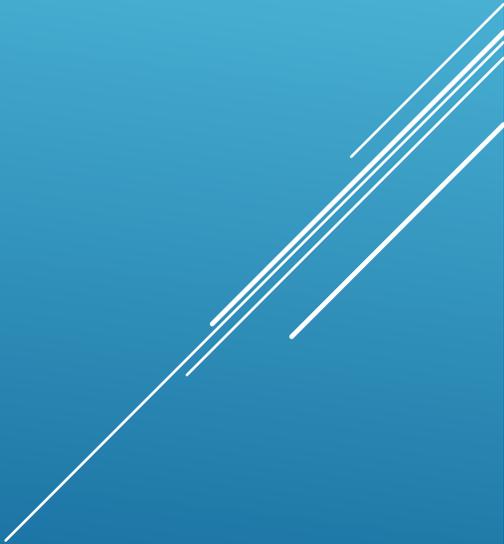


The European Union and copyright

A decorative graphic consisting of several parallel white lines of varying thicknesses, slanted diagonally from the bottom-left towards the top-right, set against a blue gradient background.

AGENDA

1. Consumer rights and protection
 2. The new EU directive on copyright
 3. The first-sale doctrine
 4. GDPR and children
- 

A STEP BACK ...



WHAT IS THE EUROPEAN UNION?

- ▶ A political and economic union
- ▶ 28 member states that are located primarily in Europe
- ▶ Population of 513 million
- ▶ Approx. 25 % global nominal GDP
- ▶ EU policies aim to ensure:

*"The free movement of **people**, **goods**, **services** and **capital** within the eternal market."*



HOW CAN THE EU LEGISLATE?

Directives

- Sets out a goal that all EU countries must achieve
- Up to the individual countries to devise their own laws on how to reach the goals
- E.g. EU consumer rights directive

Regulations

- Binding legislative act
- Must be applied in its entirety across the EU
- E.g. General Data Protection Regulation

CONSUMER RIGHTS IN THE EU

Why?

EU consumer rights has four key objectives:

1. **Protecting** you from serious risks and threats you cannot tackle as an individual
2. Giving you the **power** to make choices, based on clear, accurate and consistent **information**
3. **Safeguarding** your rights as a consumer, giving you access to fast and efficient ways of resolving disputes
4. Keeping consumer rights up to date with **economic** and **social** change

CONSUMER RIGHTS IN THE EU

- ▶ Specific rights when it comes to accessing and using telecommunications, internet and online services:
 - ▶ Every consumer in the EU has the right to receive **clear, correct and comprehensible key information** from a trader about the product or service before making an online purchase.
 - ▶ Every online consumer concluding a contract in the EU has the right to have **easy, direct and permanent access** to at least the **name** and **geographic address** of the provider
 - ▶ Every consumer has the right to receive, after having ordered the goods or services, **confirmation of the key elements of the contract in writing**
 - ▶ Any consumer in the EU, also in the digital environment, is **protected from unfair standard contract terms** by traders that create an unreasonable imbalance to the detriment of the consumer

EXAMPLES

APPLE:

“If you are a citizen of any European Union country [...] the governing law and forum shall be the laws and courts of your usual place of residence”

BLIZZARD:

Different EULA's for North America and Europe

EXAMPLES

6. **Limitations of Liability.** Blizzard, its parent, subsidiaries, Licensors and affiliates shall not be liable for any loss or damage arising out of your use of, or inability to access or use, the Platform or Account(s). Blizzard's liability shall never exceed the total fees paid by you to Blizzard during the six (6) months prior to your making a claim against Blizzard. Because some jurisdictions do not allow the exclusion or limitation of consequential or incidental damages, Blizzard's liability shall be limited to the fullest extent permitted by law.

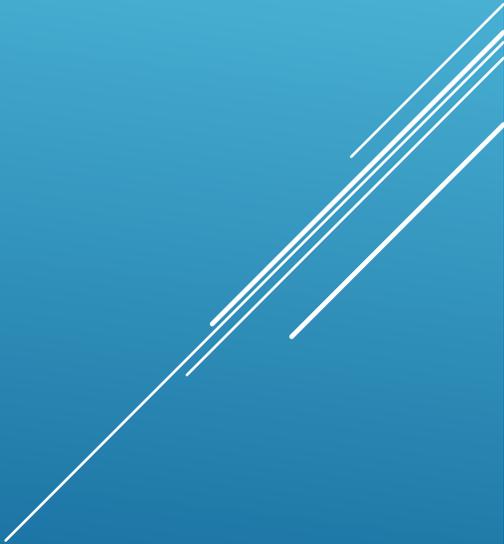
assessments, and the like, together with any interest, penalties, and additions imposed in connection with such transfer.

