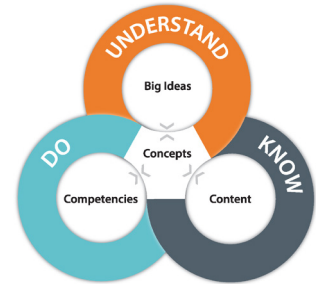


### Court Trial: Digital Matter

Online gaming and online gambling are two increasingly popular pastimes for young people. While gaming is an enjoyable, recreational activity for most, it can lead to serious problems for some, especially when paired with third-party gambling sites. Gambling real money is illegal for youth under the age of 19 throughout most of Canada but there is a legal loophole for gambling with digital matter.

In this three-session lesson (or more if desired), students learn that digital matter can cost real money and can result in winning or losing real money. Students get an opportunity to learn about gambling and digital matter through their own research while simultaneously experiencing and contributing to a mock trial in class. Students also get a chance to develop critical thinking skills that may help them reduce their risk of problematic gambling in the future.



### Instructional strategies

1. Familiarize students with gaming and gambling issues.
  - a. Introduce gaming and gambling by asking students what they already know or have experienced related to the topics. Invite students to share their stories to help others understand the issues from a peer point of view.
  - b. Give students the [Background Information handout](#), which features the two articles and background information below.
    - Gambling: ‘loot boxes’ in video games could be conditioning children (The Conversation)”
    - “How the legal battle around loot boxes will change video games forever (The Verge)”

Under-aged youth can purchase keys, or their counterparts, in video games. Keys are purchased for a base rate without the player knowing what crate or loot box the key will open – it is a randomized selection that could have something as simple as a modification for a game’s avatar in it or as essential as game-enhancing armor or weapons. When a player purchases a key in a game, there is a gamble involved –the key they purchase will open a box that has an item of either greater or of lesser value in it than the amount that they paid for the key. These winnings or digital goods (weapons, armor, avatar modifications, etc.) do not have real money value in the game. But players can transfer their digital goods to online third party sites. Through a legal loophole, these third-party sites such as Steam Marketplace allow players to buy and sell digital goods from their games for real money. The outcome of this process is that under-aged youth end up losing or winning real money even though it is illegal for them to gamble with real money.



### 2. Introduce the court case

- a. Give each student the [Court Case handout](#) on the background information of the case. You may want to read it aloud with the class:

Nathan Smith is 13 years old and has been using his parents' money without them knowing to regularly purchase keys to crates in Team Fortress 2.

It started out with his parents giving him \$30 or so just to play the online games. The Smiths say Nathan seemed happy playing Team Fortress 2 with his friends and they did not want to take that away from him. The Smiths' credit card was linked with Nathan's gaming account, and Nathan began to purchase keys to crates without his parents' consent.

Nathan began acting out in school and around the home, and began spending more and more time alone in his room online. His parents were concerned and after looking over credit card statements they discovered that over the past year Nathan had spent about \$1000 of their money on a combination of keys in Team Fortress 2 and on buying, selling, and trading goods from the game in the Steam Marketplace.

After being confronted by his parents, Nathan claimed that he has been buying more keys recently and visiting the Steam Marketplace more frequently because he wanted to win back the money before his parents found out.

Nathan's parents are suing Team Fortress 2 and Steam Marketplace for \$1000 each for not enforcing the age restriction of gambling and for punitive/exemplary damages of setting their child on the road to problematic gambling behavior. They say they have noticed a significant change in Nathan's behaviour and are concerned that he is already experiencing problematic gambling.

The media got wind of this case and the story is being discussed on national radio, television, and online. It appears many parents and children can relate to the Smiths' experience, and share concerns about the current laws regarding digital material and its true monetary value (or, currently, lack thereof).

