EU Public Consultation on Content Online
ISFE Response to Questionnaire

EXECUTIVE SUMMARY

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

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

The Commission has rightly identified "digital convergence" as the main driver of change." The interactive software industry is a leading example of digital convergence in action. The industry wishes to continue to exploit the benefits of convergence both to maximize its output within the EU and increase its competitiveness outside the EU. We believe that this can best be achieved by a liberal regulatory infrastructure aligned with strong international norms of intellectual property protection and enforcement.

This industry has pioneered the use of effective self-regulatory classification systems such as PEGI in the EU and has developed rapidly in a liberal trade environment. The industry unfortunately also suffers from growing piracy levels both on and offline which it fights collectively and individually with action programmes both at national and international level. Strong IPR legislation and enforcement by governments is therefore essential, a key element of which is effective protection of the technical measures which the industry uses to safeguard its content to the mutual benefit of users and creators.

The growth of secure and low cost broadband infrastructure must also continue to be a regulatory priority if the online aspect of this industry is to be developed to its full potential. Online videogames are already widely popular in other parts of the world following local provision of adequate broadband infrastructure. The EU industry would benefit from similar initiatives within Europe and beyond.

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[1] **ISFE** Membership consists of the following**: Associations** - AESVI (Italy), ADESE (Spain), BIU (Germany), BLISA (Belgium), ELSPA (UK), MDTS (Sweden), NISVE (The Netherlands), NMS (Norway), SELL (France), SIEA (Switzerland). **Companies** - Activision, Atari, Eidos, Electronic Arts, Konami, Microsoft, Nintendo, SCEE (Sony Computer Entertainment Europe), Take 2, THQ, UbiSoft, VUG (Vivendi Universal Games), The Walt Disney Company France.

INTRODUCTION

The interactive software industry is characterized by remarkable creativity and constant evolution. This has led to the continuous development of totally new forms of entertainment, both on and offline, and an increasing number of devices on which interactive software can be enjoyed.

The unique features which distinguish this industry fall in line with the considerations made by the Commission in the Introduction to this Consultation. What the Commission calls "the growing level of interactivity" is something which was fundamental to this industry when it started 30 years ago: from the very outset, we have invited consumers to share an interactive experience. However, even so, the level of interactivity in the industry has continued to grow steadily in line with the improved performance of digital technology. The emergence within the past decade of online gaming, as described in detail below, has meant a quantum leap not just in terms of interactivity but also in terms of technology and user-driven content.

As we hope ISFE's replies to this questionnaire will show, the head-start enjoyed by an industry "born digital and global" thirty years ago has resulted in a dynamic approach to the many "new" challenges listed by the Commission in the questionnaire. This approach includes business models, classification system and distribution methods.

The industry has developed rapidly over those thirty years, with the introduction of small computer-based games, larger 'arcade' games and the early development of specialized games consoles all occurring during the 1970s and 1980s. The past two decades have seen the wide scale development of the industry itself and the mass production and distribution for retail sale of video games and educational content for use on personal computers, advanced games consoles, including portable devices, and mobile phones. Games developers and publishers now work together to make available a wide array of creative content in increasingly diverse ways.

The advent of the Internet has given an added dimension to this industry which is growing in importance with each passing day. For some years now games have increasingly been delivered via online download and also played individually and collectively with the benefit of an internet connection.

Consumption, creation and diversity of online content

Types of creative content and services online

1. Do you offer creative content or services also online? If so, what kind of content or services? Are these content and services substantially different from creative content and services you offer offline (length, format, etc.)?

The interactive software industry has a vibrant online element and it is within the past decade that most innovations have taken place. These advances are built around two main activities: the delivery of games online and the development of games which have online capabilities. Major technological development of games consoles has also taken place resulting in much more sophisticated devices including hand held/portable models and devices with multi-purpose functionality. Almost all of these devices now have online capability.

The online delivery (download) of a game is usually direct distribution of a full game traditionally distributed as a 'packaged' good; on the other hand many network games and MMORPGs (see further below) utilize a "client-server" format and are played through a hybrid 'packaged' good/online type service where the user has a hard copy of a game or download and connects online to a server to access play with other players.

Today millions of players around the world are attracted to online gameplay as it offers an unprecedented ability to interact with large numbers of people engaged simultaneously in a structured environment where all are involved in the same activity, playing the game.

The Internet has thus allowed the evolution of entirely new entertainment experiences and as a result further opened the world market up to European publishers.

As we explain below, the growth of the online side of this industry greatly depends on the existence of a secure global legal environment. Adequate laws and effective enforcement of those laws is vital to the development of online games.

We now look at online games in more detail:

A growing number of our members[2] are delivering content to consumers online via stand alone software applications or web based applications.

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[2] EA, for example, delivers EA titles, expansion packs, add-ons, wallpaper, product demos and other proprietary content on line through an application currently entitled *EA Downloader*. Consumers obtain EA's products and related content through *the EA Downloader* simply by (i) selecting the applicable product online; (ii) if applicable, making an online payment; and (iii) downloading and installing the *EA Downloader*. When the consumer next opens the *EA Downloader*, he or she is

This new method of delivering product is rapidly finding favour amongst consumers. This is because it offers consumers the ability to purchase products and have them delivered directly to their computers, when they choose, and in a convenient fashion.[3] For example, consumers can elect to purchase a title prior to the release date of the applicable title. On the release date, the title is available for download onto the consumer's desktop computer. This new method of product delivery similarly offers new opportunities to the industry because it provides the industry with another cost effective distribution channel.

