

Summary of Video Game Case Law

Case Name	Date	Jurisdiction	Topic & Description	Summary
Atari, Inc. v. Williams	1981	Cal. Dist. Ct.	Copyright/TM	Court found nothing protectible in the "strategy" of "Pac-Man"; "Jawbreaker" does not infringe.
America's Best Family Showplace Corp. v. City of New York, Dept. of Bldgs.	1982	NY Dist. Ct.	Free Speech	Court refused an injunction against a New York bylaw because it did not recognize video games as free speech.
Atari, Inc. v. Tyrom Inc.	1982	Ill. Dist. Ct.	Copyright	Court held that Tyrom's "Gobbleman" contained symbols, characters, and non-functional design features too similar to "Pac-Man"; liable for infringement.
Atari, Inc. v. Video Amusements of Canada, Ltd.	1982	Can. FCTD	Copyright	One of the first Canadian cases; question for trial was whether copyright extended to source code.
Magnavox Co. v. Mattel, Inc.	1982	Ill. Dist. Ct.	Patent	First patent case involving patent for a computer-based video game with a microprocessor; Magnavox's "pioneer patent" entitled to the broadest protection possible.
Nintendo of America, Inc. v. Elcon Industries	1982	Mich. Dist. Ct.	Copyright	Nintendo successful in seeking an injunction against a "Donkey Kong" copycat.
Williams Electronics Inc. v. Artic International, Inc.	1982	US CA	Copyright	Key early case establishing the elements of video games that are protected by copyright
Midway Mfg. Co. v. Artic International Inc	1983	US CA 7th Cir.	Copyright/Mods	Another important early copyright decision, considering whether user-altered sequence of visuals can be called a derivative work.
Midway Manufacturing Co. v. Dirkschneider	1983	Neb. Dist Ct	Copyright/TM	Court finds defendants liable for copyright and TM infringement after they sold games "strikingly similar" in many aspects to Midway's games.

Universal City Studios, Inc. v. Nintendo Company Inc., Nintendo of America, Inc	1984	US CA	TM	The beginning of a long, arduous legal battle between Universal and Nintendo over whether "Donkey Kong" infringed Universal's rights in "King Kong". The courts ultimately found that it did not and there was no confusion between the marks.
Universal City Studios, Inc. v. Nintendo Company Inc., Nintendo of America, Inc	1985	NY Dist. Ct.	Copyright	See above. In this case, Nintendo also counterclaimed for tortious interference with contracts.
Universal City Studios, Inc. v. Nintendo Company Inc., Nintendo of America, Inc	1986	US CA	TM	The appeal of the above the case. The Court of Appeal upheld the trial court's decision.
Irwin Toy Ltd. v. Quebec (AG)	1989	SCC	Free Speech	A seminal freedom of expression case in Canada, holding the commercial speech is protected under the Charter, but that the legislature was justified in restricting advertising aimed at children.
Nintendo of America, Inc. v. Magnavox Co.	1989	NY Dist. Ct.	Patent	Nintendo sought to challenge Magnavox's "pioneer patent" in video game systems; Nintendo failed to meet certain burdens and was unsuccessful.
Watters v. TSR, Inc	1990	US CA	Game Violence/Negligence	An unsuccessful action in negligence against the manufacturer of "Dungeons and Dragons" following an avid fan's suicide.
Accolade, Inc. v. Distinctive Software, Inc	1990	Cal. Dist. Ct.	Copyright	An action brought against the defendant, a licensee, alleging that they developed a similar game for a competitor; court found that the plaintiff did not own the rights to the source code.
Morse v. Nintendo of America, Inc.	1990	Cal. Dist. Ct.	Anti-trust/Jurisdiction	One of a number of anti-trust actions brought against Nintendo in the early nineties; Nintendo unsuccessfully challenged the court's jurisdiction to hear the anti-trust case.
State of New York v. Nintendo of America, Inc.	1991	NY Dist. Ct.	Anti-trust	Following the settlement of the anti-trust cases, the Attorneys General challenged the fairness of the settlement agreement. Nintendo was required to pay money to both consumers and the states.