6. **Limitations of Liability.**

A. Blizzard may be liable in accordance with statutory law (i) in case of intentional breach, (ii) in case of gross negligence, (iii) for damages arising as result of any injury to life, limb or health or (iv) under any applicable product liability act. Gross negligence refers to an action or omission of significant carelessness, demonstrating a clear disregard of one's basic duties.

unthreatened, or (e) to report a crime or other offensive behavior.

CONSUMER RIGHTS IN THE EU - GDPR

- ▶ EU data protection rules guarantee the protection of your personal data whenever they are collected
 - ▶ The rules apply to both companies and organisations (public and private) in the EU **and those based outside the EU** who offer goods or services in the EU
 - ▶ What do people think about GDPR?
- 



Do you know a good GDPR consultant?
Yes.
Can you pass me their email address?
No.

Excited for the day after GDPR deadline day when, if I understand it, no one is legally allowed to talk to me ever again
— Dawn Foster (@DawnHFoster) May 16, 2018

Have you heard the GDPR joke about the man from Spain?
Unfortunately, I can't tell you because the data subject hasn't granted consent, and I have no other legal basis for processing.



joe

@mutablejoe

He's making a list

He's checking it twice

He's gonna find out who's
naughty or nice

Santa Claus is in contravention
of article 4 of the General Data
Protection Regulation (EU)

2016/679

UNFAIR STANDARD CONTRACT TERMS

... Any consumer in the EU, also in the digital environment, is **protected from unfair standard contract terms** by traders that create an unreasonable imbalance to the detriment of the consumer...

→ The EU consumer is not bound by the unreasonable terms



UNFAIR STANDARD CONTRACT TERMS

Some examples:

- ▶ Contract terms that a consumer did not have any real opportunity to become acquainted with before the conclusion of the contract, but which bind the consumer
- ▶ Contract terms that exclude or hinder the consumer's right to take legal action or exercise any other legal remedy (e.g. by requiring them to take disputes exclusively to arbitration)
- ▶ Contract terms automatically extending a contract of fixed duration when the deadline fixed for the consumer to express his desire not to extend it is unreasonably short;
- ▶ Contract terms that allow considerable price increases without giving the consumer the right to cancel the contract.

CONSUMER RIGHTS AND GAMES

- ▶ Games, marketed as free, should not mislead the consumers as to the actual acquisition costs
 - ▶ Games should not contain a direct call for children to buy game content or to persuade adults to do so
 - ▶ Consumers in the EU should be informed correctly about payment and no automatic payment without explicit consent should be done
 - ▶ Companies should provide the consumers with an e-mail address in case of questions and complaints
- 

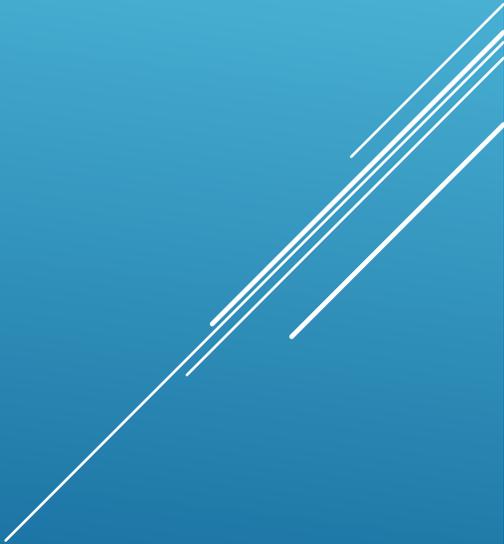
THE NEW EU DIRECTIVE ON COPYRIGHT



TIMETABLE

- ▶ September 2018: The European Parliament voted in favour of the draft
 - ▶ 26th of November: Closed-door compromise negotiations between Parliament and Council
 - ▶ 3rd of December: Closed-door compromise negotiations between Parliament and Council
 - ▶ 13th of December: Closed-door compromise negotiations between Parliament and Council
- ▶ January 2019: The Directive faces it's final vote

