

Avoid Privacy Law Problems when marketing to children under 13

Marketing to young children and “tweens” via the Internet is a key strategy for many businesses, and increasingly companies are investing in the trademarks, characters, logos, and technologies necessary to entice children to visit them online. But marketing to children has become a regulatory hot spot in many countries, and there are important privacy laws you need to consider before launching your campaign. One important privacy law is the United States’ Children’s Online Privacy Protection Act and its implementing rule (“COPPA”).

What COPPA requires. COPPA requires website operators to obtain “verifiable parental consent” (as described below) before collecting “personal information” (PI) of a child under the age of 13. PI generally means any information that would enable a third party to determine the identity of a child, such as the child’s name, address, phone number, or email address, or a combination of non-personal information that together would constitute PI, such as name of school, position on basketball team, jersey number, etc. The law applies to website operators worldwide who collect PI of children located in the U.S., and applies not only to child-oriented websites, but also to general-use websites that have actual knowledge that they are collecting PI from children (e.g., they collect visitors’ ages or dates of birth).

\$1 million fine for social networking website. The U.S. Federal Trade Commission (“FTC”) aggressively pursues violators of the statute, and the cost of non-compliance can be high. In a recent enforcement action, the FTC fined the popular social networking website Xanga.com and its principals \$1 million for collecting PI of children in contravention of COPPA. In this case, Xanga.com’s policies stated that children under 13 could not register with the website, but then it permitted visitors who provided a

birth date indicating that they were under the age of 13 to create Xanga.com accounts, without first obtaining verifiable parental consent.

How to comply. So how can website operators who want to collect PI of children under 13 ensure they are obtaining verifiable parental consent? The statute gives two different approaches, depending on whether the PI collected will be used for internal purposes or transferred to unrelated third parties:

1. PI for internal use. If you plan to collect PI of a child under 13 for internal use only – such as to facilitate shipping or order fulfillment – COPPA enables you to obtain the required parental consent by contacting the child’s parent by email. But how can you obtain such consent if you’re not allowed to first collect any PI from the child? COPPA provides an exception to its general rule which enables website operators to first collect a child’s PI in order to obtain the necessary parental consent. Therefore, you may ask a child to provide a parent’s email address and then send the parent an email requesting permission to collect the child’s PI. If the parent grants consent by reply email, COPPA requires you to then confirm consent either by follow-up email or telephone before collecting the child’s PI for internal use. However, if the parent does not grant consent within a reasonable time, the website operator must immediately and permanently delete the child’s PI from its records.

2. PI to third parties. If you plan to collect PI from children under 13 for purposes other than just internal use – for instance, if you plan to share the PI with third parties – then COPPA requires you to obtain prior parental consent by taking one of the following steps:

1) posting a consent form on the website that a parent can

print, sign, and mail to you; 2) establishing a toll-free phone line with staff trained to determine that they are in fact obtaining consent from the relevant parent and not a child pretending to be a parent; 3) enabling online consent involving the charging of a credit card used in connection with a transaction (e.g., charging a fee for admission); or 4) using some other authentication method comparable in reliability to one of the above methods.

Operators of websites geared to children should note that even if they are not intentionally collecting children’s PI, they may be subject to COPPA if their websites nonetheless enable children to post PI on publicly accessible web pages, such as a message board. In such cases, website operators would need to obtain verifiable parental consent using the PI-to-third-parties approach outlined above before allowing children to post any PI to the website. Finally, whether you collect PI for internal use or for dissemination to third parties, keep in mind that COPPA also requires you to post a privacy policy disclosing your website’s information collection and use practices.

What If You’re Violating COPPA Now? Consider deleting all PI collected in violation of the statute from your records and collecting PI anew only once verifiable parental consent has been properly obtained. There may be less extreme strategies that website operators can explore in such a situation, but these depend largely on the specific facts involved and therefore must be assessed on a case by case basis.

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