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American Experience of Video Game Copyright Protection and its Implications for China

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Abstract

As one of the countries with the most developed video game industry, the United States has gradually accumulated experience in the copyright protection of video games through continuous exploration in its judicial practice. In recent years, China's gaming industry has also experienced rapid development. And Chinese judicial practices have gradually accumulated valuable experience via continuous exploration on the copyright protection on Video Games. This paper aims to examine U.S. legislation and case law to explore its developmental patterns and summarize insights for China.

Keywords

Video Game; American Experience; Enlightenment for China.

1. Introduction

In 1958, the first video game[1] was born in the United States. Subsequently, from the beginning of the 20th century, video game appeared as a commercial form and gradually became an important entertainment industry in the United States. As a prominent video game country with a relatively advanced legal framework, the United States has exerted profound jurisprudence during various stages of its game industry development. Studying the legislation and precedents of the United States and exploring its development patterns will be of positive significance to the improvement of the legal system for the protection of video game copyright in China.

2. The Regulations Concerning Copyright Protection for Video Games under U.S. Law

According to section 102 of the U.S. Copyright Law, "Copyright protection subsists in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device." It categorizes the work types into eight distinct categories: literary works; musical works; dramatic works; pantomime and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sound recordings; architectural works. Although video games are not explicitly listed among the categories of works enumerated in U.S. copyright law, they nonetheless satisfy the criteria for protection under this legal framework: an original, fixed expression. Since the United States follows a common law system, the classification of video games as a specific type of work can vary based on the unique characteristics of each game. Consequently, different cases may result in distinct categorizations. In general, works related to video games can be categorized into three primary classifications: (1) Video games, as computer programs, can be classified as literary works due to their underlying code and script. (2) When visual elements such as illustrations or graphic designs constitute a significant portion of a video game, it may be classified as a pictorial or graphic work. (3) If the predominant component of a video game is a motion picture or audiovisual creation, it can be classified as an audiovisual work.

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Given that video games can be conceptualized as computer programs along with their audiovisual representations, it follows that video games are eligible for registration as computer programs in the United States. In the "Copyright Registration of Computer Programs" , guideline issued by the U.S. Copyright Office, there is a specific section dedicated to video games. The guideline states that video games primarily consist of the audiovisual material that appears on screen and the computer program that runs the game. It further clarifies that if both the audiovisual material and the computer program are owned by the same rights holder, they can be registered together on a single application form.[2] Registration on the same form also applies when the audiovisual element and the computer program have been published as an integrated whole. If the audiovisual material and the computer program are published separately with different right holders, it is necessary to register each of them individually. According to the WIPO report “The Legal Status of Video Games: Comparative Analysis in National Approaches”, the United States Copyright Office advises that when registering the computer program and its audiovisual material on a single application form, the copyright holder shall “choose the type most appropriate to the predominant authorship” for the question of "which type of work to choose"[3]

3. The Evolution of Relevant Precedents

The judicial practice concerning video games in the United States has traversed approximately three developmental stages. Throughout these stages, the courts' perspectives on categorizing types of video game works have also evolved.

3.1. The Early Judicial Practices Concerning Video Games in the United States

Although the graphics, sounds, and animation effects of video games during this period were relatively rudimentary, court judgments began to address the work type of video games-specifically, whether video games could only receive copyright protection as computer programs or if their audiovisual presentations could also qualify for copyright protection as audiovisual works. The first case most frequently cited by scholars is Atari, Inc. v. Amusement World, Inc., which was decided in 1981. [4]In this case, both the plaintiff's game Asteroids and the defendant's game Meteors involve players controlling spaceships to either avoid attacks or launch attacks. The court confirmed that the fundamental gameplay mechanics of the two games are identical, with 22 similar or identical design features identified, alongside 9 distinct differences. The court differentiated between the audiovisual presentation of the video game and its underlying computer program. It confirmed that the "work" created by the plaintiff and subject to copyright protection was specifically the audio-visual presentation of the video game, rather than the computer program itself. Consequently, the court ruled that this audio-visual presentation could be protected as an audio-visual work or a cinematographic work.[5] However, owing to the technological constraints of software and hardware at the time, there were limited variations in expression for similar types of games. As a result, early U.S. jurisprudence has generally held that ideas and expressions in video game are indistinguishable from each other and thus cannot be protected by copyright. In this case, for example, the court concluded that the game concept of "a spaceship combating space rocks" and the technical requirements of a certain video game made it inevitable that the two games would have multiple similarities. [6]This confusion of ideas and expressions suggested that Meteors did not constitute copyright infringement of Asteroids. In the Stern v. Kaufman case in January 1982, the final judgment confirmed that the audiovisual presentation of video games can be copyrighted as an audiovisual work. The judge ruled that the audiovisual presentation of a video game can be copyrighted independently, irrespective of its integral relationship with the underlying computer program, even if the latter has already been copyrighted.[7]

