FTC - Protecting Kids from Stealth Advertising in Digital Media – October 19, 2022

Min Hee Kim:

Good morning and welcome to the FTC's Protecting Kids from Stealth Advertising in Digital Media event. My name is Min Hee Kim and I'm an investigator with the Bureau of Consumer Protection. On behalf of the entire FTC Event team, we're delighted that you're joining us today. Before we begin our program, I have a few administrative details to cover.

First, a video recording and transcript of these proceedings will be available on our event webpage shortly after the event. Our intent is to create a lasting resource for anyone who's interested in this important topic. Second, as with any virtual event, we may experience technical issues. If these occur, we ask for your patients as we work to address them as quickly as we can. We will let you know if there are going to be any significant delays.

Third, we'll be accepting audience questions throughout our dedicated email address, digitalads2kids@ftc.gov. Due to time constraints, we may not be able to get to all of the questions, but we will review every question that we receive. We are also seeking public comments until November 18th on the topics discussed today. Take a look at our event webpage for information on how to submit those comments. Finally, please join us on Twitter. Our Twitter handle is @FTC. We'll be tweeting using the hashtag, #KidsAdsFTC.

Now, I have the great pleasure of introducing our first speaker, the chair of the FTC, Lina Khan. Prior to becoming the head of the FTC, Chair Khan was an associate professor of law at Columbia Law School. She also previously served as counsel to the U.S. House Judiciary Committee's subcommittee on Antitrust, Commercial and Administrative Law, legal advisor to FTC Commissioner, Rohit Chopra, and legal director at the Open Markets Institute. Welcome, Chair Khan.

Lina Khan:

Thank you so much. Good morning, everybody. Welcome to today's event. We have a terrific lineup of experts today. I'd speak on this critical topic and I'm so looking forward to the discussion. Thank you so much also to our entire team for putting together this event. I know a ton of behind the scenes work goes into these things and we're so grateful for all of your efforts.

So advertising has changed a lot over the last few decades. As we all know, it used to be that every kid watching a TV show would see the same commercial, and it wasn't hard for parents to keep an eye on the ads that their children were seeing, but the rise of social media and targeted advertising changed everything. Now, every child is an audience of one. Most young people today are digital-natives. They were not around for life before the internet and the proliferation of digital technologies. They interact

with digital technologies almost intuitively. In some ways, this is great news. Kids today can have the natural competency to take advantage of new digital tools in a way that grownups can only dream of, but it also carries serious risks.

When kids interact with digital media, they're exposed to an array of marketing practices that blur the line between advertising and entertainment. That's an especially serious issue when we're talking about young people. As today's speakers and panelists will explain, developing brains are more susceptible to deceptive or harmful practices. Both the immediate and long-term effects can be significant. As digital media becomes more embedded in our daily lives, kids are interacting more and more with commercial content. Research indicates that some older kids may see over a thousand ads per day. What particularly concerns the FTC is the fact that kids often cannot tell difference between ads and organic content. Some forms of advertising are intentionally designed to exploit kids in securities for commercial gain.

Children and teens can also end up engaging in commercial transactions without realizing it. They may provide personal information without understanding the privacy risks. When stealth advertising is combined with concerning content like gambling or e-cigarettes, the risk can be even greater. Today's event will examine these concerns and the possible paths forward. Our panelists will unpack the privacy, psychological, physical, economic, and other harms that can arise from predatory advertising directed at children and they'll explore whether existing regulatory regimes are up to the task of protecting kids and families from those harms.

First, we will have a presentation by Mamie Kresses of BBB National Programs. Mamie will discuss examples of ads that kids encounter online that blend into surrounding content. Her presentation will be followed by a question and answer session with Tawana Davis, an assistant director of our division in advertising practices. The remainder of the day will be filled with panel discussions on key issues surrounding kids and digital advertising. The first panel includes experts from a number of disciplines and they'll discuss children's cognitive abilities across different ages and developmental stages. They'll also connect that to key questions around how kids process and perceive advertising.

In the second panel, researchers and practitioners will discuss how kids actually interact with the current advertising landscape. They'll also describe the harms caused by the increasingly blurred line between ads and organic content and potential mitigating factors. The final panel will be more forward-looking. We'll hear from a variety of stakeholders about potential interventions and remedies. Given the complexities of these issues, there may not be a silver bullet to mitigate the risks and harms posed to children and teens. As today's discussions, we'll demonstrate we will likely need a combination of interventions to produce effective outcomes.

The FTC is currently exploring whether to update its rule implementing the Children's Online Privacy Protection Act. The last time we revised that rule was 2013, and a lot has changed since then. We are also currently soliciting comments for proposed rulemaking on commercial surveillance more broadly. In the meantime, we'll continue to aggressively pursue law enforcement actions using our existing legal authorities, and we'll continue to support congressional action that aims to bolster our efforts. We so look forward to working with consumer groups and other key stakeholders to deepen our understanding of the issues and improve our efforts to protect children, parents and teachers. Thank you all for coming today, and many thanks to our panelists for sharing their time with us. Now, I'll hand it over to Mamie and Tawana.

Tawana Davis:

Thank you, Chair Khan. Now I have the honor of introducing our next speaker, Mamie Kresses. Miss Kresses is vice president of the Children's Advertising Review Unit of BBB National Programs. She

oversees CARU's ongoing efforts to help companies ensure that their advertising and data collection practices regarding children comply with existing laws and guidelines. Before joining CARU, Miss Kresses was a senior attorney here at the FTC in the Division of Advertising Practices and a recipient of the FTC's Robert Pitofsky Lifetime Achievement Award. Please join me in welcoming, Mamie Kresses. Mamie, I'll turn it over to you now.

Mamie Kresses:

Thank you, Tawana, and thank you to the FTC for inviting me to participate on behalf of CARU in today's important event. The FTC label this opening session as a show and tell, so I will show you through simple depictions the types of digital advertising formats that children see today and tell you a little bit about why in these digital landscapes advertisers must take special care to make clear to children that they are engaging with advertising and to prevent deceptive or unfair ad representations or techniques that can mislead children. Next slide, please.

So, to set the stage, I think it is eye-opening to see that digital has become a predominant advertising medium. Recent reports estimate that ad spending on digital in 2023 could go over $300 billion, and that ad spending on metaverse advertising alone could go at near to $200 billion. So that's spending on all advertising and children and teen advertising would only be a fraction of that, but it's equally striking the lightning pace at which new digital ad formats are created as compared to the stage days of TV and radio. Next slide, please.

Before we get into the advertising itself, the FTC has asked me to give you a refresher on who regulates this space. So if you are here, you probably know that the FTC has broad jurisdiction under Section 5 of the FTC Act against unfair or deceptive practices, and the FTC's extensive case law and guidance on deceptive and unfair advertising practices has been focused closely on digital spaces in recent years. So the guidance on the screen below all addressed digital practices to a significant extent.

We're here today to talk about digital practices to children specifically. But as a background, the FTC's deception cases involving children have traditionally addressed deceptive toy and product performance claims, which importantly under the FTC standard, the FTC views these through the eyes of ordinary children. In the unfairness realm, the FTC's children's cases have typically addressed unsafe or dangerous product representations or unfair monetary charges incurred by children, each of these, which could not be reasonably avoided by parents and which had no competing value to society or the consumers. Of course, the FTC has a long and hardy case law under the COPPA rule. Next side, please.

So while we're here today recognizing the FTC's many tools, I do think it's important to take a minute to also recognize the need to be careful in how we address advertising practices to children. Looking back at the ill-fated 1970s KidVid rulemaking, it's instructive about being careful to cautiously and objectively consider the justifications for any measures taken to protect children in the advertising sphere. In that rulemaking, the commission had sought to actually ban advertising to all children beneath a certain age and ban certain types of advertising to older children.

The determination there was that these limitations would not in fact achieve their purpose narrowly or legally and would have resulted in overbroad and potentially even ineffective outcomes. Congress at that time took the action of amending the Magnuson-Moss rule to revoke the FTC's rulemaking authority on unfair advertising to children, and that restriction is still in place. So as we look at advertising to children and how to improve these spaces, it's very important to carefully looking at our objectives to make sure that they accomplish what we want, which is a truthful, transparent and appropriate space for children. Next slide, please.

The FCC also has a jurisdiction over advertising to children. The FCC under the Children's Television Act limits the number of advertising per minute that children can see per hour, that children can see on

children's programming, restricts host-selling, which is the process of a character in a show cannot promote products in that show or adjacent to that show. And then while the act does permit toy-based programming, it prohibits explicit ads for those toys in or adjacent to the program. It's important to remember that the FCC and the Television Act only cover TV, broadcast, cable, satellite and digital multicast, but it doesn't cover online content or video games, for instance. Next slide, please.

So, I do also think it's important to mention COPPA here, although today's program is about advertising. COPPA is very relevant here because now that advertising is largely digital and the chair will mention this as well, advertising and privacy issues are increasingly interlinked. Second, COPPA right now is the only federal law that finds what content is directed to children and this definition of directed to children provides important guidance for advertisers too. Third, COPPA is the only federal law that tackles the issue of who has responsibility and when for collecting children's information. Now, we know that COPPA, even with the definitions of directed to children and operator and other definitions in COPPA, that there can be gray areas for businesses and regulators too in determining what's child-directed and who audience is, and advertisers can face similar difficulties in digital spaces. Next slide, please.

Now, we don't have time today to discuss all the proposed legislation or enacted laws that focus on children, but I do put up this slide for the purpose of saying we need to acknowledge the climate we're in. There is currently intense state and federal interest in addressing concerns about digital spaces used by children and teens. It's very important to note that whether you're talking about the California Age-Appropriate Design Code or any of the numerous bills proposed in the U.S. Congress, that all of these go beyond privacy to raise safety, digital wellbeing, issues about algorithms or other concerns, and each of these also would implement specific protections for teens. Next slide, please.

So, where does CARU, the Children's Advertising Review Unit, fit in regarding advertising to children? For those of you not familiar with CARU, it was created in 1974 at a time when advocates and others were raising concerns that brands were failing to take appropriate care in advertising to children. So CARU was created by the advertising industry to clean up its act. Although created by industry, it's important to know that CARU is an independent, self-regulatory body, and we maintain strict guidelines for advertising to children, which are relied on not only by the companies who join CARU, but also we try our best to make sure that they are widely disseminated to industry. CARU monitors the marketplace to enforce its advertising guidelines against ads that are misleading or inappropriate. We also work directly with supporters respecting large, leading companies that are committed to truthful transparent advertising to children, helping them to ensure that they're advertising, especially in evolving media formats meets CARU's high standards. Next slide, please.

So, the CARU guidelines cover national advertising directed to children under 13 in any media, and that means in all media. The guidelines were most recently updated effective January of this year, specifically to more clearly address online advertising practices, digital and digital format. As you can see, the guidelines extensively cover every area where advertisers need to take special care to be truthful, transparent, and appropriate in advertising to kids. I also want to mention, next slide, please, that when CARU revised its guidelines in 2022, it incorporated the COPPA standard for determining whether advertising is directed to children under 13.

The reason for this is this standard now in place for over 20 years provides brands and advertisers with a uniform, reliable measure that they can use. However, of course, having personally enforced COPPA for many years at the FTC and in my role at CARU, I do think it's important to acknowledge that determining what content is child-directed is not always black and white. Just as for marketers and advertisers, determining who the audience is can sometimes be challenging in digital spaces. In fact, several companies that work with CARU strive not to run particular campaigns in front of children, but there isn't always the demographic data and online media to give that certainty that marketers would like to

have. Next slide, please. Next slide, please. Oh, I'm sorry. I'm sorry. You were on the right slide. I'm sorry. It just delayed for me.

I mentioned that CARU's guidelines were updated to more directly address digital media at the start of 2022. What does not change are CARU's overarching principles that underline all of our specific guidance, most importantly, to build advertising with the children's limited knowledge, experience and sophistication in mind to be transparent that advertising is advertising and to not mislead children either through representations or design. Next slide, please.

So, why am I talking so much about CARU? We are out there monitoring the children's advertising space and have been doing so for almost 50 years. Of course, our focus now, because of the fact that most advertising to children is digital advertising, our focus is in that area. Our monitoring has shown us some of the areas that are of greatest concern now in these digital spaces, especially those highly immersive and interactive spaces. These are the areas where advertisers need to take special care, not to mislead or confuse children. We're going to touch on some of those areas now. Next slide, please.

Chair Khan mentioned that much of today is going to tackle the issue of blurring in digital advertising, and the CARU guidelines were updated in 2022 to give more specific guidance to business on how to avoid blurring. So what is blurring? Blurring is where an ad is designed in a way to blur the fact that it's actually an ad and it's designed to look more like organic or entertainment content. Why is that a problem? It's because we know that the most basic truth and advertising principle is that advertising, it should be clear that advertising is advertising and that advertising should not be blurred with non-advertising content.

So, in the digital space, obviously advertisers and marketers want to be creative and engaging, but at the same time, it's very... No one says don't be creative and engaging, but at the same time, it's very important when we're talking about children and even teens to recognize their ability to take special care to ensure that advertising is clearly denoted. The FTC's blurring guidelines do provide guidance there, which is to pay attention to wording and design techniques to intentionally distinguish advertising from non-advertising content and to use tools like text size, borders, color, and even disclosures.

Why that's important is as we move into all of these different media, we need to look at the environments where the ads appear. Business needs to have guidance on how to make their ads clear, but they also need to have flexibility to be able to look at that space and say, "Where in this space can I make it clear and unavoidable that what someone is seeing is advertising?" Whether the entire space is advertising or whether there's advertising within a content space, this, as you know, is a central focus of CARU's guidance to business. Next slide, please.

So, I've tried to present a few examples of where blurring can occur that losing the line between advertising and non-advertising content. Here, you can see this is a symbol mock-up of a brightly colored branded candy-themed gaming site. The subject matter, I hope you'll look at it through the eyes of a child and say, "It's enticing. It's fun. It's colorful, and it's easy to play," but nothing here overtly says this is advertising. So when CARU and/or the FTC looks at something like this, we say, "How would a child interpret it? Would a child understand if this is in fact advertising? Would they know that?" And so, this example, I'm not going to... We're going to have panels all day that talk about issues and remedies. I'm not going to try to teach you what to do here, but I would say that this is an example of a branded site, where it wouldn't necessarily be clear to children that it is advertising. Next slide, please.

At the same time, I do want to make clear that CARU recognizes that not every inch appearance of a brand or a product in content is necessarily an endorsement, an endorsement of that brand. I put up these simple mock-ups here to say, "Here are two Mobile Worlds for children." On the surface, they're not that different from each other. They both involve picking your spaceship or your airplane and engaging in flight navigation, but we have to look at the specifics of different online content and say, "Is

this advertising or not?" And that is going to depend on whether endorsements are made for particular products, how those products appear. So it is important not to have a reaction that anything and everything, because it's online, is necessarily advertisement. And then we go to this example here, this very exciting world that our marketing team here at BBB National Programs created. Next slide, please.

So if you can take a few seconds to look at this world created by our team, there's a lot going on here. The point here is that this is an experienced space that children can come into. Depending on what the real facts are here, as you can see, this might be a branded site and the whole site may be advertising for the brand, or it might be an organic game. But as you can see to the right of your screen, you've got language. You've got a big sign, "Grab your gear here." If these are in fact a real virtual simulations of real products, this could likely be advertising for those products. There might be coins involved or actual purchases with real money.

These sorts of worlds point out that advertisers need to take care to determine whether in fact the whole experience is an ad or if advertisers are advertising on others games and platforms to take care to ensure that where that advertising is, it's clear to children. We'll talk about other guidelines, provisions that deal with this issue of how to make in this highly interactive, exciting, colorful, lots going on spaces, how to make clear to children where they're seeing advertising. Next slide, please.

Another topic that we addressed in our CARU guidelines and that was updated specifically to cover digital advertising is the issue of manipulative tactics. What CARU has said is in online spaces, particularly in games where there is advertising, you need to take special care to be sure that you clearly and conspicuously disclose what is advertising within those spaces. The flip side of that is don't manipulate or deceive children into viewing ads or making purchases, and by that we mean don't make your ads or your purchases look like they are actually part of gameplay, right? So it goes back to the idea of blurring, but blurring to the point of actually manipulating children. So let's look at some examples there. Next slide, please.

So in the past several months, CARU has actually brought four cases against mobile apps design for children. In those cases, we saw blurring there. It was very difficult to tell what was advertising in the game. It was also very difficult in some of these games to tell that when you clicked on a button here or there, you are actually going to be paying real money for something within the game. We found in some of these cases that the practices reached the level of being manipulative, and that is that the buttons for ads were designed to look like it was the next stage of gameplay. The buttons for making actual purchases were designed to look you were going to get a boost in the game or you were going to supercharge your play. We found these to manipulate children into believing that they have to take these steps in order to advance in the games. I will also tell you that CARU has had cases where we've... CARU's guidelines are not only about manipulating through technique, but also manipulating through social or emotional

Mamie Kresses:

... Queues, and we have had cases where we specifically address the use of emotional manipulation, such as telling kids they have to buy food for their pets in a game or their pets will die or their pets will be taken away. We see or giving kids that social impetus that they have to take certain steps to watch ads, make purchases in order to compete with others in the games. These are things that we work with businesses to change. That brings us to the next slide, which is on material disclosures. CARU updated its guidelines in 2022 to address long form content. We see lots of videos and games that last for several minutes. What we have said is not only do disclosures need to be clear and conspicuous in the format in media that they're in, but sometimes you will need multiple disclosures, just repeated disclosures

depending on the length. Sometimes you will need, if you're in the audio video content, the best thing to do is have audio and video disclosures to ensure that children see them. Next slide please.

We're back to our wonderful play world here. If you were to look at this slide and think about where would disclosures be helpful here to making clear what is advertising, where would they need to be so that they're unavoidable? How often would they need to appear depending on how children come in and out of these spaces and where they go. What colors, what size, shape, wording needs to be used to make clear that in fact, kids are seeing advertising when they are seeing advertising? Next slide please. That brings us to influencers and endorsers and influencers in the children's space are certainly not new. CARU had the first actions against two of the major child influencers years ago to enforce them to disclose clearly and conspicuously their relationship to the various brands. We updated our guidelines to make it very clear that influencers are advertisers and both the brand and the influencer responsible for those claims. And let's go to some examples in the digital space, how influencers work. Next slide please.

As I said, child directed influencers are not new. This is of step one. We are all familiar with static posts with influencers, and those are probably the simplest scenario to make it clear and conspicuous that there's a relationship here in this ad. You can see, we know these are influencers because they've got disclosures both oral and written, telling us that. This is the easy example. Let's go to the next slide. The next thing that we have all experienced over the past few years are long form videos. Here, we have three boys playing with a rocket. We can see it seven minutes long. Right here, we don't know if these kids are paid influencers or they're just playing with toys like, and that is the point.

We know that even for adults where it's not clearly and conspicuously disclosed that someone is in fact paid, it can be very confusing to figure that out. When we're looking at kids, the CARU guidelines make clear that those disclosures have to be frequent enough in the right format and in language, simple language that children can understand. Next slide please. What I'd like to do here is let's watch the video. Oh, let me say first that I've tried here not to do mostly mock-ups. It's not intending to call out any particular influencer or business, but where we needed to use a real video to show it. That's what we've done. This was taken from YouTube and it's just a small clip in the interest of time. If we could play the video.

Speaker 1:

I'm going to be taking this Benefit Boi-ing Cakeless concealer. I don't know if that's how you say it. My concealer is all blended in and now I'm going to use this shape tape powder from Tarte, and...

Mamie Kresses:

Okay, what do we have here? Just a typical makeup video by a young teen. We see two products that she's showing us on the screen that she loves without disclosures. We do not know if these in fact are products that she just likes or in fact if she is being paid. These point out the very real issue of how do we make clear to children and teens when someone that they look up to or someone that they follow or just someone they think is cool, when in fact are they being paid or not? I know from my years at the FTC that often, even we as attorneys could not determine. Sometimes when we thought someone was paid, we would actually find out that in fact they weren't paid. If we can't figure it out, disclosures are super important in the children's space to help them understand. Next slide please.

The last three slides were almost antiques by today's standard, right? We know that with the changing digital worlds that we're in with long form experiences where children can in fact interact with each other and interact gameplay, that there are lots and lots of ways for influencers to get us to influence in these spaces. What we see is that there can be videos of someone playing a game in another space.

There can be an influencer playing a game in a space. Real questions arise about how to effectively make clear when and where an influencers statements are actually because they have a relationship to that business because they are being compensated. Questions arise, how to make that clear when influencers maybe working in multiple media, how often to do that and how to do it correctly in each media or in every media where it's needed so that it's clear, it's understandable, and frankly it's unavoidable. Next slide please. Again, this is another snippet from a real video online and we have cut it for length reasons and if we can go ahead and play that video.

Janet:

Hey guys, it's Kate and Janet. Welcome back to Roblox videos here playing Fashion Runway. In this game you compete with other people to try to create the best outfit within the given timeframe. Today, guys I'm doing a challenge and the challenge is whoever places highest on the leader board, each round gets a point and whoever has most points at the end gets the JK World Champion belt. Today, I'm doing four rounds. Okay, so the theme looks like it's going to be moon. I'm going to choose over here, the clothes first.

Mamie Kresses:

Okay, thank you for that. This simple 30 seconds illustrate the questions that we as adults have and that children wouldn't know, or might not know to ask, which is what's going on here? Are these girls... Again, don't, I'm not throwing these girls under the bus, I just couldn't create a video like this myself. Are these girls, in fact, do they have a material connection to a brand and this game? Do they have a material connection to the game? Are they paid to promote the game? We see in the background, when they're sitting there in the background, we see branding all around them and yet we don't see any of that same branding in this game. Real questions arise as to are they paid influencers for anything that they are promoting here? Again, the CARU guidelines make very clear that if you do have a paid relationship, it needs to be clearly and conspicuously disclosed in language in a manner that children can understand. Next slide please.

I noticed that the FTC in their proposed amendment changes to the endorser guides have indicated that consumer generated influencers are considered influencers. That is an important step and something that we need to look at in prototypical metaverse spaces. How do we make it clear to children that maybe a game avatar that they're interacting with isn't simply another player, but they are put there by the game or an influencer in that space. How do we make these things clear? The challenges in with CGI are really similar to the challenges with influencers in their avatar status or influencers with their personal face. How to make clear to children when someone is paid to influence your play in the game or your purchase of products or otherwise. That brings me to really my last slide. Next slide please.

That is, you'll recall that I mentioned that CARU's guide advertising guidelines applied to advertising in all media. We have taken this step recently to put out a compliance warning to let you know everyone in these metaverse spaces know advertisers, developers, et cetera, that the CARU ad guidelines do apply to metaverse spaces as well as augmented reality and virtual reality spaces. That these same topics that we've discussed here today blurring the potential for manipulation, the need for material disclosures and influencer issues. That these are some of the core issues that we will be looking for as we monitor these spaces. These are also the core issues that we are currently working with businesses on now who are interested in being sure that they comply with the CARU guidelines and that they meet the FTCs inspections and others as we find creative and effective ways to make clear what is advertising in these spaces. That's the end of my slideshow. I'll turn it over to Tawana.

Tawana Davis:

Mamie, thank you for that overview and for setting the stage for today's event. It looks like we have some time for a few questions. Based on what you've shown us today and in an effort to frame today's discussion, what are the key characteristics that make something a blurred advertisement?

Mamie Kresses:

Essentially when we talk about blurring advertising, we're talking about presenting advertising in a manner where it's not clear to the intended audience. Here, we're talking about kids. It's not clear that the message is advertising, where instead the look and feel of the messaging creates a sense that it's non-commercial. Of course, it's a core advertising principle that advertising should be recognizable as advertising.

Tawana Davis:

Do you think younger kids and teens need the same types of protections?

Mamie Kresses:

We know that the same general principles apply whether advertising is directed primarily to adults, teens, or children, right? Ads have to be truthful, not misleading and clearly identifiable as advertising. We also know that as children age their knowledge and their experience and sophistication, and with that their ability to evaluate the credibility of information increases. CARU for its part, our guidelines do indicate that when we're looking at whether an ad is clear, we look at it through the lens of the particular age of children it's directed to.

In that regard, I would say that teens would not per se need the same protections as younger children. But that said, current advertising trends such as influencer marketing when not done truthfully and transparently, often make it difficult for even adults to know when something is an ad, for example, or to be able to tell when a recommendation is simply organic. With regard to teens, because they are seeing so much of this type of advertising, it is very important to be sure that that influencers truthfully and transparently in language and formatting that teens can see and recognize and understand, make clear where there is a relationship where they are paid. Then it's also, I think, important to double down on that, on those cautions when we're dealing with preteens.

