

## Navigating IPR Challenges in the Online Gaming Industry: A Study from International Perspective

<sup>1</sup>Ms. Shruti Srivastava, <sup>2</sup>Dr. Apoorva Dixit

<sup>1</sup>Research Scholar, GD Goenka University, Sohna, Gurgaon

<sup>2</sup>Associate Professor, GD Goenka University, Sohna, Gurgaon

### Abstract

With changing technology and innovation, the online gaming industry has plethora of challenges to be met to include diversified business models. The complexity of applying intellectual property rights (IPR) in the online gaming sector is one of the main obstacles. There is a very thin line between uses which are legal and uses which are unauthorized, and to navigate this is a complicated piece of work. This research paper outlines the pivotal requirement for developing a diversified legal supporting structure which balances out the interests of all parties, encourages innovation and ensures fearless growth of online gaming industry. The issues involve infringement of copyrights, trademark rights, publicity rights and the infringement of rights concerning new age technology such as blockchain. The paper helps to highlight that how players of online gaming protect their rights through the usage of smart contracts. This research paper dwells into the current application of IPR in online gaming and makes a comprehensive study of IPR in various countries. This research paper brings forth the various complexities related to Intellectual Property Rights in online gaming industry both at the national and international level. The author has attempted to discuss case laws which help in bringing forth the trends that are being followed globally to protect IPR related to online gaming. This research paper also suggests the best practices which can be adopted by the online gaming industry to empower their legal framework in the field of IPR. Building up the legal framework to work beyond borders is the key to tackle the challenges that the nature of online gaming industries present.

**Keywords:** technology, innovation, blockchain, copyrights, trademarks

### 1. Introduction

#### I. Online Gaming Industry – An Introduction

The onset of innovation and technology has given great boost to the online gaming industry, which are online version of video gaming technology. These games capture huge audiences worldwide and have now become a billion-dollar industry. To keep this industry continue to shine, one needs to protect the intellectual talent that goes behind in making this industry more entertaining. Taking help of Intellectual Property in its various aspects will ensure robust protection to the video gaming technology in varied modes which it is played in. Starting from copyright to trademark as well as subtle protection like right to publicity and blockchain technology, there are multiple ways which one can assert their legal claims. This paper dwells into the study of various such legal rights and chalks out the complications which occur in the online gaming industry. This paper also brings out international perspective of various laws applicable for the online gaming industries. In conclusion, the author sums up the best practices of online gaming legal protection and suggest a harmonious construction of rules and regulations to govern online gaming. The availability of statutory protection has been discussed in detail in this paper.

## 2. Background And Legal Framework

### I. Statutory Protection Provided In The Online Gaming Industry

IPR, being a vast field of law, has a lot of scope wherein it can give protection to the video gaming industries or the online gaming industries. From copyright to trademark, every aspect of functioning can be protected through video games.

Application of copyright in the video gaming industry involves coming to a point of fair balance between those who hold copyright, those who are conducting the business and also the concerns of right to freedom of expression in the video gaming industry.

One of the benefits that can be drawn from securing copyright is that it protects those works of authorship which are original. It gives protection to literary, dramatic, musical and artistic works, but not including ideas. It is statutorily provided in section 13 of Copyright Act which says “copyright shall subsist throughout India in the following classes of works, that is to say, - (a) original literary, dramatic, musical and artistic works; (b) cinematograph films; and (c) sound recording.” Changes might occur based on jurisdictions.

Section 14 of the Copyright Act<sup>1</sup> gives protection to the many parts of the online games through varied provisions like protection being given to drama and musical work, literary work, reproduced work in material form, protection for cinematographic film et al.

Through section 2 of the copyright act, one can also draw inferences for the link as to how one can protect the various aspects of the online games. Section 2 (f)<sup>2</sup> and section 2 (o)<sup>3</sup> talk about cinematograph works, literary works, visual recording etc and is quite relevant in decoding the protectable aspects of online gaming. However, section 14<sup>4</sup> consists of two important and diverse works, the first one is cinematograph works and the second one is literary works.

