Ukie submission to the Consultation on the implementation of the new subscription's contracts regime

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About Ukie

- Ukie is the trade body for the UK's video games and interactive 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.

- We welcome the opportunity to respond to this consultation on the implementation of the new subscription contracts regime. Video games continue to be a growing market for unique content for players with the UK player base for video games is estimated to be around 37.7 million people[1]. The overall UK consumer market for games in the UK was estimated at £7.82bn in 2023[2].

Refunds for Digital Content and Services Within these consumer trends the move to digital downloads at the expense of physical boxed products has accelerated, with major consoles offering 'digital only' versions, mirroring PC trends, whilst games on mobile devices and platforms are now the largest part of a still growing market.

- Throughout this period there have been established rules and regulations in the Consumer Contract Regulations (CCRs) whereby consumers waive the right to a refund on digital products, once digital content has been downloaded and/or consumed, and we welcome Government's commitment to those principles in this consultation.

- We accept the principles and the intention of the DMCCA which are aimed at giving consumers the appropriate opportunity to consider if they want to remain on a subscription and have the ability to cancel a subscription without taking unnecessary steps to be able to do so but also ensuring that a trader is not left unfairly out of pocket. We believe that new provisions within the bill relating to cancellation, as well as additional information notices at key junctures in annual subscriptions provide appropriate notifications for consumers. Consumers should be

[1] Video gaming audiences in the UK, https://www.statista.com/topics/8281/video-gamer-demographics-in-the-united-kingdom-uk/#:~:text=With%20over%20half%20of%20the,37.7%20million%20gamers%20in%202024.
[2] 2023 Video Games Industry Valuation, Ukie, https://ukie.org.uk/news/2024/04/2023VideoGameIndustryValuation#:~:text=Ukie%2C%20the%20leading%20trade%20body,2023%20was%20%C2%A37.82%20billion.

provided appropriate information as a contract starts, specifying the term of an initial cooling off period – and the established practice of waiving a right to a refund if digital content is consumed – followed by subsequent reminders at a 6-month period and prior to a contract rolling over at a 12-month period.

- Annual, or monthly subscriptions in games have become increasingly popular with players - offering players huge value and wide access to a range of games, including premium new release games. Players benefit from significant savings and huge choice when entering into subscriptions and can and do access content immediately via individual accounts on online platforms or via games consoles.

- We are concerned that proposals in this section of the consultation – specifically a cooling off period of 14 days at the renewal period for digital content and a subsequent right to a proportionate refund if exercised – would allow some players to access that content, consume or 'binge' content – and subsequently then cancel a contract within the cooling off period with companies forced to the near full value of that subscription back to the consumer. This would be a significant departure from the intentions of the DMCCA and principles laid out by Government in this consultation that traders will not be left unfairly out of pocket.

- We are also concerned that there is insufficient clarity as to the status of digital services as well as digital content. Several of our members will offer a mixed business model - with platforms offering both downloadable games and a content library akin to a streaming platform – but at the same time services such as cloud storage, multiplayer functionality and account services as well discounts on wider services on storefronts.

- The definition of services in the current consultation is insufficient and is much more suited to 'traditional' or physical services which rely on the continued provision or availability of a physical good – whereas a digital service is much closer to digital content – and in some cases indistinguishable given its value to the trader is based on intellectual property. Given that these services are immediately available and intertwined with the availability of content often through the same interface or platform – it would complex and problematic to have differing sets of rules around cancellations and potential refunds for digital services and content.

- If the proposed rules on services as envisaged are applied to digital services it opens up traders to significant risk as a consumer or player could binge on both content – but also functionality of services for a shortened period of time, cancel within the cooling off period and receive a proportionate refund. If digital services are not differentiated from the service provisions in the consultation, traders would potentially be under significant pressure and likely to offer fewer services as a result.

- Libraries of games content on platforms have been developed over the years giving players direct access to more and more games, and in some cases direct access to new release AAA games – which were previously largely only available as an individual discrete purchase or download. Consumers have benefited from innovations in subscription models, with traders able to offer this range of content on the basis of clear rules, the ability to plan and innovate, and long-term commitments on behalf of the consumers.

- We believe that the options as detailed by Government would lead to significant unintended consequences for consumers and reduced choice as they potentially expose traders to significant risk who may in turn offer a reduced service provision as a result.

- **Option 1** which details the possibility of requiring a proportionate refund scheme in place for a contract cancelled in an initial cooling off and reminder cooling off period as written, leave traders open to significant risk of abuse – but also committed to increased complexity through the need to also consider refunds on a proportionate basis. The most widely used subscription contracts in the games industry are generally available on a monthly rolling basis, an annual 12-month basis or in some cases a 3-month basis. These options give consistency to consumers and are well established – giving players various features on the basis of which time period they choose their subscription for, and potentially differential offers based on categories or tiers of subscription.

- If a consumer is able to sign up for an annual 12 month subscription, instantaneously download or access games content – and then cancel in an initial or renewal cooling off period – under option 1, a trader would be forced to return the full or near full value of a contract to the consumer, regardless of how much content had been consumed in that period and with no regard to the type of content they had consumed. Not all content on subscription services is equal – some content will be considered premium or new release content, whereas other content may be exclusive to one platform. There may also be significant libraries or series of games available on these platforms.

