

# Streaming Video Games: Copyright Infringement or Protected Speech?

Eirik Jungar

Uppsala University

## Abstract

Streaming video games, that is, live broadcasting playing video games on the internet, is incredibly popular. Millions tune into twitch.tv daily to watch eSport tournaments, their favourite streamer, and chat with other viewers. But all is not rosy in the world of streaming games. Recently, some game developers have aggressively exercised their copyright to, firstly, claim part of the streamers' revenue, and secondly, control the context in which their game is shown. The article analyzes whether game developers have, and should have, such rights under EU copyright law. Reaching the conclusion that video game streams infringe the game developer's right to communicate their works to the public, I argue that freedom of expression can and should be used to rein in their rights in certain cases. Subjecting the lawfulness of streams to game developers' good will risks stifling the expressions of streamers. The streamers, their audience, and even the copyright holders, would be worse off for it.

## Keywords

Video games; Streaming; Copyright; Freedom of speech; EU



## 1 Introduction

Every day, the internet traffic to the website twitch.tv, where visitors watch others play video games, rivals that of Netflix. "Streaming" video games, that is, live broadcasting playing video games on the internet, has become immensely popular. This generates tension between streamers and game developers, who may want a piece of the revenue generated by streamers or to control the context in which their game is shown to the public. In this paper, I analyze whether the game developers have, and should have, such rights under EU copyright law. EU legal scholars have so far overlooked the topic, which is surprising considering the increasing economic importance of streaming. First, I outline the concept of streaming and what is at stake. Second, I describe what a video game is and how it is protected under EU copyright law. The parts of a game relevant to streaming are regulated by Directive 2001/29/EC (the InfoSoc Directive), and streaming likely infringes the game developer's right to communicate their work to the public. As there are no applicable exceptions that can allow for streaming games in the InfoSoc Directive, I thirdly argue that freedom of expression can and should be used to limit the game developer's rights when it comes to certain cases of streaming. Streaming can be a valuable expression, giving rise to community creativity, while not being overly detrimental to the copyright holder's economic interests.

## 2 The Interests Involved in Streaming Video Games

### 2.1 What is Streaming?

Surfing to twitch.tv or gaming.youtube, one finds several channels where people broadcast the playing of video games. On the screen are displayed the audio-visual elements of a game, a live video feed from the streamer's web-camera, and a chat where viewers interact with the player and each other. Twitch.tv rivals big TV-networks such as MTV, Comedy Central and MSNBC in average prime-time viewers (Wingfield, 2014), and commands as large a portion of internet traffic in the US as Google and Netflix (Cook, 2014). Data from Europe is harder to obtain, but one can assume a similar rise in popularity due to the global nature of internet media. Google has launched "YouTube Gaming" to make YouTube into a platform more suitable for streaming games (YouTube Official Blog, 2015). The focus of this paper is the conflict between the copyright holder of the game and the streamer. Below, I describe the activities and economic situations of streamers and provide examples of when this conflict has surfaced.

## 2.2 The Streamers

### 2.2.1 Different Kinds of Streams and their Characteristics

It is possible to differentiate between primarily three kinds of streams: tournament streams, streams of professional players, and variety streams. Tournament streams, channels broadcasting eSport, are the most popular according to the website Socialblade<sup>1</sup>. These channels are owned and managed by professional broadcasting studios that organize, host, and commentate on tournaments.<sup>2</sup> ESPN has entered the business, since the industry is estimated to grow to 765 million dollars in 2018, up from 278 million in 2015 (Gaudiosi, 2016).

Streams of professional players show players practicing their game. The video game is shown along with a webcam feed of the player, and viewers interact with the professional through a chat function. Presumably, these streams are watched by other players looking to improve. The professionals of the most popular games to play get the most views<sup>3</sup>, which indicates that *League of Legend* players watch *League of Legends* streams, *Counter Strike* players *Counter Strike* streams etcetera. However, most viewers prefer a charismatic streamer to a better player, as the most popular streamers in this category are usually not the best players. For example, Kripparrian is the most popular *Hearthstone* streamer according to the website Socialblade, without winning any high-stake tournament as of late.

The last category of streamers, and least popular by number of regular viewers according to Socialblade, are the *variety streamers*. Variety streamers broadcast a variety of games, examples include Day[9]Tv and the now world famous PewDiePie. Variety streams are highly interactive with its viewers; popular streamers have a large fan following no matter which game is played. The streamers rely on their humor and create entertainment by, for example, exaggerating things happening in the game, providing commentary, telling jokes, or, using moments in the game as inspiration to talk about something else. An example is when Day[9] capitalized on an unexpected friendly meeting between two enemy units to tell the stream about his romantic failures (Day[9]'s Best Moments, 2011).

### 2.2.2 The Economics of Streaming

Famous YouTuber PewDiePie attracted much attention when he reported earnings of more than seven million dollars in 2014 (BBC News, 2015). That is a lot of money for a 25-year-old spending his workdays shouting at a computer monitor. But the journalist Thomsen brings up a fair point that this is far less than what an equally popular TV show would earn in

---

<sup>1</sup> <https://socialblade.com/twitch/top/50/channelviews>

<sup>2</sup> See e.g. Beyond the Summit *About*

<sup>3</sup> Compare Paul, 2016, with Socialblade.

advertisement revenue (2015). That is because YouTube keeps a substantial part of the ad revenue. The split between the content creators and YouTube is reportedly about 55% to the creator and 45% to YouTube (Spangler, 2013; Wagner, 2015). Roughly, every 1000 views earn about 7.60 US dollars in ad revenue with some variation depending on the content and use of ad-blockers, so the content creator would earn approximately four dollars per a thousand views (Rosenberg, 2015). The other main platform for streams, Twitch.tv, does not release their revenue split with streamers. Steven Bonell, known as Destiny on Twitch, describes his earnings in an article on the dailydot. Bonnell earns less than \$1,000 a month from advertisements streaming 200-250 hours a month, with an average of 2,500 concurrent viewers. Most of his income is from subscriptions; viewers can pay five dollars a month for some special privileges. Twitch keeps two of those five dollars. Bonnell earns about \$5000 from subscription fees (Egger, 2015). Daniel Fenner, a less popular and perhaps more representative streamer with about 165 concurrent viewers reported subscription revenue of \$716 and ad revenue of \$12 per month streaming approximately 9 hours per day (Fenner, 2015).

The most popular streamers, usually tournament streams and professional players, earn substantial amounts. But many dedicated to streaming struggle to make a living out of it, and almost everyone puts out hours of content every day. Streamers love playing games, but as any other job, making a living out of it requires the streamers to play games for longer periods and more often than they would choose to if doing it solely for fun (Roguebishop, 2016).

### 2.3 Clashes Between Streamers and Developers

Game developers and streamers have so far lived a somewhat peaceful coexistence. The developers of the most popular games to stream normally have user license agreements that allow streaming on condition that it is non-commercial (in the sense that the stream is provided for free)<sup>4</sup>. However, the game developers reserve the right to deny streaming their game at their sole discretion, for any or no reason<sup>5</sup>.

