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REGULATION OF MICROTRANSACTIONS AND
INDUSTRY LOBBYING: CAN THE EUROPEAN UNION
LEARN FROM CHINA, THE UNITED STATES, UNITED
KINGDOM AND OTHER COUNTRIES?

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Abstract

Microtransactions are a business model strategy that has developed over the last couple of decades in the videogame industries, spanning the market from free games to “AAA” quality videogames. This financial instrument provides the use of in-game currency that can be earned in-game or bought with “real currencies” or direct-payment to prolong the life-cycle of a product. The “benefits” to the consumer range from a “pay-to-win” microtransactions system to “only cosmetic” microtransactions. In this thesis, I analyse in detail this mechanism in its various forms, considering various case studies and attempts to regulate this phenomenon through lawsuits and national governments’ decisions. Notable examples of such court cases and policy decisions include: the recent decision by Chinese Government to limit the use of videogames to 3 hours per week for minors; the lawsuits against three major brands (Electronic Arts, Epic Games and Roblox); and the attempts from the video game industry sector to self-regulate itself through a “Trial and Error” process by listening their customers. Furthermore, I shall analyse a meeting between the UK Digital, Culture, Media and Sport Committee and the representative from Electronics Art and Epic Games INC where we can see an attempt to understand the phenomenon of the “Immersive and Addictive technologies” issue and the lobbying activity to protect the industries’ interests. To conclude, I propose a series of recommendations for the EU institutions who, as yet, have not taken significant action to regulate this rapidly evolving industry.

Key Words: Microtransactions, Loot box, Lobby, European Union, Gambling.

List of abbreviations:

A.A.A.	American Arbitration Associated
A.M.A.	Ask Me Anything
BGC	Kansspelcommissie – Belgium Gaming Commission
CLRA	Consumer Legal Remedies Act
CPC	Consumer Protection Cooperation
DICE	Digital Illusion Creative Entertainment
DLC	Downloadable Content.
E3	Electronic Entertainment Expo
EA	Electronic Arts
ESA	Entertainment Software Association
ESRB	Entertainment Software Rating Board
ISFE	Interactive Software Federation of Europe
IMCO	Internal Market and Consumer Protection
KSA	Kansspelautoriteit - Dutch Gaming Authority
NFT	Non-Fungible Token
NPC	Non-Playable Character
PEGI	Pan European Game Information
S.D.T.	Self Determination Theory
U.C.L.	Unfair Competition Law

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Introduction

The videogame industry is in constant evolution. It continuously changes and evolves with a continued attempt to adapt and improve. We can see leading brands dissolve against the tide of change because they couldn't adapt to the new market in front of them or understand what their client desires or needs.

Currently, we can see an attempt from the video game industry to increase their product's lifespan and earnings through new methods and systems. The traditional consoles exclusive video games are becoming rare and difficult to find, with producers opting for a multi-cross-platforming service to increase their product revenue. Various producers and developers decided to further improve the earnings from video games by implementing a so-called Microtransactions system, such as Electronic Arts with FIFA franchise, or Roblox with their online store.

The Microtransaction system is a business model where users can purchase virtual goods (such as Premium Currency inside a videogame or the digital product itself) with micropayment, that is an online payment of a very small amount of money. This business model is a complex and multifaced system that provides a constant income and can potentially prolong the product's lifespan indefinitely. An example of the previous statement can be found in the free-to-play mobile videogame called "Fate: Grand Order". This game was released in 2015. Thanks to its microtransaction system (based on a premium currency) it managed to remain online and continue its development cycle, staying on the top 10 most played mobile phones' videogames since its release in the digital market.

However, with the evolution of microtransactions, new problems come to the attention of the public and the developers. As minors and the population between 18-34 years old became more than 50% of the total video games players, we can verify that the development of microtransactions is parallel with this age gap. As we are going to see in the next chapter, there was an attempt to introduce the Microtransactions system in 1999 with the release of the DreamCast console. However, the proper implementation of the microtransactions business model started in 2006 with a controversial object, a cosmetic horse armour for the video

game Oblivion, sold for 2.50 \$ with an equalised number in the European market: 2.50 €. It evolved into various forms, and those new microtransactions created new issues and questions.

With this thesis, my objective is to answer this final question: Should the European Union be involved in regulating the Microtransaction system?

To answer this question, we must analyse and understand the microtransaction mechanics and the self-regulating attempts by considering some successful examples of its implementation and the outrage caused by those faulty implementations, together with the reaction from the Public Opinion around this topic. The Videogame Industry started seeing this new type of revenue as a potential threat to the mental health of minors and a potential risk to create a youth gambling addiction because of this new mechanism. The backlash was powerful, and the outrage's intensity depended on case to case. In this thesis, we will analyse different backlash and law actions. As one example for this outrage, we are going to see actions taken against Electronic Arts (EA) and their products with the microtransactions system implemented (especially in the sporting videogame) and Epic Games problem around their own video games: Fortnite and Rocket League.

Those backlash and legal actions against producers and distributors in the video game industry by the public attract the lawmaker actions and social studies for this type of situation. This thesis will analyse various countries (some of them are members of the European Union) taking measures to protect the youth by applying harsh restrictions to such practices. In contrast, other countries failed to regulate this new economic phenomenon by stopping the development of those measures after parliamentary investigations or after various Committee discussions. As an example, we will analyse the British investigation for their result and the attempt by some U.S. senators to pass a bipartisan bill to regulate the microtransaction phenomenon.

Furthermore, we will analyse the lobbying activity made by the European "Interactive Software Federation of Europe" (I.S.F.E.), the American "Electronic Software Association" (E.S.A.), and other situations where these groups or

directly the Software house which acted in defence of their interest around the topic of this thesis.

In the conclusion to this master thesis, I shall summarise the previously analysed discussion, along with review some solutions proposed by researchers. Furthermore, I will give my opinion on what system should be taken into consideration by the European Union to resolve this issue.

For this particular thesis, I considered various documents, books and articles written by researchers and experts in the field, plus online articles made by professional journalists specialising in the video game community (such as ScreenRant). Furthermore, official documents from Courts, Governments, and groups of interest were used as additional sources of information. Particularly helpful was a book that I found very interesting is “The Evolution and Social Impact of Video Games Economics” by Casey B. Hart that gave me lots of the insight that we need to understand this particular issue.

Chapter 1: Microtransaction: Types and application

In the last decade, we have seen a significant evolution in the video game industry from their economic model and time development to their final product. With this new economic interaction between sellers and buyers, the whole market is switching from a physical form into a more digitalised one. This is done for one objective: to prolong as long as possible the life-span of products and continue to have revenue for that videogame before starting the development of a new product. With this chapter, I am going to present various types of microtransactions and how they manage to maintain to “hook” the player into their product with the Prestige mechanics and the Self-Determination-Theory in video games to implement microtransactions.

We can start our discussion with the first-ever microtransaction implemented in the videogame industry. It was present in the Arcade store (places where you have the possibility to play cabinet video games after have insert some coins in the dedicated insertion), where you have to pay a certain amount of money to have the right to play the videogame present in that place. Usually, you pay to have a certain amount of time to play that videogame or a certain amount of life to spend inside that electronic game. (Hart 2017: 2)

When the technology evolved and implemented the selling of home consoles, the business tried to change. The first business model that the industry applied was the “Expansion” method. The producer releases an Expansion Pack to increase the story’s depth, which provides new gameplay elements in the videogame and new content. This required a long time of development, where the risk was that some product could not meet the favour of the fan behind that videogame.

After the Expansion model, the market implemented the “Downloadable Content” (DLC) model. The first of its type was released in 1998 for the DreamCast online service, but it didn’t find much purchase for the slow internet and the storage issue for this content. Its proper implementation can be seen with the new console generations, starting from the 6th console generation (Xbox and Play Station 2) and developing in a more prominent way inside the 7th console generation (Xbox 360 and Play Station 3), where we can see the implementation of a direct

payment request to access this type of content through their platforms. (Andrei Golynchev, 2019, page 24).

The first most famous and discussed DLC was created by Bethesda Entertainment for their videogame “The Elder Scrolls: Oblivion” developed by Bethesda, in 2006, where they decided to sell as an exclusive for the Xbox 360 (and they are still selling, even without the Console exclusive) with the price tag of 2.50 \$. (Camden Jones, 2020). The product they were selling is called “Horse Armor Pack” where Bethesda was selling to the players (as the DLC’s name suggests) horse armours for your in-game horses and its utilities are merely cosmetic. The backlash Bethesda received as consequence for the “Horse Armor” DLC was very high, because the online community considered outrageous that you have to pay actual money for cosmetic items that didn’t provide actual coverage for the in-game horses. However, even with the negative reaction, their earnings for that product were as high as the backlash they were receiving. Now, the “Horse Armor” entered the pop culture to underline something overpriced and/or useless.

Before explaining its functions and differences, we have to explain first what a microtransaction is. The definition provided by Lexico says that Microtransaction is “A very financial transaction conducted online”. However, the word itself does not talk about the payment itself, but that word refers to the digital object you are buying at the moment. An excellent example of this statement can be found in the “Horse Armor” example, as we stated before. Because that kind of content is small compared to its market value imposed by the vendor.

But why did the developer decide to implement this mechanism inside the videogame?

First, we must understand the scope of the microtransactions. Initially, the microtransactions were a direct payment for a mobile game or additional content to install into your Personal Computer or Console to expand your experience with a specific videogame. But with the evolution of the market, we can see an expansion of the micropayment method inside the mobile videogames and a differentiation of the product: from a free trial game with the possibility to buy the

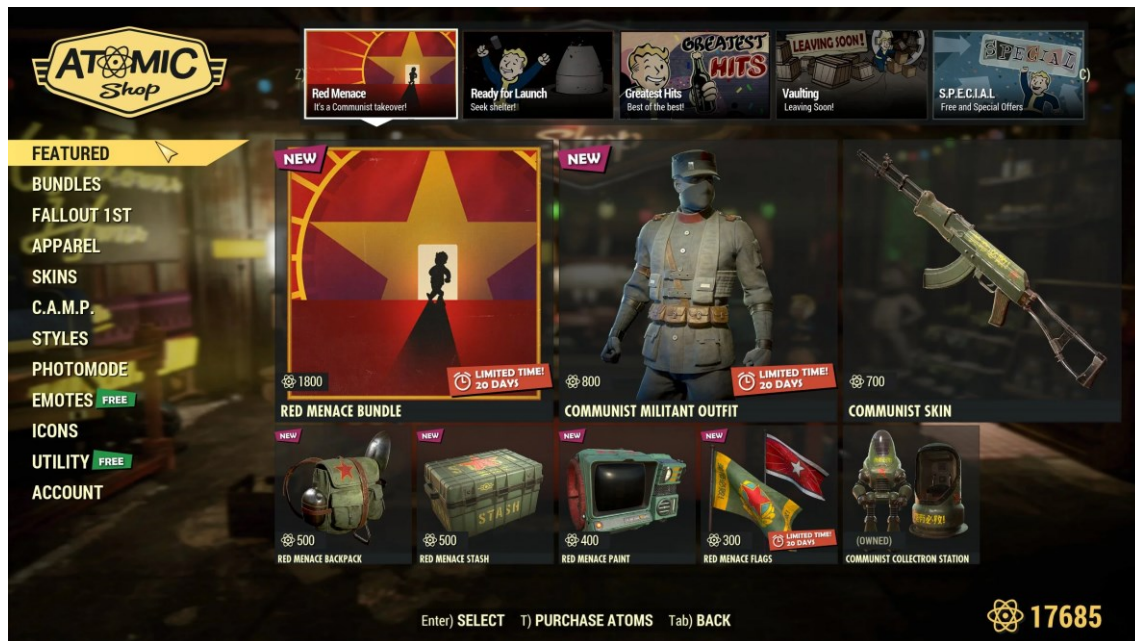
game later to various forms of free-to-play and freemium (videogames with free basic features and paid additional features) typologies of videogames. Furthermore, they implemented some new elements of microtransactions such as cosmetics, packs, etc. Slowly, this type of marketing passed into the P.C. market, where various Independent (Indie) and small developers used this formula to finance their projects.

As we said in the introduction, microtransactions evolved during the years as the video games industry evolved. Usually, the microtransactions are located in free games on various platforms, from the mobile platform (Angry Bird, Fate Grand Order), to the P.C. games (Ogame, Warframe, Genshin Impact, etc.). The actual model of microtransaction is composed of 4 types that can be combined together: in-game currencies, random chance purchase, in-game items, and expiration items (Agarwal 2021).

The in-game currencies use a fake currency inside the game that you can redeem by playing or with direct payment by proposing different deals for their in-game currencies (the more you pay, the more rewarding an in-game currencies deal you'll receive). That currency is the base of the various microtransactions present in most of the video games right now. With that type of currencies, the publishers and developers can manage their value inside the game creating a "virtual closed economy" where they have full control of it. An example is the Fallout 76 in-game shop called "Atomic Shop" where you can buy in-game products by using the in-game currencies known as "Atoms". On 16-09-2021, as shown in Picture 1, they promoted the Communist Militia Outfit around 800 Atoms, which is part of a bundle set called "Red Menace Outfit Bundle" that cost around 1800 Atoms. But how much value has Atoms with our currencies? Bethesda decided that 1 Atom value is around 1 Euro. Still, you can buy only packs of 500, 1000, 2000 or 4000 Atoms by spending 4,99 Euro, 9,99 Euro, etc. as a marketing decision. The higher the cost, the higher the bonus in Atom you receive for the payment (The 4000 Atom bundle will give you 1000 Atoms as a bonus for your purchase). So, suppose you want to buy the 1800 Atoms Package. In that case, you'll have to buy the 2000 Atom bundle that cost 19,99 Euro (with a bonus of 400 free Atoms to add in your purchase) or, if you want to buy only the Outfit, you'll have to buy

the 1000 Atoms that cost around 10 Euro when the value of the product is around 8 Euro.

Picture 1: Red Menace Bundle and other items in the Atomic Shop of Fallout 76



Source:

https://www.reddit.com/r/fo76/comments/po5qkh/september_14th_atom_shop_f_or_those_on_the_toilet/

The random Chance Purchase is the famous “Loot box” system. In this structure, you have a percentage of receiving different types of in-game products by earning those “Loot boxes” via gameplay, in-game currencies, or direct payment. An example of this Loot box system can be seen in various video games. One of these examples is Overwatch (made by Blizzard/Activision), where you can obtain different models and other customisation for your in-game character through Loot boxes that you can earn by playing the game or paying a certain amount of money for obtaining a certain number of Loot boxes. A direct example of this can be seen in Picture 2, where we can see a base skin for the character Mercy and a legendary skin for her, only obtainable with Loot boxes and in-game currency.

Picture 2: Base Skin (on the left) and a legendary Dragon Skin for Mercy, a character in the game Overwatch



Source: <https://overwatch.fandom.com/wiki/Mercy/Cosmetics>

Furthermore, we can see the implementation of in-game items. These items can be various, reaching from only cosmetic items (Picture 2 is a standard example for this mechanics) or items that are better than the “free items” counterpart and will give an advantage in-game, making the game easier for those players. This can put those players who do not pay for upgrades against those who do in a disadvantaged position, giving a clear advantage to gamers who spend money on the game and encouraging people to pay more frequently. An example of this system can be found inside Multiplayer videogames, such as World of Warcraft and Black Desert Online, where you can buy special items within the in-game store. In the case of World of Warcraft, you can buy for 25 Euro a unique mount to travel faster around the digital world as shown in Picture 3. While using those mounts, it allows the player to travel around the digital world faster than other players. For the in-game advantage items, we can see an example in the Warframe free-to-play videogame, where you have the possibility to spend premium currency for premium items that are unobtainable without paying for the premium in-game currency.

Picture 3: The Grinning Reaver Mount from the videogame World of Warcraft.



