

**Children's Online Privacy Protection Act of 1998
and Additional Teen-Focused Provisions**

**As Proposed to be Amended by
H.R. 1895, The Do Not Track Kids Act of 2011**

Prepared by the Center for Democracy & Technology

TITLE XIII-CHILDREN'S ONLINE PRIVACY PROTECTION

SEC. 1301. SHORT TITLE.

This title may be cited as the "Children's Online Privacy Protection Act of 1998".

SEC. 1302. DEFINITIONS.

In this title:

(1) CHILD.—The term "child" means an individual under the age of 13.

(2) OPERATOR.—The term "operator"—

(A) means any person who, for commercial purposes, in interstate or foreign commerce, operates or provides a website ~~located~~ on the Internet, ~~or an~~ online service, online application, or mobile application and who collects or maintains personal information from or about the users of ~~or visitors to~~ such website, ~~or online~~ service, or application, or on whose behalf such information is collected or maintained, ~~where such website or online service is operated for commercial purposes,~~ including any person offering products or services for sale through that website, ~~or online~~ service, or application; and involving commerce—

~~(i) among the several States or with 1 or more foreign nations;~~

~~(ii) in any territory of the United States or in the District of Columbia, or between any such territory and—~~

~~(I) another such territory; or~~

~~(II) any State or foreign nation; or~~

~~(iii) between the District of Columbia and any State, territory, or foreign nation;~~

~~but~~

(B) does not include any nonprofit entity that would otherwise be exempt from coverage under section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

(3) COMMISSION.—The term "Commission" means the Federal Trade Commission.

(4) DISCLOSURE.—The term "disclosure" means, with respect to personal information—

(A) the release of personal information ~~collected from a child in identifiable form by an operator~~ for any purpose, except where such information is provided to a person other than ~~the~~an operator who provides support for the internal operations of the website, online service, online application, or mobile application and does not disclose or use that information for any other purpose; and

(B) making personal information collected from a child by a website, ~~or~~ online service, online application, or mobile application directed to children or with actual knowledge that such information was collected from a child, publicly available in identifiable form, by any means including by a public posting, through the Internet, or through—

- (i) a home page of a website;
- (ii) a pen pal service;
- (iii) an electronic mail service;
- (iv) a message board; or
- (v) a chat room.

(5) FEDERAL AGENCY.—The term "Federal agency" means an agency, as that term is defined in section 551(1) of title 5, United States Code.

(6) INTERNET.—The term "Internet" means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

(7) PARENT.—The term "parent" includes a legal guardian.

(8) PERSONAL INFORMATION.—The term "personal information" means individually identifiable information about an individual collected online, including—

- (A) a first and last name;

(B) a home or other physical address including street name and name of a city or town;

(C) an e-mail address;

(D) a telephone number;

(E) a Social Security number;

(F) information (including an Internet protocol address) that permits the identification of the computer of an individual, or any other device used by an individual to access the Internet or an online service, online application, or mobile application;

(FG) any other identifier that the Commission determines permits the physical or online contacting of a specific individual; or

(HG) information concerning the child or the parents of that child (including any unique or substantially unique identifier, such as a customer number) that the websitean operator collects online from the child and combines with an identifier described in this paragraphsubparagraphs (A) through (G).

(9) VERIFIABLE PARENTAL CONSENT.—The term "verifiable parental consent" means any reasonable effort (taking into consideration available technology), including a request for authorization for future collection, use, and disclosure described in the notice, to ensure that a parent of a child receives notice of the operator's personal information collection, use, and disclosure practices, and authorizes the collection, use, and disclosure, as applicable, of personal information and the subsequent use of that information before that information is collected from that child.

~~(10) WEBSITE OR ONLINE SERVICE DIRECTED TO CHILDREN.—~~

~~(A) IN GENERAL.—The term "website or online service directed to children" means—~~

~~(i) a commercial website or online service that is targeted to children; or~~

~~(ii) that portion of a commercial website or online service that is targeted to children.~~

~~(B) LIMITATION.—A commercial website or online service, or a portion of a commercial website or online service, shall not be deemed directed to children solely for referring or linking to a commercial website or online service directed to children by using information location tools, including a directory, index, reference, pointer, or hypertext link.~~

(140) PERSON.—The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, or other entity.

