



Introduction

The Mobile Games Intelligence Forum (MGIF) was established in January 2020 to discuss and debate issues facing the sector and its place within the global video games industry. Rather than a representative body or a trade group, MGIF is a European focused participatory Forum, sharing mobile games insight and perspectives. A range of developers of differing sizes participate in the Forum, including King, Miniclip, Playrix, Playtika, Roblox, Rovio, Supercell, and Wargaming. They have in common a passion for mobile games. This paper does not represent the views of any single company, rather it is a sum of knowledge shared between MGI and Forum participants.¹

MGIF contributed to the UK Department for Digital, Culture, Media and Sport (DCMS) loot box ‘call for evidence’ and the UK CAP² and BCAP³ consultation on the self-regulatory framework for the marketing of in-app purchases. Our Forum also provides an avenue for industry professionals to discuss public policy issues affecting the sector.

Across the pandemic, mobile games have been a positive source of growth globally. Out of all video game segments, it is mobile gaming that has experienced the biggest increase in global engagement and revenue. According to SuperData, the mobile market experienced 10% growth in 2020 and accounted for 58% of the total games market.⁴ Data analytics firm NewZoo explains that ‘mobile gaming saw the largest positive impact from the lockdowns.’⁵ In Europe, the mobile games sector has a uniquely positive story to tell - COVID resilient, high growth and high proportion SME. On Christmas Day 2020 - one of the busiest times of the app year - European user spend on the App Store and Google Play hit \$54.6 million, up 29.4% from 2019 with mobile games accounting for 67% of the total, up 21% YOY.⁶

Mobile has a vital place in Spain’s video games sector growth potential. In 2016, Spain’s first video games census, undertaken by the Asociación Española de Videojuegos (AEVI), found that the sector generated more than 9,000 quality jobs, with a total impact of the sector on the economy of €3,577 million and 22,828 indirect jobs (meaning for every job generated by the video game industry, 2.6 are created in another sector, notably the digital economy).⁷ Before the onset of the pandemic, the video games sector in Spain was beginning to recover its impressive 2016 levels of growth.⁸ We believe that provided conditions are conducive to development and app store distribution, the Spanish video games sector can make a valuable contribution to the Digital Single Market. Mobile, the fastest growing category globally, must play a central part in realising that vision.

MGIF response to the DGOJ consultation

¹ This response does NOT represent any one company’s position, rather it is a sum of knowledge shared between MGI and Forum participants.

² Committees of Advertising Practice

³ Broadcast Committees of Advertising Practice

⁴ <https://www.superdataresearch.com/blog/2020-year-in-review>

⁵ <https://newzoo.com/insights/articles/newzoos-games-trends-to-watch-in-2021>

⁶ <https://sensortower.com/blog/europe-app-revenue-christmas-2020>

⁷ http://www.aevi.org.es/web/wp-content/uploads/2018/01/1801_AEVI_EstudioEconomico.pdf

⁸ <https://www.dev.org.es/images/stories/docs/libro%20blanco%20desarrollo%20videojuego%20galicia%202019.pdf>



It is a privilege for MGIF to respond to this participatory consultation⁹ initiated by the Dirección General de Ordenación del Juego (DGOJ). MGIF welcomes self-regulatory initiatives and supports a holistic and measured approach to in-app purchases, including loot boxes, based upon existing consumer protection regulation. We have focused our response on questions 1, 2, 3 and 6 and 7 of the consultation, to the best of our ability.

The response centers upon three areas:

1. Gambling regulation is a disproportionate measure that would severely inhibit industry growth. **The overwhelming majority of jurisdictions have chosen not to impose gambling regulation.** Belgium’s ruling on loot boxes has plunged the sector into legal uncertainty and is predicated upon the country’s outlier gambling legislation.
2. The Spanish mobile games sector is already governed by an extensive framework of consumer protection legislation, supported by tailored best practice guidance at both European and national level.
 - a. We respectfully suggest that the Directrices de Buenas Prácticas de Publicidad de Productos de Software Interactivo (DPPSI) presents an effective and practicable starting point from which to approach loot boxes, as part of a suite of best practice guidance, adaptable to a mobile games ecosystem characterized by fast-moving trends and new challenges.
 - b. We have made **suggestions as to what self-regulatory guidance on loot boxes might entail**: establishing **principles on the disclosure of loot box drop rates** and the **use of labels** to signpost loot boxes, as well as **measures to extend education on parental controls** which are the effective mechanism to limit or prevent in-app purchases, including loot boxes.
3. The Forum is able share some indicative data on the use of loot boxes. While differences in games, coverage and time brackets precluded a consistent data set, we hope it will be of interest to the DGOJ’s consultation. **It suggests that the purchasing behaviour for loot boxes reflects the wider in-app purchase market.**¹⁰

MGIF does recognize legitimate consumer protection concerns where specific features, ‘skins’ which are legitimately used by some of the video games industry, have been abused by third parties for the purpose of ‘skins betting’ on secondary markets. This practice is being addressed by regulators and industry through ongoing dialogue¹¹.

1.La futura regulación sobre las cajas botín, ¿debería hacerse en el marco de la LRJ y sus disposiciones de desarrollo, o por el contrario debería diseñarse un nuevo modelo

⁹https://www.ordenacionjuego.es/sites/ordenacionjuego.es/files/noticias/20210218_proceso_participativo_futura_regulacion_videojuegos_cajas_botin.pdf

¹⁰ Note: This data was confidentially provided by Forum participants and aggregated by MGI for the September-November 2020 UK ‘call for evidence on loot boxes.’ Aggregate data and ranges are based upon data confidentially provided by some MGIF forum participants for the benefit of this inquiry only. It is indicative data ONLY and has NOT been subject to academic verification or peer review.

¹¹ Loot boxes in Online Games and their effect on consumers, particularly young consumers. Accessible from: [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652727/IPOL_STU\(2020\)652727_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652727/IPOL_STU(2020)652727_EN.pdf). Published by the European Parliament in July 2020.



regulatorio para estos productos digitales, es decir, una regulación específica diferenciada de la legislación en materia de juegos de azar y de apuestas?

1. The future regulation on loot boxes, should it be done within the framework of the LRJ and / or its development provisions, or on the contrary, should a new regulatory model be designed for these digital products, that is, a specific regulation differentiated from the legislation on gambling and betting?

MGIF is of the view that it would be disproportionate to regulate loot boxes under the LRJ or subject it to a gambling licensing regime, in any form.

Gambling style KYC requirements would entail severe disruption to game-flow and fatally undermine player experiences – a designer’s remark that it would be ‘fantastically disruptive,’ is representative of Forum opinion. ‘Friction’ - i.e., interruption - is especially damaging to mobile games versus other online services. Casual games,¹² the predominant category on mobile, are quick to learn, easy to play and typically played in short time bursts. For hyper-causal games, the fastest growing category on mobile, the average playing time is just and two and a half minutes, and for ultracasual games, this can be even shorter.¹³ Gambling licensing style conditions would have a chilling effect, causing mobile games developers to exit the market, unable to maintain player retention and acting as a barrier to incumbents through presenting a prohibitive compliance burden and insurmountable hurdles to user acquisition. Consumers would be denied access to a valuable source of entertainment, enjoyment, social fulfilment and diversion.

The consultation document rightly observes that loot boxes are part of the wider freemium or ‘free-to-play’ monetisation model, in which access and play is free, with certain additional and special features available for a fee.¹⁴ This optional pay to play model was developed in the earlier days of the internet in response to fraudulent software and the fact that consumers do not pay upfront for online content. (For example, see ‘[Video games embrace China's freemium model to beat piracy](#)’ (BBC News, January 4th 2013)).¹³ Roll out of freemium to developing market economies is on-going¹⁴ and is now regarded as an industry norm for mobile games and many other app-based industries (e.g., Spotify). Freemium now predominates mobile gaming and large swathes of the app economy. Figure 1 shows prevalence of freemium model in games and non-gaming apps:

¹² According to App Annie’s State of Mobile 2020 Report, casual games, constituted 49% of game downloads globally, with puzzle and arcade as the most popular genres: <https://www.appannie.com/en/go/state-of-mobile-2020/>

Newzoo describes the typical casual gamer as a ‘time filler’:
<https://newzoo.com/insights/infographics/newzoos-gamer-segmentation-the-time-filler-explained/>

¹³ Definition: Hyper-casual games are distinct to casual games in the sense that they do not aspire to long-term player retention, are played in ultra-short time bursts, and monetise primarily through advertisements:
<https://newzoo.com/insights/articles/hypercasual-mobile-games-introduced-millions-of-consumers-to-gaming-ultracasual-interview-crazylabs/>; See also: <https://www.adjust.com/blog/the-hype-behind-hyper-casual-games/>

¹⁴ Swrve Gaming Monetisation Report 2019. Accessible from:
https://cdn2.hubspot.net/hubfs/5516657/Monetization%20Report_final.pdf. Published by Swrve, 2019

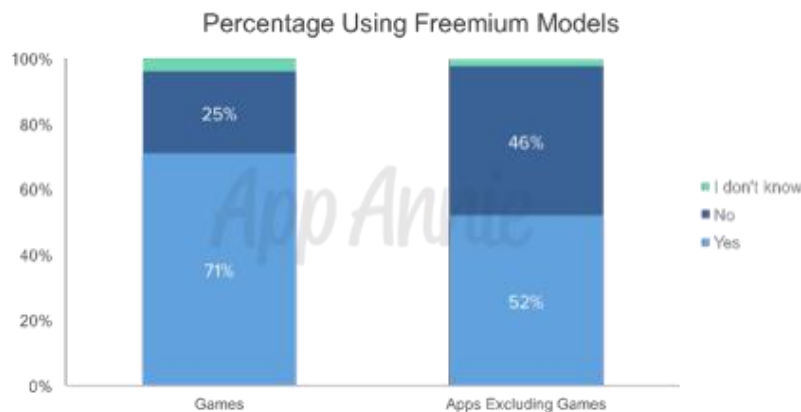


Figure 1 – Percentage using Freemium Models. Source: App Annie Economy Survey Part 2, 2017

The disproportionality of applying gambling legislation to freemium mobile mechanics is elucidated by the fact that the overwhelming majority of players spend no money whatsoever. Swrve’s respected *2019 Monetisation Report*, based on tens of millions of users, shows that from July-September 2019, 1.6% pay for in-app purchases globally on mobile, down from the 1.9% in 2016.¹⁵

The tiny minority of jurisdictions that have attempted to legislate loot boxes under gambling regulation have been criticised by the European Parliament. The Policy Department for Economic, Scientific and Quality of Life Policies, at the request of the committee on Internal Market and Consumer Protection (IMCO), carried out a detailed study of loot boxes. Their report, *Loot boxes in online games and their effect on consumers, in particular young consumers*, published in July 2020, is critical of attempts to impose gambling regulation on loot boxes. First, because it adversely affects the European Single Market for video games, denying consumers of access to titles enjoyed elsewhere in Europe. Second, because it fails to consider loot boxes as merely one of a host of in-game design and monetisation techniques.¹⁶

The Belgium Gaming Commission (BGC) is the only European regulator to have classified loot boxes as gambling due to Belgium’s uniquely broad definition of gambling that does not require monetary prize. As a result of the BGC’s decision that virtual currency can satisfy the test for ‘wager’ under the Games of Chance Act,¹⁷ any mobile game with a randomised element and in-app purchases risks classification as gambling at the arbitrary whim of the regulator. IMCO has criticised the impact on Belgium’s digital economy, whereby consumers ‘do not have access to the full content of games compared with all other national EU markets where

¹⁵ Swrve Gaming Monetisation Report 2019. Accessible from:

https://cdn2.hubspot.net/hubfs/5516657/Monetization%20Report_final.pdf. Published by Swrve, 2019

¹⁶ Loot boxes in Online Games and their effect on consumers, particularly young consumers. Accessible from: [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652727/IPOL_STU\(2020\)652727_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652727/IPOL_STU(2020)652727_EN.pdf).

