

Loot-Boxes: Fun Feature or Predatory Monetization? Max D’Ercole

We’ve all seen them, whether you know their name or not. On our phones, our computers, and especially our game consoles. Loot-Boxes, a feature believed to have been implemented first in the Chinese free-to-play game ZT Online, are a fundamental part of modern games.¹ They exist in every scale of game, from apps on your phone like “Super Mario Run”, all the way to major video games like FIFA 23.² What are they exactly? Most operate as essentially digital trading card packs, like Pokémon cards you can buy for your video game. They can include anything from cosmetic content, all the way to fundamental game-changing advantages. Overall, Loot-Boxes are represented in over 1.8 billion game installations, accounting for 58% and 59% of the top games on the Google Play Android Store and Apple iPhone Store respectively.³ The reason behind their prevalence should be no surprise, as purchases from Loot-Boxes resulted in over \$15 billion for the video game industry in 2020 alone.⁴ With their prevalence and accessibility, particularly to minors, countries around the world are now considering how to handle Loot-Boxes. Their primary question, how are these Loot-Boxes any different than online gambling?

FIFA 23, a major product in the gaming world, provides an excellent example of what modern Loot-Boxes look like. For the unaware, FIFA 23 is a video game that allows players to play English Football with their favorite teams and players.⁵ In the game mode “Ultimate Team,” players are granted the opportunity to build their own team with individual players from around the world. One does this by obtaining a player’s Ultimate Team card, which is predominantly done through their FIFA Ultimate Team Packs, or as their developer, EA, calls them, “FUT Packs.”⁶ Players mainly obtain these packs through one of two ways, by grinding through the game to earn in-game points, which they can save to purchase a pack, or instantaneously by purchasing “FIFA Points” with real cash, which they can in turn use to buy these packs.⁷ Just like physical trading cards for sports, better players are less likely to be within these packs than worse ones, incentivizing players to open them for the very best players. Furthermore, the vast majority of FIFA users play against others online utilizing these FUT players and the better your team is, the better your odds will naturally be to win. Ironically, even EA acknowledges Loot-Boxes on their own website.⁸

¹ Alex Wiltshire, *Behind The Addictive Psychology And Seductive Art Of Loot Boxes*, PCGAMER (September 28, 2017), <https://www.pcgamer.com/behind-the-addictive-psychology-and-seductive-art-of-loot-boxes/>.

² Shawn Farnar, *The Untold Truth of Loot Boxes*, SVG (January 31 2023) <https://www.svg.com/123113/untold-truth-loot-boxes/>; Wesley Yin-Poole, *Ea Sticks With Controversial Loot Boxes For FIFA 23 Ultimate Team*, EUROGAMER, (August 11 2022), <https://www.eurogamer.net/ea-sticks-with-controversial-loot-boxes-for-fifa-23-ultimate-team>.

³ Whitney DeCamp & Kevin Daly, *Loot Box Consumption By Adolescents Pre- And Post- Pandemic Lockdown*, NATIONAL LIBRARY OF MEDICINE, (May 1 2023), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10158757/#:~:text=A%20review%20of%20top%20mobile,et%20a%202020>).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Your Guide To: FIFA Ultimate Team Packs*, EA, <https://www.ea.com/games/fifa/fut-packs-explained#:~:text=FUT%20Packs%20are%20virtual%20in,to%20as%20a%20loot%20box>.

Loot-Boxes are themselves a widely known and criticized concept in the gaming world. Players complain of games essentially walling off content behind a monetary barrier, even after purchasing the full price game.⁹ 2017's "Star Wars Battlefront 2", for example, suffered from widespread criticism for their heavy use of Loot-Boxes, causing the developers to completely overhaul the multiplayer progression system and dramatically affected the game's sales.¹⁰ But the players themselves aren't the only ones asking questions of Loot-Boxes, with a slew of countries across the globe questioning how to regulate the game feature. The major purpose behind these debates is the notion that Loot-Boxes constitute an addictive form of gambling tied directly to gamers experience with video game products.¹¹ Belgium, a prominent opponent of Loot-Box features, has banned them outright.¹² This means that in games like FIFA 23, FUT Packs are simply unavailable to be purchased through real-world currency.¹³ The Netherlands remains somewhat split, but has banned many, having argued that they are "a game of chance."¹⁴ China interestingly enough has asked game developers to include the odds of obtaining different items through the feature.¹⁵ New Zealand and Poland have formally found Loot-Boxes not to be a form of gambling. Many Countries however, including the UK and Australia, are still debating the issue.¹⁶

