



June 7, 2019

Ms. April Tabor  
Acting Secretary  
Federal Trade Commission  
Office of the Secretary, Room H-113 (Annex E)  
600 Pennsylvania Ave., NW  
Washington, DC 20001

***Re: Inside the Game: Unlocking the Consumer Issues Surrounding Loot Boxes Workshop***

Dear Acting Secretary Tabor:

The Entertainment Software Association (“ESA”) submits these comments in connection with the Federal Trade Commission’s upcoming workshop, “Inside the Game.” ESA represents the major game console manufacturers and almost all of the major video game publishers in the United States.<sup>1</sup> In these comments, we provide an overview of the in-game transaction landscape, including certain transactions involving surprise mechanics, referred to in games by a variety of names, including “loot boxes.” We also outline the proactive steps the industry has taken to inform consumers and, as applicable, parents of those playing games, about gameplay features. We further explain the steps the industry has taken to present them with the choices to tailor their gameplay experience and to empower them with appropriate tools.

ESA’s members are leaders in bringing creative and innovative video game consoles, video game software, and online game services into American homes. Our member companies have made major contributions to the U.S. economy, employing more than 220,000 people nationwide.<sup>2</sup> There are over 2,500 game companies throughout the United States.<sup>3</sup>

Video games are a great American pastime. Over 164 million American adults play video games, and three quarters of all Americans have at least one player in their household.<sup>4</sup> The average U.S. player is 33 years old and has been playing games for 14 years.<sup>5</sup> Although the media tends to portray video games as being primarily played by children and teenagers, only 21% of gamers are

---

<sup>1</sup> The ESA is the U.S. trade association serving companies that publish computer and video games for game consoles, handheld devices, personal computers and the Internet. A complete list of ESA’s member companies is available at <http://www.theesa.com/about-esa> (last visited June 7, 2019).

<sup>2</sup> Stephen E. Siwek, *Video Games in the 21<sup>st</sup> Century: The 2017 Report* at 2, available at <https://www.theesa.com/esa-research/2017-economic-impact-report>.

<sup>3</sup> ESA, “Impact of the Video Game Industry: State by State,” <https://www.areweinyourstate.org> (last visited June 7, 2019).

<sup>4</sup> ESA, *Essential Facts About the Computer and Video Game Industry* at 4, 7 (2019), available at <https://www.theesa.com/wp-content/uploads/2019/05/2019-Essential-Facts-About-the-Computer-and-Video-Game-Industry.pdf>.

<sup>5</sup> *Id.*

under the age of 18.<sup>6</sup> Forty percent of gamers are 18 to 35, 18% of gamers are 36 to 49, and 21% of gamers are over 50.<sup>7</sup>

ESA and its member companies are committed to promoting high-quality gameplay experiences, while giving consumers options in how they enjoy those games. Consumers have access to robust tools provided by the video game industry to help them decide what games to play themselves, which games are appropriate for their children, and how they play them. The video game industry has a long history of facilitating parental choice by providing parents with ratings information at point of purchase and building parental control tools into video game platforms.

Loot boxes have become a common and expected feature in many modern video games. By providing consumers a surprise selection of virtual items, they add a variability and dynamism to the gameplay experience. But paid loot boxes are merely an optional enhancement, not a requirement, to play the game.

ESA welcomes the opportunity to submit these comments and participate in the workshop for two reasons. First, ESA seeks to aid the FTC in exploring the range of in-game mechanics, including loot boxes, and how they enhance the gameplay experience. Second, ESA seeks to provide a deeper understanding of the robust content disclosure and parental controls that are widely available to consumers.

## **I. Background on Loot Boxes**

### **A. What is a Loot Box?**

Loot boxes are an engaging feature in some video games by which players can obtain various virtual items for use within the game through a surprise selection mechanism. Sometimes these items help the player progress in the game; other times they are purely cosmetic. Regardless of which type of item is received, players always get something of value that they can use in the game. The general idea is that the player opens the box, crate, or other container to receive a surprise selection of virtual items. It is this surprise element that makes loot boxes interesting to the player and that enhances the entertainment experience.

Before delving into further detail about how loot boxes work and the role they play in games, it is useful to understand how loot boxes fit into the broader marketplace of consumer products and within the video game ecosystem of microtransactions.

### **B. America's Tradition of "Surprise Mechanisms" in Entertainment Products**

Loot boxes are a more recent manifestation of a concept with which American consumers have had long familiarity: purchases that involve a surprise element, where the precise content is not revealed until after purchase. A classic example is baseball cards—the quintessential companion to America's favorite pastime. For generations, people have delighted in collecting and trading baseball cards. A fresh pack of cards holds the promise of discovery because the consumer does not know what he or she will find in the pack. Will the consumer receive a coveted chrome rookie autograph card or will the consumer merely find a handful of ordinary cards of average players?

---

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

The marketplace is replete with consumer products that harness a surprise mechanism.<sup>8</sup> For instance, children have long enjoyed Kinder Joy, a chocolate treat that is bundled with a mystery toy. In another example, during the 2016 holiday season Spin Master's "Hatchimal" toy topped millions of kids' wish lists.<sup>9</sup> Each box contained a single egg, nestled inside of which was one of several different fantastical robotic creatures, called Hatchimals. Part of the delight of the toy was discovering which Hatchimal was inside, a mystery that revealed itself after the Hatchimal "pecked" its way out of its shell.<sup>10</sup> The L.O.L. Surprise toy series is designed and marketed entirely around its status as a mystery content purchase, with multiple different series and prices ranging into the hundreds of dollars.<sup>11</sup> Thousands of other real-world products are sold using similar surprise mechanisms, including those listed in the attached Exhibit. In sum, loot boxes are a variation on a surprise mechanic commonplace in many other entertainment products.

