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Subject: Statement

CONCERNING THE CONSULTATION ON CREATIVE CONTENT ON EUROPEAN SINGLE MARKET

Executive Summary:

European Games Developer Federation (EGDF) supports by principle the creation of a modern, pro-competitive, and consumer-friendly legal framework for a genuine Single Market for Creative Content Online. However in relation to the ambitious goal of the reflection paper¹ the hard copyright focus of the paper is too narrow.

EGDF is disappointed that the role of the video games as a driving force in an innovative new media is not sufficiently addressed in the reflection paper. The one and only paragraph considering video games in the paper is a good example of common underestimation of challenges faced by the European computer games industry. The description is very thin and not really pure, but reflects the little attention commission has given to the computer games industry during the recent years. This has to change.

Games and more specific gameplay should be protected in copyright legislation from plagiarism. Similarly games should be included in the legislation as their own category equal to e.g. works of visual art or films.

Due to complex and territorial management of digital reproduction rights and “making available” rights contemporary European computer games have rarely access to contemporary European music, although on global markets both sides would benefit from closer co-operation. In the end, this situation is hindering the use of European content in European interactive media. Thus EGDF encourages strongly the simplification of European music licensing.

The pure amount of languages in Europe poses a serious problem, as games have to be usually localized. Therefore a licence system should be developed, which would allow a publisher to buy a licence on a game for a certain language instead of certain territory. It should be remembered that for many European languages there are constantly growing global market (e.g. Portuguese, Spain and French). Thus multilingualism is a great opportunity for Europe.

Also orphan works exist on the field of games. But unlike on field of books or films, currently there are only few public institutions storing them for upcoming generations. Due to rapid technical development software and hardware required for playing games becomes quickly non-existent or falls apart due to aging. On the field of online games all existing copies of a game are lost when a game studio quits

¹ Creative Content in a European Digital Single Market: Challenges for the Future A Reflection Document of DG INFSO and DG MARKT. Available online at:
http://ec.europa.eu/internal_market/consultations/docs/2009/content_online/reflection_paper%20web_en.pdf

supporting it.

If we do not want the cultural heritage of Europe to end on the eve of the digital age, libraries or museums should be eligible to emulate games so that they are in general able to keep the digital heritage of Europe alive. When the copies are used only for research purposes and they are not made publicly available, these bodies should be eligible to save games for future generations, although copyright owners would be against it.

As piracy affects significantly on games industry, EGDF has been trying to find a sustainable solution to it for years. During last years most of the legislative actions have not brought desired results, fighting against piracy rings and educating public has helped a little, but the best results have been achieved by developing new almost piracy proof business models (e.g. free-to-play online games). The further implementation of these successful business models requires public support to develop them and a well functioning and easy to use European wide payment system, not further anti-piracy measures.

The endangerment of network neutrality places a serious risk for those business models. After the debate considering this package the EP and the EC reached an ambiguous compromise on network neutrality during 2009. The time will show how it will be implemented on the online single market. The French three-strike model, coming from the anti-piracy movement, can be seen as an example of this in this light. It has more to do with the attempt to control the Internet distribution than with a fight against piracy. Some ISPs have already locked or reduced the use of strong online computer games for capacity reasons. This can lead to a situation, where specific independent content producers have a discriminated position to those who are working directly for the network operators.

The integration of mobile operators, internet service providers (ISPs), telecom companies, broadband technology companies, websites, online shops, online rights aggregators and social networking platforms rises a serious risk of creation of oligopolies in the field of creative content. Consequently, all in all an important source for growth and innovation in this sector is a clear regulatory differentiation between networks and media content. This also means that services based on access subscription should not be tied to a particular ISP.

For game developers, it is highly important to maintain competition on every level of the value chain also by using legislative measures. Currently access to games industry is often controlled by game platform owners. Therefore governments should lower market entry barriers for content producers in Europe e.g. by making sure that the European games industry has equal access to technology and that the access is fair and reasonable for all European companies.

At the moment, rating does hinder the free movement of content dramatically. However, protection of minors is a crucial aspect when distributing games or movies, and it must not be weakened in Europe. As the ongoing digitalization has made game developers one of the main providers of creative digital content for minors, they should also have a central role in the PEGI system. The PEGI system as self-regulatory body should offer real influence in the system for EGDF, so that the PEGI will not be used to create regulatory barriers hindering game developers access to market in favour of game publishers.

In the reflection paper cultural diversity is understood as the co-existence of professionally produced and user generated content. For Europe it is highly important to secure this fruitful co-existence, but if cultural diversity is understood as securing the digital blossoming of all European cultures, one of the most important measures is to make computer games legally eligible for public funding for culture and innovation in order to secure the cultural diversity and technological development.

In addition, in order to promote the creative content online sector the Union has to focus on providing a legal environment in which SMEs can survive and freelancers and independents can operate more freely.

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1. The success of European creative content online cannot be secured just by copyright regulation

The goal of the reflection paper is to provide guidelines for creating a modern, pro-competitive, and consumer-friendly legal framework for a genuine Single Market for Creative Content Online. The main means for achieving this are identified to be:

- *creating a favourable environment in the digital world for creators and rightholders, by ensuring appropriate remuneration for their creative works, as well as for a culturally diverse European market;*
- *encouraging the provision of attractive legal offers to consumers with transparent pricing and terms of use, thereby facilitating users' access to a wide range of content through digital networks anywhere and at any time;*
- *and promoting a level playing field for new business models and innovative solutions for the distribution of creative content.”*

European Games Developer Federation (EGDF) finds this framework relevant for achieving the goal and by principle supports proposed actions taken for implementing them. However the European legislation discussed in the paper is limited to: Copyright and Information Society Directive², Rental and Lending Directive³, Satellite and Cable Directive⁴ and briefly on antitrust legislation⁵. In relation to the ambitious goal of the paper the legislative focus of the paper is surprisingly narrow.

EGDF would like to underline that a favourable environment in the digital world for a culturally diverse European market is a question that should not be approached only in the light of copyright legislation. Legislative actions targeted on the promotion of new business models and innovative solutions for the distribution of creative content are a much larger question than content copyright.

In the end, securing innovative cultural diversity in a European single market is in the highest degree a question of the European legislation regulating state aid for cultural products. Also European legislation considering network neutrality is much more crucial for the success of innovative business models than mere copyrights of the content.

1.1 Sensitive regulation is good for games industry

By principle EGDF welcomes creativity and innovation sensitive regulation in the European single market. Global content industry is currently going through the process of digitalization, which is revolutionising everything in the industry. Without a doubt, the current active debate in global and European political structures about policy and legislation will impact on the ability of games sector entrepreneurs to operate in a global context with the freedom that has been maybe their only or main competitive advantage in Europe. Thus it is highly important that regulatory measures have to be kept up to date in order to secure the competitiveness of European players on global dematerialized markets

For example many take the freedom of the Internet for granted, but its “man made”. In its 15 years of commercial existence, the Internet has become the central communication platform. It cannot remain the same forever, technology and regulation go hand in hand: at the beginning the Internet was the Wild West, the land of the trapper with the gun; today settlers have created cities, churches and schools. To organize this, new types of regulation and enforcement are necessary. The raising importance of online content distribution has brought with it the raising importance of online content regulation. It did not only

² Directive 2001/29 of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society. Available online at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0029:EN:HTML>

³ Directive 2006/115 of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property. Available online at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992L0100:EN:HTML>

⁴ Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission. Available online at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31993L0083:EN:HTML>

⁵ The paper discusses briefly the antitrust decision in *International Confederation of Societies of Authors and Composers (CISAC)*. Available online at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1165&guiLanguage=en>

bring opportunities for opening up the market for new, creative, quality driven and locally diverse content, but it brought also opportunities for regulators.

