![fairplay — childhood beyond brands logo]

Written Testimony of Josh Golin

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Before the House Energy and Commerce
Subcommittee on Consumer Protection

Hearing on "Holding Big Tech Accountable: Legislation to Build a Safer Internet"

December 9, 2021

My name is Josh Golin and I am Executive Director of Fairplay.

I would like to thank Chairman Pallone, Ranking Member McMorris-Rodgers, Chairwoman Schakowsky, Ranking Member Bilirakis, and the Distinguished Members of the Subcommittee for holding this important hearing of critical importance to America's families, and for inviting me to testify.

The courageous whistleblowing of Frances Haugen has shone a critical spotlight on Instagram's harmful impacts on teens and Facebook's callous disregard for children's wellbeing.[1] But it would be a mistake to view her revelations as problems limited to Facebook and Instagram. Compulsive overuse, exposure to harmful content, cyberbullying, harms to mental health, and the sexual exploitation of children are industry-wide issues that demand systemic solutions from Congress.

To put it plainly, the unregulated business model for digital media is fundamentally at odds with children's wellbeing. Digital platforms are designed to maximize revenue, and design choices that increase engagement and facilitate data collection put children at risk.

It doesn't have to be this way. Instead of prioritizing engagement and data collection, apps, websites, and online platforms could be built in ways that reduce risks and increase safeguards for children.

But tech companies won't make these changes on their own. It is past time for Congress to enact new online protections for children that require online operators to prioritize children's wellbeing in their design choices. Without meaningful Congressional action, children and teens will continue to be harmed by Instagram, TikTok, Snap, YouTube, and thousands of lesser known apps, websites, and platforms.

My testimony today will describe how many of the most serious issues facing children and teens online are a direct result of design choices made to further companies' bottom lines. I will also describe how a failure to regulate digital media for children and teens has led to today's harmful online environment. Finally, I will explain why we need a design code – a set of regulations that prioritize children's rights and needs – to ensure that young people can reap the benefits of the internet without being exposed to manipulation or harm.

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[1] Wells, Georgia, et al. "Facebook Knows Instagram Is Toxic for Teen Girls, Company Documents Show." *The Wall Street Journal* (14 Sept. 2021), https://www.wsj.com/articles/facebook-knows-instagram-is-toxic-for-teen-girls-company-documents-show-11631620739.

I. About Fairplay

Fairplay (formerly Campaign for Commercial-Free Childhood) is the leading independent watchdog of the children's media and marketing industries. We are committed to building a world where kids can be kids, free from the false promises of marketers and the manipulations of Big Tech. Our advocacy is grounded in the overwhelming evidence that child-targeted marketing – and the excessive screen time it encourages – undermines kids' healthy development.

Through corporate campaigns and strategic regulatory filings, Fairplay has changed the child-targeted marketing and data collection practices of some of the world's biggest companies. Most notably, our 2018 Federal Trade Commission complaint against Google for violating the Children's Online Privacy Protection Act (COPPA) led to the 2019 FTC settlement that required Google to pay a record fine and to limit data collection and targeted advertising on child-directed content on YouTube.[2] We have filed other requests for investigation at the FTC that remain pending. We have documented, for example, that Google Play recommends apps for young children that violate COPPA and uses unfair monetization techniques;[3] that TikTok has not complied with the 2019 FTC Consent Decree that it was violating COPPA;[4] and that Prodigy, a popular online math game assigned by tens of thousands of elementary schools across the country uses manipulative design to unfairly promote expensive subscriptions to children.[5]

Our current campaigns include leading a large international coalition of parents, advocates, and child development experts to stop Facebook from launching a kids' version of Instagram.[6] And just last week, we introduced Designed with Kids in Mind, a multi-faceted campaign to demand regulations that would require operators to make the best interests of children a primary consideration when designing apps, websites, and platforms likely to be accessed by young people.[7]

Fairplay is also home to the Children's Screen Time Action Network, a global coalition of practitioners, educators, advocates, activists, parents, and caregivers working to promote a healthy childhood by

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[2] Campaign for a Commercial-Free Childhood (now Fairplay) and Center for Digital Democracy. "Request to Investigate Google's YouTube Online Service and Advertising Practices for Violating the Children's Online Privacy Protection Act." *Counsel for Center for Digital Democracy and Campaign for a Commercial-Free Childhood before the Federal Trade Commission.* (2 April 2018). https://fairplayforkids.org/advocates-say-googles-youtube-violates-federal-childrens-privacy-law/

