



**Written Testimony of Josh Golin**  
**Executive Director, Fairplay**  
**Before the Senate Judiciary Committee**  
**Hearing on “Protecting our Children Online”**  
**February 14, 2023**

My name is Josh Golin and I am Executive Director of Fairplay.

I would like to thank Chairman Durbin, Ranking Member Graham, and the Distinguished Members of the Committee for holding this hearing of critical importance to America’s families, and for inviting me to testify.

For more than a decade, social media companies have been performing a vast uncontrolled experiment on our children. They use the reams of data they collect on young people and endless A/B testing to fine tune their platforms’ algorithms and design to maximize engagement, because more time and activity on a platform means more revenue. And because the way these platforms engage with young people is largely unregulated, there is no obligation to consider and mitigate the harmful effects of their design choices on children and teens.

The resulting impact on children and families has been devastating. Compulsive overuse, exposure to harmful and age-inappropriate content, cyberbullying, eating disorders, harms to mental health, and the sexual exploitation of children are just some of the problems linked to Big Tech’s insidious business model.

It doesn’t have to be this way. Instead of prioritizing engagement and data collection, apps, websites, and online platforms could be built in ways that reduce risks and increase safeguards for children and teens. With many young people now spending a majority of their waking hours online and on social media, improving the digital environment so it is safer and not exploitative or addictive is one of the most important things we can do to address the mental health crisis.

But that won’t happen through self-regulation. It is past time for Congress to enact legislation that expands privacy protections for young people and requires online operators to prioritize children’s wellbeing in their design choices. Without meaningful congressional action, children and teens will continue to be harmed in the most serious and tragic ways by Instagram, TikTok, Snapchat, YouTube, and thousands of lesser known apps, websites, and platforms.

My testimony today will describe how many of the most serious issues facing children and teens online are a direct result of design choices made to further companies’ bottom lines, and Congress’s failure to enact meaningful safeguards. I will then describe the types of protections that should be included in any online safety and privacy legislation.

## I. About Fairplay

Fairplay is the leading independent watchdog of the children’s media and marketing industries. We are committed to building a world where kids can be kids, free from the false promises of marketers and the manipulations of Big Tech. Our advocacy is grounded in the overwhelming evidence that child-targeted marketing – and the excessive screen time it encourages – undermines kids’ healthy development.

Through corporate campaigns and strategic regulatory filings, Fairplay and our partners have changed the child-targeted marketing and data collection practices of some of the world’s biggest companies. In 2021, we led a large international coalition of parents, advocates, and child development experts to stop Meta from releasing a version of Instagram for younger children.<sup>1</sup> Our 2018 Federal Trade Commission complaint against Google for violating the Children’s Online Privacy Protection Act (COPPA) led to the 2019 FTC settlement that required Google to pay a record fine and to limit data collection and targeted advertising on child-directed content on YouTube.<sup>2</sup> With our partners at the Center for Digital Democracy, we have filed other requests for investigation at the FTC that remain pending. We have documented, for example, that Google Play recommends apps for young children that violate COPPA and uses unfair monetization techniques;<sup>3</sup> that TikTok has not complied with the 2019 FTC Consent Decree that it was violating COPPA;<sup>4</sup> and that Prodigy, a popular online math game assigned to millions of elementary school students across the country, uses manipulative design to unfairly promote expensive subscriptions to children.<sup>5</sup>

Fairplay also leads the Designed with Kids in Mind Coalition, which advocates for regulations that would require operators to make the best interests of children a primary consideration

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<sup>1</sup> Brett Molina and Terry Collins, *Facebook postponing Instagram for kids amid uproar from parents, lawmakers*, USA Today (Sept. 27, 2021), <https://www.usatoday.com/story/tech/2021/09/27/instagram-kids-version-app-children-pause/5881425001/>.

<sup>2</sup> Campaign for a Commercial-Free Childhood (now Fairplay) and Center for Digital Democracy, *Request to Investigate Google’s YouTube Online Service and Advertising Practices for Violating the Children’s Online Privacy Protection Act*, Counsel for Center for Digital Democracy and Campaign for a Commercial-Free Childhood before the Federal Trade Commission (filed April 2, 2018), <https://fairplayforkids.org/advocates-say-googles-youtube-violates-federal-childrens-privacy-law/>.

<sup>3</sup> Campaign for a Commercial-Free Childhood (now Fairplay) and Center for Digital Democracy, *Request to Investigate Google’s Unfair and Deceptive Practices in Marketing Apps for Children*, Counsel for Center for Digital Democracy and Campaign for a Commercial-Free Childhood before the Federal Trade Commission (filed Dec. 12, 2018), <https://fairplayforkids.org/apps-which-google-rates-safe-kids-violate-their-privacy-and-expose-them-other-harms/>.

<sup>4</sup> Campaign for a Commercial-Free Childhood (now Fairplay) and Center for Digital Democracy, *Complaint and Request for Investigation of TikTok for Violations of the Children’s Online Privacy Protection Act and Implementing Rule*, Counsel for Campaign for a Commercial-Free Childhood and Center for Digital Democracy before the Federal Trade Commission (filed May 14, 2020), [https://fairplayforkids.org/wp-content/uploads/2020/05/tik\\_tok\\_complaint.pdf](https://fairplayforkids.org/wp-content/uploads/2020/05/tik_tok_complaint.pdf).

<sup>5</sup> Campaign for a Commercial-Free Childhood (now Fairplay), *Request for Investigation of Deceptive and Unfair Practices by the Edtech Platform Prodigy*, Campaign for a Commercial-Free Childhood before the Federal Trade Commission (filed Feb. 19, 2020), [https://fairplayforkids.org/wp-content/uploads/2021/02/Prodigy\\_Complaint\\_Feb21.pdf](https://fairplayforkids.org/wp-content/uploads/2021/02/Prodigy_Complaint_Feb21.pdf).

when designing apps, websites, and platforms likely to be accessed by young people.<sup>6</sup> Fairplay and many of our coalition members actively supported the successful passage of the California Age Appropriate Design Code. We were also lead organizers on the 2022 federal legislative campaigns for the Kids Online Safety Act and the Children and Teens’ Online Privacy Protection Act. And in November of last year, we filed a Petition for Rulemaking, signed by 21 organizations, urging the FTC to declare that certain design techniques used by online platforms to maximize engagement are unfair practices.<sup>7</sup>

Fairplay is also home to the Screen Time Action Network, a collaborative community of practitioners, educators, advocates, and parents who work to reduce excessive technology use harming children, adolescents, and families. The Action Network hosts seven work groups, including Online Harms Prevention, a group whose members include today’s witness Kristin Bride and several other parents who have tragically lost their children to social media harms.

## **II. Children and teens spend a significant portion of their day using digital media.**

Digital device use begins in early childhood: Nearly half of 2- to 4-year-olds and more than two-thirds of 5- to 8-year-olds have their own tablet or smartphone.<sup>8</sup> Preschool-age children average 2.5 hours of screen media use per day, and five- to eight-year-olds average about 3 hours.<sup>9</sup> In a study of elementary school-aged children’s digital media use during the pandemic, approximately one-third of parents reported that their children began using social media at a younger age than they had originally planned.<sup>10</sup>

Despite the fact that all major social media sites have a minimum age of 13 in their terms of service, a growing number of younger children use platforms like TikTok, Snapchat and Instagram. About half of parents of children ages 10 to 12 and 32% of parents of kids ages 7 to 9 reported their child used social media apps in the first six months of 2021.<sup>11</sup> That same year, 18% of 8- to 12-year-olds reported using social media every day, a 38% increase from just two years prior.<sup>12</sup> Leaked documents from TikTok revealed the company used machine learning to

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<sup>6</sup> Coalition members include Accountable Tech, American Academy of Pediatrics, Center for Digital Democracy, Center for Humane Technology, Children and Screens, Common Sense, Electronic Privacy Information Center, Exposure Labs: The Creators of The Social Dilemma, Fairplay, ParentsTogether, and RAINN: <https://designedwithkidsinmind.us/>.

<sup>7</sup> Center for Digital Democracy & Fairplay, *In the Matter of Petition for Rulemaking to Prohibit the Use on Children of Design Features that Maximize for Engagement*, (filed Nov. 17 2022). <https://fairplayforkids.org/wp-content/uploads/2022/11/EngagementPetition.pdf>

<sup>8</sup> Victoria Rideout & Michael B. Robb, *The Common Sense Census: Media Use by Kids Age Zero to Eight*, 2020, Common Sense Media at 25, (2020), [https://www.commonsensemedia.org/sites/default/files/research/report/2020\\_zero\\_to\\_eight\\_census\\_final\\_web.pdf](https://www.commonsensemedia.org/sites/default/files/research/report/2020_zero_to_eight_census_final_web.pdf).

