



Children for longer than reasonably necessary to fulfill the purpose for which the information was Collected.

3. Defendants neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this Order, Defendants admit the facts necessary to establish jurisdiction.

4. Defendants waive any claim that they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this Order through the date of this Order, and agree to bear their own costs and attorney fees.

5. Defendants and Plaintiff waive all rights to appeal or otherwise challenge or contest the validity of this Order.

#### DEFINITIONS

For the purpose of this Order, the following definitions apply:

- A. "Affected Work Product" means any models or algorithms developed in whole or in part using Personal Information Collected from Children through the Kurbo Program.
- B. "Child" means an individual under the age of 13.
- C. "Collects" or "Collection" means the gathering of any Personal Information from a Child by any means, including but not limited to:
1. Requesting, prompting, or encouraging a Child to submit Personal Information online;
  2. Enabling a Child to make Personal Information publicly available in identifiable form; or
  3. Passive tracking of a Child online.
- D. "Defendants" means Kurbo, Inc., a Delaware corporation, and WW International, Inc., a Virginia corporation, individually, collectively, or in any combination and their successors and assigns.
- E. "Disclose" or "Disclosure" means, with respect to Personal Information:
1. The Release of Personal Information Collected by an Operator from a Child in identifiable form for any purpose, except when Operator provides such information to a Person who provides Support for the Internal Operations of the Website or Online Service; and

2. Making Personal Information Collected by an Op

K. "Person" means any individual, partnership, corporation, or other entity, including a trust, that is a party to a contract.

- d. Serve contextual advertising on the website or online service or cap the frequency of advertising;
  - e. Protect the security or integrity of the user, website, or online service;
  - f. Ensure legal or regulatory compliance; or
  - g. Fulfill a request of a Child as permitted by Section 312.5(c)(3) and (4) of the COPPA Rule (attached as Appendix A);
2. So long as the information Collected for the activities listed in 1(a)-(g) is not used or Disclosed to contact a specific individual, including through behavioral advertising, to amass a profile on a specific individual, or for any other purpose.
- O. "Third Party " means any Person who is not:
1. An Operator with respect to the Collection or maintenance of Personal Information on the website or online service; or
  2. A Person who provides Support for the Interactions of the Website or Online Service and who does not use or Disclose information protected under this part for any other purpose.
- P. "Verifiable Parental Consent" means making a reasonable effort (taking into consideration available technology) to ensure that before Personal Information Collected from a Child, a Parent of the Child:
1. Receives notice of the Operator's Personal Information Collection, use, and Disclosure practices; and
  2. Authorizes any Collection, use and/or Disclosure of the Personal Information, using a method reasonably calculated, in light of available technology to ensure that the Person providing consent is the Child's Parent.

Q. "

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

ORDER

I. INJUNCTION CONCERNING COLLECTION OF PERSONAL INFORMATION FROM CHILDREN

IT IS ORDERED that Defendants and Defendants’ officers, agents, employees, and attorneys, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with being an Operator of any Website or Online Service Directed to Children or of any website or online service with actual knowledge that it is Collecting or maintaining Personal Information from a Child, are hereby permanently restrained and enjoined from:

- A. Failing to make reasonable efforts, taking into account available technology, to ensure that a Parent of a Child receives direct notice of Defendant’s practices with regard to the Collection, use, or Disclosure of Personal Information from Children, including notice of any material change in the Collection, use, or Disclosure practices to which the Parent has previously consented, unless the Child’s Online Privacy Policy or other notice provides for such notice.

a/Top] >>usl004 Tc 0.0135 -2 d 55 D

- 1 D. Retaining Personal Information Collected online from a Child for longer than reasonably
- 2 necessary to fulfill the purpose for which the information was Collected; and
- 3 E. Violating the Children's Online Privacy Protection Rule, 16 C.F.R. Part 312 (attached as
- 4 Appendix A).