<u>New York ex rel. Abrams v. Nintendo of America, Inc.</u>	1991	NY Dist. Ct.	Anti-trust	Another challenge of the fairness of the settlement agreements, denied.
<u>Nintendo of America Inc. v. 798824 Ontario Inc.</u>	1991	Can. FCTD	Mods/Infringement	Nintendo was successful in this action against a company selling multi-game cartridges.
<u>Nintendo of America Inc. v. Camerica Corp</u>	1991	Can. FCTD	Mods/TM	Nintendo was unsuccessful in this action against the maker of Game Genie, a device which allowed players to change the playability of games; Nintendo was unable to show irreparable harm and the injunction was denied.
<u>Midway Mfg. Co. v. Omni Video Games Inc.</u>	1991	US CA	Copyright/Seizure	An action to release infringing arcade games impounded as part of an earlier action; impounding unnecessary, games released.
<u>Lewis Galoob Toys, Inc. v. Nintendo of America, Inc.</u>	1992	US CA	Copyright	Nintendo's challenge to the Game Genie in the US; Game Genies did not create a derivative work, and the court refused to grant an injunction.
<u>Nintendo of America, Inc. v. Dragon Pacific International</u>	1994	US CA	Copyright/TM	Nintendo brought an action against a Taiwanese company manufacturing multi-game cartridges containing illegal copies of Nintendo's games.
<u>Midway Manufacturing Co. v. Publications International Ltd.</u>	1994	Ill. Dist. Ct.	Copyright/TM	An application for summary judgment brought against the publisher of a "Mortal Kombat" strategy guide; application dismissed as the issues raised were not appropriate for summary proceedings.
<u>Capcom U.S.A., Inc. v. Data East Corp</u>	1994	Cal. Dist Ct	Copyright	An injunction sought against the publisher of "Fighter's History" by the owner of "Street Fighter" alleging copyright infringement; despite finding that the defendant deliberately tried to copy the overall style of "Street Fighter", the court did not allow the injunction, holding that the controller sequences for moves were not protectable, and that the similarities were not sufficient to infringe.
<u>Nintendo of America, Inc. v. NTDEC</u>	1995	US CA	Copyright/TM	Unsuccessful appeal by Taiwanese company found liable for infringement; statutory damages awarded.

<u>Interactive Network v. NTN Communications</u>	1995	Cal Dist. Ct.	Copyright/TM	Interactive applied for declaratory judgment that its football gaming system did not infringe NTN's "QB1"; NTN counterclaimed for copyright and trade-dress infringement; the court held that NTN had failed to prove infringement, and that protection of trade-dress is only available where the features of the product are non-functional.
<u>Gussin v. Nintendo of America, Inc.</u>	1995	US CA	Patent	An action brought by the inventor of a electronic painting systems against Nintendo claiming that "Mario Paint" infringed his patent; he was unsuccessful and did not provide sufficient facts to support his claim.
<u>Nintendo of America v. Computer & Entertainment Inc</u>	1996	Wash. Dist. Ct.	Mods/Copyright	The defendant marketed "SuperUFO", a hardware mod that allowed users to copy and play copied games on Nintendo's console; as there were no non-infringing uses for the game, the court granted the injunction.
<u>Alpex Computer Corporation v. Nintendo Company, Inc.</u>	1996	US CA	Patent	Nintendo successfully appealed an award of \$253M to Alpex for patent infringement; Nintendo in fact improved on a different, prior patent.
<u>Nintendo of America v. Brown</u>	1996	US CA	Copyright/TM	Brown was found liable for selling pirated copies of Nintendo game cartridges.
<u>Sega Enterprises Ltd. v. MAPHIA</u>	1996	Cal. Dist. Ct.	Copyright	Sega sued the operator of a BBS that made its games available for download to users; the court found that download rights were predicated on users upload other copyrighted games, and the court found MAPHIA liable for contributory infringement.
<u>Nintendo of America Inc. v. Prima Communications Inc.,</u>	1997	Wash. Dist. Ct.	Copyright	Nintendo applied for an injunction against the publisher of a guide book for "Goldeneye 007"; the court held that the maps contained in the guide were too small a portion of Nintendo's registered copyright and thus the injunction did not meet the test of demonstrating a likelihood of success.
<u>Ahn v. Midway Mfg. Co</u>	1997	Ill. Dist Ct	Copyright	The plaintiffs were models for characters in "Mortal Kombat" and sued for use of their likenesses; court found that they had signed waivers, dismissed claim.

