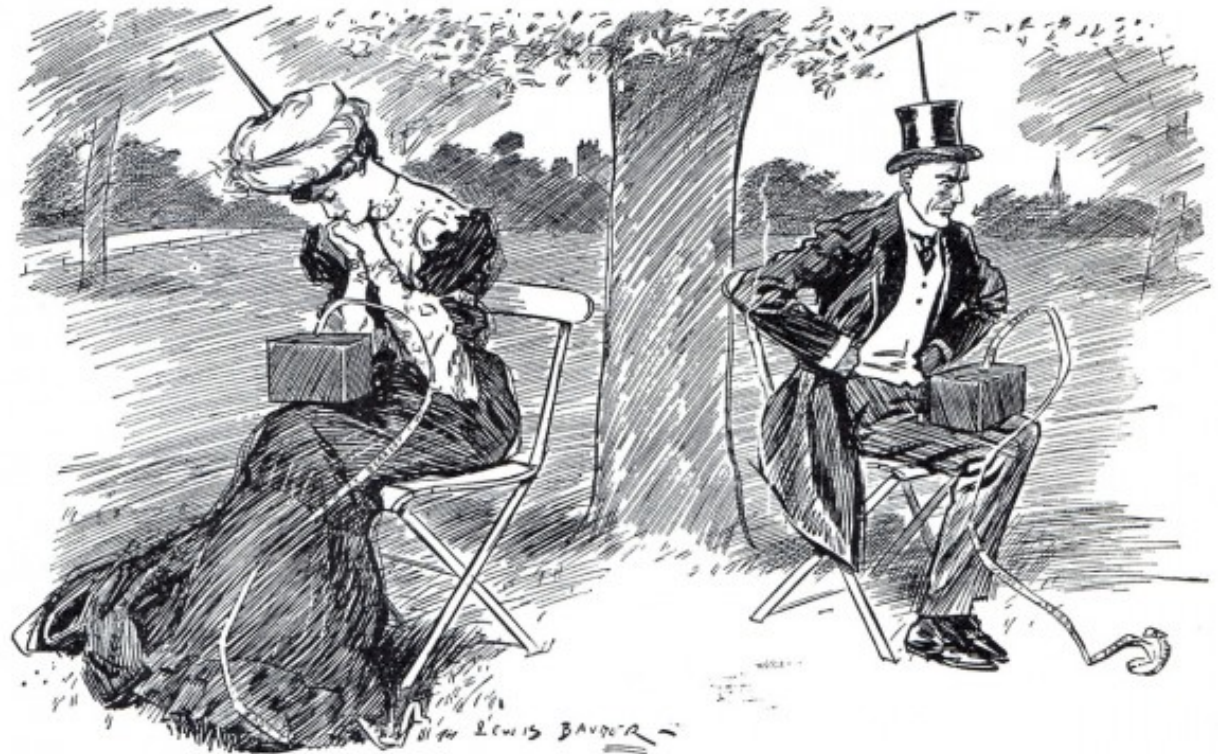


# Privacy Law for Technologists

Children's Privacy



DEVELOPMENT OF WIRELESS TELEGRAPHY. SCENE IN  
HYDE PARK.

*(These two figures are not communicating with one another. The lady is receiving an amatory message, and the gentleman some racing results.)*

(1906)

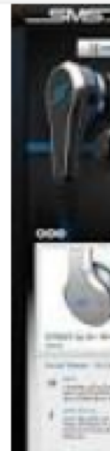
## Shopify Plan Breakdown

Feature	Basic Shopify	Shopify
More information	Visit Shopify for a free trial account	
Credit Card Rate (with Shopify Payments)	2.9% + 30¢*	2.5% + 30¢*
Additional Transaction Fee	Shopify Payments: 0 / External Gateway: 2%	Shopify Payments: 0 / External Gateway: 1%
Pricing	\$29 / month	\$79 / month

14 more rows, 1 more column

Shopify pricing plans: Which plan should I pick?

[www.websitetooltester.com/en/reviews/shopify/pricing/](http://www.websitetooltester.com/en/reviews/shopify/pricing/)





# Learning goals

- Context, contours of the Children's Online Privacy Protection Act
- Does COPPA represent a form of convergence between US and EU approaches? Does it set forth a workable approach for privacy more generally?
- How does regulation shape how content is presented?

