

# ***Does A Post-Brexit and Post-Pandemic UK Need Ad Hoc Legislation/Regulation For Videogames?***

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**DISCLAIMER:** This paper was prepared by the author in his/her personal capacity and presented at the Queen Mary Postgraduate Law Conference 2021. The opinions expressed and any possible omissions or errors are the author's own, and do not reflect the views of the QMPGLC, the CCLS or in any way those of the Queen Mary University of London.

The gaming industry is a growing and booming business. In a year when numerous businesses have been crippled by the global pandemic, the gaming industry has thrived. Investment in the industry “soared in 2020 to a record \$13.2 billion, up 77 percent”<sup>1</sup> on the previous year. The UK has certainly not missed out on this influx of investment, with the UK market growing to “£907 million in 2019/2020”<sup>2</sup> with growth being “faster in 2019/2020 than it’s ever been since trade association TIGA started doing annual reports in 2007/08”<sup>3</sup>. 2020 also saw the biggest acquisition deal in the gaming industry ever, with Microsoft buying ZeniMax Media for \$7.5 billion<sup>4</sup>.

Yet, the games industry is rather heavily ignored when it comes to the legislative and regulatory mechanisms of the UK. The industry is often left alone, with the usual overarching regulations that cover all private businesses, with little to no, industry specific legislation. This dearth of legislation has left the industry to fester in its deeply rooted problems, and newer ones have been allowed to crop up.

The industry is also unique in the variety of consumers that it attracts, with a large number of children making up those involved in the industry, with 80% of UK 12–15 year olds<sup>5</sup> and 78% of UK 8-11 year olds<sup>6</sup> playing video games in some form. This leaves open the potential for companies to prey upon some of the most vulnerable in society, through predatory monetisation practices.

Through an analysis and evaluation of certain aspects of the gaming industry, notably the lack of safeguards for children and the growing need for greater employee protections, this paper will take a frank and critical look at the UK’s place in the gaming industry. This analysis will facilitate a discussion of whether or not the UK should create legislative or regulatory mechanisms in place to foster an environment to allow the industry to grow to its fullest.

The UK has a great pedigree in the industry, yet as will be discussed in greater detail, the industry remains at the whims of the larger industry, especially the American and Asian markets. With the right legislative support, the UK could

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<sup>1</sup> David Bloom, “Video Game Sector Scores Record \$13.2 Billion In 2020 Investments, M&A” (*Forbes*, 2021).

<sup>2</sup> Marie Dealessandri, “Growth in UK Games Industry Fastest Ever Recorded” (*GamesIndustry.biz*, 2020).

<sup>3</sup> *Ibid.*

<sup>4</sup> Tom Philips, “Microsoft Buying Bethesda and ZeniMax for \$7.5bn” (*Eurogamer*, 2020).

<sup>5</sup> ‘Share of Children in the United Kingdom (UK) Who Ever Play Games Online From 2015 to 2021, By Age Group’ *Statista* (2021).

<sup>6</sup> *Ibid.*

become a world leader in the industry and cement its place as an international leader in the industry.

### **Protecting Children:**

Gaming companies have perfected their practices for monetisation over decades, especially since the creation of the smart phone, allowing companies a direct line into the wallets of millions more consumers. This, overtime, has included children, with most children, even toddlers, having access to some form of smart phone, tablet or other gaming device or console.

Monetisation is done in numerous ways, such as in-game currencies. These currencies, often in the form of coins, gems or other fun-sounding medium, act to “change the psychological value of money that’s been spent on it”<sup>7</sup>. This is particularly effective when deployed against children. Children often have little real concept of monetary value, and this lack of understanding is easily exasperated by the addition of a currency conversion. Sometimes games will use multiple currencies of differing values to further confuse even adult players.

The most prolific and problematic of these monetisation practices are loot boxes. Loot boxes take many forms, but most commonly they are “a box containing a prize of unknown value, [especially] one offered for sale to players as part of an online game”<sup>8</sup>. A key component of their use is that they are, generally, they are a total gamble, with players often not knowing entirely what they are getting for their money. Loot boxes are essentially games of chance, not dissimilar to that of a slot machine or other gambling games, making them dangerous for developing children, with “clear links to problem gambling”<sup>9</sup>.