(12) ONLINE CONTACT INFORMATION.—The term "online contact information" means an e-mail address or an-other substantially similar identifier that permits direct contact with a person online.

~~(12) ONLINE, ONLINE SERVICE, ONLINE APPLICATION, MOBILE APPLICATION, DIRECTED TO CHILDREN. — The terms 'online', 'online service', 'online application', 'mobile application', and 'directed to children' shall have the meanings given to them by the Commission by regulation. Not later than 1 year after the date of the enactment of the Do Not Track Kids Act of 2011, the Commission shall promulgate, under section 553 of title 5, United States Code, regulations that define such terms broadly enough so that they are not limited to current technology, consistent with the principles articulated by the Commission regarding the definition of the term 'Internet' in its statement of basis and purpose on the final rule under this title promulgated on November 3, 1999 (64 Fed. Reg. 59891). The definition of the term 'online service' in such regulations shall include broadband Internet access service (as defined in the Report and Order of the Federal Communications Commission relating to the matter of preserving the open Internet and broadband industry practices (FCC 10-201, adopted by the Commission on December 21, 2010)).~~

Comment [EL1]: Possibly intended to read 'website'.

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Comment [EL2]: Possibly intended to read 'website'.

~~SEC. 1303. REGULATION OF UNFAIR AND DECEPTIVE ACTS AND PRACTICES IN CONNECTION WITH THE COLLECTION AND USE OF PERSONAL INFORMATION FROM AND ABOUT CHILDREN ON THE INTERNET ONLINE COLLECTION, USE, AND DISCLOSURE OF PERSONAL INFORMATION OF CHILDREN.~~

(a) ACTS PROHIBITED.—

(1) IN GENERAL.—It is unlawful for an operator of a website, ~~or~~ online service, ~~online application, or mobile application~~ directed to children, or any operator ~~that has~~ actual knowledge that it is collecting personal information from a child ~~ren~~, to collect personal information from a child in a manner that violates the regulations prescribed under subsection (b).

(2) DISCLOSURE TO PARENT PROTECTED.—Notwithstanding paragraph (1), neither an operator ~~of such a website or online service~~ nor the operator's agent shall be held to be liable under any Federal or State law for any disclosure made in good faith and following reasonable procedures in responding to a request for disclosure of personal information under subsection (b)(1)(~~CB~~)(iii) to the parent of a child.

(b) REGULATIONS.—

(1) IN GENERAL.—Not later than 1 year after the date of the enactment of the ~~Do Not Track Kids~~ Act of 2011, the Commission shall promulgate, under section 553 of title 5, United States Code, regulations ~~to that —~~

~~(A)~~ require ~~the an~~ operator of any website, ~~or~~ online service, ~~online application, or mobile application~~ directed to children, ~~that collects personal information from children~~

or ~~the an~~ operator ~~of a website or online service that~~ has actual knowledge that it is collecting personal information from ~~a child~~ren—

(~~A~~) to provide clear and conspicuous notice in clear and plain language of the types of personal information the operator collects, on the website of what information is collected from children by the operator, how the operator uses such information, and whether the operator's disclosures practices for such information, and the procedures or mechanisms the operator uses to ensure that personal information is not collected from children except in accordance with the regulations promulgated under this paragraph; and

(~~B~~) to obtain verifiable parental consent for the collection, use, or disclosure of personal information ~~from of a child~~ren;

(~~C~~) ~~require the operator to provide to, upon request of a parent under this subparagraph whose child has provided personal information to that website or online service the operator, upon request by and proper identification of that parent, to such par-ent~~—

(i) a description of the specific types of personal information collected from the child by the ~~at~~ operator;

(ii) the opportunity at any time to refuse to permit the ~~operator's~~ further use or maintenance in retrievable form, or future ~~online~~ collection, by the operator of personal information collected from that child; and

(iii) ~~notwithstanding any other provision of law,~~ a means that is reasonable under the circumstances for the parent to obtain any personal information collected from ~~that~~ child, if such information is available to the operator at the time the parent makes the request;

(~~D~~) ~~prohibit not to~~ conditioning ~~a child's~~ participation in a game, or use of a website, service, or application, by a child ~~the offering of a prize, or another activity~~ on the provision by the child disclosing of more personal information than is reasonably required to necessary to participate in the game or use the website, service, or application ~~such activity~~; and

(~~E~~) ~~require the operator of such a website or online service~~ to establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children.

