

Data Privacy and Cybersecurity

New Bill Seeks to Update Children's Online Privacy Protections with the PROTECT Kids Act

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On Thursday, January 9, 2020, lawmakers in the House of Representatives introduced a bipartisan bill to update federal law regarding children's online privacy. The new bill – called the Preventing Real Online Threats Endangering Children Today Act, or the PROTECT Kids Act – would modernize online protections for children.

Since its passage in 1998, the Children's Online Privacy Protection Act, commonly known as COPPA, has restricted the online collection of information from children without a parent's consent. Generally speaking, COPPA and its implementing regulations impose requirements on operators of commercial websites and online services directed to children under age 13 that collect, use, or disclose personal information from children, as well as operators of general audience websites or online services that have actual knowledge of the fact that they are collecting information from users of other sites or online services directed to children. Those requirements include notifying parents of the website's information practices; obtaining verifiable parental consent; letting parents have control over future use or collection of their child's personal information; not requiring that children provide more information than necessary to participate in the online services; and maintaining reasonable confidentiality procedures.

[1]

The PROTECT Kids Act, if passed, would expand the privacy protections afforded to minors in their online activities. The new bill would raise the covered age from 13 years to 16 years old – meaning that requirements such as parental consent would expand to cover those under the age of 16 and give the parents of young teenagers broader latitude to control the future use or collection of their teens' personal information online.[2] The new bill also explicitly provides that the protections in COPPA apply to services provided through mobile applications, not just websites, and adds precise geolocation and biometric information to the categories of protected personal information.[3]

This new bill is part of a broader effort to modernize COPPA in a rapidly changing online world. In March 2019, Senators Ed Markey of Massachusetts and Josh Hawley of Missouri introduced a bipartisan bill in the Senate to update COPPA, one which contemplated even more significant changes to federal law. The Senate bill proposed, among other things, banning targeted advertising directed at children and changing COPPA's "actual knowledge" standard to a "constructive knowledge" standard for operators.[4] In many respects, the new PROTECT Kids Act strikes a middle ground between existing law and the bill that Senator Markey introduced in 2019.

COPPA has been in the news recently not only because of the PROTECT Kids Act, but because of several high-profile enforcement actions. Popular short-form video app TikTok agreed in February 2019 to a \$5.7 million settlement with the FTC after it was accused of obtaining personal information of children under age 13 without consent via an integrated karaoke app called Musical.ly.[5] The TikTok settlement was nearly double the largest prior COPPA settlement.[6] And in September 2019, the FTC and NY attorney general announced a record \$170 million settlement with Google and YouTube after allegations that YouTube's video sharing service illegally collected personal information from children without parental consent – by far the largest such settlement since COPPA was enacted.[7]

Ultimately, while it remains to be seen whether the PROTECT Kids Act becomes law, companies can – and should – expect to see movement in the near future regarding protection for children's privacy online.

[1] Fed. Trade Comm'n, *Children's Online Privacy Protection Act*, <https://www.ftc.gov/enforcement/statutes/childrens-online-privacy-protection-act>.

[2] H.R. ___, 116th Congress, *Preventing Real Online Threats Endangering Children Today Act (PROTECT Kids Act)*, (2020), <https://walberg.house.gov/sites/walberg.house.gov/files/PROTECTKidsAct.pdf>.

[3] H.R. ___, 116th Congress, *Preventing Real Online Threats Endangering Children Today Act (PROTECT Kids Act)*, (2020), <https://walberg.house.gov/sites/walberg.house.gov/files/PROTECTKidsAct.pdf>.

[4] Senator Edward Markey, *Senators Markey and Hawley Introduce Bipartisan Legislation to Update Children's Online Privacy Rules*, Mar. 12, 2019, <https://www.markey.senate.gov/news/press-releases/senators-markey-and-hawley-introduce-bipartisan-legislation-to-update-childrens-online-privacy-rules>; S. 748, 116th Congress, *A bill to amend the Children's Online Privacy Protection Act of 1998 to strengthen protections relating to the online collection, use, and disclosure of personal information of children and minors, and for other purposes* (2019), [https://www.markey.senate.gov/imo/media/doc/Leg text --Markey-Hawley 3.11.19 FINAL.pdf](https://www.markey.senate.gov/imo/media/doc/Leg%20text%20--Markey-Hawley%203.11.19%20FINAL.pdf).

[5] Fed. Trade Comm'n, *Video Social Networking App Musical.ly Agrees to Settle FTC Allegations That It Violated Children's Privacy Law*, Feb. 27, 2019, <https://www.ftc.gov/news-events/press-releases/2019/02/video-social-networking-app-musically-agrees-settle-ftc>.

[6] Sara Fischer, *TikTok app hit with record fine for violating children's privacy law*, Axios, Feb. 27, 2019, <https://www.axios.com/tiktok-app-record-ftc-fine-childrens-privacy-6b839017-8882-4ec7-8037-ba041b866860.html>.

[7] Fed. Trade Comm'n, *Google and YouTube Will Pay Record \$170 Million for Alleged Violations of Children's Privacy Law*, Sept. 4, 2019, <https://www.ftc.gov/news-events/press-releases/2019/09/google-youtube-will-pay-record-170-million-alleged-violations>.

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