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# An Epic Year In COPPA Enforcement: Trends, Takeaways, And Insights From Recent FTC COPPA Enforcement Actions

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# Agenda

**State of Youth Privacy Laws Today**

**COPPA Basics**

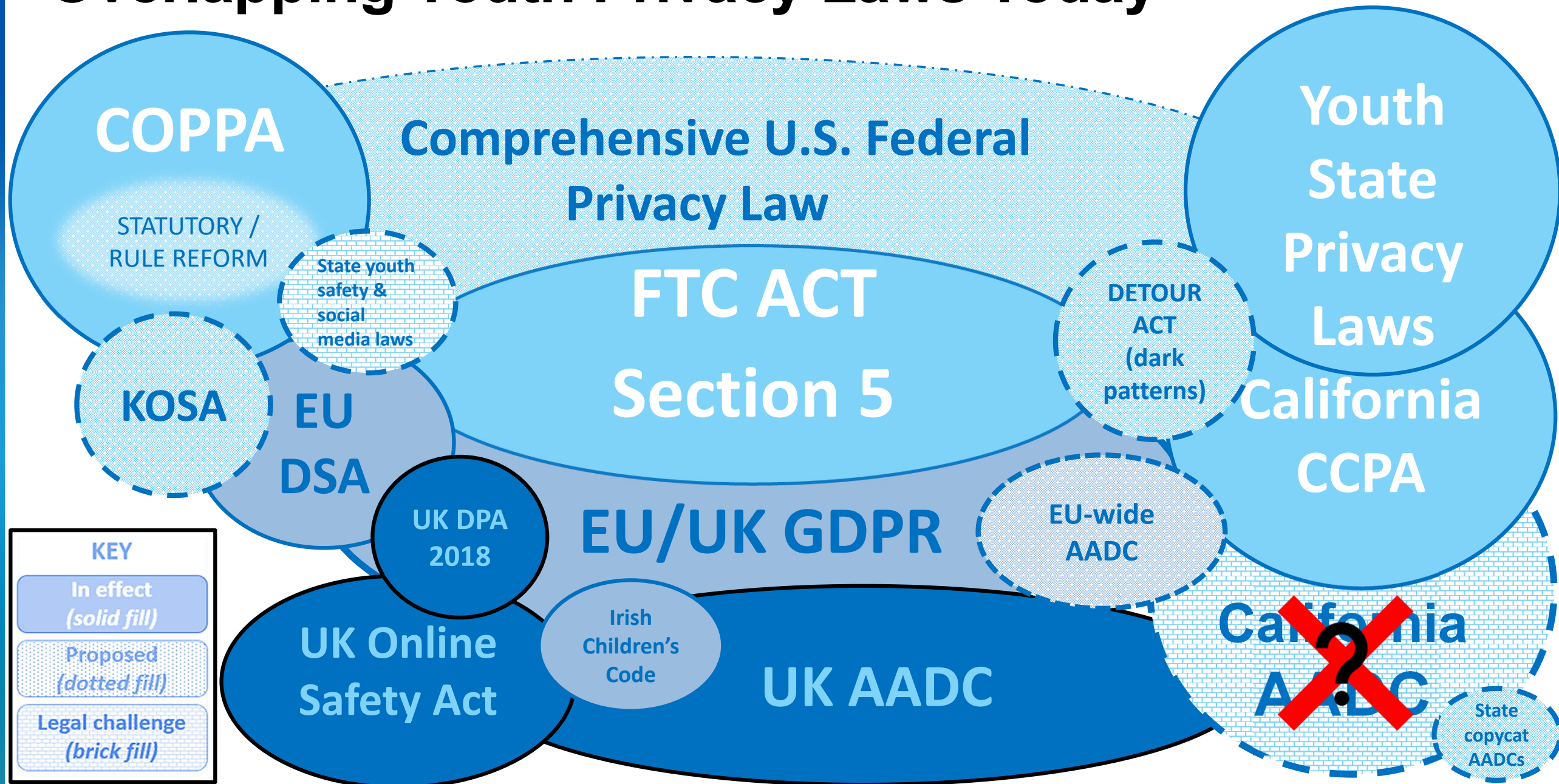
**Trends in Recent COPPA Enforcement Matters**

