



Youth Privacy in Immersive Technologies:

Regulatory Enforcement, Self-Regulatory Guidance, and Remaining Uncertainties

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Executive Summary

As young people adopt immersive technologies like extended reality (XR) and online virtual worlds, companies are expanding their presence in virtual spaces, launching brand experiences, advertisements, and digital products. While virtual worlds may in some ways resemble traditional social media and gaming experiences, they may also collect more data and raise potential manipulation risks, particularly for more vulnerable and impressionable young people. Most existing protections for kids and teens online were not crafted with immersive technologies in mind, creating some uncertainty about how they should be applied in novel contexts.

This policy brief analyzes recent regulatory and self-regulatory actions and guidance related to youth privacy, safety, and advertising in immersive spaces, pulling out key lessons for organizations building experiences in virtual worlds. This policy brief also contains an Appendix summarizing the cases and guidance used in the analysis. Key takeaways include:

- The FTC interprets COPPA's definition of "personal information" broadly, including data types that immersive technologies commonly collect.
- Default settings are an important part of protecting children's and teens' privacy and safety.
- Immersive technologies' unique capabilities may give organizations new ways to engage in manipulative design.
- Immersive application providers must comply with COPPA if their application is "directed to children," or if there is "actual knowledge" children are accessing it.
- Privacy notices and disclosures should be provided in a format appropriate for and consistent with the design elements of immersive experiences.
- Advertising disclosures in immersive environments should be designed to be as clear and conspicuous as possible, and provided in an age-appropriate manner.
- Platforms that allow advertisements to children should ensure that developers, brands, and content creators have the necessary tools and guidance to clearly and conspicuously disclose the presence of advertising to children.
- Privacy by design and by default demonstrate to regulatory and self-regulatory bodies that an organization takes youth privacy seriously.
- Privacy and advertising practices for teens should take into account the unique considerations relevant for teen privacy and safety, compared to child and adult guidance.
- Organizations with a strong "privacy culture," and that demonstrate good faith efforts to follow the law, are more likely to be given the benefit of the doubt



Introduction

Young people are flocking to immersive technologies, a collection of hardware and software products that substitute, enhance, or alter users' individual, physical-world experiences. Numerous studies show that Gen Z, more than any other generation, is interested in immersive media and gaming platforms and is increasingly using these tools to enhance learning environments in schools.¹ To reach this growing audience, companies have expanded their presence in virtual spaces, launching brand experiences, advertisements, and digital products.² While immersive virtual worlds in many ways resemble traditional social media and gaming experiences, they pose some unique risks, particularly related to data privacy and manipulation.³

Because young peoples' ability to make decisions are still developing, and their data is more sensitive, it is important to ensure that virtual world applications—whose immersive quality can exacerbate the threat of manipulation—account for these potential vulnerabilities. Most existing protections for kids online were not crafted with immersive technologies in mind, creating some uncertainty about how they should be applied in novel contexts. Additionally, the existing U.S. federal children's privacy law, the Children's Online Privacy Protection Act (COPPA), applies to those under 13 and does not provide guidance for companies seeking to design spaces with protections appropriate for teens' unique needs. However, in recent settlements, the Federal Trade Commission has signaled that it will use its Section 5 authority to scrutinize privacy practices in regards to teens as well.⁴

¹ Alexandra Lange, "Where the Teens Are Hanging Out in Quarantine," Bloomberg, November 24, 2020, 10:32AM, <https://www.bloomberg.com/news/articles/2020-11-24/teens-lead-the-way-in-adapting-to-online-public-space>. Nicki Louise, "Younger people spurn Instagram & Facebook for more immersive, virtual worlds," TechStartups, February 21, 2023, <https://techstartups.com/2023/02/21/younger-people-spurn-instagram-facebook-for-more-immersive-virtual-worlds/>. Thought Leadership, "The Metaverse: New Study Reveals Surprising Gen Z Insights," Razorfish, April 2022, <https://www.razorfish.com/articles/perspectives/razorfish-vmg-metaverse-research/>. INLEA, "Gen Z and the Metaverse: Key Insights," April 27, 2022, <https://inlea.com/gen-z-and-the-metaverse/>. THEADCCOGROUP, "46% of Gen Z Believes They Will Work in the Metaverse in the Future," December 14, 2022, <https://www.adecogroup.com/future-of-work/latest-insights/46of-gen-z-believes-they-will-work-in-the-metaverse-in-the-future/>. NOKIA, "Meet the metaverse generation New Gen Z research in partnership with Ipsos," September 2022, <https://www.nokia.com/metaverse/metaverse-gen-z-market-research/>.

² Laufik, Michele. "How Big-Name Brands Are Taking Over the Immersive Experience Market." February 1, 2023. <https://www.bizbash.com/production-strategy/experiential-marketing-activations-sponsorships/article/22684334/big-brands-and-their-immersive-experiences>. Solis, Brian. "Brands Must Reimagine Digital Experiences And Product Innovation For An Emerging Metaverse, Insights Should Also Be Applied To Today's Digital And Physical Experiences." Forbes, March 15, 2023. <https://www.forbes.com/sites/briansolis/2023/03/15/brands-must-reimagine-digital-experiences-and-product-innovation-for-an-emerging-metaverse-insights-should-also-be-applied-to-todays-digital-and-physical-experiences/>. Balis, Janet. "How Brands Can Enter the Metaverse." Harvard Business Review, January 3, 2022. <https://hbr.org/2022/01/how-brands-can-enter-the-metaverse>.

³ CARU. (2023). *Metaverse guardrails: Children's Advertising Review Unit (CARU) Metaverse Guardrails 2023 Digital Report*. Retrieved from https://8712603.fs1.hubspotusercontent-na1.net/hubfs/8712603/Template%20Assets/Landing%20Page%20Assets/Metaverse%20Guardrails/CARU_MetaverseGuardrails_2023_Digital_Report.pdf.

⁴ United States of America v. Epic Games, Inc., 2022 (discussing the FTC mandated the defendant apply privacy default settings to children and teens, despite alleged violations of COPPA, which only applies to children). Press Release. Federal Trade Commission. "Fortnite Video Game Maker Epic Games to Pay More Than Half a Billion Dollars over FTC Allegations of Privacy Violations and Unwanted Charges." December 19, 2022. <https://www.ftc.gov/news-events/news/press-releases/2022/12/fortnite-video-game-maker-epic-games-pay-more-half-billion-dollars-over-ftc-allegations>.



In addition, self-regulatory bodies approved as COPPA safe harbors⁵ have brought their own enforcement actions and developed resources like Advertising Guidelines⁶ and Privacy Guidelines⁷ to guide companies towards compliant, age-appropriate, and privacy-protecting practices.

This policy brief will examine recent regulatory and self-regulatory actions and policy guidance related to youth privacy in immersive spaces, pulling out key lessons for organizations building experiences in virtual worlds. It will also articulate any remaining areas of uncertainty in terms of complying with emerging youth privacy regulations, as well as balancing privacy, safety, and other equities when designing and operating immersive experiences for young people.

⁵ BBB National Programs. "Children's Advertising Review Unit (CARU) COPPA Safe Harbor Services." Retrieved from <https://bbbprograms.org/programs/all-programs/children's-advertising-review-unit/COPPA-Safe-Harbor-Services>. Entertainment Software Rating Board (ESRB). "Privacy." Retrieved from <https://www.esrb.org/privacy/>. Privo. "COPPA Safe Harbor Program." Retrieved from <https://www.privo.com/coppa-safe-harbor-program>.

⁶ BBB National Programs: Children's Advertising Review Unit. *Self Regulatory Guidelines for Children's Advertising*. Retrieved from https://bbbnpr-bbbp-stf-use1-01.s3.amazonaws.com/docs/default-source/caru/caru_advertisingguidelines.pdf (last accessed March 15, 2024).

