

Regulation of monetised online games

The challenges for consumer law in
gambling/gaming convergence

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TOP 100

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Law



**WORLD
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BY SUBJECT

OVERVIEW

- Gambling/gaming convergence explained
- The Loot Box: a contentious example of gambling/gaming convergence
- Reframing the gambling/gaming convergence debate: some questions
- Gambling control vs consumer protection: comparing regulatory frameworks
- Conclusions



GAMBLING/GAMING CONVERGENCE EXPLAINED

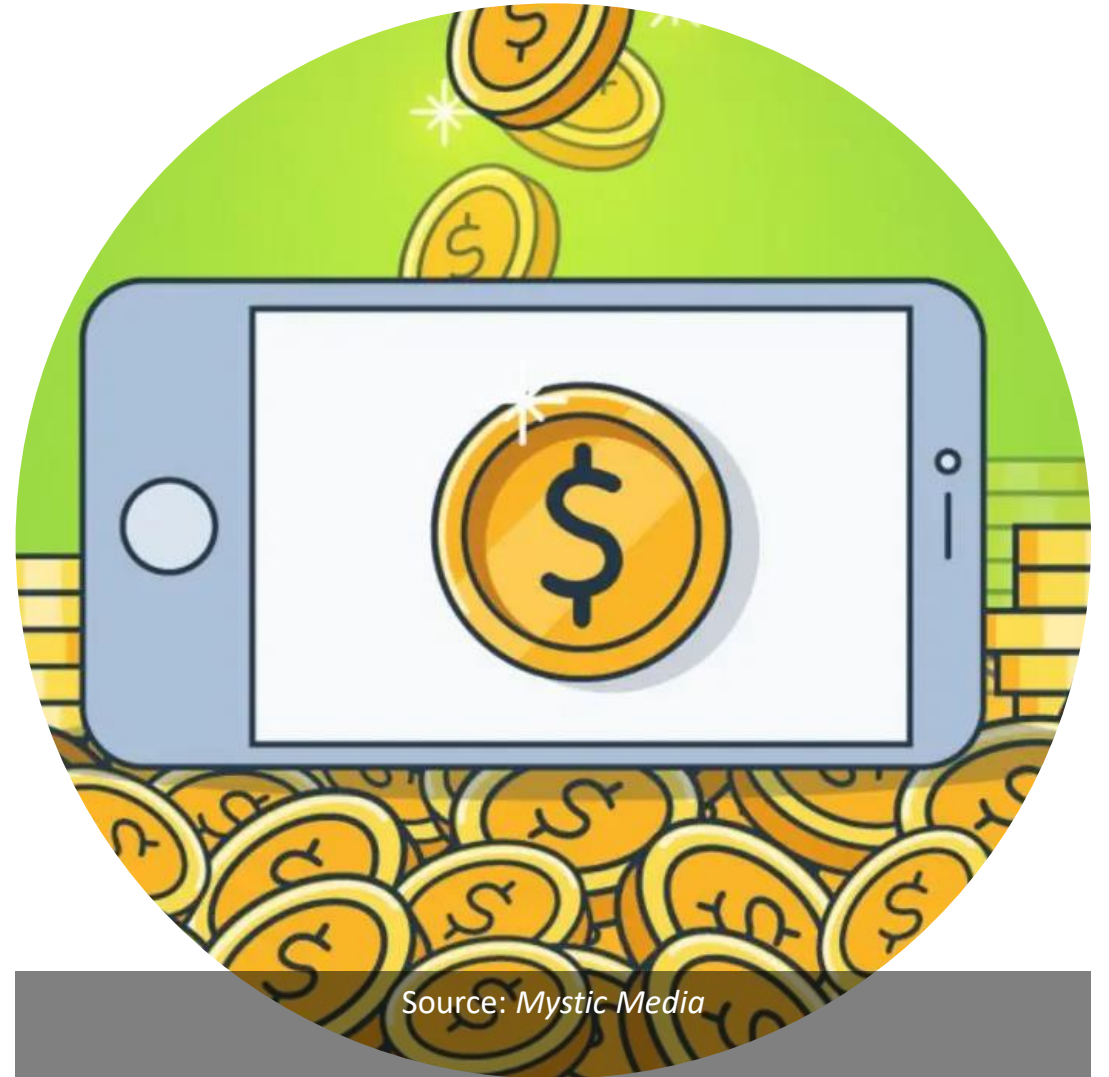
Monetised games

Casino-style gambling design elements
applied to online monetised games

What is the problem?

