Ukie response to DCMS Consultation on Cultural Test for British Video Games

October 2012

Introduction

The Association for UK Interactive Entertainment (Ukie) is the trade association that represents a wide range of businesses and organisations involved in the games and interactive entertainment industry in the UK.

Ukie exists to make the UK the best place in the world to develop and publish games and interactive entertainment. Ukie's membership includes games publishers, developers and the academic institutions that support the industry. We represent the majority of the UK video games industry; in 2011 Ukie members were responsible for 97% of the games sold as physical products in the UK. Ukie is the only trade body in the UK to represent all the major games console manufacturers (Nintendo, Microsoft and Sony).

In preparing this consultation response, we have spoken directly to a wide selection of our members, including companies of all types and sizes, from international publishers and their in-house development teams, to micro-studios of two developers creating mobile games.

We have hosted a roundtable discussion amongst members, a public seminar, and direct one-to-one conversations over the past four weeks. We have also undertaken an online survey, and received comments from across the industry.

Having undertaken this process, we believe that the following submission is a fair representation of opinion from across the industry.

Executive Summary

Ukie strongly welcomes the introduction of production tax credits for video games. This relief has the potential to be a watershed moment for the UK games industry, giving us a level playing field with the rest of the world and allowing us to compete fairly on creativity and innovation.

The cultural test is an important part of the system allowing these credits to be put in place, and so it is crucial that we construct it carefully. It has to be a rigorous test, meeting the needs of the EU state aid process, but a fair one that accurately reflects how games are made in the UK today. It is also vital that the test recognises all parts of the games industry, from the traditional console and PC markets to the mobile and social games that have emerged in recent years.

For the most part, we feel that the test as proposed meets these goals. Some of the wording reflects the film industry rather than the games industry, and requires changing to avoid unintended consequences. The games industry has a unique creative skillset that needs to be reflected in the cultural test. For example computer programming is an essential part of the creative process in making games which is not currently adequately reflected in the test. In addition a small change to the allocation of points may be useful in meeting the stated goals and creating parity with the other cultural tests.

However, we believe that with these and a few other changes the Cultural Test will be fit for purpose. Crucially, although its roots in the existing film test are clear, it has been adapted to recognise that games will not always have a traditional narrative structure, or recognisable human characters, but can still be important cultural works in their own right.

In responding to this consultation, we will go through the proposed cultural test section by section, giving our comments. We will also answer the questions set out in the consultation document, as the relevant part of the proposed test is considered.

Section A: Cultural Content

A1 and A2

A central problem with using the existing cultural test for film is that, unlike films, games will not always have a traditional narrative, describable setting, or characters of a recognisable nationality (or indeed species). The cultural test must therefore be designed to allow for, and award points to, games which are examples of British creativity that do not solely rely on film-like narrative concepts.

Section A as proposed largely strikes this balance. The allowance in A1 and A2 for locations/worlds and nationality/species that 'cannot be determined' to take 2 points each is crucial. Without this recognition of the unique cultural nature of games, a large proportion of games would be unfairly barred from ever being able to claim relief, despite being great examples of British creators leading the way in this important art form.

Many games that have contributed strongly to the development of games as a distinct medium have been essentially abstract in this way, and if they had been created in Britain would be very much deserving of cultural support.

For example, Tetris is one of the pivotal moments in games history, a modern equivalent of which this tax relief is surely designed to support being made in the UK. Without the 'cannot be determined' options in A1 and A2, it is likely that such a game would fail the cultural test.

The type of games this is likely to threaten – abstract games that do not rely on narrative - represent a significant part of the mobile and online games market, which with the rise of social networking and smartphones has become a major part of our industry in recent years. Over £600 million was spent in these markets in the UK alone in 2011: this is an important part of the future of games, and the new tax relief must be of relevance in this area if it is to have long-term credibility.

In addition, we note that the cultural test guidance notes for film state that points for A1 are allocated by applying the following rule:

- 4 points if at least 75% of the film is set in the UK
- 3 points if at least 66% of the film is set in the UK
- 2 points if at least 50% of the film is set in the UK
- 1 points if at least 25% of the film is set in the UK

and points for A2 are allocated by applying the following rule:

- 1 point if one of the three lead characters is British
- 2 points if one of the two lead characters is British
- 4 points if two or more of the three lead characters are British, or if there are only one or two characters and all are British

We suggest the inclusion of similar rules applying to games in the guidance notes for the games cultural test.

