

Legal and Organizational Issues in Collaborative User-Created Content

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ABSTRACT

In this paper we look at issues that arise when people collaboratively create digital content and want to publicly distribute it. Our focus is on the organizational and legal problems. We identify and analyze these issues based on four case studies on amateur content production. Two of the cases, *Habbo Hotel* and *Neverwinter Nights*, are about fan/gamer-created content production based on material licensed by companies. In the two latter cases, a micromovie community *Blauereiter* and a web publication *The Melrose Mirror*, the content produced is not based on licensed material, but on the creations of the community members themselves. Based on the case studies, we identify that the main legal issues and concerns in collaborative creation of content are decision-making and liability. We argue that the content creation communities would often benefit in organizing themselves formally as entities such as corporations or cooperatives, or on a contractual basis.

Keywords

User-created content, legal issues, copyright, liability

INTRODUCTION

User-created content (UCC) in games has become popular as demonstrated by game-related skins, mods and extensions, gameplay videos, game narratives, walk-throughs, websites, articles, fan art, as well as tools for creating the content. Often UCC is a collaborative activity where people share their expertise and skills, and the organization of groups into larger communities can even more advance the quality and distribution of the created material. Communities of amateur content creators can create an identity and a virtual location around their activity (*e.g.*, a website), which can act as a publicity and distribution channel for the content, as well as a discussion forum, knowledge pool, and a place for socializing.

However, as the collaborative work gains popularity and moves towards more professional production, legal and organizational issues arise that even amateur content creators should address. These issues include decisions on commercialization of the content creation activity, intellectual property rights within the creators, the brand image of the content or the group, and managing the liability risks in content production. These issues can be critical for the existence of the community, and are often largely ignored until they manifest themselves with negative consequences

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CASE STUDIES

The first two of the four cases in our study are computer game related and both of them have a commercial stakeholder that is behind the game: user-created fan websites for *Habbo Hotel*, and user-created game worlds for *Neverwinter Nights* (NWN). The other two cases, a micromovie producing community *Blauereiter*, and an electronic publication *The Melrose Mirror*, are not directly game-related and the content production has no large commercial stakeholder behind them. The first two examples were chosen due to their popularity and clear commercial support for UCC. The last two examples were chosen to illustrate the kind of organization in amateur media content production that may become more relevant for game-related UCC in the future.

Habbo Hotel

Habbo Hotel [2] is a virtual meeting place on the Internet where the gamers can create their own characters and a hotel room where characters can visit. *Habbo Hotel* is owned and developed by Sulake Inc, and it currently has 3 million monthly users worldwide.

Habbo Hotel has a devoted fan community that publishes their own fan web pages that are graphically and thematically similar to the *Habbo Hotel* game. Sulake encourages the gamers to create their own fan sites but keeps control over the created content by having strict terms of use for the copyrighted Habbo images and other material [3]. For example, the fan sites that use copyrighted material must have original Habbo content that does not promote any adult, illegal, or hacking websites or websites that conflict with Sulake's interests. Also, by leveraging its copyright to the Habbo-related material, Sulake uses licensing terms that are somewhat unfamiliar to regular copyright licenses. For example, official Habbo fan sites are required to be updated at least once a month. Lately Sulake has been also enforcing its licensing terms by forcing the closing of inappropriate fan sites.

From the fan sites point of view the strict terms of use and respective enforcing of the terms can be seen limiting the creativeness of the fans – one of the main advantages associated with UCC. Also, the creation of Habbo-related content by users is dictated by the terms of use given by Sulake. This contractual binding imposes the issue of liability to the people behind the fan sites, and in the potential case of copyright infringement the problem of responsibility among the content creators. From Sulake's perspective enforcing the terms of use and disclaimers on fan pages are critical in maintaining its brand image as a virtual world suitable for children and not allowing the dilution of its trademark by letting fans use it freely. By limiting the use of their copyrighted material Sulake is able to control the content re-use.

Neverwinter Nights

Neverwinter Nights is a computer based multiplayer role-playing game. The game was created by Canadian BioWare and published by Infogrames. NWN is specifically designed to be extensible by the gamers: new adventures with new characters, weapons, sound effects, in game movies, etc. can be added. BioWare has been supportive of the user community, providing sophisticated tools and extensive documentation for extending the game and for building new tools. This strategy has proven successful as a over 2500 user-generated game extensions were made during the first year after the launch of the game [6]. However, BioWare is not pursuing direct revenues from the user-created extensions or user-ran gaming servers but from the indirect sales of the original game which is required to play the extensions or online.