There are signs that the fragile truce is breaking down. In 2013, Nintendo issued several takedown notices to prominent streamers and YouTubers (Bailey, 2015). Nintendo then released their partner program, allowing for the streaming of some games, provided the streamer shares the ad revenue (Mullen, 2013). Nintendo and YouTube split the revenue 55/45, and Nintendo then "gives back" 60% of those

---

<sup>4</sup> See e.g. Riot *Legal Jibber Jabber*; Blizzard *VideoPolicy*, Microsoft *Rules*; Ubisoft *Policy on YouTube*, Valve *Video Policy*

<sup>5</sup> Riot *Legal Jibber Jabber*

55% to the content creator<sup>6</sup>. Games that are not part of the partnership program cannot be streamed at all.

Game developers have also shut down streams they do not approve of. Nintendo categorically refuses to allow streams of certain games “because it’s not fun to watch” (Crecente, 2014). Similarly, speed runners, players who compete to complete a game as fast as possible, have been targeted with claims for copyright infringements (Parlock, 2015), and so have people streaming earlier versions of the game *World of Warcraft* (Caucxican, Reddit, 2015). Riot Games shut down the stream spectatefaker, as they did not approve of the fact that the streamer broadcasted himself viewing another player’s games (Riot, 2014).

To conclude, the revenue generated by some streamers has attracted the attention of game developers. This raises the question whether game developers have, and should have, a right to control the broadcasting of their game and take part in the revenue generated by streamers.

### 3 Copyright Protection of Video Games in the EU

In this section, I analyze how video games are protected by intellectual property rights (IPRs) in the EU. As described above, the streamer shows a video of a game being played. Knowing how and what parts of video games are protected by IPRs is therefore necessary to analyze whether streaming them infringes those rights.

#### 3.1 Defining a Video Game

Video games come in different shapes and forms, and can contain diverse creative elements such as audio (compositions, voice, sound effects), video (moving images, still images, animation) and the plot (game story and characters) (Lipson and Brain, 2009, p. 54). Not all games contain these features. For example, *Colossal Cave Adventure* essentially lacks a visual component as the story is narrated. “Point and click” games, such as *Day of the Tentacle*, where the player travels in time to spoil the plans of a super intelligent purple tentacle, lack moving images, but contain beautiful still pictures and ingenious plots. This is in stark contrast to the shooter *Gears of War*, where the conversations are mostly grunts and expletives accompanied by detailed and gruesome moving images. Considering this diversity, how should one define video games?

Tavinor and Leino stress the interactive component, stating that a video game is defined by the fact that the game can read player inputs, and change its material substances as a result of the player’s action according to some set rules (Tavinor, 2008; Leino, 2010, pp. 127-128).

---

<sup>6</sup> Nintendo *Partnership Program*

What makes video games unique is their interactivity; the game changes depending on the player's actions. It is the code, or software, of the game that allows for this interactivity by translating inputs, such as the press of a button, to certain outputs, such as video and sound. It is therefore understandable that most jurisdictions consider video games to be computer programs (Ramos et al, 2013, p. 93; Grosheide *et al.*, 2014, pp. 10-11), as it is the software and code that makes video games different from movies and music. But video games contain diverse elements that may be worthy of copyright protection in themselves. A pertinent question is whether the IPRs to a video game should protect the game as a whole, its separate elements, or only the computer program underlying the game

### 3.2 Video Games as Computer Programs

Most jurisdictions protect video games as computer programs (Ramos *et al.*, 2013, p. 10). The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement, (Art 10) The World Intellectual Property Organization Copyright Treaty (WCT)<sup>7</sup>, (Art 2), and Directive 2009/24EC (the Software Directive), all provide for copyright protection of computer programs as literary works. In the context of EU copyright law, one needs to determine whether video games are protected as computer programs subject to the Software Directive or regulated by the more general InfoSoc Directive. This is because the rights conferred differ between the two. The Software Directive is *lex specialis* to the InfoSoc Directive (InfoSoc Directive, Art 1(2) a; C-128/11 *UsedSoft*, Para 56), taking precedence where applicable. As such, the starting point is to analyze the applicability of the Software Directive to video games.

The Software Directive applies to computer programs and their "expression in any form" (Art 1). This raises the question of what a computer program, and its expressions, are. Viewers only see the audio-visual elements of a video game when watching streams. Are these elements part of the computer program? Neither the Software Directive, the TRIPS agreement, nor the WCT defines the term "computer program". However, in the preparatory work of the WCT, computer programs are defined as "a set of instructions capable, when incorporated in a machine-readable medium, of causing a machine having information-processing capabilities to indicate, perform or achieve a particular function, task or result" (WIPO, p 3; see also AG Opinion in C-393/09 *Bezpečnostní* Para 12). Essentially, this means that the underlying code, or software, is a computer program as it runs the game and translates player inputs to outputs, but not the output, for

---

<sup>7</sup> The TRIPS and WCT are international agreements. TRIPS applies to WTO members and the EU. The WCT also has a global reach with 94 signatory states, including many Member States. The interpretation of these documents is therefore important for EU copyright law.

example video or audio, as such. The Court of Justice of the European Union (CJEU) adopted the same position in case C-393/09, *Bezpečnostní*, where it stated that the Software Directive protects expressions of computer programs [the code translating inputs to outputs] that permits their reproduction (Para 35). This is not the case for a graphical interface, which is consequently not considered an “expression in any form of a computer program” (C-393/09 *Bezpečnostní*, Para 41). As streamers only broadcast the audio-visual outputs of the game, it cannot infringe a right holder’s right to the software and underlying code. But, as shown below, video games benefit from copyright protection, just not primarily as computer programs.

### 3.3 Protection of Video Games under the InfoSoc Directive

The InfoSoc Directive harmonizes the legal rights granted by copyright in the EU, meaning that the copyright laws of Member States should grant the same rights. It may even have harmonized the originality requirement through case law (Rosati, 2011, pp. 802-803; C-5/08 *Infopaq*, Paras 47-48). The InfoSoc Directive regulates the copyright protection of a game’s audio-visual elements, as those elements are not expressions of a game’s computer program.

Many Member States have opted to separate the protection of the underlying code, regulated by the Software Directive, from other game elements regulated by the InfoSoc Directive (Ramos et al 2013)<sup>8</sup>. However, recent case law from the CJEU indicates that such a separation is not correct. In case C-355/12, *Nintendo v PC Box*, the court ruled that “...video games... constitute complex subject matter comprising not only a computer program but also graphic and sound elements, which... have a unique creative value... they are protected, together with the entire work, by copyright in the context of the system established by Directive 2001/29.” (Para 22). Instead of separating audio, video and software as works that are copyrightable in themselves, the CJEU implies that these are only parts of a copyrightable whole. As such, software that is part of a video game is subject to the provisions in InfoSoc, not the Software Directive. The reasoning of the Advocate General is more precise, stating that “Directive 2009/24 take precedence over those of directive 2001/29, *but only where the protected material falls entirely within the scope of the former.*” (AG opinion in C-355/12 *Nintendo v PC Box para 34*, my emphasis). However, it is wise to refrain from reading too much into this. The case concerned technological protection measures relating to the whole game; it may be different if it only concerned the game’s software (AG opinion in C-355/12 *Nintendo v PC Box*, Paras 34, 35).

---

<sup>8</sup> See findings from Sweden p. 85, Spain pp. 78-79, Italy p. 50, Germany p. 41, France p. 36, Denmark p. 31, Belgium p. 14

To conclude, audio-visual elements of a video game may be protected by copyright under the InfoSoc Directive provided they are original enough. Most streamed games will benefit from protection, as they contain distinctive and well-developed video features.

