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Wednesday 27th January 2021

The Committee of Advertising Practice Ltd. (CAP)
& Advertising Standards Authority (ASA)
Castle House,
37-45 Paul St,
Shoreditch,
London
EC2A 4LS

Dear Consultation Team,

Please find herein a response from Mobile Games Intelligence Forum to the CAP and BCAP consultation on guidance on advertising in-game purchases.

If you have further questions, or if you can provide any clarification, contact us via contact@mobilegamesintelligence.com

We would be happy to engage further with the CAP and BCAP at your convenience.

Yours faithfully

Luc Delany
CEO
Delany & Co



Mobile Games Intelligence Forum Response to the CAP and BCAP Consultation on ads for in-game purchasing

Introduction

The Mobile Games Intelligence Forum (MGIF) was established in January 2020 to discuss and debate issues facing the sector and its place within the global video games industry. Rather than a representative body or a trade group, MGIF is a participatory forum, sharing mobile games insight and perspectives - for example, MGIF contributed to the DCMS Loot Box Call for Evidence.

Participants in the forum include a range of developers of differing sizes including King, Miniclip, Playrix, Playtika, Roblox, Rovio, Supercell, and Wargaming. They have in common a passion for mobile games. As such this paper does not represent the views of any single company, rather it is a sum of knowledge shared between MGI and forum participants.¹

Mobile games have been a positive source of growth during the pandemic. Out of all video game segments, it is mobile gaming that has experienced the biggest increase in global engagement and revenue. According to SuperData, the mobile market experienced 10% growth in 2020 and accounted for 58% of the total games market.²

Newzoo predict a 13.3 % YoY increase in mobile gaming revenue in 2020, generating \$77.2 billion. At a time when creative industries are under threat globally, the mobile games industry is remarkably robust. In response to the anxiety and isolation of the pandemic, mobile games have provided much-needed entertainment, enjoyment, social fulfilment and diversion when many other parts of the creative industries have been unable to fulfill this need. Research from the Creative Industries Policy and Evidence Centre showed that 73% of those surveyed agreed with the statement “Video games help me deal with challenging life circumstances (e.g. work or family stresses, concerns such as COVID-19)”.³

MGIF comments on the draft Advertising Guidance

The Forum welcomes self-regulatory initiatives and support a holistic and measured approach to in-app purchases, including loot boxes, based upon existing regulation. The majority of jurisdictions have chosen not to regulate in-app purchases specifically, instead applying existing regulation.

The Forum takes player welfare extremely seriously. The video games industry as a whole, and the mobile games segment particularly, have a strong record of self- and co-regulation. Guidance on in-app

¹ This response does NOT represent any one company’s position, rather it is a sum of knowledge shared between MGI and forum participants.

² <https://www.superdataresearch.com/blog/2020-year-in-review>

³ Creative Industries Policy and Evidence Centre – Digital Culture Consumer Tracking Study. Accessible at <https://www.pec.ac.uk/assets/publications/PEC-and-IPO-cultural-consumption-study-week-1.pdf>



purchases exists in the UK, based upon existing consumer protection legislation. In 2012 the Office of Fair Trading ('OFT') (now the Competition and Markets Authority ('CMA')), working closely with the video games industry, issued a series of principles for developers regarding in-app purchases focused upon transparency, accountability and consent.⁴ The principles set a global precedent. The European Commission (EC) subsequently released a Common Position Paper⁵ on in-app purchases and the marketing of online games and the Australian Competition & Consumer Commission explicitly endorsed the OFT principles, on the conclusion of its own investigation into freemium games.⁶ The OFT principles retain relevance. In 2020 a UK government agency, the ICO, explicitly cites OFT guidance on in-app purchases.⁷

Advances continue to be made by the industry with respect to the self-regulatory landscape, and designers are responsive to player feedback. PEGI, Google and Apple have made changes to the labelling of video games to increase the transparency of game content and protect consumers online. Changes include the removal of free labels on games which include in-app purchases, the introduction of a comment for 'paid random items', the disclosure of drop rates, changes to age ratings and the improvement of parental control functionality. These changes demonstrate player feedback drives organic change. Loot boxes are merely one manifestation of output randomness in app-based games⁸ and there are multiple instances of developers making changes to improve gameplay balance.⁹

We broadly welcome the draft Advertising Guidance, however we feel that some of the proposals either stray outside of advertising regulation into content regulation or are impractical and unimplementable for the way in which mobile games tend to work. We provide detailed responses to particular issues below. We will be happy to expand upon any of this if it is helpful to CAP and BCAP as they consider responses.

