

**Written Testimony of Irene Ly**  
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**Before the Maryland Senate Finance Committee on**  
**“Maryland Online Consumer Protection and Child Safety Act”**

**Bill No: SB0011**

**Position: Favorable**

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My name is Irene Ly, and I am a Policy Counsel for Common Sense Media, where I work on privacy and platform accountability issues. Common Sense is the leading organization dedicated to helping kids and families thrive in a rapidly changing digital world. We help parents, teachers, and policymakers by providing unbiased information, trusted advice, and innovative tools to help them harness the power of media and technology as a positive force in all kids’ lives. That work often revolves around ensuring children and families’ privacy as they interact with devices and corporate interests that are eager to collect, sell, and share their information, often in ways children and parents do not expect or understand.

My testimony will focus on the harms of surveillance advertising, which is powered by data, and how children and teens are uniquely vulnerable to this kind of advertising, necessitating a privacy law that protects these groups.

**I. The Harms of Surveillance Advertising**

Surveillance advertising, also known as behavioral advertising, is a practice in which companies micro-target advertisements to consumers through inferences about their interests and demographics based on data they have collected from tracking them over time.<sup>1</sup> It can rely on web browsing behavior such as the pages visited, searches performed, and links clicked. Users can interact with these ads in a variety of places, from the internet generally, to social media platforms, user-created content, video games, mobile apps, virtual or augmented reality, virtual assistants, and internet-connected toys.

Online platforms no longer display information chronologically by default as they used to. Companies use algorithms that amplify certain content they think will be of interest to the user

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<sup>1</sup> Susan Grant, [Factsheet: Surveillance Advertising: What is it?](#), Consumer Federation of America (Aug. 26, 2021).

based on inferences from their data in an effort to get them to spend more time and engage more on their platforms. In the case of social media platforms like Instagram and TikTok, this curates a specific feed of content for each user based on what they have been looking at and interacting with.

However, these algorithms often amplify harmful content for users to see. Users can look at seemingly innocuous content such as healthy eating content, then quickly be led down a rabbit hole that escalates to receiving content promoting eating disorders, self-harm, and suicide ideation. For example, after watching one video by a fitness influencer on TikTok and following her, a teen user named Lauren started receiving a lot of the same pages.<sup>2</sup> She stopped seeing funny dance videos and other fun content, and her feed became dominated by content focused on keeping up a so-called “healthy” lifestyle that pushed her to the viral trend of meticulously tracking how many calories they eat.<sup>3</sup> She stated she had previously never had many negative thoughts about her body, until she started seeing videos of people saying they hated their body, and would cry about it every night.<sup>4</sup> Four months later, she was diagnosed with an eating disorder.<sup>5</sup> She is not alone, and many others have been led down this same path.<sup>6</sup>

The speed at which this harmful content can show up and take over someone’s feed is alarmingly quick. Within a day of U.S. Senator Richard Blumenthal’s office creating a fake Instagram account for a 13-year-old girl and following accounts with disordered eating and dieting content, the platform began serving endless content promoting eating disorders and self-harm.<sup>7</sup> It also only took the office one minute to find TikTok videos promoting illegal steroids.<sup>8</sup>

Seeing harmful content that is amplified by these algorithms is taking a toll on kids’ and teens’ mental health, escalating into what the U.S. Surgeon General and many other medical and psychological professionals have called a mental health crisis.<sup>9</sup> Teens have shown a two percent increase in depressive symptoms for every increased hour they spent using social media.<sup>10</sup> Facebook’s own internal research, which whistleblower Frances Haugen leaked in fall 2021, found that teens blamed Instagram for increases in the rate of anxiety and depression, and that

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<sup>2</sup> Avani Dias et. al, [The TikTok spiral](#), ABC News Australia (Jul. 25, 2021).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Protecting Kids Online: Snapchat, TikTok, and YouTube: Hearing Before the Subcommittee on Consumer Protection, Product Safety, and Data Security, Oct. 26, 2021 (Statement of Richard Blumenthal); *see also* Adam Westbrook, Lucy King, and Jonah M. Kessel, [What’s One of the Most Dangerous Toys for Kids? The Internet](#), New York Times (Nov. 24, 2021)

<sup>8</sup> *Id.*

<sup>9</sup> Press Release, U.S. Surgeon General Issues Advisory on Youth Mental Health Crisis Further Exposed by COVID-19 Pandemic, U.S. Department of Health & Human Services (Dec. 7, 2021).