⁷ *Id.*



Analysis: Recent FTC Enforcement Actions and Guidance

The FTC has shown a strong interest in using its consumer protection authority to bring enforcement actions against a wide range of digital companies for alleged “unfair and deceptive” practices, rule violations,⁸ and other unlawful conduct. Some of these actions have been against companies operating in the immersive technology space, or whose features and data practices may be illustrative for organizations working on immersive technology. The Commission has also issued a number of policy statements and guidance documents relevant for organizations building immersive technologies, touching on issues such as biometric data and advertising to children. It is clear the agency is thinking seriously about how its authority could apply in emerging sectors like AI,⁹ and organizations working on immersive technologies should take heed. This section will examine what lessons recent FTC privacy cases and guidance provide for organizations building immersive technologies.¹⁰

The FTC interprets COPPA’s definition of “personal information” broadly, including data types that immersive technologies commonly collect

The FTC has the authority to promulgate rules to flesh out COPPA’s definition of “personal information.”¹¹ Over the years, the types of data covered by this definition have expanded as technology evolves, as “personal information” under COPPA includes any information concerning the child or their parent that the website collects online from the child and combines with an identifier. This includes data types that are particularly relevant for immersive technologies such as photo, video, and audio files containing a child’s image or voice; geolocation information; telemetry and device data; and—when combined with other types of personal information—biometric data, health information, and “avatars generated from a [c]hild’s image.”¹²

⁸ Press Release. Federal Trade Commission. “FTC Enforcement Action to Bar GoodRx from Sharing Consumers’ Sensitive Health Info for Advertising.” February 1, 2023. <https://www.ftc.gov/news-events/news/press-releases/2023/02/ftc-enforcement-action-bar-goodrx-sharing-consumers-sensitive-health-info-advertising>.

⁹ Grande, Allison. “FTC Won’t Repeat Privacy ‘Mistake’ With AI, Bureau Chief Says.” Law360, September 19, 2023. <https://www.law360.com/articles/1723298/ftc-won-t-repeat-privacy-mistake-with-ai-bureau-chief-says>.

¹⁰ For a breakdown of specific relevant cases and guidance, see the Appendix.

¹¹ COPPA grants the FTC the authority to expand the definition of “personal information” to add “any other identifier that the Commission determines permits the physical or online contacting of a specific individual” (§6501 (8)(F)): <http://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title15-section6501&edition=prelim>.

The COPPA Rule has added data types to the definition of “personal information” not included in the original COPPA statute (§ 312.2): <https://www.ecfr.gov/current/title-16/chapter-I/subchapter-C/part-312>.

¹² Order for Permanent Injunction, 9 ECF No. 19 (U.S. v. Microsoft Corp., 253 F.3d 34 (C.A.D.C., 2001), https://www.ftc.gov/system/files/ftc_gov/pdf/microsoftproposedstiporder.pdf. 15 U.S.C. § 6502(a)(1). COPPA Notice of Proposed Rulemaking (NPRM) where the FTC asks, “Should an avatar generated from a child’s image constitute ‘personal information’ under the COPPA Rule even if the photograph of the child is not itself uploaded to the site or service and no other personal information is collected from the child? If so, are these avatars sufficiently covered under the current COPPA Rule, or are further modifications to the definition required to cover avatars generated from a child’s image?”



For example, if an immersive experience allows children to create avatars based on images of themselves, and then pairs this with other personal information, the avatar itself will also be considered personal information.

Notably, the FTC also takes an expansive view of “biometric” data, covering body-based data that *does* identify an individual, that *can* be used to identify an individual, and that *is reasonably linked* to an individual’s profile or ID.¹³ In enforcement, the Commission has explicitly stated that many data types common in immersive technologies, such as eye tracking, are considered biometric data.¹⁴ These broad interpretations of “biometric” data and “personal information” likely mean that nearly all body-based data immersive technologies collect could be regulated as “personal information.” Understanding the scope of what is considered personal information under COPPA is key given that body-based data immersive technologies rely on massive amounts of data in order to operate. That said, there are (and could be more) narrow exceptions to COPPA requirements for particular uses of body-based data. For example, collecting an audio recording that contains a child’s voice, turning it into a text transcript to allow voice controls or accessibility, and then immediately deleting the audio recording does not trigger COPPA requirements if done in this narrow way.¹⁵

Default settings are an important part of protecting children's and teens' privacy and safety

An application or product’s default settings can play a big role in protecting users’ privacy and safety, particularly for young users. To minimize the risk a young user will have a harmful interaction with strangers in immersive environments, developers can set defaults that prevent unwanted contact or interaction, such as virtual barriers around users¹⁶ and allowing users to block other people.¹⁷ Default settings can be more restrictive in terms of how the personal

¹³ Khan, Lina M., et al. "Policy Statement of the Federal Trade Commission on Biometric Information and Section 5 of the Federal Trade Commission Act." Federal Trade Commission, May 18, 2023.
<https://www.ftc.gov/legal-library/browse/policy-statement-federal-trade-commission-biometric-information-section-5-federal-trade-commission>.

¹⁴ Notably, eye tracking is absent from other privacy laws and rulemaking. See *US v. Microsoft*, page 9. Retrieved from https://www.ftc.gov/system/files/ftc_gov/pdf/microsoftproposedstiporder.pdf.

¹⁵ The FTC proposes to codify the audio recordings policy statement in the 2024 Notice of Proposed Rulemaking. *Children's Online Privacy Protection Rule*, 89 Fed. Reg. 2034, 2058 (Jan. 11, 2024) (to be codified at 16 CFR 312); Federal Trade Commission (FTC). "Children's Online Privacy Protection Act (COPPA) Policy Statement on Audio Recordings." Retrieved from https://www.ftc.gov/system/files/documents/public_statements/1266473/coppa_policy_statement_audiorecordings.pdf.

¹⁶ For example, see Ars Technica. "Meta establishes four-foot personal boundary to deter VR groping." February 2022. Retrieved from <https://arstechnica.com/gaming/2022/02/meta-establishes-four-foot-personal-boundary-to-deter-vr-groping/>.

¹⁷ META. "Block or unblock someone in Meta Horizon Worlds." Retrieved from <https://www.meta.com/help/quest/articles/horizon/safety-and-privacy-in-horizon-worlds/block-or-unblock-horizon/> (last visited March 17, 2024).



information of young people is shared with other users,¹⁸ third-party game and app developers, and advertisers,¹⁹ instead giving parents and teens the ability to affirmatively opt in to more data collection or sharing.

It is particularly important to ensure that default settings protect children's privacy and safety, given the uncertainty around the psychological effects of immersive technologies. Early research indicates that immersive environments are more emotionally impactful than traditional online spaces and games,²⁰ though more research is needed to better understand specific impacts on young people. Since immersive environments can lead to more realistic experiences, default settings should minimize the risk of bullying, threats, and harassment, the effects of which could be amplified in these spaces.

¹⁸ United States of America v. Epic Games, Inc., 2022 (the FTC alleged the defendant enabled, through default settings, children to communicate via voice and text chat with strangers, and also broadcasted children and teen users' profile names, which led to bullying and harassment. As part of the settlement, defendant agreed to change its default settings and only allow children and teens to communicate via voice and text chat with strangers with affirmative consent (parental for children, teens for themselves) through a privacy setting). Press Release. Federal Trade Commission (FTC). "Fortnite Video Game Maker Epic Games to Pay More Than Half a Billion Dollars over FTC Allegations of Privacy Violations and Unwanted Charges." December 19, 2022. Retrieved from <https://www.ftc.gov/news-events/news/press-releases/2022/12/fornite-video-game-maker-epic-games-pay-more-half-billion-dollars-over-ftc-allegations>.

