

December 15, 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

**Dear Federal Trade Commission –**

Imagine that you're a parent of a 7<sup>th</sup> grader. Your daughter is young for her grade; her birthday is in May. In her school, everyone plays by the rules. It's December and half of her grade has joined Facebook and Twitter and Skype. They're chatting away as the younger tweens are excluded. The exclusion your daughter faces – were it to be happening face-to-face – might be colloquially labeled 'bullying'. But, in the world of social media, it is one of the unintended consequences of the Children's Online Privacy Protection Act (COPPA).

COPPA was never intended to cleave peer groups in half around their age. It was never intended to prompt technology companies to throw up their hands and make their services 13+. It was never intended to imply a maturity rating. It was never intended to discourage startups from innovating for the under-13 market. Yet, these are just a few of the unintended consequences of how COPPA has played out over the last decade.

My name is danah boyd and I am a senior researcher at Microsoft Research, a research assistant professor at New York University, and a fellow at Harvard's Berkman Center for Internet and Society. Both Microsoft Research and the MacArthur Foundation fund my research. While these roles and relationships influence my thinking, I am not writing to you on behalf of any of these institutions nor do my comments necessarily reflect the interests of any organization with which I am affiliated. Instead, I am writing to you as a scholar who has spent the last decade studying the role that technology plays in the everyday lives of American youth. Through my work, I have examined privacy and publicity, bullying and sexual predation, sexting and human trafficking. I have crisscrossed the United States talking to teens, parents, educators, law enforcement officers, religious leaders, librarians, and youth advocates. I have spent time with youth from a diverse array of racial, ethnic, religious, political, and socio-economic communities. I have surveyed nationally representative samples of parents and I have worked with other scholars to analyze the practices of youth and their families. My goal in doing this work is to better understand the complex ways in which technology and youths' lives intersect. It is from my perspective as a scholar that I want to comment on your current amendments and address the role that you might play in protecting youth, empowering parents, and driving innovation that helps youth.

In my comments, I want to address four issues as they relate to this review period:

1. COPPA has sparked conversations inside families, but those conversations reveal significant confusion about age restrictions, data policies, privacy, and online safety. Media literacy is desperately needed.
2. COPPA hinders valuable innovation, particularly in the digital media and learning space where youth interact across many commercial and non-commercial sites at many ages. New models to empower startups and enable public-private partnerships are especially needed.
3. Not all parents are good actors and COPPA is especially complicated in areas where interventions are needed to address issues stemming from abuse.
4. The “email plus” option, while flawed in many ways, has significant value, particularly for marginalized populations.

As you reflect on the amendments you have proposed for strengthening COPPA, my hope is that you will consider some of the unintended consequences of this statute and the potential side effects of your proposed changes. The goals behind COPPA – protecting children’s privacy and empowering parents – are extremely important and I commend the Federal Trade Commission for your ongoing efforts to combat abuses of children’s data. It is precisely because I believe that you are approaching these issues with the interests of families at heart that I hope that you are willing to hear about some of the unintended consequences. My hope is that the FTC can continue to find and develop innovative ways of protecting youth while also making certain to not create constructs that unintentionally exclude.

### **Media Literacy, Transparency, and an Informed Citizenry**

One of the desired goals of COPPA was to get parents involved in the decision-making process regarding their children’s data. Indeed, many parents have gotten involved, but not always in expected ways. In surveying a nationally representative sample of U.S. parents, my colleagues and I found that three quarters (78%) of all parents believed that it was acceptable for their children to violate age restrictions presented by websites in order to gain access.<sup>1</sup> We learned that parents knew that their children were lying about their age to get access to Facebook, Skype, Gmail, and other major communication services and social media sites. We also learned that parents often helped children circumvent age restrictions. When I interviewed parents about why they allowed their children to gain access underage, I was given different reasons for different types of sites. Most parents allowed their children to get access to email and Skype long before they allowed their children to get access to major social media services. While social media participation was primarily driven by peer interactions, email and Skype were primarily about familial connections. In other words, parents wanted their children to have their own account so that they could talk to grandma and grandpa.

