

The **SCRAMBLE**

WILSON
SONSINI

E-Gaming Legal Year in Review: **2022**

MARCH 2023



**INDUSTRY
INSIGHTS**



**INDUSTRY
TRENDS**



**PODCAST
SERIES I**



**ELECTRONIC
GAMING
GROUP**

<https://egg.wsgr.com>

Introducing: **NEST**

Accelerating E-Gaming Start-Ups

Exclusive program offering select early-stage gaming companies with affordable access to targeted legal and investment readiness services.

WELCOME TO THE SCRAMBLE



Introduction

Welcome to the inaugural issue of *The Scramble* presented by Wilson Sonsini's Electronic Gaming Group. *The Scramble* is an annual publication that showcases highlights from Wilson Sonsini's work in the e-gaming industry during the prior year and provides a preview into what we have in store for the coming year.

A look back. Over the past year, we handled some of the most notable acquisitions, financings, commercial transactions, and regulatory matters in e-gaming. We grew both our client base and team of talented interdisciplinary attorneys able to service clients in the e-gaming industry. As we expanded our reach, we made sure to keep our clients up to date on cutting-edge legal developments through our publications and podcasts.

If you missed any of our 2022 e-gaming publications, you can catch up on them in this issue of *The Scramble* and on our website (www.egg.wsgr.com). One of our most read client alerts was republished by Wolters Kluwer, while another became the most popular read on JD Supra. In 2022, we also launched our podcast series focused on e-gaming topics. Through insightful conversations with prominent experts, Series I covered a range of topics, from the rise of NFTs in video games to antitrust in the gaming world, a topic that brought tens of thousands of listeners to the podcast. We invite you to read highlights from each episode in this issue of *The Scramble* and subscribe to our podcast, just in time for the Series II drop.

A look forward. In 2023, we are launching several initiatives specifically tailored to e-gaming start-ups:

Roadmap - Early-stage e-gaming start-ups can receive a complimentary customized roadmap to the legal services they may need by answering a series of simple questions.

NEST - We also invite founders to learn more about our e-gaming start-up program, "NEST." NEST is designed to support e-gaming start-ups by providing access to comprehensive legal services, investor readiness, and business coaching through affordable alternative fee arrangements. Additionally, NEST clients are included in our biannual Electronic Gaming investor pitchbook.

Throughout the year, we welcome you to keep up with current developments through our publications and podcasts. Visit [Wilson Sonsini's Subscription Center](#) to receive regular updates delivered directly to your inbox.

We hope you enjoy *The Scramble*. If you have any inquiries about Wilson Sonsini's Electronic Gaming Group, learn more about our team by visiting www.egg.wsgr.com or reach us by email at EGG@wsgr.com.

Thanks for reading,

Christopher Paniewski

The third-party data included in *The Scramble* was obtained from research provided by PitchBook, Inc. and is current as of January 9, 2023. Wilson Sonsini's use of this data has not been reviewed by PitchBook analysts.

TABLE OF CONTENTS

- 2 A Year in Review
- 5 NEST
- 6 What Advice Would You Give to Developers or Gaming Start-Ups as They Get Started?
- 7 Intellectual Property Challenges
- 11 Roadmap
- 12 eSports Fun Facts
- 13 Statistics on Past Trends
- 14 Practice Area Highlights
- 17 Jump into the Metaverse
- 22 What Are Some Interesting Legal Trends in the Gaming Industry?
- 23 Developments in the Law of Loot Boxes
- 26 Industry Crossover: NFTs
- 27 Blockchain Gaming: NFT Spotlight
- 28 What Excites You About the Future of Gaming?
- 29 Meet the Panelists
- 32 Credits

Select Recent Gaming Client Highlights

Wilson Sonsini Advises Roblox on Acquisition of Byfron

On October 11, 2022, Roblox announced it has acquired Byfron, a leader in anti-cheat solutions. Byfron has developed a state-of-the-art anti-cheat solution that has been utilized by some of the world's largest game publishers. With Byfron's deep domain knowledge and security engineering expertise, Roblox will accelerate its roadmap to build robust anti-cheat and security solutions. This includes client-side and server-side anti-cheat, alt accounts detection, and additional tools for developers to combat cheaters. Integrating Byfron's technology into the Roblox platform will improve experience security, protect the competitive landscape, and to allow developers to spend more time building their experiences. Terms of the transaction were not disclosed. Wilson Sonsini represented Roblox in the transaction.

Wilson Sonsini Advises Will Wright's Gallium Studios on \$6 Million Funding to Build Blockchain Games

On August 22, 2022, Gallium Studios, an independent game studio founded by video game designers Will Wright (The Sims, SimCity, Spore) and Lauren Elliott (Where in the World is Carmen Sandiego), announced the raising of \$6 million in funding to help develop simulation games that utilize blockchain technology. Gallium's first projects include VoxVerse, which Wright helped design for Gala Games, and Proxi, a memory simulation game, which utilize blockchain technology. The financing was provided by Griffin Gaming Partners, one of the world's largest venture funds specializing in gaming. Wilson Sonsini advised Gallium on the transaction.



Wilson Sonsini Advises Untamed Planet on \$24.3 Million Fundraise and Partnership with Animoca Brands for NFT Games

On May 5, 2022, Untamed Planet announced it has raised \$24.3 million to make 3D immersive nature games that make use of metaverse concepts and non-fungible tokens (NFTs). Animoca Brands led the investment, and will support the development of the game Untamed Metaverse along with Animoca's subsidiary Nway. Wilson Sonsini advised Untamed Planet on the transaction.



Wilson Sonsini Advises Improbable on US\$150 Million Fundraise

On April 7, 2022, Improbable, the UK-based metaverse technology company, announced it has raised US\$150 million in funding to establish and develop M² (MSquared), a network of interoperable Web3 metaverses powered by its Morpheus technology. The M² network will combine Improbable Morpheus technology with new services designed to support interoperability, commerce in digital assets, and governance in Web3. It will bring together companies, existing communities and fans in sports, music, fashion, and entertainment and enable them to interact in dense virtual spaces with unprecedented fidelity. The network is being designed to support integration with existing worlds as well as new projects. Improbable has established M² as a distinct entity to better enable governance in partnership with other businesses and eventually with its community. Lead investors supporting M² include Andreessen Horowitz, SoftBank Investment Advisers, Mirana Ventures, Digital Currency Group, CMT Digital, Morgan Creek Capital, Ethereum Ventures, and AllianceDAO. Other notable participating investors include Saranac partners (a private office for entrepreneurs and family capital), Round13 DAF, Zinal Growth (the tech investment vehicle of Guillaume Pousaz), and David E. Rutter. Wilson Sonsini represented Improbable in the transaction.



Wilson Sonsini is the #1 legal services provider for company-side gaming deals occurring in the previous three years.¹

Wilson Sonsini Advises Roblox on Acquisition of Hamul

On April 5, 2022, Roblox announced it has acquired Hamul, developer of video, voice, and sound overlay software designed to connect gamers and enhance the gaming experience. With Roblox, the Hamul team will focus on creating new ways for people to play together and build deeper social connections. Wilson Sonsini advised Roblox on the transaction.

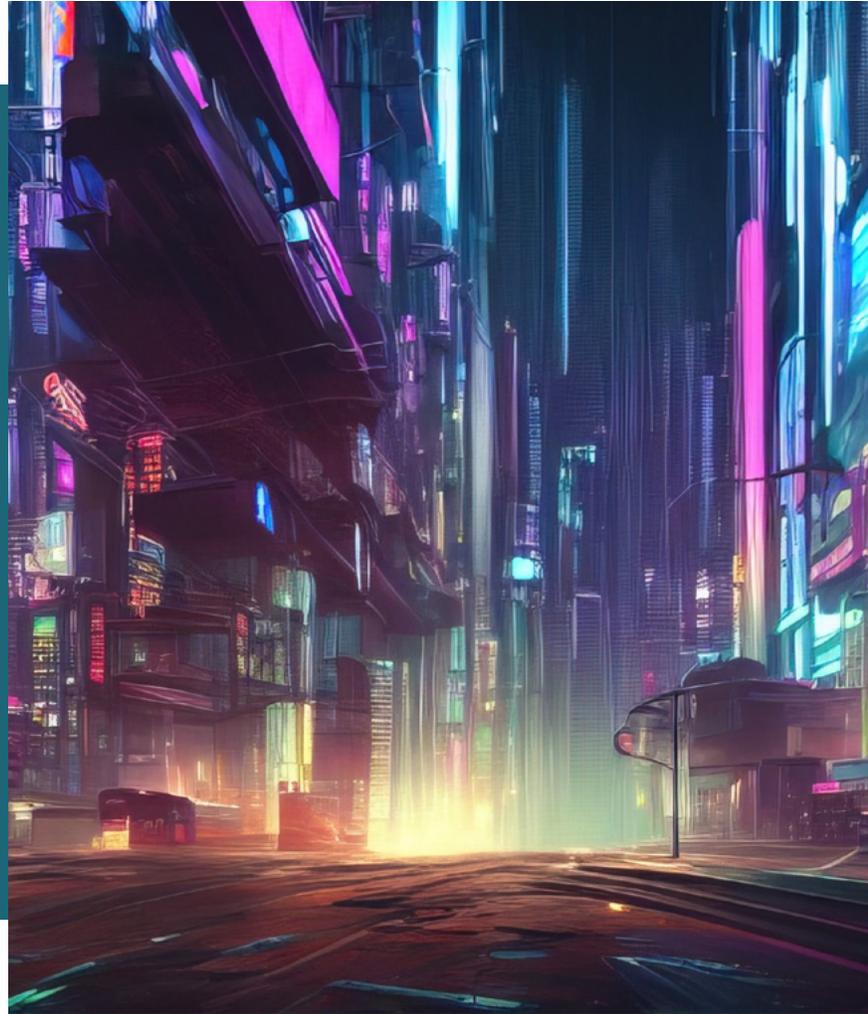
Wilson Sonsini Advises Block Tackle, a New Web3 Gaming Studio, on \$5 Million Seed Round