NWN's end user license agreement (EULA) includes sections devoted entirely to dealing with user-created extensions and the running of game servers [5]. The EULA places significant restrictions on the communities' ability to profit both from the creation of content for the game as from the running of game servers. Of particular interest are the following restrictions:

"All user created variations must only work with the full commercial version of NWN".

"User extensions must not contain any libelous, defamatory, pornographic, obscene, or other illegal material, material that is scandalous or invades the rights of privacy or publicity of any third party, or contain any trademarks, copyright-protected work or other property of third parties, or contain any viruses, worms, or other malicious code".

"Users may not rent, sell, lease, lend, offer on a pay-per-play or timesharing basis or otherwise commercially exploit or commercially distribute extensions; including, without limitation, hosting pay-per-play servers, hosting pay-per-download web-sites for variations including sites that charge for bandwidth use, and independently selling variations online, at retail, mail order, etc".

At the same time both Infogrames and BioWare retain the following rights:

"If you Distribute, or permit others to Distribute, your Variations, you hereby grant back to Infogrames and BioWare an irrevocable royalty-free right to use and distribute such Variations by any means, and to make such modifications thereto as Infogrames and/or BioWare deem are necessary to package, combine, and otherwise distribute such Variations."

In exchange Infogrames and BioWare promise to make a reasonable effort to provide credit to the creator of the variation in the event it uses or distributes them.

BioWare places itself in a win-win position in regard to user-created extensions. The large amount of modifications increases the value of the game for end user, as there is much more to play than just the original campaign. At the same time, if a modification proves to be more popular than the original game, BioWare retains all the rights to distribute it under a revenue model of its choice. BioWare also forbids its users the creation of modules that infringe on the copyrights of others; however it does not proactively enforce this. This clause in essence removes any liability that BioWare might be exposed to. In practice this lack of liability can be considered to allow BioWare to benefit from possible user infringements. For example, if a user creates a popular extension that infringes the copyrights, BioWare benefits from the users need to purchase NWN in order to play the popular and infringing extension.

Blauereiter

Blauereiter is an amateur community for discussing and distributing micromovies [1]. Micromovies are short movies made especially for handheld devices with small screens. The community was established in Finland in 2002 to promote students' micromovies and to act as a knowledge sharing website. The website includes the community rules, where it is stated that the community manages the rights, marketing, and distribution of its members' movies and potential profits. The idea of the community is to collaboratively distribute and publish movies made by individual members or groups of members.

According to the rules posted in the community website, when a micromovie is submitted to the website the submitter is solely responsible for any copyright infringements in the movie. Once the movie is submitted, the community gets the right to publish it in the website and use it in marketing the community. The community also reserves the right to “sell the rights to movie forward, so that [the submitter] gets the revenues to herself”. The community has also the right to make decisions and changes relating to the rules.

However, neither the rules nor the website do explicitly state what or who are the community, how can members affect the community decision-making, or how potential revenues are distributed within the community. In practice, the people behind the *Blauereiter* community, after a while founded a limited company to handle the decision-making and other organizational issues. The community has not achieved popularity yet and there has been very little visible activity in the community website. However, the community rules and the choice to make it into a limited company reflect the critical issues the community saw challenging: decision-making in the community and liability for the content it distributes.

Melrose Mirror

The Melrose Mirror is an electronic newspaper collaboratively published by a group of senior citizens in Massachusetts, USA [4, 7]. The community has been active since 1996, and has over the years collaboratively produced several thousands of articles and images about the history and current life in Melrose, as well as more personal opinions and stories of the authors.

Although the community members have been active for nearly ten years as media content creators, and they have found a sustainable way of collaboration, they have not decided to formally organize their activity. The members participate strictly on a voluntary basis, and they do not have any commercial ambitions related to their activity. They also have access to the necessary resources (meeting space, computers, Internet access, and web server) as provided by the facility that hosts the activity (*i.e.*, Milano Senior Center in Melrose, MA).

However, the community members have defined common practices and work processes that are similar to the ones used in professional media production. They have divided responsibilities between the members. The editorial staff of about five members, which consists of a sub-group of all contributors, selects the articles and pictures for publication. Their role is typically to act as a quality checkpoint and articles are never rejected based on their subject interest by the editorial staff.

The decisions regarding issues such as advertising on the website, usage of computers, and opinions about the website content are debated in the group meetings where all members are encouraged to participate. Sometimes there are controversial issues that provoke heated conversations in these meetings. However, the stories in the publication are not moderated, and there are no commonly defined criteria for inadequate content. The members have decided that the opinions in the publication strictly reflect the views of the individual creators, and the copyrights to the material belong to the individual contributors.