## 4. Infringements and Exceptions

### 4.1 Exclusive Rights in the InfoSoc Directive

The InfoSoc Directive grants the copyright holder an exclusive right of reproduction (Art 2), communication to the public (Art 3), and distribution of copies (Art 4). The streamers broadcast themselves playing games online, recording to make it available as a VOD (video on demand). The audio-visual elements of the video game are thus made available for others to watch, which mean that it may fall under the author's right to communicate his work to the public.

"Communication to the public" is not defined, but it should be interpreted broadly to guarantee a high level of protection and an appropriate reward for authors (InfoSoc Directive, Recital 23; see e.g. C-306/05 *SGAE*, Para 36; C-466/12 *Svensson*, Para 17). In case law, the term has been interpreted to include two criteria. There needs to be an "act of communication" to a "new public" (C-466/12 *Svensson*, Para 16), or by a "specific technical means" different from that of the original communication (C-697/11 *ITV Broadcasting* Para 24, 26; C-348/13 *Bestwater international*, Para 14; C- 160/15 *GS media* Para 37). Both criteria are fulfilled when players broadcast themselves playing a game. An act of communication is every measure by which a work is made available, so that it is accessible (C-466/12 *Svensson*, Paras 15, 19, 20). Streaming a video game makes its audio-visual elements available on a web site for people to watch live or at a time of their choosing.

The new public criterion is normally only problematic for unauthorized re-broadcasts of the right holder's original transmission (E.g. C-607/11 *ITV Broadcasting*, C-466/12 *Svensson*, C-348/13 *Bestwater international*). For streaming video games, there is no transmission by the right holder to begin with. Therefore, every stream communicates the audio-visual elements of a game to a public for which it has not yet been made available by the right holder. The situation is comparable to when someone videotapes a theatre performance and posts it online. The visitor may have paid to experience the play, or, as in the case of streaming, have purchased a video game, but that does not include a right to make parts of the work available to everyone else.

The situation could be different when it comes to video games distributed for free. Some popular games to stream, such as *League of Legends*, *Dota 2*, and *Hearthstone*, are freely available. Anyone who so desires can experience the audio-visual elements of it, meaning that a subsequent communication of those elements may not be to a new



public (See e.g. by analogy C-466/12 *Svensson* and C-348/13 *Bestwater International*). However, in this situation the alternative requisite to a new public, that of a “different technical means”, is applicable. In C-697/11 the CJEU ruled that re-transmission on the internet of television broadcasts infringed the exclusive rights to communicate a work since it used a “different means of transmission” (Para 39). Broadcasting the audio-visual elements of a game on the web is a different technical means to communicate a work than making a copy of the game available to play. Technically, it is the difference between providing for download of a hard copy, permanently stored on the user’s hard drive, and streaming audio-visual elements which are only temporary available on the viewer’s RAM. Streaming therefore infringes the copyright holder’s right to communicate his video game to the public, even if the game is distributed freely.

#### 4.2 In Search of Applicable Exceptions

The InfoSoc Directive aspires to balance the interests of different right holders and users by providing for exceptions in the public interest (Art 5, Recital 31). The list of exceptions is exhaustive, exceptions should be defined narrowly, and some are voluntary for Member States to introduce (InfoSoc Directive, Art 5 Recitals 31, 32). However, this is not the case when copyright may conflict with fundamental rights. One right cannot automatically take precedence over another. Rather, the goal is to strike a “fair balance” (C-201/13 *Deckmyn*, Paras 26-27).

The InfoSoc Directive lacks a general exception for “fair use”, or other rules that may exempt transformative uses of copyrighted works. Here, I discuss whether streaming video games can fall under the exception for use for caricature, parody, or pastiche (InfoSoc Directive, Art 5(3)k). Parodies are exempt from copyright to safeguard freedom of expression (C-201/13 *Deckmyn*, Para 25), as it is a tool for social commentary and criticism (Lee, 2015, p. 107). The exception must therefore not be interpreted too narrowly; it should strike a fair balance between freedom of expression and the right holder’s right to property.

The CJEU has ruled that a parody is characterized by two criteria (C-201/13 *Deckmyn*, Para 15). First, a parody should evoke an existing work while being noticeably different from it, and second, it should be an expression of humor or mockery (C-201/13 *Deckmyn*, Para 20). Streaming video games does not fit squarely with what one normally considers to be a parody. While streamers strive to be humorous, the original work is not modified at all, and seldom the object of mockery or used as a tool to mock others. This does not mean that a stream of a game is not “noticeably different” from the game itself – it depends on what is meant by the criteria. There is no risk of confusing the stream with the original work since the central elements of a stream – a streamer on camera that interacts with viewers through a chat - do not exist as a feature of any video game.

However, it is unlikely that the court meant the phrase “evoke an original work while being noticeably different” to be interpreted merely as a test of confusion. The reasoning of the Advocate General on the characteristics of a parody, which is cited in the judgment, is that parodies should be an imitation in terms of expression (*AG Opinion in C-201/13 Deckmyn*, Para 48). Streaming a video game is not an imitation of the game, nor is it meant to be. Instead, moments created by playing the video game create opportunities for comedic expression, criticism, or commentary about something different. For example, in the stream *Twitch Plays Pokémon*, a bird-shaped Pokémon’s heroic feat earned him the nickname *Bird Jesus*, and gave birth to a mock religion (Prell, 2014). While highly amusing, and mocking of religion, it is hard to say that the streamer “evoked” or “imitated” the original work. The CJEU must interpret secondary legislation in line with fundamental rights, such as freedom of expression, but valid interpretations are limited by the wording of the provision (The EU Charter of Fundamental Rights, Art 51(1); TEU 6(1) see also e.g. COM (2010)573 p. 4; Chalmers *et al.*, 2014, p. 275). The exception for parody will therefore not be of use for streamers.

## 5 Streaming and Freedom of Expression

In this section, I analyze whether freedom of expression can be used to provide for an exception to copyright for streaming video games. Copyright allows for a limited monopoly of works, while freedom of expression is a freedom to hold opinions, receive, and impart information and ideas (ECHR, Art 10). It is apparent that the rights may clash, considering that copyrighted works normally contain information and ideas (Hugenholtz, 2001, pp. 343-344). As stated above, there is no room under the current EU copyright provisions to allow for the lawfulness of streaming video games, even if the societal value of it being expressed freely is greater than the interests of the copyright holder. In such cases, freedom of expression can be used as an external check to rein in copyright where appropriate (Hugenholtz, 2001, pp. 343-344).

In two recent cases, the European Court of Human Rights (ECtHR) has ruled on the possibility that sanctions for copyright infringement may violate the freedom of expression (*Asby Donald and others v. France*; *Fredrik Neij and Peter Sunde Kolmisoppi (The Pirate Bay) v. Sweden*), and the CJEU has stressed the need for a fair balance between copyright as a part of the right to property and the freedom of expression (See e.g. C-70/10 *Scarlet Extended*, Para 44-45; C-160/15 *GS Media*, Para 31). The question remains how the balance should be struck, and what factors are important to determine it. The starting point is to analyze the impact of streaming on the involved interests, since the issue is one of balancing competing interests. How much would it harm the right holder

of a game, were people allowed to stream it freely? And how much does an exclusive right risk harming the dissemination of (valuable) speech?