The purpose of the draft Advertising Guidance

The Advertising Guidance set out by CAP and BCAP, and enforced by the ASA, serves an important purpose. It is there to ensure that advertising and marketing is legal, decent, honest and truthful. The

⁴ The OFT's Principles for online and app-based games. Accessible from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/288360/oft15_19.pdf. Published in 2012 and in 2014 by the OFT.

⁵ Common Position of National Authorities Within the CPC. Accessible from: https://ec.europa.eu/info/sites/info/files/common-position_of_national_authorities_within_cpc_2013_en_0.pdf. Published by the European Commission in 2013.

⁶ <https://www.accc.gov.au/media-release/accc-urges-app-industry-to-adopt-new-principles-following-%20%e2%80%98sweep%e2%80%99-of-children%e2%80%99s-game-apps>

⁷ The ICO's Age Appropriate Design Code. Standard 5: Detrimental use of data. Accessible from: <https://ico.org.uk/for-organisations/guide-to-data-protection/key-data-protection-themes/age-appropriate-design-a-code-of-practice-for-online-services/5-detrimental-use-of-data/>. Published by the ICO in June 2020.

⁸ For an explanation of output randomness, see: Mark Brown, The Two Types of Random in Game Design. Accessible from: <https://www.youtube.com/watch?v=dwl5b-wRLic&vl=en>. Published January 2020.

⁹ For example, Diablo 3 has a 'smart loot system' whereby you are more likely to find items that match the character class you are playing in order to reduce the likelihood of finding pointless items. Later versions of Xcom publish the chances of whether a bullet will hit.



Forum is in firm support of this goal. Consumers value transparency,¹⁰ and the mobile games industry is in the business of producing content and products that consumers value. It is also important that new Advertising Guidance is evidence-based, beneficial to the consumer and not unnecessarily burdensome on business.

We are concerned that the consultation invites views as to whether the draft Advertising Guidance will sufficiently “address concerns about advertising for in-game purchases”. The concerns are referenced as those raised by “the public, the video game press, campaign and research organisations, and by Government Select Committees”. We value discussion on these points and are keen to listen to the concerns of these constituent groups. However, to properly discuss and understand these matters, we have requested evidence and specific cases, rather than unevidenced concern. The industry has been proactive in supporting the development of a robust evidence. Recent research from the Oxford Internet Institute showed that time spent playing video games was a small but significant factor in wellbeing.¹¹ This research was made possible because video games businesses made detailed business data available to the researchers.

We do not believe that there is any academic or research consensus on evidence of harm with regard to the advertising of in-game purchases, or in-game purchasing itself. We are not aware of players requesting information such as equivalent real world price at the point of consumption/use of in-game currency or other items. They’ve made their decision to spend earlier. It is important that any evidence for concern that is relied upon is referenced.

¹⁰ <https://www.pocketgamer.biz/news/75437/mobile-gaming-in-the-uk-has-been-on-the-rise-over-the-past-year/>

¹¹ Oxford Internet Institute, Video game play is positively correlated with well-being. Available at: <https://psyarxiv.com/qrjza/>
www.mobilegamesintelligence.com



Practicality

Video game businesses are keen to provide consumers with the transparency and information they need to make informed decisions. Video game businesses are also keen to avoid providing consumers with information that is either unnecessary or inaccurate that might hinder their ability to make an informed purchasing decision. The Forum concerned that parts of the draft Advertising Guidance would require consumers to be presented with information that is either unnecessary or potentially confusing. Introducing equivalent real-world prices may lead players to think their in-app currency and other items have a real world value, which they do not.

Further, the Forum is concerned that some parts of the draft Guidance would require game developers to provide information to the consumer that either does not exist, or would have to be engineered into existence with no obvious benefit to the consumer.

Below we provide specific examples of these sections.

'Premium' and 'proprietary' currency is an oversimplified dichotomy

The draft Advertising Guidance seeks to distinguish between 'proprietary currency' and 'premium currency'.

