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Copycats and Copyrights ~ Solving the Casual Games Puzzle

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Housekeeping

- ⌚ +/- 50 minute presentation; remainder for questions
- ⌚ I'll repeat your question before answering (memo to self)
- ⌚ Please complete the evaluation forms
- ⌚ Turn off portable noisemakers
- ⌚ Disclaimers: (i) where lawyers divine patterns others see chaos; (ii) don't attempt this at work



The Casual Games Puzzle Piece

- ③ Common features of casual games:
 - ③ **extremely simple gameplay**, like a puzzle game that can be played entirely using a one-button mouse or cell phone keypad
 - ③ allowing **gameplay in short bursts**, during work breaks or, in the case of portable and cell phone games, on public transportation
 - ③ the ability to **quickly reach a final stage**, or **continuous play with no need to save the game**
 - ③ **no plot or character**, or simple ones with no bearing on the game's mechanics
 - ③ **2D, abstract graphics**
 - ③ some variant on a “try before you buy” business model

Source: Wikipedia (“casual games”)



The Copyright Puzzle Piece

- ⊕ Copyright protection is limited to “creative expression”
 - ⊕ copyright designed to protect the fixed expression or manifestation of an idea rather than the fundamental idea itself
 - ⊕ U.S. Supreme Court: “copyright's idea/expression dichotomy strikes a definitional balance between the First Amendment and the Copyright Act by permitting free communication of facts while still protecting an author's expression”
 - ⊕ e.g.- the idea or genre of a story is not protected expression; the particular rendition of the story, unique characters, and original dialogue are.



Scrambling the Puzzle Pieces

- ⊕ Typical questions I'm asked about casual game copyrights:
 - ⊕ Everyone else is copying the original game so isn't it legal?
 - ⊕ Is the original game even copyrighted? It's so basic, it was made in Kazakhstan, and I don't see a copyright notice (e.g., Copyright © 2007, Borat).
 - ⊕ Okay, so what do I have to change to make my game different enough to be safe?
- ⊕ These are the wrong questions



The Puzzle Solved – An Overview

- ③ To solve the casual games copyright puzzle you have to break down each game into protected elements of expression and unprotected ideas
- ③ Error on the side of caution in reproducing the expressive elements
- ③ Liberally embellish the ideas
- ③ Avoid mixing in substantially similar trademarks, trade dress, and other uniquely-recognizable game features



Copyright Principles – Part I

- ⊕ Copyright protects “original works of authorship fixed in a tangible medium of expression...” U.S. Copyright Act, 17 U.S.C. § 102(a)
- ⊕ 8 defined categories of works of authorship
- ⊕ Video games encompass 2 categories
 - ⊕ literary works –underlying game code
 - ⊕ audiovisual works – user interface and on-screen effects



Copyright Principles – Part II

- ④ “In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.”

Copyright Act, 17 U.S.C. § 102 (b)



Copyright Principles – Part III

- ⊕ Copyright owner has 5 exclusive rights
 - ⊕ reproduction right – copy, imitate, duplicate
 - ⊕ modification (derivative works) right
 - ⊕ distribution right – sell, license
 - ⊕ public performance right – showing images of game in sequence to public
 - ⊕ public display right – showing images of game out of sequence to public
- ⊕ Violation of any right is infringement, with the possibility of damages, penalties, seizure of goods, award of attorney fees



Minimum Copyrightable Subject Matter

- ⊕ Copyrightable subject matter – Atari's *Breakout*
- ⊕ Original work of authorship— independently created
- ⊕ Creativity – “very slight”, “minimal”, “modest”
- ⊕ Expression – unique series of related images and sound
- ⊕ Audiovisual display is separate from underlying program

