
PROTECTIONS FOR GAME DEVELOPERS, DESIGNERS, AND CREATORS: RECOGNITION OF ECONOMIC RIGHTS IN INDIAN GAMING LAW

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ABSTRACT

The Indian gaming economy has emerged among the fastest-growing sectors of the new-age digital economy, fueled through technological innovation, interactive content, and an increase in consumer engagement. But it cannot be recorded and considered as a whole, because the IP framework pertaining to this sector remains fractured and largely lacking to meet the modern video game complexities. This paper will thus analyze complex video game elements under the lens of different regimes- Copyright Act 1957, Trade Marks Act 1999, Designs Act 2000, and Patents Act 1970-software code, audiovisual content, characters, UI, and gameplay. The judiciary has decided very few cases in this sector. One of the very few judgements relating to piracy and circumvention in gaming would be Sony Computer Entertainment Europe Ltd. v. Harmeet Singh. The study further makes its way through practical uncertainties faced by various stakeholders: developers face cloning risks and enforcement challenges; streamers and user-generated content operators have no clear safe-harbor protection; and anti-circumvention provisions under Indian copyright law are doctrinally underdeveloped. By way of comparative insight, the U.S. and EU present far more mature approaches to composite works, character protection, and Digital Rights Management. Using doctrinal analysis, case law, and industry data, including IP filing trends within India's creative sectors, this study argues that some calibrated reforms are warranted to the statutory recognition of composite works, explicit protection of video game characters, clearer guidelines for user-generated content and streaming, and stronger enforcement against technological circumvention. By melding creators' moral and economic rights with fair use, interoperability, and innovation, the study presents a framework for nurturing a more secure and innovation-friendly gaming ecosystem in India.

Introduction:

Intellectual Property Law in India has developed manifolds and has been an indispensable tool in protecting creations that are made using the human mind. Various statutory protections are afforded to creators under various statutes and one among those statutes include the Copyright Act, 1957 providing protection to creators of Literary, Musical, Dramatic and Artistic work and producers of Cinematograph Films and Sound Recordings. One of the evergreen, ever growing and rapidly expanding industry in India is the gaming industry. The industry has developed multifold and is a pivotal component of the digital economy of India in recent years. The evolution of mobile devices and internet service plans and the increasing use of technologies such as artificial intelligence and cloud gaming are reshaping the business and creativity dimensions of gaming in India. Game developers, designers and creators are leading this transformation by producing experiences that are relevant across cultures and stretch technological capabilities. Yet another aspect of the protection provided to game developers in the gaming industry is for the characters in the game, game cover and the graphical interface under the Designs Act, 2000. The act does not extend protection for the technological functionality of the game. Therefore, what is protected under the Designs Act is only those aspects of a product that appear “Appealing to the eyes”.

The unique aspects of video games that incorporate narrative, computer programming code, graphic design and user interface, pose specific challenges to legal systems that re-frame how to define the contribution of authorship under intellectual property and need to protect the rights of creators. Video games are, in essence, complex hybrid works and their multi-dimensional quality complicates categorizing video games or the issues consequential to intellectual property protections in India or any jurisdiction that has a system of intellectual property.

The multi-layered, collaborative, and technologically complex character of video games is not sufficiently addressed by Indian law, despite the industry's growth rate. The Designs Act of 2000 and the Copyright Act of 1957 offer sporadic protection. The Copyright Act does not regard video games as a single, composite intellectual property category, but it does protect software (as "literary works"), music, graphics, and cinematic sequences. This makes ownership unclear, particularly when there are several authors, and it makes it harder to enforce moral rights like integrity and attribution.

International agreements such as the WIPO Copyright Treaty of 1996 and the Berne Convention of 1886 (which was revised in 1971) recognise the financial and moral rights of game developers, including the right to claim authorship, to object to unfair treatment, and to be compensated for commercial use. Explicit copyright registration and collective rights management for games as composite works are also available in many developed countries, although India has not yet implemented such reforms on a large scale.

In India, **The Promotion and Regulation of Online Gaming Bill, 2025**, has been recently introduced, which aims to create a statutory entity with jurisdiction over licensing, player safety, and dispute resolution while also promoting e-sports and regulating online gaming. However, the primary objective of the act is to provide protection to the consumer and money game regulation. Furthermore, the bill does not assert direct legal protection and intellectual property rights protection to the game developers. The legal and regulatory landscape is therefore still fragmented and adaptable to shifts in business realities and technology. One of the primary reasons for deficiency in protection under the intellectual property laws is due to the ever-evolving and dynamic nature of the gaming industry that has become diversified and more complex in recent years.

Literature Review:

In the research paper by A. Mukundh Viswesh, titled “Legal Challenges Of The Intellectual Property Rights In The Gaming Industry In India” published in “Indian Journal of Integrated Research in Law” the author has highlighted key issues pertinent to copyright, trademark and design protection for game developers in Indian and international perspectives citing several case laws that had discussed issues related to protection of intellectual property rights.

In the research paper by Dr Gaetano Dimita, titled “Understanding Intellectual Property in Video Games” published in the World Intellectual Property Organization website, the paper highlights the protection afforded to game developers under the copyright, trademark and design law though highlighting the gaps due to inconsistent international IP laws.