Tawana Davis:

Okay. I know you have a lot of experience with CAPA, which applies when companies have actual knowledge that they're collecting personal information from a child or has content directed to children, but CAPA draws a line at the age of 13. Is it reasonable to expect companies to know the age of their audience? Is it feasible to have different expectations solutions for audiences of different age groups?

Mamie Kresses:

Those are good questions, but not simple questions. I do want to take a minute here. CARU advises companies to design advertising and games and apps that include advertising or in-game purchasing with the age of their intended audience in mind. When we look at a game, we're going to look at it differently than we would for a six to eight year old than we would a 12 year old. While age appropriate design is a good principle and CARU has been at the forefront frankly, of helping companies with age appropriate design before that was a term, for almost 50 years. It's important to realize that this is not an exact science. I do think we need to be careful not to create hard rules around advertising to children

of different ages and risk results that are either or unintentionally too broad or too narrow or just miss the mark with current advertising or as advertising evolves.

Also, you ask the question of is it reasonable to expect a business to know the age of their audience? I think that is a very good question. In current and evolving digital spaces, the reality is that there's not always good information available on audience composition. As I mentioned earlier, many several companies who work with CARU strive not to advertise to children for a particular product or a particular ad campaign. They work really hard to be careful and to look for demographic information to study these marketplaces. But there isn't always the demographic information in online media comparable to what we may regulators and business was accustomed to in the TV sphere.

Tawana Davis:

Well, how did CARU think about these issues and ultimately create its principles on blurred advertising?

Mamie Kresses:

CARU guidelines traditionally have covered the requirement that you should not blur advertising and non-advertising content. As we looked at the digital spaces, we felt that it was important to signal the ways in which one could avoid blurring to children. But you have to back up a second and first say what is over the overriding principles of CARU's guidelines? What I think we're all here about today is that we do need to design with children in mind. We need to be looking at the start about how these ads will be perceived and understood by children.

In the blurring space, we also recognize that the world that we are in advertising should be interesting, it should be engaging and fun, but it needs to be clear, it's advertising. We thought about that, "How do we do that?" That's a matter of all sorts of content, both being truthful, but also using the contextual clues, the size and the coloring and the wording to ensure that it is clear what is advertising and that it doesn't get hidden or vary in within this exciting content or that it's not, of course intentionally masqueraded as something other than advertising.

Tawana Davis:

Does CARU treat traditional TV advertising differently than digital media advertising? If so, why?

Mamie Kresses:

The short answer is yes. We look at digital advertising differently from TV advertising because the basic principle here is that identifying advertising as advertising has to be clear and conspicuous in the medium where it appears. What is going to work in traditional TV, me very likely will not be adequate in particular digital context. It's not going to be clear and conspicuous or unavoidable, which is why we did update our guidelines so that we could move from a TV centric focus to also incorporate guidance on the digital spheres.

Tawana Davis:

Okay. Are there other solutions or remedies CARU has considered or would consider in this space? If so, would those solutions work as advertising expands into the realm of virtual worlds?

Mamie Kresses:

In updating the guidelines, which was a long, very thoughtful careful process, we did obviously consider highly immersive interactive ad formats. As outlined in our metaverse compliance warning, we do

believe that these guidelines still provide good guidance for businesses in approaching new media and that we intend to enforce them in these spaces. Of course, we look forward to today's panel discussions and the opportunity to learn where additional guidance might be warranted.

Tawana Davis:

Okay. Earlier you mentioned that CARU has brought enforcement actions against companies that violated CARU's principle on blurred advertising. Can you tell us a little bit more about those cases and what the companies ultimately did to remedy the issues CARU raised?

Mamie Kresses:

Sure. I think the cases that I mentioned, we have had several mobile apps cases recently, and what we were seeing is that advertising and purchase prompts were gamified in a way that children would not know that they were in fact clicking on something that would take them to an ad. Often what we also saw was sort of these endless loops of ads and purchase processes where the natural flow of these games was to take kids through multiple ads and to make it really hard to just play the game. The way CARU works, we do monitor the marketplace. What I have found in my experience, what I think is true historically is that in the overwhelming number of cases, businesses are willing to work with CARU to change their practices in those rare cases where they are not. We look at these to whether or not we should report them to the FTC.

Of course, some of the FTCs best cases were referrals from CARU. But here we worked with the brands, the app developers to have them make changes to clearly say when something was an ad, to not make the ad the biggest button on the page and actual gameplay smaller to clearly disclose what is a purchase. Also, very importantly, most of these games did have means to exit these ad and purchase loops, but they were not clearly marked, they were not obvious, they were not easy to use. The businesses have worked with us to make changes there. I will say that in most instances, by the end of the process, the businesses are actually, they have a much better understanding of just basic advertising principles and are willing to make the changes.

Tawana Davis:

Great. Well, I think we have run out of time. Mamie, thank you for joining us today. Now I will turn the program over to Elizabeth Nach, an attorney, an attorney in the FTCs Division of Advertising practices who will moderate our first panel.

Elizabeth Nach:

Good morning, I'm Elizabeth Nach. Thank you for joining us for Panel 1, Children's Cognitive Abilities. What do they know and when? We just heard from CARU's Mamie Kresses about advertising that is blended into entertainment or other content, sometimes called blurred advertising, self advertising or content marketing, essentially some form of blurring that makes advertising content harder to identify as advertising. Our panel will expand on that overview and discuss children's cognitive abilities at different ages and developmental stages to recognize and understand advertising content that may not be distinguishable from the content in which it's embedded. Our panelists will discuss relevant research and we will briefly cover any impact or potential remedies in advance of our afternoon panels on those topics. Our panelists are in alphabetical order, Grace Ahn, Director of the Games and Virtual environments lab and associate professor at Grady College of Journalism and Mass Communication at the University of Georgia.

Liselot Hudders, Associate Professor in the Department of Communication Science and Director of the Center for Persuasive Communication at Ghent University. Sonia Livingstone, Professor of Social Psychology at the Department of Media and Communications at the London School of Economics. Jenny Radesky, Division Director of Developmental Behavioral Pediatrics and Associate Professor of Pediatrics at the University of Michigan Medical School and Eva A. Van Reijmersdal, Associate Professor of Persuasive Communication at the Amsterdam School of Communication Research at the University of Amsterdam.

Before we get started, I wanted to mention that Professor Livingstone is a speaker at another conference that's happening right now in Copenhagen and may have to leave us a little bit early. Also, the views expressed today are our own and do not necessarily reflect the views of the commission or any particular organization or company. Finally, if we have time, we will try to incorporate questions we receive from viewers. Please submit those questions to digital ads number two, digital ads to kids @ftc.gov. Before we launch into the ins and outs of blurred advertising, it might be helpful to hear from our panelists, why is it important for children to recognize advertising as advertising? Sonia, would you like to kick things off?

Sonia Livingstone:

Yes, delighted. I think there are two primary reasons. One is, as we heard in the previous session, in fact, it's unfair and against current codes that children should not be able to tell what is advertising and what is not. Secondly, I would say crucially, all our strategies are societal strategies to protect children from being adversely persuaded, rest on being able to identify an advert in the first place. If it's media literacy strategies, digital parenting strategies, these all rely on being able to identify what is an advertisement.

Elizabeth Nach:

Thank you. Jenny?

Jenny Radesky:

Yeah, my response center is around children's autonomy. We may think, well children can have ultimate autonomy, right? Because we don't want them running the house. But so in developmental science, we think of autonomy support that we create environments, we act as caregivers to help the child self determine their behaviors. It's play, it could be learning, it could be chores. These are all with the end goal of supporting the child's social, emotional, intellectual growth as a human being. That is opposite to the use of children as a means to an end when the end is about profits or revenue generation. I think in order for children to have autonomy within digital spaces, they need to have it be informed decision makers, even if it's at the decision making level of a four year old, it still is important that they not be deceived or nudged in a way that they don't understand.

Elizabeth Nach:

Thank you. Grace?

Grace Ahn:

This question of being able to determine what is or is not advertising becomes really critical when they're facing emerging technologies where they're still trying to learn the ropes of how this space works and the different features. When parents really don't have access to the knowledge that they can rely on to guide children. When they're still trying to figure out exactly what this immersive space is, their cognitive resources are spent primarily on trying to figure out the features and they really don't

have the resources to try to determine what is or is not advertising. The likelihood of them being deceived or being manipulated becomes a little bit greater because of the likelihood of them being manipulated at a cognitive state where they're not ready to deal with advertising content. Particularly with the ongoing development and the discussions of the metaverse and these other immersive virtual and augmented spaces, the novelty of that environment compounds the problems that we already have existing with advertising.

Elizabeth Nach:

Thank you. Eva.

Eva A. Van Reijmersdal:

Yeah, so I think it's an important first step to know when you are being advertised to also for children, because only if you know that there's a persuasive attempt, you will be able to raise your defenses again against that advertising. If you are not aware that there's any advertising, you can also not be critical even if you want to. I think we'll come back to that later, whether children are able to be critical, but I think the first step is to know that someone wants to persuade you to do something or to think in a certain way to be able to defend.

Elizabeth Nach:

Thanks. Yes. We'll definitely come back to some of these excellent points and examine them in more detail.

Elizabeth Nach:

Liselot, did you have anything to add to that as far as why it's important to recognize advertising's advertising?

Liselot Hudders:

Yeah, I think it's important to also inform about how the relationship is between the advertiser and the one who makes the advertisement. As you can see with influencers, they sometimes receive a brand for free. They are sometimes paid. They are sometimes a brand ambassador, posting different contents over a longer period of time. And knowing what kind of relationship there is and how genuine and authentic the advices are is very, very important. So I think that information should also be given to adults, but especially to children, to have a better idea about the authenticity and the credibility of the statements that are made in the ad.

Elizabeth Nach:

And Liselot, given the importance of ad recognition for consumers, what skills are needed to recognize or identify advertising and understand the persuasive intent of advertising? And if you could give us a sense too of what ages children develop these skills?

Liselot Hudders:

Yeah. Well, we can look at consumer socialization theory, and it states that people need consumer competences to be able to act as an empowered consumer being in control over the consumption decisions you make and make informed decisions. And these consumer competences refer to all knowledge and skills you have regarding consumption, and you can distinguish five knowledge domains.

So the first one is, and this is especially relevant for the panel, is the advertising and preservation knowledge. And that refers to the ability to recognize advertising, understand the strategies used, know how to evaluate the fairness, the appropriateness of the ads. The second domain is a transaction knowledge, and this refers to all brands and product related knowledge, but also shopping related knowledge. Then you have the decision making skills and ability that refers to how you search information. Where do you do that? How do you evaluate a product? Which attributes are you using in your evaluation strategies?

Which decision rules do you use? And the fourth domain is purchase influence and a negotiation of abilities that refers to the influence strategies, the bargaining strategies. For instance, as a child wants to convince the parents to buy a product, how can the child do that? Which arguments should be given? And the fifth domain is the consumption motives and values. So it refers to materialism, social motives to consume certain products. And the theory assumes that these competences are acquired during childhood. So a child is evolving from a simple unknowing to a sophisticated and knowledgeable being. So based on cognitive, social and emotional development, here three important stages are distinguished. But it's important to note that this research is mainly based also when it concerns to advertising to the traditional advertising formats. So when you are looking at the development of children, an important first stage is the perceptual stage that is distinguished.

This is for children who are age three to seven years, and then children are mainly focused on the perceptual features in the marketplace. So their consumer knowledge is often based on what they can see and what they can observe. And decisions are mainly based on limited information, often focusing on a single attribute that is easily observable. And they have some idea of what brands are, but they lack insight into the abstract concepts and knowledge structures. And we also see that in this age group, children's perspective taking skills are developing or maturing. And this refers to the fact that you are aware of what motives others might have and that these motives can be different than your own motives. And this is an important skill to understand that advertisers are trying to persuade you.

And our research that we have done on preschool children, for instance, shows that these children have a simple understanding of the selling intent of advertising, but they have difficulties to understand the persuasive intent. And they are able to recognize television advertising because they are using perceptual features such as the length of a commercial, the voiceover that is used, the skip button, for instance, on pre-rolls on YouTube can help those children to recognize advertising, but they have difficulties to recognize embedded advertising. For instance, influencer marketing was really difficult because these perceptual features were absent. Now, children in the analytical stage, which is the second stage then, are children between eight and 11 years old. And they are better able to understand bias and deception in advertising. And this period is an important period in the development of consumer competences because these children then develop a more nuanced understanding of the marketplace, a more complex knowledge set of what advertising is.

And then in the reflective stage, when children are between 11 and 16 years old, their knowledge becomes even more nuanced. They get more insight into the different persuasive tactics that are used, and they are better able to control their emotions, cognition, and behaviors. And this skill is very important in the contemporary advertising roles. So two important nuances should be made now when we discuss embedded advertising. We see that there are constantly new tactics evolving, new social media platforms are coming up, and then advertisers use different strategies to persuade children. So you constantly need to update your knowledge. Even adults need to acquire new competences to understand all those new tactics.

So it's a lifelong process and it's not really a linear process because you can also experience disempowering processes. And the second important thing is that we cannot really assume that

consumers are always rational. They are often irrational because we are guided by biases, by our emotions. And it's especially important to have some kind of self-control to control your impulses and emotions. And this is very difficult for adults in the cognitively demanding environment. Think when you are going to the supermarket after your work, it's very difficult to resist all temptations. And for children who are developing their executive functioning, it's even more difficult.

Elizabeth Nach:

Thanks for walking us through that background. Ava, your research has explored the persuasion knowledge model. Could you explain that model briefly and how it relates to children's ability to recognize, understand, and defend against advertising?

Eva A. Van Reijmersdal:

Yes. So that's a model that was developed first to explain how people are influenced by persuasion attempt, by salespersons but also by ads. And we took that model as one of the most important theories to understand how children but also adults respond to blurred advertising. So we discern different aspects of that knowledge, and we see that there's conceptual persuasion knowledge, and that entails recognition of advertising. And especially for those blurred formats, it's sometimes very hard to recognize whether something's advertising or not, even for adults or even for us scientists. So that's one part.

Also understanding that the advertising has a persuasive intent. And interestingly, what we see is that, so for adults, adults you assume that once you know that something's advertising, you immediately activate the knowledge that it then has a persuasive intent. But for children, that's not a natural thing. So what we saw in our research among children of various ages, even as old as 13 or 14, that if they knew that something was advertising, that it did not trigger their understanding of a persuasive intent, that it also is meant to change your perceptions and your attitudes towards that brand.

So they have very basic, some children have very basic understanding of, yeah, it's an ad, it may want to sell something, but it doesn't want to, they do not activate the nod that it also wants to change their minds about products or services. And then also part of the conceptual persuasion knowledge is the understanding of the tactics that are being used. So for blurred advertising that it's made not too obvious, that there are nice, relatable influencers used to sell the products or to send the message instead of the advertiser itself.

And that's also a skill that needs to be developed. And as this lot has needs development all the time. And besides the conceptual persuasion knowledge, we also see a more attitudinal component. And there we look at more critical evaluations of advertising. So also advertising literacy programs, for example, in schools have very long, we have been focused on enhancing perceptual persuasion knowledge. So we thought as long as children understand that something is advertising, they will be able to critically reflect or to activate their evaluations of these forms of advertising. But in our research, we see that a second step to activate or trigger attitudinal preservation knowledge. And that involves, for example, thoughts about how misleading advertising is, or whether you should be skeptical or not, or what your overall evaluation of the ad is. So it's a more effective component versus a more cognitive component.

And so what we see is that just focusing on enhancing the cognitive persuasion knowledge is not enough for children to also start to start thinking critically because they oftentimes just stop when they know that's advertising and they just take it for granted. Or what we also found in our research is that children between 10 and 12, for example, once they know that something is advertising, they find it even more attractive because then they realize that it's something that they can buy or that they can put on their

wishlist. So by increasing that conceptual advertising literacy, it made them even more susceptible to the advertising. And that was also striking. So it's really a separate thing to also learn children to be critical, to think about bias, to think about the truth in advertising. And that's why we use this refinement of the persuasion knowledge model in our studies.

Elizabeth Nach:

Thank you. And it appears based on what we've been hearing that many of the concepts and research you've talked about were originally developed in the age of TV advertising. So my question is, can this research be extrapolated to digital advertising, particularly given the wider variety of ways in which digital advertising occurs as we saw in the last presentation? Liselot, did you have thoughts on that?

Liselot Hudders:

Yeah, I think that a digital environment is especially characterized by a high cognitive load. And what Ava said that it's very important that children also apply the knowledge they have. It's very difficult in an environment where the cognitive load is so high and you are watching entertaining content and you are not looking at or searching for the commercial content. It's really embedded, it's hidden, and it's often not clear that there is commercial content in it. So you have just to go to watch the entertainment content, so you will not be motivated and not have the capacity to activate the literacy and critically reflect on the commercial content.And it makes it also very difficult to apply simple resistance strategies. For instance, a television commercial, it's clearly distinguished from media content and you can easily avoid it by just going to another room, by changing the channel. But when the commercial content is embedded in the media content, you cannot use those simple strategies because if you would try to avoid a commercial content, you would miss the media content. And also, as I said, the environment is constantly changing. New platforms arise, new tactics arise. So it's a continuous learning process to identify the strategies and understand them and learn how to critically reflect on them.

Elizabeth Nach:

So one of the more interesting developments on the digital media premise, of course, immersive environments, virtual reality, augmented reality. Grace, with the models that Liselot and Ava have described for us, applied it these immersive environments,?

Grace Ahn:

Yeah. Many of them do. And there are things that we can take from what we already know in the existing literature and expand it upon the different features that are introduced in these immersive spaces. One of which is the fact that we are now sharing spaces with other people, not just in the sense of this abstract, we're using the same platform, but physically we are embodied in the same space. And a lot of the literature demonstrates that when you are physically sharing a space, your cognitive processing changes to accommodate the fact that you are in the social environment. And what we find through a lot of our prior research is that children have developing skills. So they're still in the process of trying to understand what it means to have a friend and what that friendship means, what you are trying to get from that friendship, what you are giving back in response.

So their current understanding, because it's in development, is much more transactional than what adults might experience in a friendship. And so, for them, just a simple matter of if that virtual agent or if that virtual user, VR user, gave me something, then potentially this friend is good. If that character looks like an animated cartoon nice person, and a lot of the digital television or even the traditional television research will demonstrate that children respond very favorably to something that looks nice

and looks friendly. And so, with avatars, you're able to really use this and leverage this feature to make everybody look very friendly. And so you'll see that typically in Roblox. All of the characters, and in other video games as well, most of the children facing video game platforms will have avatars that look very friendly. It's a little bit difficult for children because their cognitive skills are still developing to understand that what people are thinking or have different underlying motives behind what is shown on the surface.

And both Liselot and Ava mentioned that these developing skills, because they're immature, still take time. And so when we are trying to go for things like autonomy, so we always celebrate children's autonomy, but we find that autonomy doesn't simply mean leaving children to their own devices. It's more of a relational concept where they're getting the social support to help them make these autonomous choices. So they need parental guidance, they need interfaces that provide information. A lot of this requires clarity so that they can make an informed choice. And a lot of our ongoing research demonstrates that when they are interacting with bots or virtual agents, they are easily able to perceive friendship, and particularly when it's transactional. So when they're getting points, when they're getting gifts, when they're getting positive encouragement that are very simple and pre-programmed, children still perceive friendship and intimacy. And this can be used for good.

But when you are using this for maladaptive or negative intentions, then this can easily be taken out of context or used for persuasion or manipulation. And so I think that's one thing that we really notice from a lot of these social and virtual spaces where you're there, it's sort of like a digital playground. You're able to play with friends there, but at the same time, it's very difficult and challenging for children to even distinguish, is this a real person behind the avatar? When the avatar looks nice, what are some of the underlying motives? And when the relationship becomes transactional, is this still a friend? What are some of the positive and negative things that I can get from these relationships? These are very abstract and complicated issues when we have relationships, even out in the real world. But when they lose that ability to tell whether this person is real or not, especially in the virtual world, it makes it even more challenging. And so these are some of the issues that we've seen with our recent research.

Elizabeth Nach:

Great, thank you. Now, Jenny, do these theories and concepts apply to all children?

Jenny Radesky:

So I'm a developmental behavioral pediatrician, which means I follow lots of kids who are wired differently and who experience the world differently. And it's not just a small subset of people with quote unquote disabilities who are very different. This is 15% of US children. It's 7.2 million kids who receive special education for some condition that could be a learning disability, ADHD, executive functioning difficulties, autism spectrum disorder. So with a neurodiverse perspective on this, we need to understand that these kids are avid users of video sharing platforms, social gaming platforms. They, however, are not included in a lot of the studies on how kids understand and resist advertising. Those usually recruit healthy typical kids. But I want to kind of demystify where neurodiverse kids may have lagging skills that just don't come as easily to them, but are going to make it harder for them to do this kind of persuasion identification or resist some of the advertising, especially if it's blurred.

So all the things actually that Liselot talked about, perspective taking, understanding motives, so much harder for kids who have less mental flexibility, have high functioning autism, have ADHD. Abstract thinking. I have plenty of patients who are kind of middle school, high school age. They have incredible IQs, but they're abstract big picture thinking. Lags behind. They may be more reward sensitive. So those little transactional things that Grace was just talking about matter so much more to them. And they

can't take a step back and say, wait, is this an authentic interaction? Who is this person? I ask my patients all the time, are those other kids that you're playing with? And they're like, yeah, I think so. They're still trying to figure out from the cues that they're provided from the interface and from the other people who these people are and what their motives are.

And so I really think that in addition to those difficulties, the fact that we have digital environments that have so many visual elements, so they're really potentially perceptually overwhelming to lots of kids. It just may make it harder for lots of kids to have clear self-determined decision making. And I love using the curb cut analogy is that if we kind of accommodate to kids who have these lagging skills, we don't have to be super, super precise about, oh, is this a 10 year old using this game? Is this a six year old using this game? You can at least provide more transparent, more fair and honest advertising to a larger group of youth who are going to need a little extra help, both from the interface and from the social world around them, to understand it.

Elizabeth Nach:

Thank you. Now, Sonya, I'll come to you for this question. Is it possible that kids at certain ages might recognize that they're seeing a commercial message but not quite recognize it to be an advertisement? And what does that say about their ability to understand the ad's persuasive intent?

Sonia Livingstone:

Yes. I think there's lots of ways in which children have to get used to seeing being in a commercial environment. And with time they learn about advertising, they learn also about sponsorship, about product placement, about merchandising. There's a whole set of strategies that are commercial. And it is hard for, actually, it's hard for adults to sort all of these things out and to recognize them, and notably for children. And so what we see is a digital environment in which ever more kind of sophisticated and complex strategies are being developed and being embedded. And they are developed inevitably in advance of children's capacity to understand, this is an advertisement or this is here to persuade me of X, Y, or Z. And what I see in my research and that of others is a kind of general desire from children to believe that companies kind of have their best interest in mind, they're there sort of to be helpful, and they want to show a product that they think the child will like and will be a good thing for them.And this is, it's important, isn't it, that children do grow up with a sense that others are there to broadly support them. And so I think it's quite a challenge for children and also for their parents and their educators to switch into that mindset that says we have to teach children to distrust. We have to teach children to be skeptical of so much increasingly, of almost everything, because it is so hard to tell what is there for your benefit and what is there not? So I think children are, they do come to learn skepticism. I think in other areas, we can worry about how distrustful children need to become to survive in this kind of highly digital world. But there is a lot to be skeptical about. And one thing I might point out is it takes a lot of knowledge of business and of platforms and of marketing practices to grasp how advertising is becoming personalized, to figure out that you don't see the same marketing messages, the same advertising messages, as your friend or as your parents or as someone else, but it's for you.

These are sophisticated skills. And for the most part, children, they want to think well of companies, they want to think well of the world that they're growing up in. And so, there's a big slippage between recognizing persuasive intent and taking a wholly skeptical attitude to the world that you're growing up in. And if there aren't mechanisms that support children to protect them from being manipulated or being deceived, we will find ourselves arguing that children need to become distrustful and skeptical of everything, which I don't think is in a company's interests, certainly not in children's best interests.

Elizabeth Nach:

Great. And I'd love to dig in more as far as we've talked about the ad recognition piece, but to focus now more on the skepticism, as you called it, Sonya, that aspect of it. And more general, I refer to that as processing how children evaluate and defend against advertising. So before the next question, could we bring back the slides please? Thanks. So regarding processing, Liselot, what are the different levels of processing and when are children able to engage in these different levels of processing and the advertising context?

Liselot Hudders:

Well, it's only when we are highly motivated and we have the ability and capacity to process advertising that we engage in systematic processing. So this implies that we apply all the knowledge we have concerning advertising and use this knowledge to critically assess the arguments given in the ad and consciously decide whether the total would be a good option for us or not. However, in most cases, we as adults and especially children, are not really motivated nor have the full ability or capacity to systematically process advertising. So then when we have moderate levels of elaboration capacities, we engage in heuristic processing. So this means that we rely on heuristic cues to evaluate the ad, and we use simple strategies to evaluate the ad and the brands that is shown in the ad. For instance, we rely on peripheral cues such as the product endorser. We believe that if the product endorser thinks that the product is good and is a nice thing to have, the product must be good and we will also like it.

