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Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Suite CC-5610 (Annex B)
Washington, DC 20580

Submitted via http://www.regulations.gov

RE: COPPA Rule Review, 16 CFR part 312, Project No. P195404

The Interactive Advertising Bureau ("IAB") welcomes this opportunity to respond to the Federal Trade Commission's ("Commission" or "FTC") request for comments on its review of the Children's Online Privacy Protection Act ("COPPA") Rule ("Rule"). IAB shares the Commission's commitment to protecting children online and looks forward to working with the FTC as it seeks to ensure the Rule continues to protect children as technologies advance.

Founded in 1996 and headquartered in New York City, the IAB (www.iab.com) empowers the media and marketing industries to thrive in the digital economy. Our membership is comprised of more than 650 leading media companies, brands, and the technology firms responsible for selling, delivering, and optimizing digital ad marketing campaigns. We field critical research on interactive advertising, while also educating brands, agencies, and the wider business community on the importance of digital marketing. In affiliation with the IAB Tech Lab, IAB develops technical standards and solutions. IAB is committed to professional development and elevating the knowledge, skills, expertise, and diversity of the workforce across the industry.

Online data-driven advertising has powered the growth of the Internet for decades by funding innovative tools and services for consumers to use to connect, learn, and communicate, including websites and online services for children. Data-driven advertising supports and subsidizes the online content and services consumers, including children, rely on and expect. Regulation that impedes data-driven advertising has the potential to disrupt or decrease the varied and enriching content children can access and learn from online. We provide the following comments against this backdrop, highlighting important considerations for the Commission to take into account during its review of the Rule to ensure children are adequately protected while also able to take advantage of the vast benefits the Internet has to offer.

1. The Internet offers tremendous benefits to children.

In recent years, the online behaviors of children have continued to evolve. Technology is playing an increasingly important role in the lives of young people—the Internet is a source of education and entertainment, as well as an important tool for communication. Indeed, today's

youth are the most connected generation, with children and adolescents estimated to make up one third of all Internet users around the world.[1]

Children's use of the Internet is having tremendous benefits on their lives. As the United Nations has pointed out, "digital technology can be a pathway to expanding economic opportunity for young adults entering the workforce and for children and adolescents preparing themselves for the jobs of tomorrow," and these same technologies "are bringing opportunities for learning and education to children, especially in remote regions and during humanitarian crises."[2]

Thanks to free and advertising-supported services online, children have access to extensive low or no cost content and services. In no small part due to digital advertising, children are able to reap the benefits of an Internet ecosystem that enables the wide dissemination of low and no cost content and services. Advertising is leveling the playing field for children by allowing equal access to content and services, regardless of location or income.

2. The Commission should refrain from further expanding the scope of COPPA (Question 14).

When considering whether to modify the kinds of information subject to the Rule, we encourage the Commission to consider the history of COPPA. In 1998, the Commission brought safety concerns associated with children's online activity to Congress' attention in its report entitled "Privacy Online: A Report to Congress." In that report, the Commission found that "online services and bulletin boards are quickly becoming the most powerful resources used by predators to identify and contact children."[3] It was in this context of wanting to protect children from being contacted by predators that COPPA was introduced and enacted in 1998. Therefore, any updates to the scope of COPPA should continue to serve the goal of protecting children's online privacy and safety.

In Question 14, the Commission asks whether the definition of "Support for the internal operations of the website or online service" should be changed to exclude additional practices beyond behavioral targeting and profiling. We do not support excluding additional practices beyond behavioral targeting and profiling. IAB would support the Commission's decision to take a position that additional activities fall within the support for internal operations definition. The Commission previously has recognized a broad range of activities including intellectual property protection, payment and delivery functions, spam protection, optimization, statistical reporting and debugging to fall within the scope of the support for internal operations definition in addition to those specifically identified in the definitions of § 312.2. These activities, as well as activities such as advertising delivery, the passing user preferences related to advertising, and content personalization, are critical to permitting the smooth and optimal operation of age

[1] UNICEF, *Children in a Digital World, The State of the World's Children* (2017), at 3, located at https://www.unicef.org/publications/files/SOWC_2017_ENG_WEB.pdf.
[2] *Id*. at 28.
[3] FTC, *Privacy Online: A Report to Congress* (June 1998), at 5, *located at* https://www.ftc.gov/sites/default/files/documents/reports/privacy-online-report-congress/priv-23a.pdf.

appropriate Web sites and online services and enable businesses to continue to monetize and offer compelling kid-friendly content in subscription, paid and free sites and services.