### 5.1 Streaming as Valuable Speech

Streams contain different expressions. While playing, the streamer discusses the game, other matters, and interacts with their audience. The most memorable moments are usually chat interactions with the streamer (Boieru, Reddit, 2014). An example is when streamer “oddlor” fell asleep while playing the horror game *Resident Evil*, causing the chat to go wild (MrPavySRK, YouTube, 2012). The moment earned a nickname, “Resident Sleeper”, and became an “emote”, a picture that can be used in chat (Twitch.tv)<sup>9</sup>. Emotes capture a moment, and is later used to express it. Other examples are “Kappa”, to express sarcasm, “Pogchamp” to express shock and “Kreygasm” for pleasure (Goldenberg, 2015). These cultural expressions have fuelled other creative endeavors, such as the “Kappalisa” (Datgts, Imgur, 2015), and the “Create a Kappa” project (Monkeyonstrike, Reddit, 2015). I describe why these expressions are valuable below.

#### 5.1.1 Does Copyright Hinder the Expressions of the Streamer and their Audience?

Do exclusive rights to broadcast the audio-visual elements of a video game hinder the expressions contained in streams? After all, the actions of streamers and their audience can take place without a video game being streamed. This is true. But it is akin to saying that a parody works equally well without evoking a copyrighted work. Streamers use moments in the game to entertain by exaggerating, telling jokes, or as inspiration to talk about something different.

An example is the stream *Twitch Plays Pokémon*. A programmer set up a stream that allowed for the chat of *Twitch* to play the game *Pokémon Red*. Viewers controlled the game by typing commands in chat (Magdalenno, 2014). The game progressed slowly with sometimes over 100 000 viewers mashing contradictory commands. It descended into a tug of war between viewers wanting to progress the game, and those who thought it amusing to stop such efforts (Sathe, 2014). The stream birthed a mock religion, praising the *Helix Fossil*, and his prophet *Bird Jesus* (Prell, 2014). *Twitch Plays Pokémon* became immensely popular and inspired innumerable creative expressions, such as images, moving pictures, internet memes, and web sites to “consult the fossil” (Cunningham, 2014)<sup>10</sup>.

*Twitch Plays Pokémon* illustrates that playing a game may give rise to a vivid debate between viewers. Normally, it is at a tone of mockery and humor, but it may also touch on politics and religion. The game played,

<sup>9</sup> [https://twitchemotes.com/emote/\\_ResidentSleeper\\_](https://twitchemotes.com/emote/_ResidentSleeper_)

<sup>10</sup> *Ask the Fossil*: <https://www.askhelixfossil.com/>

*Pokémon Red*, contains none of these elements. Yet, these expressions, the *Church of Helix*, (Helixpedia)<sup>11</sup> or the internet culture embodied in “emotes”, would not exist were it not possible to stream games. The game developers’ exclusive rights grant them the option of shutting down streams, including the expressions of streamers and viewers contained therein.

### 5.1.2 Streaming and the Public Interest

Valuing speech is a difficult proposition. The rationales behind freedom of expression provide guidance as to what speech is valuable to protect. Traditionally, scholars have highlighted the necessity of a free flow of information to allow people to form informed opinions and participate in the political process (Hefler, Austin, 2011, pp. 223-224). This puts societal issues in the forefront of what is in the general interest. It can also include cultural expressions as they help people relate to others and shape their understanding of the world (Meiklejohn, 1961, p. 263).

The ECtHR has in case law adopted a similar rationale for freedom of expression, often stating that “Freedom of expression constitutes one of the essential foundations of a democratic society, one of the basic conditions for its progress and for each individual’s self-fulfillment.” (*Lingens v. Austria*; *Sener v. Turkey*; *Thoma v. Luxembourg*; *Maronek v. Slovakia*; *Dichand and Others v. Austria*). The ECtHR ruled that the national courts had a particularly wide margin of appreciation in both cases where it was asked to balance freedom of expression against copyright as a right to property. The reason being firstly that it was a question of balancing freedom of expression against the right to property and, secondly, in *Ashby Donald* because the expression was “commercial” (selling photos depicting copyrighted dresses) (*Ashby Donald and others v. France*, Paras 34, 41-43), and in *Piratebay* because the distributed material did not contribute to a political expression or a debate in the general interest (providing a platform where copyrighted works were shared) (*Fredrik Neij and Peter Sunde Kolmisoppi (The Pirate Bay) v. Sweden*). In essence, the court did not consider the expressions to be particularly important from a public interest perspective.

Analyzing the judgments, Geiger and Izyumenko point out that commerciality as a criterion was not mentioned in *Piratebay*, and; therefore, that the crucial criterion for valuing speech is whether it contributes to a debate in the general interest (2014, p. 329). This is likely correct. The ECtHR has held that an expression to promote a religious organization was “closer to commercial speech than to political speech...” as it was meant to attract attention as opposed to conveying a message (*Mouvement Raëlien Suisse v. Switzerland*, Para 62). In line with traditional theories on the freedom of expression; the closer speech

<sup>11</sup> [http://helixpedia.wikia.com/wiki/Church\\_of\\_Helix](http://helixpedia.wikia.com/wiki/Church_of_Helix)

is to the political expression core, the more important it is to protect (Balkin, 2004, p. 36). Commercial speech is simply at the far end of the spectrum as, for example advertisements, pursues primarily the speaker's interests, not the public's (*Ingemar Liljenberg v. Sweden*). Cultural expressions can do both and fall somewhere in between, depending on whether they contribute to "a debate in the general interest".

To value streaming video games, we need to place it on this scale. Are they commercial or cultural, and if so, the type that furthers democratic deliberation or not? To the first point, streaming games is not "commercial speech". While streams generate revenue, the primary purpose of the speech is not to advertise professional services but to entertain. Merely making money from what is expressed does not make the speech "commercial", considering that traditional news reporting, often privately owned, need to generate a revenue yet is highly worthy of protection (Geiger, Izyumenko, 2014, pp. 328-329).

It is far more difficult to evaluate whether streaming games is the kind of cultural expression that contributes to a debate in the general interest. It is unclear what is meant by a debate in the general interest; in case-law, its meaning has depended on the circumstances of the case (Geiger, Izyumenko 2014 pp. 328-329; *Axel Springer AG v. Germany*, Para 90; Hugenholtz, 2001, pp. 360-365). Previously, political discussions (*Ceylan v. Turkey*, Para 34), sporting events and performing artists (*Von Hannover v. Germany (No.2)*, Para 109; *Axel Springer AG v. Germany*, Para 90), have been in the general interest. Ruling on poetry, the ECtHR have stressed the importance of art for the exchange of ideas and opinions in a democratic society (*Karataş v. Turkey*, Para 49). However, not all entertainment is equal. Traditionally, the value of cultural expressions has been understood in terms of their supporting function to political deliberation. For example, Sunstein argues that it is more important to protect art that is "high caliber" and touches on topics that are important for people to understand their society (1995, p. 71). That is why Bob Dylan's *Blowing in the Wind*, a song about the civil rights movement, may be more valuable than the childish humor of *Big Bang Theory*.

