2024

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Publication Citation
12 Indiana Journal of Law & Social Equality 193

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Coping with COPPA:
Exploring Alternatives to the Children’s Online Privacy Protection Act

Andrew Parra*

The Children’s Online Privacy Protection Act of 1998 (COPPA) stands as one of the greatest protectors of children’s privacy for nearly twenty-five years. However, COPPA has struggled to keep pace with technological changes during this time, and the COVID-19 pandemic highlighted the shortcomings of COPPA regulations as children were forced to spend increased amounts of time in digital spaces. As the Federal Trade Commission (FTC) is set to make changes to COPPA, it is necessary to consider what changes would be most beneficial to protect children. This paper will explore the current regulatory framework, its strengths and weaknesses, and then delve into proposed reforms to COPPA. To understand which reforms would be most effective, it is necessary to consider the purpose of COPPA as well as the vulnerabilities of children that necessitate these regulations. Finally, having considered the barriers to each reform, this paper will consider which changes the FTC is likely to consider and how these could be implemented.

INTRODUCTION

The internet is built on data collection. Between requests for cookie access upon entering a site, the use of clickwrap agreements to obtain consent for data collection, and the ubiquity of targeted advertisement, most adults have become used to the passive data collection that occurs in the day-to-day usage of the internet. However, while many adults lack a full understanding of what they are agreeing to when they see these requests, children often have no conception of what these agreements entail. As data collection on children’s websites became increasingly common in the 1990s, Congress stepped in to protect children and their families. The Children’s Online Privacy Protection Act of 1998 was passed to prevent websites from collecting the personal data of children without parental consent.1 COPPA directs the FTC to enact rules to protect children’s data and privacy online,2 with the goal of giving parents greater control over and knowledge of what their children are doing online and the ability to protect their children’s privacy.3

Children inhabit a unique role in society, making certain protections necessary for their safety. Their brains are still actively developing, making them susceptible to persuasive advertising and unable to consider long-term

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* J.D., Indiana University Maurer School of Law, 2024.
2 Id.
consequences. Children are also often early adopters of new technology, making them a valuable demographic to appeal to for tech companies. As children are spending increasing amounts of time online and as there are increasing concerns regarding children’s mental health, the ways tech companies protect children’s interests are increasingly coming under scrutiny. Children cannot run for office nor can they vote, making it challenging for them to advocate for and protect their interests as a demographic. Instead, “there is a presumption that parents will maintain the best interest of the child” and in doing so address their needs and advocate for them.

As technology has progressed and society has become increasingly reliant upon the virtual world, COPPA has struggled to keep pace. A 2012 survey conducted by the FTC of major app stores showed that less than 1% of applications inspected met COPPA requirements for companies to obtain verifiable parental consent before collecting data from children, and this trend has only marginally improved over time. COPPA protections only extend to users under the age of thirteen, leaving adolescents unprotected even as they are spending record amounts of time online. COPPA protections are designed to require greater parental participation in children’s time online, yet only slightly over half of parents feel “very confident” that they know what their children are seeing online. While COPPA works closely with state actors, private citizens lack mechanisms to enforce their rights beyond making complaints to either state or FTC officials. Additionally, the FTC has been inconsistent in its enforcement of COPPA

4 Ariel Fox Johnson, 13 Going on 30: An Exploration of Expanding COPPA’s Privacy Protections to Everyone, 44 SETON HALL LEGIS. J. 419, 420–21 (2020).
5 Id. at 433–34.
9 16 C.F.R. § 312.5
10 See Geoffrey A. Fowler, Your Kids’ Apps are Spying on Them, WASH. POST (June 9, 2022, 8:00 AM), https://www.washingtonpost.com/technology/2022/06/09/apps-kids-privacy/.
violations, only bringing thirty-four cases between 2000 and 2020\textsuperscript{15} and settling cases for markedly less than the FTC is allowed to pursue.\textsuperscript{16}

These shortcomings have led to COPPA facing criticism from all directions, with corporations, advocacy groups, and politicians all expressing displeasure with COPPA.\textsuperscript{17} In 2019, following the largest COPPA settlement to date, the FTC announced that it would enter an open comment period for COPPA so that it could reform the law.\textsuperscript{18} As the FTC begins to implement reform, it is important to analyze the current framework of COPPA, the purposes of the legislation, how well the current framework meets these goals, and finally to consider the feasibility of the reforms and alternatives to the current law brought forth during the open comment period.

