

January 5, 2024

MEMORANDUM TO CLIENTS AND FRIENDS OF THE FIRM:

Re: FTC Proposes Rules to Further Strengthen Children's Online Privacy Law

Federal scrutiny of data privacy practices continues into the new year. The Federal Trade Commission (FTC) has been busy the last few years enforcing the Children's Online Privacy Protection Act of 1998, 15 U.S.C. §§ 6501–6506 (1998) (“COPPA”). Google and YouTube settled claims raised by the FTC in 2019 of COPPA violations, agreeing to pay \$170 million in state and federal civil penalties. Microsoft was fined by the FTC for \$20 million in 2023, for multiple COPPA violations. Also in 2023, the FTC assessed \$5.7 million in fines against TikTok for COPPA violations, requiring the site to remove recordings made by children under 13.

In late December 2023, the FTC published a press release and notice of proposed rulemaking to close perceived loopholes and improve data security in its enforcement of COPPA. See [FTC Press Release](#) (Dec. 20, 2023) and [Rulemaking Notice](#) (Dec. 20, 2023). The FTC has been reviewing its COPPA regulations since 2019 but only recently refocused on its rulemaking procedures to amend the regulations. Among other things, the FTC proposes the following amendments to its regulations:

- Enhanced Data Security Processes and Procedures. The FTC proposes mandating the establishment, implementation and maintenance of a reasonable, written children's personal information security program. The program would require safeguards commensurate to the sensitivity of the personal information collected from children.
- Targeted Advertising Opt-In. A separate, verifiable parental consent to disclose information to third parties, including third-party advertisers (unless disclosure is integral to the nature of the website or service), is proposed. Further, a regulated business would be prohibited from conditioning access to services on disclosure of personal information to third parties.
- Ed Tech Amendments: Codification of existing FTC informal guidance related to the use of education technology to prohibit commercial use of children's information. Data collected by ed tech providers could more efficiently be restricted for a school-authorized educational purpose, rather than for commercial purposes.

- More Retention Limits: The proposed rules limit retention of personal information for as long as necessary, but no longer, to fulfill the specific purpose(s) for which the information was collected. Data collectors would be prohibited from using retained information for any secondary purpose. The collected data could not be retained indefinitely.
- Discouraging Online Loitering. The proposed rules would limit the regulated community from using online contact information and persistent identifiers collected under COPPA's multiple contact and support for internal operations exceptions, to send "push" notifications to children, encouraging them to use their service more.

The above summary is not comprehensive or complete, but is illustrative of the scope of the regulatory amendments under consideration by the FTC in strengthening its enforcement of COPPA.

If you have questions about data privacy compliance or are interested in submitting comments to the FTC about its proposed COPPA rules, I invite you to contact me.

Michael R. Geroe