

March 11, 2024

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

Re: COPPA Rule Review, Project No. P195404

Truth in Advertising, Inc. (“TINA.org”) welcomes the opportunity to submit the following comment in conjunction with the Federal Trade Commission’s (“Commission” or “FTC”) January 11, 2024 request for comments regarding its proposed amendments to the Children’s Online Privacy Protection Rule (“Rule”).¹

In the intervening years since the FTC began its 2019 review of the Rule, TINA.org has encountered problematic issues with the use and marketing of Safe Harbor programs – issues that should be addressed in the FTC’s proposed amendments to COPPA. Specifically, while TINA.org supports the Commission’s proposed amendments, it recommends additional revisions to Section 312.11 in order to address when and how Safe Harbor program seals may be used in order to prevent misleading – and potentially harmful – representations regarding program approvals.

INTEREST OF COMMENTER

TINA.org is a nonpartisan, nonprofit consumer advocacy organization whose mission is to combat deceptive advertising and consumer fraud; promote understanding of the serious harms commercial dishonesty inflicts; and work with consumers, businesses, independent experts, synergy organizations, self-regulatory bodies and government agencies to advance countermeasures that effectively prevent and stop deception in our economy. At the center of TINA.org’s efforts is its website, www.tina.org, which provides information about common deceptive advertising techniques, consumer protection laws, and alerts about specific deceptive marketing campaigns – such as nationally advertised “Built in the USA” vans manufactured abroad;² pillows and essential oils falsely marketed as being able to treat chronic diseases;³ and a delivery meal kit service that falsely advertises free meals.⁴ The website is also a repository of information relating to consumer protection lawsuits and regulatory actions, and functions as a

¹ Notice of Proposed Rulemaking, Children’s Online Privacy Protection Rule, 89 Fed. Reg. 2034 (proposed Jan. 11, 2024), available at

<https://www.federalregister.gov/documents/2024/01/11/2023-28569/childrens-online-privacy-protection-rule>.

² TINA.org’s Mercedes-Benz Investigation, <https://truthinadvertising.org/brands/mercedes-benz>.

³ TINA.org’s MyPillow Investigation, <https://truthinadvertising.org/brands/mypillow/>; TINA.org’s doTerra Investigation, <https://truthinadvertising.org/brands/doterra/>;

TINA.org’s Young Living Investigation, <https://truthinadvertising.org/brands/young-living/>.

⁴ TINA.org’s HelloFresh Investigation, <https://truthinadvertising.org/brands/hellofresh/>.

clearinghouse, receiving consumer complaints about suspicious practices, which TINA.org investigates and, when appropriate, takes up with businesses and regulatory authorities. Through its collaborative approach and attention to emerging issues and complexities, TINA.org has become a trusted source of expertise on matters relating to consumer fraud. TINA.org has testified before Congress on issues related to consumer protection, deceptive marketing and economic justice.⁵ TINA.org also regularly advocates for consumer interests before the FTC and other governmental bodies and appears as amicus curiae in cases raising important questions of consumer protection law.⁶ Since its inception, TINA.org has filed legal actions against hundreds of companies and entities, published more than 1,400 ad alerts, written over 1,000 news articles, and tracked more than 4,000 federal class actions alleging deceptive marketing. Notably, since 2015, state and federal agencies have obtained more than \$250 million from wrongdoers based on TINA.org legal actions and evidence, and returned millions in ill-gotten gains to consumers.

While TINA.org primarily focuses on false and deceptive marketing, there are times when these interests overlap with children’s privacy concerns. Our complaint against Roblox Corporation, a multibillion-dollar public company that operates a closed platform metaverse, is a prime example.⁷ In April 2022, TINA.org filed a complaint with the FTC concerning Roblox because advertising on the platform was being surreptitiously pushed in front of millions of consumers, including more than 25 million children and adolescents.⁸ TINA.org found that companies and influencers were jumping into the Roblox metaverse with reckless abandon – exploiting children’s inability to distinguish organic content from marketing, and manipulating them and other Roblox users with undisclosed promotions that were nearly identical to organic virtual items and experiences on the platform. This deception was augmented by marketers’ covert use

⁵ Safeguarding American Consumers: Fighting Fraud and Scams During the Pandemic Before the Subcomm. on Consumer Prot. and Com. of the Comm. on Energy and Com., 117th Congress (Feb. 4, 2021) (testimony of Bonnie Patten, Exec. Dir., Truth In Advertising), <https://truthinadvertising.org/action/house-testimony-2021-summary-action/>; Curbing COVID Cons: Warning Consumers about Pandemic Frauds, Scams, and Swindles Before the Subcomm. on Consumer Prot., Prod. Safety, and Data Sec. of the Comm. on Com., Sci., & Transp., 117th Congress (Apr. 27, 2021) (testimony of Bonnie Patten, Exec. Dir., Truth In Advertising), <https://truthinadvertising.org/action/senate-testimony-2021-summary-action/>.

⁶ For example, TINA.org participated as amicus curiae in *AMG Capital Mgmt., LLC v. Fed. Trade Comm’n*, 141 S. Ct. 1341 (2021). (Brief of Amicus Curiae Truth In Advertising, Inc. In Support of Respondent, *AMG Capital Mgmt., LLC v. Fed. Trade Comm’n*, No. 19-508 (U.S. Dec. 7, 2020), available at https://www.supremecourt.gov/DocketPDF/19/19-508/162934/20201207192719389_19-508%20brief.pdf.) TINA.org also filed an amicus curiae brief in *Federal Trade Commission v. Quincy Bioscience Holding Co., Inc.*, which reinstated a Section 13(b) suit against a business falsely marketing a dietary supplement to the elderly as clinically proven to improve memory. (Brief of Amici Curiae Truth In Advertising, Inc. et al. in Favor of Appellants and in Support of Reversal, *Fed. Trade Comm’n v. Quincy Bioscience Holding Co., Inc.* 753 Fed. Appx. 87 (2d Cir. 2019) (No. 17-3745), available at https://truthinadvertising.org/wp-content/uploads/2018/03/Prevagen_Amici-Curiae-brief.pdf.)

