

# ESSAYS I/2024

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## MONETIZATION MECHANICS IN VIDEO GAMES FROM A GAMBLING REGULATION PERSPECTIVE<sup>1</sup>

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The history of video games is long and interesting, from the humble beginnings of Tetris, the most popular video game in history<sup>3</sup> to AAA titles of the present day. In almost 60 years of history, a lot has changed in making, designing, and selling video games, and in the past 20 years, a lot more monetization emerged. For the first video games for PC or console, you went to a game store and just bought the game, there was no monetization going further besides DLCs that weren't necessary to buy to play and enjoy the game. Now people mostly buy video games for PC online, on platforms like Amazon, Steam, EA Desktop, or Epic Games<sup>4</sup> and most games nowadays have some sort of monetization, loot boxes, or gambling mechanics inserted in the game. Microtransactions, loot boxes, and other forms of monetization appear across all genres of video games, and they come in many forms. It can be a new outfit that players can acquire, other character features, skins, weapons, cars, or other forms of items. In many games, there is also a season pass giving the player access to blocked new items or powers in the game. It's not necessary to buy these items, skins, or

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<sup>3</sup> WEISBERGER, M. The Bizarre History of 'Tetris'. Livescience [online]. 2024. [17.06.2024] Available at: <https://www.livescience.com/56481-strange-history-of-tetris.html>

<sup>4</sup> CLEMENT, J. Video gaming worldwide - Statistics & Facts, Purchasing behavior & spending, Statistics from UK, Germany, Brazil, UK, USA, China, Japan, South Korea and Canada. Statista. [online] 2024. [10.06.2024] Available at: <https://www.statista.com/topics/1680/gaming/#topicOverview>

loot boxes but for many people that's the first contact with gambling. Monetization in video games is a very controversial topic in the Internet sphere, many content creators point to the negative effects of the popularity of microtransactions and gambling on the players but also on the game it's in.<sup>5</sup> What are the drawbacks of video game monetization? and should gambling stay in video games?

The first true video games were created in the 50s and 60s, possibly the first ever video game created only for entertainment purposes was "Tennis for Two",<sup>6</sup> from the year 1958. It was an easy and simple game that only had a few dozen pixels. The gaming market began to grow rapidly and already at the beginning of the 70s, the first arcade game based on a coin system "Galaxy Game" came out.<sup>8</sup> The same year one of the most influential arcade games, "Computer Space" was created.<sup>9</sup> "Gaming" reached mainstream popularity by the 70s and 80s, it was mainly due to arcade video games and the first Commercial gaming console, "Magnavox Odyssey"<sup>10</sup>, which was released in 1972, also owning a computer started to be more affordable. With the rise in popularity and the rapid development of technology, games became more realistic, immersive, colourful, and advanced, which accelerated their popularity even further. As early as

<sup>5</sup> One of the most known online critics of gambling and microtransactions is a content creator called HOUNGOUNGAGNE. HOUNGOUNGAGNE. The Dark Reality behind CSGO. (Illegal Gambling, lies and addiction) Part 1. *youtube.com* [online] 2023. [cit. 10. 6. 2024]. Available at: <https://www.youtube.com/watch?v=JT17153Fkj0>, HOUNGOUNGAGNE. How Valve profits from Gambling - The Dark reality of CSGO: Part 2. *youtube.com* [online] 2023. [cit. 10. 6. 2024]. Available at: <https://www.youtube.com/watch?v=KpvePQVs-cUQ&t=2s>. [10.06.2024].

<sup>6</sup> HISTORY TOOLS. The Complete Technical and Cultural History of Tennis for Two: History's First Video Game. History Tools [online]. 2024. [18.06.2024] Available at: <https://www.historytools.org/inventions/tennis-for-two-complete-history>

<sup>7</sup> The first video game? *Brookhaven National Laboratory*. [online] 2008. [10.06.2024]. Available at: <https://www.bnl.gov/about/history/firstvideo.php>

<sup>8</sup> NORMAN, Jeremy. "Galaxy Game", the Earliest Coin-Operated Computer or Video Game. *History of Information*. [online] [10.06.2024] Available at: <https://historyofinformation.com/detail.php?id=2326>

<sup>9</sup> Computer Space. *The strong National Museum of Play* [online]. 2023. [cit. 10.06.2024]. Available at: <https://www.museumofplay.org/games/computer-space/>

<sup>10</sup> Early history of video games. *Wikipedia* [online]. 2024. [cit. 10.05.2024]. Available at: [https://en.wikipedia.org/wiki/Early\\_history\\_of\\_video\\_games](https://en.wikipedia.org/wiki/Early_history_of_video_games).

the early 1990s, computers were becoming more and more common in the home, so Arcade-based games began to lose importance. The history of games from the early 2000s to the present is too long to describe, but it is a time when video games have developed faster than ever. It was then that the iconic series of games that we love to this day such as Simcity,<sup>11</sup> Battlefield,<sup>12</sup> Call of Duty,<sup>13</sup> or Far Cry<sup>14</sup> were created. This way we come to today, in these times games are available practically everywhere and their selection is huge. Not only a selection of games, but also consoles, emulators, and other gaming equipment such as 3D goggles.

In the last 10 years, video games have not only changed graphics and popularity, but they have also changed their monetization system. Microtransactions have been introduced into games, i.e. in-game payments for items or unlockable content made directly from real-world money or indirectly through the buying of virtual currency<sup>15</sup>. With the increasing presence of microtransactions in the gaming world, there has been a public debate about whether microtransactions are not too similar to gambling, and if so how we can regulate it. Also, it has been questioned whether the use of these micro-transactions could lead to problem gambling or excessive gaming-related harm.<sup>16</sup>

The so called „loot boxes” are a very popular form of microtransactions in games. There are many definitions of loot boxes, some of the most well-known are: the Belgian FPS Justice Gaming Commission defines loot boxes

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<sup>11</sup> RAY, Michael. SimCity electronic game. In *Britannica* [online]. 2024. [cit. 08.06. 2024]. Available at: <https://www.britannica.com/topic/SimCity>.

<sup>12</sup> MADDOCK, Bryson. All Battlefield Games In Order Of Release. In: *Insider Gaming* [online]. 2023. [cit. 08.06.2024]. Available at: <https://insider-gaming.com/all-battlefield-games-in-order-of-release/>.

<sup>13</sup> Call of Duty. In: *Call of Duty Wiki* [online]. 2024. [cit. 08.06.2024]. Available at: [https://callofduty.fandom.com/wiki/Call\\_of\\_Duty](https://callofduty.fandom.com/wiki/Call_of_Duty)

<sup>14</sup> CALLUM, Williams. Every Far Cry Game: A Full History of Releases in Order. In: *IGN* [online]. 2024. [cit. 08.06.2024]. Available at: <https://www.ign.com/articles/all-far-cry-games-in-order>.

<sup>15</sup> Annette CERULLI-HARMS, Marlene MÜNSCH, Christian THORUN, Frithjof MICHAELSENN, Pierre HAUSEMER. Loot boxes in online games and their effect on consumers, in particular young consumers. *STUDY Requested by the IMCO committee* [online]. 2020. [cit. 08.06.2024]. p. 13-20. Available at: [https://www.europarl.europa.eu/thinktank/en/document/IPOL\\_STU\(2020\)652727](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2020)652727)

as “...the umbrella term for one or more game elements that are integrated into a video game whereby the player acquires game items either for payment or for free in an apparently random manner”.<sup>17</sup> Academics in the field of computer science Zendle et al. (2020b) describe 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”<sup>18</sup>. However, the best definition of the term ‘loot boxes’ that I found, in my opinion, is: “Loot boxes is a colloquial catch-all terminology used to describe software features, typically found in video games, that provide the player with randomized virtual rewards”<sup>19</sup> [5]. The player must also somehow interact with (or open) the loot box, the engagement could be obtaining a virtual item, by watching commercials, or most importantly by purchasing an item to “open” the box for real-world currency.

Once the player has opened or engaged in any other way with the loot box, they receive something as a reward. These “rewards” can be cosmetic items that only change the appearance, colour, or armour of the player, or may highly influence the gameplay by unlocking rare game content, increasing the player's level, or giving him a high-level item. In many games, these rewards can also be “sold” to other players for real-world money or in-game currency. The ability to sell and exchange in-game items has led to the creation of a huge market of skins, outfits, weapons, and other cosmetic

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<sup>16</sup> HOUNGOUNGAGNE. The Dark Reality behind CSGO. (Illegal Gambling, lies and addiction) Part 1. *youtube.com* [online] 2023. [cit. 10. 6. 2024]. Available at: <https://www.youtube.com/watch?v=JT17I53Fkj0>, HOUNGOUNGAGNE. How Valve profits from Gambling - The Dark reality of CSGO: Part 2. *youtube.com* [online] 2023. [cit. 10. 6. 2024]. Available at: <https://www.youtube.com/watch?v=KpvePQVscUQ&t=2s>. [10.06.2024].

