



FTC Proposes Additional Changes to COPPA Rule; Initiates Further Round of Public Comment

Instead of revealing the long-anticipated final revisions to its rule relating to the Children's Online Privacy Protection Act (COPPA), the Federal Trade Commission last week proposed additional changes to the Rule, as a result of the overwhelming commentary it received to the revisions it proposed last fall (read our September 2011 alert on those proposed changes), and initiated another round of public comment. In its Aug. 1, 2012, [Notice of Proposed Rulemaking](#), the Commission proposed modifications to several definitions in the Rule, including "operator" and "website or online service directed to children" that, if enacted, would clarify that providing the protections required by COPPA is the responsibility of both the entities operating child-directed websites and the third-party services, such as advertising networks, that collect information through those sites. The proposed revisions would also alter the way in which websites with content that attracts a mixed-age audience would be required to comply with COPPA requirements, and redefine "personal information" to include screen or user names, and persistent identifiers, subject to specific exceptions. Because the proposed revisions diverge from those it initially proposed in September 2011, the FTC is not making final amendments to the Rule, but rather is seeking another round of public comments.

Under the current form of the Rule, the responsibility for providing the required notice to parents and obtaining parental consent to the collection of personal information from children rests with the third party collecting information, such as an advertising network or provider of downloadable software - known as "plug-ins" - not with the website operator that allows these third parties to collect information, as long as the operator does not own, control or have access to the information collected. The

FTC proposes modifying the definition of "operator" in the Rule to state that personal information is "collected or maintained on behalf of" an operator where it is collected in the interest of, as a representative of, or for the benefit of, the operator. As a result, an operator of a child-directed site or service that allows or integrates the services of third parties that collect personal information from its visitors would be considered a covered "operator" under the Rule.

The Commission's concurrent proposed revision to the definition of "website or online service directed to children," would also clarify that a third party, such as an advertising network or provider of a plug-in, would be covered by the Rule when it knows or has reason to know that it is collecting personal information through a child-directed website or online service. In the Notice of Proposed Rulemaking, the Commission noted that while the phrase "reason to know" does not impose a duty on entities such as ad networks or providers of plug-ins to monitor or investigate whether their services are incorporated into child-directed sites, they "will not be free to ignore credible information brought to their attention indicating that such is the case."

The FTC also proposed modifications that would relieve websites containing child-oriented content that appeals to mixed-age audience - both children and others, including their families for example - from the obligation under the current rule to treat all visitors as if they are less than 13 years of age. The revised Rule would allow these websites that are likely to attract an audience that includes a disproportionately large percentage of children under age 13 as compared to the percentage of such children in the general population to screen all visitors for age and to

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provide the protections required by COPPA only to those users who are actually below age 13. Under the proposed modification, child-directed sites or services that knowingly target children under 13 as their primary audience or that have overall content that is likely to attract children under age 13 as their primary audience must still treat all users as children. The FTC views this modification as an extension of its present enforcement policy to charge “sites or services with being directed to children only where the Commission believed that children under age 13 were the primary audience.”

The Commission also proposed a modification to the definition of “personal information” to include screen or user names, in cases in which those identifiers could be used by children as a single credential to access multiple online sites, but only if those identifiers function as online contact information - that is allowing children to be directly contacted online even if the screen or user names do not contain an email address. The FTC proposed the modification to the definition as a result of comments to the September 2011 proposed changes arguing that the use of screen or user names is an important part of the effort of operators of child-directed websites at anonymization of children’s personal information.

The definition of “personal information” would also be revised to include a persistent identifier (a customer number held in a cookie, an Internet Protocol (IP) address, a processor or device serial number, or unique device

identifier), if it can be used to recognize a user over time, or across different sites or services - except when used for support of internal operations. In connection with this change, the FTC also proposes to modify the definition of “support for internal operations” to expressly include certain activities - including contextual advertising, but not behavioral advertising. Use of persistent identifiers for authenticating users and maintaining user preferences, as well as protecting against fraud, would not be considered collection of “personal information,” as long as the information collected is not used or disclosed to contact a specific individual.