⁷ See April 19, 2022 letter from TINA.org to FTC, https://truthinadvertising.org/wp-content/uploads/2022/04/4_19_22-Complaint-to-FTC-re-Roblox.pdf.

⁸ Roblox Form 10-K, Annual Report for the Fiscal Year Ended December 31, 2023, <https://d18rn0p25nwr6d.cloudfront.net/CIK-0001315098/c1bca0ff-1074-4472-abc1-77b3a54198c2.pdf> (“42% of our DAUs were under the age of 13 during the year ended December 31, 2023.”); *Roblox Reports Fourth Quarter and Full Year 2023 Financial Results*, Roblox (Feb. 7, 2024), <https://ir.roblox.com/news/news-details/2024/Roblox-Reports-Fourth-Quarter-and-Full-Year-2023-Financial-Results/default.aspx#:~:text=Separately%2C%20Roblox%20posted%20a%20letter,at%20ir.roblox.com.&text=Revenue%20was%20%24749.9%20million%2C%20up.common%20stockholders%20was%20%24323.7%20million> (“Average Daily Active Users (‘DAUs’) were 71.5 million...”).

of digital avatar influencers and AI-controlled promotional bots aimed at increasing the popularity and desirability of their brands. And as these brands exploited unsuspecting consumers, tricking them into taking part in immersive advertising experiences and unwittingly interacting with walking, talking endorsers that were indistinguishable from other avatars on the platform, the companies, including Roblox, were taking users' time, attention and money, while extracting their personal data.

TINA.org kept a close eye on the digital platform in the months following its complaint to the FTC as Roblox began to make changes to its Terms of Use and advertising policies. In so doing, we discovered further problematic issues concerning COPPA Safe Harbor programs – issues that highlight why enhanced FTC oversight of these programs is necessary.

THE USE OF COPPA SAFE HARBOR PROGRAM SEALS AS MARKETING TOOLS

Currently, six industry groups have been approved to self-regulate their member companies to ensure compliance with COPPA: Children's Advertising Review Unit (CARU), Entertainment Software Rating Board (ESRB), iKeepSafe, kidSAFE, Privacy Vaults Online, Inc. (d/b/a PRIVO) and TRUSTe.⁹ When these Safe Harbor programs, which offer paying member companies protection from FTC enforcement action (and supposed monitoring services),¹⁰

⁹ FTC COPPA Safe Harbor Program, <https://www.ftc.gov/enforcement/coppa-safe-harbor-program>.

¹⁰ Former Commissioner Rohit Chopra repeatedly expressed concern regarding “the privatized privacy policing regimes created by... COPPA,” stating:

These regimes raise questions about the efficacy of relying on private parties paid by regulated entities, given that these “regulators” may lack the right incentives to crack down on the very companies that pay their bills. ... I fear that these privatized policing mechanisms could lead to online services paying private organizations primarily to avoid legal consequences when they violate the law ... we should always be asking whether privatized policing mechanisms primarily see entities as clients, rather than companies they must watch over. ... We need to be clear-eyed about the distorted incentives of privatized privacy policing. Whether it is programs like Safe Harbor or the reliance on third-party private-sector assessors, it is hard for anyone to bite the hand that feeds them. Whenever regulated entities pay fees and shop for a regulator, are there the right incentives for the regulators to be tough?

Prepared Remarks of Federal Trade Commissioner Rohit Chopra, Common Sense Media, Truth About Tech Conference (Apr. 4, 2019), https://www.ftc.gov/system/files/documents/public_statements/1512078/chopra_-_truth_about_tech_4-4-19.pdf. See also Statement of Commissioner Rohit Chopra Regarding Miniclip and the COPPA Safe Harbors, Commission File No. 1923129, (May 18, 2020), https://www.ftc.gov/system/files/documents/public_statements/1575579/192_3129_miniclip_-_statement_of_cmr_chopra.pdf (“The Commission must take many steps to revamp its approach to these third party privacy policing programs ... Beefing up oversight of the COPPA Safe Harbor program is just one of many actions the Commission must take to strengthen our approach to protecting children’s privacy”).

Director of the Bureau of Consumer Protection Samuel Levine has raised similar concerns, stating:

There is a clear conflict of interest when self-regulatory organizations are funded by the website operators and app developers they are supposed to police, so we will be closely scrutinizing other children’s privacy oversight outfits to determine whether they are living up to their obligations.

Aristotle Removed from List of FTC-Approved Children’s Privacy Self-Regulatory Programs, Fed. Trade Comm’n (Aug. 4, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/08/aristotle-removed-list-ftc-approved-childrens-privacy-self-regulatory-programs>.

determine that companies' products or services comply with the Rule, the programs permit them to promote and market the approval by, among other things, displaying a seal on the products/services.¹¹



The program seals serve to inform consumers and regulators alike that the underlying products/services – which include kids' online games¹² and educational resources,¹³ among other things¹⁴ – protect children's online privacy in compliance with COPPA.¹⁵ But the programs are

¹¹ COPPA Safe Harbor Services, <https://bbbprograms.org/programs/all-programs/children's-advertising-review-unit/COPPA-Safe-Harbor-Services>; kidSAFE Seal Program, <https://www.kidsafeseal.com/aboutourseals.html> <https://www.esrb.org/privacy/>; iKeepSafe Certified Products, <https://ikeepSAFE.org/products/#coppa>; PRIVO COPPA Safe Harbor Program, <https://www.privo.com/coppa-safe-harbor-program>; Annie Greenley-Giudici, *COPPA FAQ: U.S. Children's Online Privacy Protection Act*, TrustArc (Jan. 10, 2023), <https://blog.trustarc.com/2023/01/10/coppa-protecting-childrens-privacy-online/>; ESRB Privacy Certified, <https://www.esrb.org/privacy/#slide-esrbforkids>.

Notably, some COPPA Safe Harbor programs have more than one seal, each of which carry different meanings. For example, kidSAFE uses three different, nearly identical seals, but only one of them means the product bearing it is COPPA-compliant. (kidSAFE Seal Program, <https://www.kidsafeseal.com/aboutourprogram.html>.) There can be no doubt that the similarity of these seals leads to consumer confusion.



¹² See, e.g., KidSAFE Seal Program Member list, <https://www.kidsafeseal.com/certifiedproducts.html>.

