

Protecting Children's Privacy on the Internet

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FEATURE

The Internet offers children a tremendous opportunity to exchange ideas and participate in a world outside their window. Using the Internet, children can learn about faraway places, communicate with each other, and publish their own Web pages with the help of their parents and teachers.

However, the interactivity provided by the Internet raises some troubling issues too. The ease with which children can reveal information about themselves to others – through the click of their mouse, or through participation in games, chatrooms, penpal programs, and other online activities – raises concerns. As a child “surfs” from one Web site to another their movements leave behind a trail, much like the foot-steps one leaves in the beach sand. This information can be used by Web site operators to improve the content of their site, or to target advertisements based on a child’s activities. Unlike television and other passive media, the Internet allows children to interact with others without ever leaving their room. And alarmingly for many, these interactions often occur without parental knowledge or supervision.

This has particularly troubling ramifications for children’s privacy. The Federal Trade Commission’s “Privacy Online: A Report to Congress,” delivered to Congress in June 1998, detailed some troubling practices by commercial Web sites targeted at children. The survey found that while 89% of children’s sites were collecting detailed personal information from children, only half had an information practice statement of any kind, and fewer than a quarter had a privacy policy notice. Only 7% of sites collecting information from kids notified parents of the practice, and only 23% even suggested that children speak to their parents before giving information. The FTC’s survey documented that online businesses have failed to respond to parents’ concerns about their children’s privacy and safety online.

At hearings held by the Federal Trade Commission in June 1997, law enforcement officials discussed the risks to children posed by chat rooms, bulletin boards, and other forums that allow those on the Internet, including children, to post information about themselves. Officials stated that a child’s ability to disclose personal information – such as their e-mail address, name, home address, school, and phone number – to a wide array of strangers posed a risk to the child’s safety.¹

Privacy, consumer, and child advocacy organizations participating in the hearings focused on business practices which undermine adults’ and children’s

privacy. Advocates emphasized that the transactional information generated during a child’s visits to Web sites and participation in other Internet activities offers an unprecedented opportunity to monitor and analyze a child’s activities and behavior. Through games, contests, and other lures, Web sites targeted at children are requesting — or requiring — that children provide personal information such as name, address, e-mail, information on likes and dislikes, and information on their families and friends, as the cost of participating in online activities. Through both passive and active information collection, online content providers create detailed individual profiles on children which can be used and disclosed for a variety of purposes.

Advocates, law enforcement officials and industry all agreed that protecting children’s privacy and safety online was critical. Participants largely agreed that the ongoing collection of personally identifiable information from children undermined their privacy and, based on survey data presented at the workshop, was

likely to scare parents into keeping their children off the Internet.²

Rules to protect children’s privacy

With consensus on the need to protect children’s privacy, one might assume that crafting such rules would be simple. But, as is often the case, the process of developing rules – in this case legislation – to accomplish a generally shared goal is far from simple. Fundamental questions about what is meant by privacy, and defining who is a child, as well as more complex questions such as what it means to “collect” information in an environment that generates data every time we “click” must be answered before appropriate rules can be crafted.

Simply stated, protecting information privacy requires developing a set of rules that ensure that limited data is collected for specific purposes and that this data is not used for other purposes unless the individual consents to such uses. This standard is used to govern information gathering practices in a variety of settings. For example, such rules provide that information collected during a doctor visit is used for your treatment but is not used to send you marketing materials or reassess your insurance premium.

How does this work for children in the online environment? A proposal to protect children’s privacy

¹See Federal Trade Commission Web site, *Comments and Transcripts of the Online Privacy Workshop* <http://www.ftc.gov>

²*Id.*

continued on next page

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must take into account the inability of young children to comprehend and consent to the collection and use of personal information; the need for parental involvement in children's online activities involving personal information; the potential risk to children posed by the public posting of information that facilitates contact (both online and offline) with a child; and the need to ensure that business practices and privacy protections do not inappropriately interfere with children's ability to access information and receive information that they have requested

First efforts

Initial proposals to protect children's privacy in the online environment recommended that personal information of those 16 and under only be collected with the knowledge and consent of a parent.³ It also created a parental right to gain access to information held by Web sites about their child

By requiring all Web sites to treat children differently from the rest of the population, this first proposal created an expectation that Web sites should request information about age. Because the rules applied to activities as simple as responding to an e-mail request for information, the proposal could have led to rules that actually increased the collection of data as people sought to comply.

The proposal didn't reflect the needs, and rights, of older minors to have privacy from their parents in certain limited circumstances. For example, if parents are required to have notice and give consent every time their 15-year-old gives out his or her e-mail address, these older teens may be reluctant to seek out information and ask questions about matters that they wish to keep confidential from their parents. Couple this with the rule that provides parents with access to any information their teenager provides to a Web site and we can imagine some rather unappealing results.

For example, there are Web sites that offer teens information about contraceptives, health concerns, sexuality, child abuse, drug abuse and other controversial topics. Many of these Web sites respond to specific questions via e-mail and some collect information to provide children with resources in their community. Some Web sites offer interactive tests and quizzes that help teens assess their knowledge of health and other issues. While the Web sites at issue may be quite concerned about and respectful of teens' privacy, they would be bound under the proposal to provide parents with information about their children's search for potentially controversial

³See guidelines for protecting children's privacy submitted to the Federal Trade Commission by the Center for Media Education and the Consumer Federation of America; and also the initial Children's Online Privacy Protection Act (S. 2326) introduced by Senator Bryan (D-NV) that provide for parental notice and opt-out for those between 13 and 16.

information and provide parents with access to sensitive information their child might have revealed in seeking out information or services. Certainly, this should not be the outcome of a proposal to increase protections for teens' privacy.

The proposal, if implemented, would have chilled the protected First Amendment activities of older minors, and undermined, rather than enhanced, teenagers' privacy. While we agree that parents have an important role in protecting their teenagers' privacy, it seems that the proposal's emphasis on parental access may overlook older minors' interests.

Finally, the proposal treated all information that identified a child the same. While this makes sense at first blush, in application it would have limited children's ability to request and receive information in a timely fashion. The Internet allows information to be exchanged in a variety of ways. Some information is posted at Web sites for all to see, other information is tailored to the individual's request through search engines, the capability to request information through e-mail, etc. If children cannot request information through e-mail without their parent's consent, their use of the Internet may be limited. A loose analogy would be limiting children's ability to use the telephone to request information because in so doing they reveal their phone number.

Recently Passed Federal Legislation

Through the work of many interested and affected parties, the issues raised above have been sorted out. The Children's Online Privacy Protection Act, which was passed by Congress last October, represents a proposal to protect children's privacy and safety in a way that preserves First Amendment and privacy values and reflects the workings of the Internet. The bill is focused on commercial Web sites directed at children 12 and under and Web sites that collect information about age. It generally requires parental consent prior to the collection of personal information from children 12 and under. It also allows children to ask for and receive information via e-mail without parental involvement, provided that the Web site uses the information the child provides only to respond to the child's specific request. The bill is a major step forward for children's privacy and safety online, and it signals that Congress is serious about ensuring privacy in this new interactive medium.

IT'S NOT TOO LATE!

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