



Consumer Federation of America

March 11, 2024

Chair Lina M. Khan
Federal Trade Commission

Re: Proposed Rule to amend the Children’s Online Privacy Protection Rule, 16 CFR Part 312, RIN 3084-AB20

VIA REGULATIONS.GOV

Dear Chair Khan:

The Consumer Federation of America (CFA) appreciates the opportunity to submit these comments on the above-referenced Proposed Rule. CFA is an association of non-profit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy, and education. As detailed in our joint comments with the Center for Digital Democracy and other privacy advocacy groups, we support a broad range of measures to limit children’s data collection and to better obtain informed consent from parents when online operators use children’s data. We write separately here to recommend that the Commission provide parents with the right to review information collected pursuant to the Proposed Rule’s school authorization exception. Parents’ limited control over children’s use of technology in school puts a premium on transparency. The Commission should therefore take steps to ensure that parents can review the data collected on their children, even where it assigns school officials the power to consent to that data collection.

Background

Scholars have described how the basis of the digital economy revolves around tech companies gathering personal information and using it to predict, influence, and modify consumer behavior.¹ Without public policy to protect children from this “surveillance capitalism,” private firms will attempt to profit from technology that pushes children towards unhealthy behaviors. Food marketing to children may represent the clearest and most insidious manifestation of this dynamic.

Currently, 1 in 3 children suffer from overweight or obesity in the U.S.,² and research shows that exposure to digital food marketing is associated with significant deleterious effects on young people’s diets, particularly on those who already suffer from obesity.³ Large food corporations

¹ See, e.g. Shoshana Zuboff. *Surveillance Capitalism*. ; Jaron Lanier. *10 arguments for deleting your social media accounts right now*.

² Skinner AC, Ravanbakht SN, Skelton JA, Perrin EM, Armstrong SC. Prevalence of obesity and severe obesity in U.S. children, 1999–2016 [published correction appears in *Pediatrics*. 2018;142(3):e20181916].

³ See, e.g., Russell SJ, Croker H, Viner RM. The effect of screen advertising on children's dietary intake: A systematic review and meta-analysis. *Obesity Reviews*. 2019; 20: 554–568. <https://doi.org/10.1111/obr.12812>; Norman, J., Kelly, B., McMahon, A.-T., Boyland, E., Baur, L. A., Chapman, K., King, L., Hughes, C., & Bauman, A. (2018). Sustained impact

including Coca-Cola, McDonald's, and Pepsi, have invested heavily in data analysis capabilities to take advantage of the digital marketing landscape and develop a new customer base among younger generations.⁴ The threat posed by these marketing activities to children has grown with greater reliance on online learning tools, a trend that the COVID-19 pandemic greatly accelerated.⁵ Despite widespread consensus that companies should not be allowed to target children at school with advertising for unhealthy foods, researchers have found banner ads for snacks, sugary drinks, fast foods, and sugary cereals displayed on many popular educational websites.⁶

Children's data enables companies to more effectively peddle junk food through the use of behavioral marketing—i.e. the practice of targeting advertising to certain individuals at certain times based on their browsing and other online behavior. This practice poses special concerns for children, who “are uniquely vulnerable to the persuasive effects of advertising because of immature critical thinking skills and impulse inhibition.”⁷ In addition to increasing children's exposure to advertising, behavioral marketing may accentuate existing disparities to the extent that it results in “different products being advertised to different populations.”⁸ Clear, vigorously enforced rules should at a minimum ensure that children do not fall prey to these marketing practices while at school or while using educational technology (“ed tech”) platforms to complete school assignments.

Protecting Children's Privacy at School

Studies show that parents' concerns about their children's online activity is growing.⁹ At the same time, schools are relying on ed tech platforms more than ever. According to one recent survey, “over three-quarters of preK-12 teachers use education technology daily in communication (77 percent), planning and preparation (71 percent) and whole-class or large-group instruction (65 percent).”¹⁰ As other commenters have pointed out, ed tech providers have exploited ambiguity in

of energy-dense TV and online food advertising on children's dietary intake: A within-subject, randomised, crossover, counter-balanced trial. *The International Journal of Behavioral Nutrition and Physical Activity*, 15(1), 37. <https://doi.org/10.1186/s12966-018-0672-6> (finding that children enrolled in within-subject, randomised, crossover, counterbalanced study ate more at a snack after exposure to food advertising compared with non-food advertising, effect was particularly strong for heavier children, and children exposed to ads did not compensate by eating less later at lunch, suggesting “that unhealthy food advertising exposure contributes to a positive energy-gap, which could cumulatively lead to the development of overweight.”).

