



AMERICAN ASSOCIATION
of ADVERTISING AGENCIES

Hal Shoup
Executive Vice President and
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B25590800134

July 6, 1999

Mr. Donald S. Clark
Secretary
Federal Trade Commission
Room 159
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Children's Online Privacy Protection Rule—FTC File No. P994504

Dear Mr. Clark:

The American Association of Advertising Agencies (AAAA) hereby requests the opportunity to participate in the Commission's July 20 workshop on proposed regulations implementing the Children's Online Privacy Protection Act of 1998 (COPPA).

AAAA is a leading proponent of industry standards to protect the unique interests of children online. Indeed, as COPPA progressed toward Congressional enactment, the AAAA Washington office worked with Congress and industry representatives to empower parents while minimizing the Act's negative effects on the growth of the Internet. We applaud the Commission's commitment to continuing to work closely with industry as it develops regulations to implement COPPA. AAAA believes the FTC's open procedures and processes in this rulemaking provide a model for the development of appropriate and effective law and policy.

AAAA is the national trade association for the advertising agency business. Our over 1,200 member agency offices across the country create and produce 80% of national advertising and substantial amounts of local and regional advertising.

AAAA serves on the National Advertising Review Council's (NARC) Board of Directors, which sets policy for the Children's Advertising Review Unit (CARU) program, administered by the Council of Better Business Bureaus (CBBB). CARU is the advertising industry's self-regulatory body charged with promoting responsible children's marketing practices. AAAA recently helped revise CARU's Children's Advertising Guidelines to address online privacy and information collection practices. Those guidelines helped serve as a model for self-regulatory initiatives like the Online Privacy Alliance (OPA), as well as for COPPA.

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At the onset, AAAA notes that the proposals in the Notice for the most part adequately reflect the intent and scope of the COPPA legislation. We comment here only to raise a few significant, yet unresolved, issues.

Flexibility In Mechanisms Used to Obtain Verifiable Parental Consent

The commentary on section 312.5 (b) identifies a number of methods an operator might use to obtain verifiable consent. We commend the Commission for including online, as well as offline, methods.

AAAA strongly encourages the Commission to remain open to e-mail based mechanisms. Offline solutions like postal mail, facsimile, credit card verification systems, and toll-free numbers are cumbersome and expensive for Web site operators and seriously diminish the interactivity and immediacy of the medium for users. However, we believe e-mail based mechanisms like passwords, PIN numbers, or a separate parent's e-mail address (in cases where children's information is not shared with a third party or posted publicly) will be sufficient to protect children and comply with CARU guidelines, while maintaining the integrity of the medium.

Additionally, as technology develops, online solutions will be even more effective and user-friendly than they are today. Digital signatures and technology like the World Wide Web Consortium's Platform for Privacy Preferences (P3P) will soon provide new solutions for obtaining verifiable parental consent. By remaining flexible, the Commission will avoid thwarting the development and use of such viable technologies.

Mandated Location of Privacy Notices

AAAA supports the general statement in 312.4 (b) that the link to the operator's notice of information practices must be "clearly labeled" and prominently placed. However, we recommend that the Commission not mandate how those principles are applied. For example, specification that a link be "placed such that a typical visitor does not need to scroll down from the initial viewing screen" places an impractical and unrealistic demand on site designers.

As discussed at the Commission's May e-commerce workshop, it is difficult to determine what the "typical" visitor will see when he enters a Web site. Factors like screen size, browser type, how large the browser is open, and from where the user

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enters the site can significantly alter what appears on the “initial viewing screen.” This is not only true today, given the variety of existing viewing configurations, but is sure to become more important as citizens use simpler and smaller devices to access the Internet.

Definition of Third Parties and Disclosure of Their Information Practices

Question 3 (a) asks whether the definition of “operator” (312.2) is “sufficiently clear to provide notice as to who is covered by the Rule.” AAAA believes that it is not. The Commission should clarify the definition, following the traditional legal definition of an affiliate and not treat corporate affiliates as third parties in its definition of operators.