Whilst there are certain similarities to the gaming experience both on and off line 'cutting edge' technology, 'immersion' excitement, skills etc, the online experience is continuous, a so-called '*persistent world*'[4], interactive with other players and user-driven.

Online games have an impressive uptake. The Organisation for Economic Cooperation and Development ('OECD'), based on a Price Waterhouse Coopers report in 2004, estimates that the online games share of the overall interactive software market will grow from 4% in 2002 to 28% in 2008.

Online games are currently categorized as being of five different types:

1. **Casual games** – which are usually online or mobile versions of arcade, board or digital games and are generally made available free of charge.

2. **Advergames** – online games aimed at promoting a particular product or message and therefore also made available free of charge.

3. **Network Games** - games played usually with a PC but now also via consoles (including newer handheld devices) with online access. The most popular types of games can now be played in this way with online engagement usually occurring between small numbers of players.

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presented with his/her chosen EA product to download and install. By way of example, a consumer could purchase EA's *2006 FIFA World Cup* simply by purchasing the product online at www.ea.com, downloading and installing the *EA Downloader* at downloader.ea.com, opening the *EA Downloader,* and downloading and installing *2006 FIFA World Cup.* The product purchased is the same product that is also available to consumers on fixed media at retail outlets. Consumers can only access and use their downloaded content through the *EA Downloader*. For more information on the *EA Downloader*, see downloader.ea.com and http://en.wikipedia.org/wiki/EA_Downloader.

[3] see http://www.gamespot.com/news/6141592.html.

[4] Edward Castronova 'Synthetic Worlds. The Business and Culture of Online Games' University of Chicago Press 2005

4. **Massively Multiplayer Online Role-Playing Games** (MMORPG) are considered the most innovative and revolutionary of all online games as they are continuous ('persistent') and can involve many thousands of players at the same time. It is around these games that virtual communities develop leading to creation of social structures and values, constant communication and virtual currencies and assets. There are a number of recent publications which document the rapidly evolving technologies, communities and artforms which are evolving from MMORPGS. [5] So far, for a number of reasons, the Asian online games industry is many times more productive and profitable than that of the EU. This is explored further below.

5. **Mobile games -** For the past decade games are also being increasingly developed for use on mobile phones and delivered either already installed on a phone or via direct download at a later time.

Online games afford unparalleled platforms for interaction among human beings, what author Edward Castronova calls "avatar-mediated communication"[6]. Noted French psychologist Serge Tisseron [7] has also observed that this interaction starts being game related, but often later leads to a broader, more personal interactivity which may result in face to face meetings.

Delivery of games via online (and mobile) download will continue to grow as will the extent of repertoire made available online by our member companies.
Another ISFE member[8] has recently announced that its new 'next generation' games console will have the facility to download any of a large number of games from its back catalogue issued during the last fifteen years.

2. Are there other types of content which you feel should be included in the scope of the future Communication? Please indicate the different types of content/services you propose to include.

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[5] Edward Castronova 'Synthetic Worlds. The Business and Culture of Online Games' University of Chicago Press 2005

[6] Edward Castronova ibid

[7] Serge Tisseron 'PC and Video Games; Friends or Foes' ISFE Expert Conference Report 2006

[8] Nintendo's new *Wii* console.

3. Do you think the present environment (legal, technical, business, etc.) is conducive to developing trust in and take-up of new creative content services online? If not, what are your concerns: Insufficient reliability / security of the network? Insufficient speed of the networks? Fears for your privacy? Fears of a violation of protected content? Unreliable payment systems? Complicated price systems? Lack of interoperability between devices? Insufficient harmonisation in the Single Market? Etc.

We have three main areas of concern. These are:

a. Positive Regulatory Environment: Online gaming is a major component of the highly creative internet-based communities that thrive at the present time. The momentum currently being generated by this industry and its user community has occurred without, and maybe because of, a lack any significant regulatory interference or limitation in the creative environment that exists for this industry online. It is vital that this positive environment is allowed to survive so that this interactive joint venture between industry and users continues to drive the online production and distribution of interactive software. It is vital that this positive environment is allowed to survive so that this interactive joint venture between industry and users continues to drive the online production and distribution of interactive software.

b. Strong IPR Protection: In addition and equally important to the expansion of online content is the protection of that content and also of the technical systems through which it is both delivered and protected from theft. We continue to therefore seek the active support of the European Commission in securing a firm legal framework which delivers strong enforcement of Intellectual Property Rights ('IPR') worldwide. We will deal later in this paper in more detail about how the Internet has unfortunately also greatly contributed to the spread of Piracy within this industry. We also write of the need for stronger protection of the technical measures which our industry uses to protect its IPR as well as the need for strong action against those who make illegal copies of video games available online.

c. Broadband Availability: Lastly, adequate broadband penetration is a prerequisite to online gaming, whose development is entirely dependent on the availability of reliable, affordable broadband connections. The Korean experience has shown the merits of inspired government innovation. In the mid nineties the Korean administration demonstrated its support of next generation communication technologies by investing $1.5 billion in broadband development, providing $1 billion of 'soft' loans and deregulating its national phone monopoly. The competition so generated resulted in Korea rapidly acquiring one of the most successful broadband and wireless connection rates in the world; 60% of homes were connected by 2002; subscriptions to broadband have now reached a world record level of 25%.

