

Before the
FEDERAL TRADE COMMISSION
Washington, DC 20580

In the Matter of)
)
Imperium Application for Parental Consent)
Method) **P-135419**

COMMENTS OF CENTER FOR DIGITAL DEMOCRACY

The Center for Digital Democracy (CDD) respectfully submits these comments in response to the *Imperium Application for Parental Consent Method, Project No. P-135419*, filed with the Federal Trade Commission (FTC or the agency).¹ CDD is a national nonprofit, nonpartisan organization dedicated to promoting responsible use of new digital communications technologies, especially on behalf of children and their families. CDD has a strong interest in ensuring that the Commission only approves verifiable parental consent (VPC) methods that fully comply with FTC’s rules and with the underlying purpose of the Children’s Online Privacy Protection Act (COPPA). As detailed in these comments, Imperium’s application for approval of its VPC mechanism fails to meet the requirements set forth in the COPPA rules and should be denied.

I. Overview of Imperium Application

Imperium describes itself as “a technology services company specializing in data quality product for the market research, marketing services, and allied industries.”² Based on the

¹ 78 Fed. Reg. 56183 (Sept. 12, 2013) (“Parental Consent Method Notice”).

² Imperium, Second Revised Application Pursuant to Section 312.12(a) of the Final Children’s Online Privacy Protection Rule for Approval of Parental Consent Method Not Currently Enumerated in § 312.5(b), Aug. 12, 2013 [hereinafter App.].

information included in the Imperium application and a supplemental submission to FTC,³ the following is a description of how the Imperium system works and how it handles a parent's information.

Imperium's ChildGuardOnline™ proposed VPC method includes three basic steps: signup of a child and parent; verification of a parent; and parental access to the Imperium portal.⁴

When a child visits a website or downloads a mobile web app that requires a username and password, the child will first be asked to provide his or her parent's name and email address.⁵ The parent will then

receive an email informing them [sic] that the child has requested permission to establish an account and provide personal information to the website or mobile app operator concerned. The URL will be furnished so that the parent can review the site. A link will also be provided for the parent to use in order to grant permission.⁶

Parents who click the link to give consent are told they can "review or withdraw it at any time by visiting the ChildGuardOnline portal[,]” which will make available all permissions previously granted.⁷ To "confirm their identity,” parents are asked for their name, address, date of birth, and last four digits of their Social Security Number (SSN).⁸

Imperium uses the information provided by parents to verify, in real time, that the responder is indeed the parent of the child.⁹ First, the system confirms that the address provided by the parent is the same as the child's and the verified age is at least 16 years older than the

³ Imperium, Responses to FTC Questions Regarding Imperium Pursuant to COPPA Rule Section 312.12(a) for Approval of Parental Consent Method Not Currently Enumerated in Section 312.5(b), Sept. 17, 2013 [hereinafter Supplement].

⁴ App. at 2–3.

⁵ App. at 2.

⁶ App. at 2.

⁷ App. at 2, 3.

⁸ App. at 2. CDD assumes an identity is confirmed once per account (rather than once per notice), though the application is not explicit on this point.

⁹ App. at 2.

child.¹⁰ Next, the system attempts to verify the identity of the parent or guardian based on the last four SSN digits provided.¹¹ If the system verifies the information, it informs the parent that the child has been approved and Imperium deletes the SSN information.¹² Imperium might also notify the child of approval, or email the child if a parent withdraws a consent previously given.¹³

If Imperium cannot verify the parent's identity in this manner, it will present the "parent" with challenge questions based on "out of wallet" information such as past addresses and phone numbers.¹⁴ These challenge questions are also referred to as Knowledge Based Authentication (KBA).¹⁵ KBA questions and answers supplied are deleted once Imperium's system either passes or fails an applicant.¹⁶

II. Imperium's Proposed VPC Mechanism Should be Denied

FTC has recognized the potential benefits of common consent mechanisms.¹⁷ They can be beneficial because they offer parents a centralized consent platform. Because of their central nature, common consent mechanisms should be comprehensive and there should be no doubt that they comply with COPPA. Imperium's application is only the second common consent mechanism application to come before the agency. For these reasons, FTC should pay particular attention and subject the application to rigorous scrutiny to prevent subsequent applications from containing the same shortcomings.

¹⁰ Supp. at 2.

¹¹ Supplement at 2.

¹² App. at 2.

¹³ App. at 2, 3.

¹⁴ App. at 2.

¹⁵ Supplement at 1.

¹⁶ Supplement at 3.

¹⁷ 78 Fed. Reg. 3972, 3989 (Jan. 17, 2013).

