

§ 312.2 Definitions.

Child mean an individual under the age of 13.

Collects or collection mean the gathering of any personal information from a child by any means, including but not limited to:

(a) Requiring the children to provide personal information online;

(b) Enabling children to make personal information publicly available through a chat room, message board, or other means, *except where* the operator deems a identifiable individual identifiable information from posting by children before they are made public, and a deems child information from the operator's record; or

(c) The packaging or use of any identifying code linked to an individual as a cookie.

Commission mean the Federal Trade Commission.

Delete mean to remove personal information that has previously been maintained in retrievable form and cannot be retrieved in the normal course of business.

Disclosure mean, in 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 an operator provides child information to a person to provide support for the in-erna operation of the website or online service and to do no disclosure of the information for any other purpose. For purpose of this definition:

(1) *Release of personal information* mean the sharing, selling, renting, or any other means of providing personal information to any third party, and

(2) *Support for the internal operations of the website or online service* mean to facilitate necessary to maintain the technical functioning of the website or online service, or of financial requirements of a child as permitted by 312.5(c)(2) and (3); or

(b) Making personal information collected from a child by an operator publicly available in identifiable form by any means, including by a public posting through the Internet, or through a personal homepage posted on a website or online service; a pen pal service; an

electronic mail service; a message board; or a chat room.

Federal agency mean an agency, as that term is defined in Section 551(1) of title 5, United States Code.

Internet mean collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected worldwide transmission control protocol/Internet protocol, or any predecessor or successor protocol of communication of a kind by wire, radio, or other means of transmission.

Online contact information mean an e-mail address or any other substantially identifiable identifier that permits direct contact with a person online.

Operator mean 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 user of or in or on a website or online service, or on the behalf of child information collected or maintained, here website or online service operated for commercial purpose, including any person offering product or service for sale through a website or online service, in online commerce:

(a) Among the several States or in 1 or more foreign nation;

(b) In any territory of the United States or in the District of Columbia, or been any territory and

(1) Another territory, or

(2) Any State or foreign nation;

(c) Been the District of Columbia and any State, territory, or foreign nation. This definition does not include any nonprofit entity that does not derive benefit from commercial purpose under Section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

Parent include a legal guardian.

Person mean any individual, partner, partnership, corporation, trust, estate, cooperative, association, or other entity.

Personal information mean identifiable information about an individual collected online, including:

(a) A first and a last name;

(b) A home or other physical address including street name and name of a city or town;

(c) An e-mail address or other online contact information, including but not limited to an instant messaging identifier, or a screen name that reveals an individual's e-mail address;

(d) A telephone number;

(e) A Social Security number;

(f) A persistent identifier, such as a cookie number held in a cookie or a processor number, where the identifier is associated with an individual's identifiable information; or a combination of a name or photograph of the individual with other information such as the combination personally or online contacting;

(g) Information concerning the child or the parent of the child that the operator collects online from the child and combine with an identifier described in this definition.

Third party means any person who is not:

(a) An operator or representative of the collection or maintenance of personal information on the website or online service; or

(b) A person who provides support for the in-house operation of the website or online service and who does not receive or disclose information processed under his purview for any other purpose.

Obtaining verifiable consent means making any reasonable effort (taking into consideration a child's echonology) to ensure that before personal information is collected from a child, a parent of the child:

(a) Receives notice of the operator's personal information collection, use, and disclosure practices; and

(b) Authorizes any collection, use, and/or disclosure of the personal information.

Website or online service directed to children means a commercial website or online service, or portion thereof, that is targeted to children. ~~It includes any application with site~~

§ 312.4 Notice.

(a) *General principles of notice.* A notice under 312.3(a) and 312.5 must be clear and understandable, be complete, and contain no irrelevant, confusing, or contradictory material.

(b) *Notice on the website or online service.* Under 312.3(a), an operator of a website or online service directed to children must post a link to a notice of information practice with regard to children on the home page of its website or online service and a separate area on the website or online service for personal information collected from children. An operator of a general audience website or online service has a separate children's area or site must post a link to a notice of information practice with regard to children on the home page of the children's area.

