

**VIA HAND-DELIVERY**

February 14, 2005

Federal Trade Commission
Office of the Secretary
Room 159-H (Annex Y)
600 Pennsylvania Ave., N.W.
Washington, DC 20580

Re: Comments on the Proposed Amendment to the Children's Online Privacy Protection Rule ("Sliding Scale 2005, Project No. P054503").

Dear Sir or Madam:

We the undersigned appreciate the opportunity to provide feedback on the proposed amendment to the Children's Online Privacy Protection Act (COPPA).

Our key comment: the "sliding scale" should be extended until the full review of COPPA, as mandated by Congress, is completed.

The proposed rule change would not be in the best interest of America's children or their parents.

We request extending the "sliding scale" for the following reasons:

1. We have concerns that "e-mail plus" does not, in many cases, result in reliable verification of parental consent.
2. "Internal use" of children's personally identifiable information can result in a customer relationship management and marketing effort targeted at children. This should be of concern to parents and require more reliable forms of verification.
3. Infomediary services, and new technological solutions, are widely available at a reasonable cost to reliably verify that parent's have consented to the use of information about their children.
4. The "sliding scale" was meant to be temporary. Making it permanent now is premature, potentially stifling new technology innovation and locking in place an inadequate form of parental notification.
5. With the detailed review of COPPA about to begin, questions about the effectiveness of "e-mail plus" and the "sliding scale" should be included as part of the broader review.

Background

The primary goal of the COPPA Rule is to give parents control over what information is collected from their children online and how such information may be used.

The COPPA Rule:

- Applies to operators of commercial and general audience websites and online services directed to children under 13 that collect personal information.
- Requires operators of such websites to, among other requirements, post a privacy policy and provide notice about the site's information collection practices to parents.
- Operators must obtain verifiable parental consent before collecting personal information from children.

The COPPA Rule currently contains a "sliding scale" approach for obtaining parental consent, with a stricter standard for websites that share information with others.

- Operators of websites and online services that collect children's personal information solely for internal use can obtain parental consent through the use of an e-mail plus an additional step (hereafter referred to as "e-mail plus") to provide assurance that the person providing the consent actually is the parent. Such additional steps can include:
 - Sending a confirmatory e-mail to the parent after receiving consent.
 - Obtaining a postal address or telephone number from the parent.
 - Confirming the parent's consent by letter or telephone call.
- Operators that wish to disclose children's information publicly or to third parties must use more reliable methods of obtaining parental consent. More reliable methods can include:
 - using a print-and-send consent form.
 - a credit card transaction.
 - a toll-free telephone number staffed by trained personnel.
 - a digital certificate using public key technology.
 - or an e-mail with a password or PIN obtained by one of the above methods.

The FTC adopted the sliding scale approach for parental consent when it issued the final COPPA Rule in 1999, anticipating that more sophisticated, reliable, and cost-efficient technology for obtaining parental consent would become available.

- The "sliding scale" approach was a temporary solution set to expire in 2002.
- In 2002, the FTC extended the "sliding scale" approach until April 21, 2005, asserting new technology was not yet available to ensure compliance.
- Now the FTC is proposing to make the "sliding scale" permanent and "e-mail plus" the standard for website operators who use children's information for internal use only.

Concerns with “e-mail plus” and the “sliding scale”

In short, “e-mail plus” does not -- in too many cases -- result in reliable verification of parental consent. In today’s world of increasingly savvy Internet users, there are many children under 13 years of age who are very resourceful and have learned how to “game the system.”

Internet savvy kids have the knowledge to falsify their age or fabricate an e-mail message that is allegedly from the parent or guardian. Even the COPPA Final Rule was concerned that e-mail alone would not satisfy the COPPA requirements “because it is easily subject to circumvention by children.”

When a website asks for a “parent’s” email address to send a message asking for consent, and the child is registering themselves, the child can easily provide their own home e-mail address or their personal e-mail address without parental involvement.

In most cases the permission granting e-mail is sent instantly, and the child can merely identify it in the inbox, and click the response. Children can thus act “as if” they are the parent behind the guise of their own email account.

Furthermore, but of greater concern, is whether website operators are actually finishing the job intended by “e-mail plus”: the requirement of taking additional steps.

- This second half of the process is often left out, ignored, or inadequately executed.
- Were the “additional steps” a postal letter or a phone call from a trained representative, then “e-mail plus” might be workable.
- In today’s sea of spam, the “additional step” follow-up email may be missed by parents. Yet many websites count “no response” as “passive consent.”

In addition, “internal use,” which requires website operators to act under the temporary and less strict provisions of the sliding scale, is not necessarily a low impact or safe use of children’s personally identifiable information.

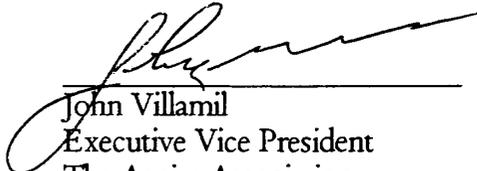
Instead internal use can represent a comprehensive, customer relationship management effort on the part of companies with a focus on targeted marketing to children. This should concern parents and require the more reliable forms of verification, as intended under the initial COPPA rule.

Conclusion

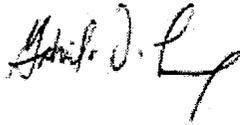
In conclusion, the current comment period is too brief and allows an insufficient study period for proper evaluation of these important questions. Further study of the effectiveness of e-mail plus is needed.

To make the “sliding scale” permanent now would represent a rush to judgment on a principal central to COPPA, which is verifiable parental notification. With the full mandated review of the COPPA rule due to begin shortly, the sliding scale must be extended and more fully examined as part of the broader review.

Respectfully submitted,



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