

## **Ukie response to ‘Unlocking Business: Reform Driven by you’**

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### **About Ukie**

Ukie is the trade body for the UK’s video games and interactive entertainment industry. A not-for-profit, it represents more than 700 games businesses of all sizes from start-ups to multinational developers, publishers, and service companies, working across online, mobile, console, PC, esports, virtual reality and augmented reality. Ukie aims to support, grow, and promote member businesses and the wider UK video games and interactive entertainment industry by optimising the economic, cultural, political, and social environment needed for businesses in our sector to thrive.

### **The UK video games industry – a highly regulated sector**

The video games industry in the UK is subject to several, sometimes competing regulatory regimes and regulators specific to its broad activities and types of content produced; as well as through its players – by both the size of its player base, but also the amount of children who use services and through the nature of interaction on games and experiences.

Identified as a ‘high growth potential sector’ in the recent industrial strategy, the video games industry is an innovative part of the UK’s Creative Industries, worth an estimated £6bn in GVA annually to the economy, with potential for further growth, and which supports 76,000 jobs across the UK – with over 55% of direct development roles located outside of London and the South East.

However, the potential of the sector will only truly be harnessed with a regulatory framework which supports its development, creating a stable framework for investment and a financial system which backs investment in creativity and intellectual property and which does not put in place complex and damaging regulatory barriers in front of it.

### **Online Safety – ensuring consumer safety in a proportionate manner**

The Online Safety Regime, administered by Ofcom is a new and evolving regime which touches all parts of the video games industry depending on the size of a game, the number of players playing that game or the nature of available interaction on the game. Whilst there are different, more stringent obligations on platforms, publishers and developers who have a higher player base, or who allow high levels of interaction through voice or text chat – all games or services, if they are accessible by a child, have obligations under the Online Safety Act (OSA) including at the very minimum carrying out a series of risk assessments, through to potentially implementing safety and moderation systems and even implementing age assurance/verification systems.

The implementation of the OSA has seen a significant increase in compliance costs for a range of companies – but it is acutely felt in the UK video games industry where 95% of companies are SME and they do not always have established compliance or legal functions. Clear information about obligations for companies has not always been readily available for these companies in a nature which is easy to understand and easily check, with many companies having to hire in or develop complex legal functionality internally themselves in an area of law which is highly technical and evolving. Whilst there have been some recent improvements from Ofcom in terms of an online portal for SMEs to more easily check their potential compliance burden, many of our member companies across the industry are struggling to keep up with the pace of implementation of the rules, and additional guidance on top which is considered good or best practice in addition to legal obligations.

Whilst the video games industry is committed to ensuring safe and accessible games and experiences for all players - there have been several examples of companies either being unable to or unwilling to keep products and services on the market in the UK given the uptick in compliance and costs in relation to online safety regulation which can ultimately damages choice for consumers. There has also been a significant amount of misinformation about requirements under the law, particularly in relation to the use of age assurance or age verification technology which has exacerbated these concerns.

We believe there is merit in ensuring that all further development of regulation in this space is underpinned by evidence of harms, but also a sense of proportionality to ensure that SMEs are able to plan and evolve their services accordingly and comply with rules and regulations. A strategic pause to enacting new codes of practice, following the early stages of implementation of the Online Safety roadmap would be welcome to ensure that businesses can fully assess their obligations and put in place the most appropriate systems for players.

### **Data protection – avoiding regulatory friction**

As part of its recent strategy update the Information Commissioner's Office (ICO) designated the UK video games sector as a 'priority sector' signaling a new dedicated workflow aimed at ensuring higher standards of conformance with the Children's Code for the top 10 mobile games in the UK, aiming at using 'lessons learned' from other sectors to improve protections for children in relation to the Children's Code.

The video games industry has consistently demonstrated a proactive approach in implementing robust safety measures that align closely with proposed Children's Safety Codes. For instance, major games platforms have integrated comprehensive parental controls with optional age restrictions preconfigured for different age ranges or to be custom configured. These tools empower parents to manage their children's gaming experiences effectively.

Maintaining effective privacy policies and fostering a safe online gaming environment are integral to our industry's ethos, ensuring that users have control over their personal data and avenues for addressing any privacy concerns that may arise.

The industry has long adopted Privacy by Design as a key principle, even before the enforcement of GDPR. Gameplay data is typically collected and stored in ways that prevent the direct identification of players. Technical and organisational measures are applied to ensure that gameplay datasets cannot be easily linked to the players' platform account information. Pseudonymised data is used to protect the identity of underaged users, adhering to GDPR requirements that limit the collection and visibility of personal data.

Moreover, video game companies often employ technical and organisational measures to prevent linking gameplay data with identifiable information. Such anonymised or pseudonymised datasets allow for personalised user experiences while maintaining a high level of privacy and safety. This approach contrasts with social media platforms, where personal data is often more readily accessible and potentially exploitable.

The obligations for video games companies under the Children's Code Regime and aspects of the Online Safety Regime are sometimes drawn into conflict, particularly around being able to appropriately and effectively identify players of a certain age to ensure that they do not see inappropriate content or have unsafe experiences – but done so in a way which protects the identity of a child and minimises data collection.

Government and regulators must work together in these areas to ensure that regulation is consistent, proportionate and complimentary to ensure the safety of consumers, but also reducing the costs of administration on businesses.

