

How To Enable Digital Growth in Europe?



European
Games Developer
Federation

EGDF represents European game developers on a European level. It helps to build up policies that support the growth of the European game developer studios and foster the development of the entire digital ecosystem in Europe.

10

TRADE
ASSOCIATIONS

AT BE DE DK ES FI FR NO SE UK
EGDF unites national trade associations for game developers from ten European countries.

1500+

STUDIOS

Together with its member associations EGDF represents more than 1,500 game developer studios. Most of them are SMEs.

25 000+

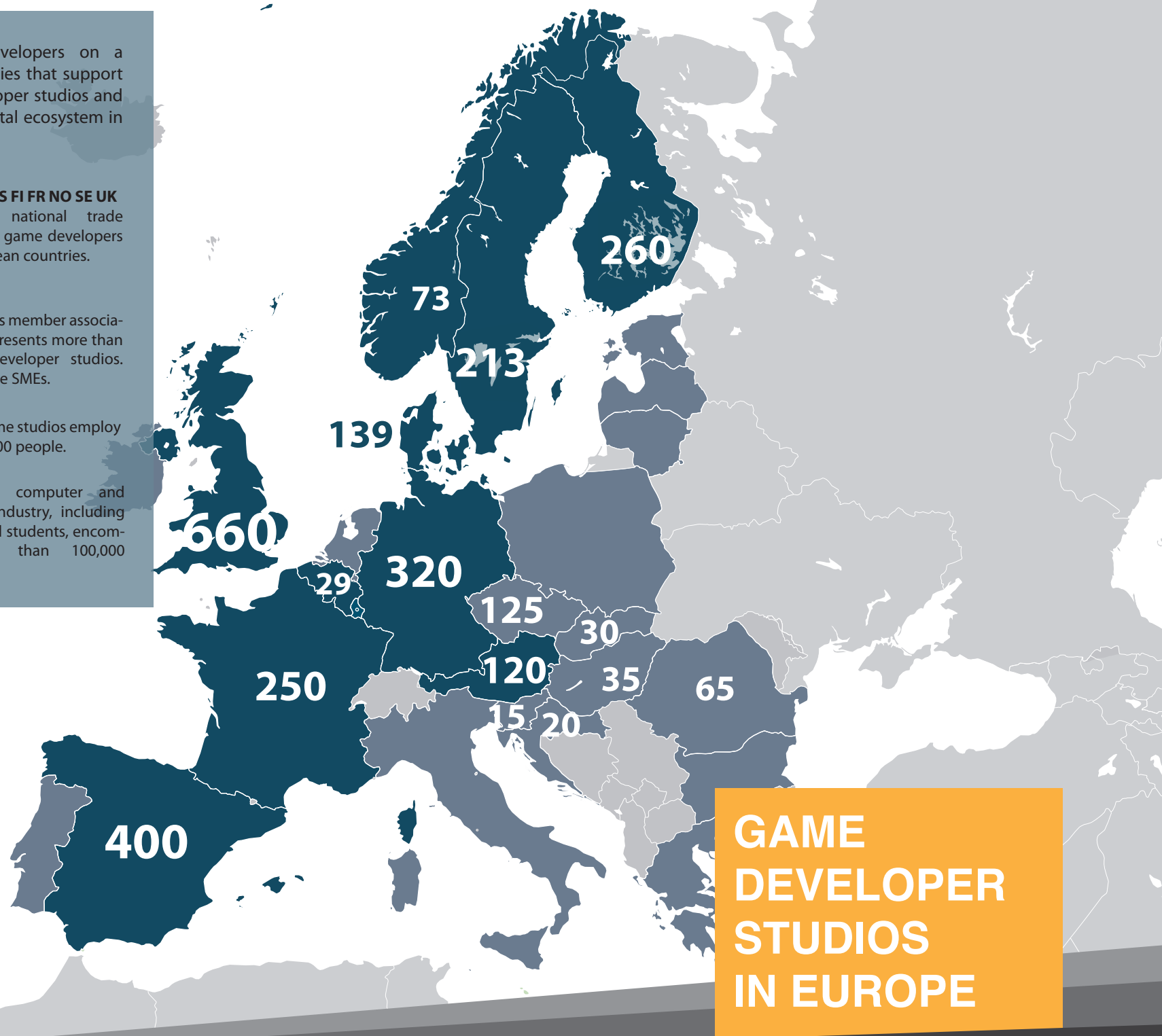
PEOPLE

These 1,500 game studios employ more than 25,000 people.

ALL TOGETHER
100 000+

PEOPLE

The European computer and video games industry, including distributors and students, encompasses more than 100,000 individuals.



**GAME
DEVELOPER
STUDIOS
IN EUROPE**

Policy building

EGDF focuses on regulation that is especially important for game developers, for example:

- European VAT system
- Consumer protection
- Data protection
- Protection of minors
- Free trade agreements
- Copyright policies
- State aid rules

Funding

CREATIVE EUROPE

- From 2012 to 2013 EGDF successfully secured the funding for game development from the Creative Europe programme. Now EGDF focuses on turning the rules more developer friendly.

HORIZON 2020

- EGDF is constantly being contacted by research consortiums looking for game developers. EGDF provides a list of European developers interested in joining these consortiums: www.egdf.eu/horizon2020.
- Twice a year EGDF creates a list of open funding opportunities for game developers in the EU

