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Defining *Tetris*: How courts judge gaming clones

Legal battle lays out when copycats go too far.

by Kyle Orland - Jun 20, 2012 4:23pm EDT

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Besides handling the rights and distribution for every official version of *Tetris*, The Tetris Company is also responsible for protecting the *Tetris* brand from unlicensed knock-offs. In the recent past, it's done this by forcing platform holders like Apple to **remove unofficial copies** of the game from the iOS App Store as soon as they pop up, for instance.

But the company went a little further in the case of iPhone *Tetris* clone *Mino*, taking developer Xio Interactive to court to protect the *Tetris* copyright. A New Jersey circuit court judge **recently ruled** in favor of The Tetris Company in that case, issuing a ruling that highlights the legal challenges in determining what separates a hackneyed clone from a game that is merely "inspired" by an existing title.

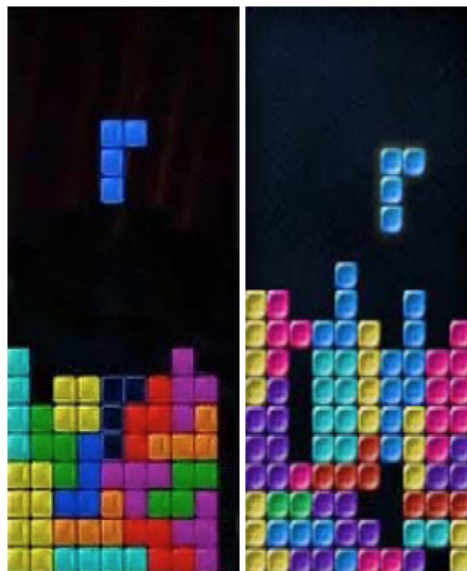
What makes *Tetris Tetris*?

While game designers usually have a pretty easy time telling when their **game design** has **been ripped off** by a clone, proving actual copyright infringement in court is usually **an uphill battle**. That's because copyright law doesn't actually protect the basic idea and underlying rules of a game, which need a duly filed and approved patent to be locked down. The copyright on a game only protects the "expression" of those rules, which usually covers things like character art, music and sound effects. That makes it relatively easy for a clone to mimic the successful engine of a game while making just enough changes on the surface to avoid a successful legal challenge.

In defending *Mino*, lawyers for Xio Interactive didn't deny that they were heavily influenced by *Tetris*, copying almost all of the game's basic elements wholesale. The defense's main argument, instead, was that the things it copied—everything from the shape and color of the blocks and the way that they rotate to the dimensions of the playfield—were actually integral to the underlying rules of the game, and therefore not subject to copyright protection. The argument, basically, was that *Tetris* is so simple and abstract that every part of the game is a basic "rule" that can be legally copied.

To address this argument, the judge in the case was placed in the interesting position of having to come up with a definition of what, exactly, defines a *Tetris* game at its most basic level. The definition he came up with reads like a patent application that's trying to cover as broad a range of games as possible:

Tetris is a puzzle game where a user manipulates pieces composed of square blocks, each made into a different geometric shape, that fall from the top of the game board to the bottom where the pieces accumulate. The user is given a new piece after the current one reaches the bottom of the available game space. While a piece is falling, the user rotates it in order to fit it in with the accumulated pieces. The object of the puzzle is to fill all spaces along a horizontal line.



The fact that it's hard to tell which one is *Tetris* and which one is *Mino* bolstered the copyright infringement claim.

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If that is accomplished, the line is erased, points are earned, and more of the game board is available for play. But if the pieces accumulate and reach the top of the screen, then the game is over. These then are the general, abstract ideas underlying *Tetris* and cannot be protected by copyright nor can expressive elements that are inseparable from them.

Under this definition, games that simply share *Tetris* penchant for falling, rotating blocks could not be subject to a copyright claim—the finding specifically cites *Dr. Mario*, for instance, as a similar game that is not infringing. But by keeping the basic, high-level definition of *Tetris* so broad, the judge also granted full copyright protection to a lot of pretty basic elements of the *Tetris* experience, explicitly including:

- The dimensions of the playing field [20 squares high by ten squares wide].
- The display of "garbage" lines [the random junk that can optionally appear at the start of a game].
- The appearance of "ghost" or shadow pieces [which highlight where a piece is going to land].
- The display of the next piece to fall.
- The change in color of the pieces when they lock with the accumulated pieces.
- The appearance of squares automatically filling in the game board when the game is over.



A video demonstration of Mino's very Tetris-like gameplay.

The judge is careful to note that any of these features, when viewed in isolation, might not be enough to prove copyright infringement—not every game with a "next piece" function is automatically a legally suspect *Tetris* clone. That said, in the case of *Mino*, the judge found that the game's co-opting of all of these elements and more amounted to "wholesale copying" that served no development purpose "other than to avoid the difficult task of developing its own take on a known idea" (it's important to note that this ruling came despite the fact that *Mino* adds features like new power-ups and modes to the basic *Tetris* gameplay).

What does it mean?

While a legal definition of what makes a *Tetris* game is interesting in its own right (and very useful to The Tetris Company), the wider meaning of the case in other game cloning debates is still open to interpretation. Some think the ruling may lead to more serious enforcement of copyright protection for games in general.

"While the case for infringement was made easier by Xio's flagrant and wholesale copying, the legal standard applied by the court, addressing the overall look and feel of the game, may presage more robust copyright protection for video games," Sunstein Kann Murphy & Timbers attorney Jack Schechter writes in a recent newsletter. By defining the "idea" of *Tetris* at such a high level (as "games with falling, rotatable blocks that disappear when arranged in lines"), Schechter notes that the judge basically ensured that the court would be able to identify many lower-level details that made *Tetris* protectable. The real battle in these kinds of cases will now mainly be "over the appropriate level of abstraction of the game mechanics and gameplay," he writes.

But Mark Methenitis says while the decision is "fascinating," he thinks it "may not give other social [and casual] game developers nearly the ammunition they think." Even though the judge granted copyright protection to a lot of relatively basic elements of the *Tetris* experience, *Mino* still could have gotten around the copyright protections with some relatively simple changes. "If all of their shapes were five blocks, and the grid had different dimensions, and the blocks weren't practically identically styled, I'm



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not sure we get to an infringement finding," Methenitis told Ars Technica. He also notes that while *Mino* and *Tetris* were almost impossible to tell apart in side by side videos and screenshots, most clones are at least visually distinct enough that you can "tell they're not the same game" by looking at them, making it harder to prove infringement.

Tetris is also somewhat unique, Methenitis says, because it has an established history and general brand awareness among the general public, which earns it a stronger level of "trade dress" protection for its look and feel. A random new iPhone game with a totally unique idea won't have that same level of protection unless it's an instant, *Angry Birds*-level hit.

So while it's nice that even a game as simple as *Tetris* can be successfully defended from outright cloning in a court of law, the news isn't necessarily a beacon of hope to makers of **other oft-cloned games**.


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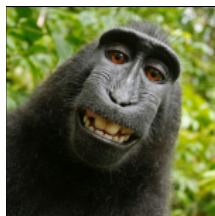
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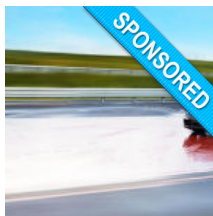
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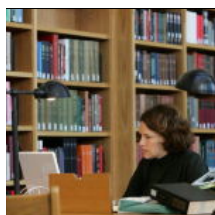
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