

Abstract:

This research explores the complex relationship between copyright law and the video game industry. This particular topic is a very less researched topic, specifically in India. Though we can infer many copyrightable elements of video games from The Copyright ACT, 1957.

Hence this paper will majorly rely on international references and resources. Examining historical precedents, legislative frameworks, and landmark cases, the study explains the multifaceted challenges of protecting creative elements in video games. Addressing issues such as fair use, transformative works, emerging technologies, and international legal variations, the research provides valuable insights into the evolving landscape of video game copyright law. Ultimately, this analysis seeks to contribute to a nuanced understanding of how copyright law shapes and is shaped by one of the most dynamic and culturally significant mediums of our time.

Introduction:

Video games have become a major force in entertainment, with their increasing complexity and interactivity raising critical copyright concerns for creators and stakeholders. Video games have many subjects where copyright subsists, resembling with cinematographic work/films. Nowadays video games have reached a level where it is difficult to find the distinction between reality and the game world. There are many attributes to video games such as story, characters, music, computer code, etc. Therefore it is important to analyze video games from the lens of copyrights. This research explores the challenges and implications of copyright in the context of video games, examining the nuanced distinction between copyrightable expressions and utilitarian functions, the impact of emerging technologies, and the international dimension.

Copyright is essential to safeguarding the intellectual capital of video games, ensuring that creators are protected from unauthorized replication or exploitation. However, the law must strike a delicate balance between protecting creators' rights and fostering innovation. This research navigates this complex terrain, highlighting the importance of considering both perspectives in upholding copyright law. Emerging technologies like virtual reality, augmented reality, and blockchain introduce new dimensions to the copyright discourse, blurring the lines between reality and virtuality. These technologies open up new possibilities for creativity, but they also pose challenges for copyright holders. The international dimension of video game copyrights further complicates the landscape, as copyright laws vary from country to country.

Overall, this research aims to contribute to a deeper understanding of copyright law in the context of video games, highlighting the complex challenges and implications that arise at this intersection of creativity, technology, and legal framework.

Historical Overview of Copyright in Video Games:

Video games have evolved from simple pixelated screens to immersive, interactive experiences, becoming a dominant force in contemporary entertainment. With this growth, questions of copyright protection have emerged as a critical concern for creators and stakeholders in the industry.

Copyright law is a complex and dynamic field, and its application to video games has been shaped by the evolving nature of the medium. In the early days of video games, copyright protection was primarily focused on source code and visual elements. However, as video games became more complex and immersive, courts and legislatures have recognized the copyrightability of a wider range of elements, such as characters, game designs, and even virtual economies.

One of the key challenges in applying copyright law to video games is distinguishing between utilitarian functions and copyrightable expressions. Utilitarian functions are those that are essential to the gameplay or functionality of a game, and they are not subject to copyright protection. Copyrightable expressions, on the other hand, are the creative choices that developers make in designing and implementing their games, and they are protected by copyright law.

Another challenge in applying copyright law to video games is the impact of new technologies. For example, the rise of augmented reality and virtual reality has created new questions about what copyright law protects in these new virtual worlds.

In the 1981 case of *Atari, Inc. v. Amusement World, Inc.*, United States District Court for the District of Maryland ruled that Amusement World's arcade game "Meteors" did not infringe on Atari's copyright for their game "Asteroids." Judge acknowledged Atari's valid copyright protection for elements like symbols, movements, and sounds in their game. However, he concluded that Amusement World's game did not copy these protected elements. Despite Amusement World admitting to drawing inspiration from Atari's idea, the court determined that this was not a violation of copyright. The ruling highlighted the distinction between protecting the specific expression of an idea, rather than the idea itself. This case stands as an early legal precedent in video game copyright law, affirming that copyright safeguards unique expressions of ideas, not the broad concepts themselves.¹

In the 1982 case of *Midway Manufacturing Co. v. Artic International, Inc.*, the court held that the character of Pac-Man was copyrightable. This decision helped to establish that copyright law could protect video game characters, which are often some of the most valuable assets of video game companies.²

¹ *Atari, Inc. v. Amusement World, Inc.*, 475 F. Supp. 222 (1981)

² *Midway Mfg. Co. v. Artic Intern., Inc.*, 547 F. Supp. 999 (1982)

The evolution of copyright law in video games reflects the industry's growing importance and cultural impact. By protecting the creative works of video game developers, copyright law helps to ensure that the industry continues to thrive and produce innovative and engaging games.

Copyrightable elements in video games:

There are multiple elements that can be copyrighted in any video game. Video games are a bundle of many types of works such as artistic, literary, computer programs, etc

- Audio elements include sound recordings, background music, dialogues, and animation sounds.
- Visual elements include photographic images, characters in the game, animated still/moving images, etc
- Software elements include codes, basic design, and plugins.
- Literary work includes the storyline, script of the game.

Infringement and Piracy:

Video game infringement and piracy are two major challenges that the industry faces. Infringement is the unauthorized use of copyrighted material, while piracy is the illegal copying and distribution of games. Both of these issues can have a significant impact on the industry, both financially and creatively.

Infringement can take many forms, such as copying game code, graphics, copying story of the game, or sound elements. It can also involve imitating gameplay mechanics or character designs. In some cases, infringement can lead to legal disputes between copyright holders and game developers.

Piracy is a major threat to the video game industry's revenue. It deprives developers, publishers, and distributors of rightful income, which can hinder investment in new projects. Piracy is particularly common in regions where legal enforcement is weak and where there are not well-defined laws for intellectual property.

