COMPLIANCE WARNING REGARDING THE USE OF AI IN ADVERTISING AND ONLINE DATA COLLECTION PRACTICES DIRECTED TO CHILDREN

May 1, 2024

SUMMARY

BBB National Programs' Children's Advertising Review Unit ("CARU") issues this Compliance Warning regarding the application of CARU's Self-Regulatory Guidelines for Children's Advertising[1] ("Advertising Guidelines") and CARU's Self-Regulatory Guidelines for Children's Online Privacy Protection[2] ("Privacy Guidelines") to the use of Artificial Intelligence ("AI") in advertising and data collection practices directed to children.

Specifically, CARU puts advertisers, brands, endorsers, developers, toy manufacturers, and others on notice that CARU's Advertising and Privacy Guidelines apply to the use of AI in advertising to children and the online collection of personal information from children. CARU will strictly enforce its Advertising and Privacy Guidelines.

Advertisers should be particularly cautious to avoid the use of AI in advertising that misleads children: 1) about product characteristics or performance; 2) about the distinction between real and imaginary or fantasy experiences; 3) that they have a personal relationship with a brand or brand character, celebrity, or influencer; and 4) that a celebrity or other person has endorsed a product when they have not. In addition, advertisers should ensure that the use of AI in advertising does not: 1) portray unsafe or inappropriate behaviors, or 2) generate or reflect negative social stereotypes or bias.

With respect to data privacy, companies that integrate AI technology in their products must clearly disclose data collection practices and obtain verifiable parental consent[3] before they collect personal information[4] from children. Transparency regarding data collection and parental consent remain the guiding standards to uphold privacy and safety.

CARU'S ADVERTISING GUIDELINES

CARU monitors and reviews advertising directed to children for compliance with its Advertising Guidelines. CARU seeks change through the voluntary cooperation of companies and, where warranted, public enforcement action.

CARU's Advertising Guidelines apply to all advertising, in any medium, directed to children under age 13, including advertising that uses AI to create or disseminate the ad. The Foundation of the Guidelines sets forth CARU's overarching principles that advertisers should

---

[1] Advertising Guidelines

[2] Privacy Guidelines

[3] The definition of "verifiable parental consent" in the Federal Trade Commission's (FTC) Children's Online Privacy Protection Rule applies. *See* 16 C.F.R. § 312.5.

[4] Personal information is defined under the Children's Online Privacy Protection Act (COPPA) as individually identifiable information about an individual collected online. 16 C.F.R. § 312.2.

recognize that they have special responsibilities to children, and that children are more vulnerable to advertising messages due to their limited knowledge, experience, sophistication, and maturity. The Scope of the Guidelines makes clear that advertising should be neither deceptive nor unfair to the children to whom it is directed, as these terms are applied under the Federal Trade Commission (FTC) Act.[5]

CARU's recent revisions to its Advertising Guidelines (January 1, 2022) address advertising practices in the evolving and expanding digital worlds in which children socialize, play, and learn – worlds that often rely upon and integrate AI technology. These digital worlds include altered, simulated, and synthetic content powered by AI.

CARU's Advertising Guidelines Prohibit Unfair or Deceptive Advertising Techniques

The Advertising Guidelines state, among other things that:
> Advertising should be neither deceptive nor unfair to the children to whom it is directed, as these terms are applied under the Federal Trade Commission Act.
>
> The overall or net impression of the entire advertisement must not be misleading to children, considering, among other things, the express and implied claims, depictions, any material omissions, and the overall format.

AI-generated deep fakes; simulated elements, including the simulation of realistic people, places, or things; or AI-powered voice cloning techniques within an ad could potentially be misleading and deceptive for an ordinary child. Product depictions, including copy, sound, and visual presentations generated or enhanced using AI should not mislead children about product or performance characteristics. Claims should not unduly exploit a child's imagination. While the use of fantasy in advertising, through techniques such as animation and AI-generated imagery, is appropriate for children, it should not create unattainable performance expectations nor exploit a child's difficulty in distinguishing between the real and the fanciful. Advertisers should not mislead children about the inclusion, benefits, or features of AI technology in the products themselves.

When children can directly engage with character avatars and simulated influencers, including non-playable characters, via online games, activities, and interactions (some of which contain advertising), it can create a sense of personal connection to and trust in the messages. CARU's Advertising Guidelines caution advertisers to avoid undue sales pressure in advertising to children. Accordingly, advertisers should not use AI technology to mislead children into believing they are engaging with a real person or have a personal relationship with a brand.

