

**Before the U.S. House of Representatives  
Energy and Commerce Committee**

**Subcommittee on Commerce, Manufacturing and Trade**

*Hearing on “Protecting Children's Privacy in an Electronic World”*

**Statement of  
Stephen Balkam, CEO, Family Online Safety Institute**

October 5, 2011



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Chairman Bono-Mack, Ranking Member Butterfield, and Members of the Subcommittee, my name is Stephen Balkam and I am the CEO of the Family Online Safety Institute (FOSI). On behalf of FOSI, it gives me great pleasure to testify before you at today’s hearing on “Protecting Children's Privacy in an Electronic World.” We would like to applaud the Chairman’s leadership on these issues. The series of hearings held by this Subcommittee are a prime example of an effective step that the government can take to balance the promotion of technological innovation with the need to keep children safe online.

FOSI is an international, non-profit membership organization working to make the online world a safer and healthier place for children and their families. We do this by identifying and promoting the best practices, tools and methods in the field of online safety and privacy that also respect free speech. FOSI’s members represent the best of the Internet industry, including broadband providers, wireless carriers, social networking websites, technology companies, and major trade associations<sup>1</sup>. FOSI works as a trusted convener, bringing

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<sup>1</sup> Members include: AOL, AT&T, BT Retail, Comcast, Disney, Entertainment Software Association, Facebook, France Telecom, Google, GSM Association, Microsoft, Motion Picture Association of America, NCTA,

together leaders in government, industry, and the nonprofit sectors to collaborate and innovate new solutions for online safety in a Web 2.0 world.

Personally, I have over 16 years' experience working in the Internet safety field. I gave testimony before the Senate Judiciary Committee on the Child Pornography Prevention Act of 1995<sup>2</sup> and I attended and spoke at the first White House Internet Summit in 1997<sup>3</sup>. I was appointed as a Commissioner of the Child Online Protection Act (COPA) Commission in 2000<sup>4</sup> and was a member of the Internet Safety Technical Task Force in 2008.<sup>5</sup> I worked closely with the National Cable and Telecommunications Association on the PointSmart-ClickSafe report in 2009.<sup>6</sup> The views expressed in both my written and oral testimony are my own and do not necessarily reflect the views of all the FOSI members.

On September 15, 2011<sup>7</sup> the Federal Trade Commission's (FTC) proposed changes to the Child Online Privacy Protection (COPPA) rule. The Act itself was passed in 1998 and became effective in 2000. The online landscape for all users has certainly changed in the past 11 years, none more so than for children. Gone are the days when we were primarily working to protect them from inappropriate material that they may come across online, now we are dealing with content that they themselves are producing, as well as troubling behaviors such as cyberbullying, sexting and online addiction. We need a more sophisticated approach that

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Nominum, Optenet, RuleSpace, Sprint, StreamShield, Symantec, Time Warner Cable, Telefónica, USTelecom, The Wireless Foundation, Verizon and Yahoo!.

<sup>2</sup> "Child Pornography Prevention Act of 1995" United States Congress. Senate Committee on the Judiciary

<sup>3</sup> "Internet Online Summit." See <http://www.kidsonline.org/participants/>

<sup>4</sup> "Commission on Online Child Protection." See <http://www.copacommission.org/report/>

<sup>5</sup> "Enhancing Child Safety & Online Technologies: Final Report of the Internet Safety Technical Task Force to the Multi-State Working Group on Social Networking of State Attorneys General of the United States." See <http://cyber.law.harvard.edu/pubrelease/isttf/>

<sup>6</sup> "Point Smart Click Safe: Task Force Recommendations For Best Practices For Child Online Safety." See <http://www.pointsmartreport.org/>

<sup>7</sup> "FTC Seeks Comment on Proposed Revisions to Children's Online Privacy Protection Rule" See <http://ftc.gov/opa/2011/09/coppa.shtm>

empowers families to gain and maintain control of their digital lives. Simply put, in order to encourage safe and responsible online use we need tools, rules and schools: the tech tools of filters and monitoring devices; balanced laws, terms of use and household rules; and education on good digital citizenship, online safety, privacy and security.

