Microtransactions and Gambling in the Video Game Industry

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Abstract
The beginning of the 21st century has had a drastic effect on the video game industry. The advent of almost universal Internet access, the release of inexpensive broadband-enabled consoles, and the availability of mobile gaming have led to game developers and publishers heavily relying on premium in-game currencies, exclusive paid items, and loot boxes to subsidize or even replace profits from traditional video game business models. By 2020, in-game purchases made up a market of $92.6B worldwide and, in the US, experienced growth of over 30%. In this highly lucrative market, the legal and ethical landscape is constantly bubbling with claims of unlicensed gambling, unfair pay-to-win mechanics, and extortion of minors. In the first part of this paper, we will explore the historical context of microtransactions from the first examples to modern ubiquity. In the second half of this paper, we will examine some relevant scandals and legal cases regarding the connection between microtransactions and gambling.

Disciplines
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Abstract—The beginning of the 21st century has had a drastic effect on the video game industry. The advent of almost universal Internet access, the release of inexpensive broadband-enabled consoles, and the availability of mobile gaming have led to game developers and publishers heavily relying on premium in-game currencies, exclusive paid items, and loot boxes to subsidize or even replace profits from traditional video game business models. By 2020, in-game purchases made up a market of $92.6B worldwide and, in the US, experienced growth of over 30% [1]. In this highly lucrative market, the legal and ethical landscape is constantly bubbling with claims of unlicensed gambling, unfair pay-to-win mechanics, and extortion of minors. In the first part of this paper, we will explore the historical context of microtransactions from the first examples to modern ubiquity. In the second half of this paper, we will examine some relevant scandals and legal cases regarding the connection between microtransactions and gambling.

Keywords—microtransactions, gambling, video games, loot boxes

I. INTRODUCTION

A microtransaction is defined as a very small financial transaction conducted online. In video games, microtransactions are typically for some amount of in-game currency or a small DLC (downloadable content) item worth anywhere from a few cents to a few dollars. While the concept of a microtransaction in games became popular in the mid-2000s and mainstream by the early 2010s, the first known example of microtransactions in a home game date back to the late 90s with the advent of the first flat-rate Internet plans.

Before flat-rate pricing, the Internet was by-the-minute and thus discouraged extended online gameplay. Without the limitation of by-the-minute pricing, more and more people could afford to spend significant time online. As a result, online games that previously had minimal user bases and low server overhead experienced a boom in both. New business strategies were employed to subsidize the rising overhead. While some games used a more traditional subscription, the concept of a video game as a service rather than a product was new and alienating to many consumers. Seeing this, the creator of the game Achaea, Dreams of Divine Lands, Iron Realms Entertainment, chose instead to keep the game free to play and instead introduce an optional premium in-game currency [10]. The model relied on the more extensive base of free users keeping the game popular in tandem with the dedicated, relatively small user base paying money for better gear. This business model proved very effective, and by the mid-2000's it was front and center for the advent of the streaming era.

By the mid-2000s, high-speed broadband Internet was widespread, with over 50% of US households adopting the technology [11]. The release of the 7th generation consoles (The Wii, PlayStation3, and the Xbox360) brought broadband devices and digital exclusive content to the masses. The mobile market was also exploding with the introduction of the Nintendo DS, Sony PSP, and smartphones with unlimited data plans. Over a few years, a massive, reliable market of Internet-enabled video game consumers emerged. Large game studios began to see the benefits of a microtransaction-based business model.

Microtransactions were used in online games in Japan and China in the early 2000s, but the first mainstream microtransaction in the western world was released in 2006. Bethesda, a major game developer and creator of the massive multi-platform, hit Elder Scrolls IV: Oblivion, experimented with inexpensive cosmetic DLCs to test the waters. Bethesda released a $2.50 digital exclusive item for Oblivion known as the Horse Armor DLC [12]. Almost universally panned, the DLC was viewed as being functionally useless and overpriced. With the advantage of hindsight, the DLC is also recognized as the seed that started the trend of purely cosmetic items being sold for real-world currency. The next major development in microtransactions came with the advent of the so-called “loot box.”

