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New FTC policy to protect children from data collection can be tricky

To keep pace with new internet-connected products for children and emerging ways to collect data and obtain parental consent, the Federal Trade Commission has updated its guidance for businesses on complying with the Children's Online Privacy Protection Act (COPPA).

The FTC's revised Six-Step Compliance Plan for Your Business outlines how to determine if a business is covered by COPPA and how to comply with the law.

The updates, released June 21, give businesses a good reason to review COPPA and the FTC's COPPA rule.

Congress enacted COPPA in 1998 to protect the safety and privacy of children under age 13 by barring the unauthorized or unnecessary collection of children's personal information online by operators of websites or online services.

The FTC promulgated a rule implementing COPPA that applies to all operators of a commercial website or online service directed to children or which collects, uses or discloses personal information from children. The rule also applies to any operator of a commercial website or online service if it has actual knowledge that it collects, uses or discloses personal information from children.

The FTC's updates target three evolving areas. First, the revised plan addresses new data collection technology that could affect businesses' COPPA obligations. For example, voice-activated devices are increasingly being used to collect personal information and companies that use such devices may need to review their COPPA compliance efforts.

COPPA defines "personal information" as: full name; home or other physical address, including street name and city or town; online contact information such as an e-mail address or video chat identifier that allows someone to contact a person directly; screen name or user name when it functions as online contact information;

telephone number; Social Security number; geolocation information sufficient to identify a street name and city or town; and a persistent identifier that can be used to recognize a user over time and across different sites, including a cookie number, an IP address, a processor or device serial number or a unique device identifier.

In addition, COPPA covers a photo, video or audio file containing a child's image or voice. Therefore, if a voice-activated device simply collects a child's voice, it may need to be COPPA compliant.

Second, the plan also adds internet-connected toys and devices intended for children, which may collect personal information including voice recordings and geolocation data, to the products covered by COPPA. Previously, COPPA applied to sites and services if they were directed to children under 13 or if they collected personal information from them or allowed others to collect personal information from them.

While COPPA previously explicitly only applied to websites and mobile applications, the FTC is now expanding COPPA's reach to include internet-connected toys and devices.

Third, the revised plan includes new methods for securing parental consent before collecting personal information online from children under 13. Specifically, the updated plan discusses two recently approved methods for getting parental consent: asking

... can the toy collect the parents' e-mail address to deliver the direct notice before collecting any personal information from the child?

knowledge-based authentication questions and using facial recognition to get a match with a verified photo ID.

These changes add new challenges for companies that are required to comply with COPPA — a law which already was extraordinarily difficult to understand



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and to comply with. For instance, COPPA requires that businesses covered by the law must post a privacy policy that clearly and comprehensively describes how personal information collected online from children under 13 is handled.

The policy must describe not only the business' practices, but also the practices of any others collecting personal information on its site or service.

In addition, the privacy policy must include the names and contact information of all operators collecting or maintaining children's personal information through the site or service and a description of the personal information collected and how it's used, including the types of personal information collected from children; how it is collected; how it will be used and whether it will be disclosed to third parties.

and refuse to allow any further collection or use of the child's information.

Links to the privacy policy should be on the home page and anywhere personal information is collected from children. The links should be clear and prominent — fine print at the bottom of the page or a link that isn't distinguishable from other links on the site is unacceptable.

But how does a business post a privacy policy anywhere personal information is collected from children when the product collecting the information is a toy — not a website or mobile app?

COPPA also requires that websites or online services give parents "direct notice" of their information practices before collecting personal information from their children. The notice must tell parents: Their online contact information was collected for the purpose of getting their consent; the business wants to collect personal information from their child; their consent is required for the collection, use and disclosure of the information; the specific personal information to be collected and how it might be disclosed to others; a link to the online privacy policy; how parents can give their consent; and that if the parent doesn't consent within a reasonable time, the company will delete the parent's online contact information.

Normally, websites and online service providers will collect a parents' e-mail address from a child to deliver this direct notice. However, how can a toy collect a parents' e-mail address? And can the toy collect the parents' e-mail address to deliver the direct notice before collecting any personal information from the child?

While these COPPA updates do answer several questions for companies that must comply with COPPA, it leaves just as many questions unanswered.

Therefore, companies must not only determine whether they must comply with COPPA but also whether they can find a way to comply with COPPA — which may be more difficult.