- There are several things that can be done to combat infringement and piracy. One is to strengthen intellectual property protections through legislation.
- Another is to collaborate with law enforcement agencies to target large-scale piracy operations.
- Additionally, game developers can implement technological safeguards, such as digital rights management (DRM) systems, to make it more difficult to pirate games.

- It is also important to foster a culture of respect for intellectual property among consumers. This can be done through education and awareness campaigns. Additionally, game companies should make it easy and affordable for consumers to purchase games legally.

By working together, the video game industry can protect its creative assets and ensure a sustainable and vibrant future.

Derivative Works and Modding in Video Games:

A 'derivative work' means a work that is substantially a reproduction of a work but which transforms, adapts, or incorporates the original work in a manner that, while the original work is recognizable, it becomes a new and distinct work in itself. In simpler terms, a derivative work in Indian copyright law refers to a new work that is based on or incorporates, a pre-existing copyrighted work, but with significant modifications or alterations that result in a distinct and recognizable new creation. This allows for creativity and innovation while still respecting the rights of the original copyright holder.

Derivative works and modding play a pivotal role in the video game ecosystem. A derivative work involves the modification, adaptation, or transformation of an existing game, often by users or third-party developers. This can encompass alterations to gameplay mechanics, the introduction of new assets, or even the creation of entirely new experiences within the framework of an established game. While derivative works can be a source of innovation and community engagement, they also raise complex copyright considerations, as they involve the use of copyrighted material.³

Licensing and Distribution:

Licensing and distribution are essential components of the video game industry. Licensing grants permission to use, copy, or distribute copyrighted material, while distribution is the process of making games available to players. This dynamic relationship ensures that games are widely available while protecting the rights of developers and copyright holders. Developers often license their games to publishers or distributors to bring them to market. These agreements outline the terms of the deal, including the territories where the game will be sold and how

³ Prashanth Shivadass Pise Rachana, The Viewpoint: Are Your Favourite Video Game Mods Copyrightable?, Bar and Bench - Indian Legal news (2021), <https://www.barandbench.com/law-firms/view-point/the-viewpoint-are-your-favourite-video-game-mods-copyrightable> (last visited Nov 6, 2023).

revenue will be shared. Developers may also license third-party assets, such as game engines, middleware, and intellectual property, which can significantly impact the development process.

Digital distribution platforms have revolutionized the way video games are accessed and distributed. Online marketplaces, such as Steam, Epic Games Store, and console-specific stores, offer developers a global audience and streamlined distribution channels. These platforms also use digital rights management (DRM) technologies to protect against unauthorized reproduction or distribution. Still there are huge numbers of pirated market for these games. Websites like torrentz, 1137x, etc are providing torrent magnet links to download the original game for free of cost without rewarding the original producers of that game. These things are need to be addressed to strict cybercrime laws and other IP laws in India.

Online User-Generated Content:

Another grey area where there is no well defined law regarding video games is ‘user generated content’ (UGC). There are a huge number of gamers using the games of various developers, but the question arises who is the owner of the content generated by that user by using that particular game? UGC can sometimes raise legal issues too. This may occur if user-generated content includes copyrighted material without proper authorization, potentially leading to copyright infringement concerns. Developers and platform providers often establish clear terms of service and user agreements to manage these legal considerations while still encouraging a thriving UGC community.

Conclusion:

In conclusion, the intricate interplay between copyrights and the video game industry has been the subject of extensive analysis in this study. We embarked on a comprehensive journey through various dimensions of this relationship, including a historical overview of copyright in video games, an exploration of copyrightable elements within the medium, and an examination of challenges posed by infringement and piracy.

The discussion also encompassed derivative works and modding, shedding light on the pivotal role of user-generated content (UGC) in the gaming landscape. UGC, a dynamic facet of the industry, empowers players to become creators, enabling them to design custom levels, characters, and game modes. This fosters a vibrant community of creative minds. However, as UGC incorporates copyrighted material, the legal landscape necessitates careful navigation. Developers and platform providers play a crucial role in establishing clear guidelines and terms of service, balancing creativity with copyright protection.

Licensing and distribution remain crucial mechanisms for developers to bring their creations to a global audience. Digital distribution platforms have revolutionized accessibility, yet they must also contend with challenges like piracy and digital rights management. The industry's continued success hinges on fostering a collaborative environment that upholds the rights of creators while encouraging innovation and creativity.

As the video game industry continues to evolve, it is imperative that all stakeholders, including developers, publishers, platform providers, and the gaming community itself, work together to shape a sustainable and innovative future. By embracing legal frameworks, technological advancements, and the creative expressions of gamers, the video game industry can continue to thrive as a cultural and economic force in the global entertainment landscape.

“In spite of the fact that current legislative framework does not provide for any protection to video game and its work from being infringed, an innovative set of intellectual property strategy in accordance with the provisions of Indian Copyright Act of 1957 can impeccably protects the interest of development team and other stakeholders involved. As the industry in itself is growing rapidly, a proportionate legal protection form infringement of video games wouldbenefit the video game industry and concerned investors, developers and players”.⁴

This holistic approach will not only protect the intellectual property rights of creators but also ensure that the gaming community remains dynamic, diverse, and engaging for years to come.

AUTHOR-ADVOCATE VIKAS AWALE

CO-AUTHOR-ADVOCATE YASH LOTLIKAR

⁴ Madhav Mandhana, THE EMERGING NEED TO PROTECT VIDEO GAMES: THE RIGHTS OF DEVELOPERS AND KEY STAKEHOLDERS, 10 ACCLAIMS, (2020).