ESRB and PEGI's Flawed 'Includes Random Items' Label: Self-Regulation of Random Reward Mechanisms (e.g. Loot Boxes) Alone Fails to Ensure Consumer Protection

Leon Y. Xiao [0000-0003-0709-0777]*

<leon.xiao.y@gmail.com>

*: Durham Law School, Durham University, Palatine Centre, Stockton Rd, Durham, United Kingdom DH1 3LE

Content Type: Letter to the Editor

Running Head: ESRB and PEGI's Flawed 'Includes Random Items' Label

Word count: 869

Conflict of Interest Declaration: None

1 May 2020

ESRB and PEGI's Flawed 'Includes Random Items' Label: Self-Regulation of Random Reward Mechanisms (e.g. Loot Boxes) Alone Fails to Ensure Consumer Protection

To the Editor:

The potential harms of loot boxes and similarly randomised monetisation methods in video games (hereinafter, random reward mechanisms (RRMs) (Nielsen & Grabarczyk, 2019), and the relationship between RRMs and gambling have been identified and established in the literature to a limited extent (Brooks & Clark, 2019; Drummond & Sauer, 2018; King & Delfabbro, 2018, 2019; Kristiansen & Severin, 2019; Larche et al., 2019; Li et al., 2019; Nielsen & Grabarczyk, 2019; Xiao & Henderson, 2019; Zendle, Meyer, et al., 2019; Zendle, Cairns, et al., 2019; Zendle & Cairns, 2018, 2019). National gambling regulators have concluded that certain implementations of RRMs constitute gambling under their national laws (Autorité de regulation des jeux en ligne [ARJEL; Regulatory Authority for Online Games] (France), 2018; Belgische Kansspelcommissie [Belgian Gaming Commission], 2018; Digital, Culture, Media and Sport Committee of the House of Commons [DCMS Committee] (UK), 2019; Federal Trade Commission (US), 2019; Kansspelautoriteit [The Netherlands Gaming Authority], 2018; Senate Environment and Communications References Committee (Australia), 2018; UK Gambling Commission, 2017). Restrictions on the sale of RRMs to children have been implemented in the People's Republic of China (Xiao, 2020a).

On 13 April 2020, the Entertainment Software Rating Board (ESRB) and the Pan European Game Information (PEGI), the video game industry's self-regulatory authorities responsible for assigning age and content ratings to video games in North America and Europe, respectively, introduced the 'Interactive Element' of 'In-Game Purchases (Includes Random Items)' and the 'Includes Paid Random Items' 'Content Descriptor,' respectively (ESRB, 2020; PEGI, 2020). The ESRB argued that this measure is intended to better inform consumers by specifically identifying the randomised nature of certain in-game purchases (ESRB, 2020). The ESRB and PEGI argued that these labels will ensure consumer protection (ESRB, 2020; PEGI, 2020). However, this measure is flawed and misleading.

This measure does not provide sufficient information to the consumer. Use of the more inclusive terminology of 'Random Items,' rather than 'loot boxes,' correctly recognised

that loot boxes represent only one particular implementation of RRMs (Nielsen & Grabarczyk, 2019). However, the generic term 'Random Items' is incapable of ensuring consumer protection because it fails to convey sufficient tangible information about the mechanics in question so as to allow consumers to identify them effectively when they are encountered, unlike established 'Content Descriptors' such as 'Violence' and 'Gambling,' which have inherent meaning. The meaning of 'Random Items' is not explained alongside the labels. Further, this measure does not inform consumers of when 'Random Items' become purchasable; how much they cost; if they affect gameplay or are merely cosmetic; and if they can be 'cashed-out' (*i.e.*, transferring in-game virtual items in exchange for real-world currency (Xiao, 2020b)).

The ESRB and PEGI deny the potential gambling-related harms of RRMs and have refused to categorise RRMs as gambling or simulated gambling using their 'Content Descriptors' (DCMS Committee, 2019, para. 85; Vance, 2018), which are intended to identify specific potentially harmful content satisfying the predetermined definitions, and whose assignment guarantees a minimum age rating and would restrict children under 13 and 12, respectively, from purchasing RRMs (ESRB, n.d.; PEGI, n.d.). By definition, a game which would be assigned the 'Includes Random Items' labels must also have satisfied the predetermined conditions required for the 'Gambling' Content Descriptors to be assigned. The 'Random Items' label is an inferior substitute, which is less capable of protecting children from consumer harm, invented by the ESRB and PEGI to identify RRMs without correctly identifying them as gambling and assigning games containing them the 'Gambling' Content Descriptors and the corresponding minimum age limits.

