

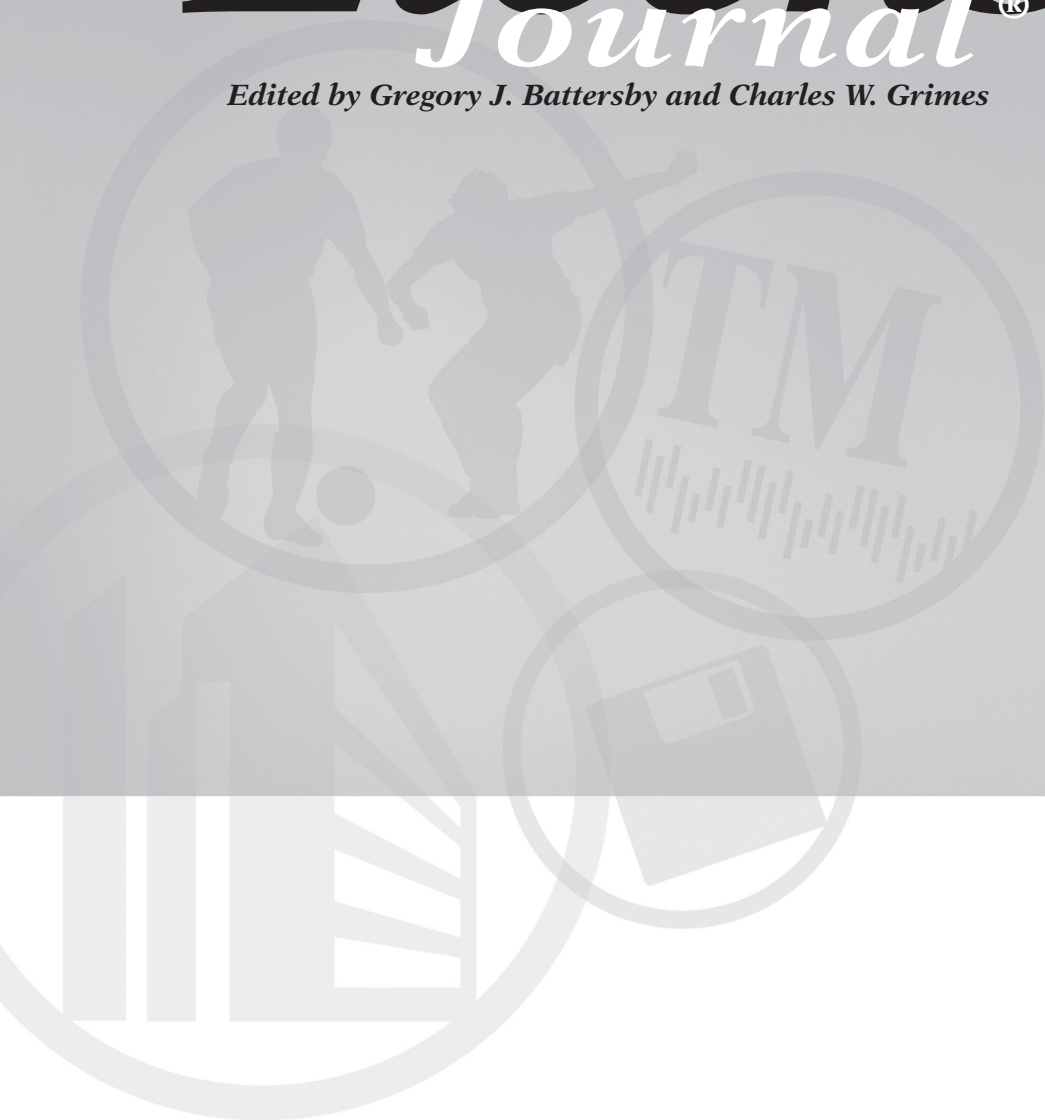
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# Video Games

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## Don't Get Cheesed—Protect Your Video Game's Intellectual Property

To say that the video gaming industry is booming would be quite an understatement. For years, gaming has been one of the fastest-growing segments of the worldwide entertainment industry. Statista notes that in 2022, global revenues topped \$200 billion for the first time ever.<sup>1</sup>

Gaming has had a profound influence on the entertainment industry—recording artists routinely jockey for inclusion in top games, and movie and television producers mine games to bring stories to the screen. Gaming has even helped drive sound, graphics, control, and processing innovations in personal computing.

