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United States Senate, Committee on Commerce, Science and Transportation

**Subcommittee on Consumer Protection, Product Safety and Data Security
Hearing on "Protecting Kids Online: Children's Privacy and Manipulative
Marketing"**

Thank you, Chairman Blumenthal and Ranking Member Blackburn for inviting me to address this critical issue. I am devoted to protecting children from online harms and hope that my legislative experience in the United Kingdom and my work with other countries might be of some benefit to this Committee. I understand you are considering how to better protect children from the dangers they face online every day. Children are being monetized by the digital products and services focused on the relentless pursuit of every ounce of their attention and data, putting them at grave risk of harm.

It is important to make explicit that while I am a member of the House of Lords, I am not a member of a political party nor the government but sit as a crossbench peer. This position affords me the great privilege of working across both Houses on a truly non-partisan basis. I have authored and introduced legislation on this subject and participated in several committee inquiries. I am co-founder and deputy chair of the All-Party Parliamentary Group for Digital Regulation and Responsibility. Outside parliament, I chair the 5Rights Foundation¹, a charity that does ground-breaking work around the world to make systemic changes to digital systems in order to protect children. 5Rights developed a Child Online Protection Policy for the Government of Rwanda, has supported multiple nation state efforts to develop data protection regimes, and is working in partnership with the Institute for Electrical and Electronics Engineers (IEEE) to co-create Universal Standards for Children and for Digital Services and Products. Most recently, 5Rights supported the Committee on the Rights of the Child (UNCRC) in drafting general comment No. 25 (2021) on children's rights in relation to the digital environment². This authoritative document adopted in March this year is anticipated to have global significance on the expectations and duties of states and business to children. I also work with international bodies such as the Organization for Economic Cooperation and Development (OECD), UNESCO Broadband Commission and EU organisations on issues such as Artificial Intelligence (AI), child-centred design and data protection.

¹ <https://5rightsfoundation.com/>

² https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f25&Lang=en

In 2012, when smartphones began to be priced at a point that allowed a parent to provide this powerful device to a child, childhood fundamentally changed. This device, increasingly glued to their pocket, bedroom, hand, and gaze, gave children unfettered access to a world of breath-taking richness and variety. It also gave adults and commercial entities unfettered and unchecked access to children – access that has been ruthlessly exploited.

In the UK, it has been 150 years since we took children out of the chimneys and put them in the classroom – arguably the beginning of what we now conceive of as childhood. Childhood is a journey from dependence to autonomy with its own set of vulnerabilities and learning. Childhood is not a risk-free business, but there is broad consensus that we have a duty of care, which requires us to protect children from foreseeable risks and preventable harms – a duty on us as parents, politicians and businesses. This consensus is taken for granted in the decisions we make about all parts of children’s lives – except the digital world. Members of this committee that is not acceptable. My personal battle and political commitment is to ensure this wrong is put right.

In 2018, as part of the Data Protection Bill, I introduced an amendment to create the “Age Appropriate Design Code (AADC)³. The AADC, or Children’s Code, as it is commonly known, has some key features. The Code defines a child as any person under the age of 18. This is in stark contrast with the tech sector that has exploited a gap in legislation to treat all 13-year-olds as adults, when any parent will tell you that their 13-year-old is not an adult. Similarly, the Code is applicable to services ‘likely to be accessed by children’ rather than restricting protections to services directed at children. Most children spend most of their time online on services which are primarily designed for adults.

The 15 provisions of the Children’s Code are interconnected and interdependent – but together they offer children a high bar of data protection, including protections from revealing their location, using a child’s personal data to deliver detrimental material, or deliberately nudging them to give up their privacy. As the September 2nd deadline for compliance approaches, the impact of this one small legislative effort is becoming apparent as companies have to redesign their services to better protect minors, including disabling features that allow direct messaging of children by unknown adults⁴, providing clearer terms of service⁵, putting age assurance schemes in place⁶, offering tailored services for children of different ages⁷, and making default settings that automatically offer a high bar of safety and data privacy for children’s profiles⁸.

The full impact of the Children’s Code remains to be seen, but in a recent conversation with one of the major platforms, I was told that all their product teams now have to consider the Code’s 15 provisions, including its overarching requirement to process children’s data in

³ <https://ico.org.uk/for-organisations/guide-to-data-protection/key-data-protection-themes/age-appropriate-design-a-code-of-practice-for-online-services/>

⁴ <https://about.instagram.com/blog/announcements/continuing-to-make-instagram-safer-for-the-youngest-members-of-our-community>

⁵ <https://about.fb.com/news/2020/02/messenger-kids-controls/>

⁶ <https://blog.youtube/news-and-events/using-technology-more-consistently-apply-age-restrictions/>

⁷ <https://blog.youtube/news-and-events/supervised-experiences-for-families-on-youtube/>

⁸ <https://blogs.windows.com/windowsexperience/2021/04/15/introducing-microsoft-edge-kids-mode-a-safer-space-for-your-child-to-discover-the-web/>

“the best interests of children”, and if I might quote the Code directly, which states that: “It is unlikely that the commercial interests of an organisation will outweigh a child’s right to privacy.”⁹ These baseline protections are overwhelmingly popular with the public that is tired of industry norms that promote intrusive and addictive design practices, or exacerbate and recommend harmful material, and they are sickened by the idea that a child’s real time location can be tracked by a stranger – or predator.

