



Fairplay
89 South Street
Boston, MA 02111

Center for Digital Democracy
1015 15th Street NW, #600
Washington, DC 20005

June 2, 2022

Lina M. Khan, Chair
Alvaro Bedoya, Commissioner
Noah Joshua Phillips, Commissioner
Rebecca Kelly Slaughter, Commissioner
Christine S. Wilson, Commissioner
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

VIA E-MAIL

Re: Request for Investigation of Unfair and Deceptive Practices by Electronic Arts, Inc.

Dear Chair Khan, Commissioner Bedoya, Commissioner Phillips, Commissioner Slaughter, and Commissioner Wilson:

Fairplay and the Center for Digital Democracy (“CDD”), together with the undersigned organizations, ask the Federal Trade Commission (“FTC”) to investigate whether Electronic Arts, Inc. (“EA”) is engaging in unfair and deceptive practices in violation of Section 5 of the Federal Trade Commission Act. EA is the publisher of FIFA: Ultimate Team (“FUT”), one of the most popular sports video games of all time.¹ As demonstrated by a major report published this week by the Norwegian Consumer Council (“NCC”), *Insert Coin: How the Gaming Industry Exploits Consumers Using Loot Boxes*, EA’s sale of loot boxes, as well as virtual currencies to purchase those loot boxes, unfairly exploits children and teens for profit. A copy of this report is attached.

¹ Robert Kidd, *As FIFA Game Passes Sales Milestone, EA Sports Seeks New Markets And To Clear Up Image Rights ‘Misunderstanding,’* Forbes, Feb. 2, 2021, <https://www.forbes.com/sites/robertkidd/2021/02/02/as-fifa-game-passes-sales-milestone-ea-sports-seeks-new-markets-and-to-clear-up-image-rights-misunderstanding/?sh=16b76c6f12bc> (last visited May 23, 2022).



FUT players build soccer teams made up of real-world players and compete against each other in live, online matches. Professional soccer players who are better athletes in real life are more powerful in FUT and therefore more likely to help a game player win matches. Game players acquire soccer players and build their teams by buying “FIFA packs,” loot boxes that can be purchased with two types of virtual currencies, FIFA points and coins. Points can be purchased with real money, and coins can be earned by playing matches. EA updates the strongest in-game players weekly to correspond with the athletes’ performance in the real world.²

The NCC’s report discusses the ways in which EA engages in a number of sophisticated, manipulative design techniques to exploit game players into buying FIFA packs. The report notes that while children under 13 are not supposed to be able to play FIFA Ultimate Team, which is EA’s live, online version of the FIFA game, there is ample evidence that they do.³ The Entertainment Software Ratings Board, a self-regulatory agency that assigns content ratings and warnings to video games, gives FIFA an “E” rating, which means it is appropriate for everyone.⁴ Evidence from video game streaming channels further suggests that the game is enormously popular with minors.⁵

The listed price of FUT is \$50-\$100 depending on the edition and video game console, but EA aggressively markets FIFA packs to persuade players to spend more money as they play. EA generates demand for packs with special offers that are available in limited quantities or for a limited time, and it entices players to buy packs in search of special players, such as FIFA 22’s cover star, Kylian Mbappé.⁶

Packs are only available in the game through points or coins. Forcing players to purchase items through an in-game currency abstracts the price of the packs and adds a transactional layer between spending real money and buying the packs.⁷ Virtual currencies are a problem in

² Norwegian Consumer Council, *Insert Coin: How the Gaming Industry Exploits Consumers Using Loot Boxes 3*, (2022), <https://fil.forbrukerradet.no/wp-content/uploads/2022/05/2022-05-31-insert-coin-publish.pdf> (last visited May 31, 2022); Your guide to play FIFA 22 Ultimate Team (FUT) as a beginner, EA Help (2021), [https://help.ea.com/in/help/fifa/fifa-ultimate-team-fut/#:~:text=FIFA%20Ultimate%20Team%20\(FUT\)%20is,your%20mark%20on%20the%20pitch](https://help.ea.com/in/help/fifa/fifa-ultimate-team-fut/#:~:text=FIFA%20Ultimate%20Team%20(FUT)%20is,your%20mark%20on%20the%20pitch). (last visited May 23, 2022).

³ Norwegian Consumer Council, *supra* note 2, at 23-24.

⁴ FIFA 22 Rating Summary, Entertainment Software Rating Board, <https://www.esrb.org/ratings/37973/FIFA+22/> (last visited May 31, 2022).

⁵ Kailem, *LOSING TO A 5 YEAR OLD, FIFA 19 MY FIRST GAME PLAY*, YouTube (Sept. 15, 2018), <https://www.youtube.com/watch?v=2Baf-Qoxtxg>; Dan D, *FIFA 18 (PS4 Pro) - Fifa Kids Gaming!*, YouTube (Oct. 27, 2017), <https://www.youtube.com/watch?v=0MkZbjlaKsg>.