The United States also falls into this category of undecided. In the U.S., under federal and many State statutes governing gambling, the following three elements must be present for something to constitute an illegal "wager": (1) risking something of value (2) on the occurrence of a chance event (3) for a potentially valuable prize.¹⁷ Interestingly, law firms like Skadden already consider these elements to be arguably satisfied by Loot-Boxes, putting the feature into a potential danger in the U.S..¹⁸ According to Skadden, Courts have held virtual currency to be "something of value," which is of course put at risk through spending it on said Loot-Boxes.¹⁹ Furthermore, Loot-Boxes include an element of chance in opening them, and cases exist at even the Circuit level which hold that a virtual good, even if only usable in-game, can constitute a "valuable good."²⁰ Congress has attempted to pass legislation directly preventing the features use as recently as 2019 through the Protecting Children From Abusive Games Act, however, the

⁹ *Id.*

¹⁰ GameSpot Staff, *Star Wars Battlefront 2's Loot Box Controversy Explained*, GAME SPOT, (November 22 2017), <https://www.gamespot.com/articles/star-wars-battlefront-2s-loot-box-controversy-expl/1100-6455155/>.

¹¹ Scott Van Hooris, *The \$15 Billion Question: Have Loot Boxes Turned Video Games Into Gambling?*, HARVARD BUSINESS SCHOOL, (April 21 2023), <https://hbswk.hbs.edu/item/the-15-billion-question-have-loot-boxes-turned-video-gaming-into-gambling#:~:text=Loot%20boxes%20generate%20%2415%20billion.a%20small%20percentage%20of%20players>.

¹² *Id.*

¹³ *Your Guide To: FIFA Ultimate Team Packs*, *supra* note 8.

¹⁴ Van Hooris, *supra* note 11.

¹⁵ *Id.*

¹⁶ *Id.*; David Smith, *Australian Government To Consider Loot Boxes And Skin Trading For Gambling Law Inclusion*, KOTAKU, (May 4 2023), <https://www.kotaku.com.au/2023/05/australian-gov-loot-boxes-gambling/>.

¹⁷ *Video Gaming: Is My Loot Box Legal?*, SKADDEN, ARPS, SLATE, MAEGHER, & FLOM LLP AND AFFILIATES, (August 26 2019), https://www.skadden.com/-/media/files/publications/2019/09/quarterly-insights/video_gaming_is_my_loot_box_legal.pdf?rev=306a06b44c174130a2b753e3e2730d46#:~:text=Are%20Loot%20Boxes%20Legal%3F,constitute%20predatory%20practices%20toward%20minors.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

Act never made it out of the committees,²¹ leaving the usage of Loot-Boxes in a rather gray area. As Skadden notes, game developers who continue to use the feature leave themselves open to litigation on several fronts.²² States' Attorneys could bring criminal or civil actions, while consumers themselves could potentially sue under many states' anti-gambling laws.

Whether Loot-Boxes qualify as an instrument of gambling remains a quandary without a unified answer. Even though several countries have outright banned them, they remain for the most part entirely unregulated. While both the gaming community as well as regulators seem to agree there should be some form of restrictions, a 2023 study nonetheless showed that the complete removal of Loot-Boxes results in a sharp decrease in overall user's satisfaction with a game as a whole.²³ The same study did posit a potential solution in the form of a \$500 cap for the feature, which would in theory retain the vast revenue developers rely on while also having a much smaller effect on the satisfaction of users according to simulations, but even that solution provides a large cap of potential loss for consumers.²⁴

While there may not be one clear answer, in the end, I believe at least some regulation must be put in place. Whether that be a cap, an outright ban, or something entirely else in between, a complete lack of regulation comes across as almost reckless. In the end, we are left in a purgatory, with no clear answer on the table. Without regulation, developers have and will continue to maximize revenue through Loot-Boxes, but for consumers it remains pertinent to ask, are these Loot-Boxes a necessary function or are they nothing more than a predatory business practice? We may not know yet, but one thing is certain, without intervention, these Loot-Boxes aren't going away anytime soon.

²¹ Protecting Children From Abusive Games Act, S. 1629, 116th Cong. (2019).
<https://www.billtrack50.com/billdetail/1129027>.

²² *Video Gaming: Is My Loot Box Legal?*, *supra* note 17.

²³ Van Hooris, *supra* note 11.

²⁴ *Id.*