

Jessica Roberts

June 28, 2010

Donald S. Clark
Secretary
Federal Trade Commission
Office of the Secretary, Room H-3 (Annex B)
600 Pennsylvania Avenue, NW.,
Washington, D.C. 20580

Re: Aristotle Application for Safe Harbor, Project No. P-114509

Dear Secretary Clark,

I am law student entering my third year and am currently studying administrative law. The issue of children's online privacy and protection greatly interests me and I appreciate the opportunity to submit comments on the proposed rule, Aristotle International, Inc.'s Application for Safe Harbor Proposed Self-Regulatory Guidelines.

Internet Safety Education

Kids and teens have begun to embrace the digital world, spending as many as eight hours a day online.¹ However, schools have failed to catch up with the modern economy, and teachers are not receiving adequate training in online safety topics.² A study released by the National Cyber Security Alliance (NCSA) found that more than one-third of teachers (36 percent) received zero hours of professional development training by their school districts in issues related to online safety, security and ethics in the past year.³ 86 percent of teachers only received less than six hours of related training.⁴

The lack of internet safety education that young adults receive results in a greater risk of children releasing private information on the internet, jeopardizing their safety. Protecting adolescent's personal information on the internet is the aim of COPPA. However, action needs to be further taken to protect children from releasing potentially harmful information online due to the lack of education

¹ Larsen, Aimee Kirkpatrick et al. *2011 State of Cyberethics, Cybersafety, and Cybersecurity Curriculum U.S. Survey*, Stay Safe Online.org National Cyber Security Alliance, May 4th, 2011, <http://http://staysafeonline.com/mediaroom.com/index.php?s=43&item=77>.

² Id.

³ Id.

⁴ Id.

provided to students. The proposed rule, self-regulatory guidelines provided by the Children's Privacy Compliance Program, attempts to address this need by assisting companies in protecting information obtained from children.⁵

Although I think that this proposed rule has great potential, I would like to take this opportunity to comment on the different parts of the rule that the Federal Trade Commission has asked for input. I will address some of the concerns that I have in order to ensure that this rule is effective. I will then conclude by commenting on why I believe this rule is important, and the impact it could have on protecting young adults' online activities.

Question 2:

The cost and benefits associated with the proposed rule are numerous. Because most children have access to computers, it is difficult to guarantee that parental/adult guidance will always be available to assist in internet safety. Section 312.5 of the final rule involves parental consent. Requirement 3, Prior Verifiable Parental Consent of the Children's Privacy Compliance Program Requirements corresponds with this section. Although the intent of this section is admirable, the costs associated with the manner in which parental consent is to be attained are not clear or timely.

Requirement 3(b) states that members must obtain prior verifiable parental consent, and that any method to obtain verifiable parental consent must be reasonably calculated.⁶ However, the requirement fails to define the phrase 'reasonably calculated.' The requirement gives different methods for obtaining verifiable consent, but the ambiguity of the phrase leaves the door open for a wide range of interpretations that may end up hindering the intent of the requirement.

Further, one method of obtaining verifiable consent is by providing a consent form to be signed by the parent and returned to the Member by postal mail or facsimile.⁷ This method is not timely. The costs associated with the time it takes for a parent to mail or fax consent greatly delays a child's use of the internet, and can inhibit time sensitive activities that they may be engaged in.

Another method of verifiable consent is requiring a parent to use a credit card in connection with a transaction.⁸ This method also has room for improvement. Many children are likely to know where their parents/guardians keep their wallet, and may be able to use their parent's card without their knowledge to gain consent. This would defeat the intent of the third requirement.

⁵ Children's Online Privacy Protection Rule; Aristotle International, Inc.'s Application for Safe Harbor Proposed Self-Regulatory Guidelines, 76 Fed. Reg. 123 (proposed June 27, 2011) (to be codified 16 C.F.R. pt. 312).

⁶ Id.

