

Summary of Contents

Contents	ix
Table of Cases	xvii
Table of Authorities	xxv
Table of Statutes and Constitutional Provisions	xxxii
Table of Board, Computer and Video Games, and Video Game Consoles Cited	xxxiii
Preface	xxxvii
Acknowledgments	xxxix
About the Authors	xli
Part I • Product Development	
Chapter 1 • Introduction	3
Chapter 2 • Asset Acquisition	53
Chapter 3 • Ownership	113
Chapter 4 • Construction	153
Part II • Intellectual Property Protection	
Chapter 5 • Copyright Protection	205
Chapter 6 • Patent Protection	305
Chapter 7 • Trademark Protection	361
Chapter 8 • Trade Secrecy	425
Part III • Commercial Exploitation	
Chapter 9 • Commercial Exploitation of Real World Games	455
Chapter 10 • Commercial Exploitation of Virtual Worlds	505
Part IV • Product Regulation	
Chapter 11 • Unfair and Anticompetitive Practices	543
Chapter 12 • Regulating Computer and Video Games	573
Chapter 13 • Personal Injury Torts	623
Chapter 14 • Legal Amusement or Illegal Gambling?	663
Index	689

Contents

Table of Cases	xvii
Table of Authorities	xxv
Table of Statutes and Constitutional Provisions	xxxii
Table of Board, Computer and Video Games, and Video Game Consoles Cited	xxxiii
Preface	xxxvii
Acknowledgments	xxxix
About the Authors	xli

Part I • Product Development

Chapter 1 • Introduction	3
§ 1.10 Pre-Game	3
§ 1.20 Industry Products	4
§ 1.30 Industry History	6
Pre-History	6
The 1960s: The Formative Years	7
The 1970s: The Golden Age	9
The 1980s: Industry Turmoil	12
The 1990s: Increased Competition	16
The New Millennium	18
Notes and Questions	19
§ 1.40 Prefatory Case: The Pioneer Patent	20
<i>Magnavox Co. v. Mattel, Inc.</i>	20
Notes and Questions	42
§ 1.50 Screenshots of Famous Games	44
Chapter 2 • Asset Acquisition	53
§ 2.10 Basic Game Elements	53
I. Audio Elements	54
II. Video Elements	54
III. Computer Code [Source Code & Object Code]	54
§ 2.20 Potential Liability	55
§ 2.30 Use Without Permission	56
<i>Zacchini v. Scripps-Howard Broadcasting Co.</i>	56
Notes and Questions	60
<i>Palmer v. Shonhorn Enterprises, Inc.</i>	62
Notes and Questions	64

<i>White v. Samsung Electronics America, Inc.</i>	65
Notes and Questions	78
<i>Kirby v. Sega of America, Inc.</i>	79
§ 2.40 Use Pursuant to Permission	86
<i>Pesina v. Midway Manufacturing Co.</i>	86
<i>Neal v. Electronic Arts, Inc.</i>	88
<i>Topheavy Studios, Inc. v. Jane Doe</i>	90
Notes and Questions	94
§ 2.50 Remedies For Improper Acquisition	96
§ 2.60 Concrete Media Assets	96
§ 2.61 Music Licenses	97
Notes and Questions	97
§ 2.62 Cinematic Licenses	100
Notes and Questions	100
Chapter 3 • Ownership	113
§ 3.10 The Public Domain	113
<i>Chamberlin v. Uris Sales Corporation</i>	114
<i>Affiliated Hospital Products, Inc. v. Merdel Game Manufacturing Co.</i>	115
Notes and Questions	119
§ 3.20 Individual Ownership	121
<i>Blue Planet Software, Inc. v. Games International, LLC</i>	121
Notes and Questions	132
§ 3.30 Employees and Works for Hire	132
<i>Community for Creative Non-Violence v. Reid</i>	133
Notes and Questions	141
§ 3.40 Joint Ownership	145
<i>Ahn v. Midway Manufacturing Co.</i>	146
Notes and Questions	150
Chapter 4 • Construction	153
§ 4.10 The Developer-Programmer Relationship	153
<i>Greenberg v. Sir-tech Software, Inc.</i>	157
Notes and Questions	159
§ 4.20 Developing a Game Engine	168
Notes and Questions	168
§ 4.30 Interoperability Concerns	170
<i>Atari Games Corp. v. Nintendo of America, Inc.</i>	171
Notes and Questions	179
<i>Sega Enterprises Ltd. v. Accolade, Inc.</i>	180
Notes and Questions	194
<i>Sony Computer Entertainment, Inc. v. Connectix Corporation</i>	194
Notes and Questions	200
§ 4.40 Defensive Construction	201
Part II • Intellectual Property Protection	
Chapter 5 • Copyright Protection	205
§ 5.10 The Copyright Act	205

§ 5.20	The Registration Process	207
§ 5.21	Copyright Registration Forms	208
	Notes and Questions	209
§ 5.22	Content of Submission	210
	Notes and Questions	212
§ 5.23	Copyright Duration	212
§ 5.30	Copyrightability of Video Games	213
§ 5.31	Fixation	214
	<i>Stern Electronics, Inc. v. Kaufman</i>	214
	<i>Williams Electronics, Inc. v. Artic International, Inc.</i>	218
	Notes and Questions	225
§ 5.32	Originality	225
	<i>Atari Games Corp. v. Oman</i>	226
	<i>Atari Games Corp. v. Oman</i>	233
	Notes and Questions	237
§ 5.40	Copyright Infringement	239
§ 5.41	Direct Infringement	241
	<i>Atari, Inc. v. Amusement World, Inc.</i>	241
	<i>Atari Inc. v. North American Philips Consumer Electronics Corp.</i>	248
	Notes and Questions	256
	<i>Data East USA v. Epyx, Inc.</i>	258
	Notes and Questions	262
§ 5.42	Secondary Liability	264
	<i>Sega Enterprises Ltd v. Maphia</i>	266
	Notes and Questions	274
§ 5.50	Remedies and Enforcement	276
	<i>United States v. Kah Choon Chay</i>	276
	Notes and Questions	279
§ 5.60	Defenses	280
§ 5.61	Invalidity of Copyright	280
§ 5.62	The Public Domain	280
§ 5.63	Fair Use	281
	<i>Sony Computer Entertainment of Am. v. Bleem</i>	282
	Notes and Questions	288
§ 5.64	Scenes a' Faire	290
	Notes and Questions	291
§ 5.65	Copyright Misuse by Copyright Holder	292
§ 5.66	Lack of Substantial Similarity or Access	292
§ 5.67	Federal Preemption	292
§ 5.70	Enhancement and Modification	292
	<i>Midway Manufacturing Co. v. Artic International, Inc.</i>	293
	<i>Lewis Galoob Toys, Inc. v. Nintendo of America, Inc.</i>	295
	Notes and Questions	300
Chapter 6 • Patent Protection		305
§ 6.10	The Patent Act	305
§ 6.11	Registration	306
§ 6.12	Infringement	306
§ 6.13	Defenses to Infringement	307

