

FTC Calls on Game Industry to Level Up COPPA Compliance

[U.S. TECH LAW UPDATE](#)¹

September 15, 2023

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On June 5, 2023, technology giant Microsoft Corporation (“Microsoft”) settled with the Federal Trade Commission (the “FTC”) for a staggering US\$20 million over violations of the Children’s Online Privacy Protection Act (“COPPA”). The settlement stems from concerns regarding the company’s Xbox gaming system, which the FTC alleged collected personal information from children under the age of 13 (“Children”, and each a “Child”) without notifying their parents or obtaining their parents’ consent.² In addition, the settlement requires Microsoft to take decisive actions aimed at fortifying children’s privacy on its gaming platform. The FTC’s action highlights the critical importance for game companies to prioritize COPPA compliance and safeguard the personal information of their youngest users.

This legal update will discuss the FTC’s enforcement of COPPA and its implications for the video game industry. In addition, it will examine how major game companies are currently complying with COPPA, exploring their approaches to certain external-facing key COPPA requirements. By looking to these enforcement actions and others’ COPPA compliance efforts, game companies can gain valuable insights into the evolving COPPA landscape and develop effective compliance endeavors.

I. The Game Industry’s COPPA Quest

COPPA, enacted in 1998, serves as a crucial safeguard for children’s online privacy.³ Designed to protect Children, COPPA imposes strict requirements on online services and platforms that collect personal information from Children.⁴ Under COPPA, “personal information” includes a Child’s name, location and geolocation information, online contact information, screenname, telephone number, social security number, image, voice, or other persistent identifier that can be used to recognize the Child over time and across different websites or services (such as an IP address or unique device identifier).⁵

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² [FTC Will Require Microsoft to Pay \\$20 million over Charges it Illegally Collected Personal Information from Children without Their Parents’ Consent](#), FEDERAL TRADE COMMISSION (June 5, 2023).

³ [Children’s Online Privacy Protection Rule \(“COPPA”\)](#), FEDERAL TRADE COMMISSION (accessed Sep. 13, 2023).

⁴ 16 CFR § 312.

⁵ 16 CFR § 312.2.



As online games (i.e., games with online functionalities) have become a popular digital playground for Children, game companies find themselves at the forefront of a COPPA compliance conundrum. Online games naturally attract Children, and operating an online game without collecting any personal information from users is a near impossibility, given that game companies probably should actively consider their COPPA compliance obligations.

II. End of Industry Avoidance of Compliance Obligations

COPPA obligations are only imposed on operators of online games directed towards Children, and on operators of online games that have actual knowledge that they are collecting personal information from Children. Over the years, many companies attempted to evade compliance efforts through various approaches (discussed in more detail below). However, recent FTC actions may mark an end to the permissibility of these approaches.

A. No Terms of Service Cheat Codes

Sometimes game companies attempt to evade compliance efforts by prohibiting Children from playing their game and avoiding any actual knowledge as to whether Children may be playing their game. COPPA does not apply to the operators of “general audience” websites or services, does not require such operators to investigate the ages of users, and permits operators of those websites or services to block Children altogether.⁶ Many online game operators take the position that their game is directed towards a general audience. Thus, they do not need to comply with COPPA and can simply prohibit Children from playing the game in the games’ terms of service. Often, these online game operators then point to that provision in the games’ terms of service prohibiting Children to assert that they have no actual knowledge of Children playing their game.

In essence, these online game operators use a terms of service cheat code to avoid their obligations under COPPA. The following sample terms of service language may look familiar:

“Our Games are intended solely for users who are 13 or older. Any use of our Games by anyone under the age of 13 is unauthorized, unlicensed, and in violation of our Terms of Service.”

Looking to FTC actions and guidance however, this popular approach may breach COPPA’s requirements. As discussed above, many online games naturally attract Children. Where an online game attracts a substantial number of Children, it may be considered a “mixed audience” game (i.e., directed to both a general audience *and* Children). It worth noting that the FTC deems the “mixed audience” category as a subset of the “directed to children” category.⁷ Therefore, just as with the “directed to Children” category, the operator of a “mixed audience” game must apply COPPA’s protections to its users and cannot restrict Children from playing the game.

