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Re: **AssertID Application for Parental Consent Method, Project No. P-135415**

Comment of Aristotle International, Inc.

Dear Secretary:

Aristotle International, Inc., an FTC-approved COPPA Safe Harbor program provider, respectfully submits these comments in response to the Federal Trade Commission's ("FTC" or "Commission") notice and request for public comment concerning the Application for Approval of Parental Consent Method submitted by AssertID, Inc. ("Application"). See 78 Fed. Reg. 51677 (August 21, 2013) ("Notice"). As one of the five certified COPPA Safe Harbor programs presently operating, and the only one that has performed tens of millions of age and identity authentications in the commercial marketplace, we believe we can provide especially informed insights in this area.

Having reviewed AssertID's application for approval of its "ConsentID" process, we have several significant concerns regarding the "method", which appears only to be in *beta* form, according to the AssertID company website. Our concerns relate principally to the fundamental issues of: 1) What the application actually is, and whether it actually works to authenticate individuals; 2) Procedures for data security, retention, and deletion; 3) The supposedly completely "free" nature the method, and the related question of AssertID's viability as a going concern that seeks to handle reams of personal information about children; 4) Whether the method itself complies with and can be legally used under COPPA; 5) Speed of the methodology; 6) Complexity and the likelihood of consumer confusion; and 7) The overall risk to consumers' information and whether that risk is outweighed by the benefits of the method.

Our concerns in each of these categories are summarized below. However, it should be noted that given the untested nature of the ConsentID method in practice, and the secret nature of the formula it employs, much more detailed commentary on the validity or efficacy of the method is effectively precluded.

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Current FTC-approved methods of obtaining verifiable parental consent

Currently, FTC-approved methods of obtaining verifiable parental consent involve one of the following mechanisms:

- A physically signed consent form.
- In-person real-time consent (orally confirmed consent (telephonic), with or without visual confirmation (videoconference)).
- Employing a commercially-used database of public records/government-issued ID to verify information where no physically signed consent form or in-person real-time consent is used.
- The credit card/online payment method.

Each of these has at least some satisfactory indicia of reliability that are time- and commercially-tested. (Even with the acknowledged problem of using credit cards to verify age, there is, normally, at least a real person associated with card.)

With this in mind, AssertID has not adequately explained how using Facebook friends can stand in for verification through these other methods. We believe the following issues must be resolved if a method such as ConsentID could even be seriously considered for FTC-approval:

What is the ConsentID “method” and does it work?

Perhaps the first and most important line of inquiry involves determining what the ConsentID method really is, and whether it works. The key algorithm that is at the core of the method is a secret. But more important, there is simply no evidence that has been provided to show that the ConsentID mechanism has been successfully applied in a live setting – or in any setting at all, for that matter. According to the AssertID website, the “Consent ID” service is merely in “beta”. See <https://www.assertid.com/consentid/overview/> (“Thank you for your patience... ConsentID™ Is Currently In Beta!”) See also <http://www.assertid.com/consentid/registration/> (same).

It would appear that AssertID is seeking a laboratory in which it can test whether its idea actually works in a live environment with real web users, using the personal information and photographs of children for practice. We believe it is inappropriate to use the COPPA environment as a testing ground for what appears

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to be a completely unproven technology. The goal of COPPA is to create and keep a safer online experience for children, and the Act is designed to ensure that parents are afforded the opportunity to control the way children's information is collected online and used. Using parents and children essentially as guinea pigs in an experiment to test AssertID's theoretical model is inconsistent with COPPA's goal.

Also relevant to the issues of what the method actually is and whether it actually works:

- a) How to evaluate the extent to which ConsentID produces an unacceptable level of false positives, given that there has been no market adoption of the methodology, and that it relies on a secret formula?
- b) Whether the proposed ConsentID method, based on an analysis of Facebook user information, is or will be permitted by Facebook's terms of use and privacy policy?
- c) Whether ConsentID would create a flood of repeated requests that Facebook would deem inappropriate, bordering on spam, and/or otherwise damaging to the user experience? *See, e.g., AssertID Application at p. 31 ("Should any 'verified' attribute be changed by the user after verification (e.g. new photo), the trust score of that attribute is set to zero and all those who had previously verified the individual will be sent a verification request for the attribute that changed".)*
- d) Even if permissible on Facebook now, how will ConsentID handle changes to Facebook's terms of use and privacy policy, which are modified frequently?
- e) Would Facebook be concerned that this process could trigger Facebook's own COPPA liability if ConsentID is used to identify a current Facebook user as someone's under-13 child?
- f) Would Facebook be concerned that this process could trigger changes in user's habits and standards for "friending", which changes Facebook might consider unwanted or bad for its business?

What are the procedures for data security, retention, and deletion?

As part of the ConsentID process, AssertID proposes to make information about parents and children available to many third parties, who may or may not know the subject parent and/or child in question. It is unclear what happens to all the information, how it is kept secure, how much of it is retained and for how long, and

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what the procedures are for destroying personal information. What happens to the children’s information and photographs displayed online to potentially many third parties in the process of seeking verifiable parental consent? *See, e.g.,* AssertID Application at p. 31 (Child’s photograph, with the question, “*Is this Ed’s son?*”) It does not appear that these security, retention, and deletion procedures have been adequately described.

