

**Before the
FEDERAL TRADE COMMISSION
Washington, D.C. 20580**

**COMMENTS OF
NICKELODEON
ON THE
CHILDREN'S ONLINE PRIVACY PROTECTION RULE
COPPA RULE REVIEW 2005
PROJECT NO. P054505**

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I. Introduction and Summary

Nickelodeon is pleased to respond to the Federal Trade Commission's ("FTC" or "Commission") request for comments in connection with its review and evaluation of the Rule implementing the Children's Online Privacy Protection Act of 1998, 15 U.S.C. §§ 6501 *et seq.*, ("COPPA" or "the Act"); 70 Fed. Reg. 21107, April 22, 2005.

In connection with its statutorily mandated five-year review of the implementation of COPPA, the Commission requests comments on the costs and benefits of the Rule; whether the Rule should be retained, eliminated, or modified; and the Rule's effect on:

- practices relating to the collection and disclosure of information relating to children;
- children's ability to obtain access to information of their choice online; and
- the availability of web sites directed to children.

Nickelodeon appreciates this opportunity to provide the Commission with these comments highlighting our experiences with the Rule and, more generally, our practices relating to information collection relating to children. The experience of the past five years has demonstrated that COPPA has been effective and successful in protecting the privacy of children online. The Act and Rule protect privacy while allowing vibrant children's offerings. During the five years in which COPPA has been in effect, Nickelodeon has received virtually no complaints from parents about our practices in connection with collecting information from children online. For these reasons, we believe that the entire Rule should be retained in its current form. The ability to use COPPA's "e-mail exceptions" to parental consent has enabled us to offer meaningful children's content and preserve the interactivity of the medium, while still protecting privacy. Moreover, although not part of our current business model, we have explored the use of the "e-mail plus" approach to consent under the sliding scale mechanism, which we believe could enable us to offer additional meaningful content for children in a safe

environment. We believe that the sliding scale approach strikes the right balance between protecting children's privacy and offering a cost-effective means for obtaining parental consent.

We set forth below our practices and experiences related to the collection and use of children's information online to provide concrete examples of how the current balance struck in COPPA guides behavior in a way that works well for children, parents, and online children's sites, as well as to respond to some of the specific questions that the Commission raises in its proposal. Specifically our comments focus on:

- Our offerings and activities;
- Use of the "e-mail exceptions" to parental consent;
- Support for making permanent the sliding scale mechanism for obtaining parental consent;
- The definition of Web sites directed at children; and
- The interpretation of the term "actual knowledge."

II. Background

Nickelodeon is a business unit of MTV Networks, which is owned by Viacom International Inc. Nickelodeon is a global entertainment brand with businesses in programming, production, consumer products, online, recreation, publishing, and feature films. All feature Nickelodeon's enormously popular program franchises, including *Rugrats*, *Blue's Clues*, *Dora the Explorer*, and *SpongeBob SquarePants*. Nickelodeon's online business, Nickelodeon Online, is the leading portfolio of children's and parents' destinations, featuring Nick.com and NickJr.com. Nickelodeon is committed to helping protect the safety of children online, empowering parents to exercise greater control over their children's online experiences, and preserving the unique interactivity of the medium. Nickelodeon actively has been involved in the Commission's implementation of COPPA over the past five years, including submitting comments in all of the various proceedings (either individually or through participation in our

trade associations and coalitions), as well as having participated in the Commission's workshop on this topic in 1999. Our flagship Web site, Nick.com, whose primary audience is children ages 6-14, is a place where children and fans of Nickelodeon can come to enjoy content that is both educational and entertaining in a forum that is designed for younger audiences. Among the activities we offer for children at Nick.com are games, contests, e-cards, jokes, horoscopes, polls, and a place where children can express their opinions on various topics.

Nickelodeon also has created a site for parents of pre-school children, NickJr.com, at which we offer parent-directed activities and content, including parenting advice, cooking and traveling tips, as well as printables, games, e-cards, and crafts that parents can use with their preschoolers. In addition, there is a special area of the NickJr.com site, the Playtime area, which is intended for preschoolers and their parents. This area includes games, stories, music, art, shows, and other activities, the design, content, and language of which are targeted to preschoolers.

