



ISFE response to the Data Act Inception Impact Assessment - Public Consultation

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1. ISFE welcomes the opportunity to respond to the Inception Impact Assessment Consultation on the Data Act and supports its overall objective to ensure fairness in the allocation of economic value among actors of the data economy. Our sector understands how important data is for economic development. Without data, our industry would not exist. Data is fundamental for the development and creation of new video game content and plays an essential role in ensuring good and frictionless gaming experiences in line with consumers' requirements and expectations.
2. On-screen action in a video game is determined by a combination of software operation and user input. The data that is processed by a video games company, for instance to detect software errors (bugs) or find bottlenecks within the game, is based on a specific code format which only has relevance in the context of that specific game. This underlying code is proprietary in nature (and is, of course, copyright protected under the EU Computer Programs Directive) as well as subject to non-disclosure agreements under the licensing agreements allowing gameplay.
3. Revealing the code would allow other companies to copy the game and would weaken the technological protection measures put in place to prevent piracy and keep players safe from hackers. The code is the incentive that justifies the investment in the game and ensures the competitive advantage on the market. We are concerned that the Commission's new proposals on access and use of data may weaken the existing layers of legal protection (such as contracts, copyright, trade secrets law, and database protections) which prevent the code from being shared.
4. Furthermore, the code only works in the context of a particular game and cannot be "translated" to other games. The data that is based on such a code format cannot therefore be converted into something that is meaningful and applicable in the context of another game. We are concerned that a new legal instrument which would "contribute to the portability of data generated by individuals" might force companies to make technical interfaces for real-time data access or machine-readable formats compulsory when there are no economic incentives to do so. Recital 68 of the GDPR acknowledges that data controllers are not required to adopt technically compatible systems. Adding new technical requirements will put an additional strain on resources and could have a substantial financial impact without a clear added value to the consumer.

About ISFE

1. The Interactive Software Federation of Europe (ISFE) comprises [national trade associations](#) covering 18 countries throughout Europe which represent in turn hundreds of games companies at national level. ISFE also has as direct members the leading European and international publishers, many of which have studios with a strong European footprint, that produce and publish interactive entertainment and educational software for use on personal computers, game consoles, portable devices, mobile phones and the Internet.
2. The video 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. All in all, there are around 5,000 game developer studios and publishers in Europe, employing close to 80,000 people. In 2019, Europe's video games industry was worth €21bn, and the industry has registered a growth rate of 55% over the past 5 years in key European markets¹.

¹ [ISFE Key Facts 2020](#) from GameTrack Data by Ipsos MORI and commissioned by ISFE. An updated Key Facts 2021 will be released very soon.