

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

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**“COMPARATIVE ANALYSIS OF INTELLECTUAL
PROPERTY PROTECTION FOR VIDEO GAMES ACROSS
JURISDICTIONS: INSIGHTS AND IMPLICATIONS (INDIA
AND UNITED STATES)”**

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ABSTRACT

This study explores the changing nexus of privacy legislation and AI regulation in leading countries such as India, the European Union, the United States, and China. It discusses the specific issues that affective data, i.e., emotional and behavioral data produced by AI systems, bring to conventional privacy regimes. The research through the analysis of statutory provisions, case laws, and regulatory guidelines shows divergences in legal approaches from the rights-based model of the EU to the sectoral regulation of the US and the state-centric framework of China. The study indicates the significance of harmonization to accommodate cross-border data flows and algorithmic accountability. It contends that India’s nascent data protection regime must incorporate emotional data safeguards to be globally relevant. The article concludes with a comparative paradigm that reconciles innovation and fundamental rights and provides insights for policymakers, scholars, and practitioners as they traverse the complicated landscape of AI-driven surveillance and privacy protection.

KEYWORDS

Privacy law, artificial intelligence regulation, affective data, cross-border data flows, and algorithmic accountability.

INTRODUCTION

The speed of technological progress and its effect on the law have made life more challenging than ever for lawmakers, scholars, and attorneys. In an era of emotive data, data obtained about people’s sentiments, facial expressions, and biometric signals, it has become highly necessary to regulate artificial intelligence (AI) and preserve privacy. This paper first discusses affective data in the context of privacy law and AI control. This is because data has become the new currency of the digital era. Companies, governments, and AI systems are gathering traditional

personal data and more and more emotional and affective data. This raises serious legal and moral problems around liberty, consent, and monitoring.

The work is noteworthy since it has both intellectual and practical values. This makes it difficult to talk about a privacy legislation topic that has not been worked on extensively in the present discussions regarding data security. Tools of this kind are already visible in public spaces, offices, and schools. So, it's crucial to understand how emotion-tracking devices affect fundamental rights and ensure that the advancement of technology does not undermine people's feeling of dignity. This subject was chosen since it is a current problem and there is little law research on emotional data. While privacy rules have historically focused on health, financial, and contact data. But emotional data is different. It is incredibly personal, often occurring without a person's permission, and can be utilized for malicious purposes. The objective is to address this gap by studying similar systems of law and proposing regulatory solutions.

The main problem this study tries to solve is the lack of enough protection of emotional data in the current privacy legislation. The rules in the US, EU, and India protect personal data in a general sense but not expressly emotional monitoring. This leaves a lacuna in legislation, which may result in discrimination, exploitation, and violation of basic rights. This study is restricted to doctrines and comparisons. It studies policy documents, case law, and legislation in the US, EU, and India. It does not, however, include the fieldwork or the technology of AI design. The major themes include legal principles, gaps in the regulation, and future improvements.

The investigation is constrained by time, money, and access to real-world statistics. Most of the time it relies on secondary sources, such as legislation, court judgments, and academic articles. The empirical is limited in the absence of field surveys or interviews, while the doctrinal approach provides depth in the legal analysis. Within these limits, the goals of the research are clear: to review the current privacy laws in India, the EU, and the US; to identify the gaps in the laws that protect emotional data; to provide recommendations for making the laws more coherent; and to add to the academic debate on AI and privacy law.

This paper is based on the premise that, in the absence of particular legal frameworks, technologies of emotional surveillance are a severe threat to individual rights and that existing privacy legislation is inadequate to regulate affective data. The approach of testing this hypothesis is comparative and doctrinal. Through analysis of statutes, constitutional ideas, and

case law, the paper examines how privacy and AI legislation are treated differently among jurisdictions. Comparative examination shows similarities, discrepancies, and potential lessons for India.