5 II. INJUNCTION CONCERNING CHILDREN'S PERSONAL INFORMATION  
6 PREVIOUSLY COLLECTED

7 IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and  
8 attorneys, and all other Persons in active concert or participation with any of them, who receive actual  
9 notice of this Order, are ordered to:

- 10 A. Refrain from Disclosing, using, or benefitting from Personal Information Collected from
- 11 Children that Defendants Collected through the Kurbo Program prior to entry of this
- 12 Order unless Verifiable Parental Consent is obtained;
- 13 B. Within thirty (30) days of entry of this Order, destroy all Personal Information Collected
- 14 through the Kurbo Program by Defendants from accounts that have not, by that date,
- 15 received direct notice and provided Verifiable Parental Consent;
- 16 C. Within ninety (90) days of entry of this Order, provide a written statement to the
- 17 Commission, sworn under penalty of perjury, that (1) describes the process through
- 18 which Defendants provided direct notice and sought Verifiable Parental Consent for the
- 19 accounts through which Personal Information was Collected through the Kurbo Program;
- 20 (2) identifies the total number of accounts for which direct notice was provided, as well
- 21 as the number of accounts:
  - 22 (i) that provided Verifiable Parental Consent;
  - 23 (ii) that affirmatively declined to provide Verifiable Parental Consent;
  - 24 (iii) that did not respond;
  - 25 (iv) that Parents requested be deleted after receiving the direct notice provided
  - 26 for under sub-provision B;

1 (v) where Parents engaged with Defendants by asking additional questions;  
2 and

3 (3) confirms all information related to accounts for which Verifiable Parental Consent  
4 was not received has been destroyed;

5 D. Within ninety (90) days of entry of the Order, delete or destroy any Affected Work  
6 Product, and provide a written statement to the Commission, sworn under penalty of  
7 perjury, confirming such deletion or destruction;

8 E. Provide additional description and written statements as follows. Any Affected Work  
9 Product, or other matter that Defendants are otherwise required to delete or destroy  
10 pursuant to this provision may be retained and may be disclosed, as requested by a  
11 government agency or otherwise required by regulation, court order, or other legal  
12 obligation, including as required by rules applicable to the safeguarding of evidence in  
13 pending litigation. In each written statement to the Commission required by this  
14 provision, Defendants shall describe in detail any relevant information that Defendants  
15 retain on any of these bases and the specific government agency, law, regulation, court  
16 order, or other legal obligation that prohibits Defendants from deleting or destroying such  
17 information. Within thirty (30) days after the obligation to retain the information has  
18 ended, Defendants shall provide an additional written statement to the Commission,  
19 sworn under penalty of perjury confirming that Defendants have deleted or destroyed  
20 such information; and

21 F. Maintain and adhere to a retention schedule for Children's Personal Information  
22 Collected through the Kurbo Program, setting forth the purpose for which the information  
23 is Collected, the specific business need for retaining such Personal Information, and a set  
24 time frame and set of criteria for deletion of such information which may not exceed one c  
25  
26  
27  
28



1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

1 related to Section I or II of the Order; and (3) any business entity resulting from any  
2 change in structure as set forth in the Section titled Compliance Reporting. Delivery must  
3 occur within seven (7) days of entry of this Order for current personnel. To all others,  
4 delivery must occur before they assume their responsibilities.

- 5 C. From each individual or entity to which Defendants delivered a copy of this Order,  
6 Defendants must obtain, within 30 days, signed and dated acknowledgment of receipt  
7 of this Order. This requirement may be satisfied through a digital signature so long as the  
8 individual's identity has been authenticated by a digital certificate issued by a certificate  
9 authority and such digital signature is bound to the acknowledgement by means of  
10 encryption.