Published by the European Parliament in July 2020.

¹⁷ Research Report on Loot Boxes. Accessible from:

https://www.gamingcommission.be/opencms/export/sites/default/jhksweb_nl/documents/onderzoeksrapport-loot-boxen-Engels-publicatie.pdf. Published by the Belgium Gaming Commission in April 2018.



loot boxes were not banned.’¹⁸ The overwhelming majority of regulators and associated government bodies that have considered loot boxes have not called for the imposition of gambling regulation. Fundamentally, this is because they recognise that loot boxes offer no opportunity to win money, or anything of value and therefore do not satisfy the legal test for gambling used by Member States: consideration, chance and prize.

IMCO conducted a survey which found that in **most member states, loot boxes fall under the rubric of consumer protection and contracts law and not gambling legislation.** Regulators that have made statements to this effect include the UK Gambling Commission (November 2017),¹⁹ the Danish Gambling Authority (November 2017),²⁰ the French gambling regulator (ARJEL) (November 2017),²¹ the Department of Justice for Ireland (October 2018),²² the Polish Ministry of Finance (February 2019)²³, the Swedish Consumer Agency (September 2019),²⁴ the Norwegian gambling regulator Lotteritilsynet (September 29th 2020),²⁵ and the Italian Competition Authority (November 17th 2020).²⁶

Belgium – a uniquely prohibitive Member State

A series of major titles and developers have already exited the Belgium market because of the use of gambling legislation to regulate loot boxes.

On May 21st 2019, Nintendo removed *Animal Crossing: Pocket Camp* and *Fire Emblem Heroes* ‘due to the unclear situation.’²⁷ As of November 30th 2018, *Mobius Final Fantasy* was no longer available in Belgium, *Final Fantasy Brave Exvius* on December 3rd,²⁸ *Kingdom*

¹⁸ Loot boxes in Online Games and their effect on consumers, particularly young consumers. Accessible from: [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652727/IPOL_STU\(2020\)652727_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652727/IPOL_STU(2020)652727_EN.pdf).

Published by the European Parliament in July 2020.

¹⁹ Loot Boxes within Video Games. Accessible from: <http://www.gamblingcommission.gov.uk/news-action-and-statistics/News/loot-boxes-within-video-games>. Published by the Gambling Commission, November 2017

²⁰ Statement on loot boxes. Accessible from: <https://www.spillemyndigheden.dk/en/news/statement-about-loot-boxes-loot-crates>. Published November 2017

²¹ Activity Report. Accessible from: <http://www.arjel.fr/IMG/pdf/rapport-activite-2017.pdf>. Published by ARJEL, 2018

²² Statement by Minister of State Stanton on the steps he has taken relating to loot boxes, online video games and their relationship with gambling behaviour. Accessible from: [https://merriestreet.ie/en/News-Room/Releases/Statement by Minister of State Stanton on the steps he has taken relating to loot boxes online video games and their relationship with gambling behaviour.html](https://merriestreet.ie/en/News-Room/Releases/Statement%20by%20Minister%20of%20State%20Stanton%20on%20the%20steps%20he%20has%20taken%20relating%20to%20loot%20boxes%20online%20video%20games%20and%20their%20relationship%20with%20gambling%20behaviour.html). Published September 2018

²³ Good news for the gaming industry. Loot boxes cannot be considered a hazard. Accessible from: <https://biznes.gazetaprawna.pl/artykuly/1399853.dobra-wiadomosc-dla-branzy-gier-loot-boksow-nie-mozna-traktowac-jak-hazard.html?r=299>. Published by Gazeta Prawna, 2017

²⁴ Mapping of consumer protection in the event of lottery or casino-like elements in computer games. Accessible from:

<https://www.konsumentverket.se/contentassets/83509d8dffff48559d44de6546ecc362/kartlaggning-av-konsumentskyddet-vid-lotteri--eller-kasinoliknande-inslag-i-datorspel-fi-2019-01630-ko.pdf>. Published by Consumer Works in September 2019

²⁵ Consultation response from the Lotteries and Foundations Authority. Accessible from: <https://www.regjeringen.no/no/dokumenter/horing-av-ny-lov-om-pengespill/id2721389/?uid=52d464f0-f713-4af9-9f88-b0cf0ae1c00d>

²⁶ As Italian IP lawyer, Andrea Rizzi explains, loot boxes are referred to by the Italian regulator as a ‘game mechanism,’ not a form of gambling: <https://www.gamechangerslaw.com/blog/italian-antitrust-authoritys-recent-activision-blizzard-lootbox-decision>

²⁷ https://www.nintendo.be/nl/Nieuws/2019/mei/Belangrijke-informatie-voor-gebruikers-in-Belgie-1561911.html?utm_medium=social&utm_source=twitter&utm_campaign=SmartDevice%7CBENews%7Co1%7CW21

²⁸ <https://www.resetera.com/threads/square-announces-ffbe-will-be-inaccessible-in-belgium.78605/>



Hearts Union X on December 6th 2018,²⁹ and *Dissidia Final Fantasy Opera Omina* on December 19th,³⁰ (Square Enix). These are merely famous examples reported in the industry media. Figures are not available for the number of smaller and medium-sized developers and titles that have been forced to withdraw their game from the Belgium market after deciding that the risk of distributing their titles to Belgium consumers outweighs the benefit, or Belgian based developers unable to take their products to market.

The BGC's exceptional approach stems from its April 2018 *Research Report Loot Boxes*, which found that loot boxes constitute gambling under current legislation, and recommended criminal prosecution against any companies that continued to operate the mechanic in their games.³¹ This can only be understood in the context of Belgium's uniquely broad definition of gambling, which does not require a monetary prize. Article 2:1 of the Gaming Act 1999 defines 'games of chance' as any game by which a stake of any kind is committed, the consequence of which is either loss of stake by at least one of the players or a gain of any kind in favour of at least one of the players, or organisers of the game and in which chance is a factor, albeit ancillary, for the conduct of the game, determination of the winner or fixing of the gain.'³²

The legal test for gambling in Belgium is therefore:

- A game
- A stake of any kind
- A loss or a gain
- Chance playing a role, however minimal in the outcome of the game.
- A 'wager' which is defined as a specific subcategory of games of chance: 'a game of chance in which each player wagers an amount that generates a gain or loss that does not depend on an act of the player, but depends on the realisation of an uncertain event happening without the intervention of the player.'

In recognition of a uniquely broad definition of games of chance, that does not require real world monetary prize, the Belgian legislature explicitly excludes certain games including the practice of sports.³³ However, these exceptions pre-date and do not clarify the legal status of

²⁹ <https://support.na.square-enix.com/news.php?id=13761&la=1&n=2&drt=1541426400&>tag=26905044311a943113dca28686f5ad92f2ffc457>

³⁰ <https://support.na.square-enix.com/news.php?id=16981&la=1&n=2&drt=1541426400&>tag=ce9c0fa70c61d1204f5020a1f47ee595ec4e2020>

³¹ Research Report Loot boxes, Accessible from: https://www.gamingcommission.be/opencms/export/sites/default/jhksweb_nl/documents/onderzoeksrapport-loot-boxen-final-publicatie.pdf Published by the Gaming Commission, April 2018

³² Act of 7 May 1999 on games of chance, betting, gaming establishments and the protection of players. Accessible from: https://www.gamingcommission.be/opencms/opencms/jhksweb_en/law/law/index.html Published by the Gaming Commission

³³ Exclusions also encompass games in which the only stake offered to the player or wager is to continue the game free of charge up to a maximum of five times; card games or board or parlour games played outside class I and III gaming establishments; games operated in attraction or trade or other fairs and analogous occasions; games organised occasionally, and at most four times a year, by an association having a social or charitable purpose or by a non-profit association for the benefit of a social and philanthropic project, requiring only a very limited stake

app-based online or mobile games.³⁴ The BGC's *Research Report Loot Boxes* explains that a loose definition of a 'wager' facilitates the classification of loot boxes as gambling:

'Winning is not even a decisive criterion in the Belgian Gaming and Betting Act. The mere loss of a wager can suffice and can also be of any type. 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.'

The BGC further explains that a 'win' under the Gaming Act can be something as mundane as progressing to a new level:

'The type and scope of the win is also irrelevant for the requirement of the transaction. Something that is described as a 'bonus,' 'gift' or 'reward' by the parties can also be qualified as a 'win.' The win therefore does not necessarily need to be of the monetary kind. The impossibility for a player to convert the game currency back into money does not rule out application of the Gaming and Betting Act.'³⁵

In identifying whether virtual currency might constitute a 'wager,' the BGC makes distinction between the 'gameplay currency' obtained from the regular course of the game and 'paid ... in-game currency' that constitutes a 'layer on top of the game.' The latter, the BGC considers can constitute a 'wager' because 'an asset value is brought into the game that serves as a participation fee/compensation fee for the loot box.'

We respectfully submit that this is a flawed dichotomy. Mobile games may have a single in-game virtual currency that can be both earned through in-game activity and purchased with 'real world' currency or multiple virtual currencies which can be earned or purchased in a variety of ways – and virtual in-game currency is often gifted to players by developers. The dichotomy also fails to account for a symbiotic relationship in virtual currencies, whereby one stand of virtual currency derives meaning from its relationship to the other. For Professor Frans Mäyrä, Dr Jaakko Stenros and Dr Annakaisa Kultima 'although seemingly simple,' virtual currencies in social and casual games of all kinds are evolving and 'complex systems' that defy easy categorisation. There is no one size fits all model.³⁶

The BGC also singles out loot boxes for their use of Random Number Generators (RNG) without recognising its standardized use across video game design:

'... it is clear that the game manufacturers and platforms use many techniques for luring and encouraging players to play online and purchase loot boxes in an unrestricted manner. These techniques vary from social behavior monitoring, to a lack of data protection policy with possibly large-scale manipulation of the player through behavior-related random number generators (RNG).'

