

UNFAIR PRACTICES AND MANIPULATIVE DESIGNS IN ONLINE GAMES AND ON GAM- ING PLATFORMS

A field study.

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Legal information

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CONSUMER RELEVANCE

Online gaming is very popular, particularly among young consumers. More than half of Germans (53 percent) aged 16 or above play video or computer games at least occasionally.¹ Throughout the EU, 73 percent of children aged 6 to 10 and 84 percent of children aged 11 to 14 play online games.²

Game developers now strongly base their business model on in-game purchases. In 2020, they earned more than 50 billion US dollars (around 46 billion euros) globally from in-game purchases.³ Almost four in ten gamers surveyed have already spent money on additional content such as in-game currency.^{4, 5}

Unfair practices in the context of in-game purchases, including direct prompts to make a purchase, can prove very costly for consumers. Such practices are particularly perfidious when coupled with manipulative designs such as incentives for daily logins, countdowns, and the use of visual highlighting. Furthermore, they are particularly problematic in games that are also aimed at children and adolescents. These groups are particularly susceptible to manipulation due to their lack of commercial experience.

SUMMARY

The Federation of German Consumer Organisations (Verbraucherzentrale Bundesverband e.V. – vzbv) carried out a test to analyse whether and how selected platform operators and providers of online games⁶ fulfil certain legal requirements. Part of the investigation concerned the design of purchase offers, the way prices for virtual objects are presented, and the use of manipulative designs known as dark patterns. vzbv has issued legal warnings against the service providers analysed.

The games investigated revealed unfair practices such as prompts – including to children and adolescents – to make purchases, non-transparency with respect to prices, and confusing offers regarding in-game purchases. Such practices were also combined with manipulative designs known as dark patterns. This combination may increase the pressure on consumers.

¹ Cf. Bitkom (2024): <https://www.bitkom.org/Presse/Presseinformation/Haelfte-Deutschen-zockt-Video-Computerspiele>

² Cf. EU Commission (2022): <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022DC0212>

³ Cf. WBS Legal (2024): <https://www.wbs.legal/medienrecht/eu-beschwerde-wegen-videospielen-geht-es-jetzt-in-app-kaufen-an-den-kragen-79000/>

⁴ In-game currencies are virtual currencies in online games that can be won by playing or else purchased with real money. Sometimes there are several in-game currencies within a game.

⁵ Cf. vzbv (2022): https://www.vzbv.de/sites/default/files/2023-05/Survey_vzbv_Lootboxes_2022_EN_0.pdf

⁶ Services from the following five providers were tested: Epic Games (game: Fortnite, platform: Epic Games Store), Roblox Corporation (game: Adopt me!, platform: Roblox), Supercell (game: Clash of Clans), Scopely (game: Monopoly Go), Sybo ApS (game: Subway Surfers). The test was carried out between 23 July and 23 September 2024. vzbv assessed the results using a system of pre-established categories based on set criteria. The latest versions of the games at the time the test was carried out were used on a Samsung Galaxy S23 (Android 14). Google Play Store and/or Epic Games Store were used to download the games. Documentation took the form of screenshots and screen videos. The selection of the five service providers tested was based on the “Game Over” action, coordinated by BEUC, which examines the lack of transparency around in-game currency in online games: <https://www.beuc.eu/game-over>

All five games and/or platforms use dark patterns. The providers use techniques such as countdowns, incentives to play games daily, or rewards for viewing advertisements in an attempt to influence user decisions. Dark patterns seem to be an established part of the monetarisation model of some games. vzbv observed manipulative practices that are specifically aimed at the online gaming market segment, including pay-to-skip and reward systems. Providers use these practices to entice users to spend money, to share data, and/or to spend more time playing the game.

