The Future of the COPPA Rule: An FTC Workshop  
October 7, 2019  
Segment 2  
Transcript

**Jim Trilling** Welcome back from the lunch break. We have a brief presentation by Morgan Reid, the president of ACTU, the APA Association, and then we'll move right into our next panel.

**Morgan Reed** Hopefully there'll be some claps afterwards, but I think there'll be, you know, I'm not sure that will still be sustained.

I see a few folks filtering in, all right.

So as Jim said, my name is Morgan Reed. I am the president of the App Association. I am also a recovering developer. And I have spent most of my life in front of keyboards, either working with software companies, writing code or otherwise. I go back to an Apple II, with a tape drive.

So our organization represents more than 5000 companies worldwide. But for the audience here today, I'm going to focus down on a subgroup of our membership. We run a developer exchange, a private closed developer group that has more than 800 companies and developers on it, where people are free to ask questions. Make comments. Talk about monetization, commiserate. And I'll read you some, some interesting quotes from there. We did a survey of that audience and in addition, we did a series of focus groups and one on one interviews with independent kids, app developers. These are developers who specialize in educational applications, applications that are directed at children. And these are folks who own it. We've heard a lot about general audience applications, mixed up applications. This is to talk about the folks who know exactly who their audience is and how they're going about them. And that leads me to something I want to thank Jim and the rest of the team at the FTC. A lot of times these events spend a lot of time talking about small developers, but never actually hearing from small developers. So I really appreciate the FTC time and thoughtfulness to include some of these messages along with it.

So most of this, you know, and I'll go through it really fast because it's a backup of all we've heard. Price Waterhouse Coopers sees kids 12 to 15 consuming 20 hours a week of screen time. The American Heart study shows kids 8 to 18 or post, post COPPA 7 hours a day. We've all heard from everything we've know up to this date that YouTube kind of owns the space and the general audience. YouTube kids grew fast. But 80 percent of kids are using YouTube. The general audience version making it the largest single kid's digital entertainment platform. I looked at a PWC marketing material and they actually estimate that YouTube general audience will actually account for 25 percent of kids digital ad spend by 2021. I thought that was a fascinating juxtaposition. P.W. C. acknowledges that this is a general audience application and yet they believe twenty five percent of kids targeted ads will actually appear there. So Tik Tok is not far behind an audience. We've heard a lot about it earlier today. I think that's yet to be seen. When I talk about general audience, really, you have to think of it in these this context. A general audience from a user perspective is free ad supported. The free will
always be in quotes for that reason unfettered, meaning that you don't feel restricted by what you can get to how you do it. It's easy, it's low friction, widely available. I can get it on any platform, in any case, in any context, and I can get to it rapidly. And then finally entertaining. We've talked a lot about serious stuff here, but the entertainment value, even when it comes to educational, is important. What a parents say. I'm going to say something provocative and that is, is that the study by Danah Boyd? As hard to take Jason Schultz and John Palfrey in 2011 still holds true. And if you haven't actually gone back and looked at that study, you should. It to nutshell a really long and thoughtful piece. Basically, it's that parents are making decisions regardless of the regulatory framework that they're presented with and that kids are doing things that are expected of children who are testing out the range of privacy and their own information sharing. And so there is a tendency of us for us to look through the regulatory lens. And what this study did back in 2011 is look through it from a behavioral lens and what people are accessing. It didn't make a commentary about whether it was good or bad or respectful of privacy, but let's match it up with the behavior. Now, the other part is 85 percent of parents, when you ask them directly say they are concerned about a children's digital privacy. And the good news is basically most parents, nearly a hundred percent, think that parental controls are a good idea. And what was more astounding is. Sixty five percent of 11 to 15 year olds also think parental controls are a good idea. You'd think this would be awesome, right? Bad news. Parents don't really use them. We're seeing some as high as 47 percent of parental controls from the platforms. But in general, when you poll parents, one in three actively use the parental controls. And I think this is something that was very interesting in our first presentation. Pew finds 81 percent of parents have knowingly allowed their child to use general audience YouTube. And I mentioned this because earlier today we had a presentation talking about an IRB approved study to look at children's behavior on their own platforms. And the fine doctor showed us a list of the applications that they were there. Remember, if it's an IRB approved study, then there's been some parent engagement of all this. And yet the majority of the applications she was showing in her study were general audience apps. That means the parents involved actively circumvented the controls. And I'll you. She said that 35 percent of her users had their own tablets. Some point along the path, the parent had to actually say, put in a full state or we told don't put 94 in, do 24, because it does make you look too old. Well, this tells you, even when informed parents are engaged, they are. They are parenting in their own way. So even in the IRB study, the they're doing that action. Why friction, restriction and cost every layer of friction you add alters parent behavior significantly. We jokingly refer to it as the over the shoulder factor. If a parent wants access to something and they have to pass it from the back seat to the front seat of the car, more than one time the parent moves onto the next thing. So the more friction you add to an application directed at children, the less likely it is that the parent is going to take the steps necessary to get through it. Because the competition, of course, is, as I said, free, unfettered, widely available. Restriction kids balk against some of the restrictions. I can't get to this. I can't do that. And they say that to the parent and from the parents perspective. Fine. I'll just put in a different age date. They're participating. They're parenting, but they're not using the regulatory construction that we all understand. And then cost.

I'm going to read you something. We'll get to a lot of other developer quotes. But this is a quote from a parent that just came in on the developer exchange yesterday.
This is to a kid's app developer who collects no information. It's an educational app. It's actually quite a good app.

Quote, firstly, I already sent a hate letter. Did you not receive it? Second, why do we need to spend money on some garbage game just so kids can learn? I got this game because I thought it was free, but no. Instead, you are making me spend like 10 bucks. So my kid learns. No. Take your business somewhere else and I will write a no star review and get my friends to write one too. I will do this until you allow my kids to play everything for free. Thank you. Now, for my members who are building educational apps for kids, that last bullet, friction, restriction and cost, that's not an unusual email. It was more hyperbolic than most, but it's not unusual. That should present you the difference. There are community is seeing when it comes down to this stuff. These numbers from our summer survey, ninety two percent of some of our developers see that general audience content. Sorry, Julia, UGC is the biggest competitor, not fellow kids, app developers. It's not just saying us saying this. The Children's Technology Review found that in 2013 they reviewed six hundred and seventy three releases from studios like Tokyo, Boca and Noisy Crow, Touch Press and Duck Duck Moose. That's now dropped to 105. So we are seeing less high quality educational valuable content because the market is just not there.

Now down to down to the questions and answers directly from developers.

Here's what they're hearing from their users, from their parents. It's cultural. Parents don't want to pay for software. We get requests from users. Why do you have ads so it's free? We're seeing that more probably on Google Play than Apple. There is a bit of a culture difference between the Apple app store. There's no one say more pressure, but there's a more acculturated concept that you pay directly for goods and services on Apple versus Google Play, which has more of a culture of free user generated. It's more available content. And I thought this one was really interesting. This is from a developer who has kids in the COPPA age range. I'm a parent. I let my kid watch videos on general audience apps. I know about the privacy issues, but it's fast, easy and they like it. This is from someone who works in our field and knows this stuff. And I bet you if I didn't if I did it where everybody would close their eyes and have a show of hands, how many of you have let your own under 13 child access a general audience application?

Yeah, a lot of hands go up and this is the problem.

So we talked about general audiences free, unfettered, widely available and entertaining, the COPPA side, expensive, onerous or friction full. We have to find some way around that restrictive, fewer features, fewer capabilities, less known or available. And it's entertaining ish. And this is I use the issue because something that our industry faces in large regard and was interesting because Rovio spends a lot of money, I know, doing the same thing. When you're up against an hour long user generated content video on some kind of video sharing site, that content is quick. It's easy, it's entertaining for the kid. They watch it for us as a small guy or even Rovio is a giant multi-billion dollar company. We've got to hire artists, programmers, program managers, project managers, lawyers to look over the COPPA language every time we roll out a new feature or new capability. We've spent thousands of hours or at least hundreds of person hours to put that new content out. And you're competing with billions of hours of video that's coming out constantly across multiple streams. So our stuff is entertaining, but it's a huge cost to
get that entertainment there, to provide 30 minutes of new content versus two hours of video that
you see from UGC. So it's very unbalanced in what we face.

It's COPPA, the barrier.

I thought this quote really summed it up seamlessly, this is expected. But with COPPA seamless
snus is impossible. And that has been one of the single largest areas of concern. Our folks are
looking to provide a cop a compliant environment and they're finding doing VPC is really hard.

We want to make it this way. We just walked away. And why do they want to do it? We wanted
to create a hub for kids to promote creativity. Right. So these are not folks who are looking to
take data and provide interest based advertising. They're trying to figure out how to do it so they
can build an engaging product. Parental consent makes the whole process very complicated. And
this is the depressing part. But I have no good answer. And why? Because developers need
insight to make better products.

The loss of analytics that's been happening throughout the ecosystem is huge. One hundred
percent of our respondents. The only thing we had a hundred percent on at all was, yes, we need
analytics. Interestingly enough, most don't blame the platforms for the restrictions that have
happened on the analytics. They feel it's just a fact of doing business that the Apples, the
Googles, the flurries, everybody in the world who's been pulling back from providing analytics is
finding themselves there because they're unsure about the regulatory environment.

That doesn't mean parents aren't concerned about privacy, but there is this concern. And you say
it here on the response, the platforms are always reacting. When you say, well, do they really
need analytics? Yes, they really, really do.

I don't want to collect information on kids, but I can't upset up a way for my app to work on the
phone, tablet and parent device seamlessly without creating accounts. You heard that earlier.
And I know that some apps use tokenization and do some other ways to pass the information, but
it's tough, especially for small developers. We saw on that initial study that we talked about this
morning that parents are providing the app to the kid and maybe it's on the phone and maybe it's
on the tablet. The better your content, the more COPPA conscious you are, the harder it is to
provide the actual solution that everyone in this room wants. We have one whole branch of our
membership that deals with applications that are in the special needs capability area. And this has
been the hardest hit. They need a lot of data and intrusive data and data that may be stored on the
device in a way that allows a child who needs a special vocabulary for kids with autism or
speech speech difficulties. They need to collect data on that child, preserve it, move it forward
with devices and capabilities. The hard part is you'd say, well, kids with parents with them, with
kids with special needs, they've got to be the most engaged parents. Unfortunately, they're not.
For a lot of families, especially those where they have a lot of income insecurity, if they have a
kid with special needs, they are the least engaged that you can find. And that's something it's
highly heartbreaking and disappointing, but it's something that our membership who works with
those communities understands full well. So we've got to find a way to make sure that special
needs has its own opportunities. And I don't think this happens by accident. We say that VPC is
intentional friction. It's clear from everything we've heard in the last two panels that the authors
of COPPA. We don't really want information collected on kids. So friction is intentional. And this is kind of leading to the destruction of general audience applications, basically wiping out COPPA apps off the face of the map. And I would say and I know I'm short on time. Sorry, Jim, that. We should take a page from what we learned during the Napster lime wire fight, which is the more you found ways for content to be provided legally, the more it down. It pushed back on the piracy applications. The line wires, the Napster's of the world. And the more you saw people gravitating to legitimate upfront paid content and they did that by reducing friction. Now, in the IP space, in the in the music movies, that space was having to do with licensing. But in ours, a lot of that friction is created by a regulatory sphere that has some uncertainty in it. So I would argue that we should take a page from there, find out a way to have results that engage parents but reduce the friction. And that gets to my. My big ideas and I'm a little over.

We have to find a way to allow the big platforms to be engaged on our capabilities, finding ways for an Apple or a Google or a steam or any of the larger platforms to provide an API that allows us to check against for a child that doesn't force us to build our own product. Allowing Kaoru and Provo and the rest to engage and intersect directly with those platforms is also something that will be good. But their platforms are not going to take that burden on. If the liability perspective and the opportunity to innovate is tough. We also need to make re consent easier. One of the things that harms our ability to create new content and push it out is getting reconsidered becomes a barrier for that next stage. Remember, I said friction is our biggest, our biggest implement, biggest barrier to implementation. Adding that friction for reconnect is a nightmare.

And then I thought, as I said, innovation of platforms is going to be critical. But I think we should look and take a page from the FDA 2013 Mobile Medicaid, medical application guidance and what's happening in fintech. On the use of regulatory sandboxes, we need to look for ways to allow the bigger platforms to innovate in this space alongside safe harbors and give them some space. Can we use the fingerprint? Can we use face I.D.? Is there some way that we can directly interface with the larger platforms to get the consent we need so that we can provide the products that everybody in this room over the last two panels said they want? And with that, Jim, I appreciate you giving me some extra time and I'll go to the end. Thank you.

Too depressing for those who were not here this morning.

Jim Trilling I am Jim Trilling, an attorney in the FTC Division of Privacy and Identity Protection, and I, along with my deep hip colleague, Kristen Cohen, will be moderating today's third panel. We're going to be talking about definitions, exceptions and misconceptions associated with the COPPA rule. We want to begin by thanking Morgan for his presentation, which will definitely help inform some of our discussions. We have a terrific group of panelists and limited time to discuss a number of issues. So I'll refer you to their bios just to introduce them briefly. We have John Ahren's the CEO of Vera Ted Technologies Inc. Ariel Fox Johnson, senior counsel for policy and privacy at Common Sense Media. Sheila Millar., a partner at Cullinan, Keller and Heckman LLP. Morgan, from whom you just heard, Steve Smith, the chief information officer of the Cambridge, Massachusetts Public Schools. Amelia Vance, Senior Counsel and Director of Education Privacy at the Future of Privacy Forum. And Samantha Vargas Poppe, a principal at Equity Matters LLC. And as with the other panels, we working to
make this an interactive discussion. And we do have question cards available for those in the audience and those who are watching online can propose questions by following the instructions posted online. So as I said, we're here to discuss, dissect definitions, exceptions and misconceptions. I want to start off by focusing on misconceptions. I'd like to ask each of our panel us to say what they think the biggest misconception is about COPPA.

And happy to go right down the line.

**John Ahrens** Why don't we start with you, John? Sure. Well, one of the misconceptions, I think has already been identified earlier at one of the panels and the terminology of verifiable parental consent. The Association of the verification identity and the fact of whether or not that person is the parent of the child. I think that is one of the interesting questions that we get when we're about to provide a service and a potential client says. So are you going to verify that the person that we're verifying is the parent? And basically we're doing the job of verifying the identity in that. And so I think that may be one of the interesting things you could take away about misconception.

Ariel all right.

**Ariel Fox Johnson** And thank you to Jim and Chris and the FTC. Common sense, I think, is the biggest misconceptions I hear or one that it covers 13 year olds and to that it's a flat prohibition on collecting personal information from kids. And I think these misconceptions really show the gap between what consumers expect from COPPA and then what COPPA is actually doing. Consumers do think that we should be protecting teenagers, at least young teenagers. And while COPPA does have some flap prohibitions on use, it's been primarily enforced as a notice and consent statute. And I think consumers at this point are looking for more.