Analysts have identified Korea's lead in broadband infrastructure as the key driver of their enviable share (7%) of the world market for online gaming. [9]

The new broadband system along with the local growth of 'cybercafés' catering for online gaming had a significant impact on the development of online gaming in Korea. This in turn contributed to the rapid development of online business and communication in that country. The growth in the Korean online gaming industry has also resulted in the some of the world's most successful MMORPGs being of Korean origin.

A similar scenario is required within the European Union where broadband use stills trails the rest of the developed world. It is therefore vital that adequate resources are devoted to ensuring sufficient penetration, speed and reliability of new broadband networks.

4. Do you think that adequate protection of public interests (privacy, access to information, etc) is ensured in the online environment? How are user rights taken into account in the country you live / operate in?

In the interactive software industry online systems aimed at protecting user rights are being developed by ISFE in cooperation with The European Commission as part of the PEGI (Pan-European Game Information) Online system. Full details of this initiative and of the original PEGI rating system are given at **Answer 24** below. The PEGI Online Safety Code will contain provisions which both seek to ensure user privacy whilst also protecting minors from harmful content. The POSC will be supervised by a panel of independent industry experts. Based on the success of the PEGI system with European consumers, and on the European Commission's effective support in extending it to the online world, ISFE is confident that it represents the best way of dealing with protection of minors, human decency and other public interest requirements in the online environment.

In order to further ensure the protection of personal information, many ISFE members have also introduced robust privacy protection programmes and policies aimed at safeguarding consumer information.

ISFE members are of course also subject to many regulatory requirements introduced under EU legislation (including those Directives covering Data Protection, Privacy and Electronic Communications, E-Commerce and Distance Selling) as well as EU and local competition and consumer protection laws. Codes of conduct also exist at national level for the online marketing and sale of goods. All of these measures further protect consumers in the online environment.

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[9] It should however also be pointed out that the Korea games industry also suffers greatly from its proximity to the piracy haven that is China (http://times.hankooki.com/lpage/200608/kt2006080817244210440.htm.

5. How important for you is the possibility to access and use all online content on several, different devices? What are the advantages and / or risks of such interoperability between content and devices in the online environment? What is your opinion on the current legal framework in that respect?

Interactive software publishers generally release their titles on multiple 'platforms' to offset the high cost of development of those titles. Games are platform specific. A single "title" may vary both in features and game play style depending on the platform for which it is released. This is because publishers take advantage of very different hardware capabilities, and design games to appeal to the audience that prefers that platform. This is now also true in online environments given that online game play is increasingly available not just as in the past via Personal Computers, but also via games consoles including mobile devices. In addition some games are adapted for use on mobile phones where limitations such as screen size, software etc allow. All of the foregoing ensures that a wide range of game players can have access to content both on and offline using the type of 'hardware' which best suits their style of game play. It is our experience that players display fixed preferences for the type of games console that best reflects their personal style and identity.

6. How far is cultural diversity self-sustaining online? Or should cultural diversity specifically be further fostered online? How can more people be enabled to share and circulate their own creative works? Is enough done to respect and enhance linguistic diversity?

Online gaming is a major component of the highly creative internet-based communities that are thriving at the present time. The momentum being generated in the online games sector and driven by the efforts of games publishers and players alike is in part responsible for an explosion in culturally diverse and multinational content online. This diversity is self-sustaining and continually evolving.

Games, particularly those played online, are rightly seen as a stage, a *hyper-stage* [10] where players are invited to take on roles and perform acts. Inevitably, they contribute their personal idiosyncrasies, values, culture, etc to these roles and acts. The *Virtual Worlds* [11] associated with online games are fora populated by communities engaging in international creativity and multi-lingual communication on a constant basis.

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[10] Edward Castronova 'Synthetic Worlds. The Business and Culture of Online Games' University of Chicago Press 2005

[11] Edward Castronova ibid.

Steven Johnson[12], a prolific author in the realm of how neuroscience and new media interlock, has this to say about how exactly games-generated culture differs from forms of culture elicited by traditional content:

"Here again, you have to shed your expectations about older cultural forms to make sense of the new. Game players are not soaking up moral counsel, life lessons or rich psychological portraits. They are not having emotional experiences with their Xbox other than the occasional adrenaline rush".

Arguably, the power of online games as providing unparalleled communication tools transcends existing languages. Online gamers have proved as creative as SMS buffs in designing tailor-made new e-mail syntax which only slightly resembles any existing language. Portraying videogames as the new purveyors of traditional culture is therefore as big a mistake as crediting them with an ability to enhance language skills. Unlike movies, games afford players a platform to share their own culture and language. Not only does this continuing creative process offer the best explanation of why videogames are so popular, it provides a ready made stage for cultural and linguistic diversity in action.

