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## Legislative Update: Children's Online Privacy Protection Act of 1998

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*Legislative Update:*  
**Children's Online Privacy Protection Act of 1998**

*By: Tianna Gadbaw*

The growth of the Internet in the early 1990s not only brought about instantaneous person-to-person connection, but also raised new concerns in regards to privacy and safety of children. Commentators were chiefly concerned with the Internet because of the ease in which personal information could be collected from people and how parental oversight of children's activities could be bypassed without any difficulty. Through the increased use of chat rooms, discussion boards, and promises of gifts, marketers had the ability to readily gather personal identifying information about children. This personal information was often organized into databases, which in turn, were sold to third parties.

To address the growing online privacy concerns of children, the Federal Trade Commission ("FTC") held public forums throughout 1998 in which privacy advocates and Internet industry representatives were in attendance. Addressing concerns raised in the public forums, the FTC also conducted a survey of 1,400 popular websites, from which they discovered:

- (1) 85% of the all websites collected personal information;
- (2) The majority of websites marketed to children also collected personal information from children; and
- (3) Only a few of the websites marketed to children posted an adequate privacy policy.

In response to the FTC's findings, Congress passed the Children's Online Privacy Protection Act ("COPPA") on October 21<sup>st</sup>, 1998. With COPPA's enactment, Congress aimed to protect children's privacy online by limiting the collection of personal information of children under thirteen and enhancing parental involvement in online activities by requiring parental consent before collecting personal information from children.

COPPA specifically focuses on websites targeted towards children and general websites where operators have knowledge that children visit. COPPA has five major requirements: (1) notice, (2) parental consent, (3) parental review, (4) security, and (5) limits on the use of games and prizes.

Under the "notice" requirement, websites directed at children must provide notice of what information they collect from child visitors, how that information is used, and to whom that information is disclosed. This notice must be done in a "clear and prominent manner." Thus, notice can be given on the home page, a specific area of a site directed at children, or on any page in which personal information is collected.

Parental consent may be obtained through "any reasonable effort." Although generally required, parental consent is not necessary when a website obtains personal information for the sole purpose of "responding directly on a one time basis to a specific request from the child" and that information is "not used to re-contact the child." For example, if a child were to ask a homework question on a tutoring website and has to provide an email address for a response, the tutoring website may use the email to respond only once to the child's original question and cannot re-contact the child after its initial response.

For parental review, websites must provide both a method for parents to review the information that has been collected and a method for a parent to contact the website operator to prohibit any further use or maintenance of the child's personal information. Thus, parents of children who have personal profiles or online blogs can have access to their children's online profile and can have parts or the whole profile deleted or modified at any time.

Further, COPPA considers data security as an upmost priority, with Section 312.8 emphasizing the importance of websites establishing and maintaining external security measures.<sup>1</sup> Adequate external security measures for COPPA compliance include firewalls, information deletion, limits on employee access to data, and careful screening of third parties to whom such information is disclosed.

Finally, COPPA prohibits websites that are focused on children from conditioning participation in a game or the offering of a prize of another activity by requiring disclosure of more personal information than necessary to participate. Thus in practice, websites may not require children to answer invasive questions, such as "What cars do your parents drive?" or "What's your social security number?" in exchange for the child's ability to participate in an online game or contest.

In December of 2012, in response to growing changes in technology, the FTC issued the first major amendments to COPPA since its passing in 1998. These amendments were intended "to clarify the scope of the Rule and strengthen its protections for children's personal information." Generally, these new amendments clarify ambiguities from the old Act and add changes to the Act's requirements. Further, the amendments streamline what operators tell parents in their privacy policy notices in order for the most essential information to be quickly communicated to parents.

Specifically, the amendment modifies many definitions under the Act. For example, the defined term "Operator" now includes any "operator of a child directed site or service where it allows outside services to collect personal information from its visitors." This new definition closed a loophole that allowed kid directed apps and websites to permit third parties to collect information.

