

Examining skins betting from a gambling law perspective

'Skins betting' is a hot topic - it generates huge revenues, operates entirely on unregulated websites and attracts and accepts players who are under 18. Recently it has also been shaken to its core as Valve, whose 'Steam' platform is used by the operators of skins betting websites, has expressly stated that skins betting websites are not permitted to use Steam. Tom Edmonds of Harris Hagan takes a look at skins betting from a gambling law perspective, and discusses recent developments and the likely future of this sector.

What are 'skins'?

A 'skin,' in the context of 'skins betting,' is an item that can be used in a computer game and, significantly, can be traded online for real money.

To understand skins, it is easiest to consider the popular game 'Counter Strike: Global Offensive' ('CS:GO'). CS:GO involves two teams of players who earn points by killing players from the other team. Players use an array of weapons, available in various aesthetic designs. A player with conservative taste might use an AK47 in gun metal black, but a player with a more adventurous style could choose a white and neon blue AK47. These different weapon designs are referred to as 'skins.' With regards to CS:GO, a player's 'inventory' of skins are recorded in their account on the Steam platform, which is operated by Valve.

There are also online marketplaces where skins can be traded for real money. The rarer the design, the more desirable and valuable the skin, with rare skins selling for hundreds of dollars. The mechanics of these marketplaces vary. Players can use third party websites (separate from Steam) to buy or sell skins for real money, albeit such transactions may be conducted using a pseudo currency of such third party website which can then be converted into real money. Players can also use a marketplace function on Steam to purchase skins for real money, but can only sell skins on Steam for credit to be used on the Steam platform, for example to buy other games, and which cannot be withdrawn from Steam.

Consequently there are liquid markets for skins, enabling skins to be exchanged for real money.

What is 'skins betting'?

Players can use skins to place wagers and similar to 'real money' gambling, there are multiple forms of 'skins betting.' Some merely replicate existing forms of gambling e.g. roulette or sports betting. Perhaps of more interest is a popular type of skins betting commonly known as 'jackpot' skins betting, which has no direct equivalent in traditional gambling, which we consider in detail below.

Skins betting is available on a number of sites: a Google search produces over 600,000 results. However, to our knowledge, none of these sites are regulated by the Great British Gambling Commission (the 'Commission').

A key point to note is that these skins betting websites typically operate by connecting to Steam via an application programming interface ('API'). This enables the skins betting websites to confirm what skins a player has in their inventory and effectively, albeit sometimes via a circuitous route involving automated Steam accounts known as 'bots,' debit skins from a player's inventory in order that they can be wagered and credit skins to a player's inventory if a player wins a wager.

Can skins betting be offered legally?

There are too many types of skins betting for us to offer a blanket analysis on the legality of skins betting. We can offer a view on the principles relating to some of the more widespread types of skins betting, namely: (1) eSports betting; (2) casino; and (3) jackpot. We only consider here the position in Great Britain as gambling laws vary considerably between jurisdictions.

Myth: Skins betting can't be illegal - it doesn't use real currency

Before we consider specific forms

of skins betting it is useful to address a myth: that skins betting cannot be ‘gambling’ simply because both the stake and prize are skins and not real money. This argument does not bear close scrutiny in Great Britain.

The primary piece of gambling legislation in Great Britain is the Gambling Act 2005 (the ‘Act’), which defines ‘gambling’ as ‘gaming,’ ‘betting’ or a ‘lottery.’ None of these forms of gambling requires the stake or prize to be real money. However, in each case, the stake or prize must be at least ‘money’s worth’^{1, 2, 3, 4, 7}. In our view, the ability to convert skins to real money via online marketplaces creates a strong argument that skins are of ‘money’s worth.’ This view is supported by a recent discussion paper issued by the Commission on ‘Virtual currencies, eSports and social gaming’⁵.

Those who argue that skins do not have ‘money’s worth’ and therefore that skins betting is not gambling, may cite the Commission’s guidance on ‘Social Gaming’:

‘[...] it has been accepted that winning additional spins/credits/tokens/chips (that can also be acquired by the payment of real money) does not amount to a prize of money or money’s worth, which would make it licensable gambling. However, this is untested in the courts and the uncertainty, and associated commercial and regulatory risk, is a useful deterrent to those thinking of pushing the boundary’⁶.

We consider that the reference to ‘credits/tokens/chips’ as not amounting to money’s worth is only applicable to virtual items which cannot, certainly not easily, be traded for money (as is the case with most social gaming). This guidance would not therefore apply to skins, which can be easily

traded for real money.

eSports betting

Skins are intended to be used in computer games. It is therefore no surprise that people wager skins on the results of computer game matches (known as eSports). Websites allow players to bet against the ‘house’ or against other players, on a peer-to-peer basis, on the results of eSports matches.

