

## **Ukie Submission – ICO Guidance on the use of storage and access technologies**

Please contact Dominic Murphy, Head of Policy and Public Affairs, Ukie, [dominic@ukie.org.uk](mailto:dominic@ukie.org.uk)

### **Introduction**

1. I am writing to you on behalf of the UK Interactive entertainment association (Ukie) to respond to the consultation on the ICO's Guidance on the use of storage and access technologies ("Guidance").
2. Ukie is the trade body for the UK's video games and inter-active entertainment industry. A not-for-profit, it represents more than 700 games businesses of all sizes from start-ups to multinational developers, publishers, and service companies, working across online, mobile, console, PC, esports, virtual reality and augmented reality. Ukie aims to support, grow, and promote member businesses and the wider UK video games and interactive entertainment industry by optimising the economic, cultural, political, and social environment needed for businesses in our sector to thrive.
3. Many video games companies rely on storage and access technologies for game functionality, fraud prevention, and analytics, and additional clarification would help these businesses navigate the new Guidance effectively. In particular, we seek clarity on how the ICO defines "cross-device tracking" that would require PECR consent. Video game players commonly play across multiple devices, and it may be necessary for publishers to use cross-device data to provide a seamless game experience—for example, synchronising the player's game progress across multiple devices. As written, the draft Guidance suggests that all cross-device tracking is not necessary and requires PECR consent, which could impact gameplay continuity.
4. Our members welcome the ICO's efforts to provide further clarity on the use of storage and access technologies. Compared to the previous 2019 guidance, the updated draft Guidance offers improved clarity by broadening its scope to cover a range of storage and access technologies beyond cookies. The use of clearer distinctions between recommendations ("could" and "should") and obligations ("must") is also a helpful addition. However, while this is a step in the right direction, Ukie members have identified several areas where further refinements would be beneficial to ensure that businesses in the video games sector can comply with the regulations while maintaining a seamless user experience. We hope this submission provides useful recommendations for the ICO to adapt to strengthen the draft Guidance.

### **Guidance on the use of storage and access technologies**

5. Ukie's members believe that the draft Guidance could be further enhanced by explicitly covering additional use cases that are particularly relevant to the video games industry. For example, it remains unclear whether URL tracking, where a URL is modified to reflect the inbound source of a user (such as an affiliate link or marketing campaign tracker), falls under PECR. Since URL tracking is commonly used to monitor the effectiveness of

marketing campaigns and referral programmes, providing explicit clarification would help businesses understand their obligations.

6. Additionally, the Guidance should provide more clarity on the use of storage and access technologies in content streaming. Many video games companies provide streaming services, such as cloud gaming or embedded gameplay videos, and need to understand whether the 'strictly necessary' exemption applies when third-party video players, such as YouTube or Twitch, are embedded on their websites. It would be helpful for the ICO to confirm whether businesses embedding third-party video players are responsible for obtaining user consent for third-party cookies and whether simply notifying users of potential data collection would be sufficient. This is particularly important as video streaming is an integral part of modern games marketing and user engagement.
7. Moreover, compared to the previous version, the draft Guidance provides greater clarity on the definition of storage and access technologies and where PECR applies to them. However, there remain areas where further explanation is needed, particularly regarding non-traditional tracking methods such as link decoration, device fingerprinting, and behavioural tracking through scripts and tags. The Guidance provides some examples, but Ukie members recommend expanding on these technologies by detailing specific use cases and explicitly stating under what circumstances PECR applies, specifically in the games sector. Greater clarity in this area via examples would ensure that businesses can continue to protect users and their intellectual property while remaining compliant with the law.
8. The Guidance is largely clear on PECR rules for using storage and access technologies, but further clarification is needed regarding the 'strictly necessary' exemption. In particular, more detail is required on how the exemption applies to analytics. Businesses rely on analytics tools to enhance security, detect fraud, improve service reliability, and optimise user experiences, and Ukie members strongly recommend that the ICO explicitly confirms that these purposes can fall under the 'strictly necessary' exemption. Additionally, the Guidance should provide practical examples of how businesses can implement non-invasive analytics methods that align with PECR while minimising the need for user consent. Many games businesses use analytics to detect cheating, enhance game performance, and ensure fair play, and greater certainty on whether these activities qualify for the exemption would be invaluable.
9. Furthermore, while PECR consent may be required for the use of analytics, online advertising, and social media plugins/tracking technologies, it would be helpful for the ICO to clarify that the installation of such technologies on a user's terminal device does not require consent. For context, video game builds typically include such technologies so they can be used if the user provides the required PECR consents. It would be highly impractical for game developers to request consent before the user installs the game on their terminal device, and even if they could, it would not be technically feasible to remove such technologies from the game where consent is not provided.
10. The explanation of the 'strictly necessary' exemption is generally helpful, but Ukie members believe that the ICO should further clarify the inclusion of cashback and rewards-based storage and access technologies within this exemption. Many online

services, including games businesses, offer loyalty schemes, cashback programmes, and in-game rewards that rely on tracking mechanisms to function properly. Previous ICO guidance suggested that these technologies could be considered ‘strictly necessary,’ and Ukie members recommend that this position is reaffirmed in the final Guidance. Furthermore, more detail is needed on how the ‘strictly necessary’ exemption applies to embedded content from third-party providers. For example, when a company embeds a third-party video player, it is unclear whether they must obtain user consent for cookies set by the third-party provider or whether merely informing users of potential data collection is sufficient. This issue is particularly relevant for games businesses that integrate live-streamed content, trailers, and gameplay videos as part of their digital storefronts or marketing strategies.