In vzbv's view, some of these practices (for example, rewarding daily login or the viewing of ads, as well as loot boxes) encourage excessive gaming. They have the potential to trigger or heighten addictive behaviour. Minors, in particular, due to their inexperience and natural instinct to play, are susceptible to such manipulation.⁷ Manipulative designs in games are thus highly relevant to policies relating to health and addiction, to gambling laws, and to the protection of minors.

From vzbv's point of view, all five providers used unfair or manipulative practices. vzbv has issued legal warnings against the five service providers tested, based on issues such as infringements of the German Act against Unfair Competition (UWG). In two cases, vzbv has objected to infringements of the prohibition of dark patterns pursuant to Article 25 of the Digital Services Act (DSA), among other things. However, the DSA's scope of application is limited. The DSA only applies to platforms – there are no corresponding rules in the UWG or the Unfair Commercial Practices Directive (UCPD) that apply to websites, online retailers and games.⁸

I. UNFAIR PRACTICES

1. DIRECT PROMPTS TO PURCHASE

In three of the five games tested, the providers issue direct prompts to make a purchase. For example, the game “Monopoly Go” shows users a pop-up as soon as they open the app, confronting them with offers even before users have visited the game shop on their own initiative. The game “Clash of Clans” combines an imperative (“Zugreifen!”, “Get it now!”⁹) with a specific offer to directly appeal to users to make a purchase.

The game manufacturers also use additional manipulative practices. For example, they attach countdowns to certain offers to put users under pressure.¹⁰ In the game “Adopt Me!” (game platform: Roblox) the option to purchase is even continuously visible as a small icon in the corner of the screen.¹¹ It serves as a constant reminder to gamers. Another game (Clash of Clans) uses an arrow in the lower right corner of the screen to point users to the in-game shop.

⁷ Cf. Jugendschutz.net (2021): https://www.jugendschutz.net/fileadmin/daten/publikationen/praxisinfos_reports/report_dark_patterns.pdf

⁸ Cf. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32005L0029>

⁹ Translation on behalf of vzbv.

¹⁰ In vzbv's view, the timer that ticks down considerably limits users' freedom to choose. It is possible that they do not inform themselves adequately about alternative options.

¹¹ Presumably until the timer expires.

2. LACK OF TRANSPARENT PRICING

In addition, the appearing prompts to purchase often do not show any prices. In the game “Adopt Me!” (game platform: Roblox) the button is simply labelled “Jetzt kaufen” (“Buy now”). Only after clicking the button and thus committing to a purchase do users learn that they do not have enough of the in-game currency “Robux”. Users can then purchase “Robux” and the selected article at the same time. However, the platform offers the in-game currency only in packs of fixed amounts (40, 80, 400, 800, 1,700, etc.). Users are not able to acquire only the amount of “Robux” necessary to buy the object in question. They are forced to buy a “pack” containing more “Robux” than necessary. At this point the lack of equivalent value between the items for sale (for example, 89 “Robux” for a virtual object) and the packs offered becomes apparent. A certain amount of virtual currency is left over, which might encourage gamers to make further purchases.

In all five games or platforms that vzbv tested, prices were stated exclusively or partially in in-game currency, without any reference to their real monetary value. The gaming platform Roblox allows combined purchases without stating the total price. In the game “Fortnite” from Epic Games, price reductions and/or discounts for virtual items are offered using the in-game currency “V-Bucks”. A crossed out price is displayed next to the purchase price. It is not clear to consumers, which price the crossed-out price and the discount refer to.

In-game currencies hide the true cost of in-game purchases. Stating prices in in-game currency without any reference to the real cost can lead users to make purchasing decisions they would never otherwise have made.

3. CONFUSING OFFERS

The “Bankenrausch Starterpaket” (“Bank Heist Starter Pack”) offer in the game “Monopoly Go” is confusing. According to the provider, it contains 110 dice rolls, 30,000 dollars, as well as three stickers and is promoted with the claim “370 % MEHR!” (“370 % MORE!”). It is not clear to consumers what “370 % MEHR!” refers to. It is not possible to assess the amount saved or to compare the offer to other offers.

