

Before the
DIVISION OF ADVERTISING PRACTICES
BUREAU OF CONSUMER PROTECTION
FEDERAL TRADE COMMISSION
Washington, DC

In the Matter of)
Proposed Modifications to the) COPPA Rule Review,
Children's Online Privacy) 16 CFR Part 312,
Protection Rule) Project No. P104503

COMMENTS OF
THE INFORMATION TECHNOLOGY AND
INNOVATION FOUNDATION

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Introduction

The Information Technology and Innovation Foundation (ITIF) is pleased to submit these comments in response to the Federal Trade Commission’s (FTC’s) request for comment on the proposed modifications to its Rule implementing the Children’s Online Privacy Protection Act (“COPPA Rule”).

The FTC is considering modifications to the COPPA Rule. In this supplemental notice of proposed rulemaking, the FTC has proposed modifying the Rule’s definition of “operator,” “Web site or online service directed to children”, “personal information,” and “support for internal operations” to impose more restrictive rules on what personal information can be collected about children and who is allowed to collect this information. In particular, this would restrict targeted advertising on websites directed at children under the age of 13. As described in this filing, ITIF believes the current effort to create more restrictions on the collection and use of information about children is misguided and likely leaves children worse off. Rather than impose additional rules on website operators, the FTC should instead explore ways to foster more development of child-directed sites and services on the Internet using market-friendly methods.

COPPA Regulations Are Ineffective and Inefficient At Protecting Children on the Internet

The purpose of COPPA is to protect the privacy and safety of children under the age of 13 online. The FTC has pursued this goal by creating rules intended to increase parental involvement and control of a child’s online activities and protect the privacy of personally identifiable information about children. For example, the FTC requires that websites directed at children must have a privacy policy posted and obtain parental consent before collecting personal information about children. The FTC’s COPPA Rule also requires that parents have the ability to review personal information collected about their children and request that it be deleted. The FTC has taken enforcement action against websites that fail to abide by these conditions.²

While the purpose of COPPA is to protect children online, it is not clear how well the legislation has achieved this goal. The data handling practices required by COPPA do not apply to websites that do not know whether an individual is under the age of 13 or that are not designed for this age group. As a result, most websites directed at a general audience either do not inquire about the age of their users (and consequently do not need to implement the COPPA protections for young children) or state that children are not allowed to use their website or service. Some of these sites will block children from their website using age verification. However, the type of age

² See for example, “FTC Announces Settlements with Web Sites That Collected Children’s Personal Data Without Parental Permission,” Federal Trade Commission, April 19, 2001, <http://www.ftc.gov/opa/2001/04/girlslife.shtm> or “Web Site Targeting Girls Settles FTC Privacy Charges,” Federal Trade Commission, October 2, 2011, <http://www.ftc.gov/opa/2001/10/lisafrank.shtm>.

verification implemented on websites is often trivial to circumvent. For example, websites will use a form that asks the user to submit his or her age or year of birth. Children can easily give false information to bypass attempts to block out children. In fact, there have been multiple reports that document the routine nature by which children bypass current age verification technologies to use websites and services like Facebook and Skype which officially are only available for individuals age 13 and over.³ Some of these children even access these websites and services, in violation of the official terms of service, with the consent of their parents.⁴

COPPA regulations also fall short in regards to protecting child safety. Congress introduced and passed COPPA in the midst of public concern about the ease with which child predators might obtain the names and addresses of children. In one notable example in 1996, a Los Angeles television station reported that it was able to purchase the ages and addresses of 5,500 children in Pasadena for \$277 from a marketing firm using the name of a convicted murderer.⁵ COPPA regulations do prevent websites from collecting and selling personally identifiable information about children under the age of 13 without parental consent; however, in practice this likely offers limited protection for the safety of children.