In Ramaswamy & Sharma (2021), Titled “Copyright Challenges in Interactive Works” (NUJS Law Review, Vol 14) the authors noted that while audio visual elements are protectable, the mechanics of gameplay are in a grey area which are not protected.

Burk & McJohn (2009), Titled “The Copyright clash: Digital Games and the Law” (Vanderbilt Journal of Entertainment and Tech Law), The authors though focus on the US law it cites the tension between user rights and developer control in digital games.

Though the above literatures highlight certain important aspects, there is little scholarship on composite works in videogames, character protection, audiovisual elements, anti-circumvention laws, livestreaming liabilities and fair use concepts. This paper showcases these gaps and in addition gives importance to the current scenario, arguments and the reform policies to address the issues.

Statement of Research Problem:

In India, there is a lack of coherent IP regime tailored to video games and the scarcity of judicial interpretations and statutory guidance creates uncertainty and ambiguity for stakeholders. The problem is compounded by the shattered and undeveloped nature of traditional IP laws which are inconsistent with the dynamic nature of gaming industry.

Research Objectives:

1. The applicability of Indian Statutes and judicial precedents for protecting the Intellectual Property Rights of game developers in India.
2. To identify the doctrinal and practical uncertainties faced by the stakeholders.
3. To promote judicial approaches and cross-border practices.
4. To balance creators rights with innovation and fair use rights of users in light of the suggested policy reforms.

Research Hypothesis:

Hypothesis - The present Indian IP regime is ill equipped to grant adequate protection to composite and interactive works in gaming industry. Therefore, it increases the risks of infringement and underenforcement.

Independent Variables – Existing IP statutes, enforcement mechanisms, safe harbour provisions.

Dependent Variables – Effectiveness of legal protection for industry stakeholders and video games, developer's economic rights, creative output quality and market competitiveness.

Research Method:

The techniques for data collection, analysis and interpretation are doctrinal and comparative in nature where it focuses on examination of statutes, rules and judicial decisions as the primary sources and references were made to US DMCA, EU Copyright directives. The qualitative data includes industry statistics such as FICCI-EY report on Indian M&E sector, KPMG gaming reports. Analytical approach was made combining doctrinal gaps with the actual market evidence to showcase the cause-effect status.

1. Statutory Protection and Legal Landscape of Gaming Industry in India:

Game developers are otherwise referred to as software developers who primarily transform ideas into interactive experiences and playable realities by designing, coding and engaging in related disciplines of creating video games. In the Indian legal perspective, the primary statutes that provide protection to game developers include the Copyright Act, 1957, Designs Act, 2000, Trademark Act, 1999 and the Patents Act, 1970.

When registered, game features including user interfaces and character images are protected under the Designs Act of 2000 as long as they are unique and have industrial applicability. However, it lacks protections for underlying code or functionality and is not a good fit for protecting dynamic, playable material.

1.1. Copyright:

The Indian Copyright Act, 1957, serves as the foundational legal instrument for the protection of creative works, encompassing a broad spectrum of literary, artistic, musical, cinematographic, and sound recordings. The Act bestows upon copyright holders exclusive rights to reproduce, distribute, publicly perform, and create derivative works from their original creations, thereby incentivizing innovation and safeguarding the interests of creators. Games fall under the ambit of “creative works” and can therefore be protected under copyright law.¹

¹ Navigating IP Rights In Game Development Consultant Considerations, available on Legallands

Section 14² of the act defines a “copyright”. It has been defined as the exclusive right that is granted to the author of a literary, dramatic, musical and artistic work and producer of sound recordings. It further lists down the specific aspects that are covered under copyright. The storyline, characters, music, and portions of the code are all protected under the term "works" as defined by Section 14 of the Copyright Act. Major components of video games can therefore fall under the aforementioned category.

Section 57³ of the act lists down the “author’s special rights”. An essential component of this framework is the recognition of moral rights which grants authors the rights to attribution and to prevent derogatory treatment that could harm their reputation. Moral rights protect the integrity of individual contributions in the collaborative field of game creation, where a number of programmers, authors, and artists work together to create the finished product. In order to sustain creative inspiration and professional credibility, this provides a sense of ownership and recognition.

The Act of 1957 was amended in 1994 to incorporate software program rights. According to the definition of the act, the "author" of a computer-generated artistic work is the person who created it. Code in the context of a game refers to the developer's written programming statements and instructions. If the owner so desires, it may be protected by copyright under literary works or software applications.

Video games, unlike films, are not subject to censorship or legal categorisation. It is only through changes to business practices—and even then, only through particular case-specific technicalities—that video games can be classified legally. Due to their novelty and lack of precedent, it is questionable if video games belong within the category of cinematograph films. According to **Section 2(f)⁴** of the Indian Copyright Act, cinematographic films are any forms of visual recording that also include sound recordings. Any piece produced using a technique that resembles cinematography, including video films, is considered a cinematograph. Therefore, it is proposed that, by careful interpretation of the words "any process analogous to

² Section 14 of Indian Copyright Act, 1957

³ Section 57 of Indian Copyright Act, 1957

⁴ Section 2(f) of the Indian Copyright Act, 1957

cinematography," video games could be categorised as cinematographic films. This is contested though, considering there isn't much precedent for this subject.

