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Questionable Monetization: Video Game Loot Boxes and Gambling Law in Thailand

The video game industry has undergone substantial changes over the years. With the transition from standalone consoles or computer games to online gaming, the move to mobile, and more recently the prevalence of new monetization structures, the modern business of video games is very different from what it once was. Unfortunately, however, in many jurisdictions, the laws and regulations have not kept pace with technology.

Of all of these changes, arguably the most significant is the development of new ways of paying for games, or new monetization structures. In the old days, you would purchase a cartridge for your gaming console, or software for your computer, making a one-time payment and playing the game without limit. In recent years, many game publishers have transitioned to new methods of monetization, such as monthly or annual subscription models, ad-supported models, and the “freemium” model, where you can play a game for free but you are encouraged to spend money within the game. There are also combinations and variations of all of these models.

Publishers have generally found in-game purchases to be a successful means of monetization. Simply put, players are offered the opportunity to buy virtual items with real cash. For example, in a role-playing game, a player might purchase armor or vehicles, pay to activate additional features, purchase additional lives, or acquire special abilities. Further building on that concept, many games allow the purchase of “gacha” or “loot boxes,” and this has presented new legal problems in multiple jurisdictions.

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Offering a loot box allows a player to purchase an unknown set of virtual items. Among those, a loot box offers a player the chance to obtain “rare” or “valuable” in-game items, with the items that the player actually receives determined by an algorithm. While games typically provide information on the types of items players could receive in loot boxes, the player does not know which specific items they will receive until after they actually purchase a loot box.

While loot boxes have been exceedingly successful, government authorities in numerous jurisdictions have taken a skeptical view. Some government authorities regard

loot boxes as a form of gambling, and there are concerns that loot boxes may fall foul of compliance with consumer protection requirements.

Gambling law and consumer protection law are inherently local. In contrast, modern online games are inherently international, and games are generally available regardless of the location of the player (save for a few exceptional countries). As such, loot boxes may be a form of gambling in one jurisdiction but not in another, and in some jurisdictions their status may remain questionable.

In Thailand, the *Royal Institute Dictionary* defines “gambling” as a game of wagering for money or valuable things by chance or intelligence. Thailand’s Gambling Act was enacted in 1935, though it has been amended several times. The law is phrased in terms of “games.” It prohibits the organization of, participation in, or gambling in, any of the games specified in its List A, any similar games, or any harmful games so specified in subsequent ministerial regulations, unless a royal decree is issued granting permission. The act also contains another list of games (List B), which are permitted for the direct or indirect benefit of the host, only if they are licensed by the proper authorities or if they are allowed by ministerial regulations. Additional games can be made subject to those restrictions by specification in ministerial regulations.

Most of the games in Lists A and B of the Gambling Act are traditional forms of gambling, such as three-card monte, bingo, backgammon, totalizators (also known as tote boards or pools), sweepstakes, or bookmaking of any game. It remains arguable whether the sale of loot boxes in an online game would fit within any of the items on List A or List B. However, the act further prohibits gambling or any playing of games of guessing or predicting, unless such games are named in a ministerial regulation that specifies the permitted conditions.

It also provides that tickets for lotteries, raffles, sweepstakes, or any game of chance promising money or other benefits to any of the players, must be sent to the licensing officer for a seal before being put on the market, and it prohibits publicly announcing such games, or directly or indirectly inviting any person to participate in them, until such permission has been granted. Sale of a loot box would likely be a game of chance promising benefits to players (thus being captured by the legislation), but online games certainly do not use paper tickets (thus making compliance extremely burdensome or impossible).

The Gambling Act also specifies that arrangements for complimentary gifts or prizes to be awarded through people trying their luck in any manner in the conduct of a business or in the pursuance of an occupation requires the prior permission of the licensing officer. So, even the giving of a complimentary loot box, together with a player’s purchase of another in-game item, would likely be captured by this provision.

This is just one example of the many issues that loot boxes may face under Thailand’s gambling regime. There are many other provisions that would present compliance risks in relation to the sale of loot boxes, and much could be written about how and whether such provisions apply to these transactions. Suffice it to say that the Gambling Act has not yet caught up with modern-day online games. Whether sale of loot boxes should or should not be prohibited under the Gambling Act, or whether and how loot boxes should be regulated, is a question of public policy. However, both game publishers and consumers would benefit from clarity and certainty in this area. 🎲