

## Communications Consumer Panel response to OFT's investigation into children's online games.

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The Communications Consumer Panel welcomes this opportunity to respond to the OFT's investigation into children's online games.

### Background

*The OFT has launched an investigation into whether children are being unfairly pressured or encouraged to pay for additional content in 'free' web and app-based games, including upgraded membership or virtual currency such as coins, gems or fruit. Many children's web- and app-based games are free to sign up to or download. Typically, players can access only portions of these games for free, with new levels or features, such as faster game play, costing money.*

*The OFT investigation is exploring whether these games are misleading, commercially aggressive or otherwise unfair. In particular, the OFT is looking into whether these games include 'direct exhortations' to children - a strong encouragement to make a purchase, or to do something that will necessitate making a purchase, or to persuade their parents or other adults to make a purchase for them. This is unlawful under the Consumer Protection (from Unfair Trading) Regulations 2008.*

*As part of the investigation, the OFT will also consider whether the full cost of some of these games is made clear when they are downloaded or accessed, potentially leading to children and parents to make decisions they may not have made if prices were more transparently advertised at the start of the purchasing process.*

*The information will be used to understand business practices used in this sector, to establish whether consumer protection regulations are being breached and if so what the consumer harm is.*

### Response

The Communications Consumer Panel is an independent body of eight experts who work to protect and promote people's interests in the communications sector. We were established by the Communications Act 2003. The Panel carries out research,

provides advice and encourages Ofcom, Government, the EU, industry and others to look at issues through the eyes of consumers, citizens and small businesses.

The Panel pays particular attention to the needs of older people and people with disabilities, the needs of people in rural areas and people on low incomes, and the needs of small businesses, which face many of the same problems as individual consumers. There are four members of the Panel who represent the interests of consumers in England, Northern Ireland, Scotland and Wales respectively.

We note the following contextual evidence base:

According to Ofcom's 2012 Children and Parents: Media Use and Attitudes Report<sup>1</sup> games consoles connected to a television and handheld/ portable games consoles are the most commonly-used devices for children's gaming; used by at least half of all children in each age group. Around three in ten 5-7s (33%), two in five 8-11s (40%) and around two in five 12-15s (46%) ever play games using a computer, laptop or netbook.

Around one in ten 5-7s (13%), one in five 8-11s (18%) and three in ten 12-15s (34%) play games using a mobile phone. The proportion of 12-15s who ever play games using a mobile phone has increased since 2011 (34% vs. 23%). This is likely to be due to the increased uptake of smartphones among 12-15s, as two in five children with a smartphone ever play games on their phone (44%) compared to one in five with another type of mobile phone (20%). While less than one in ten children in any age group play games on a tablet computer, the proportion using this device for gaming has increased for each age group since 2011 (6% vs. 1% for 5-7s, 8% vs. 3% for 8-11s, 8% vs. 4% for 12-15s).

In relation to devices used for gaming by children aged 3-4, 35% use a hand held games console, 31% games console connected to a TV, 16% PC/ laptop/netbook, 8% mobile phone, 6% tablet computer, 3% portable media player. 47% do not play games at home on a gaming device. Among those children aged 3-4 who ever play games on devices at home, 9% play games online.

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/research/media-literacy/oct2012/main.pdf>

This relatively high level of online gaming among children would suggest that there is a potential problem if in-app charging is opaque. A consequence of high internet usage among children may also be more exposure to undue inducements.

It is worth noting that Ofcom's research also found that forty-six per cent of parents agree with the statement: "My child knows more about the internet than I do". Agreement increases with each age group, with 22% of parents of a 5-7 year-old agreeing, 35% of parents of an 8-11 year-old and 67% of parents of 12-15s. In addition, 54% of 12-15s say that they know how to delete their online history and 26% say they have done this in the last year. Twenty-two per cent say they know how to disable any online filters or controls, while 8% say they have done this in the last year.

Recent research conducted by Ofcom has found that while there is high awareness of website terms and conditions / privacy statements among adults, only one in four (24%) internet users say they read these thoroughly, with the same proportion (24%) saying they never read them<sup>2</sup>. Also of note is that fact that UK adults are now more likely than in 2011 to think that internet content is regulated (44% vs. 40%)<sup>3</sup>.

Whilst the Panel does not have any specific evidence of harm in relation to in-app purchases, we have a concern that any evidence may well be hidden, inter alia because: consumers (parents and children) don't realise the cost implications; individual amounts could be relatively small, so consumers may feel it's not worthwhile querying or complaining; consumers (of any age, but especially children) may feel embarrassed or fearful about admitting they've unwittingly spent money in this way.

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<sup>2</sup> Media Use and Attitudes, Ofcom 2012 <http://stakeholders.ofcom.org.uk/market-data-research/media-literacy/archive/medlitpub/medlitpubrss/adults-media-use-attitudes/>

<sup>3</sup> <http://stakeholders.ofcom.org.uk/market-data-research/media-literacy/media-lit-research/adults-2013/>

Recent research conducted into Information, Connecting and Signposting Services for PhonepayPlus highlighted the experience of consumers who said that even where they had been misled and had lost money, they generally didn't complain for three main reasons:

- They don't know who to complain to
- They think it will be too much hassle
- They feel "a bit stupid" for having called the number.

The lack of information on complaints and redress mechanism is of concern. Research by Consumer Focus found that, of those consumers who experienced a problem with digital content, the main reasons that 32% did not take action were uncertainty about how to obtain redress (60%) and the low value of the download (40%). Similarly, we are aware of a study by the Office of Fair Trading on consumer detriment that found that consumers are less likely to seek redress for low value transactions.

It is important to understand the context in which consumption of content occurs: a free game or app that later requires a purchase for it to be enjoyed fully could be potentially misleading. Therefore clear, up-front information about the basis of the app/game and all potential costs should be considered as a requirement. This is particularly important given the absorbing nature of many games. 'Spend alerts' could also be considered - particularly as notification of spend is not always instantaneous.

The OFT release refers to whether children are being "unfairly pressured or encouraged" to pay for additional content. We wonder whether those terms could be widened to include the question of whether children being unwittingly and unknowingly enticed?

It is also pertinent to consider the type of payment systems that games/app retailers use. If a product is targeting children and young people there is a question of whether the payment system should have a requirement that each individual purchase should require the account holder to re-input permissions

and/or account details - providing greater assurance that the account holder is aware of the nature and level of spend.

From a design point of view, we are also aware of the risk of inadvertent purchases being made due to the placement of in-app purchase buttons adjacent to a button to activate a feature of the app. Whilst we would obviously not wish to suggest mandating design principles, perhaps there should be some swift method for undoing accidental purchases?

The draft Consumer Rights Bill address the issue of consumers' right to get a repair or a replacement of faulty digital content such as film and music downloads, online games and e-books. In line with this system of redress for consumers, the returns policy for in-app purchases and method for lodging complaints should be clear. Action can then be taken should a number of complaints be received. Consumers in situations like these often feel alone and this only changes if you give them the confidence only strength in numbers provides.

In conclusion, we are pleased that the OFT is investigating this rapidly developing area, and suggest that this is an area that may require further research. We do not believe that in-app purchases should be banned. The important point is that consumers must be made aware of the nature and ultimate costs of an app; and in particular, children must be properly protected.