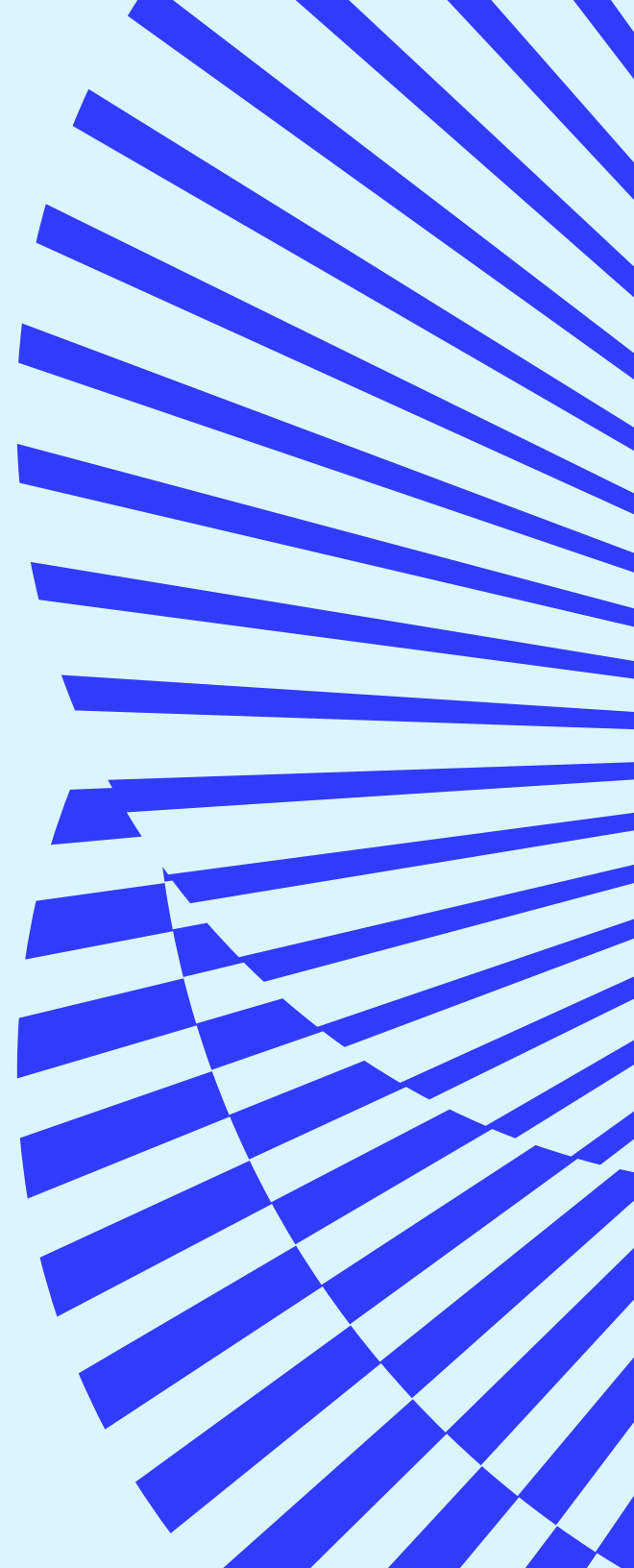


Children's Privacy and Protection Bills and Laws



U.S. Chamber of Commerce
Technology
Engagement Center



*Bold text indicates changes to COPPA (the Children’s Online Privacy Protection Rule)

