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# User-Generated Content in Gaming: Legal Challenges and Narrative Frameworks

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## Abstract

The video gaming landscape is experiencing transformational change with a massive growth in user-generated content (UGC), where players actively contribute to the gaming experience by creating and sharing their own content in a virtual world. This article seeks to investigate the complex interplay between user-generated content, the legal challenges it presents and the narrative frameworks that shape legal responses within the dynamic realm of the gaming industry. The advent of user-generated content has redefined the traditional boundaries of video gaming, giving players unprecedented opportunities for creativity and self-expression; however, the process is not without legal challenges. For example, one should examine the copyright issues and analyse the legal intricacies when players generate and share content within video games and explore the tensions between user creativity on one hand and intellectual property protection on the other. It is vitally important to investigate how legal frameworks and prevailing narratives surrounding UGC influence incentives for game developers to foster player creativity and examine the role of narratives in shaping approaches in their end-user licence agreement. The aim of this article is to examine the legal challenges of UGC in video games, with a focus on the processes influencing policy decisions and framing intellectual property protection.

**Keywords:** User-generated content; video games; end-user licence agreement; copyright; Let's Play.

## 1. Introduction

Video games have profoundly influenced not only economic markets but also cultural landscapes across the globe.<sup>1</sup> While this article engages primarily with European legal frameworks – particularly EU case law – its analysis touches on broader intellectual property principles (such as fair dealing and fair use, and derivative works) which are also relevant in other jurisdictions. Increasingly recognised as significant cultural assets,<sup>2</sup> video games serve as both artistic expressions and tools for engaging with cultural heritage. They are frequently incorporated into museum exhibitions and educational programs, enhancing the preservation and understanding of cultural heritage.<sup>3</sup> Additionally, the video game industry generates economic and social benefits,<sup>4</sup> serving as a platform for creative content from other sectors and influencing film and television productions.<sup>5</sup> In today's digital age, video games represent intricate works of art operating within sophisticated technological frameworks.<sup>6</sup> The surge in online gaming, fuelled by user-generated content (UGC) and live streaming, has propelled this industry to unprecedented heights.<sup>7</sup> The global audience for live video game streaming is projected to reach nearly 1.8 billion users by 2029, with platforms such as Twitch dominating the market.<sup>8</sup> Concurrently, the eSports market, a spectator-oriented

<sup>1</sup> European Commission, Understanding the Value, 10.

<sup>2</sup> European Commission, The European Media Industry Outlook, 51.

<sup>3</sup> European Commission, Understanding the Value, 10.

<sup>4</sup> European Commission, The European Media Industry Outlook, 53.

<sup>5</sup> Bass, "Video Games are the Next Big Thing."

<sup>6</sup> *Nintendo Co Ltd v PC Box Srl*, C-355/12, para. 22.

<sup>7</sup> European Commission, The European Media Industry Outlook, 53.

<sup>8</sup> "Games Live Streaming."



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extension of competitive gaming, was worth US\$1.98 billion in 2023 and shows no signs of slowing down. With a projected annual growth rate of 20.9 per cent, it was expected to reach US\$2.89 billion by 2025, with revenues expected to reach US\$5.7 billion by 2028.<sup>9</sup>

UGC refers to any form of content (e.g. text, images, audio, video, game assets) created by users rather than professionals or developers. It fosters participatory digital culture, empowering users to contribute, personalise and reshape their experiences across platforms. Despite the lack of a uniform definition, OECD characterises UGC as ‘content made publicly available over the Internet, which reflects a certain amount of creative effort, and which is created outside of professional routines and practices’.<sup>10</sup> In the context of video games, UGC allows players to go beyond passive gameplay, transforming them into co-creators who build, modify or extend game content, often resulting in vibrant communities and longer game lifespans.

