



**Written Testimony of
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**Before The House Energy and Commerce
Subcommittee on Consumer Protection and Commerce**

Hearing on

**“Protecting America’s Consumers: Bipartisan Legislation to
Strengthen Data Privacy and Security”**

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I. Introduction

Good morning, Chair Pallone, Ranking Member McMorris Rogers, Chair Schakowsky, Ranking Member Bilirakis, and members of the Subcommittee. I am Jolina Cuaresma, Senior Counsel for Privacy and Technology Policy at Common Sense Media. Thank you for inviting me to testify this morning on this bipartisan legislative proposal that seeks to strengthen data privacy and security.

On behalf of Common Sense Media, and its Co-Founder and CEO Jim Steyer, I believe that this committee, your counterpart in the Senate, and this Congress should do everything within your power, this year, to reach a historic agreement on comprehensive data privacy legislation, including strong protections for minors. We believe that the American Data Privacy Protection Act Draft (ADPPA Draft) lays the groundwork for achieving this goal. It is bipartisan and bicameral. It establishes important data protections with regard to civil rights. And it seeks to minimize the collection and sharing of minors' data, which we have long maintained is the first and most important step to reducing online harms to kids and teens.

We understand that this draft reflects a compromise, as is necessary in the legislative arena, and we appreciate how hard members of the House and Senate, on both sides of the aisle, have worked to get to this point. At the same time, it is our expectation that the Committee will seriously consider changes that we, and other organizations, are proposing to help this legislation better achieve its stated objectives. But there is no question that now is the time, once and for all, for Congress to come together to pass a strong national data privacy and security bill.

II. My Professional Background and Common Sense Media

I have undergraduate degrees in Finance and Economics, a J.D., and an LL.M in Advocacy. My background in business includes earning the highest distinction from GE's Financial Management Program. I have a 20-year legal career that spans private practice, government, and academia. While an enforcement attorney, and later a regulatory counsel, I represented clients in matters involving the U.S. Department of Justice, the Securities Exchange Commission, FINRA, and the Consumer Financial Protection Bureau. As a federal regulator, I conducted investigations and brought enforcement actions, helped build the nation's first supervisory program over non-depository institutions, and had a lead role drafting regulations under the Dodd-Frank Act. While in academia, I helped run the Federal Legislation Clinic at Georgetown Law Center, where I also taught classes on statutory implementation. Along with other Georgetown and MIT professors, I co-taught a joint legislative drafting course where teams of law and computer science students resolved public policy concerns arising from the use of emerging technologies.

Since 2017, I have been an adjunct professor at University of California, Berkeley School of Law, where I teach a seminar on regulatory oversight. Beginning in 2019, I have served as a co-author for two consumer protection treatises that are published by Thomson Reuters. Over the course of my career, I have worked on matters involving constitutional law (e.g., separation of powers and fourth amendment jurisprudence) and a range of federal law (e.g., securities, corporate governance, and consumer protection).

I am privileged to now use my background on behalf of Common Sense, America's leading organization dedicated to helping kids and families harness the power of media and technology as a positive force in kids' lives. We reach 125 million households annually with our age-appropriate media ratings and reviews, and our award-winning Digital Citizenship Curriculum is the most comprehensive K-12 offering of its kind in the education field. We have more than 1.2 million registered educators using our digital citizenship resources, and more than 70% of U.S. schools are Common Sense Media members. Our curriculum teaches kids, parents, and educators how to make smart and responsible choices online.

Common Sense also plays a leading role on online privacy and security issues by communicating directly with leaders of American tech firms at the highest levels. And our policy advocacy and research departments are widely regarded as independent and trusted voices for kids on privacy, platform accountability, and connectivity issues. Common Sense has been honored to appear as a witness before this Committee on several occasions for both the majority and the minority.

As an attorney working at a children's advocacy organization and as a mom, my job responsibilities dovetail with my parental duties. As a single parent to a teenager who uses social media platforms, I could not be a more committed member of Common Sense's policy advocacy program with its track record of championing federal and state laws that protect children.

It is my privilege to use this background to offer the following analysis and comments on the ADPPA Draft. In my testimony today, I outline sections of the draft that provide much-needed data protections and merit Congress' approval, and I also discuss areas of the draft that require strengthening in order to better achieve your stated objectives.

