

Time to Step Up Your COPPA Compliance

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The Federal Trade Commission (FTC) has made good on its promise to actively enforce the recently amended Children's Online Privacy Protection Act (COPPA). Here is what you should know about the latest enforcement actions against Yelp and TinyCo and how these might affect your business.

The Yelp Enforcement Action and Settlement

The recent COPPA enforcement action against Yelp may have come as a surprise to many! Why? Because Yelp operates a website and a mobile application that allow users to search for and review local businesses and are certainly *not geared* towards kids under 13. So what did Yelp do wrong? According to the FTC's complaint, Yelp had "actual knowledge" under the COPPA Rule that it was collecting personal information from children under 13 through the Yelp mobile app (the "Yelp App") without first notifying parents and obtaining their consent as required under the COPPA Rule. Specifically, from 2009 when the Yelp App was launched until April 2013, Yelp collected personal information, such as full names and email addresses, mobile device IDs, location, and any other information they posted on Yelp (such as photos) from several thousand children who input birthdates during the user registration process indicating that they were between ages 9 and 13. Prior to 2009, users could only register for a new account through the Yelp website, where Yelp implemented an age-screening mechanism to prohibit users age 12 and under from registering for a Yelp account. In 2009, Yelp introduced a registration feature in the Yelp App, allowing consumers to register for a Yelp account through that app.

However, Yelp failed to implement a functional age-screening mechanism in the in-app registration feature: consumers who registered for a new account through the Yelp App were asked to input their date of birth, but the Yelp App allowed them to sign up and have access to all of the features, regardless of what date of birth they input. According to the complaint, Yelp did not test the Yelp App to ensure that consumers under the age of 13 were prohibited from registering and instead relied on a third-party test performed in July 2010, which erroneously indicated that the iOS and the Android versions of the Yelp App prohibited registrations from users age 12 and under. As a result, from April 2009 to April 2013, both the iOS and Android versions of the Yelp App accepted registrations from users who inputted any date of birth, including dates of birth indicating that the user was under the age of 13. Although Yelp's privacy policy states that Yelp is not directed to children under 13, because Yelp collected personal information from consumers who input birthdates during the user registration process indicating that they were under 13, the FTC deemed Yelp to have had "actual knowledge" under the COPPA Rule that it was collecting personal information from children under 13. The FTC's complaint alleged that Yelp violated the COPPA Rule by failing to provide notice to parents of its information practices, and to obtain verifiable parental consent prior to collecting, using, or disclosing personal information from children under 13 when it knew that it was collecting personal information from children under 13 via the Yelp App.

Under the terms of its settlement with the FTC, Yelp agreed to:

- pay a civil penalty of \$450,000;
- delete all personal information collected from children under 13, except in cases where either (1) the user subsequently affirmed to Yelp that he or she was older than 13 at the time of



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registration, or (2) Yelp can prove to the satisfaction of the FTC that the user was older than 13 at the time of registration;

- comply with the requirements of the COPPA Rule by (1) ensuring that a parent of a child receives direct notice of Yelp's practices with regard to the collection, use, or disclosure of personal information from children, if any, including notice of any material change in the collection, use, or disclosure practices to which the parent has previously consented; (2) posting a prominent and clearly labeled link to an online notice of its information practices with regard to children, if any, on the home or landing page or screen of its website or online service *and* at each area of the website or online service where personal information is collected from children, if such information is collected; and (3) obtaining verifiable parental consent before any collection, use, or disclosure of personal information from children, including consent to any material change in the collection, use, or disclosure practices to which the parent has previously consented; and
- in one year from the date of the settlement order, submit a compliance report to the FTC describing in detail whether and how Yelp is in compliance with COPPA, including, among other things, the following information: (1) a copy of each different version of any privacy notice posted on each English language website or online service operated by Yelp or sent to parents of children that register on each website or online service; (2) a statement setting forth in detail the methods used to obtain verifiable parental consent prior to any collection, use, and/or disclosure of personal information from children or the methods used to avoid collecting, using, and/or disclosing personal information from children; and (3) a statement setting forth in detail the means provided for parents to review the personal information collected from their children and to refuse to permit its further use or maintenance.

The TinyCo Enforcement Action and Settlement

The COPPA enforcement action against TinyCo resulted from the improper collection of personal information from children under 13 via mobile apps as well, but this time, the mobile apps were "directed to children." As noted by the FTC in its complaint against TinyCo, TinyCo's apps in question, with "brightly-colored, animated characters from little animals or zoo creatures to tiny monsters...subject matters such as a zoo, tree house, or resort inspired by a fairy tale" and simple gameplay language that "would be easy for a child under age 13 to understand" clearly target children.

Since 2011, TinyCo has offered its Tiny Pets, Tiny Zoo, Tiny Village, Tiny Monsters, and Mermaid Resort apps (the "TinyCo Apps") for download free of charge from Apple's App Store, Google Play, and the Amazon Appstore. Although the TinyCo Apps are free to download and play, users can make in-app purchases of virtual items. The TinyCo Apps contained an optional feature that collected email addresses from user and, in fact, TinyCo encouraged users of at least one of the TinyCo Apps to provide their email addresses in exchange for free in-app currency.

