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About me

- Graduated from MUNI in 2009
- Lecturer at Queen Mary University, the School of Electronic Engineering and Computer Science (EECS)
- Teach and research on the impact of laws, norms and environmental constraints on users' behaviour and interactions in Cyberspace
- Collaborations with WIPO, UKIPO
- Co-editor of the Interactive Entertainment Law Review, Edward Elgar Publishing
- Consultant at Kriz & Partners, ČR
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Module Objectives

- What to expect from this module:
 - An introduction to Interactive Entertainment Law as a separate legal discipline;
 - Understanding the unique nature of video games as creative media;
 - Gaining insights into the video game industry;
 - Grasping the role of IP for the entire video game lifecycle and the industry as a whole; and
 - Identifying different stakeholders and their interests (developers, publishers, platform owners, users, creators, etc.)

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Module Overview

- Lecture 1 – Video Games and IP
- Lecture 2 – Video Games and Copyright
- Lecture 3 – Video Game Patents
- Lecture 4 – Trade Marks, Designs and Other Rights
- Lecture 5 – The Metaverse

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The Industry – Statistics

- Global revenue to reach \$406.20bn by 2023
- Over 3 billion people play video games, with projections of 4.4bn users by 2028
- 53% of the EU population (aged 6-64) plays video games (IFSE 2022)
- China is generating the highest revenue in the video game market, while the US remains the dominant player
(high consumer spending, major video game companies)

www.statista.com

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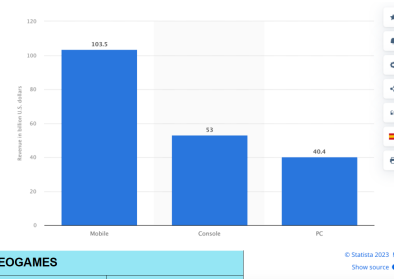
The Industry – Characteristics

- Young, global, fast-paced, born digital, highly innovative, creative, and very successful industry
- Complex digital products, underpinned by IPRs
- Complex contractual matrix facilitating the ecosystem
- Complex regulatory framework
- Transnational / international reach with consequences for the entire legal and regulatory framework
- Profound impact on culture and society

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The Industry – Structure

- Game platforms
 - PC
 - Console
 - Mobile
- Game distribution
 - Digital
 - Retail
 - Cloud



THREE PLATFORMS OF VIDEOGAMES

CONSOLE	PC (PERSONAL COMPUTER)	MOBILE/CASUAL
<ul style="list-style-type: none"> • Run on dedicated hardware • Expensive to develop • Wide variety of genres • System controlled by IP owners • Box product and digital 	<ul style="list-style-type: none"> • Run on Windows, Mac or Linux • Wide variety in price and genre • No single gatekeeper for platform • Most sales through digital 	<ul style="list-style-type: none"> • Run on tablets and phones • Least expensive to develop, but development costs increasing and difficult to retain players • All genres, but social and casual games play a big role • Largest number of gamers

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The Industry – The Players

- First party – makers of software and / or hardware
- Publishers
 - the vast majority of games are made by third-party publishers and developers



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The Industry – The Trends

- Digital accessibility will increase
- More powerful devices, enabling content-intensive games
- E-sports, cross-platform play, and cloud gaming will further expand
- Live services and video-game streaming services will grow
- More innovative gameplay will lead to more engaging games
- VR / AR / XR... The Metaverse

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Interactive Entertainment Law

- Interactive Entertainment Law:
 - Identifies relevant legal, regulatory and commercial considerations that industry players need to be aware of,
 - Links and reinforces intellectual property issues, in particular copyright, to the specific needs of this creative industry, to promote economic growth and support game developers in protecting their creative works,
 - Explores the player vs creator conundrum,
 - Formulates industry-informed and inter-disciplinary research and policies

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Interactive Entertainment Law

- IP law:
 - Copyright – protects the engine and the content
 - Patents – protect hardware and software-related, technical effect
 - Trademarks – protect branding, game mechanics (?)
 - Design – protects how a product looks
- Confidentiality and trade secrets
- Unfair competition and anti-trust
- Personality rights
- Contractual matrix – while IPRs are the default rules in relation to rights allocation with regards to the various protected assets, contract law provides an infrastructure that facilitates the access to and use of these assets and, furthermore, enables to modify or adapt these rules
- Regulation plays an increasingly important role in shaping the industry's future and our aim is to provide a platform for a multi-stakeholder dialogue that will result in well-informed, positive policies (rather than reactive ones)

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MTJG – Conference Series

Queen Mary
University of London
Centre for Commercial Law Studies

ABOUT VAULT IELR

MORE THAN JUST A GAME

After careful consideration of the global situation of the pandemic, we have decided to further postpone MTJG London to the 7-8 April 2022.

However, we do not want to stay silent for another year. We would like to discuss a number of different topics as part of 2 online webinars, on the 20th and 27th of May 2021, 5-6 pm UK time.

