

## **THE PRODUCTION OF VIDEO GAMES IN RELATION TO BUSINESS ETHICS AND LIABILITY**

*Summary:* Video games are mainstream entertainment today and also the fastest growing entertainment industry. The world of video games today counts over 1.8 billion gamers in the world, which makes for about a quarter of the world's population. Playing video games engages consumer mentally as well as physically, making him experience different emotions, dilemmas and conflicts. This is the main point where discussion on ethics in video games production and publishing comes into focus. Authors analyzed ethical question that arise in context of producing, marketing and selling of video games. Also, final section of the paper shows the difference in perception of video games, which will impact current ethical dilemmas as well.

*Key words:* video games, ethics, player, production of video games, creation of video games

### **Introduction**

Video games can, and in reality they do, have a large impact on individual as well as on society, therefore an ethical question is a legitimate one. The producers of video games, authors or publishers must act in accordance with certain ethical norms, but in practice this provides a numerous questions with less than ideal answers. First of all, there is an ethical dilemma of producing a video game, and, on the other hand, an ethical dilemma from the standpoint of a player. Therefore, the answer should shed light on both sides of the problem, but it is commonly understood that prime responsibility is on the creator of a video games, rather than on a player as person that only plays the game. In this context, we take a chance to try to determine substance of an ethical question from the standpoint of game creators, and if there is such a question, is that a legitimate one.

### **Video games as social phenomenon**

Video games are defined as, basically, games that use player's actions as input, putting these actions as well as surrounding through computer processing, and

---

\* mirkovic@pravni-fakultet.info

the end result is presented via video signal on display screen back to player. Hence the name „video” games. These games are complex works that contain many artistic forms (music, lyrics, scripts, videos, pictures, characters) which involve human interaction to play a game via computer program (Georgieva, 2016). They are divided into three categories – console, computer and on mobile devices. Today, video games represent final complex work that contain audio elements, video elements and computer code (source code and object code) as its components (Lipson and Brain, 2009).

Today, video games have become mainstream entertainment. Moreover, video industry is the fastest growing entertainment industry nowadays. The world of video games today counts over 1.8 billion gamers in the world, which makes for about a quarter of the world’s population. Furthermore, the average gamer is 35 years old, and only 56% of gamers are male. Only decade ago the average player was ten years younger, so we can see how fast the consumer element in video games industry is changing. In terms of revenue granted, video games industry is surpassing the music industry, and is in close competition to motion picture industry.

Video games are quite realistic today. Human motions are captured and mapped to computer game avatars which makes animations and motions in games increasingly realistic. Motion capture actors act out the desired motions and bring a virtual character to life. Thereby players use their own motions and emotions to form the virtual character. Therefore, playing video games engages consumer mentally as well as physically, making him experience different emotions, dilemmas and conflicts. This is the main point where discussion on ethics in video games production and publishing comes into focus. But, firstly, a brief survey on legal context of video games is in order.

### **Video games as objects of intellectual property law (legal context)**

In legal context, video game is complex copyrightable work and enjoys copyright law protection. Copyright law protects the specific form of expression of the elements enumerated above (audio elements, video elements and computer code), not the elements themselves. Therefore, methodologies, themes, ideas, concepts and colors in the process of creation of video game are not protected copyright objects. Their protection is provided via patent protection, i.e. as industrial property objects, but it is not always the case. The European Patent Convention (art. 52) expressly excludes computer programs, artistic creation, plans, rules and methods of mental activity, playing games or business activities, the presentation of information, discoveries and mathematical methods from the scope of the definition of patentable inventions. Nonetheless, video games can enjoy patent protection as parts of other inventions. Also, however, despite the cited European Patent Convention, the European Patent Office has registered a number of software patents, including video-games.

The controversy in defining a video game – is it a multimedia, an audio – visual work or a software program extends to its legal protection. In some countries<sup>1</sup>

---

<sup>1</sup> Argentina, Canada, China, Israel

jurisprudence perceives video games mostly as computer programs (due to dependence on software), in other countries<sup>2</sup> separate legal protection is afforded in respect of each intellectual property object.

