

August 15, 2013

VIA ELECTRONIC FILING AND REGULAR MAIL

Mr. Donald S. Clark
Office of the Secretary
Federal Trade Commission, Room H-135 (Annex E)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Exhibits B and C withheld as
Confidential; Confidential treatment
denied as to cover letter and
portions of Exhibit A.

RE: kidSAFE Seal Program's Application for COPPA Safe Harbor Approval

Dear Mr. Clark,

My name is Shai Samet, and I am the founder and president of the [kidSAFE® Seal Program](#).

As you might know, the kidSAFE Seal Program (**also referred to as "KSP", "we", "our", "our program", etc.**) is a fast-growing safety certification service and seal-of-approval program designed exclusively for children-friendly websites, mobile applications, tablet devices, and other similar interactive services and technologies. Since our initial beta launch in February 2011, our program has garnered over 100 participating members and is quickly becoming a globally-recognized icon and industry standard for online safety and privacy. You can learn more about our program and accomplishments in Exhibit A attached to this proposal.

I am writing to you today to formally request that the Federal Trade Commission ("FTC" or "Commission") approve of our program as a "Safe Harbor" pursuant to Section 312.11 of the Revised COPPA Rule. Enclosed for the FTC's immediate review and consideration is our complete safe harbor application, consisting of all contents required under Section 312.11(c) of the Revised COPPA Rule.

For the sake of clarity, we are seeking Safe Harbor status for the "kidSAFE+" aspect of our program only.

Currently, our program offers two levels of certification – kidSAFE and kidSAFE+. To qualify for "kidSAFE" certification, a child-directed site or service must demonstrate its compliance with the basic safety guidelines of our program. These guidelines are *not* specific to COPPA. However, to qualify for kidSAFE+ certification, the child-directed site or service must demonstrate its compliance with both our safety guidelines and our additional privacy guidelines. These additional privacy requirements are modeled after the Revised COPPA Rule. The distinction between these two levels of certification is further delineated under Exhibit C attached to this proposal. It is worth noting from the outset that given the level of compliance it takes to achieve kidSAFE+ certification (which requires compliance with over 70 individual requirements), we firmly believe that our kidSAFE+ program far exceeds the requirements of the Revised COPPA Rule.

I'd like to thank you and your esteemed colleagues in advance for the opportunity to submit this proposal. Please know we'd be happy to answer any questions you may have or provide additional information upon request.

Contents of this proposal

- **Exhibit A** – About the kidSAFE Seal Program (**CONFIDENTIAL**)
- **Exhibit B** – KSP's Business Model and Technological Capabilities (**CONFIDENTIAL**)
- **Exhibit C** – Text of All KSP Certification Rules – kidSAFE and kidSAFE+ (**CONFIDENTIAL**)
- **Exhibit D** – Text of kidSAFE+ Certification Rules Only (**FOR PUBLICATION**)
- **Exhibit E** – Comparison of kidSAFE+ Certification Rules versus Revised COPPA Rule (**FOR PUBLICATION**)
- **Exhibit F** – Effectiveness of KSP's Assessment and Enforcement Mechanisms (**FOR PUBLICATION**)

Request for confidential treatment

With the exception of Exhibits D, E, and F attached to this proposal (which are specifically intended for public review and comment), KSP would like to request that the remaining contents of this proposal (i.e., Exhibits A, B, C, and this Cover Letter) be kept strictly confidential and not shared for public review or comment. We believe that the rapid success and growth of our program is largely due to the unique structure of our program, the proprietary nature and compilation of our certification guidelines¹, and our current and planned technological capabilities (as set forth in Exhibit B). We therefore kindly ask that only the most critical information about our program be posted publicly as part of the public review and commenting process.

We believe the contents of Exhibits D, E, and F (together with the information publicly available on our website at www.kidsafeseal.com) will provide the public and other interested parties more than enough information to assess and comment on the adequacy of our program. If the FTC disagrees with this assertion, we would be happy to consider making additional information publicly available, either in redacted or modified format.

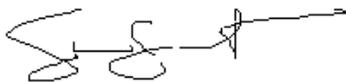
Request for expedited review

We would also like to kindly request that the review of our application be expedited, if at all possible. While we understand that the law allows for a written response within 180 days of filing an application, there are special circumstances surrounding our application. First, our application is coming at a historical time, with the Revised COPPA Rule having gone into effect just a few short weeks ago. Second, we already have several companies participating as members in the kidSAFE+ level of our program. For their sake, we would like them to enjoy the legal benefits of participating in an FTC-approved Safe Harbor Program as soon as feasibly possible. To this end, we would gladly make ourselves available at any time to answer questions or respond to requests for additional information.

We recognize it is an extremely busy time for the Federal Trade Commission in light of its ongoing enforcement efforts around COPPA and other initiatives. We greatly appreciate in advance the time and resources we know will be dedicated to consider this proposal.

We look forward to your feedback and input.

Sincerely,

A handwritten signature in black ink, appearing to read "Shai Samet".

Shai Samet, JD, CIPP
Founder and President
kidSAFE Seal Program
Samet Privacy, LLC

¹ As you will see from Exhibits C and D, our certification guidelines are compiled in a unique, easy-to-follow Rules-based format, with accompanying footnotes that provide detailed guidance on the relevancy of the rules to various web and mobile-type features, as well as guidance on how best to implement those rules in practical and technical terms. Our certification guidelines are further unique in that: (i) they are not simply a regurgitation of the COPPA law; (ii) they contain a unique combination of safety standards not found elsewhere, including standards specific to certain technologies such as mobile apps and tablet devices; and (iii) in some places, they distinguish between mandatory vs. optional rules, giving companies hard-to-find guidance on which rules are more essential than others (i.e., required vs. best practice).

EXHIBIT A

ABOUT THE KIDSAFE SEAL PROGRAM

(CONFIDENTIAL & PROPRIETARY – FOR FTC REVIEW ONLY)

About our program (mission and history)

The kidSAFE Seal Program (“KSP”) was founded in 2010 with the mission to become the leading provider of safety certification services and compliance solutions to the fast-growing market of children’s websites and applications. A beta version of the program was first launched with a select few brands in February of 2011 and was later opened to all companies in April of 2012. Since then, the program has grown rapidly and generated widespread interest on the part of industry¹ and consumers². The program has already reviewed and certified a large number of child-directed services, including online game sites, educational sites, virtual worlds, social networks, PC and mobile apps, tablet devices, and other interactive services and technologies. Many well-known brands have become members in the program and are proudly displaying the kidSAFE seals.

About our founder (credentials and history with the FTC)



Shai Samet is the founder and president of the kidSAFE Seal Program. Samet has worked, almost exclusively, in the online safety and privacy fields for more than 13 years. During this time, he has advised hundreds of small and large companies around the world on compliance issues related to COPPA and other privacy regulations. You can see Samet’s full profile [here](#).

Samet started his privacy career with the Entertainment Software Rating Board (ESRB)³ back in 1999 when consumer concerns over online safety and privacy first began to surface⁴. In 2004, Samet moved to Southern California to help start up and grow a privacy consulting practice for Deloitte & Touche. He later started and successfully built up his own boutique consulting firm before creating the kidSAFE Seal Program in 2010. The legal entity that currently owns and operates the kidSAFE Seal Program is Samet Privacy, LLC.

Perhaps most impressive, Samet has directly interacted with and developed a strong rapport amongst countless FTC COPPA lawyers over the years, including Beth Delaney and Toby Levin (from 2000-2005), Phyllis Marcus and Mamie Kresses (from 2006-2013), and, more recently, Kristin Cohen and Peder McGee (from April 2013-Present). Samet has also been an active participant in and contributor to the FTC’s Rule Review processes⁵, including the one most recently completed in 2012.

Samet is one of the earliest practitioners to have earned the title “Certified Information Privacy Professional”, and has been repeatedly voted a “Best Privacy Adviser” by industry surveys⁶. Samet is also a highly sought-after speaker on topics related to COPPA, online safety, and many other cutting-edge privacy issues.

¹ For example, we receive [REDACTED] emails per week from companies and developers around the world inquiring about our program and the process of getting certified.

² For example, to date, [REDACTED] parents and other interested adults have signed up to receive email updates from KSP.

³ Samet served as director of the ESRB’s Privacy Online Program (recently renamed “ESRB Privacy Certified”) for over 4 years. In that role, he assisted many gaming companies to develop and implement enterprise-wide privacy programs in compliance with the COPPA Rule and other developing privacy laws and standards (e.g., EU-US Safe Harbor, etc.). Samet also helped develop the ESRB’s COPPA Safe Harbor application, which enabled the ESRB to become one of the first privacy seal providers to obtain safe harbor status from the FTC.

⁴ For example, massively-multiplayer online games (MMOGs) such as “The Sims” from Electronic Arts were just being introduced to the market.

⁵ Samet participated in the FTC Roundtable in [June 2010](#), and submitted 2 comments ([Dec 2011](#) and [Sept 2012](#)) regarding the proposed changes.

⁶ These surveys were published by Computerworld.com from 2007-2010 and have since been discontinued.

Notable advisory board

In addition to Samet’s expertise, the program contains an advisory board of some of the world’s leading thinkers, influencers, and subject matter experts on Internet safety, COPPA, online data security, mobile compliance, and digital citizenship. These experts include (among others):



Anne Collier

- Co-Director, ConnectSafely.org (a member of Facebook’s advisory board)
- Co-author of several top-selling Internet safety guides
- Co-chair of Obama administration’s Online Safety & Technology Working Group



Ken Leonard

- Co-founder and CEO of Attracta
- Founder and former CEO of HACKER SAFE (which later became McAfee Secure)



Marian Merritt

- Director, Internet Safety Advocate for Norton/Symantec
- Author of *Norton’s Family Online Safety Guide*



Martine Nijadlik

- Vice President, Support and Compliance Officer, Boku
- Expert on mobile payment ecosystem



Amy Pritchard

- CEO, Metaverse, leading moderation provider for online kids’ communities
- Lawyer and moderation expert

Together, our advisors have more than 75 years of combined experience in dealing with online and digital issues affecting children, teens, and other consumers. They are consulted on various aspects of the kidSAFE Seal Program, including the contents of our certification guidelines.

Our accomplishments to date (facts and figures)

Despite our youth, KSP has achieved much success in a short period of time. These accomplishments include:

- Over 100 sites and services are currently displaying our seals (and many more awaiting certification)⁷;
- Over █████ industry contacts have been educated by our program on the new COPPA regulations⁸;
- Our seals are displayed on virtually every technology, including websites, mobile apps, and tablet devices;
- Our seals have been viewed by consumers from over █████ countries/territories around the world⁹; and,
- Our consumer-facing website has generated nearly █████ visits¹⁰.

We are very proud of these accomplishments and look forward to an equally bright and impactful future.

⁷ Approximately █████ percent of our current membership are kidSAFE+ members (i.e., COPPA-certified or seeking COPPA certification). This percentage is expected to grow significantly if/once the FTC approves our program as a COPPA safe harbor entity.

⁸ KSP has been very active and a leader in educating the business community about the Revised COPPA Rule and offering extensive guidance, illustrations, and practical techniques on how to implement the new requirements. This has been achieved by various webinars and conferences hosted or attended by our program over the past 2 years, all of which have been very well-attended. The FTC has been a participant in many of these events. For example, in May 2013, we hosted a webinar with the FTC to address questions related to the FTC’s recently-updated COPPA FAQs. Over 230 industry contacts from around the world registered for that event.

⁹ Source: Google Analytics – Feb 2011-July 2013

¹⁰ Source: Google Analytics – Feb 2011-July 2013

EXHIBIT D

TEXT OF KIDSAFE+ CERTIFICATION RULES ONLY

in conformance with Section 312.11(c)(2) of the Revised COPPA Rule

(FOR PUBLIC REVIEW AND COMMENT)

kidSAFE® Seal Program

Certification Rules – version 2.0 (FINAL)

Effective as of July 1, 2013

The [kidSAFE Seal Program](#) (KSP) is a fast-growing safety certification service and seal of approval program designed exclusively for children-friendly websites and applications, including kid-targeted game sites, educational sites, virtual worlds, social networks, mobile apps, tablet devices, and other similar interactive services and technologies (collectively, “sites or services”).