Or they rely on the number of arguments that is given rather than the content of the arguments. And if more arguments are given, then the ad must be more credible and the product must be better. Now, when we only have a limited ability to process advertising, we rely on automatic processing and then we are affected through implicit and effect based learning mechanisms. And then advertising literacy is not applied and we are often not aware of the persuasive intent. And children mostly rely on those two ladder strategies when processing advertising and when it concerns embedded advertising, automatic processing, often of cures. So exposure to the commercial content builds associations in children's minds concerning the products and the brand. So it raises awareness on the products, it's built their product knowledge, and there are also effective mechanisms in place that build brand preferences. For instance, the simple mirror exposure effect. The fact that they see the brand in different influencer videos, for instance. The next time that they encounter the brand, they feel positive because it feels familiar to them.

Elizabeth Nach:

Great. And Jenny, you had some specific findings to share from your research on YouTubers and on mobile games.

Jenny Radesky:

Yeah, thanks. We can move to the next slide. I really wanted to show some examples of how cognitive load may incite some automatic heuristic based fast brain decision making when you're in the sort of digital environments that kids are so current commonly visiting. So we're doing a study on YouTube looking at recommendations feeds. But one of the things we found during our coding of the thumbnails that occur on these recommendation feeds, as you can see, there's four screenshots here of what a child might be offered after watching a video. We did these after doing searches for terms that we know that school age kids are often searching for. Minecraft, Roblox, Fortnite, other things that the types of video games that they like to watch. And I think what we're finding is that if you're a content creator in one of these spaces, you are trying to engage your audience quickly, within the first few seconds or just

an impression based on the thumbnail, because you're trying to compete with thousands of other people trying to do the same.

So right now, children are really, they are seeing lots of visual design that is characterized by what we call kind of crowded, loud visual perceptual features, but also heuristics around violence, sex, intrigue, luxury goods, frightening horror characters like It or Squid Game. These are often combined to entice click through on a YouTube thumbnail. So you may say, okay, these are not actual ads in and of themselves, but when you're engaging with a content creator, it means you're not only generating ad revenue for them, but you're then going to engage with their brand, with their merchandise, with their gaming codes that generate a commission.

Jenny Radesky:

Right. So, these are all just the strategies used right now that really are relying on heuristics. And on the next slide is from a paper we just published in Jama Open, showing that in mobile games there's also this combination of different tactics, right at decision points. So, if you're a child trying to make a self-determined decision about whether to purchase something, whether to keep playing, but you're faced with UX design features that might be navigation constraints, tons of para-social relationships of characters that you love from different shows or from that game, multiple confusing forms of virtual currency.

And you're also given asymmetric choices here where clearly the subscribed now button is really large to get this free trial and then start paying $8 a month three days later. I'm sorry, $8 a week. So, this is just an example of not only what children understand about advertising and can resist under ideal lab-based conditions, but also what they'll be experiencing basically in the wild when they're encountering really a barrage of different forms of persuasion. So, thank you. You can minimize the slides now.

Elizabeth Nach:

Thanks, Jenny. Now Sonia, could we talk more about processing ability of pre-teen groups and teens that are more developed, what other factors are there to consider?

Sonia Livingstone:

Sure. I think one of the crucial things, I know many parents ask what is the right age when children can understand this or that when they can be exposed to some of these complex environments that Jenny was just presenting. But what we know from research and Liselot just took us through that very carefully, is these are complex processes of coming to understand a really complex world, a complex business world, a complex technological world, a complex environment to engage with. So, there is no, magic age. There's no an age where they completely understand this and it applies to all children just the same.

At 12 they understand this and sometimes I hear those ages, yes, research shows that there is transformation with time. Yes, there are certain moments when you can see that many children have moved on. But I think two points to emphasize, one is we've talked about evolving understanding or evolving capacity because it's a gradual process that moves at different rates for different children. Then as I think we've touched on already, children are not all the same. They develop at different rates and there are different processes they go through. And then because the understanding the commercial digital environment is so multidimensional, they might learn these things at different rates.

They might gain an understanding of what to look for, to tell what is an advert, at least in traditional television, they might learn that before they come to understand about how that might apply in the digital world. Or the business strategy that sits behind the content that they are shown or the

personalization of the algorithms that comes in. It means that they get their own special advertising context. So, all of these different competences, they also develop at different ages and in different ways. So, I think it's really important that we don't treat all children the same and we don't look for a magic age. We've got to recognize these are complex evolving processes and sadly from children's perspective, the innovations in the digital and commercial landscape probably always one step ahead.

Eva A. Van Reijmersdal:

And maybe I can add to that, also in our research, when we interviewed children between 11 and 16 year year old, we saw big differences of, for example, kids of 12. Some of them were totally, as we would call it naive, that they would say, "Well, this influence would never tell me something that they do not sincerely mean." If they do not like to eat these sweets, for example, they would never do it on camera. They only do it if it's real. Whereas other kids of 12 years old who for example, were active YouTubers themselves who are very much aware of the economic model or the business model behind being an influencer, they knew that you have to have these sponsor deals to be able to buy a better camera and to provide better content.

So, I would totally agree with Sonia that these differences between kids are very big and it also depends on a lot of things. But also on their experience with this media. You see that time and time again that the more you see these forms of advertising or the more you encounter these types of content, the better you become in recognizing them and being critical. And so, even if you have a special interest, you want to be an influencer yourself, then that knowledge is really very different than from just being a viewer or being a passive consumer of that content.

Sonia Livingstone:

And I think the children's other factors come into explaining some of those differences as well. So, we have some research which shows that socioeconomic status matters and that a child, in one study we did, a child of 11 from a relatively privileged home had the level of understanding that it took a child from a poor home until they were 15 to get. These can be quite big differences. And so, family background, what parents, their education, what they can afford to provide for their children, these things all matter.

Elizabeth Nach:

I'm glad you mentioned socioeconomic status because I know Jenny, that's something that you've looked at as well in your research. Did you have anything to add on that particular point?

Jenny Radesky:

I think it's a matter of a couple of issues. One is on the parent level is that a lot of the families don't feel as confident in understanding what our really, as Sonia has said, such complex socio-technical systems. They just more feel this, I'm going to give up. I'm just going to let this happen. I think there is also a bandwidth question is that they're juggling so much more that they don't have as much time and they're not as anxious as some of the higher educated families that really try to curate every single thing kids are doing online.

Lower income families in the US are being barraged with their own influencers and ads, especially around sports betting and casino ads. The targeting that they're receiving, I don't know the research on whether that actually can make them more savvy or make it harder for them to be mentors for their kids around this as well. But I do think this is an important source of making sure we're not assuming that

every child has a parent sitting there with them watching and helping explain everything the child might be seeing on the screen.

Elizabeth Nach:

Thanks. I wanted to go back to a point that Liselot raised regarding self-control, emotional regulation. How does that factor into processing advertising for children?

Liselot Hudders:

There are blurred ads. Children are not looking out for commercial content. They are just enjoying the content. They're just looking at the entertainment. So, it's different than when they are watching television and they see the separate television commercials. They have more ability to resist the ads because they are helped to inhibit their responses. Now, when you see the ads that are embedded in the commercial content, the ads that are embedded in the media content, it's very difficult to inhibit your responses because you are just assigning all your resources to watching the content. And in addition, when we look at influencer content, they spend a lot of effort and telling the children and people why they really like the products. And this makes those ads very, very persuasive because they relate to those influencers and they like the things the influencer also like.

Elizabeth Nach:

Now, we hear the phrase digital natives a lot. To what extent does this affect children's ability to recognize and understand that persuasive and intent of advertising in digital media? And Sonia, maybe we can start with you.

Sonia Livingstone:

So, I think the phrase digital natives has been overused and we in the research community most people probably wish it had never been invented. Because it became a way of leaving the kids on their own really, just assuming that they knew it all already and they were already ahead of all the adults. So, I think it unnerved parents and teachers who were ready to try to teach children something about this new and complex digital world. And it meant that policy makers perhaps looked elsewhere because the kids. So, the kids already know it all. It's very hard to compare what children know today about advertising with what they knew 10 or 20 or 30 years ago because it's different kids growing up at a different time in a different commercial environment.

So, I think that the constant is that the industry is probably always ahead of the kids, and perhaps it's true that many of the parents and teachers are a little behind, but there's wide variation on that. And what parents and educators do still know better than many children is the nature of the commercial. Well, the purposes of advertising, the nature of the effort to persuade people of something that may be pleasant for them, but may be against their interest, maybe harmful for them. So, I think let's leave that phrase behind and let's really focus on the challenge in front of children, given the content that they are shown and where the steps need to be taken.

Jenny Radesky:

I think that's perfect. I just wanted to respond that that framing of digital natives is something that just lets us give up. It's this same mindset that in our qualitative work, have heard from families who don't have self-efficacy around lots of the institutions in their life, including the digital institutions and environments that they don't expect to help them get their kids off of video games for dinner, other things like that. So, I interpreted this idea of, what is a digital native? Is it just that a child is growing up

in there's new of, new technology? Are they just going to absorb it and about it just by experiencing it? And I think that's a flawed conclusion because kids create mental models of the world around them or objects around them based on observation.

What are the formal features of that object teaching them about what it is and how are they seeing it used by the humans around them? So, in the case of, we did a study interviewing six to 11 year olds about what they understood about digital privacy. We could see how much they were forming mental models based on the surface queues of the platforms they were using. Where is my data stored? It must be right up here where it says history on YouTube. There's no surface queues telling kids about data flows back to company servers or anything like that. So, why would they create a mental model about something that's invisible? The same thing here, why would they create a mental model about something that's not stated and that is actually stated maybe a different way by someone who they've come to trust.

So, I think that is one difference in our generations is that when we talked about para-social relationships in the eighties and nineties, it was with Elmo and he was teaching us these different early learning social emotional skills. Now, kids have these para-social relationships with a distributed set of individuals who may not have any background in child development, may have very different motives, some of whom are amazing, some of whom I would prefer that kids not watch. But I think that there's a way that kids are now creating this wishful identification with these influencers that seem authentic. They seem just like them. It's more powerful when that influencer is like, I'm giving you the inside scoop of this review on this product.

You can trust me because I'm keeping you away from these other products and I'm really telling you which magic they're gathering cards to buy. That's the stories I hear from my patients about which YouTubers they feel represent them, are part of their plan that they would buy merchandise from for this sense of emotional belonging. And if they're not shown through the surface features or even through the YouTuber themselves showing some outtakes, showing this is how I made this. I've heard from kids in our workshops locally that when they see a YouTuber doing some outtakes of like, we pretended that we bought that Lamborghini, but we actually just brought it back to the rental store. That really helps kids understand the motive, the business model and what's going on behind the scenes. So, I think there's a space for a lot more of that in influencer marketing.

Grace Ahn:

And I guess the perception or the conceptual understanding of digital natives, I think encourages adults to leave the kids with their peers. And the peer to peer information has just so much that's either wrong or just inaccurate. And when that level of information is shared across all of the social users on these platforms, then I think that's where you're getting a lot of the knowledge that you shouldn't have from the beginning. And so, when we do a lot of our research on how do we really encourage the right autonomy, the more related relationship based type of autonomy. When we are able to use sensors on, let's say wearables on children and allow the parents to be alerted in real time to the kids' activities, we see that the parents are interested, but they don't really know exactly how to guide the kids.

And so when they receive these guidelines, then the support goes up. And so, they want to support, but we had discussed before, the bandwidth is very limited. And so, they don't know when to jump in, what their kids are doing exactly. And so, a lot of it is, I guess they're playing and playing is good and they're playing with friends. But when we do alert them of what is exactly happening then the parents are much more active in intervening at the right time and providing guidelines because they do, like Sonia mentioned, they do know what the underlying motives are in this larger context and they understand

the abstract idea of persuasion. And so, we feel that when you are trying to get... If you get the social support for these kids, then they can make informed choices, but not so much on their own.

Elizabeth Nach:

Great. Thank you. So, we've talked about the different types of digital media and challenges and immersive spaces and we talked a lot influencers as well. Maybe we can move on to just the thoughts on impact and this is the focus of the next panel as far as harms or benefits stemming around children's inability to advertising from other content. But I'd like to go around and have each panelist talk about what impacts do you think are worth highlighting. So Sonia, maybe you go first since I know we have you for a little bit more time, a couple minutes.

Sonia Livingstone:

Sure. And you mean impact in terms of what could be done, what changes might be made or?

Elizabeth Nach:

Just a discussion of any harms or benefits that stem from children's inability to distinguish advertising from other content given the current advertising landscape.

Sonia Livingstone:

Well, I think there is so much research on this and we could distinguish several kinds of harms. One is, harms from children being exposed to age inappropriate or potentially harmful product advertising, sorry. Advertising for products that are themselves potentially harmful. So, junk food would be an obvious example. And there's a lot of research that links that to children's weight, their health. And we could link a second set of factors, which is not what is being advertised, but the context of the advertising. What is in the way advertising messages are constructed. Everyone is thin, everyone is beautiful, everyone has perfect hair and perfect teeth and so forth. This has been linked to body image issues, which are, we also know are rising, especially among adolescent girls.

And then I think specifically in relation to influencers, I think, and we don't have such good research yet, but I think there is the potential for quite a crisis of trust because influencers are authentic, supposedly and genuine, supposedly in building a relationship with young people over time. And we have evidence in Britain that about a third of British teens are following over 30 influencers. That's a lot of content they're seeing from people claiming an authentic relationship with the child or young person and much less regulate your attention to what they're saying and what they persuade them of. So, I think both in the overt product, but also in the wider context, there are plenty of grounds for concern about children's mental health and physical health.

Elizabeth Nach:

Great. Eva, what are your thoughts on potential impact?

Eva A. Van Reijmersdal:

So, one of the studies that we've also done is on content analysis of influencer videos. And what we see there is that there are, in almost 94% of the videos, there are materialistic cues. So, cues that signal that having products makes you happy, that it will help you get friends. And if you watch a lot of these videos, your view of the world will change. We know that from rather old theories, like cultivation theories that showed, for example, if you see a lot of violence on TV, you believe that the world is a

more violent place. But for these children, if they get this impression that materialistic values are important, that products are important, if you watched this a lot, it can be very problematic.

And also because we know that materialism is often connected to a lower emphasis on personal relationships. So, the materialistic values replaced personal values or social values. So, products become more important than people. And if you are not aware of why these influencers are telling you all this, then it's really a risk of becoming very unhappy and only wanting to have more instead of investing in the high quality relationship with others. So, that's one of the harms that I would like to add to what Sonia already mentioned.

Liselot Hudders:

Maybe I can add to that because advertising also builds product preferences and these can grow into habits later on. And you also see that it might lead to parent-child conflicts because advertisers often show products that are really great and children really want to have it, even though it's not always realistic and it costs a lot of money and not our parents can buy those products for children. So, it can lead to difficulties if children see that their friends are getting the newest and coolest things that they see all through influencer videos, for instance, it can also give trouble there.

Elizabeth Nach:

And Grace, what are your thoughts?

Grace Ahn:

I think with the advancing technologies that are creating more immersive spaces, I think what is really concerning is that we're able to better disguise these advertising and persuasive intents. We're able to divide things like what does a person look like versus who is controlling them, what they look on the outside, a lot of these layers of deception that we're not able to really take advantage of with more conventional advertisements. And they're able to hide behind that novelty and it's going to take some time for the consumers to figure out exactly how to deal with these newer persuasive attempts. And during that time, disclosure is going to be the key thing.

So, in the user interfaces, if this is a bot, you have to let them know. If this is a paid message from a sponsor, it's a sponsored message, then you need to let people know. And particularly for children in that interface, this disclosure can't be hidden. Advertising in itself is fine, but you need to let people know and children know that they are dealing with advertising. And I think for immersive space it just becomes easier for advertisers to try to disguise this. And with this ongoing development of the metaverse, I think what's the key thing that could be a potential issue is that the virtual and the physical worlds become much more connected.

So, your virtual experiences come in and transfer into the physical world. So, whatever you experience there doesn't stop when you power off the computer. A lot of the research demonstrates that your virtual experiences carry into the physical world and continue to impact your attitudes, thoughts and behaviors. And so for children, it could lead to advertisers giving them experiences that they want to carry forward into their physical world and that might influence the way that they think about and even perceive the world and vice versa. And so, that connectivity can be good, but it can also create a lot of problems that need really clear disclosure on the interfaces themselves.

Jenny Radesky:

I'll just add that really building upon what Eva said about materialism is that when I've worked with school aged kids here locally in Ypsilanti and asking them about YouTube and influencer culture and

things, so many of them said, it just makes me feel less than. Just watching everyone else perform with these unrealistic standards of wealth or beauty or masculinity or femininity or whatever it is really engenders some degree of social comparison or actually a pretty disorganized relationship with that para-social character or influencer. When they told stories, I thought he was faking, and then I was looking for these clues about how they were being dishonest, but I really still like it and watch it a lot. Or they were deceptive about what they were going to show in their video, and they said it was going to be one thing.

And I watched the whole video and it wasn't. Then all of them said that a certain group of influencers were saying, "If you don't subscribe and like, you'll wake up with spiders in your bed." They trust and want to please these influencers, but yet are getting this manipulative trickery sometimes from influencers who are really trying to compete and be a little bit more extreme, a little bit more clique ready. So, I think that is maybe a longer term issue. We don't have any research on what psychological impact that has on kids and really it's to the hope in the end, it will be to the detriment of the influencer who's using those tactics, because I think and hope that children will just disengage.

Elizabeth Nach:

Thanks. So, our last panel today is at least get possible solutions to harms post by blurred advertising to kids, but I wanted to touch upon that briefly here, and maybe we can go right to Eva as far as discussing the topic of disclosures. Has research in this area pointed to certain disclosure modalities such as audio or visual being more effective? And also, just given that another unique aspect we're dealing with here with digital advertising and perhaps a challenge is that it crosses borders. And is it possible to have a universal disclosure or queue or icon?

Eva A. Van Reijmersdal:

So, that's indeed our ideal. Something that we are working on. So, you have these icons for appropriate age, for example, for harmful content. And we have a very successful system for that in Netherlands, but also in Belgium and in other European countries. And our ID was indeed to have an icon that signals advertising to children across platforms. So, we conducted this series of studies in which we also asked children to develop or to design such icons that are comparable to icons for violence or drugs or anything, any harmful content. So, the project isn't finished yet, but our idea would be to have this one icon that's recognizable for everyone, not only for children, but also for their parents, so that they are aware of the content being sponsored or the content not being just genuine opinions, but actually having a persuasive intent.

So, what you see now is that in many guidelines or regulations, there are a lot of suggestions on how to disclose sponsored content. So, they give several options and there's freedom for the contents creators. They can use different hashtags, they can use different positions where they place them. But what we see in our research is that people do not look at that and they miss it. Or they do not understand it, or especially for children, the wording is so fake that it doesn't help them understand what's going on. So, if you say, this is brought to you by this or this brand, or this is incorporation with. Well, we ask children and they have no idea what that means. Even sponsored, which we thought would be obvious, is very hard for children to understand because they say, sponsoring is a good thing.

Because I also do sponsorship in school where my parents sponsor me to raise money for this charity. So, sponsoring the brands to helping my favorite influencer. Also what Sonia was saying, that they want to think positively about companies and brands. So, to avoid all these fakeness of disclosures and having them in different positions and different forms on each platform, our ideal would be to have one icon that is applicable across platforms, across types of content, across nationalities, across countries that

could signal that there's advertising and that could raise a flag for children, but also for their parents to be aware of the type of content that they're watching.

Elizabeth Nach:

And very briefly, since I see we're down to five minutes, unfortunately, but could you just tell us very briefly about any international efforts, like perhaps with your insight on what's happened in the Netherlands on this front as far as addressing that pictograms, for example?

Eva A. Van Reijmersdal:

So, we are doing this research project and together with the, [inaudible 02:07:54] who's responsible for the signaling of harmful content

Eva A. Van Reijmersdal:

... for EU regulation. In the Netherlands we also had an initiative of YouTubers themselves who wanted to contribute to more transparency. And I think that was also a very valuable initiative where they wanted to create a universal way of disclosing advertising in their videos. So have it always on the same spot in the description of the video, have the same language across videos and across situations.

And also an interesting thing that you never see in the regulation is that they wanted to tell when something is not sponsored. Because otherwise if there's nothing there, you still have to guess, did they forget the disclosure? Did they try to hide something? You are never sure. So I thought it was a very nice initiative of the influencers themselves to say, yeah, we want to be transparent also when we are not sponsored, because then you do not have to look for that information or have to guess all the time. Because of course it's a problem that there's not strict adherence to the guidelines.

Elizabeth Nach:

Great, thank you. And now I just had a final question, which I guess we'll make into a speed round. But what are the research gaps with respect to children's ability to distinguish advertising from other content?

Jenny Radesky:

I'll start because I'm inspired by Eva's comment about the YouTubers wanting to have a standardized approach. And I think my dream experiment would be to have YouTubers who have different target audiences work with families and kids to craft a few different approaches and then deploy them experimentally on a large scale. And we could study both in labs and in homes, how kids are responding to it and what they understand. And have measures about things like not just their persuasion knowledge or the cognitive aspects, but also something to measure the attitudinal aspect and more of these implicit things which are hard to measure. But I love Grace's idea of wearables and other things that help us look at arousal or look at ways that kids are responding behaviorally to something that can sometimes be super exciting and emotional.

Elizabeth Nach:

Great. Now Grace, what would be on your research wishlist?

Sun Joo (Grace) Ahn:

Yeah, for me, I think it's still very unclear how children react to these very immersive experiences that build very detailed mental models. You're seeing, you're hearing, you're touching, it's a lot of details integrated into your experiences with products within these virtual worlds, which we know based on conventional research that you start building favorable brand preferences when you've experienced and owned psychologically these arrays of products within these virtual worlds. And so when that carries over into the physical world, how does that impact the way that they treat brands or treat advertisements? And so the understanding around that arena is very sparse. And so I think that's a big research gap that we need to work towards.

Elizabeth Nach:

Thanks. Liselot?

Liselot Hudders:

I think it's very important to also examine which strategies children can use and to more easily resist advertising. In the cognitively demanding environment, how can they avoid being subconsciously persuaded? Which strategies can they use? Because we do not know exactly what advertising recognition really does and how it helps them. It can also lead to more attendance to the commercial content. So I think that's a very important part.

And a second thing and maybe more a positive thing, especially if you look to the kidfluencers, the very popular, famous ones are also now often posting educational videos and also try to educate children about healthy eating and the harms of sugar for instance. So it can also help them to build their consumer socialization competencies. Media is often considered as a negative socialization agent, so maybe it would also be interesting to see how it can positively contribute to children's competencies and how it can actually help them and what content is helpful and what content is harmful. So I think that can be exciting avenues for future research.

Elizabeth Nach:

Absolutely. And finally Eva?

Eva A. Van Reijmersdal:

Yes, I think I agree with Liselot and I'd also like to end this on a positive note of how we could use all these influencers and this media exposure that is out there, children are exposed to all this kind of content, how can we use it for the better? How can we use it for pro-social behavior, pro-social change for healthier behavior? And also from our research we see that these influencers can play a big role, so what children know about advertising in videos came from that spares videos, where influencers explained what they did or why they did things. So we see that has a lot of impact on children's knowledge, so let's use it for the better. So I think that would be really nice to study more.

Elizabeth Nach:

Great. Well I see our time is up, so thank you so much panelists for a really interesting and enlightening discussion. And next up we are starting our break and we'll be back with panel two at 12:30 PM Eastern. Thank you.

Michelle Rosenthal:

Hello everyone, thank you and welcome back from the break. We just heard from an esteemed panel discussing the ability of kids including teenagers to recognize advertising that is blended into entertainment or other content, you might call it blurred advertising, stealth advertising, some call it content marketing, but regardless of what you call it, we're talking about advertising or marketing that may not be distinguishable from the content in which it's embedded. It was helpful to hear from panel one about the research conducted on this topic and now we'd like to focus on the impact, including any potential harms that might arise from a kid's inability to distinguish between advertising in content or subsequently process it and any potential benefits from this kind of advertising. Before we do that, however, we have a really great panel, a great and diverse panel representing the stakeholders in this space and I'd like to introduce them.

