

The **SCRAMBLE**

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Gaming Legal Year in Review: **2024**

MARCH 2025



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Rising from the Ashes:

Dive into the resurgence of the game industry (page 2). Read other insightful articles on how game companies are adapting, new technologies are emerging, and the future of innovation is unfolding.

WELCOME TO THE SCRAMBLE



Introduction

Welcome to *The Scramble*, presented by Wilson Sonsini's Electronic Gaming Group. Over the last four decades, Wilson Sonsini has supported hundreds of clients, revolutionizing the gaming sector. *The Scramble*, our yearly publication, offers a retrospective look at the game industry's legal landscape of the past year, showcases Wilson Sonsini's contributions during that period, delivers insightful industry analyses, and anticipated trends.

A look back. Over the past year, we have worked on numerous financings, acquisitions, commercial engagements, publishing agreements, litigation matters, regulatory advisement, and governmental investigations. Continuing the momentum from 2023, 2024 witnessed significant advancements in AI and the emergence of innovative gaming start-ups. Wilson Sonsini's clients are at the forefront of this evolution, as the firm dedicates substantial resources to developing, implementing, and supporting AI in the gaming sector.

A look forward. In the coming year, we anticipate renewed growth in the gaming industry as some employees impacted by company restructuring begin launching their own endeavors. In fact, game industry market researcher DFC Intelligence [predicts](#) that 2025 will be the beginning of a record period of growth for the gaming industry, surpassing the growth during the COVID-19 pandemic. Moreover, we anticipate that these newly formed companies will leverage AI to produce dynamic, user-personalized content, while enhancing the in-game experience with smaller teams and tighter budgets. This trend promises to drive groundbreaking innovation, enabling developers to craft deeply immersive gameplay experiences that adapt dynamically to individual players.

The coming year is also likely to continue the regulation of technology and technology companies. Game companies will face heightened scrutiny and must proactively adjust to meet these evolving standards, ensuring compliance while maintaining their creative and technological momentum.

If you missed any of our 2024 gaming publications, you can find them in this issue of *The Scramble* and on our website (<https://egg.wsg.com>). Throughout the year, we invite you to stay updated 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* and look forward to connecting with you at the 2025 Game Developer's Conference in San Francisco. If you have any inquiries about Wilson Sonsini's Electronic Gaming Group, learn more about our team by visiting <https://egg.wsg.com> or contact us by email at egg@wsg.com.

Thanks for reading,

Christopher Paniewski

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The Rebirth of the Video Game Industry: Technical Innovation from 2024 Spurs Growth in 2025

By *Graham Hendrick, Atussa Simon, and Jonathan Chan*



Wilson Sonsini helped its client close the biggest gaming VC deal of 2024.

The video game industry experienced a tumultuous yet transformative year in 2024, marked by significant shifts across large AAA studios, indie developers, and new entrants from unexpected sectors. Success stories and new technologies like AI emerged, but so did some high-profile challenges, including widespread company restructuring, pointing to an industry in flux and ripe with opportunity for those willing to adapt.

Major studios experienced a rollercoaster year. Some of the most anticipated releases fell short of expectations, receiving lukewarm receptions from both critics and players. These projects, with budgets over \$50 million, struggled to break even, highlighting the growing costs and risk of developing an AAA title. Two games from 2024 present an interesting case study: each took just under a decade to develop and cost around hundreds of millions of dollars to develop.¹ One of the games received commercial and critical acclaim whereas the other abruptly led to the development studio's closure. In contrast, some smaller studios

flourished by focusing on leaner budgets and innovative gameplay. One contrasting example was the resounding success of a game with a budget of just under \$11 million on development and marketing but grossing over \$400 million in revenue.²

New Players Entering the Game

In addition to small video game studios, non-traditional gaming companies are increasingly venturing into the gaming sector, leveraging their existing platforms and user bases to carve out a presence in this cutting-edge industry. Studios have introduced games integrated with cloud-streaming services, seamlessly extending their entertainment ecosystems. Often tied to popular shows and movies, these games foster brand loyalty by allowing users to continue engaging with their favorite storylines and characters. Communication technology companies are starting to embrace the rise of cloud gaming, integrating gaming capabilities with existing services, enabling users to stream games directly without specialized hardware.

Luxury fashion brands have also sashayed into the gaming space, releasing digital content and collaborating with popular gaming platforms. These ventures aim to connect their high-end image with younger, digitally savvy audiences, underscoring gaming's cultural influence extending beyond traditional entertainment. This trend is part of a broader movement in which a variety of industries leverage gaming to expand their reach.

Entering the gaming industry presents unique challenges. To navigate the gaming landscape effectively, companies must address a range of legal and operational considerations. These include developing comprehensive end-user agreements and managing complex copyright and trademark issues, particularly when dealing with games featuring user-generated content or those with cross-border intellectual property concerns. Additionally, trademark and branding strategies, licensing agreements for in-game assets, and outsourced partnerships with third party vendors require careful oversight.

Reference sites:

¹<https://www.theverge.com/2024/10/29/24282900/sony-shutting-down-concord-firewalk-studios#:~:text=Sony%20is%20closing%20Firewalk%20Studios,Koi%2C%20a%20mobile%20game%20studio>.

²<https://www.thegamer.com/palworld-budget-one-billion-yen-no-budgeting/>; <https://gamalytic.com/game/1623730>.

AI Revolutionizing Game Development

AI continues to reshape the gaming landscape, enhancing both development processes and player experiences. Moreover, AI continues to be used to generate dynamic non-playable characters (NPCs), procedural environments, realistic textures, story development, and even in game mechanics. Prominent studios have integrated AI into their workflows to expedite production. Meanwhile, certain individuals and Big Tech companies are exploring the creation of AI-based game studios, sparking debates about the future of AI in game creation.

However, legal and ethical considerations remain paramount, including issues related to intellectual property, data, and the responsible use of generative AI tools. As the industry embraces AI, balancing innovation with responsible practices is crucial for AI's longer-term impact on the industry. Companies must balance innovation with ethics by implementing clear AI policies and ensuring all personnel are aligned on acceptable AI usage.

Greening the Gaming Industry

The gaming industry's environmental impact extends far beyond gameplay, encompassing energy-intensive manufacturing of hardware, global supply chains, and electricity consumption. GPUs, essential for gaming and a driver of the \$184 billion industry, are among the most power-hungry technologies. Manufacturing these devices contributes significantly to emissions; for instance, producing and transporting a single video game console can emit 89 kilograms of carbon dioxide.³ Collectively, gamers in the U.S. alone generating 24 million metric tons of CO₂ annually, equivalent to the emissions of more than five million cars.⁴

Developers and companies are adopting innovative solutions to reduce this impact. Some independent designers power their games using solar-powered servers, featuring compressed visuals and small data footprints. Corporate-level efforts include toolkits that help developers measure and optimize game energy use in real time, with simple tweaks—such as lowering frame rates in menus—leading to significant energy

reductions. Celebrities have also partnered with studios to promote sustainability through eco-conscious events in popular titles. Despite these efforts, systemic challenges persist. Few gaming companies track or report their climate impact, and efficiency gains are often offset by increasing hardware performance.

The Cycle of Innovation and Adaptation

The events of 2024 reflect a broader cycle in the gaming industry with nimble companies presenting grand innovation, midsize companies growing and looking to capture market share, and large companies providing tradition with fan-favorite franchises.

