



# Spotlight

## Gambling, Children and Video Games

Is it time to lock the loot box and  
throw away the key?

No. 1 of 2020

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### Abstract

This Spotlight examines issues surrounding the regulation of in-game purchases through 'loot boxes'. The widespread emergence of loot box mechanics in video games has given rise to concerns that children are being exposed to addictive practices that bear strong similarities to gambling. This paper provides a comprehensive examination of loot boxes and considers whether as part of the updating of Ireland's gambling laws, legislative intervention is needed to address this relatively novel concept.



20 February 2020

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**This Spotlight may be cited as:**

Oireachtas Library & Research Service, 2020, *Spotlight: Gambling, Children and Video Games: Is it time to lock the loot box and throw away the key?*

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## Glossary

This section sets out a number of definitions for the purpose of this Spotlight.

**AAA games** [pronounced triple A]: is an informal classification which refers to games featuring the highest production values that are developed by the larger game studios and funded by a relatively large budget. Free-to-play games are generally not included in this classification.

**DLCs**: refers to downloadable content and includes any game-related material that may be downloaded within a game. A common type of DLC is a release within a game providing an extension to the main storyline. DLCs will generally feature new maps, items, playable characters and levels. DLCs are common features in AAA games.

**Esports**: also known as electronic sports, e-sports or eSports, refers to competitive video gaming which can take place at a professional or amateur level.

**ESRB (Entertainment Software Rating Board)**: is the regulatory body that assigns ratings for video games and apps (software applications) in the United States of America. The ESRB rating system encompasses guidance about age-appropriateness, content and interactive elements. More information about the ESRB is available at <https://www.esrb.org/>. The ESRB also provides information as to whether games feature real or simulated gambling<sup>1</sup> and whether a game includes in-game purchases.

**Free-to-play/freemium games**: free to play games or 'freemium' games are games which can be played without purchasing the game itself. This is a common feature of pc and mobile games where players can commence playing a game for free but are subsequently encouraged to spend real money to progress through the game, gain an advantage over other players or customise their playing experience.

**Gaming disorder**: is defined by the World Health Organisation as "a pattern of gaming behaviour ("digital-gaming" or "video-gaming") characterized by impaired control over gaming, increasing priority given to gaming over other activities to the extent that gaming takes precedence over other interests and daily activities, and continuation or escalation of gaming despite the occurrence of negative consequences."<sup>2</sup>

**Grinding**: refers to playing repetitive tasks within a game to progress through the game.

**Loot box**: a loot box is an item that can be purchased within a game using real or in-game currency. They may also be offered as a reward for progression during a game. Loot boxes can either contain randomised items<sup>3</sup> (the contents of which are only identified to the gamer upon

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<sup>1</sup> These labels have not been applied to games featuring loot boxes.

<sup>2</sup> WHO (2018), 11<sup>th</sup> Revision of the International Classification of Diseases (ICD-11). Available at <https://www.who.int/features/qa/gaming-disorder/en/>. [Last accessed 18/02/2020]

<sup>3</sup> For example, loot boxes in the FIFA Ultimate Team franchise take the form of virtual packs of cards similar to a pack of virtual trading cards. While there may be a set number of specific card types in a pack (i.e. a pre-determined ratio of special cards to normal cards), the contents of the pack will be random, based on set odds with higher-rated cards less likely to be contained within the pack than lower-valued cards.

opening the loot box) or standard fixed items<sup>4</sup> which are clearly set out in the description of the loot box in question.

**Micro-transactions:** a micro-transaction involves any in-game purchase where the gamer spends currency for an in-game item. This in-game item can take the form of downloadable gear, items, playable skins, extra lives, unique customisations, in-game currency or items designed to speed up the progression of the gamer in the game. Micro-transactions may include the purchase of loot boxes. While the term is sometimes used to refer to transactions involving either in-game currency or real currency, for the purpose of this paper micro-transactions should be understood as only referring to transactions involving real currency.

**Pay-to-win:** refers to the progression system used in certain games where gamers are encouraged to spend real money in order to progress through the game or to gain an advantage over other players.

**PEGI (Pan European Game Information):** is the content rating system that is used in a number of European countries, including Ireland. It operates in a similar fashion to ESRB ratings, providing age ratings and content descriptors for games.

**Play-to-win:** refers to the progression system used in games where practice, grinding or possessing an inherent skill (e.g. having fast reactions) is the principal means of progressing through a game or gaining an advantage over other players.

**Premium currency:** refers to currency in games that can only be bought using real money. Premium currency is generally used to purchase more exclusive and expensive items within the game.

**Social games:** is a term frequently used in the literature and generally refers to games that are played through access to a social network, where the game encourages some form of social interaction such as sending gifts to friends.

**Skins:** refers to in-game character designs which allow the gamer to play the game using a different character design to the 'standard' characters of the game.

**Skin betting:** refers to where in-game items are used to take part in gambling, with the in-game item being staked on an external gambling platform.

**Video games:** in this paper this term refers to games offered on game consoles, PCs and mobile devices. The activity of playing video games is often referred to as 'gaming' in the literature on the subject. However, as 'gaming' has a specific legal definition in the context of gambling in Irish law, this paper will use the term 'video gaming' to refer to the act of playing video games, to avoid any confusion.

**Vulnerable gamers:** is a term frequently used in the literature and generally refers to gamers that are particularly susceptible to the harms associated with gambling-like activity.

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<sup>4</sup> For example, loot boxes in the mobile game Pokémon Go take the form of specified boxes where the gamer is given a description of the precise items to be found in the loot box, where what you see is what you get. These boxes contain items that are sold at a 'discount' and are often promoted during special events. There is no element of chance as to what will be found in the box.

## Executive Summary

Loot boxes are a form of micro-transaction that features in many video games and are a major source of revenue for game development companies. They typically involve an in-game purchase of a virtual 'box', 'crate' or 'pack' that is opened by the player and contains virtual items that may be used in the video game to further progression or to enhance the video gaming experience of the player. In some cases, loot boxes contain randomised rewards, where the player does not know the content prior to purchasing the loot box.

Concerns have arisen that loot boxes feature in games played by children and that some loot boxes possess a number of similarities to gambling mechanics. This paper examines the growing use of loot boxes in video games and how regulation of loot boxes may fit within existing frameworks for regulating gambling.

Micro-transactions originated as a monetisation stream for free-to-play games. Their success is grounded in a number of purchase motivations of gamers, including the desire for unobstructed gameplay, competition and social interaction. Concerns have been raised that certain micro-transactions have been implemented in video games in a manner that is overly exploitative of vulnerable gamers.

Critics highlight that randomised reward schedules in loot boxes are similar in design to features of slot-machine gambling. The use of randomised reward schedules has been linked to addictive and harmful behaviour, particularly among vulnerable people. While a small number of academic studies have examined the relationship between loot boxes and gambling. Generally, these studies suggest that a relationship may exist between loot boxes and gambling-related harms. However, these have acknowledged that further research would be needed in this area, before any definitive link between loot boxes and problem gambling may be said to be established.

Gambling regulators and other related bodies in various countries have examined the effects of loot boxes and considered whether their use should be made subject to regulation. While there is no international consensus on whether loot boxes ought to be considered a form of gambling, the variance in approach across jurisdiction and between authorities appears to arise from different legal definitions of gambling in different jurisdictions. Recent studies in the UK, analysing how loot boxes affect children, have suggested that reforms are necessary to ensure that children are not exposed to gambling-related harms arising from loot boxes.

At the time of writing, Ireland does not have a gambling regulator, a digital safety commission or any other independent expert body responsible for determining whether loot boxes ought to be regulated as a form of gambling. It is unlikely that loot boxes could be seen to fall within existing gambling legislation. However, a comprehensive update of Irish gambling law has been mooted over several years, and these debates have included proposals for the establishment of an independent gambling regulator.

In other jurisdictions, parliamentary inquiries have been conducted into the use of loot boxes and how they may be considered to be a form of gambling. In Belgium and the Netherlands, inquiries have led to the classification of loot boxes of certain games as gambling. In the UK, the House of Commons Digital, Culture, Media and Sport Committee considered the use of loot boxes in video games while inquiring into Immersive and Addictive Technologies. The Committee recommended

that legislation be introduced to bring loot boxes within UK gambling legislation and restricting the sale of loot boxes to people over the age of 18. The Australian Senate Environment and Communications References Committee's report 'Gaming micro-transactions for chance-based items' recommended that the Australian Government should undertake a comprehensive review of loot boxes in video games which should pursue further research into gambling-related harms that may arise from loot boxes.

The emergence of loot boxes in video games has provoked different reactions from various stakeholders. Some gamers and high-profile commentators have spoken out against the use of loot boxes in games. This pressure on game developers has resulted in the removal of loot boxes from several popular games.

There is a growing consensus that some form of regulation may be required to restrict the potential harms caused by loot boxes. The following list represents various approaches that have been suggested as means of addressing the concerns arising from the use of loot boxes:

1. Amend gambling legislation to bring loot boxes within the definition of gambling in Irish law.
2. Require game developers to include warnings alerting gamers at the time of purchase to the potential harms associated with gambling.
3. Require game developers to include features in video games to enable gamers to keep a better track of the money that they spend on loot boxes, for example user-defined spending caps and running spending totals.
4. Provide that advertisements for and packaging of video games that contain loot boxes are labelled with appropriate content descriptors and age ratings.
5. Provide mechanisms for enhanced education strategies to help gamers and the parents and guardians of underage gamers to understand the potential harms posed by loot boxes.

## Introduction

This paper examines the emergence of loot box mechanics in video games and how loot boxes fit within existing frameworks for regulating gambling.

Loot boxes are a form of micro-transaction that are available in certain video games. They typically involve an in-game purchase of a virtual 'box', 'crate' or 'pack' which in some cases contains randomised items.

In recent years there has been a growing number of concerns voiced about the lack of regulation of loot boxes. Suggestions have been made that loot boxes often feature in games which are marketed at children and loot box mechanics share some key characteristics of gambling. Micro-transactions form part of a multi-billion euro video game industry. Some game developers have rejected claims that loot box mechanics are akin to gambling. This paper considers these criticisms and whether some form of regulation may be required to address these concerns.

The first section of this paper provides a brief overview of micro-transactions offered by video games, including an analysis of how loot box mechanics operate. The second section examines the existing research into potential links between loot boxes and problem gambling. The third section analyses the law on gambling in Ireland, including reform proposals which specifically address loot boxes. The fourth section provides a comparative analysis of different jurisdictions which have considered the challenges posed by loot box mechanics. The final section sets out views of various stakeholders on loot boxes, with a focus on the views of children and young people health advocates, the video game industry, ratings agencies and the video game playing community.



## Overview of Micro-transactions in video games

Micro-transactions are a common feature in video games. They allow developers to continue to monetise a game long after the initial launch of the game, which in turn allows for a prolonging of the support provided by developers in relation to the game. Micro-transactions refer to in-game purchase of items, generally involving small transactions, ranging from between €1 and €100 in value. The purchase of items usually takes place through a virtual 'shop' or 'market' within the game.

**Image 1: Examples of micro-transactions in Fortnite and Roblox**



Source: Children's Commissioner, [Gaming the system](#) (October 2019), at p. 20.

Real money is often spent to purchase an in-game currency, which is then exchanged for the desired item. Items will vary, depending on the game in question, but may include skins, gear, weapons, extra lives, game boosts to speed up progression, in-game currency bundles<sup>5</sup> and loot boxes.<sup>6</sup>

In recent years there has been a growth in the use of micro-transactions from mobile app-based or social games to PC and console games. A significant number of the most popular console and PC games have featured a game mode in which micro-transactions make up an important component of the game.

Micro-transactions have grown to become a major commercial factor in the development and distribution of games. Schwiddessen and Karius note that revenue generated from micro-transactions in PC free-to-play games has grown from US\$11 billion in 2012, to US\$22 billion in 2017.<sup>7</sup> This model has also proved to be very profitable when applied to AAA games. Profit generated by micro-transactions often eclipses profit generated through software sales. For

<sup>5</sup> In-game currency bundles are often presented to promote the sale of the more expensive bundles, as the gamer is led to believe that the more expensive bundles offer better value for money.

<sup>6</sup> Loot boxes may contain a combination of all of the listed items.

<sup>7</sup> Schwiddessen, S., and Karius, P. "Watch your loot boxes! – Recent developments and legal assessment in selected key jurisdictions from a gambling law perspective" 2018 *Interactive Entertainment Law Review*, Vol. 1(1), pp 17-43, at 19. Available at <https://www.elgaronline.com/view/journals/ielr/1-1/ielr.2018.01.02.xml>. [Last accessed 18/02/2020]

example, video game publisher Activision Blizzard, which publish games such as Overwatch and Call of Duty, reported that over half of its profits in 2017 derived from in-game transactions.<sup>8</sup>

## History of micro-transactions

The origins of micro-transactions have been traced back as far as arcade games – upon the player running out of lives or time, the player is given the option to insert additional coins to be able to continue with the game.<sup>9</sup> Micro-transactions were introduced as part of the free-to-play business model in mobile app-based and social games in the late 2000s, competing with the traditional models such as one-time payment<sup>10</sup> and subscription-based models.<sup>11</sup> Micro-transactions are now the principal means of monetisation for free-to-play games.

