

April 23, 2013

Edith Ramirez
Chairwoman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chairwoman Ramirez:

Consumer, privacy, and children's advocates strongly oppose delaying the effective date of the revised Children's Online Privacy Protection Act (COPPA) Rule as recently urged by two trade associations. Delay in implementing these already overdue reforms is unwarranted, would be harmful to children, and would undermine the goals of both Congress and the FTC.

Ensuring the privacy of our nation's children has been and must continue to be a priority for the FTC. In proposing the COPPA Rule revisions for comment in September 2011, the Commission explained that it was "deeply committed to helping to create a safer, more secure online experience for children and takes seriously the challenge to ensure that COPPA continues to meet its originally stated goals, even as online technologies, and children's use of such technologies, evolve."¹ It explained that it initiated review of the COPPA Rule in April 2010 on an accelerated schedule because of the "rapid-fire pace of technological change since the Commission's 2005 review, including an explosion in children's use of mobile devices, the proliferation of online social networking and interactive gaming."²

We know that you fully embrace this strong commitment to protecting children's privacy. You have stressed the importance of updating the COPPA rules in light of new technologies and services being increasingly utilized by children. For example, in your speech to the Children's Advertising Review Unit (CARU) in October 2012, you discussed the "striking developments in technology in the daily lives of children" and observed that the "privacy ramifications of these developments are staggering." You explained that it was critical that COPPA apply to mobile apps "if COPPA is to remain relevant as the world goes mobile."³

Despite the rapid changes in the children's online media environment, it has been more than two-and-a-half years since the Commission released its proposed rule

¹ 76 Fed. Reg. 59804 (2011).

² Id.

³ "FTC COPPA Reform: Aiming for the Regulatory Sweet Spot," Keynote Address of Commissioner Edith Ramirez, CARU Annual Conference, New York, 3 Oct. 2012, p. 4, <http://www.ftc.gov/speeches/ramirez/121003caru.pdf>.

changes. While the Commission recognized the need to act promptly, it has balanced this need against the need to get ample input from the affected industries and to provide sufficient time for implementation of the revised rules.

Indeed, the Commission provided for three separate rounds of comment. No one can reasonably claim that the FTC failed to provide adequate notice of the proposed changes. Moreover, in adopting the final rules in December 2012, the Commission set an effective date more than six months in advance to give the industry plenty of time to come into compliance.

Both groups seeking delay—the Interactive Advertising Bureau (IAB) and the Applications Developers Alliance (Alliance)—commented on the proposal. For example, in comments filed Dec 23, 2011, the IAB opposed any amendment to COPPA and argued that industry self-regulation was sufficient.⁴ In comments filed September 24, 2012, the Alliance “opposed many of the proposal’s components.”⁵ Many members of the IAB and the Alliance also filed their own separate comments on the proposals. In adopting the revised rules, the FTC carefully considered these comments. After the rules were adopted, the Alliance objected to the changes designed to make children’s apps a more privacy-compliant environment, including those concerning the crucial issues defining personally identifiable information.⁶

The requests by IAB and the Alliance to delay implementing the rules would appear to be an attempt at continuing their well-documented opposition to the revised rules. Neither IAB nor the Alliance has presented any compelling reason for giving the industry more time to comply with the law. While IAB claims that implementing the updated rules is “proving to be challenging” for many of its members, it provides no specific reasons or examples. Similarly, both IAB and the Alliance refer to

⁴ IAB, “COPPA Rule Review, Project No, P104503,” Letter from Michael Zaneis, Vice President of Public Policy, IAB, 12 July 2010, http://www.iab.net/media/file/DC1DOCS1-%23400330-v1-Comments_-_COPPA_Rule_Review_P104503.PDF. See also Wendy Davis, “IAB: Proposed Children’s Privacy Rules Undermine Business Model,” MediaPost, 25 Sept. 2012, <http://www.mediapost.com/publications/article/183786/iab-proposed-childrens-privacy-rules-undermine-b.html#axzz2QkItst1c>.

