

## HANDLING THE CLEARANCE OF IMAGE RIGHTS FOR VIDEO GAMES DESTINED TO GLOBAL DISTRIBUTION

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### ABSTRACT

*In the current generation of the internet and Artificial Intelligence who doesn't like to indulge themselves or try their hands on a particular video game? The video game industry has witnessed exponential growth in recent years, with an increasing number of games achieving global distribution. However, this expansion has brought forth a significant legal challenge: the clearance of image rights. As video games become more realistic and immersive, developers increasingly rely on the incorporation of real-world elements, including the use of real people's images. This article delves into the complexities and strategies involved in handling the clearance of image rights for video games destined for global distribution. Failure to secure proper clearance can lead to costly legal disputes, damaged reputation, and potential delays in game development and release. To navigate this intricate landscape, developers and publishers must be well-versed in the legal frameworks governing image rights in various jurisdictions. This article explores the global nature of video game distribution and highlights the challenges associated with image rights clearance across multiple jurisdictions. It discusses the diverse legal approaches taken by different countries, including the United States, European Union member states, and other regions, shedding light on variations in privacy laws, intellectual property regulations, and contractual considerations. Furthermore, this article provides practical guidance and best practices for handling image rights clearance. It emphasizes the importance of conducting thorough due diligence, employing comprehensive contracts and release forms, and implementing effective communication channels with talent agencies and individual rights holders. Additionally, it explores the role of technology in streamlining the clearance process, such as using blockchain for rights management and implementing AI-based tools for facial recognition and compliance tracking. By analysing case studies and industry trends, this article aims to equip video game developers, publishers, and legal professionals with the necessary knowledge and strategies to navigate the intricate landscape of image rights clearance for video games destined for global distribution. Understanding the legal intricacies and adopting proactive approaches to secure image rights can help ensure compliance, mitigate*

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*legal risks, and foster a thriving and legally sound video game industry in an increasingly interconnected world.*

## **INTRODUCTION**

Playing Video Games has become an essential source of entertainment not just for kids but for all other people belonging to various age groups. In the current internet period, there are various games available throughout, ranging and varying from educational games for toddlers to mind games for adults. Video games are intricate works of fiction that require player interaction while being executed by a computer programme on particular hardware. They contain a variety of artistic elements, such as music, scripts, stories, videos, paintings, and characters. Because of this, video games are not made as a single, straightforward work but rather as a combination of various components, each of which can be protected by copyright (for example, the characters in a particular video game, the soundtrack, the settings, the audiovisual components, etc.) if they meet certain standards for originality and creativity.

Action games, action-adventure games, adventure games, role-playing games, simulation games, strategy games, music games, party games, sports games, and trivia games are just a few of the many game genres available in the video game industry. Each type of game will have different components, or more specifically, different components within each particular game. However, the computer programme that powers all video games is a component that they all have in common.

As was already mentioned, video games have advanced alongside computer science. In the 1960s, video games only had simple forms for their images; shortly after, creators were able to include simple noises. Since video games have been constantly evolving throughout the years, there are currently numerous components that might all be copyright protected.

**Video games, in the opinion of Lipson and Brain<sup>1</sup>, contain the following inventive components:**

### **1. Audio Components:**

- First-person narratives;
- Audio recordings;

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<sup>1</sup> *Computer and Video Game Law – Cases, Statutes, Forms, Problems & Materials*, by Ashley Saunders Lipson and Robert D. Brain, Carolina Academic Press, 2009, p. 54.

- Voice;
- Added Foreign Sound Effects;
- Internal Sound Effects.

## **2. Video Components:**

- Photographic Images, such as GIF, TIFF, and JPG;
- Moving images captured digitally (e.g., Mpeg);
- Cartoon Computer code (source code and object code);
- Text .

## **3. Game's main engine or engines Ancillary Code**

- Third-party subroutines, or plug-ins;
- Remarks.

While some nations, like the United States of America, only guarantee copyright protection to original works of authorship fixed in any tangible medium of expression, others, like those in the European Union (EU), also ensure protection to non-fixed works. These elements are not protected per se, however, unless they meet each jurisdiction's requirements for protection. Since it is undeniable that the various components of video games can qualify for independent copyright protection, analysing the legal protection of video games as single, original works of authorship is the fundamental issue, as well as one of the study's objectives.