# The late 90s was a scary time for parents

- High profile reporting about abuse
- Concerns about pornography
- Privacy & security combined to quickly enact Children's Online Privacy Protection Act (COPPA)



# Kyra Phillips buys list of children, using suspected killer's name

A recent sting operation conducted by a Los Angeles television reporter may increase the bill's chances of becoming law. Posing as an assistant to a fictitious children's clothier named Richard Allen Davis, reporter Kyra Phillips (no relation to John) bought a Metromail list containing the names, addresses, genders, and birth dates of 5,000 Pasadena kids age 1 to 12. Richard Allen Davis is the name of Polly Klaas' murderer.





# Offline list marketing to children is still free from privacy rules

## Highlights for Children Magazine Subscribers Mailing List

Since 1946, Highlights for Children has provided kids age 2-12 years old "Fun with a Purpose®." The largest paid circulation children's magazine in the world, Highlights remains true to its original philosophy of encouraging and challenging children with fun, educational opportunities.

[Get Count](#) [Get Pricing](#) [Get More Information](#)

SEGMENTS		COUNTS THROUGH 08/31/2016	POPULARITY: ***** 100
327,889	TOTAL UNIVERSE / BASE RATE	\$105.00/M	MARKET: CONSUMER
81,743	6 MONTH SUBSCRIBERS	+ \$10.00/M	CHANNELS: 
50,036	3 MONTH SUBSCRIBERS	+ \$15.00/M	SOURCE: DIRECT MAIL SOLD
28,275	1 MONTH SUBSCRIBERS	+ \$20.00/M	PRIVACY: UNKNOWN
12,394	3 MONTH CHANGE OF ADDRESS	+ \$16.50/M	DMA?: YES - MEMBER
218,208	12 MONTH EXPIRES	\$75.00/M	STATUS: PREFERRED PROVIDER
132,868	HIGH-FIVE ACTIVE SUBSCRIBERS	\$105.00/M	GEO: USA
23,754	HIGH-FIVE 3 MONTH SUBSCRIBERS	+ \$15.00/M	GENDER: 72% FEMALE 16% MALE
	CATALOG RATE	\$95.00/M	SPENDING: \$34.00 AVERAGE ORDER
	FUNDRAISER RATE	\$75.00/M	
DESCRIPTION			
Highlights for Children is dedicated to helping children grow in basic skills, knowledge, and creativity. In addition to helping them think and reason, it shows them the high ideals and worthy ways of living like honesty.			
			
SELECTS			
3 MONTH HOTLINE		\$15.00/M	
6 MONTH HOTLINE		\$10.00/M	
AGE OF CHILDREN		\$16.50/M	
ENHANCEMENTS		\$16.50/M	
GENDER OF CHILD		\$9.50/M	
GENDER/SEX		\$9.50/M	

- Lists used to sell information about children explicitly, now framed as “households with children”
- Collected directly from children & parents through birthday loyalty programs, magazines, even in the hospital through “free” pictures offered to new mothers



PAR. 2. Among the candies manufactured and sold by respondent is an assortment packed 120 pieces to each package labeled "chocolate penny men," Commission's Exhibit 1.<sup>1</sup> Each of the 120 pieces in each of said packages is a chocolate-covered cream candy molded into the shape of a man and retailing for 1 cent each. Among these 120 pieces there are four pieces in which 1 penny is concealed. In each of said packages as sold by the respondent to the wholesaler, jobber, and retailer is placed a card displaying a picture of a schoolboy, and bearing the label, "watch this boy, he has money in his pockets," Commission's Exhibit 2. The purchaser who procures one of said pieces of chocolate cream candy which contains a penny receives his money back, and in fact receives the piece of candy free of charge, and the purchaser who procures one of the 116 pieces of chocolate cream candy which do not contain any money, pays 1 cent for the said piece of candy.

# KidVid Controversy

- In the early 1970s, there was liberal and conservative concern about the influence of television ads on children—based on tooth decay primarily
- The agency organizes self-regulatory groups, saber rattles, but groups were “talking past each other”
- Nixon appointed Chairman Engman: “advertising directed to children...which is calculated to...exploit their known anxieties or...confuse reality and fantasy is unfair [under] Section 5”
- Liberal groups petitioned both FTC and FCC to ban ads to young children
  - FTC even wanted “fairness doctrine” counter-ads to sugary treats

Meanwhile, there was a conservative shift in the US

NYT 12/30/75

### *F.T.C. Chief Has Final Word: Government Is Overregulating*

By HAROLD M. SCHMECK Jr.  
Special to The New York Times

WASHINGTON, Dec. 29—In his final news conference as chairman of the Federal Trade Commission, Lewis A. Engman said today that there was far too much regulation by government at all levels.

