



Playing fairly: the OFT's Principles for online and app-based games

The OFT has published its finalised Principles for online and app-based games. The Principles follow an OFT investigation into the ways in which online and app-based games encourage children to make purchases. The finalised industry Principles take into account responses to the OFT's public consultation on an earlier draft set.

The Principles address the OFT's concerns that misleading, aggressive and unfair industry-wide practices are being employed against consumers, and children in particular. The Principles are designed to provide guidance to businesses and include worked examples demonstrating ways in which games can be structured to avoid enforcement action.

Which games are caught by the Principles?

The Principles apply to any app or online game made available to consumers in the UK, whether or not that game is targeted specifically at children.

Of the 8 Principles (summarised in the box below), only Principles 6 and 7, refer specifically to children. As a result of feedback on the proposed Principles, the OFT has provided clearer guidance as to what *'games likely to appeal to children'* means. The general notes to the Principles explain that a significant determinative factor in deciding whether a game is likely to appeal to children *"is whether children are known to play the game or if the game is marketed to children"*. The general notes also set out a non-exhaustive list of other determinative factors. For the purposes of the Principles, a child is likely to be considered a person under the age of 16. The OFT does however emphasise that contracts entered into with people under 18 can be set aside in some circumstances.

Who should comply?

The general notes to the Principles set out on whom the obligation to comply falls.

- **Principles 1 - 3** Games businesses should provide clear and accurate information, either directly to the consumer or via platform operators. Platform operators should facilitate games businesses' compliance with these Principles by giving them the means by which they can provide the required information.

- **Principles 4 - 7** The responsibility for compliance is likely to fall entirely to games businesses although the OFT notes that platform operators aware of a breach of these Principles by games businesses operating on their platforms are expected to take prompt action to minimise the risk of consumer harm.
- **Principle 8** The OFT notes that platform operators should take reasonable steps to remove games where in-game purchases may be made without the consumer explicitly acknowledging their obligation to pay.

The effect of a breach

Businesses have until the 1 April 2014 to put their houses in order and ensure compliance with consumer protection laws. From 1 April, the Competition and Markets Authority (CMA) may take enforcement action against businesses in breach of consumer protection law. The CMA has confirmed that it will monitor the market to check that the industry is complying with its legal obligations.

Are the Principles necessary?

The European gaming industry has undergone significant growth in recent years and according to the European Commission is expected to be worth €63 billion in the next five years. But consumer awareness has not kept pace with the industry. A recent report commissioned by Ofcom titled **'Apps Environment'** explored the attitudes and behaviours of app users and highlighted a general lack of consumer awareness of the app environment. In addition a recent EU Commission **press release on unfair market practices in the in-app and online games industry** clearly sets out the need for the gaming industry to redress the balance between businesses and consumers.

The OFT's Principles puts the UK at the forefront of this movement and may be the model followed by the European Commission when it moves to address unfair market practices. The OFT's Principles are available here: **The OFT's Principles for online and app-based games.**

The Principles

Principles 1 - 3 Information about costs, material information and the games business should be provided clearly, accurately and prominently up-front, before the consumer begins to play, download or sign up to the game or agrees to make a purchase.

Principles 4 and 5 The commercial intent of the game (e.g. whether a payment is required) should be clear and a game should not mislead consumers by giving the false impression that payments are required or are an integral part of the way the game is played if that is not the case.

Principles 6 and 7 Games should not include 'aggressive' practices and should not exploit a child's inherent inexperience, vulnerability or credulity. Games should not include direct exhortations to children to make a purchase or persuade others to make purchases for them.

Principle 8 Payments should not be taken from the payment account holder unless authorised.

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