(2) WHEN CONSENT NOT REQUIRED.—The regulations shall provide that verifiable parental consent under paragraph (1)(~~A~~)(~~B~~)(~~C~~)(~~D~~)(~~E~~) is not required in the case of—

(A) online contact information collected from a child that is used only to respond directly on a one-time basis to a specific request from the child and is not

used to recontact the child and is not maintained in retrievable form by the operator;

(B) a request for the name or online contact information of a parent or child that is used for the sole purpose of obtaining parental consent or providing notice under this section and where such information is not maintained in retrievable form by the operator if parental consent is not obtained after a reasonable time;

(C) online contact information collected from a child that is used only to respond more than once directly to a specific request from the child and is not used to recontact the child beyond the scope of that request—

(i) if, before any additional response after the initial response to the child, the operator uses reasonable efforts to provide a parent notice of the online contact information collected from the child, the purposes for which it is to be used, and an opportunity for the parent to request that the operator make no further use of the information and that it not be maintained in retrievable form; or

(ii) without notice to the parent in such circumstances as the Commission may determine are appropriate, taking into consideration the benefits to the child of access to information and services, and risks to the security and privacy of the child, in regulations promulgated under this subsection;

(D) the name of the child and online contact information (to the extent reasonably necessary to protect the safety of a child participant on the site)—

(i) used only for the purpose of protecting such safety;

(ii) not used to recontact the child or for any other purpose; and

(iii) not disclosed on the site, if the operator uses reasonable efforts to provide a parent notice of the name and online contact information collected from the child, the purposes for which it is to be used, and an opportunity for the parent to request that the operator make no further use of the information and that it not be maintained in retrievable form; or

(E) the collection, use, or dissemination of such information by the operator of such a website or online service necessary—

(i) to protect the security or integrity of its website;

(ii) to take precautions against liability;

(iii) to respond to judicial process; or

(iv) to the extent permitted under other provisions of law, to provide information to law enforcement agencies or for an investigation on a matter related to public safety. 1815

(3) ~~TERMINATION CONTINUATION~~ OF SERVICE.—The regulations shall ~~permit prohibit an~~ the operator ~~of a website or an online service to terminate from discontinuing~~ service provided to a child ~~on the basis of refusal by the~~ whose parent ~~has refused of the child~~, under the regulations prescribed under paragraph (1)(~~CB~~)(ii), to permit the ~~operator's~~ further use or maintenance in retrievable form, or future ~~online~~ collection, ~~by the operator~~ of personal information ~~collected from that~~ child, ~~to the extent that the operator is capable of providing such service without such information~~.

(c) ENFORCEMENT.—Subject to sections 1304 and 1306, a violation of a regulation prescribed under subsection (a) shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(d) INCONSISTENT STATE LAW.—No State or local government may impose any liability for commercial activities or actions by operators in interstate or foreign commerce in connection with an activity or action described in this title that is inconsistent with the treatment of those activities or actions under this section.

SEC. 1304. SAFE HARBORS.

(a) GUIDELINES.—An operator may satisfy the requirements of regulations issued under section 1303(b) by following a set of self-regulatory guidelines, issued by representatives of the marketing or online industries, or by other persons, approved under subsection (b).

(b) INCENTIVES.—

(1) SELF-REGULATORY INCENTIVES.—In prescribing regulations under section 1303, the Commission shall provide incentives for self-regulation by operators to implement the protections afforded children under the regulatory requirements described in subsection (b) of that section.

(2) DEEMED COMPLIANCE.—Such incentives shall include provisions for ensuring that a person will be deemed to be in compliance with the requirements of the regulations under section 1303 if that person complies with guidelines that, after notice and comment, are approved by the Commission upon making a determination that the guidelines meet the requirements of the regulations issued under section 1303.