On March 22, 2022, Block Tackle, a new game studio founded by veterans from EA and Kabam, who will develop immersive games leveraging blockchain technology and allow players to own their own digital assets, announced its closing of a \$5 million seed round co-led by Cadenza Ventures and Play Ventures with participation from Animoca, Coinbase Ventures, Solana Ventures, Brevan Howard, Kevin Lin (co-founder of Twitch), Holly Liu (co-founder of Kabam), and others. The company is working on SkateX, a Solana-based video game with NFT skateboards. Wilson Sonsini represented Block Tackle in the transaction.



Wilson Sonsini Represents Bungie in \$3.6 Billion Acquisition by Sony

On January 31, 2022, Sony Interactive Entertainment (SIE) announced that it has entered into definitive agreements to acquire Bungie, a premier independent videogame developer and long-time partner of SIE that has created some of the videogame industry's most highly-acclaimed franchises, including Halo and Destiny. The total consideration of this transaction is \$3.6 billion, inclusive of purchase price and committed employee incentives, and is subject to customary working capital and other adjustments. Wilson Sonsini represented Bungie in the transaction.



Wilson Sonsini Advises Zynga on \$12.7 Billion Acquisition by Take-Two

On January 10, 2022, Take-Two Interactive and Zynga, two leaders in interactive and mobile entertainment, announced that they have entered into a definitive agreement under which Take-Two will acquire Zynga in a cash and stock transaction valued at \$9.86 per Zynga share, based on the market close as of January 7, 2022. This represents a total enterprise value of approximately \$12.7 billion. Wilson Sonsini advised Zynga on the transaction.



Wilson Sonsini was deal counsel for the largest VC deal and the two largest M&A deals in the gaming industry in 2022.¹

Wilson Sonsini Advises AppLovin on \$430 Million Wurl Acquisition

On February 28, 2022, AppLovin Corporation, a leading marketing platform, announced it has reached a definitive agreement to acquire Wurl, a high-growth privately held software platform in the Connected TV (CTV) market. The transaction is valued at approximately \$430 million and is subject to customary closing conditions. Wilson Sonsini represented AppLovin in the transaction.



WILSON
SONSINI

NEST

NEST is an exclusive program that offers select early-stage gaming companies the opportunity to accelerate their business.

ACCELERATE YOUR GAMING START-UP

Get exclusive access to these services and more:

Legal Services:

- + Company Formation
- + Agreements
- + Policies
- + IP protection
- + Crypto advisement

**Exclusive
Program with
Limited Spots**

Investor Readiness:

- + Prepare a Pitch Deck
- + Pitch to Investors*
- + Inclusion in Exclusive NEST Pitchbook

**Affordable
Alternative Fee
Arrangements**

Start-Up Coaching:

- + Corporate Governance
- + Intellectual Property
- + Term Sheets
- + Employment

**Application
Deadline
Approaching**

**ELECTRONIC
GAMING
GROUP**

<https://egg.wsgr.com>

*Investment not guaranteed.

Attorney Advertising

Learn More and Apply





What Advice Would You Give to Developers or Gaming Start-Ups as They Get Started?



Have a standardized approach to legal. Engineers are naturally inclined to innovate on all things, but early

on as a start-up, a standardized approach can be more practical and efficient, especially when optimizing for speed in a financing. We can work efficiently with clients to make sure they have a firm legal foundation with respect to stock, employee, advisers, consultants, and IP matters, using our most up-to-date forms and best practices.

- **Jonathan Chan**
(Corporate)



Make sure you thoughtfully build out a team that is not just capable, but also cohesive. Because a lot of gaming deals are talent-

driven, having a team that has successfully worked together for a longer period of time, without conflict or turmoil, is very compelling to buyers and other investors. A key input into a buy-side M&A model is to assess how much more beneficial the deal will be as compared to recruiting and building out a buyer's own team organically, and if a target has a well-functioning team that gets along and will move over to the buyer as a group, it is highly desired.

- **Rich Mullen**
(Mergers & Acquisitions)



Don't copy or imitate the characters and storyline of other popular games.

Don't use deception or "dark patterns" to generate revenue (e.g., misleading loot boxes, hard-to-find "undo" buttons, no-refund policies, unlimited purchases by kids). Be fast and generous with refunds; unhappy users/parents generate lawsuits and complaints to government regulators.

- **Tony Weibell**
(Litigation)



Think about privacy by design as you develop your game or platform. Build privacy protective features into the build of the game or platform from the start, so that iterations of the service retain

those privacy friendly designs. For example, think about building global and granular privacy controls that give users choices over player-to-player interactions or public displays of information; de-identifying data where possible; retaining data no longer than needed; and implementing strong data security protections for the data you hold. Starting from a strong foundation will help immensely as the game or platform scales.

- **Libby Weingarten**
(Privacy)



Make sure you understand the issue of third-party rights that may be included in a game, or if you are operating a platform, how your users may engage with the game and third-party content such as ambient

music during gameplay. As IP rights are territorial in nature, game developers need to consider securing all rights in every jurisdiction where their game may be available. The list of gaming companies that have run into problems with using copyrighted music is quite long, and such problems can get very expensive. Developers should therefore become educated on matters such as music copyright and how it applies in the gaming context and on a territory-by-territory basis.

- **Gary Greenstein**
(Technology Transactions)

To learn more about the panelists, see [page 29](#) ("Meet the Panelists").

Are Trade Secret Takedowns Real or Myth?

By Christopher Paniewski

When you publish electronic software, you frequently worry about copyright infringement. What if your game used sounds, graphics, text, or code from another game? If a competitor believes your game violates copyright, it might file a complaint that results in your game being removed from online and real-world storefronts. But what about trade secret infringement? Recent litigation highlights a successful takedown that relied both on alleged “trade secret misappropriation and copyright infringement.” The parties on both sides of the takedown have filed mirror-image claims that should help determine whether trade secret takedowns will affect the online software marketplace going forward.



To continue reading and for citations, please visit: <https://www.wsg.com/en/insights/are-trade-secret-takedowns-real-or-a-myth.html>.

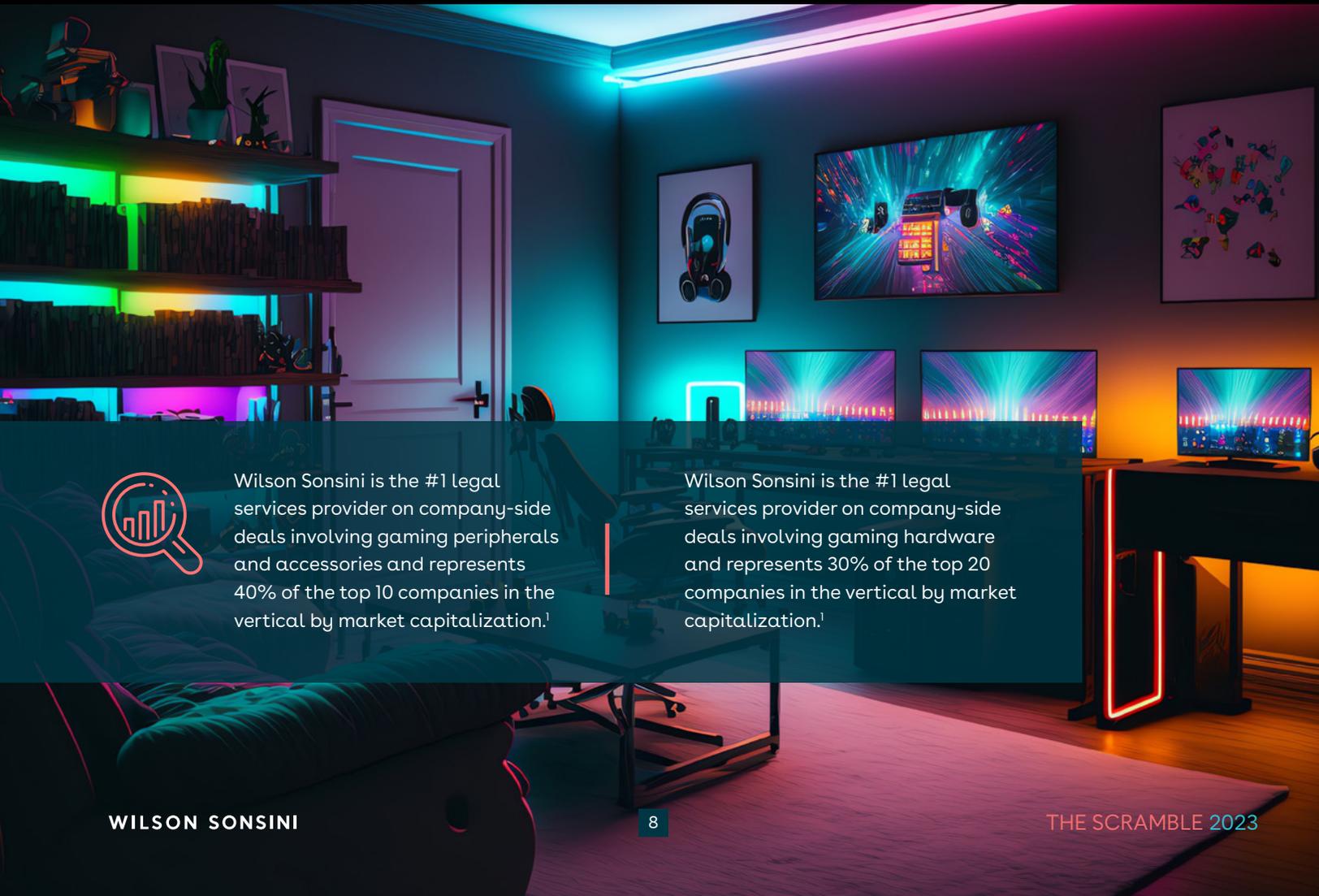
California Court Upholds Right to Rent Physical Media



