

# need to know

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## The Office of Fair Trading's Principles for Online and App-based Games: FAQs

The Office of Fair Trading published its Principles for Online and App-based Games in January this year. This Ukie guide has been produced by Ukie Associate Members Harbottle & Lewis as a plain English explanation of what the OFT Principles will mean for UK games businesses.\*

### **What's the background to the OFT's investigation?**

Following a market investigation into online and app-based games in 2013, the OFT had concerns that consumers, and children in particular, were being subjected to practices that were misleading, aggressive or unfair. The Principles are designed to clarify how the UK's existing consumer protection laws apply to online and app-based games.

### **What are the main points in the OFT's 8 Principles?**

Principles 1 to 3 require studios and platforms to be more transparent and accurate when providing information to consumers about the game, the costs associated with a game (including the costs of any in-game purchases that may be made), and the studio that has made the game available. This information needs to be provided up-front so that consumers can make an informed decision about whether or not to purchase or download a game (or any in-game content).

\* This guide does not constitute legal advice. Please seek legal advice and clarification independently before taking any action.

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**Principles 4 and 5** require studios to make the commercial intent of any in-game message clear to the consumer at the outset so that consumers are not misled into thinking that payments are not required to progress in a game when they are or that payments are required to progress in a game when that is not the consumer's sole option.

**Principles 6 and 7** aim to prevent studios from including "aggressive practices" in their games or practices which put pressure on or urge children to make purchases or pressurise other people to make purchases for them. The younger the child the more care studios will have to take to avoid breaching Principles 6 and 7.

**Principle 8** makes it clear that it is not acceptable for payments to be made without the informed consent of the person who owns the bank account from which any payments are debited. Opt-out consent will not be sufficient and consumers must explicitly acknowledge their obligation to pay at the point of sale of each purchase.

## Are the Principles new law?

No, the Principles are not new law. They are intended to clarify the UK's existing consumer protection laws.

## Do the Principles apply only to "Children's Online Games"?

No. The Principles apply to any online or app-based game that is made available to consumers in the UK with only Principles 6 and 7 specifically referring to children and only Principle 7 being solely targeted at the protection of children.

## How do I know if my game complies with the Principles?

The OFT has provided examples of practices that are likely to comply with each Principle and those that are less likely or unlikely to comply. However, the examples provided present a stark example of either good or bad practice and so may be of limited use to studios or platforms whose practices may fall somewhere between the two. Further guidance from the OFT may be required.

## From when do I have to comply with the Principles?

As the Principles do not introduce any new law and only clarify existing consumer protection law, all studios and platforms are already under an obligation to comply with the Principles. Nevertheless, the OFT has previously stated that it is aiming for the Principles to become actively enforced from 1 April 2014.

## What happens if I don't comply with the Principles?

The OFT (to be replaced by the new Competition & Markets Authority from 1 April 2014) is the regulator that enforces the UK's consumer protection laws. If the OFT suspects a breach of the Principles has occurred there are a range of actions that it could take from investigating a studio's or platform's practices and requiring them to address issues to issuing court proceedings (although the latter is unusual).

Currently, consumers do not have a direct right of action against businesses that have subjected them to aggressive or unfair practices. However, amendments to existing UK consumer protection laws which would give consumers such a right of action are currently being considered by the government.

## What should I do next?

Every studio and platform engaged in developing and publishing online or app-based games should take time to consider the OFT's 8 Principles carefully and ensure that they are in compliance with them by 1 April 2014 at the latest.

You can find the OFT's full principles here [oft.gov.uk/shared\\_oft/consumer-enforcement/oft1519.pdf](http://oft.gov.uk/shared_oft/consumer-enforcement/oft1519.pdf)

For further information on this document or the OFT's Principles please contact Alan Moss ([alan.moss@harbottle.com](mailto:alan.moss@harbottle.com)) or Nicolas Murfett ([nicolas.murfett@harbottle.com](mailto:nicolas.murfett@harbottle.com)).

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