

The Children's Online Privacy Protection Act, effective April 21, 2000, applies to the online collection of personal information from children under 13. The new rules spell out what a Web site operator must include in a privacy policy, when and how to seek verifiable consent from a parent and what responsibilities an operator has to protect children's privacy and safety online.

The Federal Trade Commission staff, the Direct Marketing Association and the Internet Alliance prepared this guide to help you comply with the new requirements for protecting children's privacy online and understand the FTC's enforcement authority.

The Children's Online Privacy Protection Act of 1998 is included at the end of this publication for your reference.

WHO MUST COMPLY

If you operate a commercial Web site or an online service directed to children under 13 that collects personal information from children or if you operate a general audience Web site and have actual knowledge that you are collecting personal information from children, you must comply with the Children’s Online Privacy Protection Act (COPPA).

- To determine whether a Web site is directed to children, the FTC considers several factors, including the subject matter; visual or audio content; the age of models on the site; language; whether advertising on the Web site is directed to children; information regarding the age of the actual or intended audience; and whether a site uses animated characters or other child-oriented features.
- To determine whether an entity is an “operator” with respect to information collected at a site, the FTC will consider who owns and controls the information; who pays for the collection and maintenance of the information; what the pre-existing contractual relationships are in connection with the information; and what role the Web site plays in collecting or maintaining the information.

Personal Information

The Children’s Online Privacy Protection Act and Rule apply to individually identifiable information about a child that is collected online, such as full name, home address, e-mail address, telephone number or any other information that would allow someone to identify or contact the child. The Act and Rule also cover other types of information — for example, hobbies, interests and information collected through cookies or other types of tracking

mechanisms - when they are tied to individually identifiable information.

BASIC PROVISIONS

Privacy Notice

Placement

An operator must post a link to a notice of its information practices on the home page

name, address, e-mail address, hobbies, etc.) and how the information is collected - directly from the child or passively, say, through cookies.

- How the operator uses the personal information. For example, is it for marketing back to the child? Notifying contest winners? Allowing the child to make the information publicly available through a chat room?
- Whether the operator discloses information collected from children to third parties. If so, the operator also must disclose the kinds of businesses in which the third parties are engaged; the general purposes for which the information is used; and whether the third parties have agreed to maintain the confidentiality and security of the information.
- That the parent has the option to agree to the collection and use of the child's information without consenting to the disclosure of the information to third parties.
- That the operator may not require a child to disclose more information than is reasonably necessary to participate in an activity as a condition of participation.
- That the parent can review the child's personal information, ask to have it deleted and refuse to allow any further collection or use of the child's information. The notice also must state the procedures for the parent to follow.

DIRECT NOTICE TO PARENTS

Content

The notice to parents must contain the same information included on the notice on the Web site. In addition, an operator must notify a parent that it wishes to collect personal information from the child; that the parent's consent is required for the

collection, use and disclosure of the information; and how the parent can provide consent. The notice to parents must be written clearly and understandably, and must not contain any unrelated or confusing information. An operator may use any one of a number of methods to notify a parent, including sending an e-mail message to the parent or a notice by postal mail.

VERIFIABLE PARENTAL CONSENT

Before collecting, using or disclosing personal information from a child, an operator must obtain verifiable parental consent from the child's parent. This means an operator must make reasonable efforts (taking into consideration available technology) to ensure that before personal information is collected from a child, a parent of the child receives notice of the operator's information practices and consents to those practices.

Until April 2002, the FTC will use a sliding scale approach to parental consent in which the required method of consent will vary based on how the operator uses the child's personal information. That is, if the operator uses the information for internal purposes a less rigorous method of consent is required. If the operator discloses the information to others, the situation presents greater dangers to children, and a more reliable method of consent is required. The sliding scale approach will sunset in April 2002 subject to a Commission review planned for October 2001.

Internal Uses

Operators may use e-mail to get parental consent for all internal uses of personal information, such as marketing back to a child based on his or her preferences or

communicating promotional updates about site content, as long as they take additional steps to increase the likelihood that the parent has, in fact, provided the consent. For example, operators might seek confirmation from a parent in a delayed confirmatory e-mail, or confirm the parent's consent by letter or phone call.