(3) EXPEDITED RESPONSE TO REQUESTS.—The Commission shall act upon requests for safe harbor treatment within 180 days of the filing of the request, and shall set forth in writing its conclusions with regard to such requests.

(c) APPEALS.—Final action by the Commission on a request for approval of guidelines, or the failure to act within 180 days on a request for approval of guidelines, submitted under subsection (b) may be appealed to a district court of the United States of appropriate jurisdiction as provided for in section 706 of title 5, United States Code.

SEC. 1305. ACTIONS BY STATES.

(a) IN GENERAL.—

(1) CIVIL ACTIONS.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any person in a practice that violates any regulation of the Commission prescribed under section 1303(b), the State, as *parens patriae*, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

(A) enjoin that practice;

(B) enforce compliance with the regulation;

(C) obtain damage, restitution, or other compensation on behalf of residents of the State; or

(D) obtain such other relief as the court may consider to be appropriate.

(2) NOTICE.—

(A) IN GENERAL.—Before filing an action under paragraph (1), the attorney general of the State involved shall provide to the Commission—

(i) written notice of that action; and

(ii) a copy of the complaint for that action.

(B) EXEMPTION.—

(i) IN GENERAL.—Subparagraph (A) shall not apply with respect to the filing of an action by an attorney general of a State under this subsection, if the attorney general determines that it is not feasible to provide the notice described in that subparagraph before the filing of the action.

(ii) NOTIFICATION.—In an action described in clause (i), the attorney general of a State shall provide notice and a copy of the complaint to the Commission at the same time as the attorney general files the action.

(b) INTERVENTION.—

(1) IN GENERAL.—On receiving notice under subsection (a)(2), the Commission shall have the right to intervene in the action that is the subject of the notice.

(2) EFFECT OF INTERVENTION.—If the Commission intervenes in an action under subsection (a), it shall have the right—

(A) to be heard with respect to any matter that arises in that action; and

(B) to file a petition for appeal.

(3) AMICUS CURIAE.—Upon application to the court, a person whose self-regulatory guidelines have been approved by the Commission and are relied upon as a defense by any defendant to a proceeding under this section may file amicus curiae in that proceeding.

(c) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this title shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

(1) conduct investigations;

(2) administer oaths or affirmations; or

(3) compel the attendance of witnesses or the production of documentary and other evidence.

(d) ACTIONS BY THE COMMISSION.—In any case in which an action is instituted by or on behalf of the Commission for violation of any regulation prescribed under section 1303, no State may, during the pendency of that action, institute an action under subsection (a) against any defendant named in the complaint in that action for violation of that regulation.

(e) VENUE; SERVICE OF PROCESS.—

(1) VENUE.—Any action brought under subsection (a) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(2) SERVICE OF PROCESS.—In an action brought under subsection (a), process may be served in any district in which the defendant—

(A) is an inhabitant; or

(B) may be found.

SEC. 1306. ADMINISTRATION AND APPLICABILITY OF ACT.

(a) IN GENERAL.—Except as otherwise provided, this title shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(b) PROVISIONS.—Compliance with the requirements imposed under this title shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), ~~in the case of—~~

~~(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;~~

~~(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act (12 U.S.C. 601 et seq. and 611 et seq.), by the Board; and~~

~~(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; by the appropriate Federal banking agency with respect to any insured depository institution (as such terms are defined in section 3 of such Act (12 U.S.C. 1813));~~

~~(2) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;~~

~~(3) the Federal Credit Union Act (12 U.S.C. 1751 et seq.) by the National Credit Union Administration Board with respect to any Federal credit union;~~

~~(4) part A of subtitle VII of title 49, United States Code, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that part;~~

(45) the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.) (except as provided in section 406 of that Act (7 U.S.C. 226, 227)), by the Secretary of Agriculture with respect to any activities subject to that Act; and

(56) the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association.

(c) EXERCISE OF CERTAIN POWERS.—For the purpose of the exercise by any agency referred to in subsection (a) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this title, any other authority conferred on it by law.

(d) ACTIONS BY THE COMMISSION.—The Commission shall prevent any person from violating a rule of the Commission under section 1303 in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this title. Any entity that violates such rule shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this title.

