



Comments on behalf of the Interactive Software Federation of Europe
on the issues papers of the Commission regarding the revision of
the Television Without Frontiers Directive

Issue 1: Material and Territorial Competence

The Interactive Software Federation of Europe¹ welcomes the public consultation undertaken by the European Commission under the heading “Towards a Modern Framework for Audiovisual Content: Rules Applicable to Audiovisual Services”.

As a preliminary observation, ISFE appreciates the fact that the contemplated broadening of the scope of the current Directive is consistent with Commissioner Reding’s statement before the European Parliament in September 2004 when she said “The idea of a content directive, which would establish the “rules of the game” for media content, irrespective of the mode of delivery, is one possibility which will be analysed”.

Interactive software is computer software embedded in carriers - mainly optical discs and cartridges. ISFE has therefore no particular view regarding television: its members do not produce or deliver audiovisual content *simpliciter* by way of broadcasting or other electronic means at this time. Nevertheless, their core business of producing video games both online and off-line positions them as the champions of global content. The industry’s longstanding experience in producing such ‘content without frontiers’ has led to development of responsible self-regulatory initiatives covering such issues as Protection of Minors and Commercial Communications.

Games played online are just a fraction of the overall revenues of the interactive software industry in Europe at the present time. This is likely to change rapidly, as per a PwC study quoted by the OECD report.

“Online games allow consumers to interact with the medium, and online applications games can deliver a variety of new functions”.

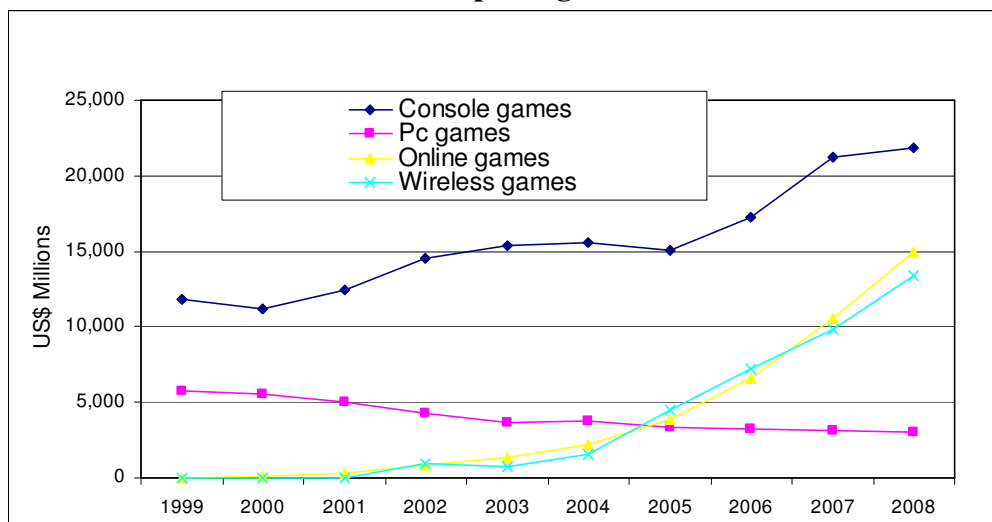
Online games and mobile/wireless games are the most dynamic sectors of the computer game industry (see graph on the next page), and the information technology industry in general (IDSA, 2001). In 2003 world PC-based online games had revenues of USD 450 million excluding advertisement and sponsorship, projected to triple to USD 1.5 billion by 2007 (IDC, 2003) and other estimates are higher (Figure 1), and online games contribute significantly to software industry growth. To give one example, Everquest, a large online game, has 450 000 registered players and revenues of EUR 8-9 million per month.

The main revenue sources for online computer games are paid subscriptions, pay per download, advertising and sponsorship. Market expansion is seen as coming through development of online network technology, diversifying content and developing large-scale, high-cost games. The sector is also increasingly seen as strategic by major media, Internet and consumer electronics firms.

¹ The members of the Interactive Software Federation of Europe are Activision, ADESE, AESVI, Atari, BIU, BLISA, Eidos, Electronic Arts, ELSPA, Konami, MDTs, Microsoft, Nintendo, NISVE, NSM, Sony Computer Entertainment Europe, SELL, SIEA, Take 2 Interactive, THQ, Ubisoft and Vivendi Universal Games.

Computer games are R&D-intensive requiring advanced technology, creativity and innovation, and the industry employs highly educated staff in programming and design.

The world computer games market



Source: OECD based on PwC (2004).

It is therefore of paramount importance for the interactive software industry that the favourable environment prevailing in the physical distribution of its product is maintained on switching to online trade. This requires two types of response:

- on the technical front, communication networks have to be able to support games applications and to be fully interoperable. ISFE and ETNO, the association of European telecommunications networks operators, have started collaborative efforts to this effect.
- on the legal front, products delivered online have to be classified appropriately. The move to online delivery mechanisms for the same products does not change the nature of the products themselves, as recognised in the underlying principles of the World Trade Organisation.²

For the purpose of expanding the scope of the TVWF Directive to include all content, ISFE appreciates the Commission's innovative suggestion to split this vast subject into tiers. This approach is likely to make such a complex issue easier to grasp and manage. Whilst we agree that the degree of user control is rightly taken by the Commission as the criterion of choice, we feel that this dictates a **three-tier** structure as follows:

- **Tier 1 online interactive entertainment:** users are able to choose content, and to interact with it, at any time;
- **Tier 2 non-linear services:** users/viewers are able to choose the content they wish at any time; e.g. Video on Demand ('VOD')
- **Tier 3 linear services:** programmers with full editorial responsibility decide upon the timing and the composition of programme schedules e.g. conventional broadcasting.

² Our contribution to the public consultation of the European Commission in the context of this revision of the TwF Directive is therefore without prejudice to our views on how our products fit into WTO classification schemes.

Among its other merits, this three-tier structure fully recognises the fact that there is a greater difference between, for example, online gaming (fully interactive play at any time) and VOD (passive watching at a time of choice) than between VOD (fixed content at a chosen time) and traditional broadcasting (fixed content and timing).

Getting this division correct is particularly important in affixing appropriate editorial responsibility, which the Commission rightly establishes as the cornerstone of the new legislation. Arguably, this responsibility can be fully fixed with programmers in tier 3, less justifiably so in tier 2 (for instance, 'watershed' type legislation would make no sense with respect to VOD) and even less so in tier 1, where a significant amount of editorial responsibility rests with users, not only in being able to choose the timing of programming but also to actually interact with it. Little or no regulation is therefore recommended.

Executive summary

ISFE is happy to comment on the Commission's proposal to expand the scope of the Television without Frontiers Directive to cover all content. In doing so, ISFE expresses support for the innovative step taken by the Commission in setting user control as a key criterion for regulation in this area. Moreover, ISFE appreciates the European Commission's concern regarding aspects of content made available in the context of the Information Society today. ISFE in this paper therefore focuses on the areas of Protection of Minors, Commercial Communications and Cultural Diversity as those issues are dealt with by this industry today.