



INSTITUTE FOR PUBLIC REPRESENTATION  
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July 3, 2019

The Honorable Joseph Simons  
Chairman  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

The Honorable Noah Phillips  
Commissioner  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

The Honorable Rohit Chopra  
Commissioner  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

The Honorable Rebecca Slaughter  
Commissioner  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

The Honorable Christine Wilson  
Commissioner  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Dear Chairman Simons, Commissioner Phillips, Commissioner Chopra, Commissioner Slaughter, and Commissioner Wilson:

The Campaign for a Commercial-Free Childhood (CCFC) and Center for Digital Democracy (CDD) are writing to follow up on our letter of June 25, 2019 regarding suggested remedies for Google's and YouTube's violations of the Children's Online Privacy Protection Act (COPPA). Specifically, we are concerned about any remedy that would allow children's content to remain on the main YouTube site and shift the burden of responsibility to content creators to opt out of "interest-based" advertising.

The COPPA Rule specifically anticipates that more than one party may be liable for the collection and use of personal information from a child without complying with COPPA. The COPPA Rule 312.2 defines an operator as "any person who operates a website located on the Internet or an online service and who collects or maintains personal information from or about the users of or visitors to such website or online service, or on whose behalf such information is collected or maintained." It further defines personal information collected or maintained on

behalf of an operator as personal information “(a) ...collected or maintained by an agent or service provider of the operator; or (b) the operator benefits by allowing another person to collect personal information directly from users of such website or online service.” The Statement of Basis and Purpose explains that the intent and effect of this definition is to “retain strict liability for child-directed sites and services that allow other online services to collect personal information through their site.”<sup>1</sup>

As we explained in our Request to Investigate, Google and YouTube are operators in at least two different senses. First, YouTube operates a website, youtube.com, a significant portion of which is directed at children.<sup>2</sup> Rule 312.2 defines a website directed to children to include a *portion of a website* that is targeted to children. Since, as we documented in our Request for Investigation, many YouTube channels consist entirely of videos intended for children under age 13, YouTube itself is an operator of a website that is directed at children under 13. Thus, YouTube is strictly liable for the collection, use and disclosure of personal information from children on that portion of its service.

Second, Google operates the Google Marketing Platform (GMP), which it launched last year. GMP incorporates both the DoubleClick advertiser products and the Google Analytics 360 Suite.<sup>3</sup> DoubleClick and other Google ad networks place trackers on child-directed channels on YouTube, which collect personal information for marketing purposes and share it with third parties.<sup>4</sup>

As shown in Attachment B, we used Ghostery browser extension to test the two most popular child-directed channels on YouTube. One is ChuChu TV, which we identified our Request for Investigation of YouTube as one of the most popular children’s channels on YouTube.<sup>5</sup> We found nine advertising trackers on the ChuChu TV’s channel page as well as on three of the most popular videos on that channel. Google placed six of those trackers:

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<sup>1</sup> Statement of Basis and Purpose, 78 Fed. Reg. at 3976.

<sup>2</sup> Request for Investigation (Apr. 2018) at 11-15.

<sup>3</sup> Brad Bender, Introducing Google Marketing Platform, June 27, 2018, <https://www.blog.google/products/marketingplatform/360/introducing-google-marketing-platform/>. Ginny Marvin, Google is retiring the AdWords & DoubleClick brands in a major rebranding aimed at simplification, June 27, 2018, <https://www.blog.google/products/marketingplatform/360/introducing-google-marketing-platform/>.

<sup>4</sup> Ghostery Analysis of DoubleClick, <https://apps.ghostery.com/en/apps/doubleclick>; Ghostery Analysis of Pingback, [https://apps.ghostery.com/en/apps/google\\_pingback](https://apps.ghostery.com/en/apps/google_pingback); Ghostery Analysis of Adsense, [https://apps.ghostery.com/en/apps/google\\_adsense](https://apps.ghostery.com/en/apps/google_adsense).