Estimates put loot boxes’ market revenue at around \$20.3 billion by 2025<sup>10</sup>, meaning that they are all the more important to control. Fortunately, whilst loot boxes are the most prolific monetisation practice, they are also one of the few practices that has garnered specific attention from governments internationally, including the UK

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<sup>7</sup> Lucy Carter, Lesley Robinson, Laura Gartry & Alex Palmer “Hooked” (ABC, 2021).

<sup>8</sup> ‘Loot Box’ *Collins Dictionary* (2021).

<sup>9</sup> Rob Davies, “Video Game Loot Boxes Linked to Problem Gambling, Study Shows” (*The Guardian*, 2021).

<sup>10</sup> Marie Dealessandri, “Loot Boxes to Generate \$20bn by 2025” (*GamesIndustry.biz*, 2021).

government. In June 2020, the UK government launched a 'Call for Evidence'<sup>11</sup> into the "impact of loot boxes on gambling like behaviour"<sup>12</sup> which would form part of a wider review of the *Gambling Act 2005*, which does not currently cover loot box practices.

This proposed action is admirable yet should be viewed with some scepticism. The scope and coverage of the changes should be extensive. However, any proposed changes have a long climb to truly fix the systemic problems with the monetisation practices in the industry. As will be discussed later, the hold that gambling companies have on the industry is extensive and growing and any loophole in these regulations will be heavily exploited. Already other forms of virtual gambling are growing in popularity, with virtual sport betting growing "by 88 per cent during the pandemic"<sup>13</sup>.

Companies have already backed off of loot boxes somewhat, with gaming giant *EA* continuing to include loot boxes in *FIFA 22* but including 'preview packs' which "let[s] players see what the items within them are before they purchase them"<sup>14</sup>. Despite this, the response has been rather lukewarm, and even *EA*'s preview packs are on a timer, meaning that players "will have to wait for a refresh timer to expire before they can preview another pack"<sup>15</sup>.

The problem at the heart of the predatory monetisation debate, is that any regulations will come down to the actions of the larger companies. As the former Chair for the *Association for UK Interactive Entertainment (UKIE)* Stuart Dinsey says it will be the actions of larger companies "who have had a hugely profitable business model rightly challenged"<sup>16</sup> that will set the stage for any government action.

The UK government findings on loot boxes have offered rather open-ended answers to the question of legislating the practice. The Select Committee recommends that loot boxes contain "the element of chance"<sup>17</sup> and "should not be sold to children"<sup>18</sup>.

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<sup>11</sup> "Loot Boxes in Video Games – Call for Evidence", *Department for Digital, Culture Media & Sport* (2020).

<sup>12</sup> John Woodhouse, "Loot Boxes in Video Games" (*House of Commons Library*, 2021).

<sup>13</sup> Andrew Kersley, "Loot Boxes Are Dead. What Comes Next Will Be Worse" (*WIRED*, 2021).

<sup>14</sup> Luke Shaw, "'FIFA Ultimate Team' Loot Boxes Let You See What's Inside Now" (*NME*, 2021).

<sup>15</sup> Alan Wen, "'FIFA Ultimate Team' in 'FIFA 22' Will Still Have Loot Boxes" (*NME*, 2021).

<sup>16</sup> Brendan Sinclair, "Outgoing UKIE Chair Issues Warning on Loot Boxes" (*GamesIndustry.biz*, 2021).

<sup>17</sup> Department for Digital, Culture, Media & Sport, *Government Response to the Digital, Culture, Media & Sport Select Committee Report on Immersive and Addictive Technologies* (Policy Paper, 2020).

<sup>18</sup> *Ibid.*

Games including loot boxes should be labelled by PEGI as containing “gambling”<sup>19</sup>, a practice which has already begun to be implemented<sup>20</sup>. Most vague of all, the committee suggests the tightening of regulations under the *Gambling Act 2005*. However, the committee states that this decision falls to parliament, leaving the committee passing the baton to the House of Commons as to their reasoning should they not choose to tighten regulations. The wider findings on the Call for Evidence are yet to be published.

The current position of the UK Government is yet to be seen, although this author is hopeful that regulations will be tightened on loot boxes. There is clear appetite in the Commons on this issue, and clear public response on the issue. Yet, as with all legislation, this is unlikely to end predatory practices. The current stance of the UK government is to be relatively hands off with private entities, part of the Conservative belief in free market capitalism, Boris Johnson has stated that post-COVID “he intended to significantly roll back the extraordinary state intervention the crisis had necessitated”<sup>21</sup>, and this author is sceptical that any real effort by the government to regulate these companies will be made.