Sony Computer Entertainment Europe Ltd. v. Harmeet Singh⁵ - Widely regarded as one of the first cases to address copyright protection for video games, the Delhi High Court issued an ex-parte injunction against defendants for copyright infringement under *Section 65A* of the Act for modifying PlayStation consoles allowing the sale of pirated games without the necessary licence and evading a technological protection measure.

In ***Mattel Inc. and Ors. v. Jayant Agarwalla and Ors***⁶, the Delhi High Court addressed a conflict in which Mattel, the producers of the renowned "Scrabble" board game, claimed that the defendants' online game "Scrabulous" violated their copyright and trademark rights. The primary issues were whether the design of the Scrabble board and the rules of the game were protected by copyright, and whether "Scrabulous" violated the registered brand "Scrabble." The court ruled that the board design was not protected by copyright because it lacked sufficient originality and had not been registered as a design under the Designs Act, and mass production extinguished such rights under Section 15(2) of the Copyright Act⁷. Nonetheless, the court upheld Mattel's trademark protection in the digital gaming industry by noting that "Scrabble" had become distinctive as a trademark and prohibited the defendants from using "Scrabulous" because of the possibility of consumer confusion.

In the ongoing case of ***WinZo v. Mobile Premier League (MPL)***⁸, WinZO claimed that MPL had duplicated the protectable expression of its gaming format "World War", resulting in copyright infringement, passing off, and unfair competition. WinZO contended that, while the concept of a game is not protected, its unique expression—through structure, user interface, notifications, and format—is original and qualified for protection under the Copyright Act of 1957. Following a cease-and-desist notice, MPL withdrew "World War" but later revived a similar format as "Team Clash," with traces of the previous name purportedly remaining in notifications. WinZO requested an injunction after registering the format and name as a trademark and requesting copyright protection. The legal dispute in India about whether gaming formats are copyrightable subject matter or belong to the unprotectable area of ideas

⁵ Sony Computer Entertainment Europe Ltd. Vs Harmeet Singh and Others - (2012) 51 PTC 419

⁶ Mattel, Inc. and Others v Jayant Agarwalla and Others - 2008 (153) DLT 548

⁷ Section 15(2) of Copyright Act, 1957

⁸ WinZo v. Mobile Premier League (MPL) – 2022

and mechanics was brought to light when MPL issued an undertaking not to use the mark "World War." In the present case, the court will consider the substantial similarity in the aspects stated above between the two games in determining copyright infringement. There is a lack of judicial decisions regarding copyright in games in India. This case may serve as a precedent for future copyright infringement cases in Indian gaming.

In the international legal landscape, *Article 2* of the *Berne Convention*⁹ safeguards various Literary and Artistic creations, and video games fall under the scope of this Article. As India is a signatory to the aforementioned convention, video games in India are eligible for protection under Article 2 of the Berne Convention.

1.2. Trademark:

The names, symbols and logos are all intrinsically connected as a part of a video game and thereby help establish a unique brand identity for the game and its developers. These elements help distinguish between competing gaming platforms and softwares in the industry. These elements are primarily covered and protected under the **Trademarks Act, 1999**. This Act allows for the registration of game titles, logos, taglines, and even specific characters or visual symbols that are associated with games as trademarks. These are typically registered under Class 28 (which includes games, toys, and sporting goods), Class 9 for software, and Class 41 for gaming-related entertainment and educational services.¹⁰ In the gaming industry, trademark can be used to protect:

- **Game Titles:** A game's name can be trademarked to prevent others from using the same or confusingly similar title.
- **Logos and Icons:** Game developers can protect the logos, symbols and icons that appear in their games or marketing materials.
- **Character Names and Designs:** Some game characters or products may become so recognisable that they are trademarked to maintain exclusivity in use and commercialisation.¹¹

⁹ Article 2 of Berne Convention, 1886

¹⁰ Available on Online Legal India

¹¹ How Intellectual Property Laws Affect Game Developers, Available on Lawbhoomi

The term “Trademark” has been defined under **Section 2(zb)**¹². It means “a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours”.

Section 9 of the act lays down “Absolute grounds for refusal” of trademark protection further elucidating that those marks that lack distinctiveness or those that are deceptive, hurtful to the religious sentiments, scandalous or obscene, etc are not entitled to protection under copyright.

Section 11 lays down “Relative grounds for refusal”. Prevents registration of a mark identical or confusingly similar to an earlier mark, which ensures protection against knock-offs using similar names or logos. Therefore, when a competitive gaming platform’s logo or symbol is identical / very similar to that of another gaming platform, trademark protection may be afforded to the latter party provided there is no violation of the conditions stated under section 9.

Section 29 lays down the “test for infringement” and **Section 30** lists permitted uses (such as descriptive use, comparative advertising), ensuring balance.

