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July 13, 2015

VIA ELECTRONIC MAIL (FOIA@ftc.gov)

Freedom of Information Act Request  
Office of General Counsel  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Re: Freedom of Information Act Request – 2014-15 COPPA Safe Harbor  
Annual Reports

Dear FOIA Officer:

The Center for Digital Democracy (CDD), through its counsel, requests the following documents under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, related to enforcement of the Children's Online Privacy Protection Act (COPPA), 15 U.S.C. § 6501 *et seq.*:

- All annual reports submitted to the Federal Trade Commission (FTC) by COPPA safe harbor programs for the reporting period of July 1, 2014 through June 30, 2015 as required by the COPPA Rule, 16 C.F.R. § 312.11(d)(1), including, for illustrative purposes, reports from the following safe harbor programs:

- (1) Aristotle International Inc.
- (2) Children's Advertising Review Unit (CARU)
- (3) Entertainment Software Rating Board (ESRB)

- (4) iKeepSafe
- (5) kidSafe Seal Program (kidSAFE)
- (6) Privacy Vaults Online (PRIVO)
- (7) True Ultimate Standards Everywhere (TRUSTe)

CDD asks that if any of the requested records are stored electronically that the FTC provide the requested records to CDD in their native electronic format as required under FOIA. 5 U.S.C. § 552(f)(2).

### **Request for Fee Waiver or News Media Fee Benefit**

CDD asks the FTC to waive all fees associated with this request because disclosure of the records is in the public interest or, alternatively, to limit any fees charged to CDD to reasonable duplication fees because it is a noncommercial request by a member of the news media. 5 U.S.C. §§ 552(a)(4)(A)(ii)(II), 552(a)(4)(A)(iii).

CDD is entitled to a waiver of all fees associated with this request under FOIA's public interest standard and relevant FTC regulations. 16 C.F.R. § 4.8(e). The regulations permit the FTC to waive all fees associated with a particular request when a requester demonstrates that (1) "disclosure will likely contribute significantly to public understanding of the operations or activities of the government" and (2) "that the request not be primarily in the commercial interest of the requester." 16 C.F.R. §§ 4.8(e)(2)(i)-(ii).

CDD's request qualifies under both prongs of the FTC's public interest fee waiver standard. First, disclosure of the annual reports provided to the FTC by COPPA safe harbor providers and any related correspondence will contribute significantly to the public's understanding of the FTC's oversight of private entities tasked with enforcing federal law. COPPA was designed to protect children's privacy online, an issue of significant public importance that concerns parents, consumers, lawmakers, and the general public. The instant request concerns data on how actively private safe harbor providers are policing COPPA compliance by their members. Relatedly, the records will also disclose whether and how the FTC performs its oversight role with respect to the safe harbor programs.<sup>1</sup> From the reports, the public can scrutinize both the safe harbors' performance and the FTC's actions in administering the safe harbor program under COPPA. Because CDD intends to publish the requested documents, the public at large will benefit from better understanding whether and how the FTC is protecting children's privacy online.

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<sup>1</sup> Pursuant to § 312.11(d)(1), these reports must include "at a minimum, an aggregated summary of the results of the independent assessments conducted under paragraph (b)(2) of this section, a description of disciplinary action taken against any subject operator under paragraph (b)(3) of this section, and a description of any approvals of member operators' use of a parental consent mechanism, pursuant to § 312.5(b)(3)."

Second, a public interest fee waiver is appropriate here because CDD is a noncommercial, public interest organization that advocates on behalf of consumer privacy and, in particular, robust enforcement of COPPA. CDD is a leading organization advocating for consumer protections in the digital age. The organization's predecessor, Center for Media Education (CME) brought a complaint against child-directed website KidsCom in 1997, arguing that it was engaging in unfair and deceptive practices. The FTC issued a letter agreeing with CME that KidsCom's practices were deceptive and unfair, setting forth principles regarding online information collection for children that were later codified in COPPA. Since that time, CME and its successor CDD have filed numerous comments with the agency regarding implementation of COPPA and several requests for investigations seeking FTC enforcement of COPPA violations.

