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COPPA, Kids, Cookies & Chat Rooms: We're from the Government and We're Here to Protect Your Children

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COPPA, Kids, Cookies & Chat Rooms: We're From the Government and We're Here to Protect Your Children

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TABLE OF CONTENTS

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I. ON-LINE PRIVACY: THE DIGITAL "PERFECT STORM"?

From the founding of the United States to the present, Americans have jealously guarded their natural right to privacy. How times have changed. Today, we are no longer concerned with our right to privacy against British troops in our homes, but our on-line rights to privacy from cookies in our personal computers—particularly as these rights relate to our children.[1] High-profile lawsuits against Doubleclick.com,[2] Amazon.com,[3] Netscape and AOL,[4] Yahoo.com,[5] RealPlayer[6] and disturbing new revelations about the FBI's 'Carnivore' software, that monitors our e-mail,[7] are fanning the pyres of concerns among consumers, courts and Congress alike.

Forrester Research found that consumers "are most concerned about how much personal information they give and who sees it."[8] A Business Week poll found that a majority of those polled expressed a "rising tide of concern" about on-line privacy and favored more legislation to regulate how personal information is collected and used.[9] A 1999 study by AT&T, Harvard and MIT found that:

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[1] Arguably, a child's right to privacy is a derivative right based on the parents' fundamental right to direct the education and upbringing of their children. *See* Troxell v. Granville, 530 U.S. 57 (2000) (citing Wisconsin v. Yoder, 406 U.S. 205 (1972); Prince v. Massachusetts; 321 U.S. 158 (1944); Pierce v. Soc'y of Sisters, 268 U.S. 510 (1925); Meyer v. Nebraska, 262 U.S. 390 (1923)).

[2] *See* Will Rodger, *Activists Charge DoubleClick Double Cross*, USA TODAY.COM, *at* http://www.usatoday.com/life/cyber/tech/cth211.htm (June 7, 2000).

[3] See ZDNET NEWS, *Amazon.com Faces Privacy Complaints, at* http://www.zdnet.com/zdnn/stories/news/0,4586,2434504,00.html (Feb. 8, 2000).

[4] *See* TECH L.J., *Netscape and AOL Sued for Alleged Privacy Violation, at* http://www.techlawjournal.com/privacy/20000706.htm (July 6, 2000).

[5] *See* EPIC NEWS, *Anonymous Message Board Poster Sues Yahoo! for Disclosures, at* http://www.epic.org/news (July 20, 2000).

[6] *See* Brian McWilliams, *Real Networks Hit With Privacy Lawsuit, at* http://www.internetnews.com/streaming-news/article/0,2171,8161_235141,00.html (Nov. 9, 1999).

[7] *See* Amy Worden, *FBI Claims E-mail Snooper Protects Privacy, at* http://legalnews.findlaw.com/crime/s/20000721/emailsnooping.html (July 21, 2000) (on file with author); WIRED NEWS, *Carnivore Eats Your Privacy, at* http://www.wired.com/news/politics/0,1283,37503,00.html (July 11, 2000); Mary Jo Foley, *Congress Isn't Swallowing Carnivore, at* http://www.zdnet.com/zdnn/stories/news/0,4586,2606899,00.html (July 24, 2000).

[8] Press Release, Forrester Research, Forrester Technographics® Finds Online Consumers Fearful Of Privacy Violations, *available at* http://www.forrester.com/ER/Press/Release/0,1769,177,FF.html (Oct. 27, 1999).

[9] Heather Green, et al., *Our Four Point Plan, available at* http://www.businessweek.com/2000/00_12/b3673006.htm (Mar. 20, 2000).

> Users were almost as willing to provide a Web site with their e-mail address as they were to name their favorite snack or TV show, the study found, while they consider phone numbers more private than any personal information other than credit card and social security numbers. They were less likely to provide information about themselves that could be shared for marketing purposes, and the vast majority were unwilling to share any information that would identify their children by name, age or address.[10]

Professor Mary J. Culnan, Director of the Georgetown University Internet Privacy Policy Study found that "98% of the Top 100 websites collected at least one type of personal identifying information (e.g. name, e-mail address, postal address), 75% collected at least one type of demographic information (e.g., gender, preferences, Zip code) and 74% of the sites collected both personal identifying and demographic information."[11]

Federal and state legislators, responding to alarmed constituents, are seemingly trying to outdo each other in introducing new on-line privacy legislation. At the state level, governors, attorneys general and key legislators are introducing initiatives and policies to stop the spread of personal, government, financial, medical and Internet records.[12] "Our fundamental right of privacy has been almost completely eroded by rapid advances in computers," according to New York Attorney General Eliot Spitzer.[13] During the 106th Congress *alone*, the following federal legislation was introduced: The Online Privacy Protection Act[14] (Senate Bill 809, Burns), Electronic Rights for the 21st Century Act[15] (Senate Bill 854, Leahy), The Electronic Privacy Bill of Rights Act[16] (House Bill 3321, Markey), The Secure Online Communication Enforcement Act[17] (Senate Bill

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[10] Press Release, AT&T Labs, Survey: "One-Size-Fits-All" Privacy Won't Work On Net, *available at* http://www.research.att.com/projects/privacystudy/press.htm (Apr. 14, 1999).

[11] DR. MARY J. CULNAN, GEORGETOWN MCDONOUGH SCHOOL OF BUSINESS, GEORGETOWN INTERNET PRIVACY POLICY STUDY, *available at* http://www.msb.edu/faculty/culnanm/gippshome.html (last modified Aug. 15, 2000).

[12] Richard Wolf, *States Move to Protect Online Privacy*, *available at* http://www.usatoday.com/life/cyber/tech/cth172.htm (June 7, 2000).

[13] *Id.*

[14] Online Privacy Protection Act, S. 809, 106th Cong. (1999), *available at* http://thomas.loc.gov/cgi-bin/query/z?c106:S.809: (last visited Apr. 11, 2001).

[15] Electronic Rights for the 21st Century Act, S. 854, 106th Cong. (1999), *available at* http://thomas.loc.gov/cgi-bin/query/z?c106:S.854: (last visited Apr. 11, 2001).

[16] Electronic Privacy Bill of Rights Act, H.R. 3321, 106th Cong. (1999), *available at* http://thomas.loc.gov/cgi-bin/query/z?c106:H.3321: (last visited Apr. 11, 2001).

[17] Secure Online Communication Enforcement Act of 2000, S. 2063, 106th Cong. (2000),

2063, Torriceli), The Consumer Privacy Protection Act[18] (Senate Bill 2606, Hollings), The Internet Security Act[19] (Senate Bill 2430, Leahy) and The Internet Integrity and Critical Infrastructure Protection Act[20] (Senate Bill 2448, Hatch).