The starter pack in Clash of Clans is advertised with the claim “10 x Wert” (“10 x value”). However, the meaning of the claim is not clear. The pack contains two components, one of which is not even offered in the shop. It is totally unclear to vzbv how the comparison “10 x Wert” is reached.

4. REWARDS FOR WATCHING ADVERTISEMENTS

The game Subway Surfers issues the following request to users: *“Sieh dir mehr Werbevideos an, um alle Belohnungen zu verdienen, bevor die Zeit abläuft!”* (“Watch more advertising videos to earn all the rewards before time runs out!”). Gamers are supposed to then watch ten advertising videos before the timer expires in order to receive virtual items as rewards. The rewards on offer suggest that it will then be possible to progress faster in the game. Minors are especially susceptible to the pressure such prompts apply.

In addition, the pop-up window bears the heading “Tägliche Belohnungen” (“Daily rewards”). Elsewhere in the game users are told “Spiele täglich, um Belohnungen zu erhalten” (“Play daily to get rewards!”). The linking of rewards to playing the game daily is designed to entice users to do just that.

Subway Surfers also promises gamers “Bis zu 10.000 Münzen” (“Up to 10,000 coins”) as a reward for watching advertisements. When vzbv tested this, however, the actual amount was far lower.¹²

UNFAIR PRACTICES ENDANGER CHILDREN AND ADOLESCENTS

The games tested contain directed purchasing prompts, a lack of transparent pricing, and offers that are difficult for users to understand. Such practices were also observed in combination with manipulative designs known as dark patterns. This combination can increase the impact. Children and youths are particularly vulnerable to such practices. In vzbv’s view, the games tested are also aimed at children and/or are primarily played by minors.¹³

II. MANIPULATIVE DESIGNS

The test revealed numerous different forms of manipulative design (see “Additional information and classifications regarding dark patterns in online games and on gaming platforms”). Dark patterns appear to be core components of gaming manufacturers’ and platforms’ monetarisation models. They may be designed to encourage excessive gaming and, in the forms outlined here, are problematic insofar as they may tempt users to spend more money, share more data, and/or spend more time gaming than they originally intended.¹⁴ These manipulative practices pose a particular risk to minors.

vzbv has identified the following intended effects of dark patterns in online games and on gaming platforms:

- ➡ Maximising of user expenditure
- ➡ Binding users to the game in terms of time / Ensuring users return to the game
- ➡ Maximising of ad consumption
- ➡ Encouraging the sharing of large amounts of personal data
- ➡ Increasing publicity for the game

DARK PATTERNS ARE WIDESPREAD IN ONLINE GAMES

During the test, vzbv observed manipulative practices that are specifically aimed at the online gaming market segment. Design tricks that are common outside this market segment were also used.

All five games and/or platforms tested revealed the use of dark patterns. The providers use methods such as countdowns, incentives to play games daily, or rewards for viewing advertisements in an attempt to influence user decisions. Such practices may tempt users to spend more money, share more data, and /or spend more time gaming than they originally intended to. Some practices are designed to encourage

¹² In vzbv’s view, this reflects a loophole in current legislation. Courts currently define the existing rule on aggressive commercial practices pursuant to Article 4a UWG very narrowly. One solution might be, to the greatest degree possible and in addition to Article 25 DSA, to explicitly ban all factually recordable dark patterns in the Unfair Commercial Practices Directive as well.

¹³ Addressing gamers with the informal second personal singular “Du”, the simple or comic-style visuals, and the simple and brief instructions could all suggest that the game is aimed at children.

¹⁴ Cf. EU Commission (2022): Behavioural study on unfair commercial practices in the digital environment: Dark patterns and manipulative personalisation: <https://data.europa.eu/doi/10.2838/859030>

excessive gaming. They have the potential to trigger or heighten addictive behaviour. Minors, in particular, due to their inexperience and natural instinct to play, are particularly susceptible to such manipulation.