



# DICKINSON WRIGHT

Gaming & Hospitality

## GAMING & HOSPITALITY LEGAL NEWS

### THE EFFECT OF CANADA’S REVISED ANTI-MONEY LAUNDERING RULES ON CASINO OPERATORS

Michael D. Lipton, Q.C., Kevin J. Weber and Chantal A. Cipriano

On July 10, 2019, the Regulations Amending Certain Regulations Made Under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (the “Amending Regulations”) were formally released in the Canada Gazette. The formal release follows the June 2018 release of draft Amending Regulations. The Amending Regulations affect several regulated entities, including casinos. As such, casino operators will now face a variety of increased reporting and monitoring requirements. The following is a non-exhaustive list of the increased reporting and monitoring requirements faced by casino operators in the Amending Regulations:

1. The Amending Regulations require casino operators to report specific types of transactions of \$10,000 or more to the Financial Transactions and Analysis Centre of Canada. Likewise, casino operators are also required to report disbursements of \$10,000 or more in a single transaction, such as, the redemption of chips, tokens or plaques, or a front cash withdrawal.
2. Casino operators are required to keep a record of large cash transactions in respect of every amount of \$10,000 or more in cash that the casino receives from a person or entity in a single transaction.
3. Casino operators are required to keep a detailed record of every account that the casino opens. This detailed account is required to include the account holder’s signature card, contact and vital information, as well as other details. In addition, casinos are required to keep a detailed record of every transaction that is conducted within the casino, as per the requirements in sections 74(1)-(2) of the Amending Regulations. It should be noted that the Amending Regulations reduce the extent of the reporting requirement as first laid out in the draft Amending Regulations. The Amending Regulations omit the requirement to include “every known detail” in respect of a transaction.
4. Casino operators are required to verify the identity of individuals associated with the account. These include for whom the casino opens the account, who is authorized to give instructions in respect of the account, and who con-

August 21, 2019 | Volume 12, Number 5

### GAMING & HOSPITALITY LEGAL NEWS EDITORIAL BOARD

**NEVADA (LAS VEGAS/RENO)**  
Kate Lowenhar-Fisher  
702.550.4459 | klowenhar-fisher@dickinsonwright.com

Gregory R. Gemignani  
702.550.4468 | ggemignani@dickinsonwright.com

Jennifer J. Gaynor  
702.550.4462 | jgaynor@dickinsonwright.com

Jeffrey A. Silver  
702.550.4482 | jsilver@dickinsonwright.com

**TORONTO**  
Michael D. Lipton, Q.C.  
416.866.2929 | mdliptonqc@dickinsonwright.com

Kevin J. Weber  
416.367.0899 | kweber@dickinsonwright.com

**WASHINGTON, D.C.**  
Jacob S. Frenkel  
202.466.5953 | jfrenkel@dickinsonwright.com

Patrick Sullivan  
202.659.6929 | psullivan@dickinsonwright.com

**MICHIGAN**  
Peter H. Ellsworth  
517.487.4710 | pellsworth@dickinsonwright.com

Peter J. Kulick  
517.487.4729 | pkulick@dickinsonwright.com

**ARIZONA**  
Glenn M. Feldman  
602.285.5038 | gfeldman@dickinsonwright.com

**OTHER OFFICES**  
California | Florida | Kentucky | Ohio | Tennessee | Texas

### COOPERATION AGREEMENT FIRMS

MdME, Macau  
Varela & Fonseca Abogados, Peru  
Velchev & Co., Bulgaria  
WH Partners, Malta

*Disclaimer: Gaming & Hospitality Legal News is published by Dickinson Wright PLLC to inform our clients and friends of important developments in the fields of gaming law, federal Indian law, and hospitality law. The content is informational only and does not constitute legal or professional advice. We encourage you to consult a Dickinson Wright attorney if you have specific questions or concerns relating to any of the topics covered in Gaming & Hospitality Legal News.*



# GAMING & HOSPITALITY LEGAL NEWS

---

ducts a transaction in respect of which the casino is required to keep a record.

5. The Amending Regulations indicate how a disbursement, as noted in (1) above, of \$10,000 in a single transaction is to be defined in respect of electronic transfers of funds. For example, if a casino operator makes two or more disbursements that total \$10,000 or more within a period of twenty-four consecutive hours, those disbursements will be deemed to be a single disbursement of \$10,000 or more, if the casino operator knows that the disbursements were requested or received, by or on behalf of, the same person or entity.
6. Casino operators are required to take reasonable steps to determine whether an individual requesting a disbursement is acting on behalf of a third party. To this end, the casino operator must take reasonable measures to obtain the individual's contact information, and determine the relationship between the third party and the individual making the request.

The effect of the Amending Regulations is to increase reporting and monitoring requirements on regulated entities. As such, regulated entities, including casino operators, will be responsible for asking their clients for additional information, and for adjusting their monitoring systems in order to comply with the new rules.

*Michael Lipton, Kevin Weber and Chantal Cipriano are lawyers in Dickinson Wright's Toronto office.*

## **VIDEO GAME INDUSTRY RESPONDS TO REGULATION OF PAY-TO-WIN MICROTRANSACTIONS AND LOOT BOXES**

*by Patrick Sullivan*

Controversy over certain video game features – “microtransactions,” “pay to win” and “loot boxes” – has heated up over the past few months. Because these popular features involve real money and an element of chance, some critics view them as similar to gambling. The criticism has resulted in regulatory scrutiny, legislative action and most recently a self-regulation commitment to disclosure from the largest players in the video game industry.