By Kristina Wang

On April 28, 2022, the U.S. District Court for the Central District of California granted the defendant's motion for summary judgment, holding that, taking facts in the light most favorable to the plaintiff, defendant Kineticflix LLC did not violate plaintiff Alla Anatoleynva Zorikova's copyright when Kineticflix rented physical copies of Zorikova's ballet instructional DVD. The court held that Kineticflix had the right to rent the DVD under the first sale doctrine.

To continue reading and for citations, please visit: <https://www.wsgr.com/en/insights/california-court-upholds-right-to-rent-physical-media.html>.



Wilson Sonsini is the #1 legal services provider on company-side deals involving gaming peripherals and accessories and represents 40% of the top 10 companies in the vertical by market capitalization.¹

Wilson Sonsini is the #1 legal services provider on company-side deals involving gaming hardware and represents 30% of the top 20 companies in the vertical by market capitalization.¹

U.S. Court of Appeals for the Ninth Circuit Clarifies DMCA Injunction Burden

By Angela Chan

As a previous Wilson Sonsini Alert reported, Snail Games USA Inc. and Wildcard Properties LLC (collectively, Snail) sent a Digital Millennium Copyright Act (DMCA) takedown notice to Valve Corporation (Valve) in order to have Suzhou Angela Online's (Angela) game removed from Valve's Steam platform. In general, the DMCA incentivizes companies like Valve to take down third-party content for which they have received takedown notices, so that the companies can make use of statutory safe harbors from copyright infringement liability. Consistent with those incentives, Valve took down the game.

Angela sued Snail, seeking to force Snail to retract the takedown notice. But both the federal district court and the federal court of appeals rejected the plaintiff's request for a temporary restraining order that would have forced the competitor to retract the takedown notice. Now Angela must first prove its case in court before its game can be reinstated, which could take years.

To continue reading and for citations, please visit: <https://www.wsgr.com/en/insights/us-court-of-appeals-for-the-ninth-circuit-clarifies-dmca-injunction-burden.html>.



Courts Provide Guidance on the Depiction of Real-World Works Including Video Games

By Christopher Paniewski, Aaron Hendelman, Andrew Poling, Mary O'Brien, and Waen Vejajiva

Many video games are marketed on the photorealism of their imagery and graphics. However, depending on the depiction, developers and publishers may need to worry about the underlying intellectual property rights in that depiction. Recent court decisions addressing tattoos and tractors in video games show growing intellectual property litigation around real-world designs appearing, even incidentally, in the digital world.

To continue reading and for citations, please visit: <https://www.wsg.com/en/insights/courts-provide-guidance-on-the-depiction-of-real-world-works-including-video-games.html>.



WILSON
SONSINI

ROADMAP

Don't Miss a Turn

Get A Complimentary Customized Roadmap to Legal Services You May Need

- > **Starting a Gaming Company?**
- > **Ready to Level Up?**
- > **We Can Help You Navigate No Matter Your Destination!**



You can receive a complimentary customized roadmap to legal services you may need within minutes by answering a series of simple questions. Your custom roadmap will cover a variety of start-up concepts, including company formation, financing, employment, intellectual property, and more!

[CLICK HERE](#)

**IT'S FAST
AND IT'S
FREE**

**ELECTRONIC
GAMING
GROUP**

<https://egg.wsgr.com>

YOUR ROADMAP IS FOR GENERAL INFORMATION PURPOSES ONLY.
NOTHING IN YOUR ROADMAP SHOULD BE TAKEN AS LEGAL ADVICE.

Attorney Advertising

1

Many eSports organizations fundraise via equity crowdfunding, which can trigger certain regulations. In the U.S., Title III of the JOBS

Act established crowdfunding provisions that allow early-stage companies to sell securities. Regulation Crowdfunding (Reg CF) allows private companies to raise up to \$5 million from the general public.² Regulation A allows private companies to raise up to \$75 million from the general public, although with more stringent requirements.

2

eSports leagues can raise antitrust concerns, just like traditional sports leagues.

Unlike traditional sports, where the rules of basketball, badminton, or volleyball cannot be owned, the proprietary code, artwork, and trademarks in games are owned by individual publishers with monopoly rights. With exclusive IP rights, game publishers can exercise control over the downstream conduct of—and even outright ban—players, teams, broadcasters, and tournament organizers.³

3

The eSports ecosystem is relatively new and underdeveloped. Unlike the biggest American sports, which are governed by collective

bargaining agreements and decades of ownership-labor negotiations, eSports leagues have not gravitated toward any single model; team owners are not so well established, nor have players organized.⁴

Competition governance is frequently conducted by one of three bodies: 1) the game publisher; 2) ad hoc tournament organizers; or 3) a standalone league or competition organizer that is formed independent of the ownership of any teams or individual players involved.

4

eSports raises employment law issues. eSports organizations must classify their players as employees or independent contractors. In the U.S., this

classification depends on state law and affects the presumption of ownership of intellectual property created during employment.⁵

eSports organizations may want to use non-competes or other restrictive covenants for their players. Some covenants are enforceable in certain states, but not in others.

Many eSports players are minors under the age of 18, and child labor is heavily regulated by both federal and state statutes.

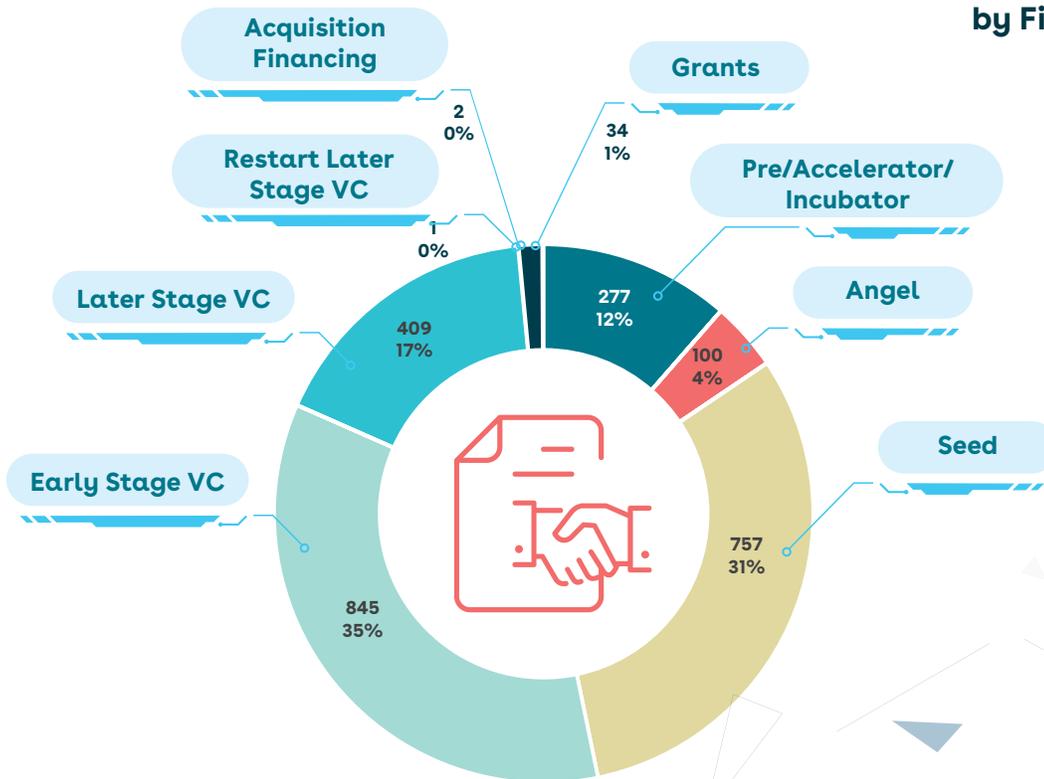


Wilson Sonsini is the #1 legal services provider on company-side eSports deals and represents two of the top five companies in the vertical by market capitalization.¹

Wilson Sonsini's [electronic gaming](#) practice counsels developers and publishers of multiplayer video games, streaming platforms, tournament hosts, clans, and other participants in the eSports industry. If you have any questions about growing your eSports business and tackling the legal challenges mentioned above, please reach out to any member of Wilson Sonsini's electronic gaming practice [here](#) for more information.

