



August 20, 2018

Chairman Simons  
Commissioner Ohlhausen  
Commissioner Phillips  
Commissioner Chopra  
Commissioner Slaughter

Federal Trade Commission  
600 Pennsylvania Ave., N.W.  
Washington, D.C. 20580

*Re: Competition and Consumer Protection in the 21st Century Hearings, Project #P181201*

Dear Chairman and Commissioners,

Thank you for your attention to today's emerging challenges for competition and consumer protection and the opportunity to provide input.

The Commission has long recognized that children and teens are especially vulnerable to privacy harms such as identity theft and reputational damage that can affect education and employment opportunities, and that these vulnerabilities are particularly acute online and on social media. These vulnerabilities are only increasing, as now 98% of children under 8 in America have access to a mobile device at home.<sup>1</sup> Half of teens say they feel addicted to their mobile devices,<sup>2</sup> and those teens overall consume an average of nine hours a day of media.<sup>3</sup>

As you investigate competition and consumer protection in the 21st century, we urge you to keep at top of mind how children and teens are uniquely affected by modern media and technology, big data, and emerging forms of communication, education, and commerce. In particular, we ask that you take time at the hearings to consider what the Commission can do with its current tools to encourage companies to promote innovative privacy protective services, both through proactive encouragement of privacy by design and through effective enforcement when children and families have been harmed. We also believe the Commission would benefit from expanded rulemaking and civil penalty authority, in order to better protect all Americans' privacy.

### **Kids And Teens Are Uniquely Vulnerable**

Common Sense is the nation's leading organization dedicated to helping kids and families thrive in a 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 positive force in all kids' lives. Common Sense counts more than 90 million annual unique users, and more than 500,000 educators from all 50 states supporting our policy initiatives.

Children today face surveillance unlike any other generation -- their every movement online and off can be tracked by potentially dozens of different companies and organizations. Young people will spend their

---

<sup>1</sup> The Common Sense census: Media use by kids age zero to eight (2017), available at <https://www.common sense media.org/research/the-common-sense-census-media-use-by-kids-age-zero-to-eight-2017>

<sup>2</sup> Common Sense: Technology Addiction: Concern, Controversy, and Finding Balance (2016), available at <https://www.common sense media.org/research/technology-addiction-concern-controversy-and-finding-balance>

<sup>3</sup> The Common Sense Census: Media use by teens and tweens (2015), available at <https://www.common sense media.org/research/the-common-sense-census-media-use-by-tweens-and-teens>

entire lives connected in order to get an education and participate in modern society. Further, kids are prone to sharing and impulsive behavior, more susceptible to advertising, and developmentally less able to understand the privacy consequences of their actions and how to protect their personal information. Unfortunately, as a recent Fordham study confirmed--this information is collected, sold, and repackaged, for kids at least as young as 2.<sup>4</sup>

The Fordham study assessed the market for “student” data. Being a student is one of the main ways kids and teens lose control of their personal information. Education technology providers collect massive amounts of sensitive data about students – including performance records, online activity, health information, biometrics, behavior and disciplinary records, eligibility for free or reduced-price lunch – even cafeteria selections, and whether or not students ride the bus to school. And this information is at risk. A recent Common Sense evaluation of the privacy policies of the top 100 edtech products found products may be inappropriately using students’ information for advertising, selling it to third parties, or otherwise failing to respect it. For example, 38 percent of educational technologies evaluated indicate they may use children’s personal and nonpersonal information for third-party marketing and 37 percent indicate collected information can be used by tracking technologies and third-party advertisers. Half indicate they may allow children’s information to be made publicly visible.<sup>5</sup>

Yet the news reports of privacy scandals make clear that it is not just edtech companies that threaten the privacy of young people--but many general online consumer companies. As we noted to the Commission about Facebook, there can easily be disproportionate harm to young people<sup>6</sup>--who these companies or their employees specifically target.<sup>7</sup> Youth 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.<sup>8</sup> 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.<sup>9</sup>

### Protecting the Privacy and Digital Well-being of Young People

At Common Sense, we are committed to helping kids and families thrive in a rapidly changing world. One of the main ways we do this is by helping to inform and educate parents and teachers. For 15 years, we have been rating movies, books, and tv shows, so parents can make smart choices as to what is best for their families. Common Sense Education rates edtech products and apps, so educators can make similar choices about media and tech used in their classrooms. And, as privacy became an increasing concern for parents and teachers, we launched our Common Sense Privacy Initiative to evaluate applications.

We recognize the importance of a market for privacy and security, but know also that practices are still far too opaque for parents and teachers to assess, and believe that this isn’t a burden that should fall solely on families’ and teachers’ shoulders. With our privacy evaluations, we developed a tool to enable teachers and districts to make informed decisions about what apps and technology they want in their classrooms.