These comments will address the following questions: (1) Is this method already covered by existing methods enumerated in Section 312.5(b)(2) of the Rule?; (2) Is the proposed parental consent method reasonably calculated, in light of available technology, to ensure that the person providing consent is the child's parent?; and (3) Does this proposed method pose a risk to consumers' personal information? In addition, these comments point out that Imperium itself may be an operator with actual knowledge that it is collecting information from children, and as such, it must also comply with COPPA requirements.

a. Is this method already covered by existing methods enumerated in Section 312.5(b)(2) of the Rule?

FTC has listed accepted methods of VPC in 16 C.F.R. § 312.5(b)(2). While Imperium's proposal has features in common with two methods enumerated in § 312.5(b)(2), it is not covered by either.

COPPA rule § 312.5(b)(2)(vi) allows the use of "email plus" for the collection of personal information that is used only for internal purposes and is not disclosed to third parties.¹⁸ Because Imperium proposes to send an email to parents and to ask parents for additional information, this method could be considered a form of "email plus." However, Imperium has not indicated that the collection of children's personal information is intended only for internal purposes. Thus, it does not fit within this pre-approved mechanism.

¹⁸ This section states the following:

"Provided that, an operator that does not 'disclose' (as defined by § 312.2) children's personal information, may use an email coupled with additional steps to provide assurances that the person providing the consent is the parent."

Section 312.2 defines "disclose," in relevant part, as

(1) The release of personal information collected by an operator from a child in identifiable form for any purpose, except where an operator provides such information to a person who provides support for the internal operations of the Web site or online service

Second, COPPA rule § 312.5(b) provides an accepted method of verification “by checking a form of government-issued identification against databases of such information, where the parent’s identification is deleted by the operator from its records promptly after such verification is complete.” Here, Imperium proposes to verify the parent’s identity based on merely the last four digits of a SSN, and then deleting that information. It is unclear whether the last four digits constitutes enough of a “government-issued identification.” It is also unclear what a “database[] of such information” is in this case—does Imperium have its own private database of SSNs, or the last four digits of everyone’s SSN?

Imperium’s application, while it may be similar to already-accepted forms of VPC, does not propose an identical mechanism.

- b. Is the proposed parental consent method reasonably calculated, in light of available technology, to ensure that the person providing consent is the child’s parent?*

The COPPA rule defines the term “obtaining verifiable consent” as

making any reasonable effort (taking into consideration available technology) to ensure that before personal information is collected from a child, a parent of the child:

- (1) Receives notice of the operator’s personal information collection, use, and disclosure practices; and
- (2) Authorizes any collection, use, and/or disclosure of the personal information.¹⁹

Any interested party that seeks approval of a parental consent method must “provide a detailed description of the proposed parental consent methods, together with an analysis of how the methods meet § 312.5(b)(1).”²⁰ COPPA § 312.5(b)(1) states that

[a]n operator must make reasonable efforts to obtain verifiable parental consent, taking into consideration available technology. Any method to obtain verifiable

¹⁹ § 312.2.

²⁰ § 312.12(a).

parental consent must be reasonably calculated, in light of available technology, to ensure that the person providing consent is the child's parent.

Given these definitions, Imperium does not show that parents will receive sufficient notice to give consent, and Imperium does not describe how its method, in light of available technology, will be effective at garnering parental consent.

- i. Imperium fails to show that parents will receive direct notice of the operator's collection, use and disclosure practices

Imperium's application states that in its email to the parent, a "URL will be furnished so that the parent can review the site." Simply providing a link to a site does not ensure that parents will actually receive appropriate notice before giving consent.

COPPA §312.4(a) says notice "must be clearly and understandably written, complete, and contain no unrelated, confusing or contradictory materials." In addition, §312.4(b) requires that before collecting, using or disclosing a child's personal information, the operator must make "reasonable efforts . . . to ensure that a parent of a child receives direct notice of the operators practices," including any material changes made after consent has previously provided. Section 312.4(c)(1) spells out the content that is required for valid direct notice to obtain parent's affirmative consent to the collection, use, or disclosure of a child's personal information. There are six separate requirements. For example, § 312.4(c)(1)(iii) requires disclosure of the "additional items of personal information the operator intends to collect from the child, or the potential opportunities for the disclosure of personal information should the parent provide consent." Section 312.4(c)(1) (iv) requires a hyperlink to the operator's online notice of its information collection practices.

