

Clone culture and its continuous impact on indie developers

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Wren Brier and Rami Ismail discuss the evolution of clones in recent years and how to cope with your game being copied

Discussions around clones crop up on a regular basis, usually around the release of widely successful games that are being copied.

In recent weeks, the conversation mainly revolved around hit puzzle game Wordle, which has seen a high number of clones emerge following its viral success, as well as numerous games inspired by its simple word-guessing mechanic.

Apple confirmed in January that it was removing Wordle clones from the App Store but the platform holder's reaction is more exception than rule.

Unpacking developer Witch Beam learnt it the hard way after dozens of clones of its zen puzzle hit emerged on mobile before and after its launch on consoles and PC last November.

"There needs to be more moderation of apps and a more thorough review process [from mobile platform holders]," says Unpacking creative director Wren Brier. "It's better on the App Store, we've seen much fewer clones there. The ones that just constantly pop up, that's generally on the Google Play store, although I have seen a couple of those Unpacking Game Guides on iOS as well, and I've had them taken down.

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Wren Brier, Witch Beam

"It's a bit ridiculous that I have to, several times a week, go into the Google Play store, and go, 'Let's see how many clones we have now,' and none of them are even real games. They're literally just some scammers trying to make a quick buck using someone else's art and a bunch of ads. There is no benefit to your users from that. Just moderate this. Why does it need to waste your users' time, and waste developers' time, to constantly try to get those taken down?"

At least one game borrowed Unpacking's mechanics and replicated its art almost scene for scene. Witch Beam was very vocal on Twitter about this one clone, which helped accelerate the process of it being removed.

"I actually did file a claim," Brier says. "This is the first thing I always do, I go to the Google Play store, and I go, 'Hey, copyright infringement. Can you take this down?' And I send pictures. That one, because it was a bit more complicated than just straight up using

our art, I organised a whole folder of pictures for comparison. And the response I got back was, 'We've decided not to take action on this. You can reach out to the developer directly.' What will that achieve? They knowingly cloned the game. The only thing I can possibly do is send them a legal threat. That's costly, and takes a lot of energy, and we're tired. We just released a game! We're still exhausted."

An image shared by Witch Beam on Twitter, showing its game Unpacking on the left, and a clone on the right

Nick Allan, legal director and head of interactive entertainment at law firm Lewis Silkin, points out in a statement sent to *GamesIndustry.biz* that legislation in terms of copyright is dated in many territories, making cases such as mobile clones difficult to tackle.

"The UK's IP system is not currently very well equipped to protect studios from clone games," he says. "At least where there is no confusion or misrepresentation that the clone game is actually the original, it will often come down to a copyright claim that the visual appearance of the clone game is too close to the original.

"Unfortunately, the copyright legislation [in the UK] dates from 1988 and the leading Court of Appeal decision dates from 2007, which is well before the current era of hypercasual mobile games. In *Nova v Mazooma*, the court held that there was copyright in the visual appearance of a game, but the court's approach of comparing screenshots of the respective games does not always do justice to protecting original games. For example, it is difficult to show animation, gameplay elements and overall look-and-feel from static screenshots alone.

"Other jurisdictions may be regarded as more sympathetic to claimants than the UK, but it generally remains a difficult area to enforce in both law and practice," he continues.

"From a practical perspective, enforcement of IP rights in a mobile games context, especially the hypercasual genre, can be difficult as well because of their faster development times, sometimes shorter shelf-life and the cross-border issues associated with platforms, studios and users around the world. Legislators in the UK and other legal systems may wish to consider reforming copyright more generally to make it more fit for the age of the metaverse and the iPhone rather than Telex and Teletext."

The Unpacking clone in question ended up at the top of the free-to-play charts on iOS, with Apple initially not even sending a response to Witch Beam after it filed the initial claim. The platform holder ended up removing the clone 12 days after the studio's original complaint.



"While it was really nice that once a lot of people got very angry about it, Apple decided to take it down, that should have happened without us needing to get all of Twitter to be talking about it," Brier says.

