



UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

January 27, 2015

AgeCheq Inc.
Roy R. Smith, II, CEO
146 Pine Grove Circle, First Floor
York, Pennsylvania 17403

Re: AgeCheq Inc.'s Application for Approval of Verifiable Parental Consent Method
(FTC Matter No. P155400)

Dear Mr. Smith,

This letter is to inform you that the Federal Trade Commission ("FTC" or "the Commission") has reviewed AgeCheq Inc.'s ("AgeCheq") October 2014 application for approval of a proposed verifiable parental consent ("VPC") method under the Children's Online Privacy Protection Rule ("COPPA" or "the Rule"). After careful consideration of the application and the public comments that were submitted in this matter, the Commission has determined that AgeCheq's proposed VPC mechanism is not COPPA compliant and is not reasonably calculated, in light of available technology, to ensure that the person providing consent is the child's parent. Accordingly, the FTC denies AgeCheq's application.

Section 312.12(a) of the Rule allows parties to request Commission approval of parental consent methods not currently enumerated in the Rule.¹ This provision seeks to encourage the development of new verification methods that provide businesses more flexibility while ensuring parents are providing consent for their children. COPPA requires an applicant for Commission approval of a parental consent method to provide 1) a detailed description of the proposed parental consent method and 2) an analysis of how the method is reasonably calculated, in light of available technology, to ensure that the person providing consent is the child's parent.²

AgeCheq submitted a proposed VPC method for approval on October 1, 2014. In its application, AgeCheq proposes a "Device-Signed Parental Consent Form" (DSPCF) method, which comprises a series of steps. First, the parent registers or creates an account with an intermediary company that handles certification, or with an operator. The parent can then enter his or her personal information including name, address, birth year, and mobile phone number on a parental identity declaration form. The intermediary or operator then sends a validation code to the mobile device listed on the form. The parent must enter the validation code and then digitally sign a certification verifying ownership of the device and accuracy of the information submitted by the parent.

¹ 16 C.F.R. § 312.12(a).

² 16 C.F.R. §§ 312.12(a), 312.12.5(b).

The Commission published AgeCheq’s application in the Federal Register on November 25, 2014. The public comment period closed on December 29, 2014.³ The Commission received four comments regarding AgeCheq’s application.⁴ Three comments raise serious concerns regarding AgeCheq’s application and recommend against approval.⁵

All three commenters who oppose the recommendation – Privacy Vaults Online, Inc. d/b/a PRIVO (“PRIVO”), the Center for Digital Democracy (“CDD”), and Tom Strange – contend that AgeCheq’s proposed method is not reasonably calculated to ensure that the person granting consent is the child’s parent.⁶

PRIVO⁷ and CDD both commented that AgeCheq’s proposed method does not ensure the accuracy of the personal information submitted by the parent.⁸ They point out that a child could falsify a name, address, and birth year with the mobile device number to obtain a validation code because the method fails to provide a means to verify the information is indeed the parent’s.⁹ Furthermore, PRIVO and CDD argue that a child could easily forge a digital signature since they are often illegible.¹⁰ According to Tom Strange, AgeCheq makes the false presumption that a parent would have physical access and/or control of the device the child is using.¹¹ Since AgeCheq’s method uses a text message or automated call verification code to verify the phone number of the user rather than to verify the identity of the parent, Strange argues that it is an unreliable method and provides no credible means to ascertain that a parent is providing consent.¹²

The Commission denies AgeCheq’s application for two reasons. First, the DSPCF method would violate COPPA. For purposes of seeking verifiable parental consent, the Rule permits an operator to collect the person’s online contact information,¹³ which is defined as an email address, an instant messaging user identifier, a voice over internet protocol (VOIP) identifier, or a video chat user identifier.¹⁴ The DSPCF proposes to collect a mobile phone number and home address in order to obtain parental consent. Because a home address or mobile phone number is not online contact information, a COPPA-covered operator, or a third party intermediary on an operator’s app, cannot collect such information as part of the consent initiation process.