Ultimately, this year's events signal not only challenges but also immense opportunities for the gaming industry. The next frontier belongs to those ready to take risks, reimagine possibilities, and redefine what it means to create and play games.

Be sure to check out the insights throughout *The Scramble* that feature our attorneys' thoughts on the issues in this article and much more.



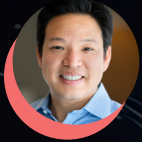
Wilson Sonsini has been a top legal services provider on company-side gaming deals for the last 10 years.

Reference sites:

³ <https://time.com/6696736/sustainable-video-game-companies/>

⁴ <https://drawdown.org/publications/a-drawdown-aligned-framework-for-the-gaming-industry#:~:text=The%20gaming%20industry%20has%20a,%20huge%20opportunity%20for%20influence>

What are the first legal steps a gaming company must take when it's founded, and how can these steps shape the future of the company?



If the company is planning to raise capital from investors like venture capital firms, then it will be important to ensure there is a proper legal foundation for setup.

The pillars of this foundation will be on ensuring the capitalization and intellectual property are properly documented. Our expertise and experience assisting gaming start-ups and companies raise venture capital give us a strong understanding of the legal foundation that investors will expect.

- **Jonathan Chan**
(Corporate)



A strong foundation for any successful gaming start-up includes robust intellectual property (IP) protection. This begins with ensuring the company has the necessary legal agreements in place with its founders, employees, and contractors. Next, the company should proactively protect its registrable IP, such as logos, graphics, software, music, technology, and inventions, by pursuing registration with the U.S. Patent and Trademark Office or the U.S. Copyright Office. By diligently protecting its IP, the start-up can: 1) minimize the risk of IP disputes and litigation; and 2) demonstrate to investors a commitment to protecting its valuable assets. A clear framework for intellectual property ownership and management is essential for building a solid foundation and setting the stage for long-term success.

- **Atussa Simon**
(Technology Transactions)

At the start of a gaming company's life cycle, what legal considerations should a start-up consider when it comes to structuring ownership and defining the roles of founders?



Wilson Sonsini helped its clients close two of the top five biggest completed gaming VC deals in 2024.

How important is it for a new gaming company to establish strong intellectual property protections from day one, and how can that IP evolve as the company grows?



It's important for a start-up gaming company to ensure that the core IP (e.g., the game ideas, characters, innovative gameplay concepts, software, etc.) that may

have been developed or conceived by founders prior to the formation of the company is owned by the start-up. Relatedly, founders should be clear up front about who is doing and contributing what, so as to avoid not only legal issues associated with IP, but business and relationship issues that can more easily emerge as a result of undefined roles or inconsistent expectations.

- **Scott McKinney**
(Technology Transactions)



Day one consideration of IP can be mission-critical for a game company. A game's long-term success, in part, is grounded in successfully navigating IP, which can enable the company to fully capitalize on its creativity while avoiding navigable land mines. An early-stage company should work to minimize

infringement risk— which can stem from use of names or in-game content—while understanding and exploiting the parameters of so-called "fair use." It may make sense to take steps to proactively protect IP assets through, for example, initiating trademark or copyrights filings. These assets will strengthen over time, and they can help better position the company, including in disputes and in an acquisition. If a company is considering a rebrand, it is especially important to involve the legal team to assess the risk of the rebrand vis-à-vis others in the gaming industry as well as how this kind of transition will affect the value of the company's current assets. To the extent that a company exits the market or transitions to new ownership, it is critical to ensure that the company's existing IP assets are appropriately transferred and maintained in order to avoid exposing them to vulnerabilities down the road.

- **Christine Au-Yeung**
(Trademark and Advertising)



> Start-Up Video Series

Access **videos** from Wilson Sonsini attorneys that guide you through key legal matters for start-up companies, including employment and intellectual property. This series assists you as you prepare to NEST!

The Start-Up Toolkit is a complimentary series of resources intended to inform early-stage gaming companies about core legal needs.



> Roadmap

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 legal start-up concepts.



> Pitch Deck Builder

Use our **Pitch Deck Builder** to develop your company's pitch deck, an integral piece of your investor presentation portfolio. The pitch deck builder highlights your company's business plan, market analysis, and go-to-market strategy.*

Download our template to get started.

For companies looking to level up, we recommend applying for the Wilson Sonsini NEST program.



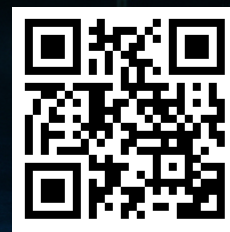
> Investor Readiness Checklist

Use our **Investor Checklist** to get ready for pitches to investors.* The Investor Checklist helps prepare you for outreach to investors with key questions like: Do you have the key components of a business plan and support materials; is your business ready to be invested in; and which investor is right for you and your business?



> Term Sheet Generator

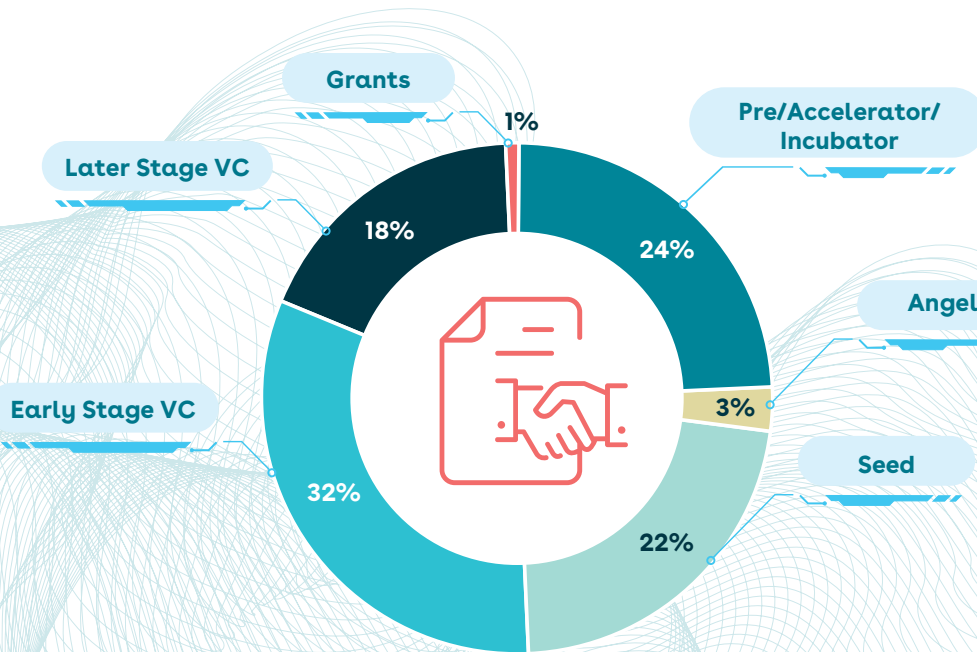
Access Wilson Sonsini's emerging companies practice **Term Sheet Generator** where you can generate a venture financing term sheet.* The Term Sheet Generator includes tutorials and annotations on financing terms.



