

Palworld's potential Pokémon problem

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On January 19, 2024, the video game Palworld was released for early access. The game features survival-style gameplay in which the player-character interacts with a world full of a variety of monsters referred to as “Pals.” Within days of release, Palworld was downloaded over eight million times, and achieved over two million concurrent players on the Steam gaming platform.

Almost immediately, Palworld was colloquially dubbed “Pokémon with guns,” with many pointing out similarities between Palworld and various games and monsters owned by the Pokémon Company. These similarities include video game mechanics, such as the ability to weaken and capture monsters in specially crafted balls, as well as visual similarities between the monsters themselves.

Opinions on the degree to which aspects of Palworld share similarities with various Pokémon assets vary immensely, making the question of whether Palworld infringes on the intellectual property of the Pokémon Company a popular topic for discussion among fans and critics alike. Specifically, public debate focuses on whether the Palworld

game, or any of the Pals, infringe on any of the copyrights owned by the Pokémon Company.

In the past, when faced with clear-cut examples of copyright infringement, the Pokémon Company (and its parent companies, Nintendo, Game Freak, and Creatures) has been quick to bring or threaten legal action. When a third-party developer attempted to make a first-person shooter directly featuring Pokémon monsters, the Pokémon Company shut down the operation before the game was released. In fact, the Pokémon Company has already successfully shut down at least one attempt to create a program which would import monsters from the Pokémon universe into Palworld. However, in cases where Pokémon assets haven't been copied directly, such as Tem Tem and Ni no Kuni, the Pokémon Company has either failed to stop the games' proliferation or decided against taking action altogether.

The fact that the Pokémon Company has yet to shut down Palworld evidences that the case of copyright infringement here may be less clear-cut than in cases where Pokémon assets have been copied directly. Palworld's developer, Pocketpair, seems confident that Pocketpair covered its bases, with Pocketpair's CEO stating that the game passed their legal review, and that Pocketpair has no intention of infringing the intellectual property of others. On the other hand, the owners of Pokémon seem to be in the process of evaluating whether they have a case,

with Nintendo releasing a statement indirectly referencing Palworld and stating an intention to investigate and address actions which infringe on intellectual property related to Pokémon.

The questions regarding copyright infringement are complicated by the fact that Palworld and Pokémon are sold and protected on an international level, meaning whether there is infringement may vary depending on the laws of a given country. However, since the United States provides a large market for both companies, the Pokémon Company and its owners will likely look closely at whether they would be successful with an intellectual property lawsuit filed against Pocketpair in the United States. This article therefore focuses on copyright infringement considerations under United States law.

In the United States, copyright protections are given to “original works of authorship” which are expressed in many forms, including audiovisual works, literary works, pictorial or graphic works, and software code. For the Pokémon Company, this means copyright protection almost certainly exists in at least its video games (and underlying code), television shows, movies, depictions of monsters (e.g., the Pokémon), and books, along with other content. To infringe a copyright, the infringer must do more than merely copy elements of a protected work; the infringer must copy so much of the protected work that the end result is “substantially similar” to the original.

The question of substantial similarity is subjective and fact-based, typically being left to a jury to decide. If a jury can find that Palworld misappropriated any one of the copyrighted assets belonging to the Pokémon Company, Pocketpair may find itself on the losing end of a lawsuit.

With respect to how much of a copyrighted work may be copied without infringing, a foundational principle of United States copyright law is that protection does not cover “ideas” and only extends to the “expression” of an idea. For example, the Pokémon universe features the popular character “Pikachu,” a small mouse-like monster capable of generating electricity. While the Pokémon Company certainly owns a copyright in its depictions of Pikachu, that copyright does not extend to the idea of a small mouse-like monster capable of generating electricity. Instead, the copyright covers only the original aspects of Pikachu which constitute expression, such as the small circular pads on Pikachu’s cheeks, the distinct zig-zagging tail, the brown hash lines on the back, and the slender, black-tipped ears which collectively form the unique look of the character.

The purpose of this limitation, termed the “idea-expression dichotomy,” is to prevent ideas from being monopolized such that artists are unfairly limited in what they can create. Other creators can use or recycle ideas so long as what they create are not “substantially similar” to the expression of another copyrighted work made by someone else. The practical effect of this dichotomy is that Pocketpair can develop its own Pals using the same underlying ideas as various Pokémon monsters without infringing, so long as the expression of the Palworld monsters is not “substantially similar” to the

expression already embodied in any Pokémon assets.

Pocketpair appears to be acutely aware of how this dichotomy works, as many Pals could be said to share the same idea as counterpart Pokémon characters. The Pal “Sparkit,” for example, is a small mouse-like monster capable of generating electricity, just like Pikachu, but features a host of visual differences calling into question whether Sparkit would be “substantially similar” to Pikachu. For example, Sparkit lacks the circular cheek pads, hash lines, slender, black-tipped ears which are unique to Pikachu, and has many features Pikachu lacks such as lightning shaped markings and whiskers, and a thin tail ending in a distinct lightning bolt shape. These differences reduce the chances that a jury would find Sparkit to be substantially similar to Pikachu and may explain the Pokémon Company’s hesitation to spend vast amounts of money litigating copyright infringement against Pocketpair.

Another aspect of copyright law which is relevant to the potentially infringing quality of Palworld is that copyright protection extends only to original expression. This means that if a copyrighted Pokémon asset, such as a character or game, includes elements which exist in nature or are otherwise commonplace, protection may not extend to those elements, and they may be freely copied. An example of this would be the many dog-like Pokémon characters which include elements such as walking on all fours, an elongated snout, pointy ears, canine teeth, and bushy fur. If the Pokémon Company were to protect these elements with copyright, other artists would be effectively prohibited from making dog-like characters, which could greatly stifle the creative efforts of countless artists. Instead, copyright protection extends only

to the elements which result from original choices by the author, and those unoriginal elements are free for those like Pocketpair to use in making their own unique designs. Pocketpair therefore has leniency to make Pals which are similar to Pokémon characters which have more real-world or commonplace elements, and less original elements. Because many Pokémon characters are based on real-world subject matter, the lack of protection over unoriginal elements may further contribute to hesitation on the part of the Pokémon Company and its parents to bring a lawsuit for infringement.

Because the ultimate determination of copyright infringement is subjective, it is impossible to know for sure whether Palworld infringes on any Pokémon assets absent a jury determination. This is especially true considering the vast amount of assets owned by the Pokémon Company which would each have to be individually evaluated against aspects of Palworld to make a final determination. As it stands, Pocketpair appears to have considered potential claims of infringement and has put effort into making sure they copy no more than is permissible, if at all. Even if the Pokémon Company or its owners ultimately concludes that action should be taken, it is entirely possible that such a matter would be handled out of court to avoid the cost and fanfare which comes with litigation in this area. While things might change down the line, Palworld has avoided formal accusations of wrongdoing thus far and remains available for gamers to enjoy.

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