

response

**Ukie response
to the Gambling
Commission's
discussion
paper on
'Virtual
currencies,
eSports and
social gaming'**

09|2016

ukie

THE ASSOCIATION FOR UK INTERACTIVE ENTERTAINMENT

Ukie response to the Gambling Commission’s discussion paper on ‘Virtual currencies, eSports and social gaming’

Introduction

Ukie (UK Interactive Entertainment) is the trade body for the UK’s games and interactive entertainment industry and represents leading eSports and video games businesses operating across the UK and internationally. Like the video games industry from which it stems, eSports is a fast growing and exciting sector enjoyed safely by millions of players and fans around the world every day.

The eSports and video games industries take their responsibility to consumers that play and watch eSports very seriously - particularly young people. It is vital for the long-term viability and success of video games companies and the wider industry that companies retain the trust of their players; anything that damages that trust is a critical threat to all games and eSports companies.

Ukie and the video games industry have a track record of introducing self-regulatory measures to ensure consumers are suitably protected and informed about how to play and watch video games safely and sensibly. We demonstrated this through the creation of the PEGI age-rating system and its adoption on a pan-European basis with the support of the European Commission. Ukie led the successful campaign for PEGI’s adoption into UK law and continuously promotes safe and sensible gaming to parents, particularly through www.askaboutgames.com - a site providing information about age ratings, parental controls, in-games purchases and many other issues. Additionally, in 2013, we worked closely with the then Office of Fair Trading to shape a set of [Principles for Online and App based Games](#) to ensure consumers – especially children – were not subjected to practices that were misleading, aggressive or unfair.

Ukie welcomes the chance to respond to the Gambling Commission's paper and shares their view that consumers should be protected and that children and other vulnerable people should not be harmed or exploited by gambling. All Ukie members wish to abide by the law and welcome the Gambling Commission’s aim of helping “businesses avoid providing facilities for gambling without a licence.”

As representatives of a responsible industry, Ukie would like to work with the Gambling Commission to foster a deeper understanding of the video games sector, eSports, and in-game economies as part of a two-way dialogue. There is a clear distinction between (i) the businesses that facilitate and promote illegal gambling or other illegal activities under the Gambling Act 2005 and (ii) reputable video games publishers, developers, network providers and eSports companies. Ukie welcomes this opportunity to clarify the delineation of the line between these distinct spheres.

Executive Summary

This paper will begin by providing an outline of the main concepts and elements of the video games and eSports sector, and continue by addressing the key issues raised in the Gambling Commission's discussion paper.

Our key points are as follows:

- Playing eSports for a prize should not be considered 'gaming' as defined in the Gambling Act 2005, as eSports tournaments involve competitively playing skill based games. In identifying 'a game of chance', the Gambling Commission should holistically consider the relevant game on an outcome basis, and in the context of eSports titles there is clear evidence that the results of the games played are based on skill. Extending the scope of 'gaming' to encompass playing eSports for a prize would cause the Gambling Commission to go against its stated aim not to capture 'activities for which additional regulation is disproportionate'.
- Providing players with the facilities to play skill based games together or against each other for the chance of winning a prize should not fall within the scope of gambling regulation as it in no way facilitates the making or acceptance of bets. There is no clear indication in the law (either statute or case law) that a participant who has paid to play a game for the opportunity of potentially winning a prize is entering into a betting transaction.
- There is a clear distinction between (i) the video games and eSports industries and (ii) platforms which offer users the ability to gamble with virtual items and convert them into cash. Video games publishers, developers or network providers do not allow, facilitate, or condone the conversion of virtual currencies or other in-game items into money. They adopt closed game economies supported by terms prohibiting the use of virtual currency and in-game items outside of these terms enforced by actions taken alone or in conjunction with law enforcement agencies.

- Gambling using virtual items, including skins, would only be a licensable activity if there was a 'cash-out' mechanism by which such items were ultimately convertible into money or money's worth. Publishers, developers and video game network operators do not allow virtual items to take on real world value and actively seek to prevent this (as mentioned above). They welcome the opportunity to explore ways to assist the Gambling Commission in addressing the problem of unlicensed gambling where virtual items can be converted into real world money (or money's worth).
- Licensed gambling on the outcome of eSports events can be appropriately encompassed by existing regulation, and operators that provide facilities designed to allow individuals to wager on the outcome of eSports matches clearly require gambling licences.