III. The ADPPA Draft is a Significant Step Forward from the Status Quo.

Internet regulations are overdue and the ADPPA Draft contains a number of much-needed consumer protections. For example, section 204 prohibits firms collecting, processing, and transferring "sensitive covered data" without first obtaining an individual's affirmative consent. If enacted, the section would establish an opt-in regime for a broad scope of sensitive information. Notably, the legislative proposal defines the term "sensitive covered data" to include no fewer than 16 categories of information. It also anticipates technological

advancements. Section 2(22)(B) grants the Federal Trade Commission (Commission) rulemaking authority to define any additional category of sensitive data that should be similarly protected. Moreover, the ADPPA Draft makes it mandatory for tech firms to minimize their data collection to what is “reasonabl[e]” and to disclose their data use practices. The legislative proposal also grants both the Commission and state attorneys general enforcement authority under the statute.

For purposes of my testimony here today, I will limit my comments to the sections of the ADPPA Draft that are most relevant to children and teens.

A. Kids and Teens are Entitled to Online Protection and Safety.

Stronger privacy protections are not the only thing needed to make the internet safer and healthier for minors, and Common Sense believes Congress should address other aspects of platform accountability as well. But stronger privacy protections are the first step and a key step to reducing well-known online harms to minors.

Children should be allowed to grow up, to go from tweens to teenagers to young adults, without worrying about a permanent record of typical youthful indiscretions or the collection of their every thought and “like.” Yet, our youth spend increasing amounts of time on sites that automatically capture their data, while at the same time they face pressure to share extremely personal and sensitive information about themselves and their peers, and to view this as common. One survey found that almost 25% of minors, ages 9 to 12, and about 33% of those aged 13 to 17, believe that sharing sexually explicit content was normal for their age group.¹

In addition to inappropriate sharing, kids and teens are routinely exposed to harmful content. Consider these sobering statistics that describe the current world in which our children live.²

- **By the time a child reaches 13, an ad tech firm has compiled over 70 million data points on that child.** The information, which includes the websites visited, what content was viewed, and for how long, is used to sort kids into target ad groups.
- **In 2019, Facebook categorized nearly 1 million kids under 18 as being interested in alcohol and 740,000 as interested in gambling.** This reflects that the company’s business model is based on child exploitation and subjecting kids to harmful content.

¹ [Self-Generated Child Sexual Abuse Material: Youth Attitudes and Experiences in 2020](#), Thorn and Benenson Strategy Group, (Nov 2021).

² Katie Joseff, *Behavioral Advertising Harms: Kids and Teens*, *Common Sense Media*, Common Sense Media (Feb. 2022); Katie Joseff, [List of Social Media Harms](#), Common Sense Media (Dec. 2021).

- **During the first year of the pandemic, 85% of YouTube videos included ads targeting kids aged 0 to 8.** One in five of these videos were not age appropriate and contained images of drugs, alcohol, violence, or sexual content.

The statistics around child sexual abuse are sickening, made even more so because some tech firms profit from it.³

- **One in four children between the ages of 9 and 17 have had a sexual encounter with an adult online.** Roughly one in five are between the ages of 9 and 12.
- **In a single year, from 2019 to 2020, “self-generated” child sexual abuse online content jumped 80%.** An overwhelming majority of these victims are girls ages 11 to 13 who have frequently been coerced into sharing images or videos of themselves on live streaming sites.

When tech firms are willing to profit from child sexual exploitation, it should come as no surprise that they are willing to place “profits over people.” This is not hyperbole. Meta Whistleblower Frances Haugen, who has testified in the House and the Senate, risked her own personal safety to provide uncontroverted evidence that we cannot trust firms to regulate themselves. She provided countless documents making clear that senior corporate leadership knew their social media platforms, Facebook and Instagram, routinely exposed teens to harmful conduct.⁴ Despite this, in an effort to increase ad revenue, the company changed its algorithms in 2018 to boost user engagement. How did it do this? By increasing the promotion of harmful content such as “civic misinfo, civic toxicity, health misinfo, and health antivax content.”⁵ This is just one important reason why reducing the amount of minors’ online data that is collected and shared can reduce some of the online harms they experience today.