### **Consumer policy – continued uncertainty for businesses**

The video games industry is highly innovative and has undergone several changes in business models over the past few decades. Mobile games, often via free to play models now make up the majority of global revenue for the industry. However, games played on PC and through console platforms remain significant and offer access to the widest range of games – from high budget 'AAA' games, large scale online multiplayer games, through to smaller AA or 'Indie' games that cater to a range of players – the majority of which are single player.

Across these various forms of games are a multitude of business models – whereby games are sold as a one off download or purchase; free to play games with in game purchases or increasingly, via subscription services such as Xbox Game Pass, PlayStation Plus or Nintendo Online.

The variety of business models and types of games have democratised access to games and experiences for players of all ages and backgrounds. Libraries of games content on

platforms have been developed over the years giving players direct access to more and more games, and in some cases direct access to new release AAA games – which were previously largely only available as an individual discrete purchase or download.

Consumers have benefited from innovations in subscription models, with traders able to offer this range of content on the basis of clear rules, the ability to plan and innovate, and long-term commitments on behalf of the consumers.

Consumer protections were recently strengthened in the Digital Markets, Competition and Consumers Act (DMCCA) whereby measures aimed at giving consumers the appropriate opportunity to consider if they want to remain on a subscription and have the ability to cancel a subscription without taking unnecessary steps to be able to do so were put in place. Government sought to achieve a balance in these rules to ensuring that a trader is not left unfairly out of pocket. We believe that new provisions within the bill relating to cancellation, as well as additional information notices at key junctures in annual subscriptions provide appropriate notifications for consumers. Consumers should be provided appropriate information as a contract starts, specifying the term of an initial cooling off period – and the established practice of waiving a right to a refund if digital content is consumed – followed by subsequent reminders at a 6-month period and prior to a contract rolling over at a 12-month period.

We are concerned that proposals in this section of the consultation – specifically a cooling off period of 14 days at the renewal period for digital content and a subsequent right to a proportionate refund if exercised – would allow some players to access that content, consume or ‘binge’ content – and subsequently then cancel a contract within the cooling off period with companies forced to the near full value of that subscription back to the consumer. This would be a significant departure from the intentions of the DMCCA and principles laid out by Government in this consultation that traders will not be left unfairly out of pocket.

If a consumer is able to sign up for an annual 12 month subscription, instantaneously download or access games content – and then cancel in an initial or renewal cooling off period – a trader would be forced to return the full or near full value of a contract to the consumer, regardless of how much content had been consumed in that period and with no regard to the type of content they had consumed. Not all content on subscription services is equal – some content will be considered premium or new release content, whereas other content may be exclusive to one platform. There may also be significant libraries or series of games available on these platforms.

Companies also currently do not have the systems in place to calculate refunds on a proportionate basis if a player were to cancel within a 14-day cooling off period, if they have already consumed content. Content available on a subscription service is priced at a different value (and often significantly discounted) to if it was available directly as an individual download. For example, AAA new release games are often priced in the

range of between £50-80 depending on the platform, whereas subscriptions are often in the region of between £10-20 per month, or between £150-200 per annum. Not only do consumers already get significant value from subscription services, but companies would also be forced to change their systems at considerable cost, in order to accommodate any such refund requests and are open to significant abuse.

We are concerned however that there is potentially an increase in complexity for both a consumer and trader if the trader is required to recontact consumers to reaffirm their express consent to waive their renewal cooling off right prior to an annual subscription renewing. The guidance, as currently envisaged sees a situation where If a consumer does not give their express consent to waive their right to their renewal cooling off period before it begins – then they could have their services interrupted as traders are unlikely to want to grant access to content if they see a risk of abuse through bingeing and subsequently being approached for a refund in that window.

We urge Government to immediately clarify its intentions with regards to the implementation of the subscription provisions in the DMCCA, which although enacted through legislation and consulted on in early 2025 – there is still no clear course of action with regards to these points on cancellations, renewals and refunds for annualised subscriptions. This lack of clarity means that it is impossible for businesses to plan for changes and even assess how much systems to enact any new processes would be.

If the provisions are implemented in a restrictive way it may determine whether console platforms continue to offer annualised subscriptions, which offer significant cost savings to consumers, to players at all – thus drastically reducing consumer choice for little benefit. Clarity, predictability and proportionality for businesses will benefit consumers and reduce friction and cost. Government's own lack of a clear decision in this area is leaving games businesses and players in a state of limbo.

## **Conclusion**

The UK video games industry has been an undoubted UK success story – contributing to the UK's economy across all parts of the nation, creating high skilled jobs and further developing the UK's rich cultural heritage. There are over 47 million players in the UK across a range of age groups and background, and the UK is the sixth largest games consumer market in the world. It is also a highly regulated and responsible industry – the safe experiences of players is paramount to the continued success of games in the UK – from the largest online multiplayer games to the breakout independent hit.

In order to maintain growth in the industry and see it reach its full potential, the regulatory regime for the industry must be proportionate, predictable and consistent in order to avoid damaging the future prospects of an IS-8 industry with high growth potential. Key to this is ensuring consistency and dialogue between regulators who are

administering complex and significant codes of practice e.g. Ofcom and ICO – but also through Government’s own decision-making in areas such as subscriptions. Delays in clarifying rules and regulations, that have in effect already become law risk throwing uncertainty and cost on businesses which could affect innovation and choice for consumers – and ultimately economic growth. We urge Government to immediately clarify its new rules on subscriptions following the consultation in February of this year and to re-engage businesses on a mutually beneficial way forward which benefits consumers through increased consumer choice and greater experiences.