The draft Guidance describes 'proprietary currency' as:

"currency used within a game or system, often with a name such as 'credits', 'gold', or 'points'"

And 'premium currency' as:

"proprietary currency used to purchase higher-value game resources, which is usually purchasable for real money (or the products purchased with it are purchasable for real money)"

In designing video games there are no hard and fast rules as to how in-game virtual currencies will work, how they will be acquired (whether through purchase with 'real world' currency, through achievements in game, or by some other means), and what they can be used for.

Some video games will have a single in-game virtual currency that can both be earned through in-game activity and purchased with 'real world' currency. Other video games will have two in-game virtual currencies, one of which can be earned through in-game activity and one of which can be purchased with 'real world' currency. Others still will have more than two in-game virtual currencies which can be earned or purchased in a variety of ways. Further, virtual in-game currency is often gifted to players by



developers. A variety of in game currencies allows video game developers to expand game worlds and create a more flexible user experience.

The draft Guidance states that:

“Marketers should note that, where premium currency is primarily or only available through purchase using real-world money, offers to purchase game resources using this currency is likely to be considered advertising because that currency is tantamount to money.”

and

“Where in-game purchases must be paid for with premium currency, rather than ‘real’ money, it must be clear to consumers what the equivalent real-world price is for the item. For this reason, approaches that completely separate the purchase of currency from the purchase of items are unlikely to be acceptable because they require consumers to cross-reference between two different areas or, in the case of advertising external to the storefront, formats of information.”

We believe that this presents three important stumbling blocks. The first is that it will often be impossible to provide an accurate ‘real-world’ currency equivalent. Game developers do not necessarily know what virtual in-game currency in a customer’s account has been purchased and at what price per unit of currency, what has been earned, and what has been gifted to the player by the developer. By providing clear pricing information at the time of purchasing the in-game virtual currency, players are well informed about the relative value of their purchase.

The second is that “in-game purchases” should only relate to a direct purchase with real world currency. An in-game purchase might be the purchase of 100 coins for £10. It should not be used to describe the use of 30 coins to acquire an in-game item.

The third is that in practice the impact of this draft Guidance will be to confuse, rather than clarify, matters for the consumer. In an example where a game has a single in-game virtual currency that can be earned through in-game activity, or gifted by the developer, or purchased for ‘real world’, showing an equivalent ‘real-world’ currency cost next to the in-game virtual currency cost (if this were possible) would confuse the consumer who has earned the in-game virtual currency through in-game activity. This would especially confusing for non-spenders who never purchased in game virtual currency with real currency.

For players who spend real currency on in-app purchases there are enormous challenges in providing accurate information to the consumer. Depending on how much of the in-app currency was purchased (potentially during a sale or in a bundle) and when, whether some in-game virtual currency was earned or gifted – all of these considerations make it impossible for the developer to provide the specific real-

currency worth for one specific in-game currency item at the point of consumption. Displaying averages would, we believe, be misleading.

The relationship between in-game virtual currencies is symbiotic and complex

Moreover, the distinction fails to account for a symbiotic relationship in virtual currencies, whereby one stand of virtual currency derives meaning from its relationship to the other.¹²

The reality is that virtual currencies are extremely complex. As Professor Frans Mäyrä, Dr Jaakko Stenros and Dr Annakaisa Kultima explain, ‘although seemingly simple’, virtual currencies in social and casual games of all kinds are evolving and ‘complex systems’ that defy easy categorisation. There is no one size fits all model.¹³

We submit that all of these factors makes Guidance predicated on the above definitions of different kinds of in-game virtual currencies impractical at best and misleading at worst. A principles-based approach would be more impactful.

Unbundling of in-app purchases

There are myriad ways in which consumers buy and use in-game virtual currency and in-game items in video games. There are also myriad ways and combinations in which these in-game virtual currencies and in-game items can be sold by video game developers. They may be purchased and sold individually, or they may be purchased as bundles, or as part of sales.

The same is true of ‘real-world’ purchases. A steak may be purchased from a supermarket for £10. It may also be purchased as part of a “three steaks for the price of two deal”, in which case the steak costs £6.66. It may also be purchased as part of a bundled “meal in for two” deal costing £18, which includes a bottle of wine, french fries and peppercorn sauce and in which the cost of the steak as an individual item is now unclear. The supermarket is not required to show the lowest possible price for which the steak can be bought. This is primarily because it is impossible to give a reasonable minimum price when multiple purchasing options are available.