<u>A3</u>

Clarity should be provided as to what 'narrative structure' represents, and how such a structure can be British or European. 'Narrative structure' is not an applicable concept for many games. Games do not necessarily rely on such a structure, but instead on the game mechanics and the design of the challenges faced – how the player interacts with the world, objects, tools and characters with which they are constructed.

Guidance on how broadly 'underlying material' will be applied will also be necessary. Many significant contributions to gaming have happened in Britain, which continue to be the basis for new games today. It is important that these be recognised.

For example, one of the biggest-selling UK games franchise is Football Manager, which is based on the Championship Manager game created by the Collyer brothers in 1992. We believe that this would clearly qualify for four points under A3.

Wording aside, it is important that the origins of the material count strongly in this test, and it is therefore welcome that this question has 4 points available.

<u>A4</u>

<u>Q1. Does allowing points for "artistic costs" (A4) reflect the creative and cultural input to a video game?</u>

<u>Q2. What should be covered in these costs?</u>

The reasoning behind this test – that games which are more creative and artistic, bringing new ideas and designs to the world of games, should find it easier to pass the cultural test – is one we support. However, the test as currently proposed will not fairly or effectively pick the right games to give additional points to.

We will suggest changes both to the costs covered under this test and to the weighting used, in order to better achieve the intended effect.

Our discussions with members indicate that, as currently proposed, almost no games would gain the two points from this test. The criteria given for artistic costs – "personnel costs for the producer, the assistant producer, the artistic director and the persons responsible for the scenario, the animation and the sound environment" with programming costs specifically excluded – are very narrow and do not represent the creative process in the making of a game.

No matter how original and 'creative' they may be, almost no game will spend more than 50% of its costs on these staff. As a result, it is neither a fair nor effective test of whether a game is 'creative' and therefore adding to British culture, as it is currently constituted.

We note that the wording of this test is taken directly from the English translation of the cultural test used for the French games tax relief. Whilst this offers an advantage in that it has already been approved by the European Commission, we do not feel that it accurately reflects the creative costs involved in a game and may again have its origin in a film industry test.

A particular issue is the explicit omission of costs for personnel involved in programming. Programming is at the heart of all video games, including the artistic and creative process involved in bringing them to life.

For example, the current test includes costs for 'animation' staff, but not for programming. This is a non sequitur; for anything to move in a game it has to have been programmed to do so. The artistic design of an in-game asset, its movement and its interaction with other parts of the game world are all determined by the programming as much as by the original art concept. It is impossible to separate the two.

This is just as true for the design of the scenario and the sound environment – both are heavily reliant on computer programming to actually make them an interactive experience rather than merely a concept.

If the test is truly to incorporate all spending on the artistic, creative process, it should not automatically rule out programming spend. Any expenditure on how the game looks, sounds and interacts, regardless of the staff involved, should be included. We would argue that such a test should be renamed to reflect this, so that the measure is whether 50% of the budget is spent on 'creative costs'.

The reality of the process, that artistic creation is involved in the programming of all these aspects of a game, is encapsulated well by the following quote, which we received from a game developer during our preparation of this response:

> "The definition [should] include anything involving the programmers creating "feel" which we would argue falls within an artistic process. Player control is a good example. Being able to create something that looks good and is responsive is an artistic achievement. Playing a number of animations when the player pushes forward on the controller is an implementation. Combining those animations together to make someone believe they are in control of a character is interpretive, requires creative collaboration and individual skill which defines it as artistic endeavour. Other examples include Graphics, AI, Physics where "look and feel" is being defined; in general game programming is a creative process where our programmers constantly raise the bar with each game, achieving the impossible with the same limited resources. To find the balance between expectations in design and what is technically achievable requires artistic decisions and judgement; where the desired outcome is by no means certain."

If the current wording is retained, guidance for test applicants should make clear that any spend that goes towards the categories of scenario, animation and sound environment should be included in this calculation. This should include programming, as well as level design and broader game design to sculpt the interactive experience. Such a test would more accurately reflect the artistic craft that is at the heart of creating a game and that therefore contributes to the development of British culture.

