
How to Stop Game Cloning: *Protecting your Video Game Patent*

by James G. Gatto

Hi. Welcome to another edition of Get Set, a video blog on legal strategies and insights for social media, entertainment and technology companies. My name is [Jim Gatto](#) and I'm the founder and leader of [Pillsbury's Social Media, Entertainment and Technology Team](#).

In this edition, I'm going to talk about how to stop game cloning. Many people believe that game cloning is something that exists and always will exist and that's just the way it is. Others are more proactive in taking steps to develop comprehensive intellectual property protection strategies to effectively prevent or minimize the ability for competitors to clone their games.

A couple of high profile cases illustrate this point. For example, Zynga was able to effectively force competitor, Vostu to stop copying various aspects of Zynga's Cityville game. In that case, Zynga alleged that Vostu's MegaCity game copied the look and feel of Cityville and as a result, forced, through settlement, Vostu to make changes to the game.

In another recent case, a federal district court found copyright infringement in connection with the game, Tetris. In that case, the owner of Tetris had sued a competitor Xio Interactive for making a similar, falling block type game. In that case, the court found that the elements of the game, including the look and feel, were copied even though the software code itself was not. The court found that to be copyright infringement and as a result, shut down the infringing game.

In its opinion, the court stated that people are free to use ideas which are not protectable by copyright but you cannot copy the expression of those ideas, which is the province of copyright law.

And that highlights one of the important issues with respect to copyright. Copyrights can be very effective at protecting against copying of the look and feel or expressive elements of your game. However, it does not protect against the functionality or game mechanics. That's where patents come into play.

Many people mistakenly believe that patents cannot be used to protect games. This is not the case. There's more and more game patents being issued every day. These patents cover the game mechanics: the functionality, the rules, and the implementation of the rules of games and in some cases, the business model for monetizing games.

Another important point to consider is that many people debate whether copyrights or patents are better for protecting games. The simple answer is that the debate misses the point. It's not an either/or choice. In

order to have a comprehensive IP protection strategy, you need to consider all available resources, including copyright and patents. As indicated earlier, copyright protect the look and feel but not the functionality or game mechanics and the patents cover the game mechanics but not the look and feel. If you only rely on one form of protection, you leave yourself exposed to enabling competitors to make minor changes, in some cases, and still be able to effectively copy your game.

So when used together as part of a comprehensive IP strategy, patents and copyrights pack a powerful one-two punch to stop game cloning. For more information on IP protection for games, please see our website and our Client Advisory entitled "[Intellectual Property Protection for Games](#)".

Thank you for tuning into this edition of Get Set. If you have any questions or need any additional information, please feel free to contact me or any of our Social Media, Entertainment, and Technology team members.

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If you have any questions about the content of this transcript, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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