

## Complying with Both the CCPA and COPPA When Collecting and Selling Data from Children

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There have been major shifts recently regarding how website operators must handle personal information of children. Privacy practitioners are already familiar with the Children’s Online Privacy Protection Act (“COPPA”), which is a federal law that first became effective in 1998. COPPA sets forth guidelines and restrictions for online services that directly target children under the age of 13, requiring services to obtain verifiable parental consent before collecting personal information of children. A regulatory gap has emerged recently between the U.S. and the EU with the EU’s General Data Protection Regulation, which provides protections to minors under the age of 16. The California Consumer Privacy Act (“CCPA”), which became effective this year on Jan. 1, is disrupting U.S. privacy law, including as it relates to children, by giving California residents who are at least age 13, but not yet 16, the right to opt-in to the sale of their personal information. In line with COPPA, the CCPA also requires parental consent for selling personal information of children under age 13.

California’s AG, Xavier Becerra, released amendments to the proposed text of the CCPA regulations in early February. These proposed CCPA regulations provide clarification regarding how California plans to approach the sale of Californian children’s personal information. This begs the question: What additional precautions must businesses now take to comply with both COPPA and the CCPA when selling data collected from Californian children under 13?

Section 999.330 of the CCPA’s regulations outlines the process for parents to opt-in to consent to the sale of their child’s personal information. A business covered by the CCPA that has “actual knowledge that it sells the personal information of children under the age of 13 shall establish, document, and comply with a reasonable method for determining that the person affirmatively authorizing the sale of the personal information about the child is the parent or guardian of that child.”<sup>1</sup> This affirmative authorization must be “in addition to any verifiable parental consent required under COPPA.” Consent is therefore required for the collection of a child’s personal information to satisfy COPPA and the sale of a child’s personal information to satisfy the CCPA.

The CCPA and COPPA both list several preapproved methods for obtaining the requisite consent. The CCPA’s list is an open-ended list comprising all of COPPA’s methods, with a couple minor but important differences discussed below. Aside from these minor differences and the CCPA’s opt-out notice requirement,<sup>2</sup> the balance of the CCPA preapproved methods are taken word-for-word from COPPA’s methods for obtaining verifiable parental consent.

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<sup>1</sup> CCPA [proposed regulations](#) §999.330(a)(1). This required parental consent is dubbed “affirmative authorization.” COPPA calls for a similar form of consent, which it defines as “verifiable parental consent.” *See* COPPA §312.5.

<sup>2</sup> “When a business receives an affirmative authorization pursuant to subsection (a), the business shall inform the parent or guardian of the right to opt-out at a later date and of the process for doing so on behalf of their child pursuant to section 999.315, subdivision (a) through (f).” CCPA [proposed regulations](#) §999.330(b).

COPPA requires businesses to incorporate at least one of its listed methods. To comply with both statutes, a business could simply pick any one of the following prescribed parental consent methods that appears in both statutes and provide parents the option to opt-in to the collection of their child's personal information and, separately, to the sale of their child's personal information:

- (i) Providing a consent form to be signed by the parent and returned to the operator by postal mail, facsimile, or electronic scan;
- (ii) Requiring a parent, in connection with a monetary transaction, to use a credit card, debit card, or other online payment system that provides notification of each discrete transaction to the primary account holder;
- (iii) Having a parent call a toll-free telephone number staffed by trained personnel;
- (iv) Having a parent connect to trained personnel via video conference;
- (v) Verifying a parent's identity by checking a form of government-issued identification against databases of such information, where the parent's identification is deleted by the operator from its records promptly after such verification is complete.<sup>3</sup>

For example, using the first consent option, a business could provide a physical<sup>4</sup> consent form for a parent to sign and return (via fax, mail, or electronic scan) with the following boxes to tick (the boxes should be unchecked when presented):

- I consent to the collection and use of my child's personal information.
- I consent to the sale of my child's personal information.

Alternatively, a business could use one of COPPA's verifiable parental consent methods to collect the child's personal information and use one of the methods unique to the CCPA for obtaining permission to sell the child's personal information.<sup>5</sup> This would, however, create extra steps for the both the business and the parent.

It is important to keep in mind that there will not be any precedent on the CCPA's enforcement by the California AG until July 1, 2020, so we have yet to see how he, or courts, will interpret these CCPA requirements in light of COPPA. Additionally, there have been several attempts to amend COPPA to bring it in line with recent developments with other privacy laws, including the Preventing Real Online Threats Endangering Children Today (PROTECT) Kids Act introduced earlier this year.<sup>6</sup> In light of all of these developments, 2020 is set to be a landmark year for new legal requirements that address how to handle personal information of children.

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<sup>3</sup> COPPA §312.5(b)(2). The FTC has since approved of a sixth method for verifiable consent involving the use of a knowledge-based questionnaire. *See* FTC letter re: Imperium, LLC Proposed Verifiable Parental Consent Method Application. <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-grants-approval-new-coppa-verifiable-parental-consent-method/131223imperiumcoppa-app.pdf>.

<sup>4</sup> The CCPA permits digital signatures but COPPA has yet to accept signatures that are not physical. Verifiable parental consent to collect a child's personal information therefore cannot be legitimately obtained via electronic consent form.

<sup>5</sup> The CCPA accepts the same consent form electronically and under the penalty of perjury. CCPA [proposed regulations](#) §999.330(a)(2)(a). Additionally, The CCPA's affirmative authorization standard can be satisfied by "having a parent or guardian communicate in person with trained personnel." *Id.* §999.330(a)(2)(e).

<sup>6</sup> The Preventing Real Online Threats Endangering Children Today (PROTECT) Kids Act. <https://walberg.house.gov/sites/walberg.house.gov/files/PROTECTKidsAct.pdf>