- In the cases of a mixed contract – for example a PlayStation plus subscription where subscribers get exclusive discounts on additional content through stores – a player could potentially purchase a subscription, buy a significant amount of additional content at a discount – but then subsequently cancel their subscription and keep downloaded content they would not have otherwise had access to on a reduced rate – whilst receiving a refund for the subscription element of their contract. This underlines the need to treat digital services in line with digital content and further highlights the potential drawbacks for traders under this option.

- **Option 2** where a digital waiver is maintained for an initial cooling off period, but a proportionate refund is provided for anyone cancelling in the 14-day renewal period, leaves traders open to similar risks. In theory, if a consumer does not download or use any content in that period, then providing a full refund is easier for companies to consider. However, should a consumer use digital content in that period then practical difficulties around the calculation of a refund – as well as the potential for abuse – persist. There is the potential for confusion on behalf of the consumer, who will be faced with two different sets of rules with regards to the consumption of digital content as part of a subscription, depending on whether it is a new subscription or a renewal.

- Companies also currently do not have the systems in place to calculate refunds on a proportionate basis if a player were to cancel within a 14-day cooling off period, if they have already consumed content. Content available on a subscription service is priced at a different value (and often significantly discounted) to if it was available directly as an individual download. For example, AAA new release games are often priced in the range of between £50-80 depending on the platform, whereas subscriptions are often in the region of between £10-20 per month, or between £150-200 per annum. Not only do consumers already get significant value from subscription services, but companies would also be forced to change their systems at considerable cost, in order to accommodate any such refund requests and are open to significant abuse.

- Increasingly companies are adding the ability to access new release, premium games on subscription services – further benefiting players with cost savings, compared to an individual purchase. Options 1 and 2 as they are written open businesses up to significant risk of abuse whereby players could access new release content or binge content within 14 days of the start of a contract, or a renewal period and cancel their contract – getting a partial refund on an already discounted product.

- Rather than simply offer a full refund, which might be viewed by some as easier and negate the need for a complex rework of systems to be able to calculate proportionate refunds, it is likely that companies would offer less content to consumers on subscription services and potentially remove premium and new release content – with consumers missing out on the cost saving benefits of a subscription and paying more overall.

- If the Government is minded to pursue either options 1 or 2 then it **should recognise the business models of companies who are operating on the basis of monthly or annual payments and consider what is practicable as opposed to a one size fits all model of proportionate refunds**, which in practice do not relate to the value of the content that could be consumed in that period. **It would be more appropriate for companies to be able to offer refunds based on use or value of the content actually downloaded and used. An alternative would be to calculate a refund on**

the basis of the full (non-discounted) cost of a monthly contract to the nearest month – where a customer cancels an annual contract in their cooling off period. Without significant investment in technology and systems the Government options as written could force companies into a de-facto full refund where the situation is deemed too complex to calculate a time or proportionate refund.

- Out of the options that have been presented by Government, **our members have a preference for Option 3 in principle, which maintains a waiver when digital content is consumed at the beginning of a contract – and re-establishes that waiver when an annual contract renews.** We believe that this is in line with the CCRs and is established practice, providing certainty for consumers who are consuming digital content and avoiding confusion between two competing processes for new contracts and renewals.

Proposed alternative approach

- We are concerned however that there is potentially an increase in complexity for both a consumer and trader if the trader is required to recontact consumers to reaffirm their express consent to waive their renewal cooling off right prior to an annual subscription renewing. The guidance, as currently envisaged sees a situation where If a consumer does not give their express consent to waive their right to their renewal cooling off period before it begins – then they could have their services interrupted as traders are unlikely to want to grant access to content if they see a risk of abuse through bingeing and subsequently being approached for a refund in that window.

- There are also potentially significant consequences for traders which could follow a lack of clarity in this area. In the case of a potential service interruption, if the consumer has paid for a subscription via a credit card or debit card as is highly likely, consumers could potentially be able to make a charge back or section 75 claim against the trader, forcing them into a full refund which could then have long term implications through higher fees rates from card providers, increasing business costs and risks. The trader could face long term charges from card and credit agencies where it has simply sought to protect itself from abuse of its services.

- This could lead also to complaints and increased administration for the company if consumers have assumed their contract by virtue of it rolling over, even with their knowledge, does not automatically count as consent under the law. A hard requirement to seek express consent for the renewal cooling off period effectively ends the practice of an 'auto renewal' which is vital to the ongoing viability of the subscription contract. Without an autorenewal provision, the likely result of this will be higher costs and subsequently reduced services and options for consumers if companies remove certain products and deals from the market.

- Practically speaking the establishment of the 14-day renewal cooling off period in the DMCCA in the cases of digital content needs to be re-examined and some flexibility considered in how traders communicate the correct information to consumers and obtain their acknowledgement and consent for the commencement of a contract and the subsequent renewal.

