

# MODERNIZING THE DEFINITION OF GAMBLING: ARE LOOT BOXES LEGAL?



Since the first cavemen bet animal hides on whose domesticated dog could win a race around the veldt, people have understood what represents gambling. But in the video game industry in recent years, the understanding of what constitutes gambling has become confused by the emergence of loot boxes and other forms of virtual “consideration” and “prizes” across the video gaming industry. Game players, parent groups, regulators, and gaming industry advocates are trying to come to a common understanding of what constitutes “gambling”, a definition necessary to clarify what’s legal and what’s not.

Why is this important to the lottery industry? As the next generation of lottery players grows up playing games on their mobile phones and in-home gaming systems, they will be “trained” by the video gaming industry as to what constitutes gambling. Lottery professionals can work with their elected representatives to help shape the legislation which makes a clear distinction between lottery games sold at retail and “for fun” video game purchases, and thereby prevent the video game industry to blur that line.

## WHAT, EXACTLY, IS A “LOOT BOX”?

Loot boxes were conceived by gaming companies as ways to increase revenue and player engagement in such popular games as Call of Duty and Overwatch. Players use real money to purchase loot boxes during game play. The boxes’ contents are a mystery, but typically feature outfits

for a character in the game or new player capabilities (such as skills or weapons). Proponents argue that this is not gambling because there is no “chance” involved. The loot boxes always contain something, so the player is purchasing something of value as opposed to wagering something of value for an uncertain outcome. If this argument is accepted, loot boxes would not fulfill one of the three criteria historically used to define gambling (i.e. chance).

The loot box discussion is also fueled by the incredible continued growth of the video game industry, which in 2018 soared past previous global box office sales. Loot boxes play an important part of that growth and are projected to increase to \$50 billion by 2022.

## DIFFERENT OPINIONS AMONG REGULATORS

Many regulators contend that loot boxes constitute games of chance. In Belgium, for example, the national gaming commission ordered that loot boxes be removed from the games Overwatch and FIFA 18. Other game publishers have removed loot boxes from game titles in Belgium or have shut down the games in that country completely.

Over the summer, the UK Gambling Commission again stated that loot boxes are not gambling. This ruling again revved up the debate in England about how to handle this situation.

In the United States, legislation is under discussion that would outlaw loot boxes and penalize gaming violators with heavy

fines. While no legislature has passed a bill, proposed legislation among interested states includes the requirement of warning labels, minimum age limits for playing games with loot limits and, in a nod to how close loot boxes come to actually gambling, disclosure of odds. The Minnesota state legislature has been one of the country’s more progressive bodies as a bill governing loot boxes works its way through the appropriate committees.

Regulatory momentum reached a crescendo at the 2018 Gambling Regulators European Forum when representatives of the United Kingdom, France, Spain, and other countries joined to launch an investigation into loot boxes. In the U.S., some state jurisdictions are looking into loot box regulation in the absence of federal legislation.

The Entertainment Software Association, the gaming industry’s advocacy group, has countered the U.S. discussion by pointing out that the United Kingdom, Australia, Ireland, and New Zealand already have investigated loot boxes and found that they did not constitute gambling. These gaming companies contend that loot boxes do not align with the traditional definition of gambling because there is no risk and there is no “wager”. The contents of the box may be a “mystery”, but the player knows she is purchasing something of value.

However, parent groups are applying pressure on gaming companies because underage players are playing these games in which loot boxes can be purchased. They contend that the underlying psychological motivations to buy loot boxes are no different than the motivation to wager for the possibility of winning something of value. They argue that the result is exactly the same: players are enticed to spend more money than they should based on a desire to accomplish an uncertain outcome. And for that reason, loot boxes should be regulated as gambling. They should at least be prohibited for under-age consumers who are most vulnerable to the destructive consequences of spending too much money on loot boxes. In response, EA released Battlefield V without loot boxes and emphasized this “responsible” stance in its marketing campaign.

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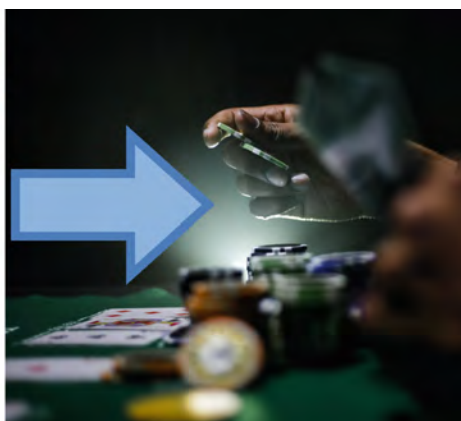
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## THE SAME PSYCHOLOGY AS GAMBLING

There is evidence that spending on loot boxes meets the same “psychological criteria” as gambling. They tap into a deep human desire for reward. Loot boxes exploit B. F. Skinner’s variable ratio schedule, a reward system used by casinos in which players are rewarded at random intervals. A player never knows when he/she may be rewarded, but the psychological excitement of the possibility sustains a player’s desire to continue to risk money. Historically, governments have regarded this type of activity as requiring regulation.

