

LEGAL UPDATE

October 2012 By: Robert J. deBrauwere, Jeffrey C. Johnson and Jill C. Braibanti

FEDERAL TRADE COMMISSION CRACKS DOWN ON WEBSITES ILLEGALLY COLLECTING CHILDREN'S PERSONAL DATA

The Federal Trade Commission (FTC) is vigorously enforcing children's privacy laws by imposing hefty fines on website operators who knowingly collect personal information about children younger than 13 without obtaining parental consent, as required by the Children's Online Privacy Protection Act (COPPA). Website operators who knowingly collect personal information from children, or otherwise operate websites directed at children which collect personal information, should seek counsel on how to become legally COPPA-compliant and avoid exposure to enforcement actions and steep civil penalties.

To draw attention to the issue of children's privacy, the FTC is prioritizing enforcement of COPPA violations and making an example of website operators who fail to comply with applicable privacy laws. On October 4, the FTC announced a \$1 million civil penalty against Artist Arena, the operator of fan websites for teen stars including Justin Bieber and Selena Gomez, as part of a comprehensive settlement for COPPA violations. Like many websites that offer personalization, commenting functions or interactive user communities, Artist Arena allows users of its fan websites to register personal user accounts, create profiles and interact with other fans. The FTC alleged that Artist Arena allowed children younger than 13 to register with their sites by providing personal information such as full name, email address, cell phone number, country of residence and birthdate – information which is protected under COPPA. According to the FTC's complaint, filed in the Southern District of New York, Artist Arena registered over 25,000 users who indicated during the registration process that they were younger than 13, and collected and stored the personal information of almost 75,000 additional children who started but did not complete the registration process. In many cases, Artist Arena sent emails to parents notifying them that their children had registered for user accounts,

but Artist Arena did not obtain parental consent or provide disclosure about its information collection and use practices as required under COPPA.

Under COPPA, commercial websites with actual knowledge that they are collecting names, birth dates and other personally identifiable information from children younger than 13 must (1) provide parents or legal guardians with a direct notice of their information collection and privacy practices and (2) obtain verifiable parental consent prior to collecting, using or disclosing this personally identifiable information. The FTC's action against Artist Arena indicates that the FTC is making COPPA compliance an enforcement priority. Notably, from the FTC's complaint it is clear that Artist Arena did take nominal steps to become COPPA-compliant, which were not enough to avoid a hefty civil penalty. Website operators who are unsure if their site is "directed at children" or otherwise subject to COPPA should seek legal counsel on structuring their user registration process, terms of use, privacy policy and information collection practices, to avoid the risk of similar FTC enforcement actions.

Our Digital Media practice regularly tracks developments in federal and state privacy laws, enforcement actions and litigations and counsels clients on the implications of these developments on their promotional practices, data collection policies, business operations and opportunities for growth. For more information on the content of this alert, please contact Robert deBrauwere and Jeffrey Johnson.

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Mr. deBrauwere is a 1993 *cum laude* graduate of Benjamin N. Cardozo School of Law, where he served as Senior Managing Editor of the *Cardozo Arts & Entertainment Law Journal*.

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Jeffrey Johnson is a partner experienced in the transactional aspects of technology and intellectual property exploitation (patents, trade secrets, trademarks and copyright) including, in particular, all aspects of mergers and acquisitions, joint ventures, strategic alliances, joint development and marketing agreements, private placements and licensing in the biotech, entertainment, Internet, pharmaceutical, software and telecommunications industries.

Jeffrey typically focuses on transactional matters principally involving intellectual property or goods and services the value of which are largely attributable to intellectual property. Representative assignments include:

- Representation of Lady Gaga in her investment in The Backplane, as reported in The New York Times on June 6, 2011
- Representation of a private equity fund in connection with the acquisition and disposition of patent portfolios and related assets
- Representation of a public biotechnology company negotiating and documenting numerous strategic alliances, research and development collaborations, co-promotion agreements, patent and know-how licenses, and other agreements relating to the development and exploitation of the company's core technologies
- Representation of a public telecommunications company in connection with a strategic reorganization to maximize the value of its patent portfolio and licensed rights
- Representation of a pharmaceutical company's bioinformatics group negotiating and documenting numerous strategic alliances, software development agreements and software licenses, as well as the group's form agreements for the provision of bioinformatics services and the licensing of genomic and proteomic databases
- Representation of a technology-transfer company in connection with the sale of a portfolio of patents governing web-enabled software updating, active desktop and offline browsing
- Representation of a telecommunications company in connection with its sponsored research agreements with various U.S. and foreign educational institutions

Jeffrey has been an invited speaker and panelist at a variety of public and private events. He is frequently called upon by the press to comment upon intellectual property and other matters.



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Jill Braibanti's practice focuses on corporate, intellectual property and digital media matters, including copyright issues, social media and promotions compliance, licensing, acquisitions and corporate governance. Her practice also includes general commercial and entertainment litigation.

Jill received her B.A. from the College of William & Mary in 2003 and her J.D. from New York University School of Law in 2009. She served as an editor of the *NYU Journal of Law and Business*.