

**Sega Enters. Ltd. v. Accolade, Inc.,
977 F.2d 1510 (9th Cir. 1992)**

Year	1992
Court	United States Court of Appeals for the Ninth Circuit
Key Facts	Plaintiff Sega Enterprises, Inc. (Sega) manufactured video game consoles and games. Defendant Accolade, Inc., one of plaintiff's competitors, developed its own computer games to be played on the Sega consoles. To make its game software compatible with plaintiff's game consoles, defendant copied object code from plaintiff's games and converted it to source code, known as "reverse engineering." Defendant used what it learned from reverse engineering to write its own computer code to make its games compatible with Sega consoles. Defendant appealed the district court's ruling in plaintiff's favor.
Issue	Whether defendant's "reverse engineering," which involved copying, of a copyrighted computer program in order to gain an understanding of the unprotected functional elements of the program constituted fair use.
Holding	The court held that defendant's "reverse engineering" of plaintiff's computer program qualified as fair use, and ruled that disassembly of a copyrighted computer program for a legitimate reason and lack of other means to access the elements not protected by copyright constituted fair use. Although defendant commercially sold video games, the court found that defendant's copying was for a legitimate, essentially non-exploitative purpose—that is deciphering the non-copyrightable functions for game console compatibility. Any commercial exploitation of the functional code was indirect and of minimal significance. Along similar lines, the court found that defendant did not usurp plaintiff's market because defendant served as a market competitor and created its own independent, creative video games. Noting that computer programs contain a mix of creative and functional elements, the court pointed out that defendant would have been unable to access the functional, unprotected aspects without "reverse engineering" and copying. The court stressed that without a fair use exception for disassembling object code, the owner of the work would have a de facto monopoly over the functional aspects of the work.
Tags	Ninth Circuit; Computer program; Education/Scholarship/Research
Outcome	Fair use found

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