

# On Copyright Infringement Concerning Video Games Reskinning

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## Abstract

A reskinned video game replicates the core architecture of an original game, including its gameplay mechanics, game element design, and underlying rules, while only replacing superficial audiovisual elements such as art assets, music, and text. This form of infringement has long been a critical challenge for copyright protection in the video game industry, with the core controversy centering on the copyrightability of game design under copyright law. In current judicial practice in China, two core regulatory paths have been formed: regulation under copyright law and regulation under anti-unfair competition law. However, both paths face fundamental logical defects and systemic conflicts with intellectual property law, failing to effectively curb infringement in reskinned video games. This paper clarifies the connotation and copyright status of game design, confirms that systematic and detailed original expressions in game design are eligible for copyright protection, and proposes an optimized Abstraction-Filtration-Comparison (AFC) Test to establish a judgment rule for substantial similarity. It aims to provide a solution for the copyright infringement in reskinned video games that aligns with fundamental copyright law principles and judicial practice needs.

## Keywords

Games Reskinning, Game Design, Copyright Law, Idea-Expression Dichotomy

## 1. Introduction

A reskinned video game is created by rewriting program code based on the core content design of an original game, including its user interface (UI), character plots, and gameplay rules, while replacing the original game's art, text, music, and other appearance elements. This type of game deliberately circumvents the most

straightforward infringement comparison of superficial audiovisual elements. Long-standing disagreements exist in academic circles and judicial practice regarding the nature of game design under copyright law, creating persistent difficulties in protecting against copyright infringement related to game reskinning (Lampros, 2013). Therefore, it is necessary to sort out the regulatory models and dilemmas of infringement in reskinned video games, analyze the copyright status of game design, and further establish a scientific method to determine the substantial similarity of reskinned video games. This paper adopts doctrinal analysis and case study methods, examining 8 representative cases adjudicated by Chinese courts from 2013 to 2022, including *Minecraft v. Mini World*, *Fantasy Westward Journey v. Pocket Fantasy*, and *Hearthstone v. Wolong Legend*.

## 2. Judicial Regulation and Dilemmas of Reskinned Video Games

In judicial practice, there are two main approaches to resolving disputes over reskinned video games, namely under the Copyright Law and the Anti-Unfair Competition Law, both of which have certain limitations.

### 2.1. Dilemmas of Copyright Law Protection

#### 2.1.1. Limitations of Literary Work Protection

Original game developers have attempted to fix character attributes, skill settings, plot structures, and quest flow in written form as game design documents, seeking to regulate reskinning infringement by protecting these materials as literary works. For example, in the *Fantasy Westward Journey v. Pocket Fantasy* case, the court held that even though Pocket Fantasy used classical Chinese and synonym replacement to modify the surface expression of the content, it still adopted core elements such as plot design, character relationships, and background settings from Fantasy Westward Journey, which constituted identical expression. The court thus ruled that the defendant had infringed the copyright in the relevant literary works of Fantasy Westward Journey (Beijing Haidian District People's Court, 2013).

However, this protection model has two fundamental limitations that cannot adapt to the core characteristics of reskinned game infringement. First, the scope of protection for literary works is limited to the written expression itself. A reskinned game can easily avoid a finding of literary work infringement by using completely different written descriptions while replicating the underlying rule logic and design architecture (Lu, 2020). Second, if the written expression of game design has limited alternative ways of presentation, it is highly likely to be deemed by courts to be merged with the idea under the merger doctrine, and thus excluded from copyright protection (Shanghai No.1 Intermediate People's Court, 2014). For numerical settings, skill effects, and crafting rules in card games, the optional expressions are often highly constrained; granting copyright protection to such content would create a monopoly over the rules themselves, so courts have taken a cautious approach to literary work protection for such content in judicial prac-

tice, making it difficult to form effective regulation.

### 2.1.2. Dilemmas and Logical Defects of the Overall Protection Path for Audiovisual Works

In addition to literary works, there is a regulatory model for infringement by reskinned video games that recognizes game screens as works created in a manner analogous to cinematography (referred to as audiovisual works in the Copyright Law of the People's Republic of China revised in 2020). For instance, in the *MU Online v. Miracle Myth* case, the court took the identical game design as the basis for determining the substantial similarity of game screens, and ruled that Miracle Myth infringed the right of reproduction and the right of communication through information networks of MU Online (Shanghai Intellectual Property Court, 2016). In the *Kunlun Ruins v. Qingyun Spirit Sword Formula* case, the court also ruled that the defendant infringed the right of adaptation and the right of authorship of the Kunlun Ruins work based on the substantial similarity of the screens (Guangzhou Intellectual Property Court, 2021).

