Interactive Entertainment

As the interactive entertainment market continues to grow increasingly competitive, interactive entertainment companies need innovative legal solutions to protect every aspect of their businesses.

From the emergence of a protectable idea to the delivery and distribution of a finished product, the lawyers in the Interactive Entertainment practice bring a multidisciplinary approach to providing innovative legal strategies to this increasingly complex and demanding industry. We assist clients in the console, online and computer games markets, including a growing focus on augmented reality and virtual reality gaming, as well as in the traditional game market at every stage of their success.

Video, Mobile, Casual, Social and Console Games

With well-developed plots and characters, complex audio, original design and art elements, video games are considered by some to be a new artistic genre. Our attorneys have long been at the forefront of helping game developers, publishers, platform manufacturers and all others involved in this industry to protect their intellectual property.

We have assisted clients in developing, enforcing and defending the intellectual property rights owned by video game companies, including investigating and prosecuting copyright and trademark infringement, pursuing cybersquatters and protecting the intellectual property rights in software code, platform names, game names, character names and character images.

Augmented Reality (AR) and Virtual Reality (VR)

We advise and represent several market leaders in AR and VR technology, products, services and content, including those in the gaming space. We have been actively guiding companies new to the AR and VR industry in identifying, anticipating and resolving legal issues raised by this developing technology. Areas of our counsel include assisting in:

- providing assistance in developing and executing strategy for developing and distributing VR content
- setting-up VR content marketplaces for VR products
- drafting warnings, labels and user manuals and providing health and safety advice
- developing and negotiating content development agreements
- providing counseling on software licensing issues
- drafting consumer-facing terms, policies and guidelines (e.g., terms of use, terms of sale, privacy policies, payment policies, etc.)
- creating developer guidelines and policies including content guidelines, ratings and warnings
- conducting VR company related financings
- advising on IP protection including patents, copyrights and trademarks

Perkins Coie attorneys demonstrate their belief, shared with clients, in the importance of the AR and VR industry through our sponsorship of leading industry events and groups, such as UploadVR and SEA VR, and through our development of CLE programs dedicated to educating clients about emerging legal issues for VR companies and content providers.

SCOPE OF COUNSEL
While never losing sight of the corporate and finance fundamentals that establish the foundation for a business to develop and grow successfully, we also draw on our knowledge and experience in international transactions, distribution, licensing (including drafting EULAs), the Internet, government regulation and emerging companies to assist our clients in expanding their business opportunities and pioneering new and innovative ways to reach their desired goals. In addition, our lawyers are experienced in counseling game companies on drafting warnings and manuals.

As the market for Casual, Mobile, Social and Location-Based Games continues to expand, our lawyers diligently work with these companies on their complex business deals. We regularly work on game developer publishing agreements, licensing game assets and technology, divestiture of game assets and acquisition of game assets. We also handle all of the regulatory issues that arise in the course of representation of traditional, online, mobile and interactive or multiplayer games providers, including privacy, financial transactions, security, promotions and advertising, gambling and copyright or other liability associated with third party postings.

TRADITIONAL GAMES
Just like the video game industry, the $2 billion board game industry is an ever-changing environment. What's hot one year, may not even come close to the same level of success the next. We have worked with traditional game companies (DVD, card and board games) on developing their legal strategies. We have investigated and defended at trial a traditional game company in a case involving trade secrets misappropriation.

Success in the interactive entertainment industry demands creativity and opportunistic timing – qualities that are equally important for successful interactive entertainment lawyers. We are committed to excellent client service and 24/7 responsiveness. Our lawyers consider themselves extremely fortunate to work with interactive entertainment industry clients and they dedicate themselves to the highest quality legal services as they share in the fun and enthusiasm that is a part of this dynamic, fast-paced and innovative industry.

EXPERIENCE

INTERACTIVE ENTERTAINMENT

TORCH 3D INVESTMENT ROUND
Represented Torch 3D in an investment round where it raised $3.5 million from several venture capital funds. Torch 3D, based in Portland, Oregon, is developing a prototyping and collaboration platform for professionals creating Augmented Reality and Virtual Reality experiences.

MICROSOFT ACQUISITION OF MOJANG (MINECRAFT)
Represented Microsoft Corporation as U.S. counsel and primary intellectual property counsel in its $2.5 billion acquisition of Stockholm-based game developer Mojang, the creator of the “Minecraft” video game franchise.

MICROSOFT ACQUISITION OF “GEARS OF WAR” FRANCHISE
Represented Microsoft Corporation in its acquisition of the “Gears of War” game franchise from Epic Games, Inc., a developer of games and cross-platform game engine technology.

