



30 September 2020

Professor Joseph Cannataci
Special Rapporteur on the Right to Privacy
Office of the United Nations High Commissioner for Human Rights
United Nations Office at Geneva, CH 1211 Geneva 10

Re: Call for Contributions: Privacy and Children; Submission by Campaign for Commercial-Free Childhood and the Center for Digital Democracy.

Dear Professor Cannataci:

The Campaign for Commercial-Free Childhood ([CCFC](#)) and the Center for Digital Democracy ([CDD](#)) respectfully submit this comment for the upcoming report on the privacy rights of children. CCFC and CDD are NGOs known for their work to protect the privacy and well-being of young people in the digital era. We have played a key role in establishing, expanding, and enforcing the U.S. Children’s Online Privacy Protection Act (COPPA), the world’s first national online privacy law to protect children. Both organizations engage in ongoing research, advocacy and public education regarding the impact of the digital environment on minors. We are particularly focused on closely monitoring tech industry developments, holding leading companies accountable for their behavior in the marketplace, and analyzing the implications of policy proposals—including those made outside the U.S. Recently, our groups brought a case to the U.S. Federal Trade Commission (FTC), documenting how Google/YouTube had been violating COPPA, which resulted in significant changes in the platform’s marketing and data collection practices involving its child users.¹

We urge your report to address the commercial structure and operations of the digital media, especially the wide spectrum of data-gathering and online marketing practices, which have significant impacts on the privacy, autonomy, and well-being of young people under 18. Today’s youth are growing up in world shaped by a complex, far-reaching, global media, marketing, and sales apparatus, capable of gathering and using unprecedented amounts of data.² Data and advertising have become so inextricably intertwined that almost all of today’s marketing is now *data-driven*. Data are gathered continually from young people, through an ever-expanding digital ecosystem, which includes mobile phones, video and audio streaming services, gaming platforms, social media, video-sharing sites, “smart” speakers, and Internet-connected toys. Artificial intelligence and machine-learning applications—deployed by leading providers of digital content for minors—are able to “learn” about a child’s (or group’s) specific behaviors,

personalize content, and deliver highly targeted data-driven marketing. Facial and speech recognition technologies enable companies to monitor young people's behaviors and social interactions as well as their engagement with images and objects. A host of new "adtech" services are enhancing the ability of marketers to reach and influence individual young people, gather continuous streams of data from them, and forge ongoing relationships with them.

Far from being neutral spaces for social interaction, entertainment, and expression, digital platforms are structured to optimize engagement, foster habitual behaviors, and maximize the impact of marketing messages. With children's content increasingly distributed across tablets, smartphones, streaming devices, and other platforms, programmers and advertisers are embracing new interactive storytelling technologies, including games, virtual reality and augmented reality experiences, and creating advertising formats that can be integrated directly into these powerful immersive environments, all designed to maximize engagement and trigger impulsive actions. For example, so-called "playable ads" are incorporated into gaming platforms, "constructed with well-known icons and strong game UI [user interface]" so that "users can immerse themselves in game-play" and respond instantly to various "calls to action," such as downloading coupons, entering sweepstakes, or making purchases online.³ Digital marketers are also drawing from behavioral science to create particularly powerful new methods for directing user behaviors and influencing decision making. The tech industry uses the somewhat benign term of "persuasive design" to describe these practices.⁴ However, consumer groups and other researchers refer to many of these design interfaces as *dark patterns*, especially when they are intended to "benefit an online service by coercing, steering, or deceiving users into making unintended and potentially harmful decisions." Such techniques are routinely incorporated into e-commerce sites and other commercial online platforms.

Government policies in countries around the world offer only limited protections for young people in this rapidly expanding, highly commercialized media culture. Scholars Ingida Milkaite and Eva Lievens reviewed government data-protection regulatory frameworks in the United States, Europe, and selected countries in Africa and Latin America, finding a "fragmented landscape when it comes to the rights of the child to privacy and data protection."⁵ The same is true for advertising and marketing policies, which are often handled separately from data protection and privacy regulation, and in some cases by different government entities without fully addressing the nature and scope of contemporary digital practices.

We urge you to call on governments to support the establishment of strong and comprehensive youth data-protection programs that can address the multiple threats posed by today's complex and sophisticated digital marketplace. Such efforts will require cross-cutting approaches to policy that encompass the structures and business imperatives of the technology industry, the interconnections between data and marketing operations, and the myriad implications of these systems on children. Data protection authorities should be structured to operate across the key domains that impact the lives of youth in their country, and to ensure adherence to the UN's Convention on the Rights of the Child's principles.⁶ In addition to addressing the needs of the individual child, policies should be developed that ensure specific groups of young people, including those from marginalized socio-economic and ethnic backgrounds, are treated fairly and protected from discriminatory and other disparate impacts.

Building on the UK ICO’s “Age Appropriate Design” code, regulators should identify “defaults” that must be incorporated into the design of digital services for young people to specifically address data and marketing practices. A set of best practice rules for corporate compliance should be established, along with a system for ongoing independent oversight.⁷ These systems could expand on existing social media and tech company internal policies for addressing online safety, cyberbullying, and advertising of such harmful products as tobacco, alcohol, and unhealthy foods.⁸ A key principle should be that data cannot be used in ways that are harmful to minors, including, but not limited to, marketing products, engagement metrics, dark patterns, and other practices that undermine young people’s healthy development. Data use and advertising applications in development, as well as those already in practice, should undergo a careful independent assessment to determine whether they take unfair advantage of young people’s developmental vulnerabilities, health, or well-being. For example, before allowing tech companies to deploy AI, personalized advertising, virtual reality or facial recognition in commercial services for children and teens, regulators should require formal reviews to determine if they are appropriate for young people.⁹ Once a set of techniques or practices that should be off-limits for children and/or adolescents has been identified, their use could be restricted through a regulated approval process.

