



Data Protection Moot Court (DPMC) Case

Variant 1: Data Subject Teams

10 October 2022

Knighthshade, Knighthshade, where's my Stormblade?

Claire is excited. In March 2022 and almost half a year later than initially announced, *Best Games Ever Ltd*, a company based in the EU Member State Randomistan finally releases *Knighthshade*, a massive multiplayer online role-playing game. In this game, players take a role in a medieval fantasy world where they can solve quests in a multitude of storylines, find items, fight NPCs (non-player characters) and other players, and level up their characters.

In order to buy and play *Knighthshade*, players need to have an account with *Best Games Ever's* own video game distribution platform *BGE-Games*. Claire had already set up a *BGE-Games* account in January 2019, in order to play *Battle666*, a competitive ego shooter.

When setting up her *BGE-Games* account back in 2019, Claire (truthfully) entered the following data:

First name	Claire
Last name	Weinberg
Date of birth	11.04.1999
Email	claire@clairestreams.fiction
Phone number:	+XX123456789
BGE-Games tag	ClaireOfDespair

Claire agreed to the **Terms and Conditions** and acknowledged receipt of the **Privacy Policy** then in force for *BGE-Games* (see excerpts in the attachment for the current version of the Privacy Policy).

On 10 March 2022, Claire purchases *Knighthshade* for €60 directly through the platform *BGE-Games*. After downloading the game, accepting its license agreement and before installing it, the following notice shows up:

Dear ClaireOfDespair,

Before we let you embark on your journey into the exciting realms of Knighthshade, we would like to draw your attention to our improved Fairness and Balancing Algorithm (FBA). As a fierce player of Battle666, you surely have heard of the problems we unfortunately encountered with cheaters (aimbots and triggerbots, disrupting network communication for artificial lags, etc.). Therefore, we have refined the FBA to analyze Knighthshade game sessions for suspicious behavior. For details, please check Point 11. of our Terms and Conditions. If you do not wish your gaming sessions to be subject to the FBA, please play Knighthshade's unranked mode. Otherwise, we kindly ask you to click "Read, acknowledged and accepted" below. This being said, we hope you'll love Knighthshade as much as we do!

Your BGE-Games Team

Claire clicks on "Read, acknowledged and accepted" and is finally able to install the game and create a character – a Warrior Mage focused on using melee weapons and destructive spells against her enemies.

Knighthshade features a ladder mode with a system that ranks all players in the game based on their playing time, questing progress, their character level and their lose/win ratio in hostile encounters with other players and NPCs and several other factors. The precise ranking method is not disclosed to players. Players can also choose to play unranked mode, which features no ladder and contains significantly fewer quests and items.

Claire starts playing and soon climbs up the European Ladder, which consists of around 300,000 active players. In mid-April, after her character reaches level 46 and the top 20% of the European Ladder, she discovers a glitch in the game: in a quest called “Shadows of death”, a boss NPC – a giant skeleton king – respawns after being killed if Claire’s character leaves and reenters the skeleton king’s throne room immediately afterwards. Claire uses this glitch to fight and kill the skeleton king repeatedly for a couple of days, granting her a high amount of experience each round. After her character reaches level 55 out of 99, the experience gains start to flatten significantly; Claire gets bored and moves on. It paid off however: Claire is now able to beat other characters up to level 60 and soon reaches the top 10% of the European Ladder.

On 23 May 2022, after playing on average 20 hours per week, she reaches position 92 on the European Ladder. As a top 100 player (a so-called *Alpha Player*), Claire can now participate in premium in-game events where she can solve quests not available to lower ranked players, fight extremely strong NPCs and other high-ranking players, and win unique items that only exist once in the game. Claire soon finds the unique and extremely powerful sword *Stormblade* that enables her to win on average more than 7 out of 10 hostile encounters with players of the same character level.

This is fun for sure – but it also starts to be a business for Claire. She had already been live streaming her *Battle666* games on the livestream platform *Blob* back in 2019 and 2020, but usually no more than 30 viewers watched her play. However, in winter of 2020, she tested a freely available aimbot – a piece of software automatically placing the crosshair on enemies – and streamed the testrun live on *Blob* in order to show her viewers how unfair such aimbots are. People were quite interested in the topic and she had some 90 viewers for maybe a week, allowing her to make a small profit. However, soon after that, more and more people started using the aimbot, which took out all the fun of *Battle666* and Claire stopped playing that game altogether.

