



# Implementing the Children's Online Privacy Protection Act

A Report to Congress

Federal Trade Commission  
February 2007

## Federal Trade Commission

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## **I. EXECUTIVE SUMMARY**

In 1998, Congress enacted the Children’s Online Privacy Protection Act (“COPPA” or “the Act”) to address privacy and safety risks created when children under 13 years of age (“children”) use the Internet. To protect children, the Act imposes requirements on operators of websites or online services directed to children, and other operators with actual knowledge that they have collected personal information from children. The Act generally mandates that such operators must provide notice of their privacy policies; obtain verifiable parental consent prior to collecting personal information from children; allow parents to review and delete personal information that their children have provided; and establish and maintain reasonable procedures to protect the security of personal information collected from children.

The Act required the Federal Trade Commission (“Commission,” “FTC,” or “agency”) to promulgate a rule implementing COPPA. In 1999, the Commission issued its Children’s Online Privacy Protection Rule (“COPPA Rule” or “the Rule”), which closely tracks the language and requirements of the Act. The Rule became effective in April 2000.

Both the Act and the Rule mandate that the Commission commence, within five years of the Rule’s effective date, a review of the Rule’s effectiveness that addresses the effect of COPPA’s implementation on practices relating to the collection, use, and disclosure of information from children online, children’s ability to obtain access to online information of their choice, and the availability of websites directed to children. The Commission is required to submit a report to Congress setting forth the results of its review. This report fulfills that requirement.

The FTC commenced this mandatory review of the Rule in 2005, along with its periodic regulatory review to determine whether the Rule should be modified. Based on the information the Commission received during this review, and its extensive experience in enforcing the Rule, the FTC concludes:

- No changes to the Act or Rule are necessary at this time.
- The Act and the Rule have been effective in helping to protect the privacy and safety of young children online. The proliferation of general audience websites, however, that may appeal to younger audiences, highlights the need for supplemental solutions, such as age verification technologies, that can provide additional measures of security for children as they increasingly engage in online activities.
- The Commission should continue law enforcement efforts by targeting significant violations and seeking increasingly larger civil penalties, when appropriate, to deter unlawful conduct.

- The FTC’s substantial, ongoing, commitment to business education has facilitated voluntary compliance with the Rule within the online industry.
- COPPA’s innovative approach of allowing a “safe harbor” from law enforcement action for website operators that comply with a Commission-approved COPPA self-regulatory program has been a cost-effective means of promoting Rule compliance.
- The Commission should continue to educate consumers, including parents and children, about privacy and security risks online generally, and about COPPA specifically, to increase awareness of these risks and actions that consumers can take to decrease them.
- The Act and the Rule do not appear to have adversely affected the number of websites directed to children or the ability of children to access online information of their choice.
- The agency’s approach thus far has proven effective in applying the flexible standards of the COPPA Rule to new online services, such as social networking sites. Education and enforcement challenges may present themselves, however, as, for example, the means by which children access the Internet increasingly move from stand-alone computers to mobile devices.

The FTC believes that its integrated program of rulemaking, law enforcement, and outreach to businesses and consumers during the Rule’s first five years has encouraged a culture of privacy and safety without imposing undue costs on website operators. The Commission expects that its approach to COPPA can continue to provide these protections, even in the dynamic online environment. The Commission recognizes that the online environment changes rapidly in response to technological change, and that the agency must respond accordingly and in a timely fashion. The FTC will remain vigilant in monitoring technological and other developments to ensure that the Rule continues to provide robust protections for children without imposing undue costs.

## **II. THE GOALS OF COPPA**

### **A. Congress’s Enactment of COPPA**

Congress enacted COPPA following an extensive Commission effort to identify and educate industry and the public about issues concerning the online collection of personal information from children and adults. In both June 1996 and June 1997, the Commission held

public workshops to learn how the rapidly developing online marketplace was affecting consumers' privacy.<sup>1</sup>

In March 1998, the Commission conducted an extensive survey of more than 1,400 commercial websites, including 212 sites that appeared to be directed at children and teens under 16. The goal of the survey was to learn the extent to which site operators were disclosing their information practices, and, with regard to the children- and teen-directed sites, the extent to which they were providing parents with notice of, and obtaining parents' consent to, the collection, use, and disclosure of their children's personal information. The Commission reported the results of its survey to Congress in June 1998 and recommended that Congress enact legislation to protect children's online privacy.<sup>2</sup>

Congress enacted COPPA<sup>3</sup> in 1998 to prohibit unfair or deceptive acts or practices in connection with the collection, use, or disclosure of personal information from children under 13 on the Internet, with widespread support from industry and consumer groups. The stated goals of the Act are: (1) to enhance parental involvement in their children's online activities in order to protect children's privacy in the online environment; (2) to protect the safety of children at places in the online environment such as chat rooms, home pages, email accounts, and bulletin boards in which children may make public postings of identifying information; (3) to maintain the security of children's personal information collected online; and (4) to limit the collection of personal information from children without parental consent.<sup>4</sup>

As enacted, COPPA contains requirements that provide parents with the right to control their children's personal information on the Internet. The Act contains a general requirement that operators of websites or online services directed to children obtain verifiable parental consent prior to collecting, using, or disclosing children's personal information.<sup>5</sup>

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<sup>1</sup> More information about the 1996 and 1997 privacy workshops are available at [www.ftc.gov/privacy/privacyinitiatives/promises\\_wkshp.html](http://www.ftc.gov/privacy/privacyinitiatives/promises_wkshp.html).

<sup>2</sup> FTC, *Privacy: A Report to Congress*, June 1998, available at [www.ftc.gov/reports/privacy3/priv-23a.pdf](http://www.ftc.gov/reports/privacy3/priv-23a.pdf).

<sup>3</sup> 15 U.S.C. §§ 6501-6508.

<sup>4</sup> 144 Cong. Rec. S12741 (Oct. 7, 1998) (Statement of Sen. Bryan).

<sup>5</sup> Narrow exceptions to the Act's general notice and consent requirements permit operators to collect a child's or a parent's name or email address to facilitate such notice and consent; to allow limited communication between operators and children; and to protect themselves or their visitors in specific instances. 15 U.S.C. § 6503(b)(2).

The Act also requires operators to post prominent links on their websites to a notice of how they collect and use personal information from children.<sup>6</sup> In most circumstances, the Act requires operators to notify parents directly that they wish to collect personal information from the parents' children. In addition, the Act requires operators to give parents the opportunity to review and delete any personal information provided by their children and prevent further collection of information from their children.<sup>7</sup>

COPPA prohibits operators from conditioning a child's participation in online activities on providing more information than is reasonably necessary to participate in those activities.<sup>8</sup> This provision was intended to prevent operators from using games and activities, such as contests or clubs, as a means of obtaining copious amounts of children's personal information. The Act further requires operators to establish procedures to protect the confidentiality, security, and integrity of the personal information they collect online from children.<sup>9</sup>

In addition, the Act established a "safe harbor" for participants in Commission-approved COPPA self-regulatory programs.<sup>10</sup> The goal of the safe harbor provision is to provide flexibility and promote efficiency in complying with the Act's substantive provisions by encouraging industry members or groups to develop their own COPPA oversight programs.<sup>11</sup> Operators that participate in a COPPA safe harbor program will, in most circumstances, be subject to the review and disciplinary procedures provided in those guidelines in lieu of formal FTC investigation and law enforcement.

## **B. The Commission's Issuance of the Rule**

To implement COPPA's provisions, the Act mandated that the Commission issue rules prohibiting unfair and deceptive acts and practices in connection with the collection, use, and disclosure of personal information from and about children online. The Commission published its proposed Rule for public comment in April 1999.<sup>12</sup> The Commission received 147 comments on a broad range of issues, many of which contained suggestions that the Commission

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<sup>6</sup> *See id.* § 6502(b)(1)(A)(i).

<sup>7</sup> *See id.* § 6502(b)(1)(B).

<sup>8</sup> *See id.* § 6502(b)(1)(C).

<sup>9</sup> *See id.* § 6502(b)(1)(D).

<sup>10</sup> *See id.* § 6503.

<sup>11</sup> 64 *Fed. Reg.* 59888, 59906 (Nov. 3, 1999).

<sup>12</sup> 64 *Fed. Reg.* 22750 (Apr. 27, 1999).

incorporated into its final Rule.<sup>13</sup> The Commission published the final Rule on November 3, 1999<sup>14</sup> and it became effective on April 21, 2000.<sup>15</sup>

The Rule imposes requirements on operators of websites or online services directed to children under 13 years of age or that have actual knowledge that they are collecting personal information online from such children (collectively, “operators”).<sup>16</sup> The Rule’s key provisions require operators to provide notice of their information practices to parents and to obtain “verifiable parental consent” prior to collecting, using, or disclosing personal information from children under 13. As set forth in the Rule, “verifiable parental consent” means that the consent method is reasonably calculated, in light of available technology, to ensure that the person providing consent is the child’s parent.<sup>17</sup> The Rule also sets forth a sliding scale approach to obtaining verifiable parental consent based upon the risks posed by the intended uses of the child’s information.<sup>18</sup>

COPPA authorizes the FTC to enforce the COPPA Rule in the same manner as rules prohibiting unfair and deceptive acts or practices promulgated by the Commission under Section 18(a)(1)(B) of the Federal Trade Commission Act (“the FTC Act”).<sup>19</sup> This permits the FTC to obtain civil penalties against those who violate the COPPA Rule. COPPA further authorizes state attorneys general to enforce compliance with the Rule by filing actions in federal court with written notice to the Commission.<sup>20</sup>

To implement the Act and the Rule, the Commission has engaged in rulemaking, law enforcement, and consumer and business education. Since the COPPA Rule became effective in 2000, the Commission has brought twelve law enforcement actions, including eleven civil

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<sup>13</sup> The comments are available at [www.ftc.gov/privacy/comments/index.html](http://www.ftc.gov/privacy/comments/index.html).

