

The practice of gambling is an age-old phenomenon, with there being no shortage of various rules and stakes that are thrown into the balance. One of the latest examples is using items in video games known as 'skins' to bet on the outcome of gaming competitions. Despite originating from within the video games sphere, the consequences of such 'skin betting' are often very real. In this newsletter, we explore some of the core concepts and the legal issues that may arise as a result of skin betting.

VIDEO GAMES SERIES

SKIN BETTING IN GAMING COMPETITIONS

WHAT ARE SKINS?

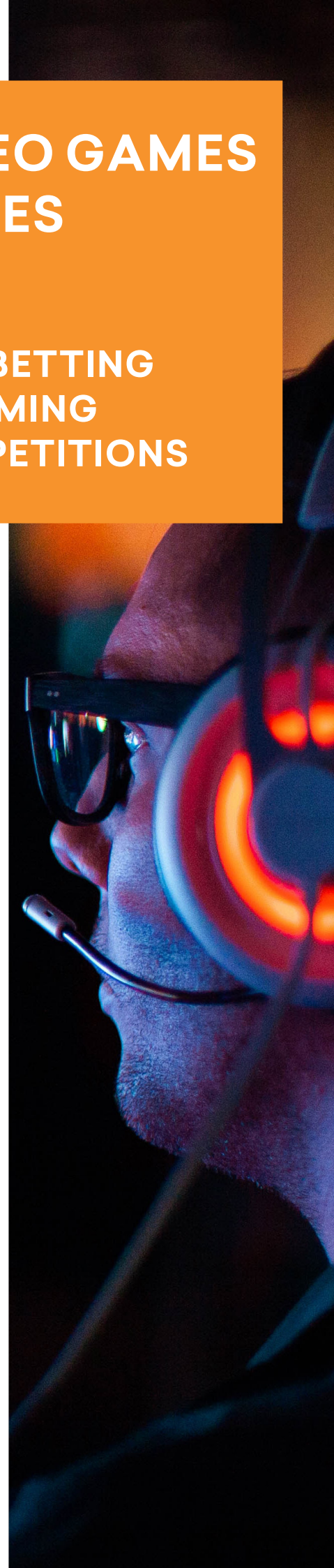
Roughly ten years ago, the introduction by game developer Valve of skins in the popular games Team Fortress 2 and Counter Strike: Global Offensive is seen as a pivotal moment in the commercialisation of skins.

These virtual items primarily serve a cosmetic purpose, allowing their owners to customise in-game items or characters by equipping said skins. For example, players can use these skins to change the outfit that their in-game character wears or may customise the colour of their weapons. While initially the idea was to incentivise active community members by rewarding them with such skins, some of these skins have become much sought-after trade items on online marketplaces, particularly when these can no longer be earned through gameplay or bought at their initial price. Nowadays, nearly all of the new gaming titles contain some form of skins and customisation of the player experience, although not all of these are tradeable on secondary markets.

WHAT IS SKIN BETTING?

As the potential value of skins was made evident, the phenomenon of skin betting started taking root in various competitive gaming circles. The activity involves the use of skins in place of more conventional currency to place bets on the outcome of competitions (in games such as Counter-Strike, NBA 2K, League of Legends etc.), by analogy with betting on horse racing. The value of the stake is tied to the value of the skin, which based on its rarity and availability on the market can range up to several thousands of euros.

If a bet is successful, the prize may consist of any form of currency or even other skins. If the opposite is true, the staked skin is forfeited in its entirety. At its core, the practice thus shows high similarities to any other type of online betting.



LEGALITY OF SKIN BETTING

An important difference in the legal approach on skin betting will depend on whether the bet is executed as a direct deal between two or more individuals or whether it is organised through a platform which automatically settles the outstanding debts once the conditions of a bet are triggered.

In the first case, the bet essentially forms an agreement between 2 individuals, which in principle is an unregulated activity. In the second case, an entity is potentially facilitating or providing gambling activities, depending on the applicable laws of its jurisdiction. In that case, the legality will a.o. things depend on what local gambling laws permit, whether the entity requires licensing and whether citizens of certain jurisdictions are targeted by these platforms through advertising or other means.

THE BELGIAN APPROACH

The Belgian legal framework does not contain any specific rules on skin betting. As a result, an assessment in light of the general definition of gambling is the only way to determine whether (an activity resembling) skin betting qualifies as gambling.

This general definition of gambling includes 4 elements, being that the practice must consist of: (i) any game, (ii) where there is a stake of any kind, (iii) in which chance is a factor and (iv) where the loss of the stake or gain of any kind is the result of playing the game.

In this discussion around skin betting, the main focal points are (a) whether the skin is a stake of any kind and (b) whether there is an element of chance in the game.

a. Skins must be a stake of any kind

For something to be considered as a stake of any kind, this implies that the staked item has “real world value”, which means that it can be exchanged for some form of legal tender down the line. This means that for example skins that are exchangeable for cryptocurrency, but not directly for fiat currency, may still meet the criterion of forming a stake, since most cryptocurrencies are in turn exchangeable for fiat money. Skins that have sentimental or symbolic value, or that are only exchangeable for in-game currency, will likely not meet this criterion. An added layer of complexity presents itself when the skins are earned for free, yet can still be sold for fiat currency at a later stage.

b. The element of chance

Another point of discussion is whether the underlying games on which the players bet contain an element of chance. This is subject to debate when it comes to first-person shooter gamers like Counter-Strike, where a high degree of skill is required to compete in top-level competitions. While an argument can be made that chance plays a role (due to e.g. external factors), this will not be that evident in all circumstances. For games like EA Sports FC (formerly known as ‘FIFA’) or card games however, where there are so-called ‘hit chances’ (i.e. percentages to hit a target), the chance element becomes clearer.



Another consideration is what exactly a player decides to bet on. The assessment may change based on whether the bet is solely placed on the outcome of the match as a whole or whether it also encompasses other more random elements, like the time needed to complete a match, the elimination of specific players or the methods used to achieve the objective. These additional layers of chance-induced elements may indeed alter the total assessment of the element of chance.

CONCLUSION

In summary, the assessment of whether the use of skins for gambling-like purposes constitutes a regulated activity will highly depend on the particular case, where no clear-cut answer exists right out of the gate.

More often than not, skin betting platforms will operate in a grey zone, where these platforms are either unregulated or operating from jurisdictions with different views on the regulatory status of skin betting.

Stay tuned for our next episode, where we will dive into the legal implications of AI in video games.

For any questions or assistance, don't hesitate to email our Video Games Team at gaming@simontbraun.eu.

This article is not a legal advice or opinion. You should seek advice from a legal counsel of your choice before acting upon any of the information in this article.

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