The first-instance judgment of the *Minecraft v. Mini World* case is a typical representative of this approach (Shenzhen Intermediate People's Court of Guangdong Province, 2019). The overall copyright protection path adopted in the first instance of the Minecraft case formed a complete three-step argumentation logic: first, confirming that the overall screen of the plaintiff's game constitutes audiovisual works; second, on the grounds that game screens cannot be compared frame by frame, taking the substantial similarity of game design (such as game elements and game rules) as the basis for determining the substantial similarity of the overall game screens; third, ruling that the defendant constituted copyright infringement based on the substantial similarity of game design. Nevertheless, this regulatory model has fundamental logical flaws.

First, the scope of protection for audiovisual works is continuous pictures, rather than the underlying game elements and game rules that constitute the pictures. Copyright protection for audiovisual works must be limited to the expression of the pictures, and cannot be extended to non-picture content, otherwise it will deviate from the original expression of the audiovisual work (Cui, 2020). The court's argument for the fixation and reproducibility of game screens based on the premise that "random game screens are within the preset scope of the developer" is essentially a sophistry. The preset scope of the developer is a completely different legal concept from the fixation and reproducibility of the footage, especially for high-freedom sandbox games such as Minecraft, where the player's operations directly determine the final presentation of the footage. The developer only provides basic elements and rules, and does not fix all footage content, which is fundamentally inconsistent with the statutory constituent element of "fixation" for audiovisual works.

The similarity of game elements cannot directly lead to the conclusion of substantial similarity of game screens. The first-instance judgment of the Minecraft case held that the similarity of game elements can determine the similarity of the

dynamic game screens formed by players using the elements for synthesis, construction and destruction, but this judgment completely ignores the core characteristics of sandbox games. As basic materials, the similarity of game elements cannot determine the similarity of dynamic pictures freely created by players, just as the similarity of drawing software brushes cannot determine the similarity of paintings. In the trial of the case, the fixation of game screens was quite difficult, making it impossible to adopt the frame-by-frame comparison method for audiovisual works. The court instead adopted the element comparison method, which in fact has deviated from the basic logic of the comparison and determination of substantial similarity of screens.

Second, the boundary between the determination of the right of reproduction and the right of adaptation is blurred, resulting in the confusion in the application of rights. In infringement cases of reskinned video games, the plaintiffs in the early stage often sued the defendants for infringing the right of reproduction and the right of communication through information networks. However, due to the obvious differences in visual perception between the original and defendant's games, it was too far-fetched to determine the infringement of the right of reproduction, and such claims were often rejected by the court. In the later stage, most plaintiffs turned to sue the defendants for infringing the right of adaptation and the right of communication through information networks, which is exactly the adjudication approach adopted in the first instance of the Minecraft case. Nevertheless, the court's determination of the right of adaptation has obvious logical defects: it takes "substantial similarity of elements + simple modification of non-core content + making consumers feel that the new work is derived from the old work" as the core elements for infringing the right of adaptation. This approach of distinguishing the right of reproduction from the right of adaptation based on the degree of similarity confuses the essential difference between the two rights. The core difference between the right of reproduction and the right of adaptation lies in the different levels of similar expression in the two works: direct application and simple replacement of basic elements fall within the scope of regulation by the right of reproduction, while re-creation using the in-depth content of the work such as characters, plots, and rule structures falls within the scope of regulation by the right of adaptation (You, 2023).

In summary, the fundamental problem of the overall copyright protection path is that the object it nominally protects is inconsistent with the object it actually seeks to protect. In fact, this model seeks to protect game design including game elements and game rules, but is forced to provide indirect protection in the name of the overall game screen due to the industry consensus that game rules belong to ideas and are not protected by copyright law. This is essentially a judicial "stop-gap measure" and cannot fundamentally solve the problem of regulating reskinned video games under the Copyright Law.

## **2.2. Dilemmas of Regulation under the Anti-Unfair Competition Law**

In practice, many courts hold that game design is not protected by copyright law,

and regulate reskinned video games under the Anti-Unfair Competition Law. The most typical case is the *Hearthstone v. Wolong Legend* case (Shanghai No.1 Intermediate People's Court, 2014). On the one hand, the court pointed out that the card and deck combination of Hearthstone is essentially the game rules and gameplay, which belong to the category of ideas and are not protected by copyright law. On the other hand, it also acknowledged that the development and design of the game require tremendous creative labor, and such intellectual creation achievements should be protected. Finally, out of the need to encourage innovation and create a fair and reasonable competitive environment for the game industry, the court ruled that the company of the reskinned game violated the provisions of Article 2 of the Anti-Unfair Competition Law and constituted an act of unfair competition.

