

Time Runs Out for TikTok App: Developer Musical.ly Agrees to FTC's Largest-Ever Fine for Children's Privacy Violations

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The FTC recently announced a \$5.7 million settlement with app developer Musical.ly for COPPA violations associated with its app (now known as TikTok)—the agency's largest-ever COPPA fine since the enactment of the statute. The agency charged the app company, which allows users to create and share videos of themselves lip-syncing to music, with unlawfully collecting personal information from children.

To create a TikTok profile, users must provide contact information, a short bio, and a profile picture. According to the FTC, between December 2015 and October 2016, the company also collected geolocation information from app users. In 2017, the app started requiring users to provide their age, although it did not require current users to update their accounts with their age. By default, accounts were "public," allowing users to see each other's bios (which included their grade or age). It also allowed users to see a list of other users within a 50-mile radius, and gave users the ability to direct message other users. Many of the songs available on the app were popular with children under 13.

The FTC further alleged that Musical.ly received thousands of complaints from parents asserting that their child had created the app account without their knowledge (and noted an example of a two-week period where the company received more than 300 such complaints). The agency also noted that while the company closed the children's accounts in response, it did not delete the users' videos or profile information from its servers.

The FTC's Complaint focused on practices spanning from 2014 through 2017. Musical.ly was acquired by ByteDance Ltd. in December 2017, and merged with the TikTok app in August 2018.

COPPA identifies specific requirements for operators who collect personal information from children under 13, including obtaining consent from parents prior to collection and providing information about collection practices for children's data. Online services subject to the rule generally fall into two categories: (1) sites that are directed to children and collect personal information from them; and (2) general audience sites that have actual knowledge that they are collecting personal information from children. Civil penalties for violations of COPPA can be up to \$41,484 per violation.

According to the FTC, Musical.ly's app fell into both categories:

1. The company included music and other content appealing to children on the app. For example, many of the songs included on the app were popular with children under 13, and the app used

“colorful and bright emoji characters” that could appeal to children.

2. Once the company began collecting the ages of its users, Musical.ly had actual knowledge that some of its users were under the age of 13. In spite of this, the company did not obtain consent from the parents of users under the age of 13, or comply with other COPPA requirements.

FTC Commissioners Chopra and Slaughter issued a joint statement on the settlement, pointing out that FTC staff had uncovered disturbing practices of a company willing to pursue growth at the expense of endangering children. They also noted that previously, FTC investigations typically focused on individual accountability in limited circumstances, rather than pursuing broader enforcement against company leaders for widespread company practices. The Commissioners further indicated that as the FTC continues to pursue legal violations going forward, it is time to “prioritize uncovering the role of corporate officers and directors” and to “hold accountable everyone who broke the law.”

This settlement indicates that the FTC continues to prioritize privacy enforcement—particularly where vulnerable audiences, such as children, are involved. Future FTC enforcement actions could signal an expanded approach to individual liability, including with respect to larger companies.

The case is also a good reminder of the value in performing robust privacy due diligence when considering acquiring an entity, and meaningfully assessing the risk of a company’s data practices before adding them to the portfolio. A widely popular business with significant data assets may not look as attractive once civil penalties and injunctive terms are added to the mix.