

T.C.
BAHCESEHIR UNIVERSITY
GRADUATE SCHOOL
THE DEPARTMENT OF COMMUNICATION DESIGN
MASTER’S PROGRAM IN GAME DESIGN

DUNGEONS & DRAGONS AS INTELLECTUAL PROPERTY
&
ANALYSIS OF WOTC’S OPEN GAMING LICENCE CRISIS
ATAKAN HATİPOĞLU

MASTER’S THESIS
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ISTANBUL 2025

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ABSTRACT

DUNGEONS & DRAGONS AS INTELLECTUAL PROPERTY

&

ANALYSIS OF WOTC’S OPEN GAMING LICENCE CRISIS

Atakan Hatipoğlu

Game Design Master Program

Thesis Advisor: Prof. Dr. Barbaros Bostan

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In this study, which approaches Dungeons & Dragons—a game that entered our lives as a tabletop role-playing game—from a legal perspective, we will seek to answer several key questions: What is the historical background of tabletop games? What is the legal nature of such works? How are intellectual and industrial rights protected? And how did the Open Game License (OGL), which functions as an IP Agreement prepared by Wizards of the Coast, evolve into a legal crisis, and what impact did this have on third-party game developers? Following a general overview of topics such as Intellectual Property Law, Copyright, Patents, Trademarks, and Patent Protection, we will present a segmented analysis of how a work should be protected, examining the individual components eligible for legal safeguarding. Where appropriate, the study will reference the book “Protection of Digital Games under Turkish Law” to offer a distinct perspective on tabletop games and the D&D universe.

Keywords: Dungeons & Dragons, Intellectual Property, Law, Open Game License, Wizards of the Coast

ÖZET

BİR FİKRİ MÜLKİYET OLARAK DUNGEONS & DRAGONS

&

WOTC’NİN OPEN GAMING LICENSE KRİZİ ANALİZİ

Atakan Hatipoğlu

Oyun Tasarımı Yüksek Lisans Programı

Tez Danışmanı: Prof. Dr. Barbaros Bostan

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Bu çalışmada, hayatımıza masaüstü rol yapma oyunu olarak giren Dungeons & Dragons’a hukuki bir perspektiften yaklaşarak birkaç temel soruya cevap aramayı amaçlıyoruz: Masaüstü oyunlarının tarihsel arka planı nedir? Bu tür eserlerin hukuki niteliği nedir? Fikri ve sınai haklar nasıl korunmaktadır? Ve Wizards of the Coast tarafından bir Fikri Mülkiyet Sözleşmesi olarak hazırlanmış olan Open Game License (OGL) nasıl bir hukuki krize dönüşmüş ve bunun üçüncü taraf oyun geliştiricileri üzerindeki etkisi ne olmuştur? Fikri Mülkiyet Hukuku, Telif Hakkı, Patentler, Ticari Markalar ve Patent Koruması gibi konuların genel bir değerlendirmesinin ardından, bir eserin nasıl korunması gerektiğine dair bölümlere ayrılmış bir analiz sunacak; hukuki korumaya elverişli olan bileşenleri ayrı ayrı inceleyeceğiz. Uygun görüldüğü yerlerde, masaüstü oyunlara ve D&D evrenine farklı bir bakış açısı katmak amacıyla “*Türk Hukukunda Dijital Oyunların Korunması*” adlı kitaba da atıfta bulunulacaktır.

Anahtar Kelimeler: Dungeons & Dragons, Fikri Mülkiyet, Hukuk, Open Game License, Wizards of the Coast

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Istanbul, 2025

TABLE OF CONTENTS

ETHICAL CONDUCT	iii
ABSTRACT	iv
ÖZET	v
ACKNOWLEDGEMENTS.....	vi
TABLE OF CONTENTS.....	vii
LIST OF TABLES	x
LIST OF FIGURES	xi
LIST OF ABBREVIATIONS	xii
Chapter 1.....	1
Introduction.....	1
1.1 The Historical Development Of TTRPGs.....	1
1.1.1 A journey from ritual to strategy.....	2
1.1.2 Chess and the rise of strategy.	3
1.1.3 Industrialization and the commercialization of play.	3
1.1.4 The 1970's: The birth of role-playing games (RPGs).	3
1.1.5 The 21st century: A tabletop renaissance.	4
1.1.6 Conclusion.....	4
1.2 D&D And Firsts	5
1.2.1 The global success and impact of D&D.....	7
1.3 Influences On D&D	8
1.3.1 Tactical Studies Rules V. Tolkien Enterprises.	9
Chapter 2.....	12
Intellectual Property, Copyright, Patents, And Trademarks	12
2.1 Board Game Intellectual Property	12

2.1.1 Patent protection.....	14
2.2 Tabletop Role-Playing Games And Intellectual Property	18
2.2.1 Protection of aesthetic elements.....	19
2.2.2 Protection of names and packaging.....	20
2.2.3 Protection of the technical features of a board game.	20
2.2.4 Protection of rules and concepts.....	21
2.3 The Intersection Point Between OGL Crisis & IP Agreements	24
2.3.1 The comparative legal analysis of Tolkien Enterprises and the OGL crisis in the Dungeons & Dragons universe.....	24
2.3.2 Holistic protection.	27
2.3.3 Fragmented Protection.	31
2.4 Intellectual Property (IP) Agreements.....	33
2.4.1 License agreements.	33
2.4.2 Assignment agreements.....	34
2.5 The Open Game License (OGL) As IP Agreement.....	35
2.5.1 Estoppel and the principle of legitimate expectation.	37
2.6 OGL Under Turkish Law	38
Chapter 3.....	41
Methodology.....	41
3.1 Research Design.....	41
3.2 Participant Selection	41
3.3 Data Collection Process	42
Chapter 4.....	44
Analysis Of Wotc's Open Gaming License Crisis.....	44
4.1 Findings.....	48
4.2 Thematic Analysis.....	54

4.2.1 Legal validity and the issue of trust.	54
4.2.2 Boundaries of intellectual property rights.	55
4.2.3 Impacts on the gaming industry and developers.	56
4.3 From The Perspective Of A Third-Party Developer	57
4.3.1 The ORC License: A post-OGC crisis alternative.	58
Chapter 5.....	60
Discussion And Conclusion.....	60
5.1 Limitations Of The Study	68
REFERENCES	73
APPENDICES	75

LIST OF TABLES

TABLES

Table 1 Classification of Intellectual Property Rights According to In-Game Components.....	26
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LIST OF FIGURES

FIGURES

Figure 1 British Museum Curator Irving Finkel explains and plays the Royal Game of Ur with Tom Scott(2017).....	2
Figure 2 The fantasy role-playing game Dungeons and Dragons, released in 1974, displayed at MoPOP in Seattle (photo by Sheila Scarborough, (2018)).....	7



LIST OF ABBREVIATIONS

D&D	Dungeons & Dragons
OGL	The Open Game License
WOTC	Wizards of the Coast
RPG	Role-Playing Game
TTRPG	Tabletop Role-Playing Game
IP	Intellectual Property
TSR	Tactical Studies Rules
ORC	Open RPG Creative
USPTO	United States Patent and Trademark Office
FSEK	Law on Intellectual and Artistic Works
PC	Personal Computer
US	United States
NPC	Non Playable Characters
TCO	Turkish Code of Obligations
U.S.C.	United States Code

Chapter 1

Introduction

Tabletop games have long stood as one of humanity's oldest forms of entertainment and social interaction. Long before the advent of writing and advanced technologies, people played strategic, chance-based, or tactical games using objects fashioned from stone, bone, or wood. These games were not merely leisure activities but integral parts of social order, religious beliefs, and cultural identity.

1.1 The Historical Development Of TTRPGs

When we trace the history back 4,600 years, we find that a game known as *The Royal Game of Ur* emerged around 2600–2400 BCE in ancient Mesopotamia. Designed to be played on a tabletop wooden board with playable shells, this game—like all games—had one essential component: rules. The rules were inscribed on a cuneiform tablet by a Babylonian astronomer in 177 BCE and were later deciphered by curator Irving Finkel. This simple game, based on the idea of two players racing their pieces from one end of the board to the other, also served a divinatory function, as some squares in the center of the board were used for fortune-telling.

Traveling from Mesopotamia to Egypt, we encounter *Senet*, a game beloved by figures such as Tutankhamun and Queen Nefertari, dating back to around 3100 BCE. In Scandinavia, at the end of the 12th century, the *Lewis Chessmen*—chess pieces exquisitely carved and discovered in 1831 on the Isle of Lewis in Scotland—emerged. Meanwhile, in China during the Qing Dynasty (1644–1912), the strategic game

Mahjong was played with 144 tiles decorated with traditional motifs. Board games have surfaced across many geographies and, through countless variations, have become a part of our lives—even integral to our digital realms.

1.1.1 A journey from ritual to strategy. One of the earliest known tabletop games is *Senet*, which dates back to 3100 BCE and has been discovered in Egyptian tombs. The game held a ritualistic and spiritual significance, symbolizing the journey of the soul through the afterlife (Piccione, 1980). Similarly, the *Royal Game of Ur*, which originated in Mesopotamia, incorporated dice-like objects and introduced elements of chance—reflecting the belief that randomness itself had divine or prophetic meaning. “Senet was not merely a pastime, but a ritual transition symbol related to the afterlife.” — *Peter Piccione, The Egyptian Game of Senet and the Migration of the Soul*, 1980.



Figure 1. British Museum Curator Irving Finkel explains and plays the Royal Game of Ur with Tom Scott (2017).

1.1.2 Chess and the rise of strategy. Chess, still one of the most enduring and respected strategy games, originated from the Indian game *Chaturanga*. It spread through the Islamic world into Europe, evolving into its modern form by the 15th century. “Chess had become an integral part of military thinking and aristocratic education.”— *Murray, H. J. R., A History of Chess*, 1913.

In medieval Europe, chess came to represent not only strategic intellect but also social status and intellectual superiority. It gained popularity among the nobility and was considered a mark of refinement and mental discipline.

1.1.3 Industrialization and the commercialization of play. The Industrial Revolution made mass production of games possible. In 1903, Elizabeth Magie designed The Landlord’s Game, a precursor to what would later become Monopoly (Anspach, 1936). This game critiqued capitalist structures, marking a moment where games became tools of ideological commentary.

Mid-20th-century titles such as Scrabble, Risk, and Clue further reflected the post-WWII desire for social cohesion and structured leisure.

1.1.4 The 1970’s: The birth of role-playing games (RPGs). In 1974, Gary Gygax and Dave Arneson created *Dungeons & Dragons* (D&D), initiating a paradigm shift in tabletop gaming. D&D allowed players to build characters and co-create stories with a designated narrator, blending mechanical systems with imaginative storytelling. “D&D was not merely a game—it was a cultural phenomenon and a new narrative medium.” — *Jon Peterson, Playing at the World*, 2012.

1.1.5 The 21st century: A tabletop renaissance. While the rise of digital gaming once threatened analog formats, tabletop games have experienced a renaissance since the early 2000s. Platforms such as Kickstarter empowered independent developers, and titles like *The Settlers of Catan*, *Ticket to Ride*, and *Gloomhaven* achieved international acclaim.

This new golden age emphasizes not only fun but also educational value and socio-cultural enrichment. During the COVID-19 pandemic, tabletop games found renewed relevance as tools for connection and cooperative engagement. “Analog games offer a collective experience against the isolating tendencies of the digital age.”

