




## ESRB's and PEGI's Self-Regulatory 'Includes Random Items' Labels Fail to Ensure Consumer Protection

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To the Editor:

The potential harms of loot boxes and similarly randomised monetisation methods in video games (hereinafter, random reward mechanisms (RRMs) (Nielsen and Grabarczyk 2019)), and the relationship between RRM and gambling have been identified and established in the literature to a limited extent (Brooks and Clark 2019; Drummond and Sauer 2018; King and Delfabbro 2018, 2019; Kristiansen and Severin 2019; Larche et al. 2019; Li et al. 2019; Nielsen and Grabarczyk 2019; Xiao and Henderson 2019; Zendle et al. 2019b; Zendle et al. 2019a; Zendle and Cairns 2018, 2019). National gambling regulators have concluded that certain implementations of RRM constitute gambling under their national laws (Autorité de regulation des jeux en ligne [ARJEL; Regulatory Authority for Online Games] (France) 2018; Belgische Kansspelcommissie [Belgian Gaming Commission] 2018; Digital, Culture, Media and Sport Committee of the House of Commons [DCMS Committee] (UK) 2019; Federal Trade Commission (US) 2019; Kansspelautoriteit [The Netherlands Gaming Authority] 2018; Senate Environment and Communications References Committee (Australia) 2018; UK Gambling Commission 2017). Restrictions on the sale of RRM to children have been implemented in the People's Republic of China (Xiao 2020a).

On 13 April 2020, the Entertainment Software Rating Board (ESRB 2020) and the Pan European Game Information (PEGI 2020), the video game industry's self-regulatory authorities responsible for assigning age and content ratings to video games in North America and Europe, respectively, introduced the 'Interactive Element' of 'In-Game Purchases (Includes Random Items)' and the 'Includes Paid Random Items' 'Content Descriptor', respectively. The ESRB (2020) argued that this measure is intended to better inform consumers by specifically identifying the randomised nature of certain in-game purchases. The ESRB (2020) and PEGI (2020) argued that these labels will ensure consumer protection. However, this measure is flawed and misleading.

This measure does not provide sufficient information to the consumer. The use of the more inclusive terminology of 'Random Items', rather than 'loot boxes', correctly

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recognised that loot boxes represent only one particular implementation of RRM (Nielsen and Grabarczyk 2019). However, the generic term ‘Random Items’ is incapable of ensuring consumer protection because it fails to convey sufficient tangible information about the mechanics in question, so as to allow consumers to identify them effectively when they are encountered, unlike established ‘Content Descriptors’ such as ‘Violence’ and ‘Gambling’, which have inherent meaning. The meaning of ‘Random Items’ is not explained alongside the labels. Further, this measure does not inform consumers of when ‘Random Items’ become purchasable, how much they cost, if they affect gameplay or are merely cosmetic, and if they can be ‘cashed out’ (i.e. transferring in-game virtual items in exchange for real-world currency (Xiao 2020b)).

The ESRB and PEGI deny the potential gambling-related harms of RRM and have refused to categorise RRM as gambling or simulated gambling using their ‘Content Descriptors’ (DCMS Committee 2019, para. 85; Vance 2018), which are intended to identify specific potentially harmful content satisfying the predetermined definitions, and whose assignment guarantees a minimum age rating and would restrict children under 13 and 12, respectively, from purchasing RRM (ESRB n.d.; PEGI n.d.). By definition, a game which would be assigned the ‘Includes Random Items’ labels must also have satisfied the predetermined conditions required for the ‘Gambling’ Content Descriptors to be assigned. The ‘Random Items’ label is an inferior substitute, which is less capable of protecting children from consumer harm, invented by the ESRB and PEGI to identify RRM without correctly identifying them as gambling and assigning games containing them the ‘Gambling’ Content Descriptors and the corresponding minimum age limits.

Finally, this measure can be circumvented. A contemporaneously released video game, *Animal Crossing: New Horizons* (Nintendo 2020) does not itself contain RRM (and therefore cannot be assigned the labels) but supports a separate product line of physical cards which can only be bought in sealed randomised booster packs (Nintendo, n.d.-a, n.d.-b). A game containing such a feature, which is potentially abusive in manners similar to RRM (cf Zendle et al. 2019c), circumvents this self-regulatory measure. This potential circumvention raises a grave concern with RRM regulations in general: when specific implementations of RRM are regulated, game companies may invent other similarly abusive predatory monetisation methods to replace those that have been restricted.

The introduction of this measure is a deceptive false signal: it represents to the public that consumer protection in relation to RRM is being improved and ensured; however, in fact, the measure is flawed and is designed not to protect consumers to the fullest extent that both the ESRB and PEGI are empowered to do. The protection of consumers from the potential gambling-related harms of RRM requires legal restrictions on their sale in the short term and the adoption of ethical game design by the industry in the long term (King and Delfabbro 2019; Xiao and Henderson 2019). The DCMS Committee’s argument (2019) that the precautionary principle (i.e. that ‘the lack of scientific certainty cannot justify [regulatory] inactivity in cases of high risk’ (Girela 2006, p. 285)) applies to the regulation of loot boxes is persuasive (para.79). Regulation must now be pre-emptively applied to ensure consumer protection, and the burden of proof must now be shifted onto the industry: it must prove that loot boxes are not harmful before any regulation should be disappplied.

## Compliance with ethical standards

**Conflict of Interest** The author declares that he has no conflict of interest.

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