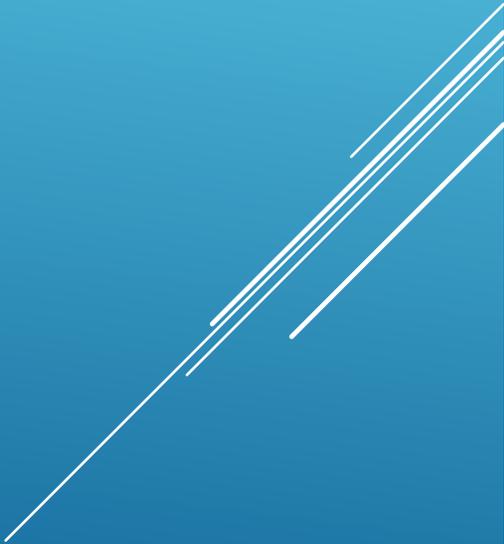
PURPOSE

- ▶ A higher level of protection of right holders
 - ▶ Update copyright law
 - ▶ Bring the copyright law into line with the digital age
 - ▶ Reduce the “value gap” between the profits made by internet platforms and content creators
- 

ARTICLE 11 AND 13

- ▶ Article 11 (aka. the “tax link”)
 - ▶ is giving press publishers direct copyright over use of their publications
- ▶ Article 13 (aka. the “upload filter”)
 - ▶ require websites who primarily host content posted by users to take “effective and proportionate” measures to prevent unauthorized postings of copyrighted content or be liable for their users’ actions

SUPPORTERS

- ▶ Alex Voss: *“I’m convinced that once the dust has settled, the internet will be as free as it is today, creators and journalists will be earning a fairer share of the revenues generated by their works, and we will be wondering what all the fuss was about”*
 - ▶ Paul McCartney: *“Music and culture matter. They are a heart and soul. But they don’t just happen; they demand the hard work of so many people”*
- 

VIDEO TIME



CRITICS

- ▶ *“an imminent threat to the future of the global network.”*
 - ▶ *“killing the open web. “*
 - ▶ *“irreparable damage to our fundamental rights and freedoms, our economy and competitiveness, our education and research, our innovation and competition, our creativity and our culture.”*
- 

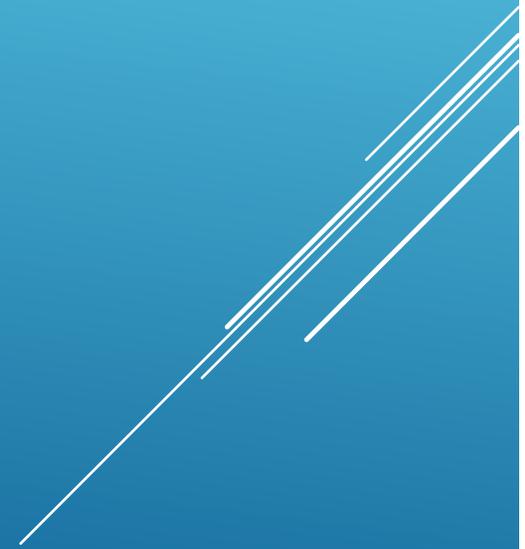
CRITICS

- ▶ YouTube chief executive:
 - ▶ “EU copyright plan could lead to blocked access”
 - ▶ Julia Reda
 - ▶ Attack on the hyperlink
 - ▶ Limiting freedom of expression and access to information
 - ▶ Boosting fake news
 - ▶ Freedom of expression limited
 - ▶ Surveillance risk
 - ▶ Start-up killer
- 

