

# Should loot boxes be banned?

## What they said...

*'Social media and video games prey on user addiction, siphoning our kids' attention from the real world and extracting profits from fostering compulsive habits'*

**Republican Senator for Missouri, Josh Hawley**

*'If I want to buy [loot boxes], we should have the right to make that transaction, do-gooder politicians be damned'*

**Forbes senior contributor, Erik Kain**

## The issue at a glance

On October 29, 2020, United States video games publisher, Electronic Arts, was fined \$5.86 million by the Netherlands Gambling Authority (KSA) for using loot boxes in FIFA football-based games. <https://www.pcgamesinsider.biz/news/71646/netherlands-gambling-authority-fines-586m-over-fifa-loot-boxes/>

In September 2020, the British House of Lords called for loot boxes to be regulated in the same way that gambling is.

<https://www.ibanet.org/Article/NewDetail.aspx?ArticleUId=B389FF33-433B-4ACB-BFC1-42CFCE22B60A>

Seven months before, in February 2020, the Australian Federal Parliament received a report from the House of Representatives Standing Committee on Social Policy and Legal Affairs, titled 'Protecting the age of innocence'.

[https://parlinfo.aph.gov.au/parlInfo/download/committees/reportrep/024436/toc\\_pdf/Protectingtheageofinnocence.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportrep/024436/toc_pdf/Protectingtheageofinnocence.pdf;fileType=application%2Fpdf)

The report recommended the introduction of loot box regulation, with mandatory age checks for purchasing. The committee also suggested that warnings should be added to video games that include any form of microtransaction, including loot boxes, skins, and other cosmetic items. <https://www.gamesindustry.biz/articles/2020-03-06-australian-parliamentary-committee-recommends-loot-box-regulation>

The debate seems to centre around whether loot boxes should be regulated or banned. In 2018, Belgium ruled that loot boxes acquired through some form of monetary transaction are gambling and should be banned in all videogames. Large fines and prison terms of up to five years can apply to those who break these laws. <https://www.bbc.com/news/technology-43906306>

## Background information

(The information below is abbreviated from the Wikipedia entry 'Loot box' which can be accessed in full at [https://en.wikipedia.org/wiki/Loot\\_box](https://en.wikipedia.org/wiki/Loot_box) and the MediaWrites article 'Loot boxes: What's all the fuss about?' which can be accessed in full at <https://mediawrites.law/loot-boxes-whats-all-the-fuss-about/>)

### Definition and origin of loot boxes

In video games, a loot box (also called a loot or prize crate) is a consumable virtual item. Loot boxes can be redeemed to receive a randomised selection of further virtual items, or loot. These range from simple customisation options for a player's avatar or character, to game-changing equipment such as weapons and armor.

A loot box is typically a way for makers to derive extra money from already purchased games. Players either buy the boxes directly or receive the boxes during play and later buy 'keys' to redeem them. These systems may also be known as gacha and integrated into gacha games.

Loot boxes first appeared in various games from 2004 through to 2007 and have since become widespread. Developers and publishers of video games find loot boxes useful in generating ongoing revenue from games while holding the initial purchase price down. They are also valuable in promoting player interest within games by offering new content and cosmetics through loot-box reward systems.

Loot boxes were popularised through their inclusion in several games throughout the mid-2010s. By the latter half of the decade, some games, particularly Star Wars Battlefront II, began to be criticised for their excessive use of the strategy. Such criticism was directed particularly at "pay to win" gameplay systems that favour those that spend real money on loot boxes. Loot boxes are also condemned as exploitative when installed in full-priced games. Due to fears of their use in gray-market skin gambling, loot boxes began to become regulated under national gambling laws in various countries during this period.

#### Australia

Within Australia, games with loot boxes would fall under gambling restrictions if they can be played "for money or anything else of value"; the question remains if items that only exist within game have "value" that can be quantified, even if this is related to an item's prestige. The Victorian Commission for Gambling and Liquor Regulation has stated that it considers loot boxes to be gambling but does not have the authority to prosecute companies registered overseas. The commission has suggested "an immediate R rating" for any games which feature loot boxes as a solution to this limitation. In March 2018, the Australian Office of eSafety published a list of safety guidelines on the dangers of online loot boxes.

#### Britain

The House of Lords Gambling Committee released a special report on the state of gambling in the UK on July 2, 2020. The report identified the ongoing issue of loot boxes, how they may be seen as gambling and their effect on the youth," and concluded that "Ministers should make regulations under section 6(6) of the Gambling Act 2005 specifying that loot boxes and any other similar games are games of chance, without waiting for the Government's wider review of the Gambling Act."

#### China

In December 2016, the Chinese Ministry of Culture issued a notice reinforcing certain restrictions on the operation of network or online games, which came into force in May 2017. Amongst the various restrictions mentioned, the notice expressly: bans any random allocation of virtual items or services in game by requiring users that wish to participate to pay by cash or virtual currency – i.e., it is no longer permissible to sell 'loot boxes' directly to users; requires publishers to publicly announce information about the name, property, content, quantity and draw probability of all virtual items and services offered in game, and the results of the random allocation.

To get around the ban, some games publishers now offer loot boxes for 'free' when a player purchases virtual currency.

#### Denmark

If a game is provided in Denmark (that is, specifically aimed at the Danish market), it will require a licence from the Danish Gambling Authority if it constitutes 'Gambling'.

A game is considered to constitute gambling if all the following conditions are met:

- i) The participants in the game have to pay a stake (money or anything else of economic value),
- ii) The participants, who have paid a stake, have a chance of winning a prize (all types of prizes of economic value), and
- iii) The likelihood of winning has an element of chance.

Based on the above requirements, where in-game items can be exchanged for real money or purchased in-game currency, there is a risk that loot boxes could be categorised as gambling, and an unlawful lottery. The Danish Gambling Authority has not, however, made any public statements regarding loot boxes. Therefore, though there is the potential for action against loot boxes, none has been taken so far.

#### Poland

The current Polish Act on Gambling Games was adopted in response to a political scandal concerning slot machine games and aimed to gradually remove slot machine gaming from the Polish market. As a result, and to prevent any attempted circumvention of the ban on slot machines, a very broad definition of slot machine games was adopted.

According to the Act, slot machine games are any “games played on mechanical, electrical and mechanical, and electronic devices, including computers, as well as games the rules of which reflect those of slot machine games held via the Internet network, for cash or in-kind prizes, when the game includes an element of chance“. The use of ‘cash’ here would also include anything which may be exchanged into cash or can be obtained by payment of money. By this definition, there is a real risk that the offering of loot boxes to players in Poland could be considered the unlawful provision of slot machine games, especially as the Act declares further that even when there is no cash or in-kind prize, but the game is “organised for commercial purposes” and is “of random nature”, such a game should also be considered a slot machine game. Read strictly, this could even affect loot boxes where the contents do not have any ‘real world’ value (as they cannot be obtained for money or sold). However, there is currently no indication that the authorities are interested in enforcing the law against games publishers or developers. To do so would have severe consequences for the gaming market in Poland, as slot machines are only permitted to operate in casinos.

