

Children's Advertising Review Unit (CARU)  
Annual Conference  
"Marketing to Children: Privacy, Food and Digital Media"  
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Thank you for that very kind introduction. I always enjoy coming here, speaking to the cognoscenti of the advertising world. When I participated in the NAD conference last fall, I was five months into my tenure as an FTC Commissioner. My oldest son had just started his senior year of high school. And now, one year later, he's one month into his freshman year in college.

As I pass by his empty bedroom in our house, I think back to all those years walking by his room when he was a kid peering in to see what he was doing. It seems like he was fully wired up, surgically attached to his computer and smartphone for years. Often while he was online playing video games, he was also chatting, tweeting, and on Facebook—and at the same time watching a football game on TV and eating some spicy Doritos crushed up in a huge bowl of Ben and Jerry's Magic Brownie ice cream. I hear from my friends with younger children that the same scene is in permanent rerun in their homes – perhaps without the crushed Doritos or the football game.

Parents today face many challenges. And while the government's role is not to solve these problems, I see the government's role as providing parents with some tools that enable them to maintain some control—and empower them—when it comes to the lives of their children.

The Children's Online Privacy Protection Act, and its implementing rule, comfortably fit within this framework.<sup>1</sup> COPPA's verifiable consent requirement provides the parental control that is at the core of COPPA. Covered operators are required to provide notice to parents and obtain verifiable parental consent prior to collecting, using, or disclosing personal information about children.

As you know, the FTC accelerated its review of the COPPA rule by five years. In 2005, when the Commission last reviewed the COPPA rule, Twitter was a sound, the Cloud was in the sky, 4G was a parking place, Applications were what we hassled our teenagers to send in to colleges, and Skype was a typo. As technology has rapidly revolutionized the way we—and our children—communicate, the Commission recognized that we had to reconsider the contours of the COPPA rule on an expedited basis.

You heard a detailed presentation from Phyllis Marcus about all the proposed changes to the COPPA rule. I'd like to highlight the ones that are most important, in my view.

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<sup>1</sup> Children's Online Privacy Protection Act of 1998, 15 U.S.C. §§ 6501-6506 (1998); Children's Online Privacy Protection Act Rule, 16 C.F.R. Part 312 (1999).

First, when Congress COPPA, it designed the Act to be flexible: to adapt to changes in technology, and to be technologically neutral. The proposed changes to the Rule make clear that COPPA applies to new media, including the mobile app space.

Second, the Commission is proposing to expand the definition of personal information covered by COPPA to include photos, videos, and audio files containing children's images or voices.

It is particularly significant that the expanded definition of personal information also addresses online behavioral advertising to children. The proposed changes will require parental notification and consent prior to the collection of persistent identifiers for purposes such as compiling data on a child's online activities, or behaviorally targeting advertising to a child.

Third, we are proposing that the COPPA rule be modified to provide more streamlined, meaningful information to parents. As we have pointed out in our draft privacy report, we think companies in all contexts, not just COPPA, should move away from notices that require a law degree to understand, and towards more simplified notice and choice about information practices.<sup>2</sup>

Within COPPA, our goal for more meaningful notices has led us to propose eliminating the Rule's current requirement that the direct online notice contain a lengthy recitation of an operator's information collection, use, and disclosure practices. Instead, we propose that operators use a simple statement of: (1) what information the operator collects from children, including whether the website or online service enables a child to make personal information publicly available; (2) how the operator uses such information; and (3) the operator's disclosure practices for such information.

Fourth, we are proposing some significant changes in verifiable parental consent. Let's face it. COPPA only works if parents are in fact contacted in order to make meaningful choices. We bring the technological revolution to the concept of verifiable consent by proposing some additional ways to obtain it, such as electronic scans of signed parental consent forms, video conferencing, and the use of government-issued IDs. And we recognize that further innovations are no doubt on the way, so we create a couple of different ways for industry to propose new means of obtaining verifiable parental consent.

But we have to recognize that our technological wizardry has simply not solved problems with the "Email Plus" method of obtaining parental consent. We previously permitted operators to use Email Plus only when collecting personal information for their internal use. Because of its simplicity, it has been widely used by kid-oriented websites. But Email Plus had always been a temporary verification method that we allowed when consent methods had not been sufficiently developed. Now, it seems to be standing in the way of developing more robust verifiable consent methods. And of course, we have long recognized that Email Plus is simply not as reliable as some of the other methods, because kids can so easily work around it.

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<sup>2</sup> See A Preliminary FTC Staff Report on Protecting Consumer Privacy in an Era of Rapid Change: A Proposed Framework for Businesses and Policymakers, at 57-59 (Dec. 1, 2010), *available at* <http://www.ftc.gov/os/2010/12/101201privacyreport.pdf>.