— Eric Zimmerman, *Manifesto for a Ludic Century*, 2013

1.1.6 Conclusion. Tabletop games have persisted across nearly every era of human history—migrating from spiritual rites to simulations of war, from critiques of economic systems to remedies for digital fatigue. Today, they continue to foster social interaction and cognitive development, preserving their timeless value in modern life.

Thanks to the work of Irving Leonard Finkel, it has become possible to identify the earliest known board game on record.¹ What is the first tabletop role-playing game recorded in history? The answer is somewhat more complex.

¹ Irving Leonard Finkel, Ph.D. (Assyriology, University of Birmingham, 1976; B.A., Ancient Near Eastern Studies, University of Birmingham, 1969), is a British philologist and Assyriologist. Since 1979, he has served as Assistant Keeper in the Department of Western Asiatic Antiquities at the British Museum, where he is responsible for the world's largest modern collection of clay tablets inscribed with cuneiform from ancient Mesopotamia—some 130,000 pieces. Finkel is also a prominent historian of board games and serves on the editorial board of *Board Game Studies*. Among his notable contributions is the deciphering of the rules of *The Royal Game of Ur*. He also owns a replica set of the Lewis Chessmen, which were used as props in the first *Harry Potter* film.

1.2 D&D And Firsts

Dungeons & Dragons (D&D), a fantasy tabletop role-playing game (RPG), was created and designed by Gary Gygax and Dave Arneson. First published in 1974 by Tactical Studies Rules, Inc. (TSR), the rights to the game have been held since 1997 by Wizards of the Coast, a subsidiary of Hasbro.

D&D evolved from miniature wargames and is considered a variant of the 1971 game *Chainmail*, which served as the foundation for the first D&D ruleset. Historically, D&D is recognized as the origin of modern role-playing games and the RPG industry as a whole. The franchise's legacy stretches from *Pool of Radiance*—the first computer game adaptation developed and published by Strategic Simulations Inc. in 1988—to *Baldur's Gate 3*, released by Larian Studios in 2023.

This long-standing work, which has influenced literary and digital artistic creations alike, becomes all the more fascinating when examined in depth.

D&D distinguishes itself from traditional wargames by allowing each player to create their own character. Players choose a class for their characters, which grants unique advantages and abilities across different levels and dice rolls. These characters embark on adventures in a fantasy world. A Dungeon Master (DM) acts as the referee and storyteller, maintaining the narrative environment and portraying non-player characters (NPCs), or inhabitants of the game world. The characters form a party, interacting with one another and NPCs, solving problems, engaging in battles, exploring, and collecting treasure and information. Throughout this process, player characters gain experience points (XP) to level up and grow stronger across multiple game sessions.

Because the game requires only minimal materials—rulebooks, character sheets (optional), and a few polyhedral dice—it can be easily adapted to nearly any environment.

A typical Dungeons & Dragons game consists of a "quest" equivalent to a single story or mission. The DM may design a custom adventure or select from numerous pre-published scenarios available throughout the D&D canon. These published adventures often include background lore, maps, narrative hooks, and objectives for the players to tackle. Briefings and notes help to enrich the game, and introductory side quests help weave interconnected story arcs that can span years. Although *Temple of the Frog* was included in the 1975 *Blackmoor* rules supplement, the first standalone D&D module officially published by TSR was *Steading of the Hill Giant Chief*, written by Gygax in 1978.

Typically, one player assumes the role of Dungeon Master while the others control a single character in a fictional setting. These characters form a "party" of adventurers, each contributing specialized abilities to the group's overall success.

During gameplay, each player dictates their character's actions and interactions with others. This process engages a range of cognitive and social skills, such as logical reasoning, basic math, and imagination. Character portrayal is enacted through spoken role-play. A single quest often spans multiple sessions, which may evolve into a longer series of interconnected adventures known as a "campaign."

A linked series of adventures is called a *campaign*, while the fictional locations where these campaigns occur—such as a city, nation, planet, or entire universe—are known as *campaign settings* or *worlds*. D&D settings vary widely in their magical and technological elements, drawing from different fantasy subgenres. Popular published

D&D campaign settings include *Greyhawk*, *Dragonlance*, *Forgotten Realms*, *Mystara*, *Spelljammer*, *Ravenloft*, *Dark Sun*, *Planescape*, *Birthright*, and *Eberron*.

Alternatively, DMs may develop their own fictional worlds for campaign use, planning subsequent adventures or expanding the setting as the players progress.

The outcomes of the party's decisions and the broader narrative are determined by the rules and the DM's interpretations. The DM also controls various NPCs, defines the environments for encounters, and resolves interactions based on player actions and choices. So how has this rules-light, imagination-driven game made such a global impact?

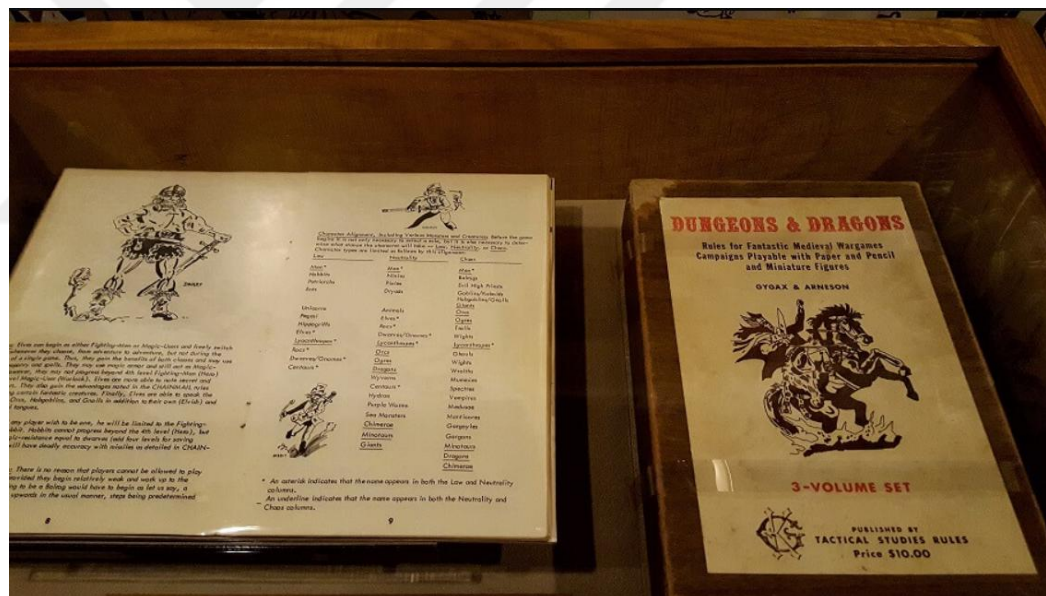


Figure 2. The fantasy role-playing game Dungeons and Dragons, released in 1974, displayed at MoPOP in Seattle (photo by Sheila Scarborough, 2018).

1.2.1 The global success and impact of D&D. The early success of Dungeons & Dragons led to the proliferation of similar game systems. Despite numerous

competitors at the time, D&D remained the market leader in the role-playing game industry.

In 1977, the game branched into two product lines: the original *Dungeons & Dragons* rules system and the more structured, rule-intensive *Advanced Dungeons & Dragons* (abbreviated AD&D). AD&D's second edition was released in 1989. In 2000, a new system was introduced as *D&D 3rd Edition*, continuing the edition numbering of AD&D. A revised version, *3.5 Edition*, was published in June 2003. The rules from this third edition also formed the basis of the Open Game License (OGL), enabling other publishers to use the core mechanics under the d20 System framework. *D&D 4th Edition* was released in June 2008, followed by the current *5th Edition* in the second half of 2014.

By 2004, D&D remained the most widely known and best-selling role-playing game in the United States, with an estimated 20 million current players. It had generated over \$1 billion in global book and merchandise sales. In 2017, D&D reached its highest number of players in its history, with an estimated 12 to 15 million players in North America alone. Sales of *5th Edition* increased by 41% in 2017 compared to the previous year and saw an additional 52% growth in 2018, marking the best sales year in the game's history.

1.3 Influences On D&D

The world of D&D has been heavily influenced by global mythology, history, and contemporary fantasy literature. While the influence of Tolkien's *The Lord of the Rings* and *The Hobbit* is debated, the inclusion of halflings, elves, half-elves, dwarves,

orcs, paladins, and the concept of a diverse party of adventurers united for a common cause clearly invites comparisons.

1.3.1 Tactical Studies Rules V. Tolkien Enterprises. Tolkien Enterprises, established in 1976, managed the licensing of media rights outside books for J.R.R. Tolkien’s works—primarily *The Hobbit* and *The Lord of the Rings*. The company later became known as Middle-earth Enterprises and was owned by The Saul Zaentz Company until its acquisition by the Embracer Group, a Swedish video game holding company, in 2022.

As is widely known, *Dungeons & Dragons* was first published in 1974 by Gary Gygax and Dave Arneson under TSR (Tactical Studies Rules). During this period, fantasy fiction was gaining popularity, largely driven by Tolkien’s works. *The Lord of the Rings*, which won the International Fantasy Award in 1957, saw renewed cultural significance in the 1960s and 1970s through paperback editions by Ace Books and Ballantine Books in the U.S. Its popularity increased further in 1978 with the release of Ralph Bakshi’s rotoscope-animated film adaptation of *The Lord of the Rings*, scripted by Chris Conkling and Peter S. Beagle.²

In 1977, Tolkien Enterprises intervened by issuing a cease-and-desist letter to TSR, asserting that the term “hobbit” was a registered trademark and had been used without permission. To avoid litigation, TSR altered some content and character names, recognizing the legal and reputational risks of confronting a major cultural

² Rotoscope animation.: the process of creating animated sequences by tracing over live-action footage frame by frame. Rotoscoping allows animators to create lifelike characters who move just like people in the real world.

brand like Tolkien Enterprises. No formal lawsuit was recorded; instead, TSR voluntarily modified its materials in response to the warning.

Terms such as “Hobbit,” “Ent,” “Balrog,” and “Nazgûl” were protected not only by literary copyright but also by trademark rights. Tolkien Enterprises’ claims focused specifically on trademark infringement.

So, does literary inspiration from another work constitute infringement? In general, being influenced by a genre or theme does not violate copyright. However, directly copying names, creature types, or distinctive character traits—considered *original expressions*—does fall within the scope of copyright protection.

Early versions of D&D displayed clear and direct influence from Tolkien’s characters and settings. This was especially evident in foundational texts like the *Player’s Handbook*, *Monster Manual*, and *Deities & Demigods*. Before the names were changed, terms like “hobbit” (later “halfling”), “ent” (“treant”), “Nazgûl” (“wraith/spectre”), and “balrog” (“balor”) bore very close resemblance to Tolkien’s original creations. These similarities ultimately led to pressure from Tolkien Enterprises.

Though brief, the interaction between TSR and Tolkien Enterprises had significant repercussions. It pushed D&D toward developing its own distinct fantasy mythology. Races like halflings and treants, which emerged from this shift, continue to appear even in contemporary adaptations like Larian Studios’ *Baldur’s Gate 3*. The case became a milestone in IP management within fantasy games and ignited debates on when terms like “orc,” “elf,” “wizard,” or “paladin” should be considered part of the public domain.

For years, Gygax avoided attributing too much of D&D's development to Tolkien. However, in a 2000 interview, he acknowledged that Tolkien had a "strong influence" on the game—while also listing many other writers as key inspirations.

