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论文前言

如今，随着现代技术的发展，人们的娱乐性越来越高，娱乐产品的消费也不停的逐步上升。正如此，电子游戏行业在2016年已超越电影和音乐行业的总和。实际上，它的增长率从+ 8.5%一直上升到2019年平均+9.3%的年增长率，而在2020年，随着新型冠状病毒带来的全球疫情爆发的紧急情况，电子游戏市场似乎一无所失反而全球多国采取的疫情防控措施中居家隔离为主要核心，产生了电子游戏市场进一步的增长。尤其中国的电子游戏市场是目前发展速度最快以及规模最大的市场之一（据调查，中国电子游戏市场在2013年已达到将近900亿人民币价值）。

因此，为了更加了解中国电子游戏行业的发展情况与来源，首先需要对电子游戏历史进行分析与了解。其次，也要对“网络游戏”（英：online gaming）在西方与中国的不同定义进行对比。这也是本论文在第一章提供的初步介绍。

在过去几十年中开发的所有技术中，互联网在电子游戏行业中起着关键的作用，实现了网络游戏的诞生。具体来说，网络游戏是在上世纪的八十年代，随着互联网在西方国家的快速扩展，开始了初步研发。而历史上最初的多入电子游戏是由 *PLATO* 系统编写的《帝国》（*Empire*）。从此，进一步的网络游戏发展阶段定为个人计算机电脑普遍化的时刻起，由 *诺兰·布什内尔*（*Nolan Bushnell*）与 *泰德·达布尼*（*Ted Dabney*）共同创办的著名 *ATARI* 就是最初把网络类型功能集成到电子游戏机中最佳例子。然而，此事导致了电子游戏行业中在随后的几年直到如今发展了多种游戏类型和商业模式。从设备角度讲，拥有易于访问性的个人手机电话迅速获得了成功并且在未来几年中将会成为游戏行业主要角色。

从商业角度来分析电子游戏市场的话，本论文列出了不同关于近几年的市场调查数据，并进行对比。值得关注的是手机游戏在近几年生产的互动及收入在2019

已占全球电子游戏市场的45%。而在这快领域，中国的《腾讯》（*Tencent*）与《网易》（*NetEase*）出现在全球排行前五名的企业之内。电子游戏行业值得关注的另一方面的发展领域为“电子竞技”（英：Electronic Sports 简称：E-Sports）。把电子游戏达到“竞技”成都，使它成为一个完整的体育项目，是电子游戏行业的一个巨大的发展机会。

由于上述所提到的要点以及当代的全球化世界，电子游戏行业不可避免面临着与它发展相关的几个主要问题。科技发展与电子游戏行业需要面对的首先是其在法律系统内的定义问题。由于现代电子游戏产品为视频以及音频元素的合成品，因而必须同电影、音乐等定义为艺术品。以该定义，电子游戏产品同样需要对严重的盗版行为进行法律保护。

首先需要对问题本身进行了解。所以，本文在第一章里包括了对“盗版”行为的描述。此行为在电子行业里似乎存在着矛盾。一方面，在上世纪八十年代时确实多数电子游戏发行商因盗版行为而倒闭。另一方面，在低价销售的情况下市场需求自然得到了增长。后者原因当然无法作为容许盗版行为的借口。对此，各个电子游戏发行商，尤其是主机游戏，不断寻找克服盗版行为的方法。然而，网络游戏的发展对此问题带来了少许的解脱。最终，能实施面对盗版问题的唯一有效方法是同法律系统对电子游戏产品的定义及保护。本文为了了解不同国家在此方面的实施，参考了美国，德国和日本等较早期发展的电子游戏市场以及后面发展的中国市场。前者通过各国已拥有的知识产权保护法进行介绍与讨论。例如美国从2011年起已把电子游戏同其他艺术作品定义并纳入了以现有的《美国版权法》。同样，德国以及日本等国家也采用了各国之前已有的版权法来实施对电子游戏的产权保护。关于后者，与上述国家不同，中国在技术和电子游戏发展方面经历了漫长的法律发展。由于互联网在中国发展时期与西方国家拥有差异，导致中国早期在国际网络游戏市场上缺乏竞争力。因此中国在后几年里持续

地发展与强化对科技以及数字出版发展的政策直到近年中国网络游戏市场实现指数增长。当今中国有关电子游戏产品地法律架构有《中华人民共和国国家版权局》、《中华人民共和国国家广播电视总局》以及《中华人民共和国文化和旅游部》等国务院组成部门管理。此部分在本论文的第二章进行更深刻的介绍与研究。

电子游戏行业中存在另一个问题与现代社会全球化以及各个国家的法律架构都精密相关。前者要求的是挑战文化差异，而后者则直接影响到一家企业在出口产品时在异国的运营方式。在本论文里通过分析中国的网络游戏法律框架，需要注意的是，该法律对外国企业构成了各种挑战。为了更好更具体的分析这些挑战，本论文在第三章提出的案例研究核心重点是意大利Digital Bros集团在亚洲的分公司Digital Bros Asia Pacific LTD。具体案例有亚洲分公司的总经理Thomas Rosenthal先生提供的采访。

案例中提出由于中国市场极为分散以及复杂，国外企业在中国经营时面临的挑战其一是文化。文化产生的差异即影响产品，也影响人力资源。挑战其二是关于法律方面。中国关于网络游戏内容以及发行审核的法律相当严格并且外国企业无法直接在中国境内经营，而需要通过当地的游戏发行商才能成功把产品带进中国市场。第三个挑战也与法律框架有关：中国对某些外国数字产品的审查制度是众人周知的，因此在中国境内缺乏了西方常用的商业工具（例如谷歌），导致外国企业无法实现企业集中化经营。当然，外国企业能通过寻找并委托最合适的当地合作伙伴以及共同建立牢固的合作关系，做为解决问题的方法之一。

虽然目前的电子游戏市场找到了平衡感，也顺利的实施了对抗违法行为的政策，但是现代技术任然在快速的发展，而电子游戏的最原始本质还是一个数据基础组成的程序。因此，游戏“克隆“的行为是电子游戏行业即将要面对的另一个重要挑战。

Chapter 1- Online Games: general knowledge

1.1. Definition of online game

When talking about online gaming, it is generally meant an electronic game played through computer network, which for the purpose of this paper means over internet¹. It is also important to note that in other areas of the world such as those analyzed in this dissertation, namely China, any digitally distributed game is framed as “online game”. Although it may have no multiplayer or network requirements, the Chinese market deems it as an online game, as long as it is downloaded through the Internet, as it is apparent from the interview conducted with Mr. Rosenthal. Because of this difference, in this thesis it will be used the latter of these two definitions.

At this point, it seems interesting to define what a videogame is, since this phenomenon has been defined only after this kind of games became relevant from a cultural and economic point of view;² in other words, definitions followed the rising interest of videogames. On this point, it has been noted that there is still the tendency to adopt a perspective focused on the studies on the games; in this way, there is a substantial absence of interest for the definition of the specific character of videogames. In other words, the latter have traditionally been seen as opposed to the classical gaming;³ the problem of this approach is that one could miss the uniqueness of videogames.

1.1.1. Technical details

After having defined what an online game is, it is interesting to understand what the key components of online games are; from this point of view, one may note that the game may be referred to as to the software, both on the console/computer and on far away servers, according to what is usually referred to as server/client structure⁴. On this respect, one observes that a server is a bigger machine than an ordinary computer, and, for this reason, it is often situated in

¹ Warmelink, H., *Online gaming and playful organization*, Routledge, London, 2014.

² Arjoranta, J., *How to Define Games and Why We Need to*, in *The Computer Games Journal* ,8, 2019.

³ Bergonse, R., *Fifty Years on, What exactly is a videogame? An essentialistic definitional approach*, *The Computer Games Journal*, 6(4), 2017.

⁴ Lee, K.W., Ko, B.J., Calo, S., *Adaptive server selection for large scale interactive online games*, *Computer Networks*, 49(1), 2005.

a data center. Typically, players install their version of software in their computer, be either a distribution platform client or a game client, these versions would then be connected to their own servers, which in case of multiplayer games are called game servers (these are specialized version of said servers, which can only be accessed through that particular game client) using the internet. Usually, multiple different servers are required for a variety of reasons. In this stage, a login server collects the credentials, validates them with the information it possesses and then the user is connected to the appropriate server. Servers typically work in such a fashion that failure of one does not stop the user or player from accessing his preferred content.

In fact, the vast majority of games plaid online resort to a registry server which is centralized, where single servers must register at the beginning of a gaming session; in this way, one can obtain a global list of ‘game servers’, which are part of the client side, and which can be downloaded by the users. The latter, thus, have the chance to choose the favorite server, which is the one more appropriate to them;⁵ a crucial process in this context, then, is given by the so-called ‘round trip’ latency, which is known as ‘ping time’.

With this indicator, it is an easy operation to get a list of ‘IP’ information of the clients connected to a particular gaming session; this is what a recent study did, in fact, where the authors wanted to investigate some popular games, like, ‘Counter Strike’, ‘Battlefield 1942’, and ‘Unreal Tournament’.⁶ A more complex, though not impossible operation, though, is to recover a list of users connected to the servers; in this case, in fact, it is necessary to cooperate with the publishers to retrieve the data about authentications. For this reason, the authors of the above-mentioned study decided to focus their efforts in another direction; as a matter of fact, they tried to understand the geographic dispersion of users⁷.

In this way, while it is not possible to understand the geographic concentration of users at a global level, it is still possible to assess this information for a single gaming server; on this regard, it seems important to note that the so-called ‘lag’, which heavily conditions the overall quality of the online session. For this reason, the population of a specific server is expected to be concentrated around the physical location of this computing machine; nonetheless, there is a correlation between the proximity at geographic and network level. At any rate, the authors of the study under examination analyzed the trace left from a server in Oregon, USA, which is used to play ‘Counter-Strike’;⁸ in this case, it has been discovered that many gamers are in fact located in proximity to the server. Although, a significant quote of users employ this machine to connect from the European and Asian continent too. In particular, the study found that about half users are from far locations, dispersed in the world. The reasons behind this somewhat

⁵ Feng, W.C., *On the geographic distribution of on-line game servers and players*, in *Proceedings of the 2nd workshop on Network and system support for games*, May 2003.

⁶ Ibidem

⁷ Feng, W., et al., *Provisioning On-line Games: A Traffic Analysis of a Busy Counter-Strike Server*, in *Proc. of the Internet Measurement Workshop*, November 2002.

⁸ Ibidem

surprising results, however, are not clear, and the explanation would require the examination of other servers in the world to draw some sensible conclusion. Nonetheless, it is possible to make some hypothesis to explain this geographical dispersion; to begin with, one must consider the fact that being close in a geographic sense, does not automatically imply the closeness of the network. Another problem to consider, then, is the delay of the server where the application is located, which condition the delays the users may have to face on the whole network. In the case taken into consideration by the study in exam, however, this is an unlikely explanation, since the server functioned at an acceptable speed; another reason, thus, could be traced in the malfunctioning of the mechanisms which allow the players to choose their favorite server. In fact, in many cases, the games use automated mechanisms to connect the players, like ‘Auto-Connect’, or ‘Quick Start’;⁹ this way, the users are automatically and easily connected to the servers which should ensure the best experience for them; in most cases, the servers chosen are the ones located to the closest location. However, it may happen that sometime the selection is far from being optimal;¹⁰ furthermore, one may consider that sometimes the preference is accorded to the numbers of gamers. In other words, it is preferable to have a large number of players, even though this may undermine the quality of the sessions, in terms of delay; this is what typically happens when playing on large maps. In this case, evidently, the game may be boring when the users are just a few, since they can decide to avoid the direct confrontation, or it may take a long time before meeting other players. This is why many gamers decide to connect only when there is a large number of users already playing; for the same reason, it may be difficult for an idle machine to attract new users, even when the latter is the optimal choice, given the location of the players. Lastly, there may be just a few servers available in the proximity, and a far server may be chosen for this reason.

At any rate, the study under examination showed that the locations of the users follow the time during a day; this way, it is not surprising to find that the vast majority of the players from Asia and Europe chose to connect in the first hours of the morning or the afternoon. This observation is far from being trivial, since it implies the necessity for service providers, like Butterfly.net, to reconfigure the available resource through the day, in order to satisfy the demands of gamers connecting from the whole world. This operation is quite complicated but still possible, since there is a regular pattern which repeats almost every day; the peak of the demand, as a matter of fact, tends to occur at the beginning of the morning, to decrease when the afternoon approaches. This is a result which is coherent with previous studies, which showed similar patterns for servers;¹¹ it is, thus, reasonable to assume the presence of a strong correlation

⁹ Feng, W.C., et al., *A traffic characterization of popular on-line games*, IEEE/ACM Transactions On Networking, 13(3), 2005, pp. 488-500.

¹⁰ Feng, W., et al., *Provisioning On-line Games: A Traffic Analysis of a Busy Counter-Strike Server*, op.cit.

¹¹ Henderson, T., *Latency and User Behavior on a Multiplayer Game Server*, in Networked Group Communication, 2001, pp. 1–13.

between the latency in the network and the geographic distance with respect to the server.

At this point, it seems interesting to understand the extent of the difference between the players distribution, from a geographical point of view, and the concentration of clients for the servers operating online. In the case under examination, the authors found that the US machine used to host Counter-Strike have the tendency to attract closely geographically-located users.¹²

1.2. Video Games History

For a long time, and especially in the west online game was synonymous of multiplayer since that was the feature that was used by game developers; as a matter of fact, online games only became possible after the introduction and popularization of Internet, which started from 1971 thanks to ARPANET. During the 70's, this net was mostly restricted to educational institutions, and it was only in 1973 that the first online multiplayer videogame was created, thanks to with the arrival of the strategic game *Empire*, played on the 'PLATO' system. This device was the first generalized computer-assisted instruction system and allowed the PLATO IV terminals to connect to the mainframe network of which the University of Illinois' ILLIAC I computer was part of. The revolutionary feature of *Empire* was that it was able to be played on multiple screens at the same time, through the mainframe network, in an online environment.

The following development was with the MUDs genre, which stands for Multi-user Dungeons, while the so-called 'DEC PDP-10' further improved the time-sharing feature, which meant spreading a computer processing power across multiple terminals. Following the trend, in the 80's personal computers became more common, and in 1983 the global network became more structured; in this context, Essex University allowed remote access to its DEC-10 via British Telecom's Packet Switch Stream network between 2 am and 7 am each night, popularizing the game further into the world.

Through the 1980s, efforts were directed on the console side to integrate a type of network functionality, like in the Atari case, where it was implemented 'Game Line', which were mostly used to download games.

In 1989, then, Multicast was developed, and in 1990 Sega tried to capitalize on it with its Sega Mega net online gaming service, accessed like other consoles before, by use of an external peripheral (the Mega Modem) which provided the first proper multiplayer online gaming experience. The date when RPG started to become popular, then, was 1994, and Warcraft was also developed during this period, becoming one of the biggest online gaming franchises.

The following consoles became ready, starting from the GameCube, PlayStation 2 and the Xbox launched first in 2001; the game Halo for Xbox appeared and drew a huge number of people to the console for its paid online service, Xbox Live.

¹² Feng, W., et al., *Provisioning On-line Games: A Traffic Analysis of a Busy Counter-Strike Server*, op.cit.

In 2010 Sony updated its online gaming deal, only 3 years before the release of the new and currently in use PS4, and this brought us to our current situation, with online multiplayer being a paid service on most consoles, while it became totally free on pc games.

Pokémon Go was released in 2016, the first augmented reality mobile game, which is also the year that mobile gaming surpassed both Pc and Consoles revenues; from this point of view, one can note that the pc and console market and business plans have remained constant since 2010. A new evolution, in this sense, is represented by the so-called 'Cloud Gaming'.

1.3. How to differentiate between videogames

1.3.1. By Platform

Games can be divided according to platforms, and, in this case, one can distinguish the consoles, PCs and mobile games, such as those played on smartphones; the first ones can be considered as a kind of video game where gamers use a particular console to play. A game console is a specialized desktop computer used to play video games,¹³ and the two most popular representatives are Sony's PlayStation and Microsoft's Xbox. In this respect, Nintendo's Wii is also a contender, since it simulates physical participation in activities, like bowling and tennis. Game software is available on CDs or DVDs, although earlier game machines used cartridges containing read only memory chips, known as 'ROM' and they require a TV or monitor as a display. Typically, video game consoles are powered by operating systems and CPUs which are different from the ones used in desktop computers. The consoles, then, are under the control of their respective manufacturers, and the software is designed to excel given the machine's capabilities. This assures a more efficient performance from the hardware, but at the same time, it depends on the manufacturer's updates or decisions, such as embracing a particular graphic setting. Usually, this kind of games are not interchangeable with other game consoles or desktop computers, although software publishers may develop games for more than one platform. Finally, it seems worth observing that this kind of device has proprietary ties to the manufacturers which can boost a great number of exclusive titles that can only be played on this piece of hardware.

A video game which runs on a personal computer, on the other hand, uses a desktop or a laptop as a tool to play; since these general-purpose machines can have many different kinds of operating systems, they can run a wider array of programs. At the same time, they can also offer a larger number of options to customize and fine tune the user experience. One of the most

¹³ Jeong, E.J., Kim, D.J., *Definitions, key characteristics, and generations of mobile games*, in *Mobile computing: Concepts, methodologies, tools, and applications*, IGI Global, 2009.

important issues, on this regard, is given by compatibility, which can be an important challenge. One of the advantages to use the personal computer is the highly likelihood to bolster a huge number of independent creators and developers, who are often the ones to produce the best content.¹⁴

Mobile games, then, are played on cellphones and/or smartphones, which have the required power to run games of different kinds; in this case, though, the content is very different. As a matter of fact, they are provided with an UI (user interface) adapted to the smaller screen, and one of the most interesting differences from the other platforms is the pervasive presence of the so-called in-app purchases. Thus, while the app/game is free to install, many of the remaining, and most interesting features are still hidden behind a pay wall, which can be unlocked by purchasing them. This way, the developers have the chance to generate more income than in the hypothesis of the classic one-time purchase.

1.3.2. By genres

Another way to distinguish a video game, then, is to consider its genre, a specific category of games sharing similar gameplay features; the genres of video games, in fact, are not usually defined by the setting or story of the game or its medium of play, but by the way the player interacts with the game. According to this criterion, one can discern many typologies, starting with the action games, which are generally focused on physical challenges and require hand-eye coordination and motor skill to overcome. Another category, then, is adventure, where the player is faced with various puzzles, whose solution depends on the interactions with npcs or the environment. A popular genre, again, is the role playing, where the user can play as character in a story; finally, one can consider the strategy genre, which is centered on rational thinking and planning in order to obtain victory. Finally, one can consider the sports and simulation video games, which try to simulate real life events; during a sport game, the opposing team(s) can be controlled by other people or artificial intelligence. This genre has a lot in common with the simulation, since it is one of the few genres that has to deal with the realistic expectations of how the sport is actually played, as well as how it is perceived during live performances which has often pushed the technical or software limit of the support which is used to play it¹⁵.

¹⁴ Lin, D., et al., *An empirical study of game reviews on the Steam platform*, Empirical Software Engineering, 24(1), 2019.

¹⁵ Ibidem

1.4. Piracy Issues

Videogames are classified as a form of intellectual property, but, like every other software or file, a videogame can be copied, and this is the aspect that has made the gaming industry especially vulnerable to piracy since its beginning. Game piracy, in turn, can be classified in two main types, and the first one takes place at the individual level. In the past, games were often copied using physical media, but the diffusion of the Internet has made possible to share online copied and counterfeited software on an unprecedented scale. The second type is the commercial counterfeiting, where a professional and organized criminal community manufactures games, partially copying existing official products.

In more recent years, then, with the advent of the so-called ‘seventh generation consoles’, the biggest game companies started to push back, mainly in forms of bans and ‘bricking’;¹⁶ nowadays, the main sources of piracy are different, as it will be explained in the following pages.

To begin, with, one can consider the practices of Hosting and Linking Sites; in this case the pirated files which are first stored and then made available for download; this is a site business model, which consists of deliberately and systematically making games and other content available through links. The profits, then, are generated by running advertising that monetize the high volume of traffic attracted by the free contents; The operators of both hosting and linking sites can generate substantial revenues from advertising and they generally operate anonymously and without respect for local taxation or other regulations.¹⁷ Another form of piracy, then, is conducted through the BitTorrent Indexing Sites and Trackers; BitTorrent indexing sites have a similar function to linking sites. However, rather than directing users to hosting sites, indexing sites provide users with links to torrent files, which enable them to connect with other users to share game software and other content¹⁸.

BitTorrent trackers are servers that facilitate transfers between peers using the BitTorrent protocol. They play an indispensable role in directing the traffic of users who are attempting to participate in the P2P transfer of content via BitTorrent. Trackers facilitate and expedite the creation and growth of swarms, and thus the infringing copying and downloading of illegal copies¹⁹.

¹⁶ Seto, A., *Going Offline, Order and the Environment*, in Seto, A., et al., *Netizenship, Activism and Online Community Transformation in Indonesia*, Palgrave Macmillan, Singapore, 2017.

¹⁷ Choi, David Y. *Online Piracy And The Emergence Of New Business Models*. 2009. 9.

