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EGDF response on EDPB guidelines on targeting social media users

About EGDF

The European Games Developer Federation e.f. (EGDF)¹ unites national trade associations representing game developer studios based in 19 European countries: Austria (PGDA), Belgium (FLEGA), Czechia (GDACZ), Denmark (Producentforeningen), Finland (Suomen pelinkehittäjät), France (SNJV), Germany (GAME), Italy (IIDEA), Malta (MVGSA), Netherlands (DGA), Norway (Produsentforeningen), Poland (PGA), Romania (RGDA), Serbia (SGA), Spain (DEV), Sweden (Spelplan-ASGD), Slovakia (SGDA), Turkey (TOGED) and the United Kingdom (TIGA). Altogether, through its members, EGDF represents more than 2 500 game developer studios, most of them SMEs, employing more than 35 000 people.

Games industry represents one of Europe's most compelling economic success stories, relying on a strong IP framework, and is a rapidly growing segment of the creative industries. European digital single market area is the third-largest market for video games globally. In 2019, Europe's video games market was worth €21bn, and the industry has registered a growth rate of 55% over the past 5 years in key European markets². All in all, there are around 5000 game developer studios and publishers in Europe, employing closer to 80 000 people.³

Game developer studios and publishers tie the data value chain together. Digital games unite a number of different digital services from social media and advertisement to player analytics to back-end servers to the flawless player experience. Consequently, EGDF welcomes EDPB guidelines bringing much-needed clarity into the responsibilities of each actor in the complex and diverse data value chain.

¹ For more information, please visit www.egdf.eu

² ISFE Key Facts 2020 from GameTrack Data by Ipsos MORI and commissioned by ISFE <https://www.isfe.eu/data-key-facts/>

³ European Games Industry in 2018:

<http://www.egdf.eu/wp-content/uploads/2020/08/European-Report-on-the-Game-Development-Industry-in-2018.pdf>

Also a targeter needs safeguards against social media platforms

Currently, the guidelines are drafted from the perspective, where a targeter has full control over its activities on social media platforms. In reality, this is not always the case, as massive global social media platforms have technical means to collect more data from the target (e.g. through installed SDK) than agreed in the contract. Consequently, the guidelines should very clearly state that social media platforms do not have a right to collect more data from their partners than clearly agreed in the contract between them.

A clear acknowledgement of power imbalances while determining the responsibilities

While determining the level of responsibility, EDPB should also consider significant power imbalances between massive global social media platforms and small European game developer studios. Quite often, these SDK's provided by the social media platforms are "black boxes", and the game developer studio has no overview of their specific features or functionalities. As leading social media platforms, are also leading advertising networks, in many cases, game developer studios have no other option than blindly trust the social media networks if they want to access the markets.

Furthermore, usually, the agreement between the social media platform and a game developer studio is a standard non-negotiable agreement drafted by the social media network. Consequently, the guideline document should mention that if another party dictates the contract terms and determines what tools must be used for data collection and transfer, it should also have more responsibilities. Furthermore, the EDPB should note that social media platforms should not be allowed to force companies directly or indirectly (bad ranking, no good new deal/ downgrade or business disadvantage of any kind) to implement non-data-protection-friendly or unstable tools.

Clear guidance for repeated infringements

EDBP should provide clear guidelines for situations where the SDK provided by the social media network for targeter repeatedly "accidentally" infringes agreed contract terms or even the GDPR itself on data access. A small European game developer studio does not have negotiation power to change the behaviour of a global social media platform. Neither they do not have financial resources to take their (often key) business partners to court. It would be useful, if, for cases of this kind, EDPB would provide a mechanism for reporting suspicious market behaviour to public authorities.

Access to consent data

Social media platform often claim that they have consent from the data subject for collecting data from a game. The guidelines should mention that a social media platform should also provide means for a game developer to match individual players with the consents they have given for social media platform. This is the only way to secure that a game developer studio can demonstrate for the player that they have his or her consent for transferring their data for the social media platform. This would also allow means to develop better tools for the users of social media services to control the data flows from third-party services their social media platforms.

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