

Video Game Livestreaming: Is it legal?

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Keywords: Video Game, Livestreaming, Disruptions.

Abstract. Where video game shows its vitality to prompt the world, the livestreaming industry, as a new phenomenon, improves dramatically throughout the world. When they cooperate with each, it is a powerful and huge market, without legal restriction. Therefore, this market has demonstrated many legal issues waiting for professionals and solutions. Although, many gaming corporations set up their own regulations to improve the condition of livestreaming concerning video games, where those gaming companies usually keep the right to remove the influence of a video product in order to keep their good will, it is not enough to regulate this market. It will be addressed that the general situation of livestreaming industry and main instruments used by different gaming companies to regulate the market, and finally, the Copyright Law will be suggested as a possible solution to video game livestreaming.

1. Introduction

Video game industry is becoming a burgeoning industry around the world, creating new and varied forms of entertainment simultaneously generating astonishing sales revenue. According to the Canada's Video Game Industry 2017 report, "video game studios have created 21,700 direct full-time jobs and contributed \$3.7 billion to Canada's GDP, a 24 per cent increase from two years ago."

The emergence of new technologies and competitors within the marketplace has given rise to a variety of new platforms for streaming media content, especially in video game industry. Video game livestreaming is a relatively new phenomenon that has exploded in recent years, attracting hundreds of thousands of viewers daily.¹ Sites like Twitch, an online tool to live stream anything from cooking shows to video games, have gone from online novelties to serious indicators of market success.² Game companies are adjusting their legal policies and adopting new technology to facilitate viewership and creativity and devoting to redefine how intellectual property rights and accelerating technology control this rapidly evolving legal and entertainment landscape, which raise the questions regarding potential legal risks, especially under copyright law.

This essay mainly focuses on the legitimacy of video game livestreaming and legal disruptions arising from it. Part 2 gives a general picture of rapid development in video game livestreaming and the emerging legal battles. Part 3 analyzes in detail two legal disruptions arising from the video game livestreaming which are definition of non-commercial purposes, authorization and royalty issues concerning copyright law. The Conclusion finally suggests some ideas that can be applied so as to both game companies and gamers benefit from this new technology while mitigating potential legal risks.

2. Current situation of video game livestreaming

[1] Tassi, P. (2013, February). Talking livestreams, eSports and the future of entertainment with twitch. Forbes. com. Retrieved April, 29, 2013, from: <http://www.forbes.com/sites/insertcoin/2013/02/05/talkinglivestreams-esports-and-the-future-of-entertainment-with-twitch-tv/>

[2] See How Twitch and Streaming Have Changed Video Games for Good, Christian Bonilla, August 11, 2017, online: <https://www.makeuseof.com/tag/twitch-streaming-change-video-games/>

Livestreaming of video game playing has become popular in recent years. The activity has taken center stage on sites like YouTube and Twitch, which has nearly 10 million daily visitors.³ Professional streamers often combine gameplay with highly knowledgeable or dexterous play and entertaining commentary. They can generate livable revenue from viewer subscriptions and donations, as well as platform advertisements and sponsorships from eSports organizations.⁴

As a rapidly emerging industry, the current situation of video game livestreaming is irregular in general. On one hand, there do exist many streamers who provide legally qualified livestreaming and gaming strategies for general gamers, being the ones that prompt the innovation of game and livestreaming industry. On the other hand, some special streamers may provide online broadcast which have probably violated domestic legislation and infringed IPR of the game company. For instant, at the end of 2017, there is an amazing black man using game livestreaming platform to broadcast real sports programs. An internet gamer's clips have gone totally viral after he broadcast UFC pay-per-view event with an ingenious and slightly illegal move.⁵ The chaotic market of video game livestreaming implies the instability and disorder of this new industry.

From the perspective of game companies, basically, they hold a positive opinion in supporting the livestreaming industry. Indeed, livestreaming their video games can be regarded as an alternative way of advertisement, attracting more people to purchase their games with little cost. However, livestreaming is not always welcomed by all game corporations, who do not support livestreaming industry or gamer should apply for certificate to broadcast their games. The NetEase Corporation even sued a livestreaming platform for infringement of their IPR on a video game in China, and they finally won and charged defendant for 20million RMB in October 2017. This industry is introduced newly, alongside with great instability and legal disruptions. We will dive into these issues in the next part.

3. Legal disruptions arising from livestreaming

3.1 The Definition of Non-commercial Purposes

With the emergence of video game livestreaming, game companies are beginning to take appropriate measures to limit players' live-streaming behavior to protect their IPRs. Perhaps the best example of video game makers exerting control over user videos and streams is Blizzard Entertainment. In 2011, Blizzard Entertainment sued South Korea's e-sports federation, ONGAMENET and MBC gaming platform for infringement of intellectual property rights, and formed the settlement on May 17, 2011.⁶ Since then, Blizzard has explicitly allowed consumers to "use Blizzard's content to create video productions", as long as the video is freely available. The Blizzard Entertainment Corporation in US indicates in their video policy that "except as specifically provided herein, Blizzard Entertainment requires that the use of Blizzard Content must be limited to non-commercial purposes."⁷ This policy limits the use of corporate content for "non-commercial purposes," while allowing streamers to earn partnership revenue from mainstream platforms.