Roginski v. Time Warner Interactive, Inc	1997	Penn. Dist Ct	Copyright	Plaintiff alleged that Time Warner, Sega and Atari had used a character from his book "Awesome Possum" in their video game and related print material; court found that the defendants did not have access to the Plaintiff's material, and work was not similar enough to presume access; claim dismissed.
Micro Star v. FormGen Inc.,	1998	US CA	Mods/Copyright	The defendants marketed new levels for "Duke Nukem 3-D", created by users using a build editor included with the game but publicly available for free on the Internet; MicroStar argued these were derivative works and the court agreed.
GE v. Nintendo Co	1999	US CA	Patent	GE appealed a lower court ruling dismissing their patent infringement claim against Nintendo and was unsuccessful again.
Nintendo of America Inc. v. Battery Technologies Inc	2001	Can. FCTD	Patent	Nintendo had brought a passing off and patent infringement action against the maker of a battery charger device for the Gameboy; this was an application to strike the counterclaim of Battery Technologies; court found the equitable claims were being used as a sword rather than shield, struck counterclaim.
American Amusement Machine Association v. Kendrick	2001	US CA	Game Violence/Free Speech	One of the first cases dealing with a ban on violent video games; the appellate court held that video games were protected as Free Speech, and that there was no compelling justification for the restriction; injunction granted.
Benoit v. Nintendo of America, Inc.	2001	Lsa. Dist. Ct.	Personal Injury	A case dealing with expert evidence, in the context of claim that certain video games cause epileptic seizures.
Wilson v. Midway Games	2002	Conn. Dist Ct	Game Violence/Negligence	Action stemming from death of child attributed to violence in "Mortal Kombat"; the court held that, even accepting the Plaintiff's argument that the game caused violence, the speech of the video game was protected unless it was an "incitement to violence", which it was not.

Kabushiki Kaisha Sony Computer Entertainment v. Stevens	2002	Federal Court (Australia)	Mods/Copyright	Playstation mod chip maker sued under Australia's copyright act for circumventing copyright protection measures.
James et al. v. Meow Media	2002	US CA	Game Violence/Negligence	Parents of school-shooting victims sued makers of video games and movies for products which they alleged caused the shootings; the Court of Appeal agreed with the lower court that the defendants were not under a duty to protect the victims and it was not foreseeable that the defendant's products would incite murder.
Morrison Entertainment Group, Inc.v.Nintendo of America, Inc	2003	US CA	TM	The Plaintiff was unable to show confusion between Nintendo's mark and their "Monster in My Pocket" mark.
World Wide Fund for Nature et al v. World Wrestling Foundation	2003	English CA	TM	WWF held not to be liable for the actions of its licensee, THQ, which continued to use a mark subject to a 2002 injunction.
Interactive Digital Software Association et al. v. St. Louis County, Missouri, et al.	2003	Federal Court	Free Speech/Game Violence/Legislation	Another ordinance seeking to restrict video game sales and display to minors; the county was unable to produce evidence of harm and the court declared the law unconstitutional.
321 Studios v. Metro Goldwyn Mayer et al	2004	Cal. Dist Ct	DMCA/Free Speech	321's DVD copying software violated the DMCA, even though the court recognized that making backup copies of DVDs for personal use is "fair use", and legal.
Jordan Spencer Jacobs v. Nintendo of America, Inc.	2004	US CA	Patent	The Court found that a licence granted by the Jacob to a non-party, gave the non-party's customers (i.e. Nintendo) an implied sublicense to use the patented technology to make, use and sell goods that infringed Jacobs patent without interference by Jacob.
Kabushiki Kaisha Sony Computer Entertainment v. Ball	2004	UK High Ct. (Ch)	Mod/Copyright	Action against Playstation mod chip maker under UK Copyright Act for circumventing copyright protection technology.
Video Software Dealers Association v. Norm Maleng	2004	Wash. Dist. Ct	Free Speech/Game Violence/Legislation	Washington State's attempt to ban violent video games; court found the law unconstitutionally vague and not narrowly tailored to further a compelling state interest.