Flunger et al analysed a number of empirical studies that explored the various purchase motivations of gamers who had spent money on micro-transactions in free-to-play games.<sup>12</sup>

Flunger et al examined the findings of Hamari et al in a study of 519 free-to-play gamers,<sup>13</sup> and found that the four primary motivations were:

- unobstructed play: where the use of artificial barriers to create obstructions to game progress arose, players experienced frustration and were likely to spend money to ensure progression;
- social interaction: where a gamer purchases virtual items to express themselves or to impress friends;
- competition: where a gamer purchases items to gain an advantage over other players; and
- economic rationale: these include purchase motivations such as reasonable pricing, special offers, the intention to support an enjoyable game and investing in a personal hobby.<sup>14</sup>

The study also identified mechanisms used in games to exploit the purchase motivations of gamers and enhance profitability. These included:

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<sup>8</sup> Towers, A. “Gimme the Loot: Will Purchases in Video Games be Exempt from Gambling Law Overhaul?” William Fry, November 2018. Available at <https://www.williamfry.com/newsandinsights/news-article/2018/11/13/gimme-the-loot-will-purchases-in-video-games-be-exempt-from-gambling-law-overhaul>. [Last accessed 18/02/2020]

<sup>9</sup> Duverge, G. (2016). Insert More Coins: The Psychology Behind Microtransactions [online] Touro University. Available at: <https://www.tuw.edu/content/psychology/psychology-behind-microtransactions/>. [Last accessed 18/02/2020]

<sup>10</sup> One-time payment is where the consumer makes a single transaction in return for complete access to all the content of the game. This was the dominant model with most games prior to the introduction of micro-transactions.

<sup>11</sup> The subscription-based model involves a recurring payment in return for continued access to game content. This model is used to sustain a prolonged revenue stream for a game allowing for continued development and support. This model was synonymous with PC games like World of Warcraft.

<sup>12</sup> Flunger Robert, Mladenow Andreas, Strauss Christine, “The Free-to-play Business Model” in Indrawan-Santiago, M., Salvadori I.L., Steinbauer M., Khalil I., Anderst-Kotsis G. (eds.) The 19th International Conference on Information Integration and Web-based Applications & Services (iiWAS). ACM Conference Proceedings Series, 2018, pp. 373-379. Available at [https://www.researchgate.net/publication/322234515\\_The\\_Free-to-play\\_Business\\_Model](https://www.researchgate.net/publication/322234515_The_Free-to-play_Business_Model). [Last accessed 18/02/2020]

<sup>13</sup> Hamari, J., Alha, K., Järvelä, S., Kivikangas, J.M., Koivisto J., and Paavilainen. J. 2017. “Why do players buy in-game content?: An empirical study on concrete purchase motivations” Computers in Human Behavior, 68, 538–546. Available at <http://dx.doi.org/10.1016/j.chb.2016.11.045>. [Last accessed 18/02/2020]

<sup>14</sup> Flunger Robert et al, Note 12 at 375.

- stratified content: used to segment gamers on the basis of player progression or by providing different gameplay modes within a game, to provide a broader range of activities to appeal to multiple groups of gamers;
- inconvenient gameplay elements: used to trigger the feeling of frustration, motivating gamers to purchase an item;
- mediums of exchange: most free-to-play games use two forms of currency, a standard currency which can be earned and collected by playing the game, and a premium currency that generally must be purchased with real money and which is distributed solely by the game developers;
- inventory mechanics: limiting the amount of storage space for virtual items and then charging for extensions to the storage space;
- special occasions and artificial scarcity: tying in real-world special events with time-limited promotions to exploit feelings of exclusivity and scarcity, e.g. a Christmas event with special limited-edition Christmas items that are only available during the Christmas period;
- alterations to existing content: providing new game content which devalues old content in the process; and
- customer lifetime value theory: examines the lifetime of a gamer using a game, beginning with their installation of the game to their conversion into a paying customer. As the conversion rate from non-paying to paying players is reported to be between one and five per cent, it is important to identify players who tend to generate high value and to provide such players with special care or treatment.<sup>15</sup> For example, people who make purchases with credit cards and people whose first in-game purchase takes place shortly after starting the game have been identified as likely to be high spenders. Flunger et al note that ethical concerns have been raised with this focus on what they term as the “milking” of this portion of the player base.<sup>16</sup>

## Loot box mechanics

This section provides greater detail on how loot box mechanics operate within a game.

Loot boxes involve some form of virtual ‘crate’, ‘box’ or ‘pack’ which is generally earned through gameplay or can be bought using an in-game currency. In some games loot boxes feature a randomised selection of items with special box opening graphics and music designed to build up hype and suspense as the box is opened. There is a relatively low probability of finding desirable items in these loot boxes, encouraging players to open more loot boxes to obtain sought-after items.

Loot boxes may take on a variety of forms. For that reason, an example of how loot boxes operate in the FIFA franchise is set out below. This game was selected because the FIFA franchise is one of the most popular franchises of video games, the developers Electronic Arts (EA) has provided detailed justifications for its model and the indications from EA are that they will continue to include loot box mechanics in future iterations of FIFA Ultimate Team.

### FIFA Ultimate Team<sup>17</sup>

FIFA 20, the most recent title in the franchise was given an ESRB E rating and a PEGI rating of 3, indicating that it is suitable for children.<sup>18</sup> FIFA Ultimate Team (FUT) is a game mode which has

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<sup>15</sup> *Ibid*, at 376-377.

<sup>16</sup> *Ibid*, at 378.

<sup>17</sup> More information about FIFA Ultimate Team is available from <https://www.ea.com/games/fifa/fifa-20/ultimate-team/features>. [Access to EA’s game websites are blocked on Oireachtas servers]

featured in recent FIFA titles released by EA. EA reported that they had generated US\$5.15 billion in net revenue over the 2018 fiscal year.<sup>19</sup> EA's 2018 Annual Report states:

“Within our games, we offer live services, including microtransactions, downloadable content, subscriptions, and esports, that provide additional depth and engagement opportunities for our players. Our live services net revenue comprised 40% of our total net revenue during fiscal year 2018 and we expect that live services net revenue will continue to be material to our business. Our most popular live service is the *Ultimate Team* mode associated with our sports franchises. *Ultimate Team* allows players to collect and trade current and former professional players in order to build, and compete as, a personalized team. Net revenue from *Ultimate Team* represented approximately 21 percent, 16 percent and 15 percent of our total net revenue during fiscal year 2018, 2017 and 2016, respectively, a substantial portion of which was derived from *FIFA Ultimate Team*.”<sup>20</sup>

The game operates as a card-collecting platform, where cards are obtained through opening packs. These cards are either footballer cards<sup>21</sup> which are used in FIFA matches or item cards such as kits, club crests, stadia, staff or consumables.<sup>22</sup> Gamers begin the game with a few random items in their club. The aim of the game is to build an “ultimate team”, with cards obtained over a year-long game cycle that tracks footballing events in the real world.

Loot boxes in FUT take the form of packs of cards which can be purchased either with the in-game currency “FUT coins” or using the premium currency “FIFA points” in the virtual store.<sup>23</sup> Limited information is provided to consumers on the odds of obtaining certain categories of footballer.<sup>24</sup> For example, where special edition cards are available in particular packs, the odds of obtaining a card with a footballer in this category will be set out separately.<sup>25</sup> These packs may be obtained as a reward<sup>26</sup> for playing various game modes while within FUT.<sup>27</sup>

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<sup>18</sup> ‘E’ denotes ‘Everyone’ and indicates that Content is generally suitable for all ages – may contain minimal cartoon, fantasy or mild violence and/or infrequent use of mild language. The ESRB website also indicates that the game contains in-game purchases. Available at <https://www.esrb.org/ratings/36486/FIFA+20/>. [Last accessed 18/02/2020]

The PEGI rating of 3 indicates the game is suitable for all age groups. Available at [https://pegi.info/search-pegi?q=fifa+20&op=Search&filter-age%5B%5D=&filter-descriptor%5B%5D=&filter-publisher=&filter-platform%5B%5D=&filter-release-year%5B%5D=&page=1&form\\_build\\_id=form-rMeY0VliwBIPS0wN8BR2BFTk5m6Ca-AtEr1AO2Mt86g&form\\_id=pegi\\_search\\_form](https://pegi.info/search-pegi?q=fifa+20&op=Search&filter-age%5B%5D=&filter-descriptor%5B%5D=&filter-publisher=&filter-platform%5B%5D=&filter-release-year%5B%5D=&page=1&form_build_id=form-rMeY0VliwBIPS0wN8BR2BFTk5m6Ca-AtEr1AO2Mt86g&form_id=pegi_search_form). [Last accessed 18/02/2020]

<sup>19</sup> Electronic Arts Inc., Fiscal Year 2018, *Proxy Statement and Annual Report*. Available at <http://www.annualreports.com/Company/electronic-arts>. [Last accessed 18/02/2020]

<sup>20</sup> *Ibid*, at p.4.

<sup>21</sup> Football player cards are given ratings to reflect the footballer’s abilities in real life.

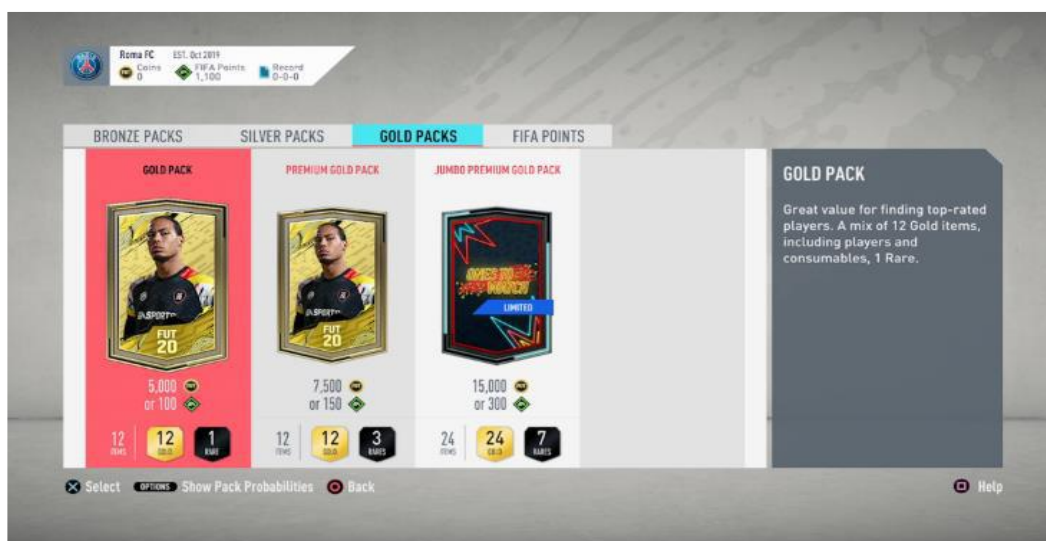
<sup>22</sup> Consumables are items such as football player contracts, healing fitness and training cards.

<sup>23</sup> FIFA points are also sold in real world retailers such as Gamestop and Smyths.

<sup>24</sup> Generally, this will be the odds of receiving one of three different categories of footballer, categorised by rating, and the odds of obtaining any featured category of special cards.

<sup>25</sup> For example, during a real-world football tournament such as the UEFA Champions League, special cards are often released of footballers who have performed well in real life. A set of special “Team of Tournament” cards may be released with the footballers having enhanced stats and ratings compared to

Image 2: FIFA packs in FUT



Source: Children's Commissioner, [Gaming the system](#) (October 2019), at p. 23.

FUT also contains a transfer market<sup>28</sup> which allows for gamers to transfer card to other gamers, using FUT coins as currency. Trading within FUT may only take place within the in-game transfer market and gamers are not able to directly swap cards for other cards. The transfer market functions as an anonymous auction, with cards sold to the highest bidder. The card holder cannot determine to whom the card is sold. In the past, third-party sites have manipulated the transfer market to allow gamers to effectively cash out their cards for real money or for use in skin gambling. Such websites operate outside the terms of use of the game and have been targeted by regulatory bodies.<sup>29</sup>

Pack openings are an important feature of FUT as this is how the gamer receives the resources (i.e. cards) by which they will take part in the various game modes. Pack opening videos are a prominent feature of many FIFA vloggers on YouTube.<sup>30</sup> When a gamer virtually opens a pack, a

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their base version. The odds displayed with the pack will show the odds of obtaining a special card in this category; however, it will not show the odds of obtaining a specific card.

<sup>26</sup> Rewards in FUT include coins, special items, packs and qualification points for the Weekend League.

<sup>27</sup> These include Squad Building Challenges (SBCs) which are puzzle games where the gamer exchanges a specified combination of cards for in-game rewards such as a pre-determined footballer or a pack of cards, Squad Battles (offline FIFA matches played against other players' squads for weekly in-game rewards), Division Rivals (online FIFA matches played for weekly in-game rewards), or FUT Champions Weekend League (the competitive online weekend tournament played for in-game rewards).

<sup>28</sup> Several websites offer FUT market analysis services. For example, [www.futbin.com](http://www.futbin.com) and [www.futwiz.com](http://www.futwiz.com) [These websites cannot be accessed from the Oireachtas servers].