<sup>9</sup> *Id.*

<sup>10</sup> Tiffany Munzer, Chioma Torres, et al., *Child Media Use During COVID-19: Associations with Contextual and Social-Emotional Factors*, 43 *Journal of Developmental and Behavioral Pediatrics* at 3 (2022), <https://pubmed.ncbi.nlm.nih.gov/36106745/>.

<sup>11</sup> Kristen Rogers, *Children under 10 are using social media. Parents can help them stay safe online*, CNN, (Oct. 18, 2021), <https://www.cnn.com/2021/10/18/health/children-social-media-apps-use-poll-wellness/index.html>

<sup>12</sup> Victoria Rideout, Alanna Peebles, et al., *The Common Sense Census: Media Use by Tweens and Teens at 12*, (2022), [https://www.commonsensemedia.org/sites/default/files/research/report/8-18-census-integrated-report-final-web\\_0.pdf](https://www.commonsensemedia.org/sites/default/files/research/report/8-18-census-integrated-report-final-web_0.pdf).

analyze user accounts and classified one-third of the platform’s users as under 14,<sup>13</sup> which suggests platform operators are well aware that children lie about their age in order to access social media.

Further, research indicates the pandemic has increased screen media use for preteens and teenagers. In 2021, preteens (ages 8 to 12) averaged over 5.5 hours of entertainment screen time per day and teens (ages 13 to 18) averaged a remarkable 8.5 hours daily - a 17% increase from 2019 for both age groups.<sup>14</sup> Much of this time is spent on the major social media platforms. Ninety-five percent of teens say they use YouTube, and 67% say they use TikTok.<sup>15</sup> Thirty-five percent of teens say they are using one of the top five online platforms – YouTube, TikTok, Instagram, Snapchat, or Facebook – “almost constantly.”<sup>16</sup>

Teens’ and preteens’ daily screentimes vary based on race and household income. White preteens average 4.5 hours of entertainment screen time use daily, compared to Black preteens (6.5 hours) and Hispanic/Latino preteens (7 hours). White teens spend approximately 8 hours per day on screens for entertainment, while Black and Hispanic/Latino teens average approximately two hours more.<sup>17</sup> Preteens in higher-income households spend just under 4.5 hours of screen time per day, compared to preteens in middle-income households (5.75 hours) and lower-income households (7.5 hours). Teens in higher-income households spend about 2.5 hours less daily on screens for entertainment compared to teens in lower- and middle-income households, (7 and 9.5 hours daily, respectively).<sup>18</sup>

### **III. Overuse of digital media is linked to a number of serious harms for young people**

Increased time online and social media use is linked to serious harms for young people. As the Surgeon General has observed – and as described in detail in Section IV of this testimony – “[b]usiness models are often built around maximizing user engagement as opposed to safeguarding users’ health and ensuring that users engage with one another in safe and healthy ways . . . This translates to technology companies focusing on maximizing time spent, not time well spent.”<sup>19</sup> By maximizing time and activities online, the design choices made by platforms to maximize engagement harm minors in a number of ways, including: undermining mental health, harm to body image, fostering problematic internet use, harming physical health,

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<sup>13</sup> Raymond Zhong and Sheera Frenkel, *A Third of TikTok’s U.S. Users May Be 14 or Under, Raising Safety Questions*, New York Times, (Aug. 14, 2020), <https://www.nytimes.com/2020/08/14/technology/tiktok-underage-users-ftc.html>.

<sup>14</sup> Common Sense, *The Common Sense Census: Media Use by Tweens and Teens at 12* (2022), [https://www.common sense media.org/sites/default/files/research/report/8-18-census-integrated-report-final-web\\_0.pdf](https://www.common sense media.org/sites/default/files/research/report/8-18-census-integrated-report-final-web_0.pdf).

<sup>15</sup> Emily A. Vogels et al., *Teens, Social Media and Technology 2022*, Pew Research Center (Aug. 10, 2022), <https://www.pewresearch.org/internet/2022/08/10/teens-social-media-and-technology-2022>.

<sup>16</sup> *Id.*

<sup>17</sup> Victoria Rideout, Alanna Peebles, et al., *The Common Sense Census: Media Use by Tweens and Teens at 12*, (2022), [https://www.common sense media.org/sites/default/files/research/report/8-18-census-integrated-report-final-web\\_0.pdf](https://www.common sense media.org/sites/default/files/research/report/8-18-census-integrated-report-final-web_0.pdf).

<sup>18</sup> *Id.*

<sup>19</sup> *Protecting Youth Mental Health: The U.S. Surgeon General’s Advisory* at 25 (2021), <https://www.hhs.gov/sites/default/files/surgeon-general-youth-mental-health-advisory.pdf>.

increasing minors' risk of contact with dangerous or harmful people, and increasing minors' exposure to age-inappropriate and otherwise harmful content.

### *Harm to mental health*

Maximizing minors' time and activities online is linked with worse psychological wellbeing in minors in concrete and serious ways that cannot be ignored in the context of the current youth mental health crisis.

Heavy users of digital media are more likely to be unhappy, to be depressed, or to have attempted suicide.<sup>20</sup> Two nationally representative surveys of U.S. adolescents in grades 8 through 12 found "a clear pattern linking screen activities with higher levels of depressive symptoms/suicide-related outcomes and nonscreen activities with lower levels."<sup>21</sup> The same research found that suicide-related outcomes became elevated after two hours or more a day of electronic device use.<sup>22</sup> Among teens who used electronic devices five or more hours a day, a staggering 48% exhibited at least one suicide risk factor.<sup>23</sup> Of particular concern, a large and growing body of research indicates a strong link between time spent on social media—some of the services most relentless in their deployment of engagement-maximizing techniques—and serious mental health challenges.<sup>24</sup> More frequent and longer social media use is associated with depression,<sup>25</sup> anxiety,<sup>26</sup> and suicide risk factors.<sup>27</sup>

Even if some of these documented associations are explained by children's underlying emotional challenges, the design features that online platforms deploy to maximize engagement are likely to have differential negative effects on these young people. For example, children with more negative emotionality may seek endless scrolling as a means of dissociating

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<sup>20</sup> Jean M. Twenge & W. Keith Campbell, *Media Use Is Linked to Lower Psychological Well-Being: Evidence from Three Datasets*, 90 *Psychol. Q.*, 311 (2019). <https://pubmed.ncbi.nlm.nih.gov/30859387/>

<sup>21</sup> Jean M. Twenge et al., *Increases in Depressive Symptoms, Suicide-Related Outcomes, and Suicide Rates Among U.S. Adolescents After 2010 and Links to Increased New Media Screen Time*, 6 *Clinical Psychol. Sci.* 3, 9 (2018) <https://doi.org/10.1177/2167702617723376>. See also Jane Harness et al., *Youth Insight About Social Media Effects on Well/ill-Being and Self-Modulating Efforts*, 71 *J. Adolescent Health*, 324-333 (Sept. 1, 2022), 10.1016/j.jadohealth.2022.04.011; Amy Orben et al., *Windows of Developmental Sensitivity to Social Media*, 13 *Nature Comm.*, 1649, (2022), 10.1038/s41467-022-29296-3

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> See, e.g., K.E. Riehm et al., *Associations Between Time Spent Using Social Media and Internalizing and Externalizing Problems Among US Youth*, 76 *JAMA Psychiatry*, 1266 (2019), <https://doi.org/10.1001/jamapsychiatry.2019.2325>; N. McCrae et al., *Social Media and Depressive Symptoms in Childhood and Adolescence: A Systematic Review*, 2 *Adolescent Res. Rev.*, 315 (2017), <https://doi.org/10.1007/s40894-017-0053-4>; H. Allcott et al., *The Welfare Effects of Social Media*, 110 *Econ. Rev. Am.* 629 (2020), <https://www.aeaweb.org/articles?id=10.1257/aer.20190658>

<sup>25</sup> Jean M. Twenge & W. Keith Campbell, *Media Use Is Linked to Lower Psychological Well-Being: Evidence from Three Datasets*, 90 *Psychol. Q.* at 312 (2019). <https://pubmed.ncbi.nlm.nih.gov/30859387/>

<sup>26</sup> Royal Society for Public Health, *#StatusOfMind: Social Media and Young People's Mental Health and Wellbeing 8* (May 2017), <https://www.rsph.org.uk/static/uploaded/d125b27c-0b62-41c5-a2c0155a8887cd01.pdf>

<sup>27</sup> Jean M. Twenge & W. Keith Campbell, *Media Use Is Linked to Lower Psychological Well-Being: Evidence from Three Datasets*, 90 *Psychol. Q.* (2019). <https://pubmed.ncbi.nlm.nih.gov/30859387/>

from emotional distress,<sup>28</sup> yet may be recommended more negative content based on their previous behavior.<sup>29</sup> Former Meta employee Frances Haugen has described how the company (then called Facebook) documented this harmful cycle in its own internal research on Instagram: “And what's super tragic is Facebook's own research says, as these young women begin to consume this -- this eating disorder content, they get more and more depressed. And it actually makes them use the app more. And so, they end up in this feedback cycle where they hate their bodies more and more.”<sup>30</sup>

