

Concurring Statement of Commissioner Christine S. Wilson

Federal Trade Commission Report to Congress
COPPA Staffing, Enforcement and Remedies
Matter No. P155401

August 18, 2022

Today the Commission is submitting to Congress a *Federal Trade Commission Report to Congress on COPPA Staffing, Enforcement and Remedies* (Report). As a Commissioner, I have been keenly focused on children’s privacy.¹ I take pride in the array of COPPA cases we have brought during my tenure; thanks to our talented staff, many of those cases featured novel remedies and stiff monetary relief. I supported launching a review of our COPPA Rule in July 2019 “to make certain that the COPPA Rule keeps pace with changes in technology, the development of new business models that involve data collection, and the evolving ways children interact with online services.”² And I have eagerly anticipated revisions to the COPPA Rule that would further strengthen children’s protections online – but more than three years later, that wait continues. As I explain in more detail below, I encourage Chair Khan to allocate the resources necessary to protect our vulnerable youth. The issuance of a Commission policy statement that merely recycles existing staff guidance is no substitute for concrete action in this important area.³ In short, I agree with Chair Khan that we must use *all* the tools in our toolkit to halt wrongdoing.⁴

¹ See, e.g., Dissenting Statement of Commissioner Christine S. Wilson, Trade Regulation Rule Regarding Commercial Surveillance and Data Security (Aug. 11, 2022) (hereinafter “Privacy ANPRM”), https://www.ftc.gov/system/files/ftc_gov/pdf/Commissioner%20Wilson%20Dissent%20ANPRM%20FINAL%2008112022.pdf (discussing the Kids Online Safety Act and urging Congress to pass legislation protecting children’s privacy); Christine S. Wilson, Oral Remarks at Open Commission Meeting, Policy Statement on Educational Technology and the Children’s Online Privacy Protection Act (May 19, 2022) (hereinafter “COPPA Policy Statement”), https://www.ftc.gov/system/files/ftc_gov/pdf/P155401WilsonRemarks_0.pdf; Joint Statement of FTC Commissioners Chopra, Slaughter, and Wilson Regarding Social Media and Video Streaming Service Providers’ Privacy Practices (Dec. 14, 2020), https://www.ftc.gov/system/files/documents/public_statements/1584150/joint_statement_of_ftc_commissioners_chopra_slaughter_and_wilson_regarding_social_media_and_video.pdf (noting that the orders “push to uncover how children and families are targeted and categorized”); Christine S. Wilson, Remarks at Global Antitrust Institute, FTC v. Facebook (Dec. 11, 2019), https://www.ftc.gov/system/files/documents/public_statements/1557534/commissioner_wilson_remarks_at_global_antitrust_institute_12112019.pdf (discussing, *inter alia*, my work with staff to secure the provisions of the Facebook order violation settlement that provide heightened review for products targeted to minors); Christine S. Wilson, The FTC’s Role in Supporting Online Safety (Nov. 21, 2019), https://www.ftc.gov/system/files/documents/public_statements/1557684/commissioner_wilson_remarks_at_the_family_online_safety_institute_11-21-19.pdf; Christine S. Wilson, Opening Remarks at FTC Workshop: The Future of the COPPA Rule (Oct. 7, 2019) (hereinafter “The Future of the COPPA Rule”), https://www.ftc.gov/system/files/documents/public_statements/1547693/wilson_-_ftc_coppa_workshop_opening_remarks_10-7-19.pdf.

² The Future of the COPPA Rule, *supra* n. 1.

³ COPPA Policy Statement, *supra* n. 1.

⁴ See Statement of Chair Lina M. Khan Regarding Policy Statement on Education Technology and the Children’s Online Privacy Protection Act (May 19, 2022),

The Consolidated Appropriations Act Committee Report directed the FTC to provide “a report detailing the current amount of resources and personnel focused on enforcing the COPPA Rule; the number of investigations into violations of the COPPA Rule in the past 5 years; and the types of relief obtained, if any, for any completed investigations.”⁵ The Report accurately describes the COPPA enforcement actions the Commission has taken in the past five years, including the use of creative and evolving remedies that reflect an ongoing effort to strengthen the deterrent effects of our orders. FTC staff has done an excellent job of identifying potential COPPA violations, conducting thorough investigations, and securing meaningful relief.

The Committee also requested that the FTC “incorporate findings from new and recent cases relating to children’s privacy into its ongoing COPPA Rule review process,”⁶ but did not explicitly request an update regarding the status of the COPPA Rule review. Given the importance of this issue, I urge the Committee to seek information regarding the status of, and the level of resources devoted to, the COPPA Rule review to determine whether it is being appropriately prioritized or given short shrift. While I believe additional legislation is necessary to protect our children online,⁷ we have significant opportunities *now* to increase the protections provided by the COPPA Rule.⁸ The Committee can and should hold the Commission accountable for using all the tools in its toolkit.⁹

https://www.ftc.gov/system/files/ftc_gov/pdf/P155401KhanStatementCOPPA.pdf (noting that “COPPA is a critical tool in the FTC’s toolbox, one that we will use vigorously”); accord Rohit Chopra & Samuel A. Levine *The Case for Resurrecting the FTC Act’s Penalty Offense Authority*, 170 U. PA. L. REV. 71 (2021), available at: https://scholarship.law.upenn.edu/penn_law_review/vol170/iss1/3 (stating that “[w]hen it comes to holding tech behemoths accountable for harm to consumers and fair competition, the Commission must use every tool in its toolbox.”)