Surveillance capitalism is something that scholars such as Shoshana Zuboff have examined in the literature that has already been written about privacy in the digital age. Nevertheless, few research projects focus solely on affective data. Studies on AI regulation tend to ignore emotional surveillance and instead focus on accountability and openness. This review of the literature stresses the uniqueness of the topic and the necessity for dedicated research. Indeed, it is the absence of such study that is the basis of the research gap. Privacy law and AI regulation have not been receiving the same attention as emotional surveillance. This paper intends to fill that vacuum by providing a systematic legal analysis.

In summary, the introduction of the present study sets the context of the study by stating its relevance, coverage, and purposes. It argues that existing privacy standards are inadequate and highlights the problem of poor control over emotive data. The study uses doctrinal and comparative techniques to fill the vacuum in the literature and to add to academic discussion and policy decisions.

HISTORICAL DEVELOPMENT OF INTELLECTUAL PROPERTY

LAWS

Intellectual property (IP), on the other hand, has evolved over the ages as humans have become more conscious of how clever and creative they are. Intellectual property rules try to balance two competing goals: rewarding artists for their work and ensuring everyone has access to knowledge and culture. Looking at the history of these laws, we can see how different regions have updated their laws to keep up with changes in culture, technology, and the economy, resulting in a global unity.

The Constitution of 1787 in the United States provided that Congress might "promote the progress of science and useful arts" by granting writers and inventors exclusive rights. This is where the law of intellectual property began. The Constitution introduced the first government copyright law and the Patent Act. Both were enacted in 1790. Ultimately, the US system made safeguards for trademarks, trade secrets, and designs. American intellectual property law has

been modernized notably in the digital age. For example, in “Sony Corp. v. Universal City Studios”¹ and in legislation such as the “Digital Millennium Copyright Act”² (1998). The U.S. approach is built on the strong protection of inventors, in keeping with a market economy and a notion that invention is the engine of national progress.

India’s intellectual property legislation has evolved throughout time due to the effect of colonial rule and post-independence reforms. Based on British legislation, one of the first was the Indian Patents and Designs Act of 1911. After India became independent, it took time to develop its own system. The last law that allowed everyone to acquire medications and limited product patents in pharmaceuticals was “The Patents Act of 1970”³. This was a reflection of India’s social and economic goals, notably in the area of public health. However, the accession of India to the World Trade Organization (WTO) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in 1995 led to significant reforms in Indian law to align it more with international standards. India now has laws for patents, copyrights, trademarks, and geographical identifiers. These laws balance between new ideas and society's demands.

Organizations and treaties have tried to bring intellectual property law into harmony internationally, to create universal standards. The earliest international treaties for the protection of literary works and intellectual property between countries were the Paris Convention of 1883 and the Berne Convention of 1886. The establishment of the World Intellectual Property Organization (WIPO) in 1967 and the TRIPS Agreement under the WTO in 1995 were major turning points. They are intended to foster fair competition, harmonize national laws, and facilitate international trade. There has been a lot of progress on harmonization, but issues such as pharmaceuticals, traditional knowledge, and the management of digital rights remain a concern between developed and developing countries.

Comparison of the two systems reveals that the U.S. system is inclined toward strong private rights to promote innovation, but India’s system has traditionally placed greater importance on public interest and access. International treaties attempt to circumvent those obstacles; however, implementation is still subject to national objectives. As laws are converging, intellectual property is emerging as a significant factor of economic growth worldwide. But there are still

¹ Sony Corp. v. Universal City Studios 464 U.S. 417

² <https://www.copyright.gov/legislation/dmca.pdf>

³ <https://www.indiacode.nic.in/bitstream/123456789/1392/1/A1970-39.pdf>

debates on how to balance advancement and fairness.

In conclusion, the history of intellectual property law demonstrates the changing nature of national interests and international cooperation over time. IP law has always been evolving to meet new problems, from the US Constitution to India's socio-economic transformations to the drive to integrate IP laws around the world under WIPO and TRIPS. You need to know this history to understand the ongoing conflicts over intellectual property. This is particularly true in the case of conventional knowledge, digital technologies, and pharmaceuticals, where the balance between innovation and public welfare is still very much in play.