SALE OF STOCK OF ANGEL STUDIOS INC. TO TAKE TWO INTERACTIVE SOFTWARE INC.
Represented videogame developer in sale.

IOT - INTERACTIVE ENTERTAINMENT
Represented Magic Leap, a developer of a wearable, dynamic-image computing interface that harmonizes with human senses, in its preferred stock financing.

IOT - INTERACTIVE ENTERTAINMENT
Representing a digital and physical mixed reality computing platform in data privacy matters, including drafting related policies.

IOT - INTERACTIVE ENTERTAINMENT
Represented one of the world’s largest talent agencies in commercial contract negotiations with Lemon Mobile in connection with a private label solution for proximity and location-based advertising and marketing campaign development and deployment.

GAME DESIGN AND DEVELOPMENT AGREEMENTS

GAME DESIGN
Represented numerous developers in connection with online, PC, mobile and VR game development agreements.

VIRTUAL REALITY

SALE OF SPATIALAND, INC. TO WALMART
Represented Spatialand Inc., a software platform that helps create virtual reality experiences, in its acquisition by Walmart.

FOUNDING AND IP COUNSEL TO VR HEADSET MAKER ATHEER
Representing Atheer, a leading HMD for industrial applications, since its founding. Handling all IP work for Atheer, particularly developing and managing Atheer’s international patent and trademark portfolios.

**AUGMENTED REALITY STARTUP FOCUSED ON PATIENT CARE**
Represented Miney Moe, a holographic communication technology AR company, in fund raising, formation and product liability counsel; Miney Moe is initially working with doctors concerned about children’s experiences in medical settings.

**FINANCING FOR MAGIC LEAP**
Represented the developer of a wearable, dynamic-image computing interface that harmonizes with human senses in its preferred stock financing.

**MAGIC LEAP’S CONTENT AND PUBLISHING AGREEMENTS**
Guided Magic Leap in drafting and developing their content development agreements and policies and procedures. Also involved in developing their publishing arrangement with developers, as well as advising them on privacy issues.

**FUNDING COUNSEL TO MAGIC LEAP**
Represented Magic Leap, Inc. in securing $793.5 million in new funding, in a funding round led by the Alibaba Group.

**TRADEMARK AND PRIVACY COUNSEL TO Niantic**
Advised the software maker in trademark enforcement as well as privacy issues.

**OCULUS WIDE-RANGING REPRESENTATION**
Advised Oculus on their marketplace, developer terms as well as product liability and warning work. Also handling several other third-party content deals, providing cross-functional support for their research group and supporting their hardware team focused on international manufacturing and supply deals. Counsel also includes writing the agreements and helping to administer the Oculus for Good program.

**PRIVACY AND LICENSING COUNSEL TO VR PET PLATFORM**
Advised Beast, Inc., a VR platform that brings digital pets to virtual “life” through artificial intelligence and personalities, on privacy issues; also drafted Beast’s form license agreement and advised on a number of other licensing issues.

**UPLOAD VR FUNDING**
Represented UploadVR, Inc. in securing $1.25 million in funding from Shanda Group.

**VIRTUAL REALITY MANUFACTURERS**
Provide advice and assistance to the Virtual Reality (VR) manufacturers regarding content development and distribution agreements, creation of a content marketplace, privacy & data security, health & safety issues, consumer-facing agreements, research and development agreements, strategic partnerships, certification, regulatory compliance and various licensing arrangement.

**INTELLECTUAL PROPERTY**

**MICROSOFT CORPORATION**
Represented Microsoft in patent prosecution relating to augmented reality (AR) and virtual reality (VR) technology, including near-eye display (NED) and head-mounted display (HMD) devices.

**TRADEMARK WORK FOR NEW MICROSOFT BRANDS**
Worked with large software company to clear new brands for software, computer games, and internet products.

**IP AGREEMENTS FOR VIRTUAL REALITY COMPANY**
Drafted and negotiated intellectual property agreements for a major virtual reality company that required navigating complex government use rights.

**LITIGATION**

**MIKOHN GAMING CORPORATION V. ACRES GAMING INC.**
U.S. District Court for the District of Nevada
Won jury trial representing the plaintiff, proving patent infringement.

**FENNER INVESTMENTS, LTD. V. NINTENDO OF AMERICA INC., ET AL.**
U.S. District Court for the Eastern District of Texas
Won summary judgment representing the defendant, proving non-infringement.

