



July 18, 2022

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Suite CC-5610 (Annex B)
Washington, DC 20580

Submitted via email to digitalads2kids@ftc.gov

RE: “Protecting Kids from Stealth Advertising in Digital Media” Event

The Interactive Advertising Bureau (“IAB”) welcomes this opportunity to respond to the Federal Trade Commission’s (“Commission” or “FTC”) request for comments related to its upcoming virtual event titled “Protecting Kids from Stealth Advertising in Digital Media.” The IAB, along with its member companies, shares the Commission’s commitment to protecting children online and looks forward to working with the Commission as it considers how children will remain protected and engaged as the digital ecosystem evolves.

Founded in 1996 and headquartered in New York City, the IAB (www.iab.com) represents over 700 leading media companies, brand marketers, agencies, and technology companies that are responsible for selling, delivering, and optimizing digital advertising and marketing campaigns. Together, our members account for 86 percent of online advertising expenditures in the United States. Working with our member companies, the IAB develops both technical standards and best practices for our industry. In addition, the IAB fields critical consumer and market research on interactive advertising, while also educating brands, agencies, and the wider business community on the importance of digital marketing. The organization is committed to professional development and elevating the knowledge, skills, expertise, and diversity of the workforce across the digital advertising and marketing industry. Through the work of our public policy office in Washington, D.C., IAB advocates for our members and promotes the value of the interactive advertising industry to legislators and policymakers.

As explained in our comments below, IAB supports the Commission’s effort to protect children online while also ensuring that children can enjoy the benefits of digital advertising. To that end, these comments detail specific steps IAB encourages its members to take to promote safe, age-appropriate advertisements to child audiences. We also note the importance of maintaining a distinction between child and teen audiences. Finally, we appreciate that the Commission’s current review of ad content issues is distinct from its consideration of children’s privacy under the Children’s Online Privacy Protection Act (“COPPA”), but we take this opportunity to encourage the FTC to continue supporting COPPA’s “actual knowledge” standard.

1. Digital advertising supports important benefits for children.

Today’s youth are the most connected generation in history, and their use of the Internet—with all the benefits such use brings—continues to grow. In 2017, UNICEF estimated that children and adolescents made up approximately one third of all Internet users around the world.¹ UNICEF also estimated in 2018 that more than 175,000 children globally go online for the first time every day.² While statistics regarding children’s Internet use are scarce, it is likely that these numbers increased during the COVID-19 pandemic as users of all ages lived, worked, and studied online. During this pandemic, online resources have played an especially vital role by allowing children to receive education and communicate with friends and family, while also providing a source of entertainment.

Providing children with meaningful access to online resources depends, in no small part, on digital advertising. Digital advertising has powered the growth of online services for decades by supporting and subsidizing publishers that provide free and low-cost services that consumers use to connect, learn, and communicate. The revenue that publishers gain from digital advertising levels the playing field for children by reducing cost barriers to online participation. As the Commission has acknowledged, if digital advertising were “turned off” by default, this would likely result in the loss of ad-funded online content.³ By supporting the growth of content and services, responsible digital advertising helps to ensure that children, regardless of location or family income, can experience the benefits of our connected world.

2. Today, industry takes significant steps to drive age-appropriate digital advertising.

Participants in the digital advertising ecosystem take seriously their responsibility to deliver high-quality and appropriate advertising to all consumers, including children and teens. The IAB understands the Commission’s concerns regarding the appropriateness of advertising practices for children. IAB has taken steps to address concerns like these by issuing guidance for our members on advertising to children.

The IAB believes that specific wording can help to ensure that digital advertisements are age appropriate. In our 2019 “Guide to Navigating COPPA,” we emphasized to our members that “language for reaching children and adults should be different” because engagement, rather than sales, should be the key performance indicator for responsible children’s advertising.⁴ Consistent with other industry guidance, IAB recommends that advertisements to children should use phrases like “learn more,” “check it out,” and “play” to avoid creating sales pressure, rather than phrases

¹ UNICEF, *The State of the World’s Children: Children in a Digital World*, (2017), at 3, located at <https://www.unicef.org/reports/state-worlds-children-2017>.

² UNICEF, *More than 175,000 children go online for the first time every day, tapping into great opportunities, but facing grave risks* (Feb. 1, 2018), located at <https://www.unicef.org/eap/press-releases/more-175000-children-go-online-first-time-every-day-tapping-great-opportunities>.

³ See Federal Trade Commission, *In re Developing the Administration’s Approach to Consumer Privacy*, 15 (Nov. 13, 2018), https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-ntia-developing-administrations-approach-consumer-privacy/p195400_ftc_comment_to_ntia_112018.pdf.

⁴ IAB, *Guide to Navigating COPPA*, 10 (Oct. 2019).

like “buy now,” “limited time offer,” and “shop” that may be appropriate for adults.⁵ IAB believes that advertising for children should encourage interest and excitement for products, unlike advertisements to adults which might encourage purchasing behaviors.

Industry also takes steps to ensure that digital advertisements direct child audiences to appropriate content. For example, IAB guidance for our member companies states that when advertising to children, the click-through destination URL must offer content appropriate for children.⁶ If an advertisement sends a child to a website that is for a general audience, we recommend that advertisers apply a “bumper” between the advertisement and the destination that reminds the child that they are leaving the original website and to be safe on the Internet.⁷

The IAB additionally encourages advertisers to comply with guidance from the FTC and from the Children’s Advertising Review Unit of the BBB National Programs (“CARU”). The CARU Self-Regulatory Guidelines for Children’s Advertising (“CARU Guidelines”) are regularly updated and are widely recognized and adopted in the industry. These CARU Guidelines impose detailed standards for the content and delivery of children’s advertising aimed at ensuring that advertisements are not deceptive, unfair, or inappropriate. Among other topics, the CARU Guidelines require that advertising must be easily identifiable as such and should not be presented in a way that blurs the distinction between advertising and other content.⁸ The CARU Guidelines are actively enforced by the BBB National Programs.