- Structural – exploitative elements
- Potentially harmful psychological effects

Question: is this a type of unregulated
online gambling?



Source: Mystic Media

THE GAMBLING/GAMING CONVERGENCE DEBATE: A CHRONOLOGY OF EVENTS

2018: Convergence problem identified via socio-scientific research

Similarities with psychological definitions of gambling analysed

Limitations of gambling law explored

2020: Debate shifted to application of “consumer protection” measures

Current regulatory diversity



LOOT BOXES: A CONTENTIOUS EXAMPLE

What are they? A form of monetised game featuring purchases of randomised in-game items

What are the problems?

- Gambling-like features
- Deliberate use of manipulative techniques
- Intensified games environment
- Risks for players – financial, psychological
- Children: age-specific risks
- Evidence



Photograph Source: Gamepedia

LOOT BOXES: THE SEARCH FOR REGULATORY SOLUTIONS



Curfews



Disclosure of “drop rate” and other game information



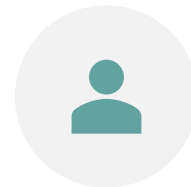
Application of gambling control law



Application of consumer law



Format-specific legislation



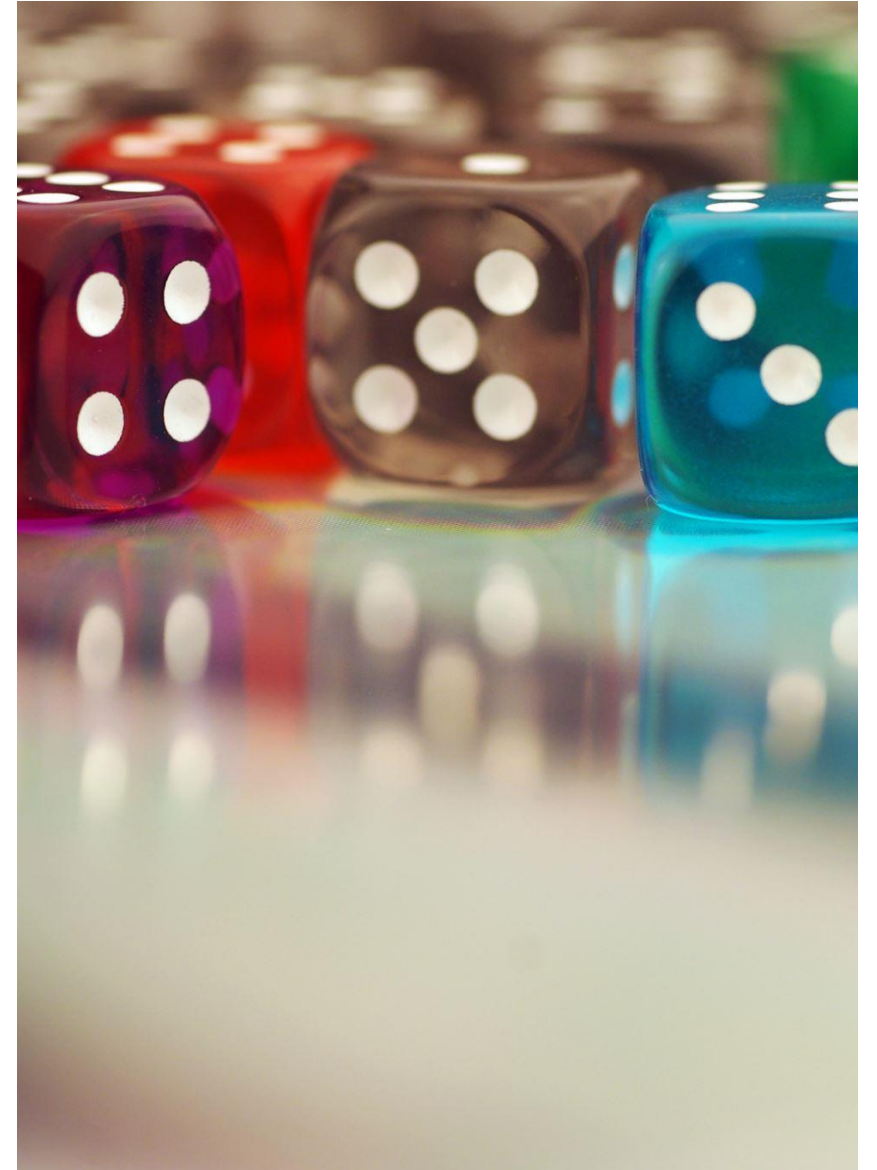
Self-regulation

REFRAMING THE GAMBLING/GAMING CONVERGENCE DEBATE

Regulatory focus to date: asking the wrong question?

Problem: applying gambling law solutions outside of gambling control frameworks; amalgamating consumer law and gambling law measures

Potential Solution for Proposed Interventions: Identify differences in regulatory frameworks & chart pathways towards a new regulatory approach