The second-instance judgment of the Minecraft case also continued this adjudication approach. On the basis of negating the determination of copyright infringement, the court ruled that the defendant constituted unfair competition, ordered it to delete 230 infringing elements in the game, and awarded compensation of 50 million yuan to the plaintiff (Guangdong High People's Court, 2021). However, the regulatory path under the Anti-Unfair Competition Law also has unavoidable institutional defects and is not a long-term solution for the problem of reskinned video games, which is embodied in two aspects.

First, the regulation of gameplay plagiarism through the confusion clause is not universal. Not all gameplay plagiarism can constitute commercial confusion. Most reskinned video games are clearly distinguished from the original game in terms of name, art image, brand logo and other aspects, which will not cause the relevant public to confuse the source of the game services, and thus cannot be regulated by the confusion clause in the Anti-Unfair Competition Law.

Second, there is a systemic conflict with the special intellectual property laws, and the abuse of the principle clause has judicial risks. When the specific conduct clauses cannot be applied, most courts make judgments based on the principle provisions of Article 2 of the Anti-Unfair Competition Law. However, as a principle provision, this clause should not be universally applied to the frequent market behavior of game reskinning. If a certain game design content has been evaluated by the Copyright Law as not having originality, belonging to the category of ideas or content in the public domain, it should fall within the scope that market entities can freely use, and should not be subject to secondary regulation through the Anti-Unfair Competition Law. Otherwise, it will violate the legislative purpose of the Copyright Law and undermine the internal coordination of the intellectual property legal system (Zhang, 2016).

### 3. The Status of Game Design under Copyright Law

Whether it is the logical defects of the indirect protection path under the Copyright Law, or the systemic contradictions of the backstop protection under the Anti-Unfair Competition Law, the root cause lies in the lack of a clear and unified

determination of the status under copyright law of the core object of plagiarism by reskinned video games, namely game design. To truly solve the problem of copyright infringement by reskinned video games, it is necessary to return to the essential analysis of the nature of game design under copyright law.

### 3.1. Connotation and Core Category of Game Design

Academic and judicial circles have used rather confusing terms to refer to the plagiarized parts of reskinned video games, including game design, game rules, gameplay, game operation methods, and expression of game rules. The boundaries between these concepts are blurred and often mixed.

Among the above concepts, game design has the widest scope, including a large amount of content such as game rules, game plots, character design, combat modes, and user interfaces (Liu & Wang, 2019). The definition of game design in the game industry emphasizes its distinction from code, art style, sound effects and other content, as well as its rule attribute that regulates the interaction of game elements (Sylvester, 2013).

Game rules are the core kernel of game design, and there are two mainstream views in academic circles on its connotation. Some views, from a functional perspective, define it as the basic provisions and procedural requirements that must be complied with in the process of participating in the game (Zeng & Guan, 2017), which is basically equivalent to game gameplay and game operation methods (Maitra, 2015). Another view integrates game rules with game design, holding that different from traditional simple offline games, game rules in online games are not a single basic gameplay, but contain a large number of detailed and systematic designs, which are essentially different from abstract gameplay (Sun, 2020). Game rules are not a single and abstract gameplay principle, but a systematic architecture composed of a series of specific, detailed and interrelated rule clauses, element design, numerical setting and combination logic, which is also the core basis for its eligibility for copyright protection.

### 3.2. The Boundary between Idea and Expression in Game Design

The basic principle of copyright law that “expression is protected while ideas are not” is the core focus of the dispute over the copyrightability of game design (Hemnes, 1982). However, similar to non-literary constituent elements such as structure, plot and characters in literary works, game design also has different levels of abstraction (Lu, 2011). The boundary between idea and expression is not clear-cut, but a process of quantitative change leading to qualitative change. When the description of an idea is specific to a certain extent, it constitutes expression, and when expression is abstracted to a certain extent, it becomes an idea (Sun, 2022).

In the *Overwatch v. Hero Gunfight* case, the court put forward a “five-layer stratification” theory for online game elements from abstract to concrete, showing the gradual concretization process of a first-person shooter game from the estab-

ishment of basic gameplay to the presentation of smooth pictures (Shanghai Pudong New Area People's Court, 2017). In *Overwatch*, players achieve victory through basic operations such as "moving" and "shooting" to complete different mission objectives such as point occupation, attack and defense, and escort. The above basic operations such as "moving" and "shooting", as well as core gameplay such as point occupation, attack and defense, and escort, are common elements of all shooter games, belong to the public domain, and are not protected by copyright law. However, when it comes to the layout of each game map, as well as the damage values of characters and props, they contain the elaborate design and personalized choices of the game developers, and even different planners of the same company will make different choices.