<sup>17</sup> Annette CERULLI-HARMS, Marlene MÜNSCH, Christian THORUN, Frithjof MICHAELSENN, Pierre HAUSEMER. Loot boxes in online games and their effect on consumers, in particular young consumers. *STUDY Requested by the IMCO committee* [online]. 2020. [cit. 11.06.2024]. p. 13. Available at: [https://www.europarl.europa.eu/thinktank/en/document/IPOL\\_STU\(2020\)652727](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2020)652727)

<sup>18</sup> Ibidem. p. 13.

<sup>19</sup> DRUMMOND, A., SAUER, J.D. Video Game Loot Boxes Are Psychologically Akin to Gambling. *Nature human Behavior* [online]. 2018. [11.06.2024]. Available at: <https://doi.org/10.1038/s41562-018-0360-1>

items. The most famous and largest of its kind is the Steam Community Market, where millions of items are sold, bought, or traded every day.<sup>20,21</sup>

Examples of games that have some form of microtransaction need not be mentioned, but in the game Counter-Strike 2<sup>22</sup> the system of loot boxes became a global phenomenon, which conquered social media and the whole internet. Counter-Strike 2 is the game I have the most experience with, I have been playing it continuously for eight years and during that long time, I had the opportunity to see, experience, and buy counterstrikes loot-boxes up close. In this game, there are items called “cases” that can be opened with a special key, sold, or exchanged with another player. Every person who bought the game can get such a box once a week for free. The cases themselves usually cost no more than 50 euro cents, but there are exceptions, rarer boxes can cost up to 30 euros for only one case. The case contains more than a dozen different cosmetic items, these items are called “skins” and they allow cosmetic weapon changes in the game. Skins, same as cases could also be sold or exchanged. Many people unfamiliar with the Counter-Strike 2 market and items think that virtual skins in a computer game can cost no more than a few euros, but that can't be further from the truth. Most of these “least wanted” skins indeed cost a penny, but the rarer the item, the greater the value, the most desirable item in the game is worth as much as one million dollars.<sup>23</sup> Other rare items are also not cheap, to be able to buy a rare skin you would certainly spend at least hundreds of dollars.

After the update that introduced skins in the game, sites started to pop up allowing people to deposit their skins and gamble with them, without any registration or age checks. The sites not only let you deposit real-world

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<sup>20</sup> Markets-Steam. *CSGOSKINS.GG* [online]. 2024. [cit. 11.06.2024]. Available at: <https://csgoskins.gg/markets/steam>

<sup>21</sup> Overview of the Steam market size, annual sales, new game releases and user engagement metrics. *VG Insights* [online]. 2024. [11.06.2024]. Available at: <https://vginsights.com/steam-market-data>

<sup>22</sup> Counter Strike 2. CS2 [online]. 2024. [cit. 11.06.2024]. Available at: <https://www.counter-strike.net/cs2>

<sup>23</sup> HEYZEUS. This Skin Just Sold For \$1.5 Million. *youtube.com* [online]. 2024. [cit. 08.06.2024]. Available at: <https://www.youtube.com/watch?v=iuP3AFeqOLY>

money but also had a ton of different options including crypto, bank transfer, transfer via phone, and others. This site looked almost the same as any other gambling site, but because it operated more on the basis of skins it was available to anyone, even for children. This caused a massive problem. Video games are most popular among children, the ISFE survey showed that 76 % of children aged 6-15 in Europe play video games on any device<sup>24</sup>, which means that the main audience of games is children. The randomized nature of loot boxes and the fact that players spend real-world money to engage with them makes them structurally and psychologically similar to gambling<sup>25</sup>. Not only that, further studies have shown that loot box purchasing positively correlates with the gambling problem and players with higher problem gambling severity tend to spend more money purchasing loot boxes<sup>26</sup>. It is important to remember that these sites want to appeal to kids, the gambling games are colourful and “gamified”, especially in Western countries. The games are specially modified to allow the player to play and stay in for longer<sup>27</sup>, and the younger the person, the more likely it is that he will take this bait, unfortunately, I took this bait as a child.

The data, unfortunately, shows and proves that children are likely to in an uncontrolled manner, spend money in games. ISFE study on how parents supervise children's in-game spending from 2019 has shown that 36 % of children aged 6 to 15 spend money within games. At the same

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<sup>24</sup> Annette CERULLI-HARMS, Marlene MÜNSCH, Christian THORUN, Frithjof MICHAELSEN, Pierre HAUSEMER. Loot boxes in online games and their effect on consumers, in particular young consumers. *STUDY Requested by the IMCO committee* [online]. 2020. [cit. 11.06.2024]. p. 27. Available at: [https://www.europarl.europa.eu/thinktank/en/document/IPOL\\_STU\(2020\)652727](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2020)652727)

<sup>25</sup> Ibidem. p. 7.

<sup>26</sup> Leon Y. XIAO, Laura L. HENDERSON, Rune NIELSEN, Paweł GRABARCZYK. Loot Boxes, Gambling-Like Mechanics in Video Games. *ResearchGate* [online]. 2021. [12.06.2024]. p.4. Available at: [https://www.researchgate.net/publication/357322014\\_Loot\\_Boxes\\_Gambling-Like\\_Mechanics\\_in\\_Video\\_Games](https://www.researchgate.net/publication/357322014_Loot_Boxes_Gambling-Like_Mechanics_in_Video_Games)

<sup>27</sup> Annette CERULLI-HARMS, Marlene MÜNSCH, Christian THORUN, Frithjof MICHAELSEN, Pierre HAUSEMER. Loot boxes in online games and their effect on consumers, in particular young consumers. *STUDY Requested by the IMCO committee* [online]. 2020. [09.06.2024]. p. 27. Available at: [https://www.europarl.europa.eu/thinktank/en/document/IPOL\\_STU\(2020\)652727](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2020)652727)

time, more parents start to supervise the in-game spending of their children, exactly 85 % of them. The same study showed that 62 % of children have a fairly small average monthly allowance, spending money ranging between 1 and 20 euros across all types of platforms and in-game transactions per month. Smaller shares of children spend intermediate to high amounts of money in-game, 11 % spend between 21 to 40 Euro, 5 % between 41 to 60 Euro, 1 % between 61 to 80 Euro, and 4 % more than 80 Euro. Yet, a significant proportion of parents, 16 %, did not know how much their child spends in-game in an average month<sup>28</sup>.

It is also not the case that gambling sites with skins, or the Steam market are completely unregulated, at the level of the European Union there are resolutions regulating gambling, as well as at the national level. Most countries in the EU have their own laws and regulations, some countries are more restrictive on online gambling like France (online casinos are illegal),<sup>29</sup> and some less so like Finland.<sup>30</sup> One of, if not the most known gaming restrictions is PEGI ratings. PEGI when rating games, takes into consideration the presence of several indicators that the game may not be suitable for kids. Indicators such as violence, drugs, bad language, or fear. Unfortunately, it does not take gambling and the presence of loot boxes as severe and restrictive as other indicators. Games containing loot boxes or other forms of microtransactions from April 2020 onwards will additionally carry the description “*paid for random items*”<sup>31</sup>.

On the EU level the legislature includes, the Consumer Rights Directive 2011,<sup>32</sup> the Unfair Commercial Practices Directive 2005,<sup>33</sup> and the Unfair

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<sup>28</sup> Annette CERULLI-HARMS, Marlene MÜNSCH, Christian THORUN, Frithjof MICHAELSENN, Pierre HAUSEMER. Loot boxes in online games and their effect on consumers, in particular young consumers. *STUDY Requested by the IMCO committee* [online]. 2020. [09.06.2024]. p. 30. Available at: [https://www.europarl.europa.eu/thinktank/en/document/IPOL\\_STU\(2020\)652727](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2020)652727)

<sup>29</sup> SRAMEK, Elizabeth. iGaming Regulations Across the EU – A Complete Guide in 2024. *Scaleo* [online]. 2024. [12.06.2024]. Available at: <https://www.scaleo.io/blog/a-complete-guide-to-igaming-regulations-across-the-eu/>

<sup>30</sup> SMITH, John. 8 Countries With the Most Progressive Gambling Laws in Europe. *The Bruges group* [online]. 2021. [09.06.2024]. Available at: <https://www.brugesgroup.com/blog/8-countries-with-the-most-progressive-gambling-laws-in-europe>



Terms in Consumer Contracts Directive 1993C<sup>34</sup>. However, the European Union does not have ultimate legislative power in the area of gambling policy, the directives mentioned above are legal acts that comply with the provisions on services laid down in the Treaties. The European Court of Justice has recognized that the particular features of gambling justify a sufficient degree of national discretion in regulating the sectors involved, Therefore, there exists no sector-specific EU legislation in the area of online gambling<sup>35</sup>.