The definition of ‘betting’ in the Act is ‘making or accepting a bet on:

- (a) the outcome of a race, competition or other event or process;
- (b) the likelihood of anything occurring or not occurring;
- (c) whether anything is or is not true’⁷.

Betting does not require a real money bet to be placed; pursuant to the Act a person can be deemed to place a bet if they transfer ‘money’s worth’⁸. Neither is there a requirement for a real money prize, a prize for betting can include ‘articles or services’⁹.

If a person places a bet on the outcome of an eSports match, in our view this would likely satisfy the definition of ‘betting.’ This is of course contingent on skins being (i) of ‘moneys worth’ with regards to the stake element, and (ii) an ‘article’ with regards to the prize element, both of which we consider could be strongly argued as being satisfied.

Casino

‘Gaming’ is defined in the Act as ‘playing a game of chance for a prize’¹⁰. It does not require a stake and as such it is immaterial whether currency or virtual items (such as skins) are wagered. The definition of ‘prize’ in this context includes ‘money or money’s worth’¹¹.

Traditional casino table games such as roulette fall within the

definition of ‘gaming’ and the substitution of skins for casino chips would not affect whether such a game satisfies the definition of gaming. This is because no stake is required and the prize element would be satisfied if it is accepted that skins are ‘money’s worth.’

Jackpot

‘Jackpot’ skins betting involves a person placing one or more skins into a pot. Each player who puts a skin into the pot has a chance of winning all the items in the pot, less a percentage of items from the pot, which are taken by the operator as commission. Each player’s chances of winning the pot are determined by the value of the skins they put in, relative to the total value of the pot.

This product could fall within the definition of ‘gaming,’ as set out above. In addition, it could fall within the definition of ‘lottery.’ There are two types of ‘lottery’ in Great Britain; for these purposes, the most relevant type of lottery is likely to be a ‘simple lottery,’ the definition of which is an arrangement where:

- (a) persons are required to pay in order to participate in the arrangement,
- (b) in the course of the arrangement one or more prizes are allocated to one or more members of a class, and
- (c) the prizes are allocated by a process which relies wholly on chance’¹².

The reference to payment includes ‘transferring money’s worth’¹³ and the definition of prize includes ‘articles or services’¹⁴. As such, we consider that typical ‘jackpot’ skins betting would likely satisfy the above lottery definition, as a person is required to transfer skins in order to participate and one or more skins will be allocated by a process which relies wholly on chance.

Where an arrangement such as this satisfies more than one definition of gambling, i.e. ‘gaming’ and ‘lottery,’ it is necessary to consider specific provisions in the Act to determine which type of gambling is applicable. However, for the purposes of this article it is sufficient to consider that this type of product would likely constitute gambling, a licensable activity, though it should be noted that it is broadly not possible to operate a lottery for commercial profit in Great Britain.

Does skins betting need to be regulated?

For the reasons explained above, we consider that the main forms of skins betting require a Commission licence to operate legally in Great Britain. A wider question is, do they need to be regulated? In short, our answer is ‘Yes.’ We highlight three fundamental reasons below, based on the licensing objectives of the Act.

(1) It is crucial that criminal elements are not involved in the operation or ownership of skins betting sites, as these could be used to generate money for criminal enterprises or to launder money. In a regulated environment, the persons involved in the operation of a gambling business are assessed to ensure they are not involved in criminal activities.

(2) Players must be confident that gambling is being conducted fairly. There have been a number of recent scandals regarding the fairness of skins betting sites, as noted below in the section on recent developments. In a regulated environment, gambling operations have to satisfy industry standards that establish that their systems are fair.

(3) Children watch eSports and become aware of skins betting, as some professional eSports players

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are sponsored by skins betting websites. However, unlike licensed gambling operators, there is no requirement for an age gateway on skins betting websites.

Penalties

The penalties for providing gambling services in Great Britain without a Commission licence include an unlimited fine and/or a custodial sentence of up to 51 weeks¹⁵.

The Act is a ‘point of consumption’ regime, which means that its application is dependant on the location of the end user. It will therefore apply to all operators who accept bets from players located in Great Britain, irrespective of where the operator’s servers are based or where their operating company is incorporated.

Whilst penalties may be difficult to enforce against offshore operators, should an offending operator decide to apply for a licence from the Commission (or a regulator in another territory), they could be refused on the basis of their ‘bad actor’ status i.e. that they were willing to operate in violation of the law. Additionally, offenders entering Great Britain for whatever reason could be arrested, although admittedly this does seem unlikely.

Penalties also extend to parties who advertise unlawful gambling services, which impacts on the ability of skins betting sites to market their services in Great Britain via established media channels¹⁶.

Recent developments

Skins betting has recently attracted adverse publicity due to a number of controversial incidents including:

- a YouTube ‘celebrity’ promoting a skins betting site but allegedly being given skins to gamble on the site and being told

what the results would be in advance, therefore giving a false impression of the likelihood of winning on such site¹⁷;

- two other YouTube ‘celebrities’ promoting a skins betting site without clearly acknowledging that they owned such site¹⁸; and

- a claim against Valve and other parties by a CS:GO player regarding losses from skins betting, which included the allegation that certain skins betting operations are “illegal gambling businesses”¹⁹.

