

New Mexico Attorney General Settles Google Children's Privacy Cases: A Unique Settlement Adds to a Complicated Landscape

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On December 13, the New Mexico Attorney General announced a settlement with Google to resolve claims regarding children's privacy, including in the burgeoning EdTech space. The federal lawsuits *Balderas v. Tiny Lab Productions, et al.* and *Balderas v. Google LLC*, respectively, alleged COPPA and privacy violations related to collection of children's information on game developer Tiny Lab's apps and on Google's G Suite for Education products. There are many features of this settlement that are worth discussing further as either potential future trends, or novel provisions.

Privacy Compliance Provisions

New Mexico's injunction related to the *Tiny Lab* case includes changes to Google Play which will take effect after 120 days. Some of the specific measures include:

- revising Google Play Families policies and including additional help pages to assist app developers in compliance;
- requiring all developers to complete a form to indicate the targeted age group of apps;
- using a rubric to evaluate app submissions to help determine whether it appeals to kids and check for consistency with the age group form;
- requiring Families apps to certify they will comply with COPPA;
- requiring all apps to only use SDKs that certify compliance with Google's policies including COPPA;
- requiring developers of Families apps to disclose collection of any children's data including through third parties;
- requiring a link to the app's privacy policy on the Google Play store page; and
- communicating whether an app is Child Directed to AdMob and AdMob will then follow COPPA pertaining to that data.

The content of the help pages the injunction requires do not just contain answers to frequently asked questions. They prescribe certain decisions by and limitations on third parties using the Google Play

store. For example, Exhibit 3 to the injunction provides “if you serve ads in your app and your target audience only includes children, then you must use Google Play certified SDKs.”

In addition to these injunctive provisions, Google agreed to a set of voluntary enhancements to the Google Education platform intended to promote safety for students. New Mexico’s enforcement of these provisions is limited to its ability to confirm that Google has made the changes, or inquire as to the status of changes not made.

These injunctions demonstrate continued state Attorney General scrutiny regarding children’s information. And they come at a time that the Federal Trade Commission, which is responsible for issuing the COPPA Rule, is redoubling its COPPA efforts. The FTC’s ongoing [COPPA Rule Review](#) includes a number of questions regarding the intersection of COPPA and education technology. The FTC’s Statement of Regulatory Priorities, which we wrote about [here](#), identifies COPPA as a top priority. And just this week, the FTC released [its first COPPA settlement](#) in almost 18 months.

Additional Settlement Terms Part from Historical State Settlements

Not to be ignored, several other provisions of the settlement have unique aspects that are extremely noteworthy. Google has agreed to pay New Mexico \$5.5 million – with \$1.65 million of that going to outside counsel for the state. The remaining payment will be used to fund the “Google New Mexico Kids Initiative” – a program jointly run by Google and New Mexico to award grants to schools, educational institutions, charitable organizations, or governmental entities. This unique allocation of the payment to the State could result in scrutiny that other State Attorney General settlements have met in the past where they attempted to designate funds to specific third party recipients. Some state legislatures may see it as an effort to appropriate funds without their involvement.

While New Mexico reserves its rights under the agreement regarding public statements, it has agreed to provide Google 24-hour notice before making any written public statement. Moreover, New Mexico agrees to consider in good faith any suggestions or input Google has, and any statement will reference the parties’ shared commitment to innovation and education. States routinely resist any efforts to negotiate press in this manner, and it is unclear how enforceable a provision like this could really be anyway. That said, this certainly reflects the cooperative nature of the agreement, in which case it’s fair to assume the State would issue press reflecting such cooperation anyway.

Google and New Mexico have also agreed to an ADR provision, requiring the state to pursue any disputes relating to the agreement in mediation prior to pursuing relief. This again is fairly unique for a State AG settlement, as is the overall form of the document (a “Settlement Agreement and Release”) – normally states will only settle matters through a consent judgment or a statutorily authorized Assurance of Compliance or Discontinuance. But just like some of the other unique provisions, agreeing to ADR may be more of a reflection of the cooperative nature of the agreement, and certainly presents opportunity for a more streamlined enforcement mechanism in the future.

It remains to be seen if these provisions will serve as a template for future state agreements with other companies, but given that state Attorneys General continue to pursue Google on a variety of fronts^[1], New Mexico’s settlement will certainly be relevant in any future settlement efforts.

[\[1\] Google Search Manipulation, Google Ad Tech, Google DOJ Search Monopoly, State of Arizona v. Google LLC geolocation privacy](#)