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July 30, 2014

Gregg Winiarski
General Counsel
IAC
555 West 18th Street
New York, NY 10011

Dear Mr. Winiarski:

We hereby request that you make available for our inspection the final minutes of all meetings of OKCupid's institutional review board. OKCupid is required under Maryland law to have an IRB review all human subjects research,¹ and to make the minutes of that IRB's meetings available "within 30 days of receipt of a request for the minutes from any person."² Maryland law allows OKCupid to "redact confidential or privileged information,"³ but makes no other exceptions.

The title of a recent blog post by OKCupid's president, Christian Rudder, is self-explanatory: "We Experiment On Human Beings!"⁴ The post details three experiments. In one, OKCupid removed all user pictures for a day; in another, it showed some users' profiles with and without profile text; in the third, OKCupid deceptively informed users with poor match percentages that they were good matches for each other, and vice-versa. In interviews, Mr. Rudder has compared OKCupid's experiments on users to university psychology experiments.⁵

Doing research on people brings with it ethical⁶ and legal⁷ obligations. All federally

¹ See MD. CODE ANN., HEALTH-GEN. § 13-2002(a).

² *Id.* § 13-2003(a).

³ *Id.* § 13-2003(b).

⁴ Christian Rudder, *We Experiment on Human Beings!*, OKTREND (July 28, 2014), <http://blog.okcupid.com/index.php/we-experiment-on-human-beings/>.

⁵ See *OkCupid Sometimes Messes A Bit With Love, In The Name Of Science*, ALL THINGS CONSIDERED (July 29, 2014), <http://www.npr.org/2014/07/29/336356931/okcupid-sometimes-messes-a-bit-with-love-in-the-name-of-science> (interview with Christian Rudder).

⁶ See generally NATIONAL COMMISSION FOR THE PROTECTION OF HUMAN SUBJECTS OF BIOMEDICAL AND BEHAVIORAL RESEARCH, ETHICAL PRINCIPLES AND GUIDELINES FOR THE PROTECTION OF HUMAN SUBJECTS OF RESEARCH (1979).

⁷ See 45 C.F.R. pt. 46.

funded “research involving human subjects”⁸ is subject to regulations known as the Common Rule, which require informed consent from participants⁹ and ethical review by an IRB.¹⁰ The Common Rule does not itself regulate private research, but it invites the states to do so.¹¹ In 2002, Maryland took up the invitation.¹² House Bill 917 was passed in response to several serious ethical breaches in research conducted on Maryland residents.¹³ It requires all research, regardless of funding source, to comply with the Common Rule’s requirements, i.e. informed consent and IRB review.¹⁴ To provide accountability for IRBs, House Bill 917 further requires that they make their minutes available for inspection.¹⁵

OKCupid engages in “research using a human subject” subject to House Bill 917.¹⁶ First, House Bill 917 incorporates by reference the Common Rule’s definition of “research”¹⁷ as “a systematic investigation ... designed to develop or contribute to generalizable knowledge.”¹⁸ OKCupid used randomized controlled trials to test social and behavioral hypotheses about the roles of physical appearance and suggestion in romantic attraction and compatibility. It subjected the data from these experiments to statistical analysis to validate or disprove the hypotheses; then published the results in a public setting, including conclusions about human behavior and informational graphics summarizing the observed data.¹⁹ These are contributions to generalizable knowledge developed by systematically investigating user behavior on OKCupid: they are “research.”

House Bill 917 also incorporates by reference the Common Rule’s definition of “human subject”²⁰ as “a living individual about whom an investigator ... obtains (1) Data through intervention or interaction with the individual ...”²¹ OKCupid users are “living individual[s],” Mr. Rudder is an “investigator,” and he obtained “data” “about” those users,

⁸ *Id.* § 46.101(a).

⁹ *See id.* § 46.116.

¹⁰ *See id.* § 46.109.

¹¹ *See id.* § 46.101(f).

¹² *See* MD. CODE ANN., HEALTH-GEN. §§ 13-2001 to -2004.

¹³ *See* Bette-Jane Crigger, *What Does It Mean to “Review” a Protocol? Johns Hopkins & OHRP*, IRB, July-Aug. 2001, at 13 (describing experiment that led to the death of Ellen Roche, a healthy 24-year-old); *Grimes v. Kennedy Krieger Inst., Inc.*, 782 A.2d 807 (Md. 2001) (describing experiment in which young children were deliberately exposed to apartments containing lead paint).

¹⁴ *See* MD. CODE ANN., HEALTH-GEN. § 13-2002(b); Letter from J. Joseph Curran Jr., Attorney General of Maryland, to Parris N. Glendening, Governor of Maryland, May 2, 2002, at 2, *available at* <http://www.oag.state.md.us/Healthpol/hb917letter.pdf>.

¹⁵ MD. CODE ANN., HEALTH-GEN. § 13-2003.

¹⁶ *Id.* § 13-2002(a).

¹⁷ *Id.* § 13-2001(e).

¹⁸ 45 C.F.R. § 46.102(d).

¹⁹ *See* Rudder, *supra* note 4.

²⁰ MD. CODE ANN., HEALTH-GEN. *Id.* § 13-2001(b)(1).

²¹ 45 C.F.R. § 46.102(f).

in the form of information about their messages and interactions on OKCupid. Moreover, this data was obtained “through intervention or interaction with the individual.” The Common Rule defines “intervention” to include “manipulations of the subject or the subject’s environment that are performed for research purposes.”²² Giving an OKCupid user false information about match percentages, or selectively withholding profile text, is a “manipulation[] ... of the subject’s environment.” And finally, these manipulations were carried out “for research purposes”: these are changes that OKCupid would not otherwise have made to users’ experiences. OKCupid engaged in research on “human subjects.”

OKCupid has almost certainly experimented on Maryland residents. It has nearly four million active users²³ and actively promotes its services to Maryland residents.²⁴ The match percentage experiment involved approximately five hundred users;²⁵ the picture-removal experiment affected OKCupid’s entire user population. Maryland accounts for nearly two percent of the United States population, so statistically it is overwhelmingly likely that the experimental groups included Maryland residents. Under House Bill 917, then, OKCupid is required to obtain approval from an IRB for all of its human subjects research.²⁶

We are of course happy to discuss with you the manner in which you make the OKCupid IRB’s minutes available to us. Our recommendation is that OKCupid create a website to which it regularly uploads its IRB minutes for review by the public. If you would prefer some other means (e.g. sending a DVD by registered mail), please do not hesitate to reach out to us.

We await your prompt reply.

²² *Id.*

²³ See Sam Yagan, IAC SENIOR MANAGEMENT, <http://iac.com/about/leadership/iac-senior-management/sam-yagan>.

²⁴ See *Online Dating in Baltimore*, OKCUPID, <http://www.okcupid.com/online-dating/baltimore/maryland/>.

²⁵ See Sam Machkovech, *Did OKCupid’s Dating-Results Experiment Help an Arisian Find Love?*, ARS TECHNICA (July 30, 2014), <http://arstechnica.com/business/2014/07/did-okcupids-dating-results-experiment-help-an-arsian-find-love/>.

²⁶ 45 C.F.R. § 46.109(a).

Sincerely,

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