Game on: decoding the video games sector

Summary of the workshop

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Summary of the workshop

Strasbourg, 12 November 2024

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1. Introduction

Since their conception fifty years ago, video games have witnessed and undergone important developments, both in terms of technology and consumption. Building on existing technologies and frameworks, the sector has led to great achievements but has also faced risks and challenges. Ensuring the protection of both consumers and assets, while allowing them to thrive in a competitive market is a core concern, as is the case in other thriving economic sectors. But some challenges that emerged are more specific to video games, from the emulation of talents to the business models and distribution channels, and even the definition and protection of video games themselves. The funding of video games is also shifting, with governments and policy makers increasingly emphasising the cultural value of video games and thereby bringing new players into the market.

This workshop aimed to bring together diverse perspectives from lawyers, academics, industry associations representing video game developers (from low-budget indies to high-budget developers), video game publishers and distribution platforms, consumer associations, public institutions and funding agencies to explore the sector's specificities, at the crossroads of creativity and technology and to examine the challenges of protection and market dynamics. Over the past 20 years, video games have grown into a significant cultural and economic force, creating skilled jobs, contributing to economic growth, and are part of our daily lives in numerous ways.

From a market perspective, it is essential to understand the industry's evolution, market structure, leading countries, prominent trends, emerging business models, and strategic significance, as well as the roles of key stakeholders such as, developers, publishers, distribution platforms, and hardware manufacturers. However, tracking and analysing this data presents significant challenges. Changes in the sector's distribution and retail channels, such as the shift from offline to online games and the increasing role of mobile and tablets, and thereby digital marketplaces and cloud video game services, make the task even more difficult.

Legally, the video game industry operates at the intersection of various legal frameworks. Copyright and intellectual property laws protect video games' creative and technology developments process, product safety regulations, including climate laws ensure hardware and software meet standards, and privacy and data protection rules apply to any data collection of its users. Consumer protection laws also apply to the video game sector. With regard to the protection of minors, a specific self-regulatory system (the Pan European Game Information (PEGI)) was set up in in 2002, upon the request of the European institutions. In addition, other fields of law apply too to the sector such as digital platform regulations, including from the right holder perspective. This multi-faceted legal landscape reflects the unique nature of video games as these rely both on software and on other

creative elements protected by copyright and other IP rights. This presents both opportunities and challenges for the industry. A key question therefore arises: how does the sector best integrate with various policy areas and agendas?

The discussions explored these issues in greater depth, providing food for thought and generating practical insights for all stakeholders who could be involved in the industry, such as but not limited to funding bodies and public institutions.

A growing number of programmes are being put in place, both at EU and national level, which recognise the value of the video games ecosystem and provide support to encourage its success. These efforts include direct aid, indirect support and tax incentives. While a growing number of countries are keen to support their video games industry in this way, some face challenges in recognising the sector as a creative force contributing to cultural diversity and supporting the sector on cultural grounds. What are the main support instruments available at EU and national level for the video games industry, its current gaps, challenges and opportunities? Are there any best practices?

The video games industry is at a pivotal moment, facing emerging challenges and opportunities. While it has already experienced the transition from offline to online video games, one might wonder if it will undergo a similar process with the metaverse. The workshop therefore allowed participants to discuss the potential growth of these new technologies and opportunities. The 2024 edition of the European Audiovisual Observatory's annual workshop explored the evolution of the video games sector. While being a distinct category combining creative elements and software code, video games share some similarities with audiovisual media, not only by incorporating narrative storytelling, but also in terms of talent, public policies and support schemes. Video games, and how they relate to other media, are therefore generating significant discussion on both international and national stages.

The target groups of this workshop were: a) experts and academics, b) industry associations representatives of video game developers, publishers and distribution platforms, c) cultural and funding agencies, d) ministries and national regulatory authorities and self-regulatory bodies, and e) consumers organisations and NGOs.

The discussion started with **Session 1 – "Measuring the European video game industry"**. It addressed the question of what data is available on the sector, both at an aggregate level (e.g. market volume), demographic data, as well as at a content level (e.g. sales figures by title). Furthermore, it discussed the specific data needs of certain stakeholders involved in the video game sector, in particular public institutions. The following questions were addressed: Which data are currently available for the video games sector and who provides them? What are the gaps and challenges in the data collection? What data are most urgently needed and for which purpose?

After this comprehensive overview, **Session 2 – "Regulatory challenges for the video games sector in the EU and beyond"**, explored some challenges related to the application of existing regulations to the video game sector. These include questions related to copyright protection (definition; what is protected, unitary approach versus the distributive approach; piracy), consumer protection law and addressed more generally the latest and upcoming EU rules in the areas of online safety and consumer protection affecting the video games sector. This session brought to the fore opportunities and risks of the current

regulatory framework for the protection of video games, companies and consumers, and from different stakeholders' perspectives.

Session 3 dealt with "**Public support**" to the video games sector. It looked into the main support instruments available at national and European level (Horizon Europe, Digital Europe, Erasmus, Creative Europe) and for whom they are intended. The session also focused on the goals and principles behind those support instruments.

Session 4, "Exploring new frontiers", delved into new challenges and opportunities that lie ahead of the video games sector. The session addressed the role of video games in relation to the metaverse and virtual worlds. It discussed the growth potential of these sectors and their relationship with topics such as AI, simulators and the development of new genres and products. This session examined how video games are designed to be accessible products and services, as well as the potential for using video games for educational purposes.

2. Opening of the workshop

Susanne Nikoltchev, Executive Directive of the European Audiovisual Observatory (EAO), welcomed the participants and emphasised the importance of this workshop, which focused on video games. This topic is currently not included in the EAO's working programme, even though it was addressed in its latest legal report.[1] The EAO's governing board has asked it to look into the possibility of extending its expertise and data collection to the video game industry. The workshop aims for EAO staff to gain insights from various experts and industry stakeholders and deepen their understanding of this complex sector.

Maja Cappello, Head of the Department for Legal Information of the EAO, introduced the workshop's theme and explained its objectives. The event brought together participants from different segments of the video game industry, fostering rich and productive discussions by sharing diverse experiences.

[1] Cappello M. (ed.), *Legal challenges and market dynamics in the video games sector*, IRIS, European Audiovisual Observatory, Strasbourg, November 2024 (in English).

3. Session 1 – Measuring the European video games industry

3.1. Introduction to the session

The workshop's first session was chaired and introduced by Martin Kanzler, Deputy Head of the Department for Market Information of the EAO. This general introduction highlighted the challenges in gathering data on the video game sector and the need to share and discuss this question with video game stakeholders and public entities.

There is currently a perceived lack of publicly available data in this sector, and there seem to be different points of view on making such data accessible to the public, or at least to public bodies. The video game sector comprises multiple subsegments, and the comparability of data provided by different sources is often limited since they refer to other market segments without clearly identifying the underlying methodology.

To illustrate the issue of seemingly contradicting data Mr. Kanzler quoted from Statista estimates of the market volume of the European video games sector which ranged from EUR 25 bn to EUR 73 bn. This clearly illustrated that there does not seem to be a common standard definition and quantification of the different market segmentation. Market volume is only one of many other data points that are relevant to understand the sector, e.g. the number of games produced, IP ownership, workforce data, industry volume, titles performance, top companies, audience insights, and many more.

While selected data are available for a number of "data silos", policymakers face major challenges in assessing the robustness of individual data sources and bringing these data together to form a comprehensive understanding of the sector which would be necessary for informed and evidence-based policy making. As the EAO has been providing such insights on the film and audiovisual markets for years, its governing body asked the EAO to look into the feasibility of starting to address information needs in the European video games sector.

The purpose of this session was primarily to improve mutual understanding of data needs, availabilities, and limitations among the different stakeholders (industry trade bodies, public funds and policymakers, researchers, consulting companies, and also consumers). Furthermore, the discussions would be useful for the EAO to better understand how it can provide added value for the various stakeholders in the European video games sector.

3.2. What data are provided by the industry?

Jari-Pekka Kaleva,[2] Managing Director of the European Games Developer Federation (EGDF), presented EGDF's methodology to navigate within the video game sector. The EGDF is the European trade association representing game developers from all over Europe. It comprises 24 national game developer's trade associations from 22 different European countries. They represent 2500 game developer studios that employ over 40,000 people.

Mr. Kaleva focused first on what data the EGDF collects, stressing the importance of distinguishing between the European game industry and the European game market. The former represents every European developer studio, the latter the number of consumer sales within Europe. The European video game industry, which operates worldwide, represents EUR 18.9 billion. The European video game market, on the other hand, is limited to the European continent and represents a revenue of EUR 25.7 billion for the main countries.

Mr. Kaleva stressed the importance of industry figures for policymaking. They measure the impact and economic significance of the sector at national level, the potential tax revenues it could generate, the impact of public support instruments, or the number of game studios.

In this respect, he highlighted that the EGDF publishes – in co-operation with Video Games Europe - an annual report which is made available on their website every year (https://www.egdf.eu/data-and-studies/). The report focuses on three key indicators:

- The number of game developer studios,
- The number of workers in the industry,
- The total turnover of the industry.

The EGDF also tracks the percentage of women in the industry, the titles published in countries where this data is available, the percentage of games developed for various platforms, European education institutions and non-formal education institutions. These are crucial for talent building.

