

June 11, 2018

Chairman Simons
Commissioner Ohlhausen
Commissioner Phillips
Commissioner Chopra
Commissioner Slaughter
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

Dear Chairman and Commissioners,

Common Sense is the nation's leading organization dedicated to helping kids and families thrive in a digital world. For over a decade, we have helped 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. Common Sense has an uncommon reach, with more than 68 million users, half a million educators, and advocates in all fifty states supporting our policy initiatives. We write to follow up on our April 10 request (attached), where we asked that as you investigate Facebook's disclosure of the personal information of 87 million users to Cambridge Analytica and potential violations of the 2011 Consent Order, you in particular: (1) investigate how teens were affected, and (2) include specific provisions protecting users under 18 in any future decrees or orders.

Teens were potentially disproportionately harmed by Facebook's allowing apps to scrape friends' information; teen online behavior often includes significant sharing and use of third party apps (games). This disproportionate harm is particularly concerning given teens' special vulnerability online, as detailed in our April 10 request, and as recognized by the Commission as well as the U.S. legal framework (which in general prohibits teens from entering binding contracts).

Further reports have revealed that Facebook gave access to Facebook users' and their friends' information to device makers, including foreign and domestic mobile phone and gaming console companies, without a user's consent and sometimes despite a user's denial.¹ (Unfortunately, ignoring users' privacy settings does not appear to be an isolated incident--just yesterday another instance was reported where Facebook made private posts public.²) Given this news we are even more concerned about disproportionate harm to young people. Young people are likely to access or have accessed Facebook and "Facebook-like experiences" on mobile and other devices, the very same devices for which Facebook built

¹ Gabriel J.X. Dance et al., *Device Companies Have Vast Access to Facebook Data*, N.Y. Times, June 4, 2018, at A1.

² Sheera Frankel, *Facebook Bug Changed Privacy Settings of Up to 14 Million Users*, N.Y. Times, June 8, 2018, at B2.

device-integrated APIs that enabled data-sharing with device makers. Teens, especially lower-income teens, are more likely to have access to phones than computers³, and a 2015 Common Sense report found that teens spent over four hours a day on mobile media.⁴ The report also found that teens were 2.5 times more likely to access social media via a smartphone than a computer, and 3 times more likely to have video game consoles as opposed to desktop computers in their bedroom.⁵ The means and methods teens use to access social media appear to put them at greater risk.

The sharing of information with device makers is yet another reason why the Commission should pay special attention to how Facebook's mishandling of user information impacted teens, with respect to Cambridge Analytica, Huawei, and a growing number of third-parties. How did device usage affect user privacy? Were teens more affected because of their device usage? Were lower-income teens more affected because of their device usage?

Moreover, that this sharing was not disclosed during multiple Congressional hearings, but rather unearthed by reporters, underscores how much of what Facebook does continues to be extremely opaque. It is therefore extremely important that the Federal Trade Commission act to protect Americans' privacy and ensure that companies are transparent--not only with Congress but with consumers as well--so consumers know what to expect. Teens especially need additional help in understanding how companies collect and use their information. According to recent Common Sense and SurveyMonkey polling, very few teens read the terms of service, compared to adults, and most almost never or never do. And only a third of teens think social networks do a good job of explaining what they do with user data, though almost all believe such networks *should* clearly label how they collect and use information.⁶ Not reading terms of service, and not understanding them, makes perfect sense for a young teen--a Georgia Tech study last year found that sites like Facebook had terms of service written, on average, for a college sophomore's reading level.⁷ This is not a document most 13-year-olds could be expected to understand.

We respectfully request that the Commission look carefully into how Facebook has communicated its practices to teens, handled teens' information, and respected teens' privacy preferences, especially with request to sharing information with device makers. We further respectfully request that the Commission craft any future decree or relief with teens in mind.