The concept of the loot box is an adaptation of the traditional trading card business model to the microtransaction-based video game market. In-game items are packaged randomly into sets and sold for some amount of money. There is typically no guarantee to receive an item, and consumers may have to purchase many loot boxes to collect desired items. Massive IPs included loot box systems for purely cosmetic as well as functional items. EA's FIFA 09 would let users buy digital playing cards of real-life soccer players to use in-game. Valve's Team Fortress 2 sold loot boxes containing everything from life soccer players to exclusive weapons with special effects.
Although previous microtransaction models were viewed as generally harmless, the advent of loot boxes created a grey area that, surprisingly, overlapped with other non-gambling digital games like Magic: The Gathering and Pokémon.

II. THE CONNECTION BETWEEN MICROTAXNSCTIONS AND GAMBLING

While loot boxes have been equated to gambling by many news outlets and social media sites, the actual legality of the model has been tested many times. Companies like EA and Apple have been accused of running illegal gambling services through microtransactions and loot boxes. Loot boxes have many parallels to trading cards, and the roots of the issue date back to the case of CHASET v. FLEER SKYBOX INTERNATIONAL (2002). This case had eight different trading card companies collectively sued by their customers. However, it was determined that the "personal injury" experienced when a desired card was not found was not related to the personal injuries protected by RICO laws (Racketeer Influenced and Corrupt Organizations Act of 1970), and the case was dismissed. As a footnote in the case, Nintendo’s IP Pokémon was specifically differentiated from other trading cards as the cards can offer an advantage in a competitive game [2]. Although no action was taken against Nintendo from this assertion, it established a distinction between cosmetic items with no gameplay advantage and those that do offer competitive advantages, with the latter (colloquially known as Pay-to-Win) typically being more susceptible to abuse by developers.

Pay-to-Win games encourage less skilled players to spend more to maintain a competitive edge. The model relies on convincing the player that they need to spend money to progress, and there are several common tactics used. As an example, one method is to hook the player with unrestricted gameplay before a timer forces the player to stop. The player must then either wait, usually many hours or days, or pay to continue. An argument can be made that the players of Pay-to-Win games are being manipulated to satisfy a gambling addiction. A German survey of over 46,000 adults concluded that Pay-to-Win game consumers also have a considerable attraction to gambling, where one exacerbates the other and vice versa [3]. From this perspective, Pay-to-Win games are predatory and rely on exploiting addictive personalities. Related to but distinct from this case is one of the most well-known gambling scandals of the last decade, the CS:GO Lotto scandal.

The Counter-Strike: Global Offensive (CS:GO) Lotto scandal was perpetrated on Valve's nearly ubiquitous PC software distribution platform, Steam. The platform allows games to reward players with digital items that can then be auctioned on Steam for real money. Although the items could be from any compatible Steam-published game, the game involved in the scandal was CS:GO. Rare items in CS:GO can be worth significant amounts of money, and there are hundreds of different rare items worth over $1000 [4]. Inevitably, some realized the potential to profit from this forum. In 2015, two social media influencers, Trevor Martin and Thomas Cassell, registered a business and website, CS:GO Lotto, where skins for CS:GO could be bet in a variety of casino-style games. As owners of the website, they were able to make videos exaggerating the odds of winning, when in reality, sites like CS:GO Lotto were exaggerating the odds of winning. When they released these videos, they opted to keep secret the fact that they both owned CS:GO Lotto. FTC officially cited the two owners in 2017 and released this information in all further transactions [5]. Trevor and Thomas were legally protected from further action by the fact that they did not directly buy or sell skins, and, technically, no purchase was required as skins could be obtained for free by playing CS:GO.

Valve, the owner and operator of Steam, was initially sued for the scandal as well. However, a direct connection between Valve and sites like CS:GO Lotto could not be reasonably established, and the case was dropped [6]. Additionally, Steam stores funds in a digital wallet whose funds cannot be transferred to a bank or any other account, making it difficult to perpetrate anything that legally classifies as gambling. Officially, Valve states that gambling sites using the Steam API are against the API's terms of service, and they regularly send cease and desist letters to offending sites [7]. The availability of CS:GO skin gambling sites today, however, indicate a failure to enforce these terms.

