

Implications Of Kid Privacy Rule Revamp For Parents, Cos.

By **Michael Canty and Danielle Izzo** (March 11, 2025)

In recent years, parents have had little control over the onslaught of website operators seeking children's data. Equally troubling is that the law has lacked clear protocols for obtaining parental consent or limiting long-term data retention.

Recognizing these concerns, the Federal Trade Commission recently took action to provide parents more control by amending the Children's Online Privacy Protection Act on Jan. 16.

With this amendment, many parents are asking how their children will benefit from COPPA's expanded scope. This article explains the FTC's recent changes and provides both tech companies and parents with a guide for ensuring that children's privacy is protected online.

COPPA

COPPA outlaws "unfair or deceptive practices in connection with the collection, use, and/or disclosure of personal information from and about children [minors under thirteen] on the Internet."^[1] It is the only federal law regulating the collection of children's data online and is aimed at protecting children from online marketers.^[2]

The law requires child-focused online services to obtain parental consent before collecting children's personal data, such as their social security numbers, phone numbers, email addresses, names or persistent identifiers. COPPA also requires web operators to have privacy policies in place and give parents the option to delete data collected by those website operators.

The FTC and federal and state agencies are responsible for enforcing COPPA through enforcement actions seeking civil penalties of up to \$53,088 per violation.^[3]

COPPA Updates

The FTC recently amended COPPA to expand protections for children online.^[4] Most notably, the FTC clarified COPPA's parental consent protocols, now requiring companies to obtain separate, verifiable parental consent before collecting children's data or sharing children's data with third parties for targeted advertising purposes — a practice few, if any, online services currently comply with.

The amendment also:

- Adds mobile telephone numbers and biometric identifiers as protected data types;
- Includes a requirement that companies conduct risk assessments at least annually;
- Limits the time for which children's personal data can be retained;
- Specifies the security measures companies must implement to protect children's personal information;



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- Expands the disclosures required in data security, deletion and retention notices; and
- Prohibits the retention of children's personal information indefinitely.

Companies have one year to comply with COPPA's expanded requirements.[5] Once effective, these changes will provide parents with greater control over their children's data. As for companies, failure to comply will result in an increased risk of facing enforcement action.

Implications for Tech Companies

The FTC's recent updates require tech companies offering web services to children under 13 to reexamine, and potentially change, their current privacy practices — or risk noncompliance.

As an initial step, companies will need to ensure they are obtaining parents' separate, verifiable consent in accordance with COPPA. This will likely require extensive changes to companies' privacy notices, including to the form of and process for the notice.

With respect to form, companies will need to enhance their disclosures to contain a separate privacy notice for parents. These disclosures must contain complete information in plain language so that parents may provide meaningful consent. As it stands, many privacy notices lack the type of clear, unambiguous disclosures that the FTC is calling for in the COPPA update, so companies' reexamination of their current language will be critical.[6]

In order to ensure compliance, companies should consider including explicit disclosures regarding (1) the identities of any third parties with which they share children's personal information, (2) how the company uses persistent identifiers and (3) what safety measures the company has established to prevent unauthorized use of persistent identifiers.

In terms of the notice process, companies will need to enhance their agreement protocols to ensure parents are in fact providing meaningful consent. The new COPPA amendment provides guidance on the types of notice mechanisms that would satisfy the rule. For example, the company can issue a confirmatory text message to the parent's phone number, coupled with an additional step of the company's choosing. The additional step could be a second text message, a physical letter or a phone call, just to name a few examples.

This "text plus" approach adds to the existing "email plus" approach previously advocated. By prioritizing providing parents with clear notice in accordance with COPPA, tech companies will significantly minimize the risk of legal action by regulators like the FTC, and parents, alike.

Failure to comply with COPPA's expansion exposes tech companies to mounting regulatory risk. The FTC's enforcement power comes from Section 5(a) of the FTC Act, which empowers it to investigate and "prevent unfair methods of competition and unfair or deceptive acts or practices affecting commerce [and] seek monetary redress and other relief." [7]

Recent leadership changes at the agency make it even more likely that tech companies will be held to account in the coming years. For example, FTC Bureau of Consumer Protection Director Chris Mufarrige said during a legal workshop on Jan. 29 that "Big Tech represents the issue of our generation and it is the chair's priority." [8]

Implications for Parents

For these reasons, the FTC's expansion of COPPA protections will unquestionably aid parents in protecting their children's data from online collection and use, especially for marketing and data brokerage purposes. However, violations of COPPA may still occur, leaving parents curious about the options that will be available to them when COPPA's amendments are fully effectuated, and violations persist.

As written, COPPA has no private right of action, which means enforcement actions may only be initiated by government actors, like the FTC or state agencies. Even so, parents still have options to enforce the protections codified in COPPA and protect their children's privacy.

First, parents may report suspected COPPA violations directly to government agencies, such as the FTC and the Better Business Bureau.[9]

The FTC encourages parents and others to "[r]eport anything you think may be a fraud, scam, or bad business practice." [10] Once the FTC receives the report, it may initiate an investigation and file a corresponding enforcement action, and if money is recovered or injunctive relief ordered, the agency will then contact anyone affected. Additionally, parents and guardians may directly file complaints with their state's attorney general.