¹³ Id. See also iKeepSafe Certified Products, <https://ikeepSAFE.org/products/#coppa>.

¹⁴ Id. See also SoundMind, <https://soundmind.app/>; PRIVO COPPA Safe Harbor Program listing JoyRX as a Certified Program Member, <https://www.privo.com/coppa-safe-harbor-program>; JoyRX Children's Cancer Association, <https://joyrx.org/>.

¹⁵ CARU COPPA Safe Harbor Services, <https://bbbprograms.org/programs/all-programs/children's-advertising-review-unit/COPPA-Safe-Harbor-Services> (“[D]emonstrate your dedication to children’s privacy with the appropriate CARU COPPA Safe Harbor seal.”); kidSAFE Seal Program, <https://www.kidsafeseal.com/aboutourseals.html> (“Any publisher or developer whose website, mobile app, or technology is displaying one of the kidSAFE Seals has demonstrated that their seal-bearing product complies with the kidSAFE-established guidelines corresponding to that Seal, as illustrated below. If a product is awarded the ‘kidSAFE+ COPPA’ Seal, which is an FTC-approved COPPA certification program, this means kidSAFE has also verified their compliance with our additional ‘COPPA Privacy Rules’.”); ESRB Privacy Certified, <https://www.esrb.org/privacy/#slide-esrbforkids> (“Members of the ESRB Privacy Certified program proudly display our seals to demonstrate their compliance with online and mobile privacy protection laws.”); Emily Ensign, *SoundMind Earns iKeepSafe COPPA Safe Harbor*, iKeepSafe Blog (Apr. 5, 2023), <https://ikeepSAFE.org/soundmind->

marketing their services and seals not only for informational purposes but also for participating brands to increase engagement and sales.

Safe Harbor programs inform prospective and current member companies that the seals can be “proudly displayed” to demonstrate their compliance with privacy protection laws¹⁶ and tout the benefits associated with the seals, including that they give parents comfort and increase their trust in – and engagement with – the underlying brands. For example, PRIVO, which lists “brand discovery” as one of its Safe Harbor program highlights states:

Being in the trenches as a FTC-approved COPPA Safe Harbor since 2004, PRIVO has been helping brands not only comply with COPPA, but find new ways to increase engagement and sales.¹⁷

ESRB states on its Privacy webpage:

According to a recent survey, upwards of 70% of parents with children 15 and younger that play mobile, online, and console video games said they would be much more comfortable allowing their kids to play if an ESRB Privacy Certified Seal is displayed.¹⁸

Similarly, iKeepSafe has this to say about its COPPA Safe Harbor program:

Displaying the iKeepSafe COPPA seal helps parents and schools to easily find technology they can trust.¹⁹

And CARU states the following about its COPPA Safe Harbor seal:

What does the CARU COPPA Safe Harbor seal signify? More than anything else, it signifies trust. ... A CARU COPPA Safe Harbor Program seal reflects a company’s dedication to its customers’ privacy and to maintaining high standards in privacy and data collection practices relating to children. Through the proud display of its seal, a company

[earns-ikeepsafe-coppa-safe-harbor/](#) (“Products that carry the iKeepSafe Safe Harbor program seal provide educators and parents with assurance that the product is compliant with COPPA, a Federal Trade Commission (FTC) Rule designed to ensure that parents remain in control of personal information collected from their children online.”); PRIVO COPPA Safe Harbor Program, <https://www.privo.com/coppa-safe-harbor-program> (“Demonstrate your commitment to children’s online privacy and safety standards.”); Annie Greenley-Giudici, *COPPA FAQ: U.S. Children’s Online Privacy Protection Act*, TrustArc (Jan. 10, 2023), <https://blog.trustarc.com/2023/01/10/coppa-protecting-childrens-privacy-online/> (“The TRUSTe green seal became iconic and was proudly displayed on thousands of websites and apps worldwide.”).

¹⁶ See e.g., ESRB Privacy Certified, <https://www.esrb.org/privacy/#slide-esrbforkids> (“Members of the ESRB Privacy Certified program proudly display our seals to demonstrate their compliance with online and mobile privacy protection laws.”).

¹⁷ PRIVO COPPA Safe Harbor Program, <https://www.privo.com/coppa-safe-harbor-program>. See also PRIVO LinkedIn post, https://www.linkedin.com/posts/privo_coppa-activity-7095767588038721536-70B3/?trk=public_profile_like_view (“Award-winning online platform, CodeMonkey has been awarded PRIVO’s COPPA Safe Harbor certification for meeting the highest standards for protecting children’s privacy and delivering an age-appropriate safe environment for kids.”).

¹⁸ ESRB Privacy Certified, <https://www.esrb.org/privacy/#slide-esrbforkids>.

¹⁹ *About the iKeepSafe COPPA Safe Harbor Certification*, iKeepSafe, <https://ikeepsafe.org/certification/coppa/>.

indicates that it takes the protection of children’s information online seriously, helping to assure families that a product is privacy-safe for their children to use.²⁰

The recipient companies then use their Safe Harbor program approvals and the corresponding seals to market their products/services on a multitude of platforms, including their websites, social media pages, press releases and app stores, among other places, as shown in the examples below.

Company Websites²¹

TRUSTED BY 300K+ FAMILIES
THE BEST KIDS SMARTWATCH: TICKTALK 4

Forbes' #1 Best Smartwatch for Kids, the TickTalk 4, is ideal for kids aged 5-12. It offers the benefits of a smartphone without internet, games, or social media distractions. It features voice and video calling, talk-to-text messaging, group chat, reminders, twin HD cameras, free music streaming, and an activity tracker, along with other kid-friendly features. Parents can manage contacts, track real-time locations, set up school mode, and ensure safety with the advanced Parental Control App. This all-in-one watch is designed for children's connectivity while prioritizing parents' peace of mind.