[3] Campaign for a Commercial-Free Childhood (now Fairplay) and Center for Digital Democracy. "Request to Investigate Google's Unfair and Deceptive Practices in Marketing Apps for Children." *Counsel for Center for Digital Democracy and Campaign for a Commercial-Free Childhood before the Federal Trade Commission.* (12 Dec. 2018), https://fairplayforkids.org/apps-which-google-rates-safe-kids-violate-their-privacy-and-expose-them-other-harms/

[4] Campaign for a Commercial-Free Childhood (now Fairplay) and Center for Digital Democracy. "Complaint and Request for Investigation of TikTok for Violations of the Children's Online Privacy Protection Act and Implementing Rule." *Counsel for Campaign for a Commercial-Free Childhood and Center for Digital Democracy before the Federal Trade Commission.* (14 May 2020). https://fairplayforkids.org/wp-content/uploads/2020/05/tik_tok_complaint.pdf

[5] Campaign for a Commercial-Free Childhood (now Fairplay). "Request for Investigation of Deceptive and Unfair Practices by the Edtech Platform Prodigy." *Campaign for a Commercial-Free Childhood before the Federal Trade Commission.* (19 Feb. 2020). https://fairplayforkids.org/wp-content/uploads/2021/02/Prodigy_Complaint_Feb21.pdf

[6] Fairplay. "Facebook's bait and switch on surveillance advertising to children." *Open Letter to Mark Zuckerberg.* (16 Nov. 2021). https://fairplayforkids.org/wp-content/uploads/2021/11/fbsurveillanceletter.pdf

[7] Fairplay. "Designed with Kids in Mind." (Accessed 7 Dec. 2021). https://designedwithkidsinmind.us/

reducing the amount of time kids spend with digital media. The Action Network hosts seven work groups, such as the Cyberbullying and Online Safety group whose members include parents who have experienced the worst types of social media-related tragedies.

II. Children and teens are spending more time with digital media than ever before, and the pandemic has accelerated the trend.

Research conducted prior to the pandemic found that nearly half of 2- to 4-year-olds and more than two-thirds of 5- to 8-year-olds have their own tablet or smartphone. By age 11, a majority of kids have their own smartphone, meaning they are potentially connected to the internet every waking moment regardless of location.[8]

That same research found preschool children average 2.5 hours of screen time per day, while pre-teens average almost 5 hours per day, and teens almost 7.5 hours per day. Importantly, these figures only count entertainment screen usage and not the time children spend on digital devices for school or homework. Children in lower-income households spent nearly two hours more with screens than children from higher-income households, and Black and Hispanic children spend significantly more time on screens than their white peers.[9]

COVID-19 has accelerated these trends, and screen time for children is estimated to have increased by 50% during the pandemic.[10] During the same period, online messages sent and received by children increased by an incredible 144%.[11] Thirty-five percent of parents report that their children began using social media during the pandemic at a younger age than their parents had originally planned.[12]

III. The platforms where children spend the majority of their time online are designed to maximize engagement, often at the expense of children's wellbeing and safety.

Digital platforms are designed to maximize revenue and therefore engagement because the longer they can capture a user's attention, the more money the platforms make. As a result, children are subject to relentless pressure and manipulative design that pushes them to use and check platforms as often as possible.

The effects of these design choices on young people are serious. Excessive screen media use and social media use is linked to a number of risks for children and adolescents, including obesity,[13] lower

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[8] Rideout, V., and Robb, M. B.. The Common Sense census: Media use by tweens and teens." *San Francisco, CA: Common Sense Media.* (2019), https://www.commonsensemedia.org/sites/default/files/uploads/research/2019-census-8-to-18-full-report-updated.pdf

[9] *Ibid.*

[10] Fischer, Sara, et al. "Kids' screen time up 50% during pandemic." *Axios.* (17 Jan. 2021), https://www.axios.com/kids-screen-time-pandemic-112650a6-743c-4c15-b84a-7d86103262bb.html

[11] Kelly, Heather. "Growing up on screens: How a year lived online has changed our children." *Washington Post*. (5 March 2021), https://www.washingtonpost.com/technology/2021/03/05/screen-time-one-year-kids/

[12] Munzer T., Torres C., Domoff S., Levitt K., Weeks H., Schaller A., Radesky J. "Media use practices of elementary-aged children during the COVID-19 pandemic." *In preparation.*