³⁴This explanation of the law in Belgium is based upon Gaming Law, Jurisdictional Comparison (2014)

³⁵ Research Report Loot boxes, Accessible from:

https://www.gamingcommission.be/opencms/export/sites/default/jhksweb_nl/documents/onderzoeksrapport-loot-boxen-final-publicatie.pdf Published by the Gaming Commission, April 2018

³⁶ 'From Social Play to Social Games and Back: The Emergence and Development of Social Network Games', in *New Perspectives on the Social Aspects of Digital Gaming: Multiplayer 2*. Published by Taylor and Francis Group, 2017



David Verbruggen of the Flemish Gaming Association (FLEGA) conveys the sector's disquiet: "I just don't think it's fair... The public perception now is that a lot of politicians and people think that every video game is some form of gambling, and that is not really what is happening." Verbruggen further cites a lack of consultation with industry prior to the release of the BGC's report before advocating a consumer protection-based approach.³⁷ As mentioned above, IMCO has criticised the impact of Belgium's stance on the digital economy.³⁸

It should be remembered that a balance of skill and chance informs virtually all causal games and their enjoyability is often contingent upon their interplay from Match 3 games like Candy Crush³⁹ (*No one is actually good at Candy Crush*, Gamesindustry.biz, November 2015) to sports simulation games and racing games like Mario Kart Tour⁴⁰ (*Arms at length: The big Nintendo Interview*, EuroGamer, July 21st 2017). When it is factored that to varying degrees all these games and genres are based upon chance and skill, the problematic enforcement ramifications of Belgium gambling law are self-evident: to classify a generation of mobile games as gambling or to cause significant uncertainty as to their legal status, is a disproportionate measure.

It is submitted that Belgium's classification of loot boxes as gambling rests upon flawed legal reasoning, limited knowledge of the sector and a uniquely broad definition of gambling. Consequently, any mobile game with a randomised element risks classification as gambling at the arbitrary whim of the regulator.

A note on Netherland's stance on loot boxes – a case for clarification?

The Netherlands has been described as one of the minority of regulators that has considered loot boxes to be a form of illegal gambling. As the below attests, this is an incomplete analysis.

In 2017, the Netherlands Gaming Commission (KSA) launched a consultation on the gambling assessment framework and concluded with a classic definition of prize as having real 'economic value.'⁴¹ In April 2018, the KSA concluded the consultation, asserting a traditional definition of prize (as real-world economic value): 'A prize is a game outcome that represents or can represent economic value.'⁴² Contemporaneously, the KSA released a paper on loot boxes, finding that only four of the ten loot boxes that were studied constituted gambling. In these, virtual prizes could be traded on secondary markets.⁴³ On July 9th 2020, the KSA

³⁷ <https://www.gamesindustry.biz/articles/2019-05-28-games-industry-being-dragged-through-the-mud-by-belgian-loot-box-ruling>

³⁸ Loot boxes in Online Games and their effect on consumers, particularly young consumers. Accessible from: [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652727/IPOL_STU\(2020\)652727_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652727/IPOL_STU(2020)652727_EN.pdf). Published by the European Parliament in July 2020.

³⁹ See product development specialist, Jessie Divnich, explain the centrality of randomness to Candy Crush: <https://www.gamesindustry.biz/articles/2015-11-11-no-one-is-actually-good-at-candy-crush-divnich>

⁴⁰ See Nintendo developer Kosuke Yabuki explain the centrality of random Blue Shells to Mario Kart: <https://www.eurogamer.net/articles/2017-07-21-arms-yabuki-mario-kart-nintendo-interview-birdoplease>

⁴¹ https://www.mygamecounsel.com/wp-content/uploads/sites/187/2018/04/guide_on_assessing_games_of_chance.pdf

⁴² https://kansspelautoriteit.nl/publish/library/6/guide_on_assessing_games_of_chance.pdf

⁴³ Study into loot boxes a treasure or a burden? Accessible from: https://www.kansspelautoriteit.nl/publish/library/6/study_into_loot_boxes_-_a_treasure_or_a_burden_-_eng.pdf. Published by the Gaming Authority, April 2018

released a ‘vision,’ setting out core directives for monitoring gambling games in the public interest. The vision:

- Reiterates that whether loot boxes amount to gambling ‘varies from case to case’ and the ‘crucial test is whether the virtual prizes can be traded.’
- Acknowledges a lack of causal evidence linking loot boxes with problematic behaviour, and a need for more research.
- States that video games with ‘gambling elements’ are ‘too diverse to be regulated solely by the Games of Chance Act.’ The coordinated approach favoured by GREF is supported.

The vision contains best practice suggestions for using loot boxes in games - a clear indication that the regulator does not consider loot boxes to be, a priori, gambling:

- *Drop rate transparency:* ‘mentioning ... the potential content of loot boxes and whether it affects game performance, and the opportunities with which coveted items occur.’

Whilst, the KSA 2020 Market Vision provides welcome clarification, an absence of guidance to the effect that developers do not have culpability for illicit secondary markets in virtual items facilitated by rogue third parties, whilst their policies explicitly prohibit transferability, has caused uncertainty in the Dutch games market which might have been avoided.

We respectfully suggest that the KSA has conflated two distinct video games policy issues: loot boxes and skins betting. The latter was a primary driver of the Game Regulators European Forum (GREF) investigation of the blurring lines between gaming and gambling.⁴⁴ When Valve began to force third party platforms to end their operations, the need for an investigation reduced.⁴⁵ The European Parliament describes the matter as ‘tackled and largely resolved by regulators and the industry’ and through dialogue with , concluded that ‘most publishers do in practice assume their responsibility by actively enforcing these terms and taking actions against illegal marketplaces.’⁴⁶

Skins are more characteristic of esports rather than casual mobile games.⁴⁷ Mobile games platforms do not offer the embedded virtual item transferability that is specific to the Steam Marketplace.⁴⁸ Mobile games developers do not facilitate or permit the trading of virtual items via platforms or third-party websites.

⁴⁴ The declaration was initially signed by 15 of the 39 members of GREF. By 2019, four more members had joined for a total of 19 signatories: these are the gambling authorities from Austria, Cyprus, Czechia, Denmark, Finland, France, Gibraltar, Ireland, Isle of Man, Jersey, Latvia, Malta, the Netherlands, Norway, Poland, Portugal, Spain, the State of Washington (US), the United Kingdom.

⁴⁵ Loot boxes in Online Games and their effect on consumers, particularly young consumers. Page 34-45. Accessible from:

[https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652727/IPOL_STU\(2020\)652727_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652727/IPOL_STU(2020)652727_EN.pdf).

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⁴⁶ Loot boxes in Online Games and their effect on consumers, particularly young consumers. Accessible from: [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652727/IPOL_STU\(2020\)652727_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652727/IPOL_STU(2020)652727_EN.pdf).

Published by the European Parliament in July 2020.

⁴⁷ Newzoo calls the casual gaming player, not the ‘conventional player’ but the ‘time filler’. Accessible from: <https://newzoo.com/insights/infographics/newzoos-gamer-segmentation-the-time-filler-explained/>

⁴⁸ The Steam marketplace has a unique facility for ‘embedded’ transferability: skins may be bought sold or bought via the Valve-owned, and in-game embedded Steam Marketplace, to other users who have added cash to



The Australian Senate Environment and Communications References Committee ‘Gaming Micro-Transactions for Chance-Based Items’ – also known as the ‘Loot Box Inquiry’

It may be worth considering the reasons as to why Australia’s ‘Loot Box Inquiry’ decided against gambling regulation. On June 28th 2018, a motion was presented by Senator Jordon Steele-John of the Australian Greens party, pertaining to the ‘use of loot boxes in video games, whether they constitute gambling, and whether they are appropriate for younger audiences.’ The Senate referred the matter to the Environment and Communications References Committee. In November 2018, after a consultation period, the Committee released a report, ‘Gaming micro-transactions for chance-based items.’⁴⁹ On March 6th 2019 the Australian government issued its response which:

- Noted committee recommendations for a comprehensive review and further research into loot boxes in video games and considered that a formal departmental review of loot boxes in video games was not warranted at the time.
- Acknowledged that while research is in its infancy, steps are already being made to consider impacts on children.
- Flagged that parents and carers are aware of strategies to encourage safe gaming behaviours among children and young people.
- Recognised that the video game industry also has a significant role to play in protecting consumers. Game developers and online gaming storefronts provide a range of consumer protection tools, such as parental controls, purchase restrictions and spending limits.
- Observed that many games developers are already responding to the debate around loot boxes:

‘The Australian Government recognises that the video game industry also has a significant role to play in protecting consumers. Game developers and online gaming storefronts provide a range of consumer protection tools, such as parental controls, purchase restrictions and spending limits. The Australian Government notes that many games developers are responding to the debate around loot boxes, taking steps to remove loot boxes from games or choosing to release new games without loot boxes.’⁵⁰

2. En caso de que, atendiendo a sus singularidades, considere más procedente la regulación de los mecanismos aleatorios de recompensa en una normativa independiente de la LRJ y de sus disposiciones de desarrollo, ¿qué aspectos debería abordar esa normativa?; ¿debería

their Steam Marketplace accounts. The funds of the sale amount are added to the user’s Steam wallet, the main distribution platform for PC games or more skins. It is not possible to withdraw money from a Steam account.

⁴⁹ Senate Environment and Communications References Committee a report into ‘Gaming micro-transactions for chance-based items’ Accessible from:

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Gaming_micro-transactions/Report

⁵⁰ Government response on the Senate Environment and Communications References Committee a report into ‘Gaming micro-transactions for chance-based items.’ Retrieved from:

<https://www.aph.gov.au/DocumentStore.ashx?id=c46de35e-9eeb-4e9f-bb34-8363f79c4df5>



contar, desde la perspectiva de la protección de los consumidores y usuarios, con un marco de protección ad hoc?

2. In the event that, taking into account its singularities, the regulation considers more appropriate of the random reward mechanisms in an independent regulation of the LRJ and of its development provisions, what aspects should this regulation address? Should it have, from the perspective of consumer and user protection, a framework ad hoc protection?

