Children Data Protection Report
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Introduction

Today, consumers are faced with unprecedented growth in technology. This growth facilitates impactful innovations that seep into the everyday lives of its users. As we (consumers) allow technology to integrate into our lives, we allow companies to learn more about us than ever before. This ability to monitor our behavior on the internet, and by extrapolation our lives, raises a myriad of concerns around the lack of privacy and security. One particularly vulnerable user demographic is children. There are about 74 million estimated children living in the United States, with 60% having access to the internet (“Home”).

The reality is that the Children Online Privacy Protection Act does not protect children. The main issues with the policy are that parental consent is not properly collected by operators and when companies are punished it doesn’t matter. Back in 2004, Universal Music Group was fined $400,000 for COPPA violations in connection with a 13-year-old idol (“Children’s”). This number seems like a lot, but it turns out that Universal made €4.99 billion in revenue in 2004 (“Universal”). That $400,000 seems like nothing compared to over $5 million. Even recently, ByteDance, the owner of TikTok, was fined for FTC violations. They received the largest fine yet at $5.7 million in 2019 (“Children’s”). But once again, when we check the numbers it turns out that ByteDance allegedly made $2.5 billion in revenue in 2018 (Bloomberg.com). This fine was 0.228% of their revenue. Lastly, we talk about the issue of people not understanding COPPA and what it sets out to do. We mention some immediate steps we can take to help solve this issue.

I. Verifiable Parental Consent

The crux of COPPA relies on verifiable parental consent, giving parents control over the information websites collect on their children. An operator must make “reasonable” efforts to obtain verifiable parental consent, the amount of effort that the FTC deems reasonable depends on the availability of verification technology to the
operator ("Complying"). Currently, COPPA enacts a sliding scale standard; this convention determines the stringency of the mechanism used to verify consent. The idea behind the standard is to maintain a reasonable cost of verification to the website operators. For example, websites that use children’s data internally might require parental email confirmation. More rigorous verification, such as disclosure of credit card information, would be used in the context of the data being distrusted externally e.g., publically or to third parties ("FTC"). The statute introduces two concerns: the sliding scale does not necessarily account for the degree of exploitation of children’s data, and children could be distributing their personal information on websites not regulated under COPPA.

The importance of privacy derives not from the exposure of information, but from the exploitation of it. By basing the stringency of the mechanism on the scale of data sharing, it loses the original purpose of the law: to protect children from the consequences of sharing personal information online. The implementation of looser verification mechanisms leaves room for deception on the part of the user i.e., the children. For example, a parental email is easy to falsify, thereby giving a child access to the website without the knowledge of their parent. This then allows the website to generate data the user cannot control, or understand how to access, monitor, and delete. This freedom can turn the data against the user even if the handling is internal. To mitigate this concern, COPPA would benefit from basing their sliding scale system on both the use and distribution of data. To support the solution the FTC would need to rewrite the policy in COPPA, previous revisions occurred by reconvening a special committee composed of consumer watchdogs, internet experts, and parents. Since the FTC acts under the mandates from Congress, changing its policies would be easier than passing new legislation altogether. Once passed and enforced, research into changes in verification standards indicates the level of success. For instance, if the FTC observes an increase in the more stringent methods, the change in policy was a success.
The language of COPPA defines the law's scope to operators that are directed at children or have actual knowledge of children using their site. However, the definition of what it means to be “directed” towards children is vague (“Complying”). This caveat allows websites to evade the ill-defined policy through a simple click of a box. For instance, before engaging with the service, the site or app can simply ask the user to indicate they are above the age of 13. The implication of this is that children can easily access websites that collect personal information without the knowledge of their parents. In order to protect children online, the FTC needs to implement a policy that regulates children’s access to sites that collect personal information but lie outside the scope of COPPA.

One resolution is to require all websites that collect personal information to verify the age of the user. Verification could include signing up with an email account that previously verified the age of the user. Using this system alleviates an undue burden on small-scale operators and limits the ability for deception. However, all websites would require the infrastructure to verify other accounts or enable security for users that input their personal information. Additionally, the FTC would need to enact an entirely new policy. Passing new regulation is a cumbersome process that requires more resources than if the FTC were to modify an already existing policy. For example, the FTC would need to hire personnel to ensure the act was properly enforced. Once implemented, violations of the new policy indicates the level of success.

Another resolution is to eliminate the need for age brackets and implement data privacy standards for everyone. COPPA ensures transparency in the data collected on a child, consent from the user’s parent, and the right to erase any collected information (Warmund). Aspects such as data ownership and transparency allow COPPA to be easily compared to the General Data Protection Regulation, GDPR, implemented in the European Union. The GDPR ensures transparency between the operator and the user on what data is collected, why it is being collected, and for how long it will be used. The act also essentially allows users to own their data. Data subjects have the right to request a copy of their data and to have their data erased (Nadeau). Currently, the
United States has yet to implement any federal law that regulates the collection and use of personal data. Instead, it depends on individual states to pass such laws. While implementing a law similar to GDPR does not protect the exploitation of children’s data, it would at least provide parents the ability to find out what information operators have on their children, and the right to erase that data. Passing this policy would require an extensive amount of resources. Since there are currently no mandates from Congress to the FTC around the collection and use of personal data, Congress would need bipartisan support to enact a new mandate. A policy that affects corporations and the public to this degree would require extensive research and planning. If successful, the new law should reduce egregious violations of data rights outlined by the law.