VC Deal Count

by Financing Type (2022)¹

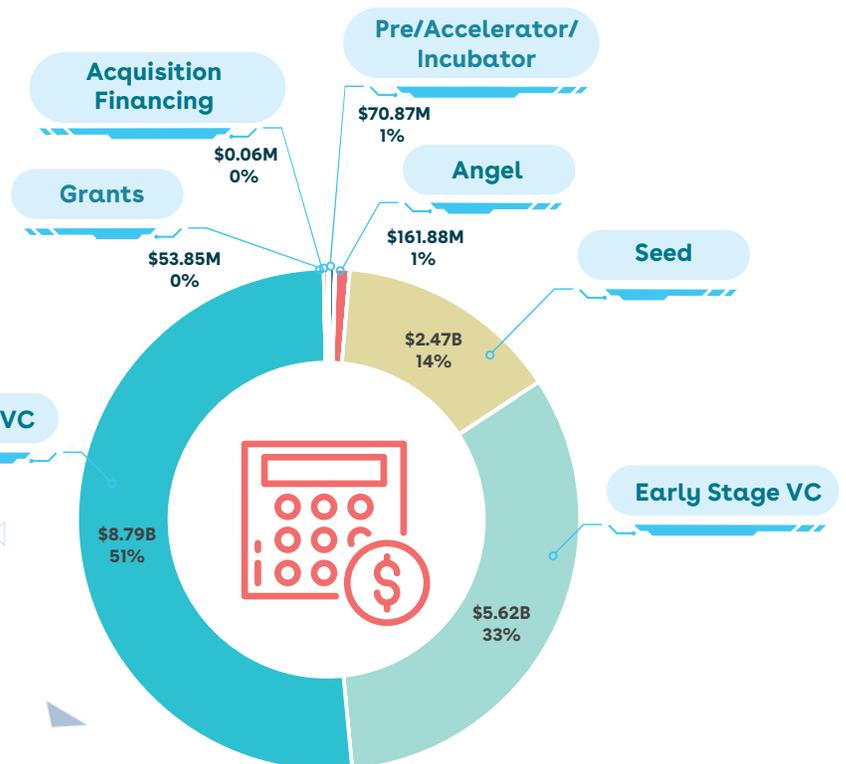


The largest acquirer in the gaming industry in 2022 is a Wilson Sonsini client.¹

VC Deal Volume

by Financing Type (2022)¹

Two of the top 5 most active gaming investors in 2022 are Wilson Sonsini clients.¹



ANTITRUST: FTC Sues to Block Microsoft/Activision Blizzard Transaction, Putting \$70 Billion Deal at Risk

By Scott Sher, Michelle Yost Hale, Beau Buffier, Brendan Coffman, Jake Philipoom, and Matthew Digan

The Federal Trade Commission (FTC) filed an administrative complaint to block Microsoft Corporation's (Microsoft's) nearly \$70 billion acquisition of Activision Blizzard, Inc. (Activision), the largest video game acquisition in history. The complaint alleges harm in three distinct markets: (1) high-performance consoles (i.e., Xbox and PlayStation); (2) multi-game content library subscription services; and (3) cloud gaming subscription services. The FTC voted 3-1 to issue the complaint, with Commissioner Christine Wilson dissenting from the decision.

To continue reading and for citations, please visit: <https://www.wsgr.com/en/insights/ftc-sues-to-block-microsoftactivision-blizzard-transaction-putting-dollar70-billion-deal-at-risk.html>.

KIDS AND CONTRACTS: A Court Weighs In on Who Owns the Family Video Game Console

By Waen Vejjajiva

Who owns the family video game console? The U.S. District Court for the Northern District of California recently held that the parents do, even if they don't play it.

The Nintendo Switch is a video game console equipped with hand-held controllers, known as "Joy-Cons." The named plaintiffs, two parents and their minor children, alleged that their Joy-Cons lost their center and "drift[ed]," requiring replacements within a few months. Nintendo moved to arbitrate, alleging the parents had twice consented to arbitrate: 1) in a shrinkwrap statement printed on the outside of the box that required acceptance of Nintendo's End User License Agreement (EULA) and 2) in a "clickwrap" message that Switch owners are required to accept the EULA to use their Switches. The plaintiffs disputed that they had consented, arguing that only the children had activated and used the Switches and that the children either lacked the capacity to enter into the EULA or had disaffirmed it. On March 3, 2021, the court ordered "the issue of whether or not there is a properly formed arbitration agreement to be sent to the arbitrator." District Court Judge William Alsup added that the issue was one of first impression: "[T]here's not a case on point."

To continue reading and for citations, please visit: <https://www.wsgr.com/en/insights/a-court-weighs-in-on-who-owns-the-family-video-game-console.html>.



Wilson Sonsini is the #1 legal services provider on company-side console/PC deals and represents 20% of the top 10 companies in the vertical by market capitalization.¹

ETHICAL RESPONSIBILITY: Lawyer Sanctioned for Failing to Play *Call of Duty*

By Wilson Sonsini's Electronic Gaming Group

Since at least 1984's *The Last Starfighter*, videogame players have dreamed that the time they spent playing games would be rewarded. Recently, a federal judge supplied the inverse, sanctioning a lawyer for failing to play enough *Call of Duty*.

On November 30, 2021, Brooks Entertainment, Inc. sued Activision Blizzard Inc. in the United States District Court for the Southern District of California, alleging that it had stolen the identity of Brooks Entertainment's owner, Shon Brooks, and ripped off Brooks Entertainment's copyrighted *Stock Picker* and *Save One Bank* games. Brooks Entertainment alleged it owned the trademark to "SHON BROOKS," which Activision had capitalized on by making "Sean Brooks" into the "main character" of the "Call of Duty Games." Brooks Entertainment alleged further that, while *Stock Picker* and *Save One Bank* were "aimed at empowering youth," they shared similarities with *Call of Duty*: among other things, Shon Brooks and Sean Brooks both had unlimited resources and missiles; they bring thieves to justice; they travelled to Mars; and both games had "scripted game battle scenes take place in a high fashion couture shopping center mall."

To continue reading and for citations, please visit: <https://www.wsgregaming.com/en/insights/lawyer-sanctioned-for-failing-to-play-call-of-duty.html>.

Podcast Episode: Open Source Software –Cheat Codes or IP Permadeath?

Our host Mary O'Brien closed out Series I with an in-depth discussion on open source software. Mary interviewed Wilson Sonsini technology transaction attorneys John McGaraghan and Andrew Poling to discuss open source software and considerations for gaming companies. Episode highlights include: an introduction to open source software, different types of open source and use in the gaming industry, risks of open source, and best practices to maintain compliance with open source.



To listen, please visit: <https://wsgregaming.podbean.com/e/open-source-software%e2%80%94cheat-codes-or-ip-permadeath/>.

Antitrust: Into the Metaverse

By Thomas Pflock, Zeke Rosenberg, and Robin S. Crauthers

Are antitrust concerns a built-in feature of the Metaverse? In two popular science-fiction novels, Neal Stephenson's *Snow Crash* and Ernest Cline's *Ready Player One*, the Metaverse is run by single companies, or "monopolists," as antitrust lawyers might put it.¹ In *Ready Player One*, a company called IOI even tries to get control of the monopoly to impose monthly fees on users and introduce advertising. Real-life antitrust regulators, sensitized by a perceived accumulation of market power in today's online world, may picture similar scenarios in their minds when thinking about the Metaverse. By contrast, many companies active today in making the Metaverse emphasize their commitment to an open virtual space that everyone can freely access and build.

To continue reading and for citations, please visit: <https://www.wsgregaming.com/en/insights/antitrust-into-the-metaverse.html>.



Podcast Episode: Antitrust Issues in Video Games

In another topical episode, our host Mary O'Brien interviewed Wilson Sonsini antitrust and competition attorneys Thomas Pflock and Brendan Coffman to discuss antitrust laws and potential impact for gaming companies. This episode starts off with an introduction to antitrust and competition laws, then dives into crucial issues around antitrust relevancy to start-up/early-stage companies, regulatory considerations for gaming companies, recent deals and regulatory impact, and how antitrust and competition intersect with gaming in the metaverse.



To listen please visit: <https://wsgregaming.podbean.com/e/antitrust-in-the-gaming-world%e2%80%94thomas-pflock-and-brendan-coffman/>.

