



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Opening Remarks of Commissioner Rebecca Kelly Slaughter¹

COPPA at 20: Protecting Children's Privacy in the New Digital Era
Georgetown Law's Institute for Technology Law & Policy
October 24, 2018

Good afternoon and thank you to Georgetown Law's Institute for Technology Law & Policy for hosting today's important event, COPPA at 20. It is an honor to be with you to mark this milestone in the protection of children's online privacy and to use the opportunity to reflect on where we have been successful in our efforts and where we could refine our approach.

Twenty years ago, Congress passed the Children's Online Privacy Protection Act. The Act directed the FTC to develop regulations requiring operators of commercial websites and online services directed to children under 13 to give parents tools to control what information is collected about those children.

Following Congress's directive, in 2000, the FTC promulgated the COPPA Rule, which set forth regulations requiring operators to notify parents of their information practices; obtain verifiable parental consent; collect the least amount of data possible; and maintain reasonable procedures to protect the confidentiality, security, and integrity of children's personal information. The Act provided the FTC with civil penalty authority to encourage compliance with the COPPA Rule.

Since enactment of the COPPA Rule, the FTC has brought 28 cases to enforce it. Those cases have yielded millions of dollars in civil penalties and have put strong provisions in place to require violating companies to change how they collect and protect kids' personal information. Two recent examples are actions against a seller of internet-connected toys² and against a web-based talent search firm³ charged with violating COPPA.

As we know, however, the world has changed quite a bit in twenty years. The popular portable devices for kids in 1998 were Gameboys and cd players. Pokemon was simply an inscrutable trading card game; today it is one of the most downloaded mobile games, relying

¹ The views expressed in these remarks are my own and do not necessarily reflect the views of the Federal Trade Commission or any other Commissioner.

² *U.S. v. VTech Electronics Ltd. et al.*, No. 1:18-cv-00114 (N.D. Ill. Jan. 8, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/162-3032/vtech-electronics-limited>.

³ *U.S. v. Prime Sites, Inc.* (Explore Talent), No. 2:18-cv-00199 (D. Nev. Feb. 12, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/162-3218/prime-sites-inc-explore-talent>.

heavily on augmented reality and geolocation technology. And —like all of us—kids are spending more and more time online. According to Common Sense Media, average mobile media time for kids has tripled from 2013 to 2017, increasing from 15 minutes a day to 45 minutes a day.⁴

The FTC has worked to keep pace by adapting COPPA to address innovations that affect children’s privacy – social networking, online access via smartphone, and the availability of geolocation information, to name just a few.

After hosting a national workshop⁵ and considering public comments, we announced changes to the COPPA Rule in 2013⁶ that expanded the types of covered information to include photos, video, or audio files that contain a child’s image or voice. Just last year the FTC issued an Enforcement Policy Statement⁷ that addressed the practice of collecting audio files that contain a child’s voice for immediate conversion into text, in response to inquiries from the marketplace as this practice became more common.

I know the FTC will continue to do everything in its power to respond to developments in technology and ensure that the protections afforded by COPPA are as effective as possible.

But today, we are at a pivotal moment when it comes to privacy; there is widespread acknowledgement that all our citizens, not just our youngest, are in need of better data security and privacy protections, and there is a long-overdue push for the federal government to step in and provide those protections. COPPA can serve as a valuable model for how to develop substantive and flexible regulation supported by meaningful enforcement.

The COPPA Act empowered the FTC with specific rulemaking authority, coupled with civil penalty authority. Most people who are not steeped in the weeds of FTC law—so, most people—do not appreciate that, unlike most other federal agencies the FTC does not have the authority to do traditional APA rulemaking and issue civil penalties. So COPPA gave the agency significant and specific powers.

The FTC was then able to craft a rule that gave clear direction to industry on the protections they needed to provide, guidance on how to do it, and flexibility to achieve the protections in a variety of ways. Technology changed, and so did the rule—we hosted conferences for fresher input, sought comment and amended the rule. When new types of risks

⁴ Michael Robb, *Kids’ Screen Time Shifts Dramatically Toward Phones and Tablets*, Common Sense Media, (Oct. 18, 2017) available at <https://www.commonsensemedia.org/blog/kids-screen-time-shifts-dramatically-toward-phones-and-tablets>.

⁵ FTC Workshop, *Protecting Kids’ Privacy Online: Reviewing the COPPA Rule*, (June 20, 2010), available at <https://www.ftc.gov/news-events/events-calendar/2010/06/protecting-kids-privacy-online-reviewing-coppa-rule>.

