

# The start of self-regulation by the social gaming industry

In October, the International Social Games Association published its Best Practice Principles. These guidelines form a starting point for the ISGA's framework for the self-regulation of the social gaming industry. Tom Grant, Partner at Harris Hagan, discusses each area of the guidelines and outlines the challenges ahead for the ISGA in its quest to successfully implement a self-regulatory framework.

William Feather, an early 20<sup>th</sup> century American author, once wrote: 'If we don't discipline ourselves, the world will do it for us.' This is the position that the social gaming industry finds itself in and it has responded via the recently formed International Social Games Association ('ISGA'). ISGA is committed to a programme of self-regulation. The organisation now boasts, amongst its membership, a healthy range of large international operators and independent game developers. It is now that the hard work will begin as ISGA faces the dual challenge of implementing an effective framework for self-regulation that is both attractive to operators and one that is sufficiently robust to satisfy those who might otherwise favour more formal regulation.

Michael Toffel, a Professor at Harvard Business School, identified four key considerations that industry sectors must consider when contemplating self-regulation: how the rules are designed, who adopts them, whether and how compliance is monitored and whether the rules actually achieve what they purport to achieve. ISGA's Best Practice Principles focus on five key areas:

Adherence to applicable laws and regulations

Compliance with existing legislation, such as consumer protection laws, underpins ISGA's position that external regulation is not required and one would expect ISGA to educate its members as to the length and breadth of these requirements, particularly the less mature organisations whose resources tend to be restricted to creative output.

Transparency, mechanics and functionality

One of the most compelling criticisms levelled against the social gaming industry relates to the transparency of the game mechanics, particularly in relation to casino style games. The extent to which social game developers may manipulate the random number generators remains unclear but there is an understandable discomfort as to whether players are being misled in their judgment of their own relative ability. In recent months, the potential for convergence has been one of the major themes of industry debate and, whilst revenue models may vary, there is no doubt that the conversion of players from social games to their real-money relations is a cause for genuine concern. The Best Practice Principles do not purely focus on casino games and state that social games, be they driving simulators, action games or traditional casino games, should not mislead players into believing that they will be more successful at their real-world equivalent. The technical report on social gaming published by the Gambling Commission earlier in the year asked this very question: does the overall experience of social gambling lead players to migrate onto real-money gambling based on unrealistic expectations? Interestingly, ISGA has gone further than one might expect on this point by recommending that

casino style social games 'should specify that the games are intended for use by those 18 or older.' In the case of casino games, it remains to be seen whether ISGA's members will synchronise and publish their 'pay tables' with the industry-standard for real-money gambling. At industry conferences, this remains one of the fundamental unanswered questions and, as the principles evolve, ISGA might consider a more perspicuous approach on this point.

Purchases and payments

One of the other major points of contention is the transparency of the in-app payment model. ISGA states that the 'cost of games or items within games should be transparent to players.' This seems to be an educational point and there is no doubt that the social gaming industry could work harder to signpost clearly the pricing structure of games. Developers should be considering ways in which they can educate the public on the preventative measures that can be taken to avert unintentional and costly in-play acquisitions, particularly by children. Most devices allow in-app purchases to be either disabled or password protected, which are two extremely suitable pre-emptive measures that consumers can apply. It remains to be seen whether there is any appetite on the part of the platform providers, such as Apple and Google, to ensure that consumers are better informed of these failsafes. As it stands, the Candy Crush download page on iTunes does present a menu of in-app purchases available within the game but some form of label, along the lines of the music industry's 'Parental Advisory' warning, would really demonstrate genuine intent on the part of the social games industry to alleviate any uncertainty. Research clearly

indicates that consumers are increasingly re-assured by the existence of marks such as 'fair trade' coffee and 'sustainably harvested' seafood. There is an opportunity here for ISGA's members to positively differentiate themselves from the rest of the social gaming pack.

Privacy

ISGA has made various recommendations as to the availability of a game's privacy policy, the treatment of personal data and improved player choice as to shared social network activity. These concerns are, of course, not unique to social games, and data protection laws in the UK are unequivocal, but clearly ISGA recognises that social game operators could improve their accountability for the treatment of users' personal data to ensure that it is fully respected.

Advertising

The final key principle focusses on the use of advertising and reinforces the obligation to comply with all advertising laws and regulations. Interestingly, the social games industry has thus far steered clear of any negative rulings of note by the Advertising Standards Authority but that is not to say that it will not now come under increased scrutiny, particularly if marketing budgets extend to mainstream media. Again, it is worth noting that ISGA has proposed that 'advertisements for casino style games should not be deliberately or explicitly directed at those aged below 18 years.' Given that the social gaming industry has been consistently resolute in its assertions that free-to-play casino style social games should not necessarily be any more age sensitive than other social games, it is interesting that this distinction has been made.

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**Towards self-regulation**

One of the most interesting of Michael Toffel's observations is as follows: "Codes are an important start, but if there's no robust verification mechanism, a company may actually find itself in a riskier position, because now it may be confronted with accusations that it claimed to do something but then failed to deliver on it." ISGA need look no further than the Advertising Standards Authority as an example of an industry that successfully self-regulates. The ASA believes that the system works because 'it is powered and driven by a sense of corporate responsibility amongst the advertising industry.' It also recognises the importance of self-regulation in allowing the industry to be able to adapt to market conditions. An overall policy of self-restraint has made further legislation and regulation at a governmental level unnecessary. Above all else, however, regulatory compliance is heavily enhanced by third party monitoring and punitive enforcement. The challenge facing ISGA here is that any formal monitoring programme could be enormously complicated and costly to implement.

ISGA has commissioned independent research into the evolution of social games. This will seek to understand how social games are changing the way that consumers are playing and paying for games. The intention of the research will be to generate and inform public debate and to provide clinical evidence as to whether or not social games pose any harm and if so, the materiality of such harm. By identifying any such risks (or lack thereof) ISGA will be able to update their principles accordingly, to the extent that any risks are identified, and will be in a position to provide policy makers with more detailed

and targeted information which could be used when formulating policy. This pro-active approach will be welcomed at a governmental level and further exhibits the industry's maturing perspective that positive debate can be healthy. Certainly, the land-based gaming industry has learnt to understand the merits of a common set of principles under one roof and open communication with its own regulators.

The key principles are, for the time being, extremely high level and one would expect them to evolve as the organisation and its membership matures. Clearly, they have not been drafted to address everyone's concerns but they are a starting point and should go some way to demonstrating that the social games industry is taking its responsibilities seriously and is rapidly developing what is known in the world of self-regulation as a 'corporate conscience.' In its 2009 policy statement on the role of self-regulation in the Office of Fair Trading's consumer protection work, the OFT acknowledged that 'self-regulation can, in some instances, reduce regulatory burdens and obviate the need for more heavy-handed and formal controls.' The OFT did also recognise that 'their largely voluntary nature means that they are unlikely to provide full coverage.' Research has shown that organisations do not reliably self-regulate without the pressure of deterrents. The next step will be to ensure that the framework for self-policing is not harmless window-dressing but has sufficient teeth to validate its existence in lieu of formal regulation.

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