There have been plethora of discussions with respect to category in which the online game fall i.e. whether it is a cinematographic work or whether it is a literary work. As such no watertight compartments are provided which give protection but the parts of online games can be majorly given protection in two separate categories which cinematography works and literary work. It can be said that online game or streaming of video games possess properties of both cinematography and literary works.<sup>5</sup> The literary part of the gameplay such as plots, twists, interactions between different characters of the game can avail the protection under literary work.<sup>6</sup> The nature of online games or video game which when streamed embody more of cinematographic rights since now they come under the term, ‘broadcasted’.<sup>7</sup> This paper has been further sub-divided broadly into two categories listed as follows:

1. Right to broadcast: whether it is a copyright infringement
  2. Protection of Intellectual Property rights for the virtual properties entailing in the online gaming industry
- Talking about virtual properties, further derivations can be made such as virtual avatar, the usage of blockchain technology and the usage of smart contracts.

#### A. Right To Broadcast: Whether It Is A Copyright Infringement

The copyright empowers the person to have an exclusive right over various aspects like exclusive right to reproduce that work, to publicly transfer that work and to license that work.<sup>8</sup> This exclusive right also embodies with it, the right to broadcasting with no wires, transmitting cables and transmission made on the internet.<sup>9</sup>

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<sup>1</sup> The Copyright Act, No. 14 of 1957, § 14 (India).

<sup>2</sup> The Copyright Act, No. 14 of 1957, § 2(f) (India).

<sup>3</sup> The Copyright Act, No. 14 of 1957, § 2(o) (India).

<sup>4</sup> The Copyright Act, No. 14 of 1957, § 14 (India).

<sup>5</sup> Yash Raj, *The Lacunae in the Indian Copyright Law vis-à-vis Video Games*, *NLUJ L. Rev.* (June 3, 2020), <https://nlujlawreview.in> (accessed Dec. 27, 2022).

<sup>6</sup> The Copyright Act, No. 14 of 1957, § 14 (India).

<sup>7</sup> Naresh Pujari et al., *Complexities of IPR in Sports League: The Way Ahead?* (2018).

<sup>8</sup> The Copyright Act, No. 14 of 1957, § 37 (India).

<sup>9</sup> The Copyright Act, No. 14 of 1957, § 14 (India).

Therefore, if any of the works which have copyrights get uploaded on the online media and is available for viewing to the larger public then clearly the rights of the copyright holder have got violated. Only after getting the license, the content could be posted online, else it will lead to copyright infringement.<sup>10</sup>

The sounds and visual images when transmitted across the internet to have viewership, it is called as “broadcasting”. The streaming of video games fall under the category of “broadcasting” and is governed under section 2(dd).<sup>11</sup> Broadcasting is again subdivided into two categories, the first one states that if the person who has participated in the gameplay and has made it available on the internet so that the user can view it after downloading and the second one is when the participants make the game available for others to view it at the same time.<sup>12</sup> The author is focussed on the second category of online gaming.

The elements of online gaming which have technical nature and includes processes and procedures may also be given the protection of trade secrets. A lot other elements such as the design of the games, the mechanics of the of the gameplay, the algorithms, the development of the character and much more.

DMCA is an American Authority that protects copyrights across domains of Google. Since the majority of internet searches involves the same, it is an important authority for Indian Copyright regime as well. This Authority provides for action of ban or ‘removal from display’ the impugned websites and thereby prohibits circumvention. There is however, no measure of prevention by the same.

The online games are a result of authorship, which is highly complicated, and through copyright, the right holder gets exclusive rights, which involve right to copy, distribute work as required. Additionally, the lengthy copyright period (fifty years after author's death) makes securing copyright protection for video games even more alluring. The copyright laws have been impacted and made more widely accepted by the 1886 adoption of Berne Convention for Protection of Literary and Artistic Works, WIPO Copyright Treaty, and WIPO Performances and Phonograms Treaty, 1996. An activity might be acceptable under the copyright in one nation and may not be acceptable in another nation. The nature of Intellectual Property rights is regional and the approach of online gaming through the developers goes beyond borders. Though there is some harmonization in intellectual property laws internationally, still a lot is yet to be achieved. The strategy for intellectual property should be to conquer the challenges at international level.<sup>13</sup> The problem relating to the protection of IPR also involves trademarks.

