

Gamers confront copyright law, says Rutgers law scholar

EurekaAlert!

CAMDEN — These days, gamers aren't just saving the virtual world, they're creating it.

Video games have evolved into a fully immersive, customizable experience in which gamers not only play, but also create new content. Players are encouraged to contribute their creativity by designing their own maps, customizing characters, and adding new material to games.

But user-generated content has the potential to infringe upon copyright law, which is casting a shadow on the legality of gamer authorship.

Rutgers-Camden law professor Greg Lastowka is mapping the intersection of copyright law and user-generated content in video games through research backed by a grant from the National Science Foundation.

"There is definitely a move in the video game industry to allow more forms of user-generated content, but the fear of legal liability presents some restraints," Lastowka says.

User-generated content for video games has existed for decades, but a gamer's ability to customize his or her experience has grown as technology has become more sophisticated.

Many developers have created games that are platforms for user creativity. Popular titles like LittleBigPlanet and Minecraft, for example, prioritize user creativity and content designed by the player.

"It's very clear that users want that ability," Lastowka says. "They want to customize their experience and create a personal space within the game — and they often use that freedom in ways the developers never anticipated."

But a problem could arise if users create content derived from copyrighted material.

"If you allow your users to create any kind of avatar, and someone creates an avatar of Mickey Mouse, Disney might view that as copyright infringement," Lastowka says. "Video game designers can feel constrained by copyright law in terms of what tools they can provide to users."

Through his research, Lastowka hopes to provide data on how games enable or constrain player creativity. He says there have been very few empirical studies of interactive media technologies that depend on user-generated content.

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"I'm trying to create a descriptive account of this segment of the media landscape and say, 'this is how user-generated content is appearing, this is what it looks like, and these are the ways games enable it to happen,'" Lastowka says.

This will also allow Lastowka to analyze user-generated content and determine to what degree it complies with copyright law.

Lastowka doubts all user-generated content is either novel or pirated.

The majority likely falls in a gray zone of copyright law, something Lastowka calls a "transformative remix of prior content."

"User-generated content can make a game very valuable, but developers have a legal obligation to look out for copyright infringement," he says. "I'm interested to hear from developers how concerns about copyright infringement affect the kind of games they create."

As video game developers prepare for the next generation of home gaming consoles, beginning with Nintendo's Wii U later this year, and more games allow for more user creativity, these are important questions to ask.

Lastowka hopes his research will ensure the development of important emerging technologies, contribute to the debate over appropriate legal rules for the interactive media industry, and aid policymakers and technologists in efforts to reform copyright law to take into account new forms of authorship.

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The National Science Foundation is the major source of federal backing in many fields such as mathematics, computer science, and the social sciences. Lastowka's work integrates the legal world with the technological world.

The author of *Virtual Justice* (Yale University Press, 2010), Lastowka has written extensively on the intersection of intellectual property and forms of new media. He is currently co-writing a book about copyright and user-generated content.

Lastowka received his bachelor's degree in English from Yale University and his Juris Doctor from the University of Virginia. He teaches intellectual property and internet law at the Rutgers School of Law-Camden.

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