

**Testimony of
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**Before the
Commission on Online Protection**

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My name is Mark MacCarthy. I am Senior Vice President for Public Policy at Visa U.S.A. Thank you for the opportunity to testify before you today on the important topic of measures to verify age on the Internet.

I understand that the Commission was created by the Child Online Protection Act, which was approved by Congress in October 1998. The primary purpose of the Commission is to “identify technological or other methods that will help reduce access by minors to material that is harmful to minors on the Internet.” The Commission’s report on these matters is due to Congress by November 30, 2000.

Visa U.S.A. is supportive of the Commission’s mission and is prepared to be as helpful as we can to further its work. It is in this spirit that I am testifying before you today.

Let me start by describing what I take to be the background for the use of payment cards as a mechanism for verifying age under the Child Online Protection Act. This Act is designed to prevent a person who is a minor from accessing materials that are “harmful to minors” over the Internet. Under the Act, a defendant can assert an affirmative defense to prosecution under the Act by showing that the defendant has made a good faith effort to restrict access by persons under the age of 17 to obscene materials on the defendant’s Internet site. One way for the defendant to assert this affirmative defense is to show that the defendant required use of a credit card or a debit card to access the Internet site. In providing so, the Act basically assumes that only adults have access to a credit card or a debit card.

To the contrary, it is important for the Commission to understand that this assumption simply is not correct. Access to a credit card or a debit card is not a good proxy for age. The mere fact that a person uses a credit card or a debit card in connection with a transaction does not mean that this person is an adult.

Many individuals under the age of 17 have legitimate access to, and regular use of, credit cards and debit cards. For example, parents may designate their child as an “authorized user” of the parent’s credit card or debit card. This actually is quite common, particularly for credit cards. Whenever this occurs, the child will have access to the parent’s credit card number or debit card number and can use that card number to access materials deemed “harmful to minors” on the Internet.

In addition, many children under the age of 17 have their own deposit accounts and may have access to a debit card that accesses such account.

Moreover, using access to a credit card or debit card as a proxy for age actually could result in an inadvertent commission of criminal acts. Unauthorized use of a credit card is a criminal offense. If, for example, a child makes the mistake of using his or her parent’s credit card without the parent’s knowledge, and the parent later reports that unauthorized use, a criminal investigation might ensue before the true nature of the problem was discovered.

This not only would divert scarce enforcement resources from more important concerns, but also could create problems for the child and the family that are unrelated to and in addition to the harm against which the Act seeks to protect.

I am not here before you today to seek to revise legal situation regarding the use of payment cards as age-verifiers under the Act. The mandate of the Commission is broader than the Act, however, and requires the Commission to report accurately and completely regarding the effectiveness of various technologies in preventing access by minors to matter that is harmful to them.

Thus, although the Act assumes that only adults have access to a credit card or a debit card, it is important for the Commission to understand that this assumption is simply not true. As a result, the Commission may want to focus its attention on more suitable methods of verifying age.

Thank you for this opportunity to testify before you today on this important topic.