Source: https://wowpedia.fandom.com/wiki/Unique_mounts

Finally, there's the Expiration system: Many games, especially single-player experiences, have components that wear out or can only be used a certain number of times in a given period of time. After the expiration occurs, the game prompts players to use real or in-game currency to replenish or continue. If players feel their experience is being cut short, they'll be more likely to contribute. An example of this system can be found in the Assassin's Creed Franchise, where you can acquire a special boost for your character. One of these boosts can be an additional experience gained booster while playing the game, so you can level up quickly without spending too much time inside the game playing.

1.1 How to hook the player: Prestige!

Various studies based on different genres of video games demonstrate that few players pay actual money inside the microtransaction system. But that small

percentage makes the vast majority of the earning for the game itself (separate from the selling of the game). Those players are commonly known as “whale” and the objective for the various videogames are to “hook the whale into their system”. (Tassi 2014)¹

This mechanism can be based on the “Prestige mechanics” where the players are stuck in a cyclical replay of the game after it reaches its end. This is explained by using the Foucault (1988) Great Confinement and adapt it within the digital realm borders. This design will diminish the play that players express themselves and, in turn, the players will remain in a loop of cyclical commercial exposure to maximise the profit for the videogame’s producer. To achieve that, the player must be invested in the videogames, and for doing so, this theory explains that we must consider the macro and micro attempts to control the player. At the macro level, the videogame developers switch from a “high score” list into an allotment of characters lives for game completion in the home consoles, and from that the Non-Playable Character (N.P.C.) changed from background elements to an essential part of the game that guide and accompany the player through the whole game. This system can be recognised in the Prestige system, or recently, the Ranking system. In the recent competitive multiplayer videogames, we can see the application of this macro system, where the highest the rank you have, then more “prestige” and “authority” you’ll receive inside the videogame community. A concrete example can be seen inside the game Overwatch where, in base of the various ranks, professional teams recruit different players into their professional teams. This increases the prestige derived from your rank inside the online community with all that follows. (possible contract with E-sport groups, streaming follow, etc. Players like Pow3r and ML7 became content-creator on Twitch and made their status as the foundation of their channels).

On the Micro level, the developer must maintain the player physically in front of the game screen via the application of a routine system. An example of this

¹ <https://www.forbes.com/sites/insertcoin/2014/03/01/why-its-scary-when-0-15-mobile-gamers-bring-in-50-of-the-revenue/?sh=5b8f5cb94065> Last Consulted: 19-02-2022

regular application is the daily log-in system where, if you log in inside the game, you'll receive a prize for entering the game or the monthly earning system, where you'll be rewarded for completing various daily and weekly tasks. We can see this system in the Mobile game Fate-Grand Order where you receive a daily drop for your constant log-in and, at the end of the week, you'll receive a bonus drop for your regular log-in with 3 Crystal (the in-game currency). Furthermore, after 50 days of constant log-in, you'll receive a bonus of 30 Crystals so you can utilise them in-game. Another example is the Genshin Impact reward system and Battle Pass, where you'll receive Battle Pass Points for your daily log-in and the daily activities for obtaining those points. With the Battle Pass, you can obtain various objects, in-game currencies, and (if you pay) you can access at a premium section of the Battle Pass with more prizes for you. Furthermore, with a monthly payment, you can receive bonus items that'll help you obtaining weapons and characters for you.

This type of system is useful not only to hook the whales, but even to prolong the videogame lifespan based on the developers' indication and project. For paid videogames, we can see that the earning from the microtransactions system will decay in a longer period; a more valuable and instant resolution of this videogame is the release of a sequel or a completely new videogame to maintain the player invested in the game. In the case of free-to-play videogames is mandatory that the game will continue to release new content cyclically to maintain the high interest in the game itself. (Hart 2017: 48)

We can see the example for the free-to-play and paid videogame case in the Call of Duty franchise where there's a yearly release for their videogame, and there's a constant presence of DLCs and microtransactions system inside their videogames. The latest main video game they release is called Call of Duty: Modern Warfare and it is a single-player video game with a multiplayer element. They released six DLC maps, and after that they switched to their new product. Usually, the new product was a Spin-Off video game developed by a different studio (an example of it is the Call of Duty – Black Ops series, but this time they decided to release a multiplayer free-to-play videogame based on the battle royal

genre where they focused the Battle Pass microtransactions releasing new season cyclically.

In both videogames we can see an example of the previously described structure as before: a Prestige structure to constantly bind the player to play to improve their rank, then after the end of the season, there'll be a reset of the "Prestige class" and the various microsystem where the player is pushed to do daily log-in for obtaining objects for constantly playing the videogame.

Table n.1: Top ten highest-earning free-to-play games in 2020 and their respective digital revenues

	Game	Company	2020 income in \$	2020 income in €
1	Honor of Kings	Tencent Games/Timi Studio Group	\$ 2.45 billion	€ 2.16 billion
2	Peacekeeper Elite	Tencent Games	\$ 2.32 billion	€ 2.05 billion
3	Roblox	Roblox Corporation	\$ 2.29 billion	€ 2.02 billion
4	Free Fire	11dots Studio/Garena	\$ 2.13 billion	€ 1.88 billion
5	Pokémon GO	Niantic	\$ 1.92 billion	€ 1.69 billion
6	League of Legends	Riot Games	\$ 1.75 billion	€ 1.54 billion
7	Candy Crush Saga	King.com	\$ 1.66 billion	€ 1.47 billion
8	AFK Arena	Lilith Games/Original Entertainment	1.45 billion	€ 1.28 billion
9	Gardenscapes: New Acres	Pylayrix Entertainment	\$ 1.43 billion	€ 1.26 billion
10	Dungeon Fighter Online	Neople	\$ 1.41 billion	€ 1.24 billion
		Total	\$ 18.81 billion	€ 16.61 billion

Source: Rebekah Valentine, Digital games spending reached \$127 billion in 2020, <https://www.gamesindustry.biz/articles/2021-01-06-digital-games-spending-reached-USD127-billion-in-2020>

This system of Prestige and attempt to engage the player to continue to play the videogame help maintain the game live enough to earn some money. But this formula can be better applied in the free-to-play and Freemium method. As shown in table n.1 above the total revenue of various videogames is based on the vast majority of Microtransaction's payment methods. League of Legends is a free-to-play videogame with elements of microtransactions inside. So, we can easily conclude that the 1.628 million dollars of revenue are based only on League of Legends' Microtransaction system. The base built by their publisher, Riot, managed to maintain and update a videogame release in 2009 and evolve outside the videogame boundaries (E-sport tournament, and recently a Netflix animated series) while remaining free-to-play and proposing different types of microtransactions to their players (Hart 2017: 62).

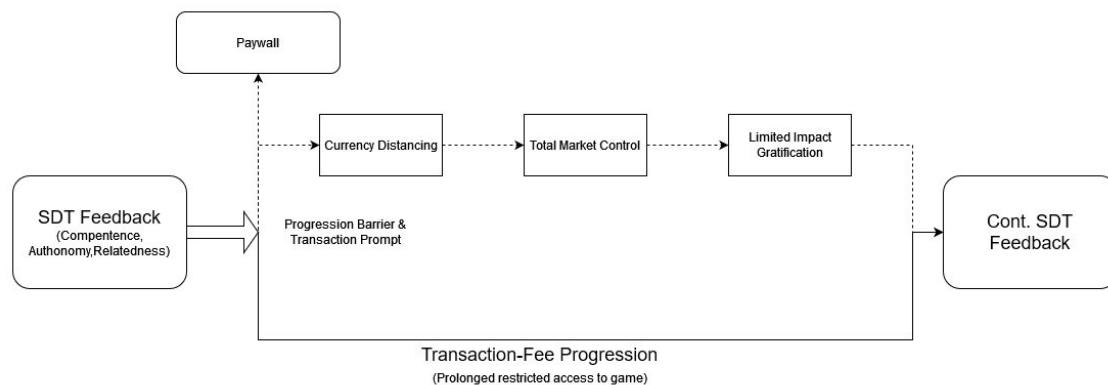
But we must be careful. There are various cases where the implementation of the Prestige System manages to alienate their players and, subsequently, erased the possibility of prolonging the lifespan of the game and destroying the reputation of the developers and distributors. One case that we are going to explain in detail in the future chapter is the BattleFront 2 fiasco and the following fall from grace for Dice and their publisher Electronic Arts. Another 2 cases that can be useful for our case is "Middle Earth: Shadow of War", where they tried to implement some microtransactions elements based on the Random Chance Purchase (referred to as "Loot box" from hereon). This implementation completely alienates their player base and damages the gameplay mechanics that the brand builds in their previous videogame. To avoid further damage to their brand, they decided to take away the Loot box system after one year of life for their product. Another example can be seen in the latest Assassin's Creed franchise videogame, where from Assassin's Creed Odyssey they started to implement a new form of microtransaction system known as "time saver" where you'll receive

a boost in your experience and, consequentially, decrease the time you'll have to remain in front of the P.C..

1.2 How to hook the players: Self-Determination Theory

Another theory around engaging the player base on their game and accepting the microtransaction system inside it is called Self-Determination Theory (S.D.T.). This theory is usually applied in the Free-to-play videogame development to make it sustainable, but the same system can be applied in some cases around traditional videogames with microtransaction's element inside. This theory is based on the balance around 4 components, as shown in Figure 1 below: Experiential factors, Currency Distancing, Total Market Control and Limited impact gratification (Hart 2017: 65).

Figure n.1: STD Feedback Diagram



Source: Hart 2017: 75

The Experiential Factor is the main system to hook the player into playing the game itself and, as show in Figure n.1 it is located under the SDT Feedback. Without direct investment to the player, the subject will simply change game and abandon that game completely. The first point is composed by 3 sub-elements:

- Competence: In this sub-point the player will have a sense of efficacy and skill growth while playing the game. In the vast majority of the cases achieving a sense of competence through completing challenges that provide constant feedback regarding the player's skills. So the engaging part is the constant upgrade and finesse of the player's skill. An example

is the “League of Legends” mechanics, where you are rewarded for successful kills and score points while penalised in the case for repeating failure in killing an enemy team’s member and scoring points.

- **Autonomy:** This refers to the players who will perceive that they have chosen their path and that their success or failure will be their own and not caused or guided by an external force. Achieving this isn’t easy because it depends mainly to the programmers and game mechanics designer’s skills.
- **Relatedness:** This point argues that the player can connect and talk with each other in the game environment through text or audio chat. The objective is to create a real or perceived connection with other individuals so that you construct a motivation for continuing to play that game.

After setting the Experiential factor, the graphic present an in-game barrier with the progression in the game (those barriers can be set in different ways, such as: character’s restrictions, limited numbers of playable characters, etc...). This barrier can be managed in two ways: pay a microtransaction to erase those restrictions or continue playing the game with those barriers on. After those two ways, we will obtain a new SDT Feedback (in the graphic Cont. SDT Feedback). If we decided to pay the microtransaction (in the graphic called Transaction Prompt) we have access to the following three point: Currency Distancing, Total Market Control and Limited Impact Gratification

The Currency Distancing is the process to (as the name suggest) distance the player from their hard currency. This is usually done by creating an in-game currency and implementing a currency exchange of sorts. One example can be seen with the previous example of the Atom Shop in Fallout 76.

Total Market Control is implemented easily by creating an internal market where you can sell in-game items, character’s skins, putting an arbitrary price on those products because those products are independent of many external facts and because the price is not significantly affected by external consumer consideration. Again, we can take as an example the “Red Menace Bundle” previously illustrated. With the combined effort of Currency Distancing, the game

developers can create an environment where they can redirect the player's behaviour and use their emotions for creating an artificial impulse to buy their digital product. Parboteeah defined impulse purchasing as "an unplanned Purchase" the result of exposure to a stimulus, and decided on the spot (Parboteeah, 2005: 180).

After the purchase, the customer experiences emotional and/or cognitive reactions. For example, the game "Candy Crush Saga" artificially prompts players to purchase game modifiers before each level and immediately after each unsuccessful attempt to complete the level. Another example is the "League of Legends" free trials, where the game will give you the possibility to play a character for a limited time and, after the end of that fixed period, that character will be playable only if you purchase it in the game store. Further combination of Total Market Control and Currency Distancing can be found in the concept of "Sunk Cost Bias". This involved two interrelated features: when you achieve the point that minor gains are valued higher than the possibility of continued losses and when certain gains or benefits of investment are overvalued while the losses are undervalued. The example for the "Sunk Cost Bias" is the "Overwatch" Loot boxes, where, after you convert the value in the in-game currency, you can't convert it back and you'll have a possibility at obtaining the desired object.

Finally, the Limited Instant Gratification can be obtained through two types of commodities:

- Functional Commodities include items that modify or facilitate the gameplay experience directly. These items are challenging to propose to the players because they could disrupt the in-game equilibrium and previously stated points by dissociating players who are unwilling to pay and disrupt your fanbase creating a bad reputation toward the developers and publishers.
- Aesthetic Commodities include items that change the look of the characters, avatars, environments, etc. These items are the easiest to propose to the players because of their "aesthetic" nature without

changing the gameplay experience. Usually, these items' feedback is based on the character's appearance and likeness.

The Functional and Aesthetic ways to approach the microtransaction mechanics help understand the various decisions that the industry took in previous years to help itself evolve. Nevertheless, as we are going to see in our following chapters, some predatory action and unbalance in the microtransaction's structure have created an important public interest towards those practices, with the result that these actions took the interest of Governments and legislations.

Chapter 2: Issues around Microtransaction. Players' feedback and responses to it

As discussed in the previous chapter, microtransactions are helpful in various ways to finance the developers, increase the lifespan of video games, and create a new type of life-service around the digital market. However, every theory we analyse and every aspect of Microtransaction does not fully consider the client's perspective. In this chapter, we are going to analyse some examples of Microtransaction's plan in detail and, after that, we are going to examine the general reaction of the community when those microtransactions are implemented. Furthermore, we are going to analyse in detail the specific case of Battlefront 2.

As we stated before, creating ideal competitiveness inside the video games makes it difficult for the players to accept microtransactions inside it because it is seen as "cheating". The microtransactions that help the player progress inside the game or give them some types of help are considered by most players as an "unfair advantage". However, as the years pass by, we can see that the idea of "cheating" is crossing its literal border and invading the moral area of this argument. Every argument that covers the microtransaction's discussion online are about "optionality". For most players, microtransaction must be optional and outside a full-priced videogames, deeming this practice unacceptable. For those who argue this point, the fact that you have to spend more money after paying the publisher 69 Euros for a full game is wrong and considered as a "predatory" aptitude towards the players. Other arguments that the player use against the implementation of microtransactions inside "AAA" videogames are the same as we stated in chapter 1 under the issue to implement microtransaction in single-player videogames: the fact that those implementations could threaten the gameplay balance and could be considered as "oppressive". The fact that the grinding mechanics (the activity in-game to harvest in-game resources, experience, money, etc, in a constant and repetitive way) is usually put in action alongside the "time saving" microtransaction and calling it an "optionality for the games" is seen as manipulative rhetoric from those who want the player to pay money to speed up the grinding mechanics inside the game and using the bait

and exploit immediate and temporary gratification, while also shortening the amount of time the player will use the product. Moreover, in the player's perceptions, the developers are seen as "innocent victims against their publishers Overlords" where they are forced to develop such mechanics that are designed only for the purpose to earn more money and squeeze the player until their last monetary drop. Those types of discussions are often hidden behind an iron curtain but sometimes those implied conflicts come out in the light. One example is the tweet posted by Ed Boon, from NetherRealm Studios where he explains indirectly his preference of in-game progress over time-saving microtransaction in their published videogame "Mortal Kombat XI" stating

"LOL OMG! The \$6440 story is complete bullshit! Where do these people get their information? The VAST majority of MK11 skins are NOT for sale. That's not how @NetherRealm make games. You have to EARN them IN GAME!" (Ed Boon, 2019).²

Furthermore, we can see that microtransactions are more accepted in free to play videogames and only-cosmetics type of microtransaction in the multiplayer-type of videogames because for the first point it helps the developers to expand the game and directly supporting them to maintain this game alive; for the second point because it doesn't modify the gameplay experience as a whole and do not for any type of inequality.

