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Mr. Donald S. Clark
Secretary
Federal Trade Commission
Room H-113 (Annex E)
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: COPPA Rule Review, 16 CFR Part 312, Project No. P-104503

Dear Secretary Clark:

Foley & Lardner LLP submits these comments on behalf of The Lares Institute ("Lares") in response to the request for public comment by the Federal Trade Commission ("FTC" or "Commission") on proposed revisions to the Children's Online Privacy Protection Rule ("COPPA Rule" or "Rule"). Lares supports the FTC's efforts to modernize the COPPA Rule for the 21st Century. It believes COPPA should be designed in a way that protects the public's privacy and security interests while allowing for important and necessary technological innovation.

Enhancing Technological Innovation

The proposed rule change to Sec. 312.2(b), governing spaces where children interact with others online, is a move in the right direction. The Internet is a space where children are increasingly interacting. The COPPA Rule's previous standard had the ability to hamper technological growth and, as a result, limit children's options. The proposed standard, that operators take "reasonable measures to delete all or virtually all" personal information from a children's posting, is more workable and realistic, and will do more to encourage innovation.

In contrast, the proposed rule change expanding the definition of "personal information" to include "persistent identifiers" and "identifiers linking a child's online activities" has the potential to hamper technological innovation. The previous rule already covers such information when it is associated with individually identifiable information, and such a rule was broad enough. Persistent identifiers and analytical tools that qualify as identifiers linking a child's online activities are necessary in order for sites to deliver content and an engaging user experience. Further, without such information, sites would not be able to improve offerings for children. This goes beyond simply providing good entertainment to kids. The internet, and in particular mobile devices, have offered incredible educational opportunities in the means of programs and applications. One reason these applications are so useful as educational tools is that they are able to provide an individual user

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experience. Another reason is that they are able to improve with use and child feedback, collected via analytical data. Under the new rules, an educational program might not be able to provide the same customized experience, and may not be able to know which lessons to scrap in favor of more effective ones.

Further, the Commission's explanation of what behavior would require parental consent and what would not is unclear. The Commission states that it is not interested in preventing sites from offering a good user experience, and does not intend to limit information collection for such purposes. Nonetheless, the Rule as proposed allows collection only if information is in "support for the internal operations of the website or online service," i.e., "necessary to maintain the technical functioning of the website or online service." It is unclear that providing an individualized user experience would qualify as necessary to maintain the technical functioning of a website. Additionally, the Commission states that persistent identifiers may be used to maintain user preferences and serve contextual advertisements. However, the Commission also states that persistent identifiers would not be allowed to be used without prior parental consent to amass data on a child's online activities or to serve behaviorally targeted advertisements. Such distinctions are nebulous and may be difficult to maintain in day-to-day practice. Confusion over how to comply with the policies may chill innovation further.

The proposed rule change expanding the definition of "personal information" to cover geolocation data poses similar concerns. This is a rapidly growing space that is not fully understood, and Commission rules here may unintentionally hamper development. Like a persistent identifier, geolocation information can be used to provide a better and more relevant user experience. Further, geolocation information is not necessarily the same as knowing someone's home address or phone number, it may require additional steps—i.e., additional collection of information—and thus could already be covered as needed by the old Rule.

Lares applauds the Commission's desire to increase and improve mechanisms for providing parental consent in this changing technological space. Safe Harbor programs should serve as incubators for new developments in methods of verifiable parental consent. These programs, situated in the marketplace, are in a good position to test and develop appropriate technology. The Commission may find that the public's privacy and security needs are better served through broader rules that can be appropriately implemented and explored by private companies and nonprofits, versus specific legislative directives. Along these lines, one of the Commissions' specific legislative directives is puzzling. For example, it is unclear if the collection of a driver's license number—more sensitive data—is an appropriate step if the purpose is to provide consent in order to collect a persistent identifier—less sensitive data. The fact that the driver's license is to be deleted does not entirely remove the concerns this raises.



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Protecting The Public's Privacy and Security Interests

Privacy policies are most effective when they are easy to find and easy to read. Many privacy policies are written in language appropriate for college readers, which may not always be a best practice for certain websites. COPPA Rule compliant policies have historically been even longer than the average policy. This has the potential to create confusion for web site operators, as well as parents, who are trying to read such policies. Lares supports the FTC's decision to streamline under Sec. 312.4(b). The move to become less reliant on privacy policies is a good step. The move to a clearer privacy policy is an even better step. Simpler privacy policies are much more likely to serve the notice function as intended. If parents are not able to understand what they are signing up for, or are dissuaded from signing up because of the length of the privacy policy, COPPA serves little protection purposes and only deters children from being able to participate on the Internet.

The confidentiality and security of personal information is also of concern. Asking companies to take reasonable measures to ensure that third parties have in place reasonable procedures is an appropriate way to protect privacy interests. Given the complex interactions between different service providers, and the inability and undesirability of a site operator constantly monitoring all third parties with whom they interact, this provision should remain broad and the Commission should not seek to dictate in the future specifically what measures and steps need be taken. Businesses and self-regulatory groups are in a better position to understand, implement, and maintain privacy oversight policies that are workable and effective.

It is important that the FTC update the COPPA Rule in order to stay current with changing technology. Recognizing that technology is rapidly changing, however, the FTC should seek to make the make the Rule a flexible one that protects privacy concerns while enabling innovation and growth.

Respectfully submitted,

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