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ELECTRONIC COMMERCE IN THE GAMING INDUSTRY. THE APPLICABILITY OF CONSUMER PROTECTION FRAMEWORK AND LEGAL CHALLENGES.

Thesis Summary

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TABLE OF CONTENT

I. THE SCOPE OF THE RESEARCH 3
II. ANALYSIS AND METHODOLOGY 7
1. Research Questions 7
2. Research Methodology 8
3. Research Structure 9
4. Research Framework 10
III. RESEARCH FINDINGS AND SIGNIFICANCE 12
1. Research Question 1 12
2. Research Question 2 14
3. Research Significance 16
IV. LIST OF PUBLICATIONS 18

I. THE SCOPE OF THE RESEARCH

Since 1961, when MIT student Steven Russel created the first-ever video game "Spacewar", which inspired the further appearance of such popular video games as "Asteroids" and "Pong",[1] the gaming industry has significantly developed. Nowadays almost every electronic device has access to the Internet and both online and offline video games.

Together with the technological development, the new possibilities and technical means for concluding the contract being available in the market, electronic commerce (hereinafter referred to as – the "e-commerce") in the gaming industry became more sophisticated and nowadays involves transactions with digital assets, intangible virtual items and smart contracts with involvement of the crypto-currency and virtual tokens. At the same time, most of the European e-commerce regulations are focused only on traditional online shopping, purchase of software or digital goods, such as music, videos, and electronic books.

Looking at the European digital market, it can be seen that, apart from standard forms of transactions with digital items, various alternative digital goods and services are available for the European consumer: info-products distributed via Instagram online platform (consultations, checklist, Instagram marathons, narrative advertisement, subscriptions etc.); online markets for virtual intangible items being available on the gaming platforms (so-called "skins", virtual animals, virtual building, avatars etc.); online platforms for crypto-currencies, non-fungible tokens, in-game currencies; blockchain-based collectable items sold on Distributed Ledger Technology (hereinafter referred to as - "DLT") platforms. The above-mentioned list is not exclusive as the market offer for digital products and services is limited only to human's fantasy and technological innovations.

Moreover, the modern digital market has a variety of authorized and non-authorized online marketplaces for digital items, or so-called "program codes", which, when applied to the third-party platform, can become a virtual item, a loot box or can increase in-game tokens balance to be used for the further in-game transactions. The above stresses the need for a separate

[1] Ramos A., López L. et al., 'The Legal Status of Video Games: Comparative Analysis in National Approaches', World Intellectual Property Organization, 2013, available at: http://www.wipo.int/export/sites/www/copyright/en/activities/pdf/comparative_analysis_on_video_games.pdf.

regulation for online marketplaces and gatekeepers focusing not only on the physical goods' transactions but as well as on the digital content and digital services.

The existing European legal framework cannot be applied to the variety of digital goods and digital services available in the market in order to secure a sufficient level of consumer protection law and ensure a balance between parties. Due to the fact that European harmonized rules are created with the focus on offline services and considering the current situation on the digital market, such a limited approach cannot satisfy the consumers' needs and facilitates unfair treatment in the transactions with digital items.

In 2020 the size of the European gaming market reached 23.3 billion euros in turnover, showing a gradual increase to 3.1 times since 2015, with 80% of the market share belonging to online transactions (both personal computers and mobile application).[2] The rising revenue numbers indicate the growth of the gaming market in Europe and, therefore, attract the attention of business owners and consumers within the European Union (hereinafter referred to as - the "EU"). In 2021 in the European region the number of users in the gaming industry reached 715,8 million,[3] in the EU 50% of the population plays video games[4] with the highest involvement from Germany, France, Italy, and Spain.[5]

From the EU-wide gaming revenue perspective, 64% are generated from in-game transactions[6] in free-to-play video games, thus, games that are positioned in the market as "free" with the main business model focused on ad hoc digital content supply. Thus, the consumer, indeed, can play for free, however, the game interface facilitated in-game transactions for (1) functional virtual items that can enhance faster game scenario development or give advantage to the player, (2) cosmetic virtual items that facilitate consumer's creativity and creation of the derivative works, (3) virtual items with the element of chance, or so-called loot boxes. On the other hand, only 25% of yearly revenue is generated from the full game download and 11%

