IRISH JOURNAL OF ARTS MANAGEMENT & CULTURAL POLICY

ijamcp

ISSN: 2009-6208 (Online). Journal homepage: https://culturalpolicy.ie/

The new tax credit regime for digital games production in Ireland

Maria O'Brien

To cite this article:

O'Brien, Maria (2024). The new tax credit regime for digital games production in Ireland, *Irish Journal of Arts Management and Cultural Policy*, 10 (2), 100-113

Published online:

July 2024

Corresponding author:

Maria O'Brien	University of Galway	maria.m.obrien@universityofgalway.ie	https://orcid.org/0000-0001-7138-445X

Abstract

Tax credit and incentive regimes for creative production are increasingly a feature of the production landscape in many jurisdictions. Historically, Ireland has provided significant opportunities for both international and national audiovisual production, including through the provision of a generous tax credit regime of up to 32% of eligible expenditure for film and TV production. However, the digital games/videogames sector has not been considered as part of the audiovisual industries but as forming part of the Information and Communications Technology (ICT) sector. Until now. The recent introduction of a digital games tax credit in Ireland has, in part at least, framed the digital games sector as part of the cultural and creative industries, given the need for European Commission approval for the tax credit as a cultural state aid under EU Treaty provisions. This article addresses the impact of the contested framing of the digital games sector as simultaneously part of the industrial and cultural industries. It does so through interrogation of framing of games as both industrial and cultural in both EU state aid and Irish taxation policy.

Keywords: tax credits; digital games; cultural and creative industries; Irish games industry; policy research

The new tax credit regime for digital games production in Ireland

Introduction: are games cultural and who cares?

Tax measures to support audiovisual production are increasingly common across different jurisdictions, with cultural consultants Olsberg SPI's recent review identifying over one hundred such measures (Olsberg SPI, 2023). While such policies are ubiquitous within the film industry, there are few tax credit/incentive regimes to support digital games. In part because of the centrality of the tax credit regime to film production in Ireland, the Irish government has recently introduced a new policy to support the digital games sector with effect from November 2022, loosely modelled on the film tax credit, Section 481. The digital games policy is shaped both by the requirements of the European Commission's cultural state aid regulations and Ireland's outward looking foreign direct investment (FDI) economic model. It is argued here that these influences are not oppositional but deeply intertwined, with both Ireland and the European Union's (EU) approaches shaped by an intersection of economic and cultural rationales. The integration of both economic and cultural drivers in Ireland's new tax credit for games offers a useful lens with which to interrogate different policy approaches to the film and digital games sectors. This article unravels policies introduced to support the digital games sector in Ireland. It does so in an attempt to understand why it is significant to think about how games have been categorised thus far as (relatively) less cultural than film and how the shift in perspective towards games as a cultural form

ISSN: 2009-6208. https://culturalpolicy.ie/

is driven by the wider regulatory requirements of the new digital games tax credit (introduced in 2022 as Section 481A of the Taxes Consolidation Act 1997, as amended). This article interrogates how the introduction of a cultural tax credit is framed as an industrial policy that supports a particular manifestation of creative industries, one that supports the development of commodifiable content and the development of sustainable business in an approach that financialises the culture and creative industries (see also Brodie; Murphy in this issue). This article considers what is at stake when a form of cultural policy for film is adapted for a distinctly related but different form, namely digital games. It interrogates this policy from the perspective of state/industry relations, the rationalisations for cultural state aids within an EU perspective, and the parameters of tax and cultural policy at state and global level.

This article interrogates how digital games are positioned within cultural policy discourses in Ireland. It looks at how the framing of digital games within a wider conceptualisation of culture serves to expand our understanding both of cultural policy studies as an academic discipline and cultural policy as an area of government action. This analysis explicitly interrogates Irish policy within the framework of EU state aid legislation, foregrounding an analysis of the new tax credit for games. It looks at what the credit aims to achieve, what key policy norms are identifiable in this new regime and the wider policy context for extending cultural tax credits to the digital games sector.

The new tax credit regime, Section 481A, operates as an incentive for digital games developers to produce digital games. The relief operates as a corporation tax credit for digital game development companies, worth 32% of eligible expenditure, or 80% of qualifying expenditure or €25M per game. The credit is not available on all expenditure, but only that which is directly incurred on the design, production and testing of an eligible game. There are minimum qualifying expenditure requirements of €100,000. Because Ireland is a member of the EU, such credits operate as a form of preferential state aid and thus require approval from the European Commission (Commission). Section 481A has been approved by the Commission as a cultural state aid under decision SA.102047 dated 27 September 2022 (Commission, 2022). Therefore, eligible games must qualify for a cultural certification as a qualifying digital game under the requirements of the legislation. The terms under which a tax credit such as Section 481A operates are subject to complex negotiations on the part of stakeholders and other interested parties. Under EU law, State aid is defined as a benefit conferred on a selective basis to undertakings by national public authorities. Such aid is generally prohibited as granting benefits to selected companies would distort competition and violate the principle of equal treatment. The games sector in Ireland has broadly welcomed the tax credit as a way of supporting a fledgling industry (Keane, 2023; O'Brien, 2022). However, the particular conditions of the credit as currently constructed mean that the tax credit supports only a particular manifestation of the digital games industry.