Retrospective (20th May 2021 5-6pm UK time)
Register here: https://qmul.ac.uk/zoom/join/secret/WN_BkbyYmTl5UjajansPqQ

Looking ahead (27th May 2021 5-6pm UK time)
Register here: https://qmul.ac.uk/zoom/join/secret/WN_H2kxpb3a5ZMk5YvsnDw

WELCOME

More Than Just a Game (MTJG) is a unique series of academic-led conferences on Games and Interactive Entertainment Law attracting an international network of

<https://www.mtjg.co.uk/>

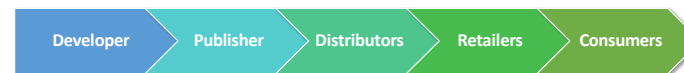
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IELR – Peer-review Journal

The screenshot displays the Elgaronline website interface. At the top, the Elgaronline logo is visible, along with the tagline 'The online content platform for Edward Elgar Publishing'. A search bar and navigation links (Home, Browse, Librarian services, Take a tour, Help, Purchase Options, Journals, Subjects) are present. The main content area features a search bar, a 'Search for article by...' section, and a 'Table of Contents' section. The 'Table of Contents' section lists 'Issue 1 (August 2021)' with a list of articles, including 'The ultimate unboxing: in search of the right questions to ask about loot boxes' and 'Getting under your skin(s): a legal-ethical exploration of Fortnite's transformation into a content delivery platform and its manipulative potential'. The page also includes a 'Download PDF' button and a 'Get eTOC Alert' button.

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Video Game as an Interactive Medium



- A complex digital product, an interactive medium
- Video games are unlike traditional games or sport practices
- The consumption of video games is tied to specific technological platforms that are also consumer commodities, such as consoles, computers, or handheld devices
- The complexity (and industrial scale) of video game animation, music, and acting, makes a modern video game share more in common with a motion picture than with a board game
- Players are interacting with the game and with each other

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Video Games and IP

- Video games as digital products heavily depend on IPRs – it is the bloodline of the industry
- Video game as *“an electronic or computerized game played by manipulating images on a video display or television screen.”*
- IPRs are associated both with the tools used to develop games and the content included in a game

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Intellectual Property Rights

- **Copyright** – set of exclusive rights granted by statute in relation to original works that generally lasts for 70 years after the death of the author; it arises automatically through the act of creation and does not need to be registered
- **Database right** – a statutory right based on the substantial investment made in creating and maintaining databases and protects against the extraction and reuse of data for at least 15 years
- **Patents** – a monopoly right granted by statute for the commercial exploitation of an invention for a limited time, usually 20 years; registration is required
- **Trade marks** – indicate the origin of goods and services, and may be protected from misuse by third parties, either by rights acquired via registration or through evidence of use; protection will last for as long as the mark fulfils its role as an indicator of origin
- **Registered designs** – may be protected through the act of creation or by registration and there is a plurality of design rights available (aesthetic and functional aspects of the designs of industrial articles, or protect against the copying and misuse of designs); they last between 3 to 25 years

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Other Rights

- **Confidential information / trade secrets** – most legal systems do not recognise trade secret as exclusive rights as such, but rather a specific legal remedy designed to protect the secrecy put up by the rightsholder, which is based on different legal principles, such as unfair competition, general principles of tort law, contract law or breach of confidence in common law jurisdictions
 - In the EU, the Trade Secret Directive establishes a minimum standard of protection
 - It specifically states that trade secrets are not considered intellectual property rights, which also precludes the application of the Enforcement Directive

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Other Rights

- **Personality / image rights / rights of publicity** – a property right that protects against the misappropriation of a person's name, likeness, or other indicia of personal identity – such as nickname, pseudonym, voice, signature, likeness, or photograph – for commercial benefit
 - US
 - State law level, statute or case law
 - *Rogers* test, transformative use analysis
 - Outside US
 - Personality and image rights, different legal regimes
 - Related protection: trade marks
 - Related claims: copyright claims, privacy and defamation claims

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IP Matrix (plus trade secrets)

Copyright	Trade Marks	Trade Secrets	Patents	Registered Design	?
<ul style="list-style-type: none"> • Code • Story • Graphics • Concept and in-game art • Music and Sounds • User Interfaces • Motion-Capture • Voice Acting 	<ul style="list-style-type: none"> • Company Name • Company Logo • Game Title • Distinguishable "Catch Phrases" associated with the game 	<ul style="list-style-type: none"> • Pricing Information • Development Tools • Developers' know-how • Deal Terms 	<ul style="list-style-type: none"> • Inventive Gameplay or Game Design Elements • Hardware Technical innovations • Software Technical innovations 	<ul style="list-style-type: none"> • Box Design • 3D Models and Environments • User Interfaces 	<ul style="list-style-type: none"> • Fictional Marks • Video Game Streams • Youtube Videos • Modifications • Unauthorised Merchandising

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How much intellectual property is there in a PlayStation?



Patents

PlayStation game controllers, robot playmates, and 3D technology are inventions which can receive patent protection.



<https://www.wipo.int/export/sites/www/socialmedia/en/docs/how-much-ip-is-there-in-playstation.pdf>

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In-class Exercise

- Work together in small groups of 3-4 students.
- Imagine that you are the Chief IP Counsel of a major video game company.
- One of your tasks under IP management is to draw up an IP portfolio for one of the video games your company develops.
- Consider all the different IPRs and how they may apply to different aspects of this video game title.

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Key Points

- The interactive entertainment industry has experienced an unprecedented success and growth
- This has recently attracted a lot of attention and scrutiny
- Interactive Entertainment Law encompasses and defines all the legal and regulatory issues and challenges – the scope is expanding
- IP is at the core, but IE Law increasingly focuses on other aspects as well

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Thank you!