Her *Blob* livestreams of *Knightshade* attract many more viewers. After reaching the top 20%, an average of 40 viewers had watched her daily streams, after reaching the top 10 % of the European Ladder, this number had risen to an average of 100 viewers. Now that Claire has cracked the top 100 and wields *Stormblade*, the numbers have skyrocketed. An average of 500 players watch her livestreams, creating a weekly revenue of up to € 170. Claire is already dreaming about quitting her daytime job of waiting tables at the local café when something terrible happens:

In the evening of 08 August 2022, Claire wants to play a newly available *Knightshade* quest called *Fires of Annihilation* and stream it live on *Blob*. She finally feels able to tackle that quest, now that her character has reached level 82. To her dismay, the following message pops up when she tries to start the game:

Dear ClaireOfDespair,

Unfortunately, your account has been flagged by our FBA due to suspicious activities and will remain suspended for a cool down period of 20 days. During the suspension, you are still able to play unranked modes on all games available on the BGE-Games platform (unranked modes do not feature a ladder system and do not support unique items). We will investigate the FBA report during the cool down period and notify you of our final decision on 28 August 2022.

Thank you for understanding!

Your BGE-Games Team

Claire is furious. Usually she uses the time *Knightshade* needs to load a game and connect to the server to chat with her *Blob* viewers (more than 600 that day!) but now all her viewers have seen this embarrassing notice on her shared screen. Some of them are already starting to post spiteful

comments on her *Blob* account and other social media. Claire stops the livestream and immediately writes the following message to *fba_support@knightshade.fiction*:

Subject: Account suspension?

Hello Best Game Ever,

Why are you suspending my account? I haven't cheated or anything!!! Please restore my account immediately, I'm not playing unranked, unranked is for noobs. If you keep me suspended this is seriously going to fuck up my ladder position! I wanted to do Fires of Annihilation today and that's only open till Thursday! I am sure this is an error!

Thx, Claire

Some 15 minutes later, Claire receives the following message from *noreply_fba_support@knightshade.fiction*:

Subject: Ticket #21699

Dear ClaireOfDespair,

Thank you for your request (Ticket #21699). We aim to handle all requests as soon as possible. Due to the high number of requests, the current handling time is approximately 11 days.

Thank you for understanding!

Your BGE-Games Team

Claire tries to call the support more than 30 times over the next two days. On 10 August 2022, she finally gets through: A customer service agent tells her that they understand her situation, but many high ranked players are currently awaiting a solution to their account suspension. Best Game Ever handles requests based on a first come, first served principle and it takes a while to go through the data of the flagged accounts. However, Best Game Ever's data shows a 93% accuracy of the FBA, so most suspended players have actually cheated. He is sure that Claire's account will be reopened for the ladder mode if she has indeed not cheated.

Claire is upset but tries to be patient – even though she misses the “Fires of Annihilation” quest and the experience and items her character could have gained. On *Blob*, she receives several more messages, some make fun of her or are even hateful and some express support.

On 19 August 2022, there is still no message from Best Game Ever, so Claire seeks advice from Ralph, a work colleague who is studying law. Ralph advises her to “*talk to the data protection officer and to mention the GDPR, because under the GDPR, they must not use your data against you*”. Ralph helps her write the following email, this time to the data protection officer of Best Games Ever, *dpo@bestgameever.fiction*:

Subject: Ticket #21699

Dear Data Protection Officer of Best Game Ever,

I demand my account (BGE-Games Tag: ClaireOfDespair) to be restored with immediate effect. Under the GDPR, it is unlawful to suspend an account without any explanation. I request information why you suspended my account in the first place.

If your FBA suspended my account because I used the glitch of the respawning skeleton king in “Shadows of death”, then I object to that. If Knightshade has glitches, that is your fault and it is up to you to patch a glitch. You cannot hold that against me. You must also delete or correct all datasets that say that I have been cheating!

I urgently await your reply, which I was promised to receive today (see email below).