11 V. COMPLIANCE REPORTING

12 IT IS FURTHER ORDERED that Defendants make timely submissions to the Commission:

- 13 A. One year after entry of this Order, each Defendant must submit a compliance report,  
14 sworn under penalty of perjury:
- 15 1. Each Defendant must: (a) identify the primary physical, postal, and email address  
16 and telephone number, as designated points of contact, which representatives of  
17 the Commission and Plaintiff may use to communicate with Defendant;  
18 (b) identify all of that Defendant's businesses by all of their names, telephone  
19 numbers, and physical, postal, mail, and Internet addresses; (c) describe the  
20 activities of each business, including the goods and services offered, the means of  
21 advertising, marketing, and sales, and the involvement of any other Defendant;  
22 (d) describe in detail whether and how that Defendant is in compliance with each  
23 Section of this Order; (e) provide a copy of each different version of any privacy  
24 notice posted on each website or online service operated by Defendants that  
25 Collects Personal Information from Children or is a Website or Online Service  
26 Directed to Children or that is sent to Parents of Children that sign up or register  
27 on each website or online service; (f) provide a statement setting forth in detail the  
28



1 E. Unless otherwise directed by a Commission representative in writing, all submissions to  
2 the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by  
3 overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement,  
4 Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue  
5 NW, Washington, DC 20580. The subject line must begin *United States v. Kurbo, et al.*

6 VI. RECORDKEEPING

7 IT IS FURTHER ORDERED that Defendants must retain certain records for ten (10) years after  
8 entry of the Order and retain each such record for five (5) years. Specifically, any business that any  
9 Defendant, individually or collectively with any other Defendants, is a majority owner of or controls  
10 directly or indirectly, Defendant must create and retain the following records:

- 11 A. Accounting records showing the revenues from all goods or services sold;
- 12 B. All personnel records showing, for each Person providing services, whether as an  
13 employee or otherwise, the Person's: name; addresses; telephone numbers; job title or  
14 position; dates of service; and (if applicable) the reason for termination;
- 15 C. All records necessary to demonstrate full compliance with each provision of this Order,  
16 including all submissions to the Commission;
- 17 D. Records of all consumer complaints relating to Defendants' Collection of Personal  
18 Information from Children, whether received directly or indirectly, such as through a  
19 Third Party, and any response;
- 20 E. Copies of communications generated in response to Section II.C(2)(v); and
- 21 F. A copy of each materially different form, page, or screen created, maintained, or  
22 otherwise provided by Defendants through which Defendants Collect Personal  
23 Information from Children other than solely persistent identifier that can be used to  
24 recognize a user over time and across different websites or online services or from any  
25 Website or Online Service Directed to Child, and a copy of each materially different  
26 document containing any representation regarding Defendants' Collection, use, and

Disclosure practices pertaining to Personal Information of Children. Each webpage copy shall be accompanied by the URL of the website.

VIII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED this U day of 0 D U F K, 2022.

7 K R P D V 6 + L [ V R Q  
UNITED STATES 0 \$ \* , 6 7 5 \$ 7 ( JUDGE



OF COUNSEL

FOR THE FEDERAL TRADE COMMISSION

KRISTIN COHEN  
Acting Associate Director  
Division of Privacy and Identity Protection

MARK EICHORN  
Assistant Director  
Division of Privacy and Identity Protection

DANIELLE ESTRADA  
DAVID WALKO  
Attorneys  
Division of Privacy and Identity Protection  
Federal Trade Commission  
600 Pennsylvania Avenue NW  
Mail Stop CC-8232  
Washington, DC 20580  
(202) 326-2630 (Estrada)  
(202) 326-2880 (Walko)  
destrada@ftc.gov  
dwalko@ftc.gov



**FOR DEFENDANTS:**

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

Date:

2

M  
Sidley Austin LLP  
2021 McKinney Avenue  
Dallas, Texas 75201  
(214) 981-3330  
sroyall@sidley.com

OLIVIA ADENDORFF  
Kirkland & Ellis LLP  
1601 Elm Street  
Dallas, TX 75201  
(214) 972-1758  
olivia.adendorff@kirkland.com

Counsel for Kurbo, Inc. and WW International, Inc

**DEFENDANT: KURBO, INC.**



Name: MICHAEL F. COLOSI

Date:

2-14-22

Date:

2-14-22

19

20

21

[Redacted signature area]

# Appendix A

average firm-wide billing rate (partners and associates) in 2011, as \$403, the average partner rate, as \$482, and the average associate rate, as \$303.