I. What are eSports?

eSports are the practice of playing video games competitively - either solo or in teams - usually over the internet or via networked computers or games consoles. It has rapidly become one of the fastest growing and vibrant digital industries in the world, with Deloitte Global predicting that eSports will generate global revenues of \$500 million in 2016, up 25 percent from about \$400 million in 2015, with an audience of viewers reaching close to 150 million people.¹

The range of video games played as eSports is incredibly diverse and includes simulations of real world football and motor racing, first-person shooters, collectible card games and fast paced strategy and tactics games that lend themselves to immersive and competitive play. MOBA (Massive Online Battle Arena) games are among the most popular, with Riot Games recently announcing that approximately 100 million people play League of Legends worldwide every month.²

The continued growth of video games as a cultural medium, coupled with faster broadband speeds and improved access to technology, has turned eSports into a multi-million pound, multinational sector in its own right. Viewing figures for major tournaments, broadcast

¹<https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Technology-Media-Telecommunications/gx-tmt-prediction-esports-revenue.pdf>

²<http://www.polygon.com/2016/9/13/12891656/the-past-present-and-future-of-league-of-legends-studio-riot-games>

primarily via the internet but increasingly on live television, are now rivalling and often exceeding traditional sporting events; approximately 32 million people tuned in - via Twitch a live streaming video platform - to watch the League of Legends Season 3 World Championships in 2013.³

There are many component parts that make up the eSports industry around the world that are mirrored within the UK. Publishers develop the games that serve as the playing field for competitors. Players are often contracted or employed by teams, or organisations, which provide facilities for them to train and travel to tournaments. Tournament organisers and league operators run the competitions these teams play in.

Some of the biggest eSports titles are offered to consumers on a free to play model with the option of making in-app purchases for virtual items.

Just like other sporting events, participants in professional eSports tournaments' earnings come from prize money and sponsorship, whilst event organisers may profit from conventional advertising as well as through ticket sales and merchandise in respect of spectators.

eSports and licensed gambling

Gambling on eSports is neither facilitated or condoned by the game publishers, developers or video game networks themselves. Nevertheless, due to the very nature of eSports being a live spectator sport, certain betting opportunities have arisen as consumers are able to wager on the outcome of eSports matches through fully licensed operators.

As the industry has grown, it has attracted interest from licensed bookmakers. We fully agree that these bookmakers are required to operate and be licensed in accordance with the Gambling Act 2005 to legally facilitate betting on the outcome of eSports matches (just as they do for other sports). Needless to say they are obliged to abide by the licensing objectives, including protecting children and other vulnerable persons from being harmed or exploited by gambling.

As a responsible industry, integrity is of huge importance to eSports businesses. They are committed to ensuring that eSports remain honest and transparent by working with publishers, developers, professional players, broadcasters, and league owners to comply with the law and prevent any match fixing, cheating, underage gambling or betting fraud from arising.

³ <https://www.theguardian.com/technology/2014/aug/30/video-games-spectator-sport>

The Gambling Commission states that ‘the regulation of eSports is no different from any other event upon which bets can be placed’. We agree with this statement and believe that licensed gambling on the outcome of eSports events can be appropriately encompassed by existing regulation by requiring third parties providing the facility to gamble on the outcome of eSports matches to be licensed.

We are, however, concerned about how the Gambling Commission defines the act of facilitating betting, most notably in the context of eSports match-ups, which we address later in this paper.

Virtual items and ‘skins’

Virtual items exist within many video games and therefore in games that are played as eSports. They are not a form of virtual currency as they exist within closed loop ecosystems thus have no 'real world' value and cannot be converted into real money or money's worth.

In-game virtual items can take a number of forms; some provide benefits to the players within games (e.g. making characters more powerful) whilst others are more cosmetic and not necessarily integral to progressing in gameplay. Skins exist as a subset of virtual items and are sometimes referred to as “finishes” - they are in essence aesthetic upgrades to players’ virtual appearance or in-game equipment; some are particularly rare and offer players a status and image within the video game community.

