

## Overview and main recommendations

### **Recommendation**

#### **“Online games: what regulations?”**

**9 November 2007**

This document discusses:

- online games: MMOGs\* (Massively Multiplayer Online Games) and Casual games\*;
- game consoles connected to the Internet.

This document does not discuss:

- video games not connected to the Internet;
- gambling.

## Freedom of expression and privacy

### **Responsibility of language**

Exchanges between players during an online game are not exempt from the main principles of freedom of expression. Discriminatory, hateful or violent language, insults, slander, intrusion into people’s privacy and the distribution of child pornography are banned. The editor’s responsibility is fairly complex and similar to that of discussion forum organisers. It must be exercised depending on the type of messages exchanged and the extent to which the editor is involved in the publication.

### **Protection of personal data and privacy**

The Forum highlights the requirement to delete content data to which the editor may be subject. Moreover, it considers it desirable that players who have not renewed their subscription and no longer wish to take part in the game be informed of the timeframe for deleting their data, which could be called the “right to forget”.

The Forum recommends that editors comply strictly with their personal data processing requirements, particularly regarding the transfer of data to a country outside of the European Union. Accordingly, declarations and requests for authorisations submitted to the CNIL (French Data Protection Authority) must mention these transfers and prior information must be sent to the player.

## Protection of vulnerable groups and fragile persons

### Monitoring game time

The risk of spending too much time playing online games is a grave concern for parents. The Forum stresses that the loss of social ties is more telling to detect excessive gaming than the number of hours spent playing. However, to help players manage their game time better, the Forum recommends:

- setting up time-keeping systems: a clock indicating the amount of time spent on the game session, visible at all times in the game interface or calling on a NPC (Non-Playable Character) who gives this information in an explicit manner. At the very least, very clear informative messages indicating the amount of time already spent on the game and encouraging a break;
- systematically setting up simple procedures enabling parents to define time slots for connection to online games. It recommends that the proposal to activate the parental control occur when the game is being paid for. It does not recommend activating the parental control by pre-ticking: it should result from the positive choice of the user;
- encouraging shorter game sessions for MMOGs\*, which can turn out to be very time-consuming, by integrating, for example, the notion of tiredness of characters or longer, less restricting reward periods. It also recommends providing the player with clearer information on his/her required involvement to join certain guilds;
- identifying and modifying the game mechanisms that foster addiction and require long periods of play;
- approaching guild leaders to advise and inform them about the messages they should be sending to players;
- setting up an educational guide for parents and a manual for players, both written in easily accessible everyday language.

### Harmful content

The Forum recommends:

- encouraging full moderation in principle for games specifically targeting minors;
- that public authorities give financial assistance to French editors involved in implementing a real moderation policy;
- clear and easily accessible information on the editor's warning systems;
- thinking about creating a warning button that is systematically present in the game interface;
- raising the awareness of voluntary gamemasters\* and moderators as regards their responsibility by providing them with a clear framework of action and ensuring that they comply with the procedures laid down by the editor;
- supplying a parental control system at least enabling illicit language to be filtered and use of the programme on a session identified as a minor's to be locked when necessary;
- that parents install a parental control system.

The Forum reminds editors that they must lay down appropriate procedures for complying with their requirements as to notifying illicit language or content and for improving cooperation with judicial authorities in terms of illicit language/content and people protection.

### **PEGI and PEGI online**

Due to the risks of confusion associated with the multiple types of rating systems, the Forum recommends:

- that the rating system adopted by the French law of 5 March 2007 on delinquency prevention be consistent with current systems. Accordingly, as regards video games, the ratings adopted must be those of the PEGI system;
- providing better information for the public on the PEGI system, particularly for parents and teachers;
- improving the visibility of these ratings by systematising their presence on the game downloading page and when starting the game;
- entrusting a multiplayer advisory commission (public authorities, manufacturers and consumers) with the task of checking that the rating of "16+" games and "18+" games and their sales conditions are consistent in France, to ensure conformity of PEGI classifications with the appropriate level of sensitivity for French society;
- organising an extensive information campaign on the PEGI online system, which is an extension of the "classic" PEGI to include online gaming, so that users can understand the scope of this new system without the risk of confusion;
- taking account of the PEGI online label in parental control software programmes;
- integrating the function of online discussion in the self-rating form of the PEGI system so that games integrating these functions cannot receive a lower rating than 12+.

