ECIJA

Spanish video game regulation – past, present & possible future

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1. Introduction

Spanish video game regulation – past, present & possible future

How can we categorise video games? Do they fit the description of a product, service, literary or audiovisual work, are they just a computer programme, or do they represent a mix of all these concepts?

The nature and definition of what video games are is, undoubtedly, complex. They represent a major challenge for jurists when tackling them from a legal perspective. The Spanish regulatory body does not provide a legal definition catered to the specific characteristics of video games, in comparison to the regulatory development of other types of works such as computer programmes.

Nevertheless, from the market's point of view, for consumers and users, video games have consolidated as an outstanding social phenomenon with great repercussions throughout the global economy, and Spain.

From the conception and commerciality of the first video games more than 60 years ago, as seen in the *Tennis for Two*[1] by William Higginbotham, up to the development of the first video game consoles, such as the Atari in the seventies, the video game industry has been subject to an incredibly rapid evolution.

Over the last decade, the video game industry has tripled its yearly revenue in Spain, reaching an approximate 2,000 million euros in sales. Such growth is not expected to cease; the market estimate for the upcoming two years indicates that this volume will double. Furthermore, according to the *Asociación Española de Videojuegos* (AEVI), the industry directly employs around 9,000 people within Spain[2].

Video games' uniqueness lies in their multidisciplinary nature: they are not merely a common product or service, but incorporate technology, innovation, and artistic creation like few other forms of entertainment. This innovation and creativity extends throughout the value chain, from the developers, through to publishers, to distributors. It's a chain that continues to develop and extend into other formats and spectacles such as e-sports and the innovative ed-tech.

[1] *The complete history of Tennis for Two*
2 *Data from the Spanish Video Games Association*

To summarise, video games have become a mainstay actor in our economy, and a key component of society's entertainment. As one of the most requested forms of media entertainment, the industry employs the most qualified professionals from a diverse range of different disciplines (including programmers, artists, scriptwriters, historians etc.) whose valuable expertise contributes to the departments required to produce these highly developed goods.

As with any other industry with a deep impact on consumer behaviour, video games have not only caught the attention of buyers, but attracted both the private and public sectors, through different enterprises, public administrations, and even the state.

Video games have become a mainstay actor in our economy and a key component of society's entertainment.

Therefore, regulation surrounding the industry has become a hot topic, sparking a debate that transcends national borders and has entered the European playing field, driving the community's legislators towards the establishment of solid regulatory foundations in which to consolidate legal certainty in the developing European Digital Single Market. According to AEVI, the European video game market is currently the biggest player worldwide.

2. Intellectual property

As mentioned previously, under the Spanish Intellectual Property Law Compendium ("TRLPI", as abbreviated in Spanish), video games can't be qualified under any existent definition amongst its Articles, and therefore constitutes a work open to legislative interpretation. This status does not infer that video games are an unprotected subject of the TRLPI. On the contrary, the text provides multiple definitions and interpretations which contribute to their protection.

With this in mind, the suicle 10 of the TRLPI establishes that:

> *"1.* ***All original literary, artistic or scientific creations*** *expressed by any means or medium, tangible or intangible, now known or to be invented in the future, are the object of intellectual property,* ***including:*** *(...) computer programmes".*

Among the figures included in this paper, computer programmes bear the closest resemblance with video games, even though they lack a complete equivalence in terms of their nature and elements which must be protected.

According to Article 10 TRLPI, authorship rights are applicable to any kind of work on a broad spectrum (numerus apertus). Therefore, even if lacking an specific regulation under the current legislation, the fact that they are generated through the intellectual endeavour of a human being, producing an original work, constitutes the fundamental and necessary requirement for said work to be protected by the extension of rights which accompany their condition as authors.

2.1. Protection as a computer programme (software)

Evidently, a video game is not identical to a computer programme, even though both are expressed in a similar medium. The analogous relationship that is often made between these two distinct kinds of works is similar to the comparison between a common photograph and a developed masterpiece from a Renaissance art collection; both are portrayed on a canvas, but the content, object, creation and scope of protection for the output requires a mandatory distinction.

Therefore, the scope of computer programmes envelopes the protection of "(…) any sequence of instructions or indications intended to be used, directly or indirectly, in a computer system to perform a function or a task or to obtain a given result, in whatever form and in whatever form of expression and fixation", along with protection to all required documentation, be it technical, instructive or user manuals, conferred upon it by the TRLPI.

As beneficial as the protection associated with computer programme works is, when it comes to a video game work, there are a number of aspects that are not sufficiently protected from the premise of a pure software-based protection.

This problem does not only involve the latest generation of video games. It has been an intrinsic characteristic of these works to integrate audiovisual components, scripts and characters that, in addition to playability and interactivity within the game, make it transcend the mere usefulness of the computer programme.

The assumption that video games should be granted the same level of protection as computer programmes under the TRLPI would entirely disregard the added value that the creative and original elements add to their development and marketability.

2.2. Protection as an audiovisual work

Another plausible approximation to the nature of video games under Spanish law arises from their comparison to audiovisual works, which are understood to be the recording of moving images with or without synchronised sound, which are played back to the viewer as a carousel of frames and ultimately give rise to the audiovisual work. Examples of the traditional works under this category include a cinematographic work, a series, or a simple video. Having said that, video games transcend, as with other figures, this concept.

Whenever the player delves into the contents of a video game, they do not merely assume a passive role, they actively participate in its narration and progression, and, therefore, partake in the development of the script of events that unfold during their experience in the game.