With the increase in dependence on technology and quick influencing power of online gaming industries, there might be possibility of characters involved in online gaming becoming assets which are monetarily triggering and therefore, there comes the need to protect these characters. In the new age lingo, these characters are said to possess the rights for virtual properties. This may call for more protection from the intellectual property rights perspective.

## **B. Protection Of Intellectual Property Rights For The Virtual Properties Entailing In The Online Gaming Industry**

Since trademark law aims to defend marks "used in commerce," it is beneficial to comprehend the role virtual property has started to perform in both kinds of worlds. In modern MMORPGs, players seek virtual acquisitions of tools, weapons, property, and more, in contrast to the traditional video and arcade games of previous decades, when players tried to earn the most points. It is kind of a business marketplace for the purchase and sale of these priceless virtual goods in the real world has been formed by both entrepreneurs and gamers. To understand comparatively better for example, there is a market on Sony's Station Exchange where people may trade real money for virtual real estate.

The protection of trademark is generally the protection given to products with two primary goals: to eliminate any kind of confusion regarding the product and the genuineness of the product. It is also to protect the goodwill by

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<sup>10</sup> The Copyright Act, No. 14 of 1957, § 51 (India).

<sup>11</sup> The Copyright Act, No. 14 of 1957, § 2(dd) (India).

<sup>12</sup> The Copyright Act, No. 14 of 1957, § 14 (India).

<sup>13</sup> Gaetano Dimita, *Understanding Intellectual Property in Video Games* (World Intell. Prop. Org., Comm. on Dev. & Intell. Prop., Nov. 2023).

protecting something in which the owner has spent time, money and energy in preparing the product for the world and seeks to guard the product from misappropriation.

Virtual Properties can be categorized into four main categories which are Avatars, virtual chattels, domain names and intellectual property.<sup>14</sup>

At the moment this virtual property is governed under a system where initial rights are allocated to traditional intellectual property rights holders, and subsequent rights are governed by license agreements called End User License Agreements (EULAs). The traditional intellectual property rights holders have been systematically eliminating any emerging or potential virtual property rights which game players may be entitled to by the use of EULAs.

In case of the Federal Court of Australia, Galaxy Electronic Pty Ltd v Sega Enterprises Ltd<sup>15</sup> it was held that visible digital creatives produced by video games can be covered under the definition of ‘cinematographic film’ .

As long as the fictional texts are even remotely creative, they pass this requirement for originality. While the bar is indeed set low, short phrases and simple shapes remain unprotected by copyright.

In the U.S. Court in Apple Computer, Inc. v. Franklin Computer Corp.,<sup>16</sup> it was held that the codes of a computer program, be it the source code or the object code, can get covered in the ‘literary work’ and has immunity from misuse, unauthorized imitation. This judgement of USA is applicable to the UK as well.

In the US, the protection to multimedia law is expressly given by the copyright law which belongs to the audio-visual work<sup>17</sup>. As per the USA copyright law, cinematograph is defined as those works which have a continuous moving image and can be shown by the usage of a device together with the background sound.<sup>18</sup>

Acquiring virtual properties is in highest trend, so much so that acquirers even create software which will repeatedly plays the same source code again and again till they defeat the villain in the game and win booties. These booties include game assets which can be resold to gain further monies. Research has suggested that some of the companies hire people to make them win booties and mine for prized possessions so that they can further resell and collect the same. The virtual property at some instances are also known as ‘farms’. There are criminal activities also involved in the same.

A lot of stakeholders are involved in these games, and it becomes all the more pertinent that they protect the precious things involved since actual money gets spent to acquire them.