Historically, mass media has been distributed by large corporations and viewed as mere entertainment that distracts people from serious issues (Balkin, 2004, p. 38). Novel internet media is different. It allows for a two-way communication, where ordinary citizens take part in creating popular culture and shaping the discussion (Balkin, 2004, p. 38). Balkin argues that freedom of speech should protect not only political deliberation in a narrow sense, but also a democratic culture where ordinary people can participate and shape the institutions and cultural expressions that make up their society (2004, p. 33). Media that allows people to interact, create, adapt, or talk about what they find important,

whether it be politics or popular culture, helps shape their understanding of society and mold it as they see fit (Balkin, 2004, p. 38). In a stream, viewers shape and participate in the expression of the streamer through chat interaction, and together they create a new expression using the video game as a base. *Twitch Plays Pokémon* is one such example; others are the community aspects stressed by *variety streamers*.<sup>12</sup>

If one values ordinary citizens partaking in creating culture, furthering the political process by exchanging ideas and shaping them, then streaming video games should be considered to contribute to a “debate in the general interest” as it is a highly interactive media. Informal channels to discuss and debate are important, considering that young people seldom take part in the traditional ways of democratic deliberation such as party membership (Bäck *et al.*, 2015, pp. 22-23, 25-29). Streaming games has created new communities and sub-cultures worthy of protection, as testaments emotes - expressions with a specific, communal, meaning - and the downstream creativity such as animation projects dedicated to *Twitch Plays Pokémon*.

### 5.1.3 Streaming and Self-fulfilment

Another rationale for freedom of expression is that of self-realization. Nussbaum has stressed that expressing ourselves is part of what makes us human, making it valuable in itself (1997, p. 287). This element was not mentioned in the cases where the ECtHR balanced copyright against freedom of expression. However, the court has repeatedly stated that “Freedom of expression constitutes on the essential foundations... *for each individual’s self-fulfillment*” (*Lingens v. Austria*; *Sener v. Turkey*; *Thoma v. Luxembourg*; *Maronek v. Slovakia*; *Dichand and Others v. Austria*). Streaming video games allows the streamer a creative outlet and could be regarded as a tool for self-expression. In the context of US copyright law, many scholars have argued that various types of appropriation of copyrighted works, such as sampling, fan-videos and fan-fiction, should be considered fair use due to it being highly transformative (See in general Wong 2008, for videos Aufderheide, Jaszi 2008, for fan videos Trombley, 2007 and fan fiction Stendell, 2005). Such appropriation sample to comment, critique, illustrate and gives a new, personal, meaning to the original work (Aufderheide, Jaszi, 2008, pp. 5–6). While streaming video games does not change the original material as much as, for example, fan fiction, it is still different from the original work. The streamer’s creativity can be expressed in original ways to play, and creative ways to react to moments in the game and interact with viewers. However, the interest of self-expression is less, the closer the streamer is to just playing the game. As such, tournament streams and streams of professional players contain less elements of self-expression than *variety streamers*. Furthermore, the game may also be a means for the developers to express themselves (Torremans, 2004,

---

<sup>12</sup> See for example *Day[9]’s Manifesto*

p. 52), making it even more difficult to strike a balance since the interests of self-fulfilment can work in both ways to different degrees.

## 5.2 Interests of the Copyright Holder

Copyright means to address the problem of underproduction that would result from the fact that information goods are non-excludable and can easily be appropriated (Mazziotti 2008, p. 15). Therefore, the author is given a time-limited exclusive right to recoup their costs, earn a living, and therefore incentivize creation (Leveque, Ménière 2004 p. 5). The InfoSoc Directive has adopted this rationale, stating that the purpose of copyright is to stimulate intellectual creation (Recital 9), by giving authors an appropriate reward to finance their creative endeavors (Recital 10). But innovation does not take place in a vacuum. Previous works are an input for a second generation of creators; therefore, the greater the rights of the first generation, the greater the costs, and lower the incentives, for the second (Benkler 2001, p. 271). Considering the purpose of copyright, the right holder should be appropriately compensated. However, some loss of revenue is acceptable, as the right to property in copyright should be understood in terms of its function to promote innovation.

### 5.2.1 Loss to the Copyright Holder

How great is the loss to the game developer, were there an exception to copyright for streaming video games? Unlike unauthorized reproduction of the game, streaming does not allow unauthorized persons to play the game. In economic terms, there is a difference between secondary works that are complementary and substitutes for the original. Complements may increase the revenue of the original right holder, by increasing the demand for their product (Lunney, 2009, p. 793). Watching someone else play a game is not a substitute for playing it considering that the defining feature of a video game is interactivity. Also, there is some evidence that streaming a game increases the demand for it. Riot purportedly arranged their professional gaming league at a loss (Zacny, 2013), presumably to increase demand for their game. It is not a coincidence that 40% of the global sales of *StarCraft* were from South Korea, where the game was played professionally and shown on TV (Joo, 2011, p. 596). When Warner Bros. released *Middle Earth: Shadow of Mordor*, they paid popular streamers to play the game (McGormick, 2016). Several smaller game developers comment that it is crucial for marketing that they distribute the game freely to streamers (Santangelo, 2015).

Streaming a video game is likely to increase sales, which benefits the developer. However, if streaming games is excluded from copyright, it may still result in a monetary loss. After all, the right holder could earn money by licensing streamers as Nintendo has done<sup>13</sup>. Furthermore,

---

<sup>13</sup> See above, section 2.3

giving game developers this option may not hinder streams at all. It has been argued that the right holder is most fit to assess the correct level of access to a work (Merges, 2004, pp. 6-10), they would surely provide licenses for streaming, as it improves sales.

There are flaws to this line of reasoning tied to the fact that requiring a license may inversely affect the creative output of streamers. First, more control and more money for the original author mean correspondingly less for creators of secondary works (Lemley, 1997, p. 989; Lunney, 2009, pp. 800-801). Most streamers have a precarious economic situation<sup>14</sup>. Some may not consider streaming as a career if potential earnings are further eroded. But would not developers recognize this and demand less from less popular streamers? The issue then becomes one of costs of operating a licensing scheme, both for the licensor and licensee (Lemley, 2009 p. 802). Obtaining a license may be difficult, since streamers may lack the legal or economic know-how to find the right holder, purchase a license, and understand its limits (Trombley, 2007, pp. 678-680). "One size fits all" licensing models, such as Nintendo's partnership program, risk stifling less popular streamers. On the other hand, an approach tailored to the situation of each licensee may be too clumsy to work. Furthermore, a game developer may refuse to grant a license simply because he does not want their game shown in a certain way.<sup>15</sup>

### 5.3 Striking a Fair Balance

In this section, I have analyzed the interests involved in streaming video games. Control over the downstream market of streaming may slightly increase the revenue of game developers, and consequently, providing for an exception results in a monetary loss. However, the purpose of copyright is not a high level of protection for its own sake. The drawback of giving right holders such control is that it may reduce the number of streamers by making it too difficult to earn a living streaming. Furthermore, those who pursue it as a hobby may find obtaining a license too bothersome. This is a lot to risk if one considers the streaming of video games to be a valuable and creative expression. Especially since streams are complementary and increase the right holders' sales, providing them ample opportunity to recoup their investment and an incentive to produce more games.

On the balance, the value of streams being expressed without authorization from the copyright holder outweighs the resulting small loss of revenue. Not all streams are equal, however. *Variety streamers* should normally be exempt, since the main attraction is the expression of the streamer and their interaction with viewers. The expressions of *professional player streams* are normally less valuable, since they

---

<sup>14</sup> See above, section 2.2.2

<sup>15</sup> See above, section 2.3



seldom spark a discussion about anything other than the game. However, this type of stream is most complementary to distributing the game. For example, if people could interact daily with the famous football player Ronaldo, or the chess prodigy Magnus Carlsen, it would likely increase their interest in the sport. This means that there is little to no harm done to the copyright holder. For *Tournament streams*, the balance may fall out differently. First, tournament streams are similar to traditional mass media entertainment since viewer interaction is minimal. Second, commentating on a professional match does not contain the same level of self-expression values as other streams. Lastly, broadcasting studios are professional; having to negotiate a license is unlikely to be a hindrance.