[13] Robinson, T. N., Banda, J. A., Hale L., Lu, A. S., Fleming-Milici, F., Calvert, S. L., Wartella, E. "Screen media exposure and obesity in children and adolescents." *Pediatrics,* 140 (Supplement 2), S97-S101. (2017), doi:10.1542/peds.2016-1758K

psychological wellbeing,[14] decreased happiness,[15] decreased quality of sleep,[16,17] increased risk of depression,[18] and increases in suicide-related outcomes such as suicidal ideation, plans, and attempts.[19] Fifty-nine percent of US teens have reported being bullied on social media,[20] an experience which has been linked to increased risky behaviors such as smoking and increased risk of suicidal ideation.[21]

The pressure to spend more time on digital media platforms and maximize interactions with other users also puts children at risk from predation. Twenty-five percent of 9- to 17-year-olds report having had an online sexually explicit interaction with someone they believed to be an adult.[22] In 2020, 17% of minors – including 14% of 9- to 12-year-olds – reported having shared a nude photo or video of themselves online. Of these children and teens, 50% reported having shared a nude photo or video with someone they had not met in real life and 41% reported sharing with someone over the age of 18.[23]

Below are just some of the tech features designed to increase user engagement that put children at risk:

Autoplay and Endless Scroll

One objective of persuasive design is to reduce friction so that platforms are easier to use and keep young people using them. Autoplay on video platforms like YouTube and TikTok's endless scroll mean that once children start watching, they are automatically served video after video with no action required. While these features are great for platforms' bottom lines because they increase engagement,

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[14] Twenge, J., Campbell, K. "Media Use Is Linked to Lower Psychological Well-Being: Evidence from Three Datasets," *Psychiatric Quarterly* 90, no. 2. 311–31, (1 June 2019), https://doi.org/10.1007/s11126-019-09630-7.

[15] Twigg, L., Duncan, C., Weich, S. "Is Social Media Use Associated with Children's Well-Being? Results from the UK Household Longitudinal Study," *Journal of Adolescence* 80: 73–83, (1 April 2020), https://doi.org/10.1016/j.adolescence.2020.02.002.

[16] Carter, Ben et al. "Association Between Portable Screen-Based Media Device Access or Use and Sleep Outcomes: A Systematic Review and Meta-Analysis." *JAMA Pediatrics* 170, no. 12: 1202–8, (1 Dec. 2016), https://doi.org/10.1001/jamapediatrics.2016.2341.

[17] Lemola, Sakari et al. "Adolescents' Electronic Media Use at Night, Sleep Disturbance, and Depressive Symptoms in the Smartphone Age." *Journal of Youth and Adolescence* 44 (1 Feb. 2014), https://doi.org/10.1007/s10964-014-0176-x.

[18] *Ibid.*

[19] Twenge, Jean et al. "Increases in Depressive Symptoms, Suicide-Related Outcomes, and Suicide Rates Among U.S. Adolescents After 2010 and Links to Increased New Media Screen Time." *Clinical Psychological Science* 6, no. 1, 3-17, (1 Jan. 2018), https://doi.org/10.1177/2167702617723376.

[20] Anderson, Monica. "A Majority of Teens Have Experienced Some Form of Cyberbullying," *Pew Research Center: Internet, Science & Tech* (blog), (27 Sep. 2018), https://www.pewresearch.org/internet/2018/09/27/a-majority-of-teens-have-experienced-some-form-of-cyberbullying/.

[21] Van Geel, M., Vedder, P., Tanilon, J.. "Relationship Between Peer Victimization, Cyberbullying, and Suicide in Children and Adolescents: A Meta-Analysis," *JAMA Pediatrics* 168, no. 5: 435–42, (1 May 2014), https://doi.org/10.1001/jamapediatrics.2013.4143.

[22] Thorn. "Responding to Online Threats: Minors' Perspectives on Disclosing, Reporting, and Blocking." (May 2021), https://info.thorn.org/hubfs/Research/Responding%20to%20Online%20Threats_2021-Full-Report.pdf.

[23] Thorn. "Understanding sexually explicit images, self-produced by children." (9 Dec. 2020), https://www.thorn.org/blog/thorn-research-understanding-sexually-explicit-images-self-produced-by-children/.

they make it more difficult for parents to set limits and for children to disengage, thereby increasing the risk of overuse.

