Research Article

Digital Disregard: A Case for Amending Québec's Children Advertising Legislation

Sydney L. Forde
Pennsylvania State University, Pennsylvania, United States

Erika Solis
Pennsylvania State University, Pennsylvania, United States

Yasemin Beykont
Pennsylvania State University, Pennsylvania, United States

Abstract

Background: In 1978, the province of Québec introduced the *Consumer Protection Act* (CPA), which prohibited advertising to children under 13. Since then, new forms of digital technology and intrusive advertising have emerged.

Analysis: Using the FIFA video game series as a case study, this article analyzes how the persuasive nature of loot-box microtransactions may be considered advertising targeted to children and explores international approaches to similar issues.

Conclusions and implications: By adopting language similar to that in EU and U.K. legislation, Québec's CPA can be transformed to better protect children in the digital age.

Keywords: advertising regulation, children's advertisements, Québec, digital regulation, microtransactions, loot boxes, Consumer Protection Act

Résumé

Contexte: En 1978, la province du Québec a mis en place la Loi sur la protection du consommateur (LPC), qui interdit toute publicité destinée aux enfants

Forde, Sydney L., Solis, Erika, Beykont, Yasemin. Digital Disregard: A Case for Amending Québec's Children Advertising Legislation.
Canadian Journal of Communication *49*(2), 201–229. doi:10.3138/cjc-2023-0026

de moins de 13 ans. Depuis, cependant, de nouvelles formes de technologie numérique et de publicité intrusive sont apparues.

Analyse: Cet article recourt aux jeux vidéo de FIFA comme étude de cas afin d'analyser en quoi le caractère persuasif des microtransactions relatives aux coffres-surprise s'apparente à de la publicité pour enfants tout en explorant des approches internationales envers des questions similaires.

Conclusion et implications: En adoptant un langage semblable à celui utilisé dans la réglementation américaine et britannique, on pourrait transformer la loi québécoise afin de mieux protéger les enfants à l'ère numérique.

Mots clés : réglementation publicitaire, publicité pour enfants, Québec, réglementation numérique, microtransactions, coffres-surprise, Loi sur la protection du consommateur

Introduction

Literature on the ethical implications of advertising, particularly targeted at children, has long established it as exploitative and harmful, with over four decades of research (McAllister & Giglio, 2005; Rozendaal & Buijzen, 2022; Singer, 1986). As advances in digital technology enable increasingly personalized and intrusive advertising, the annual global spend on digital ads targeting children is rising, with some estimates predicting an increased spend of 22 percent between 2021 and 2031 (Statista, 2023a). Of these global estimates, the three largest nations in North America (Canada, Mexico, and the United States) makes up the largest portion of spending, accounting for 37 percent of the $2.9 billion global spend in 2021 (Statista, 2023b), while making up less than 8 percent of the world's population. As online advertising spending is set to continue rising steadily, the definition of what exactly counts as "advertising" is complicated in the hyper-commercialized digital realm. One example of the digital commodification and exploitation of users—many of whom are children (see Chung & Grimes, 2006)—is the video game industry's forceful incorporation of microtransactions through the promotion of in-game purchases.

Video game advertising falls within two categories: external promotion of games through commercials and print advertisements, and internal promotion of microtransactions within the games themselves (Terlutter & Capella, 2013). In some situations, such microtransactions act as the video games' primary source of revenue, surpassing profits made through product placement and game sales (McCaffrey, 2019). The FIFA series, a product of Electronic Arts (EA), is an example of an infamous game known for promoting microtransactions within its paid platform in exchange for largely cosmetic features and game-

doi:10.3138/cjc-2023-0026

changing mechanics. In the Canadian legal landscape, EA has drawn criticism for its use of loot boxes, a form of randomized microtransactions that have been compared to gambling (Ivan, 2020). Such advertising techniques are particularly concerning when targeted to children, a demographic included in the games' rating of "E" (Everyone), which encompasses children ages six and up.[1]

Consumer protection laws against such covert forms of persuasive messaging, including toward children, are largely limited to national, typically self-regulated advertising standards that outline industry best practices. One exception is the *Consumer Protection Act* (CPA) in Québec, Canada, that prohibited all advertising to children under 13 in 1978, making it the first wide-reaching advertising ban of its kind. Outlined under Sections 248 and 249 of the CPA, three criteria are provided to determine whether advertisements qualify as targeting children. These include the intended purpose, the manner of presenting the advertisement, and when and where it is shown (Office de la protection du consommateur [OPC], 2012).

While numerous studies have examined Québec's unique blanket ban on children's advertising since its introduction, they mostly focus on the marketing of junk food to kids (e.g., Dhar & Baylis, 2011; Pauzé et al., 2021). This article seeks to demonstrate the need to both update the scope of the CPA legislation to incorporate the increasingly digital-based media experiences of children, and to act as a push to expand existing advertising regulations to all citizens in Québec, as done through a variety of approaches in countries around the world. Further, this article explores how technological advances, specifically those in the video game industry, have led to the ability of profiting off of consumers (particularly children) in digital spaces that stray from traditional conceptions of formats and media described in Québec's *Advertising Directed at Children under 13 Years of Age* (the "Advertising Guide") (Office de la protection du consommateur, 2012). This is examined through a case study analysis of one of the world's most-sold video game franchises, EA Sports' FIFA series. We explore the ways in which this game (and the many others that employ similar tactics) have incorporated problematic advertising and promotional techniques that directly violate Québec's CPA (Batchelor, 2020).

This research begins with a literature review of relevant topics pertaining to advertising and regulation within Québec, the complexities of advertising in the digital age, advertising to children, and the positioning of loot box microtransactions as a form of advertising to

doi:10.3138/cjc-2023-0026

be regulated. A background of the FIFA video game series is included, as is an exploration of FIFA's loot boxes under the criteria outlined in the Québec's CPA, specifically focusing on regulations banning advertising to children. This exploration highlights that, while FIFA stands in clear violation of much of the CPA, aspects of the *Act* could benefit from amendments specific to the digital age of video game microtransactions. To further support this, we provide an overview of policies adopted across the globe that address microtransactions within video games that, if adopted, would better position the CPA to protect the wellbeing of Québécois children.

