COPYRIGHT PRIORITIES AND CHALLENGES FOR THE VIDEO GAME INDUSTRY

AMERICAN BAR ASSOCIATION’S 33RD ANNUAL INTELLECTUAL PROPERTY LAW CONFERENCE

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April 20, 2018
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
EVOLUTION OF GAME INFRINGEMENT

• **1.0 – Hard Goods**
  - Circumvention devices, counterfeit game discs, pre-loaded hard drives
  - Online & Offline Marketplaces
EVOLUTION OF GAME INFRINGEMENT

2.0 – Infringing Downloads
- Infringement is digital, generally takes place online
- 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
OBSERVATIONS AND TRENDS

• 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
Thank You!