⁶ Press Release, FTC, *Revised Children’s Online Privacy Protection Rule Goes Into Effect Today*, (July 1, 2013), <https://www.ftc.gov/news-events/press-releases/2013/07/revised-childrens-online-privacy-protection-rule-goes-effect>.

⁷ Federal Trade Commission Enforcement Policy Statement Regarding the Applicability of the Children’s Online Privacy Protection Act Rule to the Collection and Use of Voice Recordings (Oct. 20, 2017), available at <https://www.ftc.gov/public-statements/2017/10/federal-trade-commission-enforcement-policy-statement-regarding>.

and questions have arisen, the FTC has updated its compliance guidance or its enforcement policies.

In thinking of COPPA as a model, it is also important to remember that COPPA faced significant opposition.⁸ Even the 2013 amendments to COPPA were fiercely opposed.⁹ Some of the predictions from the opposition: that the new rules would prevent websites and developers from developing child-friendly services or as another critic put it, “kids will get fewer and lamer apps.”¹⁰ To the dismay of parents everywhere trying to get their kids to unplug—these fears have not been realized.

As we grapple with questions of how to balance increased privacy protections without chilling innovation, COPPA is instructive that it is possible to establish a baseline of security and privacy protections without impeding the pace or ingenuity of our innovators.

As much as COPPA has been a success and can serve as a model for effective privacy regulation, we also know that the risks that kids and parents face online grow ever more alarming. This 20th anniversary provides an opportunity to take a critical look at COPPA, with an eye toward what more can and should be done to protect children’s privacy.

Can the FTC better keep pace with changing technology in its COPPA enforcement? Does the explosion of home IoT devices pose new risks for kids and can COPPA effectively address these risks? Does the framework of COPPA fairly apportion responsibility among the many market participants involved in delivering online content to kids? Has COPPA’s Safe Harbor increased compliance?

Beyond the specific questions of the effectiveness of our enforcement are some larger questions about children’s privacy that are necessarily a part of any serious reflection on COPPA.

Right now my kids are young, I have many years still before they pass outside the COPPA safety zone of 13. But parenthood so far has been consistent in its relentless speed, I’m at the next stage before I’ve settled in to enjoy my momentary mastery of the current one. I know that the teen years are heading my way with the same alacrity. . . and from my own experience, I don’t recall those years being a highpoint for good decisions, sound judgment and circumspection.

⁸ See, e.g., Melanie L. Hersh, *Is COPPA a Cop Out? The Child Online Privacy Protection Act As Proof That Parents, Not Government, Should Be Protecting Children’s Interests on the Internet*, 28 FORDHAM URB. L.J. 1831, 1865-1872 (2001) (summarizing arguments against and concerns with COPPA).

⁹ See Public Comment(s) on the Federal Trade Commission’s Implementation of the Children’s Online Privacy Protection Act (COPPA) Through the Children’s Online Privacy Protection Rule (COPPA Rule) available at <https://www.ftc.gov/policy/public-comments/2013/08/initiative-339>.

¹⁰ Byron Acohido, *The Ripple Effects of Stricter Privacy Rules for Kids*, USA Today, (July 1, 2013), available at <https://www.usatoday.com/story/cybertruth/2013/07/01/coppa-rules-children-tracking-behavioral-targeting-ftc-child-safety/2479815/>; Anya Kamentz, *How the New COPPA Requirements Are Bad for Businesses and Kids*, Fast Company, (June 28, 2013), available at <https://www.fastcompany.com/3013557/how-the-new-coppa-requirements-are-bad-for-businesses-and-kids>.

A critical question worth revisiting is whether we are offering enough protection for our teenagers. GDPR expands the age range for covered children's information and now requires parental consent for collection of data from kids up to age 16. Should we do the same? Or are there more effective protections for teens that we should consider instead of parental consent?

Finally, it is impossible to think critically about better protections for kids online without addressing the rising levels of technology addiction. Should informed parental consent require operators to disclose information about the risks to children about over-use and do we know what over-use is? We routinely think about the practical implications of our legislation and rulemaking, but we also have an imperative to consider the ethical implications and social cost-benefit analysis.

Taking this anniversary as a time to evaluate the effectiveness and the limits of COPPA, and ask ourselves whether and how we might reach beyond those limits, is important and timely work. I am excited to engage in this dialogue with the expert input from our excellent panelists this afternoon, and I look forward to continuing the conversation.