Advertising regulation and the unique case of Québec, Canada

> Allowing self-regulation is like letting the monkeys guard the bananas.
>
> — Nicole Parton, Vancouver journalist, 1979 (as cited in Francis, 1979, p. 39)

Established to protect citizens from growing American and Western consumerism during the rise of neoliberal deregulation and consequential market power in the 1960s and 1970s, the provincial government in Québec introduced the first iteration of the CPA in 1971. Through significant amendments in the years after it first passed, sections 248 and 249 were introduced in 1978, banning the act of advertising to children (*Consumer Protection Act*, 2022). The sections are as follows:

248. Subject to what is provided in the regulations, no person may make use of commercial advertising directed at persons under thirteen years of age.

249. To determine whether or not an advertisement is directed at persons under thirteen years of age, account must be taken of the context of its presentation, and in particular of

    a. the nature and intended purpose of the goods advertised;

    b. the manner of presenting such advertisement;

    c. the time and place it is shown. (*Consumer Protection Act*, 2022, p. 83)

Unprecedented at the time (and still largely today), the legal restrictions put in place by the Québec government on advertisers'

doi:10.3138/cjc-2023-0026

capacity to appeal to children via advertisements have not gone without challenge from some of the nation's biggest and most renowned corporations.

In the case *Attorney General (Que.) v. Kellogg's Co of Canada et al.* (1978), Kellogg's unsuccessfully challenged Québec's ban on advertising to children under the premise that a provincial law's jurisdiction was, in turn, impacting television stations across the country. Kellogg's lost this case when the Supreme Court ruled that the province had the authority to control its own policies under the *Constitution Act, 1867*. Beyond fighting the CPA through an argument of national-level inconveniences, *Irwin Toy Ltd v. Quebec (Attorney General)* (1989) challenged the constitutionality of the CPA under section 2(b) of the *Canadian Charter of Rights and Freedoms*, making a case grounded in the CPA's limitation of the right to freedom of expression. The result was a landmark Supreme Court ruling, which found that the CPA did violate freedom of expression under section 2(b); however, the law was still upheld under the reasonable limits clause in Section 1 of the Charter, which allows for the governmental limitation of an individual's Charter rights. The Court reasoned that, while the ban resulted in minimal limitations to the plaintiff's freedom of expression, "there existed a pressing and substantial government objective to protect children from the manipulation of advertising" (Columbia Global Freedom of Expression, 2023, para. 1).

Such pushback speaks to the significance of Québec's advertising regulation as uniquely bold and courageous against dominating commercial organizations forcefully prioritizing the generation of profits over the wellbeing of children. In an environment almost entirely self-regulated, especially in the North American context, Québec's introduction and subsequent maintenance of the CPA as a radically progressive force against commercial profiteering for over four decades positions the Canadian province as a leader in children's media advocacy.

Importantly, the major distinction between Québec's approach to advertising legislation and that of the rest of Canada (along with most other advanced-capitalist nations) is grounded in who sets the rules of advertising, and who enforces them. In Québec, both the establishment and the enforcement of said rules CPA's provincial jurisdiction, whereas most others have adopted a self-regulatory approach for the management of advertising standards (see Bate, 2009). In the rest of Canada, this includes relying on industry cooperation and self-management under the (industry-created) *Canadian Code of*

doi:10.3138/cjc-2023-0026

Advertising Standards, administered by Ad Standards, the self-regulated industry body. Advertising to children is one of the two forms of ads (in addition to alcohol advertisements) that are described as "regulated" by the nation's regulatory agency, the Canadian Radio-television and Telecommunications Commission (CRTC) (2020). Overseen by the Children's Clearance Committee of Ad Standards (Advertising Standards Canada, 2024a), ads must be deemed in compliance with the *Broadcasting Code for Advertising to Children* (*Children's Code*) (Advertising Standards Canada, 2024b).

The entirety of the "regulatory" involvement of the CRTC thus includes the initial endorsement of the *Children's Code* and the requirement that all ads targeting children must receive clearance from Ad Standards before being broadcast—a requirement that is not mandated, only "recommended" for non-children targeted ads (CRTC, 2020). The approval or disapproval of advertisements targeting children, then, are nonetheless controlled by industry bodies rather than government actors. Jefferey (2006) warns against such a contradiction of interests, explaining:

> [O]ne should be doubly circumspect about accepting the purported controls on advertising in codes written by and for parties that are engaged in the enterprise of commercial advertising. These authors have both a vested financial interest in weak standards and a professionally honed skill for "selling" such weak standards as tough regulatory oversight. (Jefferey, 2006, p. 246)

Such an approach to controlling commercial-driven advertising persuasion through self-regulation, particularly as it pertains to the protection of children from persuasive and exploitative advertising, has been scrutinized in the past for not effectively controlling corporations' attempts at reaching children (Anand, 2019; Potvin Kent et al., 2011). In not relying on the industry itself to uphold government-approved conditions of advertising, Québec's legislation outlined in the CPA is thus better able to shield children from commercial influences (Pepall & Reiff, 2017).

The CPA has undergone numerous amendments since its inception in 1971. For example, in 2019, Bill 197, titled *An Act to Amend the Consumer Protection Act to Fight Planned Obsolescence and Assert the Right to Repair Goods*, proposed an amendment to the CPA pertaining to the warranty of purchased goods and advocating for the "right to repair" (Rukavina, 2022). Further, in October 2023, the National

doi:10.3138/cjc-2023-0026

Assembly of Québec enacted Bill 29, *An Act to Protect Consumers from Planned Obsolescence and to Promote the Durability, Repairability and Maintenance of Goods* (2023), which, among other things, involved "the increase of penal fines, the possible imposition of monetary administrative monetary penalties, and the solidary liability of directors, officers and ultimate beneficiaries of a legal person for violations of the CPA and its regulations" (Fasken, 2023, para. 9). This new *Act* further penalizes violations of the CPA and thus demonstrates the ongoing commitment of the province to uphold CPA principles. This article proposes that updates to sections 248 and 249 of the CPA should be similarly updated and stringently upheld in order to best protect young Québécois citizens. Pascale Valois et al. similarly recommend strengthening these sections in the CPA, specifically through the expansion of the concept of advertising to all modes of commercial communication (Valois et al., 2008, as cited in Bourgoignie & Lafond, 2007, p. 96). Québec's Advertising Guide, last updated in 2012, states that "All formats and media are targeted when they are used to distribute or broadcast commercial advertising" (Office de la protection du consommateur, 2012, p. 3). Though left open to "constantly evolving, new formats" (p. 3) of technology, examples provided are limited to largely traditional mediums and conceptions of advertising, such as radio, television, the web, and promotional items. Such formats proposed here do not encompass the increasingly complex digital landscape for what is to be considered an "advertisement."