**Sheila Millar** Sheila, thanks, Jim, and thanks to the FTC for inviting me today. I'm going to highlight two misconceptions. One is that COPPA covers content, which of course it doesn't. The second is going to really come out of Morgan's presentation, and that is that COPPA prohibits analytics. The support for internal operations exception has been extremely helpful in allowing companies to use and collect certain data for restricted purposes under COPPA. We didn't talk about it this morning, but if we map GDP far and COPPA, they actually map really well. They have different approaches. But if you layer on the legal basis for processing versus the COPPA prescriptive approach and the exceptions, they map really well. Where they don't map well is the privacy directive. And so when we see last week's Court of Justice of the European Union decision on the need for express informed consent for any use of non-essential cookies, which is directionally where the UK ICAO cookie guidance goes, that's going to have an enormous impact. I think in a very negative way preventing businesses from collecting information that's legitimately necessary to operate their businesses. And I think the experience of COPPA is that that can be done in a way that is privacy safe, that reflects the risk based approach of COPPA.

**Amelia Vance** I think there are two big misconceptions that I frequently hear, first often from children and students themselves, that if you are under 13, the Internet is not for you, that you know, all of the statements and all of the websites that say, you know, this service is not for people under the age of 13 and the limited number of sites that actually are, I think really furthers
this idea that the digital ecosystem is something you have to secretly be in or that you just can't participate in until you're of age. And then the other misconception I hear a lot is something that Ariel and Sheila will be getting to, which is that there's this conflation of several worries about child privacy and safety.

And COPPA sort of up there in the clouds is sort of the umbrella that hypothetically covers all of this, whether it's concerns about advertising, concerns about whether an app is appropriate, whether it has adequate security, whether it has appropriate privacy controls.

And nobody quite knows exactly what it actually is.

And so getting down to the nitty gritty and maybe not seeing COPPA as a one size fits all, but as a piece of the ecosystem is something that I'm hoping we'll see more of moving forward.

That VPC is a technological problem, not a sociological problem.

**Steve Smith** So I'm going to have slightly different perspective. Challenges is a whole different level, and that's that. I think there's a misconception that all parents are well-informed enough to make a good decision about consent.

I would say that probably the majority of them are not in a position to make a well-informed decision. And for us in the room, it's sometimes difficult in terms of service. Privacy policies really understand what's being collected. It's more than just whether it is advertising or not. And to expect parents to make a really good decision about a product they think is is not correct.

**Samantha Vargas Poppe** Thank you, Jim and Kristin and the commission for including me in today's conversation from an equity perspective. The biggest misconception I think that I see is that this law protects all kids equally. I think that it's from a generation of legislation of one size fits all legislation and really hasn't done a good job of including a focus on the fact that different populations in an increasingly multicultural population of youth have different experiences that influence their decisions. More recent discussions and privacy have touched on this, and I challenge everyone to bring that into these debates.

While they're thinking of how to strengthen this role and make it work better to protect kids,

**Jim Trilling** To follow up first on Samantha's misconception, can you tell us about some of the demographic and social trends and unique concerns regarding children of color and their privacy?

**Samantha Vargas Poppe** Absolutely. Thank you. And I'm glad that you asked that just because I think that this panel will get very technical and it's just a good place to start. Recent data back in June from the Census Bureau came out and showed that for the first time as of 2018, the children of color represent the majority of children in the U.S. population under age 15. So the population's not what it looked like 5, 10, 15 years ago. And that's only to an expected growth in those populations. I think that that drives a lot of outdated assumptions about how people and children and parents interact in the space. I am a consultant with only those U.S., a national civil
rights and advocacy organization focused on opportunities for Hispanics. I identify as Latina myself. So that's the population that I'll just use as an example to walk you through kind of what I'm talking about here. So one out of every four children under age 15 is part of the Latino community. Various reports tell us that Latinos have an estimated spending power of over one point five trillion dollars. We know that the digital divide looks a little bit different today. Latinos are over indexing on mobile platforms. They're accessing the Internet at rates higher than the general population via mobile devices. And so then with all of those things coming together at a very high level, it's no surprise that Latino population and kids are being targeted to try to turn a profit. Unfortunately, a lot of times that comes in the way of flagrant violations of COPPA with, you know, that allow people to bad actors. I'm not saying that everyone is in this mix at all. But we've seen a strong tie in the research that violating COPPA getting data and using it to target certain populations for junk food. We see research showing that a lot of the ads that Latino kids and African-American children are seeing somewhat upwards of 95 percent are for junk food products. And again, I think there's parts different layers of this conversation. But I believe that some of that lax enforcement of COPPA helps open the door for some bad actors. And that's just something that we have to think about, how this all comes together and how we can learn more about the interests of a more racially diverse population that we're dealing with as the reality of our youth population today.

**Jim Trilling** Anybody else want to weigh in on the demographic trends that Samantha identified and how policymakers should be reticent? Those trends when it comes to rule reviews and also when it comes to the legislative landscape.

**Morgan Reed** One thing I would say is that the special needs community, the disabled community, is an area where these devices have had a profound life changing impact on on people and that we need to make sure that that I think somebody else said that life doesn't begin. You said life doesn't begin at 13. These adaptive technologies need to be made possible for kids starting as young as possible so that they can see so that they can communicate, so that they can engage in the world around them. And I hate it when COPPA becomes a barrier for a child to say, I love you to their mom. And that's what we're trying to avoid.

**Kristin Cohen** Well, so now we've sort of covered the misconceptions, so we're gonna move on to the definitions were going a little bit out of order from the title. And the most one of the most core components of the COPPA rule involves how we define personal information.

The statute specifies several pieces of information that are considered personal your name, your address. But it also gave the commission the ability to determine if there were other pieces of information that would allow the either physical or online contacting of the child. And in 2013, we added, as Phyllis told us about this morning, and the commission added three pieces of personal information that were covered, persistent identifiers used to track users over time and across Web sites, geo location information and photos and audio recordings that included the child's image or voice. So I'd just like to ask the panel how that has worked in practice is that have those additions helped to improve children's privacy? Have they had unintended consequences? We heard a little bit from Morgan. I think I know where he's going to come out, but with love to hear from the panel on that.
**Ariel Fox Johnson** So I think these it has improved kids privacy, seeing the FTC and the New York attorney general going after actors who are collecting personal information like persistent identifiers and protecting kids from those persons identifiers being used to create profiles of the kids or behaviorally target them. I think we also see that in newer definitions of personal information like in the California Consumer Privacy Act and the GDPR we see unique identifiers and things like and identifiers tracking someone across sites and services and over time included as a piece of personal information just the same way as we additionally see, you know, new things like biometrics. And I feel like COPPA is maybe like ahead of its time and understanding that these persistent identifiers and things that ways you could be identified online should be protected. But that's where we see everywhere else going now to.

**Sheila Millar** So I think one of the big changes from the 2013 rule did involve the definition of video and audio files. When we think about the policy behind COPPA, which is privacy and security by design, we didn't call it that at the time, but that idea that you don't collect more information than is necessary to allow the service to be provided is core to COPPA. Prior to 2013, I think a lot of companies offered apps or websites that allowed kids to upload photos. But certainly if you're in the kid's space, you were very attentive. Somebody mentioned earlier that predation was a really core concern that drove adoption of COPPA. So you would blur any identifiers. You wouldn't allow a child to say, you know, wear a T-shirt that you could visibly see Lafayette School. Right, to identify that child. That really was a sea change. And I think there's been an adjustment. People are accustomed to it now. But I think to Morgan's point, as we now get more focused on Americans with Disabilities Act and compliance and way two ways to get folks, including children, more engaged in the world, how do we make it easier for them to use adaptive technologies to be part of a community, to feel connected without putting up too many barriers? So it comes back to that risk balance, right? What are we trying to solve for? So the policy of advancing how we protect children with the hurdles necessary in many cases, hurdles that are put up to protect their privacy. I think we're still struggling to find that balance as technology and and society changes.

**Morgan Reed** I think, you know, we've been pro strong proponents of more enforcement by the Federal Trade Commission in front, including in front of Congress, because our members all are part comply with COPPA. So their world view is, hey, I'm doing the right thing. How come nobody else is? Why are we why are we standing alone? And we know that's not true, but that's how it feels. And you saw that from the quote. So I think I think to your point to Sheila's point, I think one of the key elements there is how do we reduce the friction for parents? How do we inform them? As Steve said, how do we engage with them in their language? They speak at home. How are we able to take advantage of what the platforms are doing for their own business purposes to make it possible to appropriately engage, meet them where they are? Help them parent? Because I think when it comes these questions of what persistent identifiers we use, well, if those can actually help us better inform the parent, reduce the friction, then that probably leads to a better product. And as you say, better protecting of children's privacy. So there has to be a better path on that.

**Sheila Millar** Well, relatedly, you know, I think the cross device point that you made earlier, Morgan, is kids are playing. They're using apps on their phone and their tablet. So how do you make a privacy safe experience that allows the business to simply leverage that persistent
identifier? I think, again, we're looking for privacy, safe experiences that minimize the data collection from children. And when we first and I was on the panel back in 2011 whenever we had the last workshop. But if we have a world where before I can set a persistent identifier to do analytics, to do frequency capping, to do, you know, spam or protection or various other things that fall within that definition, if we automatically say that's per say personal information and you need parental consent, that enormously adds to the friction. It enormously adds to the parents burden. And I think the question we need to ask ourselves is, is that the right tradeoff going forward in terms of protecting privacy?

Amelia Vance I think all of this, though, is much less about the definition of personal information and much more about what is then required for verifiable parental consent.

Because when it comes to the definition of personal information or personally identifiable information, the train has left the station like we have GDP car, which is everything ever. You have over 130 student privacy laws which define personal information extremely broadly, which obviously covers the vast majority of children. And so I think the focus really needs to be less on what is personally identifiable because we've had a million and one researchers, others show how disparate pieces of information that don't seem identifiable could become identifiable. The identification is a spectrum, not a definite.

And because of that, I think it has this Congress shaped station should focus more on what rises to the level of needing that parental consent as well as what. Use cases, what potential uses what potential sharing should not be per say, allowed.

Kristin Cohen So you're jumping the gun. Amelia VPC is next on the list. But before we get to that, I do want to ask the panel if anyone has you know, this is a rule review. So we did make changes in 2013. Where are there other pieces of information that we should consider adding to the definition now?

Keeping in mind the standard of allowing the online or physical contacting of the child. And as part of that, I just wanted to read one of the questions we got in an earlier panel from. I don't know if it was from Twitter or an audience member, but it was it's asking whether a COPPA is broad enough to capture concerns about sensory level data collection, cameras, microphones, other skin contact sensors. I didn't not know there were those, I guess the fingerprint. So I'll open that up to the panel.

We think biometrics should be included.

You know, I think the the use case, if you look at the COPPA rule revision, including videos and photos, if you have child directed properties or actual knowledge, that becomes an actual knowledge standard becomes very challenging. In a world where I've got a security camera outside my house and my neighbor's kid runs by and they're captured on the video. If I look at the video, I have actual knowledge because the operators. I think they're really challenging questions. And I think we also alluded earlier to the the flip side, which is security. So increasingly, device producers are saying use your fingerprint, use facial recognition. These are security mechanisms to safeguard the device.
So, again, it's a matter of what is the balance that we're trying to strike to incentivize good security practices and protect children's privacy. And with respect to persistent identifiers, the commission made the call based on the input last time that there should be this exception carved out to a person, a rule about persistent identifier. So within that framework of COPPA. I think directionally we need to think about those use cases and the law of unintended consequences about broadly defining these things as personal information.

You. Sure.

So let's go ahead and move on to VPC.

So we've discussed in several different contexts today that COPPA requires that online sites and services directed to children must obtain verifiable parental consent before collecting personal information from children under 13 rather than prescribing a particular method that must be used. The rule says that the method must be reasonably calculated to ensure that the person giving consent is the parent. We heard from Donna Fraser on the last panel and from John just a few minutes ago that there are questions as to whether that verification that is being done really does link a parent to a child. We've also heard from Morgan and again in the last panel that parental consent is expensive and can result in significant drop off rates. And showed some slides with feedback from developers and others about the challenges with BPC. What is it that makes getting verifiable parental consent so difficult? And should the commission consider any changes to the COPPA rule that could both do a better job of ensuring that is that parent providing the consent and also make it easier for operators to obtain the consent?

And I'm sure we will solve this quickly. Who would like to be the first weigh in.

I think there's two things that we have to consider about VPC. I would argue VPC is intentionally friction full, right? Because the other side of VPC is I can collect data on kids. And as we've heard over and over. Part of what seems to be the concern is collecting data on kids. But if you have VPC, then you can do certain forms of collection of data. So some of the friction inherent in VPC, I mean, some of the friction is inherent in VPC. And I think one of the areas that we need to look at is I'm not sure that that equates to parenting. Right. So if the outcome of VPC is to connect a child with a parent, OK, that's a regulatory concern. If our job is to help a parent be engaged with their child's digital and their digital in life, then I'm not sure a single swing gate VPC is a great mechanism. If you look at some of the Justin time capabilities that you've seen, the two major mobile platforms come out with some of their parental tools, some of the way that they've been rolling this out. It's clear that they're kind of working around the concept of VPC and going into ways of how do we engage with parents, how do we talk to parents about it? It's by no means perfect, but it's a lot closer to what parents have. And I want to give the FTC a lot of credit here. They have a regulation that stipulates certain things that doesn't necessarily equate to good parenting. And I'm not sure how you guys can work within the four corners of law to produce a VPC that matches with the way people want to parent online. That's why I go back to VPC is not a technological problem. It's a it's a sociological issue.

Do others want to land?
I'd like to weigh in just for a moment, if I could. So, of course, we come at this from a bit of a different lens because as Morgan points out, that there's probably a good case to be made, that this may be as much a sociological problems as a technology, a technology problem. And I say problem, but challenge. You know, you earlier mentioned that maybe there's a cost issue involved and certainly it's a cost issue involving how we balance the cost and performance of something that goes on every day in our business. But those of you don't know us. Very Tight Technologies is a company that got its start in the early 2000s. We were one of the pioneers at developing and delivering an online age and identity verification based on trusted and verified data sources. And so today, of course, many years later, we're doing many more things than just using the data. We're using documents. We're using biometrics. We're using these other technologies that can be leveraged to verify an identity. So enter the issue of friction and cost because there's going to be a balance of all of these things that will compete for the first position. And from a technology point of view, and it cost point of view, those who are delivering a service like ours, they have their raw cost for getting these trusted and verified data sources together and having enough of them to create a good service for someone to consume and with good, reasonable certainty know that the person on the other end of it not present transaction is what they say they are. And so we heard Don mentioned the no silver bullet. We share that same thing with each other quite a bit because there really isn't a silver bullet necessarily about any of this, but with good reasonable certainty. If you leverage enough of these technologies, you get closer to that place where you have some certainty. But when you do that, of course, you increase the cost. And so the friction goes up. The cost goes up. And so you sort naturally have this you know, this sort of competing balance that needs to be addressed as to how much friction. Of course, the friction is intentional. In fact, some parents might say, I'm so glad that there was some friction. That is that you just can't get through like you're going to get declined if you don't give the right information, that kind of thing. So I think we see this as a place for us to participate from the technology side of this. Exactly. From the sociological. Not much to add on that piece of it. Certainly to give you some insight on the cost and the performance and how this all operates, I think, you know, there's certainly a concern in the developer community about the cost of actually providing a service that verifies the identity of the end user.