⁶ Section H(1)-(3), [Complying with COPPA: Frequently Asked Questions](#), FEDERAL TRADE COMMISSION (accessed Sep. 11, 2023).

⁷ Section D(4), [Complying with COPPA: Frequently Asked Questions](#), FEDERAL TRADE COMMISSION (accessed Jul. 21, 2023).



Further, a company's assertions as to the intended audience of a particular game are inconsequential. The FTC will conduct its own analysis as to whether an online game attractive enough to Children to draw in a substantial number of Child players. If the agency determines the game is directed towards Children or a mixed audience that includes Children, the game operator must apply COPPA protections to Child players. This situation may pose challenges for companies offering online games because many such games naturally appeal to Children.

When assessing whether a game is directed towards Children, the FTC will look to a number of factors.⁸ These include, but are not limited to:⁹

- *Subject matter.* Games that involve traditionally Child-oriented subject matter, such as cartoons, superheroes, fairytales, or educational content may lean towards a determination that a game is directed towards Children.
- *Visual content.* In various enforcement actions to date, the FTC looked to games' use of cartoony and colorful graphics to argue that such games are directed towards Children.
- *Use of animated characters, child-oriented activities, and incentives.* If a game prominently features animated characters like talking animals, or includes activities such as coloring books, puzzles, or dress-up, it may be considered directed towards Children.¹⁰
- *Music or other audio content.* Games that incorporate nursery rhymes, lullabies, or other music and audio content commonly associated with Children's entertainment might suggest a Child audience.
- *Age of models.* The use of child avatars or characters that resemble children in appearance and behavior could indicate an intention to attract a young audience.
- *Presence of child celebrities or celebrities who appeal to Children.* In certain cases, the FTC looked to game marketing campaigns which used celebrities popular with Children to support a finding that a game was directed towards Children.
- *Language or other characteristics of the game.* A game that uses child-friendly language, fonts, and design elements may entice Children to the game.

Various online games, including those not explicitly directed towards Children, contain many of the above elements. Cartoon or manga visual art styles were used in the majority of the two-hundred (200) top-grossing mobile games in the U.S. and China in 2021.¹¹ Even where Children are not a game's primary audience, if the above factors lean towards a conclusion that a

⁸ Section D(1), [Complying with COPPA: Frequently Asked Questions](#), FEDERAL TRADE COMMISSION (accessed Jul. 21, 2023).

⁹ Please find a list of the FTC's COPPA enforcement actions to date [here](#).

¹⁰ See [U.S. v. Unixiz, Inc. dba i-Dressup.com](#) (2019).

¹¹ Erno Kiiski, [Popularity of mobile game art styles and genres – data breakdown](#), GAMEREFINERY (Mar. 24, 2021).



game is “mixed audience” (i.e. in part directed towards Children), then a game operator is prohibited from completely blocking Children from playing the game to avoid COPPA compliance obligations.¹² Instead, such game operator may implement an age screening mechanism (discussed below) and apply COPPA’s protections to players that identify themselves as under 13.¹³

Ultimately, COPPA is likely to apply to many operators of online games irrespective of their claims or restrictions against Children players. Furthermore, where Children are among the likely audiences of an online game, game companies cannot simply prohibit them from playing in a terms of service. Where an online game may appeal to Children, game companies must consider implementing COPPA protections for Child players or incur the risk of an FTC COPPA enforcement action.

B. New Challenge Unlocked for Game Publishers

Another recent development is the FTC’s explicit application of COPPA’s scope to game publishers that publish games on platforms used by Children. Currently, game publishers sometimes rely on game platforms to handle COPPA compliance by restricting Children at the platform level and/or never asking players for their age. However, as part of its settlement with Microsoft, the FTC ordered the major game platform to notify game publishers whenever it discloses personal information from Children to such publishers.¹⁴ The order further states that this notification may be provided through an API and must begin by October 3, 2023.¹⁵

Accordingly, upon receipt of notification that a game platform provided the personal information of a Child to a game publisher, the game publisher will have “actual knowledge” that it collects the personal information of Children, regardless of whether it asks players for age. As COPPA covers service providers with this type of knowledge, game publishers will be required to actively comply with COPPA rather than relying on game platforms or turning a blind-eye to potential Child players. Note that game publishers must look to the practices and policies of the platforms on which they publish games in order to understand the implications of the FTC’s order. But given the FTC’s recent approach to COPPA enforcement, game publishers may want to assume more responsibility for compliance.

