



INTERACTIVE SOFTWARE
FEDERATION OF EUROPE
Representing the European video games industry

ISFE Response to the inception impact assessment on measures to further improve the effectiveness of the fight against illegal content online Transparency Register No. 20586492362-11

The Interactive Software Federation of Europe (ISFE), representing the European video game industry, welcomes this opportunity to provide feedback on the inception impact assessment on measures to further improve the effectiveness of the fight against illegal content online, and also looks forward to participating in future consultation activities relating to this issue. ISFE's membership comprises 16 major publishers and national trade associations in 17 countries throughout Europe. Our national associations in turn represent hundreds of games companies across Europe that produce and publish interactive entertainment and educational software for use on personal computers, game consoles, portable devices, mobile phones and the Internet. The video game industry is the fastest growing of Europe's creative sectors and is now estimated to be worth about €19 billion annually (Newzoo). The video game industry enjoys high annual growth rates, is a major provider of employment in Europe's high tech and creative sectors and also generates substantial tax revenues.

The video game industry epitomises technological innovation and thrives on the development of original intellectual property. A robust and workable IP framework, together with strong but balanced enforcement, is accordingly integral to the industry's continuing success. Despite the industry's development of new business models, and its success today, piracy still constitutes a major threat and causes widespread economic damage to game developers, publishers, distributors and retailers. Given the speed and viral nature of online distribution and the fact that most video games titles earn the bulk of their revenue in the weeks after their release, any delay in the removal of unauthorised copies of video games distributed online can have a dramatic impact on their commercial success and can significantly reduce the ability of publishers to recover their development costs and the possibilities for investment in new games.

The distinction between content creators and intermediaries is becoming less clear today in the video games sector. Online games increasingly empower users to interact with publishers' servers and other users to build virtual worlds and to share user-generated content. Consequently, many game publishers are now also intermediaries for the purposes of the E-Commerce Directive and of "notice and takedown" or "notice and action" procedures. We are therefore very sensitive to the need for balance in the online copyright ecosystem. ISFE's

members send millions of copyright (and trademark) infringement notices every year to protect their content, and they also receive and process such notices from other right holders. As both senders and recipients of such notices, we believe that they are well positioned to lend a balanced perspective to any discussions focused on potential improvements to notice and takedown procedures.

We agree with the Commission that “the different nature and context of dissemination of specific types of content and of the importance of context to recognise their illegal nature require careful consideration.” We also agree that “a range of online service providers have particular societal responsibilities to help tackle illegal content disseminated through the use of their services.” While ISFE has long recognised that the cooperation of intermediaries is essential to combat online piracy and that efforts to encourage such cooperation through broadly inclusive multi-stakeholder dialogue should be maintained and renewed, ISFE would be opposed to any initiative that would risk destabilising the delicate balance that was successfully achieved in the E-Commerce Directive and that has worked reasonably well for the past 16 years. We also believe that any agreed future cooperation between rights holders and intermediaries must be practical and effective, and must respect and protect privacy, due process, competition, free speech and legitimate uses of the Internet.

ISFE endorses the stated overall objective of this initiative, i.e. to reduce the availability of illegal content online in conformity with the existing legal framework, while ensuring that measures to remove or disable access to allegedly illegal content do not also lead to unintended take down of legal content limiting the ability of users in the online world to express themselves freely. We share the Commission’s view that there is a need for faster and more effective detection and removal of illegal content, a need to avoid that legal content is erroneously taken down and a need for transparency and sufficient reporting by online platforms. We also share the Commission’s concerns about the risks of legal fragmentation across the EU.

Regarding the policy options outlined by the Commission, ISFE welcomes that fact that the Commission plans to monitor the effects given to the recommended measures set out in both the Recommendation of 1 March 2018 and in the Communication of 28 September 2017 on Tackling Illegal Content Online. Given the fact that these recommendations are relatively recent, we think that it is important for sufficient time to be given to both Member States and online platforms to give effect to them, and that the Commission should avoid any rush to propose legislation that may not actually be necessary. That said, we would not necessarily be opposed to the Commission pursuing a legislative option should it finally be required, and would tend to favour Option 2 (horizontal legislation addressing targeted issues) in that event.

We would like to thank the Commission for its consideration of the above points and remain available for any further clarifications.

ISFE Secretariat, March 2018