(e) EFFECT ON OTHER LAWS.—Nothing contained in the Act shall be construed to limit the authority of the Commission under any other provisions of law.

(f) TELECOMMUNICATIONS CARRIERS AND CABLE OPERATORS

(1) ENFORCEMENT BY FTC.—Notwithstanding section 5(a)(2) of the Federal Trade Commission Act (15 U.S.C. 45(a)(2)), compliance with the requirements imposed under this title shall be enforced by the Commission with respect to any telecommunications carrier (as defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153)).

(2) RELATIONSHIP TO OTHER LAW.—To the extent that sections 222 and 631 of the Communications Act of 1934 (47 U.S.C. 222, 551) are inconsistent with this title, this title controls.

SEC. 1307. REVIEW.

Not later than 5 years after the effective date of the regulations initially issued under section 1303, the Commission shall—

(1) review the implementation of this title, including the effect of the implementation of this title on practices relating to the collection and disclosure of information relating to children, children's ability to obtain access to information of their choice online, and on the availability of websites directed to children; and

(2) prepare and submit to Congress a report on the results of the review under paragraph (1).

SEC. 1308. EFFECTIVE DATE. Sections 1303(a), 1305, and 1306 of this title take effect on the later of—

(1) the date that is 18 months after the date of enactment of this Act; or

(2) the date on which the Commission rules on the first application filed for safe harbor treatment under section 1304 if the Commission does not rule on the first such application within one year after the date of enactment of this Act, but in no case later than the date that is 30 months after the date of enactment of this Act.

SEC. 4. TARGETED MARKETING TO CHILDREN OR MINORS.

(a) ACTS PROHIBITED.—It is unlawful for an operator of a website, online service, online application, or mobile application directed to children or minors, or an operator having actual knowledge that it is collecting personal information from children or minors, to use, disclose to third parties, or compile personal information collected from children or minors, if the use, disclosure, or compilation is for targeted marketing purposes.

(b) REGULATIONS.—Not later than 1 year after the date of the enactment of this Act, the Commission shall promulgate, under section 553 of title 5, United States Code, regulations to implement this section.

SEC. 5. DIGITAL MARKETING BILL OF RIGHTS FOR TEENS AND FAIR INFORMATION PRACTICES PRINCIPLES.

(a) ACTS PROHIBITED.—It is unlawful for an operator of a website, online service, online application, or mobile application directed to minors, or an operator having actual knowledge that it is collecting personal information from minors, to collect personal information from minors unless such operator has adopted and implemented a Digital Marketing Bill of Rights for Teens that—

(1) is consistent with the Fair Information Practices Principles described in subsection (b); and

(2) balances the ability of minors to participate fully in the digital media culture with the governmental and industry obligation to ensure that operators of websites, online services, online applications, and mobile applications do not subject minors to unfair and deceptive surveillance, data collection, or behavioral profiling.

(b) FAIR INFORMATION PRACTICES PRINCIPLES.—The Fair Information Practices Principles described in this subsection are the following:

(1) COLLECTION LIMITATION PRINCIPLE.— There should be limits on the collection of personal information. Any such information should be obtained by lawful and fair means and, where appropriate, with the knowledge or consent of the subject of the information.

(2) DATA QUALITY PRINCIPLE.—Personal information should be relevant to the purposes for which the information is to be used and, to the extent necessary for such purposes, should be accurate, complete, and kept up-to-date.

(3) PURPOSE SPECIFICATION PRINCIPLE.—The purposes for which personal information is collected should be specified not later than at the time of the collection of the information. The subsequent use of the information should be limited to the fulfillment of—

(A) the purposes originally specified; or

(B) other purposes that are—

(i) compatible with such originally specified purposes; and

(ii) specified in a notice to the subject of the information before the information is used for such other purposes.

(4) USE LIMITATION PRINCIPLE.—Personal information should not be disclosed, made available, or otherwise used for purposes other than those specified in accordance with the purpose limitation principle described in paragraph (3), except—

(A) with the consent of the subject of the information; or

(B) under specific legal authority.

(5) SECURITY SAFEGUARDS PRINCIPLE.—Personal information should be protected by reasonable security safeguards against risks such as loss or unauthorized access, destruction, use, modification, or disclosure.