⁵ Comments of Application Developers Alliance, Supporting in Part and Opposing in Part the Commission’s Proposed Rule Regarding the Childrens Online Privacy and Protection Act of 1998,” p. 3, <http://appdevelopersalliance.org/files/pages/COPPA%20Rule%20Review,%2016%20CFR%20Part%20312,%20Project%20No.%20P104503.pdf>.

⁶ Application Developers Alliance, “App Developers Alliance Responds to New Rules Concerning Children’s Data Online,” 19 Dec/ 2012, <http://appdevelopersalliance.org/news/2012-12-19-COPPA>.

“engineering questions,” but fail to identify what these are or what efforts have been undertaken to address them.⁷

Both also point out that the FTC has not yet updated its “Frequently Asked Questions” (FAQs). However, this argument is without merit. Companies are required to comply with rules, not FAQs. In any event, the FTC has given unprecedented guidance about the revised rules in other ways. For example, on the same date the revised rules were released, the FTC posted an advisory to business on its website entitled “FTC’s revised COPPA Rule: Five need-to-know changes for your business.” The posting explained that app developers, for example, are responsible under COPPA only if they “design and control the child-directed content.” It further underscored that the Commission’s adoption of an “actual knowledge” standard means that only those who know they are collecting personal information from a child need to ensure the protection of children’s privacy.⁸

The FTC has provided industry guidance in other ways as well. Then-Chairman Leibowitz participated in a press conference on Capitol Hill and explained that the new COPPA rules will help ensure that “business models that depend on advertising will continue to thrive. The only limit we place is on behavioral advertising.”⁹ In the months leading up to and following the release of the order, FTC staff participated in countless forums to educate the public and industry about the rule requirements.¹⁰ In addition, since early 2012 the Commission has documented and made clear its concerns about the risks to children’s privacy in the mobile application arena.¹¹

⁷ To the extent that “small resource constrained app developers” may experience difficulty in timely complying with the new rules as suggested by the Alliance at 2, we trust that the FTC will utilize prosecutorial discretion in choosing which enforcement actions to bring.

⁸ Lesley Fair, “FTC’s revised COPPA Rule: Five need to know changes for your business,” Federal Trade Commission Bureau of Consumer Protection, Business Center Blog, 19 Dec. 2012, <http://www.business.ftc.gov/blog/2012/12/ftcs-revised-coppa-rule-five-need-know-changes-your-business>; Carolyn Shanoff, “Kid’s Online Privacy: The Next Generation,” OnGuardOnline.gov, 19 Dec. 2012, <http://www.onguardonline.gov/blog/kids-online-privacy-next-generation>.

⁹ Federal Trade Commission, “Statement of FTC Chairman Jon Leibowitz on Updated COPPA Rule,” 19 Dec. 2012, <http://www.ftc.gov/speeches/leibowitz/121219coppastmt.pdf>. See also Federal Trade Commission, “FTC Strengthens Kids’ Privacy, Gives Parents Greater Control Over Their Information By Amending Children’s Online Privacy Protection Rule,” 19 Dec. 2012, <http://www.ftc.gov/opa/2012/12/coppa.shtm>; and the Federal Register description of the changes, <http://www.ftc.gov/os/fedreg/2013/01/130117coppa.pdf>.

¹⁰ See, for example, Association for Competitive Technology, “ACT and FOSI Host Congressional Briefing: Apps, Ads, Kids & COPPA,” <http://actonline.org/pressreleases/2012/08/09/act-and-fosi-host-congressional-briefing-apps-ads-kids-coppa/>; Law Seminars International, “Final Amendments to the FTC’S COPPA Rule,” <http://www.lawseminars.com/detail.php?SeminarCode=13COPPATB>.

¹¹ Federal Trade Commission “FTC Report Raises Privacy Questions About Mobile Applications for Children,” 16 Feb. 2012,

Given these efforts, we are perplexed by claims by IAB and the Alliance that they need significantly more time to educate their members, including smaller providers. Both the IAB and the Alliance have long-established mechanisms for educating their members, whether large or small. They have also participated in conversations about the impending changes to COPPA for more than a year.¹² Moreover, both IAB and the Alliance are engaged in privacy initiatives involving behavioral and mobile data, such as Do Not Track and the Commerce Department's Mobile App Code of Conduct, that reveal they are extremely well-versed in their membership's data-collection practices.

