

Record COPPA Settlements Indicate Stronger Privacy Protections for Children

7th Edition: Trends in Marketing Communications Law

Last year, the Federal Trade Commission (FTC) reached record settlements with popular online social media platforms that were collecting personal information from children in violation of the Children's Online Privacy Protection Act (COPPA).

In early 2019, the FTC agreed to settle claims against the operators of Musical.ly — now known as TikTok — for \$5.7 million, which, at the time, was the largest civil settlement in a COPPA action to date. That record was shattered only six months later when the FTC, with assistance from the New York Attorney General's Office, announced a COPPA settlement with Google and YouTube, with the companies agreeing to pay a whopping \$170 million — nearly 30 times larger than the previously record-breaking TikTok settlement.

In addition to imposing significant penalties, regulators have been imposing more affirmative obligations upon operators of child-directed platforms to age-gate their content and to ensure that child-directed content is appropriately identified. For operators of websites and other online platforms that draw large audiences of children under 13 years of age, the FTC's actions serve as a warning that their days of turning a blind eye to children's use of content hosted on their platforms may be over.

In both cases, the FTC's investigations revealed that, regardless of whether the services included terms of use prohibiting users under 13 years of age from using the platform, each of these platform operators had actual knowledge that children under 13 were using the services. As a result of these settlements, TikTok implemented an age-gate, providing new users who indicate they are under 13 years old with a different version of the platform which does not collect or share their personal information without parental consent.

While an age-gate was not necessary in YouTube's case, since the content at issue was clearly directed to children, the settlement did require YouTube to provide channel owners a way to designate its content as child-directed and to notify such owners of their COPPA obligations. YouTube also agreed to end personalized advertising on children's content altogether and introduced machine learning techniques to identify content that targets children.

The FTC also announced it would be reevaluating COPPA and held a workshop last October to assess whether the rule needed to be updated in response to rapid changes in technology, such as "smart" toys and devices. Child-directed content creators, privacy advocates and FTC officers discussed whether COPPA's "actual knowledge" standard should be replaced with a heightened standard. Under discussion was also whether COPPA should be amended to better address websites and online services that do not include traditional child-oriented activities but have large numbers of child users, such as certain social media platforms.

However, reactions to last year's groundbreaking developments have been mixed. Privacy advocates, as well as some regulators and lawmakers, felt that the settlements did not go far enough in imposing penalties and requiring meaningful changes, particularly as new "smart" technologies increasingly threaten new invasions of people's privacy. On the flip side, many content creators complained that new restrictions would hurt their livelihood by preventing them from monetizing personalized ads on child-directed channels. What

is clear is that the public is paying attention to these developments, as the FTC received over 175,000 responses to its request for comments on COPPA.

Key Takeaways

- This year and the coming decade will likely bring more enforcement actions against companies that violate COPPA, including social media platforms and technology services.
 - The FTC's settlements with TikTok and YouTube should put online services on notice that if they claim to be general audience sites but attract a large number of children, they should re-evaluate their COPPA obligations and take preemptive steps to ensure they are in compliance with the law.
 - Through the FTC's attempt to adapt COPPA to children's use of modern technologies, COPPA may be expanded to create accommodations which will enable continued technological innovations while also keeping up with children's increased use of digital platforms.
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