<sup>10</sup> Boers E, Afzali MH, Newton N, Conrod P. Association of Screen Time and Depression in Adolescence. *JAMA Pediatr.* 2019;173(9):853-859. doi:10.1001/jamapediatrics.2019.1759.

Instagram made body image issues worse for one in three teen girls.<sup>11</sup> The same research showed that among teens who reported suicidal thoughts, 13 percent of British users and six percent of American users traced the desire to commit suicide to Instagram.<sup>12</sup> Other studies have found similar disturbing results. In one study, young women showed decreased body satisfaction, decreased positive affect, and increased negative affect after browsing Instagram for just seven minutes, compared to those who browsed Facebook or played a simple video game for the same amount of time.<sup>13</sup>

The harm from surveillance advertising reaches a large audience too. More and more children are using social media, and starting at increasingly younger ages. About one-third of 7- to 9-year olds and almost half of 10- to 12-year old children use social media apps.<sup>14</sup> Ninety percent of teens ages 13 to 17 have used social media.<sup>15</sup>

Platforms know the harms these algorithms inflict on large numbers of kids and teens, and they are acting intentionally. In 2017, a Facebook internal report was leaked that showed Facebook boasting to advertisers that they have the capacity to monitor posts and photos in real time to identify the exact moment in which teenagers feel “insecure,” “worthless,” and “in need [of] a confidence boost,” amongst other negative emotions.<sup>16</sup> This enabled them to attack kids with ads at the exact moments they were feeling most vulnerable and thus most likely to fall prey to commercial manipulation. Although Facebook announced it was restricting ad targeting to teens under 18 in July 2021,<sup>17</sup> the Tech Transparency Project found in experiments that September that the platform was still approving advertisements that promote harmful content to teens, in as little as less than an hour.<sup>18</sup>

## **II. Children and teens are uniquely vulnerable to being manipulated and harmed by surveillance advertising**

Surveillance advertising is particularly harmful to kids and teens because of their unique vulnerabilities that make them easier to manipulate. This practice’s method of tracking and profiling consumers exploits the vulnerable, developing brains of kids and teens, constrains and

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<sup>11</sup> Georgia Wells, Jeff Horwitz, Deepa Seetharaman, “[Facebook Knows Instagram Is Toxic for Teen Girls, Company Documents Show](#),” *The Wall Street Journal*, (September 14, 2021).

<sup>12</sup> *Id.*

<sup>13</sup> Engeln R, Loach R, Imundo MN, Zola A. “Compared to Facebook, Instagram use causes more appearance comparison and lower body satisfaction in college women,” *Body Image*. 2020; 34:38-45. <https://doi.org/10.1016/j.bodyim.2020.04.007>.

<sup>14</sup> University of Michigan School of Medicine, [National Poll: 1/3 of children ages 7-9 use social media apps](#), American Association for the Advancement of Science (Oct. 18, 2021).

<sup>15</sup> [Facts for Families: Social Media and Teens](#), American Academy of Child & Adolescent Psychiatry (Mar. 2018).

<sup>16</sup> Sean Levin, [Facebook told advertisers it can identify teens feeling ‘insecure’ and ‘worthless’](#), *The Guardian* (May 1, 2017).

<sup>17</sup> [Giving Younger People a Safer, More Private Experience on Instagram](#), Facebook Newsroom (Jul. 27, 2021).

<sup>18</sup> [Facebook’s repeat fail on harmful teen ads](#), Tech Transparency Project (Oct. 1, 2021).

shape their choices and autonomy, and can perpetuate racial, gender, and socioeconomic discrimination.<sup>19</sup>

**Kids and teens are largely defenseless against advanced advertising techniques.** Most children younger than 8 years old cannot identify ads.<sup>20</sup> Over 75 percent of 8- to 11-year olds still cannot distinguish ads from other content, or understand the persuasive intent behind them.<sup>21</sup> This makes kids more prone to accepting advertiser messages as being truthful, accurate, and unbiased.<sup>22</sup> Most children do not know that ads can be customized to each individual either.<sup>23</sup> Researchers have concluded that children are not equipped to identify targeted ads that exploit their tracked activity data from traditional advertising.<sup>24</sup>