2.1: Example of microtransactions in detail and their reactions. From Sci-Fi to medieval strategy games

To progress with this chapter, we must take some examples of microtransactions. The first example we are going to analyse is the famous videogame Mass Effect 3 developed by BioWare.

Mass Effect 3 is a single-player Role Playing Game, and it is the last chapter of the trilogy called "Mass Effect", and it was released in March 2012. It became famous for various reasons, but one characteristic that was implemented with this

² <https://twitter.com/noobde/status/1121243237388357632> Last Consulted: 19-02-2022

game was the multiplayer experience. That feature was linked directly to the single-player experience where you can play with the other three players. Your objective is to survive 10 rounds of progressive difficulties against enemy hordes (that you already met in the single-player experience). You take control of one of the various unnamed characters that represent various classes and races inside the game. The game itself was provided with various form of microtransactions. The model that they decided to implement can be classified in six categories:

- Four story DLCs that cost between 9.99 Euro from 14.99 Euros
- Five free multiplayer DLC that expands the multiplayer experience
- Cosmetics elements for the single-player experience that cost 1.99 Euros
- The prequel interactive comics (where you can decide what happened in the previous chapter without playing the first two games)
- Free extended ending after the disappointing ending that caused one of the first significant public backlash from the player base
- Packs of randomised multiplayer equipment and characters you can buy with in-game currency that you can obtain playing or with real currency using the “Loot box” system. The payment ranged from 0.99 Euro to 2.99 Euro for the single Loot box.

The game community and the public accepted the whole project and the multiplayer experience was well implemented and linked to the single-player experience in a superb way, without compromising the story and the game mechanics. The learning curve of the multiplayer experience is not so high, earning in-game currency is not so difficult, and the Loot box system was constructed so that you can buy the highest chance Loot box with only three completed matches of multiplayer in the “gold” grade difficulty. The game pushed you to buy the Loot boxes only for collection purposes by releasing new content with free DLCs and new elements in the multiplayer environment by importing assets from the single-player experience. This system was so successful that was implemented by the developers, with some minor differences, in their successive games such as “Dragon Age: Inquisition” and “Mass Effect: Andromeda”.

The next game we are going to analyse is called “Dead Space 3”. It is a sci-fi survival horror with multiplayer elements developed by Visceral Game. This game and the previous one share the same publisher, Electronic Arts. The microtransaction structure applied in this game resembles the “Mass Effect 3” one, but they introduce the in-game purchase inside the single-player experience. The structure is the following:

- One story DLC for 9.99 Euro
- Nine additional weapons and armor packs that you can use in-game by paying from 1.99 Euro to 4.99 Euro plus a limited edition online pass, which includes exclusive weapons and armor
- Three resource gathering upgrades for 4.99 Euros
- A bundle DLC that combine the all previous one called “Tau Volantis Survival Kit” for 14.99 Euros
- Two resources pack which contain material for crafting In the single-player experience for 1.99 and 2.99 Euros, or by paying them while using the in-game currency.

The Dead Space 3 DLC elements are bound altogether and directly touch the single-player experience by helping the player easily overcome the difficulties. Furthermore, the DLC’s combined total cost is around 55.89 Euro for an 8-year-old videogame. The in-game elements, the time-saving DLCs create a bad reputation for the game caused by plot-hole and an aggressive microtransaction inside the single-player experience sign the end of its future development, with a recent rumour that the creators are developing a remastered version of the first game of the trilogy.

The next game that we are going to analyse is Mortal Kombat XI. The last release of the famous arcade game was released in late April 2019, and they have planned the release of various new characters and other cosmetic items, such as new “fatalities”, skin packs, effects, etc. Furthermore, as stated before, they continue the precedent trend of utilising the in-game currency (Time Kristal) to unlock new characters. The monetisation that they implemented is the following:

- One expansion of the main ending that cost 39.99 Euro

- Eight skin packs for various characters inside the game, with every skin pack being 5.99 Euro each
- Fourteen new characters from previous chapters and “guest characters” such as Robocop, Rambo, etc; evaluating each character 5.99 Euro each
- Two “Kombat Pack” that regroup the previously cited characters and cosmetic packs by paying them 14.99 and 19.99 Euros
- An Ultimate Add On Bundle released in November 2020 that contain all previously cited Expansions and contents pricing at 49.99 Euro
- The possibility to convert currency in in-game currency with various packages ranging from 5 Euro to 40 Euro for 500 Time Kristal to 5600 Time Kristal

The game was a financial success, and the community that followed the Mortal Kombat franchise was satisfied by the game story and its gameplay. The issue around the microtransactions were mirroring the problems that were rising after Electronic Arts and one of their games that shall be discussed later. The developers managed those rumours by arguing that they should play the game instead of buying the in-game currency. The microtransactions’ whole nature was centred around the fact that they didn’t touch the game’s competitive aspect but focused on the cosmetic aspects by personalising your favourite characters in various ways.

The last type of microtransactions we will analyse is the game called Crusader Kings II, developed by Paradox Entertainment and released in February 2012. It is a grand strategy game placed during the medieval era, and your objective is to progress with your noble family and progress until the modern era. The strategy implemented was a constant release of microtransactions until two years ago, where they stopped its development and declared the development of the new chapter after 32 DLCs. The DLCs structure is composed in this way:

- Fifteen expansions where they added new mechanics and new elements to the game ranging from 4.99 Euro to 19.99 Euro
- Two music packs directly linked to two expansions by paying 3.99 Euro

- Three content packs where they implemented new character customisations and elements for each culture with the cost of 4.99 Euro and the remaining two by 5.99 Euro
- Four collections of previously released DLCs containing unit textures, historical coats of arms, a collection of music packs, and N.P.C. portraits. Their costs are the highest on the list, starting from 6.99 Euro and finishing to 23.99 Euro.
- Two e-books with the cost of 1.99 Euro and 4.99 Euro
- Three “DLCs” where you can customise your character or create a new one, your coats of arms and a save converter where you can continue your playthrough to the next Paradox Grand Strategy game called Europa Universalis 4 (where it starts a couple of years after the ending time of Crusader Kings 2, exactly in the year 1444)

These DLCs plans are common to every Paradox videogame. It makes it difficult for new players to approach their product, so usually the developers release new free content through time together with paid DLCs and they propose discount every now and then to ease the buying of their product. Some of their players do not like the pricing and the share of the amount of DLCs that they release, because every DLC is almost mandatory to enjoy the videogame and, without those, it fell almost empty. A user called “Ozman Mohammud Zemon Von Boom” has written this review in the seller platform named Steam on the 19th September 2021:

“Crusader Kings II is a “historical” strategy game developed and published by Paradox. To access the rest of the review, you must purchase the following DLCs.

- *Introduction: 9.99 \$ (*
- *Preface: 5.99 \$*
- *Pros I: 17.99 \$*
- *Pros II: 15.99 \$*
- *Conclusion of the first part: 5.99 \$*
- *Introduction to the Cons: 7.99 \$*

- *Cons I: 17.99 \$*
- *Cons II: 19.99 \$*
- *Cons III: 7.99*
- *Cons IV: 9.99 \$*
- *Conclusion of the second part: 7.99 \$*
- *Introduction to the final conclusion: 5.99 \$*
- *Final conclusion: 15.99 \$*
- *Bonus content: 3.99 \$*
- *Bonus Content II: 7.99 \$*

Or, you can purchase the entire review for only 150 \$!''³

However, knowing this issue, they are trying to resolve this issue by proposing a monthly subscription of 4.99 Euro where you can play the whole game with all DLCs until you cancel it.

In this thesis, we have analysed a lot of microtransactions and different types of payment models. We could continue to examine other types of videogames and their monetisation strategies, but this is not the focus of this thesis.

2.2 General reaction on Microtransaction

As we stated previously, there are two main categories which describe the public reaction to microtransactions. The most famous and loudest one is the unacceptability position. This position argues that microtransactions have no place in the market for a full-priced title because a player should not be asked for additional payments when he already spent 69 Euros or more. Lots of crucial public figures and freelance journalists and reviewers in the videogame community, such as Joe Vargas (in art known as The Angry Joe), Jim Stephanie Stirling, or Jong Yea, maintain a strong critique against those practices, followed by a large number of unknown people that post their opinion in various sites, platforms and forums. In their opinion, the fact that you should pay more money

³ <https://steamcommunity.com/profiles/76561198026951941/recommended/203770/> Last Consulted: 19-02-2022

after paying a full-priced game is considered oppressive and threatening to the gameplay balance itself (in the following chapter, we are going to analyse the Battlefront 2 microtransaction argument in detail). The whole unacceptability argument of the discussion of microtransaction is inherently tied to the grinding process where the players are forcefully obliged to grind if they will not spend money on the microtransaction proposed by the developers. The “optionality” argument is seen as manipulative rhetoric where its only goal is to motivate players to, sooner or later, buy the microtransactions available to them to ease their burden and quickly progress through the game without grinding their way out by using the hook of instant gratification and the natural impulse to purchase those and, consequentially, decreasing the whole lifespan of the game itself. In their view, microtransactions belong to the free-to-play where this practice is seen as an acceptable way to have a source of income. In shorts, the “unacceptability” view considers the microtransactions as a fundamental issue plaguing the mainstream videogame industry and feels it as a harmful way to player experience on a general basis. This discourse is prominent in the “single-player traditionalism” where they are rejecting the implementation of microtransaction inside a single-player experience. However, they are willing to accept the implementation of microtransactions in the multiplayer environment. An example can be found in the Mass Effect trilogy, where it started as a single-player experience and in the 3rd game, they released the multiplayer part alongside the single-player, and the microtransaction was limited only in the multiplayer sector. Furthermore, this argumentation expands in the multiplayer sector in the so-called “competitive” versus “cooperative”. In this talking, the cooperative part has in common the same ideal of the single-player argumentation. They share the view that microtransactions that modify the gameplay experience should be avoided. This type of aptitude does not fully accept this system; instead is an indirect “compromise” between players and developers. Another issue that the players have with the microtransaction is the transparency issue, where the players see the incomplete transmission of information as an attempt to exploit the players as much as possible. An example of this comportment can be seen in Middle Earth: Shadow of War and in the Battlefront 2 video game.

With these variegated stances posed by the players, we can summarise those in two main strands:

- Acts of consumer behaviour
- Acts of player behaviour

The first category is the stance of the consumer who refuses to buy the products as it is or wait for the best opportunity to buy them to diminish the revenue for the developers deliberately by waiting for the best discount possible to buy it directly or buying a second-hand videogame. Furthermore, there's the piracy phenomenon; the video game industry's piracy can be seen as a form of political consumerism where you play the game either way, but without spending money for the microtransactions.

The second category is more difficult to define. The player activity against the microtransaction can go in a different direction. Cheating could be inserted as an activity against the microtransaction issue. One example of it can be found in the glitch-abuser system, that consist to use errors in the gameplay to your own advantage. One example of glitch-abuse can be seen in the "Missile abuse" in the Mass Effect 3 multiplayer. In this case, you can utilise a "pocket missile", the most powerful in-game weapon with limited use that can be obtained only through the Loot boxes that you can buy in-game, an unlimited number of times just like a standard weapon. The developers condemned this type of glitch abuse. However, usually, the glitch abuser wasn't reported during the match. It was often used in a private lobby because with one of the players using that kind of glitch, it was easy to quickly finish the game and obtain a higher amount of in-game currency in every game. However, the "fight against microtransaction" can be used as justification for their fraudulent activity. This can be seen in the Fallout 76 glitch abuse in the game where the vast majority of cheaters use those systems to enter inside the in-game developer's room, take all the powerful items inside it and sell those items in third-controlled sites in a sort of "public black market". After the cheating activity, we can see another way to protest against microtransactions. One of the other ways is the "not pay, but play" activity where

the player declared in the online Community that they will play the game without paying any money as a form of protest.

Furthermore, those players post useful tips and guide to maximise the player's time and strategy to play the game in the most efficient way possible without spending money behind it. One example is the guide for games such as Genshin Impact, where the Community created a map with the exact location for essential drops and guidelines for maximising and utilising the character at your disposal in the best way possible, even with posts online where you can ask for help and, most of the time, you will receive a couple of complete answers and strategy proposal in a concise time. Another form of protest is opting out of every aspect which includes the microtransaction aspect of the game. It is not usually possible, and it depends on the game. This can be found in the football game known as FIFA developed by EA, where people limit themselves by playing the various tournaments and football matches without using the microtransaction's part of the game known as "FIFA Ultimate Team" where you can obtain characters and develop your own football club with cards of real players.

As we can see, there are various reactions based on the microtransactions that the people have in front of them, and it is almost impossible to represent fully. This change is based on the balance between rejection and acceptance of the microtransaction as a whole. The example of Mass Effect 3 microtransactions proposed by BioWare was a success because, as we said previously, it avoided the single-player stance by proposing a parallel multiplayer game together with the single-player one. That situation continues with their next game, named Dragon Age: Inquisition and Mass Effect: Andromeda. However, this stance was terminated by the decision to develop a new multiplayer game called Anthem that was a commercial failure in every way, from gameplay to microtransactions proposal. (Hart 2017: 115)

To sum, the mainstream views around the videogame monetisation are more accepted only in case of the initial purchase and massive expansion pack where the developers add more and constant content inside the game itself and that all

the “time saving” microtransaction should be free of charge and implemented immediately in-game.

2.3 The straw that breaks the camel’s back: Star Wars – Battlefront 2

This chapter will cover a momentous event that happened in 2017 around the videogame called Battlefront 2, developed by DICE under the Gaming Company Electronic Arts (EA). As we will see, this video game attracted the attention of public opinion and traditional media, taking the microtransaction issue outside the boundaries of the Internet and starting a serious discussion around those practices and initializing actions by governments and private citizens as well.

EA was for a long period of time under the lens of various critiques for their activity in the video game industry. They are usually accused for a long time of using predatory microtransaction practice in the sporting games and buying other developers’ studios and licences and destroying those studios after failing to achieve essential income objectives.

In November 2017 the long-awaited videogame called “Battlefront 2”, developed by “Digital Illusion Creative Entertainment” (DICE), was released. As stated before, Electronic Arts found itself under careful scrutiny for handling microtransactions and the Loot Crate system in their games. After the open-beta and pre-release, this game receives widespread attention from the videogame public and even from mainstream media and politics alike, ranging from the legal activity against the studios to parliamentary interrogation. Here are the key elements explaining the controversy behind Star Wars Battlefront 2 that kickstarted the main focus of mass media and government around the microtransaction issue.

As a sequel to 2015 Battlefront, which was criticised for lacking a single-player story and repetitive multiplayer offerings, Battlefront 2 features new games modes and revisions to its gameplay, including a new single-player campaign. In the beginning, developer DICE stated that Battlefront two would receive free content updates instead of a season pass like they did with the previous Battlefront game. This new content will be new story missions, maps, and hero

characters, with the first free patch scheduled to be released the same week “The Last Jedi” movie hit the theatres. Despite the newly added story mode (which receives lots of critique for different reasons beyond the focus of this work), Battlefront 2’s primary focus is its online multiplayer components. Here, players can advance in rank and acquire resources for their classes and favourite characters. Returning from the previous Battlefront game is the Star Card system, which offers class and hero-focused amplifiers that increase your character’s statistics and grant new abilities for progression in online modes. Star cards are the most useful tool to customise and augment your characters. Greatly expanded in Battlefront 2, it is now a required part of long-term player growth. Adding increases to damage health regeneration along with alternate load-outs and skills, each star card comes in 4 tiers of quality: common, uncommon, rare and epic, with increasing stats for higher ranks. An example of it is a Space Card for the Character of Boba Fett. This card, called “Death from above”, reduces the received damage when using the rocket barrage ability while flying with his jetpack. At level one, the damage you’ll receive is reduced by 50%, and at level 4 the damage is reduced by 100%.