Following the judgment of the European Court of Justice, several regulations surrounding specific microtransactions and loot boxes were created in various countries across the continent. The most “drastic” option has been implemented in Belgium where all paid loot boxes have been determined to be gambling, and no gambling licenses have been granted to video game companies for the sale of loot boxes<sup>36</sup>. On the contrary, a non-European country, China has implemented the most prominent non-restrictive regulatory measure, the disclosure of probabilities, which the video game industry has already increasingly imposed this requirement as self-regulation.<sup>37</sup> The disclosure of probabilities reveals how likely a player is able to acquire skins or items through microtransactions. This

<sup>31</sup> Annette CERULLI-HARMS, Marlene MÜNSCH, Christian THORUN, Frithjof MICHAELSENN, Pierre HAUSEMER. Loot boxes in online games and their effect on consumers, in particular young consumers. *STUDY Requested by the IMCO committee* [online]. 2020. [cit. 12.06.2024]. p. 27. Available at: [https://www.europarl.europa.eu/thinktank/en/document/IPOL\\_STU\(2020\)652727](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2020)652727)

<sup>32</sup> Directive 2011/83/Eu Of The European Parliament And Of The Council on consumer rights, amending Council Directive 93/13/EEC.

<sup>33</sup> Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC.

<sup>34</sup> Council Directive 93/13/EEC on unfair terms in consumer contracts.

<sup>35</sup> NOTICE TO MEMBERS-Petition No 0747/2023 by J. T. (Hungarian) on national restrictions on online gambling in Hungary *European Parliament* [online]. 2024. [13.06.2024]. Available at: [www.europarl.europa.eu](http://www.europarl.europa.eu)

<sup>36</sup> Leon Y. XIAO, Laura L. HENDERSON, Rune NIELSEN, Paweł GRABARCZYK. Loot Boxes, Gambling-Like Mechanics in Video Games. *ResearchGate* [online]. 2021. [10.06.2024]. p.5. Available at: [https://www.researchgate.net/publication/357322014\\_Loot\\_Boxes\\_Gambling-Like\\_Mechanics\\_in\\_Video\\_Games](https://www.researchgate.net/publication/357322014_Loot_Boxes_Gambling-Like_Mechanics_in_Video_Games)

<sup>37</sup> Ibidem. p.6.

regulatory measure also had a huge positive impact on Counter-Strike 2 loot boxes for players all around the globe, not only on players living in China, because Steam (creator of Counter-Strike 2) had to publicly disclose the Counter-Strike 2 loot box probabilities in China, the whole world found out. It made a huge difference because the published probabilities were so low that the players weren't happy and I'm sure people took notice of how big of a scam it is.

Microtransactions have become an integral part of the lives of the vast majority of gamers all around the world, no matter what device they play on. They have become so common that players are surprised when a game does not have them. It is an indisputable fact that microtransactions, loot boxes, cases, or any other form of virtual money exchange are a form of gambling, and it is very easy to become addicted to it. There are a lot of drawbacks to microtransactions, it's highly addictive and can cost you not only money but also your family or friends. However, the biggest problem with gambling is the lack of good, transparent, and comprehensive regulation not only at the European Union level but also at the national level. The Judgment of the European Court of Justice has prevented the introduction of new, better regulations across the EU. With all that said I think banning loot boxes or any other form of microtransactions is not a good idea. It's better to educate the kids and the parents about loot boxes, and microtransactions and introduce better age verification capabilities.

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## GAMBLING VIDEO GAME ADVERTISING, ITS RULES AND LIMITS<sup>1</sup>

*BARBORA SPÁČILOVÁ<sup>2</sup>*

In this essay, I would like to discuss the area of video game advertising from the viewpoint of consumer law. I will focus on online hazard video games and advertisements for those games. In the essay, I will try to answer the question of whether the legislation in case of the protection of minors in instances when they make or could make contact with such advertisements is satisfactory and what we can do to improve it if is not. All this in the context of the Czech Republic.

To understand the legal basis we are working with, I would like to introduce you to the main Czech acts in this area and what they regulate. The most important one is act č. 186/2016 Sb., o hazardních hrách (from now on only as “Czech Gambling Act”).<sup>3</sup> It regulates and defines what is gambling and the types of hazard games. It also has a specific chapter number 4 which includes the definition of an internet game and the conditions of its running. The second most important act in the context of the Czech Republic and hazard games is act č. 40/1995 Sb., o regulaci reklamy<sup>4</sup> (from now on only as “Czech Regulation of Advertisement Act”). It regulates advertisement at the general level but includes regulation in specific parts

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<sup>3</sup> Zákon č. 186/2016 ze dne 26. května 2016, o hazardních hrách.

<sup>4</sup> Zákon č. 40/1995 ze dne 9. února 1995, o regulaci reklamy a o změně a doplnění zákona č. 468/1991 Sb., o provozování rozhlasového a televizního vysílání, ve znění pozdějších předpisů.

of the market. We can find the main part for the hazard games in section 5j and section 8. The first section mentions what the advertisement can and should not contain. The second one establishes for what breaches of the Czech Regulation of Advertisement Act is what punishment. This part of the regulation is closely related to the act č. 634/1992 Sb., o ochraně spotřebitele<sup>5</sup> (from now on only as “Czech Consumer Protection Act”). It defines the term “unfair business practices” and says who is to supervise the compliance with obligations, that the Czech Consumer Protection Act establishes what is considered operating hazard games.

## 1. ADVERTISEMENT OF THE GAME ITSELF AND ITS RULES

The Czech Gambling Act states, in its section 73 which hazard games can be run as an internet game, or for the purposes of this essay as a video game. This section refers us to section 3 subsection 2 paragraphs a) – f). This means that we can run a lottery, odds bet, lottery game, bingo technical game or a live (online) game as a hazard video game.

Specific rules for online hazard games are non-existent in the Czech Republic on the state level. We can use common rules for hazard games stated in the Czech regulation of Advertisement Act but they merely state that the advertisement must contain a warning about addiction and that a person under 18 years old cannot participate.

This gap in legislation might be fixed by the EGBA Code of Conduct on Responsible Advertising for Online Gambling (from now on only as “Code of Conduct”).<sup>6</sup> It expands the rules of online hazard games advertisement in section 5- Content moderation. The main problem is that this document is not enforced on the state level, and it is voluntary to join this Code of Conduct and conduct the advertisement by it. In 2020 there were only five companies that became parties of the agreement, and those are bet365,

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<sup>5</sup> Zákon č. 634/1992 ze dne 16. prosince 1992, o ochraně spotřebitele.

<sup>6</sup> EGBA. *Code of Conduct on Responsible Advertising for Online Gambling* [online]. 28. 4. 2020. [cit. 30. 5. 2024]. Available at: <https://www.egba.eu/uploads/2020/04/200428-Code-of-Conduct-on-Responsible-Advertising-for-Online-Gambling.pdf>

Betsson Group, GVC Holdings Plc, Kindred Group Plc and William Hill Plc.<sup>7</sup> All of those mentioned above can operate their online hazard games as well on our state territory. That means that even though none of the Czech companies that provide online hazard games are parties to this Code of Conduct, its rules help to protect the Czech people.

In the context of the Czech Republic, we can often see advertisement of companies that provides hazard online games during sports matches. The Czech First League's (football league) main sponsor is the company FORTUNA GAME a.s. Because of that the league is also known as FORTUNA:LIGA.<sup>8</sup> This company provides online hazard games such as lottery, live hazard games or betting. In this case, none of the advertisement rules in the Czech Republic cover the rules of such advertisement because their sponsorship of the league does not advertise any specific hazard game, only the company as such. The company's name is then every matchday on the main sports TV canal that everyone (who pays the concessionary charge)<sup>9</sup> can access. This means that even minors can see the name of the company every matchday on TV. The same problem is in the Czech First Hockey League, where the main sponsor is Tipsport a.s. and the League is named after it as "Tipsport Extraliga".<sup>10</sup>

Next, the Czech First League is also related to Betano, a gaming platform owned by German company Kaizen Gaming Ltd.<sup>11</sup> Advertisement, via displaying the logo, for this platform is accessible on the official fan

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<sup>7</sup> EGBA. *Code of Conduct on Responsible Advertising for Online Gambling* [online]. 28. 4. 2020. [cit. 30. 5. 2024]. p.1. Available at: <https://www.egba.eu/uploads/2020/04/200428-Code-of-Conduct-on-Responsible-Advertising-for-Online-Gambling.pdf>

<sup>8</sup> FORTUNA:LIGA. *FORTUNA: LIGA* [online]. c 2024. [cit. 30. 5. 2024]. Available at: <https://www.fortunaliga.cz>

<sup>9</sup> In the Czech republic every person who owns a television receiver is obliged to pay concessionary charge. The legal obligation is established in section 3 subsection 2 of the Radio and Television Fees Act. Zákon č. 348/2005 ze dne 5. srpna 2005, o rozhlasových a televizních poplatcích a o změně některých zákonů.