¹⁸ Zhang, C., et al., *Unraveling the bittorrent ecosystem*, IEEE Transactions on Parallel and Distributed Systems, 22(7), 2010.

¹⁹ Spagnoletti, Paolo, e Alessandro Piacentini. *The Effects of Piracy and Counterfeiting in the Video Games Industry*. , 2017, 74.

Another problem, then, comes from the so-called Unauthorized Private Servers, which is mainly directed at the games based on cloud; for this reason, typically the publisher adds into the client software ‘TPMs’ to prevent the client from connecting to servers other than those operated by the publisher. Therefore, the pirate action has to happen either client, on the server or on both sides, for example by distributing a modified version of the official client software or by installing additional circumventing software designed to disable the client’s TPMs that would otherwise prevent the client from connecting to the unauthorized server. At the same time, to enable online gameplay, operators of unauthorized servers must often use infringing copies of a publisher’s server software operated on alternative data centers.

Again, it is interesting to consider the unauthorized markets for digital entitlements, which in many cases are copyrighted artwork and images; for this reason, publishers’ EULAs and terms of use generally prohibit the sale of such items outside of their games. The sellers of these marketplaces often acquire these digital goods by employing phishing schemes to steal player accounts and to empty them of previously won or bought goods.

Thus, these illegal markets damage, often beyond repair, the carefully calibrated in-game economies necessary to promote a good player experience, and ultimately undermine the value of the games themselves. Related to piracy, then, is the problem of DRMs, which are used to check that the copy of the game is authentic, in order to allow the user to play.

1.5. Global Market Analysis

This section provides a detailed breakdown of the market in terms of company relevance according to revenue, the author decided that the reference period of time would be 2019, the latest developments of 2020 are also noteworthy, but because of the volatility of recent events will only be integrated on a case by case bases up to the 1 quarter of 2020 included.

Starting in 2016, the videogame industry surpassed both the movie and music industry combined²⁰, and kept on a steady pace even with the wave of change brought by the COVID-19 pandemic of 2020, this recent event only had little effect on what essentially is a trend that has been in place for quite some time now. From 2016 +8.5% growth rate all the way up to 2019, the gaming industry has kept an average growth rate of 9.3% every year^{21,22}.

According to market research company Statista, in 2019 the US and China almost held the same position for top grossing videogaming market, with a very narrow gap of a few million dollars. On a country-by-country comparison, the table below shows a list of the top 10 nations with

²⁰ Statista, *Video Game Industry - Statistics & Facts*, available at <https://www.statista.com/topics/868/video-games/> last accessed December, 29, 2020.

²¹ Newzoo, *global market reports*, from 2017 to 2020.

²² Statista, 2020.

the largest videogaming market in 2019.

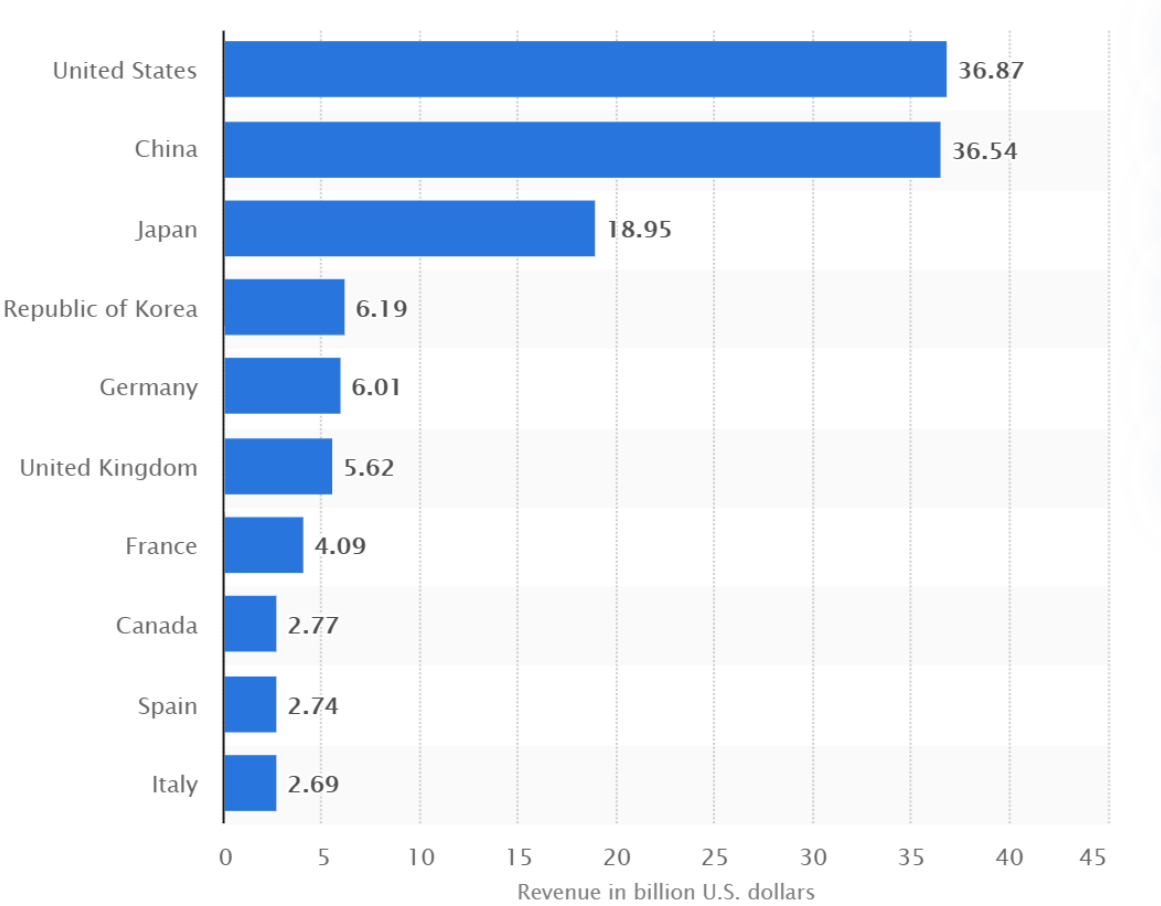


Fig.1

the Figure represents a ranking list of the top 10 nations with the largest videogaming market in 2019 according to revenue generated²³.

According to companies, below is the ranking of the current (last quarter of 2019) top video game companies, based on analysis of annual and quarterly financial reports published by the companies themselves. For companies that do not dispense their game revenues, the analysis was integrated with estimates (which have been marked) by an asterisk. Revenues (GAAP) are restated to reflect Calendar Years. Therefore, they do not necessarily match reported Fiscal Year results of individual companies. Revenues exclude hardware sales and other non-game sales to the extent publicly available. Microsoft, Sony, and Nintendo estimates represent all Xbox, PlayStation, and Nintendo non-hardware platform revenues (including Xbox Live, PSN, and Nintendo eShop revenues respectively).²⁴

²³ Statista. *Video Game Sales Revenue by Country*. 2019, Available at <https://www.statista.com/statistics/308454/gaming-revenue-countries/>

²⁴ Newzoo. *Top Public Video Game Companies | By Revenue*. 2019. Available at <https://newzoo.com/insights/rankings/top-25-companies-game-revenues/>






	Company	Revenues	Change
1.	 Tencent	\$5,225M	▲
2.	 Sony*	\$3,879M	▲
3.	 Apple*	\$2,887M	▲
4.	 Microsoft*	\$2,831M	▲
5.	 Nintendo	\$2,286M	▲
6.	 Google*	\$1,877M	▲
7.	 Activision Blizzard	\$1,749M	▲
8.	 NetEase	\$1,666M	▼

Fig. 2

Top global videogame companies in 2019²⁵

Justifiably, from the top 3 positions, one can easily grasp the current market composition, with the highest grossing company being the Chinese tech giant Tencent, followed by the Japanese Sony and American Apple.

During 2019 The top 50 public game companies generated revenues saw an increase, of +5.3% from 2018. These companies alone accounted for 85% of the entire global games market. Tencent again held on to the coveted #1 spot. In 2019, Tencent doubled down on targeting overseas markets while at the same time it monetized Chinese users via PUBG Mobile (called Game for Peace in China). Tencent's strategy paid off, its year-on-year growth rate increasing to +10% in 2019. Across the ranking, other Chinese companies—including NetEase and Perfect World—enjoyed similar returns to form after 2018's nine-month-long licensing freeze²⁶.

1.5.1. Device Trends

The market trends presented in this paragraph are segmented by device. Mobile, Pc and Console. The Author analyzed the state of each device market at 2019, as well as the main competitors and development trends.

As far as mobile gaming is concerned, one may note that, although a variety of devices are used for gaming, mobile phones remain the most popular device globally. This is consistent with the

²⁵ ibidem

²⁶ Newzoo, *Global Games Market Report*, 2020

2018 results where mobile phones were also the most used gaming device²⁷.

Indeed all game segments in this sector saw an increase in engagement and revenues, mostly due to COVID-19 lockdown measures, but mobile gaming (smartphone and tablet), which remained the largest segment in 2019, producing revenues of \$68.5 billion—45% of the global games market, had the biggest growth of all (+13.3% year on year). For this reason, the mobile division is projected to be the largest segment again by far (\$77.2 billion) in 2020²⁸.

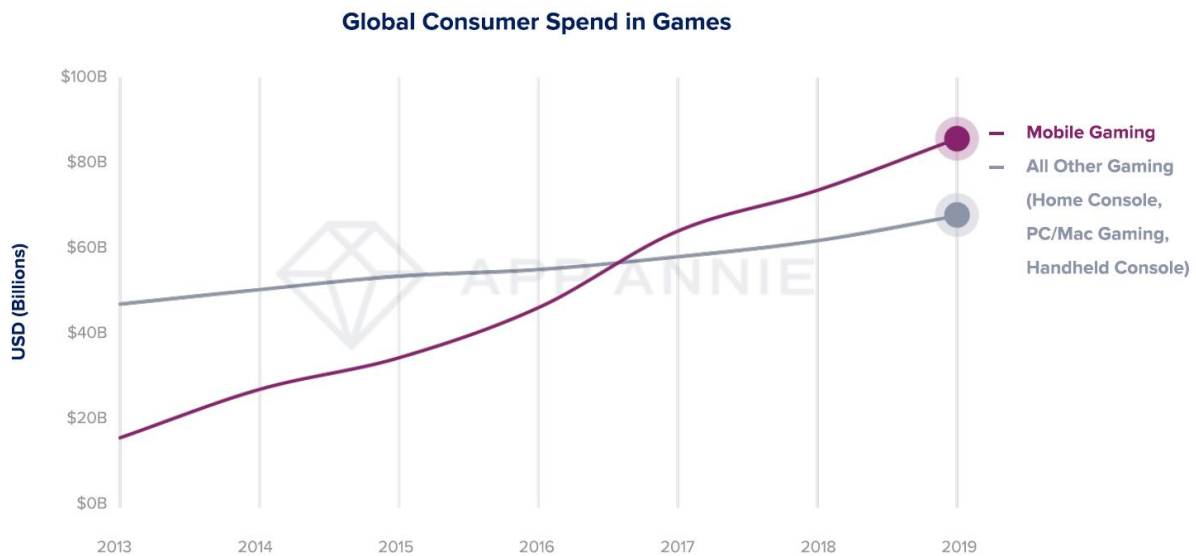


Fig. 3

The graph shows the change in consumer expense in the global videogame market through the years²⁹.

Moreover, as can be seen by the red line in graph, in 2019 mobile gaming extended its global lead in consumer spend to 2.4x PC/Mac gaming and 2.9x home game consoles³⁰.

Regarding the sector's competitors the top 5 leading companies we can find Tencent again, followed by Supercell (recently bought by Tencent), NetEase, Niantic and King Digital Entertainment.

There are several reasons mobile will enjoy more growth than both PC and console gaming: it has the lowest barrier to entry, there is a spillover effect from the shutdown of PC cafés in specific markets, and mobile suffers the least impact from game development due to Relatively low complexity³¹. Germany is the only country where mobile phones are not the most used

²⁷ Limelight, *Market Research: The State of Online Gaming – 2019*. Available at <https://www.limelight.com/resources/white-paper/state-of-online-gaming-2019>.

²⁸ Newzoo *Global Games Market Report*, 2020

²⁹ App Annie, Lexi Sydow, *Mobile Gaming: A \$100 Billion Industry That's Only Getting Bigger*. Available at <https://www.appannie.com/fr/insights/mobile-gaming-a-100-billion-industry-thats-only-getting-bigger/>

³⁰ ibidem

³¹ Newzoo, op. cit. p. 21

device, with computers leading the way³².

As far as PC gaming is concerned, one can note that this games market reached a value of nearly \$28,733.3 million in 2019, having declined at a compound annual growth rate of -0.56% since 2015. The negatively affected growth in the historic period can be linked to several factors responsible as the increasingly stringent regulatory policies for PC games. Moreover, possible elements that could hinder the future growth of the PC games market include increasing privacy concerns, and regulatory restrictions to curb pc games addiction. At a geographical level, Western Europe was the largest region in the global PC games market, accounting for 31.72% of the total in 2018. It was followed by North America, Asia Pacific, and then the other regions. Going forward, the fastest-growing regions in the PC games market will be South America and Africa. Some of the major competitors in this sector are Tencent, Activision Blizzard, NetEase, Sony and Electronic Arts. In fact, the key drivers of the PC Games market include: Cross-Platform Publishing and Cross-Platform Play; the first technique gives players the ability to play the same video games on different platforms through progress retention. Similarly, cross-platform play is a feature of a video gaming which enables gamers to use different gaming platforms such as console, mobile and PC to play with each other simultaneously. In many cases, these cross-platform games are restricted within the respective publisher's platforms. For instance, some games in the RPGs series Monster Hunter are cross-platform games between Nintendo's platforms such as the 3DS, Wii U and the Switch. The increase in cross-platform gaming can be attributed to the development of scripting languages, software libraries and game engines allowing PC games companies to efficiently use platform-specific details of the users. For instance, Microsoft is expanding Xbox Live's cross-platforms from 400 million to over two billion to include iOS, Android and Switch in 2019. Similarly, Hero Siege – an RPG published by Panic Art Studios which was available for cross-platform play between PC, Mac, mobile and Switch, was extended to include PS4 in 2018. PC based players are seen to have a competitive advantage over players using a console or a mobile due to additional features in game settings that improves visibility and control. These additional features in the PC based games are expected to drive the demand for PC based video games in the forecast period³³.

For what concerns the market of console games, one can observe that it is segmented into digital, online/micro-transaction and physical console games; in this case, market value was estimated to be at 34.27 billion USD in 2019, and projected to be 51.15 billion in 2027, with an expected growth at 5.3 % CAGR, while the top companies can be identified as Sony, Microsoft and Nintendo. However, high penetration of smartphones has increased the demand for mobile gaming as compared to that of console games.

³² Limelight, op. cit. p. 21

³³ The Business Research Company, *Global PC Games Market Data and Industry Research Analysis*. Available at <https://www.thebusinessresearchcompany.com/report/pc-games-market>. April 2020

Market trend is the constant search for better graphics, (i.e. 4k and 3D) and the driver element is the wireless feature, mostly thanks to Bluetooth 5.0, while the biggest restraint factor is represented by piracy and lack of skilled professionals, mostly because of complex and particular hardware which require a high specialization.

Engagement and revenues on console are set to grow due to the lockdown measures, at least in the short term. COVID-19 is also having adverse effects on console gaming, as physical distribution, massive cross-company collaboration, and certification are a significant part of console game development³⁴.

The biggest advantage for the console games market is the rapid increase in the number of active gamers across the world. Catering to those who search for something more than a phone to game on but without the effort needed in researching, building and constantly updating a personal computer. Keeping the whole experience simple and as plug-and-play as possible. In 2017, there were 2.21 billion gamers worldwide and the number is expected to reach 2.73 billion by 2021. According to Nielsen, 64% of the general population in the USA are gamers. Esports viewers would also significantly contribute to the growth of console games market as it is estimated that approximately 557 million people will watch Esports by 2021.

As business model, console video game developers are adopting subscription-based kind of contracts. For example, Xbox Live and PlayStation Plus provide licenses for a few games on monthly rotation basis. The first major subscription program was by EA, called the “EA Access” which offered discounts on EA games, a limited number of hours of pre-release play, and a vault of back catalog offerings on Xbox One. Microsoft, in June 2017, released a Netflix-style offering called Game-Pass, for its first-party games and a few titles from third-party developers and publishers³⁵.

Nevertheless, at the start of the generation, Microsoft’s Xbox One had a rocky launch, and it has since been playing catch up with Sony. Now, Microsoft’s innovations in the cloud and subscriptions spaces have directed the company on a somewhat different path to its once-rival. Microsoft, in fact, now finds itself potentially sacrificing short-term revenues to put itself in a stronger position for the coming generation, the cloud gaming based one. The company is also risking its console hardware market share by putting all its first-party content on PC as well—via Game Pass for PC and Steam. As things stand, there is no unique value proposition for the Series X if consumers already own a high-end gaming PC.

Now, the pc company stance is peculiar, currently selling two products who are competing with one another (Pc and Xbox), is also the reason why they are the only ones (other than Nintendo) to have been experimenting with cross-platform play in the attempt to bring the two worlds

³⁴ Fortune Business Insights, *Gaming Console Market Size, Share, Growth | Report, 2027*. 2020, Available at <https://www.fortunebusinessinsights.com/gaming-console-market-102420>.

³⁵ Chan, T.Y.M., Zhang, Y., Yeung, T.Y., *Estimating The Effect Of Subscription based Streaming Services On The Demand For Game Consoles*, arXiv, 2012.

closer together.

Finally, whatever the end results may be, the Xbox Series X and PlayStation 5 console generation is on track to significantly change the landscape of the games business. Microsoft—and to a lesser extent, Sony—already began doubling down on service revenues this generation. In particular, the new generation will be a true test for cloud gaming, making steps toward a platform-agnostic games business.³⁶ Microsoft has already announced it will include its cloud gaming service, X Cloud, in a special bundle with Xbox Game Pass. Meanwhile, Sony continues to experiment with new content offerings on its own subscription/cloud gaming service, PlayStation Now. If these cloud gaming services can replicate the experience of playing on a next-generation console, a monthly fee is a great alternative to a console's upfront cost. There is a whole subsection of gamers, the Subscriber persona, that enjoys playing games but is less willing to purchase hardware.

Naturally, this presents an unmissable opportunity for X Cloud, PlayStation Now, Google's Stadia service, and the whole host of new cloud gaming platforms appearing in the market.

1.5.2. Main genres

One of the main trends in mobile games is represented by Core Games, (complex games, requiring more than one kind of input to play) which tend to drive deeper engagement and longer gaming sessions by leveraging extensive customization, competitive online play, and season pass membership to cultivate stickiness. Mobile devices have made strides in power and hardware capabilities, enabling Core Games to flourish. Especially with 5G will make it even easier to play Core Games on-the-go. Right now, Core Games compose only 18% of downloads, yet they cover 55% of the time spent among the most popular games. From the financial standpoint Core Games made up 76% of spend, echoing the growing shift towards core gaming in western markets. Only 1% of time spent was spent in Casino Games, yet they accounted for 6% of total spend. Coin Master was the #1 Casino Game in 2019 by consumer spend and was particularly popular in the US, UK and Germany. Lastly, #1 Core Game by consumer spend in 2019 was the Fate/Grand Order RPG. Within Core Games, Action represents the biggest portion of time spent. In 2019 PUBG MOBILE was the #1 Action Core Game by time spent on Android phones globally. Among Casual Games, Puzzle Games saw the most time spent in 2019. Ani pop was the #1 Casual Puzzle Game by time spent, representing 10% of all time spent in the top 100 Games. In conclusion Core RPG, Strategy and Action Games combined made up over half of consumer spend in key APAC markets —such as China, Japan and South Korea.

³⁶ Khatri, A., *Offline Gaming Vs Cloud Gaming (Online Gaming)*, National Journal of System and Information Technology, 11(2), 2018, p. 99.

When considering the PC segment, one notes that this market is segmented by type and by genre; regarding Pc games genres trends, the action games segment was the largest of the PC games market by application, accounting for 27.4% of the total market in 2019. The PC games market can be segmented into types, namely Online microtransaction, Digital and Physical.

The Online microtransaction games market was the largest segment of the PC games market, accounting for 83.48% of the total in 2019. It was followed by digital games, and physical games. Going forward, the Online microtransaction games segment is expected to be the fastest growing segment in the PC games market.³⁷

The global console games market, then, was valued at about \$40.6 billion in 2019 and is expected to grow to \$57.9 billion at a CAGR of 13.4% through 2023. Major players in the market are Tencent Games, Sony Interactive Entertainment, Microsoft Studios, Activision Blizzard and EA. Owing to the hardware similarity between pc and game consoles, the game content itself is essentially the same and holds the same genre statistics. Below can be found the revenue ranking of the highest grossing games both on pc and console³⁸.