### C. Microtransactions in Video Games

Video game publishers continually strive to make games fun, engaging, and affordable. Games, unlike movies or TV programs, are highly interactive and designed to provide dozens of hours of entertainment. Publishers are constantly tinkering with different aspects of the game to keep the experience fresh and compelling. Microtransactions, which refer to the purchase of various in-game items and other game-related content, are one of the many ways publishers offer the opportunity for a highly-customized game experience, which helps make games more interesting. Through microtransactions, players can customize their avatar's appearance, update their kit for a major battle, trade out their racing car for a new one, or extend their game time. Other examples of microtransactions include the following:

- Purchase of in-game currency, which can be used to acquire other in-game items;
- Direct purchase of in-game items, such as costumes or health kits; and
- "Season passes" that give the player access to all downloadable content or expansion content that comes out during a certain period of time.

Microtransactions are used in a variety of video games, including those that have no upfront purchase price. For some players, especially those who are new to video games, if a game has a high initial purchase price, they may choose not to risk the purchase price on a game they are not sure they will enjoy. They may simply not want to spend that much on video game entertainment relative to other entertainment options. That is why games that are free to play provide a welcoming entry into the world of video games for casual or cost-sensitive players and also provide an opportunity for small game developers to gain traction in a crowded marketplace.<sup>12</sup>

---

<sup>8</sup>Jennifer Berger and Katherine Moran, "Surprise packs and blind bags: The latest collectible toy trend," *Newsday* (Jul. 31, 2018), <https://www.newsday.com/lifestyle/family/blind-pack-surprise-toys-1.15428582>.

<sup>9</sup>Rachel Rabkin Peachman, "The Hunt for Hatchimals: The Elusive Toy of the Holiday Season," *The New York Times* (Dec. 5, 2016), available at <https://www.nytimes.com/2016/12/05/well/family/the-hunt-for-hatchimals-the-elusive-toy-of-the-holiday-season.html>.

<sup>10</sup>*Id.*

<sup>11</sup>Dana Feldman, "L.O.L. Surprise Is The Top Doll With Over 2.5M Sold In Five Months," *Forbes* (Apr. 19, 2017), <https://www.forbes.com/sites/danafeldman/2017/04/19/l-o-l-surprise-is-the-top-doll-with-over-2-5m-sold-in-five-months/#3df7d1ed7be6>.

<sup>12</sup>Nearly all of the current top 50 games on Apple's iOS App Store are free to play with in-app purchasing. See Annie, "Top Apps on iOS Store United States, Games, June 6, 2019," <https://www.appannie.com/en/apps/ios/top/united-states/games/iphone/> (last visited on June 7, 2019).

While this monetization technique is commonplace among mobile games, it is not unique to that sector of the game industry. Microtransactions are part of the broader video game marketplace, appearing in many popular PC and console games. It is important to note that the feature is not universal; many games offer no ability to purchase in-game items.

There are compelling economic reasons why microtransactions are also used in games that have an upfront cost. In the mid-2000s, the average cost to produce an AAA game<sup>13</sup> for console or PC was around \$30 million, and consumers could purchase a copy for around \$50.<sup>14</sup> As of 2016, production costs had reached about \$90.6 million, on average.<sup>15</sup> These price increases are directly related to the increasingly expansive—and thereby expensive—methods used to make video games, including: cutting-edge graphics, immersive sound design, bespoke controls, and elaborate motion capture sequences. Creating these games requires hundreds of artists, programmers, and other technicians to build a compelling fictional world from scratch. Some estimates predict that by the early 2020s, production costs for AAA titles could climb to \$200 million.<sup>16</sup> Despite the tremendous increase in production costs, however, the average price for a new release AAA game has hovered in the \$50-\$60 range since the mid-2000s.<sup>17</sup> But for microtransactions and other monetization techniques, the price of games would have to be substantially higher to cover the enormous production costs.

Further, games are no longer a “ship and done” product. Players expect, and many publishers provide, a number of ongoing service commitments, all of which can involve significant capital over the span of several years. Contemporary video games provide consumers with continual software updates (*e.g.*, refreshed rosters for sports teams that track real-world developments), matchmaking of players for tournaments, player-to-player communication services, expansion of the game universe (*e.g.*, incorporating a new race of aliens in a sci-fi role-playing game), or the addition of new features. These games-with-service-components are common among modern video games, enabling fans to engage with a game and its community for years after the initial release thanks to a continuing stream of new content that can be purchased or earned through gameplay.

Finally, it is important to recognize that microtransactions are just one way of acquiring in-game items, but by no means the only way. Many of the same items (or similar in kind) that players acquire through microtransactions can also be earned through diligent gameplay (*e.g.*, achieve an important goal in game, such as taking an enemy’s watchtower, to capture its treasure).

#### i. *How Microtransactions Work*

Microtransactions in video games can occur in several different ways. In the paragraphs below, we describe the typical scenarios.<sup>18</sup>

---

<sup>13</sup> AAA is a term of art used in the video game industry to describe a tent pole or blockbuster title, one that typically has top notch production values and is highly anticipated (*e.g.*, a sequel to a popular franchise title).

<sup>14</sup> Raph Koster, “The cost of games,” *VentureBeat* (Jan. 23, 2018), <https://venturebeat.com/2018/01/23/the-cost-of-games>.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Michelle Yan and Ben Gilbert, “Here’s the reason most new console video games cost \$60,” *Business Insider* (Oct. 29, 2018), <https://www.businessinsider.com/why-video-games-always-cost-60-dollars-2018-10>.

<sup>18</sup> The specific implementation may vary in minor ways from publisher to publisher or platform to platform, depending upon the parameters of the game experience.

**One-step process:**

**Step 1: real money used to purchase a virtual item**

This is the simplest and most direct way for the player to purchase an item. It is particularly common in mobile games.

EXAMPLE: Hunter has downloaded to his mobile phone a medieval themed role-playing game (RPG). After playing through several levels, he decides to purchase an equipment pack for \$4.99 from within the game's store to better equip his avatar for the dangers ahead. Hunter initiates the transaction from within the game, and the mobile storefront debits his app store account for the corresponding amount.