**Case Examples**

**What's Next**

**Key Takeaways**

# Overlapping Youth Privacy Laws Today



# Year-long Lookback: Key Kids' Privacy Moments

## 2022

September      December

Irish DPC fines Meta €405M for violating EU GDPR

FTC announces \$275M Epic-Fortnite COPPA+ Settlement

## 2023

January\*      May      June      August      September      October

State laws start to come into effect. New laws pass. Total =13

FTC announces \$6M Edmodo COPPA Settlement

FTC announces \$25M Amazon-Alexa COPPA Settlement

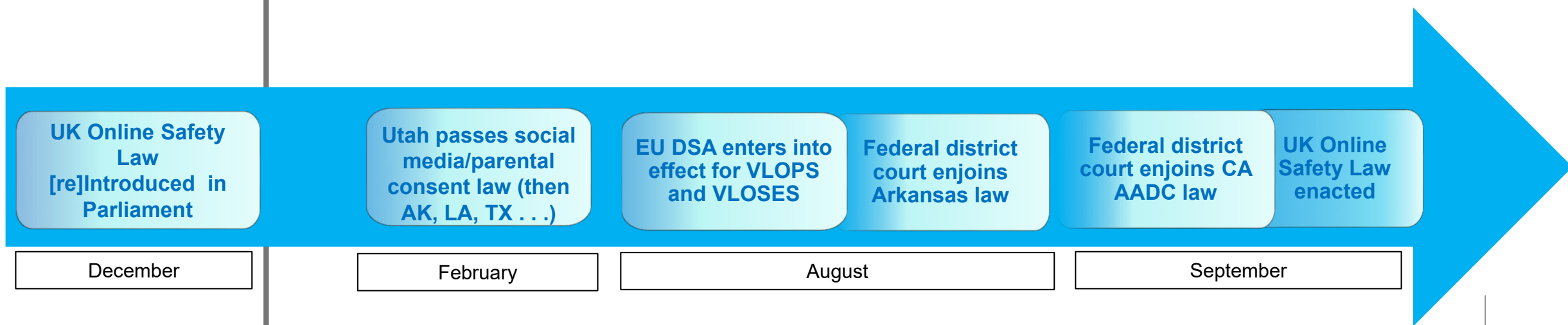
FTC announces \$20M Microsoft-Xbox COPPA Settlement

FTC announces \$6M Edmodo COPPA Settlement

Irish DPC fines TikTok €345M for violating EU GDPR

Federal district court enjoins CA- AADC

42 State AGs sue Meta for addictive features harming children



# COPPA Basics

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- ◆ Applies to:
  - Operators of commercial websites or online services “directed to children” under 13; and
  - Operators of websites or online services which have actual knowledge that children under 13 are using the website
- ◆ Operators subject to COPPA must:
  - Provide prominent notice of what personal information is collected and how it is used or disclosed;
  - Obtain verifiable parental consent to the collection, use and disclosure of children's personal information;
  - Provide a reasonable means for parents to review (and delete) personal information collected from their child and prevent further use;
  - Not require a child to disclose more personal information than is reasonably necessary for participation in an online activity as a condition of participation; and
  - Implement reasonable procedures be in place to protect the confidentiality, security, and integrity of personal information collected from children.

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# Trends in Recent COPPA Enforcement Matters

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# Evidence of Directed to Children

## ◆ *Epic Games (2022)*

- The FTC complaint provided the following reasons to support that Fortnite was “directed to children” under COPPA:
  - Fortnite promoted and hosted in-game concerts featuring celebrities popular with children, such as Marshmello, Travis Scott, Ariana Grande, and BTS.
  - Epic made millions in royalties by partnering with companies to sell officially licensed Fortnite merchandise for children, including Fortnite Halloween costumes and Fortnite-branded Nerf guns.
  - Fortnite’s various game modes include “build-and-create” mechanics like those in other games popular with children, and feature other elements that appeal to children, like cartoony graphics and colorful animation.

## ◆ *TikTok (Musical.ly) (2019)*

- The FTC Complaint identified the following as evidence that TikTok is directed to children:
  - Musicians like Ariana Grande, Katy Perry, Meghan Trainor, and Selena
  - The app’s simple tools make it easy for children to upload videos
  - Ability to send DMs with “colorful and bright” emoji characters
  - The app included songs appealing to children, including songs related to Disney (e.g., Lion King and Toy Story (You’ve got a friend in me) and “school-themed television shows or movies.”