Legal regulation in respect of video games also goes towards protection of minors and other social categories as consumers. The European Commission has published a Communication on the protection of consumers, in particular minors, in respect of the use of video games (2008). Earlier, in 2002, the European Council published a Resolution on the protection of consumers through the labelling of certain video and computer games according to age group. The self regulatory Pan European Games Information age rating system (PEGI) was adopted in April 2003 as a voluntary, self regulatory system designed to ensure that minors are not exposed to games that are unsuitable for their particular age group. The system replaced a large number of existing national age-rating systems. Today vast majority of EU Member States use PEGI, even if not all of these countries have specific legislation in place. In the United Kingdom, the computer games industry uses PEGI for most video games. Video games with material of a sexual nature, or portraying gross violence, are subject to the approval of the British Board of Film Classification (BBFC) which then awards age-related classifications that differ from PEGI. In France, PEGI is used to classify labelled video games, and recent amendments to French criminal law provide for age classification and labelling of video games according to age group. Belgium, Bulgaria, Denmark, Estonia, Hungary, Ireland, Spain and Sweden all apply PEGI.

Also, vast majority of the EU Member States have specific civil and criminal provisions concerning the physical sale of video games with content harmful to minors and there are various penalties to enforce these provisions. France, Sweden and the Netherlands prohibit certain violent video games under criminal law, and, for lawful games, Swedish retailers have agreed to follow the PEGI rating system for sale. A number of countries still, however, have no specific legislation governing the sale of video games.

Majority of Member States still do not have specific legislation for online video games, like World of Warcraft, that allow players to interact with each other online. In Ireland, for example, offline and internet video gaming activities are treated equally under the law and a hotline has been set up to report any illegal or harmful material on the internet.

As we can see, video game industry is developing much faster than legislation can follow. Therefore, it is useful to include ethics, as deeply rooted social element, in processes of creating and producing video games.

## **Production of video games in relation to social environment – the role of business ethics**

Over the years certain ethical issues have been raised in relation to production and reception of video games. Consequently, serious, socially related, questions and

---

<sup>2</sup> Belgium, Brazil, Denmark, France, Germany, Sweden, United States

interests have been raised in the video games development process, including creation of individual copyrightable components of the video game and the video game itself.

The popularity and importance of video games effects general state and behavior of the „player”, not only in the context of (increased) violent behavior. There are serious studies that show that substantial number of video games have been developed as a means of improving the player’s mental state and increasing his self-esteem (Georgieva, 2018). Today, there are games for seniors to combat declines in mental function. Playing games contributes to promoting analytical and strategy skills and makes young people accustomed to interaction with information technology. European Union even defines possibility of using video games as bearers of cultural diversity.

Nevertheless, video games can also be a means for spreading illegal and, particularly for minors, harmful content, and that creates specific challenges in terms of protecting young people, especially in the context of Pan European Games Information age rating system (PEGI). Video games have a large impact on the consumer’s perception for acceptable and forbidden behavior. Popular game Grand Theft Auto has faced scrutiny over highly abusive language, violence, racism and what it entails for an individual player. Another video game „Counter Strike” faced similar criticism, Germany even tried to legally ban this game in 2007. The debate concentrated on issues of desensitizing players to violence, bad social habits (smoking, drinking alcohol, taking drugs) and normalizing prostitution and violence against women (Stokes, 2011). Many video games are under scrutiny due to many consumers who become fans of a media product, go out in public and commit several crimes such as school shootings, vandalism etc.

Producers of video games must ensure certain level of ethics in producing a video game, but the question is to what extent, having in mind the necessity of respecting their right to freedom of speech and creativity (Takahashi, 2014). On the other hand, producers of video games must be very well aware of the effect the game and its playing may have on the consumer. But, how can producers make sure that their audiences are aware of the difference between virtual reality and the real world? Is it reasonable and just to hold producers liable for the actions some consumers may have in reality after playing a video game? Also, while expressing creativity and enjoying freedom of speech, as any other artist, producers of video games have to take into account that they are distributing a video game that goes international and not every society will appreciate certain aspects of it due to cultural differences.

It must be understood and accepted that culture and society affect the way producers create video games and also the way audiences or consumers perceive it. Consumers act on immoral or moral judgments within the game due to their social upbringing and cultural background, because what is seen normal in one society may not be so in another. The discussions on which kind of ethical code should be used for computer games is ongoing and is constantly adapted to new situations, technologies or applications. Suggestions have been made that „game devel-

opers should follow an ethical consensus because they reach a large population of young people”(Dodig-Crnkovic, Larsson, 2005). Other authors argue that the distinction if a game is unethical or not depends on the „eye of the beholder” (Kade, 2014). It is furthermore stated that consumers steer the market and in some cases even demand violent games so the gaming industry feels the pressure to comply with this demand to not loose market share to other competitors in the field.