B. Current Law Fails to Provide Children Commonsense Protections.

In 1998, when Congress passed the Children’s Online Privacy Protection Act (COPPA), kids did not have the social media that they have today. Friendster did not come online until 2003, followed by Facebook in 2006, Instagram in 2010, and Snapchat in 2011. COPPA was seven years old before people shared videos online — YouTube did not launch until 2005 — and

³ *Id.*

⁴ *Facebook Knows Instagram is Toxic for Teen Girls, Company Documents Show*, WALL ST. J. (Sept. 14, 2021) (reporting that one in five teens say that Instagram makes them feel worse about themselves); *Teen mental health deep dive*, WALL ST. J. (Sept. 29, 2021) (reporting that internal research reflected that among teens who reported suicidal thoughts, 13% of British and 6% of American teenagers traced the desire to kill themselves to Instagram).

⁵ *Five points for anger, one for a 'like': How Facebook's formula fostered rage and misinformation*, WASH. POST (Oct. 26, 2021).

twenty years passed before short-form videos exploded in popularity with TikTok's release in 2018. Nearly 25 years have passed since COPPA's enactment, and during this time, the exponential growth in computing power has allowed these social media companies and other firms to collect ever larger data sets containing millions of data points about individuals, leading us into the era of "Big Data."⁶

Yet, during all this time, Congress has not provided children new privacy and safety protections. For years, civil society groups, parents, and lawmakers have tried to pressure tech companies to change their practices. Lawmakers' attempts at passing commonsense legislation have come in fits and starts. House and Senate subcommittees and committees have held hearing after hearing about online harms to children.⁷ Kids and teens, and their families, are fed up with waiting any longer.

C. While This Bipartisan Legislative Proposal Offers Sorely-Needed Commonsense Protections for Children and Teens, Key Sections Must Be Strengthened.

1. Obtaining Privacy Protections for Kids under 17 Would be a Watershed Moment.

As mentioned above, the ADPPA Draft creates an opt-in regime for "sensitive covered data,"⁸ which is defined to include over a dozen protected categories, including any "[i]nformation of an

⁶ [*Big Data: A Tool for Inclusion or Exclusion?*](#), Federal Trade Commission Report (Jan. 2016) (last visited June 12, 2022). Big data has often been characterized as having volume (refers to the vast quantity of data), velocity (refers to the speed at which new data can be accumulated), and variety (the breadth of data), with each growing at a rapid rate. *Id.*

⁷ See e.g., *Kids Online During COVID: Child Safety During an Increasingly Digital Age*, Before the Subcomm. on Consumer Protection and Commerce, 116 Cong. (2021); *Holding Big Tech Accountable: Targeted Reforms to Tech's Legal Immunity*, Before the Subcomm. on Communications and Technology, 117 Cong. (2021); *Toxic Marketing Claims and Their Dangers*, Before the Subcomm. on Consumer Protection, Product Safety, and Data Security, 117 Cong. (2021); *Protecting Kids Online: Facebook, Instagram, and Mental Health Harms*, Before the Subcomm on Consumer Protection, Product Safety, and Data Security, 117 Cong. (2021); *Protecting Kids Online: Testimony from a Facebook Whistleblower*, Before the Subcomm on Consumer Protection, Product Safety, and Data Security, 117 Cong. (2021); *Protecting Consumer Privacy*, Before the Comm on Commerce, Science, and Transportation, 117 Cong. (2021); *Protecting Kids Online: Snapchat, TikTok, and YouTube*, Before the Subcomm on Consumer Protection, Product Safety, and Data Security, 117 Cong. (2021); *Protecting Kids Online: Instagram and Reforms for Young Users*, Before the Subcomm on Consumer Protection, Product Safety, and Data Security, 117 Cong. (2021); and *Disrupting Dangerous Algorithms: Addressing the Harms of Persuasive Technology*, Before the Subcomm on Communications, Media, and Broadband, 117 Cong. (2021).

