

The online leisure and social gaming sectors are amongst the fastest growing and changing sectors. Simont Braun makes sure you stay on top of your game. This article is part of a series intending to guide you through the regulatory landscape applicable to video games. This series is intended as practical, business-focused and attention-grabbing, emphasising the most important topics and developments that may interest an international audience, whether you are a gamer, a game developer, a producer, a streaming platform or a governmental organisation. 

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## GAMING: WHAT'S LAW GOT TO DO WITH IT ?

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### EPISODE 3

#### ADAPTATION RIGHTS AND VIDEO GAMES (1)

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The creation of a video game is a complex operation that requires the intervention of several contributors. That operation becomes even more complicated when the creation of a video game involves the taking over of someone else's work, namely when a video game is based on a pre-existing original work. In that case, can the video game creators simply reproduce existing content, or do they need to secure their own rights in doing so? In other terms, how do adaptation rights apply to the gaming industry?

Those questions are not merely academic. Many examples lie around us. The Witcher video game saga, now a successful Netflix TV show, is based initially on a polish series of books written by Andrzej Spakwoski. The God of War video game trilogy takes roots in Greek mythology and stars many well-known divinities, such as Athena, Zeus and Ares. Likewise, the Assassin's Creed video game series offers a journey through history, presenting characters such as Benjamin Franklin, Leonardo da Vinci and Charles Dickens.

#### 1. The author's authorisation

As a rule, no adaptation of an original work can take place without the prior authorisation of the author or his descendants for 70 years after the author's death. The notion of "original work" must be understood broadly: provided that an idea has been materialised in a tangible form and that such form is characterised by creative and personal choices from the author, this is a

work protected by copyright. Examples include books (such as Harry Potter), movies (such as Matrix), comics (such as X-men) – all of which have been adapted in successful video games.

## 2. The simple case of books

Under Belgian law, the right of adaptation is a branch of the right of reproduction, which belongs to the author. The author is the natural person that created the original work. Therefore, the adaptation of (part of) a work into a video game requires obtaining the author's prior consent. In the case of a book (such as Harry Potter), the situation is in principle simple: the video game editor must obtain the author's consent (in this case, J.K. Rowling) to adapt all or part of the book into a video game.

## 3. What about collaborative works?

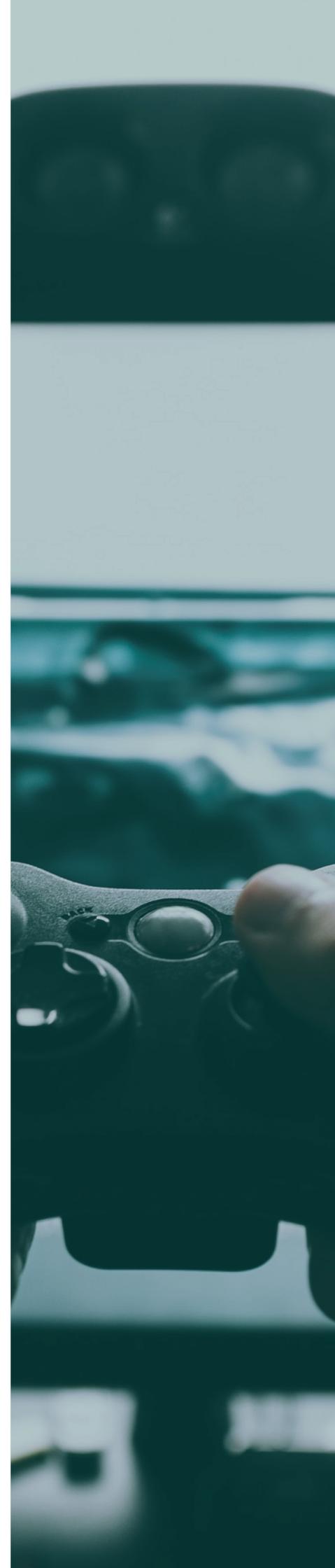
The situation becomes more complex in the case of a film or a comic book. Like video games, such works are not made by one person alone but require a team. A movie involves the contribution of a director, a scriptwriter, a sound designer, a set decorator, an art director... let alone the actors, producers and camera operators on set. Likewise, a comic book can only come together with, at the very least, the intervention of a scriptwriter, a cartoonist, a colourist and an editor. To be qualified as a "co-author", one must prove that one has made creative choices and brought a personal touch to the work (e.g. a comic scriptwriter or a music composer). That condition will not be met if, instead, one has merely followed technical or trivial instructions in the process (e.g. a cable technician on a movie set).

In the presence of a work of collaboration, to determine the applicable legal regime under Belgian law it is necessary to determine whether the work is divisible (i.e. when the contribution of each person can be distinguished – for example, in a comic book: the scenario and the drawings) or indivisible (i.e. when the contributions of the authors cannot be identified separately – for example, a book written by two authors or a movie directed by two directors).

### Indivisible work vs divisible work

In the case of an indivisible work, the exercise of the copyright is regulated by a convention. In contrast, the authors of divisible work can in principle exploit their contribution individually as long as this exploitation is not detrimental to the collaborative work. Based on the foregoing, the legal regime applicable to the authorisation of the author in the movie and comic industry remains debated and subject to the particular circumstances of each given case.

In the case of an audiovisual work (i.e. a movie or a series), under Belgian law, the producer is presumed to have obtained the transfer of the exploitation rights from the audiovisual work's authors. Therefore, the right to adapt the audiovisual work will have to be obtained directly from the producer, in the form of a transfer agreement or a carefully drafted licence of exploitation.



Finally, the copyright in the video game will only belong to those who made an original contribution to its creation, with one exception: the author of the original work from which the video game is derived will be considered as a co-author of the video game if his or her contribution is used in it.

The creation of a video game may often involve taking over pre-existing content. Whenever that content is original, the authorisation of its author(s) will be required. As we will see next week, that principle applies to original works taken as a whole and to original parts of it such as characters.

Please tune in next week to find out what this means for your business!

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**For any questions or assistance, please contact our Gaming Team**  
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*This article is not legal advice or opinion. You should seek advice from a legal counsel of your choice before acting upon any of the information in this article.*

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