The Program currently offers two certification seals – kidSAFE and kidSAFE+. To qualify for the basic kidSAFE Seal, the site or service being reviewed must be found compliant with our Basic Safety Rules, which are reflected under Sections 1-5 below. To qualify for the kidSAFE+ Seal, the site or service must be found compliant with our Basic Safety Rules, as well as our Additional Privacy Rules which are reflected under Sections 6-11 below. The Additional Privacy Rules are modeled after the revised Children’s Online Privacy Protection Rule (“Revised COPPA Rule” or “COPPA”), which went into effect on July 1, 2013. Only those sites and services that first become paying members in our program are eligible to be reviewed for kidSAFE+ certification.

Please note that any rules listed as “optional” are only recommended (not required) to achieve certification for that level. However, optional rules may be treated as mitigating factors in the absence of full compliance with certain other mandatory rules. Any rules preceded by other limitations (e.g., “mobile apps only”, “devices only”, etc.) suggest that those rules apply only to that particular technology or service. Please also consult the footnotes at the end of this document, and (when prompted) the relevant text of the Revised COPPA Rule¹ (attached as an Addendum hereto), as both are essential to the appropriate interpretation and application of these Certification Rules.

These KSP Certification Rules are subject to change at any time, with notice to our members. If any material changes are made to the Additional Privacy Rules (i.e., Sections 6-11), such changes will be submitted to the Federal Trade Commission (FTC) for prior approval in accordance with the COPPA Safe Harbor requirements. Unless required otherwise by the FTC for changes to Sections 6-11, all changes to these Rules will be applied on a go-forward basis only.

¹Sections 6-11 of these Certification Rules are designed to be fully consistent with, all-encompassing of, and, in some areas, even stricter than the Revised COPPA Rule which went into effect on July 1, 2013. If, however, there appears to be any provision in the Revised COPPA Rule that is not explicitly covered under Sections 6-11 of these Rules, then the relevant provisions of the Revised COPPA Rule shall be incorporated into Sections 6-11 of these Rules and binding upon our kidSAFE+ seal members.

Basic Safety Rules

1. Chat and other interactive community features must be designed with safety protections and controls

[detailed sub-rules redacted for proprietary reasons, as they are not specific to COPPA]

2. Must post rules and educational information about online safety

[detailed sub-rules redacted for proprietary reasons, as they are not specific to COPPA]

3. Must have procedures for handling safety issues and complaints

[detailed sub-rules redacted for proprietary reasons, as they are not specific to COPPA]

4. Must give parents basic safety controls over their child's activities

[detailed sub-rules redacted for proprietary reasons, as they are not specific to COPPA]

5. Content, advertising, and marketing must be age-appropriate

[detailed sub-rules redacted for proprietary reasons, as they are not specific to COPPA]

Additional Privacy Rules (kidSAFE+/COPPA certification only)

6. Age screening mechanisms (when used) must be neutral

- (a) Age screening mechanisms must only be used when appropriate under COPPA⁴¹
- (b) Age screening mechanisms must not force or entice kids to enter false age information (e.g., the fields should offer a full selection of target ages, no "check here" boxes⁴², etc.)
- (c) The wording displayed around age screening mechanisms (or at any point during the registration process) must not entice kids to provide false age information⁴³
- (d) Must not completely lock out kids under 13 from using your site/service⁴⁴

Optional rules

- (e) [optional] – Should use technological measures (e.g., session cookies) to help prevent age falsification (i.e., kids clicking back and changing their original age selection)

7. Must notify and obtain prior verifiable consent from a parent⁴⁵ when required by the COPPA Rule

- (a) Must notify and obtain consent from a parent before collecting and storing a child's personal information⁴⁶ in connection with registration or account creation⁴⁷
- (b) Must notify and obtain consent from a parent before giving a child access to features that allow the sharing of personal information in a public setting or with other users (e.g., chat, in-game messaging, community features, profile pages, blogs, status updates, public contents and promotions, etc.)⁴⁸

- (c) *Must notify and obtain consent from a parent before giving a child access to send-to-friend features that allow the sharing of personal information⁴⁹*
- (d) *Must notify and obtain consent from a parent before giving a child access to third party plug-in features (such as third party share functionalities, login features, ad networks, etc.)⁵⁰ that collect personal information through your site or service⁵¹*
- (e) *Must notify and obtain consent from a parent before collecting and uploading a child's geolocation information (some exceptions apply)⁵²*
- (f) *Must notify and obtain consent from a parent before collecting or using a child's personal information in connection with sending the child ongoing newsletters or other alerts (e.g., push notifications)⁵³*
- (g) *[catch-all requirement] – Must notify and obtain consent from a parent before collecting and storing a child's personal information in connection with any other features or activities (e.g., customer support forms, non-public contests and promotions, uploading of user-generated-content, etc.)⁵⁴*
- (h) *Must notify and obtain consent from a parent before collecting and using a persistent identifier linked to a child's device⁵⁵, unless such persistent identifier is used for internal support purposes only⁵⁶*
- (i) *Must establish a policy to notify and obtain consent from a parent before collecting or using a child's personal information for significantly new purposes not previously consented to by the parent (e.g., giving a child access to new data sharing features)*
- (j) *Any parental notices required under this Section must meet COPPA's "direct notice" requirements⁵⁷*
- (k) *Any parental consent mechanisms required under this Section must meet COPPA's "verifiable parental consent" requirements⁵⁸*
- (l) *Must not collect more personal information from children than is allowed under COPPA prior to obtaining parental consent⁵⁹*
- (m) *When parental consent is required, must delete a child's personal information if the parent's consent is not received within a reasonable amount of time (e.g., 7-14 days)*

8. Must give parents access to their child's personal information⁶⁰

- (a) *Must allow parents to review⁶¹ their child's personal information*
- (b) *Must allow parents to stop further collection or use⁶² of their child's personal information*
- (c) *Must allow parents to delete⁶³ their child's personal information*
- (d) *Must not allow parents to access or make changes to their child's personal information without prior authentication⁶⁴*
- (e) *Must provide mechanism for parents to inquire or submit complaints about privacy related issues⁶⁵ (e.g., data usage questions, account hijackings, unsubscribe requests, etc.)*

9. Must protect the integrity and security of a child's information

- (a) *Must minimize the amount of personal information collected/stored from a child to that which is reasonably necessary for each activity⁶⁶*
- (b) *The registration process for a child's account must be reasonably secure (e.g., no GET method, no use of real name as username, masking of passwords, minimum password length/strength, etc.)*
- (c) *The account access and retrieval process for a child's account must be reasonably secure (e.g., username and password required for login, secure "forgot password" and "forgot username" mechanisms, secure "remember-me" feature, etc.)*

- (d) *Must have stronger protections for collection/transmission of sensitive account information (e.g., encryption for credit card transactions)*
- (e) *Must have reasonable electronic safeguards to protect a child's personal information while it is stored (e.g., firewall-protected servers, intrusion detection testing, internal access controls, etc.)*⁶⁷
- (f) *Must have reasonable manual safeguards to protect a child's personal information while it is stored (e.g., confidentiality agreements with employees, secure locations for servers and paper records, etc.)*⁶⁸
- (g) *Must take reasonable steps*⁶⁹ *to check that any service providers and third parties with whom children's personal information is shared are capable of protecting the information shared with them*
- (h) *Must obtain written assurances*⁷⁰ *from services providers and third parties that they will protect any children's personal information shared with them*
- (i) *Must take reasonable steps to check that any service providers or third parties that collect information on your behalf for internal support purposes (such as for analytics or contextual advertising) do not also merge such data with behavioral advertising data*⁷¹
- (j) *Must delete children's personal information after it is no longer needed*⁷²
- (k) *Any deletion of children's personal information must be done securely*⁷³

10. Must post a COPPA-compliant privacy policy⁷⁴

- (a) *Must post a children's privacy policy*⁷⁵ *if your site/service collects any personal information from kids*
- (b) *Links to the policy must be displayed prominently as required by COPPA*⁷⁶
- (c) *Links to the policy must be displayed in the locations required by COPPA*⁷⁷
- (d) *The policy must contain all applicable COPPA-required disclosures*⁷⁸
- (e) *The policy must be truthful, easy-to-understand, and free of irrelevant or confusing information*⁷⁹
- (f) *The policy must be updated to reflect important changes in the site/service's data handling practices*
- (g) *Upon a general request from a parent, must inform the parent of the specific types of personal information collected from kids*

11. Must cooperate with the kidSAFE Seal Program's oversight and enforcement mechanisms

- (a) *Must cooperate with KSP's compliance reviews, including initial and annual compliance assessments, random seeding and testing of interactive features (such as sign-up forms, chat features, etc.), and periodic monitoring of data usage practices (e.g., review of marketing communications)*
- (b) *Must address all safety and privacy-related consumer complaints forwarded by KSP in a timely and satisfactory manner*
- (c) *When material violations occur*⁸⁰, *must cooperate with KSP's enforcement mechanisms, which may include increases in membership fees, termination of membership (including removal of all seals), consumer redress, and/or anonymous payments to the United States Treasury*⁸¹

Optional rules

- (d) *[optional] – Should submit new product features and practices (e.g., new registration flows, new chat features, new data usage practices, etc.) to KSP for review in advance of launch*⁸²
- (e) *[optional] – Should submit new parental consent techniques to KSP for possible review and approval*⁸³

FOOTNOTES

FOOTNOTES FOR SECTION 6

⁴¹ Age screening mechanisms are questions that ask for a user's age or date of birth to verify whether the user is old enough to access or participate in a particular activity. These mechanisms should only be used in certain circumstances. For example, if you operate a site, mobile app, or other service that is exclusively intended for children under the age of 13, you may be expected to assume that all of your users are under that age, and have to follow COPPA requirements, regardless of the actual age of every user. By contrast, if you operate a site or service that is directed to children as well as older users (teens, parents, etc.), and so children are not the "primary target", then you would have the option to use an age screen mechanism and either prevent collection of personal information from children under 13 or allow collection from them in accordance with COPPA requirements. See paragraph (c) of the definition of "Website or online service directed to children" under Section 312.2 of Revised COPPA Rule. In this scenario, however, you may NOT entirely block children under 13 from using your site or service. See Rule 6(d) of these Certification Rules. Note that registration forms on child-directed sites and services may never be directed to parents solely for the purpose of avoiding COPPA requirements. Despite everything stated in this footnote, there are some scenarios when age or date of birth information may be collected for non-age-screening purposes (such as to collect user demographics as part of an anonymous registration feature or in connection with some other COPPA-compliant registration feature). Every age-screening scenario will be carefully assessed by KSP on a case-by-case basis to help ensure compliance with COPPA and the spirit of COPPA.

To determine whether your site or service is "directed toward children", you should consider all of the following factors about your site or service:

- subject matter
- visual content
- use of animated characters or child-oriented activities and incentives
- music and other audio content
- age of models
- presence of child celebrities or celebrities who appeal to children
- language or other characteristics of your site or service
- whether ads promoting your site or service appear on other child-directed sites/services
- whether ads appearing on your site or service are directed to kids
- evidence regarding the actual, intended, or likely audience of your site or service
- (whether offline merchandise associated with your site or service is marketed to kids)
- (which platforms/devices is your site or service offered on and how is it categorized by third parties, such as the Apple App Store).

See paragraph (a) of the definition of "Website or online service directed to children" under Section 312.2 of Revised COPPA Rule.

⁴² These are check boxes that simply ask users to click a button to confirm they're at least 13 years of age (or some other minimum age) instead of prompting them to enter age information.

⁴³ For example, the age screening mechanism must NOT display a message that tells users how old they need to be to register as a non-child user (for example, "Sorry, you need to be at least 13 years old to register"). This type of messaging may entice kids to lie about their age to avoid parental oversight.