A common misconception regarding videogames arises from equating their "consumption" to that of movies or TV shows, two other popular combinations of audio and video signals. Movie watching is indeed enjoyed through immersion in a given and usually identifiable culture generally reflecting the background of the movie director concerned. Playing games is all about a license - rather a mandate, otherwise you are stuck in the game - to create culture. Again, Steven Johnson puts it in a clear-cut fashion:

"No other pop cultural form directly engages the brain's decision-making apparatus in the same way. From the outside, the primary activity of a gamer looks like a fury of clicking and shooting, which is why so much of the conventional wisdom about games focuses on hand-eye coordination. But if you peer inside the gamer's mind, the primary activity turns out to be another creature altogether: making decisions, some of them snap judgments, some long-term strategies".

Another way to dispel widespread confusion about the respective contribution of games and traditional content to culture focuses on the narrative aspects. Steven Johnson again:

"You can still enjoy a book without explicitly concentrating on where the narrative will take you two chapters out, but in game worlds you need that long-term planning as much as you need present-tense focus. The closest analogy to the way gamers are thinking is the way programmers think when they write code.

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[12] Steven Johnson, "Everything Bad is Good For You" Riverhead Books (2005)

A program is a sequence, but not a narrative; playing a video game generates a series of events that retrospectively sketch out a narrative, but the pleasures and challenges of playing don't equate with the pleasures of following a story".

Competitiveness of European online content industry

7   If you compare the online content industry in Europe with the same industry in other regions of the world, what in your opinion are the strengths and weaknesses of our industry in terms of competitiveness? Please give examples.

As can be seen in the OECD projections set out at **Answer 9** below, the combined online and wireless segments will comprise respectively 40%, 57% and 59% of the US, EMEA and Asia/Pacific markets in 2008. The European online market share should, we submit, be of a higher nature.

Again a comparison with Asia is striking. Some industry analysts [13] now suggest that annual MMORPG sales alone in Asia will grow at by 25% each year from 2005 to 2008 resulting in revenue growth from €300 million to € 650 million. The Asian market for these games will therefore grow to € 2 billion by 2013 with China alone growing to nearly €1 billion by 2008 [14]. This potential is too big to ignore. At present only one of the top ten MMORPGs (*World of Warcraft*) is owned by an EU company [15]

The Korean experience detailed in **Answer 3** above shows the possibilities for the EU industry both within and outside the EU territory itself. As the OECD said in its recent (2004) report on Digital Broadband Content 'The lessons from Korea suggest that diversifying Internet content in conjunction with broadband Internet access increases market participation. For example, in Korea board-type games are over 50% of the computer games played by those over 35 while role-playing games are more popular with the under 35 group.

Moreover, short games that last 1-10 minutes appeal to older people. Most game developers and publishers are still trying to develop games for mass-market penetration building on some of these lessons". [16]

Korea is also a good example of how barriers can be overcome in Europe allowing the exposure of online games to a mass-market in this region.

As a result of the Korean government's support to broadband market participation in online games in Korea now involves all ages and all walks of life, to the general benefit of the Korean population and of the Korean games industry. A similar scenario within the European Union would be fully in the

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[13] Wedbush Morgan Securities 2006 Industry Report on Entertainment Software Publishing and Retail

[14] Asia Times http://www.atimes.com/atimes/China_Business/HH12Cb01.html

[15] Vivendi Games.

[16] OECD Report on Digital Broadband Content (2004)

interests of a stated European Commission objective, 'e-Inclusion' (i.e. bringing the benefits of the Information Society to all Europeans, including senior citizens and people with handicaps).

As we have already explained, a low tariff environment is an essential aspect necessary to ensure steady growth of an EU-based online industry.

New business models and transition of traditional ones into the digital world

8. Where do you see opportunities for new online content creation and distribution in the area of your activity, within your country/ies (This could include streaming, PPV, subscription, VOD, P2P, special offers for groups or communities for instance schools, digital libraries, online communities) and the delivery platforms used. Do you intend to offer these new services only at national level, or in whole Europe or beyond? If not, which are the obstacles?

This industry has always had a global aspect as it has been digital and international from the outset. The industry therefore seeks an unfettered world trade environment for the development and online distribution of interactive software which has always been seen in a global context by our membership.

Online distribution of games is a significant and growing part of ISFE members business. In addition the industry uses online delivery to provide 'demonstration' versions of products to consumers to allow sampling of games before a purchase takes place.

A fundamental objective of ISFE membership is to ensure that the trade classification and tariff treatment accorded to electronically transmitted content is identical to that accorded to content made available on carrier media. European publishers obviously want to expand their markets globally and online distribution represents the best and most efficient opportunity to achieve this objective. Online distribution must therefore be possible in unfettered trade environment both within and outside the EU. Such an environment would obviously act as a very positive incentive in increasing development and take up of online games produced and distributed within the EU.

An example of a massive and largely untapped market for EU online games is Asia. As already stated markets in that region, (China, Japan, Korea, India) are particularly receptive to online gaming, and are so far poorly addressed by industries other than those based in Asia itself. An unfettered trade environment may very well open a window of opportunity in the region to a European industry whose ability to project itself globally offline is already well documented.