(1) *Placement of the notice.* (i) The link to the notice must be clearly placed in a notice of the website or online service's information practice with regard to children;

(ii) The link to the notice must be placed in a clear and prominent place and manner on the home page of the website or online service; and

(iii) The link to the notice must be placed in a clear and prominent place and manner in each area on the website or online service where children directly provide, or are asked to provide, personal information, and in close proximity to the request for information in each such area.

(2) *Content of the notice.* To be complete, the notice of the website or online service's information practice must include the following:

(i) The name, address, telephone number, and e-mail address of an operator collecting or maintaining personal information from children through the website or online service. *Provided that:* the operator of a website or online service may include the name, address, telephone number, and e-mail address of one operator who will respond to an inquiry from a parent concerning the operator's privacy policies and the children's information, although the name of a collector or maintaining personal information from children through the

website or online service are also included in the notice;

(ii) The type of personal information collected from children and whether the personal information is collected directly or passively;

(iii) How children's personal information may be used by the operator(s), including but not limited to financial, a requested transaction, record-keeping, marketing back to the child, or making it publicly available through a chat room or by other means;

(i) a type of personal information disclosed to third parties, and if so, the type of business with which third parties are engaged; and

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(B) The information referred to in paragraph (b) of this section.

(ii) In the case of a notice of objection referred to in paragraph (a) of section 312.5(a), the notice may also refer to the parent's consent required for the collection, use, and/or disclosure of child information, and shall mean by which the parent can provide verifiable consent to the collection of information.

(iii) In the case of a notice under the exception in 312.5(c)(3), the notice may also refer to:

(A) That the operator has collected the child's e-mail address or other online contact information or responded to the child's request for information and has the required information in a request more than once in the child's;

(B) That the parent may refer to permission for her contact with the child and require the deletion of the information, and how the parent can do so; and

(C) That if the parent fails to respond to the notice, the operator may use the information for the purpose(s) stated in the notice.

(i) In the case of a notice under the exception in 312.5(c)(4), the notice may also refer to:

(A) That the operator has collected the child's name and e-mail address or other online contact information or processed the safety of the child participating on the website or online service;

(B) That the parent may refer to permission for the use of the information and require the deletion of the information, and how the parent can do so; and

(C) That if the parent fails to respond to the notice, the operator may use the information for the purpose(s) stated in the notice.

§ 312.5 Parental consent.

(a) *General requirements.* (1) An operator is required to obtain verifiable parental consent before any collection, use, and/or disclosure of personal information from children, including consent to any material change in the collection, use, and/or disclosure practice of which the parent has previously consented.

(2) An operator may give the parent the option to consent to the collection

and use of the child's personal information in a consenting disclosure of his or her personal information to third parties.

(b) *Mechanisms for verifiable parental consent.* (1) An operator may make reasonable efforts to obtain verifiable parental consent, taking into consideration available technology. Any method of obtaining verifiable parental consent may be reasonably calculated, in light of available technology, to ensure that the person providing consent is the child's parent.

(2) The method of obtaining verifiable parental consent shall satisfy the requirements of this paragraph including providing a consent form to be signed by the parent and returned to the operator by post, mail or facsimile; requiring a parent to use a credit card in connection with a transaction; using a parent's toll-free telephone number affixed by trained personnel; using a digital certificate that is a public key technology; and using e-mail accompanied by a PIN or password obtained through one of the verification methods listed in this paragraph. *Provided that:* in the Commission's rulemaking process, the method of obtaining verifiable parental consent for use of information other than the "disclosure" defined by 312.2 may also include use of e-mail completed in addition to the other methods. The parent providing consent in the parent's child addition may include: sending a confirmatory e-mail to the parent following receipt of consent; or obtaining a post address or telephone number from the parent and confirming the parent's consent by e-mail or telephone call. Operator shall use the method that provides notice that the parent can revoke any consent given in response to the earlier e-mail.