The consequences deriving from their involvement puts distance between video games and the concept of an audiovisual work, insofar as in the former the spectator has no ability to take alternative paths, parallel routes or decide how they want to enjoy their experience, but rather it is presented to them in a predetermined way.

2.3. Protection as a multimedia work

In essence, a video game can be thought of as the synthesis of a series of key attributes from various categories of works that together form a multimedia work. Video games contain lines of code, instructions, and commands, resembling to some extent a literary work. Moreover, their audiovisual elements, together with the script and the characters that are part of the game, present a level of creativity and originality that grants the protection reserved for audiovisual works.

3. Blockchain, metaverse & cloud gaming

The video game industry has always been a leader in adopting and incorporating new technologies, often acting as the catalyst by which they expand through society as a whole.

Currently, three technologies stand out due to their outstanding impact on the industry: blockchain technology, the metaverse and cloud gaming.

3.1 Blockchain

Through blockchain technology, the video game industry is undergoing its next transformation.

Blockchain enables, amongst many other capacities, the management and exploitation of intellectual property rights, facilitating the creation and exchange of digital assets; a revolutionary step regarding the use and maintenance of these assets.

Notwithstanding this, blockchain may also influence the management of intellectual property due to its augmented efficiency, opening the grounds to new markets, exploitation methods and licensing avenues such as, for example, the objects, characters, and other artistic elements inside a video game, a potential sector which has had scarce commercial progression so far.

On the same subject, video games represent an ideal scenario in which to integrate decentralised finances (DeFi), through the use of coins, tokens and in-game markets, which in itself raises multiple legal challenges based on financial regulation and regulatory compliance, especially regarding anti-money laundering regulations, along with *Know Your Client* policies.

Traditional relations that had been long established between developers, editors, and platform providers, will

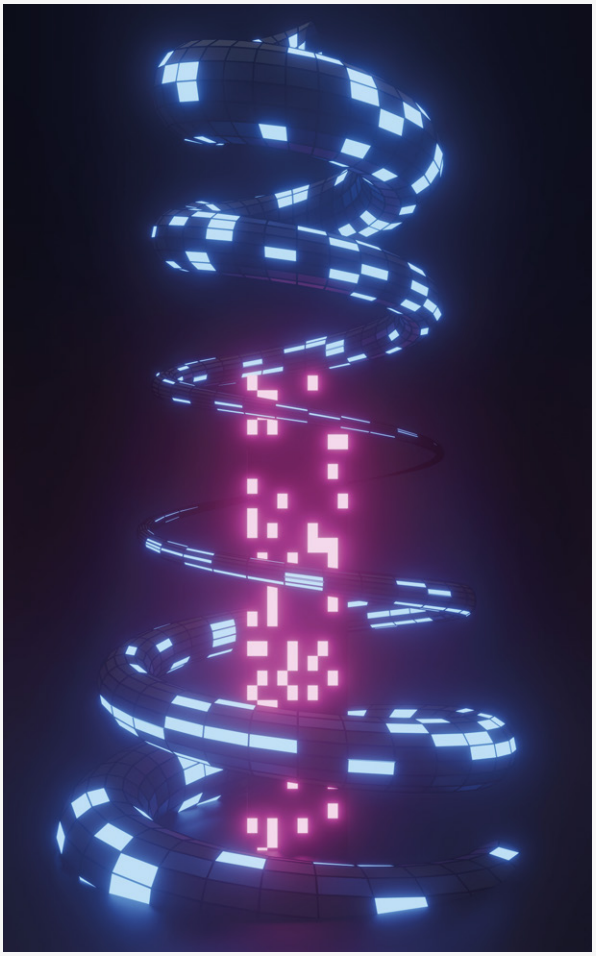
evolve, due to the new systems set forth by DeFi's systems of distribution, into transparent and decentralised bonds, which may be even further developed by integrating other aspects of blockchain.

Amongst the legal challenges introduced by blockchain technology, data privacy and security is a major concern, especially when tackling multi-platform works, which are regulated by strict data protection regulations like the General Data Protection Regulation (GDPR).

Similarly, other fields of law, such as tax, come with their own "battles" to be fought with blockchain technology, such as the question of classification and tax regimes for crypto assets and other digital assets from the video game industry. Likewise, the integration of blockchain and cryptocurrency elements also raises legal questions around the regulations applicable to gambling and, in the future, loot boxes, due to the value they assume under common physical gambling considerations.

Taking the e-sports scene as an example, the tokenisation of teams, events and player contracts are some of the unresolved legal debates, highlighting those related to players' rights, and revenue distribution. Ultimately, the possible emergence of Decentralised Autonomous Organisations (DAOs) in the gaming industry could generate unique legal challenges in areas such as governance, liability and regulation.

In short, the impact of blockchain technology on the video game industry is quickly changing the legal landscape and demands careful and up-to-date legal guidance to tackle it.