ISSN: 2692-7608 DOI: 10.6981/FEM.202511_6(11).0001

3.2. The Midterm Judicial Practices Concerning Video Games in the United States

The second stage, spanning from the 1990s to the early 21st century, saw video games primarily focused on PC platforms. After decades of development, video games have demonstrated significantly richer audio-visual presentation and a more diverse array of elements presented to players. At this juncture, the discussions in the initial stage concerning the property of video game works, the application of the Idea-Expression Dichotomy, the Merger Doctrine, and the Scènes à Faire Doctrine had largely reached a consensus. Meanwhile, judges were confronted with the increasingly complex task of analyzing whether additional elements could be protected by copyright. Copyright holders sought protection not only for the audiovisual presentation of video games but also for aspects such as game operations, characters, skill sets, performance, and processes. A relatively representative precedent at this stage was the case of Capcom v. Data East. [8]Capcom, the plaintiff in this case, launched a fighting game Street Fighter II in 1992, and not long after that, Data East, the defendant in this case, also launched a fighting game Fighter's History, which showed certain similarities in game types, rules, graphics and other aspects. Capcom sued for copyright infringement. When judges assessed substantial similarity, they employ the methods of "extrinsic test / objective analysis" and "intrinsic test / subjective analysis" for evaluation.[9,10] When conducting the extrinsic test, the court initially deconstructed "Street Fighter II" into the four primary categories that the plaintiff alleged were similar:(1) similarities in characters; (2) similarities in special moves and combination attacks; (3) similarities in control sequences; and (4) miscellaneous similarities in the general presentation and flow of the games. It is widely acknowledged that categories (3) and (4) do not qualify as objects of copyright protection, and thus have been excluded from the test.[11] The court then proceeded to analyze the characters, special moves and combination attacks in detail. It concluded that three characters and five special actions were indeed similar. However, given the extensive game library of "Street Fighter II," which includes a total of 12 characters and over 650 possible actions, the court determined that these similarities did not amount to substantial similarity under extrinsic test. In the intrinsic test, the court applied the "virtual identity standard" and excluded unprotected elements. Consequently, from the perspective of a reasonable person, it did not conclude that the defendant infringed upon the core copyrightable expression of the plaintiff[12], which was despite the widely acknowledged fact within the industry that Data East had plagiarized "Street Fighter II".[13] At this stage, the development of video games demonstrates that elements such as general presentation, procedural design, control sequences, characters, and skill systems are increasingly integrated with the audiovisual presentation of the game. When rendering the judgment, the court not only evaluated the audiovisual presentation but also analyzed the characters, special moves and combination attacks involved. It is evident that the scope of copyright protection for video games is trending towards further expansion. At this juncture, rights holders are seeking to protect not merely the audiovisual presentation of the game, but the overall copyrightability of the video game as an integrated work. However, the judicial practice of copyright at that time notably failed to address the demand of rights holders. After Capcom lost the lawsuit, the market became saturated with a deluge of similar games, leading to millions of unsold Capcom software units piling up in warehouses across Europe and the United States. Consequently, the market for fighting games experienced a significant downturn.

3.3. Recent Legal Practice in Video Game in the United States

Since the 21st century, in the third stage, probably during this period, video games not only feature more abundant content in audio-visual rendering, but also witness further development in game types and game engines. Some games possess an extremely grand worldview. Even at the same time, the majority of games have the network function. The ascent of online games not