In providing only a link to the URL, Imperium fails to meet these requirements. While direct notice must include a hyperlink to the operator's online privacy policy, that alone is not sufficient to satisfy the requirements for direct notice. Indeed, the FTC has made this clear in its

Frequently Asked Questions C. 12. The questions asks: “When I send a direct notice to parents, may I send them a simple email containing a link to my online privacy policy?” The FTC replied

No. As described in FAQ C.11 above, the amended Rule makes clear that the direct notice to parents must contain certain key information within the four corners of the notice itself, depending on the purpose for which the information is being collected. Therefore, you may not simply link to a separate online notice. Note, however, that in addition to the key information, the amended Rule requires that each direct notice you send also contain a link to your online privacy policy. The intention of these changes is to help ensure that the direct notice functions as an effective “just-in-time” message to parents about an operator’s information practices, while also directing parents online to view any additional information contained in the operator’s online notice.²¹

Because the Imperium proposal does not provide direct notice to parents, which is part of the definition of verifiable parental consent, the FTC should not approve Imperium’s application.

ii. Imperium fails to describe how its proposed verification will be effective

Even if Imperium’s proposal met the requirements for direct notice, Imperium fails to explain how using the last four digits of a parent’s SSN is reasonably calculated, in light of available technology, to ensure that the person providing consent is the child’s parent. The fact that Imperium proposes to use KBA as a contingency when SSN verification produces false negatives²² suggests that verification based on the four digits of a SSN is not adequately reliable.

It is also unclear whether the KBA method is reasonably calculated, in light of available technology, to ensure that the person providing consent is the child’s parent. Indeed, FTC staff requested Imperium to provide additional information about the proposed KBA method.

However, much of Imperium’s answer to Question 1, which sought more detail about the questions asked, has been redacted, making it impossible for the public to evaluate.

²¹ See FTC, *Complying with COPPA: Frequently Asked Questions*, Question C.12., <http://www.business.ftc.gov/documents/Complying-with-COPPA-Frequently-Asked-Questions+&cd=1&hl=en&ct=clnk&gl=us>.

²² App. at 2 (“If the supplied information is not verified the parent will be given the opportunity to respond to challenge questions.”).

In Question 2, the FTC asked:

Please provide any analysis you have done of the efficacy of the solution (i.e. provide an analysis of how the method meets the standard laid out in the rule . . . This could include summaries of any testing done, public articles or studies regarding the efficacy of knowledge-based authentication, particularly as it relates to the question you intend to ask; and any information or analysis you have done regarding whether children would be able to answer the questions you intend to ask. To the extent you base the efficacy of the method you intend to use on knowledge-based authentication programs, please note whether you use the same questions and if not, how they differ.

Imperium's four paragraph response to Question 2 does not provide any evidence of testing, any articles or studies, or any analysis of whether children would be able to answer the questions. Instead, Imperium merely asserts that it has experience with KBA in connection with other business services and that KBA is used by many major companies for online identification verification.²³ None of the cited examples relate to parental consent and the possibility of children posing as adults. The fact that credit bureaus may ask similar questions to verify financial data, for instance, does not mean those questions will verify that the person giving consent is a parent.

Imperium's response does mention COPPA FAQ H.10 for the proposition that "FTC cites KBA as an example of the additional indicia of reliability that are available to verify parental consent in connection with apps."²⁴ But Imperium quotes FTC out of context: FTC was stating that KBA was a helpful tool *when accompanied by* a parent's app store account with password (and presumably other identifying information in the account such as credit card

²³ Supplement at 3.

²⁴ Supplement at 3.

number).²⁵ FTC was not thereby suggesting that KBA could satisfy COPPA on its own, and was not suggesting that it would be appropriate in online services settings other than app stores.

Finally, Imperium’s unelaborated statement that it “uses KBA technology in conjunction with IP-based geographic location to correlate a user’s self-reported physical address with the IP-based geographic address”²⁶ is troubling for another reason. When it collects the parent’s geographic location and physical address, does it also collect that information about a child? If so, how is it used? Imperium should explain this aspect of its application.

Based on the information supplied, it is impossible to conclude that the proposed method is reasonably calculated, in light of available technology, to ensure that the person providing consent is the child’s parent.

c. Does this proposed method pose a risk to consumers’ personal information?

The FTC public notice asks “Does this proposed method pose a risk to consumers’ personal information? If so, is that risk outweighed by the benefit to consumers and businesses of using this method?” This question is difficult to answer without knowing more about how the proposed VPC service relates to Imperium’s business model. Based on what could be gleaned from public sources, there is reason to be concerned that the personal information of both parents and children could be at risk.

Imperium CEO and founder Marshall Harrison describes his company as an industry leader in providing digital fingerprinting.²⁷ Fingerprinting is a practice where a company collects

²⁵ See FTC, *Complying with COPPA: Frequently Asked Questions*, Question H.10., <http://www.business.ftc.gov/documents/Complying-with-COPPA-Frequently-Asked-Questions+&cd=1&hl=en&ct=clnk&gl=us>.

