



# Self-Regulatory Guidelines for Children's Online Privacy Protection

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## Self-Regulatory Guidelines for Online Privacy Protection

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### 1. Foundation of the Guidelines

These Guidelines address concerns about the collection of personal data from children and other privacy-related practices on the Internet. Its provisions are consistent with the Children's Online Privacy Protection Act of 1998 (COPPA) and the FTC's implementing Rule, which protect children under the age of 13, and will be interpreted consistently with the Act and Rule. Online data collection from children poses special concerns. The medium offers unique opportunities to interact with children and to gather information for marketing purposes. Young children, however, may not understand the nature of the information being sought or its intended uses, and the medium makes it easy to collect such data directly and passively from children without the supervision or permission of their parents or guardians. The collection of personal information from children,<sup>1</sup> as defined in Data Collection below, therefore triggers special privacy and security concerns.

The guidelines below address those concerns by providing guidance on specific issues involving online data collection and other privacy-related practices by operators of a website or other online service that 1) targets children under 13 years of age (based on the criteria set forth in the definition of website or online services directed to children in Section 312.2 of the COPPA Rule); 2) has actual knowledge that it is collecting or maintaining personal information from a child under 13 years of age; or 3) has actual knowledge that it is collecting personal information directly from users of another website or online service direct to children.<sup>2</sup>

### 2. Scope

The principles and guidelines of the program apply to online data collection and other privacy-related practices by website or online service operators that target children under 13 years of age or that have actual knowledge that a visitor is a child under 13 years of age or that it is collecting personal information directed from users of a website or online service directed to children.

### 3. Guidelines

#### a. Data Collection

1. *Personal information* is defined under COPPA as individually identifiable information about an individual collected online, including: first and last name; home or physical address; online contact information, such as email addresses, or other identifiers that allow direct contact with a person online, including but not limited to, an instant messaging user identifier, a voice over internet protocol (VOIP) identifier, or a video chat user identifier; a screen or user name where it functions in the same manner as online contact information; a phone number; a Social Security number; a persistent identifier that can be used to recognize a user over time and across different websites and online services, e.g., a customer number held in a cookie, an Internet Protocol (IP) address, a processor or device

1 The definitions of "collection," "operator" and "personal information" in the Children's Online Privacy Protection Rule apply whenever these terms are used in the Online Privacy Protection Guidelines. See 16 CFR § 312.2.

2 This category of companies might include operators of plug-ins or third party advertising networks who are notified by an operator of the child-directed nature of the operator's website. CARU considers these to be "Passthrough operators" since they become "operators" of a child-directed website or online service only by virtue of actual knowledge.

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serial number, or unique device identifier; a photo, video or audio file where such file contains a child's image or voice; geolocation information sufficient to identify street name and name of a city or town; or information concerning the child or the parents of that child and combined with information contained in this definition.

2. In collecting<sup>3</sup> information from children under 13 years of age, operators should adhere to the following guidelines: (a) Operators must clearly disclose to website or online service users their information collection and tracking practices, information uses, and the means for correcting or removing the information; and (b) These disclosures should be prominent and readily accessible before information is collected. For instance, on a website or online service where there is passive tracking, the notice should be on the page where the child enters the site. (c) A heading such as "Privacy," "Our Privacy Policy," or similar designation is acceptable if it allows an adult to click on the heading to obtain additional information on the site or service's practices concerning information collection, tracking and uses.
3. Operators should disclose, in language easily understood by a child, (a) why the information is being collected (e.g., "We'll use your name and email to enter you in this contest and also add it to our mailing list") and (b) whether the information is intended to be shared, sold or distributed outside of the collecting company.
4. Operators should disclose passive means of collecting information from children (e.g., navigational tracking tools, browser files, persistent identifiers, etc.) and what information is being collected.
5. Operators must obtain "verifiable parental consent"<sup>4</sup> before they collect personal information (such as email addresses, screen names associated with other personal information, phone numbers, addresses or photographs) that will be publicly posted, thereby enabling others to communicate directly with the child online or offline, or when the child will be otherwise able to communicate directly with others.
6. For activities that involve public posting, operators should encourage children not to use their full names or screen names that correspond with their email address, but choose an alias (e.g., "Bookworm," "Skater," etc.) or use first name, nickname, initials, etc.

<sup>3</sup> Collects or collection means the gathering of any personal information from a child by any means, including but not limited to:

(a) Requesting, prompting, or encouraging a child to submit personal information online; (b) Enabling a child to make personal information publicly available in identifiable form. An operator shall not be considered to have collected personal information under this paragraph if it takes reasonable measures to delete all or virtually all personal information from a child's postings before they are made public and also to delete such information from its records; or (c) Passive tracking of a child online.

<sup>4</sup> The definition of "verifiable parental consent" in the Children's Online Privacy Protection Rule applies. See 16 CFR § 312.5.