Among these were Robert E. Howard, Edgar Rice Burroughs, A. Merritt, H.P. Lovecraft, Fritz Leiber, L. Sprague de Camp, Fletcher Pratt, Roger Zelazny, and Michael Moorcock. D&D monsters, spells, and magical items have drawn inspiration from hundreds of sources, including A.E. van Vogt's *Black Destroyer* (featuring the "coeurl"), Lewis Carroll's *Jabberwocky* (inspiring the "vorpal sword"), and biblical references such as the "flaming sword that turned every way" (inspiring the clerical spell "Blade Barrier").

So, what are the legal boundaries for utilizing such inspirations? If a game mechanic appears in another game as well, should any protective measures be taken?

Chapter 2

Intellectual Property, Copyright, Patents, And Trademarks

As a slogan, "property" does not have the siren's call of words like "freedom," "equality," or "rights". The Declaration of Independence speaks boldly of liberty, but only obliquely of property—through the imagery of the pursuit of happiness. Hughes (1988) pp.2.

2.1 Board Game Intellectual Property

It is appropriate to begin with the following statement: Game mechanics cannot be copyrighted.

Nevertheless, it is not entirely accurate to say that game mechanics are entirely unprotectable. While game mechanics are not protected by copyright and cannot be registered as trademarks, many games include unique combinations of mechanics that may be associated with a particular brand or style.

To illustrate this, we can refer to the "Raid" mechanic mentioned by *Magic: The Gathering* head designer Mark Rosewater during his panel “The 20 Best Mechanics of All Time” at MagicCon 2024.

The *Raid* mechanic, first introduced in the *Khans of Tarkir* set, encourages aggressive and active gameplay. This mechanic rewards players for having attacked that turn—if a creature has attacked, certain cards provide additional effects. For example, *Mardu Warshrieker* grants three additional mana if a creature attacked that turn. Similarly, *Mardu Heart-Piercer* deals 2 damage to any target upon entering the

battlefield if an attack occurred that turn. These cards synergize especially well with the Mardu color combination (Red, White, and Black), favoring aggressive strategies.³

Another mechanic with a similar reward structure is *Landfall*, which grants bonuses when a land enters the battlefield. Like *Raid*, it incentivizes a specific action during the turn.

Now, let's look at examples outside of *Magic: The Gathering*. Similar mechanics to *Raid* and *Landfall*—essentially those that say “If you did X this turn, you gain Y”—are not new. *Hearthstone's Combo* mechanic works similarly: it checks whether another card has been played earlier in the turn, and if so, it activates a bonus effect. Likewise, *Gloomhaven* includes an *Advantage* mechanic that rewards attacking under certain favorable conditions (e.g., from a higher position or against a vulnerable enemy) by allowing players to draw two cards and use the better result.

Such action-triggered mechanics are also common in digital games. In *Elden Ring*, the *Bloodlust/Bleed Buildup* mechanic operates similarly to *Raid* by encouraging aggression and tempo. The katana build *Rivers of Blood*, for instance, causes blood buildup with each hit, and when the meter is full, it triggers a burst of massive damage. The principle “the more you attack, the greater the reward” underlies both mechanics.

Game mechanics may appear under different names in different games, but their underlying logic remains the same. Regardless, they are not subject to copyright protection. For instance, drawing cards from a deck is a fundamental mechanic in many trading card games, and attempting to copyright such a basic mechanic would be detrimental to the genre as a whole.

³ In the *Magic: The Gathering* universe, “Mardu” refers to both a three-color identity and a clan faction within the *Khans of Tarkir* setting. Mardu excels in aggressive, combat-heavy strategies designed to dominate the battlefield.

2.1.1 Patent protection. In the United States, patent protection is a significant concern for many inventors and entrepreneurs. A patent is a legal document granting the right to protect and commercially exploit an invention. Securing a patent protects the inventor's right to produce, sell, and use their product while preventing competitors from copying it.

2.1.1.1 What is a utility patent? In the U.S., utility patents are valid for 20 years from the filing date. This means that once a patent is granted, the inventor's rights to the invention are legally protected for the next two decades. To take Monopoly as an example, the game was protected under patent law from 1935 to 1952. Similarly, the gameplay method for the trading card game *Magic: The Gathering* was patented in 1994, but this utility patent expired in 2024.

When a business owner develops a new or improved product or process, they may apply for a utility patent. Once granted, this patent provides the inventor with exclusive rights to manufacture and sell the invention for a specific period, thereby limiting competition. Utility patents are sometimes referred to as “invention patents” or “commercial patents.”

To qualify for a utility patent, the invention must meet several criteria. It must not have been previously patented (including pending applications), must not be obvious, must be novel due to its uniqueness, and above all, must be useful—that is, it must provide a tangible benefit.

A utility patent protects the commercial rights to an invention. It is the most common form of patent in the U.S. and can be granted for a process, machine,

manufacture, composition of matter, or any improvement thereof. Utility patents are applicable across many industrial sectors.

This type of patent protects the inventor's right to produce, sell, and use their product while blocking competitors from launching similar items. The relevance of utility patents is primarily tied to the industrial significance and commercial applicability of the invention.

Any individual or entity can file for a utility patent. This is especially common among entrepreneurs and professionals working in industrial, mechanical, chemical, or electronic fields who seek legal protection for their innovations.

The application process is managed by the United States Patent and Trademark Office (USPTO) and typically involves legal assistance from a patent attorney or agent.

The protection term is 20 years from the filing date, during which the patent holder may legally enforce and commercialize the invention.

For example, entrepreneurs who invent new products—such as automatic garage doors, digital cameras, printers, mobile phones, and similar technologies—can apply for a utility patent. Some pharmaceutical inventions may also be eligible, allowing these patented drugs to be marketed and legally protected.

Filing for a utility patent is a critical step in safeguarding intellectual property. If your invention has industrial applications or provides novel solutions, applying for a utility patent is highly recommended.

2.1.1.1.1 The U.S. utility patent application process. The utility patent application process in the United States consists of several steps. First, the applicant

must complete the patent application form and pay the associated filing fee. The application must include a detailed description of the invention, technical drawings, potential areas of application, and various other relevant details.

The application is examined by the United States Patent and Trademark Office (USPTO), and this review process can take approximately two to three years. The USPTO evaluates the application in accordance with the procedure outlined in 35 U.S.C. § 111(a) to determine whether the invention meets the standards of novelty and patentability.

During the examination, the USPTO considers a range of patentability criteria. These include the innovation and utility of the invention, its commercial viability, the existence of similar inventions, and whether any conflicting patent rights belong to other parties.

If the utility patent application is approved, the inventor receives an official patent certificate, which grants all the necessary rights for the legal protection and commercial use of the invention. If the application is rejected, the applicant may file an appeal or request a re-examination of the decision.

Therefore, it is highly recommended that applicants prepare a comprehensive application with the assistance of a qualified patent attorney or patent consultancy firm.

2.1.1.2 What is a design patent? A design patent is another type of patent granted in the United States to protect new and original creations. This type of patent is awarded for the novel, original, and ornamental design of a product. A design patent

safeguards the appearance of a product, preventing competitors from marketing items with similar designs.

Design patents are commonly used in industries such as furniture, fashion, jewelry, packaging, and other consumer products. They are often obtained before a product's release to legally protect its unique visual design.

Product designers, fashion designers, industrial designers, and packaging designers are among those eligible to apply for design patents.

The design patent application process is largely similar to that of utility patents, although there are some procedural differences.

Unlike a utility patent, which lasts for 20 years from the filing date, a design patent in the United States is valid for 15 years from the date of grant. During this time, the patent holder has the legal right to enforce protection and commercially exploit the design.

Examples of products with design patents that have gained recognition for their distinctive appearance include Nike shoes, Coca-Cola bottles, and Rolex watches.

A design patent may be an appropriate form of intellectual property protection if your invention or creation features a unique and decorative design. In such cases, filing for a design patent is strongly advised.

2.1.1.1.2 Design patent application process in the United States. The application form for a design patent must include a description of how the design differs from similar existing products. In addition, detailed drawings or photographs of the design must be submitted.

Design patent applications are examined by the United States Patent and Trademark Office (USPTO), and the review process typically takes around one year.

The USPTO evaluates a range of criteria related to the design's originality and distinctiveness. These include how different the design is from existing products, its applicability, its commercial benefit, the presence of similar designs, and whether the rights to the design may already belong to another party.

If the application is approved, the applicant receives a legal certificate that grants exclusive rights for the protection and marketing of the design. In cases of rejection, the applicant may appeal the decision or request re-examination—similar to the process for utility patents.

As with other types of patents, it is advisable for prospective applicants to seek assistance from specialized intellectual property professionals or institutions.

2.2 Tabletop Role-Playing Games And Intellectual Property

Within the scope of patent application procedures and utility patent protections, it is evident that tabletop role-playing games (TTRPGs) incorporate numerous aesthetic elements. These aesthetic components define the identity of the game and function as an inseparable whole alongside its content.

A tabletop game is a complex work composed of elements with diverse characteristics: aesthetic features (such as boards, miniatures, etc.), name, concept, rules, technical features, and so forth. Therefore, various forms of protection under intellectual property law may be considered.

Intellectual property (IP) law grants exclusive rights to certain types of works for a specified period. These rights apply only to expressions that are concretely fixed in a tangible medium; abstract ideas themselves are not protected under IP law.⁴

IP law applies to both artistic and industrial creators. Benefits of holding exclusive rights include the ability to initiate infringement lawsuits when a work is copied, and the recognition of the work as a valuable intangible asset.

2.2.1 Protection of aesthetic elements. These elements may be protected under two branches of intellectual property law:

Copyright law; copyright protects a wide range of creative works, including texts, books, illustrations, music, videos, software, and more. The sole requirement is that the work must be original and fixed in a tangible medium. In most jurisdictions, copyright lasts for 70 years after the death of the author. It is an exclusive, intangible property right enforceable against all third parties.

Copyright protection arises automatically once the work is expressed in material form; registration is not required. Therefore, if elements such as game boards, card designs, figurines, packaging, manuals, or other visual or textual features are original—bearing the imprint of the author’s individuality—they may benefit from copyright protection.

Design law; the aesthetic aspects of a work may be protected by design rights. This form of protection covers the visual and ornamental features of an object, such as lines, contours, colors, shapes, and textures.

⁴ **Exclusive Right** refers to the legal power to perform an action or obtain a benefit while preventing others from doing the same. It denotes a right that is reserved for or restricted to a particular party and is recognized broadly in legal terms.

Design rights are acquired through registration with relevant institutions, such as the French National Institute of Industrial Property (INPI). To be eligible, the design must meet strict requirements: it must be new, distinctive, visible, legally compliant, and not dictated by technical functionality.

Once registered, the design owner receives exclusive usage rights for an initial term of five years, renewable for up to 25 years.

2.2.2 Protection of names and packaging. The name and packaging of a board game can be protected under trademark law due to their distinctive function. A trademark is a sign used to distinguish a company's goods and services from those of competitors.

Trademark law grants the applicant exclusive rights to use the mark in relation to the specified goods and services. To receive protection, a name or logo must be registered with a competent authority such as the French National Institute of Industrial Property (INPI). To qualify for registration, a trademark must be distinctive, usable, and legally compliant. Trademark registration is valid for 10 years and can be renewed indefinitely.

2.2.3 Protection of the technical features of a board game. In rare cases, board games may contain technical and innovative features that can be protected by patents. A patent protects a product or process that provides a new technical solution to a specific technical problem and grants the right to exclusive use for 20 years.