First, I'm Michelle Rosenthal, I'm an attorney in the division of advertising practices at the FTC. And as for our panelists, in alphabetical order, they are James Cooper, who is professor of law and director of the program on economics and privacy at the Antonin Scalia Law School at George Mason University. He's also an FTC alum. Josh Golin, who is executive director at Fair Play, a nonprofit organization that advocates for kids. Dr. Jennifer Harris, who is his senior research advisor at the UConn Rudd Center for Food Policy and Health. Girard Kelly, who is senior council and director of the privacy program at Common Sense Media. And finally, Sheila Millar, who's partner at Keller and Heckman where she advises companies that make and sell kid related products on advertising, privacy and consumer product safety issues.

Before we get started, just a reminder that the views express today are our own and do not necessarily reflect the views of the commission or any one particular organization or company.

Also, if we have time, we will try to incorporate a question or two that we receive from viewers. Please submit those questions to digitalads2kids@ftc.gov and that's the number 2. So digitalads2kids@ftc.gov. Let's talk about the advertising landscape. We heard today from Mamie Kresses at CARU, we heard from her this morning about the kinds of ads kids might encounter in digital media, but what does it really mean to be a kid in today's world? Understanding the context in which we are encountering these ads will help us understand the impact including any potential harms or benefits.

Also, I should mention that today when we refer to kids, we're referring to kids up through the age of 17. I will ask our panelists to try to remember to mention different age groups when they're referring to different age groups. And now I think we can get started. So Girard, in order to get a full picture, could you tell us a bit about a day in the life of a kid who's exploring digital media? And perhaps you could also talk about how many kids have devices or have access to their family's devices.

Girard Kelly:

Yeah, thanks Michelle. So when we talk about the day in the life of a child, there are several different types of blurred ads that they're likely going to experience. And I think the first panel did a really great job talking about influencer sponsored messages. These are online videos on social media, YouTube or unboxing videos of toys. The previous panel also talked about virtual product placement, this is really kind of post production product placement that can appear in movies or TV shows or games to have a favorable brand association. But there's also different types of blurred ads that kids experience, like funny memes for example, related to brands or products that help form positive brand awareness, where kids feel in on the joke. There's also inspirational articles that mentioned popular products or brands in a positive light, helpful articles on social media that are related to other ads and sponsored content on the page itself to help shape opinions and preferences for brands over time.

And this is how it influences, the kids see the world. There's also recommendations or notifications on their mobile devices to engage with more apps or more content, which provides more data for those

personalized blurred advertisements. And as discussed on the previous panel, there's also virtual environments as well, the emerging metaverse, another type of media where kids can experience nudges, blurred ads that are indistinguishable from the authentic content or interactions. This can happen through in a in-game currency or in-app purchases. But lastly, I think the digital world and the real world are connected in a lot of ways and this follow kids into the real world that what they see in blurred advertisements can impact their thoughts and behaviors and purchasing decisions in the real world. Michelle, you talked about the devices and different age groups. And so I'll start with some of the surveys we do at Common Sense.

So we survey parents and educators as well as children and teens to really better understand what technology and apps they use every day. In the last couple years we've found that about 75% of kids under 13 own their own tablet. And more than about 50% of kids ages 10 to 11 own their own mobile device. Of course, younger kids without their own devices are simply using their own parents' devices at home. But in addition, our latest survey research titled, The Common Sense Census: Media Use by Tweens and Teens, found that over half of kids surveyed engage with television, online videos, mobile games, social media every day. We also found that on average 8 to 12 year olds use about five and a half hours of screen media per day, while 13 to 18 year olds use about eight and a half hours of screen media per day.

That's a lot of screen time, but as expected, YouTube, Snapchat, TikTok, Instagram, these are all the most popular apps that teens just cannot live without. Kids under eight, they continue to enjoy educational apps, games, streaming media and other online videos. But we also hear from families that they want better privacy for their kids and themselves. And to do that we need to better understand what is the actual advertising landscape that includes blurred ads, how often are children exposed to the ads with the apps we talk about that they use every day? We know that advertising is really effective at influencing decisions, but how does blurred advertising influence decisions behind the scenes? Through manipulation or exploitation of personal information that was discussed on the first panel. To answer these questions we also published a recent report titled The State of Kids' Privacy. It analyzed the privacy policies and practices of hundreds of the most popular apps and services used by kids and teens.

We found that children are exposed to advertising and tracking practices with the apps they use every day, which provides more data for personalized and blurred advertising. For example, almost two thirds of the products in the marketplace today used by kids have unclear or worse privacy practices that say they can track kids on the app and across the internet over time for advertising purposes. In addition, over half of the products in the marketplace have either unclear or worse practices in their privacy policies that allow sending third party marketing communications and 5 out of 10 products have the potential to target it at the children based on their personal information.

Michelle Rosenthal:

Thank you, that's really helpful. And we heard on panel one that kids at certain ages haven't yet developed the cognitive ability to distinguish between an ad and content when the two are intertwined. But what about the impact on processing? Josh, I was hoping you could talk about whether there are different factors present within blurred advertising or marketing that makes it harder for a child to process an ad even when they might be able to recognize it.

Josh Golin:

Yeah, thanks Michelle. And that's a really important distinction between processing and just recognizing advertising in order to defend themselves against advertising children, recognition is not enough and

the current ecosystem, the current marketing ecosystem that children are immersed in, as you've heard from Girard's really startling statistics about how much time they're spending is designed to make it harder for consumers to cognitively process marketing. And for developing children who are already at a disadvantage, it's even much harder for them. And so there are a number of marketing techniques that make it much harder for young people to defend themselves online. I'll just mention a few, but the use of parasocial relationships. There is a lot of research that shows that these parasocial relationships, these one-sided relationships where children believe they're having an actual relationship either with an influencer, a real life human being, or an animated character or avatar, that when marketing comes through a parasocial relationship the children are less likely to understand what's going on and to be able to defend themselves against it.

In fact, even adults are less likely to defend themselves against influencer marketing, there are studies that show that when there's a parasocial relationship. And disclosures don't help, I think that's one of the really important things here. So there was one study that showed that there was a disclosure that a brand had paid for a music video. And what ended up happening is that the teens that were watching that and saw that disclosure had more positive feelings about both the band and the brand that was sponsoring that video. So this disclosure isn't helping at that point. But I also think... We heard so much from the opening panel about the kind of complex cognitive processes that go into the understanding and defending yourself against an advertisement. And the ecosystem is not designed to activate those complex cognitive processes.

So just a couple of quick examples, one would be like when kids are playing a game and they have to engage with an ad in order to advance to the next level in a game. What they want to do is get to the next level in the game, I don't think that they're sitting [inaudible 02:24:21] "Why am I seeing this ad? what are the complex financial relationships underlying this ad? What is the persuasive intent of the ad?" That's not what's happening in that moment when they want to get to the next spot. And then the last thing I'll just say is that it's really important to understand the context in which these ads are being delivered. So many of the influencer ads that kids are seeing are on platforms like YouTube or TikTok or Instagram where their feeds are being algorithmically driven based on their interests.

And so kids express the interest in something, they start getting barraged with content related to that interest. And that could be content that is paid for by a brand, it could be content that is probably not paid for by a brand, it could be content that people like me can't even figure out if it's paid for by a brand, let alone a kid. And with all that coming at them and all of the friction that's been removed to get them to stay engaged online so that one video or one post is coming right after the other, it is completely unrealistic to think that at that moment kids are going to activate those complex cognitive processes in order to defend themselves against those ads.

Michelle Rosenthal:

Okay, that's really helpful. And so Girard, getting back to what you had talked about a little bit earlier and what Josh is talking about, you mentioned the context of receiving these ads, that they're personalized, that they're targeted based on information and that they're blurred. And we talked a little bit about how much time kids spend online and the kind of timing and frequency of the ads, is there anything more about the timing and frequency that you think is relevant to a kid's ability to recognize and process these ads?

Girard Kelly:

The timing or frequency is really important because it can be manipulative. If kids and teens are exposed to, maybe, advertisements all day long, but to be effective, blurred ads require engagement at the

precise moment when a child or maybe other kids profile just like them are most susceptible to suggestion. So maybe when they first wake up in the morning or before they go to bed at night, maybe free time on the weekends, maybe after a birthday party or before a birthday when they're thinking about purchasing gifts, maybe after a breakup, maybe when they're at a specific GPS location, at the restaurant or at the mall or while using other apps to chat with friends or engage with other content or maybe after watching a scary movie for example. These are all moments when the timing and frequency is important. Because advertisers need to know when to engage with these audiences with blurred advertisements and to persuade folks to make a positive brand association or maybe a purchasing decision later on.

And this all goes to a user's emotional state. But Michelle, you also talked about the nature of these type of ads, and I don't think we've gotten too much into that yet, but the nature and methods of blurred advertising can vary depending on the amount of personalized information you have about the intended user or audience. So for example, blurred ads can be used to persuade users to have a favorable association with the brand or product. But blurred ads can also exploit users personal information collected over time from other apps and services to more personalize that blurred advertising, to be more specific, to increase the likelihood of engagement, increase the likelihood to maybe purchase that brand or other products. But blurred ads can also manipulate users to think that they can think or feel a certain way about an issue or a brand maybe by watching a video or reading an article, to encourage them to think differently about a product, to maybe try to solve the issue presented for that audience for a commercial transaction.

Michelle Rosenthal:

Okay, that's helpful. Sheila, we've talked a little bit about targeting and personalization of ads, and I know we're going to get into some mitigating factors later in the discussion. But briefly, can you tell us, do you think COPPA helps at all? Does it help mitigate any of Girard's concerns regarding the targeting and personalization and adding that to the concept of blurring?

Sheila Millar:

Sure, thanks Michelle. I guess I want to start one step back though, what is advertising? And I want to go back to what Mamie said this morning because CARU has defined advertising to essentially exclude content based, character based, branded based, entertainment. It's not per se advertising. So I think that's a predicate point to really remember. With regard to COPPA, COPPA of course applies to a segment of what we're calling today children. And I think what we heard this morning from the researchers, there is a vast difference between that touch point of age 12 where I think there is general agreement that the ability to perceive and defend against advertising does change. And that's consistent with the research [inaudible 02:29:16]. With regard to COPPA, COPPA applies to websites and online services directed to children, children under 13, and that means brands, branded websites, platforms, apps, connected products, if they're targeted to that segment of children, it's covered by COPPA.But COPPA doesn't per se ban advertising, contextual advertising is permitted and it doesn't per se ban personalization. It sets up a framework for when parental consent is required to collect personal information from children, which is very broadly defined by the FTC and when it's not. And so the FTC has adopted a rule when the last iteration of COPPA, that permits the collection of very limited information related to persistent identifiers from children and to use it to support internal operations of the business. And that allows you to do certain things like recognize a returning visitor, that's convenient for the visitor and for the parent, they don't have to sign the kid up multiple times. Remembering we're talking about under 13. And it's because the FTC determined that things like supporting contextual advertising or protecting intellectual property and other types of activities of the business were

legitimate business purposes for which that data could be collected and used. So I think from that perspective, the cut that COPPA makes is sharing of information to any third party, including for targeted advertising purposes, requires verifiable parental consent. [inaudible 02:31:02] principle that's embedded in COPPA and I think is just generally good business practice anyhow. But we should be aware that there are permitted uses of data that can allow for very minimal types of personal engagement with your visitors that is deemed helpful to the user and important for the business.

Michelle Rosenthal:

And of course, as we know, COPPA is limited to by age. So as I mentioned at the top of the discussion, there are going to be limitations on.. We have COPPA, COPPA is for kids under 13 here, here we're talking about kids all the way up through 17. So I think that that's relevant to the discussion as well. So we'll talk a little bit more about COPPA a little bit later when we talk about some of the privacy related issues. But for now I'd like to talk about the impact on kids. And some of our panelists have referenced harms to kids stemming from blurred lines of advertising and content. And I do want to drill down on the harms and want to discuss whether there are any benefits. But first I want to have a discussion about the legal parameters. I think we need to round this discussion in existing law so we can kind of figure out where things stand. So Sheila, if you could give us a brief overview to help us guide our discussion on section five. Obviously section five gives the FTC authority to police deceptive or unfair practices, you talked a little about COPPA already and perhaps you could give a brief overview about any First Amendment parameters [inaudible 02:32:38] as well.

Sheila Millar:

Sure. So I've already mentioned COPPA, so we'll put that aside. You've mentioned section five, which gives the FTC general authority over unfair and deceptive acts and practices in commerce. Mamie mentioned briefly this morning the FTC Improvements Act, which was adopted in 1980 that imposes some specific restrictions on the ability of the commission to engage in rule makings under its unfairness authority. And I think maybe it's worth for the audience who's not maybe familiar with this, reading what it says, it says restriction on rule making, authority of commission, respecting children's advertising proceedings pending on May 28th, 1980. So decades ago basically, "The commission shall not have any authority to promulgate any rule in the children's advertising proceeding pending on May 28th, 1980, or in any substantially similar proceeding on the basis of the determination by the commission that such advertising constitutes an unfair or deceptive act or practice in or affecting commerce."

And so I think that's an important restriction on the commission's ability to categorically address whether advertising is unfair. I don't think the facts support it in any event, but I don't think any type of restriction would pass First Amendments scrutiny. I think that the other relevant factor that I know some folks have alluded to are the Children's Television Act and Federal Communications Commission rules. But those rules apply to over the air broadcasts, they just don't apply to the internet. And there's a lot of Supreme Court and other precedent that establishes that the internet is a more protected First Amendment medium of expression for the content providers themselves. The rules governing the content of advertising, which also enjoys First Amendment protection are really subsumed under the Central Hudson factors, the Supreme Court precedent. That really doesn't change depending on the medium.

And I think James wants to address that as well. I think one of the interesting things this morning was how can we address the developing autonomy of children and support parents improve knowledge and awareness of children's engagement in digital media? And I think that is a goal that any of the companies that I work with who are in the children's space at large care about deeply, they want

children to be protected, they want parents to trust them. And so the kind of companies that support and are engaged in CARU are maybe the crème de la crème, as they say, of companies who care about doing right by children. And I think that some of those questions or options about digital media and really supporting parents are worth much more explanation along with, how do you engage the influencer marketers themselves in coming up with ways to enhance transparency for the consumer.

Michelle Rosenthal:

Okay, so that's helpful. And I do want to dig a little bit more though on your discussion of the FTC authority under section five. So Girard and Josh, if I could turn to you on this next question, do you think the FTCs existing authority is enough to address some of the issues that we're talking about today? And I'll turn it to Josh first.

Josh Golin:

Sorry, I un-muted first so I win.

Michelle Rosenthal:

Yeah, you win.

Josh Golin:

So first of all, I would disagree with Sheila about the FTC Improvement Act. I think the language she read talks about proceedings that are substantially similar. In 1980, the FTC was concerned about television advertising and dental cavities and they suggested a ban on all advertising to children under eight, that's not what we're talking about here. We're talking about does the FTC have authority to issue rules about specific types of marketing in an ecosystem 42 years later that doesn't look anything like... I just don't think it's substantially similar and maybe that's a conversation for another day. But in terms of the FTC's existing authority, I think clearly much of the stealth advertising that goes on to children is deceptive. If you don't understand that you're being advertised to, you can't even recognize that you're being advertised to. I think that would qualify for deception.

I also think the FTCs three pronged tests on unfairness applies here. These ads are unavoidable, they cause substantial harm and the countervailing benefits do not counterbalance that harm. I know we're going to talk more about what some of those harms are in a minute. But the last thing I would say is that I know the FTC tends to address these issues in discreet chunks. We have the COPPA rule review, we have this workshop, we had the workshop on dark patterns, and ultimately both what the kids are experiencing and what the brands are trying to do and what the advertisers are trying to do, is do all of these things in concert. And so to really get at the very complex marketing ecosystem that children are growing up in, that involves AB testing and massive data collection and targeting psychological vulnerabilities in real time and neuro marketing and all of that stuff, I don't know that it works just getting at that through these kind of distinct rule makings and these distinct workshops. And that's one of the reasons why we're such big supporters of the update to COPPA proposed by Senator Markey and Senator Cassidy because that would form a division of youth marketing at the FTC, which is ultimately what we really need to get at this really immense complex system.

Michelle Rosenthal:

Okay thank you, that's helpful. Girard, do you have anything to add?

Girard Kelly:

Yeah, I agree with a lot of what Josh just said, and I'll just add that when it comes to deception, I think at Common Sense we weigh too many privacy policies, thousands of privacy policies, and we see too many companies with apps that are directed to kids that do not provide transparent notice in their policies about personalized advertising to children, which includes blurred advertising. So parents may feel misled, understandably, that they gave consent right under COPPA for their kids to use an app that may use traditional contextual ads for example, but not target ads or blurred ads or intentional product placement. And we also see this with privacy practices where, for example, many mobile apps and app stores tell their users in their product descriptions that the app respects all their users' privacy and everything's safe here, they don't engage in any advertising, but their privacy policy says the exact opposite, that the app may still engage in some of these targeted advertising or blurred advertising practices. So that disconnect is inherently deceptive. Because it's misleading parents and consumers to download apps for themselves or their children that they believe to be more privacy protecting than its contrary, to the business's own privacy policy disclosures. And I will add, I agree with Josh on the unfairness analysis as well.

Girard Kelly:

And when we go to this issue of could injury not be reasonably avoided, as we discussed with our state of kids' privacy research, over 75% of the apps across the industry disclose that they're tracking users for commercial purposes. So if the majority of the industry is monetizing kids' data for targeted and potentially blurred ads, then I would argue that the prevalence of these ads are not reasonably avoidable. Parents, kids, or consumers with all the different apps and contents that they want to engage with.

Michelle Rosenthal:

Okay, thanks. That's helpful. And I do want to go back to one thing that we talked about earlier. So Sheila, you mentioned the parameters. The parameters and guidance and legislation around television advertising. And I wanted to quickly ask Jennifer, do you see a difference in those parameters? Do you think that the harms in blurred digital advertising are similar or different? Do they justify some of the same types of protections?

Jennifer:

Well, as Maini Pressis explained this morning, host selling is prohibited on children's television, which means that advertising messages can't appear in a children's television program. And there are also limits to how many minutes of commercials can be shown during a 30 minute children's TV program. And these regulations were established precisely because children don't have the ability to recognize and actively defend against TV commercial messages. But no such regulations exist in the digital space where we've heard commercial content is highly integrated in entertainment content, where commercial messages can appear the entire time a child spends online, and where it's much more difficult to identify the commercial content. So prohibiting these practices are even more necessary in digital than on TV. And somehow KREW guidelines in the digital environment, as long as they contain disclosures that identify the commercial messages' advertising, they can appear.

Michelle Rosenthal:

That's helpful. Thank you. So James, we're about to start the discussion on harms, but I wanted to quickly turn to you, because you've thought a lot about harm and injury. Can you tell us how we should be thinking about harm and injury in this context?

James:

Yeah, and thanks Michelle. Thanks to the FTC for inviting me. It's great to be on this panel. Great to kind of be back home, virtually, at least. What I would say, I mean, I'm an economist and that's some of the work that I did and observe consumer protection before when I most recently was back there. And so when I think about harm, I think it's really important to develop a counterfactual, think, well what would kids be doing but for this blurred advertising? And so essentially kind of looking at the delta or the difference between some sort of control group, children who are not exposed to this and saw some sort of different advertising and then those that did, what have they done that is different? Now, when we think about advertising, the first thing we think about is you're tricking, just leaving aside the blur, if we think about deception, we're thinking about you're tricking people into buying something that they ordinarily wouldn't have.

And that's when you're estimating the harm from that, you sort of look at the shift in the demand curve, what happened because of the lie, how many people were tricked into buying this? And then you can approximate that with the money spent, the revenues generated from this deceptive product. There could be complications from an economic standpoint because there's consumer surplus, which is your expectation value. And you also can often get value from a product even though you wouldn't have bought it, but you get it as valuable. So from an economic standpoint, that may not be the perfect measure of harm, but revenues is a nice approximation. And that seems to be what is typically used or was used in the case law before AMG at least.

And so what we want to see is, but for world be different, and this kind of gets at this notion, linking it back to the FTC Act and the elements of deception, we would want to think about materiality. To what extent does the fact that this advertising is a blurred advertising is some where it may be difficult to figure out the difference between the content and the message, or maybe sponsorship isn't fully disclosed, is that going to change someone's actions? And that's, I think in this context, you have to think when we're talking about kids, and again, this is not my area of expertise, but listening to this panel and others, at some age, young age, kids may not even know the difference between and they don't understand what an advertisement is, let alone be able to distinguish the difference between an advertisement and a blurred advertisement.

So, there the fact, the marginal impact of it being blurred is probably zero. There's no impact. It's not going to make a difference because I'm too young. Then you've got to think of they're gatekeepers and the fact that kids at certain age don't really have, it's a lack of agency that you may not have the money to purchase this and your parents are the gatekeepers in the sense that, so if we're talking about, I saw this unboxing video, I wasn't really clear that Lego was actually paying for this, this looks like a really cool toy, I want to buy it but at a certain age you don't have the agency to go out and do that yourself. So I'd say that, just putting my economist hat on again or keeping it on, what you want to do is in the aggregate, you'd want to look for good causal evidence.

I mean, causal evidence that compared to some control group that kids exposed to blurred advertising somehow engage in different behavior than those who didn't. Right? That's the measure of harm. That's sort of the economic measure of harm. I mean, I can drill down more on unfairness.

Michelle Rosenthal:

I know, and I think this has been helpful. I want to quickly turn to the First Amendment jurisprudence and have you give a brief overview and we'll have more time to talk about it a little bit later. But can you briefly describe the role of the First Amendment and its jurisprudence here and whether that's something that needs to be considered as we talk about harms and potential remedies?

James:

Yeah, well, I think Sheila actually already did a great job of talking about it. The only thing I would add to the mix, I mean we are talking about commercial speech. So clearly if there were any restriction you would have to deal with Central Hudson and its progeny and the commercial speech doctrine. Probably the case that may be most on point, which is not a commercial speech case, just a straight up First Amendment case, has to do with is the Brown case, Merchant's Entertainment about California law that restricted kids under 18 from buying violent video games.

I mean there were some carve outs, but it essentially made it up to the Supreme Court and the court said this failed. This is strict scrutiny, this fails under the First Amendment because the legislature can't really, there's a narrowly defined group type of content that doesn't get First Amendment protection, fighting words, incitement and obscenity, that it's okay to regulate that. The proponents of the bill tried to shoehorn this into the obscenity and say it was a legislative judgment to kind of expand obscenity. And the court said, no, the legislature cannot expand unprotected speech. The First Amendment kind of lays that out there.

And the court, and again this is, I guess, technically would be dictive, but the court was very careful, I wouldn't say careful, but they were very explicit in saying that kids have the same First Amendment rights that grownups do, that legislatures can't, I'm trying to think, that speech that is neither obscene as to use nor subject to some other legitimate prescription, cannot be suppressed solely to protect the young from images that the legislative body thinks is unsuitable for them. So that's, call that dicta. But the point is, and it was this idea that kids are entitled to strong First Amendment protections as well was actually in the Facebook case against the cheerleader with tweeting F cheerleading, F the school. And there again, the Supreme Court firmly said, I mean it was a school suppression of speech case. So it was under Tinker and it was under some different, but again, kind of pulled out the idea that, look, kids get First Amendment protections.

Michelle Rosenthal:

Let me ask Gerard though. Gerard, James is talking about the 2011 case, Brown case. It's been 11 years. Do you think that that case might be determined differently today based on the harms that you see in the space?

Girard Kelly:

Yeah, I think James covered it well. But I would add that a harm based approach really, it really reduces the scope of privacy, I think, because it denies our cultural norms we have around kids and privacy, denies privacy as a human right, consumer expectations that are changing and demanding more privacy. But I think more broadly, I think the harm model is outdated because all this collection and use of data should really be in the best interest of the child. And we can get more into that. But I think to James' point about that causal connection and how do we measure harm, I think by viewing and experiencing blurred advertising in apps or games or streaming media, this leads to more brand awareness, sales to that product. I think marketers already know the benefits of blurred advertising in an economic sense because, I mean, all the analytics they collect on the percent increases in sale or brand favorability and surveys to charge content creators. I think it'd be a little different today.

Michelle Rosenthal:

Okay, thank you. So we've talked about-

James:

I was going to say-

Michelle Rosenthal:

Go ahead.

James:

Well, you'd said that if we had a, I just wanted to just say one thing, but is that a harm Gerard if advertising works? I mean, so this goes to something I did want to say that Josh mentioned really early on, and both Josh and Jennifer been talking about kids have to defend themselves from advertising. Advertising is speech that is protected by the First Amendment for a reason that it provides useful information to it's a listener based right, it's not a speaker based right. And so it's the idea that kids are defending themselves. And just to use the example that Josh had said is that, well, once you even got the disclosure, they wanted it even more. So it almost assumes the conclusion that kids shouldn't be buying, I mean, I guess the idea, it sounds like defending themselves, they're getting these messages that are tricking them into buying things that they wouldn't ordinarily buy which goes back to my point of, you really need to have good causal evidence and you can't just assume exposure to these ads in and of themselves are harm, which seems like what's going on.

