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Federal Trade Commission
Office of the Secretary
Room H-135 (Annex E)
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

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Re: COPPA Rule Review, 16 CFR Part 312, Project No. P104503

Greetings:

The Federal Trade Commission (“Commission”) asked for public comment on its implementation of the Children’s Online Privacy Protection Act (“COPPA”), 15 U.S.C. §§ 6501-6508, through the Children’s Online Privacy Protection Rule (“COPPA Rule”). The FTC seeks public comment on:

- Amendments to definitions in § 312.2;
- Amendments to provisions in § 312.4 on notice;
- Amendments to provisions in § 312.5 parental consent;
- Revisions to § 312.8 on confidentiality, security, and integrity of personal information collected from children;
- Revisions to § 312.10 on data retention and deletion requirements; and
- Revisions to § 312.11 on safe harbor programs.

I write to submit comments to these revisions in my own capacity as a consumer advocate and data privacy attorney devoted to consumer protection, technology, and online child safety.

Executive Summary

- The minor revisions to 16 CFR § 312.8 leave this provision vague and open to broad interpretation. It offers website operators little guidance on specific steps or minimum standards they should take to protect and reasonably ensure the confidentiality, security, and integrity of personal information collected from children under 13. The Commission should offer website operators more specific direction.

- Any revisions to § 312.8 should also require commercial website operators to notify parents whenever the confidentiality, security, and integrity of personal information about child users is compromised.
- The revisions to 16 CFR § 312.4 do little to improve the way website operators inform parents on how personal information about their children will be used online. Notices generally remain long, vague, and difficult to understand. The Commission should take this opportunity to simplify parental notices.
- Overall, the enhancements to the COPPA Rule are a step in the right direction. But much remains to be done. A more appropriate model would require general audience website operators that appeal to a younger age group to make reasonable and diligent efforts to determine if a child is registering or posting personal information online, taking into consideration available technology.

COPPA Rule Review Comment

16 CFR § 312.8. Confidentiality, security, and integrity of personal information collected from children.

The revisions to 16 CFR § 312.8 leave this provision vague and open to broad interpretation. It offers website operators little guidance on specific steps or minimum standards they should take to protect and reasonably ensure the confidentiality, security, and integrity of personal information collected from children under 13. Data security is critical to protecting children online. And we know more today about minimum IT controls than we did when COPPA was first enacted. Security trends and standards throughout the health and financial sectors suggest that risk-based approaches, taking into account the size and scope of an operation, are achievable, affordable, and appropriate to protecting consumer data.

For these reasons, the Commission should offer more specific direction here. For example, when collecting personal information about children, website operators should be required to:

- Develop written procedures as part of a comprehensive information security program that contains administrative, technical, and physical controls
- Encrypt of all personal information about children stored on laptops or other portable devices.
- Encrypt of all transmitted personal information about children that will travel across public networks, and encryption of all data containing personal information to be transmitted wirelessly.
- Educate and train of all employees and independent agents or consultants on the proper use of computer systems containing personal information about children.
- Prevent terminated employees from accessing systems or records containing personal information about children.

- Reasonably monitor systems for spotting unauthorized access or uses within the network.
- Require third party services providers with access to systems with data about children to contractually agree to implement and maintain appropriate security measures to protect personal information.

Data breach notification. Any revisions to § 312.8 should also require commercial website operators to notify parents whenever the confidentiality, security, and integrity of personal information about child users is compromised. Without it, parents remain unable to protect their children when unauthorized access or disclosures occur, especially if a child's personal information lands in the hands of registered sex offenders or other online predators. This is critical to motivating website operators to implement the right controls.

16 CFR § 312.4. Notice.

The revisions to 16 CFR § 312.4 does little to improve the way website operators inform parents how personal information about their children will be used online. Notices generally remain long, vague, and difficult to understand. With over 10 years since COPPA went into effect, parents are still unclear about its existence or its intended goals to protect children online. In fact, recent studies suggest that parents don't know why children under 13 are banned from certain websites, and, thus, often help their children circumvent outdated age-gate restrictions on popular websites.¹

The Commission should take this opportunity to simplify parental notices. It should develop a model COPPA privacy notice form to make privacy disclosures to parents more readable and understandable. This form can build on the Commission's efforts to create a model privacy notice for financial institutions subject to the Gramm-Leach-Bliley Act. Under this proposal, use of the form would be voluntary, and operators that elect to use it would obtain a legal safe harbor under the COPPA Rule.

16 CFR Part 312.

Overall, the other revisions to the COPPA Rule are a step in the right direction. But much remains to be done. Arguably, these well-intended proposals are making regulatory improvements to an "abandoned house," since COPPA is a law few website operators ever have to follow. The reason is that few website operators are directed solely to an audience under 13, and the ones that appeal to this age group need not comply with COPPA's notice-and-consent requirements thanks to easy-to-circumvent age gates.

¹ dana boyd, "Why parents help their children lie to Facebook about age: Unintended consequences of the Children's Online Privacy Protection Act," <http://www.uic.edu/htbin/cgiwrap/bin/ojs/index.php/fm/article/view/3850/3075> (last visited on December 23, 2011)

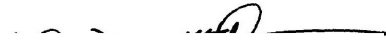
A more appropriate model would require general audience website operators that appeal to a younger age group to make reasonable and diligent efforts to determine if a child is registering or posting personal information online, taking into consideration available technology. For certain popular social networking websites, a more proactive effort to educate parents about COPPA, its requirements, and its intended goals would go a long way in achieving compliance and protecting kids online.

Conclusion

To close, I applaud the Commission's decision to review the COPPA Rule. The proposed regulatory revisions — particularly those on auditing safe harbor programs — will help protect personal information about children online in years to come. I extend my thanks to the Commission for all that it does to protect consumers and children online. Through its leadership and enforcement efforts, the Internet continues to grow into a better place for the global community to enjoy.

If I can help in any way, please let me know.

Respectfully submitted,



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