Kind regards,

Claire Weinberg

>>email by noreply_fba_support@knightshade.fiction, dated 08 August 2022<<

There is no immediate reply, not even an auto-reply. Claire starts playing and livestreaming other games (not hosted by Best Games Ever), but does not really enjoy it. This is also because no more than 20 viewers watch her play on *Blob* and she is no longer generating any revenue as she is below *Blob's* revenue threshold of an average of 50 viewers per week.

On 31 August 2022, Claire finally receives a reply by *fba_support@knightshade.fiction*:

Subject: Ticket #21699

Dear Ms. Weinberg,

Our DPO has forwarded your email dated 19 August 2022. We apologize for the late reply. It took us a while to review the dataset that led to the FBA flagging your account as suspicious. We are happy to inform you that your account will be available again for the ladder mode.

Your game progress achieved by unethical behavior has been removed from your account. Please see attached the log files recorded by the FBA.

We hope you understand that we cannot provide any further information on the reasons for your suspension as this information could be used to facilitate cheating in Knightshade.

Please let us know if you have any further questions!

Kind regards,

Your BGE-Games Team

Attached to this email, Claire finds a comma separated value file containing the time and duration of her gaming sessions for *Knightshade* and *Battle666*, her ladder position, and the level of her character at the start and end of the each gaming session. For each gaming session, there is also an *FBA score*, which ranges from 0 to 10; most gaming sessions for both games have a low score, a few show scores from 6 to 10.

Claire does not understand what this information provided to her means, switches on her computer and starts playing *Knightshade*. Indeed, she can again play in the ladder mode, but many things are not as they were before the suspension: Her character level has dropped to 75, her position on the European Ladder is only 7,068 and the mighty *Stormblade* has been removed from her character's inventory.

Claire has had enough. Ralph's wacky advice did not do the trick. She writes one final email, replying directly to *fba_support@knightshade.fiction*:

Subject: Ticket #21699

Okay, this is my final message! If you do not restore my account to exactly how it was before the suspension, I am going to hire a lawyer and take legal steps. This includes my character level, my ladder positions and my items. I haven't cheated, so it must be exactly as before the suspension. And even IF I had cheated (which I HAVEN'T) you can't just mess with my inventory and level progress. I am an Alpha Player, my character is level 82, not 75 and I have the Stormblade sword.

Claire Weinberg

Claire receives no reply to this email. She decides to stop playing *Knightshade* until the matter is resolved.

Claire comes to your law firm and asks you to take all necessary legal steps to have her account restored. Everything should be as it was before the suspension. When you inform her about the costs of filing a lawsuit with the competent court, Claire agrees on only lodging a complaint against Best Games Ever Ltd. with the data protection authority of Randomistan for now.

Please note the following:

- **The case brought to you must be reviewed exclusively based on the GDPR and your complaint must be drafted in accordance with Article 77 GDPR.**
- **The national data protection law of the state Randomistan and other legal norms (e.g. other EU-norms) which could be applicable to the claim must be disregarded.**

ATTACHMENT 1**Terms and Conditions for BGE-Games (Excerpt)****I. Intro**

1. PLEASE READ THESE TERMS AND CONDITIONS ('TC') CAREFULLY. BY PARTICIPATING IN THE GAMES OFFERED BY BGE-Games, YOU AGREE THAT THESE TC ARE ENFORCEABLE LIKE ANY WRITTEN CONTRACT SIGNED BY YOU.

2. These TC together with any applicable Licensing Agreements ("LA"), Privacy Policy, and their amendments, together with any published rules regarding a particular activity, poll, or other offering, govern your participation in the games offered by Best Games Ever Ltd ("we"/"us") on the platform BGE-Games.

[...]

II. Account

6. Only natural persons are allowed to establish an account. By entering into this TC and creating an account, you represent that you are an adult and have the legal capacity to enter into a contract in the jurisdiction where you reside.

III. Ladder Mode

[...]

