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3 HIF278.170

4 HEARING ON ``PROTECTING CHILDREN'S PRIVACY IN AN ELECTRONIC

5 WORLD''

6 WEDNESDAY, OCTOBER 5, 2011

7 House of Representatives,

8 Subcommittee on Commerce, Manufacturing, and Trade

9 Committee on Energy and Commerce

10 Washington, D.C.

11 The subcommittee met, pursuant to call, at 9:07 a.m., in

12 Room 2123 of the Rayburn House Office Building, Hon. Mary

13 Bono Mack [Chairwoman of the Subcommittee] presiding.

14 Members present: Representatives Bono Mack, Blackburn,

15 Harper, Lance, Cassidy, Guthrie, Olson, Kinzinger, Barton,

16 Butterfield, Markey, Matheson, Towns, and Waxman (ex

17 officio).

18 Staff present: Andy Duberstein, Special Assistant to

19 Chairman Upton; Kirby Howard, Legislative Clerk; Brian
20 McCullough, Senior Professional Staff Member, CMT; Jeff
21 Mortier, Professional Staff Member; Gib Mullan, Chief
22 Counsel, CMT; Shannon Weinberg, Counsel, CMT; Michelle Ash,
23 Democratic Chief Counsel; Felipe Mendoza, Democratic Counsel;
24 and Will Wallace, Democratic Policy Analyst.

|
25 Mrs. {Bono Mack.} The subcommittee will now come to
26 order.

27 Good morning. When it comes to online privacy
28 protection, we have no more important job than to get it
29 right for our kids. Today, there is an estimated 50 million
30 children across the United States who are 13 years of age and
31 younger. Our goal is to make sure their experiences on the
32 internet are as safe as possible and their privacy rights are
33 fully protected.

34 And the chair now recognizes herself for an opening
35 statement.

36 Whether they are surfing, studying, chatting, or playing
37 video games, kids today are spending more and more time
38 online taking advantage of the vast, richly diverse resources
39 found on the internet. But as we know very well and
40 sometimes painfully, there can be a dark side to the
41 internet, too. The Children's Online Privacy Protection Act
42 was adopted by Congress in 1998 to help protect the privacy
43 of our children. COPPA requires websites and other online
44 services to obtain parental consent before collecting and
45 sharing information from kids who are under the age of 13.
46 As a mother and as chairman of the subcommittee, this is an
47 issue that remains one of my top priorities, as well as one

48 of my big areas of concern.

49 For the most part, the FTC has done a great job of
50 making sure COPPA has worked well for our kids and their
51 families, but it is time to begin asking some important
52 questions. Should Congress revisit COPPA in light of the
53 rapid technological advances which have been made since its
54 enactment more than a decade ago? Is the current age
55 threshold sufficient to protect our kids or should it be
56 raised? If it is raised, what are the constitutional and
57 technological implications? Is the COPPA a safe harbor
58 regime an effective self-regulatory model and could it be
59 successfully utilized in other privacy contexts? And
60 finally, is the expansion of the definition of personal
61 information in the COPPA appropriate for use as a precedent
62 in the broader online privacy context.

63 Today, we will begin debating these and other issues
64 with a respected panel of experts. And one thing is very
65 clear to me--kids today are becoming more tech savvy at a
66 younger and younger age, but that exposure to exciting new
67 sophisticated devices and countless websites located around
68 the world doesn't necessarily mean that they are going to be
69 able to have any better judgment or make them any more aware
70 of what dangers might lurk online. That is why the FTC and
71 parents everywhere must continue to play a critically

72 important role in safeguarding the privacy of our children.

73 The purpose of this hearing is to take a close look at
74 the adequacy of existing protections and whether the FTC's
75 proposed changes to COPPA go too far, not far enough, or
76 manage to strike the appropriate balance. Having reviewed
77 these changes carefully, I think the FTC has, and as I often
78 say, they have hit the sweet spot.

79 One of the most significant changes involves revising
80 the definition of PII to include geolocation data and
81 persistent identifiers such as IP addresses or device serial
82 numbers. A second change to the existing COPPA Rule includes
83 a new provision to govern data retention and deletion of
84 children's PII, and it requires operators to delete
85 information when it is no longer needed to fulfill its
86 original purpose.

87 Another proposed improvement to the COPPA Rule addresses
88 the growing unreliability of so-called email-plus by
89 eliminating it as a method of parental consent. And when it
90 comes to safe harbors, the FTC is proposing a new self-audit
91 requirement calling for information practices to be reviewed
92 annually. Additionally, all safe harbor programs would be
93 required to regularly submit to the FTC the results of their
94 annual member audits and any disciplinary actions imposed by
95 their members.

96 Clearly, Chairman Leibowitz and the rest of the FTC
97 deserve our thanks and our appreciation for conducting a
98 careful, thorough, and thoughtful review of COPPA leading to
99 these important recommended changes. While some privacy
100 advocates would like to raise the COPPA age threshold because
101 of an increasing use of social networking sites by teenagers
102 such as Facebook, Twitter, and Google Plus, I believe the FTC
103 showed commonsense restraint in taking a go-slow approach.
104 The last thing we want to do is to inhibit technological
105 advances and stifle growth of the internet by moving forward
106 in a new policy area without a good, smart game plan in
107 place.

108 I look forward to having this particular debate in the
109 months ahead as we continue our broader hearings on privacy.
110 In closing, I also want to stress the importance of parental
111 involvement in this process. It is not enough to simply
112 check the box and provide consent. I urge all parents
113 everywhere to regularly check out the websites that your kids
114 are visiting, carefully review their privacy policies, and
115 finally, ask questions. Make sure you clearly understand a
116 site's practices as well as its policies and give your kids a
117 primer on the dangers of online predators. Talk to them
118 often and make them more self-aware. It is critically
119 important that all of us continue to work together to keep

120 the internet as safe as possible for all of our children.

121 And now, the gentleman from North Carolina, Mr.

122 Butterfield, the ranking member of the Subcommittee on

123 Commerce, Manufacturing, and Trade is now recognized for his

124 5 minutes for his opening statement.

125 [The prepared statement of Mrs. Bono Mack follows:]

126 ***** COMMITTEE INSERT *****

|
127 Mr. {Butterfield.} I thank the chairman of this
128 subcommittee and all of the others who have worked so hard to
129 make today's hearing possible. Thank you very much because
130 this certainly an important subject. I also want to thank
131 the witnesses for coming forward today, and I look forward to
132 each of your testimonies.

133 The privacy of our children is paramount and is an issue
134 where we can show strong bipartisan support. Over 10 million
135 children access the internet on a regular basis and it is our
136 job as policymakers to ensure that they are protected and
137 their personal information is safe.

138 In 1998, consumer use of the internet was still in its
139 infancy. It had evolved from making about 2 percent of two-
140 way telecommunication traffic in 1990 to over 50 percent in
141 the year 2000. Understanding the enormity of the internet
142 and the pervasive effect that it would ultimately have on our
143 daily lives, Congress passed the Children's Online Privacy
144 Protection Act. We refer to it as COPPA. In the year 2000,
145 the FTC COPPA Rule went into effect.

146 These days, homework often includes an online component.
147 You would also find it difficult to find a child of a certain
148 age who doesn't communicate with his or her peers over the
149 internet in a chat room or instant messaging program. But

150 the majority of those websites children have to visit to
151 complete schoolwork or talk to their friends require some
152 sort of registration to use the site and service. Parents
153 deserve to know what kind of personal information is being
154 collected on their child and how it will be used. COPPA
155 prohibits operators of websites and online services directed
156 at children under the age of 13 from collecting personal
157 information from them without first getting verified parental
158 consent.

159 I was curious as to why a parent would give consent to
160 have their children's information collected by an operator,
161 and it became clear to me that even free content on websites
162 has a cost. Children are avid consumers and represent a
163 large and powerful segment of the marketplace. They spend
164 billions of dollars a year themselves and influence others to
165 spend billions more. Advertisers see it as an enormous
166 opportunity to promote products and services to an eager and
167 impressionable audience.

168 The FTC's proposed revised COPPA Rule addresses a number
169 of concerns that have resulted from the technological
170 advancements of the past 5 years. Until recently, the term
171 geolocation didn't mean so much to the average person. Now,
172 anyone with a GPS-enabled phone can use certain online
173 services to broadcast their exact location to a couple of

174 feet and anyone can see their location. Geolocation,
175 persistent identifiers, as well as photos, videos, and audio
176 of a child have been added to the definition of personal
177 information. Giving website operators maximum latitude, the
178 COPPA Rule requires that reasonable procedures are in place
179 to protect the confidentiality, security, and integrity of
180 personal information collected from children while not
181 mandating any specific procedures or technology.

182 And to maximize protections for children, the FTC's
183 proposed rule will require that website operators keep
184 children's data for only as long as absolutely necessary and
185 that they ensure that their third-party vendors also protect
186 children's personal data.

187 Now, Madam Chairman, I listened very carefully to your
188 opening statement a moment ago and I agree with all that you
189 said. The proposed revised COPPA Rule is stronger and it
190 will better protect American children from their data falling
191 into the wrong hands. It seems to me that a lot of the rules
192 should be incorporated into the baseline privacy legislation
193 that protects everyone, regardless of age. Someone who is 12
194 today and 13 tomorrow has the same privacy concerns as
195 someone who is 18 today and 19 tomorrow. I hope that moving
196 forward with privacy legislation we can look to COPPA's
197 revised rule and apply the strong commonsense privacy

198 protection measures to all Americans.

199 Thank you very much. I look forward to your testimony.

200 [The prepared statement of Mr. Butterfield follows:]

201 ***** COMMITTEE INSERT *****

|
202 Mrs. {Bono Mack.} I thank the gentlemen.

203 And the chair now recognizes the chairman emeritus of
204 the full committee, Mr. Barton, for 1-1/2 minutes.

205 Mr. {Barton.} Thank you, Madam Chairwoman. I sincerely
206 appreciate you holding this hearing. This is a very personal
207 issue with me. I have been involved with privacy for a
208 number of years and have a very special interest in
209 children's privacy because of my 6-year-old son and my five
210 grandchildren.

211 When I grew up, Madam Chairwoman, I didn't even know
212 what a computer was. My son, though, my youngest son, 6-
213 year-old son probably spends at least an hour a day right now
214 playing on the computer both at school and at home. He knows
215 better how to click on things than I do quite frankly.

216 As cochairman of the Privacy Caucus along with
217 Congressman Ed Markey of this committee, I have served as a
218 leading advocate for online consumer protection. He and I
219 together have introduced H.R. 1895, the Do Not Track Kids Act
220 of 2011. This legislation does five things. It updates the
221 Children's Online Privacy Protection Act of 1998. It adds
222 protections that children or young teenagers ages 13 to 17;
223 it prohibits internet companies from sending targeted
224 advertising to children and minors; prohibits internet

225 companies from collecting personal and location information
226 from anyone less than 13 years of age without parental
227 consent and anyone less than 18 without individual consent;
228 it would require website operators to develop an eraser
229 button to give children and minors the ability to request a
230 deletion of their personal information that they do not wish
231 to be available on the internet.

232 The issue of online privacy has become a hot topic due
233 to the rapid growth of the internet. I hope that this
234 hearing, Madam Chairwoman, spotlights some of the issues and
235 builds a bipartisan consensus to do something about it such
236 as move the Kids Protection Act that I just mentioned. Thank
237 you for my time and I yield back.

238 [The prepared statement of Mr. Barton follows:]

239 ***** COMMITTEE INSERT *****

|
240 Mrs. {Bono Mack.} I thank the gentleman.

241 The chair now recognizes Mr. Olson from Texas for 1
242 minute.

243 Mr. {Olson.} I thank the chair for holding this
244 important hearing as we continue our discussions about online
245 privacy issues.

246 As a father of a 14-year-old daughter and 11-year-old
247 son, nothing is more important to me than keeping my kids
248 safe. Kids today, like mine, have access to new technologies
249 that enable them to get online instantly from almost anywhere
250 and access and share information. Congress recognized there
251 was a need to protect children's internet privacy and enacted
252 the Children's Online Privacy Protection Act, COPPA, in 1998.
253 As we examine the FTC's proposed changes to the COPPA Rule,
254 we need a clear understanding of all the tools currently
255 available to parents to protect their children's privacy on
256 the internet before we determine what changes are needed to
257 COPPA. We cannot legislate in search of a problem.

258 I thank the witnesses for being here and look forward to
259 the hearing. I yield back.

260 [The prepared statement of Mr. Olson follows:]

261 ***** COMMITTEE INSERT *****

|
262 Mrs. {Bono Mack.} I thank the gentleman and now will
263 recognize the ranking member of the full committee, Mr.
264 Waxman, for 5 minutes for his opening statement.

265 Mr. {Waxman.} Thank you, Madam Chair.

266 In 1998, thanks to the leadership of Representative Ed
267 Markey and Dr. Kathryn Montgomery, Congress passed and
268 President Clinton signed the Children's Online Privacy
269 Protection Act, and today, we are fortunate to have Dr.
270 Montgomery back before the committee to talk about this
271 landmark law and her recommendations for the future.

272 I am pleased that 11 years after enactment, your overall
273 assessment is that COPPA is a ``clear legislative success.``
274 COPPA has withstood the test of time, which is remarkable
275 because innovation occurs at warp speed online. One reason
276 for its success is that it was written to be flexible. The
277 law gives the Federal Trade Commission the authority and the
278 discretion to carry out several broad mandates aimed at
279 protecting young children from the unfair collection and use
280 of their information.