Types of UGC in video games include modifications (players alter the original video game’s mechanics, graphics or storylines, as seen in *Skryrim*), custom levels or maps (players design their own environments, as seen in *Portal 2*), cosmetic assets and skins (players design their own in-game appearances or items) and Let’s Play (LP) videos. Coogan explains that LP videos refer to videos of someone playing a video game, with audio commentary of the gameplay, which is edited to entertain the audience.<sup>11</sup> More recently, Lee<sup>12</sup> and Mejia<sup>13</sup> have defined LP videos, pointing out that there are two characteristics, or common denominators, shared by all LP videos: gameplay footage (via a playthrough of a video game)<sup>14</sup> and typically player’s commentary (e.g. commentary by the player on the gameplay, experience and mechanics). Game players can either record and subsequently upload live gameplay on internet platforms or they can livestream (live broadcast) their play while they are playing so the wider audience can enjoy watching them play in real time.<sup>15</sup> UGC allows players to generate new content for a game and has been characterised as an ‘alternative to the classic single player-multiplayer dichotomy’.<sup>16</sup> LP videos document gameplay experiences accompanied by player commentary, serving as entertainment for online audiences. This trend has given rise to a burgeoning industry of video game streaming, with platforms such as Twitch and YouTube at the forefront.

Despite the industry’s meteoric rise, questions surrounding copyright infringement and enforcement loom large, as UGC is effectively based on protected works. Lee has highlighted the lack of scholarly analysis in the forms of UGC associated specifically with video games,<sup>17</sup> with this article aiming to fill the gap by providing a comprehensive legal analysis of UGC in video games, particularly in the European context. UGC, together with its copyright implications, poses a conundrum for copyright scholars on a global scale.<sup>18</sup> While transformative and creative, such content often skirts the boundaries of copyright law. Thomas has characteristically highlighted that ‘this industry of user recreation is made possible, not because of enabling copyright laws, but in spite of a restrictive legal framework’.<sup>19</sup> Matsui suggests that the indifference exhibited by platforms stems from the approach taken by game companies, which generally refrain from initiating complaints or legal actions against platforms, and suggests labelling instances of theoretical and technical copyright infringement that are tacitly accepted by the rights-holder as ‘tolerated infringement’,<sup>20</sup> a concept embraced in this study. Nintendo stood out as an exception to the ‘tolerated infringement’, opting to permit the upload of its copyrighted content online under the condition that profits from advertisements were shared among the user, Google and Nintendo, a practice later abandoned allowing gamers/users to monetise videos with gameplay footage and screenshots of Nintendo games.<sup>21</sup>

As the video game landscape evolves, navigating the intersection of UGC and copyright law becomes imperative. To prevent any infringement of intellectual property (IP) resulting from user-generated content, players must adhere to the regulations/legal framework outlined in the end-user licence agreement (EULA), or similar terms provided by game publishers;<sup>22</sup> this agreement defines the permissible scope of usage and limitations of such use, as well as the implications of breach of, or non-compliance with, the terms and conditions to which players are required to consent in order to play the video game. These terms may vary

<sup>9</sup> “Esports WorldWide.”

<sup>10</sup> OECD, “Participative Web and User-Created Content,” 9.

<sup>11</sup> Coogan, “Let’s Play,” 391.

<sup>12</sup> Lee, “Copyright and Gaming,” 60.

<sup>13</sup> Mejia, “Fair Play,” 2.

<sup>14</sup> For a discussion on the copyrightability of gameplay itself, see Lee, ““Play Again?” and Farmaki, “Copyright Protection.”

<sup>15</sup> Matsui, “Does it Have to Be a Copyright Infringement?” 215.

<sup>16</sup> Wolf, *The Video Game Explosion*, 126.

<sup>17</sup> Lee, “Copyright in Gaming.”

<sup>18</sup> Xu, “Copyright Ownership”; Hu, “User-Generated Content”; Larkey, “Cooperative Play”; Mejia, “Fair Play.”

<sup>19</sup> Thomas, “Merit and Monetisation.”

<sup>20</sup> Matsui, “Does it Have to be a Copyright Infringement?” 215.

<sup>21</sup> Nintendo, “Nintendo Game Content Guidelines.”

<sup>22</sup> Mezei, “End-User Flexibilities,” 2.

between different games and can often be intricate and challenging to understand. Clarifying the legal framework surrounding video game streaming is essential to foster innovation while safeguarding intellectual property rights.

