



# Infringement of Intellectual Property Rights in the Gaming Industry and data protection

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## Abstract

Rapid technological advancements and rising consumer demand have propelled the gaming industry to unparalleled levels of growth and innovation. In this ever-changing environment, intellectual property (IP) rights are essential for preserving the innovation and financial investments made by developers, publishers, and other stakeholders. This paper focuses on patents, copyrights, trademarks, secrets of trade and data protection as it evaluates the complicated world of intellectual property rights in the gaming industry with respect to India.

This study's initial part explores the various kinds of IP protection a game's developers are able to utilize.

The issues posed by infringement in the gaming industry are addressed in the second portion of the abstract. The risk of intellectual property infringement has increased with the expansion of digital platforms and online gaming communities.

This abstract weigh the shifting legal landscape and business best practices aimed at avoidance of infringement in response to these challenges. The role of international collaboration and legislative changes in building an effective framework for IP protection in the global gaming market is also looked at.

This abstract's conclusion indicates the critical role that intellectual property rights perform in encouraging innovation and preserving the gaming industry's financial viability. Stakeholders may ensure a dynamic, creative, and competitive gaming ecosystem for developers, publishers, and players alike by addressing the complexities of IP protection and infringement challenges.

## **1.Introduction**

Artificial intelligence (AI) is the capacity of a computer or robot under computer control to carry out operations typically performed by intelligent entities. The phrase is commonly used to describe the endeavour of creating artificial intelligence systems that include human-like cognitive functions, like reasoning, meaning-finding, generalization, and experience-based learning.

AI in gaming describes dynamic and responsive video game environments. These AI-powered interactive experiences are typically produced by smart imaginative non-player characters, or NPCs, who behave as though they are under the direction of a human user. The AI is what controls how an NPC behaves in the virtual environment. Even though artificial intelligence has long been present in video games in some capacity, it is still regarded as a new area for game development and gameplay. The player, whose actions contribute to the creation of the game experience, is increasingly given more control over the gaming experience in AI games. Almost all video games, including those with strategic elements, incorporate various AI-powered features or similar applications. Bots are the perfect example of one such thing. The primary goal of using AI in games is to provide gamers a realistic virtual battlefield experience as they engage in combat with one another.

Furthermore, AI in games contributes to long-term increases in player interest and happiness. The future of the gaming industry appears to lie in combining Virtual Reality, Augmented Reality, and Mixed Reality to create artificial settings. Creating games that are more intelligent, engaging, and realistically rendered is made possible in large part by the advancement of artificial intelligence.

### **Intellectual Property rights and it's use in Gaming Industry**

Intellectual property rights (IPRs) are the legal protections attached to a person's or business's intangible assets that forbid unapproved use. Thus, intellectual property rights refer to the ownership rights of intellectual property. These rights enable the owners of trademarks, patents, or works protected by copyright to profit from their creations, with the intention of protecting intellectual property, or works of human intellect. Generally speaking, a video game is any electronic or digital game that is played by manipulating graphics on a television screen or video display.

In recent years, the gaming business has seen a notable increase in both popularity and revenue. Millions of gamers worldwide have been drawn into this sector by the enormous online communities and intense gaming experiences made possible by technological breakthroughs.

The preservation and administration of intellectual property rights are crucial given the industry's rapid growth. Intangible works of literature, art, inventions, trademarks, and commercial secrets are all considered forms of intellectual property. IPRs are essential to the gaming business because they protect, foster, and promote innovation, promote fair competition, and attract investment. These rights include trade secrets, copyright, patents, and trademarks, each of which has a specific function in the creation, distribution, and preservation of video games.

Copyright protects the original works of creators, like codes, graphics, music, and game play. However, brand names, logos, and distinguishing symbols connected to games are protected by trademarks. Customers can quickly identify and differentiate products on the market because of these trademarks. Another form of protection available to innovators is the patent, which enables them to defend innovative game mechanics and technological aspects, through securing a patent. The exclusive rights belong to inventors for a period of time. Finally. In the gaming industry, trade secrets cover business plans, game design procedures, and algorithms.