<sup>14</sup> 64 *Fed. Reg.* 59888.

<sup>15</sup> 16 C.F.R. Part 312.

<sup>16</sup> *See id.* § 312.3.

<sup>17</sup> *See id.* § 312.5(b)(1).

<sup>18</sup> *See id.* § 312.5(b)(2).

<sup>19</sup> 15 U.S.C. §§ 6503(c), 6506(a), 6506(d); 15 U.S.C. § 41 *et seq.*, § 57a(a)(1)(B).

<sup>20</sup> 15 U.S.C. § 6505. The Commission has not been notified of any state actions to enforce COPPA.

penalty actions, against those who were alleged to have violated the Rule.<sup>21</sup> The FTC and its staff also continually engage in extensive outreach to businesses and consumers to foster knowledge of and compliance with the Rule and to help parents protect their children in the online environment.<sup>22</sup>

### III. ANALYSIS OF THE FTC'S ACTIVITIES IMPLEMENTING COPPA

#### A. COPPA Rule Review

##### 1. Rule Review Requirements

Congress directed the Commission to commence a proceeding to review the Rule's implementation of the Act within five years of its effective date, *i.e.*, April 21, 2005.<sup>23</sup> In particular, COPPA mandates that the FTC's review address the Rule's effect on three issues: (1) operators' practices as they relate to the collection, use, and disclosure of children's information; (2) children's ability to obtain access to online information of their choice; and (3) the availability of websites directed to children.<sup>24</sup> COPPA further mandates that the Commission prepare and submit a report to Congress on the results of this review.<sup>25</sup> The Commission incorporated these statutory review requirements into Section 312.11 of the Rule.<sup>26</sup>

In general, the Commission also periodically reviews each of its rules and guides to determine whether it should be retained, modified, or rescinded in light of changes in the marketplace.<sup>27</sup> In reviewing each rule, the Commission considers a variety of regulatory issues, including the costs and benefits of the rule; whether the rule conflicts with any other laws or

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<sup>21</sup> Press releases about the cases and copies of the pleadings are available at [www.ftc.gov/privacy/privacyinitiatives/childrens\\_enf.html](http://www.ftc.gov/privacy/privacyinitiatives/childrens_enf.html).

<sup>22</sup> See, e.g., the Commission's COPPA education and guidance materials, *available at* [www.ftc.gov/privacy/privacyinitiatives/childrens\\_educ.html](http://www.ftc.gov/privacy/privacyinitiatives/childrens_educ.html), and information about the staff's 2000 compliance workshops for website operators, *available at* [www.ftc.gov/bcp/conline/edcams/kidzprivacy/workshop.htm](http://www.ftc.gov/bcp/conline/edcams/kidzprivacy/workshop.htm); [www.ftc.gov/bcp/conline/edcams/kidzprivacy/workshop111500.htm](http://www.ftc.gov/bcp/conline/edcams/kidzprivacy/workshop111500.htm); and [www.ftc.gov/opa/2000/08/coppaadvis.htm](http://www.ftc.gov/opa/2000/08/coppaadvis.htm).

<sup>23</sup> 15 U.S.C. § 6506(1).

<sup>24</sup> *Id.*

<sup>25</sup> 15 U.S.C. § 6506(2).

<sup>26</sup> 16 C.F.R. § 312.11.

<sup>27</sup> Operating Manual Chapter 7.5.



regulations; and any effects that technological advancement may have had on the rule. Because of the similarity of the issues to be addressed, the FTC therefore decided to place the Rule on its 2005 regulatory review calendar and address the agency's standard regulatory review questions in the context of the statutorily mandated review described above.<sup>28</sup>

In April 2005, the FTC sought public comment on all aspects of the Rule, including the three questions posed by Congress in COPPA, as well as additional questions about the Rule's application.<sup>29</sup> These questions were designed to elicit information about the particular issues that Congress directed the Commission to evaluate, the general costs and benefits of the Rule, and the effectiveness of each of the Rule's key provisions. The Federal Register Notice ("FRN") further asked about practical issues that may have arisen since the Rule's inception, including whether it is clear how to determine if a website is directed to children, whether age-falsification has become an enforcement problem, and whether the use of credit card transactions remains an acceptable method of obtaining verifiable parental consent. The FRN also repeated a set of questions about the Rule's sliding scale approach to obtaining verifiable parental consent from a January 2005 Notice of Proposed Rulemaking ("NPR")<sup>30</sup> to provide the public with an additional opportunity to comment on that issue.

## **2. Analysis of Costs and Benefits**

In response to the April 2005 FRN and the January 2005 NPR, the Commission received a total of 116 comments from privacy advocates, website operators, parents, teachers, industry groups, and the general public.<sup>31</sup> Commenters uniformly stated that the Rule has succeeded in providing greater protection to children's personal information online, that there is continuing need for the Rule, and that the Rule should be retained. They also agreed that COPPA's requirements have improved operators' information practices concerning children and that they continue to play an important role in protecting children's online safety and privacy. Members of industry emphasized that the Rule provides operators with clear standards to follow, and that the cost of compliance has not been overly burdensome or disproportionate to the Rule's benefits. Website operators and COPPA-approved safe harbors reported that they receive few complaints

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<sup>28</sup> 70 *Fed. Reg.* 2074 (Jan. 12, 2005) (Regulatory Review Calendar), available at [www.ftc.gov/os/2005/01/050107pubcommentsfrn.pdf](http://www.ftc.gov/os/2005/01/050107pubcommentsfrn.pdf).

<sup>29</sup> 70 *Fed. Reg.* 21107 (Apr. 22, 2005), available at [www.ftc.gov/os/2005/04/050420coppacomments.pdf](http://www.ftc.gov/os/2005/04/050420coppacomments.pdf).

<sup>30</sup> 70 *Fed. Reg.* 2580 (Jan. 14, 2005), available at [www.ftc.gov/os/2005/01/050112coppafrn.pdf](http://www.ftc.gov/os/2005/01/050112coppafrn.pdf).

<sup>31</sup> Comments on the January 2005 NPR are available at [www.ftc.gov/os/comments/COPPARulereview/index.htm](http://www.ftc.gov/os/comments/COPPARulereview/index.htm). Comments on the April 2005 FRN are available at [www.ftc.gov/os/comments/COPPA%20Rule%20Ammend/Index.htm](http://www.ftc.gov/os/comments/COPPA%20Rule%20Ammend/Index.htm).

from parents about COPPA compliance. The FTC likewise has received relatively few complaints from parents about the implementation of these standards, and these complaints have consistently diminished in the five years since the Rule was issued.<sup>32</sup> For these reasons, commenters generally favored retaining the Rule without modification.

### **3. Analysis of COPPA Rule Review Factors**

#### **a. Operators' Online Practices Related to Children**

COPPA mandates that the FTC evaluate the Rule's effect on operators' practices as they relate to the collection, use, and disclosure of personally identifiable information from children online. Two operators of major children's websites, and a marketing trade association, discussed how the Rule has affected their information practices concerning children online.<sup>33</sup> The commenters stated that they have developed more innovative ways to offer the interactive online experiences children want without collecting any personal information or collecting very little personal information, such as only an email address. In particular, they identified as useful two of the Rule's exceptions to verifiable parental consent. The first exception lets operators collect a child's email address to respond *once* to a child's specific request.<sup>34</sup> Operators can use this "one-time use" exception for activities ranging from providing homework help to responding to a child's inquiry about when a new product will debut.

The second exception favored by operators for safe interactivity lets them collect the email addresses of a child and a parent to respond multiple times to a child's specific request, such as to subscribe the child to an electronic newsletter.<sup>35</sup> To use this exception, operators must notify the parent of their information practices before contacting the child a second time and give the parent an opportunity to opt out of future contact. The commenters stated that these two exceptions are critical in helping them provide safe, interactive, and fun children's content.

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<sup>32</sup> The FTC collects consumer complaints and inquiries online at [www.ftc.gov](http://www.ftc.gov), and through its Consumer Response Center.

<sup>33</sup> See comments of the Direct Marketing Association, Inc., et al., available at [www.ftc.gov/os/comments/COPPARulereview/516296-00017.pdf](http://www.ftc.gov/os/comments/COPPARulereview/516296-00017.pdf); Nickelodeon, available at [www.ftc.gov/os/comments/COPPARulereview/516296-00018.pdf](http://www.ftc.gov/os/comments/COPPARulereview/516296-00018.pdf); and Time Warner, Inc., available at [www.ftc.gov/os/comments/COPPARulereview/516296-00019.pdf](http://www.ftc.gov/os/comments/COPPARulereview/516296-00019.pdf).

<sup>34</sup> 16 C.F.R. § 312.5(c)(2). Operators using this exception do not need to provide notice of their information practices to parents or obtain parental consent, but they cannot use the email address for any other purpose and must delete it upon responding.

<sup>35</sup> See *id.* § 312.5(c)(3).