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only significantly boosts the interactivity of video games but also increases the likelihood of infringement. At this juncture, the jurisprudence of video games in American judicial practice exhibited certain characteristics distinct from the previous two periods. During this period, the first case that was frequently referred to was the case of "Tetris". [14] As depicted in Figure 2, on the left lies a game named Tetris, developed by the plaintiff in this case, and on the right is Mino, the accused infringing game published by the defendant. In this instance, the court initially determined that there was no doubt that the two games appeared highly similar. It compared the types of blocks and discovered that there was minimal difference in their appearance and in the way they moved, fell, flipped, and behaved. The defendants did not contest that Mino replicated nearly all of Tetris's visual representations, but contended that every visual element of Tetris could be classified as a "rule of the game" and thus was not protected by copyright. The Court referred to its finding in Affiliated v. Merdel Game that the techniques and rules in video games are not copyrightable, but that the expressions of video games are copyrightable, which encompass: the design of game labels, game boards, game interfaces, and graphic works[15], and held that this doctrine does not and cannot lead to the conclusion that any and all expressions related to game rules or game features are not protected. [16]The Court maintained that the plaintiffs had contributed the rules of the game to the public domain, yet retained the right to their expression. Moreover, considering the rapid advancement of computer technology and cartographic functions, the rules of the game in Tetris were no longer confined to a single expression by outdated technology. Consequently, the Court did not assert that defendants could not discover alternative ways to express the Tetris rules.[17] Accordingly, Mino was determined to have infringed upon Tetris.

The second classic instance is Triple Town versus Yeti Town[18], which some scholars contend has actually led to the copyrighting of the game rules in the United States.[19] While acknowledging that certain disparities exist between the two games, the court discovered that similarities between Triple Town and Yeti Town pervade the entire game - ranging from the underlying concept to the game rules and to the visual portrayal of the characters and settings.[20] The fundamental rule of both games is to enable players to acquire a higher-level item by combining three identical lower-level items, with hostile creatures placed to impede construction. Nevertheless, there are substantial differences between the two games. For instance, the enemy creature in Triple Town is a bear, while the enemy creature in Yeti Town is a snowman. Items in Triple Town are upgraded in the sequence of grass, bushes, trees, wooden sheds, etc., and items in Yeti Town are upgraded in the order of saplings, trees, tents, wooden houses, etc. In this context, the Court compared video games with written works and movie scripts, maintaining that just as the expression of written works encompasses the development of plot, theme, dialogue, mood, setting, rhythm, characters and plot, a video game is more similar to a script in a movie work, which also possesses plot, theme, dialogue, mood, setting, rhythm and characters. The court also held that Spry Fox, the plaintiff, expressed the underlying concepts of Triple Town through specific roles and settings and other aspects, and Spry Fox could have copyright over these specific and objective expressions.[21] Naturally, the court also maintained that not all of Spry Fox's expressive choices were eligible for copyright protection, as some of them were indispensable, such as the utilization of points and gold to remunerate players. The court still carried out the external test and internal test to determine whether the two games constituted a substantive similarity and reached an affirmative conclusion. The significant import of this case lies in that the American court clarified for the first time that although the game rules or game ideas fall outside the scope of copyright protection, the specific expressions of the game rules or ideas can be entitled to copyright.

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4. Characteristics of Copyright Protection for Video Games in the United States

After 40 to 50 years of advancement, the jurisprudence regarding video games in the United States has witnessed considerable evolution, presenting the following characteristics:

4.1. The Attribute of Works Regarding Video Games.

Regarding the issue of whether video games can be safeguarded by copyright law, there is little debate in American judicial practice. It is a fundamental consensus that video games can at least be categorized as a written work in the form of a computer program and be protected by copyright. The subsequent debate has centered on whether the audio-visual presentation of video games can be classified as audiovisual works or cinematographic works. In the initial period, American courts addressed this question and arrived at the following three conclusions:

(a)The audio-visual presentation of the video game meets the requirements of the United States copyright for an audio-visual or cinematographic work;

(b)The audio-visual presentation of a video game may be protected as an audio-visual work or a cinematographic work and is not affected by the fact that the underlying computer program has been copyrighted;

(c)The copyright owner creates and seeks copyright protection for the audio-visual presentation of the game, rather than the computer program, that is, the originality of a video game lies in the audio-visual presentation of the game, not the underlying program. The copyright owner writes the computer program code for the audio-visual presentation.

4.2. Regarding the Application of Integrating Theory and Scenario Principles.

Since video games can be categorized as both functional works of computer programs and audiovisual or cinematic works, there is scope for both fusion theory and scene principles. In the early stages, when the court differentiated thought from expression, due to technological limitations, the expressions of the same game idea or game rules could be highly restricted. Therefore, in the early days, the court often held that although the two games were similar, it would not make an infringement judgment because the thought and expression were inseparable or based on necessary scenes. In the later period, as a result of the continuous advancement of technology, the expressions of the same game idea or rule have become extremely rich. In the aforementioned "Tetris", the defense experts stated that "game designers can employ almost countless methods to design a video game of splicing blocks".[22] Thus, when the court distinguishes between thought and expression, limited expression and the applicable scope of necessary scenes are becoming increasingly restricted.