The effective management and enforcement of intellectual property rights (IPRs) in the gaming industry are important for several reasons. They are:

- IPRs serve as a vital incentive for developers and publishers to channelise their resources into creating new games. By offering legal protection and the potential for economic rewards. IPRs foster a competitive environment where studios strive to produce unique gaming experiences.
- IPRs play a significant role in promoting the growth of a diverse array of games. Developers can safeguard their creations giving them the confidence to explore creative ideas without worrying about imitation or plagiarism.

### **2. Patents in Gaming Industry**

It is any type of intellectual property that provides the owner to take steps against any outsider or intruder who might be willing to tamper with or sell or use the owner's invention for a certain time period in exchange for the publication of a legal disclosure of the invention. As new and innovative kind of game is being introduced in the industry, and hence, protecting the patent is very important for one who innovates and also for the company at large.

With respect to India, the Indian Patents Act, 1970, if the owner of the patented innovation does not have the required consent, the person who files the patent for the exclusive innovation has the right to prevent anyone from producing, using, or selling the product in India. Additionally, the owner has the right to file a suit against any people, organizations, or businesses that would try to utilize the patented method or sell it for import.

A patent may be applied to anything in the game business that is deemed to be incredibly novel, including so-called "inventions." These must not be cliched, redundant, or repetitive, and they must have appropriate

industrial integration and application. A videogame must combine concepts with practical applications in order to be eligible for patent protection.<sup>1</sup>

When attempting to patent a video game, there are various aspects that need to be considered, such as graphics, cinematography, video programming, music and codes etc. Furthermore, many inventions, such as computer programs, are not patentable under section 3 of the Indian Patents Act. Video game patents also cover matters such as content, filmmaking, comic books, movies, and music that may have served as a significant or major source of inspiration for the game. Therefore, it is often unclear whether it will be covered by a patent or not. A few of the most well-known games that have the proper patents awarded are Monopoly, Rubik's Cube, Battleship Twister, and Simon<sup>2</sup>.

### 3. Copyrights in Gaming Industry

Video games may be covered by copyright law in India since they are considered "creative works." To be more precise, certain parts or pieces of the game will be protected by copyright. Since software is known to be protected by copyright in India, video games that are created using software may also be given further protection. The plot, characters, soundtrack etc are the main components of a video game that, according to section 14 of the Indian Copyright Act, 1957, may be protected under several types of "works." Since Article 2 of the Berne Convention for the Protection of Literary and Artistic Works lists the various kinds of works that are covered by copyright, video games may also be protected by copyright. It should be taken that the game's idea is unprotected by copyright because, an idea can only be protected by copyright in its manifestation; the idea itself cannot.<sup>3</sup>

Copyrightable contents in a game are:

- Audio components are an important aspect of every game. These consist of dialogue, sound effects from animation, background music, and sound recordings.
- All of the items that are displayed on screen are referred to as visual elements. Photographic images, digitally recorded motion pictures, animated still and moving images, text, characters, and more are among them.
- The game is operated by software programs. They consist of plugins, basic design, programs, etc.

Adding further, every single component of the game, including the screenplay, game codes, music, sound effects, visual designs, and characters, can all be protected under various copyright laws. Video games are about more than just the game itself.

The characters, screenplay, game codes, music, sound effects, visual designs, and other elements that give each and every head the right to protection under different copyright laws are just as important as the game's software.

Internationally speaking, Atari Games Corps vs Nintendo of America INC (1992) and Sega Enterprises vs Accolade, INC (1992) elucidates copyright infringement in the gaming industry. The case deals with reverse-engineering Nintendo's video game system code so that other parties may use it to play their own games.<sup>4</sup>

<sup>1</sup> <https://www.finnegan.com/en/insights/articles/utility-patents-what-game-developers-should-know.html>

<sup>2</sup> <https://guides.loc.gov/this-month-in-business-history/december/game-of-monopoly-patent>

<sup>3</sup> <https://indiancaselaw.in/mattel-inc-and-others-v-jayant-agarwalla-and-others/>

<sup>4</sup> <https://scholarship.law.missouri.edu/cgi/viewcontent.cgi?article=1069&context=betr>

#### 4.Trademarks in Gaming Industry

First of all, using trademarks, businesses can protect their intellectual property and set themselves apart from competitors' goods and services. Trademarks in the gaming business might include logos, brand names, slogans, or even certain characters or game features. A business that registers a trademark obtains the only authority to use it in connection with its products or services, barring competitors from adopting marks that are confusing to customers.

