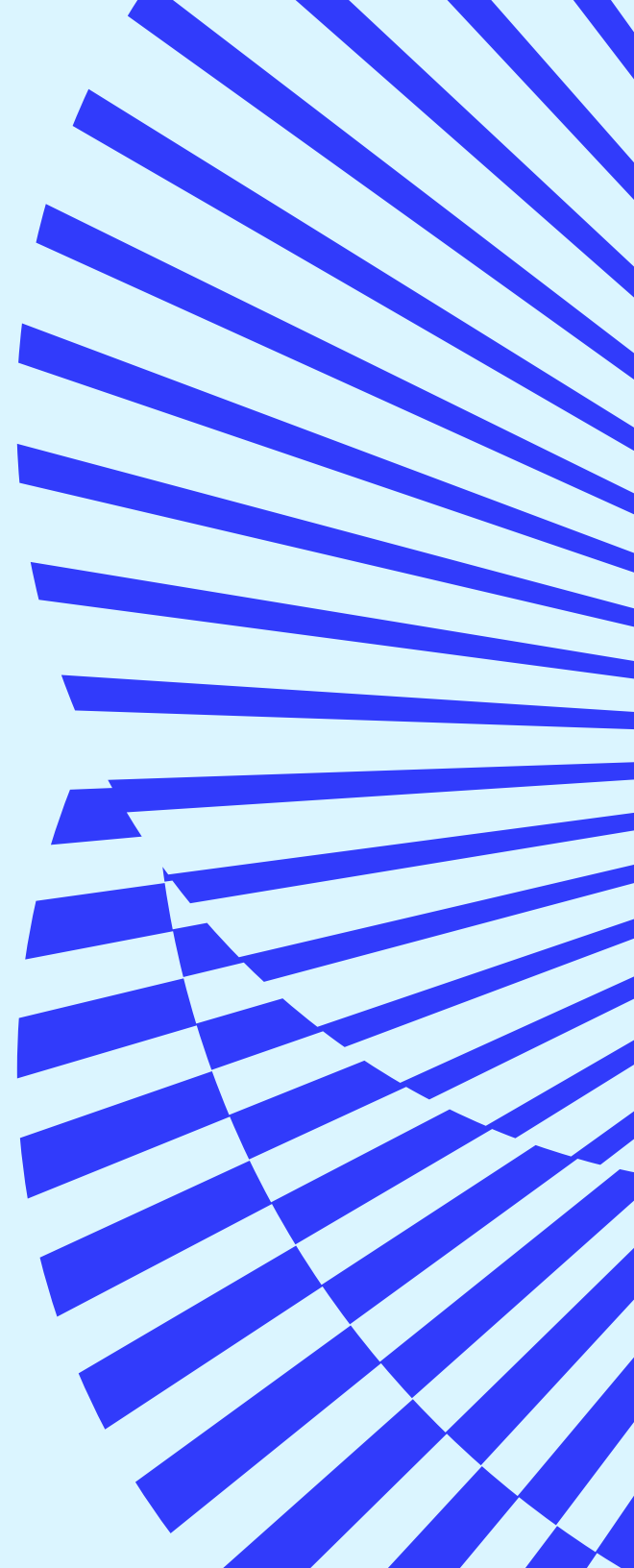


Proposed Update to COPPA Rule



U.S. Chamber of Commerce
Technology
Engagement Center





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

[Bracketed Italics] indicates deleted language.

	Children’s Online Privacy Protection Act (15 USC 6501 et seq.)	COPPA Rule (16 CFR 312.1 et seq.)	Proposed FTC 2023 COPPA Update
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 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. Personal information is collected or maintained on behalf of an operator when:</p> <p>(1) it is collected or maintained by an agent or service provider of the operator; OR</p> <p>(2) The operator benefits by allowing another person to collect personal information directly from users of such Web site or online service.</p> <p>Entities considered non-profits under the FTC Act are exempt.</p>