"People are confused—they're not sure, but they think somebody is watching them without telling them, and they're ticked," notes attorney John Kamp, who represents the Internet Advertising Bureau.[21] Web site operators, under increasing pressure and scrutiny from both state and federal regulators, have formed self-regulatory alliances such as the Internet Advertising Bureau[22] and privacy 'seal' entities such as Trust-e.com[23] to allay consumers' concerns and the threat of more litigation and government regulation.

II. THE FTC'S ROLE IN ENFORCING THE COPPA

At the eye of the on-line privacy storm is the Federal Trade Commission (FTC). The FTC, acting under its federal powers,[24] has placed itself at the forefront of public debates on electronic commerce and on-line privacy by holding workshops and seminars, issuing reports to Congress,[25] recommending legislation and filing

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available at http://thomas.loc.gov/cgi-bin/query/z?c106:S.2063: (last visited Apr. 11, 2001).

[18] Consumer Privacy Protection Act, S. 2606, 106th Cong. (2000), *available at* http://thomas.loc.gov/cgi-bin/query/z?c106:S.2606: (last visited Apr. 11, 2001).

[19] Internet Security Act of 2000, S. 2430, 106th Cong. (2000), *available at* http://thomas.loc.gov/cgi-bin/query/z?c106:S.2430: (last visited Apr. 11, 2001).

[20] Internet Integrity and Critical Infrastructure Protection Act of 2000, S. 2448, 106th Cong. (2000), *available at* http://thomas.loc.gov/cgi-bin/query/z?c106:S.2448: (last visited Apr. 11, 2001).

[21] Chris Oakes, *Websites Facing "Privacy Storm," available at* http://www.wired.com/news/politics/0,1283,37547,00.html (July 13, 2000).

[22] *See* INTERNET ADVER. BUREAU, *at* http://www.iab.net (last visited Aug. 1, 2000).

[23] *See* TRUSTE, *at* http://www.truste.com (last visited Aug. 1, 2000).

[24] Unfair Methods of Competition Unlawful; Prevention by Commission, 15 U.S.C.A. § 45 (2000).

[25] FEDERAL TRADE COMMISSION, PRIVACY ONLINE: FAIR INFORMATION PRACTICES IN THE ELECTRONIC MARKETPLACE, *available at* http://www.ftc.gov/reports/privacy2000/privacy2000text.pdf (last visited Apr. 11, 2001). In its recent report to Congress, the FTC found less than twenty percent of web sites sampled complied with the basic elements of Fair Information Practices of Notice, Choice, Access and Security. The report recommended Congress pass legislation further empowering the FTC to administer and enforce the four Fair Information Practices that would require web sites to give notice of their information practices, allow individuals to control how their data is used, allow individuals to access and correct their data and require web sites to enhance their security measures. The Report elicited a scathing dissent from FTC Commissioner Orson Swindle:

> I dissent from this embarrassingly flawed Privacy Report and its conclusory—yet sweeping—legislative recommendation. In an unwarranted reversal of its earlier acceptance of a self-regulatory approach, a majority of the Commission

enforcement actions against on-line service providers engaged in unfair or deceptive trade practices.[26]

A. Introduction to The COPPA

In 1998 Congress broadly expanded the FTC's enforcement powers in cyberspace with the Children's Online Privacy Protection Act (COPPA) which makes it unlawful for any operator of a web site directed to children to collect, use or disclose the information without verifiable parental consent.[27] The COPPA required the FTC to enact rules governing the on-line collection of personal information from children under thirteen within one-year of the date of the enactment of the COPPA.[28] Accordingly, on April 27, 1999, the FTC issued a Notice of Proposed Rulemaking (NPR) in the Federal Register proposing draft rules for the COPPA.[29] The NPR acknowledged that:

> [t]he Internet offers children unprecedented opportunities for learning, recreation, and communication in ways scarcely imagined a decade ago. Children are actively engaged in a wide variety of online activities. They communicate with one another in online chat rooms and bulletin boards, through online pen-pal services, and by posting personal home pages. Despite its obvious attraction for children, the Internet is also a medium in which children can be

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> recommends that Congress require *all* consumer-oriented commercial Web sites that collect personal identifying information from consumers to adopt government-prescribed versions of all four fair information practice principles ('FIPPs'): Notice, Choice, Access, and Security. The majority abandons a self-regulatory approach in favor of extensive government regulation, despite continued progress in self-regulation.

FED. TRADE COMM'N, Dissenting Statement of Commissioner Orson Swindle, *available at* http://www.ftc.gov/reports/privacy2000/swindledissent.pdf (last visited Apr. 11, 2001) (citations omitted).

[26] *See* FTC v. ReverseAuction.com, Inc., No. 00-0032 (D.D.C. Jan. 6, 2000) (settling charges that an on-line auction site obtained consumers' personal identifying information from a competitor site and then sent deceptive, unsolicited e-mail messages to those consumers seeking their business); *In re* Liberty Fin. Co., FTC Dkt. No. C-3891 (Aug. 12, 1999) (challenging the allegedly false representations by the operator of a Young Investors Web site that information collected from children in an on-line survey would be maintained anonymously); *In re* GeoCities, FTC Dkt. No. C-3849 (Feb. 12, 1999) (settling charges that web site misrepresented the purposes for which it was collecting personal identifying information from children and adults). *See* Wolf, *supra* note 12.

[27] Children's Online Privacy Protection Act, 15 U.S.C.A § 6501-6506 (West 2000), *available at* http://www4.law.cornell.edu/uscode/15/ch91.text.html (last modified Jan. 23, 2000).

[28] *Id.* § 6502(b).

[29] Children's Online Privacy Protection Rule, 64 Fed.Reg. 22,750 (Apr. 27, 1999) (to be codified at 16 C.F.R. pt. 312).

placed at risk.[30]

Comments to the NPR from industry leaders, concerned citizens and public interest firms were received and integrated into the 'Final Rule' (the Rule) published on November 3, 1999.[31] On April 21, 2000, the Rule went into effect.[32] Together, the COPPA and the Rule are hereinafter referred to as 'the COPPA Rule.'

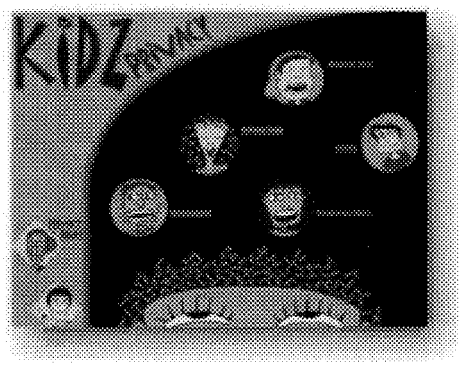

Figure 1: KidzPrivacy

The FTC has established a prominent link on its <ftc.gov> homepage to its 'KidzPrivacy' web site [*see* Figure 1][33] directed to both parents and children.[34] "Protecting children's privacy is a priority for the FTC," according to Jodie Bernstein, Director of the FTC Bureau of Consumer Protection.[35] In a recent Internet surfing expedition, FTC staff found that over half of the children's on-line sites collecting personal information appeared to be in non-compliance with the COPPA Rule.[36] Non-compliant sites received e-mails with the following warning:

> Although the law requires that you take certain steps to protect the privacy of children online, your site appears to collect personally identifying information from children under 13 without providing a privacy policy, without giving notice to parents, and/or without getting parental consent. We recommend that you review your web site with respect to information collection from children in light of the law's requirements. Be aware that the FTC will monitor web

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[30] *Id.*

[31] Children's Online Privacy Protection Rule 64 Fed.Reg. 59,888 (Nov. 3, 1999) (to be codified at 16 C.F.R. pt. 312), *available at* http://www.access.gpo.gov/nara/CFR/waisidx_01/16cfr312_01.html (last visited Apr. 22, 2001).