§ 6.20 Multiple Protection	308
§ 6.30 Combining Devices and Gameplay	309
<i>Nintendo of America, Inc. v. Magnavox Co.</i>	310
Notes and Questions	321
§ 6.40 Video Game Devices	323
§ 6.41 Claims by Industry Patentees	323
<i>Magnavox Co. v. Activision, Inc.</i>	323
Notes and Questions	326
<i>Fairchild Semiconductor Corp. v. Nintendo Co., Ltd.</i>	326
Notes and Questions	332
<i>Alpex Computer Corp. v. Nintendo Co., Ltd.</i>	333
Notes and Questions	337
§ 6.42 Claims by Non-Industry Patentees	338
<i>General Electric Co. v. Nintendo Co., Ltd.</i>	338
Notes and Questions	343
§ 6.50 Concepts and Game Play	344
<i>Gussin v. Nintendo of Am., Inc.</i>	345
Notes and Questions	347
<i>Fantasy Sports Properties, Inc. v. Sportsline.com, Inc.</i>	348
Notes and Questions	355
Chapter 7 • Trademark Protection	361
§ 7.10 Multiple Laws and Remedies	361
§ 7.11 Federal Remedies [The Lanham Act]	361
<i>Nintendo of America, Inc. v. Dragon Pacific International</i>	363
Notes and Questions	366
§ 7.12 State Remedies	367
§ 7.20 Classifying Trademark Strength	368
<i>Frosty Treats v. Sony Computer Entertainment America, Inc.</i>	369
Notes and Questions	371
<i>Anti-Monopoly Inc. v. General Mills Fun Group, Inc.</i>	372
Notes and Questions	377
§ 7.30 Game Elements	379
<i>Midway Mfg. Co. v. Bandai-Inc.</i>	380
<i>Morrison Entertainment Group Inc. v. Nintendo of America, Inc.</i>	384
Notes and Questions	386
§ 7.40 Game Affiliation or Access	387
<i>Sega Enterprises, Ltd. v. Sabella</i>	387
Notes and Questions	392
§ 7.50 Trade Dress	393
<i>M. Kramer Mfg. Co. v. Andrews</i>	394
Notes and Questions	396
<i>Incredible Technologies, Inc. v. Virtual Technologies, Inc.</i>	397
Notes and Questions	400
<i>E.S.S. Entertainment 2000 v. Rock Star Videos, Inc.</i>	402
Notes and Questions	414
§ 7.60 Celebrities and Characters	418
<i>Universal City Studios, Inc. v. Nintendo Inc.</i>	419
Notes and Questions	422

Chapter 8 • Trade Secrecy	425
§ 8.10 State Governance versus Federal Preemption	425
<i>Videotronics, Inc. v. Bend Electronics</i>	426
Notes and Questions	429
§ 8.20 Uniform Trade Secrets Act	430
<i>Pepper v. International Gaming Systems, LLC</i>	431
Notes and Questions	435
<i>Simon v. Oltmann</i>	436
Notes and Questions	441
§ 8.30 Contractual Remedies	442
<i>Delphine Software International v. Electronic Arts, Inc.</i>	442
Notes and Questions	444
<i>nMotion, Inc. v. Environmental Tectonics Corp.</i>	445
Notes and Questions	446

Part III • Commercial Exploitation

Chapter 9 • Commercial Exploitation of Real World Games	455
§ 9.10 End User License, Terms of Use, and Terms of Service Agreements	455
§ 9.11 Enforceability: Formation Issues	457
<i>ProCD, Inc. v. Zeidenberg</i>	457
<i>Hill v. Gateway 2000, Inc.</i>	459
<i>Klocek v. Gateway, Inc.</i>	461
Notes and Questions	463
§ 9.12 Enforceability: Unconscionability and Preemption Issues	466
<i>Davidson & Associates, Inc. v. Internet Gateway</i>	466
Notes and Questions	471
§ 9.13 Interpretation	473
<i>Valve Corp. v. Sierra Entertainment Inc.</i>	473
Notes and Questions	476
<i>Micro Star v. Formgen, Inc.</i>	477
Notes and Questions	481
§ 9.20 Public Performances of Video Games	482
<i>Allen v. Academic Games League of America., Inc.</i>	482
Notes and Questions	485
<i>Red Baron-Franklin Park, Inc. v. Taito Corp.</i>	486
Notes and Questions	489
§ 9.30 Advertising Issues in Video Games	489
§ 9.31 Deceptive Advertising	489
<i>In re Grand Theft Auto Video Game Consumer Litigation (No. II)</i>	490
Notes and Questions	491
§ 9.32 In-Game Advertising	491
§ 9.40 Litigation Matters	494
§ 9.41 Jurisdiction and Venue	494
<i>WAKA, LLC v. DC Kickball</i>	494
Notes and Questions	496
§ 9.42 Injunctive Relief	497
<i>Nintendo of America, Inc. v. Elcon Industries, Inc.</i>	497
Notes and Questions	499