SHOP NOW →

FEATURES AT A GLANCE

- Voice & Video Calling
- Safe In-App Messaging
- Location Tracking
- 20+ Parental Controls
- Free Streaming Music*
- Activity Tracker
- 2x SMP Photo & Video Cameras
- Reminders & Do Not Disturb

CHILDREN'S ONLINE PRIVACY PROTECTION ACT
iKeepSafe
COPPA

SAFE CELL PHONE ALTERNATIVE FOR AGE 5+

We believe the tech products our children use should protect them, not exploit them. Certified by an FTC-approved Children's Online Privacy Protection Act (COPPA) Safe Harbor program, we give your family the safest kids smartwatch with industry-leading standards to safeguard your child's private information.

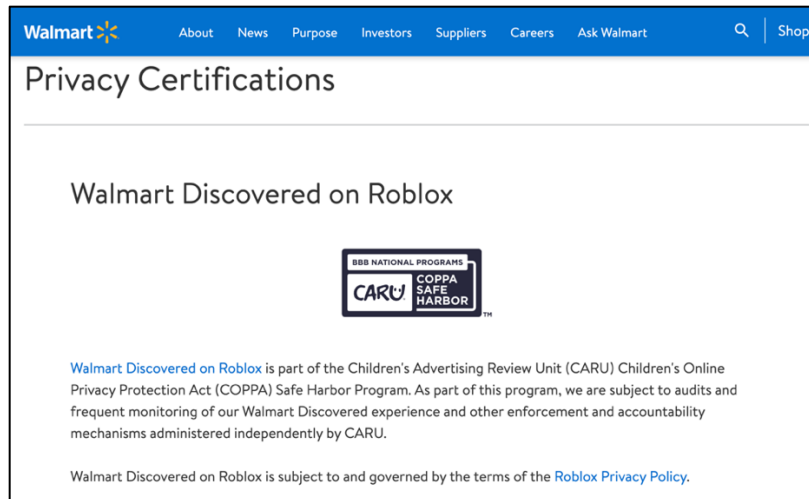
No Internet No Games No Social Media

“We believe the tech products our children use should protect them, not exploit them. Certified by an FTC-approved Children’s Online Privacy Protection Act (COPPA) Safe Harbor program, we give your family the safest kids smartwatch with industry-leading standards to safeguard your child’s private information.”

²⁰ COPPA Safe Harbor: Understanding the Seals, The Children’s Advertising Review Unit Team, Jan. 9, 2024, <https://bbbprograms.org/media-center/bd/insights/2024/01/09/coppa-safe-harbor-the-seals>.

²¹ TickTalk, <https://www.myticktalk.com/>; Walmart Privacy Certifications, <https://corporate.walmart.com/privacy-security/privacy-certifications>. Of note, prior to receiving a COPPA-compliance certification seal from iKeepSafe, TickTalk was certified by CARU*, which, in 2022, found that the company violated COPPA. (See Press Release, *Children’s Advertising Review Unit Finds TickTalk Tech in Violation of COPPA and CARU’s Privacy Guidelines; Company Agrees to Corrective Actions*, BBB Programs (Mar. 8, 2022), <https://bbbprograms.org/media-center/dd/ticktalk-tech-coppa-caru-privacy-guidelines-violation>.) Months later, TickTalk earned iKeepSafe’s COPPA Safe Harbor certification. (See Press Release, *TickTalk Earns iKeepSafe COPPA Safe Harbor Certification*, TickTalk (July 25, 2022), <https://www.myticktalk.com/blogs/news-1/ticktalk-earns-ikeepsafe-coppa-safe-harbor-certification>.)

***TickTalk was not certified by CARU. The original statement in this footnote was an error.**



“Walmart Discovered on Roblox is part of the Children’s Advertising Review Unit (CARU) Children’s Online Privacy Protection Act (COPPA) Safe Harbor Program. As part of this program, we are subject to audits and frequent monitoring of our Walmart Discovered experience and other enforcement and accountability mechanisms administered independently by CARU.”

Social Media Platforms²²



Image: *“We are proud to be COPPA Certified, ensuring a safe online space for your little ones.”*
 Caption: *“Welcome to HappyKids – Where Your Child’s Safety is Our Top Priority! From being COPPA Certified for a secure online space to putting parents in control with our easy-to-use Parental Control feature, HappyKids ensures a worry-free environment for your child... Install HappyKids for your peace of mind!...”*

²² HappyKids (@happykids_tv), Instagram (Feb. 7, 2024), https://www.instagram.com/p/C3DdyttJon8/?igsh=ZWlycXAwcGMxYXdq&img_index=2; ClassFlow (@classflow), Instagram (Apr. 19, 2018), <https://www.instagram.com/p/BhwS5i3naMr/?igsh=c2Z2ZmZ1M3k2Z2x3>. See also e.g., Kidloland (@kidloland), Instagram (July 28, 2021), <https://www.instagram.com/p/CR3O1CVp6RO/?igsh=MTYxNzZmZ1M3k2Z2x3>; To and Fro 21 (@toandfro21), Instagram (June 26, 2019), <https://www.instagram.com/p/BzLBA7shIAc/?igsh=dGt6cWUyM3UyNmo5>.



“@prometheanworld has been recognized by iKeepSafe for ClassFlow’s compliance with the Children’s Online Privacy Protection Act! . . . #studentprivacy #learning . . .”

