

FTC Offers YouTube Channel Owners Guidance on COPPA Compliance

The Bottom Line

- *As a result of the FTC's action against Google and YouTube, YouTube channel owners will be required to designate whether their channels and content are "directed to children" under COPPA. The FTC's recent guidance will help channel owners make this determination. This guidance is especially helpful in light of the FTC's intention to conduct "sweeps" of the YouTube platform to determine whether child-directed content is being properly designated in accordance with COPPA.*
- *In light of this guidance, we can expect the FTC to continue to enforce COPPA into 2020, including against YouTube channel owners whose content is directed to children in violation of COPPA.*

The Federal Trade Commission (FTC) recently issued guidance to help YouTube channel owners determine whether their content is "directed to children" under the Children's Online Privacy Protection Act (COPPA).

The YouTube Settlement

Earlier this year, Google and YouTube agreed to pay a record-breaking \$170 million to the FTC and the New York State Attorney General to settle allegations that YouTube collected personal information from children in violation of COPPA.

In addition to the civil penalty, Google and YouTube agreed to:

1. Develop, implement and maintain a system for YouTube channel owners to designate whether their content is directed to children; and
2. Implement a system to notify channel owners that their child-directed content may be subject to COPPA's obligations.

For additional information on the FTC's action and the settlement, please see our previous alert, "Google and YouTube to Pay \$170 Million in Largest Ever COPPA Settlement."

Sometime after the effective date of the settlement, the FTC will conduct a "sweep" of the YouTube platform to determine whether child-directed content is being properly designated and to ensure that child-directed channels are complying with COPPA.

The FTC guidance is intended to help YouTube channel owners and content creators determine whether their channels and content are "directed to children" under COPPA and if they must provide notice and obtain verifiable parental consent before they, or their ad networks, collect personal information (such as cookies or other persistent identifiers that track online activity) from viewers of that content, who are likely to be children under 13.

The FTC's YouTube Guidance

The guidance makes clear that COPPA applies to YouTube channel owners in the same way that it would if the channel owner had uploaded the content to its own website or app. Accordingly, the FTC will consider the following factors to determine whether the content is child directed:

- The subject matter;
- The visual content;
- The use of animated characters or child-oriented activities and incentives;
- The kind of music or other audio content;
- The age of models;
- The presence of child celebrities or celebrities who appeal to children;
- The language used or other characteristics of the site;
- Whether advertising that promotes or appears on the site is directed to children; and
- Competent and reliable empirical evidence about the age of the audience.

In addition, the guidance provides a number of general rules of thumb:

1. Unless children are affirmatively targeted, videos about traditionally adult activities, such as employment, finances, home improvement, travel and politics are likely not to be considered child-directed. Similarly, videos aimed at high school or college students are likely not subject to COPPA.
2. Videos with bright colors or animated characters are not automatically covered by COPPA, as the FTC recognizes that animated programming may appeal to more than just children.
3. Check the FTC's complaint against YouTube for specific examples of channels that the FTC considered to be directed to children. For example, the FTC found that a channel is directed to children if it states in its "About" section or in communications to YouTube that its intended audience is children under 13, or where the channel settings are enabled so that the channel's content appears in YouTube search results for names of popular children's toys or animated characters. Similarly, a YouTube channel may be deemed to be directed to children where it shows children playing with toys or participating in other child-oriented activities.

According to the FTC, the way parents, the media and actual users view particular content also can factor into whether the FTC may find content to be directed to children.

If channel owners are still unsure as to whether their channels are directed to children, they should reach out to counsel to help them determine their COPPA obligations.

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