#### Sweden

Gambling in Sweden is regulated by the Swedish Lotteries Act (although a new gambling law is on the horizon), which defines lotteries as events where one or more participants, with or without a bet, may attain a prize which is larger than that which each of the other participants may receive. A licence is required to lawfully provide a lottery in Sweden.

This law only applies where the prizes in question constitute money or money’s worth. As a result, if the in-game items that may be obtained through a loot box have no monetary value, then the provision of loot boxes would not constitute a lottery. However, if the in-game items were deemed to have a monetary value by virtue of being able to be traded, relatively easily, for money or money’s worth (for example through a third-party website), then there is a real risk that loot boxes could constitute unlawful gambling if provided without a licence in Sweden.

However, there is currently no official guidance from the Swedish Gambling Authority in respect of loot boxes. In our view, unless games publishers themselves facilitate the exchange of in-game items for money or money’s worth, then it seems unlikely that the Gambling Authority would look to enforce the law against games publishers.

#### Netherlands

Gambling in the Netherlands is regulated by the Dutch Betting and Gambling Act (the “Act”). Under the Act, it is prohibited to: “provide an opportunity to compete for prizes or premiums if the winners are designated by means of any calculation of probability over which the participants are generally unable to exercise a dominant influence, unless a licence has been granted therefore, under this law”. It is currently not possible to obtain a licence for remote (online) gambling. As a result, online gambling is currently prohibited in the Netherlands.

The Dutch Betting and Gambling Authority (the “Gambling Authority”) recently investigated whether in-game loot boxes should be considered (online) games of chance.[6] The Gambling Authority concluded that loot boxes should be regarded as games of chance when: (i) the content of the boxes is determined by chance; and (ii) the in-game goods can be traded outside of the game, i.e. the goods have an economic/market value. Because it is currently impossible to obtain a licence for online gambling, offering such loot boxes to Dutch consumers is prohibited under the Act. Loot boxes with in-game goods that cannot be traded outside the game (i.e. have no market value) do not meet the definition of a prize and are, therefore, permitted in the Netherlands.

## **Internet information**

On December 23, 2020, pocketgamer.biz published a report titled ‘Report: 31% of young gamers don't know how much they spend on loot boxes’

The report states, ‘New research from the Gambling Health Alliance (GHA) has found that 31 per cent of 11-to-16-year-old gamers have lost track of how much they spend on loot boxes.’

The full report can be accessed at <https://www.pocketgamer.biz/news/75397/report-31-of-young-gamers-dont-know-how-much-they-spend-on-loot-boxes/>

On November 3, 2020, Fasken published a report titled ‘Opening Pandora’s Loot Box? Canadian Class Action Lawsuit Over Loot Boxes May Provide Guidance On The Legality of Loot Boxes in Canada’

The report refers to a class action lawsuit filed in the Supreme Court of British Columbia seeking reimbursement of “loot box” payments made by class members to Electronic Arts Inc. and Electronic Arts (Canada) Inc.

The article argues that the result of the claim will clarify the legal situation of loot boxes in Canada.

The report can be accessed at <https://www.fasken.com/en/knowledge/2020/11/3-opening-pandoras-loot-box/>

On October 29, 2020, PC Games Insider published a report titled ‘Netherlands Gambling Authority fines EA \$5.86m over FIFA loot boxes’

The report details that US publishing giant Electronic Arts is being fined €5m (\$5.86m) by the Netherlands Gambling Authority (KSA) for selling loot boxes for its FIFA football titles.

The full report can be found at <https://www.pcgamesinsider.biz/news/71646/netherlands-gambling-authority-fines-586m-over-fifa-loot-boxes/>

On October 23, 2020, The University of Richmond’s Journal of Law and Technology published an article titled ‘Loot Boxes: A New Way to Gamble’ by Megan Haugh.

The article examines several of the most popular games and reveals that they incorporate loot boxes. It notes that in 2019, the University of York reviewed the most popular video games on Steam (an online video game retailer) and found that seventy-one percent contained these loot boxes. <https://jolt.richmond.edu/2020/10/23/loot-boxes-a-new-way-to-gamble/>

On September 29, 2020, the International Bar Association published a report titled 'Gaming: chorus of concerns over 'loot boxes' and gambling'

The report detailed a recommendation from the British House of Lords that loot boxes be classified as gambling and restricted accordingly.

The full text can be accessed at

<https://www.ibanet.org/Article/NewDetail.aspx?ArticleUId=B389FF33-433B-4ACB-BFC1-42CFCE22B60A>

On September 29, 2020, pocketgamer.biz published a report titled 'EA removes monetisation ad from kids' magazine' which explained that Electronic Arts has removed the advertisement found in Smyths Toys magazine regarding FIFA Points. An EA spokesperson has explained to PocketGamer.biz that the advertisement should not have appeared, and that the company is now reviewing all future media placements.

The full report can be found at <https://www.pocketgamer.biz/news/74606/ea-comes-under-fire-for-advertising-loot-boxes-in-a-kids-magazine/>

On September 29, 2020, gamesindustry.biz published a report by its United Kingdom editor, James Bachelor, titled 'EA under fire for promoting FIFA loot boxes in toy catalogue'. The report detailed a promotion for 'player packs' in the FIFA Ultimate Team game within a toy store catalogue. In-store placement also pushed the use of FIFA points and specifically advertised wallet top-ups for the PlayStation Store.

<https://www.gamesindustry.biz/articles/2020-09-28-ea-under-fire-for-promoting-fifa-loot-boxes-in-toy-catalogue>

On September 12, 2019, BBC News Newsbeat published a report titled 'Gaming loot boxes: What happened when Belgium banned them?'

The report examines advantages and disadvantages of loot boxes.

The full text of the report can be accessed at <https://www.bbc.com/news/newsbeat-49674333>

On September 12, 2019, The Guardian published a report titled 'Video game loot boxes should be classed as gambling, says Commons'. The report noted that a British House of Commons report had advised that video game loot boxes should be regulated as gambling and children barred from purchasing them.

The full text can be accessed at <https://www.theguardian.com/games/2019/sep/12/video-game-loot-boxes-should-be-classed-as-gambling-says-commons>

On June 29, 2019, Techspot published a reported titled 'EA believes "surprise mechanics" and loot boxes are 'quite ethical and quite fun'

The report quoted extensively from testimony given by Entertainment Arts executives justifying their company's use of loot boxes before a United Kingdom Parliamentary Committee.

The full text of the report can be accessed at <https://www.techspot.com/news/80603-ea-believes-urprise-mechanics-loot-boxes-ethical-fun.html>

On June 19, 2019, the British House of Commons Digital, Culture, Media and Sport Committee release transcripts of evidence given before its

Immersive and addictive technologies hearing by Entertainment Arts executives. The executives were justifying their company's use of loot boxes and similar devices.

The full transcripts can be accessed at <https://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/digital-culture-media-and-sport-committee/immersive-and-addictive-technologies/oral/103191.html>

On February 28, 2019, WordPress.Com published a comment by Dr Mark Griffiths, Professor of Behavioural Addiction at Nottingham Trent University, titled '(Loot) boxing clever? Has child and adolescent problem gambling really risen in the UK?'

Dr Griffiths argues that the increase in problem gambling among adolescents may be attributable to the increase in simulated gambling in videogames.

