

Calls for Investigations into Children's Privacy Issues Grow on Capitol Hill

May 26, 2020

Six bipartisan U.S. Senators recently wrote to the Federal Trade Commission (FTC), urging it to conduct a widespread investigation into children's data practices among educational technology (ed-tech) and digital advertising platforms – concerns that have escalated amidst the coronavirus (COVID-19) pandemic.

The bipartisan letter follows recent FTC guidance to ed-tech companies under the Children's Online Privacy Protection Act (COPPA) – a law which has been the target of several proposed reforms by lawmakers of all political stripes. It also comes amidst a highly anticipated new COPPA rulemaking being undertaken by the FTC.

While Congressional letters to the FTC urging investigations into certain industries or entities are commonplace, this letter is likely to receive careful attention from the FTC for several reasons.

First, the letter is bipartisan, which signals agreement across the aisle during a time period in which there is little policy agreement on a multitude of issues currently confronting Capitol Hill.

Second, the majority of the signatories sit on prominent committees (the Senate Commerce Committee and the Senate Judiciary Committee) that have oversight jurisdiction over the FTC and/or have significant jurisdictional weight over privacy-related legislation. Every time an FTC Commissioner appears before these committees, it is likely s/he will receive pointed questions from both sides of the aisle regarding what is being done on COPPA-related investigations and rulemaking.

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Third, not only do the Senators hold important positions within the Senate to move legislation and conduct oversight, but they also have exercised the bully pulpit, having been outspoken critics of tech platforms on COPPA and a myriad of other privacy-related issues. Sen. Ed Markey (D-MA), who led the letter, has made legislative reform of COPPA one of his highest priorities, along with Sens. Josh Hawley (R-MO), Richard Blumenthal (D-CT), and Marsha Blackburn (R-TN). And Sen. Marsha Blackburn (R-TN) has chaired the Senate Judiciary Committee Tech Task Force, of which Sen. Blumenthal (D-CT) is also a member.

Notwithstanding whether the FTC responds specifically to this letter by undertaking an industry-wide COPPA investigation under its FTC Act Section 6(b) authority, at the very least, the FTC has signaled it will continue to bring targeted enforcement actions whenever COPPA concerns are at issue (e.g., a recent enforcement action related to COPPA against a Swiss-based company that makes mobile and online digital games).

Furthermore, while COPPA vests broad regulatory and enforcement authority with the FTC, COPPA also affords State Attorneys General with authority to enforce COPPA. And both the FTC and State Attorneys General across the country have been extremely active in enforcing COPPA – including, for example, a recent settlement agreement reached between the New York State Attorney General's office and a popular video conferencing platform, regarding COPPA compliance.

This activity, paired with the notable spike in screen time and social media app use amidst the pandemic, is likely to lead to increased scrutiny over COPPA compliance. As the bipartisan letter makes clear, policymakers and regulators will continue to maintain a watchful eye over the tech industry – particularly when children's consumer protections are at issue.

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Wiley's FTC Regulation and White Collar Defense and Government Investigations practices advise companies on COPPA compliance and investigations, including COPPA and privacy-related investigations brought by the FTC, State Attorneys General, and Congressional committees.

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