The current regulatory systems are not yet prepared to respond to the new challenges brought by digitalisation and the regulatory context of games, especially online games, is obscure from game developers perspective. Regulation should support those, who take high risks to make projects happen in a cultural and innovative environment.

In general, it is necessary to pay more attention to the subject of game development and to have a positive attitude about it. Regulatory measures should value the cultural, technological and economic impact of a flourishing game developer community for the whole of Europe. They should value games as a cultural and audiovisual medium in the rapidly changing information society. The definition of culture cannot be made up in an ivory tower, but in a democracy it is necessary to look at the people – and they have opted for games as culture a long time ago.

1.2 Online distribution should not be killed by under or over regulation

Somewhere between the traditional audio visual, and the new media sectors, and the ISPs and telephone companies, games is a sector that policymakers find hard to categorise. Thus it is important to make sure the laws that will be applied in other media do not throw out a baby of games sector with bathwater.

It is very essential to remember that before the introduction of the Internet the production and the distribution of games and other content, like music, was not a paradise. Value chains were long and a large part of profits went overseas. European regulation has to look to the future, not get in a rut.

The advantage of digital distribution is the ability of the consumer to go directly to the content by the developers themselves. As long as developers come from Europe, the creative side of the value chain strengthens usually the European side of the media business. In other words, in general cutting out the middleman (like publishers and retail) from the markets is good for Europe as a whole. That is why it is important that the Internet is in the centre of the new regulatory network of the creative content.

As internal market for dematerialized goods and services is just emerging in Europe, it is currently at a very vulnerable state. Thus if EU wants to become the most competitive digital economy, it should pay special attention not give advantage to competing digital economies in other parts of the world by over or under regulating its own markets. Thus at the moment all the regulation effecting on digital markets should be evaluated with extra care, as securing the competition in the market is highly important.

1.3 Sustainable regulation calls for a broad view on regulation

On the area of creative content it is not enough to address only copyright barriers hindering the free movement of goods, services and knowledge in addition to securing competition in internal markets and fighting against the negative side effects of the digitalisation. Also questions like the empowerment of consumers, network neutrality and access to public funding form substantial challenges for the creators of creative content. Those questions are also extremely important when it comes to actually doing business in the European creative content market.

As well it is time to move on from a Europe-centric view on the market. As a result of ongoing dematerialisation, the creative content should be seen in a global context. Thus a real market, where creative content producers operate, is not limited to European one with the size of €650 billion – especially in online games industry the borders between different regional market areas are blurring and games studios operate always also on global market. It is also necessary to study closely the challenges created by as well as impact and spread of (online and offline) game consoles in European households during the next 10 years.

Nonetheless, EGDF finds copyright regulation highly relevant for the games industry. The copyright regulation should secure the highest possible and most sustainable use of European content in European content industry and thus it should be developed further. It is the only way to raise Europe back to its former position of cultural superpower.

2. The challenges and importance of games industry can be easily underestimated

EGDF is pleased to note that the reflection paper underlines that the availability of high quality creative content online will be a key driver of the take up of new content and new ways to receive interactive content. The current market changes recall that the digital shift is going precisely to that direction. And this development offers significant opportunities for Europe.

However, it has to be stated that the role of the video games as a driving force in an innovative new media is not sufficiently placed on the page eight of the reflection paper⁶. The one and only paragraph considering video games in the paper is a good example of common underestimation of challenges faced by the European computer games industry. We have to state that the description is very thin and not really pure, but reflects the little attention commission has given to the computer games industry during the recent years. This has to change.

2.1 Games are forerunners in the transition to digital world

European game studios develop games increasingly in an online environment. Due to the digital nature of our services, no difference is made between offline and online experience.

A good example lies in the development of online games. Games are probably the model for functioning interactive content of 3D Internet. Their growth is not just a new hype, but also the result of a structural change. Real time-back-channel content arrives finally with broadband at the end-consumers homes in Europe.

By many pioneers this moment had been awaited for long. Within the game industry the market changes radically at the moment. Business and revenue models, even the whole value chain sector, works only in parts any more; developers have more choices to create awareness for and to finance their projects directly offered to end-consumers. This leads to the current boom of browser and online games from Europe; the system sees the community as a new shaper of content networks and an aggregator as new centre.

The strongest online context lies in games, which are only or mainly available online, typically multiplayer or massive multiplayer games (MMOG's). There appears to be a large awareness for so called MMOG's (Massively Multiplayer Online Games), however one should not forget that the majority of the games that are still sold in the supermarkets across the continent are not such, but nevertheless also offer significant online options (such as multiplayer player tournaments, races, downloadable paid content, high score lists, chats etc.). Year after year also console games start to be more and more online games.

Consequently it has been estimated, that in the future an increasingly significant part of gaming will be online. In a country like Korea where the broadband rollout already took place this has already happened. From European perspective this means that online game development needs more investment in the future. European game developers have capabilities to create competitive online games and creating that them should be supported by EU.

⁶ Creative Content in a European Digital Single Market: Challenges for the Future A Reflection Document of DG INFSO and DG MARKT. Available online at:
http://ec.europa.eu/internal_market/consultations/docs/2009/content_online/reflection_paper%20web_en.pdf

2.2 Online games bring new opportunities

Game technology can be considered as the key to content on the triple play era, as it manages interactive content. A wide range of business models seem possible in this context - TV networks and telephone companies as well as manufacturers can become valuable partners. Their database allows new business strategies beyond the traditional game publishers. But so far most of these groups stay back. It is a big opportunity in the games industry that there is chance to offer additional paid content that a user can buy while he or she is playing the game.

The potentiality of new online content business models is significant, but an access to these channels is not always freely available. Furthermore there are practical obstacles that generate from a lack of understanding of the business models employed across the continent. A serious campaign on educating traditional support structures on the importance of knowledge and creative based businesses is necessary. And Europe needs to establish more centres of creativity in order to attract strong talent and further enhance the competitiveness of Europe.

It is most probably true, that the online game sector will grow significantly with and beyond the rollout of broadband in Europe. The most dynamic and fast growing part of the games industry is the Online segments which are forecast to represent at least 15% of total revenues (of \$40bn) by 2012. Europe has a great opportunity in capturing a share of this activity. However, more has to be done in supporting the content creating SMEs.

2.3 Online games create growth and jobs to Europe

The games industry as we know it is going through profound change. It has been up to recently, dominated by large multinational publishing conglomerates and console manufacturers. Now media entrepreneurs changed the dynamics of the business models and they go direct to the consumer and.

So that where European developers have been prisoners of the relentless console rounds of new hardware, which has swallowed up much of the entrepreneurialism and innovation, they are now more free to create new genres and types of content not seen on the consoles publishing lists. These include casual downloadable games aggregated by companies such as MiniClip and PopCap, but more substantially, the On-line worlds and games such represented by companies such as CCP (Iceland), Funcom (Norway), BigPoint and GamesForge (Germany), Sulake (Finland), Ankama (France) and Jagex and Real Time Worlds (UK).

These companies represent the newest and fastest growing segment of the games industry, because of the openness and the accessibility of the Internet. EGDF is aware of many more companies also taking shape and EGDF believes that the skills and know how that underpins the games industry will give rise to many more ventures and new types of content in the near future.