Microtransactions, also known as in-game purchases, are small, online purchases made within video games to access game content and purchase virtual items and in-game virtual currency. Microtransactions in an otherwise free-to-play game is a popular revenue model for many games, including the popular smartphone game Candy Crush and the smash hit Fortnite, which is available for play on consoles, PCs, tablets and smartphones. The free-to-play business model allows players access to high-production value, graphics-rich games at low cost, with some players spending more to access more content. Players can decide how much they want to spend and can experiment with many titles before committing to any one game.

Although microtransactions provide more flexibility for consumers, they also create the potential for backlash from dedicated players who feel that they are having a gaming experience inferior to those players that spend more money. “Pay-to-win” games allow players to buy points or virtual items that give them an advantage in the game, and can, in some cases, lead players to overspend in order to beat the game. The Entertainment Software Rating Board (“ESRB”), an industry group that issues age-based ratings for video games since 1994, began labeling games that included in-game purchases in 2018.

While the pay-to-win model has drawn attention due to some players’ large gaming bills on their own or their parents’ credit cards, it is the use of loot boxes that has invited the most scrutiny from outside the industry. A loot box is an in-game purchase where the virtual content is revealed only after purchase and may contain a “valuable” virtual item based on random chance. Critics complain that when players spend actual money to acquire these loot boxes, the activity starts to resemble gambling.

Traditionally, gambling is defined as an activity in which (1) a person risks something of value on (2) the outcome of an uncertain event, with (3) the opportunity to win a valuable prize. The Entertainment Software Association (“ESA”), the largest video game industry group, has responded to the gambling charge by asserting that, because the virtual goods have no cash value, loot boxes are not gambling.

International jurisdictions have responded in various ways to the new gaming features. Regulators in the Netherlands and Belgium have determined that loot boxes constitute gambling and are therefore prohibited, while the United Kingdom Gambling Commission determined that loot boxes are not gambling.



# GAMING & HOSPITALITY LEGAL NEWS

---

and declined to regulate them as such. The European actions were largely in response to the “player packs” available in EA’s popular “FIFA” soccer games, in which the celebrity players are only revealed after purchase, much like packs of physical sports trading cards (which, in fact, have also faced charges of gambling and demands for regulation in the past).

In May of this year, Senator Josh Hawley (R-MO) along with co-sponsors Richard Blumenthal (D-CT) and Edward Markey (D-MA) introduced S. 1629, entitled “A bill to regulate certain pay-to-win microtransactions and sales of loot boxes in interactive digital entertainment products, and for other purposes.” The bipartisan bill would prohibit publishing or distributing any “pay-to-win microtransactions or loot boxes” in “minor-oriented games” or in any game that the game publisher or distributor has “constructive knowledge” that any users are under the age of 18. The bill implicates several issues with which the casino gaming industry is familiar, including participation by minors, compulsive behavior, and regulation of gambling-like features.

The bill describes a broad variety of factors that define a “minor-oriented” game, including the subject matter, visual content, music, age of the characters, celebrities under 18 or celebrities that “appeal to individuals under the age of 18,” advertising materials, or any other evidence that the game targets those under 18. Pay-to-win features and loot boxes would be classified as “unfair or deceptive act or practices” under the Federal Trade Commission Act (FTCA) and the prohibition would be enforced by the Federal Trade Commission and state attorneys general. Finally, the bill calls for reports to Congress by the FTC regarding its enforcement efforts and a study on the use of the prohibited gaming features within two years of enactment, including “psychological effects” of the prohibited features and “compulsive purchasing behavior.” Passage of the bill in its current form appears to be unlikely. A bill similar to the Senate bill was introduced in 2018 in Hawaii but failed to make progress. (See: <https://www.hawaiitribune-herald.com/2018/02/12/hawaii-news/bills-target-video-games-with-rewards-for-a-price/>)

Although immediate legislative action is stalled, the Federal Trade Commission has been actively investigating loot boxes and their impact on children playing the games since 2018. As part of this investigation, the FTC held a workshop this month entitled “Inside the Game: Unlocking the Consumer Issues Surrounding Loot Boxes” and is currently seeking public comment on the impact of these game features.

Timed to coincide with the workshop, the ESA issued a press release this month stating that the major game publishers and platform operators (Sony PlayStation, Microsoft Xbox / Windows and Nintendo) will, by 2020, voluntarily disclose “information on the relative rarity or probability of obtaining randomized virtual items” in their games.

The current controversy has been going on for some time. In 2017, EA was forced to defend and ultimately modify an early version of its Star Wars: Battlefront II video game, which included a loot box system. The game sold for \$80 and included in-game upgrades that could be obtained by earning “crystals” in matches with other players, or by in-game purchases of “boxes” that might randomly contain the same upgrades. EA ended up pulling the in-game purchases from that game in response to complaints that the only realistic way to upgrade the virtual game was to buy “loot crates,” although less interesting crates could also be earned through game play. Although EA eventually pulled the microtransaction system from that game, loot boxes and in-game purchase have only grown and become mainstream, turning the traditional business model of video games with a single up-front purchase price on its head.

Last year, the publisher of the popular free-to-play game Path of Exile, at the request of a player who felt she was compulsively playing the game and overspending, disabled the loot box feature for her account. Although the casino gaming industry has successfully implemented self-exclusion programs for years, this is new for the video gaming industry and may be formally incorporated into games and video gaming platforms.

For those involved in the regulation of casino gaming, the issues confronting the video gaming industry are nothing new. The gambling industry has deep experience balancing problem gambling and protection of children with industry growth and innovation. Contact the Gaming and Hospitality Group at Dickinson Wright for help with all aspects of gaming regulation.

*Patrick Sullivan is an attorney in Dickinson Wright’s Washington, D.C. office.*