

Youth Privacy

As we have seen so often in the past, U.S. law has not kept up with the pace of technology, and especially not in connection with children's privacy.

Until recently, the most well-known legislation protecting children's privacy was the Children's Online Privacy Act of 1998 (COPPA), revised in 2013. COPPA imposes certain requirements on operators of websites or online services directed to children under 13 years of age, and on operators of other websites or online services that have actual knowledge that they are collecting personal information online from a child under 13 years of age. Most notably, it requires verifiable parental consent for the collection or use of any personal information of children under 13 years of age. In 2023, the Federal Trade Commission proposed significant amendments to COPPA, broadening both the scope and several key definitions, and is now waiting for the comment period to close before publishing the final amendments.

Technology has advanced "light-years" since COPPA was enacted, and children are some of the most avid users of new technologies and on-line services. Unfortunately, some online platforms have been shown to have potentially negative effects on children – creating addictive use, encouraging destructive behaviors, promotion of sexual exploitation – and the list goes on. However, attempts to regulate the collection and use of their personal information in the United States have been fragmented and inconsistent. As Congress has failed to act, states have enacted their own legislation.

States that have acted have generally used two approaches (one or the other or both) in their legislation:

- Parental consent, or
- Age-appropriate design codes

Parental consent: Several states have passed legislation requiring parental consent before a minor accesses internet content, but even these states have used different requirements. Some states require actual parental consent. Utah requires social media companies to provide parents access to the account of a social media resident under the age of 18. Others ban the use of social media by minors under the age of 18 without parental consent.

Age-appropriate design codes: California has taken the lead in enacting its "Age-Appropriate Design Code Act," which essentially shifts the responsibility for protecting the personal information of children to companies offering online services. These statutes include requirements for data impact assessments, measures to estimate the age of users, settings tailored to specific ages, and limits on targeted advertising, profiling, location tracking and other practices that may intrude on children's privacy. Several states have proposed similar legislation but have been unsuccessful so far.

And now, Florida!

Florida has taken what is generally considered to be an aggressive approach to protecting children's privacy online, placing the responsibility squarely on companies providing online services. In 2023, the Florida legislature enacted two pieces of legislation that defined the responsibilities of online platforms processing the personal information of children:

Student Online Personal Information Protection Act (SB 662): This statute limits the collection, use, and disclosure of student data by the operators of websites, online services, and apps used primarily for or designed and marketed for K-12 school purposes. It covers student personally identifiable information provided to the operator when a student is using the service.

Students' personal identifying information is defined as:

- First and last name;
- Phone number, email or home address, or other information allowing physical or online contact;
- Social Security number;
- Student identifier;
- Biometric or geolocation information;
- Voice recording, text messages, documents, photos, or search activity;
- Student educational, disciplinary, performance, assessment, criminal, health, juvenile dependency, food purchase, or special education records; and
- Socioeconomic, political, disability, or religious information.

Operators are prohibited from the following activities:

1. Engaging in targeted advertising using information collected through the use of their products or services for K-12 school purposes;
2. Using covered information to build a profile of a student except for K-12 school purposes;
3. Sharing, selling, or renting a student's covered information;
4. Disclosing student's covered information, except as provided in the statute.

Digital Bill of Rights (SB 262): This statute establishes a digital bill of rights for Floridians and includes a section containing requirements for protecting children on online platforms. It also includes a list of the activities that online platforms are prohibited from engaging in using children's personal information:

1. Processing the personal information of any child in such a way that it may result in substantial harm or privacy risk to children;
2. Profiling a child;

3. Collecting or using a child's personal information that is not necessary to provide an online service;
4. Using a child's personal information for any reason other than the reason it was collected;
5. Collecting, selling, or sharing precise geolocation data of a child unless such collection is strictly necessary to perform the service;
6. Collecting any precise geolocation data of a child without providing an obvious sign that such data is being collected;
7. Using dark patterns to encourage children to provide personal information beyond what would reasonably be expected to be provided for the online service;
8. Using any personal information collected to estimate age or age range for any other purpose or retaining that personal information longer than necessary to estimate age.

In the next few years, we anticipate there will be many, many more state statutes and regulations. Those outside of Florida will affect Floridians doing business with individuals and entities in other states, and at a university, that may have a substantial impact.

Unless, of course, we finally see Federal regulation...

Please feel free to contact the Privacy Office for further information about these children's privacy statutes and regulations.

Contact information: privacy@ufl.edu, 352.294.8720