Don’t Mess with Kids’ Data

Understanding the Sensitivities, Legal Framework and Best Practice Solutions for Protecting Children’s Privacy Online

Wednesday, 19 November 2014
IAPP Data Protection Congress, Brussels
Agenda – Don’t Mess With Kids Data

• Introduction & Case Study
  Sue Gold, Consultant, Osborne Clarke

• Overview of Regulatory Picture
  US - Joanne Furtsch, Director of Product Policy, TRUSTe
  EU - Sue Gold, Consultant, Osborne Clarke

• Insight into Operational Challenges
  Max Sørensen, Corporate Counsel, Data Privacy Officer, LEGO
  Katie Ratte, Assistant General Counsel, Privacy, Disney

• Q&A
Case Study
Children's privacy on-line

Sue Gold
19 November 2014
MBF Inc is introducing a new online game which is aimed at pet lovers.

The game will be called "Annie and Friends" and is aimed at dog lovers.

Annie is a dog and the game involves a number of challenges including training the dog and if tasks are completed successfully the player is awarded on-line currency as credit for pet food or credits towards a subscription to the full game or Apps.

No charge for playing the first level of the game but there is a fee for the full subscription.

Within the game Apps can be obtained and some are free and some are for a fee and data is collected from the Apps.

The terms and conditions state you must be over 13 to play and MBF state the game is aimed at adults.
Case Study

- The game uses cartoon characters to depict the dogs.
- Users can also gain extra credits by providing contact information for friends and using the send to a friend feature which send information about the game.
- Users can also chat to other dogs and owners online.
- The web address is in the US and in English and there are language options for French and Spanish.
- Payment can be made in any currency.
- The game started in the US and MBF is now planning a new marketing campaign in England and France and MBF have engaged a service provider in these countries.
- MBF has also engaged advertisers to provide online behavioural advertising based on activity on the site and analytics using cookies and plug-ins.
Don’t Mess with Kids Data
Latest COPPA Updates & FTC Enforcement

Joanne Furtsch,
Director of Product Policy,
TRUSTe
Analysis of Tracking on Top 40 Kids websites

Using the TRUSTe Website Monitoring Service we scanned a total of 2,500 pages of the 40 top Alexa websites visited by kids in the following categories (Preschool, Education, Gaming, Kids Entertainment)

3rd Party Analysis

1,110 3rd party trackers were found, of which 644 were unique tracking organizations.

The level of tracking varied significantly, ranging from less than 10 to over 180 3rd party tracking organizations on the 40 sites analyzed.
Global Privacy Compliance—US

- Children's Online Privacy Protection Act – 1998
- Privacy Rights for California Minors in a Digital World
  - Gives minors right to request removal of posted content
- Student Privacy Laws
  - Family Educational Rights and Privacy (US Federal Law)
  - Student Online Privacy Personal Information Protection Act (State of Calif.)
COPPA Updates

- In July 1, 2013, amendments to COPPA went into effect. Updates reflect changes in technology.
- Under COPPA, personal information includes a child’s name, address, phone number, email address, physical whereabouts, photos, video, audio recordings, and IP address or other persistent ID that can be used to track a child’s online activity.
- Requires VPC when a first party benefits from third party content, such as ads, on their website or mobile app.
- The updated rule spells out requirements for Mixed Audience online services that are not targeting children under 13 however may have a significant number of children under 13 using the service (e.g. services targeting teens or family games).
FTC Enforcement – ‘COPPA - Not Just for Kids Sites’

- FTC has filed 23 federal court actions, and has obtained over $9 million in civil penalties;
- FTC is authorized to seek up to $16,000/violation in penalties;
- Recent actions against Yelp and Tiny Co emphasized the complexities of COPPA compliance.