Consequently computer games have an important role in the transition from offline to online digital market, because they are a truly digital medium. Thus it is true that, as stated in the reflection paper, European games market relies to a large extent upon online interactivity, but this development has also its problems. Challenges that other areas of emerging online creative industry could learn about.

Thus it is important that legislators in Europe recognise the importance of the sector for generating revenues and employment and creating new content and delivering it in the future. Consequently the following remarks should be acknowledged, they might be highly important also for the other areas of the online creative content industry.

3. Legal offers to consumers facilitating their access to content and protection of right holders

3.1 Fight against piracy should not limit consumers' access to content

3.1.1 There are no easy answers to piracy

EGDF has a long experience with piracy, as it affects significantly on the games industry. Piracy has existed in the games industry as long as computer games have existed and large damage has been made to the industry by it, especially in the field of PC games, where games are copied freely. A successful copy protection is one that leads to the game being available online only after 3-4 weeks after release, and not after 2 days. The actions taken have varied from physical copy protections on the disk, and the use of DRM for online distribution. The benefit of the console game space has been that piracy is more difficult, mostly requiring hardware modifications to the console – and therefore making it less feasible for the mass-market.

However, a debate can be held, if the actual creators (developers) of content are damaged as much as the publishers / distributors are hurt and this is due to the business model that exists in games. Although we know that piracy can even have some positive marketing side effects, it has to be battled by in principle. At the end of the day creators are equally hurt.

Additionally it is now becoming increasingly also a developer problem. However, the question is, if DRM and other trusted computing solutions would really make a difference. From our perspective it is rather to be doubted, that a substantial impact on piracy will be made by subtle changes in the regulatory context. Online distribution however as such will be more relevant, as it allows a better control over an end user.

3.1.2 The business models are the most effective tools against piracy

Online games have large advantages, when it comes to fighting against piracy. They can not be pirated as easy as traditional games and that shows, that to a certain degree new business models can be developed to go around the piratical problems of the digital age. It is thus possible to imagine ways, which solve the problem on its own without massive copyright or anti-piracy activities.

The general raise of the computer games as a medium can be connected to the fact, that at least online games have found effective solutions to solve piracy problems, but this does not mean that all computer games are equally piracy proof. Many offline computer games, which are still sold in shops, and some downloadable computer games have piracy problems similar to film or music industry. But it is not true, that European companies are not among those who win from the free and neutral Internet. Companies from Germany, Finland, Great Britain and the browser game sector in general definitely benefit from it.

Thus contrary to music online games are not so piracy – vulnerable as off line games. A controlled access to server based virtual worlds limits the possibilities of piracy efficiently. Technical DRM solutions have become marginalised – efficient business models have (once again) replaced complicated technology. But on the other hand trust issues gain suddenly in importance: European online gamers don't like (unlike their Asian colleagues) to download clients (because they do not trust them); therefore browser-based games have more success (mainly games from Europe).

3.1.3 Fight against piracy should focus on education, not hunting down individuals

Piracy is not good, but taking the fight against individuals is not the solution. Fighting larger piracy rings and educating the public on the damage it causes is a better approach. Some distinction between “small ones” and “big ones” should be made, but it is doubtful whether chasing the big ones will be sufficient in the long run. The big ones definitely need to be treated with repressive measures since what they do is purely criminal activity.

A larger and more delicate part is the piracy that's committed by the users. These people mainly do not operate with malicious intentions, but do want to dispose over a lot of content that is too expensive to buy it all. This combined with the fact that the bulk of the people do not have a clue about the amount of work that is behind the creation of a game. Piracy in this area can only be fought by a combination on both these fields. Making sure that the retail prices go down so that this barrier is lowered, but maybe even more important, make sure that retailers get an idea about passion, effort and money it takes to create a piece of content.

In regards of a distinction between digital and physical piracy, the trend does shift and it will continue to shift towards digital piracy. The reason is quite simple. More and more users dispose over high-speed connections, more content is made available for download next to retail boxes. Additionally, disc copying is with the latest copy protection environments still harder to get by than simply downloading a piece of content.

Several EU member states run anti-piracy campaigns, whether it has an effect or not is difficult to judge. We believe countries should look at utilizing their specific talent to speak about this. However, it should be said that utilizing scare tactics or metaphors that link piracy to extreme drug use, violence, or hard crime shouldn't be used.

3.1.4 Piracy regulation should not destroy achievements of digital era

If we let users freely distribute content that they simply cannot use, they will soon stop doing so. P2P technologies can never be properly controlled, and traditionally as soon as they are commercialized, users migrate to the next free P2P software. We do not see how money could be made using P2P that could not be made using other distribution strategies as well.

In the experience of the developers, a lack of piracy-awareness and freely available pirate copies in new member states could ultimately force game-producers more and more into online distribution (such as in Asia, where the absolutely only way to make money with games is online distribution).

Policy on technology strategies should take this into consideration. The challenge is to prepare regulatory and technological solutions, which make Europe a winner of these radical changes. On the other hand we must be careful not to destroy the cultural achievements of the digitalization by changing the rules too radically. E.g. true digital content does not need (e.g. online games) radical DRM or anti-piracy measures.

3.2 Piracy-free online content market requires new ways of payment

Successful and almost piracy free business models, like free-to-play, require a well functioning and an easy to use European wide payment system.

3.2.1 eSEPA should be included

Stable, easy-to-use multi-national micro payment systems are the key to a successful mass-market online content distribution. Wide acceptance of credit card payment is helpful, too. European standardisation approach could be helpful here, if it takes needs of consumers and the industry into consideration and really aims at becoming a standard (without consumer or content producer costs).

Thus planned SEPA online payment possibility has a great potential, but it will depend on individual banks whether these products will be offered to their customers. Therefore European Commission should strongly encourage banking sector to offer these services. This approach should be broadened also to online payment providers.

3.2.2 Regulation should keep variety of payment models possible

At the moment online games are mainly paid for by credit cards. In some countries, however, credit

cards or specifically international credit cards are not widely held. There direct debit – authorised, recurring charges to bank accounts – also has importance. In the case of mobile phone games, including online games, the predominant payment is by premium SMS. Platform holders offer easy to use micro payment systems that are well designed and require little improvement. It is one of the big benefits they can offer the content providers using their channels. This could be the potential gateway of the European telephone companies into this field.

In the field of PC games, credit card payment has become the standard, and it works well – but not for teenagers or kids that only want to spend very small amounts of money. It should be noted that especially credit card transactions are not really viable for small payments due to per-transaction costs. Credit Card abuse is also an issue.

Today, online games are paid for by monthly subscription. There are no obvious technical or other issues standing in the way of paying per time or per volume of content accessed, or for incremental, episodic content. It is probably more a matter of tradition and customer preference or habit.

A widespread non-subscription payment system, premium SMS, is not only used for mobile content. It should be noted that this is a very inefficient payment system, in general, with overhead, the layers of commissions and transactions costs often leaving the content provider with well below 50 percent of the consumer price.

3.3 Regulation should focus securing consumers rights not on limiting their possibilities

At the opposite ends of the value chain, the content producers and the empowered end-users need a reliable, an open, and a free end-to-end scenario. Non-discriminatory access and treatment needs to be enforced and permanently secured in every link of the value chain, and this can only be guaranteed by public sector.