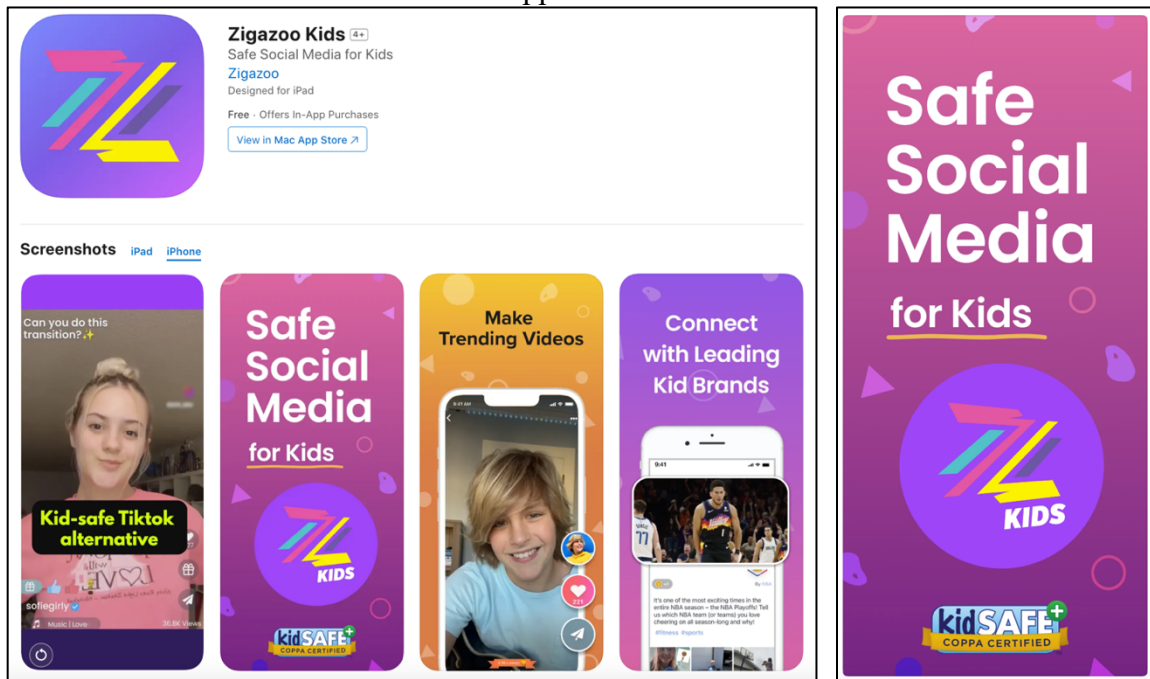
Press Releases²³



“Kidovo, the popular fun learning app for kids, is proud to announce that it has received kidSAFE+ COPPA certification. This certification confirms Kidovo’s steadfast commitment to upholding the highest standards of security and privacy for its users, ensuring a safe and enjoyable learning experience for children.”

²³ Press Release, *Kidovo, the Fun Learning App for Kids, receives kidSAFE+COPPA Compliance Certification*, Kidzovo (June 8, 2023), <https://kidzovo.com/blog/kidovo-receives-kidsafe-coppa-compliance-certification/>.

App Stores²⁴



“Safe Social Media for Kids”

In short, COPPA Safe Harbor seals are not only symbols of privacy protection, but also beneficial marketing material used to drive traffic to Safe Harbor programs, as well as to member companies' programs and services.²⁵

THE FTC MUST PREVENT COPPA SAFE HARBOR PROGRAM SEALS FROM BECOMING DECEPTIVE MARKETING MATERIALS

There are certain circumstances in which the use of COPPA Safe Harbor program approvals and the corresponding seals can be deceptive and harmful, which the FTC must prevent. The following are two examples.²⁶

²⁴ Zigazoo Kids, Apple App Store, <https://apps.apple.com/us/app/zigazoo-kids/id1506092240>. See also Zigazoo Kids, Google Play, https://play.google.com/store/apps/details?id=com.zigazoo.zigazoo&hl=en_US&gl=US.

²⁵ As evidenced by the FTC's case against Miniclip, there is clearly great value to brands in promoting a COPPA Safe Harbor program approval. (*In the Matter of Miniclip S.A.*, Complaint, https://www.ftc.gov/system/files/documents/cases/192_3129_miniclip_complaint.pdf.)

²⁶ The misleading use of COPPA Safe Harbor program seals is not new. In 2014, the FTC brought an enforcement action against TRUSTe for, among other things, its failure to conduct annual recertifications of companies holding TRUSTe privacy seals despite representing on its website that companies holding TRUSTe Certified Privacy Seals receive recertification every year. (*In the Matter of True Ultimate Standards Everywhere, Inc., d/b/a TRUSTe, Inc.*, Complaint, <https://www.ftc.gov/system/files/documents/cases/141117trustecmpt.pdf>; Press Release, *TRUSTe Settles FTC Charges it Deceived Consumers Through Its Privacy Seal Program*, Fed. Trade Comm'n (Nov. 17, 2014), <https://www.ftc.gov/news-events/news/press-releases/2014/11/truste-settles-ftc-charges-it-deceived-consumers-through-its-privacy-seal-program>.)

I. COPPA Safe Harbor Programs Misstating the Bounds of Their Authority

In December 2022, CARU announced in a press release that it had determined that a Walmart experience on the Roblox platform – Walmart Universe of Play – complied with COPPA.²⁷

McLean, VA – December 12, 2022 – Taking an important step to demonstrate its commitment to children’s privacy, Walmart joins BBB National Programs’ **Children’s Advertising Review Unit (CARU) COPPA Safe Harbor Program** to ensure that its new immersive Roblox experience complies with the stringent requirements of the Children’s Online Privacy Protection Act (COPPA) and CARU’s Self-Regulatory Guidelines.

Walmart is certifying its new Roblox immersive experience, Walmart’s Universe of Play, with CARU’s COPPA Safe Harbor program.

“Safety is a top priority for Walmart,” said Justin Breton, Director of Brand Experiences & Strategic Partnerships at Walmart. “We are committed to ensuring users – especially children – are protected as they explore and engage with this new, dynamic virtual world.”

However, CARU further represented that its approval indicated that the Walmart game also complied with CARU’s Advertising Guidelines – “a set of standards for advertising that help ensure advertising directed to children is not deceptive, unfair, or inappropriate.”²⁸ According to the press release:

BBB National Programs’ CARU COPPA Safe Harbor Program is the first and longest-running COPPA Safe Harbor Program in the U.S. and it is the only one designed to ensure both a company’s products and the product’s advertising comply with COPPA and CARU’s Advertising and Privacy Guidelines.²⁹

Not only were such representations beyond the scope of COPPA’s Safe Harbor provision (which pertains only to privacy protection concerns for children under the age of 13, not unfair or deceptive advertising practices), they also had the potential to mislead companies into believing that a Safe Harbor program approval meant that false and deceptive advertising claims were

²⁷ Press Release, *Walmart Joins BBB National Programs’ CARU COPPA Safe Harbor Program for Roblox Product*, BBB Programs (Dec. 12, 2022), <https://bbbprograms.org/media-center/prd/walmart-joins-caru-coppa-safe-harbor>.

²⁸ *Id.* See also BBB National Programs Dec. 21, 2022 Facebook post, <https://www.facebook.com/100063727699190/posts/588033349997583/?mibextid=WC7FNe>.