Despite the dropped case, the CS:GO Lotto scandal alerted the media and the wider public to skin gambling. The case highlights a common legal and ethical dilemma: Is a platform responsible for how users interact with it? In the US, platforms like Facebook are protected from legal responsibility by the Communications Decency Act, which states, "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider" [8]. Valve, after all, offers its Steam API as part of its platform. Further, because the skins can be obtained for free as random rewards in games, skin gambling websites are legally classified as sweepstakes. It is significantly more efficient to buy skins on the Steam market. However, winnings can be flipped back on the Steam market to buy games and hardware sold by Steam. Additionally, skin gambling sites use Steam to verify age; this is problematic as many minors already have access to Steam and games rated for mature audiences. A 2020 UK study has shown that, although underage gambling is decreasing overall, minors are still a growing audience for online gambling [9].

III. THE GLOBAL VIEW OF LOOT BOXES AND GAMBLING IN THE GAMING INDUSTRY

In the United States, there have been several pieces of proposed legislation over the years to limit the use of microtransactions in video games. In 2019, a bill was proposed by US Senator Josh Hawley to ban loot boxes and other types of microtransactions in games played by minors. Although the bill has not progressed any further, actions have been taken with the American rating system for video games to add descriptions that warn parents of loot boxes in games [14].

In 2020, the United Kingdom's National Health Service (NHS) stated that loot boxes contribute to gambling addiction in minors. The statement mentioned how the structure of loot boxes (randomized risk vs. reward) results in children learning how to gamble. Not unlike the United States and the United Kingdom, Australia views the concept of loot boxes as gambling according to the Victorian Commission for Gambling and Liquor regulation. Video games are included in the Australian...
Interactive Gambling Act of 2001, which targets online gambling operators [16].

Two countries in Asia have taken legal action regulating loot boxes in video games. In 2012, Japan was the first country to take regulatory action against loot boxes [14]. The Consumer Affairs Agency of Japan declared complete gacha to be illegal. Complete gacha refers to a monetization mechanism in video games that rewards the practice of gacha. Gacha is the act of paying a small sum of money to get a random item [15]. To clarify, Japan still allows microtransactions in video games. They only outlawed the loot boxes that must be purchased in order to progress in a game. Similar to Japan, China also has laws about certain types of loot boxes and how they can be used. In 2016, China passed a law that required games with loot boxes to disclose all possible rewards from the loot boxes as well as the probability of those items dropping. Since 2016, more regulations have been placed on loot boxes. They now have restrictions on how many loot boxes can be purchased per day [14].

Similar to Asia, two countries in Europe (other than the United Kingdom) have taken legal action against loot boxes. In 2018, there a study was conducted of ten different video games by the Netherlands Gaming Authority. The study uncovered that four of those ten video games had violated laws regarding gambling in the Netherlands. These loot boxes in question had prizes that could be traded outside of the game, which means they have a market value. In order to sell items with a market value in the Netherlands, you must have a government-issued license. Video game companies were not eligible for these licenses, which is why they were found to have violated the law. The other European country in question is the country of Belgium. The Belgium Gaming Commission began regulating loot boxes following the Netherlands’ regulations. Belgium declared that loot boxes are a form of illegal gambling. Belgium’s strict laws resulted in some companies removing loot boxes from their games within Belgium, and some removed their games from sale in Belgium altogether [14].

IV. CONCLUSION

In conclusion, the introduction of microtransactions in video games has changed the landscape so drastically that the market is now dominated by in-game currency and loot boxes. Concerns that microtransactions encourage gambling, especially among minors and known problem gamblers, are not unfounded. Precedent is catching up to constantly evolving platforms, and new issues regarding the responsibility of platforms to the content they host are frequently discovered. As in-game purchases now dominate gaming and key platforms like Facebook and Steam expand their reach and enter the gaming hardware market, the future will surely present more questions than it answers.