Data Privacy is obviously a big concern in the single market for creative content online, particularly considering the free information flow to the US and the lack of awareness for data privacy. Privacy is ensured only as far as technology that protects it. It may be a concept to provide annual audits and/or reports of the security of such systems providing comfort to public at large. Member states have privacy laws, but until the public is given audited records or reports each year, one just has to trust that those responsible for the system are in fact taking care of us.

Consequently trust facilitates consumers' access to a European single online market. The public has to be able to trust on companies controlling personal data they submit. They also have to be able to trust that they have what they have ordered, without at fear of losing the money.

Consequently, in this content European Union should adopt the approach of Council of Europe when it comes to stressing users rights in legislation; especially recommendations on promoting freedom of expression and information⁷ and on empowering children⁸ in a new information and communications environment.

3.4 Closed DRM is not a reliable solution

DRM systems, in the sense that users' hardware and operating systems have undocumented, inaccessible, and unalterable areas and functions, have number of potential problems. Issues range from hardware and software quality and reliability to data integrity and personal integrity, privacy and freedom-of-speech. If such DRM systems are controlled solely by non-European private interests, they

⁷ Recommendation CM/Rec(2007)11 of the Committee of Ministers to member states on promoting freedom of expression and information in the new information and communications environment. Available online at: <https://wcd.coe.int/ViewDoc.jsp?id=1188541>

⁸ Recommendation Rec(2006)12 of the Committee of Ministers to member states on empowering children in the new information and communications environment. Available online at: [http://portal.unesco.org/ci/en/files/25152/11861425271Recommendation_Rec\(2006\)12.pdf/Recommendation%2BRec\(2006\)12.pdf](http://portal.unesco.org/ci/en/files/25152/11861425271Recommendation_Rec(2006)12.pdf/Recommendation%2BRec(2006)12.pdf)

are, of course, even more questionable.

In our view, copy protection measures serve best to protect static and linear material. Any such material can always be copied through digital or analogue means. It is only a matter of the level of quality degradation one is willing to accept in a copy, moral and legal issues notwithstanding. Games, as interactive material, and online games in particular, can per definition not be copied. Each usage or experience is unique, and requires access to the game logic. If some of this logic is not resident on the user's equipment, a verified, authorised access is relatively easy to establish.

Game developers have indeed used DRM for online distribution. It is a good method to secure intellectual property against misuse. But it has two sides; it may not become extremely annoying for consumers, as has happened sometimes in the music industry.

Concerning the introduction of DRM systems EGDF wishes to underline that these systems are often seen with great scepticism. In general the DRM system problems are more political and economical than technical. They are by many seen as a means to leverage barriers-to-entry and key strategic positions in offline distribution systems, perpetuating them into the era of online distribution. Hoping for seamlessly interoperable proprietary solutions that compete and provide reliable DRM protection at the same time is not very realistic. Competing standards linked with license business models will not bring the considerable changes envisaged.

In order to grow the market, most likely only open and free standards will make the difference to the SMEs that produce content and offer it for direct distribution online. In general, it seems necessary that the Commission insists on an open standard, and at the very least opens discussion on this option with the industry, before rethinking of introducing new legislation on this issue. Whilst important, it is not enough to better inform consumers, to introduce standard labels, standard end-user contracts, or other means for making DRM systems more transparent to the end user.

4. Copyright law and game developers

Harmonizing copyright law in the EU would be mostly beneficial for European game development. Therefore EGDF supports, in principle, efforts for creating common European copyright law replacing complex national copyrights systems hindering free movement of virtual goods and services. Further common standards for royalty distribution should be developed and specification of current IP/copyright laws would be needed.

Games and more specific gameplay should be protected in copyright legislation from plagiarism. Similarly games should be included in the legislation as their own category equal to e.g. works of visual art or films.

4.1 Intellectual property

Intellectual property (IP) is one of the few assets game developers can create a long-term growth strategy on (implying high risks). Therefore regulation should not make it so easy for them to give up their IP, this is highly important on the area of online games. On the contrary, it should support them by creating works of cultural value to everybody.

But the question is not only about protecting IPs, it is also about possibilities to utilise them. There is a grey area concerning IP protection and royalty payback in terms of content creators. Current laws are possibly not apt as they date from a time where our artefacts were non-existent. Thus unclear laws and practices concerning usage also create an area in which it becomes difficult to clearly track royalty revenues.

Games are made by professional SMEs, which make a living from that. They are highly innovative and build creative and cultural works. They should be protected and remunerated. Games as such are no user-generated content. We should take the stance of paying the creators of content. In general, levy

systems are good for creators. We aim at similar models as in the film industry. However, there are practical issues here due to ability to track copies, etc.

Until we can effectively track units and distribution of material we are speaking about placing the universe into a bottle. Future consequence of convergence is the creation of a royalty system that clearly stipulates each actor and the role they served in the creation of product. The public side should also make sure that console online channels are more open and access costs are reasonable.

4.2 Release windows should be respected

In a global online world, it is clear that territorial release windows only encourage to piracy, as they provide access to content based on national borders that do not exist in digital world, and thus creating legislation to support them might be counter-productive. But as games are still a gift-driven industry, publishers have to have a right to set one release date for their retail products.

Sales peak during the holiday season or Eastern and end-of-school-term will remain even in the online space – even though some minor decline is to be expected. Traditionally Christmas has been a release window, but with the convergence to online distribution the Christmas release may end up falling to a wayside. Getting products finished for the biggest release windows as described above is important. Also, there are release windows when games are launched at the same time as corresponding movies, which is also an important factor in the convergence age.

4.3 European games do not have access to European music

Due to complex and territorial management of digital reproduction rights and “making available” rights contemporary European computer games have rarely access to contemporary European music, although on global markets both sides would benefit from closer co-operation. In the end, this situation is hindering the use of European content in European interactive media. Thus EGDF encourages strongly the simplification of European music licensing.

4.4 Increasing localisation requires easy to use European licenses

The language barriers of online games stem from the fact that online worlds support the propagation of English as a standard language of business and communication. Cultural diversity should be fostered online by offering multilingual support, but linguistic diversity comes down to a business decision most of the time.

Consequently the languages pose a serious problem, as games have to be usually localized in Europe (costly). Therefore a licence system should be developed, which would allow a publisher to buy a licence on a game for a certain language instead of certain territory. It should be remembered that for many European languages there are constantly growing global market (e.g. Portuguese, Spain and French). Thus multilingualism is a great opportunity for Europe.

The licence system would need to be completely electronic and manageable by its users. Major issues would be the cost for such a license and what specific legal coverage the licensing would cover. If it would provide transparency over revenue streams from point of sales across the EU, this could be interesting.

4.5 Copyrights should not hinder saving cultural heritage

Orphan works also exist on the field of games. But unlike on the field of books or films, currently there are only few public institutions storing them for upcoming generations. Due to rapid technical development software and hardware required for playing games becomes quickly non-existent or falls apart due to aging. On the field of online games all existing copies of a game are lost when a game studio quits supporting it.

If we do not want the cultural heritage of Europe to end to the eve of the digital age, libraries or museums should be eligible to emulate games so that they are able to keep the digital heritage of Europe alive. When the copies are used only for research purposes and they are not made publicly available, these bodies should be eligible to save games for future generations, although copyright owners would be against it.

5. Promoting innovative business models by regulation

5.1 Network neutrality needs to be secured

The promotion of new business models and innovative solutions for the distribution of creative content by European regulation is currently mostly a question of the implementation of so called Telecom package. After the debate considering this package the EP and the EC reached an ambiguous compromise on network neutrality during 2009. The time will show how it will be implemented on the online single market.