Michelle Rosenthal:

Well, let's talk about the harm. I want to make sure we have time to talk about the harm, right? Because there's a lot of discussion about harm and we haven't gotten to it yet. So I'm going to jump in if that's okay. And I'm going to ask Jennifer, is ad recognition binary? So is it either that a kid knows that they're looking at an ad or they don't think they're looking at an ad? Or is there a spectrum where children might have a sense that they're seeing a commercial message but not quite understand it to be an ad or marketing in the way that they would view, for example, a traditional TV ad? And what does that mean in terms of harm?

Jennifer:

Sure. Well we heard a lot about that this morning in that recognizing that an ad is an ad is the first step to be able to defend against it. But in a lot of cases, even if you recognize that something is an ad, you're still quite influenced by it. And you have to also consciously react to the advertising and make conscious counter arguments about what you're hearing. And finally, you need to have the time and the motivation to do all this. So a kid would have to do all this work in the middle of playing a game online, watching a video by a favorite influencer, or enjoying a social media post that their friend shared with them. And I would argue that's difficult for everyone, not just children. And I would also say that one reason blurred marketing content is so effective is that it distracts viewers from the persuasive intent and it deactivates any skeptical responses that they might have if they thought of it as a marketing message. And the marketers know this and that's why they focus so much on this kind of marketing in the digital space.

Michelle Rosenthal:

Helpful. Jennifer, we've talked about, we've heard about kids and preteens and teens developing the reward center in your brain. Is there a different harm relating to preteens and teens that's worth discussing?

Jennifer:

Yeah, there is. And child development experts argue that adolescents are highly susceptible to these kinds of marketing messages because digital advertising takes advantage of unique developmental vulnerabilities at that age. So at that age, children are in the process of establishing their own identities and separate from their families. So peers and celebrities are extremely influential in that process, and that increases the power of messages from online influencers as well as viral messages shared through social media networks. And at this age too, because of their stage in brain development, adolescents are much less able to resist immediate gratification and consider longer term outcomes when they're making decisions. And this is even more so than younger children. And as a result, they're even more susceptible to advertising for harmful products such as tobacco, alcohol, tanning beds, and junk food. And I would just like to add that in my many years of studying marketing to children, I would argue that most of the marketing they're exposed to is for harmful products.

Michelle Rosenthal:

Okay, thank you. I'd like to move on to psychological harms. And Jennifer, I know this is something that you've thought about. Can you talk a little bit about whether there are psychological harms that arise specifically from blurred advertising?

Jennifer:

Sure. Well, we also heard some about this this morning, how marketing often affects us on an emotional level. And I think when we think about marketing, a lot of people tend to think that when we see an ad, we consider the information it presents and then we make this conscious rational purchase decision. And that's, I think, what the first amendment is based on. But in fact, marketers know that, ironically, if you distract someone from the persuasive intent of an ad, it becomes a highly effective form of persuasion. And one study looked at over 800 ad campaigns and concluded that the more emotions dominate over rational messages, the bigger the business effects. And that's because emotional advertising affects us on a subconscious level. It creates these positive associations in our mind between the brand and the enjoyment we feel while experiencing the ad. And that's through a classical conditioning kind of process.

And so, advertising that's embedded with entertainment content is really the ultimate type of emotional advertising, because the positive emotions that someone feels while playing an online game or laughing at a funny social media post or learning how to put on makeup from a trusted influencer creates positive feelings that rub off on the advertised products. And over time, these associations become hardwired in the brain. And one reason children and teens are such prime targets for marketers is that they found the earlier these positive associations become established, the more difficult they are to undo.

And just briefly, what other psychological harm is the normative influence of advertising and how it affects attitudes about categories of products. So we do a lot of focus group research with parents, and very often they tell us that they had no idea that a sugary cereal or a fruit drink that their child saw advertised and then asked them for was unhealthy. They assume that because it was advertised to their child or that other parents regularly give it to their children that it's okay. And in this way, advertising affects normative beliefs about what children will eat or what they should eat. And that significantly influences what parents serve their own children.

Michelle Rosenthal:

Now, is that different in blurred advertising? We can talk about advertising broadly, but here we're trying to, we're talking about the advertising that's embedded in content. Do you see that normative influence being particularly significant in this space?

Jennifer:

Well, I think, any of these influences can actually be stronger when you don't process the advertising as an ad. So in that case, yes, it would be more.

Michelle Rosenthal:

Okay, thanks. And Sheila, what do you think about all that? Do you agree?

Sheila Millar:

Well, I wouldn't agree that branding is per se pernicious or that brand recognition is harmful. And if we think about characters like the Sesame Street characters, they're brands. Is it harmful for children to recognize Elmo and Cookie Monster? And so I think we want to be careful within our First Amendment framework of choosing that certain characters or brands are fine and others are not, are unhealthy. I am not aware, Jennifer, of research that shows the enormous exposure of children and teens to ads for cigarettes or alcohol or other products that aren't legal for them to use. The companies that I work with would be horrified. I mean, I work a lot with true children's product companies, so their products are for kids, meaning the under 13s. They would never want their ads to be placed anywhere close to ads for e-cigarettes or other products that can't be legally sold to kids.

They don't want to be associated with that. So I'm honestly not familiar with that. And I think to the extent we're talking about, what are we trying to protect against, I think that's the question. What is the harm? It goes back to what James said. What is the harm that we're trying to create remedies for within the existing legal framework? And I'll just respectfully disagree with Josh and Gerard. I don't think the FTC's current legal framework authorizes a deep dive under its unfairness jurisdiction and under the Supreme Court's West Virginian EPA case. I think it's a major question that requires some congressional oversight.

Michelle Rosenthal:

So Josh, I want to give you a chance to respond to Sheila, but I'd also like to dig a little bit deeper on the discussion about peer influence and social relationships. And we've just lost Josh, so hopefully he'll rejoin. Okay, there we go. So we've heard a lot about social influence and the concept of compare and despair in digital marketing, particularly in blurred digital marketing where you have influencers and others who are building this advertising into their content. Can you talk a little bit more about whether that harm exists and maybe respond to Sheila's point?

Josh Golin:

Sure. And I'm sorry, I'm having some connection issues, so if I disappear again, I apologize. But I think first of all, one of the things I think may be, which isn't talked about so much in discussions like this, is the peer influence and just in terms of where kids need to be these days. So when we're talking about what kids and parents can do to protect their children against advertising influences, in the old days, we'd say, just turn off the damn TV. And maybe there was a little bit of harm there and that a kid might not be literate in the programming that their peers were literate and might not be able to participate in those conversations. But it's different today. The kid's friends are living in these spaces that are ripe with self advertising, whether it's on social media or in gaming or increasingly in virtual worlds.

So to say that one of the primary ways that you can protect yourself against advertising has really now comes with a serious countervailing harm if you try and disconnect from this stuff, social isolation. So that's one thing. The other thing is that as these relationships are being formed online, as kids are seeing influencers promoting beauty products, impossible body standards, a certain type of body standard, and

that's occurring within a system that is barraging kids with these things, what is happening is we're seeing rates of eating disorders are going up as we're seeing much, we're seeing teens themselves saying that the kind of money for nothing lifestyle.

If you look at Francis Hogan's documents that she released last year, one of the least undertalked about parts of those is that teens themselves were saying that influencer culture is really toxic to them, that it makes them desire things, that it makes them feel bad about the things that they don't have. And we think that that plays a role in the mental health crisis that kids are having today. So I think it's really important to look at how all these social influencers are happening, how it's not just the fact that kids are forming these parasocial relationships with influencers who are selling them both on ideas and values and products and including what you're supposed to look like, but also that all of their friends are there. And that's a reinforcing system that is leading to these mental health harms.

Michelle Rosenthal:

Thank you. So I want to move on to physical harm. So Jennifer, to the extent we've talked about the psychological harms, are there physical harms that result when we consider all of this and then we consider the fact that there are ads for, Sheila talked a little bit about this before, that it may be limited, but unhealthy foods, alcohol, gambling, tanning, tobacco, e-cigarettes, those types of things. I think you've conducted a study that had to do with food branded advert games or games that have advertising embedded in them. Can you talk a little bit about that?

Jennifer:

Sure, well the-

Michelle Rosenthal:

What's an advert game? Maybe you could start off with what's an advert game, sorry.

Jennifer:

Okay, well an advert game is an online video game that has advertising content within it. So we saw a lot of examples of that this morning. And sometimes the harm isn't an obvious one. So in our experience experiment, we had children come in and play games on the computer, and they played either games with food brands in them advert games or similar games without any branding. And after they played, we gave them a snack of different types of food to eat. And what they didn't know was that we were actually measuring how much they ate. And the kids who played the advert games with unhealthy food brands consumed over 50% more calories from unhealthy foods than the other kids.

So that's an example of a physical harm that may not be obvious to most people. And I would also like to add that once, so this study was with children. We found similar effects with adults. And once children are old enough to have their own money and they can make purchase decisions on their own, they can become even more susceptible to these physical harms. And it's, I think, not a coincidence that adolescence is when dietary quality declines significantly, and also tobacco and alcohol use can begin.

Michelle Rosenthal:

Okay, thanks. Let's move on to harms to parents or households. So we talked a little bit earlier about the concept of the parents and their involvement, but I'd like to start with James. Well, actually, let me start with something James already said, which is James said that certain kids are too young to actually go out and make purchases. And of course that doesn't necessarily apply to everyone, any kid up to age 17, but

he talked about the fact that that may be a limiting factor for the younger kids. So Josh, what do you think? Do you think that parents are actually able to act as gatekeepers? Do you agree with what James mentioned earlier?

Okay. I think we have lost Josh.

James:

I think that means he agrees. I think that means he agree.

Michelle Rosenthal:

Yes, I think that's how it works, right? Josh, are you back? Do you hear us? Okay. Why don't we skip this one for a minute and I'm going to come back to Josh, unless you can hear us now, Josh. Can you hear us? Okay. You can. Okay, you're on mute. So my question for you Josh is James mentioned that the parent is a gatekeeper and that at least for younger kids, the parent can essentially stop the kid from making a purchase.

Josh Golin:

I can still hear you, I'm just going off camera.

Michelle Rosenthal:

Okay, no problem. So I guess the question for you is, do you agree about the parent being a gatekeeper and do you think there are any, for example, financial harms? Because obviously, it's not always about a kid going into a store and making a purchase. Sometimes those purchases can be made in the middle of their digital experience. So could you talk a little bit about any financial harms that you think might exist in the space and whether parents as gatekeeper actually does the trick?

Josh Golin:

Sure. I don't think that parent as gatekeeper does the trick. I think we are living in a completely different environment when we were talking about one big screen in the living room where parents could monitor that and have a good sense of what their children were watching and what we're doing. We're living in a small screen era where kids are watching on phones or tablets and playing on phones and tablets and parents frequently have no idea what their kids are engaging with. And based on what Gerard said at the beginning of this, the sheer number of hours, if you were to monitor your child and keep close tabs on what they were doing six to eight hours a day, I'm not sure how you would have a job or cook dinner for your family or do anything else. It would essentially be a full-time job.

And in terms of financial harms, we know particularly with younger children from people like Jenny Radeski who have studied this, that kids are frequently playing, young kids are frequently playing on their parents' tablets or phones that allow them to make, the settings don't have children's settings because they're playing on their parents' accounts that allow them to make purchases directly from these games. And we also know that influencer marketing spurs impulse purchasing. So for instance, there was a study by Super Awesome that showed that 25% of influencer marketing in the family, or 25% of purchases in the family and children category through influencer purchasing happened that same day and another third happened in the next few days. So this is designed to lead to those impulsive purchases. It's never been easier to make an impulsive purchase when all you have to do is click on something. And to expect parents to monitor what's going on six to eight hours a day while their kid's online, I think, is completely unrealistic.

Michelle Rosenthal:

Okay. What about households, families of lower socioeconomic status or different ethnic groups, do we see any different harms that apply to those types of families? Jennifer?

Jennifer:

There are a number of reasons the harms are greater for families of lower socioeconomic status and especially in communities of color. Low income families don't have as much access to high quality daycare, after school programs, or safe parks and streets, so children in those families tend to spend more time with media. They're also exposed to more commercial messages in their communities, on billboards, outside retailers and such. And there's also evidence that was alluded to this morning that low income children are more trusting and engaged with commercial messages. For them, advertising represents an ideal world that often doesn't look like the world they live in. And in the case of junk food, low income parents may be more likely to grant their children's requests because junk food is one luxury they can actually afford to give their child.

Michelle Rosenthal:

Yeah, that's helpful. Okay, so we're going to move on to privacy harms, and we still have a lot to cover, but I know, Gerard, you've talked a little bit about some of the privacy harms. So kids giving up information because they don't know they're really engaged in a commercial transaction or engaged with a market or advertiser. You've talked a little bit also about just the fact that the targeting of ads might exacerbate the blurring of advertising because children don't realize they're being, essentially, that there are manipulative tactics on different fronts is I think the point you made earlier. Is there anything else you want to add on the privacy harms?

Girard Kelly:

Yeah. Yeah, I'll add that I think when we look at the intersection of blurred advertising and privacy harms, the negative effects are typically often small. There's frustration, there's aggravation, anxiety, inconvenience, but it;s dispersed among millions of kids, right? In the aggregate, this harm can be really substantial. And we haven't talked yet about prolonged use as a harm, keeping kids and teens engaged using this content. This goes to some of the issues Josh was talking about, the addicted nature of this technology. When these interactive games or apps, they prompt users to come back to the app to earn more points, digital items of value or exclusive add-ons or content. But we should also talk about privacy harms

Girard Kelly:

... in the context of autonomy, right? Jenny Radesky on the first panel talked about autonomy of kids in visual spaces. So where people are either directly denied the freedom to decide or they are tricked into thinking that they are freely making a choice, this is what we talked about with the autonomy harms and Danielle Citron and Daniel [inaudible 03:12:17]'s academic article is really informative here.

They talk about autonomy harms in the context of coercion. The impairment or pressure on people's freedom to act. This is like the limited time deal to [inaudible 03:12:29] in this influencer, blurred advertising, manipulation we've talked about before. Using personal information to influence people's behavior or decision-making. The failure to inform. Not letting folks know that this blurred advertising is actually advertising so they can critically think about that commercial message. And different expectations that folks may be using an app or a game, that they're paying for the product and they don't expect that they're also the product.

But also lack of control. The inability to make meaningful choices, no opt-in or opt out of product placement or blurred advertisement.

Michelle Rosenthal:

Okay. James, what do you think about what Girard just said? Do you think these privacy harms are ones we need to address?

James:

I guess I'll be brief. No, no. I mean I would say that if we have to... I don't want to be flip about this. What I would say is to get this and ground this back into the FTC Act, I think certainly if there's deception going on, if an app directed to a kid says, "We're not going to track you." And let's assume it's a kid over 13, so COPPA doesn't even apply, we haven't even talked about that. But let's assume that we're in a non-COPPA world, but there is a representation that is material. We'll assume it's material to express and yeah, let's remedy that.

And if we're talking about unfairness, there I mean the standard, and again, we haven't really gotten into that. We just sort of said this stuff is unfair. Well what the FTC Act can handle under unfairness is substantial consumer injury and it's in the unfairness statement and they talk about it.

We're not talking about speculative harm. Physical harm sometimes comes in there. So if we could show, again... Again, this goes back to my idea mean this is... That not my idea, but how good policy should be made with good causal evidence, not just associational studies. That if there's causal evidence in an instance that this is blurred advertising is actually causing harm.

And then again, talking about privacy when you talk about being tracked online all the time, all these sort of things, this is something that the FTCs unfairness has never gone after, been used for because it is not, and for the reason it doesn't fit in.

Now there are lots of bills on Capitol Hill that are kicking around now, privacy bills and if we want to bring some of these harms that, or some of these things that. Josh is categorizing as a harm, under the... somehow address them, it's more... I do not think any of them fit under the FTC Act on fairness or deception as currently stated. But I think it's probably much more of a job for Congress.

Michelle Rosenthal:

Okay. All right. So I'd like to just finish up the harms discussion so we can move to the next piece of our discussion.

So Jennifer, we've talked about all of the harms but there are two left that I want to raise. One is earlier in the discussion today we heard about kids just being bombarded with ads. And I think there was one report by the Global Action Plan in their Kids For Sale report where they calculated that some older kids might see as many as 1,260 ads per day in the digital space. Can you talk about that? And does that create any additional harm in kids' ability to recognize and process advertising?

Jennifer:

Well if you assume that it takes someone as little as five seconds to recognize and consciously counter argue one advertising message, which is what you would need to do to defend against it. Actively evaluating 1200 messages would take up almost two hours of their day. And I doubt that even the most skeptical adult would be able to do that.

Michelle Rosenthal:

Okay, thank you. So the last thing I want to raise is epistemic fragmentation, which if you say five times fast becomes a tongue twister. This is a term that I recently heard and I thought was interesting. And actually the Chair alluded to this in her opening remarks, and it's the idea that when you have really small audiences, you don't have a large audience like you used to have in TV advertising where millions of people were seeing the same ad. Now you have different ads or marketing messages that small audiences are seeing.

So for example, you have a micro influencer with a thousand followers and only those people are seeing that commercial message. And the argument that we've heard is that it makes it harder to keep these advertisers accountable and it makes it harder for regulators and self-regulatory bodies to enforce when they see problematic advertising.

So Josh, do you have anything to add to that or is this a concern?

Josh Golin:

I think it's definitely a concern. I mean I think it's related to the concern I had about parental gate-keeping. It's really hard for anybody to keep tabs on what's going on. It's hard for researchers, it's hard for regulators, it's hard for parents and it's hard for kids.

The system is so immense and so micro targeted at this point, that kids and we know this, that kids are getting, for instance, from gaming influencers, they're getting, "This is the way to beat the game is to buy this certain thing." And scams that go on that don't even surface or can't be exposed, or misleading claims can't be countered because they're only going to a small number of people.

Now, obviously if they're only going to a small number of people, maybe the harm is smaller. But when you multiply that by what's happening, that that's happening at scale a million different times, I think what we have is that we have a system that it's really hard to even understand what's going on or what kids are being exposed to right now.

So yes, I think that is a concern. It's much different than when we would all know that our kids saw the same toy commercials or the same cereal commercials, and at least we could talk to them about that. I think hardly anybody has a handle on all what kids are seeing these days.

Michelle Rosenthal:

Okay, thanks. So we talked about the harms and I want to talk a little bit about mitigating factors. And I think most of them, a lot of them, have been raised earlier in the panel. So Sheila, you talked about COPPA and some other existing laws and parameters on certain kinds of advertising to kids under 13.

Josh, I'm sorry, James talked about parents as gatekeepers. Sheila, is there any other mitigating factor that you think we need to think about when we talk about harm here?

Sheila Millar:

Well, sure. I mean Mimi of course, talked about CAIRU. There's also the Children's Food and Beverage Advertising Initiative that many, many food companies have joined to address the food advertising issue specifically.

And I think we also heard some really fascinating discussion this morning from the panel about the need to support developing children's autonomy so that they become fully developed human beings. So I think an area that we haven't really actively explored and maybe they'll explore it on the next panel, is this notion of media literacy for children, media literacy for parents.

How do we help support scaffolding up that knowledge base and awareness and use the existing tools? As James mentioned, I mean there's tools available if things are deceptive, there are tools for that. CARU explained how they're working on some of these issues.

So I think this is an opportunity, given what I believe are the limits of the current legal environment to address this. But I think what I'm hearing from some of my fellow panelists is this concern that advertising itself is bad and that's not the world in which we live in. And I don't know that that's something we can legally address.

But I think giving parents and children tools to deal with that environment is something worth exploring.

Michelle Rosenthal:

All right. So James, Sheila's saying not all advertising is bad. Are there benefits to this type of advertising and if we restrict it in a certain way, could that lead to its own harm?

James:

Yeah, so I think there are two types of benefits. One, I think we've alluded to, and the reason that it's protected under the First Amendment and there are countless empirical articles, at least in economics, many done by top economists at the FTC that show the benefits from advertising.

And so I would concur with the observation that Sheila made, is it seems that there's this underlying assumption that advertising is bad. There's often this idea, again, to have to defend against advertising. Just because you're a kid and you get advertising, it doesn't mean that everything you're seeing is trying to trick you into buying something you don't want.

I think of an example of my youth, when I got saw an advertisement for Cookie Crisp cereal, I had no idea Cookie Crisp existed and it changed my world. And if my parents saw that ad, I sincerely doubt that they would've gone out and bought it for me.

But I asked them to and they got it and I love Cookie Crisp. So I mean that's a benefit from advertising. That's something that we can't assume. This is what I say, it's very important to have a counterfactual world. What has changed? What is the change in this story of advertising?

The other thing that comes from this, because we're in a digital environment, is you know, want to be able to monetize and support free content. And when there's good empirical work that suggests that when you shut down, I mean, not in this context of third advertising, but there's a paper by Wad, Foggle, Schiller, and I'm blanking on the third co-author from Rand, Journal of Economics a few years back, the ad blocking reduces revenue and then reduces the quality and it actually increases ads that you see, because for the rest of the people that don't ad block, we have to see more ads in order to monetize that content.

Things go behind paywalls. I actually have some work in progress with some other co-authors on the impact of the FTC's suit against co YouTube, the COPPA suit, which turned off behavioral advertising for all kids channels. And you see a exit from a large exit empirically, this is not anecdotal, this is I think what are good empirics; a lot of exits, reduction of videos, reduction of channels, channels moving to a more mixed or moving to a grownup, a plus 13 audience, because they can't make money in the... And there's other evidence that when you turn off the spigot of advertising that you reduce content.

And at that point, I think the fact that people are reviewing this content, we as grownups here and we can sit back and say, "Gosh, this is horrible. Who cares if it goes away?" But it's valuable to somebody. Somebody is watching it. Demand curves slope down. And so if you raise the price, as you get less of it, you reduce value. That's just Economics 101. So you have to take that into consideration as well. I think that is... So there are two benefits from this advertising. One, the messages that kids get. They are not

all harmful, they're not all... Unless they're deceptive, then they're not harmful and they help promote free content so that people can actually afford to enjoy content for free online.

Michelle Rosenthal:

Okay, so Sheila, James is saying that this type of advertising is not harmful. And I'd like to bring us back to our unfairness discussion that we started earlier in our conversation. And I think the audience, and many people know this, but for those in the audience who don't, an act or practice is unfair if it causes or is likely to cause substantial injury to consumers that is not reasonably avoidable by them, and not outweighed by countervailing benefits to consumers or competition.

Do you think that the harms we've discussed today meet the unfairness test?

Sheila Millar:

No, I don't. I don't think there's enough evidence, particularly given what James just described as the benefits of advertising and the role of free content for our economy.

I think the other issue becomes, as we try to enlarge the universe of consumers that we're concerned about to include teens, we potentially lose sight of the fact that teens have their own developing sphere of privacy. That's what Congress determined when it adopted COPPA and decided that age 13 was the benchmark.

And I think at the time there were advocates who said, "Don't change that age, and oppose age 16," which was in the original draft legislation for that reason. And so I think to the extent we identify specific issues where there could be potential harms that we should address under the existing authority, I think you have tools today to do that.

And I do think, as I said earlier, that there is an unexplored area of rich opportunity for educational opportunities as well. I think it was Eva explained this morning about the iconography work that they're doing in The Netherlands is a great opportunity. It could be beneficial to any consumer.

So I think we should be exploring what we realistically can tackle under the legal framework based on the data that we have, and avoid characterizing all advertising as pernicious or harmful, and remain cognizant of the many benefits that we enjoy through that support of free content.

Michelle Rosenthal:

Okay. We only have a few minutes left, so I'm actually going to ask for a lightning round response here. Who agrees with Sheila, with what she just said on unfairness and harm?

James, I assume you do? You're on mute, but James has raised his hand.

James:

Yes. I'll raise my hand... Lightning around.

Michelle Rosenthal:

Jennifer, what about you?

Jennifer:

No, I don't agree.

Michelle Rosenthal:

And Girard, what about you?

Girard Kelly:

No, sorry, [inaudible 03:27:28].

Michelle Rosenthal:

Josh?

Josh Golin:

Big surprise, no.

Michelle Rosenthal:

Okay. All right. Just wanted to make sure-

Sheila Millar:

It was a shocking lightning round there, Michelle.

Michelle Rosenthal:

I know. Not surprising. Not surprising. So with only a few minutes left, I want to just kind of quickly jump to just what every... We're going to talk about solutions on the next panel and so I think we can let that panel cover what the potential remedies are and what the potential solutions are to some of the harms that have been raised.