Moreover, collecting star cards for a particular class, character or vehicle will increase its level, allowing better crafting options for higher-tiered cards. As a main difference between the previous games, where to obtain Space Cards, you have to invest time in a special class or play online to obtain credits, Battlefront 2 mixes elements of steep progressions with randomised rewards from dedicated Loot boxes. There are many things you can earn in the game through that randomised system. You could obtain weapons, attachments for in-game weapons, credits, star cards, emotes, alternative outfits for in-game characters, and victory poses. Those Loot boxes will include a mix of star cards abilities, outfits, emotes or victory poses. Players can earn loot crates by completing challenges, completing gameplay milestones, purchasing them with in-game credits, or using the premium currency known as “crystals”. If you get a duplicate start card in a crate, you will get crafting parts, which you can then use to help upgrade any star card of your choice. The star cards system, in particular, are vital for increasing the level of your character and with the dependence on the

games randomised yield for players to acquire the bulk of their resources. The expanded focus on the game-changing star cards leads to fans' concerns and scrutiny for the game, comparing the new Space Cards with the infamous FIFA ULTIMATE card systems.

EA and DICE decided to release an Open Beta of the game from 6th to the 11th of October before its official release, and it reveals lots of issues inside the system.

The main issue for this type of structure it is the ability to obtain those Loot boxes without paying real currency. Various research made by players and published online proved that you could obtain an average of 150 credits for every match. It costs 1000 credits to buy the cheapest Loot box, so that's an average of seven matches around 15 minutes each, just to get one Loot box that gives you one guaranteed star card and two random items. By combining those elements, you have to play almost two hours to pay for a single Loot box with just in-game currency. No matter what how well or how poorly you do in a match, everyone will get the same amount of credits.

Furthermore, another issue was around the crafting parts, where you can only earn them randomly by using Loot boxes. Setting aside the randomness involved in earning crafting parts, the major problem is that everything that involves using crafting parts just costs way too much. For example, if you obtain a level two Star Cards you decide you'd rather use crafting parts to upgrade them instead of trying again to obtain the Level 3 or level 4 versions by using Loot boxes. Well, upgrading a star card from level 2 to Level 3 will require you to pay 120 crafting parts and from level three to four it is required 480 crafting parts. The higher the tier of the Loot boxes, the higher is the quantity of Crafting Parts you'll receive. With the most expensive Loot Crate (it cost around 2.200 Credits) you will receive between 35 to 50 crafting parts per Loot Crate. As we can see, the unbalance in the progression system for credits and crafting parts were a big issue inside the whole Community.

Moreover, the game also allows you to craft weapons and weapon upgrades. However, as a famous YouTuber Joe Vargas was keen to point out in one of his

videos, they cost an exorbitant amount of crafting parts. It is 600 to craft the weapon itself and an additional 100 for each of the three weapon mods, so we are looking at 900 crafting parts total to unlock and maximise a single weapon. Another way you can unlock these weapons is by completing timed challenges and earning class-specific Loot boxes, but even then there is a chance that you might not obtain the weapon you desire. Unfortunately, between those Loot boxes, there is always a percentage of obtaining cosmetics elements for your in-game characters so you are not always guaranteed to obtain elements that will help you with your in-game progression. They didn't address the fundamental ramifications of a system constructed in this way on a competitive multiplayer game where fair competition is crucial and where you can progress quickly in-game by paying real currencies to obtain more star cards and power up your characters and that created, as we saw, lots of controversy. Unfortunately, those issues were destined to develop furthermore.

After the trial period, the developers took steps to alter aspects of the game based on player feedback. EA published a blog post, on their site, about the state of the game, citing players' feedback. The developers adjusted various problems, but crucially they tried to fix the microtransaction system while increasing the rate at which credits are obtained by a small amount. EA's most prominent change to the game was removing epic level rewards from loot crates, affirming that it was done to help keep everyone on a level playing field. Furthermore, the developers transitioned the epics and legendary Star Cards to be obtained only through the in-game crafting system, which is the only way, aside from pre-order and deluxe edition bonuses, to acquire the highest tier star cards. Still, concerns about player in-game progression being dependent on the randomised element of Loot boxes remained. On the 10th of November, EA released a trial version of Star Wars Battlefront 2 on Xbox One and P.C. as an exclusive for members of EA Access with a 10-hour time limit to play the game. Users could experience the first three levels of the campaign mode, and the whole multiplayer experience and all the in-game progress obtained during that playtime could be carried over into the final game upon release. That was the first opportunity for many to dive into the final game, which the developer said they would continuously evolve the in-game

system with player feedback. Upon further play, however, some players felt that the game's core mechanics weren't effectively explained, leading many to feel frustrated with the restrictions and requirements of the game's economy. On the Star Wars Battlefront 2 Reddit page, a user voiced frustration after taking advantage of one microtransaction system. In his statement, the Crystals could not be used to purchase directly various hero characters, which were only available to buy in the form of credits. This user expresses the desire to purchase the Darth Vader hero, who at the time cost 60,000 credits and, using the previous statistics, it was estimated that you would have to play 40 hours worth of gameplay to unlock heroes characters such as Luke Skywalker or Darth Vader. Within the same post an EA spokesperson responded to the post stating the following:

“The intent is to provide players with a sense of pride and accomplishment for unlocking different heroes. As for cost, we selected initial values based upon data from the Open Beta and other adjustments made to milestone rewards before launch. Among other things, we’re looking at average per-player credit earn rates on a daily basis, and we’ll be making constant adjustments to ensure that players have challenges that are compelling, rewarding, and of course attainable via gameplay. We appreciate the candid feedback, and the passion the Community has put forth around the current topics here on Reddit, our forums and across numerous social media outlets. Our team will continue to make changes and monitor community feedback and update everyone as soon and as often as we can.”⁴

This comment was inundated with negative reactions from fans, soon becoming one the most disliked comment in Reddit's history with 667761 downvotes as consequence for the backlash from the post. The developers tried to fix this situation, by reducing prices for all heroes characters by 75%. Nevertheless, DICE also lowered the completion reward for the campaign from 20,000 credits

4

https://www.reddit.com/r/StarWarsBattlefront/comments/7cff0b/seriously_i_paid_80_to_have_vader_locked/dppum98/?context=5 Last Consulted 19-02-2022

to just 5000. On the 13th of November, press reviews from gaming outlets went live; while many of the initial reviews stated that the core gameplay added in Battlefront 2 created a fun and exciting game and it offered a diverse range of content to go through, the multiplayer progression system was met with widespread criticism with the game's dependency on loot crates. Many claimed that the gameplay loop of Battlefront 2 just didn't value play a time or investment in the game. (Yong Yea, - Star Wars Battlefront II - EA Cuts Costs of Locked Heroes After Backlash)

After the reviews were out, more players began to dive into the game Battlefront 2 and found themselves under greater scrutiny from the Community and press alike. Eventually, even mainstream press sites, such as CNN and The Huffington Post, began to cover the games, focusing on microtransactions and the Loot crates system. This increased attention and consumer complaints led the Belgian Gaming Commission to launch an investigation into Battlefront 2 and other video games that use Loot boxes for possible gambling practices. After this announcement, EA released the following statement :

“Creating a fair and fun game experience is of critical importance to EA The crate mechanics of Star Wars Battlefront II are not gambling. A player's ability to succeed in the game is not dependent on purchasing crates. Players can also earn crates through playing the game and not spending any money at all. Once obtained, players are always guaranteed to receive content that can be used in game.” (Makuch 2017).⁵

Before Battlefront 2's official launch, crystals were exclusively used to purchase loot crates for additional rewards, circumventing the need for credits. While crystals can be acquired from particular challenges and milestones, the most immediate way to retain them was from the in-game store. During early access and prior to launch, the purchase options ranged from 4.99 for 500 crystals to \$99.99. For 12,000 crystals, this also allowed players to take advantage of the

⁵ <https://www.gamespot.com/articles/star-wars-battlefront-2s-loot-boxes-are-not-gambli/1100-6454998/> Last Consulted 19-02-2022

premium options to obtain a larger quantity of star cards and resources over others, which fed back into player progression. But in the days since the beta and even before its release, the general perception of how Battlefront 2 offered these paid options were negative. Despite this, DICE developers expressed that these options were not “pay to win”, and the player progress would come down to player skill and not the quantity and quality of Star Card you collect.

In front of complaints of gambling and the overwhelming community’s toxicity surrounding the game, EA CFO Blake Jorgensen made comments about the state of the game during a discussion at the UBS Global Technology Conference on the 16th of November. In addition to commenting on the state of the game, he declared that the players need to be patient as they looked for options to address the Community’s concerns. (Makuch 2017)

“So things that we’ve heard today will tune into the game and they’ll be different tomorrow. Running a live service is all about constantly watching and listening to an reacting to the Community to try and develop great gameplay. But also, players should really understand that we listen to the Community very closely and we will always be changing the games to make those games better and make the Community more excited about playing those games”. (Makuch 2017)⁶

During the Reddit A.M.A. leading up to the launch of the game, DICE developers Dennis Brown, Val and Paul Keslin spoke about the backlash toward the game and expressed that the overall response incredibly saddened them, and they tried to calm the whole situation by releasing the following statement:

“We’ve made a really cool, fun and beautiful game, but it was overshadowed by issues with the progression system. We will fix this.” (Brannval 2018).⁷

Hours after the Reddit A.M.A. (Ask Me Anything) with DICE developers and shortly before the game’s official launch, Battlefront 2’s players abruptly

⁶ <https://www.gamespot.com/articles/ea-exec-responds-to-battlefront-2-microtransaction/1100-6454957/> Last Consulted: 19-02-2022

⁷

https://www.reddit.com/r/StarWarsBattlefront/comments/7d4qft/star_wars_battlefront_ii_dice_developer_ama/dpvg6cx/ Last Consulted: 19-02-2022

discovered that microtransactions were disabled from the game by deactivating the purchase screen for crystals without an initial announcement. Still, Crystals were obtainable in-game by completing milestones and challenges, but, as we stated before, they were time-investing and challenging to acquire. After a few days, EA released a statement announcing that all microtransactions would be disabled from the game until further notice with the following statement:

“Thank you to everyone in our Community for being the passionate fans that you are. Our goal has always been to create the best possible game for all of you – devoted Star Wars fans and game players alike. We’ve also had an ongoing commitment to constantly listen, tune and evolve the experience as it grows. You’ve seen this with both the major adjustments, and polish, we have made over the past several weeks. But as we approach the worldwide launch, it’s clear that many of you feel there are still challenges in the design. We’ve heard the concerns about potentially giving players unfair advantages. And we’ve heard that this is overshadowing an otherwise great game. This was never our intention. Sorry we didn’t get this right. We hear you loud and clear, so we’re turning off all in-game purchases. We will now spend more time listening, adjusting, balancing and tuning. This means that the option to purchase crystals in the game is now offline, and all progression will be earned through gameplay. The ability to purchase crystals in-game will become available at a later date, only after we’ve made changes to the game. We’ll share more details as we work through this”
(Gabrielson 2017).⁸

The whole ordeal ended when EA declared, on the 16th March, 2018, an upcoming revision and detailing the various changes in-game. In-game progression is now linear, Star cards or any other item impacting gameplay will only be earned through gameplay and will not be available for purchase. Instead of a level strictly linked to Star Cards, you earn experience points for the classes, hero characters, and ships you choose to play in multiplayer. Furthermore, Crates are earned by logging in daily, completing milestones and through timed

⁸ <https://www.ea.com/en-gb/games/starwars/battlefront/star-wars-battlefront-2/news/pre-launch-update> Last Consulted: 19-02-2022

challenges. (GameStop Staff, Star Wars Battlefront 2's Loot box Controversy Explained)

However, the damage was already done. The attention towards the microtransactions and the "Loot boxes system" was at the highest. In the next chapter, we will analyse the various actions governments and single citizens took against those practices.

Chapter 3: Case Analysis: Lawsuits, Government Reaction against Microtransactions and Lobbying Activity

We saw in the previous chapter that the player activity could evolve in different ways and even change the developer's direction towards some practice that they consider "dangerous". Now, we will analyse the various lobbying activity made by players and society alike for promoting Microtransactions as a whole.

3.1 Player activity – playing with law

The player felt betrayed by the developers' activity and result for their video games and final product on various occasions. For example, we can take the Fallout 76 release, where Bethesda released a "half-baked" game with lots of missing features and in an unplayable state, or the Cyberpunk 2077 with a poorly-balanced game with lots of missing features and compatibility issues.

In front of this issue, many players create class actions against the developers to fight for what they claim right and against the injustice made by developers. In this thesis, we will analyse various Class Actions against various developers and their results.

3.1.1 Ramirez V. Electronic Arts INC

We shall start with the "Ramizer vs Electronics Arts INC. (Case 5:20-cv-05672) formulated on August 2020.

The Plaintiffs, Kevin Ramirez who cited the Software House on his behalf and on behalf of all others similarly situated, accused the Defendant for damages, injunctive relief, and other suitable relief linked to the application of the "Ultimate Team Packs" inside their licenses sporting games from his first purchase (FIFA 2001) and in the document, he explained in detail every point of his accusation against Electronic Arts. In the first part of the document he explains in detail the whole microtransaction process and evolution, underlying various mechanics and the high-earning from EA Furthermore, he continues the argument against Microtransaction by "cherry-picking" various psychiatric studies who consider the whole microtransactions as dangerous for minors and teenagers. Plus, he cited various governmental decisions against microtransactions as a whole.

At the end of the whole document, the Plaintiffs explain the three Cause of Action against the EA

The first cause of action is the Unlawful and Unfair Business Practices in Violation of the California Unfair Competition Law (“U.C.L.”) (Cal.Bus & Prof.Code 117200, et seq.) where he argues that the Defendant has violated the U.C.L.’s proscription against engaging in unlawful business practices by virtue of its conduct in violation of California Business & Professional Code § § 19800, et seq., California Penal Code §§ 330, et seq., the Illegal Gambling Business Act (18 U.S.C. § 1955), and the Unlawful Internet Gambling Enforcement Act of 2006 (31 U.S.C. §§ 5361-5367). Furthermore, he cited that EA has violated the U.C.L.’s proscription against “unfair” business practices by: conducting illegal and unlicensed gambling business including at places non-suitable for gambling activities, intentionally profiting from conduct designed to create and/or exploit addictive tendencies in vulnerable minors and adolescents, omitting information and misleading parents of vulnerable minors. Plaintiff seeks an Order that obliges EA: to modify its game in a way that prevent the final users from engaging in gambling, from providing owners of EA with notice that the Ultimate Team Packs is being eliminated from their games, to provide restitution of all money spend by the Plaintiffs as result of EA violation of unfair competition rules, that EA have to pay the attorney fees and all other costs incurred by Plaintiff.

The second Cause of Action covers the Violation of the California Consumers Legal Remedies Act (“CLRA”) (Cal. Civ. Code §§ 1750 et seq.). In this case, the Plaintiffs accuse the Defendant that the selling Ultimate Team Packs and all the consequential transactions are unlawful gambling transactions that are prohibited by law and specifically EA has violated Subdivision (a)(14) of California Civil Code § 1770 by “*Representing that a transaction confers or involves rights,*

remedies, or obligations that it does not have or involve, or that are prohibited by law.”⁹

Furthermore, the Plaintiffs argue that EA must rectify the problem or cease the selling of Ultimate Team Packs. (Case 5:20-cv-05672, Document 1, page 36 to 40).

The last Cause of Action accused the Defendant of Unjust Enrichment and sought restitution from EA an order from the Court disgorging all profits, benefits, and other compensation obtained by EA from its wrongful conduct (point 138 to 140 page 40).

Electronic Arts responded to this accusation with a request that those claims should be dismissed because the case because Plaintiffs agreed to the User Agreement presented in every EA videogame. Those User Agreements were notified by a pop-up window that appears on the screen when the user first loads the game and, to continue playing the game, the user must accept the User Agreement and that the Plaintiffs must pursue this issue via Arbitration and individually. Subsection D of the Arbitration Provision stated that clearly. In this case, since the case was presented in the United States of America, the Arbitration is governed by the American Arbitration Associated (“A.A.A.”) Commercial Rules.

The case evolved with an exchange of documents between Plaintiffs and Defendant, with the last reachable document dated 05-03-2021. The Court agreed with EA’s argument and granted EA’s Motion to Compel Arbitration stays the case pending the outcome of the arbitration.

