

Existing and upcoming EU rules in the areas of online safety and consumer protection affecting the video games sector

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European Audiovisual Observatory workshop
"Game on: decoding the video games sector"



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Existing rules

Horizontal EU consumer legislation

Unfair Commercial Practices Directive (UCPD), **Consumer Rights Directive** (CRD), **Unfair Contract Terms Directive** (UCTD) and **Digital Content Directive** (DCD) regulate all consumer topics in games.

- UCPD Article 5 and Annex I point 28 prohibit direct exhortations towards children.
- CRD (Article 6(1)) and UCPD (Article 7) include information requirements on the price and main characteristics of the product – applicable to in-game purchases:
 - 2021 UCPD Guidance considered that prices of virtual items should be also expressed in real currencies → no CJEU case-law confirming it
 - Challenges with legal status of the use of in-game currencies (2012 UK OFT guidance: gameplay should be kept separate from commercial transactions)
- Loot boxes and in-game currencies are subject to the same rules as digital content under DCD.

Examples of enforcement action

May 2024

Dutch ACM fine for unfair practices aimed at children in Fortnite (incl. direct exhortations to make purchases, misleading countdown timers, exploitation of children's vulnerabilities).

2022

EC letter to gaming associations on loot boxes reminding of applicable consumer laws, in line with updated UCPD Guidance.

2020

Two decisions by Italian AGCM: misleading information and/or omissions regarding the characteristics and costs in games with IGP and loot boxes.

Digital Services Act

Most video games likely to fall under 'hosting services' category

Some would qualify as 'online platforms'

Obligations	Intermediary services	Hosting services	Online platforms	Very large online platforms > 45m average MAU
Transparency reporting	•	•	•	•
Requirements on terms of service due account of fundamental rights	•	•	•	•
Cooperation with national authorities following orders	•	•	•	•
Points of contact and, where necessary, legal representative	•	•	•	•
Notice and action and obligation to provide information to users		•	•	•
Reporting criminal offences		•	•	•
Complaint and redress mechanism and out of court dispute settlement			•	•
Trusted flaggers			•	•
Measures against abusive notices and counter-notices			•	•
Special obligations for marketplaces, e.g. vetting credentials of third-party suppliers ('KYBC'), compliance by design, random checks			•	•
Prohibition of dark patterns			•	•
Transparency of recommender systems			•	•
User-facing transparency of online advertising			•	•
Measures to ensure a high level of privacy, safety, and security of minors				
Risk assessment and mitigation obligations				•
External & independent auditing, internal compliance function and public accountability				•
User choice not to have recommendations based on profiling				•
Data sharing with authorities and researchers				•
Codes of conduct				•
Crisis response cooperation				•

GDPR and e-Privacy

A blurred background image showing a person's hands typing on a keyboard and using a mouse at a desk. The scene is dimly lit with blue and purple ambient light, suggesting a gaming or office environment at night.

GDPR (covering all personal data processing) and **e-Privacy** Directive/proposal for Regulation (addressing online privacy issues) fully apply to video games.

Key challenges

- Managing diverse data (gameplay metrics, biometric data via AR/VR headsets), purchase histories and in-game interactions;
- Ensuring lawful bases for data processing;
- Ensuring transparency in data handling;
- Protection of minors: verifying and managing parental consent;
- International data transfers;
- Cybersecurity risks;
- Use of telemetry data for enhancing games.

02

Rules in the making

Child Sexual Abuse Regulation

- Proposal being scrutinized by co-legislator;
- In-game communication services are covered;
- Risk assessment and mitigation measures;
- Possible execution of orders to detect known or new CSAM or grooming;
- Parliament proposed additional measures for children for online games in scope;
- Technical limitations as in-game communication is voice or text based (sharing of video and images rarely allowed).





Across adults and 12-15 year olds, social media sites are the most commonly cited sources of potential online harm. 12-15 year olds have experienced more harms on social media than last year

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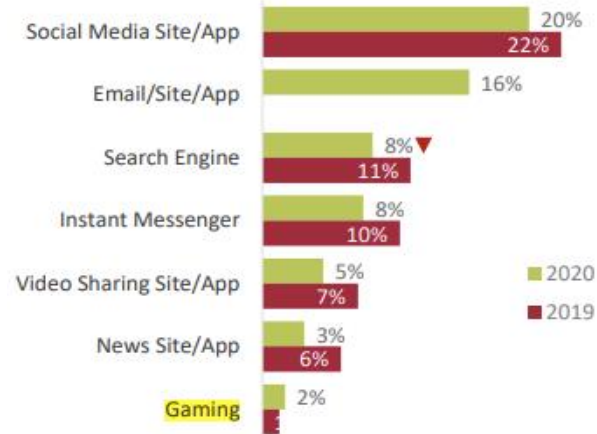
ico.
Information Commissioner's Office

Sources of potential online harm



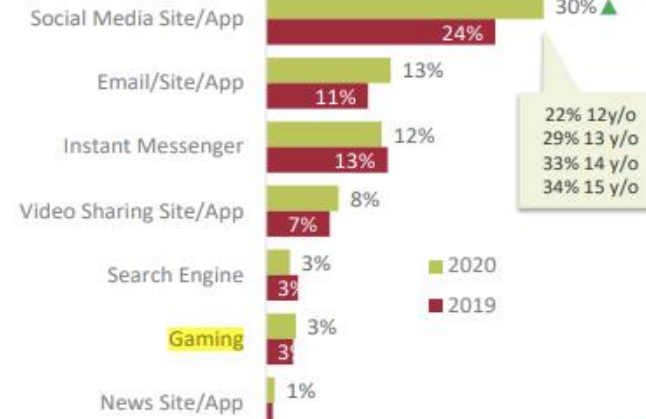
62%

Of adults have **experienced** potential online harms in the last 12 months



81%

Of children (12-15) **experienced** potential online harms in the last 12 months



22% 12y/o
29% 13 y/o
33% 14 y/o
34% 15 y/o

Significantly higher/lower than 2019 ▲ ▼

Source: Jigsaw Research "Potential online harms" March 2019

Question: C4) Which, if any, of the following things have you come across on the internet in the last 12 months? PROMPTED

C7 Which site or service were you using when you came across your most recent experience of (XXX)?

Base: All adult internet users (2057) All 12-15s (1001)

03

Future rules

Digital Fairness Act



Digital Fairness Fitness Check looks specifically at video games related practices, such as sale of virtual items.

Possible areas of further intervention

- More specific rules on dark patterns, in-game purchases, addictive designs, subscriptions, etc.;
- Clarifications/amendments to the concepts of 'average' and 'vulnerable' consumer;
- Easing of the burden of proof;
- A positive '*fairness by design*' duty for traders;
- Broad interpretation of harm (beyond financial detriment) - incl. time loss, attention-capture, '*rabbit hole*' effects, mental harms.

Thank you

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