From a methodological perspective, data for the year n-1 are collected during Q3 of year n until Q1 of year n+1 and then published in Q2 of year n+1, i.e. 2024 data will be published in spring 2026.

The data are collected from trade registers, interviews, surveys (e.g. on the share of non-binary genders in the industry), financial reports. Data sources differ among countries which may limit comparability across countries. However, Mr. Kaleva noted that data are getting more and more comparable.

He acknowledged that EGDF reports and data collection have some gaps and limitations, but these are not due to the methodology itself but to the difficulties in collecting some specific data. Geographically, data are missing from Malta, Luxembourg, and Cyprus. Also, some countries do not collect data annually. This is the case for Austria, Czechia, Denmark, Estonia, Greece, Ireland, Italy, the Netherlands, and Slovenia.

Some data are more difficult to gather than others. The number of studios, the number of employees, and the turnover are quite easy to get. On the contrary, gathering

[2] See Jari-Pekka Kaleva's presentation.

data on diversity and new titles can be challenging. Diversity relies on surveys, which means a lot of work needed to get accurate data

The number of titles depends on each country's national game awards list, which requires games to be registered, which is not systematic.

One significant difficulty in collecting industry data is linked to the lack of a sector-specific NACE code: currently video game developers are listed under programming activities and this means that data needs to be extracted manually. Some are also scattered in other activities, such as toy manufacturing or communication. Gathering all video game developments activities under the same NACE code would be a significant starting point towards accurate data collection. However, there would still be a lot of data cleaning to be done, such as distinguishing self-employed persons from actual companies, or identifying and removing inactive companies.

It is also difficult to get an accurate picture when it comes to identifying new games and tracking employment. Regarding game releases, one must distinguish between commercial games and games made by hobbyists. The evolution of the video game format has also been an obstacle to data gathering. Initially, it was simple: a game was counted when it was launched. But now, there are four different "launching steps": demo, soft launch, early access, and global launch. Some games, for instance, are in early access for a very long time. It becomes difficult to precisely define a game's release date. Regarding tracking employment, a distinction needs to be made between subcontractors, in-house freelancers and employees. Cross-border remote work is also an obstacle to get accurate data on game production and employment in each country.

There is also the issue of resources: industry surveys require a lot of resources and data processing expertise needs to be constantly worked on. Some data are also difficult to access due to regulations such as the General Data Protection Regulation (GDPR), which prevents the collection of data on the sexuality or ethnicity of companies' employees. M. Kaleva stressed that trade associations need better and more accessible company data on national trade registers, which are not standardized between European countries.

3.3. What data can commercial data providers offer?

Piers Harding-Rolls[3] (Research Director at Ampere Analysis) gave an overview of what commercial data providers can offer in the video games sector. Ampere Analysis is a market research company focused on the entertainment space. It started to cover the game industry four years ago.

Commercial games research companies offer access to research experts with deep sector expertise and experts in research techniques, data collection and forecasting, and use them to provide analysis and forecast for the sector. They also have an extensive industry network they use for their market research. Mr. Harding-Rolls also points out that, as these companies are independent, they are less biased than research organisations owned by the biggest companies, which focus on specific areas in which they are involved.

[3] See Piers Harding-Rolls' presentation.

Commercial research companies have their regular products, but can also conduct custom projects.

Ampere Analysis uses three core approaches to collect data:

- Consumer data: Using online surveys, focus groups, and user testing, they gather information on consumer profiles, games consumption, game experiences, gamers habits and preferences in relation to games.
- Market & industry data: Using public company data, industry networks surveys and modelling analytics turnover and similar data points are collected and used to provide estimates of the market sizing and its various market segments.
- Automatic collection of data: Automatic collection of millions of data points from web information, in-game analytics and databases to build own databases, which will then be used to estimate the performance of market aspects.

Based on the data and insights collected from these different approaches, Ampere Analysis provides three different syndicated productions:

- Consumer research: Consumer profiling of gamer types, attitudes and habits based on consumer surveys covering 22 markets and 46 000 respondents annually.
- Market data[4]: consumer spending, unit sales volume, industry turnover, etc. across different devices, platforms, and countries.
- Title-level data: tracking the title activity data across PlayStation, Xbox, and Steam.

There is progressively more research that can be done on the production side, in games technology, advertising attribution, analytics, value-chain and industry output.

There are many challenges and gaps in data collection for commercial providers:

- The video games sector is fast-moving, and it is difficult to keep up in terms of market data coverage (e.g. NFTs).
- Data collection and maintenance is becoming increasingly technical. For instance, the automatic collection of data takes a lot of expertise to maintain and ensure the data quality.
- There is a lack of industry workforce and output analysis.
- AI use can be relevant to research. It can be used to pick up some elements in long paragraphs or to classify content. However, there are disadvantages such as not knowing the sources the AI extracted its information from.
- Commercial data expertise is expensive to produce and expensive to buy. That means it is generally accessible only by bigger companies, leaving smaller companies at a data disadvantage.

[4] According to Ampere, market data includes consumer sales data.

3.4. Challenges, gaps and limitations of existing data from a of a public fund?

Matthew Deboysere[5] (Head of Research at VAF) explained that he encounters specific difficulties in gathering data from the video game industry in contrast to data from the film and audiovisual industry, which are largely accessible to the VAF. For the latter two sectors VAF gets their data in agreements with the industry. For films, they frequently receive data from the Belgium Cinema Federation (FCB) and Film Matters. For series, they frequently receive data for all TV shows from the Flemish Radio and Television Broadcasters Organisation (VRT), DPG Media(DPG) and Play Media. For video games, however, there are no such agreements in place and the only data source is a mandatory questionnaire to game studios that receive funding from VAF.

VAF needs data for multiple reasons. The first one is that, as an investor, VAF would like to follow up on its investments. The second one is to help the experts they work with. Currently, those experts, giving advice to the board on which projects to invest in, cannot rely on data to make sound decisions. A third reason is that data are needed to convince policymakers to invest more in video games. In general, there is a need for more transparency in this sector.

From the questionnaire, VAF was able to get the age of the company and its revenues, but also gather figures on diversity (gender, disabilities, migration background, for instance). This allowed them to carry out analysis on women and people with migration backgrounds working in the video game industry.

These scans are only made once a year as VAF does not have the capacity to gather all of these data on a more regular basis as despite their legal obligations, studios do not comply easily. It requires a lot of work for studios themselves to compile the needed data, and they lack the manpower to do so.

Mr. Deboysere stressed the fact that public funding bodies as well as policy makers need independent, verified, frequent, and automated data. For the moment, VAF's questionnaire is the best bottom-up solution they found. But it is extremely time-consuming, both for the fund and for the studios, and is limited in scope. Instead, he called on the industry and other stakeholders to work more closely together to find a "top-down solution" that involves data agreements with stakeholders and data providers that do have data, including publishers (who generally do not provide data), distributors, storefronts, analyst agencies, data resellers, trade associations and creators themselves.

3.5. Discussion

Representatives from public agencies, echoed M. Deboysere's difficulties in gaining access to the data they need. They expressed similar data needs and are faced with the lack of

[5] See Matthew Deboysere's presentation.

specific data. They confirmed the need for independent data. Even larger agencies with their own dedicated research departments have difficulties in this respect.

In this context, participating trade associations remarked that commercial datasets provided by third parties are filled with data from the companies themselves, and that information should come from people and not from an algorithm. A lot of data found online, in different publications or even on some commercial websites are, in fact, data coming directly from the trade associations, being rebranded as "independent data" and getting sold at a high price.

Another challenge for public agencies with a film and audiovisual background is that their expertise lies in the film and AV sectors, which function significantly differently than the video games industry. These funds need data to understand the video games market to inform their support schemes and decisions, as well as to convince policy makers on what they can do. This is essential for funds and policymakers who pursue evidence-based and data-driven policymaking. Funds prefer to have data to support their choices, before going a certain direction. Today, they are limited in that regard and need independent data to know where they would need to focus their attention and specialize.

Sometimes public agencies need to conduct many different surveys with individual companies to gather relevant data, as those were not available anywhere else and could or would not be provided by national trade associations, some of which have non-European members, as there may be conflicts of interests. Such surveys are time consuming and costly for all stakeholders involved. In this context, it was also highlighted that data at an aggregate level were by far not sufficient and that public agencies and institutions need more diverse, topic specific and detailed data beyond, for example, sales and revenue at the aggregate level, such as, for example, financing structures, shareholders mapping. Such analysis does not seem possible for the video games sector. Other questions of interest included: What are the studios' possibilities to obtaining new contracts on a short-term basis? What is the burn rate[6] of the studio? What is the exact need for public support? For which amount of time?

Participating trade associations remarked that much of the needed information was already available. European trade associations publish annual reports, and each national trade association also has a report covering their respective markets. Since 2019 there has been significant increase of trade associations publishing market and demographic data, as the awareness of the importance of data increased at national level. The level of data collection differs between countries. Funds are invited to contact national trade associations in case of specific data needs and national trade associations will give those data if they have it and if they get their members' approval, as ultimately it should be up to the companies to decide whether they want to disclose their data or not. Trade associations can also be open to co-operate on ad-hoc research projects, as they did during the Covid-19 pandemic to understand studios' needs during this crisis.