Both the European Parliament and US Federal Trade Commission (FTC) have advised a holistic approach to loot boxes in the context of other in-game monetisation and design techniques. The *FTC August 2020 Staff Perspective Paper* on loot boxes cautions against additional government regulation, finding that ‘the video game monetisation system is a complex space that incorporates a wide range of mechanics’ and that ‘many games today, particularly mobile apps, are free to download and rely on in-app purchases to pay for their development.’⁵¹ IMCO has found that loot boxes are merely one aspect of game design, which should be holistically tackled from a ‘wider consumer protection perspective.’⁵²

It is with these international perspectives in mind that on November 5th 2020, the UK’s government endorsed, self-regulatory advertising code setters - CAP, BCAP and the ASA⁵³ - released draft ‘formal’ guidance for consultation, to express how existing advertising codes should apply to in-app purchases, including but not limited to loot boxes. The mantra of the consultation is that: ‘Rather than implementing new rules, we think that the issues in question can be suitably addressed through specific formal guidance on existing rules.’⁵⁴ MGIF is engaged in a dialogue process to help ensure that draft proposals are implementable for mobile games.

As set out in response to question 6 on self-regulation, we believe that best practice guidance for developers, based upon existing consumer protection legislation, is the most practicable route to addressing loot box concerns. There is a respected tradition of this form of guidance for online games: from the CPC common position paper to the UK OFT Principles for Online and App Based Games (also endorsed by the Australian Competition and Consumer Commission⁵⁵) and the Directrices de Buenas Prácticas de Publicidad de Productos de Software Interactivo (DPPSI).

Best practice guidance can adapt to fast-changing technology and the evolution of mobile business models. Data from the pandemic suggests that in-app purchases (including loot boxes)

⁵¹ FTC Video Game Loot Box Workshop. Accessible from:

https://www.ftc.gov/system/files/documents/reports/staff-perspective-paper-loot-box-workshop/loot_box_workshop_staff_perspective.pdf Published by the FTC, August 2020

⁵² Loot boxes in Online Games and their effect on consumers, particularly young consumers. Accessible from:

[https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652727/IPOL_STU\(2020\)652727_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652727/IPOL_STU(2020)652727_EN.pdf).

Published by the European Parliament in July 2020.

⁵³ Committee of Advertising Practice (CAP); Broadcast Committee of Advertising Practice (BCAP); Advertising Standards Authority (ASA)

⁵⁴ Committee of Advertising Practice (CAP); Broadcast Committee of Advertising Practice (BCAP); Advertising Standards Authority (ASA): Consulting on new guidance on ads for 'loot boxes' and other in-game purchases. Accessible from: <https://www.asa.org.uk/news/consulting-on-new-guidance-on-ads-for-loot-boxes-and-other-in-game-purchases.html> Published by the ASA, November 2020

⁵⁵ <https://www.accc.gov.au/media-release/accc-urges-app-industry-to-adopt-new-principles-following-%E2%80%98sweep%E2%80%99-of-children%E2%80%99s-game-apps>



played a predominant role in the robust growth figures as advertising revenue declined. According to mobile analytics platform, AppsFlyer, the share of games using a hybrid model dropped 8% between Q2 2019 and Q2 2020. For mobile casual games, the shift has been more pronounced: the share of advertising fell 30% YoY.⁵⁶ At the same time, there are some industry analysts that say subscription models are showing signs of a comeback in the commercialisation of online content⁵⁷ and that ‘consumers seem to have become more comfortable with buying subscriptions in general during the pandemic’⁵⁸- albeit that as yet, the scale-up of subscription-led gaming is comparatively minute compared to other apps: 5% of apps worldwide use subscriptions services versus 2% of gaming apps.⁵⁹ Still, other analysts point to strong growth figures for games relying on advertisement techniques to derive revenue – rewarded video ads, banner ads and interstitial ads.⁶⁰ It is too early to speculate whether this model will one day rival freemium.

We respectfully suggest that a broad-brush, principles-based approach predicated on fairness and transparency is better suited than prescriptive legislation to address a gaming ecosystem characterised by fast-moving trends and new challenges. The enhanced commitment to online marketplace transparency enshrined in the EU Omnibus Directive, is an excellent foundation for updated DPPSI guidance aimed at clarifying expectations for developers across a host of issues including but not limited to loot boxes. The Forum would welcome an open dialogue on the development of such an approach since up to-date proportionate self-regulation, predicated on values of transparency, accountability and fairness is essential to maintain consumer trust and confidence in our industry.

3b) ¿Considera preferible, por el contrario, actualizar esa aplicación de la LRJ a las cajas botín, modificando o desarrollando a nivel regulatorio la definición de juego de dicho texto legal? En este sentido, y entre otras posibilidades regulatorias, ¿considera conveniente el mantenimiento del requisito relativo a la necesaria convertibilidad del premio obtenido en una moneda de curso legal para que una caja botín entre dentro del concepto de juego de la LRJ?

3b) On the contrary, do you consider it preferable to update this application from the LRJ to loot boxes, modifying or developing at a regulatory level the definition of the game of said legal text? In this sense, and among other regulatory possibilities, do you consider it advisable to maintain the requirement regarding the necessary convertibility of the prize obtained in a legal tender for a loot box to enter inside of the LRJ game concept?

We submit that is absolutely necessary to maintain the requirement that prize must convertible to legal tender to meet the test for gambling under the LRJ.

⁵⁶ App Developers See Revenues from In-App Purchases Outpace Advertising Revenues. Accessible from: <https://www.emarketer.com/content/app-developers-see-revenues-in-app-purchases-outpace-advertising-revenues>. Published by eMarketer, September 2020.

⁵⁷ Can Mobile Gaming Subscription Services Break Freemium Stranglehold? Accessible from: <https://www.washingtonpost.com/video-games/2019/10/23/can-mobile-gaming-subscription-services-break-freemium-stranglehold/>. Published by Washington Post, 2019

⁵⁸ <https://www.emarketer.com/content/app-developers-see-revenues-in-app-purchases-outpace-advertising-revenues>

⁵⁹ Share of subscription Mobile App Installs Worldwide by App Category. Accessible from: <https://www.emarketer.com/chart/239004/share-of-subscription-mobile-app-installs-worldwide-by-app-category-q2-2020-of-total-app-installs-tracked-by-appsflyer> Published by eMarketer, 2020.

⁶⁰ <https://blog.applovin.com/2018-hyper-casual-mobile-game-trend/>



When consumers play freemium games, they are aware their obtention of in-game currency and other virtual items through payment or gameplay, cannot create anything of value outside the game. However, if the convertibility to legal tender requirement were to be removed under the LRJ, Spanish consumers would be faced with a paradoxical predicament whereby their virtual rewards are, in effect, viewed as akin to money's worth by gambling legislation, whilst still holding no intrinsic economic value in their tangible economic lives. The disorientation effect is accentuated by the fact that most consumers spend no money whatsoever.

Historically, we are aware of only three jurisdictions that have either pro-actively or in inadvertently sought to extend⁶¹ their definition of prize under gambling legislation to encompass virtual reward. In all three instances, proposals were rejected or clarified to make clear that a traditional conception of tangible real world economic reward remained in operation. Reasons why proposals were rejected or clarified include the legal confusion and enforcement difficulties that would result, the adverse impact on the online games sector and negative consequences for a wider swathe of the digital economy through outlawing the freemium monetisation model – widely used by gaming as well as non-gaming apps.⁶²

The legal ramifications are worth considering when virtually all games are based on a combination of chance and skill.

Historic global examples of failed attempts to draw virtual rewards within the definition of prize under gambling legislation.

Example 1: France

On June 20th 2013, a legislative amendment tabled by French MP Razzy Hammadi to France's National Consumer Bill was adopted by the French National Assembly (lower house). The amendment was designed to target lottery legislation but could have unintentionally prohibited freemium games through expanding France's definition of lotteries.⁶³ On December 4th 2013, the Ministry of Finance issued a formal statement to the effect that the amendment does not alter the conception of prize and therefore was not a risk to the casual games sector:

‘En effet, l'article L. 322-2 du code de la sécurité intérieure (que l'article 72 quater a vocation à amender) ne précise aucunement, dans sa rédaction actuelle, la nature du gain, sans que cette rédaction n'ait pour autant soulevé une quelconque difficulté d'interprétation pour le juge’

On December 16th 2013, Lionel Tardy (Rep) was amongst those who alerted the French National Assembly to the risks posed by altering the definition of virtual rewards to promising French start-ups:

‘Alors que l'article 72 quater vise à interdire les jeux dits d'adresse et les jeux par avance de mise, sa rédaction risque de concerner des jeux sans mise d'argent, comme les jeux sociaux. Or contrairement aux loteries et aux jeux d'argent, le gain des jeux sociaux n'est pas financier

⁶¹ Note: Belgium is an exception since its definition of gambling does not require prize.

⁶² Note: ‘Non-gaming’ freemium apps also have virtual rewards enabling extended optionality and may use virtual currencies e.g., dating apps such as *Hinge* or *Happn*, based on a combination of chance and algorithm.

⁶³ <https://www.assemblee-nationale.fr/14/amendements/1156/AN/960.asp>



mais immatériel. Il y a là un vrai risque. Cela concerne potentiellement des jeux produits par de jeunes start-ups françaises prometteuses. Il faut savoir que la France est le deuxième plus grand producteur de jeux sociaux après les États-Unis. Je ne crois pas que l'intention de ce projet de loi soit de viser ces jeux. Cet amendement propose donc la précision suivante : les jeux interdits sont ceux qui font naître l'espérance d'un gain financier ou matériel. Les jeux proposant des gains immatériels seraient ainsi exclus.'

In response, both the rapporteur and the Ministre délégué confirmed that the casual games sector would not be affected:

'Les jeux sociaux ne sont donc pas concernés, à partir du moment où la notion de gain n'est pas présente.'⁶⁴

Example 2: Singapore

The 2014 Remote Gambling Act of Singapore initially sought to introduce a broad definition of money's worth that included virtual rewards:

Section 4 – "Meaning of gambling and associated terms":

'Money's worth' means anything recognised as equivalent to money and includes virtual credits, virtual coins, virtual tokens, virtual objects or any similar thing that is purchased within, or as part of, or in relation to, a game of chance.'⁶⁵

On October 7th 2014, during the second reading, the minister in charge of handling the bill delivered a [formal 'statement of intent'](#) delivered in parliament:

'Some social games, as I understand, facilitate players to purchase credits to enhance their in-game experience but cannot convert these in-game credits or tokens for money or real merchandise outside the game. It is not the intent of this Bill to prohibit such social games. However, it is essential that the Bill is comprehensive in scope to stay relevant over time, against the backdrop of a dynamic industry that is continuing to evolve.'⁶⁶

On January 28th 2015, the Media Development Authority issued a further clarification which explained the following games would not be covered by the act:

- 'Games which do not allow players to win, through an in-game facility, money or real-world merchandise which can be exchanged for money;
- Games which allow players to purchase or exchange game credits or tokens, but do not provide in-game facility to convert these game credits or tokens to money or real-world merchandise which can be exchanged for money;
- Games which allow players to purchase, gain or exchange game enhancement features, e.g., weapons, skills, but do not provide in-game facility to convert these game enhancement features to money or real-world merchandise which can be exchanged for money; and

⁶⁴ Translation: Casual games are therefore not concerned if the notion of gain is not present.

