



MEMORANDUM

March 8, 2021

To: Subcommittee on Consumer Protection and Commerce Members and Staff

Fr: Committee on Energy and Commerce Staff

Re: Hearing on “Kids Online During COVID: Child Safety in an Increasingly Digital Age”

On Thursday, March 11, 2021, at 10:30 a.m., via Cisco WebEx online video conferencing, the Subcommittee on Consumer Protection and Commerce will hold a hearing entitled, “Kids Online During COVID: Child Safety in an Increasingly Digital Age.”

I. BACKGROUND

The COVID-19 pandemic significantly increased children’s use of digital devices because of the unavailability of alternatives for entertainment or connecting with friends and family and remote learning.¹ Online time for children doubled during the pandemic and is increasing most in lower-income and minority communities.² Mobile devices such as smartphones and tablets increasingly dominate kids’ screen time but are the least monitored by parents, even for young children.³ At the same time, online advertising spending now outpaces all other media, and spending on digital ads targeting children is estimated to reach \$1.7 billion in 2021.⁴ Ninety-five percent of digital apps marketed to or commonly used by children under

¹ U.S. Census Bureau, *Nearly 93% of Households With School-Age Children Report Some Form of Distance Learning During COVID-19* (Aug. 26, 2020) (www.census.gov/library/stories/2020/08/schooling-during-the-covid-19-pandemic.html).

² *Kids’ Screen Time Up 50% During Pandemic*, Axios (Jan. 17, 2021); Common Sense Media, *The Common Sense Census: Media Use by Kids Age Zero to Eight* (2020).

³ Common Sense Media, *Comments on Endorsement Guidelines, P204500* (June 22, 2020) (www.regulations.gov/comment/FTC-2020-0017-0095); Common Sense Media, *The Common Sense Census: Media Use by Kids Age Zero to Eight* (2020).

⁴ *2017 Was the Year Digital Ad Spending Finally Beat TV*, Vox (Dec. 4, 2017); Statista, *Spending on Advertising to Children Worldwide from 2012 to 2021, by Format (in Billion US dollars)* (www.statista.com/statistics/750865/kids-advertising-spending-worldwide/) (accessed Mar. 1, 2021).

five contain advertising.⁵ Children in low-income and low-education households are more likely to play free apps containing more advertisements.⁶

II. SELECTED CONSUMER PROTECTION ISSUES AFFECTING CHILDREN

Children and teens are particularly vulnerable to negative effects of digital marketing and persuasive design.⁷ Children have difficulty distinguishing ads from other content, and today's digital ecosystem often intentionally blurs content and advertising adding confusion for kids.⁸ Frequent use of interactive media online is associated with addiction, anxiety, depression, suicide, sleep deprivation, obesity, and aggression.⁹

A. Children's Privacy

Despite existing regulations, data collection and third-party tracking is prevalent on children's apps and apps commonly used by children, which allows for profiling and behavioral advertising targeting children.¹⁰ Like many adults, children and teens do not fully understand how their personal information may be collected and used by companies, but may be less aware than adults of the consequences of such collection.¹¹

B. Manipulation: Persuasive Design, Dark Patterns, and Influencer Marketing

Dark patterns are design features used to manipulate users into behavior profitable for a company but contrary to user intent.¹² Many kids' apps include features such as cartoon characters, free versions with teasers of the paid version ("freemium apps"), video ads that interrupt play, encouragement of in-app purchases, and prompts for social media sharing.¹³

⁵ *Your Kid's Apps Are Crammed with Ads*, New York Times (Oct. 30, 2018).

⁶ University of Michigan Health Lab, *Advertising in Kids' Apps More Prevalent Than Parents May Realize* (Oct. 30, 2018) (labblog.uofmhealth.org/lab-report/advertising-kids-apps-more-prevalent-than-parents-may-realize).

⁷ American Academy of Pediatrics, *Digital Advertising to Children* (June 20, 2020).

⁸ *Id.*; Ofcom, *Children and Parents: Media Use and Attitudes Report* (Nov. 29, 2017).

⁹ American Academy of Pediatrics, *Digital Advertising to Children* (June 20, 2020).