### 3. Set the stage for the mock trial

- a. Explain that the trial will mimic a Supreme Court Case with 12 jurors and that each student will have a role in the trial. Note: Due to the small nature of the claim it would in real life be in a small claims court which often does not have a jury.
- b. Assign or have students choose a role. You may want to distribute the [Roles handout](#) and give students time to think about how they'd like to participate.
  - Plaintiffs' Lawyers (2-4) – They will argue on behalf of Nathan Smith and his parents for why digital matter/goods should have the same value as real money and for damages.
  - Defense Lawyers (2-4) – They will defend the current status quo. There need to be lawyers for both Team Fortress 2 and for Steam Marketplace.



- Witnesses (4-6 – mix of eye witnesses and professionals) – Lawyers will get an equal number of witnesses to work with and together the witness and lawyers will decide how the witness can best assist in arguing their side of the case. Witnesses must be cross examined by opposing counsel in trial as well and will need to prepare for cross examination. Witnesses will also each need to create their own [Eyewitness Statement](#) or [Expert Witness Report](#).
- Clerk/Timekeeper (1) – They will ensure timing is fair and that a strict schedule is maintained.
- Jurors (up to 12) – They will deliberate together after the case and come up with a verdict. Jurors will need to take notes throughout the trial. A jury foreman will need to be elected.
- Journalist (1 or 2) – They will need to take notes throughout the trial and give a short recap of the proceedings after each class.
- Judge (Played by the teacher) – The judge will rule over the courtroom and ensure all runs smoothly. The judge will address the jury and will inform them of how they are to deliberate and decide the case, and what burden of proof they will apply. For example: “This is not a criminal case and the plaintiffs do not have to prove their case beyond a reasonable doubt – they only have to show on a balance of probabilities that the corporate defendants are liable.”

**Note:** Encourage plaintiff and defense lawyers to come up with their own arguments. If they are stuck, however, we suggest the following:

*Team Fortress 2 Defense:* Keys do not differ in price based on the value of the item you win, and because they stay in the game they do not contribute to winning or losing real money and are therefore not gambling. It is not the game’s responsibility to monitor who trades on third-party sites, nor to check ages of players, and age should not even matter considering real money is not involved.

*Steam Marketplace Defense:* This is a buy-and-sell marketplace that does not involve gambling. There is no need for an age restriction because anyone can purchase or sell products online. It is not the responsibility of Steam Marketplace to research where the items are coming from and the ages of the individuals that are buying and selling goods. The site is also not responsible for contributing to any problem gambling as individuals should be monitoring their own use.

*Plaintiff:* Focus on how it is illegal for children to gamble, how digital matter ends up having real monetary value when taken to the third party sites, how keys to crates and loot boxes still cost real money to purchase, how Steam Market and Team Fortress 2 know the video game targets many under aged youth and that they should have an extra added duty to ensure kids are not gambling, and how Nathan has now had a year of gambling experience which might lead to problematic gambling. In addition, they will likely want to challenge that digital matter has real



monetary value and that the status quo should be changed. They may want to call on a psychologist or professor with a doctorate degree as an expert witness for how gambling at a young age can effect a child, or the reality of and monetary value of digital matter.

#### 4. Prepare for court and outline the court process

- a. Give the students a class or two to prepare for their trial and conduct the research they need, as well as for the lawyers to meet with their witnesses.
- b. Outline what will happen in court:
  - i. **Day 1:** Opening statements and witness questioning. Journalists will each have one or two minutes at the end of the class to give a recap of the day's events.
  - ii. **Day 2:** Witness questioning (cont.) and closing statements. Again, journalists will have a few minutes to present the day's events to the class at the end of the class.
  - iii. **Day 3:** Juror deliberation and debrief. Note: Although this happens in a separate room in real trials, you may consider having the jurors deliberate in the classroom while the rest of the students watch silently so that they may have an understanding of what the conversations are like. Jurors present a verdict to the judge. Debriefing. (If desired, you may want to debrief the following day.)
- c. Set a court date.

#### 5. Go to court. And have fun!

##### Suggestions for the debrief:

The purpose of the debrief is to discuss the details of the mock trial and to build students' skills. In law and in life, it is essential that individuals learn how to ask good questions and that they consider the ethical implications of their actions and decisions.