## **INDIVIDUALS WORKING ON THE DESIGN, DEVELOPMENT, AND MARKETING OF VIDEO GAMES**

Depending on the scope of the project, the firm involved, the type of video game, and the platform it was developed for, a variety of personnel may be needed. As a result, the market for video games has developed recently along with the professionalism and expertise of those who, in some capacity, create the games. Consequently, compared to other complicated works of authorship, like movies, modern video game creation can include an even greater number of specialists. Some of these have been listed below:

- a) Producers
- b) Designers (Graphics, Content, Technical)
- c) Visual Artists
- d) Programmers or Engineers

#### e) Audio Developers

It will depend on their contribution to the work and the particular laws of each jurisdiction as to whether these experts have copyrights. Typically, in order to possess a copyright, a person must either create their own unique and creative aspects or perform the work of another artist (such as an actor or musician). The majority of the time, the writers and the development company are in an employer-employee relationship, which means that the employer retains ownership of the work. If the work is not produced within the terms of this agreement, the producer must make sure that the appropriate rights are transferred in order to properly publish and promote the video game.

### **CLASSIFICATION OF VIDEO GAMES ACROSS THE WORLD**

Due to the unique nature of the works and their reliance on software for implementation, jurisprudence or researchers in nations like Argentina, Canada, China, Israel, Italy, the Russian Federation, Singapore, Spain or Uruguay regard video games to be, primarily, computer programmes.

Other nations, such as Belgium, Brazil, Denmark, Egypt, France, Germany, India, Japan, South Africa, Sweden, and the United States of America, on the other hand, consider the video game industry's enormous complexity when supporting the notion that video games fall under a distributive classification. Because of this, each component of the game must have its own legal protection, taking into account the unique characteristics of each work (such as whether it is literary, graphic, audiovisual, etc.).

### **HOW CAN INTELLECTUAL PROPERTY RIGHTS AFFECT THE VIDEO GAMES?**

All the individuals that are involved in the process of developing and creating video games hold IPR with respect to the work they have done. However, subject to the originality of the work.

IPR can be invariably found and also affects the following in the gaming industry:

- Game Creation
- Game Engines
- Music, Audio, Visual Effects
- Creative Art and Effects

- Backend Processing

## **WHAT IS THE STATUS OF IPR THROUGHOUT THE WORLD WITH RESPECT TO VIDEO GAMES?**

In the current article, I have tried to divert the mainstream focus with respect to IPR Concerns in the Gaming industry in three major countries, i.e., the USA, INDIA and CHINA.

### **China**

The preservation of intellectual property rights is a topic on which China has put a lot of attention. The People's Republic of China Copyright Law of 2010<sup>2</sup> (hereafter, the PRC Copyright Law), which was first published in 1990 and modified in 2001 and 2010, provides protection for all literary, artistic, scientific, social, engineering, and technological works. Though video games are not officially mentioned in China's intellectual property legislation, copyright law offers protection for software programmes. Written works, computer software, photographic works, musical works, and drawings are among the types of works that are protected by copyright under Article 3 of the PRC Copyright Law<sup>3</sup>.

The organisation of video game creation and the loading of the video game onto a storage medium for distribution are both major responsibilities of publishers, who are frequently also the industry's developers. A video game's publisher is also in charge of managing and updating the game, unlike traditional publishers of a book or CD, who are only accountable for the game's publication. The fact that all video game copyright litigation in China has been started and opposed by publishers so far, especially those cases involving Shanda, the country's largest video game publisher, demonstrates the significance of publishers in the industry.

According to the PRC Copyright Law, a work's author can either be the person originator or the organisation in charge of organising the work, which releases the work of art under its name and takes on all obligations. Because they are always the property of the employer in situations wherein there is an employer-employee connection, the actual creators of the video game cannot be classified under the category of the author.

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<sup>2</sup>The People's Republic of China Copyright Law 2010

<sup>3</sup>The People's Republic of China Copyright Law 2010, art 3

Nexon, a Korean video game publisher, and Tencent, a Chinese video game publisher, engaged in the first copyright dispute involving online games in China in 2007. The case was heard by the Beijing No. 1 Intermediate Court. Comparative analyses of the video games' backdrop images, display designs, and names of particular in-game elements were given to the court. A general idea is not protectable by copyright, the court determined, and the similarities between the video games did not amount to copyright infringement or unfair competition. This precedent-setting case shows that courts must assess every part of a video game that is protected by copyright and that a later-created game can only be deemed to violate a work's rights if there are significant similarities between it and the original.

## India

In India, there is no formal system of regulation or categorization for video games. Since Indian gaming legislation is still in its infancy, it is based on the particulars of each individual case and is derived from business practises.

Since there is no case law on the subject, it is unclear if video games can be considered "cinematograph works" within the ambit of the Indian Copyright Act<sup>4</sup>.

The game code, the characters, the conversation, the audio/music, the video, and the storyline are all components that together make up the video game's finished result. According to the Indian Copyright Act, each of the components is individually protectable by copyright.

The creators of mobile or online games often have entire rights and do not split the majority of the profits. Along with the group in charge of establishing the game's theme, the primary content producer can be considered an author. Therefore, in the case of video games, authorship will belong to the producer or publisher (as applicable) who initiates the game's development, even if those efforts involve the creative input of staff members or outside contractors.