The full text can be accessed at <https://drmarkgriffiths.wordpress.com/2019/02/28/has-child-and-adolescent-problem-gambling-really-risen-in-the-uk/>

On November 27, 2018, the Senate Standing Committee on Environment and Communications released a report on 'Gaming micro-transactions for chance-based items'. The Committee recommended 'The committee recommends that the Australian Government undertake a comprehensive review of loot boxes in video games.'

The full report can be accessed at

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Environment\\_and\\_Communications/Gamingmicro-transactions/Report/](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Gamingmicro-transactions/Report/)

On April 27, 2018, Metro column Game Central published a comment and analysis titled 'Why loot boxes in video games are here to stay'

The column proposes that loot boxes generate far too much income for game manufacturers and have become too much a part of the industry's operational model for them to be removed.

The full text of the article can be accessed at <https://metro.co.uk/2018/04/27/why-loot-boxes-in-video-games-are-here-to-stay-7500730/?ito=cbshare>

On December 18, 2017, The Sun published a comment by Dr Mark Griffiths, Professor of Behavioural Addiction at Nottingham Trent University. The comment was titled 'How your kids are being turned into gambling addicts by video game "loot boxes" right under your nose'

The report examines the addictive properties of in-game microtransactions for children.

The full text of the comment can be accessed at <https://www.thesun.co.uk/tech/5163806/how-your-kids-are-being-turned-into-gambling-addicts-by-video-game-loot-boxes-right-under-your-nose/>

## **Arguments in favour of banning loot boxes**

### **1. Loot boxes appeal to a young and vulnerable user group**

Critics of loot boxes are concerned that they are luring young and vulnerable players into behaviours they cannot control and the seriousness of which they do not appreciate.

Those who are concerned about the impact of loot boxes on young gamers note that these items have become a prominent feature of games which are widely played by minors. Video games are extremely popular among children and adolescents. A 2019 study conducted by Interactive Software Federation of Europe showed that 76 percent of children aged 6 to 15 in Europe play video games on any device. Access to video games is fostered by their easy accessibility via tablets or mobile devices, which are used intensively by young Consumers.

[https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652727/IPOL\\_STU\(2020\)6527\\_27\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652727/IPOL_STU(2020)6527_27_EN.pdf)

In December 2020, the British Gaming Health Alliance (GHA) released a report which reveals that almost one in six (15 percent) young gamers had taken money from their parents without their permission to buy loot boxes. The report also notes that one in ten (11 percent) had used their parents' credit or debit card to fund their loot box purchases, while the same percentage had borrowed money they could not repay to spend on loot boxes. In the three worse cases reported it was found that families had had to re-mortgage their homes to cover the costs of their children purchasing these products. <https://www.rsph.org.uk/about-us/news/over-1-in-10-young-gamers-get-into-debt-because-of-loot-boxes.html>

Duncan Stephenson, Chair of the GHA, has warned parents against the dangers loot boxes present to their children. He has stated, 'We know that many teenagers will be unwrapping video games for Christmas, and while we know they give a huge amount of enjoyment for many, we are concerned that games containing loot boxes are having an impact on the finances of young people...

Our research suggests that the drive to play games containing loot boxes is encouraging many [young people] to beg, borrow and steal – loot boxes really are the gift that keeps on taking. Aside from the financial cost our latest survey with gamers suggests that the fixation with loot boxes can lead to classic symptoms of addiction including mood swings, problems sleeping, and impacting on their social life...

We are calling for parents to be aware of the risks of loot boxes when buying presents this Christmas, and to boycott games with these predatory mechanics...'

<https://www.rsph.org.uk/about-us/news/over-1-in-10-young-gamers-get-into-debt-because-of-loot-boxes.html>

It has been noted that game designers deliberately make it difficult for players to recognise that they are spending real-world currency. This is a major problem when the player is a child.

In 2018, an Australian Senate Committee investigated issues associated with the chance-based components of computer games and the in-game purchases that players are encouraged to make. Submissions to the Committee claimed that users can quickly become unaware of how much money they have spent. Several factors were said to contribute to this - the use of in-game currency; one-click purchasing; and a lack of real-time feedback. Many video games use items such as crystals, gold coins, hearts, or other symbols appropriate for the specific genre of the game to represent currency for micro-transactions.

This is said to make it more difficult for players to recognise the monetary value of the items they are purchasing and so leads to excessive expenditure. The problem is claimed to be particularly acute for young players who are even less likely to recognise the real-world value of the currency they are spending.

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Environment\\_and\\_Communications/Gamingmicro-transactions/Report/c03](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Gamingmicro-transactions/Report/c03)

Concern has been expressed about the impact these in-game transactions can have on teens.

In May 2018, The Guardian quoted a young Reddit user who claims to have spent \$10,000 on these transactions. He stated, 'I started spending on in-app purchases, moved to real video games, started on CS:GO skins, then into the gambling scene there. At my worst I was working two jobs and considering dropping out of high school. Please consider how unregulated micro transactions can affect the youth of the world.'

<https://www.theguardian.com/games/2018/may/29/gamers-politicians-regulation-video-game-loot-boxes>

In the same month, May 2018, Republican Senator for Missouri, Josh Hawley, announced that he would be introducing a bill banning 'manipulative' design features in video games that promote loot boxes to underage gamers.

Senator Hawley stated, ‘Social media and video games prey on user addiction, siphoning our kids’ attention from the real world and extracting profits from fostering compulsive habits. No matter this business model’s advantages to the tech industry, one thing is clear: there is no excuse for exploiting children through such practices.’

<https://www.theverge.com/2019/5/8/18536806/game-studios-banned-loot-boxes-minors-bill-hawley-josh-blizzard-ea>

Hawley further stated, ‘When a game is designed for kids, game developers shouldn’t be allowed to monetize addiction. And when kids play games designed for adults, they should be walled off from compulsive microtransactions. Game developers who knowingly exploit children should face legal consequences.’

<https://www.theverge.com/2019/5/8/18536806/game-studios-banned-loot-boxes-minors-bill-hawley-josh-blizzard-ea>

## 2. Games incorporating loot boxes manipulate players into purchasing them

Critics of loot boxes argue that game manufacturers engineer their games to encourage the purchase of loot boxes.

Dr Daniel King and Professor Paul Delfabbro, both from the School of Psychology at the University of Adelaide, have described loot boxes as a ‘predatory monetization scheme’. King and Delfabbro claim that loot boxes encourage repeated player spending through intrusive and unavoidable promotions. For example, players who do not purchase loot boxes, find promotions for them occurring onscreen with increasing frequency. King and Delfabbro further claim that the limited chance of securing the item being sought is not revealed. Both academics also observe that the game designers deliberately promote the purchase of desired items rather than encouraging skillful or strategic play. Via this strategy, the player’s chances of completing the game’s objectives seem so remote that only purchasing the promoted loot box seems to make success possible.

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Environment\\_and\\_Communications/Gamingmicro-transactions/Report/c03](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Gamingmicro-transactions/Report/c03)

King and Delfabbro have also noted that player data is collected and used to manipulate the presentation of loot boxes to increase the likelihood that players will purchase these items. Sometimes games are engineered to highlight the in-game advantages that can only be achieved through the purchase of loot boxes.