The Commission staff's experience with websites directed to children has been consistent with these comments. A review of the top sites that count children under 13 as their primary visitors reveals that many of these sites either avail themselves of one of the two Rule exceptions, or offer activities that do not require the entry of personal information for participation.<sup>36</sup> Recently, children's websites have emerged that offer aspects of the social networking experience, for example, limited chat functions, and greater opportunities for longer term interactivity between users and the site.<sup>37</sup> The Commission staff is reviewing these sites to ensure that they are either properly complying with COPPA in the collection, use or disclosure of children's personal information, or are not collecting, using, or disclosing such information in the first instance.

#### **b. Ability of Children to Access Information Online**

Some commenters addressed how the Rule has affected children's ability to access information online. Most of them stated that the Rule's requirements have struck an appropriate balance between protecting children's personal information online and preserving their ability to access content. Although one commenter stated a concern that COPPA could limit access to educational information, a teacher who commented stressed that children should be able to access educational content without revealing their personal information and, in her experience, COPPA has not impeded her students' access to online educational content. To ensure that children can access educational content at school, the FTC has clarified in educational materials that teachers can act on behalf of parents to provide consent for purposes of COPPA.<sup>38</sup>

#### **c. Availability of Websites and Online Services Directed to Children**

Commenters also submitted anecdotal views concerning the Rule's effect on the availability of websites and online services directed to children. Many commenters indicated that they have been successful in operating popular and viable children's sites since the Rule went into effect.<sup>39</sup>

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<sup>36</sup> See note 40, *infra*.

<sup>37</sup> Social networking is discussed in greater detail in Part IV.A., *infra*.

<sup>38</sup> See *How to Protect Kids' Privacy Online: A Guide for Teachers*, available at [www.ftc.gov/bcp/conline/pubs/online/teachers.htm](http://www.ftc.gov/bcp/conline/pubs/online/teachers.htm).

<sup>39</sup> One commenter noted that some smaller websites directed to children and teenagers closed during the Internet crash of 2000, and posited that the Rule may have been a contributing factor to their demise. The commenter indicated, however, that there remain a host of entertaining websites directed to children, a statement confirmed by the FTC staff's review. See comment of Parry Aftab, Esq., *available at*

Demographic data obtained by the FTC staff reveals a wide range of child-directed websites.<sup>40</sup> As stated in Part III.A.2(a), above, many of these sites offer interactive games and other features that require the input of limited, or no, personal information. In addition, operators appear to be using screen names or other anonymous information to personalize their children's sites so that they may be used in ways similar to general audience sites that collect and disclose personal information, but without the attendant risks.<sup>41</sup> Notwithstanding these offerings, however, there is concern that younger children are visiting more general audience websites, such as social networking sites, that are not intended for their use but nonetheless attract their presence. As discussed below, there is potential for age falsification on general audience websites, as well as liability under COPPA, should these sites obtain actual knowledge that they are collecting, using, or disclosing personal information from children online.

In general, there appears to be little evidence that the Rule has imposed costs disproportionate to its benefits. Commenters stated the opposite was true, that the Rule's benefits far outweighed its costs, although they presented no empirical proof of that outside of their own experiences. In addition, the Rule does not appear to have prevented children from accessing online information of their choice, imposed too much burden on operators of websites, or limited the availability of websites directed to children. These conclusions are consistent with the Commission staff's experience in administering COPPA over its first five years.

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[www.ftc.gov/os/comments/COPPARulereview/516296-00021.htm](http://www.ftc.gov/os/comments/COPPARulereview/516296-00021.htm).

<sup>40</sup> Commission staff obtained Nielsen/NetRatings demographic information of the websites whose audience was comprised of children ages 2-12. Ranked in order of unique audience composition, the top 20 sites for COPPA-covered children for the month of October 2006 were: [psc.disney.go.com/abcnetworks/toondisney/index.html](http://psc.disney.go.com/abcnetworks/toondisney/index.html) (Toon Disney), [www.pokemon.com](http://www.pokemon.com), [www.millsberry.com](http://www.millsberry.com), [www.clubpenguin.com](http://www.clubpenguin.com), [myscene.everythinggirl.com](http://myscene.everythinggirl.com) (Myscene), [www.funbrain.com](http://www.funbrain.com), [play.toontown.com](http://play.toontown.com) (ToonTownOnline), [www.everythinggirl.com](http://www.everythinggirl.com), [pollypocket.everythinggirl.com](http://pollypocket.everythinggirl.com) (Polly!Pocket.com), [home.disney.go.com/tv/index](http://home.disney.go.com/tv/index) (Disney Channel), [www.bratz.com](http://www.bratz.com), [www.lego.com](http://www.lego.com), [barbie.everythinggirl.com](http://barbie.everythinggirl.com) (Barbie), [tv.disney.go.com/jetix](http://tv.disney.go.com/jetix) (Jetix), [www.cartoonnetwork.com](http://www.cartoonnetwork.com), [kids.aol.com](http://kids.aol.com) (AOL Kids), [www.hallpass.com](http://www.hallpass.com), [www.nick.com](http://www.nick.com), [kids.yahoo.com](http://kids.yahoo.com) (Yahooligans!), [www.noggin.com](http://www.noggin.com), and [www.pbskids.org](http://www.pbskids.org).

<sup>41</sup> As noted above, some children's websites, including several listed among those sites with the largest percentage of children ages 2-12, offer social networking-type features (*e.g.*, limited chat functions, ongoing interactivity). The Commission staff will review these sites to determine adherence to COPPA's requirements.

#### **4. Rule Application Issues**

The Commission also sought comment on three practical issues that had arisen since the Rule became effective. These issues included whether it was necessary to clarify how to determine if a website is subject to the Rule; whether age-falsification had become a compliance problem; and whether the use of credit card transactions remained an acceptable method of obtaining verifiable parental consent.

##### **a. Websites Directed to Children**

The Commission received several comments related to determining when a website operator is subject to the Rule. The Rule provides that, in determining whether a website or online service is directed to children, the Commission will consider the overall character of the website and several listed factors.<sup>42</sup> The Rule's Statement of Basis and Purpose states that the Commission, in making its determination, will consider "the overall character of the site – and not just the presence or absence of one or more factors."<sup>43</sup> Commenters representing numerous website operators stated that the language of the Rule and discussion in the Rule's Statement of Basis and Purpose provide effective and clear guidance for determining whether a website is directed to children. After careful review of this standard, the Commission determined it was not necessary to further clarify how to determine if a website is one directed to children, and therefore, automatically subject to the Rule.<sup>44</sup>

##### **b. Age Falsification and Verification**

If a website is not directed to children, the Rule only applies if the operator has "actual knowledge" that it has collected personal information from a child, *i.e.*, by collecting age-related information about the child.<sup>45</sup> The term "actual knowledge" is discussed in the Rule's Statement

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<sup>42</sup> 16 C.F.R. § 312.2. These factors include: subject matter; visual and audio content; age of models; language or other characteristics; advertising appearing on or promoting the site or service; competent and reliable empirical evidence of audience composition; evidence regarding the intended audience; and whether the site uses animated characters or child-oriented activities or incentives. *Id.*

<sup>43</sup> 64 *Fed. Reg.* 59893.

<sup>44</sup> See 71 *Fed. Reg.* 13247 (Mar. 15, 2006), available at [www.ftc.gov/os/2006/03/P054505COPPARuleRetention.pdf](http://www.ftc.gov/os/2006/03/P054505COPPARuleRetention.pdf).

<sup>45</sup> 16 C.F.R. § 312.3; see also *U.S. v. Xanga.com, Inc.*, Civil Action No. 06-CIV-6853(SHS) (S.D.N.Y., filed Sept. 7, 2006) (complaint alleged that, in collecting date of birth information from users who indicated that they were under age 13, operator of a general audience social networking site had requisite "actual knowledge"; \$1 million in civil penalties).

of Basis and Purpose and in later Commission guidance.<sup>46</sup> The Statement of Basis and Purpose explains that a general audience website operator has the requisite actual knowledge if it “learns of a child’s age or grade from the child’s registration or a concerned parent. . . .”<sup>47</sup> An operator may have the requisite knowledge if it asks age, grade, or other age-identifying questions.<sup>48</sup>

Commenters on this issue generally agreed that the term “actual knowledge” is sufficiently well-defined and does not need to be modified. Some commenters expressed concern, however that, children are evading general audience sites’ age screening mechanisms by submitting false age information (*i.e.*, that they are 13 years old or older). Five commenters submitted comments on this issue. Two of these stated that some children do appear to be falsifying their age to register on sites that screen for age, but submitted no empirical evidence showing how frequently age falsification may occur.<sup>49</sup> Two others stated that age falsification is not a problem in practice, especially when operators follow FTC staff guidance described below.<sup>50</sup> One commenter acknowledged that current technology does not provide a practical means to prevent determined children from falsifying their age online.<sup>51</sup>

In the Commission’s experience, general audience websites, especially those designed to appeal to teenagers, have the potential to attract children under the age of 13. As noted in the public comments, however, age verification technologies have not kept pace with other developments, and are not currently available as a substitute for other screening mechanisms. Commission staff, therefore, has devoted significant resources to advising general audience sites that choose to age screen, about “lower-tech” mechanisms that may discourage age falsification. For example, the Commission advises sites to ask for age information in a manner that does not bias the response. A site that has a log-in registration page that only permits a visitor to enter a birth year starting with age 13, or that flags for visitors the fact that children under 13 are not

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<sup>46</sup> See *Actual Knowledge: Not Just for Kids’ Sites*, available at [www.ftc.gov/bcp/online/pubs/alerts/coppabizalrt.htm](http://www.ftc.gov/bcp/online/pubs/alerts/coppabizalrt.htm).

