



## ENTERTAINMENT SOFTWARE RATING BOARD

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September 6, 2005

### By Fedex

Donald S. Clark  
Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, NW – Room 159  
Washington, DC 20580

Re: Revision of approved ESRB COPPA Safe Harbor Guidelines

Dear Secretary Clark:

We write to formally submit our revised ESRB Kids Privacy Online Seal Requirements (formerly known as “Principles and Guidelines”) for Federal Trade Commission review and approval. Essentially, we have taken what was previously included in Principle 7 (Children’s Privacy Requirements)<sup>1</sup> and made it into an independent set of requirements. Exhibit 1.

### Kids Privacy Online Seal Requirements

Under 16 C.F.R. § 312.10(c)(3), “Industry groups or other persons whose guidelines have been approved by the Commission must submit **proposed changes** in those guidelines for review and approval by the Commission in the manner required for initial approval of guidelines under paragraph (c)(1).” 16 C.F.R. § 312.10(c)(3) (emphasis added). Moreover, “in order to maximize efficiency, the Rule further provides that only **material changes** in approved guidelines will be subject to the public notice and comment required under this section.” 64 Fed. Reg. 59,911 (Nov. 3, 1999) (emphasis added).

Our revisions don’t substantively or materially change our approved guidelines. Rather, our revised guidelines take what was previously bundled into one document (containing both requirements for general audience websites and websites directed to children), and clearly segment and define our Privacy Online requirements with respect to children under13. The obligations of commercial website operators under our

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<sup>1</sup> Under our previous bundled “Principles and Guidelines,” we separated member responsibilities in two general categories: those required by COPPA for websites directed toward children and those imposed by our program on general audience websites. For websites subject to COPPA, we specifically outlined their legal responsibilities in Principle 7. For general audience websites, we spread their responsibilities in Principles 1 through 6.

program remain unchanged. For your review, we submit a comparative chart of our revised ESRB Kids Privacy Online Seal Requirements against the language in the COPPA Rule. Exhibit 2.

We would point out that all three of the other FTC-approved COPPA Safe Harbor programs have stand-alone children's privacy requirements. We believe that having a distinct set of requirements specifically for member websites directed toward children under 13 would provide greater clarity, thus making compliance easier and certain.

### **Revised License Agreement**

As part of this process, we also updated our license agreement. Exhibit 3. In the past, the terms of our Program Requirements were incorporated in the body of our license agreement. Over time, however, this practice proved impractical from a business perspective, especially when we needed to modify those requirements to better serve the privacy needs of consumers.

To address this concern, we modified our license agreement so that our Program Requirements are no longer directly incorporated into the body of this document. Instead, our Program Requirements have been incorporated by reference in a separate document. For example, our new license agreement specifically states:

- 1.1 By executing this Agreement, Licensee agrees to participate in the Program and to comply with the Program Requirements (which are incorporated by reference as if fully set forth herein), as they may be amended from time to time in ESRB's sole discretion.
- 1.2 Subject to the terms of this Agreement, and continuous compliance with the Program Requirements, ESRB hereby grants ....
- 2.1 In order to preserve the protections and benefits to all licensees, Licensee understands and agrees that ESRB has the right to amend the Program Requirements from time to time.

Our members will remain bound by the terms of our Program Requirements. Additionally, this change does not in any way change or diminish the privacy protection standards established by our program. Plus, this change will make it easier for us to implement improvements to our Program Requirements, while facilitating our contract negotiations with our members.

In closing, we ask that you treat these documents as confidential business materials. We appreciate your valuable assistance with this matter.

If you have any questions or concerns, please contact us at your convenience at 917-522-3241. Thank you

Very truly yours,

Harry A. Valetk, Esq.  
Director, Privacy Online

Enclosures