

December 2, 2021

Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, D.C. 20580

Re: Comment on FTC's Draft Strategic Plan for 2022-2026

To the Federal Trade Commission:

Thank you for the opportunity to provide comments on the agency's Draft Strategic Plan for 2022-2026.

I. Introduction

Common Sense Media is America's leading organization dedicated to helping kids and families harness the power of media and technology as a positive force in kids' lives. Common Sense has over 110 million unique consumer users of our media ratings and reviews each year. Our award winning Digital Citizenship Curriculum is the most comprehensive and popular K-12 offering of its kind. Our nationally recognized research program, including the Common Sense Census, provides independent data on children's use of media and technology and the impact it has on their physical, social-emotional, and intellectual development. Our privacy program evaluates popular ed-tech and other products used at home and in the classroom, and we actively support the unique needs of low-income families and families of color, empowering them to access and navigate the digital world with greater ability and confidence.

Our advocacy program has a well-established track record of pressing for rules and policies at the state and federal level to protect individuals' privacy, curb unfair advertising practices, hold tech companies accountable to ensure a healthy internet for all, and ensure universal access to high-speed internet and modern computing devices in every home, business, and school.

Technology is continuing to evolve, while children and teens are spending more and more time online. In its Strategic Plan, the Commission highlighted its plans to continue its focus on cases likely to cause substantial injury to the public in the form of monetary injury and unwarranted health, safety, and privacy risks. The Commission must continue protecting children's privacy and promoting platform accountability through its existing

Section 5 authority, and engage with child development experts to inform its decision making.

II. As the the agency continues its work to protect the public from unfair and deceptive acts in the marketplace, the Commission must continue protecting children’s privacy and promoting platform accountability

Privacy and platform accountability go hand-in-hand, and platforms like social media websites including Facebook and Instagram cannot act responsibly until they protect children’s privacy. Turning off the firehose of data companies can collect from children will help prevent these companies from exploiting their vulnerabilities through carefully thought-out design choices and behavioral advertising.

The Commission must continue strongly enforcing the Children’s Online Privacy Protection Act (COPPA) to ensure companies are not collecting personal information about children without parental consent. In doing so, the Commission must explore whether the current actual knowledge standard that determines whether COPPA applies to a company is still an effective standard in the current online marketplace, or whether it is one that is too easily abused. If the Commission finds the standard is giving too much opportunity for companies to turn a blind eye to children on their website to avoid needing to comply with COPPA, it is time for a change.

The U.S. has already seen the great opportunity that exists for companies to abuse the actual knowledge standard, and the Commission itself has stepped in to take action. In 2019, it was this agency along with the New York Attorney General that filed a lawsuit against YouTube and Google for violating COPPA by collecting personal information from viewers of child-directed channels without first notifying parents and obtaining their consent.¹ The settlement the companies struck with the Commission required them to pay a \$170 million fine for its COPPA violations.² Then-FTC Chairman Joe Simons said that YouTube touted its popularity with children to prospective corporate clients, yet when it came to complying with COPPA, refused to acknowledge that portions of the platform were clearly directed to children.³

This suit exposed the holes in our current actual knowledge standard, and demonstrated that the FTC acknowledges these holes too and is capable of using its authority when

¹ Press Release, Federal Trade Commission, Google and YouTube Will Pay Record \$170 Million for Violations of Children’s Privacy Law (Sept. 4, 2019).

² *Id.*

³ *Id.*

they see this standard is being abused. We encourage an evaluation of how well this standard still works in practice, and how the Commission can fully yet legally exercise its authority to prevent companies from falsely claiming they do not know children are on their platform when they clearly do.

The Commission should also continue to protect children’s privacy by auditing platforms’, terms of service, privacy policies, and community guidelines to ensure that they are representative of their actual practices. The Commission can do this by evaluating whether companies are carrying out promises in these policies or breaking them. For example, the Commission can see whether companies are taking down clearly inappropriate content that violates its terms of use in a timely manner like its policy claims it will. If the audit would be of public interest, such as when a company is clearly breaking its own policies, the Commission should publicly disclose a report.