By applying the stipulated order not just to children but teens as well (who normally are not covered by COPPA) the FTC signals it's looking at safety overall, not just for children.

¹⁹ In US v. Microsoft, the FTC alleged the defendant provided children with a default setting to share user data with advertisers. Press Release. Federal Trade Commission (FTC). "FTC Will Require Microsoft to Pay \$20 million over Charges it Illegally Collected Personal Information from Children without Their Parents' Consent." June 5, 2023. Retrieved from <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-will-require-microsoft-pay-20-million-over-charges-it-illegally-collected-personal-information>.

²⁰ Cummings, James J., Jeremy Bailensn, & Mailyn J. Fidler. "How Immersive Is Enough?: A Foundation for a Meta-analysis of the Effect of Immersive Technology on User Presence." Stanford University, 2015. Retrieved from <https://vhil.stanford.edu/sites/g/files/sbiybj29011/files/media/file/cummings-mp-how-immersive.pdf>. Lemmens, Jeroen S., Monika Simon, & Cindy R. Sumter. "Fear and Loathing in VR: The Emotional and Physiological Effects of Immersive Games." SpringerLink, July 5, 2021. Retrieved from <https://link.springer.com/article/10.1007/s10055-021-00555-w>. Franks, Mary Anne. "The Desert of the Unreal: Inequality in Virtual and Augmented Reality." 51 U.C. Davis L. Rev. 499. Retrieved from https://lawreview.law.ucdavis.edu/issues/51/2/Symposium/51-2_Franks.pdf.



Immersive technologies' unique capabilities may give organizations new ways to engage in manipulative design

Because immersive technologies create a greater sense of immersion, presence, and embodiment than traditional online spaces,²¹ they may be prone to new—and potentially stronger—forms of manipulation and deception.²² This is particularly true for children and teens, who are not only more likely to engage in immersive experiences,²³ but who are also still developing their abilities to make judgments. The FTC has noted this risk, stating that children in immersive environments like gaming platforms, virtual reality, and social media are at increased risk of manipulation because these platforms use techniques to keep them engaged longer and more frequently.²⁴ Virtual experience could more easily entice children into making purchases or turning over data through the use of manipulative design while also making it more difficult for a parent to delete children's data or allowing for unauthorized credit card charges.²⁵ Technologies that collect data types like eye gaze could also theoretically exploit the insights they get about user attention and behavior to “hide” privacy notices, or make it more difficult to exercise user controls. The novel design affordances that make immersive technologies so powerful can also be exploited to manipulate or deceive children and teens, as well as their parents, highlighting the importance of keeping parental and user controls accessible, consistent, and clear.²⁶

²¹ In this context, “immersion” refers to the feeling of being in an alternate environment; “presence” refers to the feeling of communicating without a medium; and “embodiment” refers to the feeling that an avatar is one's actual body. See Heller, Brittan. “Watching Androids Dream of Electric Sheep: Immersive Technology, Biographic Psychography, and the Law,” 23 Vanderbilt Journal of Entertainment & Technology Law 1 (2020): 22. Retrieved from <https://scholarship.law.vanderbilt.edu/cgi/viewcontent.cgi?article=1000&context=jetlaw>.

²² Ramirez, G. Nikki, Jameson Spivack, and Brendan David-John. “Deceptive Patterns.” Retrieved from https://bmdj-vt.github.io/assets/pdfs/Deceptive_Patterns.pdf.

²³ *Supra* note 1.

²⁴ Levine, Samuel. “Protecting Kids from Stealth Advertising in Digital Media.” Federal Trade Commission (FTC), September 2023. Retrieved from https://www.ftc.gov/system/files/ftc_gov/pdf/p214505kidsadvertisingstaffperspective092023.pdf.

²⁵ In *US v. Epic Games*, the FTC alleged the defendant had engaged in “dark patterns” by tricking users into making purchases, and then penalizing or threatening to penalize users that contested the charges. The FTC also alleged the defendant unlawfully collected personal information from children without parental consent, and then made it unnecessarily difficult for the parents to delete the data that had been collected. Federal Trade Commission (FTC). “Fortnite Video Game Maker Epic Games to Pay More Than Half a Billion Dollars over FTC Allegations.” December 2022. Retrieved from <https://www.ftc.gov/news-events/news/press-releases/2022/12/fornite-video-game-maker-epic-games-pay-more-half-billion-dollars-over-ftc-allegations>.

²⁶ In *US v. Amazon*, the FTC alleged the defendant falsely represented that Alexa app users (and, in the case of children, their parents) could delete geolocation and voice recording data, but in many instances did not actually delete this data when requested. Federal Trade Commission (FTC) and Department of Justice (DOJ). “FTC, DOJ Charge Amazon with Violating Children's Privacy Law by Keeping Kids' Alexa Voice Recordings Forever.” May 2023. Retrieved from <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-doj-charge-amazon-violating-childrens-privacy-law-keeping-kids-alexa-voice-recordings-forever>.



Immersive application providers must comply with COPPA if their application is “directed to children,” or if there is “actual knowledge” children are accessing it

In determining whether a product or service is considered “directed to children,” the FTC makes a holistic evaluation based on factors like the application’s audience composition, subject matter, visual and audio aesthetics, and marketing.²⁷ Based on this criteria, certain immersive virtual worlds (such as Roblox and Minecraft) are likely considered to be directed to children, due to their audience demographics, visual style, and gameplay. However, other immersive technologies whose minimum age requirement is 13—like VR headsets—will likely claim that their products explicitly exclude children.²⁸

At the same time, providers with “actual knowledge” that children are accessing their applications are still covered,²⁹ and the FTC takes a broad view of the “actual knowledge” standard.³⁰ Third parties receiving children’s data from first party platforms should also take care to comply with COPPA obligations.

Privacy notices and policies should be provided in a format appropriate for and consistent with the design elements of immersive experiences

The process by which organizations share information about their privacy practices with users matters, and the design of notice and consent mechanisms should match user experiences in immersive environments.

²⁷ In determining whether the game Fortnite was directed to children, the FTC looked at the game’s “...subject matter, use of animation, child-oriented activities and language, and music content, evidence of intended audience, and empirical evidence about the game’s player demographics...” (7) Federal Trade Commission (FTC). “Complaint Against Epic Games, Inc.” Retrieved from https://www.ftc.gov/system/files/ftc_gov/pdf/2223087EpicGamesComplaint.pdf.

²⁸ While most VR headset developers recommend users be 13 and above, Meta’s policy states users should be 10 and older, while Sony’s policy states users should be 12 and older. Isaac, Mike, et al. “Meta to Lower Age for Users of Virtual Reality Headset to 10 From 13.” New York Times, June 16, 2023. Retrieved from <https://www.nytimes.com/2023/06/16/technology/meta-virtual-reality-headset-children-safety.html>. Kelly, Girard, Jeff Graham, Jill Bronfman, & Steve Garton. “Privacy of Virtual Reality: Our Future in the Metaverse and Beyond.” Common Sense Media, 2022. Retrieved from <https://www.common Sense Media.org/sites/default/files/research/report/privacy-of-virtual-reality-our-future-in-the-metaverse-and-beyond.pdf>.

²⁹ Even if a provider claims an application is not child-directed, ignoring evidence that children are using the application does not remove compliance obligations. Feuer, Stacy. “Wrapping Up 2022 with A Huge (Epic) Fortnite Privacy Case.” Entertainment Software Rating Board (ESRB), December 21, 2022. Retrieved from <https://www.esrb.org/privacy-certified-blog/wrapping-up-2022-with-a-huge-epic-fortnite-privacy-case/>

³⁰ Entertainment Software Rating Board (ESRB). “COPPA Battlegrounds: The Quest to Uncover the Secrets of the FTC’s Kids’ Privacy Actions.” Retrieved from <https://www.esrb.org/privacy-certified-blog/coppa-battlegrounds-the-quest-to-uncover-the-secrets-of-the-ftcs-kids-privacy-actions/>.



