

Gaming Team | October 2021

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.

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

EPISODE 1

MAPPING THE REGULATORY LANDSCAPE (1)

It will probably come as no surprise, but you will not be able to find everything that has to do with gaming in one all-inclusive law. As it stands in Belgium, gaming is not a single legal topic, but rather a field of law that is related to a wide variety of legal areas, such as contract law, corporate law, intellectual property law, privacy law, gambling law, e-commerce law, electronic communications law, criminal law and so much more.

Understanding and being aware of the different rules that come into play and how they are intertwined is essential to avoid issues or obstacles later on the road.

Intellectual property is one of the most (if not the most) important branches of law for video game developers and publishers to understand. IP is a vital element of video game development contracts, employment agreements, distribution, advertising and every licence in the game industry. As houses are made from wood and stone, video games are made almost exclusively of IP.

Intellectual property laws are about protecting developers and their (creative) work. These laws protect the developer from pirates and competitors that want to take a creation and use it without any compensation. Hereunder, we will provide from a Belgian point of view an overview of the main intellectual property rights that can come into play for protecting the creation of a new (video) game.

1. Trademarks

Trademarks protect the goodwill and reputation associated with your company or video game as a brand. A trademark – any name or symbol indicative of a source of origin of a product or service – is arguably your most valuable business asset and is perhaps also the most recognisable form of intellectual property. You can hardly drive down a major road or browse the internet without encountering commercials from major brands like Coca Cola, McDonald's or Mercedes. Many consumers purchase goods and services based on name recognition alone. That is why for instance, the famous EA Sports trademark is so prominently displayed every time you launch your favourite FIFA game and why the original Flappy Bird game was so popular despite its simplicity and the countless existing copycats.

A trademark is a registration-based right that can be obtained at the BOIP for the Benelux region and/or at the EUIPO for the EU region, provided the sign for which registration is sought is free from occupation. Once granted, a trademark can provide perpetual protection, assuming the annual fees are timely being paid, the registration is renewed before the expiry date (every 10 years), and the trademark is not revoked for one reason or another.

2. Copyrights

Copyrights are another form of intellectual property and protect the expression of an idea (but not the idea itself). Take Pac-Man, for example. Copyright protects the artwork and sounds in the game as an audiovisual work as long as they satisfy the originality criteria. No one can copy those images and sounds used during the game. However, copyright does not protect the idea of a player-controlled character eating dots in a maze-like game board while being chased by differently coloured evil characters.

Copyright protection exists from the moment an author fixes an expression in a tangible medium. This means the moment you save your source code to disk or sketch out the artwork for your game character or level art, you automatically have copyright protection without doing anything further for a duration up until 70 years after your death.

3. Software rights

Software rights want to protect the source and object code of a computer programme. However, that's not all. In addition to the source and object code, the protection covers the preparatory material preceding the creation of a programme, provided that this preparatory material can later lead to such a programme. That is, tables, organograms, flowcharts, notes, drawings, and sketches may also obtain protection.

The software rights regime follows the copyright regime for the most part, with certain exceptions. Software is also protected without registration for a duration up until 70 years after the death of the right holder.

To conclude, under Belgian law, it will often happen that the same video game is protected by trademark rights (provided the video game's name is subject to trademark registration with the BOIP or EUIPO), copyrights (for what concerns the layout and appearances of the game) and software rights (for what concerns the source and object code as such).

This week's episode was about going back to the basics in terms of how IP and gaming can be intertwined. We saw how trademark and copyright laws can apply to video games, particularly regarding the specific copyright regime applicable to software. Next week, we will have a look at less well-known IP rights, namely the database, design and patent regimes. Last but not least, we will see how trade secrets may apply to video games.

Please tune in next week to find out more about it!

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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