<sup>10</sup> See for example: IDNES. *Tipsport extraliga 2023/24* [online]. c 2024 [cit. 30. 5. 2024]. Available at: <https://www.idnes.cz/hokej/extraliga>

<sup>11</sup> KAIZEN GAMING. *Brands and products* [online]. c 2024. [cit. 30. 5. 2024]. Available at: <https://kaizengaming.com/brands-and-products>

shop of Football Club Sparta Praha.<sup>12</sup> Minors can buy the official football dress of the club which features a big logo of Betano. The same issue is with company Tipsport a.s. and their logo being on the football dress of the SK Líšeň football club,<sup>13</sup> Football Club Sparta Praha,<sup>14</sup> or SK Sigma Olomouc football club.<sup>15</sup> The same problem is with the hockey dress of the Hockey Club Kometa Brno<sup>16</sup> and the hockey dress of the Hockey Club Dynamo Pardubice.<sup>17</sup>

It is interesting to compare previously mentioned companies and platforms being featured on sports dresses of Czech sports clubs and the practice abroad. None of the well-known sports teams have the logos of such companies on them to advertise this type of company. It brings the question why is that? Do foreign countries care more about the advertisement of online hazard games than the Czech Republic?

## 2. PROTECTION OF THE MINORS

The Council of Europe in its document on Media Regulatory Authorities and Protection of Minors concludes that gambling or exposure to it is likely to impair minors, on the level of “...*physical, mental or moral development*...”.<sup>18</sup> This means we should not diminish it and we should take

<sup>12</sup> FNSHP.CZ. AC Sparta Praha [online]. c 2024. [cit. 30. 5. 2024]. Available at: [https://www.fnshp.cz/ac-sparta-praha\\_k233/kolekce\\_k238/ruda-do-ulic\\_k894/](https://www.fnshp.cz/ac-sparta-praha_k233/kolekce_k238/ruda-do-ulic_k894/)

<sup>13</sup> SK LÍŠEŇ. [@SK\_Lisen\_Brno]. Domácí sada dresů na jubilejní 100. rok od založení klubu... X [online]. 3. 1. 2024. [cit. 30. 5. 2024]. Available at: [https://twitter.com/sk\\_lisen\\_brno/status/1763515940463919315?s=61&t=uH88ICTd-gr\\_OuTTw8eMQw](https://twitter.com/sk_lisen_brno/status/1763515940463919315?s=61&t=uH88ICTd-gr_OuTTw8eMQw)

<sup>14</sup> FNSHP.CZ. AC Sparta Praha, Dres Sparta rudý Nike 2019/21 Tipsport [online]. c 2024. [cit. 30. 5. 2024]. Available at: [https://www.fnshp.cz/dres-sparta-rudy-nike-2019-21-tipsport\\_z26178/](https://www.fnshp.cz/dres-sparta-rudy-nike-2019-21-tipsport_z26178/)

<sup>15</sup> SK SIGMA OLOMOUC OFICIÁLNÍ FANSHOP. Dres SK Sigma Olomouc dospělý 2023/2024 modrý [online]. c 2024. [cit. 30. 5. 2024]. Available at: <https://eshop.sigmafotbal.cz/p1119-dres-sk-sigma-olomouc-dospely-2023-2024-modry>

<sup>16</sup> FNSHP.CZ. HC Kometa Brno, Dres original bílý 2023/2024 [online]. c 2024. [cit. 30. 5. 2024]. Available at: [https://www.fnshp.cz/dres-original-bily-2023-2024\\_z32109/](https://www.fnshp.cz/dres-original-bily-2023-2024_z32109/)

<sup>17</sup> HC DYNAMO PARDUBICE OFICIÁLNÍ FANSHOP. Originální dres HC Dynamo Pardubice 23/24 bílý [online]. c 2024. [cit. 30. 5. 2024]. Available at: <https://fanshop.hcdynamo.cz/p1755-originalni-dres-hc-dynamo-pardubice-23-24-bily>

<sup>18</sup> COUNCIL OF EUROPE. Media regulatory authorities and protection of minors [online]. 4. 2019 [cit. 30. 5. 2024]. P 23, table 5. Available at: <https://rm.coe.int/jufrex-media-regulatory-authorities-and-protection-of-minors/168093e0d8>



a proper look into the problems and try to find solutions to protect minors from those exposures.

The Code of Conduct in its chapter 6- Protecting minors, puts together main rules to follow in order to prevent minors from seeing advertisements which are not suitable for them. Minor in this document is understood as a person, who cannot legally participate in online hazard games in EU countries, which is typically a person younger than 18 years but, in some cases, it can be 20 years.

Typical of said rules, which the Czech Republic also has in the Czech Regulation on Advertisement Act,<sup>19</sup> is stating the minimum age of the participant. From the perspective of the portrayal of the advertisement, it is important to try and make it not look like it is focused on minors i.e. colourful, with animated characters or comic figures, with celebrities from movies with a primary focus on minors or minors acting or being portrayed in such advertisement. Placement of the advertisement should not be during programmes which expect the primary audience to be minors or be reproduced on merchandise intended for minors.

I previously mentioned that in cases of the football dress which any minor is capable of buying for themselves said clothing without any form of limitation. Even the Code of Conduct requires only merchandise designated primarily for minors to not contain any form of advertisement of online hazard games.<sup>20</sup> Yet not all the minors will wear only merchandise designated for minors. For example, a 15-year-old person typically cannot physically wear a football dress, which is designated for children, where the restriction is in force. This 15-year-old minor will have to buy a standard football dress and the protection of a minor would be once again non-existent.

Yet the previous paragraphs talk only about instances when the selling company is a party to the Code of Conduct. In cases when the company is

<sup>19</sup> Zákon č. 40/1995 ze dne 9. února 1995, *o regulaci reklamy a o změně a doplnění zákona č. 468/1991 Sb., o provozování rozhlasového a televizního vysílání, ve znění pozdějších předpisů.*

<sup>20</sup> EGBA. *Code of Conduct on Responsible Advertising for Online Gambling* [online]. 28. 4. 2020. [cit. 30. 5. 2024]. p. 11. Available at: <https://www.egba.eu/uploads/2020/04/200428-Code-of-Conduct-on-Responsible-Advertising-for-Online-Gambling.pdf>

not a party to the Code of Conduct, it can do whatever it wants and might sell merchandise designated for minors with the advertisement of an online hazard game site or a gambling company.

Concerning sports matches we should not be talking only about logos of companies that provide online hazard games but also about their advertisement slots on TV during the matches as well as on the match field. During the matches of the Czech First Football League, we can often see advertisements for the company FORTUNA a.s. and its services which I have mentioned above.<sup>21</sup> Those matches are being broadcast not exclusively after 10 p.m. which is the time when the rules for advertisement in regard to children are not “needed”. These matches are often played during the afternoon time when there is a chance that minors could be watching the TV, and their protection should apply.<sup>22</sup>

Based on the tweet on platform X made by HC DYNAMO PARDUBICE<sup>23</sup> in 2021 we can see that the advertisements of the companies that provide online hazard games do not avoid even the playing area of the mentioned club. This club participates in the previously mentioned Tipsport Extraliga.

