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## **PRIVACY OFFICERS ADVISOR** (March 2004)

### **COPPA Overseas**

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Many businesses today know that the Children’s Online Privacy Protection Act (COPPA) – the law that governs the online collection of personal information from children under the age of 13 – applies to websites operated in the United States. However, what companies may not have realized is that COPPA also applies to foreign websites (i.e., websites operated overseas) if either of the following conditions is met:

- The foreign site is directed to children in the U.S.; or,
- The foreign site *knowingly* collects personal information from children in the U.S.

For example, a foreign-run, kid oriented site would be considered “directed to U.S. children” if it advertised in offline U.S. media or on popular U.S. websites (*See [www.ftc.gov/privacy/coppafaqs.htm](http://www.ftc.gov/privacy/coppafaqs.htm)* COPPA FAQ No. 20). In determining whether a site is targeted to children in general, the Federal Trade Commission (the body responsible for enforcing COPPA) looks at a number of factors, including the site’s subject matter, visual and audio content, advertising, information regarding the age of the actual or intended audience, and the appearance of animated characters or other child-oriented features (*See* COPPA FAQ No. 5).

A foreign-run, *general audience* site (i.e., a site with appeal to all ages) would be subject to COPPA if the site had *actual knowledge* that the person registering or submitting personal data is a child in the U.S. For example, the site would be deemed to have actual knowledge if: (a) the site could identify the visitor as under 13 (through an age identifying question such as “What is your date of birth?”); and, (b) the site could determine that the child resides in the U.S., either by way of website traffic statistics or a registration form that requests the child’s mailing address or geographic location. General audience sites that do not collect this information or that otherwise ban access to U.S. visitors would not be subject to COPPA.

Although the application of COPPA to foreign sites may raise some practical and jurisdictional issues with respect to FTC enforcement, what is clear is that if your company operates a foreign site devoted to a product or property with appeal to kids all over the globe, don’t assume that you are COPPA immune.

## **About the author**

Shai Samet is the Director of the Entertainment Software Rating Board's Privacy Online Program: "ESRB Privacy Online." ESRB Privacy Online is an independent, third party seal provider that reviews and certifies the online information collection practices of companies in the entertainment software industry. Shai advises over 30 videogame publishers on compliance with privacy laws such as COPPA and other industry best practices. He can be reached at (212) 759-0700 or [ssamet@esrb.org](mailto:ssamet@esrb.org).