Additionally, the Commission should take action against behavioral advertising towards children and teens. This type of advertising should be deemed “unfair” to these groups. It is harmful because companies exploit children and teens’ developing brains and vulnerabilities with their own personal information, they cannot reasonably avoid it, and it does not bring them substantial benefits. Studies have shown that kids and teens do not like having data collected about them.⁴ In the U.S., 68 percent of teens are concerned about how social media sites target them with advertisements.⁵

The Commission also highlights in its strategic plan that it will continue studying emerging consumer protection issues and holding workshops and conferences on them. This April, it held a valuable workshop on dark patterns, also known as manipulative design. The Commission should periodically hold update workshops into the effect of manipulative design features such as autoplay, push alerts, and likes, comments, and other quantitative features specifically on kids and teens who are spending large amounts of time on social media. It should also continue to look at how children’s privacy can be better protected and what harms they face in the absence of protection.

Finally, overly commercial content such as sponsored content, which often takes the form of unboxing and toy review videos, has become increasingly prominent and

⁴ Sonia Livingstone, Mariya Soilova, Rishita Nadagiri, Children’s data and privacy online: Growing up in a digital age, An evidence review, (Dec. 2018).; Know Your Rights and Have Your Say! Stream Two of the DPC’s Public Consultation on the Processing of Children’s Personal Data and the Rights of Children as Data Subjects under the GDPR, Data Protection Commission, (Jan. 28, 2019).; “Some stuff you just want to keep private!” – Preliminary report on Stream II of the DPC’s consultation on the processing of children’s personal data and the rights of children as data subjects under the GDPR, (July 29, 2019).

⁵ Common Sense Media, Privacy Matters: Protecting Digital Privacy for Parents and Kids, (2018).

popular. For example, 40 percent of the videos from the top five kid influencers show food and drink items, and 90 percent of the videos showing unhealthy food and drink items are sponsored.⁶ This type of content is particularly capable of exploiting children’s vulnerabilities because their brains are still learning how to differentiate between an advertisement and content, and sponsored content further blurs the line between the two.⁷ In its continued study of emerging consumer protection issues, the Commission should more specifically define what an “influencer” is and what classifies “sponsored content.” This will better inform the Commission’s guidelines and any new regulations, such as the disclosure guidelines that content creators must adhere to when they receive sponsorship money to produce certain content.

III. In advancing the agency’s effectiveness and performance, the Commission should establish an advisory working group to study the impact of technology on children

Children and teens are uniquely vulnerable, and thus, they need special protections, particularly when it comes to the privacy of their data, the content they are exposed to through amplifying algorithms, and the design features they encounter on platforms.⁸ To effectively protect these groups, the Commission needs more information on how technology impacts children and teens. The Commission should establish an advisory working group made up of academic researchers, pediatric associations, and children’s advocates who have specific knowledge on children’s development and tendencies. This would give the Commission a deeper understanding of children’s relationship with technology, especially because technology evolves so quickly. This would offer the Commission staff additional insight into the experience of families and children as they consider regulations and actions that impact children and teens.

⁶ Alruwaily, A. et al. “[Child Social Media Influencers and Unhealthy Food Product Placement](#),” *Pediatrics*, November 2020; 146(5).

⁷ American Psychological Association. *Advertising leads to unhealthy habits in children; says APA task force*. [Press release] (Feb. 23, 2004); Common Sense Media, *Privacy Matters: Protecting Digital Privacy for Parents and Kids*, (2018).

⁸ See e.g. Testimony of Ariel Fox Johnson Before the United States House of Representatives Committee on Energy and Commerce, Common Sense (March 11, 2021).

IV. Conclusion

The Commission serves a vital role in protecting consumers, and currently is best positioned to protect children and teens through existing consumer protection laws and COPPA. It must continue its efforts to protect children's privacy and keep platforms accountable by evaluating its current standards, taking action against harmful, unfair practices like behavioral advertising, and studying and holding more workshops and conferences on important issues that face these groups like manipulative design, children's privacy generally, and sponsored content. Working with other academic researchers, pediatric associations, and children's advocates would also equip the Commission to take stronger, more informed action. We hope the Commission will continue to focus on the two important issues of privacy and platform accountability.

We appreciate the opportunity to comment on the agency's 2022-2026 Strategic Plan.

Respectfully Submitted,
Irene Ly
Policy Counsel, Common Sense Media