281 The last several years in particular have been a period
282 of rapid change in the delivery of online services. Young
283 children now have access to social networks, interactive
284 gaming, and apps on mobile devices that they carry with them

285 everywhere they go. The FTC is responding to these
286 developments by using its authority to update the COPPA Rule
287 so that the law remains an effective tool for protecting
288 children's privacy and safety.

289 The updates to the COPPA Rule proposed by the FTC are
290 appropriate, reasonable, well thought out, and true to the
291 intent of the law. These changes will ensure that parents of
292 young children will remain in control of their information,
293 whether it be their precise location at any given time, their
294 photographic images, or a record of their online habits and
295 activities. That is consistent with the goal of the law--
296 that parents, not businesses, get to decide what information
297 about their children can and should be revealed online.

298 While the focus of this hearing is children's privacy,
299 we must not forget that adults need privacy protections, too.
300 People of all ages need more control over their information
301 and better privacy protection. I have said this before and I
302 will say it again. We should enact comprehensive privacy
303 legislation. Next week's privacy hearing will be our fourth
304 this year. There were six privacy hearings in the last
305 Congress. Each hearing has made me more and more convinced
306 that current law does not ensure proper privacy protections
307 for consumer information.

308 As we consider comprehensive legislation, there are some

309 clear lessons to be drawn from the 11 years of privacy
310 protection for young children under COPPA. First, it is
311 possible to provide consumers with real enforceable online
312 privacy protections without killing innovation on the
313 internet; and second, it is possible to craft legislation in
314 such a way that the direction from Congress is precise and
315 clear but the authority of the agency is flexible enough to
316 adapt technology and changes in social expectations and
317 behavior. Those are valuable lessons. I hope they will be
318 remembered and hopefully comprehensive privacy legislation is
319 considered by this committee.

320 Thank you, Madam Chair, and I am going to yield back the
321 balance of my time.

322 [The prepared statement of Mr. Waxman follows:]

323 ***** COMMITTEE INSERT *****

|
324 Mrs. {Bono Mack.} I thank the gentleman and I look
325 forward to our continued work together on privacy.

326 And now I would like to turn our attention to the panel.
327 We have just one panel of witnesses today joining us. Each
328 of our witnesses has, as usual, prepared an opening statement
329 that will be placed into the record. Each of you will have 5
330 minutes to summarize the statement in your remarks.

331 On our panel we have Mary Koelbel Engle, Associate
332 Director, Division of Advertising Practices at the Federal
333 Trade Commission. Also testifying is Hemanshu Nigam, Founder
334 and Chief Executive Officer of SSP Blue. Next is Morgan
335 Reed, Executive Director, Association for Competitive
336 Technology. Our fourth witness is Stephen Balkam, Chief
337 Executive Officer of the Family Online Safety Institute. Our
338 fifth witness is Dr. Kathryn Montgomery, Director of the
339 Ph.D. Program at the School of Communication at the American
340 University. And our final witness is Alan Simpson with
341 Common Sense Media.

342 Good morning and thank you all very much for coming.
343 You will each be recognized for the 5 minutes. To help you
344 keep track of time, there are the lights in front of you as
345 is standard. You know what yellow, green, and red each mean.
346 As it turns yellow either hit the gas or slam on the brakes.

347 You get to decide. And please just make sure you turn on
348 your microphone before you begin. And Ms. Engle, you may
349 start for your 5 minutes.

|
350 ^STATEMENTS OF MARY KOELBEL ENGLE, ASSOCIATE DIRECTOR,
351 DIVISION OF ADVERTISING PRACTICES, FEDERAL TRADE COMMISSION;
352 HEMANSHU NIGAM, FOUNDER AND CHIEF EXECUTIVE OFFICER, SSP
353 BLUE; MORGAN REED, EXECUTIVE DIRECTOR, ASSOCIATION FOR
354 COMPETITIVE TECHNOLOGY; STEPHEN BALKAM, CHIEF EXECUTIVE
355 OFFICER, FAMILY ONLINE SAFETY INSTITUTE; KATHRYN C.
356 MONTGOMERY, DIRECTOR, PH.D. PROGRAM, SCHOOL OF COMMUNICATION,
357 THE AMERICAN UNIVERSITY; AND ALAN SIMPSON, VICE PRESIDENT OF
358 POLICY, COMMON SENSE MEDIA

|
359 ^STATEMENT OF MARY KOELBEL ENGLE

360 } Ms. {Engle.} Good morning, Chairman Bono Mack, Ranking
361 Member Butterfield, and members of the subcommittee. My name
362 is Mary Engle, and I am the associate director for
363 advertising practices in the Bureau of Consumer Protection at
364 the Federal Trade Commission. I appreciate the opportunity
365 to appear before you today to discuss the Commission's
366 enforcement and administration of the Children's Online
367 Privacy Protection Act--or COPPA--Rule.

368 Congress enacted COPPA in 1998 to address the unique
369 privacy and safety risks created when young children under
370 the age of 13 access the internet. The goals of the act were

371 to limit the online collection of personal information from
372 children without their parents' permission to protect
373 children's safety when they view and post information online
374 and to maintain the confidentiality and security of personal
375 information that is collected from children.

376 The Commission believes that COPPA has largely worked
377 well to fulfill these purposes and that even as online
378 practices evolve, the law remains important today. The
379 Commission has brought 17 actions to enforce COPPA since the
380 COPPA Rule went into effect garnering more than \$16.2 million
381 in civil penalties. Our cases, which have been against both
382 large, established operators, and smaller or newer companies
383 often illustrate different core provisions of COPPA.

384 For example, as social networking websites exploded onto
385 the youth scene about 5 years ago, the Commission sought to
386 ensure that these sites understood their COPPA obligations.
387 In 2006, the Commission obtained a then-record civil penalty
388 of \$1 million against Xanga.com, a popular social networking
389 site that allegedly improperly registered 1.7 million child
390 users without first obtaining their parents' permission.
391 Since then, the Commission has brought a steady stream of
392 cases against operators such as Sony BMG Music Entertaining,
393 Iconix Brand Group, and Playdom Incorporated, each of whom
394 sought to engage child users in the Web 2.0 world. The

395 Commission's \$3 million civil penalty against Playdom set a
396 new record for COPPA cases.

397 More recently, in the first COPPA case involving mobile
398 applications, the Commission charged mobile app developer W3
399 Innovations with violating COPPA by collecting and
400 maintaining personal information from thousands of children
401 and allowing them to publicly post personal information on
402 in-app message boards for their Dress-Up and Girl World
403 games. This case, which included a \$50,000 civil penalty
404 made clear that COPPA reaches mobile online services and not
405 just traditional online services and websites.

406 Although law enforcement is a critical part of the
407 Commission's COPPA program, enforcement alone cannot
408 accomplish all of the agency's goals. The Commission also
409 works to educate businesses and consumers about their rights
410 and responsibilities under the law. The agency devotes
411 significant resources to assisting website operators with
412 rule compliance, regularly updating business education
413 materials, and responding to inquiries from operators and
414 their counsel. The Commission's consumer education
415 materials, including our online safety portal
416 OnGuardOnline.gov, inform parents and children about the
417 Rule's protections and also provide them with general online
418 privacy and safety information.

419 To help ensure that COPPA continues to work well,
420 especially in the face of an explosion of children's mobile
421 devices and interactive online services, the Commission
422 initiated a review of the COPPA Rule last year. Drawing from
423 the expertise the agency has gained in enforcing and
424 administering COPPA over the years and after extensive
425 consideration of public input, last month, the Commission
426 proposed modifications to certain areas of the COPPA Rule.

427 While the Commission's testimony goes into these changes
428 in greater detail, among the proposed changes are updating
429 the Rule's definition of personal information to include
430 geolocation information and the use of persistent identifiers
431 to direct online behavioral advertising to children,
432 improvements to the notices that operators must use to inform
433 parents of the operator's information collection practices,
434 the addition of a number of permissible methods operators may
435 use to obtain parental consent, strengthening the Rule's data
436 security protections, ensuring of agency oversight of the
437 COPPA Safe Harbor Programs. The proposed changes are
438 consistent with the original mandates in the COPPA statute.
439 The Commission will take public comments on these proposals
440 until November 28.

441 The Commission takes seriously the challenge to ensure
442 that COPPA continues to meet its originally stated goals even

443 as children's interactive media use moves at warp speed.

444 Thank you for this opportunity to discuss the Commission's

445 COPPA program, and I look forward to your questions.

446 [The prepared statement of Ms. Engle follows:]

447 ***** INSERT 1 *****

|
448 Mrs. {Bono Mack.} Thank you very much, Ms. Engle.

449 Mr. Nigam, you are recognized for 5 minutes.

|
450 ^STATEMENT OF HEMANSHU NIGAM

451 } Mr. {Nigam.} Chairman Bono Mack, Ranking Member
452 Butterfield, and members of the subcommittee, thank you for
453 giving me the opportunity to provide insight on best ways to
454 protect children's privacy in an electronic world.

455 I have been at the forefront of nearly every major
456 aspect of online and offline child safety for the past 20
457 years. Today, I am the founder and CEO of SSP Blue, a
458 safety, security, and privacy strategic business consulting
459 firm. My company provides strategic guidance that promotes
460 the protection of consumers, especially children, encourages
461 corporate social responsibility, and develops partnerships
462 with law enforcement, government, and NGOs. Past and current
463 clients have included News Corporation, Microsoft, AT&T,
464 Tagged, Formspring, and others. To be clear, I do not speak
465 on behalf of any of our existing clients today.

466 Prior to SSP Blue, I served in leadership roles at News
467 Corporation, MySpace, Microsoft, and MPA from the time the
468 internet was just a baby to the time that social media was
469 barely a toddler, and in each endeavor, I provided strategic
470 direction that put children's safety, security, and privacy
471 at the forefront of the business. I have also served as a

472 federal prosecutor against internet crimes against children
473 and computer crimes at the Justice Department, an advisor to
474 the COPPA Commission, and advisor to the White House
475 Committee on Cyberstalking, and as a prosecutor against child
476 molestation and sex crimes in the L.A. County District
477 Attorney's Office.

478 And so I speak to you from various perspectives in
479 government, in law enforcement, in private industry, and as a
480 father of four children ranging in age from 6 to 16.

481 The FTC has engaged in a meticulous and thoughtful
482 process in the review of the Child Online Privacy Protection
483 Act and should be congratulated. I also want to stress a
484 concept that is easily forgotten. The industry has an
485 incentive to do the right thing when it comes to protecting
486 children's privacy rights. Businesses lose when they violate
487 a child's privacy rights. Their brand reputation suffers,
488 their consumer loyalty drops, their friends in child advocacy
489 groups disappear, and most important, they lose the trust of
490 the parents and guardians who care for the very children that
491 they cater to. In essence, without doing the right thing, an
492 online business cannot succeed.

493 Within this context, I would like to propose this
494 subcommittee a framework on how we should approach whether
495 and what changes are needed in COPPA. Whenever we think of

496 protecting children, whether it is for their safety,
497 security, or privacy, our first inclination is to protect
498 them from anything that sounds bad instead of what is bad.
499 Solutions based on things that sound bad eventually will
500 fail. In the past 10 years, I have had the honor of advising
501 the COPPA Commission, sitting on the Berkman Center Internet
502 Safety Technical Taskforce, and co-chairing the federal
503 Online Safety Working Group. In each of these endeavors, we
504 could have responded to problems that sounded bad, and
505 instead, we spent the time finding the actual problems and
506 then proposing the necessary solutions.

507 While technologies have evolved since the advent of
508 COPPA, I urge you to consider whether an actual problem has
509 been clearly articulated that needs to be solved when looking
510 at each individual change that is being proposed. Next,
511 consider whether existing regulations can be used to respond
512 to an identified problem. Looking back on the FTC's COPPA
513 enforcement actions, it is clear that current regulations and
514 rules have been quite useful and effective. In fact, a great
515 majority of the industry does a tremendous job in working
516 within the rules, whether their product is directed at
517 children under 13 or 13 and over. Even new companies know
518 what is expected of them before they enter the marketplace.
519 Interestingly, companies are finding it easier to provide

520 services for the 13-plus as a much better business model.

521 And so we must ask whether today there are other bad
522 actors the FTC finds it cannot enforce against as an evolving
523 landscape created gaps. In areas where existing regulations
524 are needed, we should then determine the best solution.

525 Several factors should be considered. What we must ask: 1)

526 Would the proposed change actually close an identified gap?

527 2) Would it create technical implementation challenges? 3)

528 Would it lead to conflicted with other agency and department
529 demands or expectations such as conflict that arises between

530 data retention, data minimization, and data preservation?

531 And 4) Would it lead to unintended consequences such as

532 creating disincentives to providing a rich online experience
533 for the under-13?

534 If we utilize this framework when considering the
535 changes, I think we will be able to protect children's online
536 privacy by implementing solutions that work while the
537 technology evolves.

538 And in closing, I want to stress that if we were to

539 accept the proposed changes in whole, we can expect an

540 immediate impact on the marketplace. Larger companies will

541 adjust where they can and simply shut down areas where there

542 is simply too much uncertainty. And smaller and newer

543 companies will find investors spooked by uncertainties. Such

544 a multi-year cycle can be avoided if you spend the time now
545 to examine the proposal within the framework that we are
546 outlining and identify actual problems, create effective
547 solutions that can be readily implemented by those already
548 incentivized to do the right thing.

549 Thank you, Chairman Bono Mack, Ranking Member
550 Butterfield, and members of the subcommittee, for giving me
551 this opportunity to address you on this important topic.

