

**Protecting Children and Teens from Unfair and Deceptive Marketing,
including Stealth Advertising**

Comments from the Center for Digital Democracy

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The Center for Digital Democracy ([CDD](#)) urges the FTC to develop and implement a set of policies designed to protect minors under 18 from being subjected to a host of pervasive, sophisticated and data-driven digital marketing practices. Children and teens are targeted by an integrated set of online marketing operations that are manipulative, unfair, invasive and can be especially harmful to their [mental](#) and physical [health](#). The commission should make abundantly clear at the forthcoming October workshop that it understands that the many problems generated by contemporary digital marketing to youth transcend narrow categories such as “[stealth advertising](#)” and “[blurred](#) content.” Nor should it propose “disclosures” as a serious remedy, given the ways advertising is designed using [data science](#), [biometrics](#), social [relationships](#) and other tactics. Much of today’s commercially supported online system is purposefully developed to operate as “stealth”—from product [development](#), to deployment, to targeting, tracking and measurement. Age-based cognitive development capacities to deal with advertising, largely based on pre-digital (especially TV) research, simply don’t correspond to the [methods](#) used today to market to young people. CDD calls on the commission to acknowledge that children and teenagers have been swept into a far reaching commercial surveillance apparatus.

The commission should propose a range of safeguards to protect young people from the current “wild west” of omnichannel [marketing](#) directed at them. These safeguards should address, for example, the role market research and testing of child and teen-directed commercial applications and messaging play in the development of advertising; how [neuromarketing](#) practices designed to leverage a young person’s emotions and subconscious are used to deliver “implicit persuasion”; the integration by marketers and platforms of “[immersive](#)” applications, including [augmented](#) and virtual reality, designed to [imprint](#) brand and other commercial messages; the array of [influencer](#)-based strategies, including the extensive infrastructure used by platforms and advertisers to deliver, track and measure their impact; the integration of online marketing with Internet of Things objects, including product [packaging](#) and the role of [QR](#) codes, [events](#) (experiential marketing) and digital [out-of-the-home](#) advertising screens; as well as contemporary data marketing operations that use [machine learning](#) and artificial intelligence to open up [new](#) ways for advertisers to reach young people online. AI [services](#) increasingly deliver personalized content online, further automating the advertising process to respond in real-time.

It is also long overdue for the FTC to investigate and address how online marketing [targets](#) youth of color, who are subjected to a [variety](#) of advertising practices little examined by privacy and other regulators.

The FTC should use all its authority and power to stop data-driven surveillance marketing to young people under 18; end the role sponsored influencers play; enact rules designed to protect the online privacy for teens 13-17 who are now subjected to ongoing tracking by marketers; and propose policies to redress the core methods employed by digital advertisers and online platforms to lure both children and teens.

For more than 20 years, CDD and its allies have [urged](#) the FTC to address the ways digital marketing has undermined consumer protection and privacy, especially for children and adolescents. Since the [earliest](#) years of the commercial internet, online marketers have focused on young people, both for the [revenues](#) they deliver as well as to secure loyalty from what the commercial marketing industry referred to as “[native](#)” users. The threat to their privacy, as well as to their security and well-being, led to the [complaint](#) our predecessor organization filed in 1996, which spurred the passage of the Children’s Online Privacy Protection Act (COPPA) in 1998. COPPA has played a modest role protecting some younger children from experiencing the totality of the commercial surveillance marketing system. However, persistent [failures](#) of the commission to enforce COPPA; the lack of protections for adolescents (despite decades-long calls by advocates for the agency to act on this issue); and a risk-averse approach to addressing the methods employed by the digital advertising, even when applied to young people, have created ongoing threats to their privacy, consumer protection and public [health](#). In this regard, we urge the commission to closely review the comments submitted in this proceeding by our colleague [Fairplay](#) and allies. We are pleased Fairplay supports these comments.

If the FTC is to confront how the forces of commercial digital surveillance impact the general public, the building blocks to help do so can be found in this proceeding. Young people are exposed to the same unaccountable forces that are everywhere online: a largely invisible, ubiquitous, and machine-intelligence-driven system that tracks and assesses our every move, using an array of direct and indirect techniques to influence behaviors. If done correctly, this proceeding can help inform a larger policy blueprint for what policy safeguards are needed—for young people and for everyone else.