¹⁰ *Id.*

¹¹ *Id.*

¹² Federal Trade Commission, *Statement of Commissioner Rohit Chopra Regarding Dark Patterns in the Matter of Age of Learning, Inc.* (Sept. 2, 2020).

¹³ American Association for the Advancement of Science Eureka Alert, *Advertising in Mobile Apps for Young Children—Study Raises Concerns about Frequency and Content* (Oct. 30, 2018) (www.eurekaalert.org/pub_releases/2018-10/wkh-aim103018.php).

Another example is “gamification” in which elements of game play (e.g., point scoring, competition, etc.) are used as a marketing technique, often to encourage in-app purchases.¹⁴ “Unboxing” videos featuring so-called “kidfluencers” opening packaged items before discussing them in detail are also popular and often lack disclosures for sponsored content.¹⁵

C. Exposure to Harmful Content

Exposure to advertising is associated with unhealthy behaviors—such as consumption of unhealthy food and beverages, tobacco products, electronic cigarettes—yet, unhealthy items feature heavily in online videos popular with kids.¹⁶ Inappropriate content has appeared on video websites intended for children, including children’s characters in violent or sexual situations, conspiracy theory videos, and other age-inappropriate content.¹⁷ In addition, cyberbullying has increased with increased online time during the pandemic.¹⁸

III. RELATED FTC AUTHORITIES

The FTC has authority under Section 5 of the FTC Act to bring cases against apps and websites that engage in unfair and deceptive acts or practices, including those harming children.¹⁹ The Children’s Online Privacy Protection Act (COPPA) of 1998 requires the FTC to issue and enforce regulations protecting children’s privacy for children under 13 years old.²⁰ COPPA regulations were last updated in 2013, but the FTC issued a proposed rule in 2019

¹⁴ Letter from Angela J. Campbell, Counsel for Campaign for a Commercial-Free Childhood and Center for Digital Democracy, to Donald S. Clark, Secretary of the Federal Trade Commission, and Andrew Smith, Director, Bureau of Consumer Protection, Federal Trade Commission (Oct. 30, 2018).

¹⁵ *Online and Making Thousands, at Age 4: Meet the Kidfluencers*, New York Times (Mar. 1, 2019); *Toy Unboxing Videos Have Taken Over YouTube. Some Experts Say They Exploit Kids.*, Vox (Mar. 22, 2019).

¹⁶ *Are ‘Kidfluencers’ Making Our Kids Fat?*, New York Times (Oct. 26, 2020).

¹⁷ *On YouTube Kids, Startling Videos Slip Past Filters*, New York Times (Nov. 4, 2017); *The YouTube Kids App Has Been Suggesting A Load of Conspiracy Videos to Children*, Business Insider (Mar. 17, 2018).

¹⁸ Children’s Hospital of Philadelphia, *Cyberbullying During COVID-19* (Oct. 27, 2020) (www.chop.edu/news/health-tip/cyberbullying-during-covid-19).

¹⁹ 15 U.S.C. § 45.

²⁰ Federal Trade Commission, *Complying with COPPA: Frequently Asked Questions* (July 2020) (www.ftc.gov/tips-advice/business-center/guidance/complying-coppa-frequently-asked-questions-0).

requesting comment on potential new updates.²¹ The FTC issues guidance for businesses on unfair or deceptive acts or practices, including various forms of online advertising.²²

III. WITNESSES

The following witnesses have been invited to testify:

Ariel Fox Johnson

Senior Counsel, Global Policy
Common Sense Media

Dr. Nusheen Ameenuddin

Chair
Council on Communications and Media
American Academy of Pediatrics

Corey A. DeAngelis

Director of School Choice, Reason Foundation
Adjunct Scholar, Cato Institute
Executive Director, Educational Freedom Institute

²¹ Federal Trade Commission, *Request for Public Comment on the Federal Trade Commission's Implementation of the Children's Online Privacy Protection Rule*, 84 Fed. Reg. 35842 (July 25, 2019) (proposed rule).

²² Federal Trade Commission, *Advertising and Marketing* (www.ftc.gov/tips-advice/business-center/advertising-and-marketing) (accessed Mar. 4, 2021).