(6) OPENNESS PRINCIPLE.—The operator should maintain a general policy of openness about developments, practices, and policies with respect to personal

information. The operator should provide each user of the website, online service, online application, or mobile application of the operator with a means of readily ascertaining—

(A) whether the operator possesses any personal information of such user, the nature of any such information, and the purposes for which the information was obtained and is being retained;

(B) the identity of the operator; and

(C) the address of—

(i) in the case of an operator who is an individual, the principal residence of the operator; or

(ii) in the case of any other operator, the principal place of business of the operator.

(7) INDIVIDUAL PARTICIPATION PRINCIPLE.— An individual should have the right—

(A) to obtain any personal information of the individual that is in the possession of the operator from the operator, or from a person specified by the operator, within a reasonable time after making a request, at a charge (if any) that is not excessive, in a reasonable manner, and in a form that is readily intelligible to the individual;

(B) to be given by the operator, or person specified by the operator—

(i) reasons for any denial of a request under subparagraph (A); and

(ii) an opportunity to challenge such denial;

(C) to challenge the accuracy of personal information of the individual that is in the possession of the operator; and

(D) if the individual establishes the inaccuracy of personal information in a challenge under subparagraph (C), to have the information erased, corrected, completed, or otherwise amended.

(c) REGULATIONS.—Not later than 1 year after the date of the enactment of this Act, the Commission shall promulgate, under section 553 of title 5, United States Code, regulations to implement this section.

SEC. 6. ONLINE COLLECTION OF GEOLOCATION INFORMATION OF CHILDREN AND MINORS.

(a) ACTS PROHIBITED.—

(1) IN GENERAL.—It is unlawful for an operator of a website, online service, online application, or mobile application directed to children or minors, or an operator having actual knowledge that it is collecting geolocation information from children or minors, to collect geolocation information from a child or minor in a manner that violates the regulations prescribed under subsection (b).

(2) DISCLOSURE TO PARENT OR MINOR PROTECTED.—Notwithstanding paragraph (1), neither an operator nor the operator’s agent shall be held to be liable under any Federal or State law for any disclosure made in good faith and following reasonable procedures in responding to a request for disclosure of geolocation information under subparagraph (C)(ii)(III) or (D)(ii)(III) of subsection (b)(1).

(b) REGULATIONS.—

(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Commission shall promulgate, under section 553 of title 5, United States Code, regulations that require an operator of a website, online service, online application, or mobile application directed to children or minors, or an operator having actual knowledge that it is collecting geolocation information from children or minors—

(A) to provide clear and conspicuous notice in clear and plain language of any geolocation information the operator collects, how the operator uses such information, and whether the operator discloses such information;

(B) to establish procedures or mechanisms to ensure that geolocation information is not collected from children or minors except in accordance with regulations promulgated under this paragraph;

(C) in the case of collection of geolocation information from a child—

(i) prior to collecting such information, to obtain verifiable parental consent; and

(ii) after collecting such information, to provide to the parent of the child, upon request by and proper identification of the parent—

(I) a description of the geolocation information collected from the child by the operator;

(II) the opportunity at any time to refuse to permit the further use or maintenance in retrievable form, or future collection, by the operator of geolocation information from the child; and

(III) a means that is reasonable under the circumstances for the parent to obtain any geolocation information collected from the child, if such information is available to the operator at the time the parent makes the request; and

(D) in the case of collection of geolocation information from a minor—

(i) prior to collecting such information, to obtain express authorization from such minor; and

(ii) after collecting such information, to provide to the minor, upon request—

(I) a description of the geolocation information collected from the minor by the operator;

(II) the opportunity at any time to refuse to permit the further use or maintenance in retrievable form, or future collection, by the operator of geolocation information from the minor; and

(III) a means that is reasonable under the circumstances for the minor to obtain any geolocation information collected from the minor, if such information is available to the operator at the time the minor makes the request.

