



# Revisiting COPPA

The **Children's Online Privacy Protection Act** (COPPA) and its corresponding Rule were passed in 1998, before Facebook, Snapchat, YouTube, or Hello Barbie were even conceived. Despite the Rule having been updated there have been calls to alter the way that children's privacy is regulated in the United States.

Limiting the data collected from children, and preventing online marketing to those under 13, absent verifiable parental consent, are admirable aims for COPPA. Overall the law has good intentions, but all too often the result is that companies are incentivized to ignore children's data. Therefore, any changes to the law should create incentives for companies to know and protect information belonging to children.

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## Age of 13

While deciding on an age to differentiate between children is problematic, FOSI supports the continuation of the age of 13 as a dividing line. However, we must acknowledge that many children, sometimes with the help of their parents, misrepresent their age to access websites and services, thereby defeating the protections erected by COPPA to protect young children and comply with COPPA. These exaggerations in their age often result in children losing the special protections afforded to those aged between 13 and 17 by many companies. This trend in misrepresentation highlights the need for more online content for those under 13, and parental education as to the purposes of COPPA.

Those calling for formalized age verification mechanisms should note that they are all too often ineffective, and counter to the prevailing data minimization aim of COPPA, which limits and protects the personally identifiable information of minors.

## Federal Trade Commission

FOSI appreciates the hard work of the Federal Trade Commission (FTC) in enforcing the COPPA Rule. Their commitment to protecting children's data, while helping companies comply with the requirements of COPPA through the FAQ section of the website has been invaluable and has improved children's privacy protections overall. FOSI believes that the experts at the FTC should continue to be empowered, and appropriately resourced, to lead education and enforcement efforts with respect to the protection of children's privacy.

## Parental Consent

New solutions for obtaining verifiable parental consent, which are also cost effective, need to be approved rapidly by the FTC using the existing regulatory regime. Unfortunately, innovators are too often discouraged by the FTC's application of the Rule from developing and providing new tools that increase children's privacy while easing companies' compliance burdens. The current methods, which include facsimile and postal mail, are obsolete, impractical, and cumbersome. The lack of effective, easy-to-implement, and affordable mechanisms expose companies to unnecessary liability without meaningfully enhancing children's privacy.

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Mechanisms should be designed that easily reach parents on the devices that they carry, without requiring unnecessary data collection such as credit card details without purchasing activity. The new methods developed should ensure that parental consent given should be informed, specific, and freely given. The exemption for data collection for internal operations is an important practical element of COPPA that has strong support.

Furthermore, too often the verifiable parental consent requirements are a mere formality for school districts and school administrators who are eager to get students and parents the best new education technologies. A better set of consent tools, approved by the FTC, can ensure this is rectified so that the consent granted is informed and specific.

## **Website or Online Service Directed to Children**

FOSI supports a continuation of the clear legal standard established in COPPA that requires compliance by those services that have content specifically directed at children or that have actual knowledge that children younger than 13 are using their sites and services. Any change increasing the set of companies that would need to comply to include those with constructive knowledge would be unworkable.

Websites or services that are aimed at children under the age of 13 can be clearly identified. If a constructive knowledge standard were imposed, it is likely that all general audience sites and services would start treating all users as children, or turn off any services that might benefit minors clearly older than 13. This would have serious implications for free speech, or could lead to an increase in age gating, which is ineffective and often results -- paradoxically -- in increased collection of data from all users, including children. This negates the data minimization aims of COPPA.

## **Impact of COPPA**

FOSI remains concerned about the chilling effect of COPPA on small companies which has in turn led to a dearth in the creation of content for children, especially those between 8 and 12. Compliance costs, as well as the threat of considerable financial penalties render this an unattractive space for innovation.

Encouraging companies to create fun, educational, and interactive content for children, which collects only the data that is necessary and ensures the protection of that information should be the aim of all parties.

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