### *Harm to body image*

Design features that maximize time spent on social media can also lead to heightened exposure to content which increases minors’ susceptibility to poor body image and, consequently, disordered eating. A 2019 study of 7th and 8th graders in the *International Journal of Eating Disorders* “suggest[ed] that [social media], particularly platforms with a strong focus on image posting and viewing, is associated with elevated [disordered eating] cognitions and behaviors in young adolescents.”<sup>31</sup> Another study found a positive correlation between higher Instagram use and orthorexia nervosa diagnoses.<sup>32</sup> Personal stories from sufferers of disordered eating have highlighted the link to social media,<sup>33</sup> as has Meta’s own internal research; the documents Frances Haugen shared with the *Wall Street Journal* in 2021 revealed that Facebook has been aware at least since 2019 that “[w]e make body image issues worse for one in three teen girls.”<sup>34</sup>

### *Risk of problematic internet use and its associated harms*

Maximizing time and activities online also fosters “problematic internet use” — psychologists’ term for excessive internet activity that exhibits addiction, impulsivity, or compulsion.<sup>35</sup> A 2016

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<sup>28</sup>Amanda Baughan et al., “*I Don’t Even Remember What I Read*”: How Design Influences Dissociation on Social Media, CHI Conference on Human Factors in Computing Systems, 1-13 (2022), <https://dl.acm.org/doi/pdf/10.1145/3491102.3501899>.

<sup>29</sup>Kait Sanchez, *Go Watch this WSJ investigation of TikTok’s Algorithm*, The Verge, (July 21, 2021), <https://www.theverge.com/2021/7/21/22587113/tiktok-algorithm-wsj-investigation-rabbit-hole>.

<sup>30</sup>Scott Pelley, *Whistleblower: Facebook is misleading the public on progress against hate speech, violence, misinformation*, CBS, (Oct. 3, 2021), <https://www.cbsnews.com/news/facebook-whistleblower-frances-haugen-misinformation-public-60-minutes-2021-10-03/>.

<sup>31</sup>Simon M. Wilksch et al., *The Relationship Between Social Media Use and Disordered Eating in Young Adolescents*, 53 *Int. J. Eat. Disord.* 96, 104 (2020).

<sup>32</sup>Pixie G. Turner & Carmen E. Lefevre, *Instagram Use Is Linked to Increased Symptoms of Orthorexia Nervosa*, 22 *Eating Weight Disorders* 277, 281 (2017).

<sup>33</sup>See, e.g., Jennifer Neda John, *Instagram Triggered My Eating Disorder*, Slate (Oct. 14, 2021), <https://slate.com/technology/2021/10/instagram-social-media-eating-disorder-trigger.html>; Clea Skopeliti, *‘I Felt My Body Wasn’t Good Enough’: Teenage Troubles with Instagram*, The Guardian (Sep. 18, 2021), <https://www.theguardian.com/society/2021/sep/18/i-felt-my-body-wasnt-good-enough-teenage-troubles-with-instagram>.

<sup>34</sup>Georgia Wells et al., *Facebook Knows Instagram Is Toxic for Teen Girls, Company Documents Show*, W.S.J. (Sept. 14, 2021), <https://www.wsj.com/articles/facebook-knows-instagram-is-toxic-for-teen-girls-company-documents-show-11631620739>.

<sup>35</sup>Chloe Wilkinson et al., *Screen Time: The Effects on Children’s Emotional, Social, and Cognitive Development*, *Informed Futures*, at 6, (2021), <https://informedfutures.org/wp-content/uploads/Screen-time-The-effects-on-childrens-emotional-social-cognitive-development.pdf>.

nationwide survey of minors ages 12 to 18 found that 61% of teens thought they spent too much time on their mobile devices, and 50% felt “addicted” to them.<sup>36</sup> In a 2022 Pew Research survey, 35% of teens said they are on YouTube, TikTok, Instagram, Snapchat, or Facebook “almost constantly.”<sup>37</sup> And a report released last week by Amnesty International on young people ages 13-24 found “a staggering 74% of respondents report checking their social media accounts more than they would like to. Respondents bemoaned the ‘addictive’ lure of the constant stream of updates and personalized recommendations, often feeling ‘overstimulated’ and ‘distracted.’”<sup>38</sup>

Problematic internet use, in turn, is linked to a host of additional problems. For example, one study of 564 children between the ages of 7 and 15 found that problematic internet use was positively associated with depressive disorders, Attention Deficit Hyperactivity Disorder, general impairment, and increased sleep disturbances.<sup>39</sup> A meta-analysis of peer-reviewed studies involving cognitive findings associated with problematic internet use in both adults and adolescents found “firm evidence that [problematic internet use]. . . is associated with cognitive impairments in motor inhibitory control, working memory, Stroop attentional inhibition and decision-making.”<sup>40</sup> Another study of over 11,000 European adolescents found that among teens exhibiting problematic internet use, 33.5% reported moderate to severe depression; 22.2% reported self-injurious behaviors such as cutting; and 42.3% reported suicidal ideation.<sup>41</sup> The rate of attempted suicides was a staggering ten times higher for teens exhibiting problematic internet use than their peers who exhibited healthy internet use.<sup>42</sup>

### *Harm to physical health*

Maximizing minors’ time spent online at the expense of sleep or movement also harms their physical health. When minors are driven to spend more time online, they sleep less for a variety of reasons – because it is impossible to be online and sleep at the same time, because stimulation before bedtime disrupts sleep patterns, and because many of the design features used by online platforms make users feel pressured to be connected constantly, and that feeling often doesn’t go away at bedtime. Research shows that minors who exhibit problematic

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<sup>36</sup> Common Sense, *Dealing with Devices: Parents*, 10-11, (2016), [https://www.common sense media.org/sites/default/files/research/report/commonsense\\_dealingwithdevices-topline\\_release.pdf](https://www.common sense media.org/sites/default/files/research/report/commonsense_dealingwithdevices-topline_release.pdf).

<sup>37</sup> Emily A. Vogels et al., *Teens, Social Media and Technology 2022*, Pew Research Center (Aug. 10, 2022), <https://www.pewresearch.org/internet/2022/08/10/teens-social-media-and-technology-2022>.

<sup>38</sup> Amnesty International, “*We are totally exposed*”: *Young people share concerns about social media’s impact on privacy and mental health in global survey* (Feb. 7, 2023) <https://www.amnesty.org/en/latest/news/2023/02/children-young-people-social-media-survey-2/>.

<sup>39</sup> Restrepo et al., *Problematic Internet Use in Children and Adolescents: Associations with Psychiatric Disorders and Impairment*, 20 *BMC Psychiatry* 252 (2020), <https://doi.org/10.1186/s12888-020-02640-x>.

<sup>40</sup> Konstantinos Ioannidis et al., *Cognitive Deficits in Problematic Internet Use: Meta-Analysis of 40 Studies*, 215 *British Journal of Psychiatry* 639, 645 (2019), <https://pubmed.ncbi.nlm.nih.gov/30784392/>.

<sup>41</sup> Michael Kaess et al., *Pathological Internet use among European adolescents: psychopathology and self-destructive behaviours*, 23 *Eur. Child & Adolescent Psychiatry* 1093, 1096 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4229646/>.

<sup>42</sup> *Id.*

internet use often suffer from sleep problems.<sup>43</sup> One-third of teens report waking up and checking their phones for something other than the time at least once per night.<sup>44</sup> Some teens set alarms in the middle of the night to remind them to check their notifications or complete video game tasks that are only available for a limited time.<sup>45</sup>

These behaviors in turn create new risks for young people. Screen time before bed is associated with lower academic performance.<sup>46</sup> Teenagers who use social media for more than five hours per day are about 70% more likely to stay up late on school nights.<sup>47</sup> A lack of sleep in teenagers has been linked to inability to concentrate, poor grades, drowsy-driving incidents, anxiety, depression, thoughts of suicide, and even suicide attempts.<sup>48</sup>

A large body of research demonstrates that more time online displaces physical activity<sup>49</sup> and is consistently correlated with minors' risk of obesity, which in turn increases their risk of serious illnesses like diabetes, high blood pressure, heart disease, and depression.<sup>50</sup> Further, when minors spend more time online, they are exposed to more advertisements for unhealthy food and beverages,<sup>51</sup> which are heavily targeted toward minors<sup>52</sup> and disproportionately marketed to Black and Hispanic youth.<sup>53</sup> In addition, poor sleep quality—which, as discussed above, is associated with problematic internet use—increases the risk of childhood obesity by 20%.<sup>54</sup>

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<sup>43</sup> Anita Restrepo, Tohar Scheininger, et al., *Problematic Internet Use in Children and Adolescents: Associations with Psychiatric Disorders and Impairment*, 20 *BMC Psychiatry* 252 (2020), <https://doi.org/10.1186/s12888-020-02640-x>.

