

# INTELLECTUAL PROPERTY



For the video game industry, strong intellectual property laws incentivize the development of state-of-the-art devices and platforms, as well as the creation of sophisticated and stunning video games for the enjoyment of consumers. That is why intellectual property protection serves as the lifeblood for video game device makers and content creators. These laws—anchored in the U.S. Constitution—enable extensive investments in creative content, including video games. The video game industry supports the existing American intellectual property regime and efforts to ensure similar protections overseas so that creative and innovative works are protected, incentivized and delivered to players around the world.

## IP Protections Promote Creativity, Protect Investment and Foster Innovation

Video game publishers, device makers and online platforms rely on copyright, patent and trademark laws to ensure that players can seamlessly and securely play the video games they love in their homes and on the go. Any weakening of existing IP laws could damage the virtuous cycle of investment in capital and talent necessary to create and deliver high-quality experiences for global audiences and provide family-sustaining careers. The video game industry employs tens of thousands of Americans, with annual compensation averaging about \$121,000 in 2020.

## Copyright Law Remains Critical to the Growth and Development of the U.S. Video Game Industry

The U.S. copyright system encourages and supports creative game development and innovative distribution models through provisions of the U.S. Copyright Act, 17 U.S.C. § 101, et seq., which protect creative works and promote cooperation on effective enforcement between rights holders and online platforms. This is particularly true in the case of the Digital Millennium Copyright Act (DMCA), which contains two provisions critical to the vitality of the video game industry.

- **Section 1201's Important Anti-Circumvention Framework.** Video game software and devices use a series of digital protections, referred to as technological protection measures (TPMs), to safeguard the content played on platforms from illegal copying and distribution. Under Section 1201, it is unlawful to bypass these TPMs or distribute tools intended to help others bypass them. Protecting the integrity of the video game ecosystem from infringing activities is necessary to ensure that consumers can enjoy rich and immersive video game experiences. These anti-circumvention provisions are instrumental in safeguarding the highly creative works produced by the video game industry across all platforms.
- **Section 512's Existing Safe Harbor Provisions.** Section 512 provides rights holders a streamlined process for removing infringing content and affords online service providers with safe harbors if they expeditiously remove copyrighted content when notified by copyright owners. Rapid advances in new technologies and online service offerings underscore the need for rights holders and online platforms to work together to identify and implement voluntary measures with the flexibility to address new infringement threats and to enable new online business opportunities for video game creators.

## Collaborative Copyright Enforcement Is Essential

As digital offerings become more common, enforcement approaches must also keep pace. Working closely with government agencies and other stakeholders on forward-looking strategies remains essential to addressing illegal online operations and blocking the importation of infringing goods into the U.S.

- **Encouraging Voluntary Collaboration.** For the video game industry, working with online platforms and other stakeholders promotes greater effectiveness and efficiency for addressing online enforcement. It is critical that rights holders and online platforms work together to improve enforcement processes.
- **Stopping Repeat Infringers.** Bad actors present problems for both rights holders and online platforms. Working together to address this concern serves to protect creative content as well as consumers. Collaboration within the stakeholder community includes sharing information regarding repeat infringers, increasing transparency regarding repeat infringer policies and enhancing consumer-focused educational efforts to deter infringement on online platforms.

## An Effective Patent Law System Protects the Video Game Ecosystem

The innovations that video game audiences enjoy rely on strong patent protections. An effective patent system encourages innovation by securing legal protections for inventions, allowing inventors to recoup their research and development costs and enabling the commercialization of those inventions. Weak or improperly granted patents bring none of these benefits and encourage opportunistic litigation that stifles innovation.

## Trademark Protections Distinguish and Protect Video Game Brands in the Marketplace

The video game industry has developed some of the world's leading brands. To ensure brand integrity and consumer confidence in these brands, trademark protections must keep pace with the rapidly evolving marketplace. Such practices include:

- **Strong Trademark Enforcement.** The law must provide trademark owners with adequate tools to prevent third parties from the unauthorized use of protected marks.
- **Laws and Policies That Encourage the Use of Active Marks.** As new products and services emerge, the U.S. Patent and Trademark Office must maintain updated and accurate trademark registers.