Quantified Popularity

A defining feature of social media is that popularity of individuals and what they post is quantified and displayed publicly for other users to see in the form of friend and follower counts, and tabulated likes, shares, and views. This quantification exploits young people's tendency for social comparison and desire for acceptance, and recreates, on a 24/7 basis, the high school cafeteria experience where everyone can instantly see who the popular and unpopular kids are.

Quantified popularity is extremely effective at getting users to post on platforms, which is essential for maximizing engagement not only for the poster but for everyone in their networks.[24] Children and teens, who are already prone to oversharing, quickly learn that the way to improve these metrics is to post frequently, and to post particularly provocative and risqué content. Adolescent girls report feeling pressure to post sexualized selfies as a means of generating attention and social acceptance from their peers.[25] These posts can create a permanent online record of youthful indiscretions that can limit opportunities later in life, not to mention increase the risk of cyberbullying and sexual exploitation. Similarly, the pressure to demonstrate one's popularity by displaying a high friend count can lead children to accept friend requests from strangers, thereby putting them at risk of grooming and sexual exploitation.

The pursuit of external, quantified popularity also encourages children and teens to attempt dangerous viral challenges, like when Snapchat's speed filter led young people to film themselves driving well over 100 MPH, resulting in many tragic fatal accidents.[26] This past summer, media reports documented how "the blackout challenge" on TikTok, in which young people hold their breath until they pass out, was responsible for the deaths of several children.[27] Likes and shares and the possibility of "going viral" makes attempting these stunts much more appealing to young people.

Personalized Content and Algorithmic Recommendations

Platforms such as YouTube, TikTok, and Instagram serve users content based on automated suggestions. Algorithms choose which content children and teens see based on the vast amount of data they collect on users, such as likes, shares, comments, interests, geolocation, and the videos a user watches and for how long. These algorithms are designed to extend engagement by discerning what video or other content a user is most likely to engage with.[28] For example, a recent internal TikTok document analyzed

[24] 5Rights Foundation. "Pathways: How digital design puts children at risk." (July 2021), https://5rightsfoundation.com/uploads/Pathways-how-digital-design-puts-children-at-risk.pdf.

[25] Macheroni, G., Vincent, J., Jimenez, E. "'Girls Are Addicted to Likes so They Post Semi-Naked Selfies': Peer Mediation, Normativity and the Construction of Identity Online," *Cyberpsychology: Journal of Psychosocial Research on Cyberspace* 9, no. 1 (1 May 2015), https://doi.org/10.5817/CP2015-1-5.

[26] Blanco, Sebastian. "Snapchat removes speed filter blamed for numerous high-speed crashes." *Car and Driver,* (20 June 2021), https://www.caranddriver.com/news/a36777379/snapchat-removes-speed-filter-crashes/

[27] Lee, Anne Marie. "Child deaths blamed on TikTok 'blackout challenge' spark outcry." *CBS News,* (19 Aug. 2021), https://www.cbsnews.com/news/tik-tok-blackout-challenge-child-deaths/

[28] 5Rights Foundation. "Pathways: How digital design puts children at risk." (July 2021), https://5rightsfoundation.com/uploads/Pathways-how-digital-design-puts-children-at-risk.pdf

by *New York Times* columnist Ben Smith revealed that the company optimizes for "time spent" on the app, indicating its algorithms incentivize users to remain on TikTok for as long as possible.[29]

This personalization can harm children not only by driving overuse but by exposing them to content that hasn't undergone any human review. Algorithms drive 70% of viewing on YouTube.[30] As a former YouTube engineer observed: "recommendations are designed to optimize watch time, there is no reason that it shows content that is actually good for kids. It might sometimes, but if it does, it is coincidence."[31] In recent years, many parents have documented how YouTube recommends knockoff versions of cartoons to young children which often contain violent, sexualized and disturbing content.[32]

Algorithmic recommendations can be particularly dangerous when they target children and teens' greatest vulnerabilities. A *Wall Street Journal* investigation documented how TikTok users were served videos that encouraged eating disorders and discussed suicide.[33] And Frances Haugen described how Instagram's algorithm targets users with content based on their interests, even if their interests are eating disorders or self harm: "They develop these feedback cycles where children are using Instagram to self-soothe but then are exposed to more and more content that makes them hate themselves."[34] Her observations were confirmed by an experiment conducted by Senator Blumenthal's office, which created an account for a fake 13 year-old girl that "liked" content about dieting. Within 24 hours, the account was served pro-eating disorder and self-harm content. According to Facebook's own internal research, one in three adolescent girls says Instagram makes their eating disorders worse.[35]