[2] Interactive Software Federation of Europe, '2021 Key Facts about European game sector', 2021, available at: https://www.isfe.eu/data-key-facts/key-facts-about-europe-s-video-games-sector/.
[3]Statista, 'Number of video gamers worldwide in 2021 by region', available at: https://www.statista.com/statistics/293304/number-video-gamers/#:~:text=In%202021%2C%20there%20were%20almost,billion%20gamers%20across%20the%20globe.
[4] Interactive Software Federation of Europe, note 2.
[5] Statista, 'Digital video games revenue in selected European countries in 2021', available at: https://www.statista.com/forecasts/461229/digital-games-revenue-european-countries-digital-market-outlook.
[6] Interactive Software Federation of Europe, note 2.

from the game subscription, thus, only 36% comes from pay-to-play video games.[7] The present research shows that the existing consumer protection and e-commerce legal framework can provide a sufficient level of player protection only for that 36%, which does not fulfil consumers expectation and create a significant misbalance between parties in the gaming industry

Free-to-play video games constitute approximately 2/3 of the annual gaming revenue. This can be explained by the fact the players are attracted to the possibility of playing without paying for the software. However, the income is generated by facilitating further purchases of virtual items with functional (for example, virtual weapons) and non-functional virtual items. As a general rule, such transactions require an insignificant amount of money (thus, so-called "micro-transactions")[8], which does not allow players to estimate the total cost of a video game. For example, when a player purchases subscription to the pay-to-play video game with no build-in payments possibility, the total cost of the contract would be determined by a cost of such a subscription. In free-to-play subscription contracts, the price of the contract is determined as "free" with no monetary estimation.

Notwithstanding the micro-transaction business model explained, not all in-game transactions in free-to-play video games bear insignificant character. For example, in the Entropia Universe video game, a virtual "Club Neverdie" was purchased for 635,000 U.S. dollars, in "Second Life" video game, a virtual city of Amsterdam was sold for 50,000 U.S. dollars;[9] in the Dota 2 video game, a player spent 38,000 U.S. dollars for "Ethereal Flames Pink War Dog" virtual item.[10] In 2010 the most expensive video game item ever – virtual planet Calypso – was sold for 6 million U.S. dollars in Entropia Universe video game, which stipulates Guinness World Record.[11]

As can be seen from the above-mentioned data, transactions in the gaming industry can involve significant money flow from the player to the game developers and gaming platform. The

[7] Ibid.
[8] Davidovichi-Nora, note 6.
[9] News Report, 'Top 10 Most Expensive Virtual Items In Game Ever Sold', GadgetRoyal, 2018, available at: https://www.gadgetroyal.com/top-10-most-expensive-virtual-items-in-game-ever-sold.
[10] Ibid.
[11] Ibid; Guiness World Record, available at: https://www.guinnessworldrecords.com/world-records/92207-most-valuable-virtual-object.

revenue is generated from the subscription contracts in free-to-play (software is free, but the company gets revenue from in-game micro-transactions)[12] and pay-to-play (where the player pays for software in order to access the game).[13] Therefore, there are two main gaming models available in the market with free and paid subscriptions. As is shown within the framework of the current research, the European consumer protection framework focuses in the majority on the paid digital content supply or paid digital service provisions, that, when applied to the gaming industry, would exclude in-game transactions in the free-to-play video games, as the subscription contracts are de jure free as per the "Terms and Conditions" accepted by the players.

The present research analyses the existing European regulatory framework in relation to electronic commerce, consumer protection and player protection, and their applicability to the business models widely acceptable in the gaming industry. The author gives an inside look at the possible ways to apply the existing legal norms to specific digital services focusing on the transactions with intangible virtual items on the gaming platforms, particularly on transactions with digital content, trade of so-called "program codes" on in-game platforms and external secondary marketplaces.

