

ALERT

FTC Announces Upcoming COPPA Sweep of Online Content Uploaders Following YouTube Settlement

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On September 4, 2019, the FTC took major action under the Children’s Online Privacy Protection Rule (COPPA), adopting an aggressive posture toward online platforms and content creators. The FTC announced a major COPPA settlement with YouTube, coupled with a promised sweep of online content uploaders – which its order calls “channel owners” – for COPPA compliance. These actions and the FTC’s accompanying statements, signal a paradigm shift in enforcement for private companies that create, distribute and host material online. It also implicates current discussions of platform liability and Section 230 of the Communication Decency Act of 1996.

The FTC settlement, which included the New York Attorney General, requires YouTube to implement a system for content uploaders to designate whether content is child-directed under COPPA. The FTC stated that it will review the accuracy of those designations, as part of a broader policing of online platforms and content providers for COPPA compliance.

By way of background, COPPA requires that operators of websites or online services directed to children younger than 13, and other websites or online services that have actual knowledge that they are collecting personal information from a child younger than 13, to comply with certain obligations including parental notice and consent.

When a user uploads content to an online platform like YouTube, the platform often assigns a persistent identifier to users who view the content and collects information about what other content the user

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views for purposes of targeted advertising. This raises potential COPPA concerns because persistent identifiers are considered personal information covered under the COPPA Rule's parental notification and consent requirements.

Section I of the settlement order with YouTube requires the company to develop, implement, and maintain a system for channel owners to designate whether their content on the YouTube service is directed to children. The company must also provide a clear and conspicuous notice to channel owners that that their content may be subject to COPPA and that channel owners are obligated to designate such content as directed to children. A "channel owner" is broadly defined as anyone who uploads videos onto the service.

In his remarks, FTC Chairman Joseph Simons emphasized that the settlement was meant to send a message to content uploaders to ensure their compliance with COPPA, and noted that a sweep of content owners would be conducted after the settlement had been "effective for a period of time." An advance announcement of a sweep is unusual for the FTC, and must be taken seriously. If the FTC believes that some content is not being designated as child-directed and there is a potential COPPA violation, it can send extensive Civil Investigative Demands to companies, and potentially bring enforcement actions with fines in the many millions of dollars. State attorneys general also can investigate and bring suit, and have been increasingly active in COPPA enforcement.

Wiley Rein has extensive experience helping content owners, media, and technology companies with COPPA and other privacy compliance challenges. Our ranks include former FTC and state AG attorneys who have led cutting edge technology investigations, and our telecom, media and technology attorneys are well-versed in online data uses and marketing. We handle inquiries, investigations and enforcement actions brought by the FTC and state AGs, as well as other federal agencies. The authors can be contacted for further assistance.