The ethics of tax credit regimes

It is important to outline the importance of legislative approaches in shaping the cultural fabric of society, including forms of creative expression. Section 481A is part of a complex global financial

ISSN: 2009-6208. https://culturalpolicy.ie/

and geopolitical ecosystem. The policy rationalisations for introducing tax incentives are shaped by legal and policy norms. As van Bredrode (2020, p. 2) holds:

> laws to a great extent are the reflection of the moral standards of society … the idea of taxes gives rise to moral questions regarding the nature of government; the relation between the government (the state) and its subject or citizens.

The tax laws that shape culture that represents and constitutes our society, and thus the moral justifications that steer behaviour, are relevant. Tax policies like Section 481A are not made in a vacuum but are influenced by extant policy norms.

Tax credit policies operate to prefer production within particular regions or nation states and are thus geographically specific. However, such policies operate in a global context. Firstly, the Commission regulates state aids within the EU and thus takes an EU/external relations approach. Secondly, the Irish games sector—like any other audiovisual production sector, is part of a global production infrastructure. Overall, the literature on cultural tax credits tends to criticise such measures as an inefficient mechanism for distribution of benefits (see also Murphy; Brodie in this issue). Curtin and Sanson (2016) argue that tax credits incentivise incoming productions which contributes to a global race to the bottom for film labour services remuneration. Primorac (2020, p. 297) points out there is 'a complex picture of the transnational power relations between governments, (multinational) media companies and the global network of precarious workers' with global competition for incoming productions. Bentley (2020, p. 287) holds:

> while political ire, economic power, or incentives may force or tempt some taxpayers to operate in certain jurisdictions in compliance with the domestic rules, it will often be at the expense of other jurisdictions.

Hemels & Goto (2017) conclude that competition between countries for audiovisual industry favour is fierce and many countries increase their incentives as the competition intensifies. However, simultaneously the cultural component of such incentive is becoming 'thinner' (Hemis & Goto, 2017, p. 171) which raises questions as to whether the tax incentives can attract sustainable activities or whether they are part of a moving subsidy race. The question of sustainable activity is a key aspect to moving away from a reductive culture good/economy bad approach. Hemels and Goto also address the economic and cultural aspects of tax incentive regimes, flagging in particular how competition between EU member states might result in what they term a 'beggar thy neighbour' effect 'leaving all countries worse off in the end' (ibid, p. 158). We can frame tax credits as a catalyst in a subsidy race to the bottom, where the only losers are the taxpayers who need to make up the shortfall in incoming taxes. Relying primarily upon tax credit systems as a form of support for cultural activities leads to competition between jurisdictions and inefficiencies in allocation of scarce resources.

Games as a cultural form

In comparison to film tax credits, tax credit regimes for digital games are relatively rare within the EU. This may be because of the lingering suspicion around the digital games format as a form of culture worthy of support from the state. Historically, definitions of culture have evolved over time,

ISSN: 2009-6208. https://culturalpolicy.ie/

with variations in nomenclature including a shift from culture to cultural industries (Horkheimer and Adorno, 1944). to cultural and creative industries (Hesmondhalgh, 2018) and so on. The ideological positions underpinning the use of such terminology within the policy sector illustrates changes in framing of the significance of art and cultural forms (Garnham, 2005). This section extends the focus on definitional aspects in the previous section: focusing here on the broad concept of cultural and creative industries. The academic literature on the development of the concept of cultural and creative industries within policy discourse identifies some key tropes in how the communicative and cultural forms with which society engages are identified and valued (Banks, 2015; Hesmondhalgh, 2018; O'Connor, 2016). From a policy perspective, the continued instrumentalism of culture through a knowing expansion of the format of tax credit regimes for creative industries is necessarily brought about to align with the requirements of EU state aid policy which requires such aids to achieve cultural goals. The insistence of policymakers on using the creation of intellectual property (IP) as a way of defining creativity shows how particular forms of creation and culture are considered worthy of state support as they can be evaluated primarily in monetary terms (Campbell et al., 2019; Garnham, 2005; O'Connor, 2016).