<sup>5</sup> Request for Investigation (Apr. 2018) at 11-14 & Ex. E. As of April 2019, ChuChu TV Nursery Rhymes & Kids Songs had 23.1 million, making it the second most popular children’s channel on YouTube. J. Clement, *Most Popular children-themed YouTube channels as of April 2019, ranked by number of subscribers (in millions)*, Statista, (last edited Apr. 29, 2019), <https://www.statista.com/statistics/785626/most-popular-youtube-children-channels-ranked-by-subscribers/>.

DoubleClick,  
Google AdSense  
Google Pingback  
Google Publisher Tags  
Google Ads Measurement, and  
Google Dynamic Remarketer.

The other three are also involved in targeted marketing.<sup>6</sup> We also tested ToyPudding TV, which has 23.71 million subscribers, making it the most popular children's channel on YouTube.<sup>7</sup> We found that Google placed many of the same advertising trackers on ToyPudding TV channel and videos as it did on ChuChu TV.

When Google ad networks place trackers on child-directed channels, they must comply with COPPA. The FTC has stated that an ad network is liable under COPPA if it has actual knowledge that it collects, uses or disseminates children's personal information. An advertising network is deemed to have actual knowledge in two circumstances: 1) a child-directed content provider directly communicates the nature of its content to the ad network, or 2) a representative of the ad network recognizes the child-directed nature of the content.<sup>8</sup> Under either standard, Google must be deemed liable. Google has actual knowledge that it collects information from child-directed channels on YouTube. Child-directed channels communicate the nature of their content by, among other things, the channel name or description on YouTube.<sup>9</sup> Google and YouTube representatives have also publicly recognized the child-directed nature of content on YouTube. This was demonstrated most recently when YouTube disabled comments on tens of millions of videos featuring children under 13.<sup>10</sup> Moreover, as discussed below, YouTube permits channels to participate in its YouTube Partner's Program only after review by a human.

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<sup>6</sup> Innovid is an adtech company that, among other things, offers a service that helps content creators target their users more precisely. In one case study, Innovid describes how it personalizes content for users to "amplify relevance: "users who watched Taylor Swift related videos got a special Swift related message, those who were interested in Travel received messaging around adventure, and so on." AddThis describes itself as "the world's largest content sharing platform," and it makes tools for content creators to track their audiences and target them. Similarly, Oracle-owned Moat provides "marketing analytics" tools for content creators to track their audiences. Innovid and Moat are both "YouTube Certified External Vendors"--vendors specifically approved by Google to serve third-party ads.

<sup>7</sup> *Most Popular children-themed YouTube channels as of April 2019, ranked by number of subscribers (in millions)*, Statista, (last edited Apr. 29, 2019), <https://www.statista.com/statistics/785626/most-popular-youtube-children-channels-ranked-by-subscribers/>;

<sup>8</sup> Statement of Basis and Purpose, 78 Fed. Reg. at 3978.

<sup>9</sup> E.g., "Kids Channel – Cartoon Videos for Kids," <https://www.youtube.com/user/thekydstv>.

<sup>10</sup> Daisuke Wakabayashi, *YouTube Bans Comments on Videos of Young Children in Bid to Block Predators*, NY Times, (Feb. 28, 2019), <https://www.nytimes.com/2019/02/28/technology/youtube-pedophile-comments.html?module=inline>.

Human review would surely reveal the child-directed nature of the content to a representative of Google.<sup>11</sup>

Of course, operators of child-directed channels on YouTube are also liable under COPPA if they collect, use or disclose children's personal information, or if they benefit from allowing another person, such as YouTube or Google, to collect personal information from their users. The FTC specifically noted that many child-directed properties choose to outsource the monetization of their site to partners, and may receive direct compensation or increased revenue from advertising networks.<sup>12</sup>

Many child-directed YouTube channels participate in the YouTube Partner's Program. Participation allows partners to monetize their content by receiving a percentage of the revenue from ads placed on their channels. According to YouTube, all channels must apply to participate in this program. If they meet certain minimum requirements regarding subscriber reach and viewership, they then undergo human review to ensure they meet all of YouTube's criteria. As noted above, the fact that the partners undergo human review by YouTube eliminates YouTube's ability to claim they had no idea that these channels were directed to children.