<u>David & Associates v. Internet Gateway, Inc.</u>	2005	US CA	Copyright/TM	The defendants created reverse engineered the Blizzard software to allow users to play both real and pirated versions of the Blizzard games on their servers. The Court of Appeal upheld the District Court's finding of copyright infringement, circumvention of copyright protection systems, trade-mark infringement and breach of the user agreements.
<u>Biggs v. Bass Pro Outdoor World LLC</u>	2005	Texas Dist. Ct	Copyright	As much about jurisdiction as copyright, the Defendants were found to have breached the Plaintiff's copyright for including his photographed images in their arcade games; the court assumed jurisdiction under the "stream of commerce" theory.
<u>Frosty Treats, Inc. v. Sony Computer Entertainment America, Inc.</u>	2005	US CA	TM	Plaintiff failed to prove that its mark had acquired secondary meaning or that there was confusion with the character in Sony's Twisted Metal.
<u>R. v. Hamilton</u>	2005	SCC	Game Violence/Criminal Liability	Case considering the test for "counselling" a criminal offence in Canada, with specific commentary on whether movies and video games depicting violence qualify as "counselling".
<u>Sony Computer Entertainment America, Inc. v. Filipiak</u>	2005	Cal. Dist Ct	Mods	Sony sued for injunctive relief and statutory damages under the DMCA against an on-line mod chip supplier and was awarded \$6M in damages.
<u>Team Play Inc. et al. v. Boyer</u>	2005	Ill. Dist Ct	Copyright	Plaintiff sought declaration that its game did not infringe an earlier game; not enough similarities between games and the similarities were between unprotectible ideas.
<u>Topheavy Studios, Inc. v. Doe</u>	2005	Texas Dist Ct	Likeness and consent in game	Minor who appeared topless in a video game claimed she did not consent to her likeness being used, despite signing a waiver; court held that the First Amendment doesn't give Topheavy the right to use the plaintiff's likeness to promote a commercial product if the plaintiff didn't consent to it.

Video Software Dealers Association v. Schwarzenegger	2005	Cal. Dist Ct	Free Speech/Game Violence/Legislation	California's turn at legislating restrictions on violent video games; Judge Whyte found that the California government would have a difficult time establishing that the harms posed by violent videogames are real, and can be alleviated in a direct and material way by the enforcement of the Act.
Entertainment Software Association v. Granholm	2005	Mich Dist Ct	Free Speech/Game Violence/Legislation	Michigan's attempt to restrict violent video games; court found that violent games were protected as free speech and did not find sufficient evidence of harm.
Leapfrog Enterprises, Inc. v. Fisher Price, Inc.	2007	US CA	Patent	One of the Court of Appeals first applications of KSR International Co. v. Teleflex, Inc; patent invalid for obviousness.
Re: SOCAN Tariff 22A	2007	Copyright Board of Canada	Copyright	The Copyright Board of Canada did not set a tariff for music in video games in this decision, citing "administrative and wording issues that will require extensive negotiations with the parties." Nevertheless, in their response to ESA's arguments the Board indicated that it considered music in video games a communication to the public by telecommunication, and open to regulation by tariff.