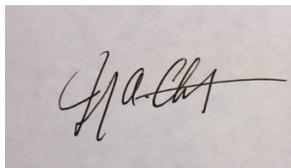
Young people throughout the world must be guaranteed the right to grow up in a digital media environment that safeguards their privacy, supports their healthy development, fosters their personal and collective growth, and promotes their autonomy. Policies must ensure that all are treated with fairness and dignity in the growing digital marketplace, and socialized to be responsible consumers and citizens who embrace their digital rights.

A list of five resources is included below.

Respectfully submitted,



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Resources

1. UNICEF Office of Global Insight & Policy, “Good Governance of Children’s Data,” <https://www.unicef.org/globalinsight/good-governance-childrens-data>.
2. Marisa Meyer, Victoria Adkins, Nalingna Yuan, et al, “Advertising in Young Children's Apps: A Content Analysis,” *Journal of Developmental and Behavioral Pediatrics* 40, n.1 (Jan. 2019): 32-39, , <https://pubmed.ncbi.nlm.nih.gov/30371646/>.
3. Fangwei Zhao, Serge Egelman, Heidi M. Weeks, et al, “Data Collection Practices of Mobile Applications Played by Preschool-Aged Children,” *JAMA Pediatrics*, 8 Sept. 2020, <https://jamanetwork.com/journals/jamapediatrics/article-abstract/2769689>.
4. Jean M. Twenge, “More Time on Technology, Less Happiness? Associations Between Digital-Media Use and Psychological Well-Being,” *Current Directions in Psychological Science* 28, n. 4 (22 May 2019): 372-379, <https://journals.sagepub.com/doi/abs/10.1177/0963721419838244>.
5. Irwin Reyes, Primal Wijesekera, Joel Reardon, et al, “‘Won’t Somebody Think of the Children?’ Examining COPPA Compliance at Scale,” *Proceedings on Privacy Enhancing Technologies* 2018, n. 3: 63–83, <https://petsymposium.org/2018/files/papers/issue3/popets-2018-0021.pdf>.

¹ Natasha Singer and Kate Conger, “Google Is Fined \$170 Million for Violating Children’s Privacy on YouTube,” *New York Times*, 4 Sept. 2019, <https://www.nytimes.com/2019/09/04/technology/google-youtube-fine-ftc.html>.

² James McDonald, “One in Four Ad Dollars Goes to the Google/Facebook Duopoly,” WARC Data Points, Mar. 2019, https://www.warc.com/content/article/warc-datapoints/one_in_four_ad_dollars_goes_to_the_google_facebook_dupoly/117305.

³ IAB, “Playable Ads for Brands, An IAB Playbook,” 5 June 2019, <https://www.iab.com/insights/playable-ads-for-brands-playbook/>; Idan Hershkovitz, “Playable Ads: Our Top 3 Examples,” Bidalgo, 5 Aug. 2018, <https://bidalgo.com/blog/playable-ads-facebook-top-examples/>.

⁴ Michael Craig, “Pixels of Influence – Breaking Down Persuasive Design Principles,” 26 Apr. 2020, <https://www.toptal.com/designers/ux/persuasive-design-principles>.

⁵ Ingida Milkaite and Eva Lievens, “Children’s Rights to Privacy and Data Protection Around the World: Challenges in the Digital Realm,” *European Journal of Law and Technology* 10, n. 1 (2019), <https://ejlt.org/index.php/ejlt/article/view/674>.

⁶ UNICEF, “Four Principles of the Convention on the Rights of the Child,” 24 June 2019, <https://www.unicef.org/armenia/en/stories/four-principles-convention-rights-child>.

⁷ Elizabeth Denham, “Age Appropriate Design: A Code of Practice for Online Services,” UK Information Commissioner’s Office, <https://ico.org.uk/for-organisations/guide-to-data-protection/key-data-protection-themes/age-appropriate-design-a-code-of-practice-for-online-services/>.

⁸ Facebook and other social media companies have developed a full set of anti-bullying practices that are built into their operating systems, along with advertising policies that restrict the promotion of certain

products to teens. See Kathryn Montgomery, “Youth and Surveillance in the Facebook Era: Policy interventions and social implications,” *Telecommunications Policy* 39, n. 9, (Oct. 2015): 771-786; Tijana Milosevic, *Protecting Children Online? Cyberbullying Policies of Social Media Companies* (Cambridge, MA: MIT Press, 2018); Facebook, “Advertising Policies,” <https://www.facebook.com/policies/ads/#>.

⁹ Kathryn C. Montgomery, Jeff Chester, and Tijana Milosevic, “Ensuring Young People’s Digital Privacy as a Fundamental Right,” in *International Handbook of Media Literacy Education*, eds. Belinha S. De Abreu, Paul Mihailidis, Alice Y. L. Lee, Jad Melki, and Julian McDougall (New York: Routledge, 2017), 85-102.