

United States Senate

May 8, 2020

The Honorable Joseph Simons
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

The Honorable Noah Phillips
Commissioner
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

The Honorable Rohit Chopra
Commissioner
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

The Honorable Rebecca Slaughter
Commissioner
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

The Honorable Christine Wilson
Commissioner
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chairman Simons, Commissioner Phillips, Commissioner Chopra, Commissioner Slaughter, and Commissioner Wilson:

As the Federal Trade Commission (FTC) considers revisions to the Children’s Online Privacy Protection Act Rule (COPPA Rule), we write to urge you to use your authority under the FTC Act to investigate the use of children’s personal information by tech companies. Specifically, the Commission should conduct a review of data collection and processing practices of educational technology (“ed tech”) companies and firms involved in digital marketing. The FTC must have all necessary facts and a full public record as it reviews the COPPA Rule to ensure that this important privacy safeguard effectively protects kids online today.

Children are a uniquely vulnerable population that deserve heightened privacy protections. The FTC should take extreme caution not to weaken – either purposefully or inadvertently – privacy protections under COPPA. In order to ensure that the COPPA Rule review benefits young users, the FTC should use its statutory power to uncover critical information about evolving and

widespread threats to children’s privacy that warrant further protections. Regrettably, much of the critical information on how individuals’ personal data is used remains obfuscated and hidden by those holding that data. Fortunately, Section 6(b) of the FTC Act provides the Commission with the ability to compel entities to submit “annual or special . . . reports or answers in writing to specific questions” to uncover findings about the entities’ “organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals.”¹ Congress granted the FTC the power to undertake important fact-finding efforts, and we urge you to use this tool to better understand children’s privacy issues online as an essential step in the COPPA Rule review.

Online platforms and software offerings have become integral to American education and essential to parents’ support of children’s development. Many ed tech companies are offering innovative solutions to challenges facing our education system and are enhancing students’ learning experiences. The Coronavirus pandemic has brought these changes into the open for many parents through an “unprecedented shift to online education,” hastily shifting traditional classroom activities to online platforms.² Many of these changes will remain after the Coronavirus pandemic is over, as leading technology companies continue to expand their reach into kids’ educational experiences.³ For the COPPA Rule to meet the needs of educators, parents, and children, it must account for this new normal.

Collection of children’s data is central to a significant number of ed tech services, and experts have found “widespread lack of transparency and inconsistent privacy and security practices in the industry for educational software and other applications used in schools and by children outside the classroom for learning.”⁴ Cybersecurity breaches of ed tech services also pose a heightened risk of exploitation by predators. The Federal Bureau of Investigation has warned that “[m]alicious use of [student] data could result in social engineering, bullying, tracking, identity theft, or other means for targeting children.”⁵

In order to protect young students’ privacy, the Commission should seek information from ed

¹ Federal Trade Commission Act (FTC Act), 15 U.S.C. §§ 41-58 (1994).

² Valerie Strauss, *As schooling rapidly moves online across the country, concerns rise about student data privacy*, Wash. Post (Mar. 20th), <https://www.washingtonpost.com/education/2020/03/20/schooling-rapidly-moves-online-across-country-concerns-rise-about-student-data-privacy/>.

³ Jon Porter, *Google donates free Chromebooks and 100,000 mobile hotspots for rural California students*, The Verge (Apr. 2, 2020), <https://www.theverge.com/2020/4/2/21204057/google-free-chromebooks-wi-fi-hotspots-california-schools-students-remote-learning-coronavirus>; Catherine Shu, *Facebook’s Messenger Kids will launch in more than 70 additional countries, roll out new features*, Tech Crunch (Apr. 22, 2020), <https://techcrunch.com/2020/04/22/facebooks-messenger-kids-will-launch-in-more-than-70-additional-countries-roll-out-new-features/>.

⁴ Common Sense Media, *The State of Kids’ Privacy: Evaluating the Safety and Security of Kids’ Tech* (July 31, 2019), <https://www.common Sense Media.org/research/the-state-of-kids-privacy-evaluating-the-safety-and-security-of-kids-tech>.