---

<sup>4</sup>Fordham University - Transparency and the Marketplace for Student Data (2018)

[https://www.fordham.edu/info/23830/research/10517/transparency\\_and\\_the\\_marketplace\\_for\\_student\\_data/1](https://www.fordham.edu/info/23830/research/10517/transparency_and_the_marketplace_for_student_data/1)

<sup>5</sup> 2018 State of EdTech Privacy Report, Common Sense Privacy Evaluation Initiative, available at

<https://www.commonsense.org/education/sites/default/files/tlr-blog/cs-state-of-edtech-privacy-report.pdf>.

<sup>6</sup>Levine, Sam. Facebook told advertisers it can identify teens feeling 'insecure' and 'worthless' (May 01, 2017) available at

<https://www.theguardian.com/technology/2017/may/01/facebook-advertising-data-insecure-teens>

<sup>7</sup>Gosh, Shona. An internal email shows how Facebook learned of a 'psychological trick' to get teens to try a new product (August 8, 2018) available at <https://www.businessinsider.com/internal-note-tbh-facebook-psychological-trick-teen-users-2018-8>

<sup>8</sup> Quarterly Survey Series, Common Sense Media and SurveyMonkey (June 11, 2018), available at

<https://www.commonsensemedia.org/research/quarterlysurveyseries>

<sup>9</sup> Quarterly Survey Series, Common Sense Media and SurveyMonkey (June 11, 2018), available at

<https://www.commonsensemedia.org/research/quarterlysurveyseries>

We also meet frequently with ed tech vendors, as well as other tech industry players, to encourage them to take steps to ensure their products are transparent and fair for kids and families. These are important steps, but there is much more to be done. At this point, far too many edtech apps, and children's technology in general, are indecipherable to teachers and families. This is an increasing concern in the connected-device space, where consumers frequently have already set up a product like a connected toy before they receive notice of its listening capabilities. We appreciate the Commission's efforts to provide reports and guidance as to best practices (such as "Start with Security" and "Stick with Security"). We believe, however, that more can and should be done.

### **The Commission Should Prioritize Kids in the Connected World**

As you consider consumer protection and competition issues in the 21st century, we urge you to take a careful look at kids. In particular, we believe that children and teens' unique experiences deserve recognition at the hearings. Here are three examples:

- #2-The communication, information, and media technology networks pose special risks for kids and teens, who are often participating in multiple online systems and networks not through any choice of their own but because it is required by a school, a parent, or an extracurricular provider.<sup>10</sup> In addition, children face unprecedented tracking today over multiple devices, and as cross-device tracking grows it is incumbent on the Commission to ensure appropriate protections are in place.<sup>11</sup>
- #4-As discussed above, big data raises particular concerns for kids. Young people are subject to near constant surveillance. And the terms of service of products kids use can be indecipherable for adults, let alone for children or young teens. Furthermore, as students, young people are often limited in their ability to choose between products and services--and schools may be limited as well: as an example, more than half of K-12 students use Google education apps.<sup>12</sup> This deserves special inquiry.
- #9-The use of algorithmic decision tools, AI, and predictive analytics on children should give everyone pause. Young people are increasingly and unwittingly being subject to algorithmic decision making.<sup>13</sup> Kids are learning and growing in a different world, communicating ideas and innermost feelings on platforms that may not have existed the year before. Kids should feel free to express themselves and voice opinions or chase ideas without fears that such behavior will come back to haunt them. Otherwise, they will start to self-censor, and opportunities for growth will be limited.

We thank the Commission for its commitment to protecting kids and teens. Please feel free to draw on us as a resource going forward.

Respectfully,

James P. Steyer, CEO & Founder  
Ariel Fox Johnson, Senior Counsel, Policy & Privacy  
Common Sense Media

---

<sup>10</sup> See, e.g., discussion of children's lack of choice in terms of network in Common Sense Kids Action comments in the Federal Communication Commission's Matter of Protecting the Privacy of Customers of Broadband and Other Telecommunications Services (WC. 16-016), p. 13-14, available at [https://www.common sense media.org/sites/default/files/uploads/kids\\_action/cskabroadbandprivacycomments.pdf](https://www.common sense media.org/sites/default/files/uploads/kids_action/cskabroadbandprivacycomments.pdf).

<sup>11</sup> See Common Sense comments on Cross-Device Tracking to the Federal Trade Commission, available at <https://www.ntia.doc.gov/files/ntia/publications/csmntiacomments6.2.16.pdf>.

<sup>12</sup> Singer, Natasha. How Google Took Over the Classroom, N.Y. Times (May 13, 2017), available at <https://www.nytimes.com/2017/05/13/technology/google-education-chromebooks-schools.html>.

<sup>13</sup> Stolzoff, Simone. Schools Are Using AI To Track What Students Write On Their Computers, Quartz (Aug. 18, 2018), available at <https://qz.com/1318758/schools-are-using-ai-to-track-what-students-write-on-their-computers/>.