<sup>44</sup> Common Sense, *Screens and Sleep: The New Normal: Parents, Teens, Screens, and Sleep in the United States* at 7 (2019), <https://www.common SenseMedia.org/sites/default/files/research/report/2019-new-normal-parents-teens-screens-and-sleep-united-states-report.pdf>.

<sup>45</sup> Emily Weinstein & Carrie James, *Behind Their Screens: What Teens Are Facing (And Adults Are Missing)*, MIT Press, at 38 (2022).

<sup>46</sup> Chloe Wilkinson et al., *Screen Time: The Effects on Children's Emotional, Social, and Cognitive Development* at 4 (2021), <https://informedfutures.org/wp-content/uploads/Screen-time-The-effects-on-childrens-emotional-social-cognitive-development.pdf>.

<sup>47</sup> *Heavy Social Media Use Linked to Poor Sleep*, BBC News (Oct. 23, 2019), <https://www.bbc.com/news/health-50140111>.

<sup>48</sup> *Among teens, sleep deprivation an epidemic*, Stanford News Ctr. (Oct. 8, 2015), <https://med.stanford.edu/news/all-news/2015/10/among-teens-sleep-deprivation-an-epidemic.html>.

<sup>49</sup> E de Jong et al., *Association Between TV Viewing, Computer Use and Overweight, Determinants and Competing Activities of Screen Time in 4- to 13-Year-Old Children*, 37 *Int'l J. Obesity* 47, 52 (2013), <https://pubmed.ncbi.nlm.nih.gov/22158265/>.

<sup>50</sup> Jeff Chester, Kathryn C. Montgomery, et al., *Big Food, Big Tech, and the Global Childhood Obesity Pandemic* at 3 (2021), [https://www.democraticmedia.org/sites/default/files/field/public-files/2021/full\\_report.pdf](https://www.democraticmedia.org/sites/default/files/field/public-files/2021/full_report.pdf).

<sup>51</sup> *Id.*

<sup>52</sup> Jeff Chester, Kathryn C. Montgomery, et al., *Big Food, Big Tech, and the Global Childhood Obesity Pandemic* at 3 (2021), [https://www.democraticmedia.org/sites/default/files/field/public-files/2021/full\\_report.pdf](https://www.democraticmedia.org/sites/default/files/field/public-files/2021/full_report.pdf).

<sup>53</sup> University of Connecticut Rudd Center for Food Policy & Health et. al., *Targeted Food and Beverage Advertising to Black and Hispanic Consumers: 2022 Update*, (Nov. 2022), <https://uconnruddcenter.org/wp-content/uploads/sites/2909/2022/11/TargetedMarketing2022-Executive-Summary.pdf>.

<sup>54</sup> Yanhui Wu et al., *Short Sleep Duration and Obesity Among Children: A Systematic Review and Meta-Analysis of Prospective Studies*, 11 *Obesity Rsch. & Clinical Prac.* 140, 148 (2015), <https://pubmed.ncbi.nlm.nih.gov/27269366/>; Michelle A. Miller et al., *Sleep Duration and Incidence of Obesity in Infants, Children, and Adolescents: A Systematic Review and Meta-Analysis of Prospective Studies*, 41 *Sleep* 1, 15 (2018), <https://pubmed.ncbi.nlm.nih.gov/29401314/>.

## *Harms to Safety*

The pressure to spend more time on digital media platforms and maximize interactions with other users also puts children at risk of predation. Twenty-five percent of 9-to-17-year-olds report having had an online sexually explicit interaction with someone they believed to be an adult.<sup>55</sup> In 2020, 17% of minors – including 14% of 9-12-year-olds – reported having shared a nude photo or video of themselves online. Of these children and teens, 50% reported having shared a nude photo or video with someone they had not met in real life, and 41% reported sharing with someone over the age of 18.<sup>56</sup>

Design features that maximize engagement also increase young people’s risk of cyberbullying. A 2022 survey by the Pew Research Center found that nearly 50% of teens reported being cyberbullied.<sup>57</sup> Sexual minority and gender expansive youth report being exposed to anonymous forms of cyberbullying more than their heterosexual and cisgender counterparts.<sup>58</sup> Cyberbullying is linked to increased risky behaviors such as smoking and increased risk of suicidal ideation.<sup>59</sup>

It’s worth noting that these serious threats to children’s safety aren’t limited to social media. The FTC’s recent settlement with Epic Games documented how the default text and voice chat settings on Fortnite led children and teens to communicate with strangers, including adults. As a result, children were subject to harassment, bullying, and predation while playing the wildly popular game.<sup>60</sup>

### **IV. The platforms where children spend the majority of their time online are designed to maximize engagement, often at the expense of children’s wellbeing and safety.**

Digital platforms are designed to maximize engagement. The longer a user is on a platform and the more they do on the platform, the more data the user generates. Tech companies and their marketing partners use this valuable data to target users with advertising.<sup>61</sup> Gaming app companies employ teams of experts who specialize in user acquisition and retention.<sup>62</sup> The

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<sup>55</sup> Thorn. “Responding to Online Threats: Minors’ Perspectives on Disclosing, Reporting, and Blocking.” (May 2021), [https://info.thorn.org/hubfs/Research/Responding%20to%20Online%20Threats\\_2021-Full-Report.pdf](https://info.thorn.org/hubfs/Research/Responding%20to%20Online%20Threats_2021-Full-Report.pdf).

<sup>56</sup> Thorn. “Understanding sexually explicit images, self-produced by children.” (9 Dec. 2020), <https://www.thorn.org/blog/thorn-research-understanding-sexually-explicit-images-self-produced-by-children/>.

<sup>57</sup> Emily A. Vogels et. al., *Teens and Cyberbullying 2022*, Pew Research Center, (Dec. 2022), <https://www.pewresearch.org/internet/2022/12/15/teens-and-cyberbullying-2022/>.

<sup>58</sup> Bauman, S., & Baldasare, A., *Cyber aggression among college students: Demographic differences, predictors of distress, and the role of the university*, 56 *Journal of College Student Development* 317 (2015), <https://doi.org/10.1353/csd.2015.0039>.

<sup>59</sup> van Geel M, Vedder P, Tanilon J. *Relationship Between Peer Victimization, Cyberbullying, and Suicide in Children and Adolescents: A Meta-analysis*, *JAMA Pediatr.* 2014;168(5):435–442. doi:10.1001/jamapediatrics.2013.4143 <https://jamanetwork.com/journals/jamapediatrics/fullarticle/1840250>.

<sup>60</sup> Case 5:22-cv-00518-BO, *Epic Games: Complaint for Permanent Injunction*, (Dec. 19, 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/2223087EpicGamesComplaint.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/2223087EpicGamesComplaint.pdf).

<sup>61</sup> See generally 5Rights Foundation. “Pathways: How digital design puts children at risk.” (July 2021), <https://5rightsfoundation.com/uploads/Pathways-how-digital-design-puts-children-at-risk.pdf>.

<sup>62</sup> See, e.g., *Leading User Acquisition in the quickly growing mobile games industry: Get to know Winnie Wen of Jam City*, Jam City (Nov. 15, 2021), <https://www.jamcity.com/leading-user-acquisition-in-the-quickly-growing-mobile->

major social media platforms – including Facebook, Instagram, YouTube, and TikTok – have both in-house and external research initiatives focused on documenting and improving engagement, as well as utilizing neuromarketing and virtual reality techniques to measure effectiveness.<sup>63</sup>

Engagement-maximizing design features prey upon minors’ developmental vulnerabilities and can lead to significant harm. These features create risk for children because they can lead to problematic internet use and the associated harm. In addition, many of the techniques used to extend engagement create new risks and harms in their own right. They include: social manipulation design features; variable reward design features; and algorithmic content recommendation systems.

### *Social manipulation design features*

Social manipulation design features leverage a minor’s desire for social relationships to encourage users to spend more time and/or perform more activities on a website or service. These features are the hallmarks of social media platforms: follower, view, and like counts; interaction streaks; displays of the names of users who have commented, viewed, or liked a piece of content; and prompts that encourage a user to share with a larger audience by adding suggested new friends or making their account or posts public.

Younger adolescents have specific developmental needs for social connectedness and are particularly attuned to social validation.<sup>64</sup> Children develop a need to fit in with their peers around age 6<sup>65</sup> and the need to be noticed and admired by others around age ten.<sup>66</sup> Social

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[games-industry-get-to-know-winnie-wen-of-jam-city/](#); *Mediation that supports everything your app business needs to scale*, ironSource, <https://www.is.com/mediation/>; Mihovil Grguric, *15 Key Mobile Game Metrics That Developers MUST Track*, udonis (Sept. 20, 2022), <https://www.blog.udonis.co/mobile-marketing/mobile-games/key-mobile-game-metrics>.