**ELECTRONIC
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VC Count

by Financing Type (2024)¹

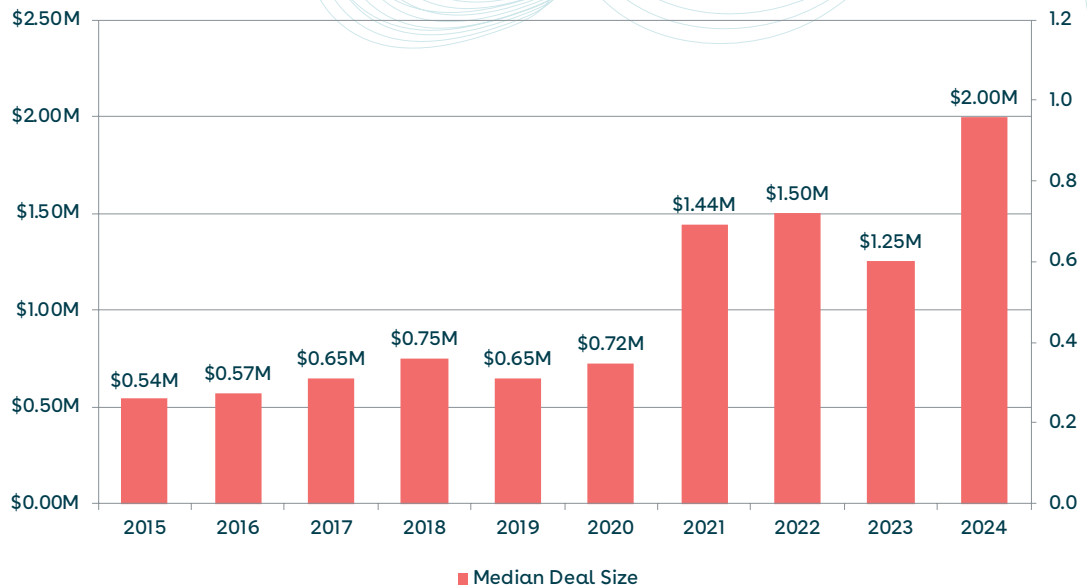


In 2024, 81% of individual VC investments in gaming was geared towards early-stage companies.

VC Median Deal Size

(60% Increase Year over Year)¹

The median VC deal size was the highest it has been in over 10 years—\$2 million, climbing 60% from 2023.



INDUSTRY INSIGHT

In the early stages, what common mistakes do gaming founders make when it comes to legal agreements, and how can these mistakes hinder a company's future success or growth?



In the early stages, gaming founders often overlook critical legal details like formalizing founders' agreements, securing IP rights, and ensuring contracts with contractors

and employees clearly define ownership of work product. They may also neglect compliance with industry-specific regulations, such as data privacy and age restrictions, or fail to set up clear terms for revenue sharing in monetization models. These missteps can lead to disputes, IP claims, or regulatory penalties that slow growth, deter investors, or block market access. Starting off with the right legal approach is key to setting the start-up up for long-term success.

- TJ Li
(Corporate)



Many start-ups, especially those founded by friends, neglect to establish formal agreements with their founders. This oversight can lead to disputes among founders regarding ownership stakes, roles, responsibilities, and decision-making authority, potentially hindering the company's progress and discouraging investors.

Furthermore, neglecting to prioritize IP protection can leave the company vulnerable to infringement claims. Competitors may exploit the company's ideas, designs, or technology, hindering its ability to compete effectively. Finally, failing to comply with data privacy regulations (e.g., GDPR, CCPA) can have severe consequences. Data breaches can erode customer trust, damage the company's brand, and result in significant financial losses, reputational damage, and legal penalties.

- Atussa Simon
(Technology Transactions)

How can game developers balance the need for data collection (for things like personalization or safety) with respect to children's privacy?



One important way for gaming companies to balance these interests is to have a policy and practice for assessing risks associated with collection, retention, and use of user data for new features, services, and games. Is the company appropriately minimizing the collection

of data to that which is necessary for the new feature or service and is the company retaining the data only as long as reasonably necessary for its intended use? What disclosures are provided to consumers to ensure they understand the company's practices with respect to data collection, use, and retention? Having a process in place to assess privacy risks and consider appropriate mitigation of such risks will go a long way towards demonstrating the company is a responsible steward of user data.

- Chris Olsen
(Data, Privacy, and Cybersecurity)



The video game industry provides a rare (if not unique) opportunity to experience the full panoply of antitrust issues and does so in an environment of constant innovation

and evolution. As a result, there is never stagnancy and antitrust practitioners are always asked to refine analyses and recalibrate the intersection of gaming economics and antitrust guidance. Whether platform economics, licensing, joint ventures, access to distribution, software/hardware integration, or M&A, there are always new developments leading to exciting challenges.

- Brendan Coffman
(Antitrust)



Will Indemnification Commitments Address Market Demands in AI

By Leila Purqurian, Barath Chari, and Scott McKinney

Lately, content owners have targeted generative AI providers with infringement suits, which has made some consumers wary of potential infringement liability. Last year, Valve, which operates Steam—the largest online game store—reportedly adopted a policy to reject any games with underlying AI-generated content due to infringement concerns.

To continue reading and for citations, please visit <https://www.wsgr.com/en/insights/will-indemnification-commitments-address-market-demands-in-ai.html>.

AB 2426: California's New Law Strengthens Protections Against False or Misleading Advertisement Claims Regarding Digital Goods

By Aaron Hendelman and Robert Deng

California recently passed AB 2426, a new law amending California's existing false advertising laws to target various false or misleading digital advertising claims. Initially introduced in February 2024, the bill quickly gained momentum amid a series of controversies where consumers lost access to digital products that they believed they had fully purchased.

To continue reading and for citations, please visit <https://www.wsg.com/en/insights/ab-2426-californias-new-law-strengthens-protections-against-false-or-misleading-advertisement-claims-regarding-digital-goods.html>.



Wilson Sonsini is a top five legal services provider for gamification and toys deals.



INDUSTRY INSIGHT

How do current laws and regulations around children's online privacy differ across countries or regions, and what challenges does this present for global gaming companies?



In the European Union (EU) and the United Kingdom (UK), children's online privacy is a concern of both legislators and enforcement authorities.

The processing of children's personal data even made the 2024 list of investigation priorities of the French Data Protection Authority (CNIL). Several companies were investigated, and it is likely that fines will be issued in the coming months. Age verification solutions, data minimization, and security measures implemented to protect personal data of children were key focus areas of these investigations. Given children are considered as vulnerable persons, ongoing scrutiny of data protection authorities is expected.

*- Marie Catherine Ducharme
(Data, Privacy, and Cybersecurity)*

How do subscription models on gaming consoles affect competition within the gaming industry? Can these models be seen as anti-competitive?



Competition issues are often thorny; they typically require a deep understanding of not only the market in which the product or service operates, but also the particular facts of the case. In certain circumstances, a subscription model could be seen as anti-competitive. For example, if a dominant firm used a subscription model to demand exclusivity for purposes of protecting their dominant market share from a nascent competitor disrupting the market, then that could be anti-competitive. Or, if different companies offering subscription models colluded to fix the prices for subscription services, that would raise competition concerns.

