

Europe's War on Loot Boxes

By: David Azrak



Among the more pernicious forms of video game monetization, the much-reviled loot box, a digital capsule of collectible goods, faces ever ratcheting calls for regulation within the European Union.[1] This past June, a group of twenty consumer rights organizations from eighteen European nations formally called on EU authorities to regulate the industry practice viewed as deceptive and predatory.[2] Accounting for \$15 billion in revenue in 2020 alone, including \$1.6 billion in sales from publisher Electronic Arts' ("EA") various sports titles, loot boxes comprise a sizable chunk of industry revenue streams.[3] They are here to stay it seems, at least for now. With over three billion gamers in the world,[4] the function of loot boxes, their current implementation, and the current landscape for regulation merits discussion in guiding American policy going forward.

Loot boxes vary in application and substance from game to game, but tend to follow a conventional, duplicitous formula. The digital “boxes” contain a random assortment of in-game items of varying rarity ranging from cosmetic character skins and avatar customizations to game-changing items such as powerful weaponry or armor.[5] Loot boxes are generally, though not always, acquired either through normal play or via in-game microtransactions using real world currency.[6] Alternatively, games may opt to obscure this transaction with secondary currencies such as gold, coins, or gems, that act as a sort of gift card for in-game purchases, including loot boxes.[7] Taken in the aggregate, loot boxes can more innocently be described as digital trading card packs; some in fact borrow the aesthetic quite heavily.[8]

A less charitable though no less apt comparison exists, however: slot machines. This should come as no surprise. The opening of a loot box carries with it the panache of a sordid weekend at the Bellagio; a veritable cavalcade of fantastical visuals, flashing lights, suspenseful sounds, all culminating in a grand reveal of feast or famine, of rare purples and golds or of common grays and blues. Recent studies have confirmed as much, with many stating that there exists an “unambiguous” connection between loot boxes and problem gambling behavior.[9] Many games, these reports find, use subtle “psychological nudges,” such as expiring deals or items, to further entice players into purchasing more loot boxes.[10]

These tactics seem to be working. Roughly five percent of players are responsible for generating half of all loot box revenue.[11] Lest it be suggested that this group merely represents a prominently wealthy sector of the market, researchers have concluded that outsized profits derived predominantly from at-risk individuals, specifically those with gambling problems.[12] Crucially, these gambling-like mechanics are not solely limited to titles rated for older players. EA’s *Madden NFL* franchise receives an inviting “E for Everyone” moniker, while Activision-Blizzard’s *Overwatch* receives a threadbare endorsement of 13+. Moreover, studies of children in the United Kingdom have suggested that between twenty-five to forty percent of children who play games have purchased loot boxes at some point.[13]

While loot boxes fall within the auspices of potential government regulation, a host of cottage industries spawned from the practice have managed to mostly avoid government scrutiny. For years, specialized third-party sites facilitated a thriving gambling scene for cosmetic in-game weapon skins, most notably for Valve’s *Counter-Strike: Global Offensive* which had its own loot box system.[14] These sites enable users to bet their skins on esports matches or enter them into lotteries with the chance of winning rarer and more valuable skins.[15] These skins could be sold for real currency officially via Valve’s Steam storefront.[16] Following an investigation by the Federal Trade Commission of two YouTubers who misstated their ownership of a skin gambling site they promoted, Valve cracked down and moved the practice largely underground.[17]

Some governments have elected to be proactive on the proliferation of loot boxes, with varying degrees of success. Belgium’s Gaming Commission, for example, ruled that loot boxes were a form of gambling and thus subject to Belgian law governing games of chance.[18] The reclassification was a crude fix, with many mobile games skirting the new regulations entirely, but a crude start is nonetheless a start. To call the endeavor a complete failure would also be disingenuous, as some publishers purged their loot box mechanics entirely from games sold in the Belgian market; Activision-Blizzard, meanwhile, opted to forgo the release of their latest infernal cash grab, *Diablo Immortal*, in Belgium entirely.[19]

In contrast, the Netherlands has flip flopped on the issue. Authorities went after EA over loot boxes in its *FIFA* series, arguing that the mechanic constituted gambling under Dutch gaming law.[20] The judiciary, initially, seemed to agree, before the ruling was overturned on appeal.[21] But the tides shift yet still. This past summer, a motion labeling loot boxes as a “form of gambling” with the potential to “manipulate children” and “disrupt families” was supported by four parties with cabinet positions.[22] As to where this leads remains to be seen.

Elsewhere in Europe, the Norwegian Consumer Council, an independent administrative body of the Norwegian government, has recommended legislative action against loot boxes to be implemented throughout the European Union.[23] Reluctant to hastily regulate industry practice, the U.K. has declined to do much of anything.[24] Downing Street’s Department for Digital, Culture, Media, and Sport (“DCMS”) called upon the video game industry to continue improving consumer protections, but labelled any formal regulations as “premature” at this time.[25] Incidentally, the DCMS views loot boxes closer to card packs than slot machines, likening them further to subscription box services where the real value of an item is not necessarily known at the time of purchase; enacting legislation specifically for loot boxes, in the DCMS’ eyes, requires a fine scalpel where only a sledgehammer currently exists.[26] A progress update on the department’s loot box initiative, provided game companies decline to self-regulate, is slated for some time in the first quarter of 2023.[27]

The United States should afford itself *carte blanche* in crafting its own regulatory scheme. The field is comparatively barren, but opportunities abound. In 2018, state legislatures in Hawaii, California, Minnesota, and Washington each independently introduced bills aimed at regulating loot box sales; all failed to pass.[28] At the federal level, “The Protecting Children from Abusive Games Act,” introduced in 2019, aimed to prohibit loot boxes in any games played by minors, but it too has little hope of becoming law.[29] Change comes from within, so the mantra goes, though not always expeditiously. Google and Apple currently require games sold on their respective app stores with loot boxes to disclose their odds; the Entertainment Software Rating Board, a self-regulatory organization that assigns age ratings to games, now visibly labels games with in-game purchases accordingly; and streamers take ever stringent care to ensure they follow FTC Endorsement Guidelines when promoting any products or services.[30] Further, loot boxes have been the subject of a host of litigation based on consumer protection and false advertising laws, including a class action suit in California.[31]

The measures outlined above are steps in the right direction, and indeed the gradual strides of the free market may be the preferable path to top-down government regulation. Still, regulators in the United States ought to keep a watchful eye on Europe and its varying approaches. “A sword wields no strength unless the hand that holds it has courage,” so the legends say.[32]

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- [12] *Id.*
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- [17] *Id.*
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