

# United States Senate

WASHINGTON, DC 20510

October 4, 2019

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) plans to review the Children's Online Privacy Protection Rule (COPPA Rule), we write to strongly caution you against undertaking a process that ultimately weakens children's privacy instead of improving it.<sup>1</sup>

The COPPA Rule, which the Commission promulgated under the bipartisan legislation for which the rule is named — the Children's Online Privacy Protection Act — provides children and families with critical and enforceable privacy safeguards. COPPA requires websites to notify parents about, and obtain consent for, the collection of children's data. Since COPPA's enactment, the FTC has used its rulemaking authority under the law to institute important modifications and keep pace with technological and societal developments. In 2012, for example, the FTC approved revisions to the COPPA Rule to broaden the definition of protected

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<sup>1</sup>Leslie Fair, Federal Trade Commission, *New Block on the Kids? FTC Announces COPPA Review and Workshop* (July 17, 2019), <https://www.ftc.gov/news-events/blogs/business-blog/2019/07/new-block-kids-ftc-announces-coppa-review-workshop>.

information to include videos, photos, geolocation information, and online cookies.<sup>2</sup> This modernization was consistent with the FTC's mandate under COPPA to protect children's privacy and reflected the significant increase in data collection online since the original rule. Children are a uniquely vulnerable population online, and we commend the FTC for devoting attention and resources to child privacy.

But recent events create concern that the FTC is at risk of favoring the interests of giant tech companies over the interests of parents and children. Even though the COPPA Rule was not scheduled to be reviewed until 2023, the FTC decided to review the rule early because of "changes in technology."<sup>3</sup> We agree that the Rule warrants updating, but we are concerned that the FTC is choosing to update the rule at a time when the Commission appears insufficiently appreciative of the threat some giant tech companies pose to children and parents.

Approximately a month after the FTC sought comments for altering the COPPA Rule, the Commission announced a settlement with Google over blatant, widespread violations of COPPA. That monetary penalty provided almost no deterrence value at all and was not paired with sufficient structural injunctions to prevent future violations by Google. Even more recently, an FTC official suggested that limiting targeted advertising could impact the quality and amount of child-directed content – a statement that appears to reveal troubling disregard for the core mission of COPPA: safeguarding kids' privacy.<sup>4</sup>

We also are concerned that many of the questions presented in the FTC's request for public comments suggest an intention to add exceptions and other rule changes to COPPA that would weaken children's privacy online. For example, you ask about exceptions to parental consent requirements around educational technology and voice-enabled connected devices. The request risks opening the door to invasive tracking of children for advertising purposes – practices that are increasingly under scrutiny from the FTC itself. Enacting exceptions in these contexts could result in new intrusions on kids' privacy and data collection in apps popular with children, such as Instagram, Snapchat, and TikTok. Such exceptions are fundamentally inconsistent with the congressional intent behind COPPA.

To be clear, there is value in the FTC requesting public comment from experts regarding potential updates to the COPPA Rule. Since 2013, significant technological and societal changes have presented emerging threats to consumers' privacy online. Smart speakers and other biometric data collection tools have proliferated. Technological platforms have become a hallmark of classroom settings. And children have flocked to popular interactive video games.

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<sup>2</sup>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/press-releases/2012/12/ftc-strengthens-kids-privacy-gives-parents-greater-control-over>.

<sup>3</sup> Press Release, *FTC Seeks Comments on Children's Online Privacy Protection Act Rule*, (July 25, 2019), <https://www.ftc.gov/news-events/press-releases/2019/07/ftc-seeks-comments-childrens-online-privacy-protection-act-rule>.

<sup>4</sup> Wendy Davis, *FTC May Loosen Children's Privacy Rules*, *DigitalNewsDaily* (Sep. 23, 2019), <https://www.mediapost.com/publications/article/341089/ftc-may-loosen-childrens-privacy-rules.html>.

Meanwhile, advertisers and app developers collect even more information from consumer devices, including those used by children. In light of these changes, there is value in the FTC considering updates to the COPPA Rule.

But the FTC's failure now and in recent years to fully enforce COPPA compliance has us concerned that an update at this time could diminish children and parents' control of their data or otherwise weaken existing privacy protections. Now is not the time to pull back. As children's use of technology continues to increase,<sup>5</sup> so too does the appetite by tech giants for children's personal information. Your agency's obligation is to put consumers' interests first and enforce the law. Therefore, should the FTC move forward with this review and new rulemaking, we strongly urge you to exercise sound regulatory judgment and to pursue only those changes that prioritize children's privacy and well-being.

Congress passed COPPA after determining that many corporations were not adequately considering the interests of children. Corporate interests thus cannot be an excuse for expansive and unfounded exemptions. With COPPA in place, the market for online kids' offerings has continued to expand and become a highly lucrative industry. Countless companies have succeeded in developing profitable, COPPA-compliant models of business. As the FTC considers COPPA and broader privacy reforms, we urge you to prioritize enhancing protections for kids, not advancing the interests of data collectors. Reopening the COPPA Rule must not lead to a weakening of existing safeguards or open the way for diminished FTC enforcement of COPPA under the Commission's current authority.

Thank you for your attention to these important matters.

Sincerely,



Edward J. Markey  
United States Senator



Richard Blumenthal  
United States Senator



Josh Hawley  
United States Senator



Marsha Blackburn  
United States Senator

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<sup>5</sup> *The Common Sense Census: Media Use by Kids Age Zero to Eight 2017*, Common Sense Media (2017), [https://www.common sense media.org/sites/default/files/uploads/research/csm\\_zerotoeight\\_fullreport\\_release\\_2.pdf](https://www.common sense media.org/sites/default/files/uploads/research/csm_zerotoeight_fullreport_release_2.pdf).