



PUBLIC INTEREST ADVOCACY CENTRE  
LE CENTRE POUR LA DÉFENSE DE L'INTÉRÊT PUBLIC  
1204 – 1 Nicholas Street, Ottawa, ON K1S 2P1

22 June 2018

Mr. Mark Zuckerberg  
Chief Executive Officer  
Facebook, Inc.  
1601 Willow Road  
Menlo Park, CA 94025

Mr. Kevin Chan  
Head of Public Policy, Canada

**VIA E-MAIL and MAIL**

**Re: Launch of Facebook Messenger Kids in Canada**

Dear Mssrs. Zuckerberg and Chan:

We are writing this open letter to you today to urge you not to launch Facebook's Messenger Kids in Canada, as has been reported. We do not take this position lightly.

The Public Interest Advocacy Centre (PIAC) is a federally incorporated non-profit organization and registered charity that provides legal and research services on behalf of consumer interests, and, in particular, vulnerable consumer interests, concerning the provision of important public services.

PIAC has been actively engaged in privacy issues since the early 1990s, with representatives sitting on the Canadian Standards Council Committee that led to the introduction of the *Personal Information Protection and Electronic Documents Act*

(PIPEDA), filing several complaints with the Office of the Privacy Commissioner of Canada on behalf of consumers on privacy standards in consumer transactions throughout the early 2000s and publishing several reports on PIPEDA and consumers.<sup>1</sup>

More recently, PIAC filed a successful OPCC complaint against Nexopia Inc., a Canadian social network, for inappropriate collection, use and disclosure of personal information of Canadian minors and children (those persons under 18 years of age).<sup>2</sup>

PIAC has committed itself to protecting the privacy interests of children and youth in Canada. PIAC has also appeared many times before the Standing Committee on Access to Information, Privacy and Ethics (ETHI) of the Canadian House of Commons (Parliament) on the subject of consumer and youth privacy.

As a vulnerable population, young children should be especially protected from inappropriate collection and use of their personal information. Messenger Kids is clearly targeted for younger children and is dangerous because it appears it would indiscriminately collect children's personal information and retain it indefinitely, based on insufficient consent. We are particularly concerned about the harmful consequences of this information being used for educational and behavioural profiling and microtargeting.

Tech companies, like Facebook, may view children as a lucrative market and seek to influence them starting from a young age. By encouraging children under 13 to use its services, Messenger Kids can capture kids young and keep them their whole lives.<sup>3</sup> Under

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<sup>1</sup> See PIAC Reports on online privacy at: [https://www.piac.ca/piac\\_category/ptt\\_05\\_piac-reports/](https://www.piac.ca/piac_category/ptt_05_piac-reports/), especially, PIAC, "All in the Data Family: Children's Privacy Online" (2008), online: [https://www.piac.ca/wp-content/uploads/2014/11/children\\_final\\_small\\_fixed.pdf](https://www.piac.ca/wp-content/uploads/2014/11/children_final_small_fixed.pdf)

<sup>2</sup> See OPCC, "PIPEDA Report of Findings #2012-001, Social networking site for youth, Nexopia, breached Canadian privacy law" (29 Feb. 2012), online: <<https://www.priv.gc.ca/en/opc-actions-and-decisions/investigations/investigations-into-businesses/2012/pipeda-2012-001/>>.

<sup>3</sup> Hayley Tsukayama, "Facebook's New Messaging App Deepens Debate over Kids' Social Media Use", *Washington Post* (4 December 2017), online: <[https://www.washingtonpost.com/news/the-switch/wp/2017/12/04/facebook-now-has-a-messenger-app-just-for-kids/?utm\\_term=.2c1cdce1414f](https://www.washingtonpost.com/news/the-switch/wp/2017/12/04/facebook-now-has-a-messenger-app-just-for-kids/?utm_term=.2c1cdce1414f)>.

this approach, a child with a Messenger Kids account would join Facebook once she turns 13, using her Facebook Messenger account to continue talking to people she connected with on Messenger Kids. There would be incredible social pressure to create a Facebook account; otherwise the now 13-year-old would lose the connections she became dependent on.

Children's preference for social media sites over gaming sites rises when they reach grade seven. Seventy-two percent of students in grades seven to 11 prefer Facebook as a social network.<sup>4</sup> In grades four to six, 22% of students preferred Facebook;<sup>5</sup> these are students who admitted to using the website, not those who hid their use. Children at these grade levels are younger than 13, the minimum age at which children may have a Facebook account. This underage use is a failing on Facebook's part.<sup>6</sup> PIAC has on previous occasions noted this pointedly to your U.S. policy counsel.