The way that virtual items are acquired can vary game by game, but generally they can either be ‘won’ in-game as a reward or purchased within the game and from the game’s publisher with real money. The purchasing and use of all virtual items, including skins, in eSports games is controlled by both the publishers or developers and the video game network operators (through which virtual items are acquired) by their terms and conditions. The industry does not intend for virtual items to be converted to money or money’s worth and so restrictions are placed on the ‘cashing out’ of virtual items through closed-loop ecosystems. Games and video game networks deliberately do not have the functionality to facilitate users trading virtual items with one another for money, in a conscious attempt to ensure that virtual items do not acquire any real world value.

Occasionally, third parties can find ways to circumvent closed-loop ecosystems and allow virtual items to be traded for money illegally and in contravention of publishers and video game network operators’ terms and conditions. In certain cases, this can lead to the virtual items acquiring real world value, and it is in these limited circumstances that secondary markets can arise which facilitate gambling of these items. These secondary markets operate entirely outside of the control of game publishers and video game network operators.

Whilst publishers and video game network operators can ensure there are no facilities to convert virtual items into cash within their games and platforms, they cannot police all third party websites where users may agree to buy and sell virtual items for money. For example, if a user sold virtual items off-platform (eg. by transferring cash in person or via a third party website like eBay) publishers and video game network operators would be unaware of this transaction taking place.

For a variety of reasons, such as data analysis, a number of platforms have allowed third party services to link with players' accounts. In a limited number of cases, third parties have exploited this access to create facilities allowing players' skins to be gambled for real money via tote pools, bets, and jackpots. However, these facilities are unlicensed and operate in contravention of the publisher's and video gaming network operators' terms and conditions. In the very limited instances where such third party sites have emerged, the relevant publishers have taken steps to ensure they cease operating. For instance, in July 2016 Valve sent cease and desist notices to numerous third party sites that were offering such gambling facilities and thereby violating their terms of service, leading to the majority of them closing down.

Where publishers and game network operators become aware of secondary market activity they actively take steps to address this, for instance by working in conjunction with law enforcement agencies to enforce their terms, and are committed to working with the Gambling Commission to explore ways of preventing these cases from occurring where possible.

II. Key issues raised in the Gambling Commission's Discussion Paper

1. Playing games for a prize

The Gambling Commission has raised the questions of 'whether participating in eSports games for a prize could fall within the definition of gaming in the Act' if these games have elements of chance. The Gambling Commission is particularly interested in whether playing a card based video game containing an element of chance for a prize would require a licence. We do not believe this to be the case for a number of reasons.

Firstly, video games, whether card based or not, are inherently skill games, as opposed to regulated gambling games such as poker, whose outcomes are significantly influenced by chance. Skilled players of video games have considerably more control over the outcome of their game and are consistently more likely to win a given game than someone not as skilled. Crucially, while there may be elements of randomness incorporated into such game designs,

the way they are played and the way that players interact with the game and each other are designed to set up an additional gameplay challenge and test the players' skills, not to determine the outcome of the game itself. As such, it would be incorrect to conclude that the randomness in a game's design had a bearing a player's ultimate chance of success.

Secondly, specifically to card based video games, the importance of skill manifests itself even before the card based video games begin as players design their own card decks - rather than being assigned a random combination of cards - based on their own strengths and knowledge of their opponent's skills and playing style. This notably differs from traditional card gambling games like poker, where players use a standard deck of cards and have no control over the cards that they are dealt.

Finally, notwithstanding the ratio of skill to chance, there is no financial risk or exposure to gambling posed to individuals participating in card based or all genres of video game titles played as eSports. eSports tournaments offer (often professional) players prizes when they beat opponents, progress to the next round and ultimately reach the finals. There is no financial risk incurred by any of the players, and by participating they are simply competing to prove their skill against other players.

Therefore, we do not believe that eSports played in competitive tournaments for a prize should be considered 'gaming' under the Gambling Act 2005. If this were to be considered the case it would not match the aim of 'avoiding capturing activities for which additional regulation is disproportionate.'

2. Match ups

All online multiplayer gaming relies on matching services provided at game or platform level to bring players together (e.g. a console or PC marketplace). Likewise, playing games as eSports necessarily involves connecting people together to play the game in question.

The act of connecting players to play games together or against each other does not in any way facilitate the making or acceptance of bets between others. This is, therefore, clearly not a licensable activity and would not require the entity providing the facilities for players to play against each other to be a betting intermediary.