<sup>63</sup> See, e.g., Meta Careers, *Shape the Future of Marketing with the Marketing Science Team*, Meta (Sept. 19, 2018), <https://www.metacareers.com/life/come-build-with-the-facebook-marketing-science-team/>; Bob Arnold & Anton Miller, *How Google’s Media Lab Boosts YouTube Ad Results*, AdAge (May 14, 2021), <https://adage.com/article/google/how-googles-media-lab-boosts-youtube-ad-results/2335796>; *TikTok Insights*, TikTok for Business (2022), <https://www.tiktok.com/business/en-US/insights>; *TikTok Ads Break Through Better than TV and Drive Greater Audience Engagement*, TikTok for Business, <https://www.tiktok.com/business/library/TikTokDrivesGreaterAudienceEngagement.pdf>; *How Virtual Reality Facilitates Social Connection*, Meta, <https://www.facebook.com/business/news/insights/how-virtual-reality-facilitates-social-connection>.

<sup>64</sup> Nicholas D. Santer et al., *Early Adolescents’ Perspectives on Digital Privacy*, *Algorithmic Rights and Protections for Children* (2021) at 6, 30.

<sup>65</sup> In particular, between the ages of six and nine, children start to feel the need to fit in to peer social groups. See Jun Zhao et al., *‘I Make Up a Silly Name’: Understanding Children’s Perception of Privacy Risks Online*, CHI Conference on Human Factors in Computing Systems Proceedings (May 2, 2019), <https://doi.org/10.1145/3290605.3300336>.

<sup>66</sup> Zara Abrams, *Why Young Brains Are Especially Vulnerable to Social Media*, APA (Feb. 3, 2022), <https://www.apa.org/news/apa/2022/social-media-children-teens> (“Starting around age 10, children’s brains undergo a fundamental shift that spurs them to seek social rewards, including attention and approval from their peers.”).

acceptance evokes activation in the brain's reward center.<sup>67</sup> Further, minors' prefrontal cortex, which helps regulate responses to social rewards, is not as mature as adults'.<sup>68</sup> These factors all converge to create a feedback loop in which, because minors crave this social reinforcement, they seek it out, and ultimately are unequipped with the tools to protect themselves against the allure of "rewards" that these manipulative design features purportedly promise.

Social manipulation design features also exploit young people's tendency for social comparison and recreate, on a 24/7 basis, the high school cafeteria experience where everyone can instantly see who is popular and who is not. Features such as like and follower counts and comment displays induce anxiety in minors that they or their content may not be as popular as that of their peers. In the words of one high school student, "[I]f you get a lot of likes, then 'Yay,' you look relevant, but then if you don't get a lot of likes and/or views, it can completely crush one's confidence. Especially knowing that you're not the only one who's able to see it."<sup>69</sup> Snapchat streaks literally quantify the strength of users' relationships and create pressure on users to communicate with their friends on the app daily.<sup>70</sup> Teens report feeling obligated to maintain Snapstreaks to "feel more popular" and show that they "care about that person."<sup>71</sup>

Ultimately, these design features create strong incentives for young people to engage in potentially harmful behaviors. Their drive for social rewards "lead[s] to greater relinquishing of security in certain arenas to gain social validation and belonging, for example, disclosing publicly to participate in online communities and accrue large amounts of likes, comments, and followers."<sup>72</sup> Young users quickly learn that they can improve their social media metrics by posting frequently and posting particularly provocative or risqué content.<sup>73</sup> Such posts can increase the risk of cyberbullying and sexual exploitation. In addition, the pressure to

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<sup>67</sup> Eveline Crone & Elly A. Konijn, *Media Use and Brain Development During Adolescence*, 9 *Nature Comm.* 1, 4 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5821838/>.

<sup>68</sup> For example, adults "tend to have a fixed sense of self that relies less on feedback from peers" and "adults have a more mature prefrontal cortex, an area that can help regulate emotional responses to social rewards." Zara Abrams, *Why Young Brains Are Especially Vulnerable to Social Media*, APA (Feb. 3, 2022), <https://www.apa.org/news/apa/2022/social-media-children-teens>.

<sup>69</sup> Katie Joseff, *Social Media Is Doing More Harm than Good*, Common Sense Media (Dec. 17, 2021), <https://www.commonsensemedia.org/kids-action/articles/social-media-is-doing-more-harm-than-good>.

<sup>70</sup> Taylor Lorenz, *Teens Explain the World of Snapchat's Addictive Streaks, Where Friendships Live or Die*, Insider (Apr. 14, 2017, 1:58 PM), <https://www.insider.com/teens-explain-snapchat-streaks-why-theyre-so-addictive-and-important-to-friendships-2017-4>; Lori Janjigian, *What I Learned After Taking Over My 13-Year-Old Sister's Snapchat for Two Weeks*, Business Insider (Aug. 4, 2016, 11:53 AM), <https://www.businessinsider.com/how-teens-are-using-snapchat-in-2016>.

<sup>71</sup> *Id.*

<sup>72</sup> Nicholas D. Santer et al., *Early Adolescents' Perspectives on Digital Privacy, Algorithmic Rights and Protections for Children* (2021) at 6 (citing J.C. Yau & S. M. Reich, "It's Just a Lot of Work": Adolescents' Self-Presentation Norms and Practices on Facebook and Instagram, 29 *J. Res. on Adolescence* 196, 196-209 (2019)).

<sup>73</sup> For example, Adolescent girls report feeling pressure to post sexualized selfies as a means of generating attention and social acceptance from their peers. Macheroni, G., Vincent, J., Jimenez, E. 'Girls Are Addicted to Likes so They Post Semi-Naked Selfies': Peer Mediation, Normativity and the Construction of Identity Online, 9 *Cyberpsychology: Journal of Psychosocial Research on Cyberspace* (May 1, 2015), <https://doi.org/10.5817/CP2015-1-5>.

demonstrate popularity through high friend, follower, and like counts can lead children to accept friend requests from strangers, putting them at risk of predation.

### *Variable reward design features*

One objective of persuasive design is to reduce friction so that platforms are easier to use, and so young people will keep using them. Low-friction variable rewards are highly effective at maximizing the amount of time users spend on the service. The psychology that renders these features effective is based on research that predates the internet by many years, beginning with experiments by renowned psychologist B.F. Skinner in the early 20th century.<sup>74</sup> Research by Skinner and others revealed that when test subjects – both humans and other animals – are rewarded unpredictably for a given action, they will engage in the action for a longer period of time than if the reward is predictable.<sup>75</sup> Specifically, the brain generates more dopamine in response to an uncertain reward than in response to an expected and reliable one.<sup>76</sup> The tendency of variable rewards to drive compulsive behavior is sometimes referred to as the “Vegas Effect,” and is the primary mechanism at work in slot machines.<sup>77</sup> In the words of Nir Eyal, a consumer psychology expert who wrote the popular industry how-to *Hooked: How to Build Habit-Forming Products*, “[v]ariable schedules of reward are one of the most powerful tools that companies use to hook users.”<sup>78</sup>

One common example of variable rewards design features is the infinite or endless scroll mechanism with variable content. When a platform uses endless scroll, a user is continuously fed new pieces of content as they scroll down a feed or page, and they never know what might appear next. Harvard researchers Emily Weinstein and Carrie James explain in their recent book on teens and technology: “Apps like TikTok have an endless database of content to offer users. Some videos are pointless or boring or upsetting; others give a fleeting reward in the form of funny, relatable, or compelling content.”<sup>79</sup> The pursuit of the next “rewarding” piece of content keeps users scrolling. As one 16-year-old told Weinstein and James, Snapchat is “so addictive because it’s so easy to go on to the next thing.... And you never know what amazing thing could be on the next Story, and all you have to do is tap once and you get to the next thing.”<sup>80</sup>

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<sup>74</sup> J. E. Staddon & D. T. Cerutti, *Operant Conditioning*, 54 Annual Review of Psychology 115 (2003), <https://doi.org/10.1146/annurev.psych.54.101601.145124>; B. F. Skinner, *Two Types of Conditioned Reflex: A Reply to Konorski and Miller*, 16 J. Gen. Psychology, 272 (1937), <https://doi.org/10.1080/00221309.1937.9917951>.

<sup>75</sup> Laura MacPherson, *A Deep Dive into Variable Designs and How to Use Them*, DesignLi (Nov. 8, 2018), <https://designli.co/blog/a-deep-dive-on-variable-rewards-and-how-to-use-them/>; Mike Brooks, *The “Vegas Effect” of Our Screens*, Psychol. Today (Jan. 4, 2019), <https://www.psychologytoday.com/us/blog/tech-happy-life/201901/the-vegas-effect-our-screens>.

<sup>76</sup> Anna Hartford & Dan J. Stein, *Attentional Harms and Digital Inequalities*, 9 JMIR Mental Health 2, 3 (Feb. 11, 2022), <https://pubmed.ncbi.nlm.nih.gov/35147504/>.

<sup>77</sup> Mike Brooks, *The “Vegas Effect” of Our Screens*, Psychol. Today (Jan. 4, 2019), <https://www.psychologytoday.com/us/blog/tech-happy-life/201901/the-vegas-effect-our-screens>.

