

## **Internet Law: Complying Your Business with COPPA**

If your business has an online presence, it is paramount to comply with the Children's Online Privacy Protection Act or "COPPA." COPPA is a federal law that applies to the online collection of personal information from children under the age of 13. COPPA details what a website or online service operator must include in a privacy policy, when and how to seek verifiable consent from a parent or guardian, and what responsibilities an operator has to protect children's privacy and safety online, including restrictions on marketing to those under the age of 13. Persistent enforcement of COPPA by the federal government and recent enforcement at the state level, coupled with the heightened public concern for online privacy serve as a reminder about the importance of complying your business with COPPA. Failure to comply can be costly – monetarily and in terms of negative public perception.

### **Who Must Comply?**

COPPA applies to commercial websites that target children under the age of 13. COPPA also applies to general audience websites that knowingly collect personal information from a child (i.e. collecting age information through a registration page).

"Personal information," for purposes of COPPA, is individually identifiable information about a child that is collected online, such as full name, home address, email address, telephone number or any other information that would allow someone to identify or contact the child. COPPA also covers other types of information, for example, hobbies, interest and information collected through cookies or other types of tracking mechanisms, when they are tied to individually identifiable information.

In determining whether your website or online service is directed to children, the Federal Trade Commission ("FTC") considers several factors, including:

- the subject matter;
- visual or audio content;
- the age of the models on the site;
- language;
- whether advertising on the site is directed to children;
- information regarding the age of the actual or intended audience; and
- whether a site uses animated characters or other child-oriented features.

If a portion of your website or online service is directed to children, then that portion must comply with COPPA.

## **COPPA Requirements**

If your website or online service business is governed by COPPA, there are a number of requirements with which the website must comply. The requirements include:

- Posting a notice of information collection practices, such as a privacy policy, that includes:
  - the name and contact information for all operators collecting or maintaining children's information through the website;
  - the kinds of personal information collected from children;
  - an explanation of how the operator uses the personal information that is collected; whether the operator discloses the information collected from children to third parties;
  - an assurance that the operator will not collect more information than is reasonably necessary for the subject to participate in the activity; and notification that the child's parent may review the child's personal information, ask to have it deleted, and refuse further collection or use of the child's information.
- Obtaining "verifiable parental consent" before collecting, using or disclosing personal information about a child, subject to very limited exceptions. Verifiable parental consent requires an operator to make reasonable efforts, taking into consideration available technology, to ensure that before personal information is collected from a child, a parent of the child receives notice of the operator's information practices and consents to those practices;
- Providing parents with the ability to review the personal information from their child and provide parents with a right to revoke consent and have information deleted; and
- Protecting the confidentiality, security, and integrity of any personal information that is collected online from children. The FTC has suggested use of passwords to access personal information on the website, installation of intrusion-detection software to monitor unauthorized access, and use of secure web servers and firewalls to ensure confidentiality.

## **Enforcement and Penalties**

COPPA is enforceable by the Federal Trade Commission ("FTC") and the Attorney Generals of each state. Courts can hold website operators who violate COPPA liable for civil penalties of up to \$11,000 per violation. The amount of penalties the court assesses may depend on a number of factors, including the egregiousness of the violation, the number of children involved, the amount and type of personal information collected, how the information was used, whether it was shared with third parties, and the size of the company.

To date, the FTC has brought 13 COPPA enforcement actions. Its largest fine of \$1 million dollars was against Xanga.com, a social networking website. Xanga.com collected, used, and

disclosed personal information from children under the age of 13 without first notifying parents and obtaining their consent. The Xanga site stated that children under the age of 13 could not join, but then allowed visitors to create Xanga accounts even if they provided a birth date indicating they were under 13. Other heavily fined companies by the FTC for COPPA enforcement actions include Hershey's Foods Corp., Mrs. Fields Famous Brands, Inc., and most recently, Industrious Kid Inc. ("Industrious Kid"). According to the FTC's complaint, Industrious Kid also failed to obtain parental consent before collecting personal information from children. Further, Industrious Kid's parental notice did not meet the requirements of COPPA. The parental notice did not disclose the types of information collected, the ways it was collected, and how the information was used, and failed to inform parents of their right to review or have their children's personal information deleted.

While the FTC has brought a number of actions against website operators for failure to comply with COPPA requirements since the law went into effect in 2000, until recently there was no reported action at the state level. In December 2007, the Texas Attorney General filed three lawsuits against website operators alleging COPPA violations, marking the first state enforcement of COPPA. In a settlement of the Texas action with Santa.com, the company agreed to: (a) obtain verifiable parental consent before collecting personal information from children; (b) clearly disclose how it intends to use the collected information; and (c) not require children to disclose excessive personal information as a precondition to participating in the website's online games and features. Two other COPPA actions by Texas are pending against TheDollPallace.com and GamesRadar.com. All three enforcement actions were against entities outside the state of Texas.

## **Conclusion**

The requirements of COPPA are complicated and this article is intended to provide only a brief overview of the law. You are encouraged to seek the advice of an experienced Internet privacy lawyer to evaluate your existing policies and procedures and help manage potential risks.

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