

# Exploring the Copyright Protection of Live E-Sports Game Programs

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## Abstract

E-sports game developers, e-sports tournament organizers, live game platforms and game anchors are the main participants of live e-sports game programs, and copyright disputes among these related subjects are new types of cases. It is difficult to determine the nature of copyright of e-sports game screen, does the game developer enjoy the copyright issue? Can the live broadcast behavior of e-sports games be regulated? Is it possible to confirm the copyright attribution of the live webcast video of e-sports games? Whether the individual network live e-sports game is established as fair use? Suggestions for solving the above problems. E-sports game screen is an audiovisual work, protected by copyright law, and the final copyright belongs to the game developer. The copyright issue of e-sports games is expected to be incorporated into the law. The e-sports game network live video is a video work, protected by copyright law, extending to the broad neighboring rights. According to its "special" nature, the e-sports network live broadcast of individual anchors to avoid copyright disputes, the law set statutory license.

## Keywords

E-Sports, Webcast Programs, Copyright.

## 1. Introduction

Originally born in the 1980s and entering popular culture, e-Sports took off in the 1990s, opening up a whole new world of possibilities for the Internet. Through domestic and international exchanges and developments, China's domestic audience in eSports has grown, and on November 18, 2003, the Chinese government announced new opportunities for sports in China as social development continues to advance, including the inclusion of eSports as the nation's 99th sport for more orderly and equitable development. At the same time, e-sports clubs rocketed in development and subsequently spawned emerging careers similar to the e-sports online game broadcasting industry and other online broadcasting platforms such as Hu Ya and Douyu began to proliferate. After more than a decade of development, the scale of e-sports continues to expand, the economic base continues to grow at the same time, in the process there are a series of problems that can not be ignored. With the passage of time, copyright disputes have become increasingly serious in various aspects such as game developers, organizers, live streaming platforms and anchors. However, because of the lagging nature of China's copyright legislation, coupled with the fact that live e-sports game programs involve complex subjects and objects, the relevant parties are also arguing about the related issues. How to characterize the behavior and how to allocate the interests of relevant subjects is quite important to the prosperity of the live webcasting industry.

## 2. Organization of the Text

### 2.1. The current status of live e-sports game shows

The 2022 China eSports Industry Report shows that the revenue of China's eSports industry in 2022 is 144.503 billion yuan, the size of the eSports population is about 488 million, and 108

eSports events are held throughout the year. 2022 China's eSports industry revenue is mainly composed of eSports games, live content, tournament activities, and club operations. Among them, live content revenue accounts for 15.28%, which is the second largest block of category revenue. Because of the interactive nature of live gaming programs, viewers can effectively follow the strategic approach and content progress of the games they are interested in, thus making them popular for a while, but in the context of the continuous development of network technology, legislation often lags behind, for example, the network writer "God" Tang Jia San Shao is deeply involved in lawsuits due to copyright disputes over network culture knowledge. In life, the law also does not include online games into the type of protected works, and the relevant interpretation method does not say so, so in practice the outcome of the relevant cases is completely different, and such cases abound in China's judicial practice. For example, in the Miracle MU case, the court held that the game screen was a series of images with or without accompanying sound, which was similar to a movie and could be protected by copyright law as a class of movie; while in the Yoyo v. Douyu case, the court of first instance held that the game screen did not constitute a work and could only be protected by anti-interference. The court of first instance in the Yoyo v. Douyu case, on the other hand, held that the game images did not constitute works and could only be adjudicated through the anti-unfair competition law. In general, the relevant basic laws were not clarified, which brought serious interference to the determination of copyright infringement, and the legal protection faced serious difficulties.

In fact, e-sports game live broadcast is the re-use of the game, is with high cultural value and commercial value. Reasonable positioning, finding a balance, copyright protection is at the present moment. The development of e-sports game industry cannot be separated from the promotion and support of it.

## **2.2. The dilemma of copyright protection for live e-sports game shows**

### **2.2.1. It is difficult to determine the nature of copyright of e-sports game graphics, and whether game developers**

The complex issue of access to copyright live game platform and anchor without the permission of the developer to broadcast the original game developed by them constitute infringement. We know that if the developer enjoys the copyright of its original game, it means that the video game screen belongs to the work on our copyright law, and it represents the developer as the copyright owner.

If we categorize video game footage as a work, what specific category does it belong to and how should it be protected by copyright law? Nowadays, watching movies with friends and partners in free time is a way to rest and entertain. We know that there is a process of creating movies, which usually starts with characters, background, music, plot, etc. Obviously, the essence of game graphics and movie making process are the same, the former forms a script similar to a movie script, and they can both be played on tangible material. Game graphics are highly ornamental, which is also similar to movies. However, the game graphics are not "filmed on a certain medium", which is contrary to the provisions of our copyright law.