**Two-step process:**

**Step 1: real money used to purchase paid in-game currency;**

**Step 2: paid in-game currency used to acquire various virtual items.**

OR

**Step 1: real money used to purchase platform stored value;**

**Step 2: platform stored value used to directly purchase in-game currency.**

Not all games allow for the direct purchase of virtual items with real money. In some games, in order to buy a virtual item, the player must first exchange real money for a predetermined amount of paid in-game currency (*e.g.*, gold, gems), and then use that in-game currency to acquire the virtual item.<sup>19</sup>

Why go to this trouble? First, there are considerations of narrative integrity. For example, if it is an adventure game set during Dynasty XIX of Ancient Egypt, it would break the illusion for a player to buy a chariot by paying USD \$2.50 at the market in Thebes. A better fit for the narrative would be bartering for the chariot with a deben of copper or another historically-appropriate commodity. Second, it minimizes transaction costs for the game publisher. Instead of processing separate transactions for each virtual item when the player purchases it, the publisher sells a set amount of paid currency to the player. There is only one microtransaction (*i.e.*, the initial real money purchase of the paid in-game currency) instead of several.

EXAMPLE: Kaya plays a racing game on her PC. Within the game is a store where she can buy new cars to race. Kaya decides to acquire a Bugatti Chiron Sport, which has a list price within the game of 3,000,000 "pistons," the in-game currency. Kaya pays \$40 to buy 5,000,000 pistons of in-game currency. Once that microtransaction is complete, those pistons show up in her avatar's in-game account, which she then uses to acquire the Bugatti. She can use the balance another time, to acquire other virtual items for use within the game.

Another variant of this two-step process involves purchases made on a platform, such as a game console. The online stores associated with game consoles sell a variety of digital content, including, among other things, paid in-game currency and expansion packs used in some of the game titles that are popular on the console. Players can buy these items at the console store, and then the currency or expansion pack will appear in the player's account the next time the player uses the game. Alternatively, the player could

---

<sup>19</sup> Games can have multiple currency systems. For example, one set of currency could be currency that is purchased with real money while another currency is strictly earned through gameplay. Depending on the game, some items may only be obtained through the earned in-game currency or only obtained through the purchased in-game currency.

buy the game currency within the game's store and, there too, the financial transaction is handled by the console store on the backend. In other words, when it comes to the console environment, the player is always buying the game currency from the platform whether the player buys it in game or in the platform store.

EXAMPLE: Ethan enjoys playing real-time strategy games, where the goal is to build an empire. This game has a paid in-game currency, Solidus, which can be used to acquire some enhancements to the game experience (such as new uniforms for your army). While Ethan can buy Solidus within the game store, he can also buy those at the game console store, which sells Solidus in various increments. Ethan buys 10,000 Solidus for \$20. The transaction is handled by the platform, not the game publisher. But the next time Ethan plays the game, he finds that 10,000 Solidus have been credited to his in-game account. He uses those, within the game, to acquire new uniforms.

**Three-step process:**

- Step 1:**            **real money used to purchase platform stored value;**
- Step 2:**           **platform stored value used to purchase paid in-game currency;**
- Step 3:**           **paid in-game currency used to acquire virtual items.**

One of the functions of a game console is to serve as a central hub for players' interactions across a variety of games. For example, a player's communication preferences or avatar's achievements will track across multiple games. On the financial transaction side, game console stores greatly simplify the purchase of digital content across a variety of games.

Players typically establish an account with the platform, which they can fund with real dollars. They then use this platform-level stored value to buy games or in-game currency across multiple games which the player may own and use on that console. Then, once the player has converted the platform-level stored value to in-game currency, the player can use the in-game currency to acquire virtual items. The advantage of this approach is that the player only needs to convert from real money once, but can use the intermediate or platform-level stored value to purchase different forms of in-game currency across a variety of games by different publishers.

EXAMPLE: Clara, a console gamer, enjoys playing both a sci-fi action game by one publisher and a Western-themed game by another publisher. She has \$40 in her game console account. She goes into the platform's storefront and uses \$10 of her platform-stored value to buy 100 Thorium, the in-game currency for the sci-fi game, and \$5 to buy 2,000 Confederate dollars in the Western-themed game. She then uses the Thorium to upgrade the navigation system on her freighter to enable quicker jumps to light speed in her sci-fi game. Later that weekend, she uses 2,000 Confederate dollars within the Western-themed game to acquire an ironclad.

*ii. The Role of Loot Boxes*

People love to collect things. This tendency extends to the virtual world where items can help the player advance in the game or simply allow the player to show off. Players like to acquire virtual items within a game, and some items are rarer or more difficult to obtain than others. This propensity to collect helps add variety and dynamism to the game experience and also increases the authenticity of the game world. Loot boxes, a type of surprise purchase mechanism, are one form of acquiring items in games. The possible content of the loot box is known to the consumer at the time of purchase, but typically not the exact items. A loot box may be attractive to players because it can contain rarer and harder to obtain items, or it may simply be a good value proposition for useful in-game items. In any event, our members operate in

a vibrant, competitive market with highly engaged consumers who will move on to other games if they do not have a good experience with the game play.




It is important to distinguish loot boxes from *loot drops*, the latter of which have been in video games since nearly the beginning of the industry. When a player has defeated an enemy, there typically is some sort of surprise loot awarded via a chest, crate, or another container at the end of the battle. The contents of the loot drop may vary from one game session to the next based upon the use of a random number generator for determining the specific loot. Depending on the game, these loot drops take different forms and contain different types of items. For example, in a fantasy role-playing game, a player may find a loot drop containing a valuable map showing the location of a key resource. Unlike a loot box, you cannot purchase a loot drop; they are strictly earned.

## II. Parental Controls, Disclosures, and Consumer Education

The video game industry offers consumers a robust and sophisticated range of parental controls and related educational materials to ensure that parents have both the information and tools to set appropriate limits for their children. Our industry’s collective efforts to educate and empower parents include, among other things, a suite of continually evolving and granular parental controls, educational initiatives to promote the awareness and use of those tools, and detailed disclosures of various game features prior to purchase of the game.

