

Congress of the United States
Washington, DC 20515

September 29, 2022

The Honorable Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chair Khan:

Threats to young people online have reached a crisis point. As the Federal Trade Commission (FTC) explores rules to “crack down on harmful commercial surveillance and lax data security,”¹ we applaud this work and urge you to continue efforts to implement strong privacy safeguards that effectively protect children and teens online, including fulfilling your obligation to update regulations under the Children’s Online Privacy Protection Act (COPPA). FTC action on these issues is critical, but it does not diminish Congress’ responsibility to pass strong legislation with protections for young users.

Children and teens are uniquely vulnerable populations on the internet. Studies show that kids lack the cognitive ability to defend themselves against common practices in the digital ecosystem.² Kids’ screen time has doubled during the pandemic;³ 35 percent of parents report that their children began using social media at a younger age than they had originally planned;⁴ and close to half of teens say they are online “almost constantly.”⁵ Experts agree that we have reached a crisis point for children and teens online, as the rates of mental health challenges for them soar,⁶ and the U.S. Surgeon General has called on technology and social media companies to address these threats to young people.⁷ In countries around the world, government entities have begun to take action by enacting policies that combat pernicious online threats to kids.⁸ The

¹ Commercial Surveillance and Data Security Rulemaking, Federal Trade Commission (Aug. 11, 2022), <https://www.ftc.gov/legal-library/browse/federal-register-notices/commercial-surveillance-data-security-rulemaking>.

² Joseph Jerome & Ariel Fox Johnson, *AdTech and Kids: Behavioral Ads Need A Time-Out*, CommonSense (May 8, 2021), <https://www.commonsensemedia.org/sites/default/files/uploads/pdfs/blog/adtech-and-kids-explainer.pdf>.

³ Sara Fischer & Margaret Harding McGill, *Kids’ screen time up 50% during pandemic*, Axios (Jan. 17, 2021), <https://wwwaxios.com/kids-screen-time-pandemic-112650a6-743c-4c15-b84a-7d86103262bb.html>.

⁴ Written Testimony of Josh Golin, Executive Director, Fairplay, House Energy and Commerce Subcommittee on Consumer Protection Hearing “Holding Big Tech Accountable: Legislation to Build a Safer Internet,” 117th Cong. (Dec. 9, 2021), https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Witness%20Testimony_Golin_CPC_2021.12.09.pdf.

⁵ Jennifer Korn, *Nearly half of all teens say they use the internet ‘almost constantly,’ survey finds*, CNN Business (Aug. 11, 2022), <https://www.cnn.com/2022/08/11/tech/facebook-teen-usage-pew/index.html>.

⁶ AAP-AACAP-CHA Declaration of a National Emergency in Child and Adolescent Mental Health, American Academy of Pediatrics (Oct. 19, 2021), <https://www.aap.org/en/advocacy/child-and-adolescent-healthy-mental-development/aap-aacap-cha-declaration-of-a-national-emergency-in-child-and-adolescent-mental-health/>.

⁷ Protecting Youth Mental Health: The U.S. Surgeon General’s Advisory, Dep’t of Health and Human Services (Dec. 7, 2021), <https://www.hhs.gov/sites/default/files/surgeon-general-youth-mental-health-advisory.pdf>.

⁸ Introduction to the Age appropriate design code, United Kingdom Information Commissioner’s Office (2021), <https://ico.org.uk/for-organisations/guide-to-data-protection/ico-codes-of-practice/age-appropriate-design-code/>;

United States must now do the same.