Ever-changing nature of advertising

As new formats continue to emerge in the advertising field, the conceptual definition has been altered numerous times. The increasingly evolving digital environment has complicated how scholars, practitioners, regulators, and consumers define "advertising." In the pre-digital era, Richards and Curran (2002) proposed a description that stated advertising was "a paid, mediated form of communication from an identifiable source, designed to persuade the receiver to take some action, now or in the future" (p. 74). Even though some specifics of this definition may be considered accurate today in the digital age, scholars such as Kerr and Richards (2020) agree that updating the concept in the increasingly complex market is necessary. They propose that "advertising is paid, owned, and earned mediated communication, activated by an identifiable brand and intent on persuading the consumer to make some cognitive, affective or behavioural change, now or in the future" (Kerr & Richards, 2020,

doi:10.3138/cjc-2023-0026

p. 16). The goal of this definition is to expand the boundaries of what media types are included under advertising practices, to be able to fit into self-regulatory organizations' definition of advertising, and to keep the definition consistent globally (Kerr & Richards, 2020).

Meanwhile, Québec's CPA has a comparatively brief definition of what an advertisement consists of, referring to ads as "a message designed to promote goods, services or an organization in Québec" (*Consumer Protection Act*, 2022, p. 4). While possibly seen as limiting, due to the unspecific nature of the definition, this broad description in the provincial law allows for a greater breadth of interpretation of advertisements as technologies and promotional techniques change over time. Such a policy approach is beneficial in markets that are constantly evolving, as being over-precise can limit the applicability of the law to the exact wording of the provisions (Baldwin et al., 2011). For this reason, and due to the context of this analysis being based on Québécois regulation, this article adopts the CPA's definition of advertising.

Even while adopting such a broad definition, the actual explication of what consists of advertising is notoriously difficult to pin down in the digital age. Asquith (2021) explains regulators struggle to identify what constitutes promotional content, noting that they often don't perceive "branded content, native advertising, user-generated content, or an influencer's endorsement as an advertising message" (p. 95). We complicate this further by expanding this already wide net of advertising to include the persuasive messaging of microtransactions in video games, a technique that is particularly concerning when appealing to vulnerable populations such as children.

Advertising to children

The negative impacts of targeted advertising to children are well documented, ranging from establishing increased degrees of vulnerability (Calvert, 2008; Laczniak & Carlson, 2012), the subsequent negative impacts and repercussions of exposure to advertisements (Lapierre et al., 2017; Radesky et al., 2020), to the active exploitation of children as easy sales targets (Sklar & Derevensky, 2011). The approach of critical realists, instead, contend that the debate surrounding the degree and impact of media "effects" on audiences does not establish the level of importance of digital influence.[2] Rather, the influence of media, including video games, is understood as meaningful because of the logical understanding that images and stories about the world shape the ways that individuals, particularly children, learn about said world. Further, in media environments

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dominated by commercial logics (that is, by those who prioritize the generation of profits), the harm to audiences is understood not explicitly through measuring behavioural, physical, and psychological influence (though these, of course, exist as well), but simply through the understanding that misleading audiences for the sake of profit generation is an act of exploitation (McAllister, 2005). This exploitation, while perhaps difficult to calculate empirically, is nonetheless understood here as harmful.

Loot boxes: Gambling and/or advertising?

Early promotions of video games narrowly targeted audiences based on geographic limitations that were largely restricted to bar and arcade type settings with coin-operated machines. This meant promotions typically focused on attracting young adult male audiences (Kocurek, 2015). However, many advertisements in the 1970s did not necessarily target consumers, but instead focused on business operators who would purchase the machines for wider public consumption. Of course, this strategy changed with the introduction of home consoles, and video game vendors began prioritizing individual player purchases by highlighting compelling gameplay and graphics.

Like many industries adapting to the digital environment of recent years, video game vendors have transitioned their revenue models away from simply relying on game sales. Starting in the 2000s, the industry shifted to including more content for players to buy, introducing the concept of microtransactions. This process, where purchase opportunities are nearly endless, is described as the "perpetual commodification of the video game" (Lizardi, 2012, p. 3). Defined as premium content that players can download in addition to normal gameplay, microtransactions allow for the expansion of a game's world. Users can purchase this additional content using either real-world money or in-game currency[3] (McCaffrey, 2019). One form of microtransactions—loot boxes—are particularly problematic due to their incorporation of manipulative and misleading tactics.

Zendle et al. (2020) define loot boxes as "items in video games that may be bought for real-world money, but which provide players with a randomized reward of uncertain value" (p. 3). These items offer opportunities to obtain game-changing features or change how players dress their characters. In either scenario, there is no guarantee a player will win the item they are looking for in a loot box. Loot boxes have been described as predatory in nature (Harvey, 2021; King & Delfabbro, 2018; Shen, 2021; Uddin, 2021), and are often

doi:10.3138/cjc-2023-0026

accused of encouraging compulsive spending, particularly among children (Mann, 2020).

