

Copyright, the exclusive right to monetize creative work, is a limited right that insures the creators ownership over their own creations such as writing a book, drawing a picture, or inventing a machine. However, copyright is not an indefinite exclusive right or ownership over creative work and is meant to expire moving these creations to the public domain giving everyone the rights to that work. The dangerous direction copyright law is heading, who is benefiting from it, how it limited new creations, and what are the repercussions of the current and potential future modifications on enforcements of copyright law when it comes to game development and manufacturing will be addressed by this paper.

Copyright law was established to provide creators with a temporary monopoly over their works, allowing them to be compensated for their creations. Once a copyright expires, the work enters the public domain and can be freely used by anyone. Previously, copyrights lasted for 28 years, with the option to renew for an additional 28 years for a total of 56 years. However, due to lobbying from big corporations, the copyright expiration date was extended to 95 years from the date of publication or 120 years from the date of creation if not published, whichever is shorter, for works created for hire. For individual creators, copyrights last for 70 years after their death (U.S. Copyright Office, n.d.). These changes to copyright law have effectively halted the addition of new works to the public domain, allowing businesses to continue profiting from these works for nearly a century while blocking others from using them as the basis for new creations.

One of the heavily impacted industries is the gaming industry. Video games are a massive collection of systems and art working together to portray an experience to the player. Usually, when it comes to gaming, a developer can copyright the code, art, music, and literature of their game. Developers, however, cannot copyright mechanics or the expression of these mechanics (Martina, S. D., 2015). For example, the developers of the platformer game Super

Mario, Nintendo, can copyright Mario's design, the game assets such as enemies and building sprites, and the level design but they cannot copyright Mario's ability to jump, that levels move from left to right with an end point at each level, or that the player can collect collectables in the game. Nintendo cannot own the whole genre of video game platformers by copyrighting the mechanics or the expression of these mechanics.

However, there has been precedent of a game developer successfully suing another developer for copyright infringement over the expression of game mechanics. The case of Triple Town vs Yeti Town is one such example. In 2012, Spry Fox, developers of the tile matching game Triple Town, successfully sued 6Waves, developers of a similar tile matching game Yeti Town, over copyright infringement despite the game sharing no game assets, music, or code. The courts came to their decision after conducting an "intrinsic test" where they used the words of game bloggers describing Yeti Town as a clone of Triple Town. The court concluded that the "concept" and "feel" of the two games was similar enough to where it counted as infringement which was substantial as it marked the first time copyright granting protection to gameplay rules and mechanics (McArthur, S. C., 2013). This case served to blur the line on what can or cannot be protected under copyright. Although, a complete trend of copyrighting mechanics has not been set yet.

The developers of the game PlayerUnknown's BattleGrounds (PUBG), a third-person shooter "battle royal" game where 99 players are placed in a shrinking map until one player or team remains, sued Epic games for implementing a similar mode in their game Fortnite (Williams, R., 2022). The case was dropped by PUBG for undisclosed reasons (Stuart, K., 2018). This serves as another example of how companies are more than willing to horde entire game genres if given the power to and stifle any competition they might face by virtue of being "first".

However, Epic Games lawsuit journey was not limited to just mechanics but also dance moves. In 2018, several individuals such as rapper 2Milly and actor Alfonso Ribeiro filed a lawsuit against Epic Games over the inclusion of dance moves popularized by the plaintiffs in the game Fortnite (Partis, D., 2022). However, US law only allows individuals to copyright entire choreography but not dance moves which did ultimately result in these cases being dismissed (Goslin, A., 2022). Epic games had the resources to fight these battles in court for long enough till they were dropped and were not bullied to alter their product.

Lastly, game developers often create games in established franchises because it can be a more financially secure option. Developing a new, original game can be risky and expensive, and there is no guarantee that it will be successful. By creating a game in an established franchise, game developers can capitalize on the existing fan base, previous marketing campaigns, and the reputation of the franchise to help ensure that the game will be well-received (Nadel, M. S., 2002). Furthermore, when making a game in an existing franchise, the game developers are often limited by the established rules and story of the franchise making it difficult for them to be creative and come up with new ideas that deviate from the established lore. Additionally, the game must be consistent with the previous games in the franchise, which can limit the freedom of the developers to make changes and improvements to the gameplay mechanics. Furthermore, the game must appeal to fans of the franchise, which can be a challenge if the developers want to introduce new elements to the game (Robinson, A., 2021). In summation, creating games in established franchises can provide game developers with a safer investment but with greater limitations.

Copyright is an example of how society influences the development of games through the social construction of technology theory which explains how technology is developed and used.