Messenger Kids, designed for children under 13, will normalize social media use for young children and create peer pressure for children to sign up.<sup>7</sup> With Messenger Kids, Facebook is increasing the data it collects to include young children. Young children are more vulnerable than older children, and even less equipped to understand the privacy implications of their online actions.<sup>8</sup>

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<sup>4</sup> Mediasmarts, "Life Online", Young Canadians in a Wired World, Phase III, Table 12, p. 28, online: <[http://mediasmarts.ca/sites/mediasmarts/files/pdfs/publication-report/full/YCWWIII\\_Life\\_Online\\_FullReport.pdf](http://mediasmarts.ca/sites/mediasmarts/files/pdfs/publication-report/full/YCWWIII_Life_Online_FullReport.pdf)>.

<sup>5</sup> *Ibid.*, at Table 11, p. 27.

<sup>6</sup> Center for Digital Democracy et al, "Request to Investigate YouTube Online Service and Advertising Practices for Violating the Children's Online Privacy Protection Act" (Federal Trade Commission, Washington DC 20580), online: <<http://www.commercialfreechildhood.org/sites/default/files/devel-generate/tiw/youtubecoppa.pdf>>.

<sup>7</sup> Campaign for a Commercial Free Childhood, "Re: Facebook Messenger Kids" (30 January 2018), online: <<http://www.commercialfreechildhood.org/sites/default/files/devel-generate/gaw/FBMessengerKids.pdf>>.

<sup>8</sup> Office of the Privacy Commissioner, *2016-17 Annual Report to Parliament on the Personal Information Protection and Electronic Documents Act and the Privacy Act* (Ottawa: OPC, 21 September 2017), online: <[https://www.priv.gc.ca/en/opc-actions-and-decisions/ar\\_index/201617/ar\\_201617/](https://www.priv.gc.ca/en/opc-actions-and-decisions/ar_index/201617/ar_201617/)>. There is a large gap between young people's expectation and reality: most 13 to 16 year olds thought information shared online should not be available to marketers or corporations that host platforms (House of Commons, Standing Committee on Access to Information, Privacy and Ethics, *Towards Privacy by Design: Review of the Personal Information Protection and Electronic Documents Act* (February 2018) (Chair: Bob Zimmer), online: <[http://publications.gc.ca/collections/collection\\_2018/parl/x73-1/XC73-1-1-421-12-eng.pdf](http://publications.gc.ca/collections/collection_2018/parl/x73-1/XC73-1-1-421-12-eng.pdf) > at 33).

Messenger Kids does not have advertising, and Facebook has said that data from Messenger Kids will not be used for Facebook ads.<sup>9</sup> Under the U.S.'s *Children's Online Privacy Protection Act*, companies are not allowed to collect personal information from children under 13 without their parents' permission. Advertising to children under 13 is restricted, too.<sup>10</sup> Messenger Kids avoids contravening the *Children's Online Privacy Protection Act* through parents creating their kids' accounts.

It is unclear what Facebook intends to do with the data collected from Messenger Kids. Facebook's use of user data has come under increased scrutiny following discovery of the huge data breach where Facebook released millions of users' data to Cambridge Analytica, a firm implicated in the possible manipulation of the 2016 American presidential election. Data of the sort that Messenger Kids collects may be valuable for feeding algorithms and other purposes that remain obscure to most people.<sup>11</sup> Conceivably, Facebook could track and influence people throughout their lives—from cradle to grave—in part by using the data it collects from Messenger Kids.

The information Messenger Kids collects could conceivably be used for profiling, microtargeting, and manipulation. Microtargeting is described as decisions based on profiling that highly personalize an individual's informational environment.<sup>12</sup> This

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<sup>9</sup> Hayley Tsukayama, "Facebook's New Messaging App Deepens Debate over Kids' Social Media Use", *Washington Post* (4 December 2017), online: <[https://www.washingtonpost.com/news/the-switch/wp/2017/12/04/facebook-now-has-a-messenger-app-just-for-kids/?utm\\_term=.2c1cdce1414f](https://www.washingtonpost.com/news/the-switch/wp/2017/12/04/facebook-now-has-a-messenger-app-just-for-kids/?utm_term=.2c1cdce1414f)>.

<sup>10</sup> *Children's Online Privacy Protection Act*, 15 USC 6501–6505.