To benefit from this protection, the invention must be registered with an official body such as INPI. The conditions for obtaining a patent are as follows:

- **Novelty:** The invention must not have been disclosed publicly anywhere before.
- **Inventive Step:** The invention must not be obvious to someone skilled in the field.
- **Industrial Applicability:** The invention must be capable of practical production and application in industry.

2.2.4 Protection of rules and concepts. As previously stated, ideas themselves are not protected under intellectual property law. Since game rules are considered abstract ideas or concepts, they are not directly protected. However, certain uniquely expressed components—such as graphic interfaces or characters—may be protected under copyright law.

A ruling from the Paris Court of First Instance (Tribunal de Grande Instance de Paris) on March 4, 2009 (No. 06/16550), involving the game *Puissance 4* (*Connect Four*), demonstrated that such protection is possible.

Hasbro, the rights holder for *Puissance 4* in France, owned copyright and trademark protection over the game’s design, rules, and name. Hasbro filed a lawsuit against a company named Eurogift, which had marketed an unauthorized version of the game, claiming copyright infringement and unfair competition. The court held that the rules and design of the game could be protected as an “intellectual work” under Articles L.112-2 et seq. of the French Intellectual Property Code. It also found that the name *Puissance 4* was protected as a registered trademark. The court ruled that Eurogift’s actions constituted copyright infringement, trademark violation, and unfair

competition, ordering the company to pay damages to Hasbro and cease the sale of the unauthorized game.

This ruling serves as a critical precedent, confirming that both the design and rules of a game may be protected by intellectual property rights and cannot be copied without authorization.

French Intellectual Property Code – Article L.112-2

Article L.112-2 of the French Intellectual Property Code defines the categories of works eligible for copyright protection. It provides a list of creations considered “works of the mind” (*œuvres de l’esprit*) that qualify for legal protection. This list serves as a key reference point for determining the scope of copyright under French law.

The following are considered protectable “works of the mind” under this law:

1. Books, brochures, and other literary, artistic, and scientific writings
2. Lectures, speeches, sermons, legal pleadings, and similar works
3. Dramatic and dramatic-musical works
4. Choreographic works, circus performances, and pantomimes (with written or otherwise fixed form)
5. Musical compositions, with or without words
6. Cinematographic and other audiovisual works
7. Drawings, paintings, sculptures, engravings, and lithographs
8. Works of applied art
9. Architectural works, plans, drawings, and architectural designs
10. Geographical maps

11. Topographic, planimetric, and three-dimensional works of scientific or technical nature
12. Photographic works and those expressed in similar forms
13. Computer software, including preparatory design material

This list is not exhaustive—any other work that meets the originality criterion may also qualify for protection.

In fact, some works may fall under multiple categories simultaneously. In such cases, courts apply a holistic interpretation of the law.

Tabletop games may be regarded as integrated works combining various elements. Courts have, in some cases, granted general copyright protection without analyzing each component individually. One notable example is the *Jungle Speed* case.

Jungle Speed, first published in 1991, is a fast-paced tabletop game requiring attention, speed, and reflexes. The objective is to discard all of one's cards by carefully monitoring patterns and acting quickly when necessary. In a ruling dated May 6, 2010 (No. 09/01554), the Paris Court of First Instance recognized *Jungle Speed* as an original intellectual work. The court concluded that the rules associated with the game's concept and key characteristics were indirectly protected under copyright law.

This case involved a lawsuit brought by *Jungle Speed* creators Thomas Vuarchex and Pierric Yakovenko against the producers of a similar game called *Jungle Jam*, alleging copyright infringement and economic parasitism.

The court held that *Jungle Speed* was an original and integrated intellectual creation. It found that *Jungle Jam* had unlawfully used the distinctive elements of *Jungle Speed*, thereby infringing copyright. Furthermore, the court ruled that *Jungle*

Jam had unfairly exploited *Jungle Speed*'s commercial reputation, constituting economic parasitism.

To secure such legal protection—as achieved in the *Jungle Speed* case—it is essential to establish evidence of authorship and creation date. Such documentation can be decisive in litigation. The court ultimately ordered the producers of *Jungle Jam* to pay damages and halt the sale of the infringing game.

This decision constitutes an important precedent, emphasizing that the designs and rules of a game may fall under intellectual property protection and cannot be copied without permission.

2.3 The Intersection Point Between OGL Crisis & IP Agreements

Let us now return to the intersection of all these legal concepts: *Dungeons & Dragons*, *Tolkien Enterprises*, and the *OGL Crisis*. Analyzing all three through the lens of intellectual property law will provide the most coherent framework for this study.

2.3.1 The comparative legal analysis of Tolkien Enterprises and the OGL crisis in the Dungeons & Dragons universe. Within the context of tabletop role-playing games (TTRPGs), *Dungeons & Dragons* stands as the most prominent example—and as such, two major intellectual property disputes have emerged around it: the copyright-related intervention initiated by Tolkien Enterprises in 1977 and the Open Game License (OGL) controversy launched by Wizards of the Coast in 2023.

Both incidents questioned the boundaries between copyright, trademark law, and open licensing, and had long-lasting impacts on the gaming industry. Therefore, it is crucial to discuss both the legal frameworks and industry-wide consequences of these disputes, particularly the tension between open licensing and proprietary trademark protections.

Since its publication in 1974, *Dungeons & Dragons* has been the subject of significant controversy from both pop-cultural and intellectual property perspectives. One of the most striking examples of this is the intervention by Tolkien Enterprises in 1977, directed at Tactical Studies Rules (TSR). Another is the public scandal known as the “OGL Crisis” in 2023. Both cases possess the power to redefine the legal limits of content usage within creative industries.

To revisit the Tolkien incident briefly: TSR’s early editions of D&D directly included numerous terms inspired by Tolkien’s works—such as the creatures “hobbit,” “ent,” and “balrog,” along with other mythological structures. Tolkien Enterprises issued a legal warning, claiming that this constituted copyright and trademark infringement. TSR, without proceeding to litigation, removed or renamed the terms in question (e.g., “hobbit” became “halfling”). This raised a fundamental issue about the balance between the incorporation of literary creations into common cultural heritage and the protection of proprietary naming rights. As a result, the Tolkien case contributed to D&D’s mythological independence and heightened industry-wide sensitivity to copyright.

Wizards of the Coast, on the other hand, released the Open Game License (OGL) 1.0a in 2000, making the D&D system accessible for use by third-party content creators. However, in 2023, the company attempted to revoke this license and replace

it with a more restrictive version, OGL 1.1. In the OGL crisis, the rights holder (WotC) sought to exert greater control over licensees. This attempt sparked significant backlash, particularly with respect to licensing security. Legally, many interpreted the license as irrevocable and perpetual. Facing mounting public pressure, WotC reversed course and published its core content under a Creative Commons license. The incident, which undermined trust in open licenses, emphasized the importance of transparent and creator-friendly models like Creative Commons.

Both cases redefined the boundaries of intellectual property within the gaming industry and drew attention to the balance between user rights, contractual stability, and creative freedom. Thus, the D&D case is unique in that it merges both classical and modern copyright challenges into a single body of analysis.

If we evaluate the OGL crisis through the lens of contract law and licensing reliability, we are compelled to ask: if IP rights are enforceable by contract in the modern era, what are the limits of such enforceability? Can the rights holder unilaterally alter the terms at any time? Would that not inevitably lead to a multitude of legal complications?

To answer these questions, we must first return to the foundations of intellectual property. IP refers to the legal protection of creations born from individual or institutional intellectual effort. Such protection ensures both economic and moral rights. The primary aim of IP law is to encourage creative activity and safeguard the resulting rights of those engaged in it. Intellectual property is broadly categorized into two main branches: copyright and industrial property rights.

2.3.2 Holistic protection. Although Turkish law does not explicitly classify digital games in this way, both Turkish legal doctrine and judicial opinions suggest that digital games should be protected as cinematographic works. The reasoning is that digital games, through cinematic design, offer viewers a perception of motion and consist of sequences of visual and auditory elements.

Even though digital games may resemble cinematic works in many ways, they are not entirely composed of passive viewing experiences. The interactive structure represents the active phase involving the player's participation. This interactive element is central to the core of digital games. In modern AAA games, even in cutscenes—traditionally considered passive—the player is now often involved through interactive prompts. However, this interactivity alone does not disqualify a digital game from being examined under the category of cinematographic works. Interactive TV series and films, which integrate viewer decisions, have already become part of mainstream media.

Even in RPGs where player choice plays a central role, the game still progresses in a linear fashion—ultimately, players cannot experience content that was not scripted by the developers. While digital games may branch out and distance themselves from the rigid linearity of cinema, they remain anchored in authored narratives.

To ensure comprehensive protection of digital games, *lege ferenda* (a legal proposal for future legislation) reforms are necessary. Under the current legal system, treating digital games as mere cinematographic works is insufficient. Considering games from a single perspective—without distinguishing between their artistic and technical components—risks creating logical inconsistencies in judicial reasoning. Reducing such multifaceted works to a single legal framework can result in serious

rights losses. Therefore, digital games must be protected cumulatively—as both computer programs and cinematographic works. Otherwise, interpreting them from a purely holistic standpoint may unjustly prioritize one core component over the other.

2.3.2.1 Copyright. Protects original and aesthetically valuable works. This includes literary and artistic creations, computer software, scripts and game texts, character designs, and fictional worlds. Copyright protects not the idea itself, but its specific expression. For example, the general concept of a “fantasy world inhabited by dragons” is not protectable; however, the actualized form of that idea—such as its creatures, characters, plotlines, and dialogue—is subject to copyright. Under the U.S. Copyright Act, a work must be original and fixed in a tangible medium to qualify for protection.

2.3.2.2 Trademark Law. Protects signs that serve as indicators of commercial origin. These may include words, logos, character names, or universe titles (e.g., *Forgotten Realms*). Trademark protection is particularly important in commercial contexts. For instance, Tolkien Enterprises’ trademark on the word “Hobbit” is commercially significant. Trademarks allow the public to associate a product with a specific source, and use of similar content that evokes the mark may constitute infringement.

2.3.2.3 Licensing. Refers to authorized use and belongs exclusively to the IP holder. An IP owner can grant permission to third parties to use their exclusive rights through a license agreement. These agreements typically cover the scope of use,

duration, territory, compensation, and other terms. The OGL (Open Game License) is a notable example—it governs the use of certain game mechanics (such as dice systems or character classes) protected by copyright. While these licenses allow limited freedom, they also retain control over expression and content-based creativity.

In increasingly digital and layered creative industries (e.g., video games and TTRPGs), copyright and industrial property rights frequently overlap:

Table 1

Classification of Intellectual Property Rights According to In-Game Components

Element	Copyright	Trademark	Patent/Design
Game narratives and dialogue	✓	✗	✗
Game name and logo	✗	✓	✗
Dice or miniature design	✗	✗	✓ (design)
System mechanics	✗ (ideas not protected)	✗	✗ / limited
Source code	✓	✗	✓ (in some cases)

In large-scale IP structures like *Dungeons & Dragons* or the Tolkien universe, a single piece of content can be protected by both copyright and trademark

simultaneously. This is why courts must be careful not to base decisions on a singular, generalized assessment, especially in complex legal disputes. The nature of the media product in question must also be accurately assessed.