Question 7 asks how much detail an operator should be required to disclose about third parties’ information practices. AAAA believes that parents must be given enough information to provide informed consent about whether to permit their child to register at a particular site. However, we believe parents can be empowered without imposing burdensome and overly regulatory requirements on operators.

For example, AAAA believes it would be sufficient to 1) give full notice of possible third party use and 2) provide links to those policies. We would not support a requirement that the full text of all possible third party policies be posted on the primary site.

Definition of Collection

AAAA strongly believes that the Commission’s definition of “collects or collection” in section 312.2 raises an issue of statutory intent. This definition would make the Rule applicable to information collected offline, as well as that collected online, which clearly was not intended in COPPA.

Language in COPPA explicitly limits the law’s application to information “collected online from a child.” 15 U.S.C. §§ 6501(8), 6502(a)(1). The bill’s chief sponsor, Senator Richard Bryan (D-NV) re-emphasized this intent in a floor statement, saying “This is an online children’s privacy bill, and its reach is limited to information collected online from a child.” 144 Cong. Rec. S. 11657 (October 7, 1998).



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Retroactive Application of the Rule

Section B of the *Federal Register* Notice states that the Rule will apply to information collected before the effective date of the final Rule. AAAA believes that such application would be burdensome and unrealistic for operators. It is unreasonable to expect operators to provide notice to parents of information collected before law required notification. Indeed, since notifying parents was not previously required, in many instances, operators may have some information about children, but have no information about how to contact their parents. Additionally, it often will be difficult—if not impossible—for operators to distinguish whether information already in databases was collected through online or offline media.

Safe Harbor Provisions

AAAA commends the Commission for encouraging effective self-regulatory programs through the proposed safe harbor provisions.

Industry already has developed several programs and mechanisms designed to protect the privacy of children. CARU was established as the advertising industry's self-regulatory body and has promoted responsible children's marketing practices since 1974. Recently, TrustE and BBBOnline developed seal programs to help protect children online. AAAA believes the proposed safe harbor provisions will provide incentive to support and grow these self-regulatory initiatives.

Regulatory Flexibility Act

We would like to take this opportunity to address comments made by Congressmen George Gekas and James Talent. Without considering any technical interpretation of the requirements of the Regulatory Flexibility Act (Reg-Flex), we note that the Commission has gone out of its way to comply with the substance and intent of the statute.

For example, considering small business outreach, we note that the Commission provided ample opportunity for small entities to participate in the rulemaking. The Commission published its proposed Rule implementing COPPA April 20, 1999. There, interested parties were asked to comment on the economic impact of the Rule on business. Section F asks specifically for comments about "the effect of the proposed



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Rule on the costs, profitability, and competitiveness of, and employment in small entities." At the time of the proposed Rule's publication, direct notification of the publication and opportunity to comment was given to interested parties including small and large businesses, trade associations, and children's Web site operators named in the Commission's March 1998 Web site survey. The same measures were taken with respect to the announcement of the COPPA public workshop to be held July 20, 1999.

Moreover, the Commission through its Office of Public Affairs has insured that the news media, including media specifically interested in Internet and children's issues, have been fully apprised of this rulemaking and related matters. We note, for example, that Commissioners and staff have been widely quoted on this issue in all related media, including especially Internet news sources.

In light of these efforts, it is unlikely that any interested party who has wanted to know about this proposed Rule could fail to find out about it.

In summary, in AAAA's experience, a hallmark of this Commission has been its considerable and careful effort to reach out to all interested parties, including industry, consumers, and small business entities. We believe these efforts should be respected and applauded, as well as fully taken into account in any review of its technical compliance with the Reg-Flex.

Conclusion

AAAA is committed to protecting the unique interests of children and empowering parents in the online world. Simultaneously, we are committed to allowing the Internet to reach its full potential as an interactive medium. We believe that these two goals are compatible and complimentary. And we believe that the Commission's proposed Rule, modified as suggested here, strikes a balance between the two interests and will effectively and fairly implement COPPA.



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Again, we are pleased with the Commission's continuing commitment to working with business in developing this Rule and look forward to participating in the July 20 workshop.

Sincerely,

A handwritten signature in black ink, appearing to read 'HAS', with a period at the end.

Harold A. Shoup

HAS/eke