I want to add one thing, Don, in the first panel for those who weren't here said that it was 35 cents an API call is what their cost was for Pokémon. Now, imagine that for a small developer, that's that's real.

I think it's useful to look at, as I believe Dr. Dusky and others have been saying, at different places where we can put in parental consent.

You know, from commonsense research, we know that something like 20 percent of kids are downloading apps by themselves. We know that as more and more people move to mobile, there's less co watching. So in addition to apps having responsibility for trying to get parental consent, where other places where we can ensure friction and we think parents may be more involved and can indicate that they're kids and that they need special protections.

I'd like to just jump in from the broader privacy landscape where we've been having all of the same discussions often with many of you from the FTC.
It just seems strange to me that we're spending a lot of time, as Laura mentioned this morning, on sort of the notice and consent piece of all of this, when the broader privacy conversation is moving away from notice and consent and saying notice and consent is not enough when we're talking about adults. And so if it's not enough when it comes to adults, I don't know why we'd have a higher expectation when we're talking about kids. And so focusing more on that than on sort of the use limitations and other pieces there, an underlying privacy protections. I think it's really important to focus much more on the latter than the former.

Before we shift gears, do you want to follow up on some of the comments that have been made in Morgan's presentation and elsewhere about Platform's role or potential role when it comes to BPC? Are there any changes the FTC should consider that might incentivize platforms to create VPC methods that can be used by other operators?

Morgan, I'll just reiterate, I spend about 40 percent of my life right now working on digital medicine and health care. And one of the most profound changes was when the FDA, who obviously has a lot at stake, produce their guidance from 2013 where they exercised what's called regulatory discretion. They essentially set up a risk pyramid and they said certain behaviors we really don't want to regulate. Don't call us. Leave us alone. Then they have another category, which is where we don't see an immediate risk of this. We're going to watch watch it, but we're not going to require you to file a 510 K, etc., etc.. And then there's the other category that had an obvious risk. I think that there's a lot to look at the way that the Federal Trade Commission could exercise some regulatory discretion and experiment with ways to use the existing platforms and their current authentication mechanisms to provide a callable API for developers. I would I would suggest that it would not be that the FTC should abrogate their responsibility, but find ways to either do what fintech does and regulatory sandboxes saying only this category or only this feature or look at the FDA as model and say what are some kinds of ways the data can be collected that still qualifies as API personally identifiable information. And yet we see the harm or the risk either for the data being used harmful to kids or providing something that's not appropriate under COPPA. I think there are some ways to look at the way the platforms can serve a function, but they're not going to take that risk if the liability is too high, both from a legal perspective and as a PR perspective.

I think we also have to be very careful with that. As I said earlier, we're defining what parents are consenting to on those platforms. So a good example of this is the family stores on both IMW and Android and some parents. We're going and thinking, okay, all of these things are appropriate for my child to watch. Some are going in thinking that COPPA protections attach to all of that somewhere coming in and just thinking, OK, there's protections from stranger danger.

And so making sure if there are these sorts of experiments that it is very clear when parents are consenting what they're consenting to, what are what is the piece there and making sure that there's not a mismatch between consumer expectations and what is actually the choice that they're being given.

Right.
And that also relates back to one of Donna's points on the last panel about understanding of what content ratings are indicating and what they're not. Samantha?

Yeah, I just wanted to make a quick point, a reminder that at its heart, COPPA is here to protect kids privacy and not companies bottom lines.

And I think that's something that is easily lost in these conversations. One thing that Steve mentioned earlier was how difficult, meaningful and informed consent can be. And I think it's a theme that we've been hearing. And you know, if I don't think it should be an easy thing. Honestly, I think a lot of parents do need to really understand just exactly what they are consenting to. And I think that's incumbent to others in this atmosphere to help make that information accessible and understandable and transparent, especially with an increasingly diverse population where English might not be a primary language. Educational levels are varied and mixed. There's a lot of fear and distrust of government. Now, that's not technically related here, but just that sensitivity to privacy and information that's shared online. So I think that's just part of the broader consent conversation that we just really have to be mindful of and think about how that conversation affects different populations.

Yeah. To follow up on what Samantha said, which I think is an excellent point. One of the issues that you did not call out or and maybe enough detail is the very specific notices that are required by the rule are quite prescriptive. And I do think it's worth evaluating whether or not you can simplify notices to be more useful to parents. Number one, the second point I want to make follows up on what John said. It's not just a matter of cost in terms of getting VPC, but most of the more robust VPC methods have a cost on parental privacy. And the notion that we would then have some big database that is a mediated way has its value and it has been looked at by the FTC over the years and not favored because of the potential security vulnerabilities that such a database might hold. And so these are all great concepts worth re exploring in 2019 and to 2020. But I think we want to be mindful that this whole risk calculation, there are burdens on parents as well as protections on children and burdens and costs on businesses. And we're trying to find the right balance to protect children, because that's the most important concept here.

But I think it's your former colleague, Dr. Lorrie CRANOR, who's done some of the best research on Amelia. Can talk about this, too, on is there any actual way to get consent at a level that people understand? Dr. Brenner was the CTO for the Federal Trade Commission previously. This is an open question. And I think my only concern from what Samantha said and I agree with you, my concern is, is the outcome is in order to make it hard to get consent, that what we do is lay waste to applications that are intentional about their application for children. And basically everything is moved to the audience. What did you guys say earlier? Folks were talking about like intentionally or actively making sure that I don't know that they're a kid. Right. Finding a way to say, I don't know if it's a kid.

So I if we make it so hard that you wipe out the people who want to do the right thing, then it pushes everybody into the general audience category. And the courts have made it pretty clear there's First Amendment speech protection around advertising and other activities.
So, again, I don't know the FTC. It's not an easy road. But Larry Kramer's work on this is really good about what is consent look like.

Thank you. Those are all really helpful points.

So we want to have some time to talk about Ed Tech, which is an area that the commission has been thinking about and concerned about for a while.

We held a workshop. In fact, a couple of the panelists here were at that workshop in 2017.

And you'll see in the rule review notice we have several questions about ed tech and how the commission should approach it. There is nothing in the rule itself that says anything about schools providing consent for parents for ed tech. But the commission has given guidance to vendors that where the use of the data is for an educational purpose only and for no other commercial purpose. That that vendors can rely on the consent of the school at our 2017 workshop. Though we did hear from concerned parents saying that they felt like they didn't have control over their kids data. I have a comment card from a parent who is was here at least this morning, may still be here today saying that where her child goes to school, they're pretty partaking in the one to one program, and she or he has not been given informed, valid consent to her children going online. And how can schools become more transparent? And so he or she feels that she's not getting the information she needs. We have also, though, heard from schools about the incredible burden that would be placed on them if they had to get every parent to consent to every app or program that they wanted to use in the EdTech area. So that was a lot of background. But, you know, I want to start broad before we drill down and just ask the panel, you know, do you think that the rules should be amended to directly address ed tech and schools giving consent? And if so, what changes would you recommend?

And I'll start with you, Amelia.

Yes.

Yes. Right now we're in a weird gray area. It's very frustrating for a lot of the districts that Steve can talk about that we work with, as well as for parents who are like, wait, do I have rights here or not? And it's really important that it be very clear. Can a school consent on behalf of parents and our parents allowed to then opt out of a particular technology being used and in order to provide sort of the context of what it's important to know what today's classrooms look like? Because it's very different from any of us who went to school. You had at the first one to one device program where every kid gets a device, a tablet or a laptop. Back in 2009. So just about 10 years ago. And so we now have a system that is really fundamentally run around technology. You're taking role through technology. You are perhaps playing math games, having personalized learning opportunities for reading all sorts of things throughout the day. It is in some ways as if Ed Tech is the new text book. And so it's very important when we're talking about is there a right to opt out?

Is there a right for parents to delete data to realize that we are talking about them being able to exercise a level of control on schools that we've never anticipated before? It is giving a parent the
right to say, my child has to use a different text book for better or worse, whether people like the tech in the classroom or not. That's essentially what it is. And so are we going to put schools in a position where teachers have to have 30 different textbooks? Or are we going to make sure that schools can continue to function and parents can exercise rights when it comes to non-core educational opportunities, products, et cetera? Steve Yeah.

So in addition to my role as the CEO and Cambridge Public Schools, I'm also the founder of the Student Data Privacy Consortium and I spend a lot of time travelling around the country speaking to school districts and in all the states. And right now, 27 of the states have joined the consortium and that the number one question or kind of muddy issue is the overlap of carbon footprint that always comes up every time I interpret a little more context. Amelia, you were saying about today's classrooms, you know, districts are all different sizes, but it's fair to say that every district in the country uses somewhere between 100 to thousands of APS every day. And to think about parental consent for a thousand apps in the various classrooms, it really is an unmanageable feat to be able to record who consented for which app. So that the practice of, you know, based on the guidance of schools being able to consent on behalf of parents under the conditions that the app is only used for educational purposes and no commercial use, coupled with schools leveraging what's known as the school official exception in Ferber, the share student level information, the school official exception has some other kind of controls around it where the schools need to actually have control over the outside provider and control over that data. So the practice that the consortium has been promoting across the country is the use of model data privacy agreements that establish this school official exception and allow a school district to share student level data with the vendor, knowing that the data is only going to be used for the purpose that the application and educational purposes that can be resolved when we're done using it, the data will be deleted. So it has all those controls over it and enables us to onboard and know that the application has been vetted properly by professionals. Like I said earlier, I'm concerned that a portion of our parents will not be able to make informed consent on applications. They'd be consenting to things that are inappropriate and maybe not allowing things that are perfectly secure. So from a school district's perspective, the idea that our schools are professionals that are charged with the protection and safety of children in the school environment, in an online environment, on the playground, and I feel like, you know, properly trained school officials can make very good decisions about apps and ensure that the data is being protected when it is being shared with the providers.

So some way of tying, you know, COPPA to essentially the school official exception. How you would do that, I'm not sure. But knowing that those controls exist within the school, official exception, I think would be something to consider.

How are you doing?

Yeah, I just I think it's important to remember that kids in school are particularly vulnerable. Even more so than, you know, kids at home. Their parents are further removed. You're dealing with all kinds of different populations. You're dealing with parents. As Steve was saying, who have even less ability to provide informed consent and to know what's going on and feel like they have a choice or their kid might be left behind. It sounds crazy to have 30 textbooks. Amelia was saying, I also you know, we all felt so have never had this sort of level of commercialization
and information collection living on about our kids as they're trying to learn and trying to figure out, you know, who they are and who they want to become and what should be a protected space. So I understand the we hear from parents that common sense that they feel like they don't know what's going on in schools.

So parents need to be able to have a better sense of what's going on. It also seems like there's a middle ground in terms of schools being able to make smart decisions. And in that sense, any sort of exceptions. For one, parental consent is allowed. There should be sort of a higher bar for when you can consent for non-commercial purposes for making sure that there's informed notice for parents, for making sure that they're, you know, appropriate deletion rights, for allowing for analog options when one possible, you know, products could identify as education products if they want this exception. Right now, there's a lot of consumer products, even products that say we're not for use in schools that are used in schools similar to, you know, how products say they're not for kids under 13. So I feel like there are smart ways to protect students. But unfortunately, you know, education is currently one of the spaces where we see it's they're not being protected. I think this is also an area where the FTC I know you guys have had workshops on this, but could use it export authority to dig deeper into what's going on in the attack market, because this is obviously a huge market in a huge way that kids are profiled and collect information these days.

Well, I'd like to drill down a little bit and to edtech and how the COPPA rule should work. And we're gonna use a hypo wrong hypo.

OK, so Company Q is an ad tech vendor that sells an app used in the classroom to help kids with their reading.

Sorry. This was slightly different than what I have here. Thanks, Jim. I collect from children their name and their voice recordings to share with their teacher. I have contracts with several large school systems, but I also make my app available to parents individually and sometimes teachers sign up directly. And considering how you think COPPA should work, should I be able to get the consent of the school for this information collection? Or should I be required to get the parents' consent? And if I can get the school's consent? What about a teacher or doesn't need to be at a higher level? I will start with whoever wants to weigh in.

Steve Yep. So.

I definitely feel like the vendors should be approaching the school district to sell the product and engaging at a higher level than the teacher. Typically, teachers are not allowed to engage in a contract. Yes, I know it's happening and they are signing up, but technically a contract between the school district and any type of vendor would have to be done at the district level. And based on that model, you know, that would take care of the parental consent.

Ariel.

Do you want to weigh in? I mean, I agree that it shouldn't be at the teacher level.
I don't know what Q is doing with all of this information, and that would affect my opinion on whether the school can consent on behalf of hypos.

Q I think there's one small area that's worth noting on this is ironically some of the platforms in order to protect privacy, actually don't let developers know what school systems have purchased their apps. And so we. Because you can do a volume based purchase so you'll see 10000 of your apps disappear being bought in one day and your night. That's definitely a school. If you've got an educational app. And so back to reaching out to your year, it's sometimes it's a classroom. So it's 60, but you kind of get a hint that there's must be something going on. But it's sometimes it's hard and then you kind of have to backtrack and figure out who was it that bought it. So there are some ironic realities of trying to protect the identity of the purchaser of the application. And not collecting information can lead to a quixotic tilting at a windmill to figure out which school district I need to reach out to. I think that's a solvable problem, but it's one that we shouldn't be too handwaving about because that's good privacy behavior. Don't let the developer necessarily know unless they from did data minimization perspective. They don't need to collect the information. Then they shouldn't be collecting it. And you only know that an application might be used in the educational environment if you are aware of what school district is.

I just wanna say there's two sides to that too. There's a huge awareness building that needs to happen in the schools so that the teachers don't just sign up. They know that there's a process to go through to have it vetted and on board. And so it's it's a building awareness on both sides.

Yes.

This is an important conversation to have and tied to my work with underserved populations. We frequently see in various policy areas across the board where certain bad actors are trying to take advantage of financially insecure populations. And this is something that I'm particularly concerned about in the educational technology space, because we have so many cash strapped school districts with teachers who and administrators who want to do the best and parents who fall into that, too. And it's easy to check a box. Not every district does. Lucky enough to have its own Steve Smith, I'm sure. But I think in talking about these, we need to think about how different school districts based on financial resources might fall victim to, you know, some bad actors getting in there, getting kids data, doing who knows what with it.

So if we do move to school consent, really do need to make sure that it's the right administrators and people doing it, but that there are certain strong definitions and safeguards to help protect children and parental. Of course, parental involvement.

I think it's important to take a step back when we're talking about ed tech and privacy.

And as I said earlier, acknowledged that we're actually in a very different legal landscape that's actually much more protective than I think all other child privacy environments.