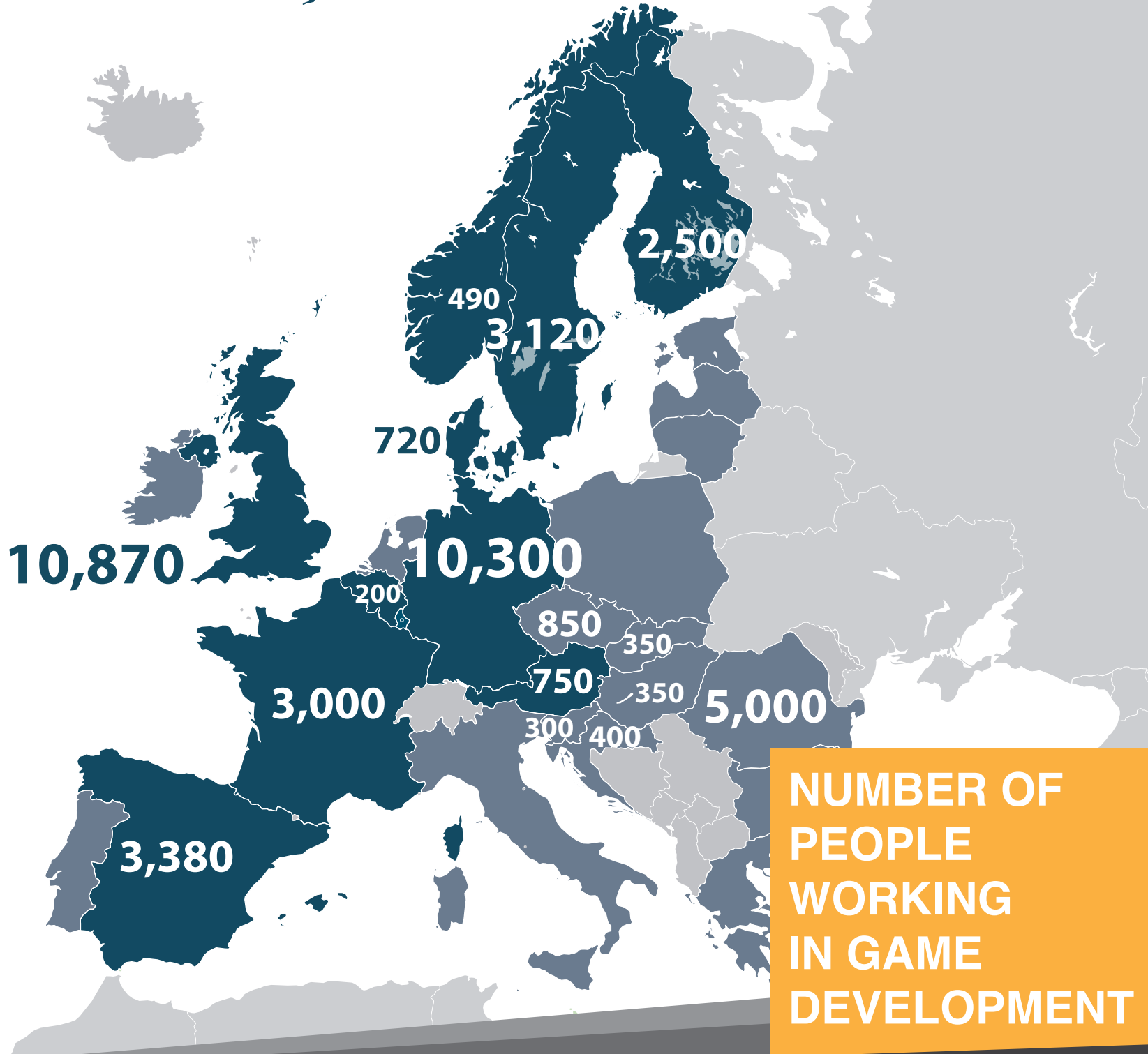
Dissemination

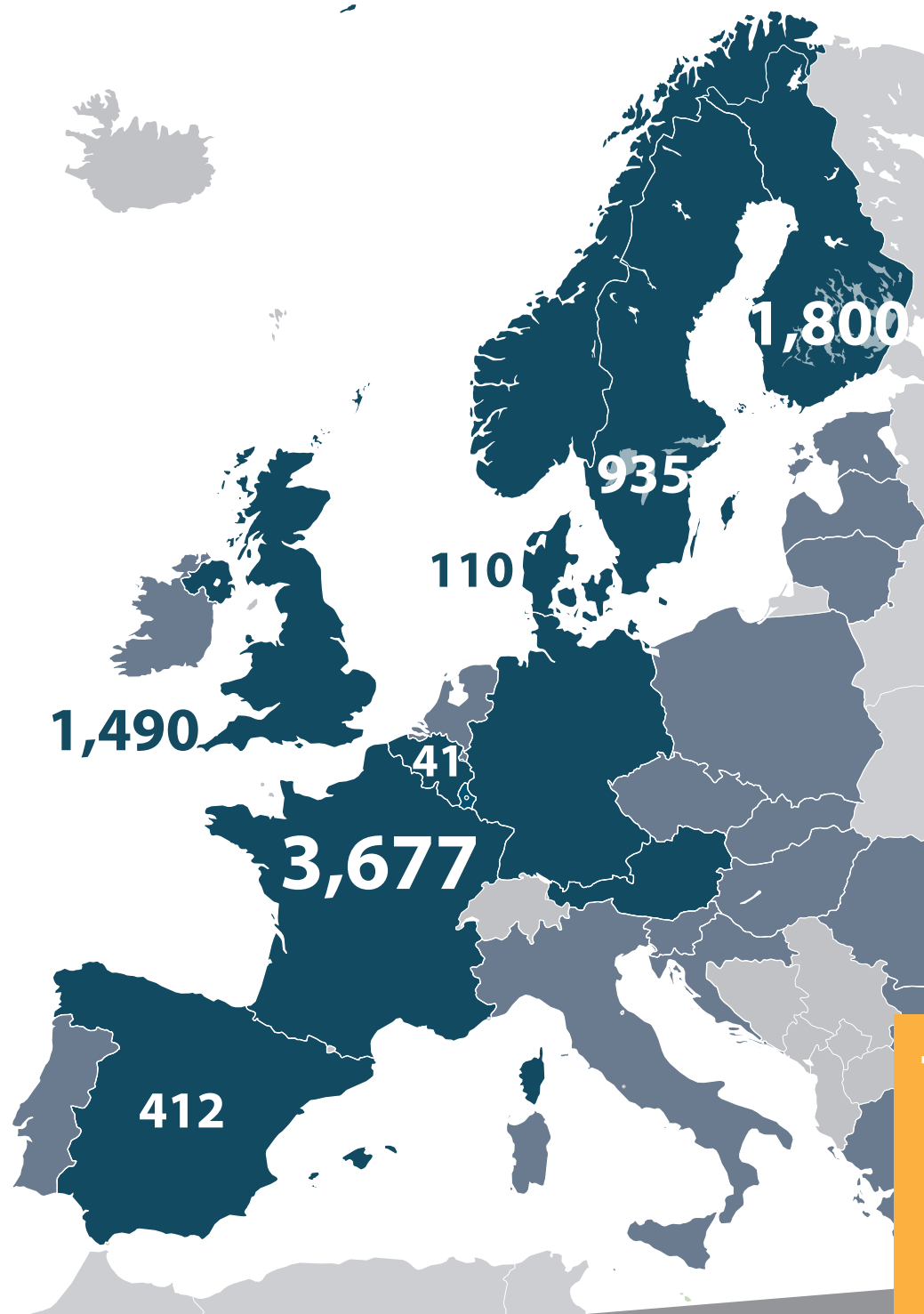
EGDF provides:

- A monthly newsletter of current EU affairs
- Analyses of European policies and their effects on European game developers
- A large European contact network
- Best practices on supporting SMEs operating in the digital markets

**WHAT
EGDF
DOES?**







**TURNOVER OF THE
NATIONAL GAME
DEVELOPMENT
ECOSYSTEMS (M€)**

The European success story of the Digital Era.

At the centre of digital entertainment industry, video games constantly engender new business models, create innovative content and germinate unique services that are driving groundbreaking technological discoveries leading the way for many other sectors.

The replacement of the traditional – retail driven – value chain by digital value chains is an enormous opportunity for Europe, as it leaves a bigger share of the revenue to European content creators and offers a way to keep European Intellectual Property (IP) in European hands. Furthermore, new, innovative business models like Free-To-Play have helped European game developers to conquer global markets. Thus it is clear that the true strength of Europe is in European cultural digital content, because it has succeeded in creating growth and jobs in Europe while European platforms and hardware developers have struggled to survive.

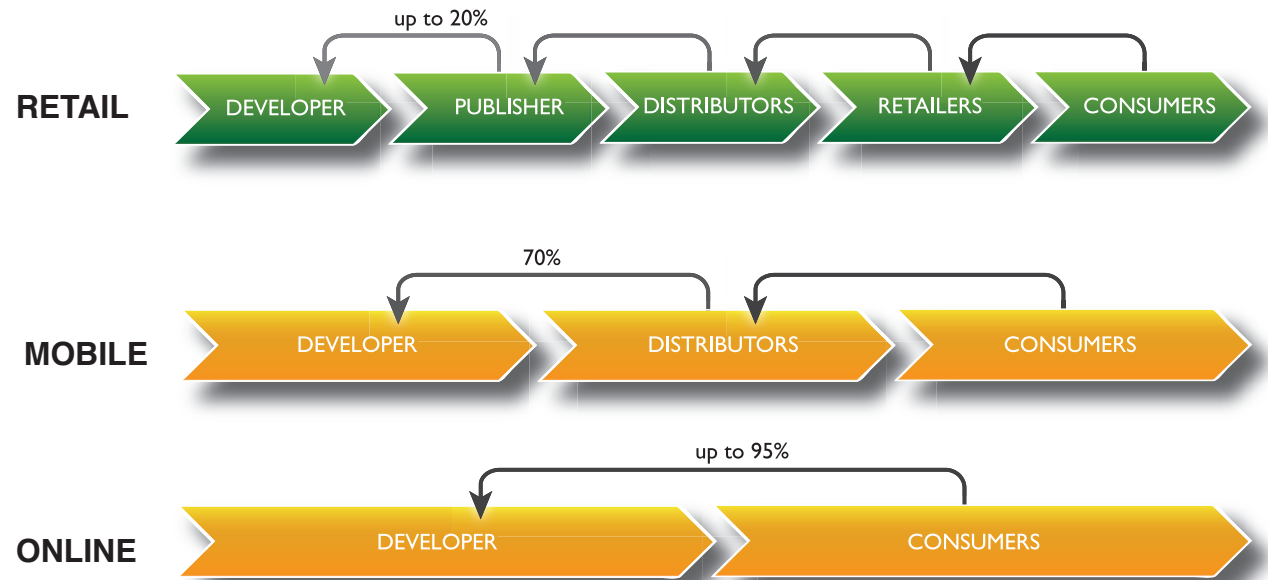
The first truly integrated digital ecosystem of the entertainment sector, the games sector, is positioned ideally to be the focal point of the coming Digital Era.