At the time of our conversation, Brier says she has reported over 30 Unpacking clones so far, most of them on Android.

This feeling of exhaustion she expresses is shared by Rami Ismail. The developer, formerly one half of Vlambeer, has talked about clones extensively in the past following the widely-covered existence of Ridiculous Fishing clones. In both Unpacking and Ridiculous Fishing's cases, clones started emerging even before their releases.

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Nick Allan, Lewis Silkin

"In our case, [the reaction] was mostly panic," Ismail recalls. "You go into games [hoping] that your creativity will be rewarded in some way, shape, or form. It turns out when that faith is shaken, it's very scary. Competition in the games industry tends to be in relatively good faith. And clones are the opposite of that. They're the most cynical expression of competition. It's not something that we're used to, in the games industry, even though it happens remarkably often. Most of the games industry is so supportive and so cooperative that even though all of us are competing for the same market space, there's a sort of good sportsmanship going on, and when that gets violated it's shocking.

"In our case, it was very disorienting and the thing I did immediately was burn out, which I can't recommend doing. Luckily after that, I got angry. And my anger overcame my hesitation to email some of the biggest news websites in the world and we ended up in the New York Times and it got out of hand from there. Vlambeer ended up as a flash point in the early discussions about cloning."

He points out that in the case of both Unpacking and Ridiculous Fishing, the situation is made more painful by the fact nothing quite like those games existed prior to their respective launches.

"Creating them takes a tremendous amount of research and a tremendous amount of testing, just going over, 'Okay, how do I put this thing down so that it feels good? Does shooting a fish feel good, does catching a fish feel good?' There weren't rules for that. But it's really easy to copy it after it's done. You just look at what we did and you just do that too, and you can be done in a few weeks copying a game like Unpacking, even though it takes years to make it."

On the topic of platform holders' responsibility, Ismail says that once it becomes clear that there is a "pandemic" of a certain game getting cloned there should be processes to simplify these getting removed.

"The burden on the developer is large. You have to go in, you have to see these clones and check them out every day. So you're just sitting there every day waking up and going, 'Okay, let's fill out 27 of these forms'. It's just incredibly demoralising.

"If the same company has to submit the same thing very rapidly ten times, 15 times, for several days in a row, there should probably be some sort of escalation that makes somebody at Apple, or Google, or whatever platform, reach out to developer and go: 'Okay, let's go over what this case is exactly and then we'll just temporarily have some sort of system in place that that can work with this'."

Ridiculous Fishing, and subsequently Vlambeer, became a flash point in the early discussions about cloning, Rami Ismail says

Clones impact small developers in more than one way, but the most direct consequence for Witch Beam was a rise in confused players which in turn can grow into bad PR for the studio and its staff being overwhelmed by demands.

"People were going to our website and being confused, thinking that this is part of the sign-up process to play the game through this app that they got, and signing up to our mailing list thinking that they're signing up to play the game," Brier explains. "We were just flooded with mailing list sign-ups, which then brought us up a tier on Mailchimp, for these low-quality subscribers. And they're low quality because they don't want to be subscribers, and they might even mark us as spam if they get our emails.

"In terms of financial impact, mostly it stems from the impact on our brand, and [causing] brand confusion, giving people a bad experience with what they think is our game. Unpacking relies really heavily on word-of-mouth, and on having a good reputation, and being shared, and so if some people go, 'Actually, I played Unpacking and it sucked,' because they played some clone full of ads, that's a really bad thing for our game unless that perception is corrected."

"It took me out for six months when Ridiculous Fishing got cloned, and that almost killed the studio"

Rami Ismail

She adds that mobile clones can take sales away from other platforms as there's a crossover between mobile players and console/PC players.

"Yes, they are their own market, but a lot of people own multiple devices, or own a phone and a PC. So while there is a whole audience that we have not tapped into and currently doesn't have access to Unpacking, a whole bunch of them still do. So it does take away from those sales.