According to **Section 30(2)(a)** of the Trademarks Act¹³, a registered trademark may be used descriptively, that is, in relation to goods or services, to specify the type, quality, quantity, intended use, value, place of origin, period of production or service delivery, or other characteristics of goods or services. Further, **Section 30 (2)(d)** of the Trademarks¹⁴ Act discusses a person's use of a registered trademark in relation to goods altered to form part of or be accessories, provided that it is reasonably necessary to indicate that the goods so adapted are compatible with the goods marketed under the trademark. Both these conditions can be applied to the gaming industry for protection.¹⁵

In a number of significant rulings, Indian courts have maintained trademark protection for the casino sector. The Delhi High Court, for example, recognised the brand "Baazi" (as in PokerBaazi, RummyBaazi) and granted an injunction against its infringement by a competitor

¹² Section 2(zb) of Trademark Act, 1999

¹³ Section 30(2)(a) of Trademark Act, 1999

¹⁴ Section 30(2)(d) of Trademark Act, 1999

¹⁵ Navigating IP Rights In Game Development Consultant Considerations, available on Legallands

in *Moonshine Technology Pvt. Ltd. v. Tictok Skill Games Pvt. Ltd. (2022)*¹⁶, highlighting the fact that even dictionary words can become trademarks if they distinguish gaming services.

*Nintendo Co. Ltd. v. Multivision Electronics Pvt. Ltd. (2015)*¹⁷: In this case, trademarks for gaming equipment were being used without authorisation. The court decided in Nintendo's favour, emphasising that Class 28 trademarks for gaming products cannot be misappropriated in order to mislead customers.

In the case of *Mattel Inc. and Ors. v. Jayant Agarwalla and Ors*¹⁸, as stated supra, although the court refused copyright protection, it still granted trademark protection to the plaintiff as the symbol “scrabble” was said to be distinctive and therefore, defendants were prevented from using the word “scrabulous” to prevent consumer confusion.

Major agreements and treaties provide protection for game trademarks on a global scale. The idea of national treatment is established by the Paris Convention for the Protection of Industrial Property, which mandates that member states grant equal trademark protection to both foreigners and citizens. WTO countries, including India, are required to adhere to basic requirements for trademark protection and enforcement under the TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights). The Madrid Protocol, which allows game developers to register their trademarks simultaneously in multiple countries through a simplified process in a single application, is a crucial tool for international trademark protection. This greatly facilitates cross-border enforcement against counterfeiting and piracy. By using these tools, game makers may protect their economic and creative interests in the global digital economy by retaining the exclusive rights to brand identifiers across jurisdictions.

Trademark Class 28 plays an essential role in protecting companies and its brand across the gaming, toys, and sports industries. As the landscape evolves, particularly with the rise of digital goods and virtual games, the scope and application of Class 28 trademarks will necessitate continued monitoring and innovation.

1.3. Designs:

The **Designs Act of 2000** protects the ornamental and aesthetic characteristics of products,

¹⁶ Moonshine Technology Pvt. Ltd. v. Tictok Skill Games Pvt. Ltd.- 2022/DHC/004489

¹⁷ Nintendo Co. Ltd. v. Multivision Electronics Pvt. Ltd. (2015)

¹⁸ Mattel, Inc. and Others v Jayant Agarwalla and Others - 2008 (153) DLT 548

which is extremely important for game developers and designers because it protects visual elements such as character designs, user interfaces, game icons, and overall look and feel. According to **Section 2(d)¹⁹** of the Act, a "design" is defined as the qualities of shape, configuration, pattern, ornamentation, or composition of lines or colours applied to a product, judged primarily on its visual appeal rather than functionality. To be qualified for registration, the design must be innovative, original, and applicable in industry.

As a result, the games' visual characters, gaming cover, and graphic interface are all protected under the Designs Act. Industrial Design Protection in the gaming business only protects the external characteristics of game characters and other models listed above, not their technological functionality.²⁰

Until recently, the video game business did not place much emphasis on design; however, in recent years, applications for registration in the European Union have grown tremendously. Only specific graphic aspects of a video game, such as the icons, user interface, and character appearances, can be protected as designs. In short, design rights protect the appearance of game elements but not their functionality. To be protected, a design must meet the criteria of novelty and individual character. A design is considered innovative if it is unique and only differs in minor elements from earlier designs available to the public. It will have a distinct personality, with the overall impression it makes on the knowledgeable user differing from that produced by a design previously made public. An application to register a game element will fail if a similar design already exists.²¹

Comparative Analysis:

The comparative analysis of intellectual property (IP) laws in the gaming industry reveals that different jurisdictions adopt distinct approaches toward the classification and protection of video games, authorship attribution, and rights management, with India still evolving in this domain.

In the United States, video games receive their legal protection through two main categories which include "audiovisual works" and "computer programs" as defined by copyright law. The

¹⁹ Section 2(d) of Designs Act, 2000

²⁰ Navigating IP Rights In Game Development Consultant Considerations, available on Legallands

²¹ Understanding IP in video games by Dr. Gaetano Dimita – WIPO website

U.S. Copyright Office maintains multiple protection systems for the combination of visual elements with musical and software components. Rights are generally owned by employers or studios under the “work for hire” doctrine, allowing game companies to own creative works produced by their employees.

The European Union (EU) along with member states such as France Germany and Belgium view video games as intricate works which merge audiovisual components with literary and artistic elements. France classifies games as "audiovisual works" which gives moral rights to authors including directors and composers and graphic artists yet economic rights usually belong to producers. The legal systems of Germany and Belgium use a "distributive classification" approach to protect each creative element (script, software, music) through its dedicated legal framework.