Since actual money is involved in these online games, it is necessary that these things, which get bought and sold, get some protection from the law.

The platforms which let the games operate also have liability, and they are concerned with their own liability as well.

The question is what possibly can be their dangers such that they need protection. The answer to that is in instances where there is abrupt disruption or stoppage of game or in cases where the players’ ID has got stolen by some mischievous elements, the stakeholders need to be compensated.

The gaming platforms make use of names and logos of big industries, they are a source of trade and money flows from them.

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<sup>14</sup> Jennifer Gong, *Defining and Addressing Virtual Property in International Treaties*, 17 B.U. J. Sci. & Tech. L. 101 (2011).

<sup>15</sup> 145 A.L.R. 21 (1997).

<sup>16</sup> 714 F.2d 1240 (3d Cir. 1983).

<sup>17</sup> 17 U.S.C. § 102.

<sup>18</sup> 17 U.S.C. § 101.

Setting of clear boundaries on how will the interaction be between the users and the platform owners will help in protecting the trademark rights for user generated content. They should set clear guidelines as to how brand names and company guidelines could be used.<sup>19</sup>

These logos should be provided the best protection, preferably under the trademark. This will give trade encouragement to both the investors and the society.

### C. The Intellectual Property Rights Vested For The Right Of Publicity In Virtual Avatars

An avatar, or virtual representation of one's identity, can be created by an MMORPG participant and shown in the online virtual environment. "A user's actions, various facets of their persona, or their social standing within the virtual environment can all be represented by virtual avatars."

Additionally, an avatar can be anything, including a mythical creature, an animal, another person's identity, or a realistic portrayal of the user who made it.<sup>20</sup>

By allowing people to give publicity value to their name or image, the Haelan case<sup>21</sup> Safeguarded an individual's economic interest in their personality, distinct from their privacy interest.<sup>22</sup>

This implied that such an economic interest would support a person's legal protection against unlawful use of his name or image, in addition to any privacy concerns.<sup>23</sup>

"First, the economic reality of pecuniary values inherent in publicity and, second, the inadequacy of traditional legal theories in protecting such publicity values" are two policy considerations that Professor Nimmer identified in his article as providing strong support for right of publicity.<sup>24</sup>

Laws addressing issues including government computerised record keeping, electronic eavesdropping, confidentiality of credit and educational records as well as intrusive bill collectors, were passed in response to a variety of social concerns that were dubbed violations of "privacy."<sup>25</sup>

These laws show that "privacy" has changed from being a single, coherent body of legislation to being divided into several different areas, each of which focuses on a different social concern.<sup>26</sup>

The paper till now, is emphasising on the privacy concept from the perspective of technology owners who want to protect the intellectual property rights with respect to property and other related rights of video games. On the flip side, there is also a right to protect one's goodwill in the market which is also known as right to publicity. In the subsequent paragraphs, we will elaborate on right to publicity.

### D. The Meaning Of Right Of Publicity

The concept of right of publicity has origin which go beyond the boundaries and the mention is mainly found in the judicial precedent of United States of America. The right to publicity as mentioned earlier is now commanding importance since online gaming is a good way to increase your brand value.

The 1977 case of Zacchini versus Scripps-Howard Broadcasting Co. has been most recent significant milestone in evolution of right of publicity concept.<sup>27</sup> United States of America may recognise publicity rights as legitimate

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<sup>19</sup> Tran Bao, *Trademark Infringement in User-Generated Content: What Brands Should Do* (July 4, 2025), <https://patentpc.com/blog/trademark-infringement-in-user-generated-content-what-brands-should-do>.

<sup>20</sup> Rune Klevjer, *What Is the Avatar? Fiction and Embodiment in Avatar-Based Single-Player Computer Games* (Ph.D. dissertation, Univ. of Bergen, 2006).

<sup>21</sup> *202 F.2d 866 (2d Cir. 1953)*.

<sup>22</sup> D. Marlan, *Unmasking the Right of Publicity*, 71 *Hastings L.J.* 419 (2019).