A scientific study published in the journal Addictive Behaviors found that the average player spent \$17.50 per month (more than \$200 annually) on loot boxes. More than 10 percent of subjects in the study spent more than \$50 per month (\$600 annually). One player reportedly spent about \$700 on FIFA Ultimate Packs alone.

This dynamic is particularly vexing because underage players have shown themselves vulnerable to the allure of loot boxes. A U.K. Gambling Commission study revealed that about a third of 16-to-18-year-old players have opened loot boxes and three percent have wagered with in-game items. Further, there are third-party platforms, such as Steam, that encourage players to trade virtual items for cash. Steam Wallet funds can be used to acquire more games.

## THE SOLUTION MAY COME FROM THE “INSIDE”

The loot box problem may fix itself. Players themselves have begun to protest the proliferation of loot boxes and other pay-to-win features in games. It may be their pressure – from within the gaming community itself – that finally makes this confusing definitional debate about what constitutes gambling a moot point. A market-driven solution is always helpful, but legislators may want to take responsibility to apply protective measures to protect the young and vulnerable in society.

Lotteries, particularly those offering online games or considering entering the online gaming world, should pay particular attention to how the video gaming industry reacts to the attention it is now receiving. We know our next generation of lottery customers is certainly paying attention. ■

or send money in 2019. That is quick adoption.

Given the internet platform-based nature of the currency, Libra also represents a pathway for businesses to acquire detailed information about the lives of their customers. Digital technologies make it possible to capture and record actions that are conducted in public but have always been difficult or cost-prohibitive to surveil (e.g. where we tend to linger in supermarkets or if we like to go to bars that show sports events through broadcast signal piracy).

## OPENING A DOOR TO BLACK MARKETS?

Libra will be, at least initially, an unregulated currency. No one in a regulatory capacity can seem to agree on what Libra actually is. Some argue it is a payment tool, like PayPal. Others argue that it may behave as an exchange-traded fund because it will be underpinned by multiple traditional currencies. Still others may choose to regulate Libra as they would a bank. There are, of course, a warren of complicated implications that will activate depending on how Libra is defined. It is unlikely that regulators will come together around existing international laws, which would place Facebook in the unenviable position of garnering approvals jurisdiction by jurisdiction. That not only would represent an implementation headache but would significantly undercut Facebook’s strategic hopes to make Libra a global entity serving populations without bank accounts or without access to international commerce.

Could crypto-currencies become the backbone of illegal gambling platforms? With Facebook’s immense global penetration, even if a small percentage were to adopt Libra as their “money,” the potential for abuse is staggering. Underground gambling could skyrocket and place real pressure on legitimate operators around the world.

## IMPLICATIONS FOR LOTTERY

Lottery sales continue to be, predominantly, cash transactions. Twenty-four jurisdictions in the U.S. – 23 states plus the District of Columbia – do not accept credit card payments, and 10 additional states permit individual retail outlets to decide whether to accept credit cards or insist on cash. It is

unlikely, therefore, that Lottery will embrace crypto-payments in the immediate future.

Of course, the speed with which lotteries will need to act on the mobile payment trend will be determined by consumer adoption. By 2022, perhaps one-third of smartphone users will have made a proximity mobile payment. While that is an impressive number, it is certainly not a cause of concern for the international lottery industry, certainly not until there is some type of consolidation among the major players, including PayPal, Apple Pay, Google Pay, and retailer-specific systems such as Walmart Pay. Further, the retail marketplace offers an inconsistent checkout experience (some stores have the necessary technology, others don’t) so consumers gravitate to credit cards because they can be relied on to be accepted everywhere. This is particularly true of smaller “mom-and-pop” lottery retailers who can’t necessarily afford the appropriate technology.

Even so, as the eco-system develops around Libra, Lottery should consider these potential implications:

- Might Libra open the door to new players - people without access to traditional banking systems?
- Should lotteries consider providing retailers with the technology necessary to accept mobile wallet transactions?
- Will new applications enable Lottery players to trade and sell tickets with other players?
- Will new security protocols need to be developed to prevent individuals from stock-piling Lottery products for re-sale as a black-market provider?
- Will an underworld gambling empire arise, hijacking revenues from legitimate operators?
- Could its ease-of-use and user confidentiality have a downside: could it fuel gambling addictions?
- Could it open the gates for truly international play (via a universal currency)?

Whether Libra becomes as common as coins in your car’s cup holder – or fails to gain traction because of technology, regulatory or consumer adoption problems – the future of how we spend will be reshaped by Financial Technology (FinTech). Facebook’s Libra initiative is likely to accelerate the evolution of commercial transaction systems. ■