

Secretary
Federal Trade Commission
Room H-159, 600 Pennsylvania Ave., NW
Washington, DC 20580

June 11, 1999

Children's Online Privacy Protection Rule--Comment P994504
(American Library Association Submission)

The American Library Association (ALA)¹ submits comments on the Children's Online Privacy Protection Act (COPPA) as requested by the Federal Trade Commission in its Notice of Proposed Rulemaking. The library profession is strongly committed to the protection of personal privacy. ALA policies on confidentiality are longstanding and central to librarians' professional ethics. Libraries do not release information related to any library patron's research, reading material or information sought or received. At the same time, librarians view their principal mission as providing broad access to ideas and information, and promoting the First Amendment values of free inquiry and free expression.

Throughout the legislative and regulatory process on COPPA, the ALA has worked to assure that this well-intentioned effort to enhance children's privacy does not inadvertently limit children's access to information and ideas online. We continue to have substantial concerns about the impact of the parental consent requirement on minors' access to information (defined in the law and proposed rule as children under thirteen). In the experience of librarians, parental consent poses a significant burden on access to information and ideas. We recognize that parental consent in COPPA is intended to apply not to access to information but to release of children's personally identifiable information. Nevertheless, we believe the implementation of this requirement demands close scrutiny to determine whether it is a workable or wise means of protecting privacy. That scrutiny should include a special examination of the impact of parental consent on children who come from families where

¹ The American Library Association, founded in 1876, is the oldest and largest library association in the world. ALA includes members from all types of libraries including school, public, state, academic, and special libraries. With a membership of more than 57,000 librarians, library trustees, library educators, friends of libraries and other interested persons from every state, ALA is the chief advocate for the people of the United States in their search for the highest quality of library and information services.

parents do not speak or write English, are illiterate, transient or are otherwise unable to respond or comprehend such notices. We raise these concerns in more detail below.

In addition, we suggest that the rule be further clarified to make plain the law's inapplicability to nonprofit websites. A key provision in the legislation that the ALA believes is critical to preserving the free flow of information to children is the exclusion of non-profits (not subject to regulation under Section 5 of the Federal Trade Commission Act) from the scope of the law. While the rule rightly reflects that exclusion, we believe it is important that the explanatory material accompanying the Rule state the exclusion of non-profits in plain English so that a school, library or other non-profit site unfamiliar with the reach of Section 5 understands the scope of the exemption. While schools and libraries are exempt from the law, the law does apply to children under thirteen who access the Internet in those settings. We believe the FTC should undertake further inquiry to examine the impact of the rule on both the children and the institutions which provide such access.

Finally, we note that some commentors will ask the FTC to expand the meaning of key terms or make the parental consent requirements more burdensome. We urge the FTC to resist such demands. To further broaden the parties or the practices subject to this rule or limit the acceptable methods of parental consent would upset the balance that the rule seeks to preserve, to the extent the law permits.

I. THE FTC NEEDS TO CAREFULLY MONITOR THE WORKABILITY AND WISDOM OF A PARENTAL CONSENT MODEL IN THE ONLINE ENVIRONMENT. The ALA continues to have concerns about the general practicality and wisdom of the use of parental consent in an online environment, regardless of the verification method used. We believe that the workability of the model must be monitored closely and revisited within a reasonable time, no more than three years. Moreover, in the interim the FTC should hold periodic workshops on verifiable parental consent and perhaps solicit further comment to gather data on the parental consent model in general and online verification systems in particular. Special attention should be paid to the impact of parental consent on children who come from families where parents do not speak or write English, are illiterate, transient or are unable to respond or comprehend such notices.

We urge that the FTC not lose sight of the ultimate goal of the parental consent and notice requirements. The goal is not to ensure infallible protection for children's information—indeed such a goal is in our view unachievable—but rather to change the information collection practices of Web sites that target children. For that reason we are concerned that the FTC's inquiry into the adequacy of e-mail verification reflects a view that other off line methods may be more verifiable and secure. We disagree. The truth is that no method of verification is fool proof and all can be circumvented by a particularly clever and determined

child. More importantly, E-mail verification is as secure as offline verification methods and has the benefit of affording children quicker access to information. Whether a method is a reliable means of obtaining parental consent must be judged on whether it would work with an average child in average circumstances, not whether it is fool proof. Under that test, all the methods of verification cited in the rule are equally reliable.

Indeed, in three years the law will have failed if parents are being inundated with increasingly complicated and numerous requests for consent or if children, waiting for the consent process to clear, lose interest in or avoid sites created specifically for them and migrate instead to adult sites. By contrast, the law will have succeeded if demands for consent are reduced because the practices that trigger consent requirements are significantly reduced on Web sites targeted to children.

II. THE FTC SHOULD HOLD A FURTHER PROCEEDING REGARDING THE SPECIAL CHALLENGES THE PROPOSED RULE MAY PRESENT TO SCHOOLS AND LIBRARIES. We also have concerns about the application of the consent and notice requirements for children who access the Internet in schools and libraries. In general, the Children's Privacy Protection Act and the FTC's proposed Rule have been drafted with home terminals in mind, and with an assumption that both parents and children have ready access to and competency in new technologies. Whether the parental consent model and the attendant issues presented in the rule raise any special implementation issues in schools and libraries is a matter that has not been considered. For this reason, the ALA requests that the Commission hold workshops to identify issues that are unique to schools and libraries, and if necessary to institute a further rulemaking to address those issues.

Respectfully submitted on behalf of the American Library Association,

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