



UNITED STATES OF AMERICA  
**Federal Trade Commission**

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**Remarks of Commissioner Noah Joshua Phillips<sup>1</sup>**

**The Future of the COPPA Rule  
FTC Staff Workshop**

**Washington, D.C.  
October 7, 2019**

Good morning and welcome back. I am pleased to see such a level of interest in the future of the COPPA Rule. Stakeholder participation is a hallmark of the FTC rulemaking process and your involvement is crucial. In 1998, Senator Richard Bryan recognized that the remarkable consensus the Senate and House had achieved on the COPPA legislation was due to the input of a broad range of stakeholders, noting that revisions to the original bill “were worked out carefully with the participation of the marketing and online industries, the Federal Trade Commission, privacy groups, and first amendment organizations”.<sup>2</sup>

Senator Bryan explained the goals of the legislation: to enhance parental involvement in children’s online activities to protect both their privacy and safety; to maintain the security of the personally identifiable information collected from children online; and to protect children’s privacy by limiting the collection of

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<sup>1</sup> The remarks I give today are my own and do not necessarily reflect the views of the Federal Trade Commission or any of my fellow Commissioners.

<sup>2</sup> 144 CONG. REC. S11,657 (daily ed. Oct. 7, 1998) (statement of Sen. Bryan).

personal information from children without their parent's consent.<sup>3</sup> He also recognized that the interest in protecting children online was not without bounds, pointing out that “[t]he legislation accomplishes these goals in a manner that preserves the interactivity of children's experience on the Internet and preserves children's access to information in this rich and valuable medium”.<sup>4</sup>

Senator Bryan's remarks highlight an important concept: the American privacy framework is built upon identifying risks and then designing a solution that balances competing interests. That requires evaluating the sensitivity of the information involved and the potential harms that would result from its collection, use or disclosure, and then creating a solution that will limit these harms while still allowing appropriate use of even sensitive information. With COPPA, rather than trying to protect children by limiting their experience on the Internet, Congress instead created a comprehensive, yet flexible, framework to protect both children's privacy and their ability to access interactive content on the Internet.

Our American privacy framework recognizes the tradeoffs at issue in the privacy debate, balancing privacy interests with innovation and competition, and protecting most the data considered to pose the greatest risk if shared or otherwise misused. This approach – like any other – is not infallible, and re-evaluation and recalibration may, at times, be warranted in light of changed circumstances. Nevertheless, our risk-based framework has permitted innovation, competition and economic growth for decades.

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

In 1998, when Congress enacted COPPA, technology looked quite different. At that time, a major concern was that children were providing their personal information through website registration forms and surveys, or posting contact information on “electronic bulletin boards”. Unlike the phone ringing or the mail carrier arriving, parents could not observe these communications. The first three cases the FTC brought under the COPPA Rule are illustrative. The Girlslife.com website targeted girls aged 9 to 14, and offered features such as online articles and advice columns, contests, and pen-pal opportunities.<sup>5</sup> Partnering with BigMailbox.com and Looksmart, the Girlslife website also offered children free email accounts and online message boards. In these three cases, the FTC alleged that the defendants each collected children’s full names and home addresses, email addresses and telephone numbers. None of these websites posted privacy policies that complied with COPPA or obtained the required consent from parents before collecting this information.

In 1998, social networks, smartphones, geolocation, and static IP addresses were barely on the horizon. However, by 2010, the FTC recognized that changes to the online environment, including children’s use of mobile technology to access the Internet, warranted another look at whether the Rule was sufficient.<sup>6</sup>

In December 2012, after a thorough notice and comment process, the FTC announced amendments to the COPPA Rule, which addressed changes to the

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<sup>5</sup> FTC Press Release, *FTC Announces Settlements with Web Sites That Collected Children’s Personal Data Without Parental Permission* (Apr. 19, 2001), <https://www.ftc.gov/news-events/press-releases/2001/04/ftc-announces-settlements-web-sites-collected-childrens-personal>.

<sup>6</sup> Request for Public Comment on the Federal Trade Commission’s Implementation of the Children’s Online Privacy Protection Rule, 75 Fed. Reg. 17,089 (Apr. 5, 2010).

technology landscape.<sup>7</sup> Among other things, the amended Rule updated the definition of personal information to include geolocation information, as well as photos, videos, and audio files that contain a child's image or voice. The amended Rule was expanded to cover persistent identifiers that can recognize users over time and across different websites and online services, such as IP addresses and mobile device IDs. The amendments also made clear that the COPPA Rule covered child-directed sites or services that integrate outside services, such as plug-ins or advertising networks, that collect personal information from its visitors. In addition, the amendments also clarified that if plug-ins or ad networks have actual knowledge that they are collecting personal information from a child-directed website or online service, they must also comply with the Rule.

As we consider whether the COPPA Rule needs further amendment, I would make three recommendations. First, in contemplating changes, we must keep in mind the original congressional intent behind COPPA. It would be easy to stray from that mandate, and to substitute our own preferences for that of the legislature. Technology has evolved in ways unimaginable in 1998, but we need to ensure that any amendments to the Rule are grounded in congressional intent.

Second, any rulemaking must be grounded in facts, and supported by data and empirical evidence, rather than predicated on unsupported fear or speculation.

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<sup>7</sup> Children's Online Privacy Protection Rule, 78 Fed. Reg. 3,972 (Jan. 17, 2013); See also FTC Press Release, *FTC Strengthens Kids' Privacy, Gives Parents Greater Control Over Their Information By Amending Childrens Online Privacy Protection Rule* (Dec. 19, 2012), <https://www.ftc.gov/news-events/press-releases/2012/12/ftc-strengthens-kids-privacy-gives-parents-greater-control-over>.

Just because we are talking about privacy – or kids – more regulation is not necessarily better, including for kids.

Finally, we should focus on the impact that conduct being (or to be) regulated actually has, and in particular whether it causes harm. There are those who would tell you that we need to avoid using personal data at all costs, especially when it comes to children. Our children are indeed precious and technology can present risks; which makes it is easy to scare all of us who care about them. But not all risks are the same and not all harms are the same. The ability of a strange person to contact a child is not the same as an advertisement appearing when the child is watching a show. What is more, focusing entirely on the possibility of harm and discounting completely the potential promise of technologies seems the wrong course to me. Our approach should be one of taking care, of children and data. For example, e-learning platforms can use data to support teachers, students, and parents by creating customized lesson plans or dynamically focusing on areas an individual student finds challenging. However, to do that, they may need to use personal data.

As much as a child's interest in online content – or TV – may sometimes frustrate me as a parent (and oh boy does it), there's great value in entertainment – and the advertising that pays for it.

COPPA is about empowering parents and protecting kids. We should keep that in mind. In doing, we should balance the risks, and help children, parents, and educators understand them. We should recognize where data support new

technologies that can be important public goods. We should allow rulemaking to reflect the thoughtful process in which we all are engaged today.

Thank you very much for your time and, again, I appreciate your participation in this process.