You may wish to discuss the quality of questions asked throughout the trial with the class. Asking questions is contextual. In dialogue with people in real life situations it is critical to use open ended, non-judgmental, and empathetic questions. In a trial situation, however, questions are almost always asked to solicit known information or to raise a reasonable doubt. There is a famous law saying that, while contradictory to everyday life situations, is recommended in a court of law: Never ask a question that you don't know the answer to. Discussing the differences between legal questioning and questioning for open-ended dialogue may be an interesting topic to cover with students.

In addition, it is worthwhile discussing the ethics of not only the mock trial but of the benefits and consequences of partaking in these types of online gaming and gambling activities. Asking students about the thought process involved before making gambling decisions and of the different elements that they consider to be beneficial, or to result in consequence, will help students develop their critical thinking skills and reduce their chance of problematic gambling in the future. Consider also asking students about their opinions on the ethics of the system



in general – Are gaming and gambling companies benefitting? Why are they allowing this loophole to occur, knowing that many youth are participating? What is working well with the system, and is any part unacceptable or unethical? Have students explain their thoughts and think critically about the topic.

More resources and handouts on mock trial can be found at: <https://classroomlaw.org/resources/mock-trial-student-handouts/>

## Gambling literacy

### Big ideas

- ✓ As humans, both individually and as communities, we need to learn how to manage gambling in our midst
- ✓ We can learn how to control gambling by examining the different ways people have thought about it, engaging in critical self-reflection and listening to each other
- ✓ Gambling can be a fun recreational activity but can also lead to significant harm

### Competencies

- ✓ Assess the ways in which material goods are distributed in society, how those goods are valued and how this is related to gambling policies and behaviours
- ✓ Explore and appreciate the diverse cognitive, social, emotional and physical factors that impact gambling behaviour
- ✓ Develop personal and social skills to reflect on and manage personal behaviour and choices related to gambling

- ✓ Assess the complex ways in which gambling is linked to human culture and impacts the health and wellbeing of individuals, families, communities and societies
- ✓ Consider dominant social discourses and assess their impact on the distribution of risk and benefit associated with gambling

For a complete look at the gambling literacy competencies, as defined by the Canadian Institute for Substance Use Research, see: <https://www.uvic.ca/research/centres/cisur/assets/docs/iminds/hs-gambling-curriculum.pdf>

## Links to curriculum

### First Peoples' principles of learning

- ✓ Learning ultimately supports the well-being of the self, the family, the community, the land, the spirits, and the ancestors
- ✓ Learning is holistic, reflexive, reflective, experiential, and relational (focused on connectedness, on reciprocal relationships, and a sense of place)
- ✓ Learning involves recognizing the consequences of one's actions

### Law Studies 12

#### Big ideas

- ✓ Laws can maintain the status quo and can also be a force for change
- ✓ Laws are interpreted, and these interpretations may evolve over time as a society's values and worldviews change
- ✓ A society's laws and legal framework affect many aspects of people's daily lives



**Competencies**

- ✓ Make reasoned ethical judgments about legal systems or codes
- ✓ Make reasoned ethical judgments about controversial decisions, legislation, or policy
- ✓ Assess the justification for differing legal perspectives after investigating points of contention, reliability of sources, and adequacy of evidence
- ✓ Use social studies inquiry processes and skills to ask questions
- ✓ Gather, interpret, and analyze legal concepts, issues, and procedures
- ✓ Communicate findings and decisions
- ✓ Assess and compare significance and impact of legal systems or codes

This resource was developed by the **Canadian Institute for Substance Use Research** with funding provided by the **BC Responsible & Problem Gambling Program**. Any views expressed herein are those of the authors and do not necessarily represent the views of the BC Responsible & Problem Gambling Program or the Canadian Institute for Substance Use Research.



