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Copyright priorities and challenges for the video game industry

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Presentation outline

• About the Industry

• Evolution of the Infringement of Video Games

• Copyright Policies Important to the Video Game Industry

• Observations and Trends

• Video Games and Digital Trade
the U.S. Video Game Industry

Video Game Publishers & Console Makers

• Physical discs, online, mobile, VR/AR games

• Consoles: Microsoft, Nintendo, Sony

• Games: Activision | Blizzard (COD, WoW), Electronic Arts (FIFA), Square Enix (Final Fantasy), Take-Two (GTA), Ubisoft (Assassin’s Creed)

• Industry Revenue: $36B Domestic for 2017
Many Ways to Play
- PC, consoles, tablets, smartphones
- Subscriptions, digital games, add-on content, mobile apps, social network gaming
- Single player, multiplayer, gameplay streaming and esports

50% use their game consoles to watch movies

28% use them to listen to music

The total consumer spend on the video game industry was $30.4 billion in 2016.
Evolution of Game Infringement

• **1.0 – Hard Goods**
  - Circumvention devices, counterfeit game discs, pre-loaded hard drives
  - Online & Offline Marketplaces
• **2.0 – Infringing Downloads**
  o Infringement is digital, generally takes place online
  o Game files are large: **40-60 GBs**
Spotlight: Monthly Infringement Volume

- **Monthly Infringement (2017):**
  - P2P peers in infringing swarms: **67M**
    - Russia ~34%
    - Brazil ~11%
  - Infringing search results: **260K**
  - Links to infringing host/torrent files: **134K**
  - Unique Host files discovered: **18K**
Evolution of Game Infringement

• **3.0 – Hybrid:** IP/Licensing Violations, hacking, the sale of in-game items and cheating
International COPYRIGHT policy and principles

• Effective protection of technological protection measures for game software, hardware and servers are more important than ever
  • overbroad exceptions should be limited
  • flexible and periodic administrative review of granted exceptions

• A legal framework that provides incentives for online intermediaries to work with rights holders to combat infringement
  • Safe harbors for online intermediaries who do their part to fight infringement
  • No conflation between safe harbors in copyright and non-copyright contexts for online intermediaries

• Remedies for infringement must be available to the same extent in the digital environment as in the physical one
  • Ability to seize and order the destruction of infringing goods
  • Criminal liability for aiding and abetting infringement and for commercial-scale infringement
Enforcement of video game intellectual property rights keeps changing and is growing more complex.

Copyright policy questions will become even more complicated in the face of proliferating access to content, changing consumer tastes and interaction with technology.

Copyright policy will be increasingly impacted by other emerging areas of law such as privacy and consumer data protection.
• Effective civil and criminal protection and enforcement of video games and related products and services must be available online

• Overbroad exceptions to TPMs could make it harder to protect video game software, hardware and servers

• Privacy and data protection concerns should avoid negatively impacting intellectual property enforcement of infringement of video games
  • EU’s GDPR and ICANN WHOIS data

• Regulatory treatment of online platforms should be nuanced and done in a way that preserves the right of video game companies to effectively protect and monetize game content they develop and publish
  • EU’s Digital Single Market strategy
Video Game monetization

• Traditional video game sales
• Free-to-play models
• In-game purchases and microtransactions
• Parental controls
  • Entertainment Software Rating Board resources
  • Video game platform/device tools
Thank You!
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