

Social Networking Site Settles COPPA Charge

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The authors examine the Federal Trade Commission's recent settlement of charges that a company violated the Children's Online Privacy Protection Act of 1998.

The Federal Trade Commission ("FTC") has announced a settlement of its charges that Industrious Kid, Inc., violated the Children's Online Privacy Protection Act of 1998 ("COPPA") and the Federal Trade Commission Act.

The settlement, announced on January 30, reflects the FTC's ongoing interest in enforcing the Children's Online Privacy Protection Rule (the "COPPA Rule") and in the privacy practices of social networking sites. It prohibits Industrious Kid from violating the COPPA Rule and requires Industrious Kid to delete personal information it collected and retained in violation of the COPPA Rule and to pay a \$130,000 civil penalty.

THE COPPA RULE

According to the FTC, the COPPA Rule is designed "to give parents control over what information is collected from their children online and

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how such information may be used.” The COPPA Rule applies to operators of web sites and online services directed to children under 13 years old and operators of general audience sites and online services that knowingly collect personal information from children under 13.

The COPPA Rule requires such web sites to:

- Post a privacy policy on the homepage and a link to the privacy policy on every page where personal information is collected;
- Provide parents with a direct notice about the web site’s collection of personal information from children, either by e-mail or by mail;
- Obtain verifiable parental consent before collecting, using, or disclosing personal information from a child, except in a very narrow range of circumstances;
- Give parents the option of allowing the web site to use their child’s information without agreeing to the disclosure of that information to a third party;
- Provide parents access to their child’s personal information and the opportunity to correct or delete the child’s personal information at any time; and
- Protect the information from unauthorized access.

THE FTC COMPLAINT

Industrious Kid operates a “free, secure, social networking and blogging destination specifically designed for kids ages 8 to 14.” In its former privacy policy, the web site purported to be “purposely designed to ensure the greatest level of safety and satisfaction for young members,” and “safer than other social networking sites.”

The COPPA Rule generally requires web site operators to obtain verifiable parental consent prior to collecting, using, or disclosing personal information from a child other than information necessary to obtain the consent. However, according to the complaint, Industrious Kid “collected and maintained personal information from children, including first and

last name, birth date, child's email address, parent's email address, gender, and a user name and password" before requesting parental consent. Only after the web site had collected this information did it send an e-mail to the parent to register the child, and the web site retained the child's personal information even if the parent did not complete the registration. The FTC found that more than 10,500 children created accounts through this process.

According to the complaint, Industrious Kids failed to "obtain verifiable parental consent" before collecting personal information from children as required by the COPPA Rule. Further, Industrious Kid's parental notice failed to:

- Disclose the types of information collected, ways it was collected, and how the information was used, as required by the COPPA Rule;
- Inform parents that it had already collected personal information from their child;
- Provide parents with their right to review their child's personal information and have that information deleted; and
- Provide hyperlinks to the web site's privacy policy.

The privacy policy had similar shortcomings, plus it did not inform parents that Industrious Kid would use the personal information it had collected from children to print and mail 20 cards to each child with the his/her name, street address, photo, and other information. Further, the complaint alleged that Industrious Kid's privacy policy and parental notice did not meet the COPPA Rule's disclosure requirements because these documents "did not clearly, understandably, or completely disclose all of the defendants' information collection, use, and disclosure practices for children."

The FTC alleged that these violations were unfair or deceptive trade practices within the meaning of COPPA and thus violations of the FTC Act.

CONSENT DECREE

The consent decree, filed on January 30, 2008, prohibits Industrious Kid from violating COPPA and the COPPA Rule.

Industrious Kid must provide parents with sufficient notice of its information practices and obtain verifiable parental consent prior to collecting, using, or disclosing a child's personal information. Industrious Kid is required to offer consumer education for five years, by placing a clear and conspicuous notice within (1) its privacy policy, (2) its parental notice, and (3) any page that collects personal information. The notice must direct consumers to the FTC's web site on protecting children's privacy online and must include a hyperlink to www.ftc.gov/privacy. A similar notice is required on any blog Industrious Kid operates, directing consumers to the FTC's social networking safety site and a hyperlink to www.onguardonline.gov.

In addition, Industrious Kid must delete all personal information that was collected or maintained in violation of the COPPA Rule. Finally, Industrious Kid must distribute the Order and a compliance guide to company personnel, meet certain compliance and recordkeeping provisions, and pay a \$130,000 civil penalty.

FTC REMAINS DETERMINED TO ENFORCE COPPA

The *Industrious Kid* settlement reflects the FTC's continued interest in enforcing COPPA and in the privacy practices of social networking sites frequented by children and teens. In September 2006, the FTC reached a \$1 million settlement for similar COPPA Rule violations against Xanga.com, one of the more popular social networking sites with about 25 million accounts. Furthermore, in a speech last week to the Internet Caucus, FTC Commissioner Jon Leibowitz emphasized the importance of social networking sites informing consumers about how their personal information is collected and used.

The *Industrious Kid* settlement is the latest indication that the FTC continues to take COPPA violations very seriously, and violations by social networking sites are of particular interest. All web sites directed to children under 13 or that knowingly collect personal information from

children under 13 should review their privacy policies, parental notices, and processes for obtaining parental consent to ensure full compliance with the COPPA Rule.¹

¹ Sadly, the authors learned after this article was prepared that the founder and CEO of Industrious Kid, and her 10-year-old son, died in a small plane crash. The authors were very sorry to learn about this tragedy.