Similarly, we do not understand IAB's claim that its members "need time to update their software and business models." Given the rapid changes in technologies and markets, the usual claim is that the law cannot keep pace with these developments, instead of the other way around. Nor should the Commission give any credence to the Alliance's claim that protecting the privacy of children will somehow lead Alliance members to "stop publishing." As the Commission recognizes, the children's digital marketplace is dramatically expanding, given young people's (and their parents') enthusiastic embrace of apps, online games, and new devices.¹³

http://www.ftc.gov/opa/2012/02/mobileapps_kids.shtm; Federal Trade Commission, "FTC's Second Kids' App Report Finds Little Progress in Addressing Privacy Concerns Surrounding Mobile Applications for Children," 10 Dec. 2012, <http://www.ftc.gov/opa/2012/12/kidsapp.shtm>.

¹² See, for example, IAB's committees for small members and one addressing data issues: Long Tail Committee, http://www.iab.net/member_center/committees/committees/long_tail_committee; Data Council, http://www.iab.net/member_center/committees/councils/data_council. The Alliance has held discussions with its members on children's privacy, for example. It also has established a committee to address children's issues. See, for example, Tim Sparapani, "COPPA Update," 16 Aug. 2012, <http://devsbuild.it/forum/industry-discussion/policy-government-and-industry-debate/876>; Tim Mackenzie, "Privacy Policies and Apps for Children," 23 Sept. 2012, <http://devsbuild.it/forum/industry-discussion/legal-questions-and-international-law/1210>. The Alliance has informed its members on best app practices for children, such as those adopted by "Sesame Workshop," and other practices related to "Kids and Education," <http://devsbuild.it/bucket/kidsandeducation>; Sesame Workshop, "Sesame's Best Practices Guide for Children's App Development," 17 Dec. 2012, <http://www.sesameworkshop.org/our-blog/2012/12/17/sesames-best-practices-guide-for-childrens-app-development/>.

¹³ See, for example, Katie Bessiere, "Consumer Insights: 'iLove Them: Kids' Use of New Devices," Blog.Viacom, 19 Feb. 2013, <http://blog.viacom.com/2013/02/consumer-insights-ilove-them-kids-use-of-idevices/>; Jeanine Poggi, "Disney Upfront Pitches 'Girl Meets World,' Multiplatform Ad Buys," *Advertising Age*, 13 Mar. 2013, <http://adage.com/article/special-report-tv-upfront/disney-upfront-pitches-girl-meets-world-multiplatform-ad-buys/240316/>.

In your speech to CARU in October 2012, you observed that the more that industry protests the proposed changes to the COPPA rule to explicitly prohibit online behavioral advertising to children, “the more it raises questions about [industry’s] claimed intention not to target children.”¹⁴ In the present instance, similarly, the more industry seeks to delay the implementation of rules, the more it raises questions about industry’s intent to comply.

In sum, the revisions to COPPA are necessary to protect children and assist parents in light of the growing use of computers, mobile phones, and tablets, the increasing amount of data that is collected through these devices, and the sophisticated methods used to target and market to consumers. Parents, child advocates, and the public at large strongly support the updated rules. Thus, we respectfully urge the Commission to reject the request for a further delay in implementing these important rules.

Cordially,

American Academy of Child and Adolescent Psychiatry

The Benton Foundation

Berkeley Media Studies Group

Campaign for a Commercial-Free Childhood

Center for Digital Democracy

Center for Science in the Public Interest

ChangeLab Solutions

Children Now

Common Sense Media

Consumer Action

Consumer Federation of America

Consumers Union

¹⁴ Id. at 8

Consumer Watchdog

Electronic Privacy Information Center

National Association of Consumer Advocates

Privacy Rights Clearinghouse

Public Health Advocacy Institute

Public Citizen

The Praxis Project

U.S. Public Interest Research Group

Yale Rudd Center for Food Policy and Obesity

cc: Commissioner Julie Brill

Commissioner Maureen K. Ohlhausen

Commissioner Joshua D. Wright