In the gaming sector, trademarks are important for a number of reasons. Trademarks are first and foremost important for building consumer trust and brand recognition. A powerful trademark can help businesses stand out in a crowded market by coming to be associated with quality and innovation. Furthermore, trademarks foster a sense of familiarity and loyalty among gamers, which facilitates the establishment of a fan base for businesses. Moreover, trademarks offer defence against infringement in court.

The gaming business places a high value on creativity and originality, therefore using trademarks without authorization can result in serious financial losses as well as harm to a company's reputation. Gaming companies can take legal action against infringers and safeguard their brand from unlawful usage by registering a trademark.<sup>5</sup>

A gaming business can use trademark law to protect a number of its operations. The ability to register a trademark for an unlimited period of time is one of its benefits.

A well-known example of one such Trademark in gaming industry include PLANTS VS ZOMBIES. Designing of PlayStation logo for Sony by designer Manabu Sakamoto etc.<sup>6</sup>

Thus the registration and use of trademarks help in preserving the particular logo and brand from disruption or fraudulent infringement by a third party.

#### 5.Trade Secrets in Gaming Industry

The definition of Trade Secrets is dynamic in nature and it comes varying from one jurisdiction to another. In General terms it means any knowledge of economic worth that is not generally known to the general public, business, or other relevant parties.

If any information is deemed to be a trade secret, the owner of the trade secret has the right to stop anyone who unintentionally finds out from using or exposing it.

A trade secret can be any kind of information, such as a formula, pattern, data compilation, apparatus, method, technique, or procedure. Additionally, involves firmware, software tools, encoded file formats, plot and character ideas, and the actual code, source, object, and machine code which combine together to form components of trade secrets in gaming business. Trade secrets are valuable and confidential, but they are not subject to the same inflexible restrictions on their subject matter as patents, copyrights, and trademarks are.<sup>7</sup>

There are innumerable factors for protection of trade Secrets in gaming industry, which are described below:

- Sustaining a Competitive Edge - Game designers put a lot of effort and money into coming up with original and cutting-edge plots, graphics, and gaming mechanisms. Keeping these components private as trade secrets enables businesses to stay one step ahead of the competition.

<sup>5</sup> <http://jolt.law.harvard.edu/digest/trademarks-and-norms-in-the-video-game-community>

<sup>6</sup> <https://www.ajpark.com/insights/the-fame-game-use-of-famous-trade-marks-in-video-games/>

<sup>7</sup> <https://www.mondaq.com/india/gaming/871026/the-curious-case-of-the-indian-gaming-laws>

- Maintaining Originality - Innovation is vital to the gaming industry. Companies are encouraged to invest in R&D by the protection of trade secrets because they know that their ideas will remain private and provide them with a competitive edge.
- Stopping Injustice in Competition - Rival game creators could try to copy concepts or elements from well-received games. Through the prohibition of using or disclosing private information obtained by unethical means, trade secret protection aids in the prevention of unfair competition.
- Holding onto Market Position - Reputable gaming firms frequently command a large share of the market. By making it harder for rivals to duplicate their achievement, the protection of trade secrets aids in the maintenance of their market position.
- Durational Sustainability - It's possible for game producers to have long-term goals and tactics that call for releasing features or content gradually. By safeguarding trade secrets, these strategies can be carried out without having to worry about being overthrown by rivals.

In conclusion, trade secret protection is critical to the gaming industry's ability to innovate, stay competitive, draw in investment, and ensure businesses' long-term viability in a market.

## 6.Data Protection in Gaming Industry

India's gaming market has seen a tremendous transformation. In the last twenty years, gaming has evolved from computer games to Nintendo, mobile games, and now skill-based gaming. It's now simpler to play, more accessible, and inclusive. The surge in gaming in India can also be attributed to shifting consumer behaviour, which increases the appeal of the medium to audiences of all ages. The potential for expansion is large, but there is also a real risk of cyberattacks and risks to privacy of users.<sup>8</sup>

India has published the much-awaited Digital Personal Data Protection Act, 2023 (DPDPA), which would update the nation's laws governing data privacy and protection. Several categories of personal data are handled by the online gaming industry. Players may reveal certain data intentionally or not, that expose personally identifiable information about themselves and other players, depending on the type of game. Online gaming platforms then handle these data in the course of their business operations. Names, gamer tags, email addresses, sex/gender, age, and credit card and other payment information are distinctive examples.