## Background Information

### *Brief blurb about third-party sites*

Under-aged youth can purchase keys, or their counterparts, in video games. Keys are purchased for a base rate without the player knowing what crate or loot box the key will open – it is a randomized selection that could have something as simple as a modification for a game’s avatar in it or as essential as game enhancing armor or weapons. When a player purchases a key in a game, there is a gamble involved – the key that they purchase will open a box that has an item of either greater or lesser value in it than the amount that they paid for the key. These winnings or digital goods (weapons, armor, avatar modifications, etc.) do not have real money value in the game. But players can transfer their digital goods to online third party sites. Through a legal loophole, these third-party sites such as Steam Marketplace allow players to buy and sell digital goods from their games for real money. The outcome of this process is that under-aged youth end up losing or winning real money even though it is illegal for them to gamble with real money.

### *Articles*

[“Gambling: ‘loot boxes’ in video games could be conditioning children \(The Conversation\)”](#)

[“How the legal battle around loot boxes will change video games forever \(The Verge\)”](#)



## Court Case

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## Roles

**Plaintiffs' Lawyers (2-4)** – They will argue on behalf of Nathan Smith and his parents for why digital matter/goods should have the same value as real money and for damages.

**Defense Lawyers (2-4)** – They will defend the current status quo. There need to be lawyers for both Team Fortress 2 and for Steam Marketplace.

**Witnesses (4-6 – mix of eye witnesses and professionals)** – Lawyers will get an equal number of witnesses to work with and together the witness and lawyers will decide how the witness can best assist in arguing their side of the case. Witnesses must be cross examined by opposing counsel in trial as well and will need to prepare for cross examination. Witnesses will also each need to create their own statement/report.

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Name: \_\_\_\_\_

## Eyewitness Statement

Use this outline to help you read through the witness affidavit to begin analyzing this witness's role in the trial.

**Witness Name:** \_\_\_\_\_

**Witness Age:** \_\_\_\_\_

**Witness Occupation:** \_\_\_\_\_

**Witness positive factors:** \_\_\_\_\_

**Witness negative factors:** \_\_\_\_\_

**Witness's Relationship to the Case:** \_\_\_\_\_

**What the witness saw (from their point of view):**

Name: \_\_\_\_\_

## Expert Witness Report

Use this outline to help you read through the expert witness to begin analyzing this witness's role in the trial.