"[In terms of] short-term impact, it was really disruptive to our community as well. All of the tags in our TikTok notifications for days were just those ads. Literally all of the comments on them were just like, 'Unpacking, someone stole your game! Sue them!' and things like that. And it was just hundreds and hundreds of these messages. And then on

top of that, we were getting half a dozen emails a day, and just constantly people were coming into our Discord to report this, to the point where our mods were discussing if they were able to come up with some kind of bot that would tell people when they ask about that, 'We know, please stop talking about this,' and delete the post. It was wearing our mods down, our community down. It was causing stress beyond even just our company."

Ismail says measuring the financial impact of Ridiculous Fishing clones is "impossible," and that he will never know for sure, even ten years later. But he adds that the real issue with clones is elsewhere anyway.

"Ultimately the most dangerous thing is that it can get to your head. And it can really get you down and it took me out for six months when Ridiculous Fishing got cloned, and that almost killed the studio.

"[You need to] make sure you have a good support network that understands that, however ridiculous it may sound, you made something so extraordinary that other people want to cynically copy it. The sad thing is it still hurts because it's still that quiet agreement that we are playing in good faith, that is pulled away from you. And for me personally, that burnout did affect my life. And that hurt and that distress that you have, it did hurt me for a bit."

He points out that the amount of pain a clone can create is especially important when the copy ends up overshadowing the original, as was the case for 2048 taking over Threes.

Brier points out that it's possible that, if Unpacking copies don't stop popping up at the rate that they do, Witch Beam may have to hire someone to remove them.

"It's really wearing me thin," she says. "I am afraid of 'What if this clone comes back?' for example. We're fine now because these are gone, [but only] until the next clone shows up. Every time it happens, it's exhausting and stressful, and you don't know how it'll go, and I don't think that every single time we can go on Twitter and say, 'Please help us, everybody.' People will get tired of that."

"You won't get cloned unless your game has a chance of being successful, but if your game has a chance of being successful, you should market it so it can be"

Rami Ismail

Avoiding clones is almost mission impossible for successful indies, with Ismail highlighting a catch-22 facing all developers.

"A lot of people do think about [how to promote their game without giving away too much to avoid clones]. And I actually, ironically, recommend them not to think about that. Because the honest truth is if Unpacking had not promoted their game at all and hadn't been open about their development, it wouldn't have been cloned, but it also likely wouldn't have been successful.

"You won't get cloned unless your game has a chance of being successful, but if your game has a chance of being successful, you should market it so it can be."

Brier says that Unpacking being a narrative-driven game disguised as a puzzle game worked in their favour as far as clones are concerned.

"We were almost -- not on purpose -- hiding something. After we released, we realised that there were a lot of people that didn't realise that there would be a story, and the story is the main draw of the game. So, it's like everyone thought that they were going to play this puzzle game, and then it's like, 'Psyche! You're playing a narrative game, actually.'

"And so, these clones, they weren't trying to emulate the part about our game that was actually what we think is its strongest point. And then the other thing is just the game is extremely dense and extremely detailed, and the quality bar is high. You can't just put together a clone of Unpacking that's as good as Unpacking in three months because it's just not a game that's possible to put together in three months. Yes, you can definitely slap together a bunch of assets and model a room, and let someone put those items around the room, and even take them out of a box, but it's not going to be the same. It's just going to feel like the amount of work that you put into it, basically."

Wordle inspired game developers to create their own versions, but also clone makers keen to capitalise on its success

Ultimately, the big question is: what can you do to combat clones? And in reality there's not a whole lot you can do. Or what you can do could legally jeopardise how game development works for future generations.

"The biggest fear we had with Ridiculous Fishing is that there was obviously a lot of interest from lawyers who wanted to take on the case and said, 'we can protect your work'," Ismail recalls. "But then other lawyers would say, 'we could protect your work but if we succeed it might set precedent as to the protection of game design'. That's scary because if that happens somebody might say, 'Jumping is ours now'. There's precedent in the games industry for patents, but it's usually very specific things like playing mini-games on loading screens.