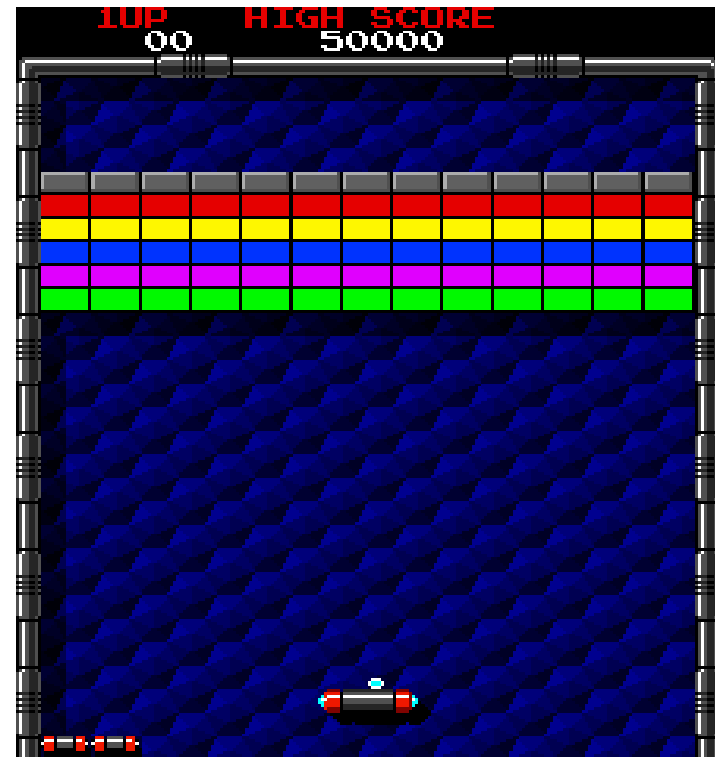
Atari v. Oman, 888 F.2d 878 (D.C. Cir. 1989)