It is unclear whether a child-directed channel on YouTube can prevent the collection of personal information from their viewers and subscribers. It appears that by using advanced settings, a channel can opt to disable interest-based advertising. See Attachment A. But it is not clear whether turning off interest-based advertising actually stops the data collection and tracking of the child via Google's GMP system. Rather, it seems only to stop viewers from receiving targeted ads. As Google explains, "[t]urning off interest based advertising may result in few ads being eligible to show in your channel, and potentially less ad revenue. Your channel viewers will continue to see ads and they may be based on the viewer's general location (such as city or state)."<sup>13</sup>

The FTC should reject any claim that the data collected and used by Google is permitted under the "Internal Operations" exception to COPPA's notice and consent requirements. Rule 312.5(c)(3) and 312.2 provide for a narrow exception to the notice and consent requirements when persistent identifiers are necessary to provide support for internal operations. But the rule explicitly prohibits information collected to support internal operations from being used or disclosed to contact a specific individual, including through behavioral advertising, to amass a profile on a specific individual, or for any other purpose. There is no question that GMP, which includes YouTube, is collecting data for behavioral advertising and profiling. For example, GMP's "Analytics 360 Suite" enables cross-device tracking, integration of data sources from third parties, and the ability to operationalize marketing tests on individuals. GMP now

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<sup>11</sup> YouTube Partner Program overview, application checklist, & FAQs, <https://support.google.com/youtube/answer/72851> (a section called "Review Process" states that after meeting thresholds, "your application will be put in a queue. Our human reviewers will look at your channel as a whole to see whether it meets our YouTube Partner Program policies.").

<sup>12</sup> Statement of Basis and Purpose, 78 Fed. Reg. at 3977.

<sup>13</sup> Attachment A.

incorporates artificial intelligence and machine learning capabilities that provide wide-ranging “insights” into users’ activities on YouTube and other Google platforms. Moreover, the recent integration of third-party analytic and measurement technologies by Google, including for YouTube, permits detailed analysis of a person’s interactions with ads and other content.<sup>14</sup>

In any case, even if they know they have the opportunity to disable interest-based ads, most commercial channels are likely to do so because Google warns them that if they do, “personalized ads will not be shown on videos on your channel, such as ads based on a viewers’ interests or remarketing ads. This may significantly reduce your channel’s revenue.”<sup>15</sup> It is also worth noting that there is no option to turn off interest-based ads on an individual video, only on channels; content creators who produce videos for a wide range of audiences would have to opt out and forgo the revenue of interest-based ads for *all* of their videos, even those produced for an adult audience, in order to avoid serving these ads to children.

Moreover, offering the option to disable behavioral advertising does not relieve Google and YouTube of their independent responsibilities to comply with COPPA. Even if Google were to instruct a channel to set a “tag” indicating it is “child-directed,” and Google stopped collecting personal information from any channel so tagged, there is little reason to believe that creators would comply or that Google would require them to comply. In our Request to Investigate the Google Play Store, we found that even though Google says that it requires participants in its Designated for Families program to comply with COPPA and other policies, many do not. We cited, among other things, a study conducted by a group of computer scientists. They found:

Based on our automated analysis of 5,855 of the most popular free children’s apps, we found that a majority are potentially in violation of COPPA, mainly due to their use of third party SDKs. While many of these SDKs offer configuration options to respect COPPA by disabling tracking and behavioral advertising, our data suggest that a majority of apps either do not make use of these options or incorrectly propagate them across mediation SDKs. Worse, we observed that 19% of children’s apps collect identifiers or other personally identifiable information (PII) via SDKs whose terms of service outright prohibit their use in child-directed apps.<sup>16</sup>

Thus, relying on tagging of this sort will not effectively protect children’s privacy online.

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<sup>14</sup> *YouTube Certified External Vendors*, Third-Party Ad Serving Certifications, <https://developers.google.com/third-party-ads/youtube-vendors>.

<sup>15</sup> Attachment A.