4.3. Regarding the Elements Eligible for Inclusion within the Scope of Copyright Protection.

In the early instances, the elements deliberated within the copyright system were predominantly the audio-visual presentation of video games. Along with the continuous advancement of the game industry, the production of games is becoming increasingly elaborate. Many games not only aim to offer players beautiful audio-visual enjoyment, but also design elements such as the story background, characters, plot, game play and rules. These elements, in combination with the audio-visual presentation, constitute a whole, which also becomes the object of copyright protection sought by the right holder. This appeal has received a response in judicial practice. In the middle and later stages of litigation, courts began to analyze the copyright of elements other than audio-visual presentation, and gradually incorporated the roles, backgrounds, plots, and even the specific expressions of game rules in video games into the scope of copyright protection. This not only reflects the continuous expansion of the scope of video game copyright protection, but also indicates from one aspect that the protection mode

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of "submerging the underlying code into a computer program + audiovisual presentation into audiovisual works" has been unable to meet the requirements of video game copyright protection.

5. Enlightenment for China

5.1. Selection of Protection Paths

At present, China's judicial practice has been entirely divorced from the initial elements and has shifted to incorporate the overall dynamic game picture within the protection of audiovisual works. In the future, when adjudicating video games, the following should be taken into consideration:

①Under the existing legal framework, the provisions of "Other intellectual achievements conforming to the characteristics of works" in Category 9 of Article 3 of the Copyright Law should be effectively utilized to achieve the comprehensive protection of video games. This not only enables judges to avoid the cumbersome process of comparing a large number of elements one by one when handling video game-related cases, facilitating an efficient resolution of the cases, but also provides valuable judicial practice experience for the overall protection of video games in our country, and ultimately promotes the revision of the corresponding provisions in the Copyright Law. Simultaneously, it can also gradually clarify the standard of "other intellectual achievements in line with the characteristics of the work" and offer ideas for the protection of the copyright law of new intellectual achievements in the future.

② Judicial focus on the overall copyright of video games by no means implies the relinquishment of copyright protection for individual elements. The United States also permits video games to be registered concurrently as audiovisual works or computer programs. When the rights holder merely initiates a lawsuit against a specific game element, the trial can promptly respond based on the trial experience of the existing types of works. At the same time, it does not mean the abandonment of video games as a form of computer program copyright protection. In the current judicial practice, rights holders are typically reluctant to file lawsuits based on computer programs, mainly for two reasons. Firstly, the aspect that rights holders genuinely desire protection for is the audiovisual presentation rather than the coded instruction sequence as a computer program. Secondly, when litigations are initiated through computer programs, the original defendants often need to provide video game program source codes for comparison, and the parties typically claim trade secrets and refuse to provide, resulting in the inability to conduct infringement comparisons. However, video games as computer programs can be protected by copyright law without any obstacles. If there is a lawsuit in practice, the court should accept it and cannot reject it on the grounds that overall protection for video games has been provided.

5.2. Considerations in the Assessment of Copyright Infringement

① The comparison of copyright infringement should be conducted on the entire work. This is also true in the judgment of other types of works. For instance, when determining whether two novels are substantially similar, the court will not dissect the novels into the title, Chapter 1, and Chapter 2 respectively. Instead, the court will consider the involved novels as a whole and extract the fundamental expressions of the story background, character relationships, plot evolution, and other elements on this basis. The comparison is repeated. When judging whether two films are substantially similar, they will not be divided into elements such as pictures and music, and a conclusion of no infringement will not be reached if these elements are not substantially similar. Because even if the two films are completely distinct in elements such as pictures and music, the combination of all these elements together might constitute a substantial similarity. The same applies to the infringement comparison of video games. When

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the elements are decomposed, the overall originality will be overlooked and a conclusion that they do not constitute "substantial similarity" will be drawn.