But I guess the question I want to hear from all of you is in our last two minutes and if you each had 20 seconds, can you tell me what is the biggest concern that you want our audience to take away from when we talk about this type of blurred advertising and marketing?

So 20 seconds, and I'm going to start with Jennifer.

Jennifer:

All right. Well, I'm concerned about the implied assumption that we don't need to prohibit companies from marketing unhelpful products to kids online as long as they tell them it's advertising. I can't think of another context where we propose exposing children to dangerous situations, and then telling parents what their children need to learn to protect themselves from harm.

Michelle Rosenthal:

Okay. Sheila?

Sheila Millar:

I think the overriding legal framework and the First Amendment are the most important considerations from my perspective as a practicing lawyer.

Michelle Rosenthal:

Girard?

Girard Kelly:

I would add to the unfairness discussion that I think blurred advertisements are unfair because it impacts our free decision-making ability. Consumers, parents and kids are unaware that they're being persuaded to make decisions based on blurred advertising as indistinguishable from the content they're trying to enjoy that may not be in their best interest.

Michelle Rosenthal:

James?

James:

That truthful and non-deceptive advertising is generally beneficial and we shouldn't assume harm absent some sort of evidence that an advertisement caused somebody to do something they wouldn't do in a but for world.

Michelle Rosenthal:

And Josh last, but certainly not least?

Josh Golin:

That kids are living in an environment right now, most their waking hours, that is advertising driven and that is not designed in their best interest. That is designed in the interest of advertisers. And we need to start looking at the places where the interests of advertisers and the interests of children and families do not align.

And I would say targeting kids with advertisements that they don't understand and can't cognitively process is one place where their interests do not align.

Michelle Rosenthal:

Thank you. Thank you to all of my panelists for a really great discussion. We are going to start our 15 minute break now, and we will be back with panel three at 2:00 PM Eastern. Thank you.

Michael Ostheimer:

Good afternoon, I'm Michael Ostheimer and I'd like to start the third and final panel today. Looking forward and considering solutions by briefly introducing the panelists in alphabetical order. Josh Blumenfeld is a member of YouTube's government affairs and public policy team of Google, where he works to advance a free and open internet.

Nellie Gregorian is the founder and president of Fluent Research, and has conducted numerous studies evaluating the impact of digital technology on teens and other children. Genevieve Lakier here is a law professor at the University of Chicago where she teaches and writes about the First Amendment, Bonnie Patten is a founder and executive director of Truth in Advertising, also known as TINA, an organization focused on protecting consumers from false and deceptive marketing. Sneha Revanur is a founder and president of Encode Justice, an international youth organization focused on re-imagining youth relationship with technology.

And last but not least, Lartease Tiffith is the executive vice president for public policy at the Interactive Advertising Bureau, also known as IAB, where he advocates on behalf of IABs member companies.

Before we get started, just a reminder that the views expressed today are our own and do not necessarily reflect the views of the commission or any one particular organization or company. If we

have time, we will try to incorporate questions received from viewers. Please submit those questions to digitalads2, number two, kids@ftc.gov.

So far today we've discussed whether kids of different ages and developmental stages can recognize advertising, when it's blended with entertainment or other content, and we've discussed the harms that may be associated with such advertising to children. This panel will discuss the potential solutions and as we go through each of them, it'll be helpful to think about the audience for the solution. For example, does the solution work for all age groups or only some? And who would be responsible for the solution?

In preparing for this event, we've had stakeholders raise a number of remedies I'd like to discuss, including the formatting of embedded advertising, disclosures, parental involvement or controls, consumer education directed at kids or parents, law enforcement actions for deceptive practices, and even a potential ban on some advertising.

We heard James Cooper and Sheila Millar on the harms panel or raised the limitations imposed by the First Amendment.

Before we talk about specific solutions, I'm hoping our panel's resident First Amendment expert can address what remedies have been historically accepted by the courts when the government addresses commercial speech, and whether there are any cases addressing the blurring of content and advertising. Genevieve?

Genevieve Lakier:

All right. Well thank you very much for having me on this panel. So speaking very generally, historically the primary focus of laws regulating advertising and then the somewhat broader category of the, what we call commercial speech has been A, to ensure that consumers of adequate information to make good choices when purchasing goods or participating in commercial transactions. And obviously this includes children as well as adults. And B, protecting consumers from false or deceptive advertising claims.

So regulators for over 150 years have adopted a variety of mechanisms to achieve these ends. The oldest being the mechanism of disclosure, including what I think of as the oldie but goodie. This is paid content, the disclosure that the speech itself is an advertisement, but also many other kinds of disclosures that seek to both cure consumer deception and also more generally inform consumers about what it is they are purchasing, both the content of the good and the terms and conditions under which it is being offered.

Regulators have also used time, place, and manner requirements about where commercial speech or advertising can occur. And this can include both formatting requirements and also requirements about duration, how many ads? Where and when they may occur? And this includes, I should say time, place, and manner requirements that are designed specifically for children, including most notably in a federal legislation like the Children's Television Act, and then also the ban on deceptive advertising that the FTC enforces.

However, for the past 50 years, total bans on advertising have been strongly disfavored, if not entirely prohibited by the courts in their First Amendment cases, although I know of no cases dealing specifically with a question of a ban on children's advertising, advertising designed only for children, except when it comes to ads or commercial speech that advertisers or promotes illegal goods and services.

Now, although as this overview suggests there are significant constitutional limits on how lawmakers can regulate advertising, there is no doubt that the First Amendment permits regulators to advertisers to, sorry, to regulate advertising much more aggressively than they can regulate what's political speech or non-commercial speech, what is sometimes called high value speech.

So to answer your question, Michael, there has been in fact a considerable amount of litigation around what counts as an ad for First Amendment purposes, and the rules are not entirely clear. But for purposes of this panel, I thought it was important to note that speech can count as advertising or can count as the low value First Amendment category of commercial speech, even if it doesn't take the form of a traditional ad.

Courts have recognized that pamphlets, letters to the editor, other purportedly informational and political speech can count as commercial speech for First Amendment purposes when it is motivated by a desire to sell a particular product and also as part of its subject matter refers to, highlights, prioritizes that product. But the court has also made clear that not everything created with commercial end in mind or with a profit motive can be considered advertising or commercial speech.

The purpose of the speech act must be in some way to sell a product or to negotiate a commercial relationship. And so, okay, I'll stop here.

Michael Ostheimer:

Thank you so much. This morning, the cognition panel discussed children's inability to distinguish premium content in ads. And based on today's previous discussions, there may be types of designs or formatting that alert viewers to the nature of commercial content. For example, there might be separators between commercial and noncommercial video content or a different background commercial content.

This approach has been utilized in the television space with advertising directed at children. For example, "And now we will have a commercial message." How well did it work in that space? Nellie?

Nellie, you're muted.

Nellie Gregorian:

Thanks Michael, you didn't miss much. I just said thank you for having me on this panel. In the traditional linear TV, of course families are very used in seeing commercials, but commercials, advertising on TV typically is very clearly delineated from the television show, for example, that the child is watching.

You gave an example of transitioning verbally from the content to commercial. Now we are moving to the commercial message, or "We'll be back after these advertising messages." There were some format demarcations, either with the graphics or different visuals or disclosures that are either in written or verbal form.

Oftentimes some networks also had interstitials that would signal to kids that now we're transitioning from the television show you watching to a commercial message. In our research, kids as young as four and five year olds are able to differentiate between ads, commercials on TV and the television shows that they're watching. And in fact, another aspect of television commercials that is also very important to note here is predictability.

Predictability of when commercials occur, whether it's certain intervals during their show or at the end of the show. And in fact, many parents do not mind commercial breaks because it gives them the opportunity of transitioning their kid from watching a show to taking a break, transitioning to a different activity or turning off the TV altogether without major meltdowns.

Michael Ostheimer:

Thank you. Is anyone aware of such tools being used outside traditional television advertisements? Lartease?

Lartease Tiffith:

Yeah, so in the digital world, similar to television, there are also signals to let people know when they are seeing an ad. There's using a banner at the bottom saying sponsored content, promotion, paid promotion, things like that. There is also, will be, in addition to that, some other shaping that shows that you've moved from the content itself, like the cartoon and then now you're going into an ad. In addition to that, there's also features that allow kids and parents to skip the ads.

So there's a signal that says skip ads. So there's multiple signals to let people know that there are advertising. And I actually think that there are actually more signals than there are on television because there's things that are clearly... On television, usually at the very end you hear that message, "This was a message brought to you by..." So you've already listened to the 29 seconds of the ad before you find out that it was an ad.

Whereas with digital, there's a clear cut note saying that there's an advertising being projected. So I'll stop there and let others comment. But that's what we've seen in the digital world.

Michael Ostheimer:

Nellie, do you have anything to add to that?

Nellie Gregorian:

Yes. Similarly to what Ortiz is saying, there are definitely some examples on streaming video, for example, that are adopting similar elements. For example, a countdown to a commercial break or a button that says "Skip ad" in certain minutes. So in those types of environments, it's easier for kids to recognize that they're now being exposed to either a banner or ad or some kind of a video ad, whereas it's much harder to do it of course in immersive environments or even on the gaming platform.

Michael Ostheimer:

Bonnie, do you have a view as to how such tools could be used in digital media?

Bonnie Patten:

Well, I think theoretically, yes, you could take the stealth out of the marketing and with these perceptual cues that we just heard about with streaming services, it could be possible to separate the marketing from the organic content. Whether that would work with a lot of the sort of stealth marketing we see, that's up for debate, but I think it would be theoretically possible.

Michael Ostheimer:

All right. Is it feasible to use as separators for a social media post or for an unboxing video? Josh?

Josh Blumenfeld:

Yeah, thanks Michael. And thanks for having us. It is feasible. I think the more nuanced question here though is what constitutes paid product placement or a blurred advertising and what is that financial contractual relationship? So you have to assume a very specific relationship between the creator and the product and a very specific moment in the content where there is that clear duplication.

And that's part of the nuance and complexity behind this entire topic.

Michael Ostheimer:

Lartease, do you have anything to add to that?

Lartease Tiffith:

Yeah, in the case of the unboxing, I think the onus is on the content creator to be able to demonstrate that they, to their audience, that they are receiving some kind of sponsorship or some paid promotion because that's really, a lot of that information is held by them. And so I think it's, as the FTC is recognized by going through a process of updating its endorsement guides, that this is where the enforcement should lay. Giving information and guidance to creators about their obligation to disclose if they're receiving some kind of compensation, this is not really something that they're doing without that compensation or consideration.

And so I think the onus really lies with the content creators on this.

Michael Ostheimer:

And do you think that this approach could work for the youngest kids?

Lartease Tiffith:

In terms of if the content creator was obligated to say that they've received... Make it very clear that they have received some kind of compensation, I think it could be helpful. But again, I think that's again, something that the FTC's already engaging and with the endorsement guide. I wonder though, if someone is three,

Lartease Tiffith:

... four or five years old, whether they really understand the idea that someone's getting paid for something. But, we can talk about another time. But, I think they would recognize and hear the signal, I don't know if they would understand what that actually means.

Michael Ostheimer:

Bonnie, do you have any reaction to, or concerns about... Not necessarily with respect to the youngest kids, but generally with respect to the use of bumpers or other separators, as an approach to dealing with blurred advertising?

Bonnie Patten:

Yes. I mean, as we've heard in the first two panels, while children may be able to identify something as an ad, that doesn't mean that they're cognitively capable of understanding the selling intent, or the motive, or bias, or interest of the advertiser, or the marketing at play. So, I would have concerns that more is needed than just being able to identify it as an ad for these older kids.

Michael Ostheimer:

Josh, should the FTC give guidance about such formatting? And if so, what should we say?

Josh Blumenfeld:

Yeah, thank you for that question. I do think, in general, platforms are best positioned to create and design what is most effective for their users, given their expertise in their particular platforms. But, at the same time, guidance from the FTC on the policy objectives, on certain best practices, I think, would be useful, and certainly would be useful to us.

Michael Ostheimer:

Okay. I'd like to now discuss how disclosures can be used in addition to or instead of formatting, and whether some times of disclosures can help children to distinguish between content and ads. Can you bring back the slides, please?

Josh, YouTube did research on this issue. What kind of disclosures work and among which age groups?

Josh Blumenfeld:

Great. Thank you, Michael, and I'll try to be very brief here, summarize a bunch of research. And, if we can show the first slide, that'd be great.

So, just to set the stage, and to demystify a little bit of what was discussed earlier, there are no personalized ads on YouTube for account holders that are under 18. That's not allowed. We have a special product called YouTube Kids, and on that product there are no personalized ads, and there are no paid product placements on YouTube Kids.

On YouTube Main, on content that is designated as made for kids, for example Art for Kids Hub here, which we're showing, which is a very popular channel on YouTube main, it is made for kids content, we do allow blurred advertising, but with a disclosure.

And we really want to get this right, so I'll walk you through, very briefly, how we approached this. So, we did three rounds of user experience research, and we did it with parents, and we did it with kids who were between five and 12 years old. We also worked with a group of outside experts who have extensive experience in child development, learning-related content, mental and physical health, etc.

And, the first round of research was qualitative, and focused on how well do kids understand advertisement. How effective are our current PPP experiences for kids, and what iconography can be useful.

And the findings from the first set of research are pretty interesting to us. So, we found that only one out of 10 kids understood the phrase "Includes paid promotion." The younger audiences struggled with the text, the older audiences who could read the text, struggled to understand what it meant. Most kids had a vague understanding of what a traditional ad was, and they'd reference kind of TV as their main focal point. They understood it was trying to get you to buy something, that would paint a product in a particularly positive light. And that ads are short.

So, we then redesigned our user experience and our interface here, and what we found is that a multi-nodal solution worked the best, and it worked the best for lots of reasons, but specially because it accounts for kids with different developmental milestones who may be watching content across our platform.

So, those three elements are a distinctive visual icon, easy to read text, and a fully-animated educational video, which I'll show you later. So, what we're looking at right now is the beginning of one of Art For Kids Hub's videos on YouTube Main. It has an icon at the top there and a little text. The text is in plain English. It says, "This channel got money or free things to make this video." And when you click on it, it will show a 30 second ad, which I'll show a little bit later on.

So, we found that once we implemented this, we went back to all of our test subjects, and we found that the majority of kids were able to identify the disclosure. 9/10 kids read all the words on the updated disclosure up there, and they were able to identify three really key concepts. The disclosure means that a creator received money or free things, as you can see by our plain, slightly awkward text there, but designed for kids' comprehension. That our company provided the creator with the thing, and

that the company gave the free thing to the creator because they'd like to get kids or you to buy something.

And the final point I'll make about this is that 9/10 parents agreed that the materials improved their kids understanding, would better help them and their kids in the future.

So, I appreciate the time, sorry to be a bit long-winded.

Michael Ostheimer:

Thank you. And if we could switch back to the speaker view, that'd be great. Thank you.

Sneha, what should disclosures actually say in order to work best, in your opinion?

Sneha:

Yeah. So, disclosures should communicate clearly who is paying for an ad, and should generally include any information that could actually affect the consumer's decision to buy a product. A disclosure should be visually accessible and the syntax language should be easy to understand. Users should be able to see that information plain and clear. They shouldn't have to scroll and that information shouldn't strictly appear after they've already added their product to their shopping cart, or have taken some step towards purchasing it.

And it's critical that the disclosure text is situated close to the claim in question, and is presented in the same format as the claim in question, again, to ensure accessibility and consumer comprehension.

Michael Ostheimer:

Nellie, do you have anything to add to that?

Nellie Gregorian:

I like how in the text that Josh shared, in the disclosure, the words were really kid-friendly. There were not too adult-focused. So, there was no language like, "Advertiser content" or stuff like that that usually kids just don't get. It was like, "People get paid for sharing with you this particular program, or this type of promotion." That works really well.

In general, the combination of different modes, verbal... for example, a lot of influencers would verbally announce that they're getting sponsored, or getting some kind of relationships with brands by promoting their products. So, some kind of combination of those verbal and reading and iconography would go a long ways.

Michael Ostheimer:

Great. Thank you. Does anybody want to add anything on the formatting that should be used to make it most likely that kids will notice disclosures? And whether it varies from platform to platform, or device to device? Josh?

Josh Blumenfeld:

Thanks, Michael. I mean, we do think that part of the elegance of that short syntax, and really understandable syntax, and that it appears at the beginning of the ad, is crucial. But, in combination with the short video that we produced, that has cartoons that really, in 30 seconds, walks kids through what a paid product placement is, is ideal.

Now, the idea, of course, is not that you would have to watch the video every single time you see a paid product placement. The first couple times you saw it, you would click on it, you would watch that video, and now you'd have an understanding. So, ideally, as you're watching with your family in the living room, and made for kids content comes up on the screen, you as a kid would understand what that is going forward.

So, investing in creating that video with cartoon characters and easy to understand kid-friendly syntax, we think was vital.

Michael Ostheimer:

Nellie, do you have anything to add or any different perspectives on formatting disclosures to work? You're muted.

Nellie Gregorian:

I think Josh has covered it.

Michael Ostheimer:

Okay. Bonnie, can disclosures work in context like social media, games or the Metaverse?

Bonnie Patten:

Well, I think if we look at the Metaverse or in games, we can't predict where the children are going, or what they're looking at. So, that is much more of a challenge in disclosing that something is marketing. And in that instance, the brand or the influencer, or the advergame really need to ensure that disclosures, both audible and visual, are in those virtual worlds in a multitude of places, so that they become not only unavoidable, but understandable.

Michael Ostheimer:

And, would you also recommend audio and visual for other context beyond advergames?

Bonnie Patten:

Well, obviously it's going to depend on the age of your audience. If everybody can read, perhaps you don't need the audio. But I think, obviously, for younger kids who cannot read, it's a must. And, for older kids, it's probably best practices.

Michael Ostheimer:

Well, actually, what about icons for younger kids who can't read?

Bonnie Patten:

Well, if a child doesn't understand an icon it's of little or no value. So, if all children understand it, then it would work. But again, we have to look at the cognitive capability of the audience, and what they know and don't know.

Michael Ostheimer:

Okay. Nellie are there disclosure practices that should be avoided?

Nellie Gregorian:

Yes. Wordy statements, again, adult-oriented language. We've tested some messaging where, for example, people used words like, "Advertiser content", it just absolutely doesn't work, even for tweens, even for pre-teens. So, using simple words, and simple icons that are easily interpreted and understood. Kids are very attuned to the word "ad", they know what "ad" means. Even if they're younger, they cannot really comprehend the concept behind the words, but they understand "Ad", so "Now somebody is going to show you something different from the content", at least that's a start.

So, using simple language. In terms of icons, I'm a strong proponent of using universal icons. You wouldn't believe how quickly kids learn. We exposed kids in our research to some ideas, and within a couple of tries, with completely new visuals, or with completely new graphics or icons, they catch on. They immediately learn and they can recognize the same icons and the same visuals in the next generation of the task.

So, if there was some kind of educational campaign or there was a widely-accepted iconography around paid content, I think it would really be very effective.

Michael Ostheimer:

All right, thanks, Nellie. Do you think that disclosures can be effective for children under eight, or under five?

Nellie Gregorian:

I think, again, any time, of course, there is an age-related question, we need to recognize that children are at different levels, at different stages of their developmental trajectories, so it's not like there is a clear-cut cutoff rate for kids to understand or not to understand. And I think which is why I agree with Bonnie in terms of utilizing a variety of different modes of communicating disclosures.

I think early emergent leaders could understand simple words like just "Ad", they understand simple icons. For example, kids would consistently tell us, "I'm Xing out of an ad." They are now very familiar with an X next to banner ads, or other types of ads in gaming.

So, kids can adapt. Between the ages of five and eight, it's probably doable with some widely-accepted icons or wording around those blurred, specially, advertising messages. For younger kids from under five, it of course becomes an issue and more research is needed, because there of course is an issue of, again, going back to Bonnie's point, whether they understand even the concept of advertising.

Michael Ostheimer:

Okay. Thank you. So, both Nellie and Josh mentioned educational campaigns. Lartease, do you have anything to add on whether an icon or pictogram would need or benefit from an educational campaign for kids to understand it? Or do you think it's been adequately addressed?

Lartease Tiffith:

Yeah, no. I think it would be beneficial to have that. But, I also just want to note that our organization along with our peer organizations have already been working on similar icons. We have AdChoices, Adcon, a universal symbol deployed within or near behavioral advertisements or on websites and mobile applications where date is collected for cover purposes.

So, we already... AdChoices is sort of one example. I would also just kind of iterate again that a one-size-fits-all isn't going to work for every medium, so let's make sure that there's a flexible ability to be able to do things based on the mediums and how they change.

But yeah, I think an educational program would be helpful, and I would love see the FTC engage in some of that. But, we as an industry, are already sort of doing that. So, would also just add that as well.

Michael Ostheimer:

Okay. Thank you. I have a question that we actually got from the audience on the last panel. On the prior panel, Josh from Fourplay suggested that disclosures don't work if you still have a favorable impression of a brand. I wanted to see whether anybody in our panel agrees or disagrees with that. Does somebody want to take that question? Bonnie?

Bonnie Patten:

Well, the goal of the disclosure, and what we're talking about, is that the marketing is not deceptive. And, if the disclosure allows the marketing to be well-understood by the audience it's directed to, then it's up to each consumer how they perceive that marketing and what choices they want to make around that.

Obviously, with children, it's more based on cognitive development, and there's issues with that. But, I think that they're separate issues.

Michael Ostheimer:

Thank you. All right, should there be a different on how disclosures are made to children versus adolescents, Josh?

Josh Blumenfeld:

We have found that if you take a multi-nodal approach, if you have a video that educates, if you use plain language, that the disclosures can be effective for a wide age group. But also, to Nellie's point earlier, for kids of different developmental milestones. And that doesn't necessarily track directly with age.

So, as you're targeting groups of kids who are on your platforms, we think that making something that's effective across that spectrum is the best way to go.

Michael Ostheimer:

Right. Bonnie, do you have anything to add to that?

Bonnie Patten:

I would just add that I think that the research is there, that children at a certain age don't know what an ad is, and there are children of certain age ranges that do not understand the persuasive intent of that. And that, that's just where they are in their cognitive development. So, disclosures, in that case, are not going to work to inform them that what they're looking at is marketing.

Michael Ostheimer:

Nellie, should the FTC give guidance such as best practices about disclosures?

Nellie Gregorian:

Well, I can't speak for additional media platforms, or advertisers, or content creators, but I think that... I'm a believer of having universal standards that people can just generally refer to. And, in our

experience, with most of the brands and digital tech companies we work with are generally interested in doing right by their kids and families they serve.

So, having a set of standards that they can use, and even enforcing some of those rules would be incredibly helpful.

Michael Ostheimer:

Thank you. We heard on panel one that YouTubers would like a standard approach to disclosures. What should be the role of platforms in facilitating or encouraging disclosures of [inaudible 04:01:43], Josh?

Josh Blumenfeld:

Thanks, Michael. Yes. So, we actually have a pretty robust disclosure requirement for our creators. When they're uploading content that they have to identify that it's made for kids content. Once they identify that, another dialog box is raised, and then they have to click through and designate the bunch of different categories that their video to disclose to us that there is a product placement in it.

This underlies a point I think that Lartease made earlier, but I really want to underscore, which is that platforms are in a very difficult position because we don't actually have direct insight, or even indirect insight into the commercial relationship between user-generated content, the content creator, and the advertiser.

And that relationship can be really complex and take a multi-varying kind of approach, right? They can be, as you noted, a toy in a box, in an unboxing scenario. It could be a speech. It can take a lot of different forms.

So, we really do think that the onus is on the generator of the content to disclose to us what their commercial relationship is. And, if we were to have an obligation, we think it should be consistent, that we should disclose, which we do now. We want our users to know that the content that they're watching has a paid product placement.

But, the issue here is that, to some degree, it has to be generic. Otherwise, we would then be mischaracterize in the nature of that commercial relationship. If you think again of the complexity of those relationships, it's nearly impossible for us on every video to accurately disclose that.

So we do think the onus is there. We do disclose this. We want to disclose it. We want our users to understand it. But, the precise nature of the relationship between the creator and the advertiser is really between them, and we have no insight into that other than what's disclosed to us.

Michael Ostheimer:

Bonnie, do you have any views on the world of platforms? And it doesn't have to necessarily be YouTube, it could be other platforms, too.

Bonnie Patten:

Right. I think we have seen other platforms attempt to provide disclosures for influencers. And I think to date, they've a pretty bad job of it. They're generally quite avoidable, and they're generally not clear and conspicuous.

So, I think to the extent that platforms are going to try and help consumers, they need to do a much better job of it.

Michael Ostheimer:

Thank you. Some of the harms mentioned in the last panel included the cumulative effect of big data, an increase in the number of ads seen by kids, the manipulation of children, and making even harder for them to defend against ads. Would disclosures be enough to combat such potential harms? Or some other kind of transparency or solution is needed, Sneha?

