

**Before the
FEDERAL TRADE COMMISSION
Washington, DC 20580**

In the Matter of)	
)	
COPPA Rule Review)	No. P104503
16 CFR Part 312)	
)	

**COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (“NAB”)¹ hereby submits brief comments in response to the Federal Trade Commission’s (“Commission”) request for comment, which seeks input on its proposed revisions of the Children’s Online Privacy Protection Rule (“COPPA Rule” or “the Rule”).²

In its recent review of the COPPA Rule, the Commission asked whether and how the Rule should be revised in light of changes in the online environment, particularly increasing use of mobile technology by children to access the

¹ NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

² Proposed rule; request for comment on the Federal Trade Commission’s proposed amendments to the Children’s Online Privacy Protection Rule, 76 Fed. Reg. 59804 (September 27, 2011) (“Request”).

Internet.³ The previous Notice asked what COPPA enforcement issues may be created by technologies such as mobile communications, interactive television, interactive gaming, or other similar interactive media, consistent with the Act's definition of "Internet."⁴ Specifically, it sought input on whether the Rule's definition of the "Internet" adequately encompasses these technologies. *Id.* NAB submitted comments explaining why broadcast "interactive television" should not be included within the COPPA Rule and its proscriptions.⁵

In its current Request and proposed rule, the Commission endorses the consensus view of the commenters that both the COPPA statute and Rule are written broadly enough to encompass many new technologies without the need for new statutory language.⁶ It notes that it will continue to assess emerging technologies with regard to COPPA's coverage. *Id.*

While NAB supports efforts to protect children and their personal information in the online context, we continue to believe that it is both premature and over-inclusive to consider "interactive television," at least "interactive" broadcast television, as a service within the ambit of the COPPA Rule. As we discussed in our Comments, at 2-3, broadcast television is a "one to many"

³ Request for Public Comment on the Federal Trade Commission's Implementation of the Children's Online Privacy Protection Rule, 75 Fed. Reg. 17089 (April 5, 2010) ("Notice").

⁴ *Id.* at 17090.

⁵ Comments of the National Association of Broadcasters, Project No. P104503, filed June 30, 2010 ("NAB Comments") at 2-7.

⁶ Request at 59807.

(millions) service, with no “return channel” to receive information back from the consumer, unlike cable television with wired paths that can function as return paths and set-top boxes with advanced return paths and interactive functionality. We here attach our previous comments which more fully explain these points.

Respectfully submitted,

A handwritten signature in black ink, reading "Valerie Schulte". The signature is written in a cursive style with a large, sweeping initial "V".

**NATIONAL ASSOCIATION OF
BROADCASTERS**

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December 23, 2011

The Notice asks what COPPA enforcement issues may be created by technologies such as mobile communications, interactive television, interactive gaming, or other similar interactive media, consistent with the Act's definition of "Internet."⁴ As the Commission stated at a recent Congressional hearing, it is seeking input on whether the Rule's definition of the "Internet" adequately encompasses these technologies.⁵

NAB respectfully submits these brief comments on the narrow issue of whether the term "interactive television" should be specifically included within the COPPA Rule and its proscriptions. While NAB supports efforts to protect children and their personal information in the online context, it is both premature and over-inclusive to include the term "interactive television," at least as to "interactive" broadcast television,⁶ as a covered service within the ambit of the COPPA Rule.

First, while there are steps being taken and technical paths defined to develop true interactivity (and true Internet-connectivity) for broadcast

⁴ Notice, 75 Fed. Reg. at 17090.

⁵ Prepared Statement of The Federal Trade Commission, "An Examination of Children's Privacy: New Technology and the Children's Online Privacy Protection Act," Subcommittee on Consumer Protection, Product Safety, and Insurance, Committee on Commerce, Science, and Transportation, United States Senate, April 29, 2010, at 9.

