

The **SCRAMBLE**

WILSON
SONSINI

Gaming Legal Year in Review: **2023**

MARCH 2024



**INDUSTRY
INSIGHTS**



**INDUSTRY
TRENDS**



**PODCAST
SERIES II**



**ELECTRONIC
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Introducing: **START-UP TOOLKIT**

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

WELCOME TO THE SCRAMBLE



Introduction

Welcome to the second issue of *The Scramble*, presented by Wilson Sonsini's Electronic Gaming Group. Wilson Sonsini has advised hundreds of clients throughout the gaming sector. *The Scramble* is an annual publication that highlights the gaming industry over the past year, Wilson Sonsini's work in the industry, and offers a glimpse into our anticipated projects in the upcoming year as well as identifies certain industry trends.

A look back. Over the past year, we have continued our momentum in handling significant acquisitions, financings, commercial transactions, and regulatory matters in gaming. 2023 was a groundbreaking year in the realm of artificial intelligence (AI), and Wilson Sonsini has been at the forefront, dedicating substantial efforts to clients developing, implementing, or supporting AI.

Readership of our publications grew steadily. In 2023, Wilson Sonsini earned the #1 spot on JD Supra's Year in Gaming Law—Popular Reads. Our first issue of *The Scramble* was ranked #8 among the "most widely read updates, insights, and commentary at the intersection of gaming and the law and published on JD Supra throughout 2023." Meanwhile, our podcast continued to attract new listeners, as Series II dove into topics like AI, attorney-client relationships, and even a founder success story (on our first guest-led episode).

Last year, we launched NEST, a suite of legal resources tailored to accelerate gaming start-ups during their critical early stages. Participants receive access to discounted rates and gaming sector specialists. Interested parties can learn more and apply here: [NEST](#).

A look forward. In the coming year, we foresee AI making a substantial impact on our gaming clients. Consequently, we anticipate that a significant portion of our work and publications will increasingly revolve around this developing area.

In 2024, we are launching the complimentary [Start-Up Toolkit](#), a series of free resources designed to support pre-seed, early-stage gaming start-ups. The Toolkit includes:

- Start-Up Video Series—This series offers legal insights tailored for early-stage gaming start-ups.
- Pitch Deck Builder—This tool enables early-stage gaming start-ups to create a pitch deck, which will highlight its business plan for prospective investors.
- Investor Checklist—This tool features financial and strategic considerations to help companies determine their investment readiness.
- Legal Services Roadmap—This tool provides early-stage gaming start-ups with a customized roadmap to help them anticipate the legal services they may need.
- Term Sheet Generator—This tool helps early-stage gaming start-ups generate a draft venture financing term sheet.

If you missed any of our 2023 gaming publications, you can catch up on them in this issue of *The Scramble* and on our website (<https://egg.wsgr.com>). 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* and look forward to welcoming you to our talk at GDC this year on AI. If you have any inquiries about Wilson Sonsini's Electronic Gaming Group, learn more about our team by visiting <https://egg.wsgr.com> or reach us by email at egg@wsgr.com.

Thanks for reading,

Christopher Paniewski

TABLE OF CONTENTS

- 1 Welcome to The Scramble
- 2 Ahead of the Game: AI
- 8 Start-Up Toolkit
- 10 Intellectual Property Challenges
- 15 2023 Gaming Investments
- 17 Start-Up Video Series
- 18 Antitrust
- 22 NEST
- 23 Regulatory Changes
- 25 User/Employee Conduct
- 27 A Year In Review
- 30 Meet the Panelists
- 33 Credits

INDUSTRY
INSIGHT

How do you predict that the increasing popularity of generative AI will impact your clients?



Perhaps the most significant impact in the national security areas in which I'm involved is that the use of generative AI is triggering interest by foreign investment regulators—when there is cutting-edge AI, these regulators (the Committee on Foreign Investment in the United States, and analogous regulators around the world) want to know which foreign investors are getting access to that technology, and they may restrict or prohibit that access.

- **Stephen Heifetz**
(National Security)



With the increasing popularity of generative AI technology, clients will likely be licensing third-party or open-source large language models and datasets under different licensing schemes. It is imperative that clients understand the rights and obligations including downstream obligations when using and licensing such third-party models and datasets. Speaking of rights and obligations, it is also important for clients to understand the implications of training or fine-tuning models with data the client may have in its possession. Clients should only train or fine-tune models with data that they have the right to use in such manner and take care not to use sensitive information when training models.

- **Atussa Simon**
(Technology Transactions)



Clients whose technologies use generative AI are likely to face an increasingly large set of complex IP issues. These include, for example, copyright ownership of outputs generated by AI models that use copyrighted works scraped from the internet, or the trade secret protection of outputs generated by models that are not trained to differentiate between confidential and nonconfidential information.

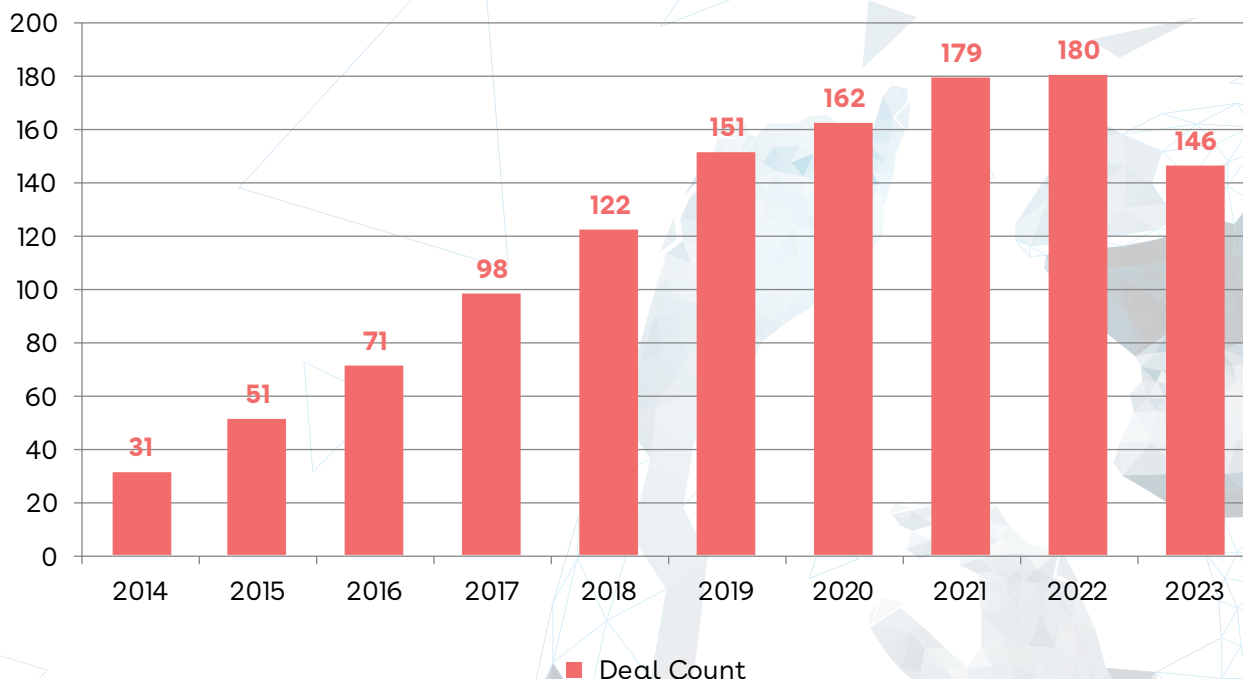
- **Lisa Zang**
(Litigation)



Generative AI is already changing many of the cost structures for game developers. The ability to instantaneously generate new assets for a tiny fraction of what it used to cost has changed, and will continue to change, a large part of the studios' business models. The technology also poses an unparalleled opportunity for developers to create more seamlessly interactive and varied experiences for players in their games, which is super cool.