5.1.1 Free Internet is the European key to success in the global markets

One of the most important questions of the future of the innovative business models for content distribution in Europe is how to uphold a non-discriminatory system, which truly allows competition among media without the discriminatory element through networks themselves.

During recent years, the basis of innovation in a media sector in Europe has been the non-discriminatory Internet. Before most of the distribution chains in media content were clearly in the hands of overseas distribution giants. European content makers received not enough to live and too much to die. The free Internet is and was a historical chance for European content producers to overcome post-war distribution structures and to touch down directly to consumers. For those, who were able to find users, this was usually also an economic success. But the base of all this is the free and neutral Internet.

Therefore network neutrality is a high value and should be strictly established without any exceptions. This does not mean that policy should be neutral to technology in general. It has to be seen as part of the rule that competition should be kept alive on every level of the value chain. The network neutrality is also a cultural value, as it allows in principle equal access for everybody to the distribution network of the future for games.

5.1.2 Network neutrality should not be allowed to be misused for gaining dominant market position

Few years ago network and Internet service providers had no systematic overview about content in their network. Regulation did not allow a closer look. The separation of network infrastructure and online content was the man made 'Holy Grail' of Internet regulation. But the situation changed: in the aftermath of homeland security policies of the Western world and the war on terrorism, providers started to install infrastructure to allow systematic scanning of content while being distributed. The legitimate fight against child pornography builds the second layer. Providers need to look even closer at the content in their sphere of responsibility. The next step seems to be the fight against piracy; this debate is still open.

At the same time there are more and more concerns about Quality-of-Service. Quality-of-Service will mainly be beneficial for large multinational companies, and SMEs and customers will be the losers in this equation. A preferential distribution would probably be given to those content providers who have a strategic interest in keeping their point of sale – privileges in the digital age. For the producers this is bad news as again not the best quality or concept is decided upon, but the "preferential" distribution channel.

It is not sure, if this will actually happen. Quality-of-Service seen in a large scale could be a tool to de-democratise the Internet. Regulating the Internet in this manner is like creating commercial television in the United States. In the end there will be few providers of content with creators of content fighting to be seen. Creation of such an environment would be counterproductive.

From the position of EGDF, the real problems of creative content online lie in the danger of misunderstanding the transition problems of some medias with the new chances of digitally distribution with an attempt to leverage their bottlenecks and strategic positions from offline to online. This is a danger for creative content innovation.

Thus, there is a danger to the network neutrality, the basis of freedom and innovation at this new frontier. The regulatory efforts face themselves constitutional and legal problems in the member states, but much more they might lead to an abrupt ending of innovation in the sector.

5.1.3 The free movement of services, virtual goods and knowledge is becoming more and more limited

Providers might misuse exceptions and “hide” behind it to prioritize their preferred content in order to recoup their investments on the network. In meantime network capacity becomes more relevant – and even more priority becomes an issue.

The French three-strike model, coming from the anti-piracy movement, can be seen as an example of this in this light. It has more to do with the attempt to control the Internet distribution than with the fight against piracy.

Some ISPs have already locked or reduced the use of strong online computer games for capacity reasons. This can lead to a situation, where specific independent content producers have a discriminated position to those who are working directly for network operators. This development can lead to a dangerous situation for European independent developers, when the strongest media content companies see this as a change to strengthen their dominant position in the media market. Therefore it is very important, that the non-discriminatory character of networks stays as a main element of European Internet politics.

Thus easing up the network neutrality raises a serious risk of dividing Europe based on national mobile and broadband networks, as network providers would have a possibility to slow down access to the virtual services competing with their own. Consequently this would also raise new borders for the free movement of innovative services and knowledge inside EU.

Consequently when it comes to creative content online, network neutrality is the single most important question of the free movement virtual goods, services and knowledge. The three freedoms that form the base for whole existence of European single market.

5.1.4 Networks and media content have to be separated by regulation

Only a common effort of the whole value chain will be able to boost the European technology in the next level. The content layer plays a relevant role in this context. At the very beginning of the value chain users and creators are getting closer (but will never replace each other: the content frame is usually provided by the professional and this frame is fulfilled by users). Boosted by the Internet the content layer is becoming more enriched by technology. Legislative actions should not hinder this kind of effort.

The integration of mobile operators, internet service providers (ISPs), telecom companies, broadband technology companies, websites, online shops, online rights aggregators and social networking platforms rises a serious risk of creation of oligopolies in the field of creative content. The challenge is to let all players of the value chain participate at this significant growth while content is still delivered non-discriminatory. Therefore efforts have to go beyond the network environments of today, which are also relevant for content from the rest of the world. A media landscape where the network neutrality is weakened is less innovative.

Consequently, all in all an important source for growth and innovation in this sector is the clear regulatory differentiation between networks and media content. This means that services based on

access subscription should not be tied to a particular ISP. ISPs should always provide equal access to all content in the Internet, as roads offer access in the real world.

5.2 Protection of minors should not be abused for creating barriers of entry

The protection of minors has rightfully been in a central role while creating European regulation considering audiovisual media services. In games industry, the classification is and should be mainly a self-regulation, as there needs to be a pan-industry approach rapidly and decisively so that the regulators do not take charge of the legislation without understanding what the stakes are for the indigenous games sector in Europe. PEGI-online remains problematic and unfulfilled, because traditional publishers do not yet understand too much of the importance of online business models of the future.

At the moment, rating does hinder the free movement of content. However protection of minors is a crucial aspect when distributing games or movies, and it must not be weakened in Europe. A European standard which could be desirable will probably not been established as cultural traditions and different values in the member states make a standardization very difficult. One possibility is to look at the German model; the rest of Europe uses the PEGI system. On the other hand, as within movies, it is important to accept that the games industry also produces content for a mature audience and that grown-ups should be able to choose their content freely, as long as proper rating procedures are followed.

As the ongoing digitalization has made the game developers one of the main providers of creative digital content for minors, they should also have a central role in the PEGI system. If the PEGI system as self-regulatory body fails to offer them real influence in the system, meaning for example a blocking minority position in the management board of the PEGI, and the PEGI will be used to create regulatory barriers hindering game-developers access to market in favour of games publishers, the Union should consider to step in.

5.3 The legislative burden on SMEs should be eased

As in digital age one does not need large companies to innovate, the most of the innovative business models, services and content are developed by small entities. Therefore EGDF supports strongly a SME approach to innovation, as it should be remembered that innovation cannot be produced; real innovations are usually hidden where one would less expect to find them.

Thus in order to promote a creative content online sector the Union has to focus on providing a legal environment in which SMEs can survive and freelancers and independents can operate more freely.

EGDF is pleased to note that EU has introduced legislative efforts to strengthen conditions for entrepreneurship and for growth of new ventures. Content and user driven SMEs like Europe's game developer studios can really make the difference. But a SME approach needs not only to be preached, but also practised. This means that also in reality, not just in the level of legislative acts, SMEs have to be specifically taken care of, including that they are efficiently and successfully informed about their rights and financial opportunities. Unfortunately so far this goal has been only partially reached.

Consequently innovations should not be supported isolated from markets e.g. by relaying too much on just technological breakthroughs. SMEs or other market actors are needed to create jobs and growth from them. Thus one should be careful not be blinded by focusing solely on innovations; one should always see innovations just one important part of the economy as a whole.