[32] *Id.*

[33] FED. TRADE COMM'N, KIDZ PRIVACY, *available at* http://www.ftc.gov/kidzprivacy/ (last visited Aug. 1, 2000).

[34] *Id.*

[35] Press Release, Fed. Trade Comm'n, *Websites Warned to Comply with Children's Online Privacy Law*, *available at* http://www.ftc.gov/opa/2000/07/coppacompli.htm (July 17, 2000).

[36] *Id.*

sites to determine whether legal action is warranted.[37]

In July 2000, the FTC settled the first lawsuit against on-line operator Toysmart.com for violations of the COPPA Rule that shows, according to Ms. Bernstein, that the "FTC is serious about enforcing the Children's Online Privacy Protection Act. This is the first charge brought under COPPA, and is only the start of our efforts to ensure that Web sites that gather information from children under 13 comply with the parental notification requirements of the law."[38]

B. The COPPA Rule: Threshold Issues

1. Who are "Operators"?

The COPPA Rule only applies to operators of web sites or on-line services.[39] The COPPA defines an operator as any "person"[40] who "operates a website . . . or an online service who collects or maintains personal information from or about the users of or visitors" to that website or on-line service.[41] The threshold consideration, then, is whether an entity is an operator. If an entity is not an operator, the entity is not subject to the COPPA Rule. In determining whether an entity is an operator under the COPPA Rule, the FTC will investigate the relationship of the entity to the information by looking at several factors, including: ownership or control of the information, who pays for the information, pre-existing contractual relationships and the role of the web site in collecting the information.[42] Thus, an Internet Service Provider (ISP) that merely provides access to the Internet without providing content for, or collecting information from, children is not an operator and would not be subject to the COPPA Rule.[43]

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[37] *Id.*

[38] Press Release, Fed. Trade Comm'n, FTC Announces Settlement With Bankrupt Website, Toysmart.com, Regarding Alleged Privacy Policy Violations, *available at* http://www.ftc.gov/opa/2000/07/toysmart2.htm (July 21, 2000).

[39] Children's Online Privacy Protection Rule, 64 Fed.Reg. at 22,752, 22,764 (Apr. 27, 1999) (to be codified at 16 C.F.R. pt. 312).

[40] A "person" under COPPA means any "individual, partnership, corporation, trust, estate, cooperative, association, or other entity" but does not include not-for profit enterprises. Children's Online Privacy Protection Act, 15 U.S.C.A. §§ 6501, 6501(11) (West 2000).

[41] *Id.* § 6501(2).

[42] Children's Online Privacy Protection Rule, 64 Fed.Reg. 59,888, 59,891 (Nov. 3, 1999) (to be codified at 16 C.F.R. pt. 312).

[43] *Id.*

2. What are Web Sites "Directed to Children"?

The COPPA Rule only applies to operators of web sites that are directed to children *or* to operators of general audience web sites who have actual knowledge that a user is a child.[44] For a web site to be classified as directed to children, the FTC will consider the subject matter, the multimedia content, the age of the models, language used and whether the site uses features such as games, puppets, animated characters or child-oriented activities and games [*see, e.g.,* Figure 2].[45] An operator of a general audience site with a specific section or area directed to children will be subject to the COPPA Rule for that section. The FTC will infer that an operator of a general audience site has *actual knowledge* when, for example, an operator learns of a child's age or grade from the child's registration process or answers an age identifying questions, such as "what type of school do you go to: (a) elementary; (b) middle; (c) high school; (d) college."[46] And, of course, operators will be deemed to have actual knowledge when a concerned parent e-mails the operator about the participating child.[47]

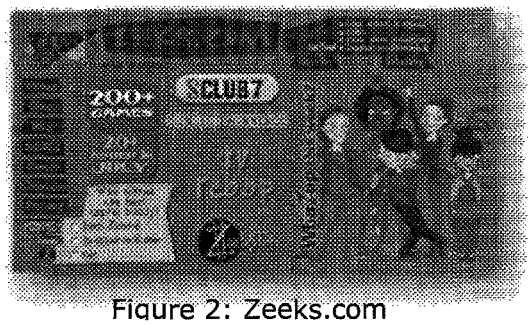

Figure 2: Zeeks.com

3. What Constitutes the "Collection" of Personal Information?

In its June 1998 report to Congress,[48] the FTC expressed concerns

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[44] *Id.* at 59,889; 16 C.F.R § 312.3 (2000).

[45] For a sampling of other presumptive web sites "directed to children" *see, e.g.*, YAHOO! INC., YAHOOLIGANS! THE WEB GUIDE FOR KIDS, *at* http://www.yahooligans.com (last visited Apr. 22, 2001); ZEEKS.COM INC., ZEEKS.COM, *at* http://www.zeeks.com (last visited Apr. 22, 2001); VIACOM INT'L INC., NICK.COM, *at* http://www.nick.com (last visited Apr. 22, 2001); VIACOM INT'L INC., NICK.COM, *at* http://www.nickelodeon.com (last visited Apr. 22, 2001); VIACOM INT'L INC., NICK.COM, *at* http://www.nickjr.com (last visited Apr. 22, 2001); NOGGIN L.L.C., NOGGIN, *at* http://www.noggin.com (last visited Apr. 22, 2001).

[46] Children's Online Privacy Protection Rule, 64 Fed.Reg. 59,888, 59,892 (Nov. 3, 1999) (to be codified at 16 C.F.R. pt. 312).