552 [The prepared statement of Mr. Nigam follows:]

553 ***** INSERT 2 *****

|

554 Mrs. {Bono Mack.} Thank you very much.

555 Mr. Reed, you are recognized for 5 minutes.

|
556 ^STATEMENT OF MORGAN REED

557 } Mr. {Reed.} Chairman Bono Mack, Congressman
558 Butterfield, thank you for holding this important hearing on
559 children's privacy, FTC, and COPPA regulations. My name is
560 Morgan Reed and I am with the Association for Competitive
561 Technology, and we represent the mobile apps developers.
562 With more than 3,000 members spread throughout the United
563 States and the world, our folks are focused on doing all
564 those cool apps you see on television.

565 So during the past year, ACT has had a chance to reach
566 out to our developers and other developer organizations
567 throughout America to discuss privacy and the importance of
568 privacy by design. At a recent conference, I was scheduled
569 to present on privacy, but before I spoke, developers were
570 given an opportunity to talk about their business. Everyone
571 got up and said this is what they were excited about, this is
572 the direction their business was going, and as I heard all
573 these folks talk, I noticed at the end of their conversation
574 always concluded with two words. And these two words are two
575 words we don't hear much in the United States right now and
576 they are words that I think are absolutely critical to all of
577 our discussions going forward. Those two words--`We're

578 hiring.''

579 And the good news is this wasn't just some random event
580 that I was at where it was a special enclave of jobs that no
581 one knows about. A recent study out of the University of
582 Maryland shows that Facebook apps alone have created 200,000
583 jobs. Our own internal studies show that 600,000 jobs have
584 been created, saved, or supplemented from the mobile apps
585 economy. And the good other part of this news is is that
586 with all deference to Chairman Bono Mack's great State of
587 California, 88 percent are small businesses and over 70
588 percent are not in the great State of California. So it is
589 widespread, it is small, and it is growing.

590 Now, besides creating jobs, developers as a community
591 are passionate about one other thing and that is privacy.
592 And education apps are particularly focused on privacy
593 because the vast majority of mobile apps are built by
594 parents. Now, these aren't folks who started their company
595 looking to get rich; they were looking to provide an
596 interactive family experience for their kids on this device
597 that they brought home from work.

598 So they want to do good and that is why we are working
599 with organizations like PrivacyChoice.org to build privacy
600 policy generators so that they can easily become aware of and
601 comply with privacy regulations. But before we all get into

602 the specifics about Section 312.4 of the NPRM or what the
603 meaning of ``collect'' is, I thought I would take some time
604 to discuss the kinds of apps these small developers are
605 creating.

606 For example, from your district we have Animal Apps and
607 Animal Pronunciations from Palm Springs. For Congressman
608 Butterfield's district, we have got We Pray, Pray With Me,
609 which is a special app for the iPad that allows grandparents
610 to record a prayer for their child so that if they are aware,
611 if they are out of state, if they can't see them, the child
612 can hear their voice. It is also used by parents that are
613 deployed overseas and folks who are just on business trips.
614 What a great app.

615 We have got from Congressman Waxman's district, we have
616 got 3 Trees, which helps educate kids about water, sun, and
617 air, and the three elements that power the world. From
618 Congressman Lance's district, we have got Random Acts of
619 Kindness, which helps kids know about 300 different random
620 acts of kindness they can do, charities they can donate to,
621 and inspiration for goodwill. From Utah, we have Tap Fuse.
622 They have got two great apps--one that helps kids with the
623 alphabet; another that they are doing right now that is about
624 anti-bullying. Congressman Harper, Mississippi State
625 currently offers field studies in iPhone entrepreneurship at

626 Mississippi State and right now you have got one guy out of
627 there who is still a freshman, his app has already sold
628 20,000 copies and it is an education app for kids in school.

629 Congressman Guthrie, we have got Oink-a-Saurus, which is
630 a great app. It is a piggy bank that helps kids learn about
631 the stock market and how they can save money. Congressman
632 Olson, we have got Music Master, high tech flashcards for
633 practicing reading music. In Maryland, we have got
634 Pickpocket Books, which was a company built by a woman
635 literally a stay-at-home mom on her couch who watched her
636 child using the iPad and said, you know, I would like to
637 combine this technology with my child's love of reading.
638 Since then, she has built a micro empire of more than 80
639 books on the iPad store that she has hired voice actors,
640 artists, and developers who have created interactive
641 applications that allow children to listen to the book, have
642 the book read to them, and read back and practice.

643 Now, my own daughter who is now 5-3/4 she reminds me
644 likes math apps from Montessorium from Sioux Falls, South
645 Dakota. It is a great app that combines the tactile
646 Montessori Method of teaching with the touch pad on an iPad
647 screen.

648 Now, I know that some here will talk about those in the
649 tech industry or media in a way that implies the larger

650 faceless corporation. I love the FTC's testimony earlier but
651 she said we speak with the companies and their counsel. The
652 vast majority of companies that I have named have no in-house
653 counsel right now, and so for them this is a learning
654 process.

655 Now, I want you to remember that the incredible
656 innovation happening today is not driven by faceless
657 corporations but by thousands of moms and dads working to
658 build applications that educate, motivate, and enrich their
659 families. So let us make sure that we don't mess up this as
660 we work to achieve a better online privacy protection.

661 Thank you for your time and I look forward to your
662 questions.

663 [The prepared statement of Mr. Reed follows:]

664 ***** INSERT 3 *****

|
665 Mrs. {Bono Mack.} Thank you, Mr. Reed.

666 And just a side note, I appreciate the reference to
667 California and the earthquake damage, though, up there on the
668 wall is not my fault.

669 Mr. {Reed.} You are bringing good apps, just not
670 earthquakes.

671 Mrs. {Bono Mack.} Mr. Balkam, you are recognized for 5
672 minutes.

|
673 ^STATEMENT OF STEPHEN BALKAM

674 } Mr. {Balkam.} Thank you very much, Chairman and Ranking
675 Member Butterfield and members of the subcommittee. My name
676 is Stephen Balkam and I am the CEO of the Family Online
677 Safety Institute. It gives me great pleasure to testify
678 before you today at today's hearing.

679 We would like to applaud the chairman's leadership on
680 these issues. The series of hearings held by this
681 subcommittee are a prime example of an effective step that
682 the government can take to balance the promotion of
683 technological innovation with the need to keep children safe
684 online.

685 FOSI is an international, non-profit membership
686 organization working to make the online world a safer and
687 healthier place for kids and their families, and we do this
688 by identifying and promoting the best practice, tools, and
689 methods in the field of online safety and privacy that also
690 respect free speech. Personally, I have had over 16 years
691 experience working in the internet safety field and I am the
692 proud father of two daughters. The views expressed in both
693 my written and oral testimony are my own and do not
694 necessarily reflect the views of all the FOSI members.

695 So the online landscape for all users has certainly
696 changed in the past 11 years since COPPA was enacted, none
697 more so than for children. We need a more sophisticated
698 approach that empowers families to gain and maintain control
699 of their digital lives. Simply put, in order to encourage
700 safe and responsible online use, we need tools, rules, and
701 schools: the technology tools of filters and monitoring
702 devices; balanced laws, terms of use, and household rules;
703 and education on good digital citizenship, online safety,
704 privacy and security.

705 At FOSI, we believe in building a culture of
706 responsibility to ensure that children have a safe and
707 productive time on the internet. We support balanced
708 government oversight of industry self-regulatory efforts.
709 This approach allows for maximum innovation and creative
710 solutions, as well as the potential for enforcement actions
711 and legislative intervention in the event of industry non-
712 compliance.

713 Parental empowerment is an important component of this
714 approach. Recent research commissioned by us and carried out
715 by the Hart Research showed that 93 percent of parents have
716 set rules or limits to monitor their children's online usage
717 and 53 percent of parents have used parental controls. FOSI
718 is working with industry to promote increased awareness of

719 parental controls and education as to their use.

720 We commend Congress and the FTC for their work in
721 providing reasonable government oversight through COPPA and
722 its corresponding Rule, while encouraging self-regulation and
723 promoting parental empowerment and children's responsibility.
724 The FTC has continued to evaluate the effectiveness of the
725 Rule and propose revisions where necessary.

726 The planned revisions contain many positive aspects and
727 ideas relating to the definition of a child, the actual
728 knowledge standard, the expansion of parental consent
729 requirements and methods, as well as proposed revisions to
730 the safe harbor regime. We agree fully with the FTC's
731 analysis that the current Rule is broad enough to encompass
732 the technological advancements that have occurred in the past
733 11 years.

734 The COPPA statute defines child as ``an individual under
735 the age of 13,'' and we are pleased that the FTC has
736 determined that it remains the appropriate age. Changes to
737 the statutory definition could lead to a substantial increase
738 in children lying about their age, or for that matter parents
739 lying about their kids' age, and thus negate protections
740 afforded to younger kids through COPPA and specific website
741 protections for minors.

742 The FTC's enforcement mechanism foreseen in the original

743 Rule has provided a flexible and valuable tool that has
744 allowed the FTC to adapt to the changing technologies.
745 Recent enforcement actions which we just heard about against
746 W3 Innovations, an app developer, show that the FTC was able
747 to use the Rule to ensure the compliance of a technology that
748 was not widely available when COPPA was enacted.

749 The FTC's review of the Rule, in conjunction with their
750 recent enforcement actions, demonstrates that no further
751 action on the part of Congress is required at this time. The
752 current system, with the FTC's proposed revisions, allows for
753 privacy protection as well as technological innovations.
754 Furthermore, attempts by Congress to pass legislation will
755 almost certainly be rendered inadequate within a few years by
756 the innovation of new methods of online interaction, sharing,
757 and communication.

758 In my opinion, a positive step that Congress could take
759 in this sphere would be to increase funding for internet
760 safety and privacy education in schools, as well as for
761 research into children's online behaviors and attitudes.
762 This would allow for all future legislative efforts to be
763 founded on a factual basis.

764 Finally, I believe that the best way to ensure that
765 children have productive, safe, and secure experiences on the
766 internet is through awareness, education, and empowerment. I

767 would like to thank the subcommittee again for holding this
768 timely and important hearing. We believe that with
769 reasonable government oversight, the self-regulatory and
770 multi-stakeholder approach currently being championed in the
771 United States--although under attack in other parts of the
772 world--can continue to protect kids and their privacy on the
773 internet without impeding technological innovation.

774 Thank you very much.

775 [The prepared statement of Mr. Balkam follows:]

776 ***** INSERT 4 *****

|

777 Mrs. {Bono Mack.} Thank you.

778 Dr. Montgomery, you are recognized for 5 minutes.

|
779 ^STATEMENT OF KATHRYN C. MONTGOMERY

780 } Ms. {Montgomery.} Thank you very much, Chairman Bono
781 Mack, Ranking Member Butterfield, and the other members of
782 the subcommittee. I really appreciate the opportunity to be
783 here to talk about children's privacy. It was during the
784 1990s in the mid-1990s that I started investigating what was
785 going on with online children's websites, and I was very
786 disturbed to find that because of the increasing value of
787 children as a target market and their avid involvement with
788 the internet, companies were setting up websites all over the
789 web that had a business model really based on taking a lot of
790 personal information from children and offering prizes and
791 doing all kinds of things in order to get children to give up
792 personal information. One of my favorites was the Batman
793 site that said ``be a good citizen of Gotham and fill out the
794 census.'' And there were many, many others like that.

795 And I did not hear when I went to industry meetings and
796 when I read all the cited coverage about all this any mention
797 of children's privacy, any concerns raised in the industry,
798 and that is why we went to the FTC. I was pleased that I was
799 able to work with both sides of the aisle in Congress, with
800 the FTC, with the Coalition of Child Health, and consumer

801 groups, and with industry stakeholders to craft a statute and
802 a set of regulations that would successfully balance our
803 collective interests in nurturing the growth of commerce on
804 the internet while protecting the privacy of our children.

805 And because decades of research had already identified
806 that younger children had particular vulnerabilities to
807 advertising, one of the key goals of the law was to prevent
808 online companies from targeting individual children with
809 marketing messages. COPPA has served, as many people have
810 observed here, as an effective safeguard for young consumers
811 under the age of 13, and it sent a strong signal to the
812 industry if you are going to do business with our Nation's
813 children, you will have to follow some rules. And that was
814 built into the system. As a result, some of the most
815 egregious data collection practices that would have become
816 state-of-the-art were curtailed.

817 Today, however, children are growing up in a ubiquitous
818 24/7 digital media environment. The data collection
819 practices that we identified in the '90s have been eclipsed
820 by a new generation of tracking and targeting techniques.
821 The Commission's proposed rules for updated COPPA offer a
822 careful, well-researched, and sensible set of recommendations
823 for addressing many of these practices, and I want to briefly
824 highlight three of them.

825 The first, which others have mentioned is mobile and
826 other location devices. Roughly half of all children have
827 mobile phones now by the age of 11. You can ask any parent.
828 Advertising is growing on mobile technologies. Geolocation
829 makes it possible to target kids wherever they are. This
830 raises not only marketing abuse issues and privacy issues but
831 also safety issues. I think the agency has appropriately
832 clarified that COPPA should apply to mobile and other web-
833 connected location devices.

834 The second issue concerns this notion of what is
835 personally identifiable information. I was a participant in
836 the 2010 June roundtable at the FTC. I was quite taken with
837 the amount of consensus among a wide spectrum of participants
838 that these days there is really no longer a meaningful
839 distinction between personal information and such ``non-
840 personal information'' as persistent cookies and IP
841 addresses. And the Wall Street Journal did an investigation
842 last year showing that a lot of these things are being placed
843 routinely on children's sites.

