

## INTELLECTUAL PROPERTY

## In Gaming



## RECENTLY,

a client by way of introduction claimed that he was in the business of IP, meaning intellectual property! We were stumped and kept wondering how could one be in the business of IP, until he explained, that being a content developer in the space of entertainment and gaming, he was a prolific IP producer.

We realized that intellectual property is an emotionally charged issue in the digital media community, especially in the game development arena where rapid technological developments have driven the evolution and current shape of video games. In just four decades, video games have become an increasingly popular, 'a click-away' form of mass entertainment, a powerful and exciting platform for innovative art and a multi-billion dollar industry. Game development budgets for many large titles already meet or exceed film budgets in terms of years in production and total outlay.

Since early days, the idea of computer graphics telling a story has been so appealing that video game pioneers have relied heavily on players' imaginations and brought many a fairy tale or popular title or character from the public domain to life through the game route. Today, in countries such as the US and Japan, video game industry has quickly perched itself on the peak of the entertainment mountaintop. In fact in just one day, sales for Activision's *Call of Duty: Black Ops 2* in 2010 soared past the all time weekend opening record set by Disney's *Avengers* by more than US\$ 300 million and grossed over US\$ 600 million in first week sales. It surpassed 2010's biggest movie block buster *Iron Man 2*, which raked in only US\$ 128.1 million. Within 24 hours of its release in September 2013, *Grand Theft Auto 5* earned more than US\$800 million and sold more than 11 million copies worldwide. Within a record-breaking three days, sales hit US\$1 billion, outdoing the biggest movie hit of the summer of 2013, *Iron Man 3*, that brought in worldwide sales of US\$372 million in its first weekend. *Supercell*, the



## ANURADHA MAHESHWARI

Partner

Lex Mantis



current market leader in mobile gaming, with its 8.5 million daily players generated about US\$2.4 million everyday and sometimes even more.

According to consulting firm PricewaterhouseCoopers (PwC), the global video game market grossed US\$56 billion in revenue in 2011 (US\$ 65 billion in 2014- WIPO). Since 2006, when the Nintendo Wii was released (first mainstream game console by Nintendo in 1985), revenues have expanded by more than sixty percent. Based on PwC's study, "the gaming industry is more than twice the size of the recorded-music industry, nearly a quarter (larger) than the magazine business and about three-fifths the size of the film industry." Moreover, PwC predicts "video games will be the fastest-growing form of media over the next few years, with sales rising to about US\$82 billion by 2015" (as published in the Economist in Dec. 2011).

The reason for the success of video games is but obvious, in that the games can be generally accessed and played over

various platforms like smartphones or tablets, consoles, and PCs or Macs and are therefore an easy source of entertainment. Their attraction lies in the complex interplay of storytelling, enhanced by graphics and music underpinned by technology, thus providing players the mechanics that make it possible to weave together a thrilling experience. While the game story provides a context for players' actions and choices and gives the games certain significance, it would be of interest to know that whereas the games of the past required about 50 sound effects as creative components, the technologies involved in contemporary games have around 100 hours of game play, 25,000 lines of dialogue and 7,000 different sound effects, all to create an experience and an addictive one at that.

With so much at stake and the multiple creative elements in games, it is important to understand how these gaming works can be classified under the framework of the law for appropriate protection; whether they should be looked upon simplistically as computer programs or as mere audio-visual

works and how best they can be proprietorially fenced. Likewise, it is essential to examine how these complex interactive works are treated in various jurisdictions because the legal approach to be adopted will have a bearing on determining critical issues such as ownership, authorship, remuneration, transfer of rights and infringement. In some jurisdictions, such as Argentina, Canada, China, Israel, Italy, the Russian Federation, Singapore, Spain and Uruguay, video games are classed as functional software with a graphical interface. Other countries, such as Belgium, Brazil, Denmark, Egypt, France, Germany, India, Japan, South Africa, Sweden and the United States take a more pragmatic approach recognizing the complexity of video games and favor a “distributive classification”, whereby each creative element of a game is protected separately according to its specific nature. Yet others, such as Kenya and the Republic of Korea, treat video games as audiovisual works.

Copyright is arguably the most significant and dominant IP protection applicable in the game domain both for individual developers and companies. Though copyright does not protect ideas in themselves, it affords one of the easiest and most versatile protections of the fixed expression of ideas. As soon as an idea is cast into an expression, whatever that may be copyright gets into action. Loosely speaking, copyrights cover the content in games and grant the holder the right to reproduce the copyrighted work as also the right to authorize or restrict others from reproducing the work. Strictly speaking therefore, a competitor can launch a similar game but with different expressions, which may not amount to an infringement of copyright.

In games, copyrights protect the fixed original expressions in the literary (written) works, the artistic works, the musical works and sound recording, moving images and animations with accompanying soundtracks. Rules, instructions and written format of the game will form the copyrightable written components, while the design on the board of an online board game, or the logo or images or other art work on cards, counters for example, would be protected as artistic works. Even compilations in the games may be protected if the words and materials are arranged in a particular way or manner, exhibiting a certain skill, labor and originality in the arrangement or presentation of the compilation. For example the compilations of questions and answers in *Trivia Crack* or *Trivial Pursuit* would be protected by copyright and if a person reproduced a number of questions and answers from a particular topic from the published games they might infringe the copyright in the compilation.