[47] *See id.*

[48] *See* FED. TRADE COMM'N, PRIVACY ONLINE: A REPORT TO CONGRESS (June 1998) *available at* http://www.ftc.gov/reports/privacy3/priv-23a.pdf (last visited Apr. 11, 2001).

that children's use of chat rooms and bulletin boards that are accessible to all on-line users present the most serious safety risks because it enables them to communicate freely with strangers.[49] Indeed, an investigation code-named "Innocent Images," conducted by the Federal Bureau of Investigation (FBI), revealed that these services are quickly becoming the most common resources used by predators for identifying and contacting children.[50]

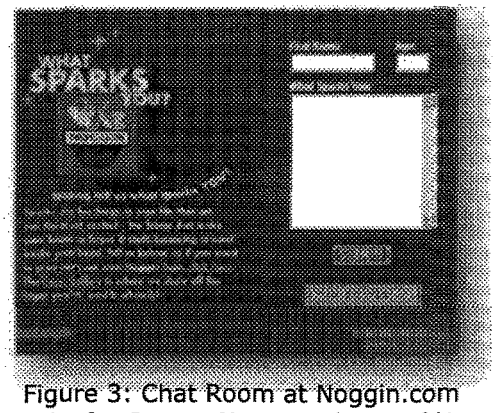

Figure 3: Chat Room at Noggin.com asks for Screen Name and Age of User

The COPPA Rule only applies to operators who are engaged in the on-line[51] "collection"[52] of personal information from children. Under the COPPA Rule, the on-line collection of information can be either active or passive. Examples of active collection of information include: (i) an operator's request for personal information regardless of how that personal information is transmitted to the operator and (ii) any information collected in order to join a chat room message board, or other public posting mechanism [*see* Figure 3].[53] Operators of sites directed to children that provide chat rooms and bulletin boards and who do not delete personally identifiable information from postings before they are made public must provide notice and obtain parental consent.[54]

General audience site operators will incur liability only if they have actual knowledge that postings are being made by children and fail to delete any personal information before it is made public.[55] For example, the operator of a general audience chat site who has actual knowledge that a child is posting personal information in a chat room

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[49] *Id.*

[50] *Id.*

[51] If information is collected using off-line methods such as telephone, mail or fax, the COPPA Rule does not apply. *See* Children's Online Privacy Protection Rule, 64 Fed.Reg. 59,888, 59,904 (Nov. 3, 1999) (to be codified at 16 C.F.R. pt. 312).

[52] Children's Online Privacy Protection Rule, 16 C.F.R. § 312, 312.2 (2000).

[53] NOGGIN, LLC., NOGGIN, *at* http://www.noggin.com (last visited Apr. 11, 2001).

[54] Children's Online Privacy Protection Rule at 59,889.

[55] *Id.*

or bulletin board must provide notice and obtain verifiable parental consent if the child is to continue to post such information in that site's chat room. In most cases, however, if the operator does not monitor the chat room, the operator likely will not have actual knowledge under the COPPA Rule.

4. What is "Personal Information"?

The COPPA Rule applies to the on-line collection of "personal information"[56] from children that can be used to identify a child on-line *or* off-line. If information collected by an on-line operator is not personal information as defined by the COPPA Rule, then the operator is not subject to the COPPA. The COPPA Rule expands upon the definition of personal information to include "individually identifiable information" such as: a first and last name; a home or other physical address including street name and name of a city or town; a telephone number; a social security number; or any information concerning the child (*e.g.,* hobbies or interests) or the child's parents that the operator collects on-line from the child and combines with an identifier described in the Rule.[57]

Personal information includes an e-mail address.[58] Operators of web sites directed to children are required to comply with the Rule of parental notice prior to giving children e-mail accounts.[59] When collecting an unsolicited e-mail from a child, operators of web sites directed to children are covered by the 'one-time' exception to parental notice that allows the operator to collect on-line contact information and respond, one-time, to a direct request from a child.[60] In the case of a general audience site, the exception only applies if the operator receiving the e-mail has actual knowledge that it was sent by a child. For operators of general audience sites, the Rule requires *actual knowledge* that information is being collected from a child.[61] Such operators would only be required to provide notice and obtain

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[56] *See* Children's Online Privacy Protection Act, 15 U.S.C. §§ 6501, 6501(8) (2000); *see also* 16 C.F.R. § 312.2 (2000).

[57] *See* 16 C.F.R. § 312.2 (2000).

[58] *Id.*

[59] Children's Online Privacy Protection Rule, 64 Fed. Reg. 59,888, 59,890 (Nov. 3, 1999) (to be codified at 16 C.F.R. pt. 312)

[60] 15 U.S.C.A § 6502(b)(2)(A) (West 2000); *see also* Children's Online Privacy Protection Rule, 16 C.F.R. §§ 312, 312.5(c)(2) (2000). This exception allows an operator to receive an e-mail from a child and provide a response without providing parental notice and obtaining consent, as long as the name and on-line contact information collected from the child are deleted and not used for any other purpose.

[61] Children's Online Privacy Protection Rule at 59,909.

parental consent if registration or other information reveals that the person seeking the e-mail account is a child.

In addition, personal information includes a 'screen name' that reveals a child's e-mail address and 'instant messaging' identifiers in use by services such as AOL, MSN[62] and Yahoo![63] [*see* Figure 4]. Yahoo Messenger, for example, includes a COPPA disclosure on its web site:

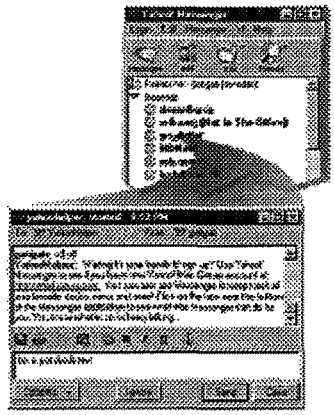

Figure 4: Yahoo! Messenger

> When someone under age 13 attempts to register with Yahoo!, we ask that he or she have a parent or guardian establish a Yahoo! Family Account in order to obtain parental consent. When any user, including a child under the age of 13, registers for a Yahoo! account, we require name, email address, birth date, gender, zip code, occupation, industry, and personal interests. Under the Children's Online Privacy Protection Act, no web site operator can require, as a condition of participation in an activity, that a child under the age of 13 disclose more information than is reasonably necessary. Yahoo! abides by this requirement.[64]

Personal information also includes persistent identifiers such as a customer ID in a cookie, an IP address or a processor serial number as long as they can be linked to an individual's identifiable information.[65] Disney.com's Privacy Policy regarding collection of cookies states:

> Cookies are pieces of information that a Web site transfers to an individual's hard drive for record-keeping purposes. Cookies

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[62] *See* MICROSOFT CORP., *MSN Messenger Service*, *at* http://messenger.msn.com (last visited Apr. 11, 2001).

[63] *See* YAHOO!, INC., *Yahoo! Messenger*, *at* http://messenger.yahoo.com (last visited Apr. 11 2001).

[64] *See* YAHOO!, INC., *Yahoo! Privacy*, *at* http://privacy.yahoo.com/privacy/us/kids/details.html (last visited Apr. 22, 2000).

[65] For an enlightening Internet 'tracer' to your PC, visit <www.privacy.net>. *See* PRIVACY.NET, *available at* http://www.privacy.net (last visited Apr. 22, 2001).