*- Jordanne Steiner
(Antitrust)*

Podcast Episode: The Intersection of Consumer Product Safety Laws and Electronic Gaming

Wilson Sonsini's Electronic Gaming Group has worked with clients throughout the digital gaming sector, from design firms and publishers to component manufacturers and online gaming providers. This podcast series takes a closer look at the start-up world of gaming companies. What do game founders care about? What should they care about? What are the common pitfalls and traps to avoid? Each episode features a different Wilson Sonsini attorney chiming in with their area of expertise to help guide game companies to success.



To listen, please visit: <https://wsgregaming.podbean.com/e/the-intersection-of-consumer-product-safety-laws-and-electronic-gaming/>.

Increased Focus on the Protection of Minors and Age Verification in the EU and the UK

By Marie Catherine Ducharme, Yann Padova, Cédric Burton, and Tom Evans

Legislators and regulators across the EU and the UK are intensifying efforts to enhance the protection of minors online, responding to growing concerns about children's safety in the digital space. Recent regulations (including the EU Digital Services Act) and guidance impose increasingly strict obligations for providers to restrict access to harmful content for children. To restrict access to such content, many providers, including gaming platforms, use age verification systems relying on various technologies, including payment card verification, ID verification, and age estimation based on a face scan. While these technologies can contribute to the protection of children, they also need to comply with privacy and data protection laws which include principles such as data minimization and limited retention periods.



Wilson Sonsini is a top legal services provider on augmented and virtual reality deals, representing 30 percent of the top 10 companies in the vertical by total raised.

To continue reading and for citations, please visit <https://www.wsgdataadvisor.com/2025/01/increased-focus-on-the-protection-of-minors-and-age-verification-in-the-eu-and-the-uk/>.

INDUSTRY INSIGHT

How should a growing gaming company handle legal issues surrounding monetization strategies like microtransactions, in-app purchases, or loot boxes?



When a gaming company brings monetization strategies to our national security group, we generally focus on two sets of regulatory concerns: anti-money laundering rules and economic sanctions. As for anti-money laundering rules, a gaming company should guard against classification as a “money service business” or else be prepared for significant regulatory compliance obligations. As for sanctions, a gaming company should ensure that no services are provided to parties that are targets of U.S. sanctions; to ensure that the provision of services does not run afoul of these sanctions often requires calibrated IP address blocking and/or customer vetting.

- **Stephen Heifetz**
(National Security)



Gaming companies are increasingly using in-game currencies and digital marketplaces to better replicate everyday activities in immersive virtual worlds, especially financial activities, as well as to enhance their monetization strategies. In the payments space, which I advise on, protecting players from the risk of financial losses from theft, scams, or other criminal activity is table stakes. These risks are exacerbated by fraudsters who leverage artificial intelligence to execute more sophisticated and frequent scams, including to manipulate players, exploit in-game transactions, and facilitate identity theft or social engineering attacks. Fortunately, by investing in financial regulatory compliance and implementing payments industry best practices, gaming companies can safeguard players and maintain trust in their platforms.

- **Jess Cheng**
(Fintech and Financial Services)



Wilson Sonsini is leading legal services provider on mobile deals and represents three of the top five companies in the subsector by market capitalization.

What are the most common legal disputes that arise as gaming companies expand, and how can these be prevented or managed effectively?



As gaming companies expand, they may find themselves forced to assert or on the receiving end of more and more trade secret claims as key employees in the industry jump between competitors. As the use of generative AI in the gaming industry increases in popularity, moreover, so too may the host of IP issues faced by gaming companies—particularly those in the growth phase. For example, who owns the copyright rights for outputs generated by AI models using copyrighted works scraped from the internet? What are the implications for trade secret protection of outputs generated by LLMs that are not trained to differentiate between confidential and non-confidential information? As gaming companies grow and encounter more of these issues, they, in collaboration with legal counsel, should look to parallel situations in adjacent industries and how the legal risks in those industries might apply to the current landscape in gaming.

- **Lisa Zang**
(Litigation)

Court Refuses Video Game Company's Arbitration Bid in Minor-Involved Case

By Victor Jih, Brian Willen, and Ariel Friedman

In *STG et al. v. Epic Games, Inc.*, minor Fortnite players filed a lawsuit against Epic Games. The U.S. District Court for the Southern District of California partially granted the defendants' motion to compel arbitration and determined that the arbitrator should address the issue of disaffirmation. This decision diverges from the ruling in *J.R. v. Electronic Arts Inc.*, as discussed in this client alert.

In February 2022, J.R. II, a minor, brought a case against Electronic Arts Inc. (EA), alleging that it engaged in unlawful and unfair business practices by deceptively inducing players of its game, Apex Legends, to purchase digital game-specific currency. The ultimate issue of the case is whether the plaintiff validly disaffirmed the entire user contract, including the arbitration clause.

To continue reading and for citations, please visit <https://www.wsgr.com/en/insights/court-refuses-video-game-companys-arbitration-bid-in-minor-involved-case.html>.

Wilson Sonsini is the #1 legal services provider on peripheral and accessories deals, representing 30 percent of the top 10 companies in the vertical by market capitalization.



neuron

Wilson Sonsini's *Neuron* platform modernizes the way you collaborate with your legal team, so you can focus on what matters: *growing your business.*

Formations

*Begin Your Start-Up's
Legal Journey*



General Corporate

*Level Up Your
Legal Game*



Commercial and Revenue

*World-Class Legal
Services with
AI-Powered Precision*



Frictionless Incorporations:

Efficient, hassle-free entity formations

Collaborative Workflows:

Enjoy automation without sacrificing personalized advice

Unparalleled Accessibility:

Access workflows and documentation anytime, anywhere

Hassle-Free SAFE Financings:

Issue SAFEs in just a few clicks, getting you funded faster

Service Provider Onboardings:

Hire employees and consultants in all 50 states to easily expand your team

Single Source of Truth:

Stay diligence-ready with our organized document repository

Plug-and-Play:

Create and review of commercial agreements, with no fine-tuning required

AI-Assisted Contract Review:

AI efficiency coupled with Wilson Sonsini expertise simplifies contracting and increases speed-to-revenue

Fixed-Fee Offering:

Predictable fixed-fee pricing to make your budgeting easier

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EMERGING COMPANIES
AND VENTURE CAPITAL

Video Game App Developer Agrees to Pay \$500,000 for Children's and Minors' CCPA, COPPA, and Ads Violations



By Tracy Shapiro, Eddie Holman, and Rebecca Weitzel Garcia

On June 18, 2024, the California Attorney General and the Los Angeles City Attorney announced a settlement with Tilting Point Media LLC (Tilting Point). The settlement resolves allegations that Tilting Point violated the Children's Online Privacy Protection Act (COPPA), the California Consumer Privacy Act (CCPA), and the Privacy Rights for California Minors in the Digital World Act (Digital Privacy for Minors Act).

To continue reading and for citations, please visit <https://www.wsgr.com/en/insights/video-game-app-developer-agrees-to-pay-dollar500000-for-childrens-and-minors-ccpa-coppa-and-ads-violations.html>.

INDUSTRY INSIGHT

As the company matures, what legal frameworks are necessary for dealing with increasing amounts of user data, including data privacy and security concerns?