⁸ Section 204 requires a tech firm to obtain an individual's affirmative express consent before collecting, processing, or sharing any "sensitive covered material," which is defined to include information belonging to "individuals under 17." It is unclear, however, whether the legislative proposal contemplates allowing a 15-year-old individual to provide consent. Moreover, the ADPPA Draft does not make clear whether it or COPPA would control for individuals under 13. We encourage the committee to address these issues.

individual [under the age of 17].”⁹ For years, children’s advocacy groups, including Common Sense, have argued that all data about minors is sensitive, and we urge the committee to modify the bracketed to text to the age of consent to include all 17 year olds. If enacted, this section would provide a substantial upgrade to COPPA, where protections end when a child turns 13.

2. Prohibiting Targeted Advertising is a Key Component to Protecting Kids’ Online Safety.

With few limitations, companies can track and profile children and teens and subject them to behavioral ads that are often disguised as other “real” online content.¹⁰ I know that Adtech firms have long tracked nearly every aspect of my teenager’s online activities. They collect seemingly mundane information: the strike of a key or a click of the mouse as she uses her laptop, cross tracking the information to the taps and swipes when she’s on her smartphone. Given my daughter’s age and her internet usage, a *single* Adtech firm likely has upwards of 100 million data points. And there are many such firms, and each with the same goal: to make predictions about kids based on the large data sets collected. With artificial intelligence (i.e., machine learning), firms identify patterns in my child’s online activity and use them to build a behavioral profile on her. Then using automated algorithmic decision-making,¹¹ a computer determines the digital ads it believes are more likely to pique her curiosity. Whether she clicks on an ad or not – that is just another data point collected and analyzed to make further refinements to her profile.

The human brain is not fully developed until 25. This means that my teen’s prefrontal cortex — the part of her brain that controls emotional maturity, self-image, and judgment — has another decade or so to go. Until then, neuroscience finds that she is not yet mature enough to make informed decisions and she shouldn’t be subjected to targeted marketing. As a lawyer, there is limited legal recourse in shielding her from companies’ invasive practices. As a mom, I know that my other options — repossess her laptop and phone, change the WiFi password — are impractical and feel punitive. They risk isolating her from friends. Moreover, the Adtech firms would still collect millions of data points, even if she to use the internet only for schoolwork. Her teachers don’t use textbooks; instead, they post class materials to the course website, where they also provide links to other online resources. The pandemic further accelerated the widescale adoption of using the internet for nearly every aspect of learning. When her public school adopted remote-learning, teachers began requiring students to upload homework assignments to

⁹ Section 2(22)(A)(xv).

¹⁰ Under the Children’s Online Privacy Protection Act, a company must obtain a parent’s consent before collecting, using or disclosing the personal information of children online.

¹¹ An “algorithm” is basically a precise set of instructions or procedures to achieve a given task. An “automated algorithm,” does not require human involvement to complete.

the Ed tech platform Canvas. And even with the move back to in-person learning, the practice didn't return to handing in assignments in class.¹²

Given the lack of real options, a ban on marketing to kids in the ADPPA Draft is a welcomed development.¹³ Section 205(a) provides:

A covered entity shall not engage in targeted advertising to any individual under the age of 17 if the covered entity has **[actual knowledge]** that the individual is under [that age].

However, whether this ban would effectively protect children turns on the definition of “targeted advertising” under section 2(26). Notably, section 2(26)(A) establishes the category of online ads that cannot be marketed directly to children while section 2(26)(B) lists the categories of ads that companies may continue to use.

Section 2(26)(A) defines “targeted advertising” to mean:

[D]isplaying to an individual . . . an online advertisement that is selected based on known or predicted preferences, characteristics, or interests derived from . . . data collected over time or across third party websites or online services about the individual.

Accordingly, the ADPPA Draft would make third-party advertising unlawful. However, this outcome is unclear based on the ad categories “not include[d]” as unlawful under section 2(26)(B)(i)-(iii):

- (i) advertising or marketing to an individual in response to the individual’s specific request for information or feedback;
- (ii) first-party advertising based on an individual’s visit into and purchase of a product or service from a brick-and-mortar store, or visit to or use of a website or online service that offers a product or service that is the subject of the advertisement; [or]

¹² With the increasing use of Ed tech apps in the classroom, the Commission recently issued a policy statement reminding firms of their obligations under COPPA. See Press Release, Federal Trade Commission, [FTC to Crack Down on Companies That Illegally Surveil Children Learning Online](#) (May 19, 2022) (last visited June 12, 2021).

