

LEGAL ASPECTS OF WAYS TO MONETIZE RIGHTS IN THE COMPUTER GAMES INDUSTRY**

Nikolai Yu. Andreev¹, Vladislav V. Arkhipov², Anton A. Vasiliev³, Yuliya V. Pechatnova³

- ¹ State Academic University for the Humanities, Moscow, Russia
- ² St. Petersburg University, St. Petersburg, Russia
- ³ Altai State University, Barnaul, Russia

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Keywords

Computer games industry, loot boxes, crowdfunding, crowdinvesting, donations, computer games law, Internet law, gaming rights monetization The subject. The authors attempt a legal analysis of several forms of monetization of rights to computer games.

The purpose of the article is the legal qualification of donations, crowdfunding, loot boxes as means of monetization.

The research methodology includes general scientific methods of analysis and synthesis, as well as specific scientific methods of comparative law and formal legal analysis.

The scientific problem of the article lies in the existing contradiction between the rapid development of the computer games market and the state of modern legal science in terms of scientific understanding and regulation of the entertainment industry.

The main results, scope of application. There are two main forms of public funding in the gaming industry: (1) donations; (2) crowdfunding. Donations are more common for streamers, crowdfunding for computer developers. Donat is money sent without the condition of reciprocity. In recent years, crowdfunding has become a common way to attract investments. The purchase of a digital (or physical) copy of a game is the acquisition of the right to use (access) a computer game. Therefore, the funds we transfer are investments. We become beneficiaries of the published product. As a result, the developer will have to pay taxes on the funds raised. A loot box is a virtual item – a random set of additional features.

The process of loot distribution is similar to a game of chance: players choose the level of need for a thing. Lootbox, despite the deceived expectations of the player, still brings some benefits to the player. In other words, the player pays a few dollars and expects to receive something of value in return, but the amount of winnings can be both large and small. In this regard, it seems that the loot box is a classic win-win lottery. Therefore, loot boxes should not be equated with gambling, otherwise the gaming industry could respond by referring to the need to include lotteries (and insurance) as gambling. At the same time, the similarity of several elements indicates that there is always a risk of turning a computer game into gambling.

Conclusions. There are a number of ways to monetize the material incentives for players. These methods include donations, funds received in the course of crowdinvesting, as well as loot boxes. Donations are an intermediate phenomenon between donation and payment. For individuals, income from donations will not be taxed if there is no consideration. Also, sometimes donations should be understood as funds from crowdinvestments, which developers sometimes collect to create the next game. These funds, in most cases, should still be treated as developer income, not donations. The boundary between the payment of in-game property and gambling is the phenomenon of loot boxes, which should be qualified as a win-win lottery.

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1. Introduction

Currently, the gaming industry (the development of computer games and the gaming industry will be used as synonyms) is one of the fastest growing and profitable areas of high technology [1, p. 27-38]. So, back in 2018, the volume of the global gaming industry was estimated at \$144 billion. The growth rate of the industry in Russia in 2020 reached 30 percent or more.

At the same time, legal research has little touched this area for various reasons. The legal regulation of the gaming industry was considered a "frivolous" research topic for a long time. This circumstance has led to the fact that only recently the law of computer games becomes separate branch of legal knowledge [2, p. 69 - 90; 3].

Thus, the scientific problem lies in the existing contradiction between the rapid development of the computer games market and the state of modern legal science in terms of scientific understanding and regulation of the entertainment industry.

On the one hand, there is a growing demand for legal protection of the interests of participants in the computer games industry, and on the other hand, there is an obvious legal vacuum in this area.

Therefore, there are various approaches in the legal disputes in connection with computer games, which does not ensure proper legal stability in the legal regulation.

Computer games is studied, as a rule, in the cultural and anthropological aspect. Examples of this approach are the works of D. V. Galkin, J. Bogost, A. S. Lenkevich [4, p. 54 - 72; 5; 6, p. 126 - 136]. At the same time, research studies emphasize exclusively negative aspects of digital reality and gaming behavior: gambling, the development of psychological abnormalities, etc. [7, p. 5 - 12].