²⁶ Supplement at 3.

²⁷ See Marshall Harrison, Founder/CEO at Imperium, <http://www.linkedin.com/pub/marshall-harrison/0/225/15b> (“Brands include RelevantID® - the leading industry digital fingerprinting technology for certifying data and RelevantView®- a proprietary, high-powered, server-based

data points about a particular device and then uses these to track that machine and its user in the digital world.²⁸ Imperium's list of clients²⁹ include companies that fingerprint and track children online, such as

- Mobigirl Media, which describes itself as “the only mobile ad network that connects you to girls in the apps they ♥”;³⁰
- GfK, one of the world's largest research companies, boasts “We're specialists in tracking your customers in their dynamic digital world. And we can transform this data into a rich, holistic picture of your customer. We know how your consumers interact with your brand.”³¹ One of its special areas is child research.³² This division “CONNECTS BRANDS with preschoolers, kids, tweens, teens, young adult and mom/families;”³³
- Ipsos, “a global independent market research company ranking third worldwide among research firms.”³⁴ Its LMX Family division conducts research on “kids from preschool to middle school, giving you an unprecedented look at the genesis, development and interplay of media and technology within families.”³⁵
- NPD group, markets convenient foods and claims to track what all Americans eat.³⁶

Because of these relationships, Imperium could use its access to parents and children to verify information obtained from other sources and to create detailed profiles of both parents and children.

tracking technology that captures user's online experience on websites and web applications.”) (last visited Oct. 3, 2013).

²⁸ See Press Release, Maritz Research, Maritz Research Selects Imperium's RelevantID for Digital Fingerprinting Services (July 7, 2011), *available at* <http://www.maritz.com/Press-Releases/2011/Maritz-Research-Selects-Imperiums-RelevantID.aspx>.

²⁹ Imperium, Clients, <http://www.imperium.com/clients.html> (last visited Oct. 3, 2013)

³⁰ Mobigirl Media, <http://www.mobigirlmedia.com> (last visited Oct. 3, 2013).

³¹ GfK, Research and Development, <http://www.gfk.com/about-us/research-and-development/Pages/default.aspx>.

³² GfK, Child Research, <http://kidcentral.com/gfk> (last visited Oct. 3, 2013).

³³ KidCentral.com, <http://kidcentral.com>.

³⁴ Ipsos, About, <http://www.ipsos-na.com/about-ipsos>.

³⁵ Ipsos, LMX Family, <http://www.ipsos-na.com/products-tools/media-content-technology/syndicated-studies/lmx-family.aspx> (last visited Oct. 3, 2013).

³⁶ NPD Group, Food and Beverage Market Research, <https://www.npd.com/wps/portal/npd/us/industry-expertise/food/food-and-beverage> (last visited Oct. 3, 2013).

d. The Imperium VPC mechanism itself may be subject to COPPA compliance

Under COPPA § 312.2, an operator is “any person who operates a Web site located on the Internet or an online service and who collects or maintains personal information from or about the users of or visitors to such Web site or online service, or on whose behalf such information is collected or maintained.” Imperium’s proposed VPC mechanism is an online service and it plans to collect and retain email addresses from children to be able to contact them later.³⁷ COPPA § 312.5(c)(4) requires that if an operator collects information like an email address and retains it for multiple contacts with a child, it must provide proper notice under § 312.5(c)(4).³⁸ In addition, if Imperium collects *any other personal information* beyond that email address, such as a persistent identifier,³⁹ it will have to provide parents with further disclosures and obtain verified consent.⁴⁰ However, Imperium’s application is silent on the issue of Imperium’s own notice and consent practices. Thus, in addition to making sure that Imperium makes the necessary showings for VPC mechanism, the FTC should ensure that Imperium itself will be in full compliance with COPPA.

III. Conclusion

For the foregoing reasons, CDD respectfully requests that the FTC deny Imperium’s application.

³⁷ App. at 2, 3.

³⁸ See FTC, Complying with COPPA: Frequently Asked Questions, Question I.4., <http://www.business.ftc.gov/documents/Complying-with-COPPA-Frequently-Asked-Questions+&cd=1&hl=en&ct=clnk&gl=us>.

³⁹ See § 312.2 (definition of Personal information: “(7) A persistent identifier that can be used to recognize a user over time and across different Web sites or online services.”)

⁴⁰ See FTC, Complying with COPPA: Frequently Asked Questions, Question I.1

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