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10-25-2021

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*Cardozo Arts & Entertainment Law Journal*

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### Recommended Citation

Saleemi, Mamoon, "Regulation of Loot Box Mechanics" (2021). *AELJ Blog*. 297.

<https://larc.cardozo.yu.edu/aelj-blog/297>

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# Regulation of Loot Box Mechanics

BY [MAMOON SALEEMI](#)/ON OCTOBER 25, 2021



Photo by DEAR on Unsplash

There has been debate among legal scholars as to whether loot boxes can be considered a form of gambling and whether they should or how they should be regulated. Loot boxes are virtual items users can purchase within video games for real money. These “boxes” contain random items which can range from cosmetic items that alter the appearance of characters in the game, to new weapons and tools or even access to new characters.<sup>1</sup> In 2017 loot boxes brought in a record 30 billion dollars worldwide.<sup>2</sup> It is projected that loot boxes will bring in 50 billion dollars in 2022.<sup>3</sup> Electronic Art’s developer of several games that contain loot box mechanisms, made \$2.6 billion in live services (including loot boxes) in 2018.<sup>4</sup> One of EA’s popular Battle Royale games, Apex Legends is a free-to-play game that makes money off of in-game microtransactions that include loot boxes. In its first month, the game brought in \$92 million.<sup>5</sup> The allure of using loot box mechanisms stems from the fact that they seem to generate a large amount of revenue from a small user base that has described themselves as addicted to loot boxes, spending thousands of dollars on them hoping to acquire rare items.<sup>6</sup>

Some scholars have likened the purchase of loot boxes in video games to gambling. Their concern is that loot boxes and gambling share many of the same addictive features.<sup>7</sup> For example, in both the gambling and loot box contexts, low win probabilities for highly desirable rewards encourage players to purchase an indeterminate number of loot boxes to obtain these rewards.<sup>8</sup> The main aspect of gambling is buying a chance in order to win a prize.<sup>9</sup> For an activity to be regulated as gambling there must be 3 elements present: chance, consideration and prize. If any one of the three elements is not present then the activity is not considered gambling.<sup>10</sup> It is argued by some that all of these elements are met by loot boxes and therefore loot boxes should be regulated as gambling.<sup>11</sup>

There is currently a legal vacuum in the context of regulating loot boxes.<sup>12</sup> Only a few countries have attempted to regulate in this sphere. Proposed government responses have focused on two avenues for regulation: banning the sale of games with loot boxes to minors and increasing transparency through labeling and disclosure of odds within games with loot-box mechanics.<sup>13</sup> These responses have been effectuated through varying methods such as attempts to regulate directly through legislation or referrals to domestic gaming commissions.<sup>14</sup> For example, in the U.S., the Hawaii legislature introduced four bills to address the proper sale and labeling requirements of games involving loot box mechanisms.<sup>15</sup> 2 of the bills attempt to ban the sale of these games to customers under the age of 21 while the other 2 seek to establish labeling and disclosure requirements for these games.<sup>16</sup> In Washington the state legislature introduced a bill directing the Washington Gaming Commission to investigate the matter.<sup>17</sup> International responses have been similar. In China, for example, legislation has been passed requiring the mandatory disclosure of loot box odds.<sup>18</sup>

The problem with regulating loot boxes strictly stems from the fact that it is hard to fit within the traditional common law understanding of gambling,<sup>19</sup> and there is a concern for inviting overregulation of videogames.<sup>20</sup> There are two problems with trying to regulate loot box mechanisms into the pre-existing framework for gambling: users are guaranteed to receive at least 1 item and all items offered have no tangible value.<sup>21</sup> Gambling results in either a win or a loss, but loot-boxes always provide some sort of reward, even if it is not the reward the user hoped to receive.<sup>22</sup> An approach that increases transparency is better suited to addressing the growing concerns with loot box mechanisms. The approach in Hawaii and China, requiring designers to disclose odds for each loot box item will provide users with access to information on which types of games contain loot box mechanics and the odds associated with those mechanics allowing users to make informed decisions about the games they purchase and participating in loot box mechanisms.<sup>23</sup> This approach also avoids the pitfalls that would arise from an outright ban of loot box mechanics in any games sold to minors. An outright ban could result in overregulation of video game content which has frequently been criticized and blamed by uninformed regulators as a cause for school shootings and various societal ills.<sup>24</sup> Of course this approach is not without its fair share of criticism. One critique is that disclosure of odds will not discourage gambling. However, the risk of overregulating before fully understanding why loot box mechanisms can be predatory supports a wait-and-see approach.

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16. Id.
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18. Prati, supra note 7 at 243.
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