

# Copyright and games preservation: lessons and opportunities in de-colonization

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## EXTENDED ABSTRACT

This presentation explores the legal and material challenges of institutionally preserving video games in a global, post-colonial context governed by IP law. Modern copyright law developed from the 1700s onward in Europe and America and has been applied internationally through the 1995 WTO TRIPS agreement. The global IP legal infrastructure has often been imposed without regard for local systems of ownership (Boateng 2011), which initiatives like the indigenous CARE principles (Collective Benefit, Authority to Control, Responsibility, Ethics) seek to re-incorporate into data and IP management (GIDA 2022) but which have not been universally or legally adopted. Current cultural heritage preservation practices were designed for the collection and maintenance of physical media, much of which was collected in colonial contexts, and are likewise challenging to apply technically to digital media, including video games (Rosborough 2024; Wallace 2022). The considerations being applied to ‘decolonize’ museums and make IP law fit for digital purposes have common cause.

Copyright law generally grants rightsholders exclusive rights to distribute copies of “fixed” works, with clear limitations & exceptions to individuals and institutions for purposes such as quotation and preservation.<sup>1</sup> Both copyright and heritage practices generally assume the territorial management of singular objects meant to be ‘preserved’ in mostly static states, without being copied. This sits uneasily with how

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<sup>1</sup> See e.g. 37 CFR §201.409(b)(19)(US) which allows for the circumvention of digital rights management tools for preservation by an eligible library, archive, or museum.

digital media is distributed and maintained. On a technical level, video games require copies, updates and other modifications to remain usable. They rarely exist in a definitive form, with patches, updates and DLC factoring in. Even with physical copies, digital data may corrupt, hardware becomes outdated, code ossifies, and platforms change, rendering even once-popular games difficult to use after a period of years if attention is not paid to their upkeep. The shift from physical media toward digital licenses and 'service' business models has likewise made it difficult for individuals and institutions to curate, preserve, and facilitate access to their collections over time (Higgins et al, 2024). Whereas once institutions like libraries and museums could collect content and make it available to the public, they maintain no long-term rights to digital material that they have licensed rather than purchased (Courtney and Ziskina 2025).

Similar factors, including the territoriality of copyright law, restrictions on digital distribution of preserved works, and a lack of commercial interest have resulted in uneven global availability of works - particularly in the Global South and smaller North markets (Orland 2024). Sony's requirements for PlayStation Network (PSN) access to play some high-profile games (Bailey 2024, Yin-Poole 2024), for example, restrict access to the approximately 85 countries in which the PSN is available (Sony 2024).

While copyright law has a well-established history of balancing rightsholder and user interests with regards to physical media, it has struggled to adapt to legal compliance frameworks for digital media, with technological protection measures adding another layer of complications (Orland 2024; Rosborough 2024; Albert and Lee 2022). While digital technology affords great opportunity for sharing, the recent US DMCA triennial rulemaking session in the US re-established that access offered through institutions will remain heavily controlled (US Copyright Office 2024). Industry pressures to prevent archival institutions from becoming "online arcades" largely limit access to on-site engagement, with a lack of interest in promoting availability in small markets. A recent study has famously shown that only a small fraction of games released since the 1970s remain commercially available (Salvador 2023) - and only in a handful of countries - underscoring the need for solutions not wholly dependent on market profitability and informal preservation efforts that largely sidestep copyright law. Attention and resources devoted to 'game history' likewise exist disproportionately in the Global North, leaving out games and play experiences of the global majority (Pepe 2025).

As notions of ownership, access, best practices, and the law are being reassessed in the cultural heritage field as they relate to colonially-acquired collections (Vergès 2024), an opportunity exists to jointly define best practices going forward for digital assets. The practicalities of game preservation also fit uneasily with cultural heritage institutions' established methods and the legal mechanisms that enable them to preserve and share collections. Games archivists face an uphill battle for funding and status, particularly in the context of fine arts and archival environments with limited public funding. Their struggles share some parallels with cultural heritage professionals seeking to 'decolonize' their collections, including developing useful

labelling and cataloguing systems (Lewis 2024). Other institutionally-based games preservationists have focused on experiences of play, such as the UK National Video Game Museum's project collecting the "thoughts, feelings and experiences of Animal Crossing players during the pandemic" (Animal Crossing Diaries 2021), paralleling efforts to enrich museum collections with greater context from people with diverse relationships to the artifacts. Concurrently, UNESCO and other bodies have increased efforts to protect 'intangible cultural heritage' (creative work that is not "fixed" in the way copyright law usually assumes) in ways legible to national and international legal systems (UNESCO 2000, 2003a, 2003b). Open Culture initiatives seek to promote greater global equity of access to creative works (Creative Commons 2024). These initiatives all seek to update established practices and laws to better reflect diverse and current interests, epistemologies, and material practices.

This research is in its early stages, with further work to be done in establishing the global state of game preservation, the supportiveness of national legislation, and ethnographic-level information on player and researcher practices. With that in mind, the presentation at this time seeks to prompt research directions and questions including: With institutions working hard to preserve games in some form, where do legal restrictions leave access considerations on a global scale? What does the state of distribution and preservation mean for the inclusion of non-Western voices in academic video game research? Where does it also leave people who want to simply play games that are not available in their region? What considerations can be found within cultural heritage practice and copyright law to ensure that games' physical preservation needs are met?

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