So you as I mentioned, you have a hundred and thirty plus student privacy laws. About 25 states have laws directly aimed at vendors with vendors on the hook if they're using information for
non educational purposes, selling it, targeting advertising to students. You have further overarching providing privacy protections. There you have COPPA weighing in as well.

And so. You can also add to that things like student data privacy consortiums contracts, which mean, again, that the vendor is the one on the hook if they're violating that. So in many ways, the data that's being collected through schools is actually much better protected and can be used in ways that are helpful to students that help students learn while also being reassured of the fact that there are legal protections there. Now, of course, the key to that is making sure that we're enforcing those legal protections, that the contracts that are being signed have some sort of, you know, check on them. All of that. And that, I think is a better focus rather than sort of worrying about the individual thing, because oftentimes when we're talking about the parent consenting versus the school, I sort of take a step back and I'm like, OK, first of all, that's going to disadvantage certain communities where parents aren't as involved, may miss a form which, as we all know, it's very easy to do. And if something is so dangerous, falls out of the educational purpose that you need parental consent, or maybe you shouldn't be using that in the classroom to begin with. And so at that point, I think we end up with information that is both better protected without maybe causing inequities when we're depending on parents to have to pay attention to those potentially thousands of apps.

So going back to the hypo for a minute. One of the questions we get asked a lot is about our guidance that says that where an operator gets the consent of the school, it can't be used for any other commercial purpose. And what does it mean to be another commercial purpose? So looking at the hypo.

Would that operator company CU be able to use the voice recordings to improve that particular app or would that be another commercial purpose? Or what about using it to improve their voice recognition software that they use in another non educational app?

But anyone like to weigh in product improvement as a commercial purpose even.

And that's even if it's to improve the particular product that the that is being sold to the school for the occasional use.

In many cases, the schools are poor. It's not what we might think about it, like, oh, well, you're getting a free app and they're getting app improvement. In many cases, the schools are shelling out a lot of money for this. I'm sure Steven knows better than I do, but I know you're paying for the service and I don't think we should be paying with children's data for for product improvement. I think that's a commercial purpose.

But we have to be careful there, because product improvement is a very broad spectrum. Like if there is a security vulnerability in it, patches pushed through the system. That's product improvement. And we don't want security holes to exist. If there's a new educational research that's been put out that says kids learn math more effectively. And so this math application puts out here's a slightly different way to ask this question. That's improvement. And I think the vast majority of people want those two types of examples to happen where we get outside of that, which is sort of the last part of that hypothetical. And talk about improving things overall is
where it gets much more difficult and much muddier in terms of, again, sort of consumer expectations, school parent expectations, and exactly how far should we go for the good of sort of improving voice recognition generally, should a company stick its head in the sand and say, well, we know that this voice recognition thing over here worked better when we did it this way, but we can't apply that improvement to everything else. And the answer to that feels like no. But it also feels like a step beyond that educational purpose.

I think that's right. Amelia and I do think, again, it comes back to what are the policies we're trying to advance? What are the privacy considerations we're trying to solve for. And so if we are going to put strict limits on what CU can do with the data to either improve that specific educational product, whether it's for that school district or for other school districts, or to more broadly apply its learning to improve its product line, assuming there are good privacy protections, it's D identify, et cetera, et cetera. I'm not sure that that's going to advance the goal of expanding educational technologies for children in the schools. Because if you're underwriting the school use for some broader use, that limitation may be enough to say I'm just going to not be in the ed tech space. So I think it comes back to that. Risk balancing approach and really looking at it with a view of both advancing privacy for children and making sure that we're not putting too much friction, as Morgan says, on legitimate business operations, that even if they just strictly advance the interests of the business.

I'm going back to the Hypo 4 and this will be the last question from the hypo. But it's around deletion, so you'll COPPA is very specific that parents have the right to have their children's personal information deleted. However, in the educational context, sometimes there's a concern about allowing parents to have their kids information deleted. What if it's a grade in the hypo? Should the parent be able to go in and have their child's voice recordings deleted? What if it's what if the app also has a grade related with the child's reading? Any any thoughts from the panel, sir?

So I'll jump in. So, you know, considering many of the core applications that district use nowadays are hosted apps that, you know, the state information system that has all the student record information. Obviously we wouldn't allow a parent to say, I want all my child's records deleted. And then we have the other extreme, such as this particular hypothetical. That's more at the classroom level. Maybe not as critical. But again, coming back to the idea of we are establishing all these these products and school officials for a purpose for almost extending the kind of the school's infrastructure and it becomes a core system where else we wouldn't be using it. So in having those records fall on the purpose, the parents would have the typical rights of being able to inspect and change and correct any errors, particularly not delete the records.

I think you've run into some really awkward clashes of law. So, for example, Wisconsin requires that there be record retention for voice. And so all of a sudden if this became the rule, you'd have state legislators trying to determine, well. Does this belong here? Does it fall under? We're supposed to keep this for five years. And there are lots and lots and lots of records like that in the educational context that state and federal legislators have decided are important enough to keep. Some of it is because we want parents to be able to access it later. Some because like with transcripts, test results, students may need it down the road to apply to college, to get a job, to
travel, whatever it may be. And so it's really important that we consider the school specific context.

This isn't to say that. Data shouldn't be deleted. In fact, it is a best practice you have. Know, not keeping data longer than necessary.

It's part of COPPA. And but that doesn't mean it's something that should be specified in the rule in reference to schools.

Instead, I think it's worth furthering best practices like there's a district in Maryland that this year held its first big data deletion day and they took all of the data that was no longer necessary, you know, the behavior tracking in the classroom that had happened throughout that year. Not essential data and a bunch of various education apps, all of that stuff that wasn't necessary and cleared the board. You had sort of that right to be forgotten that was talked about in the first panel for all of the kids in that district. And I think furthering those sorts of things as potential best practices, revisiting the data to make sure it actually is necessary is the best practice, but not something that should be mandated under COPPA because there are too many state laws and policies and other things that would be very problematic to work with.

Steve, I want to follow up on this for just one minute before we move on, because we're kind of need to start wrapping up and moving to other questions. But the idea that parents wouldn't have the right to delete. As Samantha pointed out, not all school districts are created equal. And whereas, you know, you appear to have done a lot of thinking about this. I know others in the room who I've spoken to similarly are taking this seriously. There are a lot of small school districts who maybe don't have that, who aren't paying as much attention to this. And, you know, is it fair in those situations for parents not to be able to go in to get this information deleted? And what is the right balance?

Yeah, there is definitely a large percentage of districts across the country that don't have the capacity to do what I've been describing. And that was really what sparked the creation of the consortium is the tools and the practices that we've created are made in such a way that they can be reproduced across the country. And all the states and all the districts of the districts that don't have the resources can use these model contracts and implement these practices. And we are going through a period of time where, you know, we talked a lot about building awareness. You know, you got to build awareness for parents. We it for school personnel. And it's a growing stage. There's no. Yes. You know, I think Peter is still here, but it depends. It depends on every situation. But, you know, so what are you proposing? You're talking about is kind of the ideal. It is doable. It is expandable across the country that we can create these systems to ensure that all data is protected in the classrooms.

Thank you.

So, I mean, OK, so company Q has not cornered the market on collecting recordings of children's voices. In 2017, the commission issued an enforcement policy statement that said that the FTC would not bring enforcement actions against companies that collect children's voice recordings
as a substitute for text, such as for a search function as long as the audio recordings are held for only a brief time and used only for that purpose. The commission opined that these types of uses of voice data could be useful for certain consumers, including children, and posed little privacy risk if the information was deleted immediately.

Should this policy be codified in the COPPA rule? And if so, should companies be able to identify the recordings to use them to improve their voice recognition software? And I'd actually like to start this one with Ariel. Since Ariel talked about the product improvement in the edtech context.

Well, first, I'm I'm skeptical that you can identify the voice recording, but I recognize that data application is a spectrum in terms of not treating.

I guess transcribed text as something that's covered by COPPA. To me, it's the equivalent of an open text field. So if you're otherwise a COPPA operator, I would think that you should treat transcribed voice recordings the same way as you would treat an open text field where a kid could say personal information and could easily disclose that when talking to a smart device in the home.

Other views.

Oh, I'll just follow up on a smart device in the home. So first of all, the smart device in the home is not directed to children. And I think that that is part of the scoping conversation that is going to be a really important part of this new request for comments. But I'll draw the analogy to the physical product space. For example, a children's product is defined in the Consumer Product Safety Improvement Act as a product design and intended primarily for children 12 and younger. My smart refrigerator is not a children's product. Even if children are likely to open the door and access the refrigerator, it is not a children's product. And so I think that tricky line of what's general audience and what's a children's product gets increasingly complicated with the connected product space. If you have a connected children's products, I'm going to separate. Ari Alba home device from a connected children's product. The audio recording does have to have some sort of COPPA approval. Right? So the analysis of e-mail plus, which could be a great way to get parental consent if it's used for internal marketing. The question about whether speech recognition technology is voice recognition technology, I think are two different things, though. The companies that I've worked with are offering speech recognition technology. So if they collect my voice, they don't know it's Sheila Millar. They try to figure out what I say and then provide a response to a natural question in a natural way. So I think we have to unpack a little bit what the questions are to come up with the right policy response. But I think that enforcement discretion concept has been extremely helpful in helping to advance the use of audio technology in a useful way that can be privacy protected for children.

OK. We are almost out of time, so, of course, it's a lightning round. So in 30 seconds for each of you, we've talked about definitions, exceptions and misconceptions. What advice do you have for the commission based on this discussion in terms of changes the commission should or should not consider making to the COPPA rule?
And why don't we start at the other end of the table, I'll start with Samantha.

This time, sir, I think I'd like to leave you just with a reminder that our kids today at our find themselves at the epicenter of a very powerful and largely unknown digital world. And at the heart of a lot of privacy battles. I think that now is not the time to look to exemptions to this rule or watering down the rule, but that we need to look at how to strengthen the rule. And I think an easy way to do that would be aerial hadn't mentioned the commission's 6B statutory authority. I would call on the commission to really exercise that option to learn more about how our multicultural youth and just this complicated nature and evolving, rapidly evolving atmosphere affects our children and how they're operating in this space. I'd also like to just really urge the commission to take action to provide more even and robust enforcement of what is a strong rule across companies on some of these bad actors who are flagrantly violating these protections and putting our kids at risk.

Steve, I'm going to reiterate what I said earlier about somehow connecting COPPA to the purpose, particularly the school official exception. You know, in a more formal way. So the schools are, in a sense, given more direction about the processes they need to go to, to and an app and approve an app. And I think that would help. We don't certainly do not want to do anything that's going to hinder the great tools that are in use in classrooms to support teaching and learning. And but at the same time, we want to help those schools that don't have the resources to put some more framework around what what processes should be in place to ensure that applications are vetted.

Morgan Samantha's point in increased enforcement of flagrant violators and frankly, faster enforcement of flagrant violators. It takes you guys a long time, which means entire market shift. Second, take advantage of the way that the platforms are implementing privacy, forward engagement tools, whether it's just in time, time, notice or other capabilities to allow developers to tie into that so that we can actually build apps that don't harvest kids information or rely on that harvest and can make appropriate use of information for internal uses. And then finally, don't hold up our progress. Let's find ways to make re-consent effective. Amelia.

So echoing Steve. Definitely a lining for paying COPPA. I think the protections and for are the right ones and it makes sense. Making sure that, as I said, there's a little less focus on the notice and consent pieces of COPPA and emphasizing that there are other COPPA protections that folks have to adhere to. We see this all the time in contracts with schools or in terms of service that we're passing on the cup of burden to the schools. No. You might be asking the school to get consent, but you have responsibilities. The operator in so making that a little more aware and then finally incorporating more kid voices, making putting them at the table, even if they may not be part of panels doing what the UK doing when Ireland has done it, putting together commissioning research to find out exactly how they are interacting at these systems I think is extremely important and something the FTC could take a lead on.

So I think COPPA has actually was stood the test of time reasonably well, and the commission has done a really good job at trying to update the rule to reflect technological changes. I think it just remains critically important that you maintain that balance of protecting children with acknowledging that there are legitimate business needs to collect and use data and putting those
guardrails around how that happens. Along with making sure that you have the right amount of
enforcement resources and that you appropriately target those resources where they're most
needed, as well as continuing to offer great educational resources along the lines of the things
that you already offer today.

Just in any balancing test, you have to remember that kids and protecting kids are what's most
important with this role. I think I echo many every other panelist here. You have to be thoughtful
if you're going to make any changes. They should be informed by research. You should use your
ability and authority to conduct more research, especially those in the consumer community are
able to do.

And you should focus on, since you have a role that has stood the test of time, you should focus
as much as you can with your resources on enforcement as well.

Yeah. So with respect to the regulatory frameworks, are real losses mostly in the identity in the
age verification space. But what I would say is that the need maybe for the commission to spend
a little time with technology providers like ours, a little bit more of that, because it may enlighten
you to some of the challenges that they're facing to to provide the broad the end user with a
product that they can actually leverage, which got a good balance of cost and performance that
you'd be happy with. And there are a lot of technologies and new technologies. The question is,
how would they fit into your framework for the regulatory environment? So we'd be happy to
participate in that, of course. But I think that would be a potential takeaway for the commission
to look into. It's been a little bit more time with the technology side, maybe these balanced with
the the others that have been mentioned here today.

So. Well, thank you all for a great discussion. We are going to break until 3 15 and then we'll be
back for our final presentation and panel.

Thank you all.

We're back on and we're about to begin panel for the misuses and misuses of persistent
identifiers. Before we do that, we have a presentation by Jonathan Mayor, who's an assistant
professor at Princeton and the Computer Science Department and Woodrow Wilson School.
Jonathan, come on up.