When it comes to labour law, it should respect the flexibility of freelancers and independents. The industry needs more flexible regulation when it comes to working with them. Most of creative content is created by freelancers or independents that work on projects that last anywhere between 18-24 months in office like environments, but with the caveat that once the project is finished they move on unless another project comes in.

The current regulatory framework makes it difficult for freelancers and independents to commit towards a company without becoming qualified as an employee. This places the creative and the business they work for in a difficult situation as they are forced to provide support that projects they work on do not cover.

5.4 Competitiveness needs fair competition

5.4.1 Europe's competitive advantage is in danger

Online distribution provides enormous opportunities for opening up the market for new, creative, quality driven and European content, but only if legislators help to ensure fair trading practices, something that is lacking today. For game developers, it is highly important to maintain competition on every level of the value chain also by using legislative measures.

Issues regarding of multi-territory licensing play a very minor role in today's computer games business. The main actors are all global already, with vertically integrated, or fully controlled, distribution channels. This may change in the future.

In the console space, the access to the games industry is often controlled by game platform owners. An access to the distribution channels and an ability to create games using these consoles in the first place serve as barriers. Therefore the barriers of entry into the console game development market are high. In the PC world it is mainly piracy and the inhomogeneous market that is the issue.

From game developers' point of view, a central problem is that no vertical console system hails from Europe. Console systems are also aiming at networked and digital distribution. That means that for a long time the game hardware will be imported in Europe. First look and first research privileges lie in other world regions. Console manufacturers have created an exploitable and controlled channel into the living room for millions of people in Europe. Consequently for Europe it is necessary to be as independent as possible from hardware innovation, e.g. by supporting a standardized middleware layer "behind" the hardware. One of the biggest challenges of the next years will be to make development environments for games in Europe more interoperable.

It is important to understand that game consoles stand a very big chance of becoming the online access point to the living room of the future, as the games market grows and the consumers playing games grow older and older. Already today one can buy movies, music and all kinds of other content via these portals. Thus billions are being invested by platform holders to be in control of these access points.

It should be remembered that currently Japanese and American companies (Sony, Nintendo, Microsoft) also control the access to the online channels on their game consoles, and Europe is always last to receive access also to these technologies. At same time they also control the access to the content that can be offered online for games played on their console.

In addition software and hardware costs are higher in Europe than in other parts of the world. Key software are generally priced 1,5 times more and two times more than it is in North America. This places a burden on European companies.

Consequently EU antitrust laws should be kept tight.

5.4.2 European game developers need legal support to have access to fair markets

The revenue share models of the games industry seem to be similar to those of the film-industry, but more biased to content exploiters. Game developers as content creators are at the beginning of the value chain. They have always higher risks in securing revenue stability. Especially in the context of high market entrance barriers (access to the consoles and the console online channels controlled by the platform owners, high prototype costs and piracy and payment methods in the PC field) it is difficult to

prosper for independent companies based on the principles of cultural diversity.

Therefore governments should lower market entry barriers for content producers in Europe e.g. by making sure, that the European games industry has equal access to technology, and that the access is fair and reasonable for all European companies.

It is also important to secure competitiveness against peer companies in new member states: competing companies in the new member states care less about licensing their production software, and can therefore offer even cheaper content than they normally could considering salary levels only. Thus more awareness about licensed software in the new member states is required.

5.4.3 JTIs should be an opportunity, not a threat to SMEs

In all levels of EU RTD framework it should be secured that a broad base of companies, especially SMEs, are benefiting from it. Europe wide joint technology activities (JTI) can only be successful, if those content and business creators are successfully represented and the process is dynamic. SMEs should be more present in the core of the JTIs. Also the risk of dominant market players using a JTI to secure their dominant market position in the future should be minimized.

JTI 'Artemis', that is run by an open industry association, is possibly an open, transparent and dynamic JTI model and thus it carries lower risk of being used to secure dominant market position by major economic players on the field than other models.

6. Favourable legislative environment for culturally diverse European market

6.1 Maintaining cultural diversity needs public support

In the reflection paper cultural diversity is understood as the co-existence of professionally produced and user generated content. For Europe it is highly important to secure this fruitful co-existence, but if cultural diversity is understood as securing the digital blossoming of all European cultures, also other legal measures than copyrights should be discussed. One of the most important measures is to make computer games eligible for public funding in order to secure both the cultural diversity and technological development.

6.1.1 Cultural diversity in Europe is a challenge for games industry and for games legislation

First of all unlike stated in the paper, 'cultural and linguistic differences' are a significant barrier for the development of the European games market. The success of online games as online audiovisual markets tells more about the huge market potential of games than their natural ability to overcome cultural and linguistic barriers in Europe.

In a networked environment the role of government as trust holder of cultural diversity becomes even more important, as network effects will increase in the digital age. The role of government is then to make sure, that a strong variety of content – in our case games – reflects the cultural values and traditions of the member states.

At the same time diverse European games market is a clear weakness of European games industry. With its many different languages, it is unavoidably an inhomogeneous market. In some areas of world (for instance in Asia and especially in Korea) online content and online games is a mainstream of gaming.

The contradiction between the single economic market, which needs harmonization, and on the other hand cultural diversity is sometimes difficult to grasp – it is however two sides of the same medal. One of the most significant benefits that Europe has is that it has such a number of diverse countries and cultures. This could lead to the perfect atmosphere to create abundantly original, high-quality content. Europe can and has to become the cradle for content creation. We should definitely stimulate cultural

diversity in our area. For this, it is very important to look across country borders since worldwide, a difference can only be made, if it is done on a European level.

6.1.2 Games are cultural phenomena

Games are an increasingly cultural phenomenon. They influence already the imagination of generations. Gamers do not fit any more to the stereotype of young and male computer addicts; they are an inherent element from the middle of our society.

Thus games are an important element of the audiovisual landscape. But in the era of triple play, their importance will even increase, as they are the nucleus of interactive entertainment. In democratic countries the question, whether something is cultural or not, can not be decided upon in an ivory tower. It is the matter of the people and they decide about it every day by playing games.

It should be noted that the cultural recognition of digital content has risen considerably in the perspective of the EC, the EP and the Commission (e.g. EGDF is pleased to note that also the Commission has acknowledged the cultural importance of games by accepting them eligible to state aid to promote culture⁹), but also among the member states. This non-technological predisposition has a relevant impact on the way digital content is seen and treated: it paved the way to move a step forward. Digital content is perceived as “as culture”, sometimes even as art. “Digital art” and reshaping of the digital cultural definition is an important element.

6.1.3 Cultural diversity has to be secured, also when it comes to games

The specificity of nonlinear interactive entertainment is that it needs constant attention – in difference to linear media, which happens to become background media. This shapes increasingly trends and values and the way of thinking in our society. In an open system cultural diversity might be able to self-sustain online quite well, though it is segmented in more niche areas such as portals and chat rooms. But networks are not designed for exchange; the e-content environment will have even stronger bottleneck and network effects for the game industry.

In this context the question on cultural diversity is well in place. Indeed it is a problem, as most of the games do not vest from Europe. An important figure in this context is a home market share, not the simple comparison of US imports. Due to our observation network effects increase in digital and online distribution in our sector. An average person only can remember a couple of websites in a specific context, not more. Therefore it is quite realistic that the mass market of online games will concentrate on few brands (e.g. WoW). Many other producers will either have to go through other distribution channels or be endangered. As a result, it has to be taken into consideration that in this context above all cultural diversity faces new challenges and might decrease.