(c) *Exceptions to prior parental consent.* Verifiable parental consent is not required prior to any collection, use and/or disclosure of personal information from a child except as provided in this paragraph. The exceptions to prior parental consent are as follows:

(1) Where the operator collects the name or online contact information of a parent or child to be used for the purpose of obtaining parental consent or providing notice under 312.4. If the

operator has not obtained parental consent after a reasonable time from the date of the information collection, the operator must delete the information from its record;

(2) Where the operator collects online contact information from a child for the purpose of responding directly to a one-time basis to a specific request from the child, and the information is not used to reconduct the child and is deleted by the operator from its record;

(3) Where the operator collects online contact information from a child to be used to respond directly more than once to a specific request from the child, and the information is not used for any other purpose. In such case, the operator must make reasonable effort, taking into consideration available technology, to ensure that a parent receives notice and has the opportunity to request that the operator make no further use of the information, as described in 312.4(c), immediately after the initial response and before making any additional response to the child. Such notices must provide contact information, including the notice by post, mail or ending the notice to the parent's e-mail address, but do not include asking a child to print a notice for the operator ending an e-mail to the child;

(4) Where the operator collects a child's name and online contact information or has been reasonably necessary to process the safety of a child participant on the website or online service, and the operator is reasonable effort to provide a parent notice as described in 312.4(c), the information is:

(i) Used for the purpose of protecting the child's safety;

(ii) Not used to reconduct the child or for any other purpose;

(iii) Not disclosed on the website or online service; and

(5) Where the operator collects a child's name and online contact information and the information is not used for any other purpose, the operator must reasonably necessary:

(i) To process the activity or integrity of the website or online service;

(ii) To take precaution against liability;

(iii) To respond to judicial process; or
 (i) To be reasonably necessary for the provision of a service, to provide information to an enforcement agency or for an investigation on a matter related to public safety.

[64 FR 59911, Nov. 3, 1999, as amended at 67 FR 18821, Apr. 17, 2002; 70 FR 21106, Apr. 22, 2005]

§ 312.6 Right of parent to review personal information provided by a child.

(a) Upon request of a parent of a child that has provided personal information to a website or online service, the operator of the website or online service is required to provide to the parent the following:

(1) A description of the specific type or category of personal information collected from children by the operator, such as name, address, telephone number, e-mail address, hobby, and electronic characteristics;

(2) The opportunity at any time to refuse to permit the operator to further or to continue collection of personal information from the child, and to direct the operator to delete the child's personal information; and

(3) Notwithstanding any other provision of this Act, a means of relieving any personal information collected from the child. The means employed by the operator to carry out this provision must:

(i) Ensure that the request of a parent of the child, taking into account available technology; and

(ii) Not be unduly burdensome to the parent.

(b) Neither an operator nor the operator's agent may be held liable under any Federal or State law for any disclosure made in good faith and following reasonable procedure in responding to a request for disclosure of personal information under this section.

(c) Subject to the limitation set forth in 312.7, an operator may terminate any service provided to a child whose parent has refused, under paragraph (a)(2) of this section, to permit the operator to further or to continue collection of personal information from the child or has directed the operator to delete the child's personal information.

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(i) A copy of the file of the guidelines for the approval of and any accompanying comment;

(ii) A comparison of each provision of 312.3 through 312.8 with the corresponding provision of the guidelines; and

(iii) A statement explaining:

(A) How the guidelines, including the applicable administrative mechanisms, meet the requirements of the Act; and

(B) How the administrative mechanisms and compliance incentives required under paragraph (b)(2) and (3) of the section provide effective enforcement of the requirements of the Act.

(2) The Commission shall accept a request under the section within 180 days of the filing of the request and make a final decision in writing.

(3) Industry groups or other persons who are approved by the Commission to submit proposed changes in the guidelines for review and approval by the Commission in the manner required for initial approval of guidelines under paragraph (c)(1) of the section shall

persons who shall be notified of any proposed change affecting the guidelines. (1) The section shall not apply to any person who is a member of the Commission or an officer or employee of the Commission.

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request under paragraph (b)(2) of this section. (1) The Commission shall not