

Comments on the Federal Trade Commission’s Implementation of the Children’s Online Privacy Protection Rule  
December 10, 2019

[Ben Sperry](#)

In this comment, we address the first question presented by the Commission (“Is there a continuing need for the Rule as currently promulgated? Why or why not?”). This comment answers that question in the negative, arguing the FTC should return to the pre-2013 version of the COPPA Rule. However, these comments also speak to several other questions, including specifically:

**b. What are the aggregate costs and benefits of the Rule?**

- The benefits are unclear, but the costs — in the form of restricting the ability of family- friendly content creators to monetize their products — are real.

**c. Does the Rule include any provisions not mandated by the Act that are unnecessary or whose costs outweigh their benefits? If so, which ones and why?**

- The 2013 amendment’s definition of personal information is not only arguably inconsistent with the statute, but also very costly in restricting targeted advertising.

**2. What effect, if any, has the Rule had on children, parents, or other consumers?**

**a. Has the Rule benefited children, parents, or other consumers? If so, how?**

- The benefits to parents or children are unclear.

**b. Has the Rule imposed any costs on children, parents, or other consumers? If so, what are these costs?**

- The costs on children and parents are felt in less-available zero-priced online children’s content.

**c. What changes, if any, should be made to the Rule to increase its benefits, consistent with the Act’s requirements? What costs would these changes impose?**

- The repeal of the 2013 amendments and returning the focus of COPPA to

protecting children from online threats would decrease COPPA's costs while maximizing its benefits to society.

**9. Do the definitions set forth in § 312.2 of the Rule accomplish COPPA's goal of protecting children's online privacy and safety?**

- The definition of personal information does not clearly protect online privacy and safety, but it does impose costs on online children's content creation.

**12. The 2013 revised COPPA Rule amended the definition of "Personal information" to include, among other items, a "persistent identifier that can be used to recognize a user over time and across different websites or online services." Has this revision resulted in stronger privacy protection for children? Has it had any negative consequences?**

- There are no clear benefits to privacy in this revision, but there are negative consequences in less online children's content creation.

In Part I, this comment argues that the 2013 amendments got the purpose of COPPA wrong in focusing on targeted advertising rather than protection from predators. In Part II, this comment explains how the 2013 changes to the definition of personal information and the YouTube enforcement action exemplify this changed focus and resulted in making the monetization of children-friendly content online much harder. Part III then analyzes the 2013 definition of personal information in a cost-benefit framework and finds the uncertain benefits to children's privacy are outweighed by the harm to children's content creation.

[View Article](#)