"But the idea of a generic game design element being protected by copyright laws is terrifying. Most of my games are built on other games, are built on translations of mechanics or ideas. If flying in a game was protected, then Luftrausers wouldn't exist. So the best thing you can do is just sort of swat the flies as they come up and just DMCA those games."

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Ismail also recommends claiming ownership of your title in the court of public opinion and in the eyes of the media, as the press usually is a good ally against "empty plagiarism."

He adds that there will always be people to tell you that you shouldn't be upset because cloning means you're being successful.

"But it's fair to feel ownership of a thing that you've worked on for years, and especially if it's a cynical ripoff," he says. "Inspiration is one thing and there's plenty of games that will be inspired by Unpacking that nobody will have a problem with whatsoever. The same way Ridiculous Fishing had a lot of games that were inspired by it and there's no problem with that whatsoever.

"The biggest thing -- and this is why I also recommend people to be loud about their game and to market their game regardless of the potential of cloning -- is if you can make it so that people understand that this game is your game and that these games are a clone of your game, and that the conversation is about how your game is the original, the creative version, that it will generally work out.

"Threes is an incredible game but 2048 has taken over the public 'origin' of the Threes gameplay -- so it doesn't always work out. But the chances of that working out are much higher than anything else. And then at some point -- and this is really sad to say -- you just have to let go of it, you can keep swatting down those games forever, because they will keep coming up forever."

Brier concurs on drawing a line between inspiration and straight up clones.

"I've been very clear about Unpacking drawing inspiration from The Sims, Gone Home, and Florence. But it's not similar to Florence, or Gone Home, or The Sims. It's its own thing. And even if it was more similar to them, even if we did a game that was like Florence, following a character through a romance using simple mechanics, but everything was bespoke, then that's fine. That's not a clone. It's just a game that's very similar to Florence. And the same goes for Unpacking.

"If someone were to make a game where you take things out of boxes and organise them around a room, even though there are not a lot of games like this currently, it's still, 'Okay, we're now building a genre.' That's allowed, but don't make it look exactly the same, down to specific items, down to room layouts. And don't use the same name."

'If flying in a game was protected, then Luftrausers wouldn't exist,' Ismail points out

Trademarking your game is a good first step against clones, but there are some caveats with the process.

"The thing with trademarks is that they are expensive, and they are region-specific," Brier explains. "If you trademark something in Australia, you've got to also trademark it in America, and in Europe, and in New Zealand. You have to pay for each territory that you trademark it in, and across [different] categories. And these costs add up. It's scary how

much they add up. So, for an indie studio working on a game, you don't know if the game is going to do well, and you don't have a AAA budget to invest in protecting your game. So, you go, 'Well, if it goes well, I'll trademark it then'."

The trademarking process can take years sometimes, which is plenty of time for more clones to emerge in the meantime. And while trademarking will protect a name, it doesn't protect gameplay mechanics.

"It's not going to prevent people from making games that are very similar to ours if they don't call them Unpacking, and use their own art. And to be honest, I'm fine with that too. That's how games evolve and how genres evolve. Even if it does mean that there will be some games that are too similar to Unpacking to my liking, they're still not going to be infringing on our brand, and making people confuse their game for ours. They're not profiting off literally the levels we designed and the art that we made."

Ismail says that over the years he's often been asked what divides inspiration from a clone.

"The answer I always gave is that for inspiration you imagine that somebody plays your game and then puts it away and sits down at their computer and makes something," he says. "And for cloning you imagine that they open up your game on the one screen and program their game on the other screen. It's that cynicism that separates the two."

"I don't think this is going away. That's the thing I realised over the past ten years watching this story happen over and over, having this interview in various forms over and over. The interesting thing is there's a progressive understanding of it. Every time this happens, our understanding of it increases, and more importantly, the amount of developers that understand that they are not alone when this happens improves."

"The bad thing isn't becoming less bad. It's not becoming less frequent, but as a community, as a field, as an industry, we're creating better structures for dealing with it and we're creating a more supportive community. And that's really important because we might not be able to stop the cynicism, but we can definitely make it easier on the people that are hung by it."