Four years ago, the UK government announced that they would make the UK the safest place to be online by introducing an Online Harms Bill¹⁰. Last week they finally published the bill itself¹¹ as the Online **Safety** Bill. This change of title is an important reflection of the journey government officials have been on. It is now widely accepted that we cannot argue over what is and isn’t acceptable only *after* gross harms have been committed, *after* children have suffered. While those of us in the UK parliament will inevitably scrutinise every line of its 145 pages, its premise - that we all have a duty of care to children, and in the case of digital services, there are design and commercial practises that simply must be off limits – is powerful. We cannot allow commercial interests to target a depressed or unhappy teenager¹² on Friday night with ads for inappropriate drugs, expose 9-year-olds¹³ to explicit interactions with adults, or push dangerous ‘challenges’ to children through algorithmic recommendations. Just a month ago, a 12-year-old from Colorado died after taking part in a “blackout challenge”¹⁴ that was viral on a video-sharing app.

Even with this draft Online Safety Bill, much work remains. In a busy legislative season, I will also be introducing a private member’s bill to set standards for age assurance providers. While private member’s bills rarely end up as statutes, they are an important vehicle for policy makers to flesh out arguments. Every policy conversation about children in the digital world eventually comes down to the question of age assurance and age verification. I have shared a recent 5Rights report¹⁵ “*But how do they know it is a child?*” with the Subcommittee as part of my written testimony. Age assurance is a not a question of innovation, but of governance and agreed standards. Since the release of “*But how do they know it is a child?*” and the announcement of my private member’s bill, I have been inundated by politicians, businesses, the tech sector, regulators and advocacy organizations, all saying how much they would welcome clear and enforceable standards of practice.

Mr. Chairman, I know that you are a premier advocate for Consumer Education having spent so much of your career as your state’s top law enforcement official, so let me finish with one last observation - that has had a surprising outcome. As I have worked on this issue around the world gradually policymakers have come on board – but still parents, teachers

⁹ <https://ico.org.uk/for-organisations/guide-to-data-protection/key-data-protection-themes/age-appropriate-design-a-code-of-practice-for-online-services/1-best-interests-of-the-child/>

¹⁰ <https://www.gov.uk/government/news/making-britain-the-safest-place-in-the-world-to-be-online>

¹¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/985033/Draft_Online_Safety_Bill_Bookmarked.pdf

¹² <https://www.vice.com/en/article/pg7d59/when-facebook-and-instagram-thinks-youre-depressed>

¹³ https://info.thorn.org/hubfs/Research/Responding_to_Online_Threats_2021-Full-Report.pdf?utm_campaign=H2D_report&utm_source=website

¹⁴ <https://www.today.com/parents/boy-dies-after-trying-tiktok-blackout-challenge-t215253>

¹⁵ https://5rightsfoundation.com/uploads/But_How_Do_They_Know_It_is_a_Child.pdf

and very often children themselves feel helpless to understand how they are being manipulated. At 5Rights we are about to launch a campaign to help bridge this gap. It is called Twisted Toys and we have built a suite of toys that manifest in a palpable way how Big Tech is spying on and putting children at risk. This disturbing project graphically illustrates the urgent need for action - and you'll be seeing more about it in the next month or two.

We do not accept this manipulation of children anywhere else - we must not accept it online. The reason that parents, teachers and children feel overwhelmed is that this is not a problem that parents, teachers or kids can solve on their own. A system designed to extract every ounce of a child's attention, expose them to an infinite public and encourages them to get lost in the mirror of anxiety, is not healthy. The tech sector has the ability to raise the ceiling and to give children back their childhood – but it is up to legislators to insist on the floor of behaviour below which they must not go.

There is a big and growing gap between the needs of children and the regulation in place, the digital world has transformed, but our protections for children have not kept apace. The US is home to many of the companies that dominate the sector, what lawmakers in the US do for children will ricochet around the world. How COPPA is reformed, the role and resource of the FTC and the willingness of this administration to put child protection top of its policy agenda, will impact on the lives of children everywhere.

In the UK, this is an issue that cuts across all party lines - it cuts across all ideological lines. I believe that the same strong consensus exists here, too. I have spent many years on this and wish to share whatever expertise I have. I stand ready to work with all of you. I hope that your committee will take up the challenge to lead the change. We are beyond the point of deciding whether this is a problem. It is time to work on the solution, and if I had to choose where to start – it would be with a comprehensive data protection bill which offers all children under 18 protections, by design and default.

I look forward to your questions.