<sup>29</sup> One such case involved the platform called FutGalaxy, which was used by children to gamble using FUT coins. The platform was operated by two individuals, one of whom, the prominent FIFA vlogger Craig Douglas (known by the YouTube alias of NepentheZ) promoted and advertised the gambling service on his YouTube channel without indicating his business connection to the site. See <http://www.natlotcomm.gov.uk/news-action-and-statistics/News/two-men-convicted-after-offering-illegal-gambling-parasitic-upon-popular-fifa-computer-game>. [Last accessed 18/02/2020]

<sup>30</sup> YouTube videos are blocked on the Oireachtas servers. However, it is recommended that in order to fully appreciate the mechanics of pack openings in FIFA Ultimate Team the reader should view a pack-opening video.



special animation screen appears. Different animations and audio are used depending on the value of the highest-rated card in the pack. Generally, more exclusive and higher-rated cards will have a longer opening sequence, featuring more lights, sounds and animations. Where a card has a particularly high rating, an animated version of the footballer in question will 'walk out' onto the screen and perform a goal celebration, usually akin to a dance. Gamers are given an option to skip past the pack opening animation and move to the screen where the gamer can view the full contents of the pack. The gamer will then have the choice of whether to keep or sell the contents of the pack.

In Belgium, the Gaming Commission<sup>31</sup> carried out an investigation into whether loot boxes in four high profile games,<sup>32</sup> including FIFA 18, breached Belgian gambling law. Following the publication of their report<sup>33</sup> the Gaming Commission reached an agreement with game publishers Activision-Blizzard, Valve and 2K that they would comply with their ruling by releasing versions of their games without loot boxes.<sup>34</sup> EA initially rejected this finding<sup>35</sup> and released FIFA 19 in Belgium with access to loot boxes that could be purchased with FIFA points. Following discussions with the Gaming Commission, it was announced in January 2019 that EA would be disabling the purchase of FIFA points in Belgium.<sup>36</sup>

The issue of loot boxes recently featured in an appearance by executives from EA and Epic Games before the House of Commons Digital, Culture, Media and Sport Committee as part of their Inquiry into Immersive and Addictive Technologies.<sup>37</sup> During this hearing, the question was put to Kerry Hopkins, Vice President of Legal and Government Affairs with EA, that in light of evidence given to the Committee in relation to the suspected links between loot boxes and problem gambling<sup>38</sup>, whether she viewed the loot box mechanics in FIFA as ethical. She responded, stating that EA do not call the micro-transactions 'loot boxes':

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<sup>31</sup> The Gaming Commission is a regulatory body in Belgium that reports to the Federal Public Service for Justice. More information about the Gaming Commission is available at [https://www.gamingcommission.be/openccms/openccms/jhksweb\\_en/home/](https://www.gamingcommission.be/openccms/openccms/jhksweb_en/home/). [Last accessed 18/02/2020]

<sup>32</sup> The games investigated were *Overwatch*, *Star Wars Battlefront II*, *FIFA 18* and *Counter-Strike: Global Offensive*.

<sup>33</sup> Gaming Commission, *Research Report on Loot Boxes*, (April 2018). Available at [https://www.gamingcommission.be/openccms/export/sites/default/jhksweb\\_nl/documents/onderzoeksrapport-loot-boxen-Engels-publicatie.pdf](https://www.gamingcommission.be/openccms/export/sites/default/jhksweb_nl/documents/onderzoeksrapport-loot-boxen-Engels-publicatie.pdf). [Last accessed 18/02/2020]

<sup>34</sup> See [https://www.engadget.com/2019/05/21/nintendo-pulls-two-mobile-games-in-belgium-due-to-loot-box-laws/?guccounter=1&guce\\_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS91cmw\\_c2E9dCZyY3Q9aiZxPjZlc3JjPXMmc291cmNIPXdlYiZjZD0xNyZ2ZWQ9MmFoVUtFd2p6LWRPbHFLX2pBaFdoUWhVSUhjZiZj](https://www.engadget.com/2019/05/21/nintendo-pulls-two-mobile-games-in-belgium-due-to-loot-box-laws/?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS91cmw_c2E9dCZyY3Q9aiZxPjZlc3JjPXMmc291cmNIPXdlYiZjZD0xNyZ2ZWQ9MmFoVUtFd2p6LWRPbHFLX2pBaFdoUWhVSUhjZiZj). [Last accessed 18/02/2020]

<sup>35</sup> Gaming Commission, Note 33, the findings in relation to the loot box mechanics in FIFA 18 are available at p 14 of the report.

<sup>36</sup> See [https://www.gamingcommission.be/openccms/export/sites/default/jhksweb\\_nl/documents/EA-Games-conforms-to-the-Belgian-gambling-legislation.pdf](https://www.gamingcommission.be/openccms/export/sites/default/jhksweb_nl/documents/EA-Games-conforms-to-the-Belgian-gambling-legislation.pdf). [Last accessed 18/02/2020]

<sup>37</sup> House of Commons Digital, Culture, Media and Sport Committee Inquiry into Immersive and Addictive Technologies. The full transcript of the hearing is available at <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/digital-culture-media-and-sport-committee/immersive-and-addictive-technologies/oral/103191.pdf>. [Last accessed 18/02/2020]

<sup>38</sup> This was the evidence to the Committee of Dr David Zendle, available at <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/digital-culture-media->

“That is what we look at as surprise mechanics. It is important to look at this. If you go to—I don’t know what your version of Target is—a store that sells a lot of toys and you do a search for surprise toys, you will find that this is something people enjoy. They enjoy surprises. It is something that has been part of toys for years, whether it is Kinder eggs or Hatchimals or LOL Surprise!. We think the way we have implemented those kinds of mechanics—and FIFA, of course, is our big one, our FIFA Ultimate Team and our packs—is quite ethical and quite fun; it is enjoyable to people. We agree with the UK Gambling Commission, the Australian gambling commission and many other gambling commissions that they are not gambling, and we also disagree that there is evidence that shows it leads to gambling. Instead, we think it is like many other products that people enjoy in a very healthy way. They like the element of surprise.”<sup>39</sup>

The findings of the Belgian Gaming Commission were also raised with EA’s executives during their appearance. Ms Hopkins, in response, stressed that the laws in Belgium were different to those of the UK. She was also asked whether gamers had re-registered to play in other jurisdictions to avoid the ban in Belgium. She answered:

“The only change we have made is that we no longer sell FIFA points in Belgium, because that is the virtual currency used to purchase our FIFA packs with money. In Belgium, after discussions with the Government and the regulator, we made a business decision to turn off the sale of points in Belgium; that is the only change we have made. I have no evidence that anybody has reregistered in a different country to avoid that, no. Because it is around purchase, it would be difficult, because it is a purchase; you have a country that you are located in that your credit card is attached to.”<sup>40</sup>

The issue of FIFA Ultimate Team and loot box mechanics was also raised in the oral evidence given to the Committee by James Good, a former gaming addict and representative of the gaming addiction online support community Game Quitters.<sup>41</sup> The following is an extract from his testimony to the Committee:

“**James Good:** I had an issue on the “FIFA Football” game because you buy packs of say seven players. There are a lot of football players in the world and you only get seven at a time with a very, very, very small chance of getting anyone good to make a better team.

**Q185 Giles Watling:** You try to get the perfect team and never will.

**James Good:** Pretty much, yes. You either have to play hundreds and hundreds of hours, which people did, or have to spend money. Every time a new “FIFA” came out, in

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[and-sport-committee/immersive-and-addictive-technologies/oral/97476.pdf](#). This hearing is discussed further below. [Last accessed 18/02/2020]

<sup>39</sup> House of Commons Digital, Culture, Media and Sport Committee, Note 37, at Q1142.

<sup>40</sup> *Ibid*, at Q1150.

<sup>41</sup> Available at <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/digital-culture-media-and-sport-committee/immersive-and-addictive-technologies/oral/97764.pdf>. [Last accessed 18/02/2020] [Access to Gamequitters.com is blocked on Oireachtas servers]

September I think it is, on top of the £50 for the game my friends and I would probably spend another £150 of our student loan on these points to get loads of packs so we could start off with a great team.

Q186 **Giles Watling:** If you did not have the right team, you weren't the cool guy?

**James Good:** You could not win really, you needed the team to be able to win and get these trophies.

Q187 **Giles Watling:** At the time it was insidious, you did not realise it was happening and it was just part of that scene?

**James Good:** Yes, it is completely normal.

Q188 **Chair:** The game is set up to encourage you to behave in that way?

**James Good:** Yes. To get what is called a Gold Pack would take 7,500 coins, for example, or I think it was £1. Seven and a half thousand coins is roughly 25 games of 15 minutes each. I am not going to do that maths but it is a lot of time just to get one pack so it becomes easy, "It is just £1, just £10".<sup>42</sup>

From James Good's testimony, it is apparent that the four purchase motivations identified by Flunger et al, featured in Mr Good's motivation in purchasing loot boxes while playing FUT.

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<sup>42</sup> *Ibid.*



## Similarities between loot boxes and gambling

This section provides a brief overview of the suspected relationship between loot boxes and the characteristics of gambling. An essential feature of loot boxes is that the gamer cannot work out the precise number of loot boxes he or she would need to open to obtain a desired item. This form of reward structure is known as a variable ratio-reinforcement schedule. This has been highlighted as an element in some forms of gambling.<sup>43</sup> A concern has arisen as to whether the use of a variable ratio-reinforcement schedule in some loot boxes gives rise to the same harms that arise from gambling.

At the outset it should be highlighted that there has only been a small number of empirical studies conducted examining the relationship between loot boxes and gambling. Therefore, the strength of any purported link between loot boxes and gambling remains unclear. However, a number of studies are assessed below which indicate that this may be an area that requires further evaluation from researchers, regulators and parliamentarians.

Drummond and Sauer identify six characteristics that distinguish gambling from other risk-taking behaviour, in their analysis of 22 games which were released between 2016 and 2017.<sup>44</sup> These features are:

1. an exchange of money or valuable goods;
2. an unknown future event determines the exchange;
3. chance at least partly determines the outcome;
4. non-participation can avoid loss;
5. winners gain at the expense of losers; and
6. an ability to cash out.<sup>45</sup>

Appendix 1 is a reproduction of the findings of Drummond and Sauer in relation to whether the loot boxes in the games they examined featured the above characteristics.

Griffiths has recently reviewed several empirical studies which have been conducted by a number of academics in relation to loot boxes.<sup>46</sup> Griffiths discusses studies conducted by Drummond and Sauer<sup>47</sup>, Brooks and Clark<sup>48</sup>, Li, Mills and Nower<sup>49</sup>, Macey and Hamari<sup>50</sup> and Zendle, Meyer and

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<sup>43</sup> Ferster, C. B. & Skinner, B. F. *Schedules of Reinforcement* (Appleton-Century-Crofts, New York, NY, 1957).

<sup>44</sup> Drummond, A., & Sauer, J.D. "Video game loot boxes are psychologically akin to gambling" *Nature Human Behaviour*, (2018) Vol. 2, pp 530–532. Available at [http://www.tascl.org/uploads/4/9/3/3/49339445/drummond\\_sauer\\_nhb\\_2018\\_loot\\_boxes.pdf](http://www.tascl.org/uploads/4/9/3/3/49339445/drummond_sauer_nhb_2018_loot_boxes.pdf). [Last accessed 18/02/2020]

<sup>45</sup> The first five features are drawn from Griffiths, M. *Adolescent Gambling* (Psychology Press, London, 1995). The sixth feature (an ability to cash out) is one which has arisen in several determinations by regulatory bodies.

<sup>46</sup> Griffiths, M. (2019) "Loot box buying among adolescent gamers: A cause for concern?" *Education and Health*, Vol. 37 No. 3, 63-66. ISSN 2049-3665. Available at <http://irep.ntu.ac.uk/id/eprint/38055/>. [Last accessed 18/02/2020]

<sup>47</sup> Drummond, A., & Sauer, J.D. Note 44.

<sup>48</sup> Brooks, G. A., & Clark, L. (September 2019) 'Associations between loot box use, problematic gaming and gambling, and gambling-related cognitions' *Addictive Behaviors*, Vol. 96, 26-34. Available at <https://doi.org/10.1016/j.addbeh.2019.04.009>. [Last accessed 18/02/2020]

Over<sup>51</sup>. He notes that "... the findings are very consistent that there is an association between problem gambling and loot box buying among both adolescents and adults."<sup>52</sup> However, he qualifies this noting an absence of longitudinal research and that:

"... all of the empirical research to date has collected self-report data which are subject to well-known methodological biases (e.g., social desirability, memory recall)."<sup>53</sup>

Addiction and gambling academics provided testimony to the UK and the Australian parliamentary inquiries. The following section considers some opinions of these academics. It should be noted that in almost every case, the opinions are qualified by a statement that there is an absence of empirical research in the field and that this restricts the capacity to draw comprehensive conclusions.

