



DOS AND DON'TS
FOR COMPLIANCE WITH COPPA
CHILDREN'S ONLINE PRIVACY PROTECTION ACT

Second Edition | May 2014



Toy Industry Association, Inc.

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Questions and comments on this guidance document can be directed to info@toyassociation.org

Dos and Don'ts for Compliance with COPPA
Children's Online Privacy Protection Act

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Prepared for the Toy Industry Association by
KELLER AND HECKMAN LLP
1001 G Street N.W. | Washington, D.C. 2000

Approved by
TIA Responsible Marketing to Children Committee

Introduction

This *COPPA Compliance Do's and Don'ts* (Second Edition | May 2014) amends the checklist released by the Toy Industry Association (“TIA”) on May 13, 2013 and provides additional guidance to TIA members for complying with the Children’s Online Privacy Protection Act (“COPPA”) and the final COPPA Rule issued by the Federal Trade Commission (“FTC” or “Commission”) based on developments that have occurred since the final COPPA Rule took effect on July 1, 2013.

The revisions to the COPPA Rule impose new and expanded burdens for operators of websites or online services that are directed to kids. Following TIA’s release of the initial *COPPA Compliance Do's and Don'ts* checklist in April 2014, the Commission issued revised Frequently Asked Questions (“FAQs”) entitled [“Complying With COPPA: Frequently Asked Questions.”](#) Advocacy groups, state Attorneys General, and FTC staff have been monitoring websites for instances of non-compliance with COPPA. Last November, the New Jersey Attorney General settled alleged COPPA violations involving an app developer, Dokogeo, Inc., and rejected the company’s claims that the app was not directed to children (in addition to adults).¹ In December, the Center for Digital Democracy (“CDD”) filed two complaints with the FTC requesting investigations of alleged violations of COPPA’s notice and consent requirements by Marvel Entertainment and Sanrio Digital.² At the state level, California has a variety of privacy laws that affect toy companies, including a new “eraser button” law (DB 568) that is scheduled to take effect in January 2015. That law permits children and adolescents to remove Internet and social media postings and prohibits the advertising of products like alcohol, tobacco, and guns on websites directed to minors.

These developments and new obligations under the COPPA Rule and FAQs highlight the need for TIA member companies to carefully review their websites and online services to ensure compliance with COPPA and other applicable laws. This *Updated COPPA Compliance Do's and Don'ts* offers a general framework that TIA member companies can use to examine and evaluate whether they are in compliance with the basic requirements of COPPA and the COPPA Rule. This checklist covers the following topics: COPPA coverage considerations; collection of personal information; direct and online notices; kids and social media; verifiable parental consent; service provider and third party considerations; confidentiality, security, and data retention; and enforcement and compliance. The checklist also covers some general considerations that are important for TIA members engaged in advertising to children.

Because of the differences and varying levels of complexity in each website or online service, TIA members should consult with their legal department on specific questions.

¹ See Office of the New Jersey Attorney General, *Acting Attorney General Announces Settlement Resolving Allegations That Maker of “Dokobots” App Violated Children’s Online Privacy Rules* (Nov. 22, 2013), <http://nj.gov/oag/newsreleases13/pr20131122a.html>.

² See CDD, *Marvelkids Website and Hello Kitty Carnival Mobile App Charged with Violations of the Children’s Online Privacy Protection Act* (Dec. 18, 2013), <http://www.democraticmedia.org/marvelkids-website-and-hello-kitty-carnival-mobile-app-charged-violations-children%E2%80%99s-online-privacy>.

