



UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Office of Commissioner

Rebecca Kelly Slaughter Khte5[(ched [/Top]/BBox [65.18p/23lum TJ 0 Tc 0 Tw 24.38 0 Td ()Tj [(C)-3 (hi)-2 (l)-2 (dr)3 (e)4 (n')3 (s)-1 (O)-8 (nl)-2 (i)-2 (ne

Those violations are primarily committed by content creators who upload child-directed content and monetize their channels with behavioral advertising that uses persistent identifiers to track children without verifiable parental consent.

² But, the Commission alleges, YouTube and its parent company, Google, have also committed widespread and brazen violations of COPPA

¹ The FTC has brought 31 enforcement actions under COPPA, *see Legal Resources*, Fed. Trade Comm'n, <https://www.ftc.gov/tips-advice/dec-2018>),

l-announces-record-coppa-settlement-oath-formerly-aol-violating-
es Settlement Resolving Allegations That Maker of “Dokobots” App
ate of N.J. Office of the Att’y Gen. (Nov. 22, 2013),
22a.html; Janet Elliot, *AG’s office says two Web sites invade privacy*,
ron.com/business/technology/article/AG-s-office-says-two-Web-sites-

² COPPA generally makes it “unlawful for an operator of a website or online service . . . to collect personal information from a child” without “verifiable parental consent.” 15 U.S.C. § 6502. Under the COPPA Rule, which implements COPPA, “personal information” includes “a persistent identifier that can be used to recognize a user over time and across different Web sites or online services.” 16 C.F.R. § 312.2.

but, unlike the Saturday morning cartoons of old, YouTube is not three channels—it is a virtually infinite smorgasbord of content with, according to recent estimates, more than 23 million channels that upload a combined 500 hours of video every minute.¹² Many if not most of those channels are located outside the United States and therefore likely beyond COPPA’s and the FTC’s practical reach. Many are small enterprises with opaque operations that would be difficult subjects to investigate. Under the order, they will all have to make a designation of whether their content is child-directed. In light of the steep financial cost of such a designation—and the low likelihood of COPPA enforcement for channels under the radar or originating outside of the United States—it is reasonable to anticipate that there will be significant deceit.

And here is the heart of my objection:6 (n)2]TJ -0.2 (n)2 (r)5 mdeh (he)-2 (i)-2 (on(e))[(m)-14 (r)3qu (e

profits off of behavioral advertising proportionally with its content creators; when behavioral advertisements are disabled, YouTube also takes a financial hit. A cynical observer might wonder whether in the wake of this order YouTube will be even more inclined to turn a blind eye to inaccurate designations of child-directed content in order to maximize its profit. The firm would know it could offer the content-owner's designation as a rebuttal to any evidence the Commission might gather in the future about YouTube's "actual knowledge" of child-directed content.¹⁶ In that light, the fence looks more like a moat, giving YouTube a handy argument that it should face no COPPA liability for content mis-designated as not child-directed.

The injunctive provisions in this settlement would be substantially more effective if YouTube were to make an enforceable commitment to police the accuracy of channels' designations, for example by using a technological backstop. Because the order does not contain such a requirement, I cannot support it.

Just as the Attorney General of New York contributed to bringing this action, the other 49