



## ISFE comments on the Guidance of the European Commission regarding the application of the Consumer Rights Directive and consumer information on online digital products

ISFE<sup>1</sup>, the Interactive Software Federation of Europe represents the European videogame industry which produces entertainment and educational software for use on personal computers, game consoles, portable devices and mobile phones. The videogame industry is the fastest growing 'content' sector in Europe and is now estimated to be worth approximately € 10 billion annually.<sup>2</sup> It also the leading developer and provider of new business models within that sector. These models are based on and in turn help sustain and develop Europe's Digital Single Market by ensuring that video games are enjoyed across borders by millions of Europeans.

ISFE understands and agrees with the need for adequate consumer protection legislation in Europe and considers this a prerequisite to build trust in the Digital Single Market. A uniform application of such legislation throughout Europe's 28 member states would significantly contribute to the creation of a more harmonised regulatory environment and further develop the single market to the benefit of European citizens. ISFE therefore fully supports the work of the Commission to issue guidance on the application of the Consumer Rights Directive and on the consumer information requirements for online digital products and services in particular.

ISFE member publishers distribute videogames in both packaged and fully digital formats and include games for consumer enjoyment both offline and online across a wide array of platforms, including PC, console and mobile. Digital distribution of game content, for both offline and online play, is one of the fastest growing parts of our industry and the greatest source of new cross border content. The industry has therefore created many different innovative ways of communicating with consumers in order to advertise and sell their products and services. In Europe these methods must all of course abide by legal information requirements resulting not only from the Consumer Rights Directive, but also from other European legislation such as the eCommerce Directive (Art. 10), the Services

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<sup>1</sup> ISFE's membership comprises major international game publishers and national trade associations. It consists of the following: Associations – AEPDV (Portugal), ADESE (Spain), AESVI (Italy), AHP (Czech Republic and Slovakia), BEA (Belgium), BIU (Germany), FIGMA (Finland), Games Ireland (Ireland), MDTS (Sweden), MUF (Denmark), NVPI (The Netherlands), NSM (Norway), OVUS (Austria), SELL (France), SIEA (Switzerland), SPIDOR (Poland), UKIE (UK). Companies - Activision Blizzard, Electronic Arts, Microsoft, Nintendo, SCEE (Sony Computer Entertainment Europe), SEGA, Square Enix, Take 2, UbiSoft, Disney Interactive.

<sup>2</sup> Source: PwC Global Entertainment and Media Outlook 2013-2017

Directive (Art. 22), the Unfair Commercial Practices Directive (Art. 7) and the Data Protection Directive (Art. 10).

The Commission's Guidance on how to best inform consumers should take account of all these information obligations and facilitate compliance in order to provide increased legal certainty for European businesses. It should also take account of the risks of damaging the overall consumer experience with an overwhelming amount of data indicating, for example, levels of interoperability with an ever expanding variety of connected devices.

It is therefore of utmost importance that the model for online display of key information on digital products that was proposed by the Commission allows the display only of information which is necessary and provides an added value to the consumer. "File type" is for example not necessarily always valuable information for users of special devices such as video game consoles. Information regarding separate features which is not legally mandatory should remain optional in order to allow the model to be short, flexible and fully adaptable to the great diversity of online environments.

Although this is not part of its stated scope, the proposed model would be much more useful if it would provide a more holistic example of purchase flows for digital content and services that are fully compliant with the Consumer Rights Directive reflecting how digital content and services will need to be presented in the commercial and online reality of immediate provision and performance that is a necessary reality of today's video game industry. It should, for example, provide notice that supply will begin immediately (digital content) or gain consumer consent to begin immediate provision (service). It should also take account of the Directive's requirement to label the button or similar function that places an order at the end of a purchase flow with the words 'order with obligation to pay' or a corresponding unambiguous formulation (Art. 8 CRD) instead of displaying a rather conventional "Confirm Purchase" button on page 19.

ISFE finds it equally problematic that the model does not cover the conditions of the right of withdrawal and how they apply differently to the sale of digital content and services, again an essential aspect of today's video game industry. From 13 June 2014 onwards each digital sale must be accompanied by respective mandatory legal notices. A model for online display of key information which omits these notices is simply not realistic. It should allow the consumer to receive clear, accurate information on all the rights he or she can enforce in respect of every category, including but not limited to the withdrawal requirements.

Furthermore, it is unclear whether the use of the model would guarantee full compliance with the legal requirements in all European Member States. Page 19 of the workshop presentation displays, for instance, the price without the indication "including tax". Such a practice has been subject to legal proceedings and a court injunction in Germany on several occasions. The use of the model will therefore be jeopardized if it only "facilitates" (see p. 8) legal compliance and does not offer legal protection against such claims.

