Game clones and copyright infringement

Impact Paragraph

1. What is the social (and/or economic) relevance of your research results (i.e., in addition to the scientific relevance)?

The social and economic relevance of my research consists of three aspects. First, my research results relate to the interests of the video game industry. The video game industry here not only refers to the industry in Chinese, but also the global industry. Since China is now the biggest video game market in the world, lots of game companies, both domestic and foreign, are involved in this market. The proliferation of game clones will affect their interests, and how this phenomenon will be handled by Chinese courts concerns their core interests.

Second, my research results relate to the interest of follow-on game developers. Since learning from existing video games on the market is a common practice in game developing, confirming the scope of protection for a video game closely connects with the boundaries of what contents in a video game can be legally copied by follow-on developers. If the boundaries are not clear, then the activities of follow-on game developers will face great legal risks and even be discouraged, negatively affecting the sustainable development of the video game industry in the future.

Third, just as for the interest of follow-on game developers, my research results also concern the interests of the public. More specifically, the public interest is attached to how a video game can be used by the public other than by follow-on game developers. For example, in China, the question currently of whether the live playing of a video game on a platform like Douyu (which is the biggest live platform in China) should be considered as an infringement has already caused controversy. From that, since new ways of using a video game are emerging, the scope of copyright for a video game's right holders will definitely affect the public interest. So, my research results on how to regulate a video game within copyright law will doubtless relate to maintaining the public interest.

2. To whom, in addition to the academic community, are your research results of interest and why?

In addition to the academic community, the target group of my research is judges. There are two reasons for this. The first reason concerns the reality of the courts and judges in China. Since China is in the process of building a country under the rule of law, both companies and the public are focusing more on the operation and application of laws and other legal norms, and they are more likely to apply the laws as a weapon to maintain their rights and interests. In these circumstances, the number

of lawsuits has is increasing sharply. As a result, courts and judges in China have to face a very heavy workload, and working overtime is commonplace. Considering this, my research results hope to provide clearer guidance for judges when they adjudicate copyright infringement cases regarding video games and game clones. Besides that, I also hope the results can be accepted by, and form a consensus among, judges. If so, the results in this research will save judges' time, improve judicial efficiency, and relieve judges from the pressure of a heavy workload to some extent.

The second reason relates to a video game as an object for recognition. a video game is a complex object which contains software, images, music, and literature works. Besides those elements, since a video game also closely relates to and is deeply affected by technology, to understand what a video game is means to understand the related technology in the first place. This results in recognising and understanding video games being a very hard task for judges. However, they still have to provide their opinions and decisions on the legal issues regarding video games. Therefore, this research wants to provide reliable and succinct information about video games to judges, facilitating their recognition of this type of object. Only by doing this, can judges apply the law properly to video games, and render judgments that are more suitable to the aim of law and the goal of administering justice.

3. Into which concrete products, services, processes, activities or commercial activities will your results be translated and shaped?

My research results will be shaped into more cautious decision-making when a court determines copyright infringement caused by game clones. My results will help courts to better understand what video games and game clones are and recognize how much copyright protection should be provided to a video game. By considering the interests of game developers, follow-on developers, and the public, a cautious decision-making should respond to and protect the interests that have been promised by copyright law.

Besides that, cautious decision-making should also avoid over-protection. To avoid over-protection of video games, courts should draw a proper boundary between private and public interests. Only by doing this, can courts avoid excessive invasion of private interest into the space reserved for the public interest and keep a robust boundary for the latter. More specifically, my results hope to stimulate courts to think more about the public interest regarding the video game industry, especially how the current protection of video games will affect not only the activities of learning and copying from follow-on game developers but also the activities of using and disseminating by ordinary people.

4. To what degree can your results be called innovative in respect to the existing range of products, services, processes, activities and commercial activities?

My results can be called innovative in respect of the current decision-making of a court when it deals with copyright issues regarding a video game. Current decision-making contains too much subjectivity that cannot provide a constant scope of protection for a video game. Since courts currently know little or nothing about video games, they do not have an objective understanding of the object. So, when handling copyright issues, they can only rely on their limited knowledge of video games and the industry to make decisions. As a result, their judgments reflect the big gap between the impression of a judge and the reality of game design and game industry, and they cannot provide a clear and steady boundary for the scope of copyright of a video game, let alone guidance for both right holders and follow-on game developers. Also, the subjectivity of the confirmation of the scope of right also leads to subjectivity when a judge rules on infringement regarding a video game. The subjective decisions prevail in drawing a line between protectable and unprotectable contents, and they also prevail in comparing what has been copied as factual and legal matters.

As an innovation, my results try to turn subjective decision-making into a more professional and objective one. To make decision-making more professional, my results provide a comprehensive understanding of a video game by refining the updated, mainstream theories and knowledge from the field of video game and game design. By relying on my results, courts can have a more professional and systematic recognition of a video game, facilitating the forming of a consensus among judges on what can be protected in a video game. To make decision-making more objective, my results recommend that judges adopt a more objective approach (i.e., the AFC test) to rule on infringement regarding game clones, and in each step of the AFC test, my results try to restrict the subjectivity in the decision-making process to a tolerable degree.

5. How will this/these plans for valorisation be shaped? What is the schedule, are there risks involved, what market opportunities are there and what are the costs involved?

The valorisation which my research results have provided, i.e., the increase in objectivity in a court's decision-making on copyright issues regarding video games, will be shaped by following the schedule below. First, my results provide a professional and systematic understanding of video games for judges. Then, judges can reach agreement on how to recognize a video game as an object in general or as a subject-matter under copyright law. Lastly, by relying on the agreed approach, through a Guiding Case or case law, the courts can further come to a consensus on how to find infringement between disputed video games.

The only risk of the schedule above will be that if courts rely too much on my recommendations, they ignore the development of new technology on video games.

Of course, what I have shown in this research is the most up-to-date knowledge from game designers and game experts, but this knowledge will not remain unchanged. It is dynamic and will even be overturned as technology continues to change and develop. If judges view video games as something static, they will risk holding onto an outdated dogma when providing the scope of protection of a video game. Video games are developing and changing all the time. At first, they were just the presentation of some simple rules and images, but now, they contain more complex mechanics, aesthetics, stories, and technologies. So, to avoid dogmatism, courts should always keep in mind that, all the concrete recommendations in my research are made according to the *present* technological level of video games, and they will definitely be outdated in the future. In other words, judges should keep abreast of the development of technology, and of the realities of the video game industry, and while being mindful of the justice they should reserve for the public interest.

When seen from a bigger picture, the results of my research hope to remind courts, and also legislators, to stay attuned to what they need to judge and regulate, to respect the principles of how a thing originally develops, and to keep up with updated reality rather than outdated beliefs. Only by doing this can my research results, or any other studies in the academic community, become a flexible reference that prepares us for a variable future, rather than a rigid dogma that imprisons us in the eternal present.