²⁹ *Id.*

beyond the scope of FTC review,³⁰ and mislead consumers into believing that Walmart Universe of Play did not raise any “deceptive, unfair, or inappropriate” advertising issues.³¹

As TINA.org, together with consumer advocacy groups Fairplay, Center for Digital Democracy, National Association of Consumer Advocates and Common Sense Media, informed CARU in early 2023, Walmart Universe of Play not only raised privacy concerns by virtue of being hosted on Roblox (more on this below) but was deceptively marketing Walmart products to millions of young children on a daily basis by blurring the distinction between advertising content and organic content, and failing to provide any clear or conspicuous disclosures that the game (or contents within the game) were ads.³²

Though CARU disagreed with our findings,³³ Walmart Universe of Play was subsequently (and still is) categorized as “private” and therefore inaccessible to users on Roblox,³⁴ and CARU later revised language on its website regarding its Safe Harbor program.³⁵ While these responsive

³⁰ As CARU stated at the time:

when customers are faced with the question of who to trust in a dynamic child- directed marketplace, only a COPPA Safe Harbor seal can ensure that your products comply with the stringent requirements of the COPPA Rule, and only CARU’s COPPA Safe Harbor seal can demonstrate that your product’s advertising does as well. Benefits[:] The confidence that your CARU COPPA Safe Harbor certified product is fully compliant with COPPA, CARU’s Privacy Guidelines, and protected from enforcement actions by the Federal Trade Commission.

CARU COPPA Safe Harbor Services, Archive.org from Jan. 28, 2023, <https://web.archive.org/web/20230128061812/https://bbbprograms.org/programs/all-programs/children's-advertising-review-unit/COPPA-Safe-Harbor-Services>. See also Statement of Commissioner Rohit Chopra Regarding Miniclip and the COPPA Safe Harbors, Commission File No. 1923129 (May 18, 2020), https://www.ftc.gov/system/files/documents/public_statements/1575579/192_3129_miniclip_-_statement_of_cm_r_chopra.pdf (“According to CARU, ‘Program participants who adhere to CARU’s Guidelines are deemed in compliance with COPPA and essentially insulated from enforcement actions by the Federal Trade Commission (FTC).’”)

³¹ Other Safe Harbor programs and program members appear to be engaging in similar misstatements. For example, Kidovo, which has been deemed COPPA-compliant by the Safe Harbor program kidSAFE, announced in a press release that its COPPA certification “confirms Kidovo’s steadfast commitment to upholding the highest standards of security and privacy for its users, ensuring a safe and enjoyable learning experience for children.” (Press Release, *Kidovo, the Fun Learning App for Kids, receives kidSAFE+COPPA Compliance Certification*, Kidzovo (June 8, 2023), <https://kidzovo.com/blog/kidovo-receives-kidsafe-coppa-compliance-certification/>.) Of course, COPPA Safe Harbor programs are not authorized to evaluate content or “learning experience.”

³² Letter from TINA.org, Fairplay, Center for Digital Democracy, and National Association of Consumer Advocates to CARU (Jan. 23, 2023), https://truthinadvertising.org/wp-content/uploads/2023/01/1_23_23-Letter-to-CARU-re-Walmart-Universe-of-Play.pdf; Letter from TINA.org, Fairplay, Center for Digital Democracy, National Association of Consumer Advocates, and Common Sense Media to CARU (Mar. 27, 2023), https://truthinadvertising.org/wp-content/uploads/2023/03/Response-to-CARU-3_27_23.pdf.

³³ Letter from CARU to TINA.org (Jan. 31, 2023), https://truthinadvertising.org/wp-content/uploads/2021/12/1_31_23-CARU-Response.pdf.

³⁴ *Walmart Universe of Play*, Roblox, <https://www.roblox.com/games/10980366634/Walmart-Universe-of-Play>.

³⁵ Compare CARU COPPA Safe Harbor Services, Archive.org from Jan. 28, 2023, <https://web.archive.org/web/20230128061812/https://bbbprograms.org/programs/all-programs/children's-advertising-review-unit/COPPA-Safe-Harbor-Services> to CARU COPPA Safe Harbor Services, <https://bbbprograms.org/programs/all-programs/children's-advertising-review-unit/COPPA-Safe-Harbor-Services> [last visited Mar. 6, 2024]. Of note, CARU’s December 2022 press release regarding its acceptance of Walmart’s Roblox products remains published and unchanged. (Press Release, *Walmart Joins BBB National Programs’ CARU*

actions were welcome, it does not change the fact that CARU misleadingly overstated the reach of its Safe Harbor program to businesses and parents alike, thereby impacting the meaning of its program approval and seal.

II. COPPA Safe Harbor Programs Awarding Seals to Games Without Certifying the Privacy Practices of the Platforms on Which the Games Are Played

Even more concerning was TINA.org’s discovery that programs were allowing the use of the COPPA Safe Harbor seal for single experiences within or on internet platforms when the Safe Harbor programs had failed to also audit the platform for COPPA compliance or disclose the limitations of the program’s review process. Kids cannot watch or view channels, videos and posts on social media platforms without also being subject to the platforms’ privacy protocols. Similarly, children must first sign in to gaming platforms and agree to their terms of use before they can play games on the sites.

As part of its continuing review of Roblox, TINA.org learned in 2023 that the CARU COPPA Safe Harbor program had approved – and allowed the use of its seal on – various Walmart games, among others, that were only accessible on Roblox.³⁶

Walmart Universe of Play³⁷



Supercampus powered by Walmart³⁸



COPPA Safe Harbor Program for Roblox Product, BBB Programs (Dec. 12, 2022), <https://bbbprograms.org/media-center/prd/walmart-joins-caru-coppa-safe-harbor>.

³⁶ Letter from TINA.org, Fairplay, Center for Digital Democracy, National Association of Consumer Advocates, and Common Sense Media to CARU, (Mar. 27, 2023), https://truthinadvertising.org/wp-content/uploads/2023/03/Response-to-CARU-3_27_23.pdf.

³⁷ *Walmart Universe of Play*, Roblox, <https://www.roblox.com/games/10980366634/Walmart-Universe-of-Play> (this game is currently marked “private”).

