

Social Media & Kids

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Agenda

- New COPPA Regulations
- Key COPPA Issues for Social Media
- CARU COPPA Safe Harbor
- State Developments

New COPPA Regulations

- COPPA enacted in 1998
- FTC published original rule in 1999
- Significant revisions became effective on July 1, 2013
- FAQ guidance issued in April with ongoing updates

General Rule

- “Operators” of commercial web sites and online services must provide notice and obtain verifiable parental consent before collecting “personal information” **from** children under 13
 - If “directed to children” or have actual knowledge a user is a child
- Online services = mobile apps, other networked services, third parties

Compliance Program Elements

- Privacy policy
- Direct notice to parents (e.g. email)
- Verifiable parental consent
 - “Email plus” available for internal uses
- Parental data access and review
- Cannot require more data than reasonably necessary as condition of participation in activity
- Security, confidentiality, integrity
- Consider safe harbor participation

Notable Revisions

- New factors for when a site or service is “child-directed”
- Expanded definition of “personal information”
- Revised definition of “collects or collection”
- Specific rules for persistent identifiers and plug-ins

Notable Revisions

- Revised definition of “website or online service directed to children”
 - Reorganized definition sets out criteria for site/service directed to children upfront
 - Adds music and child celebrities/celebrities who appeal to children to list
 - First parties strictly liable for third-party practices
 - Third parties liable with actual knowledge they are collecting directly from users of a child-directed property (ad networks, social plug-ins)
 - Adds provision allowing child-directed site/service, which doesn’t target children as its *primary* audience, to age-screen to provide COPPA protections only to users under 13

Notable Revisions

- Reasonable data retention and deletion
- Requirements for third-party oversight when personal information is shared
- Enhancements to “safe harbor” program

Key Issues for Social Media: “Personal Information”

- Now includes:
 - Geolocation (specific to street and city)
 - Photo/video/audio
 - Screen/user names (that allow direct online contact)
 - Persistent identifiers that can be used to recognize a user over time and across different properties (e.g. cookie, IP address, device ID)

Key Issues for Social Media: “Personal Information”

- Compliance questions:
 - Assess what information is collected by site/service or third parties operating on the property
 - Assess how the data is used; some data can be collected without notice and consent depending on how it is used:
 - Screen/user names
 - Persistent identifiers
 - Requires revision of parental notice to explain what PI is and how persistent identifiers are used so that consent is meaningful

Key Issues for Social Media: Targeted Advertising

- Persistent identifiers – limited notice/consent exception where
 - No other personal information collected
 - Used solely for “support for internal operations”
- Targeted advertising is not internal support, but contextual advertising is

Key Issues for Social Media: Targeted Advertising

- Compliance questions:
 - Determine whether persistent identifiers are the only personal information collected
 - Determine if uses limited to “support for internal operations” –
 - Serving contextual ads, frequency capping
 - Maintaining or analyzing functioning
 - Network communications
 - Authenticating users, personalizing content (not ads)
 - Security and compliance

Key Issues for Social Media: Plug-In Exception

- Persistent identifiers – limited notice/consent exception for third parties where
 - No other personal information collected
 - User interacts affirmatively with operator
 - Previous registration indicates user is not a child

Key Issues for Social Media: Plug-In Exception

- Compliance questions:
 - Determine whether persistent identifiers are the only personal information collected, and other conditions are met
 - First party can use a third-party plug-in that meets these criteria without notice/consent, but cannot rely on this exception to treat users as adults

Key Issues for Social Media: Age-Screening

- First parties (not third parties) that do not target children as primary audience can age-screen and then comply with notice/consent only for visitors that identify as children
- FTC says this is not an expansion of “child-directed” category, but has suggested more aggressive enforcement of properties that target children as secondary or lesser audience

Key Issues for Social Media: Age-Screening

- Compliance questions:
 - What is your “primary” audience?
 - Consider intended, likely, and actual audience
 - Reexamine over time
 - Child-directed sites may not block children from entering, but can treat child users differently
 - General audience sites can block children

Key Issues for Social Media: Push Notifications

- FAQ guidance: information used to send push notification is “online contact information,” thus personal information under COPPA
 - “Online contact information” is email or any substantially similar identifier that permits direct contact with a person online

Key Issues for Social Media: Push Notifications

- Compliance questions:
 - Has child specifically requested push notifications?
 - May be able to rely on multiple contact exception
 - Must also collect parent's online contact information, send direct notice and opt-out opportunity
 - Notifications must be reasonably related to app content
 - Cannot rely on this exception if combined with other personal information from child

COPPA Implications beyond Children < 13?

- Broad view of PII includes device identifiers – regulation of interest based advertising = personally identifiable information?
- Collection for advertising and marketing excluded from definition of internal operation of a website
- Has the view of “child directed website” expanded ?
- Implications for connected social media models
- Continued support for self regulatory “safe harbor” enforcement models

State Developments

- State attorneys general can enforce COPPA, have shown interest
- Several current attorneys general are very active on privacy issues

State Developments

- Maryland Work Group authorized June 2013 under Attorney General
- “To examine issues concerning the protection of children's privacy while they are using the Internet and mobile applications” including
 - Data collected through on-line advertising
 - Effect of various forms of on-line advertising on children
 - Best practices are used by the Internet and mobile applications industries to protect the online privacy of children
 - Best practices are recommended by child advocates

State Developments

- California law takes effect January 1, 2015
- “Eraser button” requirement for minors to remove (or request removal of) content they have posted
 - Provide notice, instructions
 - Exceptions: posted by someone else, anonymized, compensated content, content required to be maintained by law, minor fails to follow instructions
- Sites/services directed to minors may not knowingly allow ads for certain products
 - Such as guns, aerosol paint, smoking products, tattoos, UV tanning, lottery, certain supplements
- Applies to all minors, not only children under 13