Some authors ask what does it mean to talk about ethics in the video games and ask if there are ethical norms that creators of video games should uphold (Zagal, 2009). Zagal asks is it the same to discuss about the ethics of a game or about those in a game? How about the ethics of playing a game? These are some of the many perspectives involved in understanding the ethics of games. One, maybe the only way to address these issues, is from the standpoint of game creators and the companies that are publishing video games.

In the context of business ethic, we must first answer the question whether it is the creator of video game or the publisher that must uphold an ethic norm. As we can conjure, a company is the one that is liable for the content of creation that is publishing. Also, from the legal point of view, a legal responsibility lies on the publisher as legal entity, and not on the creators of video games. The company that is in the business of publishing video games faces numerous ethical questions that must be addressed. In the order of origin, company must take into account following questions:

- how do we create a game,
- how are we producing a game,
- how do we foresee a market, and
- how are we selling games

Ethical dilemmas are incorporated in the core of every line of business that one company is associated, because every one of them has their own agendas and goals, and the ethical principles are imbedded in the way they conduct their business. Same can be said for companies that are in business of producing and publishing video games. In the order of the questions above, the ethical approach of producing a video game and selling one, is questioned and in need of answers.

The first ethical question raised above is how a company creates a game. Even though that question is the first one, it is fundamentally in line with the other important one, whom is the company creating a game for. The game industry is very large and the diversity of games genres on the market is growing every year. The obvious answer lies is the affiliation of a game with an age of consumer. The PEGI ratings is a good tool for classification of games once they hit the market, but the company that is creating a video game has to take into account every aspect of its creation, especially the ethical aspect and its implications for consumers. We can all agree that there is different approach applied in creating a video game that, for example, has a goal to educate a person that is playing a game, from the one that is creating a sport simulation game (football etc.), or the one that is creating a first person shooter game with violent scenes and experience for the person that is playing that kind of game. So, ethical dilemma is valid one, because on the one side, a company can

create a product that is not only one which will bring revenues, but can also educate a player, but on the other side, if a company is producing a video game with violent experience for the gamers, then the way of conducting a business can be ethically and morally questionable. So to be clear, there are no legal issues with producing this type of games, but in terms of ethics, there is a big difference and it is the one that a creator of this type of games must take into account.

Revenues in game industry are associated with the quality of the product, but this market also shows the correlation between a certain type of game and its position on the market. In other words, the market of video games clearly rewards games that have a certain level of violence over the other types of games. So, if the company that operates in video games market wants to be a successful one, then the market is clearly indicating what type of games are more likely to bring success and revenues for company. That is not to say that other type of video games are not going to bring success to a publishing company, but a clear market indicators show that a success is more likely if a company produces a type of game that has a certain level of violence, over the other nonviolent games. Therefore, the ethical dilemma in first question is directly in correlation with all other questions, because when a company decides what type of games is going to produce, then all other question are affiliated with this decision.

How the companies produce a game is mostly determined in relation to the needs of the market, so if the company wants to be successful in video game industry, than a question of ethics in creation of certain type of video games is indeed a business question, more than any other one. A creation of video game is, and always will be, a business decision, and, therefore, an ethical approach to the creation of the game is determined on the grounds of market needs, not by the ethical conduct of creators of video games. One can say, if those companies don't produce this type of games, than a video market games would have a lesser video games of this type, but that is only in theory, because in real business other companies would fill a market with what it needs. Therefore, on the one side if companies want to be more ethical when it comes to nature of its products - video games, than they have to take all of the above into consideration, and make a decision to produce more ethical games, but at a cost of producing a video game that is not going to be the one that a video games market wants. This type of ethical dilemma is not only a question for companies in video games market, but also a question for all companies in the world of entertainment (movies, talk shows, other forms of digital media).

In the context of creating and producing a video game, ethical aspect that lies on a company is addressed in previous discussion which ended with conclusion that ethics in creating and producing a video game is in correlation with a certain genre of video games. Ethical dilemma that one company can have is associated with the needs of a market. Indicators in video game market show what type of video games has better chances to be successful and bring bigger revenues to the company. Other questions, how does company foresee a market of video games, and how is it going to sell a produced video game for certain type of market, is also addressed as a question from ethical point of view. Questions that arise are interconnected, so to foresee a market of video games and the business strategy to sell this product, causes same