> make Web-surfing easier for you by saving your preferences while you're at our site. We never save passwords or credit card information in cookies. The use of cookies is an industry standard—you'll find them at most major Web sites. By showing how and when Guests use a site, cookies help us see which areas are popular and which are not. . . . Disney Online and the GO Network have two primary uses for their cookies. First, we use them to specify unique preferences. . . . Secondly, we use cookies to track user trends and patterns. *You may occasionally get cookies from our advertisers.* Disney Online and the GO Network do not control these cookies. The use of advertising cookies sent by third-party servers is standard in the Internet industry.[66]

According to the COPPA Rule, if the operator uses cookies to collect individually identifiable information (such as a name or e-mail address) or non-individually identifiable information that can be linked to individually identifiable information, then the information is personal information subject to the Rule.[67]

C. The COPPA Rule: Notice and Privacy Policies

1. Content of The On-Line Privacy Notice

The COPPA requires an operator to provide an on-line notice that clearly and coherently indicates to parents "what information is collected from children by the operator, how the operator uses such information, and the operator's disclosure practices regarding such information."[68] The operator's notice must not be contradictory or confusing since it will form the basis for a parent's informed consent to determine whether to give the operator permission to collect, use or disclose personal information about the child.[69] Section 312.4(b)(2) of the COPPA Rule requires the following to be included in the notice:[70]

> The name, address, telephone number and e-mail address of *all operators* collecting or maintaining personal information from children through the web site or on-line service[71];

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[66] See WALT DISNEY INTERNET GROUP, *Privacy Policy available at* http://disney.go.com/investors/wdig/legal/wdig_privacy.html (last visited Apr. 11, 2001) (emphasis added).

[67] Children's Online Privacy Protection Rule, 16 C.F.R. §§ 312, 312.2 (2000).

[68] Children's Online Privacy Protection Act, 15 U.S.C.A §§ 6501, 6502(b)(1)(A)(i) (West 2000).

[69] 16 C.F.R. § 312.4(a) (2000).

[70] *Id.* § 312.4(b)(2).

[71] In the case of multiple operators, a single operator may list the name, address, phone number

> The types of personal information collected from children and whether the personal information is collected *directly or passively*;
>
> How such personal information is or may be used by the operator(s), including but not limited to fulfillment of a requested transaction, record-keeping, marketing back to the child or making it publicly available through a chat room or by other means;
>
> Whether personal information is disclosed to "third parties,"[72] and if so, the types of business in which such third parties are engaged, and the general purposes for which such information is used and whether those third parties have agreed to maintain the confidentiality, security and integrity of the personal information they obtain from the operator[73];
>
> That the parent has the option to consent to the collection and use of their child's personal information without consenting to the disclosure of that information to third parties;
>
> That the operator is prohibited from conditioning a child's participation in an activity on the child's disclosing more personal information than is reasonably necessary to participate in such activity; and
>
> That the parent can review and have deleted the child's personal information and refuse to permit further collection or use of the child's information and state the procedures for doing so.

2. Placement of Notice

Operators must place a hyperlink giving notice of its information

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and e-mail address of a 'contact' operator who will respond to all inquiries from parents concerning the operators' privacy policies and use of children's information. *See id.* § 312.4(b)(2).

[72] The Rule defines a 'third party' as "any person who is not: (a) an operator with respect to the collection or maintenance of personal information on the website or online service; or (b) a person who provides support for the internal operations of the website or online service and who does not use or disclose information protected under this part for any other purpose." *Id.* § 312.2.

[73] This provision [16 C.F.R. § 312.4(b)(2)(iv)] is one of the primary conditions of the Toysmart.com settlement with the FTC wherein the Respondents (Disney and Toysmart) agreed that the purchasers of any customer lists would abide by the COPPA Rule. *See* Press Release, *Fed. Trade Comm'n, FTC Announces Settlement With Bankrupt Website, Toysmart.com, Regarding Alleged Privacy Policy Violations, available at* http://www.ftc.gov/opa/2000/07/toysmart2.htm (July 21, 2000).

collecting policies in a clear and prominent place and manner on the homepage and every area where information from children is being collected, by either active or passive means, and in close proximity to the location where the requests for information are being made.[74] The FTC suggests the 'Privacy Policy' link feature a larger font size, different color or a contrasting background to help the link stand out.[75] Clear and prominent, however, does not mean a link in a small (or regular size) font at the bottom of the page that is not easily distinguishable from other links on the page. Contrast, for example, the Yahooligans! home page[76] with the FoxKids home page.[77]

3. Direct Parental Notice, Verifiable Consent and Exceptions

In addition to the web site notice, an operator must verify parental consent[78] "*before* any collection, use or disclosure of personal information from children, including consent to any material change,"[79] especially in relation to third parties.[80] The Rule requires that "available technology" used to verify parental consent be "reasonably calculated" to ensure that the person providing the consent is, in fact, the parent or guardian of the child.[81] The direct notice to the parent must include all of the information contained in the operator's privacy policy notice plus the following: (i) that the operator wishes to collect personal information from the child, (ii) that the parent's permission is required prior to collecting, using or disclosing the information and (iii) how the parent can provide consent.[82] The notice must also advise the parent that she has the option to agree to the collection without disclosure to third parties and the right to review the collected information and revoke prior consent.[83]

Until April 21, 2002, the Rule has adopted a sliding scale of various consent mechanisms depending on the *use* of the

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[74] Children's Online Privacy Protection Rule, 16 C.F.R. §§ 312, 312.4(b)(2) (2000).

[75] *Id.* § 312.4(b)(1).

[76] *See* YAHOO! INC., *supra* note 45.

[77] *See* FOXKIDS.COM, FUNBRAIN.COM, *at* http://www.foxkids.com (last visited Apr. 11, 2001).

[78] Children's Online Privacy Protection Act, 15 U.S.C.A §§ 6501, 6501(9) (West 2000).

[79] 16 C.F.R. § 312.5(a)(1) (emphasis added).

[80] Children's Online Privacy Protection Rule, 16 C.F.R. §§ 312, 312.5(a)(2) (2000).

[81] *Id.* § 312.5(b)(1).

[82] *Id.* § 312.4(c)(1).

[83] *Id.* § 312.6.

information.[84] If the operator uses the information for 'internal' purposes (within the operator's company), a less rigorous method of parental consent such as confirmatory e-mails may be used.[85] However, if the information is to be 'disclosed'[86] to third parties (*e.g.*, in a chat room or bulletin board), more secure methods of verification are required for parental consent: a parent's signing and mailing (or faxing) a consent form to the operator; use of a credit card with a transaction; call to a toll-free number; use of a digital signature[87] or use of e-mail accompanied by a PIN or password obtained by any method herein. Operators of general audience sites will only be liable if they have actual knowledge that the registrant is a child and fail to secure parental consent or delete any information before it is made public.[88] However, in the case of a *monitored* chat room, if the operator strips all individually identifying information from any of the child's postings, the operator does not have to get prior parental consent.[89]

Parental consent is *not* required when an operator: (i) collects an e-mail address for notice and consent purposes; (ii) collects an e-mail address to respond to a *one-time* request from a child and then deletes it; (iii) collects an e-mail address to respond *more than once to a specific* request (a newsletter), as long as the operator notifies the parent that it is regularly communicating with the child and gives the parent the opportunity to stop the communication before sending or delivering a second communication to a child and (iv) collects a child's name or on-line contact information to protect the safety of a child who is participating on the site or to protect the security or liability of the site or to respond to law enforcement and does not use it for any other purpose.[90] A parent may refuse the 'use' or

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[84] Children's Online Privacy Protection Rule, 64 Fed.Reg. 59,888, 59,902 (Nov. 3, 1999) (to be codified at 16 C.F.R. pt. 312).