⁵ Joint Explanatory Statement published in the Congressional Record on March 9, 2022, at H2349, <https://www.congress.gov/117/crec/2022/03/09/168/42/CREC-2022-03-09-pt3-PgH1709.pdf>, accompanying the Consolidated Appropriations Act, 2022, H.R. 2471 (Pub. L. 117-103), incorporated by reference House Report 117-79, <https://www.congress.gov/117/crpt/hrpt79/CRPT-117hrpt79.pdf>, at 72-73.

⁶ *Id.*

⁷ Privacy ANPRM, *supra* n. 1 (discussing the Kids Online Safety Act and urging Congress to pass legislation protecting children’s privacy).

⁸ *See, e.g.*, Laura Moy, Angela Campbell, Lindsey Barrett, Campaign for Commercial Free Childhood and Center for Digital Democracy, In the Matter of Request for Public Comment on the Federal Trade Commission’s Implementation of the Children’s Online Privacy Protection Rule (Dec. 11, 2019), <https://fairplayforkids.org/wp-content/uploads/2019/12/CCFC-COPPA-comments.pdf> (discussing ways to strengthen COPPA in keeping with legislative intent).

⁹ *See* Statement of Chair Khan, *supra* n. 4.

As a practical matter, Chair Khan controls completely the resource allocation decisions of the agency.¹⁰ Once again, I encourage the Chair to prioritize this Rule review¹¹ and ensure that sufficient resources are being devoted to this critical area. Issuing a policy statement that discusses how the Commission will enforce the COPPA Rule¹² – especially when that policy statement merely recycles existing staff guidance to businesses and consumers – may grab the attention of the White House¹³ and win column inches,¹⁴ but it does not create enforceable obligations that the Commission can use to hold wrongdoers accountable for violations of children’s privacy.¹⁵ Our taxpayers deserve, and our children need, concrete actions that provide enforceable protections.

I also encourage Chair Khan to allocate appropriate resources to our ongoing COPPA and broader privacy investigations, and to act decisively when providing guidance on consent negotiations. Starving key investigations of needed resources, succumbing to decision paralysis, and stalling or expediting matters based on current events (or political winds) all do a grave disservice to the consumers we are charged with protecting. When the consumers at issue are minors, a failure to act swiftly and decisively to halt ongoing wrongdoing is particularly egregious.¹⁶

Data privacy is a sphere characterized by substantial information asymmetries; consumers have little knowledge of the full scope of data collection, usage, sharing, and monetization of their

¹⁰ Technically, Reorganization Plan No. 8 reserves for the Commission the right to determine “the distribution of appropriated funds according to major programs and purposes.” 15 F.R. 3175 Section 1(b)(4) (1950). Chair Khan, however, has reallocated significant resources from other offices and divisions to the Bureau of Competition without full Commission approval. See Lina Khan, Memorandum to Commission Staff and Commissioners, Vision and Priorities for the FTC (Sept. 22, 2021), https://www.ftc.gov/system/files/documents/public_statements/1596664/agency_priorities_memo_from_chair_lina_m_khan_9-22-21.pdf.

¹¹ See Privacy ANPRM, *supra* n. 1; COPPA Policy Statement, *supra* n. 1.

¹² FTC Press Release: FTC to Crack Down on Companies that Illegally Surveil Children Learning Online (May 19, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/05/ftc-crack-down-companies-illegally-surveil-children-learning-online>.

¹³ The White House, Statement from President Biden on FTC Vote to Protect Children’s Privacy (May 19, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/19/statement-from-president-biden-on-ftc-vote-to-protect-childrens-privacy>.

¹⁴ See, e.g., Andrea Vittorio, “EdTech Tools Coming Under FTC Scrutiny Over Children’s Privacy, BLOOMBERG LAW (May 13, 2022), <https://news.bloomberglaw.com/privacy-and-data-security/edtech-tools-coming-under-ftc-scrutiny-over-childrens-privacy>; Margaret Harding McGill, “FTC to set its sights on ed tech companies,” Axios (May 19, 2022), <https://www.axios.com/2022/05/19/ftc-ed-tech-companies-enforcement>; Courtney Robinson, “FTC cracking down on ed tech companies,” WTSP (May 19, 2022), <https://www.wtsp.com/article/tech/ftc-ed-tech-companies-children-privacy-online/67-8485f2e1-fde3-4091-acc2-0dbfba5e6d3b>; Sara Geoghegan, Schoolwork Without Surveillance: The FTC’s Crackdown on Ed Tech Privacy Abuses, EPIC (May 26, 2022), <https://epic.org/schoolwork-without-surveillance-the-ftcs-crackdown-on-ed-tech-privacy-abuses/>.

¹⁵ See COPPA Policy Statement, *supra* n. 1.

¹⁶ Concurring Statement of Commissioner Christine S. Wilson, R360, LLC (May 17, 2022) https://www.ftc.gov/system/files/ftc_gov/pdf/2022-05-17-R360-Commissioner-Wilson-Statement-FINAL.pdf (discussing the need to avoid unnecessary delays in prosecuting wrongdoing and announcing enforcement actions).

information.¹⁷ Bringing cases to a swift conclusion and announcing enforcement actions provides much-needed notice to the public and empowers consumers to take action to protect their privacy. And finalized orders that require companies to establish and maintain comprehensive privacy and data security programs, a key feature in Commission privacy orders, create enforceable obligations that protect consumers. I cannot think of a more important area to prioritize at the Commission than the well-being of our children.

¹⁷ See Nathan Malkin et al., *Privacy Attitudes of Smart Speaker Users*, 2019 PROC. PRIVACY ENHANCING TECH. 250, 251 (2019), <https://petsymposium.org/2019/files/papers/issue4/popets-2019-0068.pdf> (describing survey of smart speaker users that found half of the participants did not know their recordings were being permanently stored and did not want their children's interactions with the device stored *at all*).