Alternatively, should the FTC not grant CDD a public interest fee waiver, CDD requests that the agency limit any fees to reasonable duplications costs because it seeks the records as a member of the news media. 16 C.F.R. 4.8(b)(2)(iii). The regulation defines a member of the news media as "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to the public." *Id.* CDD staff members frequently use their editorial skills to create original reports<sup>2</sup> and blog posts<sup>3</sup> from information they collect from industry, government, and other sources that is then disseminated to the general public via CDD's websites. For further examples of CDD's journalistic work, visit [www.democraticmedia.org](http://www.democraticmedia.org) and [www.digitalads.org](http://www.digitalads.org). Through these reports and blog posts, CDD provides information and expert analysis about vital current events to policymakers, journalists, and the public. Further, under FTC regulations, should the agency fail to respond to CDD's request within the 20-day statutory limit proscribed by FOIA, the FTC may not charge any duplication fees to a member of the news media. 16 C.F.R. 4.8(b)(7).

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<sup>2</sup> See, e.g., Jeff Chester, Kathryn Montgomery, & Lori Dorfman, *Alcohol Marketing in the Digital Age*, BERKELEY MEDIA STUDIES GROUP (May 2010), <http://www.centerfordigitaldemocracy.org/sites/default/files/2010-05-alcohol-marketing.pdf>; see also Jeff Chester & Kathryn Montgomery, *Interactive Food & Beverage Marketing: Targeting Children & Youth in the Digital Age*, BERKELEY MEDIA STUDIES GROUP (May 2007), [http://drupal.digitalads.org/sites/default/files/publications/digitalads\\_digi\\_marketing\\_full.pdf](http://drupal.digitalads.org/sites/default/files/publications/digitalads_digi_marketing_full.pdf).

<sup>3</sup> See, e.g., Hudson Kingston, *FTC told that iKeepSafe proposal on children's privacy will not ensure COPPA safeguards*, CENTER FOR DIGITAL DEMOCRACY (Apr. 22, 2014), <http://www.centerfordigitaldemocracy.org/ftc-told-ikeepsafe-proposal-childrens-privacy-will-not-ensure-coppa-safeguards>; see also, Jeff Chester & Hudson Kingston, *Marvelkids Website and Hello Kitty Carnival Mobile App Charged with Violations of the Children's Online Privacy Protection Act*, CENTER FOR DIGITAL DEMOCRACY (Dec. 18, 2013), <http://www.centerfordigitaldemocracy.org/marvelkids-website-and-hello-kitty-carnival-mobile-app-charged-violations-children%E2%80%99s-online-privacy>.

Should the FTC not grant a public interest fee waiver or a news media fee benefit in response to this request, CDD asks that the determination be made in advance of incurring any fees that exceed \$25 so that it may seek administrative and/or judicial review of the decision. 5 U.S.C. § 552(a)(4)(B).

### **Duty to Segregate Non-Exempt Information**

Should any of the information requested be exempt from release under FOIA, you are required to release the nonexempt records. 5 U.S.C. § 552(b). Agencies are not allowed to issue “sweeping, generalized claims of exemption for documents,” but must instead redact only the information that is truly exempt. *Mead Data Ctr., Inc. v. U.S. Dep’t of the Air Force*, 556 F.2d 242, 260 (D.C. Cir. 1977).

Thank you for your consideration of this request. As provided in 16 C.F.R. § 4.11(a)(1)(ii), CDD anticipates your response to this request within 20 working days. For questions regarding this request please contact the undersigned at (202) 662-9543 or adm232@law.georgetown.edu.

Sincerely,

/s/

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Aaron Mackey  
Angela J. Campbell  
Institute for Public Representation

*Counsel for Center for Digital Democracy*