\section{The Framework of COPPA}

The purpose of COPPA is “to regulate the collection and use of personally identifiable information from children under the age of thirteen (‘children’) via the Internet.”\textsuperscript{19} The FTC requires that companies provide notice when data is going to be collected and to obtain verifiable consent from parents before doing so.\textsuperscript{20} Next, the company needs to make the data collected available for parents to review upon request and to give parents the opportunity to refuse the use of the data.\textsuperscript{21} Lastly, sites are required to limit their data collection only to that information which is necessary for the site to operate, and to establish security measures to ensure that the data is protected.\textsuperscript{22} If a website is shown to be in violation of these regulations, the FTC is able to issue “civil penalties, injunctions, and compliance monitoring” on websites that are not in compliance.\textsuperscript{23}

The FTC breaks down websites into three categories that receive varying levels of scrutiny.\textsuperscript{24} Child-focused websites are those specifically targeting children under thirteen, by using games, cartoons, child actors, or other media that appeals


\textsuperscript{17} See Fowler, supra note 10.

\textsuperscript{18} Stuart Cobb, Comment, It’s COPPA-Cated: Protecting Children’s Privacy in the Age of YouTube, 58 Hous. L. Rev. 965, 966 (2021).


\textsuperscript{20} 16 C.F.R. §§ 312.3–312.4 (2023).

\textsuperscript{21} Id. §§ 312.3, 312.6.

\textsuperscript{22} See id. §§ 312.3, 312.8, 312.10.

\textsuperscript{23} Cobb, supra note 18, at 971.

\textsuperscript{24} Id. at 969–970.
to this demographic. These websites are automatically presumed to have child users and must have COPPA safeguards. General audience websites are those primarily meant to appeal to an adult audience, and these websites only are required to have COPPA safeguards in place if they have actual knowledge that children are using the site. The final category are mixed-use websites, those being websites that have properties that appeal to both adults and children, with these websites following the same actual knowledge requirement as general sites.

COPPA encourages self-regulation through its safe harbor program, through which companies can be excused from COPPA requirements and thus subject to less scrutiny if they can prove that they have a framework in place that is at least as stringent as the COPPA framework. Safe harbor organizations are industry groups that create frameworks for member sites to implement. They self-police to make sure that members are following guidelines, although the FTC can also step in if covered sites are found to violate COPPA. COPPA’s safe harbor policies have been effective at encouraging buy-in from the industry, but has also raised concerns from advocacy groups, who view safe harbor organizations as a “fox guarding the hen house,” emphasizing that companies are motivated to bend COPPA regulations for profit and that safe harbor can provide an illusion of COPPA compliance to families. Another concern regarding safe harbor is that while sites may not be collecting data, safe harbor organizations do not necessarily meet other purposes of COPPA such as ensuring that children are shown age appropriate content and that parents have knowledge and control over their child’s online experience.

II. DATA PRIVACY AND CHILDREN

When considering why these protections are important, it is necessary to understand why children are particularly vulnerable to the downsides of data collection. In the United States, most children have access to the internet in some
form at home.34 Children increasingly require the internet for education, socialization, play, and self-expression. This reliance has become particularly heightened since the COVID-19 pandemic led to greater reliance on the virtual world. During the summer of 2020, parents were reporting that their children were spending significantly more time online than they had before the pandemic.35 Even as COVID-19 restrictions have eased, screen time is still markedly higher than before the pandemic, with children spending an average of five and a half hours entertaining themselves with screens each day.36 Because of this, it is vital that parents, children, and advocates understand how companies are collecting and tracking children’s data.

When considering why children require added privacy protections compared to adults, it is important to consider both biological and sociological factors. Since children and adolescents are more prone to impulsive behaviors and oversharing online, they fail to consider the long-term consequences of their actions, and they are more susceptible to advertising.37 Children are often unable to distinguish advertisements from other content, particularly when in the form of native and embedded advertising,38 and they do not realize when searching online that top results often include paid promotions.39 These risk factors are compounded by the fact that young people often underestimate the scope of how often apps and websites passively track information, and the types and amounts of data collected.40 Even the most digitally aware children fall prey to this thinking. This is worsened by the fact that kids believe information will be kept private within an app or that they can easily delete data.41 This thinking tends to be exacerbated on mobile devices, as young people do not consider that apps often access the internet and collect data, which does not comport with how young people normally conceptualize internet usage.42