Traditionally, digital games have sat outside definitions of traditional culture, but have now been absorbed into creative industries policy discourse because of their economic value and potential. Within an Irish context, there are a number of examples of the framing of digital games as part of the ICT (information and communication technology) sector in Irish policy discourse in the past, including the Forfás report *The Games Sector in Ireland: An Action Plan for Growth* (2011) and under the Creative Ireland Programme, the *Audiovisual Action Plan* (2018). Aligning broadly with the thrust of Irish economic recovery looking outwards at the global communication technology sector, the rhetoric of games as part of these global industries is best seen in the Forfás report which predicted an exponential growth in the games industry in Ireland. But this predicted growth didn't happen. Instead, according to Olsberg SPI's economic impact analysis of 2017, based on 2016 data, there were only 1,450 full time equivalent direct roles in the Irish games industry in 2016 (Olsberg SPI with Nordicity, 2017). The reasons why the growth didn't happen are beyond the remit of this current article. Instead, this article focuses on the false dichotomy of framing games in a binary fashion as either a cultural form or as an economic industry.

There is extensive literature on the scope and complexity of what games are, from an educational, communication, sociological and entertainment perspective (Consalvo, 2006; Dyer-Witheford, 2009; Huizinga, 1949; Juul, 2005). This article primarily uses the term digital game, adopting the terminology used in Section 481A for consistency but acknowledges that various terms have been used in the past, and that games as a cultural form are much broader than this term implies. This article problematises the 'we' in Arjoranta's title 'How To Define Games and Why We Need To' (2019) and points to how important it is to think about who has the power to define what is a digital game worthy of support through a tax credit. For the purposes of Irish policy, what is significant is that policymakers are defining what constitutes a digital game that is deserving of a particular funding structure. Digital games are framed as an increasingly central but varied part of culture. Muriel & Crawford (2018) hold that video game culture is diverse, complex and constantly evolving (2018, p. 2). The games sector operates as part of a broader creative landscape (Potts and Cunningham, 2008). Acknowledging the multifaceted and diverse nature of games helps us to

ISSN: 2009-6208. https://culturalpolicy.ie/

understand the policy framing arguments behind seeing the games not only as an industrial product but rather an integral part of culture and creative expression that is both industrial and cultural. Given these arguments, it becomes evident that digital games are more than just industrial products; they embody elements of culture and creativity that warrant recognition and support beyond the operation of the free market.

This article explicitly addresses how games have been framed and categorised in policy discourse in Ireland. The views of policymakers towards the digital games industry is important because of the overwhelming significance of state supports and funding mechanisms for the sector. For Arjoranta

> definitions of cultural phenomena are necessarily tied to the cultural context in which they are made. When the cultural context changes—new examples are created, norms change—the definitions need to change too (2019, p. 118).

This article argues that the example of Section 481A shows more than a change of cultural context—it operates as a catalyst for defining and shaping the digital games sector, and thus excludes particular sectors that do not comply with the commodifiable format that qualifies for the tax credit. The definition of an eligible digital game under Section 481A is constitutive, it will operate as self-determining of the industry in Ireland and as self-fulfilling prophecy. In order to counteract this tendency, it will be necessary to see the tax credit system as but one tool in the state's armoury of supports for a diverse and agile sector. Thus, the evaluation of Section 481A needs to be placed within the wider context of cultural and creative industries policy. We can take on board Keogh's (2018, p.240) warning:

> Now, what is important is that we understand the *context* of videogames in the broader media ecology—how they are similar to other media forms, how they deviate, and how like all media they fundamentally shape the culture that produces them. A media studies that does not account for videogames as a form already as robust and vital as cinema or music—and as deserving of critical attention—does damage to our comprehension of contemporary media.

The lens of spatial theory allows for analysis of the new games tax credit as a commodification of the Irish production space. This approach allows for interrogation of the framing of Section 481A as a potential tool to act as a draw for an inward investment in the form of a AAA ('Triple-A') studio (i.e., a mid- to large-sized game studio producing high-selling games, e.g., Electronic Arts, Epic Games, Nintendo) and in the potential evaluation of the credit in primarily financial terms. Lefebvre's theories on space and spatial practice are used in this article as a framework for analysis of the relationship between the global games industry and space, following the work of Kerr (2013). This article applies Lefebvre's triadic conceptualisation of space (the perceived, the conceived and the lived) to the interplay between issues of location, of concepts of value and the commodification of cultural forms identifiable in the policy discourse around the development of Section 481A. Lefebvre's trialectic of perceived, conceived and lived space can be understood as referring respectively to spatial practices, representations of space and representational or lived space (Merrifield, 2006). Thus, we can see Section 481A as operating to encourage a particular

ISSN: 2009-6208. https://culturalpolicy.ie/

form of creative production, under constitutive conditions which serve to commodify a commercially exploitable variant of culture (O'Brien, 2023a).