Regarding employment data, trade associations informed participants that they were testing new technologies to gather data on employment, and they got encouraging results that were close to the actual video game companies' sources. These tools, once out

[6] Burn rate is a financial term that illustrates the speed at which a company exhausts its cash reserves or cash balance over a given period.

of the testing phase, will support trade companies to gather more accurate employment data for Europe. Others mentioned Games Jobs Live or VideoGameLayoffs.com as additional data sources for employment-related data. Also, the rise of AI tools would make it easier to get an accurate picture of job fluctuations.

As far as the improvement of data quality and comparability is concerned, participating trade associations stressed the importance of having a dedicated NACE code for the video games development and publishing activities. This would facilitate the generation of more reliable statistics significantly. It was also pointed out that – for comparability of data – it was paramount to clearly define the applied scope of the video games market, given the multitude of business models, game segments, or related markets (e-sport, advertising).

In conclusion, the data transparency situation in the European video games sector is complex, with partly overlapping interests between the public side and the industry. There has been considerable effort made over the years by the national trade associations to tackle data collection, but it is expensive and also complex due to lack of clear NACE codes. Public bodies on the other hand still do not have some specific, mostly product level data they may need for informed and evidence-based policy and funding decisions.

There is no quick fix for this challenge, but one of the solutions is better communication, and working together to make gradual progress where there is an important lack of data. IT tools will also be part of the solution, and the platforms will collect these data. A dedicated NACE code would also greatly facilitate statistical data collection.

Communication and transparency will be key. Data should go beyond turnover and answer more complex questions, such as defining a video game's success using the number of players, downloads or streaming followers. These metrics are all important and need to be considered.

Participants agreed that there would be a benefit in the industry and policymakers sitting together more often as there is a need to collaborate between those who are collecting the data and those who need them, to know what data to collect. One idea that was mentioned, would be to invite public agencies to national industry meetings and put the discussion of data on the agenda. Exchanges on data collections should also include platforms, who get a lot of data as well.

4. Session 2 - Regulatory challenges in the video games sector

The workshop's second session was chaired and introduced by Sophie Valais, Deputy Head of the Department for Legal Information of the EAO. The session started with an introduction to the fact that video games represent a unique blend of art and technology, being creative, innovative, interactive, immersive, and significantly different from other creative works.

Therefore, from a legal perspective, they operate at the intersection of multiple regulatory frameworks. Intellectual property law provides crucial protections for creativity and innovation, while confidentiality agreements and trade secrets safeguard valuable assets like proprietary game engines. A vast contractual framework, including licenses, facilitates the commercial use and distribution of these assets.

The industry is further shaped by broader public policy and regulations, including competition and anti-trust laws, digital services regulation, and emerging AI regulations. Additionally, rules focusing on consumer protection, product safety, protection of minors, and data protection play an increasingly important role in shaping the industry's future.

This session focused on two main aspects: the protection of video games through intellectual property rights, and the protection of players through minor protections and consumer law.

4.1. Protection of video games through IP law

The first part of the session was devoted to the protection of video games through IP law, looking at what elements constitute video games and how they are protected. It also delved into the challenges of piracy and how the latter can be addressed/solved.

4.1.1. Main regulatory challenges

Yin Harn Lee[7] (Senior Lecturer at the University of Bristol), presented on the complex relationship between video games and intellectual property (IP) protection.

Video games are protected by a range of IP rights, including copyright, trademarks, patents, and design rights. Other measures include technological protection measures (TPMs), end-user licence agreements, and unfair competition. The classification of video games under copyright law remains debated, with implications for enforcement strategies.

[7] See Yin Harn Lee's presentation.

Major challenges facing the industry include unauthorised distribution (piracy), game cloning, and product key resale. Each of these issues presents unique enforcement risks. Enforcement strategies vary depending on the type of infringement.

Overall, the presentation emphasised the importance of balancing IP enforcement with maintaining positive player relationships, given the unique dynamics of the video game industry and its consumer fan-base.

4.1.1.1. Unauthorised distribution

Unauthorised distribution is typically done online through peer-to-peer file-sharing protocols and file-hosting sites. This issue has been largely addressed in ways familiar to the creative industry.

Rightsholders have multiple legal options against platform providers, uploaders, and downloaders. However, the enforcement debate centres on how aggressively to pursue these options and against whom. Acting against players who have downloaded illegal copies may damage the company's relationship with its player base. Players might perceive such actions as overly aggressive, potentially harming the company's reputation.

For unauthorised distribution, rightsholders have multiple legal options against platform providers and individuals involved in sharing or downloading games. TPMs and alternative business models also play a role in mitigating piracy (e.g. subscription-based or free-to-play mode).

4.1.1.2. Game cloning

Game cloning is a practice where a competitor replicates a video game's combination of game mechanics without copying its graphics, sounds, or underlying computer programme. Game cloning presents challenges due to the difficulty in protecting game mechanics under current IP frameworks. Alternative strategies, such as unfair competition claims or public pressure campaigns, may be employed.

Legal approaches to address game cloning include:

- Copyright-based litigation: the likelihood of success may be jurisdiction-dependent, based on how video games are classified for copyright purposes in different countries.
- Unfair competition claims: these can be pursued in some jurisdictions as an alternative to copyright infringement.
- Patent infringement: this is more common in jurisdictions like the US, where innovative game mechanics may be patentable.
- Trademark infringement: while less likely to succeed for game mechanics, it may be applicable if specific trademarked elements are copied.
- Design rights infringement: this could be relevant if key visual elements are replicated.

Alternative strategies that do not involve litigation include:

- Requesting removal from online platforms with strict anti-copying measures to avoid the spread of copycat games.
- Public pressure campaigns, including "name and shame" techniques (e.g. social media campaigns), which have been successfully used by independent studios against larger companies.

The success of these approaches often depends on the specific circumstances and the jurisdiction in which action is taken.

4.1.1.3. Product key resale

Product key resale involves the resale of game product keys through 'grey market' channels not authorized by the rightsholder (e.g., G2A, Kinguin). This practice poses complex legal and business challenges for game companies.

Potential solutions include legal action against resellers and buyers and business strategies like changing distribution methods or implementing controlled resale programmes.

Legal approaches based on potential causes of action against resellers, buyers, and platforms:

- Infringement of the distribution right (in jurisdictions like the US),
- Infringement of the right to communicate the work to the public (in Europe),
- Accessory liability for acts of reproduction committed by purchasers.

Changing business strategies can include three main actions:

- Changing distribution methods:
- Stop offering product keys altogether,
- Implement geo-blocking measures (but such a practice regarding the physical distribution of keys would conflict with EU single market principles, as highlighted by the Court of the EU)[8],
- Deactivating detected grey market keys (risk: potential backlash from players),
- Implementing controlled resale programs (though there has been limited industry adoption).

The effectiveness of these strategies varies, and companies must carefully consider the potential impacts on their business and player base when addressing this issue.

Though these solutions seem interesting, they present challenges such as balancing enforcement with maintaining positive player relationships, or navigating legal complexities across different jurisdictions, and finally addressing the root causes of grey market sales (e.g., regional pricing differences, or credit card fraud).

[8] T-172/21, Court of EU, Valve Coporation v. European Commission, 27 September 2023

4.1.2. Discussion

The presentation was followed by a discussion providing insights into the challenges and considerations facing the video game industry regarding piracy, IP rights, and player relationships.

4.1.2.1. Piracy and enforcement challenges

According to public trade associations, on a general note, video games must be seen as unique complex works relying both on the computer programme directive for the protection of the software and on other copyright directive for the other creative elements., as highlighted by the Court of Justice of the European Union (EUCJ) in the case PC Nintendo.[9] TPMs and free-to-play models help mitigate piracy, they have made the video game sector less vulnerable to piracy. It is now better shielded against piracy especially when compared to other creative industries. However, these models also introduce new challenges.

However, though these techniques help, another participant recalled that there is a certain difficulty in addressing piracy in the video game sector. While companies may successfully take down one instance of piracy, new ones often emerge elsewhere. This ongoing battle is compounded by the fact that TPMs are frequently removed after a few months due to player dissatisfaction.

From an academic point of view the unique classification of video games as "complex unique works," also raises questions about their legal protection. There is still uncertainty regarding whether gameplay itself is protected under copyright law. The need for more case law from the EUCJ was emphasized, particularly concerning how these legal frameworks apply to more recent video game practices.

4.1.2.2. IP protection and legal strategies

From a practitioner's perspective, Europe should look at the importance of copyright filings in major markets like the US and China. Besides, understanding the reasons behind piracy (e.g., pricing and policy issues) is crucial for game companies. While targeting larger piracy operations may seem effective, such efforts often fail as pirated games quickly resurface elsewhere. A potential solution is implementing TPMs temporarily to boost initial sales before removing them.

In addition, the industry mentioned that there are concerns about global IP registration for video game companies, particularly for smaller studios navigating different jurisdictions. For instance, fighting patent trolls in the US can be prohibitively expensive for EU-based studios.

Furthermore, for some stakeholders in the industry, piracy is less pressing than the risk of games becoming "toxic". Copyright measures should be employed against cheat providers to maintain a healthy player base.

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[9] C-355/12, European Court of Justice, Nintendo v. PC Box, 23 January 2014.

4.1.2.3. Emerging issues and industry dynamics

In conclusion, while copyright is not commonly used in business-to-consumer environments within the video game industry, it was recognised that it plays a crucial role in business-to-business contexts.

