



## The Video Games Industry and the Geoblocking Regulation

The Interactive Software Federation of Europe ([www.ifse.eu](http://www.ifse.eu)) represents the European video games industry. Our membership comprises 16 major publishers and national trade associations in 17 countries throughout Europe. Our national associations in turn represent hundreds of European games companies. Our industry is a world leader in driving new business models for the 21st century, and our annual contribution to the EU economy is now estimated at approximately €18 billion (*Newzoo*).

ISFE is concerned by the inclusion of video games in the proposal on Geoblocking. The reality is that there is no need for it to apply to video games as the market is already functioning well - see the 2015 Eurobarometer study<sup>1</sup>. This industry was not consulted prior to the proposal and is not covered in the Impact Assessment. This failure to respect the Better Regulation principles is not the proper way to make a law that will affect an industry that contributes billions of Euros annually to the EU economy. In addition a Joint Research Centre (JRC) study has been referenced in the latest Council text but that study only looks at the console business, and only for one company (roughly 10% of the total market) and cannot be used as representative data for the whole of Europe.

In the latest draft, it appears that video games will be the only content sector protected by copyright that will be included in the Regulation, while e-books, music and audiovisual works are excluded via a review clause. This is inexplicable and unjust. Why try to damage the one part of the European content sector in which Europe leads the world?

1. **Growth opportunities in EU digital markets for online games** - Member States in Central and Eastern Europe especially are areas with the potential for major digital growth over the next decade, as wages and living standards catch up to Western European levels. The video games industry need to be able to meet consumers' needs and means on a regional basis to deliver the best possible products and experience to consumers and grow all EU markets. The reasons for differences in consumers' purchasing power across the EU are beyond the industry's control. The Regulation will harm rather than help our industry's growth, as it will reduce flexibility in shaping offerings and promotions. We note that music, which may be excluded from the Regulation, currently has prices that are 30% less than average in some markets. There is no reason why the video games industry should not be granted the same level of flexibility to promote games in different ways in different countries driving digital adoption and increasing consumer engagement, thus enabling those consumers enjoy a broader variety of products and services. This was clearly never considered and investigated before video games were included in the proposal. Today the number of digital games sold per 1000 inhabitants in Western and Central and Eastern Europe is widely different as shown by the ISFE statistics below. If games are included in the Regulation with immediate effect there will be major consequences for our industry, with serious knock on effects to gamers. The statistics show the potential growth opportunities in CEE markets, hence the importance of localisation and flexibility.

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<sup>1</sup> Flash Eurobarometer 411 Study - Cross Border Access to Online Content August 2015 p.107

## Video Games and the Geoblocking Regulation cont/.

Country	Digital Game Unit Sales (2016)	Population (2015)	Digitisation*
UNITED KINGDOM	9,316,857	63,843,856	146
SWEDEN	1,356,244	9,693,883	140
IRELAND	501,698	4,726,856	106
GERMANY	7,169,921	82,562,004	87
NETHERLANDS	1,278,686	16,844,195	76
FRANCE	4,708,828	64,982,894	72
SPAIN	1,804,096	47,199,069	38
<b>HUNGARY</b>	<b>274,168</b>	<b>9,911,396</b>	<b>28</b>
<b>SLOVAKIA</b>	<b>122,299</b>	<b>5,457,889</b>	<b>22</b>
<b>POLAND</b>	<b>836,738</b>	<b>38,221,584</b>	<b>22</b>
<b>CROATIA</b>	<b>89,398</b>	<b>4,255,374</b>	<b>21</b>
<b>GREECE</b>	<b>178,117</b>	<b>11,125,833</b>	<b>16</b>
<b>BULGARIA</b>	<b>55,153</b>	<b>7,112,641</b>	<b>8</b>
<b>ROMANIA</b>	<b>134,928</b>	<b>21,579,201</b>	<b>6</b>

\*Digitisation = Number of digital games sold per 1,000 population

2. **Flexibility necessary for tailoring commercial offers** – While video games tend to have a global appeal, this sector is however subject to commercial pressures and localization needs that vary country by country. Economic reasons may or may not require industry to apply different prices in different countries when offering video games to consumers – but this should be left to the powers of the market. This is especially valid for promotions as some markets in the EU are very competitive because retailers compete mainly on price, leading to strong price competition and hence price deflation. Flexibility in applying lower prices would certainly boost sales in countries with lower purchasing power – but in such cases, it is necessary to be able to take steps to avoid risks related to lower consumer protection and also to improve the game experience itself.
  
3. **Lower consumer protection and unclear law** - The Consumer Rights Directive implemented clear rules on wording that must be used to describe products. Buying a product in a foreign store, particularly in a language the consumer may not fully understand, will jeopardise consumer protection. For example, the PEGI age rating system for video games does not apply in Germany; therefore, if a German consumer buys from the UK or French store he/she will not see the correct German age rating. Local product description requirements, warnings and recommendations may also be missed e.g. the required epilepsy warning in France, compatibility information guidance on how to play the game, the importance of taking breaks, how to use the virtual reality mode etc. Some games include an ongoing interactive experience with online play modes that allow you to play the game against others. The terms of service for a game establish rules on how consumers are expected to behave online with other gamers and the consequence of breaking those rules. A consumer buying from another country may not understand that information in the Terms and Conditions apply to the purchase, and so would not understand what means of redress may available to them in an online environment if they encounter another player breaking rules.
  
4. **Research confirms weak demand for cross border shopping for video games and little benefit to consumers** - Apparently, consumers are not dissatisfied with the status quo, they are instead happy with how the market is structured today. For example, the 2015 Eurobarometer study shows that video games are the content that is least searched for in cross border access requests.

## Video Games and the Geoblocking Regulation cont/.

5. **Staggered releases dates also occur for video games** - Games based on films have staggered release dates. This approach, applied for a variety of reasons, in particular for the films involved, would be impossible if the proposal was to be implemented in its current form.
6. **Operational costs for new market entries and small companies** - Entities selling video games and related services should not be required to make those offers in all countries of the Union. New market entrants and small competitors may especially be unable to do this economically, logistically and technologically. Thus, freedom must be maintained for them to limit their offering to certain territories within the EU. Otherwise, the proposal will lead to a decrease in, rather than the fostering of, competition in the Union.

Due to the complete lack of an appropriate consultation process and impact assessment none of the aspects outlined above were considered before the unfair and unjust treatment of the video games industry was implemented in the current proposal.

In light of all of the foregoing it is clear that video games should be excluded from the Regulation.

**ISFE, November 2017**