



# VIDEO GAME LOOT BOXES & THE REGULATORY WILDERNESS

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# TRIGGER WARNING

This presentation will include video and still images of both traditional casino play as well as loot boxes.

Those who are concerned about engaging with this content are urged to leave the hall at this time.

# “LOOT BOX”

- Random or *seemingly* random result
- Can be bought directly or often earned at varying rates by play
- Player has no ability to influence the outcome

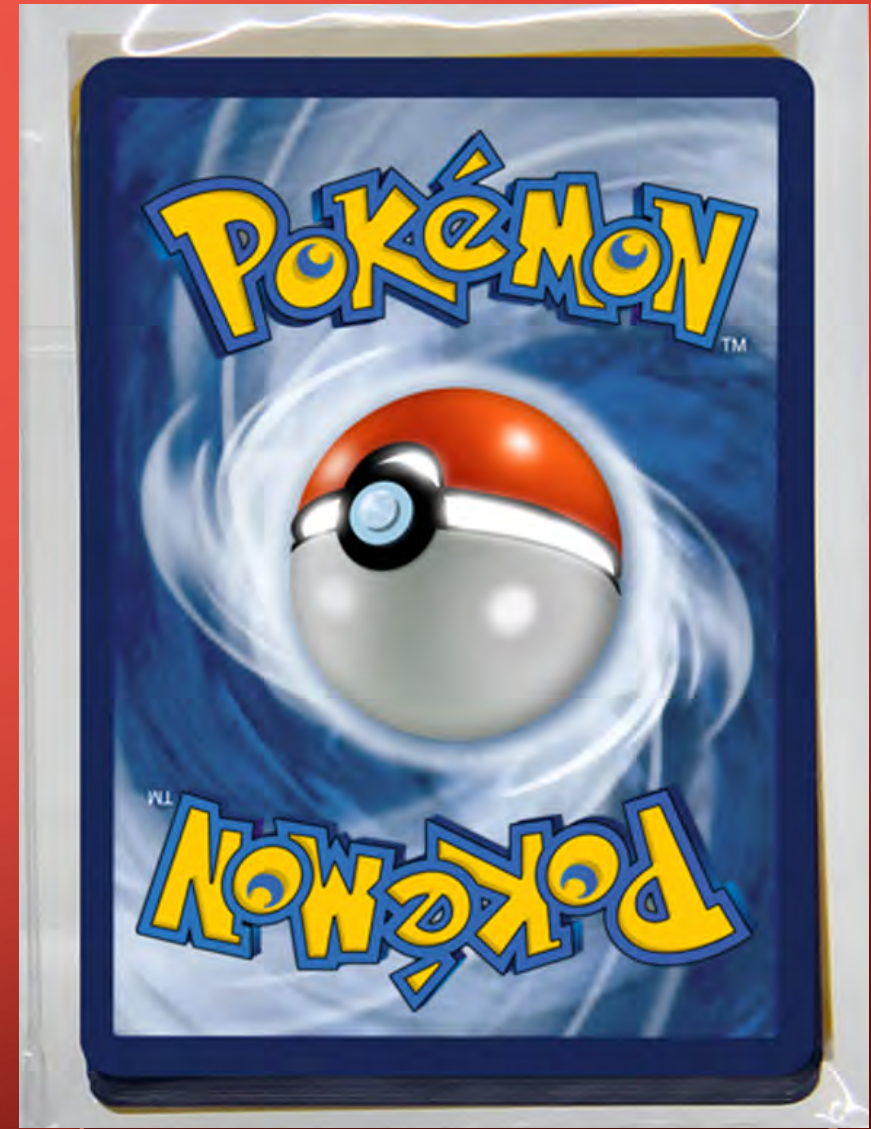
# “MICROTRANSACTION”

- Direct product purchase
- Real funds are exchanged for a product at a set price