¹² For example, see Troy Dunniway’s conceptualization of virtual currencies as a ‘secondary re-enforcer’:
<https://www.linkedin.com/pulse/using-psychology-games-depth-perspective-troy-dunniway>

¹³ ‘From Social Play to Social Games and Back: The Emergence and Development of Social Network Games’, in *New Perspectives on the Social Aspects of Digital Gaming: Multiplayer 2*. Published by Taylor and Francis Group, 2017



Indeed, it is explicitly the case in physical retail that an assortment of products sold in a single package are not required to show a unit price.¹⁴ Following a super-complaint from Which? the CMA investigated groceries pricing.¹⁵ Alongside recommendations, the CMA noted difficulties faced by physical retailers:

“Some retailers told us that during promotions they try to show the unit price based on the promotional price but are constrained by space on the shelf edge label and a concern about information overload for consumers. In particular, where the products on promotion are part of a multi-buy or bundle promotion, the unit price can vary depending on the products purchased and their respective weights. These types of promotions require more explanation than there is space for on the shelf edge label without risking creating confusion. Some retailers additionally have systems that only allow for one unit price to be displayed or printed. For online shopping we have been told that retailers will tend to show the unit price based on the promotion wherever possible but, as with in store display, face challenges with particular types of promotions.”

We would suggest that parallels can be drawn between these challenges and those of mobile game developers. Including multiple price comparisons, exchange rates and unbundling information on a mobile phone screen - without confusing consumers - is an incredibly difficult task.

We note that Guidance for Traders on Pricing Practices, by the Chartered Trading Standards Institute (CTSI) is advisory only and does not exceed legal requirements established by The Price Marking Order 2004 or the Unfair Trading Regulations 2008. Whilst setting out unit pricing best practice, CTSI caveats that:

“The following do not require an indication of the unit price:

- advertisements by radio, television, cinema or in a small shop
- goods that have had the price reduced due to damage or danger of deterioration
- an assortment of different items sold in a single package
- goods whose unit price would be 0.0p by virtue of the rounding provisions
- where the item's selling price is equal to its unit price
- packaged goods sold from a shop with a floor area not exceeding 280 m²¹⁶

Where deemed appropriate, unit pricing for physical retail is determined by straightforward, quantifiable variables. For example:

¹⁴<https://www.businesscompanion.info/en/quick-guides/pricing-and-payment/providing-price-information#Whataretheunitpricingrequirements>

¹⁵ CMA Groceries Pricing Super Complaint. Available from: <https://www.gov.uk/cma-cases/groceries-pricing-super-complaint>

¹⁶ <https://www.businesscompanion.info/en/quick-guides/pricing-and-payment/providing-price-information#Whataretheunitpricingrequirements>



“solid foods in a liquid medium (that is, water, brine, vinegar, syrups and fruit or vegetable juice) the unit price must refer to the net drained weight of the food”¹⁷

The draft Guidance proposes a potentially higher burden of unit pricing disclosure at point of use than has been applied to physical retail at point of purchase. Problems faced by physical retailers with decades of experience are likely to pale in comparison to games developers asked to implement untested and likely infeasible virtual unit pricing disclosure - when in-game items, power-ups and in-game virtual currencies are sold individually, at bulk discount and as part of bundles. Video game developers do not track what value each constituent part of a bundle makes up, or whether the consumer purchased their in-game virtual currency as part of a sale event or not. This is why transparency at the point of purchase is highly preferable to attempted transparency at the point of consumption. This argument is expanded upon below.

Odd pricing

To the best of our knowledge there is an absence of substantive research into odd pricing, as defined by IMCO¹⁸, for in-game items. We are aware of only one peer reviewed piece (cited by IMCO) where the topic is broached as hypothesis (Hamari & Lehdonvirta, 2010)¹⁹, itself on the basis of a study that pre-dates the freemium economy (C. K., Yu, F., Zhang, J., & Zhang, Y. (2003)²⁰). Unusually, the article, published in the Int. Journal of Business Science and Applied Management, sought to apply marketing science concepts to the then nascent use of virtual items in game design:

“Hsee et al. (2003) found that introducing points as a medium of exchange had a clear effect on people’s behaviour ... These results are interesting, because most MMO operators use a virtual currency as a medium of exchange between real money and virtual items. Virtual currency as a medium also enables other psychological pricing possibilities, such as odd-pricing.”