Video games function as audiovisual content and computer programs in South Korea and Japan which allows these countries to view them as a combination of both media. The Japanese legal system protects video games through its Copyright Act and Program Work Act but South Korea protects professional gamers and esports broadcasting rights. Both countries keep strong copyright protection systems yet they understand that employers gain ownership rights to software through employment agreements.

Brazil and Canada operate with dual systems which combine various elements from different structures. Brazil recognizes video games as both audiovisual works and software, offering protection under its Copyright and Software Acts. The Canadian legal system views games as "collective" or "joint works" which means that multiple creators share ownership rights based on their individual contributions to the project.

India does not have any established legal system or specific classification for video games. The Copyright Act, 1957, extends protection to computer programs, cinematographic films, and literary works, but there is no direct mention of video games. Indian law treats games as compilations of various protected works — scripts, graphics, sounds, and software — each covered under different provisions. The rights generally vest in producers or employers unless otherwise specified by contract, and moral rights remain with authors. The Indian legal system currently lacks specific regulations for derivative works and player-generated content and digital streaming rights.

Western countries have developed elaborate systems which link audiovisual content to software protection but India continues to operate at a basic level in this area. The current system provides basic protection for intellectual property rights but it does not establish specific guidelines for new challenges which include user-created content and virtual property and international licensing agreements. India needs to develop specialized gaming laws which match international standards to protect all stakeholders in the fast-growing gaming market.

2. Practical uncertainty and Industry Challenges:

2.1. Cloning, Character protection

Cloning:

The Indian gaming sector is challenged in safeguarding Intellectual property rights, most notably in combating the widespread problem of game “cloning”²² – copying basic gameplay mechanics, character art, or storylines from popular games and adding superficial differences to stay outside direct infringement claims. There are no definitive jurisprudential precedents in India that create a state of legal uncertainty for game developers compared to countries like the United States and China where case law is more established and delineates more specific guidance on protectable game content.

The basic problem is the extension of conventional copyright rules to interactive digital media. The seminal supreme court ruling in *R.G. Anand v. M/S Deluxe Fims*²³ set the “substantial similarity” test for copyright infringement, mandating that the copy must be a substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy. But this precedent, set in the area of film copyright, is ambiguous when transferred to video games because they are innovative works as composite pieces composed of software code, audiovisual components, interactive elements, and narrative compositions.

One of the rare cases where the court granted an interim injunction, *Sony computer entertainment Europe Ltd. v. Harmeet Singh*²⁴, where the play stations were being hacked using a software called Jailbreak thereby altering the programs and selling it for extra black

²² See generally, Kristelia García, Copying as Corruption, 102 B.U. L. Rev. 1153 (2022) (discussing game cloning practices and their impact on innovation).

²³ R.G. Anand v. M/s Deluxe Films, AIR 1978 SC 1613.

²⁴ Sony Computer Entertainment Europe Ltd. v. Harmeet Singh, CS(OS) No. 1778/2019 (Delhi High Court).

charges which becomes a great example of Anti- circumvention and piracy. The look and feel controversy among Free fire and PUBG where the developers of PUBG accused Free Fire of copying many aspects like air drop feature, locations, colours and textures²⁵. But this was not gone to court than the social media claims because they knew the legislations are not capable enough to address this issue.

Character protection, Identity and originality Ambiguities and gameplay mechanics:

When is the character original enough? Is the central line of the discussion. Uncertainty arises because video game characters combine many elements such as visual design, backstory, personality etc. There is no precedent that have set a clear threshold. The software code is protected as per the existing copyright Act²⁶ but if we analyse, it is clear that the characters and other gameplay mechanics can be seen visually because it is coded just like the whole gameplay. Does copyright can be availed in this manner is again a question as there is no clear legislation. Indian courts have addressed fictional characters in analogous settings but not specifically video games.

In *Green Gold Animation v. Subhanshi Enterprises (2023)*²⁷, the plaintiff claimed copyright and trademark in the cartoon characters of Chhota Bheem, Chutki etc. In *M/s Green Gold Animation Ltd v. M/s Thirupathy Brothers Media (2019)*²⁸, the plaintiff obtained damages of Rs.25 lakhs for wilful infringement of copyrights in Chhota Bheem, Kalia etc. used in a song sequence in another motion picture. So, the analogy is each animation involves coding through which the visual effects come into effect. The only difference is Cartoon character is protected but not the videogame characters and other mechanics. Another illustrative scenario is, if the same cartoon is supposedly developed into a videogame, does the character still have IPR or lose it credibility? Does the idea of creating a unique visual picture and game logic through coding and algorithm satisfies that the author has made a unique expression?

²⁵ PUBG vs Free Fire: The Battle Royale Copyright Controversy, available at various gaming industry publications (2020-2021).

²⁶ The Copyright Act, 1957, Section 2(o) - defines "computer programme" as a set of instructions expressed in words, codes, schemes or in any other form, including a machine readable medium, capable of causing a computer to perform a particular task or achieve a particular result.

