Bloomberg BNA Webinar

Get Ready to Comply with the FTC’s Updated Children’s Online Privacy Protection (COPPA) Rule

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Compliance Deadline

- July 1, 2013 compliance deadline for the updated COPPA Rule (16 CFR Part 312)

- Updated COPPA Rule:
  - applies to an operator of a website or a mobile application
  - is triggering review of website and mobile application practices, including third-party services
  - what does third-party service documentation say?
  - if applicable, what does notice say and what is consent method?
  - is spurring updating / preparation of website and mobile application privacy policies
  - FTC and state attorney general enforcement
  - guidance/FAQs from the FTC
Application (312.3)

- Updated COPPA Rule applies to an operator of a website (WS) or online service (OS), including mobile app:
  - directed to children under age 13 (kids < 13) or
  - having actual knowledge that it is collecting or maintaining personal information from kids < 13
Operator of Website or Online Service (312.2)

- Operator means any person who operates WS/OS and who collects or maintains personal information from or about the users of or visitors to WS/OS, or on whose behalf such information is collected or maintained, or offers products or services for sale through WS/OS, where WS/OS is operated for commercial purposes.

- Personal information is collected or maintained on behalf of an operator when:
  - it is collected or maintained by an agent or service provider of the operator or
  - the operator benefits by allowing another person to collect personal information directly from users of WS/OS.
• FTC removed loophole

• **WS/OS integrates third-party services** that collect personal information from WS/OS visitors
  – Examples: plug-ins, advertising networks, analytics

• **Strict liability standard** for child-directed and general audience WS/OS (when provider has actual knowledge user is child) that allow third parties to collect personal information through their WS/OS (312.2; footnote 59 of Fed. Reg. notice 1/17/13)
  – Primary content WS/OS must determine the third-party services it integrates and bears strict liability for third parties’ compliance
Plug-ins

• Add functionality to WS/OS

• Examples
  – Facebook Like Button
  – Adobe Flash Player (video)
  – Quicktime (video)
  – Adobe Acrobat Reader (read .pdf files)
Ad Networks

- Contract with online publishers and advertisers to place ads
- Compile information about individual users/devices into detailed profiles used in behavioral advertising
- Examples
  - Google Doubleclick
Ad Network: What Data is Collected?

• Example: Millennial Media
  – Age
  – Gender
  – Income
  – Ethnicity
  – Sexual Orientation
  – Political Views
  – Parental Status
Plug-ins and Ad Networks

ACCESS PUBLIC ARREST RECORDS ONLINE
STEP 1) Enter any Name & State
STEP 2) Access Full Background Checks Instantly

Example sentences:
- He spurned an insistent request to attempt invading Athens.
- The disorder in the land of the Hellenes opposes the world of Athenians.
- The promotion of such an idea is said to have ruined Athens.
- To celebrate this achievement, statues were erected around the Agora.

Relevant Questions
Where Is Athens?  What Is Athens?
What Is The Population Of Athens?  When Was Athens Greece Founded?
Plug-ins and Ad Networks

St. Patrick's Day Traditions

Explore the rich culture, history, and customs of the Irish this St. Patrick's Day by partaking in traditional activities. Of course you know to wear green and give a pinch to those who don't, but Irish traditions don't stop there... see more
Due Diligence Required

- Once determine third parties with which WS/OS connects
  - Analysis of documentation good but possibly insufficient
  - What else is required?
- Internal operations exception
- Analytics
  - Some have behavioral marketing aspects (e.g. Remarketing)
Actual Knowledge Standard for Third-Party Services (312.2)

- Third parties with actual knowledge of the collection of personal information from kids < 13

- Actual knowledge for a plug-in, advertising network, or other third party where:
  - Child-directed content provider directly communicates the child-directed nature of its content to the third party or other online service or
  - Representative of the third party online service recognizes the child-directed nature of the content
Collects Personal Information (312.2)

- Collects personal information means the gathering of any personal information from kids < 13 by any means, including:
  - requesting, prompting or encouraging kids < 13 to submit personal information online
  - all means of passively collecting personal information from kids < 13 online, regardless of technology
  - enabling kids < 13 to make personal information publicly available in identifiable form
Collects Personal Information (312.2)

• No collecting of personal information where operator takes reasonable measures to delete:
  – all or virtually all personal information from the postings of kids < 13 before they are made public and
  – such information from its records

• Reasonable measures standard replaces 100% deletion standard
• Expands covered types of personal information:
  – geolocation information sufficient to identify street name and name of a city or town,
  – a screen or user name functioning in the same manner as online contact information
  – a photo, video or audio file containing a child's image or voice
  – online contact information
  – a persistent identifier that can be used to recognize a user over time and across different WS/OS (e.g., customer number held in a cookie, Internet Protocol address, a processor or device serial number or unique device identifier)

Excludes persistent identifier used for the sole purpose of providing support for the internal operations of WS/OS (312.5(c)(7))
Personal Information – Support for the Internal Operations of WS/OS (312.2)

• Providing support for the internal operations of WS/OS means activities necessary to:
  – maintain or analyze the functioning of WS/OS
  – perform network communications
  – authenticate users of, or personalize the content on, WS/OS
  – serve contextual advertising on WS/OS or cap the frequency of advertising
  – protect the security or integrity of the user or WS/OS
  – ensure legal or regulatory compliance or
  – fulfill a request of a child as permissible
  – additional activity approved by the FTC

