

**Atari Games Corp. v. Nintendo of Am. Inc.,
975 F. 2d 832 (Fed. Cir. 1992)**

Year	1992
Court	United States Court of Appeals for the Federal Circuit
Key Facts	<p>Nintendo of America Inc., and Nintendo Co., Ltd. manufactured the Nintendo Entertainment System (NES). NES was a home video game console that allowed individuals to play video game programs stored on video game cartridges. Nintendo owned the copyrights in the source and object code for a program called 10NES. The 10NES program facilitated a “lock” and “key” mechanism that allowed Nintendo to prevent its NES console from reading and playing video game programs on video game cartridges other than those that Nintendo had authorized. Because of the 10NES program, Nintendo was able to exact licensing fees from manufacturers that sought to develop video game programs capable of playing on the NES console.</p> <p>Nintendo’s competitors, Atari Games Corporation and its wholly-owned subsidiary, Tengen, Inc., replicated the 10NES program’s object and source code, thereby making it possible to manufacture and sell video game cartridges that were compatible with the NES console without paying licensing fees to Nintendo. To replicate the 10NES object code, Atari obtained authorized copies of NES game cartridges and consoles and “reverse engineered” the object code contained in the microchips therein. Atari also gained access to an unauthorized copy of the 10NES source code by submitting false information to the U.S. Copyright Office. While in the process of “reverse engineering” the 10NES program, Atari made multiple intermediate copies of both the program’s source and object code.</p> <p>Atari sued Nintendo for, among other things, antitrust violations, and Nintendo sued for, among other things, copyright infringement of the 10NES program. After consolidating the two cases, the district court preliminarily enjoined Atari from exploiting Nintendo’s 10NES program.</p>
Issue	Whether Atari’s intermediate copying of copyright protected source and object code for reverse engineering purposes qualified as fair use.
Holding	<p>The circuit court affirmed the district court’s imposition of a preliminary injunction, finding Nintendo demonstrated a likelihood of success on its copyright infringement claims. Regarding the 10NES source code, the court found that because Atari was not authorized to possess the copy of the source code that it obtained from the U.S. Copyright Office, any intermediate or derivative copying of the code did not qualify as a fair use. Regarding the 10NES object code, the court found that the intermediary copies of the code that Atari made while examining microchips in its “rightful possession” for the purpose of “reverse engineering” the code did not violate Nintendo’s copyright. However, the court also determined that, based on the district court’s findings that the program Atari developed as a result of its reverse engineering of the 10NES program included similarities between the programs “beyond the similarities necessary to accommodate the programming environment, or similarities necessary to embody the unprotectable idea, process, or method of the 10NES program,” Nintendo was likely to succeed on the merits of its infringement claim. Specifically the court stated that the fair use doctrine “did not give Atari more than the right to understand the 10NES program and to distinguish the protected from the unprotected elements of the 10NES program” and that “Atari could not use reverse engineering as an excuse to exploit commercially or otherwise misappropriate protected expression.”</p>
Tags	Federal Circuit; Computer program
Outcome	Preliminary ruling, mixed result, or remand