Brenner and Elden frame Lefebvre's theories as containing insights and political orientations that can be mobilised 'to illuminate the present formation of neoliberalising capitalism and neoconservative geopolitical reaction in the early twenty-first century' (Brenner and Elden, 2009b, p. 5). Lefebvre points to how 'production no longer occurs merely *in* space; instead, space itself is now being produced in and through the process of capitalist development' (Brenner and Elden, 2009a, p. 185). This approach can be usefully applied to think about how state policy in the form of tax credits is operationalised to act as a draw for inward investment, at once commodifying the cultural forms and space of the nation state while simultaneously attempting to support the development of indigenous industries.

The nuts and bolts of Section 481A

The conditions of Section 481A are important as they are shaping the digital games sector in Ireland going forward. Section 481A is aimed at incentivising the development of the Irish digital games industry. At the time of writing, Ireland is the most recent European Union member to introduce a tax credit for digital games. While film/TV based incentives are common across the EU, incentives for digital games are much less common. This is in part because the Commission's soft law policy document (Cinema Communication, 2013) excluded games from its remit. Instead, the Commission applies the conditions of the 2013 Communication by analogy. A number of EU member states and the UK (including France, Denmark, Belgium, regions of Germany and Ireland) have introduced measures to support digital games (see O'Brien, 2023b).

Because Section 481A is deemed to be a state aid, it needs to align with the requirements of the European Commission as a cultural state aid under Article 107(3)(d) TFEU. Historically, the Commission's approach to state aid regimes for digital games frames games as somewhat less cultural than the film industry and takes a pragmatic approach to considerations of market failure for the digital games industry. From an EU perspective, it is significant that games are not part of the general block exemption relief (GBER) which operates as a means of block approval for funding schemes within individual member states that are under certain financial limits. Article 72 of Commission Regulation 651/2014 (GBER) explicitly excludes games from the section on aid for cultural and heritage preservation, holding that 'the list of eligible cultural purposes and activities should not include commercial activities such as fashion, design or video games'. Because of this exclusion, all individual aid schemes which do not come within the lower *de minimis* state aid rules require notification to the Commission for approval, which is a time-consuming administrative burden. There is some sectoral disquiet at this exclusion, with the European games representative group EGDF (European Games Developer Federation) calling for inclusion of digital games in GBER (Kavela, 2023). There are also indications that EU policy is shifting towards the welcome recognition of games as simultaneously an industrial and cultural sector. For example, the European Parliament resolution calls for inclusion of games in the terms of GBER (European Parliament, 2022) which will simplify the administrative processes around funding schemes targeted at digital games development within EU member states.

ISSN: 2009-6208. https://culturalpolicy.ie/

A policy analysis history of Section 481A

Having set up the EU policy background, this section turns to analysis of the Irish policy. Analysis of the background to Section 481A shows that industrial goals have historically taken centre stage in the development of policies towards digital games in Ireland. Several key policy documents enable us to trace the change in framing of digital games, from part of the ICT industries to, in theory at least, part of the cultural and creative industries. A key aspirational document was the above referenced Forfás plan from 2011. This plan explicitly framed the games sector as one with wider potential, with a focus on the potential in Ireland for service work in the form of localisation but also for indigenous development. It explicitly focused on games as part of the technical industries, a sector replete with potential economic value. For example, it holds that 'creative development is the beating heart of the sector and where most economic value is generated' (2011, p. xii).

In the 2011 Forfás plan we can see the instrumentalisation of the games sector in the framing of it as embedded within the technical sector and offering potential to expand that sector. The plan included proposals to attract key skills from abroad, develop training in Ireland, to set up a cluster development team to support relationships, incentivise content development, develop international visibility, provide research and development (R&D) support and support broadband infrastructure. The Forfás plan further commodified the games industry, framing it as 'a pioneer within the broader consumer-internet and emerging digital economy', as a 'key building block of the Irish digital ecosystem' and one 'that fuses together creativity, technology and consumer engagement'. Support for the evolution of the games sector is seen in terms of facilitating 'the accelerated growth of enterprises operating within the wider digital economy' (2011, p. v).

The Forfás plan did not in any way come near to explicitly calling for introduction of a cultural state aid for games although it did flag the existence of the French aid for games and a similar one in Quebec. While the Forfás plan does primarily place games within a STEM context, there are, however, some indications of consideration of the wider societal and cultural aspects of games. It would be reductive to nit-pick elements of the extensive (now retrospectively innocent) focus on economic potential and instead consider the wider policy framing required of such an approach. For example, the Forfás plan frames games as 'a transformative force within the emerging digital economy' and highlights how 'the games industry is not only valuable from the point of view of its potential to create employment and wealth—it is also a driver of new economic and societal norms' (2011, p. 2). Overall, the emphasis on the potential economic value in the Irish digital games sector can be understood as a structuring policy norm (following Bacchi and Goodwin, 2016) that has shaped the format of Section 481A.