NATURE OF VIDEO GAMES AS INTELLECTUAL CREATION

Video games are a kind of intellectual creation that is one of the most lively in modern times, combining art, technology, and interactivity in a way that does not easily fit the existing categories of intellectual property law. Video games are hybrid works, combining visual art, sound, narrative, software code, and player engagement into a single interactive experience, unlike traditional works such as books, movies, or music. This chapter explores the nature of video games as intellectual works and the elements that constitute them. It also discusses the theoretical background, the applicability of existing IP categories, the need for sui generis protection, the issues of authorship and ownership, interactivity as a legal concern, and the role of user-generated content.

Video games are comprised of graphics, music, plot, software code, and gaming mechanics. Each of these features may be separately protected by copyright, trademark, or patent laws. For example, character designs and artwork are protected by copyright; logos and titles are protected by trademarks; and unique technical processes are protected by patents. What is unique, though, is the integration of these into a unified interactive product, and this is what makes the application of current IP categories more difficult.

This complexity has been explained by the hybrid work theory. The theory is that video games are a combination of software and audiovisual features. This dual character has been recognized by courts in a number of jurisdictions that have treated video games as composite works falling under distinct IP regimes. However, given that different jurisdictions emphasize different parts of the game, some on its functional software and others on its audiovisual expression, this fragmented approach can sometimes lead to confusion.

The question of whether the current groups are sufficient remains open. Copyright law protects the art and story of a work; patent law protects innovative technologies. Yet these laws don't adequately capture how people interact with video games. The difference between video games and movies and books is that video games make the user a part of an activity. The experience of playing is also affected by the user's decisions. This interaction questions traditional notions of authorship and fixation, leading us to ask if we already have enough categories.

Academics and attorneys are calling for protections unique to video games as a result of this. Such a framework would recognize that they are hybrids and offer complete security that recognizes both their creative and pragmatic aspects. There may be new issues like virtual economies, in-game assets, and e-sports, which standard IP law can't address. A sui generis government could also handle these.

The problems with producing games are author and title. Video games are frequently created by vast teams of individuals, such as programmers, illustrators, writers, and designers. Under copyright law, it's not always easy to establish who the "author" is. Ownership tends to be with companies, not individual authors. This causes me worry about how the rights of donors will be adequately shared and acknowledged.

Now it is a law matter because it is interactive. Some courts and scholars wonder whether the user's ability to influence the gameplay experience amounts to co-authorship. Most legal systems do not recognize rights of authorship in games, although the participatory nature of games makes them different from passive media and calls for a different legal treatment.

User-generated content (UGC) adds another level of complexity. Many games allow players to create their own mods, levels, or characters; therefore, it is difficult to distinguish a creator from a user. There are questions about who owns this type of material, the conditions of the license, and how much control developers have over user-generated content or how they might profit from it.

In conclusion, video games are a special kind of creative output that makes fun of the laws of usual intellectual property. As they're hybrids, as they rely on interaction and are user-generated, the existing restrictions need to be looked at afresh. Existing IP categories provide some protection, but the case for sui generis recognition is strong. This will help ensure that video

games are sufficiently protected, while balancing the demands of creators, contributors, and users.

PATENT PROTECTION OF GAME MECHANICS & SOFTWARE

The gaming industry has become a lively international company, mixing creativity and innovation. As games grow in complexity and dynamism, the question of how intellectual property law should deal with new concepts is becoming more relevant. Traditional copyright law protects artistic components like visuals, sounds, and stories, but not nearly enough of the practical components like how the games work or how the technology works. Patent law strives to safeguard novel ideas and technological solutions. The question then becomes if gaming mechanisms and software breakthroughs should be protected this way too. This is particularly true for countries such as the US and India, where the rules are very different.