It can be found that the dynamic visual effect presented by the game screen is operated by the player, which reflects the intellectual achievement to a certain extent, thus can the player be identified as the author of the work in interpretation? On the other hand, nowadays, many Flash videos can be completed by means other than filming, and it is a new type of audiovisual work. The term "audiovisual works" is a new version of the Draft Revision of the Copyright Law, which aims to protect the right of "filming".

### **2.2.2. Electric competition live behavior is difficult to regulate**

We know that traditional sports events are copyrighted, so is it natural that e-sports events are copyrighted as well? This is not true. First of all, traditional sports events are not copyrighted

in the legal sense in our country either. This is due to the fact that sports events are athletes competing against each other for the score, and this behavior has not been called a work because it does not meet the high standard of originality required by copyright law for works.

Under traditional sports regulations, the broadcast rights of a sporting event are usually owned by the sports organization hosting the event, but this does not mean that they own the copyright. On the contrary, the "access regulations" stipulate that the protection of the right to broadcast sporting events should be based on the property rights property. According to common law scholars, the right to broadcast an event is a property right, owned by the event organizer, which allows various media to access the venue and enable live broadcasting. Thus, the permission of the event organizer is essential to achieve this goal. Only authorized media can have the far-reaching authority of "broadcasting rights". [1] (In judicial practice, however, countries such as the United Kingdom and the United States have adopted the principle of "sweating on the forehead," which means that a work can be considered a work as long as it has been worked on. Therefore, sports events are recognized as works and protected by copyright law in the UK and the US).

In addition, the difference between e-sports and traditional sports is that the former has game graphics, and all e-sports events are conducted on the corresponding game items, and the events cannot eliminate the use of game graphics. If it is determined that the game graphics of "weak plot" type eSports events, such as MOBA and FPS games, constitute movie-type works, then the broadcasting rights of the events that must use the corresponding game graphics will definitely fall into the hands of game manufacturers. In 2010, Blizzard filed a lawsuit against the Korean eSports Federation, demanding that the Federation take new measures to require all third-party media outlets to obtain authorization from the Federation to cover its eSports tournaments, even game developers. Blizzard eventually took it to court, and the court eventually sided with Blizzard. The retransmission rights are in the hands of the game developers.

### **2.2.3. It is difficult to determine the ownership of the copyright of the webcast videos of eSports games.**

Distributing unauthorized live game videos through the Internet may cause huge losses to the producers and broadcasters, so copyright adjustments should be carefully considered. In fact, the live game video is still a game screen, but with its individual elements added to it, such as interesting commentary and performance or interspersed with other contents [2]. Although it has some originality, it is far from the requirement of a work, because it is still essentially a depiction of the game screen.

### **2.2.4. Whether the individual network live e-sports game is established fair use issues complex**

We know that game anchors as a class of profession is also the livelihood of many people. Take for example the case of Twitch anchor StarLord Lucian who got into trouble for opening a live stream to peek at League of Legends pro Faker's game stream. Does the anchor enjoy the copyright to his live stream anymore? Although it would be taken for granted that anchors are naturally entitled to it, there is actually no clear statement worldwide.

What needs to be discussed clearly is which games players are entitled to certain copyrights. First of all, the gaming category, drama and other categories of games, players are not entitled to copyright. Some players may suggest that the operation of e-sports category is different in each game, and the operation of personal show is a creative work. However, according to the current academic discussion and judicial practice at home and abroad, these operations are in the pre-set system, and the live game mainly looks at the game screen, and the element of personal creation is very small. Thus, from this aspect, individuals who live-stream games are

not entitled to copyright. Only the players of sandbox games with high creativity may enjoy certain copyright.

In China's copyright law, fair use should be made as to whether webcasting constitutes infringement, because they are intended to obtain economic benefits and the presentation of the game screen is complete, and these factors will affect their being considered as fair use.

### **2.3. The solution of copyright protection for live e-sports game programs**

#### **2.3.1. The graphics of e-sports games are a visual and auditory art, and the developers own the rights to these works.**

According to Article 2 of the Regulations on the Implementation of the Copyright Law of the People's Republic of China, a work referred to in the Copyright Law is an intellectual work in the fields of literature, art and science that is original and can be reproduced in some tangible form. Article 4(11) stipulates that a film or similar electric work is a work that is filmed on a certain medium, consists of a series of pictures with or without accompaniment, and is shown or otherwise disseminated with the aid of an appropriate device. Here, there can be such a solution idea: the game screen is considered as an audiovisual work. Based on this, who owns the copyright of the whole picture of the game?

According to Civil Judgment No. 574-589 of Guangzhou Intellectual Property Court (2020) Yue 73 Min Final 574-589, the court of first instance ruled that online game users can utilize the online game elements in the game repository with the help of the online game search engine, which is done within the logical structure designed by the creator of the online game, and its function is to convert the virtual scenes in the online game into visualized continuous moving images, thus transforming the game content from non-visual to visual.