III. **Leveling Up: Key COPPA Requirements and Best Practices**

In 2023, the FTC’s enforcement actions against companies for COPPA violations increased as compared to previous years.¹⁶ Given the FTC’s recently increased focus on COPPA violations, game companies of all kinds face incentives to revisit compliance efforts. Below, we explore each of the key COPPA requirements and identify certain best practices by looking at the compliance efforts of various major game companies. Note that COPPA requires internal efforts

¹² Section D(6), [Complying with COPPA: Frequently Asked Questions](#), FEDERAL TRADE COMMISSION (accessed Jul. 21, 2023).

¹³ See [77 F.R. 46643](#) (2012).

¹⁴ Lesley Fair, [\\$20 million FTC settlement addresses Microsoft Xbox illegal collection of kids’ data: A game changer for COPPA compliance](#), FEDERAL TRADE COMMISSION (Jun. 5, 2023).

¹⁵ [FTC Will Require Microsoft to Pay \\$20 million over Charges it Illegally Collected Personal Information from Children without Their Parents’ Consent](#), FEDERAL TRADE COMMISSION (June 5, 2023).

¹⁶ [Kids’ Privacy \(COPPA\)](#), FEDERAL TRADE COMMISSION (accessed Jul. 24, 2023).



beyond these key external-facing requirements, such as implementing data retention and advertising policies. A company should consult with legal counsel to implement a fully-compliant COPPA program.

A. Implement an Age Screening Mechanism

Websites and online services that are directed towards a general audience are generally permitted to prohibit Children from such website or online service. However, companies are not permitted to prohibit Children from using a website or online service where such website or online service is either directed towards Children or where Children are likely to be among the audiences (i.e., a “mixed audience”).¹⁷

Since the FTC is likely to consider an online game to be directed towards Children regardless of company assertions otherwise, completely prohibiting Children from an online game may be challenging. If Children cannot be blocked altogether, the operator of an online game may instead implement a mechanism to identify when Children sign up for a service or game. These mechanisms are often referred to as “age screens.” If a user identifies themselves as a Child at the age-screen stage, the company must comply with COPPA’s parental notice and consent requirements and apply COPPA’s protections to that user.

According to FTC guidelines, age screens must be designed in a neutral way that do not lead Children to falsify age (e.g., statements indicating certain features will be blocked for Children or single check boxes with a statement that a user is 13 or older).¹⁸ Further, the FTC recommends using technical means (such as a cookie) to prevent Children from back-buttoning to enter a different age.¹⁹



DON’T: Block Children or Use Check Boxes to Verify Age

Children under 13 are prohibited from playing our game. Please verify your age below.
 I am 13 years of age or older