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<sup>1</sup> danah boyd, Eszter Hargittai, Jason Schultz, and John Palfrey. (2011). “Why Parents Help Their Children Lie to Facebook: Unintended Consequences of the ‘Children’s Online Privacy Protection Act’.” *First Monday* 16(11), November. <http://www.uic.edu/htbin/cgiwrap/bin/ojs/index.php/fm/article/view/3850/3075>

In asking parents about these sites' age restrictions, we heard a plethora of different explanations, including concerns about sexual predators, the types of content that might be accessible, and the potentials of bullying. In short, many parents I interviewed and we surveyed perceived the age restrictions as a type of maturity rating. Their attitudes about the appropriateness of these sites and services for their own children ranged, just as their attitudes about PG-13 movies ranged. Overwhelmingly, though, parents wanted their children to have access to the various tools out there and they were willing to allow their children to violate restrictions when they thought access was a desired outcome.

In my research, one of the most striking things I have found is how few parents have any understanding of how data is collected, shared, sold, or used by online sites. Even though many parents have helped their children join a plethora of different services targeted for children and general-purpose audiences, they know little about data practices of these sites. Indeed, I was hard-pressed to find any parent (outside of the safety and privacy community) who even knew that COPPA existed, let alone what it was intended to do. Thus, even when they gave parental permission through the structures provided by COPPA, they had limited understanding of why their permission was required, let alone what they were permitting.

Over a decade in, COPPA has undoubtedly sparked a conversation among technology companies and privacy advocates, but it has done little to get the public involved in understanding the choices that they're making on behalf of their children, whether to enable them to join COPPA-protected sites or to help them circumvent age restrictions on general-purpose sites. This is a shame. In order for COPPA to be effective as a regulatory measure, it is important that parents are better informed about the decisions that they're making. COPPA may limit some of the egregious things that websites can do, but its effectiveness is limited when parents give away consent without understanding the choices they're making.

My request to the FTC is that you help find ways to inform the public about the issues related to children's data and privacy. Creating stricter rules is not enough. Media literacy is necessary for COPPA's efficacy. Legal structures are more powerful when the public is engaged and serving as an additional point of pressure. If one of the goals of COPPA is to empower parents, the FTC should investigate ways to provide meaningful information to the public at large so that they can make more informed decisions.

### **Sparkling Innovation in Digital Media and Learning**

When COPPA was enacted, few imagined that it would stifle innovation. Yet, whenever I talk with entrepreneurs and venture capitalists, COPPA regularly emerges as a regulatory regime that prevents them from entering into the under-13 market. There is little doubt that large companies can take the steps necessary to comply with COPPA should they deem the costs worth it. But for a typical 3-person startup, compliance is both overwhelming and prohibitive. Thus, in a moment in which we are seeing tremendous startup-driven innovation in the technology sector, we are seeing very little that is targeted at or otherwise welcomes the under-13s. The exception here is in the

mobile app space, where the proposed amendments may complicate what little traction is already underway.

As we look towards a networked future, we need innovation that leverages digital media to provide valuable learning opportunities, both in the realm of traditional education as well as in the space of informal learning. Young people need to learn how to responsibly navigate public spaces, including mediated ones. Many of the emergent initiatives intended to drive development in this area – both by the government and by foundations – rely on public-private partnerships to achieve innovation. Yet, public-private partnerships get complicated when COPPA is involved. Public funding agencies are frustrated by COPPA because, although they are exempt, many of their partners are not.

As the FTC considers ways of expanding COPPA's domains to the mobile space and removing the simple email-plus option for compliance, it would be very helpful to have a better understanding of how COPPA affects innovation. More importantly, should it choose to do so, the FTC could play a significant role in working to spark innovation through its decisions. It would be really helpful if the FTC would consider ways in which it can create openings to encourage innovation in this space even while it works to prohibit problematic practices by companies.

### **When Parents are Part of the Problem**

COPPA assumes that parents are good actors who should always be empowered when it comes to their children's online activities. For the majority of families, this is a sensible approach. Yet, it is also important to recognize that not all children live in households where parents play a positive role. Through my research, I have encountered countless youth whose homes are riddled with addiction, abuse, and mental health issues. In my work on domestic human trafficking and the commercial sexual exploitation of children in the United States, one of the most heartbreaking things that I've learned is how often it is parents or other family members who serve as a child's first pimp. In an ideal world, social services would step in and help such youth, but this is not always what happens. Furthermore, just because a child is in the foster care system does not mean that they are free from abusive adults.

Young people turn to the internet for information, support, and help. Nowhere is this more notable than when it involves children who are facing serious issues at home. In many highly publicized cases, young people have turned to social media to express their pain and seek help. Much is needed to identify children who are hurting in order to help them. This presents unique challenges for those wishing to minimize data about children for privacy purposes. To what degree does "actual knowledge" get in the way of helping at-risk youth? It also creates new complications when we consider what data parents should have the right to review or when parents should be notified.