First, COPPA only applies to information collected about children online, not information collected through other means. In addition, COPPA does not apply to many websites, such as foreign websites and websites operated by non-profit organizations. Nor does it apply to information about children that is collected online from adults, such as parents or friends.⁶ Second, COPPA only applies to children under the age of 13. However, most victims of online child predators are teenagers, not younger children. One national study of sex crimes against minors found that 99 percent of victims were 13 years or older.⁷ This means that COPPA protections do not apply in the vast majority of cases. Third, while COPPA may help prevent a child predator from purchasing a list of potential victims directly from a website, there are other ways of obtaining this information. The majority of offenders initiate contact with their victims either in a chat room (76 percent) or through instant message (10 percent).⁸ COPPA regulations do not address these problems.

³ ITIF knows one 11 year old who crafted a complete false “adult” identity just so he could access all of the sites he wanted to visit.

⁴ danah boyd, Eszter Hargittai, Jason Schultz, John Palfrey, “Why parents help their children lie to Facebook about age: Unintended consequences of the ‘Children’s Online Privacy Protection Act’,” *First Monday*, 16 (11), November 7, 2011, <http://www.firstmonday.org/htbin/cgiwrap/bin/ojs/index.php/fm/article/view/3850>.

⁵ Jim Herron Zamora, “Data on children easy, cheap to get,” San Francisco Chronicle, May 12, 1996, <http://www.sfgate.com/bayarea/article/Data-on-children-easy-cheap-to-get-3142560.php>.

⁶ See Questions 7 and 17 on “Frequently Asked Questions about the Children’s Online Privacy Protection Rule,” Federal Trade Commission, (October 7, 2008), <http://www.ftc.gov/privacy/coppafaqs.shtm>.

⁷ Janis Wolak, David Finkelhor and Kimberly Mitchell, “Internet-initiated Sex Crimes Against Minors: Implications for Prevention Based on Findings from a National Study,” *Journal of Adolescent Health*, 35 (2004), <http://www.unh.edu/ccrc/pdf/jvq/CV71.pdf>.

⁸ Ibid.

To be clear, ITIF is not arguing that COPPA should be changed so as to allow websites to sell personally identifiable information about children—corporate marketing should not trump child safety. But COPPA, regardless of its admirable intent, should not be exempt from a critical evaluation. Moreover, it is unclear if government regulations are more effective than market forces at protecting children’s privacy and safety. Various industry-backed groups review child-directed sites for privacy and safety concerns and issue seals of approval. In addition, non-profits organizations such as Parent’s Choice rate and review websites for children. Finally, many of the most popular sites for children go far beyond the COPPA rules to employ strong controls to protect the privacy and safety of its users, such as by using active site moderators and automated technologies to prevent harassment. It is worth asking if COPPA-backed regulations are the most effective method of protecting children online and promoting overall child welfare.

COPPA Has Stifled the Growth of Innovative, Child-Friendly Websites

Although COPPA is supposed to protect children’s privacy “in a manner that preserves the interactivity of children’s experience on the Internet and preserves children’s access to information in this rich and valuable medium,” the rules propagated under COPPA appear to have blocked the development of more and better quality online sites and services for children under the age of 13. This is likely due, at least in part, to the COPPA rules which require websites directed at children to develop processes to allow parents to review and delete information collected about their children and obtain verifiable parental consent for users under the age of 13. These types of regulations can be costly for website operators and discourage investment in this area.

This regulatory environment has likely had a negative impact on the quality and quantity of websites and services available to children.⁹ For example, in the more than 10 years since COPPA went into effect, there has been no website or service developed for children that approaches the level of popularity, quality, or sophistication of a general audience site like Facebook or Google. Moreover, even a cursory review of the websites available to children show that these sites have limited content, uninspiring design, and poor pedagogical tools. It is almost as if young children have been largely bypassed by the Internet revolution of the past 10 years.

The differences can also be seen in the business models of general audience website versus those directed at children. Internet advertising has been the dynamo powering the Internet’s rapid growth. Online advertising supports the creation and maintenance of online content, applications and services including news, videos, music, games, social networking, reference, email and other online services. Indeed, many of the websites that millions of Americans use daily for work and play would not be around today without online advertising. In fact, of the top four most popular

⁹ “Statement of Sen. Bryan,” 144 Cong. Rec. S11657 (daily ed. Oct. 7, 1998), <http://www.gpo.gov/fdsys/pkg/CREC-1998-10-07/pdf/CREC-1998-10-07.pdf>.

websites in the United States—Google, Facebook, Yahoo, and YouTube all use online advertising almost exclusively to support their products and services.