<sup>23</sup> J.R. Grodin, *The Right of Publicity: A Doctrinal Innovation*, 62 *Yale L.J.* 1123 (1952).

<sup>24</sup> Lindsay Korotkin, *De Novo Finding Reality in the Right of Publicity*, 34 *Cardozo L. Rev.* 123 (2012).

<sup>25</sup> McCarthy, *supra* note 11.

<sup>26</sup> *Id.*

<sup>27</sup> *Zacchini v. Scripps-Howard Broad. Co.*, 433 U.S. 562 (1977).

economic interest, according to SC (Supreme Court's) decision in *Zacchini* case.<sup>28</sup> To "protect the proprietary interest of the individual in his act in part to encourage such entertainment," the state is interested in acknowledging a right of publicity."<sup>29</sup>

As previously mentioned, right of publicity is an IPR that prohibits defendant from using plaintiff's image for profit to bolster their position.<sup>30</sup>

On the other side, "courts protect the constitutional right to free dissemination of ideas."<sup>31</sup> "The use of a person's identity in news reporting, commentary, entertainment, works of fiction, or advertising that is incidental to such uses" is prohibited by Restatement of Unfair Competition.<sup>32</sup>

Consequently, courts have had to balance the rights to speech and publicity to guarantee that neither person's right to publicity nor society's First Amendment right is restricted.

California Supreme Court ruled that the defendants' work lacked any noteworthy innovative or revolutionary elements.<sup>33</sup> It used concept of transformative fair use from copyright law to strike balance between rights of expression and publicity.<sup>34</sup> It clarified that "the promotion of free expression and creativity is a common goal of both the First Amendment and copyright law."<sup>35</sup>

In India, in the case of *Justice K.S. Puttaswamy (Retd.) v. Union of India*, it was held that publicity rights are a definition of self and it implies a stoppage for others indulging in interference in the definitions of the same and how it is presented to the public.<sup>36</sup>

## II. The Protection Of Intellectual Property Through The Usage Of Blockchain Technology

Intellectual Property Rights in online gaming can also be protected through the usage of blockchain technology where in data can be stored in a registry sort of framework and get locked like that.

A blockchain is a kind of database, one sort of registry wherein all the businesses are clustered into blocks. Data blocks are started one after the other in a chronological manner using cryptographic trust. Every block is exchanged to create blockchain structure, and ultimately, cryptographic trust is used for registration. When the registry gets a new entry, it cannot be erased, which indicates its immutability. Even the records cannot be changed, which means it is unchanged permanently. It is challenging to alter since it needs agreement from the majority of consumers. Since the data remains more or less constant, the trust of the users remains intact.

Blockchain can be divided into class of innovations. Public blockchains and private blockchains are one kind of classification. Public blockchains are accessible to the whole public, as the name implies. It means the parties are able to read, do business as well as get a certificate if they do transact. A person becomes a miner if he does business with bitcoins. Using open-source software, anybody can establish a digital wallet, conduct transactions, and start mining. Private blockchain restricts access to the given set of numbers, and an approval is also given by the blockchain operator.

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<sup>28</sup> Jon M. Garon, *Publicity Rights in Bytes: Contemporary Issues in Entertainment and Sports Law*, 11 Chapman L. Rev. 465, 484 (2008) (citing *Zacchini v. Scripps-Howard Broad. Co.*, 433 U.S. 562, 572 (1977)).

<sup>29</sup> T.L. Eovaldi, *Market for Consumer Product Evaluations: An Analysis and a Proposal*, 79 Nw. U. L. Rev. 1235 (1984).

<sup>30</sup> Cristina Fernandez, *The Right of Publicity on the Internet*, 8 Marq. Sports L.J. 289, 324 (1998).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Cal. Civ. Code § 3344.1 (similar to § 3344 but applies to a "deceased personality" and was enacted in response to *Lugosi v. Universal Pictures*, 25 Cal. 3d 813 (Cal. 1979)).