In Question 14, the Commission also asks if advertising attribution should be expressly included in the definition of internal operations. Advertising attribution, measurement, fraud detection, conversion tracking, advertising modeling, and similar services are fundamental activities that improve the customer and business experience without creating additional privacy risks to children. The practice of attributing advertisements enables brands and companies to understand the effectiveness of their marketing efforts, to calculate and compensate partners for advertising services, to optimize or reallocate marketing expenditures if certain advertisements or platforms are less effective, and to improve the products and services they offer to adult consumers and children. For example, measurement and conversion tracking provide advertisers with information about the aggregated value of their ads, which is important for making contextual advertising models sustainable. And advertising modelling allows advertisers to provide users with more meaningful and appropriate contextual advertisements without using specific historical activities data for behavioral advertising. Furthermore, COPPA expressly contemplates that online services for children contain advertising. As such, explicitly including critical advertising-related uses of information such as advertising attribution in the definition of "Support for the internal operations of the website or online service" would have the effect of clearing up uncertainty surrounding a practice that is permissible under the existing Rule. We urge the Commission to update the Rule to expressly include advertising attribution, measurement, fraud detection, and similar services in the definition of "Support for the internal operations of the website or online service."

3. The COPPA Rule has reduced the availability of child-directed content online (Questions 1-4, 7, 8, 9, 10, 12, 13).

In 2013, the FTC issued updates to the COPPA Rule that, among other changes, modified the list of data elements comprising "personal information" that cannot be collected without parental notice and consent. The new definition includes "persistent identifiers" that can be used to recognize users over time and across different websites or online services.[4]

The effect of this change has been felt by consumers and businesses alike. Today, nearly 90 percent of digital display advertising is automated.[5] This automated advertising relies on the use of identifiers to place the highest value ad and provide the content publisher with the highest revenue. Unlike direct marketing, the placement of personalized advertising does not require the use of personally identifiable information such as name, address, or phone number or any other information that would allow someone to identify or contact the person, either online or physically. As a result, identifiers are privacy protective by design and do not carry the same risks as other forms of data.

[4] 16 C.F.R. § 312(2).
[5] Lauren Fisher, eMARKETER, *US Programmatic Ad Spending Forecast 2019* (Apr. 25, 2019), located at https://www.emarketer.com/content/us-programmatic-ad-spending-forecast-2019.

The FTC's decision to add persistent identifiers to the definition of personal information has diminished the ability of some of our members to provide innovative offerings to children. Some companies have chosen to forego developing children's websites and online services as a result of the 2013 Rule updates. Rather than developing content for children, some companies have instead focused on providing offerings that are suitable for general audiences due to the increasing potential for liability under the COPPA Rule. As a result, the Commission's 2013 Rule updates may have had the unintended effect of reducing children's offerings online.

The Commission's request for comments indicates it is considering taking steps to expand the definition of personal information even further. In Question 13, the FTC asks whether it should add data that is inferred about, but not directly collected from children, to the definition of personal information. We urge the FTC to refrain from adding inferred data to the definition, as such a change would create tremendous ambiguity and further hamper the ability of companies to provide online services and websites for children. Moreover, inferences, like persistent identifiers, do not constitute a type of information that would enable a child to be contacted physically or online. As such, Congress never envisioned inferred data to be regulated under COPPA or its implementing Rule,[6] and the FTC should not supplement the definition of personal information with this additional data element.

By conflating identifiable with non-identifiable types of data, the FTC has captured many activities related to ad serving under the Rule, when such activities do not pose a danger to children. We encourage the Commission to not to add more elements, like inferred data, to the definition. We also request the FTC to consider the proposed advertising and content personalization exceptions that we highlight above.

4. The Rule should maintain the "actual knowledge" standard (Questions 15, 25).

COPPA requires website operators and online service providers to have "actual knowledge" that a particular visitor using their website or online service is under 13 years old before they must obtain parental consent. Congress specifically chose to include this actual knowledge standard in the statute when it first passed COPPA in 1998. Because the actual knowledge standard is statutorily mandated, any expansion of its coverage in the direction of constructive knowledge would be beyond the FTC's statutory authority.