<sup>16</sup> Irwin Reyes, et al. “*Won’t Somebody Think of the Children?*” *Examining COPPA Compliance at Scale*, Proceedings on Privacy Enhancing Technologies: 2018 (3), at 63.

For these reasons, it is crucial that any proposed consent decree with YouTube or Google require the structural separation of the child-directed channels and videos, substantial civil penalties, and other relief requested in our letter of June 25, 2019.

Respectfully Submitted,

/s/ Angela J. Campbell

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Angela J. Campbell

Lindsey Barrett

Institute for Public Representation

Georgetown University Law Center

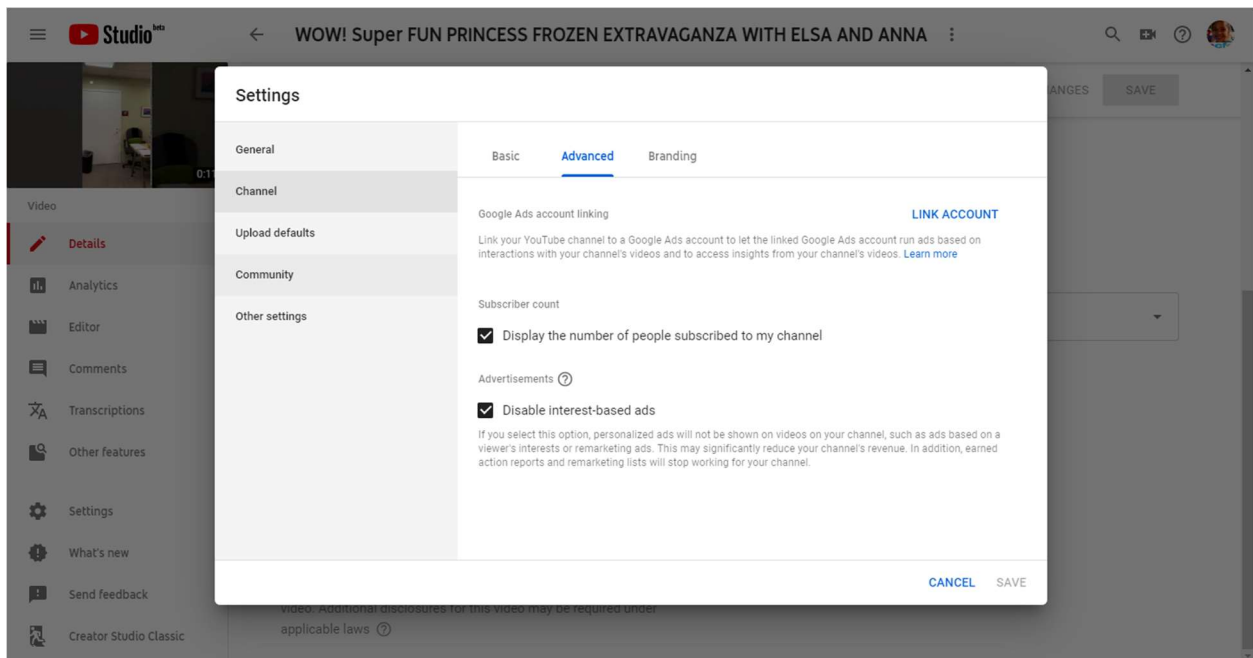
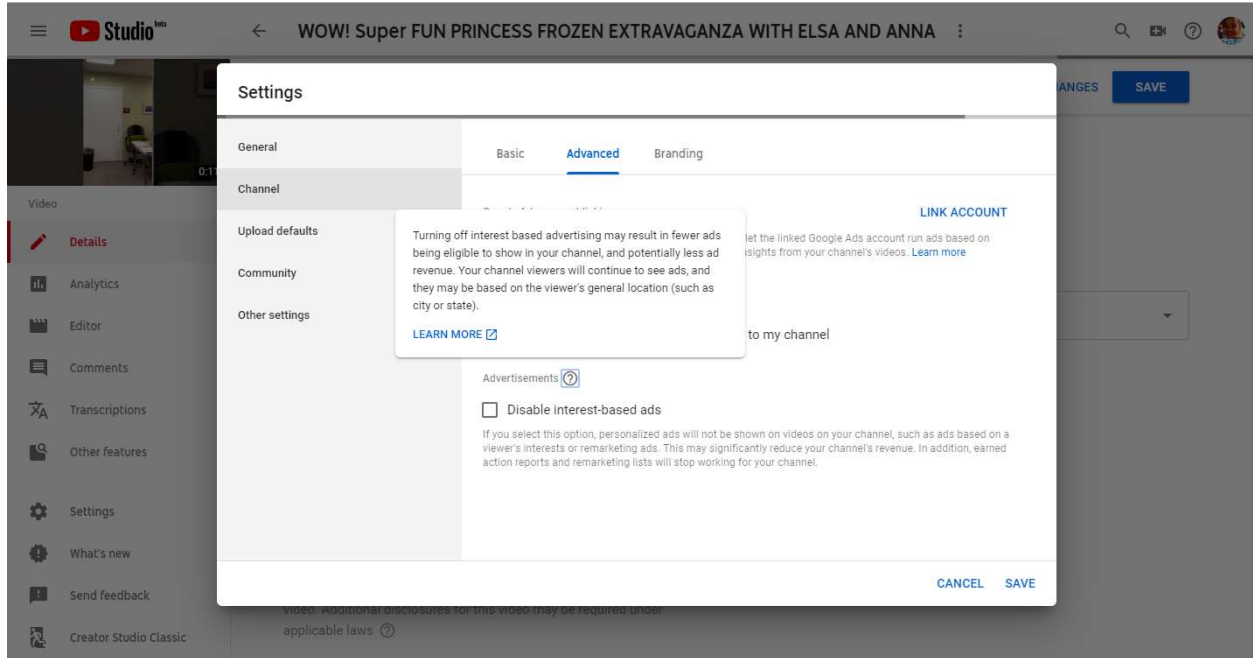
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## Attachment A- Screen Shots concerning disabling behavioral advertising



