



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of Commissioner  
Julie Brill

To: Don Clark  
From: Yael Weinman  
Date: November 6, 2012  
Re: COPPA Rule: Comments to be placed on the public record

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On November 1, 2012, Commissioner Julie Brill and Chairman Jon Leibowitz met with representatives from several consumer groups in connection with the agency's proposed modifications to the COPPA Rule.<sup>1</sup>

The representatives discussed the "know or have reason to know" change to the definition of "web site or online service directed to children" and whether it was consistent with the "actual knowledge" requirement in the COPPA statute. Prof. Campbell indicated her view that the change would be permissible under the statute. Nevertheless, the attendees indicated that an "actual knowledge" standard might be acceptable to them.

Prof. Campbell and other representatives expressed concern about the agency's proposal with regard to "family-friendly sites." They expressed concern that the proposed rule modifications did not define what constitutes a "disproportionately large" child audience. A number of attendees reported that content providers believe almost all of their websites are family-friendly rather than child-directed, and will use it as a "get out of COPPA free card." The attendees presented Comscore data indicating the percentage of children in the viewing audience for various websites. Prof. Campbell advocated for a bright-line rule defining "family-friendly," rather than the current proposal.

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<sup>1</sup> The following representatives from outside the Commission attended the meeting: Susan Grant, Consumer Federation of America; Eric Wallace, American Academy of Pediatrics; Alexander Schneider, Consumers Union; April Delaney and Jillian Oberfield, Commonsense Media; David Jacobs, Electronic Privacy Information Center; Prof. Angela Campbell, Laura Moy, Jessica Wang, and Jordan Blumenthal, Institute for Public Representation, Georgetown University Law Center; Prof. Kathryn Montgomery, American University; Joy Spencer and Jeff Chester, Center for Digital Democracy.

The following Commission personnel attended the meeting: Christine DeLorme, Attorney Advisor–Chairman Leibowitz's office; Deborah Matties, Attorney Advisor–Chairman Leibowitz's office; Kathleen Benway, Attorney Advisor–Commissioner Brill's office; Yael Weinman, Attorney Advisor–Commissioner Brill's office; Matt McDonald, intern–Commissioner Brill's office; Steve Bellovin, Chief Technologist.

The representatives expressed their support for including geolocation information and persistent identifiers in the definition of “personal information.”

The representatives also discussed the proposed “on behalf of” change to the definition of “operator.” The representatives pointed out that this would expand COPPA liability to operators when personal information “is collected in the interest of, as a representative of, or for the benefit of” the operator. The representatives acknowledged that some industry participants are opposed to this change, and have made the argument that this could make platforms liable under COPPA for the activities of the apps that they offer to consumers. The representatives indicated that a proposal to avoid liability in such situations might be acceptable to them.

The representatives distributed the attached documents during the meeting.

## **The Commission should maintain the current definition of websites “directed to children.”**

Under the Commission’s supplemental proposals, part (c) of the definition of websites “directed to children” would allow so-called “family friendly” websites to collect personal information about visitors as long as they included an age gate and avoided collecting personal information about self-identified children under the age of 13. This relaxed standard would apply to websites that, based on their overall content, are “likely to attract an audience that includes a disproportionately large percentage of children under age 13 as compared to the percentage of such children in the general population.” The Center for Digital Democracy opposes this proposal for the following reasons.

### **Adoption would create a large loophole and as a result, websites that are currently defined as directed to children will no longer be considered directed to children.**

- Disney originally proposed this change in definition. However, Disney has claimed that apart from Club Penguin, all its websites are family oriented. However, most of Disney’s websites are clearly directed to children under the current definition. For example,
  - Disney Pixie Hollow features animated characters, characters that are popular with children, child-oriented games, and visual content targeted to children. As seen in the attached screenshots, Pixie Hollow is directed to children.
  - DisneyXD is tied to Disney’s cable channel that targets boys aged 6 to 14.<sup>1</sup> As can be seen from the attachments, its animated characters and videos from children’s television programs also target children.
  - Disney Toontown also features animation, cartoon characters, and child-oriented games.
- If the proposal is adopted, all other children’s entertainment sites will also claim they don’t primarily target children. Similar websites operated by Cartoon Network, Nickelodeon, and their competitors will also claim to be “family friendly,” rather than directed at children.

### **Websites directed to children will institute age gating and decrease children’s protection.**

- Age gating is unreliable—there are no verifiable mechanisms to ensure that children are truthful about their age.
- Age gating encourages children to lie. When a “family friendly” website bars entry based on a user’s date of birth, children quickly learn to circumvent this mechanism.
- Age gating will likely not be neutral. Age gating in the “family friendly” category will likely split users into divergent experiences. Unless the experiences for different age groups are comparable, children will have incentives to lie about their age for improved website or game play experiences.

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<sup>1</sup> See “Comments of the Center for Digital Democracy, et al,” 24 Sept. 2012, at 30, <http://ftc.gov/os/comments/copparulereview2012/561789-00094-84318.pdf>.