- **Adam Shevell**
(Technology Transactions)

Source: PitchBook Data, Inc.



This chart illustrates that investment in artificial intelligence in the gaming industry has been growing, even prior to the generative AI boom.

“Video game developers have been incorporating AI techniques into games for several decades. The use of AI in games dates back to the early days of gaming with simple rule-based systems and basic decision-making algorithms. In the past, AI in games was primarily focused on creating, non-playable characters (NPCs) or different assets that exhibit intelligent behavior and interact with the player... Now, with increased computing power advancements in AI, game developers can use more sophisticated algorithms and machine learning approaches to generate more realistic and dynamic game experiences.”

- Tiffany Georgievski

Podcast Episode: Game On, AI: How Artificial Intelligence Is Revolutionizing Gaming

Host Mary O’Brien is joined by Wilson Sonsini technology transactions partner Gary Greenstein as she interviews SonyAI attorney and Wilson Sonsini alumna Tiffany Georgievski to discuss artificial intelligence (AI) and the gaming industry.



To listen, please visit: <https://wsgregaming.podbean.com/e/game-on-ai-how-artificial-intelligence-is-revolutionizing-gaming/>.

10 Things You Should Know About the EU Artificial Intelligence Act

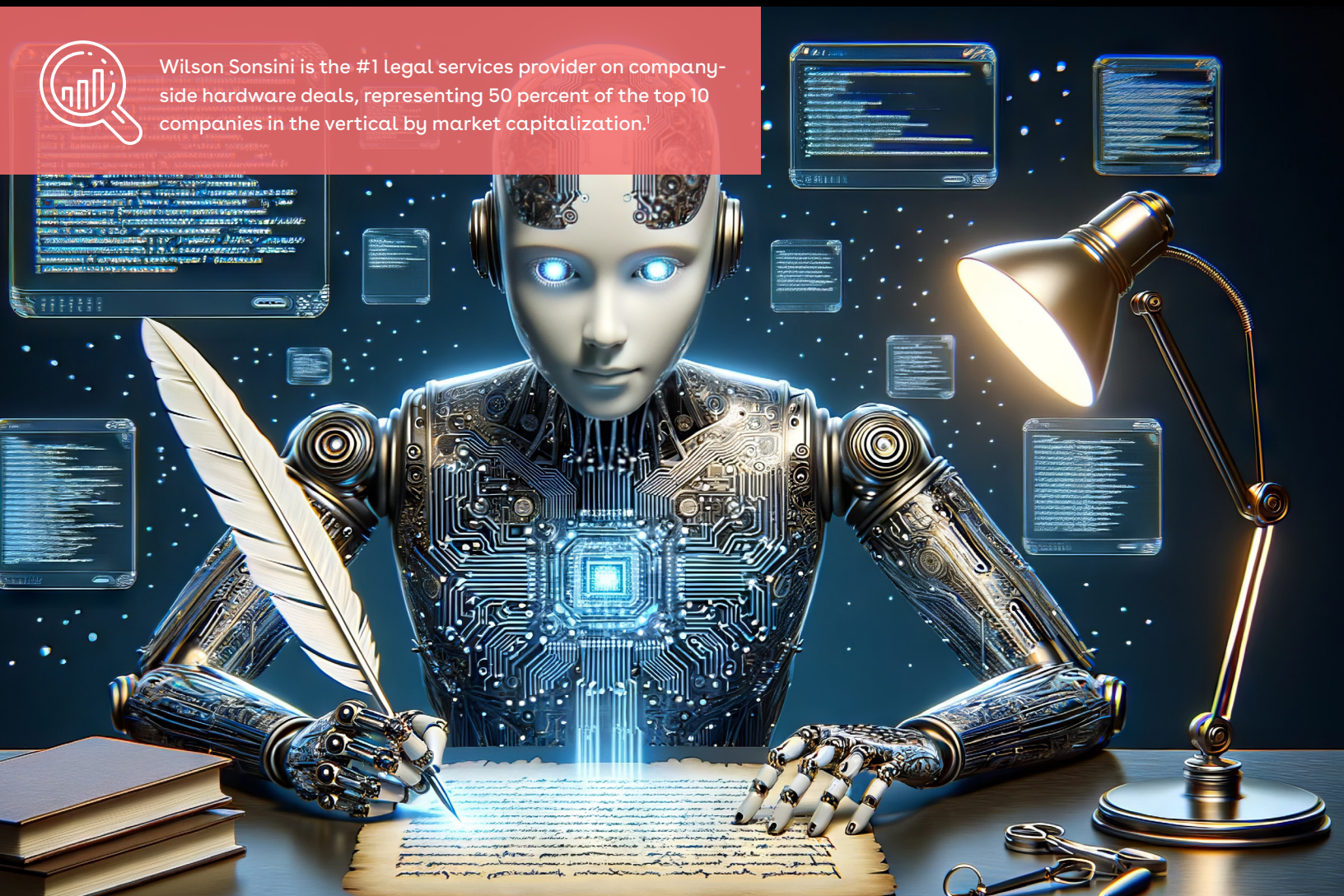
The Artificial Intelligence Act (AI Act) is the first comprehensive legislation that intends to regulate AI horizontally across all sectors in Europe. It will have far reaching consequences on all companies developing, implementing, or using AI solutions in the EU and beyond. These FAQs provide key information you should know before the AI Act is adopted, and some tips on what you can already be doing to prepare.

View the FAQs here:

<https://www.wsg.com/ai-web/5mGbBqgzQyQoCFJz72ZYCC/10-things-eu-artificial-intelligence-act.pdf>



Wilson Sonsini is the #1 legal services provider on company-side hardware deals, representing 50 percent of the top 10 companies in the vertical by market capitalization.¹



INDUSTRY
INSIGHT

What growing pains do you anticipate for developers who choose to use generative AI?



Video game companies that build generative AI technology will face the same capital needs that other generative

AI companies are facing, which is that AI computing for training models is extremely resource and cost intensive, and attractive salaries need to be offered in order to compete to gather a top-flight AI team. Fortunately, venture capital firms are actively investing in AI and there are now a number of venture capital funds, large and small, dedicated to gaming.