Network neutrality secures digital growth

Network neutrality enables the free movement of digital goods, services and knowledge in the digital single market area and it is the basis of innovation for the games sector. It is therefore vital for network neutrality to be protected.

Easing up the network neutrality raises a serious risk of dividing Europe based on national mobile and broadband networks. Network providers would have the possibility to slow down access to the virtual services competing with their own. Consequently this would also raise new borders for the free movement of innovative services and knowledge inside EU.

The regulatory efforts themselves face constitutional and legal problems in the member states, but much more they might lead to an abrupt ending of innovation in the sector. Without network neutrality, Internet Service Providers (ISP's) might misuse their increased authority in regards to information and "hide" behind it. As the network capacity becomes more and more relevant, this risk is becoming more and more obvious.



Some ISP's have already locked or reduced the use of online games that use a lot of bandwidth. This can lead to a situation where specific independent content producers hold a weaker position compared to those who are working directly for network operators. This development can lead to a dangerous situation for European independent developers, when the strongest media content companies see this as a change to strengthen their dominant position in the media market. Therefore it is very important that the non-discriminatory character of networks stays as a main element of European Internet politics.

**THE SHORTER A
VALUE CHAIN,
THE MORE
THERE IS
GROWTH IN
EUROPE**

TECHNOLOGICAL INNOVATION

Video games are a driver of technological innovation.

It is widely acknowledged that video games have contributed to the worldwide development of computer hardware more than any other application. So far video games have been the most demanding mass-market applications for computer hardware and will remain in that position in the foreseeable future.

The development of the microchips at the core of the hardware, as well as the development of graphics cards and other elements, like displays, is deeply related to the increasingly demanding architecture of modern video games. Today this approach spreads to the networks themselves, as the video games using the bandwidth of those networks pose a tough technical challenge for them.

It is also important to note that video game technologies are used more and more in other industries. For two decades now, some of the industry's core tech (artificial intelligence, physics simulation, biomechanics, behavioural models, virtual and mixed reality, wearables etc.) have been used for defence and aerospace applications, but now tend to spread to more "civilian" applications, such as in the medical or automotive fields.

Thus video games are not only revolutionizing the field of art and media. With the content and services based on business models for non-material goods they are paving the way for the other sectors that still have not undergone the digital shift.



BUSINESS INNOVATION

Video games are an economic driver.

The video games market is the most dynamic entertainment market. It has grown exponentially over the last years, and still has a huge growth potential and a natural ability to overcome cultural and linguistic barriers.

The video games sector has enjoyed two-digit growth per year for two decades and is expected to continue to be the most dynamic digital content industry in Europe.

The reasons for this dynamic are to be found in the always increasing diversification of platforms, and the constant development of new content and peripherals making games accessible to an increasing range of audiences, in terms of age and gender, as well as the rapid time-to-market and virtual "piracy proof" nature of online games.

A process, called gamefication is currently introducing both the applied games (a.k.a. serious games) and the new business models to the fields of education, geriatrics, training, policy making etc., and is reshaping them to face the needs and challenges of the new era.

Videogames are usually first applications developed for new emerging platforms in order to introduce their possibilities for the public. Good examples of this are the virtual reality headsets and smart watches which are both relying on games to promote their novel technologies.

Therefore it is not a surprise that the video games industry is a pioneer in developing the business models suitable for the digital environment. Their example is often followed by other industries (e.g. Spotify in the music industry or Netflix in the film industry).

CONTENT INNOVATION

Video games are a cultural driver at the heart of digital culture.

Video games are played by young and old, male and female alike, and they are no longer a marginalized form of culture. Thanks to constantly evolving content and the perpetual invention of new services by the sector, video games are becoming a driving medium of culture with their innovative, interactive digital content and services.

Game developers now perceive themselves as full-fledged creators in their own right. A true new language has emerged – interactivity – with its own grammar and vocabulary, a form of expression that transcends cultures and is experienced by billions worldwide.

The influence of video games in terms of how people perceive values, structure organizations, express themselves creatively, and learn is more and more significant.

10 to 15 years ago video games were often adapted from films or books, today the vast majority of video games are genuine original creations, some even leading to film or book adaptations. Many video games do not only inspire major motion pictures or books, but influence a wealth of other forms of cultural expression (films, books, paintings, comics, music, and advertising).

**GAMES ARE
THE DRIVING
FORCE OF
THE DIGITAL
REVOLUTION**

INDUSTRY CORE INDUSTRY PIONEERS

HORIZON 2020 funding secures a strong industrial base

Many of the challenges mapped by the industry pioneers with the help of Creative Europe funding, are significant economic and technological barriers. Horizon2020 funding provides an excellent opportunity for the industrial players to co-operate with academia to overcome these challenges and thus strengthen the industrial base and help creating jobs and growth in Europe.

Creative Europe funding builds the road to the future

Creative Europe funding is targeted for the most innovative games pushing the artistic, business and technological boundaries. These games are those products and services that introduce the emerging technological solutions, insightful business models and artistically ambitious content for a global audience. These are the games that are constantly pushing the technological and business boundaries setting the limits to creation. Consequently, it is the cultural content that is driving the technological and business innovation in the digital markets.

Unfortunately, the public funding instruments in many European countries are mainly focused on technological and business innovation and only very limited funding is available for the creation of the innovative content itself. The multiplier effects of the public support for cultural content are not limited in the artistic creation itself. It is helping to reshape the whole digital ecosystem.

The Creative Europe programme is helping the pathfinders of the Digital Era to explore the new frontiers of the digital economy. The challenges faced by them are the challenges other industry sectors are likely to face in the future, with the help of HORIZON2020 funding. And thus **the budget of the Creative Europe funding for game development must be increased under the Creative Europe programme.**

CONTENT DRIVES INNOVATION

Tax breaks

As examples from the UK and France demonstrate, tax support schemes are an effective way to secure that big productions are still being realized in Europe. They are a good way to secure that more European games studios will be able to compete on a more level playing field with our overseas rivals. They will effectively improve access to financing for many games development studios. This in turn will enable more studios to innovate and to develop their own IP. Games Tax Relief will also enable studios to create video games that reflect their European culture. There are two reasons for this. Firstly, Games Tax Relief should enable more studios to self-publish and keep a European feel in their games. Secondly, Games Tax Relief will reduce the cost of games development in Europe and so could incentivize global publishers to take more of a risk on developing games with a European character.

Loan guarantees

Unfortunately often loan guarantees will not help, as banks in many European countries are often reluctant to use such schemes, or they fail to lead in taking increased risk taking in granting loans because personnel working for the banks are hesitant to risk their bonuses.

Soft loans

The Commission should focus on making already well-working soft-loan schemes more mainstream. The Finnish soft-loan schemes for SMEs run by Tekes, for example, provides low interest rates and a possibility to transfer a part of the loan to a grant if needed, making it highly interesting for SMEs.