With digital transformation now embedded in everyday life, we frequently encounter multimedia works. The term “multimedia” refers to the multi-channel, interdisciplinary use of various communication tools. Given their interactive nature, digital games are often classified as multimedia works. However, under the numerus clausus principle, this classification holds no legal weight unless recognized by statute. In Turkish law, only the types of works listed under the Law on Intellectual and Artistic Works (FSEK) are eligible for protection. Since Turkish courts have yet to develop firm precedent on digital games, it is more appropriate to examine international decisions for guidance.

According to Article 1/B(f) of the FSEK, digital games fall under the broader category of audiovisual works, within the subset of cinematographic works. While this suggests a classification, it does not explicitly define digital games as such.

Despite being artistic in terms of world-building, character development, main and side narratives, digital games also involve significant technical components. The lack of precise legal provisions has resulted in an inadequate treatment of this dual nature. The book *Protection of Digital Games under Turkish Law*, co-authored by Research Assistant Abdullah Harun Ataşlar and Attorney İlkim Ülgen, explores this distinction in detail. For clarity, the book distinguishes between two types of protection: holistic and fragmented.

2.3.3 Fragmented Protection. In digital games, individual components may also be protected separately, including: Graphics and visual elements, original music, scripts, dialogues, and text, computer programs.

Each of these components may qualify for protection independently. In practice, the infringement of just one component is sufficient to constitute a violation—comprehensive infringement is not required. This approach can also be applied to tabletop games.

In tabletop games, for visual elements to be protected, they must first qualify as works under copyright law. The necessary conditions for this qualification under Turkish law are:

- The work must be created by a natural person
- It must result from intellectual effort
- It must bear the creator's personal imprint (individuality)
- It must be fixed in a tangible form
- It must fall within a protected category under the Law on Intellectual and Artistic Works (FSEK)

If these conditions are met, works may be protected as works of fine art or cinematographic works under the FSEK.

Scripts and textual elements typically fall under the domain of cinematic works. Article 8 of the FSEK highlights their significance, stating that the scriptwriter and dialogue author are considered creators of the cinematographic work. Dialogues in games serve to enhance narrative immersion and provide players with multiple branching options.

Dungeons & Dragons players often engage in long-running episodic adventures that span hours or days. These campaigns may be extensive story arcs or short stand-alone narratives. Since each adventure is authored, and thus qualifies as a literary work, individual adventures can be protected accordingly.

For example, *Candlekeep Mysteries* is a published anthology of 17 short D&D adventures written by various authors, including Daniel Kwan, Chris Perkins, Sarah Madsen, Derek Ruiz, and Kienna Shaw. Each adventure has its own creator. From Alan Nash's *The Crucible* campaign to *Bakto's Terrifying Cuisine* by Roll 4 *Tarrasque*, these texts meet the threshold of originality and are protectable under FSEK Article 2 as scientific and literary works.

Similarly, in *Baldur's Gate 3 – Act III*, the in-game book *The Elf Song*, found in the Elfsong Tavern, and its lyrics are also subject to protection:

““ *O, sing a song of Balduran*
Who founded Baldur's Gateç
Empire golden built on trade,
Could bot avert his fate.
When three, though dead, assailed his port
Transformed, he fell their thrall.
Succumbed as threat from nether years
Arose to conquer all.
Now hope is gone, or so it seems
But game's not over yet.
New cards are drawn, new hands are played
Newcomers place a bet.

A knave, a wizard, devil, gith:

The odds are cast anew

And Baldur's fate now turns upon

The whims of fortune's few... "

To protect this work, we must revisit a fundamental concept already discussed: copyright, or more broadly, intellectual property (IP)—the full spectrum of moral and economic rights, including related rights, that one can hold over a creative work. But under what conditions can these rights be transferred? And how is the Open Game License (OGL) defined within this framework? These questions are explored in the following section of this study.

2.4 Intellectual Property (IP) Agreements

Intellectual property agreements encompass legal arrangements between parties for the transfer, licensing, co-use, or joint production of intellectual property rights (such as copyrights, trademarks, patents, etc.). These contracts define the respective rights and obligations of both the rights holder (licensor) and the user (licensee). Common examples include copyright or trademark licenses, franchising, merchandising, distribution agreements, software development contracts, and the assignment of broadcasting rights.

2.4.1 License agreements. These are agreements where the rights holder grants permission to a third party to use the IP without transferring ownership.

Non-exclusive License, the licensor may grant the same right to multiple licensees.

Exclusive License, the usage right is granted to only one party—even the rights holder is excluded from using it.

Sublicense Rights, it must be specified whether the licensee can transfer the license to others.

2.4.2 Assignment agreements. These involve the transfer of all or a portion of the intellectual property right to another party. In most jurisdictions, these agreements must be in written form and may require registration (e.g., in cases of trademark or patent transfers).

To ensure the legal validity of IP contracts, formal requirements must be fulfilled. While copyright licenses generally do not require written form in many legal systems, a written contract is preferred for evidentiary purposes. Trademark and patent licenses, however, typically require both written form and registration. Particularly for trademark and patent assignments or licenses, legal effect arises only upon entry into the official registry—this is referred to as registration.

Even with formal compliance, general principles of contract law—such as freedom of contract—apply. If a contract is not formed through the genuine and mutual consent of the parties, or if public policy is violated, it may be deemed invalid.

Several types of disputes may arise from these agreements:

- Exceeding the scope of the license (e.g., unauthorized resale of licensed content)
- Violating exclusivity (e.g., granting the same right to multiple parties)

- Deficiencies or lack of transparency in royalty payments
- Disputes over the reversion of rights at the end of the license period (especially in software licenses)
- Jurisdiction and applicable law issues in international licenses

For these reasons, IP agreements must include clear, written, and detailed terms.

2.5 The Open Game License (OGL) As IP Agreement

- **Licensor:** Wizards of the Coast (WotC)
- **License type:** Non-exclusive license
- **Scope:** Rules and mechanics defined in the System Reference Document (SRD)
- **Issue:** WotC's attempt to unilaterally amend the license via OGL 1.1

The core legal question is: Can a perpetual license be unilaterally revoked?

As mentioned earlier, the Open Game License (OGL) was a license agreement issued by Wizards of the Coast (WotC) that permitted third parties to use specific content from *Dungeons & Dragons* (notably the System Reference Document, or SRD). The license was non-exclusive, publicly accessible, and applied to certain copyrightable content. It was royalty-free and included an implied promise of continuity. However, it did not constitute a full assignment of rights; rather, it authorized limited use under specified conditions.

WotC, as the licensor, retained ownership of the IP. Licensees were any individuals or developers who agreed to use the OGL terms. Unlike conventional contracts, OGL does not identify the parties by name—the user becomes a licensee

automatically upon use. As such, the license is effectively public and arguably anonymous.

Importantly, the OGL covers only content found in the SRD. These include core mechanics such as racial systems, dice usage, and class definitions. It explicitly excludes creative expressions like character names, storylines, and universe settings (e.g., *Forgotten Realms*). As a result, the OGL does not license original literary expressions or designs protected by copyright—but only the underlying mechanics, which are not themselves copyrightable.

Thus, the OGL licenses system elements (like the d20 system, classes, and spellcasting mechanics) that qualify as ideas and therefore fall outside the scope of copyright. These are presented using expressions explicitly exempted from copyright protection by WotC. This is consistent with the idea-expression dichotomy in U.S. copyright law. According to this doctrine, “Ideas, concepts, principles, methods, or systems are not protected by copyright. Only the expression of those ideas can be.” This principle is one of the cornerstones of U.S. copyright law and plays a vital role in defining the limits of IP protection not only in the U.S. but across the Anglo-American legal tradition.

OGL 1.0a was published as a license with the characteristics of perpetuity (“perpetual”) and irrevocability (“irrevocable”). Developers relied on these assurances to create and commercialize products and to plan business investments. However, a crisis ensued when WotC announced in 2023 that it would invalidate OGL 1.0a and replace it with the far more restrictive OGL 1.1.

The new version introduced stricter copyright constraints, required commercial users to obtain specific permissions from WotC, and stated that prior licenses would be revoked. This raises a fundamental legal question:

If a license agreement expressly claims to be “perpetual” and “irrevocable,” can it nonetheless be unilaterally terminated?

2.5.1 Estoppel and the principle of legitimate expectation. In a process that severely tested legal certainty and contractual trust, the fact that developers made investments in reliance on the license could, under the doctrine of license estoppel or promissory estoppel in Anglo-American law, legally prevent the licensor from unilaterally revoking its grant. The principle of estoppel aims to prevent a party from benefiting from its own contradictory conduct and serves as a general legal principle that promotes consistency, stability, and trust in international relations.

Written Form: The OGL was established in written form, as is standard for valid licensing agreements. WotC published the OGL 1.0a publicly, setting out the terms and conditions of use in a stable and transparent manner.

Prohibition of Unilateral Modification of Contractual Terms: The idea that WotC alone could modify the terms of the license contradicts general principles of contract law, which require mutual agreement for any contractual amendment.

Vested Rights Based on Contractual Reliance: Since the OGL 1.0a was explicitly described as "perpetual" and "irrevocable," revoking those rights would require clear, mutual consent. Without such consent, WotC's unilateral attempt to cancel the license lacks legal force.

Following extensive public backlash in 2023, WotC ultimately withdrew its plans to revoke OGL 1.0a and began releasing certain contents under the Creative Commons license. The legal discussions and principles involved in the OGL crisis resonated globally. Nevertheless, the interpretation and enforceability of licensing terms may vary in different legal systems (e.g., the EU, Turkey), since the OGL was drafted based on U.S. copyright law. The crisis illustrates how licensing frameworks can be flexible—or fragile—under the pressure of public opinion and market forces.

2.6 OGL Under Turkish Law

Turkey is a party to the Berne Convention for the Protection of Literary and Artistic Works and the TRIPS Agreement on Trade-Related Aspects of Intellectual Property Rights. Therefore, licenses such as the OGL must comply with these international standards.

Under Turkish law, the OGL would be considered a license agreement governed by the Turkish Code of Obligations (TCO) No. 6098. However, rather than a traditional bilateral contract, it functions as a unilateral declaration of intent containing general terms and conditions that apply to multiple parties.

As a declaration of intent, the OGL must meet the criteria of offer and acceptance. WotC provides the offer (the OGL text), and acceptance is formed when a developer uses the license to publish a game. This satisfies the TCO Article 1, which outlines how contracts are formed.

Since WotC unilaterally determined the contents of the license, for the OGL to be legally binding and enforceable against the licensee, all provisions must be predictable and foreseeable for the other party.

A key aspect is the OGL 1.0a's use of the terms "perpetual" and "irrevocable." Turkish law allows for both fixed-term and perpetual license agreements. If the parties explicitly agree to irrevocability, such a clause is valid under TCO Articles 26 and 27, provided it does not violate public policy. The principle of permanence ("süresizlik") as mutually agreed in OGL 1.0a cannot be revoked unilaterally.

- **TCO Article 26:** "The parties are free to determine the content of a contract within the limits prescribed by law."
- **TCO Article 27:** "Contracts that are contrary to mandatory provisions of law, morality, public policy, personal rights, or that are impossible in subject are null and void."

Furthermore, **TCO Article 112** states:

"If an obligation is not performed at all or is not performed properly, the obligor is liable to compensate the creditor for any resulting damages unless the obligor proves that there was no fault on their part."

Accordingly, breach of contract, abuse of rights, and arbitrary revocation of licenses all violate Turkish law under good faith principles. If OGL 1.1 includes vague terms regarding revenue sharing or data collection and if such clauses were not freely negotiated by developers, the agreement may lack clarity and enforceability.