Notably, loot boxes are extremely profitable. In 2018, it was estimated that players collectively spent $30 billion on loot boxes, demonstrating the economic incentives of organizations to shift toward microtransactions, a move that has disrupted gaming culture (Mann, 2020). Electronic Arts (EA), a U.S. video game developer and publisher, is often associated with microtransactions, as several of its games include the gaming mechanic, including as the hugely popular *Apex Legends*, *The Sims*, and *Titanfall*. Over 60 percent of EA's revenue comes from services, which include microtransactions and, more specifically, loot boxes (Warren, 2017). While most of EA's games contain some form of microtransaction, the FIFA series is one of the largest, most well-known games to do so (Electronic Arts, 2022a).

The widespread implementation of loot boxes in video games can be critiqued due to being exploitative via both 1) the chance-based nature of the microtransaction, and 2) the unrealistic or unrepresentative messaging lacking the disclosure of odds and employing persuasive media meant to encourage purchase. Many scholars and governments have emphasized the former by positioning loot boxes as a form of gambling (see Derrington et al., 2021), with several nations taking regulatory action against such practices through this lens, including Austria, Japan, China, Singapore, Belgium, the Netherlands, Germany, South Korea, and Australia (Gambling Insider, 2023; Schwiddessen & Karius, 2018). Beyond this, some have explored the detrimental effects of loot boxes on users (Brady & Prentice, 2021; Wardle & Zendle, 2021), while others have emphasized the need for improved gambling regulation in the sector (Liu, 2019). In the case of Québec, this attribution of loot boxes as gambling is an important concern that should be addressed by Loto-Québec, the crown corporation responsible for overseeing lottery and gambling throughout the province. Rather than contribute to the numerous calls for greater regulation of loot boxes as a form of gambling, this article focuses on critiques surrounding the paid and persuasive media meant to encourage purchasing loot boxes within a jurisdiction that explicitly means to protect children. While the two critiques—loot boxes as gambling, and advertising—are, of course, closely intertwined, the regulatory nature differs. In taking advantage of Québec's unique ban on advertising to children under the CPA, we intend to provide a supplementary regulatory critique (alongside

doi:10.3138/cjc-2023-0026

existing gambling critiques) against the incorporation of loot box microtransactions in video games, particularly in games available to children.

The following examines the ways in which the loot box video game industry has violated and blatantly disregarded Québec's legislation on children's advertising, using EA's FIFA as a case study. Furthermore, through examining existing and introduced national regulations in other countries, we propose changes to the existing Québec CPA through the adoption of digital-focused regulation meant to further limit the exploitation of children under 13. Through examining Québec legislation pertaining to advertising to children under sections 248 and 249 of the CPA (*Consumer Protection Act*, 2022), in addition to the most recent Advertising Guide (Office de la protection du consommateur, 2012), we explain how EA's use of microtransactions in FIFA (a video game rated "E" for Everyone) in the Québec marketplace is a violation of Québecois consumer protection regulation.

The FIFA game series

FIFA is a football video game series based on the Fédération internationale de football association, a governing body associated with running professional worldwide competitions for football. A new version of the game is released annually to replace retired players and add new ones to reflect yearly personnel changes in real football teams. Users can create different teams based on their preferences, going up against the game itself or other real users. The games are available on multiple platforms, allowing users to play on consoles or computers (Electronic Arts, 2022b), and are easily accessible throughout Canada, including Québec. In general, sports games, like the FIFA series, have a strong following and player base, as they provide "the promise of living the narratives of professional, commercialized sports" (Consalvo et al., 2013, p. 32). This promise connects directly to their interests, and in part, companies such as EA can take advantage of that with excessive microtransactions to encourage players to further fulfill potential fantasies.

Since the 2009 edition release, FIFA has incorporated loot boxes, referred to in the game as "FUT packs." These packs can contain new players, cosmetics, and temporary team boosts (Thomas, 2009). With three levels of packs (bronze, silver, and gold), as well as limited-time promotional packs, it drastically changes the percentage of players and items that can be collected (Electronic Arts, 2022c). Despite its popularity, the series has come under serious scrutiny throughout

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recent years. In 2020, EA was criticized after placing a loot box advertisement in a children's toy magazine. The advertisement promoted FIFA's in-game currency as a way to purchase packs and, in turn, "build [their] dream squads" (Robinson, 2020). The advertisement was quickly removed, and EA promised to conduct "an immediate review of all future media placements" to ensure it is responsible to its younger audience (Robinson, 2020, para. 7). However, since the controversy, EA has taken other actions to persuade its players to purchase FIFA packs.

In 2021, a report from the Canadian Broadcasting Corporation (CBC) that cited internal company documents from EA found the company was driving consumers toward purchasing FIFA packs to collect football players that are popular out of the game but have notoriously low chances of earning through FIFA packs alone (Johnson & Ivany, 2021). Yet again, the company issued a response stating it does not force people to spend money on their games but provides them with the choice to do so. EA has thus found itself with multiple class-action lawsuits, ranging from the company adjusting the difficulty to encourage consumers to buy more packs (which has since been settled in EA's favour) (Robinson, 2021), to EA breaching Canada's gambling laws for selling loot boxes in its games (Ivan, 2020). As of 2023, EA has continued to vouch for its FIFA packs and plans to include them in future installments (Robertson, 2022; Yin-Poole, 2022) despite controversies.

A concerning theme throughout EA's cyclical pattern of abuse and hand-slapping is the company's insistence that it is not pushing or promoting its products. This is made possible because, aside from advertising in toy magazines, the company has been careful to avoid the creation of "direct" or traditionally conceived advertisements. The lack of such explicit promotional material does not point to EA's lack of persuasive effort in pushing FIFA packs to its consumers. Instead, the company chooses to promote loot boxes subtly in the game through "psychological nudges," or in other words, making consumers feel as though they are missing out or are lesser for not having in-game items, only found in loot boxes (Yin-Poole, 2021).

FIFA's rating of "E" in Canada makes it difficult to know when children are playing the game and, thus, difficult to measure and track the impact of exposure to loot boxes. Instead of tracking these implications, we focus on how loot boxes appeal to all consumers invested in gameplay and amplify them to demonstrate the increased impact of ad exposures among children. In doing so, we aim to

doi:10.3138/cjc-2023-0026

critique the lack of existing regulations that speak to digital-age advertising pertaining to loot box sales and microtransactions and discuss possible policy solutions Québec can enforce to address such discrepancies through improving existing regulation.