Publicly supported venture capital funds

EGDF is worried that EU-supported venture capital funds will not reach SMEs operating in emerging industries like the games industry, as investing in the games industry requires a specific expertise from games markets.

Crowdfunding

The Commission should secure that all member states will make donation-based crowdfunding possible. However, it is should keep in mind that crowdfunding is quickly moving to become an effective marketing tool disguised as a funding tool and consequently it should be seen just as an additional financing tool; not as a primary source of funding.

Innovative financial instruments

The more innovative the financial instruments get (e.g. mezzanine financing), the more difficult it will become for many entrepreneurs to evaluate the risks associated with them.

INDUSTRY CORE | INDUSTRY PIONEERS

CONTENT INNOVATION

BUSINESS INNOVATION

TECHNOLOGICAL INNOVATION

Grants

Direct grants are a much more effective form of support for SMEs than, for example, loans and loan guarantees. In a risky and innovative business like game development, grants are the best way to encourage developers to test and develop technologies, business models and storytelling methods that have the highest potential to revolutionize the industry. In general, these projects are too risky to be funded with any other funding instrument.

Games need their own “cinema communication”

Many member states are currently mapping a way to secure that there will be high quality, artistic games exploiting their rich cultural heritage also in the Digital Era. Unfortunately, unclear state aid rules hinder this process and thus a “game communication” is needed to set clear rules for cultural state aid targeting games. Otherwise big AAA game productions will soon move to other regions in the world with more favourable state aid conditions. The money invested in production is money that stays in Europe.

Support for export and trade missions

Trade missions to international conferences and seminars often play a vital role in mapping the emerging industry trends. Unfortunately SMEs usually don't have the funding to participate in professional industry events and for this reason public funding for activities of this kind is crucial.

BETTER
PUBLIC
SUPPORT

1 Regulation should not form barriers of entry

At the moment, if an SME wants to enter the digital single market area and be sure that their application follows all the different approaches on the digital consumer protection, data protection and VAT framework implemented by member states, they are forced to hire an extremely expensive international consulting house to do that.

Most of the European game developers are SMEs that do not have sufficient resources on mapping the changes in international, European or national regulation. For this reason, the more fragmented the regulatory framework becomes on the European level, the more European game developers are forced to rely on mainly non-European publishers and content distribution platforms to secure that their games are in line with all the existing regulations. Consequently, a more fragmented regulatory framework would significantly strengthen the position of the big non-European players in the value chain, which would mean less revenue for European game developers and thus less growth and jobs for member states.

Unfortunately, some national authorities don't provide guidance at all and most of them only help the companies to implement the regulations, according to their national standards. **Consequently, all authorities should have sufficient expertise and resources to help companies to build services that are in line with all European standards.**

2 Europe has to lead the way globally

For years, the success of European game developer studios on global digital markets has been based on the low market access barriers. Unfortunately, as the global digital markets have become more and more significant, its regulation has also increased all over the world.

Consequently, fragmented VAT, data protection and consumer protection practices are quickly creating an environment that is increasingly difficult for European SMEs to operate in. Therefore, **the Commission should use its vast embassy network all over the world to track the changes in regulation targeting digital markets** and their implementation in different countries and create a clear, constantly updated and easy to understand consolidated summary about it for all SMEs.

As digital markets are by their nature global, not regional, EGDF sees it to be crucial that European union tries to minimize the fragmentation of the digital markets by **pushing European standards on consumer protection, data protection and digital VAT practices on a global level**. A similar system for VAT reporting as MOSS is needed on a global level, not just on the European level.

EGDF strongly encourages all member states to **increase co-operation in providing support for export missions targeted for specific industry sectors**. Usually, it is impossible for member states to specialise in one industry sector and focus on its issues. By increasing the co-operation between the national embassies it will become possible for member states to focus more on the challenges of specific industry sectors.

3 All regulation should follow the principles of technological, business model and content neutrality

The new regulation should not try to define the borders between different sectors of the digital economy. The borders between different forms of content are blurring more and more and the digital markets are developing extremely rapidly. **Therefore the EU should not try to build sector specific regulation or guidelines**. Instead, we need clear regulatory guidelines that apply to all sectors operating in the digital single market area.

Consequently, the new regulation has to strictly follow the principles of the technological, business model and content neutrality. **Therefore any proposal for new regulation should avoid mentioning specific technologies, tools or methods.**

For example, EGDF is happy to note that the European regulators are slowly realising that fax machines are quickly becoming obsolete. On the other hand, many implementation guidelines now emphasize that a consumer should always have access to an email address they can use to contact the company. First of all, as we all know, any email address publicly available in the internet quickly starts to attract massive amounts of spam and some of the actual feedback might get stuck in spam filters. Secondly, due to the rapid progress of technology even the companies are struggling to follow the quickly changing trends in the mediums their consumers prefer to use for communication (today they might be Twitter and Facebook, tomorrow they might be something totally different).

HOW TO BUILD
A DIGITAL
SINGLE
MARKET AREA?

4

More regulatory co-ordination

One of the biggest challenges for European SMEs operating in the digital single market area is the regulatory fragmentation. Thus more legal co-ordination is needed on the European level to secure that European regulatory framework for the digital single market area stays coherent. Currently there is, for example, an increasing tension between VAT regulation, data protection regulation and consumer protection regulation, each built from a different legal perspective without a clear overview.

Consequently, the Commission should:

- significantly **increase the co-ordination** of different DGs in the Commission while drafting the new regulation.
- strongly **encourage the member states to secure that the way they are implementing the regulation is coherent**. Therefore bodies like the Consumer Protection Co-operation network and VAT committee should always discuss the major changes in regulation and court decisions in national level.
- **force member states to translate their national implementation guidelines for the regulation in digital single market area in English and French** and collect all that information on a single website.

5

Regulation has to leave room for innovation

There should be enough room left for the companies themselves to also compete with their terms and conditions as well as develop new and innovative solutions that cannot necessarily be benchmarked to existing practices.

As the digital markets move onward so quickly, a regulation that's too specific would be obsolete in just a few years. **Therefore, any proposal for new regulation should focus more on building a system where relevant industry and civil society stakeholders, national authorities and the European Commission co-operate to solve the constantly emerging challenges in its implementation.**

A good way to do this is to benchmark the best practices from the co-operation of national tax authorities on how they keep the VAT framework of the digital single market area up to date.

HOW TO BUILD
A DIGITAL
SINGLE
MARKET AREA?

VAT REGULATION

Sanctions: residual tax, criminal charges for tax fraud.

Proposed sanctions: a fine up to 100,000,000 EUR or up to 5% of the annual worldwide turnover in case of an enterprise, whichever is greater.

Right to erasure in the proposed regulation: data subject has the right to request erasure of personal data related to him or her.

VAT records have to be stored for 10 years.

You have to identify the location of consumers for each transaction in order to apply the right VAT rate.

Location data may only be processed when it is made anonymous, or with the consent of the users, to the extent and for the duration necessary for the provision of a value added service.

COPYRIGHT REGULATION

Currently examined ideas of limiting allowed territorial restrictions in the digital single market area.

Microcompanies operating under a VAT threshold, have to refuse payments from other EU Member States if they want to avoid VAT responsibilities.

Companies have to provide information about prices with a correct VAT rate.

The law applicable to contract is that of the country in which the consumer is habitually resident.

CONSUMER PROTECTION REGULATION

Consumer protection regulation requires that the geographical address at which an application developer is established should be made available to the consumers.

Some of the youngest application developers are minors and according to proposed regulation children deserve specific protection of their personal data, as they may be less aware of risks, consequences, safeguards and their rights in relation to the processing of personal data.