Public Disclosures

When operators want to disclose a child's personal information to third parties or make it publicly available (for example, through a chat room or message board), the sliding scale requires them to use a more reliable method of consent, including:

- getting a signed form from the parent via postal mail or facsimile;
- accepting and verifying a credit card number in connection with a transaction;
- taking calls from parents, through a toll-free telephone number staffed by trained personnel;
- e-mail accompanied by digital signature;

But in the case of a monitored chat room, if all individually identifiable information is stripped from postings before it is made public - and the information is deleted from the operator's records - an operator does not have to get prior parental consent.

Disclosures to Third Parties

An operator must give a parent the option to agree to the collection and use of the child's personal information without agreeing to the disclosure of the information to third parties. However, when a parent agrees to the collection and use of their child's personal information, the operator may release that information to others who use it solely to provide support for the internal operations of the Web site or service, including technical support and order fulfillment.

Exceptions

The regulations include several exceptions that allow operators to collect a child's e-mail address without getting the parent's consent in advance. These exceptions cover many popular online activities for kids, including contests, online newsletters, home work help and electronic postcards.

Prior parental consent is not required when:

- an operator collects a child's or parent's e-mail address to provide notice and seek consent;
- an operator collects an e-mail address to respond to a one-time request from a child and then deletes it;
- an operator collects an e-mail address to respond more than once to a specific request - say, for a subscription to a newsletter. In this case, the operator must notify the parent that it is communicating regularly with the child and give the parent the opportunity to stop the communication before sending or delivering a second communication to a child;
- an operator collects a child's name or online contact information to protect the safety of a child who is participating on the site. In this case, the operator must notify the parent and give him or her the opportunity to prevent further use of the information;
- an operator collects a child's name or online contact information to protect the security or liability of the site or to respond to law enforcement, if necessary, and does not use it for any other purpose.

October 2001/April 2002

In October 2001, the Commission will seek public comment to determine whether technology has progressed and whether secure electronic methods for obtaining verifiable parental consent are widely available and affordable. Subject to the

Commission's review, the sliding scale will expire in April 2002. Until then, operators are encouraged to use the more reliable methods of consent for all uses of children's personal information.

New Notice for Consent

An operator is required to send a new notice and request for consent to parents if there are material changes in the collection, use or disclosure practices to which the parent had previously agreed. Take the case of the operator who got parental consent for a child to participate in contests that require the child to submit limited personal information, but who now wants to offer the child chat rooms. Or, consider the case of the operator who wants to disclose the child's information to third parties who are in materially different lines of business from those covered by the original consent - for example, marketers of diet pills rather than marketers of stuffed animals. In these cases, the Rule requires new notice and consent.

ACCESS

Verification

At a parent's request, operators must disclose the general kinds of personal information they collect online from children (for example, name, address, telephone number, e-mail address, hobbies), as well as the specific information collected from children who visit their sites.

Operators must use reasonable procedures to ensure they are dealing with the child's parent before they provide access to the child's specific information.

They can use a variety of methods to verify the parent's identity, including:

- obtaining a signed form from the parent via postal mail or facsimile;
- accepting and verifying a credit card number;

- taking calls from parents on a toll-free telephone number staffed by trained personnel;
- e-mail accompanied by digital signature;
- e-mail accompanied by a PIN or password obtained through one of the verification methods above.

Operators who follow one of these procedures acting in good faith to a request for parental access are protected from liability under federal and state law for inadvertent disclosures of a child's information to someone who purports to be a parent.

Revoking & Deleting

At any time, a parent may revoke his/her consent, refuse to allow an operator to further use or collect their child's personal information, and direct the operator to delete the information. In turn, the operator may terminate any service provided to the child, but only if the information at issue is reasonably necessary for the child's participation in that activity. For example, an operator may require children to provide their e-mail addresses to participate in a chat room so the operator can contact a youngster if he is misbehaving in the chat room. If, after giving consent, a parent asks the operator to delete the child's information, the operator may refuse to allow the child to participate in the chat room in the future. If other activities on the Web site do not require the child's e-mail address, the operator must allow the child access to those activities.

TIMING

The Rule covers all personal information collected after April 21, 2000, regardless of any prior relationship an operator has had with a child. For example, if an operator collects the name and e-mail address of a child before April 21, 2000, but plans to seek information about the child's street address after that date, the later collection

FOR MORE INFORMATION

If you have questions about the Children’s Online Privacy Protection Act, or the FTC’s Final Rule, visit the FTC online at www.ftc.gov/kidzprivacy. You also may call the FTC toll free at 1.877.FTC.HELP (1.877.382.4357), or write Consumer Response Center, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. You also can contact The DMA’s Ethics and Consumer Affairs Department at 202.955.5030 or ethics@the-dma.org.