### 3. WHAT CAN WE DO WITH IT?

In the United Kingdom there is the Advertising Standards Authority (from now on only as “ASA”) which is an independent regulator that has an impact across all media.<sup>24</sup> It also has Committees of Advertising Practice (from now on only as “CAP”), and their main job is to write the Advertising

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<sup>21</sup> See for example Reklama - Fortuna (CZ, 2021). *YouTube* [online]. 11. 5. 2021. [cit. 30. 5. 2024]. Available at: <https://www.youtube.com/watch?v=b6lluYgdYtg>

<sup>22</sup> Schedule of matches for the FORTUNA:LIGA season 2023/2024 is available here: FORTUNA:LIGA. Rozpis zápasů SEZONA: 2023/2024 [online]. c 2024 [cit. 30. 5. 2024]. Available at: [https://www.fortunaliga.cz/rozpis-zapasu/2024?type=2&id\\_stage=1](https://www.fortunaliga.cz/rozpis-zapasu/2024?type=2&id_stage=1)

<sup>23</sup> HC DYNAMO PARDUBICE [@hcpce]. Přípravy na pátek 10. září, kdy vstoupíme do nové sezony @telhcz, jsou v plném proudu! Ledová plocha je již připravena. X [online]. 9. 5. 2021. [cit. 30. 5. 2024]. Available at: <https://twitter.com/hcpce/status/1434494142198034438?s=61&t=PEYD5CRxlb-OsmtECNOBw>. [cit. 2024-30-05]

<sup>24</sup> ADVERTISING STANDARDS AUTHORITY. *About the ASA and CAP* [online]. c 2024. [cit. 30. 5. 2024]. Available at: <https://www.asa.org.uk/about-asa-and-cap/about-regulation/about-the-asa-and-cap.html>

Codes.<sup>25</sup> ASA then comes and applies it. In 2010 they came up with a handy document – The UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (from now on only as “CAP Code”),<sup>26</sup> containing rules that are supposed to be followed to ensure (amongst others) protection of minors when it comes to the non-broadcasted advertisement.<sup>27</sup> Minors are in this case people under the age of 15 called “children” and people aged 16 or 17 are “young persons”. Gambling advertisement has its own rules in section 16.

The first subsection states that “*Marketing communications for gambling must be socially responsible, with particular regard to the need to protect children, young persons...*”. Then it continues to state what marketing communication cannot be made of, once again with particular to the children and young persons in subsection 16.3.12. Almost the same rules the United Kingdom applies when it comes to broadcasted advertising, in The UK Code of Broadcast Advertising (from now on only as “BCAP Code”)<sup>28</sup> in its subsection 17.4.5.

In the Czech Republic, we have little to almost no legislation concerning rules of the advertisement of hazard games to minors. Everything can be found in section 5j subsection 2 of the Czech Regulation of Advertisement Act. It states that the advertisement cannot be focused on people under 18 years of age. Czech legislation does not take into consideration situations when the advertisement is not focused mainly on minors but on the rest of the population and still, some minors can watch or hear it and it does affect them. As I mentioned before the instances of sport dresses and as well advertisements during sports matches on live TV.

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<sup>25</sup> Ibidem.

<sup>26</sup> THE COMMITTEE OF ADVERTISING PRACTICE. *The UK Code of Non-broadcast Advertising and Direct & Promotional Marketing* [online]. c 2014. [cit. 30. 5. 2024]. Available at: <https://www.asa.org.uk/static/c6be0fb9-2c66-4248-ba5b824bf26fd3d3/5dce82c1-52c0-4dce-b8631be7cbeb2d2f/The-CAP-Code.pdf>

<sup>27</sup> Ibidem.

<sup>28</sup> THE COMMITTEE OF ADVERTISING PRACTICE. *The UK Code of Broadcast Advertising* [online]. c 2010 [cit. 30. 5. 2024]. Available at: <https://www.asa.org.uk/static/40293b82-443a-4416-9555ff5259585538/00f8d067-f5ea-4da5-bb06ed7b3d06f619/The-BCAP-Code.pdf>

The first thing we can do, is change the legislation. The Czech Parliament already did it with the advertisement for medicine for male erectile dysfunction.<sup>29</sup> So why not with this type of advertisement? One of the reasons why the Parliament decided to push those types of advertisements to after 10 p.m. was that the children are also watching the sports games during which the advertisement is broadcasted, and they should not be watching them.<sup>30</sup> Advertisements for hazard games are, as we established before, likely to impact minors because they expose them to hazard and gambling.

We can also take inspiration from the previously mentioned CAP and BCAP. They have their own guidances<sup>31, 32</sup> on how to interpret them where they also mention that in cases of advertisement of hazard games, the author of it should not use clothing that is fashionable among minors (such as sports dresses). Very important is that those advertisements should not contain any video gaming references that may appeal to minors. From the very essence of online hazard games, this type of advertisement should never be okay.

What can we do in the meantime since the legislation process is not one of the fastest things in the world?<sup>33</sup> We can try and put pressure on the sports associations to not have so many sponsors that provide

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<sup>29</sup> KOPECKÝ, Daniel. Mužem hned, ale až po 22. hodině. Poslanci vykážali „nechutnou“ reklamu. *iDnes* [online]. 23. 3. 2016. [cit. 30. 5. 2024]. Available at: [https://www.idnes.cz/zpravy/domaci/muzem-hned-az-po-22-hodine-poslanci-vykazali-nechutnou-reklamu.A160323\\_132329\\_domaci\\_kop](https://www.idnes.cz/zpravy/domaci/muzem-hned-az-po-22-hodine-poslanci-vykazali-nechutnou-reklamu.A160323_132329_domaci_kop)

<sup>30</sup> Ibidem.

<sup>31</sup> THE COMMITTEE OF ADVERTISING PRACTICE. *Gambling advertising: protecting children and young people – Advertising Guidance (no-broadcast and broadcast)* [online]. 4. 2019. [cit. 30. 5. 2024]. Available at: <https://www.asa.org.uk/static/uploaded/734c1499-850d-4d2f-88a441ffd1903b50.pdf>

<sup>32</sup> THE COMMITTEE OF ADVERTISING PRACTICE. *Gambling and lotteries advertising: protecting under-18s – Advertising Guidance (non-broadcast and broadcast)* [online]. April 2022. [cit. 30. 5. 2024]. Available at: <https://www.asa.org.uk/static/d9dd9d06-00e7-4630-81d460b598c7d976/Protecting-children-and-young-people-gambling-guidance-2022.pdf>

<sup>33</sup> According to CIBULKA, Jan, GURYČOVÁ, Kristýna. 6 největších legislativních ležáků. Které zákony politici uložili k ledu, ačkoli je po nich poptávka? *iROZHLAS* [online]. 22. 5. 2017. [cit. 30. 5. 2024]. Available at: [https://www.irozhlas.cz/zpravy-domov/6-nejvetsich-legislativnich-lezaku-ktore-zakony-politici-ulozili-k-ledu-ackoli\\_1705220600\\_kno](https://www.irozhlas.cz/zpravy-domov/6-nejvetsich-legislativnich-lezaku-ktore-zakony-politici-ulozili-k-ledu-ackoli_1705220600_kno) the average length of the legislative procedure is more than a year.

hazardous games online. Or to persuade them to make them their less significant sponsors so that their logos are not so visible everywhere on their sports dresses.

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# THE IMPACT OF GENERATIVE AI ON THE EXAMINATION OF STUDENTS OF LAW IN HIGHER EDUCATION<sup>1</sup>

NIKOLAJ TALIGA<sup>2</sup>

## 1. INTRODUCTION

Generative artificial intelligence as a concept has been known to humans since the 1960s.<sup>3</sup> However, the long development of this technology gave rise to generative AI as a tool for the general populace as we know it today. Generative AI can produce new data in images, audio, text, and other data types. Large language models (hereinafter LLMs) as a specific branch of generative AI are especially prevalent in academic environments, whether it be, among other things, for the creation of text, its summarisation and translation, assistance in research or support of learning. On one hand, the advantages of large language models in an academic environment are indisputable. On the other hand, generative AI is a double-edged sword that, if used inappropriately, can hinder the learning process and create unjust advantages that can undermine the meaning of academic examination. One of the unfair uses of generative AI, specifically of large language models, is its use for students' assistance during examinations.

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<sup>1</sup> Esej byla zpracována v semestru podzim 2023 v rámci předmětu MVV57917K Regulating Disruptive Technologies. / The essay was written in autumn 2023 semester for the course MVV57917K Regulating Disruptive Technologies.

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<sup>3</sup> Anyoha R. The History of Artificial Intelligence. *Science in the News*. [online]. Harvard University, 28. 4. 2017. [cit. 17. 11. 2023]. Available at: <https://sitn.hms.harvard.edu/flash/2017/history-artificial-intelligence>



AI is here to stay, and realising this leads us to many implications, including that it is essential to adapt to the fast changes in the development of AI and the consequences thereof on the educational environment and to adapt the teaching methods to the state of affairs of assisted learning. The trend of examining students online has not ceased to exist after its necessity during the Covid-19 pandemic.<sup>4</sup> However, the convenience of online assessment is now faced with the reality of the widespread use of LLMs like ChatGPT<sup>5</sup> by students. It cannot be ignored that the possibility of cheating during online examinations does not solely come down to the use of AI for assistance since, arguably, the most widespread method of cheating in the digital age is the use of search engines and the information on the internet at large. The use of the internet for communication with peers and for searching for answers during examinations has, however, been mitigated by measures taken by teachers such as setting shorter periods of time for completion of exams (in order for students not to have enough time to search for answers and cooperate) or setting of a specific time for all students to take examinations (to prevent ease of cooperation).<sup>6</sup> Nevertheless, these measures are now countered by the availability of LLMs, which offer far quicker means to get precise answers for specific exam questions. As a result, time is no longer an obstacle; cooperation among students is not necessary to achieve satisfactory results in online examinations for students. Closed question exams, also known as multiple choice exams, appear to be the easiest nut to crack for LLMs like ChatGPT, with the capability of finding the correct answer within a few seconds.

