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VIDEO GAME DEVELOPERS' USE OF INTELLECTUAL PROPERTY LICENSING

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I. ABSTRACT

Developers may also have to consider license agreements for components from game engines or community-made modifications.² These agreements define the terms and conditions under which the developer may use the licensed intellectual property, including payment schedules and usage constraints.

Developers can offer distinctive game experiences while managing legal difficulties thanks to licensing agreements. Publishers frequently grant intellectual property licenses to game producers, which has administrative and financial concerns. Furthermore, IP licensing makes it easier to recreate and adapt original, protected parts from other entertainment mediums. Additionally, YouTube provides instructional materials on the licensing of intellectual property in the gaming sector.

II. KEYWORDS

Licensing Agreement, Intellectual property rights, Game developer, Game Publisher, IP Protection, Copyright

III. INTRODUCTION

The video gaming industry has changed dramatically over the past 40 years. It evolved as a result of the 1972 commercial achievement of Atari's Pong after four decades. Subsequently, her development has continued. As a result of the possibility of using personages from different franchise units, the developers seemed to determine that they might truly impress the existing fan base. Even successful games have now been transformed into feature films. Super Mario Bros³, produced by

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² Treelife, "Types Of Intellectual Property Rights In Gaming Industry" (Treelife, February 29, 2024) <<https://treelife.in/legal/types-of-intellectual-property-in-gaming/>> accessed July 14, 2024.

³ Vanshika Kapoor, "Intellectual Property Licensing in Video Game Development" (iPleaders, February 13, 2024) <<https://blog.iplayers.in/intellectual-property-licensing-in-video-game-development/>> accessed July 14, 2024.

Nintendo, a notable Japanese gaming business that features the well-known game character Mario, is the title frequently cited as the greatest example of a popular video game being converted into an extensive film. The article opens as follows: “But video games did not stop being what they primarily are, merely amusement: they remain a fusion of technology and artistic vision”. This means that both components must be integrated without compromising the gaming experience, which is where the idea of intellectual property licensing is relevant.

IV. RESEARCH OBJECTIVES

Recognizing how motivation and intellectual property awareness affect the creation of gaming products and looking at the legal and commercial difficulties that video game producers encounter, especially with regard to licensing agreements and intellectual property rights

V. RESEARCH QUESTIONS

What effects do intellectual property laws have on the choices and tactics used by video game developers to safeguard their works, work out license arrangements, and maintain industry profitability?

VI. RESEARCH HYPOTHESES

1. Games that are based on licensed intellectual properties will do better on the market since they will have more consumer appeal and brand familiarity.
2. Due to access to pre-existing materials, intellectual property licensing allows for the development of higher-quality games, resulting in increased player happiness and reviews.
3. By using intellectual property licensing, video game producers can reduce the financial risks involved in creating new intellectual property, which will result in more consistent financial outcomes.

VII. RESEARCH METHODOLOGY

The research methodology adopted in this paper is purely doctrinal in nature. Doctrinal research, also known as library-based research, is a distinctive method of conducting legal research that involves the study and analysis of existing legal

provisions, case laws, and scholarly works. This methodology is well-suited for examining the theoretical and conceptual aspects of law and for providing a systematic exposition of legal doctrines and principles. The primary sources relied upon in doctrinal research include statutory materials, judicial precedents, and authoritative texts, while secondary sources such as commentaries, articles, and legal digests are also consulted. The research process involves the identification, collection, and critical analysis of these sources to draw logical conclusions and offer insights into the legal issues under investigation. Through doctrinal research, this paper seeks to provide a comprehensive and coherent understanding of the legal framework governing the subject matter at hand.

VIII. LITERATURE REVIEW

In the world of video games, the intellectual property is crucial. Video game developers are legally entangled, but they must do so to protect their works and ensure a profitable release. Below are the main findings based on diverse sources:

- **Video game copyrights**

Original works of authorship fixed in a tangible medium, such as video games, are protected by copyright law. Copyright ownership in video games is contingent upon various variables, such as individual production, collaboration, or work-for-hire agreements. Several components of video games, including source code, soundtrack, characters, and plots, are protected by copyright laws.