³ Monica Anderson et al., *Teens, Social Media & Technology 2018*, Pew Research Center, 14 (2018), http://assets.pewresearch.org/wp-content/uploads/sites/14/2018/05/31102617/PI_2018.05.31_TeensTech_FINAL.pdf

⁴ Common Sense Media, *The Common Sense Census: Media Use by Tweens and Teens*, 13 (2015), https://www.common Sense Media.org/sites/default/files/uploads/research/census_researchreport.pdf

⁵ *Id.*, at 22

⁶ *Quarterly Survey Series*, Common Sense Media and SurveyMonkey (June 11, 2018), <https://www.common Sense Media.org/research/quarterly-survey-series>

⁷ Casey Fiesler & Amy Bruckman, *Copyright Terms in Online Creative Communities*, CHI '14 Extended Abstracts on Human Factors in Computing Systems, 2551 (2014), <https://www.cc.gatech.edu/elc/copyright/pdf/p2551-fiesler.pdf>

As noted previously, the Commission's investigation into Facebook's apparent violations of the 2011 Consent Order and Section 5 of the Federal Trade Commission Act provides an opportunity to ensure that Facebook takes steps to provide protective measures to teens that are not available to other people.⁸ The Commission has long recognized that teens are especially vulnerable to privacy harms such as identity theft and reputational damage that can affect education and employment opportunities. We ask that you take full advantage of this chance to protect them, no matter what devices they use.

Respectfully,

James P. Steyer

James P. Steyer, CEO & Founder

Ariel Fox Johnson, Senior Counsel, Policy & Privacy

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⁸ Federal Trade Commission, *Facebook Settles FTC Charges That It Deceived Consumers By Failing To Keep Privacy Promises*, Press Release (Nov. 29, 2011), <https://www.ftc.gov/news-events/press-releases/2011/11/facebook-settles-ftc-charges-it-deceived-consumers-failing-keep>

ATTACHMENT

April 10, 2018

Acting Chairman Maureen Ohlhausen
Commissioner Terrell McSweeney
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

Dear Acting Chairman Ohlhausen and Commissioner McSweeney,

Common Sense is the nation's leading organization dedicated to helping kids and families thrive in a digital world. We write to request that, as you investigate Facebook's disclosure of the personal information of 87 million users to Cambridge Analytica and potential violations of the 2011 Consent Order, you: (1) investigate how teens in particular were affected, and (2) include specific provisions protecting users under 18 in any future decrees or orders. Given teens' tendencies to share and engage online and to be friends with other teens, it seems likely they were disproportionately harmed by Facebook's allowing apps to scrape friends' information. The Commission has recognized that teens are uniquely vulnerable; this is an opportunity to protect them.

For over a decade, Common Sense has helped 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. Common Sense has an uncommon reach among parents and teachers, with more than 68 million users and half a million educators across its network. We also have advocates in all fifty states supporting our policy initiatives.

We have long advocated for stronger privacy protections for kids and families across all platforms and services, especially those young men and women below the age of legal consent. We have supported updates to COPPA that would include teens. And we spearheaded California student privacy legislation, the Student Online Personal Information Protection Act (SOPIPA) that has become a model across the nation. Further, we have worked with industry and other partners to encourage them to build in privacy by design. We have researched media and technology use by young people from a variety of perspectives, and we are particularly attuned to the privacy challenges young people face.

As the Commission itself has recognized, teens are particularly vulnerable online, and prone to behavior that could lead to identity theft or adversely affect employment or educational opportunities.¹ Social and neuroscience research tells us that they are more likely to share information without thinking, focusing on the present and not considering or understanding long

¹ Federal Trade Commission, *Protecting Consumer Privacy in an Era of Rapid Change*, 70 (Mar. 2012); *see also* FTC, *Data Brokers: A Call for Transparency and Accountability* 55 (May 2014) (noting that that teens often fail to appreciate long-term consequences of posting data online).

term consequences.² Young people are more susceptible to advertising, and less able to assess content critically.³ While this is especially true for kids, it is also true for teens—particularly ones under 16—as studies have shown commercial literacy increases between 12 and 15.⁴ This has caused academic experts to question whether such teens, who may not be able to distinguish between an ad and content, can grasp the myriad ways in which companies use their personal information.⁵ And these vulnerabilities in comprehension and understanding are exacerbated by the sheer amount of time young people spend online and the activities they partake in. Teens have to go online in order to get an education, and many view it as a primary means to connect with friends. Over three-quarters of teens are on social media.⁶ And all teens, on average, spent over an hour a day on social media in 2015.⁷ That number has likely only grown.

Our legal framework reflects this reality of teens' differences and vulnerabilities—in general, they are unable to enter into binding legal contracts. Given the special legal and ethical considerations regarding young people, we believe it is important for the Commission to look carefully into how teens' information has been handled, and privacy preferences respected, and to craft any future decree or relief with teens in mind.