Mr. Engman, whose resignation becomes effective Thursday, said there was too much regulation of American Economic life by private groups, too.

The commission recently accused the American Medical Association of interfering with medical prices by prohibiting advertising by doctors. The agency has also started action to strike down state laws and private agreements that prohibit price advertising of prescription drugs and eyeglasses.

The New York Times  
Lewis A. Engman

He said he was disappointed by the slow pace of progress in dealing with abuses of advertising aimed at children on television.

# FTC extensively documented children's ad strategies

- “When you sell a woman on a product and she goes into the store and finds your brand isn't in stock she'll probably forget about it. But when you sell a kid on your product, if he can't get it he will throw himself on the floor, stamp his feet, and cry. You can't get a reaction like that out of an adult.”
- With children, the problem is to reach the head through the emotions...Animation is credible. Animation tends to be trusted even by most of the more critical children.





## KidVid Proposal Invited Comment on

- Ban all advertising on programming directed to kids under 8 years of age
- Ban advertising for sugared food on programming directed to young adolescents
- Require balanced advertising of more healthful foods

## KidVid reaction

- Along with funeral rule and used car rules, triggered a strong reaction
- Congress shut down the FTC, twice
- Agency struggled to renew appropriations for decades
- Congress banned FTC from any advertising rulemaking for 2 years
- This ensured that the FTC would not touch children's advertising, unless a) it was egregious or b) Congress told the agency to do so

# 1990s Concern over child-directed sites

- Seminal report by Kathryn Montgomery found that sites had “gamified” data collection from children:
  - “Good citizens of the Web, help Commissioner Gordon with the Gotham Census.”
    - Batman Forever Website
- KidsCom letter
  - Kids could earn points for rewards. Most remunerative were product surveys, eg, “one survey asked what brand of athletic shoes the child wore most of the time and why she had chosen that brand, as well as who bought the shoes, where they were purchased and how often they were replaced.”

## FTC Responds with KidsCom Letter

- It is a deceptive practice to represent that a Web site is collecting personally identifiable information from a child for a particular purpose (*e.g.*, to earn points to redeem a premium), when the information will also be used for another purpose which parents would find material, in the absence of a clear and prominent disclosure to that effect.
- Unfair to collect personally identifiable information, such as name, e-mail address, home address or phone number, from children and sell it to third parties without providing parents with adequate notice and an opportunity to control the collection and use of the information.



All of your answers will be totally anonymous.

## **A.** Allowance

---

**A1.** How much of an allowance do you currently receive each week?

\$

- ☐ I don't receive an allowance
- ☐ I'm not sure

**A2.** Do you usually save some of your allowance?

- ☐ Yes
- ☐ No
- ☐ I don't receive an allowance
- ☐ Not sure

## **B.** Gifts

---

In the Matter of Liberty  
Fin. Companies, Inc., 128  
F.T.C. 240 (1999).

The Measure up Survey

	Yes	No	Not Sure
1. Savings Bonds	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2. Stocks	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3. Mutual Funds	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
4. Cash	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
5. Checks	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
6. Certificates of Deposit (CDs)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
7. Gold Coins	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

B2. Who has given you these types of gifts?

Check all that apply

<input type="checkbox"/> Parents	<input type="checkbox"/> Grandparents
----------------------------------	---------------------------------------

## I. Entry Form

---

If you are chosen as a winner in the quarterly drawing, which prize would you like?

- ☐ Connectix color digital video camera
- ☐ CD ROM drive
- ☐ Flatbed scanner

Would you like to be added to the Young Investor email newsletter?