⁵ Federal Bureau of Investigation, *Public Service Announcement: Education Technologies: Data Collection and Unsecured Systems Could Pose Risk to Students* (Sep. 13, 2018), <https://www.ic3.gov/media/2018/180913.aspx>.

tech companies that serve children and teens. We encourage you to use your Section 6(b) authority to examine ed tech issues such as:

- What personal data ed tech services and providers collect from children and teens;
- How they obtain consent for this collection;
- How long they retain students' data and what their process is for deleting student data;
- Whether they offer incentives for schools to integrate their products and services into their systems, and whether they offer incentives, such as financial discounts, for adults to consent to children's data collection;
- How they collect and process children's biometric information, including facial recognition data, in educational settings, including outdoor educational settings;
- Whether they use student data for any non-ed tech products or services, including whether they use children's data for behavioral advertising;
- What steps they take to maintain the security of students' data;
- Whether they have suffered any data breaches involving information about children or teens;
- Whether parents have adequate alternatives to consent to the collection of their children's data, and what options are provided to parents in the course of obtaining consent; and
- How they notify parents and schools about changes to their terms of service.

Where children's privacy is concerned, the Coronavirus pandemic has transformed more than just ed tech; it also has changed children's entertainment – along with the market to push advertisements and products to young people. Kids spend a vast amount of time consuming content online. Recent research shows that American children ages 8 to 12 spend almost five hours a day watching screens, and the percent of young people who report watching videos online on a daily basis has more than doubled since 2015.⁶ These trends have only increased in the wake of the Coronavirus pandemic, with many children increasing screen time by 50% or more.⁷ Digital marketing has inundated kids' increasingly connected lives. Brands are eager to connect with consumers at young ages, and the global kids digital advertising market is poised to reach \$1.7 billion by next year.⁸ This steep demand for children's attention online comes with a steep demand for their personal information. In this way, the rise in digital marketing directed to children presents risks of privacy invasions.

The FTC should use its investigatory powers to better understand commercial entities that engage in online advertising to children—especially how those commercial entities are shifting their marketing strategies in response to the Coronavirus pandemic and increased screen time

⁶ Victoria Rideout, V & Michael B. Robb, *The Common Sense Census: Media Use by Tweens and Teens*, Common Sense Media (2019).

⁷ Sara Fischer, *Kids' Daily Screen Time Surges During Coronavirus* (Mar. 31, 2020), <https://www.axios.com/kids-screen-time-coronavirus-562073f6-0638-47f2-8ea3-4f8781d6b31b.html>.

⁸ SuperAwesome, *PwC Kids Digital Media Report 2019 estimates global kids digital advertising market will be worth \$1.7bn by 2021* (June 11, 2019), <https://www.superawesome.com/2019/06/11/pwc-kids-digital-media-report-2019-estimates-global-kids-digital-advertising-market-will-be-worth-1-7bn-by-2021/>.

among children. The Commission should seek information from companies involved in digital marketing to children on the internet, covering the following topics:

- What personal data they collect from children and teens;
- How they obtain consent for this collection;
- Whether parents are provided adequate opportunities to consent to such advertising, and how a parent's decision not to consent to collection of their child's data would affect the child's experience with the product or service;
- How they employ data analytics and machine learning techniques to determine what content children are likely to consume and to target those audiences;
- Whether they collect voice information from children, and if so, how they use this information;
- What third parties they work with to collect and process children's information;
- Whether they sell or share children's data, including to affiliated companies and data brokers;
- Whether they use geolocation information for marketing to children, and if so, how they do so;
- Whether they collect information about protected demographic characteristics or information that can be used as proxies for that type of information from children;
- If they operate a platform for both adults and children, how they determine if a user is a child;
- How they have shifted their data practices in response to the Coronavirus pandemic; and
- Whether they participate in a safe harbor program under COPPA, and if so, have there been any instances in which the safe harbor program enforced its requirements.

Congress provided the FTC the authority to update the COPPA Rule based on this body's understanding that such an important law needs to address rapid and meaningful changes in technology and markets. Ed tech and digital advertising pose such complex and unavoidable challenges to the privacy and safety of children that it is imperative that the FTC addresses the unique challenges posed to parents by both industries now. We urge the FTC to use every tool available to it to ensure that the law rises to these challenges and protects our children.

Thank you for your attention to this important matter.

Sincerely,

Edward J. Markey
United States Senator

Josh Hawley
United States Senator

Richard Blumenthal
United States Senator

Bill Cassidy, M.D.
United States Senator

Richard J. Durbin
United States Senator

Marsha Blackburn
United States Senate