### The Australian inquiry

Chapter 3 of the Australian Senate, Environment and Communications References Committee report focuses on psychology and loot boxes. The Committee heard evidence from Drummond and Sauer in relation to their study on loot boxes in video games and whether they meet the established psychological criteria for gambling.<sup>54</sup> The report notes that the study was limited to console and PC games, and that Dr Drummond told the committee that "it is possible that the overall percentage of loot boxes meeting the criteria 'is likely to be a little bit higher' with the inclusion of mobile games."<sup>55</sup>

The Committee noted that it received a number of submissions suggesting that loot boxes may share the following psychological traits with other forms of gambling:

- variable ratio reinforcement schedules;
- game-play experience such as sensory feedback;
- entrapment and other mechanisms encouraging continued spending; and
- ready and constant availability.<sup>56</sup>

The Committee's report also examines the work of King and Delfabbro<sup>57</sup> published in the academic journal *Addiction*. The article considered whether loot boxes could be considered a 'predatory

<sup>49</sup> Li, W., Mills, D., & Nower, L. (October 2019) 'The relationship of loot box purchases to problem video gaming and problem gambling' *Addictive Behaviors*, Vol. 97, 27-34. Available at <https://doi.org/10.1016/j.addbeh.2019.05.016>. [Last accessed 18/02/2020]

<sup>50</sup> Macey, J., & Hamari, J. (July 2018) 'eSports, skins and loot boxes: Participants, practices and problematic behaviour associated with emergent forms on gambling' *New Media and Society* Vol. 21 issue 1, 20-41. Available at <https://doi.org/10.1177/1461444818786216>. [Last accessed 18/02/2020]

<sup>51</sup> Zendle, D., Meyer, R., & Over, H. (2019). Adolescents and loot boxes: Links with problem gambling and motivations for purchase. *Royal Society Open Science*, 6(6), 190049. Available at <https://royalsocietypublishing.org/doi/pdf/10.1098/rsos.190049>. [Last accessed 18/02/2020]

<sup>52</sup> Griffiths, M. (2019), Note 46 at 65.

<sup>53</sup> *Ibid*, at 66.

<sup>54</sup> Drummond, A., & Sauer, J.D. Note 44.

<sup>55</sup> Australian Senate, Environment and Communications References Committee, *Gaming micro-transactions for chance-based items* (November 2018) at p. 32. Available at [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Environment\\_and\\_Communications/Gamingmicro-transactions/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Gamingmicro-transactions/Report). [Last accessed 18/02/2020]

<sup>56</sup> *Ibid*.

monetisation scheme'.<sup>58</sup> King and Delfabbro define predatory monetisation schemes as “in-game purchasing systems that disguise or withhold the true long-term cost of the activity until players are already financially and psychologically committed.”<sup>59</sup> They note that some game monetisation schemes could fall within this definition as they are:

“... designed to encourage repeated player spending using tactics or elements that may involve, either singularly or in combination, limited disclosure of the product; intrusive and unavoidable solicitations; and systems that manipulate reward outcomes to reinforce purchasing behaviors over skillful or strategic play. Such strategies may exploit inequalities in information between purchaser and provider, such as when the industry uses knowledge of the player’s game-related preferences, available funds and/or playing and spending habits, to present offers predetermined to maximize the likelihood of eliciting player spending.”<sup>60</sup>

The Committee also noted that concerns have been raised about certain games offering variable odds, which change in accordance with factors such as player profile and behaviour. In this regard the Committee considered the submission of Dr Marcus Carter, a game studies academic at the University of Sydney and former President of the Digital Games Research Association.<sup>61</sup> In Dr Carter’s submission, he notes that this form of ‘predatory practice’ exploits the ‘Gamblers Fallacy’, i.e. the expectation that the probability of winning increases with the length of an ongoing run of losses.<sup>62</sup> He states:

“... players of ‘Marvel Strike Force’ recently identified that different players of the game are given different odds in the game’s chance-based micro-transactions. This is easily implemented when rewards cannot be traded for real-money, potentially making them more harmful than rewards that can subsequently be traded for money. It is very likely that many large freemium games, which can draw millions of dollars a day in revenue, employ similar strategies to maximize their income. This is almost impossible for research to investigate, as such practices are kept strictly confidential.”<sup>63</sup>

Dr Carter also expresses concerns about the use of push notifications, similar to text messages, sent to a person’s phone. These messages will often contain special offers and other elements designed to encourage a player to make in-game purchases. He describes this as being

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<sup>57</sup> *Ibid*, at p. 35.

<sup>58</sup> King, D. L., and Delfabbro, P. H. (2018) ‘Predatory monetization schemes in video games (e.g. ‘loot boxes’) and internet gaming disorder’ *Addiction*, Vol 113, 1967-1969. Available at <https://onlinelibrary.wiley.com/doi/full/10.1111/add.14286>. [Last accessed 18/02/2020]

<sup>59</sup> *Ibid*, at p. 1967.

<sup>60</sup> *Ibid*.

<sup>61</sup> Australian Senate, Environment and Communications References Committee, Note 55 at p. 35.

<sup>62</sup> Submission 11 of Dr Marcus Carter to Australian Senate, Environment and Communications References Committee, at p. 3. Available at [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Environment\\_and\\_Communications/Gamingmicro-transactions/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Gamingmicro-transactions/Submissions). [Last accessed 18/02/2020]

<sup>63</sup> *Ibid*.

comparable to “having a slot machine in your pocket that actively encourages you to gamble at your most vulnerable moment.”<sup>64</sup>

Concerns have also been raised about the similarities between loot box mechanics and slot machine mechanics.

The Australian Senate Environment and Communications References Committee heard evidence from Dr Paul Cairns, Reader in Human-Computer Interaction at the University of York on the similarities between the development of electronic gaming machines (EGMs) and the development of loot boxes. He notes that results of research into the mechanics of EGMs has been used to maximise the amount players spend on the machine, tempting the gambler into playing until he or she runs out of money. Dr Cairns suggests that similar research has been carried out by game developers looking at increasing loot-box monetisation.<sup>65</sup>

The Committee also considered a submission and an empirical study carried out by Dr David Zendle in relation to the links between problem gambling and loot boxes.<sup>66</sup> This study was the first empirical study on the links between loot boxes and problem gambling. It involved a survey of 7,422 gamers and noted:

“We found that the more severe an individual’s problem gambling, the more they spent on loot boxes. The relationship we observed was neither trivial, nor unimportant. Indeed, the amount that gamers spent on loot boxes was a better predictor of their problem gambling than high-profile factors in the literature such as depression and drug abuse.”<sup>67</sup>

The submission concluded that the findings of the study supported the suggestion among academics that loot boxes are psychologically akin to gambling and the study refuted the suggestions of ratings agencies and industry statements that loot boxes are psychologically comparable to Kinder Surprise eggs and baseball cards.<sup>68</sup> The submission noted that the findings of the study could indicate two possibilities:

1. loot boxes in video games act as a gateway to other forms of gambling, leading to increases in problem gambling amongst gamers who buy loot boxes; or
2. the key similarities between loot boxes and gambling may lead to gamers who are already problem gamblers spending large amounts of money on loot boxes, just as they would spend similarly large amounts on other kinds of gambling.<sup>69</sup>

## The UK inquiry

The House of Commons Digital, Culture, Media and Sport Committee inquiry into Immersive and Addictive Technologies also accepted evidence from Dr Zendle.<sup>70</sup> At this hearing Dr Zendle noted:

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<sup>64</sup> *Ibid*, at p. 4.

<sup>65</sup> Australian Senate, Environment and Communications References Committee, Note 55 at pp. 35-36.

<sup>66</sup> Submission 38 of Dr David Zendle to Australian Senate, Environment and Communications References Committee. Available at [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Environment\\_and\\_Communications/Gamingmicro-transactions/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Gamingmicro-transactions/Submissions). [Last accessed 18/02/2020]

<sup>67</sup> *Ibid*, at p. 3.

<sup>68</sup> *Ibid*, at pp. 3-4.

<sup>69</sup> *Ibid*.

“The thing we found is that loot box spending is linked to problem gambling. The more money gamers are spending on loot boxes, the more severe their problem gambling appears to be. That might be because of what Drummond and Sauer suggested in their paper, which is that it is acting as a gateway to problem gambling: you go and you buy loot boxes in games, and then you develop a gambling problem because gambling is so similar. That is the real terror when it comes to the harm of loot boxes, that it is providing a gateway to problem gambling, because as I said earlier, these games are being played by children a lot and children are particularly vulnerable to developing problem gambling. We know that a really good predictor of problem gambling is the social acceptance and availability of gambling.

That is one way we can look at the data we have, but it is important to point out that there is another way. These are correlations and if there is one thing we know as scientists, it is that correlation does not equal causation. Something very different might be happening here where people who are already problem gamblers, people who already have a disordered and excessive relationship with gambling-related activities that may to some extent be beyond their control, are now going into their favourite games and saying, “Oh look, it is something that looks an awful lot like this thing I have a disordered and excessive relationship with”. That is why they are spending more money on loot boxes. It is not that it is a gateway; it is that it is a way that video games companies may, accidentally or incidentally, be profiting from problem gambling among their consumers.”<sup>71</sup>

In the course of the hearing Dr Zendle noted his belief in the importance of parental awareness of the potential dangers associated with loot boxes:

“A UK Gambling Commission study earlier this year that found that 31% of adolescents aged 11 to 16 had opened a loot box. It is an industry that is estimated to have generated up to \$30 billion last year. They are really prolific. There is no data on this but my feeling is that there is a lack of awareness among parents that they are even in games.

... There is no content descriptor for loot boxes. They are formally very different to other micro-transactions and yet there is nothing specifically saying, ‘This game contains loot boxes’, and that might also be a positive step for Governments to consider.”<sup>72</sup>

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<sup>70</sup> The full transcript of this hearing is available at <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/digital-culture-media-and-sport-committee/immersive-and-addictive-technologies/oral/97476.pdf>. [Last accessed 18/02/2020]

<sup>71</sup> *Ibid*, at Q65.

<sup>72</sup> *Ibid*, at Q79.

## Gambling law and loot boxes

### Current position in Irish gambling law

This section provides an analysis of the legal definitions pertaining to gambling in Irish law and the Irish legal position in relation to loot boxes.

Irish law relating to gambling is primarily set out in the [Betting Act 1931](#) (as amended) and the [Gaming and Lotteries Act 1956](#) (as amended) (the ‘1956 Act’). At the outset it should be noted that there is no definition of the term “gambling” in these Acts. However, these Acts define a number of terms which make up the various means by which people can gamble.<sup>73</sup> It should also be noted that this area of law is under review, with the [General Scheme of a Gambling Control Bill](#), that was published in 2013, currently being redrafted.<sup>74</sup>

### Gaming

The first term that arises is “gaming” as defined under [section 2](#) of the 1956 Act. Gaming is defined as “playing a game (whether of skill or chance or partly of skill and partly of chance) for stakes hazarded by the players.” A “stake” is defined as:

“any payment for the right to take part in a game and any other form of payment required to be made as a condition of taking part in the game but does not include a payment made solely for facilities provided for the playing of the game.”<sup>75</sup>

[Section 4\(1\)](#) of the 1956 Act sets out what is meant by “unlawful gaming”:

“no person shall promote or assist in promoting or provide facilities for any kind of gaming-

- (a) in which by reason of the nature of the game, the chances of all the players, including the banker, are not equal, or
- (b) in which any portion of the stakes is retained by the promoter or is retained by the banker otherwise than as winnings on the result of the play, or
- (c) by means of any slot-machine.”

Gaming at circuses, travelling shows and carnivals does not amount to unlawful gaming where such gaming meets the requirements of [section 6](#) and [section 7](#) of the 1956 Act. The licensing regime contained in the *Gaming and Lotteries Acts* is limited to gaming carried out in a licensed amusement hall or funfair, where a local authority has passed a resolution adopting Part III of the 1956 Act. The [Gaming and Lotteries \(Amendment\) Act 2019](#) grants local Garda Superintendents a power to issue gaming permits in areas where Part III of the 1956 Act has not been adopted. There is no provision in the 1956 Act for online gaming.

<sup>73</sup> In the UK, gambling is defined as gaming, betting or participating in a lottery. See [section 3 of the Gambling Act 2005](#) (UK). [Last accessed 18/02/2020]

<sup>74</sup> See [https://www.oireachtas.ie/en/debates/question/2019-05-14/238/#pq\\_238](https://www.oireachtas.ie/en/debates/question/2019-05-14/238/#pq_238). [Last accessed 18/02/2020]

<sup>75</sup> [Section 2](#) of the 1956 Act.



## Lotteries

Section 2 of the 1956 Act also defines a “**lottery**” as “all competitions for money or money’s worth involving guesses or estimates of future events or of past events the results of which are not yet ascertained or not yet generally known.” Part IV of the 1956 Act sets out the licensing scheme that operates for lotteries. The Irish National Lottery is separately regulated by the [National Lottery Act 2013](#), which established the office of the Regulator of the National Lottery.

## Betting

**Betting** is governed by the [Betting Act 1931](#), as amended by the [Betting \(Amendment\) Act 2015](#) (the ‘1931 Act’). [Section 1](#) of the 1931 Act states that “the word ‘bet’ includes wager, and cognate words shall be construed accordingly.” The scope of betting and the activities of bookmakers were elaborated on in *Mulvaney v. The Sporting Exchange Ltd trading as Betfair*.<sup>76</sup> Judge Clarke (as he then was) in the High Court stated:

“The Betting Act is concerned not with betting *per se*, but rather with regulating the activities of bookmakers. While bookmaking is not defined in that legislation it seems to me that the term bookmaker derives from a person or body ‘making a book’ on an event. In other words, the person or body concerned offers odds on all or a significant number of eventualities arising in respect of the same event (for example, offers odds on each horse winning or offers odds on either team winning a football game, or, indeed that game resulting in a draw). Thus, a person carrying on the business of bookmaking is someone who habitually offers to cover a range of possible eventualities on future uncertain events. Two private individuals entering into a wager on the same future uncertain event could not remotely be said to be engaged in the business of bookmaking.”<sup>77</sup>

The 1931 Act provides for three types of betting licence:

- a bookmaker’s licence;
- a remote bookmaker’s licence; and
- a remote betting intermediary’s licence.

