



Privacy Update for Child and Teen Advertising

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Agenda

- Intro: Ways to Trigger Child / Teen Privacy Rules
- Federal Law: Children's Online Privacy Protection Act (COPPA)
 - COPPA Overview
 - Enforcement Trends
 - Compliance Steps
- State Privacy Laws
- Looking Ahead

Ways to Trigger Child/Teen Privacy Rules

- Triggering child and teen privacy laws is easier than you may think!
- Businesses can trigger child/teen privacy laws by:
 - Asking for birthdays or other age information
 - Receiving age information through automated transmissions
 - Offering products with features that could appeal to children or younger teens, even if you do not intend to attract them
 - Knowing children are using your online property, even if you do not intend to attract them
 - Reviewing third-party properties where you collect data, such as reviewing for “know your customer” purposes

Federal Law: COPPA

Children's Online Privacy Protection Act (COPPA)

- Federal law on the collection, use, and disclosure of personal information **online** from children under 13
- Does not apply to:
 - Information collected from **teens or adults** (13 and older)
 - Information collected from adults **about** children
 - Information collected **offline** (e.g., through a paper or phone survey)
- Interpreted and enforced by the Federal Trade Commission (FTC)
 - State attorneys general also can and do enforce COPPA

When Does COPPA Apply?

There are three main scenarios...

1. Business has actual knowledge that a **specific end user** is a child – usually based on information from user or an automated signal.
2. An online property is “**child-directed**” – meaning it is targeted to children under 13 based on its features.
3. Business has actual knowledge that it is collecting data **from users of another website or app** that is child-directed.

Any networked system can be “online” – consider gaming consoles, connected kiosks, tablets at in-person events, and more.

Asking for Age Information

- When might you collect age information?
 - During a **sign-up** process
 - If a user **changes their profile age** after signing up
 - Through **customer service** interactions
 - From a **third-party flag or data transmission**
- What if the information indicates a user is under 13?
 - **Businesses must comply with COPPA for known users under 13.**
 - General audience properties can block children under 13.
 - Properties that are child-directed must allow children but have options for compliance.

Child-Directed Properties

- Two types of child-directed properties:
 - **Primarily targeted** to children under 13
 - All users must be treated as children.
 - **Mixed audience** properties that are targeted to children, but not as the primary audience
 - Publisher is allowed to age-gate and treat children differently.
 - Properties targeted to teens may be mixed audience properties!
 - Regulators believe children “age up.”

Factors in “Child-Directed” Reviews

- The Theory: Consider these factors together to determine if your product is child-directed—
 - Subject matter
 - Visual content
 - Animated characters
 - Child-oriented activities/incentives
 - Music
 - Intended or actual audience
 - Age of models and celebrities
 - Celebrities who appeal to children
 - Language or other characteristics
 - Ads directed to children
 - Name or title of the property

Although COPPA is limited to children under 13, you can review the same factors to decide if a property is directed to teens.

- The Reality: Many properties are very difficult to classify in practice. It is advisable to have a reasoned approach designed for your business and its risk exposure.

Knowing Children Participate on a Property

- Regulators have pursued properties when it is an “**open secret**” that young children are part of a user base, even if they age-gate to exclude children.
- Certain actions may be used to show a business is aware of child users, including:
 - Selling children’s merchandise (e.g., backpacks, toys, pajamas)
 - Marketing properties to users under 13
 - Collecting surveys showing a large volume of child users
 - User comments or customer service inquiries indicate child users
 - Communicating internally about child users
 - Marketing the property to advertisers as a place to find a child audience

Reviewing Properties Offered by Others

- *IF* you **manually review** properties operated by others, you will likely review the same features that are relevant to the child-directed determination.
 - Business may be held responsible for what its employees see.
 - Apply the child-directed factors to make a determination and act on it.
 - Review is not required – but if you review for other business reasons, do not ignore COPPA.
- What if you need to or decide to review properties?
 - Adopt policies and training to guide identification of child-directed properties.
 - Include escalation procedures for “close calls.”
 - Consider leveraging automated review tools.

If You Need to Comply with COPPA

- Most activities are still permitted (typically with verifiable parental consent), but work through compliance options with experienced counsel, as there are numerous decision points and requirements.
- For example, parental consent is not a “blank check.”
 - Do not retain information beyond the **purposes** for which you collected the information (or otherwise have consent).
 - **Delete** information from all system locations if you do not have consent or have received a deletion request.
 - Do not use improperly retained information to feed **training sets** for internal purposes, like product development.
- The FTC has signaled a desire to enforce areas of the COPPA Rule beyond parental consent.



