

Before the
FEDERAL TRADE COMMISSION
Washington, DC 20580

In the Matter of)
)
I-Safe Safe Harbor Proposal) **P094504**

COMMENTS OF CENTER FOR DIGITAL DEMOCRACY

The Center for Digital Democracy (“CDD”) respectfully submits these comments in response to the Federal Trade Commission’s (“FTC” or “Commission”) *Notice Announcing Submission of Proposed “Safe Harbor” Guidelines and Requesting Public Comment*.¹ CDD is a national nonprofit, nonpartisan organization dedicated to promoting responsible use of new digital communications technologies, especially on behalf of children and their families. CDD has a strong interest in ensuring that the Commission only approves self-regulatory guidelines that fully comply with the FTC’s rules and with the underlying purpose of the Children’s Online Privacy Protection Act (“COPPA”), *i.e.* to prohibit the collection of personal information from children without the verifiable informed consent of their parents.

INTRODUCTION

I-Safe, Inc.’s (“I-Safe”) Application for FTC approval of its safe harbor guidelines does not meet certain requirements of the Children’s Online Privacy Protection Rule (“COPPR” “the Rule” or “the COPPA Rule”).² The Commission should require I-Safe to amend its Guidelines (“the Guidelines” or “I-Safe Guidelines”) to provide the same or greater protections for children

¹ 75 Fed. Reg. 1734 (Jan. 13, 2010) (“Safe Harbor Notice”).

² 64 Fed. Reg. 59888 (Nov. 3, 1999).

as the COPPA Rule. Additionally, the Commission should require I-Safe to address a section of its Application that is incomplete by filing a complete version of its Guidelines that do not substantively weaken the protections offered by the existing Application. Only after I-Safe addresses the concerns identified herein will the Application meet the standard for approval under COPPA and the Rule.

I-Safe's proposed self-regulatory Guidelines represent the first new application in more than five years for FTC approval under the COPPA Rule. In reviewing this Application, the Commission has the benefit of its experience evaluating applications from five other organizations.³ The FTC approved four of those applications, but only after requiring three of the four applicants to make substantial changes in response to public comments and its own observations.⁴

The FTC will approve a safe harbor application only if the self-regulatory guidelines include "substantially similar requirements that provide the same or greater protections for children as those contained in §§ 312.2 through 312.9."⁵ While the I-Safe Application includes many positive elements,⁶ its several notable flaws undermine the regulatory scheme. CDD

³ In 2001, the FTC approved guidelines submitted by the Children's Advertising Unit of the Council of Better Business Bureaus, Inc. ("CARU"), ESRB Privacy Online ("ESRB"), and TRUSTe. *See* Letter from Benjamin Berman, Acting FTC Secretary, to Elizabeth Lascoux, CARU (Jan. 26, 2001) ("CARU Letter"), *available at* <http://www.ftc.gov/os/2001/02/caruletter.pdf>; Letter from Donald Clark, FTC Secretary, to Marc E. Szafron, The Entertainment Software Rating Board (Apr. 18, 2001) ("ESRB letter"), *available at* <http://www.ftc.gov/privacy/safeharbor/esrbapprovaltr.htm>; Letter from Donald S. Clark, FTC Secretary, to Rebecca Richards, TRUSTe (May 21, 2001) ("TRUSTe Letter"), *available at* <http://www.ftc.gov/privacy/safeharbor/trusteapprovaltr.htm>. PrivacyBot.com also applied for safe harbor status, but withdrew its application on January 10, 2001. *See* Privacy Initiatives, http://www.ftc.gov/privacy/privacyinitiatives/childrens_shp.html (last visited Jan. 27, 2010). Most recently, in 2004, the Commission approved self-regulatory guidelines submitted by Privo, Inc. *See* Letter from C. Landis Plummer, Acting FTC Secretary, to Albert Strong, Privo, Inc. (July 29, 2004) ("Privo Letter"), *available at* <http://www.ftc.gov/os/2004/08/040802privoletter.pdf>.

⁴ *See* CARU Letter, ESRB Letter, and TRUSTe Letter, *supra* note 3.

⁵ 16 C.F.R. § 312.10(b)(1) (2009).