<sup>47</sup> See 64 *Fed. Reg.* 59892.

<sup>48</sup> *Id.*

<sup>49</sup> See comments of Parry Aftab, available at [www.ftc.gov/os/comments/COPPARulereview/516296-00021.htm](http://www.ftc.gov/os/comments/COPPARulereview/516296-00021.htm), and the Washington Legal Foundation, available at [www.ftc.gov/os/comments/COPPARulereview/516296-00027.pdf](http://www.ftc.gov/os/comments/COPPARulereview/516296-00027.pdf).

<sup>50</sup> See comments of the Direct Marketing Association, et al., available at [www.ftc.gov/os/comments/COPPARulereview/516296-00017.pdf](http://www.ftc.gov/os/comments/COPPARulereview/516296-00017.pdf) and Time Warner, Inc., available at [www.ftc.gov/os/comments/COPPARulereview/516296-00019.pdf](http://www.ftc.gov/os/comments/COPPARulereview/516296-00019.pdf).

<sup>51</sup> See comment of the Washington Legal Foundation, note 49, *supra*.

permitted to participate on the site, may invite age falsification. By contrast, a site that allows visitors to enter any date of birth, and does not indicate why it is seeking such information, may be able to more effectively screen out children under age 13.<sup>52</sup> Commission guidance also encourages sites to use tracking mechanisms, such as a session or permanent cookie, to prevent children from back-clicking to change their birth date once they realize that they will be blocked from the site based on their age.<sup>53</sup>

None of these mechanisms is foolproof, however. Continued concerns about children's online safety may prompt the more rapid development of age verification technology. The Commission will monitor closely any such developments, and will update its business guidance accordingly if and when such technology becomes more widespread.

### **c. Use of a Credit Card to Obtain Parental Consent**

Several commenters addressed the use of a credit card transaction to obtain verifiable parental consent. The Rule specifies that operators can verify that the person providing consent is the parent by collecting the parent's credit card number and using it in a transaction.<sup>54</sup> In the April 2005 FRN, the Commission sought comment on this verification method because reports indicated that children may have greater access to their own credit cards than in the past. The majority of commenters on this issue stated that performing a transaction with the parent's credit card remains a reliable verification method because the great majority of children still do not have access to their own credit cards and, even when they do, all cards issued to minors must be linked to a parent's account. The Rule's requirement that the operator perform a transaction with the credit card ensures that parents receive notice of the purported consent when they receive their bill, allowing them to question and withdraw the consent if improperly given.

The Commission determined, as a result of these comments and its own experience in administering the Rule, that no changes to the Rule were necessary on the basis of these issues.<sup>55</sup>

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<sup>52</sup> Note that a site that collects age or grade information during the registration process and fails to screen out children under age 13 or obtain parental consent from such children may be deemed to have the requisite actual knowledge under COPPA. *See U.S. v. Xanga.com, Inc.*, note 78, *infra*.

<sup>53</sup> Frequently Asked Questions about the Children's Online Privacy Protection Rule, Question 39, available at [www.ftc.gov/privacy/coppafaqs](http://www.ftc.gov/privacy/coppafaqs).

<sup>54</sup> 16 C.F.R. § 312.5(b).

<sup>55</sup> 71 *Fed. Reg.* 13247 (Mar. 15, 2006), available at [www.ftc.gov/os/2006/03/P054505COPPARuleRetention.pdf](http://www.ftc.gov/os/2006/03/P054505COPPARuleRetention.pdf).

## 5. The Sliding Scale Approach to Obtaining Verifiable Parental Consent

The Rule provides that “[a]ny method to obtain verifiable parental consent must be reasonably calculated, in light of available technology, to ensure that the person providing consent is the child’s parent.”<sup>56</sup> The Commission held a public workshop during the original COPPA rulemaking to determine what verifiable parental consent technologies are reasonable. The workshop revealed that electronic consent methods more reliable than an email were not widely available or affordable.<sup>57</sup>

To bridge the technological gap, the Commission adopted a sliding scale approach to obtaining verifiable parental consent. In adopting this approach, the FTC balanced the costs imposed by different consent methods against the risks associated with internal and external uses of children’s information.<sup>58</sup> The Commission found that because disclosure of children’s information poses the greatest risk to children, COPPA always requires operators who disclose information to use the articulated more reliable consent methods or their equivalent.<sup>59</sup> However, under the sliding scale approach, operators that keep children’s information internal and do not disclose it publicly or to third parties also can obtain parental consent by a less costly method, *i.e.*, by email with a follow-up contact with the parent to confirm the consent.<sup>60</sup>

When the FTC issued the Rule, it was expected that more reliable electronic consent methods soon would develop.<sup>61</sup> Accordingly, the Commission originally set the sliding scale approach to expire in two years, or April 21, 2002.<sup>62</sup> When the expected progress in available technology did not develop, the Commission extended the sliding scale approach for an

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<sup>56</sup> 16 C.F.R. § 312.5(b)(1).

<sup>57</sup> See press release announcing workshop and transcript thereof, *available at* [www.ftc.gov/opa/1999/06/kidswork.htm](http://www.ftc.gov/opa/1999/06/kidswork.htm) and [www.ftc.gov/privacy/chonlpritranscript.pdf](http://www.ftc.gov/privacy/chonlpritranscript.pdf).

<sup>58</sup> 64 *Fed. Reg.* at 59901-02.

<sup>59</sup> *Id.* Such methods include, but are not limited to: using a print-and-send form that can be faxed or mailed back to the operator; requiring a parent to use a credit card in connection with a transaction; having a parent call a toll-free telephone number staffed by trained personnel; using a digital certificate that uses public key technology; and using email accompanied by a PIN or password obtained through one of the above methods. 16 C.F.R. § 312.5(b)(2).

<sup>60</sup> The follow-up contact can be made by letter, telephone call, or delayed email.

<sup>61</sup> 64 *Fed. Reg.* at 59902.

<sup>62</sup> 16 C.F.R. § 312.5(b)(2).



additional three years, to April 21, 2005.<sup>63</sup> In 2005, with the sliding scale approach again scheduled to expire, the Commission again sought public comment in a Notice of Proposed Rulemaking (“NPR”) on whether to extend the approach again.<sup>64</sup> When the comments indicated continuing public interest in the sliding scale approach, the Commission determined that it would be beneficial to accept additional comments during the approaching Rule review.<sup>65</sup>

Most commenters responding to the January 2005 NPR and the April 2005 FRN agreed that more secure electronic mechanisms and intermediary services for obtaining verifiable parental consent still were not widely available at a reasonable cost.<sup>66</sup> Similarly, most commenters agreed that disclosures of children’s personal information to third parties or publicly, such as in a chatroom or on a social networking site, continued to pose greater risks to children’s safety and privacy than when an operator keeps the information internal. The main concern with making the approach permanent was that children may be able to circumvent parental consent when it is obtained through email, but commenters did not submit any evidence that this was occurring. The FTC weighed the above concerns and determined in March 2006 that use of a sliding scale remained justified. The Commission therefore decided to maintain the sliding scale approach while continuing to monitor technological developments, and to modify the Rule when the necessary electronic consent technology develops.<sup>67</sup>

## **6. The FTC’s Conclusions from the Regulatory Review**

The Commission believes that COPPA and the Rule enhance parental involvement in children’s online activities; help protect children’s privacy and safety online; maintain the security of children’s personal information collected online; and limit the online collection of personal information from children without parental consent. The FTC’s conclusions are based on its Rule review and other rulemakings, as well as its own experiences in administering the Rule and with the evolution of online information practices in general. Consequently, the Commission determined in 2006 to retain the Rule without modification, and the agency believes that no changes to the Rule are needed at this time.

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<sup>63</sup> 67 *Fed. Reg.* 18818 (Apr. 17, 2002).

<sup>64</sup> 70 *Fed. Reg.* 2580 (Jan. 14, 2005).

<sup>65</sup> 70 *Fed. Reg.* 21104 (Apr. 22, 2005).

<sup>66</sup> See 71 *Fed. Reg.* 13247 (Mar. 15, 2006), available at [www.ftc.gov/os/2006/03/P054505COPPARuleRetention.pdf](http://www.ftc.gov/os/2006/03/P054505COPPARuleRetention.pdf).

<sup>67</sup> *Id.*

## B. Law Enforcement

Over the past five years, the FTC has filed eleven civil penalty actions that illustrate different core violations of COPPA and the Rule,<sup>68</sup> and obtained more than \$1.8 million in civil penalties.<sup>69</sup> The FTC began its formal COPPA enforcement activities in 2001 by focusing on children's sites that collected extensive amounts of personal information from children without providing notice to parents and obtaining their consent.<sup>70</sup> On April 21, 2001, the FTC announced its first three COPPA cases. The Commission's complaints alleged that Monarch Services, Inc. and Girls Life, Inc., operators of *GirlsLife.com*; *Bigmailbox.com, Inc.*, and Nolan Quan, operators of *Bigmailbox.com*; and *Looksmart Ltd.*, operator of *Insidetheweb.com*, violated COPPA by collecting personal information such as name, home address, telephone number, and email address from children under 13 years of age without parental consent.<sup>71</sup> To settle the Commission's charges that they violated COPPA, the companies together paid a total of \$100,000 in civil penalties. In addition to requiring the defendants to comply with COPPA in the future, the orders required them to delete all information collected from children in violation of the Rule.

