Copyright and Video Game Streaming: A UK Legal Perspective

Introduction

A gamer engrossed in a mobile game. Platforms like Twitch and YouTube enable players to broadcast their gameplay live to audiences of thousands or even millions. Video game streaming, which involves broadcasting live gameplay over the internet, has become a worldwide phenomenon. On platforms such as Twitch and YouTube Live, charismatic gamers stream everything from casual playthroughs to competitive esports matches, often with commentary and viewer interaction. Top gaming content creators like PewDiePie (Felix Kjellberg), Jacksepticeye (Seán McLoughlin), and Valkyrae (Rachell Hofstetter) turned playing video games in front of an online audience into full-time careers. The most popular streamers attract large followings and substantial incomes from paid channel subscriptions, advertising, sponsorships, donations, and merchandise. For example, Fortnite streamer Richard “Ninja” Blevins reportedly earned nearly $ 10 million in 2018 from streaming. In 2021, over 250 million game-related videos and 90 million hours of game livestreams were uploaded to YouTube alone, clearly indicating that watching others play video games has become mainstream entertainment.

But this wildly popular form of user-generated content raises an important legal question: do game streams infringe copyright, and if so, why are streamers rarely sued? Video games are, after all, creative works produced by developers, and streaming them involves sharing those works with the public. Yet in practice, game companies seldom take legal action against streamers, and many even encourage or cooperate with them. This article explores this apparent paradox from a UK law perspective. We begin by examining whether video games qualify as “works” protected by UK copyright law, and if so, what specific rights game streaming might violate. We then consider why enforcement against streamers has been uncommon, looking at industry licensing practices, the idea of streaming as free promotion, and the potential application of copyright exceptions like fair dealing for criticism, review or pastiche (parody). Throughout, we focus on UK legislation and case law (with reference to EU precedents that remain part of retained law) to clarify if streamers operate in a legal grey area or under tolerated practices, and what that might mean for the future.

Does UK Copyright protect Video Games?

The UK's Copyright, Designs and Patents Act 1988 (CDPA) protects "original" works falling into certain defined categories. Section 1 of the CDPA sets out a *"closed list"* of protected works, including literary, dramatic, musical or artistic works, as well as films, sound recordings, broadcasts, and typographical arrangements of published editions. In other words, to attract copyright, a creation must fit into one of these recognised categories. Unlike some other countries, UK law does not explicitly list "video games" as a separate category of work. This raised a conceptual question: *is a video game a copyrightable work at all under UK law, and if so, what kind?*

Despite the lack of a bespoke category, it is well established that video games are protected by copyright, just not as one single work. A modern video game is essentially a complex multimedia product: it contains software code, audiovisual content (graphics, animation, sound, music, dialogue), story and character elements, etc. These individual components *each* may qualify as copyright works in their own right. In fact, the game as a whole has been described as *"a collection of copyright works"* by Kate Lobov in her article for CITMA. Under the CDPA, computer program code is explicitly protected as a type of literary work (Section 3(1)(b) defines "literary work" to include computer programs). Thus, the software underlying a game, its programming, is protected just like a novel or software application would be. Meanwhile, a game's visual art and graphics (for example, character models, environment textures, user interface designs) are protected as artistic works (such as graphic works or drawings). Notably, UK courts have held that the series of images generated on a video game's screen, even if animated and varying with play, can be viewed as a sequence of still graphics, *"a series of graphic works protected by copyright, similar to a series of drawings,"* as the Court of Appeal said in *Nova Productions v. Mazooma Games*. A game's audio (sound effects, recorded dialogue, soundtrack music) will involve musical works and sound recording copyrights. If the game contains pre-recorded cutscenes or cinematics, those could be protected as films under the CDPA's definition of a film (a recording of moving images). And elements of story, dialogue or characters might be protected as literary or dramatic works, for example, a written script or narrative text is a literary work, and a character could even be a literary work if it is an original, clearly identifiable creation (as recently confirmed in *Shazam Productions Ltd v Only Fools The Dining Experience Ltd* regarding the character "Del Boy" from a TV show).