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https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CIV&division=3.&title=1.5.&part=4.&chapter=3.&article= Last Consulted:19-02-2022

3.1.2 Doe V. Roblox Corporation

The second case we are going to analyse is Doe v. Roblox Corporation (Case 3:21-cv-03943) in the Northern District of California.

In this case, the Plaintiffs, Jane Doe (a minor represented by her father) and her friend John Dennis and on behalf of all other similarly situated, accuse the Roblox Corporation of various complaints that we will analyse later in this section. Defendant is one of the largest and growing gaming platforms located in a virtual universe or “metaverse” where developers create games and experiences inside this universe with the possibility of purchasing items made by the developers and users in a virtual marketplace with a premium currency called “Robux”. This game became very popular at the beginning of the COVID-19 pandemic with its vast majority of players were minors. ([backlinko.com LINK](#)). Using the premium currencies, the Plaintiffs acquired some avatar content from the shop with the premium currency (in this case, some pyjamas and jeans), believing that the bought content will remain on their account. Unfortunately, Roblox deleted several of the purchased items without any warning or any given explanation, even if the bought content didn’t contain any trademarked or offensive content, with a direct refusal from Defendant to refund any deleted content from Plaintiff’s accounts. (Document 1 – Case 3:21-cv-03943-WHO, page 14-15). In the document, for the most part of it, Plaintiffs explain in detail the Roblox shop and the attitude to “not controlling” in any way possible the implementation of user-made content because Defendant receives a percentage from every user-to-user purchase inside its platform. Furthermore, the Plaintiffs underline the possibility that some shops are selling registered trademarks to the public, being “moderated” by Roblox (the terminology used by the Defendant for erasing content that directly infringed copyright or other platform policies) and then re-introduced inside the same online platform with a different name by the same user. Lots of this moderated content were identified as “top-selling” content, with a potential of 1 million users that have lost their purchases. The best description of Roblox’s content moderation comes from the company’s own employees. One of the former employees release a statement at [Glassdoor.com](#) site

“[t]he manager that was in charge of us demanded that we have a set quota on the amount of content and accounts moderated each day, even going as far as to banning users off the platform who clearly have done nothing that violated our Trust & Safety policies The Way we were required to treat the platform’s users with clearly false reasons of termination of their service just to meet the required quota that managers told us to meet if we couldn’t reach it with legitimate reasons was the last straw.”¹⁰

As the case before, Plaintiff launched various accusations against Roblox Corporation. First Cause of Action is for Violation of California’s Unfair Competition Law (U.C.L.) (Cal.Bus. & Bus. Prof. Code § 1750 et seq.) by engaging the fraudulent and unfair business acts and practises alleged because the Defendant moderation policies are fraudulent and their business practice are also unfair under the U.C.L. law and unjust enrichment for these practices. At the end of the document, Jade Doe, by her father and next friend John Dennis, request a trial by jury for: declaring that Roblox conduct constitutes a violation under the U.C.L. and CLRA, fraud, conversion and unjust enrichment; awarding injunctive and other equitable relief as is necessary to protect the interests of the Class, an award of all economic, monetary, actual, consequential, compensatory and punitive damages available at law and caused by Roblox Conduct, an award of reasonable litigation expenses and attorneys’ fees, award of pre- and post-judgment interest and other relief that the Court deems reasonable and just.

This case is still in progress with a joint request from Plaintiffs and Defendant to extend the deadline by seven days to respond/reply to Defendant’s motion to dismiss. The next hearing is set for February 16, 2022 and the parties shall file a Joint Initial Case Management Conference.

3.1.3 Zanca V. Epic Games

The last process we are going to analyse is the Zanca v. Epic Games. This Lawsuit was formed in February 2019 by Plaintiff Beau Zanca, Eric Krohm and

¹⁰https://www.glassdoor.sg/Reviews/Roblox-working-environment-Reviews-EI_IE242265.0,6_KH7,26.htm?filter.iso3Language=eng, Last Consulted: 19-02-2022

others against the Epic Games studio in the form of Class Action involving two videogames: Fortnite and Rocket League. The members of the Class Action cited the mechanism of selling the premium currency pushing the client to buy the higher value exchange for those, the fact that the selling of Loot boxes (erased from the game at the beginning of 2019) didn't give the opportunity to obtain the object they desired. Furthermore, it wasn't publicised enough the possibility to receive a refund for your direct purchase after 30 days after you bought those items and the fact that there's no possibility to obtain a refund from the acquisition of any Battle Pass. Moreover, it was underlined that any direct in-app acquisition wasn't notified in any way to the owner of the account and there wasn't any age-restricted control over those direct acquisitions, where the guardians of the minors discover those acquisitions after the 30 days limit imposed by Epic Games; even if the minor has the right to disaffirm and get refunds on any and all in-app purchases without any restrictions. Any Plaintiffs cases underline any of these cases plus that they didn't remember to have agreed or seen the EULA.

At the end of the lawsuit, the Plaintiffs ask to the Court to issue a declaratory judgment that Epic Games violated the consumer rights of the plaintiffs and each member of the proposed Class Action, issue a declaratory judgment that the sale contracts made by them were voidable and a monetary compensation. This process evolved withing a Class Action Settlement between the Plaintiffs and Epic Games. The Settlement Relief is composed by this points:

- a Distribution of Virtual Currency for every account that have bought aby Loot boxes between 1 July 2015 and 25 February 2021. Every one of this accounts have received 1000 Premium Currency per Loot boxes acquired.
- For the members of the Class Action who made in-game purchases will be able to submit a claim for additional compensation by explaining how they were harmed or damaged by the purchases and why they believe they are entitled to compensation. The claim can be rejected by the Settlement Administrator if the information are not given by reasonable time or in the manner requested for the compliant. For minor's purchases will be refunded

- A determined Settlement Funds Cap that shall not exceed Twenty-six million five-hundred thousand dollars (\$ 26,500,500.00)

Furthermore, it give the possibility to the people who are eligible to the Class Action to exclude themselves from receiving additional premium currencies, objecting by writing to the Court explaining why you don't agree with the Settlement Agreement, and finally asking to speak in Court about the fairness of the Settlement.(Notice of Proposed Class Action Settlement, page 2)

The Final Approval was made by the Court on 18 November 2021 and the Settlement Administrator released this statement on the settlement website:

“The Court presiding over this case granted its Memorandum and Order for Final Approval on November 18, 2021. Payments of cash, V-Bucks, or Credits for timely submitted and valid claims will be made only after all claims are processed and after appeals, if any, are resolved. Please be patient.”¹¹

Those action against the software houses made clear that to avoid those types of Class Action and cover themselves was necessary to have a proper EULA and make every aspect of the purchase. Those three cases are the most famous ones and with major relevance not because of their possibility to be in front of a Jury and win the debate (as we have seen, every Lawsuit is sent directly to a Settlement Agreement discussion by the Court) but for their online media coverage.

3.2 Government reactions to microtransactions issue

The attempt from private citizens to regulate through the judiciary system the Microtransactions mechanics pushed the various government to attempt to regulate it. However, as we will discover, almost most of those attempts concluded in failure or a very soft regulation towards those systems.

The first attempt towards the regulation of Microtransaction that we will analyse is from the United States.

¹¹ <https://www.epiclootboxsettlement.com/> Last Consulted: 19-02-2022

3.2.1 United States

The first attempt that we can track of regulation attempt is from the State of Hawaii, wherein date 21 November 2017, the Democratic Representative Chris Lee and Sean Quinlan held a conference where they declared that they are going to attempt to protect the youth and kids against this predatory practice. This Press Conference was held during the Battlefield 2 debacle and attracted lots of media attention from the traditional press and the online community. The Bill Proposal came in date 24 January 2018 where a group of Democratic Representatives there were presented two bills, one in the Hawaiian Senate and the other one in the Hawaiian House of Representative (House Bill 2686 and Senate Bill 3024).

Those Bill were the same in terms of content and text, so we will analyse only one of those Bills. Section 1 of the Bill explain why the Legislature is trying to regulate the Microtransaction system explaining the possible psychological damage that this practice can have to minors. As the official Bill states:

“The legislature further finds that the American Psychiatric Association has incorporated diagnostic criteria for internet gaming disorder as a condition warranting more clinical research and experience, in order to feature this diagnosis in future versions of the Diagnostic and Statistical Manual for Mental Disorders. The World Health Organization has defined gaming disorder, characterized by a pattern of persistent or recurrent gaming behavior, and plans to add this disorder to the latest version of its list of diseases and mental health conditions, the International Classification of Diseases. Mental health experts have raised particular concern about the exposure of youth and young adults to gambling-like mechanisms, which can affect cognitive development and lead to addiction, and to which youth and young adults are particularly vulnerable.”
(Senate Bill 3042 S.D. 2: 2)

The Bill further explains its goal to prohibit the sale of video games that contain a system of further purchasing a randomized reward or a virtual item that can be redeemed to receive directly or indirectly a randomised reward to consumers under twenty-one years old.

Both proposals died in the Committee at a different moment. The House Bill 2686 (where Chris Lee and Sean Quinlan themselves presented it) died five days later after its presentation. Meanwhile, Senate Bill 3042 carried on with its procedure, having two amendments that modified its content that added a more precise definition of Microtransaction and Loot boxes. Unfortunately, this Bill died on 8 March 2018 where it was referred to the Consumer Protection and Commerce Committee (CPC) and it wasn't touched ever since.

In the U.S. Congress, there were two attempts made by Senator Richard Blumenthal. His first attempt was in 2019 with Bill S.1629 with the title: "*A bill to regulate certain pay-to-win microtransactions and sales of Loot boxes in interactive digital entertainment products, and for other purposes*". This bill was presented directly to the Senate on 23 May 2019 and, after it was read twice, it was referred directly to the "Committee of Commerce, Science, and Transportation". The objective of this bill were: the complete Prohibition of Pay-to-Win Microtransactions and Sales of Loot boxes in Minor-Oriented Games, the Prohibition on Publication or Distribution of video games containing Pay-to-Win Microtransactions or purchasing Loot boxes where the publisher or distributor has constructive knowledge that any user is under 18 and the whole responsibility to implement these restrictions were under the Federal Trade Commission. The interesting part of this bill is that in Section 5 there's a direct request for the Federal Trade Commission to submit two studies after implementing this bill. The first study is around the Compliance made by the Game publisher and digital game distributors that comply with the act and other Federal or State laws relating to pay-to-win Microtransactions and Loot boxes. The first study was to be submitted the report directly to every Committee of Congress with jurisdiction over the Commission.

The second study that the Committee were to submit to each committee of Congress with jurisdiction over the Commission were around the Study of the effect of Pay-To-Win Microtransaction and Loot boxes and gave the possibility to the Commission to conduct or commission a psychological research on users who used those microtransactions. This report is the most interesting one because it requires six points for its report. It required to:

- analyse the use of pay-to-win Microtransaction and Loot box design practices in a specific interactive digital entertainment product,
- analyse the psychological effect of pay-to-win microtransactions and Loot boxes of users,
- study game development practices relating the Microtransactions pay-to-win mechanics and Loot boxes design, including a direct testing (A to B) of various microtransactions design
- analyse the effect of those microtransactions design on investment and production in the digital entertainment industry
- Document every different type of microtransactions and Loot boxes designs present in the digital market
- Analyse whether other forms of add-on transactions to interactive digital entertainment products can induce compulsive purchasing behaviour by minors

This Bill is practically dead after three years of hiatus and with no other news coming from official pages.

The next Bill proposal made by Senator Blumenthal is the S.2710 “Open App Markets Act” presented in the Senate. It was presented on 11 August 2021, and it is going to be debated in the Committee on the Judiciary on 20 January 2022. This Bill aims to break the Trust power made by the powerful digital seller like Valve, Google and Apple, where they charge a fixed percentage for every in-game purchase and using the store owner’s own in-app payment systems, the platform owner cannot control the prices that app developers can set other platforms or to prevent independent developers to communicating with their customers directly about discounts and other incentives. Furthermore, this bill underlines that app store owners who also control the operating system they run on, like Google or Apple, will not be allowed to restrict customers from using alternative app stores.

This attempt to regulate the market coincided with a high-profile case of Epic Games V. Apple, where the first tried to avoid paying the 30% charge for every in-game transaction inside the Apple Store by selling those in-game transactions

directly. This can be beneficial for small developers who will directly receive the payment for their games, development, and microtransaction structure.

3.2.2 United Kingdom

The United Kingdom government started two investigations soon after Battlefront 2 chaos. On 9 September 2019, the Digital, Culture, Media and Sport Committee released an official document by order from the House of Commons. It exposed its statement around the “Immersive and Addictive technologies”. This research aims to identify new problems and dangers that can derive from the new technologies and social media, from Data Collection to gambling addiction. During this investigation, the Committee made various conclusions and suggestions around the microtransaction issue and its possible dangers towards minors and sensible people. In the sector “Psychosocial harms of immersive technologies”, they considered the Gaming Disorder and the fact that some studies around this issue are not clear. Doctor Bowden-Jones, in one of the hearings that he participated in, stated that there is a danger from the public rhetoric around the idea that there is an epidemic of gaming addiction because that’s not an accurate reflection of prevalence, especially when it is compared to other types of addictions and bad behaviours. (House of Commons 2019:11-12) Furthermore, they declared that the industry itself has some reluctance to acknowledge that they might have a role in this issue and that they do not commission any study around it. They furthermore stated as a conclusion:

“At present, the games industry has not sufficiently accepted responsibility for either understanding or preventing this harm. Moreover, both policy-making and potential industry interventions are being hindered by a lack of robust evidence, which in part stems from companies’ unwillingness to share data about patterns of play.

The Department should immediately update its areas of research interest to include gaming disorder, working with researchers to identify the key questions that need to be addressed and develop a strategy to support high-quality, independent research into the long-term effects of gaming.

The Government should also require games companies to share aggregated player data with researchers and to contribute financially to independent research through a levy administered by an impartial body. We believe that the industry should pay a levy to fund an independent body formed of academics and representatives of the industry to oversee research into online gaming and to ensure that the relevant data is made available from the industry to enable it to be effective.” (House of Commons 2019:15)

This research also discovered that there are some difficulties by implementing the age-restriction to the videogames by the utilization of parental control because more often than usual it was stated that (by the government and by the industry itself) that usually the minors have more knowledge in the informatic that of their parents, therefore capable of avoiding the parental control programs and limitation that their parents can apply on their computers. The Commission concluded that it is a serious concern that, on this date, there is no effective system (in a Democratic Regime) to keep children away from age-restricted video games. (House of Commons 2019:41)

In Chapter 3 of this document, they analyse the “Financial harms of immersive technologies”, where they analyse in detail the microtransaction issue by interviewing various software houses and developers. One of the interviews they did was with the British company Jagex, creators of RuneScape. During the hearing, they declared that one-third of their revenue derives from microtransactions, with two-thirds coming from an alternative subscription model. Furthermore, they declare that they have a limit in spending per every account that it is limited to 1.000 £ (1194.82 €) per week or 5000 £ (5974.12 €) per month. The motivation behind this limit is not for the good-willingness from the company to limit the expenditure from the player, but to stem from fraud prevention.

