

U.S. Regulation of Loot Boxes Heats Up with Announcement of New Legislation

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Sen. Josh Hawley (R-MO) sent shockwaves through the video game industry this week when he formally announced that he intends on introducing new legislation that would regulate the use of loot boxes and “pay-to-win” microtransactions in video games. If such a bill were to be introduced and become law, it would be the first law in the United States to specifically regulate the use of loot boxes and microtransactions in games.

The Current State of Loot Boxes:

Loot boxes are digital mystery boxes or packages containing in-game items or rewards — often randomized — that are sold for money or in-game currency. Typically, players purchase loot boxes to obtain new characters, animations, and cosmetic items that do not affect gameplay. Some microtransactions, by contrast, involve purchasing items or characters that do affect gameplay, sometimes even providing a competitive edge, thereby earning the characterization “pay-to-win.” Game developers and publishers have been introducing loot boxes with increasing frequency in recent years as an alternative form of game development and funding. Prior to this announcement, the market for loot boxes was on pace to grow as large as \$50 billion by 2022.

Increasingly, the use of loot boxes in games has been viewed as an unauthorized form of online gambling and an addictive predatory practice, particularly as it relates to children playing games. Game developers and industry groups like the Entertainment Software Association have historically rejected these claims on the basis that the player always gets something in return, as opposed to a slot machine, and by restricting the transferability of any items granted via loot boxes.

Demonstrating the differing views on regulation, some countries have banned loot boxes entirely, or regulate them as a form of online gambling, whereas others have stood back to allow time for the

industry to regulate itself. In some cases, that has forced game companies to change the way in which the loot box mechanic works in some games, or remove them from games entirely.

In the United States, there is no legislation currently in place to regulate this practice. In November 2018, Sen. Maggie Hassan (D-NH) issued a letter that implored the Federal Trade Commission (FTC) to investigate the use of loot boxes in games, which the FTC promised to do without detailing its position on the matter. In response, the Entertainment Software Rating Board (ESRB) announced that it would add an “In-Game Purchases” label to alert purchasers of games that allow for these types of microtransactions. Several states, including Hawaii, Washington, California, and Minnesota, also introduced bills last year to regulate the use of loot boxes in games, but all failed to pass.

The Proposed New Loot Box Bill:

Against this backdrop, the announcement of Sen. Hawley’s proposed bill is noteworthy for any business in the video game industry. Called “The Protecting Children from Abusive Games Act,” the bill would specifically seek to protect minors by focusing on games either targeted at, or played by, consumers under the age of 18. Determining what games are targeted at minors would apparently be based upon a number of factors, including the game’s subject matter, visual content, and other indicators similar to those used to determine the applicability of the Children’s Online Privacy Protection Act (COPPA).

For games that meet the bill’s criteria, the legislation would prohibit “several forms of manipulative design.” In particular, the announcement identifies that the legislation would prohibit loot boxes, defined as “microtransactions offering randomized or partially randomized rewards to players.” Further, it would outlaw “pay-to-win” game designs, including both (1) attempting to induce players to spend money to quickly advance through game content that is otherwise available for no additional cost; and (2) manipulating the balance in competitive multiplayer games to give players who purchase additional microtransactions a competitive advantage over other players who do not pay the additional fees.

The proposed legislation would be enforced by the FTC through its authority to curb unfair and deceptive trade practices. In addition, the proposed legislation would empower state attorneys general to file lawsuits against game makers to enforce the act.

If passed, this new U.S. loot box bill would likely have a significant impact on game design and implementation, particularly as many games now rely heavily on in-game transactions. For those who want to learn more about loot boxes and their impact on the game industry, we encourage you to check out the LAN Party Lawyers Podcast episode on this topic: [All-In on Loot Boxes](#). If you have questions about how this proposed law may impact your business, please contact the authors of this alert.

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