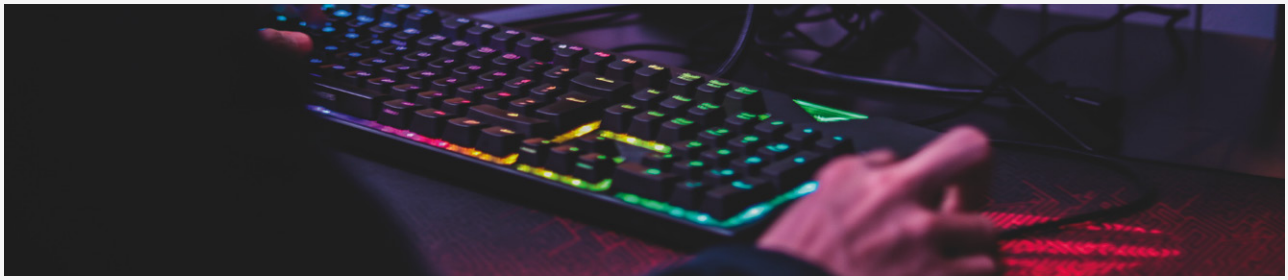


3.2. Metaverse

The metaverse and virtual/augmented reality (VR/AR) technologies have had a major role in the revolution of the video game industry. In fact, the use of these technologies in video games has served as the basis for their subsequent extension to other sectors and applications. This is largely motivated by the improved user experience made possible by virtual or mixed reality.

Nevertheless, from a legal perspective, the massive use of virtual reality, once again, raises certain questions that must be addressed.

First, the protection and licensing of the intellectual property elements of a work,



including characters, objects, environments, and trade marks, which become more complex in these immersive environments, and have fewer controls over infringements, due to a lack of knowledge and vigilance over surging cases, as well as fewer specialised dispute resolution systems in this area.

The collection, storage and use of personal data in the metaverse and VR/AR requires rigorous compliance with data protection regulations. Liability for user-generated content on these platforms also introduces concerns, as content creators and companies must address issues related to offensive, defamatory, or copyright-infringing materials. In addition, beyond the content generated, the interactions between users in these environments can encourage harassment and inappropriate behavior.

Given that each metaverse and VR/AR platform has its own terms and conditions, it is difficult to standardise and homogenise such a young industry standard.

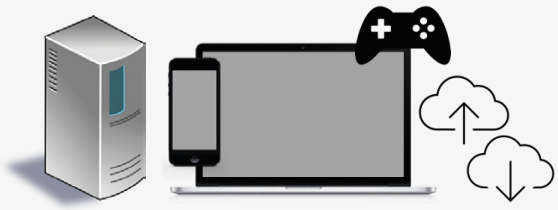
The trade of virtual goods and services within the metaverse and VR/AR platforms also poses challenges in terms of taxation and compliance with trade regulations. These environments have the potential to generate new forms of employment and collaboration, involving legal considerations such as labour rights, contractual arrangements and employer responsibilities.

The integration of advertising and sponsorships in the metaverse and VR/AR space also create legal challenges related to disclosure and user consent amongst other advertising industry-specific regulations. Furthermore, in terms of accessibility and discrimination, it is critical to address the needs of users with disabilities or other protected characteristics in the design and development of these environments.

Finally, the global and interconnected nature of the metaverse and virtual/augmented reality platforms raises issues of jurisdiction and dispute resolution, especially in cases involving parties from different countries or legal systems.

In conclusion, the rise of the metaverse and virtual/augmented reality technologies industry. An approach that will surely require the adaptation and development of regulations adjusted to the reality, commercial exploitation and experiences that the metaverse and virtual/augmented reality bring with them.

3.3. Cloud gaming



Cloud gaming refers to a combination of technologies that allow video games to be distributed and exploited remotely.

When a video game is launched through cloud gaming, it is not being executed on the user's terminal (be it a computer or a console), but on a server owned by the company providing hosting services. Therefore, in reality, the video game is retransmitted through the Internet into the user's terminal, returning the information of their actions on a reciprocal feedback loop between the game and the server.

In this context, *cloud gaming* is changing the way gamers access and enjoy video games, by allowing them to play through streaming services rather than relying on the acquisition of a specific device. This transformation raises several legal challenges within the gaming industry, ranging from intellectual property rights to platform-specific regulations such as the recent European **Digital Markets Act** *(Ley de Mercados Digitales)*.

On this note, the management and exploitation of intellectual property rights for video games becomes more complex in cloud gaming, as developers and publishers must adequately protect and license their works, including characters, objects, environments and trade marks in these new distribution environments.

Privacy and data protection are also key issues in this modality, as *cloud gaming* services may collect, store and use a users' personal data. This requires compliance with data protection regulations, such as the GDPR, and the implementation of appropriate measures to ensure data security.

Responsibility for user-generated content and moderation on cloud gaming platforms also entails an allocation of responsibility, as companies must address issues related to offensive, defamatory or copyright-infringing material.

Alternatively, and given that each *cloud gaming* service may have its own regulations and policies, complications arise in terms of compliance and consistency in the gaming industry. In addition, *cloud gaming* can increase the risk of harassment and inappropriate behaviour, which requires legal measures in terms of accountability and moderation.

However, this does not stop at these scenarios, as, in a similar manner, the integration of advertising and sponsorsh in cloud gaming environments beyond the business opportunities, also raise questions related to disclosure, user consent and jurisdiction-specific advertising industry regulations.

Moreover, from a purely contractual view, the global and interconnected nature of cloud gaming poses risks in terms of jurisdiction and dispute resolution, especially in cases involving parties from different countries or legal systems.

Concisely, the rise of cloud gaming requires an updated and careful legal approach to address these emerging challenges in the gaming industry and to ensure that regulations are complied with and the rights of all parties involved are protected.