- We do not agree that in the case of games subscriptions that consumers do not fully understand what type of arrangement they are signing up to. The DMCCA requires companies to deliver extensive 'reminder notices' which already impose additional costs on companies. We believe it is therefore considerably less likely that a consumer will not understand what contract they are on when it renews. We note that the Government's own impact assessment stated that only 5% of subscription contracts were 'unwanted' – with auto-renewing annual subscriptions numbering even fewer than this. The waiving of a right to a refund through the immediate download of and access to digital content for games is well established under the CCRs, whilst annual subscriptions to extensive game libraries – and now instantaneous access to content through cloud gaming are increasing in popularity.

- We agree that traders should take all reasonable steps to inform consumers of the key information and terms of their contracts and their rights in an upfront, timely and unambiguous manner.

- We believe there is merit in considering an alternative option in this process whereby informed 'tacit consent' is established through the additional provisions and reminder notices which are mandated in the DMCCA. Traders are required to remind consumers as to their rights and relevant waivers at the start and throughout a contract – providing, in our view, sufficient certainty to consumers and traders.

- Practically we believe it would be appropriate to state clearly and unambiguously in communications at the commencement of a contract, and prior to an auto renewal, that consumers are waiving their right to a refund should they download and use content immediately. This would be a clearer balance between traders' obligations under the DMCCA and consumers rights.

- Whilst Government has specified that communications about renewals must be clear and unambiguous to the nature of the communication so that consumers clearly understand the purpose of that communication –a clear statement alongside any renewal, pertaining to the waiving of rights to a refund during a cooling off period would be appropriate to follow this primary information.

- A reasonable step by step process, akin to a code of practice for companies, which covers how information on a digital waiver for both the commencement and renewal of a contract, and the actions a trader must take to keep companies informed, could be detailed in guidance or secondary legislation by the Secretary of State. This

would be alongside their power to make subsequent regulations around the consequences of failing to take action where a consumer cancels a contract within the cooling off period.

- We believe this is a practical and straightforward further option which supplements the intentions behind option 3. It provides consumers with the appropriate information and notifications through a durable medium, is consistent with their established rights under the CCRs, whilst ensuring that traders are not open to abuse from bad actors or unfairly penalised for seeking to protect their services. This will also help to maintain the wider range of choice for consumers, who are benefiting from long-term access to content through subscriptions.

Arrangements for exiting a contract

- We agree with the intentions of the bill where consumers must be able to exit a contract in a straightforward manner without taking steps which are not 'reasonably necessary.' We also welcome Government's recognition in the DMCCA that companies are able to make offers and interact with consumers during this process which may result in a benefit for the consumer. There is still however a lack of clarity with regards to what is considered 'unreasonable' when a customer interacts with customer services when seeking to cancel a contract.

- For example – in the case where a consumer signs up to a subscription online – but may only be able to contact customer service of a trader via phone to discuss their subscription and potentially receive special offers – would this additional step in directing them to customer services be considered unreasonable, provided there is still a mechanism to cancel their subscription online and which is reasonably signposted.

- We would also welcome further guidance on what Government considers to be 'unreasonable' in relation to the number of communications made in a cancellation process. For example, if a special offer aimed at retention is made – does this preclude a further communication as 'unreasonable' e.g. if a trader a request for feedback (in the case that the consumer continues with their cancellation).

Reminder notices

- We agree that consumers should receive information and reminder notices in a timely and straightforward manner with the prescribed information for the purpose of that communication given upfront, so the consumer understands the nature of the communication.

- However, we believe that some flexibility should be considered in what additional information can be provided in those reminder notifications, for example in relation to stating that a consumer waives their right to a refund and cooling off period in terms

of digital content at the start of their contract, and at a renewal point - therefore practically enabling 'option 3' as discussed in this response.

- Furthermore, we would welcome clarification from Government if it were allowable to send marketing material to a customer in these reminder notices, if a customer has already opted out of marketing communications under GDPR.

- We agree that traders should take all practical steps to inform consumers of their rights and obligations under the DMCCA, as well as restating established regulations in the CCR. The increased frequency of these information notices, combined with the increased prominence of information in those notices could constitute a code of practice by which traders undertake with regards to subscription customers and be set out in guidance or secondary legislation by the Secretary of State under existing provisions and powers in the Act.

- Whilst the DMCCA states that these information notices must be via a 'durable medium' – for example in writing or via an email – we believe that these Government should consider a wider definition of durable medium whereby a player or customer can contacted via notifications in apps as these are the primary interfaces for games subscriptions and how they interact with content. Indeed, games apps and subscriptions increasingly operate on a 'cross platform' basis. For example, Xbox Game Pass can be accessed via a console, a PC and via a phone via the player's individual account.

- Players send and receive messages through accounts for the purposes of gameplay, but can also receive other notifications, special offers or wider information about games, for example updates or maintenance. We consider the account messaging as a more significant and engaged communication medium than the email used to sign up to the account, which is likely to be a general email address and may see messages or email mistaken for junk of spam. We would therefore welcome a wider definition of durable medium in order to take to recognise these accounts and to better reflect how players communicate and access information about their games and subscriptions.