There are no dissertation studies on the legal regulation of computer games in domestic science. Dissertations on computer law emphasize some general systemic legal problems that arise on the Internet. For example, the dissertation work of R. F. Azizov "Legal regulation on the Internet:

comparative and historical-legal research" (2016) highlights a set of general approaches to the legal regulation of the Internet in various countries [8].

Thus, we can conclude that computer games theme is fragmented in domestic legal science: specific legal problems are studied (as a rule, in the field of intellectual property), and various ways to eliminate them are proposed [9].

The research works of the following authors should be noted among such studies: Savitskaya K., Grin E.S., Zharova A.K., Kotenko E.S., Gurko A., Pronina N.A., Buyanov A.V., Shchennikov I. AT. and etc.

Based on the foregoing, the low degree of the legal regulation of computer games emphasizes the relevance of this study.

2. Results and discussion

2.1. The law of computer games as the separate branch of law

The term "the law of computer games" is perceived ambiguously in the legal field. It is not possible to speak of the independent branch of law in this case, while the process of "gamification" is gaining momentum every year [10, p. 242 - 253; 11, p. 53 - 60]. Computer games, outlined in the separate space and time, require the separate legal niche [12, p. 117].

Computer games are part of the widest world of games [13, p. 52 – 57] with the same freedom of imagination, the distribution of the roles of players, the rules of gaming etiquette. They belong to the certain culture [14] and the system of mass cultural production, but with hybridization of artistic and technological objects, original aesthetic properties, special perception of virtual reality, specific slang and rules of in-game communication [15, p. 35].

Therefore, it is advisable to classify the law of computer games as the complex branch of legislation [16, p. 5]. This is block of norms from various branches of law that regulates certain areas of social relations – the gaming industry.

There are lots of white spots in the regulation of the gaming industry due to the paucity of theoretical or legal researches. One of these white spots is the qualification of "donations". These are funds that players or viewers of gaming

broadcasts direct in favor of players, bloggers and other participants in spectacular gaming broadcasts. It provides new opportunities for the identity of the gamer as the subject of action [17, p. 98-103].

The development of the Internet and payment tools allows you to directly contact the audience for money. Moreover, the players-streamers themselves also have an opportunity to make money on games. In addition, crowdfunding tools play an important role. The industry is developing, and the more capacious it is, the more funds it attracts. So, it opens new ways to make more money.

In our opinion, there are two main forms of public funding in the gaming industry: 1) donations; 2) crowdfunding. Donations are more common for streamers, crowdfunding is for computer developers.

2.2. Donat as the means of monetizing rights in the industry of computer games

Donat is a gift or money sent without the counter grant. Do donations have a purpose? In our opinion, donations are aimed at supporting the work (further game) of a specific user, streamer, channel owner. The goal, as civilists would say, is generally useful here. But, at the same time, it is associated with professional activities. Therefore, a basic legal question arises: are donations taxable income?

The letter of the Office of the Federal Tax Service for the Moscow Region No. 16-12/021313 dated February 21, 2018 is dedicated to donations (hereinafter referred to as the letter from the Office of the Federal Tax Service for the Moscow Region).¹

Federal Tax Service considers donations through the prism of the Art. 582 of the Civil Code of the Russian Federation, according to which a gift should be recognized as a donation of a thing or right for "generally useful purposes". Donations

can be made to citizens and non-profit organizations. Accordingly, donations cannot be made to commercial organizations and individual entrepreneurs, and therefore, this will be ordinary income, and taxes will have to be paid from it.

The self-employed are not mentioned in the Art. 582 of the Civil Code of the Russian Federation or in the letter of the Department of the Federal Tax Service for the Moscow Region. We propose that the status of the self-employed can be equated to the status of individual entrepreneurs. Therefore, the self-employed who receive income from their activities also bear the obligation to pay tax contributions when they receive donations in their favor.

In addition, it is specifically indicated in the Art. 582 of the Civil Code of the Russian Federation and in the letter from the Department of the Federal Tax Service for the Moscow Region that there should not be counter grant.