## ◆ *YouTube (2019)*

- The FTC Complaint identified the following as evidence that channels on YouTube were directed to children:
  - Channels stated in their “about” section that they are intended for children
  - Channels depicted toys popular with kids, included Barbie, hot wheels and shows popular with kids, including My Little Pony, Powerpuff Girls, etc.
  - Channels stated in their “about” sections that they were for “children and parents”
  - Channels featured “unboxing” (e.g., kids unwrapping toys from boxes and explaining how the product worked)
  - A channel featured a 13 year old reviewing popular toys

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# Focus on Data Retention

- ◆ *Edmodo*
  - The FTC alleged Edmodo violated COPPA by, among other things:
    - retaining the personal information collected for longer than the FTC asserted was reasonably necessary to fulfill the purpose for which it was collected
- ◆ *Amazon (Alexa)*
  - The FTC alleged Amazon violated COPPA by, among other things:
    - retaining voice transcripts of children's conversations with Alexa in archived storage despite parent's deletion requests
- ◆ *Microsoft (Xbox Live)*
  - The FTC alleged Microsoft violated COPPA by, among other things:
    - retaining information from children whose parents did not provide VPC for use of their child using Xbox's Live products



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# Use of Section 5 Unfairness

- ◆ *Epic Games*

- The FTC alleged Epic Games violated the “unfairness” prong under Section 5 of the FTC Act by:
  - enabling by-default real-time voice and chat communications for children and teens that led to many children being harassed or bullied.

- ◆ *Edmodo*

- The FTC alleged Edmodo violated the “unfairness” prong under Section 5 of the FTC Act by:
  - harming the schools, and by association, its students, by attempting to shift Edmodo’s COPPA compliance obligations onto the schools and teachers, requiring them to “expend valuable resources” in trying to understand and comply with the COPPA Rule as a result of Edmodo failing to provide adequate information.

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# Use of Section 5 Unfairness

- ◆ *Amazon (Alexa)*
  - The FTC alleged violated the “unfairness” prong under Section 5 of the FTC Act by:
    - Retaining children’s voice recordings for longer than necessary which increased the likelihood of additional substantial injury to consumers through, for example, unnecessary employee access to consumers’ voice recordings.
    - Not restricting employee access to Amazon Alexa users’ voice recording, thus granting access to user’s sensitive data beyond what is needed for a particular job function.
    - Failing to delete Amazon Alexa user’s geolocation data upon request as the data was allegedly maintained in “secondary data storage locations” that were insulated from consumer’s deletion requests, despite Amazon employees having regular access to the data for product improvement purposes.
    - Failing to notify Amazon Alexa users that Amazon had not satisfied their consumer requests to delete their or their children’s geolocation information or voice recordings.

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# New Forms of Injunctive Relief

- ◆ *Default Setting Changes*
  - The FTC's Proposed Order with Epic Games prohibit Epic from enabling voice and text communications for children and teens unless parents (of users under 13) or teenage users (or their parents) provide their affirmative consent through a privacy setting
- ◆ *Deleting Algorithms*
  - The FTC's Proposed Order with Edmodo required Edmodo to delete any models or algorithms developed in whole or in part using personal information collected from children without VPC.
  - Similarly, the FTC's Proposed Order with Weight Watchers (WW) International required WW to delete any models or algorithms developed in whole or in part using personal information collected from children without VPC.

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# New Forms of Injunctive Relief

- ◆ *Requiring Disclosure of Children's Age to other Operators*
  - The FTC's Proposed Order with Microsoft required Microsoft to provide notice that a user is a child when it discloses children's information to third parties, such as video game publishers via an API.
  - According to the FTC press release, this goal of this requirement is to “require the publishers to apply COPPA's protections to that child.”

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# **Key Takeaways and Strategies**

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# Key Takeaways and Strategies

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- ◆ Companies should closely assess recent actions against their own practices to:
  - determine whether they may be subject to COPPA based on internal and empirical data;
  - evaluate existing COPPA notices to ensure it accurately explains their information practices;
  - evaluate existing account creation flows to ensure that personal information collected before VPC is permitted under COPPA
  - review default settings that may be by children to share data with other users (if applicable) that could result in potential harm;
  - provide easy to use mechanisms to parents to submit a deletion requests for their children’s information; and
  - review existing retention policies to ensure children’s information is not being retained for longer than necessary, including using such data for purposes of improving products.

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# What's Next?