### A. Overview of Parental Controls

Our industry has long recognized the important needs of the youngest members of the community. To that end, our industry strongly believes that parental controls serve a critical role in the video game ecosystem. All of the major console makers provide parents with a suite of tools to ensure they can set limits consistent with their family’s preferences. The platforms have a host of common features, as detailed below:

			
<b>Offer managed child accounts?</b>	✓	✓	✓
<b>Block spending?</b>	✓	✓	✓
<b>Notify parents of spending?</b>	✓	✓	✓
<b>Limit play time?</b>	✓	✓	✓
<b>Restrict communication?</b>	✓	✓	✓
<b>Restrict game by ESRB rating?</b>	✓	✓	✓

In addition to these robust parental controls, console makers and publishers offer parents a wide range of educational materials that inform parents about the options at their disposal and how those

controls work. These materials include, for example, trainings, family management systems, and companion applications. Parental controls and education, as evidenced by the more detailed descriptions that follow, represent a cooperative effort by the industry to ensure users and parents are in control of their gameplay experiences.

i. *Microsoft Xbox One*

Microsoft also has developed controls that parents may set on the Xbox One console or through an account portal using an internet browser on their computer. The “Ask a Parent” control can be used by the parent to require a passkey to make a purchase, ensuring that a parent approves before the child can complete the transaction. Furthermore, parents can set up activity reporting, which emails them a summary of a child’s activity, including spending. Equipped with such information, parents can monitor children’s activity and engage in important discussions about healthy gameplay practices with their children. Microsoft Store personnel will also set up parental controls on an Xbox One console before a parent leaves the store if they purchase the console at a Microsoft Store.

On the education front, Microsoft has a website explaining Family Settings on Xbox One,<sup>20</sup> and also offers free in-store trainings for parents at Microsoft Stores. The “getting started” demo enables parents to learn about the Xbox One console and its features so that parents better understand the gameplay experience. It also informs parents about “child accounts” and shows parents how to set those up. Finally, the training also highlights key tools, such as the types of spending controls discussed above, as well as how to enable content restrictions by game rating, manage a child’s interactions with other players, and limit screen time.

ii. *Sony PlayStation 4*

Sony PlayStation offers robust parental controls, including ones that enable parents to restrict access to certain features and set monthly spending limits. Sony Interactive Entertainment, the maker of the PlayStation, also provides education on how to prevent children from changing parental controls. With its Family Management offering, Sony Interactive Entertainment, like the other platform operators, empowers parents to take an active role in ensuring that their children engage in appropriate gameplay.

iii. *Nintendo Switch*

Nintendo similarly provides robust controls, accompanied by educational materials. In particular, Nintendo offers a free application for smart devices that allows parents to remotely manage their child’s gameplay, in addition to the option of letting the parent manage the controls available on the game console itself. The app allows parents to monitor the time their children spend playing games and the types of games their children play as well as to restrict certain gameplay features that a parent may deem inappropriate for his or her child. Nintendo also offers an educational video about parental controls at retail.

iv. *Game Networks Operated by Publishers*

Parental controls are not limited to game console platforms. For example, Electronic Arts recently announced enhancements to its Origin game service for PC games. Origin will now enable parents to establish “teen accounts.” Once a teen account is created, an adult parent or teen can request to link accounts and create a household account. In the U.S., all teen accounts default to a monthly maximum of

---

<sup>20</sup> See Xbox, “Xbox One is fun for the whole family,” <https://www.xbox.com/en-US/xbox-one-s/family-entertainment> (last visited June 7, 2019).



\$25 on microtransaction purchases (excepting subscriptions and any funds that may be on an Origin gift card associated with the account). This limit—and the monthly spending for full games and downloadable content—can be increased or decreased by linking an adult account to a teen account. Either teen or adult can initiate account linking, but only an adult can unlink accounts. Once unlinked, the spending for the teen account will reset to the default \$25 maximum spending limit. Adult accounts will also be able to set limits for microtransactions, full games, and downloadable content *on their own account*.

Blizzard Entertainment’s Battle.net game platform for its PC games provides several parental controls to parents and Blizzard customers. Through various reporting and control settings, parents and customers can adjust play time limits, turn off in-game purchases, and request in-game transaction reporting. This functionality allows parents to monitor and control the time their children play games and the purchases they make. In addition, when a customer between the ages of 13 and 18 creates a Battle.net account, Blizzard requests a parent’s email address as part of the registration process in order to send the parent information about Blizzard’s account management and parental control features.

#### B. ESRB In-Game Purchases Disclosure

The Entertainment Software Rating Board (“ESRB”), a nonprofit self-regulatory body, plays a prominent role in promoting appropriate gameplay. Established in 1994, the ESRB implements the industry’s rating system, which provides parental guidance on age-appropriateness, content, and interactive elements.<sup>21</sup> The ESRB rating system is supported by retailers, game publishers, console manufacturers, family advocates, elected officials, and government agencies. The FTC has described the ESRB as having the “strongest self-regulatory code” of media rating systems and says ESRB “outpaces the movie and music industries in the three key areas that the Commission has been studying for the past decade: (1) restricting target-marketing of mature-rated products to children; (2) clearly and prominently disclosing rating information; and (3) restricting children’s access to mature-rated products at retail.”<sup>22</sup>

The ESRB ratings have three parts:

- **Rating Categories** that suggest age appropriateness;
- **Content Descriptors** that indicate content that may have triggered a particular rating and/or may be of interest or concern; and
- **Interactive Elements** that highlight interactive or online features of a product, including users’ ability to interact with each other, the sharing of users’ location with other users, if purchases of digital goods or services are offered, and/or if unrestricted internet access is provided.<sup>23</sup>

---

<sup>21</sup> The ESRB also operates a privacy compliance program, known as “Privacy Certified,” one of the first such programs to be recognized by the FTC as a safe harbor under the Children’s Online Privacy Protection Act Rule.

<sup>22</sup> FTC, *Marketing Violent Entertainment to Children: A Sixth Follow-Up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries* (December 2009), available at <http://www.ftc.gov/os/2009/12/P994511violententertainment.pdf>.