In conclusion, although OGL 1.0a is valid, continuous, and binding under Turkish law, WotC's unilateral termination via OGL 1.1 is invalid and violates the principle of good faith. The rights of third-party developers must be protected under

doctrines such as legitimate expectation and vested contractual rights. Otherwise, such public licenses—if left unchecked—could spread distrust, causing irreparable harm to independent developer communities and undermining the value and reputation of the D&D intellectual property.



Chapter 3

Methodology

3.1 Research Design

In this study, the researcher employs qualitative research methods and the technique of in-depth interviews (i.e., expert interviews) as a means of data collection. The expert opinions obtained are expected to provide comprehensive insights into the subject matter and enhance the quality of the study by systematically compiling data relevant to the research. The research design is structured around an interview composed of eight (8) questions directed to an expert participant.

The in-depth interview method has been specifically chosen to better understand the effects of intellectual property law and licensing crises in the gaming industry, particularly in the context of the “Open Game License (OGL) and Intellectual Property Law.” This method allows the participant to convey their experiences, interpretations, and expert knowledge in a detailed and reflective manner.

3.2 Participant Selection

The interviewee selected for this study is a legal expert specializing in Game Law—an emerging hybrid field shaped by the needs of a rapidly evolving industry, much like other areas of law in which the participant is also proficient. This innovative specialization, which encompasses Contract Law, Intellectual Property Law, Labor Law, International Law, and—when digital inheritance is considered—even Civil Law, positions the participant as a uniquely valuable contributor to the research.

Furthermore, the participant is the author of the book *“Protection of Digital Games under Turkish Law”*, which significantly enhances the academic depth and credibility of the data source. In addition to their expertise in digital games, the participant is also well-versed in tabletop role-playing games (FRP) and board games, which has broadened the scope of the interview and enriched the findings.

The participant was selected using the purposive sampling method, as the primary aim of this study is to obtain data directly from highly competent and experienced individuals in the relevant field.

3.3 Data Collection Process

The interview was conducted using a semi-structured format. The questions were designed to explore the legal dimensions of the Open Gaming License (OGL) crisis, its validity under intellectual property law, its impact on third-party developers, and to gather insights regarding possible future licensing policies. A total of eight main questions were posed:

1. **General Overview of the Open Gaming License Crisis:** Could you provide a general evaluation of the OGL crisis initiated by Wizards of the Coast? How has this crisis affected the gaming industry and its communities?
2. **Intellectual Property Law and OGL:** How should the OGL be evaluated from the perspective of intellectual property law? What are your thoughts on its legal validity and implications?

3. **Legal Validity of the License:** What legal debates have emerged concerning the validity of the OGL license? Considering that OGL is a unilateral agreement, what can be said about its enforceability and binding nature?
4. **IP Rights and OGL:** In your opinion, how has the OGL affected confidence in the intellectual property rights of Wizards of the Coast? What impact does it have on the IP rights of license holders?
5. **Legal Conflicts and the Crisis:** The OGL crisis seems to have created legal conflicts, particularly for third-party developers. What is the legal basis of these disputes?
6. **Legal Protections:** What types of legal protections does the OGL offer for game developers, and what risks does it entail? In your view, in which legal areas are there significant gaps?
7. **Legal Implications for Third-Party Developers:** How do you think third-party developers are legally affected by the OGL crisis? What potential solutions exist for them, and do you believe the current strategies they have adopted are effective?
8. **Future OGL and IP Policies:** How should licenses like the OGL be structured in the future to prevent similar crises? What kinds of reforms are necessary in terms of IP law and game licensing frameworks?

These questions were prepared to elicit both theoretical knowledge and responses grounded in practical experience.

Chapter 4

Analysis Of Wotc's Open Gaming License Crisis

The Open Gaming License (OGL) crisis represents a critical turning point in the history of tabletop role-playing games and intellectual property law. Originally introduced as a form of public copyright license, this unilateral agreement led to outcomes that may be characterized as detrimental or even bad-faith in nature. As a result of significant backlash, Wizards of the Coast ultimately reversed its decision and announced that the existing OGL 1.0a would remain unchanged.

Before proceeding with an analysis based on the interview responses, it is appropriate to present a complete overview of the currently applicable OGL 1.0a license text:

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END OF LICENSE”

The responses obtained through the interview were analyzed using thematic analysis. When we examine the full text of the OGL 1.0a and the participant's responses below, it becomes evident that organizing the findings under three main thematic categories will provide a clearer and more comprehensive understanding of the issue:

- a. Legal Validity and the Issue of Trust
- b. The Boundaries of Intellectual Property Rights
- c. Impacts on the Gaming Industry and Developers

4.1 Findings

Participant Responses:

1. Certainly, the crisis had negative consequences. It raised serious concerns regarding trust. However, in my view, this crisis primarily poses a challenge for independent developers (solo developers). Given that their market share is already limited, it would not be surprising if similar models to the OGL emerge, particularly within platforms like Steam, prompting independent developers to create their own licensing systems. Through this process, developers may develop their own legal frameworks. Although such developments might lead to a short-term decline in employment, they may contribute to greater diversification within the industry in the long term. Ultimately, I find the community's reaction to be somewhat conservative, especially when considered in light of the sector's adaptive potential.
2. The core issue here lies in determining the legal system within which the Open Gaming License (OGL) was created. If it originated under common law jurisdictions (such as the United States or the United Kingdom), then one must note that these systems adopt a stricter and more contract-centric approach to intellectual property rights, often accompanied by more rigid legal actions. If we are to conceptualize the OGL from a legal perspective in a manner akin to how one might approach an artificial intelligence system—an analogy I find quite apt—then it essentially operates on a logic similar to that of publicly accessible code. Accordingly, to what extent it benefits from intellectual property protection becomes a distinct and complex matter.

To illustrate this point: when a user purchases a game via a Steam account, they are not acquiring ownership of the product, but rather a license to use it. As such, it cannot be transferred by way of inheritance. A similar situation applies to the OGL. Since the relationship is based on a license, the content acquired under it cannot be ascribed inheritable value. In this respect, the OGL does not in itself confer copyright protection; rather, it functions as a license and usage agreement.

In practice, how this is to be implemented remains uncertain. Specifically regarding the OGL, any game created using it (and it is important to note that the OGL alone is insufficient to create a complete game) must necessarily involve additional creative contributions. Take, for example, the Unity engine. Through Unity, various extensions and actions are performed, resulting in the creation of numerous distinct games. Likewise, the OGL—on its own—cannot benefit from intellectual property protection unless it is supplemented with original and expressive content.

3. As I have emphasized, the OGL cannot, on its own, benefit from intellectual property protection. I consider it primarily within the framework of a usage and license agreement. The entity that created the OGL is Wizards of the Coast (WotC). Their *terms and conditions* may potentially be challenged under European legal systems—a concept known as *standard contract terms* (genel işlem şartı). This concept also exists in French law and is codified in the Turkish Code of Obligations (TBK). However, in English or American law, this remains a point of contention, as common law jurisdictions are far more rigid and contract-focused when it comes to intellectual property rights.

Unity, for example, is no stranger to this issue. When Unity announced, *"We are changing our terms. Under certain conditions, you must pay us a fixed amount,"* it reshaped the sector overnight. I speak from experience—as a shareholder myself—that when Unity makes such a demand, the industry complies. If the OGL ever reaches a similar level of monopolistic dominance, we may see a comparable model emerge. At that point, the debate would no longer be legal in nature, but rather one of market necessity.

That is why I remain skeptical that an open-source model like the OGL can enjoy full intellectual property protection in and of itself. At best, one might protect the code it provides. However, to claim that a game derived from the OGL enjoys comprehensive IP protection would, in my view, be an overreach. After all, we are talking about an open framework that, by design, allows for withdrawal at any time.

4. It is already evident that the OGL has left a negative impression on the community in terms of trust. This is further reflected in the rapid increase in demand for alternative open licenses—most notably, Paizo's Open RPG Creative (ORC) License initiative. When evaluated from an intellectual property (IP) perspective, it is important to acknowledge a prevailing conservative sentiment today: IP is often treated as a value to be "protected like honor." However, the core rationale behind intellectual property is, in fact, the licensing of creation. In order for a creative work to be commercialized, such licensing mechanisms are not just helpful—they are essential. The question is not whether you should protect the creation, but how you can monetize it through licensing. Yet the primary concern for any studio remains the same:

“Are you giving away your IP?” This has become the defining anxiety in the industry. Within the Turkish ecosystem, several bad-faith actors exploited this environment by acquiring IPs from different companies between 2022 and 2023, manipulating the market to their advantage. As a result, the sensitivity surrounding IP rights has intensified to an excessive degree. However, I do not believe that the OGL—or similar open licenses that follow its model—are likely to *unduly exploit or deplete* either developers or end-users in terms of IP. In fact, from another perspective, it may actually facilitate the work of developers. One must also consider the practical dimension of this issue. We cannot ignore the reality of markets like China. A game or creative product that takes three to five months to develop can be reproduced by a Chinese company in three days. This is simply a matter of population-driven productivity. Consequently, the market-based significance of IP protection becomes far less meaningful. In such environments, speed and scalability often outweigh legal safeguards.

5. Yes, there has clearly been a significant breakdown in trust. At the heart of many of these conflicts lies the question of whether one can assert intellectual property rights over a product developed using the OGL. However, what is often overlooked is this: a game that has taken months to develop can be cloned by a Chinese company within a matter of days. In practice, clone games can actually elevate the visibility and popularity of the original. Among a sea of clones, one successful game may emerge as a “hit,” and even that hit game may then generate numerous additional clones. In this way, the cloning market functions as a kind of hype engine that indirectly promotes the original work.

Platforms like Twitch and YouTube are foundational to today's gaming ecosystem. If one were to adopt a strictly conservative interpretation, almost all content on these platforms could be deemed IP infringement. However, such a view would lead to a self-defeating cycle in which no one ultimately benefits. Consider the individual who earns a living by playing *Counter-Strike*—they are, in effect, providing free publicity. On the other hand, Nintendo has taken the opposite approach, maintaining strict control over its IP while still achieving commercial success. This divergence reflects differences not only in company policy but also in broader cultural frameworks, particularly between Asian and Western approaches to IP. European companies, for instance, tend to be far less rigid in their IP enforcement.

6. Generally, a designer or developer does not seek legal counsel during the creative process. Perhaps this observation alone highlights the need for game developers to establish a user agreement or legal framework governing the use and distribution of their creations. However, I would not necessarily consider this an actual *legal gap*. The core challenge lies in proof—proving who holds the intellectual property rights is often difficult. Historically, poets would send letters to themselves with timestamps to document the creation date of their work. A modern equivalent of this practice has been the common act of emailing oneself the work. Later, parties began to obtain voluntary registrations from national copyright offices, such as the Ministry of Culture and Tourism in Turkey, to use as evidence in disputes. The OGL functions in a similar manner. One may obtain the OGL, develop code based on it, and leave clear traces such as log files, entry/exit records, and time-stamped

documentation. These records become significant in proving that a particular game belongs to a given developer. If we are to speak of any legal benefit or protection offered by the OGL, it is most accurately described as facilitating proof of authorship. Thus, the most substantial contribution of the OGL may not be the legal protection itself, but rather the evidentiary ease it provides in demonstrating authorship and ownership over derivative works.