<sup>78</sup> Nir Eyal, *The Hook Model: How to Manufacture Desire in 4 Steps*, Nir and Far, <https://www.nirandfar.com/how-to-manufacture-desire/>.

<sup>79</sup> Emily Weinstein & Carrie James, *Behind Their Screens: What Teens Are Facing (And Adults Are Missing)*, MIT Press, at 33 (2022); see also GCFGlobal.org, *Digital Media Literacy: Why We Can’t Stop Scrolling*, <https://edu.gcfglobal.org/en/digital-media-literacy/why-we-cant-stop-scrolling/1/>.

<sup>80</sup> *Id.* at 34.

All popular social media platforms, including those used heavily by minors such as TikTok, Snapchat, Instagram, and Facebook, feature endless scroll feeds strategically designed to intermittently surface content that users are algorithmically predicted to engage with. An internal TikTok document said that the app maximizes for two metrics: user retention and time spent.<sup>81</sup> Similarly, a product manager for YouTube’s recommendation system explained that the platform’s recommendation algorithm “is designed to do two things: match users with videos they’re most likely to watch and enjoy, and . . . recommend videos that make them happy. . . . [S]o our viewers keep coming back to YouTube, because they know that they’ll find videos that they like there.”<sup>82</sup> And Adam Mosseri of Instagram said, “[W]e make a set of predictions. These are educated guesses at how likely you are to interact with a post in different ways.... The more likely you are to take an action, and the more heavily we weigh that action, the higher up you’ll see the post.”<sup>83</sup>

Tech companies know that variable rewards are a valuable tool to increase users’ activity and time spent online and ultimately, to maximize profits. But they are similarly aware of the risks associated with these types of rewards. For example, in 2020, responding to internal research indicating that teen users had difficulty controlling their use of Facebook and Instagram, a Meta employee wrote to a colleague: “I worry that the driving [users to engage in more frequent] sessions incentivizes us to make our product more addictive, without providing much more value... Intermittent rewards are the most effective (think slot machines), reinforcing behaviors that become especially hard to extinguish.”<sup>84</sup> Ultimately, these sophisticated variable reward techniques prey upon minors’ developmental sensitivity to rewards.

#### *Algorithmic content recommendation systems*

Algorithms designed to maximize engagement fill young people’s feeds with the content that is most likely to keep them online, even when that means exposing them to a post, image, or video that is dangerous or abusive. Platforms such as YouTube, TikTok, and Instagram serve users content based on automated suggestions. Algorithms choose which content to suggest to children and teens based on the vast amount of data they collect on users, such as likes, shares, comments, interests, geolocation, and information about the videos a user watches and for how long. As described above, these algorithms are designed to extend engagement by discerning which pieces of content a user is most likely to engage with – not whether the content or overall online experience is beneficial to the user.<sup>85</sup>

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<sup>81</sup> Ben Smith, *How TikTok Reads Your Mind*, New York Times, (Dec. 5, 2021), <https://www.nytimes.com/2021/12/05/business/media/tiktok-algorithm.html>.

<sup>82</sup> Creator Insider, *Behind the Algorithms - How Search and Discovery Works on YouTube*, YouTube (Apr. 16, 2021), <https://youtu.be/9Fn79qJa2Fc>.

<sup>83</sup> Adam Mosseri, *Shedding More Light on How Instagram Works*, Instagram (June 8, 2021), <https://about.instagram.com/blog/announcements/shedding-more-light-on-how-instagram-works>.

<sup>84</sup> Spence v. Meta Platforms, N.D. Cal. Case No. 3:22-cv-03294 at 82 (June 6, 2022) (citing Facebook Papers: “Teen Girls Body Image and Social Comparison on Instagram – An Exploratory Study in the US” (March 2020), at p. 8).

<sup>85</sup> A former YouTube engineer observed: “recommendations are designed to optimize watch time, there is no reason that it shows content that is actually good for kids. It might sometimes, but if it does, it is coincidence.” Orphanides, K.G. “Children’s YouTube is still churning out blood, suicide and cannibalism.” *Wired*, (March 23, 2018), <https://www.wired.co.uk/article/youtube-for-kids-videos-problems-algorithm-recommend>

Algorithmic recommendations can be particularly dangerous when they target children and teens' greatest vulnerabilities. Investigations have repeatedly demonstrated the way social media feeds deliver harmful mental health and eating disorder content to accounts registered to minors. A December 2022 report by the Center for Countering Digital Hate (CCDH) found that newly created TikTok accounts registered to teenagers that watched or liked videos about body image, mental health, or eating disorders received videos in their For You feed related to self-harm, suicide, or eating disorders within minutes.<sup>86</sup> These videos appeared on the accounts' For You feeds every 206 seconds on average. CCDH also studied the For You feeds of newly created TikTok accounts registered to teenagers that included the phrase "loseweight" in their usernames. Those accounts received videos about self-harm, suicide, or eating disorders in their For You feeds every 66 seconds on average.<sup>87</sup>

Other reports have made similar findings: A 2021 *Wall Street Journal* investigation documented how TikTok users were served videos that encouraged eating disorders and discussed suicide.<sup>88</sup> The same year, Senator Richard Blumenthal's office created an account for a fake 13-year-old girl that "liked" content about dieting, and the account was served pro-eating disorder and self-harm content within 24 hours.<sup>89</sup> Young users' engagement with this harmful content is valuable to tech companies: Our 2022 report detailed how Meta profits from 90,000 unique pro-eating disorder accounts that reach 20 million people, one-third of whom are minors, some as young as nine.<sup>90</sup>

Content recommendation algorithms also expose minors to videos of dangerous viral "challenges," which has tragically led to the serious injury and death of many young people. For example, media reports have documented how "the blackout challenge" on TikTok, in which young people hold their breath or choke themselves until they pass out, is responsible for the deaths of several children.<sup>91</sup> Many families say that their children learned about the challenge through recommended videos on their For You feeds.<sup>92</sup>

## **V. Apps, websites, and platforms target children with unfair surveillance advertising and influencer marketing techniques.**

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<sup>86</sup> Center for Countering Digital Hate, *Deadly by Design: Tik Tok Pushes Harmful Content Promoting Eating Disorders and Self-harm into users' feeds*, (Dec. 15, 2022), <https://counterhate.com/research/deadly-by-design/>

<sup>87</sup> *Id.*

<sup>88</sup> Wall Street Journal Staff, *Inside TikTok's Algorithm: A WSJ Video Investigation*, Wall Street Journal, (July 21, 2021), <https://www.wsj.com/articles/tiktok-algorithm-video-investigation-11626877477>.

<sup>89</sup> Nihal Krishan, *Senate office impersonates 13-year-old girl on Instagram to flag eating disorder content*, Yahoo News, (Sep. 30 2021), <https://www.yahoo.com/entertainment/senate-office-impersonates-13-old-212700515.html>.

<sup>90</sup> Fairplay, *Designing for Disorder: Instagram's Pro-eating Disorder Bubble* at 1 (Apr. 2022),

[https://fairplayforkids.org/wp-content/uploads/2022/04/designing\\_for\\_disorder.pdf](https://fairplayforkids.org/wp-content/uploads/2022/04/designing_for_disorder.pdf).

<sup>91</sup> Olivia Carville, *TikTok's Viral Challenges Keep Luring Young Kids to Their Deaths*, Bloomberg, (Nov. 30, 2022), <https://www.bloomberg.com/news/features/2022-11-30/is-tiktok-responsible-if-kids-die-doing-dangerous-viral-challenges>; Anne Marie Lee, *Child deaths blamed on TikTok 'blackout challenge' spark outcry*, CBS News, (Aug. 19, 2021), <https://www.cbsnews.com/news/tik-tok-blackout-challenge-child-deaths/>.

<sup>92</sup> Michael Levenson and April Rubin, *Parents Sue TikTok, Saying Children Died After Viewing 'Blackout Challenge'*, New York Times, (July 6, 2022), <https://www.nytimes.com/2022/07/06/technology/tiktok-blackout-challenge-deaths.html>.

Digital platforms also harm children and teens through unfair digital advertising practices, including surveillance advertising and influencer marketing. These techniques make it harder for young people to recognize content as advertising designed to influence their behaviors and defend themselves against it, rendering them vulnerable to the influence of corporate actors that can collect and utilize data to target them with precision.