In contrast, the business model for websites directed at children are different from those directed at adult audiences. As shown in Table 1, many of the most popular sites for children use a membership-based rather than the advertising-based business model. Of the top ten most popular websites, only four of them use an advertising-only model. Although advertising revenue has enabled the development of many high-quality websites and services on the Internet, among at least the most popular sites, there appears to be fewer of these websites directed at children.

Website	Business Model
1. Nick (nick.com)	Advertising
2. PBSKids (pbskids.org)	Non-profit
3. Nick Jr. (nickjr.com)	Advertising
4. Club Penguin (clubpenguin.com)	Membership/Fees
5. Cartoon Network (cartoonnetwork.com)	Advertising
6. Yahoo! Kids (kids.yahoo.com)	Advertising
7. PopTropica (poptropica.com)	Membership/Fees
8. MoshiMonsters (moshimonsters.com)	Membership/Fees
9. Webkinz (webkinz.com)	Advertising + Membership/Fees
10. Stardoll (stardoll.com)	Membership/Fees

Table 1: Ten most popular websites for children and their business models, 2012¹⁰

The reality is that information has value, but children, unlike adults, are not able to unlock this value on the Internet because this type of exchange is explicitly prohibited by the COPPA Rule. For example, under COPPA a website may not “condition a child's participation in a game, the offering of a prize, or another activity on the child disclosing more personal information than is reasonably necessary to participate in such activity.”¹¹ Whereas a website directed at the general public is allowed to offer free access to its website in exchange for an email address and basic demographic information, the same is not true for websites directed at children. Most people would recognize the absurdity of a rule that said “a website could not condition participation in a website based on whether an individual has paid,” yet by substituting “information” for “money” this rule has managed to get enacted. Rules that limit the ability of children to exchange their information for something else of value, i.e., access to a website, reduce the total amount of revenue available to companies to develop website content and services for children.

¹⁰ Data on popular websites for children from “Top 15 Most Popular Kids Websites,” eBizMBA Inc., September 2012, <http://www.ebizmba.com/articles/kids-websites> and business model information based on analysis of websites as of September 14, 2012.

¹¹ See “§ 312.7 Prohibition against conditioning a child's participation on collection of personal information,” in Title 16: Commercial Practices, Part 312—Children's Online Privacy Protection Rule, 15 U.S.C. 6501–6508, 64 FR 59911, Nov. 3, 1999.

Additional Restrictions on Targeted Advertising under COPPA Will Further Reduce Innovation and Hinder Future Development of Internet Content and Services for Children

Targeted advertising is crucial for supporting the websites responsible for the majority of the free and low-cost content online. This is particularly true for websites that have little ability to determine what ads their users would be most interested in without the cues that better targeting enables (in contrast to some special-interest sites which can do so somewhat more easily). Educational sites for children fall into this category. More targeted advertising for children could help fund the development of more educational websites for children. Educational websites unaffiliated with a particular child-oriented company need advertising revenue, especially if these websites are to be made available to children at no cost.

The proposed COPPA restrictions that would limit targeted advertising would further reduce (and limit the potential growth of) the total revenue available to fund the development of children's websites. This is because advertising rates for online ads that use behavioral targeting are significantly higher than online advertising that do not use behavioral targeting (one study found it to be 2.68 times as much).¹² If the FTC promulgates more restrictive data collection practices that further limits targeted advertising, as proposed in this request for comment, there will likely be a reduction in the availability of high-quality content and services available to children online for free or at a low cost.¹³ The impact of such limitations will likely be distributed disproportionately to children from low-income families the most, since these are the children least likely to be able to seek out alternatives to free content and can afford to pay subscriptions or other fees to for-profit websites.