ethical dilemmas. Let us address them. For example, if a certain company has created and produced a certain video game, the genre of this game will massively influence business decisions on how to foresee a market and how to sell it. Ethical questions are more likely to be seen in the context of creation of a video game, but that is not to say that there are no legitimate ethical questions for a company with regards to its business decisions on how to distribute and sell this product. How to foresee a market and how to sell a video game is mostly determined by the publisher. What one has to acknowledge is what type of video game is produced, and on that merit a company must make decisions for what kind of market is this product made and how to sell it. Previously we concluded that ethical questions are more likely to occur if the product is video game with violent elements in its game core, opposite to those that are non violent. Company that produces violent games has, therefore, also an ethical dilemma in the way of foreseeing a market for this type of game, and its business strategy to sell this type of video game. Regarding business logic, a company must embrace every market possible where it can generate sale. But, globally speaking, are the markets of Asia, America or Europa same markets, and do those markets have same type of consumers? The answer is no, because every market, and therefore every consumer from certain market is a different one. Values that one society upholds are translated into ethical behavior of individual. As we know, the liberties of western societies are greater than those in other parts of the world, especially if we consider Asian countries, and its more conservative values that are transferred to individuals, especially to young people. So, if a company wants to analyze global market for its video game, one must take into consideration previous issues. The company must consider ethical norms of specific parts of global or regional market, so the analyses of the market must be in line with a type of video games that a company wants to sell and specific ethical norms of certain societies and its markets<sup>3</sup>.

Selling a video game is the last stadium of video game production cycle, and therefore an ethical behavior of company in this regard is the one with less implications from ethical point of view. Ethical norms have high influence in video game creation and production, but ethical norms and companies behavior in regards to selling of games is very limitedly connected. Selling a video game is a very important issue that involves logistic and marketing approach. From the standpoint of ethical norms, company is only obligated to make marketing strategy for specific games in regards to the needs and standards of specific markets. Therefore, ethical question of selling video games is only valid from the stand and standards of marketing a certain game for variety of potential consumers. Previously, we addressed ethical norms in process of creation of video games with violent elements. Marketing strategy, and therefore a company behavior, must take into account a specific

---

<sup>3</sup> Global sale of Grand theft auto video game is good example of this. While the success of this game is a global one (most popular game in the world), the majority of gamers are from the western countries. On other side, the violence and other type of game experience from the player stand have not been presented as the type of ethical and other values in other parts of the world (specially in eastern countries). Therefore, the ethical norms of certain regions or countries are those that have had and still do impact on the sale of this particular video game.

impact that this type of games have on the consumers. Ethical question in this matter is what kind of marketing strategy is going to be applied. From the view of the company, but also from the view of the society, how the company is marketing its product and how is selling one, is the only valid question, but the ethics of its conduct is very limited. As long as the selling strategies, that also include a marketing strategy, are in the line with the true nature of specific video games, then there are no real ethical issues in this regard. Only ethical misbehavior that comes into account is if company-selling strategies disregard the nature of its product, and misrepresent the true nature of it.

### **New perception of video games**

In the last ten years the perception that video games are shallow, violent and childish has changed. Interactive video games are now perceived as tools for positive change. As early as fourteen years ago Asi Burak developed a video game designed to encourage opposing parties in the Israel-Palestine dispute over land to better understand – even empathies – with each other's point of view.

Recent statistic show that collectively the world now spends one billion hours every day playing video games. Meanwhile, the average young person racks up 10,000 hours playing video games by the age of 21, only slightly less than the time they spend in secondary education. So, statistics clearly show how powerful video games are nowadays. There are authors that go as far as to state that games can effect change in problems ranging from depression and obesity to global issues such as poverty and climate change . „Gaming does seem to be persuasive in changing people's thoughts, attitudes, feelings and actions in a way other mediums cannot.” (McGonigal, 2011). Author points to a virtual reality game developed at Georgia University which places the player in the sights and sounds of computerized woodland and gives them a virtual chainsaw. They are then required to cut down a tree using a vibrating controller. After the tree falls, the forest goes quiet and birds stop chirping. „Just two minutes changed people's real-world environmental behavior for an entire week,” says McGonigal. „They used 25% less paper products.” People who simply watched a video of trees being cut down did not change their behavior.

A separate study at Stanford University's Virtual Human Interaction Lab simulated disabilities such as colour blindness. Researchers found that people who experienced blindness not only expressed more empathy but contributed time to volunteer efforts.