¹³ As the level of knowledge a tech firm must have under section 205(a) of the ADPPA is enclosed in bolded brackets, my observation is subject to change. See *infra* section IV. A (discussing the “actual knowledge” standard).

- (iii) contextual advertising when an advertisement is displayed online [that is related to/based on] the content of the webpage or online service on which the advertisement appears.

Here, section 2(26)(B)(ii) makes clear that the ADPPA Draft makes evident that first-party advertising is lawful. Section 2(26)(B)(iii) permits contextual advertising, but such advertising can be both first- and third-party. Additionally, as drafted, section 2(26)(B)(ii) may also permit first- and third-party.

The text of sections 205(b) and 2(26)(B) of the ADPPA Draft presents an opportunity to provide children with meaningful protections. However, we encourage the committee to clarify whether the legislative proposal contemplates a total ban of third-party advertising or whether the ban is limited in scope.

3. The Dedicated Group within the Federal Trade Commission Would Provide Kids and Families Enhanced Protection but Only if the Agency is Properly Funded and Staffed.

The ADPPA Draft section 205(c) would establish a new department within the Commission, the “Youth Privacy & Marketing Division,” (Youth Division) whose sole responsibility is to “address[] the privacy of children and minors, and [the] marketing directed at children and minors.” This is a marked improvement over what we have today: no regulatory resources committed entirely to protecting children online.

The ADPPA Draft recognizes the importance of having a dedicated team that focuses entirely on protecting our youth online. Standing up a Youth Division will become increasingly critical to protecting kids and teens from the next wave of emerging technologies. On the horizon is the metaverse, which Mark Zuckerberg describes this way during a [Facebook 2Q2021 earnings call](#):

It’s a virtual environment where you can be present with people in digital spaces. You can think of it as an embodied internet that you are inside of rather than just looking at. This is going to be the successor of the mobile internet.

In other words, the metaverse will become as ubiquitous as the internet, which still lacks safeguards. It is hard to imagine children facing graver dangers in the near future. Privacy harms in the metaverse are particularly alarming because these platforms record children’s nonverbal biometric data, such as facial and eye movements. This information enables Ad tech companies to track and target individuals’ physical desires for commercial exploitation.¹⁴ Common Sense’s

¹⁴ Katie Joseff and Nelson Reed, [What are Kids Doing in the Metaverse?](#), Common Sense Media (Mar. 23, 2022).

own research shows that by spending just 20 minutes in a virtual reality (VR) simulation, individuals involuntarily feed the platform nearly two million unique recordings of their body language. The safety of kids and teens is even more at risk in the universe, where there are virtual strip clubs, sexual grooming, simulated sex acts, and rape threats. With the immersive nature of VR, our youth may experience heightened trauma. The Youth Division must protect our children from existing harmful online content as well as those in a virtual world that is fast approaching.

It is unclear, however, what a new division at the Commission would have the authority to do. Section 205(c) does not identify the scope of what actions it may undertake when “addressing” children’s privacy or marketing. If the ADPPA Draft were passed, without any changes specifying the team’s authorities, the statute is unlikely to withstand judicial scrutiny on nondelegation grounds.¹⁵ As drafted, it would be no surprise if the Supreme Court were to strike the provision.¹⁶

It is also clear that the Commission does not have the bandwidth to create this new division given existing resources. To date, Congress has already tasked the agency with enforcing 82 other laws, including the prohibition against unfair and deceptive acts and practices under Section 5 of the Federal Trade Commission Act. Moreover, by legislative design, the Commission is the only independent federal agency tasked with protecting American consumers *and* promoting competitive markets across the economy. This is a critical mission made more difficult to accomplish by the ever-growing mismatch in resources between the Commission and tech companies.¹⁷

The important new protections under the proposal would be undermined if Congress failed to provide the Commission the additional resources necessary to carry out these new responsibilities. It is well documented that the agency is now and has been for years underfunded and understaffed. As internal email communications show, in addition to a hiring and pay freeze, the Commission brought fewer cases. It makes little sense to task the Commission with

¹⁵ Under Article I of the Constitution, “All legislative powers” is vested in Congress. Courts have interpreted this to mean that Congress cannot delegate its authority to other entities, such as regulatory agencies, including the Commission. This judicial interpretation, known as the nondelegation doctrine, was last used to strike down a statute in 1935. To avoid a similar fate, any congressional policy decisions must be reflected in ADPPA’s statutory text and Commission need only “fill up the details” to implement the statutory program.