⁴⁴ To qualify for certification under the kidSAFE Seal Program and warrant display of our seal, the site or service being reviewed must allow for kids' participation or access at some level. If the service entirely blocks out children (either technologically or via its terms-of-use agreement), then our seal(s) may not be relevant to that particular service. In certain circumstances, the Revised COPPA Rule also does not allow for the complete blocking of children users. See FN 41 above.

FOOTNOTES FOR SECTION 7

⁴⁵ For purposes of these Certification Rules, a "parent" includes a legal guardian and (in some cases) may include a school or teacher. See FN 58 below for additional information.

⁴⁶ For purposes of this rule and other applicable kidSAFE+ rules under Sections 6-11, the meaning of a "child" is someone under the age of 13 years old. The meaning of "personal information" is as defined under Section 312.2 of the Revised COPPA Rule. In that section, the following data elements are defined as "personal" when collected from a child:

- First and last name (together);
- Home address or other physical address that includes street name and name of city or town;
- Online contact information (email address, IM identifier, VoIP identifier, video chat ID, other ID that permits direct contact online);
- Screen name or user name when it functions in the same manner as "online contact information" (see bullet directly above);
- Telephone number (landline, cell, etc.);
- Social security number;

-
- Persistent identifier (IP address, unique device ID, device serial number, etc.) when it can be used to recognize a user over time and across different sites or services (e.g., behavioral advertising, amassing profile of child, etc.);
 - Photo, video, or audio file when such file contains the image or voice of a child;
 - Geolocation information sufficient to identify street name and name of city or town;
 - Other information regarding a child or parent that is combined with any of the items listed above.

⁴⁷ There are some exceptions to this rule. For example, if no personal information is collected as part of registration (instead, only anonymous login information such as screen name and password is collected), then parental notice and consent may not be required. Similarly, COPPA allows for collection and use of a parent's email address or other online contact information (without prior parental consent) for purposes of: (a) obtaining parental consent (*see Section 312.5(c)(1) of Revised COPPA Rule*), (b) notifying and updating a parent about a child's account (*see Section 312.5(c)(2) of Revised COPPA Rule*), or (c) responding to certain safety, security, or legal issues (*see Section 312.5(c)(5)-(6) of Revised COPPA Rule*). These exceptions, however, only allow for a limited amount of data collection and may have other usage or retention restrictions (e.g., non-use for other purposes, purging of the data collected after use is complete or if consent is not obtained, etc.). *See Section 312.5(c) of Revised COPPA Rule for further guidance.* Also note that some of these exceptions may have special parental notice requirements which are described in detail under Section 312.4(c) of the Revised COPPA Rule. *Also see FN 57 below.*

⁴⁸ If a company takes "reasonable measures" (e.g., automated filtering, human moderation, etc.) to delete all or virtually all instances of personal information from a child's postings before they can be made public (or shared with other users), and also takes steps to delete such information from its back-end records, then parental notice and consent would not be required for these types of features. *See Section 1 of these Certification Rules for further guidance on what might be considered "reasonable measures". Also see definitions of the terms "collects or collection" and "delete" under Section 312.2 of the Revised COPPA Rule.*

⁴⁹ Send-to-friend features can be constructed in a way that avoids the requirement for parental notice and consent. For example, if the feature is designed to only collect the "first name" of the sender and the email address(es) of friend(s) to whom the message will be sent (but does NOT also request the email of the sender or allow for a customized message to be entered), and then, immediately after the message is sent, the friends' email addresses are purged, then the feature would conform with COPPA's one-time-use exception (*specifically, Section 312.5(c)(3)*) and therefore not require prior parental notice or consent). Measures should be taken, however, to prevent the child who is sending the message from being able to enter more than just his/her "first name" on the send-to-friend form (for example, through character or space limitations).

⁵⁰ Examples of third party plug-in features that may be covered under this rule include:

- third party login features (such as Facebook Connect, Yahoo, Google, etc.);
- third party share features/widgets (such as Facebook Share, Twitter, Pinterest, Instagram, AddThis, etc.);
- third party like features (such as Facebook Like, etc.) – *see Section 312.5(c)(8) of Revised COPPA Rule for possible exception*;
- social gaming plug-ins (such as Apple Game Center, console-gaming networks, etc.);
- downloadable third-party toolbars; and,
- third party ad plug-ins that involve behavioral tracking (Note – plug-ins used to allow contextual advertising only can be exempt under Section 312.5(c)(7) of the Revised COPPA Rule).

These features may be covered regardless of whether they send data back to your site or service. This is because you are seen as benefiting in other ways (e.g., marketing value, convenience, etc.) by their integration on your site or service. *See definition of the term "collected or maintained on behalf of" under Section 312.2 of Revised COPPA Rule.* PLEASE NOTE THIS IS AN AREA OF THE LAW WHERE YOU CAN BE HELD STRICTLY LIABLE IF NOT FULLY COPPA COMPLIANT. WE STRONGLY URGE YOU TO CONSULT WITH YOUR KSP REPRESENTATIVE FOR FURTHER GUIDANCE ON THIS TOPIC.

⁵¹ If, however, your child-directed site or service merely provides a link off to a third party site or service (such as a button link to a Facebook fan page, Twitter page, etc.) but does not actually embed a data-collecting plug-in feature into your site/service, then parental notice and consent would not be required for such links. Note that in some instances an embedded plug-in feature may be allowed even without prior parental notice/consent, such as if it is placed in an entirely separate section of your site/service legitimately designated for parents or users 13 and older or if it conforms with the exception under Section 312.5(c)(8) of the Revised COPPA Rule. However, merely asking for age information prior to enabling such features may not always be sufficient. AGAIN, PLEASE NOTE THIS IS AN AREA OF THE LAW WHERE YOU CAN BE HELD STRICTLY LIABLE IF NOT FULLY COPPA COMPLIANT. WE STRONGLY URGE YOU TO CONSULT WITH YOUR KSP REPRESENTATIVE FOR FURTHER GUIDANCE ON THIS TOPIC.

⁵² For parental notice and consent to be required, the geolocation information being collected must be detailed enough to identify street name and name of city or town. *See paragraph (i) of the definition of "personal information" under Section 312.2 of Revised COPPA Rule.* A precise location on a map or longitude/latitude coordinates may be sufficiently detailed enough. However, a 5-digit zip code or other general coarse location would likely not be considered detailed enough, and therefore would not require prior parental notice and consent. Parental notice and consent would also not be required if the geolocation information collected (even if detailed) is never uploaded back to the operator or developer (i.e., it is kept locally on the device only). *See FTC COPPA FAQ A4 for the proper handling of geolocation information collected/uploaded prior to July 1, 2013.*

⁵³ There is an exception to this rule. COPPA allows for the collection and use of a child's email address or other online contact information (without parental consent) for the purpose of sending the child multiple communications for a specific purpose (for example, e-mail newsletters, multiple contest announcements, mobile push notifications, etc.). This exception, however, only allows for a limited amount of data collection and has other usage and data retention restrictions (e.g., non-use for other purposes, no combining the data with other personal information, etc.). In addition, to fulfill this exception, the parent must first be notified about this activity (via email, for example) and given the opportunity to opt-out their child from future communications. *See Sections 312.5(c)(4) and 312.4(c)(3) of Revised COPPA Rule for further guidance or consult with your KSP representative.*

⁵⁴ There is an exception to this rule. COPPA allows for the collection and use of a child's email address or other online contact information (without parental notice or consent) for features or activities that involve a one-time use (e.g., send-to-friend, e-card, contest entry, customer support inquiry, etc.). This exception, however, only allows for a limited amount of data collection and has other usage and data retention restrictions (e.g., non-use for other purposes, purging of the data after the one-time use is complete, etc.). *See Section 312.5(c)(3) of Revised COPPA Rule for further guidance or consult with your KSP representative.*

⁵⁵ Examples of persistent identifiers linked to a device may include an IP address, unique device ID, processor or device serial number, customer number held in a cookie, or other similar identifier. *Also see FN 46 above regarding definition of "personal information".*

⁵⁶ When a persistent identifier (such as those listed under FN 55 above) is used solely to support the internal operations of a child-directed website or service and is not combined with other personal information (*see FN 46 above*), then it is exempt from this parental notice and consent requirement. This is known as the "support for internal operations" exception under COPPA. Currently, the following data usage activities are considered "support for internal operations" as such term is defined under Section 312.2 of the Revised COPPA Rule:

- maintaining or analyzing the functioning of the site or service (e.g., analytics);
- performing network communications;
- authenticating users;
- personalizing content on the site or service (but not for purposes of showing behaviorally-targeted ads);
- serving contextual ads;
- capping the frequency of ads;
- protecting the security or integrity of the user, website, or online service;
- ensuring legal or regulatory compliance; or,
- fulfilling a request from a child under the one-time-contact or multiple-contact exceptions of COPPA (*see FNs 53 and 54 above*).

To qualify for the exception, the persistent identifier collected and used for the activities above must not also be used to contact a specific individual, to amass a profile on a specific individual, or for any other purpose. The FTC has the authority to add new activities to the list above, following a special review and approval process defined under Section 312.12(b) of the Revised COPPA Rule.

⁵⁷ These direct notice requirements are highly unique and detailed to each direct notice scenario. *See Section 312.4(c) of Revised COPPA Rule for further guidance on these requirements or consult with your KSP representative.* In all cases, however, the site or service must take reasonable steps to ensure that the parent of the child has in fact received the direct notice (*see Section 312.4(b) of Revised COPPA Rule*). For example, if the site or service receives a bounce-back email message indicating that the notice was undeliverable, then the direct notice would be deemed to have not been received.

⁵⁸ This entails using a method of parental consent that is reasonably calculated, in light of available technology, to ensure that the person providing consent is the child's parent (*see Section 312.5(b)(1) of Revised COPPA Rule*). The FTC has enumerated several methods that already meet this standard (*see Section 312.5(b)(2) of Revised COPPA Rule*). They are as follows:

- For internal uses of a child's information (i.e., when a child's personal information will be used for internal purposes only and will not be shared with other companies or users), "Email Plus" consent may be used. Email Plus consent involves obtaining parental consent via email communication (for example, by sending an activation link to the parent via email), followed by a delayed confirmatory step (such as sending a second email upon receipt of the parent's consent). The confirmatory notice must state that the parent can revoke his/her consent given in response to the earlier email and explain how the parent can do so.
- For disclosures of a child's information (i.e., when a child's personal information may be posted publicly or shared with other users or entities), a "more reliable" form of parental consent must be used. Email Plus would not be sufficient. Currently, the following methods of consent are considered "more reliable": (1) having the parent sign a printed consent form and send it back to you via fax, mail, or electronic scan, (2) having the parent use a credit card, debit card, or other online payment system (such as PayPal) in connection with a monetary transaction and that provides notification of each transaction to the primary account holder, (3) having the parent call a toll-free telephone number staffed by live/trained personnel, (4) having the parent connect to live/trained personnel via video conference, (5) having the parent provide a government-issued ID (e.g., driver's license, SSN, etc.) that you verify against a database of such information, so long as the ID information is deleted from your records promptly after the verification is complete, or (6) having a parent use another method pre-approved by the FTC or an FTC-approved COPPA safe harbor program pursuant to the Revised COPPA Rule. *See Sections 312.12(a) and 312.5(b)(3) of Revised COPPA Rule for further details about the process of submitting a new parental consent method for approval.*

Please note that *merely* directing a child to have the parent register on the child’s behalf or to go ask their parent for permission before signing up is never a sufficient means of obtaining parental consent. In some instances (such as for online activities in the school context), you may be allowed to notify and obtain consent from a school teacher or the school itself in lieu of a parent or other legal guardian. See [FTC COPPA FAQs M1-M4](#) for further guidance on school-based consent, or consult with your KSP representative.

⁵⁹ Prior to obtaining parental consent (and for the very purpose of obtaining consent), COPPA allows you to collect a very limited amount of personal information from a child, such as the child’s name, parent’s name, child’s email address, parent’s email address, or other online contact information (see *Section 312.5(c)(1) of the Revised COPPA Rule*). The Rule may also allow you to collect other information essential to the account creation and consenting process (e.g., username, password). However, a fuller profile of the child may not be created prior to providing notice and obtaining consent pursuant to COPPA.