- **Jonathan Chan**
(Corporate)



Generative AI can inadvertently propagate biases present in their training data. Game developers

need to be vigilant about the potential for generating content that could be deemed insensitive or offensive, which can be a significant issue, especially now that most games are published cross-border in culturally diverse markets. IP concerns for AI generated contents can be another big growing pain.

- **TJ Li**
(Corporate)



Generative AI technology is still so nascent and experimental. That's one of the reasons it's so exciting. It also means there are a lot of technical and legal questions that haven't been resolved. There are a number of legal questions relating intellectual property rights that haven't been

addressed by the courts yet (e.g., whether using copyrighted content without the owner's permission to train AI models constitutes fair use). Hopefully, we will start to get some case law on these questions soon but, until then, developers will need to navigate the uncertainty. I think this is best done by understanding what we do and don't know about the landscape of intellectual property issues and having contingency plans for handling changes that are introduced by the courts or legislatures.

- **Adam Shevell**
(Technology Transactions)



Concerns over employee displacement may be a growing pain for companies that choose to integrate generative

AI technologies into their businesses. Can companies really replace their human resources with datacenters full of computers working 24/7 without taking a lunch break or sleeping? Will the promise of profits supersede human creativity? Can AI truly create immersive gaming experiences? These questions can only be answered in time; however, the adoption of generative AI technologies may be concerning for talent, and such concerns may play a role in the rate and method of their adoption.

- **Atussa Simon**
(Technology Transactions)



There is a good chance that they will have to face a number of complex IP issues. These include,

for example, copyright ownership of outputs generated by AI models that use copyrighted works scraped from the internet, or the trade secret protection of outputs generated by models that are not trained to differentiate between confidential and nonconfidential information.

- **Lisa Zang**
(Litigation)

Do's and Don'ts for Developing, Extending, and Using Generative AI Models

By Barath R. Chari, Scott A. McKinney, Gary R. Greenstein, Laura De Boel, Maneesha Mithal, Stefan Geirhofer, Kristina Wang, Mary O'Brien, and Emily Chan

Generative AI (GenAI) refers to a category of artificial intelligence (AI) models capable of generating text, images, music, or other content in response to a user's input prompts and based on training data embodied in the AI model. While GenAI models show great promise, companies should consider the legal, commercial, and ethical risks posed by this technology. All companies that intend to use GenAI tools for day-to-day business tasks or to develop their own GenAI applications should evaluate the risk/reward tradeoffs and develop an AI policy that provides guidance to employees about the acceptable use of GenAI tools and the risks that could result from unauthorized use.

1

AI developers must exercise caution in their selection of appropriate training data.

Improper collection of training data for GenAI models can potentially raise issues related to data privacy and copyright law.

2

Users of GenAI models should refrain from including sensitive information in input prompts.

Some GenAI models require end users to provide rights to use their input for the purpose of improving the model. As a result, users should abstain from providing sensitive information in input prompts.

3

Outputs of GenAI models can create legal and reputation risks for both users and AI developers. GenAI outputs may contain recognizable or

identifiable portions of training data, thus raising the risk of infringing on third-party copyrights for its users. Moreover, the outputs can potentially be inaccurate, misleading, biased, or false.

4

The risk from GenAI can be mitigated through the adoption of various best practices.

Companies may build their own GenAI model from scratch or build on top of "foundational" GenAI models to mitigate legal risks. Furthermore, companies should consider developing an AI usage policy for its employees to prevent the potential leakage of sensitive business information.

To continue reading and for citations, please visit <https://www.wsgr.com/en/insights/dos-and-donts-for-developing-extending-and-using-generative-ai-models.html>.

INDUSTRY
INSIGHT

As more game developers explore the integration of AI technologies into their games, can you discuss the potential legal and/or regulatory issues that we should be preparing to help clients navigate?



From a product safety regulatory perspective, foreseeable use and misuse should always be contemplated in the development of products, and to the extent possible, unforeseeable uses of the products. While Generative AI can certainly be useful as a tool to evaluate foreseeable and unforeseeable risks, there may be legal or regulatory risks involved in relying upon Generative AI given some known flaws and deficiencies in AI technologies. For

example, AI-powered autonomous vehicles have recently been cited for failing to have adequate safeguards in terms of the proper identification of pedestrians or in how to handle unusual emergency situations (e.g., stopping the vehicle after an incident rather than continuing to move the vehicle). In the gaming world, if Generative AI causes the software or hardware, or even the user, to perform in unexpected ways, this could have legal or regulatory implications. It will be interesting to see how this all evolves.

- **Georgia Ravitz and Scott Cohn**
(Regulatory and Compliance)



One of the bigger challenges that game developers will face when integrating generative AI technologies into their game development process is the clearance of assets for third party infringement issues. Due to the risk that a generative AI model produces new content that is similar to existing proprietary content owned by third parties, game developers will need to have a strategy for mitigating potential claims when the AI-generated content is published as part of the game. Understanding the data set that was used to train the AI model, fine tuning with the developer's own assets, setting parameters for the generation of content, and manual clearances are some of the ways game developers can reduce their exposure to third party infringement risks.

- **Adam Shevell**
(Technology Transactions)



The increased integration of AI tools into gaming is also likely to raise several considerations. In particular, from a securities regulatory standpoint, the SEC has highlighted concerns with digital engagement practices underpinned by AI and machine learning, such as games, streaks, contests with prizes, points, badges, and others, in connection with retail trading. Game developers using these features in connection with crypto assets should be cautious and consult with counsel.

- **Mara Alioto**
(Fintech and Financial Services)



> 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!



> 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.



> 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.

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

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



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Wilson Sonsini is a leading legal services provider on gamification and toy deals, representing 30 percent of top 10 companies in the vertical by market capitalization.¹

Dog Toys, Whiskey, and the First Amendment: The U.S. Supreme Court Decides *Jack Daniel's v. VIP Products*

By *Conor Tucker*

On June 8, 2023, the U.S. Supreme Court decided *Jack Daniel's v. VIP Products*, a case “about dog toys and whiskey”—items that, as Justice Elena Kagan wrote for the Court, “seldom appear[] in the same sentence.” Whiskey-maker Jack Daniel’s had accused VIP Products of violating trademark law by selling a dog toy marketed as “Bad Spaniels” and designed to look like a bottle of Jack Daniel’s Old No. 7 Whiskey. Applying the so-called *Rogers* test—named for an early Second Circuit ruling in this area—the Ninth Circuit found that “Bad Spaniels” qualified as an expressive work entitled to First Amendment protection as a “humorous” parody. The U.S. Supreme Court unanimously reversed.

To continue reading and for citations, please visit <https://www.wsgr.com/en/insights/dog-toys-whiskey-and-the-first-amendment-the-us-supreme-court-decides-jack-daniels-v-vip-products.html>.

Author of The Tetris Effect Sues Apple and the Tetris Company for Copyright Infringement over Release of the Tetris Movie

By Daniel Xo and John P. McGaraghan

On August 7, 2023, Dan Ackerman, author of the nonfiction book, *The Tetris Effect*, sued Apple, the Tetris Company, and several other parties following the release of the *Tetris* film on Apple TV+ in March 2023. The lawsuit, filed in a New York federal court, alleges that the defendants engaged in willful copyright infringement of *The Tetris Effect*. The lawsuit also claims that the Tetris Company and certain other defendants involved in the creation of the film engaged in unfair competition and tortious interference with business relations.