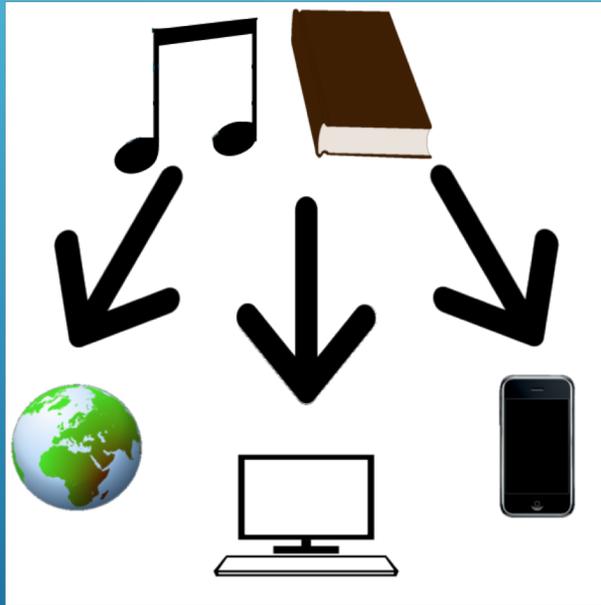
VIDEO GAMES

- ▶ Platforms will need to monitor user-created content
- ▶ Failure to do so could result in platforms paying heavy fees because the platform will be jointly liable with the user
- ▶ The measures required to moderate user-generated content will likely be extreme which could lead to disabling user-generated content
 - ▶ As an example Twitch has 2.2 million broadcasters monthly and 15 million daily active users in may 2018
- ▶ Furthermore the costly affair could also result in lack of competition

VOTING TIME



FIRST-SALE DOCTRINE



A MATTER OF COPYRIGHT

- ▶ Exclusive rights → Moral & Economical
- ▶ A limitation to distribute
- ▶ → “**First sale** in the Community of a copy of a program by the rightholder or with his consent shall exhaust the distribution right within the Community of that copy, with the exception of the right to control further rental of the program or a copy thereof.”
2009/24

TRADITIONAL APPROACH

- ▶ Does not include digital works
Works are licensed // not sold

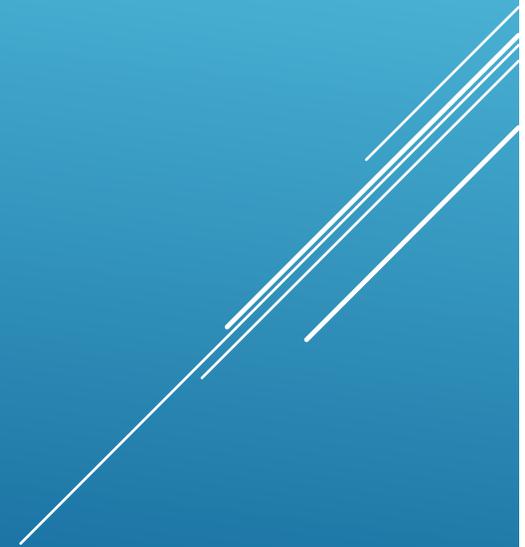
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Your Account, including any information pertaining to it is strictly personal. You may therefore not sell or charge others for the right to use your Account, or otherwise transfer your Account, nor may you sell, charge others for the right to use, or transfer any Subscription.

PROGRESSIVE APPROACH: THE USEDOSOFT CASE

- ▶ Oracle is selling computer software which is protected by copyright law
- ▶ Oracle offers group licenses for a minimum of 25 users each
- ▶ UsedSoft sells used software licenses

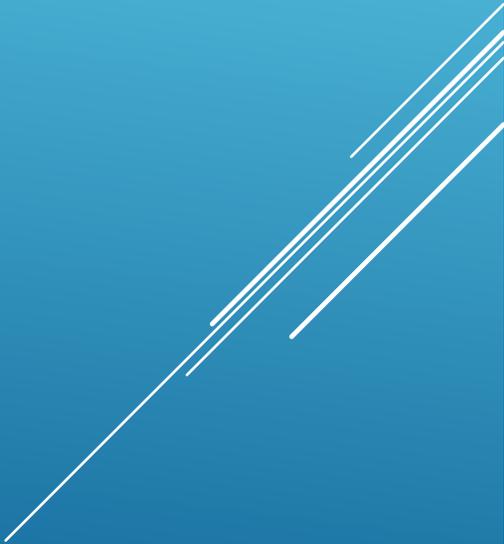
The question arises, first, whether a person who, like UsedSoft's customers, does not hold a user right in the computer program granted by the rightholder, but relies on the exhaustion of the right to distribute a copy of the computer program, is a 'lawful acquirer' of that copy?



WAS THE SOFTWARE REALLY LICENSED?

