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Broadening COPPA In Light Of New Technologies

Law360, New York (April 07, 2010) -- The Federal Trade Commission is seeking a new round of comments on its Children's Online Privacy Protection Rule, which implements the Children's Online Privacy Protection Act. The request for comments suggests the commission's intent to modify the rule, which was first issued in 2000.

COPPA imposes requirements on operators of Web sites or online services that are aimed at children under 13 years of age, or that knowingly collect "personal information" from children under 13. The primary goal of the rule is to give parents control over what information is collected from their children online and how such information can be used.

COPPA and the COPPR apply to individually identifiable information about a child that is collected online, such as full name, home address, e-mail address, telephone number or any other information that would allow someone to identify or contact the child.

The rule requires that online operators notify parents and get their permission before collecting, using or disclosing personal information from children. Operators must also keep the information they collect from children secure and may not require children to turn over any more personal information than is reasonably necessary to participate in activities on their Web sites.

The FTC conducted a congressionally mandated review of the rule in 2005 and decided to retain the rule as it was adopted in 2000. However, changes in the online environment in the last five years — in particular, children's uses of mobile technologies to access the Internet and dramatically increased use of social networking sites — have led the FTC to re-examine the rule.

While the FTC's notice poses several standard regulatory review questions — such as whether the rule has benefited children, parents, or other consumers and the aggregate costs and benefits — the FTC focuses on whether certain aspects of the rule should be modified to keep pace with the way children access the Internet in 2010.

Enforcement Actions to Date

The FTC already has brought a number of enforcement actions against companies for COPPR violations. For instance, in late 2009 the FTC issued a $250,000 civil penalty against Iconix (owner of several popular brands that appeal to children, including Candie's and OP).

Iconix collected personal information from children, such as full name, e-mail address, and in some cases mailing address, gender, phone numbers and date of birth, in order to receive brand updates, enter sweepstakes contests and participate in interactive brand-awareness campaigns and other Web site features, without first notifying their parents or obtaining parental consent.

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In another action, the FTC issued a $1 million penalty against Sony Music for collecting personal information of over 30,000 children without obtaining prior parental consent. In that case, the FTC made clear that “sites with social networking features, like any Web sites, need to get parental consent before collecting kids’ personal information." The FTC also imposed compliance, reporting, and record-keeping provisions.

Specific Issues for Review

Overall, the FTC seeks comment on the implications for COPPA enforcement raised by technologies such as mobile communications, interactive television, interactive gaming or other similar interactive media.

The FTC is specifically exploring whether its definition of "personal information" covered by COPPA should be expanded to include information such as screen names, passwords, persistent IP addresses, mobile geolocation information and information collected in connection with online behavioral advertising.

The FTC is taking a look at whether certain information not currently thought of as "personal information" may nevertheless be used to identify and contact children. This signals a shift from the current rule, which focuses on "traditional" personal information such as a child's name, phone number and address.

The FTC also seeks comment in several other areas, including whether its current definitions of terms such as "collects or collection" and "disclosure" should be modified to take into account new online technologies and Internet activities — such as centralized authentication methods (e.g., OpenId, which allows users to use an existing account to sign in to multiple Web sites without needing to create new passwords).

The FTC's notice also inquires whether the existing parental consent requirements have been effective in protecting children's online privacy and safety. Further, the FTC queries whether the currently enumerated methods to obtain parental consent should be removed from the rule and whether there are other technological methods to obtain verifiable parental consent that should be added to the rule.

In addition, the agency is examining whether the process for FTC approval of self-regulatory guidelines (also known as "safe harbor programs") has enhanced compliance and whether the FTC should modify its criteria for approval and oversight of the guidelines.

Impacts

FTC changes to the rule to incorporate new technologies could impose significant new restrictions on how companies interact with children. The expansion of the definition of "personal information" covered by the rule would require additional compliance measures on organizations that collect information from children not presently covered, such as persistent IP addresses.

Future changes in the rule would require updates to privacy policies and additional disclaimers for those companies that wish to continue to collect such information. Companies will be required to be extra vigilant when it comes to collecting personal information; those that do not wish to collect any information from children will need to make that abundantly clear, through their privacy policies and careful review of their information collection modules.

Conclusion

The FTC already has demonstrated through its enforcement actions that it takes COPPR violations seriously and will impose significant penalties. By exploring the impact of new technologies on information collection from children, the FTC is signaling that it will remain vigilant as services evolve.

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Even those companies that do not seek to collect information from children should review their policies and information collection procedures to determine if children may be encouraged to provide personal information to participate in a site's activities. Organizations should also consider implementing specific means of discouraging children from providing information if children's participation is not sought.

The FTC's new proceeding will likely expand COPPR coverage beyond the collection of obvious personal information such as name, address, and date of birth. Companies should review their information collection practices with their IT, privacy, security and legal advisers and monitor (and, if desired, participate in) the FTC's ongoing proceeding.

Comments are due by June 30, 2010. The FTC will hold a public roundtable on the rule review June 2, 2010, in Washington. FTC staff predict the review of the submitted comments and an examination of potential rule changes will extend into 2011.

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