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7. Operators should not require a child to disclose more personal information than is reasonably necessary to participate in the online activity (e.g., play a game, enter a contest, etc.).
8. Operators must obtain “verifiable parental consent” before they collect, use or disclose personal information to third parties,<sup>5</sup> except those who provide support for the internal operation of the website or online service and who do not use or disclose such information for any other purpose.<sup>6</sup>
9. When an operator collects personal information only for its internal use and there is no disclosure of the information to a third party, the company may obtain parental consent through the use of email, coupled with some additional steps to provide assurance that the person providing the consent is the parent.
10. Exceptions to prior parental consent:
  - a. Where the sole purpose of collecting the name or online contact information of the parent is to provide notice and obtain parental consent;
  - b. Where the purpose of collecting a parent’s online contact information is to provide voluntary notice to, and subsequently update the parent about, the child’s participation in a website or online service that does not otherwise collect, use or disclose children’s personal information;
  - c. Where the sole purpose of collecting online contact information from a child is to respond directly on a one-time basis to a specific request from the child and the information is not used to re-contact the child or for any other purpose, is not disclosed, and is deleted by the operator from its records promptly after responding to the child’s request;
  - d. Where an operator collects and retains online contact information to be able to respond directly more than once to a child’s specific request (such as an email newsletter or contest) but will not use the information for any other purpose, the operator must directly notify the parent of the nature and intended uses of the information collected, and permit access to the information sufficient to allow a parent to remove or correct the information;

5 Third party means any person who is not:

- (a) An operator with respect to the collection or maintenance of personal information on the website or online service; or
- (b) A person who provides support for the internal operations of the website or online service and who does not use or disclose information protected under this part for any other purpose.

6 Support for the internal operations of the website or online service means those activities necessary to:

- (a) maintain or analyze the functioning of the website or online service;
- (b) perform network communications;
- (c) authenticate users of, or personalize the content on, the website or online service;
- (d) serve contextual advertising on the website or online service or cap the frequency of advertising;
- (e) protect the security or integrity of the user, website, or online service;
- (f) ensure legal or regulatory compliance; or
- (g) fulfill a request of a child as permitted by these guidelines;

so long as the information collected for the activities listed in paragraphs (a)-(g) is not used or disclosed to contact a specific individual, including through behavioral advertising, to amass a profile on a specific individual, or for any other purpose. Support for the internal operations also includes, e.g.: intellectual property protection, payment and delivery functions, spam protection, optimization, statistical reporting, or de-bugging. See 78 Fed. Reg. 3981 (Jan. 17, 2013)

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- e. Where the purpose of collecting a child's and a parent's name and online contact information is to protect the safety of a child, and where such information is not used or disclosed for any purpose unrelated to the child's safety;
  - f. Where the purpose of collecting a child's name and online contact information is to:
    - i. protect the security or integrity of its website or online service;
    - ii. take precautions against liability;
    - iii. respond to judicial process;
    - iv. to the extent permitted under other provisions of law, to provide information to law enforcement agencies or for an investigation on a matter related to public safety, where such information is not used for any other purpose;
  - g. Where an operator collects a persistent identifier and no other personal information and such identifier is used for the sole purpose of providing support for the internal operations of the website or online service;
  - h. Where an operator covered under paragraph two (2) of the definition of website or online service directed to children in §312.2 of the COPPA Rule collects a persistent identifier and no other personal information from a user who affirmatively interacts with the operator and whose previous registration with that operator indicates that such user is not a child.
11. To respect the privacy of parents, operators should not maintain in retrievable form information collected and used for the sole purpose of obtaining verifiable parental consent or providing notice to parents, if consent is not obtained after a reasonable time.
  12. If an operator communicates with a child by email, there should be an opportunity with each mailing for the child or parent to choose by return email or hyperlink to discontinue receiving mailings.

### b. Age-Screening/Hyperlinks

1. A website or online service that is directed to children under the criteria set forth in the definition of websites or online services directed to children in Section 312.2 (a) of the COPPA Rule, but that does not target children as its primary audience, shall not be deemed directed to children if it: i) does not collect personal information from any visitor prior to collecting age information; and (ii) prevents the collection, use, or disclosure of personal information from visitors who identify themselves as under age 13 without first complying with the notice and parental consent provision of the COPPA Rule.
2. Operators should ask screening questions in a neutral manner so as to discourage inaccurate answers from children trying to avoid parental permission requirements.

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3. Age-screening mechanisms should be used in conjunction with technology, *e.g.*, a session cookie, to help prevent underage children from going back and changing their age to circumvent age-screening.
4. A website or online service shall not be deemed directed to children solely because it refers or links to a commercial website or online service directed to children by using information location tools, including a directory, index, reference, pointer, or hypertext link. Similarly, a website directed to children shall not be deemed in violation of these Guidelines by linking to a general audience website.