### **Employee Protections:**

Like many entertainment industries, the video game industry has long enjoyed a public belief that making video games for a living would be a dream job. However, more recently this belief has been increasingly questioned. The doors of the notoriously secretive industry have started to be cracked, and many have found that the reality of working in the industry is one that comes with discrimination, sexual harassment, and a general locker room culture, often perpetuated by a broadly white and male cohort.

According to the UKIE Industry Census of employees in the UK industry, employees remain predominantly White, with workers being around 67% White British and only 10% being Black, Asian or minority ethnic<sup>22</sup>. When it comes to gender the picture is

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<sup>19</sup> *Ibid.*

<sup>20</sup> “PEGI Introduces Notice To Inform About Presence of Paid Random Items” *PEGI* (2020).

<sup>21</sup> Jessica Elgot, “Boris Johnson: UK Must Not Return to Status Quo After COVID-19 Pandemic” (*The Guardian*, 2020).

<sup>22</sup> UKIE, *UK Games Industry Census: Understanding Diversity in the UK Games Industry Work Force* (2020).

only mildly better, with a rate of 28% female, 70% male and 2% non-binary<sup>23</sup>. The effects of this glut of diversity can be readily seen in studios in the UK and worldwide, Ubisoft Singapore, for example, notoriously fosters discrimination and even colonial sentiments, harbouring a 'French ceiling', only promoting French speakers to higher positions<sup>24</sup>.

The most notable workplace scandal recently is the lawsuit filed against gaming giant *Activision Blizzard*. The suit alleges that "Women [were] denied promotions, raises or even equal pay"<sup>25</sup>, "male employees [drunk] "copious" amounts of alcohol and harass and grope women"<sup>26</sup> and "[jokes] about rape"<sup>27</sup>. Most harrowing of all, there is a report that one female colleague committed suicide on a company trip after "previously [facing] intense sexual harassment at work" which included "an incident where a photo of her genitals was passed around by male employees"<sup>28</sup>. All of this, alleged at a company that turned over \$8.08 billion in 2020<sup>29</sup>. A further suit has been filed with the US National Labor Relations Board alleging further misconduct, including "interrogation of employees"<sup>30</sup>.

This type of misconduct is not unique to American firms, and UK companies have similar problems with discrimination and bad working practices. Firm *Rocksteady* has been accused of adopting *laissez-faire* attitudes to "slurs regarding the trans community", "sexual harassment" and "unwanted advances, leering [...] and inappropriate comments"<sup>31</sup>. Industry wide, workers report that a "toxic confluence of worker disempowerment and a male-dominated managerial class can make it an especially unwelcoming place for women"<sup>32</sup>.

This confluence has resulted in a first for the gaming industry, with a video game workers union being set up in the UK. Whilst not the very first, it has been one of the

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<sup>23</sup> *Ibid.*

<sup>24</sup> Evgeny Obedkov, "Ubisoft Singapore Devs on Working in 'Colonial Outpost' Led By Toxic Managers: "The Head Was Rotten"" (*Game World Observer*, 2021).

<sup>25</sup> Paul Tassi, "Activision Blizzard Lawsuit Alleges Horrific Mistreatment of Women" (*Forbes*, 2021).

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

<sup>29</sup> Net Revenue Generated by Activision Blizzard From 2005 to 2020, *Statista* (2021).

<sup>30</sup> Joseph Knoop, "Activision Blizzard Accused of Committing Labor Violations to Stop Employees From Talking About Labor Violations" (*PC Gamer*, 2021).

<sup>31</sup> Alex Hern, "Games Firm Rocksteady Accused of Inaction Over Staff Harassment" (*The Guardian*, 2020).

<sup>32</sup> Keza MacDonald, "Is the Video Games Industry Finally Reckoning with Sexism?" (*The Guardian*, 2020).

more impactful, at least as far as exposure goes. As part of a bigger union, the *Independent Workers Union of Great Britain (IWGB)*, the *IWGB Game Workers*. The *IWGH Game Workers* describes itself as “a worker-led, democratic trade union that represents and advocates for UK game workers’ rights”<sup>33</sup>. The road to the creation of this union was long and arduous, and required the help of *IWGB* to even succeed. This is down to the lack of industry wide union support which does not exist as of yet. Even the aforementioned lawsuit against *Activision Blizzard* needed the help of a union to file the suit with the National Labor Relations Board. In this author’s mind, the need for unions is great and imperative for the industry to fix the rampant workplace misconduct in the industry.