⁶ Norwegian Consumer Council, *supra* note 2, at 32.

⁷ Norwegian Consumer Council, *supra* note 2, at 8.

particular where children and teens are concerned, because their sense of financial literacy is still developing.⁸

Purchasing card packs and finding good player cards confers a significant competitive advantage in competition against friends online,⁹ but the chances of opening a coveted card, such as a Player of the Year, are miniscule unless a gamer spends thousands of dollars on points or plays for thousands of hours to earn coins, as demonstrated on pages 32-33 of the report.¹⁰ The odds that EA lists for specific pack rewards are difficult for even an adult to appreciate without a sophisticated understanding of probability and statistics.¹¹ Further, as described on pages 29-30 of the report, these probabilities cover outcomes that are so broad they are meaningless to game players.¹²

Moreover, EA says in fine print that pack contents are “dynamically generated.”¹³ The game could, in theory, provide gamers with offers and rewards through an algorithm designed to maximize their interest in specific players and teams. Odds could also be manipulated based on gamer spending habits within the game.

A related concern is whether EA engages in special deals with video game streamers that make rare rewards appear more attainable to the game players watching those videos than they actually are. It is unclear whether it is an industry practice for video game companies to provide popular video game streamers better odds of receiving coveted loot box rewards in exchange for playing specific games on their channels.¹⁴

Ultimately, EA has made the pursuit of FIFA packs endless: It releases a new version of FIFA annually, and when a player moves from FIFA 22: Ultimate Team on to the next iteration of the game, their pack rewards from prior versions do not advance with them.¹⁵ Instead, the entire process begins anew. The combination of constant updates to each game version, annual

⁸ *Bringing Dark Patterns to Light*, Fed. Trade Comm’n Workshop (Apr. 29, 2021) (statement of Dr. Jenny Radesky, Professor, University of Michigan Medical School), https://www.ftc.gov/system/files/documents/public_events/1586943/ftc_darkpatterns_workshop_transcript.pdf (“(C)hildren don’t understand virtual currencies. They start to understand money concepts, like coins and counting, between ages three and five. But it takes years to develop the idea of value and how you exchange money for different goods.”).

⁹ Norwegian Consumer Council, *supra* note 2, at 28.

¹⁰ Norwegian Consumer Council, *supra* note 2, at 32-33.

¹¹ Norwegian Consumer Council, *supra* note 2, at 14, 29-34.

¹² Norwegian Consumer Council, *supra* note 2, at 29-30.

¹³ Norwegian Consumer Council, *supra* note 2, at 31.

¹⁴ Jasmine Henry, *Game Publishers Offered Better Loot Box Odds to Sponsored Streamers*, Game Rant, Aug. 7, 2019, <https://gamerant.com/ftc-loot-boxes-better-odds-sponsored-streamers/> (last visited May 31, 2022).

¹⁵ Norwegian Consumer Council, *supra* note 2, at 35.



new versions, and the incentive to compete forces FUT game players into an endless pay-to-win cycle.

These practices raise issues that concerned organizations and professionals have highlighted in the past, and issues the Commission has studied.

The Commission held a workshop on loot boxes in 2019. A loot box is a collection of mystery items purchased in a video game that allow a game player to change their appearance (e.g. with skins or emotes) or provide them with a strategic advantage (e.g. through special tools or characters). When game players purchase a loot box, they do not know what is inside, and the items vary in value, rarity, or both.¹⁶ Workshop participants identified concerns specific to kids and loot boxes, including the fact that kids are more vulnerable to manipulation and social pressure.¹⁷ In addition, Commission staff said following the workshop, “Staff advises that disclosure of loot box odds must be accurate and nonmisleading to avoid a Section 5 violation.”¹⁸ As noted above, this is a serious concern in FUT, where information about reward probabilities is limited and deliberately unclear.

Fairplay (then Campaign for a Commercial-Free Childhood) and CDD have highlighted problems with virtual currencies, loot boxes, and other manipulative design techniques in past comments submitted to the Commission on dark patterns.¹⁹ Dark patterns exploit kids’ and teens’ developmental vulnerabilities, including their fear of missing out, esteem needs, and sense of social pressure. They also place young people on an endless treadmill of game play, all while obscuring game play costs with virtual currency.²⁰ We urge the Commission to investigate the use of dark patterns in FUT.

Finally, we are seriously concerned that FUT’s packs introduce kids and teens to gambling. The packs resemble slot machines: They require a game player to stake something of value (in-game currency) on the possibility of receiving an unknown, random reward in the

¹⁶ FTC Video Game Loot Box Workshop Staff Perspective, (2020), https://www.ftc.gov/system/files/documents/reports/staff-perspective-paper-loot-box-workshop/loot_box_workshop_staff_perspective.pdf (last visited May 23, 2022) [hereinafter FTC Workshop Staff Perspective]; Norwegian Consumer Council, *supra* note 2, at 8.

