

## **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.<sup>1</sup> 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

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



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