The legal landscape surrounding user data becomes more complex as the company matures, especially if it operates in multiple jurisdictions. In Europe, adhering to the GDPR is essential to avoid any regulatory pitfalls. This includes providing transparency to users and implementing robust data protection measures. In addition, the new EU AI Act may impact the company's data usage in the context of AI-based features. Whether it's adhering to the GDPR or preparing for the impact of the EU AI Act, the company will need to take proactive steps to mitigate data privacy and security risks.

- *Laura De Boel*
(Data, Privacy, and Cybersecurity)

What legal considerations are involved in an acquisition, both for the acquiring company and the company being acquired? What are the major roadblocks in the process?

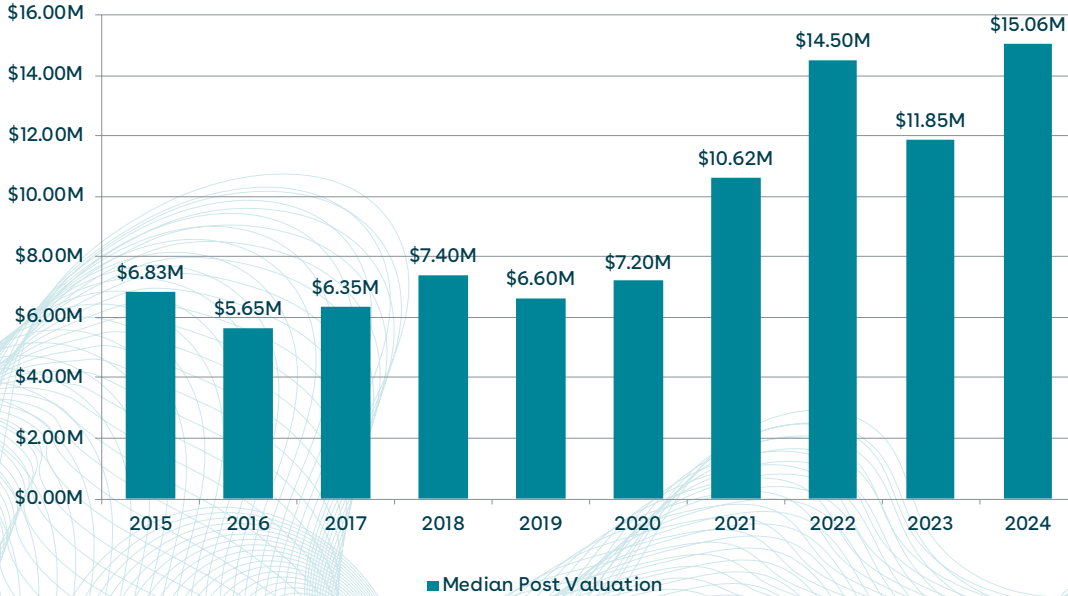


Antitrust M&A review is inherently a predictive exercise, and looking into the future is even more difficult in industries defined by change. Antitrust agencies will look at immediate consumer welfare effects such as price, output, and quality just as they do in any merger, but in the video game industry regulators across the globe have spent time evaluating long-term economic incentives, holistic industry-wide impact, and relationships by and among players in the space. Companies in the gaming space risk becoming victims of their own success because consumers are loyal and passionate about the products they love, as evidenced by the individual consumer lawsuit filed against the Microsoft/Activision merger. This allows for many voices to have a disproportionate influence. As a result, merging companies must have an honest perspective on how a given transaction will be perceived by consumers and partners alike, and need to craft a regulatory strategy that accounts for any possible resistance.

- *Brendan Coffman*
(Antitrust)

VC Median Post Valuation

(27.1% Increase Year over Year)¹

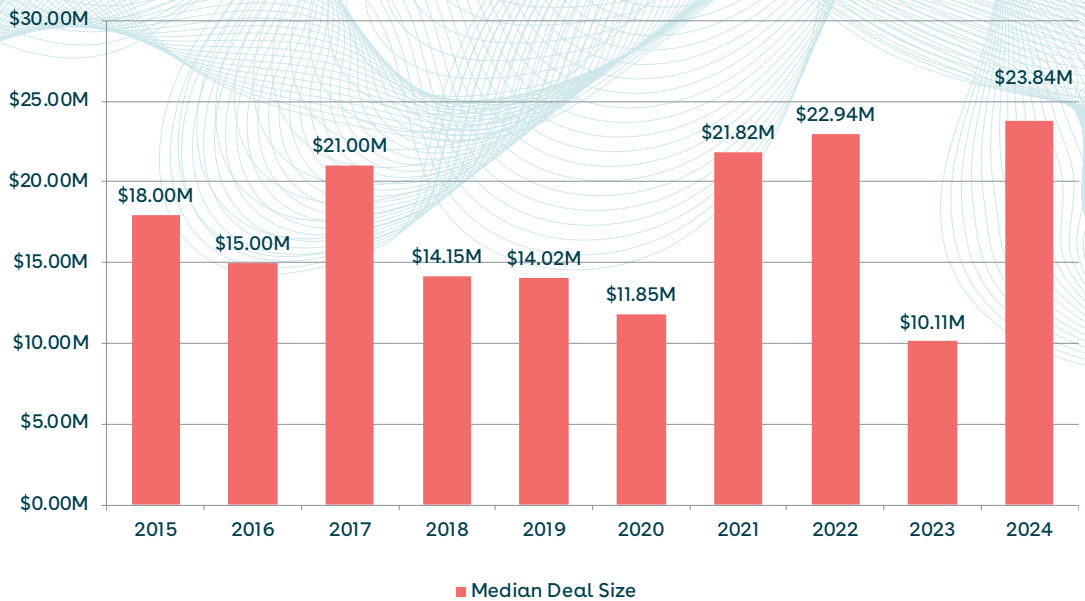


After a \$2.65 million drop in the median VC post valuation from 2022 to 2023, the median VC post valuation not only bounced back in 2024 but is the highest it has been in the last 10 years at \$15.06 million.

M&A Median Deal Size

(135.8% Increase Year over Year)¹

After a nearly \$13 million drop in M&A median deal size in 2023, the M&A median deal size in the gaming industry is the strongest it has been in the last 10 years at \$23.84 million.



FTC Obtains \$1 Million Civil Penalty for HSR Act Violation

By Jamillia Ferris, Kimberley Biagioli, and Elizabeth Wentross

While companies wait for the new Hart-Scott-Rodino (HSR) Act filing requirements to be finalized, the Federal Trade Commission (FTC) made headlines by filing an enforcement action against and obtaining nearly \$1 million in civil penalties from a GameStop executive for failing to submit an HSR notification prior to acquiring voting securities on the open market.

To continue reading and for citations, please visit <https://www.wsgr.com/en/insights/ftc-issues-dollar1-million-civil-penalty-for-hsr-act-violation.html>.

INDUSTRY INSIGHT

In the context of global expansion, how do gaming companies handle legal and regulatory challenges related to launching games in multiple countries with different content, privacy, and consumer protection laws?



Handling compliance in several jurisdictions is a multi-step process which involves identifying applicable obligations, setting priorities, putting together a phased compliance plan, and implementing it. Regular monitoring of legislative changes is also essential: a compliance plan should not be considered as something static; it should evolve as legislative changes are announced. In the EU, some Union-level data protection, content, and consumer laws apply to all 27 Member States, which can simplify compliance planning and implementation. However, there are still local specificities and enforcement priorities can vary at the national level. With more than 24 official languages in the EU, translation efforts of user-facing documentation should also not be underestimated.

