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Zhigang Zhu, 20 February 2025, first published by [WTR](#)

'Game reskinning' refers to the practice of replacing or modifying the visual elements of an existing video/online game (eg, art style, character designs, scene layouts and sound effects) while retaining its structure, system framework, numeric design and corresponding relationships (known as the 'game mechanics') in order to create a seemingly new game.

China, as a major player in the global gaming industry, has long faced frequent instances of game-related infringement. Recently, the Guangdong High People's Court used the Anti-unfair Competition Law to protect game mechanics, illustrating a new judicial approach to 'game reskinning' disputes.

Guangdong court sets three-prong approach for unfair competition in gameplay

In 2021, Lilith Games alleged that Jiujiu Company had systematically copied the game mechanics of Lilith's game Rise of Kingdoms in its game Commander, thereby constituting copyright infringement and unfair competition.

Lilith filed suit before the Shenzhen Intermediate People's Court.

First-instance court finds copyright infringement

The Shenzhen court held that with respect to visual expression, Commander made use of certain original design features from Rise of Kingdoms, although it modified certain elements (eg, character images, animation effects and music). These modifications allowed players to some extent to distinguish the two games from their overall appearance.

However, with regard to game mechanics, Commander comprehensively adopted those of Rise of Kingdoms. The court considered that since the representation of (invisible) game mechanics is made through the game's visuals, they are protected by Article 3 of the Copyright Law as "other intellectual achievements meeting the characteristics of works". Therefore, any changes made to the game visuals inherently affect the depiction of the game mechanics, thus infringing the copyright.

Since the court decided that copyright offered sufficient protection, Lilith's unfair competition claims were not addressed.

Jiujiu Company appealed the decision.

Second-instance court overturns and applies unfair competition

On 31 December 2024, the Guangdong High People's Court issued a final judgment overturning the finding of copyright infringement and instead holding Jiujiu Company liable for unfair competition.

The court stated that 'game mechanics' refers to the methods or rules by which a game is played (ie, the objectives, obstacles, rewards, punishments and other constraints preset by the developer to guide or limit player and non-person character behaviour). These game mechanics are essentially ideas, systems, processes or methods, which cannot be protected under copyright law. Only the specific expression (game visuals) of these game mechanics rules falls within the purview of copyright protection.

Extending copyright protection to game mechanics would confer a monopoly that impedes subsequent developers from innovating on the same type of mechanics, thereby undermining the gaming industry's overall inventive potential.

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With respect to unfair competition, the Guangdong High People's Court emphasised that the mere act of imitating game mechanics does not necessarily amount to unfair competition. Judicial intervention is warranted only when such imitation exceeds reasonable limits and severely harms fair competition. In determining such reasonable limits, the following three key principles must be observed:

The disputed game mechanics are unique and thus provide competitive interests to the plaintiff, which suffers substantial harm.

The borrowing or imitation of the game mechanics surpasses what is generally deemed reasonable within the industry.

The accused behaviour breaches the principle of good faith or recognised commercial ethics and adversely affects market competition.

Considering the specific facts at issue, Commander's game mechanics closely mirrored those of Rise of Kingdoms, while the game also made extensive use of art assets or resources from another well-known game, Age of Empires.

In other words, the 'bones' (mechanics) and 'skin' (visuals) were effectively 'grafted' or 'stitched' together from two different games. This indicated not only a lack of original development but also an unauthorised appropriation of others' art assets, violating basic good-faith principles.

Furthermore, Jiujiu Company used this 'reskinning and stitching' method to rapidly launch a new game, capitalising on the promotional momentum of Rise of Kingdoms, diverting potential players and undermining fair competition in the market. Notably, the company's blatant copying of large amounts of text and punctuation – even erroneous content – demonstrated a willful intent to expedite a competing product's release.