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# Continued FTC Focus

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- ◆ Children's data (including data belonging to teens) has been a key focus of FTC enforcement actions in recent years and will likely continue to be in coming years.
- ◆ The FTC has expressly made clear that it will use all tools in its war chest to protect children's privacy, including bringing actions for alleged unfair trade practices for acts that fall outside COPPA's scope.
- ◆ The FTC is certain to continue to take aggressive positions and push the boundaries of the COPPA Rule – this could push companies to choose to litigate.



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# Advance Notice of Proposed Rulemaking

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- ◆ In August 2022, the FTC released an Advance Notice of Proposed Rulemaking (ANPR) broadly relating to “Commercial Surveillance and Data Security”, which included several overlapping topics with COPPA.
- ◆ Topics considered by the ANPR relating to children under 13 included:
  - extending protections to teens or “tweens”;
  - banning certain practices, like targeted advertising to minors;
  - changing the knowledge standard for general audience sites/apps from “actual knowledge” to “constructive knowledge”;
  - Considering what child and teen privacy protections should be required for services that are not directed to children or teens; and
  - Prohibiting practices that “manipulate” children and teens into prolonging their online activity.

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# Children and Teens' Online Privacy Protection Act (COPPA 2.0)

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- ◆ In May 2023, Congress introduced the Children and Teens' Online Privacy Protection Act (COPPA 2.0) to amend the COPPA Rule.
- ◆ Key provisions of COPPA 2.0 include:
  - Prohibit companies from collecting personal information from users who are 13 to 16 years old without their consent;
  - Ban targeted advertising to children and teens;
  - Revise COPPA's "actual knowledge" standard, covering platforms that are "reasonably likely to be used" by children and protecting users who are "reasonably likely to be" children or minors;
  - Create an "Eraser Button" for parents and kids by requiring companies to permit users to delete personal information from a child or teen
  - Establish a "Digital Marketing Bill of Rights for Teens" that limits the collection of personal information of teens

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# Questions?

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# Appendix

# United States v. Epic Games, Inc.

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- ◆ On December 19, 2022, the FTC announced a settlement with video game developer Epic Games, Inc., the maker of the video game Fortnite, for violating the COPPA Rule and the FTC Act's prohibitions against unfair practices.
- ◆ The FTC complaint further alleged that:
  - From July 2017, when Fortnite launched, until September 2019, Epic took no steps to (a) provide a direct notice to parents describing Epic's practices regarding the collection, use, and disclosure of children's personal information; (b) explain what information Epic collected from children; or (c) seek verifiable parental consent from parents before collecting their children's personal information
  - When parents contacted Epic to review or delete the information Epic collected from their child through Fortnite, or delete their child's Epic Games account, Epic made those parents jump through extraordinary hoops to "verify" their parental status



# United States v. Epic Games, Inc.

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- ◆ The FTC settlement also required Epic Games to:
  - Pay a record \$275 million monetary judgment
  - Delete personal information previously collected from children and teen players (unless Epic obtains parental consent to retain the data or the user identifies as 13 or older through a neutral age gate)
  - Disable real-time voice and chat for children and teens unless the parents of users under 13 or teenage users (or their parents) provide affirmative express consent through a privacy setting
  - Maintain a comprehensive, COPPA-compliant privacy program
  - Submit to third-party privacy assessments every two years for 20 years

# United States v. Epic Games, Inc.

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- ◆ Takeaways:
  - Gaming and other online services cannot avoid COPPA compliance by claiming they are not “directed to” children in their privacy policies
  - In assessing whether a service is directed to children, the FTC will look beyond the service itself, including internal communications, product licensing, merchandising and external surveys to determine whether the company had knowledge of children on its platform
  - The process for a parent to request their child’s information be deleted should be documented and straightforward
  - Companies that later come into COPPA compliance must apply such changes retroactively or risk being required to delete such data
  - Default data sharing settings pose potential harm to child and teen users and such practices may be seen as unfair under the FTC Act

# United States v. Edmodo, LLC

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- ◆ On May 22, 2023, the FTC announced a proposed order to settle allegations against EdTech provider Edmodo, LLC for violations of the COPPA Rule and the FTC Act's prohibitions against unfair practices.
- ◆ Along with student information directly submitted to create accounts, Edmodo also automatically collected other unnecessary information from children, including IP addresses, cookies, device types, and browser IDs, which it then used for marketing purposes
- ◆ Edmodo's Terms of Service required that the schools using Edmodo shall provide direct notice and obtain verifiable consent from the children's parents; however, teachers were never required to click on the Terms of Service in order to sign up.