Besides, addressing toxicity in games requires instruments beyond copyright law, emphasising the need for a multifaceted approach to protect both IP and player experiences in an increasingly complex global market.

The discussion also touched upon how game policies now have specific rules regarding Let's Play videos and streaming content. Having well-known streamers promote their games can significantly boost sales; however, specific agreements may limit what streamers can say about the game, especially if they wish to express negative opinions.

These conversations highlight the complex interplay between legal protections, business strategies, and player relations in the video game industry. The participants emphasised the importance of balancing enforcement with maintaining positive relationships with players while navigating an evolving regulatory landscape.

4.2. Protection of minors and of consumers in video games

As video games become increasingly integrated into everyday life, the protection of players has emerged as a critical concern. With over half of European consumers engaging in video games, and a staggering 80% of children playing regularly, the industry has witnessed a significant evolution in business models. The shift from traditional arcade and boxed revenue models to game-as-a-service, pay-to-win, and freemium business models introduced new functionalities and design choices that shape the video game experience. However, this transformation has also brought forth new risks for consumers and minors, particularly related to in-game purchases, manipulative design practices, data collection, and potential addiction issues. In response to these challenges, the industry and regulatory bodies are proposing solutions to ensure a safe video game environment.

This second part of session 2 explored two aspects of players' protection: first, the industry-led initiatives, focusing on PEGI's age rating system and evolving self-regulation measures, and second, the multifaceted regulatory framework in Europe designed to safeguard consumers, along with anticipated developments in this field.

4.2.1. Protection of minors through industry measures

Dirk Bosmans[10] (Director General of Pan European Game Information "PEGI") discussed the industry-led solutions for players' protection in video games. He presented the evolution of PEGI and its role in addressing the complexities of today's video games content

[10] See Dirk Bosmans' presentation.

classification. Despite the industry's growth from 2,000 titles annually to 3 million, PEGI uses user-friendly labels, split into five age labels and eight content descriptors. The system is widely adopted across Europe, with Germany being an exception, using its own USK system, which is quite symmetric with PEGI's system.[11]

Figure 1. PEGI's content classification:

Source: PEGI

PEGI's legal status varies by country, ranging from full legal enforcement to official acknowledgement, with co-regulation, official acknowledgement or de facto market standard. Major platform holders like Microsoft, Sony, and Nintendo require PEGI ratings for release on their platforms, while others like Apple use their own systems. Certain platforms, such as Steam, do not mandate the use of PEGI age ratings on its platform.

Mr Bosmans highlighted that while PEGI addresses content-related issues (e.g. violence, bad language, sex, drugs, gambling, fear or horror), it faces context-related challenges such as playtime, online interactions (e.g. "who is talking to a minor") and in-game spendings, which cannot be fixed with age category only. There may be a need for more nuanced solutions beyond age labels. One solution is to involve parents more with specific parental control apps.

The presentation emphasised the importance of parental involvement through tools that allow monitoring and control of children's video game activities. Bosmans also noted the industry's growing focus on managing toxic communities, recognising their negative impact on business.

Finally, the example of Steam not using PEGI ratings illustrates the limitations of voluntary industry measures. It implies that without governmental support or mandate, some platforms may choose not to participate in age rating systems, potentially leaving

[11] https://usk.de/

gaps and vulnerabilities in industry standards with regards to minor and consumer protection.

Furthermore, PEGI's role has expanded beyond minor protection to include consumer protection for vulnerable adults and considerations for data protection.

PEGI operates on a code of conduct, which companies must sign and respect to obtain a PEGI rating license.[12] This code now includes provisions on in-game monetisation and safe online gameplay, aligning with recent regulatory developments. PEGI's Complaints Board and Enforcement Committee have enforcement powers and have already dealt with several cases relating to the rating or the criteria used to determine the rating of video games.[13] Mr Bosmans suggested that while age labels and content descriptors remain important, the future of gamer protection may require context-related protections too, with greater parents' involvement for instance.

4.2.2. Online safety and consumer protection in the video games sector

Kasia Colombani,[14] Partner at DGA Group, presented the legal framework at EU level for consumer protection and minors protection in the video games sector, as well as upcoming rules.

4.2.2.1. Existing rules

At the EU level, there is no specific legislation on video games or specific in-game practices. Horizontal consumer law directives do however apply to video games fully:

- Directive 2005/29/EC: Unfair Commercial Practices Directive (UCPD),[15]
- Directive 2011/83/EU: Consumer Rights Directive (CRD),[16]

- Council Directive 93/12/EEC: Unfair Contract Terms Directive (UCTD).17

[12] https://pegi.info/pegi-code-of-conduct
[13] https://pegi.info/page/complaints-and-enforcement-cases
[14] See Kasia Colombani's presentation here.
[15] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (Unfair Commercial Practices Directive) (in English).
[16] Consolidated text: Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (in English).
[17] Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (in English).

Among the most relevant provisions are those stemming from the UCPD on the protection of children, with Article 5 considering them as vulnerable consumers, thereby benefitting from an even higher level of consumer protection. Annex I further bans exhorting children to buy (e.g. "buy now!" claims. As per the Consumer Protection Cooperation (CPC) Network's18 joint enforcement actions led by the Commission and national authorities in 2014, it applies to games targeting children but also to games that are likely to appeal to children.

Information requirements (UCPD and CRD) on the price and main characteristics of the product also apply to in-game purchases. Game developers must communicate that information to consumers before the transactional decision is taken. The Commission's guidance on the UCPD[19] considered that this also applies to purchases made with virtual currencies, which means that the price of virtual items should also be expressed in real currencies.

There is yet to be case law from the EUCJ confirming that.

However, the guidance stating that the prices of virtual items must be clearly and prominently displayed in real currency when the commercial transaction takes place leads to new challenges. A strong argument by the industry is that the use of in-game currencies is not a commercial transaction but rather in-game content.

Longstanding guidance from the UK's Office of Fair Trading (which was cited by the CPC in its 2013 Common Position) has confirmed that gameplay should be separated as much as possible from commercial transactions. Transactions usually take place in a separate online shop that can be accessed, for example, via an icon displayed on the side of the screen, where the consumers can purchase in-game currency for real money.

The subsequent exchange of that virtual currency for virtual items is however not commercial by nature and therefore does not require the parallel indication of the value in a real currency. In-game currencies are also subject to the same rules that apply to digital content under the Digital Content Directive. They are treated as such in video game companies' policies, meaning that they are non-convertible, only used closed loops, cannot be cashed out and cannot be traded or exchanged outside of the game.

The most recent example of enforcement of existing EU consumer rules in relation to video games is the Dutch Authority for Consumers & Markets' actions[20] enforcing the rules on direct exhortations to children and exploitation of children's vulnerabilities.

In 2022, the European Commission addressed a letter to video game associations regarding loot boxes, reminding them of applicable consumer laws. Before that, there had been two decisions by the Italian competition authority enforcing the rules on the information requirements regarding cost and characteristic in relation to in-game

[18] CPC Network.

[19] Commission Notice – Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market (in English).

[20] ACM imposes fine on Epic for unfair commercial practices aimed at children in Fortnite game, 14 May 2024.

purchases[21]. Those decisions highlight the fact that rules exist and that they are being applied.

The Digital Services Act (DSA), a landmark EU content moderation legislation, also applies to video games, at least some of its provisions. The DSA sets asymmetric due diligence obligations on different types of online intermediaries. Most of the video games would likely fall under the hosting services category. Some of the relevant obligations that are also important from the consumer protection perspective that apply to them are, for example:

- transparency reporting (mandatory annual reports on content moderation).
- clear terms and conditions on how they moderate content.
- notice and action mechanisms allowing users to flag illegal content.

Some video game companies, mainly those that disseminate user-generated content to the public, would fall under the category of online platforms, with additional obligations under the DSA. The prohibition of dark patterns would apply, for example, but also measures to ensure a high level of privacy, safety and security for minors.

The European Commission is reportedly developing guidance on the latter, including considerations on age verification, which is a sensitive policy topic and fast-moving area of technology.

In the area of users' privacy and data protection, the General Data Protection Regulation (GDPR),22 which covers all personal data processing, and the ePrivacy Directive,23 which covers online privacy issues, both fully apply to video games. Key compliance-related challenges include the obtention of informed consent, clear communication on privacy policies that children can also understand, and managing the data collected, for example, from user profiles or in-game behaviour. Games can occasionally include processing of sensitive data and, therefore, subject to stricter regulations., which is often sensible data and, therefore, subject to stricter regulations.

4.2.2.1. Rules in the making

Rules in the making include a controversial Regulation proposal, published by the Commission in May 2022, on child sexual abuse. Within its scope were in-game communication services. Not all games have in-game communications, but the ones that do would, once the regulation is adopted, be subject to obligations related to the assessment of risks posed by the use of their service for online sexual abuse. They would have to put in place measures to mitigate that risk. If the significant risk remains after the mitigation measures, the competent authorities could issue detection orders towards those

[21] See for instance AGCM, PS11594, Electronic Arts-Acquisiti nei videogiochi, 30 September 2020.
[22] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.
[23] Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector.

services to mandate the detection of new or known child sexual abuse material or grooming.

There are certain technical limitations in in-game communications. They are usually voice or text-based, so photos and video sharing are rarely allowed. Possibility of exchanging child sexual abuse material is therefore limited. Communication online is usually a minor and ancillary feature of an online game. This is also the reason why this type of communication is often considered much lower risk than other communication platforms like social media, instant messaging or video sharing.