# PHYSICAL ORIGINS OF A DIGITAL PHENOMENON

- Baseball and other collectable card products have been popular with both young people and adults for generations
- Key Features:
  - Set Price
  - “Surprise” for the purchaser
  - Cards of varying value
  - Outcome fixed at time of manufacture
- Case Law – The 1990s
  - Outcome determined at time of manufacture
  - Player always receives something of value equal to their “consideration”
  - Any added value from rare or desirable cards is merely a “bonus”
  - See – Price v. Pinnacle Brands / Schwartz v. Upper Deck / Milberg Weiss Bershad Hynes & Lerach Class Action
- “Fun” International Perspectives / Pokemon
  - Saudi General Secretariat of the Council of Senior Religious Scholars
    - “polytheism against God by multiplying the number of deities, and gambling, which God has forbidden in the Quran and likened to wine and idols”





## ORIGINS OF RANDOM “LOOT” IN VIDEO GAMES

- Begun through MMORPGs (Massive Multiplayer Online Role Playing Games)
  - Earned through play / adventures
  - Could not be earned through real cash expenditures
  - In-Game market for loot existed “Auction House”
  - “Black” market for account trading did exist
    - Against game’s terms of service
    - Could and sometimes did result in player bans / lost of “black” account
- Early trends
  - Colors denote rarity / “value”
  - Physical presentation of a box / explosion of light and color



# THE RISE OF PAID LOOT BOXES AND GAMBLING MECHANICS

- First seen in the Chinese MMO “ZT Online”
  - “virtual treasure boxes, which may contain in-game items worth more than the cost of the box itself”<sup>1</sup>
- Products evolved from being earned exclusively through play, to being bought with real money or money intermediaries
- Early profit machines: Puzzle & Dragons
  - First mobile game to gross \$1B in revenue (Gross sales in 2012 were \$1.5B)
  - Japan eventually outlawed the game as gambling, but the developer tweaked the game play to avoid the specific regulation



1. Martinsen, Joel. "Gamble Your Life Away in ZT Online." DANWEI. December 26, 2007. Accessed May 15, 2019. Gamble your life away in ZT Online.

# EARLY PAID VARIATIONS

- Team Fortress 2
  - Released for retail sale in 2007
  - Went “free to play” in 2011
  - Within nine months of becoming free to play, Valve reported that revenue from Team Fortress 2 had increased by a factor of twelve<sup>1</sup>
  - Game then included
    - Microtransactions
    - Loot box “keys”



1. Miller, Partick. "GDC 2012: How Valve Made Team Fortress 2 Free-to-play." Gamasutra. March 7, 2012. Accessed June 8, 2019. [https://www.gamasutra.com/view/news/164922/GDC\\_2012\\_How\\_Valve\\_made\\_Team\\_Fortress\\_2\\_freetoplay.php](https://www.gamasutra.com/view/news/164922/GDC_2012_How_Valve_made_Team_Fortress_2_freetoplay.php).





## Overwatch®: Loot Boxes

Overwatch®: In-Game Content

2 Loot Boxes - \$1.99

5 Loot Boxes - \$4.99

11 Loot Boxes - \$9.99

24 Loot Boxes - \$19.99

50 Loot Boxes - \$39.99

Buy Now

Gift

♥ Add to Wish List

## Gear up and go!

Whether you're launching rockets through the delicate cherry blossoms of Hanamura or skating through King's Row, you want your hero to feel like you—so grab a few Loot Boxes and customize to your heart's content. Each Loot Box contains four items—so you could get anything from Skins, Emotes, Victory Poses, or Voice Lines, to Sprays, Highlight intros, or credits you can use to acquire many customization options!

- Requires Overwatch® or Overwatch®: Origins for PC.
- Loot Boxes are bound by account and platform.
- Internet connection, free Blizzard® Battle.net® desktop app, and registration required to play.
- Loot Boxes are available for PC only.
- Loot Boxes are available to purchase or earn through in-game systems.
- [System Requirements](#)
- [Product Details](#)