However, everything is ambiguous in the gaming industry. Many streamers say on their channels: "Guys, I will be very happy with donations, because thanks to them my next video will be released...". It turns out that people get something in exchange for donations. So, donat is not a donation, isn't it?

When the game, match, etc. is being broadcast, and the streamer receives money, it should be regarded more as a gift. The player does not give anything in return: he is playing, he has not started a new game and will not start in the next few minutes, so, the streamer can hardly provide anything in return for a specific payment. He does not set a donation as the mandatory requirement for watching the game (many viewers will not pay anything at the end of the stream). Here we are clearly dealing with a donation (in favor of an individual or a non-profit organization), with a gift. It means, such a donation is not subject to taxation in accordance with the Art. 217 of the Tax Code of the Russian Federation³. Some streamers who have the status of an individual entrepreneur or selfemployed also receive donations. But they should not do this, because donations will be considered

³ Tax Code of the Russian Federation – URL. : http://www.consultant.ru/

 $^{^1}$ The letter of the Office of the Federal Tax Service for the Moscow Region No. 16-12/021313 dated February 21, 2018 No. 16-12/021313. – URL. : http://www.consultant.ru/

² Civil Code of the Russian Federation. – URL. :

http://www.consultant.ru/ Law Enforcement Review 2023, vol. 7, no. 1, pp. 83–92

taxable income in this case.

There is another type of "donations". They are rarely distinguished from those donations mentioned earlier. They appear in the form of a permanent subscription, for example, through patreon. This is a subscription platform and periodic transfer of funds to a streamer or YouTuber. Such subscribers are promised a variety of benefits, for example, to provide access to the recording of the game earlier than others, and so on.

In our opinion, there is clearly a counter grant here. Therefore, this is not a donation, but a payment for additional materials, so such donations must be declared.

If donations are made out as a subscription without additional materials, they should be qualified as a systematic donation.

2.3. Crowdfunding as the means of monetizing rights in the computer games industry

The first mentions of crowdfunding were associated with social and creative projects. Today crowdfunding is the popular way to attract investment [18, p. 1-4]. It plays the significant role in all areas of entrepreneurial activity [19, p. 13]. The examples of crowdfunding are Planeta, Kickstarter, Rockethub and many others.

According to some experts, crowdfunding can become a source of alternative financing [20, p. 25].

Crowdfunding is the financial services industry, which uses the potential of the "crowd". Therefore, it is the institution for bringing some democracy into the world of financial transactions [21, p. 121].

At the same time, the traditional regulation of the operation of financial markets can prevent their development. In addition, the lack of optimal legal regulation causes the risk of turning this segment of the economy into the "black" market. Thus, there will be no development of alternative methods of financing, but an "arms race" between the market and the state. Such a race is counterproductive for all interested parties [22, p. 119].

In general, the legal regulation is desirable not only for investors, sponsors and fundraisers,

but also for the crowdfunding platforms themselves [23, p. 42].

One of the most interesting examples of crowdfunding in the gaming industry is the collection for the creation of the game Pillars of Eternity (the total amount of the collection is estimated at 3.5 – 4 million dollars). The same example in Russia is the Pathfinder Wrath of the Righteous (only on Kickstarter it is raised over \$2 million).

By the way, the basis of the letter of the Office of the Federal Tax Service for the Moscow Region is originally devoted to crowdfunding for the development of computer games.

The Office of the Federal Tax Service for the Moscow Region indicates that the authors want to raise money for the development and popularization of computer games. According to this letter, individuals should not pay taxes on the money raised through the crowdfunding platform for an abstract public benefit purpose.

The Federal Law "On attracting investments using investment platforms and on amending certain legislative acts of the Russian Federation" (hereinafter referred to as the Crowdfunding Law) was adopted in 2019. The Art. 8 of the Crowdfunding Law mentions utilitarian digital rights. They consist in the possibility to demand: 1) to transfer the thing; 2) to transfer exclusive rights to the results of intellectual activity and (or) the rights to use the results of intellectual activity; 3) to do the work. ⁴

In the framework of this study, the second paragraph on the transfer of exclusive rights to the results of intellectual activity and (or) the rights to use the results of intellectual activity is very important.