Furthermore, they stated that they accept account spending limitation, deletion or suspension of it imposed by the account owner. However, in a case taken by the Committee, they discovered that Jagex deals only with the account’s holders for Data protection reasons (that, in this case, is a minor) and is unable to limit their child’s account spending. All this was to discuss and analyse the possible

gambling effect that this kind of microtransactions can have on minors and impressionable people by analysing various research and statement from different doctors, experts in the field of gambling, they concluded that:

“We believe that any gambling-related harms associated with gaming should be recognised under the online harms framework. To inform this work, the Department for Digital, Culture, Media and Sport should immediately establish a scientific working group to collate the latest evidence relating to the effects of gambling-like mechanics in games. The group should produce an evidence-based review of the effects of gambling-like game mechanics, including Loot boxes and other emerging trends, to provide clarity and advice. This should be done within a timescale that enables it to inform the Government’s forthcoming online harms legislation.” (House of Commons 2019:27)

In the same chapter, they explored the Loot boxes mechanics, explaining it and their functions in detail. They took into consideration the online presentation made by Ben Lewis-Evans, a user experience researcher at Epic Games, during 2018’s “4C International Game Developers Conference” in Prague. This presentation is called “Reward Psychology-Throwing out the Neurotrash”. Where he explains some of the mechanics behind the Fortnite Loot box system. Furthermore, they studied in detail the case of FIFA ULTIMATE TEAM where they have various witnesses that, in one particular case, they declared that

“... in order to compete, players feel like they need to buy hundreds, if not thousands, of £s worth of packs in order to get the best players. Children are especially vulnerable because they lack the maturity to understand that these purchases are manipulative, and their parents may not understand that these purchases are entirely unnecessary.” (House of Commons 2019:28)

After analysing the various testimonies made by the players and the industry, they recommended that

“... Loot boxes that contain the element of chance should not be sold to children playing games, and instead in-game credits should be earned through rewards won through playing the games. In the absence of research which proves that no

harm is being done by exposing children to gambling through the purchasing of Loot boxes then we believe the precautionary principle should apply and they are not permitted in games played by children until the evidence proves otherwise.”
(House of Commons 2019:30)

To warn the players of the risks from the Loot boxes, the Committee advises that the UK Government should advise the PEGI Council to apply the existing “gambling” label on their videogames and impose the corresponding age limits on the product that has that label. Furthermore, the Gambling Commission acknowledge that, under the Gambling Act 2005, Loot boxes are not considered gambling. However, the single payment behind the possibility of winning a prize at random bears a close resemblance to a game of chance. This kind of game for a prize of money or money’s worth is considered gambling under UK law. Unfortunately, the current regulatory layout does not help the Gambling Commission because the definition of “money’s worth” is an area where the Commission itself is constrained by the current legislation, underlying that the Commission is struggling to keep pace with the technology evolution.

A recent Gambling Commission survey also discovered that 3% of 11-16 years old had bet in-game items as a payment method for a state in external, unlicensed gambling on websites outside of video games, underlying that the industry failed to manage those issues. The Committee concluded that

“We agree with the Gambling Commission that games companies should be doing more to prevent in-game items from being traded for real-world money, or being used in unlicensed gambling. These uses are a direct result of how games are designed and monetised, and their prevalence of undermines the argument that Loot boxes are not a form of gambling. Moreover, we believe that the existing concept of ‘money’s worth’ in the context of gambling legislation does not adequately reflect people’s real-world experiences of spending in games.

We consider Loot boxes that can be bought with real-world money and do not reveal their contents in advance to be games of chance played for money’s worth. The Government should bring forward regulations under section 6 of the Gambling Act 2005 in the next parliamentary session to specify that Loot boxes

are a game of chance. If it determines not to regulate Loot boxes under the Act at this time, the Government should produce a paper clearly stating the reasons why it does not consider Loot boxes paid for with real-world currency to be a game of chance played for money's worth.” (House of Common 2019:34)

Continuing the inquiry, the Committee emphasized that online games and social media are data-driven industries that use asymmetrical information and deliberate design practices to drive users to spend more time and money on their platforms by the argumentation that's a player choice. Unfortunately for the Committee, this “freedom of choice” is undermined by the amount of data collected by those industries and the usage of those data alongside design features that have been proven to have a powerful psychological effect, mainly to minors and adolescents.

They concluded this chapter with a suggestion for the Government. For them, they:

“... should outline in its response to this report how it intends to support independent research into the application, extent and effect of design mechanics used in digital technologies to extend user engagement. Such research should then inform the development of a behavioural design code of practice for online services. This should be developed within an adequate timeframe to inform the future online harms regulator's work around “designed addiction” and “excessive screen time” (House of Commons 2019:50)

This research continues with chapter 4, but that chapter goes outside the reach of this thesis, touching the E-Sport capabilities for the United Kingdom and the gender issue inside the gaming industry, plus the industry attempt to fix those issues.

After the release of this document, on 2 August 2021, the Gambling Commission released their Overview document on this issue with the title “Loot boxes in video games”.

In this document, the Gambling Commission explain why, in their opinion, the Loot boxes are controversial and, for that reason, they must be regulated. This

document cited the report from the “Digital, Culture, Media and Sport Committee” (that we have previously talked about) call for a change of the Gambling law. Together with that statement, there is also the “Lord Committee report on gambling harm” dated July 2020, where the House of Lords Committee released a report on gambling problems. In this report, they suggested that the Gambling Law of 2005 should be extended to Loot boxes as well, stating that the academic research proves that there’s a connection between Loot box spending and gambling problems, agreeing with the statement that the “Digital, Culture, Media and Sport Committee” released the previous year.

Furthermore, this document takes into consideration the report commissioned to Plymouth University by the “GambleAware” charity, where it consolidated the previous evidence that there are some structural and psychological resemblances between gaming and gambling. It also found that links between Loot box purchasing and problem “gambling problem” had been verified in around a dozen of studies, that around 5% of Loot boxes purchases could potentially generate half of industry loot revenue, with a potential one-third of them entering into the “problem gambler” category and that the most likely sector who’s going to buy those Loot boxes are young males and those with lower educational attainment. Moreover, the report suggests that future policy on Loot boxes should

“... include provisions for clear definitions of Loot boxes, game labelling and age ratings, full disclosure of odds presented in an easy-to-understand way, spending limits and prices in real currency, and finally, obligations of gatekeepers (i.e. developers, distributors, content providers) for the trade they enable and profit from.” (Close&Llyod 2021:4)

This report, however, warned for the rapidly evolving world of the video game industry that could make any legislation antiquated, calling for long-term mitigation of risk.

The next chapter details what the Government have done until now. In June 2020, they made a call of evidence into the impact of Loot boxes on gambling-like behaviour. With this decision, they aimed to gather information on: the experience of video games players, the impact of Loot boxes, all the information around the

in-game purchases and Loot box system in the United Kingdom and the impact of current voluntary and statutory protections such as consumer regulations, video games labels and spending control. As a result of this call of evidence, on 21 July 2021, the Minister of State Caroline Dinenage declared that they received over 30000 responses. This attempt made by the Government is part of an exhaustive review of the Gambling Act. Their objective was to release a white paper at the end of the year 2021, but unfortunately, they decided to postpone it by the “Spring of 2022”. With that decision, they receive critique by the public opinion and press alike because:

“... Postponement could lead to more suffering and possibly suicides.” (Davies 2021)

3.2.3 Netherland

In April 2018, the Dutch Gaming Authority, or Kansspelautoriteit (KSA), released a legal opinion on the Loot boxes issue after Battlefront 2 release due to the public backlash raised by the significant concerns of gamers, parents and addiction care. This document is called “Study into Loot boxes: A treasure or a burden?” They did it because they had to clarify if the Netherlands should prohibit the Loot boxes altogether and any other risk associated with that Microtransaction system. For doing that, they studied ten video games based on their popularity on a leading online platform that streams video of games and players. They collected all the information they asked Addiction Care to collect information around anyone who had ever been treated for gambling addiction linked to the opening of Loot boxes and to reach a conclusion on their research they outlined whenever there is sufficient reason to make an assesment. The assessment is based on examining any potential damage that video games can cause to the public of the KSA.

In the Conclusion chapter of the research, they concluded that four out of ten Loot boxes systems were contravened by the Dutch Gambling Law for a particular reason: these games permitted that in-game goods from the various Loot boxes were transferable to other accounts. Therefore, every game that permitted in-game goods to be obtained through the Loot boxes systems and be traded

between users was in direct violation of Article 1 of the Betting and Gaming Act. (Dutch Gaming Authority 2018:4)

Furthermore, they used an evaluation tool (used in the past to analyse the Dutch gaming market) to perform a structured and measurable risk assessment of Loot boxes, noting that some care is required in interpreting the result from it. The outcome of this application, on average, stated that Loot boxes have a moderate to high addiction risk potential and is based on how the Loot boxes are proposed to the player. The document continues that the Loot boxes that obtained a higher score have some integral elements similar to the slots machines in casinos. These elements are a high jackpot that the player and, when the player opens those Loot boxes, there is visual and sound effects that follow the opening of those digital packages.

The research continues with the result that there is no indication that Loot boxes are opened on a large scale by problematic players and/or addicted players. However, they stated that socially vulnerable groups such as young people could be encouraged to play other types of games of chance, increasing the possibility that those people could develop a gambling addiction.

Following this legal opinion redacted by the KSA, every in-game goods provided via Loot boxes that are transferable directly violate the Dutch law, specifically the Betting and Gaming Act. (Dutch Gaming Authority 2018:14)

Following this decision, the KSA gives 8 weeks to the various Software Houses to change their Loot boxes system not to violate the law. After this statement, almost everyone complied with the Dutch decision and blocked the possibility to buy Loot boxes to every Dutch player. However, Electronic Arts did not comply because, in their opinion, FIFA Ultimate Team didn't violate the Dutch Law. In mid-October 2018, following this statement, the Court of The Hague authorize the KSA to apply their decision, and they give EA one week to comply. If they failed to comply, KSA were to fine EA's FIFA Ultimate Team game 500.000 € per week up to a maximum of ten million €. (Poole 2020)

It is essential to declare that the Dutch law does not punish the Loot box system altogether, as we are going to see for the Belgian case

3.2.4 Belgium

Soon after the release of Battlefront II and its debacle, the Belgian Gambling Commission (BGC) started an investigation to determine if the Loot boxes presented inside Battlefront II and another famous videogame of that time, Overwatch, were to consider Gambling. After some evaluation, they released their decision on 25 April 2018. The BGC declared the whole video game Loot boxes system as a direct violation of the Belgian's Gambling Legislation, almost following up the KSA decision.

The minister of Justice during this period, Koen Geens, expressed his worrying about this type of microtransaction during a press release on that day:

“Mixing games and gambling, especially at a young age, is dangerous for mental health. We must ensure that children and adults are not presented with games of chance when they are looking for fun in a video game.” (Geens 2019)

The Belgian report found several issues with the Loot box system:

- the rewards are uncertain,
- it can cause an emotional reaction when you open those boxes
- players can be misled into believing they are buying an advantage in the game
- popular YouTubers and other celebrities promote them through video or live streaming, where they spend a significant amount of money
- the actual chance of receiving particular items is often hidden from the player.

This case is similar to the Dutch one. However, there's a main difference: the Belgian ruling does not consider the option to sell or trade the in-game contents obtained with the Loot boxes as an essential factor for determining whether or not this type of microtransaction can be considered as gambling. Therefore, the BGC have defined gambling as any game where a wager can lead to loss or win for, at least, one of the player of this particular game and where chance may even

have a secondary role in the course of the game or size of the winnings. This definition deems every type of Loot box system in the video game industry as illegal. In case of direct violation of the law, the risk was to be fined around 800.000 € and be sentenced up to five years of jail. However, during an interview with Gameindustry.biz, the BGC director Peter Naessens said:

“We are going to take all preparatory measures for the drafting of police reports, but it's not going to be tomorrow. There is a certain amount of time for the minister of justice, but it's not unlimited.” (Taylor 2018)

Other recommendations from the BGC decision include developing specific permits for video games that feature the Loot boxes system and making them accordingly to law. Some of these suggestions were the application of “age verification” in stores when purchasing codes or gift cards and a complete ban on minors being able to purchase gaming featuring these microtransaction mechanics. Furthermore, with the gambling definition provided by the BGC, it defined the many ways in which the Software House can breach the law. For example, in the videogame “Overwatch”, the sole possibility to purchase Loot boxes containing random collectable items constitute a wager, and the chance of a win or loss concerns the wager itself versus the value of the items in the Loot box. As we stated in previously, “Overwatch” has cosmetic-only elements and they are not-tradeable between accounts. However, players give value to those aesthetic items that are altered by artificial scarcity by making them a limited edition item, encouraging the player to buy those Loot boxes to obtaining faster the desired items instead of playing and spending time behind them.

As a direct consequence of this radical decision, every game product decided to stop the purchases of the Loot boxes or retire them entirely for a short period of time until they fixed the system, as happened in the Dutch case. A direct example of this is the Activision-Blizzard decision to make the purchase of Loot boxes unavailable in Belgium for their games “Overwatch” and “Heroes of the Storms”, as well Valve with their game “Counter Strike: Global Offensive” until they represented those loot crates that were obtainable only by playing the game.

As for the Dutch case, EA decided not to comply with the BGC to protect their FIFA Ultimate Team game, so the Commission decided to start legal action against them by September 10, 2018. As for the Dutch case, the legal action ended with the EA's final decision to comply with the BGC decision on 31 January 2019.

3.2.5 Eastern Hemisphere

Outside Europe, there are particular cases of regulation behind the microtransactions systems. Especially in Japan.

In the eastern hemisphere, the application of microtransactions are more implemented in their games, with the famous “Gacha Games” in the mobile sector. The Gacha game is a monetization method similar to the Loot boxes where players pay for virtual items without knowing what they are going to obtain. To regulate this type of video games, the Japanese government took the first step into regulating this trend in 2012, with making “Compu Gacha” games illegal. The “Compu Gacha” or “Complete Gacha” system is an evolution of the “Gacha Game. This type of system takes the “Gacha Game” a step further, promising even rare items in exchange for completing certain pre-determined sets of items obtained through the Gacha system. However, this was purely a formality because the industry was moving away from that type of microtransaction system when Japan’s Consumer Affairs Agency started investigating this business practice. After the publication of this research, the Comsumer Affairs Agency declared the “Compu Gacha” business model illegal starting from 1 July 2012.

In China things are rather different. In 2016 they passed a law that changed how Loot boxes operated inside the nation. According to law, games with Loot boxes have to declare all the possible outcomes and the probability of receiving said rewards when you open one of those. The information was publicly available, including outside the national borders, making it accessible for almost every videogames, with that kind of microtransaction, to insert the percentage to obtain every particular item per every Loot box in their official site. After the 2017 debacle around Battlefront 2, they had an internal discussion between the MOC (Ministry of Culture) and the SAPPRFT (State Administration of Publication,

Press, Radio, Film and Television) because on date 1 May 2017, the MOC released a new regulation that blocked the direct acquisition of Loot Boxes. At the end of this discussion, they updated the regulation with a new set of rules, taking a middle ground between the need of the public and the needs of the industry. The various Software house now had to follow the following sets of rules:

- Elements of “chance” and “prize” in a Loot box are allowed, but the forms of “consideration” paid by a user to get a Loot box are limited. For example, a Loot box can be used to reward the time spent by a user or for completing a game without quitting but cannot be purchased for or exchanged with real money or virtual currency.
- Loot boxes cannot be intentionally designed as a “compulsion loop”, which contributes significantly to gaming addictions. For example, Loot boxes cannot be the only way to get any particular virtual item, regardless of its rarity level.
- Probability and other important information must be transparent to users so they can decide whether to try their luck with a Loot box.

(Tang 2018)

An example of this application of rules can be seen in the “Overwatch” videogame, where players will buy the in-game currency and, in exchange for this transaction, they will receive a determined number of Loot boxes. (Ziebart 2017)

In November 2019, China’s General Administration of Press and Publication further updated this ruleset, creating new burdens to the law. They implemented an obligation to verify the identity of all users using their unique National Identity Number, a shutdown of all services to minors between 22:00 and 8:00 the next morning, a maximum online gaming time fixed to 3 hours on public holidays and 1.5 hours on other days and a maximum in-game spending limits. (Xiao 2019:2)

Chapter 4: Lobby activity made by ISFE, ESA. and Software Houses

The lobby activity made by the Software Houses and the representative such as ESA in America and ISFE in the EU managed to contain the damage of Battlefield 2 Microtransaction's case, but some of their activities were disastrous in terms of public PR.