On this basis, the Guangdong High People's Court held that Jiujiu Company's actions violated Article 2 of the Anti-Unfair Competition Law and constituted unfair competition. It ordered the company to cease its infringing activities and pay Rmb10 million (approximately US\$1.6 million) in damages plus Rmb500,000 (approximately US\$80,000) in reasonable legal expenses.

A timeline of courts applying copyright and unfair competition approaches

China's legal framework for protecting gaming products has evolved alongside changing forms of infringement.

To begin with, games were considered software and thus protected by copyright. In *Chu Han Zheng Ba* (2000), the court found the defendant had replicated the plaintiff's software based on the similarities in scenes, characters, sound design, and other visual features.

In *Hearthstone* (2014), the court ruled that the *Hearthstone* logo, interface layout and card designs qualified as artistic works, while the textual descriptions of cards and decks constituted a form of textual work. The defendant's copying of these works was found to be copyright infringement.

In *World of Warcraft* (2017), the court deemed the plaintiff's static drawings – lines, colours used in character designs, and dungeon maps – as artistic works. The defendant incorporated these exact elements throughout the accused game, leading the court to order the infringing game's takedown.

However, more complex 'reskinning' emerged, prompting rights holders to seek holistic protection of online games. This prompted the courts to adjust their analysis. Most the courts continued to reason within the framework of the Copyright Law. However, others opted for the Anti-Unfair Competition Law.

Miracle MU (2017) was the first case in China to recognise an online game as a work created by a method similar to cinematography. The Shanghai IP Court held that the defining feature of a 'cinematographic-like work' lies in its continuous sequence of moving images. *Miracle MU* presented a series of continuous frames during gameplay. Although each player's actions led to different visuals, such differences did not go beyond the game's pre-set content and thus remained within the scope of the 'cinematographic-like' creation.

The Jiangsu High People's Court expanded on this idea in *Taichi Panda* (2018). The game's character roles and interactions were equivalent to the creation process of a film script or storyline. Likewise, the game's overall running images – generated as a result of the player's operations – resembled the process of shooting and imaging in filmmaking, while remaining confined to the developer's preset boundaries. The game's continuous series of images, with or without audio, could be transmitted via computer or digital playback devices, thus qualifying it as a work created by a cinematographic-like method.

Subsequent rulings extended online game copyright protection from story-based role-playing games to competitive games in which the storyline was secondary. For instance, in *Overwatch* (2019), the Shanghai Pudong Court emphasised that, unlike other types of online games, first-person shooter games place a premium on perfect teamwork, precise strikes and

efficient victories. The pure visual elements of the game recede into the background. Instead, the critical game mechanics (eg, the positioning of shooting and hiding spots, the advantages or drawbacks of each character's abilities during a given match, and the interplay of one's own team's character choices) become more prominent and constitute the specific expression of the game's rules.

Stricter rules for copyright protection in game mechanics

Nonetheless, the practice of protecting game mechanics through copyright remains highly controversial. Some scholars argue that while game mechanics and storylines may be reflected in a game's visuals, they are fundamentally different from those visuals – just as a film script and a film's continuous visual presentation cannot be conflated. Writing a screenplay (ie, the plot) and creating a film (ie, a series of moving images) are distinct creative activities, each possessing its own originality. Consequently, protecting the copyright in a film does not mean automatically protecting the copyright in its screenplay.

Likewise, even if a game's visuals can be protected as a cinematographic-like work or audiovisual work, this does not imply protection of its game mechanics or storyline. Moreover, what is referred to as the game storyline is often merely the 'technical guide' of the game design, largely comprising ideas, rules or methods.

In 2020, the Guangdong High People's Court released its Trial Guidelines for IP Disputes in Online Games (Provisional), setting stricter standards for extending copyright protection to game mechanics.

Article 23 of the guidelines states that for games recognised as cinematographic-like works, whether the disputed game amounts to 'substantial similarity' should be assessed comprehensively, particularly focusing on:

the proportion and importance of identical parts in the plaintiff's work; and
whether the same expression could arise from legitimate reasons.

