

MVV296K Interactive Entertainment Law

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School of Electronic Engineering and Computer Science (EECS), Queen Mary University, 2023

Module Overview

The interactive entertainment industry is the most successful and the fastest growing of all the creative industries. In this ecosystem, creativity meets innovation and cutting-edge technology and thereby poses a unique challenge for publishers, users, and legislators alike. Interactive Entertainment Law analyses some of the legal, commercial, contractual, and regulatory issues that the Games and Interactive Entertainment industry faces. It delineates and analyses the legal parameters within which developers and publishers operate and in which players create and consume content, providing students with an overview of the industry from the development to the commercialisation of interactive entertainment products.

Lecture Outline

Lecture 1 – Video Games and Intellectual Property

The first lecture will provide information about the structure and aims of the course and an overview of the interactive entertainment industry and the relevant stakeholders. Interactive entertainment law as a discipline analyses the legal and regulatory issues the industry, users and policymakers are facing in relation to the design, development, distribution and consumption of video games. Video games differ from traditional games in many ways. They are encoded in software and users access them using a digital interface. Video games are sold as digital copies of information or online service through technological platforms that are consumer commodities themselves. The contemporary complexity of graphic design, animation, or music makes video games more like a movie rather than Monopoly. The legal definition and categorization of video games then determines their legal status and available protection.

Dedicated journal **Interactive Entertainment Law Review**

<https://www.elgaronline.com/view/journals/ielr/ielr-overview.xml>

Recommended reading:

Davin Greenspan, Gateano Dimita, 'Mastering the Game: Business and Legal Issues for Video Game Developers' (2nd ed, WIPO)

Andy Ramos, Laura López, Anxo Rodríguez, Tim Meng and Stan Abrams, 'The Legal Status of Video Games: Comparative Analysis in National Approaches' (WIPO) (partially outdated)

Andy Ramos, Video Games: 'Computer Programs or Creative Works?' (WIPO magazine)

Greg Lastowka, 'Copyright Law and Video Games: A Brief History of an Interactive Medium' (SSRN)

Yin Harn Lee, 'Making videogame history: videogame preservation and copyright law' (IELR 2/1 2018)

Ross Dannenberg, Josh Davenport, 'Top 10 video game cases (US): how video game litigation in the US has evolved since the advent of Pong' (IELR 2/1 2018)

Longan, Mitchell and Dimita, Gaetano and Michels, Johan David and Millard, Christopher, Cloud Gaming Demystified: An Introduction to the Legal Implications of Cloud-Based Video Games (SSRN, 2021) <https://ssrn.com/abstract=3949611>

WIPO – Make IP Your Business – A series of episodes looking at the role of IP across different sectors, kicking off with the interactive entertainment industry.

<https://www.wipo.int/podcasts/en/make-ip-business/index.html>

Textbooks:

Jon Festinger, *Video Game Law* (2nd ed, Lexis Nexis) (a modern classic, but outdated)

Chrissie Scelsi, Ross Dannenberg, *Computer Games and Immersive Entertainment* (2nd ed, ABA)

Brian Pyne, S. Gregory Boyd, and Sean F. Kane, *Video Game Law* (CRC Press)

Dan Nabel, Bill Chang, *Video Game Law* (West Academic)

Videos:

You can watch our presentation in Warsaw on Cyberpunk 2077 to provide a context for the role of IP in the video game ecosystem here: https://youtu.be/mrQE9_4tJ6s

Lecture 2 – Video Games and Copyright

Video games have certain unique characteristics that set them apart from other types of creative works. They are born digital and their inherently interactive nature fosters user engagement and participation to a degree unprecedented in any other type of creative work. This, in turn, creates challenges for the video game industry that are not present (or at least, far less salient) in the other creative industries. In particular, video games are susceptible to different forms of potential copyright infringement by a range of parties at all the stages of their lifecycle, from the initial creation of a video game through to its distribution and the granting of access to players and finally to different forms of player interaction. In addition, the video game industry is global in nature whereas copyright laws and enforcement are territorial. This requires the industry to navigate the copyright laws of multiple jurisdictions and to develop enforcement strategies that are effective across the board.

Recommended reading:

Copyright Chapters in any of the books suggested above in Lecture 1

Gaetano Dimita, Yin Harn Lee, Michaela MacDonald, 'Copyright infringement in the video game industry' (WIPO, September 2022),

https://www.wipo.int/edocs/mdocs/enforcement/en/wipo_ace_15/wipo_ace_15_4.pdf

Rosati, E. US District Court explains the idea/expression dichotomy in videogames, *Journal of Intellectual Property Law & Practice*, 2012, Vol. 7, No. 10

Catton, AM, Mere play or authorial creation? Assessing copyright and ownership of in-game player creations (Part 1), IELR 2(2) & (Part 2) IELR 3(1)

Dunford, M., *Paramount Pictures v. Axanar Productions: identifying the infringed work when an unauthorized production is set in an existing fictional universe*, IELR 1(2)

Lintaman, D., Unusual canvasses: resolving copyright infringement through the lens of community customs, IELR 3(1)

Brown, O., The author's arsenal: loosening standards for protectability and substantial similarity in video game copyright, IELR 3(1)

Kempton, N., Interaction of EU and UK copyright in a post-Brexit world: will video games get more protection than they bargain for?, IELR 3(2)

Trapova, A. & Fava, E., Aren't we all exhausted already? EU copyright exhaustion and video game resales in the Games-as-a-Service era, IELR 3(2)

Lecture 3 – Video Game Patents

Patent law is a complex area of law. This session provides an overview of patent protection with regards to different elements of video games, considering both hardware and software-based inventions, in the US and EU. Video game patents are not only relevant from the perspective of enforcement, litigation and licensing, but more prominently, as an important mechanism of increasing the value of the company and associated products and services.

