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**Article**

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# Fooling the user? Modding in the video game industry

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**Abstract:** Over the years, the video game industry has grown into one of the largest, most profitable entertainment industries in the world. In a highly competitive industry, legal difficulties to safeguard successful game concepts from copycats contribute to a trend of risk aversion and reliance on established game franchises. It does not come as a surprise then, that user-driven innovation, or 'modding', has come to play a considerably important role for the industry in recent years. While modders are becoming increasingly aware of the financial weight of their activities, game companies seek to secure the legal ownership of the content they create. By means of a literature review this article seeks to investigate the ongoing juridification of the relationship between modders and the industry, in order to provide a brief insight into the complex issue of intellectual property in relation to user generated content and the tensions that arise due to a mesh of messy legal and social arrangements.

**Keywords:** Innovation, Game development, User-generated content, Modding, Copyright, Intellectual property, Video games, Games

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Over the years, the video game industry has grown into one of the largest, most profitable entertainment industries in the world with a global market that is expected to reach about \$82 billion in 2017, from an estimated volume of \$67 billion in 2012, according to Forbes. In a highly competitive industry, legal difficulties to safeguard successful game concepts from copycats, as well as tough targets set by publishers contribute to a trend of risk aversion and reliance on established game franchises. (Wesley & Barczak, 2010) Stakes are high and developers are under constant pressure to deliver the next blockbuster game. Originality and innovation - instead of fueling competition and guaranteeing a diverse market - are regarded by many as risky ventures. Some therefore argue that innovation in the industry is not really innovative at all anymore. (Brightman, 2012)

It doesn't come as a surprise then, that user-driven innovation has come to play a considerably important role for the industry in recent years. Paragons such as Counterstrike, a user-created modification to the popular PC game Half Life, which has sold over 4.2 million units so far, expressively underline the economic significance that game modifications can have. (Remo, 2008) However, while users are becoming increasingly aware of the financial weight of their activities, game companies seek to secure the legal ownership of the content they create. On the surface of it, it may seem as if only one side stands to profit.

## THE USEFUL USER

In a sense, modders are to video games what early hackers were to the development of the home computer. Instead of hardware, modders tinker with the code of a game in an effort to either modify a particular game to respond to their individual preferences or to create an entirely different gaming experience, solely based on the source-code of the original. (Postigo, 2010) By virtue of their activity, modders have thus become a constant source of innovation. Besides the purely innovative aspect, user-generated content also has a benign effect on the longevity of a game by keeping up interest in it. In a way, modders are what can perhaps best be described as lead-users (von Hippel, 1986). By virtue of their activities, they serve as indicators for trends and make developers aware of flaws and deficiencies in a game's code and engine. Most importantly however, they deliver a continuous flow of free intellectual property. (Postigo, 2010)

## THE QUESTION OF 'WHO OWNS WHAT - AND WHY?'

Although the benefits of modding and allowing users to create their own content are acknowledged and their activities increasingly encouraged by developers, stakeholders in the industry are careful to retain the rights to any intellectual property that is created, as well as to set the boundaries for the appropriate use of it. By means of various contractual agreements, such as End User License Agreements (EULA's) and Terms of Service (ToS) agreements, developers strive to govern the creative activities of users in their virtual worlds. (Burke, 2010) To be sure, given the innovative potential as well as the increasing financial significance of mods and user-generated content, developers do well to pursue a strategy of 'good governance', i.e., to strike a balance between the interests of users and producers. (Kow & Nardi, 2010) This is certainly also due to the fact that the effectiveness of any governance strategy to a large extent depends on its perceived legitimacy among users. (Postigo, 2010; Burke, 2010) There exists a vibrant discourse within the modding community itself about the appropriate place of modding in relation to the industry and while some would like to see their work as independent of any commercial structures, the boundary between amateurs and industry is increasingly blurred. (Kow & Nardi, 2010) As Hector Postigo argues, "Today modding culture is in transition. Discourses [...] and the technologies used to develop mods now explicitly serve to orient modding toward a more embedded place in the whole of game development." (Postigo, 2010). Thus, whereas parts of the community define modding as a craft and rather see themselves as part of a kind of moral economy, there is a growing awareness of the importance of their activities for the industry writ large. (Kow & Nardi, 2010; Postigo, 2010) The question will be how modders choose to position themselves in relation to the industry, how they will value their creativity and consequently how both sides will reconcile their respective conceptions of ownership and usage entitlements.

## OUTLOOK

Increasing professionalism within the modding-community and a growing awareness of the financial import of their playbour (Kücklich, 2005) will certainly fuel future debates around fair and legitimate distribution of ownership and exploitation rights. As Hector Postigo argues, “Modding culture, if anything, is often very conscious of the system within which it flows. Of late, it has become increasingly aware that its participation is part of big business.” (Postigo, 2010). If developers want to continue to tap the creative potential of their respective user communities and to sustain their interest in creating content, chances are that they will need to be more inclusive in their governance strategies. The ongoing juridification of the relationship between users and producers, in form of various license agreements, may in fact turn out to have an empowering effect on the user side too. Besides being constrained by such agreements, creative users might increasingly see their own interests accounted for.

### FOOTNOTES

1. Studios like Valve or id-Software release so-called Software Development Kits (SDK), that allow users to build a game from bottom-up while using the source-code and engine of an original game.

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