Unions are maybe better suited no where more so than in the negotiation for better working hours. A term that is widely used in the industry is ‘crunch’, which is “a form of unpaid overtime where staff in a video game studio are forced to work long hours to finish a project”<sup>34</sup>. Games development cycles are strict, and meeting release deadlines can be an arduous and time-consuming endeavour, with developers often fixing video games up until the final deadline. Some employees report “[working] an average [of] 70 hours a week [...] I know people who pull 100-hour weeks”<sup>35</sup>. The more public discussion has led to crunch being widely railed against, with many companies committing to avoid the practice. Yet it has also given birth to ‘good’ and ‘bad’ crunch, framing the discussion around “not arguing over whether or not crunch occurred; rather, they are arguing over whether it was mandatory, and therefore bad, or voluntary, and therefore good”<sup>36</sup>.

Unionisation would aid workers in numerous ways, especially when negotiating healthy working hours, even if a reduced form of crunch continues, it will at least be negotiated upon. Further, employment in the gaming industry is incredibly fluid and volatile. Gaming publishers often collapse taking hundreds of jobs with them, meaning the turnover in the industry is massive. The creation of “an industry-wide

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<sup>33</sup> IWGB Game Workers, “We Are The IWGB Game Workers” (2021) <<https://www.gameworkers.co.uk/>> accessed 24<sup>th</sup> September 2021.

<sup>34</sup> Umar Hassan, “EXPLAINER: What is Crunch Culture and How Does it Affect Video Game Studios?” (*Umar Hassan*, 2020).

<sup>35</sup> Colin Campbell, “How Fortnite’s Success Led to Months of Intense Crunch at Epic Games” (*Polygon*, 2019).

<sup>36</sup> Amanda Cote & Brandon Harris, ‘The Cruel Optimism of “Good Crunch”: How Game Industry Discourses Perpetuate Unsustainable Labor Practices’ [2021].

union, which would set standards for different positions, would help protect workers as they move between jobs at different companies”<sup>37</sup>.

Recently, the UK government has decided to ‘modernise’ the regulator for trade unions, with the hope to “boost transparency and provide reassurance to workers that high standards will be maintained”<sup>38</sup>. Whilst such action is welcome, it is hardly monumental. There are a myriad of reasons for strengthening unions, most notably, increasing collective bargaining powers “a modernised trade union movement could restore the balance of bargaining power between employees and employers in our economy”<sup>39</sup>.

Unions would aid in dismantling of the systemic and cemented bad working practices, some of the most nefarious of which were previously mentioned. The secrecy behind these recent breaking stories begs the question as to what continues to happen behind closed doors? Yet without proactive government involvement we may never know or will have to rely upon yet another whistle-blower. Active government intervention would stop anyone having to choose between morality and putting food on the table.

This author would recommend a kind of ‘equality audit’ body to ensure that companies are upholding the tenants of the *Equality Act 2010*. Currently industry censuses are generally up to private entities, such as *UKIE*, to carry out. An active body that would effectively spot check private businesses on their diversity and equality responsibilities. This, coupled with more powerful unions, would ensure that workplaces are truly upholding their mottos of encouraging employees to “speak up, listen, be respectful of other opinions, and embrace criticism”<sup>40</sup> as Blizzard ironically states upon their website.

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<sup>37</sup> *Ibid.*

<sup>38</sup> Department for Business, Energy & Industrial Strategy & Paul Scully MP “Government Confirms Plans to Modernise Trade Union Regulator” (*Gov.uk*, 2021).

<sup>39</sup> “Trade Unions Need a Refresh. Political Parties of All Colours Should Take An Interest” (*Social Market Foundation*, 2020).

<sup>40</sup> “What We Stand For – Every Voice Matters” (*Blizzard*, 2021) <<https://www.blizzard.com/en-us/company/about/>> accessed 25<sup>th</sup> September 2021.

### **Concluding Remarks:**

There are a veritable mountain of issues in the gaming industry, many of which cannot be included in this paper due to its constraints. The two issues discussed today are but two of which that can be simply and relatively easily amended. The reality is that government intervention is greatly needed, something which Conservative governments are often sheepish about. Whilst this paper does not cling to any kind of Communist ideals, the reality is that unless there are changes to the law, and government practice, then any paper written about these often-serious issues means little without material action.

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