- Marie Catherine Ducharme
(Data, Privacy, and Cybersecurity)

How do international regulators, such as the EU's Competition Commission, approach antitrust cases involving video game companies? Are there key differences in approach compared to U.S. regulators?



EU competition regulators are increasingly examining antitrust concerns in the gaming industry, with a particular focus on distribution deals and geo-blocking practices that may fragment the EU Single Market. Unlike U.S. regulators, the EU prioritizes cross-border access and targets distribution agreements that restrict where and how games can be sold. Another area of intense scrutiny is vertical integration deals between developers, distributors, device producers, and/or cloud service providers.

- Jindrich Kloub
(Antitrust)

What is the role of legal professionals in helping companies diversify or invest in new gaming technologies, platforms, or business models while managing the risks involved?



Legal professionals play a vital role not only in mitigating risks but also in helping gaming companies think strategically and establish durable competitive moats. Innovations like generative AI create transformative opportunities for game developers by dramatically reducing asset creation costs, enabling smaller, leaner teams to emerge as significant players in the industry. At the same time, these advancements bring unique IP and regulatory challenges that must be addressed from the outset. Beyond risk management, legal professionals can provide critical guidance on IP strategies and structuring commercial partnerships to empower companies to explore new frontiers confidently while fostering long-term success and growth.

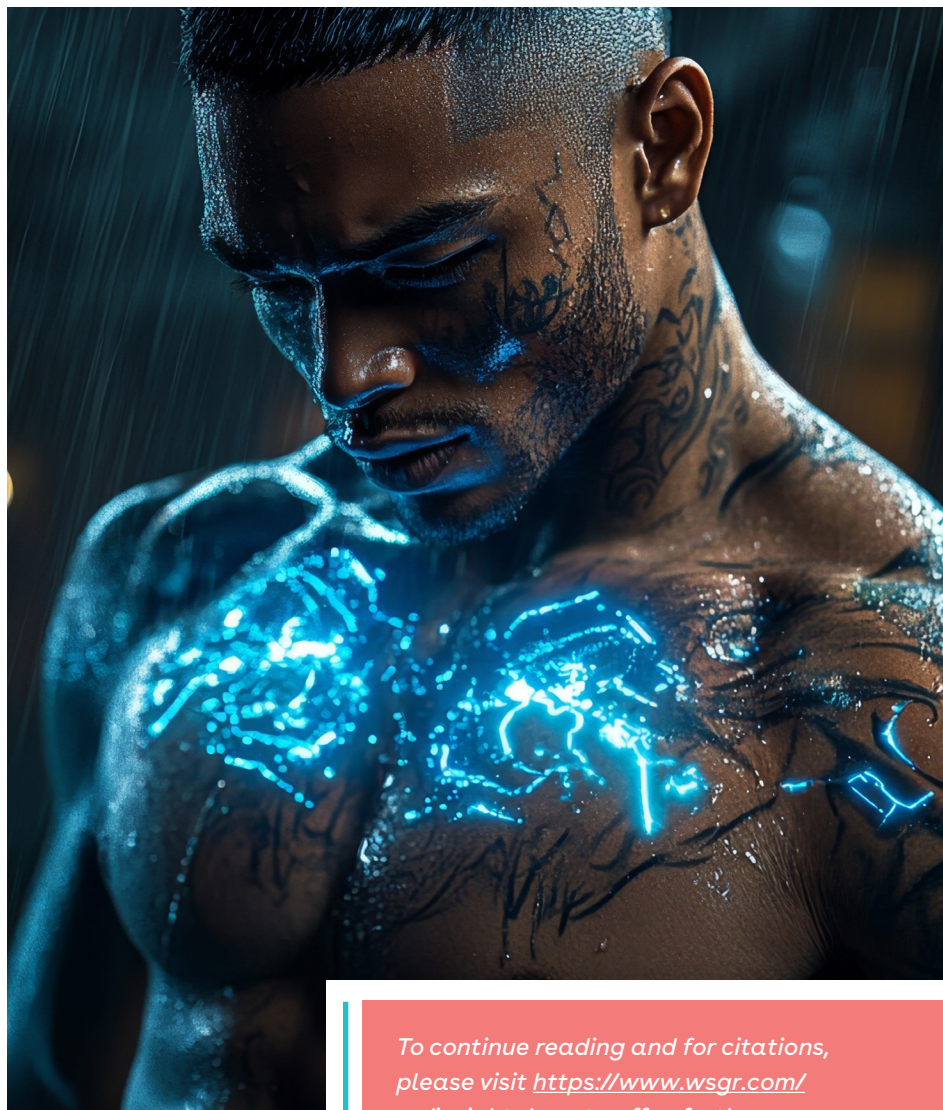
- Lang Liu
(Corporate)

Courts Offer Further Insight on Video Games, Tattoos, and Copyright Infringement

By Aaron Hendelman

Recent court decisions have provided helpful guidance on copyright infringement and tattoo designs, an issue that has spurred litigation from both virtual and real-world tattoo depictions. Wilson Sonsini previously reported on related court decisions [here](#).

In late January 2024, an Ohio federal judge dismissed four out of six tattoo copyright claims in *Hayden v. 2K Games, Inc.*, a lawsuit brought by tattoo artist James Hayden over the realistic depiction of tattoos on basketball player avatars in the video game, NBA 2K series. According to U.S. District Judge Christopher A. Boyoko, Hayden failed to disclose that the four tattoos incorporated preexisting works when he registered them with the U.S. Copyright Office (several years ago). When previously asked to weigh in on the case, the Copyright Office stated that it “would not have registered the tattoo designs if it had known that the designs included an ‘appreciable amount’ of public domain material or material owned by a third party that the applicant did not exclude in his application for registration.”



To continue reading and for citations, please visit <https://www.wsgr.com/en/insights/courts-offer-further-insight-on-video-games-tattoos-and-copyright-infringement.html>.

INDUSTRY INSIGHT

The gaming industry is known for its peaks and valleys. How do legal professionals help gaming companies navigate the risks of failure, including financial difficulties, lawsuits, or operational crises?



Legal professionals play a vital role in steering gaming companies through financial challenges, lawsuits, and operational crises. We help in negotiating funding rounds, managing debt, reviewing major agreements, and ensuring compliance with evolving regulations. Robust legal agreements help mitigate risks of IP disputes, player claims, or regulatory breaches. In crises, such as data breaches or team conflicts, we help our clients prepare proper responses to protect both the business and its reputation.

- TJ Li
(Corporate)

How does a legal professional help a company stay agile and adapt throughout its life cycle, especially in an industry like gaming that evolves rapidly?



As legal advisors we strive to be great business partners to our clients. That means staying close to market dynamics, understanding new technologies, such as AI and blockchain that represent opportunities and potential for industry disruption, assisting with introductions to our business and investor networks, and delivering unparalleled legal service. Early on, that may require quick, efficient and practical legal advice as start-ups lean on their competitive advantage of speed. Later on, the companies will encounter more complex legal issues, such as regulatory compliance or intellectual property issues. By working with our firm, we can serve the legal needs of start-ups as they grow into the largest technology companies in the world.