In this reproduction process, although the game user has some initiative, but initiative is not equal to originality, no matter how many kinds of continuous activity images are reproduced by the game user, the game engine with originality and the game resource library combined with the "King's Glory" game always have the same nature, the game user has neither created any new game elements with originality nor created any new continuous activity images with originality that can be separated from the "King's Glory" game alone. Therefore, the game user has not paid any original labor in the sense of copyright law either for the internal game engine and game resource library, or for the external audio-visual continuous activity screen that embodies the game content.

If players were allowed to own their own works and treat them as their original works, then this would lead to players having more power to control their own works, thus destroying the balance between players and violating the norms of the law. Therefore, we should respect players' works and treat them as their own original works to protect the rights of players.

Therefore, all the images of the game "King of Glory" are not copyrighted."

The court of second instance ruled that the copyright of Sunshine Culture Company should be attributed to those game players who made original creations. Except for the rare cases such as the initial screen of boot-up and the hang-up running screen, the continuous screen generated during the running of the game usually cannot be presented automatically and must be created by the players manually. Therefore, in those games that provide abundant creative tools and allow players to have more freedom and more room for creativity, we should seriously consider whether the continuous screen generated during the game running can reflect the unique creativity of players.

The gameplay flow of King's Quest is so simple that players simply need to access information from a repository, and the resulting connected images are exactly as the manufacturer intended. Even though two players may have slightly different options, their images, sounds, character looks and game flow are kept intact and presented over and over again. Importantly these

images and their components are sourced from the game's repository and are not beyond the game creator's preconceptions."

In general the author of the work, i.e. the game developer, has contributed substantially to the creation of the work and should be considered as the copyright holder and owns the copyright of the game.

In fact, at present, China is regulating live game broadcasting with "transformative use" as stipulated in Article 107 of the U.S. Copyright Act. "Transformative use" states that the purpose and nature of the work, the copyright attributes, the amount and actual effect of the use, and the effect on the market and value are all important factors. Thus, under these prerequisites, copyright owners of online games may support or encourage actions such as paraphrasing and live streaming. For copyright owners, taking free publicity can attract more fans. As an example, games such as PUBG and Getting Over It with Bennett Foddy (nickname name in Chinese: Jedi Quest), which were once a big hit, relied on domestic anchors to broadcast their games live and spread their user base in China. Even the fire of "PUBG" once led to the proliferation of users of Steam platform in China.

### **2.3.2. Copyright issues of e-competitions are incorporated into the law.**

Most viewers have become accustomed to the news that the major broadcast platforms are currently throwing money at the rights purchase. However, the current legal provisions have not yet given a clear line to limit the retransmission rights, which is just a way for the media to promote and cover the game from its many roles.

In our country and in some civil law countries it is considered that high originality is required to be recognized as a work. In fact e-sports events do not have retransmission rights in the legal sense, and in China e-sports events are not copyrighted. Although the provisions of the Law of the People's Republic of China Against Unfair Competition may affect the copyright of e-sports events, there is still an opportunity for participants and copyrighted live streaming platforms to address these issues under the provisions of the Law of the People's Republic of China Against Unfair Competition. However, in recent years there have also been cases of judgments in which tournaments have been recognized as copyrighted, and there is a good chance that future issues regarding the copyright of e-sports events will be included in the legal provisions.

### **2.3.3. Live video gaming is a kind of video work, which should be protected by neighboring rights.**

At present, although the domestic identified anchor for live game broadcast can not be considered as works, the live broadcast of e-sports can be identified as video products, and the live broadcast of non-games can be identified as electric-like works, and both of them enjoy the neighboring rights of copyright law. Thus, stealing others' live streams can be considered as copyright infringement, and can even be required to be held legally responsible in the case of large illegal profits. Generally speaking, however, theft of other people's live broadcast is generally less common in reality, and even if it does occur, the live broadcast and video platform will be responsible for solving the problem. The second editing of the live video of the anchor is more difficult to defend the right, unless it is pursued by the neighboring right holder of the copyright.

### **2.3.4. According to the "special nature", the personal anchor of the e-sports game webcast can be legally recognized.**

First of all, the gaming category, drama and other categories of games, players are not entitled to copyright. Some players may suggest that the operation of e-sports category is different for each game, and the operation of personal show is a creative work with creativity. However, according to the current academic discussion and judicial practice at home and abroad, these operations are in the pre-set system, and the live game mainly looks at the game screen, and the element of personal creation is very small. Thus, from this aspect, individuals who live-

stream games are not entitled to copyright. Only the players of sandbox games with high creativity may enjoy certain copyright.

By creating a new rule that allows individuals to post their own videos on the Web without having to obtain authorization from copyright owners or charge them any fees. This approach not only improves the utilization of videos, but is also more convenient.

The protection of rights involved in live streaming of esports games cannot be limited to copyright. At present, both academic and legislative aspects focus on analyzing the theoretical infringement of game live streaming rights, while neglecting the actual live streaming behavior. Starting from the analysis of actual live streaming behavior, the reverse approach to theory is conducive to the resolution of infringement cases and the scientific implementation of legislation, thereby better protecting the legitimate rights and interests of the parties involved.[3]

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