To continue reading and for citations, please visit <https://www.wsgr.com/en/insights/author-of-the-tetris-effect-sues-apple-and-the-tetris-company-for-copyright-infringement-over-release-of-the-tetris-movie.html>.



Wilson Sonsini is a leading legal services provider on company-side mobile gaming deals, representing 25% of the top 20 companies in the vertical by market capitalization.!



League of Legends Copycat Companies Must Face IP Lawsuit in the U.S.

By Vickie Wang and Kristin Bradley

On January 20, 2022, Riot Games sued Suga and Imba, two video game companies based in Asia, in the Central District of California, alleging that the defendants infringed on Riot's intellectual property by creating a knockoff of Riot's popular multiplayer game, *League of Legends*. The lawsuit claimed that the defendants intentionally mimicked *League of Legends*'s distinctive visual style, characters, and artwork, as well as other visual, audiovisual, and textual elements in *I Am Hero: AFK Tactical Teamfight*. On September 14, 2023, a California federal judge held that the defendants must face the intellectual property suit in California and denied their motion to dismiss based on forum non conveniens.

To continue reading and for citations, please visit <https://www.wsgr.com/en/insights/league-of-legends-copycat-companies-must-face-ip-lawsuit-in-the-us.html>.



Wilson Sonsini is a leading legal services provider on company-side esports deals, representing two of the top five companies in the vertical by total raised.¹

Podcast Episode: Pixels and Profits: Discussing Legal Issues in E-Sports Gaming

Host Mary O'Brien is joined by Wilson Sonsini technology transactions partner Barath Chari as she interviews Parth Naidu, founder and CEO at SIDO, an e-sports research group, to discuss the legal issues in e-sports gaming. Conversation highlights include an introduction to Barath Chari and Parth Naidu and their experience in the gaming industry, the evolution of e-sports industry, the growth of e-sports and legal considerations, insight into dynamics of players and e-sports organizations, key points when negotiating player contracts, intellectual property challenges and opportunities in e-sports, a background on gambling and e-sports and gambling's effects on the e-sports industry, and, looking ahead, what e-sports will look like in the next decade.



To listen, please visit: <https://wsregaming.podbean.com/e/pixels-and-profits-discussing-legal-issues-in-e-sports-gaming/>.



Game On: Rival Games Co-Founders Battle It Out in Court for Alleged Misuse of Funds and Trade Secrets

By Ariel Friedman, Benjamin Hewitt, and Lisa D. Zang

A trade secret dispute between the co-founders of Rival Games, an international online gaming platform, highlights the critical role that trade secrets and trademarks play in the success of these platforms. As alluded in the complaint, the survival of gaming platforms like Rival Games can turn on not just the value of their trade secret technology, but also their brand recognition and consumer loyalty in an increasingly competitive—and crowded—industry.

To continue reading and for citations, please visit <https://www.wsg.com/en/insights/game-on-rival-games-co-founders-battle-it-out-in-court-for-alleged-misuse-of-funds-and-trade-secrets.html>.

Marketing in the Metaverse

By Chloe Delehanty, Brandon P. Leahy, and Aaron D. Hendelman

The metaverse presents exciting new opportunities for brands to engage a new audience through interactive virtual environments and immersive experiences, including with virtual products that cross the digital divide. Many luxury goods companies, for example, now offer NFTs and other digital items under flagship brands that correspond with real-world products in an effort to drive engagement and instill brand loyalty among these new (and generally younger) consumers. Although there are still uncertainties as to how this new space will take shape, a recent jury verdict in the case of *Hermès International, et al. v. Mason Rothschild*, from the Southern District of New York, offers some guidance as to how courts may approach metaverse-related branding issues.

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

Wilson Sonsini is a top legal services provider on company-side peripherals & accessories deals, representing 45 percent of the top 20 companies in the vertical by market capitalization.¹



INDUSTRY
INSIGHT

What industry trends do you predict in the gaming industry for 2024?



Microsoft's acquisition of Activision Blizzard and Savvy's acquisition of Scopely were significant deals

in 2023. We'd expect increased consolidation and M&A activity as valuations settle in. M&A may be a preferred outcome for video game companies who may not be able to raise additional capital or see sufficient growth in performance this year. We've been advising many clients and their boards on navigating through these strategic decisions.

- **Mark Baudler**
(Corporate)



2024 will present continuing trends with the metaverse continuing to grow and the launch of

new VR efforts. The ubiquitousness of AI will be an important factor in these continuing trends as AI will hopefully allow for more efficiency in these offerings. The effort to roll out the cloud streaming of games on TVs through some of the existing services will also be an interesting trend to watch to see if those platforms can achieve success of both mindshare and revenue.

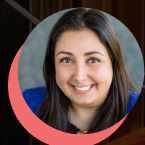
- **Michael Coke**
(Corporate)



As regulations and regulatory scrutiny increases, larger gaming companies will need to continue to

abide by regulations while continuing to be competitive and not stifle innovation. Smaller companies will need to think about what compliance issues they need to worry about spending money on now and which can be deferred until later. I think Wilson Sonsini is well-suited to advise on cutting-edge issues by providing a great balance of business advice and legal risk mitigation based on where a client is in its lifecycle.

- **Chris Paniewski**
(Technology Transactions)

