

# International Cultures of Creativity and Imitation

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## PANEL JUSTIFICATION

In August 2014 *Wired UK* magazine published an article entitled “How to build an app clone”, highlighting the services of companies that sell modifiable app templates, and seemingly normalising and endorsing the contentious practice. Although such issues have been rife since the inception of home video games in the 1970s, in recent years discourses of “creativity” and “imitation” have been highlighted by industry press, which has picked up on the consistent stream of game clones being produced, such as the high profile cases of *Triple Town* (cloned as *Yeti Town*), *Ridiculous Fishing* (cloned as *Ninja Fishing*), and *Threes* (cloned as *2048*, which itself spawned numerous imitations). As a result, the contemporary games sector is characterised by a concern with how creativity may be conceptualised, and how this correlates with legal issues of copyright, intellectual property, trademarks, and more general notions of “appropriate” practice in development.

This panel will address the ways in which these discourses are being approached by games sectors in various international contexts. Examining industries from Australia, Germany, United Kingdom, and United States, this panel will consider the way in which differing legal systems and development cultures may have an impact on attitudes to creativity.

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Each presenter will be given a short amount of time to characterize the kind of research they have done and discuss key findings of those research projects. Following the presentation, there will be a brief summary of the correlations between international cultures of creativity and imitation, after which we will open to the floor for questions.

## **PAPER ABSTRACTS**

### **John Banks**

Game developers often struggle with a tension between craft values of originality and creativity on the one hand, and on the other hand imitating known models that are more likely to meet market demand and gain commercial success. Based on interviews with Australian game developers undertaken through 2014, this paper identifies the different understandings and approaches that developers apply to negotiate this tension. The paper will also consider how these tensions impact on developers understanding of their professional identity as game developers, especially as they seek to exert values and meanings associated with 'being indie'. Developers making mobile games in Australia often suggested this provided them opportunity to make games on their own terms and to be more original and creative, but at the same time often worried about the creative and craft compromises involved in pursuing the 'free to play' business model. How are the craft values of making video games and the professional identities of video games developers shaped by these tensions that are as often as much about markets and business models as they are about the craft of making games?

### **Christian Katzenbach and Lies van Roessel**

Game development is faced with an inherent tension between providing on the one hand a certain familiarity to the player, and on the other hand sufficient innovation to differentiate the game. Especially in the dynamic and competitive market of mobile games, developers simultaneously try to 'out-innovate and out-clone each other' (Juul 2010), with the line between cloning and inspiration being openly contested and necessarily fuzzy (Herweg/Katzenbach 2014).

Based on interviews with Germany-based game developers, this paper identifies the different strategies that actors in the sector apply to cope with this situation. General consensus is that innovation in games rather lies in re-combining existing elements than producing something radically new and interviewees indicate they are heavily inspired by existing games. Yet, evaluations and strategies to operate in the grey zone between inspiration and cloning vary. For instance, indie developers share their ideas and early prototypes at least within their communities, whereas developers in larger studios do not share until release, in order to protect their ideas.

### **Daithí Mac Síthigh**

The status of games in copyright law remains the subject of debate. UK intellectual property law protects certain aspects of games, and has been amended so as to comply with both the 'software' and 'general' Directives of the European Union. The Court of Justice of the EU has also given relevant rulings on second-hand sales and digital rights management, although differences between the two Directives pose some difficulties for member states in interpreting the significance of these findings. As part of a UK-based project on games, transmedia and the law, we reviewed legislation and cases, considered critical perspectives on the current law, met with developers, and carried out a survey of gamers. In this presentation, I outline three models of copyright for games: the General Model, the Game-Specific Model, and the Player Rights Model. None of these models

are ideal, but they can be used to identify the strengths and weaknesses of current laws and of reform proposals.

### **Tom Phillips**

In the British contemporary games sector, independent developers feel there is an inadequate level of protection for their intellectual property, particularly with regards to game clones. There is also a sense that neither players nor policy-makers completely understand the specificities of how IP may be creatively, if not legally infringed. As a result, there has increasingly been a shift towards the construction of a culture of self-regulation for indie developers, attempting to publicly shame cloners via social media, directly impacting infringers' reputation and sales and bypassing formal regulation. This paper uses interviews and workshop discussions with developers to examine the manner in which this informal culture of regulation has been perpetuated in relation to current videogame copyright legislation, and suggests how the interrelation between producers and policymakers may help to inform the direction of future policy decisions.

### **Casey O'Donnell**

Battles over patents aren't new to technology-focused organizations, and are common in the videogame industry as well (Clapes, 1993). While patents are not equivalent to creativity, they can be viewed as a metric by which to measure if an idea is worth protecting. In the context of the videogame industry, patents serve as a lens through which to understand creativity. This paper explores a handful of patents surrounding digital and non-digital games as a means for understanding what has counted as creativity in game development. I examine videogame technology related patents, game mechanic patents and non-digital game mechanic patents. I argue that while the videogame industry has benefited from a lackadaisical approach to game mechanic protection, there is little reason to presume that this will remain the case. The impetus behind not patenting mechanics is more historical legacy rather than based on institutional or professional logics.