COPPA Coverage Considerations

- **DO** ensure that all websites or online services, or portions thereof, directed to children under 13 comply with COPPA when collecting or using any personal information from children.
 - **Remember:** Online services broadly cover any service available over the Internet or that connects to the Internet or a wide-area network. This includes mobile apps, services that allow users to play network-connected games, Internet-enabled location-based services, and coupon texting services, among others.
 - **Remember:** A “kids’ corner” or “kids’ area” at a general audience site is considered directed to children.
 - **Remember:** When engaging in any type of text messaging initiative, while a mobile phone number is not “online contact information,” a phone number is personal information under COPPA. If any component of a text message promotion does involve the online collection of personal information, then it is covered by COPPA. This would occur, for example, if the message encourages a child to contact a website. Also keep in mind that the technology used to send mobile messages may change in a manner that could involve COPPA-covered activities.
- **DO** determine whether your website, app, or other online service is directed to children, either primarily or secondarily, by considering the subject matter, visual content, use of animated characters, child-oriented activities and incentives, language, music or other audio content, use of child models or celebrities that appeal to kids, and target audience or demographic composition.
 - **Note:** Use of animated characters alone does not automatically indicate that a website or online service is directed to children.
 - **Note:** If you advertise a website or app in child-directed venues (*e.g.*, Nickelodeon), or age-grade an app or online game indicating it is for kids (*e.g.*, “4+”), it will be an important indicator of whether the website or app is deemed directed to children.
 - **Remember:** Your determination that a website is not child-directed may be challenged. In a recent settlement with the app developer Dokogeo, Inc. alleging COPPA violations, the New Jersey Attorney General argued that the app was directed to children (in addition to adults), citing the use of animated characters, a storyline that appealed to children, the 4+ rating, and the lack of written notice stating that the app was only intended for users older than 13.
 - **Remember:** A toy company’s own online stores, sites for adult collectors, and sites targeting teens will likely include elements that appeal to children. Retain the basis for your determination that your site is targeted to teens or adults, including demographic data on traffic at such sites, in case of questions.
- **DO** generally treat all visitors as children under 13 if your website or online service is *primarily* directed to children under 13.
 - **Exception:** A “parents’ place” at a kids’ site is considered directed to adults.

- **DO** comply with the COPPA Rule at a general audience site when you obtain *actual knowledge* that you are collecting personal information directly from children under 13.
 - Note: TIA believes that collector and e-commerce sites remain intended for general audiences, as has historically been the case. This is key to online behavioral advertising and other activities that involve information collection. The FTC FAQs do not expressly confirm this point; however, staff has indicated they agree in oral discussions.
- **DO** implement a *neutral* age screen at any website or online service secondarily directed to children prior to collecting *any* personal information from *any* visitor.
 - Note: An operator of a website or online service that is secondarily directed to children *may not block* children from participating in the website or online service per the FTC’s FAQs.
- **DON’T** use “tip-off” language at the age screen, like “You must be at least 13 to register.”
- **DO** adopt technology, such as a session or timed cookie, to prevent a child from hitting the back button and changing his or her age after age-screening.
- **DO** remember that the website operator is *strictly liable* for all information collection and use that occurs at a site that is subject to COPPA, including information collection by agents, service providers, and third party ad networks.
- **DON’T** try to entice a child to divulge personal information by the prospect of a special game, prize, or other offer.

Collection of Personal Information

- **DO** remember that “personal information” (“PI”) is broadly defined.
 - **Note:** PI includes first and last name; e-mail address or other online contact information; screen or user name, where it functions in the same manner as online contact information; phone number; persistent identifiers, like IP addresses, mobile device identifiers, customer IDs held in a cookie, etc.; precise geolocation information; a photograph, video, or audio file containing a child’s image or voice (even if not linked to a name or e-mail address); and all information combined with or linked to any other personal information.
- **DON’T** collect personal information unless it is required for a legitimate business purpose.
- **DON’T** permit an e-mail address or other similar identifier to be used as the screen or user name.
- **DON’T** ask for more information than is necessary to allow a child to participate in the relevant activity or offering at your website or online service.
- **DON’T** permit children to type information in open text fields (for example, in send a friend e-mails).
- **DO** identify:
 - What, if any, personal information is collected on your website or online service, including information collected by agents, service providers, or third parties.
 - What, if any, non-personal information (*e.g.*, gender, age, birthdate, zip code) is collected on your website or online service.
 - Whether personal and non-personal information is combined.
 - From whom information is collected.
 - Who collects the information (*e.g.*, TIA member company, a service provider, or other third party).
 - How the information is used.
 - With whom any information is shared.
- **DON’T** keep information for longer than necessary.