Thanks. Good afternoon. Before getting into substance, it occurs to me to mention I think I might
have the dubious distinction of being the only participant today who benefited, albeit briefly
while growing up from COPPA. So, you know, thanks, Federal Trade Commission. So my goal
is to provide a computer science perspective on technology trends and the state of research
around children's privacy online. In some sense, what I'm going to briefly touch on is the
computer science parallel to Jenny, where desk is an excellent overview this morning. I
especially want to highlight open research questions since the commission has an opportunity to
encourage research and use its own Section 6 authority in the course of evaluating the COPPA.
So the three areas I'd like to get into are first trends in mobile device adoption and usage. Then
I'll talk a bit about the Internet of Things and then last a bit on educational technology or edtech.
So to start mobile devices in 2010, the FTC was where we are now kicking off their review cycle
for COPPA in March 2010 and perhaps conveniently the next month, the iPad launched changed
quite a bit in the landscape of children's mobile device usage. So let me highlight some key
points from the literature on children, youth, children's use of mobile devices and devices in the
household. So first unsurprising probably to everyone in the audience. Household adoption of
mobile devices is now nearly universal, up from about half of households at the time of the last
revision of the COPPA role. About half of children, aged or younger now own a mobile device,
and that's most commonly tablets up from essentially none at the time of the last COPPA
revision. In terms of usage, it appears across multiple studies children are using these devices on
in the ballpark of about an hour a day and usage is much, much higher than traditional
computers, which of course is where the couple landscape got started. As a corollary, usage
of traditional computers is in decline and a lot of that seems to be because children are playing
games on mobile devices rather than playing games on computers. The last panel mentioned sort
disparate impact concerns that might come up under a COPPA. And I want to mention that it
appears to be the case that child usage of mobile devices, it does have some unequal distribution
depending on minority status, income, status and educational status. As for what children are
doing with these devices, perhaps, again, unsurprising to those in the audience. Kids are
watching online videos. They're playing games and they're using other apps. An important point
about what children are using on these devices is that it often is free stuff, that the same is for
adults. And that can put a lot of pressure on privacy because data can, of course, be quite
involved in monetization models. OK, we see a little bit more about online video consumption,
so traditional TV viewing time seems to be in decline. It's about a quarter down since the last
COPPA revision. Meanwhile, online video viewing time on mobile devices is through the roof.
Certainly no surprise to anyone who's engaged with small children in the audience. The popular
categories of video are what you might expect. Educational content, cute animals doing stuff.
How tos unboxing are apparently really, really popular. So not actually like using devices, just
opening up the box and getting it the device. Music videos and you're seeing Baby Shark of
course, knows that game streaming is particularly popular since you know kids, instead of
playing games themselves, watching others play games and then stunt videos, you know, the sort
of big dramatic like here, someone falling on their face type video. And of course, the landscape
of which media apps your kids are using seems to be changing quite a bit. So YouTube has been
around. It's sort of odd to think of YouTube as like the old media platform at this point. But in a
certain sense, it is. OK. As for gaming, one of the big shifts since the last COPPA revision has
been the growth of these just super popular mega hit games that have a younger target
demographic than games that were sort of that level of popularity previously. So some of the
better known ones, I suspect, for folks in the audience are Minecraft, Candy Crush and Fortnight.
You know, Minecraft about the time of the last COPPA revision team with Candy Crush.
Portland, of course, coming much later. As a corollary to these types of games becoming very
popular and mobile devices, console and portable console gaming seems to be in decline. So
now, instead of playing a game boy or a PlayStation at home, children are now playing more on
iPads and gaming time on mobile devices has increased quite a bit. And overall, gaming time and
some work suggests is going up. Now, an important thing to note about the shift from consoles
and portable consoles to mobile devices. Is that there is a greater opportunity for privacy impact
associated with the gaming on mobile devices than there is with consoles and portable consoles.
These games are often free to play and have a monetization model that either involves
advertising, which of course is going to have some data associated with it or involved in app
purchases, which of course can involve concerns around consent and what children know about
the purchases. And then social features are also increasingly common in these games in a way
where they weren't historically in console or portable console gaming. OK, so there is the state of
what we know. Now, let me highlight some open research questions. One really important one is
there's still not outstanding research on the apps and content platforms specifically that children
are using. Jenny Reed, Esky, give us some excellent initial results on preschoolers. And that's an
important demographic. It's also, of course, important to know about other demographics. And
especially as children get older, they're going to have more crossover with the types of apps that
adults might use. And so there's a tremendous opportunity for research here and a need for
research on what kids are actually doing online. There's also not as much research as one might
hope on the privacy properties of these child friendly apps. And why I say child friendly here. I
mean apps that children are using, not necessarily a child directed within the meaning of
COPPA. So there's been some good initial work suggesting that these apps collect and share
personal information, just like other apps in particular collecting unique identifiers in association
with online advertising analytics. But there definitely needs to be more work on it. There's also
been some work suggesting advertising is very common in these categories of apps, and the ads
that appear in these categories of apps are the sorts of ads you might expect in an adult app as
opposed to child appropriate advertisements. Again, more need for work on that. And then
there's been some initial work on the privacy disclosures with these types of apps suggesting that
they provide limited information and are not necessarily sufficient for parents to make informed
choices. Again, more need for work on that. Another challenging area for research is what these
apps consider themselves covered by the COPPA rule at all and how they comply with the
COPPA rule. And so since I'm calling for all of this research, I guess it seems to me I should take
the opportunity at an FTC about to like do some quick research. So I actually looked at the apps
that Jenny wrote Esky highlighted this morning and looked at the privacy policies of the apps.
And and I interacted with them a bit to try to get a sense of. Do they think they're covered by
COPPA? You know, her preliminary results show that preschoolers are using them quite a bit
and if they do, how they implement COPPA. And I mentioned this not to pick on any particular
service. And I want to emphasize this is really preliminary to give you a sense of just how
challenging it is as a computer science researcher to get a handle on how these types of apps are
implementing COPPA or disclaiming COPPA. So one of the top apps that she highlighted was
Netflix. Netflix prides. Parental controls, including a you can create a kid's profile in an app. You
can say, I only want this profile to see little kids content or older kids content. There aren't
COPPA disclosures associated with that. And it may be that Netflix is implementing COPPA and
claiming the internal operations exception. It may be that Netflix isn't implementing COPPA as a
researcher. There's just no way to say whether Netflix is doing either of those or something
different. Another app that she highlighted was Amazon Prime video. There's a children's
privacy statement associated with Amazon Services, but it's broadly applicable to all Amazon
Services. So as a computer scientist, again, it's very difficult to say in a rigorous way whether
there is or isn't a compliance issue there. Nickelodeon Junior There is an easy example as a
researcher, right? So go to the Nickelodeon junior prime app. Privacy policy says we're covered
by COPPA. Here's what we do to implement COPPA. So, you know, detecting compliance there
and doing it potentially in a large scale way. There is an example where it is doable. One of the
games that she highlighted, children's doctor, dentist, has a privacy policy that just says this app
isn't child directed. And then another subway surfers has a privacy policy that says that the app is
general audience. But if we find out your child, then, you know we won't do behavioral
advertising. Unclear how consistent that particular direction is with COPPA. And then the age
gate involves a little like dial that by default puts you between December 1999 and January 2000. So over 18 again by default. Is that compliant with COPPA is a computer scientist is just extremely difficult to give a definitive answer at scale. And we'll talk more in this panel about the ways in which the ambiguity is around persistent identifiers and internal operations can really inhibit research. OK, so that's most what I want to say about mobile devices and being sensitive to time here. Next stop in the Internet of Things. There's clearly been an explosion in adoption. So smart, smart speakers are taking off. It's not clear how long the trend is going to last, but they're certainly getting increasingly adopted in households. Streaming devices and smart TV ads are also obviously taking off. And so there's some discussion earlier today about children moving from one way platforms to two way platforms. It's important to keep in mind, as a corollary to that, that some of the platforms that were previously one way are now platforms that are also two way. And then there's also been a market explosion in Internet connected toys. I find it difficult to get good numbers on this part. Part of the issue is that defining the market is itself a challenge. But clearly a growing market to the state of research in this area as of about a month ago was was kind of thin. Thankfully, we have the benefit of literally four papers on I.T. security and privacy dropping in the past month. And they're really good papers. So there's not a lot more that we know. That said, there are some some big open questions. The first one, again being what specifically are children using? Which brands are they using, which devices by those brands? How are they using those devices? We don't have that fundamental data. And that's very important if the overall goal is going to be protecting children just as they engage with online services in the real world. Another open question, as with mobile apps, is what the privacy properties of these devices are. Here again, there's been some recent really outstanding work, including by folks at Northeastern who set up a model living rooms both in the U.S. and the U.K. Some colleagues of mine at Princeton who actually got their hands on a house just next to campus and set it up as a smart home and if built this way of collecting devices, information about devices in ordinary homes at large scale. So there's a lot of evidence that IOT devices are behaving in ways that are similar to mobile apps, which prior work had demonstrated similar to web tracking. So, you know, this ecosystem of advertising where identifiers get shared with a number of entities for ad targeting purposes, ad reporting purposes, and also analytics is cropping up around Internet things, devices and in particular smart TV TV. Streaming boxes in the same way, again, it cropped up around mobile apps and and the Web. There's definitely more work to be done here on understanding parental controls and in understanding whether parents are making informed decisions. So there's been a little bit of work on that. That suggests that parental preferences are extremely context specific and audio recording is a particular point of sensitivity. And last, that the existing controls do appear to be quite frustrating to parents. They're difficult to use and they're difficult to understand. Again, more work needed there. The last topic I want to touch on is. And here are the high level points I'd like to make are that the investments are absolutely massive. It is clearly a growing market. And some of the particular areas of ed tech that are seeing great commercial interest are in school administration, of course, content management. As a teacher, thank you. Please disrupt the course content management, space, classroom communications, educational materials and exam practicing. And here I just have a slew of open questions I'd like to flag. The state of the research is really not what you would hope, especially given the level of interest and investment in the field, including fundamental questions like does this stuff even help children learn? There really hasn't been nearly enough good science on that. Again, what are what are students using? What are parents using their teachers in schools using? What are the privacy properties? How was the regulatory
environment interacting with the offerings that are now available? What are privacy expectations? How are folks using controls? How do folks perceive consent? All areas that need a lot more research. And so I'm enthusiastic that the FTC is starting so early on this COPPA cycle because hopefully we can answer a lot of these questions in time for the COPPA revision. So that's what I wanted to touch on. And I think we'll probably dig much more again into the identifier and internal operations components of those issues during the panel.

Thanks.

So panel four.

I'm Mark Corn. I'm an assistant director in the Privacy Division and I'm here with my colleague Laura Hoskin from the Bureau of Economics. So we're going to be spending the next hour and change talking about persistent identifiers. So the fact that you guys haven't left is a good sign. And we've heard a lot about persistent identifiers over the course of the day. And it's really integral to COPPA, one of the more significant changes in the 2013 revision to the rule.

And basically the definition of persistent identifier and the definition of personal information was change. Just so we're all on the same page. The definition now reads a persistent identifier that can be used to recognize a user over time and across different Web sites or online services. Such persistent identifier includes but is not limited to a customer number held in a cookie, an IP address, a processor or device, serial number or unique device identifier. So one of the main consequences of changing the rule to include persistent identifiers was to bring behaviorally targeted advertising within the scope of the rule. So that prohibition also extends to third parties that have actual knowledge that they're collecting information from kid directed sites.

When the commission revises the rule, they're also recognize that persistent identifiers are used for many other purposes and in fact many other essential purposes. So the commission created an exception to allow the use of persistent identifiers for support for internal operations. When that's the only type of personal information covered. So a lot of our discussion in the panel will focus on either the concept of persistent identifiers or the concept of support for internal operations. So just a reminder. Comments, comment cards are available here in the auditorium if you're here or you can submit questions by email or Twitter. And because the panelists bio are available, I won't go through their histories. I was going to let each person have the opportunity to introduce themselves. James, you want to start?

Yeah. Hi. I just recently left Austin here at the FTC and I'm back at George Mason. Antonin Scalia Law School teaching and again.

Hi, I'm Harry Joe. We're my wife and I are the creators of Mother Goose Club, one of YouTube's earliest Kids Channel's.

**Katherina Kopp** Hi, my name is Katherina Kopp. I'm with the Center for Digital Democracy, and for those who don't know, it's a center for democracy represented by a large coalition of child advocates and a broad coalition and supported by Georgetown's Institute for Public Presentation. We were the ones who led the charge to get the cup passed in 1998.
And also we were the ones of part of our coalition who really pushed for the broadening of the definition of president formation to include persistent identifiers.

Hi again.

**Kate O'Laughlin** Hi, I'm Kate O'Laughlin in from super awesome, super awesome. As a kid, tech companies were providing products, services, infrastructure to ensure safe engagements with kids when they're online.

I'm Julia Tamar. I'm a partner at the law firm of Venable LLP.

And I want to thank Jonathan again for kicking off the presentation and I want to thank each of you panelists for for sharing your time and expertise with us today.

So we want to start off by talking about both the pros and cons of collecting persistent identifiers, and we'll start with the cons. So it we're particularly interested in how these might have changed since the last couple of review since 2010. We'd like to start Catriona Shaw.

I think it's important to remind ourselves how important it was to have positioned identifies included in the definition, because everyone in this room and everyone above 13 and older in the US today is subject to constant surveillance and programmatic behavioral data collection and use practices on all their devices all the time. This is a growing, perhaps a problem for all except for children which are protected about COPPA. And so really it's just identifies are the foundation for behavior programmatic advertising. And today, as a result of this rule making, we do not see sort of this programmatic advertising options in the programmatic space. But of course, we see a lot of noncompliance still because it's not being enforced properly. I mean, also, we see the problem for teens and in January for adults. So really, the children are the only Americans today who are not protected in this way. But before I go into some of the negative impacts, I just want to also remind ourselves why piracy is important, I think. You know, you sort of may be less of a little sight of this. Why it's important for all of us. We here believe that piracy is a fundamental right. It's not something that should be negotiated in terms of pros and cons, but it's a fundamental right. And we're trackers or persistent enterprise are used. That right is typically undermined. And so talking here about loss of autonomy. Decision making. Integrity of individuals. Loss of dignity. Loss of seclusion. The rights of seclusion. Fair processing of data. Really increase in an undue manipulation. So that's because of information technology to impose hidden influences on users by targeting exploiting their vulnerabilities. As was mentioned in the previous panel, for the first time today, privacy is, in our mind, also a civil right. So any denial of equal opportunity and unjust discrimination can also come from violations of privacy rights. So these are really all sort of, in our view, community commute, cumulative negative effects that impact the individual. And of course, there are societal negative impacts that I'm I'm going to skip out for. But to mention, increasing inequality, we believe, comes from. From undermining privacy rights. And really, as we've seen in the last elections, undermining of democratic institutions with voter suppression, but specifically with regard to children. And I'm going to expand a little bit more. I think we have to understand that privacy or the use of force isn't identified. Really, we have to look at this is a very intertwined space. We have marketing. We
have children's content and we have data collection. All these are sort of mutually integrated. And so we have to understand the entire ecosystem to understand why persistent identifiers are harmful. So really, at the beginning of childhood, in the very early stages now, marketers are trying to attract the attention of children to develop content, a detainer for them so they can collect more information about them so that they can deliver audiences to advertisers. So this has led to an increase in, you know, more and more content before more and more devices, more and more sophisticated ways of collecting information and hooking children to content and entertainment. And so specifically, my organization has looked a lot in terms of you've mentioned was mentioned earlier. And for example, in fast food and other unhealthy foods and beverage marketing and advertising to children who are particularly vulnerable in this in this regard, we are facing a childhood obesity crisis of epidemic proportions. And the impact on low income and youth of color is particularly high in this area. And then, of course, there are related costs to the state health and federal health care. So all these are sort of negative impact of it. Then also child psychosocial social development impact on the family and social interaction. We didn't hear that much from Jenny this morning specifically on this, but there's a lot of research. Obviously, that was the reason why the Center for Media Education at the time was so concerned about it, because there was a lot of research that suggested that the harmful impact on children. And we see more and more evidence that industry is experimenting with cognitive and behavioral insights, taking advantage of children. There has been some evidence from Facebook, for example, that has been experimenting with allowing advertisers to target vulnerable teenagers at moments when they feel worthless, insecure. So, you know, I, for one, is as a mother of an eleven year old and particularly alarmed about that. So we don't really know where the long term impact of this kind of these kind of practices. And we really should think about it as really as the precautionary principle not doing harm. And we should spend a lot more time in research and looking into this. There's, I think in Congress as proposals to do more research into the space. And we would encourage the FTC also with its authority to really understand the impact of these practices on children.

