

UK's OFT to probe in-game purchases

The OFT announced on 12 April the launch of an investigation into free web and app-based games to determine whether children are being unfairly pressured to pay for additional content.

"Social gaming is currently an unregulated market," said Tom Grant, Partner at Harris Hagan. "In terms of statutory protection, the Consumer Protection Regulations are there to protect consumers from unfair, fraudulent or misleading practices which is why the OFT has launched their investigation."

The OFT states that it is not seeking to ban in-game purchases, but to ensure that the industry is adhering to the relevant consumer protections, especially in regards to children. "My gut feeling is that gaming operators do not advertise any more aggressively than toy or cereal companies," adds Grant. "The concern is the immediacy with which children can act on those impulses."

"The gaming industry would be well advised to openly acknowledge that they have a responsibility to counteract the inevitable social issues," adds Grant. "In terms of regulation, a genuine opportunity exists for the industry to self-regulate."

Gaming operators advised to avoid virtual currency transfer

FinCEN's guidance on the applicability of the Bank Secrecy Act to virtual currencies, released on 18 March, clarifies that gambling operators involved in the transfer of Bitcoin or other forms of virtual currencies to or from any third party's account - activities defined as money transmission - may be subject to FinCEN regulations.

"Most operators are not registered or otherwise subject to MSB requirements, so this is certainly something that requires special attention," said Jeff Ifrah, Founding Member of Ifrah Law. "The regulations define a money transmitter as accepting and transmitting anything of value that substitutes for currency, but that does not include accepting and transmitting solely as part of a bona fide purchase or sale."

"For example," explains Ifrah, "if a gambling operator permits

a third party to fund a customer's account, or to withdraw funds by sending the funds to a third party, or any other transfer of the account proceeds to a third party, then that gambling operator is acting as a money transmitter."

FinCEN's guidance states that 'the definition of money transmitter does not differentiate between real currencies and convertible virtual currencies,' and that 'the same rules apply to brokers and dealers of e-currency.' "So, this actually provides some reassurance to accepting virtual currencies," adds Ifrah. Money transmitters are subject to FinCEN's registration, recordkeeping and reporting requirements, and the requirement to implement an AML program.

"Consistent with FATF's Recommendations gaming operators should approach emerging technologies and

virtual currencies with caution," said Stuart Hoegner, an International Gaming Lawyer. "However operators can embrace new technologies. For example it is possible to integrate a Bitcoin wallet and a wallet-holder's KYC, and politically exposed person considerations into existing compliance structures. While Bitcoin itself cannot be regulated, individuals and organisations using Bitcoins can be."

"In one sense, FinCEN's guidance is a positive development because it shows that the US government acknowledges and seems to want to regulate Bitcoin," adds Hoegner. However, concludes Ifrah, "It is probably advisable for operators to restrict funding and withdrawal transactions to the account owners only, and not to any third party to help avoid the transaction being classified as a money transmission."

Ordinance enables legal online gambling offerings in Romania

The Romanian Government published on 27 March an Ordinance to create a National Gambling Office, which will assume the monitoring and reporting responsibilities required by Romania's remote gambling legislation of 2009 and therefore allow operators to legally provide online gambling.

"The original Romanian law intended to outsource the monitoring of the market to a private third party," said Martin Lycka, Legal Counsel at Betfair. "Unfortunately no private party

in being the monitoring body. The Ordinance seeks to remedy the failure of the old structure." The Office's duties will include licensing and pursuing illegal operations.

Cosmina Simion, Senior Associate at DLA Piper, believes "Authorised remote gambling might open up a new revenue stream for the Romanian State." Yet operators must hold a bricks-and-mortar or televised bingo licence to offer online gambling. "To make the market attractive for foreign operators

will have to be removed," said Lycka. Simion adds: "The Ordinance may lead to the revitalisation of the offline gambling industry, as most likely, foreign operators will find it easier to enter the market by establishing a joint venture with a Romanian partner."

"The regulation can still be considered in breach of EU law because of the local entity requirement," explains Lycka. "We understand that the new Romanian government intends to amend the legislation to

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