YOUR OPPORTUNITY TO COMMENT

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards collect comments from small businesses about federal enforcement actions. Each year, the Ombudsman evaluates enforcement activities and rates each agency’s responsiveness to small business. To comment on FTC



TITLE XIII-CHILDREN'S ONLINE PRIVACY PROTECTION

SEC. 1301. SHORT TITLE.

This title may be cited as the "Children's Online Privacy Protection Act of 1998".

SEC. 1302. DEFINITIONS.

In this title:

- (1) CHILD.-The term "child" means an individual under the age of 13.
- (2) OPERATOR.-The term "operator"-
 - (A) means any person who operates a website located on the Internet or an online service and who collects or maintains personal information from or about the users of or visitors to such website or online service, or on whose behalf such information is collected or maintained, where such website or online service is operated for commercial purposes, including any person offering products or services for sale through that website or online service, involving commerce-
 - (i) among the several States or with 1 or more foreign nations;
 - (ii) in any territory of the United States or in the District of Columbia, or between any such territory and-
 - (I) another such territory; or
 - (II) any State or foreign nation; or
 - (iii) between the District of Columbia and any State, territory, or foreign nation; but
 - (B) does not include any nonprofit entity that would otherwise be exempt from coverage under section 5 of the Federal Trade Commission Act (15 U.S.C. 45).
- (3) COMMISSION.-The term "Commission" means the Federal Trade Commission.
- (4) DISCLOSURE.-The term "disclosure" means, with respect to personal information-
 - (A) the release of personal information collected from a child in identifiable form by an operator for any purpose, except where such information is provided to a person other than the operator who provides support for the internal operations of the website and does not disclose or use that information for any other purpose; and
 - (B) making personal information collected from a child by a website or online service directed to children or with actual knowledge that such information was collected from a child, publicly available in identifiable form, by any means including by a public posting, through the Internet, or through-
 - (i) a home page of a website;
 - (ii) a pen pal service;

(12) ONLINE CONTACT INFORMATION.-The term “online contact information” means an e-mail address or another substantially similar identifier that permits direct contact with a person online.

SEC. 1303. REGULATION OF UNFAIR AND DECEPTIVE ACTS AND PRACTICES IN CONNECTION WITH THE COLLECTION AND USE OF PERSONAL INFORMATION FROM AND ABOUT CHILDREN ON THE INTERNET.

(a) ACTS PROHIBITED.-

(1) IN GENERAL.-It is unlawful for an operator of a website or online service directed to children, or any operator that has actual knowledge that it is collecting personal information from a child, to collect personal information from a child in a manner that violates the regulations prescribed under subsection (b).

(2) DISCLOSURE TO PARENT PROTECTED.-Notwithstanding paragraph (1), neither an operator of such a website or online service nor the operator’s agent shall be held to be liable under any Federal or State law for any disclosure made in good faith and following reasonable procedures in responding to a request for disclosure of personal information under subsection (b)(1)(B)(iii) to the parent of a child.

(b) REGULATIONS.-

(1) IN GENERAL.-Not later than 1 year after the date of the enactment of this Act, the Commission shall promulgate under section 553 of title 5, United States Code, regulations that-

(A) require the operator of any website or online service directed to children that collects personal

- (C) prohibit conditioning a child's participation in a game, the offering of a prize, or another activity on the child disclosing more personal information than is reasonably necessary to participate in such activity; and
- (D) require the operator of such a website or online service to establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children.

(2) WHEN CONSENT NOT REQUIRED. -The regulations shall provide that verifiable parental consent under paragraph (1)(A)(ii) is not required in the case of-