The commission should start by reviewing how digital marketing and data-gathering advertising applications are “baked in” at the earliest stages of online content and device development. These design and testing practices have a direct impact on young people. Interactive advertising standards groups assess and certify a host of [approved](#) ad [formats](#), including for [gaming](#), [mobile](#), [native advertising](#), and [streaming video](#). Data practices for digital advertising, including ways that ads are delivered through the behavioral/[programmatic](#) surveillance engines, as well as their [measurement](#), are developed through [collaborative](#) work involving trade organizations and leading companies. Platforms such as [Meta](#), as well as ad [agencies](#), [adtech](#) companies, and [brands](#), also have their own [variations](#) of these widely adopted formats and approaches. The industry-operated standards process for identifying new methods for digital advertising, including the real-world deployment of applications such as “[playable](#)” ads or the ways advertisers

can change its [personalized](#) messaging in real-time, have never been seriously investigated by the commission. A review of the companies [involved](#) show that many are engaged in digital marketing to young people.

Another critical building [block](#) of contemporary digital marketing to address when dealing with youth-directed advertising is the role of “engagement.” As far back as 2006, the Interactive Advertising Bureau (IAB) recognized that to effectively secure the involvement of individuals with marketing communications, at both the subconscious and conscious levels, it was necessary to [define](#) and measure the concept of engagement. IAB initially defined “Engagement... [as] turning on a prospect to a brand idea enhanced by the surrounding context..” By 2012, there were more elaborate definitions identifying “three major forms of engagement... cognitive, physical and emotional.” A set of corresponding metrics, or measurement tools, were used, including those tracking “attention” (“awareness, interest, intention”); emotional and motor functioning identified through biometrics (“heart palpitations, pupil dilation, eye tracking”); and through omnipresent tracking of online behaviors (“viewability and dwell time, user initiated interaction, clicks, conversions, video play rate, game play”). Today, research and corresponding implementation strategies for engagement are an [ongoing](#) feature for the surveillance-marketing economy. This includes conducting research and implementing data-driven and other ad strategies targeting children—known as “[Generation Alpha](#)”—children 11 and younger—and teens—“[Generation Z.](#)”

We will briefly highlight some crucial areas this proceeding should address:

Marketing and product research on children and adolescents: An extensive system [designed](#) to ensure that commercial online content, including advertising and marketing, effectively solicits the interest and participation of young people, is a core feature of the surveillance economy. A host of companies are engaged in [multi-dimensional](#) market research, including [panels](#), [labs](#), [platforms](#), streaming media companies, [studios](#) and [networks](#), that have a direct impact on the methods used to advertise and market to youth. CDD believes that such product testing, which can rely on a range of [measures](#) designed to promote “implicit persuasion” should be considered an unfair practice generally. Since CDD and U.S. PIRG first urged the commission to investigate neuromarketing more than a [decade](#) ago, this practice has [evolved](#) in ways that enable it to play a greater role influencing how content and advertising is delivered to young people.

For example, [MediaScience](#) (which began as the Disney Media and Advertising Lab), serves major clients including Disney, Google, Warner Media, TikTok, Paramount, Fox and Mars. It conducts [research](#) for platforms and brands using such tools as “neurometrics (skin conductivity and heart rate), eye tracking, facial coding, and EEGs, among others, that assess a person’s responses across devices. Research is also conducted outside of the lab setting, such as [directly](#) through a subject’s “actual Facebook feed.” It has a [panel](#) of 80,000 households in the U.S., where it can deliver digital testing [applications](#) using a “variety of experimental designs... facilitated in the comfort of people’s homes.” The company operates a “[Kids](#)” and “[Teens](#)” media research panel. Emblematic of the far-reaching research conducted by platforms, agencies and brands, in 2021 TikTok’s “Marketing Science team” [commissioned](#) MediaScience to use neuromarketing research to test “strong brand recall and positive sentiment across various view

durations.” The findings indicated that “ads on TikTok see strong brand recall regardless of view duration.... Regardless of how long an ad stays on screen, TikTok draws early attention and physiological engagement in the first few seconds.”

NBCUniversal is one of the companies leveraging the growing field of “[emotional analytics](#)” to help advance advertising for streaming and other video outlets. Comcast’s NBCU is using “[facial coding](#) and eye-tracking AI to learn an audience’s emotional response to a specific ad.” Candy company [Mars](#) just won a “Best Use of Artificial Intelligence” [award](#) for its “Agile Creative Expertise (ACE) tool that “tracks attentional and emotional response to digital video ads.” Mars is partnering with neuromarketer [Realeyes](#) to “measure how audience’s attention levels respond as they view Mars’ ads. Knowing what captures and retains attention or even what causes distraction, generated intelligence that enabled Mars to optimize the creative itself or the selection of the best performing ads across platforms including TikTok, Facebook, Instagram and YouTube.” [TikTok](#), [Meta/Facebook](#), and [Google](#) have all used a variety of neuromarketing measures. The Neuromarketing Science and Business Association ([NMSBA](#)) includes many of the leading companies in this field as members. There is also an “[Attention Council](#)” within the digital marketing industry to help advance these [practices](#), involving Microsoft, Mars, Coca-Cola, AB/InBev, and others.