From source code and graphics to unique characters, iconic environments, and embedded music, online games are multi-layered, content-rich creations whose intellectual property (IP) can easily be ripped off. For game developers—whether your company is a AAA producer or you're a basement hacker with a great idea—protecting the IP in your game is crucial.

## Protect Your Game's Intellectual Property

How, then, to safeguard what you've worked so hard to create?

In general, you should document what you've created. This provides an outline for your IP legal team of the scope of what needs to be protected. Note any elements of the game that are particularly new and creative or representative of your brand. Be sure to include any underlying code you or your team have written. Consider how you're going to bring the game to market and to your business plan.

## IP Attorneys Help Secure Your Creation

With these broad items in place, now's the time to engage an IP attorney. Your attorney will begin an in-depth analysis of the game and help with the following:

- **Employment agreement audit:** This ensures everyone who creates content for your company has signed agreements that obligate them to assign the creations to the company.
- **Trademark clearance:** An important, money-saving process to provide certainty that no one else previously registered the same concepts.
- **Trademark application—U.S. and abroad:** This essential step strategically files word marks and design marks in the U.S. and other key foreign countries.
- **Copyright application:** Copyrights are a powerful,

inexpensive way to cover any creative work and they're enforceable overseas.

- **Design patent filing—U.S. and abroad:** If you have a character with a distinctive shape, consider filing for design patents to give you a broader IP portfolio to enforce.

With these foundational elements in place, you can now advance to the next level!

## Managing Your Gaming IP Portfolio

The second important half of smart IP management is aggressively monitoring the effort to legally protect. Once you've taken the game and its trademarks public, you can bet there will be nefarious players who will attempt to profit from your property.

Just as a strong legal framework of trademark and copyright protections are essential, so too is aggressive management. Your trademark attorney continues to work on your behalf through:

- **Trademark monitoring:** Monitor your key trademarks to guard against anyone stealing your name. If someone tries, move quickly to oppose their trademark application.
- **Infringers and squatters:** Forceful, persuasive cease-and-desist letters will let infringers and squatters know that you intend to enforce your work.
- **Anti-counterfeiting measures:** Identify, investigate, and shut down counterfeit operations as soon as possible. Let the infringers know

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they're wasting their money by copying your IP.

- **Infringement litigation:** Engage litigation counsel to act decisively and recover damages for egregious infringers by using the court system. U.S., Canadian and EU-focused efforts can be especially successful.
- **Domain name recovery:** If someone is using your trademark in a domain to steal traffic, you can reclaim that domain and redirect it to your legitimate website via a Uniform Domain Name Dispute Resolution Policy (UDRP) proceeding.
- **Agreement creation and negotiation:** Make sure you

have rock-solid agreements with partners and licensees that protect your IP rights and the methods in which they are exploited.

- **Take down notices:** Stay on top of infringers by sending Digital Millennium Copyright Act (DMCA) Notice letters to companies that host infringing content (*i.e.*, Amazon, Etsy, Walmart).

While this list may seem long and look expensive, consider the costs of *not* providing adequate protection for your game—lost revenue amplified by backfitting protections to your game. Or even worse, another entity copying and protecting your creation as their own.

Experienced IP counsel will build adequate protections and conduct thorough trademark and copyright maintenance for the life of your game. And remember, should you need to litigate for infringement, you may be entitled to reimbursement for your attorney fees and statutory damages.

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*Matthew Cutler is a Principal with Harness IP in their St. Louis office. Matt's practice is focused on delivering practical, battle-tested advice to more effectively manage the IP portfolios of individuals and corporations, including game creators and production companies. He also is experienced in intellectual property litigation.*

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1. <https://www.statista.com/topics/1680/gaming/#topicOverview>.

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