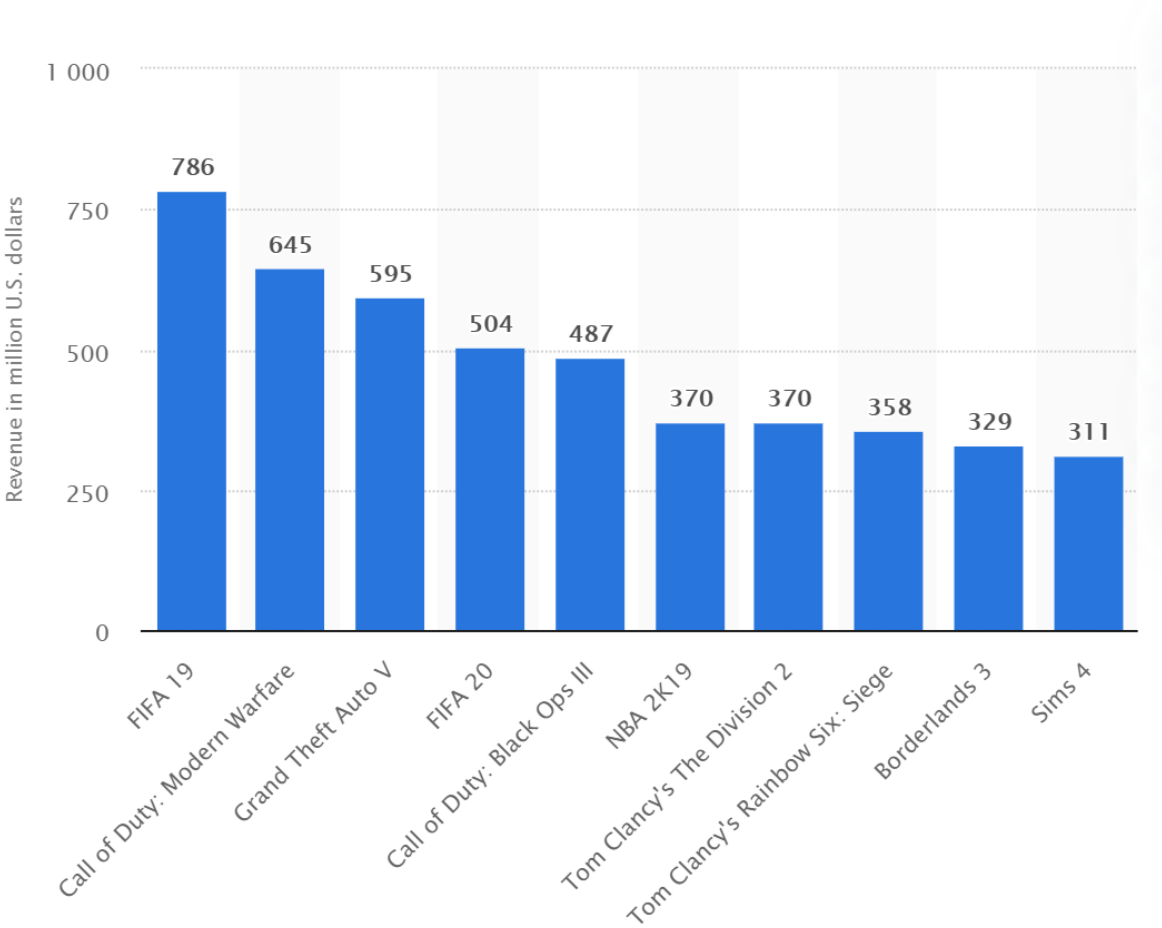


Fig. 4
The figure shows the highest grossing games across both the pc and console ecosystems³⁹.

³⁷ Chua, D., et al., *Consumer Preference on Paid Game Microtransaction*, Journal of Research in Marketing, 10(3), 2019, pp. 832-842.

³⁸ Ibidem

³⁹ Statista. *Leading Premium PC and Console Video Games Worldwide 2019*. Available at <https://www.statista.com/statistics/328683/leading-online-video-games/>.

1.5.3. The E-Sports Phenomenon

Esports means competitive gaming, by professional or amateur gamers;⁴⁰ alongside the competitions, which are typically in the form of tournaments, an ecosystem has spawned to support esports. This includes venue infrastructure, tournament organization, sponsors and advertising, chat tools, networking, team management, branded apparel, gaming hardware devices and accessories, video streaming, and more. Esports is the driver for future growth in PC and mobile gaming. But not console, this is for a number of reasons, but it ultimately boils down to desktop ergonomics (because the display distance offers increased detail when using HD and UHD monitors) and superior control with mouse and keyboard control interfaces instead of controllers and joysticks. Regarding mobile, the industry is already standardized enough that the individual brands differences do not affect the final experience. Now while not all games developed in the future will be used in competition, but the lessons from esports will permeate the business of games going forward. This kind of competition has grown to the point that the International Olympic Committee (IOC) has started reviewing the efficacy of including esports as a demonstration game in the 2024 Summer Olympics in Paris.

The current global center for esports enthusiasts is in Asia (as in Mainland China, Indonesia, Malaysia, Philippines, Singapore, Taiwan (Chinese Taipei), Thailand, and Vietnam).

China is the biggest market for esports games on mobile and PC, and has the most robust infrastructure for tournaments, streaming, teams, iCafes, arena venues, and games. Chinese professional gaming teams have earned cult-like status among these fans and this provides a unique opportunity to game operators, advertisers, brands, players and fans to benefit from this booming industry.

Regarding consumer behavior, In Asia, fans consume esports the way that Western gamers consume major league sports and Hollywood movies. Live-streaming platforms especially have helped drive demand for esports in China and SEA through the broadcast of tournaments and live matches. Popular live streaming platforms in China are Douyu, Huya, YY and Panda TV. As the games industry in Asia moves away from traditional non-competitive MMO games, we have seen the rise of new and more competitive game genres such as MOBA (multiplayer online battle arena, a sub-class of strategy games), Shooters, and Sports.

The recent success of the Battle Royale genre has also been important for esports in Asia. Not only have titles such as Fortnite and PUBG contributed to growing the PC esports market, but titles also such as Free Fire from Garena and Knives Out from NetEase are growing battle

⁴⁰ Rosell Llorens, M., *eSport gaming: the rise of a new sports practice*, Sport, Ethics and Philosophy, 11(4), 2017, 464-476.

royale esports on mobile, too.

Traditional PC titles, such as Dota 2 and League of Legends, continue to be the mainstays in esports in the region with the biggest prize pools and largest audiences respectively, in 2017, for one of the many tournaments of Dota 2 the prize pool was set at 24.8 million USD. While all the other games such as LoL averaged between 1 and 4 million dollars.

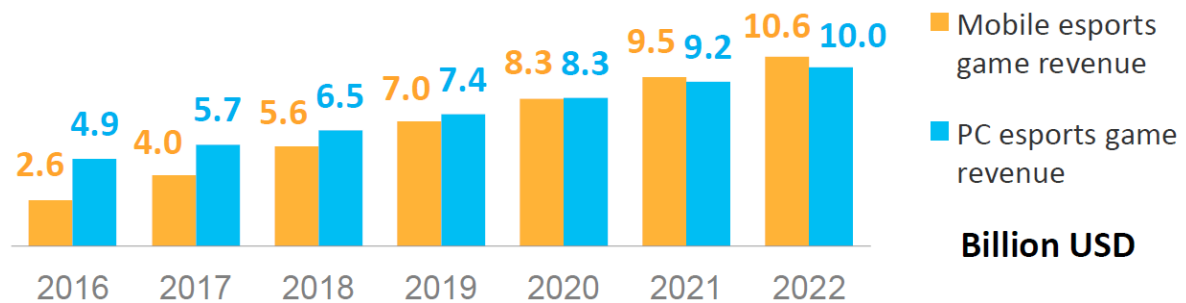


Fig. 5 the graph shows the revenues generated by esports in China divided by platforms in mobile and pc⁴¹.

While PC esports is currently the most popular, Mobile esports is becoming just as big, if not bigger, as more core competitive titles such as Arena of Valor and Knives Out launch on smartphones and is therefore reflected in the graph.

Tencent is running esports competitions at an amateur level and on college campuses. More than 278 teams signed up to compete in the recent third college esports tournament.

In the West we see colleges, such as University of California, Irvine and University of Southern California, embrace esports as an academic major as well as for competitions.

Internet cafes (iCafès) have seen a resurgence as esports has grown across Asia. Games like League of Legends, that are competitive and require multiple players in a social environment, have been a key driver of iCafè usage. This contributed to increase pc sales as the Cafés started to buy high-quality pc to host competitive gaming sessions.

Arena of Valor (known as Honor of Kings in China) is the largest mobile esports game in Asia. There are multiple leagues and tournaments for the game, such as the King Pro League. Tencent has also begun franchising the King Pro League which will provide long term security for teams and players, allowing for further investment in the space.

63 million people view live streams of esports in China and Greater Southeast Asia. Esports is expanding its reach through an ever-widening ecosystem, making it more available than ever⁴².

1.6. Publishers.

⁴¹ Niko Partners, *Esports in Asia, and what it means for the West*, october 2018.

⁴² ibidem

A video game publisher is a company that finances the design, development, marketing, and distribution of a video game. It is common for gaming studios to work under the umbrella of a video game publisher, although it is not required⁴³.

Below is a graph showing the significant video game publishing companies by revenues, it is worth noting that Tencent currently has 5% of stakes in Activision Blizzard.

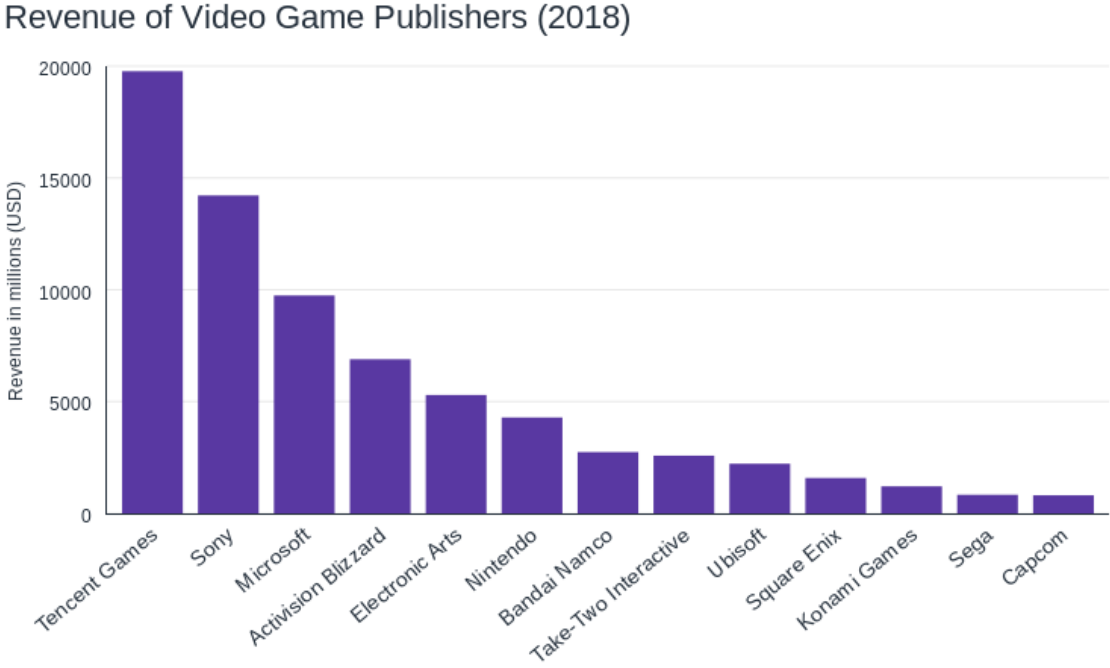


Fig 6.

This figure shows the most significant video game publishing companies by revenues.

To be clear, publishers do not directly fund the games nor involve themselves in the development process, the role of a publisher often varies between companies, and they can be more or less directly involved in the technical aspect depending on the project, typically, developers are paid in advance to keep the process moving forward, and in the end, the impact that publisher has on the final product can determine its success or failure.

Because one of the main responsibilities of this role is ensuring the final product (the game) gets done, publishers have different ways to support developers in their work, from additional funds to providing art assets or even marketing strategies. Usually, publishers step in to help manage those areas, like marketing or distribution, which are not directly linked to the technical aspect of the game.

Game publishers are exactly that—publishers. Their business is in publishing, not art, programming, or other aspects of development. While those duties may be part of some publishing deals, the general purpose of a publisher is more akin to a traditional book publisher than a game developer.

⁴³ Massarczyk, E., Winzer, P., Bender, S., *Economic Evaluation of Business Models in Video Gaming Industry from Publisher Perspective*, in *International Conference on Games and Learning Alliance*, Springer, Cham, 2019, pp. 479-489.

What a publisher can offer are media contacts and brand recognition, these connections, which typically come through years of experience, help publishers ensure that games find the right audience and therefore reduce the risk for the developers. Thus, generating a mutually beneficial relationship between the two⁴⁴.

1.7. Distributors

For the purpose of this thesis, according to the initial definition “online games”, which considers as such any game downloaded from the Internet, the author will not take into account the game’s physical copies distribution process but will focus exclusively on digital distribution.

At this point, one may wonder what digital distribution is, and, on this respect, it can be observed that in the course of the physical line of distribution, the finite product (the game), would pass from the publisher to a (regional) distributor, to be then sold to wholesalers and retailers, thus finally reaching the final customer. In Digital Distribution instead the gap between the publisher and players is much smaller, being only a platform away.

Thus, the publisher will be able to get more involved in deciding the price or sales method for their digital copies. However, digital copies usually come with lesser privilege compared to physical copies. And are sometimes subjected to heavy patches and updates if need be, for example if new government regulations arise or the game content spurs any kind of controversy. This issue can go both ways, while some games have seen their content posthumously censored or updated, raising concerns on the part of the customers about its effective ownership of the product. At the same time, for many other players, digital distribution represents the only way to access censorship-free content, the reason being, that these platforms do not have to face the same regulation as the publisher’s themselves, and often operate in a legal grey zone before being forced to comply to local regulation⁴⁵.

Digital distribution platforms can host multiple different publisher’s games on the same platform, this is the case of one of the first most representative of such platforms, Steam.

Originally, Steam was a client software born to quickly and reliably deliver game patches, updates, and check the authenticity of games published by Valve⁴⁶. Slowly but steadily, it became a huge portal, reuniting almost every existing publisher under its roof, with all of them paying a 30 to 20% cut (depending on the size of the game’s revenue) on the sales happened

⁴⁴ Song, S., Chan, F.F.Y., Wu, Y., *The interaction effect of placement characteristics and emotional experiences on consumers’ brand recognition*, Asia Pacific Journal of Marketing and Logistics, 2019.

⁴⁵ Simon, J.P., *Triggering the emergence of digital ecosystems: the role of mobile and video games in emerging economies*, Digital Policy, Regulation and Governance, 2018.

⁴⁶ Ibidem

through the platform⁴⁷.

Almost 10 year later Steam's launch in 2003, in order to maximize revenues and cut the middleman which was represented by Valve's distribution platform, some of the main publishers like Ubisoft and Epic Games, started to plan and bring forth their own proprietary digital distribution platforms. This initially was not well received by the costumers, that saw other companies starting to impose their platforms, and therefore the installation of additional software, to run games from different publishers even if this was exactly what steam did in the beginning.

The result is now a slightly more fragmented market than what it used to be in the early 2000's, while Steam still has the monopoly regarding the sheer number of titles, now that the players are slowly getting used to the new status quo, lots of other publishers are starting to exert influence on their own platforms often coupled with important exclusives, sufficient enough to let them stay relevant and afloat.

Right now, the digital distribution market is as follows: with an extremely aggressive competition between the two remaining publishers-distributors giants, Steam, which in 2017 generated 4.3 billion of us dollars⁴⁸, and the Epic Games Store, which debuted a year later in 2018 to earn a staggering \$3 billion USD⁴⁹.

1.8. Online Games IP recognition around the world

The following paragraphs are going to examine the legislation concerning videogames import, publication and distribution, in the biggest economies of this sector; the first consideration, on this respect, is that a video game is literally a bundle of intellectual property (IP) and contractual rights. However, the one thing that really distinguishes the video game industry from other creative industries is how fast it is moving and how it pushes the boundaries of the IP law system, which on the whole was designed before the advent of video games. Here the author is not only going to discuss the copyright idea but also import methods.

⁴⁷ Pathak, A., Gupta, K., McAuley, J., *Generating and personalizing bundle recommendations on steam*, in "Proceedings of the 40th International ACM SIGIR Conference on Research and Development in Information Retrieval", 2017, pp. 1073-1076.

⁴⁸ Statista. *Steam Sales Revenue 2017*
Available at <https://www.statista.com/statistics/547025/steam-game-sales-revenue/>.

⁴⁹ Wu, A., Zhang, C., *Epic Games*. Harvard Business School Case no. 720-380, October 2019.

1.8.1. U.S.A.

Nowadays, at any rate, the US copyright regulation on games can be summarized by section 102 of the United States Copyright Act, which establishes that: ‘*copyright protection subsists [...] in original works of authorship fixed in any tangible medium of expression [...] from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device, including, among others, the following categories: (1) literary works; (2) musical works; (5) pictorial, graphic, and sculptural works; (6) motion pictures and other audiovisual works; and (7) sound recordings.*’ Therefore, even though video games are not enunciated as such in this section, this kind of work can comply with the requirements established in the U.S. Copyright Act, where they are original, fixed in a medium (whether analog or digital) and can be perceived and reproduced. The United States of America has the largest video game industry in the world, which is reflected in the number of judicial cases involving this work of authorship. However, there is no clear classification of video games and their protection will vary depending on each game and the elements that are part of it. In this sense, video games can be treated as computer programs and, thus, are classified as works of authorship; in that case, the source code for a video game is classified as a literary work. If pictorial or graphic authorship predominates, a video game may be classified as a visual arts work. Similarly, if motion picture or audiovisual authorship predominates, a video game may be classified as a motion picture/audiovisual work. Therefore, it is essential analyze the characteristics of a given video game in order to determine its legal classification.

1.8.2. Germany

The ‘Gesetz über Urheberrecht und verwandte Schutzrechte – Urheberrechtsgesetz’, namely the ‘Law on Copyright and Neighboring Rights – Copyright Law’, and known as ‘UrhG’, was enacted in 1965 and has been modified several times since, with the last major amendment in 2008. As in other jurisdictions, this law provides protection to authors of literary, scientific and artistic works, the first paragraph of the UrhG, which include works of language and computer programs, musical works, works of fine arts, architecture and plans of such works, photographic works, including works produced by processes similar to cinematography, and drawings, plans, maps and sketches.⁵⁰ There is no reference to video games as such in this law; nonetheless, the list of works provided by paragraph 2 of the UrhG is *numerus apertus* and, as a consequence,

⁵⁰ Bundestag, *Gesetz über Urheberrecht und verwandte Schutzrechte (Urheberrechtsgesetz). UrhG, vom Urheberrechtsgesetz vom, 1965.*

other works like video games and multimedia works can also find protection within the law. Finally, this section ends by stating that: —personal intellectual creations alone shall constitute works within the meaning of this law.

Considering that the UrhG establishes no specific rules for classification of video games, legal doctrine considers them to be multimedia works. Therefore, different classifications apply to the protection of video games within the UrhG. The computer program that controls the game and underlies the audiovisual work is categorized as a speech work. In this regard, and as all video games are constructed with computer code that enables their execution in a computer system, Section VIII of Part I of the UrhG applies. Generally, the paragraphs from no. 69 of the UrhG establish the legal regime of computer programs, protecting exclusively the expression in any form of a computer program^{ll}, where this is original. Consequently, -ideas and principles that underlie any element of a computer program, including those which underlie its interfaces, shall not be protected. The audiovisual presentation of the video game is treated as a film work. In order to benefit from the protection granted, film works shall be personal intellectual creations according to the terms of paragraph 2, II of the UrhG. Personal intellectual creations require that the collective work of all contributors (e.g., game designers, animation and graphic artists and sound engineers) using film-like methods achieves a certain level of artistic creation. If the work does not attain this level of originality and creativity, jurisprudence protects the audiovisual presentation of a video game at least as —moving images, which do not require proof of personal intellectual creation.

1.8.3. Japan

In the absence of a direct reference to video games in statutory law, case law has recognized video games as *cinematographic works in accordance with Article 2(3) of the Japanese Copyright Act, which includes works —expressed by a process producing visual or audiovisual effects analogous to those of cinematography and fixed in some material form*. The varied judgments of lower courts were harmonized by the Supreme Court in 2002⁵¹ when the Court affirmed that video games should be classified as cinematographic works. The court's ruling specified that the video game in dispute was expressed through a process producing visual or audiovisual effects similar to those of cinematography, and furthermore that such expression was fixed in an object and thus rightly classified as a cinematographic work in accordance with Article 2(3) of the Japanese Copyright Act.

Additionally, the computer code used to execute the audiovisual elements of a given video game can be also protected under the Japanese Copyright Act as a literary work. Nonetheless, Article 10 specifies that such protection does not cover the programming language, the rules and

⁵¹ Japanese Supreme Court, Case No. H13-ju-952.

algorithms of a computer program, and that only the source code shall enjoy protection, provided it is creative and original.