In addition, "website or online service directed to children" was redefined to (1) include "plug-ins or ad networks that have actual knowledge that they are collecting personal information through a child-directed Web site or online service" and (2) "allow a subset of child-directed sites and services (those that target children but not as their primary audience) to 'age screen' their users and require such properties to meet COPPA's notice and consent obligations only for those users who self-identify as younger than age 13." Because of this expanded definition, more websites must now comply with COPPA.

Moreover, "personal information" was re-defined to include "geological information as well as photos, videos, and audio files of a child's image or voice." Therefore, websites are further prohibited from gaining physical information of children, closing a significant loophole of the original legislation.

Additionally, the 2012 amendments contain stronger provisions to keep a child's information secured. Operators are now mandated to keep children's personal information for only "as long as is reasonably necessary" and once they dispose of it they must take "reasonable measures to protect against unauthorized access." Operators are further

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<sup>1</sup> §312.8 of COPPA states, "The operator must establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children."

required to take “reasonable steps to release personal information only to service providers and third parties who are capable of maintaining the confidentiality, security, and integrity of such information.”

The 2012 amendments also provide the FTC with greater oversight over safe harbor programs. Under the original Act, the safe harbor provision encouraged industry self regulation by allowing approved industry members to create their own COPPA oversight programs with their own compliance guidelines. These programs were known as “safe harbor programs.” Website operators who participated in these approved safe harbor programs were subject only to the provisions of their own self-created and self-regulated safe harbor program in lieu of FTC enforcement. The 2012 amendments require safe harbor programs to conduct annual comprehensive reviews of their member’s information practices and submit to the FTC annual reports of the results of these annual reviews.

The 2012 amendments also expanded the methods in which companies could obtain parental consent. For example, company websites can now obtain parental consent through electronic scans of signed parental consent forms, videoconferencing, use of government-issued ID, and alternative payment systems. In addition, due to advancing technology, businesses can also get new consent methods approved by submitting to a 120-day notice and comment process conducted by the FTC. Most recently in November of 2015, Riyo Limited, a business and software development company, received FTC approval of a new verifiable parental consent method called “face match to verified photo identification.” Under this new method, a parent can use a cell phone or computer to take a picture of his or her photo identification (ex. driver license) and use the same device to take a picture of him or herself. These two images are then compared to validate that the person providing consent is the same person in the photo identification. This process can be completed in minutes and provides real time parental consent for websites and mobile applications.

Since its passing, COPPA has been subject to many criticisms. One major critique is that COPPA violates children’s right to freedom of speech and expression. Since COPPA’s regulations apply to data collection of children under thirteen, websites often simply ban users twelve and under instead of attempting to comply with COPPA regulations. Meanwhile, websites that allow access to children under twelve will often opt for heavy restrictions on these children’s interactions to prevent them from revealing personal information. Thus it is argued, that COPPA has the practical effect of preventing kids under thirteen from freely expressing themselves on most social media platforms.

Critics also note that the 2012 amendments have a detrimental effect on the ability of certain applications and websites to make revenue. Under the 2012 amendments, sites directed at children will no longer be able to deliver targeted advertisements to children without parental consent. Targeted advertisements usually provide more revenue for websites because they are more relevant to users. To make up for this revenue loss, developers may increase the number of advertisements shown to children or move away from advertisement-based income models to fee-based income models. This will impact the quality of free applications and websites available to children.

Another common criticism is that the age verification systems that websites implement simply do not work effectively to protect children because it is easy for children to lie about their age to gain access to a website. Critics posit that children can easily outwit even the more advanced age verification technologies and get around many parental consent processes.

Due to these criticisms, many advocate that the most effective solution to protecting children online is through the old school approach: education. These advocates feel that by simply educating parents and children about what is happening online, we can better protect children than any provision in COPPA.

Despite the above criticisms, it is evident that COPPA is here to stay and will remain the main legislative source for protection of children's privacy online. Yet, as technology continues to advance, COPPA will have to stay current by enacting frequent updates to the law.

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