

Children's Advertising Review Unit
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Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, NW
Washington, DC 20580

RE: Sliding Scale 2005, Project No. P054503

The Children's Advertising Review Unit (CARU) of the Council of Better Business Bureaus (CBBB) is pleased to submit these comments to the Federal Trade Commission (FTC) in support of making permanent the sliding scale mechanism ("e-mail plus") for obtaining verifiable parental consent where data is collected for internal marketing purposes, in accordance with the Children's Online Privacy Protection Act (COPPA).

CARU is the children's advertising arm of the advertising industry's self-regulation program.¹ Well before enactment of COPPA, CARU revised its *Self-Regulatory Guidelines for Children's Advertising* to include voluntary guidelines for the collection and use of personal information from children under 13. The guidelines required Websites to provide notice and choice to parents about their privacy practices. They restricted the collection of more information than necessary to allow a child to engage in an activity (such as entering a sweepstakes or contest) at a Website. They required Websites to make reasonable efforts to obtain parental consent. The CARU privacy guidelines largely provided the model for COPPA, including the requirements for parental consent, and have been updated to be fully in accord with COPPA. In addition, CARU's guidance on, for example, appropriate age-screening mechanisms for COPPA-compliance purposes, has been embraced by the FTC.

CARU has, both before and after enactment of COPPA, taken action to improve awareness about children's privacy with child-directed Websites and to enforce its guidelines. CARU monitors Websites directed to, or drawing significant numbers of children, works with Website operators to achieve compliance with its *Guidelines* and with COPPA, publishes public reports of its

¹ CARU, which focuses on children's advertising, and the National Advertising Division (NAD), which focuses on general advertising, is overseen by a strategic alliance of the American Association of Advertising Agencies (AAAA), the American Advertising Federation (AAF), the Association of National Advertisers (ANA) and CBBB, known as the National Advertising Review Council (NARC).

compliance reviews, and refers cases of non-compliance to the Commission. CARU's program was the first to be approved as a safe harbor under COPPA.

As we said in comments submitted in November, 2001 on the topic of extending the sliding scale method of consent for an additional three years, in adopting the sliding scale the Commission wisely acknowledged that the risks involved where an operator uses a child's personal information solely for its internal use, with no disclosure to third parties, were minimal. The e-mail plus method of consent was adopted to provide Websites with added flexibility in obtaining parental consent, recognizing that children are exposed to greater risks where their personal data is exposed to third parties (as in chat room situations), or where they are asked to provide detailed personal information about themselves or their families unrelated to the activity or benefit involved. CARU's experience continues to demonstrate that children are not put in harm's way by receiving posters, low-value prizes, and the like.

The sliding scale method of parental consent, and the extension of the sliding scale adopted in 2002, were adopted in part to limit the financial burden associated with mailed or faxed forms, toll-free telephone numbers, credit card authorization and other methods on small businesses and "mom and pop" Websites. It was presumed that providing a limited extension would afford time for industry to develop easily accessible secure technologies. In practice, however, there has been very little progress in acceptance of digital signatures and neither parents nor Websites have embraced other technologies. Consequently, even the largest companies have not been able to adopt other digital options. In CARU's experience, parents are comfortable with e-mail plus. Given the slow pace at which alternative, cost-effective and user-friendly digital means of consent are developing, we support making the e-mail plus option permanent. Limiting the extension of the sliding scale to a finite period has not materially advanced the development of secure technologies. Making it permanent will provide Websites with appropriate flexibility in obtaining parental consents since experience demonstrates that its use does not harm children's privacy.

Should the Commission decide to make permanent the acceptability of the e-mail plus method of parental consent, CARU suggests that it clarify what are acceptable "additional steps" coupled with e-mail notice to a parent, rise to the level of e-mail plus. In its monitoring of Websites CARU has seen a small but significant number of sites where the additional steps were merely a two-step collection of information, with no mechanism to "provide assurance that the person providing the consent is the parent." CARU would be pleased to work with Commission staff in developing this guidance.

Indeed, it may be appropriate for the Commission to consider whether a simple parental notice requirement and opt-out right is acceptable in situations involving internal marketing, on grounds that children's online privacy interests are protected by several key provisions. The first prevents Websites from collecting more information than necessary from a child online (16 C.F.R. §312.7). The second requires more robust methods of consent where data collected from a child will be shared with a third party, as in chat room situations or instances where data is shared with other third parties (16 C.F.R. §312.5(b)(2)). The third requires Websites to establish and maintain reasonable procedures to protect the confidentiality, integrity and security of children's data (16 C.F.R. §312.8).

CARU will continue to monitor adherence by child-directed Websites to its privacy guidelines, and to continue its outreach efforts to help maintain awareness of COPPA's requirements in the online community.

Respectfully submitted,

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