In cases where creators lack explicit authorisation (typically outlined in EULAs), they must rely on legal limitations and exceptions to avoid copyright infringement. This approach is more viable in jurisdictions with specific exceptions for UGC, such as Canada, or flexible copyright doctrines such as fair use in the United States, compared with the stricter, closed-list exceptions in the European Union and United Kingdom. However, these legal arguments remain largely untested in court, as disputes are often swiftly resolved through the notice-and-takedown process rather than formal litigation.

This study seeks to explore the pressing legal questions surrounding video game UGC, focusing on the copyright implications and regulatory responses. Specifically, it investigates the legal uncertainties faced by UGC creators and the broader impact of EULAs in shaping content usage. The research question guiding this study is: How does the regulatory framework governing UGC in video games reconcile intellectual property rights with evolving user practices? To address this, the article will examine the legal classification of UGC and the copyright challenges it presents; it will assess the limitations of existing copyright provision; it will explore the role of EULAs in regulating UGC; and finally, it will propose solutions to balance copyright protection with creative expression. By clarifying these legal complexities, this study aims to contribute to an informed regulatory approach that safeguards intellectual property while fostering innovation in the gaming industry.

## 2. User-Generated Content in Video Games

The core essence of UGC lies in its ability to encompass various forms of creativity, primarily centred around the reuse of existing copyrighted materials owned by third parties. This is particularly evident in the realm of video game UGC, where the content typically originates from copyrighted works owned by game publishers or developers.

As multifaceted creations, games comprise diverse copyrightable elements such as video (e.g., cutscenes), graphics (e.g., character design), audio (e.g., soundtrack) and literary works (e.g., script).<sup>23</sup> While certain aspects of game development may be outsourced, ownership rights typically revert to the game publisher.<sup>24</sup> Despite the substantial creative input from users, copyright law does not afford them recognition as authors, with the primary ownership granted to the game company. While users may contribute significantly to the value of UGC through their entertainment or skills, copyright law offers a limited perspective on their creative contribution and has not yet acknowledged an authorial role that could effectively challenge the publisher's original ownership rights. Although this issue has seldom been addressed in court,<sup>25</sup> the prevailing legal view has been to recognise the game creator – specifically, the software developers employed by the company – as the entity enabling the user's creative input by creating the game itself.

Even though users contribute to the interactive elements of gameplay, the courts (as seen above) tend to attribute creative agency to the game developer's predetermined rules and design. As a result, the audio-visual outputs and content generated by users through original and creative contributions,<sup>26</sup> even if caused by their actions, are typically considered the property of the game company. For copyright academics, the language used presents a paradox in terms of how UGC policy defines creative contributions. In copyright doctrine, 'originality' and 'authorship' are often intertwined, as meeting the originality threshold is essential for authorship and, consequently, first ownership of a creative work. In the European Union, originality is established when an author demonstrates their own 'intellectual creation', interpreted as requiring the exercise of free and creative choices.<sup>27</sup>

These same principles appear in UGC policies but in a different context, thus framing originality as a condition for permission to create rather than a criterion for authorship. In the UGC framework, originality and authorship seem to be treated as separate concepts. For instance, Riot Games mandates that UGC creators produce 'original' content but simultaneously denies recognition of 'works of authorship based on the game'.<sup>28</sup> It remains unclear whether the reference to 'authorship' in UGC policies intentionally engages with the technical definition in copyright law or carries a different intended meaning. Regardless,

<sup>23</sup> European Audiovisual Observatory, Legal Challenges and Market Dynamics, 33.

<sup>24</sup> Thomas, "Merit and Monetisation."

<sup>25</sup> In the United States, see *Atari Games v Oman* 888 F2d 878; *Midway Mfg v Artic International* 704 F2d 1009. In the United Kingdom, see *Nova Productions Ltd v Mazooma Games Ltd & Ors*, 2007, EWCA Civ 219.

<sup>26</sup> See, for example, the UGC policies of Nintendo, "Nintendo Game Content Guidelines"; Mojang, "Minecraft End User License Agreement"; Ubisoft, "Video Policy."

