



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

Office of the Secretary

March 29, 2024

Stacy Feuer
Senior Vice President
Entertainment Software Rating Board
420 Lexington Avenue
Suite 2240
New York, NY 10170

Julie Dawson
Chief Policy & Regulatory Officer
Yoti Ltd.
6th Floor, 107 Leadenhall Street
London EC3A 4AF
United Kingdom

Kids Web Services Ltd.
111 Buckingham Palace Road
London SW1W 0SR
United Kingdom

Re: Request from Entertainment Software Rating Board, Yoti Ltd., Yoti (USA) Inc., and Kids Web Services Ltd. for Commission Approval of Children's Online Privacy Protection Rule Parental Consent Method (FTC Matter No. P235402)

Dear Ms. Feuer, Ms. Dawson, and Kids Web Services Ltd.:

This letter is to inform you that the Federal Trade Commission has reviewed your group's ("the ESRB group") application¹ for approval of a proposed verifiable parental consent ("VPC") method under the Children's Online Privacy Protection Rule ("COPPA" or "the Rule"). At this time, the Commission declines to approve the method, without prejudice to your refiling the application in the future, for the reasons stated below.

COPPA requires an applicant for Commission approval of a parental consent method that is not currently enumerated under Section 312.5(b) of the Rule 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

¹ The application is available at <https://www.regulations.gov/document/FTC-2023-0044-0002>. On March 22, 2024, the applicants informed the Commission that original co-applicant SuperAwesome Ltd. has been replaced by Kids Web Services Ltd. due to recent changes, including Kids Web Services Ltd. becoming an independent company in January 2024.

² 16 C.F.R. §§ 312.12(a), 312.5(b).

The ESRB group submitted a proposed VPC method for approval on June 2, 2023. The method involves the use of “Privacy-Protective Facial Age Estimation” technology, which analyzes the geometry of a user’s face to confirm that the user is an adult. The Commission published the application in the Federal Register on July 20, 2023, and the public comment period closed on August 21, 2023.³ The Commission received 354 comments regarding the application.⁴ Commenters opposed to the application raised concerns about privacy protections, accuracy, and deepfakes. Those in support of the application wrote that the VPC method is similar to those approved previously and that it had sufficient privacy guardrails. To provide additional time to consider the comments, the Commission extended the deadline to issue its decision on the application, initially to January 29, 2024, and then to March 29, 2024.⁵

The Commission declines to approve the ESRB group’s application at this time. The Commission is aware that Yoti submitted a facial age estimation model to the National Institute of Standards and Technology (“NIST”) in September 2023, and Yoti has stated that it anticipates that a report reflecting NIST’s evaluation of the model is forthcoming.⁶ The Commission expects that this report will materially assist the Commission, and the public, in better understanding age verification technologies and the ESRB group’s application.

On March 22, 2024, the ESRB group submitted a request for the Commission to “stay” any decision on the application for 90 days from the current March 29, 2024 decision deadline to permit time for NIST to release its facial age estimation test results, the FTC to review the results, and the applicants to brief the Commissioners. The Commission does not have sufficient information to indicate that the 90-day timeframe will be adequate to allow the Commission to receive such test results and analyze their impact on the ESRB group’s application. Therefore, rather than staying or extending the deadline for the Commission to make a decision on the application, the Commission is declining the application without prejudice to the applicants refiling in the future. The public would have an opportunity to comment on a refiled application. In declining the application at this time, the Commission is taking no position on the merits of the ESRB group’s application.

By direction of the Commission.



April J. Tabor
Secretary

³ 88 Fed. Reg. 46705 (July 20, 2023), *available at* <https://www.federalregister.gov/documents/2023/07/20/2023-15415/childrens-online-privacy-protection-rule-proposed-parental-consent-method-application-of-the-esrb>.

⁴ The comments are available at <https://www.regulations.gov/docket/FTC-2023-0044>.

⁵ *See* <https://www.ftc.gov/news-events/news/press-releases/2024/01/ftc-extends-deadline-60-days-commission-decision-esrb-application-new-consent-mechanism-under-coppa>.

⁶ *See* Yoti Facial Age Estimation White Paper, Full Version at 26 (Dec. 2023), *available at* <https://www.yoti.com/wp-content/uploads/2023/12/Yoti-Age-Estimation-White-Paper-December-2023.pdf>.