The time has come to let this one go. It's just not working. And I am confident that industry will develop more reliable methods – methods that work and that we can be assured are representing actual choices made by parents so they can exert the control that Congress intended when it enacted COPPA.

At the same time we are considering how the COPPA Rule can be improved, our enforcement of the Rule continues in full force. In May of this year, the Commission reached a settlement with Playdom, a developer of online virtual worlds, many of which cater to children.<sup>3</sup> The Commission charged Playdom with collecting and disclosing personal information obtained from children—information which included their names, email addresses, instant messenger IDs, and even their locations – all without parental consent. Hundreds of thousands of children had registered on Playdom's various sites and exposed their personal, private information without their parent's knowledge. The Commission's settlement with Playdom—\$3 million in civil penalties—set a new high water mark for COPPA.

Just a few weeks ago, the Commission brought its first COPPA case against an app developer. We charged W3 Innovations with illegally collecting and maintaining thousands of young girls' email addresses.<sup>4</sup> The “dress up” and “girl world” apps developed by W3 also allowed girls to publicly post personal information to in-app message boards that were accessible to the public. In all, there were 50,000 downloads of W3 Innovations apps directed at children.<sup>5</sup>

COPPA enforcement is complemented by the agency's initiatives to give parents tools to talk to their kids about being smart online. I know how tough it is to talk to kids about these issues. At the FTC, we aim to serve as a resource to parents and educators so they have the language they need to get the dialogue going. We are proud that our Net Cetera booklet is doing just that.<sup>6</sup> More than 8.5 million copies have been distributed to parents and teachers so far, providing them with useful information about cyberbullying, sexting, P2P file sharing, and available parental controls.

So let's go back to my son in his pre-teen boy-cave, eating chips crushed into ice cream. Like all moms of a certain vintage, I dutifully told him, time and again, to go play outside, to

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<sup>3</sup>*United States v. Playdom, Inc.*, No. SA CV-11-00724 (C.D. Cal., May 24, 2011) (consent decree).

<sup>4</sup>*United States v. W3 Innovations LLC*, No. CV-11-03958 (N.D. Cal., Sept. 8, 2011) (consent decree).

<sup>5</sup> Press Release, Mobile Apps Developer Settles FTC Charges It Violated Children's Privacy Rule, (Aug. 15, 2011) available at <http://www.ftc.gov/opa/2011/08/w3mobileapps.shtm>.

<sup>6</sup> See OnGuardOnline, “Net Cetera: Chatting With Kids About Being Online,” available at [http://onguardonline.gov/sites/default/files/articles/pdf/NetCetera\\_ChattingwithKids.pdf](http://onguardonline.gov/sites/default/files/articles/pdf/NetCetera_ChattingwithKids.pdf)[http://onguardonline.gov/sites/default/files/articles/pdf/NetCetera\\_ChattingwithKids.pdf](http://onguardonline.gov/sites/default/files/articles/pdf/NetCetera_ChattingwithKids.pdf). *Net Cetera* focuses on the importance of communicating with children about cyberbullying, sexting, social networking, mobile phone use, and online privacy.

stop eating that junk, and to eat some carrots instead. Many times this discussion felt like nothing less than hand to hand combat.

Does the government have a role to play in fighting childhood obesity, by assisting parents as they teach their kids to choose good foods to eat? I think the answer is “yes”. The government can play a useful role by encouraging industry to empower parents so that they are able to instill good eating habits in their children.

As you know, in 2009 Congress directed the FTC to participate in a working group with three other federal agencies to develop recommendations about foods marketed to children.<sup>7</sup> In April of this year, the Interagency Working Group sought public comment on proposed nutrition and marketing principles that industry could use as a guide when marketing food to children.<sup>8</sup> These proposed principles—which are only voluntary guidelines—set nutritional goals for foods marketed to children. The idea is to encourage stronger and more meaningful self-regulation by the food industry, in order to support parents’ efforts to get their kids to eat healthier foods. Robust discussion continues in connection with the Interagency Working Group’s proposal, and the working group expects to issue a report to Congress with final recommendations for self-regulation soon.

As we finalize our recommendations, we are closely studying industry’s reaction to the proposed voluntary guidelines. One of the most significant industry efforts at self-regulation is the Children’s Food and Beverage Advertising Initiative, which came about as a result of earlier recommendations from the FTC and HHS about food marketing to children. Previously, CFBAI had issued company-specific criteria, and did not create a standardized set of nutrition criteria for food marketing to kids.<sup>9</sup>

The CFBAI’s new program, released in response to the Interagency Working Group’s proposed guidelines,<sup>10</sup> is significant progress over its previous program. CFBAI now has established uniform nutrition principles to govern food marketing to children by the 17 CFBAI members, which include many of the largest food and beverage companies in the United States.