This means providing relevant information to users and parents in a privacy notice during registration and within an application, not merely in a separate privacy policy.³¹ Additionally, data collection should be sequenced in such a way that verifiable parental consent (VPC) is obtained before any children's data is collected.³² If any information about a child is collected before consent is given, it should not be retained unless the parent subsequently consents. If an organization knows a user is a child, it should not request any more information until parental consent is obtained.³³ Organizations can also use the unique capabilities of immersive environments to design more informative, effective privacy notices.³⁴

Organizations should take additional steps to be transparent about advertising practices

Young users in immersive environments may also develop parasocial relationships with celebrities or influencers, which may further impede their ability to discern between organic content and advertising. The FTC recommends that influencers are transparent about their advertising in such environments, and platforms that allow influencers to engage with minors may need to account for this additional risk. These platforms may consider requiring influencers to self-identify content that includes advertising through tools provided by the platform, and offering parental controls that allow parents to limit or block their children from seeing such content.³⁵

³¹ In U.S. v. Microsoft, the FTC alleged the defendant allowed users who self-reported as children to provide personal information such as phone numbers and agree to service and advertising policies before parental consent had been obtained. Plaintiff's Complaint for Permanent Injunction, page 5. Retrieved from https://www.ftc.gov/system/files/ftc_gov/pdf/microsoftcomplaintcivilpenalties.pdf.

³² For more on VPC under COPPA, see FPF's report *The State Of Play: Is Verifiable Parental Consent Fit For Purpose?* (Jun. 2023), <https://fpf.org/wp-content/uploads/2023/06/FPF-VPC-White-Paper-06-02-23-final2.pdf> [<https://perma.cc/EC4C-D4JH>].

³³ In US v. Microsoft, the FTC alleged the defendant allowed users who self-reported as children to provide personal information such as phone numbers, and agree to service and advertising policies, before parental consent had been obtained. (5) Federal Trade Commission (FTC). Complaint against Microsoft for Civil Penalties. Retrieved from https://www.ftc.gov/system/files/ftc_gov/pdf/microsoftcomplaintcivilpenalties.pdf.

³⁴ For research on novel methods of ensuring data transparency and appropriate disclosure in extended reality (XR) environments, see META. "Data Transparency and Control in XR and the Metaverse." Retrieved from https://www.ttclabs.net/site/assets/files/11085/data_transparency_and_control_in_xr_and_the_metaverse_report.pdf (last visited March 17, 2024).

³⁵ Federal Trade Commission (FTC). "Kids' Advertising: Staff Perspective." Retrieved from https://www.ftc.gov/system/files/ftc_gov/pdf/p214505kidsadvertisingstaffperspective092023.pdf.



The FTC also recommends providing specific types of disclosures for minors:³⁶

- **“Prominent” and “just in time” notices:** For example, if an entire section of a VR experience is an advertisement, the advertiser and creator should both consider a watermark-type disclosure that appears at regular intervals or is permanently visible within that section.
- **Multi-modal disclosures:** A disclosure should be both communicated orally and in writing, so the child is more likely to encounter the disclosure and understand it.
- **Easy-to-understand and easy-to-see icons:** Influencers can use these icons to signal to children that they received money or free items for the message.

³⁶ (12) https://www.ftc.gov/system/files/ftc_gov/pdf/p214505kidsadvertisingstaffperspective092023.pdf



Self-Regulatory Cases and Safe Harbor Guidance

Advertising disclosures in immersive environments should be designed to be as clear and conspicuous as possible and provided in an age-appropriate manner

Immersive virtual worlds, home to hundreds of thousands of users overall,³⁷ represent a major opportunity for advertisers to reach potential consumers—including and especially young people. Because immersive spaces may more easily allow for blurring between organic and advertising content—what the FTC refers to as “blurred advertising” or “stealth advertising”—it is especially important that ads are clearly labeled and carry disclosures that young people can understand.³⁸ To ensure adequate disclosure,³⁹ organizations can:

- Make the disclosure in the same format as the ad. For example, if an ad is a video with both visuals and audio, the disclosure should be made in both as well.⁴⁰
- Make disclosures at the beginning of a video advertisement and multiple times throughout if the video is longer than a few minutes.⁴¹ Constant, always-on disclosures may disrupt the experience, so periodic disclosures may be preferable.⁴²

³⁷ Tan, Huileng. "The Metaverse Isn't Dead, Says the Billionaire CEO Behind Fortnite—And He's Jokingly Trying to Hold a Wake So 600 Million Gamers Can Mourn Its Passing in 'Real-Time 3D!'" Business Insider, May 10, 2023, 1:28 AM. Retrieved from <https://www.businessinsider.com/metaverse-meta-isnt-dead-billionaire-ceo-fortnite-2023-5>.

³⁸ CARU alleged that Roblox violated its Advertising Guidelines by not providing adequate notice to children that advertising was present within an experience or video on the platform. BBB National Programs. "Children's Advertising Review Unit Finds Roblox in Violation of Its Advertising Guidelines; Recommends Modifications and Compliance Monitoring." May 12, 2023. Retrieved from <https://bbbprograms.org/media-center/dd/roblox-advertising>.

³⁹ For more guidance on what kinds of experiences and content should be accompanied by advertising disclosures, see (7-9):

https://8712603.fs1.hubspotusercontent-na1.net/hubfs/8712603/Template%20Assets/Landing%20Page%20Assets/Metaverse%20Guardrails/CARU_MetaverseGuardrails_2023_Digital_Report.pdf.

⁴⁰ "In Advertisements with audio and video components, disclosures made in both audio and video are more likely to be noticed by Children and therefore most likely to be effective." (5) Children's Advertising Review Unit (CARU). "CARU Advertising Guidelines." Retrieved from

https://bbbnbp-bbbp-stf-use1-01.s3.amazonaws.com/docs/default-source/caru/caru_advertisingguidelines.pdf.

⁴¹ "In Advertisements longer than a few minutes, disclosures should be repeated periodically to increase the likelihood that Children will see/hear the disclosure." (5) Children's Advertising Review Unit (CARU). "CARU Advertising Guidelines." Retrieved from

https://bbbnbp-bbbp-stf-use1-01.s3.amazonaws.com/docs/default-source/caru/caru_advertisingguidelines.pdf.

⁴² BBB NAT'L PROGRAM: CHILDREN'S ADVERTISING REVIEW UNIT, *Building Guardrails for Child-Directed Advertising & Privacy in the Metaverse* (2021),

<https://8712603.fs1.hubspotusercontent-na1.net/hubfs/8712603/T>.



- Avoid blurring the boundaries between in-app content and advertisements, or suggest that the user must take an action within the ad to access the app content.⁴³
- Use language and visuals—design techniques such as size, color, shading, and borders—that are easier for children to understand.⁴⁴
- Stay away from “deceptive door openers” and social pressure or validation. This includes implying that the use of a product will lead to greater acceptance, or confer special qualities.⁴⁵

Platforms that allow advertisements to children should ensure that developers, brands, and content creators have the necessary tools and guidance to clearly and conspicuously disclose the presence of advertising to children

Platforms that allow advertising in their virtual experiences have some level of responsibility in ensuring that influencers with whom they have material connections disclose this connection in their promotional material.⁴⁶

⁴³ “In online services directed to Children, Advertisements integrated into the content of a game or activity should be easily identifiable as Advertising.” (6)

https://bbbnbp-bbbp-stf-use1-01.s3.amazonaws.com/docs/default-source/caru/caru_advertisingguidelines.pdf

“CARU found these ads excessively interfered with gameplay, required children to download and install unnecessary apps, and often provided unclear and inconspicuous methods for children to exit the ad and return to the game.”

