

Intro to: COPPA

(Children's Online Privacy Protection Act)

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NOTHING IN THIS PRESENTATION IS INTENDED TO CONSTITUTE A LEGAL OPINION





When does COPPA apply?

1. COPPA applies to operators of commercial websites and online services (including mobile apps, IoT devices) when:
 - The website or online services is directed to children under 13 (in whole or in part), or
 - The website or online services is directed to a general audience but operator has actual knowledge that it is collecting information from children under 13, and
2. The operator collects personal information from children <13, including:

<ul style="list-style-type: none">• First + last name• Address, phone number• Email, user name or screen name that functions as online contact information	<ul style="list-style-type: none">• Photograph or video w/child's image• Voice recording• Geolocation (street level)• Persistent identifier (cookies, IP address, device ID)
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COPPA Requirements



- Post privacy policy
- Provide direct notice to parents
- Provide parents choice to prohibit sharing PI with third parties (unless sharing is integral to service)
- Give parents access to PI and option to delete or modify
- Maintain confidentiality, security and integrity of PI
- Delete data when no longer necessary
- Obtain parental consent before collecting personal information from child, subject to narrow exceptions, and allow parents to withdraw consent if desired

Good News! EdTech operators may rely on a **SCHOOLS** to provide consent in some circumstances.

"Email Plus" Consent

Operator uses info for internal purposes and does not disclose it or make it public

- Email direct notice with consent request
- Opportunity to opt-out
- Confirmation email (after reasonable delay)

Verifiable Parental Consent

Operator shares info with third parties or permits child to share (incl. behavioral advertising; social)

- Consent form returned by mail, fax, or electronic scan
- Credit card in connection with a monetary transaction
- Phone or video calls
- Checking ID against database
- Safe Harbor provider mechanism

Exceptions to Parental Consent



- Must obtain parental consent before collecting personal information from the child, unless the collection fits into one of the limited exceptions to prior parental consent, including:
 - For purpose of obtaining consent - May collect name, email address and email address of parent for purpose of obtaining parental consent. If consent is not obtained, must delete the information.
 - One-time contact – May collect online contact information and no other PI, for the sole purpose of responding one time to the child; PI is not used for any other purpose or to re-contact the child; PI is deleted after one-time contact
 - Internal Operations – May collect a persistent identifier and no other PI, and it is used solely to provide “support for internal operations” of the website:
 - Activities necessary for the site to operate or analyze its function
 - Authenticate users or personalize content; security and safety functions
 - Serve contextual advertising or cap the frequency of advertising

CAUTION: Under exception #3, persistent identifiers cannot be used to contact the individual (including through interest-based ads), to amass a profile about individual, or for any other purpose. Geolocation data and persistent identifiers for ad attribution purposes do **not** fall under exception for “internal operations.” → Need parental consent!



- When a school has contracted with an operator to collect personal information from students solely for the benefit of students and the school, the school can provide consent under COPPA
 - School consent applies solely for educational purposes
 - Operator cannot use data for its own purpose (i.e., marketing, advertising/OBA, creating profiles for commercial purpose) without verifiable consent from parent
- Operators must:
 - Provide school with COPPA notices, and (on request) a description of PI collected, an opportunity to review/delete the child's PI, and to opt-out of further collection
 - Have a contract with the school, which addresses data collection, use limits, consent, etc.
 - Ideally, contract with school or district rather than individual teacher
 - Maintain data for no longer than necessary to provide the educational service



How to Avoid the Hassle and Expense



- Most companies go to great lengths to avoid collecting information from children that would trigger COPPA parental consent requirements.
 - Do not collect personal information
 - Collect only persistent identifiers that will be used solely to support internal operations
 - [If general or mixed-audience site] Implement a Neutral Age Screen to screen out kids under 13. You can block kids under 13 from providing personal information by implementing an age screen.

Neutral Age Screen

Age screen mechanism must be age-neutral and not encourage falsification

Mechanism should request user to enter age accurately (i.e., require user to freely enter day, month, and year / drop-down menu going back to 1900)

Do not warn the kid that users under 13 will not be permitted to participate

Use non-specific language when user is blocked (“Sorry, we’re unable to process your registration at this time”)

Use session cookie to prevent back-buttoning to try again

Enforcement & Penalties



- FTC Enforcement
 - Penalties up to \$40,000 per violation (up from \$16,000)
 - Consent decrees can also include data destruction; 20 year compliance & reporting requirements
 - Enforced aggressively (30+ public consent decrees since 1999)
 - Penalties range from \$35,000 - \$4,000,000 (fines sometimes partially suspended due to inability to pay)
- State Attorneys General may also enforce (settlements ranged from \$0 - \$500,000)
- No private right of action under COPPA (but plaintiffs may leverage COPPA violations for other claims, such as violation of right to privacy under state law)





Ignorance of the law is no excuse



LAI Systems (2015) – Developer of kid-directed apps (My Cake Shop, My Pizza Shop) did not ask for kids' PI but permitted online advertising from 3rd parties \$60,000

RetroDreamer (2015) – Same facts, different apps (Happy Pudding Jump, Ice Cream Drop) \$300,000

TinyCo (2014) - Online kid-directed gaming apps (Tiny Pets, Tiny Zoo, Tiny Village and Mermaid Resort) did not ask for consent \$300,000



But it's not a kids site!



InMobi (2016) – Mobile ad network failed to honor developer check-box that provided notice that app was “child directed” \$4,000,000
(reduced to \$950,000)

Yelp (2014) – Asked for voluntary birthdate, but mobile app did not include neutral age screen \$450,000



Tried but didn't get it quite right....



United Artists Arena (2012) – Operator of music fan websites collected birthdates: (i) didn't ask for parent email address for Email+ notice; and (ii) sent insufficient notice \$1,000,000

Playdom (2011) – Child-directed and general audience sites had age screen, but insufficient notice and no verifiable consent before permitting kids to post publicly \$3,000,000

Xanga (2006) – Social network age screen said, *“You hereby certify to Xanga that you are at least 13 years old. Xanga is intended for people who are at least 13 years old. Children under 13 are not permitted to join Xanga or participate in the Xanga Community.”* \$1,000,000

Lessons Learned from Consent Decrees and Guidance



1. Don't ask for birthdate without an age screen in place.
2. If you get parental consent, be sure you do it correctly – and strictly limit data use to permissible purpose(s).
3. Operators are liable for downstream activities of 3rd parties operating on site (e.g., embedded YouTube videos with ad trackers). Take affirmative steps to monitor and oversee these third parties.
4. Strict liability for honest mistakes (e.g., coding errors, inadvertent tracker placement).
5. Delete data when it is no longer needed to perform the services.



- COPPA Rule

https://www.ftc.gov/system/files/documents/federal_register_notices/2013/01/2012-31341.pdf

- FTC COPPA FAQs (last revised March 20, 2015)

<https://www.ftc.gov/tips-advice/business-center/guidance/complying-coppa-frequently-asked-questions#Schools>

- FTC 6-Step Compliance Plan for Your Business

<http://www.business.ftc.gov/documents/bus84-childrens-online-privacy-protection-rule-six-step-compliance-plan-your-business>

- Browse the FTC website section on children's privacy

<https://www.ftc.gov/consumer-protection/childrens-privacy>



- Sulina is trusted data privacy and consumer protection law advisor, helping clients large and small navigate global privacy risk and compliance efforts.
- Her practice focuses primarily on social networks, retail, start-ups and emerging companies, and any business that has a website or mobile app.



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