In addition to alerting government agencies, parents and guardians can use litigation as a tool for data protection to advance similar goals as those outlined in the COPPA statute.

While COPPA does not have a private right of action, every state has passed a consumer protection act, e.g., versions of Section 5 of the FTC Act,[11] aimed at protecting consumers against a variety of deceptive and unfair practices similar to those in COPPA. In many states, these statutes afford consumers an opportunity to initiate litigation when they experience such unfair practices. The collection, use and indefinite retention of personal data are issues that are routinely addressed by actions arising under state consumer protection statutes.

For example, in September 2024, parents, on behalf of minor children, filed a putative class action against TikTok's parent company for collecting and using their children's personal information without providing direct notice to parents or obtaining verifiable parental consent, which, among other things, violated COPPA. The case, Villanueva v. Bytedance Inc., was filed on behalf of "millions of American children" in the U.S. District Court for the Central District of California.

The claims in Villanueva seek relief for unfair data practices that deviate from the FTC's stated best practices as outlined in COPPA. Similar claims were recognized in July 2023 in Jones v. Google, where the U.S. Court of Appeals for the Ninth Circuit rejected the U.S. District Court for the Northern District of California's finding that state privacy claims for unfair data practices as to children were preempted by COPPA.[12]

These examples confirm that, should violations persist, parents can use litigation as a tool to ensure that the expanded protections of COPPA are being properly enforced.

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[1] Children's Online Privacy Protection Rule, Final rule, 64 FR 59888 (Nov. 3, 1999), available at <https://www.federalregister.gov/documents/1999/11/03/99-27740/childrens-online-privacy-protection-rule>. 16 CFR Part 312 ("Children's Online Privacy Protection Rule"), <https://www.ecfr.gov/current/title-16/part-312>.

[2] Pamela Mendels, "New Serious Side to Child's Play on Web," *The New York Times* (Nov. 27, 1998), <https://www.nytimes.com/1998/11/27/us/new-serious-side-to-childs-play-on-web.html?searchResultPosition=1>.

[3] "Complying with COPPA: Frequently Asked Questions, Federal Trade Commission," Federal Trade Commission, <https://www.ftc.gov/business-guidance/resources/complying-coppa-frequently-asked-questions> (last visited Jan 31, 2025).

[4] 16 CFR Part 312, https://www.ftc.gov/system/files/ftc_gov/pdf/coppa_sbp_1.16_0.pdf; "FTC Finalizes Changes to Children's Privacy Rule Limiting Companies' Ability to Monetize Kids' Data," Federal Trade Commission (Jan. 16, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/01/ftc-finalizes-changes-childrens-privacy-rule-limiting-companies-ability-monetize-kids-data>.

[5] However, the new COPPA rules have not yet been published and are pending publication/ considered withdrawn pursuant to a January 20, 2025 regulatory freeze.

[6] Aleecia McDonald & Lorrie Faith Cranor, "The Cost of Reading Privacy Policies," *I/S: A Journal of Law and Policy for the Information Society*, 2008 Privacy Year in Review, Volume 4, Issue 3, <http://www.is-journal.org/> (also available at: <https://lorrie.cranor.org/pubs/readingPolicyCost-authorDraft.pdf>) (detailing the results of a study that calculated it would take an individual 244 hours per year to read — or 154 hours to skim — the privacy policies necessary to understand how their data is being collected, processed, and used, and noting that various other "[s]tudies show privacy policies are hard to read, read infrequently, and do not support rational decision making").

[7] Federal Trade Commission Act, 15 U.S.C. §§ 41-58, as amended, Federal Trade Commission, <https://www.ftc.gov/legal-library/browse/statutes/federal-trade-commission-act> (last visited Feb. 14, 2025).

[8] Marc Caputo, "Scoop: Big Tech is 'on notice' with FTC's hires," *Axios* (Feb. 10, 2025), <https://www.axios.com/2025/02/10/ftc-hires-trump-big-tech>.

[9] "How to File a Complaint with the Federal Trade Commission," Federal Trade Commission, <https://consumer.ftc.gov/media/video-0054-how-file-complaint-federal-trade-commission#:~:text=Complaints%20help%20the%20FTC%20and,at%20ReportFraud.ftc.gov> (last visited Feb. 14, 2025); "File a Complaint," Better Business Bureau, <https://www.bbb.org/file-a-complaint/search> (last visited Feb. 14, 2025).

[10] "Frequently Asked Questions," Federal Trade

Commission, <https://reportfraud.ftc.gov/faq> (last visited Feb. 14, 2025).

[11] "Federal Trade Commission Act Section 5: Unfair or Deceptive Acts or Practices," Federal Reserve, <https://www.federalreserve.gov/boarddocs/supmanual/cch/200806/ftca.pdf> (last visited Feb. 3, 2025).

[12] "COPPA's preemption clause does not bar state-law causes of action that are parallel to, or proscribe the same conduct forbidden by, COPPA." *Jones v. Google LLC*, 73 F.4th 636, 644 (9th Cir. 2023).