DATA PROTECTION REGULATION

EXAMPLES OF AREAS WHERE REGULATORY FRAMEWORKS COLLIDE

SKILLS

Most of the emerging industries are based on the skills and knowledge of passionate hobbyists. This is especially true for the games industry where non-formal education has always been crucial. The base of the flourishing European games industry is in the passionate young people participating game development clubs and summer camps, game jams and demo parties.

Similarly, the emerging European 3D printing and drone industries, for example, are in the hands of passionate young hobbyists experimenting with these technologies. Thus, instead of just focusing on introducing entrepreneurship in school curricula, the Commission should push the introduction of coding in the school curricula and using the coding skills to create something (e.g. games, mobile applications...) and monetising it. The best way to promote the entrepreneurial skills is not by focusing on the entrepreneurship itself, but by building passion for the creation of new and innovative digital goods and services. When one has the skills and passion for the industry sector itself, the step to entrepreneurship is much smaller than starting from building up the entrepreneurship skills and then trying to find the skills needed to use them.

The need for further skill building and education does not end in the graduation of an individual from the higher educational institution. The paradigm of life-long learning is a common sense to survive in the games industry: the game developers build upon their base of knowledge and continue investing in their future by training their already experienced employees during their careers. On the flip side development studios spend up to six months training new hires comprised of graduates and self-taught artists who are just starting their careers in order to get them to the level required to work on games.

Consequently, **the Commission should strongly encourage member states to invest more on enabling game development and experimentation with technologies from other emerging industries as a hobby among young people through youth work.**

EDUCATION

Only your skills matter in the games industry - the quality of the education has to be superior

As a result of constant growth in a game market, during recent years more and more higher education institutions have started to offer education for the needs of the games industry. Unfortunately the quality of education and real opportunities for employment vary significantly from one institution to another. Far too often the higher education institutions are using games education as a marketing tool for attracting new students, although they do not necessarily offer decent education in this field. The problem is that often the quality control of the higher education institutions exists more for the needs of the institution itself instead of their students or industries they are supporting.

Thus the games education should always simulate realities in the games industry. E.g. education can be offered in a form of virtual studios, where students orientate their studies in working groups to become games producers, developers, programmers or artists.

On a regional level, especially in smaller countries, it should be taken care that scarce resources are not wasted by creating competing educational programs between educational institutions; instead regional, national and international co-operation between educational institutions should be promoted.

Co-operation between games industry and educational institutions has to be strengthened

EGDF acknowledges the role of the universities as a field for basic research and sees them as a great source of inspiration and influence for the European game developers. From the point of view of the games developers, the higher education institutions are not capable anymore to answer to the quickly changing needs of the industry. It takes higher educational institutions more than two years on average to develop and implement a new curriculum and then three years before the first graduates will enter to job markets. Meanwhile, the fast-paced games industry changes every six months. During those three years both focus and technology used in the industry has usually been changed to something totally different.

Games research needs more support

From a diverse set of viewpoints, European game researchers have broadened and deepened the field of game research. The computer and video game academic research field is young. The first journal, "Game Studies", commenced publishing in 2001, and the first international research conference was arranged by DiGRA, Digital Games Research Association, in Utrecht in 2003.

Currently game research is almost solely based on project funding, which weakens possibilities for focusing on the research itself and using the outcomes for the needs of the games education and the games industry." Thus European academies should find ways to entrench the game studies as an academic field equal to literature or film studies.

TALENT

The games industry is a global industry, its success is based on its ability to recruit worldwide leading talents to Europe. **Consequently, the Commission should do all it can to simplify the immigration requirements for non-European talent**, them being job seekers, employees or co-founders of companies. Far too often very expensive consulting agencies are needed to take care of the immigration bureaucracy making it impossible for many start-up teams to get leading talents globally to join their teams.

1. Individual member states have small embassy networks globally, but when combined the network is huge. For this reason, **anyone applying a blue card from one member state should be able to use embassies of other member states as well**, for example, for identification. No highly skilled professional should be required to waste their time by flying to an embassy in another country, just to do some administrative work.

2. As leading digital games are based on the combination of cutting edge technological solutions, pioneering business models and highly innovative artistic content, highly skilled professionals hired from global markets often are forerunners in their fields of expertise. Consequently, game developer studios were looking for big data-scientists years before relevant university degrees became available. **Thus the residence permits for experts should not be tied to qualifications, but on relevant professional experience.** The length of this experience should not be required to be more than two years.

3. There are huge differences in the variance of salaries between member states and thus the **use of average salaries to calculate the salary threshold makes the blue card system almost unusable** in some of them. In addition, **it should not take more than one month to get a blue card after applying for one.**

Furthermore, it is crucial that the industry is able to reach the best talents regardless of their sex, ethnic background, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. Currently the games industry loses many young talents just because, for example, gender-biased prejudices existing among members of the industry: among students applying to the game education, in higher education institutions and among members of the games industry itself. **Thus more work is needed in fighting discrimination all over Europe.**

**DIGITAL SKILLS
AND TALENT**

1 Clear rules for location information

First of all, the implementation guidelines from tax authorities have to be in line with data protection regulation.

Secondly, tax authorities have to clearly define the minimum amount of information a payment service provider has to be able to provide automatically for an online game developer in order to use payment data as an evidence of the location of the consumer.

Ideally, when a payment service provider is able to provide two pieces of evidence, this should be enough. Unfortunately some member states see all evidence coming from payment service providers as a single piece of evidence and you still have to collect the second piece from an alternative source.

2 European VAT threshold

The VAT thresholds are different from one European country to another. Thus although online game developers might be under the VAT threshold in their home country they might be responsible for paying the VAT to another member state. Therefore, online game developers, who are operating under the national VAT threshold, might be forced to register for the VAT, if they want to keep their business model and European consumers. Consequently a European VAT threshold is needed.

Meanwhile, member states that use VAT thresholds should follow the UK model, where companies do not have to pay the VAT to the UK until the threshold is reached even if they would be registered in MOSS.

Until we have a European VAT threshold, a geo-blocking framework or any other regulatory framework should not be used to force game developers to register in the VAT register if they are under the VAT threshold. At the moment the most secure way for a game developer who does not want to register for VAT (this is an especially important case for the UK where the VAT threshold is 81,000 £), is to block access to their game for any consumer coming from another EU member state.

3 Access to the rules

All tax authorities have to translate their VAT guidelines for digital markets in English. Game developers have to be able to approach national VAT contact points by email in addition to a phone call.

4 More guidance

Digital markets change constantly. Thus the guidance documents have to be updated as well.

For example, it is currently unclear, who is responsible for paying the VAT if a crowdfunding platform is used to collect funding as presales (e.g. Kickstarter handles the payment, Steam delivers the content).

How to fix the
VAT?

WHY TERRITORIAL RESTRICTIONS ARE HOLDING BACK THE GAMES INDUSTRY

- 1.** A key problem with national application stores is the fact that they **hinder the user experience**, adding an extra burden for game developers in terms of consumer support.
- 2.** **Application stores should not be allowed to force consumers to repurchase the content they have already paid for.** At least in the Apple App Store, a consumer can lose the applications he or she has purchased from a British application store, when he or she moves to Germany and replaces the British credit card with a German one.
- 3.** **Consumers should be allowed to access their content.** Quite often different language versions of the same app can be confusing for a consumer, therefore it might not be a best idea to place five different language versions of the same app in all application stores. However, if a German consumer who has moved to the UK wants to access the German version of the application from the German Application store he or she should be allowed to do so. Or if a British consumer is in Germany, he or she should be able to see what kind of local applications are available for him or her in the local application store.

