

Tech liability: tales of the unexpected



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Not long ago, in the U.S., police reportedly picked up a boy who had apparently borrowed his parents' car in the middle of the night to rent a video game. An officer became suspicious when he spotted an apparently driverless car zigzagging slowly between two lanes on a highway. The vehicle eventually collided with a parked vehicle and a police cruiser before coming to rest.

There have been plenty of lawsuits against video-game companies relating to deaths and destruction caused by kids who were obsessed with playing violent games. If someone can sue a restaurant because the coffee is too hot, then it's not hard to imagine someone's suing the publisher of a driving game for allegedly teaching a kid how to drive.

Game companies in particular spark a variety of unexpected liabilities. In such a fast-moving sector, it's to be expected. For example, a Chinese online-game company was sued by a gamer whose stockpile of virtual weapons was stolen after his gaming account had been hacked. The company was ordered to replace the stolen property!

Another potential liability for an online-game company lies in the shutting down of a game. It's the company's game, so the company should be able to cancel it at will; however, gamers spend time and money to acquire in-game property and

may feel they have good reason to take legal action for its loss.

Another major unexpected source of lawsuits for tech companies is intellectual-property infringement. It's not uncommon for tech companies to choose new company names or product names without doing trademark clearance searches first. This will often result in the issuance of a

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demand letter from an owner of a similar trademark. If a settlement isn't reached, the tech company may have to re-brand at a significant expense and after losing goodwill in the discontinued brand.

Just as common is for a tech company to develop software or other technology that functions a particular way, only to find out that a portion of the technology is already protected by a patent. It's a mistake to believe that your product can function in a particular way just because other products on the market function that way, too. For example, Sega owns a patent that protects the use of a directional arrow in driving games (i.e., the arrow at the top of the screen that tells

the player what direction to drive). Such technology is crucial to its business, and an unexpected lawsuit for Electronic Arts followed in connection with a driving game that used a similar directional arrow. This can be an annoyance for a large tech company, but it can be the end of business for a smaller one.

There are plenty of other unexpected

sources of liability for tech companies: defamatory postings on blogs or social-network sites; theft of confidential information; unauthorized collection, use or disclosure of customers' personal information on line, etc. Many of these problems can be anticipated and avoided through proper contracts, employee policies, due diligence and intellectual-property searches and registrations.

It also can't hurt to warn customers to hide their car keys from their kids! ■

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