



Office of the Chair

UNITED STATES OF AMERICA  
Federal Trade Commission  
WASHINGTON, D.C. 20580

**Statement of Chair Lina M. Khan  
Regarding Policy Statement on Education Technology and  
the Children’s Online Privacy Protection Act  
Comm’n File No. P155401**

**May 19, 2022**

**I. Introduction**

The Federal Trade Commission’s work with Congress to promote children’s privacy is a testament to its foresight and its credentials as an early leader in this field. In 1998, the Commission published a report recommending that Congress pass legislation to address children’s online privacy,<sup>1</sup> and that same year Congress enacted the Children’s Online Privacy Protection Act (COPPA),<sup>2</sup> which gave the FTC rulemaking authority to implement the law. By late 1999, the Commission had used this authority to promulgate the COPPA Rule.<sup>3</sup>

Although much of today’s Internet economy, including the prevalence of education technology used regularly in the classroom, would seem fantastical at the time the original COPPA Rule was drafted, the Rule still applies to today’s technologies. Indeed, the explosion of technology directed to children, and in particular education technology in our schools, make it more important than ever that we enforce COPPA to its fullest extent. While these technologies can offer key benefits—especially in enabling remote learning, as has been necessary during the pandemic—we must ensure that their broader adoption does not compromise children’s privacy.

While COPPA is known primarily for its “notice and consent” provisions, it is important for businesses to also be on notice of its provisions that govern the use, retention, and collection of children’s data. To this end, FTC staff drafted a Policy Statement clarifying these provisions of COPPA.

Today’s statement underscores how the substantive protections of the COPPA Rule ensure that children can do their schoolwork without having to surrender to commercial surveillance practices. I strongly support it.

The ability of businesses to monetize user information has created a vast ecosystem of companies whose business model incentivizes the vast tracking and collection of personal data,

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<sup>1</sup> FED. TRADE COMM’N, PRIVACY ONLINE: A REPORT TO CONGRESS, at 42 (June 1998), <https://www.ftc.gov/sites/default/files/documents/reports/privacy-online-report-congress/priv-23a.pdf>.

<sup>2</sup> 15 U.S.C. §§ 6501–6505.

<sup>3</sup> Children’s Online Privacy Protection Rule, 64 Fed. Reg. 59,904, 59,889 (Final Rule released Nov. 3, 1999) (codified at 16 C.F.R. § 312).

from one's geo-location and engagement with content to contents of emails and the full set of websites someone has visited online.

There are early indications that these types of commercial surveillance practices are beginning to invade ed tech, creating the risk that students will be profiled and targeted—and that their sensitive information could be exposed as part of a data breach.

The “notice and consent” approach to privacy can be particularly inadequate in contexts where people lack real choice or alternatives. For example, a parent who is uncomfortable signing up their child for expansive tracking and data collection may do so anyway if it is the only way their child can do their schoolwork.

Fortunately, though COPPA is often thought of as a “notice and consent” regime, the law also provides *substantive* limits on what data can be collected and how it can be used and retained. In other words, ed tech providers and other companies covered by COPPA are prohibited from engaging in the types of surveillance and monetization that have taken hold across other digital services.

## **II. Substantive Protections of the COPPA Rule**

Today's Policy Statement puts COPPA-covered companies, including ed tech firms, on notice for these prohibitions. There are a few key aspects of the Policy Statement to highlight.

### **A. Collection Limitations**

First, there are clear restrictions on the types of data that these businesses can collect in the first place. Specifically, the collection prohibition of the COPPA Rule forbids COPPA-covered companies from conditioning access to an activity on the collection of more information than is reasonably necessary for the child to participate in the activity.<sup>4</sup>

That means that companies must have a reason, connected to administering the child's participation in an activity, that they need to collect each data field that they collect.<sup>5</sup> If a company doesn't strictly need the data for the purpose of offering the service, the company cannot require that someone provide that data in order to access the service. Simply put, an ed tech provider cannot require that parents or schools sign-off on sweeping data collection of children as a condition of children accessing the ed tech services. Commercial surveillance cannot be a condition of doing schoolwork.

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<sup>4</sup> See Children's Online Privacy Protection Rule, 64 Fed. Reg. 22,750, 22,758 (proposed Apr. 27, 1999) (codified at 16 C.F.R. § 312) (“Section 312.7 of the proposed Rule precludes, for example, an operator from requiring to a child to provide personal information for the purpose of registering merely to access the website or online service if such personal information is not reasonably necessary to engage in its activities.”).