The FTC is accepting public comments on its proposed changes to the COPPA Rule until Sept. 10, 2012.

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Advanced Media and Technology Department

KENNETH A. ADLER	KADLER@LOEB.COM	212.407.4284
ROBERT M. ANDALMAN	RANDALMAN@LOEB.COM	312.464.3168
ALISA C. BERGSTEIN	ABERGSTEIN@LOEB.COM	312.464.3155
IVY KAGAN BIERMAN	IBIERMAN@LOEB.COM	310.282.2327
CHRISTIAN D. CARBONE	CCARBONE@LOEB.COM	212.407.4852
TAMARA CARMICHAEL	TCARMICHAEL@LOEB.COM	212.407.4225
MARC CHAMLIN	MCHAMLIN@LOEB.COM	212.407.4855
MEG CHARENDOFF	MCHARENDOFF@LOEB.COM	212.407.4069
CRAIG A. EMANUEL	CEMANUEL@LOEB.COM	310.282.2262
KENNETH R. FLORIN	KFLORIN@LOEB.COM	212.407.4966
DANIEL D. FROHLING	DFROHLING@LOEB.COM	312.464.3122
DAVID W. GRACE	DGRACE@LOEB.COM	310.282.2108
THOMAS A. GUIDA	TGUIDA@LOEB.COM	212.407.4011
NATHAN J. HOLE	NHOLE@LOEB.COM	312.464.3110
MELANIE HOWARD	MHOWARD@LOEB.COM	310.282.2143
MICHAEL W. JAHNKE	MJAHNKE@LOEB.COM	212.407.4285
THOMAS P. JIRGAL	TJIRGAL@LOEB.COM	312.464.3150
IEUAN JOLLY	IJOLLY@LOEB.COM	212.407.4810
MICHAEL RIDGWAY JONES	MJONES@LOEB.COM	212.407.4042
JULIE E. LAND	JLAND@LOEB.COM	312.464.3161
JESSICA B. LEE	JBLEE@LOEB.COM	212.407.4073
MICHAEL MALLOW	MMALLOW@LOEB.COM	310.282.2287

KATHERINE THERESE MASON	KMASON@LOEB.COM	212.407.4898
DOUGLAS N. MASTERS	DMASTERS@LOEB.COM	312.464.3144
NERISSA COYLE MCGINN	NMCGINN@LOEB.COM	312.464.3130
ANNE KENNEDY MCGUIRE	AMCGUIRE@LOEB.COM	212.407.4143
DOUGLAS E. MIRELL	DMIRELL@LOEB.COM	310.282.2151
DANIEL G. MURPHY	DMURPHY@LOEB.COM	310.282.2215
BRIAN NIXON	BNIXON@LOEB.COM	202.618.5013
DANIEL O'CONNELL OFFNER	DOFFNER@LOEB.COM	310.282.2252
SETH A. ROSE	SROSE@LOEB.COM	312.464.3177
ROBERT MICHAEL SANCHEZ	RSANCHEZ@LOEB.COM	212.407.4173
ALISON POLLOCK SCHWARTZ	ASCHWARTZ@LOEB.COM	312.464.3169
STEVE A. SEMERDJIAN	SSEMERDJIAN@LOEB.COM	212.407.4218
BARRY I. SLOTNICK	BSLOTNICK@LOEB.COM	212.407.4162
REGAN A. SMITH	RASMITH@LOEB.COM	312.464.3137
BRIAN R. SOCOLOW	BSOCOLOW@LOEB.COM	212.407.4872
WALTER STEIMEL, JR.	WSTEIMEL@LOEB.COM	202.618.5015
AKIBA STERN	ASTERN@LOEB.COM	212.407.4235
JAMES D. TAYLOR	JTAYLOR@LOEB.COM	212.407.4895
MICHAEL A. THURMAN	MTHURMAN@LOEB.COM	310.282.2122
JILL WESTMORELAND	JWESTMORELAND@LOEB.COM	212.407.4019
DEBRA A. WHITE	DWHITE@LOEB.COM	212.407.4216
MICHAEL P. ZWEIG	MZWEIG@LOEB.COM	212.407.4960