Share of online and wireless in overall gaming revenues

Regions	2006	2008
US	31 %	40 %
EMEA	42 %	57 %
Asia/Pacific	46 %	59 %

Source: ISFE from OECD report (see footnote 17)

Secondly, as already stated above, online gaming depends heavily on the availability of reliable, affordable telecom services both within and outside the EU. We see possible obstacles and limitations to our online business in the possibility of some telecom networks remaining sub-optimal in quality or service or even discriminating against non-national content In addition , 'network neutrality' must be ensured (see **Answer 20**. below).

9. Please supply medium term forecasts on the evolution of demand for online content in your field of activity, if available.

Here again the OECD 2004 study [17] provides useful data. It states 'a trend is evident towards online games in PCs and consoles, as most if not all, new PC and console games are released with some online network capabilities. This is expected to lead to a decline in off-line PC computer game sales, and moderate growth rates in the off-line console market possibly to the point where the all computer games will become, at least in part, online games. Projected market proportions by 2008 are: console games 41%, PC games (not on-line) 6%, wireless games 25%, and online games of advanced kinds 28% '

This can be summarised as follows:

Trends in the computer game industry [18]

		Connectivity	
		Off-line	Online
Hardware	**PC**	Mature	Strong growth
	Console	Moderate growth	Strong growth
	Wireless	Strong growth	Strong growth

The OECD study also provides more detailed estimates which whilst not showing 'broken out' figures for Europe do indicate a growing market for online games in the region

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[17]   OECD Report on Digital Broadband Content (2004)

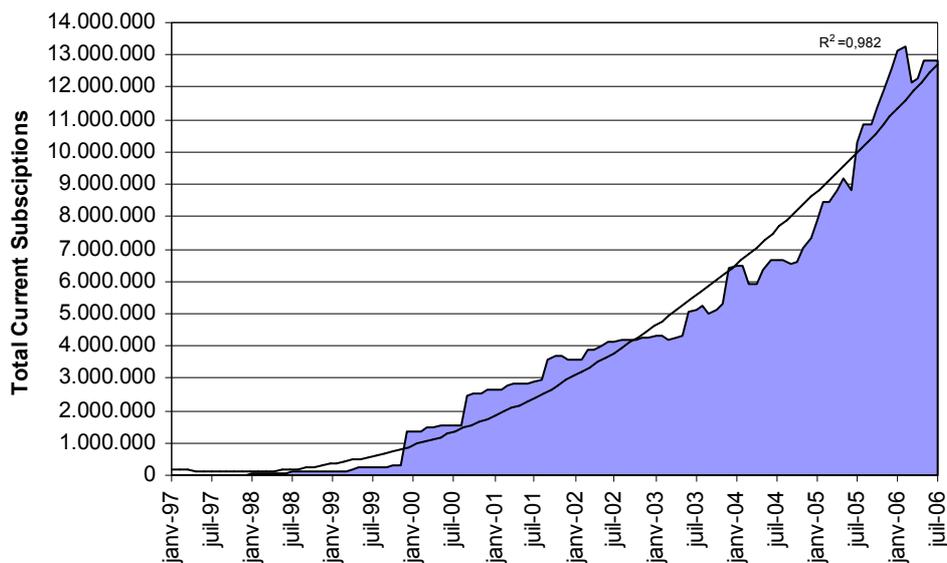[18]   Rand Europe Report on Online Gaming to Ofcom UK (2006)

Computer and video game markets, 1999-2008 (estimates 2004-2008) million USD

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
U.S.										
Console games	4 200	4 102	4 597	5 501	5 794	5 890	5 670	6 500	7 820	8 040
PC games	1 998	1 900	1 747	1 401	1 206	1 251	1 125	1 125	1 068	1 046
Online games	-	57	135	249	420	662	1 152	1 692	2 622	3 375
Wireless games	-	-	-	65	142	301	1 202	1 680	2 232	2 837
Total	6 198	6 059	6 479	7 216	7 562	8 104	9 149	10 997	13 742	15 298
Europe, Middle East, Africa (EMEA)										
Console games	2 569	2 496	2 801	3 410	3 611	3 688	3 620	4 094	4 974	5 190
PC games	1 433	1 365	1 266	1 109	939	951	925	914	890	866
Online games	-	14	60	157	302	548	871	1 706	2 784	4 086
Wireless games	-	-	-	112	208	408	996	1 935	2 835	3 948
Total	4 002	3 875	4 127	4 788	5 060	5 595	6 412	8 649	11 483	14 090
Asia/ Pacific										
Console games	5 003	4 594	5 025	5 610	5 920	6 052	5 823	6 680	8 400	8 625
PC games	2 352	2 236	2 037	1 728	1 472	1 518	1 300	1 249	1 167	1 120
Online games	-	50	155	389	630	1 020	1 881	3 168	5 115	7 470
Wireless games	-	-	8	717	367	845	2 295	3 605	4 800	6 600
Total	7 355	6 880	7 225	8 444	8 389	9 435	11 299	14 702	19 482	23 815
Total										
Console games	11 772	11 192	12 423	14 521	15 325	15 630	15 113	17 274	21 194	21 855
PC games	5 783	5 501	5 050	4 238	3 617	3 720	3 350	3 288	3 125	3 032
Online games	0	121	350	795	1 352	2 230	3 904	6 566	10 521	14 931
Wireless games	0	0	8	894	717	1 554	4 493	7 220	9 867	13 385
Grand total	17 555	16 814	17 831	20 448	21 011	23 134	26 860	34 348	44 707	53 203

Note: EMEA includes EU15, Czech Republic; Hungary; Poland; Romania; Russia; Israel; Saudi Arabia; South Africa; and Turkey; Asia/Pacific includes Australia; China; Hong Kong China; India; Indonesia; Japan; Malaysia; New Zealand; Pakistan; Philippines; Singapore; Korea; Chinese Taipei and Thailand.