Privacy in the Metaverse

By Dan Chase and Maneesha Mithal

Coined in Neal Stephenson's 1992 best-selling novel, *Snow Crash*, the term "metaverse" has recently reentered the general public's lexicon to denote a technology hailed by some as the successor to the mobile internet and the next step in humankind's technological evolution. Though there is no consensus on the definition's precise contours, the metaverse has generally been described as an embodied internet where, instead of passively viewing content in two-dimensional space, users are in the content and experiencing it with others.

The recent enthusiasm for, and commercial promise of, this more immersive digital experience has led companies at all stages to consider a metaverse strategy, from early stage start-ups offering metaverse fashion items to mature financial institutions buying virtual land to open metaverse-based bank branches. And yet in any vision of the metaverse, real-world privacy issues are magnified, as I/O devices can capture qualitatively novel, more intimate data.

To continue reading and for citations, please visit: <https://www.wsg.com/en/insights/privacy-in-the-metaverse.html>.



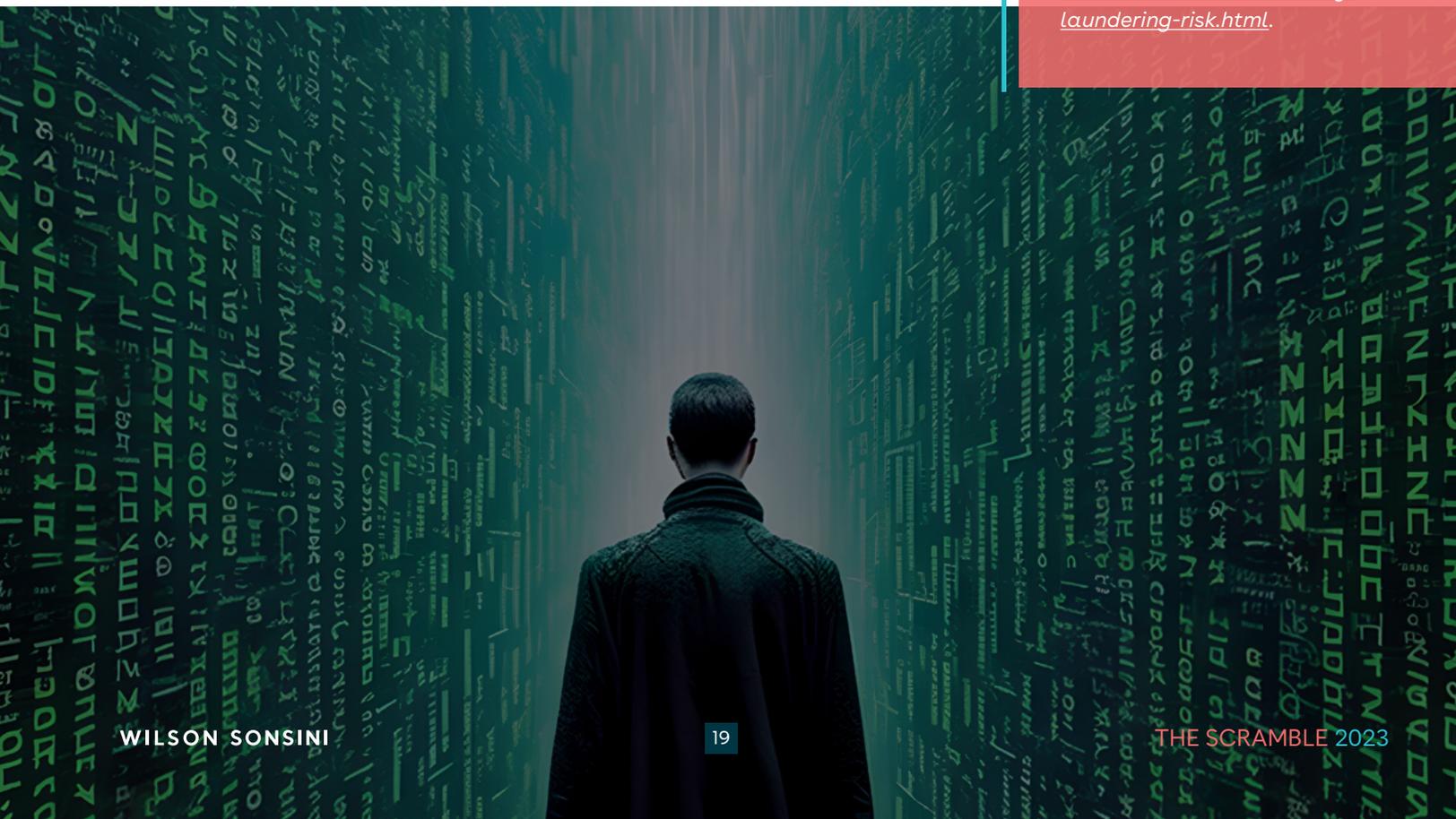
Headed to the Metaverse? Be “The One” to Minimize Money Laundering Risk

By Stephen Heifetz and Troy Jenkins

The “Metaverse” is a buzzword generally referring to a digital representation of the real world, with a digital economy largely based on cryptocurrencies and digital assets. There are reports that a patch of land in the Metaverse sold for \$2.4 million, and that someone paid \$450,000 to be Snoop Dogg’s neighbor in the Metaverse.

It is, perhaps, a modern version of The Matrix, but currently lacking any Keanu Reeves superhero (a.k.a., Neo or “The One”) to make everything right. And there is a lot that might go wrong: federal regulators have been increasingly focused on technology-driven financial crime, particularly money laundering and, although federal regulators may not be drafting regulations that specifically target the Metaverse, participants should be aware of existing anti-money laundering laws when they undertake financial activity in the Metaverse—or anywhere else. There will be no defense of “I was in the Metaverse” if the activity constitutes a money laundering violation.

To continue reading and for citations, please visit: <https://www.wsgr.com/en/insights/headed-to-the-metaverse-be-the-one-to-minimize-money-laundering-risk.html>.



Will Section 230 and DMCA Translate to the Metaverse?

By Wilson Sonsini's Electronic Gaming Group

In recent months, many technology companies have indicated that the “Metaverse” is the Next Big Thing. Proponents claim that the Metaverse will be far more immersive and all-encompassing than traditional web interfaces.¹ Like with traditional web-based services, it is likely that user-generated content will be hosted on or organized by service providers. If the Metaverse becomes the dominant communications method, those Metaverse service providers might become even more prominent intermediaries of content than existing web platforms. The question, then, is how?

Two of the most notable laws regulating the internet—Section 230 of the Communications Decency Act (Section 230) and the Digital Millennium Copyright Act (DMCA)—were designed for and have been frequently applied to web-based intermediaries like search engines, social media networks, and online periodicals. Because the Metaverse is still more of a concept than a product, caselaw on the application of Section 230 and the DMCA is scarce. Nevertheless, when a dispute arises, it seems likely that both doctrines will apply with as much force in the Metaverse as they do on the internet.

To continue reading and for citations, please visit: <https://www.wsgr.com/en/insights/will-section-230-and-dmca-translate-to-the-metaverse.html>.



Wilson Sonsini is the #1 legal services provider on company-side deals involving gaming platforms and represents 30% of the top 10 companies in the vertical by market capitalization.¹

Antitrust Hits the Metaverse: FTC Sues to Block Meta Platforms, Inc. from Acquiring a VR Fitness App

By Scott A. Sher, Michelle Yost Hale, Brendan J. Coffman, Matthew McDonald, and Jake Philipoom

The Federal Trade Commission (FTC) filed suit seeking to enjoin Meta Platforms, Inc.'s (Meta, f/k/a Facebook) acquisition of Within Unlimited, Inc. (Within). Republican Commissioners Christine Wilson and Noah Phillips voted against blocking the deal, making this the first 3-2 merger challenge since Commissioner Alvaro Bedoya joined the FTC in May 2022.

To continue reading and for citations, please visit: <https://www.wsgregaming.com/en/insights/antitrust-hits-the-metaverse-ftc-sues-to-block-meta-platforms-inc-from-acquiring-a-vr-fitness-app.html>.

Wilson Sonsini is the #1 legal services provider on company-side gamification and toys deals and represents 30% of the top 10 companies in the vertical by market capitalization.¹



Wilson Sonsini is the #1 legal services provider on company-side deals involving augmented and virtual reality and represents 40% of the top 10 companies in the vertical by total raised.¹

Podcast Episode: Video Games Classified as Medical Devices

Our second podcast episode of the year explored the convergence of the gaming and healthcare industries. Our host Mary O'Brien interviewed Wilson Sonsini partner Paul Gadiock on the intersection of these diverse industries. The episode tracks e-gaming's move into digital healthcare, while providing useful insights on relevant FDA and government regulations, and regulatory strategy for gaming founders.



To listen, please visit: <https://wsgregaming.podbean.com/e/governmental-regulation-of-gaming-games-as-medical-devices-paul-gadiock/>.



What Are Some Interesting Legal Trends in the Gaming Industry?



Crypto and blockchain games raise complicated legal questions around securities and financial regulation, including those related to the digital ownership of in-game items.

- **Jonathan Chan**
(Corporate)



The incorporation of live music events in the metaverse and the rights issues that are implicated in such events, including public performance and communication to the public rights, synchronization rights for both musical works and sound recordings, and name, image, and likeness rights for performers.