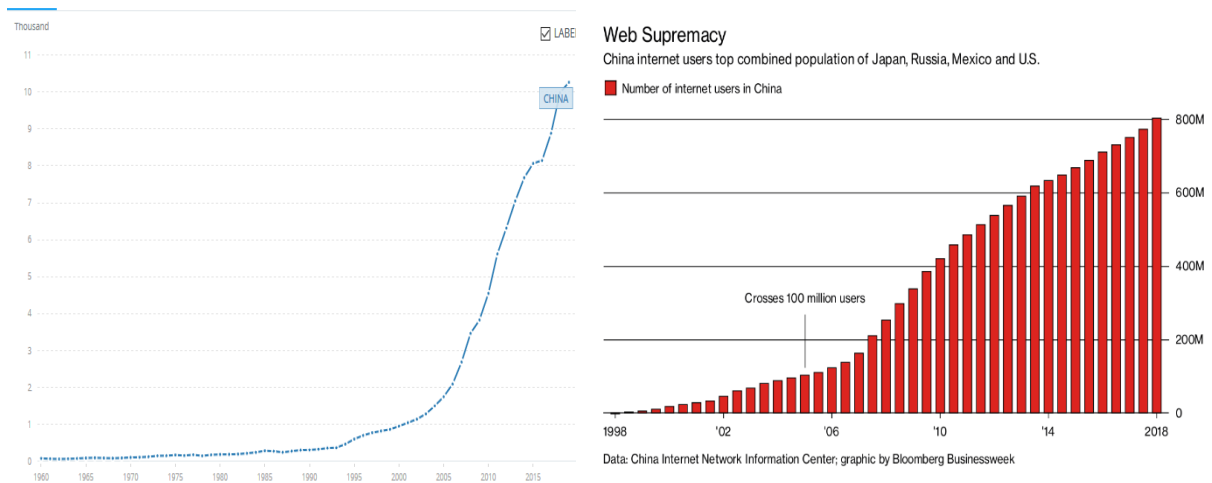
As with traditional cinematographic works, the determination of authorship is the key to establishing ownership of video games. As set forth in the Japanese Copyright Act, creators, producers or publishers may all be considered authors⁵².

⁵² Greenspan, D., *Mastering the game: business and legal issues for video game developers*, WIPO, 2013.

Chapter 2- The Videogame industry in China

2.1. Evolution of the publication legal framework: 2004-2018

In a period between the late 1990s and early 2000s, the progressive spread of the internet and the increase in per capita income in China have made online games a very popular form of entertainment in the large Asian country especially among the younger generations.



GDP per capita – source OECD

Internet users – source Bloomberg

In 2012, the market size of China's online gaming industry was RMB 60 billion. Just a year later, the market had grown to RMB 89.16 billion⁵³. After an initial phase in which the development of the market was hindered by legal constraints, the Chinese authorities decided to favor this development by temporarily and conditionally lifting the ban on the production and distribution of games by foreign capital⁵⁴. A decision that allowed Chinese video game developers to open their businesses in the Shanghai free trade pilot zone to develop and market entertainment content under the censorship of the Ministry of Culture. In this way, in a short time the Chinese games industry has managed to become a key sector of the online entertainment sector after almost two decades of incubation⁵⁵. In practice, at a certain point the

⁵³ Ernkvist M, Ström P. *Enmeshed in Games with the Government: Governmental Policies and the Development of the Chinese Online Game Industry*. "Games and Culture". 2008;3(1):98-126. doi:10.1177/1555412007309527

⁵⁴ *China lifts ban on foreign video games consoles*, Published 7 January 2014, <https://www.bbc.com/news/technology-25635719>. BBC.

Chinese government decided to open up to the market of online games produced abroad, but without giving up very strict control over the contents of the games and possible developments in the domestic market. On May 20, 2004, the Ministry of Culture of the PRC announced a "strengthening of censorship of online game content". With this announcement, the minister ruled that imported games distributed on the internet or mobile platforms had to overcome the content censorship of the Ministry of Culture before⁵⁶. Additionally, foreign companies producing online games were forced to collaborate with a local company to start their gaming service in China and the local partner had to be granted an exclusive assignment⁵⁷.

In fact, these policies have placed many obstacles to the development of game images, but at the same time, they have favored local production. It was a conscious strategy on the part of the Chinese government. On the one hand, it meant that products compatible with the ideology of the authorities were introduced into the Chinese market, and on the other hand, it favored the development of a Chinese industry that in a short time began to export its products abroad.

The development of China's gaming legal framework can be summarized in 2 stages. We have the pre-2000 phase in which there is a regulation of game publishing with the formulation of related policies. The second phase, after 2000, more focused on online games. In this historical phase, the former General Administration of Press and Publishing -GAPP and the Ministry of Culture have attached great importance to the supervision of online games, which is considered an essential part of the entire Internet industry. Due to some delay in the development and spread of the Internet in China, the local online gaming industry also suffered at first. In the first phase of the regulators attention was on increasing the size of the sector, which had been set as the step before the regulation of the sector. According to this orientation, the policies implemented were aimed at a rapid growth of the sector in the absence of real regulation. However, as the sector took shape, a regulatory system with more specific regulations was being formed, together with the establishment of regulatory agencies. The rapid evolution of technology in online games has directly expanded the scope and increased the depth of supervision and administration of online games⁵⁸. However, it was not easy for Chinese

⁵⁵ Chew, Matthew M. *A Critical Cultural History of Online Games in China, 1995–2015*. "Games and Culture 14, n. 3" (maggio 2019): 195–215. <https://doi.org/10.1177/1555412016661457>

⁵⁶ see also Chew, Matthew M. "A Critical Cultural History of Online Games in China, 1995–2015". *Games and Culture* 14, n. 3 (maggio 2019): 195–215. <https://doi.org/10.1177/1555412016661457>

⁵⁷ Cheung, Carlos K. F., e Anthony Fung. *Globalizing the Chinese Online Game Industry: From Incubation and Hybridization to Structural Expansion in the Past Two Decades*. In "Global Game Industries and Cultural Policy", curated by Anthony Fung, 71–90. Palgrave Global Media Policy and Business. Cham: Springer International Publishing, 2016. Pdf

⁵⁸ Ernkvist, Mirko, e Patrik Ström. *Enmeshed in Games with the Government: Governmental Policies and the Development of the Chinese Online Game Industry*. "Games and Culture 3, n. 1" (January 2008): 98–126.

developers to face international competition at least in the first phase of market development. In fact, foreign manufacturers had important competitive advantages linked above all to the technology of the game systems and the engine. In fact, Chinese developers were relatively weaker than foreign companies in terms of 3D rendering. At that time there were two very popular online game engines on the market, namely BigWorld developed by the Australian company BigWorld, and the Gamebryo Engine, developed by Emergent. In particular the BigWorld engine was able to render 3D effects fluid, making the Australian company the market leader with the release of World of Warcraft. As a result, several Chinese developer companies have started adopting this engine. Other Chinese companies such as Tencent and Shengda⁵⁹ instead adopted the Gamebryo engine. At that stage the Chinese government proved to be proactive by encouraging, also through funding, the development of a Chinese game engine, but this initiative had many problems as local engines showed frequent problems with hardware compatibility⁶⁰. But the technological aspect was not the only problem for Chinese companies that wanted to enter the international online gaming market. In fact, there was also a cultural problem. It was not enough simply to translate the language, but to be able to accept a completely different culture of games that were born in China. For this reason, the Chinese producers had to make a great effort of "hybridization" not only technological, but, even before, cultural.

Chinese policies, which inspire regulatory production, cover several aspects, in particular points related to the industrial policy, the game operation, the management of the premises, the network information and security and, in general terms, the Software products.

Already during the 90s of the twentieth century, China with the ninth five-year plan had defined computerization as a long-term national strategic goal for economic and social development. The country's computerization policies also had a significant impact on the development of the online games industry. In that historical phase, China realized that in order to compete globally in a sector that was rapidly developing, it was necessary on the one hand to develop a yet undefined regulatory framework and on the other to build an adequate technological infrastructure. For this reason, the five-year plan covered several points such as: the exploration and use of information resources; the construction of the computer network; the application of information technology; the definition of information standards; the computerization of technology education; the development of the information industry and online games.

<https://doi.org/10.1177/1555412007309527>.

⁵⁹ Chew, Matthew M. *A Critical Cultural History of Online Games in China, 1995–2015*. "Games and Culture 14, n. 3" (May 2019): 195–215. <https://doi.org/10.1177/1555412016661457>

⁶⁰ Fung, *Global Game Industries and Cultural Policy*, 2013

Indeed, the government believed that the development of the online gaming industry was closely related to that of the country's efforts in the computerization process.

The measures are numerous and only the most significant (and recent) ones will be selected here. Regarding industrial policies⁶¹:

In January 2011, the State Council issued a policy notice to further encourage the development of the software industry and the integrated circuit industry. The communication provides details on a number of tax policies. Among the most incisive was the one that provided that, once certified, newly established companies in China for the design of integrated circuits and companies qualified for software could benefit from the preferential tax policy that exempts companies from tax on corporate income for 2 years the tax of the first year in which the income is generated and reduces the tax account in half for the next 3 years. Furthermore, the communication reported that the state would continue to have a favorable VAT policy for software-related businesses. The document also indicated a direct investment policy by the state. In particular, the state would financially support software projects and integrated circuits and investments in software companies and integrated circuit companies to supplement industrial resources. The notice also stated that the state would allow the country's policy-oriented institutions to provide special support for integrated circuits and software projects that meet the criteria for "National Key Technology Projects".

Subsequently, in May 2012, on the 12th Five Year Plan, the Ministry of Industry and Information Technology stressed that the internet, as one of humanity's greatest inventions in the 20th century, was gradually becoming a strategic infrastructure of the era. Information for the development of human society. It was also indicated that the Chinese Internet industry had now become an important part of the world after many years of development. It highlighted how by now the Internet had largely covered all sectors of the economy and society of the country and has become a new platform that has the power of change for production, construction, trade, scientific and technological innovation, public service, cultural communication and entertainment.

In August 2013, the Council of State once again returned to the issue of the development of innovative technologies by proposing a suggestion on the expansion of domestic demand and the consumption of information products and services. For the first time, therefore, some policy points are highlighted that specifically concern the internal demand for these products. In particular, the document highlights a series of conditions without which it would not be possible to computerize the country. Among these elements there is in the first place the need to favor an expansion of consumer demand, and to diversify the content of information consumption. Among other things, again to encourage the growth of the sector, the document highlights how it is necessary to vigorously develop digital publishing, new interactive media, mobile media

⁶¹China's Regulatory Environment for Games, August 2015. http://www.neogames.fi/wp-content/uploads/2015/11/Chinas-Regulatory-Environment-for-Games-2015_181120151.pdf

and other emerging cultural industries and promote the consumption of animation, games, digital music, networked art and other digital products.

In April 2012, the Ministry of Industry and Information published the twelfth five-year technology plan for the software and information services industry. This is a very ambitious plan that contains a series of strategic indications. Among other things, the plan highlights that the eleventh five-year plan has seen the rapid development of software and information services in China, with an annual growth rate of 28.3%, accompanied by the continuous expansion of the scale of the sector. The plan also proposes some projections on the next development of the sector. In particular, it is stated that by 2015, the revenues of the software and information services industries will exceed 4 trillion RMB, representing 25% of the entire information sector, a growth of 24.5% year on year, with a software export volume of \$ 60 billion. Information services revenue will exceed RMB 2.5 trillion, a 60% share of software and information services revenue.

In March 2014, the State Council proposed suggestions for the promotion of cultural and creative design and related industrial cohesion, the suggestions propose an acceleration in the development of the digital industry to explore the quality resources of cultural products and to push the optimization and updating of the animation and games industries, branding the national products.

2.2. Current Laws 2019-Present.

In recent years, the supervisory and control structure of the sector has also greatly developed in China, becoming more and more complex a testimony of the growing interest of the authorities in this sector. Today, mobile games, especially the mobile online games industry, are one of the sub-sectors of Internet information services, subject to the supervision and administration of the relevant government departments. Supervisory bodies include the National Copyright Administration (NCA), the State Administration of Press, Publication, Radio, Film and Television (SARFT), (formerly the General Administration of Press and Publication), as well as the Ministry of Culture and other departments. The state departments we have listed, in their respective areas of competence, cover specific aspects of Internet information services, exercise their respective administration and supervision over the Internet sector.

The National Copyright Administration is probably the most important Chinese public authority for this strategic sector of the country's economy. It is an agency of the State Council, responsible for the administration of copyright in China. The NCA is China's highest administrative copyright department, also the highest administrative copyright law enforcement agency for implementing copyright laws and regulations, formulating rules, regulations, and important administrative measures. Among its tasks we find the activity of copyright

registration. It also deals with certifying the copyright of foreign works through the archiving of contracts relating to the copyright of foreign works and allows their use. It also deals with trade supervision and promotes the overall development of the country in the field of copyright. Therefore, the game copyright regulation represents the pillar of government oversight of the market.

However, the Ministry of Culture also plays an important role in this area as China's highest department for cultural administration and as a functional department under the State Council. In particular, the Ministry of Culture is responsible for formulating Chinese policies for culture and arts, drafting laws and regulations for the sector. It is also responsible for approving literature and art products prior to online dissemination. It manages the licenses of the places that the services related to online games, internet points and supervision services relating to online games, including approval of online publication. The ministry makes plans for the development of the animation. The ministry makes plans for the development of the animation and games industry, and the games industry, and implements the plans. Coordinates the industrial development of animation and games. It coordinates the industrial development of animation and games.

Companies in China currently do not need to apply for any approval for game development business. However, managing online games requires:

- a) The license for telecommunications and information services granted by the administrative authority for the management of communications.
- b) The Online Cultural Affairs License issued by the administrative authority for cultural affairs.
- c) The online publication permit issued by the administrative authority for printing and publication.

Games must obtain the computer software copyright registration certificate issued by the National Copyright Administration, before gaining approval:

- 1) by the news and publication authority.
- 2) by the cultural affairs authority when starting the online business.

2.3. Approval Process

With respect to the video game market and online games in general, as we have seen, the Chinese government has had an ambivalent attitude for a long time. On the one hand, industrial policies wanted to encourage the digitization of the country, including in the entertainment sector, on the other hand, they wanted to maintain a strict form of censorship. In 2015, faced with a rapidly expanding domestic market, there was a first turning point. The ban on the production and sale of video games for foreign companies in force since 2001 and initially

introduced also for the fear that the habit of playing on multimedia platforms could cause physical and mental damage to the young people who used them, was gradually removed. This removal was therefore progressive as it was anticipated by a trial period, starting from January 2014, in the Shanghai Free Trade Zone, where for the first time the sale of video games was granted only to foreign companies that had stipulated a joint venture with a Chinese company. The official confirmation followed on July 31st with the final approval of the Chinese Minister of Culture, who announced the liberalization policy for the video game trade, while complying with a series of requirements and procedures that foreign companies will have to respect if they intend to take over the market. In addition to the removal of the ban on production and sales, numerous other factors favored the strong growth of the market in those years. For example, the greater diffusion of smartphones and the 4G network which allowed the use of more sophisticated video games, but also the significant increase of the adult population who devotes part of their income to entertainment in video games. In fact, the number of users in 2014⁶² reached 446 million⁶³.

When Microsoft and Sony began sales activities in the Shanghai Free Trade Zone in 2014, corporate reports disappointed expectations and the companies were unable to reach the desired market share by selling their flagship products (Xbox One and Playstation in Chinese version). Microsoft had in fact declared the sale of 100,000 Xbox consoles on the first day of launch in Shanghai, at a price of RMB 3,699 (about € 530), but later sales have been decreasing. The relative failure of foreign companies is mainly due to a pricing policy that is more focused on margins than on potential consumers. In fact, according to market research by CLSA, a Hong Kong brokerage agency, 70 percent of Chinese gamers had an income of less than RMB 4,000 per month and could not afford that expense⁶⁴. In addition, in the Chinese market the greatest successes have been achieved by games that can be downloaded free online made to accumulate revenues through premium add-on packages that allows one to progress more quickly in completing the various stages of the game. To demonstrate this trend, examples are games such as Assault Fire, League of Legends and the online games platform managed by Tencent Holding Ltd., which through its WeChat portal boasted a very large user base, which allowed it to secure a leading role in the industry with a market share of 23 percent. The Internet was therefore the

⁶² Ernkvist M, Ström P. *Enmeshed in Games with the Government: Governmental Policies and the Development of the Chinese Online Game Industry*. "Games and Culture". 2008;3(1):98-126. doi:10.1177/1555412007309527

⁶³Snyder, Matt *China's Digital Game Sector, U.S.-China Economic and Security Review Commission staff research report*, 2018

⁶⁴Liu, Chun. (2013). *Raising the Golden Goose: A Retrospective Analysis of the State's Role in China's Online Game Industry*. "Media International Australia". 149. 41-54. 10.1177/1329878X1314900106.

main sales channel for video games, with an 81 percent share of the equivalent, confirming the preference of the Chinese consumer for video games that can be used on mobile devices⁶⁵.

However, even in recent years of market liberalization, the Chinese government's attitude has not been univocal. In fact, with the growth of the internal market there was also a worrying growth in gambling addiction, particularly among the youngest. In 2019, the government published new guidelines governing the use of video games by minors. Minors could not play online video games from 10pm to 8am; on weekdays, they could play a maximum of 90 minutes and on weekends and holidays a maximum of three hours per day. Those between the ages of 8 and 16 could have spent up to 200 yuan (about 26 euros) per month on video games, those between 16 and 18 up to 400 yuan (about 51 euros) per month. Additionally, users were required to register for video games with their real name and provide other personal data, such as a WeChat account or phone number. The government has also recommended that companies design non-addictive video games. In this way, the Chinese government was trying to contain the addiction of young people to video games (*Diànzǐ yóuxì shàngyǐn* 电子游戏上瘾), which it had considered a worrying problem for years. In fact, in 2018 it had already published guidelines that limited the number of online games and the time in which to play and developed a restrictive system based on age⁶⁶.

On the other hand, the concern about the phenomenon of addiction to video games, especially online ones, did not concern only China. Video game addiction had already been listed as a mental disorder in the ICD (International Classification of Diseases) classification of the World Health Organization in 2018. The debate on this is still very heated and the various nations are orienting themselves in different ways. The American Psychiatry Association's most recent manual on mental disorders does not officially recognize video game addiction as a mental disorder but reserves the right to carry out further studies regarding internet gaming. At the same time, some countries have identified excessive gambling as a major problem by setting up private clinics to treat this condition.

In any case, to publish a video game in China, it is necessary, as in any other place in the world, to obtain an ISBN code.

ISBN is an acronym that means International Standard Book Number, which is an international standard number for books (but it also applies to video games). The international ISBN agency that issues these codes in fact defines the ISBN as a number that uniquely and permanently identifies an international level of a title or edition of a title by a particular publisher.

⁶⁵ 14 anni dopo: la Cina riapre il commercio dei videogiochi, China Briefing, <https://www.china-briefing.com/news/14-anni-dopo-la-cina-riapre-il-commercio-dei-videogiochi/>

⁶⁶ *People's Republic Of China Legal Update: The Notice On The Prevention Of Online Gaming Addiction In Juveniles* (Published October 25, 2019, Effective November 1, 2019) Leon Y. Xiao, *Gaming Law Review* 2020 24:1, 51-53

It is useful to clarify 3 points of this definition: "internationally". The first point to underline is that the ISBN code has international value. It applies to all works and identifies them internationally. This means that if one buys an ISBN code for one's creation, in any part of the world through that code one can trace the title back and vice versa. "a title or an edition of a title". The second point to emphasize is that each ISBN is associated with a title or edition of a title. This means that if one publishes one's work today, one will combine this edition with an ISBN code, but if in a few years one wants to publish a second edition, then one will have to buy a new and different ISBN code so that the user can use the codes. Know exactly which edition one has purchased. The assignment of a new ISBN code for each new edition takes place for all titles that are republished, with the exception of simple reprints. "uniquely". Consequence of the previous point is precisely the uniqueness of the ISBN code. Each title, in its specific edition, published exactly by that publisher in that year, has an ISBN code so it means that a code refers to that work, published in that year, by that publisher, in that format⁶⁷.

Obtaining an ISBN for a video game in China is a real administrative process that involves a whole series of necessary steps. First, the developer has to register as an online game publisher. Secondly, the game must have copyright protection according to the rules of the national copyright administration in China. In addition, the gaming operator's agency must have a commercial license for telecommunication and information services (ICP certificate). Regarding the game content, it must comply with the industry laws and regulations issued by the NPPA regarding "Publisher Management Regulations", "Internet Information Services Management Measures", "Internet Management Regulations" online publishing services "and other laws and regulations. Again, with reference to the content of the game, it must also comply with state regulations on the protection of children and game activities; in fact, we have seen how the government is very concerned about the problems relating to the addiction of young people to online games. Finally, the game must pass the NPPA qualification process and be accepted to receive an ISBN⁶⁸.

