

Game development AI — Familiar rules, faster timelines

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Generative artificial intelligence (AI) is rapidly becoming part of the game development process. Studios are using AI tools to generate concept art, create dialogue and streamline workflows. Major game companies have publicly discussed integrating AI into long-term strategy, while independent developers increasingly view AI as a way to reduce costs and speed production.

As adoption accelerates, lawyers and business teams are confronted with a deluge of questions. For developers, studios and their counsel, these questions surrounding ownership, licensing, risk allocation and intellectual property rights can feel unprecedented and overwhelming.

For practitioners in the space, however, the current AI movement is less a dramatic leap from Frogger to Fortnite and more a short hop from Pac-Man to Ms. Pac-Man. The stakes are higher and the pace is faster, but the underlying rules are mostly the same.

Many AI-related legal issues are surprisingly familiar. Questions regarding authorship, ownership, contractual obligations and risk allocation are hardly new. Attorneys have been advising clients on those issues for decades.

Generative AI has not fundamentally changed copyright, trademark and contract law. What has changed is the speed at which potential disputes emerge and the volume of content created, distributed and challenged. For many businesses, success is no longer measured by whether they can win a lawsuit in two years, but whether they can win on the internet in the next two weeks.

Copyright still begins with human authorship

Public discourse frequently focuses on whether AI-generated content is protected by copyright. Existing law provides a framework for answering that question, even if there is no bright-line distinction between protected and unprotected works.

For decades, U.S. copyright law has emphasized that copyright protects original works of human creative expression and authorship. In the 2018 case *Naruto v. Slater*, the 9th U.S. Circuit Court of Appeals declined to extend copyright protection to

a photograph taken by a monkey because the work lacked human authorship. The same principle applies to purely machine-generated outputs.

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More challenges arise when human creators and AI systems work together. But here again, copyright doctrine has been separating original creative elements from preexisting or unprotectable components for decades, such as the overall design and composition of a collage versus the underlying images.

Copyright likewise already has principles governing functional elements like gameplay mechanics and systems, which are unprotectable ideas, distinct from protectable creative expression. These doctrines will continue to shape disputes involving AI just as they shaped prior disputes involving video games, software and other creative works.

Games and apps cover the entire spectrum from non-copyrightable functional gameplay to protected creative expression. Interactive media relies on multiple layers of creative decision-making requiring human input, from story and character design to user interfaces and soundtracks, all of which can contain protectable expression.

By contrast, simply generating content from a prompt with minimal human contribution or using AI to modify generic gameplay mechanics may present more significant questions regarding copyright eligibility.

Recent Copyright Office decisions reflect these principles. Copyright protection remains available when humans exercise meaningful creative control over AI-assisted works. Selection, editing, refinement and other creative judgments may contribute protectable authorship even where AI tools are used during creation or development.

The most important legal question often is not whether generative AI was used, but whether and where meaningful human contribution can be demonstrated.

Documentation is becoming increasingly important in that analysis. Records showing creative direction, iterative development, editing decisions and human oversight can help support ownership claims and establish provenance if disputes arise later. The same documentation can also simplify diligence during investment, publishing and acquisition transactions.

Contracts still determine who bears AI-related risk

While intellectual property attracts significant attention, more immediate legal issues surrounding AI often arise from private contracts.

Developers, publishers and platforms increasingly use representations, warranties and indemnification provisions to allocate risk associated with AI-generated content. Counterparties want assurances regarding asset provenance, licenses for AI tools and output ownership. Those concerns become particularly significant when a commercial product is distributed globally and generates substantial revenue.

Terms of service deserve particular attention. AI service providers often change their contractual terms to address shifting views on topics such as output ownership, prompt reuse, model training and data retention. Rights that appear broad at one point may become more limited under subsequent revisions.

Organizations that fail to keep records of applicable terms may later struggle to determine what rights they acquired or what obligations they accepted when particular assets were created.

The result is that diligence often becomes as important as doctrine. Before incorporating AI-generated assets into commercial products, organizations may need to assess not only whether an asset is legally protectable, but also whether contractual restrictions limit its use, transferability or exclusivity.

Developers with well-documented creation processes and clearly defined ownership rights are often better positioned in licensing negotiations, publishing agreements and potential enforcement actions. Conversely, uncertainty surrounding ownership or licensing can slow transactions, prevent deals from closing and increase the cost of resolving disputes.

Good governance still beats post-hoc solutions

Not every AI-related challenge relates to infringement or ownership. In many cases, disclosure practices, internal governance and reputational considerations create equally significant risks.

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Stakeholders often hold differing views about the appropriate role of generative AI in creative industries. Employees, consumers, investors and business partners may have expectations that differ from the law. As a result, organizations evaluating AI tools should consider not only legal compliance, but also oversight, transparency, disclosure practices and broader business objectives.

Clear internal policies can help reduce uncertainty. Organizations increasingly benefit from establishing guidelines addressing when AI tools may be used, what records should be maintained, how ownership is evaluated and when additional legal review is required.

These policies can help create consistency across teams while reducing the likelihood that important legal or business considerations are overlooked. In that respect, AI governance increasingly resembles cybersecurity or privacy compliance. Organizations that build policies and practices before a problem arises are generally better positioned than those attempting to reconstruct events after the fact.

Governance also intersects with enforcement. When disputes emerge, organizations with clear documentation and established review procedures are often better positioned to respond quickly. Preparation can be particularly valuable in online environments where content spreads rapidly and delays can have significant commercial consequences.

Speed is the new challenge

The legal questions raised by generative AI in game development are largely recognizable descendants of longstanding copyright and contract principles. Questions of authorship, ownership, licensing and commercial responsibility have been addressed before and will continue to evolve through familiar frameworks.

What distinguishes the current environment is speed.

Development cycles are accelerating. New tools emerge rapidly. Content can reach a global audience almost

immediately. Intellectual property disputes that once unfolded over months may now affect a product, creator or brand within days.

For counsel advising game developers, proactive preparation is therefore becoming increasingly important. Clear documentation of human creative contributions, careful review of AI platform terms, thoughtful contract drafting and well-

defined governance policies can reduce uncertainty and allow businesses to pivot or respond more quickly to new challenges.

Organizations that establish best practices early and continually refine them as technology and business needs evolve will be better positioned to manage both legal and commercial risk as AI adoption continues to expand.

About the author



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