With the development of more complex video games, a new issue involving online gamer contributions has emerged. The precise legal issues of interactive online gaming are yet unresolved under Indian law. The topic of the legal standing of player contributions, however, may give rise to problems if avatar behaviour gets more lifelike, smart, and intelligent. The world of gaming may gain a new dimension if players are granted exclusive

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<sup>4</sup> The Indian Copyright Act 1957

rights to their contributions and inventions in a game. As a result, the contributions made by the players would become their property, which could then be bought, sold, or licenced just like any other type of property.

Currently, the owners of cinematic works are the producers, who do not pay contributors like composers of music any royalties once their music or song has been used in the production. In light of the Supreme Court's significant ruling in *Indian Performing Rights Society Ltd. v. Eastern India Motion Pictures Association (the IPRS Case)*<sup>5</sup>, this is the current situation. The Copyright Board initially ruled in the IPRS Case that lyricists and composers retained copyright in their musical compositions used as soundtracks in cinematograph films, allowing them to recoup fees, royalties, and costs related to those films. The High Court overturned the Board's decision following an appeal. The Supreme Court ultimately decided that because the producer became the first owner of the copyright, the rights of the music composer and lyricist were defeated. This was done by interpreting Sections 17(b) and (c)<sup>6</sup> in terms of Section 13(4)<sup>7</sup>. The creator of a song or piece of music cannot later claim copyright infringement if the creator gave permission for a film producer to use their creativity in a cinematographic work.

## USA

The quantity of legal issues regarding this particular work of writing is indicative of the fact that the United States of America has the largest video game industry in the entire globe.

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However, video games are not clearly categorised, and therefore will have varying levels of safety. based on the components that make up each individual game. In this respect, video games are seen as works of authorship since they can be regarded as computer programmes; in this case, the source code for a video game is regarded as a literary work.

A video game may be categorised as a visual arts work if pictorial or graphic authorship predominates. In a similar vein, a video game might be categorised as a motion picture or audiovisual production if authorship from those genres predominates. Determining the legal classification of a particular video game requires careful consideration of its features.

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<sup>5</sup> *Indian Performing Rights Society Ltd. v. Eastern India Motion Pictures Association*, 1977, [SC] [1997 AIR 1443]

<sup>6</sup> The Indian Copyright Act 1957, s. 17 (b) & (c)

<sup>7</sup> The Indian Copyright Act 1957, s. 13(4)



Atari, Inc. v. Amusement World, Inc., a 1981 lawsuit alleging the similarities between the defendant's Meteors and Atari's Asteroids, was one of the earliest instances involving video games.<sup>262</sup> The court confirmed that video games can be protected by copyright as audiovisual works (and, incidentally, as motion pictures) in this instance, upholding the general concept that only the expression of an idea is shielded by copyright. Instead of depositing the literary work in this instance, Atari sought to safeguard their video game by registering it as an audiovisual work via a videotape. The court recognised this protection, concluding that the plaintiff's claim to be protected concerned the game's aesthetic presentation rather than the computer programme.

In the American copyright system, registration of creative works is still highly significant. The U.S. Copyright Office has a policy that only one registration can be submitted for a computer programme and its screen displays.

Last but not least, under US law, sections of video games that are kept secret may be protected as trade secrets if the conditions set forth in the relevant trade secret statute (such as the US Uniform Trade Secrets Act) have been satisfied. Patents (for the practical components of the game) and trademarks (for things like the game's title and the names of the characters) are additional ways to protect specific aspects of video games.

As a result, the legal classification of video games in the United States is complicated. Because of this, even while there is a wealth of jurisprudence and legal literature on the subject, the legal protection of video games is still fragmented and will depend on the components and traits of each unique work.

As a result, video games are not always regarded as audiovisual works under American law; rather, a case-by-case study is required to ascertain which aspects prevail in this type of work of authorship. Regardless, computer code. This implies that a distributive classification will be relevant to video games because it always underpins them. The peculiarity in the United States is that the true authors of the work may no longer be considered authors if they engage in a relationship of work-for-hire or if they accept the terms of such a relationship in the service agreement and are independent contractors. But most video game legal challenges concern patents (and not copyright) on computer code or other relevant ideas.<sup>8</sup>

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<sup>8</sup> The Legal Status of Video Games: Comparative Analysis in National Approaches—WIPO, 2013



## CONCLUSION

According to me, video games are intricate productions made up of numerous copyrighted works (such as literary works, visuals, sound, characters, and software) that should be given separate legal protection. Although the majoritarian trend assumes that software predominates in video games, we think that other components, such as the audiovisual and literary components made specifically for each video game, will also be important in identifying one video game from another.

It is advised to enact regulations that ensure a just reward for authors who have significantly influenced the commercial success of the game or have produced unique elements that allowed the video game producer to make significant profits, whether these authors are employees, independent contractors, or merely online gamers, with the aim to prevent potential abuses.