The question of odd pricing in video games has not been researched in any serious or substantial manner. Further, there has been no regulatory scrutiny of the question of odd pricing prior to the publication of the draft Guidance and this consultation. We suggest that seeking to regulate granular activity without substantive research or proper regulatory scrutiny is not proportionate and potentially damaging without clear cause.

Regulating business practices outside of advertising and marketing

¹⁷ Ibid.

¹⁸ European Parliament IMCO Committee Report: ‘Loot boxes in online games and their effect on consumers, in particular young consumers’. Published July 2020. Accessible at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652727/IPOL_STU\(2020\)652727_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652727/IPOL_STU(2020)652727_EN.pdf)

¹⁹ Int. Journal of Business Science and Applied Management, Volume5, Issue 1, 2010

²⁰ C. K., Yu, F., Zhang, J., & Zhang, Y. (2003). Medium Maximization. Journal of Consumer Research: An Interdisciplinary Quarterly, 30(1), 1-14.

Why in-game purchases exist

In game purchases exist for a number of reasons. These include:

1. **Integrity of the game world:** Video games are about creating convincing, engaging worlds that players believe in. It is why video game companies invest heavily in employing skilled script writers who can craft believable stories, dialogue and characters. A part of this integrity is currency. In a game in which the player creates a fleet of spaceships, it would not be believable if a laser upgrade was priced at £5.
2. **Consumer choice:** Video games cost a significant amount of money to make. Video game developers are businesses and have costs that they must cover in order to make their next game. Some businesses recoup this cost by charging consumers to access the game. Others recoup this cost by allowing players to purchase in-game virtual currency with which they can acquire in-game items. Others use a mix of techniques. This facilitates consumer choice. Some consumers will prefer to pay money to access a game with no options to buy add-on in-game items. Others will prefer to pay nothing to access a game and to have the option of making in-game purchases if they decide to.
3. **Games as a Service:** Video games were historically one-off, hit-based products. They are increasingly becoming services, that must be updated and improved over long periods of time to retain their audiences. This consistent development costs a video game developer money. The options for users to make in-game purchases allows for the video game developer to recoup their ongoing costs as they cater to a loyal customer base.

The majority of players make no in-game purchases at all

The majority of players spend no money whatsoever. This is especially true of freemium (no cost to access the game, but may contain optional in-game purchases) mobile games where 98.4 % of users are non-paying.²¹ The freemium model is the most common business model for mobile games. Finding players willing to pay up-front to play mobile games is therefore a difficult and delicate task.

Pay walled gameplay is anathema to freemium mobile games. A commonly used monetisation technique in freemium games are 'pinch points,' where a user runs out of an in-game resource (e.g. running out of lives or coins). At these pinch points a player will usually have the option to wait for the resource to refresh, to replay early parts of the game to acquire more of the resource, or to use in-game virtual currency to acquire an in-game item or resource in order to continue progressing. In crafting

²¹ Swrve Gaming Monetisation Report 2019. Accessible from: https://cdn2.hubspot.net/hubfs/5516657/Monetization%20Report_final.pdf.
Published by Swrve, 2019



pinch points, it is imperative not to alienate the majority of players who do not make in-app purchases. Users must hit pinch points at an appropriate frequency and recover at the right rate so that first, they will not finish too fast, and second find the game sufficiently challenging, yet not unduly frustrating to keep playing. As the app engagement company PollJoy explains, 'getting this combination right is one of the most difficult aspects of balancing.'²²

Considering the prevalence of the freemium model in mobile games we submit that the draft Advertising Guidance will have a particularly significant impact on the development of mobile games. This will in turn make mobile games less commercially viable and will have an adverse impact on consumer choice.