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Environment\\_and\\_Communications/Gamingmicro-transactions/Report/c03](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Gamingmicro-transactions/Report/c03)

International researchers, Rune Nielsen and Pawel Grabarczyk, have also noted several other characteristics of game design which are intended to promote the purchase of loot boxes. For example, players of Marvel Strike Force identified that they had been given different odds in the game's chance-based micro-transactions. It appeared that purchasing more loot boxes increased the likelihood of success in other aspects of the game creating a predisposition in gamers to make further purchases.

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Environment\\_and\\_Communications/Gamingmicro-transactions/Report/c03](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Gamingmicro-transactions/Report/c03)

A further strategy employed to encourage the purchase of loot boxes in online competitive games is to pit players who have not purchased loot boxes against players who have bought these products. This is referred to as ‘match making’. The virtual items won through loot boxes are significantly more powerful than free items and the player who has not made purchases is likely to lose repeatedly. If a player then decides to purchase loot boxes, they are likely to then be matched with those who have not, allowing them to begin winning games. This positively reinforces the decision to purchase a loot box.



[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Environment\\_and\\_Communications/Gamingmicro-transactions/Report/c03](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Gamingmicro-transactions/Report/c03)

Problems associated with the exploitation gamers have been observed around the world. The Singaporean newspaper, The Straits Times, published an analysis and opinion piece in November 2020, which highlighted the measures intentionally employed by games manufacturers to seduce players into purchasing ever-increasing numbers of loot boxes.

<https://www.straitstimes.com/opinion/forum/forum-kids-need-more-protection-from-loot-boxes-in-games>

Critics have claimed that some of the most concerning instances of loot box promotion can be found in annual sports games, which are among the most popular of all games. Loot boxes purchased in one game do not carry over to subsequent years' releases, meaning that they must be repurchased each time. Critics claim that even avid gamers sometimes have difficulty understanding the intentionally convoluted monetisation mechanics of loot boxes and the various forms they take. <https://www.straitstimes.com/opinion/forum/forum-kids-need-more-protection-from-loot-boxes-in-games>

### 3. Games incorporating loot boxes have been linked to the development of problem gambling among young people

It has been claimed that the prevalence of mechanisms such as loot boxes in computer games is contributing to an increase in problem gambling, especially among young people.

The problem seems to be being fostered both by games which directly simulate gambling scenarios and by those which offer chance-based rewards for either direct cash outlay or the use of in-game currency.

In the United Kingdom, the problem gambling rate for adolescents accounts for between 0.8-2.2 per cent of the teenage population compared with just 0.5 per cent in the adult population. There is growing evidence that the playing of gambling-like games without money being involved (such as playing Slotzmania or Texas Hold 'Em Poker on social networking sites) is a gateway to real money gambling and is one of the risk factors for teenage problem gambling. <https://www.thesun.co.uk/tech/5163806/how-your-kids-are-being-turned-into-gambling-addicts-by-video-game-loot-boxes-right-under-your-nose/>

The United Kingdom Gambling Commission published its annual statistics in 2019 showing that based on a self-report survey of 2865 children and adolescents aged 11-16 year-olds, that the prevalence of problem gambling had risen to 1.7% (2% for boys and 1.3% for girls) compared to 0.4% in 2016 and 0.9% in 2017

<https://drmarkgriffiths.wordpress.com/2019/02/28/has-child-and-adolescent-problem-gambling-really-risen-in-the-uk/>

Dr. Mark Griffiths, Professor of Behavioural Addiction at Nottingham Trent University, has explained how a range of video games exploit gambling-like features to progressively lure young players into increasing their expenditure. Griffiths further suggests that these games prime young players to experiment with more conventional forms of gambling. Griffiths states, 'We know the playing of gambling-like activities is a major risk factor for both gambling with real money in the first place and problem gambling in later life...

With "freemium games" children can play the games for nothing but have to pay for additional content. Freemium games are a way of luring people in to play in the first place but to progress in the game it will cost money. Arguably, it's a bit like a drug dealer giving out free drugs to get people hooked.' <https://www.thesun.co.uk/tech/5163806/how-your-kids-are-being-turned-into-gambling-addicts-by-video-game-loot-boxes-right-under-your-nose/>

Even young people themselves believe there may be a connection between playing certain sorts of video games and developing a gambling habit. According to a report by the Royal Society for Public Health in December 2019, more than half of young people believe that

playing video games could lead to gambling. <https://www.expressandstar.com/news/uk-news/2020/01/18/video-games-setting-kids-up-for-addiction-with-loot-boxes-mental-health-boss/>

The director of mental health for the National Health Service (NHS), Clair Murdoch, has endorsed this view. Ms Murdoch has stated, 'Frankly, no company should be setting kids up for addiction by teaching them to gamble on the content of these loot boxes.

No firm should sell to children loot box games with this element of chance, so yes, those sales should end.' <https://www.expressandstar.com/news/uk-news/2020/01/18/video-games-setting-kids-up-for-addiction-with-loot-boxes-mental-health-boss/>

Ms Murdoch has stated that although the National Health Service offers programs to help young people deal with gambling addictions once they have developed this problem, steps must be taken to help prevent them developing this problem in the first place.

Ms Murdoch has explained, 'Young people's health is at stake, and although the NHS is stepping up with these new, innovative services available to families through our long-term plan, we cannot do this alone, so other parts of society must do what they can to limit risks and safeguard children's wellbeing.' <https://www.expressandstar.com/news/uk-news/2020/01/18/video-games-setting-kids-up-for-addiction-with-loot-boxes-mental-health-boss/>

Damian Collins, the chair of a British House of Commons committee examining the question of causes of problem gambling, has stated, 'Loot boxes are particularly lucrative for games companies but come at a high cost, particularly for problem gamblers, while exposing children to potential harm. Buying a loot box is playing a game of chance and it is high time the gambling laws caught up. We challenge the government to explain why loot boxes should be exempt from the Gambling Act.'

<https://www.techradar.com/au/news/loot-boxes-are-not-gambling-says-uk-gambling-commission-heres-why-thats-a-problem-for-gamers>

#### 4. Loot boxes retrigger recovering problem gamblers

Opponents of loot boxes claim that not only do they promote problem gambling among young people they pose a particular risk for older players who are trying to overcome a gambling addiction.

New research has found that there is a significant relationship between problematic gambling behaviors and spending money on loot boxes. The findings indicate that people who spend more money on loot boxes are also more likely to be unable to keep their gambling habits in check. <https://www.psypost.org/2019/03/two-large-studies-have-found-a-link-between-loot-box-spending-and-problem-gambling-53341>

Keith S. Whyte, Executive Director of the United States National Council on Problem Gambling has attempted to define problem gambling. He has stated, 'The essential features are increasing preoccupation with gambling, a need to bet more money more frequently, restlessness or irritability when attempting to stop, "chasing" losses, and loss of control manifested by continuation of the gambling behavior in spite of mounting, serious, negative consequences. In extreme cases, problem gambling can result in financial ruin, legal problems, loss of career and family, or even suicide.' [http://www.ncpgambling.org/wp-content/uploads/2019/08/NCPG-statement-on-loot-boxes-to-FTC\\_August-2019-.pdf](http://www.ncpgambling.org/wp-content/uploads/2019/08/NCPG-statement-on-loot-boxes-to-FTC_August-2019-.pdf)

Whyte has noted that the frequently made claim that videogames cannot be regarded as a form of gambling or as a precursor to gambling unless they involve the outlay or real money for real cash prizes. Whyte argues that this is misleading and dangerous as the sort of psychological payoff that comes from risk is anticipation of possible reward is replicated in many videogames.