§ 9.43 Evidentiary Concerns	499
<i>Alpex Computer Corp. v. Nintendo Co., Ltd.</i>	499
Notes and Questions	503
Chapter 10 • Commercial Exploitation of Virtual Worlds	505
§ 10.10 Brief History of Virtual Worlds	505
§ 10.20 Attributes of Virtual Worlds	508
§ 10.30 Property Rights in Virtual Worlds	509
§ 10.40 Commerce in Virtual Worlds	511
§ 10.50 Criminal and Civil Law Issues in Virtual Worlds	513
§ 10.51 What is Virtual Crime?	514
Notes and Questions	514
§ 10.52 Consequences of Virtual Crime	516
Notes and Questions	517
Notes and Questions	521
§ 10.53 Civil Suits between Users and other Litigation not Involving Developers	523
Notes and Questions	523
§ 10.54 Civil Suits Involving the Developers of Virtual Worlds	527
<i>Bragg v. Linden Research, Inc.</i>	528
Notes and Questions	536
Part IV • Product Regulation	
Chapter 11 • Unfair and Anticompetitive Practices	543
§ 11.10 Unfair Competition	543
<i>M. Leff Radio Parts, Inc., v. Mattel, Inc.</i>	543
Notes and Questions	547
§ 11.20 False Advertising	551
<i>eGames, Inc. v. MPS Multimedia, Inc.</i>	551
Notes and Questions	553
§ 11.30 Business Torts and Related Claims	554
<i>Silicon Knights, Inc. v. Crystal Dynamics, Inc.</i>	554
Notes and Questions	564
§ 11.40 Procedural Issues	564
<i>Morse v. Nintendo of America, Inc.</i>	565
Notes and Questions	567
<i>State of New York v. Nintendo of America, Inc.</i>	568
Notes and Questions	571
Chapter 12 • Regulating Computer and Video Games	573
§ 12.10 A Constitutional Primer on Regulatory Challenges	573
§ 12.20 Regulatory Challenges to Video Game Legislation	576
§ 12.21 The “Early” Era and the Rational Basis Test	576
<i>America’s Best Family Showplace Corp. v. City of New York Department of Buildings</i>	576
Notes and Questions	579
<i>Caswell v. Licensing Commission For Brockton</i>	579
Notes and Questions	582

<i>City of Warren v. Walker</i>	583
Notes and Questions	585
<i>Marshfield Family Skateland v. Town of Marshfield</i>	586
Notes and Questions	588
§ 12.22 Modern Trend: First Amendment Protection and Strict Scrutiny	589
<i>Rothner v. City of Chicago</i>	589
Notes and Questions	591
<i>American Amusement Machine Association v. Kendrick</i>	592
Notes and Questions	596
§ 12.23 Legislative Response to First Amendment Protection Accorded Video Games	599
§ 12.231 “Exceptions” to First Amendment Protection	600
§ 12.232 Greater Constitutional Flexibility When Regulating Activities of a Minor	601
<i>Entertainment Software Association v. Granholm</i>	602
Notes and Questions	606
§ 12.233 Special Problems with Vagueness	607
Notes and Questions	609
§ 12.234 Factual Support for Content-Based Statutes	610
Notes and Questions	620
§ 12.30 Industry Self-Regulation	620
Notes and Questions	622
Chapter 13 • Personal Injury Torts	623
§ 13.10 Negligence	623
<i>Watters v. TSR, Inc.</i>	623
Notes and Questions	626
<i>James v. Meow Media, Inc.</i>	627
Notes and Questions	631
<i>Sanders v. Acclaim Entertainment, Inc.</i>	632
Notes and Questions	638
§ 13.20 Products Liability	640
<i>James v. Meow Media, Inc.</i>	640
Notes and Questions	641
<i>Wilson v. Midway Games, Inc.</i>	642
Notes and Questions	645
<i>Sanders v. Acclaim Entertainment, Inc.</i>	645
Notes and Questions	648
§ 13.30 First Amendment Defenses	650
<i>James v. Meow Media, Inc.</i>	650
<i>Wilson v. Midway Games, Inc.</i>	653
<i>Sanders v. Acclaim Entertainment, Inc.</i>	656
Notes and Questions	658
§ 13.40 Video Game Addiction as Mitigating Criminal Responsibility	659
<i>State v. Molitor</i>	659
Notes and Questions	661
Chapter 14 • Legal Amusement or Illegal Gambling?	663
§ 14.10 Character and Fitness Requirements for Licenses	663

	<i>Sagittarius, Inc. v. Village of Arlington Heights</i>	664
	Notes and Questions	665
§ 14.20	Regulating Machines	666
	<i>Serpico v. Village of Elmwood Park</i>	666
	Notes and Questions	671
	<i>O'Donnell v. City of Chicago</i>	671
	Notes and Questions	677
§ 14.30	Abstention	678
§ 14.31	<i>Burford</i> Abstention	678
	<i>Martin v. Stewart</i>	678
§ 14.32	<i>Younger</i> and <i>Colorado River</i> Abstention	684
	<i>Taylor v. Siegelman</i>	684
	Notes and Questions	686
Index		689

