Fun4Kids Inc.

Model answer: the outline, then the written memo (annotated)

An objective advisory memo (Issue / Analysis and Recommendation). Read the colors as in your marked-up File and Library: each highlight is the rule a fact serves, and the same color links a rule to the fact that triggers it.

Key: a highlighted phrase is the fact; **the teal → text** after it is the shorthand recommendation.

COPPA threshold (under 13) **Franklin law (all under 18)** **1 clickwrap** **2 parental consent** **3 credit cards** **4 data to advertisers** **the data items** **5 ad limits**

STEP ONE The outline (what you jot before you write)

Five issues from the interview, each a one-line rule and a recommendation. Fix the age split first; it drives every answer.

Frame: who each law covers

R COPPA + FTC regs cover a “child,” under 13; Franklin § 200.1 + CPIA cover minors under 18. → **federal data rules hit the younger half; disaffirmance + ad limits hit everyone**

The five issues

1 Clickwrap? *Sampson/Hartson*: browsewrap binds only with notice; clickwrap = affirmative click. **→ use a CLICKWRAP agreement**

2 Parental consent? COPPA requires verifiable parental consent for under-13 (§ 312.3(b), 312.5; methods in § 312.5(b)(2)); § 200.1 lets parents disaffirm any minor's contract. **→ get consent for under-13, and for ALL users to avoid disaffirmance**

3 Credit cards? FTC/Persimmon: express informed consent before charges (notice, password = final, right to withdraw). **→ allow cards with those safeguards; a card can double as consent**

4 Data to advertisers? collect only reasonably necessary data (§ 312.3(d), 312.7); parents may withhold collection + disclosure (§ 312.5(a)(2)); home + email not necessary. **→ for under-13, name/gender/age only, with notice + opt-out**

5 Ad limits? CPIA § 18 bars advertising the § 18(h) products to minors under 18 (all users). **→ screen advertisers; refuse the eight prohibited categories**

STEP TWO The written memo (Issue / Analysis and Recommendation)

Each issue is its own block: a one-line Issue, then an objective Analysis and Recommendation with the rule, the facts, and a clear recommendation. Essay left, teaching notes right.

MEMORANDUM

To: Tony Briotti From: Examinee Re: Fun4Kids Terms of Service, issues and recommendations

Frame. *Overview. Set the age split up front; it decides who each rule protects and recurs in every issue.*

This memo identifies and analyzes the five issues raised in Ms. Morrison's interview and recommends how to address each. As a threshold matter, COPPA and its FTC regulations reach only children under 13, about half of Fun4Kids's 11-to-14 users, while Franklin's Civil Code § 200.1 and the CPIA reach all minors under 18 and thus every user.

Issue 1: May Fun4Kids use a browsewrap terms of service agreement, or is a clickwrap agreement necessary?

Issue. Issue 1. The case law point: a click beats browsewrap for enforceability, and COPPA's paper trail needs it.

Advise. Objective: state the rule, apply the facts, land a clear recommendation with citations.

Analysis and Recommendation. Fun4Kids should use a clickwrap agreement. Under *Sampson Scientific Foundation, Inc. v. Wessel* and *Hartson v. Hobart*, a browsewrap agreement (assent by mere use) binds a user only after a fact-specific showing of actual or constructive notice, whereas a clickwrap requires an affirmative “I agree” click and is enforceable. Because COPPA and the FTC regulations require documented notice and verifiable consent, a clickwrap gate best ensures the terms are binding. *Sampson; 16 C.F.R. §§ 312.3-312.5.*

Issue 2: Is verifiable parental consent required and how is it obtained, and may parents disaffirm regardless?

Issue. Issue 2. Two layers: COPPA consent for under-13, plus the Franklin disaffirmance risk that pushes consent to everyone.

Advise. Objective: state the rule, apply the facts, land a clear recommendation with citations.

Analysis and Recommendation. Yes, for the under-13 users. COPPA and 16 C.F.R. §§ 312.3(b) and 312.5 require verifiable parental consent before collecting a child's personal information; § 6501(9) defines it as a reasonable effort, and § 312.5(b)(2) lists acceptable methods (a signed consent form, a credit card that notifies each charge, a toll-free call, a videoconference, or a government-ID check). Because the site will also require a credit card, that method can serve double duty as consent. Separately, Franklin Civil Code § 200.1 lets a parent disaffirm any contract made by a minor under 18, so unless Fun4Kids will risk disaffirmance, it should obtain parental consent for all users, not only those under 13.

Issue 3: May the site require credit-card payment, and what safeguards apply?

Issue. Issue 3. Cards are fine; the Persimmon release supplies the three required safeguards.

Advise. Objective: state the rule, apply the facts, land a clear recommendation with citations.

Analysis and Recommendation. Yes, with safeguards. The FTC's *Persimmon* settlement shows the site must obtain express informed parental consent before any credit-card charge: notice of the possible charges and their uses, an explanation that using a password makes a charge final, and the option to withdraw consent at any time. *See FTC press* *release.*

Issue 4: May Fun4Kids collect the user data it wants and provide it to advertisers?

Issue. Issue 4. Split by age; then the reasonably-necessary limit knocks out home + email and requires an opt-out on disclosure.

Analysis and Recommendation. For the 13- and 14-year-olds, yes; for the under-13 users, only in part. COPPA § 6501(8) treats name, home address, gender, age, and email as personal information, and § 312.3(d) allows collecting only what is reasonably necessary to participate, while § 312.7 bars conditioning participation on more. Because home and email are not necessary to deliver the games, for under-13 users the site may collect name, gender, and age but not home or email. It must also give parents notice and the chance to withhold consent to both collection and disclosure to advertisers (§ 312.5(a)(2)); only if consent is not withheld may it share the data.