	Children’s Online Privacy Protection Act (15 USC 6501 et seq.)	COPPA Rule (16 CFR 312.1 et seq.)	Children and Teen’s Online Privacy Protection Act (S. 1628, Markey)	Kids Online Safety Act (S. 3663, Blumenthal)
Definitions	<p>Covered Entity</p> <p>“Operator” 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.</p> <p>Entities considered non-profits under the FTC Act are exempt.”</p>	<p>“Operator” 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, or offers products or services for sale through that website or online service, where such website or online service is operated for commercial purposes involving commerce among the several States or with 1 or more foreign nations; in any territory of the United States or in the District of Columbia, or between any such territory and another such territory or any State or foreign nation; or between the District of Columbia and any State, territory, or foreign nation.</p> <p>Entities considered non-profits under the FTC Act are exempt.</p>	<p>“Operator” means any person—</p> <p>(i) who, for commercial purposes, in interstate or foreign commerce operates or provides a website on the internet, an online service, an online application, or a mobile application;</p> <p>AND</p> <p>(ii) who (I) collects or maintains, either directly or through a service provider, personal information from or about the users of that website, service, application, or connected device; (II) allows another person to collect personal information directly from users of that website, service, application, or connected device (in which case, the operator is deemed to have collected the information) OR (III) allows users of that website, service, application, or connected device to publicly disclose personal information.</p> <p>Entities considered non-profits under the FTC Act are exempt</p>	<p>“Covered Platform” means a social media service, social network, video game, messaging application, video streaming service, educational service, or an online platform that connects to the internet and that is used, or is reasonably likely to be used, by a minor.</p>
	<p>Targeted or Knowledge Requirement</p> <p>Must be website targeted in whole or in portion to children or actual knowledge collecting personal information from a child.</p>	<p>“website or online service directed to children” means a commercial website or online service, or portion thereof, that is targeted to children.</p> <p>(1) In determining whether a website or online service, or a portion thereof, is directed to children, the Commission will consider its subject matter, visual content, use of animated characters or child-oriented activities and incentives, music or other audio content, age of models, presence of child celebrities or celebrities who appeal to children, language or other characteristics of the website or online service, as well as whether advertising promoting or appearing on the website or online service is directed to children. The Commission will also consider competent and reliable empirical evidence regarding the intended audience.</p>	<p>(A) In General—the terms “directed to children,” “directed to minors,” and “directed to children or minors” mean, with respect to a website, online service, online application, mobile application, or connected device, that the website, online service, online application, mobile application, or connected device, or a portion thereof, is targeted to children or minors, as the case may be, as demonstrated by</p> <p>(i) the subject matter</p> <p>(ii) the visual content</p> <p>(iii) the use of animated characters or child-oriented activities</p> <p>(iv) the music or other audio content</p> <p>(v) the age of models</p>	



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Definitions (continued)	Targeted or Knowledge Requirement (continued)	<p>(2) A website or online service shall be deemed directed to children when it has actual knowledge that it is collecting personal information directly from users of another website or online service directed to children.</p> <p>(3) A website or online service that is direct to children under the criteria set forth in paragraph (1) of this definition, but that does not target children as its primary audience, shall not be deemed directed to children if it (i) does not collect personal information from any visitor prior to collecting age information; and (ii) 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 provisions of this part.</p> <p>(4) A website or online service shall not be deemed directed to children solely because it refers to links to a commercial website or online service directed to children by using information location tools, including a directory, index, reference, pointer, or hypertext link.</p>	<p>(vi) the presence of child celebrities, celebrities who appeal to children, teen celebrities, and celebrities who appeal to minors.</p> <p>(vii) the language used</p> <p>(viii) advertising content</p> <p>(ix) reliable empirical evidence related to the composition of the audience and the intended audience.</p> <p>(B) RULES of CONSTRUCTION— Deemed targeted to children or minors if it collects personal information directly from users of any other website, online application, mobile application, or connected device that is directed to children or minors as described in subparagraph (A) or USED OR REASONABLY LIKELY TO BE USED BY CHILDREN OR MINORS.</p> <p>SERVICES DEEMED DIRECTED TO MIX AUDIENCES—A service that is described in subparagraph (A) but that does not target children or minors as the primary audience shall not be directed to children or minors if it does not collect personal information from any user and does not collect use or disclose personal information of any user who identifies themselves as an individual who is age 16 or younger.</p>	
Covered Information	<p>“Personal information” means individually identifiable information about an individual collected online, including—</p> <p>(A) A first and last name</p> <p>(B) A home or other physical address including street name and a name of a city or town</p> <p>(C) An e-mail address</p> <p>(D) A telephone number</p> <p>(E) A Social Security number</p>	<p>“Personal information” means individually identifiable information about an individual collected online, including:</p> <p>(1) A first and last name</p> <p>(2) A home or other physical address including street name and a name of a city or town</p> <p>(3) Online contact information</p> <p>(4) A screen or user name where it functions in the same manner as online contact information</p>	<p>“Personal information” means individually identifiable information about an individual collected online, including—</p> <p>(A) A first and last name</p> <p>(B) A home or other physical address including street name and a name of a city or town</p> <p>(C) An e-mail address</p> <p>(D) A telephone number</p> <p>(E) A Social Security number</p> <p>(F) Geolocation information</p>	<p>“Personal Data” means information that identifies or is linked or reasonably linkable to an individual, household, or consumer device.</p>