Whyte notes, ‘The American Psychiatric Association’s Diagnostic and Statistical Manual of Disorders and World Health Organization’s International Classification of Diseases and Related Health Problems clinical criteria for gambling disorder do not require that rewards be ‘real money’ or preclude a diagnosis if the client played with virtual coins or received several free plays before spending excessive amounts of time and money purchasing loot boxes and developing a gambling or retriggering a problem.’ [http://www.ncpgambling.org/wp-content/uploads/2019/08/NCPG-statement-on-loot-boxes-to-FTC\\_August-2019-.pdf](http://www.ncpgambling.org/wp-content/uploads/2019/08/NCPG-statement-on-loot-boxes-to-FTC_August-2019-.pdf) Some experts argue that the frequently repeated claim that video games and their use of loot boxes do not equate with gambling is particularly dangerous. This is because it lures the recovering problem gambler into a false sense of security, allowing him or her to believe that he or she can safely play these video games when in reality they are likely to prompt a return of their gambling disorder.

Whyte states, ‘There is a reasonable concern that gambling-related harm may occur to some loot box users... at risk for gambling problems... Impulsivity, the inclination to act on urges without significant regard for consequences, is associated with both video game playing and with risk taking, especially addiction.’ [http://www.ncpgambling.org/wp-content/uploads/2019/08/NCPG-statement-on-loot-boxes-to-FTC\\_August-2019-.pdf](http://www.ncpgambling.org/wp-content/uploads/2019/08/NCPG-statement-on-loot-boxes-to-FTC_August-2019-.pdf)

Whyte argues for increased regulation to limit the capacity for problem gamblers to access potential triggers and for wide spread community and educational support to buffer addictive personalities as they address their problem. He states, ‘Strong regulation is important, but it cannot be effective at reducing harm unless accompanied by equally robust prevention, education, treatment, recovery and research services.’ [http://www.ncpgambling.org/wp-content/uploads/2019/08/NCPG-statement-on-loot-boxes-to-FTC\\_August-2019-.pdf](http://www.ncpgambling.org/wp-content/uploads/2019/08/NCPG-statement-on-loot-boxes-to-FTC_August-2019-.pdf)

##### 5. Loot boxes are diminishing the quality of video games

Some critics are concerned that the use of loot boxes is damaging the gaming industry and reducing the quality of video games. They claim that the increasing use of loot boxes is allowing the industry to release for sale less than optimally developed games and to continue to draw income from them via these microtransactions. They also argue that the prevalence of loot boxes reduces the need for players to develop skills in order to progress through a game. In 2019, Daniel Slavey, a contributor to Roarbots, noted that when companies add loot boxes and other similar systems into their games and still see tremendous profit, they are more likely to add them to future installments, as well. They are thus able to continue to draw profits from their games without making substantial improvements to new versions.

Slavey also argues that as other smaller companies see the success loot boxes have in these larger games, they may be more inspired to add them to their games. Overall, the more loot boxes are added to games and the more they go unchallenged, the more they will damage the player experience. They may also lead to more pay-to-win systems being implemented in the future. <https://medium.com/@theroarbots/the-dangers-of-video-game-loot-boxes-85768e2b5602>

The way in which loot boxes lead to a progressive reduction in game quality has been explained by games blogger Shamus Young in a comment posted on July 14, 2020. Young writes, ‘In a game with fixed pricing the designer has an incentive to make the game as fun and engaging as possible. More fun means more sales. More fun means users stick around and pay the monthly MMO (massively multiplayer online game) fee longer. It means people will be more likely to buy the expansions.

But if you’re selling the game to a player a tiny chunk at a time, then you want to push them to spend more. The last thing you want is to make the game as good as possible. If the game feels complete, then the users won’t be motivated to add anything to it.’

<https://www.shamusyoung.com/twentysidedtale/?p=50354>

Other critics note that loot boxes are diminishing the quality of the gaming experience because they encourage players to buy items they need, rather than earn them through their carefully developed skills. In an article published in Games Radar in October 2017, Alex Avard wrote, 'The loot box commodifies player progression and defines reward in purely economic terms.' <https://www.gamesradar.com/au/loot-boxes-shadow-of-war/> Shamus Young wrote, 'Loot boxes attack the entire premise of video games.' Young went on to explain that video games are contests in which players earn rewards by developing skills. Supplying examples, Young argues, 'Maybe you memorize all of the combos so you can beat your opponents in Street Fighter, or maybe you use logic to solve the puzzles in Hexcells Infinite, or maybe you grind mobs in the Canyon of the Magi looking for rare drops... but you're doing stuff within the game to get stuff.' According to Young the pleasure of the game comes from a combination of the 'stuff' earned and the skills developed in order to earn these rewards. He concludes, 'The stuff you get is your motivation and the stuff you do is the gameplay that (hopefully) makes the process fun.' According to this model of gaming, diminishing the importance of skill acquisition reduces the fun of the game. <https://www.shamusyoung.com/twentysidedtale/?p=50354>

## **Arguments against banning loot boxes**

1. Loot boxes enable game makers to hold down the up-front price of games

Those who support loot boxes argue that they have acted as a means of keeping the cost of games relatively low. The argument is put that as the level of development needed to produce games has grown dramatically over the last two decades so have the costs of production. It is claimed that game makers would have needed to increase the sale price of games significantly to recoup their outlay and make a profit.

In the event, it appears that game prices have remained relatively unchanged. Kyle Orland, in an article published in Ars Technica on October 7, 2020, noted, 'Adjusting for inflation, we can see the actual (2020 dollar) value of top-end disc-based games plateaued right around \$70 for almost a decade through in the '00s and early10s.'

<https://arstechnica.com/gaming/2020/07/the-return-of-the-70-video-game-has-been-a-long-time-coming/>

It has been claimed that in-game purchases such as loot boxes have enabled game developers to keep the upfront cost of games relatively low. This point was made in the BBC's Newsbeat segment on September 12, 2019, which stated, 'As games developers have to pour more and more money into creating more innovative and impressive titles, game prices haven't really gone up dramatically.