We try to apply the law to reality on the example of the Pathfinder Kickstarter. The player starts from \$25 donations, and then gets various bonuses, from the digital copy of the game to the dinner with the developers.

The purchase of the digital (or physical) copy

⁴ On attracting investments using investment platforms and on amending certain legislative acts of the Russian Federation: Federal Law No. 259 of August 2, 2019 // Collection of Legislation of the Russian Federation, August 05, 2019, No. 31, Art. 4418.

of the game is the acquisition of the right to use (access) computer games. So, we are subject to the Crowdfunding Law by transferring on Kickstarter. Therefore, these funds are investments. Not donations. We become beneficiaries of the published product. As the result, the studio or indie developer will have to pay taxes on the funds raised through Kickstarter and its analogues.

In our opinion, this can be avoided. It is enough not to provide anything in exchange for the funds transferred through Kickstarter. The permission to donate money for the creation of computer games does not mean the investment under the Crowdfunding Law. In this case, the transfer of funds is the donation. It is the voluntary transfer of funds so that the developer creates the masterpiece and, in general, promotes the creation and development of computer games.

2.4. Loot box as the means of monetizing rights in the computer games industry

Another interesting form of game monetization is the distribution of loot boxes [24, p. 477 - 480; 25, p. 34 - 40; 26, p. 262 - 272].

The term "Loot box" (box with loot) can be taken literally as a box with randomly determined contents. So, the loot box is the virtual item or the random set of additional features, and the question of which ones, the player receives an answer only after the purchase [27, p. 86].

The process of loot distribution is similar to the gambling: players choose the level of need for the thing. Items that can be obtained through loot boxes are often divided into "rarity levels". The chance of getting an item decreases significantly as the item's rarity increases.

The typical example of the loot box controversy is the lawsuit initiated by Kevin Ramirez. He spent about 600 euros on loot boxes in 2011. Such significant investments in the game, according to Ramirez, did not materialize. He did not receive anything of value. Ramirez found the same victims of "empty" loot boxes and they filed lawsuit against Electronic Arts for about \$5 million.⁵

⁵ EA filed a class action lawsuit over loot boxes in FIFA. – URL. : https://zen.yandex.ru/media/wtftime.ru/protivea-podali-kollektivnyi-isk-izza-lutboksov-v-fifa-

While the litigation was going on, industry representatives advocated the introduction of special notices about the randomness of the contents of loot boxes.

However, litigation around loot boxes continues. For example, some representatives of the House of Lords proposed extending gambling legislation to loot boxes in the UK in 2020. ⁶ Many advocates of restricting loot boxes have pointed out that loot boxes are highly addicted to children and teenagers. In parallel, it is proposed to introduce certain limits and parental controls.

Should loot boxes really be considered gambling?

Despite the deceived expectations of the player, loot box still brings certain benefits to the player [28]. In other words, the player pays few dollars and expects to receive something valuable in return, but the amount of winnings can be both large and small.

In this regard, it seems that the loot box is a classic win-win lottery.

On the one hand, the lottery itself also has the features of gambling. On the other hand, the same can be said about insurance.

It seems that loot boxes should not be equated with gambling; otherwise the gaming industry will include lotteries (and insurance) in the number of gambling games.

To confirm this hypothesis, we will try to analyze loot boxes for compliance with the main features of gambling contained in Russian legislation [29].

Risk. Can we get something sitting down for the game of Gwent in one of the taverns of the Northern Kingdoms? Something to win or something to lose? We can only lose or gain gwent cards.

There are more significant rewards in the Arcomage in Might and Magic VII and VIII. But the winnings could not be used in any other ways instead of the game. The situation is approximately the same in blackjack in San Andreas: it is impossible to withdraw money from the game. This is in-game

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⁶ The UK House of Lords has stated that loot boxes should be regulated by gambling laws. – URL. : https://dtf.ru/gameindustry/164058-palata-lordov-velikobritanii-zayavila-chto-lutboksy-dolzhny-regulirovatsya-zakonami-ob-azartnyh-igrah

property. Here the player is rather risking his sleep time. Sitting down for "real blackjack" means the risk to lose money or something else that one player has agreed with other players.