In talking with organizations looking to develop online services that can help address at-risk youth, I was startled to learn how often COPPA emerged as a concern. I have heard concerns from people who wanted to develop systems within the context of commercial

hospitals and from those who are trying to leverage public-private partnerships. Even when organizations are exempt from COPPA, they are often ill equipped to know and are fearful of the consequences. It's clear that many individuals and organizations struggle to make sense of what their responsibility is and how to comply, particularly when they are not structured as a large technology company.

With an eye to the internet and, more importantly, the mobile space, it would be helpful if the FTC would consider situations in which there is a legitimate interest in providing a waiver or a similar process to help entities that are trying to innovate ways to help at-risk youth. Likewise, it would be helpful if the FTC could consider situations in which companies can and should collect certain data in order to be prepared to address at-risk situations, such as those where suicide may be a possible outcome. Needless to say, it's not particularly tenable to create an anti-suicide program or build services directed at trafficked youth where parent permission is required. Sometimes these programs are built by non-profit organizations, but there is also a need to involve commercial actors in helping address at-risk youth.

### **Underserved and Marginalized Communities**

In considering whether or not to do away with “email plus,” the Commission focuses on the ways in which this form of parental consent can be properly verified. There is no doubt that an innovative child could easily create multiple email addresses to give the appearance of verification, just as that same child could fill out a form and mail it in. Yet, in surveying parents about Facebook – arguably the site in which current children would most likely try to usurp parental control in order to get access – my colleagues and I found that parents tended to be very aware of their underage child's participation on the site. Indeed, there is little data to suggest that millions of children are sneaking behind their parents' backs in order to circumvent age restrictions.

The removal of “email plus” has other consequences. Many of the other forms of parental consent create a financial burden on families. Not all American parents have access to credit cards and even something as simple as a stamp can be a burden on a low-income household. Millions of children access the internet primarily from public places like school libraries, afterschool programs, and youth centers. When companies require proof of identity – such as a scan of a driver's license – there is an assumption that all parents in the U.S. are documented and can provide such information. Yet, we know that millions of people in this country are undocumented, including parents of child citizens.

Other forms of parental consent place significant burdens on companies. For example, maintaining a toll-free phone line requires significant financial commitment, both for the phone line and for the staff to support it. While this is tenable for a large corporation, it is impossible for a new startup.

Email-plus is popular, both because it's easy for companies and because it's easy for families. It is not foolproof, but no parental verification mechanism is. Thus, this decision rests on a cost-benefit analysis. Taking away the email-plus option presumes

that enough children are circumventing this barrier – and would not circumvent other barriers – to make the extra burden on families and companies worth the trade-off. None of my data suggests that this is the case. It would be very helpful to understand the data that has led the FTC to believe that this is the right trade-off.

## **Conclusion**

Protecting children’s privacy is of critical social importance. The FTC has the hard task of making sure that this goal is met while also balancing other social, cultural, and economic interests. In doing so, it is important to think about populations that don’t fit into the imagined perfect family. Likewise, while most public attention on issues like COPPA centers on large social media services and major companies, it’s imperative to think about the implications that these decisions have on the cycle of innovation and development, particularly in spaces like digital media and learning.

There is no perfect solution that cleanly balances these issues. All I know is that, from the perspective of a youth scholar, COPPA appears to be producing all sorts of unintended consequences that are complicating children’s lives and resulting in parents helping children undermine restrictions in order to help their children gain access to contemporary communications services and social spaces. Likewise, as a member of the digital media and learning community, I’m regularly struck by how COPPA frightens entrepreneurs enough to stifle innovation. The study that my colleagues and I conducted on how parents approach age restrictions is only one small contribution, intended to help understand some of the unintended consequences of COPPA. My hope is that the FTC will more deeply examine how your decisions affect marginalized populations and the cycle of innovation. Likewise, my hope is that the FTC will develop new mechanisms to engage and inform the public so that they can be helpful in this process. In order to protect children, we need as many people involved as possible.

I’m grateful for the opportunity to comment on your proposed revisions. I hope that my insights and research provide fruitful fodder for discussion. I wish you the best in tackling these hard issues. If there is any way in which I can be of service, please don’t hesitate to contact me.

Sincerely,

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danah boyd