The first step, namely the one necessary to obtain a commercial license is probably the most complex and this is also the reason why even today most foreign companies use a Chinese publisher that is already introduced on the market and has all the necessary authorizations. . To the general complexity of the procedure must be added the fact that the laws also differ from province to province. This fact further complicates the regulatory framework. Below we illustrate how the trial in Shenzhen could take place, which still today represents the largest video game district. In this district there are some elements that must be completed with the

⁶⁷ *What does China's tightened ISBN policy mean for developers entering the market?* Leticia Ye, April 14th, 2020. <https://www.pocketgamer.biz/asia/comment-and-opinion/73093/what-does-chinas-tightened-isbn-policy-mean-for-developers-entering-the-market/>

⁶⁸ SAPPRFT. 2016. "Policy and Regulation." State Administration of Press, Radio, Film and Television of the People's Republic of China website. Accessed July 27, 2019. http://www.sapprft.gov.cn/sapprft/govpublic/6679_2.shtml.

support of a local company. First, the company name must include the words "Technology Co., Ltd." ⁶⁹

The applicant must then submit a copy of the Chinese identity card of each of the legal shareholders. The process also requires a business address to be registered. It is also necessary to confirm some elements:

The share capital, legal persons, shareholders. The legal representative must be in possession of Bank U-Shield (a digital signature or certified device that verifies one's identity), which is required to pay the commercial license fees. To participate in the market, a capital requirement is also required, which currently is commensurate with assets worth at least RMB 1 million.

Companies able to demonstrate to the local government that they meet the requirements will receive a series of documents from the local authority that will allow them to start business in the district. These are an original commercial license; a copy of the business license; An Enterprise Unified Social Credit Code certificate (which is an 18-digit code specific to that company); the Articles of Association; Company seals and seal retention card⁷⁰.

Local government may require additional licenses for game distribution, depending on the company's location. For example, a "Network Cultural Business License" is required in the province of Shenzhen for the distribution of articles on the Internet. This is done through the regional department with the approval of the Ministry of Culture or denial with an explanation in 20 working days. The license is valid for three years.

Another necessary step, which will be further investigated, is that relating to obtaining the copyright. It is assumed that a foreign producer who wants to publish in China has its own copyright; therefore, the Chinese company must be allowed to use its copyright in the national territory. In order to do this, all foreign copyright holders must receive the copyright from the National Copyright Administration (NCAC).

To obtain this copyright from the Chinese authority, the software must pass the Copyright Protection Center of China (CPCC) examination received by the NCAC. The request can be submitted by post or by physically going to the CPCC offices⁷¹.

Applicants must submit the following elements: The application form, which is available at the CPCC headquarters in Beijing or on the website; Copy of identification documents for the applicant. A photocopied and translated passport of the applicant and the original legalized and notarized version of the incorporation document which has the company name, incorporation

⁶⁹ *How To Get Your Business License In China*, <https://qpsoftware.net/blog/business-license-china>

⁷⁰ *Rules of Shenzhen Special Economic Zone on Commercial Registration*, <http://govt.chinadaily.com.cn/s/201904/18/WS5cb5739d498e079e6801daa4/rules-of-shenzhen-special-economic-zone-on-commercial-registration.html>

⁷¹ *Lehman, Lee & Xu, How to register the copyright of a computer software?*, <http://www.lehmanlaw.com/resource-centre/faqs/intellectual-property/copyright/how-to-register-the-copyright-of-a-computer-software.html>

data, location, certificate number and validity; Copy of the joint development contract; Power of attorney in case an agent is used; An excerpt from the software. At least 30 pages of the source program. If the program is less than 60 pages all of them must be sent. This applies to both the server and the client code.

Once the documents are received and the fee of 200RMB per game and 120RMB for 100 pages of code is paid, the copyright, if accepted, is released in 30 business days.

If one wants to distribute the game online, one will need to have an ICP certificate that allows one to become an internet service provider in China. For foreign companies that want to have an e-commerce or website hosted on a Chinese hosting, it is necessary to acquire an ICP License. Without this license, it is not possible to obtain a hosting and CDN service in China, and the domain may be censored for non-compliance with local regulations. ICP stands for Internet Content Provider. An ICP license is a registration number issued by the Ministry of Industry and Information Technology (MIIT) that allows a website based in China to legally operate in the country.

Having an ICP license is a mandatory step to host a website on a server in China and use a CDN service. Alternatively, one can use a Hong Kong based hosting. This option avoids having to request the ICP license, but it must be considered that the site may sometimes not be accessible from China. Therefore, any company that wishes to operate in China and obtain appreciable results in the country will not be able to avoid using a Chinese hosting and consequently apply for a license. The ICP license is mandatory for all companies running an e-commerce site in China. Sites for purely informational purposes also require this license. In fact, all sites hosted on a server in China must apply for and receive the ICP license before the site goes online. There are two types of ICP licenses: ICP Filing (known as *bèi'àn* 备案), which is a license for non-commercial websites that provide information to people who use the website.

Sites operating under this license are accessible in China, but it is not possible to sell directly online with this type of ICP license. ICP filing is the first level of license that all sites must obtain as a first step.

After obtaining this license, commercial sites such as e-commerce must proceed with applying for the ICP Commercial License. An ICP commercial website license allows one to run an e-commerce site hosted or CDN in China. This license is required if one plans to generate income from any of the following businesses in China:

- Online sales
- Advertising
- Businesses that require payments through the platform

To apply for an ICP Commercial License, the company must first have obtained ICP Filing.

Not all individuals or businesses can obtain an ICP license. Some entities and individuals are not technically eligible for an ICP license, while others may have difficulty obtaining a license even if they are technically eligible. Chinese citizens or companies find it much easier to be

approved than international applicants do. Individuals and entities who may apply for an ICP license include:

- Chinese citizens using a state-issued ID. They are eligible to apply for an individual ICP.
- Foreign passport holders who use their passport as an identity document. They must be physically present in the country for a sufficient period to meet the basic registration requirements.
- Chinese-owned enterprises with a Chinese business license can apply for an ICP business license.
- Wholly foreign-owned enterprises (WFOE or WFOE) with a Chinese business license can apply for an ICP business license.
- Companies that have a Representative Office in China can apply for a license.
- Joint venture companies where more than 50% of the company is owned by a Chinese company can apply for an ICP business license.
- Other entities or individuals may be able to obtain an ICP license, but they may face additional obstacles and are less likely to be approved for their license.

2.4. Main Laws

2.4.1. Copyright protection details

In regarding to this paper, the piece of legislation that we are considering for our analysis of the Ip protection laws in the videogames industry in china is the Copyright Law (*Zhōnghuá rénmín gònghéguó zhùzuòquán fǎ* 中华人民共和国著作权法). Which was adopted on Sept. 7, 1990 and made effective on June 1, 1991; It was later amended and made effective on the same day in Oct. 27, 2001; only to finally amended in Feb. 26, 2010, effective Apr. 1, 2010.

At the moment of writing of this paper a new amendment to the copyright law has being discussed and approved, it happened on Nov. 11, 2020, and will only be effective starting June 1, 2021. Because this new content has still to come into effect it will not be taken into account with regards to the example portrayed in the following section of the paper, but it will be a part of the final analysis with regards to the trends and direction taken by Chinese lawmakers on the subject.

Copyright is an automatic right that arises at the time the work is created. This principle is valid in all 164 member countries of the Berne Convention for the protection of literary and artistic works, among these are all the countries of the European Union and China. In China, it is possible to voluntarily register one's own copyright. Although the law from the moment of its

creation automatically covers the work, voluntary registration provides proof of ownership of the same, which ensures a saving of time and money in the event of a future dispute⁷². The registration of copyright is strongly recommended in relation to those rights that are of particular importance for the survival of the company itself (as in the case of websites, software, catalogs, customer databases, etc.). Copyright is, in effect, a set of rights that the author or creator of an original work enjoys, or that his successors or licensees transfer to others.

Traditional types of creative works such as books, music, recordings, plays, films, paintings, sculptures, photographs, etc., are protected by copyright in China. Other works such as choreography, acrobatics, calligraphy, *qǔyì* (a traditional form of Chinese theater - 曲艺), models, databases and compilations as content selection and arrangement, are also copyrighted in China⁷³. The principle behind the registrability of a copyright is that the work is original and reproducible. Unlike in Europe, where patents protect software, in China they are expressly covered by copyright⁷⁴. Industrial and graphic designs applied art and architectural buildings are also covered by copyright. As in Europe, in China copyright arises at the very moment in which the work is created, even in the very numerous cases in which the work is created outside the country. Copyright arises on the creation date of the work⁷⁵. For example, if one writes a book in Germany, one also enjoys copyright protection in China at the same time. It is not necessary to register a copyright for it to be effective and enforceable in China. Nevertheless, it is much easier to assert one's right if the copyright is registered. The copyright on a work may belong to the creator of the same or to his employer, as regulated in advance in the contract signed by the parties. The protected creative acts include those intellectual activities that result directly in the creation of the work. Acts of support, such as the provision of services and the provision of materials and financial resources are not considered creative acts. An individual who only provides managerial support to the creation of the work is therefore not considered the creator of the same. In the event that it has not been otherwise governed by the contract, the person or company whose name appears on the work is the author of itself. If one hires a third party to create a work on one's own, the same is the copyright owner unless the contract provides otherwise⁷⁶. For example, if the Chinese subsidiary of a European company develops

⁷² Ajani G. -Luther J. *Modelli giuridici europei nella Cina contemporanea*, 2009, Napoli, Jovene Editore

⁷³ Awokuse T.-HONG YIN, *Intellectual property rights protection and the surge in FDI in China*, in "Journal of Comparative Economics 38" (2010) 217-224

⁷⁴ Timoteo M, *La difesa di marchi e brevetti in Cina. Percorsi normativi in un sistema in transizione*, Giappichelli, 2014

⁷⁵ Ibidem

⁷⁶ L. Formichella, E. Toti, *Leggi tradotte della Repubblica popolare cinese*. Ediz. italiana e cinese. Vol. 7: *Legge sui brevetti, legge sui marchi, normativa in materia di marchio notorio*, Giappichelli, 2014

software for its parent company, the subsidiary will be the owner of the software. This means that the parent company will not have the ability to reproduce, distribute, review or otherwise use the work in the absence of a license issued by the subsidiary. It is therefore crucial to clearly define copyright ownership in any contract. If not already present, it would also be advisable to add a copyright ownership clause to one's company's standard contract, in order to avoid potential disputes in the future.

If an employee creates a work during working hours using mostly company resources, the worker has the right to have the work attributed, but the company owns all copyrights, provided that the contract of use does not stipulate otherwise.

In the event that the contract clearly states that the employee enjoys ownership of the copyrights on all the works created by him in the course of his employment, the company enjoys some preferential rights. Among which that of preventing the employee from licensing the work to third parties for two years without the consent of the employer, or, if such consent is granted, from receiving a certain percentage of the royalties.

Examples and interpretations of the Chinese Copyright Law with regards to the gaming industry.

Now, as fast as the Chinese development has been in the last two decades, basically in almost every sector comprised the legal one, this next section goes to show how the PRC's legal system may still partially suffer from decades of isolation. Especially with regard to the issues of information and communication technologies and their relationship with copyrighted works. Indeed, whenever the legislation lags behind the technical advancement, it is a common strategy in the Chinese legal environment to fix any new problems through judicial activism rather than legislation amendments.

For this reason, the Author has chosen the following examples to show what appears to be the IP legislation trend in relation to the Chinese online gaming industry.

In the first example, the case of Douyu v. Yaoyu (2015), the online game concerned is a Multiplayer Online Battle Arena Game called "DOTA2" which was sponsored as an E-sports competition⁷⁷. Both this companies are Online game live streaming platforms, which have most of their revenues come from online game User Generated Content (UGC). The plaintiff "Yaoyu" is the sole licensee to live stream the above-mentioned E-sports competition. But it found out that the defendant "Douyu" live streamed the whole event without license. "Yaoyu" brought this case to Shanghai Pudong New District People's Court by claiming "Douyu"'s behavior as copyright infringement and unfair competition. The first instance court denied online game live streaming to be the right of information network dissemination, or any statutory right prescribed

⁷⁷ LIU Zijia, FENG Bo, e FENG Junwen. *A Study on the Copyright Law of Live Game Streaming*, 18 aprile 2020.

in China Copyright Law. The court also denied the images formed during the E-sports competition to be work (based on article 3, paragraph 6)⁷⁸. Therefore, the plaintiff's claim of copyright infringement was not supported by the court. But the court confirmed that the defendant's unauthorized streaming violated commercial morality and the principle of good faith, and thus constituted unfair competition. The defendant "Douyu" is unsatisfied with the first instance judgment and then filed appeal to Shanghai IP Court. But Shanghai IP Court avoided of making comments on if the online game images constitute work, or what type of right live streaming is, but went straight to rule that the unauthorized live stream constitutes unfair competition, and thus upheld the decision of the first instance. This case was concluded in 2016⁷⁹.

The second example focuses on the case of NetEase v. Huaduo, the online game concerned is a Role Play Game named "*Mèng huàn xī yóu*" (梦幻西游) which was developed and operated for more than 10 years by the plaintiff "NetEase". Without obtaining license from the plaintiff NetEase, the defendant "Huaduo", owner of the major webcasting platform YY.com, live streamed the game in 2012. in 2014 The plaintiff NetEase thus brought this case to Guangzhou IP Court and claimed defendant's behavior as copyright infringement and unfair competition. Guangzhou IP Court held that the continuous dynamic images formed during online game operation constituted work created in a way similar to cinematography (*Lèi diàn zuò pǐn* 类电作品). Also, the court held that defendant infringed "other rights which shall be enjoyed by the copyright owners" as prescribed in Article 9.1 (17) in China Copyright Law⁸⁰. Based on this determination, the court supported the claim of the plaintiff and concluded that the unauthorized live streaming of the game by the defendant constituted copyright infringement, and thus the case was closed in 2017⁸¹.

⁷⁸ Article 3 of the Copyright Law (2010): "Works" mentioned in this Law shall include works of literature, art, natural science, social science, engineering technology and the like made in the following forms: [...]

(6)cinematographic works and works created in a way similar to cinematography

⁷⁹ Ibidem

⁸⁰ Article 9 "Copyright owners" shall include: (1) authors; [...] (17) other rights which shall be enjoyed by the copyright owners.

⁸¹ Zhang, Hanying. *Exploration of Tortious on Live Streaming of Video Games*. In "Proceedings of the 5th International Conference on Economics, Management, Law and Education" (EMLE 2019). Voronezh, Russia: Atlantis Press, 2019. <https://doi.org/10.2991/aebmr.k.191225.186>.

A few considerations.

What is interesting to notice is the change of interpretation which occurred between the two rulings: in the first case we see the accusation of copyright infringement being discarded because the content of the live stream was not recognized as “work” under the interpretation of the copyright law, Article 3, paragraph 6. While in the second case the opposite has happened. Some argue the reason for such difference is because the online games concerned in both cases are different. In the former case, the online game “DOTA” is a Multiplayer Online Battle Arena Game (MOBA) which is organized as E-sport competition, while the online game “Meng Huan Xi You” is a Role Play Game (RPG) as a non-sport game. In judicial practice, E-sport competition (DOTA) is usually deemed as sport event which does not constitute work of any type and shall not be ruled by Copyright Law (while there is likelihood that the recorded video of sports event may constitute video recordings as neighboring work)⁸².

Regardless, the Author believes the above-mentioned distinction to be imprecise at best, the reason being that including online games in the category of “works analogous to cinematography” is essentially misguided. Even the recent amendment of the copyright law which passed on Nov. 11, 2020 and will begin to be enforced on June 1, 2021, is not nearly enough to recover the gap between the legislation and the current technological advancements. Indeed, in the above-mentioned amendment one of the key innovations was the change from the old definition of cinematic works to “audio visual works” (Article 3.6, Article 10.1.7, Article 15, Article 21.3, Article 46 and Article 48.8) and refines to the definition of “the right of broadcasting” from “the right to broadcast or communicate a work by wireless means” to “the right to broadcast or communicate a work through wired or wireless means” (Article 10.1.11).⁸³

The Author has reason to believe that both versions of the law regarding the definition of online games are lacking, with the issue being that the central point of this new media is *interactivity*. The greatest distinction between games and all other kind of media is the requirement in some way or another to actively participate in the work of art itself. Quite literally, without a player or user, there is no game. It is the active experience of participation and the different styles in which its elaborated that constitute the true value of this kind of products, meaning that by taking out of the equation the interactivity the inherent value of the game is already destroyed,

⁸² Chunling Xiang, Trademark Attorney, «IPLINK ASIA» *Copyright Issues on Online Game Live Streaming*.
<http://www.iplink-asia.com/articles/52>.

⁸³ AWA Point. *Upcoming Amendments to China's Copyright Law*, 24 giugno 2020.
<https://awapoint.com/upcoming-amendments-to-chinas-copyright-law/>.

and the transformative work⁸⁴ process already complete. Therefore, to equate an active media such as games to a passive one like cinematography is evidence of the continuous struggle of the Chinese lawmakers in bridging the legal gap between the 2 different concepts. Which is painfully evident in the fact that regardless of the huge importance of the gaming industry for China, there still lacks a proper, independent definition for videogames in the Copyright Law itself.

2.4.2. Anti-Monopoly Law

During the 29th Meeting of the Standing Committee of the Tenth National People's Congress on August 30, 2007, a new revision of the Anti-monopoly Law (*Zhōnghuá rénmin Gònghéguó fǎn lǒngduàn fǎ* 中华人民共和国反垄断法) was approved, which came into force on August 1, 2008.

The law mainly prohibits three kinds of monopoly acts: reaching monopolizing agreements; *abusing a dominant market position*; and concentration of business operations that which may exclude or restrict competition.

Conduct subject to an anti-monopoly inspection includes mergers and acquisitions, JVs, as well as licensing and technology transfer. All core practices of the gaming industry.

On the matter of abusing one's dominant market position, it is interesting to quote once more the case of Huaduo V. Netease. When Netease (the plaintiff) decided to sue Huaduo (the defendant), for copyright infringement, after the first ruling in favor of the plaintiff in 2017, the once-defendant answered with its own, separate accusation, centered on the idea that the publisher Netease was abusing its dominant market position to reach or maintain a monopolistic status⁸⁵.

This, would have been in open violation of article 17 paragraph 5 of the Anti-monopoly law, which clearly states that:

“Article 17: Undertakings holding dominant market positions are prohibited from doing the following by abusing their dominant market positions (5) without justifiable reasons, conducting tie-in sale of commodities or adding other unreasonable trading conditions to transactions”.

⁸⁴ He, Tianxiang. *Transplanting fair use in china? history, impediments and the future*, 2020 (ottobre 2020): 52.

⁸⁵ Ming, Yang. *Anti-Monopoly Regulation On Game Developers In Online Game Live Streaming Industry*, 2020, 20.

But what exactly constitutes a “dominant market position”? In order to fully understand the reasoning behind this case we must take a few steps back and analyze the situation of Netease company. According to the same article 17 we can see that:

“For the purposes of this Law, *dominant market position* means a market position held by undertakings that are capable of controlling the prices or quantities of commodities or other transaction terms in a *relevant market* or preventing or exerting an influence on the access of other undertakings to the market.”

Because the dominant market position definition is again defined by the “relevant market” term, means that the first step of the platform-related anti-monopoly regulatory analysis is to define what relevant market means. While It is worth to mention that the theoretical field has been constantly rethinking the analytical logic of anti-monopoly regulation in recent years, the accuracy of the definition will directly affect the validity and legal significance of the subsequent analysis, and therefore is of the uttermost importance.

Before the analysis, the relation between several markets needs to be clarified. There are several markets involved in the supply chain of live streaming, from the game product market to the game service market and the online games live-streaming market. They are in the form of vertical and upstream-downstream market relations. If game products have a strong lock-in effect on consumers, producers can then have a decisive impact on consumers’ decisions in the secondary market (service market)⁸⁶.

Furthermore, this dominant market position can be passed on further to the secondary online games live-streaming market, that is, producers have the power to limit users’ choice from choosing only the corresponding live streaming service (i.e. those have obtained the consent from the producer). Thus, it is self-evident that the analysis of the game service market (Netease’s sector), which stays in the middle of the supply chain, is a critical one⁸⁷.

So, in order to start the analysis, we are going to need the definition of “relevant market” which can be formulated as: “the product scope or geographic scope within which business operators compete against each other during a certain period of time for specific products or services (collectively referred to as ‘products’).⁸⁸”

Now that we have a precise definition, we can be looking at article 3 of the *Guidelines on Definition of Relevant Markets of the Anti-monopoly Committee of the State Council*, which states that in the practice of anti-monopoly law enforcement, the attributes of said relevant market mainly depends on the degree of substitutability of commodities. Which in turn includes two aspects: demand substitutability and supply substitutability⁸⁹.

⁸⁶ Ibidem

⁸⁷ Ibidem

⁸⁸ Article 12 of the Anti-Monopoly law

⁸⁹ LLP, Hartson. *China/Antitrust Update*, 15 luglio 2009, 10.

The *Demand substitutability* helps determining the substitutability degree of different commodities from the perspective of the demander, in accordance with the demand for the functional use of commodities, the recognition of quality, the acceptance of price and the difficulty of acquisition, etc.

While *Supply substitutability* is used in determining the substitutability degree of different commodities from the perspective of the operator, in accordance with its facilities investment, risk, time to enter the target market, etc.⁹⁰

Starting with the demand substitutability analysis, we can observe that the game service market includes two phenomena: Firstly, if most of the players of an online game are old players, it can be argued that the online game has a strong lock-in effect, which results in high switching cost of the follow-up game service market⁹¹.