Finally, this measure can be circumvented. A contemporaneously released video game, *Animal Crossing: New Horizons* (2020) does not itself contain RRMs (and therefore cannot be assigned the labels), but supports a separate product line of physical cards which can only be bought in sealed randomised booster packs (Nintendo, n.d.-a, n.d.-b). A game containing such a feature, which is potentially abusive in manners similar to RRMs (cf Zendle, Walasek, et al., 2019), circumvents this self-regulatory measure. This potential circumvention raises a grave concern with RRM regulations in general: when specific implementations of RRMs are regulated, game companies may invent other similarly abusive predatory monetisation methods to replace those that have been restricted.

The introduction of this measure is a deceptive false signal: it represents to the public that consumer protection in relation to RRMs is being improved and ensured; however, in fact, the measure is flawed and is designed not to protect consumers to the fullest extent that both the ESRB and PEGI are empowered to do. The protection of consumers from the potential gambling-related harms of RRMs requires legal restrictions on their sale in the short-term, and the adoption of ethical game design by the industry in the long-term (King & Delfabbro, 2019; Xiao & Henderson, 2019). The DCMS Committee's argument (2019) that the precautionary principle (that 'the lack of scientific certainty cannot justify [regulatory] inactivity in cases of high risk' (Girela, 2006, p. 285)) applies to the regulation of loot boxes is persuasive (para.79). Regulation must now be pre-emptively applied to ensure consumer protection, and the burden of proof must now be shifted onto the industry: it must prove that loot boxes are not harmful before any regulation should be disapplied.

References

Autorité de regulation des jeux en ligne [ARJEL; Regulatory Authority for Online Games] (France). (2018). *Rapport d'activité 2017-2018 [Activity Report 2017-2018]*. Retrieved 1 May 2020, from http://www.arjel.fr/IMG/pdf/rapport-activite-2017.pdf

Belgische Kansspelcommissie [Belgian Gaming Commission]. (2018). *Onderzoeksrapport loot boxen [Research Report on Loot Boxes]*. Retrieved 1 May 2020, from https://www.gamingcommission.be/opencms/export/sites/default/jhksweb_nl/docume nts/onderzoeksrapport-loot-boxen-final-publicatie.pdf

Brooks, G. A., & Clark, L. (2019). Associations between loot box use, problematic gaming and gambling, and gambling-related cognitions. *Addictive Behaviors*, *96*, 26–34. https://doi.org/10.1016/j.addbeh.2019.04.009

Digital, Culture, Media and Sport Committee of the House of Commons [DCMS Committee] (UK). (2019). *Immersive and Addictive Technologies: Fifteenth Report of Session 2017–19* (HC 1846). Retrieved 1 May 2020, from https://publications.parliament.uk/pa/cm201719/cmselect/cmcumeds/1846/1846.pdf

Drummond, A., & Sauer, J. D. (2018). Video Game Loot Boxes Are Psychologically Akin to Gambling. *Nature Human Behaviour*, *2*(8), 530–532. https://doi.org/10.1038/s41562-018-0360-1

Entertainment Software Rating Board [ESRB]. (n.d.). *Ratings Guide*. ESRB Official Website. Retrieved 1 May 2020, from https://www.esrb.org/ratings-guide/

Entertainment Software Rating Board [ESRB]. (2020, April 13). Introducing a New Interactive Element: In-Game Purchases (Includes Random Items). *ESRB Official Website*. Retrieved 1 May 2020, from https://www.esrb.org/blog/in-game-purchases-includes-random-items/

Federal Trade Commission (US). (2019, August 7). *Inside the Game: Unlocking the Consumer Issues Surrounding Loot Boxes*. Public Workshop, Washington, DC, US. Retrieved 1 May 2020, from https://www.ftc.gov/news-events/events-calendar/inside-game-unlocking-consumer-issues-surrounding-loot-boxes

Girela, M. Á. R. (2006). Risk and Reason in the European Union Law. *European Food and Feed Law Review*, *1*(5), 270–285.

Kansspelautoriteit [The Netherlands Gaming Authority]. (2018). *Onderzoek naar loot boxes: Een buit of een last? [Study into Loot Boxes: A Treasure or a Burden?]*. Retrieved 1 May 2020, from https://www.kansspelautoriteit.nl/publish/library/6/onderzoek_naar_loot_boxes_-_een_buit_of_een_last_-_nl.pdf

King, D. L., & Delfabbro, P. H. (2018). Predatory Monetization Schemes in Video Games (e.g. 'Loot Boxes') and Internet Gaming Disorder. *Addiction*, *113*(11), 1967–1969. https://doi.org/10.1111/add.14286

King, D. L., & Delfabbro, P. H. (2019). Video Game Monetization (e.g., 'Loot Boxes'): A Blueprint for Practical Social Responsibility Measures. *International Journal of Mental Health and Addiction*, *17*(1), 166–179. https://doi.org/10.1007/s11469-018-0009-3

