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Facebook's virtual reality ambitions could be threatened by court order



By [Jan Wolfe](#)

Facebook Inc's ([FB.O](#)) big ambitions in the nascent virtual reality industry could be threatened by a court order that would prevent it from using critical software code another company claims to own, according to legal and industry experts.

Last Thursday, video game publisher ZeniMax Media Inc asked a Dallas federal judge to issue an order barring Facebook unit Oculus from using or distributing the disputed code, part of the software development kit that Oculus provides to outside companies creating games for its Rift VR headset.

A decision is likely a few months away, but intellectual property lawyers said ZeniMax has a decent chance of getting the order, which would mean Facebook faces a tough choice between paying a possibly hefty settlement or fighting on at risk of jeopardizing its position in the sector.

For now, Facebook is fighting on. Oculus spokeswoman Tera Randall said last Thursday the company would challenge a \$500 million jury verdict on Feb. 1 against Oculus and its co-founders Palmer Luckey and Brendan Iribe for infringing ZeniMax's copyrighted code and violating a non-disclosure agreement.

Randall said Oculus would possibly file an appeal that would "allow us to put this litigation behind us."

She did not respond to a request for comment for this article.

An injunction would require Oculus, which Facebook acquired for \$3 billion in 2014, to stop distributing the code to developers or selling those games that use it.



Mitch Shelowitz Quoted on Historic Oculus/Facebook \$500 Million Copyright Infringement Case

For more information about the case and the importance of software copyright registration, please contact Mitch at mshelowitz@shelgroup.com and/or 212-655-9384.

Such a court order "would put a huge stumbling block in front" of Oculus, said Stephanie Llamas, an analyst with gaming market research firm SuperData. It would offer the company's rivals in the new market, which include HTC ([2498.TW](#)), Sony Corp ([6758.T](#)), Alphabet Inc ([GOOGL.O](#)) and others an "important opportunity for them to become first movers."

Sales of the Rift itself would not be barred, but Llamas, said a lack of available titles could hinder Facebook's offering relative to HTC's Vive headset and Sony's Playstation VR.

That market is relatively small at the moment - sales of VR hardware and software totalled \$2.7 billion in 2016 - and mainly limited to gaming. But Facebook chief executive Mark Zuckerberg has predicted the technology "will become a part of daily life for billions of people," revolutionizing social media, entertainment and medicine.

SuperData says the VR market will be worth \$37 billion by 2020. Likewise, investment firm Cantor Fitzgerald last year issued a report predicting VR would account for 10 percent of Facebook revenue in four years' time.

ZeniMax's lawsuit arose from 2012 correspondence between Luckey and famed video game developer John Carmack, creator of the Doom and Quake series and then a ZeniMax employee. Luckey signed a non-disclosure agreement with ZeniMax covering his communications with Carmack.

Carmack joined Oculus in 2013 as chief technology officer. ZeniMax sued in 2014, claiming Carmack's work while its employee was crucial to the Rift. At trial, Facebook said ZeniMax concocted its claims because of "sour grapes" over missing the VR trend.

Zuckerberg testified that "the idea that Oculus products are based on someone else's technology is just wrong."

The jury decided Oculus had not stolen trade secrets but had infringed ZeniMax's intellectual property. It also said Oculus breached the non-disclosure agreement.

IP lawyers said the judge would consider factors such as whether ZeniMax continues to be harmed and whether money is sufficient compensation.

Edward Naughton, a Boston-based copyright lawyer with Brown Rudnick, said ZeniMax has a strong argument because its technology continues to be used without its permission and the jury's verdict does not compensate for that.

"I think they have a pretty good shot here," Naughton said.

Mitchell Shelowitz, a copyright lawyer in New York, noted that the non-disclosure agreement explicitly stated ZeniMax would be entitled to an injunction in the event its terms were violated.

Not all lawyers agree ZeniMax has the stronger position. Chicago-based IP lawyer Joshua Rich said he thinks Facebook has a good chance to repel the injunction by arguing that ZeniMax is not being harmed by the sale of the Oculus products because it is not direct competitor.



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If Facebook can get past the injunction fight, the calculus could change, said Naughton. Facebook may believe it has strong arguments on appeal or, because it has so much cash on hand, it may hope to wear ZeniMax down to the point where it settles on favourable terms.

"Facebook has deep pockets," said Naughton. "That allows them to put their opponent into litigation fatigue."

(Reporting by Jan Wolfe; Editing by Anthony Lin and Grant McCool)