



United States of America  
FEDERAL TRADE COMMISSION  
WASHINGTON, DC 20580

Office of Commissioner Ohlhausen

**TO: Don Clark**  
**FROM: Anna Davis**  
**DATE: October 24, 2012**  
**RE: COPPA Rule: Meeting Notes to go on Public Record**

On October 24, 2012, a meeting to discuss the COPPA Rulemaking was held in room 540.

**Attendees from outside the Federal Trade Commission**

Laura Moy: Georgetown Law Staff Attorney – Institute for Public Representation  
Jeff Chester: Center for Digital Democracy  
Alan Simpson: Common Sense Media  
Joy Spencer: Center for Digital Democracy  
David Jacobs: Electronic Privacy Information Center

**Attendees from the Federal Trade Commission**

Anna Davis: Attorney Advisor – Commissioner Ohlhausen’s office  
Pablo Zylberglait: Attorney Advisor – Commissioner Ohlhausen’s office  
Sarah Bamford: Intern – Commissioner Ohlhausen’s office  
Ashley Nummer: Intern – Commissioner Ohlhausen’s office  
Marianne Watts: Office of General Counsel

**Chester:** COPPA was passed by a bipartisan Congress at the request of the FTC. It has been a large success.

- But practices in the online data collection industry have changed
- Support proposal for COPPA coverage of: persistent identifiers, geolocation, photos of children.
- Law written to be flexible to take into account future changes. What’s happening in the industry now is not unexpected.

**Simpson:** Industry advocates believe that parents should be responsible for what their children are doing online. Education is an essential part of the equation (for parents, kids, etc.) We agree and the law is designed to keep parents in charge.

**Jacobs:** We understand that the FTC is trying to balance the interests of everyone involved, especially given the emergence of behavioral advertising.

**Moy:** All of our groups agree that inclusion of persistent identifiers is critical.

- One-on-one marketing sends information to individual children and devices.
- The information sent is not anonymous, at best it is pseudonymous.
- Support bringing this under the purview of COPPA.

**Davis:** Commissioner Ohlhausen has concerns about holding third parties liable for the actions of first parties.

**Simpson:** An ecosystem has been created where first parties and third parties share information and all benefit from each other. Because of this, all should share responsibility for complying with COPPA. First parties and third parties are passing the ball around for responsibility – first parties say that they aren't collecting personal information; third parties say they don't know where they are installed. The players in this ecosystem are complaining about how hard it is to manage, but it is much harder for parents who aren't technologists.

**Jacobs:** Competing conceptions of fairness are involved here. Third-party operators are claiming that it is unfair because they don't know how their software will be used. Compared to the parent, however, the burden should lie on the operator because operators at least know who is incorporated in their site. The "knows or reason to know" standard strikes the right balance.

**Moy:** COPPA was designed so that parents would have one place to go to give consent. The current ecosystem creates a huge loophole for third party plug-ins. That's why we need to make sure such third parties keep in compliance.

**Chester:** The online world involves an exchange and mingling of a large number of 1st and 3rd party operators -- a "data syndicated environment." It no longer matters where you are, but who you are, because people can be followed everywhere. At the same time, we have entered a period of transparency and accountability for advertisers who have incentives to ensure their placement on particular sites to make sure their brand is safe.

**Zylberglait:** If the standard is "reason to know or knowledge" why do publishers have a disincentive to know?

**Moy:** The rule now applies only to online services that are child-directed. In the current system, everyone has incentives to look the other way due to the knowledge standard. Parents should be able to send a letter to the FTC to provide notice that there is data collection occurring on a child-directed site by a third party.

Publishers are also using tools to control what ads are showing on their sites.

- Provided the example that advertisements for ED are not seen on websites like Disney and Nickelodeon

**Chester:** Major publishers are increasingly using private exchanges to avoid giving access to their data to third party ad networks.

**Simpson:** Frustrated that there hasn't been enough innovation on protecting data, only on collecting it. Also want operators to do more to educate parents. Child-directed sites should work to develop trust with parents before they can expect to market to their kids. Disney is a model of building trust with parents.

- Fundamentally disagrees that COPPA will stunt innovation for kids.