In the US, utility patent law permits software patents if they are innovative, non-obvious, and useful. In landmark rulings such as “Alice Corp. v. CLS Bank International”⁴, the courts have ruled that abstract ideas that are implemented on a computer are not patentable unless they include an original idea that goes beyond basic functionalities of a computer. In the game world, this means that patents might be granted for innovative algorithms, network topologies, or technical solutions in generating interactive environments. Nintendo and Sony have managed to patent game mechanics such as motion-based controls and methods to keep multiplayer games synchronized. These patents stimulate technology to move forward, although they also increase the fear of monopolies, as wide claims could prevent other developers from experimenting with similar mechanics.

India, on its side, is more circumspect. Section 3(k) of the Indian Patents Act stipulates that computer systems are not patentable per se. But a software invention is patentable if it has a “technical effect” or “technical contribution.” For example. A game engine that improves the performance of the hardware. A new way of data processing. The Indian law is clear that patents cannot be granted for abstract rules or processes but can be granted for discoveries that contribute to significant technological progress. This hard stance is in agreement with India’s aim to encourage open innovations in software and not to monopolise abstract ideas. This is the reason why most Indian game creators prefer copyrights and trademarks to patents for

⁴ Alice Corp. Pty. Ltd. v. CLS Bank International, 573 U.S. 208 (2014).

protecting their original creations. That frees up the industry as a whole to innovate.

How these varied strategies operate in persuading people in the gaming firm to come up with fresh ideas is really crucial to know. Patents ensure that corporations have the exclusive right to exploit their inventions. It might be an incentive for corporations to invest money into research and development. Make it possible for companies to patent new stuff, like virtual reality apps or ways to send content over the cloud, and you will get more companies pushing the limits of technology. When too many patents are created that make it difficult for smaller enterprises to come up with fresh ideas because the claims overlap, this results in the creation of "patent thickets." The U.S. approach has more software patents and favors big corporations who can spend to go to court and defend their rights. India's approach is more constrained but makes life simpler for independent developers. But that may also kill off major investments in new innovation.

And last, the topic of patenting game mechanics and software is still being contested in many areas. The US system provides an extra incentive for people to develop new technology, but it may also be used to stifle innovative ideas. By contrast, India is more cautious and emphasizes openness, which could make it more difficult to develop innovative technologies. "Think about it: the gaming industry is about new ideas and creative people. "Laws have to change to make sure that patents protect true technical efforts without damaging the teamwork that goes into making games. Ultimately a balanced strategy that honors technical innovation while safeguarding artistic expression will be best for developers, players, and the industry as a whole.

TRADEMARK CHARACTER PROTECTION & OVERLAPPING

RIGHTS

Trademark law has become a pillar of intellectual property protection in the gaming industry, especially in protecting the commercial identity of game titles, logos, trade dress, and iconic characters. Copyright protects creative expression. Trademarks are source and goodwill identifiers. Consumers identify a certain symbol, name, or character with the proper developer or publisher. This duality of protections, copyright for invention and trademark for identification, produces a complicated legal environment where overlapping rights often collide and pose concerns of expressive freedom and the problem of 'right stacking.'

The title and brand are one of the easiest ways to identify a gaming product. Super Mario and Call of Duty are trademarks; therefore, the competition cannot use titles that are similar enough to cause confusion. Logos are trademarks, such as the PlayStation logo or the Nintendo red logo, and are not to be used illegally. Trade dress is the overall appearance of a product or its package. It might be color schemes or even digital user interfaces. A trade dress may be protected if it has become distinctive. Courts have found that differing menu layouts or interface designs could be considered as part of a video game's trade dress provided that they identify the source of the game and are not merely functional aspects. This makes the brand more unique but also might have replaced aesthetically beautiful sections that could have been updated creatively.