On top of that, algorithmic recommendations have been shown to push dangerous drug content to teen users. A report by the Tech Transparency Project released just this week found that accounts for fake teen users aged 13-17 were able to connect with drug dealers in as little as two clicks.[36]

IV. Apps, websites, and platforms target children with unfair marketing and manipulative monetization techniques.

Another way in which digital platforms harm children is through unfair advertising and monetization practices. Online advertising to children is significantly less regulated than television advertising; there are no limits on the frequency or presentation of ads shown to children. As a result, the websites and

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[29] Smith, Ben. "How TikTok Reads Your Mind." *The New York Times,* (5 Dec. 2021), https://www.nytimes.com/2021/12/05/business/media/tiktok-algorithm.html?partner=slack&smid=sl-share

[30] Solsman, Joan. "YouTube's AI is the puppet master over most of what you watch." *CNET,* (10 Jan. 2018), https://www.cnet.com/news/youtube-ces-2018-neal-mohan/

[31] Orphanides, K.G. "Children's YouTube is still churning out blood, suicide and cannibalism." *Wired,* (23 March 2018), https://www.wired.co.uk/article/youtube-for-kids-videos-problems-algorithm-recommend

[32] Bridle, James. "How Peppa Pig became a video nightmare for children." *The Guardian,* (17 June 2018), https://www.theguardian.com/technology/2018/jun/17/peppa-pig-youtube-weird-algorithms-automated-content

[33] Wall Street Journal Staff. "Inside TikTok's Algorithm: A WSJ Video Investigation." *Wall Street Journal,* (21 July 2021), https://www.wsj.com/articles/tiktok-algorithm-video-investigation-11626877477

[34] Pelley, Scott. "Whistleblower: Facebook is misleading the public on progress against hate speech, violence, misinformation." *CBS: 60 Minutes,* (4 Oct. 2021), https://youtu.be/_Lx5VmAdZSI

[35] Wells, Georgia, et al. "Facebook Knows Instagram Is Toxic for Teen Girls, Company Documents Show." *The Wall Street Journal* (14 Sept. 2021), https://www.wsj.com/articles/facebook-knows-instagram-is-toxic-for-teen-girls-company-documents-show-11631620739

[36] *Tech Transparency Project.* "Xanax, Ecstasy, and Opioids: Instagram Offers Drug Pipeline to Kids." (7 Dec. 2021), https://www.techtransparencyproject.org/articles/xanax-ecstasy-and-opioids-instagram-offers-drug-pipeline-kids

apps used by young children contain a high frequency of ads, often shown in manipulative ways, as well as other commercial content. In addition, online advertising is frequently harder for children to identify, making young people more vulnerable to the marketing they encounter online as compared to traditional television advertising.[37]

More than 95% of early childhood videos on YouTube contain ads, and one in five videos viewed by children 8 and under contained ads that were not age-appropriate, such as ads that featured violent or sexualized content.[38] Researchers who studied preschool apps found a high prevalence of age-inappropriate ads, and 54% of apps contained disruptive pop-up advertisements or ads that the child user couldn't easily close.[39] Another analysis found that the educational potential of children's apps is severely degraded by the high number of disruptive ads that appear, particularly in free apps more likely to be used by low-income children.[40]

Surveillance Advertising

Surveillance advertising – targeted advertising using personal data provided by websites and platforms – is the dominant form of marketing online. As Fairplay, Global Action Plan, and Reset Australia described in a recent report about Facebook, surveillance ads are inherently unfair when targeted to children:

> On the one side is a child, poorly equipped to distinguish between advertising and information, especially within digital contexts. On the other, Facebook with its vast troves of data about the child, including but not limited to their browsing history, mood, insecurities, their peers' interests, and more. This power imbalance makes surveillance advertising inherently more manipulative than contextual digital advertising, let alone traditional analogue advertising.[41]

As with personalizing content, surveillance ads can be used to target and exacerbate young people's vulnerabilities. Ads for risky "Flat Tummy Teas" and dangerous exercise routines target young women on Instagram. Researchers were able to target ads to teenagers on Facebook based on their interests in gambling, alcohol, and dieting.[42] While Facebook has since restricted advertisers' ability to target teens

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[37] Owen, L., Lewis, C., Auty, S., Buijzen, M., "Is children's understanding of non–traditional advertising comparable to their understanding of television advertising?" *Journal Public Policy Mark.* 32(2):195–206 (2012), https://journals.sagepub.com/doi/abs/10.1509/jppm.09.003