⁷ Id.

⁸ Id.

I like how the Integrity System includes an email option for parental consent, allowing a parent to fill out an attached electronic copy of a consent form.⁹ Allowing a parent to access the form electronically through their personal email accounts will likely be timely and easy for guardians to use. Children are also less likely to know their parent's personal email account, and thus will be forced to obtain parental consent prior to releasing information on the website.

The ambiguity of requirement 6 lead to potential problems. Requirement 6 corresponds with Section 312.8¹⁰ of the final rule. The requirement states that members must establish and maintain reasonable procedures to protect the confidentiality, security and integrity of personal information collected from children.¹¹ However, the requirement fails to define the phrase 'reasonable procedures.' The ambiguity of this statement may result in members creating inferior internal security measures that may be lacking in protecting a child's personal information. By failing to provide guidelines as to what reasonable procedures entail, there is a potential for members to violate the requirement and jeopardize the protection of a child's information from loss, misuse, unauthorized access, or improper disclosure.

Question 3:

The mechanisms utilized to assess operator's compliance with the guidelines seem to be effective. Requiring members to submit to quarterly monitoring reviews will aid in monitoring whether or not members are adhering to the guidelines.¹² However, the biggest impact on compliance will be requiring member companies to submit to periodic, unannounced monitoring reviews of their website.¹³ Unannounced monitoring reviews will likely provide monitors with a more accurate evaluation of a members' compliance with the regulatory guidelines.

One area where compliance monitoring may be improved is the application of results from monitoring reviews. This aspect of the rule does not address how member companies will be notified of their results from monitoring reviews, what happens if they are in violation of the guidelines, or inform them of ways that they can improve. Compliance monitoring could include how monitoring reviews will be utilized to improve online protection, and allow members to have a time frame to correct any infractions that were found. By reformatting monitoring reviews in this manner, the reviews are likely to have a greater impact on the safety of a member's information collection practices and ensure compliance with COPPA.

⁹ Children's Online Privacy Protection Rule; Aristotle International, Inc.'s Application for Safe Harbor Proposed Self-Regulatory Guidelines, 76 Fed. Reg. 123 (proposed June 27, 2011) (to be codified 16 C.F.R. pt. 312).

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Id.

There costs associated with adding this component to monitoring reviews would be minimal. Providing members a copy of the written report already maintained by the Children's Privacy Compliance Program will allow members to know their strengths and weakness associated with their information collection practices. Likewise, the costs incurred from notifying members that they have until the next monitoring review period to correct any areas that are lacking would also be insignificant. By adding this component to the program, members would be more likely to take note of their monitoring reviews, and apply the outcome of their reviews to their information collection practices, strengthening the impact of the program.

Question 4:

The incentives in the guidelines describe how members can meet full compliance with the program requirements. They describe what is necessary to meet membership obligations, compliance with consumer complaints/monitoring, and when referral to the commission is necessary. Although this section is named incentives, it seems to be more concerned with listing the requirements of maintaining good standing with the Children's Privacy Compliance Program.

This area of the guideline could be reformatted by providing actual 'incentives' for internet companies to 1) join the commission and 2) maintain good standing with the program. The commission could award member companies for the time accrued while being in compliance with the guidelines. Participating websites could post on their homepage some sort of notification that identifies them as a safe website for children's information and the years they have been in good standing with the commission. This sort of recognition on the website would alert parents to sites that are safe for their children, making them more cautious of sites that do not have the certificate from the commission.

The costs associated with providing this incentive to members would likely be minimal. It would take time for the commission to analyze the past performance of its members. However, because the commission already maintains a record of complaints and violations, time would only be spent determining the members that are 1) in compliance with the guidelines and 2) the duration of time each member has been in compliance. Once this is determined, the commission could create an electronic certificate that members could post on their sites.