A5

We support this test, with the proviso that 'English language' must include dialects, slang and other variants on the English language.

However, this brings to light a broader question about Section A. It is inconsistent whether the cultural test is being applied on a British or a European basis. A1 and A3 test for whether the content

is European or has been created by a European citizen or resident, whereas A2 and A5 focus test whether the content is British. This risks creating confusion as developers apply the test to their game, and so the reasons for it should be clearly explained.

As we will cover in more detail in our response to Question 7, we believe that there should be four points available from A5, to bring this test in line with the existing film cultural test.

Section B: Cultural Contribution

Q3. Is Section B of the cultural test an appropriate model for video games production?

Section B broadly reflects the different possibilities associated within the creation of a game, and so we have no specific changes to propose.

The main issue will be with ensuring that games companies fully understand how to claim the points available to them; although heritage and diversity are often represented in games, with their increasing complexity, games developers are not often well-versed in discussing them in these terms. This is particularly true as the test allows for broad representations of 'other factors' about the game which show heritage or diversity.

Guidance should also be provided on how developers can show technical or creative innovation. Although innovations are frequently made in games, it is often hard to show how a game stands out from the market until it is released. It will have to be made clear how companies can show sufficient innovation on a work-in-progress to qualify for these points.

Clarity is also needed on how points can be secured in Section B: whether all 4 points can be won in a single section, say creativity, or whether a mixture of the three parts must be shown. We assume that it will be possible to gain up to four points from any mixture of the three parts, and indeed would recommend this to be the case if it is currently otherwise.

Section C: Cultural Hubs

Q4. Is the formulation of points available for the use of cultural hubs appropriate for the video games industry?

The rewarding of points for the locating of development of a game in the UK is crucial to the success of the cultural test, making Section C vital. However, the language used in this section retains too much of the language from the film tax relief, and as such is liable to cause confusion in the games industry.

In particular, the terms 'visual effects' and 'audio post production' are not in common use in the games industry, as they do not reflect the working methods that exist.

'Visual effects' are not a separate creation, added on top of the game's images, as they are in film. Indeed, it is hard to say that 'visual effects' exist as a separate type of content that is budgeted for and created in its own right in any game. The visual design of the game, and how it looks when it is finally played, is a result of the combined artistic design and programming undertaken: a mixture of assets created for the game, the design and layout of the game world, and the engine used in its creation.

Separating these costs out from other parts of the budget as 'visual effects' and determining where they took place will be difficult for most developers, as this is not a category that has existed before now.

It would be more reflective of the actual working practices of the industry to test for 50% of the 'design' or perhaps 'level design' of a game.

Similarly, 'audio post production' is not a commonly-used term in the games industry. Whereas films are recorded in full, then additional audio (and indeed VFX) layered on top, games are designed and created as a single, coherent work from the beginning.

In this case, simply removing the word 'post' will suffice: audio production is a recognised term in the games industry that reflects existing working practices.

Section D: Cultural Contributors

Q5. Does Section D of the cultural test identify the key roles involved in video games development?

Section D picks out the most important disciplines in the creation of a game. However, the language used is unnecessarily exacting. The games industry has a wider variation in titles given to lead staff than in the film industry, which may create confusion when the test is applied. Rather than give specific titles, the test should award one point for each discipline in which the lead person is an EEA citizen or resident.

In D7, use of the word 'crew' is also inappropriate; again this is a term from the film industry that is not used in games. We recommend 'team' is used instead.

There also may often be several people taking joint responsibility on one of these functions. A point should be awarded where one or more of the practitioners for a function are EEA citizens or residents (or, if there are more than three, one of the three lead practitioners). This is consistent with Section D of the guidance notes for the film cultural test applying to actors, producers and scriptwriters of a film.

For example, Section D could therefore be phrased as such:

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One point to be awarded for each of the following disciplines in which at least one of the practitioners (or, if there are more than three, one of the three lead practitioners) is an EEA citizen or resident:

D1 Overall Project Lead
D2 Programming
D3 Art
D4 Script
D5 Design
D6 Music/Audio
D7 Animation

and one further point to be awarded where at least 50% of the development team are EEA citizens or residents.