³⁸ *Supercampus by Walmart*, Roblox, <https://www.roblox.com/games/12140368177/Supercampus> (this game is currently marked “private”).

Walmart Discovered³⁹



Because children could not access these games without first creating an account on – and logging into – Roblox, parents viewing the CARU COPPA Safe Harbor seal on the Walmart Roblox games (or reading about the approvals on Walmart’s website where the company tells consumers the games are “subject to and governed by the terms of the Roblox Privacy Policy”⁴⁰) could reasonably believe that CARU had also verified Roblox’s compliance with COPPA. But CARU did not do so.

Instead of conducting its own review to ensure Roblox complied with COPPA as well as its own Privacy Guidelines, CARU relied on the fact that Roblox had previously been vetted by a different COPPA Safe Harbor program, KidSAFE.⁴¹ KidSAFE’s approval of Roblox, and CARU’s subsequent reliance on this approval, are problematic for several reasons.

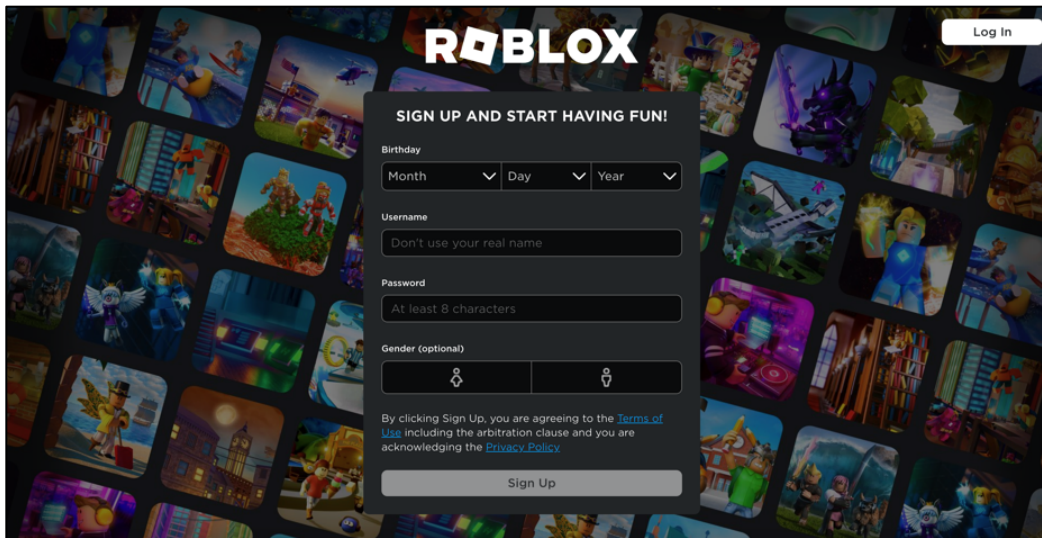
First, creating an account on Roblox requires, among other things, providing children’s full birthdate, username and password, and indicating that they agree to Roblox’s Terms of Use and acknowledge the platform’s Privacy Policy, all without their parents’ verifiable consent, as is required by the COPPA Rule.⁴²

³⁹ *Walmart Discovered*, Roblox, <https://www.roblox.com/games/13398230007/Walmart-Discovered> (Note: This game is not currently accessible to children under 13. When TINA.org asked CARU why a game only accessible to children 13+ bore a COPPA Safe Harbor seal, CARU informed us that “Companies join our safe harbor program not only to certify products intended for users under 13, but also to ensure their general audience products do not trigger COPPA. *Walmart Discovered* is an example of the latter.”).

⁴⁰ Walmart Privacy Certifications, Walmart’s Universe of Play on Roblox, <https://web.archive.org/web/20230124143730/https://corporate.walmart.com/privacy-security/privacy-certifications>; Walmart Privacy Certifications, Walmart Discovered on Roblox, <https://corporate.walmart.com/privacy-security/privacy-certifications>. See also *Walmart Discovered*, Roblox, <https://www.roblox.com/games/13398230007/Walmart-Discovered> (“Privacy Notice: Walmart Discovered is subject to & governed by the Roblox Privacy Policy.”).

⁴¹ What is Roblox?, Roblox, <https://corp.roblox.com/wp-content/uploads/2022/02/Safety-and-Civility-Overview.pdf> (“Roblox is COPPA certified by kidSAFE, and we are a member of the kidSAFE Seal Program.”); kidSAFE Seal Program, Official Membership Page, Roblox, <https://www.kidsafeseal.com/certifiedproducts/roblox.html>; Roblox Privacy and Cookie Policy, <https://en.help.roblox.com/hc/en-us/articles/115004630823-Roblox-Privacy-and-Cookie-Policy>.

⁴² 16 CFR § 312.3.



Second, as part of TINA.org's investigation into Roblox, we learned through a FOIA request that, as of March 2022, the Commission had received nearly 1,300 consumer complaints regarding Roblox, many of which noted significant privacy concerns vis-à-vis children, including the following issues:⁴³

My 8 year old son created an account on Roblox without my permission, using a non-working email address with a domain owned by his school, that includes his last name, first name and middle letters. Ive asked Roblox to delete this account as he did not have my permission to sign up, and secondly his username identifies him 100% and its unsafe. ...Roblox support keeps resending automatic emails asking me to return to the customer support page and enter his email for verification. ... my son cannot check his email for verification, as his school owns this account and he uses it only to log into google classroom for assignments. ...

My under 13 child (stupidly) made an account while at a friends house and used their real name. ... This is a privacy concern that their websites states [sic] they take seriously but I was told to log in and do it, which according to others cost money? My child doesn't remember the password which I already told them and they didn't even address how to assist me with that...

My child registered on roblox.com using her fist initial and her surname. She is under 13. I contacted roblox to ask them to change this to protect her privacy. They told me the only way for me to change it was to buy robux (which are an in game currency). This is detailed in their policy ... I raised with them that was a concern to me over child safety, but they re-iterated they would not change this. I tried to contact them again but I have not received any response.