Kristiansen, S., & Severin, M. C. (2019). Loot box engagement and problem gambling among adolescent gamers: Findings from a national survey. *Addictive Behaviors*, *103*, 106254. https://doi.org/10.1016/j.addbeh.2019.106254

Larche, C. J., Chini, K., Lee, C., Dixon, M. J., & Fernandes, M. (2019). Rare Loot Box Rewards Trigger Larger Arousal and Reward Responses, and Greater Urge to Open More Loot Boxes. *Journal of Gambling Studies*. https://doi.org/10.1007/s10899-019-09913-5

Li, W., Mills, D., & Nower, L. (2019). The Relationship of Loot Box Purchases to Problem Video Gaming and Problem Gambling. *Addictive Behaviors*, *97*, 27–34. https://doi.org/10.1016/j.addbeh.2019.05.016

Nielsen, R. K. L., & Grabarczyk, P. (2019). Are Loot Boxes Gambling? Random Reward Mechanisms in Video Games. *Transactions of the Digital Games Research Association*, *4*(3), 171–207. https://doi.org/10.26503/todigra.v4i3.104

Nintendo. (n.d.-a). *Animal Crossing amiibo cards and amiibo figures*. Nintendo Official Website. Retrieved 1 May 2020, from http://animal-crossing.com/amiibo/

Nintendo. (n.d.-b). *Animal Crossing: New Horizons*. Nintendo Official Website. Retrieved 1 May 2020, from https://www.nintendo.co.uk/Games/Nintendo-Switch/Animal-Crossing-New-Horizons-1438623.html

Pan European Game Information [PEGI]. (n.d.). *What Do the Labels Mean?* [PEGI Official Website]. Retrieved 1 May 2020, from https://pegi.info/what-do-the-labels-mean

Pan European Game Information [PEGI]. (2020, April 13). *PEGI Introduces Notice To Inform About Presence of Paid Random Items*. PEGI Official Website. Retrieved 1 May 2020, from https://pegi.info/news/pegi-introduces-feature-notice

Senate Environment and Communications References Committee (Australia). (2018). *Gaming Micro-Transactions for Chance-based Items*. Retrieved 1 May 2020, from https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_an d_Communications/Gamingmicro-transactions/Report

UK Gambling Commission. (2017). *Virtual Currencies, eSports and Social Gaming—Position Paper*. Retrieved 1 May 2020, from http://www.gamblingcommission.gov.uk/PDF/Virtual-currencies-eSports-and-social-casino-gaming.pdf

Vance, P. (2018, February 27). *ESRB Response to Senator Hassan* [Letter to Margaret Wood Hassan]. Retrieved 1 May 2020, from http://esrbstorage.blob.core.windows.net/esrbcontent/about/news/downloads/ESRB-response-to-Senator-Hassan_Vance-22718.pdf

Xiao, L. Y. (2020a). People's Republic of China Legal Update: The Notice on the Prevention of Online Gaming Addiction in Juveniles (Published October 25, 2019, Effective November 1, 2019). *Gaming Law Review*, *24*(1), 51–53. https://doi.org/10.1089/glr2.2019.0002

Xiao, L. Y. (2020b). Which Implementations of Loot Boxes Constitute Gambling? A Legal Perspective on Random Reward Mechanisms. Preprint. https://doi.org/10.31228/osf.io/7swhq

Xiao, L. Y., & Henderson, L. L. (2019). Towards an Ethical Game Design Solution to Loot Boxes: A Commentary on King and Delfabbro. *International Journal of Mental Health and Addiction*. Advance online publication. https://doi.org/10.1007/s11469-019-00164-4

Zendle, D., & Cairns, P. (2018). Video Game Loot Boxes Are Linked to Problem Gambling: Results of a Large-Scale Survey. *PLoS One 13*(11): E0206767. https://doi.org/10.1371/journal.pone.0206767

Zendle, D., & Cairns, P. (2019). Loot Boxes Are Again Linked to Problem Gambling: Results of a Replication Study. *PLoS One 14*(3): E0213194. https://doi.org/10.1371/journal.pone.0213194

Zendle, D., Cairns, P., Barnett, H., & McCall, C. (2019). Paying for Loot Boxes is Linked to Problem Gambling, Regardless of Specific Features Like Cash-out and Pay-to-win. *Computers in Human Behavior*, *102*, 181–191. https://doi.org/10.1016/j.chb.2019.07.003

Zendle, D., Meyer, R., & Over, H. (2019). Adolescents and Loot Boxes: Links With Problem Gambling and Motivations for Purchase. *Royal Society Open Science 6*: 190049. https://doi.org/10.1098/rsos.190049

Zendle, D., Walasek, L., Cairns, P., & Meyer, R. (2019). Links between problem gambling and spending on booster packs in collectible card games: A conceptual replication of research on loot boxes. Preprint. https://doi.org/10.31234/osf.io/ps54r