Think You Don’t Need To Think About COPPA? Think Again
Don't Mess with Kids' Data
Proposed changes in the EU Data Protection Regulation

Sue Gold
19 November 2014
Use of children's data: Up to what age should parental consent be required for organisations and companies on the internet to collect and record data from children?
EU Regulation – Definition of a child

Original text
• Child – definition in UN Convention on the Rights of the Child (Recital 29)
• Article 4 - child means any person below the age of 18

Parliament text
• Article 4 remains – below 18
• Child – where processing is based on consent in relation to 'offering goods and services' directly to a child, consent is needed where the child is below the age of 13
• Age appropriate language should be used where the intended audience is children
• Counselling services – grounds of public interest should remain for lawful processing
EU Regulation Article 8

Original text

• Offering of information society services directly to a child

• Consent or authorisation given by parent or custodian

• Reasonable efforts to obtain verifiable consent taking into account available technology

• Rules on general contract law remain e.g. formation of a contract in relation to a child
EU Regulation
Article 8

Parliament text

• Offering of **goods** or services directly to a child
• Consent given or authorised by parent or **legal guardian**
• Reasonable efforts to **verify such consent**, taking into account available technology **without causing unnecessary processing of personal data**
• Information provided to parents and children to express consent (including about controller's collection or use of data) should be in clear language appropriate for the intended audience
EU Regulation
Other relevant clauses

Original text
• Article 17 and Recital 53 – Right to be forgotten (especially in relation to children)
• Article 33 – Data Protection impact assessment – large filing systems on children

Parliament text
• Many of the specific references to children deleted
• Profiling – both texts prohibit profiling of children (Recital 58)
• Transparent information – where addressed specifically at children (Article 11)
Other considerations for children

- Accreditation schemes
- Use of Moderators
- Product testing
- Security
- Disclosure of information for children at risk
- Marketing – send to a friend
- Child friendly Privacy Policies
- Parent's tracking children – location data
- Applicable Law
LEGO Data Privacy

Insight into the operational challenges from the perspective of a global business headquartered in Europe

Max G. Soerensen
Legal Counsel
Data Privacy Officer
How do we handle privacy

Facts:

• Present in more than 28 countries
• 5 central hubs – DK, Singapore, China, UK and US – HQ still in DK
• Currently finishing BCR application process – implementation in 2015
• Finishing COPPA certification

Our method – introducing a global standard - on company level and on a technical level.
Examples

Link: [http://wishlist.lego.com](http://wishlist.lego.com)

Link: [http://www.lego.com/minifigurefamily](http://www.lego.com/minifigurefamily)
Thank You
Implementation Challenges for Rules Pertaining to Kids

Katie Ratté
Assistant General Counsel
Global Public Policy - Privacy
The Walt Disney Company
November 2014
Implementation challenges for rules pertaining to kids

• The age of a “kid” and the determination of what is “directed to kids” is different across regions.

• U.S. FTC assesses whether a website or online service is “Directed to Kids” under COPPA against a number of factors, including:
  - Subject matter
  - Visual content
  - Language of the site
  - Audio content
  - Musical content
  - Age of models/characters
  - Use of animated characters
  - Presence of child celebrities or celebs that appeal to children
  - Child-oriented games
  - Use of child-oriented incentives
  - Use of child-oriented activities
  - Evidence regarding audience composition
  - Ads promoting the site/service
  - Ads appearing on the site/service

• In the advertising context, European regulators have used the test of whether a website or app is “reasonably appealing to kids.”
Implementation challenges for rules pertaining to kids

• Complex matrix of rules governing collection, processing, and use of data from children
  • U.S. Children’s Online Privacy Protection Act – governs collection of data from children under 13 and imposes requirements to obtain parental consent
  • EU Data Protection laws – govern collection and processing of data
  • Restrictions on data use: advertising and in-app purchases
    • UK OFT rules
    • U.S. FTC actions against Apple, Google, Amazon for in-app purchases

• Changes to existing rules
  • 2013 amendments to U.S. COPPA
  • Proposed EU Data Protection Regulation – section on parental consent, need for harmonized approach to defining a child
On April 1, 2014 the OFT enacted a set of principles relating to ads and in-app purchases presented in online and mobile apps reasonably expected to appeal to kids.

- Principles include:
  - Material information about a game must be clearly and prominently provided prior to the commencement of play.
  - The commercial intent of in-game promotions should be clear.
  - A game should not include direct exhortations to children to make a purchase or persuade others to make purchases for them.
  - Games should not include practices that are aggressive, or which otherwise have the potential to exploit a child’s inherent inexperience, vulnerability or credulity or to place undue pressure on a child to make a purchase.
Questions?
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