

Enforcement Policy Statement Regarding the Applicability of the COPPA Rule to the Collection and Use of Voice Recordings

On November 3, 1999, the Federal Trade Commission (“FTC” or “Commission”) issued its Children’s Online Privacy Protection Rule (“COPPA Rule” or “Rule”). The Rule implements the Children’s Online Privacy Protection Act, 15 U.S.C. §§ 6501–6505, and requires, among other things, operators of commercial websites or online services directed to children, and operators with actual knowledge they are collecting personal information from children, to provide notice of their information practices to parents and to obtain verifiable parental consent before collecting a child’s personal information. The Rule defined “personal information” to include data such as name, address, and social security number.

In 2013, the FTC amended the COPPA Rule and added several new types of data to the definition of personal information, including a photograph, video, or audio file that contains a child’s image or voice.¹ Discussing the 2013 amendments, the Commission explained that “the very personal nature” of such files supported the Commission’s finding that they met the standard for personal information set forth in the COPPA statute because they “permit the physical or online contacting of a specific individual.” 78 Fed. Reg. 3972, 3982 (Jan. 17, 2013). Therefore, under the amended Rule, a covered operator must provide notice and obtain verifiable parental consent before it collects any of these types of personal information from a child. The Commission’s rationale in amending the Rule was to keep pace with changes to technology, children’s increased use of mobile devices, and the development of new business models that did not exist when the Commission issued the Rule in 1999.

Since amending the Rule, the Commission has received inquiries from a number of companies about whether the practice of collecting audio files that contain a child’s voice, immediately converting the audio to text, and deleting the file containing the voice recording triggers COPPA’s requirements. In particular, these companies have requested that collection of audio files in connection with a search or similar function be exempted from COPPA’s verifiable parental consent requirement when the audio file is briefly maintained in order to fulfill the request and then deleted almost instantaneously.

In relevant part, the Rule defines “collects or collection” to mean:

the gathering of any personal information from a child by any means, including but not limited to:

- (1) Requesting, prompting, or encouraging a child to submit personal information online;
- (2) Enabling a child to make personal information publicly available in identifiable form. An operator shall not be considered to have collected personal information under this paragraph if it takes reasonable steps to delete all or virtually all personal information

¹ The prior definition included photographs only when combined with additional information that would allow physical or online contacting of the child.

from a child's postings before they are made public and also to delete such information from its records²

The Commission views the collection from a child of an audio file when the voice is being used solely as a replacement for written words, such as to convert voice to text in order to perform a search, as falling into the first prong of the definition of "collection" because the operator is "requesting, prompting, or encouraging" the child to submit personal information. Because this practice falls into the first category of "collection," the Rule does not provide a mechanism for the operator to avoid being deemed to have collected the personal information by deleting it. In other words, as soon as the operator gathers the audio file, it has collected it for purposes of the COPPA Rule regardless of how long the operator maintains possession of it. The second prong of the definition is meant to address the inadvertent collection of personal information, such as information that might be collected incidentally in an open text field, which is why the Rule specifically allows an operator to be deemed not to have collected the personal information if it takes reasonable measures to delete the information.

Nevertheless, the Commission recognizes the value of using voice as a replacement for written words in performing search and other functions on internet-connected devices. Verbal commands may be a necessity for certain consumers, including children who have not yet learned to write, or the disabled. In addition, when the operator only uses the audio file as a replacement for written words, such as to effectuate an instruction or request, and only maintains the file long enough to complete that purpose and then immediately deletes it, there is little risk the audio file will be used to contact an individual child.

As such, when a covered operator collects an audio file containing a child's voice solely as a replacement for written words, such as to perform a search or fulfill a verbal instruction or request, but only maintains the file for the brief time necessary for that purpose, the FTC would not take an enforcement action against the operator on the basis that the operator collected the audio file without first obtaining verifiable parental consent. Such an operator, however, must provide the notice required by the COPPA Rule, including clear notice of its collection and use of audio files and its deletion policy, in its privacy policy.

There are important limitations on this non-enforcement policy. First, this non-enforcement policy is not applicable when the operator requests information via voice that otherwise would be considered personal information under the Rule, such as name, for example. Second, as noted above, an operator must provide clear notice of its collection and use of the audio files and its deletion policy in its privacy policy. Otherwise, parents may have no way to know prior to download or purchase whether audio files are being collected, and if they later learn that audio files are being collected, they would have no reason to know that the files are being collected only for a limited purpose and immediately destroyed. Third, the operator may not make any other use of the audio file in the brief period before the file is destroyed — for example, for behavioral targeting or profiling purposes, for identification purposes through voice recognition, or for posting, selling, or otherwise sharing the file with third parties. Finally, this policy does not affect the operator's COPPA compliance requirements in any other respect. For

² The third prong of the definition relates to passive tracking of a child online and is not relevant to this discussion.

example, the operator must provide notice and obtain verifiable parental consent if types of personal information other than audio files are also collected.