

Blurred Lines: A Rundown on the FTC Workshop “Protecting Kids from Stealth Advertising in Digital Media”

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As we recently blogged [here](#), the FTC’s review of the COPPA rule has been pending for over three years, prompting one group of Senators, in early October, to ask the agency to “[Please Update the COPPA Rule Now.](#)” The FTC has not yet responded to that request (at least not publicly) or made any official moves towards resuming its COPPA review. However, the agency is focusing on children’s privacy and safety in other ways, including by hosting a [virtual event](#) on October 19 on “Protecting Kids from Stealth Advertising in Digital Media.”

The FTC’s day-long event examined how advertising that is “blurred” with other content online (“stealth advertising”) affects children. Among other things, the event addressed concerns that some advertising in the digital space – such as the use of influencers on social media, product placement in the metaverse, or “advergames” – can be deceptive or unfair because children don’t know that the content is an ad and/or can’t recognize the ad’s impact.

The event focused in particular on: (1) children’s capacity at different ages to recognize advertising content and distinguish it from other content; (2) harms resulting from the inability of children to recognize advertising; (3) what measures can be taken to protect children from blurred advertising content; and (4) the need for, and efficacy of, disclosures as a solution for children of different ages, including the format, timing, placement, wording, and frequency of disclosures. The FTC has also sought public comment on these topics (until November 18).

The event dove deeply into these issues, with help from a range of legal, policy, behavioral, and communications experts. (See [here](#) for the agenda and list of panelists.) The discussion was interesting and substantive, and built on actions already undertaken in [Europe](#) and [California](#) to develop Age-Appropriate Codes governing child-directed content. However, the event left open the question of whether and how the FTC intends to address the issues discussed. Will it proceed via guidance or rulemaking? If rulemaking, does it plan to use COPPA, the pending Mag-Moss rulemaking on “commercial surveillance,” or some other regulatory vehicle?

All of these options present challenges: COPPA gives parents the tools to control the content that their children see, but generally doesn’t regulate the content itself. Mag-Moss is a long process, which the FTC has made especially complex with its sprawling ANPR. Finally, any rulemaking restricting kids’ advertising could run into the specific Mag-Moss provision (discussed [here](#)) limiting the FTC’s regulatory authority in this area. (On the other hand, protecting kids’ privacy and safety tends to be a bipartisan issue, which will assist the agency as it seeks to address these issues.)

Here's more detail on what happened at the workshop:

First up, Opening Remarks from FTC Chair Lina Khan

In her opening remarks, Chair Khan set the stage by describing how much advertising has changed over the past few decades. In the past, every child would see the same ad, but now, the digital space allows companies to treat each child as an audience of one. Also, ads now blur commercial and organic content, and kids can't tell the difference. Chair Khan stated that the FTC is exploring whether to update its COPPA rule, while also soliciting comments on commercial surveillance more broadly, including stealth advertising to kids.

Next, CARU VP Mamie Kresses provided a "Children's Advertising Show and Tell"

Kresses (who co-ran the COPPA program when she was at the FTC) explained that CARU (the Children's Advertising Review Unit at BBB's National Programs) has increased its focus on monitoring ads to children in the digital space because that's where the majority of ads now are. Advertisers need to make sure that, when they engage in blurring, they don't mislead kids about the nature of the commercial content. Advertisers also should avoid manipulation - i.e., making it hard for children to tell when they're making purchases or leaning too much on their emotions.

Importantly, Kresses said, the digital space has changed with the creation of computer-generated imagery influencers. Advertisers should make clear to kids that a game avatar, for example, is part of a paid relationship. In general, advertisers must clearly disclose whether something is an ad, even in these new, creative spaces.

Panel One: Children's Cognitive Abilities - What do they know and when?

In this discussion, panelists highlighted why protecting children in the digital space is so important. Children lack the skills to understand the persuasive effects of advertising and also tend to believe that companies have their best interest in mind. When entertainment and commercial content are blurred (e.g., when a virtual reality character gives a child something in the metaverse, or an influencer promotes a product), the child cannot tell that these are ads and takes for granted the content is all good or true. In these spaces, children develop para-social relationships and emotional attachments with content creators and influencers, which affects their ability to evaluate ads and cues. As one panelist stated, the naiveté of children should not be a tool for advertisers.

Panel Two: The Current Advertising Landscape and its Impact on Kids

This panel primarily discussed whether stealth advertising is an unfair practice under the FTC Act. Citing the elements of unfairness, some thought that the harm outweighed the benefits, while others believed the research was not strong enough to prove harm, and that any harm is outweighed by the value of the information conveyed by the ads.

According to some panelists, blurred advertising can distract a child from the persuasive intent of an ad, causing them to rely more on emotion and less on rationality. Also, they said, research suggests that some methods of blurred advertising, such as the use of influencers, can be toxic to children, increasing eating disorders and adding to the current mental health crisis, especially when the advertising is targeted and prolonged. Other panelists argued that just because an advertisement works does not mean it's harmful or deceptive. They also said that non-deceptive ads are protected under the First Amendment.

Panel Three: Looking Forward and Considering Solutions

The last panel discussed potential solutions to the challenge of stealth advertising, including disclosures, parental controls, educational programs, or even a ban on blurred advertising directed at children. As these panelists recognized, the solutions all come with limitations: (1) children cannot always read or understand disclosures; (2) parents don't have the time or resources to monitor every piece of content their child consumes; (3) there's a lack of resources for educational programs; and (4) a ban could face First Amendment issues.

Closing Remarks from FTC Associate Director Serena Viswanathan

In closing, Viswanathan stated that the FTC hopes to provide guidance and recommendations regarding how to comply with applicable laws and avoid problems associated with stealth advertising to kids. She said the FTC is following these issues with interest, eager to review the public comments, and continuing to engage with stakeholders.

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That's our quick summary for now. Stay tuned as we continue to track this topic and learn about the next steps the FTC may be planning in this area.



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