While the approach set out above is our preferred approach, an alternative approach would be to provide that one point should be awarded where 50% or more of the lead practitioners for a function are EEA citizens or residents. If this approach were to be applied, Section D could be phrased as such:

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One point to be awarded for each of the following disciplines in which at least 50% of the lead practitioners are EEA citizens or residents:

D1 Overall Project Lead
D2 Programming
D3 Art
D4 Script
D5 Design
D6 Music/Audio
D7 Animation

and one further point to be awarded where at least 50% of the development team are EEA citizens or residents.
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Another crucial difference between games and films must also be recognised. Where films will almost always be made with a large team, and a different person often heading each of the named disciplines, this will not always be the case in games. It is entirely possible for a commercially successful game to be made by just one person.

Section D must allow for the same person to be used to win multiple points, where they are performing more than one lead role.

For example, a game may have one person acting as project lead, scriptwriter, game designer and artist, and another person acting as lead programmer and designer. If the former is an EEA citizen, this should result in 4 points, and 2 for the latter. If they represented more than half of the team between them, this should again result in an additional point. We understand that this reflects the way the equivalent test for film operates; for example where the same person assumes the role of producer, director and scriptwriter of a film, then 3 points are accorded (rather than 1 point).

General Test Design / Other issues

Q6. Are there other elements of video games development that are relevant to the cultural test? If so, how might the cultural test for film be further adapted to take these into account?

No comment

Q7. Are the proposed point allocations appropriate?

We recommend that, wherever possible, the tests used for the different creative sector tax reliefs should be similar in design.

We note that the cultural test for films has a total of 31 points, whereas the games test has 30, whilst each has a pass mark of 16.

We also note that films are awarded 4 points for being in the English language. This should also be the case in the games test: A5 should have 4 points available. To maintain balance in the test, however, Section A should still only provide 16 points in total. If a game scores 17 or 18 points in Section A as proposed, they should only receive 16 points towards their overall score (this would of course allow them to pass the test in any case).

To maintain overall parity with the film test, an additional point is needed to bring the total to 31. Our recommendation is that Section D be given this additional point, to a total of 8. As stated above, 'Quality Assurance', a key function in the crafting of a game experience, should be considered as a role.

We are otherwise content with the points balance of the test.

Q8. What are your views on the assessment process for video games cultural test applications?

It is crucial that the people administering the cultural test for video games are independent, and that they are recognised experts with significant experience of the games industry.

One suggestion has been that the BFI should simply take on the administration of the new tests, as they already undertake the film cultural test. Our preference would be for an independent body, composed solely of games industry experts, to administer the test, in recognition of the unique nature of our industry.

The production of games, and the examination of their cultural nature, is extremely different from films and the likely volume of applications, which we believe will at least match the volume from the film industry, means that new staff will have to be hired to undertake this work. There is also the concern that having the games relief administered by a film industry body would be a negative message for the games industry, suggesting we were not recognised as an important creative industry in our own right.

As such, our preference would be for an entirely new team to be created, as an independent games specific body. We recognise the potential cost involved in this. Ukie would be happy to provide office space and facilities for the new team, to lower this cost whilst allowing them to continue to operate entirely independently.

However, we recognise that the broader political environment may not be conducive to the creation of a new administrative body. We also recognise the very effective service and expertise that the BFI Cultural Test team has offered to the film industry and that there may also be some savings available in the sharing of administrative costs across the different cultural test teams.

If the decision is made, therefore, to administer the games test from within the BFI, alongside the other tests, we request that the games unit be sufficiently resourced as an independent team sitting within the wider BFI structure. The name of this cultural test body should reflect the wider remit it would now carry, and the additional industries whose tests it will be administering.

It is also clear that a new set of guidelines will need to be drawn up for the video games sector's cultural test. Unlike the guidelines for the other sectors being granted tax breaks, the games industry will not be able to draw as heavily on the existing film guidelines as a basis, meaning that creating the video games guidelines is likely to require more effort to produce. Ukie would therefore like to offer assistance to Government in drawing up these new guidelines to ensure that the industry's tax breaks are implemented as soon as possible.