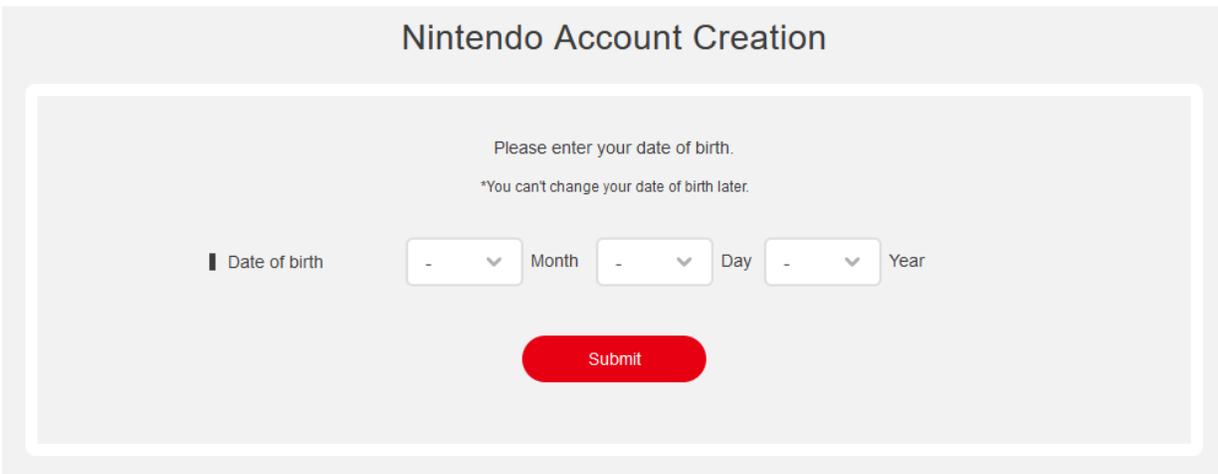
Companies are prohibited from blocking Children from using a game where the game is directed towards Children or where Children are among the game’s likely audiences. Age screening mechanisms must be designed in a neutral way that do not lead Children to falsify age.

¹⁷ Section D(6), [Complying with COPPA: Frequently Asked Questions](#), FEDERAL TRADE COMMISSION (accessed Jul. 27, 2023).

¹⁸ *Id.*, Section D(7).

¹⁹ *Id.*

✔ **DO: Ask Age Information in a Neutral Manner and Prevent Back-Buttoning**



Nintendo Account Creation

Please enter your date of birth.
*You can't change your date of birth later.

Date of birth - Month - Day - Year

Submit

To create a Nintendo Switch Online account, users must enter their date of birth via a neutral mechanism. In addition, users are prevented from back-buttoning to change age information.

B. Get Parental Consent Prior to Collection

According to the FTC complaint against Microsoft, when Children signed up for an Xbox account, the sign-up process directed Children to enter their name, date of birth, and email address—all before receipt of parental consent.²⁰ However, COPPA requires companies to obtain consent from a Child’s parent *prior to* the collection, use, or disclosure of such Child’s personal information. In addition, the company must seek new parental consent with an updated direct notice if it materially changes any practices related to the collection, use, or disclosure of a Child’s personal information.²¹

In practice, this requirement mandates companies halt the collection of any personal information from the Child after the Child indicates they are 12 or younger at the age-screen stage and seek a parent’s consent. However, the company may ask the Child to enter a parent’s email so that the parent can provide consent.

✘ **DON’T: Collect Personal Information After a User Indicates They are Under 13**

Defendant Failed to Provide Notice and Obtain Verifiable Parental Consent Before Collecting Personal Information from Children

28. Section 312.4(a) of the COPPA Rule requires covered operators to provide notice and obtain verifiable parental consent before collecting, using, or disclosing personal information from children. As described in Paragraph 15, Defendant learned that certain users were children after they provided their birthdates in the first step of the account creation process but went on to request phone numbers from the children, before seeking to involve a parent.

²⁰ [U.S. v. Microsoft Corporation](#) (2023) at 5.

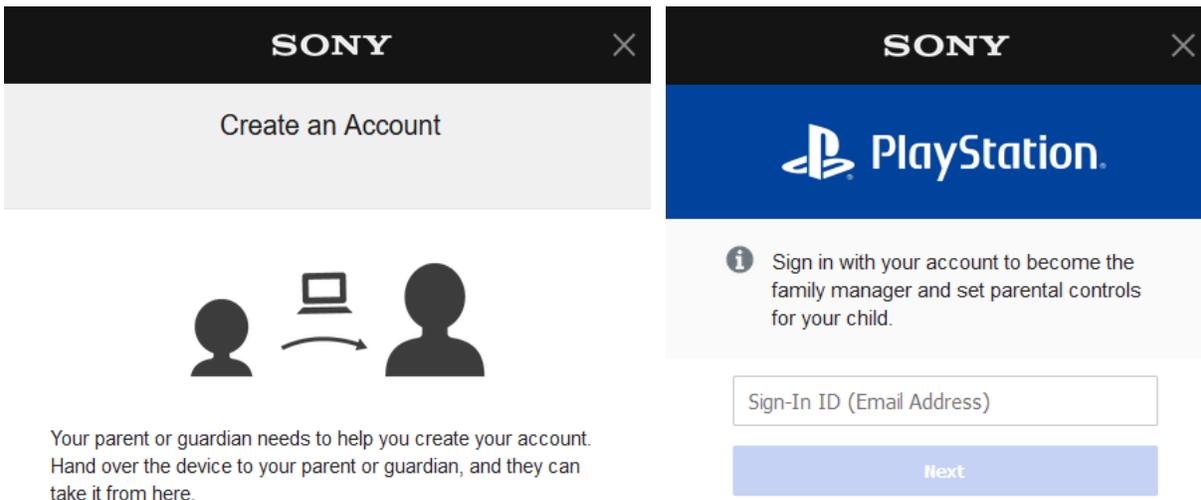
²¹ 16 CFR § 312.5(a)(1).