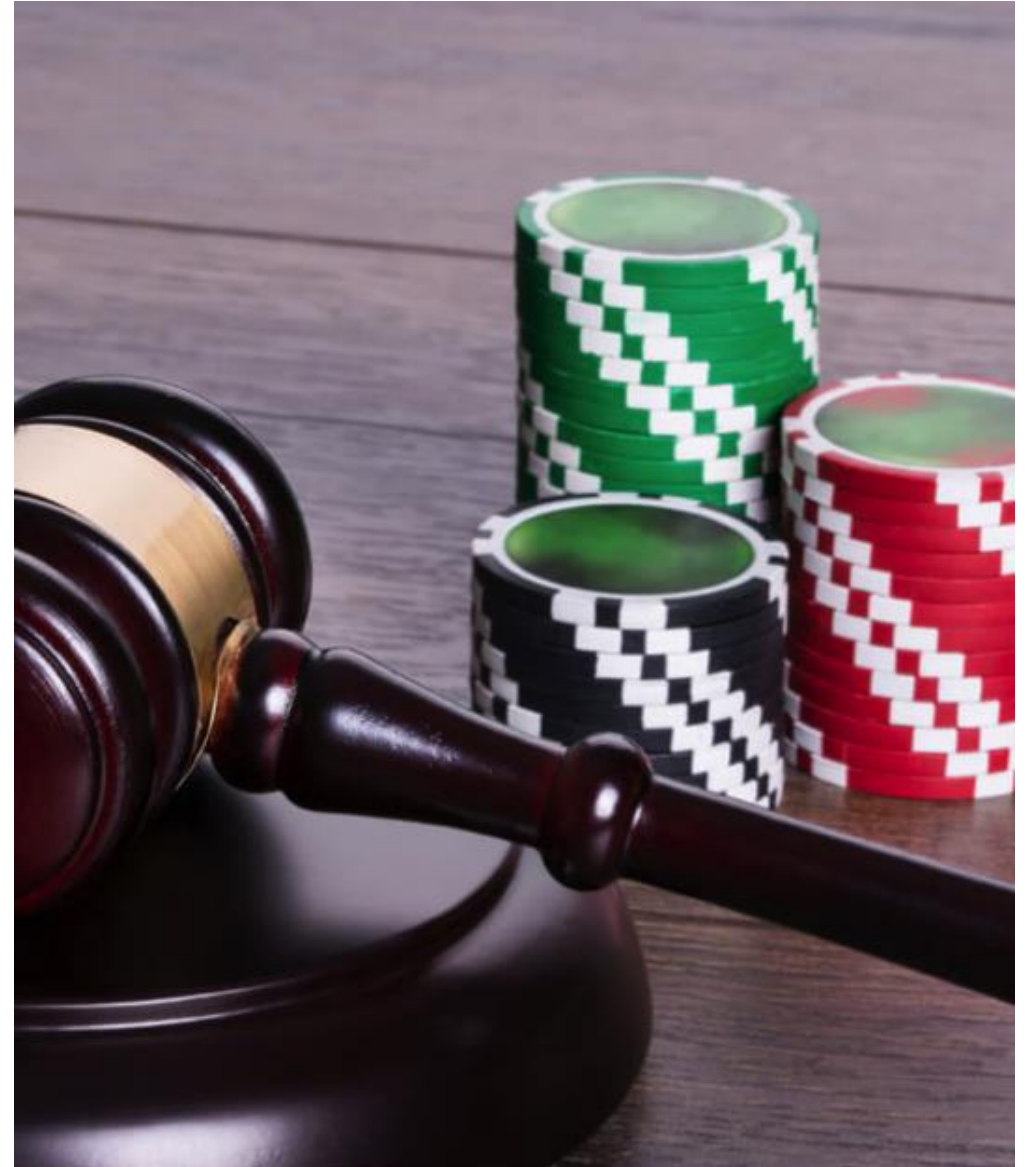
GAMBLING CONTROL VS CONSUMER PROTECTION

Comparing the regulatory frameworks

Theoretical differences

Structural differences

Procedural differences



THEORETICAL DIFFERENCES: OVERVIEW

Gambling Law

Public health rationale

Restraints on personal autonomy and commercial activity

Command-and-control regulatory model

Protect against potential risks of financial, social, psychological and health harms

Consumer Law

Information and disclosure rationale

Commercial freedoms, few restraints

Compulsory disclosures, rule of market conduct

Protect against potential risks of financial harm

THEORETICAL DIFFERENCES: IMPACTS

Example of measure: compulsory limit-setting on spending in monetised games

Gambling law:

- **Permit** gambling but **mitigate risk** to players by imposing restrictions on transactional freedoms

Consumer law:

- Leans towards **prohibition** of a commercial practice which drives irrational spending or adversely affects choices by impinging on transactional capacity



STRUCTURAL DIFFERENCES: OVERVIEW

Gambling law

High degree of vertical control over operator and player

Objective: control of supply, control of market and product access

Elements of consumer protection, advertising control, health and product safety

Impacts on market entry and continuance

Prohibits underage play

Consumer law

Minimal vertical control

Focus on information disclosure events

Elements of contract law and qualitative contract conditions