### **Building a Culture of Responsibility Online**

At FOSI we believe in building a culture of responsibility to ensure that children have a safe and productive time on the Internet. In order to foster good digital citizenship, six different areas of society need to work together. These are:

- 1) Reasonable government oversight and support;
- 2) Fully resourced law enforcement;
- 3) Robust and comprehensive industry self-regulation;
- 4) Tech-savvy teachers;
- 5) Empowered parents; and
- 6) Resilient children making wise choices about the content they access and post online, the people they contact, the people they allow to contact them and how they conduct themselves online.

We support balanced government oversight of industry self-regulatory efforts. This approach allows for maximum innovation and creative solutions as well as the potential for enforcement actions and legislative intervention in the event of industry non-compliance. As part of this, we promote robust and comprehensive industry self-regulation in this space. As a membership organization we bring together the leading technology companies to discuss emerging issues and create best practices and new solutions to increase privacy measures for children and adults alike.

We need more tech-savvy teachers to help foster 21<sup>st</sup> Century skills including digital and media literacy, and good cyber-ethics. By teaching children to make wise choices on the Internet, they can protect themselves and their peers from some of the risks that exist online. The skills that they learn will continue to assist them throughout their digital lives.

Parental empowerment is an important component of this approach. Recent research commissioned by FOSI and carried out by Hart Research Associates<sup>8</sup> showed that 96% of parents questioned say that they have spoken to their children about their online behavior, 87% report awareness of Internet parental controls available and 53% of parents have used them. Among those parents who do not use parental controls 60% state that the reason that they don't is because they have household rules and limits in place. FOSI is working with industry to promote increased awareness of parental controls and education as to their use, and believes that these efforts are key to help parents make informed decisions about the sites their children access online and the information that they share.

In accordance with this multi-stakeholder approach, FOSI commends Congress and the FTC for their work in providing reasonable government oversight through the Children's Online Privacy Protection Act and its corresponding Rule, while encouraging self-regulation and promoting parental empowerment and children's responsibility.

### **Proposed Revisions to Children's Online Privacy Protection Rule**

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<sup>8</sup> *“Who Needs Parental Controls? A Survey Of Awareness, Attitudes, And Use Of Online Parental Controls.”*  
<http://www.fosi.org/research.html>

Since it became effective in 2000 the FTC has conducted two reviews of the Rule,<sup>9</sup> a roundtable discussion with representation from industry, non-profit and government,<sup>10</sup> as well as commencing a number of enforcement actions against those found to be in contravention of the Rule<sup>11</sup>.

The FTC continues to evaluate the effectiveness of the Rule and propose revisions where necessary. The most recent report was released on September 15, 2011<sup>12</sup> and the comment period for the notice of proposed rulemaking is open until November 28, 2011. This provides an opportunity for those impacted by the Rule, as well as all stakeholders to provide input into the proposals before the new provisions come into force.

The planned revisions contain many positive aspects and ideas relating to the definition of a child, the actual knowledge standard, the expansion of parental consent requirements and methods as well as proposed revisions to the safe harbor regime. We agree fully with the FTC's analysis that the current Rule is broad enough to encompass the technological advancements that have occurred in the past 11 years.

The COPPA statute, and thus the Rule, define child as "an individual under the age of 13,"<sup>13</sup> the FTC had asked for comments on whether or not the age should be increased or altered.

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<sup>9</sup> "Children's Online Privacy Protection Rule: Request for Comments." April 21, 2010

<http://www.ftc.gov/os/2005/04/050420coppacomments.pdf> "FTC Seeks Comment on Proposed Revisions to Children's Online Privacy Protection Rule" September 16, 2011 See <http://ftc.gov/opa/2011/09/coppa.shtml>

<sup>10</sup> "Protecting Kids' Privacy Online. Reviewing the COPPA Rule" June 2, 2010 Roundtable. See <http://www.ftc.gov/bcp/workshops/coppa/index.shtml>

<sup>11</sup> "Operators of Online "Virtual Worlds" to Pay \$3 Million to Settle FTC Charges That They Illegally Collected and Disclosed Children's Personal Information" May 12, 2011 See

<http://www.ftc.gov/opa/2011/05/playdom.shtml> and "Mobile Apps Developer Settles FTC Charges It Violated Children's Privacy Rule" August 15, 2011 See <http://www.ftc.gov/opa/2011/08/w3mobileapps.shtml>