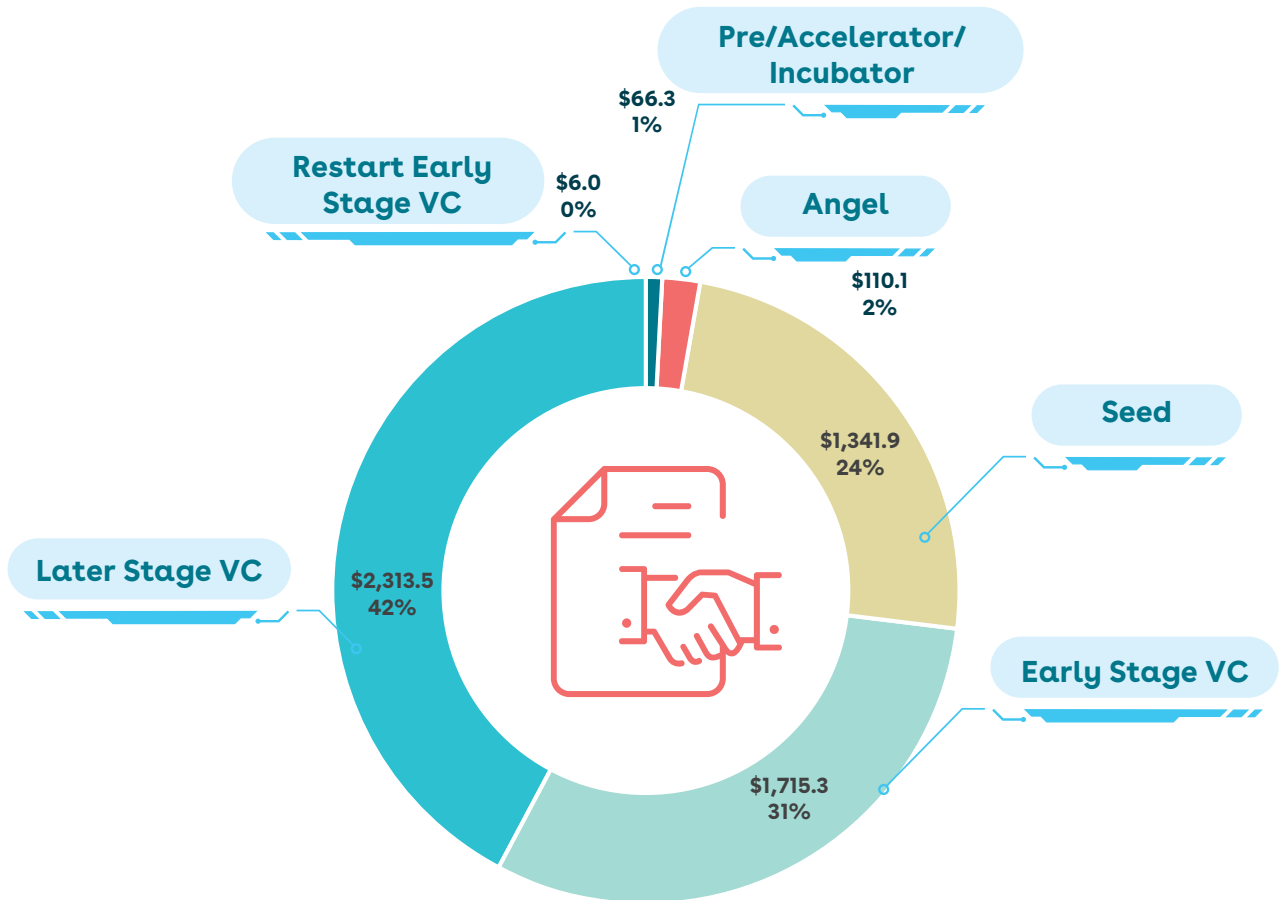


Sticking with the generative AI theme, I predict that the industry will trend towards investing and researching in deeper immersive experiences with multimodal AI-generated content within gaming frameworks (e.g., the Metaverse). Multimodal AI-generated content refers to content that is produced using several data types in unison such as audio, visual, and text. If accomplished, this means that at least within gaming frameworks, we could interact with fully AI generated NPCs, reminiscent of the replicants featured in the classic sci-fi movie Blade Runner that are indistinguishable from human counterparts.

- **Atussa Simon**
(Technology Transactions)

Gaming VC Deal Volume

by Financing Type (2023)¹



Podcast Episode: A Conversation with Jonathan Chan and Justin Woodward

In this special episode, Wilson Sonsini corporate partner Jonathan Chan interviews Justin Woodward, co-founder and creative director of Interabang Entertainment, co-founder of the Media Indie Exchange, the founder of Black Voices in Gaming, and the lead adviser on the Black Game Dev Fund. Conversation highlights include the state of gaming and publishing and the current market, financing trends for developers, working with publishers, managing intellectual property assets, insight into the new gaming platforms, AI within gaming and its impact on independent developers, and an overview of Black Voices in Gaming and the state of underrepresented developers in the gaming industry.



To listen, please visit: <https://wsgregaming.podbean.com/e/a-conversation-with-jonathan-chan-and-justin-woodward/>.

INDUSTRY
INSIGHT

What are some of the key challenges clients might face in the gaming industry in 2024?



The gaming industry in 2024 will likely continue to find ways to integrate crypto assets and blockchain technology; however, the use of crypto assets in particular may be

less common than in the past. Game developers often want to include play-to-earn models, where players earn crypto asset rewards for in-game achievements, incentivizing gameplay and fostering a micro-economy within the gaming environment. Game developers also continue to incorporate Non-Fungible Tokens (NFTs) for unique in-game assets and are incorporating NFTs that can be used across games. Many game developers also seek to provide pathways for such NFTs and other in-game crypto assets to be exchangeable for fiat currencies or may seek to make such in-game assets freely tradeable on centralized or decentralized crypto exchanges. However, integrating these technologies and trading mechanisms comes with significant regulatory considerations and challenges.

- **Mara Alioto**
(Fintech and Financial Services)



Gaming companies 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. And as the use of generative AI in the gaming industry increases in popularity, so too may the host of IP issues faced by gaming companies. Some examples are the copyright ownership of outputs generated by AI models that use copyrighted works scraped from the internet, and the trade secret protection of outputs generated by models that are not trained to differentiate between confidential and nonconfidential information.

- **Lisa Zang**
(Litigation)



Focusing on some of the earlier stage, start-up gaming clients, the funding

environment coming out of 2023 was very challenging. For these clients, running lean, relying on friends and family, and being strategic and purposeful in their decisions will be the key to ride out this current cycle. We encourage these clients to continue to proceed with their great ideas and be able to hit the funding sources. While none of us have a crystal ball, the economic signs for a turnaround all appear to be lining up and we know there is plenty of cash on the sidelines.

- **Michael Coke**
(Corporate)



My kids love online gaming communities (especially Roblox), so as a parent, I can't help but (try to) monitor who is trying to contact them, who they are contacting, and whether their online behavior is appropriate. With the advancement of AI technologies, and increased governmental and regulatory scrutiny of AI technology,

I think gaming industry clients are going to face an even more daunting task of keeping kids' personal information safe and making sure that AI behavior and suggestions are age and content appropriate, especially on platforms that cater to younger gamers. On the other hand, I'm also hopeful that platform owners will be able to use AI to monitor in-game behavior in real-time, which could help create a safer space for younger gamers to play.

- **Adam Bloom**
(Corporate)



I think the challenging funding environment is going to continue well into 2024. This means that game developers who can do more with less will be in better shape to ride out

the storm. Surviving is thriving right now. Blockchain and web3 game developers in particular are going to have a challenging time raising funds but if they can keep their heads down and keep building, I expect the "crypto winter" to thaw by later this year.

- **Adam Shevell**
(Technology Transactions)

START-UP VIDEO SERIES

Join Wilson Sonsini attorneys as they guide you through some of the key legal issues for start-up companies ranging from intellectual property and employment.



Employment

Rebecca Stuart covers employment matters critical to start-ups. This video addresses a selection of common employment agreements and pitfalls, including confidentiality and non-compete agreements, independent contractor agreements, leave laws, and more.



Intellectual Property Protection and Commercialization

Level up with John McGaraghan by learning about intellectual property (IP) law. This video discusses: (1) IP fundamentals, (2) building an IP portfolio, (3) navigating IP risk, and (4) insight into what is important to investors.

Stay tuned for more videos as they become available.

So Much Potential (Competition), So Little "Available Feasible Means": FTC Denied Preliminary Injunction of Meta's Within Acquisition



Wilson Sonsini is a top legal services provider on company-side augmented and virtual reality deals, representing three of the top five companies in the vertical by total raised!