FOOTNOTES FOR SECTION 8

⁶⁰ The parental access rights referenced in this Section 8, when applicable, need not be automated or web-based. For example, *manual* processing of a parent’s request to review their child’s personal information or have it deleted would be acceptable in lieu of an automated or web-based mechanism. Also, these rights (parental access, deletion, etc.) need only be honored upon specific request from a parent. A parent should also be able to make these access requests rather easily (i.e., without an overly burdensome process) and free of charge (i.e., without having to pay a fee or be a paying member of the site/service). See *Section 312.6(a) of Revised COPPA Rule*.

⁶¹ This rule does not require that you store the child’s personal information in order for the parent to have access to it later. In other words, if you decide to delete the child’s personal information (for policy or other reasons), you can simply reply that you no longer have any personal information stored about the child. If, however, you choose to store the information for legitimate ongoing use and with the appropriate parental permission, then you must enable the parent to access the information for review at any time. See *Section 312.6(a)(3) of Revised COPPA Rule*.

⁶² This may include, for example, allowing the parent to stop the sending of marketing communications to the child (if the site does this) or allowing the parent to stop additional collection or use of their child’s personal information in connection with other features (such as a social profile page or photo/video contest). If a parent makes a request of this kind, the site or service may prevent the child from accessing the site or service (or certain features within the site or service) in the future. See *Section 312.6(c) of Revised COPPA Rule*.

⁶³ Any deletion of the child’s personal information (done in response to a parent’s request) must be done securely, in accordance with Rule 9(j) of these Rules. If a parent requests deletion of their child’s personal information, the site or service may prevent the child from accessing the site or service (or certain features within the site or service) in the future. See *Section 312.6(c) of Revised COPPA Rule*.

⁶⁴ Prior authentication of a parent can be achieved in a variety of ways, but must attempt to ensure (taking into account available technology) that the person requesting access is in fact the child’s parent. See *Section 312.6(a)(3) of Revised COPPA Rule*. For example, before granting access, the parent should be required to verify at least one of the following: (i) the child’s unique login credentials (username, password, etc.), (ii) separate password/PIN information created for the parent or parent account, or (iii) other information that uniquely identifies the child or the child’s account and that only the parent would know. If, after taking these reasonable measures, you nonetheless give out a child’s personal information to someone who is not the child’s parent or guardian, you or any agent acting on your behalf will not be held liable under COPPA (see *Section 312.6(b) of Revised COPPA Rule*).

⁶⁵ A simple online contact form, or contact information (such as a contact email address) displayed within a privacy policy, would suffice for purposes of this rule.

FOOTNOTES FOR SECTION 9

⁶⁶ In other words, if certain information is not needed for a child to participate in a specific activity or use a specific feature, then that information should not be collected or requested from the child (see *Section 312.7 of Revised COPPA Rule*). Merely labeling a field as “optional” would not suffice for purposes of meeting this rule (see *paragraph (a) of the definition of “collects or collection” under Section 312.2 of Revised COPPA Rule*).

⁶⁷ The actual safeguards required will depend on a variety of factors, including (among other things) the sensitivity of the personal information stored about children, the amount of personal information stored, the method of storage, and the size and resources of the company operating the site or service.

⁶⁸ See FN 67 above.

⁶⁹ At a minimum, these steps should include a due diligence review of the third party’s data security practices prior to the initial hiring or sharing of personal information with that third party, as well as periodic checks on the third party’s data security practices thereafter.

⁷⁰ Preferably, these written assurances should be contractual, although other forms of written assurances may be acceptable in lieu of a contract (such as a statement or certificate asserting or demonstrating compliance with a widely-recognized data security standard (PCI, ISO, EU Safe Harbor, etc.).

⁷¹ COPPA allows for the collection and use of IP addresses or other persistent identifiers (without parental notice and consent) for the purpose of gathering analytics about the use of your site or service, personalizing the content on your site/service, and showing contextual ads (see FN 56

above for other allowable uses of persistent IDs). However, that same data may NOT also be used for behavioral advertising purposes or be linked to data used for such purposes (absent prior parental consent). See definition of the term “support for internal operations” under Section 312.2 of Revised COPPA Rule. Therefore, it is imperative that you take reasonable steps to confirm that your third party providers are not linking your internal support data with behavioral advertising data.

⁷² In other words, once the purposes for collecting the personal information have been fulfilled, the information should be deleted or anonymized. Deletion means to remove personal information such that it is not maintained in retrievable form and cannot be retrieved in the normal course of business. See definition of the term “delete” under Section 312.2 of Revised COPPA Rule. In some circumstances, personal information may be retained in archives or backup files if required to comply with records retention requirements.

⁷³ Reasonable measures must be taken to protect the information from unauthorized access during the deletion/destruction process. See Section 312.10 of Revised COPPA Rule. For paper records (such as signed parental consent forms), this process might require destruction of the records via shredding, pulverizing, or other similar method. For electronic records, this process might entail deleting or anonymizing the information so it is no longer retrievable or readable. Also see FN 72 above.

FOOTNOTES FOR SECTION 10

⁷⁴ A COPPA-compliant privacy policy is only needed for sites or services that collect some form of personal information from children or that enable children to share personal information with others. However, even when no personal information is collected or shared from children, it is still recommended that you have a privacy policy to state that fact alone and to describe your practices regarding other features (such as the use of web cookies to track non-personal data). You may also have a legal obligation to post a privacy policy under other laws or regulations.

⁷⁵ The children’s privacy policy can be a sub-section within a broader or more general privacy policy, but only so long as there is a direct link to the children’s section from the top of that policy (e.g., table of contents’ link).

⁷⁶ To be considered “prominent”, the link to the privacy policy must be clearly labeled and easily noticeable (see Section 312.4(d) of Revised COPPA Rule). This can be achieved either by making the link distinguishable from other surrounding links (such as by making it a larger font size, all CAPS, different color, and/or contrasting background) or by creating a separate eye-catching icon or button for the policy. A small, non-prominent link placed in the global footer of the site or service (although a good idea to cover every page) would not be sufficient.

⁷⁷ The privacy policy link must be displayed on the home page of the site or service (or the home page of the children’s section of the site/service), and preferably toward the top of the screen (i.e., within initial viewing and no down-scrolling). For mobile apps, the link must be provided on the app’s promotion page (i.e., the description page on the relevant app store), as well as on the app’s landing screen or menu screen. In addition, a privacy policy link must be provided on every screen where personal information is requested from a child, within close proximity to the fields requesting such information. See Section 312.4(d) of Revised COPPA Rule. All links to the policy, wherever offered, should immediately present the policy content, and not require multiple clicks or additional navigation.

⁷⁸ The privacy policy must contain the following information (see Section 312.4(d)(1)-(3) of Revised COPPA Rule):

- **Contact Information.** Full contact information for the company operating the site or service, including name, address, telephone number, and e-mail address. Also, if applicable, full contact information for any third party companies (such as joint sponsors/operators, third party plug-ins, etc.) that may be collecting personal information *through* your site or service. If you, as the owner of the site or service, agree to handle all inquiries related to data collection occurring on your site/service (including any data collection by third party features), then only the names of those third parties (not their full contact information) would need to be listed in your policy. (Note that you do not have an obligation under COPPA to list in your policy the names of third party vendors that collect or process personal information strictly on your behalf and within your site or service. Examples of these types of vendors may include (among others) payment processors, promotion fulfillment companies, email deliverability providers, and analytics tools.)
- **Information Collection Practices.** A description of the types of personal information the site or service collects from children, and whether the site or service enables children to share personal information publicly or with other users (such as through a chat room, community area, or other feature).
- **Information Use Practices.** A description of how the operator of the site or service uses personal information collected from children (e.g., marketing, personalization, to access to special content or features, account maintenance, etc.).
- **Information Sharing Practices.** A statement of whether the operator shares personal information collected from children with third parties, and if so, which types of third parties (e.g., vendors, joint sponsors, etc.).
- **Parental Access Rights.** A statement that parents can review their child’s personal information or request that their child’s information be deleted or no longer collected or used. The policy must also tell parents how they can exercise these rights (e.g., by providing a link to the parental dashboard area or displaying a contact email address).

[Note: KSP offers a free policy template you can use to help craft a customized policy that meets these requirements and is easy for parents to read and understand. For a copy of this policy, please contact your KSP representative. If you need to craft a mobile-friendly privacy policy, you can consider using this free [Policy Maker tool](#) from PrivacyChoice.]

⁷⁹ The policy should be written in plain language (not hard-to-understand legalese) and should be its own document. It should NOT be bundled or blended together with a terms-of-use document or other legal document. It should also be free of advertisements, promotional materials, or other distracting content. *See Section 312.4(a) of Revised COPPA Rule.*

FOOTNOTES FOR SECTION 11

⁸⁰ Material violations may include severe or repeated violations of these Certification Rules or other significant breaches of consumer safety or privacy. This will be determined on a case-by-case basis in the sole discretion of KSP.

⁸¹ The appropriate enforcement mechanism(s) for a material violation will be determined on a case-by-case basis in KSP's sole discretion. Factors considered will include the severity of the violation, including (among other things) the number of affected children, the amount and type of data involved, whether personal information was shared publicly or with third parties, and any harm that may have resulted from the violation.

⁸² This service comes as a benefit to our kidSAFE+ members.

⁸³ The Revised COPPA Rule allows for FTC-approved safe harbor providers to review and approve new parental consent techniques, provided that such techniques meet the COPPA standard of reliability (i.e., they are "reasonably calculated, in light of available technology, to ensure that the person providing consent is the child's parent"). *See Section 312.5(b)(3) of Revised COPPA Rule.*

ADDENDUM:

Full Text of Revised COPPA Rule

V. Revised Rule

List of Subjects in 16 CFR Part 312

Children, Communications, Consumer Protection, Electronic Mail, E-mail, Internet, Online Service, Privacy, Record Retention, Safety, Science and Technology, Trade Practices, Website, Youth.

Accordingly, for the reasons stated above, the Federal Trade Commission revises Part 312 of Title 16 of the Code of Federal Regulations to read as follows:

PART 312 – CHILDREN’S ONLINE PRIVACY PROTECTION RULE

Sec.

312.1 Scope of regulations in this part.

312.2 Definitions.

312.3 Regulation of unfair or deceptive acts or practices in connection with the collection, use, and/or disclosure of personal information from and about children on the Internet.

312.4 Notice.

312.5 Parental consent.

312.6 Right of parent to review personal information provided by a child.

312.7 Prohibition against conditioning a child’s participation on collection of personal information.

312.8 Confidentiality, security, and integrity of personal information collected from children.

312.9 Enforcement.

312.10 Data retention and deletion requirements.

312.11 Safe harbor programs.

312.12 Voluntary Commission Approval Processes.

312.13 Severability.

AUTHORITY: 15 U.S.C. 6501-6508

§ 312.1 Scope of regulations in this part.

This part implements the Children's Online Privacy Protection Act of 1998, (15 U.S.C. 6501, et seq.,) which prohibits unfair or deceptive acts or practices in connection with the collection, use, and/or disclosure of personal information from and about children on the Internet.

§ 312.2 Definitions.

Child means an individual under the age of 13.

Collects or collection means the gathering of any personal information from a child by any means, including but not limited to:

- (a) Requesting, prompting, or encouraging a child to submit personal information online;
- (b) Enabling a child to make personal information publicly available in identifiable form. An operator shall not be considered to have collected personal information under this paragraph if it takes reasonable measures to delete all or virtually all personal information from a child's postings before they are made public and also to delete such information from its records; or
- (c) Passive tracking of a child online.

Commission means the Federal Trade Commission.

Delete means to remove personal information such that it is not maintained in retrievable form and cannot be retrieved in the normal course of business.

