

Videogame Law

Videogame Law

**Cases, Statutes, Forms,
Problems & Materials**

SECOND EDITION

Ashley Saunders Lipson

UNIVERSITY OF LA VERNE COLLEGE OF LAW

Robert D. Brain

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I dedicate this Second Edition to the Gamers who make this book possible.

RDB

To indispensable Anna.

ASL

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Preface

The goal of this second edition, much like the first, is to provide professors and students with a comprehensive view of the cases, statutes and transactional documents that pertain to the construction, protection, marketing and regulation of videogames and consoles. As the first casebook devoted to the subject of videogame law, the first edition of this book was among the initial sources to recognize that the videogame industry had grown large enough, and had reached a sufficient level of complexity, so as to warrant its own, specialized treatment. There is no doubt that the subject has clearly outgrown its initial status as a mere subset of intellectual property and cyberspace law. Indeed, even with the prior global recession, annual videogame and console sales are rapidly approaching \$100 *billion*, far overshadowing worldwide movie, recording, publishing, and sports revenue.

The first edition is only a few years old, but in the videogame world, each calendar year since the first edition was published has seemed like a dog year (about seven years' worth of materials generated). As such, a new edition was sorely needed. This second edition keeps the same general structure of the first: starting with an overview and then following the basic process a developer would use in bringing forth a game, beginning with acquisition of rights, dealing with intellectual property issues and finally, once the game is ready to launch, wrestling with various regulatory and marketing issues.

However, there have been a number of changes in this edition as well. Many of the "early industry" disputes that we could only introduce in the first edition have now been resolved, either through case law, statutes or regulation; those matters are now covered in detail. Also, we have extensively reorganized chapters dealing with gambling, addiction, and antitrust issues, and have introduced new chapters dealing with rights of publicity and rights of privacy in videogames. Because copyright issues continue to grow, we have separated our treatment of that topic into two chapters. We were introduced to many of these new issues, cases, and organizational ideas upon our collaboration with Roxanne Christ, Esq. who practices videogame law as a Partner in the law firm Latham & Watkins, and we want to thank and acknowledge Roxanne for all her help.

We likewise want to highlight two attributes that continue in the second edition that we think make our casebook unique. First, transactional forms are included within chapters. Most law-related books tend to draw a sharp line between casebooks, which are essentially for law students and focus on appellate decisions, and form books which are used primarily by practitioners who need to churn out agreements for their clients. We believe that this traditional gulf between academic theory and practical information is less warranted for videogame law. On the one hand, students want to know the general

content and structure of videogame agreements, and to be able to see how many litigation disputes originate from sloppy or ambiguous drafting of those agreements; and on the other hand, practitioners remain interested in the foundational cases giving rise to the body of videogame law.

Next, our cases tend to be longer than most casebooks. But that's because we believe the facts that give rise to the cases are very important. Indeed, in many of those cases, the facts trace the history of the videogame industry, and that history is noteworthy in explaining the cases. Besides, we get a kick out of sharing the industry's history with our readers. But more significantly, we think there is a general underappreciation in the academy of the manner in which factual details ultimately determine liability. As such, we have only lightly edited the factual portions of many cases.

We were fortunate in having some superb help in revising and assembling this edition. As such, we want to express our sincere and profound gratitude to David Michie, La Verne College of the Law, Class of 2015; Hannah Dunn, Britta Norwick, and Selina Swatek, all Loyola Law School, Los Angeles, Class of 2016; and Matthew Dobil, Jasmyn Troncoso, and Andrew Wyah, Loyola Law School Class of 2017, for their help.

Finally we are very interested in hearing from you—whether you are a student, professor, or practitioner who has stumbled across our book, and whether your comments are critical, complimentary, or capable of any other characterization. The easiest way to get us is by email: you can get Ashley at ashley@objection.com; and Bob at bob.brain@lls.edu.

ASL
RDB
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