However, even though young people often underestimate how much of their data is being collected, they still express a sense of unease regarding how they feel

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36 COMMON SENSE MEDIA, supra note 12, at 9.
37 See Johnson, supra note 4, at 432, 438.
38 Native and embedded advertising are forms of covert advertising designed to promote products while not appearing as ads. See generally Brigitte Naderer, Jens Seiffert-Brockmann, Jörg Matthes and Sabine Einwiller, Native and Embedded Advertising Formats: Tensions Between a Lucrative Marketing Strategy and Consumer Fairness, 45(3) COMMC’NS 273 (2020).
39 See Johnson, supra note 4, at 437.
40 See id. at 434.
41 Id. at 438.
42 See Fowler, supra note 10.
This has led to increased fears regarding cancel culture and censorship, instilling in youth a sense of performative perfectionism. Additionally, targeted advertisements have been shown to exacerbate certain negative thought patterns, such as showing young girls advertisements that celebrate “diet culture” and young men aggressive “alpha male” content, funnelling these demographics to content through algorithms. Since the pandemic, there has been a marked rise in mental health concerns among minors, and while there are numerous factors tied to this, studies have shown that increased screen time is tied to poor mental health outcomes. For these reasons, it is vital that there are protections for children’s data on the internet to lessen the negative impacts of technology on developing minds.

III. A HISTORY OF COPPA

COPPA was created in 1998 to address many of the concerns that the public had about the risks the internet posed to children. A 1998 study showed that 89% of children’s websites were collecting data from children, while only 10% offered parental controls. Sites were asking children for information ranging from birthdates, to home addresses, to social security numbers. Additionally, child-focused sites were found to use deceptive practices to entice data collection from children. COPPA was designed to “(1) enhance parental involvement in a child’s online activities in order to protect the privacy of children in the online environment; (2) to enhance parental involvement to help protect the safety of children in online fora such as chatrooms, home pages, and pen-pal services in which children may make public postings of identifying information; (3) to maintain the security of personally identifiable information of children collected online; and (4) to limit the collection of this information without parental consent.” The creators hoped that by giving parents a greater understanding of how their children were spending time online, it would lead to greater parental oversight while also

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**References**


45 See Kang & Mac, supra note 6.


48 Johnson, *supra* note 4, at 422.


encouraging self-regulation from corporations.\textsuperscript{52} Initial versions of the statute had differing layers of protection for different age ranges, but protections for adolescents were removed from the final version.\textsuperscript{53}

COPPA gave the FTC broad discretion over how the regulations would be implemented and enforced, but it took until 2000 for the FTC to enact its regulatory framework.\textsuperscript{54} There was immediate pushback against COPPA from corporations, who argued that the law was an impermissible burden upon their corporate speech, but the law was able to survive these challenges, unlike to its predecessors.\textsuperscript{55} The FTC was able to utilize momentum from the passage of COPPA to take action against companies such as Hershey, Etch-a-sketch, and GeoCities for misrepresenting how they collected and used children’s data.\textsuperscript{56}

In 2012, the FTC expanded COPPA to cover a broader range of devices and data collection methods to account for changes in technology, specifically regarding mobile technology.\textsuperscript{57} This was meant to indicate that COPPA applies not only to websites, but also to internet connected tools and applications that are often found on mobile phones, tablets, smart devices, and smart toys, although the FTC had to issue additional guidance in 2017 clarifying this.\textsuperscript{58} This is especially important as these technologies collect sensitive information such as geolocation; face, voice, and fingerprint recognition; and access to all the phone numbers saved to that device.\textsuperscript{59} Young people also tend not to consider that applications and websites can track device usage even when not actively using them. Finally, many smart devices have notoriously poor security, so laws requiring strong data protection measures can make it more difficult for malicious software to infect children’s devices.\textsuperscript{60}