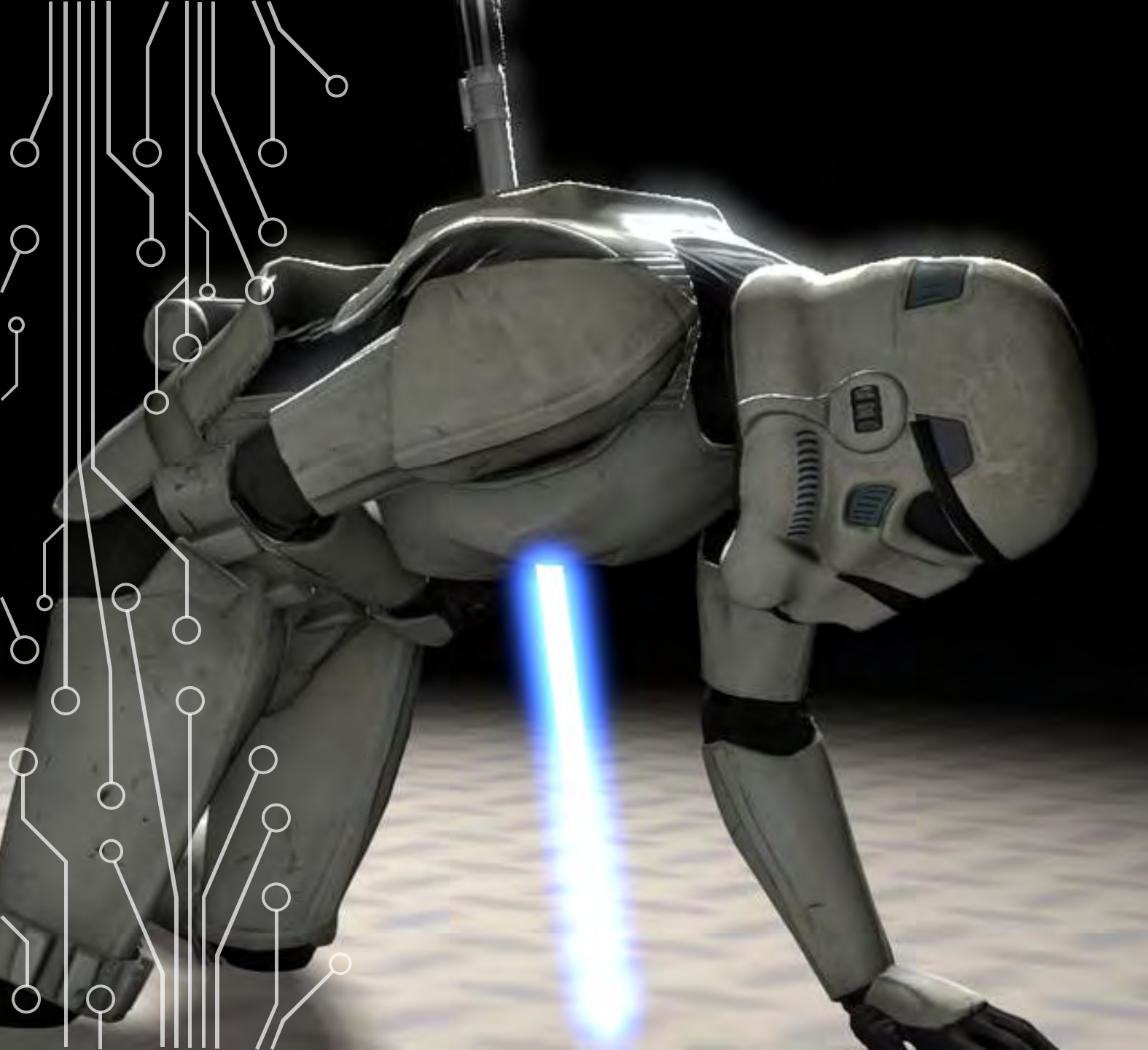
# PAID LOOT BOXES: COSMETIC VS. COMPETITIVE

## “COSMETIC ONLY”

- Skins – AKA costumes, outfits, hats, weapons decoration, ect.
- Emotes – Character dances / behaviors
- Special lines / voices
  - Hastalavista baby
  - I’ll be back
  - Get to the CHOPPAH!