Disclose or disclosure means, with respect to personal information:

- (a) 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 website or online service; and
- (b) Making personal information collected by an operator from a child publicly available in identifiable form by any means, including but not limited to a public posting through the Internet, or through a personal home page or screen posted on a website or online service; a pen pal service; an electronic mail service; a message board; or a chat room.

Federal agency means an agency, as that term is defined in Section 551(1) of title 5, United States Code.

Internet means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire, radio, or other methods of transmission.

Online contact information means an email address or any other substantially similar identifier that permits direct contact with a person online, including but not limited to, an instant messaging user identifier, a voice over internet protocol (VOIP) identifier, or a video chat user identifier.

Operator means any person who operates a website 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 website or online service, or on whose behalf such information is collected or maintained, or offers products or services for sale through that website or online service, where such website or online service is operated for commercial purposes involving commerce:

- (a) Among the several States or with 1 or more foreign nations;
- (b) In any territory of the United States or in the District of Columbia, or between any such territory and
 - (1) Another such territory, or
 - (2) Any State or foreign nation; or
- (c) Between the District of Columbia and any State, territory, or foreign nation. This definition does not include any nonprofit entity that would otherwise be exempt from coverage under Section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

Personal information is **collected or maintained on behalf of** an operator when: (a) it is collected or maintained by an agent or service provider of the operator; or (b) the operator benefits by allowing another person to collect personal information directly from users of such website or online service.

Parent includes a legal guardian.

Person means any individual, partnership, corporation, trust, estate, cooperative, association, or other entity.

Personal information means individually identifiable information about an individual collected online, including:

- (a) A first and last name;
- (b) A home or other physical address including street name and name of a city or town;
- (c) Online contact information as defined in this section;
- (d) A screen or user name where it functions in the same manner as online contact information, as defined in this section;
- (e) A telephone number;
- (f) A Social Security number;
- (g) A persistent identifier that can be used to recognize a user over time and across different websites or online services. Such persistent identifier includes, but is not limited to, a customer number held in a cookie, an Internet Protocol (IP) address, a processor or device serial number, or unique device identifier;

- (h) A photograph, video, or audio file where such file contains a child's image or voice;
- (i) Geolocation information sufficient to identify street name and name of a city or town; or
- (j) Information concerning the child or the parents of that child that the operator collects online from the child and combines with an identifier described in this definition.

Release of personal information means the sharing, selling, renting, or transfer of personal information to any third party.

Support for the internal operations of the website or online service means those activities necessary to:

- (a) maintain or analyze the functioning of the website or online service;
- (b) perform network communications;
- (c) authenticate users of, or personalize the content on, the website or online service;
- (d) serve contextual advertising on the website or online service or cap the frequency of advertising;
- (e) protect the security or integrity of the user, website, or online service;
- (f) ensure legal or regulatory compliance; or
- (g) fulfill a request of a child as permitted by §§ 312.5(c)(3) and (4);

so long as the information collected for the activities listed in paragraphs (a)-(g) is not used or disclosed to contact a specific individual, including through behavioral advertising, to amass a profile on a specific individual, or for any other purpose.

Third party means any person who is not:

- (a) An operator with respect to the collection or maintenance of personal information on the website or online service; or
- (b) A person who provides support for the internal operations of the website or online service and who does not use or disclose information protected under this part for any other purpose.

Obtaining verifiable consent means 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:

- (a) Receives notice of the operator's personal information collection, use, and disclosure practices; and
- (b) Authorizes any collection, use, and/or disclosure of the personal information.

Website or online service directed to children means a commercial website or online service, or portion thereof, that is targeted to children.

- (a) In determining whether a website or online service, or a portion thereof, is directed to children, the Commission will consider its subject matter, visual content, use of animated characters or child-oriented activities and incentives, music or other audio content, age of models, presence of child celebrities or celebrities who appeal to children, language or other characteristics of the website or online service, as well as whether advertising promoting or appearing on the website or online service is directed to children. The Commission will also consider competent and reliable empirical evidence regarding audience composition, and evidence regarding the intended audience.
- (b) A website or online service shall be deemed directed to children when it has actual knowledge that it is collecting personal information directly from users of another website or online service directed to children.
- (c) A website or online service that is directed to children under the criteria set forth in (a) above, but that does not target children as its primary audience, shall not be deemed directed to children if it: (i) does not collect personal information from any visitor prior to collecting age information; and (ii) prevents the collection, use, or disclosure of personal information from visitors who identify themselves as under age 13 without first complying with the notice and parental consent provisions of this part.
- (d) A website or online service shall not be deemed directed to children solely because it refers or links to a commercial website or online service directed to children by using information location tools, including a directory, index, reference, pointer, or hypertext link.

§ 312.3 Regulation of unfair or deceptive acts or practices in connection with the collection, use, and/or disclosure of personal information from and about children on the Internet.

General requirements. It shall be unlawful for any operator of a website or online service directed to children, or any operator that has actual knowledge that it is collecting or maintaining personal information from a child, to collect personal information from a child in a manner that violates the regulations prescribed under this part. Generally, under this part, an operator must:

- (a) Provide notice on the website or online service of what information it collects from children, how it uses such information, and its disclosure practices for such information (§ 312.4(b));
- (b) Obtain verifiable parental consent prior to any collection, use, and/or disclosure of personal information from children (§ 312.5);
- (c) Provide a reasonable means for a parent to review the personal information collected from a child and to refuse to permit its further use or maintenance (§312.6);
- (d) Not condition a child's participation in a game, the offering of a prize, or another activity on the child disclosing more personal information than is reasonably necessary to participate in such activity (§ 312.7); and
- (e) Establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children (§ 312.8).

§ 312.4 Notice.

- (a) *General principles of notice.* It shall be the obligation of the operator to provide notice and obtain verifiable parental consent prior to collecting, using, or disclosing personal information from children. Such notice must be clearly and understandably written, complete, and must contain no unrelated, confusing, or contradictory materials.
- (b) *Direct notice to the parent.* An operator must make reasonable efforts, taking into account available technology, to ensure that a parent of a child receives direct notice of the operator's practices with regard to the collection, use, or disclosure of personal information from children, including notice of any material change in the collection, use, or disclosure practices to which the parent has previously consented.
- (c) *Content of the direct notice to the parent.*
 - (1) *Content of the direct notice to the parent under §312.5(c)(1) (Notice to Obtain Parent's Affirmative Consent to the Collection, Use, or Disclosure of a Child's Personal Information).* This direct notice shall set forth:
 - (i) That the operator has collected the parent's online contact information from the child, and, if such is the case, the name of the child or the parent, in order to obtain the parent's consent;
 - (ii) That the parent's consent is required for the collection, use, or disclosure of such information, and that the operator will not collect, use, or disclose any personal information from the child if the parent does not provide such consent;
 - (iii) 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;
 - (iv) A hyperlink to the operator's online notice of its information practices required under § 312.4(d);
 - (v) The means by which the parent can provide verifiable consent to the collection, use, and disclosure of the information; and
 - (vi) That if the parent does not provide consent within a reasonable time from the date the direct notice was sent, the operator will delete the parent's online contact information from its records.
 - (2) *Content of the direct notice to the parent under §312.5(c)(2) (Voluntary Notice to Parent of a Child's Online Activities Not Involving the Collection, Use or Disclosure of Personal Information).* Where an operator chooses to notify a parent of a child's participation in a website or online service, and where such site or service does not collect any personal information other than the parent's online contact information, the direct notice shall set forth:
 - (i) That the operator has collected the parent's online contact information from the child in order to provide notice to, and subsequently update the parent about, a child's participation in a website or online service that does not otherwise collect, use, or disclose children's personal information;
 - (ii) That the parent's online contact information will not be used or disclosed for any other purpose;
 - (iii) That the parent may refuse to permit the child's participation in the website or online service and may require the

- deletion of the parent's online contact information, and how the parent can do so; and
- (iv) A hyperlink to the operator's online notice of its information practices required under § 312.4(d).
- (3) *Content of the direct notice to the parent under § 312.5(c)(4) (Notice to a Parent of Operator's Intent to Communicate with the Child Multiple Times).* This direct notice shall set forth:
- (i) That the operator has collected the child's online contact information from the child in order to provide multiple online communications to the child;
 - (ii) That the operator has collected the parent's online contact information from the child in order to notify the parent that the child has registered to receive multiple online communications from the operator;
 - (iii) That the online contact information collected from the child will not be used for any other purpose, disclosed, or combined with any other information collected from the child;
 - (iv) That the parent may refuse to permit further contact with the child and require the deletion of the parent's and child's online contact information, and how the parent can do so;
 - (v) That if the parent fails to respond to this direct notice, the operator may use the online contact information collected from the child for the purpose stated in the direct notice; and
 - (vi) A hyperlink to the operator's online notice of its information practices required under § 312.4(d).
- (4) *Content of the direct notice to the parent required under § 312.5(c)(5) (Notice to a Parent In Order to Protect a Child's Safety).* This direct notice shall set forth:
- (i) That the operator has collected the name and the online contact information of the child and the parent in order to protect the safety of a child;
 - (ii) That the information will not be used or disclosed for any purpose unrelated to the child's safety;
 - (iii) That the parent may refuse to permit the use, and require the deletion, of the information collected, and how the parent can do so;
 - (iv) That if the parent fails to respond to this direct notice, the operator may use the information for the purpose stated in the direct notice; and
 - (v) A hyperlink to the operator's online notice of its information practices required under § 312.4(d).
- (d) *Notice on the website or online service.* In addition to the direct notice to the parent, an operator must post a prominent and clearly labeled link to an online notice of its information practices with regard to children on the home or landing page or screen of its website or online service, and, at each area of the website or online service where personal information is collected from children. The link must be in close proximity to the requests for information in each such area. An operator of a general audience website or online service that has a separate children's area must post a link to a notice of its information practices with regard to children on the home or landing page or

screen of the children's area. To be complete, the online notice of the website or online service's information practices must state the following:

- (1) The name, address, telephone number, and e-mail address of all operators collecting or maintaining personal information from children through the website or online service. Provided that: the operators of a website or online service may list the name, address, phone number, and e-mail address of one operator who will respond to all inquiries from parents concerning the operators' privacy policies and use of children's information, as long as the names of all the operators collecting or maintaining personal information from children through the website or online service are also listed in the notice;
- (2) A description of what information the operator collects from children, including whether the website or online service enables a child to make personal information publicly available; how the operator uses such information; and, the operator's disclosure practices for such information; and
- (3) That the parent can review or have deleted the child's personal information, and refuse to permit further collection or use of the child's information, and state the procedures for doing so.

§ 312.5 Parental consent.

(a) *General requirements.*

- (1) An operator is required to obtain verifiable parental consent before any collection, use, or disclosure of personal information from children, including consent to any material change in the collection, use, or disclosure practices to which the parent has previously consented.
- (2) An operator must give the parent the option to consent to the collection and use of the child's personal information without consenting to disclosure of his or her personal information to third parties.

