

# Safety First: Protecting Children in a Rapidly Evolving Landscape

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The children's advertising and privacy landscape is evolving quickly – and regulators and self-regulators are keeping up.

Davis+Gilbert Advertising partner **Allison Fitzpatrick (AF)** sat down for a conversation with **Dona Fraser (DF)**, Senior Vice President, Privacy Initiatives at BBB National Programs, and FTC veteran and current BBB National Programs Children's Advertising Review Unit Vice President **Mamie Kresses (MK)** to explore the major developments in this area, from child influencers to global privacy initiatives, and provide insights and practical tips for ensuring child-directed websites, apps, connected toys and influencer marketing campaigns stay in compliance with the law.

**AF:** **The Children's Advertising Review Unit (CARU) updated its self-regulatory guidelines for advertising to children (CARU Guidelines). What changes were made to the CARU Guidelines?**

**MK:** We looked to modernize the guidelines. It has been a long time since they were updated and advertising to children has changed dramatically, especially with online content and long-form influencer advertising videos. We are also living in an era where we have all been made more aware of the inequities in our society, and we hope to use the guidelines to inspire content that is welcoming to children of all backgrounds and abilities and makes them feel good about themselves.

**AF:** **Are there certain areas of children's advertising and privacy that CARU will be looking at more closely during the upcoming months?**

**MK:** Advertising and privacy are very linked these days, given the amount of data collection and data knowledge. So we will go where advertising goes and try to ensure we are setting a model for best practices in modern times.

**DF:** Years ago, everything was very siloed — you could deal with privacy separately from advertising. But now there is this convergence; ad practices are getting companies into trouble with their data collection practices. What we are trying to do is to constantly keep our finger on the pulse of what companies want to do versus what they can do within the frameworks, remaining cognizant of their challenges, especially for those global companies who may be working on global campaigns and dealing with the different privacy regimes and models around the world that are defining what a child is very differently than the way we define a child in the United States.

**AF:** **Child influencers are very popular with marketers these days. What steps should marketers be taking when they engage child influencers to ensure they are not running afoul of the CARU Guidelines?**

**MK:** Obviously advertising has to be truthful and non-deceptive. In particular, we need to ensure that when children are watching influencer content, they understand that it is advertising. We are dealing with that in our guidelines as well. It also needs to be clear that these influencers should not engage in other practices that are a concern in advertising to children, such as creating unrealistic expectations.

**DF:** Part of the conversation also needs to be about the actual influencers understanding the landscape. There needs to be some real uptick on the education to influencers themselves and their responsibilities. We cannot put this all on the marketers. They can explain what their guidelines are and what they want their influencers to do or not do, but I also think that there needs to be some real responsibilities on the influencers themselves. That will make them better partners for the marketers.

**AF:** **The Federal Trade Commission (FTC) is currently reviewing the Children's Online Privacy Protection Act (COPPA) Rule to see whether additional changes are needed to address the different ways that children under 13 years of age access the Internet, including the increased use of mobile devices and social networking. What changes do you expect the FTC to make to COPPA as part of its review?**

**DF:** We will likely see an expansion of the definition of personally identifiable information to possibly include biometric data. I would be surprised if there is not some additional scrutiny of safe harbors. I think that the issue of data security is going to be enhanced and the internal operations exceptions may also be reviewed, possibly expanded, or at least there will be a conversation about that because what was defined as internal operations 10 or 20 years ago has evolved.

**AF:** **Over the past two years, the FTC has brought high profile actions against both TikTok and YouTube for violations of COPPA. What are some of the lessons that operators can learn from these FTC actions?**

**MK:** I think there is a lot to be learned there. First, you cannot have it both ways. You cannot be a channel directed to children and then try to skip COPPA and not get parental consent and then avail yourself of behavioral advertising

through a third party. Second, obviously it is a huge wake up call to platforms and other third parties that provide a whole host of services to individual child-directed marketers and advertisers and content providers.

**AF:** **What do you see as the most significant challenge facing companies that want to direct their products and services to children?**

**MK:** I think the challenge is to be exciting and innovative when you are competing with a whole host of exciting and innovative content geared to the public as a whole. So you really need to be focused on what is appropriate for children and how to capture their interest at the same time. And, of course, if there are issues of data security or data collection, then obviously you are going to fall into the COPPA basket and you need to be very cognizant of that.

**DF:** What we do not often talk about is the cost of doing business in this space. Whether you are on the side of a content creator or the side of data collection, there is a cost of doing business in the space that I think is higher than other spaces. And when I say cost of doing business, I mean everything from hiring outside counsel, to having your engineers to downstream everything from the outset. Being a good actor in this space is not terribly difficult because there are so many good actors in the space. But again, some of that does come at a cost.

**AF:** **If you could provide one piece of advice to companies that market their products and services to children, what would it be?**

**MK:** To look at what you are trying to accomplish through the eyes of a child: keep it simple and pure. Step back and ask yourself if you are marketing something that is great for kids, or something more focused on bells and whistles.

**DF:** Put yourself in the seat of a child but also put yourself in the seat of the parent. The overarching advice that I would give is: What do you want your brand to be known for? How do you want to build brand trust and longevity? If you do that from the outset, parents and kids recognize that this brand is fun. It is engaging and parents do not feel like it is intrusive. I think that's probably the best advice.