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	Children’s Online Privacy Protection Act (15 USC 6501 et seq.)	COPPA Rule (16 CFR 312.1 et seq.)	Proposed FTC 2023 COPPA Update
Definitions <i>(Continued)</i>	<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>(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>“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 audience composition and evidence regarding the intended audience, including marketing or promotional materials or plans, representations to consumers or to third parties, reviews by users or third parties, and the age of users on similar websites or services.</p> <p>(2) A website or online service shall be deemed directed to children when it has actual knowledge that it is collecting personal information <i>[directly]</i> from users of another website or online service directed to children.</p> <p>(3) A mixed audience website or online service shall not be deemed directed to children with regard to any visitor not identified as under 13.</p>



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Definitions <i>(Continued)</i>		<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>(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> <hr/> <p>Mixed audience website or online service” means a website or online service that is directed to children under the criteria set forth in paragraph (1) of the definition of website or online service directed to children, but that does not target children as its primary audience, and does not collect personal information from any visitor prior to collecting age information or using another means that is reasonably calculated, in light of available technology, to determine whether the visitor is a child. Any collection of age information, or other means of determining whether a visitor is a child, must be done in a neutral manner that does not default to a set age or encourage visitors to falsely age information.</p>
	<p>Mixed Audience Website or Online Service</p>		



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Definitions <i>(Continued)</i>	<p>Covered 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) 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>“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>(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>“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>(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) A biometric identifier that can be used for the automated or semi-automated recognition of an individual, including fingerprints or handprints; retina and iris patterns, genetic data, including a DNA sequence; or data derived from voice data, gait data, or facial data; or</p> <p>(11) 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>



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Definitions <i>(Continued)</i>			“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, or an identifier such as a mobile telephone number provided the operator uses it only to send a text message.
	Protected Group	“Child” means an individual under the age of 13.	“Child” means an individual under the age of 13.
	Transparency	Yes	Yes (Includes Direct Notice to Parent)
	Right to Access	Yes	Yes
	Reasonable Basis/ Exceptions	<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.

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<p>Obligations, Consumer Rights and Prohibitions <i>(Continued)</i></p>		<ul style="list-style-type: none"> • For consent, online contact information used to respond to specific requests or child/parent. • 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. 	<ul style="list-style-type: none"> • For consent, online contact information used to respond to specific requests or child/parent. • 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. These are now new notice requirements for this. • Where an operator collects a persistent identifier and no other personal information from a user who affirmatively interacts with the operator and whose previous registration with that operator indicates that such user is not a child. In such case, there also shall be no obligation to provide notice. • Where an operator collects an audio file containing a child’s voice, and no other personal information, for use in responding to a child’s specific request and where the operator does not use such information for any other purpose, does not disclose it, and deletes it immediately after responding to the child’s request. No direct notice requirement if done this way. • Operator obtains written school authorization for school-authorized educational purpose.



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Obligations, Consumer Rights and Prohibitions <i>(Continued)</i>	<p>Consent</p> <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. <p>Misc. Prohibited Practices or Obligations</p> <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"> • 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 Collection and use can be consented to without consent to disclose. <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"> • 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 Collection and use can be consented to without consent to disclose. • Operators are required to give parents the option to consent to the collection and use of the child’s information without consenting to the disclosure, unless such disclosure is integral to the nature of hte website or online service. An operator required to give the parent this option must obtain separate verifiable parental consent to such disclosure, and the operator may not condition access to the website or online service on such consent.

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Obligations, Consumer Rights and Prohibitions <i>(Continued)</i>	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.	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 and not for a secondary purpose. 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. Personal information collected online from a child may not be retained indefinitely. At a minimum, the operator must establish, implement, and maintain a written children’s data retention policy that sets forth the purposes for which children’s personal information is collected, the business need for retaining such information, and a timeframe for deletion of such information that precludes indefinite retention. The operator must provide its written children’s data retention policy in the notice on the website or online service.
	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.	
Security	Data Security	Yes	Yes
Enforcement Issues and Effective Date	Enforcement Agency	FTC and equivalent enforcers	FTC

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Enforcement Issues and Effective Date <i>(Continued)</i>	Safe Harbor	FTC approved self regulatory programs	FTC approved self regulatory programs
	State AG Enforcement	Yes	
	Rulemaking	Yes	
	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. 	