State Privacy Laws

Sensitive Data

- Information from a known child (under 13) is defined as “sensitive data” under most state privacy laws.
- Many states with comprehensive privacy laws now require **parental consent** before businesses can “process” sensitive data about children.
- Some states require consent for more **specific uses**, including:
 - Processing for targeted advertising, sales, or profiling
 - Collecting children’s precise geolocation data
- Unlike COPPA, state privacy laws requirements can apply to **offline collection**.

Additional Requirements

- **Application to Teens.** Some states require consent (authorization) to process data about 13- to 15-year-olds for targeted advertising or sales.
 - This means obtaining consent from the teen user.
 - New Jersey will extend this requirement to users up to age 16.
 - Delaware will extend this requirement to users up to age 17.
 - Florida requires consent for the sale of sensitive data, including data collected from children under 18.
- **Assessments.** Several states require businesses to conduct data protection assessments when processing activities involve information about known children.

“Kids Code” Laws

- Some states, like Colorado, have enacted additional requirements for products and services offered to known minors (under 18), including:
 - Separate assessment requirements.
 - Duties of care for processing data about minors.
 - Default privacy settings.
 - Precise geolocation data restrictions.
- Maryland and Vermont will impose similar requirements for a broader range of products, namely those “reasonably likely to be accessed” by children under 18.

Other Laws Relevant for Teens

- **Advertising to minors.** Some states, like California, limit what can be advertised on properties directed to minors or on any property if the ads are targeted to a known minor.
 - For example, ads for aerosol paint, BB guns, UV tanning, dietary supplements, and lotteries are restricted.
- **“Eraser button” laws.** Some states, like California, require the opportunity for minors to erase content they have posted online.
 - For example, California law applies to properties directed to minors or those with knowledge that a specific user is a minor.



Looking Ahead

Active COPPA Rulemaking

- Process opened in 2019, proposed rule released in December 2023.
- Public comments closed in March 2024. Next, the FTC can issue more proposals or finalize the updated rule.
- FTC declined to move away from “actual knowledge” standard for when user age triggers COPPA.
- Clarified certain advertising practices—like attribution—fall within the “support for internal operations” exception.
- Various changes proposed, including additional notice and consent requirements.
 - Proposals generally indicate skepticism of third-party sharing.

Legislative Trend: Expanded Age Range

- Another approach under debate is expanding protections to minors aged 13 or older.
 - Protections for minors **under 16**
 - COPPA 2.0 – Expansion of existing COPPA to older ages
 - KOSA – Focus on online safety and advertising
 - Some comprehensive state privacy laws
 - Protections for minors **under 18**
 - Proposed APRA prohibitions on advertising
 - Child-specific provisions in Florida’s Digital Bill of Rights
 - Restrictions on targeted advertising and sales

Legislative Trend: Social Media Focus

- Some bills have specifically targeted social media platforms.
- Application and requirements vary by state, but common features include:
 - Age verification requirements
 - Parental consent for users under age 18
 - Advertising restrictions and prohibitions

Machine Learning and Artificial Intelligence

- ML/AI activities are subject to privacy laws (among other legal considerations), and AI-specific regulations are also emerging.
- FTC has provided blog guidance that rewriting privacy notices to allow use or sharing of data for training may be deceptive.
- If data is subject to COPPA, consider whether sufficient consent has been obtained or an exception applies.
 - Recent case alleged that retaining voice data for training purposes violated retention limits in COPPA.
- State “Kids Codes” and general privacy laws on automated decision making may also apply.

Takeaways

- Update product inventories and flag products that collect age information, including for users aged 13-17.
- Revisit audience analyses and previous COPPA reviews, especially:
 - Collection of user age in any way, including third-party or automated data.
 - Other awareness of child users on online properties.
 - Any review of third-party properties (websites, apps, games) for any reason.
- If COPPA may apply, line up experienced counsel and look out for upcoming new rules.

Takeaways

- Be mindful of practices like “nudging” and default privacy settings, which can attract scrutiny.
- Build adaptable products:
 - Design data collection, sharing, and social features with choice in mind.
 - Be prepared to offer options to turn off certain features.
 - Stay on top of changes in legislation and regulation, such as “sensitive data” restrictions.



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