

# focus on

## Privacy

October 2001

### **Children's Online Privacy Protection Act (COPPA) Parental Consent Rules Due to Change Significantly in 2002: FTC Seeks Comments on Proposed Two-Year Extension of Current Rules**

#### **Summary**

Barring action by the Federal Trade Commission, on **April 21, 2002**, the permissible methods for obtaining verifiable parental consent under the Children's Protection Act ("COPPA") will significantly change. However, on October 26, 2001, the FTC proposed a two-year extension of the current rules. Comments on the proposed rule change are due on November 30, 2001. The extension will keep in place the current system of more rigorous standards for verifying parental consent when information is shared with third parties as well as the more relaxed standards for internal uses of children's personally identifiable information.

#### **Background**

On October 21, 1998, Congress enacted COPPA to address concerns about the online collection of information from young children. The Federal Trade Commission ("FTC") promulgated regulations to implement COPPA on November 3, 1999 (64 Fed. Reg. 59888), effective April 21, 2000. COPPA applies not only to operators of commercial Web sites and online services directed to children under the age of 13 but also to other Web sites that knowingly collect personal information from children under 13. The regulations require Web sites to:

#### ***Post their privacy policy.***

Web sites either directed to children or those that knowingly collect information from kids under 13 must post a notice of their information collection practices that includes:

- the types of personal information they collect from kids — for example, name, home address, e-mail address or hobbies.
- how the site will use the information collected — for example, to market to the child who supplied the information, to notify contest winners or to make the information available through a child's participation in a chat room.
- whether personal information is forwarded to advertisers or other third parties.
- a contact at the site.

***Get parental consent.***

In many cases, a site must obtain verifiable parental consent *before* collecting, using or disclosing personal information about a child. Consent is not required when a site is collecting an e-mail address to:

- respond to a one-time request from the child.
- provide notice to the parent.
- ensure the safety of the child or the site.
- send a newsletter or other information on a regular basis, as long as the site notifies a parent and gives them a chance to say no to the arrangement.

***Get new consent when information practices change in a "material" way.***

Web site operators need to notify parents and get consent again if they plan to change the kinds of information they collect, change how they use the information or offer the information to new and different third parties. For example, new parental consent would be required if the Web site decides to:

- send information from children to marketers of electronic equipment instead of only marketers of board games, as covered in the original consent.
- give a child access to a chat room if the parent's original consent covered only sending a newsletter.

***Allow parents to review personal information collected from their children.***

To do this, Web site operators must verify the identity of the requesting parent.

***Allow parents to revoke their consent and delete information collected from their children at the parents' request.***

Parents can revoke their consent and ask that information about their children be deleted from the site's database. When a parent revokes consent, the Web site must stop collecting, using or disclosing information from that child. The site may end a child's participation in an activity if the information it collected was necessary for participation in the Web site's activity.

**Options for Obtaining Parental Consent ("Sliding Scale")**

It is a challenge to determine who is a parent and who is a child on the Internet. However, in order to obtain "verifiable parental consent," as required by COPPA, it is a critical determination. In drafting the COPPA rules, the FTC received evidence that new technologies,

such as digital signatures, were under development that would offer more reliable electronic verification at a reasonable cost. Yet, these products were not likely to be available by the effective date of the regulations. Therefore, the Commission adopted a "sliding scale" of permissible verification mechanisms, depending upon how the child's information was to be used. *Unless the FTC is presented with evidence showing that the expected technological progress has not been made, the "sliding scale" will be phased out on April 21, 2002.*

### **Current Standard for Internal Use of Children's Information**

Web site operators today may use e-mail mechanisms to obtain verifiable parental consent for *internal* uses of information collected from children under 13 years old. However, because many children are more Web savvy than their parents, the FTC concluded that even for these purposes, e-mail alone was insufficient. Instead, additional steps are required, including sending a follow-up e-mail to the parent confirming their consent or confirming the consent by letter or telephone call following the initial e-mail consent. Parents must be told that they can revoke their consent at any time.

### **Current Standard for External Use of Children's Information**

Because the FTC concluded that *third-party* disclosures were among the most sensitive and potentially risky uses of children's personal information, it established an initially higher, more reliable standard for such disclosures. These disclosures also include chat rooms, message boards, pen pal services and personal home pages. The mechanisms approved by the FTC include print-and-send, use of a credit card, toll-free number and digital signatures or other reliable verification methods. E-mail verification is permitted, but only in conjunction with a PIN or password provided by one of the procedures described above.

### **FTC Proposal**

The FTC has now proposed a two-year extension, until April 21, 2004, of the phase-out of the sliding scale because the expected progress in available technology has not yet occurred. The FTC seeks comment on the current and anticipated availability and affordability of secure electronic mechanisms and/or intermediary services to obtain parental consent. Comment is also sought on the length of the extension and any negative impact of the proposed extension.

*This Privacy Update is for information purposes only and is not intended as a basis for decisions in specific cases. This information is not intended to create, and receipt of it does not constitute, a lawyer-client relationship.*

*David Medine is a partner in the firm's Antitrust and Consumer Protection Group. If you have any questions regarding these issues, please contact him or any member of the group.*

For more information, please contact the following Hogan & Hartson attorney:

**David Medine**

202/637-5773

email: [dmedine@hhlaw.com](mailto:dmedine@hhlaw.com)

*Washington, DC*