Following the commissioning of an economic impact analysis of Section 481 for the film industry by Olsberg SPI with Nordicity in 2017 (Olsberg SPI with Nordicity, 2017) the Department of Culture, Heritage and the Gaeltacht (Department of Culture) published the *Audiovisual Action Plan* in 2018 (the Plan) which called for the introduction of a games tax credit (2018). The Plan was put in place under Creative Ireland Program Pillar 4, developed by the Department of Culture. While this Plan focused primarily on the role of Section 481 for film and TV production, it did albeit briefly refer to the possibility of extending the tax credit to the games sector. In a review of the recommendation in

ISSN: 2009-6208. https://culturalpolicy.ie/

the Plan to extend Section 481 to the digital games sector, I held that this ‘will represent a policy challenge, bearing in mind the structural and perceptual differences between the film/TV drama industries and the videogames industries’ (O’Brien, 2019, p. 422).

It is clear that introduction of a digital games tax credit is a significant policy move in Ireland. While it might be seen as an extension of the existing film/TV tax credit which has been in place one way or another since 1987 and operates as a significant draw for international production and supports indigenous production (see Murphy, 2024 and Murphy in this issue), the terms of the tax relief differ markedly in some ways, arising in part because of the continued emphasis on the potential economic value of the digital games sector.

Section 481A is a corporation tax credit which is available to digital games development companies. It is operational from November 2022 in respect of certain expenditure incurred on the development of eligible digital games subject to compliance with various statutory and regulatory conditions. The game must be a digital game which integrates digital technology and is capable of being published on an electronic medium; incorporates at least three of the four following classes of information, in digital form: (1) text, (2) sound, (3) still images and (4) animated images; and is controlled by software enabling interaction with the game. The game must be an eligible game as defined in the legislation, developed on a commercial basis and not solely or mainly for promotional, advertising or gambling/betting purposes. To qualify for the credit, the digital game must meet certain minimum spend requirements (€100,000) and qualify as a cultural game by passing a points-based ‘Culture test’. In contrast to the less onerous film tax credit cultural test which requires a project to comply with three out of eight conditions, the Section 481A culture test requires a project to secure fourteen points out of a possible thirty-five points between four sections. It is important to note however that the film tax credit, Section 481, was redesigned in recent years to require a project to pass both a cultural test and an industry test. The digital games tax incentive, Section 481A, has combined both the culture and industry sections into one points-based test. Section A relates to cultural content, section B to cultural creativity, Section C to cultural clusters and Section D captures what is called concomitant cultural credit. As there are minimum points requirements in Sections A-C, we see that a project must align with conditions around technical and cultural creativity and the development of cultural clusters through the carrying out of a substantial part of the creative work and the employment of key personnel who are Irish or EEA nationals or ordinarily resident in Ireland. There is no overall annual cap or limit on the incentive. As outlined above, the tax credit currently has a cap per project of up to 32% of the lowest of eligible expenditure, 80% of the total qualifying expenditure or €25M.

The stated aim of the credit is ‘to provide an incentive to digital games developers to produce digital games that contribute to the promotion and expression of Irish and European culture’ (Revenue Commissioners, 2023, p. 5). Nevertheless, the thrust of the scheme is primarily economic, illustrated by a minimum spend requirement, and the creative, technical and clustering requirements in the Culture test. However, it is not the intention of this article to propose a binary of culture versus industry. Instead, the design of Section 481A appears to be pragmatically focused on the development of a games industry in Ireland, with the hope that provision of such structures will lead to expressions of Irish and European culture.

ISSN: 2009-6208. https://culturalpolicy.ie/

It's important to note that policymakers are not defining the concept of a digital game, instead, they are defining what a qualifying game is. Only a particular sector of the games industry or sector is supported by a tax credit. Bacchi's policy approach, What's the Problem Represented to be? (WPR) succinctly illustrates the importance of policy framing. For Bacchi & Goodwin, WPR

> makes the case that policies do not *address* problems that exist; rather, they *produce* "problems" as particular sorts of problems … (T)he manner in which these "problems" are constituted shapes lives and worlds. The critical task, therefore, becomes interrogating the particular problematizations within policies (Bacchi and Goodwin, 2016, p. 16, their emphasis).

Essentially, Section 481A is framed as a national aid for cultural production—as is necessary under EU state aid law. However, given the global nature of the games production sector, it is impossible for the tax credit to operate solely in a national context. Instead, there are attempts to devise the incentive to operate simultaneously as a support for indigenous industries and as a draw for inward investment. Section 481A, like the film tax incentive, operates in both the local and the global space. We know that the concept of culture is a contested concept from an academic perspective. It is contended that it is also a contested concept from a policy perspective—an empty cipher that is filled with industrial and political goals. Understanding of what cultural forms are worthy of support has changed over time, along with the conditions under which they are supported. The particular conditions under which cultural creativity takes place are fundamentally political and therefore the rationale and impact of condition of operation is significant. There is consideration of the bounded concept of the nation even within an industry that is potentially borderless. The policy intervention of the state through provision of state aids is directly driven by national requirements and policies. However, in the Irish context, we have this tension as the policy is driven by national taxation policy but deliberately takes an outward vision that wants to attract inward investment, i.e., be a player on the global stage through deliberate and conscious courting of international investment through the potential of locating an AAA studio in Ireland.