- Jonathan Chan
(Corporate)



Copyright Battle in 2K Games Lawsuit Comes to a Close

By Aaron Hendelman

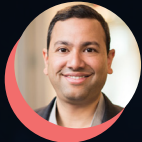
The case of *Hayden v. 2K Games, Inc.* involving a tattoo artist's copyright battle against the gaming giant, 2K Games, was decided earlier this month. In 2017, tattoo artist James Hayden filed the lawsuit over 2K Games' realistic portrayals of his tattoo designs on its popular basketball player avatars. Wilson Sonsini previously reported on this lawsuit [here](#) and [here](#).

In mid-April 2024, an Ohio federal jury finally reached a verdict in favor of the gaming company, after finding that 2K Games had an implied license to use the images. This development closely follows U.S. District Judge Christopher A. Boyoko's ruling back in February 2024, on Hayden's failure to disclose that four of the six tattoos in question incorporated preexisting works in his original copyright registration filings. Consequently, Judge Boyoko dismissed those four tattoos from the lawsuit.

To continue reading and for citations, please visit <https://www.wsg.com/en/insights/copyright-battle-in-2k-games-lawsuit-comes-to-a-close.html>.

INDUSTRY INSIGHT

As gaming companies mature, what legal strategies should they adopt to ensure long-term sustainability and protect their assets for the future?



First, they should ensure that their IP is adequately protected. They should secure trademarks for game titles and register copyrights for important creative content, including storylines, characters, artwork, and music. Second, they should make sure that they have a gameplan to ensure continued compliance with regulations that might impact their business, including privacy and consumer protection regulations. Third, they should proactively seek protection from foreseeable risks that could impact their bottom line and put the company at risks. In addition to obtaining adequate insurance, this also includes doing things like making DMCA filings to protect from risks inherent in user-generated content. Finally, gaming companies should be proactive in negotiating and entering into contracts with employees, users, and partners that include adequate contractual safeguards.

- **Barath Chari**
(Technology Transactions)



One of the best ways to ensure long-term sustainability is to capitalize and commercialize past success. For example, if a prior game was successful, develop an add-on or new DLC, or explore porting a console or PC-only to mobile, or vice-versa, to both maintain brand awareness and to generate new revenue to pay for development of the sequel or the next big hit game.

- **Scott McKinney**
(Technology Transactions)

Wilson Sonsini is the #1 legal services provider on hardware deals, representing 40 percent of the top 10 companies in the vertical by market capitalization.



To what extent do practices like exclusive game deals or platform lock-in (e.g., certain titles only available on specific consoles) raise antitrust concerns?



Exclusive game deals and platform lock-in practices can raise antitrust concerns in the EU if they restrict market access or foreclose competitors, particularly when dominant companies are involved. Generally, exclusivity and platform lock-in deals not exceeding five years are exempt from antitrust scrutiny if they are between companies with less than 30 percent market share. Deals that do not meet these criteria must be assessed individually to determine if they raise foreclosure concerns. Gaming companies should carefully structure such agreements to align with EU regulations, which are generally stricter than U.S. laws on these points.

- **Jindrich Kloub**
(Antitrust)



Where a gaming platform has a dominant market position, exclusive game deals or platform lock-in have the potential to allow the platform to maintain that dominance by decreasing competition on the market and harming consumers through increased prices and decreased competition. Exclusive deals limit where consumers can purchase specific games. If a game is viewed as a “must-have,” a platform may be able to raise prices of those exclusive titles. When players are locked into a specific console because of exclusive game availability, players are less likely to switch consoles or purchase competing console products. Locking consumers into specific (and dominant) platforms via exclusive game deals may also lead to concerns by new and nascent console competitors who may not have access to “must-have” games.

- **Jamillia Ferris**
(Antitrust)

“Stop Killing Games” Campaign Seeks to Prevent Video Game Publishers from Taking Games Offline

By Victor Jih

Ross Scott, operator of the YouTube channel Accursed Farms, has launched an online campaign (the Campaign) advocating against the video game industry practice of game publishers ending technical support for video games, which renders the games unplayable. According to Mr. Scott, the Campaign is in response to video game publisher Ubisoft’s decision to decommission The Crew, an online-only video game initially released in 2014.

To continue reading and for citations, please visit <https://www.wsg.com/en/insights/stop-killing-games-campaign-seeks-to-prevent-video-game-publishers-from-taking-games-offline.html>.



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Game, Set, Match: Courts Curb Cheat Code Sellers

Wilson Sonsini is a leader in Esport deals and represents three of the top five companies in the subsector by total capital raised.



By Alex Manter, Christopher Paniewski, and Scott McKinney

The \$200 billion video game industry is centered around positive experiences where developers challenge player skill through game mechanics, level design, and other creative tactics. Through the course of the gameplay experience players are supposed to grow their skills to overcome new challenges. However, this lucrative industry has spawned a secondary market of “cheat codes” that change the developer-intended experience, typically creating an unfair advantage. To protect their players, intellectual property, and the overall gaming experience, gaming publishers have brought suit against third-party providers of cheat codes.

To continue reading and for citations, please visit <https://www.wsgr.com/en/insights/game-set-match-courts-target-gaming-cheat-code-sellers.html>.



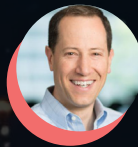
INDUSTRY INSIGHT

How can a gaming company maintain its competitive edge while ensuring legal compliance with evolving regulatory laws?



In addition to staying up to date with regulatory developments and avoiding pitfalls in exclusivity-related distribution deals, gaming companies should capitalize on opportunities created by new regulations. For example, the EU Digital Markets Act (DMA) provides avenues such as sideloading apps and alternative payment systems, reducing dependency on dominant platforms. These changes allow businesses to expand distribution channels and optimize revenue models. By leveraging the DMA's provisions, gaming companies can innovate their offerings, streamline costs, and secure a competitive advantage.

- **Jindrich Kloub**
(Antitrust)



Many of the national security regulations on which I provide counseling, such as anti-money laundering and investment screening (e.g., CFIUS), have significant ambiguities. This is especially so in the national security area because there often is little public precedent interpreting the regulations so as to narrow the scope of permissible interpretations. Accordingly, companies (and their counsel) may interpret rules so as to provide more or less flexibility, as long as they recognize that more company-favorable interpretations may increase the risk of adverse action by regulators. It is appropriate, though, for companies to expect that counsel will provide a range of interpretations, at least with respect to some regulations—and as long the companies are willing to assume the resultant risks.

- **Stephen Heifetz**
(National Security)

What are some emerging legal trends (e.g., AI, blockchain, digital ownership) that gaming companies must be aware of to stay relevant and legally protected in the long run?



National security regulations have increased dramatically in the previous Trump and Biden administrations, and that trajectory likely will continue in the next Trump administration. These regulations include anti-money laundering, sanctions, export controls, investment screening rules (CFIUS, analogues to CFIUS in other countries, and the new "outbound investment" rules), data transfer rules, and more. Collectively, these regulations have very broad scope. As a gaming company grows and/or expands the scope of activities, it is important to have legal counsel consider the ways in which these proliferating national security rules can create regulatory obligations and risks that often are not obvious. To provide just one example: under the new outbound investment rules that are effective as of January 2, 2025, a U.S. investment into a U.S. gaming company might trigger a government notification requirement if the gaming company includes certain types of AI and has certain ties to China.