## Attachment B – Ghostery Analysis of YouTube Channels ChuChu TV and ToyPudding TV

The first two screen shots show which trackers Ghostery found on the ChuChu TV Nursery Rhymes & Kids Songs YouTube Channel

This screenshot shows the YouTube channel page for 'ChuChu TV Nursery Rhymes & Kids Songs' with 24,155,093 subscribers. The Ghostery overlay is in 'Simple View' mode, displaying a score of 11. It lists 9 trackers: Advertising, DoubleClick, Google AdSense, Google Pingback, Google Publisher Tags, Google Ads Measurement, and three others. The 'Trust Site' and 'Restrict Site' buttons are visible, along with a 'Pause Ghostery' dropdown.

This screenshot shows the same YouTube channel page, but the Ghostery overlay is in 'Detailed View' mode. It shows the same 11 score and 9 trackers. The 'Essential' section is expanded, showing 1 tracker. The 'Google Tag Manager' section is also visible. The 'Trust Site' and 'Restrict Site' buttons are still present.



These screen shots on this show trackers found on the ChuChu TV video *Baby doll cooking food kitchen play Doli House*

This screenshot shows a YouTube video player for the video 'Baby doll cooking food kitchen play Doli house' by ToyPudding TV. The video features a baby doll in a kitchen setting. A Ghostery tracker overlay is visible on the right side of the screen, displaying a score of 9 and a list of trackers. The trackers listed include Advertising (8 trackers), DoubleClick, Google AdSense, Google Pingback, Google Publisher Tags, and Google Ads Measurement. The overlay also shows options to 'Trust Site', 'Restrict Site', and 'Pause Ghostery'. The video has 3,049,416 views and was published on Jun 28, 2019.