Source: OECD adapted from PwC (2004).

Meanwhile, Rand Europe [19]projects an explosive growth of MMORPGs globally:

$R^2 = 0,982$

Total MMORPG active subscriptions

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[19] Rand Europe Report on Online Gaming to Ofcom UK (2006)

10. Are there any technological barriers (e.g. download and upload capacity, availability of software and other technological conditions such as interoperability, equipment, skills, other) to a more efficient online content creation and distribution? If so, please identify them.

Here again we refer to our comments on broadband penetration and affordable telecom access detailed at **Answer 3** above as well as the need for a strong IPR protection environment also explained at **Answer 21** below.

11. What kind of difficulties do you encounter in securing revenue streams? What should in your view be the role of the different players to secure a sustainable revenue chain for creation and distribution online?

Our main concern again here is to ensure a secure legal environment for the online distribution of interactive software via strong IPR regimes and effective enforcement of same. This is the most effective way of protecting our members' revenue streams and the technical measures through which they protect the integrity of their relationship with consumers (see **Answer 21** below).

Payment and price systems

12. What kinds of payment systems are used in your field of activity and in the country or countries you operate in? How could payment systems be improved?

13. What kinds of pricing systems or strategies are used in your field of activity? How could these be improved?

Licensing, rights clearance, right holders remuneration

14. would creative businesses benefit from Europe-wide or multi-territory licensing and clearance? If so, what would be the appropriate way to deal with this? What economic and legal challenges do you identify in that respect?

15. Are there any problems concerning licensing and / or effective rights clearance in the sector and in the country or countries you operate in? How could these problems be solved?

16. How should the distribution of creative content online be taken into account in the remuneration of the right holders? What should be the consequences of convergence in terms of right holders' remuneration (levy systems, new forms of compensation for authorised / unauthorised private copy, etc.)?

ISFE membership is opposed to the introduction of levy schemes as compensation for any copying of copyright material.

Such levy schemes are generally inaccurate and ineffectual and can even be seen as granting an implied license to those who seek to illicitly reproduce copyright material. ISFE members do not currently benefit from any such levy schemes nor do they want to so benefit in the future.

Legal or regulatory barriers

17. Are there any legal or regulatory barriers which hamper the development of creative online content and services, for example fiscal measures, the intellectual property regime, or other controls?

It seems that any kind of new controls on online output would run contrary to the healthy development of an industry which is global by nature. It is our belief that the origin of the global success of the European interactive software industry can be traced back to a lack of national obstacles, be they tax or intellectual property related. Accordingly, our core advocacy consists of recommending the retention of the recipe for the past and current success of the European industry. This core stance is consistently put forward by the industry worldwide, i.e. in regional (EU) as well as global (WIPO, WTO) fora.
Again, as already explained, a strong global IPR protection regime is vital to the development and survival of a market for creative online content.

18. How does the country you mainly operate in encourage the development of creative online content and services?

19. Are "release windows" applicable to your business model? If so, how do you assess the functioning of the system? Do you have proposals to improve it where necessary? Do you think release windows still make sense in the online environment? Would other models be appropriate?

20. The Internet is currently based on the principle of "network neutrality", with all data moving around the system treated equally. One of the ideas being floated is that network operators should be allowed to offer preferential, high-quality services to some service providers instead of providing a neutral service. What is your position on this issue?

The interactive software industry, uniquely in the content sector, favours and fosters the ability of users to create content.

Accordingly, we oppose any discrimination between users dependent on the level of intensity of their network usage.

This is all the more so in view of our comments made at **Answer 6** above on the ability of users to contribute their own content and therefore increase the interactivity and creativity of the industry.

This industry is a strong supporter of 'Network Neutrality'. We strongly feel that the EU should safeguard the competitive nature of its online content industry by allowing consumers and content providers to connect with each other in an open marketplace.

Therefore we ask the European Commission to guard against any future abuse of market power by network operators who might have the incentive and ability to distort commerce by charging content providers for preferential access to consumers. It is indeed a current observation that gamers' adeptness at creating new content on playing easily transfers into an ability to develop new content as a business. In a nutshell, a number of today's gamers are tomorrow's developers. It would therefore run contrary to the EU's proclaimed intent to foster game development in Europe to let the related fledgling businesses be hit by undue access charges.

Piracy and unauthorised uploading and downloading of copyright protected works

21. To what extent does your business model suffer from piracy (physical and/or online)? What kinds of action to curb piracy are taken in your sector/field of activity and in the country or countries you operate in?

Do you consider unauthorised uploading and downloading to be equally damaging? Should a distinction be made as regards the fight against pirates between "small" and "big" ones?

Piracy/Counterfeiting – Problems

As the market for interactive software gets bigger pirates have become more sophisticated both commercially and technologically. There has been a consequent, and dramatic, increase in the instances and variety of forms in which piracy can arise. A large part of the piracy problem has its origin online but it also exists offline.