A survey by the UK national media regulatory authority Ofcom and ICO shows that 2% of adults and 3% of children have experienced online harms via online gameplay. That is significantly lower than those other types of services like social media. This is an important point to make because sometimes games are caught in debates that are driven by concerns with the largest online platforms, in particular social media, in mind.

4.2.2.2. Upcoming rules

The next wave of rules affecting the video game sector will come in the form of the Digital Fairness Act. It was announced in the mission letter from the European Commission President to the Commissioner-designate for Democracy, Justice, and the Rule of Law, Michael McGrath (Ireland).[24] This new piece of legislation is expected under this upcoming mandate, with a proposal to be expected at the earliest towards the end of 2025. It could bring some potentially far-reaching changes.

A fitness check published in early October looked specifically at some video game-related practices, such as the sales of virtual items. The Digital Fairness Act can be expected to include several areas of intervention, based on what is known at this stage.

There may be more specific rules on some of the online practices that are considered prevalent at the moment, such as in-game purchases, but also dark patterns, addictive design and subscriptions.

The Commission considers that although rules already exist, they may be too principles-based and not specific enough, and this is confirmed by the limited enforcement action regarding existing rules to those practices at the moment. That can be combined with the clarification or amendments to average and vulnerable consumer concepts.

In conclusion, the sector is already subject to numerous rules on consumer and minor protection and more rules are coming up. All of these current and upcoming rules are complemented by PEGI, which has evolved over the years to reflect the different policies and legal changes at the European level.

[24] Mission letter to Michael McGrath, 17 September 2024.

4.3. Discussion

The following discussions confirmed that the different industry stakeholders consider that the video games sector is already heavily regulated. A horizontal approach is more technically neutral and open, and appears to present the most advantages for a fast-changing industry.

With various examples of existing legislation being applied to video games, many participants appeared to agree that the problem may come from enforcement rather than a lack of applicable legislation, due in part to a lack of resources from the competent national institutions.

A recent complaint by BEUC[25] regarding 'misleading tactics' about in-game purchases will have to be assessed by the European Commission's European Competition Cooperation Network (CPC Network) in light of the existing legislation.

PEGI's role was praised and hailed as one of the great success stories of the industry, as an organism that moves quickly to address the issues at stake, in particular through its code of conduct but also with the information it provides to players (and parents of younger players), based on factual data, with regard to a video game's content.

In addition to PEGI, many resources and tools exist to inform and educate players and the people around them (such as (grand)parents, caretakers and teachers) about the many positive aspects of video games and to provide tips and inspiration for safe and responsible video gameplay, and for instance, for parents to assess if they think a video game is suitable for their child. Those resources and tools could benefit from more communication support (for instance by public bodies and organisations), as many in the general public are still not aware of their existence.

There is however still a massive lack of data and understanding of potential harms across games and of what proper policy-making looks like in this space. The UK government's recent introduction of the Video Games Research Framework was pointed out as an appropriate initiative in that sense, as it allows academics to conduct policy-making informed research more openly and readily.

For academics, the collection of feedback from those that play games is key. An element that is often left out of the centre of the discussion at the moment is what players want from games (the kind of experience, diverse, entertaining, inspiring and the accessibility in design, for instance). Ensuring that the games being built and made available to the public are the kind of games that the public wants to play is very important.

Participating trade associations have engaged in data collection since 2018 to understand parents' supervision of in-game spending by children and the context around it. Consistent data (from France, Germany, Italy, Spain and the UK) show that around 18% of children are allowed to spend money on in-game content, with a significant 90% of the parents that allow their children to spend on in-game content supervise this activity, reaching 95% in 2024. Further, players are very vocal about what they like and dislike, which creates a constant dialogue between them and video game companies.

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[25] *Game over: Consumers fight for fairer in-game purchases*, 19 September 2024, BEUC (in English).

The industry pointed out that game developers must navigate the combined impact of numerous regulations, from Consumer Protection Law to the GDPR and the platform regulation. It creates a challenging path to navigate for smaller studios. A holistic perspective on the combined impact of these regulations and how they work together is necessary, rather than focusing on looking into single regulatory initiatives.

Sophie Valais, as Chair of Session 2, concluded the discussion by providing a concise summary of the most important needs expressed by the participants. In essence, joint efforts by industry, legislators and the players themselves are seen as crucial, along with a more open and horizontal approach to upcoming developments, supported by appropriate education and information efforts.

Session 3 – Public support to the video games sector in Europe

The third workshop session was chaired and introduced by Gilles Fontaine, Head of the Department for Market Information at the EAO.

Sessions 3 explored key aspects of financing, public support, and collaborative initiatives of the European game industry. It gave an overview of the main support instruments available at national and European level and to whom they are intended. It focused on the goals and principles behind those support instruments.

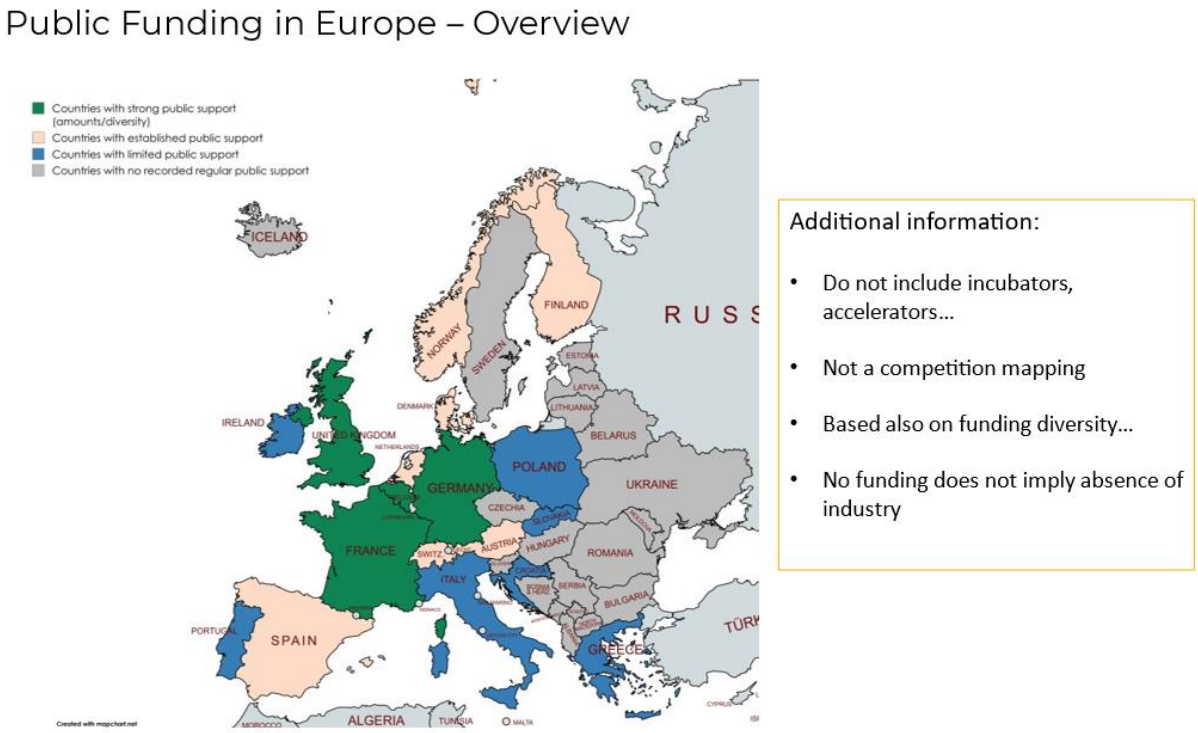
4.4. The different support schemes for video games in Europe

Thierry Baujard[26] (Co-founder of Spielfabrique) started the session by giving an overview of the different support schemes for video games in Europe from the one, primarily public, funding games project, and the others, mostly private, funding companies. He highlighted accessible support for video games, even if they were not these funds' specific targets. Public support can be divided between grants, refundable loans, and tax incentives (generally tax credits). The latter have gained traction, and are now present in France, the UK, Italy, Ireland, and Belgium. Private support is shared between debt and equity; they are not developed enough in Europe.

Mr. Baujard began his presentation by addressing the significant challenges European video game studios face in accessing debt and equity funding. Germany is an example of a country where progress has been particularly slow despite ongoing discussions with banks. In the realm of equity, there are only a few funds across Europe—perhaps 10 to 15—that specifically focus on video games. Although there is growing interest in the video game sector from investors, the area remains considerably underdeveloped.

To provide an overview of the situation, the working map below categorizes European countries into four groups based on the status of their public video game funds. Countries in the green category, such as France, are well-established in terms of public funding and offer diverse support systems. Pink countries, including Norway and Denmark, have longstanding but relatively limited funding mechanisms. Blue countries, such as Italy, Croatia, and Poland, have recently introduced public funding programs, while grey countries, including Sweden, lack dedicated public funding entirely.

[26] See Thierry Baujard's presentation.



Source: Spielfabrique

However, the absence of public funding does not necessarily indicate a lack of industry activity, as evidenced by Sweden's strong video game sector. The mapping, he clarified, is intended to showcase diversity rather than foster competition between countries.