<https://bbbprograms.org/media-center/dd/firefly-games-violations> BBB National Programs. “Children’s Advertising Review Unit Finds Firefly Games in Violation of COPPA and CARU’s Advertising and Privacy Guidelines; Company Agrees to Corrective Actions.” August 2, 2022. Retrieved from

https://bbbnbp-bbbp-stf-use1-01.s3.amazonaws.com/docs/default-source/caru/caru_advertisingguidelines.pdf

“Any methods provided to dismiss or exit an Advertisement must be Clear and Conspicuous to Children.” (8)

https://bbbnbp-bbbp-stf-use1-01.s3.amazonaws.com/docs/default-source/caru/caru_advertisingguidelines.pdf

⁴⁴ (6) Children’s Advertising Review Unit (CARU). “CARU Advertising Guidelines.” Retrieved from

https://bbbnbp-bbbp-stf-use1-01.s3.amazonaws.com/docs/default-source/caru/caru_advertisingguidelines.pdf.

⁴⁵ “Deceptive door openers are advertising or sales practices that misleadingly lure someone into considering a purchase by withholding key information or using a fake claim.” BBB National Programs. “In-App and In-Game Ads Compliance 2022.” Retrieved from

<https://bbbprograms.org/media-center/bd/insights/2021/11/03/in-app-and-in-game-ads-compliance-2022>.

“Advertisements should not convey to Children that possession of a product will result in greater acceptance by peers or that lack of a product will result in less acceptance by peers...Advertisements should not imply that purchase or use of a product will confer upon the user the prestige, skills, or other special qualities of characters appearing in Advertising.” (8) Children’s Advertising Review Unit (CARU). “CARU Advertising Guidelines.” Retrieved from

https://bbbnbp-bbbp-stf-use1-01.s3.amazonaws.com/docs/default-source/caru/caru_advertisingguidelines.pdf.

⁴⁶ “Advertisers should ensure that their Endorsers Clearly and Conspicuously disclose that they have a material connection to the Advertiser (i.e., a connection that is not expected by ordinary Children).” (6)

https://bbbnbp-bbbp-stf-use1-01.s3.amazonaws.com/docs/default-source/caru/caru_advertisingguidelines.pdf



This may also extend beyond the platform to cover influencers' conduct on other social media sites as well.⁴⁷ This would require platforms to more proactively monitor affiliates' behavior elsewhere on the web, not just within the platform.⁴⁸

Privacy by design and by default demonstrate to regulatory and self-regulatory bodies that an organization takes youth privacy seriously

The way that platforms and applications design systems for collecting information, and for determining whether a user is a child, impacts youth privacy and safety. Based on CARU case decisions, best practices for designing information flows that prioritize privacy include:⁴⁹

- Providing multiple opportunities for app developers to indicate an app is child-directed.⁵⁰
- Informing app developers of the requirement to indicate whether an app is child-directed in the User Manual and enforcing by way of Terms of Service and related policies.⁵¹
- When providing an age-gate, doing so in a neutral manner that doesn't imply users must be 13 or older to access the app, pressuring children to lie about their age.⁵²
- Not allowing children to remain on the app if it is discovered that they have breached the age-gate.⁵³

⁴⁷ CARU alleged that Roblox violated its Advertising Guidelines by not taking "adequate measures to ensure that social media influencers with child audiences adequately disclose material connections." BBB National Programs. "Roblox Advertising." Retrieved from <https://bbbprograms.org/media-center/dd/roblox-advertising>.

⁴⁸ In CARU's view, platforms have an obligation to provide influencers and endorsers on their platform with guidance on making advertising disclosures to children, and to monitor the influencers on other platforms to ensure they are making proper disclosures. BBB National Programs. "Roblox Advertising." Retrieved from <https://bbbprograms.org/media-center/dd/roblox-advertising>.

⁴⁹ For more guidance on privacy best practices for children in immersive experiences, see (15) CARU (Children's Advertising Review Unit). "Metaverse Guardrails: CARU's Recommendations for Children's Advertising in the Metaverse." Retrieved from https://8712603.fs1.hubspotusercontent-na1.net/hubfs/8712603/Template%20Assets/Landing%20Page%20Assets/Metaverse%20Guardrails/CARU_MetaverseGuardrails_2023_Digital_Report.pdf.

⁵⁰ In determining that Unity did not have "actual knowledge" that its Ads SDK (software development kit) was collecting persistent identifiers from child-targeted apps, CARU found that Unity "had provided adequate processes to allow app developers to identify their services as child-directed." (CARU Case #6435 Case Report, available in online archive) BBB National Programs. "Unity Ad SDK Data Collection." Retrieved from <https://bbbprograms.org/media-center/dd/unity-ad-sdk-data-collection>. (press release)

⁵¹ <https://bbbprograms.org/media-center/dd/unity-ad-sdk-data-collection>

⁵² In determining that Snap complies with COPPA and goes beyond minimal procedures to prevent under-age use of its services, CARU "found that the app employs an age-gate asking date of birth in a neutral manner and does not display text that implies a user needs to be over 13 years of age to register." BBB National Programs. "CARU Finds Snap Inc. Complies with COPPA. Company Goes Beyond Minimal Procedures to Prevent Under Age Use." Retrieved from <https://bbbprograms.org/media-center/dd/caru-finds-snap-inc.-complies-with-coppa.-company-goes-beyond-minimal-procedures-to-prevent-under-age-use>.

⁵³ BBB National Programs. "CARU Finds Snap Inc. Complies with COPPA. Company Goes Beyond Minimal Procedures to Prevent Under Age Use." Published July 18, 2019. Retrieved from <https://bbbprograms.org/media-center/dd/caru-finds-snap-inc.-complies-with-coppa.-company-goes-beyond-minimal-procedures-to-prevent-under-age-use>.



- Including a mechanism in the age gate to prevent children from circumventing age-screening.⁵⁴
- Providing a reporting tool for users to flag accounts that might be underage and a robust team to investigate such reports.⁵⁵
- Not using the information collected via child-directed apps for tracking or targeting purposes, including behavioral advertising, for any other purpose.⁵⁶
- After becoming aware of any misuse of children’s data on a third-party app, immediately reporting the offending app and deleting the data in question.⁵⁷
- Putting in safeguards to prevent developers from accessing identifiers simultaneously that, when accessed together, allow for tracking.⁵⁸
- Having an internal multidisciplinary team with stakeholders from across the organization evaluate application features that deal with personal data.⁵⁹

⁵⁴ For example, in web and mobile environments, session cookies can be used narrowly to prevent a child user from attempting to get past the age-gate an unlimited number of times. “Historically, websites have used session cookies to prevent children from going back and changing their age. While cookie usage is more limited in the mobile environment, CARU held that the same requirement is still necessary.” BBB National Programs. “CARU to Facebook: Improve Mechanisms for Blocking Under-13 Users; Facebook Agrees to Place Age-Gating Mechanisms in Mobile App to Prevent Children from Falsifying Age.” Published May 1, 2019. Retrieved from <https://bbbprograms.org/media-center/dd/caru-to-facebook-improve-mechanisms-for-blocking-under-13-users-facebook-agrees-to-place-age-gating-mechanisms-in-mobile-app-to-prevent-children-from-falsifying-age>.

“CARU determined, however, that the parent gate allowed users, who had identified themselves as under age 13 on the initial age screen, to make unlimited attempts to change their age in responding to this second gate without prior verifiable parental consent.” BBB National Programs. “Outright Games Commits to Adherence with COPPA and CARU Guidelines.” Published July 6, 2022. Retrieved from <https://bbbprograms.org/media-center/dd/outright-games-coppa-caru-guidelines>.

