

Alert | Video Games & Esports



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Loot Box or Pandora’s Box? Regulation of Treasure Chests in Video Games

One form of digital promotion that has recently drawn attention across several states and countries is the sale of treasure chests or “loot boxes” in video games and apps. Loot boxes typically offer players a chance-based opportunity to obtain virtual items for use in a game. These in-game items may help improve a player’s chances of success in the game, or they may merely be decorative and simply give a player bragging rights based on rarity (often called “skins”).

Although the items found in a loot box often are available by “grinding,” or continuing to play the game over time, buying a loot box gives a player a chance to obtain the same item faster. In short, it can be a trade-off of time vs. money (though without a guarantee what is in any given loot box).

Loot boxes also may give a player the psychological excitement and stimulation of feeling like the player has “won” something (regardless whether the “thing” has any real-world value or utility outside the virtual world of the game). It is largely based on these psychological factors that some jurisdictions have begun to take the position that the selling of loot boxes may constitute a form of gambling – or at least warrant some form or regulation – even in the absence of prizes with real-world value being available in the loot boxes (such real-world value/prizes generally being a threshold requirement for a finding of illegal gambling under most existing U.S. precedents at this time).

Outside the United States

A few countries have publicly addressed loot boxes. Below is a summary of some of those countries' public positions. The positions vary. Some deem the sale of loot boxes a form of gambling. Others stop short of that conclusion, but nonetheless require certain disclosures when offering loot boxes. Yet others have gotten comfortable with the sale of loot boxes, at least when the items available to be won are purely virtual rewards with no real-world value.

- *Australia:* The Office of eSafety has **expressed** concern that loot boxes may be a gateway to later addictive gambling behavior, and the state of Victoria stated that loot boxes are a form of gambling.
- *Belgium:* The Gaming Commission has **stated** that loot boxes are “games of chance” subject to gambling laws.
- *Japan:* The National Consumer Affairs Agency issued an opinion that virtual items in paid loot boxes could be considered “prizes” where players find the items to be strongly desirable, even without any demonstrable real-world monetary value.
- *Netherlands:* The Gaming Authority issued a **report** that games with paid loot boxes and the ability to transfer items are illegal under gambling laws.
- *China:* Game companies must disclose odds for paid loot boxes. (Some companies have avoided this requirement by selling other items – such as in-game currency – and pairing those items with “free” loot boxes.)
- *South Korea:* The Fair Trade Commission fined video game companies nearly \$900,000 in 2018 for misstating odds related to loot boxes. In April 2019, it requested information from video game developers regarding in-game purchases, particularly related to underage users.
- *The UK and New Zealand:* The Gambling Commissions have stated that loot boxes offering purely virtual rewards are not gambling (presumably with no authorized secondary market).
- *France:* The Autorité de régulation des jeux en ligne (ARJEL) took a somewhat similar approach to the UK and New Zealand in its **2017-18 report** (link in French), although it seemed to suggest that loot boxes may not be in line with the public policy on gambling.

Inside the United States

Several states (CA, HI, IN, MN, NY, and WA) have considered legislation related to loot boxes. Most of the state bills would require various types of disclosure and/or limit sales to persons over 18. However, none of the states have yet passed legislation to require disclosures or limit sales.

At the federal level, Sen. John Hawley (R-MO) introduced the **Protecting Children from Abusive Games Act** in May 2019. The bill would ban loot boxes and microtransactions (in-app purchases to speed up game play) in games specifically targeted at children as well as games for which the game developer has “constructive knowledge” that users are minors. Although the bill has bipartisan support, it is not clear whether it will proceed to further consideration, as the Federal Trade Commission (FTC) has announced its intent to hold a **workshop** on Aug. 7, 2019, to consider consumer protection issues related to loot boxes and microtransactions. Public comments may be submitted online **here** through Oct. 11, 2019 at 11:59 p.m. EST.

Requirements for Apps

Separate from any legal requirements, as of December 2017, Apple has addressed loot boxes in its [App Store Review Guidelines](#), where it requires app developers to disclose the odds of obtaining each type of virtual item in a loot box. In 2019, Google adopted the same disclosure requirement in its [Google Play Developer Policy](#).

Current U.S. Considerations

Pending further legislative developments, game developers offering loot boxes to players in the United States may wish to consider the following precautions:

- Ensure any items available are purely virtual and have no real-world value outside the game. To reinforce these facts, consider making the items not redeemable for money, or exchangeable with other players.
- Strictly prohibit sale of the items in secondary markets outside the game, with any such activity resulting in immediate cancellation of the items and expulsion of the offending person(s) from further participation in the game. Permitting (or sometimes promoting) sales of virtual items in secondary markets has become a controversial issue in several cases where allegations were made that virtual items in loot boxes may have real-world value.
- Avoid selling the loot box items for real-world money in a game store, since such offering/sale could be viewed as a way of establishing a real-world price/value for the items. Instead, focus on items that are otherwise reasonably available through grinding in the game (without the need ever to pay for a loot box) and do not have a regular price tag in the game store.

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