- ☐ Yes
- ☐ No

* Must be completed to get our newsletter	
First Name *	<input type="text"/>
Last Name	<input type="text"/>

**G2.** Please pick the closest definition for a mutual fund from the choices below.

- ☐ An investment company that raises money from shareholders and invests in securities
- ☐ Debt instrument issued by a bank that usually pays interest.
- ☐ An interest bearing security that obligates the issuer to pay the holder a specified sum of money and repay principal amount a maturity.
- ☐ Ownership of a corporation represented by shares that are claims on the company's earning and assets.
- ☐ Not Sure

**G3.** Over twenty years' time, where would you expect to make the most money; the stock market, the bond market, or bank certificates of deposit (CDs)

- ☐ Stock Market
- ☐ Bond Market
- ☐ Bank Certificates of Deposit (CDs)
- ☐ Not Sure

**G4.** Do you think the federal deficit is good, bad, or has no effect on the economy:

- ☐ Good



# Forces leading to COPPA

- FTC feared using unfairness, and thus thought it could only do straight-up deception cases
- Europeans had their 1995 directive, painted US as Mad Max scene where even children had no privacy protection



# Children's Online Privacy Protection Act (COPPA)

- Enacted quickly, with little legislative history
  - Floor statements pointed to both privacy and security rationales
- No caselaw
- Basically punted substantive rules to FTC

# COPPA Scope

- Child = person under the age of 13
  - Why 13? 16? 18?
  - ACLU, sex health constituencies were concerned about censorship
- Applies to “services,” not just websites
  - This can include B2B services, such as behavioral advertising libraries that “plug in” to an app
- Does not apply to non-commercial sites (presumably AGs have jurisdiction to police non-profit sites)

# COPPA Dynamics

- COPPA rule violations are legislatively declared to be FTC Act violations.
  - Therefore, if FTC Act is limited, it has knock-on effects for children's privacy more generally
  - E.g. if common carriers are out of the FTC Act, COPPA may also be limited
- COPPA is always enforced in federal district court
- COPPA cases almost always have fines—and they are getting large
- COPPA cases almost always name company executives as defendants, because they are “operators” under the law

# Importance of CARU

- Children's Advertising Review Unit (CARU) is arm of the National Advertising Review Unit
  - Very well respected self-regulatory body
  - FTC looks to it for norm-setting
- CARU refers many (most?) COPPA cases to FTC
- CARU will help sites comply with COPPA, if you violate COPPA, they'll try to help you get into compliance.
  - Persistent non-compliance, etc., they'll throw you under the bus to prevent bad actors from driving expansion of COPPA.

## Self-Regulatory Program for Children's Advertising

Children's Advertising Review Unit  
Administered by the Council of Better Business Bureaus, Inc.  
Policies and Procedures set by the National Advertising Review Council  
70 West 36th Street, New York, NY 10018

The Children's Advertising Review Unit  
Self-Regulatory Program for Children's Advertising

# What services are subject to COPPA?

- Services “directed at” children
  - Totality of the circumstances test
    - subject matter of the site
    - use of animated characters
    - characteristics of music
    - whether the site uses child models or child celebrities
    - the use of childish fonts
    - audience composition
- (Or) Actual knowledge of information collection on children
- General purpose sites with child sections (e.g. Amazon’s toy store) are not COPPA services



US v. TinyCo., Inc., 3:14-cv-04164 (N.D. Cal. 2014).





# BREEDING



1

Family Complete!

4

Different Species!

You didn't come back in time, your baby African Elephant got sick. Heal for 2 Zoo Bucks?

Abandon

Yes

GOT SICK

INSTANT  
RECOVER

Breed animals to complete families! Families of 3 collect 10% EXTRA, families of 4 collect 15% EXTRA! Best of all, completed families ANIMATE!

Exhibit H

Case3:14-cv-04164 Document-8 Filed09/16/14 Page3 of 4

# Information covered—Now very broad

- First and last name
- Personal identifiers: SSNs, telephone #, address
- Online contact information, including user names that can be used to contact the child
- Persistent identifiers (e.g. cookies) that can be used to recognize a user over time and across different websites or online services
- A photograph, video, or audio file, containing a child's image or voice
- Geolocation information sufficient to identify street name
- Or Information concerning the child or the parents of that child that the operator collects online from the child and combines with an identifier described above.