- ▶ 'With the payment for services you receive, exclusively for your internal business purposes, for an unlimited period a non-exclusive non-transferable user right free of charge for everything that Oracle develops and makes available to you on the basis of this agreement.'
 - ▶ Definition of a license agreement?
- 

DEFINITION OF SALE

- ▶ The grant of a right to use a copy of a computer program,
 - ▶ for an unlimited period,
 - ▶ in return for payment of a fee designed to enable the copyright holder to obtain a remuneration corresponding to the economic value of the copy of the work of which he is the proprietor
- 
- A decorative graphic consisting of several parallel white lines of varying lengths, slanted upwards from left to right, located in the bottom right corner of the slide.

CONCLUSION

The right of distribution of a copy of a computer program is exhausted if

- a) the copyright holder who has authorised, even free of charge, the downloading of that copy
- b) in return for payment of a fee intended to enable him to obtain a remuneration corresponding to the economic value of the copy of the work of which he is the proprietor, a right to use that copy
- c) for an unlimited period.

THIS QUALIFIES.....

Steam, Blizzard and more?

2. LICENSES □

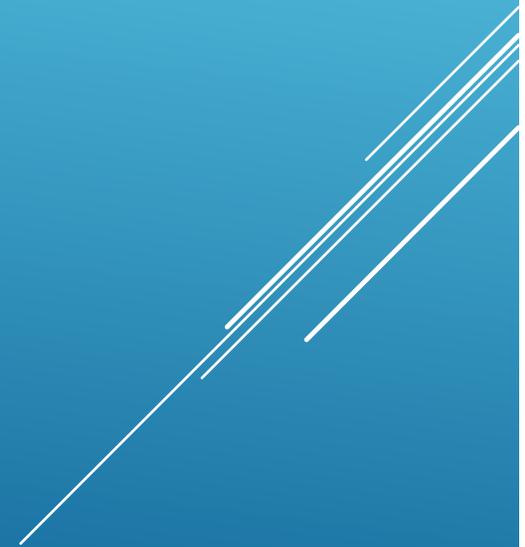
A. General Content and Services License

Steam and your Subscription(s) require the automatic download and installation of Content and Services onto your computer. Valve hereby grants, and you accept, a non-exclusive license and right, to use the Content and Services for your personal, non-commercial use (except where commercial use is expressly allowed herein or in the applicable Subscription Terms). This license ends upon termination of (a) this Agreement or (b) a Subscription that includes the license. The Content and Services are licensed, not sold. Your license confers no title or ownership in the Content and Services. To make use of the Content and Services, you must have a Steam Account and you may be required to be running the Steam client and maintaining a connection to the Internet.

For reasons that include, without limitation, system security, stability, and multiplayer interoperability, Steam may need to automatically update, pre-load, create new versions of or otherwise enhance the Content and Services and accordingly, the system requirements to use the Content and Services may change over time. You consent to such automatic updating. You understand that this Agreement (including applicable Subscription Terms) does not entitle you to future updates, new versions or other enhancements of the Content and Services associated with a particular Subscription, although Valve may choose to provide such updates, etc. in its sole discretion.

FUTURE?

- ▶ Principles confirmed...although not back-up copies
- ▶ Software directive
- ▶ Practical problems with controlling downloads



I will not resell my digital files.
I will not resell mu diaital files.



TXT2PIC.COM



THE GDPR-KIDS AND MOBILE GAMES

MOBILE GAMES AND CHILDREN'S DATA

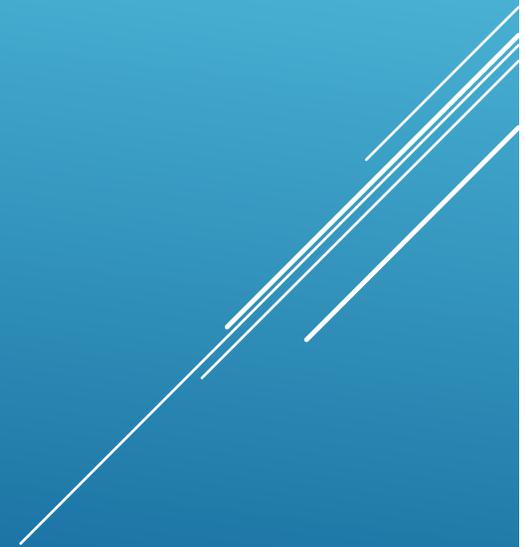


SPECIFIC PROTECTION GRANTED TO CHILDREN UNDER THE GDPR

Full novelty within the EU data protection framework

Rationale?

