



Office of the Secretary

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

June 2, 2010

Mr. Dennis R. Shaw
Chief Operations Officer
i-SAFE, Inc.
500 Pasteur Court, Suite 100
Carlsbad, CA 92008

Re: Application for Approval of i-SAFE's Proposed Safe Harbor Program
(FTC Matter No. P094504)

Dear Mr. Shaw:

This letter is to inform you that the Federal Trade Commission has reviewed i-SAFE, Inc.'s application to serve as a safe harbor program for purposes of implementing the protections of the Children's Online Privacy Protection Rule ("COPPA" or "the Rule"),¹ and has determined that the application does not meet the criteria for approval set forth in the Rule.

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.² i-SAFE's application for approval as a safe harbor program was published in the Federal Register on January 13, 2010 for a public comment period that closed on March 1, 2010. The Commission received fourteen comments regarding the application.³

To be approved by the Commission, self-regulatory guidelines must include: (1) a requirement that participants in the 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 participants' compliance with the program's guidelines; and (3) effective incentives for participants' continued compliance with the program's guidelines.⁴ The Commission has determined that i-SAFE's proposed self-regulatory guidelines contained in its application do not satisfy these criteria.

¹ 16 C.F.R. Part 312.

² 16 C.F.R. § 312.10.

³ The comments are available at
<http://www.ftc.gov/os/comments/isafesafeharbor/index.shtm>.

⁴ 16 C.F.R. § 312.10(b).

First, i-SAFE's proposed safe harbor guidelines do not meet the Rule's requirements because they would result in *lesser* protections for children than provided by COPPA itself. The proposed guidelines, for example, do not adequately specify what information member sites must include in the direct notice to parents and do not require general audience sites with separate children's areas to post links to their privacy policies in *all* areas where children could provide personal information, as required by Part 312.4 of COPPA.⁵

Nor do i-SAFE's proposed guidelines provide sufficient mechanisms for assessing or enforcing participants' compliance with its requirements. For instance, i-SAFE's proposal to allow itself the discretion to periodically monitor licensees as infrequently as every other year fails to provide an effective, mandatory mechanism for the independent assessment of participants' compliance with i-SAFE's proposed guidelines, or to provide an effective incentive for participants' continued compliance with the program's guidelines. In addition, i-SAFE's proposed third-party complaint resolution system sets up significant and unnecessary hurdles for consumers that are likely to deter the reporting of complaints and the correction of flaws in participating websites' information practices.

Further, although i-SAFE may not be legally required to comply with COPPA because of its non-profit status, the Commission is concerned that i-SAFE's own website does not provide protections for children equal to or greater than the Rule. As several commenters pointed out, i-SAFE's website does not comply with COPPA in several respects. i-SAFE collects an extensive amount of personal information from children during its i-Mentor registration process, without first notifying parents and obtaining parental consent, in direct contrast to COPPA's requirements.⁶ In addition, i-SAFE's privacy policy misstates its information collection practices with regard to children under 13. The policy states that "[w]hen a child or young adult under the age of 13 attempts to register with i-SAFE, we ask them to obtain their parent's consent." According to the Commission's review, i-SAFE does not instruct children to obtain their parent's consent or provide a mechanism for parental consent.

The Commission feels strongly that *any* organization – including a non-profit organization – to which it grants safe harbor status should itself comply with COPPA when interacting with children online. In the case of i-SAFE, which promotes itself as a leader in educating children on Internet safety, the failure to provide COPPA protections is particularly troubling. This failure also would undermine i-SAFE's authority to enforce other website operators' compliance with COPPA.

⁵ See i-SAFE Proposed Guideline Requirement #1, Section II.B., at 8 and Section IV.B., at 11.

⁶ It also does not appear that i-SAFE provided notice to parents or obtained verifiable parental consent prior to permitting children to engage in its i-SAFE chat room.

The safe harbor provisions set forth in COPPA provide a unique opportunity for industry members to participate with government in protecting children's privacy and safety online. In this case, however, the proposed i-SAFE program does not meet the standards set forth by the Rule. The Commission therefore cannot approve the i-SAFE application.

By direction of the Commission.

Donald S. Clark
Secretary