Public funding for video games in Europe faces critical limitations. Only a few countries have more than two public funds, often constrained by political instability, capped financial contributions, and restrictive rules such as "de minimis" thresholds that limit how much funding studios can receive. There is also a tension between cultural and commercial objectives, as many public funds prioritize cultural criteria, making it challenging to support projects with a strong commercial focus. This dynamic creates a vicious cycle where studios prioritize meeting public funding criteria over pursuing market-driven goals, ultimately undermining the sector's sustainability.

Three Spielfabrique initiatives aim at addressing these funding challenges. The first, the Indie Plaza (www.indie-plaza.eu), is an online database co-funded by Creative Europe. It organizes and presents various sources of financing dedicated to video games, aiming to improve transparency and help studios navigate funding opportunities across Europe. The second initiative is a co-production market called MATCH, launched by Spielfabrique six years ago with the support of ARTE and CNC, initially to foster collaboration between indie studios from different countries. Although co-production is common for larger studios like Ubisoft, it remains relatively new for smaller, independent studios. This year, the co-production market expanded to include Canada and Brazil, enabling international collaboration and skill development. The third initiative is a public funds club, established 18 months ago, which brings together representatives from 13 European public funds. This group meets twice a year—in Strasbourg and online every six weeks—to share best practices and explore innovative approaches to public funding.

In conclusion, it seems important to develop more diverse and balanced funding mechanisms to support both the creative and commercial aspects of video game. It is also crucial to improve cooperation and share knowledge through Europe to overcome shared challenges and ensure the long-term sustainability of the video game industry.

4.5. How does a national fund support video games: the example of the French CNC

Olivier Fontenay[27] (Head of Digital Creation, Centre National du Cinéma et de l'Image Animée, CNC) started his presentation by explaining the distinct approach France takes toward public support for video games, emphasizing the country's cultural perspective. Unlike some European nations where video games fall under ministries of finance, industry, or even sports, France considers video games a cultural industry. Consequently, the sector is overseen by the Ministry of Culture, with the CNC playing a pivotal role in administering funding and support. The CNC operates with a dual focus: fostering artistic creation and advancing technology and innovation, both of which are essential for the development of video games.

The French video game industry is diverse and ranges from large-scale productions such as Star Wars and Assassin's Creed to smaller, critically acclaimed projects. The CNC is committed to promoting both small independent studios and larger, well-established companies, ensuring support across all levels of the industry. One of the tools used to accomplish this goal is *Game France,* a label to promote French games worldwide.

France boasts 40 million players, with seven out of ten people playing video games at least once a year and over half playing weekly. The average gamer in France is 40 years old, reflecting a broad demographic appeal. The industry is supported by 600 active studios, generating €6 billion in turnover. Of these studios, 200 have benefited from the CNC's tax credit system, which has supported 67 projects in the past year with a cumulative budget of €350 million. In total, the French government distributes approximately €100 million annually to the video game sector.

The CNC's funding mechanisms are divided into two selective funds, each with an annual budget of €10 million, focusing on creation and innovation. These funds support all stages of game development, from initial writing to prototype creation and production. The key criteria for funding are artistic quality and the potential for innovation, ensuring that even small studios with unconventional ideas can access resources.

The second pillar of CNC's support is the tax credit system, introduced in 2008. This program allows studios to recover 30% of eligible production expenses, providing vital financial relief. The tax credit has significantly strengthened the French video game industry, which now employs 50,000 people. However, there is a recurring challenge: the tax credit system requires annual approval by the French Parliament, necessitating consistent advocacy to demonstrate its economic and cultural value.

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[27] See Olivier Fontenay's presentation and video.

In addition to the CNC, other institutions contribute to the industry's growth. The Banque Publique d'Innovation (BPI) provides financial support to game companies, while L'Institut du Financement du Cinéma et des Industries Culturelles (IFCIC) also offers assistance. Regional and municipal governments occasionally provide additional funding, further diversifying support sources.

In conclusion, the data is key in advocating for continued government support. Consistent and reliable metrics are necessary to prove the effectiveness of the tax credit and other funding mechanisms. There are also alternative funding models which should be explored, such as reinvesting a portion of taxes collected from consumers into the industry, a system already in use for French cinema.

4.6. Supporting video games at the European level: strategy and tools

Maciej Szymanowicz[28] (Policy Officer, DG CNECT, European Commission) presented the EU's supporting initiatives for the video game sector. The European Union plays a dual role in regulation and financing. Creative Europe is one financing tool, which aims at supporting cultural diversity and facilitating the economic development of the audiovisual sector, including the video game industry. This presentation concentrated on the latter, which became part of its media division in 2014 at the request of member states.

Creative Europe provides annual grants to game developers, with applications evaluated by independent experts. A significant increase in grant applications in the past year has been noticed, which could be attributed to reduced availability of private capital in the video game market. This heightened competition for public grants underscores the economic challenges faced by the sector. Beyond grants, Creative Europe offers other support programs, including training, trade show access, and media literacy initiatives. In some cases, video games have been increasingly used as tools for media literacy, with three of seven awarded projects last year focusing on video games.

In addition to Creative Europe, other EU programs that support the video game industry. Horizon Europe focuses on the societal impact of video games and funds technological innovation, while Digital Europe supports demo projects. Erasmus is also exploring opportunities for collaboration between academia, businesses, and vocational training, inspired by Sweden's approach to integrating video games into educational initiatives.

Many companies face significant barriers to debt financing, a primary economic tool for other industries. To address this gap, the European Commission and the European Investment Fund launched the Culture and Creative Sectors Guarantee Facility (CCSGF) in 2016. This initiative reduces the risk for financial institutions lending to creative businesses, including game developers. Between 2016 and 2020, the CCSGF facilitated nearly EUR 600 million in financing for audiovisual and multimedia companies, with EUR 140 million

[28] See Maciej Szymanowicz's presentation.

directed toward video games. Contrary to initial fears of high default rates video game companies demonstrated financial reliability, with defaults at only 2–3%, comparable to other industries.

Building on the success of CCSGF, the InvestEU program continues to expand access to debt financing for the creative sector. Recognizing the need for equity investment, the Commission also launched Media Invest in cooperation with the European Investment Bank, which focuses on audiovisual production, distribution, and video games. Media Invest co-invests with private investors, covering up to 50% of fund values, to attract additional investment. The program's initial EUR 200 million in public funding is expected to generate a total investment of EUR 1 billion. However, working with a new sector like video games is challenging, some early-stage companies for instance are still unfamiliar with equity-based financing.

To complement these financial instruments, the Commission has introduced capacity-building initiatives both financial intermediaries and creative companies. These efforts include providing data on national markets, monetization trends, and risk profiles to help investors better understand the video game industry. It is important to educate studios to think beyond public subsidies and explore broader financing options.

In conclusion, accurate data is essential for both public and private financiers to evaluate the industry's potential and ensure that financing mechanisms are effective. By broadening financial support and increasing collaboration between public and private sectors, the Commission aims to strengthen the European video game industry and enhance its global competitiveness.

4.7. Discussion

The discussion began with the question of how to define an independent developer. Olivier Fontenay explained that, according to the CNC's approach, independent studios are typically not owned by major publishers, such as Ubisoft, and that often operate with either self-financing or project-specific deals. He emphasized that such studios vary in size, from very small to sizable entities with hundreds of employees.

Some legal practitioners considered that while public funding is crucial, other forms of support, such as guidance in attracting private funding and navigating regulatory landscapes, are equally important. He highlighted the fundamental difference between film and video game industries, noting that films are often domestically focused, while games are designed for a global audience. Public funding in games, he suggested, should be a tool to leverage additional private investment rather than the sole support mechanism.

Some participating trade associations shifted the focus to structural challenges within Europe, such as supporting micro-enterprises to enable their growth. They highlighted limitations in state aid rules, which restrict flexibility in supporting the technological and cultural aspects of game development. They called for frameworks that address the unique combination of innovative technology, artistic content, and novel business models in the video game sector.

Representatives from public institutions emphasised the importance of public support for promoting and branding ecosystems for better visibility in the global market. They also highlighted the issue of fragmentation in Europe, where regions and countries compete for investments rather than collaborating on a unified strategy, contributing to a race to the bottom.

Some industry representatives discussed the challenges of creating sustainable growth for smaller and medium-sized studios. There has been a strong interest in acceleration programs and incubators for video game companies. They pointed out that many studios struggle with inequitable deals with publishers and a lack of access to private financiers. They proposed a balanced financial ecosystem involving public funding, private investment, publishers, and studio revenue.

Some participating trade associations brought up the Danish example of restructuring its video game support system, moving it from the Danish Film Institute to a dedicated video game body. It was observed that while such changes recognize the differences between media types, implementation remains slow due to administrative constraints. They highlighted Europe's strength in diversity, where individual countries can experiment with funding models and game development approaches.

A representative from public institutions noted the challenges of treating video games as cultural products, which limits the European Commission's involvement. The growing adoption of tax credit systems across Europe and the interest from equity investors in the video game sector was stressed. However, the complexities of attracting these investors due to their lack of familiarity with the industry were also acknowledged.

Some participating trade associations addressed the importance of demonstrating the economic return of tax credits to policymakers. They cited France's example, where studies showed a fourfold return on investment through tax credits, leading to job creation and industry growth. However, they noted the need for standardized methodologies to evaluate these benefits, as inconsistent metrics can undermine credibility. They also pointed out that while the current tax credit in France is currently secure, ongoing legislative changes may introduce uncertainty.