7. To be frank, I view this crisis more as a reflection of anxieties within the IT industry. For instance, I personally no longer compose many of my emails manually; I simply instruct an AI to format them, which saves me approximately twenty minutes each day. From this perspective, I do not foresee a structural rupture in the industry that could arise from collective opposition to technological integration in the coming years. Similar concerns have previously been raised regarding the end of contract law, with some claiming that automation or algorithmic governance would render it obsolete. Yet, we have been anticipating such a development for over a decade now. In that sense, I do not consider the OGL crisis to be disruptive or destructive; rather, I interpret it as a manifestation of anxiety within a rapidly evolving digital legal environment.
8. Ultimately, what we refer to as an *Open License* is itself a form of creation. Whether or not it is included within the scope of protection does not, in itself, determine whether it can benefit from intellectual property rights. When protection is considered in a segmented manner—as is often the case with software—certain components may indeed be protected. But whether the work as a whole qualifies for protection is another question. If we establish a doctrine

of preferential treatment, then a tailored legal framework could be created, allowing for such protection. However, in the specific case of works derived from the OGL, I do not believe that the OGL portion itself would be subject to a high degree of protection. If, in the end, there is consensus that such materials should be protected, legislative reform would be necessary. If not, the current legal structure would remain, and the legal community would wait for the emergence of judicial precedent. As of now, no major legal disputes concerning the OGL have arisen in either the United States or the United Kingdom. Thus, we cannot currently predict how the courts might interpret the matter—it remains ambiguous. There are, however, numerous legal precedents regarding *open source*. Open source, after all, is ultimately a form of software. If I create a clone of an open source product, I am obliged to protect the rights of the original creator. Yet asserting intellectual property claims over a work derived from open source code would likely not be accepted by Turkish courts, nor by Swiss law, both of which tend to take a fragmented view of such matters. In that approach, the open source portion itself is not protected; only what follows—what is added creatively—may be protected. This satisfies the criterion of *human authorship*, which is essential for copyright eligibility.

4.2 Thematic Analysis

4.2.1 Legal validity and the issue of trust. The OGL crisis has been primarily evaluated through the lens of trust. According to Mr. İlkim, although the crisis caused a serious erosion of confidence within the community, it will mostly affect

independent developers. While he finds the community's reactions somewhat conservative, he also notes that, in the long term, this process might encourage developers to create their own licenses, potentially fostering greater diversity in the industry.

Regarding legal validity, it was emphasized that the OGL does not in itself provide copyright protection, but rather functions as a usage and license agreement. Mr. İlkim pointed out that such license terms could be challenged under European law as “standard terms and conditions,” whereas common law systems such as the US and UK take a more rigid, contract-driven approach. Drawing on the Unity example, he warned that should the OGL become monopolized, we might shift to a regime where legal norms are superseded by market needs.

In conclusion, the core legal problem with the OGL lies in its revocability. While unilateral amendments remain controversial in legal theory, in practice, dominant market actors often impose such terms, and they are de facto accepted.

4.2.2 Boundaries of intellectual property rights. Mr. İlkim argued that the OGL should be assessed within the idea–expression dichotomy. Game mechanics and system elements, being considered “ideas,” are not subject to copyright protection. However, added content—such as text, visuals, or character descriptions—may be protected as “expressions.” Therefore, the OGL should not be seen as a standalone protection mechanism, but as a licensing infrastructure that functions when additional creative content is introduced.

He also criticized the overly conservative treatment of IP rights as untouchable assets, arguing that the actual logic of IP lies in licensing creations for commercialization. Within the Turkish game development ecosystem, excessive sensitivity has emerged due to bad-faith actors who acquired IPs from different companies during 2022–2023 and manipulated the market. Still, Mr. İlkin noted that in practice, IP protection often has limited real-world effectiveness.

Using the example of China, he explained how games developed over several months are often cloned within days. Ironically, cloned games can sometimes increase the popularity of the original. In this sense, open licenses such as the OGL may not weaken IP enforcement but may offer practical advantages for developers. Nonetheless, the question of which elements are truly protected remains legally and commercially ambiguous.

4.2.3 Impacts on the gaming industry and developers. The OGL crisis primarily affected third-party developers and independent creators. Mr. İlkin stated that he does not view this as a fundamental industry-breaking event, but rather as a concern internal to the IT sector—an "anxiety trigger," rather than a destructive force. He also criticized apocalyptic claims that contract law was becoming obsolete, emphasizing that such predictions have failed to materialize.

From a developer's perspective, the most important benefit provided by the OGL is its evidentiary function. Just as artists once mailed themselves physical copies of

their work or sought voluntary registration through national copyright offices, developers can now use log files and timestamps generated during development as proof of authorship. While not offering direct copyright protection, this contributes to the legal credibility of ownership claims.

Looking to the future, Mr. İlkim expressed doubts about the OGL's ability to offer robust protection due to its open-source nature, though he noted that software components may be protected in a fragmented fashion. He added that any substantial legal change would require either legislative reform or the establishment of judicial precedent. As of now, no landmark case has been brought before courts in the United States or United Kingdom regarding the OGL, leaving the issue unresolved.

4.3 From The Perspective Of A Third-Party Developer

For years, developers relied on OGL 1.0a to create content and build businesses around it. They produced derivative works and system extensions within the D&D framework, confident that the license was perpetual and irrevocable. They mapped out narrative branches, invested time and money, and engaged with their communities.

Then one day, OGL 1.1 appears with a message that reads like this:

"You can no longer publish content without explicit permission. If your revenue exceeds a certain threshold, you must pay us royalties. Your creative work, your investment, and your community may only exist with our consent."

The new license proposed by WotC demanded 20–25% royalties from developers generating more than \$750,000 annually, as well as mandatory reporting

of financial and usage data. This sparked fear among third-party creators: “What if I grow? What if I succeed? Will I be punished for it?”. Such a system, which penalizes innovation, could have alienated entire creative communities. It risked dismantling grassroots content-sharing spaces—Reddit, Discord, conventions—by imposing bureaucratic control over a formerly open ecosystem. These creators are not just making products; they are community-builders, contributing to a living, shared world. OGL 1.1 drowned that spirit in licensing bureaucracy, even giving the impression that fan-made content might one day require official approval.

As a result, many creators began turning to more reliable alternatives, such as the Open RPG Creative License (ORC License).

4.3.1 The ORC License: A post-OGL crisis alternative. In the wake of the OGL 1.1 crisis, the ORC License emerged as an independent, open, permanent, and community-owned licensing system. Spearheaded by Paizo Inc., publisher of *Pathfinder*, the ORC License is an open-source, royalty-free license for tabletop RPG systems. It was created in response to the erosion of trust caused by OGL and is built upon core principles: transparency, permanence, neutrality, and system agnosticism.

The ORC License offers legal protection independent of WotC’s intent, providing a flexible framework not just for D&D but for the entire RPG ecosystem.

Developed with legal counsel from Azora Law, the ORC License gained support from many prominent publishers and developers in the industry, including Kobold Press, Chaosium (Call of Cthulhu), Green Ronin Publishing, Legendary Games, and numerous independent creators. With this support, ORC became more than a license—it became a manifesto of industry solidarity.

*“When people cease to help one another, humanity dies. Without mutual aid,
societies cannot exist.”*

— **Sir Walter Scott**

Chapter 5

Discussion And Conclusion

The findings of this study reveal that the OGL crisis is not merely a licensing dispute; rather, it reflects a broader legal and structural problem concerning legal certainty, the binding nature of contracts, and the transparency of intellectual property policies.

- **From the perspective of Turkish Law:** There is a strong correlation between the principle of non-modifiability of contractual terms under the Turkish Code of Obligations and the concept of license irrevocability.
- **From the Anglo-American legal perspective:** The doctrine of *promissory estoppel* requires the protection of developers who have made investments in reliance on a license, emphasizing the necessity of maintaining trust in contractual relations.
- **From the industry perspective:** The emergence of alternative licenses demonstrates that legal crises can directly trigger sectoral innovation. The most prominent example is Paizo's *Open RPG Creative License (ORC)* initiative, which has become a safe harbor for third-party developers.

The findings obtained from the interview indicate that the OGL crisis is not merely an attempt to amend a license agreement; it also constitutes a critical turning point in terms of legal certainty, the boundaries of intellectual property rights, and the operational dynamics of the gaming industry.

It is essential to establish clearer legal frameworks for the fragmented and holistic protection of intellectual property rights in both digital and tabletop games.

In order to prevent similar crises in the future, certain principles must be firmly established:

- Licenses must explicitly include non-revocation clauses.
- Ordinarily, the copyright to a license text belongs to the company issuing the license, which gives it the power to amend or retract the agreement. In contrast, Azora Law's act of dedicating the ORC License's text to the public domain means that the license is no longer subject to the ownership of any company.
- This creates a form of safe harbor in intellectual property law—a rare but powerful mechanism to protect the license from corporate interference, acquisition, or retroactive nullification.

Licensing policies must be structured in a way that protects small publishers, particularly regarding copyright and reporting obligations. This approach enables independent creators to feel confident about "investing in the future." The loss of trust experienced by third-party developers after the OGL crisis has largely been addressed through the legal and structural design of the ORC License. This shift may foster a more open, transparent, and sustainable development model within the industry.

Adopting open and transparent models such as Creative Commons is highly recommended. Such community-based licenses offer more reliable solutions in the sector. For example, the ORC License—drafted by Azora Law and placed into the public domain—ensures that the license is no longer subject to corporate control. This move repositions the license as a form of common property, thus minimizing the risk of unilateral changes by any future corporate entity. As seen in the OGL crisis, this risk is precisely what undermined developer trust. In contrast, the ORC structure offers

developers and publishers a sense of legal assurance that a company like WotC will not be able to reverse its commitments in the future.

A key issue emphasized by the interview participant, Mr. İlkim, is that while Continental European legal systems permit the imposition of limitations on such unilateral modifications under the principle of standard contract terms, common law jurisdictions—particularly in the Anglo-American tradition—approach contracts with a stricter and more binding framework, making the legal debate far more complex.

In terms of the boundaries of intellectual property rights, it has become evident that the OGL does not offer direct copyright protection, but instead functions primarily within the framework of licensing relationships. Here, the principle of the idea–expression dichotomy is of critical importance: while game mechanics are not eligible for protection, texts, visual assets, and creative contributions are covered under copyright.

As Mr. İlkim's analysis illustrates, viewing IP rights as inviolable and conservative assets does not necessarily lead to practical solutions. On the contrary, the widespread existence of clone games, the rise of streaming platforms, and the influence of content creators all point to how the strict boundaries of intellectual property are frequently stretched or softened within the contemporary gaming industry.

The OGL Crisis demonstrates the urgent need to reevaluate licensing policies not only in the context of Turkish Law but also under international legal frameworks, especially for digital and tabletop role-playing games. Although licenses such as the ORC License may be dedicated to the public domain, their practical enforceability still

depends on judicial interpretation and recognition across jurisdictions. This highlights the absence of comprehensive regulation in Turkish law specifically concerning the protection of digital and tabletop games.

When examining the impact of the OGL crisis on the gaming industry and its developers, it becomes clear that the crisis primarily exerted pressure on independent developers, without causing a disruptive rupture within the industry as a whole. The most significant contribution of the OGL lies in its facilitation of evidentiary processes. Log files offer developers a practical advantage in demonstrating authorship and ownership over their works.

However, to establish durable and robust legal protection, the development of judicial precedents or the enactment of specific legislative regulations is required.

