

# ***Analysis and Governance Strategies of Online Gambling Crimes under New Live Streaming: Taking Lottery Games as an Example***

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**Abstract:** With the development of multimedia technology and the increasing popularity of online live streaming, new forms of online gambling crimes using online live streaming platforms for game live streaming have also emerged, and new operating modes and criminal methods have been used. This gambling method involves certain game anchors using their online popularity, as well as the trust of some fans and their viewers in their anchors during live broadcasts, to attract viewers to participate in gambling through various means and gimmicks. This new type of network under game live streaming involves various factors such as law, technology, and regulation. Live streaming platforms, hosts, and users who watch live broadcasts must strictly abide by laws and regulations. Government regulatory departments also need to strengthen their supervision of whether gambling is involved in the field of online live streaming, protect the legitimate rights and interests of the public, and maintain a healthy and orderly online environment.

**Keywords:** Game live streaming, online lottery, gambling governance

## **1. Introduction**

From the perspective of the nature of the lottery game behavior under the crime of online gambling under the new type of game live streaming, in a broad sense, gambling is aimed at profit and forms a gambling relationship between rewards, lottery, and cash exchange, which can be suspected of constituting the gambling crime and casino opening crime stipulated in Article 303 of the Criminal Law of China. This new form of online gambling using "lottery games" as a medium, as a new platform for gambling, has a more covert setting of casinos compared to traditional gambling casinos. They often rely on legitimate online direct broadcasting platforms in China, and their betting methods are novel and different from traditional online gambling. Therefore, in the determination of the nature of this newly emerging behavior, it is still necessary to determine whether it meets the description of China's criminal law for the crime of gambling and the crime of casino opening, which constitute the elements of gambling crimes. The hosts of this type of online gambling induced by live streaming games often engage viewers through language induction and deceptive advertisements promoting low risk and high returns. Compared with the gambling adjusted by criminal law, this type of online gambling in live streaming games has strong deceptive and covert characteristics. Based on the interaction mode between the host and the audience, it can unconsciously trap some viewers into

gambling to a greater extent, and easily cause them to suffer financial losses, even leading to a large number of social problems. Due to the ambiguity in the legal definition of online gambling crimes under the new type of game live streaming described in this article, it is difficult to determine the boundary between "game lottery" and online gambling. Therefore, in the perspective of the application of China's criminal law, we also need to make a theoretical distinction on whether such behavior constitutes a crime; At the governance level, due to the operational mode of this behavior, most of it relies on formal platforms, and multiple parties face difficulties in regulatory issues [1]. Driven by economic factors, some online broadcasters may take risks and ignore legal provisions to engage in illegal live streaming gambling activities. Some live streaming platforms may not be able to play a timely regulatory role. Therefore, once such deviant behavior occurs, "live streaming platforms", "participants in game live streaming lottery gambling", and "network broadcasters building such lottery gambling platforms" may lead to criminal competition in the criminal law sense, as well as a series of difficulties in criminal liability division in the criminal law sense among the three parties [2]. Therefore, the discussion and research on online gambling crimes under this new type of game live broadcast is imminent. This paper takes the game lottery as the main research object, analyzes the possible criminal behaviors during online live broadcast, and puts forward some criminal analysis and governance suggestions, hoping to provide help for China's criminal governance of online gambling in this era of Internet plus.