⁵⁵ “There is an easy, in-app reporting tool which allows any user to flag and report accounts that are believed to be underage. Each report is investigated thoroughly by its Trust & Safety team. If any instance is unable to be resolved by an agent, the privacy program manager is the point of escalation.” (CARU Case #6297 Case Report, available in online archive) BBB National Programs. “CARU Finds Snap Inc. Complies with COPPA. Company Goes Beyond Minimal Procedures to Prevent Under Age Use.” Published July 18, 2019. Retrieved from <https://bbbprograms.org/media-center/dd/caru-finds-snap-inc.-complies-with-coppa.-company-goes-beyond-minimal-procedures-to-prevent-under-age-use>.

⁵⁶ BBB National Programs. “Unity Ad SDK Data Collection.” Published April 28, 2021. Retrieved from <https://bbbprograms.org/media-center/dd/unity-ad-sdk-data-collection>.

⁵⁷ “CARU also looked at proactive measures taken by Unity to rectify the misuse of its Ads SDK, including promptly flagging the Number Coloring and Cats and Cosplay apps as child-directed on its platform and taking steps to delete the personal information it had inadvertently collected from child users on those apps.” BBB National Programs. “Unity Ad SDK Data Collection.” Published April 28, 2021. Retrieved from <https://bbbprograms.org/media-center/dd/unity-ad-sdk-data-collection>.

⁵⁸ “Prior to CARU’s inquiry, Unity had updated its entire platform to prevent developers from accessing the AAID simultaneously with the Android ID to prevent similar concerns in the future.” BBB National Programs. “Unity Ad SDK Data Collection.” Published April 28, 2021. Retrieved from <https://bbbprograms.org/media-center/dd/unity-ad-sdk-data-collection>.

⁵⁹ “In fact, all app features that touch personal data are vetted collaboratively through the legal team, product engineers, and trust and safety representatives.” BBB National Programs. “CARU Finds Snap Inc. Complies with COPPA. Company Goes Beyond Minimal Procedures to Prevent Under Age Use.” Published July 18, 2019. Retrieved from <https://bbbprograms.org/media-center/dd/caru-finds-snap-inc.-complies-with-coppa.-company-goes-beyond-minimal-procedures-to-prevent-under-age-use>.



Privacy and advertising practices for teens should take into account the unique considerations relevant for teen privacy and safety, compared to child and adult guidance

For applications that are directed specifically to teens, organizations should consider teens' unique risks and needs. For example, it may be easier to blur the line between advertising and organic content, making it more difficult for young people to understand that a particular experience is actually an ad. Applications should provide privacy and advertising disclosures in clear, conspicuous language that will be understandable to teens, explaining how ad and content targeting works, if applicable.⁶⁰ They should also make default settings that prioritize user safety and privacy, such as minimizing data collection, opt-in consent for behavioral ad targeting, and opt-in consent for collecting precise geolocation data.⁶¹ Additionally, organizations can consider building out separate, dedicated spaces in their applications that are teen- and/or child-friendly.⁶²

Organizations with a strong privacy culture that demonstrate good faith efforts to follow the law are more likely to be given the benefit of the doubt

With a changing legislative landscape and constantly-evolving technology, it is not always clear whether certain design and data collection practices are lawful. Organizations can make mistakes without acting maliciously or neglectfully, and regulators and self-regulatory bodies are more likely to give organizations that otherwise operate in good faith the benefit of the doubt.⁶³ Beyond compliance, there is no formula for demonstrating a good faith commitment to children's privacy, though implementing strong internal policies around children's data will help. This could include:⁶⁴

- Implement the highest level of privacy standards in all geographic areas, rather than varying by jurisdiction.
- Have a dedicated team that investigates reports about and enforces the organization's policies on child users in the application.

⁶⁰ Council of Better Business Bureaus. "TAPP Roadmap: Transparency, Accountability, Privacy and Protection in Digital Advertising." Retrieved from https://industryselfregulation.org/docs/librariesprovider5/default-document-library/tapp_roadmap.pdf.

⁶¹ *Id.*

⁶² Feuer, Stacy, Sr. Vice President, Privacy Certified. "Ready Player Go: Getting Your Privacy Program Metaverse Ready in 2023." Entertainment Software Rating Board (ESRB), January 26, 2023. <https://www.esrb.org/privacy-certified-blog/ready-player-go-getting-your-privacy-program-metaverse-ready-in-2023/> (accessed Feb 1, 2024).

⁶³ "Where companies have a comprehensive culture of privacy, good faith efforts may outweigh strict adherence to principles that may have outlived their utility in certain instances." "CARU Finds Snap Inc. Complies with COPPA. Company Goes Beyond Minimal Procedures to Prevent Under-Age Use." BBB National Programs, July 18, 2019, <https://bbbprograms.org/media-center/dd/caru-finds-snap-inc.-complies-with-coppa.-company-goes-beyond-minimal-procedures-to-prevent-under-age-use> (accessed Oct. 1, 2023).

⁶⁴ These recommendations are drawn from Snap's child privacy and safety practices, which CARU identified as strong policies that "go[] beyond minimal procedures to prevent under-age use." (CARU Case #6297 Case Report) *Id.*



- Provide tools for reporting the presence of potential underage users to be investigated by a dedicated team.
- Set default settings that prevent strangers from being able to view a user's profile or contact them without first connecting.
- Design products to collect and store as little data as possible.



Remaining Areas of Uncertainty

Applications for kids and teens will continue to become more immersive, blurring the line between the physical and digital worlds. Immersive environments often collect large amounts of data and may pose unique manipulation risks, making it important that young people—who are particularly vulnerable to these harms—are protected in these spaces. Recent enforcement actions and guidance from regulatory agencies and self-regulatory bodies provide some insight into how immersive technology designers can employ privacy best practices. However, because immersive technologies are relatively new and evolve rapidly, much of this guidance is pulled from other contexts, so questions remain about how regulations apply in immersive environments, and how to operationalize best practices. These questions include:

- How **age-appropriate design principles** will best fit into an immersive technology context, such as how best to ensure strong default privacy settings for underage users; the best methods for clarity and transparency regarding data practices notices and advertising disclosures; and whether an immersive experience should require unique, additional safeguards.
- What **novel data collection and analysis methods** in the immersive technology space will require discerning data practices surrounding its safeguarding and use, such as what kinds of inferences are appropriate to make from body-based data or to what extent avatars not derived from a child's data are considered personal information.
- How **immersive technology impacts children and teens**; more research is needed to understand whether certain kinds of experiences and privacy practices are harmful for children and teens, if there are unique risks to children's privacy and mental health, and how any potential issues can be addressed.

Organizations developing and deploying immersive technology devices, platforms, and applications will need to be mindful of these remaining questions, and regulatory and self-regulatory bodies could ease their uncertainty by providing clear policy statements and guidance.



Appendix

FTC Enforcement Actions

<i>Company</i>	<i>Description of Charges</i>	<i>Order</i>
Epic Games ⁶⁵	<p>Alleged privacy violations:</p> <ul style="list-style-type: none"> Violated COPPA rule by collecting personal info from children under 13 who played Fortnite (child-directed online service) without notifying parents or obtaining parents' verifiable consent Violated prohibition against unfair practices by enabling real-time voice and text chat communications for children/teens by default <p>Alleged illegal "dark patterns":</p> <ul style="list-style-type: none"> Used "dark patterns" to trick users into making purchases Charged account holders without authorization Blocked access to purchased content 	Monetary penalties; prohibited from enabling voice and text communications for children and teens without parental consent; delete data collected in violation of COPPA Rule; establish comprehensive privacy program; prohibition on charging consumers through "dark patterns" or blocking access to content for disputing charges
Microsoft ⁶⁶	<p>Allegedly violated COPPA Rule by:</p> <ul style="list-style-type: none"> Collecting personal information from children under the age of 13 without providing notice to parents or obtaining parental consent beforehand Failing to tell parents about what information it collected from children, why it is collecting this information, and that it discloses some of the data to third parties Retaining personal information from children longer than necessary 	Monetary penalty; provide info to parents about child accounts; obtain parental consent for child accounts created before May 2021; create systems to delete ill-gotten children's data; notify video game publishers when user is a child
Amazon ⁶⁷	<p>Allegedly violated COPPA Rule by:</p> <ul style="list-style-type: none"> Preventing parents from exercising their deletion 	Monetary penalty; delete certain voice recordings and

⁶⁵ "Fortnite Video Game Maker Epic Games to Pay More Than Half a Billion Dollars Over FTC Allegations." Federal Trade Commission (FTC), December 19, 2022, <https://www.ftc.gov/news-events/news/press-releases/2022/12/fortnite-video-game-maker-epic-games-pay-more-half-billion-dollars-over-ftc-allegations> (accessed Oct 1, 2023).