Interestingly, according to the current laws in Finland, *The Melrose Mirror* would probably be considered a publication where the rules of publisher’s liability would be imposed. This would mean that the publication has to have an editor-in-chief that bears the responsibility of the story

content in the case of claims of libel, slander, invasion of privacy, invasion of the right of publicity, trademark and copyright infringement, etc. This is because the practices of the online newspapers closely resemble the ones used in traditional press and media.

DISCUSSION

Based on these cases we argue that the main legal issues and concerns in collaborative creation of content are *decision-making* and *liability*. The decision-making issues can be further identified as the distribution of potential revenues, deciding on a licensing policy for the content, and the re-publication of content. The liability issues can be specified as infringement of intellectual property rights (*i.e.*, copyrights, patents, and trademarks), risk of dilution of trademarks, publication of illegal material (*i.e.*, defamatory, pornographic or racist material), and the distribution of technically damaging content (*i.e.*, hacking instructions, computer viruses or cracking software). The liability issues are relevant irrespective whether the act is intentional or not. These issues are especially significant if the user-created content has the potential for commercialization.

Organization of UCC communities based on licensed material

We identified two alternatives that legal systems and existing practices provide as solutions to these issues. The first alternative is exemplified by the virtual fan/gamer communities around *Habbo Hotel* and *Neverwinter Nights*. In *Habbo Hotel*, Sulake owns the copyrights to the game material and trademark to the Habbo brand and by the terms of use for this content Sulake transfers the responsibilities of liability and, therefore, decision-making to the users themselves. In the same way, the *Neverwinter Nights* end user license agreement includes sections devoted to dealing with user-created extensions and the respective responsibilities (*e.g.*, illegal material, or malicious code). In addition, the license provides that users grant back to BioWare and Infogrames an irrevocable royalty-free right to use and distribute variations made by users and make modifications to them.

In both examples the holder of the key intellectual property rights is a traditional separate legal entity, a corporation, and their decision-making and liability issues are determined by the respective company legislation. On the other hand, the fan communities hardly ever assume any separate legal form, in part owing to the fact that the questions about rights and liabilities are determined by the license agreements. From the legal perspective, the rules relating to liability are dictated by the license agreements of the used material, which do not take into account organization among the content creators themselves (*e.g.*, representation and decision-making inside community).

Organization of UCC communities owning their own material

The second alternative for arranging these matters is exemplified by *Blauereiter* and *Melrose Mirror*. In *Blauereiter*, there was initially no separate legal entity managing the rights and liability issues but rather the questions were arranged by a contract between the members of the community. The contract was the community rules which had to be agreed upon when joining *Blauereiter*. The rules stated that the community managed the rights, marketing, and distribution of its members' movies and potential profits, while some rules on decision-making and liability of infringing materials were also included. Owing to the fact that the rules were not assumedly sufficient and clear enough, the community after a while established a company. The related corporate law then provided to the members clear rules and regulations to handle liability,

decision-making, and other organizational issues.

Rather than organizing themselves as a company, *The Melrose Mirror* members decided not to formally organize their own activity. However, the chosen editorial staff selected the content for publication therefore managing most of the decision-making issues. The approach adopted by the community to liability issues was that the opinions in the publication reflected the views of the individual creators, and the copyrights belonged to the individual contributors. The interesting issues arise as to determining whether, for example, these provisions exonerate the editorial staff entirely from civil or criminal liability should illegal materials be published. Drawing the line between legal and illegal material is a difficult task, bearing in mind also the freedom of speech aspects. Different national legislations provide different answers to questions on liability of editors in respect of contributions, sometimes regardless of whether there is a traditional organizational framework facilitating for the publication or not.

CONCLUSIONS

The two alternatives presented above outline the issues the content creators have to address when interacting between themselves, a separate entity providing the material for their activities, or with a third party interested in using further their content. They also apply in the potential case of an alleged intellectual property infringement, defamatory statement, damaging content, or other illegal material. To address these issues, there are three options available: to adhere to the end user license agreement associated with the content, to formally organize the community activity (e.g., a company or a cooperative), or to address the issues by forming contracts between all the members and stakeholders.

For many cases of user-created content communities the formal organization of their activity into a legal entity is too complex and not necessary. However, as the content production becomes more professional or the content has potential commercial value these issues should be addressed even by small communities. This short paper has outlined the current alternatives used by user-based creation communities but we call for more research on these issues, especially the practicality and feasibility of the existing alternatives.

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