And anyone else who.

Sure. Oh, oh, oh. Jump in and I may be surprising that I have a slightly different view than Katrina. But those who know me chuckle.

So no, no, I agree that the issue here, you know, the the surveillance issues that are facing everyone are the same as they are that are facing kids. And I think we should start. It seems that there are two types of harm that that COPPA seems to be targeted at, at least in some ways. And one is the actual just advertising the kids, which I think is a different animal. And maybe we can talk about that more because I think that's quite different. But but I want to think about it more as the privacy aspect. There's surveillance. And I think that when we don't I don't think as policymakers, we should be able to just say, well, privacy and kids and then be done. I think we do need to think in the same way that we think about surveillance and online and privacy issues and the grown up world the same way with kids. And what is the what is the harm that we're we're talking about? What is the what is the injury? Because we'll talk about later. There there are potentially costs to to restricting persistent identifiers. So when you look at the there, as far as I know, there's not a lot of evidence as far as privacy preferences for children all of the time of the data, the the empirical work that I'm familiar with, it deals with with with adults, whether.
And so if you look at whether it's experimental evidence or and if you look at field experiments, the revealed preference are few studies seem to suggest the willingness to pay for privacy is relatively small. I mean, that's again, again, grown ups. Now they're informational issues. There are behavioral cognitive biases.

But even when you there's some studies that try to control for all of that. And at the end of the day, seems to be what's out there. And this is a conclusion. There's a survey article by Christy Taylor and Waxman on the economics of privacy. And they conclude, if you look at the data, that it's pretty clear that that the privacy, the consumers seem to be more engaged in privacy, reducing activities than privacy, protecting activities, and that there's a very small willingness to pay for privacy. Now, we can debate over, you know, again, their flaws in each of each of those studies or in some of the studies. But but I think that the takeaway there and then especially when you look at what we're talking about here as far as persistent identifier to target ads, that's usually ranks even in survey, which is stated preference is a relatively low level concern compared to other types of privacy. You know, it certainly does concern people, that creepy feeling of being tracked around the Web. But again, it's it's usually not a not that top level concern. So we think about we, you know, what are the harm that we're trying to address? Now, that's the grown up world. Again, there isn't the data. And I could imagine, you know, kids are more vulnerable. And if the profiles that are put together on kids were similar to the ones that were put together in adults, which would include other API, such as name and address, all the gender, all the sort of profile information. But if we assume that, say, a company is COPPA, an operator or Web site is COPPA compliant in every other aspect and that we go back before persistent identifiers were called PCI. If you're COPPA compliant, every other aspect and all you're doing is putting a cookie, a persistent identifier or other other type of persistent identifier on on a device, it's unclear whether the type of surveillance would be the same. And mean because you're not going to be able to link it up with all the the other types of information. You know, it's clear that when you when you have a Google account. Google knows a lot about you because you've signed up for that that account. If you're a kid and everything else is COPPA compliant. The the persistent identifier won't be linked up with those those those other things. So I think we we have to think about what is the harm that going back to 2013, what is the harm the persistent identifiers are trying to address from a privacy standpoint? What it is it really? What is the privacy harm and does it rise to the level that will we're willing to impose the cost that that again, we'll talk about. I think in some ways it comes back putting on more of a lawyer hat. Listen, economists had to think about the debate that went on at when the COPPA. All throughout and thinking about what does contact a kid mean or. And it is is a behavioral is, you know, you can't collect P.I. or something can be used to contact a kid and there's a behavioral ad contacting a kid. And, you know, I thought it was wrong then. I still think it's a wrong interpretation now. And I think, you know, as you go back to the drawing board, maybe that's something to to to read could reconsider. So anyway, I'll I'll leave it at that for now.

James, I'd like to disagree a little bit with the idea that collecting a participate persistent identifier in a single website cannot be connected back to other bits of PII which are more sensitive. It's one of the big differences between what what the environment, what it was like. The ecosystem was like in 2010 and 2011 to what it is today. The invention in the adult side of advertising technology has really leapfrogged in terms of the ways that a single person can be identified and re identified in their data connected together. Back in 2011, there weren't things called customer
data platforms, customer centric management platforms, data management, floor platforms, which are all places in which disparate pieces of information that seem innocuous alone are now combined together, and they are prolifically used across all content monetization platforms and across all advertisers. So even though it might seem a bit innocuous to drop a cookie on a kid when they're on a single website or from a single advertiser, men do know that there are many, many systems out in the ecosystem that can connect that cookie back to precise geo location or can connect that back to a user screen name. That being then can be connected to people's preferences.

I was going to say otherwise. COPPA compliant user screen name and geo location would not be COPPA compliant. If those had already been collected. So if you're otherwise COPPA compliant. But for the cookie. That's right. I mean. And I will grant you, I don't know the tech space the way that you and Jonathan do. So. So that's that's what I was saying. So I think if you add either one of those pieces of a kid, it would have been non COPPA compliant and left. There was prudent consent.

So I think my point is that a single site or single advertisement might think that they are innocuously just setting a single browser, but when they connect it to a third party or they let that be used in some kind of internal operations aloud environment, that that is going to be prolifically sent out to a hub and another hop into another hub to another company that can connect it back to something more sensitive. And what we've seen since 2011, 2012, that some of the mechanisms that we've tried to put in place to prevent that downstream or upstream connection haven't really worked.

So some of the flagging mechanisms that are used in the advertising technology space, the things that we're hoping to send out as signals that this piece of data shouldn't be used in connection with with anything else, haven't yet worked.

So as we look forward, we need to make sure that we understand that these systems are already in place and very widely used. And we have to make sure that we don't introduce additional exemptions that let them be exercised with even more collection and connection together.

I have a question. Do we know if that data actually is being used to target not children generally, but presumably, let's say, children under the age of 8? Right. Are they using that level of targeting in order to present ads to children of the age of five, for example? Right.

I don't think you would find anyone who would that would raise their hand and say we are actually doing this from a common sense perspective, knowing there's so many ways to otherwise target children of that age.

Right. And if you are, for example, marketing know junk food, you don't necessarily need to go to those lengths.

Right. To to provide that to deliver an ad. Right. So, again, I personally don't know.
I do not run an operator. But I wonder, as we think through this and you know, the FTC is doing its research if that's something that we should be looking at.

All right. Yes, I do. Sorry. I'll just jump in here one more time. That, yes, it is possible to advertise to kids without it being data driven, without using personal personal information for the good, not just the, you know, the bad example of using an unhealthy food.

And I think that's earlier today. That was one of the sort of frustrating things to be sitting in the audience and hearing is that if we don't let data be part of the equation, then the entire kid's ecosystem is going to collapse on itself because data is the only way to make money. That is not true. There is safe and effective advertising that can help great kids content creators monetize that do not have to be data driven. We do that. We see that every day in our technology. We are proactively stripping out data so that we can have safe ads. We can have saved engagements with kids and it works phenomenally well. The big kids brands, they want to talk to kids. They want to do that safely. And it can work data free.

I think maybe that brings us back to the question of the pros and cons, and if I could jump in on the pros at the moment, you know, I think that this is something that the COPPA role today actually recognize, right? Persistent identifiers are defined us as personal information. But there is also this important exception that's been mentioned about support for internal operations. And that exception is the piece that makes it workable to have persistent identifiers as part of the rule. Because if we're talking about the pros, a lot of those are recognized in the exception. Right. Persistent identifiers are absolutely necessary for a lot of functions in online services and websites today that make them interesting and engaging for kids. And the exception sees that. So. And the exception also recognizes, I think, that persistent identifiers are a bit different from the other types of personal information that are listed in the COPPA rule. Persistent identifiers to have these beneficial uses of other data also has beneficial uses, but persistent identifiers are allowed to be used for certain purposes without parental consent because of those beneficial uses. I think there are a lot of pros and I actually think it's very hopeful that the COPPA rule is recognizing those today. And I think that it would it's essential to maintain that exception and to continue to work towards improving it and keeping it as clear and as comprehensive as possible so that it can continue to be used. And it really is for the benefit of kids to make sure that there can be engaging and interesting online content for them.

Julia? Have you seen an increase in benefits over time since the previous rule review? I mean, has this gotten more useful for internal purposes over time or is it kind of just the same? Do you see the. I'm sorry you're using that persistent identifiers have become more useful over time as their internal purposes. Yeah, for designing. Apps well, maybe it's not something you thought of.

No, it's it's a little bit hard to answer. I think over time, I mean, I think what is listed now is probably the minimum of what should be listed of support for internal operations. The challenges that I see as a practitioner are that there's still uncertainty. So there are services or functions that companies might like to use. Persistent identifiers for, which are not behavioral advertising and are not profiling. But if if the rule is uncertain, companies are very risk averse. And so there is a chilling effect where the where the exception is not clear.
Catarina, I know you'd wanted to wait, wait. And then Harry.

Sure. Thank you. Yeah. So I think with regard to the internal operations exception, we believe that definition is way too broad and vague, that it really creates incentives for operators to claim that position identifiers are used for internal purposes, even if they're not. So, for example, the content personalization exception, you know, there's we believe that sometimes content personalization is similar to personalized ads, especially when ads are or, for example, content on YouTube. I really am. So you have branded channels, for example, on YouTube. If a if a child sorts of clicks on that, it likes that. And then the personalization would basically repeat sending that content to the child. And that's a really amounts to no more advertising to no more advertising to foot for the child to be consumed. And I also think that content, personalization. I think we're going to probably see much more of that. And, you know, I think you've been involved in research on dark patterns in e-commerce websites. I think a dark pattern. So this this attempt to have the design architecture so that certain default decisions are made by Web side users, we're probably going to see much more of that being personalized. And so there's forms of manipulation that's going to creep into sort of making that. So the children making choices that they will might give away more information or that they will be manipulated in certain behaviors. So this this exception for of operations, I think we need definitions for that. We need to understand what companies are doing with this data. So, again, I think the 6B authority would be good here to really understand what how companies are using this information under the exception. We also have concerns, for example, around the use of this data for attribution and measurement purposes because that would facilitate advertising and marketing.

And I think that's not the purpose and intent of COPPA.

I just want to jump in on that for a moment and say that I think we have to be kind of disciplined about this conversation because there's a lot of concern, of course, you know, at all times about what advertising or what content kids are seeing online. But that's an important conversation to have. But I don't think that's a COPPA conversation. COPPA is about data collection from kids. And then we've introduced use restriction in the form of the support for internal operations exception. So I think we can speak about it there. But I do not think we should try to make COPPA into the vehicle for all policy concerns that might relate to add content or content online for kids.

Can I hear you had wanted to jump in?

So I'm not an expert on COPPA, but you know, to the extent that when I looked at, say, where we sit with the data that that we have access to for our audience, we got data from YouTube. We got data from we have an app out there, a subscription out that we have data from Apple and we have data from our website. Apple and Google do not provide us with really anything that's even remotely the user level. But there is important data there about the geographic locations, for example. So, for example, we have a large international audience knowing that we have a large Latin American audience led us to create a Spanish channel. Right. We wouldn't have known to do that if if we didn't have that data. Right. And. Yeah, I'm sure. Cookie level data came into play, but by the time the data got to me, it was aggregated only at the country level. Right. Which is really all the data I needed. So one element here I think is who is looking at Immune,
meaning there's operator data level data. That at Google's level, and then there's the data that we got. Meaning, you know, on my Web site, I might get more data. I don't necessarily need to look at data to that degree of specificity, but it is essential for me to be able to provide content to have access to some information other than fan email of what of what we are or who our audience is similarly with with Apple. And mean where we have a subscription on a map. I would say that just anecdotally going to that the issue of harm. I would say the number one bit of feedback, we go out of our way for our content and provide ad free experiences. So yes, we're on YouTube or also on pretty much all of the subscription video services and we have a subscription app which is ad free. And then when we have we've removed all ads from our Web site. And yet in spite of that, I would say the number one bit of feedback we get on our app is why can't we make it available for free? And if we had you know, it's not we don't really consider it an option. But I would say that I would our audience would probably want to have an know an opportunity to somehow opt into ads instead of paying the subscription fee. So, right, sir, as we think about how these identifiers are used, I wouldn't want the conversation to be about just one level of operator or one or that the audience for the data just be only advertisers, but rather there's a there's a many different audiences and not all of them have to get that data. I would never want to have or would never need to have user level data on anyone. We have millions of fans and that would just be not useful for us. And I think I think most people wouldn't have an interest in that. But certainly we would need to have data. You're going to see one of the earlier panels and we worked, you know, when we developed our app with one of those app with one, the app companies touch price and many of the other companies listed on that slide are no longer creating content for kids. They're know one of the Muslim acquired that when I went out of business. And that was the cream of the crop for. For content in the app space. So when you look at the pre-school, that market, that is absolutely a market where you're seeing negative impact as a result of being able to have monetization options. The result then is that we all know that people continue to stay on these devices. So they are now using. Apps and and engaging with content that is less thoughtful, not created by people we weren't aware of COPPA, etc.

Jonathan, I know you had had your hand up.

Thanks.

So I guess I had to respond to a few points that have come out from a technical perspective. The first one being, you know, why should we care about these identifiers in the first place? And I think often the conversation tangles the use of information with the collection of information, and those are related but distinct issues. Right. So you might be concerned about behavioral advertising to kids or not mutually exclusive. Or you might be concerned about third party entities collecting information about what kids do online. And, you know, the rule could get at one of those or the other or both of them. I think as currently drafted, it gets it both. As for why you might think it's not cool to have a company you've never heard of collecting your kids activities online, I'll maybe leave that others to talk about. The second point I want to address is this monetization issue and whether you can monetize an app if you need verifiable parental consent to do behavioral advertising.