<sup>23</sup> ESRB, “ESRB Ratings,” <http://www.esrb.org/ratings/index.aspx> (last visited June 7, 2019).

More specifically, the ESRB includes an “In-Game Purchases” or “In-App Purchases” notice within a game’s rating information, as part of the “interactive elements” component.<sup>24</sup>



This label applies to games with in-game offers to purchase digital goods or premiums with real world currency, including but not limited to bonus levels, surprise items (such as item packs, loot boxes, mystery awards), music, virtual coins and other forms of in-game currency, subscriptions, season passes and upgrades (e.g., to disable ads).

According to the ESRB’s most recent research:

- 87% of parents are aware of ESRB ratings;
- 83% of those parents are confident that ESRB ratings accurately describe content; and
- 77% of parents regularly use the ESRB ratings.<sup>25</sup>

These ratings provide parents with choice and empower them to make appropriate purchasing decisions for their family’s needs. They can be found on game packages and their corresponding advertisements, promotional websites, and wherever those games are available for download or purchase (e.g., from the game stores on the three major game consoles themselves, from online stores such as Amazon, and some mobile app stores, such as Google Play).

The ESRB provides a robust set of resources for parents on its website to assist them in searching for ratings information, accessing a variety of tips, setting household rules with a Family Discussion Guide and more.<sup>26</sup> In addition, the ESRB hosts ParentalTools.org,<sup>27</sup> which provides easy access to parental control guides for the various game consoles and computers in the home. The ESRB has launched numerous public service campaigns<sup>28</sup> over the past two decades, featuring sports celebrities, elected officials, and parents, including the most recent award winning “Join the Conversation”<sup>29</sup> social media campaign and contest.

### C. Loot Box-Related Disclosures

In addition to the “In-Game Purchases” notice assigned by ESRB, video game publishers currently provide more specific loot box-related disclosures in a variety of formats to empower players to make

---

<sup>24</sup> The format of this label is representative of the type of labels in the marketplace.

<sup>25</sup> ESRB-commissioned research conducted by Hart Research Associates, April 2019, *available at* <http://www.esrb.org/about/awareness.aspx>.

<sup>26</sup> ESRB, “ESRB Parent Resources Center,” <http://www.esrb.org/about/resources.aspx> (last visited June 7, 2019).

<sup>27</sup> ESRB, “ParentalTools.org,” <http://www.esrb.org/parentaltools/> (last visited June 7, 2019).

<sup>28</sup> ESRB, “Education & Outreach,” <http://www.esrb.org/about/education.aspx> (last visited June 7, 2019).

<sup>29</sup> See, e.g., ESRB, “ESRB Conversations - Jerry & Ronia: Mad Turtle (30s)” (YouTube, 2018), <https://www.youtube.com/channel/UCmf9tX5HAFKvI4nCGujH96g>.

informed choices. Apple requires that any apps on the App Store offering loot boxes include drop-rate disclosures. These disclosures inform consumers of the odds of receiving in-game items prior to purchase. As a result, any mobile games provided through Apple must include such information for consumers.<sup>30</sup> In addition, Google recently announced a new requirement that any apps on the Google Play store offering loot boxes include drop rate disclosures.<sup>31</sup>

Drop rate disclosures and related information are also available for some video games distributed for consoles. The disclosures take several forms, including the probability of obtaining a particular virtual item or, relatedly, the rarity of a particular virtual item. For instance, in one game that provides players with the opportunity to obtain loot gear, a player who arrives at an “event draw” may receive a list of loot gear, accompanied by percentages indicating the probability of attaining each particular item. Another video game that enables players to acquire packs provides those players with disclosures on the number of items in each pack and guarantees of getting items of certain rarity. The video game also includes odds disclosures pertaining to levels of rarity. Still other games combine the probability of attainment statistics with stars on a scale of 1 to 5 or 1 to 10 indicating rarity.

Another increasingly common way that publishers provide disclosures is by color coding loot boxes based on rarity or probability. The color coding provides information to enable players to calculate whether to pursue a particular loot box. Color-coding these items provides the player a handy visual representation of the items’ worth and/or rarity, allowing players to quickly decide which items they might want to obtain, and which ones can be discarded.

These diverse approaches illustrate two key points. First, many publishers are informing players about the relative likelihood of obtaining items in a given loot box. Second, game publishers know their audiences and have tailored their approaches to be most useful for the players of that game. These are extensions of industry’s longstanding, and continuing, efforts to arm consumers and parents with information and the tools to choose what games they want to play, or have their children play, and how.

### **III. Recommendations for Workshop Panelists**

ESA would be pleased to participate and share its perspective on loot boxes and the industry’s efforts to empower parents with appropriate tools. ESA could present on information raised in this comment, namely the availability of robust parental controls, the types of disclosures of in-game purchases and loot boxes that currently exist, and our longstanding and ongoing educational efforts.

### **IV. Conclusion**

Loot boxes are part of the vibrant, innovative and competitive video game marketplace – not to mention a fun element of gameplay. Industry has implemented robust controls and disclosures to ensure that practices around loot boxes align with appropriate gameplay. As the FTC begins framing the issues for the upcoming workshop, ESA respectfully requests that the staff:

---

<sup>30</sup> Apple, “App Store Review Guidelines,” <https://developer.apple.com/app-store/review/guidelines/> (last visited June 7, 2019) (“Apps offering ‘loot boxes’ or other mechanisms that provide randomized virtual items for purchase must disclose the odds of receiving each type of item to customers prior to purchase.”).

<sup>31</sup> Google, “Google Play Developer Policy Center,” <https://play.google.com/about/monetization-ads/payments/> (last visited June 7, 2019) (“Apps offering mechanisms to receive randomized virtual items from a purchase (i.e., ‘loot boxes’) must clearly disclose the odds of receiving those items in advance of purchase.”).

- Fully explore the range of loot box mechanics and functionality in the broader marketplace, which includes the breadth of surprise items available in stores today specifically directed to children (see Exhibit);
- Fully explore the benefits of loot boxes in the video game ecosystem to both video game publishers and consumers; and
- Fully explore existing controls, disclosures, and educational efforts surrounding loot boxes.