Within the course of the current research, the author focuses in detail on the difference in monetary value in free-to-play and pay-to-play video games and will analyse various business models, psychological manipulations and unfair consumer practices in relation to the digital content purchase on the gaming platforms. For example, certain gaming platforms request players to top up a virtual wallet in the gaming account with in-game tokens (purchased priorly for fiat money) and further in-game transactions are performed in exchange for such in-game tokens. Such an approach does not allow players to estimate the economic consequences of the particular transaction and, as will be explained further, can be considered as unfair commercial practice.

Revenue-generating transactions in the gaming industry fall out of the standard models of the business regulated on the European level. Therefore, the gaps in legal regulations applicable to

[12] Davidovichi-Nora M., 'Paid and Free Digital Business Models. Innovations in the Video Game Industry', Institut Mines-Telecom/Telecom-ParisTech, Digiworld Economic Journal, no. 94, 2014, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2534022.

[13] Ibid.

the gaming industry around the EU currently facilitate differences in the practical application, lack of legal certainty and do not fulfil customer expectations regarding the level of legal protection, including but not limited to expectations on customer guarantees regarding gratuitous content in video games.

As investigated in present research, a lack of regulatory oversight and impossibility of legal enforcement allows gaming platforms to dictate contractual provisions to standard terms subscription contracts with consumers and unilaterally decide on the legal framework applicable. Particularly, due to the historical approach applied to the first software programs, up to the current date the gaming platforms apply intellectual property framework as a law analogy to the consumer versus trader relationships. The author analyses specific terms of the various subscription contracts in the scope of the nature of business relationships between users and game developers and provides alternative legal opinions towards the applicable framework.

II. ANALYSIS AND METHODOLOGY

1. Research Questions

The study is designed in order to analyze the existing consumer protection and electronic commerce framework in the scope of their applicability to the hybrid business models, alternative payment methods and online marketplaces for virtual items trade inter alia used in the gaming industry. For that the author answers the following research questions:

(1) Can the existing consumer protection and electronic commerce legal framework efficiently protect consumers from unfair treatment and ensure the balance between the parties considering the standard contract terms usage in the gaming industry?

   (a) Which provisions can be applied to the gaming platform versus user legal relationships from the scope of the European consumer protection framework taking into account specifics of the electronic commerce activities in the gaming industry?

   (b) What are the legal gaps in the existing legal framework on consumer protection and electronic commerce in relation to the gaming industry in the European Union?

(2) Can the existing regulatory approach applied to the gaming industry ensure the balance between the rights and lawful interests of the parties and facilitate the equal level of consumer guarantees between traditional and innovative ways of business conclusion used in the gaming industry?
    (a) What is the existing legal and regulatory approach used in the gaming industry?
    (b) What are the gaps in the existing legal and regulatory approach used in the gaming industry from the perspective of consumer protection in the European Union?
    (c) What is the most suitable legal and regulatory approach from the perspective of consumer protection in the gaming industry taking into account innovative models of electronic commerce used in the gaming industry?

2. Research Methodology

The author uses the qualitative content analysis and analytical legal research methodology as the main research methods in the current thesis in order to determine which provisions in the current European e-commerce and consumer protection framework can be applied to the (1) obtaining access to the video game (free-to-play and pay-to-play video games) as software and to the (2) in-game transactions on the virtual content purchase. As well as using qualitative content analysis and analytical legal research methods, the author identifies legal gaps in the particular European regulations and directives and determines the way forward in order to secure European Digital Single Market Strategy and to provide equal treatment and consumer protection guarantees to the players in the European Union.

The author separates legal notions used in the European regulatory framework (applicable to gaming industry), for example, notions of the “digital content”, “digital service”, “monetary value”, “online platform” and uses the descriptive methodology in order to determine characteristics of the legal terms used to answer the question whether existing legal norms and definitions can be applied to the player versus developer relationships and, particularly, to the transactions in the virtual world.

Apart from the descriptive analysis, the author uses the method of historical analysis in order to investigate legal developments in determining notions and formation of concepts that are used in the European e-commerce and consumer protection framework in the scope of the digital market developments and involvement of innovative solutions in the European digital

environment. The historical analysis helps to understand the reasoning behind the current situation in contractual relationships. For example, looking back at the emergence of the software market, the intellectual property approach was used as a legal analogy due to the lack of regulations. The same is applicable to the actual situation in the gaming market.