WHY TERRITORIAL RESTRICTIONS ARE NEEDED IN THE GAMES INDUSTRY

- 1.** **The copyright framework or any other regulatory framework should not be used to force game developers to register in the VAT register if they are under the VAT threshold.**

The VAT thresholds are different from one European country to another. Thus although game developers selling their games directly to end-consumers (without using a portal or an application store taking care of the VAT on their behalf) might be under the VAT threshold in their home country, they might be responsible for paying the VAT for the income they receive from another member state. Furthermore, in order to report the VAT through MOSS, a game developer has to register for VAT in their own country. Consequently, the most secure way for a game developer who does not want to register for VAT (this is an especially important case for the UK where the VAT threshold is 81,000 £), is to block access to their game for any consumer coming from another EU member state.
- 2.** **The copyright framework or any other framework should not force game developers to mislead consumers about pricing.**

Previously any application store or game developer had to only take one VAT rate into account (the country where they had registered in). Now the VAT is paid based on the location of the consumers. In practice this means that, if a game costs 1€ before VAT, its price for end-consumers varies between 1,15€-1,27€ depending on the country where they come from. For this reason, in order to not mislead consumers, the regulatory framework has to allow the existence of country specific storefronts.
- 3.** **It might pose a significant legal problem for a game developer if an end-user downloads a Japanese version of the game which the user agreement is made based on Japanese consumer protection standards instead of European standards.**
- 4.** **It might be useful for game developers to soft-launch their games in some European countries before making them fully available for European markets.**

Beyond territorial copyright licenses, it should be up to content creators to decide where and when they want to launch their products.

GEO-BLOCKING

1

A single European copyright title

A unitary EU copyright title should be introduced; it is the only way to create a real single digital market for digital content in Europe. The mistakes made with a European trademark law should not be repeated with a copyright law. Thus it is not sufficient to introduce a parallel legal framework to national law. This would only lead to an even more complex copyright system than the one now seriously hindering the development of digital single markets in Europe.

2

A non-mandatory registration system for licenses at the EU level

In the long run, this kind of system would help taking advantage of European digital cultural heritage, as it would be easier to identify the right holders.

However, EGDF is extremely worried about the unnecessary bureaucratic burden this kind of system might create for European start-ups if made mandatory. The great economic potential of the global digital markets germinates from the fact that the barriers of entry are extremely low. Therefore, all regulatory actions adding more barriers and red tape should be avoided.

3

Clear time limits for making available and moral rights

Video games are co-creations of a wide range of artistic talents. Musicians, composers, graphic designers, game designers and script writers all co-operate to create a single game uniting their artistic visions. Especially for co-creations of this kind, making available rights and moral rights can become (the level of protection varies significantly from one member state to another) a major barrier, as any of the contributing artists behind a specific part of a game can determine how the complete game can be disseminated.

Specifically with big international productions with budgets of tens of millions of euro, the mere number of artists involved is huge, which makes controlling the making available rights extremely challenging. The more time passes from the creation of the game, the harder it is to reach all the contributors, which seriously hinders the efforts of keeping the European digital cultural heritage available for the European audience.

Similarly the music in a game should not have longer protection than the game itself. As the rapid technological changes in the games industry clearly demonstrate, the technological mediums of digital markets change so quickly that providing access to games published today will be a challenge in only twenty years. Therefore an extension for economic rights of music is no longer necessary.

4

European games should be allowed to be built on the European cultural heritage

A single, simple and well-working licensing system for music in the digital single market area

Due to complex and territorial management of digital reproduction rights and "making available" rights, contemporary European computer games rarely have access to contemporary European music although on global markets both sides would benefit from closer co-operation.

The collections societies should focus only on licensing the music for B2C markets and let their members operate freely in B2B markets

For example, a single track given for free to a game developer by a musician can lead to a significant increase in the value of their brand and replace very expensive marketing activities needed to gain the same publicity. The Finnish collections society, Teosto, has already acknowledged this, allowing direct music deals between musicians and game developers.

Although freedom of contracts should be respected, territorial licensing systems are obsolete and should be abolished

As digital markets are global by definition, the only territorial licensing model that might somehow work is "continental", not smaller. It is the obligation of the European Union to make the principles of free trade and free circulation of goods and services as effective as possible within the member states. If territorial licensing systems are not abolished in the European digital single market area, they should be restructured in a way that would allow a publisher to buy a license of a game for a certain language instead of a certain territory. The rights of the newcomers could be protected by minimum contract terms.

5

European digital cultural heritage has to be saved

Exceptions related to the long-term preservation of digital content should be mandatory in the copyright framework

The first decades of European digital culture are quickly becoming the lost years of European digital cultural heritage. Quite often the content is stored in mediums that are slowly eroding. These mediums are often protected by patented copy prevention mechanisms making it legally impossible to move the content to other mediums. Thus a clear general exception for cultural heritage institutions to transfer a digital media carrier for archival and access purposes without any technical restrictions is urgently needed.

Tools for breaking patented copyright prevention methods and reproduction of the protected content should be allowed to be created for long-term preservation purposes in memory institutions

The Community Copyright Framework and European licenses should include a new exception that allows cultural or legacy institutions such as national libraries, archives and museums to perform the necessary steps for reproduction in order to preserve multimedia works running on proprietary programs, through emulation or any other relevant technique.

6

Copyright framework should not hinder the use of screenshots and gameplay videos in scientific work and education

At the moment some scientific journals do not allow the use of screenshots in their publications if there is no written authorisation from copyright holders. As obtaining such authorisations can be impossible from big global publishers with no interest on handling such requests, this seriously hinders the scientific research on the emerging European digital culture, and therefore a clear exemption is needed for scientific and educational use in the new copyright framework.

7

Game developers should receive a remuneration similar to that of music producers from the advertisement revenue of their gameplay videos

At the moment, many video streaming services provide music producers a share of a remuneration for the music used in the videos. The same practice should be applied to game developers, whose content is used in gameplay videos. At minimum, the video streamers should have an opportunity to donate the advertisement revenue paid to them to game developers.

**A DIGITAL-READY
COPYRIGHT
FRAMEWORK**

8 It should be up to a service provider to decide if a resale of digital content is allowed

Fully downloadable content that is clearly a product

When it comes to fully downloadable content, the digital markets are still at their early stage and the business models vary significantly. On the one hand, as the price of a mobile game can be as low as 0,99 euro, rather than creating new markets for games, second-hand markets would just create a platform where games are exchanged for free. As the profit margins per game are already extremely small anyway, this would only make it even harder for European game developers to create games in a sustainable way.

On the other hand, some publishing platforms might want to build their business model on first selling the games with a high price and then allowing users to resell them at a lower price. For them, a business model based on second hand content might work. Thus instead of building a legal framework, it should be left for the platform owners decide whether they want to offer an opportunity to resell the content or not.

Content that is provided as a service

When it comes to games that are streamed from a server to a consumer, they are closer to a digital service than a traditional product. The extent that people are allowed to exchange digital goods within this kind of multiplayer game is often an essential part of the gameplay and therefore something that should be left for the game developers to decide based on their artistic vision. Thus any regulation on the resale of digital content should be strictly limited to content that does not require a server connection to work properly.

9 The focus of the new copyright frameworks should be in encouraging innovation in all creative sectors, not hindering it by focus on copyright infringements

The copyright framework should encourage game developers to allow users to create their own content in game environments, not block it.

As modern online games can have millions of users, developers have no longer any way to control the creativity of their gamers completely when it comes to user generated content. Expanding the responsibilities of intermediaries beyond taking down infringements when they are pointed out for them may lead to the creation of severe barriers of innovation in this area. The European game industry is already struggling with the global competition and these kinds of actions would give an important competitive advantage to developers from competing market areas.

The limitations on liability of internet service providers as intermediaries are highly necessary and should be expanded to other digital service and content providers.

At the opposite ends of the value chain, the content producers and the empowered end-users need a reliable, an open, and free end-to-end scenario.

Non-discriminatory access and treatment needs to be enforced and permanently secured in every link of the value chain and this can only be guaranteed by a public sector.