4. E-sports and audiovisual regulations

4.1. Audiovisual rights in e-sports

Society's rising interest in video games and video game-related media has given rise to a new sector closely linked to these phenomena: e-sports.

E-sports are born out of the passion of casual gamers who wish to see how the best players in the world take their favourite hobby to a whole other level, thus establishing a new form of entertainment watching said players face off against each other.

The rise of e-sports has been a direct consequence of the socio-cultural, technological, and economic changes society has undergone, leading to not only the involvement of entities in the sector, but also attracting enterprises who want to explore a market with vast amounts of raw potential.

Indeed, under current developments, society demands more attractive and stimulating forms of entertainment to drive consumption. In this regard, e-sports have an enormous advantage, as they offer dynamic content, of moderate length and are easy to understand in most cases. In addition, this content can be viewed for free by viewers via streams on platforms such as YouTube or Twitch, making it even more attractive and accessible to view than other content.

As e-sports audiences grow, audiovisual rights in the field of e-sports are growing in importance too, affecting all sector players from publishers to video streaming platforms, clubs, streamers, and brands interested in making themselves visible in the sector.

4.1.1. Exploitation rights

E-sports have grown in importance and relevance as more people have developed an interest in gaming. While the most common exploitation of a video game is its sale to the end consumer, the broadcasting of competitions essentially requires the granting of the following rights over the video game: a licence for players to use the video game and to compete individually or collectively, and an authorisation to the organiser to make public communication of the video game. If the competition is recorded by the organiser, or any other party interested in the event, an authorisation from the game publisher will also be required.

This will lead to an audiovisual recording which, in principle, the organiser of the competition will own the rights to and will, in turn, exploit by broadcasting it on channels and media which it owns or third-party licensees own.

It is important to point out that to be able to exploit audiovisual recordings with full guarantees, other matters must be considered, such as the transfer of the corresponding image rights, compliance with the regulations on audiovisual communication and information society services, and even the regulations on advertising.

4.1.2. Collective management rights

The exploitation of video games in different environments, such as public events or competitions, entails acts of exploitation that affect collective management rights.

To the extent that e-sports depend substantially on an element protected by intellectual property rights, the exploitations that may be performed around the video game and the event or competition, some players may be bound by the obligations associated with collective management entities of intellectual property rights.

As is well known, collecting societies are non-profit organisations on an associative basis, whose activity consists of the collective management of intellectual property rights of a proprietary nature, acting on behalf of the legitimate right holders (e.g. authors).

Among the possible owners of the remuneration rights derived from the exploitation of the video game through public events or competitions, we must take into account various parties. These include the authors of the video game themselves, for example, for the public communication of their creation through the public projection of the video game in places that require an entrance fee or its availability to the public on the Internet. And also the producers of the phonograms incorporated in the video game, the artists or performers who take part in them and the audiovisual producers, for the public communication of the different works included in the video game itself.

4.2. Main roles around audiovisual rights in e-sports

4.2.1. Publisher

The publisher is the person, who whether naturally or legally, holds the intellectual property rights to the video game and who, in most cases, is also responsible for the design, development, edition and marketing of the game.

On the other hand, the distribution and marketing of copies of the corresponding title, as well as its availability and downloading procedure throughout different channels and platforms, is a task that publishers have traditionally carried out, not only in the video game sector, but also in the music and film sectors.

Therefore, in order to be able to broadcast any video game, the terms of the licence granted by the video game publisher to users (e.g. to broadcast their game on their Twitch channel) must be observed. In the case of larger-scale exploitations (e.g. to organise a high-level competition and stream the event), an agreement in which the multiple rights are negotiated is fundamental.

There are two trends in the field: restrictive and permissive publishers. On the one hand, with a restrictive or controlling profile, Riot Games, publisher of League of Legends, is in charge of designing the competition model based on different tiers. On the other hand, there are permissive publishers such as Valve or Rockstar, which allow the existence and coexistence of multiple promoters and organisers of events related to their video games, favouring greater competition. However, this entails risks for the publisher of associating its title or brand with competitions or events of little value, losing control over the organisation and management of the competition.

4.2.2. Competition promoter and event organiser

The promoter or organiser is the entity in charge of the creation, organisation and administration of the event or competition associated with the video game. In this regard, unless the publisher generally authorises the possibility of carrying them out, the promoters must obtain the publisher's authorisation to develop the competition.

In general, promoters are legal entities with experience in the organisation of events and shows, with sufficient staff and organisational infrastructure to be able to exploit audiovisual content, manage advertising, brands and the organisation of clubs, players and competitions in general. However, it should be emphasised once again that the figure of the promoter is not always independent of the publisher, who may perform this function themselves or simply subcontract all or part of the tasks to be carried out.

Nevertheless, promoters must assume a wide range of responsibilities, from the organisation and management of the event itself, to obtaining, managing and fulfilling the obligations imposed by the publisher.

These include, but are not limited to: obtaining image rights, determining the rules of the competition, taking measures to protect the image of the event, and taking the necessary measures to ensure that the video game is not used by the publisher.

Considering that the video game is owned by the publisher and that the publisher has control over the exploitations realised by the video game, it would not be strange that in the future certain obligations or commitments could be demanded from them in order to avoid conflicts of competition such as, for example, vertical mergers.

4.2.3. Audiovisual media service providers - television channels, video-sharing platforms, and streaming channels

The broadcasting of e-sports is mainly done via the internet through channels hosted on video-sharing platforms (e.g. YouTube or Twitch). This does not exclude the fact that more and more traditional media (e.g. television) are interested in broadcasting e-sports.