844 While the FTC proposed rules would then apply COPPA
845 safeguards to protect children from companies that want to
846 use the tools to behaviorally target individual children or
847 to create profiles or share the information, the rules are
848 also narrowly tailored so that they wouldn't interfere with

849 what the companies are doing in terms of their regular normal
850 business operations. And I think this kind of sensitivity is
851 reflective of how the FTC has done a good job here.

852 By the way, on mobile phones, I am disappointed about
853 text messaging. I hope we can talk about that because we
854 know how much kids are using texts.

855 And finally, I agree with the Commission that the
856 mechanism of parental verification that we created with COPPA
857 is not appropriate for teens. However, I do feel strongly
858 that adolescents can no longer be ignored in the public
859 policy debates over online privacy. We know they are being
860 encouraged to share a lot of information. They also do not
861 know how all of their data are tracked by all of these other
862 kinds of technologies that are now online. I hope the FTC
863 will develop some specific recommendations in its broader
864 privacy agenda.

865 And the goal of any public policy on teen privacy should
866 balance the ability of young people to participate fully in
867 the digital media culture with the government and industry's
868 obligation to ensure that youth are not subjected to unfair
869 deceptive surveillance, data collection, or behavioral
870 profiling. The legislation offered by Representative Joe
871 Barton and Representative Ed Markey known as the Do Not Track
872 Kids Act of 2011 is based on these principles and it is to

873 give teens themselves the power to make their own decisions
874 about their privacy online. If we can build privacy
875 principles into how our online businesses engage with both
876 children and adolescents, we can help ensure that young
877 people are treated fairly in the digital marketplace and that
878 they grow up with an understanding of their rights and
879 responsibilities as consumers.

880 Thank you.

881 [The prepared statement of Ms. Montgomery follows:]

882 ***** INSERT 5 *****

|

883 Mrs. {Bono Mack.} Thank you.

884 Mr. Simpson, you are recognized for 5 minutes.

|
885 ^STATEMENT OF ALAN SIMPSON

886 } Mr. {Simpson.} Good morning, Ms. Bono Mack, Ranking
887 Member Butterfield, and thank you to all the members of the
888 subcommittee for this important hearing. I am Alan Simpson.
889 I am with Common Sense Media, and I want to begin by
890 outlining that Common Sense Media works as a nonprofit,
891 nonpartisan organization dedicated to helping children and
892 families thrive in a world of media and technology. One way
893 that we describe our work is that we love media. We work
894 with everyone to make it better for kids. We admire and
895 embrace many of the innovations we have seen in this space in
896 recent years, and we believe that parents, educators,
897 companies, and policymakers all must play a central role in
898 helping to protect children's privacy in this rapidly
899 changing electronic world. And we work with each of these
900 groups to improve the media lives and the privacy
901 opportunities of children.

902 The Federal Trade Commission's proposed rule revisions
903 will help keep COPPA up to date with this rapidly changing
904 world. They will improve protections for children's online
905 privacy, encourage parental involvement, and foster
906 innovation in online services for children, especially the

907 innovations we most need--innovations to protect children.
908 The COPPA recommendations will help hold the industry more
909 accountable, and most importantly, they will build on the
910 fundamental purpose of COPPA, which is bolstering the role of
911 parents as the informed gatekeepers in the lives of their
912 young children. This is not a question of whether kids will
913 be online or offline. We all know that kids are online and
914 they will always be online. It is most a question of who
915 will be watching them and who will be watching over them when
916 they are online.

917 I would like to echo Dr. Montgomery's remarks about the
918 value of the FTC recommendations and emphasize most of all
919 that the FTC has struck a careful and reasonable balance
920 between maintaining the internal operations of online
921 services and protecting children from intensive tracking and
922 behavioral advertising.

923 The FTC proposals will be important steps for younger
924 kids, but teens still need protections and they need
925 empowerment, and the legislation Mr. Barton mentioned--H.R.
926 1895--will be a strong baseline for those protections and
927 that empowerment.

928 In my written remarks, I have outlined in more detail
929 the work that Common Sense Media is doing with parents and
930 schools, including dozens of articles that we have published

931 in the last year and a half around privacy and security. And
932 many of those parent tips that we published are among the
933 most popular resources on our site for parents.

934 We also work in more than 18,000 schools around the
935 country providing the education around smart, responsible use
936 of media and privacy and security are an essential part of
937 that. But one of the most important parts of this equation
938 are the media and technology companies themselves, and we
939 feel they must do far more to help parents and families
940 protect children's online privacy in part because they are in
941 the best position to develop better technology, better tools,
942 and better information for users. There have been positive
943 steps in this area of late, but on the whole, media and
944 technology companies have not done enough to provide better
945 solutions for families. Parents need the innovators to
946 innovate to protect. In our experience, the companies will,
947 especially if they are encouraged by this subcommittee and
948 this Congress to do so.

949 Thank you.

950 [The prepared statement of Mr. Simpson follows:]

951 ***** INSERT 6 *****

|
952 Mrs. {Bono Mack.} Thank you, Mr. Simpson.

953 And I will recognize myself, then, for the first 5
954 minutes of questions. And again, I thank you all very much
955 for your testimony.

956 And I would ask, Ms. Engle, can you elaborate on why the
957 Commission opted not to seek a change on the age threshold?

958 Ms. {Engle.} Yes. That was an issue that we considered
959 very carefully and we thought that Congress when it enacted
960 the statute and it also thought about that at the time and
961 believed that it reached the right result that under 13 is
962 the right cutoff. While any particular age cutoff is going
963 to be somewhat arbitrary and children do develop at different
964 rates, the whole idea behind and the way that COPPA works is
965 for the child to provide their parents' email address in
966 order that the operator may contact the parent to get
967 permission to further interact with the child. And the
968 concern is that if you raise the age, COPPA may not work well
969 because older children may not provide the parent's email
970 address. They may provide their own or their friend's or a
971 sibling's. And that is true even more now than it was
972 earlier because it is very common now for children to have
973 their own email addresses or multiple email addresses or they
974 may simply lie about their age. And younger kids can do that

975 as well but it is less likely.

976 And finally, we have concerns about the constitutional
977 rights that courts have afforded to teenagers and whether,
978 you know, whether that might be unduly intrusive on the
979 teenagers.

980 Mrs. {Bono Mack.} Thank you. And you mentioned the
981 email-plus Rule. So the COPPA Rule allowed website operators
982 to use a low-cost email-plus approach in determining whether
983 there has been verifiable parental consent. And this was
984 intended to be a short-term option available only until the
985 Commission determined that more reliable consent methods had
986 adequately been developed. Has the Commission now made such
987 a determination and do sufficient substitutes for email-plus
988 currently exist? And if you disallow that mechanism
989 immediately, does that leave businesses in the lurch?

990 Ms. {Engle.} So the Commission, when it crafted the
991 COPPA Rule, decided to make a distinction between personal
992 information collected for a site's internal use and
993 information that is used publicly. That distinction is not
994 in the statute itself but the Commission decided that it made
995 sense on a temporary basis to make that distinction and allow
996 a less reliable method of obtaining consent called email-plus
997 assuming that more reliable methods, new technology would
998 develop. That turned out not to be the case. The Commission

999 expanded allowing that unreliable method a couple of times
1000 and then ultimately made it go on indefinitely when no new
1001 technologies developed. But having reconsidered it over the
1002 years, you know, we believe that COPPA statute didn't make
1003 that distinction between internal and external uses and that
1004 perhaps this unreliable but easy method has actually deterred
1005 the development of technologies that would allow a more
1006 reliable method.

1007 So in its place we are proposing that companies can
1008 apply to the Commission for a new method if we would place it
1009 on the public record, get comment, and that would allow the
1010 Commission the opportunity to really evaluate the method and
1011 determine whether it is reliable and then essentially include
1012 it in the Rule. It is true right now that the list of
1013 reliable methods is not exclusive. Companies can use any
1014 method that is reasonably designed to ensure that the person
1015 providing consent is the child's parent, but what we heard is
1016 that companies prefer the assurance that this is the method
1017 that essentially the Commission has blessed. They want it
1018 listed. They don't want to take the risk that the Commission
1019 may find it inadequate. So we have proposed this new method
1020 to help provide that assurance.

1021 Mrs. {Bono Mack.} Thank you. That is understandable.

1022 And the FTC proposes to add factors to its totality

1023 review of websites to determine if they are targeted to
1024 children under 13--for instance, music and celebrities that
1025 would appeal to children but many celebrities and a lot of
1026 music content appeal to both 8-year-olds, 13-year-olds, and
1027 49-year-olds. Would that blur the age line and create
1028 confusion for websites as to whether or not they would be
1029 considered a COPPA operator?

1030 Ms. {Engle.} No, I think that, you know, we are still
1031 maintaining the same test basically. It is the totality of
1032 the circumstances. We look at a number of factors to
1033 determine whether a particular site is directed to kids under
1034 13 and by adding more factors, we are not changing the test.
1035 We are just making it clear that these are factors that one
1036 can consider. And yes, it is true that it is never, you
1037 know, will never be a bright-line cutoff that no children
1038 under 13 would be interested in an over-13 site and vice
1039 versa. But by adding more factors, we are trying to make it
1040 more transparent to operators the kinds of factors the
1041 Commission considers.

1042 Mrs. {Bono Mack.} Thank you. And right on time.

1043 The chair will recognize Mr. Butterfield for 5 minutes.

1044 Mr. {Butterfield.} Thank you.

1045 There is a published study titled ``Always Connected:
1046 The New Digital Media Habits of Young Children.'' I believe

1047 Dr. Montgomery has referred to it from time to time. This
1048 study published through the Sesame Workshop contains some
1049 interesting findings about the digital media usage habits of
1050 white, Hispanic, and African American children. In
1051 particular, while the study points out that the digital
1052 divide remains, when children of color do have access to
1053 digital media, they tend to use it substantially more than
1054 white children. African American children between ages 5 and
1055 9 the report says spends 41 minutes online per session.
1056 White children in that group spend 27 minutes online per
1057 session. Hispanic children between the ages of 8 and 14
1058 spend almost 2 hours online each day. That is 40 minutes
1059 more than white children. The study also points out that
1060 children from low-income and ethnic minority homes are less
1061 likely to have adult guidance when accessing the internet.
1062 As a result, they are spending more time on lower-quality
1063 websites or on activities that won't help them develop
1064 school-based skills.

1065 And so, Dr. Montgomery, I would like to hear any
1066 thoughts that you might have whether COPPA parental notice
1067 and consent models work well for all children or if there are
1068 any changes that could and should be made to account for the
1069 differences that I have referenced.

1070 Ms. {Montgomery.} Yes, thank you for asking that. I am

1071 concerned about ethnic children as you point out and I am
1072 actually looking at a lot of those issues in another context.
1073 I am doing a project on food marketing and we are very
1074 concerned that there are very aggressive techniques that are
1075 being used to target particularly ethnic children who are at
1076 greater risk for obesity as well. So this is a very
1077 complicated problem.

1078 I think it is probably difficult to enact a law that can
1079 address those specific needs around privacy. What we want to
1080 do is to have a set of rules that work as best as they can
1081 for all children with special sensitivities to children who
1082 are at risk. And I think that the proposed changes in the
1083 guidelines will do that, but it is going to be very important
1084 that companies take these obligations very, very seriously.
1085 And particularly, I think companies that are targeting that
1086 age group ought to be encouraged to develop their own self-
1087 regulatory mechanisms to work more effectively to ensure
1088 children's privacy.

1089 Mr. {Butterfield.} But you do agree this is an issue
1090 that we need to be concerned about and address?

1091 Ms. {Montgomery.} It is.

1092 Mr. {Butterfield.} As best we can legislatively.

1093 Ms. {Montgomery.} And not only that. Spanish language
1094 needs to be looked at. I think that the Congress could do

1095 more to look into these things. We haven't had enough
1096 examination of these areas either.

1097 Mr. {Butterfield.} Ms. Engle, has the Commission looked
1098 at this issue in any respect?

1099 Ms. {Engle.} The Commission has not received specific
1100 data on--I mean we do have information on the greater use of
1101 internet technologies and mobile technologies certainly by
1102 ethnic minorities for example. Whether there are additional
1103 protections that are needed that come from that, we haven't
1104 received information on that.

1105 Mr. {Butterfield.} Do you agree with Dr. Montgomery
1106 that it might be a little difficult to develop some type of
1107 regulatory protections to protect against these, that ideally
1108 it is a problem but developing protections might be
1109 challenging?

1110 Ms. {Engle.} Yes, I agree with that.

1111 Mr. {Butterfield.} All right. Can you help us out, Mr.
1112 Simpson, with this, please?

1113 Mr. {Simpson.} Well--

1114 Ms. {Montgomery.} Can I add something?

1115 Mr. {Butterfield.} Yeah, sure.

1116 Ms. {Montgomery.} Because I do think in one area that
1117 we might want to think about changing some things because if
1118 we look at the kinds of data that are collected, when racial

1119 data are collected and children are then marketed to based on
1120 the kind of profiling that can take place with that data,
1121 that I think can be very problematic and can be very
1122 discriminatory and I think that needs to be investigated.

1123 Mr. {Butterfield.} All right. Mr. Simpson?

1124 Mr. {Simpson.} The only thing I can really add, sir, is
1125 that one of the concerns we see in the broader space around
1126 privacy and other concerns that parents have around digital
1127 media is it is, as the FCC's studies have shown, one of the
1128 reasons for lack of adoption of broadband and digital media.
1129 We all see great benefits for families and communities in
1130 broadband and what it can bring to their communities, but if
1131 they are reluctant because of what they see as the downsides-
1132 -and lack of privacy and security is certainly one of them,
1133 especially in rural areas and among low-income communities.