**IA LABS CA, LLC. V. NINTENDO COMPANY, LTD., ET AL.**
U.S. District Court for the District of Maryland
Won summary judgment representing defendant, proving non-infringement.

**IMPULSE TECHNOLOGY LTD. V. NINTENDO OF AMERICA INC., ET AL.**
U.S. District Court for the Northern District of Ohio
Plaintiff dismissed with prejudice after Markman ruling favorable to client Nintendo.

**NINTENDO OF AMERICA INC. V. WHAT’S ON INC. ET AL.**
U.S. District Court for the Western District of Washington
Represented Nintendo in litigation alleging infringement of intellectual property rights in video game products. Successfully obtained TRO, preliminary and permanent injunctions.

**MELE DBA BLIZZARD RECORDS AND BLIZZARD RECORDS INC. V. DAVIDSON & ASSOCIATES INC.**
U.S. District Court for the Western District of New York
Successful defense through trial of trademark infringement claim involving reverse confusion claim. Citation: WL2285111

**NINTENDO OF AMERICA INC. V. NYKO TECHNOLOGIES INC.**
U.S. District Court for the Western District of Washington
Represented Nintendo in an action alleging patent and trademark infringement based upon the defendant's design, marketing and sale of a handheld game controller.

**THINKOPTICS INC. V. NINTENDO OF AMERICA INC., ET AL.**
U.S. District Court for the Eastern District of Texas
Defended Nintendo in a paten case in the Eastern District of Texas relating to direct-pointing devices and methods.

**MULTIPLAYER NETWORK INNOVATIONS, LLC V. NINTENDO OF AMERICA INC., ET AL.**
U.S. District Court for the Eastern District of Texas
Defended Nintendo in a patent case in the Eastern District of Texas relating to multiplayer gaming technologies.

**MILESTONE COMPANY, LTD., ET AL. V. NINTENDO OF AMERICA INC.**
U.S. District Court for the Western District of Washington
Represented Nintendo of America Inc. in a patent case relating to imaging lenses for portable devices.

**BAKER V. NINTENDO OF AMERICA INC.**
U.S. District Court for the Western District of Washington
U.S. District Court for the Eastern District of Texas
Lead counsel for Nintendo in a patent case relating to motion tracking technology and related games. Successfully moved to transfer multi-defendant case from the Eastern District of Texas to the Western District of Washington. Secured summary judgment of noninfringement for all claims asserted against Nintendo.

**CHERDAK V. NINTENDO OF AMERICA INC.**
U.S. District Court for the Eastern District of Virginia
Lead counsel for Nintendo in a patent case in the Eastern District of Virginia relating to pedometer technology and related games. The plaintiff voluntarily dismissed all claims with prejudice after briefing on Nintendo’s motion to dismiss was complete.

**TRITON TECH OF TEXAS, LLC V. NINTENDO OF AMERICA INC.**
U.S. Court of Appeals for the Federal Circuit
Persuaded the Federal Circuit to affirm summary judgment that Triton's patent claims on a computer input device were invalid for indefiniteness because the patent’s specification did not disclose an algorithm corresponding to the claimed “integrator means.” 753 F.3d 1375 (Fed. Cir. 2014).

**QUINTAL RESEARCH V. NINTENDO OF AMERICA INC.**
Handheld computing devices.

**TRITON TECH OF TEXAS V. NINTENDO OF AMERICA INC., ET AL.**
Mems-gyroscopeos and accelerometer technologies.

**THINKOPTICS, INC. V. NINTENDO OF AMERICA INC., ET AL.**
Direct-pointing devices and methods.

**BACH, ET AL. V. FOREVER LIVING PRODUCTS U.S., INC., ET AL.**
U.S. District Court for the Western District of Washington
Defended litigation alleging copyright and trademark infringement of rights in the novel "Jonathan Livingston Seagull."

**NINTENDO OF AMERICA INC. V. CHAN, ET AL.**
U.S. District Court for the Western District of Washington
Obtained permanent injunction and consent judgment on behalf of Nintendo against Internet seller of anti-circumvention devices, based on violations of the Digital Millennium Copyright Act and copyright and trademark infringement.

**NINTENDO OF AMERICA INC. V. NYKO TECHNOLOGIES INC.**
U.S. District Court for the Western District of Washington
Represented Nintendo in an action alleging patent and trademark infringement based upon the defendant's design, marketing and sale of a handheld game controller.

**NINTENDO OF AMERICA INC. V. WINBOND ELECTRONICS CORPORATION**
U.S. District Court for the Northern District of California, U.S. District Court for the Western District of Washington
Represented Nintendo in litigation alleging infringement of intellectual property rights in video game software and hardware.