② Take into account the audience's perception and experience. In cases of copyright infringement, the audience's perception and experience regarding the similarity between the two works also constitute an important consideration in determining infringement. In the second judgment of the case of Qiong Yao v. Yu Zheng, the Beijing High Court expressed the role of the audience's experience and perception in the judgment of infringement as follows: "The original judgment held that the audience's perception and appreciation experience of the similarities between the two works before and after were also significant factors to be taken into account in the determination of infringement, and in combination with the corresponding network survey results provided by Chen Zhe, it was presumed that the audience had generated a high level of similar experience with relative consensus in the viewing experience. The original trial court's view that the audience's perception and experience should be considered as a factor was inappropriate."[23] There exist analogous instances in American judicial practice. For instance, in Arnstein v. Porter, the judgment was expressed as follows: "The criterion for determination is the reaction of the general audience; accordingly, neither decomposition nor expert proof is relevant in this matter." [24]

In the context of video games, the factor influencing the overall experience of players is not solely confined to elements such as the character image, plot development, and game screen, but also encompasses aspects like the game type, the operation method of the game, the operation interface, the game rules, and other elements of the game core. This is precisely the reason that, in the case of skin change games, even though the game's character image, text description, game screen, and other elements are entirely distinct, players would perceive the two games as essentially similar.

6. Conclusion

The copyright protection of video games in the United States has undergone certain adjustments to the determination of infringement rules in different periods and based on distinct technical backgrounds. Nevertheless, on the whole, the fundamental judgment approach has remained unchanged, thereby ensuring that the copyright protection of video games in the United States has maintained considerable stability while possessing certain flexibility. Specifically, the relevant experience of the United States can serve as a reference for China in at least the following aspects:

1) Overall protection should be given priority while taking into account the separation of elements.

2) The copyright infringement ratio should be based on the entire work.

3) The perception and experience of the audience should be regarded as an important factor in the determination of copyright infringement.

References

[1] The name of this game is "Tennis for Two" (Double Tennis), a game which allows people to play tennis on an oscilloscope. It was used for the entertainment of visitors at the Brookhaven National Laboratory in New York. It is claimed that at that time, there was a situation where hundreds of people queued up to play. Ahriven: "A Brief History of Global Video Games", https://wenku.baidu.com/view/87bd295ef76527d3240c844769eae009581ba22c.html, Accessed on October 21, 2022.

[2] “A videogame typically contains two major components: audiovisual material that appears on screen and the computer program that runs the game.” U.S. Copyright Office: Copyright Registration of Computer Programs, https://www.copyright.gov/circs/circ61.pdf, 2020.03.04.

ISSN: 2692-7608 DOI: 10.6981/FEM.202511_6(11).0001

[3] "According to the Copyright Office, when answering the 'type of work being registered' question on the application form, the copyright holder shall 'choose the type most appropriate to the predominant authorship'." Andy Ramos, Laura López, Anxo Rodríguez, Tim Meng and Stan Abrams: The Legal Status of Video Games: Comparative Analysis in National Approaches, WIPO World Intellectual Property Organization, Page 90, Paragraph 283, https://www.wipo.int/export/sites/www/copyright/en/creative_industries/pdf/video_games.pdf, last accessed on February 7, 2020.

[4] Atari, Inc. v. Amusement World, Inc. United States District Court, D. Maryland. November 27, 1981, 547 F. Supp. 222, 215 U.S.P.Q. 929.

[5] "Plaintiff's 'work,' the thing that plaintiff has created and desires to protect, is the visual presentation of the 'Asterioids' game. That work is copyrightable as an audiovisual work and as a motion picture." Paragraph [4] [5], Atari, Inc. v. Amusement World, Inc. United States District Court, D. Maryland. November 27, 1981, 547 F. Supp. 222, 215 U.S.P.Q. 929.

[6] "However, the Court finds that most of these similarities are inevitable, given the requirements of the idea of a game involving a spaceship combatting space rocks and given the technical demands of the medium of a video game." Paragraph [12], Atari, Inc. v. Amusement World, Inc. United States District Court, D. Maryland. November 27, 1981, 547 F. Supp. 222, 215 U.S.P.Q. 929.

[7] "The visual and aural features of the audiovisual display are plainly original variations sufficient to render the display copyrightable even though the underlying written program has an independent existence and is itself eligible for copyright. Nor is copyright defeated because the audiovisual work and the computer program are both embodied in the same components of the game. " Stern Electronics, Inc. v. Kaufman, 669 F. 2d 852 (1982), 213 U. S. P. Q. 443.

[8] Capcom U. S. A., Inc. v. Data East Corp., Not Reported in F. Supp. (1994).