<sup>34</sup> Garon, *Publicity Rights in Bytes*, supra note 32, at 485.

<sup>35</sup> *Id.*

<sup>36</sup> *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1 (India).

A. **Protection Of Intellectual Property Rights In Online Gaming Through The Usage Of Smart Contracts**

The rights of stakeholders in online gaming can be protected through the creation of smart contracts. The participants or the players rights can be better governed through the smart contracts as technology can be a good medium to ensure fair transactions taking place.

Smart Contracts are a result of process of decentralization. Smart contract is “a computerized transaction protocol that executes the terms of a contract”. Smart contracts are performed automatically if specific conditions are already satisfied. Smart Contracts enable the concerned parties to transact the revenues in a fair and instant manner, and the smart contracts ensure timely compliance of the same. Since video games include cross-border transactions, it is important that copyrighted content be safeguarded in such a systematic way. It simplifies complex transactions and does away with the need for having intermediaries in contracts having licenses.

The working of smart contracts is kind of logical and conditional. For example, if a certain condition is met, like payment of money, then there would be permission given for access to certain privileged things, like accessing the digital copy. Also, if a work gets done and it has resulted in production of money for the company, then further course of action will follow, like dispensation of money among the owners of copyright.

**3. Policy Analysis And Critique**

**III. Understanding The Complexities Involved In A Video Game And Possible Legal Solution**

The video games are hugely popular and they help the industry earn in billions, primarily because video games are obtainable as live game streaming. At times, it also incorporates pre-recorded gameplay. These are classified as "Let's Play" videos in context of livestreaming.

Video games that demand a strong computer network and high-speed internet access are referred to as online games. Online video games include MORPGs and MMORPGs, for instance. MORPGs allow unlimited number to join the ecosystem of online video games while MMORPGs does the opposite. In this league, prominent online games include DOTA 2, *League of Legends*, and *World of Warcraft*.<sup>37</sup> A fixed monthly charge is at times given to play the online video games.

Pre-recorded games can be uploaded directly on video game platforms like YouTube and Twitch by clicking on “Share Button”. So while sharing the livestreaming of the games, copyright goes to the platform through which the button was clicked. During the hours of live streaming, in between, if any content gets displayed which is not part of the developer's video, then there might arise some copyright claims. There is also something known as “create” button, the “create” button changes the dynamics of copyright claims.

The Licence Agreements also have a way of protecting the video game publishers and those who have uploaded the same on the internet. The licensing agreement makes more sense to the ‘competitive video gaming’ and not to those video games which present a linear story. The licensing agreement also provides for ‘right of cancellation’. This right enables the creators and developers to terminate the contract when faced with improper streaming. This kind of right is required to balance interests of licensees and rightsholders. Under the Licensing Agreements, the rightsholders have a duty to provide remuneration very fairly to the copyright holders. The agreement between the platform and game publishers is the most beneficial one since it is the platform owners who benefit through the advertisements in between. It is often emphasized that the platforms are mainly responsible for remunerative rights. Therefore, the license agreements create a level playing field for all parties involved, including the streamers and content creators, and the platform's outcomes will be necessary to determine the level of remuneration. There are multiple ways of sharing remuneration. The amount given to copyright holder will be proportional to length of video game. Another remuneration generative approach will depend on ‘views’

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<sup>37</sup> Statista, *Most Played PC Games on Gaming Platform Raptr in November 2015, by Share of Playing Time* (Dec. 2015), <https://www.statista.com> (last visited Feb. 4, 2022).

of new video. Like this, part of revenue generated goes to rightholder.<sup>38</sup> The rights of content creators should not be looked away and therefore, there should be a fair balance between all the content creators.

#### 4. Proposed Reforms And Solutions

#### IV. The Global Approaches To The Protection Of Intellectual Property Rights

Digital Single Market for all online creative material has been a priority for the European Commission. They focused on the revenue generated, which is more than billions of rupees. A lot of their stakes are concerned, such as 2.6 percent of EU's GDP, and which hires slightly above than three percentage of European Union's workforce.<sup>39</sup> European Commission therefore understands requirement of providing protection to literary materials using copyright in an economy which is fast growing.