- **Trade secrets and trademarks**

Trademarks act as identifiers of origin and are crucial for safeguarding real-world components included in video games. Similar to algorithms and company information, trade secrets give game developers a competitive advantage.

- **Strategies for Licensing**

Characters and storylines from video games are increasingly being made money through licensing deals.

Internal and outward licensing, handling legal matters, and ownership considerations are all part of the licensing strategy.

IX. CONS OF INTELLECTUAL PROPERTY LICENSING FOR VIDEO GAME DEVELOPERS

- **The IP owner's monopoly**

Since the licensor owns the intellectual property, the licensee is mostly dependent on the former party for ongoing support and IP upgrades in order for the game to run smoothly. Here, the licensor's promise to the licensee to continue providing support becomes crucial. In the unlikely event that the licensor decides to back out of the deal, it could put the licensee in danger and have an impact on how well the game sells. It is crucial to consider the potential difficulties associated with intellectual property licensing when engaging in an arrangement.

- **IP disputes**

In *Bethesda v. Mojang* (2011), the use of the word "Scrolls" was the topic of controversy. The parent company's request for an injunction was granted by the court, leaving the matter unsolved. Mojang agreed that it would never compete with Bethesda's Elder Scrolls game.

- **Payments for expenses and royalties**

It is absolutely necessary to assess the financial transactions before signing the contract. In addition to the original fee, the licensee is responsible for paying royalties on sales made through the video game, which is how the licensor makes money off of the intellectual property that has been licensed. All of this ultimately increases the licensee's financial burden; these things should be taken into account when signing a license agreement.

A. Components Used In The Creation Of Video Games Under License

As previously said, a video game consists of multiple components that, when combined, create an ideal gaming experience. It is common to see that when creating a video game, a few aspects are commonly licensed in order to increase the game's attractiveness. When making a successful video game, the following are some frequent components that can be licensed.

- **Personas**

Numerous games have incorporated well-known characters into their productions, enabling them to reach a wider audience. To include them in the game, this method needs approval from copyright holders, franchises, and even books. This covers novels, films, and other works in addition to franchises like Marvel or Star Wars. The owner of the copyright may demand a license fee from the game creator, or they may only ask that the developer get consent in writing before using the content. The developer may occasionally be required by the copyright owners to make modifications to the content, such as changing the appearance of characters or eliminating specific elements.

- **Integration between platforms**

A common goal of game developers is to release games that are compatible with multiple platforms, like PCs and smartphones. To do this, they need to seek technological support in order to establish the game on multiple platforms, where software licensing or other technological support facilitates the seamless integration of the games.

- **Logos**

It provides consumers with a distinct personality to relate to and helps them connect with the brands. They are essential instruments for marketing. Moreover, licensing logos encourages greater fan interaction with the game. Fans get a stronger sense of connection to a game when they see their favorite clubs and players represented. Because they are more likely to purchase game-related merchandise and other items, fans may become more devoted and spend more money as a result.

B. IP Properties For Video Game Developing

1. **Copyright⁴** - *“S.14: Interpretation of Copyright. – Within the meaning of this Act, the word "copyright" refers to the sole right, subject to its necessities, to perform or issue permission to perform any of the following kinds of actions with regard to a work or any material portion of it:”*

⁴ <https://www.copyright.gov.in/Documents/Copyrightrules1957.pdf>

- "Computer" in S-2 (ffb) describes any technological or similar machine that is designed for processing information;"
- S-2 (ffc) defines a "computer program" as an arrangement of directions that can be utilized for instructing a computer to carry out an activity or produce an outcome. These instructions may be written in words, codes, schemes, or any other format, including one that is machine-readable;"
- "S-2 (j) "exclusive license" means a license which provides any right associated with the copyright in a work to the licensed entity or to the licensee and persons authorized by him, to the exclusion of all other persons (including the copyright owner); "exclusive licensee" shall be interpreted in accordance;"
- Computer apps, tables, and compilations, including computer [databases], are included in S-2 [(o) "literary work";]