The Commission believes it is reasonable to assume that the workload among law firm partners and associates for COPPA compliance questions could be more evenly distributed among attorneys at varying levels of seniority, but would be weighted most heavily to more junior attorneys. Thus, assuming an allocation of two-thirds of such work is done by associates, and one-third by partners, a weighted average tied to the average firm-wide associate and average firm-wide partner rates, respectively, in the

2011 survey would be about \$365 per hour. The Commission believes that this rate, which is very near the mean of TIA's stated range of reported hourly rates that its members typically pay to engage counsel for COPPA compliance questions, is an appropriate measure to calculate the cost of legal assistance for operators commonly with the final Rule amendments.<sup>396</sup>

TIA also states that the 2012 SNPRM estimate of \$42 per hour for technical support is too low, and that engaging expert technical personnel can, on average, involve hourly costs that range from \$72 to \$108.<sup>397</sup> Similar to TIA's hours estimate, discussed above, the Commission believes that TIA's estimate may have been based on implementing requirements that, ultimately, the Commission has determined not to adopt. For example, technical personnel will not need to ensure "the security procedures of third parties; operators that have been eligible to use email for parental consents will not be required to implement new systems to replace it. It is unclear whether TIA's estimate for technical support is based on the types of disclosure-related tasks that the final Rule amendments would actually require, other tasks that the final Rule amendments would not require, or non-disclosure tasks not covered by the PRA. Moreover, unlike its estimate for lawyer assistance, TIA's

estimates for technical labor are not accompanied by an adequate explanation of why estimates for technical support drawn from BLS statistics are not an appropriate basis for the FTC's PRA analysis. Accordingly, the Commission believes it is reasonable to retain the 2012 SNPRM estimate of \$42 per hour for technical assistance based on BLS data.

Thus, for the 180 new operators per year not previously accounted for under the FTC's currently cleared estimates, 10,800 cumulative disclosure hours would be composed of 9,000 hours of legal assistance and 1,800 hours of technical support. Applied to hourly rates of \$365 and \$42, respectively, associated labor costs for the 180 new operators potentially subject to the proposed amendments would be \$3,360,600 (i.e., \$3,285,000 for legal support plus \$75,600 for technical support).

Similarly, for the estimated 2,910 existing operators covered by the final Rule amendments, 58,200 cumulative disclosure hours would consist of 48,500 hours of legal assistance and 9,700 hours for technical support. Applied at hourly rates of \$365 and \$42, respectively, associated labor costs would total \$18,109,900 (i.e., \$17,702,500 for legal support plus \$407,400 for technical support). Cumulatively, estimated labor costs for new and existing operators subject to the final Rule amendments is \$21,477,500.

Estimated total labor costs for new operators would consist of 5r legal

<sup>396</sup> Cf. Civil Division of the United States Attorney's Office for the District of Columbia, United States Attorney's Office, District of Columbia, Laffey Matrix B 2003-2013, <http://www.usdoj.gov/civil/affirmativeaction/2003-2013>. (updated Laffey Matrix "for calculating reasonable" attorneys fees in suits in which fee shifting is authorized can be evidence of prevailing market rates for litigation counsel in the Washington, DC area; rates in table range from \$245 per hour for most junior associates to \$505 per hour for most senior partners).

<sup>397</sup> Toy Industry Association (comment 89, 2012 SNPRM), at 18.

312.8 Confidentiality, security, and integrity of personal information collected from children.

312.9 Enforcement.

312.10 Data retention and deletion requirements.

312.11 Safe harbor programs.

312.12 Voluntary Commission Approval Processes.

312.13 Se verability.

**Authority:** 15 U.S.C. 6501-6508.

**§ 312.1 Scope of regulations in this part.**

This part implements the Children's Online Privacy Protection Act of 1998, (15 U.S.C. 6501, *et seq.*), which prohibits unfair or deceptive practices in connection with the collection, use, and/or disclosure of personal information from and about children on the Internet.

**§ 312.2 Definitions.**

means an individual under the age of 13.