In this sense, broadcasts of e-sports events or competitions would be considered as a televised event or "show", as they fully fit the definition established in Article 2.18 of the recent Law 13/2022, of 7 July, General Law on Audiovisual Communication ("LGCA"):

"Television programme: A set of moving images, with or without sound, constituting a unitary element, irrespective of its duration, within the programming schedule of a linear television audiovisual media service or a catalogue of programmes produced by an audiovisual media service provider, including feature films, short videos, sports events, series, sitcoms, documentaries, children's programmes and original plays, as well as live broadcasts of events, cultural or otherwise".

It can be derived from this definition that broadcasts of e-sports games, as television programmes, could be found within a linear television communication service (e.g. a television channel) or a catalogue of programmes (e.g. YouTube).

Concerning the legal obligations regarding audiovisual communication to which video-sharing platforms are subject, it should be noted that these are not the same as those of a content creator or a traditional television channel, due, among other reasons, to the fact that they do not have editorial control over the content hosted on their platform.

Platforms are required to comply with the basic principles imposed by the LGCA, like registration into the Ministry of Economic Affairs and Digital Transformation or the protection of minors and the public from certain commercial communications and content by including useful mechanisms for this purpose.

Streamers or influencers play a fundamental role in the broadcasting of e-sports, as they are one of the main communication channels for these events and competitions. For this reason, they must comply with the obligation to register in the State Register of Audiovisual Communication Service Providers. In addition, they must comply with the basic principles of the LGCA, those relating to the protection of content harmful to the physical, mental or moral development of minors, as well as the conditions under which audiovisual commercial communications may be made. The regulation does not yet impose on streamers or influencers all the obligations required of traditional media service providers, due to the still incipient development of these services.

5. Consumers and users

5.1. The warranty and the right of withdrawal for video games

As with any product intended for final users, the marketing of video games must comply with consumer and user legislation. With technical and computer advances, much has changed in the way video games are marketed. Gone are the video games of the 1980s and 1990s which were marketed on media such as floppy disks (5 ¼ or 3 ½), cassettes or cartridges. In fact, these media evolved into higher-capacity and higher-speed media such as CDs and DVDs. All of them, despite technical differences, have a common denominator - they are physical media. Therefore, for the purposes of consumer and user rights, a video game on physical media was little different from an item of clothing or a household appliance.

The evolution of technology and the Internet, as well as the increase in download speed and cloud storage, have meant that it is no longer necessary to have a physical medium to buy a video game. Therefore, we can buy or use video games by downloading them to a device directly from an app store or even play them, without having to store them on the device, as we have seen previously in this paper. This new way in which consumers and users enjoy digital services and content has meant that consumer and user legislation has had to adapt and evolve accordingly.

Having made the distinction between purchasing video games in physical format and in digital format, we must determine whether the warranty for one or the other product differs or is the same depending on the format. As of 1 January 2022, Royal Legislative Decree 1/2007, of 16 November, which approves the revised text of the General Law for the Defence of Consumers and Users ("TRLCYU") and other complementary laws establishes that:

"In the case of a contract for the sale of goods or for the supply of digital content or services supplied in a single act or in a series of individual acts, the trader shall be liable for any lack of conformity which exists at the time of delivery or supply and which becomes apparent within three years of delivery in the case of goods or two years in the case of digital content or services".

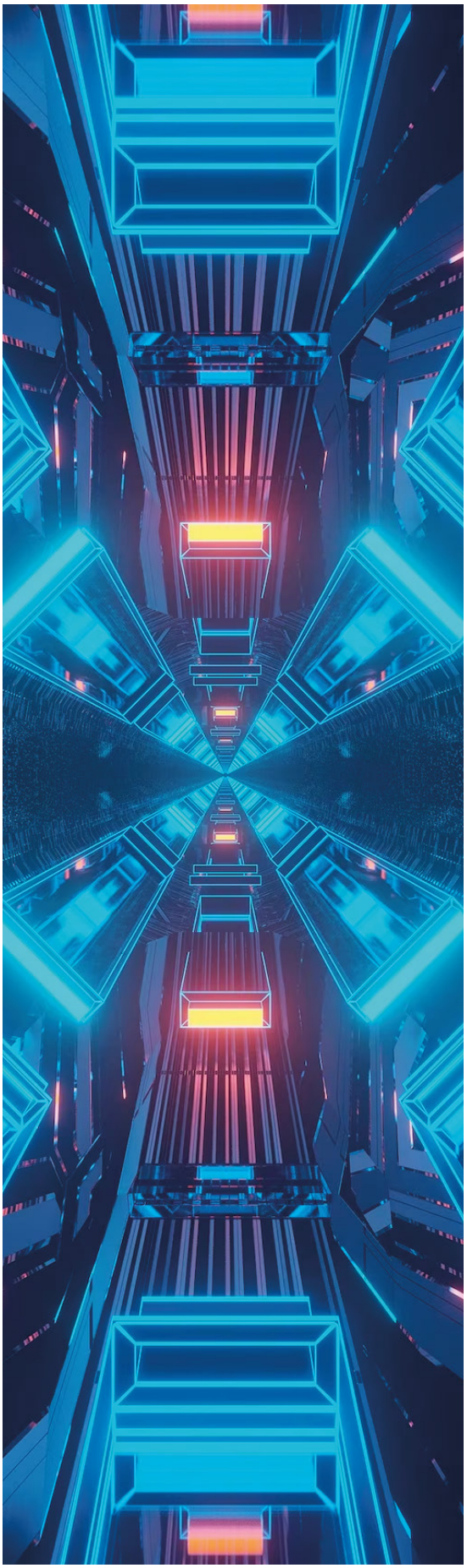
In this Article, three elements currently associated with video games can be seen, defined in the standard as follows:

"'Goods with digital elements' means any tangible movable item incorporating or interconnected with digital content or services in such a way that the absence of such digital content or services would prevent the goods from performing their functions."