## 6 Conclusions

Streaming video games has become immensely popular over the last years. As with many novel industries, this raises questions as to whether the law is apt to adapt: can it resolve the potential conflict between streamers and game developers? Video games may be protected by copyright, and broadcasting its audio-visual elements infringes the right to communicate the work to the public. Unlike works normally protected by this provision, such as movies or music, the streamer's broadcast is a poor substitute for the original work. Streaming games is beneficial to the game developers as it increases the demand for their game. However, the InfoSoc does not allow for such considerations when determining the lawfulness of streaming.

I therefore turned to freedom of expression and argued that it should be used to provide an exception to the game developers' rights in certain cases of streaming. An exception may result in a small loss for the copyright holder. Not doing so subjects the lawfulness of streaming to copyright holders' whims, and the risks that a licensing market may fail. Taking that risk is not worth it. Firstly, the purpose of copyright is to incentivize innovation, not maximize revenue. Secondly, streaming video games is a highly interactive media that has provided entertainment, satirized just about anything, created new communities and sub-cultures, and inspired viewer engagement and innovation, which helps people better understand their society, culture and shape it as they see fit.

The earnings of popular streamers will tempt game developers to exercise their rights aggressively, in spite of it being in their interest not to do so. Shielding the streaming of games from such efforts is important, as it is an expression that enriches the creative life of streamers and the cultural life of viewers.

## 7 Bibliography

### 7.1 Legislation and Official Publications

**Berne Convention**, Convention for the Protection of Literary and Artistic Works

**WCT**, The World Intellectual Property Organization Copyright Treaty

**COM (2010) 573**: COMMUNICATION FROM THE COMMISSION *Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union*

**InfoSoc Directive**, Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society

**Software Directive**, Directive 2009/24/EC Of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs

**TRIPS**, Agreement on Trade-Related Aspects of Intellectual Property Rights

### 7.2 Case-law

#### 7.2.1 Court of Justice of the European Union

C-306/05 *Sociedad General de Autores y Editores de España (SGAE) v Rafael Hoteles SA*. 7 December 2006 ECLI:EU:C:2006:764

C-5/08 *Infopaq International A/S v Danske Dagblades Forening* 16 July 2009, ECLI:EU:C:2009:46

C-70/10 *Scarlet Extended SA v Société belge des auteurs, compositeurs et éditeurs SCRL (SABAM)* 14 November 2011, ECLI:EU:C:2011:771

C-128/11 *UsedSoft GmbH v Oracle International Corp* 3 July 2012, ECLI:EU:C:2012:407

C-607/11 *ITV Broadcasting Ltd and Others v TV Catch Up Ltd*. 7 March 2013, ECLI:EU:C:2013:147

C-314/12, *UPC Telekabel Wien GmbH v Constantin Film Verleih GmbH, Wega Filmproduktionsgesellschaft mbH*, 27 March 2014, ECLI:EU:C:2014:192

C-355/12, *Nintendo Co. Ltd and Others v PC Box Srl, 9Net Srl* 23 January 2014, ECLI:EU:C:2014:25

C-466/12 *Nils Svensson and Others v Retriever Sverige AB*, 13 February 2014 ECLI:EU:C:2014:76

C-201/13 *Johan Deckmyn and Vrijheidsfonds VZW v Helena Vandersteen and Others*. 3 September 2014, ECLI:EU:C:2014:2132

C-248/13 *BestWater International GmbH v Michael Mebes and Stefan Potsch* 21 October 2014, ECLI:EU:C:2014:2315

C-160/15 *GS Media BV v Sanoma Media Netherlands BV and Others*. 8 September 2016 ECLI:EU:C:2016:644

### 7.2.2 Opinions of Advocate Generals

C-393/09 *Opinion of Advocate General Bot Bezpečnostní softwarová asociace – Svaz softwarové ochrany v Ministerstvo kultury* on 14 October 2010, ECLI:EU:C:2010:611

C-70/10 *Opinion of Advocate General Cruz Villalón in Scarlet Extended SA v Société belge des auteurs, compositeurs et éditeurs SCRL (SABAM)* 14 April 2011 ECLI:EU:C:2011:255

C-128/11 *Opinion of Advocate General Bot in UsedSoft GmbH v Oracle International Corp* 3 July 2012, ECLI:EU:C:2012:234

C-355/12, *Opinion of Advocate General Sharpston in Nintendo v PC Box*, 19 September 2013, ECLI:EU:C:2013:581

C-201/13 *Opinion of Advocate General Cruz Villalón in Johan Deckmyn and Vrijheidsfonds VZW v Helena Vandersteen and Others* 22 May 2014 ECLI:EU:C:2014:458

### 7.2.3 European Court of Human Rights

*Ingemar Liljenberg v. Sweden*, 1 March 1983, Application No. 9664/82

*Lingens v. Austria*, 8 July 1986, Application No. 9815/82

*Ceylan v. Turkey*, 8 July 1999, Application No. 23556/94

*Sener v. Turkey*, 18 July 2000, Application No. 26680/95

*Thoma v. Luxembourg*, 29 March 2001, Application No. 38432/97

*Maronek v. Slovakia*, 19 April 2001, Application No. 32686/96

*Dichand and Others v. Austria*, 26 February 2002, Application No. 29271/95

*Axel Springer AG v. Germany*, 7 February 2012, Application No. 39954/08,

*Von Hannover v. Germany (No. 2)*, 7 February 2012, Application Nos. 40660/08 and 60641/08

*Mouvement Raëlien Suisse v Switzerland*, 13 July 2012, Application No. 16354/06

*Ashby Donald and others v. France*, 10 January 2013, Application No. 36769/08

*Fredrik Neij and Peter Sunde Kolmisoppi (The Pirate Bay) v. Sweden*, 19 February 2013, Application No. 40397/12

### 7.3 Doctrine

Aufderheide, P, Jaszi, P. (2008) *Recut, Reframe, Recycle: Quoting Copyrighted Material in User-Generated Video*, Center For Social Media, School of Communication American University

Balkin, J. M. (2004) Digital Speech and Democratic Culture: A theory of freedom of expression for the information society, *N.Y.U.L-Rev* 1 2004 p 1

Benkler, Y. (2001) *A Political Economy of the Public Domain: Markets in Information Goods vs. the Marketplace of Ideas* in Cooper, R. C.; Zimmerman, D. L.; First, H. 2001 *Expanding the Boundaries of Intellectual Property. Innovation Policy for the Knowledge*, Oxford University Press

Bäck, E.; Bäck, H.: Gustafsson, N. (2015) *Ungas politiska deltagande. Nya former och aktivitet genom sociala medier?* Regeringskansliet, 2014 års Demokratiutredning

Chalmers, D.; Davies, G.; Monti, G. (2014) *European Union Law. 3rd edition*, Cambridge, Cambridge University Press

Geiger, C. Izyumenko, E. (2014) Copyright on the Human Rights' Trial: Redefining the Boundaries of Exclusivity through Freedom of Expression, *International Review of Intellectual Property and Competition Law*, Volume 45 Issue 3 pp 316-342

Grosheide, W., Roerdink, H.; Thomas, K. (2014) Intellectual property protection for Video Games: A view from the European Union, *Journal of International Commercial Law and Technology*, Volume 9, Number 1 2014