During its investigation, we ask that the Commission pay special attention to how teens were impacted by Facebook's mishandling of user information, both with respect to Cambridge Analytica and any other third-parties. Given teens' propensity to take personality quizzes, play games, and share viral content, and to be friends with other teens, it seems likely they were disproportionately affected by Facebook's allowing apps to scrape friends' information. How many teens were affected? Were teens more affected? Have affected teens been informed by Facebook in language they can understand and act upon?

We also ask that any future decrees or orders provide special protections for teens. These should be tailored to address teens' specific vulnerabilities. For example, privacy policies and terms of service are notoriously dense for adults, let alone for youth, calling into question teens' abilities

² See, e.g., Adriana Galván et al, Earlier Development of the Accumbens Relative to Orbitofrontal Cortex Might Underlie Risk-Taking Behavior in Adolescents, *Journal of Neuroscience* (June 21, 2006); Adriana Galván and Kristine M. McGlennen, Enhanced striatal sensitivity to aversive reinforcement in adolescents versus adults, *Journal of Cognitive Neuroscience* (2013).

³ Workgroup on Children's Online Privacy Protection, Report to the Maryland General Assembly on Children's Online Privacy, 16 (Dec. 30, 2013); Ofcom, Children and Parents: Media Use and Attitudes Report 2015 (Nov. 20, 2015), <http://stakeholders.ofcom.org.uk/market-data-research/other/research-publications/childrens/children-parentsnov-15/>.

⁴ Livingstone, Sonia and Kjartan Ólafsson, Children's Commercial Media Literacy: New Evidence Relevant to UK Policy Decisions Regarding the GDPR, Media Policy Project (Jan. 26, 2017), blogs.lse.ac.uk/mediapolicyproject/2017/01/26/childrens-commercial-media-literacy-new-evidence-relevant-to-uk-policy-decisions-regarding-the-gdpr/.

⁵ See, e.g., Livingstone, Sonia et al, If Children Don't Know an Ad from Information, How Can They Grasp How Companies Use Their Personal Data?, Media Policy Project (July 19, 2017), blogs.lse.ac.uk/mediapolicyproject/2017/07/18/if-children-dont-know-an-ad-from-information-how-can-they-grasp-how-companies-use-their-personal-data/.

⁶ NORC at the University of Chicago, New survey: Snapchat and Instagram are most popular social media platforms among American teens: Black teens are the most active on social media and messaging apps, *ScienceDaily* (April 21, 2017), www.sciencedaily.com/releases/2017/04/170421113306.htm.

⁷ Common Sense Media, Common Sense Census: Media Use by Tweens and Teens, Executive Summary (Nov. 3, 2015), https://www.commonsensemedia.org/sites/default/files/uploads/research/census_executivesummary.pdf.

to understand all of the nuances that may be buried in them. Teens deserve clear policies written for their age and level of understanding. Otherwise, they are unable to understand what they are allegedly agreeing to or give anything resembling informed consent. Teens also deserve privacy protective defaults. Given teens' propensity to share and act impulsively, protective defaults can provide an important speedbump. Facebook itself has actually recognized this with respect to some settings the Facebook site has for teens vis-à-vis sharing with the public, but it does not appear to have taken any such steps vis-à-vis sharing with apps and advertisers.

These are just some of the ways that Facebook can better respect and protect its teenage users in the future. After learning more about how teens were impacted—which the Commission has the power to do during its investigation—there will likely be additional safeguards that are appropriate to put in place.

The Commission's investigation into Facebook's apparent violations of the 2011 Consent Order⁸ and Section 5 of the Federal Trade Commission Act provides an opportunity to ensure that Facebook takes steps to provide protective measures to teens that are not available to other people. As noted, the Commission has long recognized that teens are especially vulnerable to privacy harms such as identity theft and reputational damage that can affect education and employment opportunities. We ask that you take full advantage of this chance to protect them.

Respectfully,

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⁸ Federal Trade Commission, Facebook Settles FTC Charges That It Deceived Consumers By Failing To Keep Privacy Promises, Press Release (Nov. 29, 2011), <https://www.ftc.gov/news-events/press-releases/2011/11/facebook-settles-ftc-charges-it-deceived-consumers-failing-keep>.