Although adding this incentive to the program would take time and resources, the benefit of electronic certificates would be great. Parents worry about their children on the internet and want to know that they don't have to supervise all of their children's online activities. By certifying a website as a "safe site"

parents will be able to relax and allow their children to explore certified websites without supervision.

Question 5:

The proposed rule allows member companies to provide both parents and children with a reasonable and effective means to submit complaints regarding a member company's information practices under Requirement 7, subsection D.¹⁴ However, the guideline could further strengthen the original aim of COPPA by providing examples of a 'reasonable and effective means' of how to submit complaints. As the rule currently stands, the ambiguity of how to submit complaints could cause problems for children and parents.

The rule could also be improved by outlining a way that complaints will be handled. The rule currently says that a Children's Privacy Compliance Program representative will respond to all complaints immediately.¹⁵ The rule continues that a designated individual is responsible for investigating the complaints and determine a recourse/resolution for the complaint no later than 14 days after receiving the complaint. Although the guideline cannot anticipate every complaint that a member company may receive, the guideline fails to thoroughly outline the manner in which complaints will be addressed.

Problems may arise with this portion of the guideline by allowing member companies too much leeway regarding the manner in which they address complaints. By providing members with outlined instructions of how to handle complaints, the guideline would likely have a greater influence on addressing consumer concerns and improving member's information collection practices.

There are likely to be costs associated with reformatting this area of the guideline. It will take time to outline a procedure of how complaints can be submitted and how they will be addressed. More time will also be spent by members and representatives on responding to the complaints in an effective manner to improve the matter at issue. Although there are costs with reformatting this guideline, the benefits will be significant. Detailing a way in which complaints will be submitted and answered will assist in ensuring that members will handle complaints in a timely and effective fashion, and will overall strengthen the aim of the propose rule and members compliance with COPPA.

¹⁴ Children's Online Privacy Protection Rule; Aristotle International, Inc.'s Application for Safe Harbor Proposed Self-Regulatory Guidelines, 76 Fed. Reg. 123 (proposed June 27, 2011) (to be codified 16 C.F.R. pt. 312).

¹⁵ Id.

Conclusion:

When COPPA was passed by Congress in 1998, the rule was in response to growing concerns over the dissemination of children's personal information over the internet.¹⁶ The Act responded to the amount of children online and addressed concerns over the harms that could arise if websites were not held accountable for the way in which they collected and used children's personal information.¹⁷ However, many concerns have arisen regarding the effect of COPPA. Critics note that the practical effect of COPPA causes websites simply to ban users twelve and under.¹⁸ While this strategy may sound effective, it encourages age fraud and allows websites to bypass the burden of obtaining parental consent.¹⁹

Due to the criticisms of COPPA, information collection practices have to be monitored in a way that will ensure compliance from websites. The Integrity Children's Compliance Program attempts to fill the void in the COPPA. By offering companies a privacy program that will collect information from children online in an efficient and compliant way, companies can become more confident that they will be in compliance with COPPA. Although the Integrity Children's Privacy Compliance Program has room for improvement, it also has the ability to fill the gaps in COPPA, and achieve the original aim of the Children's Online Privacy Protection Act.

Although COPPA has made an impact on the information collection practices of children, its practical effect has been to hamper children's access to certain online resources, and encourage age falsification.²⁰ Additions to the COPPA laws are needed in order to provide flexible, yet comprehensive regulations to guarantee that adolescent's information on the internet is protected.²¹ Although it's lacking in some areas, I am overall pleased with the work of this proposed rule, and think that the Integrity Children's Privacy Compliance Program will be able to further protect children's private information that is shared online, and secure compliance with COPPA.

Sincerely,

Jessica Roberts

¹⁶ Matecki, Lauren A., Update: COPPA is Ineffective Legislation, 5 Nw. J. L. & Soc. Pol'y. 369 (2010).

¹⁷ Id.

¹⁸ Id. at 370.

¹⁹ Id.

²⁰ Id. at 402

²¹ Id.