⁶ For example, the I-Safe Guidelines require that participants include more useful information in their privacy policy than the Rule, such as statements about how changes will be communicated, that the information is subject to

therefore recommends that the Commission should only approve the Application if I-Safe amends its Guidelines to address the concerns identified in this comment, as well as any other shortcomings the Commission may recognize.

As discussed in more detail below, the I-Safe Guidelines are problematic in three respects. First, I-Safe’s notice and parental consent provisions fail to provide “the same or greater protection” as the COPPA Rule.⁷ The Guidelines do not require notice in all the necessary locations on a Web site, and the notice required may mislead parents about the extent of their consent. Second, the Application contains inconsistent statements about how often it requires independent monitoring of participating Web sites. Finally, I-Safe’s policy for resolving consumer complaints is incomplete and unnecessarily restrictive. As an initial matter, one of the paragraphs in I-Safe’s consumer complaints section ends abruptly, making it impossible to evaluate the Application. Further, by requiring that complainants treat both information received from licensees and information about the hearing process as confidential, the Guidelines deter awareness of privacy issues and stifle a complainant’s ability to alert the Commission and public advocacy groups to flaws in I-Safe’s complaint resolution procedures.

I. I-SAFE’S GUIDELINES OFFER LESS PROTECTION TO CHILDREN ONLINE THAN THE COPPA RULE.

The Commission should not approve the Application, as filed, because two of the I-Safe Guidelines provide less protection for children than those in the COPPR. The Rule states that, to

disclosure under subpoena or warrant, and an explanation of the I-Safe Harbor program. *See* I-Safe Inc., *Guideline Requirements*, Guideline Requirement #1(III)(B) & (C), pp. 10-11, *available at* <http://www.ftc.gov/os/2010/01/100106isafeguideline.pdf> (“I-Safe Guidelines”). The Guidelines also require licensees to inform I-Safe before modifying the URL or content of the privacy notice and to obtain verifiable parental consent if their privacy practices change materially. *See* I-Safe Guidelines, Guideline Requirement #1(VI), pp. 11-12.

⁷ *See* 16 C.F.R. § 312.4 (2009).

be approved, safe harbor program guidelines must require operators to adopt policies that “provide the same or greater protections for children as those contained in §§312.2 through 312.9.”⁸ When past applications did not clearly satisfy this requirement in all of their provisions, the FTC granted approval only after the applicant submitted revised guidelines addressing these concerns.⁹ In keeping with this precedent, I-Safe must modify its notice and parental consent provisions to provide the same or greater protections for children as the Rule. Additionally, the Commission should encourage I-Safe to address other weaknesses in its Application to comport with evolving industry standards and respond to prudential concerns.

A. I-Safe’s Notice Requirements Provide Less Protection for Children Than the Rule.

The I-Safe Guidelines provide less protection for children by departing from the strict language in the Rule regarding the placement of notice on a Web site. COPPR demands that operators place a link to their privacy notice “at each area where children directly provide, or are asked to provide, personal information, and in close proximity to the requests for information in each such area.”¹⁰ “Personal information” is a term of art in the Rule, referring to specific types of information including: a first and last name; a home or physical address; an e-mail address or other online contact information; a telephone number; a Social Security number; a “persistent identifier” such as an identification number, cookie, or child’s last name and photograph; and information about the child or parent combined with an identifier.¹¹

The I-Safe guideline for Web sites “directed to a general audience” uses a less demanding standard for determining where operators must place their privacy policy. Instead of placing the

⁸ *Notice Announcing Submission of I-Safe, Inc. Application for Safe Harbor*, 75 Fed. Reg. 1734, 1734 (Jan. 13, 2010) (“Safe Harbor Notice”).

⁹ See CARU Letter, ESRB Letter, TRUSTe Letter, *supra* note 3.

¹⁰ 16 C.F.R. § 312.4(b)(1)(iii) (2009).

¹¹ See 16 C.F.R. § 312.2 (2009).

policy at each place where children provide “personal information,” I-Safe demands only that licensees place a link to their privacy policy “at any place, and in close proximity to the place(s), where *online contact information* is collected.”¹² “Online contact information” is a narrower term than “personal information”¹³ as evidenced by its inclusion in both the Rule and the Guidelines as one of seven categories of “personal information.”¹⁴ The Guidelines thus require I-Safe licensees to place their privacy policy in fewer places than the Rule. For example, if a Web site collects a child’s phone number, the Rule requires that site to place a link to its privacy notice where it collects such information, but the I-Safe Guidelines do not. The same is true of locations where a site collects other information that is not “online contact information” such as a child’s physical address, Social Security number, or last name and photograph.