**NINTENDO OF AMERICA INC. V. TAIWAN SEMICONDUCTOR MANUFACTURING COMPANY, LTD.**
U.S. District Court for the Northern District of California
Represented Nintendo in litigation alleging infringement of copyright, trademark and mask work rights in software, hardware and semiconductor chips.

**SWINIARSKI V. HASBRO INC.**
U.S. District Court for the Central District of California
Defense of action alleging copyright infringement in name, character and title of book allegedly infringed by video game software and related materials.

**BIG FISH GAMES INC. V. IWIND INC.**
U.S. District Court for the Western District of Washington
Obtained preliminary and permanent injunctive relief for client Big Fish Games, in a case alleging violations of the Computer Fraud and Abuse Act, RICO, Uniform Trade Secrets Act, Unfair Business Practices Act, and other statutes, based upon a competitor's unauthorized access to Big Fish Games' proprietary and trade secret information. The case was favorably resolved, after substantial discovery, through a confidential settlement.

**CARNAHAN V. BIG FISH GAMES**
U.S. District Court for the Western District of Washington
Lead counsel defending Big Fish Games, Inc., in a purported nationwide class action alleging unfair and deceptive practices and fraud in connection with auto-renewal and free trial aspects of online subscription program. Achieved confidential settlement and stipulated dismissal, after moving to dismiss and prior to discovery.

**PRODUCT COUNSELING**

**VIDEO GAME REGULATORY ADVICE**
Provided advice to a first-party video game developer on regulatory issues related to a game.

**MERGERS & ACQUISITIONS**

**SALE OF WIZARDS OF THE COAST INC.**
Represented Wizards of the Coast Inc. in its sale to Hasbro Inc.

**SALE OF STOCK OF ANGEL STUDIOS INC. TO TAKE TWO INTERACTIVE SOFTWARE INC.**
Represented videogame developer in sale.

**REAL-D INC. ACQUISITION OF ASSETS OF STEREOGRAPHICS**
Represented 3D cinema company in its acquisition of substantially all of the assets, including patents and related technology, of StereoGraphics Corporation.

**MICROSOFT ACQUISITION OF MOJANG (MINECRAFT)**
Represented Microsoft Corporation as U.S. counsel and primary intellectual property counsel in its $2.5 billion acquisition of Stockholm-based game developer Mojang, the creator of the "Minecraft" video game franchise.

**MICROSOFT ACQUISITION OF “GEARS OF WAR” FRANCHISE**
Represented Microsoft Corporation in its acquisition of the “Gears of War” game franchise from Epic Games, Inc., a developer of games and cross-platform game engine technology.

**SALE OF BIG FISH GAMES, INC.**
Represented Big Fish Games, Inc. in its sale to Churchill Downs Incorporated

**NEWS**

09.27.2016

*Perkins Coie Represents Outerwall in Completion of its Acquisition by Affiliates of Funds Managed by Affiliates of Apollo Global Management*

Press Releases

Perkins Coie LLP acted as outside counsel for Outerwall Inc. (NYSE: OUTR), in the completion of its acquisition by affiliates of certain funds managed by affiliates of Apollo Global Management, LLC (together with its consolidated subsidiaries, “Apollo”)
(NYSE: APO), a leading global alternative investment manager.

09.12.2016
**Perkins Coie and Upload Survey Reveals Opportunities and Obstacles Facing Augmented and Virtual Reality**
Press Releases
As optimism about the future of augmented reality (AR) and virtual reality (VR) grows, a lack of compelling content, cost and issues with the user experience are still viewed as the main impediments to the industry’s expansion, according to a new survey by Perkins Coie and Upload. The survey was completed by 653 respondents, including AR/VR startup founders, executives with established technology companies and investors.

08.15.2016
**Best Lawyers® 2017 Recognizes 252 Perkins Coie Attorneys**
Press Releases
Perkins Coie is proud to announce that 252 of its attorneys were selected by their peers for inclusion in the 2017 edition of The Best Lawyers In America®, the oldest and most respected peer-review publication in the legal profession.

07.25.2016
**Perkins Coie Represents Outerwall in its $1.6 Billion Acquisition by Affiliates of Funds Managed by Apollo Global Management**
Press Releases
Perkins Coie acted as outside counsel to Outerwall Inc., which delivers kiosk experiences for consumers that generate revenue for retailers, in its definitive merger agreement to be acquired by affiliates of certain funds managed by affiliates of Apollo Global Management, LLC (together with its consolidated subsidiaries, “Apollo”), a leading global alternative investment manager, pursuant to which the Apollo Funds will acquire all of the outstanding shares of Outerwall common stock for $52.00 per share in cash.

