Videogames and Intellectual Property

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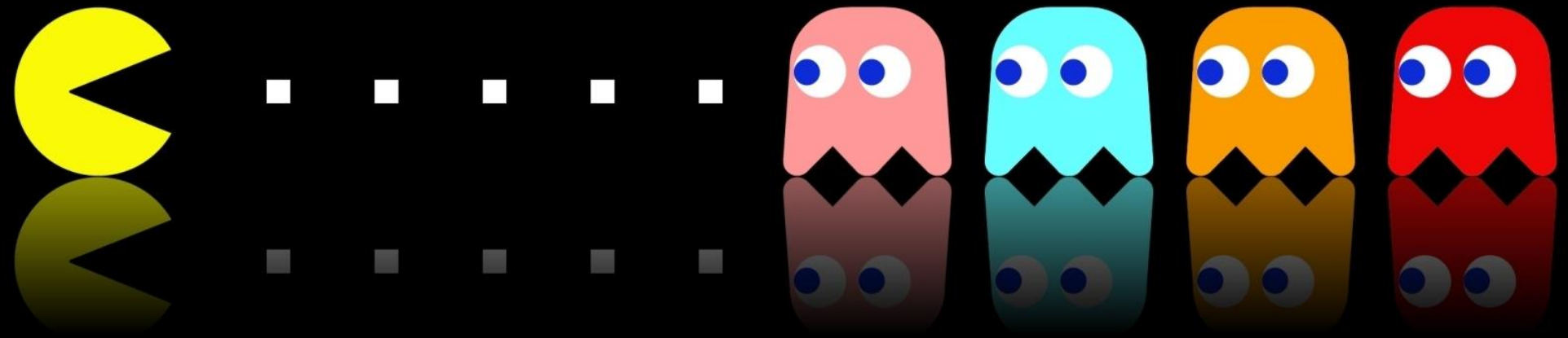


Overview

- How are videogames protected?
- Main challenges
- Key enforcement risks
- Proposed solutions

How Are Videogames Protected?

- Copyright
- Trade marks
- Patents
- Design rights
- Other considerations: technological protection measures, end-user licence agreements, unfair competition

Main Challenges

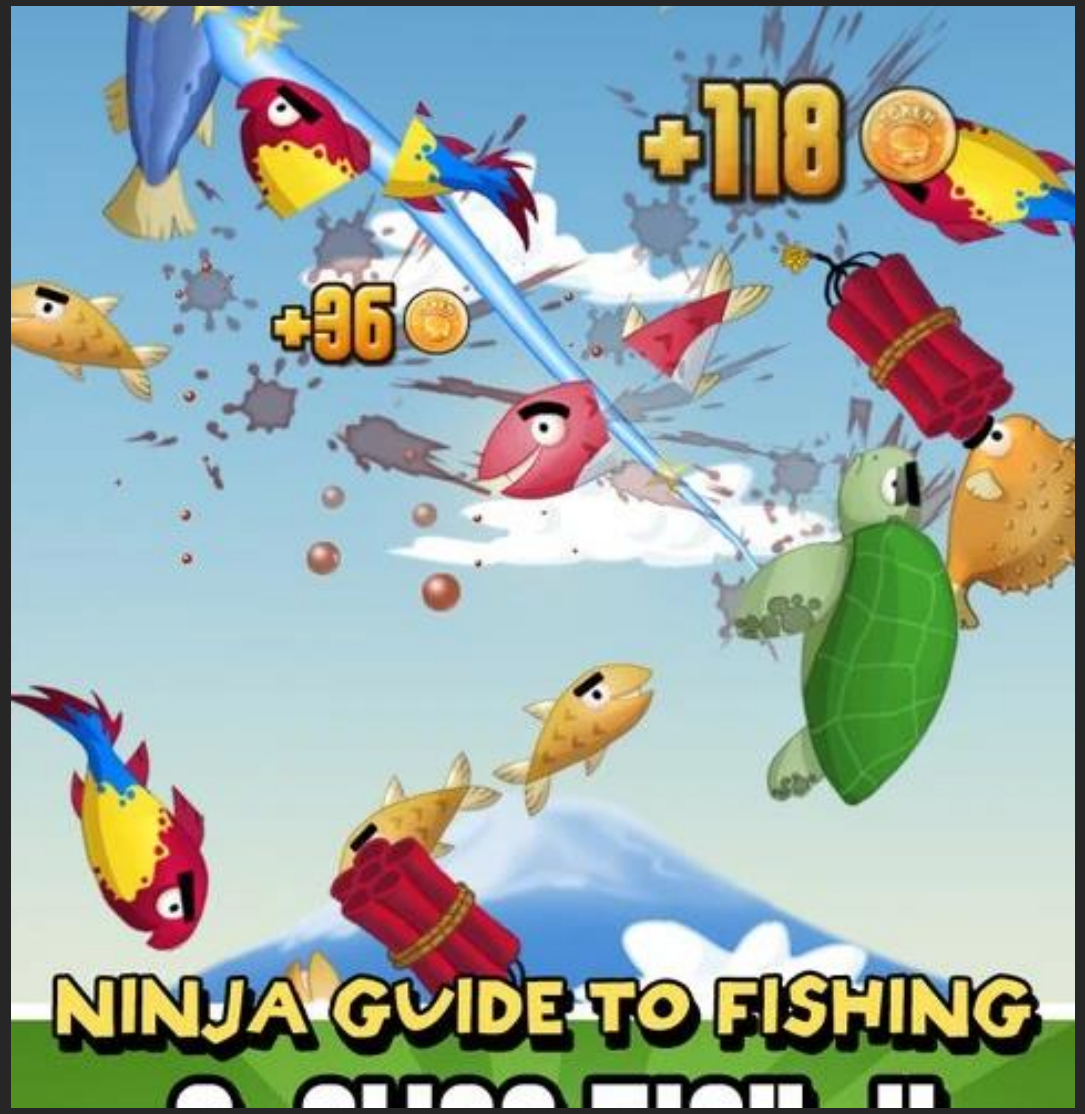
- Unauthorised distribution
- Game cloning
- Product key resale

Unauthorised Distribution

- Typically done online through peer-to-peer file-sharing protocols and file-hosting sites
- Rightsholders will generally have multiple causes of action available against the different parties involved, and different kinds of legal mechanisms available
- Rightsholders frequently make use of TPMs
- In some cases, rightsholders may adopt business models that are less susceptible to this form of infringement

Game Cloning

- Practice where a competitor replicates a videogame's combination of game mechanics, but without copying of its graphics, sounds or the underlying computer program
- Copyright-based litigation: likelihood of success may be jurisdiction-dependent
- Other potential causes of action: unfair competition, patent infringement, trade mark infringement, design right infringement
- Other strategies: seeking removal from online platforms, 'name and shame' techniques



Ridiculous Fishing (Vlambeer) vs Ninja Fishing (Gamenauts)

Product Key Resale

- Resale of product keys through ‘grey market’ channels that have not been authorised by the rightsholder (e.g. G2A, Kinguin)
- Potential causes of action: infringement of the distribution right and/or right to communicate the work to the public (depending on definitions in each jurisdiction); accessory liability for acts of reproduction committed by purchasers
- Other strategies: stop offering product keys; use of geo-blocking measures; de-activating ‘grey market’ product keys; setting up own resale programme

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