Table of Cases

- A & M Records, Inc. v. Napster, Inc., 239 F.3d 1004 (9th Cir. 2001) § 5.42
- Abercrombie & Fitch v. Hunting World, Inc., 537 F.2d 4 (2d Cir. 1976) § 7.20
- Accuride Intl., Inc. v. Accuride Corp., 871 F.2d 1531 (9th Cir. 1989) § 7.50
- Ackerman v. Ferry, LC 039960, 2002 WL 31506931 (Cal. Ct. App. Nov 12, 2002) § 2.30
- Advent Systems, Ltd. v. Unisys Corp., 925 F.2d 670 (3d Cir. 1991) §§ 9.11, 12.20
- Affiliated Hospital Products, Inc. v. Merdel Game Manufacturing Co.**, 513 F.2d 1183 (2d Cir. 1975) §§ 3.10, 5.64
- Alexander v. Haley, 460 F. Supp. 40 (S.D.N.Y. 1978) § 5.64
- Aliotti v. R. Dakin & Co., 831 F.2d 898 (9th Cir. 1987) § 9.20
- Ahn v. Midway Mfg. Co.**, 965 F. Supp. 1134 (N.D. Ill. 1997) § 3.40
- Allen v. Academic Games League of America, Inc.**, 89 F.3d 614 (9th Cir. 1996) §§ 3.10, 9.20
- Alpex Computer Corporation v. Nintendo Co., Ltd.**, 102 F.3d 1214 (Fed. Cir. 1997) § 6.41
- Alpex Computer Corporation v. Nintendo Co., Ltd.**, 770 F. Supp. 161 (S.D.N.Y. 1991) § 9.43
- Alsbach v. Bader, 700 S.W.2d 823 (Mo.1985) § 12.40
- American Amusement Machinery Association v. Kendrick, 115 F. Supp. 2d 943 (S.D. Ind. 2000) § 12.30
- American Amusement Machinery Association v. Kendrick**, 244 F.3d 572 (7th Cir. 2001) §§ 1.30, 12.22, 12.233, 12.30, 13.11, 13.20
- American Booksellers Assoc., Inc. v. Hudnut, 771 F.2d 323 (7th Cir. 1985) §§ 12.30, 13.30
- American Dairy Queen Corp. v. New Line Productions, Inc., 35 F. Supp. 2d 727 (D. Minn. 1998) § 7.50
- America's Best Family Showplace Corp. v. City of New York, Department of Building, 536 F. Supp 170 (E.D.N.Y. 1982) §§ 12.21, 12.30, 13.11
- AMF v. Sleekcraft Boats, 599 F.2d 341 (9th Cir. 1979) § 7.30
- Anheuser-Busch, Inc. v. Balducci Publications, 28 F.3d 769 (8th Cir. 1994) § 7.50
- Anthony Pools v. Sheehan, 455 A.2d 434 (Md. 295) §§ 9.11, 12.20
- Anti-Monopoly, Inc. v. General Mills Fun Group, Inc.**, 684 F.2d 1316 (9th Cir. 1981) § 7.20
- Apple Computer v. Franklin Computer, 714 F.2d 1240 (3d Cir. 1983) § 6.20
- Apple Computer, Inc. v. Formula International Inc., 725 F.2d 521 (9th Cir.1984) §§ 5.20, 6.20
- Architectronics, Inc. v. Control Systems, Inc., 935 F. Supp. 425 (S.D.N.Y. 1966) § 9.11
- Atari Corp. v. SEGA of America, 161 F.R.D. 417 (N.D. Cal. 1994) § 6.41
- Atari, Inc. v. Games, Inc. No. 04, Civ. 3723 2005 WL 612711 (S.D.N.Y. March 15, 2005) § 9.12
- Atari Games Corp., v. Nintendo of America, Inc.**, 975 F.2d 832 (Fed. Cir. 1992) §§ 4.30, 5.70, 6.20, 11.40
- Atari Games Corp., v. Nintendo**, No. C-88-4805 FMS1993 WL 214886 (N.D. Cal. 1993) §§ 4.30, 6.41
- Atari Games, Inc. v. Oman, 693 F. Supp. 1204 (D.D.C. 1988) § 5.62
- Atari Games Corp., v. Oman**, 888 F.2d 878 (D.C. Cir. 1989) § 5.32
- Atari Games Corp., v. Oman**, 979 F.2d 242 (D.C. Cir. 1992) §§ 5.32, 5.62
- Atari, Inc. v. Amusement World, Inc.**, 547 F. Supp. 222 (1981) §§ 5.21, 5.41, 5.64
- Atari, Inc. v. North American Philips Consumer Electronics Corp.**, 672 F.2d 607 (7th Cir. 1982) §§ 5.41, 5.64

- Avalon Hill Company, v. Gebhardt, 166 A.2d 740, 224 Md. 52 (MD. 1961) §§ 3.10, 7.50
- Baker v. Selden, 101 U.S. 99 (1880) §§ 5.32, 5.41
- Bally Total Fitness Holding Corp. v. Faber, 29 F.Supp.2d 1161 (C.D. Cal. 1998) § 7.30
- Basic, Inc. v. Levinson, 485 U.S. 224 (1988) § 11.10
- Bill v. Superior Court, 187 Cal. App. 3d 1002 (Cal. Ct. App. 1982) § 13.10
- Blanc v. Lantz, 83 U.S.P.Q. 137 (Cal. Super. Ct. 1949) § 2.30
- Blue Planet Software, Inc. v. International, LLC**, 334 F. Supp. 2d 425 (S.D.N.Y. 2004) § 3.20
- Bonito Boats v. Thunder Craft Boats, 489 U.S. 141, 155–56 (1989) § 8.10
- Bragg v. Linden Research, Inc.**, 487 F. Supp. 2d 593 (E.D. Pa. 2007) §§ 9.12, 10.54, 11.40
- Brandenburg v. Ohio, 395 U.S. 444 (1969) § 12.231
- Brazil v. Dell, Inc. No. C-07-01700 RMW, 2007 WL 2255296 (N.D. Cal Aug. 3, 2007) § 9.11
- Broadrick v. Oklahoma, 413 U.S. 601 (1973) § 12.21
- Bridge Publications, Inc. v. F.A.C.T. Net, Inc., 183 F.R.D. 254 (D. Colo. 1988) § 5.23
- Brocklesby v. United States, 767 F.2d 1288 (9th Cir. 1995) § 13.20
- Brother Records v. Jardine, 318 F.3d 900 (9th Cir. 2003) § 7.50
- Burnett v. Twentieth Century Fox Film Corp., 491 F. Supp. 2d 962 (C.D. Cal. 2007) § 7.50
- Cairns v. Franklin Mint Co., 292 F.3d 1139 (9th Cir. 2002) § 7.50
- Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569 (1994) § 5.63
- Capcom U.S.A., Inc. v. Data East, No. 93-3259, 1994 U.D. Dist. LEXIS 5306 (N.D. Cal. March 16, 1994) § 5.41
- Capitol Records, Inc. v. Naxos of America, Inc., 372 F.3d 471 (2d Cir. 2004) § 5.40
- Capitol Records, Inc. v. Naxos of Am., Inc., 4 N.Y.3d 540 (N.Y. 2005) § 5.40
- Cardozo v. True, 342 So. 2d 1053 (Fla. App. 1977) § 13.20
- Cardtoons, L.C. v. Major League Baseball Players Ass'n, 95 F.3d 959 (10th Cir. 1996) § 2.30
- Castle Rock Entertainment v. Carol Publ'g Group, 150 F.3d 132 (2d Cir. 1998) § 5.63
- Caswell v. Licensing Commission for Brockton**, 444 N.E.2d 922 (Mass. 1983) § 12.21
- Caterpillar, Inc. v. Walt Disney Co., 287 F. Supp. 2d 913 (C.D. Ill. 2003) § 7.50
- Caterpillar, Inc. v. Williams, 482 U.S. 386 (1982) § 11.40
- C.B.C. Distribution and Marketing, Inc. v. Major League Baseball Advanced Media, 443 F. Supp. 2d 1077 (E.D. Mo. 2006) §§ 2.30, 3.10
- Century Communications Corp. v. F.C.C., 835 F.2d 292 (D.C. Cir. 1987) § 13.20
- Chamberlin v. Uris Sales Corp.**, 150 F.2d 512 (2d Cir. 1945) § 3.10
- Chaplinsky v. New Hampshire, 315 U.S. 568 (1942) § 12.231
- China Healthways Institute, Inc. v. Wang, 491 F.3d 1337 (Fed. Cir. 2007) § 7.30
- Clafin v. Houseman, 93 U.S. 130 (1876) § 7.12
- Clarity Software, LLC, v. Allianz Life Insurance Company of North America, No. 2:04-CV-1441 2006 WL 2346292 (W.D. Pa. Aug. 11, 2006) § 5.21
- Computer Associates International, Inc. v. Altai, Inc., 982 F.2d 693 (2nd Cir., N.Y., 1992) § 5.41
- Cole v. Kimberly-Clark Corp., 102 F.3d 524, 531 (Fed.Cir.1996) § 1.40
- Community for Creative Non-Violence v. Reid**, 490 U.S. 730 (1989) § 3.30
- Confold Pac., Inc. v. Polaris Indus., 433 F.3d 952 (7th Cir. 2006) § 8.10
- Conagra, Inc. v. Singleton, 743 F.2d 1508 (11th Cir. 1984) § 7.50
- Coyne-Delany Co. v. Capital Dev. Bd., 717 F.2d 385 (7th Cir. 1983) § 5.70
- Dallas Cowboys Cheerleaders, Inc. v. Pussycat Cinema, Ltd., 604 F.2d 200 (2d Cir. 1979) §§ 7.50, 7.60
- Data East USA v. Epyx, Inc.**, 862 F.2d 204 (9th Cir. 1988) §§ 5.41, 5.64
- Davidson & Associates, Inc. v. Internet Gateway**, 334 F. Supp. 2d 1164 (E.D. Mo. 2004) §§ 9.11, 11.40
- Davidson & Associates v. Jung, 422 F.3d 630 (8th Cir. 2005) § 9.12
- Davis v. Walt Disney Co., 430 F.3d 901 (8th Cir. 2005) § 7.50
- Defilippo v. National Broadcasting Co., 446 A.2d 1036 (R.I. 1982) § 13.10
- Delphine Software International v. Electronic Arts, Inc.**, No. Civ. 4454 AG AS, 1999 WL 627413 (S.D.N.Y. Aug. 18, 1999) § 8.30