²⁷ *Green Gold Animation v. Subhanshi Enterprises*, 2023 SCC OnLine Del 2156.

²⁸ *M/s Green Gold Animation Ltd v. M/s Thirupathy Brothers Media*, CS(COMM) 319/2019 (Delhi High Court).

The Indian gaming market projected to grow to \$4 billion by 2030²⁹, but there are high risks for developers from re-skinning practices when underlying gameplay mechanics are borrowed with new visual effects. The issue is further worsened by the definitional uncertainty in Indian copyright law that does not establish a clear distinction between protectable expression and unprotectable gameplay mechanics, leaving developers in doubt as to the extent of their rights.

Cross border enforcement poses a further challenge to Indian developers in safeguarding their IP abroad. Lack of dedicated IP courts with gaming industry insight is an added obstacle for effective enforcement, as conventional courts lack the technical sophistication to analyse complicated gaming related cases. This gap in enforcement has provided a de facto setting where infringement claims are challenging to prosecute effectively, that leads to copycatting and erodes the incentive system for innovating game development.

2.2. Insufficient Safe Harbour Provisions for Streamers, YouTubers, and UGC Creators:

One of the biggest shortcomings in India's digital content landscape is the lack of comprehensive safe harbour protections for content creators. Compared to the US, which has well-defined Digital Millennium Copyright Act (DCMA) safe harbour provisions³⁰ for content creators and platforms, India has no specificity in the Copyright Act, 1957³¹, or the Information Technology Act of 2000³², with respect to gaming content creation, streaming, and commentary.

Currently, from an IP perspective, this "leaves a whole set of IP elements unshielded" from the perspective of influencers and UGC creators using game footage for review, commentary, and educational purposes in gaming. Here exist fair use exceptions, one of which is pertaining to streaming and game reviews, and with none really in effect, the indeterminacy has become a clash of lawful principles for solo UGC artists who may have been taken down without becoming ameliorated due to unclear fortification³³. The modern issues are also the same when it comes to rights for monetizing gaming-oriented UGC which, because of legal turmoil, will come in the way of earning the best talent for gaming-oriented UGC and instead will hinder

²⁹ KPMG, The Future of Gaming in India: The Roadmap to 2025 (2021).

³⁰ Digital Millennium Copyright Act, 17 U.S.C. § 512 (1998).

³¹ The Copyright Act, 1957 (Act No. 14 of 1957).

³² The Information Technology Act, 2000 (Act No. 21 of 2000).

³³ The Copyright Act, 1957, Section 52 - provides for fair dealing exceptions.

growth for the U.S. creator economy here in India.

Free advertising v. Real IPR loss. Significant value comes from streaming (e.g. Twitch, YouTube). We also know the popular person who streams game online and earns significant value in return³⁴ like “Ishowspeed” whether consent obtained or not is unknown. Apart from these there are fan arts, mods, user generated levels etc. Indian law offers some protections through intermediary safe harbour under section 79 of the IT³⁵ Act and the IT Intermediary Guidelines and Digital Media Ethics Code) Rules 2021³⁶, but the specifics are murky enough. Livestreaming may look like a free advertisement but it has its own limitations. Streamer might misuse the works of developer, the works of other copyrighted works like music while playing the game, reveal the next levels and tricks of the game and commentaries which might cause the boring sensation among the game users and lead to decreased usage of the game etc. So, how fair dealing works among streamers is still a question which needs a framework.

Absence of some safe-harbor provisions demotivates investment in gaming content platforms, curbing the growth promise in India's digital entertainment domain. The uncertainty also thwarts platforms and creators into incurring compliance costs, forcing them to work in an uncertain legal space without clear-cut instructions on legal permitted uses of copyrighted gaming content.

2.3. Anti-Circumvention Law Ambiguities and Livestreaming Liabilities:

The Indian anti-circumvention regime, primarily contained in *Sections 65A-65B* of the Copyright Act³⁷, comprises certain deep uncertainties in application to game situations, especially with respect to drawing lines between legitimate reverse engineering, modding processes, and illegal circumvention of technological protection measures. The legislative terms, originally crafted for protection of the traditional media, do not stretch to cater to the specific technical and creative idiosyncrasies of gaming, where user alteration and interoperability most often mean accessing or circumventing or reverse engineering and modding some sort of protective system.

³⁴The Economics of Game Streaming: Revenue Models and Creator Economy, Digital Entertainment Research (2023).

³⁵ The Information Technology Act, 2000, Section 79 - provides safe harbour protection for intermediaries.

³⁶ The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

³⁷ The Copyright Act, 1957, Sections 65A-65B - anti-circumvention provisions

The fine line that exists between legitimate and illegitimate circumvention grows hazy in the gaming environments where actions such as modding, developing accessibility aids, and building interoperability solutions may well contravene anti-circumvention codes, yet all of them have legitimate creative and utility goals to pursue. This leaves a legal gray area wherein useful user-generated mods and community-driven enhancements potentially confront legal battles, suppressing innovation and user engagement that more often than not fuels the longevity and success of gaming properties.