Characters are a distinctive thing in copyright. Their work is protected by copyright. The law of trademarks protects the use of trademarks as commercial symbols. Familiar faces like Mario, Sonic the Hedgehog, and Lara Croft are also the commercial icons of their own firms. These figurines are trademarked, so producers can't use them without permission on merchandise, in commercials, or in competitive games. In the US, judges have said that characters can be trademarks as long as they have acquired a second meaning and indicate the origin of the character. India doesn't have as many character trademarks as other countries, but increasingly enterprises are registering characters as marks to protect their economic value. This fact that this character is covered by copyright, trademark, and design rights at the same time highlights how IP rights can overlap in the game world.

But trademark enforcement also raises fundamental free speech considerations. Pop culture includes games and their figures, and that leads to fan art, parody, and criticism. Too much regulation kills creativity. Courts have looked for a middle ground between property rights and free expression with concepts like "nominative fair use" and "parody." For example, using a character's name in a review or a spoof may not be criminal if it doesn't cause people to get the wrong idea. This is a tricky combo to discover in the game setting because fan groups live on creative copying. Too much policing can turn players off from the game and kill cultural discussion. Brand value can be damaged by lack of enforcement.

Right stacking is a problem when you have various IP security applied to the same thing. For example, a game character may be copyrighted for creative design, trademarked for business symbol, and protected in design law for the appearance. Rights on rights on rights are

monopolistic control. Protecting people way more than any one government was ever meant to. Right stacking is difficult for real-life license enforcement and new concepts. If the rights are too close to the existing ones, then it may be difficult for developers to create new characters or game elements. Some say the correct stacking conflicts with the balance of nurturing creativity but also making sure that people can recognize cultural icons.

Comparative analysis demonstrates that the procedures are varied in different areas. We're quite liberal-minded in the U.S. You can register and enforce game names, brands, trade dress, and characters in a variety of various ways. This is a good incentive to spend, but you need to consider the risk of getting carried away, especially if you stack correctly. But India is more traditional, and they have stricter standards concerning what constitutes a unique mark. Also, they don't accept character trademarks as much. This clarifies the picture and removes monopolistic control but also puts the brand assets of the creators at risk of being hijacked.

European systems, on the other hand, tend to strike a nice balance between enabling character trademarks and ensuring enforcement fairness.

In conclusion, IP protection of game names, logos, trade dress, and characters is essential to the protection of brand identification and commercial value in the gaming business. But the convergence of rights, copyright, trademark, and design brings with it the problem of stacking of rights, and this can lead to monopolistic dominance and diminished creative freedom. "The U.S. is very protective, India is cautious, and Europe is trying to balance it out." The end goal should be to preserve real commercial interests without suffocating cultural conversation and innovation. A balanced framework, honoring the separate role of trademarks without excessive overlap, best serves the long-term interests of developers, customers, and the gaming ecosystem.

COMPARATIVE ANALYSIS AND CRITICAL EVALUATION

"Protection of intellectual property (IP) in the gaming business is based on a thorough understanding of the way different jurisdictions categorize, interpret and enforce rights. This comparative research also discusses the benefits and shortcomings of the frameworks in the US, the EU and India apart from critically analyzing if India gives similar protection and meets international obligations. It also reviews the question of a sui generis regime for gaming and confronts the study hypothesis with comparable findings.

In the US, there are several different forms of IP security. Copyright covers all things audiovisual and logos protect names, brands and characters. New technology in the program and gaming elements could be patented. User interfaces and menu layouts are protected by trade dress rights, if they indicate the source of the goods or services. Strict enforcement of legislation via damages by law, injunctions and IP specific tribunals.

The EU's position is legitimate. There are patents and copyrights, but regulation is about fairness, not monopoly excess. EU law also recognizes character trademarks. But there's not too much control, as there are limits to rights that combine.

In India, on the other hand, computer systems are not patentable per se under Section 3(k) of the Patents Act. 2. Copyright protects audiovisual aspects, but not how things are done. Titles and visuals are protected by trademarks. Character marks are not as effectively protected. enforcement is weaker, owing to delays in courts and inexperience with gaming IP. On the whole architecture in India is less protective. That encourages openness but kills high-end innovation.