<sup>5</sup> Children's Online Privacy Protection Rule, 64 Fed. Reg. 59,904, 59,889 (Final Rule released Nov. 3, 1999) (codified at 16 C.F.R. § 312) (“As noted in the NPR, the operator's right to terminate service to a child is limited by section 312.7 of the Rule, which prohibits operators from conditioning a child's participation in a game, the offering of a prize, or another activity on the child disclosing more personal information than is reasonably necessary to participate in the activity.”).

## **B. Use Limitations**

Second, there are limits on how ed tech companies can use the data that they collect on children. A school's ability to consent on behalf of parents is limited to data collected in the context of educational services.<sup>6</sup> This means that for ed tech companies operating based on authorization from a school district or school, the children's data they collect cannot end up as part of any score, algorithm, profile, or database that is used for targeted advertising or any other commercial use.

In other words: children's data should not be fodder for A/B testing, should not be plugged into supposedly "anonymous" or "aggregate" audience models, and should not be extracted and used to develop new products. Children's use of learning games should not be used to enhance engagement for future users, and children should not be subjected to targeted advertisements just to do their schoolwork.<sup>7</sup> Although many of these practices are commonplace in the big data ecosystem, they have no place in our schools, and, where they are forbidden by COPPA, the FTC intends to vigorously enforce those prohibitions.

## **C. Retention Limitations**

Third, COPPA-covered companies must retain such information "only as long as is reasonably necessary to fulfill" that purpose.<sup>8</sup> This means that companies, once they collect a child's data, cannot hang onto it for speculative future uses. The Commission's recent enforcement action against Kurbo highlights the importance of this provision. Specifically, the Commission alleged that Kurbo, now a subsidiary of the company formerly known as Weight Watchers (WW), retained children's data indefinitely, without regard to whether it was necessary. The FTC's settlement requires WW to delete children's information that was unlawfully collected, as well as any derivative work product, such as models or algorithms.<sup>9</sup>

## **D. Security Requirements**

Fourth, if an ed tech provider must collect data and must retain it, the COPPA Rule also requires ed tech providers to "establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children."<sup>10</sup> In other words, companies that don't keep kids' data secure are violating COPPA, whether or not they suffer a breach.

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<sup>6</sup> See *Complying with COPPA: Frequently Asked Questions, A GUIDE FOR BUSINESS AND PARENTS AND SMALL ENTITY COMPLIANCE GUIDE*, FED. TRADE COMM'N § N at Q. 1.

<sup>7</sup> See, e.g., Remarks of President Joe Biden – State of the Union Address As Prepared for Delivery (Mar. 1, 2022) <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/03/01/remarks-of-president-joe-biden-state-of-the-union-address-as-delivered/> (calling for stronger privacy protections for children, including a prohibition on targeted advertising to children and that technology companies stop collecting children's personal information).

<sup>8</sup> 16 C.F.R. § 312.10.

<sup>9</sup> Stipulated Order for Permanent Injunction. Civil Penalty Judgement, and Other Rel., *United States of America v. Kurbo Inc.*, No. 3:22-cv-00946 (N.D. Cal. 2022).

<sup>10</sup> 16 C.F.R. § 312.8.

### **III. Next Steps**

The Policy Statement underscores the importance of safeguarding children’s privacy in today’s digital economy.

COPPA is a critical tool in the FTC’s toolbox, one that we will use vigorously. But it can only go so far, especially given the dramatic changes in how firms collect, use, and monetize children’s data. I understand that Congress is considering what legislative updates might be necessary to adapt COPPA to modern market realities—and I very much welcome these efforts.

At the FTC, we are considering ways to strengthen our rules and expand their protections more broadly. The COPPA Rule was last updated in 2013, and another Rule review was initiated in 2019. I look forward to reviewing the record as we determine next steps for strengthening protections online.

### **IV. Conclusion**

The collection, use, and retention limitations of COPPA place notable restrictions on how digital companies operate in our schools. Though widespread tracking, surveillance, and expansive use of data across contexts have become increasingly common practices across the broader economy, this Policy Statement makes clear that COPPA forbids companies from wholesale extending these practices into the context of schools and learning.<sup>11</sup> We intend to vigorously enforce these restrictions in order to protect children online.

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<sup>11</sup> I am grateful to the Bureau of Consumer Protection’s Peder Magee, Jim Trilling, Mark Eichorn and Kristin Cohen for their work on this statement, as well as for their efforts enforcing COPPA, issuing rules, and developing guidance relating to children’s online privacy. Thank you also to Josephine Liu, Rich Gold, and Liz Tucci in our Office of General Counsel for their input, and June Chang, Lesley Fair, and Jennifer Leach in DCBE for getting the word out.