Case study: FIFA loot boxes & the Consumer Protection Act

The following section scrutinizes FIFA's use of loot box microtransactions by breaking down the regulation pertaining to limiting advertising to children under 13 within the CPA (sections 248 and 249) using the most recent Advertising Guide. The Advertising Guide is intended for "merchants, businesses, lawyers and anyone working in the advertising or media sectors" to clarify "the ground rules contained in the CPA that must be taken into account when determining whether advertising targets children and whether it is prohibited" (Office de la protection du consommateur, 2012, p. 1).

The CPA first breaks down who is affected by the ban of commercial advertising to children, what exactly commercial advertising encompasses, and what formats and media are targeted. The act first and foremost clearly states that "no person may make use of commercial advertising directed at persons under thirteen years of age" (*Consumer Protection Act*, 2022, p. 83). Further, the act specifies that:

> [T]he ban applies to all merchants: Those who request the promotion of goods or services as well as those involved in the advertising process. The ban also applies to persons who *design, distribute, publish or broadcast the advertisement*. (Office de la protection du consommateur, 2012, p. 2; emphasis added)

This description of advertisers clearly establishes FIFA's external and internal self-promotion, including microtransaction sales built into the fabric of the game, as prohibited to children, under the CPA. As for the scope of the act, the CPA broadly describes "All formats and media are targeted when they are used to distribute or broadcast commercial advertising" (Office de la protection du consommateur, 2012, p. 3). The Advertising Guide specifies examples such as radio, television, the web, and mobile phones (along with other forms), and clarifies "Since the Act's interpretation is constantly evolving, new formats and media that emerge as a result of changes in advertising practices and technologies are also affected" (p. 3). This broad scope demonstrates flexibility in applying the act to changing formats, thus

allowing space for the enforcement of the CPA to digital video games as it stands.

While FIFA's use of loot boxes clearly meets the qualifications of banned advertisements under section 248 of the CPA, section 249 sets out to determine if said advertisements qualify as targeting children. The *Act* states the context of the presentation must be taken into consideration. This includes looking at the nature and intended purpose of the goods advertised, the manner of presenting such advertisement, and the time and place it is shown. FIFA's in-game loot box promotion as an added component of gameplay that provides benefits to the experience speaks to the intended purpose of advertising to users. Further, loot boxes are promoted with well-known and popular prizes (often the digital possession of celebrity athletes) through a lottery-style reward system. And lastly, the time and place of loot box advertisements are both within the video game itself (rated "E"), as well as having been strategically placed in media meant to target children.

Section 249 of the CPA outlines three criteria to consider when determining the context of the advertisement's presentation and the impression it gives. These include: 1) for whom are the advertised goods or services intended? Do they appeal to children? 2) is the advertisement designed to attract the attention of children? and 3) are children targeted by the advertisement or exposed to it? Are they present at the time and place it appears or is broadcast? The Advertising Guide is explicit in the importance placed on all three of these criteria, emphasizing that "an overall analysis of advertisements that takes the relationship between these three criteria into account is essential since each criterion, when considered separately, is not decisive in itself" (2012, p. 5). As such, the following breaks down FIFA's use of loot box promotion accordingly:

1. *For whom are the advertised goods or services intended? Do they appeal to children?*

   The Advertising Guide scores this criterion on a scale from being "essentially intended for children," to "greatly appealing to children without being exclusively intended for them," to "not particularly appealing to children." Based on FIFA's low age rating of "E", the game can be understood as, in part, appealing to children—though it cannot be deemed exclusively intended for them due to the widespread demographic of audiences of the game. Regardless, through various forms,[1] children access the video game.

doi:10.3138/cjc-2023-0026

2. *Is the advertisement designed to attract the attention of children?*

   The Advertising Guide lists multiple characteristics that would establish a product as being "designed to attract the attention of children" (Office de la protection du consommateur, 2012, p. 6). Some characteristics that are most applicable to FIFA include: a level of language commonly used by children; subjects linked to fantasy, magic, mystery, suspense, adventure, or virtual worlds; and spectacular media techniques. Of course, many video games meet these qualifications. The nature of appealing to wide audiences often means using a common language easily understood by most of the population, including, in this case, football terms that do not require video game knowledge (Impey, 2021). Further, the FIFA annual revamp incorporating new and traded players every year speaks to the fantasy dynamic through the creation of a virtual world. Reflective of this, the stimulating sound, colours, and special effects of the game promote the prolonged attention of users, in addition to paratexts generated by external, often sponsored (see Das, 2021) influencers who record themselves opening dozens of loot boxes (TwinsFifaHD, 2021). While not exclusive to children, such effects speak to the ability to draw in young people through the allure of digitized excitement.

3. *Are children targeted by the advertisement or exposed to it? Are they present at the time and place it appears or is broadcast?*

   The criteria described in assessing the qualification of this third question include reflecting on the proportion of children that make up the audience, or that might be reached by an advertisement, and whether children are present both at the time and location of broadcasting. The Advertising Guide states: "All media must be taken into account. For instance, a website section falls under the media category. The place can also be associated with a physical space such as a shopping centre, restaurant, school, daycare centre, festival location, etc." (Office de la protection du consommateur, 2012, p. 7).

In focusing on the temporal and physical reception of advertisements, the CPA demonstrates its positioning as media neutral—an approach that is incompatible in the complex digital and highly

interactive landscape. In specifying that "a website section falls under the media category" (Office de la protection du consommateur, 2012, p. 7), the guide encompasses the entirety of the web under a single media category, essentially casting an ocean-sized net over digital spaces. Without either enforcing unreliable self-disclosure checks, or requiring websites to provide user demographic data, the CPA will face challenges in its ability to establish the specific demographics of audiences playing video games online.

Further, in outlining whether the content that is not exclusively targeting children but may be particularly appealing to young audiences is permitted or not, advertisements are deemed permissible primarily based on whether it is not "broadcasted or distributed in a place where or at a time when children in particular are normally reached" [Office de la protection du consommateur, 2012, p. 9]. Such restrictions based on the location and temporality of advertisements, as more applicable in linear, scheduled broadcasting of content, do not take into consideration digital media environments that do not operate under such restrictions.