Direct and Online Notices

- **DO** post a written privacy policy that complies with COPPA.
- **DO** identify all operators collecting data at your website or online service in your posted privacy policy, and include the name and address of one operator who assumes responsibility for data collection.
- **DO** post a direct link to the privacy policy or children’s portion of the privacy policy on the home or landing page or screen of the website or online service (including mobile apps), and at each area of the website or online service where personal information is collected.
 - Note: Links to a general privacy policy that includes the children’s privacy policy are acceptable if it is clearly disclosed at the top of the privacy policy that there is a specific section discussing the operator’s information practices with regard to children. Links at footers may not comply if visitors must engage in lengthy scrolling to reach the link to the privacy policy.
- **DO** disclose in the privacy policy:
 - What personal and non-personal data is collected.
 - Who collects or maintains the personal and non-personal information (*e.g.*, TIA member company, a service provider, promotional partner, analytics company, ad network, or other third party).
 - How the website or online service uses the personal information.
 - With whom the website or online service shares the personal information.
 - Whether a child can make personal information publicly available.
 - What the website or online service disclosure practices are for such information.
 - How a parent can review or have deleted a child’s personal information or refuse to permit further collection or use.
- **DO** provide clear and conspicuous disclosures.
- **DON’T** make retroactive, material changes to privacy practices and policies without notifying parents and obtaining consent.
- **DO** provide direct notices to parents of your practices regarding collection, use, or disclosure of personal information from children where required.
 - Note: The content of the direct notice depends upon the collection and use practices.

Kids and Social Media

- **DON'T** allow children to post personal information unless it is stripped, screened, and filtered first; otherwise you must obtain verifiable parental consent.
- **DO** use filtering software in any areas where kids are allowed to post and take down postings that inadvertently get through the screening process and disclose personal information.
- **DON'T** permit children to upload photos, videos, or audio files featuring children's images or voices absent verifiable parental consent.
 - Remember: Images of toys, pets, and nature without pictures of kids can be uploaded.
- **DON'T** allow children to fill in free text fields in send-a-friend messages, and make sure such messages come from the website operator, not the friend.
- **DO** remember that personal information, including images or videos of children, posted in a parents' or general audience site or area is assumed to be posted by an adult absent actual knowledge that it was uploaded by a child.
 - Note: Actual knowledge may arise in situations, for example, where a picture is posted of a girl with a doll, which includes a caption that says "Here I am with my favorite doll."

Verifiable Parental Consent

- **DO** determine whether your information collection is subject to a recognized exception that allows you to collect information for limited purposes without parental notice or consent.
 - **Exceptions:** These include, but are not limited to, collecting an IP address (and no other “personal information”) to support the internal operations of a website; collecting analytics data from persistent identifiers (and no other “personal information”) to support the internal operations of a website; collecting limited information to protect a child’s safety or the integrity of the website; collecting and promptly deleting a child’s e-mail address to respond on a one-time basis to a child’s request.
 - **Note:** The FTC FAQs clarify that non-personal information (like a user name and password) or personal information collected pursuant to other exceptions or obtained with verifiable parental consent can be linked to the IP address to the extent that the information is used to support the internal operations of the website. However, the FTC staff will likely take a narrow view of permitted personalization in the context of this exception.
- **DO** obtain verifiable parental consent prior to collecting, using, or disclosing the personal information from a child, including consent to any material change in the privacy practices and policies.
- **DO** use one of the pre-approved consent methods provided by the FTC.
 - **Remember:** E-mail plus may be used only where limited information (child’s first name and child’s and parent’s e-mail address) is collected for purposes of internal marketing.
 - **Note:** Approved methods of parental consent include collecting a credit or debit card in connection with a transaction; cross-checking a parent’s government-issued ID (such as social security number or driver’s license) against an available database and deleting the sensitive information promptly after verification; mail, fax, or scanned copies of consent forms; manned toll-free numbers; video-conferencing with the adult; etc.
- **DO** remember that you may ask a child to provide a parent’s e-mail address to notify the parent that the child is engaged in activities at the site.
- **DO** allow parents to opt-out or limit the collection, use, and disclosure of their children’s personal information.
- **DO** allow parents to access or review personal information about their child that is collected via the website or online service and/or have the information deleted.
- **DON’T** allow any data to be collected or used for online behavioral advertising on websites directed to kids without first providing notice and obtaining parental consent.