Regulating content rather than advertising and marketing

As is noted above, in-game virtual currencies are often deployed as a tool to create and maintain narrative integrity. Purchasing a horse in a medieval themed mobile game for crowns maintains the game world in a way that paying in GBP does not. Separating the point of purchase of the virtual in-game currency and the use of the currency to acquire an in-game item supports narrative integrity. We submit that requiring the presentation of an equivalent 'real-world' currency cost of an item that can be acquired with in-game virtual currency steps from regulating advertising and marketing to regulating game design and content. We do not believe that this is the purpose of the Guidance.

Point of purchase vs point of consumption

The Forum is supportive of transparency at the point of purchase. This is an essential part of consumers making informed purchasing decisions and we consider this to be essential in all advertising and marketing, not just for video games. It is a fundamental part of the important OFT principles for in-app purchases (further explained below).

Despite this support, we consider that the draft Advertising Guidance strays into regulating the point of consumption. Transparency at the point of purchase of virtual currency is provided to the consumer by clearly showing the price of various products and bundles available. By requiring that an equivalent 'real-world' price is shown at the point of use of in-game virtual currency, the draft Guidance regulates point of consumption which we submit should be outside of advertising and marketing regulation.

This creates a novel regulatory regime for in-game purchases that does not exist for purchases outside of games, either in the digital or non-digital worlds. For instance, the seaside pier arcade will allow consumers to use real-world currency to earn stamps. These stamps can then be exchanged for a variety

²² 8 tips to balance free-to-play games. Accessible from: <https://polljoy.com/blog/balance-free-play-mobile-game-8-tips>. Published by PollJoy www.mobilegamesintelligence.com

of different items, from water pistols to cuddly toys. There is no requirement to show the equivalent ‘real-world’ price next to these items, just the number of stamps required to acquire them.

Overlapping regulatory regimes

In-game purchases are subject to various regulatory regimes, whether self-regulatory or otherwise. We believe that there is a significant risk of regulatory overlap, contradiction and confusion. Below we set out some of these risks.

The OFT principles for in-app purchases

The UK is already a leader on regulatory guidance for in-app purchase, based upon existing consumer protection law.

During April 2013, the Office of Fair Trading (OFT) (now the Competition and Markets Authority - CMA) launched an investigation following media coverage of parents running up substantial costs from in-game purchases made by their children. The investigation focused on transparency of in-app purchases in games played by minors, and whether ‘app-based’ games are ‘misleading, commercially aggressive or otherwise unfair in light of existing consumer protection laws.’

On 26 September 2013, the OFT published its final report which proposed a set of eight draft principles clarifying the obligations of social games developers and platforms under existing consumer protection laws.²³ The eight principles focus upon transparency, accountability and consent in in-app purchases.

The principles are derived from UK Consumer Protection law – in particular, the Unfair Trading Regulations 2008, the Unfair Terms in Consumer Contracts Regulations 1999, the Electronic Commerce (EC Directive) Regulations 2002 and the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 and, in some cases, the Payment Services Regulations 2009.²⁴

On 31 January 2014, after a period of consultation, the OFT published its final principles. Particularly relevant to the draft Advertising Guidance are Principles 1 and 2.

Principle 1 provides that:

²³ Children’s Online Games report and consultation. Accessible from <https://assets.publishing.service.gov.uk/media/53330c4de5274a566000005/oft1506.pdf>. Published by the OFT, 2013.

²⁴ OFT’s Principles for online and app-based games. Accessible from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/288360/oft15_19.pdf. Published by the OFT, 2014



“information about the costs associated with a game should be provided clearly, accurately and prominently up-front, before the consumer begins to play, download or sign up to it or agrees to make a purchase.”

Principle 2 further provides that:

“All material information about a game should be provided clearly, accurately and prominently up-front, before the consumer begins to play, download or sign up to it or agrees to make a purchase.”

These principles remain highly relevant. It is with good reason that in 2020, a UK government agency, the ICO, explicitly cites OFT guidance on in-app purchases concerning in-game mechanics such as reward loops.²⁵ Below is an example of how the OFT guidance continues to impact company policy and player protection:

Transparency of cost

Principle 1 provides that ‘information about the costs associated with a game should be provided clearly, accurately and prominently up-front, before the consumer begins to play, download or sign up to it or agrees to make a purchase.’ Principle 2 further provides that: ‘All material information about a game should be provided clearly, accurately and prominently up-front, before the consumer begins to play, download or sign up to it or agrees to make a purchase.’