Otherwise we don't have or I should say we don't accommodate quite a bit of it.
I'm sorry, I should say advertising with an identifier. Third party advertising. And as a technical matter, there are a bunch of other directions you could go. So there are other types of advertising outside of behavioral advertising. Some of you mentioned today's demographic advertising. That's you know, we think we know something about this kind of person at a very high level, but not specific to the person. Right. So, you know, people who are playing an app that in an app that is designed, let's say, for, you know, little boys and little girls, you might target based on that demographic information without knowing something about the specific user. You could have geographic targeting, not precise geographic targeting based on G.P.S. But now this user seems like there in Washington, D.C. So we'll advertise a kids club in Washington, D.C. or we could have contextual advertising. Right. So the kids in an app where, you know, you're at the dentist's office and there's some app related to like a, you know, some fun toothbrush, I don't know what the point being. It could be based on contacts. So there are a bunch of different ways of targeting a bunch of different ways of delivering ads. Right. So instead of using identifier, you could imagine an ad delivery that stateless or uses some state stored in the device rather than using a unique identifier, you could use a session identifiers or a short lived identifier. You could use first party identifiers that are persistent but not persistent third party identifiers. So this is entire spectrum of designs short of sharing precision identifiers with third parties for all advertising and at the risk of putting too fine a point on it. Apple has effectively banned third party advertising that uses a persistent identifier in the app store. And clearly the app store is doing fine in terms of having children's apps. And so, you know, the claim that monetize an exception for that type of advertising is essential seems a little bit belied by the Apple experience at the last point. I want to make and I recognize that I've been talking for a bit here relates to this internal operations exception. And I think the exception kind of conflates a few things that might be going on. One is to say we're concerned about behavioral advertising, so we're going to cover behavioral advertising, then use the internal operations exception to cut to exclude everything. That's not behavioral advertising. Right. So the only persistent identifier stuff we're trying to cover is behavioral advertising. I don't think that's what the rule is trying to do. But that could be a direction some folks want to go or conceive of it as another is the sort of bare minimum for the app to function. And that, you know, it's like network level information, right? You have to be able to collect IP addresses in conjunction with the app loading. Otherwise, the app can't load anything. And then you've got this broad middle of stuff where I believe the term used in less rulemaking is smoothing the Internet experience or something like that. Right. Where as a sort of accommodation to the ecosystem, we're going to allow identifier based contextual advertising, other forms of advertising, frequency capping, etc.. And there I think is where the hard policy questions is. And I think it's a little bit of a misnomer to call internal operations again. I think it's the sort of concession to allow the ecosystem to run and query whether the that form of concession is technically needed at this point.

I am I believe Kate wanted to step in and then maybe we can change the discussion just a little bit.

Yeah, sure. So the techniques that Jonathan described for delivering advertising without. Data are all. Right on, and what we see practically is that the ecosystem can thrive. I'm using those techniques, those same techniques and those same paradigms can be also applied in measurement. Some of the internal operations expansion ideas have been maybe around attribution. And if you're not familiar with the term, attribution is connecting whether an ad
drove to something being sold. I think it seems a bit innocuous and it is important to marketers that might be one of those places where concessions might you might have a lot of pressure to concede. But let's remember that what is attribution or what is a marketing measurement to some of the most active brands in the ecosystem might get us too close to data that we really think is sensitive. So if you think about Target or Wal-Mart or Chucky Cheese, what matters to them? And measuring whether or not advertising works is did someone actually walk into a store? And so if we extend some of these internal operations to include attribution as a use case and measurement, we again are getting into this territory where we're connecting a bunch of data together that gets even more sensitive. And we can accomplish measurement. We can accomplish. Marketing effectiveness measurement, which is ultimately the job that many marketers want us to do by using some of the same techniques that Jonathan described on the targeting side of advertising.

I just wanted to I mean, to jump in and just say something that we can look and say that advertising at ecosystems or I'm sorry, app ecosystems are thriving.

But what we don't have is the but for a world, I mean, the one thing we work. We're looking at it. And I agree. You look at the app store, there's absolutely no dearth of it of children's and children's apps. But what we know just from a good, good empirical standpoint is to look at something and say there's a lot. So there's no impact. I mean, I think there's clearly an impact first. There's just anecdotal. Harry talks about going behind a paywall. So that's one thing. I mean, we know if you get behind a paywall versus ads or have a free, you know, a freemium type view, I mean, demand curve flipped downwards. So you raise the price. Fewer people consume. I mean, that's just going to happen. The second thing is the data, the empirical evidence is pretty clear that behavioral or interest rate stands. What if you want to call them? They they do garner more revenue for the content creators. Garrett Johnson at Boston University. Kathryn Tucker and Ivy Goldfarb, they're actually down here last last fall as part of the competition, consumer protection hearings. We had a whole thing about that.

You know, there's somewhere between 2 X and 5 X, maybe 10 X depending on for the revenue. Now, there is some evidence to suggest that maybe that's overpriced, that their effectiveness isn't what they are. But just as far as the revenue that's generated and in fact, all you have to do is read the commission statement in the YouTube case and look at the YouTube statement after that, knowing that it's going to harm, you know, saying that talking and whine about how YouTube profited off of these ads and then.

No. So and then YouTube saying, look, we know this is going to be tough for some content creators. So it is going to say that what what would be good and maybe this is something we'll talk about later, because I know we were going to talk about what the next steps. What are some researching to actually see what the impact of the 2013 rule was on on kid's content? Again, we could look at it and say it's fine. And I you know, I have kids and I think they have plenty of apps, probably too many. I mean, I know, but but just from a good kind of science perspective to see, have there been an impact on the impact and be not just some disappeared, some may go behind a paywall.
There's also content. I mean, there's a good very recent paper in the Rand Journal of Economics. Joel, what Fargo and a couple co-authors and I apologize to the other two co-authors for forgetting their names, but it's not exactly on point, but it's about ad blockers and they find it for every percentage of your web, your audience that has an ad blocker, your revenue goes down by about 1 percent. And that also when you look at the heaviest traffic, the sites with the heaviest ad blocker traffic, they have less content.

And so, I mean, I think they're there definitely is there is likely to be some impact. And again, maybe maybe the world's fine. But I think that we should think we can't just look at it and say that there is enough out there and there are lots of ways you can monetize, but you are changing behavior. And and I'm not saying again and I just want to say this is just something that needs to be weighed. This is the right equilibrium, maybe there is a market failure, maybe we need government intervention here, maybe COPPA is the right balance, but we can't just look at the Apple app store and say there are lots of kids apps, so it's fine.

If I could, I would just want to quickly say you can actually tell, at least in the preschool space. You can see sort of the vision of the future on content where say, five, six, seven years ago, you had many independent companies developing content. So, for example, my mom, where my kids were really on their play talking bogus apps. They loved him. Now, what you're seeing is the developers are focusing on brands that are basically using the apps really just to promote mega brand. So like the Disney apps, the Lego apps, but those independent apps are pretty much largely disappeared unless they're there. Basically there's a large group of we'll call it almost disposable apps are being cheaply generated at that scale. Right. But that sort of very thoughtful kind of independent creator based in the app store is largely disappeared. Right. And more likely than not, you might see something similar happened to you, too. Right. So there is actually impact there is there? There's meaningful impact and will affect choice.

So I think you guys got through several of our questions.

Can I just jump in your post once I can? It is in terms of framing, I think that's been bothering me a little bit this morning already. I think when I'm not here to do a sort of balancing act.

Right. COPPA had an intent to protect children, to limit the contacting of children, limiting the marketing to children because they are vulnerable. And there are a lot of research out there. Why would we care about you as a society? We've decided we care about that. So we should not sit here now and sort of decide, OK, what's the negative impact to businesses and how do we trade this off against children? I think the priority is that we want to protect children. And that's that's why we have COPPA. So I think there are other times when I think it's appropriate to consider what the tradeoffs are, but not in this particular case. I just don't.

I don't think it's businesses or children. I think it's businesses and children. Businesses are out there wanting to offer high quality content to kids. Businesses of all sizes. As we've heard and I think we I mean, I'm a parent. I think we want kids to have online content. I think we want them to have access to this tool, the Internet, that is gonna shape so much of their lives. And the question is, how do we do that responsibly? And just to tie that back to one particular aspect of the COPPA rule, because it's just come up a lot. There are limited options for monetization to
support publishers who want to offer that content to kids. And contextual advertising is a really important one that is recognized in the current COPPA rule. And so I would just say that one way to support businesses and children is to continue to recognize that exception for contextual advertising, including the activities that come with contextual advertising. I would certainly include ad attribution in there, and I'm sure there will be other ideas in the public comments in terms of things that should be considered part of meaningful contextual advertising that can support an app or services for kids.

So to that point, I'm just going to interject right here. Sure. You guys could take care of it. You know, there is an open question as to whether or not behavioral advertising brings in significantly more revenue than contextual.

And I just wanted to you from everybody kind of what their experience with this is. You know, if you have no idea, you can just say, I've no idea. That's perfectly reasonable. James, you've already answered this question.

I want to talk also with Harry for I would say currently we get advertising from our revenue from quite a large number of sources. But I would say that behavioral advertising on YouTube constitutes the lion's share of our revenue. I would say the loss of it will require us and. Every other YouTube were in a similar position to dramatically change their entire business model, which are in the process of doing.

So I think the questions that were raised about this issue also were the research fund.

Professor Christie, I think only points to the fact that we need more transparency on this and what the role of the platforms are in determining price on that. So again, I think 6B Authority is called for here to look into that.

What the really behind the scenes information.

I agree with the call for. Ideally the commission to do the work of its own and certainly encourage more work in this area. It's an area of research I've wanted to get into. It's essentially not possible because the entities that have the data generally not really overly enthusiastic about collaborating with privacy researchers. The work that has been done to date, I think in many instances has some serious methodological issues. And I say that about the work that finds that behavior advertising is quite valuable in the work that finds behavioral advertising is not so valuable. And so I genuinely do think we just need more research. And it is a little crazy that we're a couple decades into behavioral advertising, driving much of the online economy and privacy conversation. And we're really not super sure just how important or actually how necessary this stuff is. It's a little weird.

Our experience is that safe kids advertising commands equal prices that advertising to adults. That's very data driven does. We don't see a gigantic discount to contextual advertising. And then when it comes to the changes that it's going to be incurred for monetization by content creators with YouTube changes, just say let's not model turning off data driven advertising with some of
the more structural changes that they're making to declared kids content when they turn off comments and they turn off engagements.

That's affecting their algorithm and how users are going to find that content. That's one part of the expected decrease in monetization, which is separate from just turning off the data in the targeting. So let's not conflate decrease in prices or decrease in revenue to kids content creators on YouTube just because the data is turned off every.

Really?

It's my understanding that there are plenty of studies showing that interest based advertising is more supported for publishers than contextual. I certainly think it's you know, you can always have more research as a data different driven industry. We can have more research on it. Certainly that would be welcome. But I do believe that there are plenty of studies showing that the that the results for publishers are better with the interest based advertising. And I think that's what I hear anecdotally. Of course, you know, under the new COPPA rule, that been a shift in that in the past six years. So that was more from the time that the rule came out that that we were hearing those concerns.

So I'll ask a question from the audience and sort of gives me an opportunity to address something I've heard earlier today as well. So the question is, as Commissioner Phillips noted, looking at the intent of Congress, COPPA was about addressing contacting of kids. Does a persistent identifier alone allow contacting of a child, assuming it's not combined with other types of information? So I just wanted to take this opportunity to since we're talking about the intent of Congress and you know, people have talked about the intent earlier in the panels and basically talked about the online safety aspect of congressional intent. But when you look back at sort of the FTC report that led to it and and to the I think to the statute and the original rule itself, I think that it's clear that there's a couple of purposes. And one was online safety. But I think the other purpose was to basically restore parents to the role that they used to have back in the day where, you know, the parent would be home.

And if you wanted to reach the kid, you would be calling. And probably the parent would be picking up the phone or you'd be sending some mail that the parent would be, you know, reviewing.

So from the legislative history that was from Senator Brian, I think he was speaking for himself and Senator McCain. He spoke to this issue a little bit. And so he talks about the information being collected. And then at some point, he says much of this information appears to be harmless, but companies are attempting to build a wealth of information about you and your family without an adult's approval, a profile that will enable them to target and to entice your children to purchase a range of products. The Internet gives marketers the capability of interacting with your children and developing a relationship without your knowledge. Where can this interactive relationship go? Where you're? Will your child be receiving birthday cards and communications with online cartoon characters for particular products? So that's just an excerpt. But sort of gives you a flavor of, you know, online safety was just sort of part of what they were. They were after. But anyway, sort of provide that as background. But the question is sort of
going again to does the persistent identifier alone allow the contacting the child? I think James has again, I think I've already answered that.

No, I just think I mean, you're right. And I actually reread the legislative history of. Well, and you're right. And I think that there is this sort of conventional wisdom a cop has about protecting kids from predators and and that sort of thing. But but you're right. I mean, it's clearly in the germ of COPPA was also advertising and marketing kids. And I but I still think if you just look at the statute in the statute says, you know, India under PCI, it could be any other.

And I don't know it verbatim. But, you know, any other thing that that can help contact.

I don't know if it's a specific contact, a child or. I still think that it's a I agree. And again, this was all in the comments. I mean, you guys went through this and you worked through it 2011, 10 through 13 or 12. And and that view did not carry the day. But I I still think that it's a stretch of the statutory language, because to say that a a advertisement is is contact is contact. The the an identifier that allows you to send an advertisement is and is the same type of contact as, you know, the other things that are specifically in there, the email advertise, email address, phone number, name, birth date, those sort of thing. So so I would say just as a matter of statutory interpretation, I think it's a little bit of a little bit of a stretch. But again, that was already if you want to go back and rethink that effect, recent case on net neutrality said, OK, you can go back and rethink your rule.

So just because you think you got it wrong the first time need the original definition that James is referring to for persistent identifier was any other identifier that the commission determines permits the physical or online contacting of a specific individual to anybody else. Have any thoughts on this? Jonathan, just quickly give.

Again, trying to stick to the computer science here. So I'm not going to talk about Chevron deference, but the. From a computer science perspective, an identifier is like how you contact. People are devices online. They mean ultimately it's the reference to, again, whatever person or device you're trying to try to and then you resolve it through some underlying protocol for email. We have a suite of protocols like, you know, S.M. Teepee and so on for phone numbers. There's all sorts of protocols like SS 7 and for a cookie we use HDTV. But ultimately the just always a placing something in front of a person or getting some information to a person. And again, from a computer science perspective. I don't see any difference between these communication technologies with respect to one is whether one is enabling contact or another truly from a practitioner's perspective.

There's a very significant difference and I think we see it. I mean, we've heard some of this earlier. You know, persistent identifiers are being added to more laws as a type of personal information, and it creates a tremendous amount of mischief. For companies, it's extremely difficult. It's very easy to say it's an identifier like any other. But the fact is, it's a different type of identifier. It's a identifier that does not allow me to pick up the phone and call a child and speak to them in real life. It is an identifier that does not allow. That doesn't give the same ability to go back and and, you know, engage in some of the activities that some of the new laws are calling for, like access, etc.. So it's just important to realize that there are persistent identifiers are
categorized. There's personal information today under the COPPA rule, but they remain fundamentally different from the other types of things that are listed as personal information. And that exception on support for internal operations. That's why it's so critical and essential for it to remain in place is to recognize that difference and to make it workable to even have persistent identifiers in there. And I would agree with the comments that I do think it's a stretch to have persistent identifiers in there. I don't think they allow contacting in the same way as the other items in the list of personal information. But if they were to be left in the COPPA rule, the exception is essential and it needs to not only continue to stay there, but continued to be improved and to offer more clarity and more certainty for the companies that are really relying on it.

So we have another question from the audience. Most monetization concerns mentioned today are centered around advertising. What does COPPA have to say about paid subscription apps? Are businesses?