3. Research Structure

The study focuses on particular legal notions applied the gaming transactions in various online platforms and secondary marketplaces, or so-called program code trade, and will examine legal challenges arising in the connection with the application of intellectual property rules, contract or property law to in-game transactions and shows possible ways to amend the rules regulating e-commerce, conformity of goods, particular consumer protection rules and gambling regulations in connection to commoditized free-to-play video games.

Chapter I focuses on the particular definitions used in the European electronic commerce and consumer protection framework and their applicability to the gaming industry. In this chapter the author analyses accepted notions on the European community level, such as electronic commerce, information society services, digital goods, digital services, goods with digital elements, and explains how such notions can be applied to the various types of business model available on the gaming market, for example, free-to-play, pay-to-play video games, games with the usage of augmented or virtual reality, online marketplaces for virtual items, shared collaboration platforms etc. The mentioned analysis can facilitate the determination of possible gaps in legal regulations and applicable legal framework to the in-game transactions and virtual items purchase in order to secure consumer and minor's protection.

Chapter II explains the existing approach to the game developer versus player legal relationships with the usage of examples from popular video games. Particularly, the author examines the nature of the factual legal relationships between parties and their correlation to the contractual provisions of the standard term contracts used widely in the industry. This chapter investigates whether the sole intellectual property law approach can satisfy legitimate interests of both parties and will examine alternative legal views present in the doctrine, for example, the "no legal intervention" approach, property law or contract law approach. Chapter II can provide legal guidance to the contractual provisions to be included in "Terms of Service" agreements or EULAs used by the gaming platforms in order to ensure the balance between rights, obligations and legitimate interests of both parties. Moreover, the author examines legal

acts and regulations on the Community level that can be applied to the gaming industry and in-game transactions per se and analyses whether the existing framework can provide a sufficient level of consumer and minors protection that corresponds to the consumers' expectations and the pillars of the European Union.

Chapter III focuses on the specific legal challenges and legal gaps that take place in the gaming industry identified in the previous chapters. Particularly, the author explains in detail the hybrid models and free subscription contracts used in the gaming industry, especially, in free-to-play video games and which contractual provisions are used by gaming platforms to override electronic-commerce and consumer protection regulations in the EU. This chapter focuses on specific issues in the consumer protection framework, such as transparency requirements and conformity requirements, that are applicable in the digital environment and gaming industry itself. Moreover, the author examines the legal issues connected with the loot boxes availability in video games and the effect it has on the applicability of the gambling regulations in the European Union and player protection framework. The author provides an overview of the legal gaps currently present in the legal relationships between players and gaming platforms and shows an alternative view on solutions to such non-compliances in order to ensure the balance between parties and player protection on the community level.

4. Research Framework

The present research analyses the terms included in standard term subscription contracts or to the Terms of Service or End User Licence Agreement (hereinafter referred to as - the "EULA") of the popular video games and investigates consumer practices applied by the top revenue-generating gaming platforms in the EU.

Within the course of the present research the author analyses applicable norms on the EU level in the scope of the consumer protection and e-commerce regulations. The European regulatory framework on e-commerce, including but not limited to the consumer protection in e-commerce, consists of more than 90 different normative acts, explanatory notes from the European Commission as well as the prospective regulatory acts. However, the current research focuses, particularly, on the provisions included in:

(1) the Communication from the Commission to the European Parliament, the Council, the European Economic, and Social Committee, and the Committee of the Regions, A

Digital Single Market Strategy for Europe, lying down the principles on harmonization of the regulations in the digital world and establishing general approach towards regulations development in the European Union on the cross-border digital contracts;

(2) the Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, focusing on the general provisions regarding consumer rights, traders obligation in B2C contracts including contracts with digital elements;

(3) the Proposal for a Directive of the European Parliament and of the Council amending Council Directive 93/13/EEC of 5 April 1993, Directive 98/6/EC of the European Parliament and of the Council, Directive 2005/29/EC of the European Parliament and of the Council and Directive 2011/83/EU of the European Parliament and of the Council as regards better enforcement and modernisation of EU consumer protection rules, focusing on the changes to the regulatory framework in relation to the cross-border digital service provision and digital service supply;