However, despite the implementation of this policy, companies were slow to respond. A year after the implementation of the changes, an FTC survey of applications in the Android marketplace showed that only 1.5\% of apps adequately complied with requirements that the apps explain to users and parents how data is being used, and many apps failed to inform users that data was being collected whatsoever.\textsuperscript{61} This has led to growing concerns from privacy and children’s rights groups that as the data being collected has become more valuable to corporations,

\begin{flushleft}
\textsuperscript{53} See Johnson, supra note 4, at 424.
\textsuperscript{54} See Warmund, supra note 19, at 191.
\textsuperscript{55} See id. at 212–13.
\textsuperscript{58} Jeremy Greenberg, Dangerous Games: Connected Toys, COPPA, and Bad Security, 2 GEO. L. TECH. REV. 170, 175 (2017).
\textsuperscript{59} Id. at 171.
\textsuperscript{60} See generally id. at 170–174 (showing numerous examples of data breaches from children’s smart devices).
\textsuperscript{61} See FTC Staff Rep., supra note 8, at 11–12.
\end{flushleft}
corporations are incentivized to ignore COPPA requirements. Recently however, tides have begun to shift. In 2019, TikTok parent company Musical.ly and Google’s YouTube received fines for having thousands of individual violations despite having actual knowledge that children were using these sites. Following these settlements, the FTC announced that it would be entering an open comment period for COPPA reforms that ended in December 2019, after having received over 175,000 comments on the law.

In December of 2022, the FTC showed how COPPA applies to video games through the largest COPPA settlement to date with Epic Games. The $520 million settlement, split between fines and refunds, highlighted two main issues. The first was the use of “on by default” features, such as voice and text chat in Epic’s Fortnite, which collected chat information from children and presented parents with unreasonable barriers when parents requested access to the information collected. The second issue in the settlement was how Epic would use patterns to trick young users into making purchases without their knowledge or parental consent. This was particularly concerning because verified credit card purchases can be used as a form of parental consent for data collection under COPPA.

IV. STRENGTHS AND WEAKNESSES OF COPPA

Before considering the proposed reforms to COPPA, it is important to look at the strengths and weaknesses of COPPA to see the merits of keeping the Act as is. Despite facing pushback from all sides, COPPA has managed to endure where other efforts have failed. The FTC has managed to win large settlements from companies, the largest being the $520 million settlement with Epic Games in 2022. Congress granted the FTC ability to make changes to COPPA through informal rulemaking procedures of the Administrative Procedures Act, allowing the FTC to act quickly and flexibly in making changes to COPPA. Aside from APA rulemaking, the FTC has shown that it can utilize informal tools to address new challenges.

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63 See PRIVO, supra note 56; see also Cobb, supra note 18, at 974–75.
64 See Cobb, supra note 18, at 966.
66 Id.
67 Id.
68 See Johnson, supra note 4, at 426.
69 See Warmund, supra note 19, at 212.
70 FED. TRADE COMM’N, supra note 65.
and changing technological concerns, such as updating COPPA’s FAQ, releasing blog posts on the FTC website, and issuing policy enforcement statements.\textsuperscript{71}

Additionally, COPPA’s safe harbor provisions encourage corporations to self-regulate. This reduces the burden upon the FTC to actively monitor sites and allows corporations to implement even stronger user protections than required in COPPA. The FTC currently has approved six safe harbor groups, and corporations have been eager to join these organizations.\textsuperscript{72} However, allowing industry oversight can lead to its own set of issues. For example, in 2019 the FTC brought suit against a game developer for claiming to be a member of a safe harbor organization, despite the fact that the developer had stopped being a member in 2015.\textsuperscript{73} The fact that a company could violate the law for four years raised questions about the efficacy of safe harbor.\textsuperscript{74}

The next major criticism of COPPA by children’s and parents’ rights groups concerns the way that the “verifiable parental consent” requirement is handled by corporations.\textsuperscript{75} These groups argue that corporations increasingly try to shift the burden to parents and then use this as an argument as to why they lacked actual knowledge of a child using the site.\textsuperscript{76} As mentioned previously, the FTC has proposed several methods of obtaining verifiable parental consent. These include methods such as having a parent telephone a call center, sending in a consent form, or communicating over multiple emails all to prove that it is the parent and not the child performing these actions.\textsuperscript{77} Problems arise on two fronts. The first is that many companies attempt to hide items through the use of clickwrap and browsewrap.\textsuperscript{78} While there is reason to believe that these methods are not enough to constitute verifiable parental consent due to falsifiability, companies continue to use them and argue that this constitutes compliance with COPPA.\textsuperscript{79} Additionally, while the methods of consent were chosen so as to be too sophisticated for young children