# United States v. Edmodo, LLC

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- ◆ The FTC alleged Edmodo violated COPPA by:
  - Including COPPA provisions within Edmodo's Privacy Policy, rather than a separate notice
  - failing to inform teachers/schools that they should provide notice and obtain consent on Edmodo's behalf
  - collecting personal information from children without notifying parents and obtaining verifiable parental consent;
  - retaining the personal information collected for longer than the FTC asserted was reasonably necessary to fulfill the purpose for which it was collected

# United States v. Edmodo, LLC

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- ◆ The FTC settlement prohibited Edmodo from:
  - Conditioning a child's participation in an activity on the disclosure of more personal information than reasonably necessary for participation
  - Relying on a school's authorization for children's personal data collection, unless it enters into a written agreement with the school that includes specified provisions
  - Using schools as intermediaries in the parental consent process
  - Using children's personal information for non-educational purposes

# United States v. Edmodo, LLC

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- ◆ The FTC settlement also required Edmodo to:
  - Pay a \$6 million monetary judgment
  - Destroy all personal information from accounts where verifiable parental consent or compliant school authorization was not provided
  - Delete algorithms, models or other item developed using the illegally collected children's information
  - Implement and adhere to a retention schedule where deletion occurs within one year after collection, unless a parent requests otherwise, or one year after the service contract's termination, unless the school or district requests otherwise

# United States v. Edmodo, LLC

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- ◆ Takeaways:
  - Edtech providers who are relying on school authorization should do the following:
    - Limit their use of personal information to educational purposes only (which includes metadata).
    - Provide a direct notice to the school (and make reasonable efforts to ensure the school receives such direct notice and understands COPPA requirements).
    - Avoid language in Terms or Privacy Policy that tries to shift responsibility for COPPA compliance to intermediaries.

# United States v. Amazon

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- ◆ On May 31, 2023, the FTC announced a settlement against Amazon for violations of the COPPA Rule relating to its data practices involving its Alexa smart speaker.
- ◆ Background:
  - Amazon's Alexa provides these products include voice activated services aimed at children under 13 years old, including the Echo Dot Kids smart speaker; "FreeTime on Alexa," a personalized service that allows parents to control how their child accesses and uses Alexa; and "FreeTime Unlimited on Alexa," which offers children's audio books and audio-based Alexa applications such as voice-controlled games, stories, jokes, and educational tools.
  - More than 800,000 children under 13 years old have their own Alexa profiles. These profiles link to a parent's profile and include the child's name, birth date, and gender.
  - Despite representations stating otherwise, Alexa's smart speaker saves voice recordings and geolocation data indefinitely by default, even if the user stops using Alexa for months or even years, including to train and improve the Alexa product, and would retain this data regardless of parent's deletion requests.



# United States v. Amazon

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- ◆ The FTC complaint alleged Amazon violated the COPPA Rule by:
  - Retaining children’s voice recordings for longer than necessary as Amazon only needed to retain a voice recording for a few seconds to respond to the request. The complaint further claimed that indefinite retention of children’s voice recordings to improve Alexa’s speech recognition and processing capabilities was not reasonably necessary.
  - Failing to fully delete a child’s information after being requested by a parent, despite representations in Amazon’s “Children’s Privacy Disclosure” that parents could delete their child’s information at any time. This was not made possible until mid-2019, where before then, Amazon would only delete the child’s voice recording but retain written transcripts of the recordings for product development.
  - Failing to provide parents with complete and “truthful” notice by representing to parents that they could delete their child’s information at any time, where Amazon would only delete certain information relating to their child upon request.

# United States v. Amazon

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- ◆ The FTC complaint further alleged Amazon violated the FTC Act by:
  - Retaining children’s voice recordings for longer than necessary as Amazon only needed to retain a voice recording for a few seconds to respond to the request, claiming that Amazon’s unlawful retention of consumers’ sensitive personal information increased the likelihood of additional substantial injury to consumers through, for example, unnecessary employee access to consumers’ voice recordings.
  - Not restricting employee access to Amazon Alexa users’ voice recording, thus granting access to user’s sensitive data beyond what is needed for a particular job function.
  - Failing to delete Amazon Alexa user’s geolocation data upon request as the data was allegedly maintained in “secondary data storage locations” that were insulated from consumer’s deletion requests, despite Amazon employees having regular access to the data for product improvement purposes.
  - Failing to notify Amazon Alexa users that Amazon had not satisfied their consumer requests to delete their or their children’s geolocation information or voice recordings.