**Witness Name:** \_\_\_\_\_

**Witness Age:** \_\_\_\_\_

**Witness Occupation:** \_\_\_\_\_

**Witness positive factors:** \_\_\_\_\_

**Witness negative factors:** \_\_\_\_\_

**Witness's area of expertise:** \_\_\_\_\_

**What Expert can testify to:** \_\_\_\_\_

## THE CONVERSATION

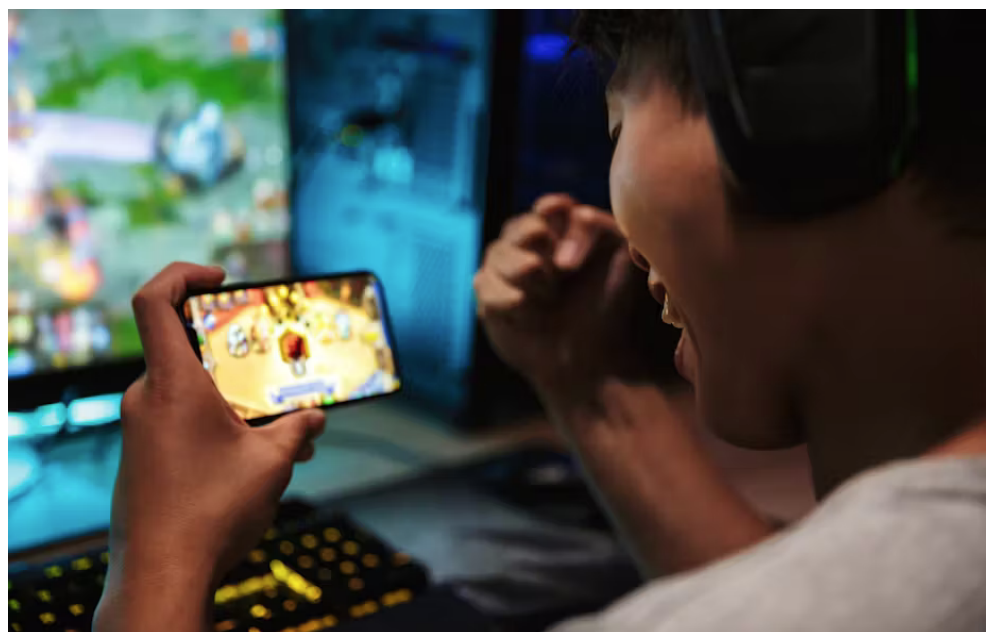
Academic rigour, journalistic flair

# Gambling: 'loot boxes' in video games could be conditioning children

Published: December 4, 2018 8.10am EST

**Mark Griffiths**

Director of the International Gaming Research Unit and Professor of Behavioural Addiction, Nottingham Trent University



Taking a chance. Shutterstock.

The number of children with gambling problems has “quadrupled to more than 50,000 in just two years”, according to [recent reports](#). The alarming figures come from the UK Gambling Commission’s latest [annual statistics](#), which showed that the prevalence of problem gambling among children had risen to 1.7%, compared with 0.4% in 2016 and 0.9% in 2017.

To put these figures into context, problem gambling among teenagers overall has actually been declining in the UK over the past 20 years. A [review of research](#) revealed that in 2000, roughly 5% of teenagers met the criteria for problem gambling – by 2016, it was less than a tenth of that. The Gambling Commission’s [report also suggests](#) that the significant increase recorded in 2018 could be due to changes in the way survey data were collected – though the increase between 2016 and 2017 would not have been affected by this issue.

But as someone who has been researching teenage gambling for more than 30 years, there is still cause for concern. If there has been a genuine increase in problem gambling among teenagers over the past couple of years, I think one of the main factors will have been the growing presence of simulated gambling in video games.

## Loot box lottery

Loot boxes, rates, cases, chests, bundles and card packs are, in essence, virtual games of chance which can be purchased in video games. Players use real money to buy these virtual items, which contain a chance selection of rewards. The likelihood of winning rare or powerful items is slim, so players are encouraged to spend more to increase their chances of success.

Many popular video games – including Overwatch, Middle-earth: Shadow of War, Star Wars Battlefront 2, FIFA Ultimate Team – now feature loot boxes or the like. The Gambling Commission's report noted that 13% of teenagers aged 11 to 16 had played gambling-style games online, and that 31% had accessed loot boxes in a video game or app, to try to acquire in-game items.



Overwatch loot box.

Some might argue that buying loot boxes isn't gambling, because the rewards only have value within the game. But this is not always the case: there are many independent websites (such as loot.farm and skins.cash), which allow players to trade in-game items or virtual currency, in exchange for real money.

What's more, I have argued that the "prizes" won are – in financial terms – often a lot less valuable than the prices paid. In effect, it is a lottery as to which items might be won. Indeed, loot boxes have already been outlawed in Belgium, on the grounds that they breach gambling rules.

## Taking a risk

A recent study found evidence for a link between the amount that video game players spent on loot boxes and the severity of problem gambling. In a large survey of 7,422 gamers, the more money a person spent buying loot boxes, the more likely they were to be a problem gambler. The paper concluded that the gambling-like features of loot boxes could be responsible for problem gambling severity, because the buying of other in-game items had no relationship with the level of problem gambling.

What's the difference? Shutterstock.

This evidence does not prove that loot boxes cause problem gambling – but it does suggest there is an association that needs to be explored further. It may be that problem gamblers are more attracted to buying loot boxes within video games. But there's further evidence that simulated gambling – that is, gambling for free – within video games is a risk factor which increases the likelihood of teenagers gambling with real money and developing gambling problems.