Under the DPDPA, it is expressly forbidden to target children with marketing, and processing of such content requires obtaining parental agreement based on verified information. This becomes especially important when it comes to consent received from minors who play video games. Many Indian online gaming sites have a sizable user base comprised of people under the age of 18. Online gaming platforms are only permitted to process a child's personal data under the DPDPA with the parent or guardian's consent and after confirming the child's age. Age-gating may cause a decline in the number of users under the age of 18 on online gaming platforms, despite the fact that it is an essential component of any data protection policy. The necessity of several stages of verification for adults or even teenagers may make commercial opportunities more difficult. Furthermore, the repetitious nature of such procedures may cause consent fatigue in users of online gaming platforms where explicit consent is required. Given that the bulk of users on free-to-play online gaming platforms are between the ages of 13 and 18, this will probably have an impact on those platforms.<sup>9</sup>

Thus, there should be set of legislations that can restrict the privacy infringement in Gaming Sector.

<sup>8</sup> <https://www.sconline.com/blog/post/2022/09/07/the-convoluted-case-of-data-privacy-and-esports-industry-in-india-challenges-and-way-forward/>

<sup>9</sup> <https://www.businessinsider.in/advertising/ad-tech/article/rising-cases-of-cyberbullying-data-privacy-and-other-threats-in-online-gaming-report/articleshow/89611643.cms>



## 7. Issues of intellectual property rights infringement in Gaming Industry

- Game Development - Due to a variety of factors related to the creation of video games, certain program elements are copyrighted separately, while other program elements are either common creatives or already in the public domain and cannot be protected by copyright.
- Common Resources - Designers can borrow few elements from a number of websites to use in their games. Different websites use different models to grant access to and the ability to use these resources but there are extremely few assets available to the public. The fact that these assets frequently need to be duplicated in order to create a new game is a problem that many game developers face because it is expensive to create commercially acceptable assets, which hinders smaller studios' ability to produce a variety of games.<sup>10</sup>

## 8. Protection from intellectual property rights infringement in gaming industry

The difficulties of safeguarding intellectual property in online gaming can be addressed by game makers in a few ways. In order to have a stronger legal position in the event of an infringement, they can first register their intellectual property, such as trademarks and copyrights. Game producers can also spend money on anti-piracy tools like DRM software to stop their games from being distributed illegally.

Secondly, working with the gaming community and obtaining its assistance. In order to protect their intellectual property, game producers can act quickly by collaborating with gamers to report instances of game cloning and piracy.

## 9. Research Methodology

The type of research methodology applied above is that of the qualitative method. It includes taking references from a varied platforms including journals, ebooks, magazines etc.

## 10. Conclusion

In summary, the gaming industry's relationship with intellectual property rights (IPR) and data protection is a dynamic and intricate area that requires careful thought. The necessity to protect user data and intellectual property has grown more urgent as the gaming business develops and thrives. Achieving a delicate balance between safeguarding the privacy and security of user data and upholding creators' rights through strong IPR regimes calls for cooperation between industry players, legal professionals, and legislators.

IPR regulations that are implemented effectively can encourage innovation, promote creativity, and safeguard gaming companies' investments. Recognizing the possible dangers and moral ramifications of the gathering and use of user data is as important, though. Gaming organizations must take a proactive stance in implementing strong security measures, prioritizing user permission, and adopting transparent data practices in response to stricter data protection rules and changing customer expectations. Industry participants, government agencies, and advocacy organizations can work together to set moral guidelines that protect user privacy and intellectual property.

To summarise, managing the complex relationship between intellectual property rights and data protection in the gaming sector necessitates a comprehensive strategy that strikes a balance between the needs of producers, players, and the industry as a whole. The gaming business may grow while maintaining the values of intellectual property rights and data protection in harmony by encouraging an environment of responsible innovation.

<sup>10</sup> <https://vlex.in/vid/sony-computer-entertainment-europe-545976774>