Advise. Objective: state the rule, apply the facts, land a clear recommendation with citations.

Issue 5: Are there limits on the advertising the site may carry?

Issue. Issue 5. CPIA reaches all users; the site must gatekeep the prohibited ad categories.

Analysis and Recommendation. Yes. The Franklin CPIA § 18 bars a site directed to minors (under 18) from advertising the products and services listed in § 18(h). Because Fun4Kids targets 11-to-14-year-olds, this applies to all users, so the site must screen advertisers and refuse any in the eight prohibited categories.

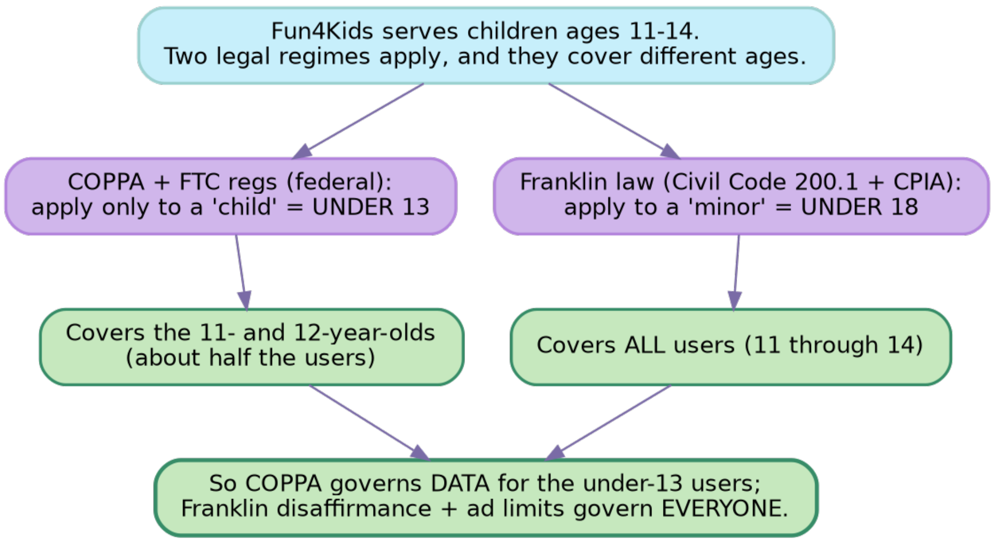
Advise. Objective: state the rule, apply the facts, land a clear recommendation with citations.

Recommendation summary. Use a clickwrap gate; obtain verifiable parental consent for under-13 and parental consent for all users; allow credit cards only with express informed consent; collect only reasonably necessary data with an opt-out on disclosure; and screen advertisers against the CPIA list.

Wrap. Close. A one-paragraph roundup so the partner can move straight to drafting.

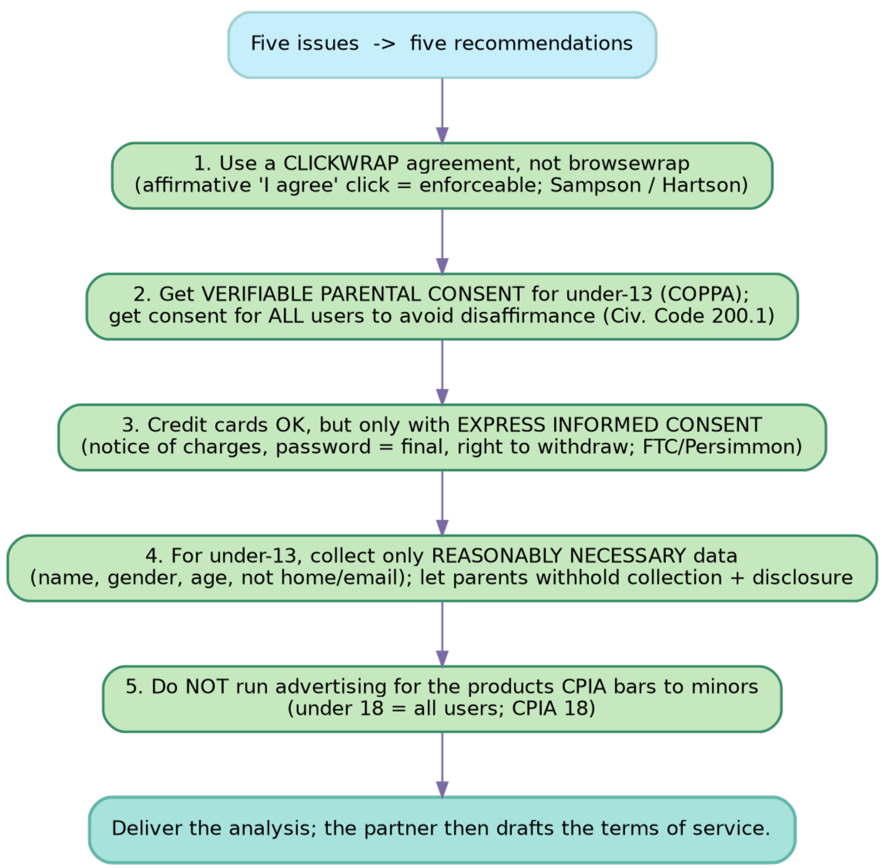
AT A GLANCE The coverage split and the five recommendations

Who each law covers



COPPA (under 13) governs data for the younger users; Franklin law (under 18) reaches everyone.

The five recommendations



Then the partner drafts the terms of service.