## **Providing a framework for advertising**

Several types of adverts feature in online games: adverts for the game itself and the placing of products in the game environment. The practice of in game advertising is due to increase sharply over the next few years.

The Forum points out that, in addition to the applicable laws and regulations, all professionals involved in online game advertising must undertake to comply with the deontological rules of the advertising interprofession and, in this sense, ensure a truthful, decent and loyal advert. These rules enable them to combine the principles of freedom of expression with the respect of the basic deontological principles: loyal information for the public, respecting the beliefs and sensibilities of the public and responsibility vis-à-vis society.

More specifically, the Forum recommends:

- providing players with constant, clear and legible information about the presence of adverts in the game. Simply mentioning this in a booklet is not enough; it must be possible to give it to players before they purchase the game;

- that adverts be placed in context:
  - depending on the group of people the game is targeting. For example, an online video game bearing a PEGI 7+ rating (recommended minimum age of 7 years) is likely to be played by young children, so adverts must be tailored to their age group,
  - depending on the game universe, for example, don't place an advert for a car within a mediaeval game to avoid undermining the credibility of the game,
- that adverts be targeted systematically by editors before being broadcast;
- limiting advertising practices and protecting players, particularly:
  - by not including in game advertising in online games for minors,
  - by guaranteeing a "reasonable exposure level" of the player to advertising messages. This reasonable character must be assessed depending on the target players and the exposure level must be calculated on the number of minutes of exposure per hour of play,
- highlighting the legal notices of adverts;
- avoiding clickable adverts.

## Trading activities within the game

Many MMOGs integrate an economic dimension through virtual money with which items found or created during the game can be paid for or avatars\* can be enhanced, etc. Economics in the game are therefore based on real life. Virtual auctions are set up within or sometimes outside of the game allowing players to sell their rare items. Some games convert virtual money into real money, based on the RMT (Real Money Transfer) or RCE (Real Cash Economy) model and some even offer a withdrawal card.

### Parallel trading circuits

With the development of these trading activities in games, a parallel market has been created. Many sites specialise in the sale of virtual items (for example a sword), the sale of virtual money for real money, the sale of a game account, the supply of intellectual services (such as copyright on creations in the game), power-leveilling which involves incarnating the character of a player to help him/her reach a certain level in the game or seeking to accompany the character in its quest to speed up progress, in return for money.

That said, the practice of selling virtual items from the game is still banned by most editors. If, despite this ban, these items are sold outside the game, these practices can be punished by common law rules (fraud, parasitism, etc.).

### **Fraud and swindling**

As with any sale or offer of online services between individuals, there are risks of delivery failure, poorly executed service or even fraud. These are mainly cases of phishing. In order to limit these risks, the Forum recommends that editors make it clear that they do not ask for the user's password under any circumstances.

One of the techniques used by companies selling virtual items to recover items in games is the creation of robots\* (or bot\*) exploiting flaws in the IT system. The Forum reminds players using such programmes that the game's editor is justified to take sanctions against them. Their use may be punished under articles 323-1 and following of the French Criminal Code as being an attack on an automated data processing system. The Forum recommends that editors set up adequate protection against intrusion into their information systems.

### **Tax aspects**

Some players make a profit from this leisure activity, which raises the issue of tax. As long as exchanges take place within the framework of the game, it isn't possible to talk about a taxable economic activity. Income derived from the sale of virtual items in the real world is potentially taxable income, however. The Forum recalls that all types of income must be declared and that, as soon as the game universe is left for the real world economy, declaration comes into play. To help players with these often complex matters, the Forum recommends that clear information, validated by the tax authorities, be given to players so that they better understand their tax obligations on any income derived from their online gaming.