I-Safe licensees might also place links to their privacy notice in fewer locations than the Rule requires because a subsequent clause in I-Safe’s notice section implies that participating Web sites need to have only one link to their privacy policy. Discussing where the notice must be placed, the Guidelines refer to “[t]he link to the *Privacy Policy* statement.”¹⁵ The use of the singular “the link” suggests that a particular Web site will only have one such link, contradicting other requirements that may necessitate a single site having multiple links to its privacy policy. Accordingly, I-Safe should replace the phrase “the link” with “all links” “any links” or other prefatory words conveying the same concept.

¹² I-Safe Guidelines, Guideline Requirement #1(I)(B)(2), p. 8 (emphasis added).

¹³ The Rule and the Guidelines both define “online contact information” as “an e-mail address or any other substantially similar identifier that permits direct contact with a person online.” 16 C.F.R. § 312.2 (2009); I-Safe Guidelines, Definitions, p. 5.

¹⁴ See 16 C.F.R. § 312.2 (2009); I-Safe Guidelines, Definitions, p. 6.

¹⁵ I-Safe Guidelines, Guideline Requirement #1(II)(C), p. 9.

B. I-Safe's Guidelines Fail To Warn Parents In All Instances Where Their Children's Information is Subject to Disclosure to Third Parties.

The I-Safe Guidelines are inferior to the Rule because they fail to require operators of social networking sites to obtain separate parental consent to release to third parties information collected from children. COPPR requires operators to inform parents that they “have the option to consent to the collection and use of their child’s personal information without consenting to the disclosure of that information to third parties.”¹⁶ The FTC’s COPPA FAQs (available on its Web site) recognize that for certain sites, parental consent to collect a child’s personal information is the equivalent of consent to disclose that information:

In the case of social networking sites, chat rooms, message boards and other similar online services, sharing of personal information is part of the nature of the site. Therefore, you are not required to give parents the choice to allow you to collect and use their children’s personal information, but not disclose it to third parties, where the public disclosure of information is integral to the website’s operations. You must, however, clearly disclose the websites’ information collection and disclosure practices in your privacy oflinepolicy [sic] and direct notice to parents so that parents can make an informed decision.¹⁷

The FTC’s clarification recognizes that when a child publishes information to a social networking site or a chat room, the child is disclosing that information to certain third parties. Many social networking sites and chat rooms, however, only make their content available to members or to those individuals specifically designated by the content creator. Thus, while the nature of this kind of site is to permit disclosure to some third parties, it is not necessarily to permit disclosure to all third parties. In these situations, the Commission’s rationale applies only to information that the operator discloses to third parties who can reasonably access the information for its intended purpose. Neither the Rule nor the FTC’s Web site statement justifies

¹⁶ 16 C.F.R. § 312.4(b)(2)(iv) (2009).

¹⁷ COPPA FAQ’s, #37, <http://www.ftc.gov/privacy/coppafaqs.shtm> (last visited Feb. 27, 2010).

an operator disclosing information received from a child with parental consent to a third party who would not otherwise have legitimate access to the site.

I-Safe's Guidelines permit operators to inform parents that consent to disclose to a social networking site is all or nothing. In a note under its provision permitting parents to consent to an operator collecting information without consenting to disclosure of that information, I-Safe incorrectly states that "the Rule does not require operators to give parents the choice to allow them to collect and use their children's personal information but not disclose it to third parties (i.e., because public disclosure of information is integral to such Web sites' operations)."¹⁸ I-Safe interprets the FTC's statement too broadly (improperly attributing this statement to the Rule itself), leading to I-Safe's requirement that operators of such sites clearly indicate to parents that consent to collect information equates to consent to disclose that information.¹⁹ Under I-Safe's Guidelines, an operator can obtain permission to collect a child's information without offering parents the opportunity to protect their children's personal information from disclosure to third parties who otherwise would not have access to the social networking sites, chat rooms, message boards and other similar online services.