Livestreaming further compounds the legal subtleties contrary to traditional copyright regimes. The live aspect of game streams brings about novel questions as to whether such live streams amount to public performance, reproduction, or some new kind of fair use. The interactivity afforded by livestreaming wherein the viewers are able to engage in chat and contribute to gameplay decisions compounds the legal analysis under the existing copyright regimes not tailored for dealing with such participatory uses of media.

3. Cause - Effect Analysis Using Industrial Data:

3.1. Market Size and Growth Indicator of Indian Gaming Industry The Indian gaming market is witnessing an almost unprecedented growth, now valued at \$4.38-\$5.21 billion for the year 2024-2025, predicted to hit \$8.74 billion-\$15.2 billion between 2030 and 2033, with an invariably consistent CAGR of 14.80-16.20%³⁸. Sustaining this exponential trajectory of growth placed India as one of the largest gaming markets in the entire world in terms of the user base, with 591 million active gamers representing nearly 18% of the global population in gaming and an addition of 23 million new active gamers in FY24 alone.³⁹ Mobile gaming is the primary driver for growth, with market estimations going from \$1.8 billion in 2021 to \$6-7 billion by 2025⁴⁰. Connectivity via a mobile device has leveled the playing field across India's socio-economic fabric, with 66% of gamers originating from rank II and III cities⁴¹, giving it a huge geographical reach rather than just an urban-centric phenomenon. Smartphone penetration and robust internet infrastructure have thus remained crucial in ensuring this revolution in accessibility, bringing gaming participation to erstwhile-marginalized segments

³⁸ India Gaming Report 2024, Ernst & Young and All India Gaming Federation (2024).

³⁹ Mobile Gaming Market in India, Statista Digital Market Outlook (2024)

⁴⁰ RedSeer Consulting, India Mobile Gaming Market Report 2021-2025 (2021)

⁴¹ Tier 2 and Tier 3 Cities Drive Gaming Growth in India, PwC Entertainment & Media Outlook India (2023).

Justifying an unusual growth trajectory within a legal system with weak measures to protect intellectual property rights, there arises a situation where short-term market expansion may cast its hazy shadow on long-term innovation drivers. The very relationship between a strong IPR regime and the sustainable growth of a market is a sufficient insinuation that the present regulatory regime in India may pose certain limitations to be borne by the full potential of the industry. A revenue analysis of the markets, where IP is defended, points to associations with higher levels of FDI and stronger local developmental ecosystems⁴².

From a high perspective, the multiplier effects on the economy of gig industry growth range far beyond direct generation of revenue and include job creation, technological innovation, and possible export culture. According to the Indian Government, online gaming is considered an industry "with immense potential to contribute to the Indian economy through FDI investments, employment generation, and revenue creation for the government."⁴³ This recognition emphasises the strategic significance of developing suitable legal frameworks to aid industry growth whilst protecting creator rights.

3.2. Rising IP Filings in Gaming/Digital Creative Sectors:

India's digital creative economy serves as an emerging specter in terms of filing for intellectual property within it; this is because there has been a 44 percent growth registered in IP application in the last five years⁴⁴. These observations mean that Indian games companies are getting smarter in their IP strategies, considering, however, that some figures produce both opportunities and challenges for present filing trends from the gaming sector perspective. Hence, the increase in IP filings being directly correlated with market growth would mean that developers are increasingly acknowledging the commercial value in protecting their creative assets.

Character trademark registrations form one of the fastest-growing areas of gaming IP filings, where developers look to protect the unique visual and narrative elements granting consumer recognition and loyalty. However, the lack of express statutory recognition of video game characters as works eligible for protection creates ambiguities in the filing process and may limit the extent of protection eventually available. Copyright registrations of computer code,

⁴² World Bank, Innovation and Intellectual Property Rights: Economic Development in Asia(2022).

⁴³ National Strategy for Electronics 2019, Ministry of Electronics and Information Technology, Government of India.

⁴⁴ Controller General of Patents, Designs & Trade Marks, Annual Report 2023-24 (2024).

artwork, and music have also continued to rise. However, the very composite nature of gaming works makes it difficult to classify them within the registration categories available.

Game UI/UX design registrations reveal increasing awareness of the commercial value of visual design in the success of games. Such growing importance gives rise to the notion of establishing rights in UI/UX design, emblematic of an industry maturing and adopting increasingly sophisticated IP strategies. Patent applications in gaming technologies and new mechanics are still relatively minor compared with those in other technology industries, possibly because patentability of game mechanics remains still unclear within the current patent regime in India⁴⁵.

International comparison of filing patterns reveals glaring inequalities between domestic and foreign gaming businesses' strategies in IP protection in India. Foreign companies normally file wider IP portfolios, including a few trademark classes, copyright registrations, and design protections, while domestic developers hold much more restricted IP strategies, partly due to a lack of resources and chances for enforcement. Such a difference implies that fuller protection under IP might encourage more lengthy protection strategies from domestic developers, which might make them more integrated into global markets.

Relative enforcement effectiveness comparison brings to the surface huge variation in the results of IP protection. Although the size of India's gaming market compares with those of well-established jurisdictions, enforcement frameworks are underdeveloped and may constrain the market's full growth potential. Having IP protection strength as a proxy for market sophistication sustains the hypothesis that strengthening the regulations may translate into greater growth potential for India's gaming market while also safeguarding rights for local creators more effectively.