Because games are an amalgam of many creative contributions, it was long tricky to fit them neatly into one of the traditional categories. Historically, English law insisted on classifying a work into a single category for copyright: a work *"cannot be both a dramatic work and a literary work,"* as the High Court noted in the *Nova v. Mazooma* case. In that 2007 case (one of the few UK cases to thoroughly analyse video game copyright), the court considered whether the visuals of a pool video game could be a dramatic work (i.e. a work intended to be performed or shown to an audience). The court concluded that the game's on-screen action was *not* a pre-scripted dramatic work because *"every time the game is played, the sequence of images will differ,"* meaning there was no fixed sequence of events as in a play or film. Instead, the court treated each frame/image as an artistic work (graphic work), and the underlying code as a literary work. The upshot is that UK law protects the *components* of games under existing categories, even if it doesn't label the game itself as a single unit of copyright. As Kate Lobov (CITMA) puts it, *"video games do not neatly fall into any one of [the CDPA's] categories as a whole, they are a combination of all of them"*.

It is worth noting that recent legal developments have somewhat loosened the rigidity of the "closed list" of works. Pre-Brexit decisions of the Court of Justice of the EU (CJEU), notably *Cofemel v. G-Star Raw* (2019), suggested that any subject matter meeting two criteria (the author's own intellectual creation, and sufficient precision/objectivity in identifiability) can be protected by copyright, potentially undermining the closed list. UK courts have acknowledged this tension. In the *Shazam/Only Fools* case in 2022, the court stretched a category to fit a new kind of subject matter: it held that the fictional character *Del Boy* was protected by copyright (applying the Cofemel test) and shoehorned him into the category of *literary work*. Similarly, a 2020 case (*Response Clothing v EWM*) found that a textured fabric design was protectable and classified it as an artistic work (specifically a work of artistic craftsmanship) to avoid declaring a new category. These cases show courts inching toward protecting things that aren't obvious traditional works. By analogy, one can imagine a court in future finding that an overall video game or even certain game elements like distinctive gameplay mechanics might qualify for copyright if they reflect creative choices and are identifiable, a prospect commentators find increasingly plausible. However, for now, the safer view is that a video game is protected via the assortment of its parts that fall into existing work categories (code, graphics, music, etc.). All those parts are typically original and fixed, meeting basic copyright criteria. In short, yes, video games are protected by UK copyright law, even though you won't find the word "video game" in the CDPA. When a consumer buys or downloads a game, they usually receive a limited licence to use those copyrighted elements for personal play, as set out in the game's End User Licence

Agreement (EULA). They do not acquire ownership of the copyright itself, which remains with the developer or publisher. This means uses beyond the license, such as broadcasting the game's content to the public, may engage the rights of the copyright owner unless an exception applies or permission is given.

Streaming Games: Public Performance and Communication to the Public

What exclusive rights do game copyright owners have, and how might streaming encroach on those rights? Under CDPA Section 16(1), the copyright owner has the exclusive right to carry out (or authorise) certain "restricted acts" in relation to the work. Two rights are particularly relevant to streaming: the right to perform, show or play the work in public (s.16(1)(c)) and the right to communicate the work to the public (s.16(1)(d)). In plain terms, these cover presenting the work to an audience beyond a private circle.