2. Patent⁵

- "Patent" as used in S-2 (m) refers to any new idea granted under this Act;
- S-2 (j) "invention" signifies an innovative product or procedure utilizing innovation and offers potential for economical use;
- "S-2 (ja) "inventive step" pertains to a characteristic of a creation that is not instantly apparent to a person educated in the art and involves an improvement in technology relative to the state of the art, economic significance, or both;

C. Is IP Protection Available To The Gaming Industry

When talking about intellectual property protection for the gaming sector, a number of things need to be taken into account. Video games are not covered by any specific area of intellectual property law in India since the gaming industry is not expressly regulated there. Therefore, it is believed that the following laws regulate the gaming industry:

1. **Copyright:** If correctly interpreted, Section 2⁶ of the Copyright Act, 1957 states that video games fall within the definition of "process akin to cinematography."

⁵ https://ipindia.gov.in/writereaddata/Portal/IPOAct/1_31_1_patent-act-1970-11march2015.pdf

⁶ <https://www.copyright.gov.in/Documents/Copyrightrules1957.pdf>

Any well-known character that is protected by copyright has both exclusive usage rights and commercialization rights, meaning that the character cannot be marketed without a license. Additionally, in the case of Sony Computer Entertainment Europe Ltd. v. Harmeet Singh⁷, the Delhi High Court issued an ex-parte injunction

2. **Patent:** A computer program "per se" is not patentable under S. 3(k)⁸ of the Patent Act, 1970. However, a patent for the computer software in question may be secured if it can demonstrate a technological impact resulting from its application or if it can connect to the supporting hardware components. It was decided in Mattel Inc. v. Mr. Jayant Agarwalla⁹ That the Patents Act, of 1970 does not cover game rules and strategies (for playing).

X. VARIOUS IP PROBLEMS INVOLVED

- Live streaming: Broadcasting video games for paid members on various platforms without the permission of the game developers raises a number of legal concerns. These regions are seen as legal gray areas in the gaming industry because, aside from the obvious IP law infringement that would happen if the game developers opted to pursue legal action on such infringement, there are currently insufficient guidelines or legal backing for them. Few well-known game developers, however, specifically prohibit their games from being streamed or used commercially without their permission. Some game developers support these kinds of tournaments and streaming because they allow them to freely promote their games and because their end-user license agreements specifically permit it. Notable YouTubers who earn millions by playing video games, providing live commentary, and organizing tournaments have encountered challenges in maintaining their gaming companies.

⁷ (51) PTC 419 (Del)

⁸ https://ipindia.gov.in/writereaddata/Portal/IPOAct/1_31_1_patent-act-1970-11march2015.pdf

⁹ 2008 (153) DLT 548

- Comparatively speaking, publishers used to be in charge of securing funds for game development¹⁰; but, as new sales channels and alternative funding sources such as crowdsourcing have emerged, publishers' and developers' roles have evolved. Consequently, a developer, an investment company, or a publisher may suddenly possess authority over intellectual property rights that were formerly held by publishers. These transitional ownership agreements function.
- Sharing of User Produced Data¹¹: Players are encouraged to produce and share their own fan art, game modifications, new characters, stories, and other user-generated content in today's current online games. The main worry about this sharing, which takes place on the game's platform, is the high possibility of infringing on the intellectual property rights of other developers because players may mix and match the IP-protected content of other online games and impact the IP rights of
- Game Structure: The creation of electronic games involves a number of factors that have led to the individual copyright protection of some program elements, while others are general creatives or exist in the public domain and are not protected by copyright.