The interplay between national policy and global culture illustrates the continued significance of the nation state as a structuring force 'even as the culture of games is losing, or has lost, any claim to an "originary" national culture, capital seeks to keep some boundaries in place to channel this flow' (Consalvo, 2006, p. 133)**.** The continued need for nation states as a driver of global capitalism is undeniable, and is illustrated by the significance of tax credit regimes for cultural production globally. As Meiksins Wood holds,

> although the world today is more than ever before a world of nation states, we are constantly being told that the global expansion of capitalism has ruptured its historic association with the nation state. … But, while no one would deny the global reach of capital, there is little evidence that today's 'global' capital is less in need of national states than were earlier capitalist interests (Wood, 2002, p. 177).

However, while Ireland's policy towards digital games may—in theory at least and in order to comply with the state aid regulations of the Commission—frame them as increasingly part of the cultural fabric of the nation, the introduction of a cultural state aid in the form of Section 481A is part and parcel of a globally valuable production ecology. As such, the particular conditions under which projects are framed, games are defined, and inward production is wooed are increasingly

ISSN: 2009-6208. https://culturalpolicy.ie/

significant. The tax credits are framed in a way to encourage the development of Irish intellectual property, through incentivisation of indigenous development. However, such an approach doesn't fully recognise the role of project based work in developing a sustainable games industry.

Digital games are complex and multifaceted, part of the cultural fabric of their own world and of society. Ample data sources underpin this, telling us that the games industry is of significant value[1] but also that games are played by a wide demographic. Bringing a specific cultural policy as a form into industrial policy thinking is not the same as valuing a cultural form on its own terms. Instead, it is valuing the commodifiable aspect of that sector. This is problematic from a number of perspectives, not least the exclusionary aspects of the creative industries (as theorised by various authors including Brook et al., 2020), the issues of precarity, gender discrimination and labour exploitation in the wider creative industries and particularly in the digital games (Bulut, 2020; Mortensen, 2018). However, it must be acknowledged that the recognition of games as a cultural form, even within a commodification of culture context, offers some potential to the sector, potential to develop a sustainable, inclusive sector that allows for multiple entry points, multiple forms of engagement and recognises the value of games as both an industrial form and a form of cultural expression.

Conclusion

This article explicitly interrogates the framing of the new Irish games tax policy as a cultural policy, illustrating a shift in perspective towards policy framings of digital games. While this may be framed as a commodification and extractive exploitation of culture, conversely, it may be productive in establishing a stable ecosystem. This analysis explicitly interrogates Irish policy within the framework of EU state aid legislation, foregrounding an analysis of the new tax credit for games introduced in late 2022 in Ireland. It looks at what the credit aims to achieve, what the key policy norms are identifiable in this and the wider policy context for extending cultural tax credits to the digital games sector. It identifies a broad understanding of what culture might be. Thus, it allows us to expand our understanding of cultural policy as including tax measures, and as a discipline opening up interrogation of legal and regulatory measures.

With respect to Section 481A, it is possible to identify policy ideas (a concept from Scalise, 2020) around defining what is (or is not) a cultural form. We can also identify the normative drivers shaping what is a cultural form that is deemed worthy of a tax credit regime. The policy drivers shaping Section 481A show how it is meant to operate in a way that commodifies the Irish digital games industry production space. The policy rhetoric around Section 481A frames it as medium to attract inward investment in the form of a AAA studio. This article argues that the shift in framing of games as technical and industrial to part of the cultural and creative industries can be framed in multiple ways: in expanding what we think of as important forms of culture; in recognising the importance of the digital games sector as both an industry and a cultural form; but most importantly in unravelling the policy norms that are identifiable in Irish cultural and creative industries policy discourse. This analysis explicitly interrogates Irish policy within the framework of EU state aid legislation, foregrounding an analysis of the new tax incentive for games. It looks at what the tax

ISSN: 2009-6208. https://culturalpolicy.ie/

incentive aims to achieve, what the key policy norms are identifiable in this new incentive and the wider policy context for extending cultural tax incentives to the digital games sector.