(b) *Methods for verifiable parental consent.*

- (1) An operator must make reasonable efforts to obtain verifiable parental consent, taking into consideration available technology. Any method to obtain verifiable parental consent must be reasonably calculated, in light of available technology, to ensure that the person providing consent is the child's parent.
- (2) Existing methods to obtain verifiable parental consent that satisfy the requirements of this paragraph include:
 - (i) Providing a consent form to be signed by the parent and returned to the operator by postal mail, facsimile, or electronic scan;
 - (ii) Requiring a parent, in connection with a monetary transaction, to use a credit card, debit card, or other online payment system that provides notification of each discrete transaction to the primary account holder;
 - (iii) Having a parent call a toll-free telephone number staffed by trained personnel;
 - (iv) Having a parent connect to trained personnel via video-conference;

- (v) Verifying a parent's identity 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; or
 - (vi) *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. Such additional steps include: sending a confirmatory email to the parent following receipt of consent, or obtaining a postal address or telephone number from the parent and confirming the parent's consent by letter or telephone call. An operator that uses this method must provide notice that the parent can revoke any consent given in response to the earlier email.
- (3) *Safe harbor approval of parental consent methods.* A safe harbor program approved by the Commission under § 312.11 may approve its member operators' use of a parental consent method not currently enumerated in paragraph (b)(2) where the safe harbor program determines that such parental consent method meets the requirements of paragraph (b)(1).
- (c) *Exceptions to prior parental consent.* Verifiable parental consent is required prior to any collection, use, or disclosure of personal information from a child except as set forth in this paragraph:
- (1) Where the sole purpose of collecting the name or online contact information of the parent or child is to provide notice and obtain parental consent under §312.4(c)(1). If the operator has not obtained parental consent after a reasonable time from the date of the information collection, the operator must delete such information from its records;
 - (2) Where the purpose of collecting a parent's online contact information is to provide voluntary notice to, and subsequently update the parent about, the child's participation in a website or online service that does not otherwise collect, use, or disclose children's personal information. In such cases, the parent's online contact information may not be used or disclosed for any other purpose. In such cases, the operator must make reasonable efforts, taking into consideration available technology, to ensure that the parent receives notice as described in § 312.4(c)(2);
 - (3) Where the sole purpose of collecting online contact information from a child is to respond directly on a one-time basis to a specific request from the child, and where such information is not used to re-contact the child or for any other purpose, is not disclosed, and is deleted by the operator from its records promptly after responding to the child's request;
 - (4) Where the purpose of collecting a child's and a parent's online contact information is to respond directly more than once to the child's specific request, and where such information is not used for any other purpose, disclosed, or combined with any other information collected from the child. In such cases, the operator must make reasonable efforts, taking into consideration available technology, to ensure that the parent receives notice as described in § 312.4(c)(3). An operator will not be deemed to have made reasonable efforts to ensure that a parent receives notice where the notice to the parent was unable to be delivered;
 - (5) Where the purpose of collecting a child's and a parent's name and online contact information, is to protect the safety of a child, and where such information is not used or disclosed for any purpose unrelated to the child's safety. In such cases, the operator must make reasonable efforts, taking into consideration available technology, to provide a parent with notice as described in §

- 312.4(c)(4);
- (6) Where the purpose of collecting a child's name and online contact information is to:
 - (i) protect the security or integrity of its website or online service;
 - (ii) take precautions against liability;
 - (iii) respond to judicial process; or
 - (iv) to the extent permitted under other provisions of law, to provide information to law enforcement agencies or for an investigation on a matter related to public safety; and where such information is not be used for any other purpose;
 - (7) Where an operator collects a persistent identifier and no other personal information and such identifier is used for the sole purpose of providing support for the internal operations of the website or online service. In such case, there also shall be no obligation to provide notice under §312.4; or
 - (8) Where an operator covered under paragraph (b) of the definition of website or online service directed to children collects a persistent identifier and no other personal information from a user who affirmatively interacts with the operator and whose previous registration with that operator indicates that such user is not a child. In such case, there also shall be no obligation to provide notice under § 312.4.

§ 312.6 Right of parent to review personal information provided by a child.

- (a) Upon request of a parent whose child has provided personal information to a website or online service, the operator of that website or online service is required to provide to that parent the following:
 - (1) A description of the specific types or categories of personal information collected from children by the operator, such as name, address, telephone number, e-mail address, hobbies, and extracurricular activities;
 - (2) The opportunity at any time to refuse to permit the operator's further use or future online collection of personal information from that child, and to direct the operator to delete the child's personal information; and
 - (3) Notwithstanding any other provision of law, a means of reviewing any personal information collected from the child. The means employed by the operator to carry out this provision must:
 - (i) Ensure that the requestor is a parent of that child, taking into account available technology; and
 - (ii) Not be unduly burdensome to the parent.
- (b) Neither an operator nor the operator's agent shall be held liable under any Federal or State law for any disclosure made in good faith and following reasonable procedures in responding to a request for disclosure of personal information under this section.
- (c) Subject to the limitations set forth in § 312.7, an operator may terminate any service provided to a child whose parent has refused, under paragraph (a)(2) of this section, to permit the operator's further use or collection of personal information from his or her child or has directed the operator to delete the child's personal information.

§ 312.7 Prohibition against conditioning a child’s participation on collection of personal information.

An operator is prohibited from conditioning a child’s participation in a game, the offering of a prize, or another activity on the child’s disclosing more personal information than is reasonably necessary to participate in such activity.

§ 312.8 Confidentiality, security, and integrity of personal information collected from children.

The operator must establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children. The operator must also take reasonable steps to release children’s personal information only to service providers and third parties who are capable of maintaining the confidentiality, security and integrity of such information, and who provide assurances that they will maintain the information in such a manner.

§ 312.9 Enforcement.

Subject to §§ 6503 and 6505 of the Children’s Online Privacy Protection Act of 1998, a violation of a regulation prescribed under section 6502 (a) of this Act shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under Section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

§ 312.10 Data retention and deletion requirements.

An operator of a website or online service shall retain personal information collected online from a child for only as long as is reasonably necessary to fulfill the purpose for which the information was collected. The operator must delete such information using reasonable measures to protect against unauthorized access to, or use of, the information in connection with its deletion.

§ 312.11 Safe harbor programs.

- (a) *In general.* Industry groups or other persons may apply to the Commission for approval of self-regulatory program guidelines (“safe harbor programs”). The application shall be filed with the Commission’s Office of the Secretary. The Commission will publish in the FEDERAL REGISTER a document seeking public comment on the application. The Commission shall issue a written determination within 180 days of the filing of the application.
- (b) *Criteria for approval of self-regulatory program guidelines.* Proposed safe harbor programs must demonstrate that they meet the following performance standards:
 - (1) Program requirements that ensure operators subject to the self-regulatory program guidelines (“subject operators”) provide substantially the same or greater protections for children as those contained in §§ 312.2 through 312.8, and 312.10.
 - (2) An effective, mandatory mechanism for the independent assessment of subject operators’ compliance with the self-regulatory program guidelines. At a minimum, this mechanism must include a comprehensive review by the safe harbor program, to be conducted not less than annually, of each subject operator’s information policies, practices, and representations. The assessment

mechanism required under this paragraph can be provided by an independent enforcement program, such as a seal program.

- (3) Disciplinary actions for subject operators' non-compliance with self-regulatory program guidelines. This performance standard may be satisfied by:
 - (i) Mandatory, public reporting of any action taken against subject operators by the industry group issuing the self-regulatory guidelines;
 - (ii) Consumer redress;
 - (iii) Voluntary payments to the United States Treasury in connection with an industry-directed program for violators of the self-regulatory guidelines;
 - (iv) Referral to the Commission of operators who engage in a pattern or practice of violating the self-regulatory guidelines; or
 - (v) Any other equally effective action.

- (c) *Request for Commission approval of self-regulatory program guidelines.* A proposed safe harbor program's request for approval shall be accompanied by the following:
 - (1) A detailed explanation of the applicant's business model, and the technological capabilities and mechanisms that will be used for initial and continuing assessment of subject operators' fitness for membership in the safe harbor program;
 - (2) A copy of the full text of the guidelines for which approval is sought and any accompanying commentary;
 - (3) A comparison of each provision of §§ 312.2 through 312.8, and 312.10 with the corresponding provisions of the guidelines; and
 - (4) A statement explaining:
 - (i) how the self-regulatory program guidelines, including the applicable assessment mechanisms, meet the requirements of this part; and
 - (ii) how the assessment mechanisms and compliance consequences required under paragraphs (b)(2) and (b)(3) provide effective enforcement of the requirements of this part.

- (d) *Reporting and recordkeeping requirements.* Approved safe harbor programs shall:
 - (1) By July 1, 2014, and annually thereafter, submit a report to the Commission containing, at a minimum, an aggregated summary of the results of the independent assessments conducted under paragraph (b)(2), a description of any disciplinary action taken against any subject operator under paragraph (b)(3), and a description of any approvals of member operators' use of a parental consent mechanism, pursuant to § 312.5(b)(4);
 - (2) Promptly respond to Commission requests for additional information; and

- (3) Maintain for a period not less than three years, and upon request make available to the Commission for inspection and copying:
 - (i) Consumer complaints alleging violations of the guidelines by subject operators;
 - (ii) Records of disciplinary actions taken against subject operators; and
 - (iii) Results of the independent assessments of subject operators' compliance required under paragraph (b)(2).
- (e) *Post-approval modifications to self-regulatory program guidelines.* Approved safe harbor programs must submit proposed changes to their guidelines for review and approval by the Commission in the manner required for initial approval of guidelines under paragraph (c)(2). The statement required under paragraph (c)(4) must describe how the proposed changes affect existing provisions of the guidelines.
- (f) *Revocation of approval of self-regulatory program guidelines.* The Commission reserves the right to revoke any approval granted under this section if at any time it determines that the approved self-regulatory program guidelines or their implementation do not meet the requirements of this part. Safe harbor programs that were approved prior to the publication of the Final Rule amendments must, by March 1, 2013, submit proposed modifications to their guidelines that would bring them into compliance with such amendments, or their approval shall be revoked.
- (g) *Operators' participation in a safe harbor program.* An operator will be deemed to be in compliance with the requirements of §§ 312.2 through 312.8, and 312.10 if that operator complies with Commission-approved safe harbor program guidelines. In considering whether to initiate an investigation or bring an enforcement action against a subject operator for violations of this part, the Commission will take into account the history of the subject operator's participation in the safe harbor program, whether the subject operator has taken action to remedy such non-compliance, and whether the operator's non-compliance resulted in any one of the disciplinary actions set forth in paragraph (b)(3).

§ 312.12 Voluntary Commission Approval Processes.

- (a) *Parental consent methods.* An interested party may file a written request for Commission approval of parental consent methods not currently enumerated in §312.5(b). To be considered for approval, a party must provide a detailed description of the proposed parental consent methods, together with an analysis of how the methods meet § 312.5(b)(1). The request shall be filed with the Commission's Office of the Secretary. The Commission will publish in the FEDERAL REGISTER a document seeking public comment on the request. The Commission shall issue a written determination within 120 days of the filing of the request; and
- (b) *Support for internal operations of the website or online service.* An interested party may file a written request for Commission approval of additional activities to be included within the definition of support for internal operations. To be considered for approval, a party must provide a detailed justification why such activities should be deemed support for internal operations, and an analysis of their potential effects on children's online privacy. The request shall be filed with the Commission's Office of the Secretary. The Commission will publish in the FEDERAL REGISTER a document seeking public comment on the request. The Commission shall issue a written determination within 120 days of the filing of the request.

§ 312.13 Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

EXHIBIT E

COMPARISON OF KIDSAFE+ CERTIFICATION RULES VERSUS REVISED COPPA RULE

(FOR PUBLIC REVIEW AND COMMENT)

In conformance with Section 312.11(c)(3) of the Revised COPPA Rule, this document provides a comparative chart illustrating the alignment between the requirements of the Revised COPPA Rule (specifically, Sections 312.2 through 312.8, and 312.10) and the kidSAFE Seal Program’s COPPA-related guidelines.

For purposes of assessing the adequacy of our program (as compared to COPPA) and reviewing the chart below, we kindly request that the Commission take special note of the following two factors that make our program unique.

First, in light of the requirement that all COPPA-certified members under our program must comply not only with COPPA but also our Basic Safety Rules (see Exhibit C or D of this proposal), we feel our program requirements far exceed those of COPPA.

Second, the unique, Rules-based and feature-centric format of our Certification Rules tends to be far more effective in actually helping our members achieve COPPA compliance. This is because our Rules provide a clear, checklist-type roadmap of exactly what features on a website or service need to be reviewed and tested for COPPA compliance, and what legal rules and compliance options apply to each feature. This unique style is very beneficial to our members, as well as our own staff, as it greatly increases the likelihood that we flag all COPPA-related issues during the auditing process. A simple regurgitation of the COPPA law as the layout for our guidelines could not achieve the same result¹.

