



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of Commissioner
Edith Ramirez

To: Don Clark, Secretary
From: Alyssa O'Connor
Date: November 14, 2012
Re: COPPA Rule: Comments to be Placed on the Public Record

On October 16, 2012, Commissioner Edith Ramirez and agency staff met with a coalition of children's privacy advocates from the Center for Digital Democracy, the Institute for Public Representation at Georgetown University Law Center, Electronic Privacy Information Center ("EPIC"), Commonsense Media, and Professor Kathryn Montgomery of American University to discuss the proposed modifications to the FTC's COPPA Rule.¹

Overall, the outside participants expressed their support for the supplemental modifications but also noted areas of concern. The participants were pleased that the modifications would update COPPA to cover persistent identifiers and address new technologies, such as mobile applications. Professor Montgomery said that there is significant evidence that persistent identifiers can be used to contact individual users, and she believes that including persistent identifiers in the definition of "personal information" aligns with the COPPA's purpose and intent. Accordingly, the participants urged the Commission to adopt its proposals. More generally, April McCalin Delaney from Commonsense Media emphasized the importance of government oversight from her experiences as a parent and an advocate. She emphasized that today's complex digital world makes it difficult for parents to understand, much less police, how children's data is collected online. Professor Montgomery added that if the Commission did not "get it right" in modernizing COPPA, the Rule would not be effective. Addressing the contention by some in the business community that the Commission's proposed amendments would dampen innovation and reduce profits, the coalition noted that similar arguments were made in 1997 prior to COPPA's enactment but that the industry has thrived under COPPA.

The participants also brought up the Commission's proposal to cover third parties, such as social plug-ins and online advertising networks, which collect personal information on child-directed properties. David Jacobs acknowledged that the issue was a difficult one but expressed EPIC's general agreement and support for the Commission's approach in the supplemental

¹ In attendance were Jeff Chester and Joy Spencer from the Center for Digital Democracy; Professor Kathryn Montgomery from American University; Professor Angela Campbell, Laura Moy, Jessica Wang, and Jordan Blumenthal from the Institute for Public Representation at Georgetown University Law Center; David Jacobs from EPIC; and April McCalin Delaney from Commonsense Media. Alan Simpson from Commonsense Media participated via telephone. In addition to Commissioner Edith Ramirez, Janis Kestenbaum, Attorney Advisor to Commissioner Ramirez; Mary Engle, Associate Director for Advertising Practices; and Alyssa O'Connor, Honors Paralegal, participated on behalf of the FTC.

NPRM. Jeff Chester from the Center for Digital Democracy argued that third parties can determine whether they are collecting data from a site directed at children, pointing to the “brand safety” programs that have proliferated in recent years. Chester expressed the view that there is a disparity between how the advertising industry touts its targeting capabilities when speaking at industry forums versus what it says when speaking to regulators. In response to the argument that small application (“app”) developers lack leverage in negotiating with third parties that collect data from app users, Professor Montgomery responded that the proposed rule would modify the current negotiating positions within the industry and give app developers greater leverage.

The participants then turned to their concerns with the Commission’s proposal to modify the definition of “web site or online service directed to children.” The coalition argued that the proposed language would create a regulatory loophole: websites directed towards children could claim that they attract a mixed-age audience and comply with COPPA by simply utilizing age-gating, which the participants argued is highly ineffective. Mr. Chester characterized the hypothetical situation as a “get-out-of-COPPA-free” card. To illustrate the problem, Mr. Chester offered the Walt Disney Company (“Disney”) as an example. Mr. Chester reasoned that Disney website DisneyXD.com is unquestionably directed to children, but he believes that Disney considers DisneyXD.com to be “family-friendly” and to attract a mixed audience. Mr. Chester argued that Disney hopes to use an age-gate on DisneyXD.com to satisfy its COPPA requirements. Along with other members of the coalition, he urged that doing so would allow Disney to effectively circumvent stricter regulation and put children’s privacy at risk. Returning to brand safety, Mr. Chester added that operators know the composition of their website audience due to the data available in today’s sophisticated online advertising marketplace and that mixed audience claims can be misleading.

Finally, the participants noted that their comment letters on the supplemental proposed modifications provide greater detail on their organizations’ views. The Institute for Public Representation highlighted its August 2012 comment letter and attached complaints, which allege that “refer-a-friend” marketing on children’s websites violates COPPA.