

Children's Privacy and Children-Directed Influencer Marketing Face Greater Scrutiny

4th Edition: Trends in Marketing Communications Law

Regulators and industry watchdogs, concerned that children are becoming more vulnerable to new technologies and sales techniques used by marketers, are taking a stronger stance against practices that violate children's privacy and marketing regulations.

Last year, the Federal Trade Commission (FTC) brought its first action under the Children's Online Privacy Protection Act (COPPA) against a mobile advertising network, InMobi, alleging that InMobi violated COPPA by collecting persistent identifiers (such as cookies) to serve children geotargeted advertisements. The FTC will continue bringing actions against websites and apps that violate COPPA, particularly if they collect persistent identifiers from children to serve behaviorally targeted advertising without verifiable parental consent.

The New York Attorney General recently resolved allegations, resulting in fines and remedial measures, that Viacom, Mattel, Hasbro and JumpStart allowed ad networks and advertisers to track children's activities on their websites in violation of COPPA. This action is likely to spur other state attorneys general to increase monitoring of websites and online services directed to children and to take similar enforcement measures.

Self-regulators and advocacy groups will continue to be active, particularly with respect to child-directed influencer marketing. The Children's Advertising Review Unit (CARU), the children's arm of self-regulation, brought an action last year against EvanTube, a popular YouTube channel featuring a boy unboxing and reviewing toys provided by sponsoring advertisers. According to CARU, EvanTube did not sufficiently disclose to children that the videos were advertising, and now EvanTube's videos must include a prominent audio disclosure at the beginning of each sponsored video stating that it is "advertising."

Additionally, several advocacy groups recently petitioned the FTC to impose stricter regulations for child-directed online influencers, such as EvanTube, arguing that children are less capable of understanding that influencer content is commercial advertising. These advocates believe that such influencer marketing is inherently deceptive, even with appropriate disclosures. Although the FTC may not act on these petitions due to First Amendment concerns, advocacy groups will continue to generate headlines by filing complaints against influencer campaigns that arguably are directed to children.

Key Takeaways

- Regulatory authorities will bring COPPA actions against websites and mobile apps that collect geolocation data from children or serve children behaviorally targeted advertisements without parental consent.
- As the Internet of Things develops, regulators will also focus on the privacy implications of smart toys and smart TVs that collect personal information from children to ensure compliance with COPPA.

- Self-regulators and advocacy groups will continue to scrutinize influencer marketing directed to children to ensure that children know whether their content is paid advertising.
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