

**From:** Zylberglait, Pablo  
**To:** Clark, Donald S.

Don,

Today at 2pm, Commissioner Ohlhausen met with Morgan Reed, Executive Director of the Association for Competitive Technology (“ACT”). Also present at the meeting were Marianne Watts (OGC), Ashley Nummer (our legal intern), and yours truly.

During the meeting, Mr. Reed informed us that the proposed revisions to the COPPA Rule would affect a subset of his members that is composed of parents who develop applications for educational purposes. He explained that these parents use the applications as a tool to teach and are not necessarily in it for the money. They generally do not serve banner ads. These apps are downloaded mostly by parents and are aimed specifically at children under the age of 13. He explained that the proposed “reason to know” standard is very problematic because app stores like Apple iTunes curate these apps and are likely to ban them to avoid liability.

Mr. Reed also explained that although staff’s notice mentions that the affected parties may be 125, he believes that the actual number would be much higher (there are 75,000 educational apps in the iTunes store). There would also be significant issues related to the collection of IP address or device IDs. Plug-in developers may ban their distribution to apps aimed at children. Mr. Reed argued that the responsibility for COPPA compliance should start with the app developers themselves. But he also said that developers should be able to rely on truthful information obtained from plug-in developers. He thinks that it is easier to judge liability by examining the behavior of upstream developers. He fears that under the current proposals 3d party toolmakers will ban kids’ apps and developers may ignore COPPA altogether by downloading the plug-ins anyway.

Also with regard to the proposed changes, Mr. Reed suggested that developers should be granted safe harbor for relying on devices’ own controls, and owned up to his group’s responsibility to educate users. He argued that the FTC should be able to pursue efforts to circumvent device controls. He also said that he hopes that “directed to” does not trump age-gating for third parties. Mr. Reed also compared the notice’s estimated \$10,000 legal compliance costs with the estimated \$5,000 in revenues per app.

Please let me know if you have any questions or need any additional information.

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