This paper will analyse the state of the art of students' use of generative AI during examinations and provide possible solutions to mitigate undue

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<sup>4</sup> Harmer, N, Hill, A. Online Exams Are Growing in Popularity: How Can They Be Fair and Robust? *Times Higher Education*. [online]. 17. 11. 2022. [cit. 17. 11. 2023]. Available at: <https://www.timeshighereducation.com/campus/online-exams-are-growing-popularity-how-can-they-be-fair-and-robust>

<sup>5</sup> OpenAI. ChatGPT [online] C 2023 [cit. 17: 11. 2023]. Available at: <https://openai.com/chatgpt>

<sup>6</sup> RYZNAR, Margaret. Exams in the Time of ChatGPT. *Washington and Lee Law Review Online*. [online]. 2023, vol. 80, no. 5. [cit. 17. 11. 2023]. s. 305. Available at: <https://scholarly-commons.law.wlu.edu/wlulr-online/vol80/iss5/3/>

privileges thereof. It is argued that closed-question examination in an online environment for students of law in higher education is inappropriate due to the availability of generative AI tools and that in order to attain the intrinsic goal of examinations, which is to assess the knowledge of students accurately, examiners should hold examinations predominantly offline. In contrast, online examinations should only consist of open questions and theoretical cases that the current form of generative AI struggles to answer satisfactorily.

## **2. FORMS OF EXAMINATIONS WHERE GENERATIVE AI IS MOST LIKELY TO BE USED FOR UNFAIR ADVANTAGES**

The possibility of cheating using LLMs in higher education examinations varies for different academic disciplines. The riskiest of environments for all disciplines is undoubtedly outside of university premises. In 2023, the global pandemic was a distant memory; despite this, the habit of assessing students online didn't disappear completely. Professors usually make their best efforts to prevent unfair behaviour on online exams, with tactics such as scheduling examinations for a specific time or lowering the time required to complete exams.<sup>7</sup> As previously presented, these tactics are no longer effective in preventing unfair behaviour and cheating, specifically thanks to the accessibility of generative AI tools. Another measure capable of monitoring students' behaviour during exams is implementing specialised software that monitors whether students use websites or software that could help them on exams.<sup>8</sup> Such software, however, is quite intrusive. Due to privacy concerns, among others, we don't see such systems being employed often. Using generative AI for assistance during exams by law students is arguably most accessible when the answers are already provided in the exam in the form of multiple-choice questions.<sup>9</sup> What then suffices for students to do, is to copy the question and serve it to the AI model to get the correct answer. This can take a couple of seconds, and no time

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<sup>7</sup> Ibidem.

<sup>8</sup> E.g. Online proctoring software like Honorlock, Available at: <https://honorlock.com/>

<sup>9</sup> Anderman, E. M, Murdock, T. B. Psychology of Academic Cheating. Elsevier, 2011. p. 263

restriction for completion of an exam can effectively prevent it. This is not to say that generative AI is not helpful in examinations consisting of open questions or essay-form exams. The difference, however, is that compared to open-question exams, students can get a complete and correct answer in closed-question examinations. Open-question examinations consisting of theoretical scenarios the AI is not familiar with are much more complicated for it to answer, especially with its limited ability of legal interpretation, application of rules to specific scenarios and the incapability of balancing exercises necessary for completion of complex theoretical questions.<sup>10</sup> In the case of essay-form examinations, AI as a writing tool can also be of great assistance, but this will not be without the abovementioned understanding of legal rules only humans are capable of (for now). Accordingly, also in the case of essay exams, the result that generative AI is capable of producing on its own is not satisfactory enough, and human knowledge is required to either alter the AI-produced texts on legal topics or assist it throughout the production of an essay. Again, the difference between this form of examination and closed-question exams is that AI cannot produce a satisfactory result without significant student knowledge. Open questions on exams, whether in the form of theoretical cases or essays, are thus inherently more suitable not only for actually testing students' adequate legal knowledge but also in the prevention of cheating with the help of AI technology in an online environment.

### **3. IMPLICATIONS OF THE USE OF GENERATIVE AI DURING EXAMINATIONS**

Irrespective of what form of examination the examiners choose to employ, cheating is fraudulent behaviour and an issue capable of undermining the meaning of academic examination. If unnoticed, the behaviour's legal and ethical implications are wide-ranging.<sup>11</sup> Cheating is a form of academic

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<sup>10</sup> Prakken, H. Is the robot judge coming? *Nederlands Juristenblad*. [online]. 2018, vol. 207, no. 4. [cit. 17. 11. 2023]. p. 269-274. Available at: <https://webSPACE.science.uu.nl/~prakk101/pubs/Robotrechter2English.pdf>

misconduct capable of resulting in disciplinary actions such as academic probation or even expulsion.<sup>12</sup>

Universities and examiners may have an intellectual property claim over the content of examinations, and taking the contents and sharing them with a generative AI effectively disseminates an intellectual creation without authorisation. Moreover, using generative AI for assistance during examinations lead to an unfair advantage over students who answer exam questions independently. Such assistance during assessment also leads to the unauthenticity of their work. Examinations exist to evaluate the knowledge of individuals and their abilities in the field of their studies. However, this is not the case when AI assists students during exams, which results in faulty assessment of their knowledge and unfairly achieved results. Such hindering of the learning process can, in worst cases, lead to giving degrees to individuals who do not deserve them, falsely labelling them as professionals in their field. This, in turn, has far-reaching consequences on the credibility of higher education institutions. Accordingly, it is of utmost importance for these institutions to ensure they have appropriate measures to prevent such fraudulent behaviour and preserve academic integrity.

#### **4. COUNTER-MEASURES TO MITIGATE UNFAIR ADVANTAGES OFFERED BY AI ASSISTANCE**

The apparent measure to counter the possibility of cheating with AI on examinations is holding examinations at university premises. This way, both open-question and closed-question forms of examination can take place without the possibility of students using AI for assistance due to unavailability of this tool in a closely monitored environment with technical limitations.

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<sup>11</sup> Burke, D, Sanney, K. Applying the Fraud Triangle to Higher Education: Ethical Implications: Applying the Fraud Triangle to Higher Education. *Journal of Legal Studies Education*. [online]. 2018, vol. 35. [cit. 17. 11. 2023]. p. 5–8. DOI: 10.1111/jlse.12068

<sup>12</sup> E.g., Art. 15 of the Examination Regulation of the University of Groningen [online]. C 2023. [cit. 17. 11. 2023]. Available at: [https://www.rug.nl/rechten/kennisbank/?tcid=verint\\_64\\_6284\\_6931](https://www.rug.nl/rechten/kennisbank/?tcid=verint_64_6284_6931) or Art. 2 of the Student Disciplinary Code of Masaryk University [online]. 1. 9. 2022 [cit. 17. 11. 2023]. Available at: <https://www.muni.cz/en/about-us/official-notice-board/disciplinary-misdemeanours-and-sanctions>

An essential issue can arise with in-person examinations: the limited capacity of examination halls and the inability to fit all students into a monitored environment. It is crucial, however, to consider the times before the 2019 pandemic that gave birth to the popularity of online examinations and how they could be held in person. Furthermore, in-person examinations are undoubtedly the best to prevent unfair behaviour and cheating. With this in mind, it should be of the highest priority for universities to preserve academic integrity and consider examinations as paramount to the effective learning process and not as a mere tedious obligation that has to be fulfilled.