When a streamer plays a video game and transmits the gameplay visuals and sounds over the internet to many viewers, this activity can squarely fit these categories. First, there is a good argument that it constitutes performance *or* showing in public. If the game's images and sounds are considered a film or dramatic work, then streaming it to online viewers is analogous to playing a film or performing a play in a public venue. Even if the game content is treated as a series of artistic works (each frame a graphic work), displaying those to the public in sequence could be seen as showing those works publicly without permission. The audience on Twitch or YouTube, potentially ranging from dozens to tens of thousands of people around the world, would certainly count as "the public" in copyright terms (essentially, anyone outside your normal domestic circle qualifies as a public audience). Second, and even more clearly, streaming is a form of communication to the public. UK law in s.20 CDPA (implementing the EU *InfoSoc* Directive) defines "communication to the public" broadly to include *transmitting the work by electronic means (whether a broadcast or an on-demand transmission) such that members of the public can access it from different places at a time individually chosen by them*. Live internet streaming of gameplay is essentially a broadcast of the game's audio-visual content to the public via the web. It doesn't matter that the viewers are not in the same physical place as the streamer, the online transmission is still a communication "to the public." As explained by the Barrister Group, the right covers *"any transmission or retransmission of a work to the public by wire or wireless means, including…making available of works"*.

To illustrate, imagine a streamer playing The Last of Us (a heavily narrative-driven game) and thousands of people watching the story unfold on the streamer's channel. The visuals (the

game's cutscenes, character designs, artwork) and the audio (voice acting, music) are copyrighted content owned by the game publisher. By streaming it, the streamer is effectively *broadcasting* those protected elements. Unless licensed, this would prima facie invade the publisher's exclusive right to communicate or show the work to the public. It's similar to projecting a film in a cinema without permission, just digitally. In fact, game streams have sometimes been analogised to screening *a* movie to the public that you only have a private copy of. Streamers and legal commentators have long acknowledged the grey area surrounding full-game streaming. Some liken it to screening a privately owned film in public, an act that typically requires permission from the copyright holder, while others argue that Let's Plays and similar content may qualify as transformative works. We will discuss the "transformative" argument (a reference to US fair use doctrine) later; the baseline under UK law is that streaming is an unlicensed public communication of copyrighted content, thus *prima facie* an infringement of copyright.

It's important to note that the act of streaming does not typically involve making permanent copies of the game (aside from transient data in memory). Hence, the reproduction right (copying the work, CDPA s.16(1)(a)) is less of an issue for the streamer (although the platform might make copies via caching or recording streams). The key rights in play are the performance/communication rights, which cover public dissemination. In sum, from a black-letter law perspective, streaming a video game without permission is very likely an infringing act because it communicates the game's protected audiovisual elements to the public. The UK courts have not yet had a direct case on game streaming, but by analogy to other media, it falls within the kind of use reserved for the copyright owner. For example, unauthorised online streaming of TV broadcasts was found to violate the communication to public right in cases like *Football Association Premier League Ltd v QC Leisure* (CJEU 2011, concerning live sports broadcasts). A video game stream would be treated similarly, the streamer is not just *playing* the game at home; they are *publishing* the experience to the world in real time.

Why Don't Game Streamers Get Sued?

Given that streaming unlicensed gameplay seems to fit the definition of copyright infringement, one might wonder: why are game streamers seldom subject to legal action by game companies? By the letter of the law, publishers like Nintendo, Electronic Arts or Sony could arguably sue thousands of Twitch and YouTube gamers for communicating their works to the

public without consent. Yet we rarely see such lawsuits or even takedown demands targeting pure gameplay streams. Several factors explain this apparent leniency:

- Industry Licensing and Tolerance, "Win-Win" Marketing: In practice, most game developers and publishers allow or even encourage streaming of their games, viewing it as free publicity and community engagement rather than a violation to punish. The relationship between game studios and streamers has largely been symbiotic. Streamers help popularise games, boosting sales and player engagement, while studios let streamers generate content and even profit from it. *"Most game companies understand that it's often in their economic interest to allow streamers to stream the game… and so there hasn't been a ton of litigation over it,"* Adi Robertson explains. Some companies go further and provide explicit licences or guidelines that authorise fans to create gameplay videos and streams under certain conditions. For example, *Campo Santo*, the developer of *Firewatch*, had a published policy allowing Let's Play streams of their game (they later used it to revoke permission in a specific dispute, discussed below). Many major studios have similar fan content policies or EULA clauses granting a broad, albeit revocable, license for non-commercial or monetised streaming of their titles. A 2023 study of 30 popular game titles by Amy Thomas found that companies increasingly use contractual UGC policies to permit and control fan-created content, effectively creating a parallel system of "some rights reserved" licensing that bypasses strict copyright rules. In essence, game creators realise that cracking down on streamers would be biting the hand that feeds them in terms of community goodwill and marketing. Streaming can make obscure games into viral hits; it can prolong the lifespan of live-service games; it generates hype that money can't easily buy. Thus, companies often choose to tolerate or unofficially partner with streamers rather than enforce rights. As reported by Daniel Jefferies for Raconteur, one UK trade association CEO observed that "*some developers take the view that the more people who stream their game*, *the better,"* and even embed permission in the user licence. However, she added, *"this could be a problem for other companies which want to restrict or control streaming"*. Indeed, not every publisher is equally permissive, some do place limits (for instance, a developer might forbid streaming the ending of a story-heavy game to avoid spoilers or disallow monetisation). But the general trend has been a strategic tolerance. As Amy Thomas put it, this massive user-driven phenomenon exists *"not because of enabling copyright laws, but in spite of a restrictive legal framework"*, it persists only because rights holders

choose not to enforce, understanding that *"heavy-handed copyright enforcement [would be] ill-advised in this industry, [as] doing so would risk alienating influential user communities."* In short, from the perspective of many game companies, suing streamers would be counterproductive. They'd rather embrace the free exposure. This implicit bargain has kept lawsuits at bay, leaving the legal status of streaming largely untested in court.

- Fair Dealing Exceptions, Critique, Review, or Parody: Another reason we haven't seen courtroom showdowns is that streamers might attempt to argue their broadcasts are protected by copyright *exceptions*, particularly the UK's fair dealing provisions for criticism/review or for parody/pastiche. UK copyright law (CDPA Section 30) provides that fair dealing for the purpose of criticism or review of a work does not infringe copyright, so long as there is sufficient acknowledgement of the original. Could a Let's Play video be considered a form of criticism or review of the game? Potentially, if the streamer's presentation is truly focused on critique or commentary about the game. Many streaming videos do involve the player commenting on the game's quality, strategising out loud, or reacting to content, which might be seen as a form of review or commentary. However, to qualify, the dealing must be "fair" and genuinely for the permitted purpose. Fairness is judged by factors like whether the use competes with/extracts value from the original work, and whether the amount used was necessary. Streaming an entire game from start to finish, especially a narrative game, could be seen as unfair because it substitutes for purchasing or experiencing the game oneself, the stream may act as a replacement for some viewers, impacting the market for the game. Also, if the streamer's commentary is sparse or secondary to just showcasing the game, it may not convincingly qualify as a "review." There's an obligation to give acknowledgement as well, streamers typically do name the game they're playing, so that condition is usually met. But ultimately, this exception has limits: it wasn't intended to allow broadcasting an entire work under the pretext of commentary. The UK Intellectual Property Office's guidance explicitly notes that if a use "acts as a substitute" for the original, causing the owner to lose revenue, it's likely not fair dealing. A publisher would likely argue this in any dispute, e.g. "This stream is giving away our whole game to viewers, undermining sales, not merely providing a few illustrative clips for critique."

  There is also a relatively new UK exception for parody, caricature or pastiche (CDPA

