



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of the Secretary

January 26, 2001

Elizabeth Lascoutx, Esq.  
Vice President/Director  
Children's Advertising Review Unit  
845 Third Avenue  
New York, NY 10022

Re: Application of Children's Advertising Review Unit  
Children's Online Privacy Protection Rule Safe Harbor Program

Dear Ms. Lascoutx:

This letter is to inform you that the Federal Trade Commission has approved the application of the Children's Advertising Review Unit of the Council of Better Business Bureaus (CARU) to serve as a safe harbor program for purposes of implementing the protections of the Children's Online Privacy Protection Rule.<sup>1</sup> As you know, the Rule includes a provision enabling industry groups or others to submit self-regulatory guidelines to the Commission for approval as a safe harbor program.<sup>2</sup> Pursuant to this provision, on April 10, 2000 CARU submitted an application for Commission approval. The application was published in the Federal Register on April 28, 2000 for public comment, which closed on May 30, 2000.<sup>3</sup>

To be approved by the Commission, self-regulatory guidelines must include: (1) a requirement that participants in the safe harbor program implement substantially similar requirements that provide the same or greater protections for children as those contained in the Rule; (2) an effective, mandatory mechanism for the independent assessment of safe harbor program participants' compliance with the guidelines; and (3) effective incentives for safe harbor

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<sup>1</sup> 16 C.F.R. § 312.

<sup>2</sup> 16 C.F.R. § 312.10.

<sup>3</sup> The Commission received responses from seven commentators. In response to concerns raised in the comments, CARU supplemented its application on June 30, 2000 with additional materials, including its Compliance Checklist, which specifically describes the practices websites must implement.

program participants' compliance with such guidelines.<sup>4</sup> The Commission has determined that CARU's application for status as a safe harbor program and its self-regulatory guidelines satisfy these three criteria.<sup>5</sup>

First, the Commission has determined that CARU's "Compliance Checklist," which sets forth the requirements that each safe harbor participant must follow, mirrors the provisions of the Rule and therefore provides the same or greater protections as those contained in the Rule.

Second, the Commission has determined that the independent assessment mechanisms that CARU has created to evaluate participants' compliance with its guidelines meet the standard set out in the Rule. CARU's proposed program requires an initial self-assessment conducted by the applicant,<sup>6</sup> followed by CARU's independent assessment of the website's information practices and confirmation that the information submitted in the website's self-assessment form is accurate. The program also includes ongoing monitoring and seeding of each website to assess compliance with the self-regulatory guidelines.

Third, the Commission has concluded that CARU's safe harbor program provides a number of effective incentives to ensure operators' ongoing compliance with its guidelines.<sup>7</sup> These proposed incentives mirror two of the recommended incentives set forth in the Rule. For example, in cases where the operator fails to voluntarily comply with CARU's guidelines after CARU has opened a formal case, CARU may refer the matter to the Commission. In addition, CARU will report the formal cases it brings against website operators through press releases and in the monthly Case Reports published by the National Advertising Division and will publish a summary of its other actions in the Case Reports.

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<sup>4</sup> 16 C.F.R. § 312.10(b).

<sup>5</sup> Participants in CARU's safe harbor program must also abide by CARU's Self-Regulatory Guidelines for Children's Advertising, a set of guidelines and principles addressing, among other things, the content of advertising directed to children. CARU's decision to require its safe harbor participants to adhere to both its advertising and privacy guidelines was not relevant to the Commission's determination of whether or not to approve the safe harbor program.

<sup>6</sup> CARU requires that this self-assessment be completed and signed by a responsible corporate officer of the website operator and be submitted with the website operator's application for safe harbor status. Each safe harbor participant is required to submit to CARU a description of any material changes to its information practices and provide an updated self-assessment form to CARU annually.

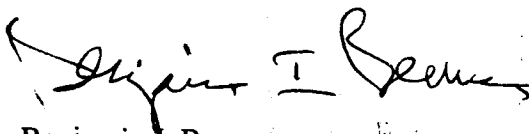
<sup>7</sup> CARU requires that each website operator agree to be subject to the provisions of the Procedures for the National Advertising Division/CARU/National Advertising Review Board. These Procedures, among other things, provide for corrective action by the operator, referrals of certain types of violations to the appropriate government agency, and public reporting of certain dispositions and violations.

In response to the publication of CARU's safe harbor application, the Commission received responses from seven commentators. The commentators expressed the following general concerns: (1) whether CARU's guidelines provide the same or greater protections of those offered by the Rule; (2) the need to clarify certain aspects of CARU's requirements for providing parental notice and obtaining prior parental consent; (3) the fact that the CARU guidelines themselves did not contain the compliance assessment mechanisms and incentives required for safe harbor status; and (4) the adequacy of CARU's complaint process. The Commission believes that each of these concerns has been addressed through submission of revised materials by CARU.

With respect to the first three issues, the Compliance Checklist and revised Attestation Form now specifically articulate each requirement that website operators must meet in order to fall within the safe harbor program and mirror the requirements set forth in the Rule. With respect to concerns about the adequacy of its complaint process, CARU has clarified that it will act on behalf of consumers, both by pursuing complaints and conducting its own investigations.<sup>8</sup>

The Commission therefore is pleased to approve CARU's application as its first safe harbor program. This program will play an important role in expanding the implementation of the COPPA Rule, and we look forward to working with CARU and other safe harbor programs to provide these important protections for children's online privacy. The Commission reserves the right to revoke this approval if at any time it determines that the approved self-regulatory guidelines and their implementation do not, in fact, meet the requirements of the Rule.

By direction of the Commission.



Benjamin I. Berman  
Acting Secretary

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<sup>8</sup> CARU has a history of enforcement of its self-regulatory guidelines in offline media and since the Rule went into effect, has initiated several inquiries into the information collection practices of children's websites and already has obtained voluntary compliance from a number of websites.