<sup>12</sup> "FTC Seeks Comment on Proposed Revisions to Children's Online Privacy Protection Rule" See <http://ftc.gov/opa/2011/09/coppa.shtml>

<sup>13</sup> s.1302 Children's Online Privacy Protection Act 1998

FOSI is pleased to see that the FTC has determined that 13 remains the appropriate age.<sup>14</sup> EU research released this year found that there were increasing numbers of children under 13 accessing social networks, against their terms of use.<sup>15</sup> Changes to the statutory definition could lead to a substantial increase in children lying about their age, and thus negate protections afforded to younger children through COPPA and specific website protections for minors.

FOSI commends the FTC on maintaining the ‘actual knowledge’ standard, rather than substituting the ‘constructive knowledge’ alternative.<sup>16</sup> We believe that such a requirement would be wholly unworkable and would impose unmanageable burdens on all website operators.

FOSI supports the Commission’s decision to look for additional methods to obtain verifiable parental consent.<sup>17</sup> The newly proposed system will allow for innovation and flexibility in the future. Concerns have been expressed about some of the proposed techniques, including the use of parents’ government IDs and video-conferencing, but we are hopeful that the FTC will conduct full risk-assessments and will not maintain data for longer than is necessary, as well as considering the burden that can be imposed on small businesses through the use of suggested methods.

In accordance with the emphasis attributed to parental empowerment in FOSI’s online culture of responsibility, we are pleased to see the introduction of ‘just-in-time’ notifications for

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<sup>14</sup> II. COPPA’s Definition of “Child” Federal Register. Vol. 76, No. 187

<sup>15</sup> “*Social Networking, Age and Privacy*” Livingstone, S., Ólafsson, K. & Staksrud, E. 2011

<sup>16</sup> III. COPPA’s “Actual Knowledge” Standard Federal Register Vol. 76, No. 187

<sup>17</sup> “(1) Mechanisms for Verifiable Parental Consent” Federal Register Vol. 76, No. 187

parents and the simplification of privacy policies.<sup>18</sup> In order that the consent is full and informed, it is vital that parents understand what their children are doing online and what they are consenting to. The encouragement of industry and websites to improve transparency is welcomed. The FTC's increased oversight of the safe harbor programs, with the periodic reporting of COPPA compliance that proposed in the revisions,<sup>19</sup> is a positive step to ensure increased transparency and accountability.

The FTC's enforcement mechanism foreseen in the original Rule has provided a flexible and valuable tool that has allowed the FTC to adapt to the changing technologies. Recent enforcement actions against W3 Innovations LLC, an app developer<sup>20</sup>, show that the FTC was able to use the Rule to ensure the compliance of a technology that was not widely available when COPPA was enacted. Other enforcement actions, such as that against Playdom, Inc<sup>21</sup>, demonstrate that the FTC is able to obtain consent decrees that have both a restitution element as well as imposing increased reporting, by the wrongdoer, of COPPA compliance.

The FTC's review of the Rule, in conjunction with their recent enforcement actions, demonstrates that no further action on the part of Congress is required at this time. The current system, with the FTC's proposed revisions, allows for privacy protection as well as technological innovation.

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<sup>18</sup> "(2) Direct Notice to a Parent" Federal Register Vol. 76, No. 187

<sup>19</sup> "F. Safe Harbors" Federal Register Vol. 76, No. 187

<sup>20</sup> "Mobile Apps Developer Settles FTC Charges It Violated Children's Privacy Rule" August 15, 2011 See <http://www.ftc.gov/opa/2011/08/w3mobileapps.shtm>

<sup>21</sup> "Operators of Online "Virtual Worlds" to Pay \$3 Million to Settle FTC Charges That They Illegally Collected and Disclosed Children's Personal Information" May 12, 2011 See <http://www.ftc.gov/opa/2011/05/playdom.shtm>

## Government Actions

At FOSI we advocate reasonable government supervision with informed lawmaking based on a foundation of robust research. We also encourage restraint in areas we feel that industry is being pro-active and is offering effective solutions to child protection and privacy. It is with this in mind that we express caution in respect to H.R. 1895, the “Do Not Track Kids Act of 2011”<sup>22</sup>, as well as international proposals from the European Commission and the International Telecommunications Union.