⁶⁶ "FTC Will Require Microsoft to Pay \$20 Million Over Charges It Illegally Collected Personal Information." Federal Trade Commission (FTC), June 5, 2023, <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-will-require-microsoft-pay-20-million-over-charges-it-illegally-collected-personal-information> (accessed Oct. 1, 2023).



	<p>rights under the COPPA Rule</p> <ul style="list-style-type: none"> • Keeping sensitive voice and geolocation data for years • Using unlawfully retained data for its own purposes, while putting data at risk of harm from unnecessary access <p>Alleged unfair and deceptive practices:</p> <ul style="list-style-type: none"> • Falsely representing that Alexa app users could delete their geolocation info • Falsely representing that Alexa users could delete their or their child's voice recordings • Unfair privacy practices 	<p>geolocation information; algorithmic disgorgement; cannot use ill-gotten data to create/improve a product; delete inactive children's Alexa accounts; notify users of enforcement action, and of retention and deletion practices; cannot misrepresent retention policies; create privacy program for geolocation data</p>
Ring ⁶⁸	<p>Alleged unfair and deceptive practices:</p> <ul style="list-style-type: none"> • Misrepresenting that the company took reasonable steps to ensure Ring cameras are secure • Allowing thousands of employees (and contractors) to access recordings of customer's intimate spaces, without their knowledge or consent • Failing to provide reasonable security to prevent unauthorized access to customer's camera recordings 	<p>Monetary penalty; algorithmic disgorgement; delete customer videos from before 2018 and products derived from videos; privacy and security program with safeguards on human review (and third-party assessment); cannot misrepresent security practices; alert FTC about unauthorized access; notify customers about FTC action</p>
Edmodo ⁶⁹	<p>Allegedly violated the COPPA Rule by:</p> <ul style="list-style-type: none"> • Failing to provide direct notice to parents of 	<p>Cannot condition child participation in activity on</p>

⁶⁷ "FTC, DOJ Charge Amazon for Violating Children's Privacy Law, Keeping Kids' Alexa Voice Recordings Forever." Federal Trade Commission (FTC), May 2, 2023, <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-doj-charge-amazon-violating-childrens-privacy-law-keeping-kids-alexa-voice-recordings-forever> (accessed Oct. 1, 2023).

⁶⁸ "FTC Says Ring Employees Illegally Surveilled Customers, Failed to Stop Hackers from Taking Control of Users' Devices." Federal Trade Commission (FTC), May 31, 2023, <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-says-ring-employees-illegally-surveilled-customers-failed-stop-hackers-taking-control-users> (accessed Oct. 1, 2023).

⁶⁹ "FTC Says Ed-Tech Provider Edmodo Unlawfully Used Children's Personal Information for Advertising." Federal Trade Commission (FTC), May 22, 2023, <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-says-ed-tech-provider-edmodo-unlawfully-used-childrens-personal-information-advertising> (accessed Oct. 1, 2023)



	<p>children's data collection, use, or disclosure</p> <ul style="list-style-type: none"> Failing to obtain verifiable parental consent before any collection, use, or disclosure of personal information from children Retaining children's personal information longer than necessary <p>Alleged unfair and deceptive practices:</p> <ul style="list-style-type: none"> Outsourcing COPPA Rule compliance duties to schools or teachers without providing them with adequate information or support, likely causing substantial injury 	disclosing more info; requirements before collecting information from a child; cannot use child's info for non-educational purposes; cannot use schools as intermediaries in parental consent process; implement retention schedule; delete models developed using ill-gotten personal info
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CARU Cases

Company	Description of Case
Roblox ⁷⁰	Alleged that Roblox violated CARU's Advertising Guidelines by not adequately disclosing to children when ads were present in "experiences" or integrated into a video and not taking adequate measures to ensure influencers with child audiences disclosed this connection on other off-platform social media sites.
Unity ⁷¹	Determined Unity did not have "actual knowledge" their developer kit collected persistent identifiers from child-targeted apps and therefore did not violate COPPA.
Snap ⁷²	Determined Snap went beyond minimum COPPA requirements by taking effective measures to ensure under age children did not use its service.
Meta/Facebook ⁷³	Recommended that Meta/Facebook change its mobile app to improve its mechanism for preventing under age users from circumventing the age screen.

⁷⁰ BBB Nat'l Programs. "Children's Advertising Review Unit Determines Development Platform Unity Did Not Have Actual Knowledge of Ad SDK Data Collection in Child-Directed Apps." April 28, 2021. URL: <https://bbbprograms.org/media-center/dd/unity-child-directed-apps> (accessed Month Day, Year).

⁷¹ "Unity Ad SDK Data Collection." BBB National Programs, April 28, 2021, <https://bbbprograms.org/media-center/dd/unity-ad-sdk-data-collection> (accessed Month Day, Year).

⁷² "CARU Finds Snap Inc. Complies with COPPA. Company Goes Beyond Minimal Procedures to Prevent Under-Age Use." BBB National Programs, July 18, 2019, <https://bbbprograms.org/media-center/dd/caru-finds-snap-inc.-complies-with-coppa.-company-goes-beyond-minimal-procedures-to-prevent-under-age-use> (accessed Month Day, Year).

⁷³ "CARU to Facebook: Improve Mechanisms for Blocking Under-13 Users; Facebook Agrees to Place Age-Gating Mechanisms in Mobile App to Prevent Children from Falsifying Age." BBB National Programs, May 1, 2019, <https://bbbprograms.org/media-center/dd/caru-to-facebook-improve-mechanisms-for-blocking-under-13-users-facebook-agrees-to-place-age-gating-mechanisms-in-mobile-app-to-prevent-children-from-falsifying-age> (accessed Month Day, Year).



Firefly Games ⁷⁴	Alleged that Firefly Games violated COPPA and CARU's Advertising and Privacy Guidelines by having conflicting privacy policies, blurring the line between advertising and non-advertising content, and displaying unsafe and inappropriate advertising for children.
Outright Games ⁷⁵	Alleged that Outright Games violated COPPA and CARU's Advertising and Privacy Guidelines by providing a non-neutral age-gate, allowing children to bypass the age-gate, blurring the line between advertising and non-advertising content, and displaying unsafe and inappropriate advertising for children.

Guidance

Resource	Takeaways
Federal Trade Commission (FTC)	
Stealth advertising to children staff paper ⁷⁶	<p>Recommendations:</p> <ul style="list-style-type: none"> • Do not blur advertising. There should be a clear separation between kids' entertainment or educational content and advertising, using formatting techniques and visual and verbal cues to signal to kids they are about to see an ad. • Prominent, timely just-in-time disclosures should be provided verbally and in writing and include important information about the ad. • Platforms, content creators, and advertisers should consider creating and using an easy-to-understand and easy-to-see icon that signals to kids that money or free things were provided to the content creator to advertise the product. • All stakeholders should look for ways to educate kids, parents, and educators about how digital advertising works and help kids recognize and evaluate it. • Platforms should consider: (a) requiring content creators to self-identify content that includes advertising through policies and tools, and (b) offering parental controls that allow parents to limit or block their children from seeing such content.