[38] Radesky, J. S., Schaller, A., Yeo, S. L., Weeks, H. M., & Robb, M.B. "Young kids and YouTube: How ads, toys, and games dominate viewing." *Common Sense Media,* (2020), https://d2e111jq13me73.cloudfront.net/sites/default/files/uploads/research/2020_youngkidsyoutube-report_final-release_forweb.pdf

[39] Meyer M, Adkins V, Yuan N, Weeks HM, Chang YJ, Radesky J. "Advertising in Young Children's Apps: A Content Analysis." *J Dev Behav Pediatr,* (Jan. 2019), https://pubmed.ncbi.nlm.nih.gov/30371646/

[40] Meyer, M., Zosh, J.M., McLaren, C., Robb, M., McCaffery, H., Golinkoff, R.M., Hirsh-Pasek, K., & Radesky, J. "How educational are "educational" apps for young children? App store content analysis using the Four Pillars of Learning framework." *Journal of Children and Media*, (2021), https://www.tandfonline.com/doi/abs/10.1080/17482798.2021.1882516?journalCode=rchm20

[41] Yi-ching Ho, E., Farthing, R. "How Facebook still target surveillance ads to teens." *Reset Australia, Fairplay, and Global Action Plan.* (Nov. 2021), https://fairplayforkids.org/wp-content/uploads/2021/11/fbsurveillancereport.pdf

[42] Farthing, Rys, et al. "Profiling Children for Advertising: Facebook's Monetisation of Young People's Personal Data." *Reset Australia,* (April 2021), https://au.reset.tech/uploads/resettechaustralia_profiling-children-for-advertising-1.pdf

based on their interests, the company's ad targeting algorithm still uses the data it collects on young people to determine who is most likely to be vulnerable to a given ad.[43]

Even in cases where the products aren't as harmful as alcohol or dieting aids, surveillance advertising exploits children. As Common Sense notes, "Kids may be profiled as gamers, impulsive purchasers, or anxious oversharers – and then unfairly targeted by ads that encourage more of these things."[44]

While the Children's Online Privacy Protection Act (COPPA) prohibits collecting and using the data of a child under the age of 13 for targeted advertising and other purposes without advance verifiable parental consent, the law is rarely enforced. In the 21 years that the COPPA Rule has been in effect, the FTC has brought only 35 enforcement actions. Often, settlements merely required the defendant to comply with the law and file periodic reports with the FTC. When the FTC has assessed civil penalties, they have been woefully insufficient to incentivize compliance with COPPA. Given this lack of enforcement, it is not surprising that COPPA violations are rampant. Studies of Android apps directed to and played by young children have found that more than 50% share children's personal information with third parties, including advertisers, in clear violation of the law.

Influencer Marketing

It has long been understood that children are better able to identify advertising when it is clearly separated from programming. That's why product placement and host selling are prohibited on children's television. Yet no such prohibitions exist on the internet and therefore influencer marketing to children and teens is ubiquitous.

Almost half of videos watched by children eight and younger on YouTube featured or promoted products for children to buy.[45] In fact, unboxing videos – where toy companies or retailers compensate a child YouTuber for excitedly talking about a toy – are among the most popular and most recommended videos on YouTube. Children have no idea that the videos they are watching, which are often more than ten minutes long, are essentially infomercials. Instead, they think they're watching a friend talk about a toy they really like. Not surprisingly, unboxing videos are incredibly effective from an advertiser's point-of-view. Children who watch unboxing videos are more likely to nag their parents for products and throw a tantrum if the answer is "no" than when they watch regular commercials.[46]

Similarly, older children and teens are targeted by influencers who post clips telling where to buy outfits like theirs. And junk food marketers like Burger King and Doritos target kids and teens with commercialized dance "challenges" on TikTok. The toy industry is also increasingly using influencers to

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[43] *Ibid.*

[44] Jerome, Joseph and Johnson, Ariel Fox. "AdTech and Kids: Behavioral Ads Need a Time-Out" *Common Sense,* (2021), https://d2e111jq13me73.cloudfront.net/sites/default/files/uploads/AdTech%20and%20Kids.pdf

[45] Radesky, J. S., Schaller, A., Yeo, S. L., Weeks, H. M., & Robb, M.B. "Young kids and YouTube: How ads, toys, and games dominate viewing." *Common Sense, (*2020), https://d2e111jq13me73.cloudfront.net/sites/default/files/uploads/research/2020_youngkidsyoutube-report_final-release_forweb.pdf