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<sup>68</sup> Press releases concerning each of the cases are available at [www.ftc.gov/privacy/privacyinitiatives/childrens\\_enf.html](http://www.ftc.gov/privacy/privacyinitiatives/childrens_enf.html). In addition, a case brought shortly after the effective date of the Rule included an allegation that the defendants collected personal information from children without obtaining prior parental consent in violation of COPPA, but did not include civil penalties. *See FTC v. Toysmart.com LLC*, No. 00-11341-RGS (D. Mass. filed July 10, 2000, amended July 21, 2000).

<sup>69</sup> Section 5 of the FTC Act sets forth the following factors that the Commission is required to consider in determining an appropriate civil penalty amount in each case: (1) the defendant's degree of culpability; (2) any history by the defendant of prior such conduct; (3) the defendant's ability to pay; (4) the penalty's effect on the defendant's ability to continue to do business; and (5) such other factors as justice may require. A chart listing the cases and their civil penalty amounts is attached to this report as Table 1.

<sup>70</sup> Prior to that time, the FTC staff conducted an online surf of websites directed to children to determine adherence to COPPA's provisions, issuing warning letters to those sites found to have compliance problems. *See* "Web Sites Warned to Comply With Children's Online Privacy Law: FTC Also Works to Educate Children's Sites About Law's Privacy Protections" (July 17, 2000), available at [www.ftc.gov/opa/2000/07/coppacompli.htm](http://www.ftc.gov/opa/2000/07/coppacompli.htm).

<sup>71</sup> *U.S. v. Monarch Services, Inc.*, Civil Action No. AMD 01 CV 1165 (D. Md., filed Apr. 21, 2001) (\$35,000 in civil penalties); *U.S. v. Bigmailbox.com, Inc.*, Civil Action No. 01-606-B (E.D. Va., filed Apr. 21, 2001) (\$35,000 in civil penalties); *U.S. v. Looksmart Ltd.*, Civil Action No. 01-605-A (E.D. Va., filed Apr. 21, 2001) (\$35,000 in civil penalties).

In 2001, the Commission also filed a complaint and consent decree against Lisa Frank, Inc., manufacturer of toys and school supplies, and operator of LisaFrank.com.<sup>72</sup> The company paid \$30,000 in civil penalties to settle charges that it violated the COPPA Rule by collecting personal information such as name, home address, telephone number, and email address from children without providing notice to parents, obtaining prior parental consent, or fully disclosing its information practices in its privacy policy. Furthermore, the FTC's complaint charged Lisa Frank with violating the FTC Act by falsely claiming to require written parental consent for children under 13 to submit personal information.

Since 2001, the Commission has continued to use law enforcement actions to improve compliance with various COPPA requirements for operators of sites, or portions of sites, directed to children and operators of general audience sites that collect personal information from children with actual knowledge that they are under 13. For example, in 2002 the Commission filed complaints and consent decrees against the operators of two general audience websites with specific areas directed to children, American Popcorn Company, operator of Jollytime.com, and The Ohio Art Company, operator of Etch-A-Sketch.com.<sup>73</sup> The FTC's complaints alleged that the operators violated COPPA by collecting personal information such as name, home address, and email address from children without obtaining verifiable parental consent and collecting more personal information than was necessary for their sites' activities. American Popcorn Company and The Ohio Art Company paid \$10,000 and \$35,000 in civil penalties, respectively, to settle the Commission's charges against them.

On February 27, 2003, the Commission filed complaints and consent decrees against two defendants, Hershey Foods Corporation and Mrs. Fields Famous Brands, Inc. The FTC's complaints charged each of the defendants with violating COPPA by failing to obtain verifiable parental consent before collecting personal information such as name, home address, telephone number, and email address from children on the areas of their sites that were directed to children.<sup>74</sup> Hershey agreed to pay \$85,000 in civil penalties to settle the charges against it and Mrs. Fields agreed to pay \$100,000 in civil penalties.

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<sup>72</sup> *U.S. v. Lisa Frank, Inc.*, Civil Action No. 01-1516-A (E.D. Va., filed Oct. 3, 2001) (\$30,000 in civil penalties).

<sup>73</sup> *U.S. v. American Popcorn Co.*, Civil Action No. 02-CV-4008 (N.D. Iowa, filed Feb. 14, 2002) (\$10,000 in civil penalties; also charging operator with violating the FTC Act by falsely stating in its privacy policy that it would notify parents when their children registered and let parents have the registration deleted); *U.S. v. The Ohio Art Company*, Civil Action No. 02-CV-7203 (N.D. Ohio, filed Apr. 22, 2002) (\$35,000 in civil penalties; also charging operator with failing to provide parents with access to their child's information).

<sup>74</sup> *U.S. v. Hershey Foods Corp.*, Civil Action No. 4:CV03-350 (M.D. Penn., filed Feb. 27, 2003) (\$85,000 in civil penalties); *U.S. v. Mrs. Fields Famous Brands, Inc.*, Civil Action No. 2:03 CV205 JTG (D. Utah, filed Feb. 27, 2003) (\$100,000 in civil penalties).

As discussed in Section III.A.3, above, COPPA and the Rule apply not only to operators of sites, or portions of sites, directed to children, but also to operators of general audience sites that have actual knowledge that they are collecting personal information from children under 13.<sup>75</sup> Operators can obtain actual knowledge by collecting age, birthdate, or equivalent information from visitors indicating that they are under 13.<sup>76</sup>

In 2004, the Commission filed its first “actual knowledge” cases against general audience website operators. On February 18, 2004, the Commission filed complaints and consent decrees against UMG Recordings, Inc. and Bonzi Software, Inc. for violating COPPA by collecting personal information such as name, home address, telephone number, and email address from children on their general audience websites with the actual knowledge that they were collecting the information from children.<sup>77</sup> The defendants paid \$450,000 and \$85,000 in civil penalties, respectively, to settle the Commission’s charges against them.

Most recently, on September 7, 2006, the Commission filed its latest civil penalty action for violations of COPPA and the Rule against operators of the social networking website Xanga.com.<sup>78</sup> In its complaint, the Commission alleged that Xanga’s operators collected, maintained, and disclosed the personal information of over one million children under 13 by creating over 1.7 million separate online accounts for those children on its general audience website. The Commission’s settlement requires Xanga’s operators to comply with the Rule, delete all personal information collected in violation of the Rule, and pay civil penalties of one million dollars (\$1,000,000), the largest civil penalty amount obtained by the Commission in a COPPA Rule violation case.

The Commission is committed to continuing its vigilance in protecting the online privacy and safety of children by bringing law enforcement actions when warranted and in the public interest. Even when privacy violations fall outside the bounds of COPPA and the Rule, the

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<sup>75</sup> 15 U.S.C. § 6503(a)(1); 16 C.F.R. § 312.3.

<sup>76</sup> 16 C.F.R. § 312.3; *see also Actual Knowledge: Not Just for Kids’ Sites*, available at [www.ftc.gov/bcp/online/pubs/alerts/coppabizalrt.htm](http://www.ftc.gov/bcp/online/pubs/alerts/coppabizalrt.htm). Operators also may obtain actual knowledge, among other ways, through monitoring the site or by being notified by a parent or other person that a visitor who has provided information is a child.

<sup>77</sup> *U.S. v. UMG Recordings, Inc.*, Civil Action No. CV-04-1050 (C.D. Cal., filed Feb. 18, 2004) (\$400,000 in civil penalties; failure to notify parents and obtain consent); *U.S. v. Bonzi Software, Inc.*, Civil Action No. CV-04-1048 (C.D. Cal., filed Feb. 18, 2004) (\$75,000 in civil penalties; failure to notify parents and obtain consent).

<sup>78</sup> *U.S. v. Xanga.com, Inc.*, Civil Action No. 06-CIV-6853(SHS) (S.D.N.Y., filed Sept. 7, 2006) (\$1 million in civil penalties; failure to notify parents and obtain consent).

agency may bring law enforcement actions to address deceptive or unfair business acts or practices under Section 5 of the FTC Act.<sup>79</sup>

### C. Consumer and Business Education

Although law enforcement is a critical part of the Commission's COPPA program, enforcement alone cannot accomplish all of the agency's goals in administering COPPA and the Rule. A crucial complement to the Commission's formal law enforcement efforts, therefore, is educating consumers and businesses about their rights and responsibilities under the law. The FTC's business outreach goals focus broadly on shaping prospective practices rather than on penalizing individual past acts. By promoting consumer and business education, the Commission seeks to help the online community create a culture that protects online privacy. The FTC's COPPA outreach efforts include issuing publications; devoting significant resources to assisting website operators with Rule compliance; holding public compliance seminars for industry; and tracking consumer complaints and providing information to the public through the Commission's Consumer Response Center.

Since COPPA was enacted, the Commission has issued a broad range of compliance and educational materials to help industry and the public understand COPPA and the Rule. These materials provide basic information about the Rule's requirements, including who must comply, what "personal information" is, what parents and teachers should look for in a privacy notice, and how the FTC enforces the Rule. Free copies of any FTC educational materials are available online or by calling the Commission's Consumer Response Center toll-free number.<sup>80</sup> The Commission also has created a special Children's Privacy area on the [www.ftc.gov](http://www.ftc.gov) site to provide a centralized online location to disseminate information about COPPA.<sup>81</sup> This area links to all of the FTC's COPPA educational, enforcement, and other materials. The FTC encourages corporations, organizations, and others with an interest in protecting children's online privacy to

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<sup>79</sup> See, e.g., the Commission's first Internet privacy case, *Geocities*, FTC Dkt. No. C-3849 (Feb. 12, 1999) (respondent settled charges of deceptively collecting personal information from children and adults); *Liberty Financial Companies, Inc.*, FTC Dkt. No. C-3891 (Aug. 12, 1999) (respondent allegedly deceptively promised to maintain only anonymous information collected from minors online). In addition, some COPPA complaints have contained allegations that the operators also violated the FTC Act by making false or misleading statements in their privacy notices. E.g., *Bigmailbox.com, Inc.*, note 71, *supra*, and *Lisa Frank, Inc.*, note 72, *supra*.