## COMPETITIVE

- Improves performance in the game
- Typically provides a competitive edge
  - Run fast shoes
  - Camouflage jacket
  - More powerful weapon
  - Stronger armor



# TURNING PLAYERS INTO PAYERS



# MAY THE ODDS BE WITH YOU

Play



Result



Advance



Frustration

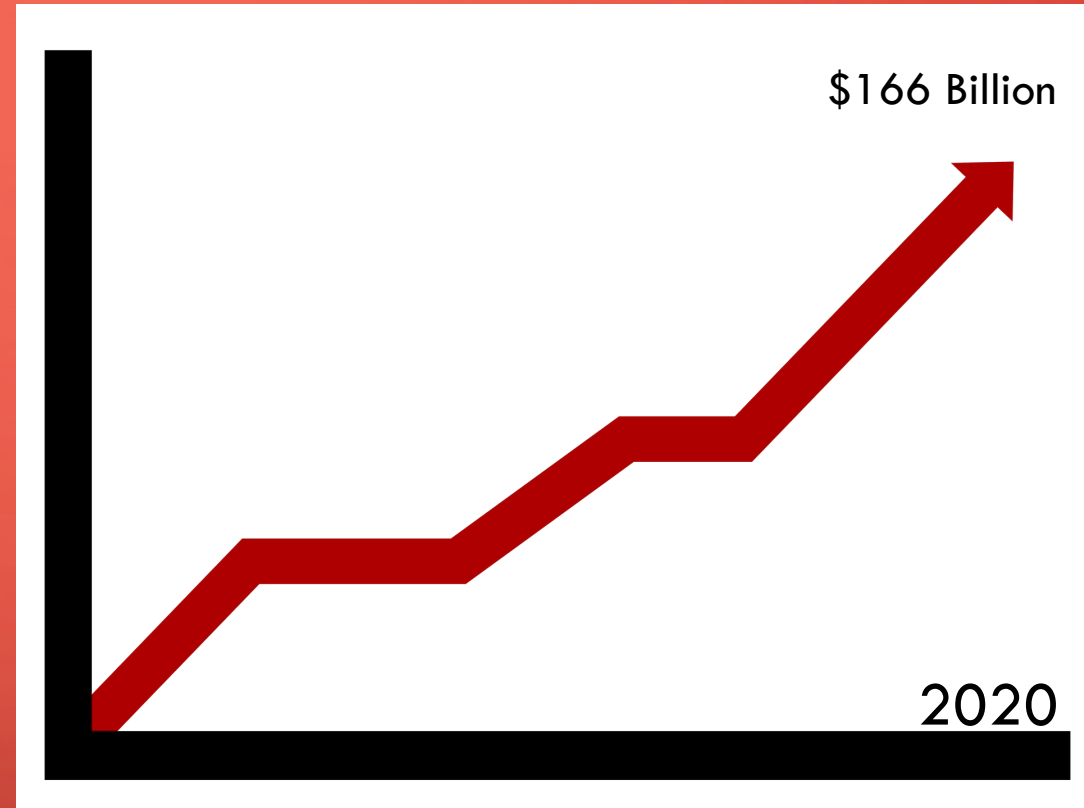


Acceleration



# WHY THIS MATTERS

- Ethical Concerns
- Legal Standing
  - Outlawed in Belgium and Netherlands
  - Legislation pending in US
- Financial Impact
  - Clash of Clans made **\$2.3 Billion** in 2016 in only microtransactions
    - In 2018 traditional casino betting in Ohio totaled \$837.5 million
  - Electronic Art's FIFA Ultimate Team loot boxes generated **\$800 Million** in 2016.
  - In the 2017 fiscal year, Activision Blizzard made **\$7.16 Billion**, roughly **\$4 Billion** of which came from "in-game net bookings"
  - A new study from Juniper Research forecasts that loot boxes and skins gambling, two emerging gaming growth sectors, will reach a total spend of **\$50 billion by 2022**, up from under **\$30 billion** this year.
- Pathway To Problem Gambling?
  - July-2019 – Computers in Human Behavior
  - "regardless of the presence or absence of specific features of loot boxes, if they are being sold to players for real-world money, then their purchase is linked to problem gambling"