- Diamond v. Diehr, 450 U.S. 175 (1981) Ch. 6, foreword
- Digital Communications Associates, Inc. v. Softklone Distributing Corp., 659 F. Supp. 449 (N.D. Ga. 1987) § 5.21
- Discover Bank v. Superior Court, 36 Cal. 4th 148 (2005) § 9.12
- Dr. Seuss Enterprises v. Penguin Books USA, 109 F.3d 1394 (9th Cir. 1997) § 7.50
- Dustin Hoffman v. Capital Cities/ABC, Inc., 255 F.3d (9th Cir. 2001) § 2.30
- Echo Travel, Inc. v. Travel Associates Inc., 870 F.2d 1264 (7th Cir. 1989) § 7.50
- eGames, Inc. v. MPS Multimedia, Inc., No. Civ. A. 04-5463, 2005 WL 670693, 76 U.S.P.Q.2d 1059 (E.D. Pa. March 22, 2005) § 11.20**
- Electronic Arts Inc. v. Hebrew University of Jerusalem, 100 Fed. Appx. 629 (9th Cir., 2004) §§ 2.30, 2.50
- Ellison v. Robertson, 357 F.3d 1072, 1078 (9th Cir. 2004) § 5.42
- Entertainment Merchant's Association v. Henry, No. CIV-06-675-C, 2007 WL 2743097 (W.D. Okla. Sept. 17, 2007) § 12.2333
- Entertainment Software Association v. Blagojevich, 404 F. Supp. 2d 1051 (N.D. Ill. 2005) §§ 12.10, 12.22, 12.232, 12.233, 12.234, 13.20
- Entertainment Software Association v. Foti, 451 F. Supp. 2d 646 (E.D. Mich. 2006) § 12.233
- Entertainment Software Association v. Granholm, 426 F. Supp. 2d 646 (E.D. Mich. 2005) §§ 12.10, 12.23, 12.233, 13.20, 13.31
- Entertainment Software Association v. Swanson, 519 F.3d 768 (8th Cir. 2008) § 12.233
- Erickson v. Trinity Theatre, Inc., 13 F.3d 1061 (7th Cir. 1994) § 3.40
- Eros, LLC v. Simon, Case No. CV-07-447 (E.D.N.Y.) § 10.53
- Erznoznik v. Jacksonville, 422 U.S. 205 (1975) § 12.232
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- ETW Corp. v. Jireh Pub., Inc., 332 F. 3d 915 (6th Cir. 2003) § 2.30
- Exxon Corp. v. Oxxford Clothes, 109 F.3d 1070 (5th Cir. 1997) § 7.50
- Fairchild Semiconductor Corp. v. Nintendo Co., Ltd., No. C-92-1971 C, 1994 WL 560607 (W.D. Wash. Feb. 14, 1994) § 6.41**
- Fantasy Sports Properties, Inc. v. Sportsline.com, Inc., 287 F.3d 1108 (Fed. Cir. 2002) § 6.50**
- Fasa Corp. v. Playmates Toys, Inc., 108 F.3d 140 (7th Cir. 1997) § 7.60
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- Fleet v. CBS, Inc., 50 Cal. App. 4th 1911 (Cal. Ct. App. 1997) § 2.30
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- O'Donnell v. City of Chicago**, 842 N.E.2d 208 (Ill. App. 2005) § 14.20
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- Olivia N. v. NBC**, 126 Cal. App. 3d 488 (Cal. Ct. App. 1981) §§ 13.10, 13.30