II. Enforcement

Secondly, no matter the plan that we choose to implement to help protect children online, it needs to be enforced and violators must be punished. What good is it to have a policy if you have no way to properly execute it. A massive flaw with COPPA was the fine policy. It states that “operators who violate the Rule liable for civil penalties of up to $41,484 per violation” (“Complying”) This might have seemed like a lot of money back in 1998 when COPPA was first passed; however, that is not the case anymore. The proposed fix is similar to what the GDPR does; violators will be fined based on their yearly revenue from the last fiscal year, up to 4% for the most serious offenses. This approach creates an incentive in companies to actually follow the law. Without proper punishment, companies can do what they please in the name of profits.

Another option would be to create a task force specializing in children data violations. We have established that COPPA tried to determine what it meant to be a company directed at children. Thus, this task force could scrutinize these companies the most seeing as how they are the most likely candidates to abuse children’s data. This task force could also just be a branch within the FTC. This branch specifically audits companies aimed towards children to make sure their data is safe.

We have already mentioned the process of how to add to COPPA, so in this case, the FTC just needs to update the penalties of the policy. The old method was bad
because it tried to put a value on our data. We feel like this is impossible to do since data is so personal. There will also be internal changes made to the FTC if more attention is to be put on children data violations. We will then need money for these changes so budgets and taxes will need to be worked out, but the reward of data protection justifies a possible spike in taxes to maintain a safer internet.

This all sounds fine, but what is our end goal and how do we determine if we made it? The main problem we are trying to fix is the lack of punishment for COPPA violators, or better said the lack of fear compelling you to comply with the law. COPPA tried to be a helpful policy, but with no bite, it ultimately failed. Therefore, one obvious metric of success is the successful passing of a new policy that places stricter punishments on COPPA violators. Just having a new policy on the books is already a win for children’s data protection advocates.

Another success would be seeing companies getting fined by the new task force. Ideally, we would see a bunch of fines very rapidly following the creation of the task force. Then they would soon taper off as companies learned how to properly follow the new policy. We would then hopefully see the fines stop completely because all companies will by complying with the law. The issue of ever-changing technology makes it so that the fines may never end. Either way, both would be good outcomes.

III. Lack of Public Understanding of COPPA

Most of the conversations around COPPA focus on whether companies are actually following all the set regulations and whether the age should be increased to 18. However little attention is being brought to the effectiveness of COPPA and what it actually means to families. Currently, there is a large gap between the intentions of COPPA and how parents and their children understand and perceive COPPA’s implementation. This lack of the public’s understanding of the purpose of COPPA contributes to both parents, and children actively circumventing its laws and regulations. Even if the most secure age verification system was introduced, it would have little effect if parents are actively helping their children avoid the set restrictions.
In a study done by Dr. Danah Boyd, a Microsoft Researcher, it was found that 78% of parents surveyed help their children lie to Facebook about age in order to create an account. These parents admitted to helping their children circumvent the age restriction by teaching them that they needed to choose a birth year that would make them over 13. Across the board, parents and youth misinterpret the age requirements that emerged from the implementation of COPPA. Except for the most educated and technologically savvy, families are often completely unaware that these age restrictions have anything to do with privacy and data collection (Boyd).

Although the main intention of COPPA’s age requirement and verification is to protect children’s privacy and data, parents often times think these requirements are designed to protect the safety of their children. While many parents see social media sites like Facebook and Snapchat as inappropriate for their children, they are okay with letting their children use services like Messenger and Skype, regardless of the fact that they all have an age restriction of 13. These services not only provide parents and children with a means of communication, but they also allow communication with extended family. Communication with grandparents is the most commonly cited answer as to why parents allow their children under 13 to have access to these services. Since the age restriction is a safety precaution, parents are okay with creating accounts for their children since they believe that the value of family communication out weights the perceived safety issue. However, the issue of data privacy is completely ignored ("How").

If we want COPPA to actually be effective, we need to improve public education. Families need to understand the difference between privacy and safety and how COPPA is only designed to protect privacy. If parents continue to think the age restriction is for safety, COPPA will continue to inevitably fail. The government needs to do more to ensure that both parents and children receive effective education about COPPA. One resolution to increase public education is for the FTC to create a task force designated to educate both parents and children about data privacy as well as the role COPPA plays in its protection (Hersh). The task force would be responsible for
creating an easily understood and distributed curriculum that explains the basics of the
law and the main difference between privacy and safety. This curriculum can then be
used in public schools and can be required before a student gets internet access. This
curriculum can also be readily available either through online classes or classes offered
at public libraries so that parents have easy access. Since there is no way to force
parents to educate themselves, certain incentives can be used so that parents actually
use the curriculum. For example, a small economic incentive, like a tax break could be
award to parents that attend these internet privacy classes.

This obviously is not an easy resolution to execute. The first step would be to
create a policy that would mandate this education program and task force. This in and
of itself can be a quite long and arduous process. Once the task force and education
program are created, there needs to be an infrastructure set up to distribute the
information. This includes digital infrastructure to maintain the online classes and
websites as well as the need for qualified teachers to explain the curriculum to parents.
Class attendance can be used as a metric of success. The high attendance and
participation there is, the more likely parents and families will be informed on data
issues and COPPA.

The manpower and digital infrastructure could be quite expensive, but this is a
necessary expense to ensure that we have a well-educated public. This task force could
be repurposed to also spread general cybersecurity awareness to the public. This
resolution would not only help shed light on COPPA but will also help all digital citizens
understand how their data is being used and shared and how the policies that exist
affect their lives.

IV. Conclusion

People have always wanted to protect children online. COPPA tried to help but
with inadequate consent approval methods and punishments not being forceful enough,
it failed to help. We could clearly take hints from the GDPR and make websites start
requiring rigid age verification, possibly look to expand the target age group protected,
and fine companies based on revenue and not some predetermined amount in our
constantly changing world. First and foremost, however, we need to educate parents and consumers on the risks. Companies are able to get away with these things because the consumers are so ill-informed.

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