s.30A, introduced in 2014). This allows the use of limited amounts of a work for those humorous or pastiche purposes, as long as the use is fair dealing. One might ask: Is a funny live commentary or a comedic gameplay montage a “parody” of the game? Possibly, in a loose sense, some streamers do poke fun at game mechanics or create humorous narratives out of gameplay. However, the legal bar for parody/pastiche is specific. In the *Shazam v. Only Fools The Dining Experience* case (2022), the court clarified what counts as parody or pastiche in UK law. In that case, performers had staged an interactive dinner show using characters and scenes inspired by the *Only Fools and Horses* sitcom without permission. The defendants tried to invoke the parody/pastiche defence. The judge held that their show was *not* a protected parody because it did not *“*express an opinion [on the original] expressed as humour or mockery,” and not a pastiche because it wasn’t imitating the style of the original in a transformative way, rather, it was “recreating it as closely as possible.” Moreover, even if it had qualified as parody/pastiche, the use failed the three-step fairness test: it conflicted with the normal exploitation of the original work (the unlicensed show could divert audiences from the official Only Fools and Horses stage musical) and it prejudiced the rights-holder’s legitimate interests. This outcome highlights that UK courts take a narrow view of these exceptions. By analogy, a streamer who simply plays through a game faithfully is recreating the game*,* not parodying it. Unless their content is truly transformative in making some commentary or comedic critique about the game, the parody exception likely wouldn’t shield them. And if a stream becomes too much of a substitute for the game (for instance, viewers watch the whole story on stream instead of buying it), it would “conflict with normal exploitation” of the work, disqualifying the exception.

In practice, few if any UK streamers have tried to openly test these exceptions in court, largely because, as noted, companies haven’t sued them, and also because streamers would prefer to stay on good terms with publishers than fight a legal battle. It’s also worth mentioning that no reported UK case has yet directly ruled on fair dealing in game streaming, so the analysis is somewhat theoretical. But given the stringent application of fair dealing seen in other contexts, relying on it would be risky for a streamer. The consensus among experts is that Let’s Plays and streams occupy a grey area not clearly covered by existing fair-dealing provisions. In the US, creators sometimes invoke the more flexible “fair use” doctrine (arguing the stream is transformative, akin to

commentary), but UK law's closed list of purposes makes that a tougher sell unless the stream is structured as bona fide criticism or parody of the game.

- Enforcement Optics and Community Backlash: A more pragmatic reason is that game companies fear the public backlash that could come from aggressively enforcing copyright against popular streamers or their fan base. Gamers are a passionate community, and many see streaming as a legitimate part of game culture. A publisher that issues mass takedown notices or lawsuits could earn bad press and alienate customers. The Firewatch incident with PewDiePie is a case in point. In 2017, after YouTuber PewDiePie (the world's largest gaming YouTuber at the time) uttered a racial slur during a stream, the game's developer (Campo Santo) filed a DMCA copyright takedown to remove his *Firewatch* gameplay video in protest. The developer's co-founder openly said, "We're filing a DMCA takedown... His stream is not commentary, it is ad growth for his brand. Our game on his channel = endorsement". PewDiePie took down the video, and the developer urged others to ban him from streaming their games. This was an unusual instance of a company "weaponising" copyright to make a point. It sparked debate in the gaming community about whether it was fair to use copyright law in this way. While many supported the stance against the streamer's behaviour, others raised concerns about the precedent of game creators pulling permission arbitrarily. The episode underscored that legally, game developers do have the power to pull the plug on streams they dislike, since, without a license, a stream can be taken down as infringing. But it also showed that doing so is a bold step that companies don't take lightly. In the aftermath, Adi Robertson noted that the legal foundation of most streams is *"shaky"* and unresolved because such conflicts rarely go to court, they're settled by community norms and the implicit détente between creators and users. Streamers generally abide by publisher requests (like avoiding spoilers or using official music) to avoid takedowns, and publishers refrain typically from flexing their legal muscle except in extreme cases. This mutual caution contributes to the status quo, where overt legal enforcement is rare.

In summary, game streamers have been spared a legal onslaught thanks to a mix of tolerance and tact: game companies see value in streaming and often grant permission (explicitly or tacitly), and streamers try to add commentary or follow rules to strengthen their claim to legitimacy (or at least to not provoke the rights holders). The few legal tools streamers could invoke, fair-dealing exceptions, are of limited scope and untested for full-game streams, so they

are a thin shield. It's less that streamers have a clear right to stream, and more that they are "tolerated infringers" operating in what is effectively a copyright grey zone. As one legal study observed, this entire user-driven ecosystem exists largely because rights holders permit it, crafting private licensing policies to encourage fan content, rather than because copyright law itself gives users robust freedoms.