"'Digital content' means data produced and provided in digital format."

"'Digital service' means a service that allows the consumer or user to create, process, store or consult data in digital format, or a service that allows sharing of, or otherwise interacting with, data in digital format uploaded or created by the consumer or other users of that service."

Therefore, the warranty of a video game purchased in physical format has a three-year warranty and the warranty of a video game purchased on digital platforms would have a two-year warranty.



Regarding the right of withdrawal for the purchase of a video game in physical format in a shop in person and the purchase of a video game in an online shop, there are also differences.

According to Article 68.1 of the TRLCYU, the right of withdrawal is defined as "the right of the consumer and user to cancel the contract concluded, notifying the other contracting party within the period established for the exercise of this right, without the need to justify their decision and without penalty of any kind". In other words, return the purchased product without the need to allege any cause or reason whatsoever.

Accordingly, when a consumer buys a physical video game in a shop in person, the shop is not obliged to offer the right to return the product. However, if as a commercial policy it decides to grant the consumer the right of return in the sale and purchase of video games, it must comply with the minimum standards established by law:

- The minimum withdrawal period of 14 calendar days to exercise the right of withdrawal.
- No charge or penalty for the consumer who exercises it.

Furthermore, the retailer's return policy may include other conditions for exercising the right to cancel or return the product. In this type of sales of physical video games, it is usually essential that the video game has not been unsealed.

On the other hand, with regard to the right of withdrawal in the purchase of a video game in online shops, the regulation established in the TRLCYU applies with regard to contracts concluded at a distance (Articles 92 and following). Distance contracts are those that are concluded "without the simultaneous physical presence of the trader and the consumer and user, and in which only one or more distance communication techniques have been used up to the time of the conclusion of the contract and during the conclusion of the contract itself".

In all distance contracts, the consumer and user has the right to withdraw from the contract during the period of 14 calendar days. Notwithstanding the above, Article 103 of the TRLCYU establishes certain exceptions to the right of withdrawal in distance contracts. Thus, Article 103. m) establishes that the right of withdrawal shall not apply to contracts relating to:

"The supply of digital content that is not provided on a tangible medium when performance has begun and, if the contract imposes an obligation on the consumer or user to pay, when the following conditions are met:

1. The consumer or user has given his prior consent to start performance during the period of the right of withdrawal.

2. The consumer or user has expressed his or her knowledge that he or she consequently loses his or her right of withdrawal; and

3. The employer has provided a confirmation in accordance with Article 98(7) or Article 99(2).”

Consequently, the general rule for the purchase of video games in online shops is that there is no right of withdrawal, provided that the online shop complies with the requirements established by law. However, many digital video game sales platforms, in their commercial sales policy, allow the right of withdrawal under certain conditions. For example, Steam states that:

“DLC purchased from the Steam shop is refundable for fourteen days after purchase, if the title to which it belongs has been played less than two hours since the DLC was purchased, and provided that the DLC has not been consumed, modified or transferred”.

5.2. The PEGI classification system

The Interactive Software Federation of Europe (ISFE) created the PEGI (Pan European Game Information) system in 2003 with the aim of self-regulating and standardising the age rating of video games across Europe.

The purpose of PEGI is to provide consumers with sufficient, user-friendly and effective information about the content of the video game and the recommended age of the video game. Like any self-regulatory model, it is based on a code of conduct that binds publishers adhering to the PEGI system. This code of conduct regulates age labelling, promotion and marketing of video games, and establishes the video game industry's commitment to providing information to the public in a responsible way.

The PEGI system is used in most countries in Europe, including Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Greece, Hungary, Iceland, Ireland, Israel, Italy, Kosovo, Latvia, Lithuania, Luxembourg, Malta, Moldova, Montenegro, the Netherlands, Norway, Slovakia, Slovenia, Poland, Portugal, Romania, Serbia, Spain, Sweden, Switzerland, Ukraine and the United Kingdom.

There are two video game rating guidelines, depending on whether the release is traditional or digital:

For games that are released as physical products and sold through retailers, a pre-release verification method is used. Publishers must complete a content evaluation form for each version of their product prior to release. Based on the publisher's responses, the PEGI online rating system automatically determines a provisional rating with content descriptors. PEGI administrators then review the provisional age rating, and depending on the review, approve or modify the provisional rating.

For digital products that are released daily in digital shops, post-publication verification is used. In this case, the IARC classification system, a coalition of classification authorities from Europe, Australia, Brazil, North America and South Korea, is used. Publishers complete an IARC questionnaire to classify their product, and immediately receive an age-rated licence. IARC committee administrators perform a strict cross-check of all classifications to ensure that age classifications are applied correctly. In case of error, the incorrect age classification can be changed very quickly.