The numerous ways in which interactive software piracy occurs, the ease and low cost of duplication and the high quality of the resulting pirate product all highlight a significant problem for the industry. Due to the use of digital technology throughout the piracy process, there is no degradation in the quality of interactive software from the original to the pirate copy in either 'hard goods' form, optical disc or game cartridge or online. A video game that results from groundbreaking technological development, years of effort and an investment of millions of euros can be duplicated and illegally distributed instantaneously either online or offline by means of existing widely developed distribution networks.

Piracy in the on-line environment may take various forms including websites allowing the downloading of pirated copies - most of the time after having removed the technological protection measures – (so called *warez* websites) as well as peer-to peer networks which enable Internet users to exchange pirated files. It is now a regular occurrence for new interactive software to be distributed for illegal download on the Internet within minutes of official release and occasionally even prior to release.

Currently, thousands of interactive software pirated copies are distributed everyday via these *warez* websites, peer-to-peer and 'bit torrent' servers. As is generally known, a number of the major peer- to-peer and 'bit torrent' servers recently highlighted in the news are located in Europe. For example, we point to the so called 'Pirate Bay' site which is hosted in Sweden, and the 'Finreactor' peer to peer litigation pending in Finland in which some ISFE members are active participants.

Pirates are therefore using the Internet and online channels to advertise and take orders for hard goods that are being shipped in from outside the country and, more often, replicated by using CD and DVD burning equipment domestically. Access to these pirated products can be gained at home, but pirates also use the broadband facilities of universities or Internet cafés where illegal downloading of interactive software is an increasingly growing concern. Wider household broadband access will unfortunately also further increase this phenomenon. Also in Sweden, which has one of the higher rates of broadband penetration in Europe, it has been estimated that 85 % of the broadband traffic consists of pirate copies of copyright protected works.

Pirates also often advertise, distribute and sell counterfeit interactive software online through web sites and Internet auction houses such as eBay, Yahoo!, and Alibaba.

Another damaging and widespread activity is the making available on the Internet of illegal devices ('mod chips') enabling circumvention of vital technological protection measures in game consoles. Some ISFE members engage in continuous enforcement programmes and litigation aimed at halting the manufacture distribution and sale of these devices.

Piracy/Counterfeiting – Remedies

Our member companies continually strive to improve protection of the technical systems they use to protect distribution and use of the interactive software that they produce online. These systems must cover both online distribution of software and the consoles on which that software is used. i.e technological protection measures ('TPMs') are used to protect against its PC or console software being copied and also to protect against any access to unauthorized copies of that software.

These TPMs differ from company to company and are of necessity proprietary and/or confidential, but essentially what they do is first, place a technological impediment against copying so that to make an unauthorized copy of these products, the technological measure must be 'hacked' or circumvented.
Then, if the product is 'hacked' and copied, a user would once again have to circumvent the TPM to access the content on the unauthorized copy, i.e., by using a so called 'mod chip' and/or including code in a copy that would imitate a legitimate copy.

It is vital that there is increased governmental focus on the problems our members are facing online, such as unauthorized downloads, 'bit torrent', peer-to-peer, etc. (as explained above) and on the legal remedies that exist to those problems such as ensuring strong TPM/anti-circumvention legislation and enforcement (both civilly and criminally), full implementation of the 1996 WIPO 'Internet' treaties[20] and effective ISP notice and takedown requirements.

Additionally, we wish to highlight the need for criminal penalties for online piracy, the training of criminal enforcement agents and prosecutors on online technology and piracy and the ability for rights holders to work with local law enforcement to initiate criminal action for online piracy. The industry already works collectively and individually to fight piracy both on and off line. However while efforts have been and are being made, further cooperation and training are needed. ISFE members also work with law enforcement officials globally to shut down, for example, w*arez* groups. See also **Answer 22** below.

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[20] http://www.iipa.com/wipo_treaties.html

22. To what extent do education and awareness-raising campaigns concerning respect for copyright contribute to limiting piracy in the country or countries you operate in? Do you have specific proposals in this respect?

ISFE and its membership is continually involved in education of the public, government and law enforcement and feels that EU/government supported and funded educational campaigns are key in educating consumers, especially the young, in both refraining from engaging in illegal activity and also from purchasing pirate or counterfeit goods. In the recent past, ISFE has focused its activities in this area on the member states which have recently joined the EU.

23. Could peer-to-peer technologies be used in such a way that the owners of copyrighted material are adequately protected in your field of activity and in the country or countries you operate in? Does peer-to-peer file sharing (also of uncopyrighted material) reveal new business models? If so, please describe them?

Rating or classification

24. Is rating or classification of content an issue for your business? Do the different national practices concerning classification cause any problem for the free movement of creative services? How is classification ensured in your business (self-regulation, co-regulation)?