• Excludes information collected where used or disclosed to contact a specific individual, including through behavioral advertising, to amass a profile on a specific individual or for any other purpose
• Continues to cover the following types of personal information:
  – first and last name,
  – physical address including street name and name of a city or town,
  – telephone number,
  – Social Security number
  – information concerning the child or the parents of that child that the operator collects online from the child and combines with any covered identifier
Website or Online Service Directed to Children under Age 13 (312.2)

- Expands factors as to whether WS/OS is directed to kids < 13:
  - musical content
  - presence of child celebrities or celebrities who appeal to children

- Expanded factors are in addition to the following factors:
  - subject matter
  - visual content
  - use of animated characters or child-oriented activities and incentives
  - audio content
  - age of models
  - language or other characteristics of WS/OS
  - whether advertising promoting or appearing on WS/OS is directed to kids < 13
  - competent and reliable empirical evidence regarding audience composition
  - evidence regarding the intended audience
Website or Online Service Not Deemed Directed to Children under Age 13 (312.2)

- WS/OS directed to kids < 13 that does not target kids < 13 as its primary audience that:
  - does not collect personal information from any visitor before collecting age information and
  - prevents the collection, use or disclosure of personal information from visitors who identify themselves as under age 13 without first complying with the notice and parental consent requirements
General Requirements for Operator (312.3)

- Provide notice on WS/OS of the information it collects from kids < 13, how it uses such information and its disclosure practices for such information
- Obtain verifiable parental consent before any collection, use and/or disclosure of personal information from kids < 13
- Provide a reasonable means for a parent to review the personal information collected from kids < 13 and to refuse to permit its further use or maintenance
- Not condition kids < 13's participation in a game, the offering of a prize or another activity on kids < 13 disclosing more personal information than is reasonably necessary to participate in such activity and
- Establish and maintain reasonable procedures to protect the confidentiality, security and integrity of personal information collected from kids < 13
Notice Requirements for Operator (312.4)

• Direct notice via “just-in-time” message to parents – precise info required (312.4)
  – Four types of notice

• Notice (privacy policy) on the WS/OS of operator’s information practices regarding kids <13
  – List of all operators (contact information of only one required but that one must be prepared to explain privacy policies of all operators)
    • Plug-ins, ad networks, analytics
  – Information operator collects from children, including whether WS/OS enables a kid < 13 to make personal information publicly available
  – How operator uses such information
  – Operator’s disclosure practices for such information
  – Other info required by 312.4
Verifiable Parental Consent Methods for Operator (312.5)

• Updated to add new methods of verifiable parental consent (several existing methods still acceptable)
  – Electronic scans of signed parental consent forms
  – Video-conference with trained personnel
  – Use of government-issued ID for verifying parent’s identity (checked against database)
  – Alternative payment systems, like debit cards and electronic payment systems, if provide notification of each transaction to primary account holder
  – Other methods approved by FTC-approved safe harbor program in which operator is member
  – Other methods approved by FTC

• “Email plus” continues as method for operators that collect personal information only for internal use
Verifiable Parental Consent Not Required (312.5(c))

- Eight exceptions – three are new
- Where purpose of collecting parent’s online contact information is to provide voluntary notice to, and update parent about child’s participation in WS/OS that does not collect, use or disclose kids < 13’s personal information (312.5(c)(2))
- Operator collects persistent identifier and no other personal information and identifier is used for sole purpose of providing support for internal operations of WS/OS (312.5(c)(7))
- Where plug-in (or other third party covered by (2) of website operator def’n) collects persistent identifier and no other personal information from user who affirmatively interacts with that operator and whose previous registration with operator indicates that such user is not a kid <13 (312.5(c)(8))
Confidentiality and Security Requirements for Operator (312.8)

• Establish and maintain reasonable procedures to protect the confidentiality, security and integrity of personal information collected from kids < 13 and

• Take reasonable steps to release kids < 13’s personal information only to service providers and third parties capable of maintaining the confidentiality, security and integrity of this information, and that provide assurances that they will maintain the information in this manner
Retention and Deletion Requirements for Operator (312.10)

- Retain personal information collected online from a kids <13 as long as reasonably necessary to fulfill the purpose for which the information was collected
- Delete this information using reasonable measures to protect against unauthorized access to or use of the information in connection with its deletion
Enhanced FTC Oversight of Safe Harbor Programs (312.11)

• Safe harbor program’s business model and the technological capabilities and mechanisms to assess covered operators’ compliance

• Safe harbor program annual comprehensive review of each covered operator’s information policies, practices and representations

• By July 1, 2014 and annually thereafter, report to the FTC on:
  – aggregated summary of annual comprehensive reviews
  – any disciplinary action taken against covered operator and
  – any approval of covered operator parental consent mechanism

• FTC considerations in investigating or bringing an enforcement action against a covered operator for violations:
  – the history of covered operator’s participation in safe harbor program
  – whether covered operator has taken action to remedy non-compliance and
  – whether the covered operator’s non-compliance resulted in any disciplinary actions
Questions & Answers

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