In this chapter, we will analyse various documents and statements released by various Software Houses and the representative groups that attempt to explain their view on this particular topic. After that, we are going to analyse the stance of ISFE and ESA around the microtransactions

4.1 Public Relation in front of Government and Public by Games Publishers

The activity of lobbying made by the various Software Houses were unsuccessful in depicting the Loot boxes microtransaction in a positive light. Numerous attempts were depicted with a strongly negative light that influenced public perception of those business models furthermore. The most active in the direct lobby activity were made by EA with press released and participating directly in government investigations, especially in the British and Dutch-Belgium cases.

The EA started with a press release trying to contain the bad release of Battlefield 2 and its critique against the game, especially the microtransaction structure. As we stated in chapter 2, Electronic Arts responded to a direct question with the infamous phrase during a Q&A in the subreddit dedicated to Battlefield 2:

“The intent is to provide players with a sense of pride and accomplishment for unlocking different heroes.”¹²

After this release the backlash continue to grow, causing the direct intervention of various government, such as the Dutch and Belgian government. Following up the BGC declaration of their investigation around the Loot boxes issue, EA released a statement to the online newspaper Gamespot:

¹²

https://www.reddit.com/r/StarWarsBattlefront/comments/7cff0b/seriously_i_paid_80_to_have_vader_locked/dppum98/?context=5 Last Consulted 19-02-2022

“Creating a fair and fun game experience is of critical importance to EA. The crate mechanics of Star Wars Battlefront II are not gambling. A player’s ability to succeed in the game is not dependent on purchasing crates. Players can also earn crates through playing the game and not spending any money at all. Once obtained, players are always guaranteed to receive content that can be used in game.” (Makuch 2017)¹³

In this statement, they tried to argue that their Loot box systems are not gambling and that the ability to win a match didn’t depend on purchasing Loot boxes. The same statement was repeated later during the attempt by EA to resist against KSA and BGC. Andrew Wilson released a statement during an interview with Gamesindustry.biz where he commented the BGC decision to investigate the Loot box system directly citing the FIFA Ultimate Team:

“We don't believe that FIFA Ultimate Team or Loot boxes are gambling firstly because players always receive a specified number of items in each pack, and secondly we don't provide or authorize any way to cash out or sell items or virtual currency for real money,

We're working with all the industry associations globally and with regulators in various jurisdictions and territories, [and] have established that programs like FIFA Ultimate Team are not gambling.”¹⁴

Furthermore, during the interrogation made by the “Digital, Culture, Media and Sport Committee” during the investigation of “Immersive and addictive technologies” we have the representative of various video game producers and Game Developers that were interrogated in various interview by the Committee where they responded to various question made by them.

When they were asked how the games companies can limit the game time and spending control, they referred that the responsibility of implementing the

¹³ <https://www.gamespot.com/articles/star-wars-battlefront-2s-loot-boxes-are-not-gambli/1100-6454998/> Last Consulted: 19-02-2022

¹⁴ <https://www.gamesindustry.biz/articles/2018-05-09-ea-adamant-loot-boxes-arent-gambling> Last Consulted: 19-02-2022

parental control fall to the child's parents. As Epic Games' Director of Marketing, Matthew Weissinger, told during the public hearing:

“Parents can monitor play time through things like our weekly play usage report and then take advantage of some of these parental controls around screen time, access and purchasing access, in order to make decisions based on how they would like either their child or somebody else who they share an account with to play the game.” (House of Common 2019:14-15).

However, they almost immediately observed that the parental control can be easily subverted when the technological knowledge of the parents were inferior to their child's knowledge.

Around the microtransaction the Game Publishers tried to argue that their microtransaction structure were ethical and healthy for their players.

During a hearing, King's Chief Marketing Officer, Alex Dale, rejected the statement that in-game currencies are used to hide how much players are spending in microtransactions. Instead, he stated that those in-game currencies give players “good value”. Furthermore, he stated that the adults were responsible for their spending in the video games

(House of Commons 2019: 46)

During the interrogation made by the Committee, there was an interesting answer made by Vice President, Legal and Government Affairs for EA Kerry Hopkins and one representative of the Committee Brendan O'Hara around the microtransactions ethics.

“Brendan O'Hara: You may not have a legal duty of care, but I think you would agree that a company such as yourselves should have a code of ethics. We have heard a lot of evidence in this Committee from Dr David Zendle, among others, that Loot boxes are closely linked to problem gambling, particularly among adolescents. Can I ask both companies: do you consider Loot boxes to be an ethical feature of your games?”

Kerry Hopkins: First, we do not call them Loot boxes.

Brendan O'Hara: Whatever term you wish to apply to them, do you consider them ethical?

Kerry Hopkins: That is what we look at as surprise mechanics. It is important to look at this. 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. We agree with the UK Gambling Commission, the Australian gambling commission and many other gambling commissions that they are not gambling, and we also disagree that there is evidence that shows it leads to gambling. Instead, we think it is like many other products that people enjoy in a very healthy way. They like the element of surprise.

Brendan O'Hara: Just to be absolutely clear, you have no ethical qualms whatsoever about your Loot boxes or surprise mechanics.

Kerry Hopkins: I think you are re-characterising my language. What I said is that I think the way we have implemented our FIFA Ultimate Team packs is ethical.”
(House of Common 2019: 22-23)

After those question, Kerry Hopkins continued to argue that the law interpretation made by the KSA and BGC were made in bad faith and that EA disagree with both institutions.

Since this hearing are available in the UK Government's official site, this part of the hearing went viral online soon after, causing a big backlash in the public opinion, nullifying the attempt from EA and other Publishers to contain the backlash from their videogame and the attention from the media.

4.2 Lobby Activities made by official groups: ISFE, ESA, PEGI and ESRB

The official groups that represent the video game industry took a softer approach in dealing with the backlash that rose during this period, with a press release and public response through their official site using the rhetoric of self-regulation and personal responsibility, together with an information campaign around microtransactions how to manage the parental controls.

Now, we are going to see some of those responses, starting with the Entertainment Software Association (E.S.A.) linked with the Entertainment Software Rating Board for the United States and the Interactive Software Federation of Europe (ISFE) and their associated Pan European Gaming Information (PEGI).

4.2.1 ESA and ESRB

Before continuing with this chapter, we must explain what ESA and ESRB stand for and what are their objective.

The Entertainment Software Association (ESA) was founded in 1994 and is the U.S. lobby group representing the interest of the video game industry at the federal and state level, advocating for robust intellectual property protection and enforcement measures, federal common standard and the reduction to barriers on digital services. This group also organize the Electronic Entertainment Expo (E3) which is one of the largest gaming-expo of the year by importance and impact.

Meanwhile, the Entertainment Software Rating Board (ESRB) was founded by ESA in 1994, and it is an independent organization that manages the video game rating system used in the United States and Canada. It was founded as a self-regulatory measure by the industry as a response to critique moved by the U.S. senator Joe Lieberman and gave America's video game industry a base rating standard to categorize their product in the base of their content. One example is the EC rating (Early Childhood) game such as "FIFA" and the M rating (Mature, it means it suggests that the game is for a player who is seventeen years old or more) such as "Grand Theft Auto".

With this element in mind, we will continue with the study of their lobbying activity around the microtransactions issue.

During the presentation of Hawaiian House Bill 2686 and House Bill 2727, E.S.A. released this statement on Gamesindustry.biz:

"As an industry, we take our responsibility to consumers very seriously and continually work to create greater awareness and transparency about the wide range of in-game experiences.

We strongly believe that the industry's robust, self-regulatory efforts remain the most effective way to address these important issues, and that system has a proven and long record of doing so.

Some consumers and parents may have questions about how Loot boxes work, and ESA has demonstrated a commitment to providing information to guide consumers, especially parents, in their purchase decisions." (Taylor 2018)¹⁵

Furthermore, E.S.A. continues this kind of narrative with lots of communication through their site, inserting a link for the ESRB Parental Control page at the end of every communication, where you can find helpful information on how to manage minor's accounts and limit their spending online. A couple of communications were published between 17 March and 7 August 2019, and those are quite interesting to analyse.

The first one is dated 17 March 2019, and it is called "E.S.A. Leadership desk: Unpacking the Loot box Conversation". As we stated before, they carry on with the narrative that we stated previously, adding a new narration around "enhancing" players' experience while counterarguing that Loot boxes are not gambling. Here is a fragment from their communication.

"Loot boxes, which are an optional feature in some video games, are digital containers that players can open to receive a surprise selection of virtual items, ranging from a new team uniform in a sports game to a magic sword in a fantasy

¹⁵ <https://www.gamesindustry.biz/articles/2018-02-13-hawaii-introduces-landmark-legislation-against-loot-boxes> Last Consulted: 19-02-2022

adventure game. Many Loot boxes are earned through gameplay—doing things like completing a quest or finishing a specific level—but in some games, players can purchase Loot boxes with real-world money.

Critics of purchasing Loot boxes express concern about the element of randomness involved, likening them to gambling. Unlike gambling though, players will always receive something that enhances their experience from a Loot box.

It's the video game industry's goal to ensure players have a positive experience when engaging with our games. We rely on creating a sustainable, long-term relationship with our players, and have no incentive to offer products that create a game environment that is not fun or fair.” (Pierre-Louis 2019)¹⁶

The next month, they released a new communication on 29 April 2019 titled “Parental priorities: what parents can do to better manage spending in video games”.

In this communication, they focused their attention on the parents' power to manage and control their child's purchases and time play by using Parental Controls programs, plus pushing the parents themselves to join their child in the activity of playing their favourite game.

This statement made by the President of ESRB, Patricia Vance, explains ESA's main argumentation.

“Parents can limit in-game purchases or block them altogether, manage how much time their kids spend playing games, and prevent access to potentially inappropriate games based on their assigned age rating.” (Vance 2019)¹⁷

The last important communication on 7 August 2019 was the “Video Game Industry Commitments to further inform consumer purchase” where they clarify the success of the self-regulation and the implementation of more precise

¹⁶ <https://www.theesa.com/news/esa-leadership-desk-unpacking-the-loot-box-conversation/> Last Consulted: 19-02-2022

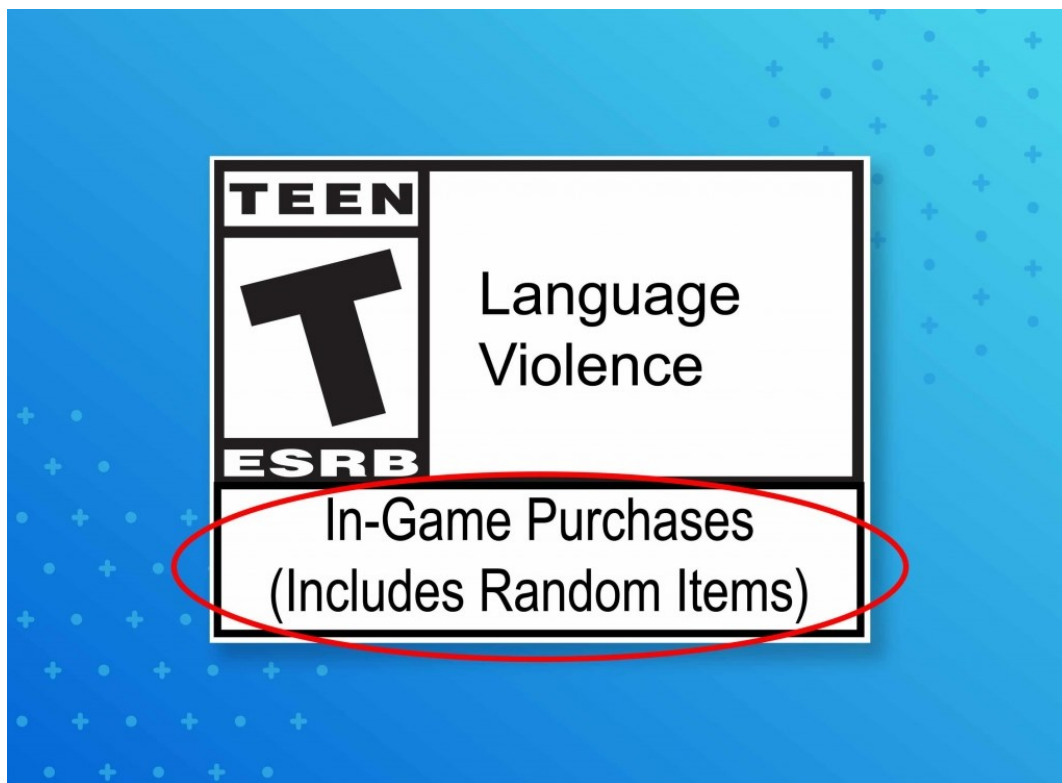
¹⁷ <https://www.theesa.com/news/parental-priorities-what-parents-can-do-to-better-manage-spending-in-video-games/> Last Consulted: 19-02-2022

communication around the content of Microtransactions and In-Game purchases inside their videogames, citing the implementation of new platform policy in various stores such as Microsoft, Sony, Valve, Nintendo, etc. Furthermore, the publisher decided to make clear the relative rarity or probability of obtaining in-game virtual items from buying Loot boxes.

The ESRB, since the ESA founded it, did not take any relevant activity in the public debate. However, when questioned by the online gaming blog Kotaku around the Loot boxes business model issue, they followed the ESA line of communication, stating that Loot boxes aren't gambling (Schreier 2017).

However, in April 2018, they implemented a new label in response to the various critique moved against them, introducing (together with other labels) the "In-Game Purchases". Furthermore, later in April 2020, the ESRB implemented a new label to add under the main rating board, marking that this product has an In-Game purchase and can include random Items, as we can see in Picture 4.

Picture 4: ESRB introduce In-Game Purchases with random items label



Source: ESRB <https://www.esrb.org/blog/in-game-purchases-includes-random-items/>

In the statement, ESRB declared that this implementation responded to the critique and the absence of clarity under the “In-Game Purchases” around the randomised item purchases, concluding this post with a direct online link to the parental control tools can be used to manage minor’s accounts. An essential element of this declaration is that ESRB refuse to categorize the randomised In-Game Purchases as Loot boxes in the following quote:

““Loot box” is a term that doesn’t encompass all types of randomized in-game purchase mechanics. We want to ensure that the new label covers all transactions with randomized elements. In-Game Purchases (Includes Random Items) accounts for Loot boxes and all similar mechanics that offer random items in exchange for real-world currency or in-game currency that can be purchased with real money.

Moreover, we want to avoid confusing consumers who may not be familiar with what a Loot box is. Recent research shows that less than a third of parents have both heard of a Loot box and know what it is. “Loot box” is a widely understood phrase in and around the video game industry and among dedicated gamers, but most people less familiar with games do not understand it. While this new label is primarily in response to feedback from game enthusiasts, it is still essential that all consumers, especially parents, have a clear understanding of the rating information we provide.” (ESRB 2020)¹⁸

4.2.2 ISFE and PEGI

The Interactive Software Federation of Europe (ISFE) lobby group was founded in 1998, and it has six main objectives:

¹⁸ <https://www.esrb.org/blog/in-game-purchases-includes-random-items/> Last Consulted 19-02-2022

- To serve Europe's game ecosystem and represent Europe's and the world's most successful game publishers and developers, guaranteeing that diversity, skill, and creative talent can be protected and continue to grow in Europe.
- Increase harmonised self-regulation and responsible gameplay.
- Build awareness and understanding of games and their value in modern society and to Europe's digital strategy
- Active engagement and dialogue with policymakers to release the full potential of video games in society
- Provided strategic data on the economics and demographic in the video game ecosystem
- Promote Regulatory harmonisation and effective representation for the European's video game ecosystem.

This lobby doesn't limit itself to the European borders but has a continental vision. For example, they have a member in the United Kingdom and Switzerland.

Since lots of action against microtransactions (especially against the Loot boxes business model) were located in Europe, ISFE had a more proactive stance in defending the industry's interest together with PEGI, using a more successful communication strategy.

At the beginning of the issue and following up the declaration by the BGC to start their investigation on Loot boxes, they released a public statement on their site on 22 November 2017 where they confirmed this investigation and that they will continue to monitor the situation and remaining available to consultation and direct dialogue with the relevant authorities. They maintained their word when on 10 May 2018 released a statement about the BGC decision on Loot boxes.