# 2013 COPPA Rule

- First party services are responsible for third parties—now a strict liability approach
  - If the third party is an agent or service provider of the host, or
  - the host benefits by allowing the third party to collect personal information directly from users
- Third parties can be liable too if the third party collects personal information through another operator's service and if it has actual knowledge that it is collecting personal information from users of a Service directed to children

# New Mexico Sues Google, Twitter, and App Developers Over Games That Allegedly Violate Kids' Privacy



Melanie Ehrenkranz

9/17/18 3:30pm •

7 5

Photo: Getty

New Mexico Attorney General Hector Balderas [filed a lawsuit](#) last week against Google, Twitter, and a number of other smaller tech companies for allegedly tracking children online without parental consent.

Google and Twitter did not make the apps that allegedly violated a federal child-privacy law. Instead, the companies “marketed” these apps through their platforms, according to Balderas’ office.



# Where's My Water? 2

Developer: [Disney](#)

[Privacy Policy](#)

Version 1.6.1

Published on 02/22/2018

• [Puzzle](#) •



Uses Sensitive  
Permissions



Transmits Sensitive  
Data

## Permission-Protected Resources

In order for an app to access sensitive resources in Android (e.g., personally identifiable information, camera and microphone, etc.), it must first request *permission*. The tables below list the permission-protected sensitive resources that this app had permission to access and whether we observed it actually accessing them. In some cases, this might be due to the app requesting access to more data than it actually needs to function, though in other cases it may be due to our testing mechanisms not triggering the relevant app functionality (which may be triggered with additional testing).

**Resources Accessed** lists the data types that we observed the app accessing during our testing.

**Resources Requested** lists the data types that the app *could* have accessed, but never actually accessed during the testing period.

**Warning:** just because we did not observe a particular permission-protected data type being accessed during our limited testing period does not mean that the app definitively will not access it when tested under different conditions.

### Resources Accessed



Location

### Resources Requested



## Where's My Water? 2

Developer: [Disney](#)

[Privacy Policy](#)

Version 1.6.2

Published on 07/02/2018

• [Puzzle](#) •



Transmits Sensitive  
Data

### Permission-Protected Resources

In order for an app to access sensitive resources in Android (e.g., personally identifiable information, camera and microphone, etc.), it must first request *permission*. The tables below list the permission-protected sensitive resources that this app had permission to access and whether we observed it actually accessing them. In some cases, this might be due to the app requesting access to more data than it actually needs to function, though in other cases it may be due to our testing mechanisms not triggering the relevant app functionality (which may be triggered with additional testing).

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**Warning:** just because we did not observe a particular permission-protected data type being accessed during our limited testing period does not mean that the app definitively will not access it when tested under different conditions.

#### Resources Accessed

No permission-protected resources accessed during our testing.

#### Resources Requested



Location

# COPPA's Five Major Protections

- Privacy notice that meets certain requirements
- Parental consent *prior to* collecting data from children
- Parental review of information collected
- Limits on data collection
- Limits on retention, requirements for security

# Notice

- COPPA conceives of four kinds of services—
- 1) Those that act as social networks for kids—this is the most feared service because of child predation
- 2) Sites that maintain an ongoing, two-way communication with children
- 3) Sites that are mostly one-way (site to child) but collect information for registration or the like
- 4) Broadcast-only sites that are child-targeted, but collect no information about children



# COPPA Consent Triage

- High risk sites are social networking or those that use behavioral ads
  - These sites require highest level of parental consent:
    - Consent form
    - A credit card used with a payment
    - Toll-free number for parents to call
    - Video conference with parent
    - Collection of parent's gov-issued identification
- Middle tier: collect info for internal purposes, contextual ads
  - "Email plus" is sufficient, although disfavored by FTC
- Lowest tier: child directed, cookies used for internal technical purposes. No consent needed.

# COPPA Access Rights

- Parents have a right to know the categories of personal information collected by a service, but also to get the actual information collected!
  - Interesting—COPPA doesn't conceive of the parent as privacy invader
- Parents can also request that data be deleted AND that the child still be able to use the service
  - Service has to still operate unless data are technically necessary
  - Data collection for advertising not considered *technically* necessary

# Data minimization

- COPPA-regulated services must allow access to children without requiring the disclosure of more personal information than is reasonably necessary to participate in such activity
  - This sounds a lot like European-style proportionality—the idea that data collectors must specify uses of information, and then collect only what is necessary for those specified uses
- FTC has been strict on this requirement
  - E.g. collection of address was excessive bc presumably only needed for kids who win the prize

RECIPES • JOKES •

**I want to join the Club!**  
Choose A Nickname. It has to be different than anybody else's, so be creative!

NICKNAME:

PICK A SECRET WORD:

RETYPE YOUR SECRET WORD:

**Tell us about yourself. Be sure to check with your parents first.**  
(Parents: Be sure to read our detailed Privacy Policy.)