⁶⁵ <https://sso.agc.gov.sg/Act/RGA2014>

⁶⁶ <https://sprs.parl.gov.sg/search/sprs3topic?reportid=bill-106>



- Games which rank players but do not provide in-game facility to convert these ranking positions to money or real-world merchandise which can be exchanged for money, such as Tower of Saviors and 2Fuse in their current form.⁶⁷

Example 3: Australia

In May 2013, Senator Nick Xenophon proposed a “Virtual Credits Bill,” which would have incorporated virtual items and currency into a definition of money’s worth under the Gambling Act.⁶⁸ The Virtual Credits Bill was referred to the Joint Select Committee on Gambling Reform (JSOCGR) for inquiry which recommended that it should not be passed.⁶⁹ In making this recommendation, the JSOCGR referenced the to the 2012 Interactive Gambling Act review by the then Department of Communications, Broadband and the Digital economy (DCBDE) whose observations on the incorporation of virtual reward into gambling legislation included:

- The constant evolution of online games and consumer trends precludes the application of an effective definition.
- Australian consumers benefit from strong legal and regulatory protections under the Australian Consumer Law and there is no evidence of deception by operators as to whether virtual goods will in fact be convertible to money or money-like ‘value,’ or as to players being misled as to whether virtual goods will in fact be convertible to money or money’s value.
- If misleading statements were made by operators of games sites where virtual goods may be used, the Australian Consumer Law would empower the ACCC (Australian Competition and Consumer Commission) to take appropriate enforcement action.
- Ultimately, given the definitional and enforcement difficulties, the committee supports the provision of better information to parents, targeted research and enlisting the cooperation of the relevant stakeholders.”⁷⁰

6. Sin perjuicio de la regulación que se estableciera al efecto, ¿deberían fomentarse desde los poderes públicos los mecanismos de autorregulación de la industria del videojuego en relación con los mecanismos aleatorios de recompensa En este caso, ¿cuáles serían los elementos y características con los que debiera contar el mecanismo de autorregulación que se pusiera en práctica para garantizar la mejor protección de los usuarios de este tipo de productos?

6. Notwithstanding the regulations established for this purpose, should the self-regulation mechanisms of the video game industry in relation to random reward mechanisms be promoted from the public authorities? ⁷¹ In this case, what are the elements and

⁶⁷ <https://www.imda.gov.sg/news-and-events/Media-Room/archived/mda/Media-Releases/2015/remote-gambling-act-clarifications-on-the-scope-of-social-games>

⁶⁸ <https://www.lexology.com/library/detail.aspx?g=11bf1a4f-55d6-493f-9b6c-8f5de99af3cd>

⁶⁹

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/gamblingreform/completedinquires/2010-13/virtualcredits/report/index

⁷⁰ <https://www.communications.gov.au/publications/final-report-review-interactive-gambling-act-2001>

⁷¹ Part of the scientific doctrine has underlined the importance of the industry establishing its own self-regulation mechanisms,

in order to temper the harmful effects that may develop in relation to this class of products.



characteristics that the system should have self-regulation mechanisms put in place to ensure the best protection of users of this type of product?

To the best of our knowledge, the Spanish mobile games sector is already subject to an extensive framework of consumer protection law, supported by sector-tailored self-regulatory best practice guidance, through the Directrices de Buenas Prácticas de Publicidad de Productos de Software Interactivo (DPPSI):

- Ley General para la Defensa de los Consumidores, (1/2007, de 16 de noviembre)⁷²
- Ley de Competencia Desleal (Ley 3/1991, de 10 de enero)⁷³
- Ley de Servicios de la Sociedad de la Información y del Comercio Electrónico (Ley 34/2002, de 11 de Julio) ⁷⁴
- Ley General de Publicidad⁷⁵ (34/1988, de 11 de noviembre)⁷⁶
- Directrices de Buenas Prácticas de Publicidad de Productos de Software Interactivo (DPPSI) (2005) governed by the the self-regulatory Autocontrol (Asociación para la Autorregulación de la Comunicación Comercial) and signed by AEVI, modified in 2018. ⁷⁷ (<https://www.autocontrol.es/codigos-de-conducta/>)

The Spanish mobile games sector is also guided by the review undertaken by the European Commission (EC) in tandem with the Consumer Protection Cooperation (CPC) Network of EU consumer enforcement authorities of concerns surrounding in-app purchases and the marketing of online games. In December 2013, a common CPC position was communicated based on existing EC law: The Unfair Commercial Practices Directive (Directive 2005/29/EC (UCPD)) and the Consumer Rights Directive (Directive 2011/83/EC). Guidance includes the following.⁷⁸

- 1 Games advertised as ‘free’ should not mislead consumers about the true costs involved.
2. Games should not contain direct exhortations to children to buy items in a game or to persuade an adult to buy items for them.
3. Consumers should be adequately informed about the payment arrangements and purchases should not be debited through default settings without consumers’ explicit consent.
4. Traders should provide an email address so that consumers can contact them in case of queries or complaints.

In July 2014, the EC cited ‘real progress in delivering tangible results: ‘Industry has made a number of engagements, which seek to address consumer concerns. The action will increase consumer confidence in the fast-growing ‘app’ sector.’⁷⁹ Google was praised for a series of new payment policy measures, including adapting its default settings so that payments are authorized prior to every in-app purchase, unless the consumer actively chooses to modify

⁷² <https://www.boe.es/buscar/act.php?id=BOE-A-2007-20555>

⁷³ <https://www.boe.es/eli/es/l/1991/01/10/3/con>

⁷⁴ <https://www.boe.es/eli/es/l/2002/07/11/34/con>

⁷⁵ General Advertising Law

⁷⁶ <https://www.boe.es/buscar/act.php?id=BOE-A-1988-26156>

⁷⁷ <https://docplayer.es/4095638-Directrices-buenas-practicas-publicidad-de-productos-de-software-interactivo-preambulo.html>

⁷⁸ https://ec.europa.eu/info/sites/info/files/common-position_of_national_authorities_within_cpc_2013_en_0.pdf

⁷⁹ https://ec.europa.eu/commission/presscorner/detail/en/htm/IP_14_847

these settings. The commission also acknowledged the potential for online games associations to incorporate the CPC position into industry-led standards.

It is submitted that best practice guidance for mobile games developers, predicated upon this foundation would: A) address the wider landscape of in-game mechanics and monetisation; B) address loot boxes without hazardous overlap with gambling legislation; C) allow iterative development of guidance in line with a fast-changing industry and technology; D) serve as a pathfinder for the holistic approach to loot boxes advised by the European Parliament, based upon consumer protection law. The DPPSI provides an excellent starting point from which to approach loot boxes, as part of a suite of principles for developers that are flexible to fast-changing industry trends and predicated upon values of transparency, accountability, education and consent. This could include **guidance on the disclosure of drop rates used** labels to signpost loot boxes, to help clarify expectations of developers and address consumer concerns and **developing education on parental controls** which are the effective mechanism to limit or prevent in-app purchases, including loot boxes.

Analysis of the existing Spanish legal framework and best practice guidance for mobile games developers

We hope that the below survey of the application of Spanish consumer protection law to mobile games, shows that the existing DPPSI guidance is effective, and might be complemented by a new principle surrounding loot boxes or a more wide-ranging update, since its last iteration in 2018.

a) Transparency in in-app purchases

ARTÍCULO 6. PRINCIPIO DE VERACIDAD DPPSI: 2. La publicidad de los productos de software interactivo deberá reflejar con precisión la naturaleza y contenido del producto que representa (es decir, no deberán inducir a los consumidores a error respecto a la verdadera naturaleza del producto). A tal fin se cuidará la realización de los anuncios de estos productos para evitar que los mismos puedan inducir a error al público al que se dirigen acerca de sus características y prestaciones.

Article 6(2) (Principle of Truth) DPPSI: ‘Advertising for interactive software products must accurately reflect the nature and content of the product it represents (that is, it must not mislead consumers as to the true nature of the product). To this end, the advertisements of these products will be taken care of to avoid that they may mislead the public to whom they are directed about their characteristics and benefits.’

MGIF comment: This DPPSI principle, working in concert with Ley General de Publicidad (artículo 3), instructs mobile developers to maintain high advertising standards in Spanish app stores - including for example, that games cannot be advertised ‘free’ unless they can be completed, without recourse to in-app purchases. We note that Article 6(2) of the DPPSI mirrors Principle 1 of the Office of Fair Trading (OFT - (now Competition and Markets Authority (CMA)) Principles for Online and App Based Games: ‘The consumer can access discrete parts of the game that stand alone without the need to make purchases and can make

an informed choice as to whether to pay to access additional content, the price of which has been made clear before the consumer begins to play or agrees to purchase the game.’⁸⁰

b) Endorsement of the platform rating ecosystem

The preamble to the DPPSI states that: ‘Los anuncios no deberán realizar un uso abusivo de la clasificación concedida a un products por la ISFE.’

‘Advertisements must not misuse the classification granted to a product by the ISFE’

Article 6(3) (Principle of Truth) DPPSI further states that: ‘La publicidad de los productos de software interactivo deberá evitar inducir a error acerca del público al que va dirigido el producto. A tal fin deberá reflejar con claridad y precisión la clasificación por edades del producto anunciado, de tal forma que ésta resulte claramente legible y perceptible para los destinatarios de la publicidad.’

‘Advertising of interactive software products should avoid misleading the target audience for the product. To this end, it must clearly and accurately reflect the age classification of the advertised product, in such a way that it is clearly legible and perceptible to the recipients of the advertising.’

MGIF comment: The DPPSI has some of the most prescriptive and advanced best practice guidance in the world for endorsing platform rating ecosystems. We respectfully suggest that best practice principles might be further strengthened by the recognition of other platform ratings systems alongside PEGI.

c) Consent, comprehensibility and transparency for in-app purchases

Artículo 60 de la Ley General de Defensa de Consumidores y Usuarios:

1. Antes de que el consumidor y usuario quede vinculado por un contrato y oferta correspondiente, el empresario deberá facilitarle de forma clara y comprensible, salvo que resulte manifiesta por el contexto, la información relevante, veraz y suficiente sobre las características principales del contrato, en particular sobre sus condiciones jurídicas y económicas.⁸¹

‘Before the consumer and user is bound by a contract and corresponding offer, the entrepreneur must provide them in a clear and understandable way, unless it is manifest by the context, relevant, truthful and sufficient information on the main characteristics of the contract, in particular on their legal and economic conditions.’