The model also includes an “optional costs” field in which, we believe, information regarding costs that are fully optional and can be associated with the product or service should be displayed. The video on demand subscription example on page 18 of the presentation seems to suggest that a finite list of additional products and corresponding prices should be included in such a field. For many subscriptions and games it is however not always possible to provide an exhaustive and detailed list ab initio because games today are continually evolving through different iterations bringing a better and more challenging game experience to the consumer. A subscription to PlayStation Plus, for instance, will enable the consumer to access an ever-changing, and therefore infinite, range of discounted products on the Store.

Sometimes additional content for a product or service is provided after the consumer’s decision to purchase or sign up to it. Once again, such situations reflect the reality of current game development practice in which gameplay is often expanded with additional content if it has proven to be popular, thereby enhancing creativity and providing consumer benefit. The Commission should therefore provide further guidance on how to best inform consumers in situations where no finite list of additional costs can be provided.

The video games and interactive entertainment industry believes that the use of icons can be effective and efficient way to communicate important information to consumers in a market as diverse as the EU. In fact, the industry, through ISFE has for many years now been engaged in several successful self-regulatory initiatives that make use of icons to provide appropriate information and advice regarding the content, functionality and age suitability of a product to the consumer, and, in some instances, certain purchasing options.

In 2003 ISFE founded the Pan European Game Information (PEGI) system which aims to provide parents with objective, intelligible and reliable information regarding the minimum age for which a given product is deemed suitable according to criteria developed and assessed by experts. PEGI was launched with, and continues to enjoy, the support of the European Commission. Under the PEGI system there are five age-rating levels: 3, 7, 12, 16 and 18. 8 content descriptors were also developed and used in conjunction with age rating logos to explain the main reason(s) for attributing a particular age rating. These are: violence, bad language, fear, sex, drugs, discrimination, gambling and online connectivity. Both sets of icons appear offline, on packages of game products, as well as online, on the retail websites and on many different game platforms, etc... The PEGI icons have become a well-known European standard.<sup>3</sup>

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<sup>3</sup> Videogames in Europe: 2012 Consumer Study, [European Summary Report](#), p. 33.



In 2012 PEGI for APPS was launched. PEGI for APPS is a rating procedure specifically designed for small software applications, including but not limited to games. It uses the same PEGI age labels and content descriptors and adds new feature descriptors that inform a consumer about certain types of functionality in an app. It is currently approved for use by Microsoft on Windows 8 and Windows Mobile platforms.. Among other things, under the “PEGI for Apps” rating system (see further below), a product that allows the purchase of additional content or functionality will carry a graphical icon to inform the consumer that the product allows to purchase additional content or functionality. This information enables parents to set the appropriate parental controls on the game devices or online networks in order to monitor or manage expenditure by their children.

The current feature descriptors are:

	The app contains elements enabling the consumer to purchase additional content or functionality when the app is active, regardless of whether the app itself was acquired for free or not.
	The app gives its developer (or a third party) access to personal data such as home address, contact details or bank account numbers.
	The app contains the option to share exact location on a map when using the app. The location information may be shared publicly or with a specific network inside the app or elsewhere online.
	The app includes an option for a user to chat with other users of the app. These users may operate under a pseudonym or anonymously.

Icon-based means of communication can be very effective in facilitated comprehension by the consumer on important issues about a product or service. ISFE has found it to be the best way to communicate certain information our industry products. However, overlapping and/or inconsistent icons within a particular market on the same or related issues can also cause some confusion. We note that some of the icons in the Commission model overlap

with the PEGI icons although their respective definitions differ. This, for example, is the case with PEGI's "in-app purchase option" descriptor, the same icon is used by the Commission to highlight the trader's name. On the other hand, sometimes a different icon is used to inform consumers about the same functionality such as the icon that notifies about "internet connectivity". We believe that there is a need for discussion on whether some standardization would be useful in order to avoid unnecessary confusion of the consumer.

Such a process should take account of the existing and well established industry practices as well as existing and upcoming consumer regulations that apply icons or pictograms to inform consumers. The European Parliament's Civil Liberties and Home Affairs Committee, for instance, recently adopted proposals for the introduction of a set of icons to standardize data collection information policies in the context of the review of the Data Protection Framework. ISFE will gladly contribute to any related multi-stakeholder consultation.

## **Conclusion**

Finally, we re-iterate our support for the work of the Commission in issuing its Guidance on the application of the Consumer Rights Directive and on the consumer information requirements for online digital products. However, as explained above, we believe that such Guidance would even be more helpful if it would provide for more "holistic" models of consumer purchase flows that take account of other (legal) information requirements and practices in order to facilitate compliance and increase legal certainty for European businesses. This will help our digital industry to maintain its strong growth so continuing to provide enjoyment to consumers, employment to workers and fiscal revenues to national governments.

Brussels, 17 January 2014.