\textsuperscript{71} See Johnson, supra note 4, at 427–28.
\textsuperscript{72} See Fed. Trade Comm’n, supra note 29.
\textsuperscript{75} See Warmund, supra note 19, at 208; see also Johnson, supra note 4, at 448–49 (discussing how children often lie to get around parental consent mechanisms).
\textsuperscript{76} See Johnson, supra note 4, at 449.
\textsuperscript{77} What is Verifiable Parental Consent?, PRIVO (March 18, 2019, 2:48 PM), https://www.privo.com/blog/what-is-verifiable-parental-consent#solntext=Verifiable%20parental%20consent%20is%20required%20(required%20(P))/(1)%20from%20their%20kids.
\textsuperscript{78} See Greenberg, supra note 58, at 177. “Clickwrap” refers to online contracts formulated to allow users to agree to terms by ticking a box or clicking a button. “Browsewrap” refers to online contracts that assume acceptance of terms through use of a website. See generally Clifford Fisher, Samuel J. Calderson, Jayden Mougin & Matthew J. Radford, Evolution of Clickwrap & Browsewrap Contracts, 48 Rutgers Comput. & Tech. L.J. 147 (2022).
\textsuperscript{79} Adam C. Losey, That’s a Wrap: Online Agreements and Gaming Kids, ABA (Apr. 2015), https://www.americanbar.org/groups/intellectual_property_law/publications/landslide/2014-15/march-april/that-s-wrap-online-agreements-gaming-kids/.
to falsify, falsification does occur on a fairly frequent basis, often with the tacit encouragement of corporations.80

Nowhere is this more evident than using a verified credit card purchase as the indicator of parental consent. As technology has changed over the past decade, many individuals, including parents, are choosing to save credit card information on their devices. When children have access to these devices, many can find ways to access card information and make purchases.81 While parents can contest these charges and revoke any notion of consent, the burden is on the parent rather than on the company to monitor their children, devices, and bank accounts to keep their children’s data from being collected.82 This was exemplified in the Epic Games case, where the company led users, often unknowingly, to make charges using card information saved on the gaming console.83 This led to not just unwanted purchases, but also allowed Epic Games to track user data under the pretense that they had obtained “consent.”84

Corporations often argue that COPPAt is too vague for them to know if the procedures that they implement are adequate to comply with regulations.85 This is particularly the case for mixed-use websites such as YouTube that rely on third-party creators uploading content to drive revenue. The distinction between how mixed-use and general audience sites are treated under COPPA is unclear on its face aside from how the Act recognizes that children are more likely to be attracted to mixed-use sites, without defining what this content looks like.86 Additionally, sites with third-party content creators are treated both as a website individually and as a publisher, where the individual creator’s page is treated as its own separate website.87 Because of this, both the creator and the host site can be held responsible for COPPA violations, but the apportionment of fault in these situations is unclear.

Finally, the requirement that mixed-use and general audience websites have actual knowledge that a child is using the service has provided companies with a great deal of lenience. Many sites require that an account user be over the protected

82 See id.
83 See FED. TRADE COMM’N, supra note 65.
84 See id.
86 See Cobb, supra note 18, at 970–71.
87 See id. at 973.
age range but do little to ensure that the user is providing an accurate age. The actual knowledge requirement tends to be a major source of contention in cases surrounding COPPA, as companies attempt to shift the blame to users for violating terms and conditions. This argument has proved to be at least moderately successful with courts, but has been met with skepticism by scholars, due to how accurately most analytic software can predict user age. Lawmakers have urged the FTC to instead switch to a constructive knowledge requirement, as this would expand the ability for states to take action, and force corporations to implement better safeguards.

V. COPPA REFORMS AND CHALLENGES

The first types of reforms proposed for COPPA are age-based reforms, including the Children and Teens Online Privacy Protection Act (CTOPPA), informally known as COPPA 2.0, which is currently before the Senate Committee on Commerce, Science, and Transportation. These reforms would expand COPPA’s data collection protections across a broader range of ages with CTOPPA specifically expanding to cover those under the age of 16, while some advocate proposals would expand age protections to cover all minors or to even cover adults.