Limited to transactional impacts, has a broad horizontal scope, facilitates market choices

Addressed to consumers of all transacting categories, including children and vulnerable consumers

STRUCTURAL DIFFERENCES: IMPACTS

Example of measure: compulsory limit-setting on spending in monetised games

Gambling law:

- Limitations: applicable to adult players only
- Enforceable through conditions of market access

Consumer law:

- Applicable to all categories of player, including categories of vulnerable player and children
- Heavy probative burden for enforcement measures



PROCEDURAL DIFFERENCES: OVERVIEW

Gambling law

Licensing as a prerequisite to market entry

Licences renewed periodically, with risk of revocation or imposition of onerous conditions for non-compliance

Operator trading activities subject to ongoing supervision and penalties for breach

Consumer law

Few barriers to market entry

Video games: labelling – query effectiveness?

Enforcement of labelling and information requirements – penalties, fines

Product-specific rules regulated by sector-specific legislation

PROCEDURAL DIFFERENCES: IMPACTS

Example of measure: compulsory limit-setting on spending in monetised games

- Gambling law:
 - Blanket provision imposed on all operators and supervised via licensing conditions and data access
- Consumer law:
 - Resourcing operational supervision of operator/trader/product – lack of access to operational data



CONCLUSIONS

Potential of consumer law as a tool for protection against **financial harms** (with some limitations)

