



interactive games & entertainment association

**Submission to DFAT on the proposed  
Free Trade Agreement between  
Australia and the European Union**

**February 2019**

**Interactive Games & Entertainment Association**

## Overview

The Interactive Games & Entertainment Association (IGEA) is the peak industry association representing the business and public policy interests of Australian and New Zealand companies in the interactive games industry. Our members publish, market, develop and distribute interactive games and entertainment content and related hardware.

IGEA is pleased to provide a submission to the Department of Foreign Affairs and Trade (DFAT) on the Free Trade Agreement currently being negotiated between Australia and the European Union (A-EU FTA).

## The Australian video games industry

The interactive games sector is one of the fastest growing technology and entertainment industries in the world, eclipsing both the filmed entertainment industry and the music industry. The global games market was estimated to be worth almost \$200 billion in 2018<sup>1</sup> and \$3 billion in Australia alone.<sup>2</sup> While video games continue to be popular as entertainment for people of all ages across the world, games are also finding ‘serious’ applications, including in the education, health care, defence, business, research and community sectors.

Games are an ideal export industry for Australia given that they are generally digital and therefore exported instantaneously without transportation costs. Many Australian games are built on original intellectual property, meaning that export profits flow through to home-grown businesses who re-invest them into more products. In fact, DFAT has recognised games as both an economic and cultural export priority, with the 2017 Foreign Policy White Paper stating the “*need to invest in exporting Australia’s software development and interactive content expertise to take advantage of growth in digital games development*”.

However, the Australian game development industry has yet to fulfil its potential. A survey that IGEA conducted last year found that Australian game developers generated \$118.5 million in revenue in the preceding year and employed just 928 full-time employees.<sup>3</sup> Unlike other parts of the screen industry, game developers do not currently receive any specific federal funding – incentives that would fuel the industry’s growth and develop the next

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<sup>1</sup> <https://www.gamesindustry.biz/articles/2018-12-18-global-games-market-value-rose-to-usd134-9bn-in-2018>

<sup>2</sup> <https://igea.net/2018/02/australian-consumer-spend-video-games-cracks-3-billion>

<sup>3</sup> <https://igea.net/2018/01/australian-game-developers-march-generating-118-5m-spitelimited-recognition-support>

generation of high-skilled digital workers. In December 2018, IGEA released a policy paper [‘Building a Thriving Interactive Games Development Industry in Australia’](#) that outlines why a game industry is so vital to Australia and sets out the concrete steps for how the Australian Government can better support it.

IGE A supports the liberalisation of trade and the negotiation of an A-EU FTA that encourages digital trade in particular. Europe is an vital market for Australian game developers, not only as a key consumer market for Australian-made games, but also as a business environment to collaborate and partner with. According to a survey of Australian game developers in 2018, Europe was the second most important overseas market for revenue behind North America and ahead of Asia. The rest of this paper provides details of our specific views.

## Positions and recommendations on the A-EU FTA

### Reducing barriers to digital trade

IGE A supports the negotiation of an FTA that recognises the importance of free and open trade of digital goods and services between Australia and the EU. As a priority, the FTA should ensure there are no tariffs or customs duties on digital goods like video games and we support text that has been included in previous FTAs adopted by Australia and the EU that enshrine this goal as well as the non-discriminatory treatment of digital products between treaty parties.

The A-EU FTA should recognise that both Australia and the EU have sufficiently robust and broadly similar domestic controls in place to protect data security, privacy, consumer rights and cyber security. Even if the laws are not identical, a good compromise is one that strikes an appropriate balance between open digital trade and safeguards. The FTA should not impose data localisation requirements nor necessitate changes to existing laws. For example, we would not support any provisions in the FTA that requires Australian privacy laws to move towards those set out under the EU’s General Data Protection Regulations (GDPR). Any reforms of Australian privacy laws should be driven by the domestic policy agenda and subject to comprehensive consultation.

### Reducing barriers to investment and travel

IGEA supports the negotiation of an FTA that encourages both inbound and outbound investment between Australia and the EU. It should provide a framework that encourages relationships and cooperation between companies based in both regions. Foreign investment has always been vital to the Australian economy and the video games industry is no different. Australian game developers are attractive partners to European studios for investments, collaborative projects, joint ventures and “work for hire” arrangements, given our talent and creativity and also Australia’s advantageous time zone. An A-EU FTA should therefore liberalise inbound investment rules as much as possible.

An A-EU FTA should also provide for the free movement of video game professionals between both regions, which will create a “win-win” scenario. Given the limited size of the Australian video games industry, it is vital to not only the success of Australian-made games but also the general health of the industry as a whole that local businesses have the flexibility to bring in talent from Europe and elsewhere where needed. Our members tell us that it is difficult to find experienced game development workers, particularly experienced managers, who are then able to share their skills with the local workforce. Similarly, it is vital that young Australian game development professionals have every opportunity to travel abroad to enhance their careers and, just as importantly, learn new skills that they can bring back home with them. The A-EU FTA should provide a way to strengthen these opportunities.

The A-EU FTA should also enhance the ability of Australian and EU firms to sponsor professionals in each others’ jurisdictions for work and business visas, including for Australians employed by European development companies as well as Australians engaged on contractual arrangements. We note anecdotal advice that some individual EU jurisdictions impose high and impractical restrictions that hinder collaboration between businesses. The FTA should also liberalise arrangements for temporary work and working holiday visas between the regions, noting that they can help to facilitate early and vital training opportunities for young game developers and broaden their horizons.

### Copyright

The A-EU FTA should recognise the importance of strong copyright protections for content creators, while taking a flexible approach to copyright and not mandating any changes to existing Australian laws. While we would prefer flexible and technology-neutral language over prescriptive language in the FTA, we also urge the FTA to be clear in its language to ensure that video games are accommodated. Areas that may need particular attention include

the definition of “audio-visual” and provisions that refer to specific types of content (eg. film and music are kinds of content discussed in the EU’s textual proposal).

While we note that negotiations are unlikely to lead to any reduction in current copyright terms in Australia, we nevertheless take this opportunity to reiterate the importance of adequate protections. Given that the economic value of video games can extend for decades after their release, particularly given the demonstrable success of remastered games and the enduring appetite for retro and “indie” games, lengthy terms of copyright protection are crucial to games.

We note that the EU’s textual proposal for the A-EU FTA includes an article that provides that each party shall provide for a regime of national or regional exhaustion of intellectual property rights. We know that Australia has traditionally not supported restrictions on parallel importation except in certain areas like books. However, we note that some Australian game distributors who have invested significantly into acquiring the rights to games and marketing them have suffered from parallel importation. For this reason, IGEA does not oppose the EU’s textual proposal on exhaustion of rights.

#### A flexible and living document

Finally, an A-EU FTA should be principles-based, rather than prescriptive, particularly in the chapters on intellectual property and digital trade that will impact on rapidly-changing technologies and industries. The FTA should also provide a framework for ongoing cooperation between Australia and EU, such as on regulatory issues and commitments to reducing red tape that may inhibit Australian and European companies from doing businesses with each other.

We thank you again for the opportunity to provide a submission on this important negotiation process and we look forward to further consultations and progress updates.