Teens continue to exhibit many of the vulnerabilities of younger children such as failing to consider the future consequences of their actions when they post online, struggling to comprehend who might be able to see their posts, and continuing to be susceptible to advertisements. However, teens also face certain vulnerabilities that younger children do not experience, such as being more likely to engage in risky behaviors, being more susceptible to peer influence and less deferential to authority, and therefore drawn to general audience websites. Expanding reforms to cover teens would serve to further multiple purposes of the original act, those being to protect young people and their families from data collection while the child is still developing, and providing parents with awareness of how their children are spending time online. However, advocacy groups have expressed concerns about the impact that this could have on children’s privacy, as it would require teens to obtain parental consent to interact with many websites that

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88 See Johnson, supra note 4, at 448.
89 See id.
90 See Cobb, supra note 18, at 979–80.
91 See Fowler, supra note 10; Fifteen senators have cosponsored legislation that would require the FTC to make this change. See Children and Teens’ Online Privacy Protection Act, S. 1628, 117th Cong. (2021).
93 Id.
94 See Johnson, supra note 4, at 446–48.
95 See id. at 432–34.
96 See Laurence Steinberg, Cognitive and Affective Development in Adolescence, 9 Trends in Cognitive Scis. 69, 69–73 (2005); see also Johnson, supra note 4, at 440–41.
they currently use freely.97 This could have a severe negative impact upon the parent-child relationship, as studies show that 40% of parents and teens already report regularly arguing about technology use. 98 Additionally, this would run counter to social trends of providing adolescents with greater agency as they approach the majority.99

This leads to a second age-based reform proposal: to extend COPPA protections to all consumers, adults included.100 This approach would change the parental consent requirements to simply making it so that companies have to protect the data of all people who visit their sites.101 This approach would require companies to be more transparent to all users about data collection and incentivize all companies regardless of status to implement better methods of collecting consent.102 However, there is concern that these reforms would require a massive restructuring of the current framework of the internet, with there being good evidence that many users would choose to opt out of data collection and thus cost companies large sums of money even if companies were technically allowed to require data collection as a precondition to using their service.103

The next style of reform comes in giving users greater knowledge before data is collected and greater rights over their data after it is given. In the United States, the California Consumer Privacy Act of 2018 (CCPA) and its later amendments in the California Privacy Rights Act of 2020 (CPRA) best exemplify this style of reform.104 This legislation applies to all consumers within the state regardless of age.105 While the law is specifically designed to protect consumers, the term “consumer” is defined broadly so as to encompass nearly all users.106 These laws require companies to let users know when data will be collected, if that data might be sold to a third party, and to give users the option to opt out of collection in a clearly marked way.107 Upon request, users can see specifically what data has been

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99 See Johnson, supra note 4, at 425.
100 Id. at 446–48.
101 See id. at 448–49.
102 See id. at 450–51.
104 Sanford P. Shatz & Paul J. Lysobey, Update on the California Consumer Privacy Act and Other States’ Actions, 77 BUS. LAW. 539, 539–40 (2022).
105 Id. at 539–41.
106 Id.
collected, and upon review can choose to have the data deleted, subject to a few limited exceptions.108

Some advocates argue that the CCPA and CPRA do not go far enough, and that instead the United States should take an approach more similar to the European Union’s General Data Protection Regulation (GDPR).109 The GDPR is similar to the CCPA in many ways, but provides users with the opportunity to request that any data collected or posts made be deleted and removed by the website, even if consent at one point was provided, so long as there is no cultural significance to the data in question.110 This ties into two large movements regarding data in the EU, those being the “right to be forgotten”111 and recognizing data as property.112 Recognizing data as property would give users ultimate control over how their information was used, how it could be collected, and whether it can stay online.113

The concept of the right to be forgotten would allow the same rights as those related to the data-as-property movement but would serve to expand upon them as well. The right to be forgotten would allow individuals to have a say over whether information about them, that is posted online by another party, can remain on a website. This is a particularly powerful tool related to concerns over “sharenting,” the process by which parents share overly personal information of their children online.114 However, this immediately raises concerns regarding parental rights and the property rights of others. To give children a say over what others can post online, particularly parents, would invert who has control within the parent-child relationship in a way that would run directly counter to the current design of COPPA.115 While this makes it unlikely that the right to be forgotten will ever be recognized in full in the United States, understanding the guiding philosophy of the movement and enacting elements of reform remains possible.

Finally, another proposed reform would be to attempt to apply and expand Coogan laws to protect children online. Coogan laws are legislation in a handful of states designed to protect child performers.116 These laws require that a certain amount of the money earned from the child’s labor be set aside until they are an adult, and also regulate the child’s education and the number of hours they can work.117 The most straightforward applications of Coogan laws would be to cover

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108 See id.  
109 See Finnegan, supra note 62, at 852–53.  
111 Id.  
113 See id. at 261–62.  
114 See Eichhorn, supra note 110, at 74, 121.  
116 Id. at 257–59.  
117 Id. at 249.
solely child content creators, either those who make content individually or with their families and upload the content online, but a natural extension of this is to consider that performance could be expanded to provide even greater protections for any child user that posts content. However, there are multiple pitfalls to this approach, the first and most glaring being that Coogan laws are not currently widespread with Coogan style financial protections being in place in only four states. Additionally, this would create a great liability for parents, who would suddenly be placed in a fiduciary role to allow their children to access the internet.