Children face pervasive and inappropriate advertising from a young age: According to one study, more than 95% of early childhood videos on YouTube contain ads, and one in five videos viewed by children 8 and under contained ads that were not age-appropriate, such as ads that featured violent or sexualized content.<sup>93</sup> Researchers have also found a high rate of age-inappropriate advertisements on preschool apps<sup>94</sup> and have found that the educational potential of children's apps is severely degraded by the high number of disruptive ads that appear, particularly on free apps that are more likely to be used by low-income children.<sup>95</sup>

### *Surveillance advertising*

Surveillance advertising – targeted advertising using personal data collected by websites and platforms – is the dominant form of marketing online. Programmatic data-driven advertising accounted for 90% of display ads in the U.S. last year.<sup>96</sup> This pervasive form of advertising draws on massive amounts of data about young people. By some estimates, advertisers already possess over 13 million data points about a child by the time they turn 13, despite the fact that the Children’s Online Privacy Protection Act (COPPA) requires parental permission before sharing the personal information of children 12 and under with advertisers.<sup>97</sup> These data are drawn from countless daily activities, including web surfing, interacting with friends on social media, and recording messages and exchanging images and other communications on computers, phones, and tablets.<sup>98</sup> Smart home technologies allow companies to collect data on a young person’s home life; extended reality (virtual, augmented, and mixed reality) devices can collect unique biometric data.

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<sup>93</sup> Radesky, J. S., Schaller, A., Yeo, S. L., Weeks, H. M., & Robb, M.B. “Young kids and YouTube: How ads, toys, and games dominate viewing.” *Common Sense Media*, (2020), [https://d2e111jq13me73.cloudfront.net/sites/default/files/uploads/research/2020\\_youngkidsyoutube-report\\_final-release\\_forweb.pdf](https://d2e111jq13me73.cloudfront.net/sites/default/files/uploads/research/2020_youngkidsyoutube-report_final-release_forweb.pdf).

<sup>94</sup> Meyer M, Adkins V, Yuan N, Weeks HM, Chang YJ, Radesky J. “Advertising in Young Children's Apps: A Content Analysis.” *J Dev Behav Pediatr*, (Jan. 2019), <https://pubmed.ncbi.nlm.nih.gov/30371646/>.

<sup>95</sup> Meyer, M., Zosh, J.M., McLaren, C., Robb, M., McCaffery, H., Golinkoff, R.M., Hirsh-Pasek, K., & Radesky, J. “How educational are “educational” apps for young children? App store content analysis using the Four Pillars of Learning framework.” *Journal of Children and Media*, (2021), <https://www.tandfonline.com/doi/abs/10.1080/17482798.2021.1882516?journalCode=rchm20>.

<sup>96</sup> Meaghan Yuen, *Programmatic Digital Display Advertising in 2022: Ad Spend, Formats, and Forecast*, Insider Intelligence (May 23, 2022), <https://www.insiderintelligence.com/insights/programmatic-digital-display-ad-spending/>.

<sup>97</sup> *SuperAwesome Launches Kid-Safe Filter to Prevent Online Ads from Stealing Children’s Personal Data*, SuperAwesome (Dec. 6, 2018), <https://www.superawesome.com/superawesome-launches-kid-safe-filter-to-prevent-online-ads-from-stealing-childrens-personal-data/>.

<sup>98</sup> Wolfie Christl, *Corporate Surveillance in Everyday Life: How Companies Collect, Combine, Analyze, Trade, and Use Personal Data on Billions*, Cracked Labs (June 2017), [https://crackedlabs.org/dl/CrackedLabs\\_Christl\\_CorporateSurveillance.pdf](https://crackedlabs.org/dl/CrackedLabs_Christl_CorporateSurveillance.pdf).

Kids and teens cannot appreciate the depth and breadth of these data collection systems, nor the way they are used to target them with precision. Younger children largely think about privacy in interpersonal terms, such as the ability to be left alone and control access to physical places.<sup>99</sup> As children get older, they may start to think about privacy in terms of freedom from surveillance at school or by the government, but they do not think about privacy in the sense that companies might use information about them to influence their purchasing choices, for example.<sup>100</sup>

Ultimately, surveillance ads are inherently unfair when targeted to children. As Fairplay, Global Action Plan, and Reset Australia described in a report about Facebook:

On the one side is a child, poorly equipped to distinguish between advertising and information, especially within digital contexts. On the other, Facebook with its vast troves of data about the child, including but not limited to their browsing history, mood, insecurities, their peers' interests, and more. This power imbalance makes surveillance advertising inherently more manipulative than contextual digital advertising, let alone traditional analogue advertising.<sup>101</sup>

As with algorithmically recommended content, surveillance ads can be used to target and exacerbate young people's vulnerabilities. Leaked documents from Facebook revealed in 2017 that the company told advertisers it could help them target teens at moments when they are feeling specific emotions, such as "silly," "defeated," "overwhelmed," "useless" and "a failure."<sup>102</sup> Facebook Australia told advertisers it could specify when teens are likely to experience certain moods, sharing that "earlier in the week, teens post more about 'anticipatory emotions' and 'building confidence,' while weekend teen posts contain more 'reflective emotions' and 'achievement broadcasting.'"<sup>103</sup>

This capability allows marketers to target vulnerable young people with ads for harmful products. Ads for risky "Flat Tummy Teas" and dangerous exercise routines target young women on Instagram. Early digital marketing campaigns for Juul vaping products were deliberately targeted at young audiences.<sup>104</sup> Researchers were able to target ads to teenagers

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<sup>99</sup> Kaiwen Sun et al., *They See You're a Girl if You Pick a Pink Robot with a Skirt: A Qualitative Study of How Children Conceptualize Data Processing and Digital Privacy Risks*, CHI Conference on Human Factors in Computing Systems (May 2021), <https://dblp.org/rec/conf/chi/SunSASGRS21>; Priya Kumar et al., *No Telling Passcodes Out Because They're Private: Understanding Children's Mental Models of Privacy and Security Online*, 1 Proceedings of the ACM on Human-Computer Interaction 64, (Nov. 2017), <https://pearl.umd.edu/wp-content/uploads/2017/08/kumar-et-al-2018-CSCW-Online-First.pdf>.

<sup>100</sup> Mariya Stoilova et al., *Digital by Default: Children's Capacity to Understand and Manage Online Data and Privacy*, 8 Media and Commc'n 197, 200, (2020), <http://dx.doi.org/10.17645/mac.v8i4.3407>.

<sup>101</sup> Yi-ching Ho, E., Farthing, R., *How Facebook still targets surveillance ads to teens*, Reset Australia, Fairplay, and Global Action Plan (Nov. 2021), <https://fairplayforkids.org/wp-content/uploads/2021/11/fbsurveillancereport.pdf>.

<sup>102</sup> Sam Machkovech, *Report: Facebook Helped Advertisers Target Teens Who Feel "Worthless"*, ArsTechnica (May 1, 2017), <https://arstechnica.com/information-technology/2017/05/facebook-helpedadvertisers-target-teens-who-feel-worthless/>.

<sup>103</sup> *Id.*

<sup>104</sup> Jidong Huang et al., *Vaping versus JUULing: how the extraordinary growth and marketing of JUUL transformed the US retail e-cigarette market*, 28 Tobacco Control 146, 150 (Feb. 22, 2019), <https://doi.org/10.1136%2Ftobaccocontrol-2018-054382> ("JUUL was one of the first major retail e-cigarette

on Facebook based on their interests in gambling, alcohol, and dieting.<sup>105</sup> While Meta announced in 2021 that they were restricting advertisers' ability to target teens based on their interests, this change was misleading, as the company's ad targeting algorithm still used the data it collected on young people to determine who is most likely to be vulnerable to a given ad.<sup>106</sup>

Even in cases where the products aren't as harmful as alcohol or dieting aids, surveillance advertising exploits children. As Common Sense notes, "Kids may be profiled as gamers, impulsive purchasers, or anxious overshareers – and then unfairly targeted by ads that encourage more of these things."<sup>107</sup>

### *Influencer marketing*

Product placement and host-selling are not permitted on children's television, where regulations require clear separation between content that is advertising and content that is not. The online marketing ecosystem does not have similar rules, and as a result, advertising and entertainment and informational content are deeply intertwined.

One of the ways that marketers reach kids and teens online is by advertising products through influencers and trusted fictional characters. This method of advertising is highly appealing to marketers because it is seen as more "authentic" and it capitalizes on the relationships that kids and teens form with the characters and media figures they see online. This advertising sector is huge and getting bigger. Market research shows that influencer marketing is currently growing by billions of dollars annually.<sup>108</sup> Influencer marketing reaches even the youngest kids online: "kidfluencers" on YouTube receive millions of views on videos of themselves unboxing and showing off new toys from brands and marketers.

Research demonstrates that influencer marketing overcomes children and teenagers' nascent cognitive ability to understand and defend themselves against advertising. For example, young people identify closely with these media characters and figures and develop feelings or

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brands that relied heavily on social media to market and promote its products."); Julia Cen Chen-Sankey et al., E-cigarette Marketing Exposure and Subsequent Experimentation Among Youth and Young Adults, 144 *Pediatrics* at 8 (Nov. 2019), <https://doi.org/10.1542/peds.2019-1119>; see also Erik Larson et al., *Juul Reaches \$439 Million Settlement Over Marketing to Kids*, Bloomberg Law, (Sept. 6, 2022), <https://news.bloomberglaw.com/health-law-and-business/juul-reaches-439-million-multi-state-settlement-over-marketing>.