For this reason, I argue that children should be banned from playing gambling simulations in video games. For example, in games such as Candy Crush and Runescape there are “wheel of fortune” games, which strongly resemble blackjack, where players have to pay to spin the wheel for a chance reward.

So it seems that problem gambling among young people has increased over the last couple of years – but not at the rate claimed in many recent news stories. However, the research suggests that loot boxes within video games could be a prime contributing factor to the increase in problem gambling among teenagers.

ENTERTAINMENT / CULTURE

## How the legal battle around loot boxes will change video games forever / Digging in to one of 2017's biggest gaming controversies

by Katherine Cross

Dec 19, 2017, 6:00 AM PST



0 Comments



Just a few weeks ago, Belgium's Gambling Committee took up the most controversial gaming question of the season: are loot boxes gambling? Yes, they said.

Loot boxes are, in short, virtual boxes with random contents that you purchase through video games with real money. They contain everything from virtual cosmetic items to power-ups to gear that can dramatically alter your chances of winning the game. Rarer items, of course, show up in loot boxes far less often.

The rush of buying them and rolling the dice on their contents has been likened to the psychological sensation one feels when gambling. That gets even more unsettling when you consider how many underage people play these games, and how much they spend; my own younger sibling, a few years ago, drained \$400 from my bank account on Xbox Live purchases.

The debate over loot boxes has been one of the most divisive and furious that gaming has seen in years, and certainly one of the most important stories for the industry in 2017. Billions of dollars are on the line here — especially as legislators and regulators in more countries have started to speak up.

Hawaiian state representative Chris Lee recently held a press conference where he characterized loot boxes as “predatory gaming,” and is working on legislation to ban minors from buying them. He later added in a Reddit post that “these kinds of loot boxes and microtransactions are explicitly designed to prey upon and exploit human psychology in the same way casino games are so designed.” In Australia, a regulator for the state of Victoria agreed that “what occurs with ‘loot boxes’ does constitute gambling” and that the regulatory body for gaming was “engaging with interstate and international counterparts” on policy changes.

For years, microtransactions have become more and more prominent in gaming as a way of supplementing income for developers, or replacing the revenue gained by selling units — hence “free to play” games that are free to download and play, but make money by selling you small-ticket items or downloadable content in the game itself.

The unparalleled outcry from players, fans, press, and politicians about loot boxes in *Star Wars Battlefront II* signaled that we were at a breaking point. A flagship title of perhaps the world’s most profitable and famous IP was monetizing through microtransactions and loot boxes so pervasively that it felt openly exploitative. Every aspect of the game was now bent toward facilitating microtransactions. Characters or power-ups can take days worth of play to earn, which makes purchasing them in an in-game store more tempting.



## Loot boxes have brought the video game industry to a crossroads

A process that had begun over a decade ago has reached a crisis point. Loot boxes have brought the video game industry to a crossroads, and the path taken now will shape the future of the industry in profound ways.

It could take months or years before a final ruling is settled in any jurisdiction, and even then, a global patchwork of differing laws and rulings will need to be reckoned with. But the implications are clear. The law has always lagged behind technology, but sooner or later it's going to catch up, and tech companies that are used to doing as they please will suddenly have to figure out what life after regulation looks like.

Previously, most defenders of the loot box economy and its associated trading websites said that since real currency wasn't being won, no real gambling was taking place. But according to some legal experts, that isn't strictly true.

In a recent episode of his *Robot Congress* podcast, prominent video game attorney Ryan Morrison interviewed another lawyer, Marc Whipple, who has experience in the gaming industry. Whipple said that gambling, in "most jurisdictions," was judged to be such if it had three critical elements: "Consideration, which means you have to pay something to play. Chance, which means there has to be something outside your control that determines the outcome of the game. And a prize. And of course, a prize is something, anything of value."

Whipple added, with deliberate clarity: "As close as I'm ever getting to giving actual legal advice to strangers on the internet who are not my clients is this: no, it does not have to be money. It has to be something of value, period."