VI. CONCERNS REGARDING REFORM

One concern about expanding COPPA protections is that this could lead to a decrease in appropriate children’s content. By giving existing protections more weight or by expanding the users covered by the protections, there are concerns that corporations and content creators would be incentivized to instead focus on creating more profitable media and technology than creating a COPPA compliant framework. Creators would lack the incentives to pursue creating tools, platforms, and websites specifically for children, which could stifle innovation in educational and social technology. Alternatively, increased restrictions could also lead to a significant increase in the number of non-targeted advertisements being shown to children, which would present problems given the demographic’s susceptibility to advertisements. There are also the previously mentioned civil rights concerns, as this could impact how much privacy minors have from their parents, as well as their ability to speak and gather online.

Finally, an increase in regulation, specifically any regulations that eliminate safe harbor provisions, would have the problem of needing greater government oversight. Fewer than 1,200 employees work for the FTC, and even with assistance from state regulatory bodies there would need to be some way to encourage companies to self-regulate. Many of the proposed changes discussed would struggle to find ways to entice corporate buy-in, and as such there is increased pressure upon the FTC to monitor and regulate massive amounts of content through direct oversight. As previously mentioned, the FTC only brought thirty-four cases in twenty years under the current framework, in part due to this struggle, so it would be vital to expand and invest in the FTC to provide them

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118 Id. at 263–64.

119 Id. at 257.


121 See Fowler, supra note 10.

122 See Warmund, supra note 19, at 212–13; see also Jargon, supra note 97.


124 See Fed. TRADE COMM’N, supra note 15, at 34.
with adequate resources to be able to truly address the problem. However, this would require an expansion of the FTC to unforeseen levels and likely require a dedicated division of the agency to focus solely upon COPPA, making it infeasible that this would occur. Because of this, it is necessary to continue to have strong partnerships with corporations and state agencies to ensure that there is the appropriate coverage to monitor compliance.

CONCLUSION AND PREDICTIONS

The two greatest challenges that must be addressed by the FTC as they work to reform COPPA are to make sure that the regulations are acting in a proactive rather than reactive manner, and to provide incentives to both corporations and parents to make sure that COPPA is self-enforcing. The current safe harbor provisions are vital for this, but by implementing the reforms of the CCPA on a federal level, there would be greater levels of transparency regarding what data is being collected by sites and how the data is being used. Even should these policies only apply to children, it would require companies to make their data collection policies more prominent on their websites, give parents and children the ability to request that data be deleted by companies retrospectively. If dormant commerce clause concerns were to arise, states could still implement similar schemes, giving them the ability to work with the FTC to enforce COPPA in conjunction with state data privacy laws.

The next most likely reforms for the FTC to impose are adding additional ways for companies to obtain verifiable consent and eliminating the option for methods that have proven to be problematic, such as credit card purchases. While this does raise concerns about what methods could prove to be effective without being burdensome to families, allowing parents to email in a signed form or to improve access to automated call centers could solve some of these problems. The final reform proposal listed that may be given attention by the FTC is changing the actual knowledge requirement to a constructive knowledge requirement, placing a stronger emphasis on corporate responsibility to self-moderate.

While numerous other reform proposals have been presented, they are less likely to be seriously considered, as they either place too harsh a burden upon companies or shift power away from adults and into the hands of children. While advocates for proposals regarding Coogan expansion or the right to be forgotten may one day achieve legislative reform, it would require a stark shift in how we view the parent-child relationship and moving away from the current legal framework.

However, what stands out above all is that the FTC is unlikely to make any drastic changes to COPPA due to how efficiently it works for the agency. Despite pushback from corporations, politicians, and advocacy groups, the law has found a way to balance these disparate interests while providing a level of flexibility to regulators to make slight adjustments as needed and major adjustments at regular intervals. Additionally, the FTC, in conjunction with state legal agents, has
managed to achieve massive settlements and actionable changes from some of the largest players in the industry. As such, the change that could be most efficient would be to focus on improving resources for the FTC to allow for better regulation of the existing law.