Hefler, L. R.; Austin, G. W. (2011) *Human Rights and Intellectual Property: Mapping the Global Interface*, Cambridge University Press

Hugenholtz, P.B. (2001) *Copyright and freedom of expression in Europe*, in Cooper, R. C.; Zimmerman, D. L.; First, H. 2001 *Expanding the Boundaries of Intellectual Property. Innovation Policy for the Knowledge*, Oxford University Press

Joo, J. (2011) Public Video Gaming as a copyright infringement, *Apila Quarterly Journal*, Volume 39, Number 4, fall 2011 p 563

Lee, Y. H. (2015) *Copyright and Freedom of Expression: A literature Review* CREATE Working Paper 2015/04 (May 2015)

- Leino, O. (2010) *Emotions in Play: On the Constitution of Emotion in Solitary Computer Game Play*. Doctoral Dissertation. IT University of Copenhagen
- Lemley, M. A. (1997) The Economics of Improvement in Intellectual Property Law, *75 Texas Law Review*, p 989
- Leveque, F.; Ménière, Y. (2004) *The Economics of Patents and Copyright*, Berkley Electronic Press, July 2004 Available at SSRN: <https://ssrn.com/abstract=642622> Last Accessed 14.10.206
- Lipson, A. S.; Brain, R.D. (2009) *Computer and video game law – cases, statutes, Forms, Problems & materials*, Carolina Academic Press 2009
- Lunney, G. S. Jr. (2009) Copyright, Derivative Works, and the Economics of Complements, *12 Vand.J.Ent.& Tech. L.* p 779
- Mazziotti, G (2008) *EU Digital Copyright Law and the End-User*, Springer
- Meiklejohn, A. (1961) The First Amendment Is an Absolute, *The Supreme Court Review*, 1961 pp 245-266
- Merges, R. P. (2004) Compulsory Licensing vs. the Three “Golden Oldies” Property Rights, Contracts, and Markets, *Policy Analysis*, Number 508 January 15 2004
- Nussbaum, M. C. (1997) Capabilities and Human Rights, *Fordham Law Review*, Volume 66, Issue 2 p 273
- Ramos, A.; López, L.; Rodriguez, A.; Meng, T.; Abrams, S. (2013) *The Legal Status of Video Games: Comparative Analysis in National Approaches*, World Intellectual Property Organization 29 July 2013
- Rosati, E. (2011) Originality in a Work, or a Work of Originality: The Effects of the Infopaq Decision, *Journal of the Copyright Society of the U.S.A.*, Volume 58, Issue 3-4, p 795
- Stendell, L. (2005) Fanfic and Fan Fact: How Current Copyright Law Ignores the Reality of Copyright Owner and Consumer Interests in Fan fiction, *SMU Law Review*, Volume 56 p 1551
- Sunstein, C. (1995) Democracy and the Problem of Free Speech, *Publishing Research Quarterly*, Volume 11, Issue 4 pp 58-72
- Tavinor, G. (2008) Definition of Videogames, *Contemporary Aesthetics*, Volume 6 Issue 1 2008
- Torremans, P.L.C. (2004) *Copyright and Human Rights: Freedom of Expression, Intellectual Property, Privacy*, Kluwer Law International, The Hague, The Netherlands

Trombley, S. (2007) Visions and Revisions: Fanvids and Fair Use, 25 *Cardozo Arts & Ent. L.J.*, p 647 2007-2008

Wong, M. W. S. (2008) "Transformative" User-Generated Content in Copyright Law: Infringing Derivate Works or Fair Use? *Vanderbilt Journal of Ent. And Tech. Law*, Volume 11, Issue 4, p 1075

## 7.4 Other Sources

### 7.4.1 Newspaper Articles

BBC News (2016, July 8) *YouTube gaming star PewDiePie 'earned \$7m*, Retrieved from <http://www.bbc.com/news/technology-33425411> Last accessed 14.10.2016

Cook, J. (2014, October 20) *Twitch Founder: We Turned a 'Terrible Idea' Into A Billion-Dollar Company*, Business insider

Cunningham (2014, February 18), *The bizarre, mind-numbing, mesmerizing beauty of "Twitch Plays Pokémon"* Arstechnica, Retrieved from <http://arstechnica.com/gaming/2014/02/the-bizarre-mind-numbing-mesmerizing-beauty-of-twitch-plays-pokemon/> Last Accessed 12.10.2016

Crecente, B. (2014, June 12) *Nintendo: Wii U won't get Twitch gameplay streaming because it's not fun to watch*. The Polygon, Retrieved from <http://www.polygon.com/2014/6/12/5802560/nintendos-fils-aime-wii-u-wont-get-twitch-gameplay-streaming-because> Last accessed 19 October 2016

Egger, J. (2015, April 21) *How Exactly do Twitch streamers make a living? Destiny breaks it down* The Daily Dot, Retrieved from <http://www.dailydot.com/esports/twitch-streaming-money-careers-destiny/> Last accessed 14.10.2016

Gaudiosi, J. (2016, 22 January) *Why ESPN Is Investing in ESports Coverage*, Fortune magazine, Retrieved from <http://fortune.com/2016/01/22/espn-invests-in-esports-coverage/> Last accessed 14.10.2016

Goldenberg, D. (2015, October 21) *How Kappa Became The Face of Twitch*, FivethirtyEight, Retrieved from <http://fivethirtyeight.com/features/why-a-former-twitch-employee-has-one-of-the-most-reproduced-faces-ever/> Last accessed 14.10.2016

Leichtamer, S. (2015, May 13) *Nine Insane Moments Caught on Twitch*, USGamer, Retrieved from <http://www.usgamer.net/articles/9-insane-moments-caught-on-twitch> Last Accessed 14.10.2016

Magdaleno, A. (2014, February 19) *How a Week-Long Game of Pokémon Became a War of Religion*, Mashable, Retrieved from

<http://mashable.com/2014/02/19/pokemon-stream-twitch/#rvpmaZB7B5q0> Last accessed 12.10.2016

McGormick, R. (2016, July 12) *PewDiePie and other YouTubers took money from Warner Bros. for positive game reviews*, The Verge, Retrieved from <http://www.theverge.com/2016/7/12/12157310/pewdiepie-youtubers-sponsored-videos-ftc-warner-bros> Last accessed 13.10.2016

Mullen, J. (2013, July 17) *Nintendo kicks "Let's Play" videos off YouTube then slaps ads on them*, ArsTechnica, Retrieved from <http://arstechnica.com/tech-policy/2013/05/nintendo-kicks-lets-play-videos-off-youtube-then-slaps-ads-on-them/> Last accessed 14.10.2016

Parlock, J. (2015, September 10) *Nintendo's cracking down on speedrunning and ROM hacking videos*, The Destroctoid, Retrieved from <https://www.destructoid.com/nintendo-s-cracking-down-on-speedrunning-and-rom-hacking-videos-310152.phtml> Last Accessed 19.10.2016

Prell, S. (2014, February 22) *Twitch Plays Pokemon: It's history, highlights and Bird Jesus*, Engadget, Retrieved from <https://www.engadget.com/2014/02/22/twitch-plays-pokemon-its-history-highlights-and-bird-jesus/> Last accessed 12.10.2016

Paul, J (2016, September 16) *By The Numbers: Most Popular Online Games Right Now*, NowLoading, Retrieved from <https://nowloading.co/posts/3916216> Last Accessed 24.10.2016

