

environment. And moreover, she indicates why middle-class parents have bought or built playhouses for their children ever since.

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**The Game That Never Ends:
How Lawyers Shape the
Videogame Industry**

Julien Mailland

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A law school course in video game law, as I teach it, is largely about intellectual property doctrines (such as copyright, patent, and trademark) as seen through the lens of litigation over video games. Students read court opinions and debate whether designers should need permission before incorporating real people in their games, imitating or modifying another game's graphics or game play, or imposing technological access controls. At its heart, the course asks how intellectual property doctrine can best promote progress, and, ultimately, what progress looks like.

In *The Game That Never Ends: How Lawyers Shape the Videogame Industry*, Julien Mailland does something completely different but provides insights into these questions. Although Mailland explains legal doctrine in language that is easily digestible for nonlawyers, the book is fundamentally a very human history rather than a legal primer or policy pre-

scription. It asks, "how did we get here" and suggests that at least some of the answers reside in the personalities and strategies of the attorneys who negotiated mergers and acquisitions, litigated over the basic technology underlying electronic gaming, wrote employment contracts governing key designers, and oversaw (or overlooked) various aspects of workplace culture. To find these answers, Mailland has conducted impressive research, including deep dives into court files and archives as well as original interviews.

The book tells several distinct but interconnected stories, and it is structured so that each chapter could be enjoyed as a stand alone story. Although this arrangement results in occasional repetition of key facts and makes it somewhat difficult to construct a precise timeline of events, it also demonstrates how the same facts may fit differently into different stories.

The first six chapters explore how intellectual property disputes and lawyering decisions in the 1970s, 1980s, and 1990s created industry structures and norms. Chapter 2 discusses how Atari obtained a patent on the technology underlying *Pong* but decided to license the (questionably valid) patent to potential competitors rather than suing them. In contrast, Magnavox owned a patent on similar technology and used it to go into the lawsuit business, becoming what modern lawyers would describe as a "patent troll." An early settlement with Atari and some generous court rulings in Magnavox's favor allowed Atari to dominate early markets by sitting back and letting Magnavox sue its potential competitors. Chapter 4 explains how the specifics of California employment law and some

savvy matchmaking by individual lawyers allowed key game designers to leave Atari to form Activision and how a collection of patent, copyright, trademark, and trade secret law doctrines allowed Activision to build a market for game cartridges. The bifurcation of the console market and the game cartridge market set the stage for the industry structure that prevails today: as chapters 5 and 6 explain, when console manufacturers learned that they could not use law to prevent other companies from making cartridges, they created a technological solution—the “lock-out chip”—that prevented unauthorized games from running on their machines. Although the solution was technological, chapter 6 tells a compelling story about how law and lawyering continue to shape competition.

Chapters 3 and 7 each put the reader in the shoes of a law student or attorney advising a video game company. Mailland’s explanation of the relevant legal concepts is remarkably clear, and the chapters demonstrate how hard it would have been for an attorney to make predictive decisions about whether to sue competitors or let them experiment.

Chapters 8 and 9 consider how regulation of violent or other potentially objectionable content has affected the video game industry and how different nations’ business cultures have effects that stretch well beyond national borders. As video games have become more graphically detailed and grown in storytelling potential, they have attracted censors worldwide, but they have also gained legal status as “speech” protected by the first amendment of the U.S. Constitution. The book explains how the rules and norms in one country influence how games and the game indus-

try may look in another.

The final chapter, subtitled “Frenemies,” reminds the reader that this book is about lawyers as much as it is about law. The video game industry has been marked by mergers, breakups, and worker movement that gave each company—at least during the era of the book’s focus—a sort of familial tie to each other. But unlike most families, the rivalries and alliances in this industry were built or facilitated by lawyers, in the form of litigation, joint venture agreements, settlements, and other behind-the-scenes wrangling.

What does the reader take from the book? It is a history built from overlapping tales about legal disputes and decisions, but it is also more than that. It demonstrates that the game industry has, itself, been a game, mediated by law and lawyers. Mailland does not attempt to suggest what constitutes “good” legal policy, but as a reader who thinks intently about that question, I was struck by the extent to which legal losses—that is, unsuccessful attempts to stretch law past what turned out to be its limits—were what in the end moved the industry forward. The book therefore provides a reminder that the negative space surrounding legal restriction is as influential as the positive space of what law prohibits. Had the law placed more restriction on, for example, worker mobility, technological imitation, or reverse engineering, players could have stunted the growth of the industry.

Conventional wisdom often counsels that strong intellectual property protection promotes innovation. Here, locking down intellectual property and restricting worker mobility might have consolidated the business more and made it predictable.

This is surely what current entertainment giants prefer. But weaker intellectual property laws that, for example, allowed one company to make game cartridges for another's console, created what is widely regarded as the fastest growing sector of the entertainment industry today. These insights, together with Mailland's readable style, makes me likely to assign the book to my future video game law students.

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Intellivision: How a Videogame System Battled Atari and Almost Bankrupted Barbie

Tom Boellstorff and Braxton Soderman
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appendix, notes, and index. 432 pp.
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Tom Boellstorff and Braxton Soderman's *Intellivision: How A Videogame System Battled Atari and Almost Bankrupted Barbie* is a narrative—it presents the story of the Intellivision (and Mattel Electronics more broadly) in meticulous detail. More importantly, *Intellivision* is a necessary antidote to the Atari-centric discourse that previously dictated the history of the second generation of video games. *Intellivision* follows a temporal structure, beginning with the history of Mattel toys before exploring the rise (and fall) of Mattel Electronics. Although each chapter covers a topic rather than a time period, their order preserves the narrative structure of

the book. For example, the early chapter on toy design as “platform development” informs five later chapters on Intellivision's various peripheral components, which in turn explain the overextension of resources that opens the book's final chapter.

As storytellers, Boellstorff and Soderman use three types of data. First, they document historical media: newspaper and magazine articles, print advertisements, television commercials, and trade publications. Second, they present archival data in the form of documents internal to Mattel Electronics during Intellivision's development and lifespan. These archival materials include internal memos, unreleased games, training manuals, sample code, and notes between staff. Third, they conducted 150 interviews with former employees of Mattel Electronics and related companies. The interviews form the heart of the data, filling the prose with nuance and personality. Boellstorff and Soderman's text seamlessly flows between these three datasets to document the inner workings of Mattel Electronics as a social space and Intellivision as a piece of hardware.

The central strength of this book is the amount and quality of the data. Every assertion that Boellstorff and Soderman make about the working life of Intellivision's engineers or the practice of game development is supported by multiple quotes from interviewees and notes or memos from the archives. Highlighting Intellivision as a platform, certain topics are given particular importance, such as the Standard Television Interface Chip (STIC) and the EXEC (a partial operating system). *Intellivision* is written so that anyone with a basic understanding of the different components of a computer (e.g.,