ESA looks forward to a productive discussion and analysis of loot boxes at the upcoming workshop.

Sincerely,

A handwritten signature in blue ink, appearing to read "Stanley Pierre-Louis". The signature is stylized and cursive, with the first name "Stanley" written in a more compact, looped style, and "Pierre-Louis" written in a more open, flowing style.

Stanley Pierre-Louis  
Chief Executive Officer  
Entertainment Software Association



**Exhibit to ESA Letter to April Tabor**

***Re: Inside the Game: Unlocking the Consumer Issues Surrounding  
Loot Boxes Workshop***

**June 7, 2019**

## Hello Kitty Surprise



[https://www.amazon.com/Suprise-Figure-Bundle-Choices-Toho/dp/B00X4LWWC6/ref=sr\\_1\\_1?keywords=hello+kitty+surprise+eggs&qid=1559568169&s=gateway&sr=8-1](https://www.amazon.com/Suprise-Figure-Bundle-Choices-Toho/dp/B00X4LWWC6/ref=sr_1_1?keywords=hello+kitty+surprise+eggs&qid=1559568169&s=gateway&sr=8-1) (last visited June 7, 2019).



### Pikmi Pops Surprise Pack



[https://www.amazon.com/Pikmi-Pops-DoughMis-Surprise-Pack/dp/B07JK887J3/ref=sr\\_1\\_1\\_sspa?keywords=Pikmi+Pops&qid=1559568481&s=gateway&sr=8-1-spons&psc=1](https://www.amazon.com/Pikmi-Pops-DoughMis-Surprise-Pack/dp/B07JK887J3/ref=sr_1_1_sspa?keywords=Pikmi+Pops&qid=1559568481&s=gateway&sr=8-1-spons&psc=1) (last visited June 7, 2019).

### Crate Creatures Surprise



[https://www.amazon.com/Crate-Creatures-Surprise-Flingers-2/dp/B07BMYP3W8/ref=sr\\_1\\_18?keywords=crate+creatures+surprise&qid=1559568747&s=gateway&sr=8-18](https://www.amazon.com/Crate-Creatures-Surprise-Flingers-2/dp/B07BMYP3W8/ref=sr_1_18?keywords=crate+creatures+surprise&qid=1559568747&s=gateway&sr=8-18) (last visited June 7, 2019).



### Glitzi Globe Eggs



[https://www.amazon.com/Glitzi-Globes-Surprise-Mystery-Bundle/dp/B07BS3BGSH/ref=sr\\_1\\_1?keywords=Glitzi+Globe+Eggs&qid=1559568970&s=gateway&sr=8-1](https://www.amazon.com/Glitzi-Globes-Surprise-Mystery-Bundle/dp/B07BS3BGSH/ref=sr_1_1?keywords=Glitzi+Globe+Eggs&qid=1559568970&s=gateway&sr=8-1) (last visited June 7, 2019).

**K'Nex Collectible Series – Super Mario Mystery Bag**



[https://www.amazon.com/KNex-Super-Mario-Mystery-Bag/dp/B0741CL19T/ref=sr\\_1\\_4?keywords=K%E2%80%99Nex+Collectible+Series&qid=1559569024&s=gateway&sr=8-4](https://www.amazon.com/KNex-Super-Mario-Mystery-Bag/dp/B0741CL19T/ref=sr_1_4?keywords=K%E2%80%99Nex+Collectible+Series&qid=1559569024&s=gateway&sr=8-4) (last visited June 7, 2019).



### Shopkins Mystery Squishies



[https://www.amazon.com/Shopkins-Micro-Lites-Mystery-Pack/dp/B00Y3LCOYW/ref=sr\\_1\\_5?keywords=Shopkins+Mystery+Squishies&qid=1559569202&s=gateway&sr=8-5](https://www.amazon.com/Shopkins-Micro-Lites-Mystery-Pack/dp/B00Y3LCOYW/ref=sr_1_5?keywords=Shopkins+Mystery+Squishies&qid=1559569202&s=gateway&sr=8-5) (last visited June 7, 2019).

### My Little Pony Blind Bags



[https://www.amazon.com/My-Little-Pony-Suprise-Contains/dp/B077KJ6NR5/ref=sr\\_1\\_3?keywords=My+Little+Pony+Blind+Bags&qid=1559569267&s=gate&sr=8-3](https://www.amazon.com/My-Little-Pony-Suprise-Contains/dp/B077KJ6NR5/ref=sr_1_3?keywords=My+Little+Pony+Blind+Bags&qid=1559569267&s=gate&sr=8-3) (last visited June 7, 2019).



### Lock Stars Blind Packs



[https://www.amazon.com/Hasbro-Lock-Stars-Blind-Offering/dp/B07F3TFWBT/ref=sr\\_1\\_1?keywords=Lock+Stars+Blind+Packs&qid=1559569431&s=gateway&sr=8-1](https://www.amazon.com/Hasbro-Lock-Stars-Blind-Offering/dp/B07F3TFWBT/ref=sr_1_1?keywords=Lock+Stars+Blind+Packs&qid=1559569431&s=gateway&sr=8-1) (last visited June 7, 2019).

### KleptoCats Mystery Minis



[https://www.amazon.com/Funko-KleptoCats-Holiday-Mystery-Collectible/dp/B07K1DH98C/ref=sr\\_1\\_2?keywords=KleptoCats+Mystery+Minis&qid=1559569874&s=gateway&sr=8-2](https://www.amazon.com/Funko-KleptoCats-Holiday-Mystery-Collectible/dp/B07K1DH98C/ref=sr_1_2?keywords=KleptoCats+Mystery+Minis&qid=1559569874&s=gateway&sr=8-2) (last visited June 7, 2019).



### Paw Patrol Minis



<https://www.amazon.com/Paw-Patrol-6045829-Assortment-Colours/dp/B07K3QT3S9> (last visited June 7, 2019).