⁴ Chester, J., Montgomery, K., & Kopp, K. (2021). Big Food, Big Tech, and the Global Childhood Obesity Pandemic. Center for Digital Democracy. https://democraticmedia.org/assets/resources/full_report.pdf

⁵ Emond JA, Fleming-Milici F, McCarthy J, Ribakove S, Chester J, Golin J, Sargent JD, Gilbert-Diamond D, Polacsek M. Unhealthy Food Marketing on Commercial Educational Websites: Remote Learning and Gaps in Regulation. *Am J Prev Med*. 2021 Apr;60(4):587-591. doi:10.1016/j.amepre.2020.10.008

⁶ *Id.*

⁷ Radesky, J., Chassiakos, Y. (Linda) R., Ameenuddin, N., Navsaria, D., & Council on Communication and Media. (2020). Digital Advertising to Children. *Pediatrics*, 146(1), e20201681. <https://doi.org/10.1542/peds.2020-1681>

⁸ *Id.*

⁹ McClain, C. (2022, April 28). How parents' views of their kids' screen time, social media use changed during COVID-19. Pew Research Center. <https://www.pewresearch.org/short-reads/2022/04/28/how-parents-views-of-their-kids-screen-time-social-media-use-changed-during-covid-19/>

¹⁰ Nation's Teachers and Parents Overwhelmingly Embrace Education Technology in Classrooms but Want Guardrails in Place | American Federation of Teachers. (2023, October 12). <https://www.aft.org/press-release/nations-teachers-and-parents-overwhelmingly-embrace-education-technology-classrooms>

FTC guidance to claim permission to use student data in ways that have no educational objective.¹¹ The sheer ubiquity of ed tech undermines the feasibility of parents' efforts to "opt out" of practices that encroach upon their children's privacy. Parents' limited oversight capacity in turn militates in favor of clear, vigorously enforced federal rules that safeguard children's privacy, and provide for greater transparency.

The Proposed Rule argues that the impracticality of requiring parental consent for all data collection in connection with the use of ed tech in schools supports a school authorization exception.¹² Accepting that to be true, the exception should be narrow. While most parents do not have the time or resources to evaluate an ed tech provider's privacy and data retention policy, the same is true for school administrators. Like parents, these officials are ill-equipped to evaluate optimal data use and disclosure limitations. Indeed, given the diversity of opinion among parents about the importance of privacy protection and the desirability of using ed tech platforms, among other factors, assigning school administrators with the task of determining permissible data uses will put these officials in an impossible bind. Accordingly, a school authorization exception should afford privacy protections that conform to, or exceed, most parents' preferences.

The Proposed Rule would codify the Commission's guidance allowing operators to rely on school authorization to collect children's personal information, so long as a written agreement with the school "limits the operator's use and disclosure of the personal information to a school-authorized education purpose only." The Proposed Rule correctly excludes from "school-authorized education purpose" those activities with "commercial purposes unrelated to a child's education, such as advertising." However, as noted in our joint comments, the Commission should go further in delineating prohibited uses under this exception, including data use to maximize user engagement. It should also require written agreements between operators and schools to give parents notice of data collection, and an opportunity to review the data collected on their child.

In particular, in addition to assigning to school officials the right to review personal information, the Commission should require "school authorization" agreements to extend this right to parents, with the school as a facilitator. In other words, the Commission should require that, under the "school authorization" exception, an operator must have a written agreement with the school that provides for 1) notice to be sent to parents informing them that the school has entered into the agreement, 2) maintenance by the school of a list of all such data use agreements in a centralized place accessible to parents and divided by grade level, and 3) access by parents, upon request to the designated school official, to a description of the specific types or categories of personal information collected from their child by the operator pursuant to the agreement, such as name, address, telephone number, email address, hobbies, and extracurricular activities.

Such a requirement would strike a better balance between protecting children's privacy and accommodating prevailing practices in schools. The Proposed Rule argues that "[r]equiring operators to fulfill requests, such as deletion requests, from each parent could result in schools

¹¹ Letter from Children's Online Privacy Advocates to the Federal Trade Commission regarding the Request for Public Comment on the Federal Trade Commission's Implementation of the Children's Online Privacy Protection Rule. Accessed at <https://www.regulations.gov/comment/FTC-2019-0054-117343> Pages 21-22.

¹² Children's Online Privacy Protection Rule, 89 F.R. 2034-2076 (January 11, 2024). <https://www.govinfo.gov/content/pkg/FR-2024-01-11/pdf/2023-28569.pdf> at 2055

having to provide different services to different children or forego particular services for the entire class based on the request of an individual parent.”¹³ But even accepting that to be true, the rules should still give parents the right to review personal information collected from a child. Endowing parents, and not just school officials, with the right to access this information would bring more transparency to ed tech operators’ practices and help to ensure compliance with the rules.

Conclusion

We commend the Commission for undertaking this rulemaking to clarify the obligations of operators subject to the Children’s Online Privacy Protection Rule, and we encourage the Commission to continue to take actions to enforce the rule against unlawful actors, such as its 2023 order against ed tech provider Edmodo.¹⁴ Greater parental oversight of data collection subject to the school authorization exception may facilitate more such enforcement actions, which are critical to realizing the benefits intended by Congress when it passed COPPA.

Thank you for your consideration of these comments.

Sincerely,

Thomas Gremillion
Director of Food Policy
Consumer Federation of America

¹³ Children’s Online Privacy Protection Rule, 89 F.R. 2034-2076 (January 11, 2024). <https://www.govinfo.gov/content/pkg/FR-2024-01-11/pdf/2023-28569.pdf> at 2059

¹⁴ FTC Says Ed Tech Provider Edmodo Unlawfully Used Children’s Personal Information for Advertising and Outsourced Compliance to School Districts. (2023, May 22). Federal Trade Commission. <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-says-ed-tech-provider-edmodo-unlawfully-used-childrens-personal-information-advertising>