Feedback on the European Commission's Draft Guidelines on the Protection of Minors Online under Article 28(4) of the Digital Services Act

Submitted by the Working Group on Gaming and Regulation

We welcome the European Commission's draft Guidelines on Article 28(1) of the Digital Services Act (DSA), which set out measures to ensure a high level of privacy, safety and security for minors online. We appreciate and encourage the interpretation and implementation of these Guidelines in a children's rights-inspired manner, grounded in a comprehensive children's rights-based perspective, the principles and rights outlined in the UN Convention on the Rights of the Child and the General Comment No. 25. We appreciate the structured and design-oriented approach taken in these Guidelines and the attention given to online environments that are accessible to minors, including gaming platforms.

Drawing from our work on gaming, platform regulation, online trust and safety, children's rights and digital design, we offer the following reflections and suggestions, focusing on those parts of the Guidelines most relevant to game-based platforms and ecosystems.

Recommended provisions to be maintained in the final version of the Guidelines

We strongly support the following aspects of the draft and urge that they be maintained:

- **Platform-wide design focus**. The draft Guidelines rightly identify the role of service design in influencing the level of risk. We support the framing that children are rights holders, and that platform accountability and responsibility must not be offloaded to parents or guardians alone.

- **Protecting all users benefits minors (p. 5).** We support the Guideline's encouragement for platforms to adopt protective measures for all users, not just minors. This is particularly valuable in gaming environments where effective age gating remains difficult. There is currently no proven, foolproof method of age assurance in games. Accordingly, embedding safety, privacy, and security measures universally may be the most effective way to protect minors in practice.

- We also support **the risk-based approach** outlined in Section 5, which helps ensure that measures are proportionate and protect the rights of all users. In this context, we suggest that references to the potential impact on children's rights (lines 190–195) also acknowledge the broader effects on all users.

- **Default settings (Section 6.3.1)**. We endorse the list of default settings recommended for minors, particularly those aimed at reducing 'excessive' use and enhancing user control. These include disabling features known to encourage compulsive use or compromise privacy, such as push notifications, geolocation tracking, camera access, location sharing, public visibility, autoplay, streaks, and read receipts. We especially support the recommendation in lines 446–447 to automatically turn off geolocation, camera, and optional tracking features after a session ends if a minor has enabled them. These recommendations are especially relevant for gaming platforms and should not be diluted.

- **Commercial practices (Section 6.6)**. The Guidelines appropriately highlight the risks associated with exploitative monetisation tactics, such as loot boxes, other products with random or unpredictable outcomes or gambling-like features, intermediate virtual currencies, such as tokens or coins that can be exchanged with real money, and in-game purchases that are necessary to access core functionalities (lines 653-657 and 661-665). We support the recommendation to avoid such features for minors, to ensure that they are not exposed to practices that may compromise their well-being, and to introduce friction between gameplay and spending. These provisions reflect long-standing concerns in the gaming and child rights communities and should be preserved. Nevertheless, we recommend further demonstrating the existence of a clear link between the commercial practices addressed in Section 6.6. and their negative impact on minors' privacy, security and safety to emphasise their relevance in the context of the Guidelines. For example, by highlighting how profiling of players based on their personal data and their interactions within or outside the game enables the personalisation of exploitative monetisation practices which also impacts players' privacy.

- **Addition of section on economically exploitative practices**. We welcome the inclusion of strong language around practices that can result in excessive or unwanted spending or compulsive behaviour. In particular, the emphasis on removing gambling-like features for minors, including randomised reward mechanisms, is essential and should remain.

  We also commend the inclusion of the statement, "Minors are particularly exposed to the persuasive effects of commercial practices and have a right to be protected against economically exploitative practices," and urge that it be maintained in the final version of the Guidelines. Retaining this explicit recognition of children's rights will help future-proof the Guidelines, ensuring their continued relevance as new forms of persuasive and monetisation techniques emerge.

- **Transparency of economic transactions (p. 24)**. We support the requirement to avoid using opaque or intermediate currencies that can be exchanged with real money, which often reduce minors' understanding of real costs and undermine informed decision-making.

Points for clarification and improvement:

- **Terminology: 'extensive use or overuse', 'addictive behaviours', 'excessive use' vs exploitative practices and persuasive design**. We encourage the Commission to use clearer language to describe compulsive engagement and its relation to persuasive design patterns, which are often built into online environments, including games. It would be useful to clearly distinguish between 'excessive use' via the users own volition and design that intentionally undermines user agency. In line 422, the Commission could also consider providing examples of filters it views as detrimental to body image, self-esteem, and mental health, as this language may otherwise be open to divergent interpretation in practice.