1134 Mr. {Butterfield.} Let me give my last 5 seconds to Mr.
1135 Reed. Yes. Yes.

1136 Mr. {Reed.} I want to be the guy with good news here.
1137 I am sure that you have seen studies from Danah Boyd and more
1138 importantly, we have worked with Dr. Nicol Turner-Lee at the
1139 Joint Center and it turns out that mobile applications and
1140 the mobile environment is something that actually is having
1141 an impact in low-income and especially minority communities.
1142 And I think as we talk about privacy and what the government

1143 can do to shut down things and be careful about it, I think
1144 it is really important that we allow some opportunity for
1145 these things to flourish. Remember, mobile apps have only
1146 been in existence since 2008 and what we have seen from Dr.
1147 Nicol Turner-Lee's information and Dana Boyd is there is a
1148 huge opportunity for us to reach people who have never had a
1149 PC in their home through their mobile phone, but more
1150 importantly, their mobile Smartphone. So I think as you talk
1151 about what the government can do and the ways it can play a
1152 role, we need to make sure that the choices are there for
1153 them to have cool things to do rather than just tell them how
1154 they can't do things.

1155 Mr. {Butterfield.} Thank you.

1156 Mrs. {Bono Mack.} Thank you.

1157 The chair will recognize Mr. Barton for 5 minutes for
1158 questioning.

1159 Mr. {Barton.} Thank you, Madam Chairwoman.

1160 I am going to ask my first question to the
1161 representative of the Federal Trade Commission.

1162 If you don't expand the protections of the law to 13- to
1163 17-year-olds explicitly, how do we protect them? Because
1164 they are not adults and while they are able to make some
1165 decisions on their own, I do not know that they are fully
1166 capable of making some of the decisions that would be

1167 required in this area.

1168 Ms. {Engle.} The Commission is considering the privacy
1169 interests of teens in its broader review of privacy generally
1170 and certainly we have considered that. Some of the ideas
1171 that we have offered in that area, for example, very clear
1172 notice about the kinds of information that is being collected
1173 and how it is being used made at the point that the
1174 information is collected as well as data security would also
1175 provide benefits to teens. But the Commission at this time
1176 hasn't reached any conclusions as to what additional privacy
1177 protections teens may need.

1178 Mr. {Barton.} So would it be safe to say that the
1179 provision in the Barton Markey bill that gives these
1180 protections explicitly to 13- to 17-year-olds, the FTC is not
1181 automatically opposed to; you are just not totally supportive
1182 of? Is that a fair statement?

1183 Ms. {Engle.} The Commission hasn't taken a position on
1184 the legislation yet, but I would say that we are definitely
1185 not automatically opposed to it and we would be happy to work
1186 with you on it.

1187 Mr. {Barton.} In a similar vein, in the bill that Mr.
1188 Markey and I have introduced, we explicitly cover mobile
1189 applications. The proposed enhancements that you testified
1190 to in existing law do not explicitly cover mobile

1191 applications. Are you opposed to the provision in the Barton
1192 Markey bill that makes that explicit or you just need to
1193 study that more also?

1194 Ms. {Engle.} No, we are not opposed to it. In fact, we
1195 believe COPPA already does cover mobile applications. We
1196 interpret them to be online services already covered by the
1197 Rule, and in fact we recently brought a case against a
1198 company that was a mobile app provider on that basis.

1199 Mr. {Barton.} See, my position is that more and more of
1200 our teenagers and certainly even, sadly, children are getting
1201 iPhones and iPads and you almost have to explicitly cover
1202 mobile applications just because that is where the younger
1203 generation is going. So, you know, they are not going to be
1204 sitting behind a computer. They are going to be walking
1205 around and doing stuff as they are out and about.

1206 I want to ask Mr. Balkam, your institute has got a
1207 great-sounding name. Who funds that? Who funds your
1208 institute?

1209 Mr. {Balkam.} We have more than two dozen members
1210 mostly from industry, so from AOL at one end of the alphabet
1211 to Yahoo at the other.

1212 Mr. {Barton.} And there is nothing wrong with that, but
1213 they would be industries that try to make a profit--which
1214 again is a good thing--by using the internet and they would

1215 tend to want to collect information about people on the
1216 internet. Is that not a fair statement?

1217 Mr. {Balkam.} I think that is a very fair statement and
1218 I also agree with my colleague Nigam's point that it would be
1219 against their very own interest to, as it were, violate kids'
1220 privacy in so doing because it would actually rebound against
1221 them.

1222 Mr. {Barton.} Okay. Now, my understanding is that your
1223 institute doesn't support the bill that Mr. Markey and I have
1224 introduced, is that correct?

1225 Mr. {Balkam.} That is correct. I particularly took
1226 notice of the eraser button idea and particularly Congressman
1227 Markey's own statements at an internet privacy hearing in
1228 July when as he was talking about kids posting stuff--
1229 particularly teens--I will quote him, ``what were they
1230 thinking? It will want to be the parents who will want to
1231 erase it. They have a right to do so. I am not talking
1232 about Big Brother; I am talking about Big Mother and Big
1233 Father.'' And so given that, while proponents of the bill
1234 talk about giving kids and teenagers more control over their
1235 privacy, what we see--and particularly let us think about a
1236 17-year-old who is already--

1237 Mr. {Barton.} I want to ask you one more question. I
1238 am not going to cut you off but I have only got 20 seconds

1239 so--

1240 Mr. {Balkam.} We have serious concerns about parents
1241 taking things off the internet of their 17-year-olds and it
1242 is not as simple as rubbing out like a piece of--

1243 Mr. {Barton.} We can work on that. I want to get
1244 consensus on one thing I think that your group can agree with
1245 me on. Do you oppose the use of super cookies, your group?

1246 Mr. {Balkam.} We think that it is something that
1247 deserves considerable amount of attention and we are looking
1248 forward to future hearings on that, yeah.

1249 Mr. {Barton.} Okay. Well, for those of you that don't
1250 know, a super cookie is something that is put on your IP
1251 address without your permission and you cannot delete it.
1252 You don't know about it. It can collect information--it can
1253 even collect information on where you go on other sites and
1254 you don't know anything about it and it can't be deleted.
1255 And I hope at some point, Madam Chairwoman, that we will all
1256 agree legislatively to ban super cookies. And with that, I
1257 would yield back.

1258 Mrs. {Bono Mack.} I thank the gentleman.

1259 The chair recognizes Mr. Towns for 5 minutes.

1260 Mr. {Towns.} Thank you very much, Madam Chair.

1261 Mr. Simpson, in your testimony you emphasize companies
1262 can play a more active role in protecting privacy and

1263 personal information. In what ways can companies play a more
1264 active role in protecting our privacy?

1265 Mr. {Simpson.} Thank you, sir. I think most
1266 importantly I would recognize there are quite a few companies
1267 that are doing a better job of providing information, but I
1268 think the most important change that companies need to make
1269 in this space, companies large and small, is better
1270 opportunities on their own platforms, on mobile apps, on all
1271 the devices that they provide so that parents in the case of
1272 younger children and teens themselves have more chance to
1273 understand what is going on; what data is being collected;
1274 how they can opt out of it; whether they should or shouldn't
1275 opt into it; and to keep that information simple, accessible,
1276 and actionable. The big challenge in this space right now is
1277 that it is very hard to find out what is going on with my
1278 data when I use a given device or platform. The easier they
1279 can make that, the more we have parents who can make informed
1280 choices on behalf of young kids and teens who can make
1281 informed choices on behalf of themselves.

1282 Mr. {Towns.} All right. Thank you very much.

1283 Mr. Balkam, Family Online Safety Institute is your
1284 operation, right?

1285 Mr. {Balkam.} Um-hum.

1286 Mr. {Towns.} All right, good. What do you think the

1287 FTC did right in their proposed rule and what do you think is
1288 missing?

1289 Mr. {Balkam.} Well, as I said in my own testimony, I
1290 think they got the balance just right between protection on
1291 the one hand while not squashing innovation on the other. I
1292 don't think that there was anything that they left out. I
1293 mean it was quite a thorough review. We are very impressed
1294 with the range in their technical know-how about emerging
1295 technologies. So we are pretty happy with it.

1296 Mr. {Towns.} What about the definition of a child's
1297 age?

1298 Mr. {Balkam.} We think that is appropriate. We
1299 certainly do not advocate for it to be increased. As I was
1300 beginning to explain in my last response, we have some
1301 serious concerns about the older teens and whether or not
1302 they have some rights of free speech themselves. We don't
1303 really see the need for parents to come in and to take away
1304 their content as it were.

1305 Mr. {Towns.} All right. Thank you very much.

1306 Ms. Engle, you know, there has been some questions about
1307 the response period and the notification and that people are
1308 not informed. What methods and techniques do you use to
1309 solicit responses?

1310 Ms. {Engle.} Are you referring to comments on our

1311 proposals?

1312 Mr. {Towns.} Yes.

1313 Ms. {Engle.} Well, we have published it in the Federal
1314 Register issued, of course, as we must with all proposed
1315 rulemakings. We issued a press release, we have reached out
1316 extensively, we have an extensive email list to privacy
1317 advocates and people who have expressed interest in privacy,
1318 you know, in COPPA over the years. We are doing a lot of
1319 speaking. In fact, one of my colleagues is up in New York
1320 this morning speaking to the Children's Advertising Review
1321 Unit Conference on our proposal in COPPA.

1322 Mr. {Towns.} And the reason I raise this issue is that
1323 many members of the faith-based community are saying, look,
1324 nobody talked to us. We are not aware of this. When did it
1325 happen? In fact, they even blame me in many instances, you
1326 know, and that is my problem.

1327 Ms. {Engle.} Well, I know we have done outreach to
1328 faith-based institutions in other areas, for example, in
1329 fraud protection, and I think we can look into doing that
1330 here as well.

1331 Mr. {Towns.} Right, because these faith-based
1332 institutions have what we refer to as national conferences
1333 and if you in some way could arrange to get on their agenda,
1334 I think it would be a great service to all of us because they

1335 have some input there and I think that we should solicit it.

1336 Yes, Mr. Reed?

1337 Mr. {Reed.} I just wanted to add to that. I think you
1338 really hit a key point, and Congressman Butterfield, the app
1339 that I was talking about from your district, the author of
1340 that app has raised concerns. This was the first she heard
1341 about it when I contacted her through a group of developers.
1342 And she said well, this app allows grandparents to contact
1343 kids. Do I need to get parental explicit consent? How do I
1344 go about the process? And so this entire process to her,
1345 while there are rules and regulations, the publishing of
1346 something in the Federal Register, having discussions with
1347 privacy advocates is not necessarily the same as reaching out
1348 to the faith-based communities. And specifically, the app in
1349 your district is exactly the kind of app that Congressman Ed
1350 Towns has talked to me about. And I am hoping that we can
1351 work with her to make sure she understands the changes.

1352 Mr. {Towns.} Thank you very much, Madam Chair. Yeah,
1353 thank you.

1354 Mrs. {Bono Mack.} I thank the gentleman.

1355 The chair recognizes Mr. Harper for 5 minutes.

1356 Mr. {Harper.} Thank you, Madam Chair.

1357 And I certainly want to thank everyone for being here
1358 and as a parent now to a 19-year-old and a 22-year-old that

1359 we dealt with those issues and we had AOL and we used age-
1360 appropriate email settings as they were growing up. You
1361 know, I think there is a large responsibility for the parents
1362 themselves to make sure that they are monitoring this and we
1363 certainly want to have those tools available.

1364 And this is just a curiosity question, Ms. Engle, on
1365 violations that come to your attention that result in fines.
1366 Just a general breakdown of the percentage that come from
1367 your own search or investigation or policing, those that
1368 might come from third-party organizations and those that
1369 perhaps are reported by parents, can you give me just a
1370 general breakdown?

1371 Ms. {Engle.} I would say probably most of the
1372 violations we detect are from our own review. We do also get
1373 complaints and things are brought to our attention by the
1374 COPPA Safe Harbor Programs. They are a frequent source of
1375 complaints.

1376 Mr. {Harper.} If I could just ask this sort of as a--
1377 you know, we have heard a lot of different testimony here but
1378 just at its most basic level, what is wrong with advertising
1379 to children based on those likes or dislikes so long as the
1380 child is anonymous?

1381 Ms. {Engle.} So we think that the same privacy
1382 interests that inspired Congress to enact COPPA in the first

1383 place, the idea that at least with respect to children under
1384 the age of 13, young children, that parents are the ones who
1385 should be in the position of making the decision of
1386 permitting their children or not to interact with a website.
1387 And it goes both ways, both in terms of the website
1388 collecting personal information from the child and also being
1389 able to contact a child individually. And what we are seeing
1390 now and what is behind our proposal is that with things like
1391 tracking cookies which are able to track children across
1392 websites over time and direct ads based on their web browsing
1393 activity, that that is a form of contact of an individual
1394 that falls within COPPA.

1395 Mr. {Harper.} Okay, thank you.

1396 Mr. Reed, I would like to ask you a few questions if I
1397 may. And certainly I know your position in a statement on a
1398 Supreme Court decision earlier this summer, *Brown v.*
1399 *Entertainment Merchants Association*, 7-2 Supreme Court
1400 decision that dealt with the sale of videogames to minors.
1401 Is there anything about that case that correlates to this
1402 that you have seen?

1403 Mr. {Reed.} Well, I think we have to step back and
1404 think to ourselves, what are we trying to do? What are the
1405 goals we are trying to achieve? I have an obvious bias. My
1406 goal is to make sure that we have mobile apps developers able

1407 to create jobs and specific applications that reach the right
1408 audience. And so when you look at both the Supreme Court
1409 decision and where we are heading both on this panel, I think
1410 it is pretty clear that our industry is, to borrow a phrase
1411 that was used earlier, putting the pedal to the metal and
1412 trying to get things into the hands of as many people as
1413 possible. Therefore, we are going to be enthusiastic and
1414 supportive of ways that allow people to have access to our
1415 technology.