The 'empowerment versus protection' and the 'individualized versus average child' dilemmas in EU data protection law



GDPR-K ARTICLE 8

Article 8 of the General Data Protection Regulation

1. Where point (a) of Article 6(1) applies, in relation to the offer of **information society services directly to a child, the processing of the personal data** of a child shall be lawful where the child is **at least 16 years old**. Where the child is below the age of 16 years, such processing shall be lawful only if and to the extent that **consent is given or authorised by the holder of parental responsibility over the child**. Member States may provide by law for a lower age for those purposes provided that such lower age is **not below 13 years**.

WHO IS A “CHILD” UNDER THE GDPR?

No definition of a “child”

No unique age threshold

No adequate debate concerning the age threshold

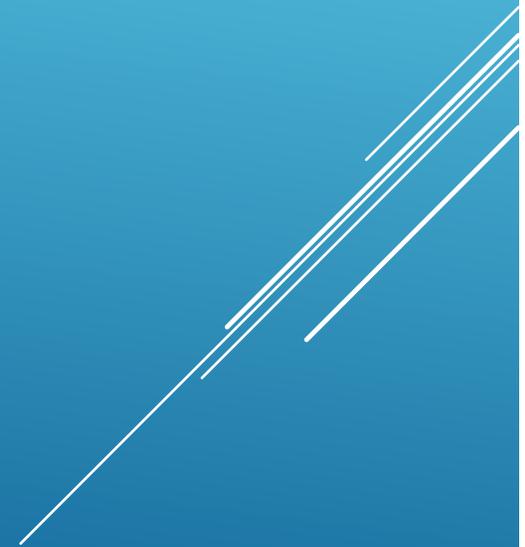


CONSENT OR AUTHORISATION

Consent [for the processing of the personal data of a child] is **given** or **authorised** by the holder of parental responsibility over the child

What is the difference between the two activities?

When the consent can be given?



DO MOBILE GAMES FALL UNDER THE SCOPE OF ARTICLE 8 OF THE GDPR?

Conditions:

Information service society;

any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services

directly to a child; and

services that are targeted at children or all services that are actually used by children on a regular basis?

the data controller relies on consent as a legitimation ground

NOTICES ADDRESSED TO CHILDREN MUST BE CHILD-FRIENDLY

Article 12 of the GDPR imposes the obligations to ensure that information provided to data subjects is:

a concise, transparent, intelligible and easily accessible form, using clear and plain language, in particular for any information addressed specifically to a child

Recital 58 expands: “Given that children merit specific protection, any information and communication, where processing is addressed to a child, should be in such a clear and plain language that the child can easily understand.”

FIRST THINGS FIRST!

TAP HERE TO SEE OUR TERMS AND PRIVACY NOTICE!

TO START FLINGING BIRDS AND POPPING PIGS YOU MUST ACCEPT OUR TERMS OF SERVICE!

ACCEPT

Gardenscapes

Important

By choosing Accept, I agree with the Terms of Use and Privacy Policy.

[Terms of Use](#)

[Accept](#)

I hereby consent to Kiloo's disclosure of the advertising ID of my device to advertising network companies (see below) for the purpose of serving targeted advertisements in the game based on my personal preferences.

I ACCEPT

OK

By checking off the box above, I understand that I can always withdraw my consent at any time from within Settings in the game, and I can find more information on Kiloo's processing of my personal data and the identity of the advertising network companies in [Kiloo's privacy policy](#).



We've updated our Terms

To continue playing, you need to confirm that you agree to our Terms of Service and have read our Privacy Policy

[Terms of Service](#)

[Privacy Policy](#)

Accept

29.3K

WE ARE UPDATING OUR PRIVACY POLICY!

[News](#) 3 days ago

Privacy Policy Update



PRIVACYGRADE.ORG CHECK



LEGO® Ninja...



Super Jabbe...



Scrubby Dub...



Tiny Farm®



Angry Birds...



Angry Birds



Tom's Messe...



Monsters U:...



Happy Farm:...

Apps get a letter grade (A,B,C or D) that depends on two things:

How the app tracks you; and

whether that tracking matches up with your expectations

BUT WHAT DO CHILDREN THINK ABOUT DATA PRIVACY?