The PEGI system consists of two types of descriptors in the form of icons. One descriptor informs the consumer about the recommended age of the video game and another descriptor informs about the content of the video game. The design of the age information logos is based on the traffic light colour code (green, yellow and red). The age icons are accompanied by icons explaining the content of the game with pictograms.

The PEGI system has, in addition, a PEGI Online label on games that offer online play functionality. As such, only operators of online content that meet the requirements set out in the POSC (PEGI Online Safety Code) may display the label.

The PEGI system has also created the PEGI OK label for "casual games", those low-cost games that can be downloaded from the Internet for phones, computers and similar devices. The PEGI OK label informs which games are suitable for all audiences and whether the web platforms selling them offer the required safety guarantees.

The PEGI iconography is as below:

PEGI 3

It is considered suitable for all age groups. The game should not contain sounds or images that may frighten young children. No foul language should be heard.

PEGI 7

Contains scenes or sounds that may frighten younger children. May contain very mild forms of violence (implied, non-detailed or non-realistic violence).

PEGI 12

For video games that exhibit violence of a slightly more graphic nature towards fantasy characters or unrealistic violence towards human characters. There may be sexual innuendo or posturing, while any foul language in this category should be mild.

PEGI 16

For video games whose violence (or sexual activity) reaches a level similar to what would be expected in real life. The use of bad language may be more extreme, while the use of tobacco, alcohol or illegal drugs may also be involved.

PEGI 18

The adult rating applies when the violence reaches such a level that it becomes a depiction of brutal violence, murder for no apparent reason or violence towards defenceless characters. The video game contains some advocacy of drug use and explicit sexual activity.

The game contains depictions of violence.

The game contains foul language.

The game contains images and/or sound that produce fear.

The game contains elements that promote or teach gambling.

The game contains sexual positions or innuendo, erotic nudity or sexual intercourse without visible genitalia or explicit sexual activity in the game. Depictions of nudity in non-sexual content would not be included.

The game contains references to or use of drugs, alcohol or tobacco.

The game contains depictions of ethnic, religious, nationalistic or other stereotypes that may encourage hatred.

In the game, players can use real money to purchase digital items such as additional content, upgrades, virtual currencies and more.

PEGI LABEL OK.

5.3 New forms of video game monetisation and their effect on consumers.

As the video game industry and society have evolved, innovative methods of monetising video games have emerged. However, many of these new monetisation strategies have created controversy among gamers and have attracted the attention of governments in different countries, who have begun to regulate them due to their potential risk to consumers.

5.3.1. Loot boxes

Loot boxes are purchasable components in certain video games that contain random items. These can range from mere aesthetic additions to significant upgrades that enrich the player's experience. The controversy lies in the fact that players do not know the exact contents of the box before acquiring it, which has led some to consider it equivalent to gambling. Additionally, there is concern in some sectors due to the possible link between loot boxes and gambling addiction and the consequent excessive expenditure of money.

Countries like China and Belgium have started to pay attention to loot boxes' apparent connection with betting and gambling. In 2017 China forced companies to show the actual probability of getting each random reward and in 2018 Belgium banned loot boxes involving micro transactions with real money.

In Spain, in July 2022, the first steps were taken to regulate the loot boxes by revealing in a public hearing "Draft Bill regulating the random reward mechanisms associated with interactive leisure software products". This draft bill regulates the prohibition of access to loot boxes for minors, restricts their commercial communications, establishes obligations of information on their conditions and probabilities of obtaining virtual objects and obliges the publisher to make available to the consumer self-exclusion mechanisms. For the time being, this text has not been validated by the Council of Ministers and, consequently, has not begun its parliamentary processing. However, law 23/2022, of November 2, amending law 13/2011, of May 27, on the regulation of gambling, added an additional provision to the law on the regulation of gambling that established the "guidelines for the safer use of non-fungible digital assets, loot boxes or mechanics of monetisation of user participation in video games". These guidelines, should include at a minimum:

– The regime of commercial communications of these products.

– The necessary consumer information regarding the risks of its use and abuse.

– Safety measures necessary for proper storage.

There is still a long way to go regarding the regulation of loot boxes, which must strike a balance between the business interests of the video game industry and the protection of consumers, with a heavy emphasis towards the latter.

5.3.2. Game passes

Game passes, also known as season passes, represent an increasingly common method of offering additional content in video games. Instead of purchasing each content pack individually, players can opt to purchase a season pass, which gives them access to all extra content released during a specific period. These passes are generally more affordable than purchasing each content pack individually, making them an attractive option for many gamers.

In Spain, several consumer associations have raised concerns about the ambiguity that sometimes surrounds game passes. Unlike content packs sold individually, season passes do not always clearly specify what content will be included. This can cause players to feel disappointed or even deflated if the content ultimately offered does not meet their expectations. Despite these concerns, game passes continue to be a popular option for many players.

In general, game passes offer gamers an affordable way to access additional content in the games they love. However, it is important for gamers to be informed about what they are buying before purchasing a season pass and for companies to be clear and transparent about what they are offering in these packages. As the regulation of gaming and integrated transactions continues to evolve around the world, we may see changes in how game passes are regulated in the future.

5.3.3. F2P, P2W and P2E video games

One of the most obvious ways in which video games are evolving in terms of monetisation is the introduction of F2P, P2W and P2E business models

Free-to-play (F2P)

Free-to-play or F2P is a video game business model that has become popular in recent years. In this model, games are free to download and play, but developers earn money through in-game transactions. These transactions can include purchases of virtual items, such as outfits, weapons and in-game currency. The goal is to provide a free but engaging game that encourages users to make in-game transactions.

