

Ukie submission to Consumer Rights Bill Public Bill Committee

About Ukie

1. UK Interactive Entertainment (Ukie) is the trade body that represents over 200 businesses and organisations involved in the games and interactive entertainment industry in the UK.
2. 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, console manufacturers 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's membership list is set out as an annex to this document.

Introduction

3. Ukie have engaged with BIS from the beginning of the process that has resulted in this Bill. Our initial submission focused on three issues, which remain fundamental:
 1. Bugs are an unavoidable and short-lived feature of all games given the specific and unique nature of gaming software development, which consumers understand and expect. As such, there must be no "freedom from minor defects" right in relation to games and other technologically complex digital content.
 2. As the majority of faults in games will be the result of flaws in the code itself, they will be universal. This means that repair attempts will usually involve universal patches or updates which minimize any effects from initial software bugs on consumers. Policy around repair attempts – the reasonable amount of time allowed, the number of opportunities to repair – must reflect this.
 3. The right to reject, or the return of content in exchange for a refund, would make no sense for digital content in general and for games in particular. The trader or provider would have to be able to see clear proof that the content had been deleted by the consumer from all their devices. In closed platforms this may just be possible, but for open content, considering the ease of copying digital works, this is simply untenable.
4. We are pleased to say that BIS have reflected this input in the final version of the Bill, as presented to Parliament. These issues remain absolutely fundamental; taking a different approach on any one of them could cause significant problems for companies selling games digitally in the UK.
5. The question of whether to include a short-term right to reject continues to be debated, we understand. This submission is focused on addressing the issue further.

Short-term right to reject

6. Our position on this matter remains firm – there should not be a short-term right to reject for digital content.

7. It is extremely difficult for a company to be certain that digital content a consumer wishes to 'return' has been deleted from the consumer's device, and not saved elsewhere in any form. This creates a great risk for abuse because the very nature of digital product means that it essentially can be perfectly replicated an infinite number of times at no additional cost
8. While Digital Rights Management and other technological solutions can be used to control access and further copying of content, including games, these solutions are not failsafe, can be expensive, and may not be appropriate or the best consumer experience for every type of game.
9. If a short-term right to reject existed for digital content, the possibility of unscrupulous consumers abusing this right to obtain free copies of games and other content would be very real. This may compel businesses to use stronger or less product-appropriate or consumer-friendly forms of controls to enable them to deny consumers access to games in the case of a refund. This would significantly reduce consumer choice, whilst offering them little additional benefit.
10. In almost all cases, a fault in a game would be the result of a problem with the underlying code. Thus, a problem with one copy will exist in all copies of the game, and if that problem creates a right to return that right could most likely be claimed by anyone who has purchased the game. However it also means that a patch or update can be used correct the fault and repair the content for all consumers at once.
11. Generally, any bugs or other faults can be and are fixed through a patch that is distributed universally in a reasonable time after a problem has been identified. This scenario is quite different from that of physical goods, where manufacturing defects rarely impact more than a small percentage of goods in any product line and where a digitally delivered, universal fix is not the norm.
12. Put simply, if a short-term right to reject was in place, game companies would face the prospect of losing their entire UK revenue from a project shortly after its release, for problems that could otherwise be universally corrected relatively quickly. The inevitable outcome of this is that companies would take fewer risks innovating with different forms of service delivery and online play, ultimately hurting all consumers, when compared to the repair/replace route, which provides rapid redress for all affected consumers and still gives companies the security to offer new forms of content.
13. Introducing a short-term right to reject would risk causing significant disruption into a broad range of digital content markets, stifling innovation and greatly reducing consumer choice, whilst giving little additional consumer benefit on top of the remedies of repair/replace followed by a price reduction. We recommend the route BIS is currently taking – introducing digital content rights as currently proposed.