A commercial [research](#) infrastructure provides a steady drumbeat of insights so that marketers can better target young people on digital devices. Children’s streaming video company [Wildbrain](#), for example, partnered with Ipsos for its 2021 research report, “The Streaming Generation,” which explained that “Generation Alpha [is] the most influential digital generation yet.... They have never known a world without digital devices at their fingertips, and for Generation Alpha (Gen A), these tech-first habits are now a defining aspect of their daily lives.” More than 2,000 U.S. parents and guardians of children 2-12 were interviewed for the study, which found that “digital advertising to Gen A influences the purchasing decisions of their parents.... Their purchasing choices, for everything from toys to the family car, are heavily influenced by the content kids are watching and the ads they see.” The report explains that among the “most popular requests” are toys, digital games, clothing, tech products and “in-game currencies” for Roblox and Fortnite.

Determining the levels of “[brand love](#)” by children and teens, such as the use of “Kidfinity” and “Teenfinity” scores—“proprietary measures of brand awareness, popularity and love”—are regularly provided to advertisers. Other market researchers, such as [Beano Studios](#), offer a “COPPA-compliant” “Beano Brain Omnibus” website that, through “games, quizzes, and bespoke questions” for children and teens, “allows brands to access answers to their burning questions.” These tools help marketers better identify, for example, the sites—such as TikTok—where young people spend time. Among the other services Beano provides, which reflect many other market-research companies’ capabilities, are “Real-time UX/UI and content testing—in the moment, digital experience exploration and evaluation of brands websites and apps with kids and teens in strawman, beta or live stages,” and “Beano at home—observing and speaking to kids in their own homes. Learning how and what content they watch.”

Adtech and other data marketing applications: In order to conduct any “stealth” advertising inquiry, the FTC should review the operations of contemporary “Big Data”-driven ad systems

that can impact young people. For example, [Disney](#) has an extensive and cutting-edge [programmatic](#) apparatus called [DRAX](#) (Disney Real-Time Ad Exchange) that is delivering thousands of video-based campaigns. DRAX supports “[Disney Select](#),” a “suite of ad tech solutions, providing access to an extensive library of first-party segments that span the Disney portfolio, including streaming, entertainment and sports properties.... Continuously refined and enhanced based on the countless ways Disney connects with consumers daily. Millions of data inputs validated through data science.... Advertisers can reach their intended audiences by tapping into Disney’s proprietary Audience Graph, which unifies Disney’s first party data and audience modeling capabilities....” As of March 2022, Disney Select contained more than 1,800 “audience segments built from more than 100,000 audience attributes that fuel Disney’s audience graph.” According to [Disney Advertising](#), its “Audience Graph” includes 100 million households, 160 million connected TV devices and 190 million device IDs, which enables modeling to target households and families. Children and teens are a core audience for Disney, and millions of their [households](#) receive its digital advertising.

Many other youth-directed leading brands have developed extensive internal adtech applications designed to deliver ongoing and personalized campaigns. For example, [Pepsi](#), [Coca-Cola](#), [McDonald’s](#), and [Mondelez](#) have in-house capabilities and extensive partnerships that create targeted marketing to youth and others. The ways that “[Big Data](#)” analytics affect marketing, especially how [insights](#) can be used to target youth, should be reviewed. Marketers will say to the FTC that they are only targeting 18-year-olds and over, but an examination of their actual targets, and asking for child-related brand-safety [data](#) they collect, should provide the agency with a robust response to such claims.

New [methods](#) to leverage a person’s [informational](#) details and then target them, especially without “cookies,” requires the FTC to address how this is being used to market to children and teens. This review should also be extended to “contextual” advertising, since that method has been [transformed](#) through the use of machine learning and other advanced tactics—called “Contextual 2.0.”

Targeting youth of color: Black, Hispanic, Asian-American and other “[multicultural](#)” youth, as the ad industry has termed it, are key [targets](#) for digital advertising. An array of [research](#), [techniques](#), and [services](#) is focused on these young people, whose behaviors online are closely [monitored](#) by advertisers. A recent case study to consider is the McDonald’s U.S. advertising campaign designed to reverse its “decline with multicultural youth.” The goal of its campaign involving musician Travis Scott was to “drive penetration by bringing younger, multicultural customers to the brands... and drive immediate behavior too.” As a [case study](#) explains, “To attract multicultural youth, a brand... must have cultural cachet. Traditional marketing doesn’t work with them. They don’t watch cable TV; they live online and on social media, and if you are not present there you’re out of sight, out of mind.”