To illustrate the second point above, take for example COPPA’s provisions regarding third party plug-ins. For a company to fully understand COPPA’s requirements in this area, it would need to piece together all of the following: (i) the definition of the term “operator”; (ii) the definition of the term “collected or maintained on behalf of”; (iii) paragraph (b) of the definition of the term “website or online service directed to children”; (iv) Section 312.5(c)(8) covering the exception that applies to certain limited plug-in features (such as the Facebook Like button); and, (v) in the case of third party ad networks, Section 312.5(c)(7), along with the definitions of “personal information” and “support for internal operations”, which collectively tell you that *behavioral advertising* requires prior parental consent while *contextual advertising* does not. By contrast, our Certification Rules capture all of this, along with the pertinent exceptions, in one simple rule about third party plug-ins – Rule 7(d) and its two footnotes.

In spite of these advantages, if the Commission still were to view this approach as somewhat unorthodox, we have added the full text of the Revised COPPA Rule as an addendum to our Certification Rules and have cross-referenced the pertinent sections of the Revised COPPA Rule within the footnotes of our guidelines.

¹ In addition, it is worth noting that an exact or near-exact replication of the COPPA Rule provisions as the format for a safe harbor’s guidelines does not appear to be required or necessarily desired by the law itself. Rather, the law itself requires that the guidelines of the proposed safe harbor provide “substantially the same or greater protections for children than those contained [under COPPA]”. See Section 312.11(b)(1) of Revised COPPA Rule. We believe our guidelines demonstrate this to the fullest extent.

COMPARATIVE CHART (COPPA vs. kidSAFE+)

Relevant Section of Revised COPPA Rule	Corresponding kidSAFE+ Certification Rule(s)
<p>Section 312.2 <i>Definitions</i></p>	<ul style="list-style-type: none"> • These definitions are incorporated (explicitly or implicitly) across various sections of our kidSAFE+ Certification Rules (specifically, Sections 6-11). Rather than create an entirely separate section for definitions, the terms most relevant to our program are defined in those locations of our guidelines where the terms are actually used, providing much greater context and clarity for member companies. • Examples of terms defined in this manner include: <ul style="list-style-type: none"> ○ “Parent” – see Rule 7 and Footnote 45 ○ “Child” – see Rule 7(a) and Footnote 46 ○ “Personal information” – see Rule 7(a) and Footnote 46 ○ “Online contact information” – see Footnote 46 ○ “Support for internal operations” – see Rule 7(h) and Footnote 56 ○ “Delete” – see Rule 9(j) and Footnote 72 ○ “Website or online service directed to children” – see Footnote 41 <p>[Note: We have outlined only those child-directed categories (i.e., 312.2(a) and (c)) that are pertinent to our program, which is focused primarily on reviewing and certifying sites and services specifically intended for children and their families.]</p>
<p>Section 312.3(a) <i>General notice requirement</i></p>	<ul style="list-style-type: none"> • Rule 7 (generally) • Rules 7(j) and 10 (more specifically)
<p>Section 312.3(b) <i>General verifiable parental consent (VPC) requirement</i></p>	<ul style="list-style-type: none"> • Rule 7 and all of its corresponding sub-rules • [Rule 7(g) – catchall VPC requirement for collection of personal information from children in connection with any features or activities]
<p>Section 312.3(c) <i>General parental access requirement</i></p>	<ul style="list-style-type: none"> • Rule 8 and all of its corresponding sub-rules, specifically 8(a) and 8(b)
<p>Section 312.3(d) <i>General data minimization requirement</i></p>	<ul style="list-style-type: none"> • Rule 9(a)
<p>Section 312.3(e) <i>General data security requirement</i></p>	<ul style="list-style-type: none"> • Rule 9 and all of its corresponding sub-rules
<p>Section 312.4(a) <i>General principles of notice</i></p>	<ul style="list-style-type: none"> • Rules 7 and 10 (regarding general notice obligation) • Rules 10(d)-(e) (regarding completeness and clarity of notice)
<p>Section 312.4(b) <i>Direct notice to parents (obligation)</i></p>	<ul style="list-style-type: none"> • Rule 7, Rule 7(j), and Footnote 57 (regarding delivery of notice) • Rule 7(i) (regarding notice of material changes)
<p>Section 314.4(c)(1)-(4) <i>Direct notice to parents (contents)</i></p>	<ul style="list-style-type: none"> • Rule 7(j) • The content requirements for “direct notice” are explicitly referenced under Footnote 57. Given the lengthy and highly-detailed nature of the direct-notice content requirements, KSP felt it was unnecessary and overly complex to list out all of these requirements directly within our Certification Rules document. Instead, we chose to provide a direct reference to the relevant sections of the Revised COPPA Rule, which is attached as an addendum to our guidelines.
<p>Section 312.4(d) <i>Privacy policy notice – prominence and location of link</i></p>	<ul style="list-style-type: none"> • Rule 10 (generally) • Rules 10(a)-(c) and Footnotes 75-77 (specifically)
<p>Section 312.4(d)(1)-(3) <i>Privacy policy notice – contents</i></p>	<ul style="list-style-type: none"> • Rule 10 (generally) • Rule 10(d) and Footnote 78 (specifically)

Relevant Section of Revised COPPA Rule	Corresponding kidSAFE+ Certification Rule(s)
Section 312.5(a)(1) <i>General VPC requirement</i>	<ul style="list-style-type: none"> • Rule 7 (generally) • Rules 7(a)-(i) (specifically) • [Rule 7(g) – catchall VPC requirement for collection of personal information from children in connect with any other features or activities] • [Rule 7(i) – VPC requirement for material changes]
Section 312.5(a)(2) <i>Parental option to consent to collection but not disclosure</i>	<ul style="list-style-type: none"> • Not applicable, as KSP prohibits the disclosure of children’s personal information to third parties (see Rule 5(g) under our Basic Safety Rules). • [Note - The terminology regarding “marketing” under Rule 5(g) is there to exclude from the prohibition (i.e., allow) the sharing of personal information with third party vendors and service providers for non-marketing purposes, which is both allowed under our program and not subject to this “collection without disclosure” requirement under COPPA.]
Section 312.5(b)(1)-(3) <i>Methods of verifiable parental consent</i>	<ul style="list-style-type: none"> • Rule 7 (generally) • Rule 7(k) and Footnote 58 (specifically)
Section 312.5(c)(1) <i>Exceptions to VPC – seeking consent</i>	<ul style="list-style-type: none"> • Rule 7(l) and Footnote 59 • Rule 7(m) • Footnote 47 (in connection with Rule 7(a))
Section 312.5(c)(2) <i>Exceptions to VPC – parental notification</i>	<ul style="list-style-type: none"> • Footnote 47 (in connection with Rule 7(a)) • Rule 7(j) and Footnote 57 (regarding delivery of notice)
Section 312.5(c)(3) <i>Exceptions to VPC – one-time-contact</i>	<ul style="list-style-type: none"> • Footnote 54 (in connection with Rule 7(g))
Section 312.5(c)(4) <i>Exceptions to VPC – multiple contact</i>	<ul style="list-style-type: none"> • Footnote 53 (in connection with Rule 7(f)) • Rule 7(j) and Footnote 57 (regarding delivery of notice)
Section 312.5(c)(5)-(6) <i>Exceptions to VPC – safety, security, legal</i>	<ul style="list-style-type: none"> • Footnote 47 • Rule 7(j) and Footnote 57 (regarding delivery of notice)
Section 312.5(c)(7) <i>Exceptions to VPC – persistent ID for internal support</i>	<ul style="list-style-type: none"> • Rule 7(h) and Footnotes 55-56
Section 312.5(c)(8) <i>Exceptions to VPC – persistent ID from users previously identified as 13 or older (for actual knowledge sites/services only)</i>	<ul style="list-style-type: none"> • Footnotes 50-51 • [Although covered under the footnotes listed above, it remains unclear to KSP how this exception can be implemented in practice. If this exception is meant for the potential use of certain third party plug-in features (such as the Facebook Like feature), how would the operator of the child-directed site or service know in advance whether it can serve up that feature without having access to the age information previously collected by the third party plug-in? In addition, what if the user who interacts with the third party feature does not already have a previous account with the third party operator? In that scenario, the user would be required to create an account (as is the case with Facebook), which would then necessitate the collection of more information than is allowed under the exception (such as an email address). Despite the release of an FTC FAQ on this topic, it is still unclear how and when this exception can actually be used without a scenario that may run afoul of the Revised COPPA Rule. For this reason, incorporation of this exception into our guidelines is done with some caution, pending further clarity from the FTC.]
Section 312.6(a)(1) <i>Parental access rights – general request</i>	<ul style="list-style-type: none"> • Rule 10(g)

Relevant Section of Revised COPPA Rule	Corresponding kidSAFE+ Certification Rule(s)
Section 312.6(a)(2) <i>Parental access rights – stopping further collection or use and right to delete</i>	<ul style="list-style-type: none"> • Rule 8(b) (regarding stopping further collection or use) • Rule 8(c) (regarding deletion)
Section 312.6(a)(3) <i>Parental access rights – right to review</i>	<ul style="list-style-type: none"> • Rule 8(a)
Section 312.6(a)(3)(i)-(ii) <i>Parental access rights – means of providing access</i>	<ul style="list-style-type: none"> • Rule 8(d) and Footnote 64 (regarding authenticating the requestor) • Footnote 60 (regarding least burdensome process)
Section 312.6(b) <i>Parental access rights – no liability for good faith disclosure to parent</i>	<ul style="list-style-type: none"> • Footnote 64 (in connection with Rule 8(d))
Section 312.6(c) <i>Parental access rights – right to terminate child’s access</i>	<ul style="list-style-type: none"> • Footnote 62 (for termination in response to stopping further collection/use) • Footnote 63 (for termination in response to deletion)
Section 312.7 <i>General data minimization requirement</i>	<ul style="list-style-type: none"> • Rule 9(a) and Footnote 66
Section 312.8 (part 1) <i>Reasonable data security procedures</i>	<ul style="list-style-type: none"> • Rule 9 and all of its corresponding sub-rules • Rules 9(e) and 9(f) (specifically requiring “reasonable safeguards”)
Section 312.8 (part 2) <i>Due diligence of service providers and third parties</i>	<ul style="list-style-type: none"> • Rule 9(g) and Footnote 69 (regarding data security capabilities) • Rule 9(h) and Footnote 70 (regarding data security assurances)
Section 312.10 (part 1) <i>Data retention requirement</i>	<ul style="list-style-type: none"> • Rule 9(j) and Footnote 72
Section 312.10 (part 2) <i>Secure deletion requirement</i>	<ul style="list-style-type: none"> • Rule 9(k) and Footnote 73

EXHIBIT F

EFFECTIVENESS OF KSP'S ASSESSMENT AND ENFORCEMENT MECHANISMS

(FOR PUBLIC REVIEW AND COMMENT)

In conformance with Section 312.11(c)(4) of the Revised COPPA Rule, this document: (i) provides a description of the various assessment and enforcement techniques used by our program to help ensure our members' ongoing compliance with COPPA; and, (ii) illustrates the effectiveness of these techniques¹. These techniques – which have already been implemented by our program – are spelled out explicitly under Section 11 of our Certification Rules and are also contractually agreed to by every kidSAFE+ member prior to our provision of services. Excerpts of the pertinent guidelines and contractual terms are provided below.