III. Practices related to the collection and use of children's information at Nick.com

A. Content that does not require collection of any personally identifiable information

Nick.com's policy is to create Web site content that requires minimal collection of personally identifiable information from our visitors. Generally, Nick.com limits collection of information from children to what is known as non-personally identifiable information (*e.g.* screen name, birthday, gender, state, zip code). This information is collected so children may participate in activities (*e.g.*, chat with celebrities, post messages, play online games) in an interactive fashion. For example, at Nick.com, children can become part of the Nick Community by registering and creating a non-personally identifiable "NickName" and password. Registration allows children to participate in message boards, affording them the opportunity to express their opinions on various topics. Content submitted for posting on the Nick message

boards is filtered through a trained moderator, and posts are scrubbed of any personally identifiable information and/or inappropriate content prior to posting. In addition, through the use of a NickName, we are able to offer children personalized content (*e.g.*, weather forecasts and daily horoscopes), as well as interactivity (*e.g.*, kids can submit jokes, which we will attribute to the child's NickName; they can swap e-collectibles like digital trading cards; and they can play multi-player games). Moreover, registration affords children with the opportunity to earn points for their participation in the various activities on our site, allowing them to land their NickName on the high score list.

Nick.com visitors also can express their opinions through various polls in which children can vote without providing any personally identifiable information. In addition, kids can submit questions to the site through our use of a Web-based form that asks them to submit their first name only, which we may use for attribution purposes if the question is selected for posting.

Similarly, we employ a policy of collecting minimal information from our visitors to the Playtime area on NickJr.com, which is the portion of our site where parents can enjoy online entertainment together with their preschool-aged children. Consistent with this policy, the Playtime area of NickJr.com limits the collection of information from children to non-personally identifiable information (*e.g.*, first name).

However, some of our interactive features require collection of personally identifiable information, and we next provide examples of how the COPPA Rule strikes an appropriate balance for these activities.

B. Use of COPPA's "e-mail exceptions"

In those instances where we do collect personally identifiable information, collection is limited to e-mail address only, and our activities fall within the COPPA e-mail exceptions to parental consent. Recognizing the importance of preserving interactivity at children's Web sites and ensuring the continued availability of many popular online activities for children, including contests, online newsletters, and electronic postcards, COPPA includes several exceptions that allow Web sites to collect a child's e-mail address without obtaining the parent's consent in advance. These exceptions often are referred to as the "e-mail exceptions." Among the e-mail exceptions, prior parental consent is not required when:

- (1) an operator collects an e-mail address to respond to a *one-time* request from a child and then deletes it; and
- (2) an operator collects an e-mail address to respond *more than once to a specific* request. In this case, the operator must notify the parent that it is communicating regularly with the child and give the parent the opportunity to stop the communication before sending or delivering a second communication to the child.

We use both of these exceptions to enable us to provide children's content. For example, using the first exception described above, we provide children with the opportunity to send electronic postcards featuring Nickelodeon characters or original artwork to family or friends, as well as to participate in contests and sweepstakes, limiting personally identifiable information collection in both instances to e-mail address only. Consistent with the requirements under the Rule, we do not use the e-mail addresses for any purpose other than to fulfill the child's request, we take steps to protect the security of the information for the limited time during which we maintain it, and the information is then promptly deleted.

In addition, using the second exception described above, Nick.com offers children the opportunity to sign up to receive the Nick.com newsletter by e-mail. When a child asks to

receive our e-mail newsletter, we, in turn, ask the child to provide his or her first name, e-mail address, and the e-mail address of his or her parent, which we use to provide the requisite parental notice and opt-out to enable us to fulfill a subscription requiring multiple contacts with the child. These exceptions have been extremely useful and afford us with the ability to provide meaningful children's content.