MGIF comment: As in other European jurisdictions, the mobile games sector understands that in-app purchases should be communicated in a way that is transparent and easily understandable and that express consent should be obtained for payments. Spanish app stores

⁸⁰ The OFT’s Principles for online and app-based games. Accessible from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/288360/oft1519.pdf Published in 2012 and in 2014 by the OFT.

⁸¹ <https://www.boe.es/buscar/act.php?id=BOE-A-2007-20555>

operate refund policies for all types of in-app purchases and provide clear details of how such refunds can be obtained on their support pages.

d) The protection of minors in advertising

Article 3b (la Ley General de Publicidad): ‘La publicidad dirigida a menores que les incite a la compra de un bien o de un servicio, explotando su inexperiencia o credulidad, o en la que aparezcan persuadiendo de la compra a padres o tutores. No se podrá, sin un motivo justificado, presentar a los niños en situaciones peligrosas. No se deberá inducir a error sobre las características de los productos, ni sobre su seguridad, ni tampoco sobre la capacidad y aptitudes necesarias en el niño para utilizarlos sin producir daño para sí o a terceros.’

‘Advertising aimed at minors that encourages them to buy a good or a service, exploiting their inexperience or credulity, or in which they appear persuading parents or guardians of the purchase. Children may not, without good reason, be presented in dangerous situations. The characteristics of the products, their safety, or the ability and skills necessary for the child to use them without causing harm to themselves or to third parties should not be misled.’

Article 7 (principle of protection of minors) further DPPSI states that: ‘El público menor de edad es un público que por sus características de inmadurez, credulidad, facilidad de persuasión y sugestión resulta especialmente vulnerable frente a la publicidad y, como tal, es merecedor de una especial protección en este ámbito. Así las cosas, la publicidad dirigida a menores queda sometida a unas exigencias más estrictas y rigurosas que aquélla que se dirige a un público ya adulto y con mayor experiencia.’

‘The underage public is a public that due to its characteristics of immaturity, credulity, ease of persuasion and suggestion, is especially vulnerable to publicity and, as such, deserves special protection in this area. Thus, advertising directed at minors is subject to stricter and more rigorous requirements than that directed at an adult and more experienced public.’

MGIF comment: The DPPSI best practice principle, supported by legislation, gives clear guidance to the effect that developers should not encourage children to part with money through exploiting their inexperience and credulity, or by making direct exhortations to purchase. We note that principles 6 and 7 of the UK OFT Principles similarly maintain that developers should not encourage children to part with money through exploiting their inexperience and credulity, or by making direct exhortations to purchase.⁸² This is a prime example of best practice guidance working in concert with existing consumer protection legislation.

e) Suggestion for complementary guidance on loot boxes

MGIF comment: Platform guidance requires that mobile games developers disclose drop rates. However, this is not specifically tackled by DPPSI best practice principles. We suggest that such a principle could help clarify expectations of developers and address consumer concerns. Additional guidance might encompass the use of labels to signpost the use of loot boxes.

⁸² The OFT’s Principles for online and app-based games. Accessible from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/288360/oft1519.pdf Published in 2012 and in 2014 by the OFT.



The Italian competition regulator has taken a prescriptive approach in their console-focused legal settlements with EA⁸³ and Activision Blizzard⁸⁴, encompassing a range of commitments on the marketing of in-app purchase across game platforms, app storefronts and Italian affiliate websites. Whilst these are specific to the facts of each legal case and cannot provide a one-size fits all solution for the mobile games sector, aspects of the approach taken by the Italian regulator may be instructive – notably in that it **builds upon a framework of existing platform requirements** on the use drop rates and labels to signpost that a game has loot boxes.

It may also be of interest that loot boxes are not referred to as gambling by the Italian regulator – and the limited extension of scope to in-game content (for the disclosure of drop rates) is caveated with functionality considerations (see Impregno Bi – Activision Blizzard: ‘fermi gli specifici adeguamenti richiesti in ragione del peculiare funzionamento e della caratterizzazione anche grafica di ciascun videogioco.’)

PS11594 - ELECTRONIC ARTS-ACQUISTI NEI VIDEOGIOCHI

1) Impegno 1: informazioni fornite ai consumatori relativamente alla presenza nei videogiochi ed al funzionamento di acquisti in-game e loot boxes all’interno della piattaforma Origin 20. Per quanto riguarda i giochi commercializzati attraverso la propria piattaforma Origin, il gruppo EA si impegna ad adottare le seguenti misure:

- a) utilizzare, nell’ambito della pagina di descrizione del gioco, l’ultima versione del pittogramma PEGI relativo agli acquisti in-game, contenente, oltre all’icona grafica, anche: (i) la dicitura “Acquisti in-game”, quando sono previsti all’interno del videogioco acquisti di oggetti che non vengono attribuiti tramite una selezione casuale; (ii) la dicitura “Acquisti in-game (contiene elementi casuali)”, per tutti i giochi che contengono microtransazioni per acquistare oggetti di gioco virtuali, attribuiti anche tramite una selezione casuale (cfr. figura Impegno 1 lettera a) della dichiarazione di impegni);
- b) aumentare le dimensioni del pittogramma PEGI relativo agli acquisti in-game al fine di renderlo il 66% più grande di quanto appariva in precedenza e più chiaramente visibile (cfr. figura Impegno 1 lettera b) della dichiarazione di impegni);
- c) inserire, nell’ambito della pagina di descrizione del gioco in modo chiaramente visibile oltre al pittogramma PEGI come sopra illustrato, la descrizione della presenza e del funzionamento di acquisti in-game e loot boxes mediante la dicitura: “Questo gioco include la possibilità di acquistare all’interno del gioco tramite denaro reale una valuta virtuale da utilizzare per acquistare oggetti di gioco virtuali, che potrebbero essere attribuiti anche tramite una selezione casuale” (cfr. figura Impegno 1 lettera c) della dichiarazione di impegni);
- d) inserire il pittogramma PEGI relativo agli acquisti in-game, come sopra declinato, prima dell’acquisto, in modo chiaramente visibile vicino al bottone “Acquista ora” (cfr. figura Impegno 1 lettera d) della dichiarazione di impegni).

PS11595 - ACTIVISION BLIZZARD-ACQUISTI NEI VIDEOGIOCHI

⁸³[https://agcm.it/dotcmsCustom/tc/2025/10/getDominoAttach?urlStr=192.168.14.10:8080/C12560D000291394/0/B20A07DF6BC2F369C1258606004E6A61/\\$File/p28368.pdf](https://agcm.it/dotcmsCustom/tc/2025/10/getDominoAttach?urlStr=192.168.14.10:8080/C12560D000291394/0/B20A07DF6BC2F369C1258606004E6A61/$File/p28368.pdf)

⁸⁴[https://www.agcm.it/dotcmsCustom/tc/2025/12/getDominoAttach?urlStr=192.168.14.10:8080/C12560D000291394/0/B9FA711B7757E0B2C1258637005FA58A/\\$File/p28452.pdf](https://www.agcm.it/dotcmsCustom/tc/2025/12/getDominoAttach?urlStr=192.168.14.10:8080/C12560D000291394/0/B9FA711B7757E0B2C1258637005FA58A/$File/p28452.pdf)



Impegno A. Il professionista introdurrà i seguenti miglioramenti con riferimento alla presenza, al funzionamento e alle finalità degli acquisti in-game e loot box presenti nei videogiochi del gruppo:

i) mostrerà il pittogramma PEGI indicante gli acquisti “in-game” nella pagina di dettaglio relativa ai videogiochi nel negozio online Battle accessibile dai consumatori italiani (<https://eu.shop.battle.net/it-it>) in posizione prominente e in maniera chiaramente percepibile dai consumatori. Inoltre, per quanto concerne i videogiochi che includono loot boxes e pacchetti di carte, mostrerà anche la versione in lingua italiana del disclaimer recentemente introdotto da PEGI che informa i consumatori della presenza di loot boxes⁹. In particolare, l’etichetta PEGI sarà riprodotta nel primo frame della pagina, in una posizione di risalto rispetto agli altri contenuti ivi presenti e in maniera chiaramente visibile ai consumatori all’accesso alla pagina ...

... Impegno B. Con riferimento ai videogiochi che implementano la possibilità di effettuare acquisti tramite loot-boxes o pacchetti di carte, il professionista, allo scopo di migliorare le informazioni fornite ai consumatori, si impegna ad adottare le seguenti misure:

i) le informazioni sulle probabilità di ottenere specifici item di gioco tramite le loot-boxes o i pacchetti di carte saranno fornite direttamente nella pagina di dettaglio nel negozio Battle dedicata al relativo videogioco a mezzo di una evidente dicitura in caratteri maiuscoli (“INFORMAZIONI SULLE PROBABILITÀ RELATIVE AL CONTENUTO DEL TUO ACQUISTO”), che costituirà altresì un link ipertestuale ad una specifica pagina contenente le informazioni di dettaglio sulle probabilità relative al contenuto dei forzieri (cfr. Figura 3 con riferimento al gioco Overwatch e Figura 4 che riporta l’aspetto che avrà la pagina di dettaglio relativa alle probabilità dei pacchetti di carte del videogioco Hearthstone). Il professionista ha fornito altresì il testo della pagina contenente le informazioni sulle probabilità relative al gioco Overwatch: “Il team di Overwatch precisa che le probabilità di ottenere oggetti di differente rarità in ciascun forziere sono quelle dettagliate qui di seguito. Ciascun forziere contiene 4 oggetti selezionati in maniera casuale che possono essere utilizzati per personalizzare gli eroi o il profilo del giocatore. A ciascun oggetto è associato un grado di rarità specifico (Comune, Rara, Epica e Leggendaria) e ciascun forziere contiene almeno un oggetto di qualità Rara o migliore. Le probabilità ufficiali relative ai forzieri sono le seguenti: • RARA – 1 oggetto di qualità Rara o migliore è incluso in ogni forziere; • EPICA – 1 oggetto di qualità Epica è incluso in circa il 18,5% dei forzieri; • LEGGENDARIA – 1 oggetto di qualità Leggendaria è incluso in circa il 7,5% dei forzieri”.

ii) le informazioni sulle probabilità di ottenere certi item tramite le loot-boxes o i pacchetti di carte verranno altresì rese disponibili ai consumatori, con modalità analoghe a quelle descritte al punto precedente, all’interno del negozio accessibile nel corso dell’esperienza di gioco (fermi gli specifici adeguamenti richiesti in ragione del peculiare funzionamento e della caratterizzazione anche grafica di ciascun videogioco).