This discussion neatly lays out where the legal battle lines *actually* are. The issue has come up a handful of times in American courts, but the industry won those

cases because digital objects were determined to have no value. In Whipple's mind, this was because the judges were not "technologically literate," and "did not understand what was going on," instead seeing this very lucrative form of commerce as nothing more than "blips on a screen."

The answer to this question — whether digital matter should be considered as real as what's in your pocketbook — affects every aspect of the tech industry. If the virtual is not real, rules are irrelevant; if it *is*, then we're badly in need of a digital social contract. With the events of the last few years — from a president's tweets moving markets, to discourse around online harassment — we're recognizing, slowly, that what happens online is, for all intents and purposes, real. We cannot simply switch it off.

## **What happens online is, for all intents and purposes, real**

Pursuant to this specific discussion, the American legal framework on gambling is already primed to accept that. The legal test for gambling, here, *never* required actual currency to be won.

"Value doesn't mean necessarily mean you like it and you want it. Value means it 'has value.'" said Whipple. "If you can sell it to somebody, if you can transfer it to somebody...and exchange for some consideration, some payment, I would argue under that most gambling statutes that it is almost certainly something of value. If you can't, that doesn't mean it *isn't* something of value, it just means it'd be harder to prove,"

The "harder to prove" bit is key, and that will be where the legal trenches are dug on this issue, I suspect. But it's no *guarantee* of forestalling regulation and adverse judgements, and that's equally critical to understand here.

The potential implications of this question are tremendous. They could theoretically categorize the entire business model of the popular deck-building

game *Magic: The Gathering*'s as a form of gambling, along with numerous similar properties, and perhaps even the “blind boxes” of unknown minifigures sold by many tabletop RPG companies. That's for courts and regulators to decide, of course. But the path is open now for major changes to the world of gaming.

What caused the game industry to charge so recklessly toward this precipice? Why risk doing something that would invite legal battles and government scrutiny above and beyond anything that the industry endured during the darkest days of the last generation's culture wars? Inescapably, the answer is money.

A law review article in the aptly titled “Gaming Law Review” made that abundantly clear, with language that was unusually blunt for an academic paper. In her article “Skin Gambling: Have We Found the Millennial Goldmine or Imminent Trouble?” lawyer Desirée Martinelli analyses the legal landscape as relates to the practice of “skin gambling,” which is the practice of using skins — cosmetic alterations to in-game objects — as the ante for ever rarer ones. One report by the gambling industry analyst Chris Grove estimated that \$7.4 billion worth of skins were wagered in 2016, with some significant percentage of that money undoubtedly going to the distribution platform Valve, which sold many skins in the first place.

## **One report estimated that \$7.4 billion worth of skins were wagered in 2016**

Valve has since pledged a crackdown on skin gambling, of course, but a broader issue remains: the mentality that let it flourish for so long in the first place.

Martinelli concludes that “the lack of regulation provides the perfect atmosphere for thirsty, tech-savvy entrepreneurs looking to capitalize on the craze” and that “courts may find it necessary to start reining in this millennial goldmine

especially if a social policy concern such as underage gambling through e-sports and skins betting arises.”

The implications of this argument go far beyond skin gambling. The question of whether virtual goods have “real-world value” is central to a range of ethical questions about microtransactions, and is at the heart of the loot box question as well. In all cases, the motivation behind each mechanic is quite simply a yearning to make as much money as possible. There are practical reasons for this: blockbuster video games routinely cost tens of millions of dollars to make now, with costs continuing to rise.

It’s difficult to get sales figures on loot boxes by themselves, but they’re normally grouped into a bucket of controversial practices that are known in business jargon as “player recurring investment.” In other words, any penny made from something other than the initial cost of purchasing a game. This can be downloadable content (DLC), microtransactions as a whole, in-game advertising, subscription fees, and of course, loot boxes. As implied by the name, it’s money made from players who keep coming back to a game. Players “recur,” and the amount of time they spend in-game is more or less proportional to how much *money* they spend.

