



Virtual currency: money, money's worth or none of the above

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THE recent UK launch of Bingo Friendlyz, Facebook's first real-money gambling app, has added fresh impetus to the debate about the future of social gaming and its forays into the world of gambling, but is it a red herring?

In terms of free-play casinos, it may change very little and the debate about the value of virtual currency should remain as open as ever. Bingo Friendlyz has only attracted the level of media coverage it has because it is hosted on Facebook but it is important that the gambling industry does not allow such coverage to muddy the water.

The interest level in Bingo Friendlyz is that players are depositing real money in pursuit of financial gain. It is, to that extent, the first coming together of a social platform and a real-money gambling game. Cynical sections of the media do not (or choose not to) acknowledge that Bingo Friendlyz doesn't purport to be anything other than gambling.

The game does not operate with virtual currency – players deposit in pounds sterling and, at no stage, is there any form of currency conversion. It can also be no coincidence that bingo, traditionally perceived as a softer form of gambling, was chosen as the initial real-money format.

To maintain an open mind, we must go back to basics and consider the key components of gambling to assess whether bingo and casino style social gaming, in their current guise, might be classified as gambling.

GAMBLING BUT NOT AS WE KNOW IT...

Until Bingo Friendlyz came along, social gaming had largely existed outside the scope of gambling as it did not comprise all of the elements of "gambling." In the UK, the Gambling Act 2005 classifies any game that contains an element of chance with the opportunity of winning a prize as "gaming" and, as such, is subject to its regulatory requirements. In essence, the following two components must both be present:

(a) Chance – any games that rely on an element of chance (even where skill is also required, such as in poker) will satisfy the test under the Act. There are very few games that are purely skill based and so this component tends to be satisfied by the majority of social games.

(b) Prize – games of chance will only be deemed to be gambling if there is an opportunity to win prizes of "money or money's worth." This reference to "money or money's worth" is central to the social gaming debate and is one that needs to be examined in greater detail.

The way that social games have been structured means that one of these components is usually absent. The necessity

for chance in the game mechanic and the frivolity of playing without financial consequence has meant that social games have hitherto been structured with chance but without a prize.

The enjoyment of winning a prize is inherent in the human psyche. To that end, game publishers have introduced virtual currency, virtual goods and leader boards to satiate this human requirement. The catchphrase from the old seventies quiz show *Play Your Cards Right* ("What do points make? Prizes!") still rings true today.

In the last couple of years, however, some moral guardians and some regulators have started to question the structure of social gambling for a variety of reasons. It is no surprise that the aged old argument of the social impact of casino games, particularly in a freeplay format, have been put forward. It is a debate that will surely outlive this author (and most of its readers!) but it is particularly virulent when such games are available on platforms that do not operate robust age verification procedures.

Arguably, the more thought-provoking argument revolves around the legal status of virtual currency and whether it represents "money or money's worth" as envisaged by the Act.

IS IT VIRTUALLY THE SAME THING?

Until now, social games (including those with a gambling theme) have steered away from offering "real prizes" to their players. Instead, the reward for successful gameplay tends to come in the form of leaderboards, unlocking locked levels, virtual items or, most commonly, virtual currency with which players can improve their position or release locked functionality within the game.





The common approach is that virtual currency, whether in the form of virtual tokens or virtual items, is not worth anything in the real world and so has no tangible value. This view is predicated on the basis that social games do not allow players to “cash out” their virtual currency - it is, in effect, a closed loop. It seems logical that something that can only be used for one purpose (i.e. spending those virtual tokens within the relevant game) carries no real world value.

It is interesting to consider how this sits with the prospect of virtual currency crime. Last year, Ashley Mitchell, an IT businessman in Devon, admitted to hacking into the social gaming accounts of Zynga and, in doing so, managed to transfer approximately 400 billion virtual poker chips into his account, which were then sold on the black market. His projected gain stood at £184,000 but he only managed to convert £53,000 into real money. Zynga estimated that the legitimate sale value of the chips appropriated by Mitchell was \$12m.

Mitchell’s defence team optimistically argued that Zynga’s loss was impossible to quantify because the chips were virtual and that Zynga were able to produce as much virtual currency as they liked. While the court acknowledged that the virtual currency wasn’t real and was effectively infinite in supply, it came as no surprise that the court was unsympathetic to Mitchell’s actions. He was sentenced to two years’ imprisonment.