¹⁶ In 2019, Justices Gorsuch and Thomas along with Chief Justice Roberts approved reinstating the nondelegation doctrine while Justice Alito expressed interest in doing so. *Gundy vs. United States*, at No. 17-6086 (U.S. June 20, 2019) (last visited June 12, 2022). Justice Kavanaugh would likely agree based on his rulings as a judge on the D.C. Circuit Court of Appeals. *PHH Corp. v. Consumer Fin. Prot. Bureau*, 839 F.3d 1, 12 (D.C. Cir. 2016). Based on her confirmation hearings, Justice Barrett is an originalist, and likely to support this doctrine.

¹⁷ In fact, the largest Big Tech companies enjoyed revenues in 2021: \$117.9B at [Meta](#) (parent company of Facebook and Instagram), \$257.6B at [Alphabet](#) (parent company for Google and YouTube), \$378.3B at [Apple](#), and \$168B at [Microsoft](#).

implementing another statutory program, especially one as important and as online privacy, without a substantial increase to the agency’s budget.¹⁸

IV. Additional Discussion of Changes to the ADPPA Draft are Needed to Ensure Reasonable Protections for Children and Teens.

A. The Knowledge Standard Must be Changed by Closing the Loophole Enabling Companies to Evade Complying with Children’s Protections.

Putting aside that brain development continues well past the teen years, the U.S. Surgeon General Dr. Vivek Murthy’s warning about our youth mental health crisis underscores the urgency to ban targeted advertising. During the height of the pandemic, our children were not “homeschooled.” We sat them down, placed a computer monitor inches from their face, told them to go online for long stretches of time. Our children were “internet-schooled.” They deserve and are entitled to strong online protections. Now, more than ever.

The ADPPA Draft brackets the term “actual knowledge” in section 205(a)’s ban on targeted ads. “Actual knowledge” is the same term found in COPPA, the statute enacted decades before TikTok. Tech platforms are subject to COPPA only when they have “actual knowledge” of an individual’s age, making it child’s play to evade the statute’s compliance requirements. In other words, COPPA does not penalize a tech firm for burying its head in the sand.

Under today’s legal framework, websites and apps may turn a blind eye when young people use their services because COPPA does not make it mandatory for firms to make good faith attempt to determine a user’s age. At the same time, tech platforms claiming the lack of “actual knowledge” have business models that succeed only when kids use their websites. The most prominent example is YouTube.¹⁹ While touting its popularity with children to prospective advertisers, the company argued that it was not subject to COPPA requirements because it is a “general-audience” site. It refused to acknowledge that portions of its platform, such as toy review videos, were clearly directed to kids under 13.

¹⁸ [Letter to the Appropriations Committees](#), Common Sense Media (May 16, 2022).

¹⁹ Earlier this year, in March 2022, the Commission ordered [WW International](#) (formerly known as Weight Watchers) to destroy the algorithms or AI models it built using personal information collected through its Kurbo healthy eating app from young kids without obtaining parental consent. WW International and Kurbo had marketed the app for use by children as young as eight years old. If the ADPPA Draft were enacted with the “actual knowledge” standard, the Commission would spend its limited resources investigating and bringing actions against wrongdoers view penalties as the cost of doing business.

To be clear, we are not advocating for strict liability. As children’s privacy advocates, we are not interested in encouraging nor do we believe it is necessary for companies to collect even more information. Instead, we ask that this legislative proposal acknowledge that firms collect millions of data points already, and that such data informs them of the age of its users. Put simply, we ask that firms have a legal obligation to use that information, not just in its Marketing Division but also in its Legal Division.

B. The Private Right of Action Waiting Period Should Be Shortened and Simplified So Consumers Can Obtain Deserved Relief.

We are encouraged that like other federal consumer protection statutes, the ADPPA Draft provides for a private right of action (PRA). However, we raise a few concerns for the committee’s review.