Such adverse publicity is likely to attract the attention of regulators.

We are aware of at least one instance where the Commission has begun criminal proceedings against a skins betting operator. The Commission also made the following comment to the BBC on the recent skins betting controversy, referred to above, which involved two YouTube personalities promoting a skins betting site without clarifying that they owned the site, that:

“We are paying close attention to the growing popularity of virtual or in-game items (skins), which can be traded, sold or used as virtual currencies to gamble. If we suspect unlicensed gambling is taking place, we will write to the operator to inform them that they need a licence and will take further action if they do not stop”²⁰.

This negative publicity is also likely to dissuade a variety of businesses from allowing skins betting websites to use their services. The most prominent example is Valve, which has recently taken a decisive step. In July 2016, Valve issued a notice on its site regarding skins betting²¹ and is reported to have sent a cease-and-desist notice to a number of skins betting operators stating that they could no longer use its API, thereby resulting in the almost instantaneous closure of some of these sites. However, some skins

betting sites are still operating, potentially using various workarounds or operating in contravention of Valve's notice. It will be interesting to see how much further Valve goes in order to prevent such sites using Steam, which could include technical action, such as shutting down bots used by such third party websites, or legal proceedings, requiring such third party websites to stop using Steam's platform.

Significantly, Twitch, a major online video streaming site that has been used to promote skins betting websites via people publishing videos of themselves playing such sites, also published a statement, which stated that content that violates user agreements of third parties, such as Valve, is prohibited on Twitch²². As such, an important platform for promoting skins betting sites has closed its doors to this sector.

We also understand that a payment processor has begun to ask for assurance regarding payments made in relation to eSports tournaments, due to concerns that it could be associated with gambling. Although eSports tournaments are a completely different business to skins betting websites, this is a reminder that payment processors are acutely sensitive to matters that could be deemed to involve gambling and that they are becoming more interested in the eSports environment, which includes skins betting websites. A significant development could be if payment processors approach the online marketplaces that are used to buy and sell skins for real money and ask them to provide legal confirmation that the skins traded on their sites are not associated with gambling.

Another interesting development was that one of the major skins betting websites stated that,

although it considers that it is “not offering games of luck, [the website is] not offering any transactions with real money or equivalents,” that it had decided “to acquire a licence to legally operate in most of the countries and be able to accept the esports bets by our community, as if it would be real money²³.” It would represent a fundamental shift if an operator of a skins betting website decided to apply for a gambling licence. However, we understand that this operator has since removed this statement about applying for a gambling licence and we are not aware of any other skins betting operators applying for a Commission gambling licence.

Conclusion

Skins betting shares many of the characteristics, including the risks, of real money gambling. Regulation is important to ensure criminality is kept out of these operations, the gambling is fair and that people at risk, in particular children and those with gambling addiction issues, can be protected. Operators of these sites should be aware that regulators are paying close attention to this area and that an operator, sooner rather than later, will likely be prosecuted for providing such services.

Separate from regulatory action, the greatest immediate impact on skins betting sites may be that providers used by skins betting websites, such as Valve, Twitch and payment processors, have begun to actively disassociate themselves from skins betting. The approach of these providers and how aggressively they seek to stop skins betting websites from using their services will be key to whether skins betting can continue in its current form.

On a more positive note, we consider that the first skins betting operator to apply for a licence from

the Commission and therefore be able to accept players legally from Great Britain would have a significant first mover advantage.

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1. Section 6(5) Gambling Act 2005 ('Act').
2. Section 11 Act.
3. Para 2(b) Sch 1 Act.
4. Section 14(4) Act.
5. <http://www.gamblingcommission.gov.uk/pdf/Discussion-papers/Virtual-currencies-eSports-and-social-gaming-discussion-paper-August-2016.pdf>
6. <http://www.gamblingcommission.gov.uk/pdf/Social-gaming---January-2015.pdf>
7. Section 9(1) Act.
8. Para 2(b) Sch 1 Act.
9. Section 11(4) Act.
10. Section 6 Act.
11. Section 6(5) Act.
12. Section 14(2) Act.
13. Para 2 Sch.2 Act.
14. Section 11(4) Act.
15. Section 33(4) Act.
16. Section 330 Act.
17. <http://www.esportsbettingreport.com/m0e-kept-money-skins-site-engaged-fraud-exposed/>
18. <http://www.bbc.co.uk/news/technology-36702905>
19. https://www.scribd.com/doc/316578160/Michael-John-McLeod-et-al-vs-Valve-Corporation#from_embed
20. <http://www.bbc.co.uk/news/technology-36702905>
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