⁴³ FOIA Response from FTC to TINA.org (May 12, 2022), https://truthinadvertising.org/wp-content/uploads/2022/01/5_12_22-FTC-response-to-FOIA-appeal.pdf; Consumer Complaints to the FTC regarding Roblox, <https://truthinadvertising.org/wp-content/uploads/2022/08/FTC-consumer-complaints-re-Roblox.pdf>. See also *Roblox Consumer Complaints: By the Numbers (Infographic)*, Truth in Advertising (Aug. 29, 2022, updated May 16, 2023), <https://truthinadvertising.org/articles/roblox-consumer-complaints-by-the-numbers-infographic/>.

I downloaded the Roblox app on April 14, 2018 for my middle daughter. Since then, my youngest daughter (now 10yrs old) was able to access the app without my knowledge [sic] and establish an account. ... The company made no attempt to protect her interests or privacy by requiring a parent email or disclosure. ...

My son who is 10 years old and has been playing for many years is being bullied both online and in real life because of his user name. I learned about this and contacted Roblox and their repeated response is his name is not a safety concern and to change it he has to use robux which will cost me \$10 to do so. They are allowing cyber bullying and want me to pay to stop it...

Third, months *after* accepting Walmart Universe of Play into its COPPA Safe Harbor program,⁴⁴ CARU found that it too had “privacy concerns,” among other things, regarding Roblox.⁴⁵ Yet despite finding issues with the platform’s COPPA compliance, neither KidSAFE nor CARU attempted to bring any sort of formal disciplinary action against Roblox. Instead, as is typical of Safe Harbor programs,⁴⁶ CARU announced that it was working with KidSAFE to attempt to bring Roblox into compliance – an indication that this privatized policing mechanism sees entities, like Roblox, as clients rather than companies that must be closely monitored and disciplined for violations.

In short, the ability of a COPPA Safe Harbor program to represent that children’s privacy is properly protected when using a particular product or service, like a video game, without independently determining whether the platform that hosts the game also protects children’s privacy, raises serious concerns regarding the effectiveness and validity of the FTC’s Safe Harbor program. As such, TINA.org not only supports the FTC’s strengthening of its oversight of the COPPA Safe Harbor program, but also urges the Commission to further amend Section 312.11 of the Rule to make clear that a COPPA Safe Harbor program must not certify a product’s or service’s privacy practices as compliant with COPPA if it has not also independently verified that the platform on which it is hosted also complies with COPPA, or, in the alternative, properly disclose to the public the limitations of the review. Without this requirement, many Safe Harbor program approvals and accompanying marketing pushes by brands about the safety of their products or services will risk misleading – and possibly harming⁴⁷ – the very consumers that these programs are supposed to be protecting: children.

⁴⁴ Following CARU’s COPPA Safe Harbor program approval of Walmart Universe of Play, it approved two more Roblox Walmart products: Supercampus powered by Walmart and Walmart Discovered. *See Supercampus by Walmart*, Roblox, <https://www.roblox.com/games/12140368177/Supercampus> and *Walmart Discovered*, Roblox, <https://www.roblox.com/games/13398230007/Walmart-Discovered>.

⁴⁵ Press Release, *Children’s Advertising Review Unit Finds Roblox in Violation of Its Advertising Guidelines; Recommends Modifications and Compliance Monitoring*, BBB Programs (May 12, 2023), <https://bbbprograms.org/media-center/dd/roblox-advertising>. Of note, CARU previously investigated Roblox’s privacy practices in 2010 as a result of a consumer complaint and noted several privacy compliance concerns at that time. *See* CARU Case No. 5137, Roblox, (Jan. 21, 2010).

⁴⁶ *See* Prepared Remarks of Federal Trade Commissioner Rohit Chopra, Common Sense Media, Truth About Tech Conference (Apr. 4, 2019), https://www.ftc.gov/system/files/documents/public_statements/1512078/chopra_-_truth_about_tech_4-4-19.pdf.

⁴⁷ *See, e.g.*, Complaint for Permanent Injunction, Civil Penalties, and Other Relief at para. 3, *U.S. v. Epic Games, Inc.* (E.D.N.C. 2023) (no5:22-CV-00518-BO),

CONCLUSION

As the FTC is well aware, COPPA violations can be extremely harmful to children, subjecting them to bullying, threats, harassment, and exposure to dangerous and psychologically traumatizing issues. As such, protecting children from online privacy violations is of the utmost importance.⁴⁸ While COPPA Safe Harbor programs are intended to help the FTC in preventing COPPA violations, these self-regulatory organizations have conflicting incentives and an abysmal record of referring their paying clients to the FTC when COPPA violations occur. As such, the Commission's proposed amendments to strengthen its oversight of the COPPA Safe Harbor programs are necessary to help ensure the programs operate as intended and so that representations concerning the programs are not false or misleading. TINA.org further urges the FTC to add an additional amendment regarding the need to independently verify the COPPA compliance of platforms upon which experiences, videos or the like exist, or properly disclose the limitations of their reviews in order to prevent program misuse and resulting consumer deception and harm.

Sincerely,



Bonnie Patten
Laura Smith
Eliza Duggan
Truth in Advertising, Inc.

https://www.ftc.gov/system/files/ftc_gov/pdf/2223087EpicGamesComplaint.pdf (“Ultimately, Epic’s matchmaking children and teens with strangers while broadcasting players’ account names and imposing live on-by-default voice and text communications has caused substantial injury that is neither offset by countervailing benefits nor reasonably avoidable by consumers. Children and teens have been bullied, threatened, and harassed within Fortnite, including sexually. Children and teens have also been exposed to dangerous and psychologically traumatizing issues, such as suicide and self-harm, through Fortnite. And the few relevant privacy and parental controls Epic has introduced over time have not meaningfully alleviated these harms or empowered players to avoid them.”).

⁴⁸ Statement of Commissioner Rohit Chopra Regarding Miniclip and the COPPA Safe Harbors, Commission File No. 1923129 (May 18, 2020),

https://www.ftc.gov/system/files/documents/public_statements/1575579/192_3129_miniclip_-_statement_of_cmr_chopra.pdf, fn. 2 (“Surveillance and data collection on American children raise concerns that go beyond privacy. According to a State Department official, there are critical national security issues with respect to technology companies affiliated with the Chinese government...”).