[46] Marshall, Lisa. "Unboxing videos fueling kids' tantrums, breeding consumerism." *CU Boulder Today,* (3 Dec. 2019), https://www.colorado.edu/today/2019/12/03/unboxing-videos-fueling-kids-tantrums-breeding-consumerism

market to children on TikTok, taking advantage of the fact that TikTok does little to enforce its own terms of service that say users must be at least 13 years-old.[47]

Manipulative In-game Purchases

In addition to advertising, in-game purchases are a primary way children and teens are monetized online. Most online games and apps now use a "freemium" model where users can download a game for free or a nominal cost and then have to pay for add-ons. Some add-ons are essential to advance in the game while others are for coveted cosmetic items for game characters, such as Fortnite skins. In almost all cases, developers use unfair pressure and manipulation to get kids to make – or ask their parents for – in-game purchases. Apps targeted to teenagers are more than 3 times as likely to have in-app purchases as apps targeted to general audiences.[48]

Apps aimed at young children often leverage their parasocial relationships with the games' characters in order to promote in-game purchases. The characters directly exhort children to make purchases and express disappointment when they don't. A forthcoming analysis of apps popular with young children found that of apps that feature characters, nearly 29% use "parasocial relationship abuse" to drive purchases.[49] For example, the Buddy character in *Kick the Buddy* says "don't just stand there, buy something!" when the player is on the store page.[50] In the popular preschool app *Doctor Kids,* the main character cries if kids click away from the store without making a purchase. [51] In other words, the app developer is deliberately trying to make kids feel like they are hurting a friend if their parents are unwilling or unable to make a purchase. Parasocial relationship abuse is also used to extend engagement in nearly a quarter of apps played by young children, with characters pressuring players to keep going or expressing disapproval if they stop.

Apps popular with young children also tease players by showing them attractive game items or prizes that can't be accessed without a purchase. This practice is used extensively by the popular math game Prodigy, which has been assigned by more than 90,000 schools for homework, in order to sell pricey Premium memberships. For example, when children successfully answer a math problem, they are presented with two treasure boxes: a plain wooden one and a sparkly blue one. When kids without Premium memberships click on the sparkly blue box, their choice is denied and they are blocked from finding out what's inside. Instead, they are presented with an ad for a Premium membership, which presently costs $75 for one year, and kids who don't upgrade at that moment must settle for the wooden box.[52] To make matters worse, when they play at school, students can see who does and

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[47] Chang, Brittany. "TikTok is quickly becoming a marketing destination for toy companies with the help of influencers and original content." *Business Insider.* (19 Dec. 2020), https://www.businessinsider.com/tiktok-quickly-becoming-marketing-destination-for-toy-companies-2020-12?utm_source=pocket_mylist

[48] BBB National Programs. "Risky Business: The current State of Tenn Privacy in the Android App Marketplace." (2020), https://industryselfregulation.org/docs/librariesprovider5/default-document-library/tapp_whitepaper.pdf

[49] Radesky, J., Hiniker, A. et al. "Design abuses in children's apps." Forthcoming*.*

[50] *Ibid.*

[51] Meyer M, Adkins V, Yuan N, Weeks HM, Chang YJ, Radesky J. "Advertising in Young Children's Apps: A Content Analysis." *J Dev Behav Pediatr,* (Jan. 2019), https://pubmed.ncbi.nlm.nih.gov/30371646/

[52] Campaign for a Commercial-Free Childhood (now Fairplay). "Request for Investigation of Deceptive and Unfair Practices by the Edtech Platform Prodigy." *Campaign for a Commercial-Free Childhood before the Federal Trade Commission.* (19 Feb. 2020). https://fairplayforkids.org/wp-content/uploads/2021/02/Prodigy_Complaint_Feb21.pdf

doesn't have Premium memberships and the associated perks, thereby creating a new form of educational inequity.

Platforms and games such as Roblox and Fortnite frequently require players to purchase virtual currencies in order to purchase in-game items. These virtual currencies have no fixed value to actual money (i.e. the conversion rate is better the more currency you buy). It is unrealistic to expect a child who is a concrete thinker to understand the complexities and abstractions of a currency with no fixed value. In addition, games often use dark patterns to get children to buy more virtual currency. For example, game items are priced so that children will have leftover currency but not enough to buy another item, making their remaining virtual currency worthless unless they buy more.[53] Not surprisingly, given these high levels of manipulation and abstraction, children spend lots of money on in-game purchases, with some racking up bills in the thousands of dollars.[54]

V. Congress must take action to build a better internet for children and teens.

Nearly every concern that parents, public health professionals, and children themselves have about digital media platforms can be traced to deliberate design choices. It doesn't have to be this way. Apps and online platforms could instead be built to reduce risks and increase safeguards for children.