Sneha:

Yes. I mean, as everyone has said, being able to deceit an ad alone is not enough, because kids may not always have the cognitive capacity to understand what it means to pay for an ad or to process how the ad in question might've been placed specifically to manipulate their purchasing decision. So, as has been said before as well, disclosures may not work for all age groups, and what that means is that disclosures are one solution, but they cannot stand alone as the only solution. We need a robust public awareness and educational effort to ensure that youth understand how to operate as responsible consumers.

You might also need technology controls to actually sift through advertising material and empower parents and children to avoid harmful content.

Michael Ostheimer:

Great. That's a great transition to the next topic. Which is, parental controls. Let's switch gears to parents. On the last panel we heard that parental involvement is an important mitigating factor. And I'd like to ask, are there parental controls already in existence that help, or could help protect youth from blurred advertising, Josh?

Josh Blumenfeld:

Yeah, there are. And let me just take a quick moment to explain how we approached this on YouTube, with the caveat that we don't have our product features flow with the type of ads, we have our product features flow with the type of content.

So, the first product that we have, which I mentioned earlier, is YouTube Kids. So, all users under 13 should be on YouTube Kids. Within YouTube Kids, we've disabled personalized ads, we've disabled the ability to upload content, autoplay is off, there's no paid product placements. And, importantly, we have a pretty high standard for commercial content.

So, we really want to try to reduce the overly-commercialized content that kids are viewing, and instead raise one of our pillars, really high-quality controlled content.

We also have a three-second bumper to help kids distinct between paid advertising, which is a different topic, of course, and the organic content.

Then, we have a product that's new called Supervised Experiences, and this is for parents who think that their teens or tweens are ready for something a little bit bigger on YouTube Main, but want to supervise that experience closely.

Now, PPPs are allowed in that kind of content, as we've been discussing, but there's a ton of restrictions on the kinds of content that can be allowed.

And then, finally, on YouTube Main, there are some made-for-kids content like the advertisement, the content we showed earlier from Art for Kids Hub, that are going to be viewed in a family context, for example, in the living room. And in that category, PPPs are allowed, but they're really highly restricted.

So, for example, no alcohol products, no beauty or cosmetics, no food and beverage. And I would not that it's no food and beverage regardless of the nutritional content. So, getting back to some of the comments from earlier, we don't allow that at all.

So, there are a whole series of features that are baked in based on the age group and the platform or sub-platform that you're on.

Michael Ostheimer:

Bonnie, do you have anything to add to that?

Bonnie Patten:

Yes. I think the technology is there for many social media platforms and close metaverse platforms to have parental controls. I think some of the issues are that you shouldn't have to read 45 pages in your terms and conditions as a parent to figure out how to use it or that it even exists. And then, I think, with a lot of these parental controls, they're not focusing on stealth marketing or advergames, or things of that nature.

So, while you may be able to have age limitations, there isn't a focus on perhaps this sort of hard to identify, deceptive marketing.

Michael Ostheimer:

Practically speaking, could technology identify an embedded ad in content when humans are unable to do so sometimes, Sneha?

Sneha:

Yeah, I definitely do believe so. We've talked about how AI often acts as a double-edged sword, it obviously has the power to serve misinformation and also enable deceptive marketing practices. But, it can also be an asset. It can be used as a tool where humans tend to fail. It's hard for us to detect blurred advertising, because that's often the whole point. And the techniques have oftentimes gotten so sophisticated that it's very hard for it to be visible to the untrained human eye.

We can harness the power of machine-learning to train algorithms to sift through historical examples of ads and non-ads, and we can teach that algorithm to make generalizations and recognize patterns in the data that humans might not be able to spot. And we can potentially armor ourselves with a very powerful tool, one that can be used to support parents, children and more.

So, I definitely think that technology can be an ally in the fight against blurred advertising and artificial intelligence plays a role here in actually helping us identify embedded advertisements that might not otherwise be visible to humans.

Michael Ostheimer:

Thanks very much. Josh, do you agree? Or do you think content provided would first need to self-identify?

Josh Blumenfeld:

Yes. From our point of view, the creator would always need to identify and disclose to us, that's the first principle. Secondarily, as a technology company, we're huge believers of and deployers of machine learning. We do it in a variety of contexts. We do it in recommendations based on all kinds of signals to kind of give users the content we think that they might want to see. And we use it in our content moderation.

Now, it's really good at certain kinds of content moderation, like pornography. It is much less good at much at much more, as Sneha was talking about, much more highly-contextualized kinds of content, like

a blurred advertisement, or an extremist speech, for example. An extremist speech, an unrelated topic, but it's highly dependent on cues, on various turns of phrase, on context, etc. So, in that category, in content moderation, we have thousands and thousands of human reviewers, because machine learning just simply isn't up-to-par.

So, there is a place for machine learning, but we're not quite there yet.

Michael Ostheimer:

Do you have a sense of how compliant content creators are with the requirement that they identify their content as advertising, Josh?

Josh Blumenfeld:

Yeah, that's a great question. I don't have that data in front of me. I mean, it is a requirement of all content, of all uploaders, to disclose to us that it's made-for-kids content, and then what the disclosure requirements are relative to paid product placements.

Michael Ostheimer:

Bonnie, do you think that there could be stronger incentives for self-identifying? And if so, what could those incentives be?

Bonnie Patten:

Absolutely. I think right now it's economically advantageous for influencers and brands to use stealth marketing, sort of piggybacking on what Josh said.

In Tina.org's experience, influencers and bloggers are not following the rules on any social media platform. They're not identifying when there is a commercial speech going on in their content, and they are blurring the lines.

So, I think it would be really helpful if these platforms at least made influencers and content creators follow the terms and conditions that are there in these platforms. I mean, these are voluntary rules, and the platform should do something about it when they find violators.

I also think that FTC could have a role here. They send out more than 700 letters for penalty-sense authority to national advertisers talking about endorsements and testimonials. And I think that using that tool could be very helpful to encourage more people to disclose instead of using stealth marketing.

Michael Ostheimer:

Assuming that technology could identify embedded ads or content, or whether through artificial intelligence of self-identification, could a solution with respect to the youngest children be given parents ad-blocking tools or providing parents with disclosures before kids viewed the content, Sneha?

Sneha:

Yeah. So, as I mentioned before, I think that parents alone can't always act as an effective intermediary, and it needs to be some additional solution, and additional layer there to actually empower them to help sift through that harmful content.

So, I do agree that there are some limitations to using machine learning in this context. The machine learning might not quite be there yet, it might not quite be up to speed. But I think that we should

thoughtfully deploy ad-blocking tools and equip parents with those tools to help identify embedded ads and sift through that.

Michael Ostheimer:

Are both alternatives I mentioned, either notifying parents before the kids view content, or ad-blocking, are both those alternatives acceptable? Or is one preferable? Bonnie? And then Lartease.

Bonnie Patten:

Well, I think we heard on other panels that children are seeing up to a thousand ads a day. And, if you have more than one child, that would be a lot of ads for any parent of guardian to have to sift through disclosures. So, I think that that would be absolutely impractical. I think that ad-blockers could be helpful as one arrow in the quiver, but they're not going to fix the problem as it currently stands.

Michael Ostheimer:

Lartease?

Lartease Tiffith:

Yeah, I think there's a preference for disclosure over ad-blocking tools, and I'll tell you why. I think one, which I've not had an opportunity to discuss before, is how important digital advertising is, actually, to our economy, to the content that provide, that kids get to use. All of that is subsidize by the fact that you can use digital advertising to sort of upside the cost of development of the content, and producing it and things like that.

That wouldn't exist, but for the ability to use advertising. If we did away with advertising by blocking ads, that basically does away with the content. Devalues it and eventually that content may go away. Or you may see companies start putting content behind a paywall, where only those who can afford to pay will actually get it.

So, that means that they have, instead of right now, where to get kids a lot of content for free, basically, enormous amounts of content, all that would go away, and only those who could afford to pay would be able to use it.

So, I think it's important to realize the value that advertising plays in our economy, as well as the development of the content and products and services that we all love and enjoy.

So, I want to make sure we talked about that for just a second. I mean, I think that the preference here would be disclosure, which is what the FTC historically has been doing. We talked about earlier about the endorsement guide. There are other disclosures as well that the FTC has implemented. I think those things are things that are preferable than trying to develop, or the FTC sort of forced the development of ad-blocking tools.

Michael Ostheimer:

Nellie, I don't have it in the outline, but I seem to recall that you had mentioned something about the experience of ad blocking with Roblox. Is my recollection correct?

Nellie Gregorian:

I don't think I was the one mentioning Roblox in particular.

Michael Ostheimer:

Was it Bonnie? Was it you?

Bonnie Patten:

Yes. When tina.org did an investigation of Roblox, if parents were to set the parental controls at that time to restrict the viewing of children to all ages, it basically meant that they saw nothing. I think Roblox has since changed after our complaint to the FTC, but at the time, this sort of exception to ensure the safety of the child basically meant that the child would see almost nothing and definitely not the popular games.

Michael Ostheimer:

Okay. Sneha, I think I know the answer to this question, but I'm going to ask it. Should the FTC encourage the development or use of ad blocking tools?

Sneha:

Yeah. I think it's mentioned before that there obviously are some limitations that these ad blocking tools have, and so in general, disclosures might be the best solution, but I still think that there is ... It does merit an exploration of what these tools can deliver, and I think that it's also important for us to utilize AI in this site. So, I think that we could definitely suggest further exploration of these tools, but I don't think that we can move forward with forceful endorsement or forceful enforcement of these tools quite yet.

Michael Ostheimer:

Okay. Thank you. On the first two panels today, both panels, there were mentions of families of lower socioeconomic status having a number of challenges acting as a gatekeeper. Are there specific populations for whom the parents as gatekeeper just isn't viable? Nellie?

Nellie Gregorian:

Well, yes. Absolutely. In our research, although I don't have quantitative numbers but just conducting qualitative research, lower income families and recent immigrants, younger parents, other economically stressed households obviously are more ... have less resources to, for example, afford ad-free content or subscription services, ad-free subscription services or have the time to navigate the digital parental control tools that might be available to them but frankly, we know are not being widely used.

The point I want to make is just it's not limited to lower income. That challenge that parents face is not limited to lower income families or families with or parents with less educational levels and stuff like that. In our experience, families across the economic, socioeconomic stratum are struggling to navigate the ever-evolving digital media landscape, struggling to figure out what parental controls are available to them or could be put in place to monitor their children. Frankly, they don't have the digital literacy themselves to really being able themselves very often to differentiate between content that might be promotional versus content that's free, the quality of content, the whole spectrum of issues that we deal with, speaking to parents about digital media. So, any kind of anticipation that parents would be effective gatekeepers as far as advertising to their children is just not realistic in my view.

Michael Ostheimer:

Lartease, do you want to [inaudible 04:19:52]?

Lartease Tiffith:

Yeah, I definitely do. I think that we need to realize that parents ... I'm a parent. I have a five-year-old daughter. Parents still have their responsibility to look after their kids, and that exists in the digital world and the physical world. Right now, parents are ... when they go to shopping malls or if they're at amusement parks, their kids are inundated with marketing and advertising to get them to buy products and services, but guess what? Parents, at the end of the day, are the gatekeeper to decide whether they're going to purchase something for their kid or not. I don't think that there's a real distinction between the physical and the digital world. It's the same thing.

At the end of the day, if the parent doesn't want to buy the child a product that they see on a tablet, they're not going to do it just like they wouldn't do it if they were in store. So, I think that we need to not forget that parents do have their own duty and responsibility, and they also want their own choices, right? Not every parent wants to parent the same way. So, I think we need to be careful about trying to impose one view of parenting on all parents because everyone is different, and they should be allowed to decide for themselves and their child what they want to do.

Michael Ostheimer:

Thank you. Let's move on to the next topic. Earlier, we discussed education, and I'd like to ask, to what extent is or could could education be helpful in protecting youth from blurred advertising? Sneha?

Sneha:

Yeah. So, Encode Justice runs an AI ethics workshop program for high school and college students. It has already reached over 10,000 youth worldwide, and we've been actually able to start conversations about the social, political, ethical, and environmental dimensions of technology. So, I've seen firsthand how powerful these sorts of public awareness efforts can be in driving change in conversation. I've seen youth leave our trainings, resolving to take action in their own communities, whether that be by contacting lawmakers, raising the topic with their parents at the dinner table, or encouraging their friends to get involved.

I'm optimistic that if we made a similar push to get the word out about how harmful blurred advertising can be and outline specific action steps and measures that people can take to become more sensitive to such advertising practices and also protect their friends and family, my peers and I would be immensely receptive. We obviously still need some more aggressive action. We still need disclosures. We still need everything we've mentioned previously, but I think it is important that we ramp up the educational work that we're doing to ensure that not only are we detecting and identifying ads, we're also teaching youth and equipping youth and empowering youth to actually understand how paid product placement influences their relationship with the internet and their relationship with advertising, and that they actually understand how that impacts their purchasing decisions.

Michael Ostheimer:

Thank you. Bonnie?

Bonnie Patten:

I would obviously agree with all that. I think education is incredibly important. No one's going to be able to help children more than being educated with that critical concepts of what marketing is because someone is not going to always be looking over their shoulder to see what's going on. So, as their cognitive age allows, learning about media literacy and marketing, learning to be skeptical of marketing

but also learning about these deceptive tactics of stealth marketing, I think, will go a long way to empowering children as they can chronologically age to protect themselves better.

Michael Ostheimer:

Thank you. Nellie, would an increase in ad literacy allow kids to evaluate the ads they see and realize these products are being introduced to them by someone who's paid to advertise them?

Nellie Gregorian:

I have a very strong delivery in the media literacy, media literacy efforts, media literacy curriculum schools. We have seen over the past, I would say five years, we have seen great progress in kids' ability to recognize online bullying or being more kind of aware of digital citizenry types of behaviors about responsible behaviors on social media. Of course, there are long ways to go and fully protect teens and preteens from all the possible influences that they're exposed to, but huge progress has been made, so that makes me very, very hopeful that a really concerted effort in introducing into media literacy curriculum topics about advertising, about stealth advertising and especially new forms of advertising in immersive environments could be potentially very, very powerful.

Media literacy, again, a hardening development, media literacy curriculum is now being adopted in many public schools, middle schools, and even upper elementary grades. So, this is something unfortunately very often, they're just focused too much on how to create a beautiful PowerPoint instead of really talking and teaching kids and students about critical thinking skills and how to critically evaluate the intent of messages, but it's a start, and it could be a great platform to integrate more education on stealth advertising.

Michael Ostheimer:

Thank you. Could we bring back the slides? Josh, what does or could education look like?

Josh Blumenfeld:

Yeah, great question. If we could go to the next slide, what we're going to do for you is play the video that would play for a user who had clicked on that little disclosure up top. So, if we can go ahead and play this video.

Speaker 2:

When you see this button on a video, it means the person who made the video might get money or free things from a company to make it. We call this a paid promotion. For example, if a video has a toy in it, the person who made the video might get money to show the toy to you. That's because the company who made the toy wants you to buy it. So, again, that's what this button means when you see it.

Josh Blumenfeld:

So, as you can see, the video is quite short, and it explains the fundamental premise. This works, we think for us, once the user has ... once the creator has disclosed to us that there is some sort of paid product placement, then we can educate kids. We found in our research that the video, along with this phrasing that appears on videos, is actually really effective. So, it's not the kind of thing that you have to go back, and kids have to watch multiple times in order to understand what they're seeing. So, again, our objective is to make sure that kids really understand what a paid product placement is with all its complexity. So, after a huge amount of research, we boiled it down to this product.

Michael Ostheimer:

Great. Thank you. Nellie, do you have anything further ... Actually, could we put away the slides please? Nellie, I know you talked extensively just now about education. Do you have any thoughts besides what you said about elementary school and middle school education on what an educational campaign could or should look like?

Nellie Gregorian:

Well, I love what YouTube is doing, and this is the first that I see it, Josh. Thank you for sharing with us. I think this is great. If it was consistently adopted across different platforms or something similar, especially with similar language or similar iconography, it would be incredibly powerful. There's also, of course, definitely a role of parents. Parents have been incredibly successful in teaching their kids about stranger danger as far as social media is concerned, but they're less aware of advertising. They just don't have the tools and knowledge to really and frankly, or the ability even to know what kind of advertising their kids are exposed to.

Right now, they're applying, in our experience, in our research, parents are applying the same strategy they apply with television commercials basically. They're being within an earshot of a video that their kids is using or digital games, but that, of course, doesn't mean that they actually see or hear what their kids are listening to. So, some kind of also educational ... I don't want to say campaign but some kind of an educational initiative for parents would also be very, very useful.

Michael Ostheimer:

Great. Bonnie, is it possible to educate children under five on how to evaluate advertising that is blended into content?

Bonnie Patten:

I think the answer, given what we've heard in panel one, is no.

Michael Ostheimer:

Okay. Lartease?

Lartease Tiffith:

I disagree. I think Josh just gave a perfect example of an educational way, which basically, a video, I think it's very simplistic, that actually teaches a kid about advertising. I would just kind of say that not everything is going to fit the same medium. So, I think of podcasts and other things where we would actually want to have different kind of educational, but I do think that more education is better, I think, for kids, I think for adults, as well for their parents. So, yeah, I support that, and I think it would be good.

Michael Ostheimer:

Josh, did you test your campaign with kids under five?

Josh Blumenfeld:

No. So, our campaign was tested kids five to 12 and their parents.

Michael Ostheimer:

Okay. Thank you. Who should be educated? Kids, parents, teens or all of the above? Josh?

Josh Blumenfeld:

All of the above. I mean, we are huge believers in education. We want all of our users to be educated. We do this across various spaces. We have a new campaign educating people about misinformation, right, so the more information people have, the more education they have, the better and more discerning viewers they are, and the better experience they have. We think that's good for the entire ecosystem certainly within YouTube.

Michael Ostheimer:

Nellie, do you have anything to add to that? You disagree, or do you agree?

Nellie Gregorian:

No. I agree totally with Josh.

Michael Ostheimer:

Okay. What's the best forum for education, and who should be responsible for providing this education? Josh?

Josh Blumenfeld:

Yeah. I mean, this is a sort of a whole of community effort, right? I mean, at YouTube, we take responsibility as our absolute top priority, so we take this incredibly seriously. That's why we've gone to such efforts to make sure that we have these disclosures and the video, that they work together, and that in our testing, they actually work for our users, but it's a responsibility for all of us, right? As Lartease said earlier, it's responsibility for parents, it's responsibility for our community leaders, it's responsibility for our government regulators and government partners to help us. So, this is a societal wide effort, and we're proud to play a leading role in it.

Michael Ostheimer:

Bonnie?

Bonnie Patten:

I have nothing to add.

Michael Ostheimer:

Bonnie, do you think that the FTC should assist with or encourage such education?

Bonnie Patten:

Absolutely, yeah.

Michael Ostheimer:

Okay. Changing topics, we talked earlier about disclosures, and now, I'd like to talk about whether the failure to adequately disclose the commercial nature of advertising is a deceptive practice. For children and teens who are able to understand what advertising is, is it sometimes or always a maturely

deceptive practice to not disclose the commercial nature of sponsored content? Why or why not? Let's start with Bonnie.

Bonnie Patten:

I would say, given that assumption that they understand not only that it's an ad but the intent behind the ad, the answer would be sometimes. If we take an example and kids, teenagers are following Kylie Jenner, the vast majority of our followers are going to know that Kylie Cosmetics is her company, and in that case, a disclosure would not be needed, or if Kylie was promoting Keep Up With the Kardashians, again, the vast majority of her followers are going to know that she's got a material connection to that TV show. So, in this type of instances, if everyone knows it's already an ad, it would not need to be disclosed.

Michael Ostheimer:

Lartease, do you have anything you would like to say in this question? You're muted.

Lartease Tiffith:

Yes. Sorry, I have to unmute myself. Yeah, no. I think it depends on the specific instance. I don't think there's, in itself, what you say what we need to believe that it's deceptively. I think already though, the FTC has put out the endorsement guides, and so to the extent that anyone isn't disclosing, there's an opportunity for the FTC to come after them for an enforcement action and see what happens in court, but I'm not sure just on its own whether there meets the criteria of materially deceptive so ...

Michael Ostheimer:

Okay. Genevieve, would requiring the disclosure of commercial content be consistent with the First Amendment?

Genevieve Lakier:

Probably. This is the oldest kind of regulation of commercial speech, and courts have upheld it. So long as what has been regulated is actually considered advertising or commercial speech, so long as it ... and I think so if we are talking about videos that are being paid for by a manufacturer, the courts would likely consider that to be commercial speech, so then a disclosure's fine, so long as it is not so burdensome that it prevents the speaker from communicating the message effectively, and so you'd have to think about the tailoring.

Michael Ostheimer:

Lartease, would clear and conspicuous disclosures, perhaps combine with other remedies we've discussed, be sufficient for children old enough to understand advertising?

Lartease Tiffith:

Yes, and I think that's why we see that already in a lot of ... I mean, I think most advertisers and content creators are doing the right disclosures. I think there are a few who were not, and I think that we can go after those bad actors, but I think that overall, people are disclosing, and I think that that is ... Things are generally working okay. So, with more disclosure, we're happy with that, but I think it's a good remedy.

Michael Ostheimer:

Thank you. Let's change topics to when children are too young to understand advertising. I believe that some people have suggested, some stakeholders and probably some of the people on earlier panels, I believe, suggested that there might be a ban, that a ban might be appropriate for children who can't understand disclosures or for whom other remedies would not address the harm. For children too young to recognize and process blurred advertising, I would like to discuss whether a ban would be appropriate.

First, I'd like to explore whether this would constitute an unfair practice that would support commission enforcement or regulation. As was discussed on an earlier panel, an act or practice is unfair if it causes or is likely to cause substantial injury to consumers, which is not reasonably avoidable by consumers themselves and not outweighed by the countervailing benefits to consumers at a competition. My first question is, does blurred advertising to young children cause a type of substantial injury necessary for finding of unfairness? Let me start with Lartease and then give Bonnie a chance to give her views. So, Lartease?

Lartease Tiffith:

I'd say no. It does not. I mean, I think that if you look at the unfairness, the three-factor test whether the practice injures consumers, whether it violates established public policy, as well as whether ... I think earlier, you mentioned countervailing benefits-

Michael Ostheimer:

Right now, I'm just talking, are the harms, type of harms that are substantial ... that cause substantial injury. I'm not talking about the countervailing benefits or the avoidability.

Lartease Tiffith:

I don't necessarily believe that they are, but I think that, as I said earlier there, if you'd go back to ... If the harm is purchasing something that you otherwise wouldn't purchase, as I said before, the parents are the gatekeepers ultimately, so they're still the ones who are making the decision whether to purchase or not. The children and teens and kids aren't generally the ones oftentimes making that choice so ...

Michael Ostheimer:

Bonnie?

Bonnie Patten:

I think this is a really interesting question, especially if we apply it to close platform metaverses and if we're looking at virtual currencies or loot boxes. This is an area that the FTC has said when it's sort of unavoidable financial loss, that could be an area of unfairness. I think that arguments could definitely be made with unfairness in this area. Obviously, I think more research needs to be done. Tina.org has also seen many deceptive marketing campaigns on social media platforms that are promoting toys and games and also really unsafe conditions, playing with fireworks or challenges to sleep in a pool all night. So, I think that there is content out there that is even within the FTC's narrow definition of unfairness, so I think it's possible that an argument might be able to made along this context.

Michael Ostheimer:

Okay. Do you think that would apply to some of the other harms that we heard discussed on the prior panel such as an increase in materialism?

Bonnie Patten:

Well, I think to date, the FTC is really focused on physical harm, but I think what we see even with the Wall Street Journal's disclosure of the Facebook materials is that we're in a new realm now. We're looking at not only the physical harms that might be presented by stealth marketing but also psychological harms. I think that arguments can be made that that could present an unfairness position.

Michael Ostheimer:

Are the harms to young children reasonably avoidable by the children or their parents, Bonnie?

Bonnie Patten:

Absolutely not. I think it's absolutely disingenuous to say that parents who need to work and cook and do the laundry and hopefully brush their teeth at some point can watch everything that their children are looking at on a screen. Moreover, even those parents that are really trying their best, they're not going to be able to do it. You look at Roblox. A parent reads its terms and conditions. They say that the brands or the content creators shouldn't be marketing to children under 13. They're doing it anyway, so even if you're a responsible parent and you believe that your kid can go on Roblox and not see ad or games that aren't disclosed, you're just wrong. You can't rely on it.