1416 That said, just like with videogames, we are very
1417 sensitive to the content question. There is a big difference
1418 between, as we have discussed, and it is an interesting part
1419 about this whole privacy regime, in interviewing parents
1420 prior to this hearing and in other cases, when you ask them
1421 what do you think when you see that ``only 13 and over'' in
1422 this location? The vast majority actually think it is about
1423 content, not about privacy. So I think that we have merged a
1424 lot of these privacy questions with content questions in a
1425 way that I think we need to pull back from. So when it comes
1426 to violent videogames, when it comes to Supreme Court
1427 decision, we need to maybe separate a little bit out on how
1428 we view the collection of information, the content of
1429 information, and who the audience of those are.

1430 Mr. {Harper.} And I know I am almost out of time. I

1431 want to end with one last question, Mr. Reed, if I can. You
1432 know, you had expressed some concern about the FTC's proposal
1433 to disallow the email-plus system. And I would like for you
1434 to just speak for the next 23 seconds on that.

1435 Mr. {Reed.} I will make it really short. We are
1436 concerned that the FTC's email-plus complete abandonment is a
1437 bit of a Hail Mary. It is a well, we will get rid of this
1438 technology and magically new technology will develop. Now,
1439 that might happen but I think we are probably better off
1440 given just exactly how nascent the mobile apps industry is
1441 and how we are quite literally learning every day that I
1442 think we probably, if we are going to do anything, it should
1443 be considered sunsetted or given a longer time to stretch it
1444 out a little bit because I am not sure in the mobile space
1445 people are exactly ready to just magically create new
1446 technology out of next week. Remember, most of these
1447 companies are small and they don't have staffs of
1448 technologists ready to develop their own version of
1449 verifiable parental consent. So there needs to be some
1450 industry percolating and I believe there are other incentives
1451 that can be used rather than just tossing it all out at once.

1452 Mrs. {Bono Mack.} I thank the gentleman.

1453 I now recognize Mr. Guthrie, also the home of Oink-a-
1454 Saurus for his 5 minutes.

1455 Mr. {Guthrie.} Thank you very much. I have to figure
1456 out where Oink-a-Saurus is so I have to--

1457 Mr. {Reed.} I will send you a link.

1458 Mr. {Guthrie.} Send a link. That would be great.
1459 Thanks a lot.

1460 To Mr. Nigam, in your testimony you said that we don't
1461 need to be focusing on things that sound bad and focus on
1462 things that are bad. What is an example of things that sound
1463 bad that we have focused on that distracts us from--

1464 Mr. {Nigam.} I mean I will go back more into the
1465 historical internet safety world. There was a time when
1466 anytime somebody went online there was this fear that
1467 predators were going to attack them and that sounded bad, and
1468 then once that happened, there were tons of proposals on do
1469 A, B, C, D, and E to stop that. But every time research was
1470 done, what ended up happening was researchers showing around
1471 less than 1 percent or even less than that there were actual
1472 issues with that as opposed to issues with things like
1473 digital fingerprints that kids are leaving online when they
1474 are going places and 10 years later it is going to be
1475 haunting them when they are applying to college. That is bad
1476 versus what sounded bad. So those are the kinds of things
1477 that I am referring to when talking about that.

1478 Mr. {Guthrie.} Okay. And you mentioned that it would

1479 be against the business model to abuse the information
1480 because obviously people would quit going to that business if
1481 that is the issue, but the FTC does find violations of it.
1482 Even though it would be a bad business model to do it, people
1483 are doing it or have done it, because from the FTC you do
1484 find violations of COPPA I think. So how do you explain
1485 that?

1486 Mr. {Nigam.} I think that is a great question because
1487 if you look in the last 11 years, there has been 17 actions,
1488 which to me is amazingly small. And what you are finding if
1489 you go through each of the 17 actions, for the majority of
1490 them what you are going to find is companies who are unaware,
1491 didn't have the resources, didn't have counsel advising them,
1492 hadn't done the review when the developer was creating this
1493 great idea and most of the time didn't even know they were
1494 doing what they were found to be doing, which I think is very
1495 different than saying there is a company who made an
1496 executive decision. We know there is COPPA, let us see if we
1497 can get away with it, and we will make \$10 million by the
1498 time they figure it out, and we will be disappearing after
1499 that.

1500 Mr. {Guthrie.} So there is no kind of cases of that
1501 like you see in Medicare fraud or stuff like that?

1502 Mr. {Nigam.} I haven't read every line of everyone, but

1503 I would--

1504 Mr. {Guthrie.} You know of no case that does that?

1505 Mr. {Nigam.} If there is, I am not aware of it.

1506 Mr. {Guthrie.} The typical violator would be someone
1507 who you find are small businesses that just, well, I didn't
1508 know I was supposed to do that kind of thing?

1509 Ms. {Engle.} No, actually many of our cases are again
1510 very large companies--Sony BMG, Universal Music Group,
1511 Iconix, but what we have found in those cases is they
1512 attempted to comply with COPPA but didn't really follow
1513 through. So they may have at the registration page asked for
1514 someone to enter their date of birth and they intended that
1515 if the person entered an age under 13, they would be kicked
1516 off. In fact, they weren't. And then those kids were able
1517 to post information, et cetera.

1518 Mr. {Guthrie.} Okay.

1519 Mr. {Nigam.} If I may.

1520 Mr. {Guthrie.} Yeah, go ahead.

1521 Mr. {Nigam.} And having worked inside the companies
1522 with developers, what you often find happening is legal
1523 counsel in the large companies, most say here are the
1524 requirements. Developers don't always understand that and
1525 there is where the disconnect occurs. So when something is
1526 executed, you create a new product, a new feature, it may be

1527 one of those left-behinds or the right process wasn't in
1528 place, which is very different than an intentional violation
1529 or attempt to collect information from children that you know
1530 would violate their privacy rights or violate COPPA for that
1531 matter.

1532 Mr. {Guthrie.} Professor?

1533 Ms. {Montgomery.} Yeah, I just wanted to say that
1534 having observed this all from the very beginning, if we
1535 hadn't instituted COPPA, you would see a very different
1536 marketplace. It is not a question of a business model not
1537 working. It wouldn't work now because it is not legal to
1538 work in that way, but it was heading in a direction that
1539 would have been absolutely outrageous and we would all be
1540 very, very upset at what we saw because data collection was
1541 built into the heart of it. And that is also what is
1542 happening with teens and adults as well. So that is why I
1543 think we need safeguards for everybody.

1544 Mr. {Guthrie.} Thanks.

1545 Mr. {Nigam.} And I do agree with what was just said in
1546 the sense that the expectations have been established and it
1547 has had a tremendous impact on the marketplace and the way it
1548 exists today. And so when I am focusing on what do we do
1549 next, that is when we have to look at each individual
1550 proposal and say is it proposing to solve a problem that

1551 sounds bad or actually is bad? Is there gaps? Are there
1552 things that can be done and are there going to be unintended
1553 consequences? For example, shutting off email plus is a
1554 great example of that. Companies have been doing email plus
1555 with millions of users for, say, 11 years or 10 years and all
1556 of a sudden that function disappears? What do you do with
1557 that millions of users on your site? How do you recreate the
1558 process? Are they grandfathered in? Those are the questions
1559 that have to be asked in that category of is there technical
1560 implementation concerns? Will there be unintended
1561 consequences?

1562 And I think that is why I wanted to focus more today on
1563 providing a framework within which to look at it as opposed
1564 to let us go line by line right now in this 2 hours that we
1565 have and come up with the answers.

1566 Mr. {Guthrie.} Thank you. I yield back. My time has
1567 expired. I yield back.

1568 Mrs. {Bono Mack.} I thank the gentleman and now
1569 recognize Mr. Olson for 5 minutes.

1570 Mr. {Olson.} I thank the chair and I want to welcome
1571 the witnesses. And thank you for coming here today and
1572 giving us your time and your expertise.

1573 And my question is for you, Director Engle. And you
1574 stated in your written testimony that the Commission is not

1575 aware of any operator directing online behavioral advertising
1576 to children. However, the Commission is proposing adding to
1577 the list of what constitutes ``personal information
1578 persistent identifiers.'' For example, numbers held in
1579 cookies, user IDs, IP addresses, as well as screen and user
1580 names. And you state in your testimony that the effect of
1581 these additions would be ``to require parental notification
1582 and consent prior to collection and use of persistent
1583 identifiers for purposes such as behaviorally targeting
1584 advertising to children.''

1585 My question for you, ma'am, is if the Commission isn't
1586 aware of any online companies directing behavioral ads to
1587 kids, then why does the FTC feel so strongly about wanting to
1588 change the COPPA Rule to address this issue?

1589 Ms. {Engle.} Our testimony is that no individual
1590 company has admitted that they are behaviorally targeting
1591 children under the age of 13, but there have been widespread
1592 reports in the press, for example, Dr. Montgomery referred to
1593 the Wall Street Journal article earlier that reported dozens
1594 and dozens of tracking cookies placed on child-directed
1595 sites. So it appears that the industry position has been
1596 that self-regulation is sufficient here to address the
1597 problem or the issue but our thought is that, I mean, what
1598 the regulatory principle says that their members will not

1599 behaviorally advertise to children under the 13 except in
1600 compliance with COPPA. And so that actually doesn't say much
1601 because if COPPA doesn't cover it, then they are free to do
1602 it. But the outward statement appears to be that they won't
1603 do it. So we want to kind of close that gap and require
1604 parental permission before that occurs.

1605 Mr. {Olson.} Okay. Mr. Simpson, it seemed like you had
1606 some comments. Do you want to follow up on that at all, sir?

1607 Mr. {Simpson.} I would echo those remarks and say that
1608 we are seeing signs of what is increasing. We saw it in the
1609 Wall Street Journal story, we see it in the increase in ID
1610 theft, and we see it as a basic business principle of some of
1611 these companies, as Dr. Montgomery talked about, the pattern
1612 of advertising towards kids before COPPA was established. We
1613 also need to keep an eye on what the pattern of valuation of
1614 companies in Silicon Valley is right now and that is
1615 eyeballs. Do they have people on their sites? None of these
1616 companies I would suggest want to turn anyone away, and so
1617 their opportunity to reach out to kids of any age is valuable
1618 to them.

1619 I respect what some of my colleagues have said about the
1620 importance of corporate responsibility here, but I think they
1621 are caught in a tension and they do want the biggest audience
1622 they can get, whether that is an individual app or a large

1623 website. So we see lots of signs of how much they are
1624 marketing toward kids and targeting kids under 13 and over.

1625 Mr. {Olson.} Yes, sir. Okay.

1626 One more question for you, Director Engle. For the 5
1627 new proposed rule changes to the COPPA Rule being put forth
1628 by the FTC, has the Commission conducted any kind of economic
1629 impact analysis on these proposals, and if not, will you?

1630 Ms. {Engle.} We have certainly considered the cost as
1631 well as the benefits that we hope to achieve by the rule
1632 changes, and in our Federal Register Notice, we have
1633 estimated costs on small businesses and we are specifically
1634 seeking comment on our estimates. And if we are, you know,
1635 off on our estimates and inaccurate, we certainly would like
1636 to hear from businesses about that.

1637 Mr. {Olson.} And Mr. Reed, you are representing the app
1638 world so to speak and I want to say, by the way, while I was
1639 sitting here I texted my 14-year-old daughter and told her I
1640 was with the app guy and she basically said, Dad, can I get a
1641 job with him in the future?

1642 Mr. {Reed.} We are hiring.

1643 Mr. {Olson.} Do you agree with that assessment? I mean
1644 the small businesses that you represent be involved in the
1645 process?

1646 Mr. {Reed.} I have found the FTC to be towards me--as a

1647 trade association based in Washington, D.C.--very responsive.
1648 I think that they lack the manpower and resources to really
1649 reach out to a community that is now over 100,000 developers
1650 in the larger picture and tens of thousands of developers in
1651 the educational app space. So I think that I respectfully
1652 say that we will be filing comments with the NPRM
1653 specifically about the small business impact and we look
1654 forward to working with the FTC to make sure their estimates
1655 are appropriate. I think that as we think about all of this,
1656 we have to remember 2008 was when we had our first app store.
1657 So we have had all of these changes in business models, in
1658 technology, in capabilities in 24 months. So we are looking
1659 forward to working with the FTC, and I think I am probably
1660 going to say that we are going to estimate their cost up and
1661 encourage them to take a very measured approach on the impact
1662 to small business.

1663 Mr. {Olson.} Yes, sir?

1664 Mr. {Nigam.} I just wanted to make a comment. Because
1665 of the company that we have in terms of consulting with
1666 online businesses, we spend countless hours talking about
1667 COPPA and whether to choose even going under 13 and over 13
1668 and the eyeballs question comes up and the uniform reaction
1669 is eyeballs that are good we want; eyeballs that are going to
1670 hurt us kill our reputation, therefore kill our business.

1671 And I think that is something we should keep in mind because
1672 that goes back to companies being incentivized to find the
1673 right way to do the right thing. Now, the challenge may be
1674 what is that right thing because we can't understand what it
1675 means. That is a very different question than whether you
1676 are motivated to even try.

