

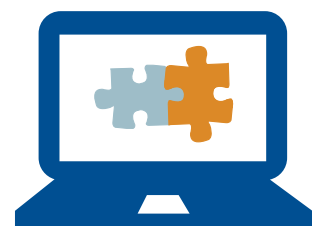
## Briefing note on the OFT's Principles for online and app-based games

As of 1st April 2014 the newly established Competition and Markets Authority (CMA) has assumed responsibility from the Office of Fair Trading (OFT) as the UK's regulator enforcing consumer protection laws in relation to online and app-based games. In view of the compliance date coinciding with this transition, the CMA expects that games developers and publishers targeting UK consumers will be compliant with the OFT's recently published Principles for online and app-based games in relation to in-app purchases and the use of personal data of end users.

In the wake of adverse media coverage (including the memorable headline "*D'oh! Eight-year-old boy runs up £1,000 bill on parents' iPad buying virtual DOUGHNUTS on Simpsons game*"), the OFT launched an investigation into the area in early 2013. Its conclusion was that end users of online and app-based games, particularly children, were being subjected to practices that were unfair, aggressive or misleading.

The Principles are intended to act as a guide to assist firms active in the UK games sector with selling in-app content responsibly, particularly where their games are marketed at or likely to be played by children. They also contain guidance regarding other commercial practices prevalent in the area and indicate potential ways to avoid breaching consumer protection laws.

The Principles do not contain any new law or impose any further obligations on games businesses; they are merely a clarification of the OFT's views on the interpretation of existing consumer protection laws. It remains important for developers and publishers active in the UK games market to be aware of their obligations under the Consumer Protection from Unfair Trading Regulations 2008, the Unfair Terms in Consumer Contracts Regulations 1999, the Electronic Commerce Regulations 2002, the Consumer Contracts Regulations 2013 and the Payment Services Regulations 2009.



## Provision of transparent and accurate information

Principle 1 states that information about the costs associated with a game should be provided clearly, accurately and prominently up-front, before the consumer begins to play, download or sign up to it or agrees to make a purchase.

Accordingly, the consumer should be made aware of the item's total cost in a clear and prominent manner directly before the consumer places the order (e.g. directly before clicking on 'buy').

Principle 2 requires that all material information about a game is clearly, accurately and prominently displayed up-front, before the consumer begins to play, download or sign up to the game or agrees to make a purchase.

The associated Principle 3 underlines that it needs to be absolutely clear to the consumer whom they ought to contact in case of dissatisfaction with the app or in-game purchase. The 'trader' must be capable of being contacted rapidly and communicated with in a direct and effective manner.

## Misleading commercial practices

Principle 4 stipulates that the commercial intent of any in-game promotion of paid-for content (or indeed advertising of any other commercial product or service) should be clear and distinguishable from general gameplay. The younger the intended target audience, the more difficult the OFT considers it is likely to be for consumers to identify the commercial intent in certain contexts. Consequently the language, design and structure of the game should take the intended target market into account.

Principle 5 states that a game should not mislead consumers by giving the false impression that payments are required or that they are an integral part of gameplay (or progression within a game) if that is not the case.

## 'Aggressive practices'

Principle 6 sets out the OFT's view that games should not have the potential to exploit a child's inherent inexperience, vulnerability or credulity or to place undue influence or pressure on a child to make a purchase - what it terms 'aggressive practices'. Again, this is context and audience specific - the younger a child is, the greater the likely impact those practices will have, and therefore the language, presentation, design and structure of the game should take account of the likely target market.

Principle 7 clearly states the OFT's belief that a game which includes direct exhortations to children to make a purchase (or persuade others to make purchases for them) would be in breach of the UK's consumer protection laws.

## Consent in relation to payments at point of sale

In line with generally accepted commercial practice, the OFT reiterates that payments should not be taken unless authorised by the account holder. The only way in which a payment made in a game can be authorised is if express, informed consent for that payment has been given by the account holder. In accordance with the information providing requirements in Principles 1, 2 and 3, the scope of the agreement and the amount to be debited should be made clear. Consent should not be assumed (e.g. through the use of opt-out provisions) and the account holder should positively indicate their express, informed consent.

As a result, Principle 8 states that businesses must ensure that the consumer explicitly acknowledges their obligation to pay at the point of each purchase.

## Summary

Whilst the Principles themselves are relatively abstract, the accompanying OFT guidance contains some very useful worked examples and illustrates various situations under which games and in-app purchases would or would not comply with the Principles. Developers and publishers therefore need to acquaint themselves with this guidance as thoroughly as possible and consider the likely compliance or otherwise of their existing games, apps and payment mechanisms.

Now that the targeted compliance date of 1st April has passed and the CMA has assumed responsibility from the OFT in relation to the enforcement of the associated consumer protection laws, there is likely to be more active monitoring of activity in this area. When the CMA suspects that there has been a breach of the Principles and the underlying consumer protection laws, it can order an investigation into the activities in question, require further information to be provided or even, in extreme cases, initiate court proceedings.

### OFT Principles:

[http://www.of.gov.uk/shared\\_of/consumer-enforcement/oft1519.pdf](http://www.of.gov.uk/shared_of/consumer-enforcement/oft1519.pdf)

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