29. Nothing in this Rule permits an operator to collect a child’s telephone number, as opposed to online contact information, without first obtaining verifiable parental consent. 16 C.F.R. § 312.5(c)(1) and (6).

*In its complaint against Microsoft, the FTC explicitly found Microsoft in violation of COPPA for its failure to obtain parental consent prior to collecting Children’s telephone numbers.*²²

✔DO: Halt Personal Information Collection After a User Indicates They are Under 13



If a user indicates that they are under 13 when signing up for a PlayStation Network account, the next page asks the Child to get a parent’s help and asks the parent to sign into a parent account.

How might companies sufficiently obtain this consent? COPPA does not explicitly mandate any particular method. Instead, a company must choose a method reasonably designed in light of available technology.²³ The FTC provides a non-exhaustive list of pre-approved methods of obtaining parental consent, which include requiring a parent to use a credit or debit card that provides notifications of transactions to the parent’s bank account, or providing a consent form for the parent to sign and return to the company.²⁴ The agency also invites proposals for new parental consent mechanisms on an ongoing basis. Most recently, the Entertainment Software Rating Board (ESRB) submitted a proposal for a new method to the FTC whereby verifiable parental consent is received via a user’s face geometry.²⁵ The proposal is still under review by the FTC, but the method may be soon approved for use in compliance with COPPA.

Many large game platforms (including Microsoft, Sony, and Nintendo) require a parent to set up an account and add a Child’s account to the parent’s account. Then, in the process of adding the Child, the parent is prompted to enter a credit card to provide his or her consent.

²² [U.S. v. Microsoft Corporation](#) (2023) at 7.

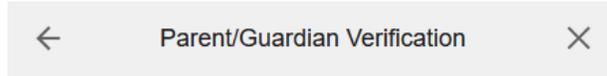
²³ [Verifiable Parental Consent and the Children’s Online Privacy Rule](#), FEDERAL TRADE COMMISSION (accessed Aug. 2, 2023).

²⁴ 16 CFR § 312.5(b)(2).

²⁵ [FTC Seeks Comment on New Parental Consent Mechanism Under COPPA](#), FEDERAL TRADE COMMISSION (Jul. 19, 2023).



✔ DO: Obtain Verifiable Parental Consent (Ideally Using a Pre-approved Method)



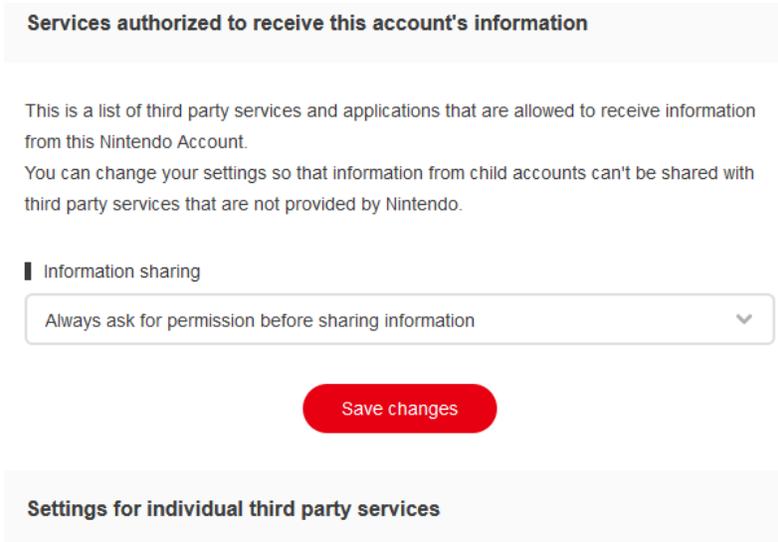
To add children to your family, a \$0.50 charge is necessary to verify that you are an adult.