We do not believe that paying to enter a games tournament (either through a player-to-player match-up or in a multi-player tournament) where a player can win a prize would constitute betting. There is no clear indication in the law (either statute or case law) that a participant who has paid to play a game for the opportunity of potentially winning a prize is entering into

a betting transaction. Taking this argument to its natural conclusion would mean that a football team paying to enter a tournament and winning a prize would constitute betting.

The games offered in eSports tournaments and match-ups are skill-based games and there should be no distinction simply because one operates in the virtual environment. Therefore, we do not believe any third party who organises a pay to enter tournament, irrespective of the number of participants, should be considered to be facilitating gambling. This is also relevant to the question raised below on eSports being played for prizes.

3. Gambling with virtual items

As discussed above, gambling using virtual items is not facilitated by the game publishers, developers, video game network operators or eSports organisers. Third party websites have appeared that allow customers to gamble and trade in-game virtual items, including 'skins', for money but these facilities are unlicensed and often operate in contravention of publishers' and video game network operators' terms and conditions.

We agree with the Gambling Commission's assessment that such secondary market gambling, would require a licence and the games and eSports industry welcomes the opportunity to work with the Gambling Commission to prevent such secondary markets from operating without an appropriate licence.

The video games and eSports industry is already taking action against such unlicensed gambling sites where they are misappropriating the publisher's intellectual property and/or acting in breach of terms and conditions. For instance, as mentioned above, Valve recently discovered that skins from their *Counter-Strike: Global Offensive* game were being gambled on unlicensed third party marketplaces. These sites were operating in contravention of their subscriber agreement and Valve has since issued cease and desist letters to the leading unlicensed gambling websites, leading to the majority closing down entirely or removing their skins gambling facilities.

There are therefore legal, moral, and commercial reasons why games businesses support action against sites that are unlawfully using in-game items to facilitate gambling and would welcome the opportunity of working with the Gambling Commission to address this issue fully.

4. Social gaming

We welcome the Gambling Commission's reiteration of its position on social games that its focus is 'predominantly on gambling-style games (that look and feel like traditional gambling)' and not on the wider array of social games 'that people play over the internet, often via

mobile phones, and which are built on social networks'. We recognise the recent review of this area, undertaken in 2014, culminating in the social gaming publication released by the Gambling Commission in January 2015, and believe that there is no need for additional regulation.

However, we would like further clarity from the Gambling Commission on where a social game publisher's responsibility lies if the Gambling Commission were to discover "that items are being traded or tradeable or are being used as a de-facto virtual currency", particularly where this trading is facilitated by a third party without the knowledge or approval of the publisher. It would be helpful to understand how responsibility is shared with both the third party and the Gambling Commission itself.

Additional clarity would also be welcomed over the issue of social games using loyalty points. The Gambling Commission state that the use of such points could make the provider a lottery, with money's worth prizes, if they discover that the loyalty points are being traded or used as de-facto virtual currency. We would appreciate the Gambling Commission providing guidance on the precise instances where such games would 'need a licence' or anonymised examples of mechanisms that are the cause of concern.

Conclusion

We share the Gambling Commission's desire, set out in their paper, for greater clarity in determining which activities need to be licensed and which do not, in the domain of eSports, and virtual currencies. Through this paper, we have also sought to cast light on the clear distinction between (i) video games publishers, video game network operators, and eSports companies and (ii) those limited number of businesses that are misusing their brands and products in some cases in order to facilitate and promote illegal gambling.

Whilst organisations providing facilities for gambling need to be regulated, it would be disproportionate if (i) the playing of skilful video games competitively for a prize were categorised as 'gaming', (ii) if organisations simply providing the infrastructure for this to take place were required to have gambling licenses, and (iii) if a participant paying to play the game for the opportunity of winning a prize was deemed to be entering into a betting transaction.

eSports players are driven by the same desires as professional athletes or chess players: to perform in front of a crowd and be recognised. Equally, eSports spectators repeatedly watch and attend live tournaments for the same reasons as football fans: the atmosphere and thrill of being part of a roaring crowd, and an appreciation for the skill of the game and mastery of

the players. It would therefore be inappropriate for such an exciting and growing spectator sport, and for the games publishers and eSports companies providing its underlying infrastructure, to fall within the remits of gambling regulation.

[1] <http://calvinayre.com/2016/07/11/business/esports-and-skin-gambling-the-elephant-in-the-room/>

[2] Note: as of as of July - August 2016 Valve has issued cease-and-desist notices to several sites allowing in-game items to be converted to real money.