<sup>27</sup> *Infopaq International A/S v Danske Dagblades Forening*, C-5/08, ECLI:EU:C:2009:465, European Court Reports, I, 6569; *Eva-Maria Painer v Standard VerlagsGmbH*, C-145/10, ECLI:EU:C:2011:798, European Court Reports 2011-00000.

<sup>28</sup> Riot Games, "Legal Jibber Jabber."

this contradiction is not addressed in UGC policies, despite the possibility that a user could be considered an original creator without being the legal author of a work. This framework distinguishes game UGC from traditional creative works, prompting criticism for its inconsistent treatment of creators.<sup>29</sup> In this legal landscape, users are left with limited options to assert their authorial claim over UGC. Seeking refuge in copyright exceptions proves challenging, especially in scenarios such as creating a playthrough video, which often involves substantial portions of copyrighted content.

There are three types of LP videos: reviews, playthrough videos with commentary and playthrough videos without commentary. The first category constitutes reviews of video games. In the second category, a viewer can watch the entire or part of the video game being played, while the gamer gives their commentary on their experience. In the third category, viewers can watch videos of the entire game being played, or part of it, with no commentary from the gamer. To illustrate, users broadcast themselves playing video games on their YouTube or Twitch channel, known as a ‘playthrough’ – for example, there is an 18-hour and 48-minute game walkthrough of the video game *Baldur’s Gate 3*<sup>30</sup> and a ten-hour and 20-minute playthrough of *Bloodborne*,<sup>31</sup> where viewers can watch the entire game, or part of it, and would encounter various obstacles hindering the straightforward application of a copyright exception.

Even small portions of content can be deemed significant, as evidenced by legal precedent.<sup>32</sup> Streaming an entire game is undoubtedly substantial, potentially constituting copyright infringement. Given the extensive time required to complete modern games (a number of video games require more than 70 hours to complete them), comparing their duration to that of films or music becomes challenging.

In addition, streaming gameplay does not neatly fit into the closed list of exceptions outlined in Article 5 of the Information Society Directive (hereafter InfoSoc Directive),<sup>33</sup> which is a key piece of EU legislation that aims to harmonise the copyright laws of EU member states in the context of the digital environment. The InfoSoc Directive concerns the legal protection of copyright and related rights, the exclusive rights of rights-holders and exceptions and limitations to these rights. In principle, copyright exceptions create legal allowances for the use of protected works in situations where such use offers social, political or economic benefits. While some exceptions might seem applicable to video game playthroughs, their relevance diminishes when the purpose of the playthrough – a key factor in many copyright exceptions – is examined more closely. For UGC creators, playing a game serves as a medium for self-expression.<sup>34</sup> The significance of a playthrough is less about the game itself and more about the interaction between the player and their audience, which forms the core of its value.

Similarly, while some videos are clearly intended as parodies, most playthroughs only feature sporadic moments of humour or mockery, which may not always relate directly to the game itself. The criteria for assessing parody under Article 5(3)(k) of the InfoSoc Directive, as established in *Deckmyn v Vandersteen*,<sup>35</sup> require two key elements: (1) the work must reference an existing creation while being noticeably distinct from it; and (2) it must serve as an expression of humour or mockery. Merely playing a game and occasionally making humorous remarks – whether about the game or unrelated topics – does not meet the threshold required by this test. A successful parody must actively engage with the original work in a way that both references and transforms it with a clear comedic or critical intent.

While users may critique or inject humour into their streams, they often fall short of meeting the level of engagement required for exceptions such as quotation for criticism and review<sup>36</sup> or parody.<sup>37</sup> Most playthrough streams prioritise the streamer’s personality, skills, observations or rapport with viewers over critiquing or mocking the game itself.

Even if a copyright exception could potentially apply, national implementations of the InfoSoc Directive often factor in the non-commercial aspect when assessing ‘fairness’. Many streams generate revenue through ad partnerships, sponsorships or fan donations, undermining claims to non-commercial use. The notion/meaning of commerciality in EU copyright jurisprudence suggests that any form of compensation primarily intended for commercial advantage or private monetary gain falls under this category.<sup>38</sup>

<sup>29</sup> Thomas, “Merit and Monetisation.”

