

Title: Intellectual Property Protection for Video Games

The paper examines intellectual property (IP) protection for both UK and Chinese games companies with digital contents as their key intangible assets. The objective is to evaluate the efficacy of the IP system and advocate a legal reform for a more efficacious legal system. The research questions of the paper are (1) whether the current IP law has afforded adequate protection for games; (2) how the IP legal regime can be reformed to effectively protect the industry whilst maintaining a delicate balance between IP owners and other stakeholders, like the platform and the end user. The primary focus of the paper is on copyright, which has been involved in most disputes over the contents. Moreover, it undertakes a broader approach to examine how other IPs, including patent and design, have been utilized by games developers to protect both contents and physical operating systems.

The current research on the IP protection of video games is much confined to the law per se and therefore unable to address the challenges brought by technologies. The literature lacks the understanding of the technological, social, and cultural factors that influence the making and enforcement of the law. Without a thorough understanding of the dynamics between the industry and the market, it is impossible to seek an optimal model of IP protection for video games. The paper examines how businesses selectively employ different IP strategies to maximize their profit. Based on the observation, it analyzes the rationale of those choices. It discusses how the IP legal concepts of originality, idea/expression dichotomy, novelty and inventiveness that underpin the creation of copyright, patent, and design rights have affected the choice of the route for protection. Deriving from the current movement of theorizing IP as a complex adaptive system, we argue that the modular structure of IP, particularly copyright, is incapable of providing efficacious protection to games in a new virtual world with immersive technologies and a significantly higher degree of interaction. A more holistic approach needs to be adopted for games.

This paper is divided into five sections. The first section categorizes digital games based on the criteria typically applied within the games industry, including genre classification and the impacts of platform, technologies, and user generated content on original game design. The second section develops the theoretical approaches from game studies to conceptualise what is and is not expression. The third section examines the development perspectives on the individual code, image, and audio components of games. At the highest level, the core and shell model separate gameplay (the core) from the representation of ideas within the game (the shell). However, this level of abstraction does not necessarily map well to copyright protection, if the assumption is that the original expression within games is constrained to its representational and dramatic elements. The MDA framework stresses a distinction between mechanics (the game rules) and dynamics (the operation and behaviour of those mechanics at run-time). Lastly, at the most granular level of game categorisation we can consider all the individual text, code, graphic, and audio-based elements that are generated as part of the production cycle. The fourth section examines the scenarios where patent and design rights have been utilized to protect games by examining relevant UK and Chinese cases involving IP disputes. It analyzes the rationale of the alternative routes of protection and the resultant legal implications for games companies. The final section recommends an optimal model for IP protection for games and concludes that IP as a complex adaptive system can well apply to the protection of games.