

# A Big Stink Over Ink]

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Like many kids who grew up in the 1980s, our family had an Atari 2600. One of my favorite games was 'Video Olympics,' which featured soccer, hockey, volleyball and basketball. The graphics were not stellar. Basketball featured two solid-colored, blocky players battling one another.

In middle school we got a Nintendo. 'Double Dribble' was an exceptional basketball game that featured graphics that were light years ahead of Atari. While the players had no faces, you could actually distinguish them from one another because they had different skin tones. Plus the game had slow-motion close-ups of dunks.

In college, one of my roommates had a Sega Genesis game system. After class we loved to play 'NBA Jam.' This was one of the first games licensed by the NBA and had digitized player likenesses. After playing Atari's basketball where it was hard to recognize the players as human beings, it was astounding to play a game where you could actually recognize NBA stars.

Today my kid plays 'NBA 2K16' on our Xbox One. The graphics are so good I have a hard time telling if he's playing a video game or watching an actual NBA game. The players' likenesses are extremely detailed, down to their headbands, shoes, facial hair and even tattoos. The depictions are so accurate, they may be *too* good.

Because the details are so precise, Solid Oak Sketches is actually suing Take-Two Interactive and Visual Concepts, makers of the popular 'NBA 2K' video-game franchise. The suit, filed in federal court, alleges that the players' tattoos are so exact, using them in the game violates Solid Oaks Sketches' copyright.

Solid Oak Sketches asserts it owns the copyrights to eight designs featured in the game, including a child's portrait and script scrolls with clouds and doves on LeBron James' forearms and butterflies on Kobe Bryant's arm. According to exhibits submitted with the lawsuit, most of the copyrights for the tattoos were obtained by Solid Oak Sketches last year.

Anticipating the use of the players' ink in the game, Solid Oak Sketches approached Take-Two, offering the company a license to use the tattoos for a fee of \$1.1 million. Last year, 'NBA 2K15' shipped over 7 million copies. More than 4 million copies of 'NBA 2K16' shipped in the first week. Based on sales, presumably Take-Two would be able to cover this licensing fee.

Take-Two purportedly opted to proceed with making the game and featuring the tattoos without the license. As a result, Solid Oak Sketches filed suit. Darren Heitner, one of Solid Oak Sketches' attorneys, claimed, "It's clear that they knew that this was something that was to be negotiated."

Surprisingly, this is not a new concept. Tattoo artist Victor Escobedo asked for \$4.1 million from THQ for using his tattoo without permission. In the company's 'UFC Undisputed' game, UFC fighter Carlos Condit could be seen sporting Escobedo's lion tattoo. He sued and was awarded \$22,500.

Fearing a lawsuit, the NFL Players Association warned players in 2014 they needed to get waivers from their tattoo artists before depicting them on merchandise, including video games. Accordingly, 49ers quarterback Colin Kaepernick obtained the blessing of his tattoo artists and his ink was shown in Electronic Arts' 'Madden 15.'

Growing up in the '80s, I think someone should make a video game featuring Tattoo. Not the ink, but the character played by Herve Villechaize, Ricardo Montalban's sidekick on 'Fantasy Island.'

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