## **2. The Current Situation of the Online Live Streaming Industry**

Internet plus is the synonym of our times. Due to the development of Internet technology, the live broadcast function began to rise in 2016. The original platform was based on Taobao and JD. During 2017-2018, the first batch of "online celebrity anchors" have been emerging. Two direct broadcast platforms (Kwai and Tiktok) have developed rapidly. Since 2019, they have become a media for lottery gambling based on live games. The rise of this live broadcast technology has also become the technical support for live broadcast lottery [3]. Game related live streaming is represented by gaming esports live streaming platforms such as Douyu and Huya. The development of entertainment industries such as games has helped to promote the integration of gaming and live streaming, promoting the diversity of the live streaming industry and promoting the popularity of live streaming platforms among a wider range of people. 72% of the audience who watch live broadcasts often play esports games, and 88% frequently watch esports content. it can be concluded that the relationship between games and live streaming is inseparable, and the degree of correlation is very high. It can be seen that Internet live broadcasting has been closely linked to the life of the public [4]. The game of online live lottery uses technology as a cover tool, and uses live lottery to set up a bureau. This new situation has released the second of the ten typical cases in 2022 in the Chengdu Intermediate People's Court of Sichuan Province: In the case of online live broadcasting of casinos set up by Fu Mouloung and others: Fu Mouloung and others organized a total of 4267 sweepstakes in the process of live lottery, with more than 4.42 million people participating, and more than 100 million funds involved. The cases involved are widely oriented to the masses, involve huge amounts of money, and have a wide range of social influence.

## **3. The Online Live Streaming Lottery is Controversial due to Its Legal and Illegal Nature**

Online live streaming lottery refers to the behavior of online hosts using verbal guessing, barrage scrolling, screenshots, and gifts to determine whether users have won or not during online live streaming.

### 3.1. Illegal Claim of Online Live Streaming Lottery

According to Article 303 of the Criminal Law, Chinese government does not allow any form of online gambling. In the case of online gambling crimes based on game live streaming of the new type, platform users give gifts as a way to cash out their gambling funds. After receiving virtual gifts, broadcasters exchange chips and cash for users, which creates a new form of gambling on the entire live streaming platform and constitutes the criminal elements of Article 303 of the Criminal Law of the People's Republic of China.

Those who gather to gamble or engage in gambling for the purpose of profit shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance, and shall also be fined. Those who open casinos shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention or public surveillance, and shall also be fined; If the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than ten years and shall also be fined. Those who organize citizens of the People's Republic of China to participate in gambling outside the country (territory), and the amount involved is huge or there are other serious circumstances, shall be punished in accordance with the provisions of the preceding paragraph. The act of setting up a casino in a live broadcast room is very simple to operate at almost zero cost, and its degree of restriction is also relatively low. For example, time and space restrictions are not ways to restrict online live streaming lottery gambling. In comparison with traditional casinos, it was found that the new type of online lottery gambling under live streaming has a wider audience because the live broadcast room is open to all viewers and there is no threshold for browsing in the live broadcast room; The impact is more widespread, which leads to online lottery gambling under live streaming, with a large audience and significant social impact. Therefore, the new type of online lottery under live streaming is essentially applicable to the crime of opening a casino in the sense of Chinese criminal law, and it has illegality [5].

### 3.2. Legitimacy of Online Live Lottery

In most cases, live streaming lottery is simply a means for the host to enlarge the popularity of their live streaming room, with the main purpose of increasing the participation of the audience in the live streaming room and increasing their popularity exposure. On the contrary, gambling in the sense of criminal law in our country is a gambling behavior that involves money or other valuable bets. The audience in the live broadcast room usually hopes to win more money or items through luck and skills. As gambling participants may lose the money and items they bet on, gambling is usually accompanied by high risk. From the definition of gambling, online lottery under live streaming and traditional gambling usually have the main differences of different purposes, risks, legality, prize sources, and participation methods. Therefore, live streaming lottery does not belong to gambling, but even if live streaming lottery itself does not belong to gambling, if the lottery process involves improper transfer of benefits or violates relevant laws and regulations, it may also be subject to legal constraints and supervision.

### 3.3. Author's Viewpoint

The author believes that the definition of the legitimacy of online lottery under live streaming actually lies in determining whether the live streaming audience, as the main body, has the opportunity to purchase and participate in such games by recharging and giving gifts through the use of legitimate live streaming platforms as covert tools and setting up lottery games in the live streaming room. The subjective purpose of the audience during this period is to seek greater value for the gift, and whether the platform redistributes the user's gift as gambling capital in proportion to the audience's cashback. After summarizing, there are three criteria for judgment: whether legal money or currency has been

invested; Is there any random result; Can the returned items be exchanged for legal currency or property [6].

