

Appendix II

Information Necessary to Comply with the Notice Portion of Both the Children's Online Privacy Protection Act (COPPA) and the Federal Trade Commission COPPA Rule that Implements the Act

The following is a set of policy requirements, which marketers can use to help them comply with the notice portion of both the Children's Online Privacy Protection Act (COPPA) and the Federal Trade Commission COPPA Rule that implements the Act.

These "guidelines" have been taken from The DMA/IA/FTC COPPA Compliance Manual, which should help you develop completely and correctly, your privacy policy. Nevertheless, your attorney should review your final work product for strict adherence to the law and rule. Readers who would like to utilize an automated COPPA privacy policy generator, can take advantage of such a tool, as listed on The Direct Marketing Association's (The DMA) Web site at, www.the-dma.org.

The following guidelines do not provide users with the notices required under the Direct Notice to Parents section of the COPPA regulations. Specifically, these guidelines do not address the issue of obtaining Verifiable Parental Consent. Please read this section carefully to ensure that your company is operating within the requirements of the FTC's regulations. Further information will need to be compiled and appended to your privacy policy to fully comply with the COPPA regulation.

COPPA Guidelines for Privacy Policy Development

Your Privacy Policy Statement Must Disclose...

The name and contact information (address, telephone number and email address) of all operators collecting or maintaining children's personal information through the Web site or online service. If more than one operator is collecting information at the site, the site may select and provide contact information for only one operator who will respond to all inquiries from parents about the site's privacy policies. Still, the names of all the operators must be listed in the notice.

Who Must Comply

If you operate a commercial Web site or an online service directed to children under 13 that collects personal information from children or if you operate a general audience Web site and have actual knowledge that you are collecting personal information from children, you must comply with the Children's Online Privacy Protection Act.

To determine whether a Web site is directed to children, the FTC considers several factors, including the subject matter; visual or audio content; the age of models on the site; language; whether advertising on the Web site is directed to children; information

regarding the age of the actual or intended audience; and whether a site uses animated characters or other child-oriented features.

To determine whether an entity is an “operator” with respect to information collected at a site, the FTC will consider who owns and controls the information; who pays for the collection and maintenance of the information; what the pre-existing contractual relationships are in connection with the information; and what role the Web site plays in collecting or maintaining the information.

Your Privacy Policy Statement Must Disclose...

1. That the operator may not require a child to disclose more information than is reasonably necessary to participate in an activity as a condition of participation.
2. The kinds of personal information collected from children, (for example, name, address, e-mail address, hobbies, etc.) and how the information is collected -- directly from the child or passively, say, through cookies.

E-mail address alone can, in some circumstances, be collected without verifiable parental consent if the site implements certain steps to protect children's privacy specified in COPPA. See 47 C.F.R. § 312.5(c). For example, no consent is required for the collection of a child's e-mail address to respond to a one-time request by a child provided that this information is not used beyond the scope of the request and is subsequently deleted. In addition, an operator can collect e-mail address information to respond to a child's specific request that involves multiple contacts (e.g., to enter a child into a contest or to send a child an online newsletter) as long as the information is not used for another purposes and the parent is given notice of these practices and an opportunity to prevent further use and maintenance of the information.

Otherwise, collection of any personal information from children other than e-mail address alone usually requires the site to implement a mechanism to obtain prior verifiable parental consent, regardless of whether this information pertains to the children, their parents, or others.

3. How the operator uses the personal information. For example, is it for marketing back to the child? Notifying contest winners? Allowing the child to make the information publicly available through a chat room?
4. That the parent has the option to agree to the collection and use of the child's information without consenting to the disclosure of the information to third parties.
5. Whether the operator discloses information collected from children to third parties. If so, the operator also must disclose the kinds of businesses in which the third parties are engaged; the general purposes for which the information is used;

and whether the third parties have agreed to maintain the confidentiality and security of the information.

If the operator wishes to disclose to third parties information collected from children, the operator must obtain the parent's verifiable consent to such sharing of information.

6. Whether the third parties have agreed to maintain the confidentiality and security of the information.
7. That the parent can review the child's personal information, ask to have it deleted and refuse to allow any further collection or use of the child's information. The notice also must state the procedures for the parent to follow.
8. The name and contact information (address, telephone number and email address) of all operators collecting or maintaining children's personal information through the Web site or online service. If more than one operator is collecting information at the site, the site may select and provide contact information for only one operator who will respond to all inquiries from parents about the site's privacy policies. Still, the names of all the operators must be listed in the notice.

When you review your completed privacy statement, you should ensure that the representations made in the statement accurately reflect your information practices. You also should match the particular types of information collected with the uses made of this information.

Please remember that in addition to posting a privacy notice, COPPA requires Web site operators to implement verifiable parental consent and access mechanisms. For example, unless your practices fall within an exception, you must establish a means by which parents can provide verifiable parental consent before collecting, using or disclosing a child's personal information. In addition, you must provide parents with a means of reviewing and deleting their children's information.

In addition, links to the privacy notice must be available in a clear and prominent place and manner on the home page and at each place where the site collects personal information from children. The notice should be clearly labeled as a notice of the site's information practices with respect to children.

Source: The Direct Marketing Association (DMA), www.the-dma.org, April, 2002. Used with permission.