

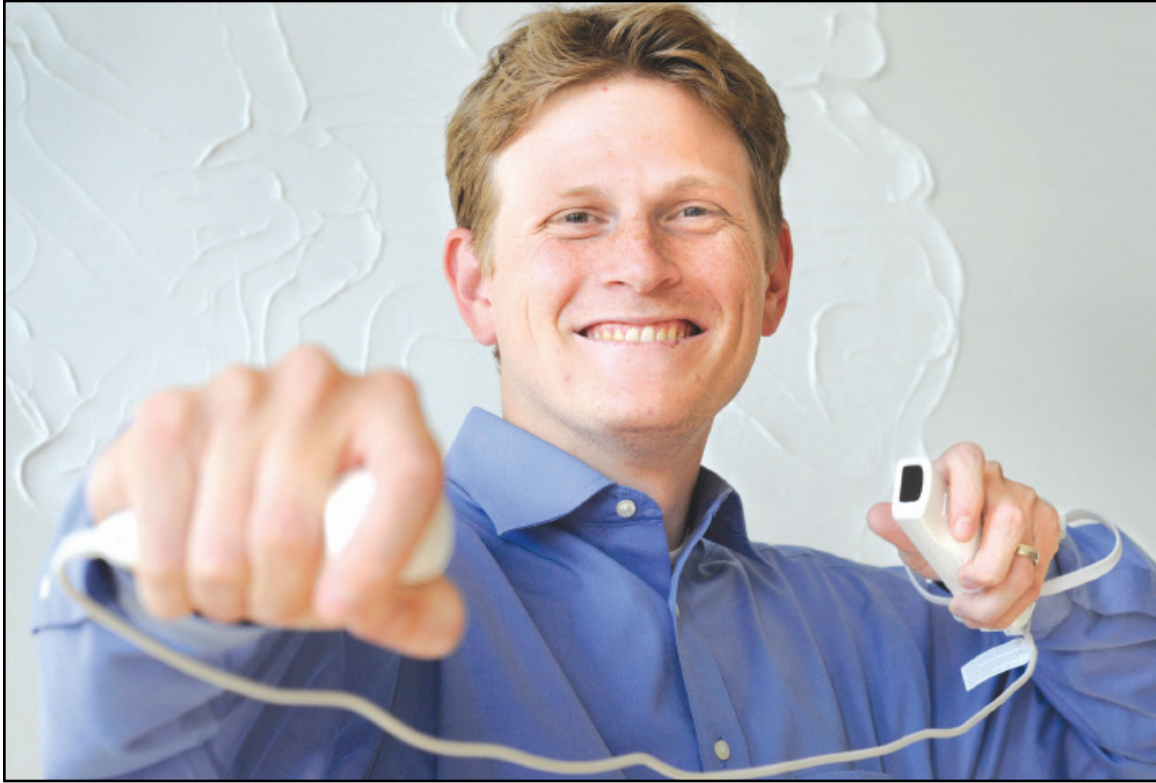
# THE RECORDER

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**CHEAT CODE:** One way to move to the next level as a young associate is to create your own practice group and lead it. Sheppard, Mullin's Shawn Foust did it, founding the firm's new video game practice group.

JAMIE RECTOR

## Player One

### 2nd-year associate creates firm's video game practice

**By Niraj Chokshi**  
RECORDER STAFF WRITER

Sheppard, Mullin, Richter & Hampton associate Shawn Foust just leveled up.

The firm announced last week that Foust, a second-year associate in the Century City office, will lead its newly created video game industry group, a coalition of 20 partners and associates.

Foust, who says he's less a leader and more a maintainer of the group, is a video game connoisseur. He owns five consoles, can name the publisher of his all-time favorite game — OGRE Battle, published by Enix for the Super Nintendo Entertainment System — and even has a favorite gaming industry legal issue, the end-user license agreement. He even once had dreams of entering the industry.

"I tried to be a programmer by taking classes back in high school, and it just didn't stick at all," said Foust, 26. He turned to other areas of the industry and began reading books on game design and mechanics, but eventually came to terms with the likelihood that his dream

would not be realized.

"I then went off to law school," he says.

The practice group was Foust's idea. He only joined the firm last fall, drifting from labor and employment work toward the entertainment group. The firm was encouraging associates to be pro-active, so he broached the idea of starting the video game industry group with Robert Beall, head of the firm's business litigation group and the head of the Orange County office.

"I spoke to him about the possibility and he said, 'Well that's interesting. Why don't you convince me?'"

"I said, 'All right, what the heck — I might as well just give it a shot and just start doing things and see if they say no,'" he said. Several partners at the firm were already representing industry clients in various matters. Aided by fellow associates Bethany Hollister and Oscar Cisneros, Foust started drafting outlines on the industry and marshalling internal resources. He sent out a firmwide e-mail seeking attorneys with interest and aptitude for the practice area, and got about 50 responses.

"I have lists with everyone who has this very high-end, solid legal experience," he said. "And then I have a list of everyone who plays video games at the firm."

#### PLAY TIME

Foust entered the game at a good time. Video game and console revenues totaled \$18 billion domestically in 2007, while movie and music revenues totaled a combined \$20 billion, according to data from the industry associations. Music sales fell 12 percent by some counts, and movie revenues rose by only about 2 percent last year, but video game sales shot up by 28 percent.

Not only is there more money, there are also more legal issues. The

drive to constantly improve the product can lead to new legal questions.

“Where the law gets made is in these kinds of new technology cases, because the video game has to have the best technology,” said Neil Smith, an IP partner in Foust’s new group. While at now-defunct Limbach & Limbach, Smith represented Sega Enterprises Ltd., a video game manufacturer, in its 1994 suit against Maphia, a digital bulletin board system on which Sega’s games were illegally exchanged.

The court ruled that the owners of the board were liable for users’ copyright infringement — a ruling cited seven years later in the major 2001 Ninth Circuit U.S. Court of Appeals decision that shut down music file-sharing service Napster.

Smith, who enforces the Pac-Man copyright for NAMCO and related companies, says copyright issues are becoming more complicated as games increasingly license music, voices and likenesses.

Video game enthusiasts, and competing manufacturers, also put any new product under intense scrutiny, making it more likely that patent infringement questions might arise.

“When we’re dealing with a circuit, it’s typically embedded within a chip and therefore not as visible to the industry,” said Marc Sockol, a member of Foust’s group who joined

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— SHAWN FOUST  
*Sheppard, Mullin*

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Sheppard, Mullin in April to head its new Silicon Valley office. “When we’re dealing with video game clients, a lot of the time there are a lot of people out there that are digging through the code and figuring out what’s going on. It’s

easier for [companies] to become the target.”

Sockol, who has counted Electronic Arts, one of the world’s biggest video game publishers, as a client for about a year, deals mostly with patent and trademark issues. The firm’s other video game clients include Activision, Aruze, Comcast, Game Show Network, Namco Bandai Games America and Zeebo.

Foust said that, in addition to the lawyers who were eager to join the group, he’s had a lot of positive reaction. While it’s unusual for a second-year associate to create and lead a new practice group, in this case, his youth works in his favor.

“Even though I’m junior, the way I put it is, ‘Yeah, I’m young, but the industry is young, I have plenty of experience playing their games,’” he said.

While the new industry group may sound like an excuse to spend the day “learning” about what clients do, Foust said that’s not likely.

“You’re not going to get bills that say three hours of video game playing time,” he said.

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