

Congress of the United States
Washington, DC 20515

October 8, 2021

The Honorable Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Ave, NW
Washington, DC 20580

Dear Chair Khan:

Recently, major technology companies announced policy changes intended to protect young people online. These policy changes — prompted by the companies’ need to comply with a new United Kingdom law — are an important step towards making the internet safer for young users. We write to urge the Federal Trade Commission (FTC) to use all its authority to ensure that these powerful companies comply with their new policies, to hold them accountable if they fail to do so, and to prioritize the protection of children’s and teen’s privacy.

The Age Appropriate Design Code (AADC) is a meaningful new U.K law that took effect on September 2, 2021.¹ It requires online services available to children and teens in the United Kingdom to meet fifteen key standards, many of which are similar to legislative proposals to update the Children’s Online Privacy and Protection Act (COPPA) in the United States.² For example, the AADC explicitly includes protections for both children *and* teens; requires that companies limit the amount of data they collect from young users; and extends coverage to all commercial online services—including apps, search engines, social media platforms, and online games—that are “likely to be accessed by children” in the United Kingdom.³

To comply with the AADC, several leading technology companies announced updates to their platform policies. For example, Instagram publicly announced it is “defaulting young people into private accounts, making it harder for potentially suspicious accounts to find young people, [and] limiting the options advertisers have to reach young people with ads.”⁴ Google and its subsidiary YouTube announced they will be “tailoring product experiences for kids and teens” by changing

¹ U.K. Information Commissioner’s Office, *Age Appropriate Design: A Code of Practice for Online Services* (Sept. 2, 2020), <https://ico.org.uk/media/for-organisations/guide-to-data-protection/key-data-protection-themes/ageappropriate-design-a-code-of-practice-for-online-services-2-1.pdf>.

² Children and Teens’ Online Privacy Protection Act of 2021, S. 1628, 117th Cong. (2021) (Senator Markey); PRIVCY Act, H.R. 5703, 116th Cong. (2020) (Representative Castor).

³ The AADC’s threshold inquiry is whether it is more probable than not that someone under the age of 18 will access the online service. U.K. Information Commissioner’s Office, *Age Appropriate Design: A Code of Practice for Online Services* (Sept. 2, 2020), <https://ico.org.uk/media/for-organisations/guide-to-data-protection/key-dataprotection-themes/age-appropriate-design-a-code-of-practice-for-online-services-2-1.pdf>.

⁴ Giving Young People a Safer, More Private Experience, <https://about.instagram.com/blog/announcements/giving-young-people-a-safer-more-private-experience> (last visited Sep. 10, 2021).

to “private” the default video upload setting for teens between the ages of 13 and 17; turning off location history (without the option of turning it back on) for users under 18; and “block[ing] ad targeting based on the age, gender, or interests of people under 18,” among other changes.⁵ Last year — in a similar vein prior to the enactment of the AADC — TikTok stated that it had disabled messaging for the accounts of those under the age of 16 and increased parental controls. These policy changes are no substitute for congressional action on children’s privacy, but they are important steps towards making the internet safer for young users.

We urge you to use your authority under Section 5 of the FTC Act to ensure that technology companies comply with these commitments to users and hold them accountable if they fail to do so.⁶ Section 5 of the FTC Act prohibits companies from engaging in “unfair or deceptive acts or practices in or affecting interstate commerce.”⁷ Under this standard, a deceptive practice is defined as one in which “a representation, omission or practice is likely to mislead the consumer.”⁸ The FTC thus has a statutory obligation to ensure that powerful technology platforms comply with their public statements and policies on children’s and teen’s privacy. The need to protect young people from privacy threats online is more urgent than ever. Since 2015, American children have spent almost five hours each day watching their screens,⁹ and children’s and teens’ daily screen time has increased by 50 percent or more during the coronavirus pandemic.¹⁰ We therefore encourage you to use every tool at your disposal to vigilantly scrutinize companies’ data practices and ensure that they abide by their public commitments.

Thank you in advance for your attention to this important matter.

Sincerely,

Edward J. Markey
United States Senator

Kathy Castor
Member of Congress

Lori Trahan
Member of Congress

⁵ Giving kids and teens a safer experience online, <https://blog.google/technology/families/giving-kids-and-teens-safer-experience-online/> (last visited Sep. 10, 2021).

⁶ Section 5 of the Federal Trade Commission Act (FTC Act), Ch. 311, §5, 38 Stat. 719, codified at 15 U.S.C. §45(a).

⁷ 15 U.S.C. §45(a).

⁸ *ITT Continental Baking Co. Inc.*, 83 F.T.C. 865, 965 (1976).

⁹ Victoria Rideout, V & Michael B. Robb, *The Common Sense Census: Media Use by Tweens and Teens*, Common Sense Media (2019).

¹⁰ Sara Fischer, *Kids’ Daily Screen Time Surges During Coronavirus*, Axios (Mar. 31, 2020), <https://www.axios.com/kidsscreen-time-coronavirus-562073f6-0638-47f2-8ea3-4f8781d6b31b.html>.