

Submission to the U.S. Federal Trade Commission

TRUSTe Application for Modifications to Safe Harbor Program Requirements
Project No. P024526

Comments of The Pokémon Company International, Inc.

Submitted May 24, 2017

I. Introduction

The Pokémon Company International, Inc. (TPCi) appreciates this opportunity to submit comments to the U.S. Federal Trade Commission (FTC or Commission) in connection with the Commission's Federal Register notice regarding proposed changes to the True Ultimate Standards Everywhere, Inc. (TRUSTe) Safe Harbor program under the Commission's Children's Online Privacy Protection Rule (COPPA).

TPCi, a subsidiary of The Pokémon Company in Japan, manages the Pokémon children's entertainment properties outside of Asia, and is responsible among other things for brand management, licensing, marketing, the Pokémon Trading Card Game, the Pokémon animated TV series, home entertainment, and the official Pokémon website with its associated Pokémon Trainer Club program. Through things like a partnership with the Entertainment Software Ratings Board as well as support of the Children's Advertising Review Unit of the Better Business Bureau, TPCi is a strong proponent of children's privacy and child safety.

TPCi has established itself at the forefront in children's privacy and child safety. For example, TPCi has implemented an industry-leading age verification system developed by Veratad Technologies, LLC, to help parents feel confident that they, and only they, are the ones who have authorized their children to access products distributed and supported by TPCi, including the 2016 phenomenon "Pokémon GO". Using Veratad's solution costs TPCi hundreds of thousands of dollars every year but TPCi believes this is a small price to pay to help parents have the confidence they deserve.

Although TPCi is not a partner of TRUSTe, TPCi's mission is to help best practices become industry norms. It is in furtherance of that mission, and to support the FTC in its efforts to ensure that bad actions do not put America's children at risk, that TPCi submits this comment.

II. Recommendations

TPCi recommends that both in the context of the TRUSTe program under discussion as well as those of other Safe Harbor Organizations, the FTC should consider

removing online payment methods from approval as a method to provide Verifiable Parental Consent. TPCi also encourages increased FTC enforcement against bad actors in children's privacy and child online safety, and encourages Congress to allocate the necessary budget and resources to this end.

A. *Eliminate online payment methods for Verifiable Parental Consent*

Within the Privacy Practices of TRUSTe Children's Privacy Certification Standards, the list of approved methods by which TRUSTe COPPA Safe Harbor Participants (Participants) must obtain Verifiable Parental Consent to collect Personal Information (PII) includes the following: "Require a Parent, in connection with a monetary transaction, to use a credit card, debit card, or other online payment system that requires username and password, or other authentication, that provides notification of each discrete transaction to the primary account holder".¹ TPCi notes that the use and authorization of online payment verification systems is not unique to TRUSTe, and that many other safe harbor organizations as well as the FTC have endorsed this method.

TPCi believes that the fact that Participants can offer online payment verification systems as the sole means by which to obtain Verifiable Parental Consent risks creating a disincentive for parents to allow creation of a U-13 account. This disincentive exists in several different types of situation. Two major ones would be:

- Parents who do not have access to the accepted types of payment method or mechanism (*e.g.* those without access to credit cards).
- Parents who notice that payment of a fee is only required for creation of a U-13 account (*e.g.* those who also have children over age 13 and know no payment was required for them).

In these scenarios, a Parent might encourage a child to enter an incorrect age during the process of creating an account. Parents who have to have a credit card to authorize a child to use a website that their child wants to use, or who have to make a payment for a younger child to have access to the same things as their older siblings, those Parents might just create the account in their own name instead and let the child use it without supervision. As a result, Parents would ultimately have less control and knowledge about their children's online behavior and about the use of their children's PII. Put simply, whether a parent can't afford to pay or just doesn't want to pay for something that is otherwise available for free, financial decisions shouldn't come up for parents concerned about protecting their children's privacy.

TPCi therefore recommends that the FTC eliminate all online payment verification options for obtaining Verifiable Parental Consent as part of the proposed changes to

¹ Submission of TRUSTe's Proposed Post-Approval Modifications to its Children's Privacy Program under 16 CFR §312.11(e).

program requirements for the TRUSTe COPPA Safe Harbor Program, as well as for other similarly-situated Safe Harbor Programs.

B. *Dedicate FTC enforcement resources to investigate children's privacy*

The strategic objective of the COPPA Safe Harbor Program, as with all other Safe Harbor Programs, is to encourage increased industry self-regulation in order to strengthen and broaden industry best practices that “put parents in control of what information commercial websites collect from their children online.”² Enabling industry groups or others, including, but not limited to, TRUSTe, to submit for Commission approval self-regulatory guidelines that implement the protections of the final COPPA Rule mitigates financial and regulatory burdens on the Commission. It also helps parents to know at a glance when a company has committed to help protect children's privacy.

But for bad actors who are hoping they'll never get caught, self-regulation isn't in play. To protect their children from these companies, America's parents need help.

To discourage bad actors and help parents, TPCi recommends the dedication of FTC enforcement resources to supplement Safe Harbor self-regulation and to investigate COPPA violations outside of Safe Harbor Programs. With increased enforcement, the FTC would signal to potential bad actors who have not yet joined or who have no plans to join self-regulation activities that the FTC is there and is watching. This is especially important in a world where new developments like connected toys and other technological advancements risk putting children, and not just their PII, at increased risk. By showing potential bad actors that bad actions will not go unpunished, this enforcement will help encourage these companies to become good actors instead. And to the extent that additional budget and resources are necessary to help the FTC with these efforts, TPCi encourages Congress to consider these as a small price to pay so that America's parents can feel confident that their children's privacy and safety are being protected online.

As TPCi has shown through its Pokémon Trainer Club program and the global phenomenon that is Pokémon GO, it's very possible to combine exciting online experiences and robust parental verification without making parents pay extra for this. All that's missing from some companies is the will. TPCi encourages that the FTC be given the tools and resources necessary to help parents feel more comfortable knowing that even where companies may not have that will, someone does.

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² "Children's Online Privacy Protection Rule: Not Just for Kids' Sites." Children's Online Privacy Protection Rule: Not Just for Kids' Sites | Federal Trade Commission. Federal Trade Commission, 01 Apr. 2013. Web.

TPCi appreciates the opportunity to submit these comments to the FTC. If you have any questions about these comments, please contact Don McGowan, Chief Legal Officer and Business Affairs, The Pokémon Company International.