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- ProCD, Inc v. Zeidenberg**, 86 F.3d 1447 (7th Cir. 1996) § 9.11
- Qualitex Co. v. Jacobson Prods. Co., 514 U.S. 159 (1995) § 7.50
- R.A.V. v. City of Paul, 505 U.S. 377 (1992) §§ 12.10, 13.20
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- Red Baron-Franklin Co. v. Taito Corp.**, 883 F.2d 275 (4th Cir. 1989) § 9.20
- Religious Technology Center v. Netcom On-line Communication Services, Inc., 923 F. Supp. 1231 (N.D. Cal. 1995) § 5.42
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- Roccaforte v. Nintendo of America, Inc., 917 So. 2d 1143 (La. App. 2005) § 12.20
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- Sable Communications v. FCC, 492 U.S. 115 (1989) § 12.232
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- Sanders v. Acclaim Entertainment, Inc.**, 188 F. Supp. 2d 1264 (D .Colo. 2002) §§ 13.10, 13.20, 13.30
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- Schad v. Borough of Mt. Ephraim, 452 U.S. 61 (1981) §§ 13.11, 13.12
- Schroders, Inc. v. Hogan Systems, Inc., 522 N.Y.S.2d 404 (Sup. Ct., N.Y. County 1987) § 9.11
- Sega Enterprises Ltd. v. Accolade, Inc., 785 F. Supp. 1392 (N.D. Cal. 1992) § 7.40
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- Step-Saver Data Systems, Inc. v. Wyse Technology, 939 F.2d 91 (3d Cir. 1991) § 9.11
- Stern Electronics Inc. v. Kaufman, 669 F.2d 852 (2d Cir. 1982) §§ 5.31, 7.20, 12.22
- Stirlen v. Supercuts, Inc., 51 Cal. App. 4th 1519 (Cal. Ct. App. 1997) § 10.54
- Sullivan v. First Affiliated Securities, Inc. 813 F.2d 1368. 1371 (9th Cir. 1987) § 11.40
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- Taylor v. Siegelman 230 F. Supp. 2d 1284 (N.D. Ala. 2002) § 14.30
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- Matter of Tommy and Tina, Inc. v. Department of Consumer Affairs of City of New York, 464 N.Y.S.2d 132 (N.Y.A.D. 1983) § 13.11
- Toney v. Independent School District No. I-48 of Hughes County, No. CIV-06-455-FHS, 2007 WL 54832 (E.D. Okla. Jan. 5, 2007) §§ 13.12, 13.20
- Topheavy Studios, Inc. v. Jane Doe, No. 03-05-00022 CV, 2005 WL 1940159 (Tex. App. Aug. 11, 2005) § 2.40
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- Troll Co. v. Uneeda Doll Co., 483 F.3d 150 (2d Cir. 2007) § 5.20
- Turner Broad Systems, Inc. v. F.C.C., 512 U.S. 622 (1994) § 12.10
- Twentieth Century Fox Film Corporation v. Entertainment Distributing, 429 F.3d 869 (9th Cir. 2005) § 3.30
- Two Pesos v. Taco Cabana, 505 U.S. 763 (1992) §§ 7.20, 7.50
- Uhlaender v. Henrickson, 316 F. Supp. 1277 (D. Minn. 1970) §§ 2.30 3.10
- Universal City Studios, Inc. v. Nintendo, Inc., 746 F.2d 112 (2d Cir. 1984) §§ 7.30, 7.60
- Universal City Studios, Inc. v. T-Shirt Gallery, 634 F. Supp. 1468 (S.D.N.Y. 1986) § 7.50
- United States v. Caroline Products, 304 U.S. 144 (1938) § 12.10
- United States v. Kah Choon Chay, 281 F.3d 682 (7th Cir. 2002) § 5.50
- United States v. Loew's, Inc., 371 U.S. 38 (1962) § 5.65
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- Valve Corporation v. Sierra Entertainment Inc., 431 F. Supp. 2d 1091 (W.D. Wash. 2004) § 9.13
- Vault Corp. v. Quaid Software, Ltd., 847 F.2d 255 (5th Cir. 1988) §§ 5.10, 5.70
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- Video Software Dealers Association v. Maleng, 325 F. Supp. 2d 1180 (W.D. Wash. 2004) §§ 12.30, 13.20
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- Videotronics, Inc. v. Bend Electronics, 564 F. Supp. 1471 (D. Nev. 1983) § 8.10
- Matter of W.L. v. A.E., 2006 WL 940629, (N.Y. Fam. Ct. Mar. 27, 2006) § 12.20
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- Waller v. Osborne, 763 F. Supp. 1144 (M.D. Ga. 1991) §§ 13.10, 13.30
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- City of Warren v. Walker, 135 Mich. App. 267, 354 N.W.2d 312 (Mich. Ct. App. 1984) § 12.21
- Watters v. TSR, Inc., 904 F.2d 378 (6th Cir. 1990) § 13.10
- Weirum v. RKO General, Inc., 15 Cal. 3d 40 (1975) § 13.30
- Wham-O, Inc. v. Paramount Pictures, 286 F. Supp. 2d 1254 (N.D. Cal. 2003) § 7.50
- Matter of While You Wait Photo Corp. v. Department of Consumer Affairs of City of New York, 450 N.Y.S. 2d 334 (1982) § 12.21
- Whist Club v. Foster, 42 F.2d 782 (S.D.N.Y. 1929) § 3.10
- White v. Samsung Electronics, America, Inc., 971 F.2d 1395 (9th Cir. 1992) §§ 2.30, 7.12
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- Winter v. G. P. Putnam's Sons**, 938 F.2d 1033 (9th Cir. 1991) § 13.20
- Worrell v. Barnes**, 484 P.2d 573 (Nev. 1971) §§ 9.11, 13.20
- Yakubowicz v. Paramount Pictures Corp.**, 536 N.E. 1067 (Mass. 1989) § 13.10, 13.30
- Yurman Design, Inc. v. PAJ, Inc.**, 262 F.3d 101 (2d Cir. 2001) § 7.50
- Zacchini v. Scripps-Howard Broadcasting Co.**, 433 U.S. 562 § 2.30
- Zamora v. CBS**, 480 F. Supp. 199 (S.D. Fla. 1979) §§ 13.10, 13.30, 13.40
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17 U.S.C. § 509 § 5.40
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Article I, § 8 § 5.10, Ch. 6 forward
Article IV § 8.10
Amend. I Ch. 12 forward, §§ 12.10, 12.20,
12.21, 12.22, 12.23, 12.231, 12.232,
12.233, 13.10, 13.30
Amend. V § 12.10, 12.22
Amend. XIV § 12.10, 12.233, 13.10

Table of Board, Computer and Video Games, and Video Game Consoles Cited

A

Advent § 10.10
Adventure § 1.30
Apple Lisa Computer § 1.30
Araknoïd § 1.30
Asteroids §§ 1.30, 1.50, 5.41
Atari:
 Atari 400 §§ 1.30, 6.42
 Atari 800 § 1.30
 Atari 2600 §§ 1.30, 4.30, 6.41, 6.42
 Atari 5200 § 1.30
 Atari 7800 § 1.30
 Atari Lynx § 1.30
 Atari S/T § 1.30
 Atari XE Game System (“XEGS”) § 1.30
 XE Game System (“XEGS”) § 1.30
 Video Computer System § 1.30

B

Battle Tech § 1.30
Battle Zone § 1.30
Bingo § 8.20
“Bit,” defined § 6.42
Breakout §§ 1.30, 1.50, 5.32
Bubble Bubble § 1.30