(4) the Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, focusing on the mandatory contractual provisions and contractual obligations in B2C contracts concluded through electronic means;

(5) the Directive (EU) 2019/771 of the European Parliament and of the Council on certain aspects concerning contracts for the sale of goods, focusing on the mandatory contractual provisions and contractual obligations in B2C contracts on digital goods provision;

(6) the Directive (EU) 2019/770 of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content and digital services, focusing on the mandatory contractual provisions and contractual obligations in B2C contracts on digital content supply or digital service provision;

(7) the Explanatory Memorandum, Proposal for a Regulation on the European Parliament and of the Council on a Single Market for Digital Services and amending Directive 2000/31/EC, focusing on the mandatory contractual provisions and contractual obligations in B2C contracts concluded on e-commerce online platforms acting as intermediaries as well as the provisions regarding illegal digital content;

(8) the Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services, focusing on the general provisions regulating intermediaries in B2C contracts, including but not limited to online platforms acting as intermediaries.

Moreover, the author focuses not only on the EU-wide harmonized framework but as well as the national legal norms of the different European member states using the comparative research method. The present research will investigate the difference in legal regulations applications around the European Union and will underline the need for the harmonisation of approaches in regard to the particular digital content supply (i.e. loot boxes) in order to secure the Digital Single Market Strategy.

III. RESEARCH FINDINGS AND SIGNIFICANCE

1. Research Question 1

The present research shows that existing consumer protection and electronic commerce legal framework cannot efficiently protect consumers from unfair treatment and ensure the balance between the parties considering the standard contract terms usage in the gaming industry. Particularly, from the analysis concluded it can be determined that due to the specifics of the gaming industry (i.e hybrid business models with usage of paid digital content supply under the gratuitous contract, availability of online marketplaces for virtual items and indirect payment models), not all regulatory acts available in the European Union in relation to consumer protection and e-commerce regulations, as well as separate provisions of those acts, can be applicable.

The European consumer protection and e-commerce framework is composed of numerous directives and regulations, which are complementing one another. The fast technological development of new ways of concluding contracts and conducting business in the digital environment provides room for interpretation and in certain cases triggers a need in the applicability of the legal analogy due to the impossibility to apply specific legal norms to certain types of modern legal relationships.

It can be concluded that the existing e-commerce and consumer protection framework in the EU focuses on distribution channels (subscription contract, gratuitous access or one-time digital item purchase, online marketplace, service platform) and the representation (tangible

medium, intangible medium or a combination of both) of the particular digital content and can be hardly applicable to various hybrid models. Video game per se can be explained both as "digital good", "digital service" or "digital content". The regulatory framework does not provide clear differentiation between the above-mentioned notions and introduce various exclusions on the stage of practical implementation, which facilitates difference in enforcement and, therefore, self-regulation through law analogy and contractual means.

If the business modes stand out from the standard form of business conclusion (i.e. single level digital product with direct payment in fiat money transfer, or online marketplace for offline goods), there is a lack of legal certainty regarding applicable harmonized regulations on the community level. The EU regulatory framework is not adapted to hybrid digital products, alternative payment models and indirect payment mechanisms, which facilitates manipulations, price obfuscation and unfair treatment in the gaming industry. The majority of game developers use various methods, to disguise the actual price of game participation under gratuitous contracts, particularly, consumers are expected to share the personal data, transfer intellectual property rights, transfer in-game tokens or cryptocurrency as counter-performance under the "free" subscription contract in order to avoid direct fiat money payments and eliminate the possibility for consumers to evaluate the economic consequences of such a contract.