Piracy is solved by new business models

and digital distribution, not by stronger sanctions on copyright enforcement

Piracy has existed in the games industry as long as computer games have existed and has been the cause of a lot of damage for the industry, especially in the field of PC games. A successful copy protection system has been considered one that leads to a game being pirated 3-4 weeks after release instead of 3-4 days. Now, online and cloud-based mobile games have large advantages when it comes to fighting piracy. They can not be pirated as easily as traditional games which shows that to a degree new business models can be developed to go around the piracy problems of the Digital Era. As can be seen from the success of the mobile and online games, there are ways to solve the problem on its own without massive copyright or anti-piracy activities.

Thus as a representative of rights holders, for EGDF the current framework for fighting copyright infringements is clear enough. Any further action risks eroding the consumer trust in online privacy even more than now. This would seriously damage the position of European companies in global markets.

Instead efforts should be focused on fighting commercial piracy, where fake copies of games are placed for sale on digital market places.

Network neutrality enables the free movement of digital goods, services and knowledge in the digital single market area and it is the basis of innovation for the games sector. It is therefore vital for network neutrality to be protected.

Easing up the network neutrality raises a serious risk of dividing Europe based on national mobile and broadband networks. Network providers would have the possibility to slow down access to the virtual services competing with their own. Consequently this would also raise new borders for the free movement of innovative services and knowledge inside EU.

The regulatory efforts themselves face themselves constitutional and legal problems in the member states, but much more they might lead to an abrupt ending of innovation in the sector. Without network neutrality, Internet Service Providers (ISP's) might misuse their increased authority in regards to information and "hide" behind it. As the network capacity becomes more and more relevant, this risk is becoming more and more obvious.

Some ISP's have already locked or reduced the use of online games that use a lot of bandwidth. This can lead to a situation where specific independent content producers hold a weaker position compared to those who are working directly for network operators. This development can lead to a dangerous situation for European independent developers, when the strongest media content companies see this as a change to strengthen their dominant position in the media market. Therefore it is very important that the non-discriminatory character of networks stays as a main element of European Internet politics.

A hyperlink leading to a work of art should not be a subject to the authorisation of the rightholder

The success of the European games industry is partly based on building strong communities of consumers helping the game developer to market the game. Normally, communities of this kind involve thousands of consumers, in some cases hundreds of thousands or even millions. If the developer, instead of relying on reports from the users, would be forced to check all the links in their forums, this would bring a serious burden on precisely those European creative industries that are able to create jobs and growth in Europe by reaching a huge global audience.

**A DIGITAL-READY
COPYRIGHT
FRAMEWORK**

1 More legal certainty, less legal fragmentation

In general, a good user experience is vital for the success of the game developer studios. For this reason game developers try to follow the best consumer protection practices, as it usually means less complains from consumers and therefore less work for the game developers. Unfortunately, due to the quickly fragmenting nature of the consumer protection framework this is becoming a more and more difficult task to do.

The stronger the level of harmonisation of consumer protection regulation is in Europe the less the digital single market area is fragmented. For this reason **the regulatory framework should be harmonised as far as possible on the European level.**

However, a new consumer protection framework should not be introduced before the implementation of the new Directive on Consumer Rights has been reviewed. The new regulation should not be introduced before we have a clear overview of how the current one works.

Currently each member state has their own legal tradition that defines their approach on consumer protection. For this reason the already existing consumer protection framework is quickly becoming a major risk for European companies. The problem exists not so much on the European level, but on the national level, where member states are not co-ordinating their approaches.

Consequently the role of **the Consumer Protection Co-operation Network should take a more active role** in examining the implementation practices each member state has and building up a clear joint approach on different issues. As member states are fragmenting the digital single market area, they also have to provide **enough support for companies on implementing the consumer protection regulation.**

2 The protection of young game developers

The current consumer protection framework requires all companies to publish their postal address. For years, the success of European games industry has been based on young game development enthusiasts, who publish their first games already as teenagers. Some of them even found their own companies in their parents' basement or garage when they are underage like many highly successful tech entrepreneurs before them.

As the audiences of successful games are nowadays calculated in millions, you always have some highly problematic individuals among them. For this reason, and due to extremely harsh online discussion culture, exposing ones home address might pose a serious risk even for an adult, and much more so for a child.

For this reason the strict requirement to publish the developers' geographical address should be softened. It would be sufficient that the consumer has an easy way to recover the identity of a supplier and a way to communicate with him or her if needed.

3 No additional layer on data protection regulation

The proposed framework should only cover the transactions made in exchange of money. The idea to widen the current regulation to cover the transactions provided "in exchange of data" is highly problematic.

The proposed new data protection framework already provides a sufficient level of protection for consumers. These extra requirements would make the regulatory framework only more confusing, as part of the data would be covered by both the consumer protection framework and data protection framework. Furthermore, there is a serious risk of extra fragmentation if the data protection framework is implemented by both consumer protection and data protection authorities from different perspectives.

It would be difficult to determine what exactly is the data covered by the proposed consumer protection regulation and what is not. Separating the data provided in exchange of a digital service or good from all the other data collected for other purposes (e.g. crash reports, data for determining the location of the consumers for paying the VAT) would be confusing for both consumers and SMEs.

Consequently, all in all, it quickly becomes very confusing for a consumer to understand:

- what data is required to be collected by some European regulators,
- what data is collected, but not as an exchange of the service,
- and what data is provided in exchange of the service.

4 The liability of game developers should be limited to the money paid by a consumer.

In principle EGDF supports the idea of introducing a completely harmonised framework for damages in case of lack of conformity. However, the potential loss compensated by a price reduction should be limited to any economic loss and should not include any non-economic loss like the impairment of the quality of life and loss of enjoyment.

Furthermore, like already underlined by the implementation guidelines of the new British consumer protection framework, there should not be room for subjective judgment:

"Quality does not include the consumer's subjective judgements such as whether he liked a downloaded piece of music or not. Most computer systems' software, games and apps have minor defects that are corrected over time with fixes or upgrades. Therefore a 'reasonable person' might expect the defects to be present and judge any items containing them to be of satisfactory quality."

5 Subjective criteria by default for the conformity

EGDF supports the idea to introduce a two-step process for assessing the conformity of a digital product, where the subjective criteria will be used by default and objective criteria only if the subjective criteria are lacking from a contract.

Furthermore, EGDF welcomes the idea to give a consumer responsibility to make sure that a digital product is correctly integrated into the consumer's digital environment.

CONSUMER PROTECTION

6 Service credits should be allowed to pay compensation for damages

Service credits should be allowed as a means of compensating the damages, as often that is what consumers are expecting from a service provider and since they are a good way to decrease the risk of frauds in the system. However, it should be up to the businesses to decide whether they want to include an option to provide service credits for damages.

7 A coherent framework for tangible and digital goods

The borders between digital goods and services as well as tangible goods and digital goods are blurred. This means that the regulatory framework has to be extremely coherent. On the crowdfunding side, for example, it is not uncommon that digital services (e.g. access to a game) are combined with physical goods (e.g. a t-shirt) to a single package that is being pre-sold to consumers.

The dividing line in the markets is no longer between purely digital goods and services and tangible goods with embedded software, it is not even between the goods that need to be connected online in order you to use them and the goods that do not need an online connection. The main question is, if when cancelling a service agreement or returning the goods, the seller can be certain that a consumer does not have access to goods or services anymore. Thus the real dividing line in the markets is in the service providers' ability to restrict the access to or use of the good or service after a good has been delivered to a consumer.

8 A definite time period for asking for remedies

There should be a definite time period for asking for remedies. On the one hand, this would secure that consumers would have a motivation to test the product or a service shortly after they have purchased it or after an update has been introduced, which would significantly help a service provider to be informed about the faults in their products or services. On the other hand, this would ensure that the service providers would still have the required expertise in their organisation to introduce required changes in their products or services securing that they are in line with the contracts.