- **Gary Greenstein**
(Technology Transactions)



The complexity of the regulatory environment is mind-boggling, especially for larger companies.

For example, games can involve issues like children's privacy, antitrust, monetization, in-game currency, and export controls/sanctions compliance, particularly in the United States, the EU, and China. Many people underestimate the amount of time that will be spent in game development on these issues, so it's important for companies to get good advice and budget for that advice. There is always a calculation of the risk profile that a gaming company must make as they grow and have limited resources, but it is important to understand all the issues to be able to make good decisions.

- **Michael Coke**
(Corporate)



Artificial intelligence (AI) is the biggest industry trend in my opinion. It will affect both the player

experience and the development process (i.e., generation of game art, environments, NPCs, and experiences). The short-term legal issues related to AI will focus on IP ownership and infringement. However, I anticipate the long-term legal issues will center around social issues. For example, games today are criticized for being too addictive. If AI driven games are able to generate extremely tailored experiences to a specific demographic or individual, we could see a new and complicated branch of legal issues.

- **Atussa Simon**
(Technology Transactions)



Consumers and gamers have more power here than any other industry I've focused on. Developers must adapt to consumer demand, and gamers are not afraid to voice displeasure. Regulators across the globe know that consumer welfare is an important part of competition and that consumers are willing to pay more for better quality. Therefore, they will consider issues like product degradation in their review of mergers or acquisitions.

- **Brendan Coffman**
(Antitrust)

To learn more about the panelists, see page 29 ("Meet the Panelists").

Recent Rulings Suggest Defendant Wins in Loot Box Cases Are Common, Appeals All Pending



By Christopher Paniewski and Aaron Hendelman

In recent years, there has been an increase in putative class actions alleging that game developers, game publishers, and even platforms should be liable for alleged harms flowing from loot boxes in mobile or other electronic games. “Loot boxes” are items that contain random rewards—usually the user has a higher probability to receive “common” items while a user has a much lower chance to receive the most highly desired or powerful rewards. In three recent cases, defendants have defeated claims that loot boxes constitute illegal gambling under California or Washington law, with each case reaching the same result on at least partially different grounds. All three cases are on appeal, giving the United States Court of Appeals for the Ninth Circuit the opportunity to clarify the law of loot boxes in California and Washington.

To continue reading and for citations, please visit: <https://www.wsgr.com/en/insights/recent-rulings-suggest-defendant-wins-in-loot-box-cases-are-common-appeals-all-pending.html>.



Looting the Metaverse: Will the Law of Loot Boxes Change?

By Wilson Sonsini's Electronic Gaming Group

Investors in technologies and services for the Metaverse hope that a significant portion of the existing lucrative electronic gaming market will migrate to Metaverse platforms. Game companies regularly rely on the sale of loot boxes to generate significant revenue. "Loot boxes" are virtual items that contain random rewards—usually the user has a higher probability to receive "common" items and a much lower chance to receive the most highly desired, powerful, or rare rewards.

Plaintiffs' lawyers have brought lawsuits against service providers and game companies, alleging that their loot boxes constitute illegal gambling. To date, most of these claims have failed, although courts have offered different reasons why. Nonetheless, the successful defenses in earlier internet cases also likely apply to the Metaverse.

To continue reading and for citations, please visit: <https://www.wsgr.com/en/insights/looting-the-metaverse-will-the-law-of-loot-boxes-change.html>.

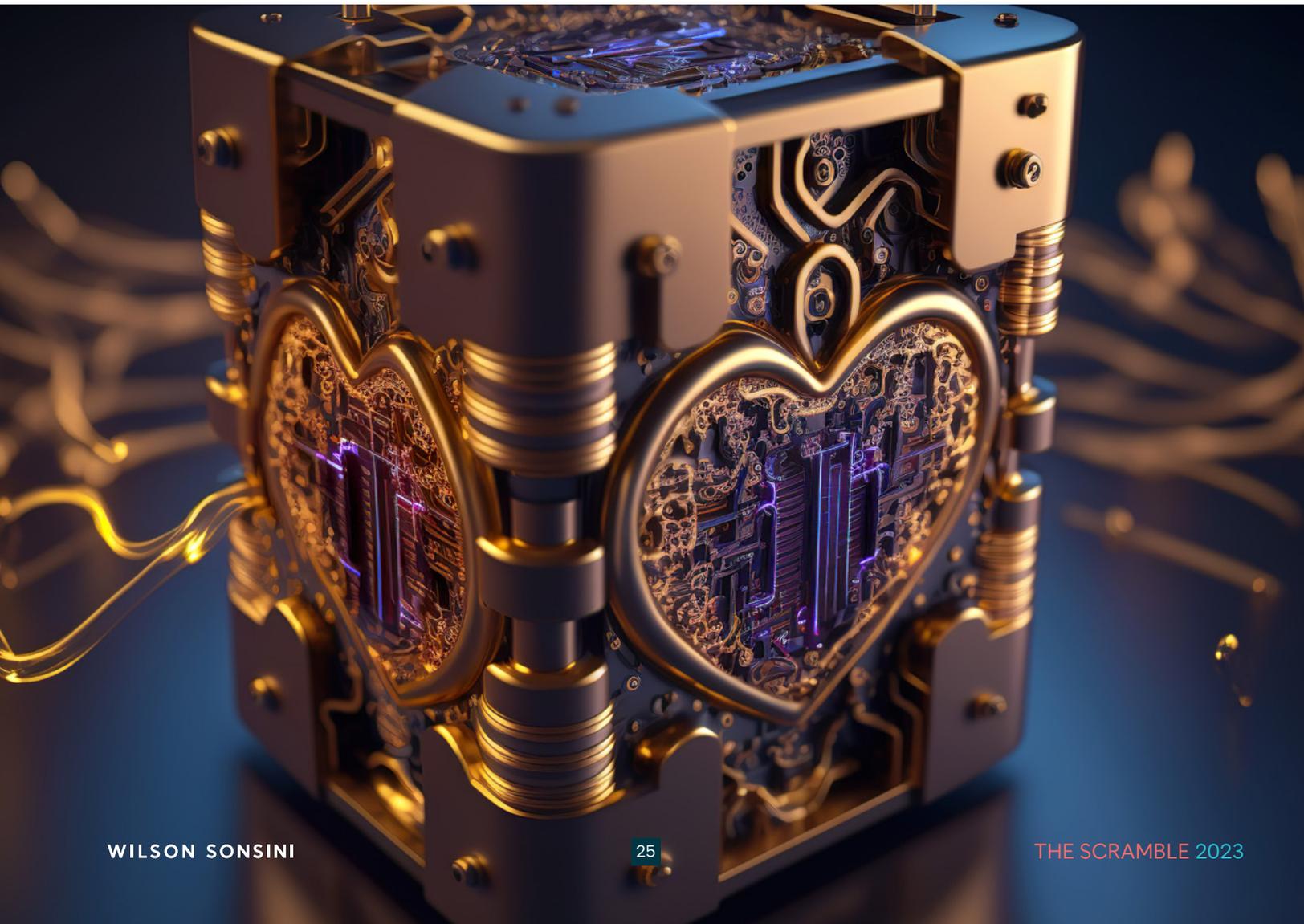
Plaintiff Claims Hearthstone Gives Her Too Many Good Cards

By Wilson Sonsini's Electronic Gaming Group

On May 17, 2022, Plaintiff Y.H. brought claims against Blizzard Entertainment making two sets of allegations: *first*, that booster packs in the game *Hearthstone* constitute unfair competition or unlawful gambling; and *second*, that Activision had discouraged underaged customers like the plaintiff from repudiating the contract.

In large part, the plaintiff's claims about gambling resemble the lootbox claims that have been rejected by numerous courts. However, Y.H.'s allegations about "pity timers" were relatively novel.

To continue reading and for citations, please visit: <https://www.wsg.com/en/insights/plaintiff-claims-hearthstone-gives-her-too-many-good-cards.html>.





Video Game NFTs: Top Legal Considerations for Developers

By Scott A. McKinney, Amy B. Caiazza, Myra A. Sutanto Shen, Jonathan Chan, Will Andrews, Nika Antonikova, and Whitman Shaw

The qualities of non-fungible tokens (NFTs), including digital scarcity, immutable persistence, and transferability on a blockchain, make NFTs an attractive technology to integrate into video games. NFTs have been implemented into video games as in-game assets, transferable characters, and even as a means of rewarding players with cryptocurrency, and the recent success of Web3 games will likely lead to more games incorporating NFTs and related blockchain technologies. Before utilizing NFTs, video game developers should consider what rights are being granted when designing NFTs, as the mechanics of the NFTs may have legal, economic, and possibly regulatory ramifications.

To continue reading and for citations, please visit: <https://www.wsgregaming.com/en/insights/video-game-nfts-top-legal-considerations-for-developers.html>.

1

Games with NFTs can give players more value than games traditional in-game purchases.

Many games prompt users to buy in-game items with real money but do not typically allow users to sell those items for real money. In most NFT games, by contrast, users who buy NFTs for use in the game are often given the right to re-sell them to other potential users, giving them a real-world asset.⁶

2

From an intellectual property standpoint, owning an NFT in an electronic game may look and feel different from the traditional legal definition of ownership.