In our opinion, the "risk" edge of turning the ordinary game into the gambling one is the loss of money or other valuables for losing in the particular game.

Winning agreement. As a rule, user agreements do not establish the obligation to pay money to the player for his win. Benefits and bonuses for winning can be promised by other game characters, but not by the developers of the game.

Organizer / participants. The game organizer is the developer of the computer game, and the participants are other players. In accordance with the Federal Law "On State Regulation of the Organization and Conduct of Gambling and on Amendments to Certain Legislative Acts of the Russian Federation" 7, the organizer is a legal entity engaged in the organization and conduct of gambling. The specified federal law contains a number of prohibitions and requirements established for legal entities acting as organizers of gambling. At the same time, as E. I. Spektor notes, these prohibitions do not contribute to the effectiveness of legal regulation of the organization and conduct of gambling [30].

Rules. The rules can be quite extensive in computer games. But the key element, in our opinion, is still missing. There is no risk of losing property because of the result of the game (not because of the purchase of a distribution kit).

At the same time, the similarity of several elements indicates that there is always the risk of turning computer games into gambling. For example, this line of risk runs through loot boxes. Therefore, loot boxes have become the key front in the fight. If the funds from winning loot boxes could be directly (as far as possible in the modern

world) withdrawn to players' accounts, it would definitely be possible to qualify loot boxes as gambling with strict legal regulation.

3. Conclusion

Thus, there are several conclusions:

- there are a lot of ways to monetize the rights to the game or material incentives for players and game bloggers in addition to acquisition of the right to access computer games or purchase of its digital copy or CD. These methods include donations, crowd investing, as well as loot boxes;
- donations are the intermediate phenomenon between donation and payment. Income from donations will not be taxed for individuals if there is no counter grant;
- sometimes donations should be understood as funds from crowdinvestments, which developers sometimes collect to create the next game. Often these funds should still be considered as developer income, but not donations;
- loot boxes are the borderline phenomenon between paying for in-game property and gambling. This phenomenon should not be attributed to gambling, since there is no risky nature (the player who purchases a loot box will receive some property).

⁷ On state regulation of activities for the organization and conduct of gambling and on amendments to some legislative acts of the Russian Federation: Federal Law No. 244 of December 29, 2006 // Collection of Legislation of the Russian Federation, 01.01.2007, No. 1 (1 part), art . 7.

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INFORMATION ABOUT AUTHORS

Nikolai Yu. Andreev – PhD in Law; Head, Center for Practical Jurisprudence and Digital Competencies, Faculty of Law

State Academic University for the Humanities 26, Maronovskii per., Moscow, 119049, Russia RSCI SPIN-code: 5508-9927; AuthorID: 703380

Vladislav V. Arkhipov – Doctor of Law; Head, Department of Theory and History of State and Law St. Petersburg University

7, 22-ya Liniya V.O., St. Petersburg, 199106, Russia E-mail: v.arhipov@spbu.ru

ORCID: 0000-0003-4566-1454 ResearcherID: I-7148-2013 Scopus AuthorID: 57191837637

RSCI SPIN-code: 1715-5893

Anton A. Vasiliev – Doctor of Law, Associate Professor;

Director, Law Institute

Altai State University

68. Sotsialisticheskii pr. B

68, Sotsialisticheskii pr., Barnaul, 656049, Russia E-

mail: anton_vasiliev@mail.ru ORCID: 0000-0003-3122-531X ResearcherID: N-8386-2016 Scopus AuthorID: 57210645825

Yuliya V. Pechatnova – PhD student, Law Institute *Altai State University*

68, Sotsialisticheskii pr., Barnaul, 656049, Russia E-

mail: jp_0707@mail.ru ORCID: 0000-0003-3091-990X ResearcherID: AAD-7961-2021 ISSN 2658-4050 (Online)

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