1677 Mr. {Olson.} Thank you, sir.

1678 I am over time. I yield back.

1679 Mrs. {Bono Mack.} I thank the gentleman.

1680 And the chair recognizes Dr. Cassidy for 5 minutes.

1681 Dr. {Cassidy.} I got a 10-year-old, and she will take
1682 my iPhone, go to my iTunes, and she will download Angry
1683 Birds. Dad, can I get Angry Birds? I never recall being
1684 asked if I am over 13. I assume iTunes knows I am over 13.
1685 But as I listen to you guys, I am suddenly realizing, man,
1686 how do you empower a parent? It sounds so nice as rhetoric,
1687 but as a guy with a 10-year-old who is always on my iPhone, I
1688 have no clue how I am empowered. I am feeling very un-
1689 empowered.

1690 Mr. {Reed.} I can help you with that.

1691 Dr. {Cassidy.} Somebody empower me, buddy.

1692 Mr. {Reed.} Within most of the devices, I am happy, you
1693 know, I can grab a cup of coffee and I am happy to walk you
1694 through. All of the devices now--some of them are better;

1695 some of them are worse--have pretty granular and pretty
1696 incredible parental restrictions that you can set up. On
1697 your iPhone, there is a page that you can go to where you can
1698 say your daughter can't download. You can set it up with its
1699 own password. You can--

1700 Dr. {Cassidy.} Okay. So my daughter downloads. My son
1701 who is 17--

1702 Mr. {Reed.} Right.

1703 Dr. {Cassidy.} --vim and vigor, full of himself,
1704 downloads something but my 13-year-old uses it.

1705 Mr. {Reed.} Right.

1706 Dr. {Cassidy.} Or if I go to my desktop, my 84-year-old
1707 mother who moves in with us is on the computer, my wife is,
1708 and then my daughter. So the super cookie has a place for my
1709 mother but it tracks all the way through three generations.
1710 Now, it seems like unless somebody is logging off, which we
1711 don't do--we reboot it--whether there is COPPA or not, it is
1712 going to be tracking whoever is on that computer, correct?

1713 Mr. {Reed.} That is correct. I would of course
1714 recommend that you get more mobile devices for your
1715 household. That is the clear solution here.

1716 Dr. {Cassidy.} Well, we are going that way.

1717 Mr. {Reed.} Get more.

1718 Dr. {Cassidy.} Yes.

1719 Mr. {Reed.} But yes, you are right.

1720 Mr. {Nigam.} Oftentimes I talk about how people
1721 distinguish between the online and the offline, but when you
1722 actually step back and say as a parent, how would I handle
1723 this situation if it was in the physical world? I think
1724 those same kinds of conversations need to apply, which means
1725 a conversation--and I have an 11-year-old--of you are not
1726 allowed to do this but your 16-year-old brother is. That is
1727 part one. Part two--

1728 Dr. {Cassidy.} That assumes--think about a television.
1729 You walk by, you see the program, you have a sense of the
1730 content over a 30-minute show. You can have an entrée into
1731 an online and then that entrée takes you someplace far
1732 different. So the parent downloads it looks pretty benign,
1733 and next thing I know I have got, you know, \$10 on my credit
1734 card bill. Now, I figured out how to stop that, but that
1735 said, I just say it takes in you places--Ms. Montgomery, I
1736 liked your testimony. I think you were going to say
1737 something?

1738 Ms. {Montgomery.} Yeah. Well, what I wanted to say is
1739 I think what we need are tools that will help parents because
1740 it is baffling for all of us, and I agree with you. It is
1741 very frustrating and you can't really control where your kids
1742 are all the time, and that is why COPPA was designed to

1743 really address the business practices and really to minimize
1744 data collection. It was not set up to facilitate parental
1745 verification so that companies could collect a lot of data.
1746 It was really developed to ensure that websites targeting
1747 children did not collect a lot of data.

1748 Dr. {Cassidy.} But again, if my mother is on who is 84
1749 and something is placed which begins to track and does not
1750 log out and my daughter gets on, something benign at the
1751 outset but perhaps less benign further in, I mean my mother
1752 has set the table for my daughter to be tracked, correct?

1753 Ms. {Montgomery.} Well, right. That is right. And
1754 that is why, you know, I mean this is an evolving marketplace
1755 and there will be more and more of that happening, as others
1756 have noted.

1757 Mr. {Balkam.} I just wanted to make a quick point that
1758 all of the major cell phone operators now offer pretty good
1759 parental controls. And in our survey that we just released a
1760 couple of weeks ago, we found that 25 percent of American
1761 families now do use that. Now, that seems like a fairly low
1762 figure, but then you compare it to the v-chip usage, which is
1763 around 15, 16 percent, that is not too bad. I would highly
1764 recommend that you also use--

1765 Dr. {Cassidy.} Yeah, I have a parental control but I am
1766 sure I am not using it to the full robustness as it should

1767 be.

1768 Mr. {Balkam.} And education. We need to empower--

1769 Dr. {Cassidy.} Now, I will tell you when I look at your

1770 documentation and it says click here, once I actually read

1771 it, it was 40 pages of legalese and a lot of it was

1772 redundant. A lot of it was actually repeated. And it is

1773 like I am thinking they are trying to defeat me from reading

1774 it. Now, we laugh but--

1775 Mr. {Balkam.} Sorry, sir.

1776 Dr. {Cassidy.} --it is repeated, repeated, repeated,

1777 and some of it is totally extraneous. It makes me think that

1778 that which actually I might object to is buried deep within.

1779 Mr. {Balkam.} I feel your pain. That is all I can say.

1780 Dr. {Cassidy.} I will tell you, though, but we have got

1781 to move beyond feeling pain to actually having something

1782 where a parent can look at and say it is one paragraph, boom,

1783 this works and this does not.

1784 Mr. {Balkam.} Right.

1785 Dr. {Cassidy.} Because right now I am thinking, heck, I

1786 can't read through this.

1787 Mr. {Balkam.} But there is another factor as well, sir,

1788 that you should consider especially with apps is that what

1789 drives those parental controls in many cases is the rating

1790 that was provided for the content. In television and movies

1791 that is provided by an industry--

1792 Dr. {Cassidy.} Can I ask one more question before I run
1793 out of time, Ms. Montgomery? I read in the Wall Street
1794 Journal that if they have this interactive game and they make
1795 the tractor red, white, and blue on a patriotic holiday,
1796 people are more like to purchase something online. You
1797 realize that there is a subliminal suggestion taking place
1798 which is modifying the behavior of the person who is actually
1799 looking at the screen. Now, if that is true for an adult,
1800 this is absolutely true for my 9- and 10-year-old. How are
1801 we going to regulate this sort of subliminal molding the
1802 person who is looking at the interactive game to manipulate
1803 them into a behavior which they frankly may not be aware they
1804 are being manipulated?

1805 Ms. {Montgomery.} Well, these are major concerns. And
1806 I agree with you and we haven't even talked about things like
1807 neuromarketing, which is one of the trends in the industry as
1808 well, in the online industry. But this is exactly why I
1809 think we need to ensure that COPPA makes it impossible for
1810 companies to behaviorally target, to track an individual
1811 child and to create marketing that is designed for that child
1812 based on that child's behavior, psychological profiles, and
1813 other information that has been collected from that child.

1814 Dr. {Cassidy.} Okay. That seems like nice-sounding

1815 recommendations, but how do we get there? I am not quite
1816 sure I know that.

1817 Ms. {Montgomery.} We have to keep working at it.

1818 Dr. {Cassidy.} Okay. Thank you. I yield back.

1819 Mrs. {Bono Mack.} Thank you.

1820 The chair recognizes Mr. Kinzinger for 5 minutes.

1821 Mr. {Kinzinger.} Thank you, Madam Chair.

1822 I may be the last person to ask you questions, so
1823 congratulations. You made it. Thank you for coming.

1824 Mrs. {Bono Mack.} Excuse me, sir. We plan a second
1825 round, so don't let me off that easily.

1826 Mr. {Kinzinger.} Okay, this round. But I really
1827 appreciate you coming in and talking to us. This is very
1828 important. And I think as we, you know, here in Congress
1829 debate things like the economy and jobs and what is the
1830 proper role of government, you know, does government
1831 micromanage an economic recovery or is it the private sector,
1832 which I believe? This is a great opportunity to show how
1833 this area is an explosive market and really a bright spot in
1834 the American economy. It would be really sad to think of
1835 where we would be, frankly, without, you know, technology
1836 innovation right now as an economy. What place would we have
1837 in the world?

1838 So I think as we go forward it is very important that we

1839 understand that there has got to be a proper balance, of
1840 course, between where the government is involved and what it
1841 does and also stamping down on the innovation of the free
1842 market. Because again if we are going to get out of this
1843 recession, and we are, it is going to be through that free
1844 market.

1845 So it is good to hear also from the witnesses that the
1846 FTC is working well with the stakeholders in updating our
1847 privacy rules to reflect that evolving world. As you have
1848 heard from everybody here, I am amazed at what the young
1849 folks are able to teach me about, you know, what to do with
1850 applications and stuff like that. Even though I may be one
1851 of the younger members of Congress, all I can do on my iPad
1852 right now is surf the internet. I really don't know how to
1853 do much else. So I can go to my nieces and nephews to help
1854 me with that if they need to.

1855 But I also want to say to me it is incredibly hard for
1856 parents to control or even know what their children are
1857 doing, and at the same time, I feel confidence, obviously,
1858 that mothers and fathers want to have that assurance that
1859 they know what is going on and things like that.

1860 The FTC has played an important role in this regard and
1861 should continue to work with the various stakeholders to
1862 ensure children's personal information is not being collected

1863 online. More can always be done and this committee must
1864 determine and it will determine whether the FTC has enough
1865 authority to keep up with online advances, at the same time
1866 finding that balance.

1867 My first question, though, is to Mr. Reed. As the apps
1868 become more enhanced in geolocation and social media
1869 interactions advance--and they do it at a record pace and an
1870 exponential pace frankly--do parents have the tools to ensure
1871 that predators won't have access to their children's
1872 location? Because to me I see that as potentially being a
1873 very terrible story in the future.

1874 Mr. {Reed.} Right. That is becoming kind of a
1875 universal conundrum. How does my child share his information
1876 with his friends and not let people that we don't want to see
1877 it, see it? We are working on technological solutions, we
1878 are working on allowing kids to kind of develop their own
1879 friends list, but that has its own shortfalls. Does my 13-
1880 year-old--mine is 5-3/4 so she is not there yet--but does she
1881 know who her friends really are? The problem is is if we
1882 take a step back, we had this problem with this device called
1883 the telephone. People could call each other and say this is
1884 where I am. I will meet you behind the park or behind the
1885 baseball field. So it is really a struggle that we have on
1886 how do we take this location information that we are provided

1887 in our mobile device and somehow segregate it in a way that
1888 is different than, say, my physical telephone in my house
1889 saying I will meet you behind the baseball field.

1890 Mr. {Kinzinger.} Right.

1891 Mr. {Reed.} So we don't have the answers. We are
1892 trying to figure it out, but I a big part of what we are
1893 doing is empowering parents to know what their kids' device
1894 does and by alerting them very clearly, hey, this is going to
1895 share your location. Are you okay with it? And in the case
1896 of most of the mobile devices, you can turn that off
1897 completely. So in mine, my daughter can't actually hit any
1898 button that charts her geolocation. And so that is what we
1899 are going to have to do.

1900 Mr. {Kinzinger.} And that is good. And again, I mean
1901 in 2 or 3 years if you all are fortunate enough to come back
1902 here and talk, we are going to have a whole slew of new
1903 different questions--

1904 Mr. {Reed.} Right.

1905 Mr. {Kinzinger.} --because there is going to be so much
1906 that we can't even begin to imagine now. And again, that is
1907 what beautiful about our innovating economy is that, you
1908 know, that is the case.

1909 But let me ask Ms. Engle. How is the FTC approaching
1910 geolocation technologies as it relates to children? And

1911 specifically, do you believe parents are given enough
1912 information to know what an app is storing about a child and
1913 what information is being shared with other users?

1914 Ms. {Engle.} The FTC believes that geolocation
1915 information is already covered as an item of personal
1916 information under COPPA because COPPA refers to physical
1917 location including street name and city or state and
1918 geolocation information is at least as precise as that and
1919 often more so. But what we have proposed is specifically
1920 adding geolocation as an element of personal information just
1921 to make that crystal clear.

1922 Mr. {Kinzinger.} Well, thank you. And again, this
1923 appears to be a good example of where government and private
1924 sector seems to be working well together. And I yield back.

1925 Mrs. {Bono Mack.} I thank the gentleman and recognize
1926 myself for the next 5 minutes.

1927 And to Dr. Montgomery, I appreciate very much your
1928 thoughts on this and your work on this over the years. Last
1929 week, I took a trip up to Silicon Valley and I visited a
1930 number of the big firms. It was very, you know, thought-
1931 provoking and I think that what really strikes me the most is
1932 how over the years the internet has been built on the backs
1933 of intellectual property. And early on when you think about
1934 Napster and Kazaa and the peer-to-peer networking and how we

1935 have moved into other models that actually try to pay for
1936 intellectual property, do you think, I mean behavior
1937 advertising to me, I kind of grapple a little bit with why it
1938 is bad when sometimes they are trying to monetize these new
1939 models that end up trying to pay for content.

1940 Anybody who is a writer in the audience, you know,
1941 anybody who has ever been a part of any creative work, any
1942 longer your work is devalued because you can't get paid. And
1943 when something is out on the internet in digital form, a
1944 master copy is a master copy is a master copy. How do you
1945 see moving forward, then, in a world where we need to try to
1946 provide decent, quality content for our children and still
1947 protect them from behavioral advertising? And you said that
1948 if we hadn't had COPPA--and I don't disagree with you--but
1949 you said it would have been outrageous what we would be
1950 living under now. How do you find outrageous and how do you
1951 see paying for quality content going forward as people are
1952 grappling with how to pay people who create, you know,
1953 valuable content for our children?