Examining students in an online environment offers excellent advantages, including access to examinations in times when physical presence is simply impossible, or simply the fact that such examinations save time and resources by not requiring the students and examiners to attend an in-person examination. Online examinations, realistically speaking, are not going to disappear either, and it is thus necessary to adapt this form of examination to the accessibility of generative AI assistance. As previously argued, closed-question examinations are unsuitable for an online environment due to the possibility of cheating and the ease of obtaining complete answers to questions. This paper, therefore, argues that for exams held online, the most viable option for fair and accurate assessment of students' knowledge is to hold them in open-question form. This way, students are required to showcase legal reasoning, correct interpretation and application of legal rules to specific issues – something generative AI of this day struggles to do satisfactorily and reliably on its own.<sup>13</sup> An obvious disadvantage of such a form of examination is the amount of work it requires for assessment by examiners, something many examiners use as justification for closed-question exams. With the intrinsic requirement of open question exams for students to showcase their accurate understanding of law and legal reasoning, this form of examination in an online environment is

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<sup>13</sup> Prakken, H. Is the robot judge coming? *Nederlands Juristenblad*. [online]. 2018, vol. 207, no. 4. [cit. 17. 11. 2023]. p. 269-274. Available at: <https://webSPACE.science.uu.nl/~prakk101/pubs/Robotrechter2English.pdf>

the best suited for assessment of students' knowledge, even more so with the availability of AI tools for assistance. This should not be disregarded, and the convenience and ease of marking should not be traded for accurate examination essential for the preservation of academic integrity.

## 5. CONCLUSION

The conclusion reached is that despite the apparent advantages generative AI provides in academia, it can have a detrimental impact on academic integrity when used unfairly. Cheating has always been an issue for academic institutions, and the accessibility of AI as a tool for students in examinations calls for considering effective measures to mitigate the unfair advantages it can offer. It is argued that offline examinations are the best measure to be taken in law schools to counter the academic misconduct of cheating with generative AI since it is in a closely monitored environment of university premises where examiners can confidently ensure students aren't engaging in fraudulent activities. Further, it is argued that if examinations on legal faculties are to take place online, they are to be in the form of open questions consisting of theoretical cases, which require a human understanding of law and where AI cannot on its own construct a satisfactory answer without significant intervention by a student with legal understanding. Accordingly, it is argued that multiple-choice online exams are inappropriate for the assessment of legal knowledge of pupils since there are currently only limited measures available at most universities to prevent cheating on exams with the help of generative AI. To conclude, even the forms of examination proposed in this paper as adequate for assessment of students' legal knowledge might prove to be obsolete in the future. Therefore, due to the fast pace of innovation in the field, different forms of examinations must be continually scrutinized in light of the state-of-the-art in artificial intelligence technology.

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# SOCIAL IMPACT OF GENERATIVE AI ON LEGAL RESEARCH<sup>1</sup>

DOMINIK ZACHAR<sup>2</sup>

## INTRODUCTION

Technology and society are inherently intertwined together and cannot be separated. As such, they influence each other – technological advance is shaped by the society and vice versa. Generative AI stands poised to dramatically revolutionise the society, altering the very fabric of everyday interactions, and penetrating nearly every aspect of society - especially work, study, and research. As with any other technological advance, generative AI challenges settled and widely accepted norms and behaviour for which it is subject to calls for regulation or even banning in certain spheres, most notably in research and education.<sup>3</sup> However, once a technological step is made, it cannot be undone which can be illustrated on Robert Oppenheimer's words after successful Trinity nuclear test: "*We knew the world would not be the same.*"<sup>4</sup> Thus it is for society to adapt and learn to incorporate generative AI for its own benefit while education should focus on teaching new generations to employ it properly and effectively.

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<sup>1</sup> Esej byla zpracována v semestru podzim 2023 v rámci předmětu MVV57917K Regulating disruptive technologies. / The essay was written in autumn 2023 semester for the course MVV57917K Regulating disruptive technologies.

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<sup>3</sup> Should schools ban or integrate generative AI in the classroom? [online]. *Brookings*. 7. 8. 2023 [cit. 21. 11. 2023]. <https://www.brookings.edu/articles/should-schools-ban-or-integrategenerative-ai-in-the-classroom/>

<sup>4</sup> Nast, C. 'Now I Am Become Death, the Destroyer of Worlds.' The Story of Oppenheimer's Infamous Quote [online]. *Wired UK*. 2023. [cit. 22. 11. 2023]. <https://www.wired.co.uk/article/manhattan-project-robert-oppenheimer>



This position paper deals with the usage of generative AI in legal research and its social impacts, particularly whether it can be used without undermining the essential values of research. It argues that the employment of generative AI in legal research is not in opposition to the essential values, albeit such employment must be in secure, transparent, accountable and responsible way.

Disclaimer: Since this is a position paper reflecting my thoughts and stance, I did not consult any available generative AI on this matter.

## 1. BENEFITS OF AI

### 1.1 ASSISTANCE WITH RESEARCH

To conduct any research, it is imperative to go through an extensive quantity of information that has already been obtained through previous studies. Legal research might slightly differ, specifically due to constantly evolving interpretation of norms by the judicial system and the fact that nothing in law is certain, which is the reason why every answer to any legal question is “it depends”. Generative AI has the potential to assist in this sense for its “algorithms are programmed to analyse vast amounts of data, recognise patterns, and generate responses based on that analysis.”<sup>5</sup> This ability surpasses humans for its capacity to process and analyse numerous rulings, commentaries, researches, statutes etc. in several minutes and saves lawyers’ time which can be devoted to other activity, such as meetings with clients or attending court hearings.<sup>6</sup>

In the age of globalisation, generative AI may also assist with overcoming language barriers since the most typical language used in academia and scientific journals is typically English, which is usually not the native language of the researcher. Besides generative AI’s capacity to provide analysis

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<sup>5</sup> Balmer, A. A Sociological Conversation with ChatGPT about AI Ethics, Affect and Reflexivity [online]. *Sociology*. 2023, no. 5. [cit. 22. 11. 2023]. pp. 1249–1258. <http://journals.sagepub.com/doi/10.1177/00380385231169676> Balmer, A. A Sociological Conversation with ChatGPT about AI Ethics, Affect and Reflexivity. *Sociology*. 2023, no. 5. <http://journals.sagepub.com/doi/10.1177/00380385231169676>

<sup>6</sup> AI for Lawyers: Tools for Law Firms [online]. *Clio* [accessed cit. 22. 11. 2023]. <https://www.clio.com/resources/ai-for-lawyers/ai-tools-for-lawyers/>

of individual research and texts, they also assist with the formatting of academic texts and translation of research done in foreign languages. Everyone sometimes struggles to put their thoughts into words and to express them in an understandable and appropriate manner – this is especially augmented while using other than their native language. Generative AI generates natural language and offers tailored vocabulary or structure for written texts that is generally required for specific texts, such as academic, judicial, formal letters or technical communications.<sup>7</sup> Hence, language review and translation through AI represents an easily accessible way to formulate more comprehensive research and to incorporate previous research in other languages that would not be as accessible otherwise.

Furthermore, no single lawyer has deep knowledge of all legal areas, although law education provides general knowledge across the various areas of law. To possess such comprehensive knowledge is impossible, hence lawyers specialise on particular areas and even in these areas they have certain blind spots.<sup>8</sup> Generative AI is a great tool for quick insight on issues the lawyer is not familiar with and can serve as means to fill those gaps in a timely manner. In this context, generative AI can serve as a benchmark for lawyers and any other research areas since it may provide concrete points to commence research on. This is mainly useful for students, and I am no exception, for I often consult various chatbots when faced with research or a problem I am unable to find an answer to. Usage of generative AI by students should thus be encouraged, for example, as the Masaryk University does in its “AI as a tool” approach (for more information see

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<sup>7</sup> Barros, A., Prasad, A., Śliwa, M. Generative artificial intelligence and academia: Implication for research, teaching and service [online]. *Management Learning*. 2023, no. 5. [cit. 22. 11. 2023]. pp. 597–604. <http://journals.sagepub.com/doi/10.1177/13505076231201445>

<sup>8</sup> Moorhead, Richard. Lawyer Specialization – managing the professional paradox [online]. *Law & Policy*, 2010, volroč. 32, noč. 2, . 230. [cit. 14. 4. 2024]. p. 230. [https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.1467-9930.2009.00315.x?casa\\_token=FgklmpUce5kAAAAA:jAqLzK-3N3grB1-0nHqa0zv10yfhqKu8XJuFvslwE4Lt6O3Vlk2kwcHj0RdQr6bx5iGhzVIA7e\\_eFts](https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.1467-9930.2009.00315.x?casa_token=FgklmpUce5kAAAAA:jAqLzK-3N3grB1-0nHqa0zv10yfhqKu8XJuFvslwE4Lt6O3Vlk2kwcHj0RdQr6bx5iGhzVIA7e_eFts)

the Statement on the Application of Artificial Intelligence in Teaching at Masaryk University).<sup>9</sup>

## 1.2 AUTOMATIC DOCUMENT GENERATION

Apart from using generative AI for actual research, it can also assist lawyers in generating contracts or even rulings. Although both contracts and rulings must be specifically tailored for the individual case, their preparation is to some extent routine and repetitive which gives space for the use of AI. Any automatization represents lucrative investment since people are inherently “lazy” and try to find means to simplify their work and daily activities – this idea basically underlines any technological innovation and development.