None of the other four safe harbor applications approved by the FTC contain this exception for social networking sites, and for good reason. The Commission should clarify the limitations of its Web site statement and reassert the protections offered by the Rule by requiring I-Safe to amend this section to require that licensees provide parents with an option to limit disclosure to third parties who would not otherwise have access to information contained on the site.

¹⁸ I-Safe Guidelines, Guideline Requirement #1(III)(A)(5), p. 10.

¹⁹ *Id.*

C. I-Safe's Application Does Not Conform To Industry Standards and Raises Several Prudential Concerns.

Evolving industry standards, as recognized in the most recently approved safe harbor application, suggest that I-Safe should take additional steps to protect children's privacy.

First, the Commission should encourage I-Safe to revise its Guidelines to clarify the limits on what information operators can collect. Currently, the Guidelines require that when obtaining verifiable consent, licensees must provide notice that "the Participant/Licensee may not collect personal information from the child unless and until the parent consents."²⁰ This unqualified statement can be construed to permit operators to collect any personal information about a child once the operator obtains parental consent. The Rule, however, prohibits operators from conditioning participation "on the child's disclosing more personal information than is reasonably necessary to participate in such activity."²¹ By suggesting that an operator can collect *any* personal information from a child once it obtains verifiable consent from the parent, I-Safe does a disservice to parents and Web site operators alike, since parents should know the boundaries of their consent and operators have an incentive (in terms of greater participation) to assure parents that the scope of the consent is limited. Accordingly, I-Safe should require operators to describe in their notice to parents that by consenting to the collection of a child's personal information, a parent only consents to disclose *for those purposes necessary to the site's operations*.²²

Second, I-Safe should revise its section on parental consent exceptions to meet or exceed the standard toward minimization of information collected established in the newest safe harbor

²⁰ I-Safe Guidelines, Guideline Requirement #2(IV)(A)(3), p. 14.

²¹ 16 C.F.R. § 312.7 (2009). I-Safe adopts section 312.7 in its Guideline Requirement #5.

²² In the next section of its Guidelines discussing parental controls, I-Safe adopts a similar approach to that which we are recommending, cross-referencing the prohibition from section 312.7 of the Rule. *See* I-Safe Guidelines, Guideline Requirement #3/4(III), p. 20.

program approved by the Commission. The Rule allows operators to collect a child's personal contact information without obtaining full parental consent in five instances, including three where the operator collects the child's name or online contact information.²³ In the most recent new application approved by the FTC, Privo, Inc. only applies the consent exceptions if the operator limits the information it collects to the child's *first* name.²⁴ Because there is no reason to collect a child's last name for the purpose of obtaining parental consent, protecting the child's safety, or supporting security or the legal process, the Privo Guidelines represent a reasonable, evolving industry standard of minimization. This standard is consistent with the Commission's prohibition against conditioning a child's participation on the child's disclosing more information than is reasonably necessary for his participation.²⁵ The Commission should encourage I-Safe to modify its guidelines to conform to the minimization standard.

Finally, if the FTC approves I-Safe's Application, it should make clear that I-Safe must amend its Guidelines in the future to comply with any modifications to the COPPA Rule. The Commission has indicated that it will initiate a review of the COPPR this year and consider amending the Rule in the face of recent technological developments.²⁶ Among the items that the Commission is likely to consider are how the Rule applies to mobile services,²⁷ how recent advancements affect the parental consent requirements,²⁸ and whether the Rule should more specifically address behavioral advertising.²⁹ Given the likelihood of these revisions, the Commission should explicitly condition its approval on I-Safe's future compliance with

²³ See 16 C.F.R. § 312.5(c) (2009).

²⁴ See Privo, Inc., *Safe Harbor Application*, Requirement 3(C), pp.3-4, available at <http://www.ftc.gov/os/2004/04/privoapp.pdf> ("Privo Guidelines").

²⁵ See 16 C.F.R. § 312.7 (2009).

²⁶ FED. TRADE COMM'N, BEYOND VOICE: MAPPING THE MOBILE MARKETPLACE 3 (2009), available at <http://www.ftc.gov/reports/mobilemarketplace/mobilemktgfinal.pdf>.

²⁷ See *id.*

²⁸ See *Children's Online Privacy Protection Rule*, 71 Fed. Reg. 13247, 13255-57 (Mar. 15, 2006).