Within the context of Turkish Law, the enforceability and binding nature of licenses such as the OGL may be questioned under the provisions of the Turkish Code of Obligations and the Law on Intellectual and Artistic Works. For third-party developers, critical legal issues include whether their investment based on license terms is protected and whether the license can be unilaterally revoked. Therefore, from a Turkish legal perspective, licensing agreements for digital and tabletop RPGs must be clear, transparent, and easily comprehensible for all parties involved.

Moreover, when assessed through the lens of U.S. and European copyright law, the OGL crisis brings into focus two major legal principles: the idea-expression dichotomy and the irrevocability of licensing terms. In the international gaming market, many third-party developers created content in reliance on the terms of such

licenses. Sudden amendments can jeopardize these investments, thus making it imperative to reform licensing policies across the digital gaming and RPG sectors.

In practice, the OGL crisis has reminded both developers and rights holders of the importance of clearly defining a license's scope, its conditions for modification, and the respective rights and obligations of all parties. At the legal level, it has reaffirmed the necessity of reevaluating licensing frameworks both within Turkish legal doctrine and under international law, in order to establish more secure and transparent systems for the gaming industry.

In conclusion, the principle of *Estoppel*, and more specifically *Promissory Estoppel* under Anglo-American law, functions as a critical legal doctrine used in disputes where one party has relied on a mutual understanding with another, and the second party attempts to act inconsistently with that understanding. If a licensee has made investments based on the promises of the licensor, the licensor is legally barred from unilaterally revoking that license. The crisis surrounding the Open Gaming License (OGL) clearly illustrates the applicability of Promissory Estoppel to the gaming industry.

From the moment Wizards of the Coast (WotC) released the OGL 1.0a, it provided third-party developers with a reasonable expectation that the license terms would remain *permanently valid*. In reliance on that assurance, independent developers made both financial and intellectual investments—creating game systems, supplementary books, and digital content. However, when the possibility of revoking or unilaterally modifying the OGL was raised, these investments evolved into a legally protected “legitimate expectation.” Under the common law system, the principle of

estoppel protects such expectations and prevents licensors from retracting their commitments.

Within the framework of intellectual property law, licenses inherently require legal certainty, particularly because they involve the transfer of certain rights from the copyright holder to third parties. One of the fundamental principles of copyright law is that licensees must be protected from arbitrary interference by licensors. The legal structure of the OGL carefully balances the protection of expressive content (which falls under copyright) and the openness of system elements (which remain unprotected due to their abstract nature).

According to the *idea–expression dichotomy* recognized in U.S. law, abstract ideas themselves are not eligible for copyright protection, whereas their tangible expressions are. The OGL treats system mechanics as unprotected "ideas," making them openly accessible, while licensing the use of protected expressive elements such as illustrations, written content, and lore.

The implications of the OGL crisis extend beyond the industry; they are also academically significant. This crisis has highlighted the importance of stability and predictability in intellectual property law. If a license generates reliance and legitimate expectations under the principle of promissory estoppel, its unilateral revocation contradicts not only the principles of contract law but also those of copyright law.

Therefore, the OGL crisis has shown just how critical the principle of promissory estoppel is in practice and underscored the need for *investment security* and *legal predictability* for independent developers. Community-based license models such as the ORC License—publicly dedicated to the domain—represent not only economic

safety nets but also a noteworthy evolution in modern intellectual property law by offering enhanced legal protection.

From the perspective of Turkish Contract Law, any arbitrary restriction or revocation of contractual rights by one party constitutes a violation of general legal principles. As stipulated in Article 25 of the Turkish Code of Obligations (TCO), “*General terms and conditions that are contrary to the rules of good faith and that impose disadvantages or hardships on the other party shall not be valid.*” Within this context, the principle of *trust* requires the legal protection of the licensee’s expectations.

Furthermore, under Article 29 of the Code of Civil Procedure, arbitrary revocation of a license contradicts the principle of good faith and the freedom of contract. The rule of good faith, codified in multiple Turkish legal provisions, mandates that licenses must be fair, clear, and predictable. Therefore, the licensee’s *legitimate expectations* must be safeguarded under Turkish law as well.

In summary, both the *Estoppel/Promissory Estoppel* principle under Anglo-American law and the *principles of good faith and legal trust* in Turkish law serve similar protective functions in the context of the OGL crisis. The unilateral withdrawal of the OGL license constitutes a legally problematic act not only within the domain of intellectual property law but also within the broader fields of contract law, labor law, international law, and Turkish private law.

These legal doctrines play a vital role in protecting the investments and labor of third-party developers. The OGL crisis thus serves as a critical case study in understanding the necessity of fair, reliable, and transparent licensing practices in both domestic and international legal frameworks.

The central question our study ultimately seeks to answer is this: *Within which legal system was the Open Gaming License (OGL) created?*

If it was developed under the Anglo-American legal tradition, and is to be interpreted accordingly, then one must accept that the approach to intellectual property rights will be significantly stricter, more rigid in enforcement, and heavily contract-oriented. This fundamental tension constitutes the core focus of this research.

Although we have adopted a somewhat conservative perspective, the highly interpretable and open-ended legal framework surrounding the OGL has, in fact, strengthened the relevance and urgency of our inquiry. On the one hand, we refer to the doctrine of promissory estoppel; on the other, we are reminded of the comment made by our interview participant, lawyer İlkin Ülgen: *“The underlying logic is that one can license their creation. Actions of this kind are necessary for the commercialization of creative work.”*

While the OGL has indeed had an adverse effect on community trust, it may not have significantly undermined either the end-user or the developer in terms of intellectual property. On the contrary, it has arguably paved the way for the emergence of more user-friendly, open-source alternatives, such as the ORC License.

With this study, through the inclusion of both theses and antitheses, we have once again demonstrated that the gaming industry operates within an inherently multidisciplinary and inclusive legal and commercial environment.

5.1 Limitations Of The Study

This section *aims* to outline the following key objectives:

a. Scope of the Study: What does the research include and exclude? Under which conditions are the study's limitations and findings valid?

b. Enhancing the Reliability of the Research: Is the researcher able to critically reflect on their own work? (methodological transparency) This is essential in terms of academic integrity.

c. Framing the Interpretation of Findings: Allows the reader to consider these limitations when evaluating the results.

As stated in the Conclusion section above, this study argues that a crisis such as the one surrounding the OGL can rapidly erode both emotional trust and perceived legal reliability within a community. Furthermore, during the methodology phase, the legal insights shared by the expert interviewee provided an entirely new perspective on the industry.

Although our study focuses on the legal frameworks of Anglo-Saxon systems and Continental European jurisdictions such as Turkish and French law, the methodological process revealed that our perspective encompasses broader interpretations. Therefore, this study embraces methodological transparency, and its openness to critical reflection enhances the comprehensiveness of the research. This enables readers to assess the findings while considering these inherent limitations.

One of the shared conclusions that emerges from this study is that the OGL has functioned as a catalyst, expanding the creative and legal ecosystem. Thus, it would be misleading to claim that modifications to the OGL have had no impact on communities. However, based on the findings obtained through interviews, the group most affected by the crisis appears to be solo developers. The reason for this is the already limited market share accessible to independent actors. Our expert made the following observation: *“However, in my view, this crisis primarily poses a challenge for independent developers (solo developers). Given that their market share is already limited, it would not be surprising if similar models to the OGL emerge, particularly within platforms like Steam, prompting independent developers to create their own licensing systems. Through this process, developers may develop their own legal frameworks. Although such developments might lead to a short-term decline in employment, they may contribute to greater diversification within the industry in the long term”*. This perspective—though not a primary focus of our study—highlights a probable outcome: developers have indeed begun creating their own license systems. One such example is the ORC License, developed with legal consultancy from Azora Law. While our study acknowledges the pessimistic exodus of the community in response to the OGL crisis, it does not fully elaborate on the counterpoint that this rupture also enabled long-term diversification in the industry.

Put simply, this opens the door to a more dynamic landscape: one where the dominance of monolithic production models and limited actors gives way to a variety of genres, licensing structures, user communities, and business models. The findings

underline the multifaceted and interdisciplinary nature of the ecosystem, reinforced by both thesis and antithesis throughout this study.

In this study, we aimed to evaluate the Open Game License (OGL) within the context of intellectual property (IP) law, while also strengthening our analysis by incorporating insights from different legal systems. Expert commentary has reinforced this approach, emphasizing that the legal framework in which the OGL was created plays a critical role in how it should be interpreted. When examined under the lens of Anglo-American legal traditions, it becomes evident that the approach to IP rights in such systems is significantly more rigid. Actions taken within these jurisdictions tend to be more aggressive and contract-centered.

Indeed, one of the impressions we sought to leave on the reader throughout the study was precisely this: the content of the OGL is unilaterally determined by Wizards of the Coast (WotC). For such an agreement to be legally binding and enforceable for both parties, all terms within the OGL must be predictable and foreseeable by the other party. While this study references the doctrine of promissory estoppel under Anglo-American law—which protects third-party developers who invest based on trust in a license—it also integrates the prohibition of unilateral modification under the Turkish Code of Obligations, along with the principle of legitimate expectation, thus diversifying the legal discourse.

This pluralistic legal lens allowed the research to internalize community reactions, making the analysis more nuanced. Our methodology, which purposefully embraced multiple viewpoints, also encouraged readers to form their own

interpretations. The organic expansion of the study reflects this openness to critique and promotes reader engagement.

From a legal perspective, our expert likened the OGL to the logic of an AI system, in that it functions as a publicly accessible codebase. Accordingly, the degree to which such a structure can benefit from IP protection remains debatable. For instance, when purchasing a game via a Steam account, one acquires a license, not ownership—thus such digital assets are not inheritable. The same rationale applies to the OGL. It functions as a use and license agreement rather than a comprehensive IP protection tool. Its enforceability in practical terms remains unclear.

More specifically, in the context of the OGL, any game created using the license would necessarily involve additional creative input, as the OGL alone is insufficient for full game development. Consider the example of Unity: developers frequently add features and take unique actions within the platform, leading to the creation of diverse games. Hence, the OGL in and of itself cannot fully benefit from IP protection.

When assessing the issue through an IP lens, our expert remarked: Today, IP has become something to be guarded like a virtue, viewed through an overly conservative lens. Yet the actual logic is this: you license your creation. If you wish to commercialize it, such legal actions must be taken. I do not believe that OGLs or similar frameworks will significantly exploit either developers or end users from an IP standpoint. In fact, they offer practical convenience for developers. Consider real-world implementation: a Chinese company could easily replicate a game you've developed in three to five months within three days. This is a function of sheer

population and market dynamics. In such a context, the value of IP in market terms diminishes drastically.

Indeed, the gaming industry is no longer a purely Western domain. Powerful actors are emerging from regions such as Korea, China, and Turkey, marking a global shift. This inevitably brings about legal interactions across jurisdictions—for example, the OGL’s U.S.-centric structure may face scrutiny in the European Union. Our expert provided robust responses to our interview questions, backed by industry-specific examples, further enriching the interdisciplinary depth of the study.

This research begins with a historical overview of board games and proceeds to examine the global influence of Dungeons & Dragons. It then transitions into an analysis of copyright, patent, and trademark issues through the lens of the Tolkien Enterprises case, ultimately leading to an in-depth investigation of the Open Game License (OGL) within the framework of intellectual property (IP) law and licensing agreements. The study’s methodological transparency further enhances its academic rigor.

The primary reason for presenting the limitations of this research at its conclusion is to emphasize its reliability and openness to alternative perspectives. No academic study is ever truly “perfect”; acknowledging limitations not only reflects intellectual honesty but also reinforces the integrity of the research process.

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