We are, therefore, pleased that the FTC recently issued an Advanced Notice of Proposed Rulemaking (ANPRM) with specific questions pertaining to surveillance threats to young users.⁹ The questions in this ANPRM probe important issues, such as techniques that encourage sharing of personal information; the value of default privacy-protective settings; the need for heightened protections for kids on platforms that are not necessarily directed to children; the effects of online designs that prolong kids' online activity; the merits of enacting safeguards that distinguish between young users of varying age groups; and the harms stemming from targeted advertising to kids. These questions are very important, and we commend you for posing them. The FTC should closely review experts' public responses to aid the FTC in crafting strong and enforceable rules that protect children and teens online. In doing so, the FTC will build on its record of protecting children's privacy, including through enforcement actions¹⁰ and publication of instructive policy statements and guidance.¹¹

The FTC must also utilize its authority to update its COPPA regulations. Under this legislation, in response to technological and societal development, the Commission can regularly promulgate rules to protect children's privacy. In 2012, for example, the FTC approved revisions to the COPPA regulations, broadening the definition of protected information to include photos, videos, geolocation information, and online cookies.¹² Now, we encourage the FTC to use its regulatory authority to institute additional protections that address pressing threats online, a process the Commission has already begun. For example, the Commission should consider:

- expanding the definition of "personal information" covered under COPPA;
- implementing rules to effectuate COPPA's prohibition on conditioning a child's participation in an online activity on the child sharing more data than is reasonably necessary;
- implementing rules to effectuate COPPA's requirement that platforms protect the confidentiality, security, and integrity of children's data;

Perry Stein, Quentin Ariès & Cat Zakrzewski, *European Parliament gives initial approval to rules that would change big tech data collection, advertising*, Washington Post (Jan. 20, 2022), <https://www.washingtonpost.com/world/2022/01/20/european-union-digital-services-act/>.

⁹ *Commercial Surveillance and Data Security Rulemaking*, Federal Trade Commission (Aug. 11, 2022), <https://www.ftc.gov/legal-library/browse/federal-register-notices/commercial-surveillance-data-security-rulemaking>.

¹⁰ *FTC Takes Action Against Company Formerly Known as Weight Watchers for Illegally Collecting Kids' Sensitive Health Data*, Federal Trade Commission (Mar. 4, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/03/ftc-takes-action-against-company-formerly-known-weight-watchers-illegally-collecting-kids-sensitive>.

¹¹ *Policy Statement of the Federal Trade Commission on Education Technology and the Children's Online Privacy Protection Act*, Federal Trade Commission (May 19, 2022), <https://www.ftc.gov/legal-library/browse/policy-statement-federal-trade-commission-education-technology-childrens-online-privacy-protection>; *FTC to Ed Tech: Protecting kids' privacy is your responsibility*, Federal Trade Commission (May 29, 2022), <https://www.ftc.gov/business-guidance/blog/2022/05/ftc-ed-tech-protecting-kids-privacy-your-responsibility>.

¹² Press Release, Federal Trade Commission, *FTC Strengthens Kids' Privacy, Gives Parents Greater Control Over Their Information By Amending Children[‘s] Online Privacy Protection Rule*, (Dec. 19, 2012), <https://www.ftc.gov/news-events/news/press-releases/2012/12/ftc-strengthens-kids-privacy-gives-parents-greater-control-over-their-information-amending-childrens>.

- ensuring that COPPA's requirements protect children on the platforms they actually use by updating COPPA's regulations defining platforms that are directed to children and updating regulations defining platforms that have actual knowledge they are collecting data from children;
- implementing regulatory protections that reflect the increased use of online platforms for educational purposes; and
- implementing regulatory protections that reflect changes in online advertising practices.

Strong FTC action to protect young people as their use of technology increases is a needed step in the right direction — one that in no way diminishes Congress' obligation to pass legislation to safeguard children and teens online. The urgency of this issue requires an all-of-the-above approach, and the FTC has a leading role to play. We look forward to working with you as these processes move forward to ensure that kids and teens in the United States have the online protections they need and deserve.

Thank you for your attention to this important matter.

Sincerely,



Edward J. Markey
United States Senator



Richard Blumenthal
United States Senator



Kathy Castor
Member of Congress



Lori Trahan
Member of Congress