³ 79 Fed. Reg. 51514 (August 29, 2014).

⁴ The comments are available at <http://www.ftc.gov/policy/public-comments/initiative-584>.

⁵ See Comments of PRIVO; CDD; and Tom Strange. One commenter, Heidy Ayers, stated that parents should be monitoring their children’s access to online applications, but did not opine as to whether AgeCheq’s application should be approved.

⁶ See Comments of PRIVO at 5; CDD at 2; Strange at 1.

⁷ PRIVO also argued that AgeCheq fails to propose a new VPC method. See Comment of PRIVO at 3-4.

⁸ See Comments of PRIVO at 6; CDD at 2. Both groups also argued that the proposed method allows the operator to store the information used for verification indefinitely and does not provide any means to access or delete the information. See Comments of CDD at 4-5; PRIVO at 9-10.

⁹ See Comments of PRIVO at 5-7; CDD at 2-3.

¹⁰ See Comments of PRIVO at 8; CDD at 4.

¹¹ See Comment of Tom Strange at 3.

¹² *Id.* at 3-4.

¹³ 16 C.F.R. § 312.4(c)(i); 16 C.F.R. §312.5(c). See also COPPA FAQ H.11.

¹⁴ 16 C.F.R. §312.2.

Second, consistent with the concerns expressed in the comments cited above, the Commission has determined that the proposed method is not “reasonably calculated, in light of available technology, to ensure that the person providing consent is the child’s parent.” As AgeCheq acknowledges in its Application, the Commission expressly refused to include electronic or digital signatures in the list of enumerated VPC methods in the Rule because a digital or electronic signature alone is not a reliable means of obtaining verifiable consent.¹⁵ Specifically, in the 2013 Statement of Basis and Purpose for the final Rule, the Commission stated as follows:

The Commission has determined not to include electronic or digital signatures within the non-exhaustive list of acceptable consent mechanisms provided for in § 312.5, given the great variability in the reliability of mechanisms that may fall under this description. For instance, the Commission believes that simple digital signatures, which only entail the use of a finger or stylus to complete a consent form, provide too easy a means for children to bypass a site or service’s parental consent process, and thus do not meet the statutory standard of “reasonably calculated, in light of available technology, to ensure that the person providing consent is the child’s parent.”

AgeCheq’s proposed DSPCF method does not add further indicia of reliability because it does not verify the identity of the parent – it authenticates the device rather than the user.¹⁶ A significant number of children under 13 have their own smartphones.¹⁷ Moreover, a child could at any given time be using the parent’s device and interacting with a particular app. Given such access, a child could easily obtain a validation code from AgeCheq (or another intermediary or operator who uses the proposed method) by inputting a name, address, and (made up) birth year into the very device that the child is using to download the app. AgeCheq’s method simply assumes that the parent has complete control and authority at all times over the device. Since AgeCheq’s method does not verify the identity of the parent when providing the validation code, the additional step does not add indicia of reliability to the digital signature.

Accordingly, the Commission denies AgeCheq’s application.

By direction of the Commission.

Donald S. Clark
Secretary

¹⁵ 78 Fed. Reg. 3988.

¹⁶ 78 Fed. Reg. 3988. The Rule allows operators to use verifiable parental consent mechanisms that are not specifically enumerated, and thus does not prohibit an operator’s acceptance of a digitally-signed consent form where the signature provides other indicia of reliability. *Id.*

¹⁷ *See, e.g.,* Harris Interactive, Pearson Student Mobile Device Survey 2013 – National Topline Results (Apr. 17, 2013) (19% of fourth and fifth graders – generally age 9-11 – surveyed personally own a smartphone), *available at* <http://www.pearsoned.com/wp-content/uploads/Pearson-Student-Mobile-Device-Survey-2013-National-Report-summary-tabulations-public-release.pdf>. *See also* 76 Fed. Reg. 59818 (acknowledging “the proliferation of mobile devices among children”).