[9] " A court may enlist the assistance of 'analytic dissection' and expert testimony to aid it in identifying the core of protectable expression under the extrinsic test. " Capcom U. S. A., Inc. v. Data East Corp., Not Reported in F. Supp. (1994).

[10] "The intrinsic test consists solely of the response of the ordinary reasonable person to the question of whether the challenged work captures the 'total concept and feel' of the protected work." Capcom U. S. A., Inc. v. Data East Corp., Not Reported in F. Supp. (1994).

[11] "These similarities can be divided into four primary categories: (1) similarities in characters; (2) similarities in special moves and combination attacks; (3) similarities in control sequences; and (4) miscellaneous similarities in the general presentation and flow of the games. Each of these categories of alleged similarities will be examined independently. Because the Court finds that the third and fourth categories are not eligible for copyright protection, they will be examined first and quickly filtered out of the analysis." Capcom U. S. A., Inc. v. Data East Corp., Not Reported in F. Supp. (1994).

[12] "Applying the virtual identity standard, the Court finds that Data East has not copied the core, protectable expression in Street Fighter II." Capcom U. S. A., Inc. v. Data East Corp., Not Reported in F. Supp. (1994).

[13] Even Data East changed the main programmers several times during the production process of "Fighter's History" due to technical bottlenecks. Eventually, they were compelled to hire a programmer from CAPCOM at a high salary to solve the problem. See: Baidu Baike entry for Capcom, URL: https://baike.baidu.com/item/CAPCOM, last accessed on March 14, 2020.

[14] Tetris Holding, LLC v. Xio Interactive, Inc., 863 F.Supp.2d 394 (2012).

[15] "The game mechanics and the rules are not entitled to protection, but courts have found expressive elements copyrightable, including game labels, design of game boards, playing cards and graphical works." Affiliated Hosp. Prods., Inc. v. Merdel Game Mfg. Co., 513 F.2d 1183, 1188–89 (2d Cir.1975).

[16] "But this principle does not mean, and cannot mean, that any and all expression related to a game rule or game function is unprotectible." Tetris Holding, LLC v. Xio Interactive, Inc., 863 F.Supp.2d 394 (2012).

[17] "Tetris Holding has given the rules of its game to the public domain, but has kept the rights to its expression." "Considering the exponential increase in computer processing and graphical

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capabilities since that unique variation on Tetris's rules, the Court cannot accept that Xio was unable to find any other method of expressing the Tetris rules other than a wholesale copy of its expression." Tetris Holding, LLC v. Xio Interactive, Inc., 863 F.Supp.2d 394 (2012).

[18] Spry Fox LLC v. LOLApps Inc., Not Reported in F.Supp.2d (2012).

[19] Tian Hui, "Research on the Infringement Determination of Computer Game Works' Copyright under the Overall Protection Mode," Journal of Dalian University of Technology (Social Sciences Edition), Vol. 40, No. 6, November 2019.

[20] "No one would deny the many similarities between Triple Town and Yeti Town. Those similarities pervade the games, from their underlying concepts to their rules to the visual appearance of their characters and backgrounds." Spry Fox LLC v. LOLApps Inc., Not Reported in F.Supp.2d (2012).

[21] "In a literary work like a novel or screenplay, the 'measurable, objective elements that' constitute [its] expression include the 'plot, theme, dialogue, mood, setting, pace, characters, and sequence of events…' …A video game, much like a screenplay expressed in a film, also has elements of plot, theme, dialogue, mood, setting, pace, and character. Spry Fox took the idea underlying Triple Town and expressed it with its own characters, its own setting, and more. These objective elements of expression are within the scope of Spry Fox's copyright." Spry Fox LLC v. LOL Apps Inc., Not Reported in F.Supp.2d (2012).

[22] "Xio's expert, Jason Begy, agreed at his deposition that a 'a game designer could design the playing pieces for a video game in an almost unlimited number of ways.'" Tetris Holding, LLC v. Xio Interactive, Inc., 863 F.Supp.2d 394 (2012).

[23] Judgment of the Higher People's Court of Beijing Municipality, Case No. 1039 of (2015) Gao Min (Zhi) Zhong.

[24] "…the test is the response of the ordinary lay hearer; accordingly, on that issue, 'dissection' and expert testimony are irrelevant." Arnstein v. Proter, Circuit Court of Appeals, Second Circuit. February 11, 1946, 154 F.2d 46468 U.S.P.Q. 288.