Licences are issued by the Irish Revenue Commissioners, with the standard duration of a licence being two years.

## Laws applicable to loot boxes

From the above it can be seen that loot boxes cannot be said to fit neatly within the current Irish legal concept of gambling. It is unlikely that the provision of loot boxes within a game would be deemed to be sufficiently similar to making a book on an event as to amount to betting. Difficulties would also arise with trying to fit loot boxes within the concept of a lottery, as it is unclear whether the contents of loot boxes could be seen to amount to “money’s worth.”<sup>78</sup> It is also unclear whether

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<sup>76</sup> *Mulvaney v. The Sporting Exchange Ltd trading as Betfair* [2009] IEHC 133.

<sup>77</sup> [2009] IEHC 133, at para 4.12.

<sup>78</sup> The UK Gambling Commission has suggested that where in-game items cannot be sold outside of a game they are not considered money’s worth. See Gambling Commission, *Virtual currencies, eSports and social casino gaming – position paper* (March 2017), at paras. 3.17-3.18. Available at

loot box mechanics could be considered to be a form of gaming, as it would be difficult to argue that opening loot boxes is equivalent to playing a game for stakes hazarded by the players.

If it were necessary to categorise loot boxes within one of the three definitions, the definition of gaming would probably be the most receptive. Unlike the definition of a lottery, the definition of gaming makes no reference to the prize being for money or money's worth.<sup>79</sup>

**However, it must be emphasised that, in the absence of any case law or interpretive guidance from a specialist regulator,<sup>80</sup> the legal position of loot boxes in Ireland remains uncertain.**

## Calls for reform

The question of whether loot boxes ought to amount to gambling or e-commerce was considered in the Report of the Inter-Departmental Working Group on Future Licensing and Regulation of Gambling.<sup>81</sup> The Working Group notes:

“... current Irish gambling legislation does not provide a pathway for licensing gambling activities arising out of the on-line video gaming environment. It acknowledged that this would be a difficult area to legislate for, given the need for accurate descriptions of activities and those games and their attributes can evolve quickly. As the first response, it further felt that the video gaming industry should play a greater role in ensuring that their intellectual property was not used outside the games for ‘gambling purposes’ facilitated by third party websites.”<sup>82</sup>

The issue of loot boxes and whether they fall to be regulated under gambling legislation has been raised in both the Dáil<sup>83</sup> and the Seanad<sup>84</sup>. In response to a parliamentary question from Deputy

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<http://www.gamblingcommission.gov.uk/PDF/Virtual-currencies-eSports-and-social-casino-gaming.pdf>. [Last accessed 18/02/2020]

<sup>79</sup> This contrasts with the definition of “gaming” in the UK which set out in [section 6](#) of the *Gambling Act 2005* which defines gaming as playing a game of chance for a prize, where a prize is defined as money or money's worth.

<sup>80</sup> At present there is no independent specialist regulatory body responsible for developing gambling policy in Ireland, although such a body is due to be created under the *Gambling Control Bill*. See <http://www.justice.ie/en/JELR/Gambling%20Control%20Bill%20-General%20Scheme%20July%202013.pdf/Files/Gambling%20Control%20Bill%20-General%20Scheme%20July%202013.pdf>. [Last accessed 18/02/2020]

<sup>81</sup> Report to Government, *Inter-Departmental Working Group on Future Licensing and Regulation of Gambling* (March 2019), at pp. 24-27. Available at [http://www.justice.ie/en/JELR/Inter-Departmental Working Group on Future Licensing and Regulation of Gambling.pdf/Files/Inter-Departmental Working Group on Future Licensing and Regulation of Gambling.pdf](http://www.justice.ie/en/JELR/Inter-Departmental%20Working%20Group%20on%20Future%20Licensing%20and%20Regulation%20of%20Gambling.pdf/Files/Inter-Departmental%20Working%20Group%20on%20Future%20Licensing%20and%20Regulation%20of%20Gambling.pdf). [Last accessed 18/02/2020]

<sup>82</sup> *Ibid*, at p. 26.

<sup>83</sup> See question of Deputy Martin Heydon and reply by Minister of State at the Department of Justice and Equality, Deputy David Stanton. Available at <https://www.oireachtas.ie/en/debates/debate/dail/2019-01-30/8/?highlight%5B0%5D=loot&highlight%5B1%5D=boxes&highlight%5B2%5D=loot&highlight%5B3%5D=boxes&highlight%5B4%5D=loot&highlight%5B5%5D=boxes&highlight%5B6%5D=loot&highlight%5B7%5D=boxes#s12>. [Last accessed 18/02/2020]

<sup>84</sup> See the statements of Senator Jerry Buttimer and reply by Minister of State at the Department of Justice and Equality, Deputy David Stanton. Available at <https://www.oireachtas.ie/en/debates/debate/seanad/2018-09->



Fiona O'Loughlin TD in relation to loot boxes, the then Minister of State at the Department of Justice and Equality, Deputy David Stanton responded:

“Video games may offer in-game purchases of ‘loot boxes’ advertised to increase the chances of success in the game. These are referred to as micro-transactions and are a method of monetisation of their product by game developers. Some games may be provided free or at very low cost.

Where the offers do not fall within the current Irish legal definition of gambling, such purchases are essentially an e-commerce activity. This would fall within the recourse of normal consumer law where there is dissatisfaction on the part of the customer with the purchase.

However one might regard in-game purchases and how they may be marketed, it must be clear that they fall within the legal definition of a gambling activity to engage the regulatory attention of my or other Departments. This is a position, which is shared by other EU Member States. However, the position is kept under review.”<sup>85</sup>

Ireland has signed up to the *Declaration of gambling regulators on their concerns related to the blurring of lines between gambling and gaming*, adopted at the 2018 annual meeting of the Gambling Regulators European Forum (GREF).<sup>86</sup> While this is not a legally-binding document, it does recognise the concerns that have arisen in relation to “skin betting, loot boxes, social casino gaming and the use of gambling themed content within video games available to children” and calls for “companies whose platforms or games are prompting concern, to engage with [gambling] regulatory authorities to develop possible solutions.”<sup>87</sup>

GREF’s eGambling Working Group recently completed a synthesis of their work on the *Declaration of gambling regulators on their concerns related to the blurring of lines between gambling and gaming*.<sup>88</sup> This synthesis notes that there have been calls for loot boxes to be legally classified as gambling in order to protect minors from gambling-related harms.<sup>89</sup> It concludes:

“Relevant national authorities responsible for consumer protection enforcement, health, education, digital and financial regulation should continue to be involved in the debate relating to the risks being posed by the blurring of lines between gambling and other forms

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<https://www.oireachtas.ie/en/debates/question/2019-06-11/335/?highlight%5B0%5D=loot&highlight%5B1%5D=boxes&highlight%5B2%5D=loot&highlight%5B3%5D=boxes&highlight%5B4%5D=loot&highlight%5B5%5D=boxes&highlight%5B6%5D=loot&highlight%5B7%5D=boxes&highlight%5B8%5D=loot&highlight%5B9%5D=boxes#s4>. [Last accessed 18/02/2020]

<sup>85</sup> Question 335, Fiona O'Loughlin Gambling Sector (11 June 2019). Available at <https://www.oireachtas.ie/en/debates/question/2019-06-11/335/?highlight%5B0%5D=loot&highlight%5B1%5D=boxes&highlight%5B2%5D=boxes>. [Last accessed 18/02/2020]

<sup>86</sup> Available at <https://www.gamblingcommission.gov.uk/PDF/International-gaming-and-gambling-declaration-2018.pdf>. [Last accessed 18/02/2020]

<sup>87</sup> *Ibid.*

<sup>88</sup> GREF, *Synthesis of the works carried on by GREF1 eGambling Working Group with regard to the implementation of the Declaration of gambling regulators on their concerns related to the blurring of lines between gambling and gaming* (May 2019). Available at [http://www.gref.net/wp-content/uploads/2019/10/Synthesis\\_final-draft\\_v4\\_clean.pdf](http://www.gref.net/wp-content/uploads/2019/10/Synthesis_final-draft_v4_clean.pdf). [Last accessed 18/02/2020]

<sup>89</sup> *Ibid.*, at p. 10.

of digital entertainment such as video gaming, i.e. skin betting, loot boxes, social casino gaming and the use of gambling themed content within video games available to children.

However, it is recognized that whether these activities ultimately trigger the implementation of gambling regulation, would depend on each national gambling definition.<sup>90</sup>

Dr Brett Abarbanel emphasises the importance of understanding the complexity and nuances involved when regulating loot boxes.<sup>91</sup> He highlights that while loot boxes may fit a social science definition of gambling, not all risk-based activities are best regulated by gambling regulators.<sup>92</sup> Dr Abarbanel encourages game developers to engage in self-regulation, stating:

“... the potential for unintended consequences in regulation exists when our desire to establish measures designed to protect vulnerable populations (e.g., children) end up overly restricting adults able to make clear, informed choices. The need for dynamic regulation is key here, and self-regulation – whether that be via a newly established organization, or perhaps extending the scope of responsibility for existing organizations – can go a long way in demonstrating the gaming industry’s acknowledgement of the potential harm from loot boxes.”<sup>93</sup>

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<sup>90</sup> *Ibid*, at p. 14.

<sup>91</sup> Abarbanel, B. “Gambling vs. gaming: a commentary on the role of regulatory, industry, and community stakeholders in the loot box debate” [2018] 4 *Gaming Law Review* 231. Available at <https://doi.org/10.1089/glr2.2018.2243>. [Last accessed 18/02/2020]

<sup>92</sup> *Ibid*, at 232. For example, stock market trading meets many of the traditional elements of gambling definitions, both legal and social science, and yet, it is regulated by financial regulatory authorities.

<sup>93</sup> *Ibid*, at 234.

## Approaches adopted in other jurisdictions

This section considers various positions that have been considered in an international context. These jurisdictions have been chosen because they have examined some of the issues relating to loot boxes. In contrast to Ireland, these jurisdictions each have an independent authority responsible for regulating and formulating gambling policy which has issued reports or findings on the use of loot boxes in video games.

### UK

The position in the UK has been set out by the UK's Gambling Commission. In a position paper from March 2017, the Gambling Commission examined a number of issues relating to gambling and video games:

“... one commonly used method for players to acquire in-game items is through the purchase of keys from the games publisher to unlock ‘crates’, ‘cases’ or ‘bundles’ which contain an unknown quantity and value of in-game items as a prize. The payment of a stake (key) for the opportunity to win a prize (in-game items) determined (or presented as determined) at random bears a close resemblance, for instance, to the playing of a gaming machine. Where there are readily accessible opportunities to cash in or exchange those awarded in-game items for money or money's worth those elements of the game are likely to be considered licensable gambling activities.

Additional consumer protection in the form of gambling regulation, is required in circumstances where players are being incentivised to participate in gambling style activities through the provision of prizes of money or money's worth. Where prizes are successfully restricted for use solely within the game, such in-game features would not be licensable gambling, notwithstanding the elements of expenditure and chance.”<sup>94</sup>

In November 2017, The Gambling Commission published a further statement on their website specifically addressing loot boxes.<sup>95</sup> This stated:

“... where in-game items obtained via loot boxes are confined for use within the game and cannot be cashed out it is unlikely to be caught as a licensable gambling activity. In those cases our legal powers would not allow us to step in.

However, many parents are not interested in whether an activity meets a legal definition of ‘gambling’. Their main concern is whether there is a product out there that could present a risk to their children. We are concerned with the growth in examples where the line between video gaming and gambling is becoming increasingly blurred. Where it does meet the definition of gambling it is our job to ensure that children are protected and we have lots of rules in place, like age verification requirements, to do that.