Owning an NFT via the functionality of a game typically means that the player has gained a right or license to 1) sell the NFT on third-party marketplaces or 2) use the underlying digital asset in the electronic game.⁷

3

More cross-platform interoperability could emerge from NFT gaming.

NFTs are held on a blockchain, meaning they could be easily transferred across games sharing the same blockchain. This could lead to user-driven cross-pollination.⁸

4

The rise of NFT games will link all aspects of the metaverse, including fashion, music, art, and events.

Many brands have already jumped to claim their metaverse turf, and NFTs will only speed up the race into metaverse games.⁹

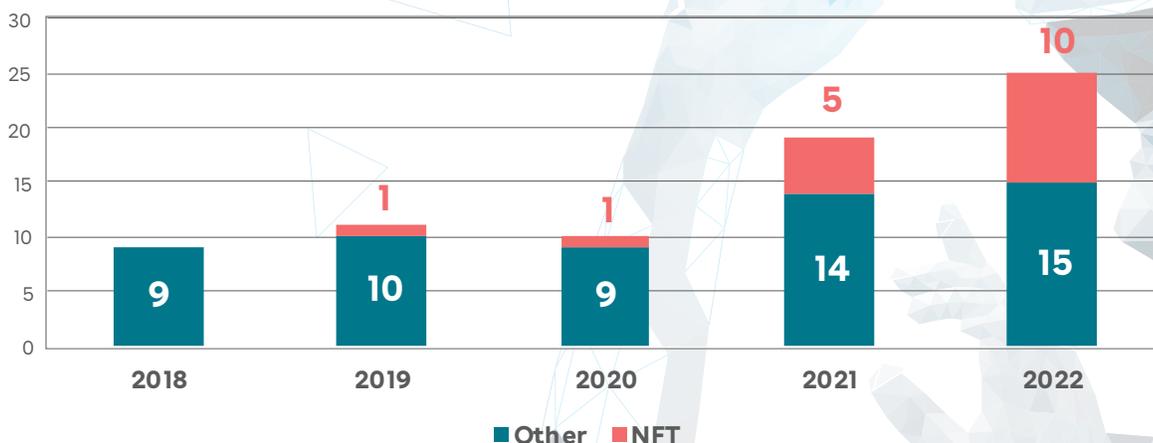


To listen, please visit: <https://wsgregaming.podbean.com/e/the-wild-west-of-gaming-nfts-adam-shevell/>.

Podcast Episode: The Wild West of Gaming NFTs

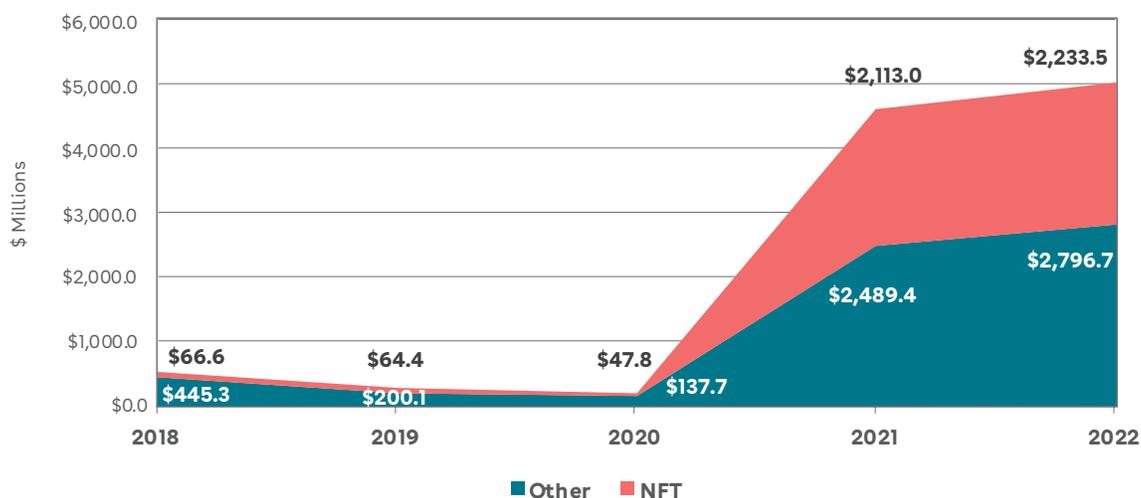
In our first podcast episode of 2022, our host Mary O'Brien interviewed Wilson Sonsini partner Adam Shevell. Adam's passion for video games has been prevalent throughout his life and carries over into his career today. Mary and Adam's conversation took us through the wild, wild west of non-fungible tokens (NFTs). Episode highlights include an introduction on NFTs, the commercialization of NFTs, recent NFT adoption in games, an introduction in the metaverse, and legal considerations for adding NFTs into games.

Count of Blockchain/Crypto Gaming M&A Deals NFT vs. Other Last 5 Years



Wilson Sonsini represents 40% of the top 10 companies in the blockchain gaming vertical by total raised.¹

Blockchain/Crypto Gaming VC Deal Volume NFT vs. Other Last 5 Years



What Excites You About the Future of Gaming?



I am excited to see gaming become a mainstream part of the media landscape.

As someone who's

worked in TV and film, I see gaming as a sort of replacement for such long-form content, providing immersive experiences that are as much about the story as the gameplay. Games appeal to all demographics and engender multiple communities. I'm also excited to see more crossover between film, TV, and gaming.

- **Salil Gandhi**
(Corporate)



The gaming industry is huge, and it keeps growing. The innovation is constant, though major tech

companies frequently stumble and fall when trying to enter the industry, and the latest and greatest technologies often are overhyped and either take much longer to mature than expected or never really pan out. Console games used to be dominant, but now we are seeing more innovation, including streaming games, crypto games, VR/AR, and the metaverse. I'm excited to see what's coming up next.

- **Craig Sherman**
(Corporate)



Gaming has already undergone such an amazing transformation. Video games have never had a broader audience and now are being played by people of all

ages and demographics. It's also gratifying to see gaming's ever-increasing influence on other industries, including technology. For example, I love that a recent medical device client is incorporating specialized game play with its device to maximize health outcomes. As a sports fan, I'm eager to see eSports continue its rapid growth and become even more mainstream. I'm excited to watch the gaming industry continue to expand and diversify its fan base and to have more and more cultural influence. We'll all be quoting our favorite game play in the way we used to quote movie lines.

- **Aaron Hendelman**
(Trademark and Advertising)



Taking off my attorney hat, as a gamer myself, I am looking forward to a few developments.

First, a move away from mouse and keyboard controls to gesture or other more natural controls will likely make gaming more intuitive. Second, home hardware set-ups will become less relevant as more processing is done in the cloud and the barriers to entry for gaming fall when expensive gaming solutions are no longer a prerequisite. Lastly, as home hardware becomes less meaningful, games could become platform agnostic and access to titles will be based less on whether someone preferred gaming platform, and more about what content they subscribe to.

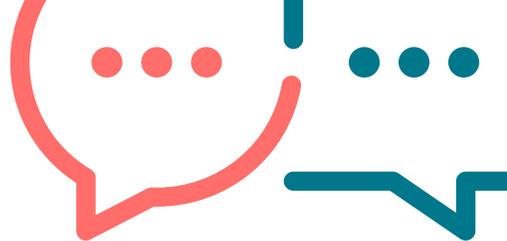
- **Chris Paniewski**
(Technology Transactions)



In my lifetime, the means for developing, funding, collaborating, distributing, making content, etc., have all gotten infinitely better. I'm just old enough that I can remember buying a computer game by sending a check in the mail to an address in a magazine and receiving floppy disks in return. Games from that era were developed entirely locally, in a programming language not optimized for making games, with art and levels designed on graphic paper. By the time I was developing my own rudimentary games, we still had no dedicated game-development suites and shareware was distributed over bulletin board systems via dial-up modems. Today, I'm able to collaborate with friends around the world, using a development suite that even AAA developers couldn't have dreamed of in the 1990s, and we can distribute our games through the same channels as the biggest titles in the world.

Given that arc, it strikes me that the future of gaming is one in which folks around the world continue to be drawn together in making, playing, hacking, obsessing over, and ranting about games. Future developers growing up today have nearly infinite global influences and they will hear a diverse, decentralized chorus of voices—voices that barely had a chance to speak even 30 years ago. Since my own days of playing games are basically behind me, I'm jealous of those who will have this feast.

- **Mark Yohalem**
(Litigation)



Meet the Panelists

Thank you to our wonderful panelists for providing their advice in the “Industry Insights” sections of this publication. To learn more, please read about their experiences in the gaming industry below and visit www.wsgqr.com.



Prior to joining Wilson Sonsini, I was a senior director of business development at EA for more than five years,

where I grew third-party relationships and focused on the distribution of titles across online channels and platforms. I also co-founded Fig.co, the first equity crowdfunding platform for video games, which was later acquired by Republic. Now, I am privileged to help game companies grow and develop long term strategic value through financings, acquisitions, and investments as their outside counsel.

