

February 12, 2010

Via Electronic Submission

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

Ref: i-SAFE Safe Harbor Proposal – Comment, P094504

Dear Mr. Clark:

As a law student concerned with online privacy, I am responding to the Federal Trade Commission's Notice Announcing Submission of Proposed "Safe Harbor" Guidelines and Requesting Public Comment on the application of i-SAFE, Inc. ("i-SAFE"), 75 Fed. Reg. 1734 (Jan. 13, 2010). The FTC will approve self-regulatory guidelines only if they "provide the same or greater protections for children as those contained in §§ 312.2 through 312.9" of the FTC's Children's Online Privacy Protection Rule ("COPPR"). 16 C.F.R. § 312.10(b). I would like to direct the FTC's attention to two ways in which i-SAFE's proposed guidelines, as written, fail to provide the required level of protection.

I. Section 312.5(b)(2) – Verification of Actual Parental Consent for Internal Information Use

The COPPR allows web site operators to obtain parental consent for internal use of information via an email from a parent, but only if the email is "coupled with additional steps to provide assurances that the person providing the consent is the parent." 16 C.F.R. § 312.5(b)(2). "Such additional steps include: sending a confirmatory e-mail 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." *Id.* (emphasis added). Both of the "additional steps" listed in section 312.5(b)(2) require an operator to affirmatively attempt to contact a parent.

i-SAFE's guidelines do not provide sufficient assurances that the person providing the consent is the parent because they do not require operators to attempt to contact parents. Rather, i-SAFE's guidelines make confirmation of consent optional. Under i-SAFE's "email plus" guidelines, after receiving email consent that purportedly comes from a parent, an operator must send a confirmatory email or request "that the parent include a phone or fax number or mailing address in the reply email, so that the Participant/Licensee *can* follow up to confirm consent via telephone, fax or postal mail." i-SAFE Harbor Guideline Requirement #2, II.B.1 (emphasis added). While the operator can follow up with the parent, it is not required to do so under i-SAFE's guidelines. i-SAFE itself discourages operators from using its "email plus" method, noting that it is "the WEAKEST form of verification." i-SAFE Harbor Guideline Requirement

#2, II.A, n.4. i-SAFE's optional mechanism provides less protection for children than that provided under section 312.5(b)(2).

i-SAFE could remedy the above deficiency by making it mandatory for web site operators at least to attempt to contact parents after receiving unverified parental consent via email.

II. Section 312.4(c)(1) – Use of a Hyperlink in a Notice to a Parent

The COPPR states that notice to a parent must state “[t]hat the operator wishes to collect personal information from the child,” 16 C.F.R. § 312.4(c)(1)(i)(A), and must include enumerated information on the operator’s data collection practices, see 16 C.F.R. § 312.4(c)(1)(i)(B). The text of the Rule is silent on whether a hyperlink to a web site’s privacy policy, contained within a notice to a parent, meets these requirements. The FTC has noted, however, that “the notice to the parent must contain additional information that is not required in the notice on the site.” 64 Fed. Reg. at 59897 (Nov. 3, 1999). The FTC only allows operators to include hyperlinks to their privacy policies in notices to parents if “the additional, required information is clearly communicated to parents in the e-mail, and the hyperlink to the notice on the site is clear and prominent.” *Id.*

i-SAFE’s guidelines on notices to parents generally follow section 312.4(c)(1)(i). *See* i-SAFE Harbor Guideline Requirement #1, IV.B. i-SAFE notes, however, that “[u]se of a link to your Web site’s *Privacy Policy Statement* is acceptable.” *Id.* It is unclear from i-SAFE’s guidelines whether a web site operator is required to include in its notice to parents anything more than a link to its privacy policy. i-SAFE should attempt to clarify this ambiguity.

I respectfully urge the FTC to delay its approval of i-SAFE’s application until the above issues are addressed.

Sincerely,

Roman Swoopes