¹⁷ FTC Workshop Staff Perspective, *supra* note 16, at 3.

¹⁸ FTC Workshop Staff Perspective, *supra* note 16, at 4.

¹⁹ See generally Request for Comments Regarding Topics to be Discussed at Dark Patterns Workshop, FTC-2021-0019, Comments of Campaign for a Commercial-Free Childhood and Center for Digital Democracy, Comment No. 108 (May 28, 2021), <https://www.regulations.gov/comment/FTC-2021-0019-0108>.

²⁰ *Id.* at 12-15.

future, and are accompanied by bright colors and animations.²¹ Research shows that there are connections between spending money on loot boxes and problem gambling in adolescents.²² In some cases, young people who have already developed problem gambling behaviors seek out games with loot boxes; for others, loot boxes are a gateway to problem gambling.²³ EA may insist that the majority of game players do not spend money in FUT, but the video game industry makes large amounts of money off of big-spending “whales.”²⁴

We are highly concerned these practices violate Section 5 of the FTC Act.²⁵ We urge the Commission to investigate EA and specifically, to seek answers to the following questions:

1. How many children ages 6-9 and 9-12 play FUT? How many teenagers? What steps, if any, does EA take to verify the ages of players, or to prevent children under age 13 from playing the live version of the game or purchasing loot boxes?
2. What percentage of children and teenagers playing FUT pay for points? How much revenue does EA earn from child and teenage FUT players?
3. Are the design and marketing techniques EA uses in FUT, such as its use of virtual currencies and the way it artificially generates demand by offering “special” packs, dark patterns that mislead or take unfair advantage of FUT players?
4. Does EA provide accurate statistics on FIFA player packs?
5. What does it mean that FIFA packs are “dynamically generated”? Does EA use data-driven techniques to manipulate game players’ odds of receiving certain player cards? Relatedly, does EA use the data it collects about young people’s favorite teams and players and spending habits to market FIFA packs to individual game players? Are packs marketed more frequently and aggressively to “whales?”
6. Does EA offer popular video game streamers better odds of opening coveted rewards if they agree to stream themselves playing FUT?
7. Is marketing FUT for a cost of \$50-\$100 deceptive to children and teens when spending money in the game on packs is essential to compete successfully with friends?

²¹ James Close & Joanne Lloyd, *Lifting the Lid on Loot-Boxes: Chance-Based Purchases in Video Games and the Convergence of Gaming and Gambling* at 14, (2021), https://www.begambleaware.org/sites/default/files/2021-03/Gaming_and_Gambling_Report_Final.pdf; Norwegian Consumer Council, *supra* note 2, at 27.

²² David Isaac Zende et al., *Paying for loot boxes is linked to problem gambling, regardless of specific features such as cash-out and pay-to-win* 7-8, 17-18, (2020) <https://eprints.whiterose.ac.uk/148267/>.

²³ See Stuart Gordon Spicer et al., *Loot boxes and problem gambling: Investigating the “gateway hypothesis,”* 131 *Addictive Behaviors* (2022), <https://doi.org/10.1016/j.addbeh.2022.107327>.

²⁴ Norwegian Consumer Council, *supra* note 2, at 7-8.

²⁵ 15 U.S.C. § 45.



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8. Are EA's representations about FIFA packs and points likely to be misleading from the perspective of a 9-year-old? A 13-year-old? A 15-year-old? Are children at these ages likely to understand the complex statistical probability of receiving a highly coveted card? Are children at these ages likely to understand the cost of FIFA packs in real money, given EA's virtual currency system obscures the true cost?
9. Does FUT's random rewards system indoctrinate children into gambling behaviors? Does it harm children who are already more vulnerable to problem gambling behavior?
10. Has EA ever conducted or reviewed research on whether its games promote gambling to young people?



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We urge the Commission to read the NCC report in full and investigate EA's practices in FIFA: Ultimate Team for unfairness and deception in violation of Section 5 of the FTC Act.

Respectfully Submitted,

Haley Hinkle, Policy Counsel
Fairplay
89 South Street
Boston, MA 02111
haley@fairplayforkids.org
(574) 453-8595

Katharina Kopp, Deputy Director and Director of Policy
Center for Digital Democracy
1015 15th Street NW, #600
Washington, DC 20005
kkopp@democraticmedia.org
(202) 836-4621

Organizations Supporting Investigation Request:

Campaign for Accountability
Children and Screens: Institute of Digital Media and
Child Development
Common Sense Media
Consumer Federation of America
Electronic Privacy Information Center (EPIC)
Florida Council on Compulsive Gambling, Inc.
Massachusetts Council on Gaming and Health
National Consumers League
National Council on Problem Gambling
Parent Coalition for Student Privacy



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Public Citizen

Stop Predatory Gambling and the Campaign for
Gambling-Free Kids

TINA.org (Truth in Advertising, Inc.)

U.S. PIRG