- Jonathan Chan
(Corporate, Palo Alto/San Francisco)



As an antitrust attorney, I advise clients in connection with mergers and acquisitions, joint ventures, government

investigations, private litigation, and distribution practices. Wilson Sonsini knows antitrust from a tech perspective unlike anybody else; we understand what the growth model means and our clients’ dreams of bringing the best to people. We are strong at litigation and interfacing with regulators, but equally strong at preventing such situations from occurring in the first place. Antitrust is a rising concern in the global gaming market, and the firm’s global presence is well-equipped to handle it.

- Brendan Coffman
(Antitrust and Competition, Washington, D.C.)



A personal career highlight is when I represented Roblox in its direct listing in 2021. Roblox has been a Wilson

Sonsini client since its incorporation in 2004, and Mark Reinstra, who was the Wilson Sonsini partner in charge, went in-house as the GC to take the company public. As an attorney, it has been a truly rewarding experience to be a part of this journey, witnessing a company growing from incorporation to a public company. It’s been an honor for me to stand alongside and assist Roblox every step of the way, and I’m looking forward to continuing to support them in the future. Also, my teenage daughter plays a lot of Roblox, so I support the client in numerous ways.

- Michael Coke
(Corporate, Palo Alto)



I represent a mix of investors and companies in the gaming industry, including Galaxy Digital, Konvoy Ventures, and Clockwork Labs. I have an extensive background in entertainment law and media. As a previous founder myself, I take a business-forward approach with my clients in helping them grow as quickly and as thoughtfully as possible. I work with a lot of fun clients helping them solve interesting legal issues; for example, I recently represented an investor to invest as a limited partner in a virtual real estate fund set up to purchase real estate in metaverse games!

- Salil Gandhi
(Corporate, New York)



My practice focuses on intellectual property, licensing, and commercial transactions, with specialized expertise in the digital exploitation of intellectual property. I represent companies in transactions with record labels, music publishers, and program suppliers. My recent cases include representing Google before the Copyright Royalty Board in the Phonorecords IV rate-setting proceeding and Roblox in its now-settled dispute with the National Music Publishers’ Association. I was named among Billboard’s 2022 Top Music Lawyers, marking the sixth consecutive year I have received this recognition.

- Gary Greenstein
(Technology Transactions, Washington, D.C.)

Meet the Panelists (cont.)



One of my favorite aspects of being an attorney is the relationship I have with my clients, and Roblox is no exception. I was

fortunate to be able to represent Roblox on its very first M&A deal and have been involved in each of their transactions since. My team and I have established a very deep relationship with the corporate development team, legal team, and others at Roblox over the years and have helped them develop and refine their M&A strategies and processes across a variety of deals.

- **Rich Mullen**
(Mergers & Acquisitions, San Francisco)



I've been involved in many memorable transactions across multiple sectors of the gaming industry, including

commercial transactions for AR/VR system development, game engine licensing, game publishing and development, reward program creation, as well as M&A and fundraising transactions for clients in the gaming space. Most recently, I represented Zynga in its acquisition by Take-Two, and I also represented Epic Games in a transaction with LEGO to create a kid-friendly metaverse experience. These kinds of transactions draw on gaming-industry expertise that Wilson Sonsini is uniquely suited to provide and shows the range of matters we can help clients with.

- **Chris Paniewski**
(Technology Transactions, Palo Alto)



A personal career highlight: I started working with Bungie shortly after they spun out of Microsoft. I was

able to witness their growth along the way as we helped them enter into a big development/publishing agreement, exit a big development/publishing agreement, raise equity and debt, and eventually sell to Sony in 2022 for \$3.6 billion. I'm really proud of maintaining our relationship with Bungie over the years.

- **Craig Sherman**
(Corporate, Seattle)



A personal career highlight: When Bungie re-established itself as an independent studio after spinning out of Microsoft, we worked closely with their team to develop a comprehensive brand and intellectual property strategy for their highly anticipated, secretive new

game, Destiny. We worked in collaboration with the team at Bungie for years developing the intellectual property assets related to the game and building protection, while ensuring the game's secrets remained, well, secret. When the game launched, it was immensely gratifying seeing the game's immediate, massive success and the glowing reception it received in both the gaming and tech communities. An added bonus: a fleeting moment of "cred" with my teenage son when I shared that Bungie was a client (and brought home just-released Destiny).

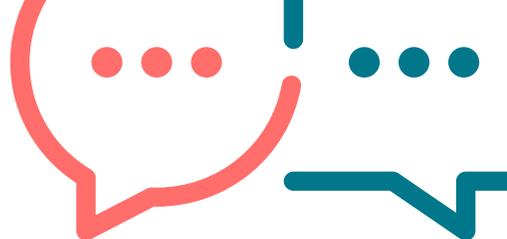
- **Aaron Hendelman**
(Trademark and Advertising, Seattle/Palo Alto)



As a Wilson Sonsini attorney, I've negotiated multimillion dollar deals for clients opposite the biggest game publishers and companies around the world. Prior to becoming an attorney,

I founded a game and machinima company; helped found a world-renowned graduate game education program (SMU Guildhall); and designed and developed a massively multiplayer online social game for kids that allowed them to engage with sports legends like Derek Jeter.

- **Atussa Simon**
(Technology Transactions, Palo Alto)



Meet the Panelists (cont.)



As a data privacy and consumer protection specialist, I help gaming clients navigate all the federal and state laws regarding data privacy and consumer protection,

and I defend clients who may face regulatory investigations by the Federal Trade Commission, State Attorney Generals, or the U.S. Department of Justice.

- **Libby Weingarten**
(Privacy and Cybersecurity, Washington, D.C.)



As litigation counsel, I've led the team that successfully sued a toxic gamer to keep the gamer from accessing the gaming platform and harassing other players. I've negotiated the resolution of lawsuits after a gaming platform

terminated valuable user accounts and deleted virtual items. I've also defeated a potential lawsuit over video game theme music by proving that allegedly infringing musical theme existed in the public domain.

- **Tony Weibell**
(Litigation, Palo Alto)



Last year, the most successful of my personal projects, Primordia, was ported to the Nintendo Switch, about a decade after it came out on the PC. Since I'm from the generation whose first video games were on Nintendo, it felt like closing a childhood circle. Somewhat similarly, back when I did work-for-hire story writing for games, I had the opportunity to work on titles alongside developers at BioWare and inXile Entertainment, who had made many of the games I'd enjoyed as a kid. That, too, felt like closing a circle.

But I think the most significant moments have been the connections I've made with players through Primordia and my more recent release, Strangeland. Many players have written letters or messages, or sent small gifts, expressing thanks for the impact the games had on them—helping them through hard moments in their lives, or inspiring them to create their own projects. When creators have the opportunity to pour themselves into a work, and then players connect with that work, a personal connection forms between the developer and the player. That is truly special.

- **Mark Yohalem**
(Litigation, Los Angeles)

Editorial Team**Angela Chan****Atussa Simon****Brittany Von Rueden****Chris Paniewski****Isabel Annino****TJ Tingjie Li****Waen Vejjajiva****Special Thanks to the
Wilson Sonsini Teams:****Creative Services****Knowledge Management****Marketing and Business
Development****General Counsel's Office****ENDNOTES**

¹ The third-party data included in *The Scramble* was obtained from research provided by PitchBook, Inc. and is current as of January 9, 2023. Wilson Sonsini's use of this data has not been reviewed by PitchBook analysts.

² <https://www.sec.gov/education/smallbusiness/exemptofferings/regcrowdfunding>.

³ <http://jlsplaw.columbia.edu/wp-content/uploads/sites/8/2019/01/Vol52-Miroff.pdf>.

⁴ <https://www.wsgr.com/email/EGG/Q2-2020/EGG-2020-Q2.html>.

⁵ <https://www.jdsupra.com/legalnews/electronic-gaming-podcast-employment-5863578/>.

⁶ <https://medium.com/udonis/play-to-earn-games-101-how-do-they-work-56b07ad2117c>.

⁷ <https://www.wsgr.com/en/insights/video-game-nfts-top-legal-considerations-for-developers.html>.

⁸ <https://markets.businessinsider.com/news/currencies/play-to-earn-crypto-axie-infinity-business-model-gaming-value-2022-1>.

⁹ <https://www.wsgr.com/a/web/vIKoG7V99ybr9uoSEKZLL6/brands-in-the-metaverse-0322.pdf>.

Wilson Sonsini is the trusted legal counsel to hundreds of developers, entrepreneurs, investors, and publishers who are building and launching market-leading gaming experiences around the world.



**ELECTRONIC
GAMING
GROUP**

<https://egg.wsgr.com>

**WILSON
SONSINI**

650 Page Mill Road, Palo Alto, California 94304-1050 | Phone 650-493-9300 | Fax 650-493-6811 | www.wsgr.com

Wilson Sonsini has 19 offices in technology and business hubs worldwide. For more information, visit wsgr.com/offices.

This communication is provided as a service to our clients and friends and is for informational purposes only. It is not intended to create an attorney-client relationship or constitute an advertisement, a solicitation, or professional advice as to any particular situation.

© 2023 Wilson Sonsini Goodrich & Rosati, Professional Corporation. All rights reserved.