Some public agencies representatives elaborated on the role of tax credits, noting that they have helped stabilize and grow the French video game industry, even during global economic challenges. It was pointed out, however, that creating these systems is time-intensive and requires significant legal and administrative effort. They also discussed the cultural framing of funding mechanisms, observing that while some frameworks emphasize cultural contributions, games often transcend national narratives, making such criteria less applicable.

Some participating trade associations observed that games with budgets between EUR 5 million and EUR 15 million often face challenges—too costly for indie publishers and too small for large investors. The need for co-investment models where new investors collaborate with experienced financiers or publishers was emphasized. The discussion concluded with a call by some industry representatives for more structured collaboration across Europe to address the video game industry's unique challenges while emphasizing the importance of maintaining flexibility and self-regulation. The need to build on

initiatives like the European Commission's roundtables and workshops to foster ongoing dialogue and craft a cohesive strategy was also stressed.

5. Session 4 – Exploring new frontiers

5.1. Introduction

The fourth session of the workshop was chaired by Maja Cappello, Head of Department for Legal Information of the EAO. The session started with a short introduction to the fact that the sector has evolved into a complex ecosystem of technology and creativity, increasingly based on talent, skill and innovation.

It is therefore important to consider how this evolution will continue to shape various aspects of video games, including accessibility and educational values, but also the very nature of video game play itself. This also implies an engagement in a critical dialogue about how to shape the future of video games across several interconnected dimensions.

This session focused on two dimensions: accessibility and educational purposes of video games, and the transition from the traditional video game environment to the metaverse.

5.2. Accessibility and Inclusion in the video games industry

Thomas Westin[29] (Senior Lecturer at the Department of Computer and Systems Sciences, Stockholm University, Sweden) addressed the fundamental question of how video games are designed to be accessible products and services.

Dr Westin pointed out that games are more than just entertainment. They are also tools that allow one to make and create games, allowing players to become developers of some sort. Sandbox games like *Minecraft*, where players can collaborate to create game worlds to play in, are good examples of this. This context reinforces the importance of accessibility and inclusion.

Accessibility and inclusion can be achieved in several ways. One way is to build accessibility features directly into the development of the game itself. Another way is to make modifications to existing games. For example, a modification called *EyeMine* makes the game *Minecraft* fully playable with eye-tracking only, allowing gamers to control and play *Minecraft* with their eyes only. Game developers can also either take a game design for all approach, focusing on universal design principles, or they can take a more specific approach to game accessibility, focusing on a wide range of capabilities. For example, a blind person may have very fast speech synthesis, which may be difficult for others to follow, but also allows for an audio gaming experience that is fun for blind players.

A key challenge raised was that making games accessible should not affect the fun of the game. Rather, the game should be accessible by design within limits of game rules and game mechanics. The usability of the game, i.e. ensuring that the interaction is

[29] See Thomas Westin's presentation.

effective, efficient and satisfying for the player, is only meaningful if the game is also both accessible and fun for a specific target audience.

A video of the game *The Last of Us* was shown to the participants, with good examples of how accessibility can be designed in a high-end AAA game. For instance, captioning was implemented, making it possible to read what the characters are saying, understand who is speaking and, in certain cases, determine which direction the voices are coming from. Another example was high contrast mode, which is an accessibility feature useful for players with low vision. Options for blind players to make the game more immersive and enjoyable, as well as accessible, include audio description of key visual elements in the game. The voice describes what is happening in the scene, not just the minimum required to make the game accessible. One challenge is that games, compared to e.g. film, often have no predefined pauses when longer descriptions can be inserted.

The European Accessibility Act[30] (EAA) focuses on the accessibility of interfaces across all digital platforms, including video games. The EAA also adopts the Web Content Accessibility Guidelines[31] (WCAG), which are however, designed for the web and not specifically for games.

The WCAG are organised into four principles under which web content should be:

- Perceivable (allowing to see, hear or feel what is happening)
- Operable (allowing control with different input methods)
- Understandable (the player needs to understand functions and content)
- Robust (allowing it to remain accessible over time with assistive technologies)

Since the WCAG is designed for the web, it does not consider the specificities of games, which are a very special type of application where barriers are deliberately added by the game rules and mechanics. But that is the essence of games. Westin therefore pointed out the importance of not following accessibility guidelines without considering the game itself, with the risk of being counterproductive. While the WCAG is more conformance-oriented (with three levels of conformance: Level A, AA and AAA), the Game Accessibility Guidelines[32] (GAG) are best-practice oriented.

The World Wide Web Consortium[33] (W3C), which is also behind the WCAG, has started to look at extended reality (XR) including virtual, mixed and augmented realities and what that would mean for accessibility. W3C has produced a list of XR user needs and requirements for accessibility in this regard, but guidelines still need to be drawn from this, and again, XR *games* are a special case that requires further elaboration and discussion.

Mr Westin concluded by raising several questions that remain to be answered:

- How can developers comply with the WCAG or guidelines within the EAA if there is no specific focus on games?

[30] Directive - 2019/882 - EN - EUR-Lex
[31] Web Content Accessibility Guidelines (WCAG) 2.1
[32] Game Accessibility Guidelines
[33] W3C

- What are the implications of the EAA, especially for small and medium sized game studios?
- What does the EAA mean for the accessibility of games in augmented reality?
- In what way can or should end users, in this case, disabled players, be involved in the interpretation of the EAA into national law?

5.3. Educating for a video game culture

Alessandro Soriani[34] (Senior Assistant Professor at the Department of Educational Studies, University of Bologna in Italy and Coordinator of the Council of Europe's Working Group on Video Game Culture[35]) highlighted some considerations that could be useful when using video games for educational purposes and in educational contexts.

The Department of Education of the Council of Europe has set up a working group on video game culture within the framework of Digital Citizenship Education[36] (DCE). The DCE comprises 10 different domains of activity under three umbrellas: Being online, Well-being online and Rights online. The Video Game Culture Working Group, which is composed of academics from different fields and the industry, focuses on how to promote this through video games.

Mr Soriani brought up the question of what it means to 'educate for a video game culture', a concept that is not so obvious in the educational context. This idea considers video games as an artistic, cultural and economic phenomenon, and carefully analyses its characteristics, mechanics, language, and economic models of production, distribution and communication.

Such an analysis is critical because when discussing education for digital citizenship, it also means looking at the problems associated with technology, media and video games from many angles. It also means generating and fostering a pedagogical reflection on the medium, considering video games not only as a tool for learning, but also as useful for the development of the person as a whole and for the development of citizens.

Educating for a video game culture should also encourage and stimulate players to engage in meta-reflection on their own video game practices and to see video games as a creative and expressive environment. This also aligns with the new field of literacies, which goes beyond traditional media literacy and critical thinking, and fosters citizens' responsibility and ethical stance towards how they engage with media, media environments and technology.

Mr Soriani stressed that it can be very easy for teachers and experts in the field of education to talk about video games in general terms. But doing so can be risky, because every video game is very different in terms of gameplay mechanics, genre, budget,

[34] See Alessandro Soriani's presentation.
[35] Video game Culture Working Group - Education
[36] Digital Citizenship Education - Education

production values, distribution models, accessibility and quality of representation. It is therefore important to understand the diversity of video games, and to be cautious about what kind of video games are proposed in educational contexts and for what purposes. In addition, the effects of video games cannot be treated in general terms either, as the same video game can be perceived very differently depending on the context, the mediation by adults and peers, personal experiences, and also depending on political and socio-economic contexts.

The presentation further emphasised that each video game deserves to be considered according to its educational purpose. At the same time, it recalled that even video games that are not strictly educational can be useful, for example to reflect on how women or migrants are represented in video games. Video games that offer the most stereotypical points of view can, for example, be useful to start a reflection and critical discussion with students.

Video games can be used in several ways for educational purposes:

- Direct use: through video games specifically designed to activate learning, such as applied games, educational games, news games (eg: *Minecraft Education* to teach about chemistry).
- Indirect use: to foster motivation and to initiate and stimulate "self-regulated forms of learning".
- Critical use: to activate the exercise of critical thinking about the content (media literacy, gender representation, violence...) but also about one's relationship with the medium itself.
- Creative use: to create something new and exercise creativity, lateral thinking and problem solving.

Mr Soriani concluded by recalling that next year will be the European Year of Digital Citizenship Education. The Council of Europe is therefore trying to set up a series of initiatives to promote a deeper reflection on video games and their role in promoting Digital Citizenship Education.

5.4. Exploring new frontiers: the Metaverse

Michaela MacDonald[37] (Senior Lecturer at the School of Electronic Engineering and Computer Science at Queen Mary University of London) delivered a thought-provoking presentation on the metaverse, exploring its definition, evolution, and implications.

She opened with a fundamental question: *What is, and what can be considered, a video game from a legal perspective?* This query has far-reaching implications for the future of interactive entertainment, especially as the boundaries of video games expand into new dimensions and iterations.

[37] See Michaela MacDonald's presentation.

The legal and conceptual definition of video games directly influences our understanding of the metaverse. Dr. MacDonald highlighted that definitions often reflect the agenda and goals of those shaping them. It is important to keep these different perspectives and approaches in mind when trying to fully understand the concept.