## Party Popteenies



[https://www.amazon.com/Party-Popteenies-Exclusive-Collectible-Accessories/dp/B07BNGPK29/ref=sr\\_1\\_6?keywords=Party+Popteenies&qid=1559570110&s=gateway&sr=8-6](https://www.amazon.com/Party-Popteenies-Exclusive-Collectible-Accessories/dp/B07BNGPK29/ref=sr_1_6?keywords=Party+Popteenies&qid=1559570110&s=gateway&sr=8-6) (last visited June 7, 2019).



### Baby Born Surprise Collectibles



[https://www.amazon.com/Baby-Born-Surprise-Collectible-Multicolor/dp/B07MC979CP/ref=sr\\_1\\_1\\_sspa?keywords=Baby+Born+Surprise+Collectibles&qid=1559570178&s=gateway&sr=8-1-spons&pvc=1](https://www.amazon.com/Baby-Born-Surprise-Collectible-Multicolor/dp/B07MC979CP/ref=sr_1_1_sspa?keywords=Baby+Born+Surprise+Collectibles&qid=1559570178&s=gateway&sr=8-1-spons&pvc=1) (last visited June 7, 2019).

### Hairdorables Surprise Dolls



[https://www.amazon.com/Hairdorables-Collectible-Surprise-Accessories-Styles/dp/B07BS2Q2XJ/ref=sr\\_1\\_2?keywords=Hairdorables+Surprise+Dolls&qid=1559570375&s=gateway&sr=8-2](https://www.amazon.com/Hairdorables-Collectible-Surprise-Accessories-Styles/dp/B07BS2Q2XJ/ref=sr_1_2?keywords=Hairdorables+Surprise+Dolls&qid=1559570375&s=gateway&sr=8-2) (last visited June 7, 2019).

### 5 Surprise Pink Mystery Capsule



[https://www.amazon.com/Surprise-Pink-Mystery-Capsule-Collectible/dp/B07GJVDCZ3/ref=sr\\_1\\_1\\_sspa?keywords=5+Surprise+Toys&qid=1559570446&s=gateway&sr=8-1-spons&psc=1](https://www.amazon.com/Surprise-Pink-Mystery-Capsule-Collectible/dp/B07GJVDCZ3/ref=sr_1_1_sspa?keywords=5+Surprise+Toys&qid=1559570446&s=gateway&sr=8-1-spons&psc=1) (last visited June 7, 2019).



**Lost Kitties Blind Box Assortment**



[https://www.amazon.com/Lost-Kitties-Blind-Box-Assortment/dp/B07CL5CMZ2/ref=sr\\_1\\_5?keywords=Lost+Kitties&qid=1559570492&s=gateway&sr=8-5](https://www.amazon.com/Lost-Kitties-Blind-Box-Assortment/dp/B07CL5CMZ2/ref=sr_1_5?keywords=Lost+Kitties&qid=1559570492&s=gateway&sr=8-5)  
(last visited June 7, 2019).

## Mega-Egga Mystery Eggs



[https://www.amazon.com/Mega-Egga-Ultimate-Surprise-Giant-Mystery/dp/B07PD24M5Q/ref=sr\\_1\\_fkmr0\\_1?keywords=Megga+Egga+Mystery+Eggs&qid=1559570533&s=gateway&sr=8-1-fkmr0](https://www.amazon.com/Mega-Egga-Ultimate-Surprise-Giant-Mystery/dp/B07PD24M5Q/ref=sr_1_fkmr0_1?keywords=Megga+Egga+Mystery+Eggs&qid=1559570533&s=gateway&sr=8-1-fkmr0) (last visited June 7, 2019).

## Gudetama Lazy Eggs



[https://www.amazon.com/Fiesta-Toys-Mystery-Sanrio-Gudetama/dp/B07K7TPF4T/ref=sr\\_1\\_13?keywords=Gudetama+Lazy+Eggs&qid=1559570720&s=gateway&sr=8-13](https://www.amazon.com/Fiesta-Toys-Mystery-Sanrio-Gudetama/dp/B07K7TPF4T/ref=sr_1_13?keywords=Gudetama+Lazy+Eggs&qid=1559570720&s=gateway&sr=8-13) (last visited June 7, 2019).



### Sesame Street Surprise Plush



[https://www.amazon.com/GUND-Sesame-Street-Anniversary-Surprise/dp/B07NPTJYND/ref=sr\\_1\\_1?keywords=Sesame+Street+Surprise+Plush&qid=1559570802&s=gateway&sr=8-1](https://www.amazon.com/GUND-Sesame-Street-Anniversary-Surprise/dp/B07NPTJYND/ref=sr_1_1?keywords=Sesame+Street+Surprise+Plush&qid=1559570802&s=gateway&sr=8-1) (last visited June 7, 2019).

## Poundtoy Surprise Eggs



<https://www.poundtoy.com/collections/surprise-eggs-toys/products/dreamworks-trolls-keychains-surprise-egg-capsule> (last visited June 7, 2019).



## Rainbocorns Surprise Toy



[https://www.amazon.com/Rainbocorns-Sequin-Surprise-Plush-Flamingo/dp/B07MWV4827/ref=sr\\_1\\_13?keywords=Rainbocorns+Surprise+Toy&qid=1559571113&s=gateway&sr=8-13](https://www.amazon.com/Rainbocorns-Sequin-Surprise-Plush-Flamingo/dp/B07MWV4827/ref=sr_1_13?keywords=Rainbocorns+Surprise+Toy&qid=1559571113&s=gateway&sr=8-13) (last visited June 7, 2019).

## Stikbot Dino Egg



[https://www.amazon.com/Stikbot-Dino-Egg-Color-Vary/dp/B07BHXQC63/ref=sr\\_1\\_fkmr1\\_1?keywords=Stikbot+Dino+Surprise&qid=1559571171&s=gateway&sr=8-1-fkmr1](https://www.amazon.com/Stikbot-Dino-Egg-Color-Vary/dp/B07BHXQC63/ref=sr_1_fkmr1_1?keywords=Stikbot+Dino+Surprise&qid=1559571171&s=gateway&sr=8-1-fkmr1) (last visited June 7, 2019).