3. Commission guidance and regulation should continue to recognize the distinct characteristics and online needs of the teen audience.

Anticipating that other commentators may urge the Commission to address advertising to teens as a part of the instant proceeding, the IAB asks the Commission to continue treating teens as distinct from children. The interests and developmental maturity of teens are vastly different from young children. We recommend that our members treat teens aged 13 to 18 as a distinct audience in developing ad content, so that teens receive age-appropriate advertising that reflects their interests.⁹ Because of these pertinent differences between teens and children, including teens’ greater ability to distinguish advertising from other content, the IAB does not believe that it is relevant or necessary to address teens as part of the Commission’s “Stealth Advertising” proceeding.

To the extent that the Commission nevertheless decides to consider teens’ advertising in this proceeding, such consideration should likewise reflect that teens are a mature audience distinct from children under 13. The FTC should support teens’ continued ability to access online resources readily and safely. Teens should not face unnecessary burdens on their access to general information across the Internet as they mature and become capable of making critical, informed decisions about access to speech. Today’s teens have grown up online and are sophisticated

⁵ *Id.*

⁶ *Id.* at 18.

⁷ *Id.*

⁸ CARU, Self-Regulatory Guidelines for Children’s Advertising 4.e, https://bbbnp-bbbp-stf-use1-01.s3.amazonaws.com/docs/default-source/caru/caru_advertisingguidelines.pdf.

⁹ IAB, *Guide to Navigating COPPA*, 14 (Oct. 2019).

consumers of online resources. Teens use websites and apps for a wide array of purposes, such as to do schoolwork, research jobs and colleges, interact with friends, and express themselves. To enable teens to continue to receive the benefits of these ad-supported resources, any guidance relating to teens should recognize that teens are adept Internet users with a high capacity for critical thinking and rational decision-making.

4. The Commission should continue supporting COPPA’s actual knowledge standard.

The IAB appreciates that the Commission’s call for comments focuses on the content of children’s advertising and does not conflate concerns about ad content with privacy. The children’s advertising practices that are the subject of this proceeding can be considered under Section 5 of the FTC Act, consistent with the Commission’s longstanding practice. However, the call for comments rightly does not address COPPA, implicitly acknowledging that whether ad practices trigger COPPA requires a different analysis focused on processing of personal information. Nevertheless, anticipating that other commentators may raise privacy considerations as a part of the current proceeding, the IAB takes this opportunity to encourage the Commission to continue supporting COPPA’s current standard relating to “actual knowledge” of user age, which is critical to ensure the continued availability of premium digital advertising and content for all ages.

Specifically, COPPA provides that operators of websites and online services that are *not* directed to children must have “actual knowledge” that a particular visitor is under 13 years old before COPPA applies.¹⁰ Not only is this actual knowledge standard statutorily mandated, but the FTC’s history of vigorous COPPA enforcement demonstrates that it is effective in protecting children online.

During the previous COPPA Rule review, the Commission considered alternatives to the actual knowledge standard, but rejected such alternatives and concluded that the actual knowledge standard appropriately helps ensure that activities on general audience properties are not inappropriately swept within coverage of COPPA or required to collect more data from users than is necessary.¹¹ We believe the actual knowledge standard continues to strike the right balance. This standard requires operators to comply with COPPA when they know they are collecting personal information online about a child, without imposing unnecessary burdens on websites and online services that are unlikely to attract children. In contrast, any weakening of the actual knowledge standard in the direction of a “constructive knowledge” or “reckless indifference” standard would be unworkable for operators including those providing children’s advertising.

Under a constructive knowledge standard, operators may be required to treat a visitor to a general audience property as a child if the operator has any indication the visitor might be a child. As the Commission recognized in 2011, this would require operators to “ferret through a host of circumstantial information” to determine whether any children are using the resource.¹² Given the high penalties associated with a COPPA violation, operators in this position would likely deny

¹⁰ See 15 U.S.C. § 6502(a).

¹¹ 76 Fed. Reg. 59804, 59806-59807 (Sept. 27, 2011).

¹² *Id.* at 59806.



access broadly to users where there is any suspicion that they are underage, impeding access to online resources for many users who are not children.

Similarly, a reckless indifference standard (which has been discussed by some commentators) could be viewed as creating a “duty to inquire” into the age of visitors for general audience publishers. Such a standard would likely raise compliance costs for operators and result in the collection of more information from all users online. This change would, in fact, be particularly noticeable on properties that are *unlikely* to have child visitors, and thus would have the largest negative impact on adults’ online experience as well as bringing many more businesses within scope of COPPA than ever before. We encourage the Commission to continue recognizing the actual knowledge standard as the appropriate approach to protecting children’s online privacy without unduly burdening online resources for adults.

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IAB thanks the Commission for this opportunity to submit these comments and looks forward to working closely with the Commission on this important topic. Please do not hesitate to contact me at lartease@iab.com with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Lartease M. Tiffith", with a long horizontal flourish extending to the right.

Lartease M. Tiffith, Esq.
Executive Vice President for Public Policy
Interactive Advertising Bureau