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<sup>94</sup> Gambling Commission, *Virtual currencies, eSports and social casino gaming – position paper* (March 2017), at paras 3.17-3.18. Available at <http://www.gamblingcommission.gov.uk/PDF/Virtual-currencies-eSports-and-social-casino-gaming.pdf>. [Last accessed 18/02/2020]

<sup>95</sup> Available at <https://www.gamblingcommission.gov.uk/news-action-and-statistics/News/loot-boxes-within-video-games>. [Last accessed 18/02/2020]

Where a product does not meet that test to be classed as gambling but could potentially cause harm to children, parents will undoubtedly expect proper protections to be put in place by those that create, sell and regulate those products. We have a long track record in keeping children safe and we are keen to share our experiences and expertise with others that have a similar responsibility. Whether gambling or not, we all have a responsibility to keep children and young people safe.”<sup>96</sup>

As noted above, the House of Commons Digital, Culture, Media and Sport Committee has conducted a review of this area as part of their inquiry into Immersive and Addictive Technologies.<sup>97</sup> As part of this review the Committee heard from industry representatives, regulators, former gaming addicts and addiction experts. The report of the Committee sets out the following recommendations in relation to loot boxes:

- loot boxes that contain the element of chance should not be sold to children playing video games, and instead in-game credits should be earned through rewards won through playing the particular game in question. In the absence of research, the precautionary principle should apply, and loot boxes should not be permitted in games played by children until the evidence proves otherwise;
- loot box mechanics are integral to major companies’ revenues and evidence that they facilitate profiting from problem gamblers should be of serious concern to the industry. PEGI (a video-game content ratings body) should be advised to apply the existing ‘gambling’ content labelling, and corresponding age limits, to games containing loot boxes that can be purchased for real-world money and do not reveal their contents before purchase; and
- loot boxes that can be bought with real-world money and do not reveal their contents in advance should be treated as “games of chance for money’s worth”. The report recommends that regulations should be brought forward under existing UK gambling legislation in the next parliamentary session to specify that loot boxes are a game of chance.<sup>98</sup>

## Australia

This section focuses on the findings of the Australian Senate, Environment and Communications References Committee report on gaming micro-transactions for chance-based items.<sup>99</sup> This report examined loot boxes both in terms of whether they constituted gambling and in terms of the

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<sup>96</sup> *Ibid.*

<sup>97</sup> More information about the inquiry and the evidence which they have received are available at <https://www.parliament.uk/business/committees/committees-a-z/commons-select/digital-culture-media-and-sport-committee/inquiries/parliament-2017/immersive-technologies/>. [Last accessed 18/02/2020]

<sup>98</sup> House of Commons Digital, Culture, Media and Sport Committee, *Immersive and addictive technologies* (September 2019), at p. 62. Available at <https://publications.parliament.uk/pa/cm201719/cmselect/cmcmmeds/1846/1846.pdf>. [Last accessed 18/02/2020]

<sup>99</sup> Australian Senate, Environment and Communications References Committee, *Gaming micro-transactions for chance-based items* (November 2018). Available at [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Environment\\_and\\_Communications/Gamingmicro-transactions/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Gamingmicro-transactions/Report). [Last accessed 18/02/2020]

adequacy of the regulatory framework for such items including international comparisons, age requirements and disclosure of odds. In carrying out the report, the Committee heard submissions from regulators, industry officials and addiction experts.

**At pages 9 to 14 of the report the Committee examined the approaches of other jurisdictions including Denmark, Belgium, the Netherlands, France, Germany, the UK, the US, China and New Zealand.**

Chapter 5 of the report sets out the Committee view and recommendations.<sup>100</sup> Among its conclusions, the Committee noted that there is no uniform approach being adopted in relation to loot boxes and whether they amount to legally-defined gambling. The Committee also note that “loot boxes are not a homogenous entity and many variations of the mechanism exist.” As such, the report stressed the importance of dealing with loot boxes on a case-by-case basis.<sup>101</sup> In summarising the submissions they received, the Committee noted:

“... there was broad consensus that where real-world currency is exchanged (that is, when loot boxes are purchased, where virtual items are bought and sold, or where both occur) loot boxes may most closely meet the definitions of gambling (both regulatory and psychological), and therefore a range of risks to players may exist.”<sup>102</sup>

While the Committee acknowledged concerns raised in submissions that the inclusion of loot box mechanics in games may normalise ‘gambling-like’ behaviour and that children and vulnerable adults may be exposed to potential gambling-related harms, they emphasised the range of regulatory bodies that operate in this area.<sup>103</sup> The Committee made only one recommendation:

“The committee recommends that the Australian Government undertake a comprehensive review of loot boxes in video games. This review should be led by the Department of Communications and the Arts in conjunction with the ACMA [Australian Communications and Media Authority], the ACCC [Australian Competition and Consumer Commission], the Office of the e-Safety Commissioner, the Classification Board, and the Department of Social Services.

This review should commission further research into the potential for gambling-related harms to be experienced as a result of interaction with loot boxes; identify any regulatory or policy gaps which may exist in Australia's regulatory frameworks; examine the adequacy of the Classification Scheme as it relates to video games containing loot boxes; consider if existing consumer protection frameworks adequately address issues unique to loot boxes; and ensure that Australia's approach to the issue is consistent with international counterparts.”<sup>104</sup>

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<sup>100</sup> *Ibid*, at 71.

<sup>101</sup> *Ibid*, at 72.

<sup>102</sup> *Ibid*.

<sup>103</sup> *Ibid*.

<sup>104</sup> *Ibid*, at 73.

## Belgium

As noted above, in April 2018 the Belgian Gaming Commission carried out a [Research Report on Lootboxes](#). Chapter 5 of this report<sup>105</sup> analyses loot boxes in light of Belgian law on gambling.<sup>106</sup> Under Belgian law the key question to be determined is whether a game amounts to a game of chance. This will arise where the following questions are answered positively:

1. Does the game allow for a bet to be placed?
2. If so, does the placing of the bet lead to a loss or a win by at least one of the players?
3. Does chance play a factor in the outcome?

In determining whether there is a win or a loss, the Gaming Commission suggested that what “is important is that players attach value to it and that this value is also emphasised by the game developers themselves.”<sup>107</sup> The Commission went on to note:

“If a player pays a certain amount for the purchase of a loot box, then the player’s loss will consist of the value of the wager minus the value of the obtained item. Therefore, even though developers and distributors maintain that the obtained items in loot boxes have no value, the amount of the wager will constitute an integral loss for the player and an integral win for the distributors and game developers.”<sup>108</sup>

The Commission concluded that where the three elements apply, it would be forbidden to operate the game of chance without first obtaining a permit from the Gaming Commission. The report ultimately found that some paid loot boxes amounted to gambling under Belgian law. The Gaming Commission recommended that criminal prosecutions should be considered, criticising game manufacturers for adopting techniques which lure players into purchasing loot boxes in an unrestricted manner.<sup>109</sup>

The Gaming Commission was also critical of the game rating agencies such as PEGI, stating:

“The gaming industry’s self-regulation does not [adequately] protect the player. The option to use money in video games is fine-tuned down to the last detail; not so the integration of the developed PEGI system. The age and playing requirement is not extended to the payment system by the game manufacturers and platforms. Once a player has created an account, he can make [anonymous] payments in a variety of ways without his age being checked. A 13-year old can make payments in a game whose age requirement is 16.

The lack of regulation and control of these video games is particularly problematic with regard to minors and gambling addicts, who can take part in games of chance without any

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<sup>105</sup> Gaming Commission, *Research Report on Loot Boxes*, (April 2018), at p. 8. Available at [https://www.gamingcommission.be/opencms/export/sites/default/jhksweb\\_nl/documents/onderzoeksrapport-loot-boxen-Engels-publicatie.pdf](https://www.gamingcommission.be/opencms/export/sites/default/jhksweb_nl/documents/onderzoeksrapport-loot-boxen-Engels-publicatie.pdf). [Last accessed 18/02/2020]

<sup>106</sup> The primary piece of legislation in Belgium in this area is the Act of 7 May 1999 on games of chance, betting, gaming establishments and the protection of players. This is available at [https://www.gamingcommission.be/opencms/opencms/jhksweb\\_en/law/law/](https://www.gamingcommission.be/opencms/opencms/jhksweb_en/law/law/). [Last accessed 18/02/2020]

<sup>107</sup> Gaming Commission, Note 105, at p. 10.

<sup>108</sup> *Ibid*, at p. 11.

<sup>109</sup> *Ibid*, at p. 16.



protection. PEGI does not check for loot boxes and does not organise any effective monitoring of its age limits.”<sup>110</sup>

As noted above, in response to the findings, EA removed FIFA points from FIFA 19. Other game developers have reacted to the report by no longer releasing their games in Belgium.<sup>111</sup>

## The Netherlands

In the Netherlands gambling is regulated by the Netherlands Gaming Authority.<sup>112</sup> In April 2018 the Netherlands Gaming Authority published a report examining whether loot boxes amounted to gambling and whether there were addiction risks associated with opening loot boxes.<sup>113</sup> The Netherlands Gaming Authority examined ten games and found that in four of the ten games the loot boxes violated Dutch gambling law.<sup>114</sup>

In determining whether these loot boxes violated Dutch gambling law the two aspects of the law which they focused on were whether:

1. the mechanics amounted to a game of chance over which the player could exert a dominant influence; and
2. the game was played for a prize.

The Authority suggested that the four games which were found to violate Dutch gambling law each included in-game items that were transferable and in some cases were capable of being sold.<sup>115</sup> In relation to the other six games and their loot boxes, the report noted:

“Six of the ten loot boxes that were studied do not contravene the law. In these games, there is no question of in-game goods with a market value and they therefore do not satisfy the definition of a prize under Article 1 of the Betting and Gaming Act. As these loot boxes could nevertheless foster the development of addiction, these games are at odds with the objective of preventing addiction to organised games as much as possible.”<sup>116</sup>

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<sup>110</sup> *Ibid*, at 16-17.

<sup>111</sup> See <https://www.theguardian.com/games/2018/nov/21/square-enix-pulls-games-mobius-final-fantasy-belgium-loot-box-ban>. [Last accessed 18/02/2020]

<sup>112</sup> More information about the Gaming Authority

<sup>113</sup> Netherlands Gaming Authority, *Study into loot boxes: A treasure or a burden?* (April 2018). Available at <https://kansspelautoriteit.nl/english/loot-boxes/>. [Last accessed 18/02/2020]

<sup>114</sup> *Ibid*, at para. 4.7.

<sup>115</sup> *Ibid*, at para. 4.3.

<sup>116</sup> *Ibid*, at para. 4.8.

## The positions adopted by key stakeholders

This section considers the response of stakeholders to the growth of loot box mechanics featured in video games. Loot boxes have been viewed from a number of perspectives by these stakeholders, and this analysis shows that objections to loot boxes relate not only to concerns over gambling but also to a perception that the micro-transactions amount to an unfair business practice, especially within competitive video gaming.

### Children and young people health advocates

This section analyses three recent studies carried out in the UK on the effects of video games on children and young people. These studies outline how the gaming practices of child gamers may be affecting those children socially. These studies also offer an insight into the perspectives of child gamers and their views on how loot boxes in video games affect their daily social interactions.

#### Royal Society for Public Health report

The Royal Society for Public Health (RSPH)<sup>117</sup> produced their report, *Skins in the Game: A high stakes relationship between gambling and young people's health and wellbeing* (the 'RSPH report').<sup>118</sup> The RSPH report examined loot boxes as part of a broader study into attitudes of young people towards gambling and gaming. The RSPH carried out research based on evidence gathered through a survey and focus groups.<sup>119</sup>

The RSPH found that a majority of the young people surveyed believed that activities such as purchasing loot boxes and skin-betting are addictive and, through ubiquity, have become normalised. Underlining this point, the RSPH report quotes a 14-year-old focus group participant, who stated:

“When I was 13, I spent all my birthday money on packs on FIFA and then starting to use my mum's card to buy more when that had gone. I knew it was wrong, but I couldn't stop. I'd spend all my time thinking about when I could next get a pack. It's so easy to get caught up in – I was definitely addicted.”<sup>120</sup>

The RSPH report notes that older gamers had experienced frustration at the addition of loot boxes into video game franchises where they had not previously featured. This frustration was manifest in two ways:

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<sup>117</sup> The RSPH is a UK-based independent health education charity. More information about the RSPH is available at <https://www.rsph.org.uk/about-us.html>. [Last accessed 18/02/2020]

<sup>118</sup> RSPH, *Skins in the Game: A high stakes relationship between gambling and young people's health and wellbeing* (20 December 2019). Available at <https://www.rsph.org.uk/our-work/policy/gambling/skins-in-the-game.html>. [Last accessed 18/02/2020]

<sup>119</sup> The focus groups were held between November 2018 and August 2019, involving 79 young people aged between 11 and 24 from across England, Wales and Scotland. The focus groups were used to design the questions that were included in the survey which was responded to by 1,025 young people who met the inclusion criteria. More information about the focus groups and the survey used in the research is available at <https://www.rsph.org.uk/uploads/assets/uploaded/cc6f2be7-cdae-4376-9f47156691baa15a.pdf>. [Last accessed 18/02/2020]

<sup>120</sup> RSPH, Note 118, at p. 17.



- that a past-time which they had previously enjoyed was being spoiled by mechanisms associated with gambling, as games were now designed in a way that it was difficult to enjoy or complete them without purchasing loot boxes; and
- concern in relation to younger players who had less experience of video games prior to the addition of loot boxes and would be aware of fewer protective strategies to avoid the gambling-related harms associated with them.<sup>121</sup>

The RSPH report also notes that respondents aged between 11 and 14 were more likely to have taken part in gambling-like activity and were more likely to have taken a permissive attitude towards such activity.<sup>122</sup> The RSPH report states:

“The fact that the gambling-like activity that young people classify as being the most addictive, is being undertaken by those who are youngest and who are resistant to more prohibitive measures to restrict it, should be treated as an area for both concern and for further research.”<sup>123</sup>

The RSPH report sets out a list of suggestions in relation to both gambling generally and loot boxes, offered up by young people participating in the study:

- to be given more information at school on the health risks associated with different forms of gambling and gambling-like activity, the support services available to them and for this to start earlier in their childhood;
- Teachers, parents and carers to be given more information to support young people around gambling harms;
- The purchase of loot boxes and skin betting to be legally recognised as forms of gambling; and
- Game developers and platforms to do more to make them aware of the risks associated with loot boxes and skin betting.

