

ORC Ann. 1349.09

Current through File 26 of the 135th General Assembly (2023-2024).

Page's Ohio Revised Code Annotated > Title 13: Commercial Transactions — Other Commercial Transactions (Chs. 1301 — 1355) > Chapter 1349: Consumer Protection (§§ 1349.01 — 1349.99)

§ 1349.09. Responsibilities of operator of an online website that targets children.

(A) As used in this section:

(1) “Operator” means any business, entity, or person that operates an online web site, service, or product that has users in this state and that allows those users to do all of the following:

(a) Interact socially with other users within the confines of the online web site, service, or product;

(b) Construct a public or semipublic profile for the purpose of signing into and using the online web site, service, or product;

(c) Populate a list of other users with whom an individual shares or has the ability to share a social connection within the online web site, service, or product;

(d) Create or post content viewable by others, including on message boards, chat rooms, video channels, direct or private messages or chats, and a landing page or main feed that presents the user with content generated by other users.

(2) “Child” means any consumer of an online web site, service, or product who is under the age of sixteen and who is not emancipated.

(B) The operator of an online web site, service, or product that targets children, or is reasonably anticipated to be accessed by children, shall do all of the following:

(1) Obtain verifiable consent for any contract with a child, including terms of service, to register, sign up, or otherwise create a unique username to access or utilize the online web site, service, or product, from the child’s parent or legal guardian using any of the following methods:

(a) Requiring a parent or legal guardian to sign and return to the operator a form consenting to the contract by postal mail, facsimile, or electronic mail;

(b) Requiring a parent or legal guardian, in connection with a monetary transaction, to use a credit card, debit card, or other online payment system that provides notification of each discrete transaction to the primary account holder;

(c) Requiring a parent or legal guardian to call a toll-free telephone number implemented by the operator and staffed by trained personnel;

§ 1349.09. Responsibilities of operator of an online website that targets children.

- (d) Requiring a parent or legal guardian to connect to trained personnel by videoconference;
 - (e) Verifying a parent's or legal guardian's identity by checking a form of government-issued identification against databases of such information, and promptly deleting the parent's or legal guardian's identification from the operator's records after such verification is complete.
- (2) Present to the child's parent or legal guardian a list of the features offered by an operator's online web site, service, or product related to censoring or moderating content, including any features that can be disabled for a particular profile.
 - (3) Provide to the child's parent or guardian a web site link at which the parent or legal guardian may access and review the list of features described in division (B)(2) of this section at another time.
- (C) In determining whether an operator's online web site, service, or product targets children, or is reasonably anticipated to be accessed by children, the attorney general or a court may consider the following factors:
- (1) Subject matter;
 - (2) Language;
 - (3) Design elements;
 - (4) Visual content;
 - (5) Use of animated characters or child-oriented activities and incentives;
 - (6) Music or other audio content;
 - (7) Age of models;
 - (8) Presence of child celebrities or celebrities who appeal to children;
 - (9) Advertisements;
 - (10) Empirical evidence regarding audience composition; and
 - (11) Evidence regarding the intended audience.
- (D)
- (1) Except as otherwise provided in division (D)(2) of this section, after obtaining consent from a child's parent or legal guardian, an operator shall send written confirmation to the parent or legal guardian via electronic mail, postal mail, or facsimile.
 - (2) If an operator is unable to secure an address, electronic mail address, or facsimile number of the child's parent or legal guardian, after making a reasonable effort to obtain such information, the operator may verify consent via telephone.
- (E) If a child's parent or legal guardian does not affirmatively consent to the terms of service or other contract, the operator shall deny the child access to or use of the online web site, service, or product.
- (F) If a parent or legal guardian receives confirmation of consent, as described in division (D) of this section, and determines that consent was given in error, or if the parent or legal guardian

§ 1349.09. Responsibilities of operator of an online website that targets children.

chooses to withdraw consent for any reason, the parent or legal guardian shall notify the operator, and the operator shall terminate the child's use of or access to the online web site, service, or product within thirty days after receiving such notification.

(G) The attorney general shall investigate any noncompliance with this section in the same manner, by the same means, and with the same jurisdiction, powers, and duties as in section 1349.191 of the Revised Code. Nothing in this section shall be interpreted to serve as the basis for a private right of action.

(H) If it appears that an operator of an online web site, service, or product failed to comply with this section, the attorney general has the exclusive authority to bring a civil action in a court of common pleas, or other appropriate court, for appropriate relief including a temporary restraining order, preliminary or permanent injunction, and civil penalties.

(I) If a court finds that an operator of an online web site, service, or product entered into a contract with a child without consent of the child's parent or guardian, as required by this section, the court shall impose a civil penalty on the operator as follows:

(1) Up to one thousand dollars for each of the first sixty days the operator failed to comply with this section;

(2) In addition to the civil penalty required by division (I)(1) of this section, up to five thousand dollars for each subsequent day the operator failed to comply with this section, commencing with the sixty-first day and ending with the ninetieth day;

(3) In addition to the civil penalties required by divisions (I)(1) and (2) of this section, up to ten thousand dollars for each subsequent day the operator failed to comply with this section, commencing with the ninety-first day.

(J) Any civil penalty that is imposed under division (I) of this section shall be deposited into the consumer protection enforcement fund created under section 1345.51 of the Revised Code.

(K) Any operator that is found by the court to have failed to comply with this section is liable to the attorney general for the attorney general's costs in conducting an investigation and bringing an action under this section.

(L) The rights and remedies that are provided under this section are in addition to any other rights or remedies that are provided by law.

(M)

(1) If an operator is in substantial compliance with this section, the attorney general shall provide written notice to the operator before commencing a civil action under this section. The notice must identify the specific provisions of this section that the attorney general alleges have been violated.

(2) The attorney general shall not commence a civil action under this section, and a court shall not impose a civil penalty, for a violation identified in a notice sent by the attorney general under division (M)(1) of this section if the operator does both of the following within ninety days after the date such notice is sent:

(a) Cures the violation;

§ 1349.09. Responsibilities of operator of an online website that targets children.

(b) Provides the attorney general with written documentation that the violation has been cured and that the operator has taken measures sufficient to prevent future violations.

(N)

(1) This section does not apply to an online web site, service, or product where the predominant or exclusive function is:

(a) Cloud storage or cloud computing services;

(b) Broadband internet access services;

(c) Search engine services.

(2) Division (N)(1) of this section does not apply with respect to content and communications created or controlled by the provider, affiliate, or subsidiary.

(O) This section does not apply to an online web site, service, or product respecting which interaction between users is limited to the following:

(1) Reviewing products offered for sale by electronic commerce or commenting on reviews posted by other users;

(2) Comments incidental to content posted by an established and widely recognized media outlet, the primary purpose of which is to report news and current events.

History

2023 hb33, § 101.01, effective October 3, 2023.

Page's Ohio Revised Code Annotated
Copyright © 2024 All rights reserved.