Even international organization such as International Committee of the Red Cross has come to an awareness that video games can be useful tools in popularization of its work and achieving its international goals. Game developer Bohemia Interactive has, for over seven years now, worked closely with the International Committee of the Red Cross (ICRC) on creation of new ways to spread awareness of International Humanitarian Law (IHL). Cooperation in question aims to create ways to integrate certain elements of IHL into popular war games<sup>4</sup>, in order to replicate

---

<sup>4</sup> Namely Arma series of video games, link...

realistic war scenarios. Without spoiling the gaming experience, the idea is to expose players to an extra layer of complexity present in war, namely roles and responsibilities of real soldiers in context of IHL. Having in mind the statistics mentioned above, decision of the ICRC can be viewed as reasonable and quite innovative, as well as socially adequate. In this way both sides win – players get realistic and full experience, while significant social impact has been achieved, having in mind that, according to Bohemia Interactive statistics, Arma series games includes over 3,2 million gamers.

Via video games millions of people can be familiarized with substantial issues that represent significant social trends and desired outcomes. As we have mentioned, the cooperation between ICRC and game developer resulted in integration of complex legal rules into very popular video games, without degrading the gaming experience. Basically, great added value to video game. But, new perceptions lead to new challenges, and it is yet to see how ethical issues will be accommodated to new trends.

## Concluding remarks

Playing video games frequently involves social and interpersonal experiences which can have ethical ramifications. Video games are particularly compelling media for the study and practice of ethics because of the specific nature of their design. They provide an authentic content within which to practice and experience ethical dilemmas and critical thinking and decision making. They have been the center of a lot of media attention as a causal factor of a lot of society's ills, including youth violence, child obesity, and social alienation. Science and video games producers community has yet to develop best practices for designing and studying games that enable the practice of ethical thinking and reasoning skills. It is necessary to develop a deeper understanding of the ethics of videogames, and this paper is modest contribution in this respect.

## References:

1. Dodig-Crnkovic, G., Larsson, T. (2005). „Game ethics-homo ludens as a computer game designer and consumer”, *International Review of Information Ethics*,4(12), 19–23.
2. Georgieva Radkova, Hristina (2016). „Video games / objects of intellectual property. Comparative law Analyses”, *Proceedings of University of Ruse*, Vol. 55.
3. Kade, D., (2014). „Ethics of Virtual Reality Applications in Computer Games Production”, IACAP 2014 - Conference of the International Association for Computing and Philosophy, Thessaloniki, Greece, 2-4 July 2014.
4. Lipson Saunders, A., Brain R (2009). „Computer and Video Games Law – Cases, Statutes, Forms and Materials”, *Carolina academics press*.
5. McGonigal, J., (2011) *Reality Is Broken: Why Games Make Us Better and How They Can Change the World*, published by Jonathan Cape.

6. Zagal, J., (2009), Ethics in Videogames, DiGRA '09 - Proceedings of the 2009 DiGRA International Conference: Breaking New Ground: Innovation in Games, Play, Practice and Theory
7. Stokes. „Grand Theft Auto and the Problem of Evil.” Overthinking It. 2011. Web. 7 Sept. 2014. <http://www.overthinkingit.com/2011/03/03/grand-theft-auto-evil/>.
8. Germany seeks common EU rules on violent video games, <https://www.macworld.com/article/1054905/euidgames.html> .
9. Takahashi, D. „Ethics of Game Design.” Gamasutra – Ethics Of Game Design. 2014. Web. 7 Sept. 2014. [http://www.gamasutra.com/view/feature/130594/ethics\\_of\\_game\\_design.php?print=1](http://www.gamasutra.com/view/feature/130594/ethics_of_game_design.php?print=1) .
10. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the protection of consumers, in particular minors, in respect of the use of video games, COM (2008) 207, Brussels.

## РЕЛАЦИЈА ПРОДУКЦИЈЕ ВИДЕО ИГАРА И ПОСЛОВНЕ ЕТИКЕ И ОДГОВОРНОСТИ

**Сажетак:** Видео игре су данас део мејнстрим забаве, као и најбрже растућа индустрија забаве. Свет видео игре данас чини преко 1,8 милијарди играча, што је четвртина светске популације. Играње видео игара је и ментално и физичку захтевно, и играчи доживљавају различите емоције, дилеме и конфликте током играња. Ово је главна тачка у којој етика у продукцији и дистрибуцији видео игара долази до изражаја. Аутори анализирају етичка питања која се намећу у контексту продукције, маркетинга и продаје видео игара. Такође, завршни сегмент овог текста указује на разлике у перцепцији видео игара, што утиче и на савремене етичке дилеме.

**Кључне речи:** видео игре, етика, играч, продукција видео игара, стварање видео игара