⁷⁴ "Firefly Games Violations." BBB National Programs, August 2, 2022,

<https://bbbprograms.org/media-center/dd/firefly-games-violations> (accessed Month Day, Year).

⁷⁵ BBB Nat'l Programs. "Children's Advertising Review Unit Finds Outright Games in Violation of COPPA and CARU's Advertising and Privacy Guidelines; Company Agrees to Corrective Actions." July 6, 2022. Accessed Month Day, Year. URL: <https://bbbprograms.org/media-center/dd/outright-games-coppa-caru-guidelines>.

⁷⁶ Samuel Levine, *Protecting Kids from Stealth Advertising in Digital Media*, FTC (Sept. 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/p214505kidsadvertisingstaffperspective092023.pdf.



Biometrics policy statement ⁷⁷	<p>Practices the FTC will scrutinize:</p> <ul style="list-style-type: none"> • False or unsubstantiated marketing claims relating to the validity, reliability, accuracy, performance, fairness, or efficacy of technologies using biometric information • Deceptive statements about the collection and use of biometric information • Collection or use of biometric info that can create serious risk of harm to consumers when harms are not reasonably avoidable <p>Potential unfair or deceptive practices:</p> <ul style="list-style-type: none"> • Failing to assess foreseeable harms to consumers before collecting biometric info • Failing to promptly address known or foreseeable risks • Engaging in surreptitious and unexpected collection or use of biometric info • Failing to evaluate third-party practices and capabilities • Failing to provide appropriate employee/contractor training • Failing to conduct ongoing monitor of biometric technologies
Voice recordings enforcement policy statement ⁷⁸	<p>"...when a covered operator collects an audio file containing a child's voice solely as a replacement for written words, such as to perform a search or fulfill a verbal instruction or request, but only maintains the file for the brief time necessary for that purpose, the FTC would not take an enforcement action against the operator on the basis that the operator collected the audio file without first obtaining verifiable parental consent. Such an operator, however, must provide the notice required by the COPPA Rule..."</p>
Ed tech policy statement ⁷⁹	<p>Vendors:</p> <ul style="list-style-type: none"> • Cannot condition participation in an activity on a child disclosing more info than is reasonably necessary • May only use info to provide the requested online education service; marketing, advertising, and other commercial purposes are prohibited • May not retain info longer than is reasonably necessary

⁷⁷ Khan, Lina M., et al. "Policy Statement of the Federal Trade Commission on Biometric Information and Section 5 of the Federal Trade Commission Act." Federal Trade Commission, May 18, 2023.
<https://www.ftc.gov/legal-library/browse/policy-statement-federal-trade-commission-biometric-information-section-5-federal-trade-commission>.

⁷⁸ "FTC Statement on Enforcement Policy Regarding the Applicability of the COPPA Rule to the Collection and Use of Voice Recordings." October 20, 2017. Retrieved from
<https://www.ftc.gov/legal-library/browse/federal-trade-commission-enforcement-policy-statement-regarding-applicability-childrens-online>

⁷⁹ "Policy Statement of the Federal Trade Commission on Education Technology and Children's Online Privacy Protection." Federal Trade Commission (FTC), May 19, 2022,
<https://www.ftc.gov/legal-library/browse/policy-statement-federal-trade-commission-education-technology-childrens-online-privacy-protection> (accessed Month Day, Year).



	<ul style="list-style-type: none"> • Must have processes to maintain reasonable security
BBB National Programs	
CARU: Building Guardrails for Child-Directed Advertising & Privacy in the Metaverse ⁸⁰	<p>Provides guidance to companies advertising to children in the “metaverse,” reminding them to:</p> <ul style="list-style-type: none"> • Avoid blurring advertising and non-advertising content • Clearly disclose influencer and endorser claims • Avoid the use of manipulative designs or other deceptive tactics • Use clear and conspicuous disclosures.
CARU Metaverse Compliance Warning ⁸¹	<p>Clarifies that CARU’s Advertising Guidelines applies to advertising practices directed to children in the metaverse. The warning specifically cautions against advertising that “blurs the distinction between advertising and non-advertising content, that uses manipulative tactics, including but not limited to social pressure or validation, deceptive door openers, or misleading design techniques, or that fails to make clear and conspicuous disclosures to children where needed to distinguish advertising from non-advertising content.”</p>
CARU Advertising Guidelines ⁸²	<p>Provides guidance to advertisers regarding:</p> <ul style="list-style-type: none"> • Ensuring advertising is not deceptive • Making accurate product presentations and claims • Disclosing material information and connections • Avoiding ad blurring • Avoiding exploiting children’s immaturity with sales pressure or deceptive door openers • Preventing unsafe or inappropriate advertising
CARU Privacy Guidelines ⁸³	<p>Provides guidance to organizations regarding children’s data collection and other privacy-related practices, consistent with COPPA and the COPPA Rule.</p>
TeenAge Privacy Program Guidelines ⁸⁴	<p>Provides guidance to organizations regarding:</p> <ul style="list-style-type: none"> • Products, services, and systems appealing to teen audiences and interests

⁸⁰ CARU (Children’s Advertising Review Unit). “Metaverse Guardrails: CARU’s Recommendations for Children’s Advertising in the Metaverse.” Retrieved from https://8712603.fs1.hubspotusercontent-na1.net/hubfs/8712603/Template%20Assets/Landing%20Page%20Assets/Metaverse%20Guardrails/CARU_MetaverseGuardrails_2023_Digital_Report.pdf

⁸¹ BBB Nat’l Program: Children’s Advertising Review Unit. “Compliance Warning Regarding Advertising Practices Directed To Children In The Metaverse.” August 23, 2022. Retrieved from https://assets.bbbprograms.org/docs/default-source/caru/compliancewarning-metaverse.pdf?sfvrsn=b9937f2b_7..

⁸² BBB Nat’l Program: Children’s Advertising Review Unit. “Self-Regulatory Guidelines for Children’s Advertising.” Accessed March 15, 2024. URL: https://bbbnbp-bbbp-stf-use1-01.s3.amazonaws.com/docs/default-source/caru/caru_advertisingguidelines.pdf.

⁸³ BBB Nat’l Program: Children’s Advertising Review Unit. “Self-Regulatory Guidelines for Children’s Advertising.” Accessed March 15, 2024. URL: https://bbbnbp-bbbp-stf-use1-01.s3.amazonaws.com/docs/default-source/caru/caru_advertisingguidelines.pdf.

⁸⁴ Center for Industry Self-Regulation. *A Roadmap for Considering Teen Privacy & Safety*. 2022.



	<ul style="list-style-type: none"> • Collecting personal teen information, including for interest-based or targeted advertising • Collecting or sharing precise geolocation information • User-generated content • Content that could be considered inappropriate for teen audiences
ESRB	
COPPA blog post ⁸⁵	<p>Recommendations based on COPPA enforcement actions:</p> <ul style="list-style-type: none"> • Sequence your game play to obtain VPC before you collect ANY personal information from a child • The FTC views COPPA's "actual knowledge" standard broadly and so should you • Your COPPA notices must be clear, understandable, and complete • Privacy by default is not a fad • Take your data minimization and retention/deletion obligations seriously • Be especially careful when dealing with kids' biometric data, algorithms, and machine learning • Privacy innovation can help you comply with COPPA

⁸⁵ Feuer, Stacy. "COPPA Battlegrounds: The Quest to Uncover the Secrets of the FTC's Kids' Privacy Actions." ESRB, July 5, 2023. URL: <https://www.esrb.org/privacy-certified-blog/coppa-battlegrounds-the-quest-to-uncover-the-secrets-of-the-ftcs-kids-privacy-actions/>.





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