In the case law of *Nova Productions v Mazooma Games*<sup>40</sup> it was held that the screenshots taken from the game of pool also possessed copyright. The screenshots are usually taken while the players are playing the game. Logically the person who has taken efforts to create the game should possess copyrights on screenshots of the game. However, there still have been arguments that the players have possession of copyrights. In the mentioned case, it is the developer of the game who has planned out the display of the game. The strategy and methodology, therefore, the copyright of the screenshots belong to the developers instead of players.

The copyright law of USA lays down certain rights meant exclusively for those who are seeking copyrights. The copyright laws give certain specific rights to the copyright holder which includes right to make copies of the original, preparation of the inspired work of the original, distribution of the copied work to the public.

For the Gaming Industry, an act known as the Digital Millenium Copyright Act (DMCA) makes it a crime if one indulges in production and spread of any technology that does not obey and comply by the copyright protection systems. The Digital Rights Management (DRM) is in place to control the gaming rules and regulations. There are provisions like Fair Use which justify the usage of copyrighted material and that can be reporting or journalism. There is a provision for copyright given to standing out parts which are creative like codes, music, story, visual art etc.

In the case law of *GTA v. Rockstar Games*<sup>41</sup>, one of the American actresses made a claim that an in-game character depicted a figure just the same as her and that it was violation or infringement of her privacy rights. The New York State's Court of Appeals, held that the character of the figure appearing in the game contain general characteristics and cannot be said to be violating the actress' rights.

In the well-known *Nintendo versus PC Box* case<sup>42</sup>, court believed that video games are a very complicated subject that involves both computer programming and sound effects.

These effects and ingredients, which are one on their own, need to have protected by the laws of copyright. This has also been given by the DSM directive of 2001/29.

Betamax recorder case<sup>43</sup> has been handled by the SC of USA. It was said that the recorder gave place to the claims of liability at the secondary level, and the scope for unlawful usage can be limited as opposed to the thoughts of the right holders. It was decided that there are a number of beneficial, non-infringing uses for Betamax recorders.

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<sup>38</sup> C. Postel, *Let's Play: YouTube and Twitch's Video Game Footage and a New Approach to Fair Use*, 68 *Hastings L.J.* 1169, 1191 (2017).

<sup>39</sup> European Commission, *European Commission Launches Reflection on a Digital Single Market for Creative Content Online*, Press Release (Oct. 22, 2009), [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_09\\_1563](https://ec.europa.eu/commission/presscorner/detail/en/IP_09_1563) (last visited Feb. 4, 2022).

<sup>40</sup> [2006] EWHC 24 (Ch).

<sup>41</sup> 547 F.3d 1095, 1099 (9th Cir. 2008).

<sup>42</sup> *Case C-355/12, Nintendo Co. v. PC Box Srl*, ECLI:EU:C:2014:25.

<sup>43</sup> 220 U.S.P.Q. (BNA) 665 (T.T.A.B. 1983).

Betamax Players in 1980s had something known as 'Record' link, which is similar to the 'Share' and 'create' link that we have now these days. This feature permits users to make a copy of songs being played and replay the copied version.

The name of the mentioned case law is Sony Corporation of America versus Universal City Studios, Inc.<sup>44</sup> and particulars of case law is as mentioned below:

Petitioner in this case is Sony Corporation, which manufactures "Home Videotape Recorders," or VTRs, as well as distributes them through retail outlets. In this case, respondents are the owners of some of works which is copyrighted. It is aired on public airwaves. The Respondents' issues were that the petitioners, through their selling of VTRs, are infringing copyrights of the owners. They are responsible for the same through their marketing. The case again saw back and forth as the court of higher appeal said that if one is using VTRs in a private area, such as one's home, then it amounts to fair use and not an infringement. On further appeals, the court reversed the decision and said that there is a copyright infringement, and relief should be given.