02.08.2016
**Attorneys Noted as Counsel in The Recorder**
General News
The Recorder
Fiona Brophy, Katherine Richard and Elizabeth Zolotusky are noted as counsel in The Recorder article titled, “Perkins Coie Waves Deal Wand for Magic Leap,” regarding securing funding for Magic Leap.

**PUBLICATIONS**

03.26.2019
**New Accessibility Requirements in Effect for Video Game Software**
Updates
As of January 1, 2019, video game developers and publishers are now subject to certain accessibility requirements under the Twenty-First Century Communications and Video Accessibility Act (CVAA) that apply to manufacturers and providers of advanced communications services (ACS).

02.22.2019
**Opinion: Get Ready for More Litigation as Biometric Privacy Laws are Passed**
Articles
Puget Sound Business Journal
Regulators in Washington and across the nation have trained their gaze on biometric technology, and companies that use or sell fingerprint, voice print or facial recognition technologies should be aware of the regulatory and litigation landscape so they can be sure to comply with applicable law and avoid going to court.

02.15.2019
**Changing Landscape for Video Game Developers in Third-Party IP Suits?**
Updates
What do the manufacturer of a military-grade light tactical wheeled vehicle and a nineteenth-century private-detective agency have in common? Each has recently sued a video game developer for infringing their trademark or trade dress rights.

01.30.2019
**Proposed Washington Privacy Act Tracks GDPR and CCPA Protections and Emphasizes Facial Recognition**
Updates
Washington state has joined the growing ranks of states considering data privacy legislation in the wake of the European General Data Privacy Regulation (GDPR) and the California Consumer Privacy Act (CCPA).

01.02.2018
**Google Defeats Biometric Privacy Lawsuit on Article III Standing Grounds**
Updates
Google won summary judgment in Rivera v. Google, a privacy class action alleging violations of the Illinois Biometric Information Privacy Act (BIPA). The case involved “face grouping,” a feature that enables Google Photos to automatically sort and group the photographs in a user's private account, based on visual similarities between the images of faces in the photos. The court held that any alleged collection of “biometric information” or “biometric identifiers” stemming from this feature did not cause an injury-in-fact sufficient to confer Article III standing. This update summarizes the decision, which may be relevant to clients involved with biometric technology, as well as other clients facing litigation where a no-injury defense may be applicable.

08.21.2018

**Why The Next CryptoKitties Mania Won’t Be About Collectables**

*Articles*

TechCrunch.com

In recent months, the CryptoKitties fad that had users buying and selling tens of thousands of dollars of blockchain-based collectable cats has settled down considerably. That is not to say that CryptoKitties hasn’t spawned numerous copycats (see CryptoPuppies, CryptoCountries and many more).

03.26.2018

**AR/VR Industry is Growing and Facing New Challenges, Perkins Coie Survey Finds**

*Updates*

Augmented reality and virtual reality are showing clear signs of a growing industry—with increased investment, exciting new content (and types of content) and technological advancements.

10.19.2017

**California Updates Its Auto-Renewal Law**

*Updates*

From fashion clothing in the mail to gym memberships to monthly mobile app subscriptions, the subscription-based business model is everywhere and here to stay.

This update has been republished in California Lawyer on 12.04.2014, "Auto-Renewal Update."

09.13.2016

**Future of Augmented and Virtual Reality Revealed in Perkins Coie and Upload Survey**

*Updates*

The launch of Pokémon Go in July took the world by storm, with downloads of the AR game reaching more than 100 million within a month, and 2016 saw the launch of several VR headsets. Multiple studies have predicted significant growth for the industry, including a January 2016 report from Goldman Sachs projecting that AR/VR will be an $80 billion market by 2025.

**PRESENTATIONS**

**Interactive Entertainment Event Calendar**

Speaking Engagements

Join Perkins Coie at one of the upcoming conferences we'll be attending!

**CONTACTS**

**Donald (Don) E. Karl**

Partner

Los Angeles

D +1.310.788.3227

**Kirk A. Soderquist**

Partner

Seattle

D +1.206.359.6129

**RELATED SERVICES**

**PRACTICES**
Perkins Coie surveyed 140 startup founders, technology company executives, investors and consultants on key challenges and opportunities in the AR/VR space. The survey findings depict a growing industry that is focusing more on practical applications, while facing new challenges reflective of an expanding customer base.

READ MORE