C

Cadillac Bingo § 8.20
Castle Wolfenstein §§ 13.10, 13.20
Centipede § 1.50
Challenger Wild Poker § 8.10
Champions of Norrath §§ 10.10, 10.40
Chuck Norris Superkicks § 1.50
City of Villains § 10.10
Civilization § 7.20
Civilization — Call to Power § 7.20

Colecovision § 1.30
Commodore:
 Commodore 64 § 1.30
 Commodore CDTV § 1.30
Computer Space § 1.30
Connectix Corp. and Virtual Game Station
 § 4.30
Crazy Kong § 9.42

D

Dark Age of Camelot, The §§ 7.40, 10.10, 10.54
Data General, Nova computers § 1.30
Daytona USA § 1.30
Death Race 2000 § 1.30
Defender §§ 1.30, 4.40, 5.21, 5.31
Defender of the Crown § 1.30
Defense Command §§ 4.40, 5.31
Diablo § 9.12
Diablo II: Lord of Destruction § 9.12
Donkey Kong §§ 1.30, 1.50, 6.42, 7.60, 9.42, 12.21
Donkey Kong 64 § 1.30
Donkey Kong Country § 1.30
Doom §§ 1.30, 4.20, 13.10, 13.20
Double Dragon § 9.20
Dragon’s Lair § 1.30
Dreamcast, Sega § 1.30
Dr. J. § 1.30
Driller § 1.30
Duke Nukem § 9.13
Dungeon § 1.30
Dungeons & Dragons §§ 1.30, 10.10, 13.10, 12.40

E

Enter the Matrix § 1.30
Entropia §§ 10.10, 10.30

E.T. § 1.30

EverQuest II §§ 1.30, 10.10

EverQuest §§ 10.10, 10.30

F

Fairchild Corp., as developer of Zircon Chanel

F console § 1.30

dispute with Nintendo over Super Nintendo Entertainment System § 6.41

Fighter's History § 5.41

Final Fantasy §§ 1.30, 13.20

Final Fantasy VII § 1.30

Flight Simulator § 5.64

Football § 1.30

Frogger § 1.50

G

Galactic Invader § 7.11

Galaxian §§ 1.30, 1.50, 4.20, 5.41, 5.70, 7.11, 7.30, 7.40

Galaxip § 7.40

Galaxy § 7.40

Galaxy of Games § 11.20

Gameboy, Nintendo §§ 1.30, 1.50, 6.42, Ch. 7, forward

Gameboy Micro, Nintendo § 1.30

Gamecube, Nintendo § 1.30

Game Genie § 5.70

Genesis console, Sega §§ 1.30, 4.30, 6.41

Genesis III console, Sega § 4.30

Goldeneye 007 § 1.30

Golden Tee § 7.50

Grand Theft Auto §§ 1.30, 9.20, 9.30, 9.31

Grand Theft Auto: San Andreas §§ 1.30, 1.50, 7.50, 9.31, 12.22, 12.23, 12.231

Gunfight § 1.30

H

Habitat § 10.10

Halo 3 § 5.10

Hardball § 4.30

Hi-Lo Double Up Joker Poker § 7.50

House of the Dead §§ 12.22, 12.23

Human Cannonball § 1.50

I

Indiana Jones and the Temple of Doom § 1.30

Indy 800 § 1.30

Intellivision game console, Mattel §§ 1.30, 1.40

I, Robot § 1.30

J

John Madden Football § 1.30

Jumpman § 1.30

Junior Pac Man § 1.50

Jurassic Park §§ 5.42, 7.40, 8.10

K

Kangaroo § 12.21

Karate Champ § 5.41

K.C. Munchkin §§ 1.30, 5.41

L

LambdaMOO

Legend of Zelda § 1.30

Lisa Computer § 1.30

Lunar Lander § 1.30

M

Madden Football § 1.30

Madden NFL Football 2004 § 2.40

Madden NFL Football 2005 § 2.40

Mahjongg Master 5 § 11.20

Manhole, The § 1.30

Maniac Mansion § 1.30

Mattel Corp., Intellivision game console §§ 1.30, 1.40

“Mega Drive” game console, Sega §§ 1.30, 4.30

Meteors § 5.41

Microsoft Corp.:

Xbox § 1.30, Ch. 7, forward

Xbox 360 §§ 1.30, 4.30

Mighty Mouth § 7.11

Mike Ditka Power Football § 4.30

Missile Command § 1.50

Monopoly, history of § 7.20

Morgan, James § 1.30

Mortal Kombat §§ 1.30, 3.40, 13.10, 13.20, 13.30

Mortal Kombat II § 3.40

Mortal Kombat 3, Ultimate § 12.22

Motoracer I § 8.30

Motoracer II § 8.30

Ms. Pac Man §§ 1.30, 12.21

MUD 1 §§ 10.10, 10.53

Myst §§ 1.30, 12.234

Mythica § 7.40

N

Neopets § 9.32
 N-Gage video game system § 1.30
Night Driver § 1.30
 Nintendo:
 Gameboy §§ 1.30, 1.50, 6.42, Ch. 7, forward
 Gameboy Micro § 1.30
 Gamecube § 1.30
 Nintendo 64 § 1.30
 Nintendo DS § 1.30
 Nintendo Entertainment System (“NES”) §§ 1.30, 4.30, 6.41, 6.42
 SNES §§ 6.41, 6.42, 6.50
 SNK § 1.30
 Super Nintendo Entertainment System (“SNES”) §§ 6.41, 6.42, 6.50
 Virtual Boy § 1.30
 Wii §§ 1.20, 1.30, 4.30
 Nokia, N-Gage video game system § 1.30
Norrath §§ 10.10, 10.40

O

Objection! § 1.30, Ch. 14, forward
 Odyssey home game console §§ 1.30, 1.40, 6.41
Onslaught § 4.30
Othello § 1.30

P

Pac Man §§ 1.30, 1.50, 5.41, 5.70, 7.11, 7.30, 7.50
Pac Man, Junior § 1.50
Pac Man, Ms., origin § 1.30
Pacri Monster § 7.30
PGA Tour Golf § 7.50
 PlayStation, Sony §§ 1.30, 4.30, Ch. 7, forward, 13.20
 PlayStation 2, Sony § 1.30
 PlayStation 3, Sony § 4.30
 PlayStation Portable (“PSP”), Sony § 1.30
Pokemon § 1.30
Police Trainer §§ 3.40, 5.64
Police Trainer 2 § 5.64
Pong §§ 1.30, 1.40, 1.50, 6.30, Ch. 12, forward
Postal II §§ 12.23, 12.231
 PSP, Sony § 1.30
Puckman, as predecessor to *Pac Man* § 1.30

