

# ADVERTISING, MARKETING & PROMOTIONS

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## FTC PLANS WORKSHOP ON ‘LOOT BOXES’

The Federal Trade Commission (FTC) will be holding a public workshop on August 7, 2019 on video game “loot boxes” following concerns raised by U.S. Senator Maggie Hassan.

The FTC’s chairman, Joseph Simons, said in a letter to the senator that consumer advocacy organizations, parent groups and industry members would be invited to participate in the workshop. Simons added that the workshop could “help elicit information to guide subsequent consumer outreach, which could include a consumer alert.”

Several months ago, the FTC indicated that it was considering issues raised by video games with loot boxes – nearly a \$30 billion industry according to an estimation by Juniper Research – but the chairman offered no comments on the status of that investigation in his letter to the senator.

### WHAT ARE LOOT BOXES?

Many popular video games allow players to acquire digital goods such as additional lives, character costumes, weapons or gold coins for in-game spending from what has come to be known as “loot boxes.” These digital goods generally can be acquired in one of two ways:

1. In most games, players can win goods from a loot box through in-game micro-transactions, which allow the players to move up to the next level or otherwise progress in a game.

### THE BOTTOM LINE

A strong push has come forth from the likes of Senator Hassan, other legislators, the FTC and consumer lawsuits regarding consumer protection issues related to “loot boxes” in video games. This year may see efforts at regulating loot boxes move forward to the extent they have not done so to date, as the FTC prepares for its workshop on August 7, 2019.

2. Some games permit players to purchase digital goods from a loot box by using a gift or debit card or other real-world payment methods.

In many instances, video game players acquire the digital goods, which typically are randomized, without knowing what they are until the transaction is completed. In some cases, these virtual goods have real-world value and can be sold for hundreds, or even thousands, of dollars.

### SHOULD LOOT BOXES BE CONSIDERED GAMBLING?

An improperly designed video game with loot boxes may create an unintended sweepstakes or illegal lottery within the game.

Now, the primary focus among some regulators, legislators and consumers across the United States and internationally appears to be

on whether loot boxes amount to gambling or, at least, whether loot boxes may lead to a gambling problem. Senator Hassan, in a letter last year to the Entertainment Software Ratings Board (ESRB), pointed out that there is “robust debate over whether loot boxes should be considered gambling.” She added that loot boxes “raise several concerns surrounding the use of psychological principles and enticing mechanics that closely mirror those often found in casinos and games of chance.”

The ESRB has said that it cannot find “any evidence that children specifically have been impacted by loot boxes or [that they lead] them to some sort of tendency towards gambling.” Moreover, the Entertainment Software Association has made it clear that, in its view, “loot boxes are not gambling.” Players, the association said in a statement, “always receive something

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that enhances their experience, and they are entirely optional to purchase.”

Nevertheless, legislation has been introduced (though not yet passed) in several states that would restrict loot boxes in a variety of ways, including by requiring warning labels or by regulating them like lottery tickets or slot machines. (The label “in-game purchases” now appears on video games with loot boxes, following a decision by the ESRB.)

#### A LAWSUIT

A lawsuit was recently filed in a federal district court in California in a challenge

to the way video games with loot boxes are marketed and advertised.

The proposed class action against Epic Games, Inc. (Epic), which makes the video game *Fortnite*, asserts that its loot boxes are marketed “as highly likely to contain valuable loot that will increase a player’s power and prowess” but that they do not do so upon purchase.

According to the complaint, “[l]ike with a slot machine, Epic psychologically manipulates its young players into thinking they will ‘get lucky,’” but its loot boxes “almost never contain what they are touted as containing.”

#### FOR MORE INFORMATION

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