The inclusion of games in the context of cultural policy is significant in its expansion of the boundaries of what might be considered culture when we are looking at this from the perspective of funding of the arts, and justifying what might be deserving of funding. This helps us to unravel the rationales for funding policies in an Irish context, which are generally understood in a neoliberalised context of developing economic value, soft power and now creative clusters. Paradoxically, the understanding in policy circles of digital games as less cultural (in comparison to more traditional art forms such as theatre or film) means that other thinking of ways to support a particular section of the sector have come to be included in the new tax credit regime including development of creative clusters, recognition of technical innovation and educational aspects. In this way, the new cultural tax credit operates in a way that is more supportive of the digital games sector in its framing of it as somewhat less of a cultural force than other art forms. Lefebvre's work on spatialisation is a useful framework to interrogate the policy rationales driving the introduction of this variant of a tax incentive for digital games. His unravelling of the spatial dynamics that underpin state policies enables us to more deeply understand the interrelations between material, social and imagined spaces that shape our world.

Ouellette and Conway invoke Thomas Kuhn's work, asking where game studies now is, holding that 'we are pre-paradigmatic' with 'unresolved debates over foundational issues, chaotic activities, as many conflicting theories as there are theorists' (2020, p. 146). The acknowledged incommensurability is to be expected and is valuable so should not be discounted. Being open to alternative understandings of what a game is, what games studies tries to do, what differing understandings there are from a creator, player and policy perspective allows for recognition of the interdisciplinarity of both games studies and cultural policy as academic disciplines.

References

Bacchi, Carol, and Goodwin, Susan (2016). *Poststructural Policy Analysis: A Guide to Practice*. New York: Springer.

Banks, Mark (2015). *Valuing Cultural Industries*. London: Routledge.

Bentley, Duncan (2020). Taxpayer Rights and Protections in a Digital Global Environment. In: Van Brederode Robert, F. (ed.) 2020. *Ethics and Taxation*. Singapore: Springer Singapore. 251–294.

Brenner, Neil, and Elden, Stuart (2009a). Henri Lefebvre on State, Space, Territory. *International Political Sociology* ,3 (4), 353–377.

Brenner, Neil, and Elden, Stuart (2009b). Introduction. State, Space, World: Lefebvre and the Survival of Capitalism. In: (Brenner, Neil & Elden, Stuart (eds.) 2009. *State, Space, World: Selected Essays*, 1–48. Minnesota: University of Minnesota Press.

ISSN: 2009-6208. https://culturalpolicy.ie/

Brook, Orian, O'Brien, Dave and Taylor, Mark (2020). *Is Culture Good for You?* Manchester: Manchester University Press.

Bulut, Ergin (2020). *A Precarious Game: The Illusion of Dream Jobs in the Video Game Industry.* Ithaca: ILR Press, an imprint of Cornell University Press.

Campbell, Peter, O'Brien, Dave, and Taylor, Mark (2019). Cultural Engagement and the Economic Performance of the Cultural and Creative Industries: An Occupational Critique. *Sociology,* 53 (2), 347–367.

Consalvo, Mia (2006). Console Video Games and Global Corporations Creating a Hybrid Culture. *New Media & Society,* 8 (1), 117–37.

Department of Culture, Heritage and the Gaeltacht (2018). *An Plean Gníomhaíochta Closamhairc Colún 4 Den Chlár Éire Ildánach / Audiovisual Action Plan Creative Ireland Programme Pillar 4.* Dublin.

Dyer-Witheford, Nick (2009). *Games of Empire: Global Capitalism and Video Games*. Minneapolis, Minn.; Bristol: University of Minnesota Press.

European Parliament (2022). *European Parliament Resolution of 10 November 2022 on Esports and Video Games.* https://www.europarl.europa.eu/doceo/document/TA-9-2022-0388_EN.html.

European Union (2010). *Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union*, 2010 O.J. (C83), 2012 O.J. (C326).

Forfás (2011). *The Games Sector in Ireland: An Action Plan for Growth.* Dublin: Ireland.

Garnham, Nicholas (2005). From Cultural to Creative Industries: An Analysis of the Implications of the "Creative Industries" Approach to Arts and Media Policy Making in the United Kingdom. *International Journal of Cultural Policy,* 11 (1), 15–29.

Government of Ireland/Rialtas na hÉireann (1997). *Taxes Consolidation Act*, as amended, No. 39 of 1997. Available at: https://www.revenue.ie/en/tax-professionals/legislation/notes-for-guidance/taxes-consolidation-act-tca.aspx [Accessed March 2024].

Government of Ireland/Rialtas na hÉireann (2022). *Digital Games Regulations*, S.I No. 593 of 2022. Available at: https://www.irishstatutebook.ie/eli/2022/si/593/made/en/print [Accessed March 2024].

Hemels, Sigrid and Goto, Kazuko (2017). *Tax Incentives for the Creative Industries*. Singapore: Springer.

Hesmondhalgh, David (2018). *The Cultural Industries*. 4th edition. Thousand Oaks, CA: SAGE Publications.

Horkheimer, Max and Adorno, Theodor W. (1944). The Culture Industry: Enlightenment as Mass Deception. *Media and Cultural Studies: Keyworks*, 2001, 71–101.