4. Reform Proposals and Way forward:

4.1. Statutory Clarifications

Character Protection:

The current Gap in Indian law is that there is no specific recognition of game characters as

⁴⁵ Patentability of Gaming Technologies in India: Current Challenges, Indian Journal of Intellectual Property Law, Vol. 15, Issue 2 (2023).

copyrightable works. Many game developers or the authors struggle to address this issue for availing registration and protection. Instead, they are looking for innovative ideas protecting the IP Rights in those characters by inserting specific numerals or codes which is not an economical and leisure activity. Proposed reform:

- There need an Amendment to the Copyright Act to explicitly include “ Video game Characters” as Artistic Works⁴⁶.
- The backstories of the characters including their personality traits and visual elements are to be protected as the Idea of the Author moved to the form of creating a distinctive expression. The Traditional Act and precedents states that the ideas that are common in nature and those ideas that can only be expressed in a limited number of ways cannot be given protection under the Copyright Act⁴⁷. The Jackie Chan Adventures owned by Sony have IPR protections to the characters as they come under the Fictional ones and having unique traits. The same analogy can be used in this online gaming Characters.
- Additionally, there can be a fixation in the duration and scope limitations to balance creator rights with public domain considerations.

Recognition of composite works:

Video games are composite works as they contain multiple copyrightable matters like code, music, story, graphics and others. The gap is, though code or software programmes are literary works under the Act where computer software is explicitly protected as a work under section 2(o)⁴⁸. Only the code is protected; game logic which is also derived from the algorithm, user interface behaviour etc. may or may not be protected. There are also issues about sampling, reuse, remix and derivative works particularly in streaming, mods. Proposed reform

- There need a statutory definition of “Video game” as composite audiovisual work. The traditional Act suffers modernisation as it lacks framework on the very ideology that

⁴⁶ . Proposed amendment would modify Section 2(c) of The Copyright Act, 1957 to include video game characters within the definition of "artistic work."

⁴⁷ Eastern Book Company v. D.B. Modak, (2008) 1 SCC 1 (establishing originality standards in Indian copyright law).

⁴⁸ The Copyright Act, 1957, Section 2(o).

the graphics and characters itself are created by specific codes which are unique thereby making the entire tangible or visual works be copyrighted.

- The ownership framework can be made clear for collaborative gaming projects.
- The derivative work rights for mods and user generated content can be recognised.

User generated content and streaming guidelines:

The gap lies in the saga of free Advertisement profit vs. Reality IPR loss as discussed earlier. Apart from the streaming infringement there lies fan art, mods, user generated levels etc. The composite works are getting infringed apart from the game itself. Proposed reform

- Safe harbour provisions for platforms hosting gaming content.
- Fair use exemptions for commentary, criticism, and educational gaming content.
- Takedown and counter notice procedures specific to gaming content.
- Specific guidelines for monetization of gaming streams and videos.

4.2. Strengthening enforcement against circumvention and piracy:

In anti-circumvention law reform, a balance will have to be struck between protecting legitimate technological protection measures and recognizing circumvention acts for good, including research, interoperability, and accessibility enhancement. Specific gaming-related exceptions should allow circumvention activities for the legitimate purposes of modding where such mods enhance rather than supplant the original gaming experiences. Clear distinctions should also be made through detailed regulatory guidance between legitimate reverse engineering for compatibility purposes and acts of circumvention with mal-intent for piracy.

Research and development exemptions should cover legitimate competitive analysis, as well as academic research on game mechanics and technology. Such exemptions promote innovation by allowing necessary technical inquiry while keeping the core anti-piracy protections intact. Enforcement should be graduated as well and distinguish between different circumvention activities in consideration of intent and adverse impact, concentrating resources on commercial-scale piracy rather than an individual act of research or accessibility.

Enhanced cooperation mechanism between platforms and IP holders will streamline enforcement while protecting legitimate user activities. Streamlined takedown procedures for cloned games and cross border enforcement mechanisms for international piracy will protect the regulation and enforcement of IPRs in gaming industry.

Conclusion:

The current gaming industry is not well established with legal frameworks for IPR and the existing statutes are not suited for the dynamic nature of video games. The existing statutes namely the Copyright Act 1957, the Trade Marks Act 1999, the Designs Act 2000, and the Patents Act 1970 only cover certain works such as computer or software codes, Branding etc indirectly. There is no specific provision for the protection of gameplay in these Acts leaving ambiguities unresolved. Judicial precedence is rare with Sony computer entertainment Europe ltd v. Harmeet Singh being one of the rare videogame specific rulings. This industry faces uncertainties around cloning, circumvention, character protection, streamers issue etc. the gap produces practical difficulty in enforcement from establishing substantial similarity to combating cross border piracy and includes the IPR registrations.

However, US and EU have developed statutory recognition of composite works, character protection, guidance on user generated content and streaming and balanced the rights of creators and fair use on public. Bridging the developers moral and economic rights in India not only resolve the doctrinal gaps but also create a sustainable and secure legal environment for industry growth. In the future the market for interactive entertainment and digital creativity boosts the Indian economy and thus the need for these protection and safeguards are vital for the sustenance of gaming industry.