(2) WHEN CONSENT OR AUTHORIZATION NOT REQUIRED.—The regulations promulgated under paragraph (1) shall provide that verifiable parental consent under subparagraph (C)(i) of such paragraph or express authorization under subparagraph (D)(i) of such paragraph is not required when the collection of the geolocation information of a child or minor is necessary, to the extent permitted under other provisions of law, to provide information to law enforcement agencies or for an investigation on a matter related to public safety.

(3) CONTINUATION OF SERVICE.—The regulations promulgated under paragraph (1) shall prohibit an operator from discontinuing service provided to—

(A) a child on the basis of refusal by the parent of the child, under subparagraph (C)(ii)(II) of such paragraph, to permit the further use or maintenance in retrievable form, or future online collection, of geolocation information from the child by the operator, to the extent that the operator is capable of providing such service without such information; or

(B) a minor on the basis of refusal by the minor, under subparagraph (D)(ii)(II) of such paragraph, to permit the further use or maintenance in retrievable form, or future online collection, of geolocation information from the

minor by the operator, to the extent that the operator is capable of providing such service without such information.

(c) INCONSISTENT STATE LAW.—No State or local government may impose any liability for commercial activities or actions by operators in interstate or foreign commerce in connection with an activity or action described in this section that is inconsistent with the treatment of those activities or actions under this section.

SEC. 7. ERASER BUTTONS.

(a) ACTS PROHIBITED.—It is unlawful for an operator of a website, online service, online application, or mobile application to make publicly available through the website, service, or application content that contains or displays personal information of children or minors in a manner that violates the regulations prescribed under subsection (b).

(b) REGULATIONS.—

(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Commission shall promulgate, under section 553 of title 5, United States Code, regulations that require an operator—

(A) to the extent technologically feasible, to implement mechanisms that permit users of the website, service, or application of the operator to erase or otherwise eliminate content that is publicly available through the website, service, or application and contains or displays personal information of children or minors; and

(B) to take appropriate steps to make users aware of such mechanisms.

(2) EXCEPTION.—The regulations promulgated under paragraph (1) may not require an operator to erase or otherwise eliminate information that the operator is required to maintain under any other provision of Federal or State law.

SEC. 8. ENFORCEMENT AND APPLICABILITY.

(a) ENFORCEMENT BY THE COMMISSION.—

(1) IN GENERAL.—Except as otherwise provided, this Act shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(2) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—Subject to subsection (b), a violation of a regulation prescribed under section 4(b), 5(c), 6(b), or 7(b) shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed

under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(3) ACTIONS BY THE COMMISSION.—Subject to subsection (b), the Commission shall prevent any person from violating a rule of the Commission under section 4(b), 5(c), 6(b), or 7(b) in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act. Any person who violates such rule shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act.

(b) ENFORCEMENT BY CERTAIN OTHER AGENCIES.—Notwithstanding subsection (a), compliance with the requirements imposed under this Act shall be enforced as follows:

(1) Under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) by the appropriate Federal banking agency, with respect to an insured depository institution (as such terms are defined in section 3 of such Act (12 U.S.C. 1813)).

(2) Under the Federal Credit Union Act (12 U.S.C. 1751 et seq.) by the National Credit Union Administration Board, with respect to any Federal credit union.

(3) Under part A of subtitle VII of title 49, United States Code, by the Secretary of Transportation, with respect to any air carrier or foreign air carrier subject to such part.

(4) Under the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.) (except as provided in section 406 of such Act (7 U.S.C. 226; 227)) by the Secretary of Agriculture, with respect to any activities subject to such Act.

(5) Under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) by the Farm Credit Administration, with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association.

(c) ENFORCEMENT BY STATE ATTORNEYS GENERAL.—

(1) IN GENERAL.—

(A) CIVIL ACTIONS.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any person in a practice that violates any regulation of the Commission prescribed under section 4(b), 5(c), 6(b), or 7(b), the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

(i) enjoin that practice;

(ii) enforce compliance with the regulation;

(iii) obtain damage, restitution, or other compensation on behalf of residents of the State; or

(iv) obtain such other relief as the court may consider to be appropriate.

(B) NOTICE.—

(i) IN GENERAL.—Before filing an action under subparagraph (A), the attorney general of the State involved shall provide to the Commission—

(I) written notice of that action; and

(II) a copy of the complaint for that action.