- **Stephen Heifetz**
(National Security)



One of the most significant legal trends that will affect the gaming industry in the long term is the passage of numerous state laws addressing the privacy and safety of minors. Numerous states now have laws with provisions related to minors' privacy and safety and more states are continuing to pass laws on a regular basis. These laws address a number of issues relevant to the gaming industry, including data minimization, parental consent, age restrictions, and age verification. Some states, Texas for example, have already begun enforcing such laws that have only recently come into effect. AI will also be an important issue for companies that use AI in their business. For example, if companies make promises about the ability of AI-powered tools to detect problematic content, they will need to be mindful that such statements could lead to regulatory scrutiny regarding their accuracy.

- **Chris Olsen**
(Data, Privacy, and Cybersecurity)

How Extreme Should the FBI and DHS Be in Removing Extremism from Gaming?

By Graham Hendrick, Brian Willen, Victor Jih, and Joshua Gruenspecht

The United States Government Accountability Office recently published a report that highlights the federal government's increased interest in monitoring domestic violent extremist content on gaming and social media platforms. The purpose of the report is to provide information to other agencies and to encourage the development of actionable strategies to combat domestic violent extremist content. Forthcoming guidance, scheduled for release in June 2024, could result in companies navigating an increasingly complex moderation system with increased communication efforts with the Federal Bureau of Investigation and Department of Homeland Security.

To continue reading and for citations, please visit <https://www.wsgr.com/en/insights/how-extreme-should-the-fbi-and-dhs-be-in-removing-extremism-from-gaming.html>.

INDUSTRY INSIGHT

How can the gaming industry stay ahead of evolving privacy concerns as new technologies like AI and VR become more common?



With so many moving parts, it is challenging to stay abreast of evolving regulatory developments related to emerging technologies like AI and VR. Our Wilson Sonsini teams are actively monitoring developments in these areas and regularly release alerts that cover breaking developments. Wilson Sonsini's [Data](#)

[Advisor](#) blog is a great source for information on the latest evolving privacy concerns related to emerging technologies. Our firm's [AI website](#) is also a great source of up-to-date information on AI developments. Also, the FTC is a critical source of information for how the main privacy regulator in the United States is thinking about emerging risks. The FTC often issues guidance on these topics, including a blog post on January 3, 2025, addressing [AI and the Risk of Consumer Harm](#). Finally, keeping track of what your peers are doing in these areas can be a helpful way to benchmark how your practices compare to others.

- **Chris Olsen**
(Data, Privacy, and Cybersecurity)



One of the biggest challenges will be navigating the increasing complexity of privacy and AI regulations across various jurisdictions. Much like the impact

of the EU GDPR on global privacy standards, the introduction of the EU AI Act is setting new benchmarks that could influence gaming companies worldwide. To stay ahead, the industry must monitor these evolving regulations and adapt strategies for ensuring transparency, user control over their data, and user safety.

- **Laura De Boel**
(Data, Privacy, and Cybersecurity)

What legal measures should gaming companies take to ensure that their IP is properly valued and protected during a sale or acquisition?



IP is the lifeblood of gaming companies, so it is of the utmost importance that their IP is adequately protected, not only to maximize enterprise value but also to build a competitive moat that discourages copycats. During the development process, every gaming company needs to make sure that all employees and contractors sign invention assignment contracts to ensure that the company owns their work. Gaming companies should also be careful about compliance with open source licensing obligations to ensure that their source code remains proprietary. As launch nears, gaming companies should secure

trademarks for game titles and register copyrights for important creative content, including storylines, characters, artwork, and music. Finally, if a gaming company develops novel game mechanics or technology, they should consider filing for patents to prevent competitors from using them.

- **Barath Chari**
(Technology Transactions)



INDUSTRY INSIGHT

What do you see as the next big legal challenges for the gaming industry in the coming decade, and how should gaming companies prepare for them?



I anticipate legal challenges surrounding the use of AI and algorithmic recommendations. With digital distribution models comes the ability to price games differently based on factors such as purchasing history, real-time market demand, consumer behavior, geographic location, etc. Some companies may choose to license AI-based algorithms to make pricing recommendations, either for the game itself or for in-game purchases. I would anticipate that any such decision may trigger competition concerns and recommend that any company interested in licensing AI first consult with our antitrust department.

- **Jordanne Steiner**
(Antitrust)



The most significant legal issues in the payments and fintech areas in which I'm involved are with respect to financial regulatory risk, especially compliance with consumer financial protection and anti-money laundering regulations, as well as proactively protecting players from fraud, scams, and other financial harm. Navigating these challenges and getting ahead of emerging threats require a deep understanding of the financial regulatory landscape, especially to ensure that monetization practices mitigate regulatory risk related to payments processing and digital transactions.

- **Jess Cheng**
(Fintech and Financial Services)



Wilson Sonsini is a top legal services provider for investors on blockchain gaming deals, representing 40 percent of the top 10 companies in the vertical by total raised.

Nintendo Weakens Emulator Upstart “Yuzu,” Setting Off Panic Within the Emulator Community

By Dale Bish and Robert Deng

Nintendo of America’s (Nintendo) recent dispute against emulator developer, Tropic Haze, has highlighted major questions of intellectual property (IP) in the gaming sphere. This alert explores the background behind Nintendo’s dispute, its resolution, and corresponding legal and business ramifications.

To continue reading and for citations, please visit <https://www.wsgr.com/en/insights/nintendo-weakens-emulator-upstart-yuzu-setting-off-panic-within-the-emulator-community.html>.





Meet the Panelists



Chris Paniewski

*Technology
Transactions*
cpaniewski@wsgr.com



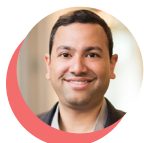
Jonathan Chan

Corporate
jchan@wsgr.com



Atussa Simon

*Technology
Transactions*
asimon@wsgr.com



Barath Chari

*Technology
Transactions*
bchari@wsgr.com



Brendan Coffman

Antitrust
bcoffman@wsgr.com



Chris Olsen

*Data, Privacy, and
Cybersecurity*
colsen@wsgr.com



Christine Au-Yeung

*Trademark and
Advertising*
cauyeung@wsgr.com



Jamillia Ferris

Antitrust
jferris@wsgr.com



Jess Cheng

*Fintech and Financial
Services*
jcheng@wsgr.com



Jindrich Kloub

Antitrust
jkloub@wsgr.com



Jordanne Steiner

Antitrust
jsteiner@wsgr.com



Lang Liu

Corporate
liu@wsgr.com



Laura De Boel

*Data, Privacy, and
Cybersecurity*
ldeboel@wsgr.com



Lisa Zang

Litigation
lzang@wsgr.com



**Marie Catherine
Ducharme**

*Data, Privacy, and
Cybersecurity*
mducharme@wsgr.com



Scott McKinney

*Technology
Transactions*
smckinney@wsgr.com



Stephen Heifetz

National Security
sheifetz@wsgr.com



TJ Tingjie Li

Corporate
tingjie.li@wsgr.com

Editorial Team

- Atussa Simon
- Angela Chan
- Anna Weber
- Ariel Friedman
- Brittany Von Rueden
- Christopher Paniewski
- Erica Hur
- Graham Hendrick
- Isabel Annino
- Jinny Park
- Melis Kilic
- Regina McLeod
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ENDNOTES

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