<sup>30</sup> Loopy Longplays, “*Baldur’s Gate 3: Act 1 Longplay Walkthrough*.”

<sup>31</sup> SourceSpy91, “*Bloodborne – Full Game Walkthrough*.”

<sup>32</sup> *Infopaq International A/S v Danske Dagblades Forening*, C-5/08, ECLI:EU:C:2009:465, European Court Reports, I, 6569.

<sup>33</sup> “Council Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001,” 10.

<sup>34</sup> Thomas, “Merit and monetisation: A study of video game user-generated content”.

<sup>35</sup> *Deckmyn v Vandersteen*, C-201/13, ECLI:EU:C:2014:2132, Bus LR, 1368, para 20.

<sup>36</sup> *Spiegel Online GmbH v Volker Beck*, C-516/17, ECLI:EU:C:2019:625, ECDR 24.

<sup>37</sup> *Deckmyn v Vandersteen*, C-201/13, ECLI:EU:C:2014:2132, Bus LR, 1368.

<sup>38</sup> Thomas, “Merit and Monetisation.”

Given the slow pace of policy change and judicial interpretation, it is unlikely that the legal treatment of game UGC in copyright doctrine will evolve soon. Without intervention, UGC creators remain in a precarious state of ‘tolerated infringement’, susceptible to enforcement measures. In response to this complex legal landscape, the video games industry has adopted an alternative approach to regulate user creativity: contracts. Game companies now view users not merely as passive consumers but as active creators interested in understanding the rights licensed to them for interactive game creation. The end-user licence agreement (EULA), traditionally accompanying games at the point of sale, now includes extensive terms, conditions and policies dedicated to regulating UGC.<sup>39</sup>

### 3. End-User Licence Agreement and Copyright Challenges

Rights in UGC are retained by publishers (in the first instance). For example, Blizzard, the publisher of *World of Warcraft*, states in its EULA that:

User Created or Uploaded Content. The Platform may provide you an opportunity to upload and display content on the Platform, such as on the Blizzard forums, and/or *as part of a Game*, including the compilation, arrangement or display of such content (collectively, the ‘User Content’) ... You hereby *grant* Blizzard a perpetual, irrevocable, worldwide, fully paid up, non-exclusive, sub-licensable, right and license to exploit the User Content and all elements thereof, in any and all media, formats and forms, known now or hereafter devised. Blizzard *shall have the unlimited right* to copy, reproduce, fix, modify, adapt, translate, reformat, prepare derivatives, add to and delete from, rearrange and transpose, manufacture, publish, distribute, sell, license, sublicense, transfer, rent, lease, transmit, publicly display, publicly perform, provide access to, broadcast, and practice the User Content as well as all modified and derivative works thereof and any and all elements contained therein, and use or incorporate a portion or portions of the User Content or the elements thereof in conjunction with or into any other material. In the event you upload or otherwise transmit to Blizzard any concepts, ideas, or feedback relating to the Platform, *you shall not be entitled to any compensation for any such submission*, unless expressly agreed between you and Blizzard, and Blizzard may freely use any such submission in any manner it deems appropriate.<sup>40</sup>

A study conducted by Thomas examined the UGC policies of 30 popular game titles from 30 different publishers, chosen on the basis of their popularity from sources such as Ranker and eSports Earnings.<sup>41</sup> The analysis involved reviewing the latest versions of EULAs, terms and conditions, and other UGC-related documents available as of 21 December 2021, resulting in a total of 61 documents (approximately two per game title).

Thomas’s analysis categorised UGC policies into eight specific activities: video creation, monetisation, screenshots and game photography, soundtrack usage, fan works, merchandise, mods, and commercial use. Each activity was assessed to determine whether it was permitted, conditionally allowed or prohibited. The creation of video content, both streamed and prerecorded, is the most frequently permitted UGC activity without conditions, authorised by the majority of rights-holders in the dataset. This widespread permission aligns with the dominance of game streams and prerecorded videos in the UGC landscape.