In relation to this final point the RSPH report notes that survey participants had made suggestions about mechanisms that game developers could include in their games to better enable players of video games to self-regulate. These mechanisms included pop-up warnings about gambling harms when purchasing loot boxes and the inclusion of spending limits and running spending totals to give people a better idea of the total amount of money spent.<sup>124</sup>

### Parent Zone report

In August 2019, the consultancy group Parent Zone published a report, *The Rip-Off Games: How the new business model of online gaming exploits children* (the ‘Parent Zone report’).<sup>125</sup> The Parent Zone report examined the means by which game development is financed and the use of

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<sup>121</sup> *Ibid*, at pp. 21-22.

<sup>122</sup> *Ibid*, at p. 23.

<sup>123</sup> *Ibid*.

<sup>124</sup> *Ibid*, at p. 59.

<sup>125</sup> Parent Zone, *The Rip-Off Games: How the new business model of online gaming exploits children*, (29 August 2019). Available at <https://parentzone.org.uk/system/files/attachments/The%20Ripoff%20Games%20-%20Parent%20Zone%20report.pdf>. [Last accessed 18/02/2020]

potentially exploitative practices in game development to introduce gambling-style elements into video games.<sup>126</sup> This research was carried out with the polling company Ipsos MORI, through a series of qualitative interviews and observations.<sup>127</sup> It found that in the UK, 93% of children played online games on a regular basis and over 76% believe that such games encourage in-game spending as much as possible.<sup>128</sup>

The Parent Zone report acknowledges the deficit in reliable research in the area and the lack of international consensus on how loot boxes should be regulated. However, it maintains that until evidence emerges that loot boxes aren't linked to problem gambling, a precautionary approach should be adopted and that, "it is in the best interests of children to bring loot boxes under gambling rules and regulations, specifically a requirement to prove that purchasers are 18 or over."

The report argues that the following 'psychological techniques' are employed by developers in the micro-transactions that feature in video games:

- the use of in-game currency to hide the value of what is being purchased;
- loss aversion, i.e. video gamers are more likely to spend if they believe they are close to winning, rather than on the edge of losing;
- reward removal, i.e. the discomfort of losing what you already have;
- fun pain, i.e. where a painful situation is avoided by a pop-up offering a way out; and
- inducements to spend more, i.e. where bigger offers are sold at a greater 'discount'.<sup>129</sup>

The report notes the growing prevalence of loot boxes in video games and highlights that "63 of the top-grossing games on Google Play, for instance, contain loot boxes; and 32% of the top 50 games on Steam."<sup>130</sup> The report also expresses concerns over loot boxes featuring random rewards:

"In addition to the psychological techniques listed above, many of which can be seen in the operation of loot boxes, they deploy the technique of variable ratio reinforcement, meaning that rewards are delivered unpredictably. This is similar to the mechanism that drives behaviour on slot machines. Since players never know when the reward will show up, only that it will come sometimes, they are incentivised to keep trying."<sup>131</sup>

### Children's Commissioner report

In October 2019, the Children's Commissioner for England published their report, *Gaming the system* (the 'Children's Commissioner report'), which examined video gaming culture among children.<sup>132</sup> The report is based on research carried out by the Children's Commissioner using a

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<sup>126</sup> Parent Zone is a consultancy agency in the field of digital family life. More information about Parent Zone is available at <https://parentzone.org.uk/about-us>. [Last accessed 18/02/2020]

<sup>127</sup> Parent Zone commissioned an Ipsos MORI survey with 1001 children aged 10 to 16. They also analysed existing posts on online gaming forums, posted questions soliciting the views of seasoned gamers, and conducted an ethnographic close observation of a nine-year-old gamer. Parent Zone, Note 125, at p. 13.

<sup>128</sup> Parent Zone, Note 125, at p. 2.

<sup>129</sup> *Ibid*, at p. 9.

<sup>130</sup> *Ibid*, at p. 10.

<sup>131</sup> *Ibid*.

<sup>132</sup> Children's Commissioner, *Gaming the system* (October 2019). Available at <https://www.childrenscommissioner.gov.uk/publication/gaming-the-system/>. [Last accessed 18/02/2020]

focus group of 29 children aged between 10 and 16.<sup>133</sup> The Children's Commissioner report examines the positives and negatives that these children experience from playing video games.

The Children's Commissioner report considers the effect that monetisation techniques used in video games has on children, suggesting that when money becomes involved video games start to look less like a game and more like gambling. In relation to loot boxes, the Children's Commissioner report notes:

"Some of the most significant spending across the groups is on in-game purchases, often called 'loot boxes', where the player receives a randomised selection of items. This was particularly true for the FIFA groups, where the vast majority of children's expenditure is on player packs.

In the FIFA groups, children were aware that the odds of receiving good players is low and some children explicitly related the purchase of player packs to gambling. Nonetheless, they are still happy to spend hundreds of pounds on packs."<sup>134</sup>

The report emphasises the various purchase motivations of focus-group participants behind making in-game purchases on loot boxes. It notes that having fun, keeping up, i.e. being encouraged to spend to gain a competitive advantage, and peer pressure were factors that led to in-game spending. The Children's Commissioner report suggests that the normalisation of in-game spending has led to a considerable increase in money spent by children. The report notes how one child:

"... described how, when he had first started playing Ultimate Team aged 11, he had spent around £10 each year. This rose to £100 by the time he was 14. By the age of 16, when he was playing FIFA 19, he spent £300 in the year."<sup>135</sup>

The Children's Commissioner report also argues that the variable reward mechanics in FIFA mean there is a potential for children to spend a significant amount of money, which they may later view as wasted if the purchased pack did not include a desired footballer. Despite this frustration, the children in the study unintentionally bought multiple packs at once, failing to keep track of the total amount of money spent, akin to "chasing losses" in gambling.<sup>136</sup>

The Children's Commissioner report makes several recommendations, including:

- developers and platforms should not enable children to progress within a game by spending money. Spending should be limited to items which are not linked to performance - e.g. aesthetic items such as new outfits;
- all games which allow players to spend money should include features for players to track their historic spend;
- maximum daily spend limits should be introduced in all games which feature in-game spending and these limits should be turned on by default for children;

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<sup>133</sup> *Ibid*, at p. 30. The research focused on children who played Roblox, Minecraft, Fortnite, FIFA and Call of Duty: Black Ops 4. The research comprised of analysing gaming behaviour diaries which were put together by the participants and through focus groups where the children were divided into groups of five based on the game they played and asked to share their experiences.

<sup>134</sup> *Ibid*, at p. 20.

<sup>135</sup> *Ibid*, at p. 23.

<sup>136</sup> *Ibid*, at p. 24.

- the government should take immediate action to amend the definition of gaming in section 6 of the Gambling Act 2005 (UK), to regulate loot boxes as a form of gambling; and
- the government should also undertake a wider review into the current definition of gambling in the Gambling Act 2005 (UK), to ensure that it accurately reflects new forms of gambling, including those forms found in online games.<sup>137</sup>

## The video game community

The response of the video gaming community to the introduction of loot boxes in AAA games has been largely negative. Criticisms of loot boxes among the video gaming community take many forms. However, criticism often focuses on the fact that loot boxes allow gamers to “pay-to-win” and that a consumer who is spending a considerably higher price to purchase a AAA game rather than a free-to-play game should not have to pay more money for randomised loot boxes to unlock content necessary to enjoy the game.

Schwiddessen and Karius note some of the criticisms of loot boxes raised by gamers in 2017:

“Sport and racing fans were complaining that they were forced to ‘grind’ in Forza Motorsport 7, NBA 2k18 and Need for Speed: Payback unless they paid money on loot boxes to build up their characters. Adventure fans criticized Assassin’s Creed Origins for including loot boxes that contained game-progress-affecting items and not just cosmetic ones. RPG and fantasy fans had similar concerns regarding the highly-anticipated Lord of the Rings: Shadow of War and also stated that reaching a bonus ending would require significant more time without the player spending real money on loot boxes. Action and shooter fans claimed that loot boxes which could be opened in the Normandy setting of Call of Duty: WWII would be disrespectful towards the allied troops who ‘gave their lives to save the world from fascism and tyranny’. Science-fiction and shooter fans were outraged about several game events and gameplay adjustments for Destiny 2 which were allegedly undertaken to boost the sale of loot boxes and ultimately even demanded the removal of the game’s entire in-game shop.”<sup>138</sup>

The negative reaction of the game playing community has convinced some game publishers to make changes. A notable example arose from the Star Wars Battlefront II controversy. Prior to its general launch in November 2017, Star Wars Battlefront II was released on a limited early-access basis. This version of the game was widely criticised for its loot box system which gave purchasers significant gameplay advantages over other gamers through randomised loot boxes which could be purchased using real money or in-game currency earned by playing the game.<sup>139</sup>

<sup>137</sup> *Ibid*, at p. 27.

<sup>138</sup> Schwiddessen, S., and Karius, P. “Watch your loot boxes! – Recent developments and legal assessment in selected key jurisdictions from a gambling law perspective” 2018 *Interactive Entertainment Law Review*, Vol. 1(1), pp 17-43, at 22. Available at <https://www.elgaronline.com/view/journals/ielr/1-1/ielr.2018.01.02.xml>. [Last accessed 18/02/2020]

<sup>139</sup> In one case a Reddit user commented about the lack of access to one of the main characters, “Seriously? I paid 80\$ to have Vader locked?” In response an EACommunityTeam user, an account associated with the publisher of the game [EA] attempted to explain and justify the prohibitive pricing of these characters. This replying comment became the most downvoted comment in reddit history, receiving more than 280,000 downvotes in one hour. See [https://www.vice.com/en\\_us/article/pa3wek/star-wars-battlefront-most-downvoted-comment-on-reddit](https://www.vice.com/en_us/article/pa3wek/star-wars-battlefront-most-downvoted-comment-on-reddit). [Last accessed 18/02/2020]

Reports emerged that some of the higher-profile powerful characters, such as Darth Vader and Luke Skywalker, heavily featured in marketing for the game, could be obtained through a credit system. Without the purchase of a loot box, a gamer could only earn sufficient credits to unlock a single one of these characters after 40 hours to 60 hours of grinding.<sup>140</sup> Despite lowering the number of credits needed to unlock characters by 75%, the negative feedback continued, resulting in the game developers removing all micro-transactions from the game, one day before its official release.<sup>141</sup>

Upon release, the game sold fewer copies than its predecessor *Star Wars Battlefront* and resulted in a decline in EA's stock market value. As the scandal continued, concerns began to be raised as to the similarities between the game's loot box system and gambling.<sup>142</sup> These concerns were heightened by the fact that *Star Wars*, as a Disney franchise, is marketed towards children. Schwidessen and Karius have suggested that this controversy acted as a catalyst towards further inquiries into loot box mechanics:

"In particular during the last months of 2017, gamers all around the globe had lodged thousands of complaints with local gambling and youth protection regulators as well as politicians to take action against loot boxes. The sheer amount of complaints together with the omnipresent coverage by the mass media and the corresponding global internet uproar ultimately made several authorities, age-rating boards, politicians and other stakeholders take a closer look at the matter. Many of them subsequently issued statements, warnings or even started legislative initiatives or investigations on loot boxes. Several of these initiatives are still ongoing."<sup>143</sup>

## The video game industry

The video game industry has given a mixed response to the criticism raised about loot boxes. While the industry has at times staunchly defended its position on loot boxes, concerns about the harmful effects of micro-transactions have also been raised by game developers who in some cases have criticised the use of commercial practices that exploit vulnerable gamers.

The Interactive Games and Entertainment Association (the IGEA) provided a written submission to the Australian Senate Environment and Communications References Committee Inquiry.<sup>144</sup> The IGEA put forward the following arguments in relation to loot boxes:

- Loot boxes are an optional form of micro-transaction that are not required to enjoy, progress in or complete a video game;

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<sup>140</sup> Schwidessen, S., & Karius, P. Note 138, at p. 22.

<sup>141</sup> *Ibid*, at p. 23.

<sup>142</sup> See [https://www.washingtonpost.com/news/comic-riffs/wp/2017/11/18/how-a-star-wars-video-game-faced-charges-that-it-was-promoting-gambling/?utm\\_term=.bdcaa5f23a79](https://www.washingtonpost.com/news/comic-riffs/wp/2017/11/18/how-a-star-wars-video-game-faced-charges-that-it-was-promoting-gambling/?utm_term=.bdcaa5f23a79). [Last accessed 18/02/2020]

<sup>143</sup> Schwidessen, S., & Karius, P. Note 138, at p. 23.

