

**Before the  
FEDERAL TRADE COMMISSION  
Washington, D.C. 20580**

**COMMENTS OF THE  
DIRECT MARKETING ASSOCIATION, INC.**

**CHILDREN'S ONLINE PRIVACY PROTECTION RULE AMENDMENT**

**SLIDING SCALE 2005  
PROJECT NO. P054503 (RE: COPPA)**

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**February 14, 2005**

## **I. Introduction**

The Direct Marketing Association, Inc. (“The DMA”) is pleased to comment on the Federal Trade Commission’s (“the Commission”) proposal to extend indefinitely the sliding scale approach to obtain verifiable parental consent for the collection of personal information about children contained in its rule implementing the Children’s Online Privacy Protection Act of 1998, 15 U.S.C. §§ 6501 *et seq.*, (“COPPA” or “the Act”).

The Direct Marketing Association ([www.the-dma.org](http://www.the-dma.org)) is the leading trade association for businesses and organizations interested in direct, interactive, and database marketing, which in 2003 generated more than \$1.7 trillion in U.S. sales, including \$134 billion in catalog sales and \$41 billion in Web-driven sales. In addition to catalogs and the Web, DMA members employ a wide variety of marketing media, including mail, e-mail, telephone, newspapers and magazines, interactive television, and radio, among others.

Founded in 1917, The DMA today has more than 5,200 corporate, affiliate, and chapter members from the U.S. and 44 other nations. Reflecting the significant and growing role that direct and interactive marketing plays in today’s advertising mix, The DMA’s membership represents marketers from every business segment, including catalogers, Internet retailers, retail stores, nonprofit organizations, advertising agencies, financial services providers, book and magazine publishers, book and music clubs,

industrial manufacturers, and a host of other vertical segments, as well as the service industries that support marketers.

The DMA has supported and worked actively with Congress and the Commission on the passage of the Children's Online Privacy Protection Act. Moreover, The DMA has continued to be actively involved in the COPPA rulemaking proceedings, including submitting comments and participating in the Commission's workshop on this topic. The DMA submitted comments on the earlier Notice of Proposed Rulemaking on the sliding scale, 66 Fed. Reg. 54963, Oct. 31, 2001.

The DMA strongly supports the Commission's proposal to make permanent the sliding scale approach to obtaining parental consent. As demonstrated by the five-year trial period, the sliding scale approach has proven effective at protecting children's privacy, and thus there is no need to delay making the rule and sliding scale permanent. The penetration of verification technologies has not changed in a way that alters the Commission's reasoning at the time of issuing the COPPA regulations. Finally, if the sliding scale approach is made permanent, it will foster the development of additional Web site content for children by providing companies with the regulatory certainty needed to undertake investments in a preferred parental consent mechanism.

## **II. The Sliding Scale Has Proven Effective in Protecting Children's Privacy**

In setting forth the sliding scale approach in 1999, the Commission distinguished between internal uses of children's personally identifiable information (*e.g.*, marketing back to a child based on the child's preferences) and disclosures of

such information to third parties, recognizing that greater risks to children may be present for those activities involving disclosures of information to the public (*e.g.*, chat rooms, messages boards) or other disclosures to third parties. At that time, the Commission balanced the costs imposed by the methods of obtaining consent and the risks associated with the intended uses of the information. 64 Fed. Reg. 59901 (1999). The rule thus provided for a less restrictive means of consent for internal uses of information, enabling Web sites to obtain parental consent through an e-mail plus approach until authentication technologies were more widely adopted.

The sliding scale was adopted on a temporary trial basis, leaving the Commission to revisit this issue again in 2002. In extending the sliding scale mechanism for three more years in 2002, the Commission determined that the sliding scale mechanism was working well, the safety risks to children of a Web site collecting personal information only for its internal use remained low, and anticipated technological developments had not yet occurred. 67 Fed. Reg. 18818, 18820 (2002).

The five years since the adoption of the trial period have demonstrated that the sliding scale approach to parental consent is successfully and effectively protecting children's privacy as intended by the Act. The rationale supporting the initial adoption of the sliding scale, which carefully factors children's safety into the equation, continues to endure and thus warrants permanent extension of this approach. A flexible range of consent mechanisms depending on the use of children's personal information has preserved interactivity at children's Web sites without unduly

burdening these sites' operators with costly parental consent mechanisms that, ironically, could have the unintended effect of reducing children's online content.

Moreover, The DMA is unaware of any complaints against member companies that would call into question the effectiveness of the sliding scale. Nor are we aware of any harm from the use of an e-mail plus consent mechanism. Thus, The DMA believes that the sliding scale should be made permanent.

### **III. Electronic Verification Technologies Have Not Been Widely Adopted**

At the time of promulgating the Children's Online Privacy Protection Rule in 1999, the Commission set forth a sliding scale approach to obtaining verifiable parental consent to allow time for electronic methods of verification to become adopted. As the FTC correctly observes in its current proposed rule, at the present time, just as in 2002 when it undertook the prior rulemaking regarding extension of the sliding scale, the expected progress in available technology has not occurred. 70 Fed. Reg. 2580 at 2580-81 (Jan. 14, 2005). Although technologies to provide verification and authentication on the Internet continue to develop, they have not been widely adopted and deployed. Moreover, at this juncture there is no clear indication that widespread adoption of such technologies will occur in the near future.

### **IV. Extending the Sliding Scale Would Preserve Meaningful Children's Online Content and Foster Additional Development**

The sliding scale strikes the appropriate balance between providing parental control and helping ensure the continued availability of meaningful children's content at Web sites. A change from the e-mail plus standard for internal use of children's

personal information would impose an increased burden on companies that use such information only for internal purposes. Web sites that utilize e-mail plus would be forced to either redesign their offerings through more costly consent mechanisms or limit their offerings, which could have the unintended effect of reducing the amount of children's content available over the Internet.

Moreover, extending the sliding scale indefinitely would provide more regulatory certainty, affording Web sites with clear guidance about how to structure their activities. Many Web sites have not committed resources to implement an e-mail plus system because they have been hesitant to make investments in children's content given the temporary nature of the sliding scale. A permanent extension of the sliding scale will further both the goals behind COPPA and more innovation in the offering of children's sites and services.

## **V. Conclusion**

For the foregoing reasons, The DMA strongly supports the Commission's proposal to make extend the sliding scale permanent.