<sup>80</sup> The public can obtain free information or file a complaint by visiting the FTC's website ([www.ftc.gov](http://www.ftc.gov)) or by calling toll-free the Commission's Consumer Response Center, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261.

<sup>81</sup> The Children's Privacy area is available at [www.ftc.gov/privacy/privacyinitiatives/childrens.html](http://www.ftc.gov/privacy/privacyinitiatives/childrens.html).

link to the Children’s Privacy area.<sup>82</sup> In addition, the orders entered in COPPA law enforcement actions require defendants to link to the Children’s Privacy area on their sites. The Commission has distributed nearly five million copies of its COPPA consumer and business education materials since COPPA was enacted.

The FTC’s business outreach efforts are grounded in a comprehensive set of written compliance materials, and in individual guidance to website operators, or their counsel, on an “as needed” basis. The Commission’s business education materials include a detailed compliance guide entitled *How to Comply with the Children’s Online Privacy Protection Rule*,<sup>83</sup> a short compliance brochure entitled *How to Protect Kids’ Privacy Online*,<sup>84</sup> and a set of Frequently Asked Questions (or “FAQs”) about COPPA.<sup>85</sup> Successive COPPA alerts have focused on more detailed topics, such as the Rule’s requirements for the contents of online privacy notices,<sup>86</sup> and its actual knowledge standard for the operators of general audience websites.<sup>87</sup> In addition, after the Commission issued the Rule in 2000, the Commission staff held compliance seminars to help operators familiarize themselves with the Rule and its requirements.<sup>88</sup>

In addition, the staff provides individual website operators with fact-specific guidance on COPPA issues as they arise through calls placed to the FTC’s COPPA Hotline.<sup>89</sup> Since COPPA’s implementation, the staff has provided such guidance to hundreds of website operators. The Commission continues to commit significant resources to responding to calls to the COPPA Hotline. The Commission’s COPPA enforcement team has found continuing demand for compliance assistance as new websites and technologies emerge and operators seek to comply with COPPA’s requirements in this changing environment.

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<sup>82</sup> See, e.g., [www.caru.org/about/links.asp](http://www.caru.org/about/links.asp); [www.epic.org/privacy/kids/#resources](http://www.epic.org/privacy/kids/#resources); [www.nocpa.org/privacy/kidsprivacy.html](http://www.nocpa.org/privacy/kidsprivacy.html).

<sup>83</sup> Available at [www.ftc.gov/bcp/online/pubs/buspubs/coppa.htm](http://www.ftc.gov/bcp/online/pubs/buspubs/coppa.htm).

<sup>84</sup> Available at [www.ftc.gov/bcp/online/pubs/online/kidsprivacy.htm](http://www.ftc.gov/bcp/online/pubs/online/kidsprivacy.htm).

<sup>85</sup> Available at [www.ftc.gov/privacy/coppafaqs.htm](http://www.ftc.gov/privacy/coppafaqs.htm).

<sup>86</sup> Available at [www.ftc.gov/bcp/online/pubs/buspubs/coppakit.pdf](http://www.ftc.gov/bcp/online/pubs/buspubs/coppakit.pdf).

<sup>87</sup> Available at [www.ftc.gov/bcp/online/pubs/alerts/coppabizalrt.htm](http://www.ftc.gov/bcp/online/pubs/alerts/coppabizalrt.htm).

<sup>88</sup> Announcements of, and the agendas for, the August 22 and November 15, 2000 workshops are available at [www.ftc.gov/bcp/online/edcams/kidzprivacy/workshop.htm](http://www.ftc.gov/bcp/online/edcams/kidzprivacy/workshop.htm) and [www.ftc.gov/bcp/online/edcams/kidzprivacy/workshop111500.htm](http://www.ftc.gov/bcp/online/edcams/kidzprivacy/workshop111500.htm).

<sup>89</sup> Operators can contact the Commission’s COPPA enforcement staff by calling the COPPA Hotline at (202) 326-3140.

The FTC's consumer education materials aim to inform parents and children about the protections afforded by the Rule and provide consumers with more general online privacy and safety information. To these ends, the FTC has created a broad range of consumer education materials, ranging from *Site Seeing on the Internet*, a general set of "smart surfing" tips for consumers,<sup>90</sup> to special COPPA Web pages containing targeted educational resources for parents<sup>91</sup> and their children.<sup>92</sup> Because teachers often act as an online intermediary for the parents of their students, the Commission issued a separate COPPA guide for teachers: *How to Protect Kids' Privacy Online: A Guide for Teachers*.<sup>93</sup> Most recently, the sudden surge in online social networking and its unique aggregation of safety and privacy risks prompted the agency to create and disseminate safety tips tailored to social networking, one directed to parents<sup>94</sup> and the other to youth.<sup>95</sup>

The Commission has used the announcement of its formal law enforcement actions as a further opportunity to publicize and educate consumers and businesses about COPPA, the Rule, and the challenged Rule violations in particular. For example, in connection with a settlement with The Ohio Art Company, the agency issued *You, Your Privacy Policy and COPPA*, a guide to help operators draft COPPA-compliant privacy notices.<sup>96</sup> The guide explains each component of a COPPA-compliant privacy notice, answers common questions about the notice requirements, and features a compliance checklist to help operators improve their privacy notices.

Similarly, in conjunction with filing complaints against UMG Recordings, Inc. and Bonzi Software, Inc., two general audience site operators, the Commission issued a business alert focusing on the Rule's actual knowledge standard for general audience sites. The alert, entitled *The Children's Online Privacy Protection Rule: Not Just for Kids' Sites*, helps general audience

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<sup>90</sup> Available at [www.ftc.gov/bcp/conline/pubs/online/sitesee.htm](http://www.ftc.gov/bcp/conline/pubs/online/sitesee.htm).

<sup>91</sup> Available at [www.ftc.gov/bcp/conline/edcams/kidzprivacy/adults.htm](http://www.ftc.gov/bcp/conline/edcams/kidzprivacy/adults.htm).

<sup>92</sup> Available at [www.ftc.gov/bcp/conline/edcams/kidzprivacy/kidz.htm](http://www.ftc.gov/bcp/conline/edcams/kidzprivacy/kidz.htm).

<sup>93</sup> Available at [www.ftc.gov/bcp/conline/pubs/online/teachers.htm](http://www.ftc.gov/bcp/conline/pubs/online/teachers.htm). See also *For Teachers*, a dedicated web page at [www.ftc.gov/bcp/conline/edcams/kidzprivacy/teachers.htm](http://www.ftc.gov/bcp/conline/edcams/kidzprivacy/teachers.htm).

<sup>94</sup> *Social Networking Sites: A Parent's Guide* is available at [www.ftc.gov/bcp/edu/pubs/consumer/tech/tec13.htm](http://www.ftc.gov/bcp/edu/pubs/consumer/tech/tec13.htm) and [onguardonline.gov/socialnetworking.html](http://onguardonline.gov/socialnetworking.html).

<sup>95</sup> *Social Networking Sites: Safety Tips for Tweens and Teens* is available at [www.ftc.gov/bcp/edu/pubs/consumer/tech/tec14.htm](http://www.ftc.gov/bcp/edu/pubs/consumer/tech/tec14.htm) and [onguardonline.gov/socialnetworking\\_youth.html](http://onguardonline.gov/socialnetworking_youth.html).

<sup>96</sup> Available at [www.ftc.gov/bcp/conline/pubs/buspubs/coppakit.pdf](http://www.ftc.gov/bcp/conline/pubs/buspubs/coppakit.pdf).

site operators and online service providers determine when they must comply with the Rule's requirements.<sup>97</sup>

The Commission believes that the FTC's educational materials and the staff's informal compliance guidance have promoted compliance and avoided imposing unnecessary burdens on website operators.

#### **D. COPPA Safe Harbor Programs**

As part of its five-year review of the Rule, the Commission sought public comment on whether the Rule's self-regulatory approach is effective. Section 312.10 of the Rule contains a "safe harbor" provision that enables the FTC to approve programs containing self-regulatory guidelines that implement the protections of the Rule.<sup>98</sup> In approving safe harbor programs under COPPA, the agency determines that they meet particular requirements as to program guidelines, monitoring provisions, and compliance incentives. First, the program must contain guidelines that protect children's online privacy to the same or greater extent as the Rule and ensure that each potential participant complies with these guidelines.<sup>99</sup> Second, the program must monitor the participant's practices on an ongoing basis to ensure that the participant continues to comply with both the program's guidelines and the participant's own privacy notices.<sup>100</sup> Finally, the program must contain effective incentive mechanisms to ensure program compliance.<sup>101</sup>

COPPA's safe harbor provision has two main goals. First, the provision encourages industry self-regulation, which the Commission believes often can respond more quickly and flexibly than traditional statutory regulation to consumer needs, industry needs, and a dynamic

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<sup>97</sup> Available at [www.ftc.gov/bcp/online/pubs/alerts/coppabizart.htm](http://www.ftc.gov/bcp/online/pubs/alerts/coppabizart.htm).

<sup>98</sup> 16 C.F.R. § 312.10.