- (A) online contact information collected from a child that is used only to respond directly on a one-time basis to a specific request from the child and is not used to recontact the child and is not maintained in retrievable form by the operator;
- (B) a request for the name or online contact information of a parent or child that is used for the sole purpose of obtaining parental consent or providing notice under this section and where such information is not maintained in retrievable form by the operator if parental consent is not obtained after a reasonable time;
- (C) online contact information collected from a child that is used only to respond more than once directly to a specific request from the child and is not used to recontact the child beyond the scope of that request-
 - (i) if, before any additional response after the initial response to the child, the operator uses reasonable efforts to provide a parent notice of the online contact information collected from the child, the purposes for which it is to be used, and an opportunity for the parent to request that the operator make no further use of the information and that it not be maintained in retrievable form; or
 - (ii) without notice to the parent in such circumstances as the Commission may determine are appropriate, taking into consideration the benefits to the child of access to information and services, and risks to the security and privacy of the child, in regulations promulgated under this subsection;
- (D) the name of the child and online contact information (to the extent reasonably necessary to protect the safety of a child participant on the site)-
 - (i) used only for the purpose of protecting such safety;
 - (ii) not used to recontact the child or for any other purpose; and
 - (iii) not disclosed on the site,
 - if the operator uses reasonable efforts to provide a parent notice of the name and online contact information collected from the child, the purposes for which it is to be used, and an opportunity for the parent to request that the operator make no further use of the information and that it not be maintained in retrievable form; or
- (E) the collection, use, or dissemination of such information by the operator of such a website or online service necessary-
 - (i) to protect the security or integrity of its website;
 - (ii) to take precautions against liability;
 - (iii) to respond to judicial process; or
 - (iv) to the extent permitted under other provisions of law, to provide information to law enforcement agencies or for an investigation on a matter related to public safety.

(3) **TERMINATION OF SERVICE.**-The regulations shall permit the operator of a website or an online service to terminate service provided to a child whose parent has refused, under the regulations prescribed under paragraph (1)(B)(ii), to permit the operator's further use or maintenance in retrievable form, or future online collection, of personal information from that child.

under section 1303(b), the State, as *parens patriae*, may bring a civil action on behalf of the resi-

State may, during the pendency of that action, institute an action under subsection (a) against any defendant named in the complaint in that action for violation of that regulation.

(e) VENUE; SERVICE OF PROCESS.-

- (1) VENUE.-Any action brought under subsection (a) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.
- (2) SERVICE OF PROCESS.-In an action brought under subsection (a), process may be served in any district in which the defendant-
 - (A) is an inhabitant; or
 - (B) may be found.

SEC. 1306. ADMINISTRATION AND APPLICABILITY OF ACT.

(a) IN GENERAL.-Except as otherwise provided, this title shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(b) PROVISIONS.-Compliance with the requirements imposed under this title shall be enforced under-

- (1) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of-
 - (A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;
 - (B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act (12 U.S.C. 601 et seq. and 611 et seq.), by the Board; and
 - (C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;
- (2) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;
- (3) the Federal Credit Union Act (12 U.S.C. 1751 et seq.) by the National Credit Union Administration Board with respect to any Federal credit union;
- (4) part A of subtitle VII of title 49, United States Code, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that part;
- (5) the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.) (except as provided in section 406 of that Act (7 U.S.C. 226, 227)), by the Secretary of Agriculture with respect to any activities subject to that Act; and

- (6) the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association.
- (c) EXERCISE OF CERT

DIRECT MARKETING ASSOCIATION, INC.

The Direct Marketing Association (The DMA) is the largest trade association for businesses interested in database and interactive marketing, with more than 5,000 member companies from the United States and 53 other nations. Founded in 1917, its members include direct marketers from every business segment as well as the nonprofit sector. Included are catalogers, Internet retailers and service providers, financial services providers, book and magazine publishers, book and music clubs, retail stores, industrial manufacturers and the segments that support them. According to a DMA-commissioned study conducted by the WEFA Group, direct marketing sales in the United States exceeded \$1.5 trillion in 1999. The DMA Web site is www.the-dma.org. Its consumer Web site is www.shophenet.org.

THE INTERNET ALLIANCE

The Internet Alliance (IA) is the leading consumer Internet industry association representing the industry on the state, federal and international levels. Through public policy, advocacy, consumer outreach and strategic alliances, the IA is seeking to build the confidence and trust necessary for the Internet to become the mass-market medium of the 21st Century. The IA is an independent subsidiary of the Direct Marketing Association. Its Web site is www.internetalliance.org.

FEDERAL TRADE COMMISSION

The Federal Trade Commission (FTC) works for the consumer to prevent fraudulent, deceptive and unfair business practices in the marketplace and to provide information to help consumers spot, stop and avoid them. The FTC also publishes a series of publications to help businesses understand compliance requirements. Many are available at www.ftc.gov; click on Consumer Protection for a list of subjects. For printed copies, contact the FTC toll free at 1.877.FTC.HELP.



Direct Marketing Association, Inc.



Internet Alliance



Federal Trade Commission