The Supreme Court, in a number of decisions,<sup>23</sup> has found that children under 18 are entitled to some, if more limited, first amendment protections. It is our concern that the “Do Not Track Kids Act of 2011” though laudable in its aims would be unconstitutional and technologically impracticable. The concept of the ‘eraser button’ presents legal, technical and practical issues. Firstly, it would conflict with journalistic autonomy and press freedoms, in allowing requests for stories about those under 18 to be arbitrarily removed from the Internet. Furthermore, there is no real explanation for how such a ‘button’ would be developed technically, while the practical issues that come with such an idea, such as the verification of an individual’s identity prior to a deletion request and the issues that shared content present, make it almost totally infeasible. Additionally, we believe that with the proposed revisions to the COPPA Rule many of the provisions within H.R. 1895 become arguable unnecessary and adequate protection is given to children’s privacy.

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<sup>22</sup> H.R. 1895, the “Do Not Track Kids Act of 2011”

<sup>23</sup> *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969) and *Board of Education v. Pico*, 457 U.S. 853 (1982)

There is increased concern about national governments of other countries, as well as international bodies overreaching, with a potentially global effect. While we applaud the balance of regulation, oversight and self-regulatory efforts which are embodied in COPPA, we are mindful of proposed legislation from international bodies such as the European Union<sup>24</sup> and the International Telecommunication Union (ITU)<sup>25</sup>. Both recommend the imposition of a top-down approach that requires industry-wide, rather than technology specific, actions. The plans carry with them the threat of legislation if the European Commission or ITU feel that the mandated self-regulatory approach is not working. Any laws or initiatives enacted by these bodies would require strict compliance by US technology companies operating within these jurisdictions.

For more information on these and many other international initiatives, you can refer to [www.fosigrid.org](http://www.fosigrid.org), an online portal which aggregates online safety initiatives, legislation and education efforts from over 100 countries around the world, as well as all fifty U.S. states.

At FOSI, we caution the government not to overreach. Currently the FTC is doing a consummate job in proposing new provisions in response to the changing nature of the technology, as well as working to educate parents on protecting their children's privacy. Moreover, the 2011 revisions work to increase transparency and improve upon the existing safe harbor scheme.

In our opinion a positive step that Congress could take in this sphere would be to increase funding for Internet safety and privacy education in schools as well as for research into

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<sup>24</sup> “*Digital Agenda: further action needed to safeguard children – Commission report*” September 13, 2011 See <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/1026>

<sup>25</sup> Internet Telecommunication Union “*Child Online Protection Global Initiative.*” See <http://www.itu.int/osg/csd/cybersecurity/gca/cop/>

children's online behaviors and attitudes. A good example of such a proposal is S. 1047 the School and Family Education about the Internet (SAFE Internet) Act<sup>26</sup> introduced by Senator Menendez in 2009. The legislation foresaw a system of grants to carry out Internet safety education programs and research, to be administered by the Secretary of Education and the Secretary of Health and Human Services. This would allow for all future legislative efforts to be founded on a factual base.

## **Conclusion**

In summary, we at FOSI do not believe that there is a need for further governmental action at this time. The admirable work of the FTC in reviewing the COPPA Rule, using the existing mechanisms to keep up with technological innovation and enforcing the Rule against those in breach render them the best suited organization to ensure that children remain safe and private online. The speed at which the technology has developed over the last decade means that any attempt by Congress to pass legislation will almost certainly be rendered inadequate within a few years by the innovation of new methods of online interaction, sharing and communication.

It should be noted, however, that the best way to ensure that children have productive, safe and secure experiences on the Internet, with all the opportunities that it brings, is through awareness, education and empowerment.

FOSI would like to thank the Subcommittee again for holding this timely and important hearing. We believe that with reasonable government oversight, the self-regulatory and multi-

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<sup>26</sup> S. 1047 the School and Family Education about the Internet (SAFE Internet) Act. See <http://thomas.loc.gov/cgi-bin/query/z?c111:S.1047:#>

stakeholder approach currently being championed in the United States can continue to protect children and their privacy on the Internet without impeding technology innovation. FOSI looks forward to working with Members of the Subcommittee as they pursue these issues further. Thank you again for the opportunity to testify today, and I welcome your questions.