When conditions are attached to video creation, they often reflect existing copyright principles. These conditions may require users to make ‘original contributions’ (Riot Games)<sup>42</sup> or add a ‘creative spin’ (Ubisoft)<sup>43</sup> to their UGC. Additionally, many conditions address non-copyright concerns related to the quality and nature of the content. For instance, restrictions may include prohibitions on videos that contain spoilers or pre-release footage to protect a game’s commercial viability and longevity (Rockstar Games).<sup>44</sup> Other conditions aim to preserve the ‘spirit and tone’ (Epic Games)<sup>45</sup> of the game, preventing content that is ‘obscene, sexually explicit, defamatory, offensive, harmful’ (Epic Games)<sup>46</sup> or ‘objectionable’ (Ubisoft).<sup>47</sup> These conditions allow game creators to determine what content aligns with the ‘spirit and tone’ of their game and the quality of its use. Even a minimal quantitative use of copyrighted material can be deemed qualitatively significant,<sup>48</sup> potentially leading to infringement; UGC policies therefore focus more on the quality of the user’s interaction with the game. This qualitative assessment prioritises the nature and originality of the user’s content over the amount of game footage shown.

<sup>39</sup> Thomas, “Merit and Monetisation.”

<sup>40</sup> Blizzard, “Blizzard End User Licence Agreement” (emphasis added).

<sup>41</sup> Thomas, “Can you Play?”

<sup>42</sup> Riot Games, “Legal Jibber Jabber.”

<sup>43</sup> Ubisoft, “Ubisoft Video Policy.”

<sup>44</sup> Rockstar Games, “Policy on Posting.”

<sup>45</sup> Epic Games, “Fan Content Policy.”

<sup>46</sup> Epic Games, “Fan Content Policy.”

<sup>47</sup> Ubisoft, “Ubisoft Video Policy.”

<sup>48</sup> *Infopaq International A/S v Danske Dagblades Forening*, C-5/08, ECLI:EU:C:2009:465, European Court Reports, I, 6569; *Eva-Maria Painer v Standard VerlagsGmbH*, C-145/10, ECLI:EU:C:2011:798, European Court Reports 2011-00000.

Among other key findings of the study was a significant variation in how game companies handled screenshots and game photography. While 14 allowed it without conditions, 14 prohibited it and one permitted it with conditions. This disparity may stem from the perceived value of static images, which can be more closely associated with a game's brand compared with more dynamic and less predictable video content. Despite the general view of UGC creators as non-commercial entities, a notable number of companies allowed UGC monetisation (seven unconditionally, 12 with conditions). However, this permission was narrowly defined. Monetisation was typically linked to the creator's originality and creativity, emphasising content that adds value rather than merely replicating existing material. Conditions for monetisation often aimed to protect the game's integrity and community standards, allowing companies to withdraw monetisation rights if the content was deemed harmful or inappropriate. The differing approaches to screenshots and monetisation reflect broader concerns about brand integrity and community engagement. By examining these policies, the study provides insight into the balance game publishers seek between encouraging creative expression and maintaining control over their intellectual property.

While Thomas's study examined the UGC policies of popular game titles, Mezei and Harkai's study examined EULAs and the flexibilities available to end-users across 17 service providers, categorised into four groups: streaming with a hosting service; streaming without a hosting service; online marketplaces; and social media.<sup>49</sup> Their analysis highlighted that end-users cannot negotiate the contractual terms: they must either accept the terms as presented or not use the service at all. In the context of streaming sites with hosting services, YouTube and Twitch were particularly relevant due to their prominence in UGC. The study of Twitch's terms of service revealed key points. First, while these platforms generally allow the upload of various types of user-generated content, they consistently require that such content respects third-party intellectual property rights.<sup>50</sup> Second, the platforms reserve the right to change their terms and conditions at any time, with users needing to accept these changes either explicitly (by confirming) or implicitly (by continuing to use the service).<sup>51</sup> Additionally, user privileges and licences may be revoked if users engage in illegal activities or choose to delete or remove their content from the platform.