6.1.4 Securing cultural diversity requires public support

In the games themselves cultural diversity risks to decline in the digital age. On the one hand, it is the ultimate outcome of the European project that diversity will be reduced, and this is acceptable. On the other hand, it is important to maintain an individual European culture based on the strong pillars of diverse cultural traditions. This is enabled by established mechanisms that maintain a level of cultural diversity (national and EU film subsidies). In games, there are only few of these mechanisms yet, whether for online or offline games/content.

EGDF believes it is very important to strengthen cultural identity in games sector, just as it happens in other sectors, to make sure there will still be typical French, German, English or Spanish games in ten years. The language barriers shrink the target markets for each game, and in times of rising production costs due to consumer expectations, this makes products targeted at smaller markets unprofitable. In

⁹ C47/2006(ex. N648/2005) Crédit d'impôt pour la création de jeux vidéo. Available online at: http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_C47_2006

consequence more 'Hollywood' mainstream is produced even within Europe.

An important possibility to create awareness is the implication of user-friendly portals, which offer innovative companies possibilities to be seen to a wider public. It is probably a good idea, if the public side takes a stake here to allow a minimum of competitiveness either by regulation or by supporting alternative distribution networks. It is important however to state, that game development is a rare and highly professional craft which implicates high software and creative skills; therefore it is not enough to set game developers equal to those who create user generated content.

6.2 Is Europe ready for interoperability?

The cultural diversity in games industry is made possible by technology. Therefore cultural diversity is also a technological question.

6.2.1 The media field will face unavoidable revolution during upcoming years

Boundaries between a traditional music, publishing, games and audiovisual industry are more and more blurring as a result of convergence. Therefore also legislative actions concerning creative content should be planned from the both perspectives: from the perspective of one specific creative content area and the creative content production in general.

Consequently EU legislative actions considering creative content should not just reactively address the technological challenges already existing, they should also proactively acknowledge also the upcoming challenges brought by the quickly developing technology. One of the legal challenges influencing on all areas of creative content is the interoperability of devices, which is becoming more and more important as the borders between different mediums of creation are constantly blurring as a result of the convergence.

6.2.2 Interoperability is coming, Europe has to support standardization

It should be remembered that there are different levels of interoperability. For content creators the most important is the interoperability of the tools and development environment they are working on and the platforms for which they are producing, this way of functioning is inevitable in the not so distant future.

A growth in the number of broadband and 3G subscribers offers game developers and operators a possibility to create good quality content to a larger user base. However, the bandwidth alone is not good enough. Also technical standardisation is required in order to achieve as coherent market as possible. In this context it is important to stress that technology to create games also needs interoperability in Europe. It is not only necessary on the level of devices, but also on the level of creation, because – as often underestimated – creating games is also a technological challenge.

It seems that Europe's strengths lie traditionally in the centre of the value chain. Display technologies, flat screens and monitor technologies have literally disappeared. Integrated value systems, as game consoles, have never been the strong point of Europe either. European content distribution technologies have been strongest in an open end-to-end scenario. Europe's strength lies in the technological standardisation, but not yet necessarily from an end user perspective. But the whole value chain must be taken care of; a simple "strengthen the strengths" – strategy would not be the appropriate answer: it would lead to a further deepening of the "defensive" position of European ICT industry.

6.2.3 The role of content as a driver of innovation should be acknowledged

Business models interlink with technology, and innovation is not necessarily technological. Today technology follows the business model, not vice versa. A good example from this is the sector of interactive mobile content: the content production was for many years hampered by technical standardisation on handsets as well as by little cooperative business propositions from operators' side for the content community. The App Store driven by Apple (and now followed by Ovi Store from Nokia)

has solved the problem now: the free Internet has once again made it possible to overtake complicated restrictions on flat rates from the operators with little technological implications. But the price is that Europe's leading position in mobile sector is under pressure and content – once again – does not necessarily vest from Europe.

This insight is enriched by the experience of storage media. The strategic choice on the storage media of the future (HD DVD or Blu-ray) has been made exclusively on the basis of content back catalogues of Hollywood studios. This means not only business models, but also content (and the ability to produce content) takes the final stake in standardisation efforts. Standardisation works without content only in cases, where no content is relevant (e.g. voice telephony or business software). Research must be built in the context of the real media distribution system. In every single case the relevance of content and relevant business models should be justified, as end-users' perception of media happens through the content layer.

6.3 The lack of public funding for creative content hinders the growth of cultural diversity in European online single market

6.3.1 Legal framework has to enable access to public funding for computer games

One of the weaknesses of European games industry is for sure a certain lack of broad acceptance of its cultural dimension among policy makers and a general scepticism towards new technology in many areas. This is mainly a generation problem – current policy makers have not grown up with the media 'games' in their childhood and therefore they cannot relate to it in the way they can to movies, TV, music and books. Other areas in the world that have understood the growth potential in games have simply been faster (Korea, China, USA, Canada, Australia, Japan etc.). Thus it is very important that the European Union increases the focus on the European games industry by developing a (regulatory) framework supporting the development of the potential of the industry.

By accepting games as a cultural and audiovisual media, public regulation and support systems can be applied to games. Especially in development side funding it is a requirement for both cultural diversity and technological development.

In this context, innovation can only happen, when it is still possible to launch a new venture with a good content idea. A good negative example what can happen, if this is not guaranteed, can be observed in the mobile game sector. Europe had for a long time a clear advantage position in mobile standards, handsets and content applications. This was the result of a farsighted and intelligent standardization policy.

But as a result of infrastructure and operator driven business decisions, this position was wound up. Mobile games for example could not take off, because the European network operators tried to control this business and refused new and more adapted solutions. The result is that the iPhone took back the competitive advantage and the distribution of content happens outside of the control of the European operators; they lost their share in the game and Europe lost most of its competitive edge.

Therefore EGDF is surprised that legal framework considering public funding for creative content producers is not included in the reflection paper, although many essential sectors of music and film industry are highly dependent on the public funding and the paper acknowledges the high risk nature of professional creative content in online environment. The lack of public funding is also hindering the competitiveness of European games industry.

Consequently crucial challenges of European creative content producers are also related to the questions of the legal definitions of innovation and culture, which remarkably limit or promote their access to public funding in national and EU level.

6.3.2 Lack of public funding hinders the development of games industry

Currently in other regions of the world developers have access to capital support that acknowledges the knowledge based and/or creative economies and further incubate these sectors with financial support. In Canada there is access to subsidies, incentives, and capital that assists in the creation of the videogames industry. Asians also have very strong public support to online game development. This offers Asian and Canadian online game developers a competitive advantage compared to European developers. It is hard for EU based developers to compete, when they are forced to comply with national regulations that have not yet recognized the importance of this sector.

Recently a few funding schemes have emerged in the creative industries that also encourage innovative online content, but national funding schemes exist only in very few cases. Only some member states like the multimedia support system of France (through CNC), game development support of Norway (through Norsk Filmfond), and game development support of the Nordic countries (Nordic Game Program) have addressed this area of creative industry.

In Germany local support agencies give money in a context to foster local industry. In some Länder strategic approaches exist, but they are rarely becoming operational. The situation is better in those regions where cities equal the Länder levels (Berlin, Hamburg). On a national level there are technological projects through the ministry of economics, but nothing for the content side.

Content funding, which can be legitimized culturally, should be given support e.g. in the context of project development (e.g. prototypes). On the other side the barriers of R&D innovation are blurring in a service driven economy. Technology funding should especially take into consideration strategies for lowering the market entrance barriers for European content producers and little control Europeans have over console, hardware and interface technology. The important role of the EU level lies in finding interoperability standards for middleware for interactive content creation taking into consideration open source layers as well as proprietary solutions.