# THE IMPACT IS REAL

- **EA's FIFA Soccer 2019**
  - 4 children spent £550 on FIFA loot boxes "card packs"
    - Children watched their father buy them one pack, then repeated the process without permission
    - "You pay £40 for the game, which is a lot of money in itself, but then the only way to get a great team is essentially by gambling"
    - "They spent £550 and they still never got their favorite player, Lionel Messi."
  - Last year a 32 year old found out he spent over \$10,000 on loot boxes in EA's FIFA products over the product lifetime



# Borderlands 3

Platform: Windows PC, PlayStation 4, Xbox One

Rating Category:



Content Descriptors: Blood and Gore, Intense Violence, Sexual Themes, Strong Language

Other:

- Users Interact (PC, PlayStation 4, Xbox One)
- In-Game Purchases (PC, PlayStation 4, Xbox One)

**Rating Summary:** This is a first-person shooter in which players assume the role of a Vault Hunter engaging in combat missions while traversing through planets on foot and in vehicles. Players explore new planets, interact with characters, and accept missions to kill specific enemies or obtain objects/information. Players use pistols, machine guns, shotguns, grenade launchers, and explosives to kill enemies in frenetic combat. Battles are highlighted by realistic gunfire, cries of pain, and frequent blood-splatter effects. Some weapons cause enemies to explode into blood sprays and body parts. Stylized environments depict further instances of violence and gore: severed heads on spikes; a human corpse on a spit fire; a giant grinder emitting body parts and blood; a birthday cake decorated with severed fingers. The game contains some sexual material, mostly in the dialogue (e.g., "Looks like someone won't be getting a pre-coital foot rub"; "...I wasn't always the smokin' hot six-stroke sex engine I am today"; "I'm talkin' sex stuff! Two rounds if I've got the juice."). The words "f\*\*k," "sh\*t," and "a\*shole" appear in dialogue.





# THE REGULATORY WILDERNESS

- Video game industry is exclusively a self-regulated operation.
  - Entertainment Software Rating Board
    - Parent organization: Entertainment Software Association
    - Rates games / products for content
    - Founded in 1994
  - Retailers voluntarily obey and anecdotally do not enforce ratings purchase requirements
- Traditional gaming
  - At least 69 government regulatory agencies and departments in the US alone
  - Regulations are NOT voluntarily enforced
  - New Jersey
    - New Jersey Legalized Games of Chance Control Commission
    - New Jersey Casino Control Commission
    - New Jersey Lottery
      - 2017 Online Casino Revenues: \$245,605,981
      - 2017 Activision-Blizzard In-Game Net Bookings: \$4,000,000,000



# PARTS OF THE INDUSTRY ARE SAYING “ENOUGH”

- Tim Sweeney – CEO of Epic Games
  - Makers of the radically popular title “Fortnite”
- Fortnite is extremely popular with youth under 18
- In 2019 the game eliminated random lootboxes (shows the player the contents before purchase)
- Dice Summit – Feb 2020
  - “We have to ask ourselves, as an industry, what we want to be when we grow up“
  - “Do we want to be like Las Vegas, with slot machines or do we want to be widely respected as creators of products that customers can trust? I think we will see more and more publishers move away from loot boxes.“
  - “We should be very reticent of creating an experience where the outcome can be influenced by spending money. Loot boxes play on all the mechanics of gambling except for the ability to get more money out in the end.
  - “We have businesses that profit by doing their customers harm.”





# DISCLOSURES

- EULA – End User License Agreement
  - Account buying, selling, and trading
- In-Game Net Bookings
  - Typically involve BOTH loot box and direct microtransactions / DLC
- ESA Statement on Loot Boxes (Nov. 2018)
  - "Contrary to assertions, loot boxes are not gambling," reiterated the ESA. "They have no real-world value, players always receive something that enhances their experience, and they are entirely optional to purchase."
  - "They can enhance the experience for those who choose to use them, but have no impact on those who do not."