Based on the relationship between the three criteria provided under section 249 of the CPA (Figure 1), in order to solidify an advertisement as targeting children, the application guide specifies:

> To reach a conclusion, the ad's design must be considered in order to determine if it might appeal to children and if the time and place the advertisement is shown make it possible to reach children. (Office de la protection du consommateur, 2012, p. 8)

In other words, the intended audience, the appeal toward children, and the place and time the ad is shown are all equally important criteria in determining the status of an ad as targeting children. Providing equal weight to all three criteria in the assessment of whether an advertisement should be prohibited actually raises potential problems in the digital age. Specifically, the emphasis on spatial and temporal components of advertisements in the digital environment is complicated through children's access to digital content at all hours of the day. Whereas in the past, broadcasting could be sectioned off into times of the day that children would and would not be likely to be part of the audience, the online component of digital media, including video games that use promotional online material, allows for gameplay at any time of day or night, thus

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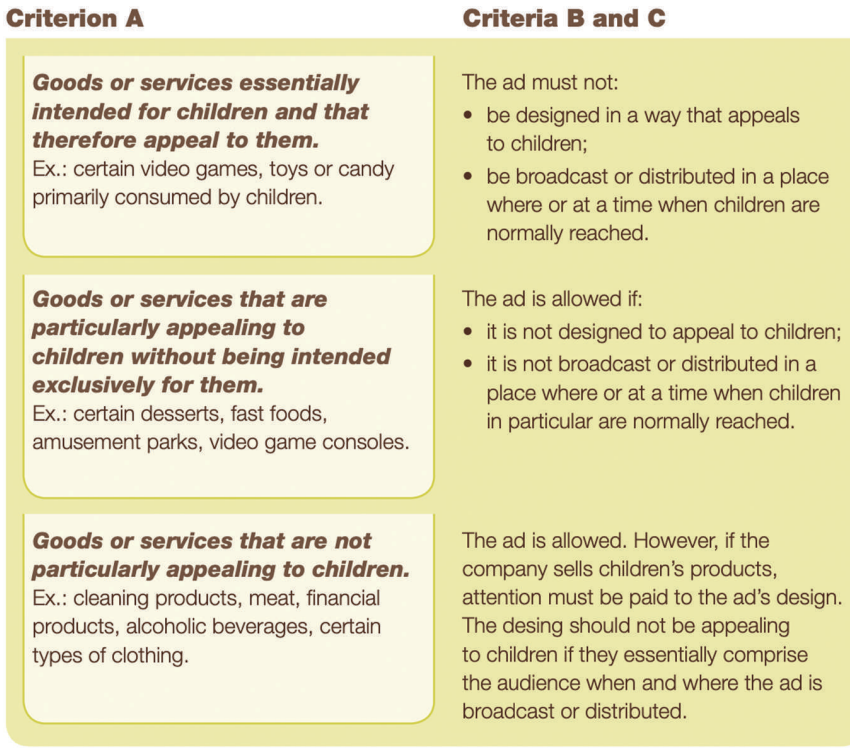
Figure 1: Three criteria for determining if an advertisement is prohibited under the *Consumer Protection Act*



Source: Office de la protection du consommateur, 2012, p. 9.

problematizing the regulatory overview of application based on temporal factors.

Alternative policy approaches

As outlined in the analysis above, video games boasting predatory microtransactions in the province of Québec are neglecting regulatory guidelines outlined under the CPA. Further, the CPA itself—with the most recent Advertising Guide being released over a decade ago—also appears to be avoiding the regulatory complexities of protecting children in the digital media realm. Together, this disregard of digital complexities requires intervention.

As political economists, our vision of change relies not on the goodwill of the actors within a capitalist system, but rather on efforts to support structure that holds said actors to account. In other words, we believe that capitalism is going to capitalize, and thus leave discussions of how to convince FIFA's parent company EA to abide by

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regulatory guidelines on their own accord—via conversations grounded in the role of corporate social responsibility—to other (perhaps more optimistic) scholars. The following section, then, focuses on the problem of the outdated CPA guidelines when applied to digital media, through an exploration of alternative digital-age policies.

Attempts have already been made to categorize loot boxes as "unlawful" across the country, such as a failed class action lawsuit against EA in British Columbia that emphasized the harm of loot boxes as a form of unregulated and unlawful gambling (Dring, 2023). Another attempt in British Columbia was successful in 2023, when the province brought a class action settlement over loot box purchases in *Fortnite* and *Rocket League*. Epic Games, the developer of both games, paid a $2.75 million settlement (Otis, 2023), with payments up to $25 to individuals. In this case, the lawsuit claimed the games had "intentional design choices such as offering rewards for completing challenges and making frequent updates" that led players to develop addictions (Chiang, 2023, para. 3). As court cases against the exploitative nature of loot boxes across Canada continue, the implementation of policies in other nations provides structural alternatives that Québec might consider adopting into its already progressive regulation.

While other countries such as the United States (Bill S.1629, 2019) have sought to regulate microtransactions, specifically loot boxes, many European and Asian countries have become substantial driving forces in the push toward the adoption of regulatory language to curb the negative impacts of persuasive video game mechanics. In considering these various policy approaches, we propose ways in which it would benefit Québec to adopt similar strategies in order to create stronger regulations for digital advertising to all citizens (with a special focus on children) and to better enforce existing regulations.

Regulating microtransaction advertising

One approach that other nations have adopted in dealing with the harm caused by loot boxes is the enforcement of regulation pertaining specifically to advertising surrounding microtransactions. In Germany, neither the purchase of loot boxes can be advertised nor can games offer players the option to open loot boxes in exchange for watching advertisements (Cerulli-Harms et al., 2020). Moreover, Germany's Bundestag (federal parliament) also passed a reformed *Youth Protection Act* that limits adding loot boxes to games that are restricted to the age group 18 and older, though this is pending approval by the Bundesrat (legislative body) (Fingas, 2021).