While Ahuja asserts that EULAs provide crucial information to users, delineating the terms and conditions that define the relationship between the parties involved and the range of rights available to each party,<sup>52</sup> and Miller supports the view that EULAs offer tangible benefits to consumers by promoting efficiency, disseminating information and delineating a variety of rights,<sup>53</sup> it is important to emphasise that the terms outlined in these agreements are non-negotiable and presented on a take-it-or-leave-it basis. Given that users often do not engage with or read these agreements, the purported informational benefits and efficiency gains are effectively nullified. This non-negotiable nature underscores the inherent limitations in the practical utility of EULAs for the average user as well as (its limitation) in enforcing the terms stipulated in the Agreement, due to the unfair bargaining power between the parties.

An in-depth examination of EULAs brings to the surface additional nuances that challenge the efficacy of EULAs in effectively safeguarding user interests, as observed by Corbett, whose analysis reveals that EULAs attached to computer games tend to be remarkably similar across different jurisdictions – likely because they are often copied from other games or created using online templates without careful legal analysis.<sup>54</sup> This international convergence of EULAs may also be due to terms that purport to exclude user-permitted exceptions in the copyright laws of various countries. Rights-owners appear somewhat complacent about the enforceability of their EULAs, relying on research indicating that only a small fraction of users actually read the contractual documents to which they agree, with the majority entering into contracts without understanding the contents or potential consequences.<sup>55</sup>

However, this complacency is problematic. For players of Massively Multiplayer Online Role-Playing Games (MMORPGs), many terms in EULAs infringe upon their rights as both consumers and users of intellectual property. The reality is that these standardised agreements often fail to account for the legal nuances of different jurisdictions, leading to potential conflicts. This situation is unsatisfactory and underscores the need for a more conscientious approach to the formulation of EULAs, ensuring they respect user rights and adhere to legal standards across different regions.

Lau's analysis of Blizzard Entertainment's EULAs in the context of the decentralised Web 3.0 Metaverse highlights critical issues related to legal complexity and the imbalance of negotiating power.<sup>56</sup> EULAs, notorious for their dense legalese, pose a

<sup>49</sup> Mezei, "End-user Flexibilities."

<sup>50</sup> Twitch, "Terms of Service 8."

<sup>51</sup> Twitch, "Terms of Service 6."

<sup>52</sup> Ahuja, "Commercial Creations," 400.

<sup>53</sup> Miller, "Determining Ownership."

<sup>54</sup> Gorbett, "Computer Game Licences," 453.

<sup>55</sup> Bakos, "Does Anyone Read the Fine Print?"

<sup>56</sup> Lau, "Disrupting MMORPGs Gaming."



significant cognitive challenge for the average user, leading to superficial reading or complete disregard of the terms. This lack of thorough engagement results in users unknowingly consenting to terms that they do not fully understand. Furthermore, the inherent power asymmetry in these agreements places users at a disadvantage, relegating them to accept the terms unilaterally imposed by the software provider without the opportunity to negotiate or contest unfavourable conditions. This dynamic undermines the concept of informed consent and marginalises user autonomy in contractual engagements.

#### 4. Exploring Solutions

In addressing the complexities and issues of EULAs for UGC in video games, several solutions are proposed to enhance clarity and fairness (pro-user solutions) and the positive impacts on game sales (pro-publisher solutions). The proposed solutions do not merely aim to resolve technical legal ambiguities; they also contribute to an evolving narrative about creativity and authorship in digital gaming environments. Traditional EULAs often reflect a narrative of corporate control, framing user creativity as a form of licence-dependent activity. By contrast, emerging regulatory and cultural trends – such as the transparency mandate of the General Data Protection Regulation (GDPR) and the rise of platforms such as Decentraland<sup>57</sup> – promote a more participatory narrative, where users are seen as co-creators within expansive digital worlds.

One significant issue is the complexity and legalistic nature of EULAs, which are often difficult for the average user to comprehend. To mitigate this problem, it is essential to mandate that EULAs be rewritten in plain language, so the lay user can understand the terms and conditions contained therein, including the rights they retain and those they grant to publishers. Importantly, the GDPR explicitly enshrines the principle of transparency, requiring that any information addressed to the public or data subjects be concise, easily accessible and easy to understand.<sup>58</sup> This legal obligation extends to the use of clear and plain language, supplemented by visual elements where appropriate – particularly in technologically complex contexts such as online data collection and advertising. Given that certain groups, such as children, require specific protection, the GDPR further mandates that any information intended for them be presented in language they can easily comprehend. Thus, ensuring that EULAs adhere to these legal transparency requirements is not merely a best practice but a regulatory necessity.