Moreover, various gaming platforms are established oversees in compliance with various e-commerce and consumer protection standard that are not compatible with the EU ones. Or the platform itself can be hosted by a private individual or third-party service provider, which would change the approach towards mandatory contractual rules and liability of parties. Therefore, due to the complexity, multi-party and multi-level transactions in the hybrid business models used in the gaming industry, the existing legal framework could be applied only partially to the gaming industry and in-game transactions. It covers in the majority of pay-to-play video games, however, certain gaps related to the free-to-play gaming model, particularly, regarding the gratuitous contracts, the monetary value of the intangible virtual items, indirect payment models, commoditized in-game transactions under free-subscription contract, cryptocurrencies engagement, are present in the existing European e-commerce and consumer protection framework. This leaves European players without proper legal protection, facilitates unfair treatment and creates a misbalance between parties in the gaming industry.

2. Research Question 2

The present study examined existing approach to the regulation of the business relationships between players and game developers and concluded that the existing regulatory approach applied to the gaming industry cannot ensure the balance between the rights and lawful interests of the parties and facilitate the equal level of consumer guarantees between traditional and innovative ways of business conclusion used in the gaming industry.

Particularly, the author discovered that gaming platforms apply intellectual property approach in order to regulate relationships with players following the historical approach that was established together with the first open-source software due to the lack of the legal framework applicable. Notwithstanding the fact that gaming platform cannot prove the intellectual property rights on particular virtual products and such products in majority lack the element of creativity, the relationships between game developers and players are up to date regulated based on quasi-intellectual property governance system stipulated only contractually.

Due to the complexity of transactions within virtual worlds and lack of legal clarity in relation to the status of virtual currency, in-game tokens or virtual items, standard term EULAs expand the scope of self-established intellectual property rights to all kinds of relationships within the gaming platforms and introduce horizontal self-regulation for players behaviour, virtual property and liability between third parties. Moreover, due to the collaborative nature of the virtual world and multiparty relationships, the intellectual property framework regulations of one EULA (i.e. game developer) can conflict with another one (i.e. gaming platfor) creating legal collision for players' obligations, liabilities and licencing regime of intellectual property rights or user-content.

Analyzing the "real-life" EULAs, the author determined that, in general, the transparency requirements in relation to the total price of the contract, the way in which such a price will be determined, the purpose of data collection and data transfer, intellectual property rights of players, governing law and the enforcement mechanisms available are not fulfilled. Due to the legal gaps in the EU regulatory framework in relation to the digital content supply, the gaming platforms apply an artificial quasi-regulatory system contractually that contradicts principles of consumer protection and data subject protection accepted on the EU level. The business model applied misleads consumers in relation to the nature of legal relationships as is

advertised as “free”, however, de facto depriving consumers not only of financial resources through direct or indirect remuneration but as well of privacy and intellectual property.

Notwithstanding the type of transaction, its monetary representation or expected consumer's counter-performance, in-game transactions with the virtual item should be considered as paid digital service consumer contracts and should guarantee the same level of consumer protection as contracts with the provision of direct fiat money transfer. Unfortunately, at the current date, the European e-commerce and consumer protection framework applies a discriminative approach disregarding innovative and hybrid business models and applying a historically outdated approach established in relation to the open-source software.

As per the analysis concluded, it can be seen that standard term EULAs and “Terms of Service” contracts of the popular video games show that the game developers tend to use, apart from the intellectual property framework application to the digital service provision consumer contracts, terms that are introduced not in the clear, plain and intelligible language. The game developers do not provide transparent pre-contractual information in relation to the terms of future possible payments, applicable law and subscription obligations (for example, automatic payments for in-game virtual items from the consumer’s e-wallets).

From the perspective of the conformity requirements in relation to the digital content, it can be concluded that the majority of the conformity requirements cannot be applied to specific types of digital content due to the above-discussed price obfuscation mechanisms applied by th game developers and lack of regulatory framework. Moreover, the difference in framework applicable to “free” and paid content, self-regulatory approach dictated contractually by the game developers, deprive the consumers of the possibility to enforce the conformity rights violations respectively. Thus, the conformity of digital content and digital services in both free, paid and hybrid contracts should be ensured and the consumer should be entitled to respective remedies and refund for money invested in case of legal non-conformity, subjective or objective non-conformity of the digital product.