FIRST NAME:

LAST NAME:

STREET ADDRESS 1:

STREET ADDRESS 2:

CITY:

STATE:

ZIP:

**Tell us your birthday.**

MONTH:

DAY:

**What is your email address? We need to know how to tell you if you win a prize.**

EMAIL  @

ADDRESS:

Once more, just to make sure we've got it right.  
 @

☒ Sign me up for the Kids Club Mailing List.

# Data Security & Retention

- Services must employ reasonable measures to ensure confidentiality, security, and integrity of data
- Data is supposed to be kept “for only as long as reasonably necessary to fulfill the purpose for which the information was collected”
  - Thus, COPPA services need a data deletion schedule

# COPPA Safe Harbor

- COPPA allows for companies to create self-regulatory “safe harbor” systems. These are approved by the FTC after a notice & comment period. They include:
  - Aristotle International Inc., CARU, Entertainment Software Rating Board (ESRB), iKeepSafe, kidSAFE, Privo Inc., TRUSTe

# COPPA Enforcement Priorities

1. No privacy policy or where it is incomplete or not prominent
2. Service misrepresents how data are used
3. No procedures for parental consent
4. Parent is not given the opportunity to refuse consent to sharing of data to a third party
5. Parent cannot see the child's information or where information is not deleted as requested
6. Where the service collects more information than necessary for an activity.

## Case Selection Seems to Focus on

- Services with large numbers of children
- Services that allow posting of info by children
- Services that collect geo, address books

# COPPA's Unintended Effects

- Web is a rich medium, but COPPA's incentives favor television-like, broadcast only sites
- Companies take a bi-modal compliance approach: either completely deny that children are on a service or go all-in
- All-in COPPA sites tend to be very commercial—worst outcome for child advocates





# State law child privacy

- Maine's Act to Prevent Predatory Marketing Practices Against Minors
- Prohibited knowingly collecting or receiving personal or health information from minors (18) for marketing purposes without verifiable parental consent.
- Banned marketing to minors where personal information was used!
- Banned sale of minors' info to third parties w/o parental consent
- Still on books but AG agreed not to enforce

# California “Eraser Button Law”

- California minors (>18) who are registered users of a service may request removal of content and information that the user publicly posted on the service.
  - Service must be directed to minors or have knowledge that user was a minor
  - Cannot remove material posted by others
  - Service must give notice of right
- Services may not use, disclose, compile minors’ PI for purposes of advertising alcoholic beverages, tobacco, salvia, guns, fireworks, spray paint/etching fluid, tanning, ephedrine, lotteries, tattoos, obscenity.
- Privacy Rights for California Minors in the Digital World Act, Cal. Bus. & Prof. Code § 22580.

# Proliferation of “Edtech” regulation

- Perhaps 30 states now regulate school-directed tech services
- Most prominent is California’s SOPIPA: Student Online Personal Information Protection Act, Business & Professions Code § 22584
- Applies to operators of internet services with “actual knowledge” that it is “used primarily for K-12 school purposes” and “was designed and marketed for K-12 school purposes.”
- No “targeted” advertising, no selling student info
- No profiling, except to further educational purposes
- Reasonable security, deletion at school district’s request

## More generally, edtech operates in a minefield

- Federal Educational Rights Privacy Act (FERPA)
  - Access, amendment, security, limited disclosure of educational records
- Protection of Pupil Rights Amendment (PPRA)
  - Concerns controversial survey research in schools
- Children's Internet Protection Act (CIPA)
  - Mandates internet filtering in schools
- Americans with Disabilities Act (ADA)
  - Schools must serve everyone and accommodate disabilities
- Strict procurement rules that do not fit well with startup companies

# Monday's discussion

- Choose a COPPA-regulated service & list it on the discussion area of Bcourses
  - Read the privacy policy
  - Pay attention to the critical COPPA-regulated areas
- We'll discuss what is different between COPPA and non-COPPA sites
- We'll do an in-class exercise surrounding the monetization of COPPA sites