The F2P model has been popularised by games for mobile devices, such as Candy Crush and Clash of Clans. Although these games are free to download, players have the option to purchase in-game items to enhance their experience. These purchases are called microtransactions and typically range from a few cents to a few euros.

Video game developers must provide clear, accurate and truthful information about the costs and terms and conditions of the services they offer in F2P video games.

Pay-to-win (P2W)

Pay-to-win or P2W is a video game business model that has been the subject of much criticism. In this model, players can purchase in-game items that give them significant advantages over other players. For example, in a strategy game, players can buy resources that allow them to build faster and therefore advance more quickly in the game. This gives an advantage to players who spend money in the game compared to those who do not.

The P2W model has been popular in strategy games for mobile devices and also in paid online games. P2W games have been criticised for fostering inequality and exclusion in the gaming community.

Play-to-earn (P2E)

Play-to-earn video games, or P2E for short, are an upcoming trend in the video game industry that combine gameplay with the possibility of earning real money through various mechanics and systems integrated into the game.

In these games, players can perform different in-game tasks and activities to earn monetary rewards, which can be redeemed for real money or other cryptocurrencies. These rewards can be in the form of tokens, virtual coins or digital assets, which have a value in the market and can be exchanged for other cryptocurrencies or cash.

The popularity of play-to-earn games is due in part to the growing adoption of blockchain technology,

which enables the creation of unique and secure tokens and digital assets. Players can obtain these digital assets through various game mechanics, such as completing quests, winning battles, or harvesting in-game resources.

An example of a play-to-earn game is Axie Infinity, a blockchain-based game that allows players to breed and collect digital creatures called Axies. Players can use these Axies to fight against other players and earn rewards in the form of in-game tokens, which can be redeemed for cryptocurrencies such as Ethereum. The game has been especially popular in countries like the Philippines, where some players have been able to earn enough money to cover their daily expenses.

However, play-to-earn games have also generated controversy due to the speculative nature of their rewards and the potential for them to become speculative bubbles.

6. Tax incentives

Investment in the creation of video games, by itself, does not have specific tax benefits to encourage the sector.

There have been numerous occasions in which the sector has demanded legislative changes with tax benefits to encourage the national production of video games. One of the main demands is the extension of the tax incentive enjoyed by the audiovisual sector to the world of video games. To date, these requests have not been answered and there are no tax policies that make investment in this area more attractive.

Currently, the only tax incentive that can be applied to the video game sector is the one referred to deductions in technological innovations, included in the Corporate Income Tax Law ("LIS") to encourage the performance of certain activities, as expressed in Article 35 of the same, when it considers the development of video games as a technological innovation:

"Technological innovation will be considered to be the activity whose result is a technological advance in obtaining new products or production processes or substantial improvements to those already existing. Products or processes whose characteristics or applications, from a technological point of view, differ substantially from those existing previously, will be considered new."

"This activity will include the materialisation of the new products or processes in a plan, scheme or design, the creation of a first non-marketable prototype, initial demonstration projects or pilot projects, including those related to animation and video games and textile, footwear, tanning, leather goods, toy, furniture and wood samples, provided that they cannot be converted or used for industrial applications or for their commercial exploitation."

Considering the above definition and understanding a video game creation project as a set of tasks that give rise to an application or software with which one or more users interact through hardware systems simulating a recreational, immersive, informative, or educational experience, companies should be able to benefit from the application of these deductions in a generalised manner.

This incentive takes the form of a deduction in the corporate income tax of the company creating the video game. In this regard, there are formulas, through Economic Interest Groupings, to sell these deductions to third parties outside the sector, in exchange for an economic contribution to produce the video game.

However, in practice, the application of this deduction is not so simple, since we must identify which costs are eligible and which constitute the basis for the deduction.

If we go to Article 35.2 LIS itself, it establishes that the costs that are eligible to determine the basis for the deduction.

Therefore, there will be many costs in the creation of a video game that will not be incentivised, such as marketing, promotion, distribution, market analysis, etc. costs.

Further, for the application of technological innovation deductions, the most important thing is the determination of the eligible costs. In many cases, this cost determination work is carried out by IT auditing companies.

As mentioned above, technological innovation is considered to be the technological advance in obtaining new products, production processes or substantial improvements to existing ones. These costs must be directly related to these activities, must be effectively applied to the performance of these activities and must be specifically identified by project.

On the contrary, the below are not considered technological innovation:'

- Activities that do not involve significant scientific or technological innovation.
- Activities of industrial production and provision of services, or distribution of goods and services.

The technological innovation expenses that form the basis for the deduction must correspond to activities performed in Spain or in any Member State of the European Union or the European Economic Area.

Equally, the amounts paid for the performance of such activities in Spain or in any Member State of the European Union or the European Economic Area, on behalf of the taxpayer, individually or in collaboration with other entities, will be considered as technological innovation expenses.

The basis of the deduction will be reduced by the amount of the subsidies received for the promotion of such activities and attributable as income in the tax period. The amount of the deduction is 12% of the expenses incurred in the tax period for this concept.

In addition, optionally, the monetisation of the tax incentive can be requested, if a series of requirements are met (39.2 LIS), and a discount of 20% of the deduction generated is applied.

The amount of the deduction applied or paid, in accordance with the provisions of this section, in the case of technological innovation activities, may not exceed a total of 1,000,000 euros per year.