ISSN: 2009-6208. https://culturalpolicy.ie/

Huizinga, Johan (1949/2008). *Homo Ludens: A Study of the Play-Element in Our Culture*. London: Routledge.

Juul, Jesper (2005). *Half-Real: Video Games between Real Rules and Fictional Worlds*. Cambridge MA: The MIT Press.

Kavela, Jari-Pekka (2023). Better State Aid Framework. European Games Developer Federation. Available at: https://www.egdf.eu/documentation/3-enabling-digital-growth-with-public-funding/national-state-aid-instruments/better-state-aid-framework/. [Accessed 3 January 2024].

Keane, Jonathan (2023). Tax Breaks and the MedTech Model: Ireland's Games Industry Is "Only Scratching the Surface" of Its Potential. *The Currency* [online], 3 October. Available at: https://thecurrency.news/articles/129014/tax-breaks-and-the-medtech-model-irelands-games-industry-is-only-scratching-the-surface-of-its-potential/. [Accessed 23 March 2024].

Keogh, Brendan (2018). *A Play of Bodies: How We Perceive Videogames*. Cambridge MA: MIT Press.

Kerr, Aphra (2013). Space Wars: The Politics of Games Production in Europe. In: Huntemann, Nina B. and Aslinger, Ben (eds.) 2013, *Gaming Globally: Production, Play, and Place*. London: Palgrave MacMillan. 215–232.

Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media (2023). *Guidance Note for application to the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media - Section 481A Taxes Consolidation Act 1997*, 19 April.

Mortensen, Torill Elvira (2018). Anger, Fear, and Games: The Long Event Of #GamerGate. *Games and Culture, 13(8),* 787–806.

Muriel, Daniel and Crawford, Garry (2018). *Video Games As Culture: Considering the Role and Importance of Video Games in Contemporary Society*. Oxford: Routledge.

Murphy, Denis (2024). *Screen Workers and the Irish Film Industry*. Liverpool: Liverpool University Press.

O'Brien, Maria (2019). The Audiovisual Action Plan: A New Audiovisual Policy for Ireland. *Cultural Trends,* 28 (5), 417–428.

O'Brien, Maria (2022). What does the new tax credit for Ireland's games industry actually mean?. QUB Policy Engagement blog. Available at: http://qpol.qub.ac.uk/what-does-the-new-tax-credit-for-irelands-games-industry-actually-mean/ [Accessed 19 May 2024].

O'Brien, Maria (2023a). 'Lefebvre and the Media Production Space'. *Mediapolis: A Journal of Cities and Culture,* 8 (1).

O'Brien, Maria (2023b). The many facets of culture in digital games policy: the EU dimension. G|A|M|E 10 (2021-2023), 67-85. Available at https://www.gamejournal.it/i10-05-obrien [Accessed July 2024].

ISSN: 2009-6208. https://culturalpolicy.ie/

O'Connor, Justin (2016). After the Creative Industries: Cultural Policy in Crisis. *Law, Social Justice and Global Development,* 1, 1–18.

Oslberg SPI with Nordicity (2017). *Economic Analysis of the Audiovisual Sector in the Republic of Ireland*. Screen Ireland. Available at: https://www.screenireland.ie/images/uploads/general/Olsberg_Report.pdf. [Accessed 23 March 2024].

Ouellette, Marc A. and Conway, Steven (2020). The Game Studies Crisis: What Are the Rules of Play? *Eludamos: Journal for Computer Game Culture,* 11 (1), 145-159.

Potts, Jason and Cunningham, Stuart (2008). Four Models of the Creative Industries. *International Journal of Cultural Policy*, 14 (3): 233–247.

Primorac, Jaka (2020). Film Globally, Work Locally: Factors Influencing the Effectiveness of the Production Incentive Programme in the Croatian Audio-Visual Industry. *Cultural Trends* 29 (4), 287–301.

Revenue Commissioners (2023). Tax and Duty Manual Section 481A Digital Games Corporation Tax Credit Part 15-02-07. Dublin. Available at https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-15/15-02-07.pdf [Accessed March 2024].

Van Brederode, Robert F. (2020). Introduction: Why Ethics Matter in Taxation. In: Van Brederode, Robert F. (ed.) 2020. *Ethics and Taxation*. Singapore: Springer Singapore. 1–19.

Wood, Ellen Meiksins (2002). *The Origin of Capitalism: A Longer View*. London: Verso.

Endnotes

[1] For example, Fortune Business Insights tell us that 'The global video games market size is projected to grow from $199.74 billion in 2022 to $307.19 billion by 2029, at a CAGR of 6.3% during the forecast period'. Available at: https://www.fortunebusinessinsights.com/video-game-market-102548 [Accessed 3 July 2023]

ISSN: 2009-6208. https://culturalpolicy.ie/