By Michelle Yost Hale and Brendan J. Coffman

On January 31, 2023, Judge Edward Davila of the U.S. District Court for the Northern District of California denied the Federal Trade Commission's (FTC) motion for a preliminary injunction to enjoin the acquisition of VR game studio Within Unlimited, Inc. by Meta Platforms, Inc. (formerly known as Facebook). The FTC did not appeal, leaving Judge Davila's opinion as the final word in "potential competition" theories for the foreseeable future. The result is an unusual case in which both the merging parties and the FTC proclaim vindication. While Meta's satisfaction with the outcome is self-evident, the FTC took the position that Judge Davila's embrace of the potential competition doctrine is important because "a court's opinion can have beneficial interpretations of the law that can help us in future cases down the road, and really chart out a new course." It remains to be seen whether the theoretical inroads accomplished by the unorthodox merger challenge truly yields a boon to enforcers in the future, or whether it is a pyrrhic moral victory.

To continue reading and for citations, please visit <https://www.wsgr.com/en/insights/so-much-potential-competition-so-little-available-feasible-means-ftc-denied-preliminary-injunction-of-metas-within-acquisition.html>.

A dramatic scene set in a dark, rocky cave. On the left, a muscular gladiator with a long grey beard and a bronze loincloth stands in a fighting stance, holding a sword aloft. On the right, a large, detailed lion with its mouth open, showing sharp teeth, roars towards the gladiator. The lighting is dramatic, highlighting the textures of the gladiator's skin and the lion's fur.

UK Regulator Says Game Over to Microsoft/Activision Deal

By Deirdre Carroll, Brendan J. Coffman, and John Sack

On April 26, 2023, the UK's Competition and Markets Authority (CMA) blocked Microsoft's \$68.7 billion acquisition of Activision Blizzard over concerns the deal "would alter the future of the fast-growing cloud gaming market." However, on October 13, 2023, the CMA approved the acquisition, as a result of Microsoft restructuring the deal by transferring the cloud gaming rights to Ubisoft in certain markets addressing the CMA's concerns about competition in the emerging cloud gaming space, clearing the final regulatory roadblock.

To continue reading and for citations, please visit <https://www.wsgr.com/en/insights/uk-regulator-says-game-over-to-microsoftactivision-deal.html>.

FTC Foreclosure Theory “Foreclosed”: FTC Loses Campaign to Block Microsoft’s Purchase of Activision

By Brendan J. Coffman, Robin S. Crauthers, and Deirdre Carroll

On July 10, 2023, the United States District Court for the Northern District of California denied the Federal Trade Commission’s (FTC’s) request to grant a preliminary injunction of Microsoft’s proposed acquisition of Activision Blizzard, clearing a major obstacle on the path to closing. The FTC filed a notice of appeal with the Ninth Circuit. Significantly, the UK’s antitrust regulator, the Competition and Markets Authority (CMA), announced shortly after the denial that it had agreed to a stay of Microsoft’s appeal against the CMA’s prohibition decision. The Ninth Circuit denied the FTC’s appeal in July 2023, in October 2023 the CMA approved the deal, and Microsoft closed its acquisition that same month. The FTC, not satisfied with the outcome, returned the matter to adjudication in September 2023 seeking to block the now closed acquisition.

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EU General Court Confirms Antitrust Fines on Game Publishers for the Geo-blocking of Video Games in the EU

By Jindrich Kloub

On September 27, 2023, the EU General Court (GC) rejected an appeal by Valve Corporation (Valve) of a January 2021 decision by the European Commission (Commission), which found that Valve and five PC video game publishers had restricted competition under Article 101 TFEU by implementing a geo-blocking strategy for certain PC video games. The game publishers cooperated with the Commission's investigation and received reduced combined fines of €6.3 million. Valve was fined €1.6 million and challenged the Commission's decision before the GC, which has now rejected Valve's appeal.

To continue reading and for citations, please visit <https://www.wsgr.com/en/insights/eu-general-court-confirms-antitrust-fines-on-game-publishers-for-the-geo-blocking-of-video-games-in-the-eu.html>.

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Considering the global nature of the gaming industry, what potential cross-border legal challenges do you foresee for game companies in 2024?



Given the global nature of the gaming industry, the integration of crypto assets and blockchain technology presents

unique cross-border legal challenges. Jurisdictions have varying regulations for crypto assets and blockchain technology, leading to a complex legal landscape for gaming companies. While game developers may choose not to include crypto assets in their games for U.S. users, they still must adhere to the regulations of each other jurisdiction in which they provide crypto assets, navigating the patchwork of regulations to avoid legal pitfalls.

- **Mara Alioto**
(*Fintech and Financial Services*)



The overall cross-border trends remain fascinating to me as a holder of an undergrad degree in political economy. The different approaches of the U.S., EU, and China present such a contrast in approaches and state activity that directing impact the gaming industry. As some examples: In the U.S., we see an antitrust atmosphere that seemingly views any deal as a bad deal that will stifle competition; we have the active plaintiff's bar suing the biggest gaming participants for various alleged wrongdoings; and regulators in the administrative state follow suit such as with the proposed COPPA rule that would place significant new restrictions on companies that collect personal information from children under 13. The EU's jumping out front in AI regulation will set some guardrails that impact game developers worldwide. Finally, the Chinese government proposed regulation in December 2023 caused tens of billions of market cap to be wiped from Chinese gaming company stocks shows the reach of the state action, all in a market that is very difficult for outsiders to enter. As gaming companies navigate these various changing regulatory environments, they will continue to require effective legal, strategic, lobbying, and other advice.

- **Michael Coke**
(*Corporate*)



I think the biggest concern will continue to be a fragmented regulatory environment that impacts gaming companies who are publishing internationally. We saw this play out with privacy laws in the EU and

now certain states in the U.S., and a similar trend is likely to follow around the regulation of AI. The EU AI Act may or may not impact many gaming companies (as it will depend on whether and how their use of AI impacts fundamental rights of individuals), but the Biden administration has already signaled a willingness to take a multipronged approach to regulating AI. It remains to be seen how this results in legislation or regulatory action (e.g., by the FTC).

- **Adam Shevell**
(*Technology Transactions*)



All of national security regulatory issues in which I'm involved are likely to be increasingly thorny in 2024: i) foreign investment reviews, which are potentially relevant whenever a company receives foreign investment or is acquired by a foreign party; ii) anti-money laundering laws, which prohibit the transfer of illegally derived funds and which also require registration and other actions by certain businesses that transfer virtual currency or other value; and iii) sanctions, which are limitations on doing business (including providing gaming experiences or other products or services) to certain countries and regions, businesses, groups, and individuals.