We are unaware of Congress delaying the enforcement of its statutory mandates for more than two years. To be sure, there are consumer protection statutes that establish a PRA that becomes effective after the statute’s enactment date. These statutes, however, provide that the period between the effective date of the PRA (along with other provisions of the statute) and the statute’s enactment date ranges from 120 days to eighteen months.²⁰ Shortening the waiting period would better align the ADPPA Draft to other consumer protection statutes of its kind.

In addition, certain aspects of the ADPPA Draft’s enforcement framework may prove burdensome for harmed consumers. For example, section 403(a)(3) requires individuals to first notify the Commission and the state attorney general of their intent to file a PRA. They must wait 60 days to provide these offices time to evaluate whether to bring a government action. When the Commission opts to enforce the statute, individuals are unlikely to recover compensatory damages.²¹ And while there are other sections that merit the committee’s review,

²⁰ The Gramm-Leach-Bliley Act, (Financial Services Modernization Act of 1999), represents the last time Congress acknowledged privacy concerns regarding consumer information. It went into effect “120 days after the date of the enactment of this Act.” (Pub. L. No. 106-102, 113 Stat. 1385). The Fair Credit Reporting Act took effect “upon the expiration of one hundred and eighty days following the date of its enactment.” (Pub. L. No. 91-508, 84 Stat. 1136). The Fair Debt Collection Practices Act took effect “upon the expiration of six months after the date of its enactment.” (Pub. L. No. 95-109, 91 Stat. 883). When the Equal Credit Opportunity Act was first enacted, it took effect “upon the expiration of one year after the date of its enactment.” (Pub. L. No. 83-495, 88 Stat. 1525). Similarly, the ECOA Amendments of 1976 took effect “12 months after the date of enactment.” (Pub. L. No. 94-239, 90 Stat. 255). Like the ECOA, the Consumer Leasing Act took effect “one year after the date of its enactment.” (Pub. L. No. 94-240, 90 Stat. 261). The Electronic Fund Transfer Act took effect “upon the expiration of eighteen months from the date of its enactment, except that sections 909 and 911 [took] effect upon the expiration of ninety days after the date of enactment.” (Pub. L. No. 95-630, 92 Stat. 3741). Section 909 pertains to consumer liability for unauthorized transfers while section 911 deals with the issuance of credit cards.

²¹ See *AMG Capital Mgmt., LLC v. Fed. Trade Comm’n*, 593 U.S. (2021) (holding that section 13(b) of the FTC Act does not extend the Commission’s authority to obtaining monetary relief for victims). Since the Court’s

we recognize that establishing a PRA framework is a step in the right direction. Market forces may work better when individuals use their own resources, not taxpayers, to obtain compensatory relief.

C. Increased Funding and Staffing for the Commission is Essential.

As stated above in section III (C) (3), the Commission is outmatched relative to the size of the companies it must regulate and number of laws it is tasked with enforcing. Congress has an obligation to the consumers on whose behalf it is drafting this legislation to also ensure that the Commission receives a robust and sustained increase in appropriations and staff slots.

V. Conclusion

Americans are sick and tired of having their online data and the data of their children mined and used for profit. Poll after poll shows overwhelming majorities of voters from both parties supporting new privacy protections and holding social media firms accountable. Without action from Congress, consumers are powerless against the data practices of large companies.

This year and this Congress must be the time and the place when children, teens, and all consumers are finally treated with the respect they deserve for their data. People are entitled to protection from online harms and the ability to operate in an environment that reduces the harmful impacts of online existence. Tech firms' notices must be clear and conspicuous so individuals can make choices about their online activities without penalty. This is true for all consumers but is especially needed now because of the increased online harms being experienced by children and teens.

The fact that the Committee is holding this hearing on your bipartisan and bicameral draft is an important sign that there is still time and still the will to reach a data privacy agreement. We know there is hard work ahead. Common Sense Media is committed to being a resource to you during this next phase and we again strongly encourage you to consider the changes recommended here and to reach an agreement on online data privacy and security that includes strong protections for minors.

decision, the Commission is limited to seeking injunctive relief against wrongdoers. Until Congress passes legislation restoring the agency's authority, individuals can only obtain monetary damages against wrongdoers as long as the Commission does not seek to enforce matter itself.