Recommended reading:

Patent Chapters in any of the books suggested above in Lecture 1

Kelly-Nealon, 'Game and Technology Co. v. Activision Blizzard' IELR 2(2)

Warner Brothers granted patent for Nemesis System from Middle Earth <http://patentarcade.com/2021/02/warner-brothers-granted-patent-for-nemesis-system-from-middle-earth-video-games.html>

Gamasutra: The Ten Most Important Video Game Patents
http://www.gamasutra.com/view/feature/130152/the_ten_most_important_video_game_.php?print=1

Chang, Dannenberg: IP Law Protection for Video Games
http://www.gamasutra.com/view/feature/131951/hey_thats_my_game_intellectual_.php?print=1

Comment (McRO v Namco): Will Patent Eligibility of Computer Software Survive?
<http://bannerwitcoff.com/news/1329/>

Listen to the Podcast at <https://www.gamesindustry.biz/articles/2021-02-15-one-patent-to-rule-them-all-podcast>

Lecture 4 – Trade Marks, Designs and Other Rights

Trade marks allow consumers to recognize a certain company and its products or services instantly when they see the mark. Logos, images and catchphrases all qualify as trademarks and form part of a company's goodwill and reputation. Brand recognition and association with a particular company is the purpose of a trade mark. Trade marks are arguably the second most important type of IP protection for game companies after copyright. This session further explores legal implications of in-game use of third parties' marks and available defences. It also covers the role of designs and other rights, contributing to the matrix of IPRs protecting the creative and innovative input into video games, as well as facilitating their distribution and consumption.

Recommended reading:

S. Kane, 'Evolving Case Law on the Fair Use of Famous Trademarks in Video Games' (2013)

K. Lobov, 'How multimedia trade marks could kill cloned games' (Games Industry, 2018)

Tanya Aplin, 'A Critical Evaluation of the Proposed EU Trade Secrets Directive' (SSRN, 2014)

Melissa Ung, 'Trademark Law and the Repercussions of Virtual Property' (ILR, 2009)

CD Projekt Red Defends Its 'Cyberpunk' Trademark (Game Informer, 2017)

Sarlangue, E. 'Registered Community designs in the video game industry: a neglected yet potent tool' IELR 4(2)

Burbidge, R. 'A lost destiny or world of warcraft? Unlocking the hidden power of designs', IELR 3(1)

Gaetano Dimita, Andrea Rizzi, Nicoletta Serao, 'Image rights, creativity and videogames', *Journal of Intellectual Property Law & Practice*, Volume 15, Issue 3, March 2020,

William K. Ford and Raizel Liebler, 'Games Are Not Coffee Mugs: Games and the Right of Publicity', 29 Santa Clara High Tech. L.J. 1 (2012)

Videos:

What role do designs play in the overall IP strategy within the video game sector? This event, appropriately titled Design Intelligence, explores how and why registered Community designs are an important part of the intellectual property toolbox. Although the validity of virtual designs has not yet been tested before courts, registered designs adequately address the issue of clone gaming faced by the industry. Watch here: <https://youtu.be/wjOTya8IYI>

Lecture 5 – The Metaverse

The Metaverse: the parallel virtual worlds, where communities of users – via their avatars - play, socialise and collaborate. The next paradigm shift. Increasingly, the Metaverse is about business too, fuelling a burgeoning new economy in virtual products. As in real life, inhabitants of these virtual worlds like to shop, and buy their favourite brands of (virtual) clothing, furniture and other accessories so that they may express their individuality, enhance their surroundings, and acquire and trade other symbols of social status. This session explores challenges and opportunities for rightsholders, as well as central concepts as digital assets and users rights.

Recommended reading:

Metaverse Report (Osborne Clarke, 2021) <https://togetherwith.osborneclarke.com/metaverse-report/home/>

Michaela MacDonald, 'The Case for Virtual Property' (PhD thesis, QMUL, 2019)

Ross A. Dannenberg and American Bar Association (eds), *Computer Games and Virtual Worlds: A New Frontier in Intellectual Property Law* (American Bar Association, Section of Intellectual Property Law, 2010)

Tyler T. Ochoa, *Who Owns an Avatar?: Copyright, Creativity, and Virtual Worlds* (Santa Clara Law Digital Commons 2012)

Kim Barker, 'MMORPGing – The Legalities of GamePlay' (2012) 3 European Journal of Law and Technology

Videos: UCL's Institute of Brand and Innovation Law hosted a discussion with experts on the topic.

Watch here: <https://youtu.be/vSrCshz5w0>