The FTC's complaint alleges that although TinyCo knew that many children under 13 use the TinyCo Apps, both due to the nature of the apps and based on complaints received from parents whose children under 13 used the TinyCo Apps, TinyCo collected tens of thousands of email addresses from children under 13 via the TinyCo Apps in violation of the COPPA Rule. Specifically, TinyCo failed (1) to provide notice on its website or online services of the information it collected online from children, how it used such information, and its disclosure practices, among other required content, in violation of Section 312.4(b) of the COPPA Rule, (2) to provide direct notice to parents of the information it collected online from children, how it used such information, and its disclosure practices for such information, among other required content, in violation of Section 312.4(c) of the COPPA Rule, and (3) to obtain verifiable parental consent before any collection or use of personal information from children, in violation of Section 312.5(a)(1) of the COPPA Rule.

Under the terms of its settlement with the FTC, TinyCo agreed to:

- pay a civil penalty in the amount of \$300,000;

- delete all the personal information it collected from children under the age of 13;
- comply with the requirements of the COPPA Rule by (1) making reasonable efforts, taking into account available technology, to ensure that a parent of a child receives direct notice of TinyCo's practices with regard to the collection, use, or disclosure of personal information from children, including notice of any material change in the collection, use, or disclosure practices to which the parent has previously consented; (2) posting a prominent and clearly labeled link to an online notice of its information practices with regard to children on the home or landing page or screen of its website or online service *and* at each area of the website or online service where personal information is collected; and (3) obtaining verifiable parental consent before any collection, use, or disclosure of personal information from children, including consent to any material change in the collection, use, or disclosure practices to which the parent has previously consented; and
- in one year from the date of the settlement order, submit a compliance report to the FTC outlining its COPPA-compliance program, including, among other things, the following information: (1) a detailed description of whether and how TinyCo is in compliance with the terms of the settlement, (2) a copy of each different version of any privacy notice posted on each website or online service operated by TinyCo or sent to parents of children that register on each website or online service, (3) a statement setting forth in detail the methods used to obtain verifiable parental consent prior to any collection, use, and/or disclosure of personal information from children, and (4) a statement setting forth in detail the means provided for parents to review the personal information collected from their children and to refuse to permit its further use or maintenance.

What You Can Do to Avoid COPPA Enforcement Actions

1. First and foremost, conduct an analysis of whether COPPA applies to you. As evidenced by the Yelp enforcement action, COPPA is clearly not just for websites and online services geared toward children under 13! The FTC's Children's Online Privacy Protection Rule: Not Just for Kids' Sites is a good introductory resource and the COPPA FAQs and the Mintz Levin Guide to COPPA offer detailed information on the COPPA Rule and compliance requirements. In a nutshell, if you operate a commercial website or online service (including mobile apps, network connected games, social networking site) that is either (1) directed to children under the age of 13, OR (2) geared to a general audience, but you have "*actual knowledge*" that you collect personal information from children under the age of 13, *you are likely covered by COPPA*. In addition, if you operate an advertising network or plug-in or provide other services that are integrated into a website or online services directed to children AND have "*actual knowledge*" that you collect personal information from users of the website or online service that are under the age of 13, *you are also likely covered by COPPA*.
2. If you determine that you are a COPPA-covered entity, this is a good time to evaluate your websites, online services, and mobile apps and get your COPPA house in order. If you offer a mobile app, build privacy in from the start and comply with the additional requirements under COPPA. With respect to mobile apps in particular, Jessica Rich, director of the FTC's Bureau of Consumer Protection, recently stated that "as people – especially children – move more of their lives onto mobile devices, it's important that they have the same consumer protections when they're using an app that they have when they're on a website...companies should take steps as they build and test their apps to make sure that children's information won't be collected without a parent's consent."
3. Below are a few best practices for COPPA-covered entities:
 - a. **Prepare a COPPA-compliant privacy policy and make it accessible via a clear and prominent link on your home page and anywhere you collect personal information from children under 13.** The privacy policy should accurately reflect not only your information collection, use, and disclosure practices, but also the

practices of any third party collecting or maintaining personal information through your site or service. Review the policy on a regular basis and update it as practices change!

b. **Develop and implement processes and procedures for compliance with COPPA:**

- i. Develop a COPPA-compliant parental notice form and use it to provide direct notice to parents before collecting personal information from their children and remember that if the information collection, use, and disclosure practices that parents agreed to change, you have to send parents an updated notice;
- ii. Implement and use an approved verifiable parental consent method and obtain parental consent before collecting, using, and disclosing a child's personal information;
- iii. Develop and implement a reasonable process to (1) provide parents access to the personal information collected from their children, (2) give parents a way to review and modify the personal information collected from their children, (3) give parents a way to revoke consent and opt out of future collection of personal information from their children, and (4) delete their children's personal information; and
- iv. Develop and implement a COPPA training program for your personnel and train personnel on a regular basis; review the program and update it as necessary.

c. **Establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children.** In addition:

- i. Minimize what you collect;
- ii. Keep personal information only as long as reasonably necessary to fulfill the collection purpose; and
- iii. Delete personal information you no longer need to retain or that is required by parents to be deleted.

d. **Know your service providers:**

- i. Before sharing personal information collected from children with a service provider or other third party, do your due diligence to determine what the service providers' or third parties' data practices are for maintaining the confidentiality and security of the information and preventing unauthorized access to or use of the information; and
- ii. Release the personal information only to service providers and third parties capable of maintaining its confidentiality, security, and integrity and get those assurances in writing.

e. **Comply with COPPA by participating in a Safe Harbor Program.** There are currently seven (7) FTC approved COPPA Safe Harbor Programs. Participants are generally:

- i. deemed to be in compliance with the COPPA Rule if they are in compliance with the program's guidelines; and
- ii. subject to review and disciplinary procedures outlined in the program's guidelines in lieu of formal FTC investigation and enforcement.

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