Generating legal documents is a time-consuming activity and to be honest, nearly everyone is to some extent “recycling” their previous products, be it attorneys in their court submissions or judges in their rulings (e.g., the Supreme Court of Canada stressed that “judicial copying is a longstanding and accepted practice”).<sup>10</sup> Such copying gives space to mistakes because some of the copied parts can contain information from previous cases which is irrelevant to the current one or due to their length, thus making them clearly recognisable. Employment of generative AI offers precision and reliability – its pre-defined templates together with inputting relevant information results in tailored and comprehensive legal documents.<sup>11</sup>

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<sup>9</sup> University, M. Statement on the Application of Artificial Intelligence in Teaching at Masaryk University [online]. *Masaryk University*. 2023 [cit. 22. 11. 2023]. <https://www.muni.cz/en/about-us/official-notice-board/statement-on-the-application-of-ai>

<sup>10</sup> Emir Crowne. Judicial ‘Copying’ Does Not Affect Independence or Impartiality: Supreme Court of Canada [online]. *Journal of Intellectual Property Law & Practice (Oxford)*. 2013, no. 11. [cit. 22. 11. 2023]. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2306665](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2306665)

<sup>11</sup> Volody. Exploring Generative AI for Contract Management [online]. 9. 10. 2023 [cit. 22. 11. 2023]. <https://blog.volody.com/exploring-generative-ai-for-contract-management/>

## 2. DOWNSIDES OF AI

### 2.1 FLAWS, INACCURACY, AND LACK OF CONTEXTUAL UNDERSTANDING

Since AI's algorithms are programmed in a certain way and are trained on information that does is not all-encompassing, it may produce flawed, inaccurate or even completely fabricated texts.<sup>12</sup> These limitations are further exacerbated when using uncommon words or phrases as legal research (once again, as any other research) uses particular terminology. Some of the specialised words and institutes do not even have exact translations in other languages, which challenges the AI's ability to accurately analyse, generate or translate legal texts.

Data on which AI algorithms are trained is limited, resulting in the AI's inability to determine the outcomes of certain cases accurately and effectively due to the fact that it is not "educated" in certain questions. Similarly to humans, AI displays reluctance to admit that it doesn't know something which may lead to completely fabricated data that might undermine the whole legal research or court fillings, such as in the recent case of a lawyer who used generative AI to prepare a filing – the AI provided him with non-existent cases to show a precedent and the lawyer now faces possible sanctions for fabricating case law.<sup>13</sup>

One of the key downsides and challenges connected with the employment of generative AI is its lack of contextual understanding (at least for now). This issue is even more present in legal research and judicial work where context and legal interpretation of individual characteristics is

<sup>12</sup> See, for example, Opa, Michael C. et al. Bias and inaccuracy in AI chatbot ophtalmogolist recommendations [online]. *Cureus*, 2023, volroč. 15, noč. 9, . 2. [cit. 14. 4. 2024]. p. 2. [https://assets.cureus.com/uploads/original\\_article/pdf/188588/20231025-16670-itpx6b.pdf](https://assets.cureus.com/uploads/original_article/pdf/188588/20231025-16670-itpx6b.pdf) or Cohen, Fren, Jenn Vallimont, and Amy A. Gelfand. Caution regarding fabricated citations from artificial intelligence [online]. *Headache: The Journal of Head and Face Pain*. 2024, volroč. 64, noč. 1, [cit. 14. 4. 2024]. p. 3. <https://headachejournal.onlinelibrary.wiley.com/doi/full/10.1111/head.14649>

<sup>13</sup> Bohannon, M. Lawyer Used ChatGPT In Court—And Cited Fake Cases. A Judge Is Considering Sanctions [online]. *Forbes*. 2023. [cit. 22. 11. 2023]. <https://www.forbes.com/sites/mollybohannon/2023/06/08/lawyer-used-chatgpt-in-court-and-cited-fake-cases-a-judge-is-considering-sanctions/>

vital – be it aggravating or mitigating circumstances or any information that can be related to individual cases. During their legal evaluation of each individual case, judges consider small details in the context of such case which might not seem required by non-lawyers. Furthermore, AI might not be able to grasp the little nuances and subjective elements of legal cases leading to incorrect case analysis and possible dire consequences (e.g., in criminal proceedings).

## 2.2 DATA PROTECTION

Employment of generative AI might also raise concerns regarding data protection of information put in by lawyers to generate customised texts for individual cases. It is most notable in the automation of legal documents (explained in the second section) since lawyers can put in personal or other crucial information regarding their clients. Such information, however, is confidential and is generally protected by attorney-client privilege with sanctions in the case of its breach (can lead to disbarment of the attorney and in some cases and countries even to facing criminal charges).<sup>14</sup> Once the information is put in, it is nearly impossible to make trained generative AI forget the data even though this issue currently attracts attention of regulators across the world.<sup>15</sup>

Concerns of data protection arise especially in the context of possible breaches and intrusions of unauthorised actors no matter their purpose, including the conduct of espionage or simply stealing those data and selling them online to other potentially malicious actors. Albeit regulatory frameworks deal with data governance which comes hand in hand with cybersecurity, it is naive to think we can be 100 % secure for it is preposterous – data breaches happen on daily basis.<sup>16</sup>

<sup>14</sup> Team, L. What Are the Limits of the Attorney-Client Privilege? [online]. 6. 8. 2018 [cit. 22. 11. 2023]. <https://www.lrwlawfirm.com/what-are-the-limits-of-the-attorneyclient-privilege/>

<sup>15</sup> Nast, C. How To Delete Your Data From ChatGPT [online]. Wired UK. 2023. [cit. 22. 11. 2023]. <https://www.wired.co.uk/article/how-to-delete-personal-data-chatgpt>

<sup>16</sup> Gates, B. Living in a 100 % Secure Cyberspace: Is It Possible? - RCyberSolutions.com [online]. *Reliable Cyber Solutions*. 2. 10. 2020 [cit. 22. 11. 2023]. <https://www.rcybersolutions.com/living-in-a-100-secure-cyberspace-is-it-possible/>

### 2.3 DESKILLING

Last but not least, dependency on generative AI together with its large usage might lead to deskilling, making certain processes obsolete. AI challenges (and to some extent even undermines) the crucial societal role of universities whose purpose is not solely limited to providing education, but which also have undisputable role in the society as hubs for socio-economic growth and as places of social development.<sup>17</sup> Universities act as catalysators for new ideas and societal changes due to their specific freedoms and openness stemming from historical development. Although AI is a cost- and time-efficient tool, its wider usage in inappropriate manner might “destroy” those hubs, particularly the transfer of knowledge. People would not be pushed to think critically and think about challenges since AI provides quick solutions with tiny costs which might lead to making some administrative and academic staff redundant and replaced by AI.

### 3. CONCLUSION

Generative AI and its wide employment across the society poses significant challenges to behaviours and norms we are used to. Yet it is impossible to travel back in time and make sure AI is not developed in any way (at least for now). For that, it is imperative the society uses AI in appropriate ways that support its usage, but which also ensure those negative consequences of AI are mitigated properly.

In the context of legal research, the sole usage of AI does not undermine essential research values if used correctly. Those algorithms and models are still imperfect and human oversight should therefore still be in place – this also raises question whether humans should be kept in the loop in AI similar to those depicted by science fiction. I feel that humans must be kept in the loop, especially now when AI is still not that advanced while containing flaws and inaccuracies. That’s similar for legal research because

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<sup>17</sup> Barros, A., Prasad, A., Śliwa, M. Generative artificial intelligence and academia: Implication research, teaching and service [online]. *Management Learning*. 2023, no. 5., [cit. 22. 11. 2023]. pp. 597– 604. <http://journals.sagepub.com/doi/10.1177/13505076231201445>

saving time by using AI to go through hundreds of already written texts for creating summaries is useful. However, the researcher should not use generative AI extensively for specific text generation for it gives space to visible errors that might be spotted by a single look of a human. Such oversight prevents excesses such as filing court submissions with fabricated information or mere copying of previous judicial decisions.

Generative AI should be treated as a tool rather than something to replace the learning and working process. As with any other tool, caution is required while using it. Society must agree to certain rules and guidelines for the usage of generative AI in scientific/legal research so that the effects of AI employment are positive and not outweighed by the negative ones. Such guidelines should incorporate ethical considerations as well as prevent submissions of research papers entirely generated by the AI. The already mentioned guidelines published by Masaryk University are a good example of how to encourage AI usage while minimising negative consequences.

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