The lock-in effect of online games mainly comes from three aspects: the good positive feedback incentive mechanism built in the game, the sunk cost to engage in the game, and addiction to the game itself. Secondly, online games have strong network externalities, which results in high switching costs in the follow-up game service market. When people's evaluation of the utility of a commodity depends on the total number of people using the commodity, the commodity has network externalities⁹².

Therefore, by virtue of the different natures of network externalities, they can be further divided into direct network externalities and indirect network externalities. Direct network externalities refer to the effect of the number of people using a product over the same category of consumers. For example, the utility of chat software depends directly on the total number of people using the same software. At this point, chat software shows direct network externalities.

Indirect network externality refers to that, with the increase of the number of users of a product, more complimentary products become available in the market, which indirectly increases the utility of the product for the benefit of the users. For example, the more people using hardware, the more vendors will provide supporting software for the hardware, which will give hardware users more choices thereby improving their experience. Obviously, online games with a good reputation and a large group of players have both strong direct and indirect network externalities⁹³.

From these two aspects, with the complex system construction, the more popular the online games are, the stronger the lock-in effect and network externalities they will produce. This

⁹⁰ *ibidem*

⁹¹ *Ibidem*

⁹² Kim, Jun Youn, e Song Hee Kang. “*Windows of Opportunity, Capability and Catch-Up: The Chinese Game Industry*”. In *Journal of Contemporary Asia* 51, n. 1 (1 gennaio 2021): 132–56.

<https://doi.org/10.1080/00472336.2019.1656761>.

⁹³ *ibidem*

determines that the switching cost of the follow-up service market of such online games is high, while the demand substitutability is weak.

For those online games with a large group of players (especially loyal players), the supply substitutability of game services is also weak, which is mainly determined by the following reasons: the first is the high cost of research and development (R&D). In economics, the amount of fixed cost input is an important factor in identifying market barriers. ‘When the fixed cost of manufacturing a commodity is high, the commodity will show the characteristics of natural monopoly and form a high barrier to entry⁹⁴.

Online games with a good reputation and numerous players are often large-scale online games. Their development and follow-up services are extremely complex, and they set very high requirements for game planning and operation design. The time and cost of R&D of online games determine that it is difficult for other game developers to provide similar games and follow-up services.

Secondly, because of the above-mentioned know-how issues. The sustainable attraction of a game to players takes a long time to establish. Successful online games require a constant balance between entertainment, profitability and timeliness, that can only be adjusted and realized in the process of operation, which in turn, can lead to a deficiency of time and space for planning.

Therefore, game manufacturers cannot enter the relevant market in a short time.

The last point is related to copyright. The risk of copyright infringement greatly limits the possibility of supply substitutability. There is no doubt that the developers of online games can enjoy the corresponding copyright. The premise of copyright protection is that the works are original, and it is the original part of online games that can often attract online users, which is usually reflected in the sense of game experience and player preferences. Therefore, for a game that has produced a lock-in effect to a significant number of users, if the preferences of players do not change dramatically, any other games that seek to substitute it will inevitably plagiarize and copy the original part of the game. Making this the first clue of a possible conflict between the Copyright Law and the Anti-monopoly Law in China.

The above-mentioned low value of substitutability contributes into defining the game service market as an independent one, meaning that regardless of any change in price, the company would not face any loss thanks to the high switching cost brought by the low substitutability levels.

The last attribute of the game service market we are going to explore is the after-sell one, this is because of the dynamics present in the industry, meaning that once the players buy the game (main product), they are heavily incentivized to buy secondary products, which can often be entirely cosmetic with no real purpose as far as the game mechanics are concerned. Nevertheless,

⁹⁴ Baumol W.J. & Willig R.D., *Fixed Costs, Sunk Costs, Entry Barriers, and Sustainability of Monopoly*, 96(3) “Quarterly Journal of Economics” 405-431 (1981).

this generates an ulterior lock-in effect on the consumers, because on top of the already low substitutability levels they now must face a growing sunk-in cost toward the main product because of all the secondary ones, thus making the switching cost near unbearable⁹⁵.

Finally, after having evaluated all the characteristics of the game service market, the Author conclusion is that Netease does indeed occupy a market dominant position.

The reason being the consequences of the near-total lock-in effect generated by the above mentioned attributes, plus the actual size of the market, on the basis of article 17 of the *Anti-monopoly Law of China* “market-dominant position refers to the market position in which the operator can control the price, quantity or other trading conditions of commodities in the relevant market, or hinder or affect the ability of other operators to enter the relevant market.” We can safely assume the price controlling capability being represented by the high independency of the market, while in regard to the trading conditions it is important to remember that because the after-sale market is entirely controlled by the developers, often through in-game online stores, they reap 100% of the revenues from both the main and secondary products. With little or no choice regarding the sources of secondary products. Lastly, the afore mentioned R&D and fidelization issues proper to the industry are great representatives of the barrier to entry present in this sector.

Nevertheless, because the online game live streaming industry is placed at the end of the supply chain, and it is vulnerable to the 2 adjacent markets already in possession by the copyright owners. Which often formulate ad hoc user agreement clauses aiming for an overall control when launching the game products. Instead, such clauses are usually inserted into the agreement when the game has produced a strong lock-in effect and network externality after several years of operation, resulting in locked-in users to be unable to make choices.

This way, the developers of online games show a clear intention to monopolize the live streaming market, for example by opening their own proprietary platforms. Therefore, the intervention of anti-monopoly regulation would be necessary.

Conclusion

In the end, on the 4th of August 2020, Guangdong Higher People’s Court upheld the original judgment, rejecting the Appellant (Huaduo) arguments and holding that NetEase was not in a position to exclude or restrict competition in the relevant market and, therefore, did not enjoy a dominant market position⁹⁶.

⁹⁵ Ming, Yang. *Anti-Monopoly Regulation On Game Developers In Online Game Live Streaming Industry*, 2020, 20.

⁹⁶ *News & Cases from China: August 2020*.

<https://rouse.com/insights/news/2020/news-cases-from-china-august-2020>.

The reasoning behind this sentence was that the game pictures of NetEase's "Fantasy Journey to the West 2" were works created using methods similar to film making and, as such, capable of copyright protection. NetEase, as the copyright owner, had the right to prohibit others from broadcasting the game screens without permission⁹⁷. The relevant contractual agreement did not constitute an abuse of intellectual property rights for the purpose of excluding or restricting competition. Although single games may have a strong lock-in effect on users, that does not result in the creation of a specific market. The relevant market is the broader games industry market and NetEase's share of that market is far less than that stipulated in the Anti-monopoly Law. Accordingly, the claims against NetEase were dismissed.

This sentence, deemed by the judges as "the first Anti-Monopoly" case in the videogaming industry, goes to show the main trend in online gaming judicial standards, which is that copyright is more important than unfair competition.

⁹⁷The game's user agreement clearly states that: "Without the written consent of NetEase, users shall not perform the following acts (whether for profit or not): 6.2.2 to publicly display and broadcast all or part of the content of this product."

Chapter 3- Case studies and theories.

3.1. Case study: Digital Bros

The aim of this chapter is to consider the experience of the Italian company Digital Bros, a group operating in the development, distribution and commercialization of video games in international markets⁹⁸, as a success example to identify the best practices and requirements that allowed them to thrive where so many have failed.

From the operative point of view, the group operates in 5 sectors, and the first one is composed by the so-called ‘premium games’; in this case, Digital Bros is concerned with the acquisition of the rights to use the video-games. In other words, the company acquires the rights from the developers and then distributes the game through an international network, both traditional and digital⁹⁹. This activity is carried under the trademark known as ‘505 Games’, which is tasked to acquire the license rights and to sell the games in the foreign markets. The second sector is the segment known as ‘free to play’, one can find the development and the publishing of videogames or applications which are freely given on the digital markets. In this case, the final user can purchase other products during the game. When the first are successful they can remain on the market for a long time, as this kind of products is usually and frequently updated. The goal, in fact, is to amplify the life cycle of these games by keeping at a high level the interest of the users¹⁰⁰; in this case, the main firm coordinating this sector is ‘505 Mobile S.r.L’, an Italian enterprise. The next segment is called ‘Distribuzione Italia’ and is used to distribute foreign acquired video games in Italy; interesting to note, these activities are directly carried out by the holding company, ‘Digital Bros S.p.A’, through the ‘Halifax’ trademark and a controlled society known as ‘Game Entertainment S.r.L.’, the distributor¹⁰¹.

These are the main activities carried out by Digital Bros, and besides these ones, one can find operational projects, which are of secondary importance to the firm; among these, one can mention ‘Digital Bros Game Academy S.r.L’, which is concerned with the organization of educational courses in the video-gaming sector. Finally, one can find the holding, ‘Digital Bros S.r.L’, which supervises and coordinates the activities performed in the other sectors, and overlooks the ancillary operations, like the finance activities. Interesting, in this regard and for

⁹⁸ Digital Bros, *Bilancio consolidato e separato al 30 giugno 2019*.

⁹⁹ *ibidem*.

¹⁰⁰ *Ibidem*.

¹⁰¹ *Ibidem*.

the purposes of this chapter, the presence of Digital Bros China LTD and Digital Bros Asia Pacific LTD.

As a matter of fact, the case presented here is about the experiences of the latter, seen through the lenses of its General Manager, Thomas Rosenthal, who was interviewed by the author of this work; as one will see in the following pages, the words of the manager give interesting clues on the challenges faced by the Asian Branch of Digital Bros. In fact, this person confirmed that the Chinese market is very fragmented, and, as such, operating in this context is not an easy task; furthermore, one must remember that, according to Chinese regulations, the definition of ‘online game’ is quite different from the one used in the Western markets¹⁰². As a matter of fact, every video game which can be downloaded through the Internet is deemed as ‘online’ by Chinese authorities¹⁰³. On the contrary, when talking of ‘online games’ in the West, one thinks at games played online; this is a non-trivial difference, since it determines a very wide range of potential consumers. The latter, in fact, can be pc, consoles, or mobile users, and, given the international nature of the activities, it is very important to elaborate a contract which contain protective clauses with respect to the intellectual rights¹⁰⁴

3.1.1. Contracts clauses

The contracts always contain arbitration clauses, in order to settle the disputes that may arise; the general manager confirmed that the license agreements do not necessarily entail the recourse to a Chinese forum. On the contrary, seats as Hong Kong and Singapore are often chosen instead. In addition, to further confirm this location’s importance, the new 505 Games K.K. that has been recently established in Tokyo, also reporting back to Hong Kong. The goal is to provide an effective protection of the rights choosing a forum which is internationally recognized. From this point of view, one can observe that the two above mentioned seats are very well familiar to Chinese operators and government officials as well¹⁰⁵. In other words, the licensing contracts are signed with Chinese firms, but the relevant regulations are those of established and internationally recognized seats. In fact, the Asian branch of Digital Bros sells its rights on the games to a Chinese counterpart; the latter, then, is tasked with the development or

¹⁰² Dong, L., Mangiron, C., *Journey to the East: Cultural adaptation of video games for the Chinese market*, The “Journal of Specialised Translation”, 29, 2018.

¹⁰³ Nir, K., *The evolution of the Chinese online gaming industry*, “Journal of Technology Management in China”, 4(2), 2009.

¹⁰⁴ Ernkvist, M., Ström, P., *Enmeshed in games with the government: Governmental policies and the development of the Chinese online game industry*, “Games and Culture”, 3(1), 2008.

¹⁰⁵ Nobles, K.C., *Emerging issues and trends in international arbitration*, Cal. W. Int'l LJ, 43, 2012.

commercialization in different parts of the People's Republic of China. On this respect, it is important to note that the contract typically transfers all the rights related to the games; as a matter of fact, one of the needs arising from the operations in a foreign market is the adaptation of the games. In this sense, one must take into consideration not only the contents, but also other elements, such as the graphic interface, or the audio component; this way, the game can be fit for the regulations in China, especially those relating to the censorship, and to the preferences of the Chinese consumers alike¹⁰⁶. For this reason, it is important to transfer the source code, unless the game is open source; in fact, the Chinese developers or distributor must have the legal right to modify the product for the reasons underlined above. For the same reason, the legal agreement must be carefully crafted, in order to avoid the reverse engineering risk; in fact, a game cannot be legally duplicated, it must undergo to a process of modification and adaptation¹⁰⁷. In this process, as the words of Thomas Rosenthal confirmed, the most important element is, indeed, the source code; the latter, however, cannot be transferred alone. Other aspects, such as the application providing for other functions, like the multiplayer, must be transferred to the Chinese firm¹⁰⁸. In this case, the instrument used is the sub-license, through which Digital Bros can transfer the different parts of the final product, in order to be developed or distributed in China. For this reason, it is fundamental that Digital Bros acquired the different rights; this way, the firm can decide to agree the transfer of the various parts; since it is a commercial product, the counterpart must pay to acquire the rights. In this case, one can note that the contracts can mandate for the payment of three elements, namely the 'revenue share', the 'license fee' and the 'minimum guarantee'. Regarding this aspect, it is interesting to observe that not all these elements must be present; usually, the most important one is the revenue share, while the other two are optional. When Digital Bros¹⁰⁹ transfers its right on a game, in fact, it renounces to a part of its revenue, which is acquired by the Chinese developer or distributor. It does not come as a surprise, then, that this requires a payment, and this process also explains the reason why this element is always present.

3.1.2. First Challenge: a fragmented environment.

This business venture had to face different challenges, linked to the needs arising from entering

¹⁰⁶ Dong, L., Mangiron, C., *Journey to the East: Cultural adaptation of video games for the Chinese market*, "The Journal of Specialised Translation", 29, 2018.

¹⁰⁷Ibidem.

¹⁰⁸ Nir, K., *The evolution of the Chinese online gaming industry*, "Journal of Technology Management in China", 4(2), 2009.

¹⁰⁹ MacInnes, I., et al., *Business models for mobile content: the case of m-games*, "Electronic Markets", 12(4), 2002.

a complex and fragmented market as the Chinese one; the first set of problems, in this respect, was given by the knowledge of the cultural and legal context. On this matter, one can note that there was the need to have adequate information about the competition, and of the entry barriers. In fact, there are not so many foreign operators in Asia and particularly in China, due to the presence of many regulations and competitors; this context, as a matter of fact, limits the presence of Western firms in this market¹¹⁰. In fact, Chinese laws, as one should remember from the previous chapter, foreign enterprises cannot directly operate in China, but it is needed a Chinese firm which mediates. For this reason, Digital Bros could not directly enter in this market, but operates as a ‘Wholly Foreign Owned Enterprise’¹¹¹; it is not surprising, then, that one of the main challenges is to find an adequate Chinese partner. This implies the need to share the revenue and explains the importance of the revenue share in the contracts; on this point, it is interesting to note that Digital Bros sells the games and guarantees a minimum payment in addition to the revenue share¹¹².

The agreement, however, is not the only challenge faced by the Italian firms in its Asian venture; another problem seems to be the need to manage the expectations; in other words, the firms deciding to internationalize their operations in China, often tend to oversimplify and underestimate the complexity of the challenges¹¹³. Meaning, it is often and wrongfully assumed that the dimensions of this giant market are the guarantee of an easy success; as matter of fact, this invariably proves to be a big mistake for European and American firms. The level of complexity to manage often proves to be unbearable for foreign operators, and this is a big challenge faced by Digital Bros as well. In particular, the general manager of the Asian branch underlined the fact that the Chinese market is very complex and one of the most important aspects is to ensure that a game which may be successful in the West is also appreciated in China. Evidently, this is not an easy task, as there is the need to adapt the products, and it has been mentioned above, in order to make it attractive for this market, and pass the quality assessment. In order to do that, the general manager of Digital Bros and of ‘505 Games’ in China, affirmed that the censorship exerted by the local authorities is a complex problem. These words, in fact, reflect a general issue of the industry which is very well known¹¹⁴; other problems of entering the Chinese market, then, are linked to the instruments available for business. To begin with, there is no Google or Facebook in this Country, and this translate in

¹¹⁰ Supra note 9.

¹¹¹ Bontempi, M.E., Prodi, G., *Entry strategies into China: the choice between joint ventures and wholly foreign-owned enterprises: an application to the Italian manufacturing sector*, “International Review of Economics & Finance”, 18(1), 2009

¹¹² From the interview with general manager of the Asian division, Thomas Rosenthal.

¹¹³ Li, J., Tang, Y.I., *CEO hubris and firm risk taking in China: The moderating role of managerial discretion*, “Academy of Management Journal”, 53(1), 2010.

¹¹⁴ Zhang, X., *Censorship and digital games localization in China*, “Translators’ Journal”, 57(2), 2012.

the impossibility to have a centralized hub for online games. In other words, the significant fragmentation which can be observed in this market is also due to the dispersion of platforms and operators, which determines a fierce competition as well. On this respect, one must observe that there are over 200 distribution channels for the Android sector in China, and, for this reason, it is not easy for a foreign firm to successfully operate in this Country.

It is not surprising, then, that many Western firms decide to create a subsidiary in a fiscal paradise and operate in China, even though the capital is foreign; this is a trick, which can turn against the firms, as new laws and regulations can be issued overnight and radically change the rules. Digital Bros did not take this option, which is illegal, and rests on the tolerance of the local authorities; the latter, evidently, can suddenly change their minds and put the firm in trouble. The will of the director Rosenthal is to operate within the legal framework and chose to stress the quality of its products and the efficacy of its business model; as a matter of fact, this is not the choice of the giant firms, which have more bargaining power vis-à-vis the government.

Summing up, the main challenges faced by foreign operators can be traced in the many regulations, which can vary from one region to another, the fragmentation of the market¹¹⁵, together with its dimensions and the invading role of politics and censorship.

For these reasons, it is easy to understand the importance of trust toward the local realities and professionals to check and keep the firm in compliance with the rules; on this regard, one may note that the Asian branch of Digital Bros decided to hire counselors for the ancillary activities, such as the accounting or the human resources. However, the firms did not disclose or trusted any local firm for its core business; this is a strategic choice and signals the will of the enterprise to stress the importance of its main activities.

3.1.3. Second Challenge: Independency

Part of the success enjoyed lies here as well, as the core competences have not been shared or commercialized; another source of help, in fact, could come from the embassies and the Chambers of Commerce in China. However, this rarely happens¹¹⁶; It should not come as a surprise, though, since the firms typically have more knowledge of the business they operate than these institutional actors. When it comes to the gaming sector this is even more true, as the information that a Chamber of Commerce can give is quite general in the best scenario; in no

¹¹⁵ Tiong, T.K., et al., *The Issue of Fragmentation on Mobile Games Platforms*, in Tiong, T.K., et al., *Understanding the Interactive Digital Media Marketplace: Frameworks, Platforms, Communities and Issues*, IGI Global, 2012.

¹¹⁶ From the interview with general manager of the Asian division, Thomas Rosenthal.

case, however, the advice can take a strategic stance. For this reason, it usually happens that the firms sustain the embassies and the Chambers, as these actors rely on the support of their members to survive and prosper.

From the financial point of view, then, one can observe that the strength of the Asian venue of Digital Bros lies in the use of internal resources¹¹⁷; thus, no bank has been involved in the project, and no third parties support the Chinese efforts of the Italian firm. Only some counselors, like those hired for accounting, are Chinese, but, as it has been previously affirmed, the core business competences remained under the tight control of the firm. The main objective of the enterprise is to offer counseling to the parent firm, and it operated under Chinese laws and regulations. Interestingly, the form of the Joint Venture, which is often portrayed as the only solution in cases like the Chinese one¹¹⁸ has been avoided; while this form of engagement has some advantages, it cannot be used to operate in the video gaming sector in China. For this reason, the choice was to utilize the figure of the Wholly Foreign Owned Enterprise as a representative in the Chinese market, as it has been already remembered in the lines above, in order let 505 Games establish the license agreements themselves, therefore excluding the Chinese participation in the capital of the firm. For these reasons, the success is largely determined by the correct choice of the partners¹¹⁹; in the case in exam, this decision rests on the presence of some factors, deemed to be of relevance. To begin with, the candidate firm must have a significant experience in the sector in question; it is evident, as a matter of fact, that this is a very particular segment, requiring specific competences, which can only be acquired after a long experience. At the same time, the ideal partner must be able to prepare the relevant documents required by the regulations in an easy and efficient way; for this reason, the preference is often assigned to the firms which are publicly traded. On these subjects, in fact, are imposed stricter requirements of disclosure, and they must be more transparent since they directly address the general public. Finally, the candidates must be specialized in a particular segment of the video games, as it is evident that different kind of platforms imply differing competences and abilities, such as those required for multi-player, the consoles, the mobile devices, the personal computers. These qualities, however, are not sufficient, as a candidate must also be available to enter license fee-based contracts; it is not surprising, then, that a due diligence is conducted on a potential partner¹²⁰. This way, the Chinese branch of Digital Bros have the chance to inquire into the characteristics and business model of the Chinese operator;

¹¹⁷ Michaud, L., *World video games market*, "Communications and Strategies", (83), 2011.

¹¹⁸ Shenkar, O., *International joint ventures' problems in China: Risks and remedies*, Long Range Planning, 23(3),2010.

¹¹⁹ Nir, K., *The evolution of the Chinese online gaming industry*, "Journal of Technology Management in China", 4(2), 2009.

