



## **Green Paper on Copyright in the Knowledge Economy**

### **Comments from the Interactive Federation of Europe**

ISFE, the Interactive Software Federation of Europe<sup>1</sup> represents the European videogame industry which produces entertainment and educational software for use on personal computers, game consoles, portable devices and mobile phones. It is the fastest growing 'content' sector in Europe.

The interactive software industry embraced the Internet as a creative and business tool at an early stage and now has a vested interest in its proper development. Interactive software is increasingly delivered and enjoyed online and is a rich and exciting source of user created and culturally diverse content.

ISFE responds to the following part of the Green Paper questionnaire in the context of the user generated content that is increasingly a part of the online games and virtual worlds produced and operated by our member companies.

#### **3.4. User-created content**

**24) Should there be more precise rules regarding what acts end users can or cannot do when making use of materials protected by copyright?**

**25) Should an exception for user-created content be introduced into the Directive?**

The videogame industry has long been a pioneer in the development of technology that increases game players' interaction and participation and also provides them with new opportunities to create, interact, and learn. An important consequence of this investment has been the creation of ideal conditions for the development of user-generated content. This type of innovation has been an integral part of the online games and virtual worlds developed and marketed by some of our member companies. The success of these game industry products that provide users with tools and an environment to create and share content demonstrates that innovation is not stifled under the current legal framework. Examples of such products are World of Warcraft, Spore, X-Box Experience, Mii and Little Big Planet where, utilising the technology developed by our member companies, users are able to create their own virtual personae and property within an online world.

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<sup>1</sup> **ISFE** Membership consists of the following: **Associations** - AESVI (Italy), ADESE (Spain), BIU (Germany), BLISA (Belgium), ELSPA (UK), FIGMA (Finland), MDTS (Sweden), MUF (Denmark), NVPI (The Netherlands), NSM (Norway), OVUS (Austria), SELL (France), SIEA (Switzerland), SPIDOR (Poland). **Companies** – Activision, Atari, Eidos, Electronic Arts, Konami, Microsoft, Nintendo, SCEE (Sony Computer Entertainment Europe), SEGA, Take 2, THQ, UbiSoft, VUG (Vivendi Universal Games), The Walt Disney Company France.

The videogame industry will go on developing interactive tools for online and virtual environments which will in turn lead to more opportunities for users of games to create and innovate. A certain and secure legal environment is required in order that all of this investment and development can continue to the greater benefit of humanity i.e. the products of this industry are increasingly being used not just for play, but also for education, science and medical research.

ISFE therefore feels that, for reasons of legal certainty and security, contractual rules governing user-generated content are best left to the individual companies that invest in and develop the technology which allow that content to be generated by the users. In addition it is a fundamental feature of the industry's PEGI Online system that removal of undesirable or harmful user-generated content is carried out by member company website providers themselves.

ISFE also believes, that existing copyright laws notably the parameters for copyright exceptions as set out in Section 5 of the EU 'Copyright' Directive (2001/29) , and including the Berne 'three step' test, are already sufficient to deal with the legal issues that arise in relation to user-created content. It is also obvious that if content is truly created by a user, it is fully original material and does not need to be the subject of an exception.

The Berne 'three step' test is now the established basis for development of copyright exceptions designed to protect the investment, both intellectual and commercial, of the creator whilst at the same time providing the requisite amount of flexibility to deal with the new questions that continue to arise. The existing copyright regime is based on the just and fair principles that creators should continue to have the right to control the use of their work and to be paid when it is used by others. Any change to this regime by the introduction of, for example, a new exception for 'transformative' works is unjustified, will cause uncertainty and in turn lead to a reduction of investment and innovation in this important sector.

Brussels, November 2008