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Recent legal actions highlight issues of children's online privacy

Companies with online sites and services that expressly target a young audience, such as websites and mobile apps providing entertainment, games or educational enrichment specifically oriented toward children, should already be very familiar with the Children's Online Privacy Protection Act and the Federal Trade Commission's COPPA rule. Companies operating outside of that specialized, child-oriented arena, however, may be less familiar with the statute.

Given the FTC's recent rulings, it appears as if the FTC intends to enforce COPPA broadly and that even general audience sites not intended for children can run afoul of COPPA for collecting basic personal information from children.

In general terms, COPPA regulates how online sites and services collect and safeguard the personal data of children under 13. The FTC's COPPA rule imposes a number of specific conditions under which a website or app can solicit and collect personal information (including a child's name, address, e-mail address, Social Security number, phone number and other identifying information concerning the child's identity, image and location). COPPA requires that sites and apps obtain parental consent before collecting personal information from children and restricts how the information can be stored and shared with third parties.

Not only do COPPA's restrictions apply to all online sites and services directed at children under 13, but they also apply to general audience sites that knowingly collect, use or disclose

personal information from children under 13. In sum, if a site is child-oriented—a site operator would expect to attract significant numbers of young users—the site must automatically comply with COPPA's consent and data security rules.

In contrast, general audience sites remain subject to COPPA only if they knowingly collect information from children under 13. Therefore, even if a site's content is oriented toward a fairly mature audience, COPPA safeguards come into play if the service or site collects the age of users and allows children under 13 to use the site.

For most general-audience sites and apps, the cost of COPPA compliance may outweigh any potential commercial benefit operators might derive from collecting personal information from children. Thus, many operators seek to avoid COPPA's knowing standard by having an age gate blocking users under the age of 13 from submitting any personal information. While there's nothing sinister about this practice, it may still leave operators at risk for COPPA violations.

For instance, the online review site Yelp recently found itself in

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regulatory hot water for collecting the e-mail addresses of young users via its Android mobile app because its age gate was not properly implemented. While Yelp didn't target young users, its website did collect users' birthdates, effectively putting the company on notice that a limited number of its users

PRIVACY, TECHNOLOGY AND LAW



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are under 13, and therefore subject to COPPA protections.

According to the FTC, even though Yelp had an effective age-screen mechanism in place on its website, Yelp failed to implement that mechanism in its mobile apps, which allowed children under 13 to register and share their personal information with Yelp. While the failure to implement that age-gate was apparently limited to Yelp's Android mobile app, the FTC faulted the company for failing to test the app effectively. Yelp agreed to pay \$450,000 in penalties — a costly lesson for what appears to have been a technical design oversight.

COPPA is a more pressing concern to sites with content holding particular appeal to children. In determining whether an online service is directed at children under 13, the FTC considers factors including the site's subject matter, visual and audio content (including use of animation) and related adver-

tising. The FTC exercises significant discretion in evaluating whether a site's content is child-oriented. Even if a site's intended (or purported) audience is not children under the age of 13 but the FTC determines that a site that appeals to children, COPPA will apply.

Another recent settlement serves as a reminder that a site need not require users to submit personal information to violate COPPA. The FTC penalized a gaming app company for collecting email addresses of young users. TinyCo Inc., which makes a number of popular gaming apps, including Tiny Pets, Tiny Zoo, Tiny Monsters, Tiny Village and Mermaid Resort, allegedly awarded in-app currency to users in exchange for providing an email address.

Not surprisingly, perhaps, given the apps' youthful titles, the FTC regarded the apps' themes, "brightly colored animated characters" and simple language as appealing to children under 13. The company paid \$300,000 in penalties for inducing young users to submit personal information without obtaining parental consent.

More recently, the Children's Advertising Review Unit, the advertising industry's self-regulatory body focused on advertising to children, found fault with an online photo contest run by Boys Life, the online magazine of the Boy Scouts. Readers were invited to submit photos for the publication's "summer fun" contest, along with an e-mail address, to be used purely for winner-notification purposes. Although the Boy Scouts maintained that the solicitation fell under a COPPA exception for onetime use of personal information, the CARU found that the contest was not covered by the exception because the site

encouraged entrants to submit captions describing their photos, which could contain personal information.

Although COPPA compliance issues frequently center on how information is collected — when it is permissible to collect information and what parental consent mechanisms are adequate — enforcement authorities also have expressed the importance of complying with COPPA's data security requirements.

In a recent presentation at the CARU annual conference in New York City, FTC Commissioner Terrell McSweeney reminded advertisers and others in the audience not to ignore the COPPA rule's requirements for securing children's data. Noting that the recent series of high-profile data breaches illustrates the importance of safeguarding data, the commissioner cautioned that focusing on the rule's consent requirements is important but not enough.

A site may be impeccable in providing privacy notices and obtaining parental consent, but it also must ensure that the information it collects is retained securely. Even data that has been collected legally can put a company at risk if it's not stored and safeguarded appropriately.

These recent enforcement actions were some of the first since the FTC's amendment of the COPPA rule. They illustrate the FTC's intent to interpret COPPA as broadly as possible —

to include sites directed toward children and general audience sites that collect information from children and to include the enforcement of the collection and the security of this information.

Given the breadth of the FTC's interpretation, all websites and mobile applications — even sites that attract young users on a purely incidental basis — should be wary of COPPA and should evaluate their data collection and security practices for compliance.