¹²⁰ Bjorksten, J., Hagglund, A., *How to manage a successful business in China*, World Scientific, 2010.

in addition, there must be a proved track record of successful operations, witnessed by at least 50 license contracts. Again, the local firm must show and prove a deep interest in the products which are the objects of the legal agreement; in fact, this interest must coincide with the relevance of the contract for the business. For this reason, it is deemed a better option to contract with a medium dimension operator, rather than with a multinational enterprise, since the latter could be less interested in the video game and decide to delay its launch on the market. As long as the marketing plan is concerned, Mr. Rosenthal confirmed that he has no general plan; on this respect, then, it is important to differentiate between the Business-to-Business operations and those pertaining the Business to Consumer. In the first case, Digital Bros tries to sell licenses for games which can be appealing to Chinese distributors; as a matter of fact, the Chinese market, as noted above, is somewhat different from the Western ones. In the second case, it must be noted that the firms directly operate with the global platforms; the complexity of the context, on the other hand, requires the operation with sites which can be accessed to the foreign operators. On this regard, one may note the prominent position of 'STEAM', which is a global platform for games; the Chinese government announced a domestic version, but it has to become operative. When that happens, there will be two versions of STEAM, a global one and a Chinese one, regulated by Chinese laws and regulations.

Nowadays, the marketing budget is allocated for every single game, while the general plan is made by the local partners, which develops it as soon as their request is approved by the authorities; a big role in the market is played by STEAM, which allows to bypass the censorship. This situation could change in the future, though, especially when the local platform will become operative; from the interview conducted with the general manager it is also clear that VPNs are not generally used. When they are, the goal is not to bypass censorship, but to have a better performance from the game sessions, and, on this respect, STEAM must be deemed as a considerable loophole¹²¹, for now at least, since this platform is fully accessible and there are no known restrictions in China.

With respect to the human resources, then, the staff is only Chinese, included some managers; the priority seems to be hiring local personnel, and the investments in this area appear to head in this direction. In fact, the knowledge of the market and the needs of the Italian firm seems to exclude the need to hire expatriates; the sourcing of the staff is made in the offices located in Hong Kong.

Another important element is the barriers to the entry, and, from this point of view, Digital Bros encountered no barriers, since the obstacles have been overcome by resorting to the local partners; it is the latter, as a matter of fact, that allowed the Italian firm to successfully operate in China, and to keep the firms compliant with the regulations of different nature, such as the fiscal ones. The success obtained by the Asian branch, as a matter of fact, crucially depended

¹²¹ Nir, K., *The evolution of the Chinese online gaming industry*, "Journal of Technology Management in China", 4(2), 2009.

on the local presence, which is fundamental to allow for the cultural adaptation¹²². The same importance, then, is to be attributed to the local general manager within the senior management, especially when it comes to the internal processes and the deployment of strategies.

3.1.4. Change in consumers wish

The market where Digital Bros operates is very fragmented, but it has undergone a certain evolution, since Chinese consumers are interested in the videogames, especially the mobile ones, which are a significant business opportunity. At the beginning, as one can easily imagine, the market was suspicious, but in the course of time, Chinese operators and consumers alike have shown a considerable interest. Evidently, this change was a big opportunity, successfully exploited by Digital Bros, and it has been also promoted by the need of Chinese content providers to exploit the global opportunities. Probably, the biggest change it has been witnessed in the premium segment, where the interest for this kind of games grew considerably over time; for this reason, it is not surprising to find many Chinese developers on STEAM. In other words, local developers increasingly choose this platform to reap its benefits and reach a global audience¹²³. Other benefits of using STEAM, then, include, among others, the greater speed to launch the games, which can be proposed in less time to the consumers and without undergoing the lengthy processes needed by the ordinary procedure. It does not come as a surprise, then, that sometime the Chinese government may decide to remove notorious games from this platform; at the same time, it can happen that the ISBN code is given only to the titles which are not loaded on STEAM. It seems that the government, then, is realizing that this platform is a considerable loophole, and the growing importance of Chinese developed games may convince the officials to discourage the recourse to STEAM¹²⁴.

In fact, the success of the Chinese venture of Digital Bros seems to be determined by motivated personnel and a deep knowledge of the market; above all, the most important factor, which was indicated by the general manager, Mr. Rosenthal, is the support of the senior management of the Italian firms. The direct link with the CEO and the representation in the board of directors, in this respect seems to be fundamental since the constant support for the Chinese venture was and is an essential feature of the success obtained. Another ingredient of this successful recipe, then, is the staff hiring policy, as the people who work in the Asian branch had no prior experience in the field, and this allowed to work with someone with no prejudices. In other words, the fresh mind of the workers seemed to free the creative energies needed to approach

¹²² Dong, L., Mangiron, C., *Journey to the East: Cultural adaptation of video games for the Chinese market*, "The Journal of Specialised Translation", 29, 2018.

¹²³ Ibidem.

¹²⁴ Ibidem

the market in an innovative way. Other factors contributing to the performance of Digital Bros in China, finally, can be traced in product and corporate communication strategies, which allowed the corporation to differentiate themselves from the competitors.

As long as the opportunities are concerned, it must be noted that the firm exploited the premium and *indie* segments, and the changes that occurred in this context; on this regard, it seems important to remind that the very notion of 'indie', of independent title is different than the one generally acknowledged in the West. Whereas a game could be deemed independent in the case it does not count on the use of the resources of a big and established firm, in China games that are considered premium, albeit not the top tier, are labeled as 'indie'¹²⁵. From this perspective, it is important to understand the changes in the market; as a matter of fact, its evolution was favorable to Digital Bros, and the presence of STEAM allowed for the experimentation of new business models. The desire to experiment and change, on the other hand, seems a broad characteristic of the Chinese market; this way, the Italian firm could change its offer, which started with the 'free to play' formula, to propose premium games as well. The price, on the other hand, does not seem to be a real problem for Chinese consumers, who have shown a significant availability to pay to download games. From this perspective, one may note that this attitude is rather aggressive, and constituted a huge opportunity that caught Digital Bros ready to exploit. In fact, the preferences of these consumers changed over time, since in the past the preference was linked to traditional genres, as the martial arts (武侠). Nowadays, however, this situation changed considerably, and these people show more varied tastes, which go well beyond the classic genres; furthermore, they require a better graphic quality, which is an important factor when choosing a game.

Finally, it should be noted that the licensing process posed some problems for Digital Bros as well, which have been solved by the Chinese partners; the latter, as a matter of fact, has a deep knowledge and specific competences to overcome the obstacles that may arise, since they can interface with the government officials in a way a foreign operator cannot. Anyway, the difficulties in this field are mainly due to the lack of transparency of the whole process, which is, consequently, lengthy and uncertain. There is no possibility to monitor the state of the request and the outcome depends on the officials tasked to review the request; evidently, these features have precise repercussions on the business. In fact, the launch of many games may be slowed down, and, furthermore, one has to remember as often the license is granted only when the game is modified; this could be a significant problem. On this respect, one may observe that a developer may not be willing to change an aspect of the games he deems essential, such as the presence of the blood; at the same time the person who originally developed the game could be busy with another project. For this reason, the Chinese operations of Digital Bros were based on a model which accorded the preference to local and consolidated operators to which to cede

¹²⁵ Nir, K., *The evolution of the Chinese online gaming industry*, "Journal of Technology Management in China", 4(2), 2009.

the technology and the coding, in order to speed up the entire process. This approach proved to be especially effective in the multi-player niche, where the rules and regulations are tighter, and the time required to obtain the license can be longer.

In general, Digital Bros in China operates through the agreement with the local giants of the gaming sector, like Tencent; these are, in fact, the ideal partners, since they have an adequate strength on the market. In this business relationship, in fact, both firms can benefit, as the foreign one can indicate to the Chinese one potential games to export abroad; for this reason, the preference is accorded to consolidated enterprises. The strategies adopted by 505 Games, the Asian venture of Digital Bros, allowed the Italian firm to obtain important acknowledgments; in fact, in 2020, the enterprise has been awarded as the ‘most reputable game publisher’ in the context of ‘Grand Game Awards’ in China¹²⁶. In addition, 505 Games was awarded ‘Most Reputable Game of the Year’ and ‘Publisher of the year’, thanks to ‘Bloodstained: Ritual of the Night’¹²⁷. Other successful titles, ‘Death Stranding’ was deemed as the ‘Game of the Year’, and ‘Human Fall Flat’ published by X.D Network, which sold over two million copies, the higher number of sales ever recorded in the premium mobile segment in China. These are important awards, confirming the success of the strategies and business model adopted, which was possible only thanks to the local partners.

¹²⁶ Digital Bros, *505 Games premiata in Cina con molteplici riconoscimenti e nominato ‘Most reputable game publisher’ ai Grand Game Awards, presentati da Baidu e 17173*, 2020.

¹²⁷ Ibidem.

3.2. What happens next?

3.2.1. Main Issues

In the previous paragraph, it has been portrayed the success case of Digital Bros, underlining the factors which led to this situation; here, it seems interesting to inquire, with the help of the relevant literature, what could happen if the protection against the phenomenon of ‘reskinning’, also known as cloning of the games becomes tougher on the Chinese market. Such change, in fact, could determine the structure of this market; in this paragraph, the goal is to understand the direction of this change, considering the significant fragmentation which can be observed nowadays.

On this respect, one can note that, the sector in exam is very profitable, but it is constantly threatened by imitations and the cloning phenomenon; in other words, there are developers who prefer to redevelop the ideas and concepts elaborated by other firms¹²⁸. What happens is that a firm may decide to imitate some of the elements of the games, such as the story, the interface, or the general experience of the user when playing¹²⁹. This is a frequent phenomenon, and it is generally allowed; what is not acceptable, however is the blatant copy¹³⁰. The methodologies to do this are varied, but they typically be reduced to three; to begin with, one can consider the technique known as ‘one-for-one’. From this point of view, a video game can be essentially deemed as a program which is composed of many bases of data¹³¹. This way, a developer may decide to cope the code in which the game was programmed in order to ‘create’ a novel video game; when this happens, the people performing the reskinning generally use instruments which allow for the direct copy of the coding. To note that this is an operation which is quite easy to perform, as all it is required is a simple smartphone with a cloner application¹³². In other cases, the documents related to the target game can be used for a direct copy of the code, as it happened for the famous ‘Tetris’¹³³; from a legal point of view, though, this conduct could be accepted, as most of the copyright regulations consider the code something protected by a specific right. Thus, when the code is copied directly this behavior is a copyright breach; however, the recourse to the technique of ‘reverse engineering’ is controversial in this

¹²⁸ Katzenbac, C., Herweg, S., van Roesse, L., *Copies, Clones, and Genre Building: Discourses on Imitation and Innovation in Digital Games*, INT’L J. COMM 22, (10), 2016.

¹²⁹ Drew, S.D., *Hitting Reset: Devising A New Video Game Copyright Regime*, 164 U. PA. L. REV., 164, 2016.

¹³⁰ Li, Z., *The Copyright Protection of Video Games from Reskinning in China-A Comparative Study on UK, US and China Approaches*, Tsinghua China L. Rev., 11, 2018.

¹³¹ Ibidem.

¹³² Ibidem.

¹³³ Ibidem.

perspective¹³⁴. The decision, in these cases, depends on the evaluation of the judge, as it happened in the Atari v. Nintendo case, where the behavior of the first was deemed unfair¹³⁵. In that case, the judges affirmed the fair use of the intermediate copying; however, the code retrieved from the Copyright Office lacked the necessary authorization. This is an opinion which has been recalled by other courts, when they had to decide the fairness of the reverse engineering¹³⁶; besides this methodology, one can observe a second one. In this instance, a developer may try to imitate the functioning of an existing games, or, alternatively, recombine the mechanisms of many games, and this is generally accepted and even promoted¹³⁷. As a matter of fact, it is possible that some games can express the same rule but in a different version; finally, the last method to clone games is the reskinning technique. In this case, the graphic, the skin of the game is modified, but the gameplay is the same; in this way, from a pre-existing game can be derived another one, which is a mere variation of the original one, but with another denomination. The expression used is reskinning, since the changes are related only to the appearance and not to the substance of the application; from the legal point of view, this practice is not easy to understand. At the contrary, the legal judgment is rather complex, since the reskinning is completely different from the other two techniques used to copy the code; in fact, the only difference with respect to the original game is the graphics. The other elements, such as the story or the rules, are the same¹³⁸.

3.2.2. New Trends and Consequences for the market

It is not surprising, then, that the strategies used to protect the originality of video games are ambivalent; in fact, the dividing line between what is allowed and what is blamable is often blurred, especially in a market like the Chinese one¹³⁹. The fragmentation of this sector, on the other hand, may depend on the attitude of the local authorities towards this issue; in fact, the relative ease to copy the games, especially in emerging realities like the one under examination, could contribute to the structure one can observe nowadays. Moreover, the absence of a centralized hub makes it even more difficult to compare and ascertain the originality of a game; in this context, it is evident that, to the extent that this practice is tolerated, the foreign companies are not encouraged to invest. In other words, the reskinning could act as a barrier to

¹³⁴ Ibidem.

¹³⁵ Atari Games Corp. And Tengen, Inc. v. Nintendo of America Inc. And Nintendo Co., Ltd., 975 F.2d 832 (Fed. Cir. 1992)

¹³⁶ Li, Z., *The Copyright Protection of Video Games from Reskinning in China-A Comparative Study on UK, US and China Approaches*, Tsinghua China L. Rev., 11, 2018.

¹³⁷ Ibidem.

¹³⁸ Ibidem.

¹³⁹ Ibidem.

entry.

On this respect, it seems interesting to note that, from 2009 to 2015 the observers reported two trends in the industry, which are, at the same time, very strong but also conflicting¹⁴⁰; to begin with, new developers and publishers emerged. This phenomenon, in turn, was promoted by a process of disintermediation of the value chain, prompting a new visibility for the developers of small dimensions¹⁴¹. This effect, on the other hand, was felt everywhere in the world and gave a new prominence for this kind of firms, and it extended to China as well, where there was a rise of games played on mobile devices¹⁴². The other reason explaining this trend was specifically Chinese, as, in fact, the advent of the so-called ‘browser games’ determined a significant change in the structure of this particular market¹⁴³. The proliferation of this new genre was due in large part to the lower costs for the development and publishing¹⁴⁴; in addition, in this new market niche was absent, at least initially, any oligopolistic form of control. In other words, there were no established gaming firms at the time; as such, the initial developers had the chance to generate creative games, which were influential at the time. Those firms were able to compete with the giants of the industry, since they created something new and innovative, and they could get huge profits as they were the first movers in the arena¹⁴⁵. Some of these publishers, then, were able to grow further, and to create social games, while others could be deemed as small networks of firms advertising via Internet, on behalf of the developers behind the startups. From this point of view, one can see how creativity and the absence of practices like cloning could boost the sector, encouraging other actors to enter the market and innovate; however, it was reported a conflict between the creativity and the need to make profits¹⁴⁶. In particular, the laws of the market would have undermined the potential to create and innovate in the sector. In this sense, it was observed as mediocre games with a great market potential, could have a better performance than a high-quality application¹⁴⁷.

In this period, one can observe another trend, which led the phenomenon of ‘corporatization’, and the concentration of the market lowered between 2006 and 2009, as the result of the new entry of strong realities, causing a redistribution of the shares of the market¹⁴⁸. This parameter rose again, and in 2012 the rate of concentration was around 67%; in this context, one of the

¹⁴⁰ Chew, M.M., *A critical cultural history of online games in China, 1995–2015*, “Games and Culture”, 14(3), 2019.

¹⁴¹ Ibidem.

¹⁴² Huxiu, G., *Nine Chinese companies that earn the most revenue on iOS*, 2012.

¹⁴³ Chew, M.M., *A critical cultural history of online games in China, 1995–2015*, “Games and Culture”, 14(3), 2019.

¹⁴⁴ Ibidem.

¹⁴⁵ Ibidem.

¹⁴⁶ Ibidem.

¹⁴⁷ Ibidem.

¹⁴⁸ Ibidem.

most prominent players was and is Tencent. This multinational probably best represent the trend in exam, since in 2009 its market share was about 21%, while 3 years later this figure rose to 36%¹⁴⁹. This success as game publisher, nonetheless, is not due to the qualitative profile of the games proposed, but the previous base of customers; as a matter of fact, the service of instant messaging developed by the Chinese multinational, together with its chat, is used almost universally in the Country¹⁵⁰. However, the success thus obtained did not seem to promote creativity; on the contrary, the very name of the company was deemed as a guarantee of success on the market. On the other hand, the top managers of the firm did not deny this claim, and they were rather proud of the success of their company¹⁵¹; this way, the other developers were urged to adopt the same business model, based on the design known as ‘win to pay’. In other words, what it was promoted was the imitation of the formula at the base of Tencent’s evident success; the title known as *Aoshì tiāndì* (傲视天地) implied minor costs to be played with respect to the other browser-based games¹⁵². Nonetheless, this game was cloned by many developers, which Tencent published. The same title, then, was made available on other platforms as well; in this case, one may note that the clones did not hesitate not only to copy the very well appreciated gameplay, but also to imitate the blatant ‘pay to win’ elements, in order to increase revenue¹⁵³. In fact, the clones were able to reap decent profits, although their longevity was shorter than the copied game; it does not come as a surprise, then, that those who developed Aoshitiandi, despite the initial announcements, introduced a system based on gems to be paid by the users.

3.2.3. Countering the Cloning Culture

In case China would pass and enforce a tighter regulation on cloning and reskinning, based on what happened in the past, it seems that the market would become less fragmented, to concentrate around a few big players, like Tencent. It is difficult to forecast the future of the firms relying on cloning and reskinning, though it seems plausible that the concentration of the market would not incentivize creativity, and for this reason the developers could resort to the cloning to reap the benefits of more famous title. On the other hand, this is what happened with Aoshitiandi, and the pressure exerted by the giant operators could act as an incentive to conform to this attitude and bandwagon on the success of the more notorious games.

Cloning and imitation, on the other hand, seems to be well rooted in the Chinese culture at

¹⁴⁹ Ibidem.

¹⁵⁰ Ibidem.

¹⁵¹ Ibidem.

¹⁵² Ibidem.

¹⁵³ Ibidem.

large; and it does not seem an exaggeration to deem this characteristic as inherent to this context, even if the trend has been shown to start changing in recent times¹⁵⁴. Although one can consider imitation as an opportunistic behavior, it is, nonetheless, useful, as it serves a precise purpose¹⁵⁵. As a matter of fact, the act to copy seems to be an inner feature when it comes to learning and comprises some innovative aspects as well¹⁵⁶ (Keane, 2013). Nonetheless, when this behavior becomes blatant and widespread, the interest of the people may decline; in fact, many Chinese complain that televised drama are cloned¹⁵⁷. The process of imitation, nonetheless, can be better understood when considering the legacy deriving from the revolutionary socialism of the 1940s. During this era, in fact, it was proposed the imitation of the so-called ‘model characters’¹⁵⁸. In the past, furthermore, the Communist Party told explicitly the people how to generate cultural works, and this practice is now being substituted by a behavior which can be defined by the formula ‘wait and see’¹⁵⁹. The attitude, in other word, is to wait for an idea to emerge, and then copy it or make a suitable adaptation; this way one may observe the presence of a sort of dependency driven by the market.

Internationally, this behavior has determined a bad reputation for China, and consumers are well aware of the high chance that a product is a copy or an imitation of something else more famous’¹⁶⁰. Chinese people, on the other hand, seems to acknowledge the risk of this feature of their culture; on this regard, one may consider the popularity of ‘World of Collectibles’ a televised program which is very popular in China. Its notoriety, in fact, is due to two main reasons, the first being the imitation of a famous program broadcast in the United Kingdom, known as ‘Antiques Roadshow’. The second, then, lies in the high value of the objects shown, and it is probably the primary cause explaining the attraction of the show¹⁶¹. This way, the producers can count on a huge audience, as it points to the education of the people between original and imitated objects. The latter are ruthlessly destroyed by the host, causing the embarrassment of the collectors, who are shamed in front of a high crowd; the claimed goal is to teach people to appreciate the originality and the value of intellectual property¹⁶².

Cloning, however, is not always a bad idea or a blamable conduct, as the distinction between creativity and copying may be blurred; on this regard, one may think that the artifacts shown in

¹⁵⁴ Yang, W., *Moving from imitation to innovation: Exploring a Chinese model of early childhood curriculum leadership*. “Contemporary Issues in Early Childhood”, 20(1), 2019.

¹⁵⁵ Keane, M., *Creative Industries in China. Art, Design and Media*, Polity, 2013.

¹⁵⁶ Ibidem

¹⁵⁷ Keane, M., et al., *New Television, Globalisation, and the East Asian Cultural Imagination*, “Arts Of Asia”, 36(6), 2006.

¹⁵⁸ Keane, M., *Creative Industries in China. Art, Design and Media*, Polity, 2013.

¹⁵⁹ Ibidem.

¹⁶⁰ Ibidem.

¹⁶¹ Ibidem.

