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FEDERAL TRADE COMMISSION

16 CFR Part 312

RIN 3084-AB20

Children’s Online Privacy Protection Rule Safe Harbor Proposed Self-Regulatory Guidelines; the Entertainment Software Rating Board’s COPPA Safe Harbor Program Application to Modify Program Requirements

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Notification of modifications to guidelines, requesting public comment.

SUMMARY: The Federal Trade Commission publishes this notification and request for public comment concerning proposed modifications to Entertainment Software Rating Board’s (“ESRB”) Commission-approved self-regulatory guidelines, under the “safe harbor” provision of the Children’s Online Privacy Protection Rule.

DATES: Written comments must be received by May 9, 2018.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “ESRB Application for Modifications to Safe Harbor Program Requirements, Project No. P024526” on your comment, and file your comment online at <https://ftcpublic.commentworks.com/ftc/esrbcoppaapp>, by following the instructions on the web-based form. If you prefer to file your comment on paper, write “ESRB Application for Modifications to Safe Harbor Program Requirements, Project No. P024526” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex E),

Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex E), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Shameka L. Walker, Attorney, (202) 326-2570, Division of Privacy and Identity Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Section A. Background

On October 20, 1999, the Commission issued its final Rule pursuant to the Children’s Online Privacy Protection Act, 15 U.S.C. 6501 *et seq.*, which became effective on April 21, 2000.¹ On December 19, 2012, the Commission amended the Rule, and these amendments became effective on July 1, 2013.² The Rule requires certain website and online service operators to post privacy policies and provide notice, and obtain verifiable parental consent, prior to collecting, using, or disclosing personal information from children under the age of 13.³ The Rule contains a “safe harbor” provision enabling industry groups or others to submit to the Commission for approval self-regulatory guidelines that would implement the Rule’s protections.⁴

Pursuant to Section 312.11 of the Rule, ESRB submitted proposed self-regulatory guidelines to the Commission that the FTC approved in 2001. ESRB subsequently updated its

¹ 64 FR 59888 (1999).

² 78 FR 3972 (2013).

³ 16 CFR Part 312.

⁴ *See* 16 CFR 312.11; 78 FR at 3995-96, 4012-13.

guidelines to comply with the revised Rule, which became effective on July 1, 2013. ESRB is now seeking to modify its Commission-approved Safe Harbor program requirements. The text of the proposed modified program requirements is available on the Commission's website, at www.ftc.gov.

Section B. Questions on the Proposed Modified Program Requirements

The Commission is seeking comment on various aspects of ESRB's proposed modified program requirements, and is particularly interested in receiving comment on the questions that follow. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted. Each response should cite the number and subsection of the question being answered. For all comments submitted, please provide any relevant data, statistics, or any other evidence, upon which those comments are based.

1. Please provide comments on any or all of the proposed modifications to ESRB's program requirements. For each provision commented on please describe (a) the impact of the provision(s), including benefits and costs, if any, and (b) what alternatives, if any, should be considered, as well as the costs and benefits of those alternatives.
2. Are the mechanisms used to assess operators' compliance with the proposed modified program requirements effective?⁵ If not, please describe (a) whether and how ESRB could modify the assessment mechanisms to satisfy the Rule's requirements, and (b) the costs and benefits of those modifications.

⁵ See 16 CFR 312.11(b)(2); 78 FR at 4013.

3. Are the incentives for operators' compliance with the proposed modified program requirements effective?⁶ If not, please describe (a) whether and how the incentives could be modified to satisfy the Rule's requirements, and (b) the costs and benefits of those modifications.
4. Please provide comments on any other issue deemed relevant to this matter.

Section C. Invitation to Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before May 9, 2018. Write "ESRB Application for Modifications to Safe Harbor Program Requirements, Project No. P024526" on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Website.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/esrbcoppaapp>, by following the instructions on the web-based form. If this document appears at <http://www.regulations.gov/#!/home>, you also may file a comment through that website.

If you file your comment on paper, write "ESRB Application for Modifications to Safe Harbor Program Requirements, Project No. P024526" on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary,

⁶ See 16 CFR 312.11(b)(3); 78 FR at 4013.

600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex E), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex E), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC website at www.ftc.gov, you are solely responsible for making sure that your comment does not include any sensitive personal information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "[t]rade secret or any commercial or financial information which . . . is privileged or confidential" – as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Once your comment has been posted on the public FTC website – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request in accordance with the law and the public interest. Comments containing material for which confidential treatment is requested

must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment must include the factual and legal basis for the request, and must identify the specific portion of the comment to be withheld from the public record. *See* FTC Rule 4.9(c).

Visit the Commission Website at <http://www.ftc.gov> to read this document and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before May 9, 2018. You can find more information, including routine uses permitted by the Privacy Act, in the Commission’s privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

By direction of the Commission.

Donald S. Clark
Secretary.

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