<sup>105</sup> Farthing, Rys, et al., *Profiling Children for Advertising: Facebook's Monetisation of Young People's Personal Data*, Reset Australia, (April 2021), [https://au.reset.tech/uploads/resettechaustralia\\_profiling-children-for-advertising-1.pdf](https://au.reset.tech/uploads/resettechaustralia_profiling-children-for-advertising-1.pdf).

<sup>106</sup> *Id.* In February 2023, Meta announced yet another change to its ad targeting for teens and now claims it will not use teens interests or online activities at all for the targeting of ads to minors. As of this writing, Fairplay has not had the opportunity to verify this claim.

<sup>107</sup> Joseph Jerome and Ariel Fox Johnson, *AdTech and Kids: Behavioral Ads Need a Time-Out*, Common Sense, (2021), <https://d2e111jq13me73.cloudfront.net/sites/default/files/uploads/AdTech%20and%20Kids.pdf>.

<sup>108</sup> Traackr, *2022 Influencer Marketing Impact Report* at 2, (2022), <https://www.traackr.com/content/influencermarketing-impact-report-2022>; *State of Influencer Marketing 2022*, Influencer Marketing Hub at 10, (2022), [https://influencermarketinghub.com/ebooks/Influencer\\_Marketing\\_Benchmark\\_Report\\_2022.pdf](https://influencermarketinghub.com/ebooks/Influencer_Marketing_Benchmark_Report_2022.pdf).

friendships known as parasocial relationships.<sup>109</sup> As a result of these relationships, kids and teens have difficulty responding to content from a beloved character or creator as an advertisement,<sup>110</sup> and can therefore be unduly influenced by marketers. As Fairplay outlined in its comments to the Federal Trade Commission last year, the existing system of disclosures – even when it is followed – does very little to alert kids and teens to the massive amounts of advertising content they encounter online every day.<sup>111</sup>

This form of stealth marketing negatively impacts kids and teens. Children who watch unboxing videos are more likely to nag their parents for products and throw a tantrum if the answer is “no” than when they watch regular commercials.<sup>112</sup> In internal Meta research leaked by Frances Haugen, teens specified that influencers and their materialistic, over-the-top “money for nothing” – or effortlessly rich – lifestyles triggered social comparisons and contributed to young people feeling bad about themselves. The research emphasized the cumulative effect of influencer marketing: “However, users report seeing multiple pieces of content from celebrities and influencers in each app session, multiplying their effect. In addition, their friends mimic celebrities’ beauty and fashion standards, further compounding the effects of one piece of content.”<sup>113</sup>

## **VI. Congress must take action to protect young people online.**

When kids are in digital spaces for learning, socializing, and relaxing, they deserve the opportunity for the most positive experience, designed in a way that understands and supports their unique ways of seeing the world. They should be able to explore in developmentally-appropriate ways without being manipulated into spending more time or targeted by algorithms that amplify harmful content.

We cannot continue to hope that tech platforms will unilaterally disarm in the race for young people’s valuable attention. Nor can we expect young people to extract themselves from the

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<sup>109</sup> Amanda N. Tolbert & Kristin L. Drogos, *Tweens’ Wishful Identification and Parasocial Relationships With YouTubers*, 10 *Frontiers In Psychology* 1, (2019), <https://www.frontiersin.org/articles/10.3389/fpsyg.2019.02781/full>; Frans Folkvord, K.E. Bevelander & Esther Rozendaal, et al., *Children’s bonding with popular YouTube vloggers and their attitudes toward brand and product endorsements in vlogs: an explorative study*, 20 *Young Consumers Insight And Ideas For Responsible Marketers* (2019), <https://doi.org/10.1108/YC-12-2018-0896>.

<sup>110</sup> Emmelyn Croes & Jos Bartels, *Young adults’ motivations for following social influencers and their relationship to identification and buying behavior*, 125 *Computers In Human Behavior* at 7, (2021), <https://doi.org/10.1016/j.chb.2021.106910>; 4 Brigitte Naderer, Jörg Matthes & Stephanie Schäfer, *Effects of disclosing ads on Instagram: the moderating impact of similarity to the influencer*, 40 *International Journal of Advertising* 686, 687-88 (2021).

<sup>111</sup> See generally Comments of Fairplay, Alexander Neville Foundation, et al. in the Matter of Protecting Kids from Stealth Advertising in Digital Media (filed July 18, 2022), <https://fairplayforkids.org/wp-content/uploads/2022/07/influencer-comments.pdf>.

<sup>112</sup> Harsha Gangadharbatla & Deepti Khedekar, *The Role of Parental Mediation and Persuasion Knowledge in Children’s Consumption of Unboxing Videos*, 22 *Advertising & Society Quarterly* (2021), <https://muse.jhu.edu/article/813891>.

<sup>113</sup> The Wall Street Journal, *Teen Girls Body Image and Social Comparison on Instagram – An Exploratory Study in the U.S.*, (Sep. 29, 2021) <https://s.wsj.net/public/resources/documents/teen-girls-body-image-and-social-comparison-on-instagram.pdf>.

exploitative platforms where their friends are, or expect overworked parents to navigate confusing settings across multiple platforms and monitor every moment their kids are online.

The last time Congress passed a law to protect children online was 25 years ago. The digital landscape has changed dramatically, in many unforeseen ways, since the passage of the Children's Online Privacy Protection Act in 1998 when smart phones, YouTube, social media, multiplayer gaming with voice chat, and virtual reality didn't even exist. In addition, COPPA only covers children until they turn 13 and has failed to effectively keep kids ages 12 and under off of platforms like Snapchat, Instagram and TikTok, leaving significant demographics vulnerable to exploitation and harm. Congress's continued inaction has emboldened Big Tech to develop an exploitative business model without considering or mitigating its harmful effects on children and teens. Consequently, the social media platforms that define youth culture and norms and shape children's values, behavior, and self-image were developed with little to no thought given to how young people might be negatively affected.

We cannot expect a 25-year-old framework to adequately protect children from today's sophisticated persuasive technologies powered by big data and machine learning or in the rapidly developing metaverse. We need new legislation that puts brakes on this harmful business model and curbs dangerous and unfair design practices.

At a minimum, such legislation should:

1. Extend privacy protections to teens. Currently, COPPA only covers children until their 13<sup>th</sup> birthday. It is critical to limit the collection of adolescents' data, which fuels harmful recommendations and puts young people at risk of privacy harms.
2. Ban targeted advertising to children and teens to protect them from harmful marketing targeted to their vulnerabilities. Surveillance ads not only take advantage of young people's developing capacities and sell them on harmful products, but they also incentivize tech platforms to prioritize engagement over safety.
3. Require tech companies to make the best interests of children and teens a primary consideration in the design and operation of their platforms, including their algorithms. It is important that such liability be broad enough to capture current harmful practices, such as quantified popularity, as well as emerging features and products. The latter is particularly important given the rapid development of metaverse applications targeted to young people.<sup>114</sup> Companies should have a duty to prevent and mitigate harms to young people before new features or products are released.
4. Prohibit the use of dark patterns, which are used to undermine young people's autonomy and manipulate them into spending more time or money on a platform.
5. Impose transparency requirements, including access to algorithms, that enable outside researchers to better understand the impacts of social media on young people. We

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<sup>114</sup> See, e.g., Salvador Rodriguez, *Meta Pursues Teen Users as Horizon Metaverse App Struggles to Grow*, The Wall Street Journal (Feb. 8, 2023) <https://www.wsj.com/articles/meta-to-revamp-horizon-metaverse-app-plans-to-open-for-teen-use-as-soon-as-march-11675749223>.

shouldn't have to rely on courageous whistleblowers like Frances Haugen to understand how social media platforms are impacting our youth.

6. Require minors' privacy and account settings to be on the most protective by default, rather than putting the onus on youth or their parents to navigate a maze of confusing settings just to have a safer, more age-appropriate experience.
7. Have a clear and effective enforcement mechanism, such as a division at the FTC, solely dedicated to protecting young people and their privacy online.

The good news is that two bills which together would do all of the above, the Kids Online Safety Act and the Children and Teens' Online Privacy Protection Act, advanced out of the Commerce Committee with broad bipartisan support last July – the first such legislation to advance out of committee in more than two decades. The Committee votes came on the heels of a number of important hearings with whistleblowers, child development experts, and tech executives in the Senate Judiciary and Commerce Committees and House Energy and Commerce Committee, which established a clear record of harm and the need for new online protections for young people.

The bad news, of course, is that neither bill became law or even received a floor vote. And every day that the status quo continues, children are suffering – and even dying – from preventable harms.

We've named the problem and debated the solutions. Now it's time to build on last year's momentum and disrupt the cycle of harm by passing privacy and safety-by-design legislation. Let's make 2023 the year that Congress finally takes a huge step toward creating the internet children and families deserve.

Thank you again for having me here today and I look forward to discussing all of this with you.