<sup>99</sup> See *id.* § 312.10(b)(1).

<sup>100</sup> See *id.* § 312.10(b)(2)(i)-(iv). Acceptable methods for assessing compliance include periodically reviewing a participant's information practices; seeding a participant's databases by submitting fictional information and tracking what happens to that information, when accompanied by periodic reviews of the participant's information practices; or any other equally effective independent assessment mechanism. *Id.* "Seeding" a participant's database means registering on the site as a child and then monitoring the participant to ensure that it complies with the Rule's requirements.

<sup>101</sup> See *id.* § 312.10(b)(3)(i)-(v). Effective incentives include mandatory public reporting of disciplinary action taken against participants by the safe harbor program; consumer redress; voluntary payments to the United States Treasury; referral of violators to the Commission; or any other equally effective incentive. *Id.*



marketplace. The second goal of the safe harbor provision is to reward good faith efforts to comply with COPPA. The Rule therefore provides that operators fully complying with an approved safe harbor program will be “deemed to be in compliance” with the Rule for purposes of enforcement.<sup>102</sup> Therefore, in lieu of formal enforcement actions, such operators instead are subject first to the safe harbor program’s own review and disciplinary procedures.

Since the Rule went into effect, the Commission has approved four COPPA safe harbor programs. The programs are administered by: the Children’s Advertising Review Unit of the Council of Better Business Bureaus (“CARU”); the Entertainment Software Rating Board (“ESRB”); TRUSTe; and Privo.<sup>103</sup> The FTC evaluated each of the programs’ applications and proposed programs and determined that they met each of the Rule’s requirements, discussed immediately above, for approving a safe harbor program. In 2005, the Commission also approved ESRB’s application to modify several provisions of its COPPA safe harbor program.<sup>104</sup>

The FTC concludes that the safe harbor programs have benefitted the FTC in administering COPPA, as well as consumers and businesses. The programs have helped the FTC in numerous respects, from monitoring the Internet and educating operators and consumers, to bringing sites into compliance. Members of the public have lauded the safe harbor programs in these and other respects. One commenter stated that they “are an important educational resource on children’s privacy issues, and serve to heighten awareness of children’s privacy issues more generally.”<sup>105</sup> Another stated, “the Safe Harbor program demonstrates the benefits of a self-regulatory scheme and mechanism for industry to maintain high standards with limited

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<sup>102</sup> *Id.* The Commission may take action against websites that are in compliance with an approved safe harbor program only if the FTC approved the program’s guidelines based on inaccurate or incomplete representations, or did not approve a material change made to the guidelines.

<sup>103</sup> Materials related to each of the COPPA safe harbor programs are available at [www.ftc.gov/privacy/privacyinitiatives/childrens\\_shp.html](http://www.ftc.gov/privacy/privacyinitiatives/childrens_shp.html). In addition to serving as a Commission-approved COPPA safe harbor, CARU’s procedures permit referral to the Federal Trade Commission of website operators that CARU finds to have violated the organization’s guidelines.

<sup>104</sup> 16 C.F.R. § 312.10(c)(3). Under the Rule, any material changes to Commission-approved COPPA safe harbor program must be published for public comment. Statement of Basis and Purpose, 64 *Fed. Reg.* at 59911. The Commission determined that ESRB’s proposed changes were not material because they did not substantively alter its guidelines or the rest of its safe harbor program.

<sup>105</sup> Comment of The Direct Marketing Association, *available at* [www.ftc.gov/os/comments/COPPAruleview/index.htm](http://www.ftc.gov/os/comments/COPPAruleview/index.htm).

government intervention.”<sup>106</sup> The Commission has not received any negative comments about the program. The Commission’s experience with the approved programs indicates that industry self-regulation has been successful in complementing the FTC’s enforcement of COPPA and should be given continued support.

#### IV. NEW AND EMERGING ISSUES IN CHILDREN’S ONLINE PRIVACY

Children’s participation in online activities has changed significantly since COPPA’s enactment. Data show that the proportion of 8-to-18-year-olds who could access the Internet from their homes increased from 47% in 1999 to 74% in 2004; the proportion of 8-to-18-year-olds who had Internet access in their bedrooms rose from 10% in 1999 to 20% in 2004.<sup>107</sup> In 2001, 31.4% of children ages 5 to 7, and 53.5% of children ages 8 to 10, used the Internet.<sup>108</sup> By 2004, children between the ages of 8 and 10 spent an average of 25 minutes online each day.<sup>109</sup> Researchers have found that more youth are online today, and that those youth spend more time online than did their counterparts in the recent past.<sup>110</sup>

Like their teen counterparts, children are using the Internet to access websites and to email, instant message, chat, and play video games.<sup>111</sup> A recent report indicated that the websites [www.cartoonnetwork.com](http://www.cartoonnetwork.com), [www.nick.com](http://www.nick.com), [www.disneygo.com](http://www.disneygo.com), and [www.google.com](http://www.google.com) are popular with children ages 8 to 11.<sup>112</sup> As discussed above, young children are not solely visiting kids-oriented websites, but rather are also visiting the more general audience sites to serve their

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<sup>106</sup> Comment of Mattel, Inc., available at [www.ftc.gov/os/comments/COPPARulereview/index.htm](http://www.ftc.gov/os/comments/COPPARulereview/index.htm).

<sup>107</sup> See Kaiser Family Foundation, “Generation M: Media in the Lives of 8-18 Year-olds” (2005), available at [www.kff.org/entmedia/upload/Generation-M-Media-in-the-Lives-of-8-18-Year-olds-Report.pdf](http://www.kff.org/entmedia/upload/Generation-M-Media-in-the-Lives-of-8-18-Year-olds-Report.pdf).

<sup>108</sup> See National Center for Education Statistics, “Computer and Internet Use by Children and Adolescents in 2001 – Statistical Analysis Report,” available at [nces.ed.gov/pubs2004/2004014.pdf](http://nces.ed.gov/pubs2004/2004014.pdf).

<sup>109</sup> See Kaiser Family Foundation report, note 107, *supra*.

<sup>110</sup> See Pew Internet & American Life Project Report, *Youth are Leading the Transition to a Fully Wired and Mobile Nation* (July 27, 2005), available at [www.pewinternet.org/pdfs/PIP\\_Teens\\_Tech\\_July2005web.pdf](http://www.pewinternet.org/pdfs/PIP_Teens_Tech_July2005web.pdf).

<sup>111</sup> *Id.*

<sup>112</sup> Coolwatch, Kidscreen, Sept. 2006, at 126.

online interests.<sup>113</sup> Many such sites do not require the input of personal information.<sup>114</sup> However, the rise of interactive sites such as social networking sites, where sharing personal information is part of the nature of the site, has created new challenges to applying COPPA's protections.<sup>115</sup>

#### **A. Social Networking Sites**

Social networking sites provide the next generation of online communications tools, combining email, chat, instant messaging, bulletin boards, and online journals that can contain text, hypertext, video and audio files, and links to other files or sites. In late 2005, the Commission began to examine social networking sites in response to growing concerns among parents and schools about the privacy and safety risks such sites could pose to youth. While social networking websites offer the potential for online communication, camaraderie, and a sense of community among teens and tweens, they also pose substantial risks. Because the information that children post on their online journals or blogs may be accessed by other Internet users, social networking websites have become a matter of public concern and were the subject of a series of Congressional hearings during the summer of 2006.<sup>116</sup> In particular, there is concern that sexual predators may use the information children provide on social networking

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<sup>113</sup> Nielsen/NetRatings website demographic information lists the following sites as the top 20 most visited sites by children ages 2-12 for the month of October 2006: Google, Yahoo!, MSN/Windows Live, AOL, Nickelodeon Kids and Family Network, Disney Online, Microsoft, Yahoo! Homepage, Yahoo! Search, and AOL Instant Messenger, eBay, DisneyChannel.com, Yahoo! Mail, MySpace, MSN Homepage, Ask Search Network, Google Image Search, Cartoon Network, Windows Media Player, and Apple. Many of these websites merely serve as a portal for children's access to other online sites.

<sup>114</sup> In enacting COPPA, Congress did not intend to issue blanket restrictions against children visiting general audience websites. Rather, the statute imposes liability only for those general audience sites that knowingly collect, use, or disclose personal information from children. 15 U.S.C. § 6502; *see also* 16 C.F.R. § 312.3.

<sup>115</sup> In addition, as discussed above, because advances in electronic verification technologies have not developed as expected, the Commission has had to extend the Rule's sliding scale approach to obtaining verifiable parental consent. *See* Part III.A.4, *supra*. The Commission believes that the growing population of consumers online can be a catalyst for producing more reliable, widespread, and affordable electronic verification mechanisms and will monitor developments to ensure that the Rule accurately reflects what verification measures are reasonable to require of operators.

<sup>116</sup> *See* note 122, *infra*.

sites to identify, contact, and exploit them.<sup>117</sup> To help parents and their children address the sites' potential for significant risk, in May 2006 the Commission issued two sets of tips for safe social networking, one directed at parents and the other directed at teens and tweens.<sup>118</sup>

The Commission has posted its social networking materials on the [www.ftc.gov](http://www.ftc.gov) site and on [www.OnGuardOnline.gov](http://www.OnGuardOnline.gov).<sup>119</sup> The OnGuardOnline site was developed by the FTC through a partnership with cybersecurity experts, consumer advocates, online marketers, and other federal agencies. The FTC chose to make OnGuardOnline unbranded to encourage other organizations to adopt the information and then disseminate it themselves in ways that could reach more consumers. Most recently, in late October 2006, the FTC added "Buddy Builder," an interactive quiz on social networking that tests users' online savvy as cyber-strangers attempt to "friend" the player at a fictional social networking site.<sup>120</sup> The FTC also has encouraged the social networking sites themselves to link to its safety tips, and several have.