There are other potential benefits of allowing targeted advertising as well. Online advertising that is not targeted to a user's interest has to be more obtrusive to get the user's attention. For example, advertisers are more likely to use methods like pop-up ads which users find annoying. Targeted advertising can therefore lead to more user-friendly websites. Targeted advertising may be also useful at addressing issues such as stereotypes about gender in advertising (e.g., boys play with trucks, girls play with dolls) since advertisers will be able to deliver ads based on a particular child's interest. This means that a girl who likes Star Wars will be more likely to receive ads for these toys rather than have advertisers assume that she wants to see ads for

¹² Howard Beales, "The Value of Behavioral Targeting," 2009, http://www.networkadvertising.org/pdfs/Beales_NAI_Study.pdf.

¹³ Specifically, the FTC notes that the definition for "support for internal operations" will be modified so that "none of the information collected may be used or disclosed to contact a specific individual, including through the use of behaviorally-targeted advertising, or for any other purpose." See "Supplemental notice of proposed rulemaking; request for comment," Federal Register, Vol. 77, No. 151, August 6, 2012, <http://www.ftc.gov/os/2012/08/120801copperrule.pdf>. Also the 2011 COPPA NPRM is intended to "require parental notification and consent prior to the collection of persistent identifiers where they are used for purposes such as amassing data on a child's online activities or behaviorally targeting advertising to the child." See 2011 COPPA NPRM, 76 FR at 59812 (proposed definition of personal information, paragraph (h)).

Barbie. If advertisers have to rely on limited information, they may be more likely to resort to traditional, gender-specific advertisements. Using targeted advertising can help avoid these negative effects on children.

COPPA Regulations Have Been Usurped by Anti-Advertising Advocates

Much of the discussion and rulemaking for COPPA has been driven by consumer advocacy groups who intrinsically distrust advertising. Many of these groups would sacrifice children's access to high quality content and services to reduce exposure to advertising and would advocate a government-subsidized Internet experience for children. Some of their beliefs are driven by legitimate concerns, such as questions about the impact on child obesity and health from exposure to advertising (especially in print and on TV) about unhealthy snacks and soft drinks. However, while some concerns may be legitimate, that is not a reason to dismiss the entire advertising model. To illustrate this with an example, consider the following: there is widespread consensus in the United States that advertisers should not show advertising for smoking and alcohol to children. Yet there is also (more or less) widespread consensus on the need to have anti-smoking and anti-drinking advertising campaigns targeted at children. Both are forms of advertising directed at children, but one is accepted while the other is not. So advertising itself is not what these groups object to, but rather the content.

A better policy would make a distinction between opposition to advertising content and advertising methods. That is to say that the FTC, and other policy makers, can and should consider guidelines on the appropriateness of the content of advertising that is directed at children (or do so in partnership with the advertising industry's existing self-regulatory process). But that should be a completely separate discussion than the one about the methods used to display advertising.

Unfortunately, there has been little effort made to advocate for this point of view. But that does not mean this perspective is not legitimate. After all, an industry that has been virtually regulated out of existence is likely to have little voice in the policymaking process. Those that have survived in the current environment may be less affected by further restrictions on rules. For example, right now many of the most popular websites for children are either part of a larger consumer brand or tied to a specific toy or product. This means that these websites also likely benefit from cross-promotion of their own brands; indeed, that may be the primary purpose of some of these sites. For example, some websites for children serve as virtual platforms for promoting offline products, such as Webkinz which provides an associated online site for plush toy pets. Other popular websites for children, such as Whyville and Neopets, also use other forms of advertising such as product placement. Because of their business model, these types of sites would be largely unaffected by rules to restrict targeted advertising for children. But that does not mean the FTC should ignore the impact its rules have on the potential innovators of child-friendly websites, especially educational sites. The FTC should act with the best interests of children and parents in mind.

Conclusion

Given that both the current and proposed COPPA Rule has had, and will likely continue to have, a negative impact on the Internet experience for children, the FTC should recalibrate its current effort. Policymakers should carefully consider how they can allow the collection and use of personally identifiable information about children for legitimate purposes while still preventing illegitimate uses. The COPPA rulemaking actions should focus not only on the impact of rules on children's online privacy, but also on the consequences of these rules on the availability of high-quality content and services online for children. Moreover, stricter rules on what personal information can be collected about children and who is allowed to collect this information would not benefit children. If policymakers and parents want more high-quality, low-cost (or free) websites for children, then they should be pushing for rules that enable more targeted advertising.