11. Specifically, our members also urge the ICO to consider whether the use of advertising technologies to deliver a rewarded ad in response to a player’s request could be deemed ‘strictly necessary’ under s.6(4) PECR. Rewarded advertising placements are now a common form of game progression in mobile games, allowing players to watch an ad in exchange for an in-game reward (such as an item that aids progression, a reduced cooldown period, or an extra life). Given that the player actively requests such ads, it would be helpful for the ICO to confirm whether the use of advertising technologies in this context qualifies as ‘strictly necessary.’
12. Additionally, further clarification is needed on whether advertising technologies used solely for the technical rendering of ads in ad-supported video games—without broader data collection for measurement, frequency capping, or targeting—could fall within the ‘strictly necessary’ exemption. Many free-to-play games rely on advertising as their primary business model, and ensuring compliance with PECR while maintaining game monetisation strategies is crucial.
13. The relationship between PECR rules and the UK GDPR is well-articulated in the Guidance, but there are areas where members identified potential conflicts arise. One key issue is the requirement under PECR for organisations to name all third parties that may access data, whereas the UK GDPR allows businesses to list categories of third parties instead. This discrepancy presents practical challenges for businesses, particularly those with large numbers of third-party service providers. Ukie members recommend that the ICO provides clearer guidance on how organisations can reconcile these differences while ensuring compliance with both regulations. Additionally, more detail is needed on how businesses should handle third-party consent requirements, particularly in cases where multiple third parties are involved in data processing chains. The video games industry frequently partners with third-party analytics providers, ad networks, and cloud gaming platforms, and greater clarity on third-party obligations would help ensure consistency in compliance.
14. The draft Guidance provides a useful overview of compliance requirements, but Ukie members recommend that the ICO includes more practical examples and templates to help businesses implement these requirements effectively. Best-practice templates for consent banners, notices, and policies would be particularly valuable, as they would provide a consistent approach to compliance across different industries. Additionally, further guidance on settings-based consent is needed, particularly around how

businesses should inform users of the use of storage and access technologies when remembering user preferences, such as display settings or accessibility options. Many video games rely on settings-based consent mechanisms to store player preferences, and it would be helpful for the ICO to confirm whether these use cases require explicit user consent or whether they can be treated as ‘strictly necessary.’

15. The new graphics in the ‘Our Expectations for Consent Mechanisms’ section are a helpful addition, as they make it easier to understand how consent should be presented to users. However, Ukie members believe these visuals could be improved by providing examples of multi-step consent processes, particularly for more complex services like games platforms, where users may be required to interact with multiple services within a single ecosystem. Further examples demonstrating how consent mechanisms should work across different devices and platforms (e.g., mobile, console, and PC) would also be beneficial.
16. The section on managing consent in practice is useful, but additional details on third-party consent requirements are needed. Many video games companies work with multiple third-party service providers, and it is unclear whether businesses must obtain granular user consent for each third party or whether broad consent for categories of third parties is sufficient. Ukie members recommend that the ICO provides specific guidance on how granular consent should be structured and how businesses should manage consent when dealing with a large number of third parties.
17. The new section on online advertising is a welcome addition, but further clarity on ad measurement is needed. Specifically, the Guidance should provide concrete examples of how businesses can comply with PECR without requiring additional consent requests. Many video games companies rely on advertising and sponsorships as part of their business models, and greater clarity on what is permissible under PECR would help businesses align their advertising strategies with regulatory requirements.
18. The draft impact assessment covers the main affected groups but should include a deeper analysis of sector-specific challenges, particularly those faced by the video games industry. Ukie members recommend that the ICO considers how the Guidance will affect interactive entertainment businesses and provides sector-specific recommendations.
19. The impact assessment should also consider the financial impact on SMEs, particularly around compliance costs and implementation challenges.
20. Ukie and its members appreciate the ICO’s efforts to provide clearer guidance on storage and access technologies. However, further refinements, particularly around industry-specific use cases, exemptions, and third-party obligations, would help ensure that businesses can comply effectively while continuing to provide innovative and user-friendly experiences. We are keen to work collaboratively with the ICO to refine the Guidance further and support the development of practical solutions that balance compliance with commercial realities.