²⁹ FED. TRADE COMM'N, *supra* note 26, at 31 & n. 223.

amendments to the Rule.

II. I-SAFE PROVIDES INADEQUATE MONITORING OF PARTICIPATING WEB SITES.

I-Safe’s monitoring program does not demand sufficient regularity of inspections to ensure adequate monitoring of participating Web sites. Under the COPPR, applicants must provide for independent assessments of operators’ compliance, such as: (1) periodic reviews of information practices conducted on a random basis, (2) periodic reviews of all information practices, and (3) seeding the operator’s databases.³⁰ Both the COPPA Rule and industry practice suggest that the periodic reviews should be conducted no less than annually. Indeed, in its Statement of Basis and Purpose accompanying the Final Rule, the Commission expressed support for the idea of quarterly monitoring before settling on a case-by-case review of specific safe harbor requests.³¹ Further, each of the safe harbor applications that the Commission has considered and approved provide for independent monitoring on no less than an annual basis.³²

I-Safe’s monitoring program is too irregular to meet the Rule’s assessment requirement. The I-Safe Guidelines provide for both initial assessments of an operator’s information practices and periodic monitoring, defining periodic as “quarterly, semi-annual, annual, or bi-annual” at I-

³⁰ 16 C.F.R. § 312.10(b)(2) (2009).

³¹ *See id.*

³² CARU provides “routine monitoring and patrolling” “throughout the year.” *See* CARU, *Application Materials / Text of Proposed Guidelines*, p. 18, available at <http://www.ftc.gov/privacy/safeharbor/caruappmaterials.pdf>. ESRB requires an annual on-site audit along with random and scheduled quarterly reviews. *See* ESRB Privacy Online, *ESRB Kids Privacy Online Seal Requirements*, § VII(4) & (5), p.6, available at http://www.ftc.gov/privacy/safeharbor/051129kidsreqs_esrb.pdf (“ESRB Guidelines”). TRUSTe provides monitoring “throughout the year;” *See* TRUSTe, *TRUSTe Children’s License Agreement – 1.0*, p. 21, available at <http://www.ftc.gov/privacy/safeharbor/truselicenceagreement.pdf> (“TRUSTe Guidelines”). Privo uses quarterly monitoring and “periodic unannounced reviews.” *See* Privo Guidelines, Requirement 7(C), p. 5.

Safe's discretion.³³ Further, these reviews "may be announced or unannounced."³⁴ By permitting reviews on less than an annual basis, the Guidelines unnecessarily take a step back from the standard established in the four programs previously approved by the Commission.

It is not sufficient that other parts of I-Safe's Application suggest monitoring on a more regular basis. The COPPA Rule clearly states that a Web site's compliance with the Rule is based on following the "self-regulatory guidelines."³⁵ Statements by a safe harbor provider made outside the actual guidelines have no binding effect under the Rule. Therefore, even though other sections of I-Safe's Application indicate that it will provide monitoring no less than annually,³⁶ the Commission should require that it incorporate such statements into the actual Guidelines.

III. I-SAFE'S COMPLAINT RESOLUTION PROCEDURES ARE INCOMPLETE AND PLACE UNNECESSARILY RESTRICTIVE BURDENS UPON COMPLAINANTS.

Consumers seeking to resolve complaints with I-Safe and its licensees face unnecessarily restrictive eligibility barriers and confidentiality requirements. First, it is impossible to accurately assess I-Safe's complaint resolution practices because this section of I-Safe's Application is incomplete, with one paragraph ending abruptly in the middle of a sentence.

Second, the parts of the policy that are complete will likely foster an underreporting of privacy

³³ I-Safe Guidelines, Guideline Requirement #7(II), p.24. While bi-annual can mean either twice in one year or every other year, given the ordering of frequencies, from most to least, the contextual meaning is every other year. Further, it would not make sense to list semi-annual if the intended meaning of bi-annual is twice in one year.

³⁴ *Id.*

³⁵ 16 C.F.R. § 312.10(a) (2009) (emphasis added).