This enables marketers to create profiles of a child or teen’s interests and fine-tune sales pitches to these impressionable groups without them even understanding that they are looking at ads. Even when kids and teens can recognize advertising, they are often not able to resist it due to their immature and developing critical thinking skills and impulse inhibition, especially when it is embedded within trusted social networks, encouraged by celebrity influencers, or delivered next to personalized content.<sup>25</sup> This is particularly problematic for kids and teens, because evidence suggests that exposure to advertising is associated with unhealthy behaviors, such as consumption of high-calorie, low-nutrient food and beverages, use of tobacco products and electronic cigarettes, use of alcohol and marijuana, and indoor tanning.<sup>26</sup>

**Kids and teens also do not want or like surveillance ads.**<sup>27</sup> They express negative attitudes about data collection and sharing, especially when this data is collected and shared surreptitiously, and dislike when apps can monitor or collect private information about them.<sup>28</sup> Parents do not want their kids to receive these ads either, with 88 percent of parents believing

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<sup>19</sup> See Common Sense Media, [AdTech and Kids: Behavioral Ads Need a Time Out](#) (May 13, 2021).

<sup>20</sup> Zhao, J., Wang, G., Dally, C., Slovak, P., Childs, J. E., Van Kleek, M., & Shadbolt, N. (May 2019). "I make up a silly name": Understanding children's perception of privacy risks online. CHI Conference on Human Factors in Computing Systems Proceedings 2019, p. 2.

<sup>21</sup> Ofcom. Children and Parents: Media Use and Attitudes Report 2017 (Nov. 29, 2017).

<sup>22</sup> American Psychological Association. Advertising leads to unhealthy habits in children; says APA task force. [Press release] (Feb. 23, 2004).

<sup>23</sup> Kaiwen Sun, Carlo Sugatan, Tanisha Afnan, Hayley Simon, Susan A. Gelman, Jenny Radesky, and Florian Schaub. 2021. "They See You're a Girl if You Pick a Pink Robot with a Skirt": A Qualitative Study of How Children Conceptualize Data Processing and Digital Privacy Risks. In Proceedings of the 2021 CHI Conference on Human Factors in Computing Systems (CHI '21). Association for Computing Machinery, New York, NY, USA, Article 687, 1–34. DOI:<https://doi.org/10.1145/3411764.3445333>.

<sup>24</sup> Zhao et. al *supra* note 20.

<sup>25</sup> Jenny Radesky, Yolanda (Linda) Reid Chassiakos, Nusheen Ameenuddin, Dipesh Navsaria, Council on Communications and Media; Digital Advertising to Children. *Pediatrics* July 2020; 146 (1): e20201681. [10.1542/peds.2020-1681](https://doi.org/10.1542/peds.2020-1681).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Sun et. al *supra* note 23.

that the practice of tracking and targeting kids with ads based on their data should be prohibited.<sup>29</sup>

**The profiling of surveillance advertising can harm kids' and teens' development and constrain and shape their choices and autonomy.** Kids are encouraged by society to explore new things and not worry about making mistakes during childhood. And yet, surveillance advertising's constant profiling and targeting of kids does a disservice to them by potentially labeling and limiting them from a very young age.<sup>30</sup> Kids should be exploring a range of interests, yet based on their behavior, they may be profiled as gamers, impulsive purchasers, or anxious overshareers, then unfairly targeted by ads that encourage more of these behaviors.<sup>31</sup> This profiling can also make kids hold themselves back, with kids who know they are being monitored by surveillance technology less likely to engage in critical thinking, political activity, or questioning of authority.<sup>32</sup> Knowing they receive targeted ads can chill their expression too, out of fear these ads could expose aspects of their lives they want to keep secret or share on their own terms, such as through ads involving sex, drugs, or professional interests.<sup>33</sup> For example, ads for LGBTQ+ resources showing up on a shared device could out a child instead of giving them the autonomy to do so on their own accord.<sup>34</sup>

**Finally, surveillance advertising can perpetuate discrimination towards kids, teens, and adults alike.** Businesses can constrain kids' and teens' choices and autonomy by utilizing coercive techniques that only show them certain opportunities and algorithmic profiling that builds in bias in decision making, such as when to admit students into educational programs.<sup>35</sup> This can disadvantage kids by restricting the number of opportunities they receive or even see, based on characteristics like their race or ethnicity, socioeconomic status, or location.