Fully effective and dynamic classification/ratings systems have been developed by ISFE as part of the self-regulatory PEGI (Pan-European Game Information) programme. PEGI is the first ever pan-European system of harmonized age ratings throughout Europe. PEGI affords parents and other gatekeepers independently checked, reliable and easy-to-read recommendations to make informed buying decisions pertaining to interactive software, whatever the platform involved. More details can be found at www.pegi.info,

ISFE is now enhancing the PEGI-related information already given to parents by developing a ratings system for online content, with the support of the European Commission's Safer Internet Programme. As with the PEGI system that precedes it, all signatories to the PEGI Online Safety Code (POSC) will be authorized to exhibit a machine-readable PEGI Online ('PO') label that will tell parents, directly or through parental control systems, that online content is PEGI compliant. The POSC will also contain provisions which seek to ensure proper advertising and protection of user privacy and human decency. The POSC will be supervised by a panel of independent industry experts.

In the future interested parties need only go to the PEGI website to gather detailed information on the general commitments taken by companies authorized to display the PO label. There they will also find information about any concerns pertaining to various types of online games.

Based on the success of the PEGI system with European consumers, and on the European Commission's effective support in extending it to the online world, ISFE is confident that this self-regulatory approach represents the best way of dealing with protection of minors, human decency and other public interest requirements in the online world. ISFE therefore wishes to see the PEGI system fully operational throughout the European region. A small number of countries, however, retain compulsory ratings systems which partition the internal market by causing obstacles to the free movement of the goods produced by this industry.

Digital Rights Management systems (DRMs)

Digital Rights Management systems (DRMs) involve technologies that identify and describe digital content protected by intellectual property rights. While DRMs are essentially technologies which provide for the management of rights and payments, they also help to prevent unauthorised use.

25. Do you use Digital Rights Management systems (DRMs) or intend to do so? If you donot use any, why not? Do you consider DRMs an appropriate means to manage and secure the distribution of copyrighted material in the online environment?

26. Do you have access to robust DRM systems providing what you consider to be an appropriate level of protection? If not, what is the reason for that? What are the consequences for you of not having access to a robust DRM system?

27. In the sector and in the country or countries you operate in, are DRMs widely used?Are these systems sufficiently transparent to creators and consumers? Are the systems used user-friendly?

28. Do you use copy protection measures? To what extent is such copy protection accepted by others in the sector and in the country or countries you operate in?

29. Are there any other issues concerning DRMs you would like to raise, such as governance, trust models and compliance, interoperability?

As is well known, the term DRM ('Digital Rights Management') is used to describe a number of technologies that can be incorporated into electronic devices to protect and control the use of digital media. ISFE members use DRMs both to safeguard both their intellectual property and also the relationship between the company and the user. They are an essential ingredient in a successful, secure and legitimate online industry.

The interactive software industry has always used technological protection measures on its products in a variety of forms. These are referred to generally in the industry as "TPMs" and can include "copy protection" mechanisms. DRMs generally provide for broad and varied rules on how content is accessed and consumed and can often be based on a third party or industry mandated standard.

This industry has made its own contribution to the development of very successful TPM solutions for the online environment.
We believe this form of self-help by individual companies has a self evident, successful history and must be encouraged. On the other hand, a universal DRM system, particularly if imposed from the outside or mandated by government can only adversely impact on an industry that has been seen to thrive through the use of own TPMs since inception.

As explained elsewhere in this document, we cannot stress too highly the importance of the continued protection of both TPMs themselves and also the legal regimes under which they exit. Our industry's continued online growth rests on the protection and preservation of those TPMs, but developed and utilised on an individual company by company basis, as opposed to any mandatory imposed DRM system.

TPMs are truly vital in the online environment. Therefore their existence must be protected and, we repeat, the need is great for both the existence and enforcement of legal rights to protect against circumvention of those TPMs, such as, for example, result from national implementation of the WIPO 'Internet' treaties.

Complementing commercial offers with non-commercial services

30. In which way can non-commercial services, such as opening archives online (public/private partnerships) complement commercial offers to consumers in the sector you operate in?

What role for equipment and software manufacturers?

31. How could European equipment and software manufacturers take full advantage of the creation and distribution of creative content and services online (devices, DRMs, etc.)?

What role for public authorities?

32. What could be the role of national governments / regional entities to foster new business models in the online environment (broadband deployment, inclusion, etc.)?

Korea has achieved a 7% share of the world market for online gaming in correlation with a 25% broadband penetration rate which, as explained above, results from a substantial effort by the Korean government to support broadband uptake. This contrasts with, for instance, the 12.5% broadband penetration rate of Germany where the online gaming market is currently depressed.

At a time when the German Parliament is poised to consider a bill to bar rivals from Deutsche Telekom's new ultra-fast VDSL Internet network, it is worth bearing in mind that, as set out in our responses above, a timely uptake of online gaming hinges on broadband connections being ubiquitous, reliable and affordable. We recognize that the telecom industry may need incentives to provide such services but not in a way which disadvantages other users and content providers.

33. What actions (policy, support measures, research projects) could be taken at EU level to address the specific issues you raised? Do you have concrete proposals in this respect?

Independent, i.e. government supported research is essential. Member state delegations to the OECD gathered at a meeting to unveil the first OECD study on games in December 2004 [21] agreed that they cannot develop adequate public policies in the absence of proper information about current and future populations of gamers and how their needs and expectations will evolve.
This research should be funded, commissioned and undertaken in the near future. ISFE is happy to assist.

ISFE Secretariat, Brussels; October 2006

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[21] OECD Report on Digital Broadband Content (2004)

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