In general, however, the research suggests that the common defining elements can be reduced to the following: metaverse as a shared digital space where users, players and citizens can move seamlessly from one area or space within the digital environment to another while retaining their different (potentially multiple) identities, assets, etc. Boundaries within individual spaces in the virtual environment are being removed.

Dr. MacDonald emphasised that the metaverse is not tied to a singular technology but encompasses diverse tools like virtual, augmented, and mixed realities, which are constantly evolving. Early examples, such as *Second Life* and *World of Warcraft*, introduced elements of real-time interaction and user-generated content, paving the way for proto-metaverses like *Roblox* and *Fortnite*. While these platforms expand possibilities, they remain confined by technological and systemic barriers. A key characteristic of the metaverse, highlighted by Dr. MacDonald, is its potential for interoperability across technical infrastructure, data, licensing, and legal frameworks. Unlike the physical world, the metaverse lacks territorial boundaries, yet it remains fragmented due to isolated virtual ecosystems.

The concept of the metaverse builds on decades of research and understanding of the video games sector. Many lessons that can be learned from the various regulatory experiences, whether it is state regulation, self-regulation or co-regulation, and what works and what does not.

These are some of the key characteristics that have been identified through research.[38]

- Scaling: ability to increase the size of the metaverse.
- Persistence: unlocking technical limitations to improve the immersive nature of the metaverse.
- Interoperability: the merging of different virtual worlds and systems.
- Decentralisation / centralisation: distributing or concentrating control over data, content, online identity.
- Economy: allowing for trading across the metaverse.
- Identity: evolving current online identities for avatars for a stronger connection to the user.
- Digital and physical: spanning across many aspects of life.
- Multiple contributors: content from all sorts of stakeholders from individuals to commercial organisations.

Among these, interoperability stood out as a critical factor for merging virtual worlds and enabling seamless user experiences. Despite these challenges, the metaverse's success hinges on collaboration among industry stakeholders and regulators, balancing innovation with accountability.

[38] See in particular research by Matthew Ball.

Another fundamental question that was raised was who is going to provide this metaverse or multiple metaverses? And how their vision of what they are developing and delivering aligns with that of digital citizens and of governments and organisations involved in the video game industry and interactive entertainment sector. Such interactions can ensure that there is an ongoing conversation and dialogue about what kind of metaverse we are imagining and envisioning.

Finally, a human-centric approach to the development of the metaverse and video games was addressed. It was argued that the focus should be on the human, the user, the player and the citizen, to create spaces where we feel comfortable, safe and want to spend time. For Dr. MacDonald, this approach also highlights the importance of the responsibility of those who create video games, infrastructure and technology to ensure that human is at the centre of all initiatives and motivations.

5.5. Discussion

The presentation concluded with a robust discussion on regulatory frameworks, coordination opportunities, and the ethical considerations necessary to guide the metaverse's development.

5.5.1. The evolution of the Metaverse

According to some participating trade associations, a new division is rising. On the one hand, the video games industry is moving towards human-centred virtual worlds and spaces. On the other hand, there is a focus on the industrial and productivity approach to the metaverse. The core issue is, therefore, to understand the connection between these two approaches, whether there are possible interactions or whether they will go in two different directions.

From an academic point of view, there are a lot of different approaches and perspectives, and the question is how practical and user-friendly and, from a commercial point of view, how viable it is to combine everything in one space. There will most likely be multiple hybrid metaverses rather than a single one.

Public institutions pointed out that there will certainly be different metaverses, because the Internet in Europe and “the West” is different from how people experience it in China or Russia.

For the academia, we already live in a metaverse as long as you can connect with others and create things together. The concept of immersion is often misunderstood because one can create an immersive experience by reading a book and losing track of time, just as one can lose track of time by playing a game or wearing a virtual reality helmet. Besides, when people talk about XR as a metaverse, they are talking about enhancing the real-life experience. But as soon as it comes to XR games, it becomes a bit trickier, especially in terms of accessibility.

It was mentioned that the term "metaverse" might be overthought, because the metaverse is already there in some form. It is simply a new immersive experience of the regular Internet. The physical and the digital are merging, just as when using physical currency and then paying with a smartphone or credit card.

A representative of the industry wished in this context to recall a project from the 90's *Second World* financed by the CNC. Although it worked on CD-ROM and without the internet, the idea of the metaverse was already there. Citing a book by Pierre Kuzlowski, the speaker also reflected on the relation of humans in general to media and what it means in relation to our behaviour, in a philosophical sense but also in the sense that we all make the machines go. The latest innovations today however show how B2B and B2C are blending and lead to a strong blurring of concepts.

The moderator of this session recalled the work of the Council of Europe on the metaverse and its implications for human rights, the rule of law and democracy.[39]

The importance of being proactive, considering the consensus among parties that a metaverse was ineluctable, was pointed out by a participant. A metaverse would magnify the existing social issues of the real world.

5.5.2. Regulating the Metaverse

The question was raised how the EU, apart from regulation, would be able to create a human-centred metaverse, since it has no control over either hardware or platforms, and that market trends, scale, scope, access, and price are all in the hands of US, Chinese, Japanese and South-Korean companies.

It was also pointed out that the mistakes and risks made in developing the internet and social media provide an opportunity to pre-emptively ensure a move towards a human-centred metaverse. The work that has been done within the video game industry should allow us to understand what the problems are, or whether new types of problems can be anticipated, and what the best forms of governance would be to deal with them. This was also linked to the educational aspect of the work, as younger generations need to have a very different set of tools and sense of techno-social values as they navigate the digital environments.

Some of the industry representatives, explained that they were taking a relatively slow approach to the metaverse. According to them, the metaverse is like a product, simply a new version of a video game product. In that context, consumer and other types of regulation can apply to them.

It was noted that, from a legal perspective, all laws apply to this medium. The metaverse is nothing more than a platform. The Digital Services Act[40] (DSA) applies,

[39] The Metaverse and its Impact on Human Rights, Rule of Law, and Democracy
[40] Digital Services Act

including all the measures to combat hate and hate speech. In that sense, the metaverse is also a platform under the Digital Markets Act[41] (DMA).

From a practitioner's point of view, it is good that Europe has made laws that are primarily based on technology neutrality. It is important to think about issues like digital identity and digital divide, when it comes to the development of the metaverse. There are some major ethical, human, and personal dilemmas that are at odds with each other and that go far beyond anything one can think about from a legal perspective.

Participating trade associations reminded participants of the European Commission's Communication on Web 4.0 and metaverses,[42] according to which all existing and future laws will apply to the metaverse.

5.5.3. Standardisation and coordination

Participating trade associations felt that the European Commission could help with the standardisation aspect, where the US and China are currently very active. It was recalled that in the context of the work of the AR-VR coalition[43], the Commission had acknowledged that it needs to play a stronger in ensuring that European perspectives are well heard and better coordinated in standardisation bodies. Without European coordination or investment, there is a risk that the European human(rights)-centric approach will be lost because of a lack of coordination between member states.

It was noted that standards are indeed essential. The Metaverse Standards Forum,[44] a collective organisation that is now quite large in terms of the number of companies that are members, focuses primarily on critical interoperability issues.

It was also recalled that coordination is also part of the work of the Virtual Worlds Steering Group,[45] which interacts with the High-Level Group on Internet Governance[46].

On a concluding note, it was emphasised that we should not rely on or believe in quick, easy, technical solutions to fundamentally ethical, personal and societal problems. Many of the issues that exist and persist, and the potential new issues and challenges that will emerge, require multi-stakeholder and interdisciplinary discussions, which are not a quick and easy technical solution.

Maja Cappello, as Chair of Session 4, concluded the discussion by recalling the main points of the exchanges and thanked all participants for their engagement.

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[41] Digital Markets Act
[42] EU strategy to lead on Web 4.0 and virtual worlds
[43] The Virtual and Augmented Reality Industrial Coalition.
[44] The Metaverse Standards Forum.
[45] Virtual Worlds Steering Group .
[46] High Level Group on Internet Governance.

6. Closing of the workshop

Susanne Nikoltchev, Executive Director of the EAO, closed the workshop by thanking all participants for their active participation.

In sharing her impressions about the event, she felt it was important to recall the role of the EAO and the reason for this workshop. Established more than 30 years ago, in 1992, the EAO was set up to address the lack of publicly available information on the audiovisual market, especially at a pan-European level, and the need for a better understanding of the different regulatory frameworks. Today, the EAO stands as a neutral and trustworthy institution that does not promote any particular interest other than increasing transparency through information.

When the EAO was set up, the audiovisual industry consisted mainly of cinema and broadcasting. Still, it has proved to be a particularly dynamic market from a technological and financial point of view. In parallel to the sector's rapid development, the EAO had to enlarge its scope to include for example, on-demand media services and platforms. The situation of the video games industry today reminds of this natural need to expand, although it should be borne in mind that the video games industry is even more global and transcends European borders. Moreover, whereas some common goals might be identified, the question remains how common they are exactly and how common on a European scale.

Despite these questions, Ms Nikoltchev believes that strong European values exist and that the video games industry could benefit from pan-European data collection, processing and analysis. The members of the EAO (39 countries in Europe, Morocco and the European Union) have pointed the finger at this growing industry and asked the EAO to look into it. She confirmed that although no decision has yet been taken to include video games in its action plan, the EAO is keen to explore and develop competencies in this area.

She thanked the participants for sharing their knowledge of the industry and expressed how valuable these exchanges were in building trust and developing strong relationships.