representatives Cliff Stearns and Mike Pompeo that would prevent FTC rulemaking authority on the data minimization provisions in the Act.

G. Conclusion

Survey and opinion researchers already encounter significant public apathy with respect to research participation. Research “response” rates have been falling for the last couple of decades, driving up the cost of and time involved in achieving the required number and strata of participants to reach viable representative samples for most research studies. That always informs MRA’s approach to any new regulatory impediments to research: that the problems identified above will make it harder to reach and involve research participants, increase non-response bias and adversely impact the accuracy of research results.²

MRA and the whole survey and opinion research profession stand ready to work with you in pursuit of our common goal: protection of children and respect for their parents. For the reasons illuminated in this comment, MRA respectfully requests the Commission to reconsider the three changes proposed to COPPA.

Sincerely,

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² This wouldn’t just impede bona fide survey and opinion research. It would ultimately result in higher costs for research – costs which would be passed on to the individuals the Commission is trying to protect, in the form of: higher prices for goods and services; lengthier time before new or better goods and services are brought to the marketplace; delayed introduction of new or better public policies; and a decreased amount of research ordered by companies, who might then bring less well-tested and researched products and services to market, harming consumers in the end because the goods and services did not fulfill consumer expectations or needs.