## **Legal status of leisure universe creations**

### **The legal status of video games**

The legal status of video games is an important issue. It has major legal consequences, particularly on the ownership of copyright.

This status is yet to be clearly defined, and has been the subject of much hesitation over the last 25 years. The video game was long considered a software program, but there is now a question mark hanging over this particular qualification. The Forum asks that public authorities take account of the differences in interpretation and provide an unambiguous response on the legal nature of video games.

### **Players' rights over digital items**

It is tricky to acknowledge an ownership right of players over virtual items that they use within a game universe, although it seems possible to consider that, once the player is the creator of an item or character, s/he is likely to hold intellectual ownership rights over it. This is a matter concerning the level of control the editor has given the player to produce his/her creation.

The same goes for the graphic representation of the character. The prospect of copyright is directly associated with the extent to which the player has personalised the avatar\*.

Beyond the simple graphic aspect, it is entirely possible to imagine the same protection for an avatar as is granted to a "literary character". In this regard, a character's freedom of action in certain games is strong enough that its protection by copyright may be considered, since the behaviour of the avatar reflects the personality of the person controlling it. Accordingly, when the social attitudes and history of an avatar make a character personalizable, its protection by copyright becomes acceptable.

## Public awareness

### Game rules

The need to inform players and educate parents is essential.

The game rules structuring the relationship binding the player to the editor are formalised in two documents: the instructions and the End User License Agreement (EULA). These are usually written in English.

The Forum recommends:

- that when the "target public" is French, in accordance with the French law of 4 August 1994, players must have access to a translation of the EULA and Instructions;
- that the content of these documents be adapted to French law when the target public is French;
- using game downloading screens and login windows to inform users of the most relevant points of the EULA and Instructions simply: period of prolonged inactivity of the site, method for setting up a warning system, information about respecting other players and banned language/content in the game, intellectual ownership policy, financial points and above all aspects related to any renewals by tacit agreement, bank withdrawals, subscriptions by audiotel, unsubscribing procedures; editor's procedure should activity stop;
- not merging game servers in different languages;
- informing players, clearly and within a reasonable timeframe, of the next game stoppage and to allow reimbursement on the basis of the time used of current subscriptions;
- keeping players up-to-date with changes in game rules by involving them in modification projects if possible.

### Education

The Forum recommends:

- setting up a website on video games, at the initiative of the public authorities, pooling editors' and expert' resources, to provide parents and teachers with clear information about the consequences and advantages of video games;
- that editors of video games and players' associations play an active role in distributing advice about being alert on the internet;
- that players in the field (public authorities, manufacturers, users) participate in the drawing up, publication and distribution of a practical guide containing information and basic advice on video games.

### **Settling disputes between players and editors**

The Forum recommends:

- standardizing the measures taken by editors concerning players by implementing a mechanism of graded punishments;
- at the very least that every punishment should result in a message being sent giving at least the reason and timeframe of the punishment and the procedure for contesting it or appealing;
- that editors be able to offer players a mediation procedure and inform them of this process.

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*Gamemasters*: these are game moderators of sorts whose role is to oversee and moderate the game by ensuring that players abide by the rules and do not publish offensive, slanderous or racist messages for example. This role is often given to voluntary players by editors.

**MMOG**: Massively Multiplayer Online Game. This refers to video games that are only accessible online, on the internet, with a so-called persistent universe (accessible 24 hours a day, 7 days a week) and able to welcome a large number of players at the same time, traditionally a few thousand players via servers. Different types of MMOGs exist, the most well known being MMORPG (Massively Multiplayer Online Role-playing Game) in which players embody their characters, taking account of their own personalities, characteristics, etc.

**Casual games**: characterized by simplified game mechanisms encouraging rapid pick-up and rounds that can be got through quickly.

**Avatar**: refers to the digital representation of the player in the game universe, his/her character.

**Robots** or "bots": refers to IT programs that are specially developed to simulate human players and gather items or money during the game. They are also used in some games to automate tedious tasks like keeping an eye on the price of raw materials exchanged in the game universe.