³⁶ For example, Part I of the Application states that Participants/Licensees are subject to "quarterly or semi-annual or annual monitoring reviews" and "periodic, unannounced monitoring reviews." I-Safe, Inc., *Safe Harbor Application: Parts I-IV*, p. 5, available at <http://www.ftc.gov/os/2010/01/100106isafeapp1-3.pdf>. While this would at best bring the Application into minimum compliance with COPPR, it must be part of the Guidelines themselves to even have this effect.

concerns and reduce the likelihood of complaint resolution, because the guidelines include a needlessly restrictive confidentiality provision, strict complainant eligibility rules, and a requirement that complainants seek resolution with the operator before contacting I-Safe. The Commission should not approve the Application until I-Safe removes these excessive restrictions from its complaint resolution procedures.

A. I-Safe’s Complaint Resolution Procedures Are Incomplete.

As a threshold matter, the Commission cannot approve I-Safe’s complaint resolution procedures as submitted because they are incomplete. The COPPA Rule requires applicants to submit a “copy of the *full text* of the guidelines for which approval is sought.”³⁷ Whether by typographical error or intentional omission, I-Safe left a key provision out of its complaint resolution requirements.

I-Safe’s guideline detailing its dispute resolution procedures includes the following, partial paragraph:

A. Internal Complaint/Dispute Resolution: i-SAFE Harbor Participant/Licensees must create and implement a complaint/dispute resolution program internal to their business operations, which should be designed to fairly and expeditiously resolve privacy related queries/issues and complaints raised by consumers or by i-SAFE. Consumer complainants are encouraged to [.]³⁸

As a result of this omission, the Application is both facially and substantively flawed. Facially, I-Safe has failed to submit “the full text of the guidelines” for which it is seeking approval. Thus, the Application does not meet the COPPA Rule’s requirements for approval of a safe harbor program. Substantively, the omission undermines I-Safe’s complaint/dispute resolution procedures. It is impossible to ascertain from the text of the Guidelines what additional burdens the omitted section places upon complainants. One can certainly conceive of burdens that would

³⁷ 16 C.F.R. § 312.10 (2009) (emphasis added).

³⁸ *Id.*

increase the difficulty of filing an internal complaint, thereby weakening the protections that the Guidelines provide.³⁹

I-Safe's internal dispute resolution procedures are of heightened importance because the Guidelines require a complainant to pursue internal dispute resolution before I-Safe will intervene.⁴⁰ Accordingly, I-Safe's entire dispute resolution section could be affected by the omitted provision. Thus, the Commission should only approve I-Safe's Application if the applicant submits a complete version of its Guidelines where the text replacing the omission does not create any additional burdens upon complainants or otherwise weaken the provision.

B. I-Safe's Complaint Resolution Procedures Overly Burden Complainants.

I-Safe's procedures for resolving consumer complaints are unnecessarily restrictive for two reasons: first, the Guidelines excessively limit how complainants can use the information they obtain through the process; and second, the Guidelines inhibit users with legitimate concerns from filing complaints. Because these failures undermine the effectiveness of I-Safe's Guidelines and severely limit the amount of protection the Guidelines provide for children, the FTC should insist upon I-Safe removing these egregious provisions prior to approval.

The confidentiality provisions in the Guidelines hinder both the ability of complainants to seek external advice and, in some cases, prevent users from filing complaints at all. I-Safe requires complainants to accept several terms indemnifying I-Safe and agreeing to treat the information received through the process and the proceedings themselves as confidential.⁴¹

Specifically, the Guidelines state that persons participating in the I-Safe resolution process (1)

³⁹ As detailed *infra*, Part III, I-Safe places substantial burdens on complainants participating in its third-party dispute resolution procedures. These restrictions are already overly burdensome; additional restrictions will further discourage complainants, allowing providers to continue practices that interfere with children's privacy.

⁴⁰ I-Safe Guidelines, Guideline Requirement #7(III)(C)(3), pp. 26-27.