It’s extremely valuable to identify some of the elements involved in this case, which are emblematic of the integrated set of marketing and advertising practices that accompany so many campaigns aimed at young people. These included working with a celebrity/[influencer](#) who is able to “galvanize youth and activate pop culture”; offering “coveted content—keepsakes and experiences to fuel the star’s fanbase, driving participation and sales”; employing digital strategies through a proprietary (and data-collecting) “[app](#) to bring fans something extra and drive digital adoption”; and focusing on “affordability”—to ensure “youth with smaller wallets” would participate. To illustrate how expenditures for paid advertising are much less relevant with

digital marketing, McDonald's explains that "Before a single dollar had been spent on paid media, purely on the strength of a few social posts by McDonald's and Travis Scott, and reporting in the press, youth were turning up at restaurants across the country, asking for the Travis Scott meal." This campaign was a significant financial success for McDonald's. Its partnership with this influencer was effective as well in terms of "cultural response: hundreds of thousands of social media mentions and posts, fan-art and memes, unboxing videos of the [meal](#)..., fans selling food and stolen POS posters on eBay..., the multi merch drops that sold out in seconds, the framed receipts."

Online ads targeted to America's [diverse](#) communities of young people, who can also be a member of a group at risk (due to finances, health, and the like) have long required an FTC investigation. The commission should examine the data-privacy and marketing practices on these sites, including those that [communicate](#) via languages other than English.

Video and Video Games: Each of these applications have developed an array of targeted advertising strategies to reach young people. Streaming video is now a part of the [integrated](#) surveillance-marketing system, creating a pivotal new place to reach young people, as well as generate data for further targeting. Children and teens are viewing video content on Smart TVs, other streaming devices, mobile phones, tablets as well as computers. Household data where young people reside, which is amplified through the use of a growing number of "[identity](#)" tools that permit cross-device tracking, enable an array of marketing practices to flourish. The commission should review the data-gathering, ad-formatting, and other business practices that have been identified for these "OTT" services and how they impact children and teens. There are industry-approved ad-format guidelines for digital video and [Connected TV](#). Digital video ads can use "[dynamic overlays](#)," "shoppable and actionable video," "voice-integrated video ads," "sequential CTV creative," and "creative extensions," for example. Such ad formats and preferred practices are generally not vetted in terms of how they impact the interests of young people.

Advertisers have strategically embedded themselves within the video game system, recognizing that it's a key vantage point to surveil and entice young people. One leading quick-service restaurant chain that used video games to "reach the next generation of fast-food fans" [explained](#) that "gaming has become the primary source of entertainment for the younger generation. Whether playing video games or watching others play games on social platforms, the gaming industry has become bigger than the sports and music industries combined. And lockdowns during the global pandemic accelerated the trend. Gaming is a vital part of youth culture." Illustrating that marketers understand that traditional paid advertising strategies aren't the most effective to reach young people, the fast-food company decided to "approach gaming less like an advertising channel and more like an earned social and PR platform.... [V]ideo games are designed as social experiences."

As Insider Intelligence/eMarketer [reported](#) in June 2022, "there's an ad format for every brand" in gaming today, including interstitial ads, rewarded ads, offerwalls, [programmatic](#) in-game ads, product placement, advergaming, and "loot boxes." There is also an "in-game advertising measurement" framework, recently released for public comment by the IAB and the Media Ratings Council. This is another example where leading advertisers, including Google,

Microsoft, PepsiCo and Publicis, are determining how “ads that appear within gameplay” operate. These [guidelines](#) will impact youth, as they will help determine the operations of such ad formats as “Dynamic In-Game Advertising (DIGA)—Appear inside a 3D game environment, on virtual objects such as billboards, posters, etc. and combine the customization of web banners where ads rotate throughout the play session”; and “Hardcoded In-Game Ad Objects: Ads that have not been served by an ad server and can include custom 3D objects or static banners. These ads are planned and integrated into a video game during its design and development stage.” Leading advertising platforms such as [Amazon](#) sell as a package video ads reaching both streaming TV and gaming audiences. The role of [gaming](#) and streaming should be a major focus in October, as well as in any commission follow-up report.