As the nature and business models of digital content and services vary significantly, it is hard to define the exact time frame the defect should appear. In practice time limits for the defects to appear should be hours, not days from the moment the consumer starts to use the product or service. Also the time limits for exercising the remedies should be as short as possible.

Often many digital products or services are closed down extremely quickly, if they do not turn out to be economically sustainable. This is particularly important for SMEs operating with minimal resources that the support measures for products or services can be closed down at the same time the product or service is closed down. Many game developer studios, for example, do not have more than three people working for them and the time used to support the exiting services is often taken away from building the new products whose success is crucial for the companies. For this reason alone the time limits should be as short as possible.

9 Returning and deleting all user generated content is not possible

The idea that a supplier should provide the consumer with technical means to retrieve all user-generated content provided by the consumer and any other data produced or generated through the consumer's use of the digital product is not realistic.

First of all, as mentioned before, most of the data collected is anonymised in order to secure that it is in line with the data protection framework. Secondly, there should not be an obligation to a service provider to store all user-generated content. Often, for example, chat logs are not stored forever, but are erased after a certain period of time. Thirdly, often the data generated by a consumer in a digital service is only usable in the service itself. For example, any user generated content or data generated in a specific game, is not usable in any other application.

Furthermore, having a right to retrieve user-generated content should not mean that it has to be deleted from a system. Often user-generated content can be linked to another piece of user-generated content in a digital service. For example, if two players have collaborated to build a castle in an online game, the castle should not be removed from a game when one of the players decides to terminate a contract.

10 Advance payments for tangible goods have to be allowed

The European digital content creators are relying more and more on crowd funding based on presales. Many of these campaigns combine both tangible (e.g. t-shirts) and non-tangible goods (e.g. an access to an early version of a game) and they are often completely based on advance payments provided by consumers. The whole idea of these campaigns is that the advance payments enable the realisation of the crowdfunding campaign. For this reason mandatory deposits of any kind by the trader, until the delivery of the digital content or tangible goods is realised, would easily destroy pre-financing based crowdfunding platforms in Europe.

**CONSUMER
PROTECTION**

1 Platforms should not have a right to limit the freedom of expression and arts

As most of the distribution platforms of digital content are run by non-European companies, they usually follow non-European practices on the content allowed on their platforms. In practice this leads to a situation where they often strongly limit the freedom of expression and arts from a European perspective. At the moment, European games do not have the same freedom to discuss the full range of human emotions as freely as European films operating in a more diverse distribution environment. This seriously hinders the development of games as a form of art.

In order to strengthen the media diversity and freedom, the European Commission should carefully examine the type of European content that is blocked from online platforms and map ways to secure the freedom of expression and arts also in the Digital Era.

2 A responsibility to reply to both consumers and content providers

At the moment many distribution platforms rarely reply to contact requests from content developers even though they happily outsource consumer services to them. This has led to a situation where content creators do not have enough information to handle consumer complaints about their products, as part of the information required to process these complaints might be in the hand of distribution platforms.

3 Platforms have to become more transparent

At the moment, discoverability/findability is the biggest challenge for all European content creators operating in the digital environment. New and novel regulatory solutions should be developed to address the transparency and operations of the research algorithms and practices related to editor's choices. Europeans have a right to know what is shown to them and what kind of content is hidden from their eyes.

Furthermore, at the moment distribution platforms do not necessarily inform content creators well beforehand about upcoming updates on their platforms. For this reason, content creators operating on mobile platforms for example are struggling to secure that their applications will continue to work as promised after an update. Furthermore, the platforms do not necessarily inform content creators about requests made by public authorities related to their content, which might lead to a situation where a content creator does not have information about the early warning provided by public authorities about possible problems in their product or a service.

4 Limitations for unfair B2B contract terms

In mobile environments, for example, the developers of mobile applications have no bargaining power towards the distribution platforms. For this reason, the competition authorities have to introduce a framework that protects European content creators from unfair contract terms. For example, the platforms should always provide a clear reason why they cancel a contract with a certain content creator. The platform holders should be obligated to only act towards content creators for reasons that are justified, and not to act as they please.

5 A right to seek redress

Content creators have to have a right to seek redress for the decisions of public authorities even if the decisions would have been originally targeted to platforms. The right to seek redress has to be secured for content creators even if the decisions made by public authorities would be addressed for a distribution platform. If a consumer protection authority, for example, asks a distribution platform to remove certain content from their platform, the content creator should be allowed to seek redress for the decision.

PLATFORMS

1 The approach of AVMSD works with broadcasting, not with digital markets

The current Audiovisual Media Services Directive has been built for traditional broadcasting services. Consequently its regulatory approach works poorly with quickly evolving online services.

In order to keep the European regulatory framework as coherent as possible in the online environment, the Commission should make sure that consumer protection issues are discussed under consumer protection regulation and no parallel regulatory frameworks addressing the same issues are built, as they would be confusing for both consumers and businesses.

For example, both AVMSD and e-commerce directive require that a service provider has to publish their geographical address. Considering the fact that the online can be extremely toxic and hostile environment to operate in and as it is becoming more and more common that service providers are self-employed people operating from their homes (or even minors), this part of the regulation should clearly be updated. The most effective way to change it is to make the changes in the e-commerce directive that targets all digital market sectors.

Thus the AVMSD directive should focus on traditional broadcasting and other issues should be addressed through other regulatory frameworks that already apply to all actors operating in European markets (e.g. European consumer protection framework).

2 Rules for consumer protection should be written in consumer protection regulation

The unfair commercial practices directive already provides a relevant regulatory approach for targeting sponsorship in the online environment and the protection of minors from aggressive commercial practices. Furthermore, when it comes to the protection of minors, by now there are already a number of examples of successful self-regulatory actions (e.g. PEGI).

Thus, in order to avoid regulatory fragmentation, the scope of the AVMSD should not be widened to cover all on-demand content. Consequently, instead of building an additional regulatory framework for online content through AVMSD, the Commission should focus on co-ordinating the implementation of the existing consumer protection framework. The most urgent task should be to build a joint position within the CPC-network on the sponsorship practices and product placement in social media.

3 AVMSD should not block European eSports live streaming

Lately eSports and live videos streaming services focusing on video games have become enormously successful. Twitch, for example, has more than 100 million visitors per month.

Counter Strike is one of the leading games played in eSports events and it has an age rating of PEGI16 and therefore can be broadcasted in a TV in the evening only. However, it is likely that as a film or a tv-series it would have game would have a lower age rating than as a game. Consequently the current system fails to take into account the cross-media nature of game streams.

The whole idea of on-demand digital services is that a consumer can have access to them at any time of the day on any time zone they happen to be. Thus, if the current rules for the protection of minors from the linear side would be implemented also for the on-demand side, service providers would be potentially forced to track the time zones of their users and block the access to some of the content for a certain part of the day.

Furthermore, these days tens of millions gamers are already live streaming their game play around the globe. This would mean that potentially for a vast majority of a day European fans could not watch live streams of or live stream by themselves PEGI16 or PEGI18 rated games.

Consequently, this approach does not naturally make any sense in the global digital markets.

If the AVMSD were to be applied to all user-generated content, the regulation might actually cause severe risk for minors that create content themselves. For example, all best practices guidelines strongly recommend that minors should not publish their geographical address on the internet. If the scope of the directive would be broadened to on-demand content, a minor uploading his or her videos on his or her website might be forced to do just that according to the directive.

4 Promoting European content does not happen through quotas

At the moment, discoverability/findability is the biggest challenge for all European content creators operating in the digital environment.

Consequently, potential issues should be addressed in context of the comprehensive assessment related to the role of online platforms and intermediaries. Due to massive amount of digital content in global markets, strict quotas are not a suitable tool, instead new and novel regulatory solutions should be developed to address the transparency and operations of the research algorithms and practices related to editor's choices.

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