- This is only required once as the family manager. There will be no charge for adding more family members.
- \$0.50 will be funded to your wallet, and you can use it for purchases.

To register a Child for a PlayStation Network account, a parent must provide consent by incurring a small fee on the parent's credit card. This method is pre-approved by the FTC.

In addition, companies must give parents the option to consent to the collection and use of the Child's personal information without consenting to the disclosure of his or her personal information to third parties.²⁶ If sharing the Child's personal information is integral to the service or game, then a company must notify parents of this fact. In our review, we found that game companies where parents can set up family permissions often default to always ask parents for consent before sharing a Child's personal information.

✔ DO: Give Parents a Way to Consent to Third Party Sharing of Child's Information



No third party services are currently allowed to receive your information.

Child accounts for Nintendo Switch Online have default settings that require a parent's permission each time Nintendo seeks to share the Child's personal information with a third party. In addition, Nintendo does not automatically permit any third parties to receive personal information from a Child's account. These controls are accessible from a linked parent's account.

²⁶ 16 CFR § 312.5(a)(2).



C. Send a Direct Notice

Another COPPA violation identified by the FTC in its action against Microsoft was the company’s failure to provide a COPPA-compliant “direct notice” (i.e., a notification sent directly to a Child’s parent). COPPA mandates companies collecting personal information of Children to send a direct notice to parents with certain information related to the company’s privacy practices.²⁷

COPPA requires various explicit disclosures within a direct notice. In the case of Microsoft, the FTC claimed that through at least April 2021, Microsoft’s direct notice hyperlinked parents to its privacy policy instead of identifying what type of personal information the company would collect from the Child within the direct notice.²⁸ However, when obtaining a parent’s affirmative consent to the collection, use, and/or disclosure of a Child’s personal information, the direct notice to the Child’s parent must include:²⁹

- That the company is contacting the parent on behalf of the parent’s Child in order to obtain his or her consent, which is required for the collection, use, and disclosure of the Child’s personal information;
- A list of the types of personal information the company will collect from the Child;
- A list of the potential opportunities for the Child to disclose his or her personal information should the parent provide consent;
- How the parent can provide his or her consent and the time frame within which the parent must do so before the company deletes the parent’s contact information from its records; and
- A hyperlink to the company’s privacy policy.



DON’T: Forget to Make All Required Disclosures in a Direct Notice

From:	no-reply@gamecompany.com
Subject:	New child account created

Hello,

This is an automated confirmation e-mail from Game Company Inc. to let you know that your child has created an account with us. We hope your child is excited about joining our online gaming community!

We take your child’s online safety very seriously and want to ensure you are informed about our practices. We will collect various types of personal information when your child interacts with us. You can visit our privacy policy on our website for more information about our privacy practices.

Sincerely,
Game Company Inc.
Customer Support Department

In the above example, Game Company Inc. fails to list the types of personal information it will collect from the Child, the potential opportunities for the Child to disclose his or her personal information, and a hyperlink to the

²⁷ 16 CFR § 312.

²⁸ [U.S. v. Microsoft Corporation](#) (2023) at 8.

²⁹ 16 CFR § 312.4(c)(1).



company's privacy policy. In addition, this direct notice is sent after the Child already signed up for an account, and does not inform the parent how he or she can give her consent.