⁶ As we discuss below, broadcast television is a "one to many" (millions) service, with no "return channel" to receive information back from the consumer, unlike cable television with wired paths that can function as return paths and set-top boxes with advanced return paths and interactive functionality.

television,⁷ it is not a current reality for the over-the-air service.⁸ For interactive broadcast television, there are still a lot of “what if’s,” with many experiments, trials and marketplace plans to come.⁹ Putting the current steps together to

⁷ See “ATSC Announces New Planning Teams,” May 12, 2010, available at <http://www.atsc.org/cms/index.php/communications/press-releases/211-atsc-announces-new-planning-teams>.

⁸ See John Carey, *Winky Dink to Stargazer: Five Decades of Interactive Television* (1996) (Paper presented at the UnivEd Conference on Interactive Television, Edinburg, Scotland, 1996) (unpublished), available at http://www.columbia.edu/cu/business/courses/download/B9201-XX/carey/history_of_interactive_tv.pdf. Beyond experimental activities, there have also been numerous market trials and at least one service that did not succeed in the marketplace. See *id.* at 4-16 (discussing Qube and other interactive experiments).

⁹ Work on new industry technical standards for internet connectivity and program-related interactivity is beginning. The just-released annual report of the Advanced Television Systems Committee, the multi-industry organization developing voluntary technical standards for digital television, states that: “The ATSC is committed to the development of comprehensive standards for the next generation of fixed-broadcast digital television (DTV) services, a concept currently referred to as “ATSC 2.0.” These standards will address the technical specifications needed for complete end-to-end applications. . . . Technology continues its rapid pace of change, with more and more consumer devices being Internet-enabled, which in turn enables new distribution and consumption models for entertainment programming and information. The ATSC 2.0 concept is designed to take the experience of television - watching on fixed receivers to the next level by introducing a number of enhanced features based on newly-developed standards and focused application of existing standards. . . . Features and functionality of the ATSC 2.0 concept include Non-Real Time (NRT) services (including support for 3D content), advanced video and audio codecs, *program-related interactivity*, *Internet connectivity*, access-control, digital rights managements (DRM), and data collection to support service usage measurement. Work on the new standards needed for ATSC 2.0 is expected to start in the Technology and Standards Group in the near future.” “ATSC People and Progress,” Advanced Television Systems Committee (2010), at 15, available at http://www.atsc.org/cms/pdf/ATSC_Annual_Electronic.pdf (emphasis added). See also, TV TechCheck, National Association of Broadcasters, June 21, 2010, available at <http://www.nab.org/xert/scitech/2010/TVTechCheck/TV062110.asp>.

produce interactive broadcast services (using mobile phone networks and the Internet for return paths) should occur in time, as should development of real-world business plans for interactive consumer services. But the precise nature of any such service is still undefined.¹⁰

NAB maintains that government regulation of commercial activity should be narrowly crafted and focused on current services and products rather than experimental endeavors. Among other reasons, premature government regulation can hinder the development or deployment of useful marketplace applications. Thus, NAB respectfully suggests that now is not the time to include “interactive” broadcast television within the ambit of the COPPA Rule or other government regulatory framework.¹¹

¹⁰ *Id.* A review of a recent, comprehensive filing with the Federal Communication Commission (“FCC”) detailing current interactive television activities and technologies reveals a lone broadcaster-involved venture. Comments of Children’s Media Policy Coalition (“CMPC”), In the Matter of Children’s Television Obligations of Digital Television Broadcasters, MB Docket No. 00-167 (“Children’s Digital Television proceeding”) and In the Matter of Empowering Parents and Protecting Children in an Evolving Media Landscape, MB Docket No. 09-194 (filed February 24, 2010), at 13.