1954 Ms. {Montgomery.} Well, I will tell you that what I saw
1955 in the early days was leading to a business model where
1956 marketers were talking about creating personal relationships
1957 between a product spokescharacter and a child, things that
1958 nobody would ever talk about now in terms of microtargeting

1959 and targeting individual children. And I think what we have
1960 been able to do with COPPA is allow and enable that industry
1961 to grow and flourish but by creating some guardrails, some
1962 rules of the road where we are not taking advantage of the
1963 youngest children, whereas I mentioned earlier, research
1964 shows they don't have the cognitive capacities or the
1965 psychological developmental capacities to handle these kinds
1966 of very, very sophisticated behavioral targeting and--

1967 Mrs. {Bono Mack.} But there must be some positive
1968 behavioral targeting out there, too. And this is what
1969 troubles me about these discussions we have in here with
1970 privacy, with security is all of these issues have another
1971 side to the coin where some people see benefit, others see
1972 risk, all of these. My point here is what if we wanted to do
1973 an anti-bullying campaign? That is positive. What if we
1974 want to encourage our children to go to a great university
1975 like USC or something like that? And so there are ways to
1976 target them in a positive way as well, aren't there? We are
1977 stifling--

1978 Ms. {Montgomery.} Absolutely. And from the beginning
1979 what we have said and I still agree with, we were never
1980 trying to eliminate marketing or advertising in this context.
1981 We think that is perfectly fine and identifying the IPs,
1982 understanding that an IP address is still now personal

1983 information, personally identifiable, that doesn't mean you
1984 can't provide contextual advertising to children. That is
1985 still very much possible. You can do all kinds of anti-
1986 bullying campaigns. They are happening online. None of this
1987 would restrict it.

1988 What I think is important, however, is that we create
1989 some safeguards for the kinds of data collection and
1990 profiling and highly targeted and potentially very
1991 manipulative advertising that is targeted at younger
1992 children. Now, when it comes to--

1993 Mrs. {Bono Mack.} And can you speak a little bit
1994 towards again monetizing the delivery of quality content?
1995 This is what it is all about at the end of the day.

1996 Ms. {Montgomery.} It is a tradeoff. It is always a
1997 tradeoff. And yes, of course you need to monetize the
1998 content but you do that at a price. And if it is a price
1999 that is not fair to children, that takes advantage of them,
2000 then I think you look for ways to alter that business model.

2001 Mrs. {Bono Mack.} Thank you very much, Dr. Montgomery.

2002 Mr. Simpson?

2003 Mr. {Simpson.} Just quickly to add to that, as a big
2004 believer in those incredible educational opportunities of
2005 apps, of a lot of this digital media, how do we monetize
2006 that? As much as possible we do that with the engagement and

2007 empowerment of parents. Make them part of the equation so
2008 that they know about the cyber bullying campaign that we want
2009 to promote and that they are engaged with their kids with
2010 talking about USC and other great institutions. Make them
2011 part of the equation.

2012 Mrs. {Bono Mack.} Quick question--and we are trying
2013 also to get enough time to Mr. Markey so he can be here--you
2014 like the eraser button. I don't understand how that is
2015 technologically feasible. I am not opposed to the concept,
2016 but again, if it is a digital recording, if a song is out
2017 there, it is out there forever. If a photograph is out
2018 there, it is out there forever. How do you technologically
2019 think that an eraser button is possible when it is already
2020 out there in cyberspace and you can't even attribute
2021 necessarily who originated it?

2022 Mr. {Simpson.} You are very right on that part and one
2023 of our first pieces of advice to parents and to our
2024 educational materials for kids is to make them recognize that
2025 these things can be forever and all the more reason why kids
2026 need to be very careful about what they post, what they
2027 share. But as the bill has drafted, to the degree that it is
2028 technologically feasible, the eraser button should address
2029 some of the opportunities for kids or teens, parents in the
2030 case of kids, to take down what they own.

2031 This also gets back to what, I believe, Congresswoman
2032 Blackburn has described as who owns the virtual you. So this
2033 is also an issue of intellectual property. This is an issue
2034 of property. When we start sharing things online, they do
2035 get much more complicated. They run into First Amendment
2036 issues and they run into shared ownership. But at what point
2037 do we have tools for parents and for teens where something
2038 that belonged to me, a picture I took of myself still belongs
2039 to me and is something I can take down.

2040 Mrs. {Bono Mack.} All right, thank you. I need to
2041 yield to Mr. Butterfield for 5 minutes.

2042 Mr. {Butterfield.} Thank you, Madam Chair.

2043 Ms. Engle, let me start with you. The statute contains
2044 a broad definition of personal information. It states simply
2045 that personal information means ``individually identifiable
2046 information about an individual collected online'' and then
2047 includes a nonexclusive list of identifiers. The FTC is also
2048 granted the authority to expand the definition to include any
2049 other identifier that the Commission determines permits the
2050 physical or online contacting of a specific individual. This
2051 is the authority that the FTC is relying on to bring the
2052 meaning of personal information into the COPPA Rule in line
2053 with the technological changes that have happened since the
2054 Rule first went into effect.

2055 Let me just ask you yes or no. Am I correct that you
2056 are not required by the statute to determine whether changing
2057 the definition of personal information will unreasonably
2058 impede technological innovation?

2059 Ms. {Engle.} That is correct.

2060 Mr. {Butterfield.} All right. Yes or no, am I correct
2061 that you are not required by the statute to determine whether
2062 changing the definition of personal information will
2063 adversely affect interstate commerce?

2064 Ms. {Engle.} That is correct.

2065 Mr. {Butterfield.} All right. Yes or no, am I correct
2066 that exercise of this authority does not require any finding
2067 other than that the identifier permits physical or online
2068 contacting?

2069 Ms. {Engle.} That is what the statute says.

2070 Mr. {Butterfield.} All right. Yes or no, am I correct
2071 that you get to use streamlined APA rulemaking and are not
2072 required to follow the more burdensome Magnuson-Moss
2073 rulemaking process to change the definition?

2074 Ms. {Engle.} That is correct, although we always, you
2075 know, seek comment on burdens and cost and technological
2076 feasibility, but it is not statutorily required.

2077 Mr. {Butterfield.} All right. Yes or no, is this the
2078 first time in the 11 years since the COPPA rule became

2079 effective that the Commission has proposed changes to the
2080 meaning of personal information using its statutory authority
2081 to modify the meaning of that term?

2082 Ms. {Engle.} Yes.

2083 Mr. {Butterfield.} All right. Those are my yes-or-no
2084 questions. All right. We need to use some more time.

2085 It seems to me that when the FTC is given the ability to
2086 modify the meaning of a key statutory term like personal
2087 information, and 2) is allowed to do so following a
2088 straightforward and streamlined process, it is shown it will
2089 not abuse the authority or act hastily. It will not run wild
2090 and create chaos and unnecessary cost for businesses. I
2091 think our experience with COPPA shows the FTC can exercise
2092 this sort of authority carefully and deliberately. I hope
2093 that is a lesson all of us here can apply to the data
2094 security context as we look to move legislation in that area
2095 that is both effective and adaptable to changes in technology
2096 and expectations about what information should be protected.

2097 This has been a good hearing, Madam Chairman. I want to
2098 thank the witnesses and want to thank you for your patience.
2099 I yield back.

2100 Mrs. {Bono Mack.} I thank the gentleman and at this
2101 point I will thank the panel very much for your answers to
2102 our questions. You have been very gracious with your time.

2103 And as I said, these issues I think no more than any others
2104 have a flipside to everything that we do. And the law of
2105 unintended consequences can be very, very frightening. And
2106 with that, I am actually just stretching--you owe me. And I
2107 am happy to recognize Mr. Markey for 5 minutes.

2108 Mr. {Markey.} Thank you. I thank the gentlelady and I
2109 thank you for allowing me as a nonmember of this subcommittee
2110 to participate. Thank you so much.

2111 I am the House author of the Children's Online Privacy
2112 Protection Act, which Congress passed and President Clinton
2113 signed into law in 1998. It is the communications
2114 constitution when it comes to protecting kids online but we
2115 need to update it to take into account the explosive growth
2116 and innovation in the online ecosystem over the last 13
2117 years.

2118 I commend the Federal Trade Commission for its
2119 thoughtful and comprehensive review and for its proposed
2120 changes to that Rule, which reflect and reinforce many of the
2121 same safeguards contained in the Do Not Track Kids Act that I
2122 introduced this past May with Representative Joe Barton.

2123 As in our bill, the Commission appropriately notes that
2124 teens should be provided with clear information about how
2125 their personal data is used and also empowered to exercise
2126 control over these uses. As in our bill, the Commission also

2127 proposes to add children's location information under the
2128 category of personal data that require a parent's permission
2129 before it is collected or used. Given the potential for this
2130 sensitive data to be misused to endanger a child, the
2131 Commission's proposal in this area is a much-needed step.

2132 I commend the Commission for rejecting arguments that
2133 voluntary self-regulatory efforts are the best way to address
2134 privacy concerns in connection with behavioral targeting of
2135 children online. Strong legal requirements along with
2136 vigilant enforcement are needed to protect children from
2137 tracking and targeting on the internet.

2138 Children should be able to grow up in an electronic
2139 oasis that enables access to online education, to education
2140 and entertainment opportunities in a safe environment. And I
2141 look forward to working with you, Madam Chair, and all the
2142 members of the committee so that we can strengthen privacy
2143 safeguards and ensure that kids and teens are protected when
2144 they go online, and that is why I introduced the Do Not Track
2145 Kids Act.

2146 Mr. Simpson, you mentioned in your testimony that teens
2147 still need privacy protection online because, as we know,
2148 COPPA covers users 12 and younger. I agree with you. And
2149 the Do Not Track Kids bill that Joe Barton and I introduced
2150 provides teens with safeguards specifically tailored for

2151 their age group without expanding the COPPA structure to
2152 adolescents. Can you expand on Common Sense's views on
2153 privacy protections for teens, please?

2154 Mr. {Simpson.} Thank you, sir. We think you are taking
2155 very much the right approach. There is a complicated issue
2156 here called child development and we all know that not all 8-
2157 year-olds are the same, 8-year-olds are not the same as 14-
2158 year-old, and 14-year-olds are not the same as 20-year-olds,
2159 and many 20-year-olds act like 12-year-olds. But the reality
2160 is that teens need something more than they have right now.
2161 The FTC's recommendations are very valuable for kids under
2162 13, but there are a lot of 13- and 14- and 15-year-olds who
2163 are quite capable of making mistakes in this innovative
2164 space, and those mistakes can come back to haunt them. They
2165 need opportunities and they need a lot more education and
2166 they need a lot more information that is actionable. They
2167 need resources they can use that are designed for their age
2168 group, not for the lawyers who are well versed in privacy.

2169 Mr. {Markey.} Thank you.

2170 Dr. Montgomery, do you agree that younger teens need a
2171 framework for them as well, perhaps not for the 12 and under
2172 but something tailored for that group?

2173 Ms. {Montgomery.} Yes, I do and this is something I
2174 have felt very strongly about for a long time since we were

2175 debating COPPA where the issue of whether we ought to apply
2176 the COPPA protections to teens was very much part of the
2177 discussion at that time. And what I really believe is that
2178 we do need protections here. What we have seen is with
2179 COPPA, we have a framework where there is an industry that
2180 appreciates the concerns about children, but with teenagers,
2181 it has been no holds barred and no real sensitivity to their
2182 concerns.

2183 Mr. {Markey.} Can I ask, what is your response to the
2184 questions that are raised by the eraser button that Mr.
2185 Barton and I have included in our bill? What do you think
2186 about its functionality as a way for parents to be able to
2187 protect kids?

2188 Ms. {Montgomery.} I don't really know how the eraser
2189 button will work but I do believe, as my colleague Alan
2190 Simpson has said, that teenagers themselves should be able to
2191 have some control over the information they have placed
2192 online.

2193 Mr. {Markey.} Mr. Simpson, what is your view in terms
2194 of the eraser button?

2195 Mr. {Simpson.} Absolutely. And you know, we don't know
2196 exactly how they will work, but I think the key is here we
2197 have seen a lot of innovation on how to collect and not
2198 enough innovation on how to protect. And I think something

2199 like an eraser button is a tool that industry can design to
2200 empower teens in richer ways.

2201 Mr. {Markey.} Okay. Thank you. And I thank all of you
2202 for your participation in this very, very important
2203 discussion. It is only going to get more and more dangerous
2204 for kids if we don't put these safeguards in place.

2205 Thank you, Madam Chair.

2206 Mrs. {Bono Mack.} Thank you, Mr. Markey.

2207 And again, I would like to thank Ms. Engle and then
2208 entire staff at the FTC who has devoted time and thought to
2209 this effort. Job well done. And also to all of you once
2210 again, thank you. I would like to say that this is a third
2211 in our series of online privacy hearings so far this year. I
2212 look forward to our continued discussions on how we can best
2213 balance the need to remain innovative with the need to
2214 protect all of our privacy, certainly our children's privacy.

2215 Next week, we will take a close look at consumer
2216 attitudes and expectations, and we know that is going to be a
2217 very interesting hearing.

2218 I will remind members that they have 10 business days to
2219 submit questions for the record, and I ask all witnesses to
2220 please respond promptly to any questions you might receive.

2221 And the hearing is now adjourned. Thank you again.

2222 [Whereupon, at 11:02 a.m., the subcommittee was

2223 adjourned.]