However, Blizzard did not make a clear definition on "non-commercial purposes".

Actually, the game players as anchors can be divided into amateur players and professional players.⁸ Amateur players manipulate the video game screen through the live-streaming platform for

[3] Slotnik, Daniel E. (March 15, 2017). "Gamer's Death Pushes Risks of Live Streaming Into View". The New York Times. ISSN 0362-4331

[4] Leslie, Callum (2014-12-31). "Hearthstone players won more than \$1 million in the game's first year". The Daily Dot. Archived from the original on 9 May 2016

[5] Online: <https://www.maxim.com/sports/gamer-streams-ufc-218-2017-12>

[6] Online: http://www.koreatimes.co.kr/www/news/tech/2010/12/133_77381.html

[7] See Blizzard video policy, online: <http://us.blizzard.com/en-us/company/legal/videopolicy.html>

[8] Does It Have to Be a Copyright Infringement: Live Game Streaming and Copyright, Matsui, Shigenori, International Review of Law, Computers & Technology, Vol. 31, Issue 3 (November 2017), pp. 265-288

broadcasting with a few people and their livestreaming is often intended to achieve social interaction, implying that they only have a negligible impact on the market. In contrast, the professional players usually have contracts with live-streaming platform as its exclusive game anchors, gaining commercial advertising revenue due to their high popularity which defiantly has the commercial value. Therefore, the scope of non-commercial purpose may not be complied with those professional players.

Additionally, in order to control the content of general livestreaming, game corporations usually reserve the right to delete any kinds of derivatives of their games. Ubisoft writes in their video policy that “we reserve the right to remove content that is only reproducing our games, in whole or in part, on a case by case basis.”⁹ The ambiguous definition in non-commercial purpose and the reserved right give game company high discretion in deciding whether livestreaming constitutes copyright infringement or not.

3.2 The Requirement of Authorization

Most jurisdictions define video games as computer programs. TRIPS Agreement provides that: “Computer programs, whether in source or object code, shall be protected as literary works under the Berne Convention.”¹⁰ The World Intellectual Property Organization Copyright Treaty also provide copyright protection of computer programs as literary works.¹¹ When the streamers livestream their play online, the relevant plots, audio and music background of the video game will be shown to the public, which can be regarded as an infringement of the information network transmission right. Canada Copyright Art 13(4) provides that “either for the whole term of the copyright or for any other part thereof, and may grant any interest in the right by license.” Thus, authorization from game company is necessary for streamers to livestream video games legally on the internet. However, different company has their own policy to deal with this kind of transmission, Microsoft and Sony are open-minded to encourage players to share their games. However, Japan's Nintendo, American League of Legends and China NetEase have adopted a strict copyright policy, arguing that the distribution of game content must be authorized by the game's copyright owner, and issued a warning letter about unauthorized live broadcasts, making a copyright statement or suing for infringement.

3.3 Fair Use Defense

The focus of the debate on live broadcast should lie in whether the live broadcast of the game constitutes a fair use. For example, Nintendo's Creator Project, launched on YouTube in 2015, requires game video players to pay royalty fee and allocate 40% of its channel profit to Nintendo. Those people who declare that this is not a fair use mainly because the player by broadcasting the process of playing video game to make profit. Moreover, based on the Canada Copyright Act: “Fair dealing for the purpose of research, private study, education, parody or satire does not infringe copyright.”¹² What's more, the main focus on the fair dealing in Canada Copyright Act is Non-commercial User-generated Content. Based on the analysis above, most streamers earn their living by video game livestreaming, which means that streaming activity is not satisfied with the defense of fair dealing. Moreover, the fair use defense has never been tested in court, being a legal grey area.

4. Conclusion

With the proliferation of video game livestreaming, it has come up with many legal issues under copyright law. Such video can be considered as a copyright violation, though is argued to be protected by fair use defenses. Platforms should embrace the inevitable changes which may call for paying more for streaming services, building stronger relationships with developers, and monitoring licenses

[9] See Ubisoft video policy, online: <https://www.ubisoft.com/en-US/videopolicy.html>

[10] Article 10 of The Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS).

[11] See Article 2 of The World Intellectual Property Organization Copyright Treaty.

[12] Article 29 of Canada Copyright Act.

between other platforms and developers. Licenses are the best armor against potential infringement wars for the video game streaming industry. Moreover, copyright legislation should give more clear protection for video game livestreaming. Shielding the streaming of games from such efforts is important, as it is an expression that enriches the creative life of streamers and the cultural life of viewers.

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