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<sup>7</sup> Omnibus Appropriations Act, 2009 (H.R. 1105), Financial Services and General Government, Explanatory Statement, Title V, Independent Agencies, 983-84.

<sup>8</sup> See *Interagency Working Group Food Marketed to Children Preliminary Proposed Nutrition Principles to Guide Industry Self-Regulatory Efforts*, available at <http://www.ftc.gov/os/2011/04/110428foodmarketproposedguide.pdf>.

<sup>9</sup> Council of Better Business Bureaus, “Children’s Food and Beverage Advertising Initiative,” *core principles and company pledges* available at <http://www.bbb.org/us/children-food-beverage-advertising-initiative/>.

<sup>10</sup> See Comments Submitted by the Children’s Food and Beverage Advertising Initiative on the Preliminary Proposed Nutrition Principles to Guide Industry Self-Regulatory Efforts, available at <http://www.ftc.gov/os/comments/foodmarketedchildren/07845.html>.

The FTC and other agencies are closely examining the details of the CFBAI proposal. My view is that the CFBAI proposal represents a good foundation on which the governmental Interagency Working Group can build its final recommendations.

One of the issues raised in the Interagency Working Group's proposal is the application of the voluntary guidelines to two distinct age groups—children aged 2-11 and adolescents aged 12-17. Congress' mandate to the Working Group was to consider children who are 17 or younger in our deliberations. The Working Group sought comment on whether it would be appropriate to more narrowly define the scope of marketing to which the nutrition principles would apply for adolescents. You all answered our call, and you let us know what you are thinking! We are now closely examining the issue of whether, and if so, how, to cover the 12-17 age group, because as we all know, adolescents are not quite the same as children. The Interagency Working Group may decide to narrow the ways in which the voluntary principles would cover the 12-17 age group. But even if it does, I strongly encourage food marketers to continue to be careful about the ways they market to teens, particularly online and in social media. Obesity is a difficult problem in this country, and I want to encourage food marketers to do their part in finding a solution.

As my younger son so often reminds me, I do have another child in the house. My younger son is 16, and is following closely in his older brother's footsteps. When I pass by the door of his room, I see that, from time to time, he is playing a violent video game online with about 10,000 of his closest friends.

At the FTC, we continue to monitor the industry's own efforts to regulate the marketing of violent entertainment to children. In April of this year, the Commission released its undercover shopper survey on the industry's enforcement of its own entertainment ratings.<sup>11</sup> The FTC recruited 13- to 16-year-olds, unaccompanied by a parent, to attempt to buy movie tickets, DVDs, music CDs, and video games that the industry rated as suitable for mature audiences. Between November 2010 and January 2011, the teenagers in our study attempted to buy these products from national and regional chain stores and theaters across the United States.

Our survey showed that video game retailers continue to be most vigorous in enforcing the ratings governing age and content that were established by the entertainment media industry. Music CD retailers lag far behind movie theaters, and DVD and video game retailers, in preventing unaccompanied children under age 17 from purchasing entertainment intended for mature audiences. While industry has made progress, more progress needs to be made with respect to music CDs, movie tickets and DVDs.

Finally, let me touch on alcohol and youth. The Commission continues its commitment to monitor industry efforts to reduce the likelihood that alcohol advertising will target those under the legal drinking age of 21. The most recent Commission alcohol-related report, issued in 2008, was based on data provided by 12 major alcohol suppliers in response to FTC

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<sup>11</sup> "FTC Undercover Shopper Survey on Enforcement of Entertainment Ratings Finds Compliance Worst for Retailers of Music CDs and the Highest Among Video Game Sellers" (2011) *press release available at* <http://www.ftc.gov/opa/2011/04/violentkidsent.shtm>.

mandatory information requests.<sup>12</sup> This was our first effort to present detailed information about how alcohol companies allocate their promotional dollars. The report also included data on compliance with the industry's advertising placement standard, which requires that at least 70 percent of the audience for advertising consist of adults 21 and older. The Commission found that more than 92 percent of radio, television and print ads disseminated by the 12 suppliers met the 70 percent standard.

Soon we will issue new mandatory information requests from alcohol companies, in order to gather updated information and issue another report.

Thank you for having me today.

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<sup>12</sup> Fed. Trade Comm'n, *Self-Regulation in the Alcohol Industry: Report of the Federal Trade Commission* (2008) available at <http://www.ftc.gov/opa/2008/06/alcoholrpt.shtm>.