#### **4. Case Analysis**

This section will introduce the second of the ten typical cases released by the Chengdu Intermediate People's Court in Sichuan Province in 2022: the case of Fu Mouloung and others opening a casino through online live streaming, and analyze the relationship between game live streaming lottery and gambling crimes in the sense of criminal law.

##### **4.1. Basic Case**

Fu Mouloung and others were members of Douyu Live. From March 2017 to September 2020, Fu Mouloung and others used the specific lottery section "Fan Welfare Society" in Douyu Live media to set the amount and number of lucky draws, inciting viewers in the live broadcast room to participate in the lottery. They used confusing and provocative language such as "getting home with 50000 yuan for one card" and "striving to turn bicycles into motorcycles" to incite viewers in the live broadcast room to participate in the lottery. They also used QQ groups, WeChat groups, and other methods to promote the time and amount of the lottery to a large number of groups who did not participate in the live broadcast. As a result, many people used paid card applications at the time of the lottery. Investment methods such as brushing virtual gifts have invested money. After the lottery is over, redistribute the gambling funds to the winners. Before being blocked, Fu Mouloung and others had already organized a total of 4267 live lottery events, with more than 4.42 million people participating and gambling nearly 130 million yuan.

##### **4.2. Judgment Results**

After hearing The Dujiangyan Irrigation Project Court hold the opinion that Fu Mouloung and others organized gambling activities by lottery using the live broadcast room of the platform. The circumstances were serious, and their acts constituted the crime of casino opening. Taking into account the role, confession, and surrender of Fu Mouloung and others in the joint crime, they were sentenced to imprisonment ranging from six to three years and fined. After the verdict was pronounced, neither the defendant filed an appeal nor the procuratorial organs protested, and the verdict has taken legal effect.

##### **4.3. Author's opinion**

According to the Opinions of the Supreme People's Court, the Supreme People's Procuratorate, and the Ministry of Public Security on Several Issues Concerning the Application of Laws in Handling Cases of Online Gambling Crimes as of August 31, 2021; The act of spreading gambling videos and data, organizing gambling activities, establishing gambling websites and accepting bets through the Internet, mobile communication terminals, etc. belongs to the act of "opening casinos" as stipulated in the second paragraph of Article 303 of the Criminal Law: the act of establishing gambling websites and accepting bets, with the cumulative amount of profits from tapping more than 30000 yuan, the cumulative amount of gambling funds more than 300000 yuan, and the cumulative number of gamblers more than 120 people shall be recognized as "serious" as stipulated in the second paragraph of Article 303 of the Criminal Law.

From this, it can be found that there were over 4.42 million participants in the 4267 games, with a gambling investment of nearly 130 million yuan. Fu Mouloung's behavior meets the description of serious circumstances of the crime of casino opening within the meaning of China's criminal law. The

plot of disguised organized gambling, these lottery activities also have gambling attributes. This behavior of live streaming lottery, where fans purchase gifts to reward the host and the host gives corresponding rewards, is legal and compliant. However, in the live streaming lottery of Fu Long's live broadcast room, the purpose of fan rewards is simply to seek more profits. By using small and large amounts of money to obtain legal currency, and whether the money invested can be rewarded is highly uncertain. I believe that the platform has not provided assistance in dealing with the live streaming lottery activity of Fu Long, but it cannot be ignored that the platform has the purpose of inciting fans to purchase gifts and reward, thereby improving the platform's activity. The behavior of Fu Mouloung and others, The official Douyu platform should legally and effectively regulate broadcasters who may be suspected of opening casinos for their own benefit, in order to utilize the functions provided by the platform [7]. When it comes to online live streaming lottery, consideration should be given to whether the conviction criteria have been met. There is a boundary between legal lottery activities and gambling, which depends on whether it involves cash or other forms of cashback, whether a betting agreement has been formed, whether there are random results, and whether the virtual currency obtained can be exchanged for legal tender or property. If the purpose of the audience's participation in investing money is to obtain legal form of property, then this constitutes a gambling crime in the sense of criminal law [8].