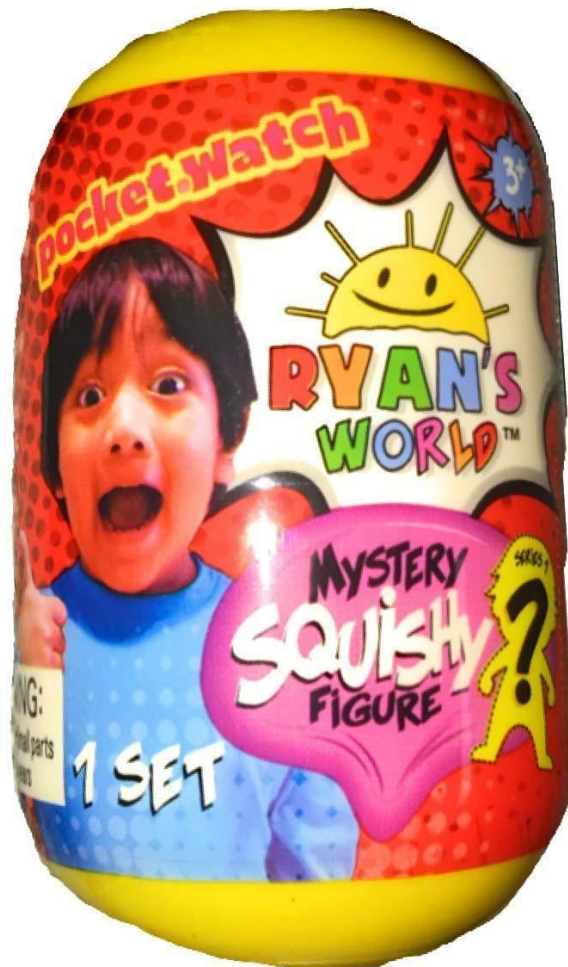
## Yowie Chocolate Characters



[https://www.amazon.com/Yowie-Chocolate-Characters-PACK-12/dp/B01MSAU7TA/ref=sr\\_1\\_3?keywords=Yowie+Surprise&qid=1559571518&s=gateway&sr=8-3](https://www.amazon.com/Yowie-Chocolate-Characters-PACK-12/dp/B01MSAU7TA/ref=sr_1_3?keywords=Yowie+Surprise&qid=1559571518&s=gateway&sr=8-3) (last visited June 7, 2019).



### Ryan's World Mystery Squishy



[https://www.amazon.com/Ryans-World-Mystery-Squishy-Figure/dp/B07HY45VWK/ref=sr\\_1\\_2?keywords=Ryan%E2%80%99s+World+Mystery+Squishy&qid=1559571579&s=gateway&sr=8-2](https://www.amazon.com/Ryans-World-Mystery-Squishy-Figure/dp/B07HY45VWK/ref=sr_1_2?keywords=Ryan%E2%80%99s+World+Mystery+Squishy&qid=1559571579&s=gateway&sr=8-2) (last visited June 7, 2019).

June 7

## Toy Capsule Vending Machines



<https://www.gumball.com/products/big-pro-2-inch-toy-vending-machine> (last visited June 7, 2019).

### Transformers BotBots



<https://www.target.com/p/transformers-botbots-series-1-collectible-blind-bag-mystery-figure-surprise-2-in-1-toy/-/A-75560486> (last visited June 7, 2019).

## Poopsie Cutie Tooties Surprise



[https://www.amazon.com/Poopsie-Tooties-Surprise-Collectible-Character/dp/B07JQX2P58/ref=sr\\_1\\_1?keywords=Poopsie+Cutie+Tooties+Surprise+Collectible+Slime+%26+Mystery+Character+2&qid=1559661175&s=toys-and-games&sr=1-1](https://www.amazon.com/Poopsie-Tooties-Surprise-Collectible-Character/dp/B07JQX2P58/ref=sr_1_1?keywords=Poopsie+Cutie+Tooties+Surprise+Collectible+Slime+%26+Mystery+Character+2&qid=1559661175&s=toys-and-games&sr=1-1) (last visited June 7, 2019).



### L.O.L. Surprise! Biggie Pet – Spicy Kitty



<https://www.amazon.com/L-L-Surprise-Biggie-Pet/dp/B07BHPXQ5W> (last visited June 7, 2019).

**Andy Warhol Campbell Soup Can Blind Box**



<https://www.amazon.com/Kidrobot-Warhol-Campbells-Blind-Figure/dp/B01MSD1GKF> (last visited June 7, 2019).

### My Little Pony Blind Box





**Breyer Stablemates Mystery Horse Surprise**



<https://www.amazon.com/Breyer-Stablemates-Mystery-Surprise-Sealed/dp/B079JBP5YV> (last visited June 7, 2019).



## Educational Insights Playfoam Pals Pet Party 6-Pack - Surprise Egg



[https://www.amazon.com/Educational-Insights-Playfoam-Party-6-Pack/dp/B000NNSJFW/ref=sr\\_1\\_13?keywords=surprise+toys&qid=1559658122&s=gateway&sr=8-13](https://www.amazon.com/Educational-Insights-Playfoam-Party-6-Pack/dp/B000NNSJFW/ref=sr_1_13?keywords=surprise+toys&qid=1559658122&s=gateway&sr=8-13)  
(last visited June 7, 2019).

## Kinder Joy – Chocolate Egg with Surprise Toy Inside



[https://www.amazon.com/Kinder-Joy-Chocolate-Surprise-Inside/dp/B079M6Y8VL/ref=sr\\_1\\_1?keywords=kinder+surprise&qid=1559661483&s=gateway&sr=8-1](https://www.amazon.com/Kinder-Joy-Chocolate-Surprise-Inside/dp/B079M6Y8VL/ref=sr_1_1?keywords=kinder+surprise&qid=1559661483&s=gateway&sr=8-1)  
(last visited June 7, 2019).