



Make Privacy Your Choice

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February 14, 2005

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW – Room 159-H (Annex Y)
Washington, DC 20580

Re: Sliding Scale 2005 – Project No. P054503

Dear Secretary Clark:

TRUSTe is pleased to respond to the Federal Trade Commission's ("the Commission") request for comments on whether to make permanent the "sliding scale" mechanism for obtaining verifiable parental consent under Section 312.5 of the Children's Online Privacy Protection Rule ("COPPA Rule"), 16 C.F.R. Part 312.

In May 2001, the Commission approved TRUSTe's Children's Privacy Seal Program as a safe harbor under the COPPA Rule. We are proud to have received that designation. Hundreds of thousands of young children who are active online are protected by our program, which currently includes some of the most popular Web sites, including www.disney.go.com, www.kids.msn.com, and www.epals.com.

In keeping with both the spirit and the letter of the COPPA Rule, TRUSTe works with member companies to reasonably limit the circumstances under which they collect personal information from young children online. Indeed, many TRUSTe Children's Seal holders have developed information collection practices that comply with the Rule's exceptions for limited collection of children's contact information (e.g., to respond to a child's specific request to receive a document, get assistance with homework, or to subscribe to a newsletter) under Section 312.5(c).

The TRUSTe Children's Seal program requirements do not permit Seal holders to obtain verifiable parental consent via email. Instead, seal holders must use more reliable methods of obtaining consent, even where they are collecting children's personal information solely for internal use. TRUSTe's COPPA compliance guidelines for "general audience" Web sites state that email consent



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may be used for internal uses of children's personal information only where the initial consent is confirmed either by a postal letter to the parent or by a telephone call from a trained operator. While under our seal program we do not accept a consent email from the parent's email account, without more, it is our opinion that, as a minimum legal requirement, such email consent as currently permitted is in fact sufficient. It is appropriate, in our perspective, that under some circumstances seal programs mandate best practices, in excess of legal requirements, and we feel that such a distinction is appropriate here.

The Commission's original impetus for creating the "sliding scale" rested in optimism that, with time, new developments in technology and/or industry practice would lead to truly reliable electronic or other means of assuring that companies collecting personal information from young children had, in fact, obtained the requisite parental consent. In TRUSTe's view, although there continue to be many exciting advances in e-commerce that benefit consumers generally, there has not been change sufficient to warrant a departure from the current "sliding scale." Furthermore, the "sliding scale" benefits consumers because it requires companies to carefully weigh the costs of sharing children's personal information with third parties and may, in fact, encourage companies not to share. For these reasons, we recommend that the Commission make the "sliding scale" permanent.

We thank the Commission for this opportunity to share our experience in administering the consent provisions of the COPPA Rule in the TRUSTe Children's Privacy Seal Program. We look forward to working closely with the Commission in its ongoing COPPA enforcement efforts.

About TRUSTe

TRUSTe is the leading online privacy brand. As an independent, nonprofit organization, TRUSTe is dedicated to enabling individuals and organizations to establish trusting relationships based on respect for personal identity and information in the evolving networked world. Founded in 1997, today TRUSTe runs the largest and award-winning global privacy certification and seal program, with more than 1,500 Web sites certified throughout the world, including those of AOL, Microsoft, IBM, Nationwide and The New York Times. Its seal programs are certified as safe harbors for the Children's Online Privacy Protection Act (COPPA) and the EU Safe Harbor Framework. Information about all TRUSTe programs may be viewed at our web site at <http://www.truste.org>.

TRUSTe's programs have evolved since its inception to reflect changes in law, technology, industry practices and consumer needs. For example, TRUSTe has introduced Wireless Privacy Principles and Implementation Guidelines. Further, TRUSTe has proven expertise in legitimate email and is working on several fronts to further best practices in electronic mail. Our License Agreement now includes program requirements covering Licensees' email practices. TRUSTe also significantly contributes to anti-spam efforts by operating an Independent Trust Authority ("ITA") for

email, most specifically as the certification and enforcement authority for Ironport's Bonded Sender program.

For further information, please contact: Fran Maier, Executive Director & CEO, at 415-520-3418, email: fmaier@truste.org; Cathy Bump, Vice President of Policy and Legal, at 415-520-3423, email cbump@truste.org; or Martha Landesberg, Senior Policy Advisor, at 202-835-9751; email mlandesberg@truste.org.