

Loot Box Update

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Brazil, the 13th largest videogame market in the world as of 2017, may be the latest jurisdiction to adopt rules prohibiting or limiting loot boxes in videogames. At the urging of a public interest group – the National Association of Child and Adolescent Defense Centers – the Public Prosecutor’s Office in Brazil has accepted a request for Public Civil Action against several game publishers, including Electronic Arts, Riot Games, Garena, Nintendo, Konami, Valve, Ubisoft, Tencent, Microsoft, Apple, Google, and Sony. The action alleges that loot boxes are essentially gambling, and thus illegal under Brazilian law. Brazil’s independent courts will ultimately investigate and determine the legality of loot boxes. Although game developers are not currently required to remove loot boxes from games sold in Brazil, if the courts determine that loot boxes violate Brazilian law, the Public Civil Action seeks \$700,000 per day in fines for ongoing violations.

Loot boxes are randomized collections or boxes of virtual items, often made available for purchase with money. A player who purchases a loot box in a game does not know its contents until he or she opens the box, causing advocacy groups and government actors to liken loot boxes to games of chance, and to call for their regulation under gambling laws.

Starting in 2012 with Japan’s prohibition of “complete gacha” loot boxes in social games, a handful of nations have either forbidden or restricted the use of loot boxes. For example, the Netherlands declared games that feature loot boxes and permit trading of yielded items to be illegal. In Belgium, regulators found that loot box systems in three games, FIFA 18, Overwatch, and Counter-Strike: Global Offensive are games of chance and subject to Belgium’s gambling laws. China, the world’s largest videogame market by revenue, requires game developers to publish the percentage odds of receiving certain items in each box and to limit the number of purchases made in a day. China also requires publishers to improve the odds of acquiring rare items as the player purchases more loot boxes, thereby taking some of the uncertainty out of the purchasing process.

In 2019, Senator Josh Hawley proposed legislation in the United States Senate, to prohibit loot boxes in “minor-oriented games,” but the bill remains in committee. Also in 2019, the Federal Trade Commission held a workshop to consider loot box regulation.

Loot boxes generated nearly \$15 billion globally in revenue in 2020 and may generate more than \$20 billion in annual revenue by 2025.

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Recognizing that emerging industries require bespoke lawyering, Mike Tomasulo and David Enzminger formed and lead Winston's Videogame, Gaming & Esports Group to provide comprehensive legal solutions to companies in these industries. This multidisciplinary group includes more than 60 lawyers across 10 practices working seamlessly to assist companies in these industries in all areas, including managing IP portfolios, assisting esports companies establish global sports leagues, selling franchises, and developing proactive legal solutions for issues that arise from league operations. We represent videogame publishers in antitrust matters and represent both rights owners and gaming companies in licensing issues for game content. In addition, our team helps electronic game clients prepare for all types of regulatory and public scrutiny issues, such as corporate governance, data privacy, and harassment/discrimination claims that are sure to come as the industry continues to grow in both size and influence. Our offices in New York, Silicon Valley, Los Angeles, Shanghai, and Hong Kong provide gaming clients with a global platform for their complex and evolving legal needs.

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