

10.1.2022

EGDF response on the adapting liability rules to the digital age and artificial intelligence (Civil liability) consultation

About EGDF

1. **The European Games Developer Federation e.f. (EGDF)**¹ unites national trade associations representing game developer studios based in 18 European countries: Austria (PGDA), Belgium (FLEGA), Czechia (GDACZ), Denmark (Producentforeningen), Finland (Suomen pelinkehittäjät), France (SNJV), Germany (GAME), Italy (IIDEA), Netherlands (DGA), Norway (Produsentforeningen), Poland (PGA), Romania (RGDA), Serbia (SGA), Spain (DEV), Sweden (Spelplan-ASGD), Slovakia (SGDA), Turkey (TOGED) and the United Kingdom (TIGA). Through its members, EGDF represents more than 2,500 game developer studios, most of them SMEs, employing more than 40,000 people.
2. **The games industry** represents one of Europe's most compelling economic success stories, relying on a strong IP framework, and is a rapidly growing segment of the creative industries. The European digital single market area is the third-largest market for video games globally. In 2021, Europe's video games market was worth €23bn, and the industry has registered a growth rate of 22% over 2020 in key European markets². There are around 5 100 game developer studios and publishers in Europe, employing over 87 000 people.³
3. **Usually, redress is not a problem in game markets.** The creators of digital content and services rely more and more on their fan communities to get feedback (co-innovation) and get their help in viral marketing. As negative consumer feedback can quickly erode a fan community, the creators need to secure a good consumer relationship.

¹ For more information, please visit www.egdf.eu

² ISFE Key Facts 2021 from GameTrack Data by Ipsos MORI and commissioned by ISFE <https://www.isfe.eu/data-key-facts/>

³ 2019 European Games Industry Insights report: http://www.egdf.eu/wp-content/uploads/2021/08/EGDF_report2021.pdf

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

4. In principle, EGDF supports the idea of introducing a completely harmonised framework for damages in case of lack of conformity. Furthermore, to secure fair competition in the EU digital single market area, both EU and non-EU traders must have the same rights and obligations.
5. Technically complex products, like AI-enabled products and IoT products, may present some minor difficulties in terms of providing defectiveness and causality in the event of damage. The Commission should respect technological neutrality and introduce a similar risk-based approach on damages as it has taken in its proposal for AI regulation. The Commission should focus on high-risk applications that should have more extensive liability for damages than low-risk ones.
6. To bring much needed legal security and predictability to the European Digital Single Market area, the Commission should harmonise the rights of consumers to claim compensation for damages. The less harmonised the EU liability rules are, the higher are the costs to overcome regulatory fragmentation. A fragmented regulatory framework leads to increased legal information costs, the need to develop different adaptations of and distribution solutions for different countries, and higher costs on and limitations for consumers on accessing, for example, AI-based solutions.
7. The potential loss or damages compensated by a price reduction should be limited to any economic loss (limited to the amount paid by a consumer). They should not include any non-economic loss like the impairment of the quality of life and loss of enjoyment. 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.
8. Furthermore, the following limitations for the liability of the producers of products are still valid and do not create unreasonable obstacles for consumers in making compensation claims.
 - producers are released from liability for death/personal injury 10 years after placing the product on the market
 - producers are released from liability for property damage 10 years after placing the product on the market
 - consumers have to start legal proceedings within 3 years of becoming aware of the damage

- Consumers can claim compensation only for damage to property worth more than EUR 500
- Consumers can claim compensation only for damage to the property intended and used for private purposes

Circular economy

9. When a third party refurbishes or remanufactures a product or a spare part and places it on the market as a new product, they should also be liable for defects causing damage.

High-risk AI applications

10. The new AI regulation will significantly clarify the roles and responsibilities of different actors in the AI value chain. It also introduces mandatory transparency obligations making the use of AI more transparent and explainable and therefore significantly reducing the risks related to opacity and complexity. Furthermore, the upcoming AI regulation introduces horizontal obligations like mandatory quality management systems, technical documentation, logs, conformity assessment procedures and registration obligations on the providers of high-risk AI systems. Consequently, the new AI framework is likely to create sufficient tools for linking the damage AI caused to the actions or omissions of a human actor, making victims of the damage caused by AI more protected and introducing more certainty on how national courts and enforcement authorities will approach proof and liability gaps in relation to AI.
11. All in all, the upcoming AI regulation will create a regulatory environment that sufficiently increases trust in AI and encourages the uptake of AI-enabled products and services; therefore specific liability framework for AI might not be needed.
12. Consequently, before building a new liability regime for the AI. The Commission should:
 - Wait for the final approval implementation of the AI regulation and evaluate its impact on the markets.
 - Wait for the member states to introduce competent national authorities for enforcing AI regulation so that the possible new liability regime for AI can be implemented through them (e.g evaluation of the role of AI for damages and access to log data).
 - Wait for the high-risk AI-based products to enter the markets and map the actual damage caused for them before introducing any mandatory insurances by them.
13. Only after the enforcement structures introduced by AI regulation have been established and the impact of AI regulation on the development of AI has been evaluated, the

Commission should evaluate the need for harmonisation of the liability irrespective of fault ('strict liability') for operators of high risk AI technologies that pose a serious injury risk (e.g. life, health, property) to the public.

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