

United States Senate

WASHINGTON, DC 20510

June 27, 2019

Mark Zuckerberg
Chief Executive Officer
Facebook
1 Hacker Way
Menlo Park, CA 94025

Dear Mr. Zuckerberg:

We write regarding reports that Facebook and its partners have failed to stop exploitative practices that lead children to spend significant sums of their parents' money without permission on its platform. We first raised concerns with you about this issue — known as “friendly fraud” — in a January 29, 2019 letter. Yet according to a recent report from The Center for Investigative Reporting, Facebook has failed to make key changes to payment policies that would effectively protect your users.¹ We urge you to promptly address this issue and put your users first.

Facebook's actions thus far have failed to demonstrate a commitment to ending friendly fraud on your platform. In your response to our January 29, 2019 letter, you pointed to Facebook's less-than-1% *overall* chargeback rate — the percentage of charges that a credit card company disputes at the request of the consumer — and stated that Facebook is incentivized to “prevent chargeback requests.”² However, Facebook's payment policies allow an *individual* developer to maintain a chargeback rate of up to 5% before potentially penalizing it, well above the red flag rate recommended by the Federal Trade Commission. Moreover, it is unclear what specific recourse or actions are taken when a developer exceeds this rate. Permitting a chargeback rate of as much as 5% runs contrary to industry standards and suggests that Facebook is unwilling to address the problem of young users spending their families' money without parental awareness or consent.

Moreover, a complaint filed on February 21, 2019 with the Federal Trade Commission (FTC) by more than a dozen child and consumer advocacy groups suggests that Facebook's chargeback policies may violate the Federal Trade Commission Act (FTCA).³ Multiple consumers have reported Facebook's charging them hundreds or even thousands of dollars after their children

¹ Nathan Halverson, *Facebook's fraud policies raised red flags. It still hasn't changed them*, Reveal from The Center for Investigative Reporting (June 4, 2019), <https://www.revealnews.org/article/facebooks-fraud-policies-raised-red-flags-it-still-hasnt-changed-them/>.

² Letter from Kevin Martin, Vice President for U.S. Public Policy, Facebook, to Senator Ed Markey and Senator Richard Blumenthal (Feb. 20, 2019).

³ *Request for an investigation of whether Facebook has engaged in unfair or deceptive practices in violation of Section 5 of the Federal Trade Commission Act and the Children's Online Privacy Protection Act (COPPA)*. Submitted to the Federal Trade Commission by Common Sense Media et al (Feb. 21, 2019), http://d2e111jq13me73.cloudfront.net/sites/default/files/uploads/2.21.19_fbftcletter.pdf.

unknowingly spent those sums in games on Facebook's platform.⁴ The complaint alleges that Facebook's conduct violates Section 5 of the FTCA⁵, which prohibits unfair or deceptive trade practices. Specifically, Section 5 makes it illegal for a company to engage in practices that (1) cause substantial injury to consumers; (2) the consumers cannot avoid; and (3) are not outweighed by countervailing benefits to consumers or to competition.⁶ Profiting off of the mistakes and deception of children can never be considered fair.

In light of these continued concerns, we urge you to reduce from 5% to 1% (or lower) your acceptable chargeback rate for third party developers. We also request that by July 18, 2019, you answer the following questions:

1. Will Facebook commit to lowering its acceptable chargeback rate for individual developers to 1% or lower to reflect industry and FTC standards? If not, why not?
2. What specific actions are taken by Facebook when a developer exceeds the 5% chargeback rate? What percent of developers that exceed this rate have been suspended?
3. Will Facebook commit to strengthening penalties for developers who exceed its chargeback threshold? If not, why not?
4. In response to our January 29, 2019 letter, you stated that you have "streamlined" the refund process for purchases by minors.⁷ Please provide further detail regarding the specific changes Facebook has made to this process.
5. Has the FTC contacted you regarding the February 21, 2019 complaint? If so, what steps has Facebook taken to cooperate with the FTC on this and all related investigations?

Thank you in advance for your attention to these requests.

Sincerely,



Edward J. Markey
United States Senator



Richard Blumenthal
United States Senator

⁴ *Id.* at 4.

⁵ *Id.* at 3.

⁶ 15 U.S.C. §45(n) (2012).

⁷ Letter from Kevin Martin, Vice President for U.S. Public Policy, Facebook, to Senator Ed Markey and Senator Richard Blumenthal (Feb. 20, 2019).