Cost of service and AssertID’s viability

We have concerns about the supposedly completely “free” nature the method, and the related question of AssertID’s viability as a going concern that would handle reams of personal information about children. First, on the matter of whether the method will be offered for “free” to operators, there is an apparent conflict – or at least ambiguity – between AssertID’s website and AssertID’s application to the FTC for approval of ConsentID. The former suggests that the basic service is not free to operators:

Our services are free to end-users. Our revenue is derived from website operators and online/mobile gaming companies who use our identity and privacy solutions <https://www.assertid.com/about-us/what-we-do/>

However, AssertID’s application to the FTC states that the “basic ConsentID™” service will be offered “completely free of charge” to operators. Curiously the paragraph is titled “Low Cost”, rather than “No Cost”. It also is unclear whether AssertID is promising that the “basic ConsentID™” service will always be “completely free of charge” to operators as well as to end-users (parents), or whether AssertID is merely making an introductory offer in order to induce operators to test the basic ConsentID™ service:

Low Cost: *In order to mitigate the “cost of compliance” burden for operators, AssertID will offer the basic ConsentID™ service completely free of charge. Additional premium services will be offered on a fee-basis. ConsentID™ is always free to end-users (parents).*

See AssertID Application at p. 7.

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Assuming that the service will always be free to operators and end-users, our experience tells us that such “completely free” services online are typically offered in exchange for a) personal information that can be resold; b) the ability to target online ads; or c) some other *quid pro quo*. AssertID does not explain how it proposes to finance, subsidize or support its ConsentID service, whether it will use information from the process to target behavioral ads, and similar questions.

AssertID also does not indicate whether the “additional premium services”, whenever they become available, will specifically modify, supplement, or change the operation of the basic ConsentID service, and if so, what the effect of these premium services will have on the ConsentID service for which FTC-approval is sought. Moreover, it does not appear, based on AssertID’s website, that any “premium services” other than credit card and government ID verification even currently exist. See <https://www.assertid.com/consentid/pricing/>

A related question that inevitably follows is whether -- as a provider of a free and commercially-untested service that proposes to collect and display online a large amount of personal information that includes children’s photographs -- AssertID has the financial ability to be viable. We do not know the cost to ConsentID of providing the completely free basic ConsentID service. The financial viability of a business that seeks to collect, handle, and display personal data and photographs of children online, world-wide, requires close examination. Without describing its revenue model with more clarity, it is not clear how AssertID could pursue its mission statement of providing the promised “completely free” service or engage in other organizational initiatives.

Does the ConsentID methodology itself comply with COPPA?

ConsentID appears to be based on a circular methodology that may not comply with basic COPPA principles. We question whether ConsentID can legally be used to obtain verifiable parental consent under COPPA, even if it technically “works” to obtain such consent by the end of its process. The method, as we understand it, appears to involve a) the collection of a child’s photograph and other personal information, and b) then making this available to numerous third parties online, in order to compile a “trust score”. This is all purportedly done in order to obtain the verifiable parental consent that we would think was necessary from the outset to permit the sharing of the child’s information with third parties in the first place.

This apparent circularity is troubling. It is unclear to us how AssertID has initially obtained the verifiable parental consent that COPPA requires in order to collect and display children’s names and photographs to third parties online.

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Speed of the ConsentID process

ConsentID is not a real-time solution. It is unclear how long this process takes to obtain a "verified" consent. Again, the secrecy of the methodology leaves unanswered questions as to the efficacy and speed of the service.

Complexity and the likelihood of consumer confusion

To be acceptable under COPPA, a verifiable consent process should be easy for a parent to understand and implement. Unlike other FTC-approved methods for obtaining verifiable parental consent – all of which can be explained in a phrase or short sentence – it takes a considerable amount of time to explain the ConsentID process. The process also apparently involves the (potentially repeated) participation of many people for a single, simple consent that is not in real-time. To us, a resulting likelihood of consumer confusion would seem high. However, it is not possible for us to evaluate this without knowing how the method has been received in a live environment.

In this case, the multiple steps of the method not only take long to explain, but also, because of the secrecy of the analysis, a parent cannot truly understand how many third-party responses will be needed and how they are evaluated. ConsentID takes what should be a relatively safe and straightforward transaction, and turns it into a multistep process involving many people and unknown evaluation standards, all not in real-time. This all leads us to the conclusion that considerable consumer confusion is likely.

Overall risk to consumers' information and whether that risk is outweighed by the benefits of the method

As noted above, there are a number of aspects of AssertID's verifiable parental consent proposal that should be reviewed from the consumer's viewpoint. In our view, because of these questions, there is no evidence that the overall risks to consumers' information are outweighed by any asserted benefits of the method. To the contrary, the available evidence suggests the opposite is true.

Conclusion

At best, AssertID's request for FTC approval of its beta service appears premature. The proposed service is more appropriately evaluated when it can show its efficacy in a live environment, and some demonstrated commercial acceptance. Then, even if the method can be shown eventually to "work",

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questions would also remain as to whether ConsentID itself even complies with COPPA, and whether the “completely free” service model is sustainable.

Because consumers using subscribing websites would rely on AssertID’s service to obtain the privacy protections mandated by Congress, we believe that the FTC should address these issues before approving this or any similar proposal.ⁱ

Thank you very much for the opportunity to provide our comments.

Respectfully,

Aristotle International, Inc.

By: _____/s/_____

J. Blair Richardson

General Counsel and Chief Privacy Officer

ⁱ Finally, we respectfully conclude that AssertID’s request for approval of Consent ID as a “common consent” mechanism cannot be seriously considered or even analyzed until the threshold issues raised above have been addressed to the Commission’s satisfaction.