<sup>11</sup> See, for example, Carole Cadwalladr & Emma Graham-Harrison, "How Cambridge Analytica Turned Facebook 'Likes' into a Lucrative Political Tool", *The Guardian* (17 March 2018), online: <<https://www.theguardian.com/technology/2018/mar/17/facebook-cambridge-analytica-kogan-data-algorithm>>; Cecilia Kang, "Facebook Faces Growing Pressure Over Data and Privacy Inquiries", *New York Times* (20 March 2018), online: <<https://www.nytimes.com/2018/03/20/business/ftc-facebook-privacy-investigation.html>>.

<sup>12</sup> European Data Protection Supervisor, "Opinion on Online Manipulation and Personal Data" (Opinion 3/2018, 19 March 2018) at 9, online: <[https://edps.europa.eu/sites/edp/files/publication/18-03-19\\_online\\_manipulation\\_en.pdf](https://edps.europa.eu/sites/edp/files/publication/18-03-19_online_manipulation_en.pdf)>.

information's value is increased by software and devices designed to induce addictive behaviour and maximize attention, especially in children.<sup>13</sup>

The type of surveillance that Messenger Kids engages in likely diminishes the intimate space available to children, which may in turn have a chilling effect on children's ability to form relationships and express themselves freely. These chilling effects are especially concerning because the UN *Convention on the Rights of the Child* goes beyond questions of access and seeks to ensure that media will promote a child's social and moral well-being.<sup>14</sup>

Messenger Kids' privacy policy outlines the app's broad collection of data, which inevitably includes personal information.<sup>15</sup> The app collects "the content and information children and their parents or guardians provide when registering for and using" Messenger Kids. Collecting the content of messages sent and received is akin to a wiretap; Facebook is recording—and retaining—conversations among its users.

Messenger Kids also collects the IP address of the device on which the app is used. IP addresses may be personal information when they are associated with an identifiable individual.<sup>16</sup> An IP address can be used to acquire myriad data about an individual's activities because it shows the individual's location at different times. Messenger Kids, collecting information based on device use, is conceivably collecting information about whoever uses the device, not only the child whose Messenger Kids account is on that

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<sup>13</sup> European Data Protection Supervisor, "Opinion on Online Manipulation and Personal Data" (Opinion 3/2018, 19 March 2018) at 9, online: <[https://edps.europa.eu/sites/edp/files/publication/18-03-19\\_online\\_manipulation\\_en.pdf](https://edps.europa.eu/sites/edp/files/publication/18-03-19_online_manipulation_en.pdf)>.

<sup>14</sup> *Convention on the Rights of the Child*, 20 November 1989, UNTS vol 1577 arts 16, 17, 13 (entered into force 2 September 1990). See Working Group of Canadian Privacy Commissioners and Child and Youth Advocates, "There Ought to Be a Law: Protecting Children's Online Privacy in the 21<sup>st</sup> Century" (19 November 2009) at 7–8, online: <[http://www.cdpcj.gc.ca/Documents/Children\\_Privacy\\_Internet.pdf](http://www.cdpcj.gc.ca/Documents/Children_Privacy_Internet.pdf)>.

<sup>15</sup> Canada's private sector privacy legislation, *Personal Information Protection and Electronic Documents Act*, defines personal information as "information about an identifiable individual (SC 2000, c 5, s 2(1) [PIPEDA])."

<sup>16</sup> Office of the Privacy Commissioner, *What an IP Address Can Reveal About You: A Report Prepared by the Technology Analysis Branch of the Office of the Privacy Commissioner of Canada* (May 2013), online: <[https://www.priv.gc.ca/en/opc-actions-and-decisions/research/explore-privacy-research/2013/ip\\_201305/](https://www.priv.gc.ca/en/opc-actions-and-decisions/research/explore-privacy-research/2013/ip_201305/)>.

device. It is unclear whether Messenger Kids collects data only when the app is being used, or if its data collection runs constantly in the background.

Messenger Kids' policy on data retention is ambiguous and implies that data is retained indefinitely. Under PIPEDA, personal information no longer required to fulfil the identified purpose for its collection should be destroyed, erased, or made anonymous. Organizations are required to develop guidelines and implement procedures to govern the destruction of personal information.<sup>17</sup> Messenger Kids should clearly identify its purposes for collection to develop an appropriate data retention and deletion policy aligned with those purposes. However, Messenger Kids does not, in our view, clearly state its purpose for collecting and retaining such huge amounts of data, possibly forever.