Of late, the gaming industry is also witnessing a rush of clones or copycat games, raising the number of thefts and infringements in gaming. Game developers find it convenient to replicate and ride on successful ideas, stories, graphics, arts, the look and feel and other components of original works. Typically, a clone is something that is intended to be very similar to or is heavily inspired by a previous popular

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game or series. Likewise, if the name of the clone or the way in which it is marketed misleadingly represents the clone to have some association or connection with the original, then too the clone infringes upon the copyright of the original. However, not all clones can be said to be infringing the copyright of the original merely by adopting a similar look and feel of the original or modeling the new game on another's idea.

Proliferation of game clones has appeared mostly on mobile gaming platforms, such as the iPhone, Android devices and tablets as opposed to games released on the three major consoles: Xbox, PlayStation 3, and Nintendo Wii. The most popular *Angry Birds* with over 100 million downloads, quickly sparked clones in Apple's App Store, with titles such as *Angry Rhino: RAMPAGE!*, *Angry Alien*, and *Angry Pig*. While the majority of the *Angry Bird* clones are accessible for free, some cloned games were able to generate abundant revenues. Halfbot Games, an independent developer who created the game *The Blocks Cometh*, had its game stolen, including the name and the actual art assets.

Another area of copyright contention is when developers create new work based on an existing copyrighted work and creates thereby, a so-called derivative work. It is imperative in such cases to first secure appropriate licenses from the copyright holders and pay a certain royalty for using such copyrighted work. Generally the idea for particular video game springs from a famous movie, book or characters. An example of a derivative work is *Shrek* the game, which was based on *Shrek* the film. The process can also work the other way. When filmmakers want to develop a film on the basis of the story line of a successful game they too must secure rights from the right holders of the original work, for example, *Doom* the movie was based on *Doom* the game. Electronic Arts had created “*Battle for Middle Earth*” game based on the movie *Lord of the Rings* and by obtaining a license from Peter Jackson for developing the same.

On a secondary level, many game companies in order to enhance the popularity of their games license their copyrights to outlets like *ThinkGeek* who sell products inspired by a developer's games/game characters. The range of merchandize available from the *Game of Thrones* store is legendary. Separately the articles may qualify for Design protection based on the novelty and originality of the designs.

**Patents** form the lesser-known intellectual properties that protect the idea behind the games, which is beyond copyright protection. They not only prevent game inventions from being copied but protect many aspects of games and gamification, like various functional features as in game controllers and consoles; the technological components of game platforms like mobile apps, functions and processes within a game like game play methods, graphics techniques, user interface communications; machine (e.g. a computer programmed with computer software); article of manufacture (e.g. a disk or storage media on which software is distributed) or composition of matter, as long as these ideas can be established as inventions that are novel, useful and having an inventive step.

Examples of good gaming patent can be found in U.S. Patent Application Publication No. 2006/0281553 (Digital Chocolate, Inc.), which relates to adjusting an element of a game (e.g. a character strength, a reward amount, a reward type, an enemy type, and/or a game environment action) based on a real world location of a device on which the game is being played. Similarly, U.S. Patent Application Publication No. 2010/0227675 (Zynga), which has received much media attention, relates to a virtual currency that is purchased with real world money but is not redeemable for real world money, so it can be used in a gaming environment

such as *Zynga Poker*. Patents, though involve complex and lengthy processes to grant, do afford greater monopolies and more lucrative returns over investments.

**Trademarks** as intellectual properties serve well to protect the names, titles and logos associated with the game product and its characters. Trademarks are used to establish the brand and reputation of the game and the developer company, to distinguish it from other products and gaming companies in the market place. Any unauthorized usage of the product or company names entitles the developers to sue for a 'passing off' action and/or infringement of trademark depending on whether the trademark is registered or not. Many game companies in order to enhance the popularity of their games turn to outlets like *ThinkGeek* who sell to produce products inspired by their games/game characters.

**Trade secrets** on the other hand can be used to safeguard a company's competitive advantage by protecting confidential business information, such as contacts or subscriber mailing list data, or an in-house development tool.

Intellectual Property, found at every stage of the game product development from the tools to the content, is the lifeblood of the gaming industry. Naturally, gamers are extremely protective about the IP they create and own and are equally wary about them being lifted away. Without the appropriate IP rights and licensing arrangements in place, developers may find it hard to distribute their game or to fully leverage the value of their work in a highly creative and cutting edge domain. In fact, all the gamers have is their precious IP, so they need to protect every bit of what they have created or stand the risk of forever losing them to competitors and a lucrative market.

## A Snapshot of IPs in Virtual Gaming

Copyrights	Trade Secrets	Trademarks	Patents
Music	Customer mailing lists	Company name	Hardware technical solutions
Code	Pricing information	Company logo	Inventive game play or game design elements
Story	Publisher/distributor contacts	Game title	Technical innovations such as software, networking or database design
Characters	Middleware contacts	Game subtitle	
Art	Developer contacts	Identifiable catch phrases associated with the game or company	
Box design, packaging	In-house development tools		
Website design	Deal terms		

Sources: Compiled from WIPO & other sources

IP

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