*t* or *t* means the gathering of any personal information from a child by any means, including but not limited to:

(1) Requesting, prompting, or encouraging a child to submit personal information online;

(2) Enabling a child to make personal information publicly available in identifiable form. An operator shall not be considered to have collected personal information under this paragraph if it takes reasonable measures to delete all or virtually all personal information from a child's postings before they are made public and also to delete such information from its records; or

(3) Passive tracking of a child online.

means the Federal Trade Commission.

*t* means to remove personal information such that it is not maintained in retrievable form and cannot be retrieved in the normal course of business.

means, with respect to personal information:

(1) The release of personal information collected by an operator from a child in identifiable form for any purpose, except where an operator provides such information to a person who provides support for the internal operations of the web site or online service; and

(2) Making personal information collected by an operator from a child publicly available in identifiable form by any means, including but not limited to a public posting through the Internet, or through a personal home page or screen posted on a web site or online service; a e-mail service; an electronic mail service; a message board; or a chat room.

means an agency, as that term is defined in Section 551(1) of title 5, United States Code.

*t* means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire, radio, or other methods of transmission.

profile on a specific individual, or for any other purpose.

It means any person, who is not:

(1) An operator, with respect to the collection or maintenance of personal information on the web site or online service; or

(2) A person, who provides support for the internal operations of the web site or online service and who does not use or disclose information protected under this part for any other purpose.

It means a commercial web site or online service, or a portion thereof, that is targeted to children.

(1) In determining whether a web site or online service, or a portion thereof, is directed to children, the Commission will consider its subject matter, visual content, use of animated characters or child-oriented activities and incentives, music or other audio content, age of models, presence of child celebrities or celebrities who appeal to children, language or other characteristics of the web site or online service, as well as whether advertising promoting or appearing on the web site or online service is directed to children. The Commission will also consider competent and reliable empirical evidence regarding audience composition, and evidence regarding the intended audience.

(2) A web site or online service shall be deemed directed to children when it has actual knowledge that it is collecting personal information directly from users of another web site or online service directed to children.

(3) A web site or online service that is directed to children under the criteria set forth in paragraph (1) of this definition, but that does not target children as its primary audience, shall not be deemed directed to children if it:

(i) Does not collect personal information from any visitor prior to collecting age information; and

(ii) Prevents the collection, use, or disclosure of personal information from visitors who identify themselves as under age 13, without first complying with the notice and parental consent provisions of this part.

(4) A web site or online service shall not be deemed directed to children solely because it refers or links to a commercial web site or online service directed to children by using information location tools, including a directory, index, reference, pointer, or hyperlink.

**§312.3 Regulation of unfair or deceptive acts or practices in connection with the collection, use, and/or disclosure of personal information from and about children on the Internet.**

It shall be unlawful for any operator of a web site or online service directed to children, or any operator that has actual knowledge that it is collecting or maintaining personal information from a child, to collect personal information from a child in a manner that violates the regulations prescribed under this part. Generally, under this part, an operator must:

(a) Provide notice on the web site or online service of what information it collects from children, how it uses such information, and its disclosure practices for such information ( §312.4(b));

(b) Obtain verifiable parental consent prior to any collection, use, and/or disclosure of personal information from children ( §312.5);

(c) Provide a reasonable means for a parent to retrieve the personal information collected from a child and to refuse to permit its further use or maintenance ( §312.6);

(d) Not condition a child's participation in a game, the offering of a prize, or another activity on the child disclosing more personal information than is reasonably necessary to participate in such activity ( §312.7); and

(e) Establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children ( §312.8).

**§312.4 Notice.**

(a) It shall be the obligation of the operator to provide notice and obtain verifiable parental consent prior to collecting, using, or disclosing personal information from children. Such notice must be clearly and understandably written, complete, and must contain no unrelated, confusing, or contradictory materials.

(b) An operator must make reasonable efforts, taking into account available technology, to ensure that a parent of a child receives direct notice of the operator's practices with regard to the collection, use, or disclosure of personal information from children, including notice of any material change in the collection, use, or disclosure practices to which the parent has previously consented.

(c) It shall be the obligation of the operator to provide notice and obtain verifiable parental consent prior to collecting, using, or disclosing personal information from children.