The platform ecosystem

It should not be forgotten that platforms are the policy and procedure gatekeepers in the mobile gaming space via rating, labelling, parental controls paired to ratings and app storefront transparency requirements. Best practice guidance must sit in concert with this existing platform ecosystem.

In recent years, Google (including PEGI) and Apple have made significant changes to increase the transparency of game content and protect consumers online, including the removal of free



labels on games which include in-app purchases, the introduction of labels for in-app purchases and ‘paid random items,’ the disclosure of drop rates, changes to age ratings and the improvement of parental control functionality.

Google

- May 29th 2019: Google requires that ‘Apps offering mechanisms to receive randomised virtual items from a purchase (i.e., ‘loot boxes’) must clearly disclose the odds of receiving those items in advance of purchase’⁸⁵:

6. Los juegos y aplicaciones que ofrezcan mecanismos para recibir elementos virtuales de forma aleatoria al hacer una compra (por ejemplo, las cajas de recompensas) deben indicar de forma clara, antes de hacer la compra y en un momento oportuno y próximo a la adquisición, la probabilidad de recibir estos elementos.

Figure 2 –Google Play Help page

- April 13th 2020: PEGI announced a new notice to inform users prior to purchase about the existence of paid random items. PEGI has been assigning the in-game purchases descriptor to video games since September 2018. A text box will now be added to provide the additional information if the game features paid random items – ‘Notice to Inform About Presence of Paid Random Items’⁸⁶ (Figure 3)



*Figure 3 – PEGI’s new caption informing users of games including Paid Random Items*⁸⁷

- August 2020: After a six-month transitional period, games with ‘simulated gambling content’ will be rated 18+.⁸⁸

⁸⁵ Google Console Help: Payments. Accessible from: <https://support.google.com/googleplay/android-developer/answer/9858738?hl=en-GB>

⁸⁶ PEGI Introduces Notice to Inform About Presence of Paid Random Items. Accessible from: <https://pegi.info/news/pegi-introduces-feature-notice> Published by PEGI, April 2020

⁸⁷ PEGI Introduces Notice to Inform About Presence of Paid Random Items. Accessible from: <https://pegi.info/news/pegi-introduces-feature-notice> Published by PEGI, April 2020

⁸⁸ Government response to the Digital, Culture, Media & Sport Select Committee Report on Immersive and Addictive Technologies. Accessible from: <https://www.gov.uk/government/publications/government-response-to-he-digital-culture-media-sport-select-committee-report-on-immersive-and-addictive-technologies/government-response-to-the-digital-culture-media-sport-select-committee-report-on-immersive-and-addictive-technologies>. Published by the DCMS, June 2020



Apple

- December 2017: Apple requires that ‘Apps offering ‘loot boxes’ or other mechanisms that provide randomized virtual items for purchase must disclose the odds of receiving each type of item to customers prior to purchase.’⁸⁹

Parental controls and the restriction of in-app purchases, including loot boxes

It is with good reason that platform parental controls are widely supported by a range of organisations, regulatory, and government bodies. The UK government has endorsed parental controls to stay safe online during the coronavirus pandemic⁹⁰ and its data regulator, the Information Commissioner’s Office (ICO), recently published their age-appropriate design code in which parental controls make up one of the fifteen standards⁹¹ – a testament to the legitimacy of parental controls as a critical online safety tool. In the USA, parental controls are endorsed by the American consumer protection watchdog, the Federal Trade Commission⁹² and the US rating authority, the Entertainment Software Rating Board (ESRB).⁹³ Research showed that more than nine in ten parents of 5-15s who use parental control software consider it useful.⁹⁴

For mobile games, Google (via *Google Assist Family Link Parental Controls*)⁹⁵ and Apple⁹⁶ have developed extensive built-in device parental controls that allow parents to ensure that their children access appropriately rated content, can control children’s screen time and block or restrict in-app purchase, including loot boxes. Parental controls work in close concert with age ratings. The DPPSI explicitly endorses PEGI:

‘La industria del software interactivo ha venido mostrando un seria preocupación y voluntad de compromiso por informar al público general sobre el contenido de estos productos de una forma responsable, por proporcionar una información objetiva, inteligible y fiable acerca de la edad para la que se considera adecuado tal producto, y por garantizar la conformidad de cualquier actividad de publicidad o promoción de los productos de software interactivo con la finalidad básica de informar al público sobre el contenido de los productos de software interactivos de una forma responsable y respetuosa con la dignidad humana. No en vano, su actitud de compromiso se plasmó en la adscripción de la Asociación española de distribuidores y editores de software de entretenimiento (en adelante, ADESE) al Código de conducta de la industria europea del software interactivo relativo a la clasificación por edades, el etiquetado,

⁸⁹ Apple adds new rules for loot boxes, requires disclosure of probabilities. Accessible from <https://www.polygon.com/2017/12/21/16805392/loot-box-odds-rules-apple-app-store> Published by Polygon, December 2017

⁹⁰ <https://www.gov.uk/guidance/covid-19-staying-safe-online>

⁹¹ <https://ico.org.uk/for-organisations/guide-to-data-protection/key-data-protection-themes/age-appropriate-design-a-code-of-practice-for-online-services/11-parental-controls/>

⁹² <https://www.consumer.ftc.gov/articles/0029-parental-controls>

⁹³ <https://www.esrb.org/tools-for-parents/parental-controls/>

⁹⁴ <https://www.ofcom.org.uk/research-and-data/media-literacy-research/childrens/children-parents-2017>

⁹⁵ Google Assist Family Link Parental Controls. Accessible from:

<https://www.theverge.com/2018/9/18/17855746/google-assistant-family-link-parental-controls>

⁹⁶ iOS 13 Parental Controls Explained. Accessible from: <https://protectyoungeyes.com/ios-13-parental-controls-explained/>



la promoción y la publicidad de productos de software interactivo (en adelante, Código PEGI).⁹⁷

There room for extending education on parental controls. In February 2017, the European Commission DG Communications Networks, Content & Technology released a study which benchmarked 25 parental controls used on PCs, mobile devices and games consoles.⁹⁸ Findings include that:

- Awareness-building and knowledge dissemination are the most important initiatives to create an educated environment and enable informed decisions from parents.
- A comprehensive guide would be useful to 'educate' parents on how to integrate the use of parental control tools with parenting and how to inform and explain to children how to use these tools properly.
- Whilst the study supports Parental Controls as a major method to protect minors, it calls for development and further iterations of the tested tools to improve functionality, coverage and overall effectiveness.⁹⁹

In 2017, Tech Crunch observed that: ‘A lack of guidance is one of the gaping holes with many parental control systems today. That’s unfortunate given that all the app stores have app ratings.’¹⁰⁰ Whilst there are studies to suggest that awareness of parental controls is rising¹⁰¹ there is an on-going need for education efforts to make sure parents are aware of extensive tool that are built- into mobile devices as well as the availability of third-party protection tools.¹⁰²

MGIF comment The MGIF Forum is of the view that further steps could be taken to develop education on parental controls which are the effective mechanism to limit or prevent in-app purchases, including loot boxes. Such a step would be in keeping with the DPPSI’s leading role in promoting the use of platform age ratings, which work close concert with parental controls.

The inappropriateness of age verification

We submit that the platform age rating ecosystem is better suited to mobile games than any other method of content access moderation. Analysisists have pointed to an underlying inadequacy across current age verification solutions for multiple online services, namely an

⁹⁷ <https://www.autocontrol.es/codigos-de-conducta/>

⁹⁸ Benchmarking of parental control tools for the online protection of children. Accessible from: <https://sipbench.eu/transfer/FullStudyonparentalcontroltoolsfortheonlineprotectionofchildren.pdf>
Published by the European Commission, 2p17

⁹⁹ Benchmarking of parental control tools for the online protection of children. Accessible from: <https://sipbench.eu/transfer/FullStudyonparentalcontroltoolsfortheonlineprotectionofchildren.pdf>
Published by the European Commission, 2p17

¹⁰⁰ Google Introduces Family Link – Its own parental control software for Android. Accessible from: <https://techcrunch.com/2017/03/15/google-introduces-family-link-its-own-parental-control-software-for-android/>

¹⁰¹ Children Media Use Attitudes report - Online gaming is on the increase, as are parental concerns. Accessible https://www.ofcom.org.uk/_data/assets/pdf_file/0023/190616/children-media-use-attitudes-2019-report.pdf
Published 2019.

¹⁰² There are a number of third-party apps which can provide a full-featured, third-party parental control service including Qustodio, Net Nanny and Norton Family.



inability to resolve the tension between robustness, data protection and functionality.¹⁰³ The DGOJ may be aware that in February 2021, the Italian Data Protection regulator reached an agreement with social media platform, Tiktok.¹⁰⁴ It is indicative of the inappropriateness of existing third-party verification technology for online services, that after extensive consideration, the Italian regulator considers self-declaration, albeit reinforced by other measures, the viable route to age-gating for a form of online content that arguably poses a unique level of risk to younger users.¹⁰⁵ In October 2019 the UK Conservative Party officially abandoned their 2015 manifesto commitment to introduce age verification for online pornography.¹⁰⁶ China, the only jurisdiction that we are aware of that has introduced age verification for mobile games, has generated considerable privacy concerns.¹⁰⁷

Developer-led change

The role of player feedback as a driver of organic change in iterative versions of game titles should not be understated. Simply put, games must constantly adapt to improve player experience and retention. Output randomness in app-based games, of which loot boxes are a manifestation, is one of the most cited causes of frustration in gaming.¹⁰⁸ In order to achieve well-balanced gameplay, game designers must carefully curate randomness – since if frustration exceeds enjoyment, then player retention will suffer. For example, in response to player feedback, RPG game *Diablo* has a ‘smart loot system’ whereby you are more likely to find items that match the character class you are playing in order to reduce the likelihood of finding pointless virtual items.¹⁰⁹ Epic Games Modern versions of *Tetris* - instead of picking a block at random for every drop - generate a random sequence of seven blocks, delivered in that order, before making a new sequence, thus ensuring a diverse selection of blocks and a maximum of 12 ‘garbage’ blocks between two-line pieces (four blocks in a straight line).¹¹⁰

Commitments to publish drop rates by leading developers & consoles

As a result of the FTC August 2020 workshop (*Unlocking the Consumer Issues Surrounding Loot Boxes*⁴), several console platforms - Nintendo, Sony, and Microsoft - alongside a host of high-profile developers committed to publishing their drop rates by the end of 2020¹¹¹ joining other high-profile publishers, that have already committed to publishing their drop rates, including Activision Blizzard, Entertainment, Bethesda, Bungie, Electronic Arts, Epic, Konami, Microsoft, Nexon, Nintendo, Sony Interactive Entertainment, Square Enix, Take-Two

¹⁰³ For example, see the 2017 study by, revealing problems surrounding the application of AV to the e-commerce industry: <https://risk.lexisnexis.co.uk/-/media/files/business/white-paper/age-verification-feb-17-wp-uk%20pdf.pdf>

¹⁰⁴ https://www.garantepriacy.it/web/guest/home/docweb/-/docweb-display/docweb/9533424#english_version

¹⁰⁵ https://www.garantepriacy.it/web/guest/home/docweb/-/docweb-display/docweb/9533424#english_version

¹⁰⁶ <https://www.bbc.co.uk/news/technology-50073102>

¹⁰⁷ <https://www.businessinsider.com/tencent-age-restrictions-identity-verification-china-video-games-2018-11?r=US&IR=T>

¹⁰⁸ For an explanation of output randomness and how player feedback drives its curtailment, see: Mark Brown, The Two Types of Random in Game Design. Accessible from: <https://www.youtube.com/watch?v=dwI5b-wRLic&vl=en>. Published January 2020.