So, they try to make their money back in other ways - which is why in-game purchases have become so big.' <https://www.bbc.com/news/newsbeat-49674333>

Joel Hruska, explaining the proliferation of loot boxes in an article published in Extreme Tech on October 13, 2017, stated, 'Part of the problem is that game prices have been stuck at \$59.99 for well over a decade. If pricing had simply kept pace with inflation, games should be sitting at ~\$71. If a game were to sell 3 million copies, that's ~\$35 million in revenue that won't be earned.' <https://www.extremetech.com/gaming/257387-gamers-hate-buying-loot-boxes-games-using>

Some commentators have suggested that loot boxes and similar in-game profit-generating devices are inevitable as consumers would resist the point-of-sale price increases that would have to be charged for games otherwise. In an article published by CNBC, on September 29, 2020, Bartosz Skwarczek, CEO and co-founder of video game reselling marketplace G2A, stated that increasing the price of AAA games 'risks jeopardizing gaming for a new generation of young gamers.' He warned that higher prices, coupled with the economic fallout of the coronavirus pandemic, may prevent cash-strapped consumers from buying

expensive new titles. <https://www.cnn.com/2020/09/29/xbox-series-x-and-ps5-gamers-brace-for-70-video-game-prices.html>

The article's author, Ryan Browne, noted, 'Nine in 10 gamers believe a new video game should cost less than \$60, according to a survey undertaken for G2A by research firm Censuswide. The study, which surveyed 1,031 Americans in August [2020], found all respondents think a price of more than \$60 is too much for a single game, while 59 percent say gaming has become too expensive.' <https://www.cnn.com/2020/09/29/xbox-series-x-and-ps5-gamers-brace-for-70-video-game-prices.html>

Defenders of loot boxes urge players to see them as a form of subscription that extends the pleasure of the game once the initial outlay has been paid. Steve Boxer, writing in April 2017 for the Games Central column published in Metro noted, 'For games publishers microtransactions essentially amount to a form of subscription. Once players get sufficiently deep into a game and discover that they need to splash out on microtransactions to properly compete they start paying for microtransactions on a regular basis, bringing in small but frequent payments that are tantamount to subscriptions – with all the cashflow benefits those bring to the publisher.' The implication is that for game producers microtransactions are merely a more palatable way to have the consumer pay for the game.

<https://metro.co.uk/2018/04/27/why-loot-boxes-in-video-games-are-here-to-stay-7500730/>  
Matthew McCaffrey, 34, an assistant professor at the University of Manchester has written a paper on the challenges regulating micro-transactions in video games. McCaffrey states, 'It's a question of how to increase the revenue that can be generated through games without infuriating your customers. So, that's the challenge.' <https://www.washingtonpost.com/video-games/2019/08/27/video-game-loot-boxes-are-going-away-it-could-crush-rocket-leagues-black-market/>

## 2. Loot boxes add to player enjoyment

The manufacturers of video games claim that a major reason for including loot boxes in their products is to improve the player experience.

Referring specifically to the chance element which exists because players generally do not know exactly what will be found within the loot boxes they purchase, Kerry Hopkins, a vice president of EA (Electronic Arts) Games, has compared them with other forms of game that offer the consumer a pleasurable surprise.

Hopkins has stated, 'If you go to—I don't know what your version of Target is—a store that sells a lot of toys and you do a search for surprise toys, you will find that this is something people enjoy. They enjoy surprises. It is something that has been part of toys for years, whether it is Kinder eggs or Hatchimals or LOL Surprise!. We think the way we have implemented those kinds of mechanics—and FIFA, of course, is our big one, our FIFA Ultimate Team and our packs—is quite ethical and quite fun; it is enjoyable to people.' <https://www.techspot.com/news/80603-ea-believes-surprise-mechanics-loot-boxes-ethical-fun.html>

EA argue that the interaction between skill and the chance element that derives from purchased packs is one of the features of video games that make them enjoyable.

Kerry Hopkins explained, 'The surprise that we talked about a little before—are fun for people. They enjoy it. They like earning the packs, opening the packs, and building and trading the teams. The thing about FIFA Ultimate Team is that it is not any one of those things—the points, the coins, the packs, the items, the trading market or building your team—but an integrated, really well-designed mode in a game that we launched 11 years ago. Arguably, I guess it is one of the most popular game modes in the world. All those pieces go together; they are very balanced; they go together and players love playing them.'

<https://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/digital-culture-media-and-sport-committee/immersive-and-addictive-technologies/oral/103191.html>  
Another EA executive, Shaun Campbell, has explained the pleasure that comes from earning or purchasing extension packs or loot boxes and claims they are an essential part of the fun that games offer.

Campbell has stated, ‘From a player’s perspective, that ability to get the pack—one of the bundles of items with the players’ kit and so on in the game—is one of the most important features to them. When you look at what Ultimate Team is, it is about being able to build your best virtual team. The ability to do that is about earning the FUT coins to do it. Taking that mechanic out essentially prevents one of the most appealing things for players about the game: “I want to have my perfect team, which I can then play against another—my best friend’s team, or another competitor’s.” It is a key feature of the game that players enjoy. From the perspective of a lot of people, it has been the driver. Look at the Ultimate Team: we’ve had it in the game for over 10 years, and it continues to increase in popularity. But it is about that ability to build your team.’

<https://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/digital-culture-media-and-sport-committee/immersive-and-addictive-technologies/oral/103191.html>  
Kat Bailey, the editor of US Gamer, has examined the popularity of loot boxes and similar microtransactions. In October 2017, she wrote, ‘While Star Trek Online was pushing lock boxes, FIFA and Madden were introducing Ultimate Team for the first time—a mode in which you built fantasy teams by ripping card packs to obtain players of varying degrees of rarity. Madden Ultimate Team and FIFA Ultimate Team proved wildly popular, almost single-handedly transforming sports gaming...’ <https://www.usgamer.net/articles/gamers-like-opening-loot-boxes-too-much-to-stop-now-even-at-the-expense-of-balanced-gameplay>  
Giving an overview of the phenomenon, of which she is not personally a fan, Bailey writes, ‘Loot boxes, CCGs, Ultimate Team, and gacha-driven mobile games like Fire Emblem Heroes all have their differences and their quirks, but they’re all driven by the simple pleasure of opening a mystery box and getting something good. They could be an epic costume; a new character, or in the case of Middle-earth: Shadow of War, a really great orc. Whatever it may be, people love it.’ <https://www.usgamer.net/articles/gamers-like-opening-loot-boxes-too-much-to-stop-now-even-at-the-expense-of-balanced-gameplay>

### 3. Loot boxes are not gambling

Defenders of loot boxes claim they are not gambling.

So far as many game producers and regulators are concerned, loot boxes are not part of a game of chance because, although a player may not win the particular object s/he is seeking, that player will always win something.

The Entertainment Software Rating Board (ESRB), which rates most video games sold and published in North America, asserts that loot boxes are not gambling because the player is always guaranteed to receive in-game content (even if it something he or she does not want). <https://mediawrites.law/loot-boxes-whats-all-the-fuss-about/>

From the point of view of pre-existing gambling regulations, there is another reason why loot boxes are not regarded as gambling. The principal reason offered for loot boxes not to be considered gambling is that they are not games of chance which offer the player the opportunity to win either cash or an item that has an independent monetary value.

This distinction centres on the difference between an activity in which items without a direct monetary value can be won as a secondary element of the game and an activity where the sole purpose of the game is to win money through the operation of chance. The difference was spelt out by Rune Kristian Lundedal Nielsen and Paweł Grabarczyk in a paper published by the Digital Games Research Association in June 2019. (Digital Games Research Association

(DiGRA) is a nonprofit international learned society whose work focuses on game studies and associated activities.)