XI. WHY IS IT NECESSARY TO OBTAIN AN INTELLECTUAL PROPERTY LICENSE?

One of the entertainment sector's fastest-growing industries is gaming. The process of creating a video game includes several steps, including concept, design, software, coding, and more. This would indicate that a considerable sum of money is spent during the entire game production process. A typical video game might take anywhere from a few months to three to five years to develop from concept to release on the market. The ease or complexity of the game's development affects both time and resources.

¹⁰ "Video Games and IP: A Global Perspective" <https://www.wipo.int/wipo_magazine/en/2014/02/article_0002.html> accessed July 14, 2024.

¹¹ Ibid

The advantages of intellectual property licensing for game production are as follows:

1. Merging technology in artistic expression

Along with the technological part of the game, which is covered by intellectual property, every component used in its creation contains some element of artistic originality. Although copyrights protect the game's artistic elements, software licensing—which forms the core of the game—is frequently disregarded. Every game's underlying technology has a distinct structure, and licensing gives other businesses and up-and-coming game producers access to these technologies in a way that saves them money and effort.

2. Attendance of the audience

By releasing a game under a well-known franchise, developers may take advantage of the existing fan base and increase their revenue by forming partnerships with other well-known franchises. Their assessment of market demand is improved by the presence of the current audience. This enables the creators to profit from the following and notoriety that comes with being associated with the well-known brand name. The licensor gains a new revenue stream and strengthens its market position, while the licensee gains popularity and technological advantages.

XII. WHAT IS THE PROCESS OF CREATING VIDEO GAMES?

This can be done by a single person or by a group, such as a gaming firm. Like traditional game, which requires field interaction, electronic games are more immersive and can be played quite easily in the comfort of our own homes. A comprehensive strategy is needed for video game creation, involving a variety of abilities such as programming, character design, plot VFX, animation, and more. It includes some important fields and other important elements, including as-

- The process of building the game world, which includes level layouts, object placements, and enemy and obstacle designs. This is known as level design.
- Art direction: The general appearance and atmosphere of the game, encompassing the user interface, character, and environment designs.

- Testing the game in order to make sure it is without bugs and up to the required quality standards is known as quality assurance.
- The process of publicizing the game and making it accessible to gamers is known as marketing and distribution.

To create a successful video game, each of these elements is necessary. A group of skilled developers can collaborate to produce a game that is visually appealing and enjoyable to play. Having said that, one can appreciate that creating video games requires a large team and significant financial outlays rather than being a one-man show, even though it is still feasible. This is where licensing helps developers.

XIII. CONCLUSION

The key here is that in order to create a successful video game, one must strike a balance by entering into a mutually beneficial partnership where the collaboration addresses the challenges while sharing the benefits to create a win-win situation. The developer benefits from having access to state-of-the-art, well-established technology and does not have to worry about the cost of developing a new technology to run the game. On the one hand, it's critical to collaborate with people who possess the knowledge and expertise required to realize a game. Developers, artists, and marketers may fall under this category. Together, these collaborators can combine their assets and knowledge to produce a game with a higher chance of success.

However, it's equally critical to recognize the difficulties involved in making a video game. Financial limitations, creative blockages, and technical difficulties are a few examples of these difficulties. By confronting these issues head-on, partners can improve their chances of making a successful and entertaining game.

XIV. SUGGESTION

Development expenses can vary widely, however, they usually fall between millions of dollars, depending on the platform, artwork, level of difficulty of the game, and whether any underlying intellectual property is licensed. The applicability and execution of intellectual property law protection to various aspects of the gaming business will continue to be closely examined as the video game industry expands in

size and adds new and unique elements to various gameplay components. It is imperative that third parties contact game designers prior to using their creations without permission, as they profit greatly from exposing the names of well-known games and their graphics. Additionally, some smaller game developers wouldn't care because their games get free publicity, but bigger developers might not want to be connected to these kinds of third-party tournaments without the necessary authorization and license. It is also felt that urgent changes must be made to the current IT and IP legislation in order to include sections specifically pertaining to online gaming.¹²

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