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While EU regulation broadly contains multiple measures to assist in protecting children, the United Kingdom has been an important player in the discussion of advertising in-game purchases through reports and guidance produced by the Advertising Standards Authority (ASA)—the United Kingdom's independent advertising regulator—and the Committee of Advertising Practice (CAP) —the self-regulatory partner organization. The CAP developed a report in 2021 for in-game advertisements. The organization sought to prevent players being pressured to purchase products or misled as to the price or purpose of a product. What is particularly helpful for Québec in this case, is the explication of various terms throughout the report and recommendations as to how to best navigate these new advertising techniques (CAPBCAP, 2021). While it is important to note that the CAP is funded and run by the U.K. advertising industry through a self-regulatory approach, meaning that proposed solutions to issues may be taken with a grain of salt, the articulation of digital concerns within the advertising industry is a useful starting point for the digital renewal of the CPA.

For example, the 2021 CAP report, in describing in-game storefronts as the virtual location where digital items can be purchased, explained that such storefronts "are considered to be advertising where the items are purchased with virtual currency that can only meaningfully be obtained with real money" (CAPBCAP, 2021, p. 7). While this articulation of storefronts as a location of advertising is quite limited in that it only applies to games that "meaningfully" require real money purchases (thus allowing those that offer a mix of currency options exempt from the "advertising" label), the identification of in-game storefronts as the potential for a cite of advertising provides a foundation to build upon within the CPA. Thus, self-regulatory reports from other nations provide a starting point for the amendment of the CPA, with the government oversight of the CPA allowing for the adoption of such points without incorporating the oft-found industry friendly language guiding self-regulatory approaches.

Disclosure/transparency regulation

Another practice adopted internationally to make loot boxes less deceptive and more transparent is disclosure regulation, which requires game developers to disclose the probability of earning different items and rewards from the loot boxes the players open. The United Kingdom now recommends the transparent inclusion of odds for rarer, more coveted items within loot boxes, and changing the in-game language to prevent direct encouragement of purchasing

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products, as well as a direct gambling disclaimer (CAPBCAP, 2021). In addition, U.K. policy states that marketers and promoters must not mislead consumers by discouraging vague language and the omittance of relevant information. Throughout the EU, video games are encouraged to disclose the probabilities of specific items in an accessible format for the intended audience. Further, The People's Republic of China introduced legislation in 2016 where players are required to be informed of these probabilities (Cerulli-Harms et al., 2020; Fingas, 2021; Straub, 2020). Meanwhile, the Korea Association of Game Industry took a similar approach via self-regulatory measures (Cerulli-Harms et al., 2020).

In Québec, there is a comparatively widespread lack of regulation overseeing such probabilities involved with loot boxes, which has led to misleading accounts of prospective rewards. Québec should, in considering the actions of other nations, both expand the CPA to better protect young audiences, as well as more strictly enforce its own guidelines to ensure that audiences are not being misled by inaccurate depictions of risk and reward. Further, due to the inherent contradictions of power involved in the self-regulation of advertising standards by advertisers, we propose that probability disclosures should be adopted into the CPA as a requirement rather than a voluntary measure to assure industry compliance.

Overall, outlining ways to identify commercially manipulative and exploitative tactics, as seen in China and Korea, and recognizing the problems affiliated with loot boxes beyond gambling, such as outlined in the United Kingdom and the European Union, are all viable options to consider when expanding the scope of the CPA to the digital realm.

Discussion/conclusion

Throughout this paper we have aimed to problematize the promotion of microtransactions, specifically loot boxes, to children in the FIFA video game series through a breakdown of the Québecois *Consumer Protection Act*. In scrutinizing the sales and advertising of loot boxes to children under the CPA, we found that while much of the regulation remains clearly applicable to the FIFA case—solidifying the video games disregard for the provincial regulation—aspects of the *Act* can and should be updated to better encompass the digital realm. This includes the need for the adoption of policies modelled by other nations into the CPA that address growing concerns of microtransactions, including the regulation of microtransactions and the enforcement of disclosure/transparency. Further, specific

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amendments to the CPA, including the reassessment of privileging temporal and physical location criteria, as well as updating the existing definition of advertising, would aid in its application to digital age media.

Temporal and physical limitations

Under the CPA, the place and time an advertisement is shown is deemed equally important in determining whether it targets children. While applicable to traditional media such as the placement of a print ad in a magazine meant for children, or early electronic media such as the placement of a television or radio advertisement within content targeting children, such qualifications are more difficult to determine in the digital age where individuals can choose when and where to participate in online play. Thus, the games' rating—"E" (Everyone)—provides the only audience insight. A reassessment of video game ratings within the province, or overall banning advertising of loot boxes (as other nations have done), may help to better protect young users from advertisements of microtransactions, and subsequently, the exploitative nature of such.

Re-defining advertising

Looking at EU and U.K. reports and legislation, we propose that regulatory action pertaining to the digital explication of advertising from a variety of other nations should work as a model for the Québec government to clearly identify advancing ad tactics used in video games. Québec's definition of advertising, while strategically broad, lacks the precision required in the digital communication realm to provide stronger and more effective restrictions against advertisers. While this is not to say the definition should be so specific that the Act loses its broad applicability, adopting language that aims to restrict advertising loot boxes and similar exploitative processes is a necessary step. Like Germany's approach to loot box advertisements, expanding the definition of advertisements in the CPA and restricting advertisements for both the purchase and heavy promotions of loot boxes would further protect minors. Alternatively, the United Kingdom has proposed that video game developers should make this type of purchase clear for the player and distinctly label such as advertising. This means if in-game currency can be used to buy loot boxes, obtained through real-world transactions rather than solely with in-game elements, any information (store-front and inducements) provided about the purchase should be considered advertising and regulated accordingly. Such expansions to both the considerations of

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what qualifies as an advertisement and what is deemed acceptable (or not acceptable) for consumers may better protect audiences in Québec.