“ISFE and its Belgian trade association, BEA, have several times over the past few months requested a meeting with the Belgian authorities. As such, we welcome the willingness by the Belgian authorities to now initiate a dialogue with stakeholders including ourselves. Our membership takes its responsibility towards gamers seriously and particularly when minors play games. Every platform has parental control tools installed allowing parents to control their

children’s behaviour online, control spending, set and control the time spent on games and online generally, and manage the sharing of information with other players. We are currently in the process of reviewing the report which has now been published by the Belgian Gaming Commission, and would prefer not to comment at this stage.

Most countries across Europe such as Denmark, Sweden and the United Kingdom do not consider that Loot boxes in themselves fall under the national gambling law as there are no means to convert the item(s) obtained into real money-value, i.e. where there are no cash out mechanisms present in the game.” (ISFE 2018)¹⁹

Following up this declaration, on 29 January 2019, they commented the EA decision to stop selling FIFA points in Belgium, where they expressed concerns by the potential impact of the BGC decision on the gamer community in their country. However, they continue with the following statement:

“ISFE therefore welcomes the focus that other gambling authorities in Europe have taken to further look into illegal practices such as “skin betting” where third party gambling sites allow minors to bet and trade on virtual items. ISFE members do not allow, facilitate, or condone the conversion of virtual currencies or other in-game items into money or the use of them within unlicensed third party gambling sites.

The video games industry takes its responsibility to consumers, particularly children, very seriously. Every platform has parental control tools installed allowing parents to ensure their children can play games safely, sensibly and responsibly. These tools allow parents to make choices about the way their children enjoy games, including control and limit spending, set and control the time spent on games and online generally, and manage the sharing of information with other players. The large majority of parents do monitor the in-game

¹⁹ <https://www.isfe.eu/news/report-by-the-belgian-gaming-commission-on-loot-boxes-statement/>
Last Consulted 19-02-2022

spending of their children. Only 2 % of parents chose not to monitor the in-game spending of children.” (ISFE 2019)²⁰

This declaration follows up directly with ISFE attempt to continue their activity in promoting Parental Control. On their main page, there’s a section dedicated to “5 Tips for parents to manage video gameplay” where they explain in an exhaustive way how parents can manage their children’s gameplay, pushing them to look at the national video game trade association to be fully informed in their local language. Furthermore, they push parents to join their children in the game activity and explain that video games can be beneficial in practising motor skills, problem-solving, team playing, improved memory, attention and concentration, multi-tasking and social skills.

After seven months, on 7 August 2019, they released a statement jointly with ESA around the willingness of the industry to inform the consumer of their purchases.

Many of the member companies of the ESA and of ISFE, including console makers and publishers, will implement new policies to provide disclosures to inform consumers about the relative rarity or probability of obtaining randomised virtual items for their video games (e.g. Loot boxes). The major console makers will require paid Loot boxes for games developed for their platforms to disclose information on the relative rarity or probability of obtaining randomised virtual items and are targeting 2020 for implementation. Additionally, major publishers have agreed to disclose the relative rarity or probability of obtaining in-game virtual items from purchased Loot boxes no later than the end of 2020. Several publisher members have already provided disclosure, and many additional members are considering a disclosure. These disclosures will apply to all new games and updates to games that add Loot box features.

The ISFE activity, however, didn’t stop there but continued to release content in the last year arguing around the protection of minors. On 3 March 2021, Simon

²⁰ <https://www.isfe.eu/news/statement-regarding-eas-decision-to-stop-sale-of-fifa-points-in-belgium/> Last Consulted 19-02-2022

Little, CEO of ISFE, released an article to EurActiv with the title “Video Gamers – a long history of commitment to the protection of minors – it is in our DNA”, where they underline the success of their activity on protecting children and guaranteeing protection tools to their parents.

“We believe parental autonomy must be respected. We have a responsibility to empower children to play responsibly and help parents and caregivers with tools that can be set up in the most appropriate way for their child. In addition to PEGI and strict privacy tools, video game companies make parental control tools available on all consoles and devices that allow limits to be set on spending, screen time and in-game communication. Their example is increasingly followed by mobile and P.C. video games platforms.” (Little-Kaleva 2021) ²¹

Furthermore, we must underline the constant activity by ISFE and their partners on publicising and researching the game activity and minors in Europe. Every nation in Europe has its national representative groups that promote the ISFE message of Parental Control and do information campaigns around In-Game Purchases.

Interesting to add is that ISFE yearly survey called “Key Facts”, commissioned to GameTrack, has information around video games utilisation, plus they have documentation around the utilization of Parental Controls. In their last released “Key Facts 2020” they stated that 85% of parents have an agreement with their children that they ask permission prior to a purchase and that 97% of parents use some sort of control or monitor their children’s in-game spending. (ISFE 2021)

Furthermore, in September 2021, they uploaded on their site a report commissioned to Ipsos a document called “Children’s in-game spending” where they released an exhaustive research on minors utilization of in-game spending by reviewing parents. This research used data from five nations: United Kingdom, France, Germany, Spain and Italy and they used previous data collected during the “Key Facts” research on microtransaction utilizations and Parental Control.

²¹ <https://www.euractiv.com/section/digital/opinion/video-games-a-long-history-of-commitment-to-protection-of-minors-its-in-our-dna/> Last Consulted 19-02-2022

They concluded that 74% of Europeans' children do not personally spend their money and this trend increased from 53% calculated in 2018, that the average spending is around 33 € per month, most of the purchased items are decorative items only and that the numbers of parents of children who have an agreement with their children on spending levels remains high on previous research. (Cook 2021)

As the ESRB is subordinate to ESA, the same relationship is applied between PEGI and ISFE.

The Pan European Game Information is the independent rating game organization founded in 2003 by ISFE and replacing the various national rating systems with a unified one. Right now, it is used by 35 countries presented in the European continent. This rating system categorized different type of age and content in their videogames and this structure evolved in the following years.

PEGI did not participate like the ESRB in the debate, but they limited themselves to support the ISFE in their lobby activity on two occasions: one in 2018 and the second time in 2020. The first occasion was the implementation of the in-game purchase label in their game copy, and the second occasion, following the ESRB trend, they updated the label with the introduction of a more specified bottom label that inform the presence of paid random items. Here's the following description provided by PEGI:

“Paid random items are a particular form of optional in-game purchases : they comprise all 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). Depending on the game, these items may be purely cosmetic or they may have functional value: they can include additional characters, outfits and other appearance upgrades, but also tools or weapons, etc. They may unlock extra levels, add new skills or provide performance upgrades. For the purpose of this descriptor, “paid” random items are those that can be purchased directly with real money and/or those that can be exchanged for an in-game virtual currency that itself can be purchased directly with real money.

If a game does not include these paid random items, but contains in-game offers to purchase items, it will only display the in-game purchases descriptor.” (PEGI 2020) ²²

An example of the implementation of PEGI rating in a video game copy can be seen in Picture 5, where are applied the last changed implemented in 2020.

Picture 5: PEGI features In-Game Purchases with random items label



Source: PEGI 2020 <https://pegi.info/news/pegi-introduces-feature-notice>

²² <https://pegi.info/news/pegi-introduces-feature-notice> Last Consulted 19-02-2022

Chapter 5: Conclusion

We saw in the previous chapters that Microtransactions are a complex topic, with different approaches and techniques to attract people into spending money after buying the game itself. On the one hand, there is a fear of applying gambling techniques to minors, predatory practices that punish players who don't buy microtransactions that give a decisive advantage on your gameplay, bleak capitalism that focuses more on maximising results with minimum effort without worrying about their customer's opinions and care. On the other hand, there are rising costs in gaming production, the attempts to increase the lifespan of video games and the attempt (in good will) to insert new content in a viable way.

As we have seen at the beginning of this thesis, different types of microtransactions are, for the most part, accepted by video game players, particularly aesthetic microtransactions. Even microtransactions that give players form of advantage tend to be accepted, but only in a free-to-play environment and only if the developers manage to maintain a certain balance in the game itself. However, the Loot boxes system became under scrutiny since the beginning, and the issues related to this business model remained overlooked.

When the Loot boxes system was pushed too much towards predatory practices or some elements that were considered outrageous by the community, social media, social platforms, and journalists took the leading role in fighting against Software Houses. Only when the situation went too far, as in the example of Battlefield 2's Loot boxes, did the traditional media intervene with TV services and articles in newspapers. After this, governments started looking at those issues, though with some limited success. As a result of these actions, the microtransactions word became the synonym of Loot boxes and bad business practices in-game.

How can the European Union can manage this situation? How can it learn from national experiences, lawsuits against Software Houses and the self-regulation activity that followed soon after?

On November 2019, the Policy Department for Economic, Scientific and Quality of Life Policies (an institution part of the European Parliament) commissioned a study for the Internal Market and Consumer Protection Committee of the European Parliament (IMCO), and it was released in July 2020. The title is “Loot boxes in online games and their effect on consumers, particularly young consumers”, and it analysed the regulatory framework at the EU and national level within. This study underlined that, since 2012, there were monitoring activities made by the European Parliament and the Commission towards online gambling services and investigative activity towards Loot boxes jointly with the Consumer Protection Cooperation Network (CPC). However, the EU has not yet taken any significant action towards managing the Loot boxes issues and the microtransactions (Cerulli-Harms et al. 2020:32).

The authors of the previously stated study considered the Dutch and Belgian cases, analysing in detail their decisions, and concluded that national gambling authorities intensify their cooperation to ensure that the Publishers take actions against third online marketplaces that violate their terms and condition by selling in-game products. It underlines that banning Loot boxes altogether impacts the Single Market for video games while signalling that national action against gambling is limited and inefficient. The research continues by arguing that Loot boxes are a specific example of a more general issue around problematic game design and in-game monetisation methods, signalling that the industry developed rapidly and that focusing only on one type of microtransaction will inevitably make the whole legislation lag behind technological development. The study continues with the recommendation that a broad perspective beyond the gambling aspect must be taken and that these issues should be approached from a more comprehensive consumer protection perspective.

Furthermore, the study formulates other suggestions too: to add default implementation of parental control measures in video games targeted to minors; to continue the research around the damages that microtransactions can procure to minors; to increase the awareness of minors and parents on the risks of microtransactions; to verify that consumer information and transparency are functional and working properly.

The study concludes with the following statement:

“The European Union has the competence to harmonise rules on consumer protection in the Single Market. The European Commission is therefore in a position to take a holistic approach on design and monetisation elements in video games which include, but are not limited to, certain types of Loot boxes that may have harmful effects on players, in particular minors. Measures taken at EU level should be based on evidence for the effectiveness of existing initiatives and can range from non-binding recommendations to binding legislation in the form of Directives.” (Cerulli-Hams et al. 2020:43).

At this point, Loot boxes are being abandoned for more secure types of microtransactions such as Battle Pass practices and direct purchases of in-game elements. However, the market is changing fast.

In the last few months, the video game industry started to look very carefully towards the Non-Fungible Token (NFT). NFTs are based on “blockchain” technology and give owners a digital Certificate of Authenticity that a dedicated worldwide network can verify. To be more specific, the chain of custody is marked in the file itself, making it impossible to modify the property of the file. To acquire such products, it is mandatory to utilize Cryptocurrencies such as Ethereum or Bitcoin.

For the video game industry, the NFTs can be in-game assets that can be owned by the user with the potential to be swapped and transferred to other games. However, the implementation of NFTs in the video game industry was almost immediately controversial for various reasons:

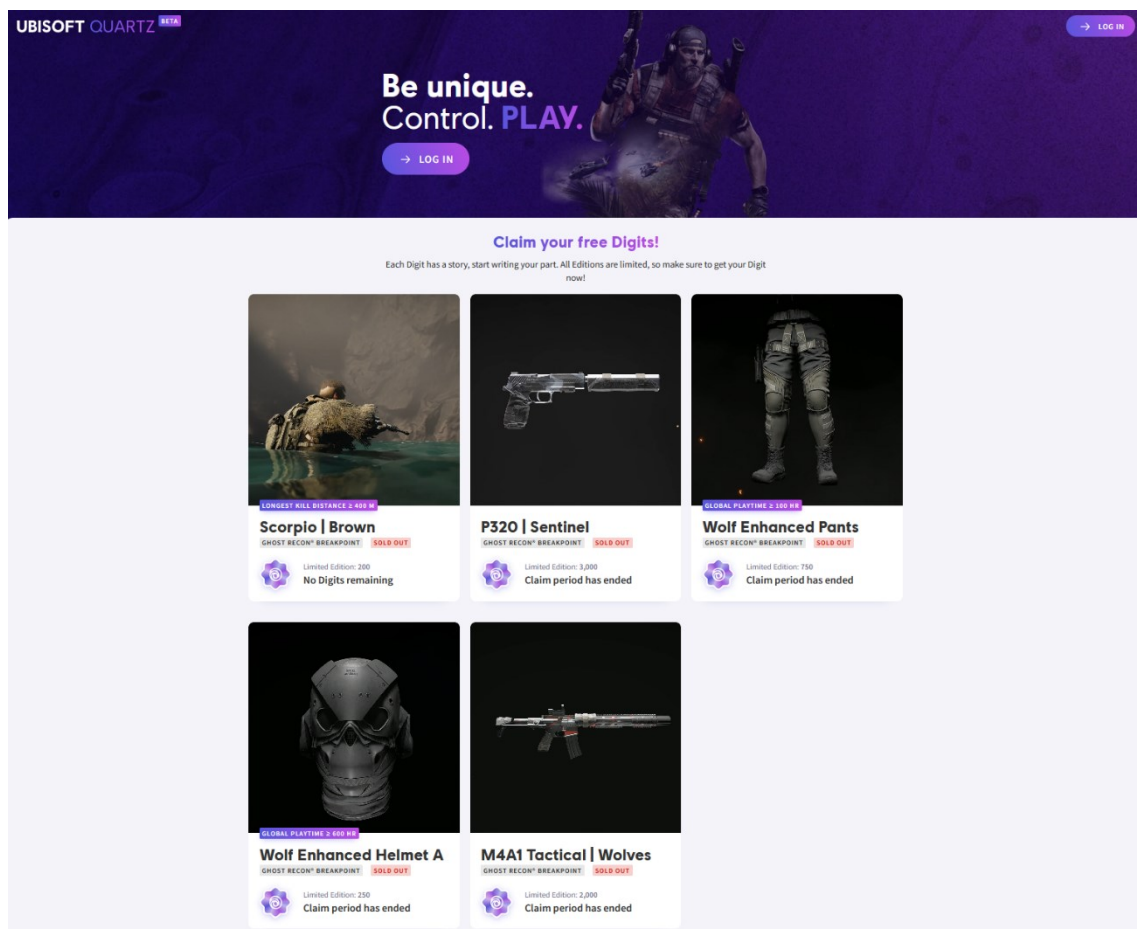
- The transactions of NFTs and the verification of ownership process are long and require high energy usage, therefore there’s an increase in greenhouse gas emission linked to these products.
- Birth of a new type of gameplay: Play-To-Earn. This type of gameplay compensates the players with NFTs for the time they spend grinding in those games, allowing them to sell those items at a later point.

- The impossibility to transfer NFTs to other games because they must be implemented and balanced within the game that issued them.
- Money laundering through the use of Cryptocurrency.

These are some of the issues that NFTs entail. However, software houses like Square Enix and Ubisoft are planning judicial action to continue with this trend. The latter has already opened an NFT store with some exclusive in-game NFTs that are usable only in one game so far, as we can see in Picture 6.

The video game community's reaction to the NFTs was almost identical to the reaction against the Loot boxes practices, with Twitter posts going viral, highlighting the lack of clarity from the Software Houses about how they want to use the NFTs and all the other issues that I just mentioned.

Picture 6: Ubisoft Quartz Store



Source: Ubisoft Quartz: <https://quartz.ubisoft.com/dashboard>

As the NFTs approach the digital market and become another monetization model inside the video game industry, this represents a new call for European institutions to start a serious discussion and a new dialogue with national institutions and lobby groups to ease concerns and avoid predatory practices that can damage consumers and minors.

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