D. Draft a COPPA-Compliant Privacy Policy

Companies that operate services or games that are directed towards or may attract Children must also consider COPPA's privacy policy requirements. When collecting or receiving personal information from Children, COPPA mandates that the company make certain COPPA-relevant disclosures in its privacy policy, including but not limited to:³⁰

Contact Information	Information Collection	Parental Rights
<ul style="list-style-type: none"> The name, address, telephone number, and email address of all operators collecting or maintaining personal information from Children through the company's website or services. Alternatively, the company may list the contact details of one operator responsible for responding to all parental inquiries about Children's privacy, so long as all operator's names are also listed. 	<ul style="list-style-type: none"> A clear description of the information the company collects from Children. A statement whether Children can make their personal information publicly available (e.g., through social media sharing). An explanation of how Children's personal information is used by the company. A description of the company's disclosure practices regarding Children's information. 	<ul style="list-style-type: none"> A statement informing parents that they have the right to review or request deletion of their Child's personal information, and to disallow disclosure to certain third parties. Detailed procedures for parents to exercise the above rights effectively.

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Many terms of service combine most of COPPA's required disclosures with other disclosures mandated by other applicable data privacy laws. However, a better approach is to make COPPA-specific privacy disclosures (such as parents' rights under COPPA and how to exercise them) in a specific section related to Children's privacy. When reviewing the privacy policies of several major online game companies, we found that many privacy policies fell short in one area or another with respect to the above-listed required disclosures.



DON'T: Forget to Make Mandatory Privacy Policy Disclosures

8. OUR POLICIES REGARDING CHILDREN

We do not knowingly collect, use, or share information from children under the age of 13 without verifiable parental consent or as permitted by law. Parents or guardians have certain rights with respect to their child's personal information.

In the above example, the company does not provide the appropriate contact information or statements about the company's information practices. While the example does give a statement about parental rights, it does not explicitly list those rights or explain the detailed procedures for parents to exercise those rights.

³⁰ 16 CFR § 312.4(d).



COPPA also requires covered companies to prominently and clearly label links to their online privacy policy on their website or service’s home page, as well as in close proximity to wherever they collect Children’s personal information. In addition, the link must be clear and prominent. Companies may provide the link in a larger font size and/or a different color on a contrasting background. The FTC advises against placing the link at the bottom of a webpage or making it indistinguishable from other adjacent links.³¹



DO: Prominently Display a Link to Your Privacy Policy



Nick Jr. displays a link to its privacy policy prominently at the top of its games landing page in a bright color on a contrasting background.

E. Enroll in a COPPA Safe Harbor Program

Game companies looking to achieve COPPA compliance efficiently should consider enrolling and actively participating in an FTC-approved COPPA “Safe Harbor” program. COPPA Safe Harbor programs are voluntary initiatives approved by the FTC as compliant mechanisms for companies to meet COPPA’s stringent requirements. These programs offer game companies a structured framework to ensure adherence to COPPA’s regulatory standards.

COPPA includes a safe harbor provision that allows industry groups to seek FTC approval for self-regulatory guidelines that implement protections that are “the same or greater” than the COPPA rule.³² By enrolling in an FTC-approved safe harbor program, companies are deemed in compliance with COPPA so long as they abide by the program’s guidelines.

In addition, enrolled companies are generally subject to review and disciplinary procedures under the particular safe harbor’s guidelines instead of formal FTC enforcement.³³ Generally, a safe harbor program is designed to proactively identify areas of noncompliance and provide the member company with necessary guidance and opportunities to rectify COPPA violations. While most FTC-approved safe harbor programs may impose monetary penalties on

³¹ Section C(6), [Complying with COPPA: Frequently Asked Questions](#), FEDERAL TRADE COMMISSION (accessed Aug. 3, 2023).

³² Lesley Fair, [Do your COPPA Safe Harbor claims hold water?](#), FEDERAL TRADE COMMISSION (May 19, 2020).