## **5. Governance of Online Lottery Gambling Crimes under New Game Live Streaming**

### **5.1. Necessity of Governance for Online Lottery Gambling Crimes**

According to the Eleventh Amendment to the Criminal Law and the Law on Public Security Punishments, if an individual participates in gambling and does not engage in gambling as a profession, it generally does not constitute a crime. However, if the amount of gambling is large, it still constitutes an illegal act and will be subject to corresponding public security penalties. This reflects the strict control of gambling behavior by the law, aimed at maintaining social order and the legitimate rights and interests of citizens. Some platforms attract traffic to gambling websites, and the gambling nature of setting up casinos through live streaming lottery is becoming increasingly apparent. The gambling behaviors hidden in the live streaming room, such as "tipping and smashing golden eggs", should not be underestimated [9]. The compliance development of enterprises has become the mainstream of the era's development at that time. For the governance of online gambling crimes under the new type of game live streaming, I have the following suggestions.

### **5.2. Suggestions for Cracking Down on Live Streaming Lottery Gambling Crimes**

#### **5.2.1. Platform Fulfills Regulatory Responsibilities**

Pay attention to reviewing user complaints and establish a complete system for users to supervise the platform, so that users can promptly handle supervision and reporting of suspected gambling crimes during live broadcasts. Platforms should actively assume social responsibility. When platform anchors induce live streaming viewers to gamble or post links to external gambling, they should fulfill their regulatory obligations, fulfill their management responsibilities, and prevent gambling behavior from taking advantage. The reward mechanism of the platform should be reviewed for compliance, and the administrative department should play an administrative role in regulating the reward system of gambling significance on the platform. Even in cases where the nature of gambling cannot be avoided, the difference between the funds invested by users and the value of virtual property returned should be regulated to avoid excessive differences and being exploited by criminals [10].



### 5.2.2. Regulations for Live Streaming Platforms

Pay attention to the application detection of blockchain platforms and derivative platforms. When there are suspected crimes of online gambling through new online game live streaming, use the blockchain platform to open online gambling casinos and monitor the platform. At the same time, it is necessary to strengthen the supervision of online platform anchors. Artificial intelligence tools can be used to monitor the words spoken by anchors that may involve criminal activities related to online gambling during organized game live broadcasts. Once multiple gambling related words are found, they can be controlled in a timely manner, such as banning their live broadcast rooms or conducting investigations in accordance with the law. During the process of signing anchors, it is explicitly restricted that anchors are not allowed to engage in gambling related live broadcast lottery during online live broadcasts [11]. Carefully review the advertising and links on the platform, and strictly screen the partners of the software on the live streaming platform to prevent the intrusion of illegal gambling software. During the live streaming process, users should avoid allowing gambling promotion and links from overseas gambling websites to enter the public's view.

### 5.2.3. Play the Role of Social Supervision

Strengthening the supervision of social reporting can be achieved through rewarding and reporting, mobilizing the public to supervise similar behaviors. Government supervision departments should enhance the knowledge dissemination of online game live streaming lottery, and enhance the public's positioning of the entertainment value of online live streaming, rather than using online live streaming lottery as a form of participation in gambling activities with a small and broad nature [12].

## 6. Conclusion

In terms of the criminal identification of online lottery games under the new type of live streaming, there are currently no specific applicable provisions in China's laws and regulations for this specific live streaming behavior. There is still a gap in China's laws and superior laws regarding under what circumstances such behavior is considered gambling. Live online lottery gambling is a complex phenomenon, which contains multiple social factors, so legal regulation is extremely important. To combat new forms of online gambling crimes, we also need to follow the principle of suiting crime to punishment, improve legislation, strengthen enterprise supervision and other ways, and respond to more diverse legal issues in the Internet plus era through legal and compliance means.

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