The guiding principle that advertisements must be easily identifiable as advertising remains. AI technology makes deep fakes and simulated content virtually undetectable. Simulated figures include celebrities and anyone reasonably believed by an ordinary child to be a person. Advertisers should not use AI to create the impression that a celebrity or other person has endorsed a product when they have not. In addition, AI should not be used to generate images of fictitious people who appear to be endorsing a product; such images would be misleading because they would appear to be third-party endorsements when they are actually from the advertiser itself.

---

[5] https://www.ftc.gov/about-ftc/mission/enforcement-authority, https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf

The Advertising Guidelines' Endorser and Influencer provision, states, among other requirements that:

> Advertisers should recognize that the mere appearance of a celebrity, influencer, or authority figure with a product or service can significantly alter a child's perception of the product or service. Advertising that uses such figures should not falsely imply that the use of the product or service enhanced the celebrity's, influencer's, or authority figure's performance.

> All endorsements should reflect the actual experiences and beliefs of the endorser.

> Advertisers should ensure that their endorsers clearly and conspicuously disclose that they have a material connection to the advertiser (i.e., a connection that is not expected by ordinary children).

CARU's Advertising Guidelines regarding unsafe or inappropriate advertising apply to ads featuring AI-generated children and AI-generated environments. Advertisers should ensure proper safety measures are depicted, including safety equipment, adult supervision, and age-appropriate play.

Knowing that bias within AI exists, and understanding the special responsibility advertisers have to children, to the extent that generative AI is used to depict people, it is imperative that advertisers filter images and take measures to ensure people depicted reflect the diversity of humanity. Additionally, advertisers must ensure AI-generated images do not portray or promote harmful negative social stereotypes, prejudice, or discrimination.

CARU'S PRIVACY GUIDELINES

CARU monitors data privacy practices directed to children for compliance with CARU's Privacy Guidelines and the Children's Online Privacy Protection Act ("COPPA").

CARU's Privacy Guidelines apply to online data collection[6] and other privacy-related practices. These Guidelines apply specifically to online services that target children under 13 years of age, and to operators that have actual knowledge they are collecting personal information ("PI") from children under 13 years of age.

The Foundation of the Privacy Guidelines sets forth the guiding principle that online data collection from children poses special concerns. AI offers unique opportunities to interact with children who may not understand the nature of the information being sought or its intended use. Collecting personal information from children and using it for machine learning processing and analysis could violate COPPA if the operator is not appropriately obtaining verifiable parental consent ("VPC").

Many products, including AI-powered toys, rely upon third-party generative AI technology to operate and process data. COPPA requires operators to provide a parental notice that outlines each type of PI collected from children.

Website or online service operators must clearly disclose to their users their information collection and tracking practices, information uses, and the means for correcting or removing the information.

---

[6] Collects or collection means the gathering of any personal information from a child by any means, including but not limited to: (a) Requesting, prompting, or encouraging a child to submit personal information online; (b) Enabling a child to make personal information publicly available in identifiable form; or (c) Passive tracking of a child online.

CARU Privacy Guidelines Require Clear Disclosure of Data Collection Practices

The Privacy Guidelines state:

Operators must clearly disclose to website or online service users their information collection and tracking practices, information uses, and the means for correcting or removing the information. These disclosures should be prominent and readily accessible before information is collected.

Operators should disclose, in language easily understood by a child (a) why the information is being collected and (b) whether the information is intended to be shared, sold, or distributed outside of the collecting company.

Operators must obtain VPC before they collect, use, or disclose personal information to third parties, except those who provide support for the internal operation of the website or online service and who do not use or disclose such information for any other purpose.

If an operator collects PI from children and uses it in or with AI systems, those operators should be careful to closely follow the guidelines above. For example, if an operator inputs a child's personal information into an AI system and receives a deletion request from a parent, it would be nearly impossible to retrieve and delete that data from the AI system. Accordingly, if an operator is unable to delete a child's information from an AI system upon parental request, then children's information should not be used in the AI system.

AI-connected toys and online services are on notice that they must collect VPC and properly disclose their collection practices in their Privacy Policy, prior to any collection, use, or sharing of children's personal information through their own online service or with a third-party generative AI service.

Disclosure of data collection practices and appropriate parental consent apply when AI is being used by first or third parties.

CARU WILL STRICTLY ENFORCE ITS GUIDELINES WITH REGARD TO AI

CARU will strictly enforce its Advertising and Privacy Guidelines in connection with the use of AI.

This Compliance Warning focuses on the potential risks that the use of AI in children's advertising may pose in terms of manipulative practices including in influencer marketing and deceptive product claims. CARU also cautions that marketers should take steps to ensure that their use of AI comports with protections for children's data privacy, especially when personal information is being used for machine-based learning models via third-party processes integral for product functioning.