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Definitions <i>(continued)</i>	Covered Information <i>(continued)</i>	<p>(F) Any other identifier that the Commission determines permits the physical or online contacting of a specific individual</p> <p>(G) Information concerning the child or the parents of that child that the website collects online from the child and combines with an identifier described in this paragraph.</p>	<p>(5) A telephone number</p> <p>(6) A Social Security number</p> <p>(7) A persistent identifier that can be used to recognize a user over time and across different websites or online services. Such persistent identifier includes, but is not limited to, a customer number held in a cookie, an Internet Protocol (IP) address, a processor or device serial number, or a unique device identifier.</p> <p>(8) A photograph, video, or audio file, where such file contains a child’s image or voice</p> <p>(9) Geolocation information sufficient to identify the street name and name of a city or town</p> <p>(10) Information concerning the child or the parents of that child that the operator collects online from the child and combines with an identifier described [in the COPPA rule].</p> <p>“Online contact information” means an email address or any other substantially similar identifier that permits direct contact with a person online, including but not limited to, an instant messaging user identifier, a voice over internet protocol (VOIP) identifier, or a video chat user identifier.</p>	<p>(G) Information generated from the measurement or technological processing of an individual’s biological, physical, or physiological characteristics, including fingerprints, voice prints, iris or retina imagery cans, facial imagery or templates, DNA, or gait.</p> <p>(H) Information reasonably associated with or attributed to a child or minor.</p> <p>(I) Information (including an internet protocol address) that permits the identification of an individual or any device used by an individual to access the internet or an online service, online application, mobile application, or connected device.</p> <p>(J) Information concerning a child or minor or the parents of that child or minor (including any unique or substantially unique identifier, such as a customer number) that an operator collects online from the child or minor and combines with an identifier described in this paragraph.</p>	
	Protected Group	“Child” means an individual under the age of 13.	“Child” means an individual under the age of 13.	<p>“Child” means an individual under the age of 13.</p> <p>“Minor” means an individual over the age of 12 and under the age of 17.</p>	<p>“Child” means an individual under 12.</p> <p>“Minor” means an individual 16 or younger.</p>
Obligations, Consumer Rights and Prohibitions	Transparency	Yes	Yes	Yes	
	Right to Access	Yes	Yes	Yes	
	Right to Correction			Yes	
	Right to Deletion			Yes	