Additionally, the development of standardised EULA templates, which clearly outline UGC terms, should be implemented. Publishers should explicitly state in their EULAs whether UGC is permitted, and if so what kinds and under which conditions. The diverging EULA approaches discussed above illustrate competing narratives around digital creativity. Balancing the protection of intellectual property with the encouragement of fair use/dealing and creative freedom presents a significant challenge. Including explicit fair use/dealing provisions in EULAs would allow players to create and share content without fear of legal repercussions, provided they adhere to specified guidelines. Additionally, creating collaborative platforms where players and developers can discuss and negotiate the terms of UGC creation would foster a community-driven approach to content creation, ensuring that the interests of both parties are considered.

Research highlights that the creation of official guidelines for gameplay approval significantly impacts game sales, varying by genre.<sup>59</sup> The rationale behind this difference is that action games, role-playing games (RPG) and sports games emphasise the player's experience, such as the thrill of gameplay and competition with friends. For these genres, simply knowing the storyline from gameplay-related content does not deter purchases. Instead, watching gameplay can inspire viewers to want to experience the game themselves, develop in-game characters and engage in competition, thereby significantly influencing their willingness to buy the game.

To leverage the above, genre-specific strategies for UGC and gameplay approvals should be developed. For instance, story-driven games may benefit from stricter guidelines to prevent spoilers, while action games may benefit from more lenient guidelines that encourage user creativity and engagement.<sup>60</sup> Implementing dynamic guidelines that can be adjusted based on the game's life-cycle and user feedback would further enhance this strategy. Stricter guidelines may be necessary early in a game's release, whereas more lenient guidelines could help sustain user interest and engagement over time.

<sup>57</sup> Decentraland, "Frequently Asked Questions."

<sup>58</sup> "Regulation (EU) 2016/679 of the European Parliament (General Data Protection Regulation)."

<sup>59</sup> Oshima, "The Impact of User-Generated Content"; Puddington, "Fair Play," 413; Liu, "A Study on the Copyright Law."

<sup>60</sup> See, for example, the discussion in Johnson and Woodcock, "The Impact of Live Streaming"; Caguioa, "Recent Copyright Issues"; Puddington, "Fair Play."

## 5. Concluding Remarks

As frontier technologies such as virtual worlds reshape creative practices, the legal frameworks that govern them will increasingly serve as narrative tools – encoding values about who creates and who owns. The exponential growth of online gaming, driven by UGC and live streaming, has pushed the industry to new heights, with platforms such as Twitch and the burgeoning eSports sector demonstrating impressive expansion. However, this rapid development brings forth intricate legal and regulatory challenges, particularly concerning copyright enforcement and user rights. UGC, epitomised by LP videos, has become integral to the gaming culture, yet it operates in a legally ambiguous space, often skirting the boundaries of copyright law. The current European legal discourse lacks a comprehensive analysis of UGC's copyright implications, leading to a precarious state of 'tolerated infringement', where content creators operate with limited protection. The industry's reliance on EULAs to regulate UGC therefore underscores the need for these agreements to be clear and equitable.

EULAs should evolve to reflect the distinctive attributes of decentralised platforms, addressing the unique legal complexities they present. The analysis of Blizzard Entertainment's EULAs, as discussed by Lau, highlights the critical issues of legal complexity and power asymmetry. To ensure user rights are protected and foster innovation, it is imperative that EULAs are crafted with transparency and fairness, allowing for informed consent and user autonomy.

As the video game industry continues to advance, navigating the intersection of UGC and copyright law remains a pressing concern. Legal professionals and industry experts should work together to develop EULAs that are not only legally sound, but also reflect the dynamic and participatory nature of modern gaming. By doing so, the industry can ensure that it remains innovative and inclusive while safeguarding intellectual property rights and fostering a respectful and legally compliant user community.

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