Rule 11 of our Certification Rules (which is required for kidSAFE+ certification) reads in part as follows:

11. Must cooperate with the kidSAFE Seal Program's oversight and enforcement mechanisms

- (a) *Must cooperate with KSP's compliance reviews, including initial and annual compliance assessments, random seeding and testing of interactive features (such as sign-up forms, chat features, etc.), and periodic monitoring of data usage practices (e.g., review of marketing communications)*
- (b) *Must address all safety and privacy-related consumer complaints forwarded by KSP in a timely and satisfactory manner*
- (c) *When material violations occur, must cooperate with KSP's enforcement mechanisms, which may include increases in membership fees, termination of membership (including removal of all seals), consumer redress, and/or anonymous payments to the United States Treasury*

Section 5 of our kidSAFE+ membership agreement (which all kidSAFE+ members must sign) reads in part as follows:

- 5.2 Cooperation and Enforcement.** *If you are awarded kidSAFE+ certification and choose to be acknowledged as such (for example, by displaying the kidSAFE+ Seal on your qualifying in-scope products), you agree to make best efforts to comply with all KSP Certification Rules during the term of your kidSAFE+ status (also see Section 5.3 below). You further agree to cooperate with KSP's routine oversight and enforcement mechanisms. These mechanisms may include (without limitation): (i) annual compliance assessments of your in-scope products (for as long you retain kidSAFE+ membership), (ii) seeding and testing of interactive features (such as sign-up forms, chat features, etc.), (iii) periodic monitoring of your data usage practices (e.g., review of consumer email communications), (iv) the requirement to address all consumer complaints forwarded to you by KSP in a timely and satisfactory manner, and (v) the reporting of certain information regarding member assessments and disciplinary actions to the Federal Trade Commission. In more extreme cases (such as for serious violations of our certification rules or breaches of consumer safety/privacy), our enforcement may include more severe measures, such as increases in your membership fees, the requirement for [COMPANY] to provide consumer redress, termination of your KSP membership (including the immediate removal or suspension of all seals), and/or the requirement to make an anonymous payment to the United States Treasury.*
- 5.3 Notification of Changes.** *You agree to notify KSP in advance of any significant changes to your in-scope products (e.g., new registration flows, new chat features, new data usage practices, etc.). Such changes may need to be reviewed by KSP to help ensure your continued compliance with the KSP Certification Rules. Non-compliance with this requirement may result in termination of your membership and kidSAFE+ status.*

As you can see, ongoing assessment and monitoring are crucial components of our enforcement program, to which all kidSAFE+ members must agree. These techniques, and their effectiveness, are further discussed below.

¹ KSP has already demonstrated earlier in this proposal (specifically, through Exhibits D and E) how its self-regulatory guidelines meet the requirements of the Revised COPPA Rule. The focus of this Exhibit, therefore, is on KSP's assessment and enforcement mechanisms and the effectiveness of those techniques.

1. Annual Compliance Assessments

Pursuant to Section 312.11(b)(2) of the Revised COPPA Rule, for every kidSAFE+/COPPA member of our program, KSP conducts a thorough assessment of the member's compliance with the Revised COPPA Rule. This assessment is performed initially as a prerequisite to receiving kidSAFE+ certification and then annually thereafter. Each assessment entails reviewing and testing our kidSAFE+ member for compliance across all 11 sections of our Certification Rules, including Sections 6-11 which specifically cover COPPA. We then document our findings and any corrective actions for every rule within our guidelines (which together total more than 70 individual compliance requirements). The comprehensiveness of our review is unparalleled in the industry².

Our annual compliance reviews are especially unique and effective for the following additional reasons:

- **A separate review and report is generated for every single product (site, app, etc.) seeking certification.** We don't combine reviews of multiple sites or services, even if they all belong to the same company.
- **Our compliance reviews are truly independent.** We – not the client – initiate and conduct the audit, without having the client first complete a questionnaire explaining their practices. This allows us to test and review their site or service wholly objectively, without any pre-conceived notions or bias on how their site or service actually operates³. Once our review is complete, the client is then given the opportunity to comment on our findings and clarify any practices of concern.
- **Members can re-use our assessment tool at any time.** Our kidSAFE+ clients can request a re-assessment of their site or service at any time throughout their membership year and get access to the same tool we use to self-audit their own practices. This proves to be very useful, especially after a major website or service re-launch.

For more specifics on the technological tools and manual techniques we use to actually generate and document the findings in our reports (techniques we consider to be "proprietary"), please see Exhibit B of this proposal.

For purposes of this document, however, we note that all findings from our audits are recorded, tracked, and easily searchable in a database owned and maintained by KSP. This enables us to advise members on compliance issues quickly and efficiently, and in turn help expedite their ability to make any necessary changes. To date, through our compliance audits alone, we have successfully helped (or currently are helping) over 30 sites and services achieve or maintain COPPA compliance, demonstrating the effectiveness of our assessment procedures.

2. Ongoing Compliance Support

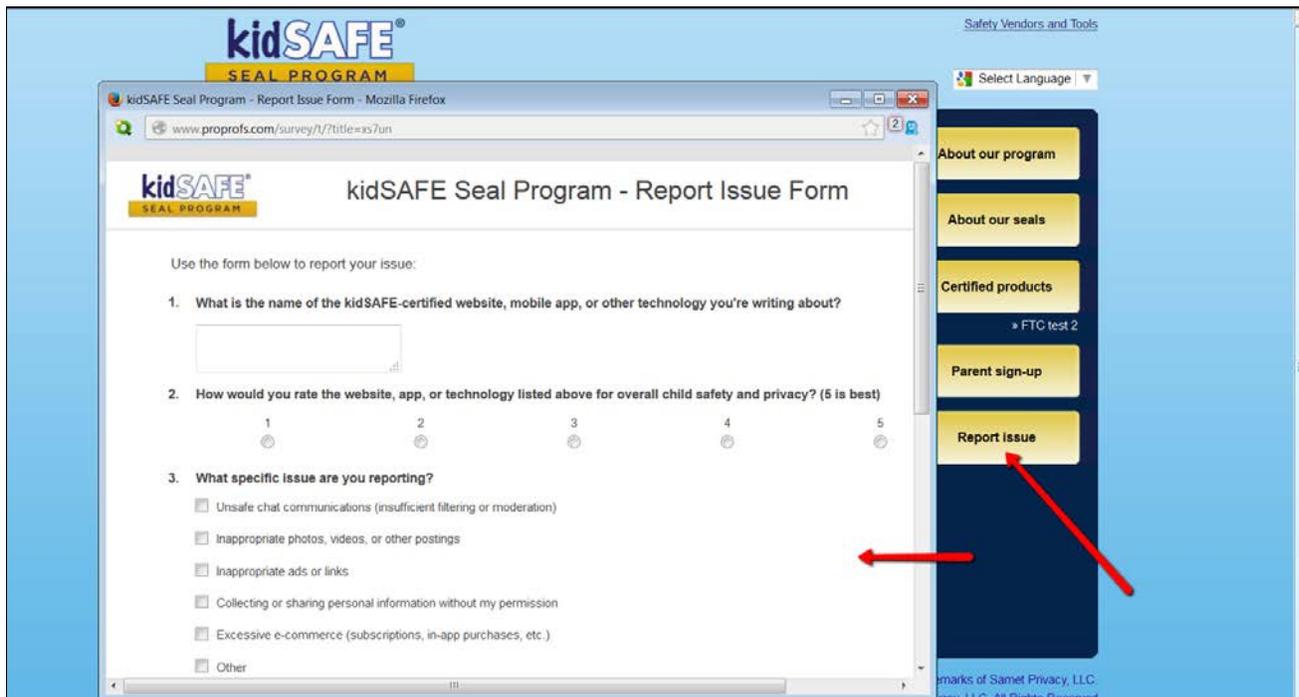
In addition to annual reviews, KSP provides ongoing compliance support to kidSAFE+ clients throughout the year. This includes responding to any client questions about COPPA, reviewing and advising on new methods of parental consent, and reviewing and approving of new website or interactive features before they launch. We also require that all kidSAFE+ members notify us of any significant changes in their data collection or use activities (see Section 5.2 of contract language above) and so we're constantly in sync with our members' policies and practices. These added consultations are very effective in helping our members launch new or modified features in conformance with COPPA and achieve a cleaner report at the time of their next annual review.

² This claim is made based on the simple premise that kidSAFE+ members are reviewed for compliance not only with all COPPA requirements (i.e., our "Additional Privacy Rules") but also with all of our Basic Safety Rules (which are not COPPA specific, but rather added safety and privacy best practices).

³ For those areas that require a company's input (i.e., that requires information or documentation available to them only), we require the client to provide this information upon the completion of our initial review. The most common example of this is information or documentation that describes their back-end data security practices or third party due diligence procedures.

3. Consumer Complaint Mechanism

KSP offers a simple, 24/7 [consumer-complaint mechanism](#) on our [website](#) that parents can use to report any safety or privacy related issues regarding one of our members. The link to this mechanism is constantly displayed on the home page and navigation bar of our website and is immediately visible when users click over to our site from a seal on a member site. A screenshot of the link and corresponding complaint form is shown below.



This online complaint mechanism has been extremely effective in helping us enforce member compliance. The form provides a selection of issue categories that are closely aligned with general COPPA requirements and the types of safety issues commonly reported by parents.

Upon our receipt of a valid complaint, the issue is forwarded to our member company for immediate investigation and resolution⁴. KSP requires that all such complaints be addressed and resolved in a timely and satisfactory manner (see Section 11 of guideline language above). Non-compliance with this requirement is grounds for termination of a member's certification.

Since offering this feature, we have received a wide variety of complaints, ranging from issues related to ad content, video content, and the management of personal or account login information⁵. In at least two instances⁶, the complaints revealed potential COPPA issues which led to important fixes by our member companies. This tool, therefore, has proven to be highly effective in influencing member behavior and driving COPPA compliance.

⁴ KSP does not require that the consumer first report the issue directly to the member company. We forward all valid complaints that come through our system to our member contact and expect their response within a 24-hour timeframe. We then regularly follow-up with the member and sometimes the consumer until the issue is completely resolved.

⁵ KSP tracks statistics regarding all issues reported, such as the percentage of parents that report the same issue. This allows us to adjust the emphasis of our enforcement activities based on the most common complaints and enhance the effectiveness of our overall program.

⁶ The first instance revealed the potential use of behavioral advertising on a child-directed site, while the second revealed potentially-insufficient filtering and moderation of a chat feature.

4. Consequences for Violations

Pursuant to Section 312.11(b)(3) of the Revised COPPA Rule, KSP has established the ability to impose strict disciplinary actions upon our kidSAFE+ members, both for violations of COPPA or other material breaches of our Certification Rules. This is clearly reflected under Section 11 of our Certification Rules and within our kidSAFE+ membership agreement (see excerpted language on page 1 above). Among other things, KSP reserves the right to:

- Raise membership fees for the violating member;
- Require compensation or other redress to consumers;
- Terminate a violating company's kidSAFE+ membership without refund;
- Temporarily or permanently remove the display of the kidSAFE+ Seal from the violating site or service⁷;
- Require anonymous payments to the United State Treasury Department.

Any one of these measures could be imposed in the event of a significant violation (e.g., a member collects personal information from children without any form of parental consent or consent exemption) or for repeated violations of the same kind that remain uncured. Of course, the specific disciplinary action taken (or combination of actions taken) will always depend on the severity of the violation.

KSP has already exercised certain disciplinary actions with great effectiveness. In one instance, a member company had activated behaviorally-targeted ads on its child-directed site without the appropriate form of parental consent. In response to this violation (which occurred on two separate occasions), KSP immediately removed the display of the kidSAFE+ Seal from the member company's website, causing its users to believe that its site was no longer safe. Upon learning of our removal of the seal (which we control remotely), the member company took swift action to remove the violating ads and get back into compliance.

In yet another similar instance, a member company had activated a third party social plug-in feature on its mixed-audience child-directed site without the appropriate form of parental consent or age screening. KSP took the same action of removing the kidSAFE+ Seal from the member website until the feature was removed or deactivated for children-aged users.

On two other occasions (one because of inappropriate video content and the other insufficient chat moderation), KSP required the affected members to issue full refunds to its consumers for previously-made transactions. This form of consumer redress has also been executed with successful results.

Conclusion

The kidSAFE Seal Program is well-positioned to be a trusted and effective partner in helping the FTC enforce and spread awareness about COPPA compliance. We look forward to the possibility of becoming the next approved COPPA safe harbor program and embracing the responsibilities and challenges that come along with that status.

As always, we would be glad to provide additional information about our assessment and enforcement techniques upon request. We would also be glad to share a copy of our full kidSAFE+ membership agreement for FTC review.

⁷ All seals issued by KSP, including the kidSAFE+ Seal, are hosted on our servers, which allows us to control the display of our seals remotely. A seal displayed on a member website, therefore, can be hidden, modified, or deleted by KSP in a matter of seconds.