But that won't happen without significant action from Congress. COPPA – the only federal law that protects children online – was passed 23 years ago, long before smartphones, Instagram, and YouTube even existed. Congress's continued inaction, combined with a lack of enforcement by the FTC, has emboldened Big Tech to develop an exploitative business model without considering or mitigating its harmful effects on children and teens. It's no wonder polls consistently show parents want Congress to do more to protect children online.[55]

When kids are in digital spaces for learning, socializing, and relaxing, they deserve the opportunity for the most positive experience, designed in a way that understands and supports their unique ways of seeing the world. They should be able to explore in developmentally-appropriate ways without being manipulated into spending more time online, spending more money, watching more ads, or surrendering more data. That's exactly why we need a US design code – rules and laws to ensure that any digital services children use are safe and fit for them.

A design code, like the UK's recently implemented Age Appropriate Design Code, is an upstream approach that requires making the best interests of children a primary consideration when designing an online service likely to be accessed by children and teens. It requires tech companies to think about what children need and how to reduce risks in their products. A code would prohibit harmful data

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[53] Rosenbloom, Michael. "Request for Public Comment on the Federal Trade Commission's Request for Comments Regarding Topics to be Discussed at Dark Patterns Workshop." (27 May 2021), https://www.democraticmedia.org/sites/default/files/field/public-files/2021/ccfc-cdd_dark_patterns_comments_05-28-2021.pdf

[54] Kleinman, Zoe. "My son spent £3,160 in one game." *BBC News* (15 July 2019), https://www.bbc.com/news/technology-48925623

[55] Klar, Rebecca. "Most voters support new rules for social media companies on children, personal data: poll." *The Hill,* (18 Nov. 2021), ttps://thehill.com/policy/technology/582013-most-voters-support-new-rules-for-social-media-companies-on-children

processing and design choices and require tech companies to regularly assess how their services are impacting children.

Just as companies currently design their services to prioritize profits and engagement over children's wellbeing, these same services *could* be designed in a way that puts children first. It shouldn't be up to tech companies to decide if they want to make risky design choices for children or not.

Fortunately, there are already two legislative solutions under consideration by this Subcommittee which, taken together, would create the foundations of a design code for America's children. The KIDS Act, which we will discuss today, would prohibit companies from deploying design techniques that extend engagement on children and teens, such as autoplay, nudges, and rewards like Snapstreaks. It would ban, for children under 16, the public displays of quantified popularity that drive overuse of social media, trigger social comparison, and encourage provocative posting. It would prohibit websites from amplifying harmful content to children and young teens. It would prevent operators from manipulating children into making in-game and in-app purchases. And it would prohibit websites from recommending content that includes influencer marketing, such as unboxing videos, to children under 16.

While the KIDS Act would stop online operators from targeting children and teens with manipulative design, deceptive advertising, and harmful content, the Protecting the Information of our Vulnerable Children and Youth (PRIVCY) Act would give young people the 21st century privacy protections they deserve. It expands privacy protections to teens and bans harmful uses of data like surveillance advertising. The PRIVCY Act also incorporates key elements of the UK's groundbreaking Age Appropriate Design Code, including requiring platforms to make the best interests of children a primary design consideration and to conduct regular risk assessments. And to address the crisis of enforcement, it creates a Youth Marketing and Privacy Division at the FTC.

Together, these bills would create the safeguards children need and transform the online experience for young people.

VI. Conclusion

Over the last year, Congress has convened a number of critical hearings on children's online experiences and the responsibilities of Big Tech. It has been heartening to hear members of Congress speak first and foremost, not as Republicans or Democrats, but as parents and grandparents with first-hand knowledge of what's at stake.

But the American people need more than your understanding and justifiable anger at companies like Facebook. Big Tech is banking on the fact that partisan divisions will keep you from taking real action. I hope you prove them wrong and advance legislative solutions that better protect children while they're online *and* make it easier for them to disconnect and engage in the offline experiences they need to thrive. There is simply too much at stake for children and for their futures to allow the status quo to continue.

Thank you again for having me here today and I look forward to discussing all of this with you.