Q

*Q*bert* §§ 1.30, 1.50

R

Rally-X § 7.11
Resident Evil § 13.20

S

Second Life, § 1.20, *passim* Chapter 10
 SEGA:
 Dreamcast § 1.30
 Gamegear §§ 1.30, 6.41
 Genesis console §§ 1.30, 4.30, 6.41
 Genesis III console § 4.30
 “Mega Drive” game console §§ 1.30, 4.30
Sharpshooter § 5.64
Sid Miller’s Civilization § 7.20
SimCity § 1.30
Sims, The § 1.30
Sims Online § 10.10
 Sinclair Corp. § 1.30
 SNES, Nintendo §§ 6.41, 6.42, 6.50
Solitaire Master 4 § 11.20
Solitaire Master 5 § 11.20
Sonic Pinball §§ 5.42
Sonic Spinball §§ 7.30, 8.10
Sonic the Hedgehog § 1.30
 Sony Corp.:
 PlayStation §§ 1.30, 4.30, Ch. 7, forward, 13.20
 PlayStation 2 § 1.30
 PlayStation 3 § 4.30
 PlayStation Portable (“PSP”) § 1.30
Space Channel 5 § 2.30
Space Invaders §§ 1.30, 1.50, 4.20, 7.50, 12.21
Space War §§ 1.30, 6.30
Star Control § 4.30
Star Craft § 9.12
Star Craft: Brood War § 9.12
Star Fire § 1.30
Star Wars § 1.30
Steeplechase § 1.30
Streetfighter § 1.30
Streetfighter II § 5.41
Super Bug § 1.30
SuperCross 2000 § 8.30
Super Mario Brothers 3 § 1.30
 Super Nintendo Entertainment System (“SNES”) §§ 6.41, 6.42, 6.50

T

Tank § 1.30
Telstar § 1.30
Tempest § 1.30
Tennis for Two § 1.30
Tetris §§ 1.30, 1.50, 3.20
There § 10.10
Tiger Woods Golf § 7.50
TinyMUD § 10.10
Trial Pursuit Ch. 14 forward
Tron §§ 1.30, 12.21
Turrican § 4.30
TV Basketball § 1.30

U

Ultima § 1.30
Ultima Online §§ 1.30, 10.10, 10.40, 10.52
Ultimate Mortal Kombat 3 § 12.22

V

Virtual Boy, Nintendo § 1.30
Virtual Fighter § 1.30
Virtual Game Station § 4.30
Virtual Racer § 1.30

W

WarCraft § 1.30
WarCraft II § 9.12
Warrior § 1.30
Webkinz § 10.52
Wii, Nintendo §§ 1.20, 1.30, 4.30
Wizardry § 4.10
Wolfenstein 3D §§ 1.30, 12.234
World Karate Championship § 5.41
World of Warcraft §§ 1.30, 10.10

X

Xbox § 1.30, Ch. 7, forward
Xbox 360 §§ 1.30, 4.30
Xerox 8010 § 1.30
XEGS, Atari § 1.30
XP Championship 555 § 11.20
XP Championship Mahjongg § 11.20
XP Championship Solitaire § 11.20

Z

Zaxxon §§ 1.30, 12.21
Zork § 10.10
ZX80 § 1.30

Preface

This is the first casebook exclusively devoted to the subject of computer and video game law. To the question of why now, there are several answers. First, the computer and video game industry is HUGE. Estimates vary, but a recent *L.A. Times* story predicts that world wide sales of video games alone reached in excess of \$50 billion in 2008.¹ Second, with an industry this large, legal problems abound. Lawyers who practice tax, licensing, immigration, litigation, labor, risk management, copyright, trademark, patent, securities, and mergers and acquisitions all play a role in the video game industry. Law firms around the country are dedicating significant parts of their entertainment law practice just to service video and computer game clients.² Third, law students are being hired directly out of law schools to work specifically on video game issues.³ With such a legally complex industry, coupled with a market demand for lawyers with knowledge of video and computer game law, we perceive a need for law school courses and texts dedicated to this area.

Furthermore, lawsuits emanating from virtual worlds such as *Second Life*, *World of Warcraft*, etc. are beginning to wind their way into our court system, and the legal issues raised by these “metaverses” need to be studied, debated, and remedied. In our view, law schools, and tech-savvy law students, are natural leaders in this quest. We hope our book can help facilitate the shaping of what may turn out to be entirely new body of common law dealing with this area.

Please know that we actively solicit comments from students and their professors on our the book. Good or bad, we would love to hear from you. You can reach Ashley at ashley@objection.com, or Bob at bob.brain@lls.edu.

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Los Angeles, CA
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1. Alex Pham, “*These Lawyers Got Game*,” LOS ANGELES TIMES, December 3, 2008 at C1.
2. *Id.*
3. *Id.*

A Brief Note on our Methodology

We wanted to say a few words about the selection and editing of the cases in this text. What can be called “video game law” is almost always an application of some other substantive discipline—copyright, patent, trademark, torts, constitutional law, etc., and it is cases from these areas that form the backbone for much of this book. But there is an emerging substantive and procedural law that applies and modifies the law in those areas uniquely to video and computer game situations. Where a court has rendered a computer or video game-specific adaptation of the law, we have included those cases. However, there are areas in which no video game case yet exists, but certainly the issues raised in cases concerning board games, or the internet generally, will likely become video game issues in the near future. For those areas as yet without a video game application, we invite you to analyze along with us the likely adaptation of more general rules into the computer game arena.

In addition, you will note that many of the video game cases go deeply into the factual history of the inventor, competitor, or evolution, of the particular game or games at issue. We have left much of that matter in for two reasons. First, we believe facts matter. A case can always be edited just to reveal the controlling legal principle, but we believe it is in the application of the legal test that much of the law gets made and studied. Further, we are video game junkies and so we like that stuff. We hope you will end up sharing our enthusiasm for the facts and the history of this relatively new industry, as well as the law that surrounds it.

With that said, our cases, like those in all other casebooks, have been edited substantially. We have chosen not to indicate the edits by means of ellipses or asterisks or the like. We believe such editorial markings break up the flow of the cases. The footnotes in the cases have original numbering.

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