Ubisoft recently reported that for the first time, the company made more money from these microtransactions than it did from digital sales of the games themselves. Not only that, but microtransaction sales had grown at a significantly faster rate than those overall unit sales compared to the previous year (83 percent compared to 57 percent).

More sensational individual stories have hit the wires as well. *Kotaku* interviewed a man who’d spent over \$10,000 on microtransaction payments. In an interview with *Waypoint*, game developer Manveer Heir said that during his previous employment at BioWare, he had “seen people literally spend \$15,000 on *Mass Effect* multiplayer cards.” The reason, he said, was both profit and retention. Keep the players playing for longer, and thus *paying* for longer. The numbers, just from individuals, can be eye-watering.

But the entire lucrative enterprise depends on these goods being categorized as “not real” or having “no value.” This is, unsurprisingly, the mindset of game developers at large, and it’s supported by at least a few regulators worldwide. The New Zealand Department of Interior Affairs, which oversees its gambling licensing, told me that it “is of the view that loot boxes do not meet the legal definition of gambling.” The Australian state of Queensland, meanwhile, disagreed with its southern counterpart in Victoria on the question. At the heart of such opinions is whether virtual loot is real and valuable.

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Tim Miller, the executive director of the UK Gambling Commission, reinforced that point in an interview with Eurogamer’s Vic Hood, emphasizing that he doesn’t believe loot box proceeds are “valuable” — an opinion that could transform the future of gaming. If they are deemed “valuable,” mechanics strewn through countless games on every platform, might end up being criminalized or strictly regulated in the US and abroad. Regulators could raise questions about card games and tabletop role-playing games that bank on similar mechanics with much tighter profit margins.

The recent statements from gambling regulators and legislators worldwide constitute an opening shot in the battle over loot boxes, not a climax. The industry’s biggest players are unlikely to give up a multibillion-dollar revenue stream without a fight. But the stakes are larger than even that princely sum. This is a battle for the soul of gaming; we’re at a crossroads where the industry has to choose who and what it wants to be.

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The loot boxes of *Battlefront II* seemed to presage an industry that produced lavish video lottery machines, where all art had been sublimated into mere backdrops for mechanics whose sole purpose was the extraction of maximum

profit. The gaming industry has been on the cusp of a digital nightmare where games and their stories were tailored around profitable systems, not the other way around. Thanks to this controversy, it has a chance to take a different path now.

Loot boxes are only one kind of microtransaction, but they're often discussed as a unit because all microtransactions rely on similarly seductive sales techniques. They also permit theoretically unlimited revenue to be drawn from a game. Cajoling and enticing players onto that limitless funicular track of spending raises serious ethical issues, especially where our youngest players are involved.

Because of the moral panics that have been weaponized against everything from *Dungeons & Dragons* to *Grand Theft Auto* in the past, everyone who works in or around the gaming industry has a certain, marrow-deep revulsion to arguments that smack of "what about the children!?" But children aren't the only ones harmed by a gambling economy; their cases are just especially egregious. It is long past time to stop reliving the culture wars of the last three decades and move on. Many of the people complaining about loot boxes now *are* the very same people who play and adore games, not right-wing religious extremists who want to obliterate everything we love.

Seeking to ban a specific revenue-generating practice that is inessential to artistic expression is very different from banning games on the basis of content — or banning them altogether. If we can have the debate on those terms, rather than the apocalyptic ones we've been saddled with, something good might come out of this whole mess.

The future could still be one in which we — consumers, regulators, developers, and critics — develop an entirely new ethical framework around microtransaction economies and the sale of digital content. Perhaps it will require government intervention, or perhaps it'll take the form of industry self-regulation. Either way, the industry could come out the other side of this acrimonious debate, and its forthcoming legal battles, not just intact, but better than it was before.

***Correction 12/19/17 2:30 PM ET:*** This article has been updated to include the correct name of Hawaii state representative Chris Lee.

0 COMMENTS