The theory suggests that the way a technology is designed and used is determined not only by its technical characteristics, but also by the social and cultural context in which it is embedded. This means that the way a technology is perceived and used can vary greatly depending on the culture and society in which it is found. For example, a technology that is seen as useful and necessary in one society may be seen as unnecessary or even harmful in another (Bigker, W. E., 2008). On the whole, the social construction of technology emphasizes the importance of understanding the social and cultural factors that shape technology and its uses.

The social construction of technology theory can be applied to copyright and the development of games in established franchises. The way a game is designed and used is not only determined by its technical characteristics, but also by the social and cultural context in which it is embedded. This means that the way a game and game mechanics ownership is perceived and used can vary greatly depending on the culture and society in which it is found. Thus, understanding the social and cultural factors that shape the development and use of technology, such as games, is important for game developers to create successful and well-received games.

The current state of copyright law has had a number of negative impacts on the game development industry. One of the key issues is the strict enforcement of copyright and intellectual property rights, which has led to a number of legal battles between game developers over mechanics and companies or individuals that hold or think they hold the rights to various forms of media as discussed earlier. This has had a chilling effect on creativity and innovation in the industry, as developers are often hesitant to use existing content in their games for fear of being sued which can be a lengthy and expensive process (Kunvay, 2016). Meaning there is less and more limited creative output.

Another issue is the length of copyright protection. Under current law, copyrights last for the life of the creator plus 70 years or 95 years if the creator was an organization. This means that many popular games from the early days of the industry are still protected by copyright, making it difficult for developers to create new games that build upon the ideas and mechanics of these older titles. It has also resulted in continued investments in older franchises and the formals that businesses already know work rather than invest into newer more risky ideas (Robinson, A., 2021). This has limited the ability of developers to create new and innovative games, as they are often forced to work within the constraints of existing copyrights.

Remixing elements of other games is a fundamental part of how genres evolve and new games and ideas are born. By taking existing ideas and combining them in new ways, creators can create unique and innovative works that build on the foundations of those that came before them (Van Roessel, L., & Katzenbach, C., 2018). For example, the action-adventure genre of video games was largely shaped by the pioneering work of Nintendo and Konami with the games *Metroid* and *Castlevania*. These games introduced new ideas, such as non-linear exploration and progression, which were then remixed and built upon by other creators to create a new genre of games known as *Metroidvania* (Bitmob, 2010). Without the ability to remix and build upon existing ideas, the growth and evolution of genres would be stifled, limiting the potential for new and exciting games and ideas.

The case of *Triple Town* vs *Yeti Town* illustrates the potential negative impact of expanding the scope of copyright protection without clear lines and justifications. Doing so can discourage new creators from creating new works, as they may fear lawsuits or the need to conduct extensive research to ensure they are not infringing on existing copyrights. Furthermore, using consumers' use of descriptive language, such as the word "clone," as justification for

expanding copyright protection does not serve the public interest or promote creativity.

Originality is difficult to achieve, and most creations build on the ideas of others. However, the case also sheds light on one rampant issue in the games industry, cloning.

Having a game cloned can discourage development of new games, as it allows others to profit from the hard work and creativity of the original developer without compensating them. Additionally, cloning a game can harm the financial viability of the original game, making it difficult for the developer to recoup their investment in the game's creation. This can ultimately discourage investment in game development, as developers may be hesitant to invest time and resources into creating new games if they believe that their work could be easily copied by others. Thus, discouraging this behavior can be beneficial but has to be specific and hard to abuse.

The Tragedy of the Commons is a concept that can be applied to the issue of copyright law. In the paper "The Tragedy of the Commons: How Elinor Ostrom Solved One of Life's Greatest Dilemmas," the authors discuss how Elinor Ostrom's work on common-pool resources can be used to solve the problem of the "tragedy of the commons" in the context of copyright law. Ostrom's work suggests that, in order to effectively manage a common resource, such as the pool of creative works protected by copyright, it is necessary to establish clear rules and guidelines, as well as effective mechanisms for enforcing those rules. Most importantly, judging and modifying the rules should be up to the collective of developers in that space such that the minority does not get to draft rules favoring themselves over smaller developers. By implementing these measures, it may be possible to strike a balance between protecting the rights of creators and ensuring that their works can be used and built upon by others.

In conclusion, the direction that copyright law is heading poses a threat to the creativity and innovation in the gaming industry. The expansion of copyright protection to include game mechanics and the expression of those mechanics, as seen in the case of Triple Town vs Yeti Town, can stifle the development of new games and ideas. This not only harms independent game developers, but also limits the potential for growth and evolution within the gaming industry as a whole. It is important for lawmakers and industry stakeholders to carefully consider the potential consequences of expanding copyright protection and ensure that it does not undermine the very creativity and innovation it is meant to support.

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