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Obligations, Consumer Rights and Prohibitions <i>(continued)</i>	Fiduciary Duty			<p>“A covered platform shall act in the best interests of a minor that uses the platform’s products or services. It must mitigate:</p> <ul style="list-style-type: none"> • Mental health disorders • Patterns of use that indicate or encourage addiction-like behaviors • Physical violence, online bullying, and harassment • Sexual exploitation • Promotion of narcotics under the Controlled Substances Act, tobacco, alcohol, and gambling • Predatory, unfair, or deceptive marketing practices or other financial harms.
	<p>Reasonable Basis/ Exceptions</p> <ul style="list-style-type: none"> • Online contact information used to respond to specific requests of child/parent • Data used for the sole purpose of obtaining parental consent or providing notice under the Act • Protect the safety of the child • Protect security and integrity of the website, take precautions against liability, respond to judicial process; cooperate in investigation regarding public safety 	<ul style="list-style-type: none"> • For consent, where the sole purpose of collecting the name or online contact information of the parent or child is to provide notice and obtain consent [under the Rule]. If the operator has not obtained parental consent after a reasonable time, the operator must delete such information from its records. • For consent, where the purpose of collecting a parent’s online contact information is to provide voluntary notice to, and subsequently update the parent about, the child’s participation in a website or online service that does not otherwise collect, use, or disclose children’s personal information. In such cases, the parent’s online contact information may not be used or disclosed for any other purpose. • For consent, online contact information used to respond to specific requests or child/parent. 		

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Obligations, Consumer Rights and Prohibitions <i>(continued)</i>	Reasonable Basis/ Exceptions <i>(continued)</i>	<ul style="list-style-type: none"> For consent, protect safety of the child For consent, protect security and integrity of website, take precautions against liability, respond to judicial process; cooperate in investigation regarding public safety Where an operator collects a persistent identifier and no other personal information and such identifier is used for the sole purpose of providing support for the internal operations of the website or online service. 		
	Consent	<ul style="list-style-type: none"> Verifiable parental consent required for collection, use, or disclosure of personal information from children. Opportunity at any time for parents to refuse to permit operator’s further use or maintenance in retrievable form, or future online collection, of personal information from that child. 	<ul style="list-style-type: none"> Verifiable parental consent required prior to the collection, use, and/or disclosure of personal information from children, including consent to any material change in the collection, use, or disclosure practices to which the parent has previously consented <p>Collection and use can be consented to without consent to disclose.</p>	<p>To obtain verifiable consent for the collection, use, or disclosure of personal information of a child or minor.</p> <p>The operator should obtain consent from a parent of a child or from a minor before using or disclosing the personal information of the child or minor.</p> <p>The operator should obtain affirmative express consent from a parent of a child or from a minor before using or disclosing previously collected personal information of the child or minor for purposes that constitute a material change in practice from the original purposes specific to the child or minor.</p>
	Misc. Prohibited Practices or Obligations	<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> 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 The personal information of a child or minor shall not be used to direct content to the child or minor, or a group of individuals similar to the child or minor, on the basis of race, socioeconomic factors, or any proxy thereof.

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Obligations, Consumer Rights and Prohibitions <i>(continued)</i>	Misc. Prohibited Practices or Obligations <i>(continued)</i>		<ul style="list-style-type: none"> • Collection of personal information from minors is prohibited unless the operator complies with a Digital Marketing Bill of Rights consistent with Fair Information Practice Principles which are outlined in the Act and can be defined by the FTC. • Use, collection, and sharing of data of children and minors for targeted advertising prohibited with exception of consent by minors. 	<p>(C) Limit features that increase, sustain, or extend use of the covered platform by a minor such as automatic playing of media, rewards for time spent, and notification and other features leading to compulsive usage</p> <p>(D) Control algorithmic recommendation systems that use a minor’s personal data, including the right to opt-out of such algorithmic recommendation systems or limit types of categories of recommendations</p> <p>(E) Delete the minor’s account and delete their personal data.</p> <p>(F) Restrict the sharing of the geolocation of a minor</p> <p>(G) Limit the amount of time spent by a minor on the covered platform</p> <p>Default Settings Must be Most protective</p> <p>2) PARENTAL TOOLS</p> <p>A covered platform shall provide readily-accessible and easy-to-use tools for parents to supervise the use of the covered platform including (A) ability to control privacy and account settings in children’s safeguards, ability to restrict purchases, ability to track metrics, and address harms.</p>