Influencers: What was once largely celebrity-based or word-of-mouth style endorsements has evolved into a complex system [including](#) “nano-influencers (between 1,000 and 10,000 followers); micro-influencers (between 10,000 and 100,000); macro-influencers (between 100,000 and a million); and mega or celebrity influencers (1 million-plus followers). According to a recent [report](#) in the *Journal of Advertising Research*, “75 percent of marketers are now including social-media influencers in their marketing plans, with a worldwide market size of \$2.3 billion in 2020.” Influencer marketing is also connected to social media marketing generally, where advertisers and others have long relied on a host of surveillance-related systems to “[listen](#),” analyze and respond to people’s [social](#) online communications.

Today, a generation of “content creators” (aka influencers) is lured into becoming part of the integrated digital sales force that sells to young people and others. From “[unboxing videos](#)” and “[virtual product placement](#)” in popular content, to “[kidfluencers](#)” like Ryan’s World and “brand ambassadors” [lurking](#) in video games, to favorite TikTok [creators](#) pushing fast-food, this form of digital “payola” is endemic online.

Take Ryan’s World. Leveraging “more than one billion views” on YouTube, as well as a Nickelodeon show, has “catapulted him... to a global multi-category force,” notes his production and licensing firm. The deals include a “preschool product line in multiple categories, “best in class partnerships, and a “Tag with Ryan” app that garnered 16 million downloads. Brands seeking help selling products, says Ryan’s media agency, “can connect with its kid fanbase of millions that [leverages](#) our world-class portfolio of kid-star partners to authentically and seamlessly connect your brand with Generation Alpha across YouTube, social media, mobile games, and OTT channels—everywhere kids tune in!... a Generation Alpha focused agency that [delivers](#) more than **8 BILLION** views and **100 MILLION unique viewers** every month!” (its emphasis). Also available is a “custom content and integrations” feature that can “create unique brand [experiences](#) with top-tier kid stars.” Ryan’s success is not unique, as more and more marketers [create](#) platforms and content, as well as merge companies, to deliver ads and marketing to children and teens.

An [array](#) of influencer marketing [platforms](#) that offer “one-stop” shopping for brands to employ influencers, including through the use of [programmatic](#) marketing-like data practices (to hire people to place endorsements, for example) is a core feature of the influencer economy. There are also software programs so brands and marketers can [automate](#) their social influencer operations, as well as social media “[dashboards](#)” that help track and analyze social online

conversations, brand mentions and other communications. The impact of influencers is being [measured](#) through a [variety](#) of services, including [neuromarketing](#). Influencers are playing a key role in “[social commerce](#),” where they promote the real-time sales of products and services on “[shoppable media](#).” U.S. social commerce sales are [predicted](#) to grow to almost \$80 billion in 2025 from its 2022 estimated total of \$45.74 billion. [Google](#), [Meta](#), [TikTok](#), [Amazon/Twitch](#) and [Snapchat](#) all have significant influencer marketing operations. As Meta/Facebook recently [documented](#), there is also a growing role for “virtual” influencers that are [unleashed](#) to promote products and services.

While there may be claims that many promotions and endorsements should be classified as “user generated content” (UGC), we believe the commission will find that the [myriad](#) influencer marketing [techniques](#) often play a role spurring such product promotion.

The “Metaverse”: The same forces of digital marketing that have shaped today’s online experience for young people are already at [work](#) organizing the structure of the “metaverse.” There are virtual [brand](#) placements, advertisements, and industry initiatives on ad [formats](#) and marketing [experiences](#). Building on [work](#) done for gaming and esports, this rapidly emerging marketing environment poses additional threats to young people and requires timely commission intervention.

Global Standards: Young people in the U.S. have fewer protections than they do in other countries and regions, including the European Union and the United Kingdom. In the EU, for example, protections are required for young people until they are 18 years of age. The impact of the GDPR, the UK’s Design Code, the forthcoming Digital Services Act (and even some self-regulatory EU initiatives by companies such as [Google](#)) should be assessed. In what ways do U.S.-based platforms and companies provide higher or more thorough safeguards for children when they are required to do so outside of this country? The FTC has a unique role to ensure that U.S. companies operating online are in the forefront—not in the rear—of protecting the privacy and interests of children.

The October Workshop: Our review of the youth marketing landscape is just a partial snapshot of the marketplace. We have not discussed “apps” and mobile devices, which pose many concerns, including those related to location, for example. But CDD hopes this comment will help inform the commission about the operations of contemporary marketing and its relationship to young people.

We call on the FTC to ensure that this October, we are presented with an informed and candid discussion of the nature and impact of today’s marketing system on America’s youth.