The authors stated, ‘We believe that games of chance played for money and games of skill played without financial stakes are indeed very different from each other.’

<https://core.ac.uk/download/pdf/289098932.pdf>

In most jurisdictions, while loot boxes involve an element of chance because players do not know what they will get, they are not covered by existing gambling legislation because the items ‘won’ are not considered to have monetary value.

<https://www.theguardian.com/games/2019/sep/12/video-game-loot-boxes-should-be-classed-as-gambling-says-commons>

This is the current position in Britain. In 2017, the UK Gambling Commission published a position paper on ‘virtual currencies, esports and social casino gaming’. In that paper, it states that virtual items (like those won in loot boxes) are ‘prizes’. The paper further states, ‘Where prizes are successfully restricted for use solely within the game, such in-game features would not be licensable gambling.’ <https://www.techradar.com/au/news/loot-boxes-are-not-gambling-says-uk-gambling-commission-heres-why-thats-a-problem-for-gamers>

A similar position pertained within the Netherlands in 2017. Rami Ismail, a spokesperson for the Dutch independent games maker, Vlambeer’s, has stated, ‘My legal understanding is that for loot boxes to be gambling, there should be a chance of something of objective value to be returned. Loot boxes always return a digital item of subjective value, whereas the objective value is zero - this being a binary file.’ <https://www.gamesindustry.biz/articles/2017-11-20-loot-boxes-are-not-bad-game-design-say-devs>

This is also the position which is currently adopted in Australia. According to the Australian Communications and Media Authority (ACMA), the body responsible for overseeing the federal Interactive Gambling Act, loot boxes do not constitute gambling under Australian law. ACMA stated that “In general, online video games, including games that involve ‘loot box’ features, have not been regarded as ‘gambling services’ under the Interactive Gambling Act 2001, because they are not ‘played for money or anything else of value’. That is, the game is not played with the object of winning money or other valuable items”. Queensland’s Office of Liquor & Gaming Regulation and even New Zealand’s Department for Internal Affairs are of the same view, and the NSW Law Reform Commission have shared similar thoughts in the past. <https://www.igea.net/wp-content/uploads/2018/02/IGEA-Loot-Boxes-Factsheet.pdf>

#### 4. Regulation can address the potential problems associated with loot boxes

Defenders of loot boxes claim that there is no need to ban them as any potential harm can be prevented by regulation.

It is claimed that potential abuse of loot boxes is already largely controlled by the games industry’s own protocols and practices. The Interactive Games and Entertainment Association (IGEA) has stated, ‘The industry has worked hard for years to ensure that loot boxes, and indeed video games as a whole, are a fun and safe experience. As a matter of law and just good practice, the industry is transparent about in-game purchases – ensuring that prices are displayed correctly, descriptions are accurate, and marketplaces are as clear as possible. It is also commonplace for this information to be declared prior to download or purchase, even if a player has made purchases before. The industry empowers consumers to make informed decisions by providing them with what they need before purchasing any products, including loot boxes.’ <https://www.igea.net/wp-content/uploads/2018/02/IGEA-Loot-Boxes-Factsheet.pdf>

All games on the three major platforms — Microsoft, Nintendo and Sony — need to disclose to players how likely it that they will receive a certain item from a loot box, according to a

statement by the Entertainment Software Association issued in 2019. The companies plan to implement the policy by the end of 2020. <https://www.washingtonpost.com/video-games/2019/08/27/video-game-loot-boxes-are-going-away-it-could-crush-rocket-leagues-black-market/>

IGEA has also stressed that the games industry has been careful to protect children from inappropriate experiences by making it possible for parents to control their children's games. IGEA has stated, 'video game consoles, PC platforms and mobile game stores offer robust controls that enable parents and carers to decide what games children can play according to age rating, how long they can play for and, importantly for loot boxes, who is authorised to shop in a game's digital store and make purchases.

It is even possible to set spending limits for children. These innovative technological tools help parents and carers tailor the online experience of children so that it is age appropriate and ensure that children are not able to spend money on loot boxes or other products without obtaining permission first. The industry will also frequently encourage parents and carers, through social media and instructional videos, to show an interest in the games played by children and talk to them about responsible video gaming and purchasing.'

<https://www.igea.net/wp-content/uploads/2018/02/IGEA-Loot-Boxes-Factsheet.pdf>

Many defenders of loot boxes argue that self-regulation, within the games industry, is the best approach. This claim is made in part because the laws currently being drawn on to control loot boxes relate to the regulation of gambling and it is difficult, if not impossible, to reasonably apply them to the microtransactions that take place within games.

This point has been made by Daniel Cermak, in a treatise published in the Michigan State International Law Review in 2019. Cermak stated, 'Though there could be a case to be made that state gambling statutes need a major overhaul to bring them into the twenty-first century, particularly with online gambling,<sup>291</sup> the court system is not the best way to regulate the devices for parties on either side of the loot box debate... The best practice for loot box regulation is self-regulation. This self-regulation, as seen in Japan... The self-regulation of Japan's standard gacha games, largely comparable to loot box mechanics, could serve as a [model]... Publishing the odds of receiving certain items, setting monthly spending limits and a self-regulated ban on certain loot box mechanics that requires multiple combinations of loot box wins are all methods seen in Japan that could provide useful protection for consumers while protecting the practice for game developers.'

<https://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?article=1266&context=ilr>

Other commentators have argued that self-regulation alone is insufficient and that it should be bolstered by a legal framework requiring game manufacturers to adhere to certain standards.

In August 2019, Leon Y. Xiao of the University of London argued, 'The level of consumer protection provided by game companies often depends on the legal regulation in place, which is why it is necessary for legal regulation to set a minimum acceptable standard to ensure a sufficient degree of consumer protection, in the absence of proactive voluntary self-regulation.'

[https://www.researchgate.net/publication/335485825\\_A\\_Primer\\_on\\_the\\_Legal\\_Regulation\\_of\\_Loot\\_Boxes](https://www.researchgate.net/publication/335485825_A_Primer_on_the_Legal_Regulation_of_Loot_Boxes)

Xiao further argued, 'The best solution going forward with loot box regulation may be for the law to set a minimum standard that does not overregulate, and for self-regulation to complement the legal regime by striving to achieve an even higher standard of consumer protection.' In detail he proposed, 'The combined regulatory approach would ensure that loot boxes whose rewards are worth real-world money cannot be sold to children... and that their sale to adults will be strictly scrutinised (and taxed) as gambling by regulators.'



[https://www.researchgate.net/publication/335485825\\_A\\_Primer\\_on\\_the\\_Legal\\_Regulation\\_of\\_Loot\\_Boxes](https://www.researchgate.net/publication/335485825_A_Primer_on_the_Legal_Regulation_of_Loot_Boxes)

5. A ban on loot boxes would be difficult to enforce

Supporters of loot boxes argue that a ban would be government overreach, would be actively opposed by many players and so would be very difficult to enforce.

In an opinion piece published in Forbes in June 2019, senior contributor, Erik Kain, suggested that such a ban was an unreasonable infringement of players' rights to enjoy their games as they wish. He stated, 'I'm wary of government involvement here. If Blizzard wants to sell me loot boxes so I can get Overwatch skins, and I want to buy them, we should have the right to make that transaction, do-gooder politicians be damned.'

