

## COMMENTS OF THE ELECTRONIC PRIVACY INFORMATION CENTER

to the

### FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

83 FR 49557

File No. P155408

December 3, 2018

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By notice<sup>1</sup> published on October 2, 2018, the Federal Trade Commission (“FTC”) intends to ask the Office of Management and Budget to extend the current Paperwork Reduction Act clearance for information collection requirements contained in the Children’s Online Privacy Protection Act (“COPPA”) Rule for an additional three years. The Electronic Privacy Information Center (“EPIC”) submits these comments in support of the COPPA Rule.

EPIC is a non-profit, educational organization dedicated to focusing public attention on emerging privacy and civil liberties issues and is a leading consumer advocate before the FTC.<sup>2</sup> EPIC supported COPPA at the time of enactment and continues to believe that COPPA is one of the strongest privacy protection regimes in the United States. Since 1995, EPIC has pursued many important online privacy issues concerning children.<sup>3</sup> We have testified before lawmakers in support of strong privacy safeguards for children<sup>4</sup> and have filed complaints with the FTC detailing unfair and deceptive trade practices that put children’s privacy at risk.<sup>5</sup>

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<sup>1</sup> Fed. Trade Comm’n, *Agency Information Collection Activities; Proposed Collection; Comment Request*, 83 Fed. Reg. 49557 (Oct. 2, 2018), <https://www.gpo.gov/fdsys/pkg/FR-2018-10-02/pdf/2018-21377.pdf>.

<sup>2</sup> EPIC, About EPIC, <https://epic.org/epic/about.html>.

<sup>3</sup> EPIC, *EPIC Letter to Christine Varney on Direct Marketing Use of Children's Data* (December 14, 1995), available at [http://epic.org/privacy/internet/ftc/ftc\\_letter.html](http://epic.org/privacy/internet/ftc/ftc_letter.html).

<sup>4</sup> EPIC, *Children’s Privacy Protection and Parental Empowerment Act: Hearing on H.R. 3508 Before the Subcomm. on Crime of the H. Comm. on the Judiciary*, 104th Cong (1996), (statement of Marc Rotenberg, Executive Director, EPIC), available at [https://epic.org/privacy/kids/EPIC\\_Testimony.html](https://epic.org/privacy/kids/EPIC_Testimony.html).

<sup>5</sup> EPIC, *Children's Online Privacy Protection Act (COPPA)*, <https://epic.org/privacy/kids/>; *See also*, EPIC, *In re Echometrix* (Complaint, Request for Investigation, Injunction, and Other Relief), <https://epic.org/privacy/ftc/Echometrix%20FTC%20Complaint%20final.pdf>; EPIC, *In re Facebook and the Facial Identification of Users* (June 10, 2011), Request for Investigation of COPPA Violations in Facebook’s Facial Scanning of Children, [https://epic.org/privacy/facebook/EPIC\\_FB\\_FR\\_FTC\\_Complaint\\_06\\_10\\_11.pdf](https://epic.org/privacy/facebook/EPIC_FB_FR_FTC_Complaint_06_10_11.pdf); EPIC, *In re Universal Tennis* (May 17, 2017), Complaint on COPPA Violations in the Secretive Scoring of Young Athletes Without Parental Consent, <https://epic.org/algorithmic-transparency/EPIC-FTC-UTR->

The Commission has requested comments on the necessity of the information collection, accuracy of time and cost estimates, how to improve disclosures, and how to minimize the burden. EPIC has learned firsthand through its extensive work on children’s privacy issues that the COPPA Rule is uniquely valuable to help provide privacy protection for children. The best way to improve the utility of the COPPA Rule is to ensure that it keeps pace with changing technologies and new business practices, as the 2013 Amendments process has shown.