Service Provider and Third Party Considerations

- **DO** understand what personal and non-personal information is collected by any service provider or third party at your website or online service.
- **DO** require that all service providers and third parties comply with COPPA (and the Children’s Advertising Review Unit (“CARU”) guidelines).
- **DON’T** allow third party plug-ins, like Facebook and Twitter, on websites directed to children if *any* personal information is collected.
 - **Remember:** Sometimes data is collected when the visitor merely hovers over the plug-in.
 - **Remember:** The COPPA Rule defines “collection” to include requesting, prompting, or encouraging a child to submit personal information online, and enabling a child to make personal information publicly available in identifiable form. In addition, “disclosure” includes making a child’s personal information publicly available in identifiable form through an e-mail service or other means, such as a social network. You must get verifiable parental consent before enabling children to share personal information in this manner, even through third parties on your app (unless an exception applies).
- **DO** obtain assurances from all service providers and third parties concerning privacy and security compliance.
- **DO** remember that support for the internal operations of the website may apply to you and to a service provider, *e.g.*, collection of an IP address by your site and by Adobe to support flash-enabled games.

Confidentiality, Security, and Data Retention

- **DO** use, and require others to use, reasonable security measures to protect personal information in transit and at rest.
- **DO** take reasonable steps to release children’s personal information only to third parties that are capable of maintaining confidentiality, security, and integrity of such information.
- **DON’T** retain children’s personal information longer than is reasonably necessary to fulfill the purpose for which the information was collected.
- **DO** securely dispose of, or de-identify, information when it is no longer necessary.
- **DO** properly delete all personal information by taking reasonable measures to protect against unauthorized access to, or use of, the personal information in connection with its deletion.

Enforcement and Compliance

- **DO** remember that a new team at the FTC will be in charge of enforcement and compliance.
- **DO** remember that state Attorneys General (“AGs”) have enforcement authority under COPPA.
 - **Note:** Some AGs (such as in California, Maryland, and New York) have created Internet branches to address privacy, data security, and related online and mobile consumer protection questions, and privacy is a high priority for the Maryland AG, who is currently head of the National Association of Attorneys General (“NAAG”).
- **DO** remember that the CARU staff will also be reviewing COPPA compliance activities.
- **DO** remember that the Council of Better Business Bureaus (“CBBB”) will evaluate compliance of websites and network advertisers with online behavioral advertising self-regulatory standards.
- **DON'T** keep information collected from children prior to the effective date of the new rules (July 1, 2013) or combine it with other information collected from children after that date, unless you have confirmed that the collection and use are consistent with the **new rules**.
- **DO** remember that support for the internal operations of the website may apply to you and to a service provider, *e.g.*, collection of an IP address by your site and by Adobe to support flash-enabled games.

Additional General Considerations: Advertising to Children

- **DO** review and adhere to the CARU Guidelines when advertising to children.
- **DON'T** blur the lines between content and advertisements. Always be sure that the target audience will be able to identify ads, if any, as advertisements.
- **DON'T** allow links in a kid-directed site or app to sites or areas not intended for children or not compliant with COPPA.
- **DO** ensure that kid-directed sweepstakes and contests adhere to relevant state law requirements, that “short rules” and advertising include material terms, and that appropriate disclosures of the odds of winning that are understandable to kids are provided.
- **DO** assure that products are depicted in ways they can actually be used by children, and that children clearly understand what is included in a purchase.
- **DON'T** allow in-app purchases or any other mobile payments to be made through the app without obtaining verifiable parental consent, establishing a cap on charges, or implementing other mechanisms to limit the incurred charges and assure that parents are aware of the fees.
- **DO** include a privacy policy explaining your privacy practices in mobile applications.



1115 Broadway | Suite 400 | New York, NY 10010

T: 212.675.1141 | F: 212.633.1429

info@toyassociation.org | www.toyassociation.org