Conclusion: A Grey Area of Tolerance and Future Outlook

From a UK legal standpoint, the act of streaming video games occupies ambiguous terrain. On paper, it often falls foul of copyright, streaming a game involves communicating protected visuals and audio to the public, an act reserved to the copyright owner. And yet, in practice, game streaming thrives largely unimpeded, thanks to an understanding (explicit or implicit) between game developers and the streaming community. Streamers operate in a legal grey area that has been rendered benign by industry tolerance and tacit licensing, rather than by any solid statutory right to stream. In effect, most streamers are *"*living on license*"*, their activities are technically infringing but are permitted (and even facilitated) by rights holders who see mutual benefit in allowing it. UK law's fair-dealing exceptions (for critique, review, parody, etc.) provide only a narrow and uncertain safety net for streamers and would likely not cover the majority of gameplay streams that aim to entertain rather than critique in a limited way. Thus, most streamers cannot rely on the law to protect them; they rely on the copyright owner's acquiescence.

Does this mean the sword of Damocles hangs over the streaming world? In a sense, yes, publishers could enforce their rights if they chose to. The Firewatch/PewDiePie incident showed that this power is very real. However, the status quo of tolerance is likely to continue as long as streaming remains the marketing boon and cultural force that it is. Game companies have strong economic incentives to let streaming flourish, intervening only in exceptional cases (like to prevent spoilers, stop harassment, or shut down someone who is blatantly harming their market). Streamers, on the other hand, generally comply with unofficial rules (for example, many follow Nintendo's guidelines on not monetising certain content, or abide by embargoes set by publishers) to avoid rocking the boat. This mutual benefit dynamic has so far kept the peace and obviated the need for decisive legal battles.

Looking ahead, the landscape could evolve. One possibility is greater formalisation of streaming rights, we might see more publishers incorporating clear streaming licenses into game EULAs, or even industry-wide standards on what content is streamer-friendly. This would give streamers

more legal certainty (essentially converting the current implied permissions into explicit contracts). Another possibility is that if a major dispute did arise (for example, a streamer refusing to comply with a publisher's demands and a lawsuit ensues), we could finally get a court ruling on whether something like a Let's Play video with commentary is protected by fair dealing. Such a case would set a precedent one way or the other, either affirming that streamers have some cover under exceptions, or confirming that copyright owners have the final say. The lack of litigation so far suggests neither side is eager to roll those dice.

In the meantime, the prevailing approach treats streaming as a tolerated use, not strictly legal by statute, but accepted through practice. Streamers essentially operate under the de facto licences granted by game companies' silence or explicit policies. As long as that tacit contract holds, copyright law's grey edges will remain untested. For now, then, a game streamer's world is one of *"*proceed, but with caution*."* They must remember that behind their entertainment content lies someone else's IP. The current era of leniency reflects a careful balance: game studios refrain from wielding the big stick of copyright, and streamers respect the goodwill by not egregiously undercutting the game's market or moral rights. It's a fascinating example of how an industry can develop its own norms in the shadow of the law. Whether this equilibrium shifts, perhaps due to new monetisation models or a change in enforcement attitudes, will be worth watching. If game streaming ever stops being a net positive for publishers, the grey area could quickly darken into a black-and-white assertion of rights. But given the trajectory thus far, outright legal showdowns seem unlikely. Streamers and studios have little to gain and much to lose from breaking the unspoken truce. In conclusion, streaming sits at the intersection of copyright law and modern digital culture, illustrating that not everything that could be enforced is enforced. It is a legally grey but largely tolerated practice, one that may well persist as an accepted exception (informally if not in statute), as long as all parties keep playing along.

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