<sup>144</sup> The IGEA is an industry association representing the business and public policy interests of Australian and New Zealand companies in the interactive games industry and includes in its members game publishers such as Activision Blizzard, EA, Five Star Games, Gameloft, Namco Bandai Entertainment and Ubisoft. For more information about the IGEA, see <https://igea.net/about/>. [This website cannot be accessed from the Oireachtas servers]

- Loot boxes do not constitute a form of gambling under current Australian law;
- Video game publishers, developers and platforms generally do not allow loot boxes or virtual items to be traded, exchanged, sold or gambled through secondary websites or services;
- Loot boxes use the same “surprise and delight” mechanics that feature in trading cards and Kinder Surprises, which are subject to consumer protections and regulations; and
- The video game industry takes its responsibilities seriously and provides parents with robust tools to ensure children cannot make purchases without obtaining parental approval first.<sup>145</sup>

As far back as 2015, Eira Ekre, a Stockholm-based game developer wrote about the comparisons between certain micro-transaction mechanics and gambling.<sup>146</sup> She highlighted that the lack of regulation of micro-transactions contrasted starkly with the regulation of the gambling industry. She noted, in the UK, online gambling providers required a licence and were required to adhere to strict rules designed to protect gamblers.<sup>147</sup>

Ekre raised concerns about game developers dehumanising gamers. Some game developers referred to gamers spending large amounts on micro-transactions as “whales”.<sup>148</sup> She highlighted that these gamers may have an addictive personality, and that micro-transactions in games were being custom-built to take advantage of this ‘weakness’. In order to address this, she suggested:

“Unless the developers of a game, app or online service have the well-being of their audience in mind when deciding on their monetization model, they are bound to abuse their consumers. There’s a choice between exploiting people’s weaknesses, and building a stable system where good design is worth paying for; many will choose the first option, simply because it’s easier. It takes less thought, less empathy, and while it may not be the best long-term plan, it’ll make enough profit in a short time to be worth it.

This is why we need communities, marketplaces, app stores and maybe even countries to establish rules for developers who create products with microtransaction models.”<sup>149</sup>

In recent years some video game developers of AAA games for consoles have moved away from loot box monetisation following the backlash that came from the Star Wars Battlefront II scandal. As can be seen from Appendix 1, below, a number of developers subsequently removed loot box

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<sup>145</sup> Submission 3 of the IGEA to Australian Senate, Environment and Communications References Committee, at p. 4. Available at [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Environment\\_and\\_Communications/Gamingmicro-transactions/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Gamingmicro-transactions/Submissions). [Last accessed 18/02/2020]

<sup>146</sup> Eira Ekre, “The Whales of Microtransactions, and the Elephant in the Room,” *Model View Culture*, Issue 30 (November 2015). Available at <https://modelviewculture.com/pieces/the-whales-of-microtransactions-and-the-elephant-in-the-room>. [Last accessed 18/02/2020]

<sup>147</sup> *Ibid.* She also notes that in the UK a gambling commission “ensures companies continue to adhere to these rules once a license has been granted.”

<sup>148</sup> “Whales” refer to a small group of consumers in relation to certain games where their contribution in terms of in-game spending amounts to the majority of the revenue made by the game.

<sup>149</sup> Ekre, Note 146.



mechanics from their games.<sup>150</sup> Announcements have been made for a number of high-profile upcoming games that they will not include loot boxes.<sup>151</sup>

In some cases, game developers have even gone so far as to openly criticise the use of loot boxes. For example, CD Projekt Red<sup>152</sup> have stated that their forthcoming game, *Cyberpunk 2077*, will not feature loot boxes and that they would “leave greed to others.”<sup>153</sup>

## Game ratings agencies

### ESRB

The position of the ESRB in October 2017 was set out in response to calls for their position to be clarified. A spokesperson from the ESRB in an email to the game review site *Kotaku* stated:

“ESRB does not consider loot boxes to be gambling. While there’s an element of chance in these mechanics, the player is *always* guaranteed to receive in-game content (even if the player unfortunately receives something they don’t want). We think of it as a similar principle to collectible card games: Sometimes you’ll open a pack and get a brand new holographic card you’ve had your eye on for a while. But other times you’ll end up with a pack of cards you already have.”<sup>154</sup>

This position was reiterated in February 2018, in a letter sent by Patricia Vance, President of the ESRB to US Senator Margaret Hassan, in relation to concerns around loot boxes and gambling.<sup>155</sup> The response from the ESRB raised issues about the lack of empirical evidence to suggest loot boxes are linked to gaming disorders and were specifically targeting children. The letter went on to state:

“The ESRB has previously stated publicly that we do not consider loot boxes to be gambling for various reasons, nor am I aware of any legal authority in the United States that has classified loot boxes as gambling. In fact, the UK Gambling Commission recently determined that loot boxes do not constitute gambling.

We believe that loot boxes are more comparable to baseball cards, where there is an element of surprise and you always get something. Loot boxes are an optional feature in

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<sup>150</sup> A list of some of the high profile developments in relation to the removal of loot boxes in mainstream games are available at <https://www.forbes.com/sites/insertcoin/2018/04/11/from-battlefront-2-to-fortnite-the-war-against-loot-boxes-is-being-won-in-2018/#10abb116a92d>. [Last accessed 18/02/2020]

<sup>151</sup> These include *Gears of War 5* [<https://www.windowcentral.com/gears-5-eliminates-loot-boxes-and-season-pass-still-features-direct-purchases>], *Borderlands 3* [<https://www.forbes.com/sites/paultassi/2019/05/02/here-is-what-is-actually-happening-with-borderlands-3s-microtransactions/#54a494da14bd>], and *Star Wars Jedi: Fallen Order* [<https://www.forbes.com/sites/paultassi/2019/04/14/it-is-rich-that-eas-star-wars-jedi-fallen-order-is-using-anti-ea-talking-points-as-marketing/#33d926892f67>]. [Last accessed 18/02/2020]

<sup>152</sup> The developers behind the multi-award winning *Witcher 3: Wild Hunt*.

<sup>153</sup> See <https://www.windowcentral.com/cd-projekt-red-slams-loot-crates-well-leave-greed-others>. [Last accessed 18/02/2020]

<sup>154</sup> See <https://kotaku.com/esrb-says-it-doesnt-see-loot-boxes-as-gambling-1819363091>. [Last accessed 18/02/2020]

<sup>155</sup> Available at <https://cdn.arstechnica.net/wp-content/uploads/2018/02/ESRB-response-to-Senator-Hassan-Vance-2-27-18.pdf>. [Last accessed 18/02/2020]

certain games that provide the player a fun way to acquire virtual items for use within the game itself. Most of the time, these items are cosmetic in nature. They are sometimes earned as an award to the player; other times they can be purchased. But at all times, they are optional. Additionally, there is no way to cash out in the game; the player can only use the item to customize game play experience. Having said that, if parents have a concern about how much time or money their kids are spending playing games, they can activate parental controls to help them manage both.”<sup>156</sup>

## PEGI

The position of PEGI was set out in October 2017, in an email from the Operations Director Dirk Bosmans to the video game review site *WCCFtech*. This stated:

“In short, our approach is similar to that of ESRB (I think all rating boards do, USK in Germany as well). The main reason for this is that we cannot define what constitutes gambling. That is the responsibility of a national gambling commission. Our gambling content descriptor is given to games that simulate or teach gambling as it’s done in real life in casinos, racetracks, etc. If a gambling commission would state that loot boxes are a form of gambling, then we would have to adjust our criteria to that.”<sup>157</sup>

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<sup>156</sup> *Ibid.*

<sup>157</sup> See <https://wccftech.com/pegi-loot-boxes-cant-define-gambling/>. [Last accessed 18/02/2020]



## Conclusion

This paper has considered the regulation of loot boxes in video games. Based on the above research, a number of considerations arise:

- Micro-transactions have emerged as a major source of revenue in relation to the development of video games. While micro-transactions were traditionally associated with free-to-play games on mobile and social platforms, in recent years micro-transactions now feature in a growing number of PC and console games.
- Loot boxes are a specific type of micro-transaction sometimes featured in video games available to children. The use of loot boxes has raised concerns among some commentators as they are seen to share characteristics with forms of gambling;
- The Irish legal position on whether loot boxes should be considered to be a form of gambling is unclear;
- Other jurisdictions exhibit a degree of divergence on how they treat loot boxes under their respective gambling legislation. Some have declared that loot boxes breach gambling laws, while others have suggested that the contents of loot boxes do not hold a market value and hence should not be regulated under their gambling laws;
- There is a limited amount of empirical data relating to the effects of loot boxes on gamers;
- Existing academic research indicates that loot boxes may be linked to problem gambling and there is consensus of opinion among these academics that further research is needed into the effects of loot boxes on gamers.
- In response to the video gaming community's backlash against the use of loot boxes in certain games, some franchises have limited their use in their video games. However, for some game publishers, loot boxes remain an integral part of their monetisation strategy.

The following list represents various approaches that have been suggested as potential means of addressing the concerns arising from the use of loot boxes:

1. Amend gambling legislation to bring loot boxes within the definition of gambling in Irish law.
2. Require game developers to include warnings alerting gamers at the time of purchase to the potential harms associated with gambling.
3. Require game developers to include features in video games to enable gamers to keep a better track of the money that they spend on loot boxes, for example user-defined spending caps and running spending totals.
4. Provide that advertisements for and packaging of video games that contain loot boxes are labelled with appropriate content descriptors and age ratings.
5. Provide mechanisms for enhanced education strategies to help gamers and the parents and guardians of underage gamers to understand the potential harms posed by loot boxes.

## Appendix 1. Drummond and Sauer: Gambling features in 22 video games containing loot boxes in 2016–2017<sup>158</sup>

Game	ESRB rating	Exchange of money	Unknown future event	Chance involved	Avoid losses if opt out	Competitive advantage	Can cash out <sup>159</sup>
<i>Assassins Creed Origins</i>	17+	Yes	Yes	Yes	Yes	Yes	No
<i>Battlefield 1</i>	17+	Yes	Yes	Yes	Yes	No	No
<i>Call of Duty: Infinite Warfare</i>	17+	Yes	Yes	Yes	Yes	Yes	No
<i>Call of Duty: WWII</i>	17+	Yes	Yes	Yes	Yes	No	No
<i>Destiny 2</i>	13+	Yes	Yes	Yes	Yes	No	No
<i>FIFA 17</i>	E	Yes	Yes	Yes	Yes	Yes	Yes
<i>FIFA 18</i>	E	Yes	Yes	Yes	Yes	Yes	Yes
<i>For Honor</i>	17+	Yes	Yes	Yes	Yes	Yes	No
<i>Forza Motorsport 7</i>	E	No <sup>160</sup>	Yes	Yes	Yes	Yes	No
<i>Gears of War 4</i>	17+	Yes	Yes	Yes	Yes	No	No
<i>Halo Wars 2</i>	13+	Yes	Yes	Yes	Yes	Yes	No
<i>Injustice 2</i>	13+	No	Yes	Yes	Yes	Yes	No
<i>Lawbreakers</i>	17+	Yes	Yes	Yes	Yes	No	No

<sup>158</sup> Drummond, A., & Sauer, J.D. "Video game loot boxes are psychologically akin to gambling" *Nature Human Behaviour*, (2018) Vol. 2, pp 530–532. Available at [http://www.tascl.org/uploads/4/9/3/3/49339445/drummond\\_sauer\\_nhb\\_2018\\_loot\\_boxes.pdf](http://www.tascl.org/uploads/4/9/3/3/49339445/drummond_sauer_nhb_2018_loot_boxes.pdf). [Last accessed 18/02/2020]

<sup>159</sup> Drummond and Sauer note that in *FIFA 17*, *FIFA 18*, *Madden NFL 17* and *Madden NFL 18* gamers could cash out through websites unaffiliated with the Electronic Arts. They also noted in relation to *PlayerUnknown's Battlegrounds* gamers could "... cash out (by selling items for varying prices) on the distributor's (Steam) marketplace. We found no text in the publisher's terms of use explicitly prohibiting trading or re-selling virtual items. At the time of writing, many items were purchasable in this game's marketplace for less than the cost of opening a loot box. Thus, through a chance outcome, players could lose money by obtaining items worth less than the cost of opening a loot box and cashing the item out via the game's distribution platform." *Ibid*, at 532

<sup>160</sup> Drummond and Sauer note "Turn 10 Studios (the publisher of *Forza Motorsport 7*) have announced they will be adding the ability to purchase loot boxes with money soon." It is unclear whether such a feature was ever added: *ibid*, at 531.

<i>Madden NFL 17</i>	E	Yes	Yes	Yes	Yes	Yes	Yes
<i>Madden NFL 18</i>	E	Yes	Yes	Yes	Yes	Yes	Yes
<i>Mass Effect Andromeda</i>	17+	Yes	Yes	Yes	Yes	Yes	No
<i>Middle Earth: Shadow of War</i>	17+	No <sup>161</sup>	Yes	Yes	Yes	Yes	No
<i>NBA 2K18</i>	10+	Yes	No	No	Yes	No	No
<i>Need for Speed Payback</i>	13+	Yes	Yes	Yes	Yes	Yes	No
<i>Overwatch</i>	13+	Yes	Yes	Yes	Yes	No	No
<i>PlayerUnknown's Battlegrounds</i>	13+	Yes	Yes	Yes	Yes	No	Yes
<i>Star Wars Battlefront II</i>	13+	No <sup>162</sup>	Yes	Yes	Yes	Yes	No

Source: Drummond, A., & Sauer, J.D. Note 158.

<sup>161</sup> Originally included but removed at time of writing due to consumer backlash.

<sup>162</sup> Originally included but removed at time of writing due to consumer backlash.



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