³³ 16 CFR § 312.11(g).



or report companies in violation of COPPA, any such consequences are typically only imposed after repeated or material violations.³⁴

Enrolling in a safe harbor program typically requires submission of self-assessments of company products and privacy practices. Safe harbor program providers may:

- Review company policies;
- Monitor company products and services for COPPA compliance issues;
- Issue reports to companies which outline required changes necessary to remain in compliance with the Safe Harbor program;
- Conduct onsite audits of member companies;
- Offer ongoing consultation services;
- Provide dispute resolution services for COPPA-related issues; and
- Administer a seal for company use to demonstrate COPPA compliance.³⁵

COPPA safe harbor program providers must submit their program proposals to the FTC for approval. As of the date of this article, the FTC approved six programs:³⁶

[Children’s Advertising Review Unit \(CARU\)](#)



[kidSAFE](#)



[Entertainment Software Rating Board \(ESRB\)](#)



[Privacy Vaults Online \(PRIVO\)](#)



[iKeepSafe](#)



[TRUSTe](#)



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But before making any claims about enrollment with a COPPA safe harbor program, companies should note that making false or inaccurate statements in this regard can have consequences. In addition, if a company’s enrollment in a COPPA safe harbor program lapses, the company must promptly remove language indicating it participates in such program from its policies and terms. The FTC monitors such claims and has the authority to take enforcement actions against companies that falsely represent their participation or compliance status. In 2020, the FTC brought an action against a game company for falsely stating that it participated in a COPPA safe harbor program.³⁷ While the game company originally was enrolled in the program, it stopped participating in the program and continued to make claims about its enrollment for a subsequent four years.

³⁴ See, for example, the Entertainment Software Rating Board’s [Submission of Amended Safe Harbor \(ESRB Privacy Certified Kids’ Seal\) Program Requirements](#).

³⁵ *Id.*

³⁶ [COPPA Safe Harbor Program](#), FEDERAL TRADE COMMISSION (accessed September 6, 2023).

³⁷ Lesley Fair, [Do your COPPA Safe Harbor claims hold water?](#), FEDERAL TRADE COMMISSION (May 19, 2020).



✔ **DO: Consider Enrollment in an FTC-Approved COPPA Safe Harbor Program**

The Walt Disney Company's Child Directed Websites and Mobile Apps are included in PRIVO's Kids Privacy Assured COPPA Safe Harbor Certification Program ("the Program"). The Program certification applies to the digital properties listed on the validation page that is viewable by clicking on the PRIVO seal.

The Walt Disney Company discloses its enrollment in PRIVO's Kids Privacy Assured COPPA Safe Harbor Certification Program for child-directed websites, apps, and games.

✘ **DON'T: Make False Claims About Safe Harbor Program Enrollment**

Count 1: COPPA Safe Harbor Misrepresentations

14. As described in Paragraphs 9-11, [Miniclip] represented, directly or indirectly, expressly or by implication, that it was a current participant in the CARU COPPA safe harbor program.

15. In fact, as described in Paragraph 12, after CARU terminated [Miniclip] from CARU's COPPA safe harbor program, [Miniclip] was not a current participant in the CARU COPPA safe harbor program. Therefore, the representation set forth in Paragraph 14 is false or misleading.

In its complaint against Miniclip S.A. ("Miniclip"), the FTC found Miniclip in violation of Section 5 of the Federal Trade Commission Act for falsely representing its participation in the CARU COPPA safe harbor program.³⁸

IV. Level Cleared: COPPA Compliance Recap

The FTC's action against Microsoft serves as a powerful reminder that COPPA compliance is often not optional for game companies, as many online games naturally entice Child players. Game companies cannot evade COPPA obligations through clever terms of service drafting. Similarly, game publishers should not exclusively rely on game platforms to screen or prevent Children from playing their game at the platform level. To avoid hefty fines and reputational damage, companies offering games that may appeal to Children must level up COPPA compliance efforts by employing robust age screening mechanisms, seeking parental consent where a player indicates they are under the age of 13, proactively informing parents about privacy practices in a direct notice, and drafting and prominently displaying a COPPA-compliant privacy policy. A strong way to ensure a game company does not draw FTC scrutiny is to enroll in an FTC-approved COPPA Safe Harbor program. Implementing these practices is a critical quest in safeguarding Children's online privacy and avoiding legal risks.

³⁸ [*In the Matter of Miniclip S.A., a corporation*](#) (2020) at 3.