COPPA, of course, applies to social networking sites that knowingly collect personal information from children under age 13 without first notifying parents or obtaining parental consent, and has proven to be a powerful tool in the online safety arsenal. The Commission's 2006 action against Xanga.com<sup>121</sup> should alert other social networking and general audience sites that their failure to implement COPPA protections for their under-13 members results in

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<sup>117</sup> See, e.g., *Michigan Teen Home Safe & Sound: Authorities Say 16-Year-Old Flew To Mideast For 'MySpace' Rendezvous* (June 12, 2006), available at [www.cbsnews.com/stories/2006/06/09/tech/main1697653.shtml](http://www.cbsnews.com/stories/2006/06/09/tech/main1697653.shtml); Tehani Schneider & Adam Teliencio, *Free Expression Blooms in Risk-laden MySpace*, *Morristown Daily Record*, May 14, 2006.

<sup>118</sup> See "Do You Know Who Your Kids Are Talking To? Safety Tips for Social Networking Online" (May 9, 2006), available at [www.ftc.gov/opa/2006/05/socialnetworking.htm](http://www.ftc.gov/opa/2006/05/socialnetworking.htm).

<sup>119</sup> See *Social Networking Sites: A Parent's Guide* and *Social Networking Sites: Safety Tips for Tweens and Teens*, available at [www.onguardonline.gov/socialnetworking.html](http://www.onguardonline.gov/socialnetworking.html).

<sup>120</sup> See "The Buddy System for Safe Social Networking Online: New Game Tests Who to Approve and Who to Remove" (Oct. 31, 2006), available at [www.ftc.gov/opa/2006/10/fyi0669.htm](http://www.ftc.gov/opa/2006/10/fyi0669.htm) and at [www.onguardonline.gov/socialnetworking.html](http://www.onguardonline.gov/socialnetworking.html)

<sup>121</sup> See note 78, *supra*.

substantial risk to children's online privacy and safety, and may result in the Commission taking legal action against them.

In June 2006, the Commission testified on both its consumer education and law enforcement efforts in the area of social networking at a hearing before the House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations.<sup>122</sup> Testifying on behalf of the Commission, FTC Commissioner Pamela Jones Harbour detailed the agency's efforts, described above, to help protect children, and educate parents, about social networking sites.

## **B. Technological Development and Convergence**

One particular area of technological development that has the potential to raise children's online privacy issues is the continuing convergence of wireless and landline communications with the Internet. As devices and technologies converge, some or all communications, from telecommunications to interactive entertainment programming, are increasingly available over the Internet.

Already, children can use a single handheld wireless device to access the Internet, to download and listen to video and audio entertainment, and to connect with their friends and families.<sup>123</sup> Marketers anticipate that mobile Internet access by children will continue to grow over time. Some have predicted that such technology may "permeate" children's lives and that, in the future, children may spend most of their time interacting with others on such devices rather than face-to-face.<sup>124</sup> If this development occurs, children will connect to the Internet from wherever they are, making parental supervision even more difficult than it is today. COPPA applies to websites and online services, regardless of the manner in which they are accessed, and the FTC will continue to monitor the shift in children's access to the Internet as it moves from stand-alone computers to mobile devices.

The Mobile Marketing Association, a consortium of hand-held device advertisers, manufacturers, carriers, and operators, issued its most recent set of "Consumer Best Practices

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<sup>122</sup> Prepared Statement of the Federal Trade Commission On Social Networking Sites, before the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce of the United States House of Representatives, presented by Commissioner Pamela Jones Harbour (June 28, 2006), *available at* [www.ftc.gov/os/2006/06/060626socialnetworking.pdf](http://www.ftc.gov/os/2006/06/060626socialnetworking.pdf).

<sup>123</sup> See John Biggs, *Courting a Hot Market with Cool Phone Service*, NY TIMES, July 13, 2006, at [www.nytimes.com/2006/07/13/technology/13basics.html](http://www.nytimes.com/2006/07/13/technology/13basics.html) (last accessed Jan. 8, 2007); see also Castleman, *2016: A 10-year-old's Odyssey*, KIDSCREEN, Jan. 2006 at 38-39.

<sup>124</sup> See Castleman, *id.*

Guidelines for Cross-Carrier Mobile Content Programs” in November 2006.<sup>125</sup> These revised guidelines address the need to proceed cautiously when marketing new technologies to children. Among other things, the Mobile Marketing Association’s best practices document includes a section on marketing to children, stating “All industry participants are expected to comply with all applicable laws dealing with children and marketing, including COPPA and regulations regarding age restrictions for particular products.”<sup>126</sup> This guidance document sends a clear message to the mobile industry that it must be mindful of COPPA’s requirements when developing new products and services, especially in light of children’s wholehearted embrace of these new technologies.

To address the issue of wireless services, as well as numerous other technological developments, the Commission convened public hearings in early November 2006 entitled “Protecting Consumers in the Next Tech-ade.”<sup>127</sup> The hearings featured experts from all sectors, including industry, technology, consumer advocacy, academia, government, and law enforcement, and explored how technological convergence and commercial globalization impact consumer protection. The hearings provided an opportunity to examine changes in marketing and technology over the past decade, and garnered experts’ views on coming challenges and opportunities for consumers, businesses, and government. A report on the Tech-ade hearings is expected to be issued in March 2007.

## V. CONCLUSION

The first five years of COPPA’s implementation show that the Rule has provided a workable system to help protect the online safety and privacy of the Internet’s youngest visitors. Commenters overwhelmingly support the Rule and its requirements. They state that the Rule has provided children with greater online privacy and safety than in the era prior to its implementation, that there is a continuing need for those protections, and that the Rule should be retained. The Rule’s standards appear to have played a role in improving operators’ information practices for children online, and neither operators nor parents have found the standards to be overly burdensome. Operators have been able to use the COPPA standards successfully in providing interactive online content for children. The standards also have provided parents with a set of effective tools, among others, for becoming involved in and overseeing their children’s interactions online.

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<sup>125</sup> The Mobile Marketing Association’s Best Practices document, issued November 27, 2006, is available at [www.mmaglobal.com/bestpractices.pdf](http://www.mmaglobal.com/bestpractices.pdf).

<sup>126</sup> *Id.*

<sup>127</sup> More information about the Commission’s Tech-ade hearings is available at [www.ftc.gov/bcp/workshops/techade/index.html](http://www.ftc.gov/bcp/workshops/techade/index.html)

Since the Commission first started looking at privacy online, and children's privacy in particular, it appears that many website operators have brought their children's information practices into compliance with the Rule. Still, the emergence of social networking sites, and other general audience sites that are attractive to tweens – without the concomitant development of suitable age-verification technologies – presents challenges to website operators and parents, as well as the Commission. Moreover, the failure to develop more secure electronic mechanisms or infomediaries to verify parental consent poses an additional technological challenge. For its part, the Commission will continue to vigorously enforce COPPA, as well as Section 5 of the FTC Act, where appropriate, in matters relating to children's online privacy. The Commission also will continue its extensive consumer and business guidance programs. Recognizing that the Internet and related media are not static environments, the Commission will closely monitor developments in the marketplace, and will make recommendations for changes in the Rule, if appropriate, so that the Rule continues to serve its intended protective function for children online.

**TABLE 1****FTC COPPA CIVIL PENALTY AMOUNTS**

| <b>CASE</b>  | <b>YEAR</b> | <b>AMOUNT</b> |
|--|-------------|---------------|
| <i>U.S. v. Xanga.com, Inc.</i> , Civil Action No. 06-CIV-6853(SHS) (S.D.N.Y.)              | 2006        | \$1,000,000   |
| <i>U.S. v. UMG Recordings, Inc.</i> , Civil Action No. CV-04-1050 (C.D. Cal.)              | 2004        | \$400,000     |
| <i>U.S. v. Bonzi Software, Inc.</i> , Civil Action No. CV-04-1048 (C.D. Cal.)              | 2004        | \$75,000      |
| <i>U.S. v. Mrs. Fields Famous Brands, Inc.</i> , Civil Action No. 2:03 CV205 JTG (D. Utah) | 2003        | \$100,000     |
| <i>U.S. v. Hershey Foods Corp.</i> , Civil Action No. 4:CV03-350 (M.D. Penn.)              | 2003        | \$85,000      |
| <i>U.S. v. The Ohio Art Company</i> , Civil Action No. 02-CV-7203 (N.D. Ohio)              | 2002        | \$35,000      |
| <i>U.S. v. American Popcorn Co.</i> , Civil Action No. 02-CV-4008 (N.D. Iowa)              | 2002        | \$10,000      |
| <i>U.S. v. Lisa Frank, Inc.</i> , Civil Action No. 01-1516-A (E.D. Va.)                    | 2001        | \$30,000      |
| <i>U.S. v. Monarch Services, Inc.</i> , Civil Action No. AMD 01 CV 1165 (D. Md.)           | 2001        | \$35,000      |
| <i>U.S. v. Bigmailbox.com, Inc.</i> , Civil Action No. 01-606-B (E.D. Va.)                 | 2001        | \$35,000      |
| <i>U.S. v. Looksmart Ltd.</i> , Civil Action No. 01-605-A (E.D. Va.)                       | 2001        | \$35,000      |