As established above, game design encompasses both ideas and expressions, and it is erroneous to categorically exclude all game design from copyright protection. In the *Taichi Panda v. The Journey of Flower* case, the Supreme People's Court also pointed out that "gameplay rules are a general term. Whether they are protected should not be judged by the name, but by the specific expression, in accordance with the provisions of the Copyright Law on works, especially the provisions on originality." (Supreme People's Court of the People's Republic of China, 2020)

The second-instance judgment of the *Minecraft* case further clarified the criteria for distinguishing between idea and expression in game rules. Its core adjudication view pointed out that there is often no clear dividing line between idea and expression, and more often there is only a transitional fuzzy zone. The process of distinguishing the two is not only a factual determination, but also contains value judgment. The legislative purpose of copyright law is to encourage the creation and dissemination of works. Therefore, the key is not to define idea and expression with a clear distinction, but to judge whether the object has a sufficiently broad space for creative expression, and forms a fully described structure through the creation of selection, design, arrangement and other acts among numerous expression possibilities. If the design meets this requirement, and granting copyright protection to it will not greatly hinder or restrict subsequent creative acts, it can be judged that it is closer to expression rather than idea.

Specifically, simple, basic and abstract gameplay rules, general and necessary gameplay element designs for a certain type of game, or rule designs directly derived from the summary of empirical laws in the real world, are themselves elements at the idea level, elements that are inseparable from ideas, or expressions lacking originality, and are not protected by copyright law. However, systematic, detailed game design with sufficient originality, especially the combination of rules that form a fully described systematic architecture, can fully constitute original expression and be included in the scope of copyright protection.

#### **4. Content and Method of Substantial Similarity Comparison for Reskinned Video Games**

Clarifying the copyrightability of specific expressions in game design resolves the

fundamental premise of reskinned game infringement determination. However, the core challenge in judicial practice remains how to accurately identify copied protectable expressions, which requires shifting the substantial similarity comparison from superficial game screens to the core game design itself.

#### **4.1. Specific Expressions in Game Design Should Be the Object of Substantial Similarity Comparison**

For online games, the core part is always the sophisticated design in the game. Players may enter the game because of the game's art, IP collaboration, or even advertising and marketing, but the key factor that determines whether players stay and are willing to pay can only be the "interactive" design inside the game. Therefore, taking the overall screen as the content of substantial similarity comparison for online games actually loses its core characteristics, which is like judging whether two literary works constitute substantial similarity based on the calligraphic presentation effect of the works. The specific expressions in game design should be taken as the content of the comparison.

At the same time, online games themselves have different types, and the game design varies greatly among various types. Therefore, the comparison content selected for different game types should be different. For example, role-playing games have a complete storyline, which should be an important part of the game design comparison; in competitive games such as sports, fighting, and shooting games, the plot is relatively less important, so it can be considered not to be included in the comparison content of game design.

#### **4.2. Judicial Application and Optimization of the Abstraction-Filtration-Comparison Test**

For the comparison of substantial similarity of reskinned video games, the three-step "abstraction-filtration-comparison" test developed in the field of computer programs can be used for reference (Casillas, 2012). Take Multiplayer Online Battle Arena (MOBA) games as an example:

1) Abstraction: Separate the external parts of the game such as text, art, and music that can be separately protected, and summarize the basic player competitive combat design therein.

2) Filtration: Eliminate the elements not protected by copyright law in the game design, mainly including factors determined by efficiency, elements determined by external factors, and elements from the public domain. The basic mode of MOBA games includes that two opposing camps are located at both ends of the map connected by several lanes, minions regularly appear on the lanes and march towards the enemy camp, neutral units are scattered in the areas outside the lanes, players control their heroes to kill enemy heroes, minions or neutral units to obtain gold and experience to enhance their own strength, and the final victory condition is to destroy the enemy's main base. The above basic mode is a common feature of all MOBA games, which is in the public domain for free use by the public. Moreover, such content is abstract enough to leave huge room for free creative

design for different games, and should be filtered from the game design to be compared.

3) Comparison: Compare the remaining specific expressions of the design that should be protected by copyright law. If the design of the defendant's game has an excessively high similarity with that of the plaintiff's game, the two are substantially similar. The above specific expressions in the design of MOBA games can include the layout design of the map, the behavior patterns and specific numerical values of heroes, the functions and usage methods of various props, etc.

## 5. Conclusion

As a new type of work, online games lack a targeted protection model under copyright law, and drawing on similar work types for protection is a conventional approach of legal analogy. However, when protecting through similar work types, the core characteristics of online game works cannot be ignored, otherwise the protection of online games will be superficial and dampen the enthusiasm of online game creators. The proliferation of reskinned video games is precisely the result of ignoring the core feature of interactivity in the copyright protection of online games. The governance of copyright infringement by reskinned video games should avoid being constrained by the notion that general concepts such as game design and gameplay rules are not protected by copyright law, filter out the expression parts therein, and judge their substantial similarity.

## Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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