Asquith's (2021) in-depth analysis of how Canadian cannabis companies promoted their brands after national legalization in 2018 demonstrates the digital-age difficulties of regulating promotional material online. Comparing new-age challenges of upholding guidelines set out by the *Cannabis Act* in 2018, as compared with the *Tobacco Act* in 1997, Asquith describes the cannabis brands as "navigating the law simply *by embodying what it means to be a twenty-first century brand*" (p. 94). This referred to new-age promotional tactics on new-age promotion platforms, neither of which lend themselves to traditional advertising regulations. Microtransactions in video games present the same issue of embodying twenty-first-century branding and occupying digital spaces. Serazio aptly explains this dilemma between the digital complications of both regulating and simply identifying the ever-increasing presence of advertisements noting that "advertising is slowly receding from view even as it, paradoxically, becomes more ubiquitous than ever" (2013, p. 169, as cited in Asquith, 2021, p. 95). The description of CPA jurisdiction should thus be amended to better incorporate the digital world of advertising in order to extend the enforcement of radically progressive regulation online.

Québec is leading the charge in Canada in addressing the safety and protection of children in media environments. However, despite the province's actions in the past, we aimed to demonstrate throughout this paper that in order to maintain its status as a leader in protecting children from exploitative advertising and to embody greater protections for all Québecois citizens, the provincial CPA must adjust its policy framework to meet the demands of the twenty-first-century digital media environment. Microtransactions such as loot boxes are incredibly profitable due to predatory tactics that currently go unrestrained, even in jurisdictions that fought to protect children in the broadcast age. In examining Québec's CPA criteria for establishing advertisements to children, much of it remained applicable when closely examining the FIFA series–demonstrating the longevity of what has been considered one of the most progressive advertising policies in the world. But, in order to most effectively regulate popular video games exploitation of young users, the suggestions outlined throughout this paper must be adopted into existing criteria. Building on the uniquely protective regulatory power established under

doi:10.3138/cjc-2023-0026

the CPA in these ways would allow Québec to once again be a world leader in preventing the exploitation of audiences and maintain its status as a progressive leader of children's safety.

Scholars have also called for increased attention to the slipping standards of gaming regulation in Canada, which have been described as falling behind in the protection of children's rights in the digital environment (Grimes et al., 2023). While fears of adopting such regulations might be grounded in Charter- (or equivalent) based challenges to the entitlement of corporate freedom of expression, protecting consumers from advertising messages has been recognized as a reasonable and justifiable government incursion, as broken down throughout this article and as precedented in *Irwin Toy Ltd v. Quebec (AG)*. This was further stressed in *R. v. Wholesale Travel Group Inc.* (1991), where the Chief Justice of the Supreme Court of Canada explained: "I am prepared to accept that preventing false/misleading advertisers from benefiting from false/misleading advertising and protecting consumers from the detrimental effects of false/misleading advertising is sufficiently important to warrant overriding constitutionally protected rights and freedoms" (section 1, para. 4). Such perspectives will, of course, be met with industry pushback, just as the CPA has received over the years, as perfectly embodied by sales manager J. Richard Genin of Tele-Metrople Inc. when he described advertising restrictions under the CPA as "The whole thing is a dog's breakfast" (Lippman, 1983, para. 8), but it is precisely this commercial pressure, coupled with industry's disregard for existing policies, that demands Québec take back its role as a leader in protecting children from commercial influence.

Notes

1. While it is unclear whether exact data that tracks user demographics of video game players via age groups is available, there is ample evidence that children, even those younger than 13 years old, play FIFA video games. This ranges from popular culture narratives and paratexts that demonstrate the game series' popularity with minors via streaming channels (e.g., The Williamson's FC, 2018; Dan D, 2017), to the development of advocacy groups dedicated specifically to fighting against the exploitation of children and teens in EA's FIFA series. Such groups exist across the globe, such as the coalition of 15 advocacy groups in the United States that came together to call on the Federal Trade Commission (FTC) to investigate EA's loot box features (Fairplay, 2022), and the Norwegian Consumer Council's (Forbrukerrådet) report using *FIFA 22* as one of its case studies in outlining exploitative practices and predatory nature harming children (Norwegian Consumer Council, 2022). These points of argument, along with the positioning of an audience rating as a measure of self-disclosure outlining what audiences may be reached (including children under 13, in this case), rather than what audiences are reached, means that regardless of how many children participate in FIFA (which, as shown above, is a lot), the possibility of their participation through invitation from EA warrants critical inquiry.

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2. See Horkheimer's (1947) *Eclipse of Reason* for further contestations with positivist-based and pragmatist grounded assumptions rooted in a naturalized measurement of social behavior.
3. In-game currency is currency that is gained either by purchasing with real money or earned through gameplay.

Suggested Citation: Forde, S. L., Solis, E., & Beykont, Y. (2024). Digital disregard: A case for amending Québec's children advertising legislation. *Canadian Journal of Communication*, *49*(2), 201–229.

Acknowledgments: An earlier version of this paper received the CRTC-CCA Prize for Excellence in Policy Research in 2023 under the PhD category. We are grateful for the constructive feedback we received from Stuart Poyntz and the two anonymous readers of this manuscript throughout the review process, as well as the helpful comments and questions that stemmed from our presentations to CRTC Commissioners, and at the 2023 Canadian Communication Association. We also wish to thank Kyle Asquith for his thoughtful review and suggestions, which we believe thoroughly strengthened this article. Finally, a special thanks goes to our advisor, Matthew McAllister, for his help throughout numerous drafts, and for his unwavering support in all our academic endeavours.

Data Accessibility: All data will not be made publicly available. Researchers who require access to the study data can contact the corresponding author for further information.

Funding: No funding was received for this research.

Disclosures: The authors have no conflicts of interest to disclose.

Sydney L. Forde is a PhD Candidate at the Donald P. Bellisario College of Communications at Pennsylvania State University. Email: slf5652@psu.edu.

Erika Solis is a PhD Candidate at the Donald P. Bellisario College of Communications at Pennsylvania State University. Email: exs5625@psu.edu.

Yasemin Beykont is a PhD Candidate at the Donald P. Bellisario College of Communications at Pennsylvania State University. Email: yfb5071@psu.edu.

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