[85] *Id.*

[86] Disclosure of personal information includes the "sharing, selling, renting, or any other means of providing personal information to any third party," and the "making of personal information collected from a child by an operator publicly available by a public posting through the Internet, or through a personal home page posted on a website or online service; a pen pal service; an electronic mail service; a message board; or a chat room." Children's Online Privacy Protection Rule, 16 C.F.R. §§ 312, 312.2 (2000).

[87] Free digital certificates are available at http://www.thawte.com. *See* THAWTE CONSULTING, THAWTE DIGITAL CERTIFICATE SERVICES, *at* http://www.thawte.com (last visited Apr. 11, 2001).

[88] Children's Online Privacy Protection Rule, 64 Fed.Reg. at 59,889.

[89] *Id.*

[90] 16 C.F.R. § 312.5(c) (2000).

'disclosure' of the collected information and require its deletion.[91]

4. Maintaining Information Integrity

The COPPA Rule requires operators to establish and maintain adequate policies and procedures to protect the "confidentiality, security and integrity of personal information collected from children."[92] The FTC suggested the following mechanisms in furtherance of the Rule: designating an individual in the organization to be responsible for maintaining and monitoring the security of the information, requiring passwords for access to the personal information, creating firewalls, utilizing encryption, implementing access control procedures in addition to passwords, implementing devices and procedures to protect the physical security of the data processing equipment, storing the personal information collected on-line on a secure server that is not accessible from the Internet, installing security cameras and intrusion-detection software to monitor who is accessing the personal information or installing authentication software to determine whether a user is authorized to enter through a firewall.[93]

The FTC noted that the following measures are appropriate procedures for maintaining information integrity: using secure web servers and firewalls, deleting personal information once it is no longer being used, limiting employee access to data and providing those employees with data-handling training and carefully screening the third parties to whom such information is disclosed.[94] The FTC is "mindful of the potential costs of complying with the Rule" and will allow operators to choose from various methods of maintaining information integrity.[95]

D. The COPPA Rule: "Safe Harbors" and Enforcement

An operator's compliance with FTC-approved self-regulatory guidelines acts as a safe harbor in any enforcement action brought by the FTC.[96] Indeed, the Rule is designed to incentivize the on-line

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[91] 16 C.F.R. § 312.4(c)(1)(iii) (2000).

[92] Children's Online Privacy Protection Rule, 16 C.F.R. §§ 312, 312.8 (2000).

[93] Children's Online Privacy Protection Rule, 64 Fed.Reg. 59,888, 59,902 (Nov. 3, 1999) (to be codified at 16 C.F.R. pt. 312).

[94] *Id.*

[95] *Id.*

[96] 16 C.F.R. § 312.10 (2000).

industry to regulate itself.[97] To receive safe harbor treatment, an operator must fully comply with FTC-approved guidelines. Operators do not have to independently seek approval from the FTC if, in fact, they are complying with approved guidelines but the COPPA Rule is the benchmark against which all guidelines and self-regulatory measures will be tested.[98] The FTC has the burden of proof in an enforcement action against an operator who does not comply with FTC-approved guidelines or who provides incomplete or misleading information.[99]

The COPPA Rule provides criteria for approval of self-regulatory guidelines. Promulgators of self-regulatory guidelines, such as PrivacyBot.com and TRUSTe.com, must require operators to implement "substantially similar requirements that provide the same or greater protections for children" as those contained in the COPPA Rule.[100] Persons seeking FTC approval of their procedures have the burden to demonstrate their policies meet the Rule's standard.[101] In addition, the Rule requires that any self-regulatory guidelines include an "effective, mandatory mechanism for the independent assessment" of an operator's self-compliance with the Rule.[102] Under this safe

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[97] In a change of policy, the FTC recently endorsed a self-regulatory plan submitted by the Network Advertising Initiative, a consortium of major Internet advertising companies. "Industry self-regulation must play a central part in protecting consumer online privacy," said Jodie Bernstein, director of the FTC Bureau of Consumer Protection. "NAI played a valuable and constructive role in developing these principles which serve as the basis for protecting consumer privacy in this area." *FTC Backs Internet Privacy Deal, at* http://dailynews.yahoo.com/h/ap/20000727/ts/internet_privacy_4.html (July 27, 2000); Chris Oakes, *FTC Endorses Privacy Rules, at* http://www.wired.com/news/politics/0,1283,37853,00.html (July 27, 2000). The plan sets forth three major principles as to how companies may gather information anonymously from Web users and use it to profile customers. Consumers will now: (i) be able to 'opt out' of the collection of anonymous data on the Internet for the purpose of profiling; (ii) be given an opportunity to determine if they want to allow previously collected anonymous data to be merged with personally identifying information and (iii) be allowed to give permission for the collection of personally identifying information at the time and place it is gathered on the Internet. But some privacy advocates are not happy. "The FTC has given a green light to DoubleClick and the other online advertising networks to add names and addresses to online profiles," said Jason Catlett, president of Junkbusters Corp., of Green Brook, N.J., and an outspoken privacy advocate. *Privacy Advocates Enraged by NAI-FTC Deal, at* http://dailynews.yahoo.com/h/zd/20000728/tc/privacy_advocates_enraged_by_nai-ftc_deal_1.html (July 28, 2000).

[98] Children's Online Privacy Protection Rule, 64 Fed.Reg. 59,888, 59,906 (Nov. 3, 1999) (to be codified at 16 C.F.R. pt. 312).

[99] *Id.*

[100] Children's Online Privacy Protection Rule, 16 C.F.R. §§ 312, 312.10(b)(1) (2000).

[101] 16 C.F.R. § 312.10(b)(2) (2000).

[102] *Id.*

harbor provision, the FTC will first look to the promulgator of the guidelines to determine whether the guidelines have been effectively implemented by the operator.[103]

Industry leaders suggested a variety of mechanisms to determine whether operators are in compliance with the Rule: comprehensive information practice reviews as a condition of membership in self-regulatory programs, annual compliance affidavits to be submitted by subject operators to self-regulatory organizations, quarterly monitoring of operators' information practices by self-regulatory groups, public reporting of disciplinary actions taken by trade groups against subject operators in publications other than trade publications and referral to the Commission of all violations of approved guidelines or all failures to comply with a self-regulatory group's disciplinary dictates.[104] The FTC, however, will look to self-regulatory groups or persons to determine the appropriateness of these mechanisms.