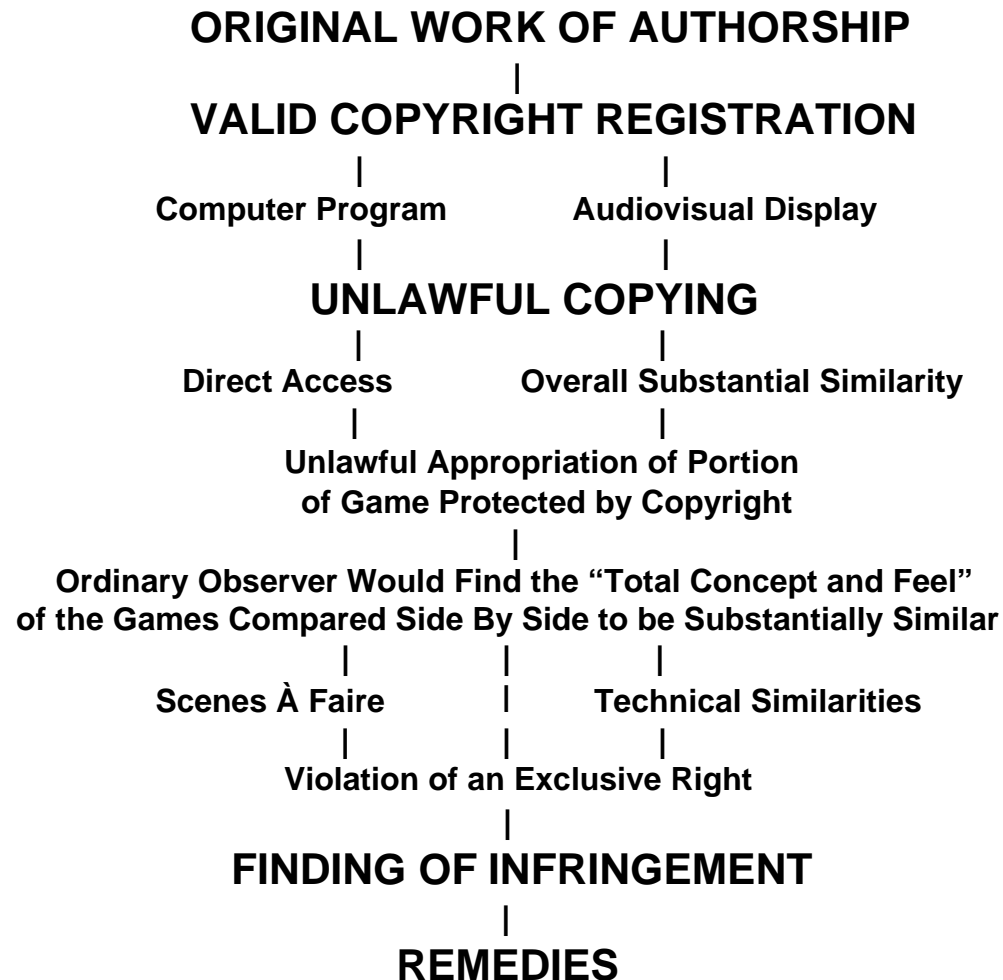
Degree of Copyright Protection

- ⊕ Taito's *Arkanoid*
- ⊕ Multiple levels with different brick patterns and mechanics
- ⊕ Power ups
- ⊕ Slightly different sounds
- ⊕ More successful than *Breakout*
- ⊕ *Arkanoid* copycats – *Krakout*, *Traz*, *Krypton Egg* and *Bananoid*





Casual Game Copyright Crib Sheet





Puzzle 1



Atari v. North American Philips, 672 F.2d 607 (7th Cir. 1982)

Midway/Atari's
Pac-Man®



N.A. Philips/Magnavox's
K.C. Munchkin





Puzzle 2 - *Asteroids*®

Atari v. Amusement World, 547 F. Supp. 222 (D. Md. 1981)

Atari's
Asteroids



Ovine By Design's
Meteor





Puzzle 3 - *Bejeweled*®

Popcap's
Bejeweled



iWin's
Jewel Quest®





Bejeweled Clones

Anarchy Enterprises

Temple of Jewels



Jewel of Atlantis





Puzzle 4 - Zuma®

Popcap's *Zuma*



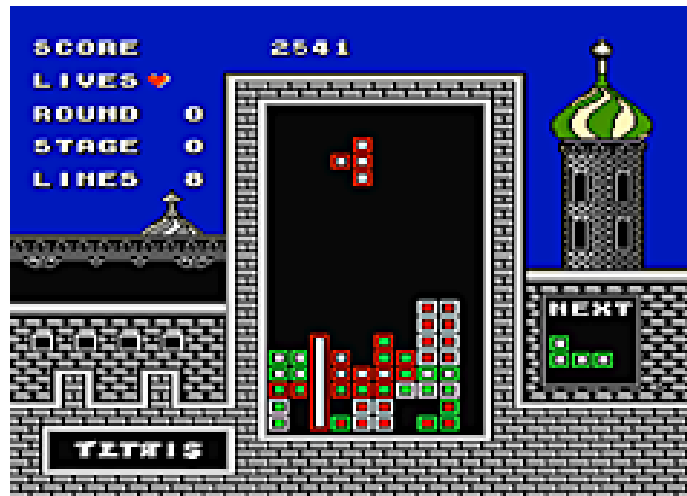
MumboJumbo's *Luxor*®



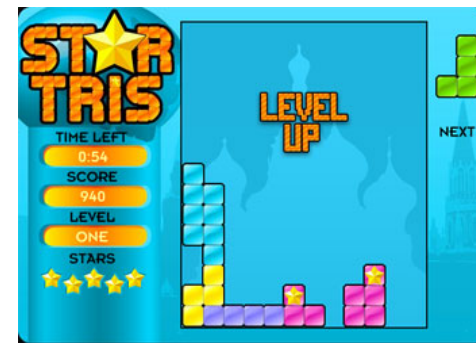


Puzzle 5 - Tetris®

Jamdat/EA's *Tetris*



StarTris



Super Collapse





Trademarks and Trade Dress

⊕ Trademarks

- ⊕ Tetris v. StarTris
- ⊕ Asteroids v. Meteoroids
- ⊕ Pac-Man v. PAKri MONster v. Mr. Mouth
- ⊕ Bejeweled v. Jewel Quest

⊕ Trade Dress

- ⊕ visual appearance of a product or its packaging such as the three-dimensional shape, graphic design, color, or even smell of a product and/or its packaging





Conclusions

- ⊕ The scope of copyright protection for casual games is limited
- ⊕ Determining protected subject matter requires a multilevel analysis that separates ideas from expression
- ⊕ In cases of infringement, the games are substantially similar overall and in the protected expressive features
- ⊕ Innocent intent is not a defense
- ⊕ Use of substantially similar trademarks and trade dress is indicative of willful copying and exposes the infringer to greater damages