The significance of this case is clear: the court’s recognition that virtual currency was legal property capable of protection under criminal law was a landmark decision. There is a distinction, however, between virtual currency that is locked into a game and one that is capable of transfer to third parties.

The court might have been faced with more complex issues if the stolen virtual currency had been locked into the social game with no external value. In that situation, the court would still have had considerable concerns about the exploitation of security weaknesses but may have faced tougher decisions about the protection of “property” that has no real-world value.

The principle legal argument in such a scenario might focus on “money’s worth” rather than “money” and the courts would need to consider if the unlawful ability to acquire virtual goods or unlocking levels, for example, might represent some degree of money’s worth.

It is still possible that free-play casino games may yet fall foul of gambling legislation in their own right. The award of extra game-time, unlocked levels or virtual

credits may be considered to represent value, particularly in the case of credits which can be purchased with real money.

Even if such benefits cannot be cashed out or transferred to third parties, the fact that they are capable of being purchased with real money is a strong argument when assessing whether the award of tokens or items as prizes for successful gameplay represent money or money’s worth.

The traditional counter-argument is this: just because you can pay for virtual currency or buy the opportunity to play unlocked levels does not mean that the award of free virtual currency has any value, provided that the virtual currency has no intrinsic real-world value and cannot be traded. It remains a very convincing argument. It is, therefore, essential to ensure that the virtual currency is as worthless as possible and the terms and conditions are key to achieving this.

WHAT DO THE TERMS SAY?

The popularity of social gambling games, particularly in the US where operators are readying the market for the eventual legalisation of real-money play, is bringing the games under increased scrutiny by regulators.

The Gambling Commission, the UK regulator, currently takes the view that “money’s worth” relates to the real-world value of the prize offered and can include vouchers, goods or any items that have actual value. Adopting this liberal stance is not to say, however, that they are not considering the subject and, in common with other European regulators, might well be assessing whether there is any requirement for further investigation.

It should be remembered that the Gambling Commission has a statutory duty to advise the government on issues relating to gambling. As part of this duty, it may yet be minded to consider the issue of free-play social gambling games and whether these should be available to those who are under 18, even though they do not stand to expend any money, or have the chance to win prizes. For the moment, they have not come to any conclusion and any such conclusion is likely to take some time.

In the meantime, terms and conditions will be ever more crucial in keeping the regulators at bay. It is instructive to consider some of the key terms that are being used by social game publishers to ensure that virtual currency is being kept within the closed walls of each game. The following is a sample selection of terms which, each in their own way, clearly demonstrates this point:

- “You shall not sublicense, rent, lease, sell, trade, gift, bequeath or otherwise transfer your Account or any Virtual Items associated with your Account to anyone without our written permission.”

- “Virtual Currency and Virtual Goods can never be redeemed for real money, goods, or any other item of monetary value from us or any other party.”

- “We prohibit and do not recognise any purported transfers of Virtual Items effectuated outside of the Service, or the purported sale, gift or trade in the “real world” of anything that appears or originates in the Service, unless otherwise expressly authorised by us.”

- “You understand that you have no right or title in Virtual Goods or Virtual Currency, whether “earned” in a game or “purchased” from us.”

It is clear from these terms that there is a very deliberate attempt by publishers to lock virtual currency and virtual items into the game. The question of title in the final example raises an interesting legal argument as to whether publishers are entitled to claim ownership of virtual currency and items that have been legitimately earned or, more pertinently, paid for by consumers. It remains untested but, if challenged, the courts would need to give some serious consideration as to whether consumers are adequately protected where they have invested real money to acquire virtual benefits.

For the time being, terms such as these can only be sustained so long as social gaming operators abide by fairly rigid virtual currency business models. Time will tell if Bingo Friendly and its real money successors will need to re-evaluate their terms and conditions to distinguish themselves from their free-play counterparts.

WHAT NEXT?

It is clear that there are many legal and regulatory challenges facing social game developers and the platforms which house these games, particularly in the gambling arena. More so than ever, the onus is on the lawyers to keep ahead of the game and, where possible, future-proof terms and conditions against the ever-changing social gambling landscape. Indeed, it is a sign of the times that, in the space of seven short years, the Act appears to have been outstripped by technology and social trends.