- **Age assurance (Section 6.1)**. While we welcome the tiered approach to age assurance, more detail is needed on the types of age estimation methods envisaged. The Guidelines should clarify whether biometric estimation or knowledge-based approaches are considered, and under what conditions they would be acceptable. We also consider it very important that the Commission provides further clarification on what constitutes high-risk and medium-risk scenarios in the context of age assurance. Beyond the reference to the EDPB statement on age assurance, the Guidelines should also provide more details on the appropriate levels of accuracy required from age estimation systems as well as the quality of the data used for their training and testing. In line 350, we also suggest clarifying that the method used should be appropriate and available for all users, not just minors, as any age assurance process would likely apply to all users accessing the platform. Concerning the table in line 297, the first bullet point should make clearer that age verification is mandatory for content and goods which are *legally* restricted to 18+. The last bullet point of the same table which concerns "medium risk services" should reaffirm that age verification and estimation systems should be put in place only in the circumstances where there is *no effective alternative which is less restrictive of the rights and freedoms of natural persons.* Although this requirement was already highlighted in lines 234 to 237, a reminder is necessary to make clear that age assurance should not be the first step in mitigating risks for minors, especially in situations where the risks associated with the service are medium in terms of gravity.

- **Independent evaluation and oversight**. Currently, the Guidelines rely heavily on provider-driven assessments of what is accessible to minors or considered child-friendly. We recommend that the Commission specifically encourage platforms to seek input from

independent researchers and experts in evaluating, among other aspects, whether a service or part thereof is accessible to minors, the effectiveness of age assurance methods, the assessment of risks and the effectiveness of mitigation measures, whether transparency declarations regarding terms and conditions, and commercial communications are understandable and age-appropriate for children.

Game ratings, to the extent that they are carried out by independent entities, could also be considered credible sources of information on the level of risk that games pose to consumers along various dimensions, including social or interactive risks and data privacy risks.

- **Examples of commercial practices and monetisation (Section 6.6)**. The Guidelines could benefit from more explicit references to industry practices that rely on real-time behavioural influence and manipulation. For example, using time-limited offers during intense moments of gameplay (as referenced in footnote 55) is a well-documented dark pattern. We recommend including examples of such tactics directly in the main text of the Guidelines, not just the footnotes.

  In addition, the Guidelines could go further in addressing the **use of profiling for commercial purposes**. While lines 535–538 state that recommender systems should not rely on ongoing behavioural data collection, this important safeguard is limited to that context. We recommend extending this reasoning to other areas such as commercial practices that personalise user experiences to nudge minors towards increased spending or engagement. This would align with existing national age-appropriate design codes, as well as the positions of the UN Committee on the Rights of the Child and the Council of Europe.

  In this regard, the wording in lines 583–584 could be clarified: asking providers to "ensure that minors can choose an option of their recommender system that is not based on profiling" may appear inconsistent with the earlier recommendation that recommender systems should not be based on profiling at all.

- **Moderation (Section 6.7)**. This section has particular relevance for gaming platforms, especially those with chat functions or multiplayer components. We recommend strengthening expectations around moderation tools tailored to in-game interactions, and the role of moderators as well as carefully supervised AI systems in preventing grooming, harassment, hate speech and other risks in real time.

- **Child-centred transparency and positive guidance** (lines 1002–1014). In addition to the existing transparency recommendations, we suggest including prompts that actively encourage children to involve a parent or trusted adult before making decisions or taking

actions that could pose a high risk to them. This could help strengthen protective measures in situations where children may not fully grasp the implications of their choices.

The Guidelines could also promote the use of **positive nudges** throughout the user experience, gently encouraging privacy-preserving and safe behaviours in age-appropriate ways. Such guidance can support children in developing good digital habits and exercising agency in safer, more informed ways online.

We also encourage the Commission to explain in more detail what is meant by terms such as **'child-friendly', 'age-appropriate',** and **'easily accessible to all minors'**, including those with disabilities or additional accessibility needs. It would also be helpful to clarify what constitutes content that is "presented clearly in a way that is easy for children to understand." This includes providing guidance on how platforms can determine whether they have met these standards, and what thresholds should apply. One way to strengthen this would be to **encourage child participation in the design and evaluation of services**, ensuring the perspectives of children are meaningfully included in shaping transparency and accessibility measures.

- **Scope of good practice examples**. While the examples in the Guidelines are a helpful starting point, they currently reflect relatively basic or self-evident applications. We would welcome the addition of more nuanced, gaming-specific illustrations that demonstrate proactive risk mitigation, embedded safety features, and participatory design. Expanding on the current good practice example ("HappyExplore", p. 34) with a more detailed case from the gaming sector, such as one incorporating safety education, content moderation, and cooperative play mechanisms designed to support inclusion and wellbeing, could offer valuable guidance.

- **Review and revision of the Guidelines (Section 9)**. Given the pace of technological developments in gaming and virtual environments, we suggest specifying that the Guidelines be reviewed at least every 2 years, with an option for earlier review in light of emerging risks.

- **Redress and controls**. In addition to user reporting, providers should offer meaningful redress options for mistaken age estimation and for content or purchase regrets. Frictions should not only deter spending but support children in understanding and reversing unwanted decisions.

We thank the Commission for the opportunity to comment and remain available to engage further on these matters. Game-based platforms form a major part of children's digital lives, and these Guidelines represent a crucial opportunity to set meaningful standards across the ecosystem.

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