



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: December 18, 2012  
Re: COPPA Rule: Comments to be Placed on the Public Record

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On November 14, 2012, Commissioner Edith Ramirez and agency staff met with representatives of the Direct Marketing Association (“DMA”) and Association of National Advertisers (“ANA”) to discuss the proposed modifications to the FTC’s COPPA Rule.<sup>1</sup>

Mr. Ingis began by noting that FTC staff had been very responsive in discussions over the last two years about modifying COPPA. He remarked that the DMA and ANA appreciated that the Supplemental Notice of Proposed Rulemaking (SNPRM) was intended to address many of the concerns they had raised.

Nonetheless, Mr. Ingis identified three main concerns with the Commission’s proposed modifications: the expanded definition of personal information; shared liability for first and third parties; and the creation of a “mixed audience” category of “websites or online services directed to children.” Overall, Mr. Ingis stated that the DMA and ANA do not consider the SNPRM to be a “workable solution” for the outstanding questions surrounding children’s online privacy.

First, Mr. Ingis identified what he characterized as the DMA and ANA’s most significant concern—the expansion of the definition of “personal information” to include IP addresses and cookies. Mr. Ingis stated that this change runs counter to the legislative intent of the COPPA statute and raises various compliance problems. Instead of augmenting the definition of personal information, Mr. Ingis suggested that the Commission adopt an “imputed knowledge” standard of liability. The “imputed knowledge” standard would be triggered if a site used an advertising segment directed at children.

Next, Mr. Ingis discussed the proposed standard of liability for first and third parties. Mr. Ingis referred to the proposed revised definition of “operator” as a “tortured expansion” of the meaning of the phrase “on behalf of” or “on whose behalf.” Mr. Ingis recommended that the Commission further investigate the nature of the relationship between first and third parties in order to devise a different standard. At the same time, Mr. Ingis agreed that first and third

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<sup>1</sup> In attendance were Stuart Ingis and Emilio Cividanes, Venable LLP; Jerry Cerasale and Rachel Thomas, Direct Marketing Association; and Dan Jaffe, Association of National Advertisers. In addition to Commissioner Edith Ramirez, Janis Kestenbaum, Attorney Advisor to Commissioner Ramirez; and Alyssa O’Connor, Honors Paralegal, participated on behalf of the FTC.

parties should not be able to avoid liability by pointing fingers at each other, which would leave no one liable for the collection of children’s personal information.

Third, Mr. Ingis turned to what he referred to as the “Disney proposal”—the proposed creation of a mixed audience category under the definition of “website or online service directed to children.” Mr. Ingis questioned how the Commission would determine whether a site attracts a “disproportionately large percentage of children under age 13.” He predicted that proposed subsection (c) would severely burden the business community and decrease the amount of children’s online content. Mr. Ingis and the other outside participants acknowledged that mixed-audience websites exist, but they are unsure if expanded use of age screening is an effective solution.

Finally, Mr. Ingis detailed the DMA and ANA’s positions on the following additional issues raised in the SNPRM and 2011 NPRM: the discontinuation of the “email plus” method of consent; the presence of child celebrities as dispositive indicia of whether a website or online service is directed to children; deeming screen names, photographs, and geolocation data “personal information”; the treatment of “refer a friend” marketing; and cooperative consent.