The Rule requires persons seeking approval of self-regulatory guidelines to submit a statement to the FTC demonstrating that their proposed guidelines, including assessment mechanisms and compliance incentives, comply with the COPPA Rule.[105] The FTC will act on the application within 180 days.[106] As of August 1, 2000, the FTC had received three applications from persons seeking to establish safe harbor guidelines: ESRB Privacy Online, a division of the Entertainment Software Rating Board (ESRB), The Children's Advertising Review Unit of the Council of Better Business Bureaus, Inc. (CARU) and PrivacyBot.com.[107] In February 2001, the FTC approved CARU as the first COPPA safe harbor.[108]

The COPPA provides both federal and state enforcement mechanisms and penalties against operators who violate provisions of the COPPA Rule.[109] In addition, the COPPA empowers the FTC to examine and enforce on-line information collection procedures or

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[103] 16 C.F.R. § 312.10(b)(4) (2000).

[104] See Children's Online Privacy Protection Rule, 64 Fed.Reg. 59,888, 59907 (Nov. 3, 1999) (to be codified at 16 C.F.R. pt. 312).

[105] 16 C.F.R § 312.10(c)(1)(iii) (2000).

[106] Children's Online Privacy Protection Rule, 16 C.F.R §§ 312, 312.10(c)(2) (2000).

[107] FED. TRADE COMM'N, SAFE HARBOR PROGRAM, *available at* http://www.ftc.gov/privacy/safeharbor/shp.htm (last modified Oct. 4, 2000).

[108] *See* Press Release, Fed. Trade Comm'n, First "Safe Harbor" Approved for Children's Online Privacy Protection Act, *available at* http://www.ftc.gov/opa/2001/02/caru.htm (Feb. 2, 2001); *see also* FED. TRADE COMM'N, CARU'S SAFE HARBOR PROGRAM REQUIREMENTS, *available at* http://www.ftc.gov/privacy/safeharbor/carureqs.pdf (last visited Feb. 2, 2001).

[109] Children's Online Privacy Protection Act, 15 U.S.C.A §§ 6501, 6504 (West 2000).

policies that are unfair or deceptive, whether they pertain to adults or children.[110] A state attorney general may file suit against a web site operator whose information gathering practices are, or may be, adversely affecting any of the residents of the state.

The COPPA permits a state attorney general to file suit in United States District Court, *parens patriae*, and ask the court to enjoin the web site, enforce compliance with the COPPA Rule, obtain damages, restitution or other compensation on behalf of the residents of the state or obtain other relief that the court may consider appropriate.[111] However, before filing suit, an attorney general must give the FTC notice[112] and a copy of the complaint[113]; the FTC may then intervene[114] or file *amicus curiae* in the proceeding.[115] On the other hand, if the FTC chooses to file suit against an operator for violation of the COPPA Rule, the COPPA preempts a state from filing suit against the same operator during the pendency of the FTC action.[116]

E. Sample Operator Privacy Policies

Policies posted on various web sites directed to children differ in how they balance the legal requirements of the COPPA versus the marketing of the site. Following are samples of various privacy policies of web sites directed towards children.

1. <Noggin.com>

Noggin.com's privacy policy states, "[w]hile we encourage the interactive nature of online media, we strive to educate parents and kids about how to appropriately safeguard their privacy when traveling on the web. Noggin.com is committed to complying fully with the Children's Online Privacy Protection Act of 1998."[117] Noggin's policy generally is limited to so-called "non-personally identifiable information (i.e. first name, age, city or state)" so that children can "participate in activities (post questions or jokes, and respond to questions) without giving out unnecessary personal

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[110] *Id.* § 6505.

[111] *Id.* § 6504(a).

[112] *Id.* § 6504(a)(2).

[113] *Id.*

[114] *Id.* §§ 6501, 6504(b).

[115] Children's Online Privacy Protection Act, 15 U.S.C.A. § 6504(b)(3) (West 2000).

[116] *Id.* § 6504(d).

[117] NOGGIN, L.L.C., *Privacy Statement*, *available at* http://www.noggin.com/privacy (last updated Sept. 11, 2000).

information."[118]

Noggin's cookie policy is limited to determining "the type of computer operating system and browser that you and other visitors are using. . . . We do not link the information collected through cookies to any personal information that kids may submit online when participating in our activities."[119] However, it is arguable that the information collected—in its totality—is individually identifiable information. Noggin provides a parental Information Access Inquiry Form for a parent to access an operator's information.[120]

2. <Yahooligans.com>

"Yahooligans! takes the issue of safeguarding your online privacy very seriously" as indicated by its privacy policy.[121] Yahooligans!'s privacy policy tracks the COPPA Rule very closely and uses much of the language from the Rule. Yahooligans! states that it will "NOT collect personally identifiable offline contact information without prior parental consent," nor distribute or publicly post the information to third parties, nor divulge more information than is needed to participate in a special game, prize or other activity.[122] Yahooligans! does not require the child to give any personal information to access any of the free news, sports, games, homework help and fun links.

Yahooligans! does admit, however, that it contains links to web sites that may ask for personal information. It warns that these third party sites are "entirely separate from our own and are not covered by this privacy policy" and that "Yahooligans! has no responsibility or liability for these independent policies or actions."[123] Figure 5[124] shows how the author was able to play an on-line 'Tic-

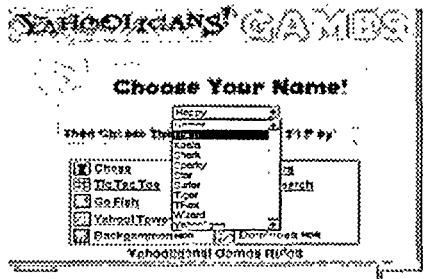

Fig. 5 Play Yahooligans!

[118] *Id.*

[119] *Id.*

[120] *See* NOGGIN LLC, PERSONAL INFORMATION ACCESS INQUIRY FORM, *available at* http://www.noggin.com/privacy/personal_info_form.html (last visited Aug. 5, 2000).

[121] *See* YAHOO! INC., YAHOO! PRIVACY, *available at* http://www.yahooligans.com/content/tg/privacy.html (last visited Aug. 5, 2000).

[122] *Id.*

[123] *Id.*

[124] YAHOO! INC., YAHOOLIGANS! GAMES, *available at* http://games.yahoo.com/games/yahooligans.html (last visited Aug. 5, 2000).