⁴¹ I-Safe Guidelines, Guideline Requirement #7(III)(C)(2), p. 26.

cannot hold any individuals affiliated with I-Safe liable for their actions in connection with the proceedings, (2) cannot subpoena individuals affiliated with I-Safe in any subsequent legal proceeding arising from the matter in dispute, (3) can only use information or materials provided in the dispute resolution process for the purpose of resolving the complaint through the dispute resolution process, and 4) will treat *all* proceedings as confidential.⁴²

Under the Guidelines, a complainant who is unsatisfied with how I-Safe or the operator handles his complaint is severely limited in his ability to seek third-party advice. By making the proceedings themselves confidential, users arguably cannot share their experiences with anyone, including consumer groups, attorneys, the FTC, or even Congress. This will make it more difficult for consumers to resolve their issues, and it will also prevent consumer groups and the Commission from identifying and resolving problems in the system that could affect a much broader group of users. In fact, because these terms are so restrictive, consumers will have to choose prior to filing a complaint whether it is more important to resolve their individual issue or to educate other users about the potential invasion of privacy. Such a forced decision will harm consumers and lessen the protections that the Guidelines provide to children.

No other application approved by the Commission contains such restrictive confidentiality provisions. The Privo, ESRB, and TRUSTe guidelines do not impose any such restrictive burdens upon complainants.⁴³ Even the CARU guidelines, which are the most restrictive in this regard, only require confidentiality during the proceedings and limit statements after the proceedings only if they mischaracterize the information provided or use it for

⁴² *Id.*

⁴³ See Privo Guidelines, Requirement 7(D), p. 5; ESRB Guidelines, § VII(7) & (8), p.7; TRUSTe Guidelines, §§ 6 & 7, pp. 23-24.

promotional purposes.⁴⁴ Meanwhile, I-Safe’s process permits operators to exploit the system by addressing concerns on a case-by-case basis while leaving the underlying vulnerabilities unresolved. Accordingly, I-Safe’s restrictions make operators less likely to address ongoing compliance issues, resulting in less protection for children than the Rule provides.

The Guidelines also prevent a parent who is concerned about a site’s privacy policy and chooses not to allow her child to submit personal information from submitting a complaint. This occurs because I-Safe unnecessarily restricts complainants to the persons who provided the information, parents of children whose information was collected, or persons who are the subjects of information collected.⁴⁵ Restricting the ability to complain further undermines the protection offered by I-Safe’s Guidelines. CARU’s Guidelines, on the other hand, permit any person or legal entity to complain.⁴⁶ This broader right to complain better serves the interests of COPPA and the Rule in ensuring adequate protections for online privacy.

Finally, I-Safe’s complaint procedures fail to alert the applicant or the FTC to recurring consumer complaints. The Guidelines state that I-Safe will only accept complaints after the party makes “a good faith attempt to resolve their complaint(s)/dispute(s) directly with the Participant/Licensee.”⁴⁷ I-Safe does not impose any requirements upon operators to maintain or report records relating to the complaints it receives. Thus, I-Safe may not learn about the substantial majority of problems that users are reporting. This approach further encourages operators to resolve matters on a case-by-case basis without addressing systematic problems. At the very least, the Commission should require I-Safe to specify what constitutes a “good faith

⁴⁴ CARU, *Procedures: Voluntary Self-Regulation of National Advertising*, § 2.1(D), p. 3, available at <http://www.ftc.gov/privacy/safeharbor/caruappmaterials.pdf> (“CARU Guidelines”).

⁴⁵ I-Safe Guidelines, Guideline Requirement #7(III)(C)(1), p. 26, available at <http://www.ftc.gov/os/2010/01/100106isafeguideline.pdf>.

⁴⁶ CARU Guidelines, § 2.2(A), p. 3.

⁴⁷ I-Safe Guidelines, Guideline Requirement #7(III)(C)(3)(b), p.27.

attempt.” This requirement should be minimal, such as contacting the Web site operator by e-mail. More stringent requirements make it less likely that consumers will seek resolutions, leading to a void in information about legitimate privacy issues.

CONCLUSION

The Center for Digital Democracy respectfully urges the Commission to condition approval of I-Safe’s Application on the foregoing stipulations. In order to warrant approval, I-Safe should amend its notice and parental consent guidelines to provide the “same or greater protections for children” as those provided by the respective provisions of the COPPR. In addition, I-Safe should specify in the Guidelines that it will monitor participating Web sites on at least an annual basis. Finally, I-Safe must amend its unnecessarily restrictive complaint policy by correcting the truncated paragraph, removing the confidentiality provisions, and allowing all interested users to complain. Unless I-Safe addresses all of these concerns, its Guidelines will continue to provide less protection to children than the COPPA Rule, and the FTC should reject the Application accordingly.

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Filed: March 1, 2010