- **Stephen Heifetz**
(*National Security*)

Incoming: California's Digital Financial Assets Law Dropping July 1, 2025

By Stephen R. Heifetz and Troy K. Jenkins

On October 13, 2023, California Governor Gavin Newsom signed into law California Assembly Bill 39, California's Digital Financial Assets Law (DFAL). DFAL will regulate "digital financial assets" and require companies engaged in a "digital financial asset business activity" to obtain licenses from the California Department of Financial Protection and Innovation (DFPI), subject to certain exceptions, similar to New York's BitLicense. With the DFAL, California becomes the third state following New York's lead, after Louisiana, in establishing a licensing regime specific to crypto assets. DFAL goes into effect on July 1, 2025, but some of the obligations arising from this new law will not be clear until a forthcoming rulemaking process is complete.

To continue reading and for citations, please visit <https://www.wsgr.com/en/insights/incoming-californias-digital-financial-assets-law-dropping-july-1-2025.html>.



Wilson Sonsini is a leading legal services provider on company-side blockchain gaming deals, representing 40% of the top 10 companies in the vertical by total raised.¹

Bungie Wins Landmark Lawsuit Against Destiny 2 Player Who Harassed a Bungie Employee

By Daniel Xo and Kristin Bradley

On July 11, 2023, a trial court in the State of Washington issued a groundbreaking opinion which provides employers with a legal path to protect their employees from online abuse and harassment from third parties suffered while performing their employment obligations. The court declared that companies can recover damages and expenses incurred from investigating and taking protective measures against individuals who have targeted company employees with harmful online behaviors such as “doxing,” “trolling,” cyberstalking, and other methods of online and telephonic harassment. This decision sets an important precedent that empowers employers to hold wrongdoers legally accountable for harmful actions directed at their employees over the internet and through similar mediums.

To continue reading and for citations, please visit <https://www.wsgr.com/en/insights/bungie-wins-landmark-lawsuit-against-destiny-2-player-who-harassed-a-bungie-employee.html>.

Wilson Sonsini is a top legal services provider on investor-side console/PC deals!



Podcast Episode: Swords and Shields: Forging Strong Attorney-Client Relationships

Host Mary O’Brien is joined by Wilson Sonsini corporate partner Craig Sherman as she interviews former Bungie General Counsel Don McGowan to discuss forging strong attorney-client relationships. Conversation highlights include Don McGowan’s career path, what it means to be a General Counsel, forming attorney-client relationships and ethical obligations, factors to consider when choosing an attorney to represent them, best practices to maximize value from law firm relationships, building trust between attorneys and clients, takeaways from Bungie’s recent acquisition by Sony, and advice to gaming companies when engaging or working with attorneys.



To listen, please visit: <https://wsgregaming.podbean.com/e/swords-and-shields-forging-strong-attorney-client-relationships/>.

Rec Room Sues Player for Copyright Infringement and Other Claims Following Alleged Misconduct and Hacking Activities on Its Gaming Platform

By Daniel Xo

Rec Room, Inc. (Rec Room), developer of the eponymous Massive Multiplayer Online (MMO) video game *Rec Room*, has sued one of its players in a Washington federal court for violations of its terms of service arising from the posting of discriminatory content on the *Rec Room* platform and the development and distribution of “hack” software that provides an unfair competitive advantage to *Rec Room* players. The lawsuit also claims that the defendant’s use and sale of his hack software to other players infringes on Rec Room’s copyrights.

To continue reading and for citations, please visit <https://www.wsgr.com/en/insights/rec-room-sues-player-for-copyright-infringement-and-other-claims-following-alleged-misconduct-and-hacking-activities-on-its-gaming-platform.html>.



Wilson Sonsini Secures Ninth Circuit Win for Roblox

On December 21, 2023, the U.S. Court of Appeals for the Ninth Circuit affirmed the Northern District of California’s dismissal of a class-action complaint that accused Roblox of illegally denying minors refunds for their purchases of virtual currency—called “Robux”—for use in Roblox’s metaverse.

The thrust of the claim against Roblox was that the plaintiff was a minor who disaffirmed, or voided, his contract for purchases of Robux by filing suit—and because he had not yet received a refund, Roblox violated state law by not respecting his disaffirmance. As an alternative theory, the plaintiff claimed that the contract was void ab initio, meaning that it never existed in the first place under a statutory exception that prohibits minors from entering into contracts “relating to any personal property not in the immediate possession or control of the minor.” Cal. Fam Code § 6701(c).

The district court twice dismissed the case for lack of a ripe controversy under Article III of the U.S. Constitution. It noted that the plaintiff never requested a refund before filing suit. And, given Roblox’s terms of use allow for refunds as “required by law,” the district court held that requesting a refund based on a minor’s disaffirmance right would not have been futile.

The Ninth Circuit affirmed. After agreeing with the district court that the plaintiff’s voidability theory was not ripe, it held that the plaintiff’s alternative theory—that his purchases were void to begin with—was ripe but failed on the merits. The plaintiff argued “that, because Roblox reserved the right to revoke his license to use Robux, his purchases involved property not in his sole possession or control.” The panel rejected this argument, holding that Robux remained in the minor’s “immediate possession or control” for the purposes of § 6701(c)—even if it wasn’t solely or exclusively possessed or controlled by him given Roblox’s reservation of rights to revoke it. This was a significant issue for entire online industries, as the panel recognized when noting that a contrary holding “would largely preclude minors from purchasing software licenses.”

The Wilson Sonsini team that represented Roblox in the matter included [Mark Yohalem](#), [Tom Wakefield](#), and [Carmen Sobczak](#).

Select Recent Gaming Client Highlights

Wilson Sonsini Advises Roblox on Transaction with Jido

On March 15, 2023, Jido, which uses cutting-edge computer vision to quickly interpret visual data, announced it has completed a transaction with Roblox Corporation, a global platform for bringing millions of people together through shared experiences. The transaction will allow the Jido team the opportunity to continue advancing its computer vision technology at Roblox. Wilson Sonsini Goodrich & Rosati advised Roblox on the transaction.



Wilson Sonsini Advises Roblox on Acquisition of Speechly

On September 20, 2023, Roblox announced it acquired Speechly, a leading provider of speech recognition tools for voice chat moderation. Founded in 2016, Speechly's mission is to use voice technology to enable more delightful human computer voice interactions, and to empower and enhance communication between people. Speechly developed a speech recognition product that allowed fast, real-time and cost-efficient voice moderation helping developers reduce toxic behavior in online communities. Roblox is building the leading platform for 3D immersive communication and connection. With the addition of Speechly's new voice features, Roblox is solving new challenges—moderating spoken language in real time. Terms of the transaction were not disclosed. Wilson Sonsini Goodrich & Rosati represented Roblox in the transaction.

Wilson Sonsini Advises Anthropic in Connection with Amazon Partnership

On September 25, 2023, Amazon announced it is investing up to \$4 billion into the AI start-up Anthropic. As part of the deal, AWS will become the “primary” cloud provider for Anthropic, with the AI company using Amazon’s cloud platform to do “the majority” of its AI model development and research into AI safety, the companies said. That will include using Amazon’s suite of in-house AI chips and collaborating on the development of future AI chips. Anthropic made a “long-term commitment” to offer its AI models to AWS customers, Amazon said, and promised to give AWS users early access to features such as the ability to adapt Anthropic models for specific use cases. In Anthropic’s press release, it said that Amazon developers and engineers will be able to build on top of Anthropic’s models to incorporate generative AI capabilities into their work. Anthropic further emphasized that Amazon’s minority stake would not change its corporate governance structure nor its commitments to developing AI responsibly, and that Anthropic and Amazon would work together to ensure responsible use of Anthropic’s products. Wilson Sonsini Goodrich & Rosati represented Anthropic in the commercial aspects of the transaction.