This screenshot shows a YouTube video player for the video 'Twinkle Twinkle Little Star 3 Song + More Nursery ChuChu TV' by ChuChu TV Nursery Rhymes & Kids Songs. The video features a baby doll in a kitchen setting. A Ghostery tracker overlay is visible on the right side of the screen, displaying a score of 11 and a list of trackers. The trackers listed include Google Publisher Tags, Google Ads Measurement, AddThis, Innovid, Moat, and Google Dynamic Remarketing. The overlay also shows options to 'Trust Site', 'Restrict Site', and 'Pause Ghostery'. The video has 18,995 views and was published on Jul 2, 2019.

These screen shots show trackers found on the ChuChu TV video *No No Yes Yes Go to School Song*

The screenshot shows a YouTube video player for the video "No No Yes Yes Go to School Song - ChuChu TV Songs". The video has 1,193,587 views and is from the channel "ChuChu TV Nursery Rhymes & Kids Songs". The Ghostery extension is open, displaying a "Simple View" of the trackers found on the page. A circular progress indicator shows 11 trackers blocked. The "TRACKERS" list includes:

- Advertising (9 TRACKERS)
  - DoubleClick
  - Google AdSense
  - Google Pingback
  - Google Publisher Tags
  - Google Ads Measurement

Below the list, there are controls for "Trust Site", "Restrict Site", and "Pause Ghostery". The video player shows the baby character from the ChuChu TV series.

This screenshot shows the same YouTube video player, but the Ghostery extension is displaying a "Detailed View" of the trackers. The circular progress indicator still shows 11 trackers blocked. The "TRACKERS" list includes:

- Google Publisher Tags
- Google Ads Measurement
- AddThis
- Innovid
- Moat
- Google Dynamic Remarketing

The video player shows the baby character from the ChuChu TV series.

This screen shot shows the trackers found on the Toy Pudding YouTube Channel

The screenshot shows a web browser displaying a YouTube video from the 'toypudding TV' channel. The video is titled 'Color fruit song | Doli kids song and baby doll kitchen play' and has 2,149 views. The channel name is 'ToyPudding TV', published on Jul 2, 2019, with 25M subscribers. The video description mentions singing and playing with Baby Doll friends toys and a color song nursery rhyme. The category is 'Entertainment'. A 'SHOW LESS' link is visible.

Overlaid on the right side of the browser is the Ghostery extension interface. It shows '3' trackers blocked on 'www.youtube.com'. Statistics include 'Trackers Blocked: 0', 'Requests Modified: 0', and 'Page Load: 1.38 secs'. There are buttons for 'Trust Site', 'Restrict Site', and 'Pause Ghostery'. A 'TRACKERS' panel is open, showing 'Advertising' with 3 trackers: 'DoubleClick', 'Google AdSense', and 'Google Pingback'. Each has a checkbox to block it. The interface also includes a 'Collapse All' button, a 'Block All' button, and a 'List View' button.

The video player includes a 'Skip Ads' button and a progress bar. The video is an advertisement for Universal Studios Hollywood, with a 'Save Up to \$30' offer and a 'Buy Today!' button.



These screen shots show trackers on two different videos available on the ToyPudding TV channel

The screenshot shows a YouTube video player with a girl with long blue hair. The Ghostery extension is open, displaying a '3' in a purple circle, indicating 3 trackers blocked. The extension also shows 'Trackers Blocked: 0', 'Requests Modified: 0', and 'Page Load: 1.38 secs'. The video title is 'Baby Doll color soda tomato making play Baby Doli story' with 13,251 views. The channel is 'ToyPudding TV'.

Tracker	Status
DoubleClick	Blocked
Google AdSense	Blocked
Google Pingback	Blocked

The screenshot shows a YouTube video player with a baby doll. The Ghostery extension is open, displaying a '9' in a purple circle, indicating 9 trackers blocked. The extension also shows 'Trackers Blocked: 0', 'Requests Modified: 0', and 'Page Load: 1.38 secs'. The video title is 'Baby doll cooking food kitchen play Doli house' with 3,049,416 views. The channel is 'ToyPudding TV'.

Tracker	Status
DoubleClick	Blocked
Google AdSense	Blocked
Google Pingback	Blocked
Google Publisher Tags	Blocked
Google Ads Measurement	Blocked