## **I. The Value of COPPA**

EPIC has long advocated for the FTC to place meaningful limits on data collection from children, and has urged the Commission to vigorously enforce the COPPA Rule. The rule provides a sensible approach that recognizes both the unique vulnerabilities of young children and the limitations of a self-regulatory approach that would place an unreasonable burden on young minors to interpret privacy policies and make informed decisions about the disclosure and use of personal information.<sup>6</sup>

The benefits of the COPPA Rule are substantial. Children—who lack the ability to understand and assess sophisticated data collection practices—receive a heightened level of protection under COPPA compared to other privacy laws concerning adults. Parents benefit because operators are required to provide information about the kind of data collected about their children and the opportunity to limit data collection and use. Operators benefit because the COPPA Rule, and the statute itself, set forth clear guidelines that enable companies to identify permissible business practices involving the collection, storage, and disclosure of children’s personal information.

The FTC’s 2013 amendments to the COPPA Rule expanded the types of information covered and correctly sought to keep pace with changes in technology. EPIC supported the expanded definition of “personal information,” which now includes photo, video, and audio files that contain a child’s image or voice.<sup>7</sup> This updated definition was responsive to technological changes and new business practices that threaten children’s privacy.

## **II. Information Collection is Necessary but not Sufficient to Protect Children’s Privacy**

EPIC supports the Commission’s requirement that operators participating in the safe-harbor program be required to undergo “independent assessment[s] of the subject operators’ compliance” and to provide the Commission with the results. These audits create an important record for both the Commission and the public to evaluate whether the COPPA Rule is being effectively administered

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Complaint.pdf; EPIC, *In re Genesis Toys and Nuance Communications* (December 6, 2016), Complaint on COPPA Violations in “Toys that Spy,” <https://epic.org/privacy/kids/EPIC-IPR-FTC-Genesis-Complaint.pdf>.  
<sup>6</sup> *An Examination of Children’s Privacy: New Technologies and the Children’s Online Privacy Protection Act (COPPA): Hearing Before the Subcomm. on Consumer Protection, Product Safety, and Insurance of the Sen. Comm. Commerce, Science, and Transportation*, 111th Cong. (Apr. 29, 2009) (statement of Marc Rotenberg, Director, EPIC), at 2-5, [http://epic.org/privacy/kids/EPIC\\_COPPA\\_Testimony\\_042910.pdf](http://epic.org/privacy/kids/EPIC_COPPA_Testimony_042910.pdf).

<sup>7</sup> See, e.g., EPIC Comments to Fed. Trade Comm’n, *On the Children’s Online Privacy Protection Act Rule Review*, Project No. P104503 (Sept. 24, 2012), <https://epic.org/privacy/kids/EPIC-COPPA-2012-Rule-Rev-Cmts.pdf>.

and enforced. However, disclosures and compliance reports, alone, are not sufficient to protect the privacy of American children.

The quality, utility, and clarity of disclosure requirements would be improved by adding restrictions on the personal data collected. COPPA currently requires covered operators to “provide notice and obtain parents’ consent” before using children’s information.<sup>8</sup> While these disclosures are necessary to inform parents about potential harms and privacy risks to their children, the disclosures are not sufficient to protect privacy online. The Commission should consider additional use limitations for children’s data. These limitations, whether mandatory or made available on an opt-out basis, would greatly improve the utility of disclosures.

More generally, if paperwork requirements were broadly established for the collection and use of personal data, then the paperwork obligation would be proportional to the privacy risks to the record subject. This would correctly align incentives for PRA and data protections

### III. Conclusion

The COPPA Rule requires information collection to achieve its purpose. The COPPA would be more effective if the FTC established new limits on how firms can collect and use children’s data. More broadly, PRA requirements should be aligned to the collection and use of personal data.

Sincerely,

/s/ Marc Rotenberg

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/s/ Christine Bannan

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EPIC Consumer Protection Counsel

/s/ Jeff Gary

Jeff Gary  
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<sup>8</sup> Fed. Trade Comm’n, *Agency Information Collection Activities; Proposed Collection; Comment Request*, 83 Fed. Reg. 49557 (Oct. 2, 2018), <https://www.gpo.gov/fdsys/pkg/FR-2018-10-02/pdf/2018-21377.pdf>.