Wilson Sonsini Advises iSIZE on Acquisition by Sony Interactive Entertainment

On November 2, 2023, Sony Interactive Entertainment (SIE), the company behind PlayStation, announced that it had entered into an agreement to acquire iSIZE Limited, a UK-based company specializing in deep learning for video delivery. The terms of the deal were not disclosed due to contractual commitments. Wilson Sonsini Goodrich & Rosati advised iSIZE on the transaction.



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.



As someone that has enjoyed playing video games since I was a kid, I love that I now get to work with

companies that take the imagination even further than the 8-bit graphics of my childhood ever could. Specifically, as a corporate attorney, I get to help the next generation of gaming companies in different aspects of their life cycle, including capital raises and liquidity events. In fact, I’ve been afforded the opportunity to work with several nascent online gaming companies and platforms. I particularly enjoy transactions that require out-of-the-box thinking or have novel challenges. Maybe that’s why I gravitate towards puzzle-based RPGs in my free time.

- **Adam Bloom**
(Corporate)



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)



As a corporate partner at Wilson Sonsini over the past 25 years, I’ve had the privilege to advise elite technology

companies like Tesla and Dolby (including their IPOs) and marquee names in gaming like Epic and Krafton. My practice spans across the full life cycle of technology companies; from early and late-stage private companies to M&A transactions, IPOs, and public companies. Most recently, I’m advising a number of gaming start-ups in a16z’s Speedrun program and notable AI companies like Inflection AI and Eleven Labs.

- **Mark Baudler**
(Corporate)



Having been an avid gamer of mostly FPS variants, I am excited to advise gaming clients at all stages of development, from early start-ups looking to secure funding to investors in the gaming space. A personal career highlight is when I represented Roblox in its direct listing in 2021, and I have assisted them on their journey as a public company. For once my work had something that related with my teenage daughter—an avid Roblox player going on six years or so—as she ages up with Roblox.

- **Michael Coke**
(Corporate)



Before I joined Wilson Sonsini, I led product operations and business development for various start-ups in Asia. This included a role at a gaming publisher start-up backed by IDG Capital, where I honed my skills in cultivating strategic partnerships and navigating diverse online media and platforms to maximize game performance. Now, at Wilson Sonsini, I work alongside innovative start-up clients and help navigate them through complex legal landscapes with an eye towards practical, business-oriented solutions.

- **TJ Li**
(Corporate)

Meet the Panelists (cont.)



Video games occupy a fascinating intersection where art, narrative, technology, and imagination collide. As a

technology attorney and a creative mind, I adore working with companies who are building worlds, developing adventures, or establishing the technology that delivers new entertainment experiences. I have been fortunate to work with both large studios and publishers such as Bungie, Roblox, Epic Games, and Tencent, as well as up-and-coming studios working on AAA games, web3-enabled games, or even casual games. I thoroughly enjoy working with video game developers and publishers to help them achieve their visions of bringing new and wonderful adventures to fans worldwide.

- **Adam Shevell**
(Technology Transactions)



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. More recently, I've been helping many new clients who are leaving their day jobs to found new and exciting companies in gaming. My role is to set them up for success (and funding!) from an IP and commercial perspective.

- **Chris Paniewski**
(Technology Transactions)



As a Wilson Sonsini attorney, I've negotiated multimillion dollar deals for clients opposite the biggest game companies

and publishers around the world. Prior to becoming an attorney, I founded a machinima and game company; helped found the world-renowned graduate game program (the SMU Guildhall); and designed and developed a massively multiplayer online game that allowed players to engage with sports legends like Derek Jeter. As a former game developer turned attorney, my practical understanding of what matters to game companies gives my clients a unique advantage when negotiating contracts.

- **Atussa Simon**
(Technology Transactions)



I specialize in FDA regulatory compliance as well as and general consumer products innovation and compliance. In addition to my work on food and drug law, I handle a broad range of regulatory requirements

(including those of the Consumer Product Safety Commission and Federal Trade Commission) governing the regulation and promotion of a wide variety of consumer goods and emerging consumer technologies, including gaming hardware and software. I counsel U.S. and foreign manufacturers, distributors, retailers, and importers of regulated products in all phases of their product lifecycle, from innovation through product commercialization and ongoing post-market compliance, including product safety monitoring and recalls.

- **Georgia Ravitz**
(Regulatory and Compliance)



My practice specializes in consumer product regulation, innovation, compliance, safety, and recalls. I provide legal counsel to major global and domestic retailers, importers, distributors, and manufacturers of consumer

products, including many in the gaming and electronics space, in all aspects of consumer product regulation, product safety and compliance, and product labeling and advertising claims. I also represent and counsel on product safety recalls in the U.S. and abroad and have experience in the management and defense of civil and criminal investigations conducted by governmental agencies that regulate product safety and advertising (including the Consumer Product Safety Commission, Customs and Border Protection, and Federal Trade Commission).

- **Scott Cohn**
(Regulatory and Compliance)



Meet the Panelists (cont.)



I am a national security attorney who served in several U.S. government agencies—the CIA, Department of Justice, and Department of Homeland Security. I focus primarily on three sets of regulatory issues: i) foreign investment reviews, which are potentially relevant whenever a company receives foreign investment or is acquired by a foreign party; ii) anti-money laundering laws, which prohibit the transfer of illegally derived funds and which also require registration and other actions by certain businesses that transfer virtual currency or other value; and iii) sanctions, which are limitations on doing business (including providing gaming experiences or other products or services) to certain countries and regions, businesses, groups, and individuals.

- **Stephen Heifetz**
(National Security)



As a fintech and financial services attorney, I help gaming clients navigate the federal securities laws as they relate to gaming, in particular when gaming clients want to include crypto assets or other blockchain-based features in their games.

- **Mara Alito**
(Fintech and Financial Services)



As an IP litigator, I represent entertainment, media, and gaming clients in complex trade secret, patent, copyright, and other IP and commercial litigation matters. I also regularly advise clients in thorny situations involving IP issues, such as trade secret claims brought when a key employee jumps to a competitor. My recent matters include representing a multinational tech company in a Copyright Royalty Board proceeding to determine industry-wide statutory royalty rates for music streaming, and defending an international e-commerce platform in preliminary injunction proceedings involving copyright and trademark infringement claims brought by a competitor.

- **Lisa Zang**
(Litigation)

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The Scramble: 2022 Gaming Legal Year in Review

In this inaugural issue of The Scramble, our Electronic Gaming Group (EGG) compiled legal news from the front lines of gaming. Find out the sectors being funded, the state of intellectual property in gaming, statistics on past trends, and what our gaming lawyers are looking forward to in 2023. The Scramble also features a collection of EGG’s industry-leading publications from the last year.



ENDNOTES

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

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