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Obligations, Consumer Rights and Prohibitions <i>(continued)</i>	Misc. Prohibited Practices or Obligations <i>(continued)</i>			<p>3) Shall provide reporting mechanisms for parents, children, schools.</p> <p>4) Not facilitate the advertising of narcotics under Controlled Substances Act, tobacco, alcohol, or gambling.</p> <p>5) Dark patterns limiting user autonomy are prohibited.</p>
	Data Minimization	An operator of a website or online service shall retain personal information collected online from a child for only as long as is reasonably necessary to fulfill the purpose for which the information was collected. The operator must delete such information using reasonable measures to protect against unauthorized access to, or use of, the information in connection with its deletion.	<p>Personal information should be collected only when it is consistent with the context of a particular transaction or service or the relationship of the child or minor with the operator, including collection necessary to fulfill a transaction or provide a service requested by the child or minor OR required or specifically authorized by law.</p> <p>The personal information of a child or minor should not be retained for longer than is necessary to fulfill a transaction or provide a service requested by the child or minor. The operator should implement a reasonable and appropriate data disposal policy.</p>	
	Discrimination Based on Privacy Rights	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, to permit the operator’s further use or maintenance in retrievable form, or future online collection, of personal information from that child.	The regulations shall prohibit an operator from discontinuing service provided to a child or minor on the basis of a request by the parents of the child or by the minor, under regulations to delete personal information.	

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Obligations, Consumer Rights and Prohibitions <i>(continued)</i>	Misc. Provisions			<ul style="list-style-type: none"> • The personal information of a child or minor should be accurate, complete, and kept up-to-date to the extent necessary to fulfill the purposes. • Children or Minors have the right to be forgotten for data collected from them. 	<p>Yearly Reporting Requirements:</p> <p>Platforms with 10,000,000 or more active users must issue a yearly report identifying the foreseeable risks of harm to minors and describing the prevention and mitigation measures taken to address such risks based on an independent, third-party audit conducted through reasonable inspection of the covered platform and describe the prevention and mitigation measures taken to address such risk. Covered platforms must safeguard the privacy of information used.</p> <p>Independent Research Regarding Harms to Minors The NTIA Administrator shall establish a program under which an eligible researcher may apply for, and a covered platform with users of 10,000,000 or more, shall, access to data sets from the covered platform for the sole purpose of conducting public interest research regarding harms to the safety and well-being of minors.</p> <p>Kids Online Safety Council: A new council is established to provide advice related to the Act under the Secretary of Commerce.</p>
	Security	Data Security	Yes	Yes	Yes

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Enforcement Issues and Effective Date	Enforcement Agency	FTC and equivalent enforcers	FTC	FTC and equivalent enforcers	FTC
	Safe Harbor	FTC approved self regulatory programs	FTC approved self regulatory programs	FTC approved self regulatory programs	Yes, for public independent research
	Expanded Penalty Authority				
	State AG Enforcement	Yes		Yes	Yes
	Rulemaking	Yes		Definition of “Reasonably Likely to be Used,” Definition of “Reasonably likely to be a minor or child”; Defining further Fair Information Practices Principles; Requirements for a privacy dashboard, Safe Harbor guidelines	NTIA rulemaking for public interest research; FTC for covered platform market research; FTC Rulemaking for Safeguards, Disclosure, and Transparency
	Private Right of Action				
	Effective Date				
Preemption	<ul style="list-style-type: none"> 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. No state or local government may impose any liability for commercial activities or actions by operators in interstate or foreign commerce in connection with an activity or action described in this chapter that is inconsistent with the treatment of those activities under the Act. 		<ul style="list-style-type: none"> 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)(A)(iii) to the parent of a child or under subsection (b)(1)(A)(iv) to a minor. No state or local government may impose any liability for commercial activities or actions by operators in interstate or foreign commerce in connection with an activity or action described in this chapter that is inconsistent with the treatment of those activities under the Act. 		