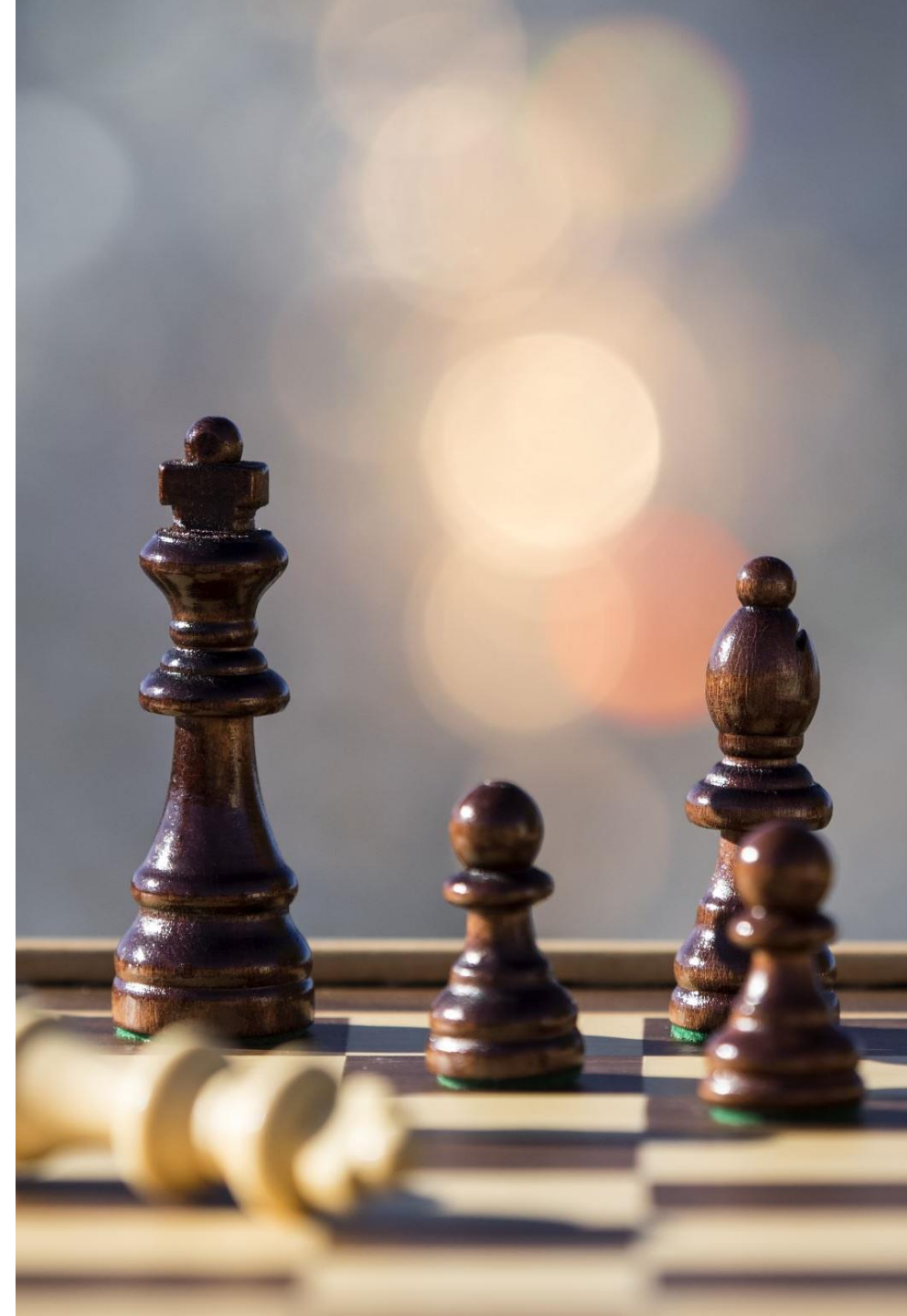
Advantage of reformed consumer law enforcement frameworks

Disadvantage of excluding gambling law solutions (at national level)

Conceptual difficulties of adapting gambling law outside of gambling control frameworks

Challenge of greater protection for some cohorts of players?

Solution: *sui generis* legislation?



QUESTIONS?

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