¹⁶² Keane, M., *Creative Industries in China. Art, Design and Media*, Polity, 2013.

the above-mentioned Chinese program can be deemed as an effort to recover the past¹⁶³. It has been written, on this subject that this intent is not automatically a formal copying, but it can also be a way to redefine the present¹⁶⁴. In other words, when people know what happened in the past, they can be guided in the presence, as these facts can validate the action undertaken¹⁶⁵. The process of copying, though, can, sometimes, promote innovation, as it happened after a documentary was broadcast on the national television in China, reporting the rising value of the imitation of famous artifacts in ceramic produced by professional artisans in Jingdezhen, in the province of Jiangxi¹⁶⁶. In this case, the latter began to generate imitations as well, starting a fierce competition; in fact, the whole sector was pervaded by counterfeiting, and the reaction of the artisans can be explained by the need to make profits despite the imitations on the market. Other authors, then, deemed the process of copying as natural and able to inspire people; furthermore, the imitation process considerably reduces the risk¹⁶⁷; nonetheless, the choice to clone something original can have negative repercussions in case a business adopts the strategy known as ‘follow the leader’¹⁶⁸. However, people tend to imitate for three main reasons, namely the perception of safety, since copying entails following a path which is already known and somewhat consolidated. Another reason lies in the conformity, and the pressure exerted by fashion and social norms; finally, when a product has some success, the other people may be led to believe that someone else have a better understanding, and, this way, the responsibilities are not shouldered.

On this regard, it seems interesting to note that the imitation concerned not only the notorious games produced abroad, but also the famous title produced by Chinese developers, as the example of Aoshitiandi has shown. On the other hand, the Chinese officials sustained the efforts of the domestic operator; for the government, this is a way to show the independence on a cultural level, and, on this regard, the exports are crucial¹⁶⁹. The local officials, in fact, live under the fear of a sort of ‘cultural invasion’, and, for this reason, the national government seeks to develop domestic products to export abroad. One can see here the effect of a nationalist stance, although based on the technology products; in fact, this movement needs China to act, in order to present itself as the promoter of this attitude. For this reason, the Chinese authorities

¹⁶³ Ibidem

¹⁶⁴ Stanley-Baker, R., *Archaism*, “Arts Of Asia”, 36(6), 2006.

¹⁶⁵ Ibidem.

¹⁶⁶ Supra note 64.

¹⁶⁷ Bonabeau, E., *The perils of the information age*, “Harvard Business Review”, 82 (6), 2004.

¹⁶⁸ Keane, M., *Creative Industries in China. Art, Design and Media*, Polity, 2013.

¹⁶⁹ Jiang, Qiaolei, e Anthony Y.H. Fung. *Games With a Continuum: Globalization, Regionalization, and the Nation-State in the Development of China’s Online Game Industry*. “Games and Culture 14, n. 7–8” (novembre 2017): 801–24. Available at <https://doi.org/10.1177/1555412017737636>.

cannot be passive and wait the foreign content to flow in the internal market; this is clearly the effect of precise policies, devised by the government. It does not surprise, then, that many Chinese operating in the video gaming sector are beginning to export their title on the international markets¹⁷⁰.

This movement has not gone unnoticed by the West, increasingly worried by the growing number of games which are copied and cloned every year; on this respect, the United States of America, one of the biggest and most important markets in the world, expressed their concerns¹⁷¹. In a recent report, in fact, it was observed that, while the Chinese government has begun to counteract the addiction towards games, it has expanded the social control exerted on the population¹⁷². As a matter of fact, the obligation for gamers to register themselves is a way to control these people, tracking their behavior during the gaming sessions. On the other hand, one may observe that the government tried to attack the giant corporation Tencent, in order to exert its influence; this effort, as a matter of fact, seems confirmed by the acquisition of a quote in the top firms of the Country, along with the control of the operations of those firms¹⁷³.

As a matter of fact, the cloning of games is of particular concern for the administration of the United States of America, as these titles are illicit, and are often launched on a different platform and constitute an illegal practice that distort the rules of competition. An example, in this respect, is the game known as ‘Heartstone’, produced by Blizzard for personal computer, was proposed as an evaluation, a beta version, Unico, a corporation based in China, launched something similar. The clone was known as ‘Sleeping Dragon: Heroes of the three Kingdoms’, and, in fact, it was an exact imitation of the American counterpart¹⁷⁴. It does not surprise, then, that in 2014 the case was settled in favor of Blizzard and its local licensor in China, ‘NetEase’¹⁷⁵; in that instance, the legal battle was won, but the phenomenon of imitation and cloning is so widespread that it cannot be counteracted only on a case-by-case basis. The same accusations, as a matter of fact, have been levied against Tencent as well¹⁷⁶; in this case, a popular game, known as *Tiào yī tiào* (跳一跳) has been accused to be a copy of a French title, whose name is ‘Bottle Flip’. To have an idea of how the Chinese clones are widespread, it is sufficient to think that, since 2014, 5 claims of copyright infringement have been filed by Blizzard; in one case, then, it happened that a Chinese corporation decided to sue, in turn, other firms under the same complaint¹⁷⁷.

¹⁷⁰ *ibidem*.

¹⁷¹ Snyder, M., *China’s Digital Game Sector*, “U.S.-China Economic and Security Review Commission, Staff Research Report, May 17, 2018”.

¹⁷² *Ibidem*.

¹⁷³ *Ibidem*.

¹⁷⁴ *Ibidem*.

¹⁷⁵ *Ibidem*.

¹⁷⁶ *Ibidem*.

¹⁷⁷ *Ibidem*.

Conclusions

Evidently, this practice does not encourage foreign investment, since the fear to compete in an uneven environment usually discourages the enterprise to invest and be present in the Chinese market. On the other hand, the explicit support of the Chinese government for the local firms does not authorize to hope in a reform of the rules; on the contrary, this seems to be a precise strategy that is yielding some results for China¹⁷⁸. However, the repercussions on the foreign investment could be though, as well as the aspiration of China to become a truly global player in this field. Evidently, a change in the regulations would help to boost the confidence of foreign firms; some of them, as it has been shown in the case of Digital Bros and 505 Games, are successful and could overcome the odds and the challenges. However, the ban to operate directly and the need to seek a local partner is highly illustrative of the attitude of the Chinese officials; moreover, the justified fear to compete against firms copying the games is not a good indicator. Furthermore, the need to resort to the courts is not a positive perspective for the Western investors, who deem China a market which is not mature yet¹⁷⁹. This sector, on the other hand, is well developed in the Asian Countries, and China is consolidating its presence, also thanks to the recent acquisitions. The latter, as a matter of fact, have been promoted by the protections enjoyed by Chinese firms and the favorable policies; this expansion of the local corporations in the global markets, furthermore, sparked further concerns. The latter, as a matter of fact, are linked to the use of the information collected from the citizens of the other Countries, like the United States of America¹⁸⁰.

Finally, it seems worth observing that a more generalized reform on competition would ensure an even playing field for European and American competitors alike; on this regard, it has been observed that the US firms in some segments, like the mobile market, obtain a considerably lower share in China, compared to the domestic and other markets¹⁸¹. Such change, evidently, would entail a more effective protection against the imitations of the games, which constitutes another unfair practice. Another kind of concern, then, is linked to the privacy of the information collected, as it has been noted in the lines above; this kind of data has a huge value on the market, and this practice incentivize the bigger firms to gather even more information which can be leveraged for commercial purposes¹⁸². Moreover, this data is stored in a centralized way, and can be accessed by the Chinese government; the integrated nature of the platforms in China, moreover, allows companies like Tencent to have a monopolizing position on the market. This situation, in turn, is very risky, since the same firm can control the vast

¹⁷⁸ Jiang, Q., Fung, A.Y., *Games with a continuum: Globalization, regionalization, and the nation-state in the development of China's online game industry*, "Games and Culture, 14(7-8)", 2017.

¹⁷⁹ Snyder, M., *China's Digital Game Sector*, "U.S.-China Economic and Security Review Commission, Staff Research Report", May 17, 2018.

¹⁸⁰ Ibidem.

¹⁸¹ Ibidem.

¹⁸² Ibidem.

majority of, among others, videos, payments, real estates and financial services; it is not surprising, then, that Tencent can collect huge amount of information in a vast array of fields¹⁸³. The Chinese market, as one may infer from the discussion conducted in these pages, is really complex, and, differently from the Western ones, led by very different rules; as such, it is not surprising that foreign firms struggle to compete in the gaming sector. Many of them are bound to exit this market, while many other choose not to enter in the first place; the negative opinion of the West seems well grounded¹⁸⁴. Evidently, a tighter regulation on the imitation of the games would help to acquire a better profile and be more attractive for foreign investors; however, it is the overall competitive environment which is unfair. Moreover, this attitude, cloning included appears to be a specific government policy, in response to a perceived cultural invasion; for this reason, it is even more valuable the experience of a firm like Digital Bros, which decided to invest in China, and with success. This case, as a matter of fact, shows that a presence in this Country is possible, but, at the same time, it requires a solid strategy, the correct business model, and the active support of the top management of the parent company. It is not easy, evidently, to craft the correct strategy and overcome the challenges, but it seems worth the effort, since the results obtained are significant. Thanks to its performances in China, as a matter of fact, 505 Games can be considered a success case, which can inspire other firms to make the same decision.

Glossary of Chinese terms

¹⁸³ Ibidem.

¹⁸⁴ Ibidem.

Chinese Characters	Pīnyīn	English
网络盗版	Wǎngluò dàoobǎn	Piracy
主机游戏	zhǔjī yóuxì	Console Games
电脑	diànnǎo	Computer
电子竞技	diànzǐ jìngjì	E-Sports
手机游戏	shǒujī yóuxì	Mobile Games
网络游戏	wǎngluò yóuxì	online game
心竞技	xīn jìngjì	free to play
迅雷	xùnléi	Xunlei
百度网盘	bǎidù wǎng pán	Baidu Pan
版权	bǎn quán	Copyright
发行人	fā xíng rén	Publishers
翻版	fān bǎn	Cloning
中华人民共和国国家版权局	Zhōnghuá rénmin gònghéguó guójiā bǎnquán jú	National Copyright Administration
国家广播电影电视总局	guójiā guǎngbò diànyǐng diànshì zǒngjú	State Administration of Press, Publication, Radio, Film and Television
中华人民共和国文化部	zhōnghuá rénmin gònghéguó wénhuà bù	Ministry of Culture

网络游戏成瘾	Wǎngluò yóuxì chéng yǐn	Online Games Addiction
国际标准书号	guójì biāozhǔn shūhào	ISBN
国家新闻出版署	guójiā xīnwén chūbǎn shǔ	National Press and Publication Administration
中国版权保护中心	zhōngguó bǎnquán bǎohù zhōngxīn	Copyright Protection Center of China
备案	bèi'àn	ICP Filing
外商独资企业	wàishāng dúzī qīyè	Wholly foreign-owned enterprises
商业执照	shāngyè zhízhào	Chinese business license
曲艺	qǔyì	Quyì
合理使用	héilǐ shǐyòng	fair use
版税	bǎnshuì	Royalties
恶意	èyì	Bad faith
以使用	yǐ shǐyòng	intent to use
不正当竞争行为	bù zhèngdàng jìngzhēng xíngwéi	unfair competitive behavior
武侠	Wǔxiá	Wuxia
傲视天地	àoshì tiāndì	Aoshitiandi
跳一跳	tiào yī tiào	'Tiao Yi Tiao'

专利	Zhuānli	Patent
商标	shāngbiāo	Trademark
梦幻西游	Mènghuàn xīyóu	Meng Huan Xi You, Name of Netease RPG
类电作品	lèi diàn zuòpǐn	work created in a way similar to cinematography
中华人民共和国反垄断法	zhōnghuá rénmin gònghéguó fǎn lǒngduàn fǎ	Anti-Monopoly Law

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Official Legal Documents

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- (七) 工程设计图、产品设计图、地图、示意图等图形作品和模型作品；
- (八) 计算机软件；
- (九) 法律、行政法规规定的其他作品。

Article 3 "Works" mentioned in this Law shall include works of literature, art, natural science, social science, engineering technology and the like made in the following forms:

(1) written works;

(2) oral works;

- (3)musical, dramatic, quyi, choreographic and acrobatic art works;
- (4)works of fine art and architecture
- (5)photographic works;
- (6)cinematographic works and works created in a way similar to cinematography
- (7)drawings of engineering designs and product designs, maps, sketches and other graphic works as well as model works;
- (8)computer software;
- (9)other works as provided in laws and administrative regulations.

第九条 著作权人包括：

(一) 作者；

(二) 其他依照本法享有著作权的公民、法人或者其他组织。

Article 9 “Copyright owners” shall include:

(1)authors;

(2)other citizens, legal entities and organizations enjoying copyright in accordance with this Law.

第十条 著作权包括下列人身权和财产权：

(一) 发表权，即决定作品是否公之于众的权利；

(二) 署名权，即表明作者身份，在作品上署名的权利；

(三) 修改权，即修改或者授权他人修改作品的权利；

(四) 保护作品完整权，即保护作品不受歪曲、篡改的权利；

(五) 复制权，即以印刷、复印、拓印、录音、录像、翻录、翻拍等方式将作品制作一份或者多份的权利；

(六) 发行权，即以出售或者赠与方式向公众提供作品的原件或者复制件的权利；

(七) 出租权，即有偿许可他人临时使用电影作品和以类似摄制电影的方法创作的作品、计算机软件的权利，计算机软件不是出租的主要标的的除外；

(八) 展览权，即公开陈列美术作品、摄影作品的原件或者复制件的权利；

(九) 表演权，即公开表演作品，以及用各种手段公开播送作品的表演的权利；

(十) 放映权，即通过放映机、幻灯机等技术设备公开再现美术、摄影、电影和以类似摄制电影的方法创作的作品等的权利；

(十一) 广播权，即以无线方式公开广播或者传播作品，以有线传播或者转播的方式向公众传播广播的作品，以及通过扩音器或者其他传送符号、声音、图像的类似工具向公众传播广播的作品的权利；

(十二) 信息网络传播权，即以有线或者无线方式向公众提供作品，使公众可以在其个人选定的时间和地点获得作品的权利；

(十三) 摄制权，即以摄制电影或者以类似摄制电影的方法将作品固定在载体上的权利；

(十四) 改编权，即改变作品，创作出具有独创性的新作品的权利；

(十五) 翻译权，即将作品从一种语言文字转换成另一种语言文字的权利；

(十六) 汇编权，即将作品或者作品的片段通过选择或者编排，汇集成新作品的权利；

(十七) 应当由著作权人享有的其他权利。

著作权人可以许可他人行使前款第（五）项至第（十七）项规定的权利，并依照约定或者本法有关规定获得报酬。

著作权人可以全部或者部分转让本条第一款第（五）项至第（十七）项规定的权利，并依照约定或者本法有关规定获得报酬。

Article 10 “Copyright” shall include the following personal rights and property rights:

(1) the right of publication, that is, the right to decide whether to make a work available to the public;

(2) the right of authorship, that is, the right to claim authorship and to have the author’s name mentioned in connection with the work;

(3) the right of alteration, that is, the right to alter or authorize others to alter one’s work;

(4) the right of integrity, that is, the right to protect one’s work against distortion and mutilation;

(5) the right of reproduction, that is, the right to produce one or more copies of the work by means of printing, Xeroxing, rubbing, sound recording, video recording, duplicating, or re-shooting, etc.;

(6) the right of distribution, that is, the right to provide the public with original copies or reproduced copies of works by means of selling or donating;

(7) the right of lease, that is, the right to nongratically permit others to temporarily exploit a cinematographic work, a work created in a way similar to cinematography or computer software, unless the computer software is not the main object under the lease;

(8) the right of exhibition, that is, the right to publicly display the original copies or reproduced copies of works of fine art and cinematographic works;

(9) the right of performance, that is, the right to publicly perform works, and to publicly transmit the performance of works by various means;

(10) the right of projection, that is, the right to make, by such technical equipment as projector, episcopes, etc., the works of fine art, photographic works, cinematographic works and works created in a way similar to cinematography, etc. reappear publicly;

(11) the right of broadcasting, that is, the right to publicly broadcast or disseminate works by wireless means, to disseminate broadcast works to the public by wired dissemination or rebroadcast, and to disseminate broadcast works to the public by audio amplifier or other similar instruments for transmission of signs, sounds or images;

(12) the right of information network dissemination, that is, the right to provide the public with works by wired or wireless means, so as to make the public able to respectively obtain the works at the individually selected time and place;

(13) the right of production, that is, the right to fix works on the carrier by cinematography or in a way similar to cinematography;

(14) the right of adaptation, that is, the right to modify a work for the purpose of creating a new work of original creation;

(15) the right of translation, that is, the right to transform the language of a work into another language;

(16) the right of compilation, that is, the right to choose or edit some works or fragments of works so as to form a new work;

(17) other rights which shall be enjoyed by the copyright owners.

A copyright owner may permit others to exercise the rights provided in Items (5) through (17) of the preceding paragraph, and may receive remuneration as agreed upon in the contract or in accordance with the relevant provisions in this Law.

A copyright owner may wholly or partially transfer the rights provided in Items (5) through (17) of Paragraph 1 of this article, and may receive remuneration as agreed upon in the contract or in accordance with the relevant provisions in this Law.

中华人民共和国反垄断法 2007年8月30日通过。

Anti-monopoly Law of the People's Republic of China

第十二条 本法所称经营者，是指从事商品生产、经营或者提供服务的自然人、法人和其他组织。

本法所称相关市场，是指经营者在一定时期内就特定商品或者服务（以下统称商品）进行竞争的商品范围和地域范围。

Article 12 For the purposes of this Law, undertakings include natural persons, legal persons, and other organizations that engage in manufacturing, or selling commodities or providing services.

第十七条 禁止具有市场支配地位的经营者从事下列滥用市场支配地位的行为：

（一）以不公平的高价销售商品或者以不公平的低价购买商品；

（二）没有正当理由，以低于成本的价格销售商品；

（三）没有正当理由，拒绝与交易相对人进行交易；

（四）没有正当理由，限定交易相对人只能与其进行交易或者只能与其指定的经营者进行交易；

（五）没有正当理由搭售商品，或者在交易时附加其他不合理的交易条件；

(六) 没有正当理由，对条件相同的交易相对人在交易价格等交易条件上实行差别待遇；

(七) 国务院反垄断执法机构认定的其他滥用市场支配地位的行为。

本法所称市场支配地位，是指经营者在相关市场内具有能够控制商品价格、数量或者其他交易条件，或者能够阻碍、影响其他经营者进入相关市场能力的市场地位。

Article 17 Undertakings holding dominant market positions are prohibited from doing the following by abusing their dominant market positions:

(1) selling commodities at unfairly high prices or buying commodities at unfairly low prices;

(2) without justifiable reasons, selling commodities at prices below cost;

(3) without justifiable reasons, refusing to enter into transactions with their trading counterparts;

(4) without justifiable reasons, allowing their trading counterparts to make transactions exclusively with themselves or with the undertakings designated by them;

(5) without justifiable reasons, conducting tie-in sale of commodities or adding other unreasonable trading conditions to transactions;

(6) without justifiable reasons, applying differential prices and other transaction terms among their trading counterparts who are on an equal footing; or

(7) other acts of abuse of dominant market positions confirmed as such by the authority for enforcement of the Anti-monopoly Law under the State Council.

For the purposes of this Law, dominant market position means a market position held by undertakings that are capable of controlling the prices or quantities of commodities or other transaction terms in a relevant market, or preventing or exerting an influence on the access of other undertakings to the market.

国务院反垄断委员会关于相关市场界定的指南 2009年7月6日通过。

Guide of the Anti-Monopoly Committee of the State Council for the Definition of the Relevant Market

第三条 相关市场的含义

相关市场是指经营者在一定时期内就特定商品或者服务（以下统称商品）进行竞争的商品范围和地域范围。在反垄断执法实践中，通常需要界定相关商品市场和相关地域市场。

相关商品市场，是根据商品的特性、用途及价格等因素，由需求者认为具有较为紧密替代关系的一组或一类商品所构成的市场。这些商品表现出较强的竞争关系，在反垄断执法中可以作为经营者进行竞争的商品范围。

相关地域市场，是指需求者获取具有较为紧密替代关系的商品的地理区域。这些地域表现出较强的竞争关系，在反垄断执法中可以作为经营者进行竞争的地域范围。

当生产周期、使用期限、季节性、流行时尚性或知识产权保护期限等已构成商品不可忽视的特征时，界定相关市场还应考虑时间性。

在技术贸易、许可协议等涉及知识产权的反垄断执法工作中，可能还需要界定相关技术市场，考虑知识产权、创新等因素的影响。

Article 3 Meaning of the Relevant Market

A relevant market refers to the product scope and geographic scope within which business operators compete on specific products or services (hereinafter collectively referred to as “products”) during a particular period of time. In antitrust enforcement practice, it is usually necessary to define the relevant product market and relevant geographic market.

The “relevant product market” is a market composed of a group or category of products that is considered by buyers to be relatively closely substitutable. Relatively intense competition is present among these products, and in the antitrust enforcement, they may be used as the product scope within which business operators compete with each other.

The “relevant geographic market” is the geographic area within which buyers acquire the products that are relatively close substitutes. Relatively intense competition exists among these products, and in antitrust enforcement, the area may be used as the geographic scope within which business operators compete with each other.

Where a product’s production cycle, lifetime, seasonability, fashion, or a finite period of intellectual property protection has become a characteristic of the product that cannot be ignored, timeliness must also be considered in defining the relevant market.

In antitrust enforcement work that concerns technology trade or license agreements involving intellectual property rights, it may also be necessary to define the relevant technology market, and factors including intellectual property rights and innovation may need to be taken into account.