Roguebishop (2016, February 24) *4 Signs You're Experiencing Twitch.tv Burnout*, PlayNation, Retrieved from <https://dev.playnation.io/2016/4-signs-youre-experiencing-twitch-burnout/>) Last accessed 14.10.2016

Rosenberg, E. (2015, March 26) *How Youtube Ad Revenue Works*, Investopedia, Retrieved from <http://www.investopedia.com/articles/personal-finance/032615/how-youtube-ad-revenue-works.asp> Last accessed 14.10.2016

Santangelo, N. (2015, April 10) *Should game Developers Let Everyone Stream Every Part of Every Game?* XBLAFans, Retrieved from <http://www.xblafans.com/should-game-developers-let-everyone-stream-every-part-of-every-game-80474.html>, Last accessed 19.10.2016

Sathe, G (2014, March 24) *The hive mind at work: Twitch Plays Pokemon*, Gadgets 360, Retrieved from <http://gadgets.ndtv.com/games/features/the-hive-mind-at-work-twitch-plays-pokemon-499384> Last accessed 12.10.2016

Spangler, T. (2013, November 1) *Video site is moving content partners to a 55-45 revshare while letting them keep revenue for ads that exceed rate card*, Variety Magazine

Thomsen, M. (2015, July 11) *PewDiePie Doesn't make Anywhere Close to What he Should be Making*, Forbes

Wagner, K (2015, July 1) *YouTube Beware: Facebook Will Start Sharing Ad Revenue With Video Creators No coincidence here: Facebook's revenue split is the same as YouTube's.*, Recode, 1 Retrieved from <http://www.recode.net/2015/7/1/11564024/youtube-beware-facebook-will-start-sharing-ad-revenue-with-video> Last accessed 14.10.2016

Wingfield, N. (2014, August 26) *What's Twitch? Gamers Know, and Amazon Spent 1 Billion on it*, N.Y Times

Zacny, R. (2013) *LCS "a significant investment that we're not making money from", but Riot love it anyway* PCGamesN, Retrieved from <http://www.pcgamesn.com/leagueoflegends/lcs-significant-investment-we-re-not-making-money-riot-love-it-anyway> Last accessed 14.10.2016

#### 7.4.2 Web-pages

Ask The Fossil (<http://askhelixfossil.com/#w3gezt>) Last Accessed 12.10.2016

Bailey, J. (2015, April 9) *Nintendo's Copyright Blunder*, PlagiarismToday, Retrieved from <https://www.plagiarismtoday.com/2015/04/09/nintendos-copyright-blunder/> Last Accessed 26.10.2016

Beyond the Summit *About*, Retrieved from <http://beyondthesummit.tv/about/>

Blizzard *Video Policy*, Retrieved from <http://us.blizzard.com/en-us/company/legal/videopolicy.html> Last accessed 9.30.2016

Boieru, Reddit (2014) *What Legendary Twitch Moments do you remember?* Retrieved from [https://www.reddit.com/r/Twitch/comments/2g38lu/what\\_legendary\\_twitch\\_moments\\_do\\_you\\_remember/](https://www.reddit.com/r/Twitch/comments/2g38lu/what_legendary_twitch_moments_do_you_remember/) Last accessed 19.10.2016

Caucxican, Reddit (2015) *Blizzard suddenly gets aggressive with Twitch streamers streaming private Vanilla servers – DMCA takedown and channels banned today; Arena Junkies People getting banned on twitch for streaming vanilla servers*, Retrieved from [https://www.reddit.com/r/wow/comments/31cv9e/blizzard\\_suddenly\\_getting\\_aggressive\\_with\\_twitch/](https://www.reddit.com/r/wow/comments/31cv9e/blizzard_suddenly_getting_aggressive_with_twitch/) Last accessed 19.20.2016

Datgts, *Imgur*. (2015, April 3) *Kappalisa*, Retrieved from <http://imgur.com/YHvZ4AH> Last Accessed 14.10.2016



*Day[9]'s Manifesto*, Retrieved from <http://day9.tv/manifesto/> Last Accessed 25.10.2016

*Day[9]'s Best Moments*, YouTube (2011, October 12) Retrieved from <https://www.youtube.com/watch?v=TWJvvRbJ4pM> Last Accessed 14.10.2016

Fenner, (2015, January) *How much does a streamer make*, Retrieved from <http://danielfenner.com/how-much-does-a-streamer-make-january-2015/> Last accessed 14.10.2016

Helixpedia *Church of Helix*, Retrieved from [http://helixpedia.wikia.com/wiki/Church\\_of\\_Helix](http://helixpedia.wikia.com/wiki/Church_of_Helix) Last Accessed 26.10.2016

Microsoft *Rules*, Retrieved from <http://www.xbox.com/en-US/developers/rules> Last Accessed 9.30.2016

Monkeyonstrike, Reddit, (2015) *Create a Kappa*, Retrieved from [https://www.reddit.com/r/twitchcreative/comments/3bad0l/community\\_project\\_july\\_is\\_create\\_a\\_kappa\\_month/](https://www.reddit.com/r/twitchcreative/comments/3bad0l/community_project_july_is_create_a_kappa_month/) Last accessed 14.10.2016

MrPavySRK, YouTube (2012, September 30), *Origin of Resident Sleeper*, Retrieved from <https://www.youtube.com/watch?v=nI1YWEdVZ5M> Last accessed 14.10.2016

Nintendo, *Nintendo Partnership Program*, Retrieved from <https://r.ncp.nintendo.net/guide/> Last Accessed 14.10.2016

Riot *Legal Jibber Jabber*, Retrieved from <http://www.riotgames.com/legal-jibber-jabber> Last Accessed 09.30.2016

Riot *Spectatefaker: What we Learned and What we'll do*, Retrieved from <http://na.leagueoflegends.com/en/news/riot-games/announcements/spectatefaker-what-we-learned-and-what-well-do> Last Accessed 14.10.2016

Socialblade *Top 50 Channel Views*, Retrieved from <https://socialblade.com/twitch/top/50/channelviews> Last accessed 14.10.2016

Twitch.tv *Emotes, Residentsleeper*, Retrieved from [https://twitchemotes.com/emote/\\_ResidentSleeper](https://twitchemotes.com/emote/_ResidentSleeper) Last accessed 14.10.2016

Ubisoft *Policy on YouTube*, Retrieved from <http://forums.ubi.com/showthread.php/773564-Ubisoft-policy-on-YouTube-videos#Ubisoft%20YouTube%20policy> Last Accessed 9.30.2016

Valve *Video Policy*, Retrieved from [http://store.steampowered.com/video\\_policy](http://store.steampowered.com/video_policy) Last accessed 30.9.2016

YouTube Official Blog (2015, June 12) *A YouTube built for gamers*,  
Retrieved from <https://youtube.googleblog.com/2015/06/a-youtube-built-for-gamers.html> last accessed 14.10.2016

#### 7.4.3 Reports

WIPO, *Standard Provisions on protection of Computer Programs*,

Retrieved from

[http://www.wipo.int/edocs/mdocs/copyright/en/wipo\\_ip\\_cm\\_07/wipo\\_ip\\_cm\\_07\\_www\\_82573.doc](http://www.wipo.int/edocs/mdocs/copyright/en/wipo_ip_cm_07/wipo_ip_cm_07_www_82573.doc) (Last accessed 14.10.2016)