Eliminating or modifying the actual knowledge standard in the manner suggested by the Commission will create significant uncertainty in the market. To help mitigate concern of enforcement actions by the Commission under this ambiguous standard, it is likely that many general audience website operators would operate from a defensive position, concluding that it is less risky to deny access to anyone they suspect of being under the age of 13. This is a position that dramatically diminishes choices for all consumers, children and adults alike. Of the top ten trafficked websites in the United States, not a single one intends for children to be its main audience, yet they all would be affected by a "constructive knowledge" standard requiring

[6] *See* 15 U.S.C. § 6501(8)(F).

website operators and online service providers to make a "constructive guess" as to whether or not they could potentially be collecting personal information from children under 13. Alternatively, general audience sites may have to employ age gates more broadly, which would create a disruptive user experience and could dilute the effectiveness of age screening.

COPPA was never meant to apply to the entire Internet, but it was intended to apply to websites and online services directed to children under the age of 13 or where operators have actual knowledge that a visitor is a child. The Commission should preserve the "actual knowledge" standard, thereby ensuring continued access to premium online content for children.

A. Determining COPPA applicability based on "large" numbers of child users is vague and contrary to the actual knowledge standard (Question 15).

The Commission asks in Question 15 whether the definition of "Web site or online service directed to children" should be amended to cover websites that may have large numbers of child users when they are not "child-oriented." We oppose this proposal, as we view it as a move away from the "actual knowledge" standard. We further believe that this proposal is duplicative of the listed factors the FTC may consider to determine whether a website or online service is directed to children in the Rule, and it would create significant uncertainty for companies which will be required to interpret this vague directive.

The FTC enumerates a number of factors it considers in determining whether a website or online service is directed to children.[7] One of the explicitly listed factors is "empirical evidence regarding audience composition."[8] Consequently, the number of child users of a given website or online service is already encompassed in the FTC's analysis of whether the website or online service is directed to children. The Commission does not need to add websites with "large" numbers of child users to the definition to capture this consideration, as the actual audience of a given website or online service is already taken into account through the analysis.

In addition, we caution the FTC from considering certain other factors when determining whether a website or online service is directed to children. For example, the Commission should not take into account app store ratings or app names when determining whether a website or online service is directed to children. These are generally determined by third parties and are based on the complexity of the mechanics or the degree to which explicit or violent content is present, rather than the age of the targeted consumer. Similarly, the FTC should not consider app names in its analysis. Third party platforms that collect personal information via apps are rarely able to review and analyze the app's name and the type of users its name may attract before collecting personal information from users of the app. Furthermore, app names that may appear to be whimsical and child-oriented may not actually be directed to children or intended to have children as a principal audience (consider, e.g. Candy Crush). Considering factors such as app names and app store ratings in the Commission's "directed to children" analysis has the potential to inject arbitrary considerations into the scope of COPPA's applicability.

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[7] 16 C.F.R. § 312.2.
[8] *Id.*

In sum, the Commission's proposal to add websites that have "large" numbers of child users, even when such websites are not "child-oriented", to the scope of COPPA is a vague suggestion that would be difficult to manage in practice. Without direction from the FTC, companies would have no barometer by which to calibrate how many child users constitutes a "large number" of users. We caution the FTC from injecting duplicative, arbitrary, and vague notions or factors into the definition of "Web site or online service directed to children."

B. General audience platforms should be held to the actual knowledge standard (Question 25).

In Question 25, the Commission asks whether the Rule should encourage general audience platforms to "identify and police child-directed content uploaded by others." We believe the outcome of such a change would be a move away from COPPA's "actual knowledge" standard, which Congress purposefully included in the statute in 1998. Instead of taking steps to move away from this statutorily mandated standard, the FTC should affirm in its Rule update that general audience platforms have no affirmative duty to police child-directed content uploaded by others or to investigate the ages of visitors to their platforms under COPPA.

Requiring general audience platforms to identify and police child-directed content uploaded by others would shift COPPA's applicability away from actual knowledge. By obligating platforms that may not have actual knowledge of child users to take steps to review and monitor content that may be consumed by children, the Rule's provisions may become applicable to businesses who may not have actual knowledge of the ages of visitors to their platform. This proposal would force platforms to adjust their business operations for compliance with the Rule even if they have no actual knowledge of child users. We oppose any efforts by the Commission to regulate businesses' conduct under the Rule in ways that go beyond the text of COPPA itself.

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The IAB thanks the Commission for this opportunity to submit these comments, and looks forward to working closely with the Commission on this important topic. Please do not hesitate to contact me at (202) 800-0771 with any questions.

Respectfully submitted,

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Interactive Advertising Bureau