(ii) EXEMPTION.—

(I) IN GENERAL.—Clause (i) shall not apply with respect to the filing of an action by an attorney general of a State under this paragraph, if the attorney general determines that it is not feasible to provide the notice described in that clause before the filing of the action.

(II) NOTIFICATION.—In an action described in subclause (I), the attorney general of a State shall provide notice and a copy of the complaint to the Commission at the same time as the attorney general files the action.

(2) INTERVENTION.—

(A) IN GENERAL.—On receiving notice under paragraph (1)(B), the Commission shall have the right to intervene in the action that is the subject of the notice.

(B) EFFECT OF INTERVENTION.—If the Commission intervenes in an action under paragraph (1), it shall have the right—

(i) to be heard with respect to any matter that arises in that action;

and

(ii) to file a petition for appeal.

(3) CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1), nothing in this Act shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

(A) conduct investigations;

(B) administer oaths or affirmations; or

(C) compel the attendance of witnesses or the production of documentary and other evidence.

(4) ACTIONS BY THE COMMISSION.—In any case in which an action is instituted by or on behalf of the Commission for violation of any regulation prescribed under section 4(b), 5(c), 6(b), or 7(b), no State may, during the pendency of that action, institute an action under paragraph (1) against any defendant named in the complaint in that action for violation of that regulation.

(5) VENUE; SERVICE OF PROCESS.—

(A) VENUE.—Any action brought under paragraph (1) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(B) SERVICE OF PROCESS.—In an action brought under paragraph (1), process may be served in any district in which the defendant—

(i) is an inhabitant; or

(ii) may be found.

(d) TELECOMMUNICATIONS CARRIERS AND CABLE OPERATORS.—

(1) ENFORCEMENT BY FTC.—Notwithstanding section 5(a)(2) of the Federal Trade Commission Act (15 U.S.C. 45(a)(2)), compliance with the requirements imposed under this Act shall be enforced by the Commission with respect to any telecommunications carrier (as defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153)).

(2) RELATIONSHIP TO OTHER LAW.—To the extent that sections 222 and 631 of the Communications Act of 1934 (47 U.S.C. 222; 551) are inconsistent with this Act, this Act controls.

SEC. 9. DEFINITIONS.

(a) IN GENERAL.—In this Act:

(1) MINOR.—The term “minor” means an individual over the age of 12 and under the age of 18.

(2) TARGETED MARKETING.—The term “targeted marketing” means advertising or other efforts to market a product or service that are directed to a specific individual or device—

(A) based on the personal information of the individual or a unique identifier of the device; and

(B) as a result of use by the individual, or access by the device, of a website, online service, online application, or mobile application.

(b) TERMS DEFINED BY COMMISSION.—In this Act, the terms “directed to minors” and “geolocation information” shall have the meanings given such terms by the Commission by regulation. Not later than 1 year after the date of the enactment of this Act, the Commission shall promulgate, under section 553 of title 5, United States Code, regulations that define such terms broadly enough so that they are not limited to current technology, consistent with the principles articulated by the Commission regarding the definition of the term “Internet” in its statement of basis and purpose on the final rule under the Children’s Online Privacy Protection Act of 1998 (15 U.S.C. 6501 et seq.) promulgated on November 3, 1999 (64 Fed. Reg. 59891).

(c) OTHER DEFINITIONS.—The definitions set forth in section 1302 of the Children’s Online Privacy Protection Act of 1998 (15 U.S.C. 6501), as amended by section 3(a), shall apply in this Act.

SEC. 10. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsections (b) and (c), this Act and the amendments made by this Act shall take effect on the date that is 1 year after the date of the enactment of this Act.

(b) AUTHORITY TO PROMULGATE REGULATIONS.—The following shall take effect on the date of the enactment of this Act:

(1) The amendments made by subsections (a)(5) and (b)(3)(A) of section 3.

(2) Sections 4(b), 5(c), 6(b), 7(b), and 9(b).

(c) DIGITAL MARKETING BILL OF RIGHTS FOR TEENS.—Section 5, except for subsection (c) of such section, shall take effect on the date that is 180 days after the promulgation of regulations under such subsection.