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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 worldwide sales of video games alone reached in excess of $50 billion in 2008. 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. Third, law students are being hired directly out of law schools to work specifically on video game issues. 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.

AL
RDB
Los Angeles, CA
April 2009

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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.
We would like to acknowledge our sincere appreciation to Professor William Ford of the John Marshall College of the Law and Professor Diane Klein of the University of La Verne College of the Law for their review and helpful comments on early drafts of the book.

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