



## Zynga v. Vostu: Is Copying Another Game's User Interface Copyright Infringement?

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Recently, social media game developers have been filing copyright infringement suits faster than a round of crops can grow on *FarmVille*. Although the "look and feel" of a user interface is typically not eligible for copyright, particularly within the Internet environment, this seems to be at the center of recent filings.

In June, social gaming giant Zynga filed suit against Brazilian developer Vostu for "blatant copyright infringement." Zynga claims that Vostu has appropriated the copyright-protected aspects of Zynga's games as well as almost every other aspect of Zynga's business. Vostu is accused of infringing Zynga's copyrights in *FarmVille*, *Zynga Poker*, *PetVille*, *Café World* and *CityVille*, with *Mini Fazenda* (Mini Farm), *Vostu Poker*, *Pet Mania*, *Café Mania* and *MegaCity* respectively. Zynga alleges that its evidence shows a series of similarities between the concepts, graphics, layout, menus and more for each game, although the complaint never specifies what the copyrights actually cover. The complaint includes a side-by-side comparison of a number of the games Vostu allegedly infringed. In addition, the filing points to bugs in the Zynga source code that Vostu allegedly copied inadvertently.

Zynga's suit was quickly followed by another copyright infringement allegation filed on June 17, 2011. A complaint filed by SocialApps, a California-based developer, claims that Zynga stole the source code from *myFarm* for use in Zynga's farming game, *FarmVille*. The Facebook game *myFarm* was released in November 2008, six months before Zynga released *FarmVille*. The suit claims Zynga had engaged in discussions to buy SocialApps in May 2009. Allegedly, Zynga was able to access the source code for *myFarm* during those negotiations. The complaint further claims that shortly after receiving a copy of the *myFarm* source code, Zynga called off negotiations and released *Farmville* only a few weeks later.

Zynga is not a stranger to copyright lawsuits. David Maestri, the creator of another popular Facebook game *Mob Wars*, sued Zynga in 2009. Maestri claimed that Zynga's *Mafia Wars* was a knockoff. The suit was settled the same year for an undisclosed amount. Recently, Zynga agreed to change the name of its upcoming expansion to *FrontierVille* from *The Oregon Trail* to *Pioneer Trail* after being approached by The Learning Company with a lawsuit.

Most recently, Vostu filed a countersuit against Zynga on July 20, 2011. Vostu claims that Zynga cannot claim copyright over the design of everyday objects and places, including barns, farms and chairs, and that Zynga has in the past copied designs from other companies. Vostu does not deny similarities between its games and the Zynga games, but claims that Zynga did not create the elements it now bringing suit over. Vostu provides a number of exhibits as part of its filing with its own side-by-side comparisons between Zynga games and similar, earlier games by other companies. For example, Vostu compares Playdom's *Social City* to Zynga's *CityVille*, and Slashkey's *FarmTown* to Zynga's *FarmVille*. The suit, filed in the United States District Court for the Northern District of California, also alleges that Zynga entered discussions with Vostu last year under the pretense of forming a partnership which never actually materialized.

To prevail on a copyright infringement claim, a plaintiff must prove: (1) ownership of a valid copyright; and (2) copying of constituent elements of the work that are original. The second element can be further dissected into two prongs: (a) actually copying by the defendant of the plaintiff's work; and (b) a substantial similarity between the defendant's work and the *protectable elements* of the plaintiff's work. There is no agreed-upon test for substantial similarity, but it has been established that to show infringement, the plaintiff must show "a substantial similarity of *protectable expression*, not just an overall similarity between the works." 4 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* § 13.03[F] (2008). By presenting the court with numerous examples of preexisting works similar to both the defendant's and the plaintiff's works, the defendant puts the plaintiff in the unenviable position of trying to show how his or her work is dissimilar to those examples, but still substantially similar to the defendant's.

Vostu seems to have taken this approach — showing that the constituent elements of Zynga's games lack originality — in its countersuit against Zynga. According to Vostu spokesman, Davidson Goldin, "Zynga has been accused of copying so many games that they've sadly lost the ability to recognize games like ours that are chock full of original content and have been independently created." It will be interesting to see how the courts respond to this unsettled area of copyright law.

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