<https://www.forbes.com/sites/erikkain/2019/06/20/eas-latest-loot-box-shenanigans-are-absurd-but-a-government-ban-is-still-a-mistake/?sh=3c452f03245e>

Kain further notes that a ban seems an over-reaction relative to the harm loot boxes are likely to cause. 'Banning gambling might seem like a good idea, but people get around these bans easily enough. And loot boxes are, in the end, a very mild sort of gambling—gambling, to be sure, but not the same as horse races or slot machines, endless money pits with nothing on the other side but despair.'

<https://www.forbes.com/sites/erikkain/2019/06/20/eas-latest-loot-box-shenanigans-are-absurd-but-a-government-ban-is-still-a-mistake/?sh=3c452f03245e>

Other commentators have suggested the negative impact a ban on loot boxes could have. On October 15, 2019, on Casino Org, Brooke Keaton commented, 'Banning a feature that can be problematic for some is not always the best answer — it can often have the effect of making it more attractive and pushing it underground. And there are already reports of a "black market" where gamers trade or sell on their loot box spoils, with gaming companies oft accused of being slow to clamp down on this.' <https://www.casino.org/blog/should-the-uk-ban-loot-boxes/>

The above concern (that a total ban on loot boxes, prohibiting their inclusion in games for players of all ages, would prove difficult to enforce) highlights the problems that could occur with a ban that targeted only young players. Currently, there is draft legislation in the United States which would, if approved, prohibit the sale of loot boxes in games targeted at children under the age of 18. Games marketed toward wider audiences could also face penalties from regulators like the Federal Trade Commission if companies knowingly allow children to purchase these randomized crates. <https://www.theverge.com/2019/5/8/18536806/game-studios-banned-loot-boxes-minors-bill-hawley-josh-blizzard-ea>

However, critics have noted that a ban targeting only products sold to minors would be even harder to enforce. Games are widely shared among player communities and it would be virtually impossible to ensure that games containing loot boxes did not end up in the hands of players under 18.

A Newsbeat report published by BBC News on September 12, 2019, notes, 'Enforcing a ban on loot boxes for under-18s might prove difficult for the government, given consoles and online accounts can be easily shared by many people.' <https://www.bbc.com/news/newsbeat-49674333>

There is the additional concern that were loot boxes to be banned from games targeting minors, there would be no requirement for games producers to warn young players of the risks associated with them

## **Further implications**

(Much of the comment and analysis below is an abbreviation of an article written by Mark W. Hughes, Michael Shortt and Karam Bayraka for Fasken – an international business law firm based primarily in Canada. The piece was published on June 2, 2020. The full text can be accessed at <https://www.fasken.com/en/knowledge/2020/06/1-games-that-offer-loot-boxes-will-be-clearly-labelled/>

The concluding remarks on the potential impact on the games industry of a ban on loot boxes comes from JD Supra, an online repository of free legal information, including documents, filings, newsletters, etc. shared by the legal professionals who generate it. Their full text can be found at <https://www.jdsupra.com/legalnews/esports-alert-the-global-crackdown-on-92022/> )

North America’s video game rating organization, the Entertainment Software Ratings Board (ESRB) and Europe’s equivalent entity, Pan European Game Information (PEGI) have issued new labeling requirements for video games containing randomized in-game purchases, more commonly known as “loot boxes”...

The ESRB now requires games that include randomized in-game purchases or loot boxes to be labeled with “In-Game Purchases (Includes Random Items)”. PEGI now requires these games to be labeled with ‘Includes Paid Random Items’...

The ESRB states that the label ‘In-Game Purchases (Includes Random Items)’ will ‘be assigned to all games that include purchases with any randomized elements, including loot boxes, gacha games, item or card packs, prize wheels, treasure chests, and more’. [2] PEGI states that the label ‘Paid Random Items’ will apply where there are ‘in-game offers to purchase digital goods or premiums where players don’t know exactly what they are getting prior to the purchase (e.g. loot boxes, card packs, prize wheels)’. Both the ESRB and PEGI will continue to label games with in-game purchases (but without randomized transactions) with an ‘In-Game Purchases’ label.

The ESRB and PEGI have made these labelling changes in response to increased public discussion about loot boxes. Critics argue that loot boxes are addictive and similar to gambling. In response to these criticisms, some jurisdictions have implemented specific rules for loot boxes or even banned loot boxes outright. However, most jurisdictions have not yet taken action on the issue of randomized in-game purchases.

Loot boxes are everywhere in video games today, including the most popular games. As new technologies and standards appear, developer and publisher costs are always increasing, yet video game prices have remained relatively flat (and the ‘free to play’ model has arisen), leading some to argue that loot boxes are important for the long-term viability of the industry, or at least some genres of games. [6] Lately, the conversation on loot boxes appears to be shifting away from legal bans towards ‘informed’ consumption. Nintendo, Microsoft, Sony, and other publishers will require games on their platforms to disclose loot box odds in all titles by the end of 2020. As well, the ESRB and PEGI’s new labeling requirements are an attempt to allow consumers to make informed purchases and avoid randomized in-game reward mechanics if they so choose. This proactive industry step is intended to demonstrate the effectiveness of self-regulation in order to avoid legislative bans or restrictions. Indeed, in jurisdictions where there is no legal regulation of loot boxes, the ESRB or PEGI guidelines are the most important compliance requirements faced by publishers and developers.

And this is self-regulation with teeth: if a developer or publisher tries to hide its loot boxes or fails to fully disclose the contents of its game during the ratings process, the ESRB and PEGI have the ability to impose sanctions on publishers of up to \$1,000,000 or €500,000 respectively. Many publishing agreements require developers to cover liability for undisclosed content in published games, so developers must be transparent with their publishers about randomized in-game purchases. As disclosing the odds of loot boxes

becomes the norm, developers will also need to ensure visual consistency so as not to create a misleading impression. For example, the visualization of randomized transactions should not make it appear that there are more rare items than the odds would indicate. If loot boxes are not a core component of their game, developers and publishers may need to balance the inclusion of loot boxes with any detrimental effect that the 'randomized item' label may have on sales. Developers options are essentially to comply with labelling or to drop randomized reward mechanics from their games entirely.

Moving forward, whether governments impose a regulatory approach on loot boxes is likely to depend on the practical success of the ESRB and PEGI self-regulatory measures. To contribute to that success, developers and publishers are advised to be as transparent as possible when implementing loot boxes in their games. But given the risk that a few bad actors could bring down the heavy hand of regulation on the whole industry, developers and publishers should also keep alternative monetization strategies in mind.

(These concluding remarks on the impact of a ban on the games industry come from JD Supra) This banning or restriction of loot boxes is a major concern for video game developers and publishers, who make roughly 25-50 percent of their yearly revenue off DLC, with loot boxes being a large part of that revenue stream. Video game developers devote significant financial resources to innovating content, and they should have the right to sell DLC such as loot boxes to adults who understand the risks. Removing loot boxes entirely from video games could have significant ripple effects throughout the industry. It could, for example, result in layoffs, decreased investment in content development and higher game prices. It could also potentially result in decreased interest in video games and esports in general.