¹¹ In its open proceedings considering regulation of commercial interactivity during children’s television programming, see *id.*, the FCC has yet to act. In its 2004 Report and Order, the FCC decided not to prohibit the appearance of direct, interactive links to commercial Internet sites in children’s programming because that technology was not being used in children’s programming. Children’s Digital Television proceeding, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 22943 (2004), at ¶¶ 53, 72. Noting, however, that this technology was “on the horizon,” the FCC tentatively concluded in the Further Notice of Proposed Rule Making (“FNPRM”) that it should prohibit interactivity during children’s programming that connects viewers to commercial matter unless parents “opt in” to such services. *Id.* at ¶ 72. Comments and reply comments were filed in response to that FNPRM, but the Commission has not yet acted. See Comments and Reply Comments of NAB, filed April 1, 2005 and May 2, 2005 in that proceeding. See also Comments of

Second, NAB submits that it is over-inclusive to apply COPPA restrictions to all “interactive” broadcast television as such. Interactive broadcast television broadly would include not only Internet-based or other “true” interactivity with the capability to gather personal information from consumers (and children),¹² but what is known as “local interactivity” with no such capabilities. The COPPA Rule should apply only when a broadcaster or other service provider enables consumers/children or the devices they use to send back identifiable personal information (via the Internet or other networks) that can be gathered and used in

NAB, MB Docket No. 09-194 (filed Feb. 24, 2010); Reply Comments of NAB, MB Docket No. 09-194 (filed March 26, 2010), where, at 33, NAB notes that it would be premature for the Commission to engage in regulation of interactive digital broadcasting at this time, because interactive television for broadcasters is a nascent and developing service. As noted *supra* at fn. 12, the comments of CMPC in that proceeding updated the record on television interactivity but listed only a single venture involving broadcasters.

¹² For broadcasters to achieve true inter-activity, they need a return path for the consumer to send information back to the broadcaster. Television transmissions do not provide such a return path, although there are technical protocols (but not plans) for interactive components for the broadcast service. With Mobile DTV, just now under trial (see <http://www.omvc.org/about-omvc/initiatives/dc-showcase/>), broadcasters will be able to transmit signals to mobile devices, such as cell phones, laptops, etc., and receive information back from consumers via the return paths of cell phone networks or, in the case of laptops and netbooks, WiFi networks. As configured per the ATSC standard for Mobile DTV, all the broadcaster can garner without permission from consumers’ return channels is time, channel and place (if the consumer device is GPS-enabled). Within a few years, interactive (or tailored) advertising could develop as an application for Mobile DTV.

contravention of the privacy rights established by COPPA.¹³

With “local interactivity,” broadcasters will be able to achieve a form of interactivity by sending more information to consumers’ devices (*i.e.*, to televisions, and with mobile DTV, currently in trial, to mobile phones, hand-held media players, laptops, back-seat screens, etc.) than will initially display on their screens. Only when the consumer clicks on a particular icon (*i.e.*, “interacts”) will the “answer” or other information display on the consumer’s screen. But, with this configuration, no information is sent by the consumer to the broadcaster, and no consumer information is gathered by the broadcaster.

Thus, when the Commission inquires about including “interactive television” within the COPPA Rule, NAB believes that it is casting too wide a net. Rather, the Commission should focus on current technologies and services that can harvest or gather identifiable personal information from children or the devices they may use without inadvertently sweeping within COPPA’s regulatory scheme experimental broadcast activities, as well as “local interactive” services

¹³ Similarly, with the advent (within the next few years) of true Internet-connected television, broadcasters will be able to embed in their broadcast transmissions Internet links which the consumer may or may not choose to access. (Before true Internet connectivity is a reality, there should be television products available to enable limited Internet access, albeit of a constrained “walled garden” variety.) NAB maintains that applicability of the COPPA Rule begins only once the (child) consumer accesses a web site whose operator can harvest personal information stored within the consumer’s television or other device (in the case of Mobile DTV reception). Thus it should be the web site operator with information-gathering capability that should be appropriately constrained by COPPA regulations, not the broadcaster who simply sent the link to get the consumer to an Internet site.

with no ability to violate the COPPA Rule's proscriptions. We respectfully suggest that more precision is required to include appropriate "interactive television" technologies within this current discussion.

Respectfully submitted,

A handwritten signature in black ink that reads "Valerie Schulte". The signature is written in a cursive, flowing style.

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June 30, 2010