

COPPA ADVISORY

Do you know whether your website is subject to the Children's Online Privacy Protection Act (COPPA)? If it is, are you in compliance?

COPPA seeks to eliminate the unauthorized collection and abuse of a child's personal information by requiring informed, verifiable parental consent. In its short history, COPPA has become a significant force in making the Internet safer for children. This is due largely to the enforcement efforts of the Federal Trade Commission (FTC), which has imposed significant fines and issued press releases in cases of non-compliance. Among the companies that have agreed to pay penalties for violating COPPA are UMG Recordings (\$400,000), Mrs. Fields Cookies (\$100,000) and Hershey Foods (\$85,000). In light of the potential for big fines and bad publicity, we strongly urge all clients to review their websites to ensure compliance.

WHO MUST COMPLY

The first step in determining whether your website must comply with COPPA is to consider the type of information you collect and the visitors who provide it. COPPA prohibits sites from knowingly collecting "personal information" from a child - such as first and last name, home address, email address, telephone number or social security number - without parental approval.

If your website collects personal information from visitors and falls into either of the following two categories, you must comply with COPPA:

1. *Websites that specifically target children under age 13.* To determine whether a web site is directed to children, the FTC considers several factors, including the site's subject matter, visual or audio content, the age of models on the site, language, whether advertising on the 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. This list is not exclusive - that is, the FTC will consider any factor that might be informative.

2. *"General audience" sites that knowingly collect information from children under age 13.* The FTC has indicated that it will consider empirical evidence in determining whether or not a general audience site knowingly collects information from children.

HOW TO COMPLY

If your website is subject to COPPA, you must provide the following:

1. *Privacy Notice.* You must post a clear and prominent link to a privacy policy on your homepage, as well as in every location at which information is collected. A tiny notice at the bottom of the web page would not suffice.
2. *Direct Notice to Parents.* You must also post a clear and understandable notice to parents that informs them that your site desires to collect personal information from their child, that a parent's consent is required for this, and that the parent can consent to the collection without consenting to the sale of the personal information to a third party.
3. *Verifiable Parental Consent.* Before collecting, storing or sharing any personal information obtained from a child, you must make a reasonable effort to ensure that a child's parent has received and consented to the site's privacy policy. The measures required use a "sliding scale" that depends on how the information will be used.

Of course, the above is by no means a complete description of COPPA, the technical requirements of which can be difficult to understand and implement. Therefore, if you have any questions regarding COPPA, including whether your website is subject to COPPA and is COPPA-compliant, please feel free to contact us.

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