

July 19, 2011

Hon. Cameron Kerry, General Counsel, Department of Commerce
Christopher Schroeder, Assistant Attorney General, Department of Justice
Co-Chairs, Interagency Subcommittee on Privacy and Internet Policy
The National Science and Technology Council
The White House

Dear Counsel Kerry and Assistant Attorney General Schroeder:

We were pleased to meet with members of the Subcommittee last month to discuss the need for Internet privacy and consumer protection safeguards on behalf of children and adolescents. As promised, we are writing to highlight some of our concerns and to outline our positions on current policy proceedings that we are asking the Administration to support in its forthcoming White Paper on information privacy.

A number of the consumer, privacy, and child health organizations represented at the meeting were instrumental in the passage of the Children's Online Privacy Protection Act (COPPA) in 1998. Because it was enacted during the early days of e-commerce, COPPA established an important policy foundation that continues to provide effective online safeguards for children under 13.

As you know, today's young people are growing up in a ubiquitous digital media environment, where mobile devices, social networks, virtual reality, interactive games, and online video have become ingrained in their personal and social experiences. This is especially true for teens, many of whom are living their lives online. Because digital media resonate strongly with many of the fundamental developmental tasks of adolescence—such as identity exploration, social interaction, and autonomy—teenagers have embraced these new tools with great enthusiasm.

However, teenagers are also key targets in a rapidly growing online marketplace that subjects them to increasing amounts of data collection, behavioral profiling, and manipulative techniques that threaten their privacy. Through Web analytics, conversation targeting, and other forms of surveillance, marketers can now track individual teens across a growing array of digital media platforms—from social networks to gaming to mobile phones—monitoring their interactions, social relationships, and locations. (We have included several articles and reports documenting these practices.)

The groups represented in our coalition are committed to ensuring that all youth are able to participate fully in this new digital media culture and be treated fairly as consumers. Because the needs and capacities of young people are distinctly different from those of adults, we call on the Interagency Subcommittee and the White House to incorporate into the forthcoming White Paper a policy framework that addresses the privacy concerns of both children and adolescents. Moreover, we call on the Administration's support for the following items:

Updating and strengthening the COPPA rules currently under review by the Federal Trade Commission. COPPA was written to be flexible, so that its rules could be revised and updated to address ongoing technological and market developments. Consumer, privacy, child health and advocacy groups have called on the FTC, as part of its current COPPA review, to address a number of issues confronting parents and children in today's contemporary marketplace, including extending privacy protections to mobile devices, online gaming sites, and other new platforms. (See attached.) The Administration's White Paper should strongly support these efforts to ensure COPPA's continued effectiveness in protecting the privacy of children under 13.

Passage of federal legislation that protects adolescent privacy. Currently, adolescents lack appropriate privacy protections in the digital marketplace. While the mechanism of parental consent in COPPA would not be appropriate or effective for this age group, we are calling for a set of Fair Information Practices to ensure that teens have age-appropriate understanding and control over the data collection and online targeting process. These practices would apply to marketers that are specifically targeting teens, and would include creating user-friendly privacy policies designed for teens (using the "just-in-time" notices, for example, proposed by the recent FTC staff report), as well as mechanisms for teenagers to opt in to data collection (so that they will not be subjected to behavioral profiling and tracking without informed prior consent). Through an FTC rulemaking, key stakeholders—including industry, consumer privacy, and child advocacy groups—would work together to help develop this FIPS framework.

In the last decade or so, a growing body of research has identified biological and psychosocial attributes of the adolescent experience that may play an important role in how teens respond to marketing, making them more vulnerable than they have been thought to be in the past. Research on brain development, for example, has found that the prefrontal cortex, which controls inhibitions, does not fully mature until late adolescence or early adulthood. Additionally, children entering puberty experience hormonal changes that make them more receptive to stressful environmental stimuli. As a consequence, at the same point in their lives when their biological urges are particularly intense, adolescents have not yet acquired the ability to control these urges. They also experience greater emotional volatility than either younger children or adults, including frequent and intense negative emotions and fewer positive emotions. These factors may help make teens more susceptible

to digital marketing, especially when they are distracted, are in a state of high arousal, or are subjected to peer pressure. (See attached article by Professor Frances Leslie, et al, of the University of California.) Thus, certain digital marketing techniques targeted at teens are uniquely deceptive to the audience they are aiming to persuade.

Adolescents are particularly vulnerable to the panoply of sophisticated techniques that marketers are using on mobile and location-based platforms. Teens remain quintessential early adopters in their use of mobile phones, avidly embracing a variety of Web applications and communication tools. Nielsen reports that teens 13-17 watch more video via their phones than any other group (some 7 hours, 13 minutes a month, compared to the next highest group—18-24 year olds—who watched 4 hours, 20 minutes a month during the second quarter of 2010). Teens from low-income households, particularly African Americans, are much more likely than other teens to access the Internet with a cell phone. The ubiquity of mobile phones gives marketers unprecedented ability to follow young people throughout their daily lives, delivering highly enticing marketing offers that are designed to trigger impulsive behaviors, and linking point-of-influence techniques to point-of-purchase opportunities.

During the meeting, several members of the Subcommittee asked for examples of teen targeting online. We have attached the comments we submitted to the FTC for its recent staff report on privacy, which identify a number of companies engaged in teen-specific targeting—e.g., MyYearbook, Alloy, Stardoll Media, Habbo, Gaia Online, AOL, Microsoft, Yahoo, SONY, and Hearst. We would be happy to provide the Subcommittee with more information on adolescent online data collection in the contemporary digital marketplace.

We have included a number of background materials that provide further research on both the digital marketplace and children and adolescent development. We look forward to discussing these issues with you and your colleagues.

Respectfully submitted,

American Academy of Pediatrics

American Academy of Child and Adolescent Psychiatry

Benton Foundation

Center for Digital Democracy

Center for Science in the Public Interest

Children Now

Consumer Action

Consumer Federation of America

Consumers Union

Consumer Watchdog

National Consumers League

Privacy Rights Clearinghouse

Public Health Law and Policy

World Privacy Forum

David Britt, President and CEO (retired), Sesame Workshop

Kathryn Montgomery, PhD, Professor, School of Communication, American University

Ellen Wartella, PhD, Professor, School of Communication, Northwestern University

(Attachments sent separately)