Tac-Toe' game by choosing an anonymous screen name provided by Yahooligans![125] Yahooligans! is certified by TRUSTe.com,[126] an independent company that is gaining reputation as the Internet's 'Good Housekeeping' seal of quality control over on-line security and privacy matters.[127]

3. <Zeeks.com>

Zeeks.com's Privacy Policy states:

> Zeeks does not collect personal contact information from children, such as name or physical address. To Zeeks, all children are anonymous. Zeeks' membership collects only nickname, password, gender, zip code, and birth date. We also collect a parent's email address, which we use solely to mail a notice to parents. Once the notice is emailed, we delete the email address from our system, and do not retain it. The general demographic information collected is used solely in aggregate form to report demographics to advertisers and to better target the activities we offer on Zeeks.com, and will never be used to try to identify your child. If the birth date given indicates that the child is 13 or older, they will immediately have access to all of Zeeks' activities. If the birth date given indicates that the child is under 13, then that child will not have access to the interactive portions of the site (such as email, chat and ZeekStore) or be able to collect prizes in our contests, until we receive parental permission.[128]

4. <Disney.com>

Disney.com's registration for its "interactive activities such as chat, games and contests" requires the child to supply her name, e-mail address and birthdate as well as her parents' e-mail address.[129] Disney.com's privacy policy appears to be internally contradictory since, on the one hand, it states "[n]o information should be submitted to or posted at Disney Online and the GO Network by Guests under 13 years of age without the consent of their parent or guardian," while at the same time allowing registered guests under 13 years of age to

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[125] *Id.*

[126] *See* TRUSTE, LOOK UP A COMPANY, *at* http://www.truste.org (last visited Apr. 11, 2001).

[127] *See* Dave Steer, *Privacy Practices Help Build Trust, Get and Retain Web Customers*, ECNOW.COM, at http://ecmgt.com/Nov1999/feature.article.htm (Oct. 29, 1999).

[128] *See* ZEEKS.COM INC., PRIVACY POLICY, *available at* http://www.zeeks.com/PT/SafetyPrivacy.asp (last visited July 30, 2000).

[129] *See* WALT DISNEY INTERNET GROUP, REGISTRATION, *available at* http://register.go.com/disney/indexhome (last visited Aug. 1, 2000).

"participate in such activities upon Registration, *unless* their parent or guardian asks that their registration be invalidated."[130]

By the time the parent 'opts out,' however, the child may have already participated in on-line chat sessions, even if on-line activities are monitored by "community policy experts."[131] Operators are still trying to figure out how to comply with the COPPA and variations among web sites differ greatly. Resolution of these variances will no doubt proceed on a case-by-case basis with the FTC.

III. CONCLUSION: DOES THE COPPA REALLY PROTECT CHILDREN?

According to FTC Chairman Robert Pitofsky, "the Children's Online Privacy Protection Act and our implementing Rule provide important new protections for kids who surf the net and for their parents. . . . This Rule implements one of the Commission's top goals—protecting children's privacy online."[132]

But does the COPPA *really* protect children? Or does it merely protect web site operators from liability? Consider that the COPPA protects the collection of detailed, personal information from children, protects the disclosure of that information to third parties and protects advertisers and most of their profiling practices but allows operators to leave cookies on a child's personal computer.

In an operator's monitored chat room or bulletin board—such as Disney.com's—it seems reasonable that so-called "community policy experts" should do more than monitor communications; they should be able to delete all personal information from a child before disclosing it to third parties in a chat room and they should be able to intercept inappropriate questions that are asked or—better yet—'boot' chatters who ask for this information. For unmonitored chat rooms, filtering software can easily be configured to automate the role of human monitors. Are operators really concerned with the freedom of speech of its guests? Or with the revenue from their advertisers? Operators are entitled to make a profit, but at what cost? Or why not filter out all personally identifiable information from children, including IP addresses, from being collected or disclosed at all?[133]

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[130] *See* WALT DISNEY INTERNET GROUP, PRIVACY POLICY, *available at* http://disney.go.com/legal/privacy_policy.html (last visited Aug. 1, 2000)

[131] *Id.*

[132] U.S.LAW.COM, *Federal Law Protecting Children's Online Privacy Becomes Effective, at* http://www.uslaw.com/library/article/usl420kidsprivacy.html?area_id=6 (Apr. 21, 2000).

[133] An IP address can be traced to a particular computer, as demonstrated last year when the FBI tracked down the creator of the "I Love You" virus in a matter of hours to an apartment in

While the COPPA does give parents the right to opt-out from the harvest of information from their children by requiring parental consent, will parents read the privacy policies of the web sites? Perhaps, the first few times but how about the twenty-fifth? And once parental consent is received, an operator is relatively free to harvest—and disclose—information about a child and his family via chat rooms, message boards, e-mail or possibly by telephone or even personal contact. Many operators are looking for more than information about whether a child prefers beanie babies or furbies; they want to know parents' shopping and lifestyle habits, bank accounts, property, credit card information and social security numbers.

Or suppose the unthinkable occurs and a child is injured—or worse—it was due to information disclosed in an operator's chat room. Suppose further that the operator is in a COPPA safe harbor, having complied with all the requirements of the COPPA Rule. Who is responsible for a child's injury? Does parental consent waive operator liability? Is the operator liable if he complied with the COPPA? While the COPPA provides causes of action for state attorneys general as *parens patriae* of the residents of the state and the FTC, there is no private cause of action for parents. The Rule only provides for damages in the collective sense "on behalf of the residents of the State"[134] but none for individual cases.

An operator who complies with the COPPA Rule most likely would prevail against a negligence claim from aggrieved parents since the COPPA provides a legal standard of care for information collection from children. Parents would presumably have to prove either intent or gross negligence—a very high burden of proof. On the other hand, failure to comply with the COPPA might allow parents a negligence *per se* claim, but the causal link between the operator's act and the child's injury may be onerous to prove. And at least one federal court has held a web site may not be strictly liable for physical injuries resulting from intangible thoughts and ideas on a web site.[135]

Quezon, Phillipines. *See* CNN.COM, *Virus Clues Point to Phillippines; Authorities Suspect Manilla Man Created Costly Computer Virus, at* http://www.cnn.com/2000/fyi/news/05/05/love.virus/index.html (May 5, 2000).

[134] Children's Online Privacy Protection, 15 U.S.C.A § 6504(a)(1)(C) (West 2000).

[135] LAW.COM, *Shooting Death Claims Against Net, Video, Movie Defendants Dismissed, at* http://www.law.com/cgi-bin/nwlink.cgi?ACG=ZZZWO76P08C (May 9, 2000). In this case, a Kentucky District Court held that intangible thoughts, ideas and messages contained within games, movies and Web site materials are not products for purposes of strict products liability.

In conclusion, although well-intentioned, the COPPA does little to protect children from being exploited by on-line advertisers and predatory third parties. Essentially, the COPPA only requires children to get a permission slip for a field trip on the information highway; a field trip where they are free to wander down a neighborhood's dark alleys, into questionable businesses and into information landfills. When a child is communicating in a web site's chat room or on a bulletin board, she is totally unaware whether the other 'chatters' she is communicating with are children, advertisers or pedophiles. And a fifty year-old pedophile does not need *his* parent's permission to chat with a child.

The court dismissed strict liability as well as negligence and RICO charges against Internet, video game and motion picture defendants in a suit springing from the school shooting deaths of three girls.