Pacification. Right. So it was our app, we've designed it to use the service to make sure it was COPPA compliant. And, you know, the irony there is and we actually have no direct relationship with our users. They they subscribe through Apple service. So they're completely invisible to us. You know, I would say that from that perspective, one of the issues that does come up is and it's been alluded to sort of when you profit from a product design standpoint, you do want to consider, you know, if the original purpose of COPPA was to prevent that level of, you know, you don't want people to, like call people up in their homes. Should it also prevent me from allowing them to have a playlist? Right. You know, there are many I would say most nearly all of the product services that people would want are services that would require a certain amount of customization to to their use. But for us, we'd either have to do it for everyone or not at all. And so the answer is it becoming. Not at all. But, you know, in the ecosystem where we're the digital ecosystem today, the fact of the matter is that the users have been so conditioned to not paying for content that a subscription app is really almost something that you like. I do like we invested a lot of time and effort in it almost as a loss leader. I would say as a matter of principle. It's not a major driver of revenue for us. Right. Almost all the major drivers of revenue for us are advertising based.

And that is because and that's what the audience wants and demands. And I would say that and we've heard the word equity today for most of our audience, they would consider that a very serious issue of equity. Right. Like if if I told that the only way to consume our content was for you to sign up for a subscription service, I think most of our fans would consider that to be very offensive and outrageous. So you we.

Yeah.

Yeah. Which is like I don't personally support tracking, you know, kids to that level of detail. I think that a certain level of specificity there is from where I see it. Like, why would you need to get beyond a certain point of information? But if the information is anonymized to a certain point, why shouldn't you be able to use it to provide a better experience? Why should you be able to use it to also support ads if the advertiser and the users want that right? It's the only way I can, quite frankly, for a robust content environment to exist. Otherwise we would ironically end up in
a situation where our thanks to regulation you'd be creating content monopolies where only the biggest billion dollar content providers could deliver content to this audience.

You want to comment?

So I guess a point that occurs to me in response is I think everyone wants there to be free awesome content available for kids. That's like a lot of the promise here. And one of the directions that strikes me is potentially promising and then I hope the commission will take the opportunity to explore is addressing this issue of age gating and parental consent and oversight via platforms. So I think one of the issues we have now is if you want to be a content creator or a developer, that sort of model is that the burden is heaped on you to figure out the age game, to figure out the parental consent, et cetera. And you could imagine a world in which platforms, especially, as you know, the data, show kids are overwhelmingly moving towards a small number of mobile platforms and they're using tablets on those platforms. If those platforms did a good job of implementing each flagging age, getting parental consent, et cetera, it might take a lot of strain off of app developers and content creators to collect afterward.

Yeah, absolutely. Yeah, I think there's a way that we're talking about data where there's just one pool of data and there's one group of people that want to use that data.

That's not actually true. There's a wide range of data and there's a wide there's many different constituencies that want access to some of that data. I would say there was a struggle to think of anyone who actually wants to get to that level of specificity for children. Right. And certainly we shouldn't allow anyone to get so much individualized data that they could actually call someone up in their home. But at the same time, between that and be able to give an itemized data to certain classes of people and allow them to spawn advertising elements of support, app development. I don't really see a public policy interest that's addressed there. It's totally anonymized. It may not even be from people in this country. Right. It's just you we're talking about YouTube or the app store. So certainly within. There seems to be a wide sort of middle that we can bridge as we look into this. I would just urge that as we do the research, we do it somewhat quickly because starting January, a lot of us might not be around.

I'm gonna ask some sort of change in the conversation just a bit. One objective to online advertising. We've heard about it earlier today as well. Is that really an objection to the content of the ads themselves or to the products advertised? So I remember a few years back there was erectile dysfunction ads appearing on the Super Bowl. There was a lot of talk about that or or generally on football.

Is there any connection between that and like if I'm a kids site and I say, you know, you can't do a B.A. on my site. Is there any connection between that and the appropriateness of ads either?

Am I more likely to get ads that are appropriate for kids or am I less likely to get as it are appropriate for kids? Or is it sort of no relationship there?

I think that it should be every person and every company and ecosystem than the ad delivery chain's responsibility to make sure that flag telling you that this is a kid should mean not just
don't use or collect data here, but also make sure that this experience is appropriate. What are they? What does the kid hearing, seeing, feeling should abide by the guidelines set up by the self-regulatory organizations and that should just be part of the expectation.

Right. And part of that would require us to know that it's kid's content. Right. And that their kids watching it. If it weren't for those protections to work. So.

So I mean that the problem with behavior advertising is not that it delivers sort of inappropriate content. I mean, you know, we've been over this, but the fact that it aims to manipulate children and influence them in inappropriate ways. That's what to ask. The objection is. And I think the problem with inappropriate content. I think there's much more brand safety issues when it's obvious and there's many more solutions from from a different angle to look at that that would be prevented.

But that's not connected to them when they behave advertised.

I would just want to jump in there a little bit more to really go to that. That's that's really almost an editorial question. Right. Like, what are the. What do we want our children to watch either in terms of ad content or, you know, which then also somewhat, I think relates to what what do we want our children to watch in terms of the content itself and the approach that we seem to be taking care of is to regulate that editorial decision through the privacy angle.

My personal view is that we should address that and we should address issues of curation, but we should do that head on and not necessarily just through privacy, but rather through a direct discussion of the question, can I?

Yeah. I just wanted to echo what Harry said a little bit. I think that when we talk, you know, we began this discussion talking about the privacy harms and the privacy aspect of COPPA, which I think when I COPPA mostly about what we think about the ad side, you know, I worry about undervaluing or undervaluing.

The information flows to kids, you know, just to say, well, they're advertising to kids, we need to stop it all. I mean, you know, experience from my life.

I my world was changed when when I was watching an ad and I saw Cookie Crisp, you know, I'm like, wow, they're cookies. You can have cookies for cereal for breakfast. It's a game changer. Right. But the point there is like if my parents would have seen that or, you know, we never would have had Cookie Chris. Now, that's all I wanted to say now. And I'm paid for by Cookie, Chris.

But but the point is, I think that we need the.

I don't want to I would not want to say, oh, you're under 13. So the decisions.

I mean, again, we're kind of getting more into the realm of bigger picture policy of like, you know, who should have control over what year is this a parental a parental issue?
But to devalue the information that flows to kids and say it's just completely valueless mean the Supreme Court in coming in Brown vs. the videogame case and a video game. I can't remember. Entertainment software. Yeah. Okay. Yeah. So a couple years ago, I mean it was it was it was they they said that, look, they kids except for obscenity and obscenity is usually defined in kind of pornographic terms or sexual. That the information flow to them, that kids shouldn't deserve any less First Amendment protection than grownups, that they're vulnerable population, but they shouldn't desire any. So I think that we need to be careful. And again, we're getting far afield from where COPPA is and the privacy issues. But once we start thinking about using COPPA as a tool to restrict advertising to kids, then I do think we're getting into First Amendment land. And, you know, we we should think about. I mean, as COPPA the right tool for that if we. And we've had this debate. I mean, again, we're at the FTC, which is sort of the the best place in the world to be to talk about restricting advertisements to kids and the others. There's a rich history here of not a good one. Eventually turned to the happy ending, I think. But and I was here at the commission in the the early to mid 2000s when there was a big push to do something with advertising for four kids for obesity reasons again. And that was kind of resisted a lot. And I know that there's research to suggest that kids don't get advertising. So everything's inherently deceptive, deceptive. So they get you out of the First Amendment. As far as I know, no court has adopted that. But but the the point being is that I don't think we should just give short shrift to information flows to kids and say that that it's OK to have a rule that restricts information to kids and that should.

That's kind of on the cost side.

So when we have less valuable ads going to children, meaning, you know, I don't mean just the monitors. The reason that they can they make more money for the publisher or the content providers because they're more likely to lead to action. And if to the extent that kids are seeing fewer cookie Chris bans or things that they really could act on and again, their parent is typically going to be the gatekeeper to this. You know, this is this is something that should be valued. It shouldn't just be given short shrift.

CUNNINGHAM Thank you, James. Can I turn to one last question from the audience? I think we just have a few minutes left here. But the question is about persistent I.D. I.D. and it says Persistent I.D. may be part of a child directed site app, but maybe on the device of the parent. So there may be multiple people using a shared device and sort of how to address these types of identifiers. And at the same time, I wanted to bring in both Jonathan and his presentation. And Dr. Reed Esky had mentioned that more and more kids now have their own device. Certainly wasn't true when the rule was revised. So. So if you can sort of meld those two together. Any thoughts? Welcome.

Sure. So I see you again trying to focus on the computer science present perspective. A great opportunity here for the commission to maybe encourage a new direction that addresses a lot of the issues that have thus far come up in COPPA implementation around kids have their own tablets or maybe when they share a tablet. Now Android or I guess as of like a month ago, it's now called iPad OS. So iPad OS have the ability to set up a profile specific to a child. And so
were you know, you two were the world to move towards the operating system, for example, telling an app and this is like technically trivial. The user who's currently on the device has a profile that their parent is configured as a child. And if you if the user is using your app or sending some sort of persistent identifier via your platform or so on, you should be COPPA compliant. And if you want to and your exercise of editorial discretion have, you know, child friendly advertising and so on, you could do that, too. I think that that could get a lot of the issues here. That, of course, does not solve shared devices, shared profiles on devices. But I think given that, that seems to be where things are going. Here's an opportunity to take advantage of the trend towards mobile devices and maybe solve some problems.

My opinion is that keeping the conventions of child directed and actual knowledge is a cleaner way to recognize who is the kid, instead of giving a more liberal look at who could be using a device.

In practice, we often hear from an advertiser saying, well, you know, we're trying to reach the family and that's, you know. You know, the same of them sort of winking at you and saying, well, can't we get around this by just saying, mom's probably in the room somewhere? That's how they try to get around COPPA. So if we loosen this up and say, well, a shared device with a shared, persistent identifier is allowable, I think that gets us further into the gray than relying on what is good and more clean. And though, you know, we've talked about today, that could be an even more clear but child directed an actual knowledge.

So I want to bring up a point that was made in a previous panel. How do you think? These issues apply when you're talking about.

Minorities and low income families.

Is it going to be just as easy for them to hit that button and say, oh, this is my child's device sort of issues? Do you see surrounding?

Vulnerable populations.

So if I may jump in, I think a I mean, it was written it was a thought written in this tradition of privacy, self-management. The idea that individuals make decisions that rational decision makers, if they have enough information that can make this decision. And I think today we are much more aware and we have growing evidence of the fact that predictive in classifying analytics really lead to a distributed distribution of harms, said look at groups of users and that the distribution of homes is uneven and that some people are more harm than others or groups of users as particular people of color and low income. So COPPA identify children as particularly vulnerable. But I think with even within children, we need to understand that there is different populations affected differently. And again, this is an area I think we need much more research on. We know this from the sort of adult population. We have had some great research from Facebook and advertising and housing and employment, where even when advertiser wanted to reach a diverse audience, it ended up creating disparate impact.
And so we think that, again, we mentioned the junk food marketing, but it could be a problem is
the same in education, you know, in other sort of areas where we need to look at the disparate
impact. And I think, again, this is something for the commission to look at in terms of 6B
inquiry, because we cannot always see where the witch populations of which ads deliver to
which populations in the aggregate and where the disparate impact is. And I think this is
something we need to do a better job in representing these groups at this panel, in these
conversations, if I look around the room and these bounds when not doing a good job, you know,
we had one person this afternoon and really, you know, we are much more diverse and we have
in this country a growing problem of discrimination and increasing inequality. And we need to
figure out to what extent the practice that we're talking about today contribute to that inequality.
And so we need to look at that.

On the issue of. You have one device for a wide range of users. I would think that it would not
be in our interests to disregard the signals coming from the child user, right. Because I think this
is how the scenario where the erectile dysfunction ad ends up getting shown. Right.

You know, it's hard to imagine now, but when we first got started on YouTube, there was very
little information regarding anything on YouTube is a very earliest days. We're one of the first
channels. And I uploaded my videos because I just wanted to email them to people. The concept
of having YouTube channel and publishing or developing on YouTube, as was no one's
imagination.

One of the reasons why we became active users of the platform was that in that environment
where there's very little content on YouTube for many of our videos, the sidebar thumbnail was
next to our videos. When we first uploaded was it was a video about an exorcism. OK, so I was
using YouTube to share our videos with potential partners and they would open it up and you'd
see the somebody on this picture of an exorcism on it. And it just annoyed me to no end that, you
know, like how could they possibly put this explicit video against my video? And so I had no
one to complaint. I had no recourse. One of the things that we realize that we know where he got
rid of it was by uploading more content and in the hopes that one of our new uploads might
replace that, that that video. And it took us like. And that's the only reason why I started to, like,
upload more content and start managing my channel. Right. You know, obviously that would
never happen today. But part of that is because they know that my content is against content.
Right. If they didn't know my content was kid's content, you know, what would you know? And
are there enough problems? You know, as we know some of the algorithms. So, yes, I think we
do want to consider those signals to help protect the kids.

Jonathan, did you ever come here?

I guess some just to be extra clear on the issue of shared devices. I guess the direction I
encourage the commission to look at of potentially doing better with platforms, enabling age gets
and VPC and some sort of ongoing parental relationships would have to be alongside dealing
with the reality. We all know exists that parents hand their kids their smartphones and their
tables and some for some kids that's gonna be the primary way in which they engage with
devices. So absolutely, you're gonna have to look at other signals in those circumstances. Right.
You know, if someone installs an app that is clearly a child directed app. The fact that the profile
is not marked as a child profile is, you know, one piece of information. But maybe if it just so obviously a child app, you can be confident that that's actually, you know, still going to be a child audience anyway. That is all to say. There are issues that will exist alongside one another.

And I think more options can always be helpful. But I do think that the current legal standard that exists today encompasses a lot of this and should stay the same because it's been workable. Right, that you have actual knowledge, as Kate mentioned, either of the child's age or you have child directed content. And I think that that standard is important to continue maintaining because that has proved workable and expanding it to require companies to guess or investigate more would really not be workable.

Well, with that, I say our time has expired. So I will ask for a quick hand for the panel, but then if you all would stay here, I will just give some closing remarks quickly. But thank you all.

So this is a signal that the closing remarks will be short, but I just wanted to thank everyone for coming today. And for those of you viewing from the office or home. So it's been a good day. We are still we still have our comment period open.

I believe it closes October twenty third.

So get those comments in, we. We appreciate them and we read them and take them into account. There's a lot of people who made this event possible today. First, I want to thank all of our panelists over the course of the day. I mean, for some great presentations and for your time and expertise. I really appreciate it. We really appreciate it. I want to thank our colleagues in the Office of Public Affairs for manning the Twitter and handling our press release and all the other work that they do.

Our thought, our colleagues in the division of Consumer and Business Education, the honors paralegals who helped out with comments and making sure everyone got got in the door. Our colleague and deep pip, Alex Iglesias. And legal interns Nomi Conway and Shannon Silvester. Our colleague Rob McGraw, the event's planning team and in deep hip, Jim Trilling, Peter McGee, Kristen Cohen, my boss, Manisha Methyl, Laura Hoskin, and that's it.

So thank you all for coming today. And again, get those comments in. Thank you very much.