¹⁰⁹ Smart Loot. Accessible from: https://www.diablowiki.net/Smart_Loot

¹¹⁰ This example is cited in Mark Brown, The Two Types of Random in Game Design. Accessible from: <https://www.youtube.com/watch?v=dwI5b-wRLic&vl=en>. Published January 2020.

¹¹¹ Nintendo, Microsoft, and Sony commit to disclose drop rates for loot boxes. Accessible from: <https://www.theverge.com/2019/8/7/20758626/nintendo-microsoft-sony-loot-box-drop-rate-disclosure-video-games> Published by The Verge, August 2019.



Interactive, THQ Nordic, Ubisoft, Warner Bros. Interactive Entertainment, and Wizards of the Coast.¹¹²

**7. ¿Qué otras cuestiones resultarían de interés presentar para esta consulta?
7. What other questions would be of interest to present for this consultation?**

For the benefit of this consultation, MGIF is also able to share indicative data on loot boxes, confidentially provided by some MGIF Forum participants for the November 2020 UK DCMS call for evidence on loot boxes. The data was aggregated by MGI. Differences in games, coverage and time brackets, precluded a consistent data set. The reality is that it is difficult, sometimes impossible, to compare data sets, when games and their mechanics can vary considerably. Nonetheless, we hope that the indicative data provided will help inform discussion.¹¹³

1. The proportion of loot box revenue relative to total in-app purchase revenue ranges from 6-25%.¹¹⁴
2. Less than 3% of all users are purchasing loot boxes.¹¹⁵
3. The proportion of paid-for loot boxes to free loot boxes ranges from less than 2% to less than 8%.¹¹⁶
4. Over the past year, users in the UK who bought loot boxes spent between £5 and £33, averaging approximately £21.¹¹⁷ The figure for total users ranges from less than 1p to £1.¹¹⁸
5. The average cost of the most popular loot boxes by total purchases or by total users ranges from £11 to £22.¹¹⁹
6. The average frequency of purchase for loot boxes is every 20 days versus the average frequency of purchase for all in-app purchases, which ranges from 7-10 days.¹²⁰
7. 25% of paid for loot box purchasers, will also purchase another in-game purchase in the same session.¹²¹
8. A leading mobile games publisher shared customer service data showing that ~1% of queries are about loot boxes.

¹¹² Video Game Industry Commitments to Further Inform Consumer Purchases. Accessible from: <https://www.theesa.com/perspectives/video-game-industry-commitments-to-further-inform-consumer-purchases/> Published by The Entertainment Software Association,

¹¹³ Note: Aggregate data and ranges are based upon data confidentially provided by some MGIF forum participants for the benefit of this inquiry only. It is indicative data ONLY and has NOT been subject to academic verification or peer review.

¹¹⁴ For the majority of mobile games surveyed, the proportion of loot box revenue relative to in-app purchases lies within 5-9%. Data is taken from multiple games featuring loot boxes over quarterly and yearly 2020 periods.

¹¹⁵ Data taken from September & October 2020

¹¹⁶ Based on 12 months of data up until October/ November 2020. Note: As paid-for loot box and free loot box features are only present for certain games, it is not always possible to collect this data.

¹¹⁷ Based on 12 months of data up until October/ November 2020

¹¹⁸ This is in line with the freemium model where the overwhelming majority of players play for free (98.4%, Swrve 2019 report)

¹¹⁹ Based on historic all-time data

¹²⁰ Based on 12 months of data up until October 2020 & on historic all-time data & only for the proportion of users that purchased a loot box more than once. Note: A potentially lower frequency of purchase for loot boxes in relation to other in-app purchases may be explained by the fact they are often purchased in packs.

¹²¹ Based on historic all-time data



As the above figures suggest, loot boxes are not significantly divergent from other in-app purchases. Global data from Swrve for July - September 2018, show an average monthly spend on mobile in-app purchases of \$23.05 (down from \$24.66 in 2016) and an average in-purchase price of \$19.47.¹²² It is worth considering how this compares with consumer spending in other sectors such as food and drink, cosmetics and gyms. It should also be born in mind, that out of the total users that play these games, only a small fraction of these are buying loot boxes and an even smaller fraction of those are buying multiple times. A further factor to consider is that players purchase loot boxes less frequently than other in-app purchases – supporting anecdotal information we have received from Forum participants that loot boxes are generally sold in packs that may have a higher average cost than individual virtual items.

Whilst we take loot box concerns extremely seriously, we do believe that loot boxes should not detract from other equally pressing public policy issues affecting the sector. A piece of the evidential jigsaw that may be overlooked is that loot boxes have not necessarily generated many player complaints in relation to other in-app purchases and in-game issues. For example, the Swedish Consumer Protection Agency observes that:

‘From August 1st 2018 to August 1st 2019, the Swedish Consumer Agency has only received a few reports specifically concerning loot boxes. Furthermore, there are occasional reports that children have spent money via purchases inside computer games, but it is unclear what the children have purchased.’¹²³

The Norwegian Gaming Authority also cites few complaints specifically about loot boxes in relation to other in-app purchases:

‘Public inquiries to the authorities are not unequivocal as to what they actually perceive as the challenges with loot boxes. Many parents point to challenges in controlling their children’s spending in the virtual gaming world, but it is often unclear whether the inquiries concern money spent on loot boxes or other things in the game. Adult gamers have expressed the view that loot boxes destroy the value of computer games as games. There are relatively few who have contacted the authorities and pointed out gambling problems.’¹²⁴

Virtually all regulators and associated bodies that have investigated loot boxes conclude that academic research is at an embryonic stage and there is a lack of longitudinal evidence. The European Parliament finds that ‘there is no consensus on a causal link between loot boxes and harmful behaviour.’¹²⁵ Similarly, the October 2019 Swedish Consumer Protection Agency’s

¹²² Swrve Gaming Monetisation Report 2019. Accessible from: https://cdn2.hubspot.net/hubfs/5516657/Monetization%20Report_final.pdf. Published by Swrve, 2019 – out of paying users.

¹²³ Mapping of consumer protection in the event of lottery or casino-like elements in computer games. Accessible from: <https://www.konsumentverket.se/contentassets/83509d8dffff48559d44de6546ecc362/kartlaggning-av-konsumentskyddet-vid-lotteri--eller-kasinoliknande-inslag-i-datorspel-fi-2019-01630-ko.pdf>. Published by Consumer Works in September 2019.

¹²⁴ [Om gråsonespill fra Forum for spilltrender](https://www.regjeringen.no/no/dokumenter/rapport-om-grasonespill-fra-forum-for-spilltrender). Accessible from: <https://www.regjeringen.no/no/dokumenter/rapport-om-grasonespill-fra-forum-for-spilltrender/id2618537/>. Published by The Norwegian Gaming Authority (Regjeringen), November 2018.

¹²⁵ Loot boxes in Online Games and their effect on consumers, particularly young consumers. Accessible from: [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652727/IPOL_STU\(2020\)652727_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652727/IPOL_STU(2020)652727_EN.pdf). Published by the European Parliament in July 2020.



study of loot boxes highlights a lack of causal evidence.¹²⁶ Moreover, problem gambling prevalence rates have remained stable¹²⁷ whilst the online games industry has flourished. The singling out of loot boxes for scrutiny does not reflect complex freemium game design ecosystems. Professor Andrew Przybylski of the Oxford Internet Institute has warned that trying to regulate game mechanics as a form of gambling would be and akin to ‘Trying to crack a nut with this sledgehammer.’¹²⁸

Concluding recommendations

Whilst a substantial portion of this submission has focused on the pitfalls of applying gambling regulation to mobile games, we would like to end on a positive, pro-active note.

We would reiterate that **the Forum supports a measured approach to in-app purchases, including loot boxes, based upon consumer protection regulation and self-regulatory best practice guidance.** The Directrices de Buenas Prácticas de Publicidad de Productos de Software Interactivo (DPPSI), present an effective and practicable starting point from which to approach loot boxes, as part of a suite of self-regulatory principles for developers. This could include **principles on the disclosure of loot box drop rates** and the **use of labels** to signpost loot boxes, as well as **measures to extend education on parental controls** which are *the* effective mechanism to limit or prevent in-app purchases, including loot boxes.

A broad-brush, principles-based approach predicated on fairness and transparency, is inherently better suited than prescriptive legislation to address a gaming ecosystem characterised by fast-moving trends and new challenges. We would welcome an open dialogue on the development of such a principles-based approach that reflects the online marketplace transparency enshrined in the EU Omnibus Directive.

¹²⁶ Mapping of consumer protection in the event of lottery or casino-like elements in computer games. Accessible from: <https://www.konsumentverket.se/contentassets/83509d8dffff48559d44de6546ecc362/kartlaggning-av-konsumentskyddet-vid-loteri--eller-kasinolikhande-inslag-i-datorspel-fi-2019-01630-ko.pdf>. Published by Consumer Works in September 2019

¹²⁷ Gaming-Gambling Convergence: Research, Regulation, And Reactions. Accessible from: <http://doi.org/10.1089/glr2.2019.2323>. Published by Gaming Law Review in March 2019.

¹²⁸ There's a debate raging in video games over whether loot boxes should be classified as gambling. Accessible from: <https://www.businessinsider.com/classifying-video-game-loot-boxes-as-gambling-2020-7?r=US&IR=T>. Published by Business Insider in July 2020.