In a subsequent press conference, the Guangdong High People's Court reiterated that when assessing substantial similarity in continuous dynamic images, it is essential to distinguish ideas from expression. The court stressed avoiding comparisons at the level of creative concepts or emotions, and instead focusing on whether the work's choices, arrangement and design are similar at the level of concrete expression.

After the trial guidelines were released, the courts took a fresh approach. In *Infinite Borders* (2023), the Guangzhou Internet Court reasoned that a video/online game's originality arises from the design, selection and arrangement of its rules, assets and code, which are then reflected in the game's visuals. However, not all of the originality in those visuals necessarily originates from the game's developer, and the game's rules play a critical role in shaping its visual presentation.

Accordingly, the court held that *Infinite Borders* should not be classified in its entirety as an audiovisual work, but rather regarded – separate from the eight statutory categories of works – as a form of "other intellectual achievement meeting the characteristics of a work".

Rise of Kingdoms among a growing unfair competition trend

It is clear that in *Rise of Kingdoms*, the Shenzhen Intermediate Court followed a similar line of reasoning as the Guangzhou Internet Court. This was overruled by the second-instance Guangdong High People's Court, which ultimately applied the Anti-Unfair Competition Law.

Rise of Kingdoms is not the first case to apply the Anti-Unfair Competition Law to protect gameplay. In *Hearthstone* (2014), the Shanghai No 1 Intermediate People's Court recognised that the plaintiff's game was a special intellectual creation requiring substantial investment of labour, capital and resources, representing significant commercial value.

Rather than conducting legal, independent R&D, the defendant had unfairly appropriated these efforts, promoting its product by highlighting stolen features. This conduct, which exceeded the bounds of permissible reference or imitation, contravened the principles of equality, fairness, good faith and widely accepted commercial ethics, thus constituting unfair competition.

Nevertheless, that case remained isolated until *Minecraft* (2022). In this case, the Guangdong High People's Court rejected the first-instance holding that granted copyright protection and instead recognised infringement under the Anti-Unfair Competition Law. The court found that both games' overall visuals could be classed as cinematographic-like or 'audiovisual' works under the new Copyright Law, but their similarities centered not on the continuous frames but on the design of in-game elements.

The court concluded that *Mini World* and *Minecraft* were nearly identical in gameplay rules and shared numerous overlapping elements, exceeding any reasonable scope of reference. By directly capturing core creative commercial value

through copying, the defendant had unfairly seized commercial opportunities, constituting unfair competition.

In *Rise of Kingdoms*, the Guangdong High People's Court went even further, unequivocally declaring gameplay mechanics to be ideas, systems, processes or methods that do not fall under copyright protection, while also articulating a three-pronged standard for determining unfair competition in such disputes.

The importance of good faith

The Guangdong High People's Court's ruling aligns with the latest policies of the Supreme People's Court.

On 31 December 2024, the Supreme People's Court issued the *Opinion on Safeguarding Technological Innovation through High-Quality Judicial Adjudications*. Article 18 of the opinion underscores the importance of leveraging the catch-all and principle clauses of the Anti-Unfair Competition Law, guided by good-faith principles and commercial ethics, to effectively curb new forms of free-riding and innovation-blocking acts, thereby fostering a fair and honest competition environment.

As game mechanics evolve and iterate, they become increasingly varied and complex. Relying solely on traditional copyright law for protection can be both controversial and limiting. The gaming industry must strike a balance between 'reasonable borrowing' and 'encouraging innovation'.

Going forward, the principle of good faith will continue to play a pivotal role in judicial practice. Whenever a business operator acquires or uses another party's gameplay mechanics or rules through improper means and disrupts normal market competition, the courts can intervene by invoking the Anti-Unfair Competition Law. This approach is crucial for sustaining a healthy gaming industry and ensuring a fair market environment.