One clear example of how surveillance advertising can be used to perpetuate discrimination is seen with Naviance, a software that nearly two-thirds of American high schoolers use in the college application process to learn information about colleges and see which is a good fit for them.<sup>36</sup> Naviance allows admissions officials to select what kinds of students will see their recruiting messages based on factors like the students' location, academic credentials, the majors they are interested in, and most concerningly, their race.<sup>37</sup> The Markup found that one university deliberately advertised only to white students on Naviance, and many other schools targeted

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<sup>29</sup> Accountable Tech, [2021 Accountable Tech Frequency Questionnaire 2021](#) (Jan. 28, 2021).

<sup>30</sup> Common Sense Media *supra* note 19.

<sup>31</sup> *Id.*

<sup>32</sup> Brown, D. H., & Pecora, N. (2014). Online data privacy as a children's media right: Toward global policy principles. *Journal of Children and Media*, 8(2), 201–207.

<sup>33</sup> Common Sense Media *supra* note 19.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Todd Feathers, [College prep software Naviance is selling advertising access to millions of students](#), The Markup (Jan. 13, 2022).

<sup>37</sup> *Id.*

students of all races in some states but only white students in other states.<sup>38</sup> Although students can receive messages on Naviance about schools that may be a good fit for them, some of those messages are advertisements the schools paid for.<sup>39</sup> This kind of social engineering can, at worst, close teens off from having access to viewing certain educational opportunities at all, and at best, make them more likely to constrain themselves and believe a school is not a good fit for them.

Surveillance advertising's harmful effects can be inflicted and felt by anyone, including adults. However, kids' and teens' unique vulnerabilities makes them even more susceptible to this advertising practice. Despite the many harms surveillance advertising imposes, it is also not significantly more profitable than other advertising practices,<sup>40</sup> such as contextual advertising, which involves placing advertisements based on the content of the web page the user is on.<sup>41</sup>

### **III. Enacting a strong privacy law that protects kids and teens cuts off businesses' access to data, which will weaken the power of these algorithms**

Surveillance advertising is made possible by the troves of data businesses collect from tracking users. Kids today have the largest data footprints in history. In 2017, adtech company SuperAwesome reported that companies have an average of 72 million data points for a 13-year-old, all gathered "unintentionally" through adult-oriented adtech.<sup>42</sup>

In the absence of a ban on surveillance advertising, the most effective way to weaken the power and impact of this advertising, particularly to kids and teens, is to pass a strong privacy law that protects users' data privacy and prohibits certain data collection. This cuts off at least some of the access to data businesses need for their algorithms to target ads to users. Then, platforms like Instagram and Facebook could not disclose data on kids and teens to third-party advertisers to target their ads. For example, it would prevent another situation like the one in which Instagram allowed one of its preferred marketing partners, HYP3R, to flout its privacy rules and scrape as many as one million posts a month from millions of public users' profiles in 2019, including Instagram stories that are meant to disappear after 24 hours.<sup>43</sup>

The Maryland Online Consumer Protection and Child Safety Act would allow a consumer to opt out of third party disclosure at any time, and prohibit businesses from disclosing the personal information of a consumer to a third party if the business has actual knowledge or willfully

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<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Keach Hagey, [Behavioral ad targeting not paying for publishers, study suggests](#), The Wall Street Journal (May 29, 2019).

<sup>41</sup> See Jessica Davies, [After GDPR, The New York Times cut off ad exchange in Europe – and kept growing ad revenue](#), Digiday (Jan. 16, 2019).

<sup>42</sup> [Ad Tech collects 72 million data points on the average American child by age 13](#), VideoWeek (Dec. 14, 2017).

<sup>43</sup> Devin Coldeway, [Instagram ad partner secretly sucked up and tracked millions of users' locations and stories](#), TechCrunch (Aug. 7, 2019).

disregards the fact that the consumer is under 16 years old. This would provide protection to teens 13-15 years old who are currently not protected under the federal Children's Online Privacy Protection Act (COPPA), and consistent with the proposed amendments to COPPA some legislators are pushing and advocacy organizations like Common Sense hope to see passed. If this bill were passed, Maryland kids' and teens' data would be better protected and the impact of surveillance advertising on them could be significantly weakened.

#### **IV. Conclusion**

Children and teens' unique vulnerabilities make them particularly easy to be manipulated and harmed by surveillance advertising. Cutting off companies' access to data on these groups, as this bill would do, is a necessary step to weakening the harm surveillance advertising can inflict on kids and teens and better protect them online. Thank you Senator Lee for your work on this bill.