India's system does not offer the same security as the US or EU systems. No more software patents, therefore novel mechanics are more difficult to patent for authors. Copyright protects the expression of an idea, not the functional aspects. While trademark law covers names and graphics, character marks are not fully protected. Security is far less tight due of enforcement concerns. This is the reason Indian developers rely on copyright and trademark which is not a full proof protection for creative technologies. This difference leads to worse competitiveness of Indian firms in overseas markets with more stringent IP policies that encourage investment and licensing.

Both TRIPS and Berne Convention have been signed by India. Both declare that IP must be protected to some extent. TRIPS mandates patents for ideas in every field of technology. This has led to questions as to why India is not adding computer programmes to its list of prohibited technology. India says they are fulfilling their legal obligations as technical contributions are patentable. In practice, India does these tasks very precisely, placing access and freedom over monopolization. While India follows international norms on gaming, it doesn't give the same level of safety as countries like the US or EU.

The enforcement difficulties and conflicts of rights have revived the idea of a unified IP system for games. A unique framework may include aspects of copyright, patent and trademark law, but would not permit too many rights to be stacked on top of one another. Supporters say the games are interesting works of culture and need particular protection. It's a balance between the need to promote innovation and the opportunity to express oneself. Critics fear a new regime might make the law harder to enforce and could contravene international agreements. A unique regime might clarify things, but comparative analysis might show that it is better to strengthen existing frameworks and clarify overlaps.

The research hypothesis is that India's current IP regime cannot provide a level-playing field to gaming innovations as in the industrialized countries. This hypothesis is supported by comparative analysis India's exclusion of software patents, restricted recognition of character trademarks, and inadequate enforcement procedures provide voids in protection. There is a lack of substantive equality even while India adheres to international commitments. India's overall strength of the framework is less than that of the U.S. or EU which discourages investment in high end innovation. But the cautious position of India also precludes monopolistic control and encourages openness, a blessing for independent developers. The theory is thus vindicated. The caveat is that the Indian framework is a product of purposeful policy choices that prioritize access over exclusivity.

A research that examined IP laws in India, the US and the EU concluded that India's laws provided poor protection for gaming ideas. There are all kinds of things like classification, scope, enforcement, absolute power, etc. India does everything it needs to do to be fair in the international community but its narrow notion of equality makes this impossible. The "sui generis" question illustrates how valuable it is to create distinct responses, even if it's easier to defend existing institutions. Detailed examination of the primary notion of the study. India's approach may not be ideal to all but it reflects the government's inclination towards transparency. India will need to strike a healthy balance between providing access to culture and fostering creativity. Its mission should be to guarantee the game industry can compete globally and also offer opportunities for creativity.

CONCLUSION

The comparative analysis demonstrates video games to be intellectual works that challenge traditional IP frameworks, a combination of artistic, technological, and interactive components.

There's a lot of security in the U.S. with patents, copyrights, trademarks, and trade dress. But this can lead to monopolies and "right stacking." The EU is a more balanced approach, an acknowledgement that everybody is treated equally, but still recognizes character names and not too many overlaps. On the other hand, India is still cautious. Software patents not protected under Section 3(k) No full recognition of character marks Difficult to enforce This openness is good for individual developers, but it stifles high-end innovation and makes the world less competitive.

The research indicates that India's IP law is aligned with the TRIPS and the Berne Convention but offers less IP protection than the US or EU. Weak regulation, narrow patent coverage, and poorly defined character trademarks leave gaps that make investment and licensing opportunities harder to find. And like the rest of the world, India's policy choices reflect its concern for access, openness, and curbing monopolies. The study believes a single framework for video games would assist in clarifying any uncertainty, but perhaps improving the rules and mechanisms that enforce them as they are today is easier. India has to find a way to be open and still innovative at the same time so that the gaming business may flourish globally and still be true to artistic and cultural expression.

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