Thus EGDF agrees with the Commission that the current economic recession is making fundraising and the exit environment difficult for entrepreneurs. As there is currently no EU funding program directed for the needs of the game industry, preparations for setting up creativity-sensitive legal framework for the new programme period 2014-2019 should be started as soon as possible.

6.3.3 Public support for culture industry should be made totally available for games industry

In a cultural context EGDF strongly supports direct support for games as for films in the film industry (CNC, FFA etc.) and fiscal measures for game development support, as they are currently discussed in France and already set up in Canada and Korea. While these kinds of measures cannot replace private business, EGDF believes that, concerning competition regulation, games should be a part of the "cultural exception". Games are becoming more and more culture just as films and music.

Thus EGDF is pleased that European commission has decided that cultural games can be considered to be eligible for tax breaks based on the EC Treaty¹⁰, which authorizes aid to promote culture provided that it does not adversely affect trading conditions and competition. The commission should mainstream this interpretation among member states in order to support the European game industry battling with companies from other regions with competitive advantage due to generous public support.

6.3.4 Regulation should enable research and innovation support on innovative services

Games are right in the middle of the innovation policy, as they are right in the interface between business policies, cultural policies and technology policies. Unfortunately until now European innovation policies have relied purely on technological push, this focus has not been as effective as the pure concentration on marketing and non-technological factors would have been.

¹⁰ C47/2006(ex. N648/2005) Crédit d'impôt pour la création de jeux vidéo. Available online at: http://ec.europa.eu/competition/eojade/isef/case_details.cfm?proc_code=3_C47_2006

Therefore EGDF welcomes all efforts to extend the definition of innovation from purely technological innovations to innovations related to content, services and business models. An intelligent innovation policy should be both flexible and a combination of different elements of innovation, in order to make the difference.

TEKES, the Finnish Funding Agency for Technology and Innovation, has taken a broad-based view on innovation: besides funding technological breakthroughs, TEKES emphasizes the significance of service-related, design, business, and social innovations. This approach should be largely adapted also when it comes to legislation considering funding for ICT in EU RTD framework. By extending the definition of innovation and the focus of it in ICT RTD funding, EU will secure its competitive edge on the rapidly expanding content industry.

6.3.5 The focus on services should be mainstreamed in legislation

Consequently EGDF is pleased to note that the Commission has recently stated it to be necessary to better acknowledge the weight of services as an attribute of modern industrialised countries and their innovation potential for the economy and the society at large. This approach should be mainstreamed also in legislative work. Hence it should be one of the main priorities of the Commission to better customise research and innovation support to the specific legislative needs of services, as well as completing critical infrastructures and unlocking their potential with new services and applications on the field of creative content. However, these manoeuvres should be implemented in a non-discriminatory way in order to keep the level of competition high.

For example user driven technology can be seen in open combinations with different elements. E.g. game development studios are at the same time technological (R&D relevant) and creative (design relevant), but it shows often that transition and the innovation do not follow these paths. Instead content and business models are the real drivers of innovation on that field.

Another good example is the sector of online mobile music distribution. In this case innovation does not necessarily mean technological innovation network. Music downloaded from the Internet has made large parts of storage media (based on complicated technological standardisation procedures with strong European implications) obsolete. The real innovation lies not in the technology, but in the radical business model. This demonstrates how the relevance of content for the advancement of ICT technology has been underestimated in the current generation of ICT support.

7. Conclusions

7.1 Passing a law is always a question of its implementation

7.1.1 National implementation of EU regulation is unpredictable

EGDF supports a SME focused approach. Content and user driven SMEs like Europe's game developer studios can really make the difference. But a legislation considering SMEs needs not only to be preached, but also practised. It means that SMEs have to be specifically taken care of, including that they are efficiently and successfully informed about their rights.

Thus it should be remembered that creating European regulation is not just a question of creating new directives or decisions. It is also a question of implementing them. As following example from the area of innovation policy demonstrates, often the creation of innovation friendly regulation framework is clearly just the first part of the story.

7.1.2 Innovations are created as result of innovation policies only if the legal decisions are implemented

Although European innovation policies do acknowledge the crucial role of SMEs as a flourishing field of innovations, the programmes supporting innovation have rarely been able to reach the most innovative

SMEs, at least when it comes to game industry. Two main reasons for this are inflexibility and bureaucratic nature of the programmes and the invisibility of the programmes among those actors who actually could benefit the most of it.

Therefore EGDF welcomes all actions of European Commission to keep the evaluation process of innovation programmes dated so that it is able to come more focussed on real innovation within the reality of the market place and less formalized. In general this means that structures of innovation programmes should be stronger to be able to be more flexible, less guideline oriented and less bureaucratic.

Programmes supporting innovations should be able to communicate their possibilities also to the innovative actors under the surface of big companies and actors specialised on writing project applications. Only those who are interested in the programmes anyway will travel to Brussels to participate to events organized to promote them. The innovation programmes should be present on major industry events, where their target groups are gathered anyway.

7.2. Summa summarum

European Games Developer Federation (EGDF) supports by principle the creation of a modern, pro-competitive, and consumer-friendly legal framework for a genuine Single Market for Creative Content Online. The legal framework for the online creative content should be approached my body and soul instead of narrow copyright centric approach. The regulation of public support for culture and technology, the regulation considering single European payment area (SEPA), the legislation protecting consumers' rights, the regulation considering network neutrality, the legislation ensuring protection of minors and the implementation of antitrust laws have together much more stronger effect on the online creative content market than copyright legislation alone.

Consequently EGDF would like to underline following aspects in relation to the reflection paper:

- Games and more specific gameplay should be protected in copyright legislation from plagiarism. Similarly games should be included in the legislation as their own category equal to e.g. works of visual art or films.
- EGDF encourages strongly the simplification of European licensing when it comes to music in order to facilitate its use in European games.
- A licence system should be developed for games, which would allow a publisher buy a licence on game for certain language instead of certain territory.
- Libraries or museums should be eligible to emulate games so that they are able to keep the digital heritage of Europe alive. When the copies are used only for research purposes and they are not made publicly available, these bodies should be eligible to save games for future generations, although copyright owners would be against it.
- The best results on the fight against piracy can be achieved by developing new almost piracy proof business models (e.g. free-to-play online games). The further implementation of these successful business models requires public support to develop them and a well functioning and easy to use European wide payment system, not further anti-piracy measures.
- The endangerment of network neutrality places a serious risk for those new business models. Thus, all in all an important source for growth and innovation in games sector is the clear regulatory differentiation between networks and media content. This also means that services based on access subscription should not be tied to a particular ISP.
- For game developers, it is highly important to maintain competition on every level of the value chain. Governments should lower market entry barriers for content producers in Europe e.g. by making sure, that the European games industry has equal access to technology and that the access is fair and reasonable for all European companies.
- At the moment, rating does hinder free movement of content dramatically. As the ongoing digitalization has made game developers one of the main providers of creative digital content for minors, they should also have a blocking minority position in the management board of the PEGI.
- If cultural diversity is understood as securing the digital blossoming of all European cultures,

one of the most important measures is to make computer games legally eligible for public funding for culture and innovation in order to secure the cultural diversity and technological development.

- In addition, in order to promote creative content online the Union has to focus on providing a legal environment in which SMEs can survive and freelancers and independents can operate more freely.

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