All of the above can be considered as an unfair consumer practice that affect the enforceability of the consumer protection requirements due to the hybrid nature of contractual arrangements and widespread usage of price obfuscation mechanisms. Therefore, it is important to ensure transparency during pre-contractual and contractual relationships between the parties as well

as explicit consent provision in order to avoid misbalance in legal relationships, judicial costs differentiation, damages to the business reputation and ensure competitive quality service provision in the European market. For that purpose, the “black list” and the “grey list” of unfair consumer practices with the indication of including but not limited to the price obfuscation mechanisms should be updated in order to facilitate enforceability and transparency in the gaming industry on the EU level.

Considering the complexity, collaborative nature and monetisation of the majority of virtual worlds, the intellectual property approach towards gaming company versus consumer relationships cannot fit all parties’ needs and cannot effectively manage all spectrum of gaming industry-specific legal relationships. Therefore, the intellectual property approach can be applied solely to the pay-to-play video games with no further commoditization, in cases when the contract is executed at the moment of gaming platform purchase. For any other types of business relationships, hybrid approach of the contractual relationships should be taken into account: the creative element and the access to virtual world is regulated under intellectual property framework, digital content supply – as consumer contract.

The author underlines that due to the establishment of multi-level legal relationships in virtual worlds, a modal approach towards the contractual provisions of EULA should be taken into account by the gaming companies, which would lead to the grouping of different sets of contractual provisions. While applying a modal approach, the gaming platforms would provide players with a possibility to opt-in for certain rights and obligations based on players' interests, which would determine the game interface available to them. In such a case, different sets of contractual provisions would be applied to the different groups of players based on the nature of legal relationships, their level of commoditization, players’ consent or level of legal capacity, which will result in the blocking of elements of the game interface based on the specific contractual provisions. This can ensure a higher level of transparency and provide relevant freedom to both consumers and developers on the scope of rights and obligations applied.

3. Research Significance

The main goal of the present thesis is to show an underestimation of the gaming industry, to determine legal gaps in e-commerce and consumer protection framework, and to facilitate further research and regulatory changes in order to secure European Digital Single Market

strategy, to protect the rights of the consumers, players and minors, and to facilitate balanced legal relationships in the gaming industry. This will ensure healthy growth of the market, will attract more consumers and will provide a basis for innovation due to the legal certainty and practical enforceability of the legal regulations.

As investigated in the present research, specific provisions of the regulations included in the European e-commerce and consumer protection framework cannot be applied to the player versus developer relationship in free-to-play video games due to the specific nature of the business models applied - audio-visual content, gratuitous software access, possibility to create own digital content (i.e. skins, avatars), in-game token transactions and availability of third-party digital content specific marketplaces. The author analyses European consumer protection and e-commerce framework, applicable legal acts, their scope and specific provisions that can be applied directly or as a legal analogy and will lay down the base for further research in this area for academicians and European policymakers.

The author determines gaps in the existing contractual and regulatory approaches to the player versus developer relationships by analysing contractual provisions of standard term contracts of popular video games available in the market on the subject of the applicable law, transparency of contractual terms and information provision. The gaps identification can serve for further research in the area of consumer protection in the gaming industry. Moreover, the present research proposes solutions for equalization of the rights and lawful interests of both parties in order to facilitate balanced legal relationships in the gaming industry and protect the rights of the players. Such a proposal can be used not only by the academicians focusing on the gaming industry and law of information technologies, as well as by various European policymakers, regulatory authorities and judicial bodies.

The present research can serve as a turning point for the amendment of age classification of the video games and the implementation of the game labelling system on the community level. Moreover, the present research can be used by players in order to obtain information on the minimum scope of the rights, obligations and legitimate interests that has to be maintained by the game developers in standard term contracts in the gaming industry.

Considering the significance of transactions in the video game industry on intangible items purchase, the author underlines the urgent need to adapt existing rules in order to protect

consumer rights in the gaming industry and to secure the Digital Single Market policy of the EU. The present research can be used by the policymakers in order to amend the existing legal framework in the European Union on electronic commerce, consumer protection and players protection. In the same way, the present thesis can be used by practitioners in the industry as guidance for restoring the rights of players in a dispute resolution, mitigation or negotiation in relationships between consumers and game developers.

IV. LIST OF PUBLICATIONS

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