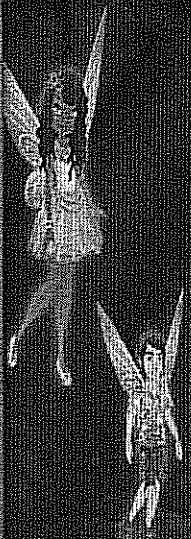
## Pixie Hollow World



- Play
- Pixie Hollow World
- Purchase Options
- Parents
- Help
- Secret Codes
- Pixie Central
- Fairies & Friends
- Videos
- Activities
- Games
- Movies & TV
- Books
- Parks & Travel
- Live Events



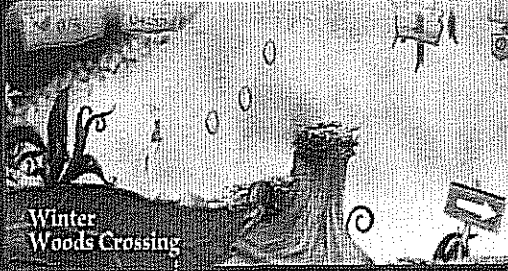
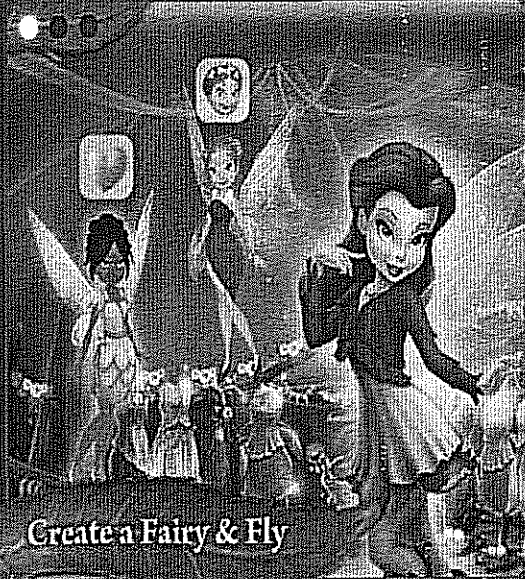
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## Games

- Disney FAIRIES
- Play
- Pixie Hollow World
- Pixie Central
- Fairies & Friends
- Videos
- Activities
- Games**
- Movies & TV
- Books
- Parks & Travel
- Live Events
- Products



View All

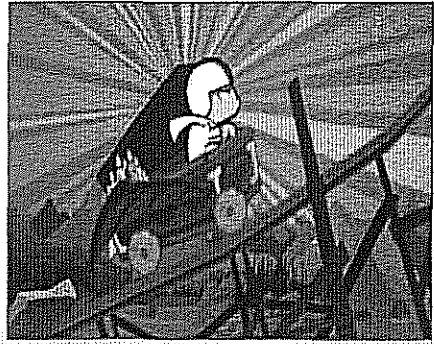


BATTLE FOR SLUGTERRA

PLAY NOW!

Disney TV Disney XD

Disney XD navigation bar featuring character icons and menu options: Games, Videos, TV Schedule, WATCH



game / Posted 1 day ago

### Play Trick or Launcho

Watch out for skeletons, witches, ghosts, and bats. You already knew that, though, right? [Play Now »](#)

Comments Share

WATCH many of your favorite episodes online now!

GIRLS MONSTER

SKYLAR VS DEIMATA

BATTLE FOR SLUGTERRA





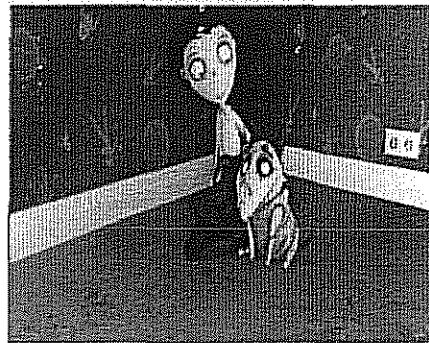
video / Posted 1 day ago

### New Pair of Kings tonight!

Like going to the dentist wasn't scary enough already... [View Now »](#)

Comments Share

WATCH many of your favorite episodes online now!



game / Posted 2 days ago

### AD: Create creepy projects with Victor

Secret objects are worth more points. How many can you find before time runs out? [Play Now »](#)

Comments Share

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POLICY & ACTION FROM CONSUMER REPORTS

November 1, 2012

Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

FTC Action Necessary to Update and Strengthen Children's Online Privacy Protection

Consumers Union, the public policy and advocacy division of *Consumer Reports*, supports the FTC's continuing goal of protecting children's privacy online, and we applaud work currently in progress to update and strengthen the Children's Online Privacy Protection Act (COPPA) Rule to protect the next generation of children and their parents.

The Commission's current COPPA Rule provides a solid framework for kids' privacy by empowering parents to make informed choices about the types of information companies can collect about their children. But 14 years after COPPA was first enacted, the online landscape is wholly different. More children spend more time on the internet than ever before. That is why we support current efforts to update the rule.

Parental consent and notice is crucial to making this rule work. Children do not have the same capability to make decisions about how their information can be collected and used online as adults. Parents and guardians are in a far better position to make informed choices.

As the Commission has proposed, websites servicing children should notify parents about all data collected, including third-party data collection. We also support the Commission's proposal to define "personal information" to include persistent identifiers, such as tracking cookies and behavioral advertising services, and geo-location, which ensures that parents will continue to have the ability to be informed and oversee data targeting practices directed at their children.

Consumers Union would like to thank the Commission for its commitment to the protection of children's privacy online. We look forward to continuing to support the work of the Commission in this area of great importance to children, families and consumers generally.

Sincerely,

A handwritten signature in cursive script that reads "Ellen Bloom".

Ellen Bloom  
Senior Director, Federal Policy & Washington Office  
Consumers Union