C. Additional practices aimed at protecting the privacy of children online

Nickelodeon also undertakes additional measures above and beyond those required by COPPA that are designed to help protect the privacy of children visitors, as well as to educate children about the issues raised by collection of personally identifiable information online.

Among these measures, Nickelodeon displays "bumper pages" to inform children that they are leaving the Nick.com Web site to visit another site.¹ In addition, we use kid-friendly language and reminders not to provide personally identifiable information online. For example, on the Nick message board "NickName" sign-up/registration, we remind children not to use their real names or provide any personal information. This practice, combined with our above-described practice of pre-screening posts prior to posting, together act as a double layer of protection for children's privacy. Similarly, the bumper pages between Web sites remind children to "always check with your parents before you give information online and never give out your full-name, phone number, or address on the Internet because that stuff is yours and it's private!!!" In addition, we take steps to remind and encourage parents to regularly check and monitor their children's use of e-mail and other online activities.

¹ We also provide bumper pages at certain points in the Playtime area of our site to let users know when they are entering an area that is limited to parents. In addition, we provide bumper pages when linking from the Playtime area to an advertiser's site or other websites, which may have their own information practices that are different from ours, to let users know that they are leaving our site.

Nick.com also offers parents and their children an online safety guide, which we encourage parents to use as an entrée into discussing safety and privacy concerns with their children. See <<<http://www.nick.com/blab/safety/index.jhtml>>>. Topics include personal information, passwords, Web addresses, cookies, and downloading. For example, the cartoon on the “Cow-fidential Information” page reminds children not to give out personal information over the computer: “chatting online is just like talking to strangers (except online, you can’t even SEE them!).”

Finally, recognizing the important role of self-regulation in protecting children’s privacy, we participate in the BBB*OnLine* privacy and children’s privacy seal program. The BBB*OnLine* Privacy Kid’s seal requirements are based upon the guidelines of the Council of Better Business Bureaus’ Children’s Advertising Review Unit, the Online Privacy Alliance, and COPPA.

IV. The Commission should make permanent the sliding scale approach for obtaining verifiable parental consent

In January 2005, the Commission requested comments on whether its “sliding scale” approach to parental consent should sunset as scheduled on April 21, 2005, or be made permanent.² We incorporate by reference the comments filed by the Motion Picture Association of America (“MPAA”), of which we are an affiliated member, on the effectiveness of the sliding

² Under the sliding scale approach, the requirements to obtain consent vary based on the way the operator uses the child’s personal information. For instance, if the operator discloses the information to others—or enables the child to disclose information to others via an e-mail account, chat room, message board, or other means—then a very reliable method of consent is required because the situation potentially presents danger to children. Methods of obtaining parental consent that satisfy this “very reliable” standard include getting a signed form from the parent via postal mail or fax; accepting and verifying a credit card number; taking calls from parents through a toll-free number staffed by trained personnel; and receiving an e-mail that is accompanied by a digital signature. If, on the other hand, the personal information “collected” from the child will be used only by the operator for internal purposes, then a less rigorous method of consent is required (*e.g.* through a delayed confirmatory e-mail, referred to as “e-mail plus”).

scale.³ See MPAA Comments in Project No. P054503 (re: COPPA), Feb. 14, 2005. In the context of the current, larger Rule review, the Commission has determined that it would be useful to obtain additional data or comments on this issue.

We strongly support the sliding scale and the continued ability to use e-mail plus as a mechanism for obtaining parental consent for internal uses of children’s information. Under COPPA, operators may use “any reasonable effort (taking into consideration available technology) . . . to ensure that a parent of a child . . . authorizes the collection, use and disclosure” of personal information from a child. 15 U.S.C. § 6501(9). We currently do not use this aspect of the Rule, but believe that it is necessary for situations in which operators’ business models involve collection of more than an e-mail address.