Lartease Tiffith:

I disagree. Parents can totally avoid it. They could decide not to have a kid play with that device. They can give him a book instead. They can do other things. If they don't feel as though that they can trust what the child is seeing, the parents can choose to give them something else, so I think if there is a harm, and I disagree there is, it is avoidable by the parents because the parents can choose to use something else instead of having the kids play there. It goes to your point about monitoring your child, but which most parents are doing and able to do competently.

Michael Ostheimer:

Josh, what are the benefits of having ads associated with content?

Josh Blumenfeld:

Yeah. I really appreciate that question, and I know we talked about it a little bit at the front end, but look, responsible ads support high-quality, accessible content on YouTube. Without ads to monetize content, publishers, creators, particularly those focused on kids' content simply wouldn't ... They'd either be out of business, or they'd have to have a firewall, a paid firewall. One of the fundamental principles of YouTube is to give everybody a voice and show them the world. No matter where you sit in the world, you can access all the videos, well, if your government allows you to. In most countries, you can access all the content that's on YouTube for free.

The bar for me for kids' content is very, very, very high. It's not just the disclosures that we talked about, so disclosing the commercial relationship that you may have if there's a PPP, but it also, there are all kinds of elements that make high-quality content really expensive and very challenging to produce. Our interest in YouTube is to have more high-quality content that users enjoy and benefit from, not less of it. That's also an advertiser's interest as well. So, I think sometimes, we stipulate that, and we forget that

the first principle here is that an ad, a responsible ad-enabled internet, and in this case, video content makes it free. That is a huge value to tens of millions of our viewers.

Michael Ostheimer:

Sneha or Nellie, do either of you have anything to add to that?

Nellie Gregorian:

There's no question that parents appreciate having their kids have access to free content, free high-quality content that is ad-supported. In our research consistently, even when parents have a choice between subscribing to a channel, ad-free channel or purchasing a game, for example, that is ad-free, even if it's a couple of dollars that's really cheap, they opt for ad-supported content just because it's expensive. It accumulates. On average, the American family now spends about $50 per month on subscription services only. So, there's no question that parents understand and appreciate the need for ad content.

I think that they also understand and anticipate that there is some kind of quality control that those digital platforms exercise in terms of protecting their children from harmful content, whether it's advertising or content related from sexualized or content or violence, protecting them or at least alerting them to social media component and games, for example. They want to know in advance whether there is an opportunity for their children to communicate with others and unintended purchases, which is a major issue for parents. So, so far, parents are being very, very effective in our conversations with kids in warning them against those unintended purchases, but that's basically the limit of their safeguard. The rest is basically left to their children's devices.

So, again, I would argue that digital platforms, media, content creators and advertisers have a huge responsibility in doing their best in at least ensuring that the content, the advertising they're exposing their kids are directed at least at their children, age appropriate, and doesn't have any harmful content or any vehicle for inflicting those economic harms like unintended purchases.

Michael Ostheimer:

Thank you very much, Nellie.

Lartease Tiffith:

If I may say something on this question, Michael, I just want to just emphasize again just the value of advertising and the ability to have content that would not otherwise exist without advertising, and that is very important. Not only that, but we actually did a study with a professor from Harvard Business School that found that Americans value the ad-supported products and services that they get that are either free or subsidized at $32,000 per year, right? That is a lot of value for a family, and that's trillions of dollars for our economy that people don't have to pay for. If we get rid of advertising, what we're going to do is have a subscription-based model, and that means that for a lot of poor families or families who don't have a lot of means, they're going to be left out of really great content that is now available for them for free, so it is a trade-off. Trust me, we realize this, but it is providing overall so much value, so much benefits to kids, to their parents, to our economy, and so we should definitely recognize the value that advertising brings to our country.

Michael Ostheimer:

Okay. Putting together the three elements of the unfairness test, the question would be, would the unfairness doctrine support the FTC challenging or prohibiting blurred advertising to the youngest children? I think both of you have kind of answered this question, but Bonnie, putting those three elements together, do you have anything you'd want to add beyond what you've already said?

Bonnie Patten:

No. I think the FTC could bring, on a case by case basis obviously, cases under their unfairness doctrine for these children.

Michael Ostheimer:

Lartease?

Lartease Tiffith:

Sorry. I have to unmute myself. No, it would not. Again, it goes back to the test, and I don't think it would meet the standard. I think right now, overall, the FTC is focusing on enforcement where there are a few bad actors, and I think that instead, it should go after those bad actors rather than trying to completely ban advertising or any form of it at this point.

Michael Ostheimer:

Okay. We've been talking about children too young to understand advertising. At least, that was how I framed the last question and the earlier question. The FTC also received a comment that suggested that banning influencer and other blurred advertising to older kids would be appropriate, even teens. With respect to a ban against blurred advertising to older kids, would your analysis change, Bonnie?

Bonnie Patten:

Well, I think from a legal perspective, you're still looking at that unavoidable substantial injury, so from a legal analysis, I don't think it would change.

Michael Ostheimer:

Lartease? You're muted, or do you-

Lartease Tiffith:

I think, yes, it would change obviously for older kids. As I think others have said in the previous panels, that kids by age have a little bit more autonomy, and we have to look at what age group we're talking about. For older kids, they would not have the ability to do that. The FTC would be in more trouble, I think, even for younger kids, but it

Lartease Tiffith:

It goes to what Bonnie said earlier, it depends on the case that we're talking about. So I think that in general, we'll have to see. But generally, no. I think as the kids get older, it gets even more hard and complicated.

Michael Ostheimer:

I have another question for you, Lartease, in applying an unfairness analysis, could one really distinguish between the harms from blurred advertising and those from other advertising that is shown to kids, like on television?

Lartease Tiffith:

I don't think so because I think that a lot of the marketing advertising that's happening on television, that's happening on the physical world, when people walk around; amusement parts and other places, they're advertisements, they're marketing. That's what happened. And at the end of the day, you can't say one is worse than the other. If you say ads are bad, you can't say some ads are good if they're in a store or if they're in a mall, but they're bad if they're on your tablet. I think if the FTC were get itself involved in this as it did a few decades ago and it did not turn out very well, I think it would be a real problem for the organization, and the agency. So no, I think it would not matter between it.

Michael Ostheimer:

Genevieve, would there be First Amendment concerns about banning and blurred advertising to children too young to understand advertising or to older children?

Genevieve Lakier:

I mean, there were definitely be concerns. Historically, the courts have really not like total bans on advertising when the product being advertised is a legal product. But the rules are different for children. And so we know that at least when it comes to profanity, for example, the FCC can ban profanity during certain hours for children without violating the First Amendment. And that suggests that the government gets a lot more leeway when it comes to thinking about children's harms.

The difficulty here is I think twofold. One, figuring out whether or not the audience to the videos or the self advertising is purely made up of children of that age group because there's just no way that you could justify a ban on ads to adults of this kind. And so you'd really have to think about how to make sure that there's enough audience segmentation. And second, the courts typically require, even when they allow a certain kind of regulation to proceed, there has to be pretty good evidence of the connection between the restriction and the harm it's trying to avoid. And so that you would have to substantiate.

Lartease Tiffith:

I would actually add one more thing real quick, and that is basically going back to the 1978, 1980, remember Congress actually put in place a provision that said that, and I know there was a debate earlier in a previous panel about whether this is substantially similar, but there's something in there that says that the FTC cannot do rule making around children's advertising in terms of banning. I know it's subject to debate, but it is in there. And I think that again, there's a reason for this. The FTC tried this same kind of action before and it did not turn out well for the agency. And I think that's a reason why Congress did what it did. And so we can continue to debate that, but I think it would be in addition to, around, a First Amendment issue, but in general does not have the authority to do this. And so I think it would be a really bad situation for the agency to try to do it.

Michael Ostheimer:

Genevieve, did you listen to the discussion of potential harms on the prior panel?

Genevieve Lakier:

A little bit, yeah.

Michael Ostheimer:

Do you have a sense of whether those types of harms that were mentioned are the types that would be sufficient to survive First Amendment scrutiny?

Genevieve Lakier:

Well, I don't think something like increasing materialism is going to be a kind of harm that the cause is sympathetic to, but the traditional harms that the regulation of advertising has been trying to prevent are consumer confusion and consumer ignorance. And to the extent that we are worried that stealth advertising is hiding the fact that it is advertising and that children of a certain age are unable to perceive that it's advertising, that is the core kind of problem that the advertising regulation seeks to avoid.

And so I don't actually think you need to go into a very elaborate justification of the harms, and the harms as they pertain to children. The fact that we have consumers who are not able to identify that what they're receiving is an ad is a classic harm that the government can regulate to prevent. The difficulty, I think, would not be in identifying the severity of the harm, it would be showing that this kind of restriction is necessary to avoid it, a ban rather than a disclosure, for example. I think that's where all the fighting would be.

Michael Ostheimer:

And is there a way to narrowly tailor any sort of requirement to survive First Amendment scrutiny?

Genevieve Lakier:

I think the open question when we're talking about the regulation of social media is, are we still in the same landscape as we were in 1996 when the court handed down the Reno case? In which it said, you may not regulate to prevent harms to children because that's going to necessarily infringe on the free speech rights of adults. Or are we in a social media environment where there's been enough segmentation of audiences where we have a varied enough landscape that we can be confident that videos addressed to kids is not going to be addressed to adults, where we are really having different kinds of segmentation. And in that context, the rules look very different. And so I guess the open question for me is, how do we identify who the audience to these kinds of ads can be and whether the courts are going to be sensitive to the changing nature of social media itself?

Michael Ostheimer:

Thank you. That is a great segue to my next question. Which I was planning on addressing to Lartease. Lartease, as a practical matter, how difficult is it to segment an audience by age? And if there was a ban or a restriction on advertising to the youngest children, would that impact older ones or would a broader ban impact adults? And how does that fit into the analysis?

Lartease Tiffith:

Yeah, I mean this is where it would be a very big challenge because it would require figuring out, gathering more information about the user. And for a lot of businesses, they can't afford to develop additional operational functions to be able to figure out whether they're dealing with someone who's five, eight or 10. And so what would happen is that basically some businesses, some companies, would

decide, "You know what? I'm not going to do provide the content at all." So that means if you're an older teen, you may not get to some of the things that you would normally get. You may not be shown things that you would ordinarily be seeing, that you should be seeing. Same thing with adults.

And so it would have ramification for those because again, it would require a lot of operational infrastructure to kind of create something and then it still wouldn't be effective, because people move tablets and they move devices around from each other. So one moment an adult can be holding it, the next moment a kid could be holding it or some age. So I think there would be a lot of difficulties. And again, I think that goes back to whether the fairness doctrine would be established, and I think it wouldn't be enough to justify the FTC being able to engage in this.

Michael Ostheimer:

Thank you. As Mimi mentioned in her overview, and people have discussed on the second panel, and Lartease raised earlier in this panel, the FTC embarked on a rule making to restrict television promotion of highly sugared cereals and foods to kids back in 1978, and there was a backlash. Have the facts, evidence, legal, and or policy landscape changed since then, Bonnie?

Bonnie Patten:

Well, I definitely think the landscape for facts and evidence have changed. We weren't talking about the internet then or closed platform metaverses or virtual gaming or even social media platforms. So I think as we saw with the transition of advertising dollars over to the internet, a lot has changed factually. I think what hasn't changed is policy or the legal landscape. I would note though that in that kid vid era, the FTC staff concluded at that time that kids under seven lack the cognitive ability to understand and evaluate the persuasive messaging of advertising. And I don't think that's changed either. But no doubt we've got a divergence between the law and where we are now with stealth marketing on digital platforms.

Michael Ostheimer:

Thank you. Lartease.

Lartease Tiffith:

Yes. No, nothing has changed since then. Basically, it's again, a situation where the FTC potentially would be wanting to basically be the nanny and parent for everybody in America. This got it in trouble back in 1978, and I think that again, parents have the responsibility and choice to decide for their children how they want to engage, whether they want them to have advertisement or marketing. And so I don't think the FTC should be left to that. I think that it would be very unwise for it to go back down this path. I think it was a very difficult one back then. So no, I think it would be very, very challenging.

And facts haven't changed, so I think we should not engage in that. Instead, I think the FTC should focus on enforcement of disclosures and things like that, coming up with that and figuring that out and going after bad actors, because again, as a whole, the industry is doing a lot of the things we've already discussed. We've already talked about, we already have icons, we already have disclosures, we're doing a lot of that. You heard earlier about educational videos. The industry's doing a lot of work. Really what we're talking about is a few bad actors, and I think the FCC should focus on going after them rather than changing the entire industry, and also damaging our economy by removing advertising from the marketplace, and a lot of products and services that depend on advertising.

Michael Ostheimer:

I presume you meant the FTC, not the FCC.

Lartease Tiffith:

Sorry, FTC. I'm sorry. I thought I said that. I apologize.

Michael Ostheimer:

Okay. Lartease raised this earlier. It was discussed on the second panel about the language in the FTC Act prohibiting the FTC firm engaging in a substantially similar rule making. And Sheila raised that, and then Josh from Fair Place had that, a rule focused on blurred advertising would not be substantially similar. And I believe that was Lartease, you raised this earlier on the panel. I mean, does anybody have any additional thoughts on whether a rule addressing blurred advertising would be substantially similar or not substantially similar to what Congress had in mind?

Okay. Going once, going twice, moving on. In West Virginia BEPA, the Supreme Court invoked the major questions doctrine. That is in extraordinary cases of political and economic significance where an agency makes unheralded use of its authority, the agency must be able to point to a clear statement from Congress authorizing its action. I believe that Sheila actually alluded to this earlier, and I wanted to ask, would that pose a fertile to banning certain categories of advertising to children by the FTC. Genevieve?

Genevieve Lakier:

I guess I should say, we don't know that much about how much of a hurdle it would be because the court has not been entirely clear. It's a emerging, new doctrine. But the standard that it suggested in West Virginia is, is it going to fundamentally transform an entire segment of the American economy? And so the question is, how broad would the rule making be? Certainly there's no way a disclosure rule or anything of that kind would constitute a major question under the standard. And maybe a ban on all advertising children could rise to that level. But the court was clear that we're talking about extraordinary exercises of regulatory authority, that this is going to be used only in limit cases, and so long as it's a relatively narrowly crafted rule, I'm skeptical that it would be counted as a major question.

Michael Ostheimer:

Should it be up to Congress whether to prohibit advertising to children, Bonnie?

Bonnie Patten:

Well, I definitely think Congress has a major role to play here, and there have been a variety of bills introduced, though nothing has gotten through to this point. But I also think that the FTC does have a role to play. At tina.org stealth marketing is something that we see all day every day. It's a huge problem, especially for children. And so I think that the FTC and also self reg need to do more in this area.

Michael Ostheimer:

Lartease. You're muted.

Lartease Tiffith:

Yeah. Thank you. So Congress would have the ability to, more so than the FTC, to do something in here. Although, I would argue that it shouldn't. Again, for the reasons I mentioned earlier about how important advertising is, but they would be on better footing than having an agency do it. Although, I'll

let Genevieve talk about the First Amendment restraints still on Congress, even if it was to act on this as well.

Michael Ostheimer:

Genevieve, could there still be First Amendment concerns with Congress prohibiting advertising to children?

Genevieve Lakier:

Yeah, I mean, they'd be roughly the same. The courts are somewhat more differential to Congress and to congressional fact finding, but only somewhat. So you don't get a big First Amendment bonus by passing the hot potato to Congress. If the FTC acts, if Congress acts, there's going to be similar kinds of First Amendment concerns.

Michael Ostheimer:

Thank you. Bonnie, you mentioned self regulation. And we started off the day with a presentation by Mamie Kresses of CARU, a self-regulatory agency for the promotion of responsible advertising and privacy practices to children. I'd now like to discuss self-regulation. What is the role of self-regulation in addressing blurred advertising in youth? And upon what specific solutions should self-regulatory bodies focus, Bonnie?

Bonnie Patten:

Well, I definitely think there is a role for self reg here, and they can act quickly. They have a lot more flexibility than an agency like the FTC. But when we're talking about CARU, there are incredible limitations. One, it's looking at advertising for children 12 and under. They're not protecting teenagers. And two, it's a very small staff with small resources, and there's no way they can police the entire advertising market. Obviously, they do a very good job of educating brands and influencers with regard to these stealth marketing issues, but there's no way that they are the end all solution to this huge problem.

Michael Ostheimer:

Thank you. Lartease.

Lartease Tiffith:

Well, I disagree with Bonnie again. I think they do a great job, I think self-regulation is the way to go, and I'll tell you why. One is, is that technology is constantly evolving, and industry and those who are more flexible and able to adapt more quickly are better suited to figure out what the new rules should be when technology evolves. When the FTC gets involved, it has to go through a very lengthy rule-making process. That takes time. And by the time something comes out from here, the technology would already change.

And so I do think that it is a better mechanism for us to get ahead of what's happening with technology by having self-regulatory bodies like CARU, but not the only one. I mean, I think, like I said, my organization and others like it, have other regulations that we require our members to abide by. And so that's, I think, the first point. And I would love to see the FTC support that rather than trying to [inaudible 05:04:31] and decide to do something quite different from that. I think self-regulation is a great way to go.

Michael Ostheimer:

Okay, thank you. Bonnie, I don't know if there's anything you'd add on this next question, but do you think there's anything self regulators could do differently or better that you haven't already flagged?

Bonnie Patten:

Yes. I mean, as far as changing technology goes, the law has remained the same. We're applying the same standards of law to deceptive marketing, whether it's a newspaper or the metaverse. That hasn't changed. And I think CARU made that quite clear in its latest guidelines with regard to the Metaverse. But with those new guidelines, I was quite disappointed to see that CARU has not taken head-on the issue of marketing to toddlers. And I think this is an area where self-regulation really could make a difference, that we've seen CARU go beyond the law with say, ethical issues of stereotyping, and trying to keep brands from doing that. I think that they need to tackle this question of whether it be deceptive or unfair to market to toddlers because they've got more flexibility than the FTC.

Michael Ostheimer:

Thank you. Were there any harms discussed on the second panels today that should be addressed but can't be addressed by any of the remedies that we've discussed today? Does anybody have any thoughts on that? That there are any harms that were raised that can't be addressed by any of the remedies we've discussed? Okay. Does anyone have any closing thoughts that they would like to share? We didn't get any questions from the audience. If we had, we would've taken them. So does anybody have any closing thoughts? Let me go through the line. Genevieve, like 20 seconds, 30 seconds.

Genevieve Lakier:

Well, again, I just want to emphasize that ensuring that children understand that what they're seeing is an ad is a core interest that the FTC can and should pursue. And so I think the constitutional concerns are raised by how the FTC pursues this, not by the legitimacy of this aim.

Michael Ostheimer:

Thank you. Josh?

Josh:

Thank you, Michael. I just thank you and your colleagues at the FTC for including us, and it's really important from our point of view for industry to have a voice in the debate, a seat at the table, with advocates and all different kinds of views. And so we welcome this discussion, and we welcome more discussions on this subject and we're grateful for being included.

Michael Ostheimer:

Thank you. Sneha?

Sneha:

Yeah, so grateful to have been included. Obviously, representing a youth-led organization, it's really meaningful that youth perspectives are being integrated in these conversations. And so I think that my lasting message is obviously just harping on the importance of education and public awareness work, while also ensuring that we are taking aggressive action to supplement that.

Michael Ostheimer:

Bonnie?

Bonnie Patten:

Yes, I would say thank you to the FTC. I hope this is the start of more discussion and that it doesn't end here. And I also really want to thank industry for their involvement today. And I hope that that discussion that we're having here can also continue in more private forums.

Michael Ostheimer:

Lartease?

Lartease Tiffith:

Yeah, I also would thank the FTC for having my organization here today. I think it's very important to be a part of this conversation with the advocates and with others in the community. So thank you for that. I would just leave with a few thoughts real quick. One is that advertising is important to our economy, to the content that we all enjoy. And that without it, we would not have a lot of free content that we have or things that are subsidized. I would also say that for those who can't afford to do the subscriber model, it is the best thing that can allow them to have the same access to the same great content, is being able to have advertising. So I just want to emphasize that.

And I would say we already developing a lot of tools. We talked earlier about some things in terms of markings that have been put on sponsored content and other advertisement. So the industry's already operating and doing a lot of good things to make sure that people are aware when there is advertisement, and when there's not.

And the last thing I would say, that there's no substitute for parental involvement. Parents are parents all the time. And I think that applies in the physical world, digital world, the same. So I'll end there.

Michael Ostheimer:

Thanks. Nellie.

Nellie Gregorian:

Thank you to the FTC, Michael, to you for moderating this very invigorating discussion. It's very heartening to hear that people are brought to the table and we have this opportunity to discuss, even though we may disagree with each other at some points, but it's also very heartening to hear that steps are being taken very proactively by the industry, by researchers and scholars who continue conducting research by obviously some other groups.

What I wanted to mention at the end is, again, my very strong belief that any kind of media literacy education is absolutely essential for our society in general, not just for kids and parents, and not withstanding everything that everybody and Lartease said about the role of parents. It also behooves us as members of the industry, different industries, to do our best. And the last thing I wanted to say that we have had the privilege of working with everybody on this panel has the kids and family's best interest at heart. And that's just the best takeaway that we could all take from this panel.

Michael Ostheimer:

Thanks, Nellie, and thanks again to everyone. Thanks to everyone for a great panel and for a great event today. Now, I would like to introduce Serena Viswanathan the Associate Director for the Division of Advertising Practices, who will be giving the events closing remarks.

Serena Viswanathan:

Thank you, Michael. Good afternoon everyone. I'm Serena Viswanathan, the Associate Director for advertising practices here at the FTC. I hope everyone found the discussion today as interesting as I did. I would like to thank the chair for her thoughtful remarks this morning. I would also like to thank the staff from the Division of Advertising Practices and Office of Technology Research and Investigation for all their hard work putting this together. And of course, I'm very grateful to all of the panelists for sharing their time, their insights, their expertise with us today.

In closing, I just wanted to note some points that stood out to me and an overview of some of what we heard today. Of course, my views expressed today are my own and don't necessarily reflect the views of the commission. First, it's really important to understand the marketplace, existing regulations and regulatory gaps. We heard today about how the distinction between advertising and content [inaudible 05:12:19] kids have been handled in traditional media, but as Mamie Kresses noted, media and advertising is evolving more quickly than ever. And now most advertising to children is digital, which does not fall within those regulatory schemes. And we saw some of the techniques and media that children encounter online. So this is a real challenge for us as regulators, as advocates, for advertisers and for consumers to anticipate as well as react to changes in the marketplace to protect kids.

Second, as we do anticipate and react, it's equally important to understand the evidence. Listening to the experts is critical, and we heard from some of those experts about their research, which I found absolutely fascinating. I think we all agree that it is important to be able to recognize ads as ads. That's a longstanding principle under FTC law. And the panelists talked about the development of children's perceptions about ad recognition and that it's not a linear process. The kids may understand that they're seeing an ad but not understand its persuasive intent, and that's even more difficult with entertaining and immersive digital content.

We also heard about some of the impacts and potential harms to kids from blurred advertising like financial or privacy harm, exposure to unhealthy products or mental health effects. But we also heard that some of these relationships that kids might have with popular influencers can be directed towards positive outcomes for kids. So that relates to my third point, which is that any analysis needs to take into account the complexities of dealing with different age groups and differently situated kids. Five year olds, 12 year olds, 17 year olds will all vary in competencies and vulnerabilities. We heard that some kids who are interacting with this content are neurodiverse or have lower income, lack certain social supports. And we heard today that determining what is child directed is complex, but we've also heard that ads are increasingly narrowly targeted. So we need to consider all these factors when we're trying to create effective and enforceable regulatory or statutory schemes.

Finally, as chair Khan noted this morning, and in our last panel, there are a variety of potential solutions, all of them may play a role. We've heard that media literacy programs may help if they focus on critical thinking, disclosures or other separators have been traditionally used, and some platforms have disclosure requirements, but we want to make sure those work for kids, and for the particular ages we're talking about. It's instructive to hear about how other countries have dealt with this. For example, a testing standardized disclosures or icons. Similarly, parental controls or automated tools may help, but they have their own limitations.

And finally, we talked about legal remedies, including whether a band on blurred ads would be appropriate for younger children. And as an enforcement agency, we face some practical questions

about which of these solutions could rectify the harms we talked about, and what solutions would be feasible under the law. So the public comment portal here is open for one more month. We really do want to hear from you. We will carefully consider all of your comments. My hope is that we can provide some guidance and recommendations on complying with the law in this space, building on the work of CARU and some of our international colleagues.

One last point I wanted to make. We focused today on the blurring of online content and advertising, but it's clear from today's discussion that there are of course, larger questions about how to appropriately regulate what kids experience online. These are complex questions, and they have been the subject of existing legislation and regulations, proposed legislation and regulations, and much policy discussion. So although we couldn't fully explore those issues in the short time we had today, the FTC has followed those debates with interest, and we will continue to engage with stakeholders on these issues. Thank you again for joining us today.