Messenger Kids allegedly acquires parental consent on behalf of a minor child when the parent sets up the child's account. Presumably, the parent reads the privacy policy and consents by completing the registration process. This consent is assumed to extend to collection of all data from the registration for and use of the app, and to the disclosure of information also described in the privacy policy.

This data collection and use may well run afoul of Canada's privacy laws. It is unclear what Facebook's purpose is for indiscriminately collecting the content of all messages sent and received on Messenger Kids; this may call into question the ability of Facebook to establish meaningful consent as required under PIPEDA. Vague purposes are insufficient to establish meaningful consent.<sup>18</sup> The OPCC has recognized that individuals already often feel powerless over how their personal information is collected and used by companies.<sup>19</sup> People cannot give truly informed consent when privacy policies are vague and they feel

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<sup>17</sup> PIPEDA, above at note 11, Schedule 1, s 4.5.3.

<sup>18</sup> Office of the Privacy Commissioner, *2016-17 Annual Report to Parliament on the Personal Information Protection and Electronic Documents Act and the Privacy Act* (Ottawa: OPC, 21 September 2017), online: <[https://www.priv.gc.ca/en/opc-actions-and-decisions/ar\\_index/201617/ar\\_201617/](https://www.priv.gc.ca/en/opc-actions-and-decisions/ar_index/201617/ar_201617/)>.

<sup>19</sup> *Ibid.*

compelled to consent to receive services.<sup>20</sup> The tenuousness of this situation is exacerbated when a parent is making a decision on behalf of a child.

Parents cannot assess Messenger Kids' privacy when considering registering; they would only be able to perform this assessment after sharing significant personal information about their child.<sup>21</sup> To remedy this gap in informed consent, Facebook might consider creating a mock account or a video showing the privacy settings available through Messenger Kids. We have been unable to find such a tool in the app to date.

Canada's Office of the Privacy Commissioner takes the position that users should not bear the heaviest burden of deconstructing data flows to make informed decisions about consent.<sup>22</sup> Instead, in our opinion, Messenger Kids should be more accountable and transparent. Facebook has a responsibility to be clear and transparent about what parents are consenting to when they register their children for a Messenger Kids account.

Messenger Kids may collect, use, or disclose personal information only for purposes that a reasonable person would consider appropriate in the circumstances.<sup>23</sup> Inappropriate use, even where a parent has allegedly consented, includes situations known to or likely to cause significant harm to an individual, for example reputational harm. The potential harm to children who share their personal information through social media has been widely noted.<sup>24</sup> We believe that there is the potential for similar harm stemming from the stated collection of personal information by Messenger Kids.

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<sup>20</sup> *Ibid.*

<sup>21</sup> Joseph Bonneau & Sören Preibusch, *The Privacy Jungle: On the Market for Data Protection in Social Networks* (The Eighth Workshop on the Economics of Information Society, 2009) at 32, online: <[http://preibusch.de/publications/Bonneau\\_Preibusch\\_\\_Privacy\\_Jungle\\_\\_2009-05-26.pdf](http://preibusch.de/publications/Bonneau_Preibusch__Privacy_Jungle__2009-05-26.pdf)>.

<sup>22</sup> OPC, above at note 16.

<sup>23</sup> PIPEDA, above at note 11, s 5(3).

<sup>24</sup> See, for example, OPC Nexopia, *supra* note 12 at paras 93–94; Office of the Privacy Commissioner, *Draft OPC Position on Online Reputation* (26 January 2018), online: <[https://www.priv.gc.ca/en/about-the-opc/what-we-do/consultations/consultation-on-online-reputation/pos\\_or\\_201801/#heading-0-0-5](https://www.priv.gc.ca/en/about-the-opc/what-we-do/consultations/consultation-on-online-reputation/pos_or_201801/#heading-0-0-5)>.

Further, while Messenger Kids is presented as a “safe” environment for parents to monitor their children’s communications in their interest, it can equally be viewed as a form of surveillance: a pre-consented-to “wiretap” of children’s communications that is retained indefinitely for unknown purposes. This type of collection, we believe, cannot be appropriate.

As other open letters have pointed out, you personally have vowed to “do better” in response to Facebook scandals.<sup>25</sup> Doing better here is likely only possible by leaving young children alone: We urge you to not launch Messenger Kids in Canada.

Sincerely,



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cc Rob Sherman, Deputy Chief Privacy Officer, Facebook  
Claire Gartland, Privacy and Public Policy Manager, Facebook

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<sup>25</sup> Campaign for a Commercial Free Childhood, above at footnote 7.