In Nickelodeon’s experience, the penetration of verification technologies has not changed in a way that alters the Commission’s reasoning at the time of issuing the regulations. Nickelodeon believes that the sliding scale approach strikes the appropriate balance between protecting children’s privacy and offering cost-effective means for obtaining parental consent. We have explored the use of the e-mail plus mechanism under the sliding scale, and believe it offers great promise for providing additional children’s content. Making the sliding scale permanent would provide us with the necessary regulatory certainty to begin to offer new activities and offerings directed to children. For these reasons, we strongly support the FTC’s proposal to make the sliding scale permanent.

³ Nickelodeon is an affiliate of Paramount Pictures Corporation, which is a member of the MPAA.

V. The factors used to determine whether a site is directed to children are clear

The Commission also has requested comment on the current standard for determining whether a site is directed at children. This standard takes into account subject matter, language, whether the site uses animated characters, how the site represents itself to advertisers, and empirical evidence regarding the ages of the site's visitors. Nickelodeon believes that the current standard works well. Nickelodeon is familiar with these established standards from our experience in television, radio, and print advertising, and believe that they provide meaningful guidance. In addition, consistent with the factor analysis set forth in the commentary to the Rule, we believe that looking at the overall character of the site, rather than just the presence or absence of one or more factors, provides helpful guidance in determining whether the site is directed at children, and thus whether in collecting personally identifiable information, the site's activities trigger the requirements of COPPA. As an example, in the Playtime area of the NickJr.com Web site, the subject matter, language, graphics, activities, and information collection practices, among other factors, taken together, distinguish this portion of the site from the rest of the site, which is directed to parents. By contrast, the "look and feel" of the rest of the site, including the information and features, etc., are targeted to parents. The factors used to determine whether a site is directed to children provide clear and practical guidance to Web sites with respect their application.

VI. The definition of actual knowledge provides a clear framework for compliance

The Commission also requests comment on whether the definition of the term "actual knowledge" is sufficiently clear. The definition of this term is of particular importance as it determines whether a Web site's activities are subject to COPPA's requirements. Although this term is not explicitly defined in the Rule, we believe that the FTC pronouncements on the issue

provide meaningful guidance, enabling general audience Web sites to determine whether their information collection practices provide them with the requisite knowledge for triggering COPPA. Specifically, the Commission's guidance clarifying that asking for age or date of birth information or similar questions through which the Web site would learn the ages of specific visitors, provides clear criteria for Web sites to determine their obligations. For these reasons, we believe that no additional clarification of the term "actual knowledge" is needed.

VII. The use of a credit card should continue to be endorsed by the Commission as a method for obtaining verifiable parental consent

The Commission requests comments on whether the use of a credit card in connection with a transaction should continue to be endorsed as among the acceptable methods of obtaining verifiable parental consent. The Rule currently allows Web sites to use credit cards in connection with a transaction among the more reliable methods of consent for disclosures of information to third parties. Nickelodeon believes that this mechanism is a reasonable means of verifying that the person providing consent is the child's parent, and should continue to be among the available options.

The Commission also requests comments on the marketing of credit and debit to children. Nickelodeon is unaware of any such marketing practices and, thus, cannot comment on this point. In our experience, credit cards are issued to individuals over 18 years of age. In the unlikely instances where such cards could be issued to someone under 18, the cards presumably are tied to a parent account that is responsible for those financial charges. Thus, the use of a credit card signifies an enforceable contract, a premise which is key to the continued development of e-commerce at Web sites. Nickelodeon currently uses credit cards at the Nick.com Shop and the Nick Arcade in connection with purchases, and relies on the presence of

a credit card as a means of confirming that we are collecting personally identifiable information from an adult, rather than a child. Nothing in our experience suggests that this practice raises any concerns. The Commission should, therefore, continue to endorse this method to avoid an inadvertent adverse impact on commerce at Web sites.

VIII. Conclusion

Nickelodeon appreciates the opportunity to provide comments on this Notice of Proposed Rulemaking. The positive experience of the last five years since the Rule's inception shows that the Rule is working well and should be continued in its current form. Just as we have done in the past, we look forward to continuing to work with the Commission on protecting the privacy of children online.