11. Fairness and balancing

We strive to provide our players with a fair and balanced environment that enables a competitive and fun experience to all players. It is strictly prohibited to participate in any activity that could be regarded as cheating (e.g. use of unauthorized aids, unethical behavior or any other kind of behavior that grants the Player a disproportionate advantage). You understand and expressly accept this prohibition. Should you participate in any such activity, we are entitled to set your account back to any status before the malicious activity occurred or to delete the account entirely. We are entitled to use our Fairness and Balancing Algorithm (FBA) in order to analyze your gaming behavior in any game featured on the BGE-Games platform for suspicious behavior. The FBA might collect and analyze personal information about the Player. Information about the processing of personal data is available in our Privacy Policy.

[...]

IV Termination of BGE-Games Account & Services

[...]

14. Violation of TC

The following activities are prohibited:

[...]

- Publishing, supporting, facilitating, positing or, distributing illegal content of any kind.
- Activities that might threaten or embarrass another user, such as sending unwanted messages in a continuous way.
- Trying to obtain a password, account information, or other private information from another player of BGE-Games.
- Performing an illegal activity like hacking, cracking or any other kind of activity endangering the integrity of any service offered on BGE-Games.
- Using or distributing software programs, macro software programs or other “cheat utility” software program or application.

[...]

We reserve the right to suspend or terminate your account and to prevent your use of any service offered by BGE-Games if your account is used in breach of any of the prohibited activities listed above.

ATTACHMENT 2**Privacy Policy for the platform BGE-Games provided by Best Game Ever BGE-Games (Excerpt)**

The protection of your data is very important to us. This privacy policy explains which data we (**Best Game Ever Ltd** or “**BGE**”) collect from you in the context of the **BGE-Games** platform provided by us. This privacy policy also explains how your data is processed and what rights you have in connection to this data processing.

[...]

What data do we collect about you?

Registration information: information provided by you in order to register for the BGE-Games platform (e.g. name, date of birth, contact details and BGE-Games tag);

Information about your playing progress and behavior: this includes information about the games purchased by you on the BGE-Games platform and information related thereto (e.g. duration of play, interactions with other players, achievements, etc);

Information regarding fairness and balancing: depending on what games you play on the BGE-Games platform, various information in connection with unfair, fraudulent or unethical gaming (cheating) could be collected.

[...]

What is the purpose of the processing by BGE?

We process your personal data for the following purposes:

- Identification and age verification (some of your games are not feasible for players below a certain age).
- Communication with you.
- Advertisement and promotion of our products both within the BGE-Games platform and via email.
- Providing you with our games as set forth in the BGE-Games terms and conditions and in the license agreements of the games you play.
- Maintaining a balanced and fair gaming environment in any kind of ranked or sanctioned games or events (such as games featuring a ladder mode).

What is the legal basis for the processing by BGE?

Consent: In certain cases, we ask you to accept a specific data processing operation. In those cases, the data processing for that data processing operation is based on your consent in accordance with Art 6(1)a GDPR. You can withdraw your consent anytime. Such withdrawal does not affect the lawfulness of processing based on consent before its withdrawal.

Contractual Necessity: We process your personal data in order to perform our obligations set forth in the BGE-Games terms and conditions and in the license agreements of the games you play. Legal basis for those processing is the contractual necessity in accordance with Art 6(1)b GDPR.

Legitimate Interest: We process your personal data when it is necessary for our legitimate business interests. In these cases, we perform a balancing of interests and take your interests, fundamental rights, freedoms and your reasonable expectations into account. Examples for such data processing are the communication with you and improvements, extensions and customization of our services as well as the prevention of fraud or other malicious activity on the BGE-Games platform. Legal basis for those processing activities is our legitimate interest in accordance with Art 6(1)f GDPR.

[...]

Automated decision-making and profiling

You are not subject to any automated decision-making, including profiling, referred to in Art. 22(1) and (4) GDPR.

How to lodge a complaint with the competent data protection authority.

You have the right to lodge a complaint with the data protection authority in case you consider that the processing of your personal data by BGE infringes data protection law. The competent data protection authority in Randomistan is the Randomistanian Data Authority (RDA), Dataprotectionstreet 1, 679 Randomia, Randomistan.

How to contact us.

The data controller for the data processing in connection with the BGE-Games platform is Best Game Ever. Our contact information is:

Best Game Ever Ltd

Gamestreet 12
679 Randomia
Randomistan

You can also contact us with any question concerning the processing of your personal data via the general support address or by reaching out to our data protection officer (dpo@bestgamesever.fiction).