A lot of legal issues were pondered over in this case, giving rise to possibilities in the copyright infringement area. For example, a copyrighted work can be reproduced by anybody for 'fair use' and not just the copyright owner. There is a part for constructive knowledge where it is assumed that if you are selling out VTRs, you are indirectly contributing to the sale of illegal copies, because there is no chance that one can stop this.

Final verdict: There is no contributory copyright infringement when the VTRs are sold to the general public. U. S. (a) In situation such as, when Congress hasn't explicitly indicated path to be taken by judiciary, this Court must exercise caution when interpreting the extent of rights established by a legislation that never considered such protections since copyright protection is entirely statutory and a calculus of interests. A copyrighted work may be reproduced for "fair use" by anybody; copyright owner doesn't have sole right to do so. (b) Kalem Co. versus Harper Brothers<sup>45</sup>, doesn't support respondents' unique premise that culpability for copyright infringement can be established by providing "means" to carry out an infringing conduct or advertising that activity. To establish vicarious liability as the "contributory" infringer had the authority to restrict how others used copyrighted works and had permitted their use without the owner's consent. In this instance, there was only interaction between the petitioners and the VTR users during the transaction. Furthermore, vicarious responsibility has never been applied to the claim that petitioners sold the VTRs knowing that their customers may use the devices to illegally duplicate works protected by copyright. If copying equipment is widely used for appropriate, legal purposes, it doesn't constitute contributory infringement, just like selling of other commercial items c) record and District Court's conclusions show (1) that a sizable portion of copyright owners who provide licenses for free television shows wouldn't mind if private viewers shifted the time of their broadcast (i.e., recording the broadcast for later viewing when VTR owner is unable to watch it); and (2) that there is no chance that time shifting would negatively impact the respondents' copyrighted works' potential market or value. Consequently, the VTRs have a large number of non-infringement uses. Private, non-commercial time shifting in the home satisfies this non-infringing use standard because respondents have no control over other copyright holders' permission to allow such time shifting for their programs, and the District Court's findings show that even unapproved home time shifting of respondents' programs is permissible fair use.

## 5. Conclusion

### V. Conclusion And Suggestion

The strong Intellectual Property laws will encourage developers to innovate and disseminate global information. The harmonization of Intellectual property laws globally will immensely help the video gaming industry since video games/online games run across borders. The strengthening of IP laws with the aim of protecting local developers' creations from piracy and infringements will give a boost to the industry and help in global dissemination. One can take a cue from the European Union Directives as well as from the laws of WIPO and USA. Referring to practices in China may also help as China has strict licensing and registration procedures

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<sup>44</sup> 220 U.S.P.Q. (BNA) 665 (T.T.A.B. 1983).

<sup>45</sup> 222 U.S. 55 (1911).

wherein government databases are also involved.<sup>46</sup> Though section 65 A & 65 B of copyright rules 2013 does give an uptick to the protection of original work but still a lot of other changes are still to be made. The Digital Rights Management attempts to build a unified system but more work is still to be done. The Digital Millennium Copyright Act of USA enables the platforms to takedown any content wherein the copyright owners feel that their rights have been violated. This kind of safe harbour concept can again be found in section 79 of Information Technology Act of India<sup>47</sup>, however, there is a lot of scope for overregulation and ambiguity.

The local gaming community will be encouraged to engage in more research and development if there are robust Intellectual property regulations in place. Through the usage of blockchain, trading across borders have got a philip, yet better IP regulations are required to manage blockchain in a more efficient and acceptable manner. Smart Contracts are one such example. Since a lot of value is given to the brand names these days, protection given to logos and brand names is also quite pertinent; evidently, gamers are trading products online as well.

Summing up, a harmonious implementation of Intellectual Property laws across the world is required to boost the videogaming or online gaming industries with better protection mechanisms and encourage development of videogaming/online gaming platforms in a way which benefits all stakeholders.

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<sup>47</sup> Information Technology Act, No. 21 of 2000 (India).