# United States v. Amazon

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- ◆ The FTC settlement also required Amazon to:
  - Pay a record \$25 million monetary judgment
  - Implement and provide notice of a retention schedule for Amazon Alexa's voice and geolocation data, including mechanisms for parents to request deletion of such data relating to their children.
  - Implement a process to identify inactive Alexa child profiles and to delete any children's personal information associated with such profiles.
  - Implement a privacy program focused on Amazon's collection and use of geolocation information. The program includes annual risk assessments, implementation of safeguards (including privacy reviews, employee training and access controls) and performing diligence on Amazon's service providers.
  - Submit a compliance notice with the Order for 10 years

# United States v. Amazon

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- ◆ Takeaways:
  - The FTC settlement reflects that retaining children’s data for training or product improvement purposes is not sufficient alone to retain the data for longer than reasonably necessary.
  - Children’s data located in archive or other cold storage solutions are not exempt from parent’s deletion requests.
  - The FTC is broadly interpreting “unfair practices” within the meaning of the FTC Act. Included within the scope are practices ranging from overbroadly broad employee access to customer data, unnecessary retention of customer data, and failure to honor deletion requests.

# United States v. Microsoft Corporation

- ◆ On June 5, 2023, the FTC announced a settlement against Microsoft for violations of the COPPA Rule relating to its data practices involving its Xbox live products, claiming it to be a “game changer” for COPPA compliance.
- ◆ Background:
  - As part of the Xbox Live platform, Microsoft would require that a child who indicated that they were under the age of 13 to have a parent link their own Microsoft account to the child’s account, then Microsoft would provide a notice to the parent of its information practices.
  - In order to play, Microsoft required children to display their “gamertag” which is by-default visible to other Xbox Live users. allowed children to add freeform text to their “activity feed,” which is visible to other users, or share direct user-to-user text messages, voice messages, video recordings, and photographs.
  - In instances where the parent did not complete the process of creating a Microsoft account for the child, Microsoft retained the personal information collected from the child, in many cases for years.

# United States v. Microsoft Corporation

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- ◆ The FTC complaint alleged:
  - Microsoft failed to provide parents with direct and complete notice of its information practices, as it did not fully disclose all types of information that may be shared with third parties, such as the child’s “gamertag” and their “gamerpic” which could be an avatar or an uploaded image, and the child’s voice from sending video messages
  - Microsoft also failed to adequately provide notice of its sharing practices, as Microsoft would share the child’s usage data and their persistent identifier (i.e., an Xbox User ID or XUID) with third-party game and app developers. Additionally, children could add freeform text to their “activity feed” which is visible to other users of third-party games
  - Microsoft’s retention of information pertaining to children whose parents did not complete registration process violated COPPA’s prohibitions on retaining children’s personal information for longer than necessary to fulfill the purpose for which that information was collected

# United States v. Microsoft Corporation

- ◆ The FTC settlement also required Microsoft to:
  - Pay a record \$20 million monetary judgment
  - Delete personal information previously collected from children's accounts (unless Microsoft obtains parental consent to retain the data)
  - Provide notice of parental controls to all parents of children's accounts, as well as informs parents that Microsoft offers parental controls and a family safety settings app
  - Implement and publicly publish a data retention schedule setting for the criteria for retention of information collected through children's accounts
  - Provide notice that a user is a child when it discloses children's information to third parties, such as video game publishers.
  - Submit a compliance notice with the Order for 10 years

# United States v. Microsoft Corporation

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- ◆ Takeaways:
  - The FTC settlement with Microsoft reflects that the FTC is interpreting “Personal Information” to broadly include not only children’s full names, email addresses, and telephone numbers, but also photographs, video, or audio, as well as information associated with other categories of personal information through unique identifiers.
  - Companies should evaluate their COPPA notices, taking into account the FTC’s broader definition of “Personal Information” to confirm the notice provides complete descriptions of their information practices relating to children’s data, including the potential collection of children’s data through unique identifiers.
  - Establish and implement a retention schedule to ensure that children’s data is not stored longer than reasonably necessary.