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Game Is Not Over Yet: Software Patents and Their Impact on Video Game Industry in Europe



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I. Introduction

“video games” : console games;
PC offline games;
online games;
wireless games.

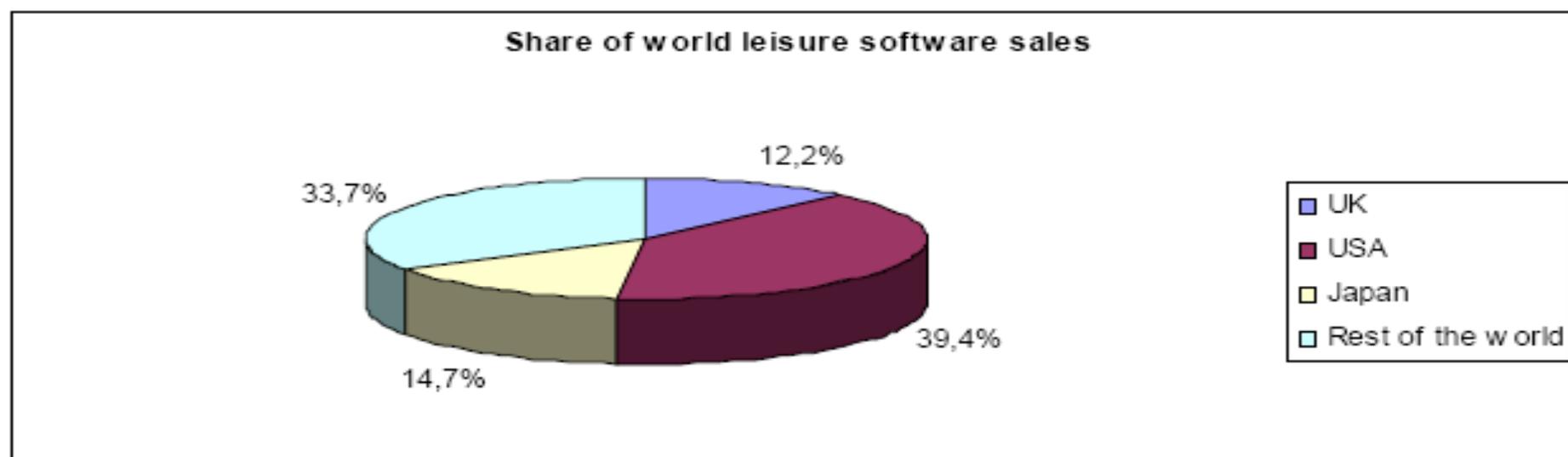
* *Just a matter of enlightenment?*

* *Marginal in terms of economic contribution?*

Country	Turnover (€ million)
Austria & Switzerland	227.1
Benelux	300.8
France	869.2
Germany	945.8
Ireland	103.9
Italy	388.7
Denmark, Finland, Norway and Sweden	393.3
Spain and Portugal	387.3
UK	1,632.4

In Europe, the turnover of video game publishing companies amounted to **USD 2.8 billion (€ 2.2 billion)** in 2003, representing about **14% of the worldwide market**⁹⁷.

Figure 38. Share of world leisure software sales (2005)



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I. Introduction

Video game industry plays a pivotal role in the international and regional economic arena.

The three largest markets for computer and video games:

- √ North America (US and Canada);
- √ Japan;
- √ The United Kingdom.

European companies possess some significant market shares.

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II. A review of video game patents

A contemporary computer game may include:

advanced physics,

artificial intelligence,

3D graphics,

digitized sound,

an original musical score,

complex strategy and may use several input devices

Programming — “literal expressions” — Copyright

— “ideas” — Patent?



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II. A review of video game patents

Atari Games Corp. v. Nintendo of America, Inc.
30 U.S.P.Q.2d 1401 (N.D. Cal. 1993)

While data notes and variable silences might be copyrightable within a musical composition, they are not copyrightable as a means to enable data communication.

Relied on a traditional patent infringement claim.

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II. A review of video game patents

Contents for software patent protection in video games:

(1) Game engine

Torque Game Engine, Truevision3D, C4 Engine, 3D Game Studio, and Unreal Engine, *etc*

(2) A method or process performed by a game

“Game system, puzzle game program, and storage medium having program stored therein” (EP1291047)

(3) Game concepts

“Sanity system for video game” (US Patent 6935954)

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III. Patent protection of software in Europe

Patentability of software in EPO

Article 52 of the 1973 EPC specifically excludes computer programs “as such” from being patentable subject matter.

Different policy reasons to get around the statutory proscriptions on the patenting of computer programs.

The EPO has granted more than 30,000 software-related patents since 1978

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III. Patent protection of software in Europe

Patentability of software in the UK

Section 1(2) of the Patents Act 1977

Take a tough line on the patentability of computer-related inventions.

Based on *Astron Clinica's Application*, the UK-IPO issued a Practice Notice setting out a change in its approach to patents for computer programs in certain circumstances.

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IV. The impact of patent protection of software in video game industry

European patent granted for a video football game

KONAMI / Video Game System and Storage Medium, T 0928/03,2006

The EPO has set another example of the broad approach it takes towards software applications in relation to patentability and technical contributions.

Europe and the US approaches compared

Compared to Europe, the US adopts a more liberal stance on patenting software in video game industry.

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IV. The impact of patent protection of software in video game industry

The features of the video game industry :

(1) A game is a hit for aesthetic and emotional reasons;

The abstract game rules should never be deemed as a technical contribution

(2) The creation of a game requires liberty and collaborative spirit;

It is critical to preserve and promote the collaborative spirit of games, as well as the freedom to design and to play

(3) Games are half-real.

Patents should only be awarded for technologies that have a specific contribution over all prior art.

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IV. The impact of patent protection of software in video game industry

Property rights in virtual worlds are really about social relations

To gain a competitive edge in the global video game market and to encourage the creative online content, what kind of social relations are expected in the video game industry?

whether to enlarge monopoly power of the giant game companies or to nurture the potential of a collaborative network.

The software patent regime has a profound impact on the video game industry.

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V. Conclusion

Successful games depend on the efforts of a creative and liberal network.

Europe is advantageous at higher population level, PC homes and Internet users, and this is the key to the maintenance of the long-term growth.

If the European video game industry hopes to continue growing, what it needs are not high entry barriers, such as strict patent polices, but highly effective and sustainable models of creative collaboration.

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V. Conclusion

In the real-life game of the software patent protection, multiple players are ready and the goal has been set to promote economic welfare, but the rules and standards of this game are still ambiguous and controversial.

Will the European player gain maximum momentum from this interactive virtual world?

The game is not yet over.