Application: Since 2014, Google Play has required developers to display a range of in-app purchases on the storefront.²⁶ The Apple App Store displays a description as to whether an app contains in-app purchases by the app’s price or ‘Get’ button.²⁷ PEGI has applied in-app purchase and randomised in-app purchase labels. Moreover, games developers provide information regarding in-app costs on the game’s page in the app stores. This information is visible to users prior to downloading the game and may include subscription details, in-app purchase management details and examples of in-app purchases.

Further, Principle 4 of the OFT principles for in-app purchases requires the separation of purchases for ‘real-world currency’ and gameplay. It states that:

²⁵ The ICO’s Age Appropriate Design Code. Standard 5: Detrimental use of data. Accessible from: <https://ico.org.uk/for-organisations/guide-to-data-protection/key-data-protection-themes/age-appropriate-design-a-code-of-practice-for-online-services/5-detrimental-use-of-data/>. Published by the ICO in June 2020.

²⁶ Google Play now shows in-app purchase pricing in listings, developer addresses too. Accessible from: <https://www.androidauthority.com/google-play-latest-changes-532124/> Published by Android Authority, September 2014.

²⁷ Buy additional app features with in-app purchases and subscriptions. Accessible from: <https://support.apple.com/en-gb/HT202023>. Published by Apple



“While consumers may pay to obtain premium content or features, information about the ability to do so is separated from gameplay. Consumers are not prompted while playing the game to pay for additional content or features.”

To comply, game developers allow players to purchase in-game virtual currency away from gameplay. They can use this purchased in-game virtual currency to acquire in-game items, power ups and content if they so choose.

There is a clear regulatory overlap between the draft Advertising Guidance and the OFT principles for in-app purchases. Indeed, there is a conflict between showing the ‘real-world’ price of an in-game item with reference to the price of in-game virtual currency (as the draft Advertising Guidance requires) and separating the point of purchase with ‘real-world’ currency from gameplay (as the OFT principles require). This is not dealt with in the draft Guidance. We submit that it is essential that the draft Guidance clarifies how companies can be compliant with both regimes.

The UK Government’s call for evidence on loot boxes in video games

Between 23 September 2020 and 22 November 2020 the DCMS ran a call for evidence on loot boxes in video games. This may feed into the review of the 2005 Gambling Act if the Government decides that this is appropriate. It is important to note that the Government has not pre-judged the relevance of loot boxes to any change in the regulation of gambling in the UK.

The draft Advertising Guidance contains specific provisions for “messaging relating to random-item purchasing”, including loot boxes. The draft Guidance suggests that “explicit or implicit links to real-world gambling” would be unlikely to be compliant.

We note that this again has the potential to create two separate and potentially divergent regulatory regimes for randomised in-app purchases in the UK. With DCMS guidance forthcoming on randomised in-app purchase, there is a risk of conflicting guidance and confusion. The government has committed to:

“set out next steps on loot boxes early next year once the evidence gathered has been considered. The government will take action should the outcomes of the call for evidence on loot boxes support taking a new approach to ensure users, and particularly young people, are protected.”²⁸

²⁸ <https://www.gov.uk/government/publications/government-response-to-the-report-of-the-house-of-lords-select-committee-on-the-social-and-economic-impact-of-the-gambling-industry/government-response-to-the-house-of-lords-gambling-industry-committee-report-social-and-economic-impact-of-the-gambling-industry-html>

We suggest that any guidance on randomised in-game purchases as it relates to gambling is delayed until the Government publishes its response to its call for evidence.

Recommendations

We would reiterate that the Forum is broadly supportive of a proportionate, self-regulatory approach to ensure legal, decent, honest and truthful advertising and marketing. The Forum remains committed to transparency and consumer protection as is demonstrated by industry's actions.

This response has sought to highlight parts of the draft Advertising Guidance that we consider to be either impractical, outside of advertising and marketing, or not sufficiently based on evidence. We would be happy to provide further details or clarity to the CAP, BCAP and ASA as is helpful.

We recommend a broad-brush, principles based approach predicated on fairness and transparency, with a focus on marketing rather than in-game content. This will be more impactful and future proof than a prescriptive system that will inevitably become out of date in a fast-changing ecosystem. We would welcome an open dialogue on the development – and enforcement – of such a principles based approach.