

Final Syllabus VGL Spring 2013

VIDEO GAME LAW

University of British Columbia Law School | Allard Hall; Law 450A.001

Spring 2013: Wednesdays, 10:30 a.m. to 12:30 p.m. Room B101

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(Thanks to UBC Centre for Teaching, Learning & Technology for design, implementation and continuing support)

Twitter: Add #ubcvgl to tweets and re-tweets to post in Twitter widget at Course Blog

A. Abstract:

North American video game revenues routinely surpass both domestic film box office receipts and music sales. The digital media and video game industries continue to grow

faster than almost any other economic segment. Vancouver is the most important video game production center in Canada and one of the largest in the world.

A significant part of the industry's success lies in the creation of virtual worlds that the player can physically interact with. Video games upset the traditional media apple cart. The gamer becomes the controller of a responsive virtual world, rather than simply a passive "receiver" of images and sound.

The nature of interactive entertainment and video games has generally defied systematic domestic legal constraints due to: (1) a general lack of regulatory requirements targeted directly at video games; (2) the sources of both creative content and audience for interactive entertainment being international (i.e. there is very little regionally or locally targeted interactive entertainment); (3) relatively low technical barriers to entry; (4) an industry which is maturing during an era of increasing globalization.

The consequence is that the video gaming industry has in a sense become a large-scale case study in the future of law and regulation as applied to creative enterprise. That this is occurring in an industry whose core demographic includes children results in periodic though considerable controversy.

Having been historically largely ignored by governments, the video game industry also represents an interesting free market experiment. Generally content is created and distributed to a mass market without financial support mechanisms, distribution protections or licensing requirements that apply to other "cultural industries". As such video games have been a precursor to the rapid rise of live digital communities and of social media. Gamers by building levels for their favorite games have been engaged in forms of crowd-sourcing, not to mention threatening intellectual property orthodoxies for years.

The interactive entertainment and video game industries are governed by a variety of international and domestic laws dealing with intellectual property, communications, contracts, tort liability, obscenity, employment, defamation, and freedom of expression.

The goal of this course is to continue scholarship in the area. It also forms part of a cluster of courses both at UBC Law School related to the entertainment and communications industries.

B. Base Text & Materials:

Mandatory: "Video Game Law, 2nd Edition" (LexisNexis, 2012) by Jon Festinger Q.C., Chris Metcalfe & Roch Ripley

<http://www.lexisnexis.com/store/ca/catalog/booktemplate/productdetail.jsp?prodId=prd-cad-01004>

Optional: "Virtual Justice: The New Laws of Online Worlds" (Yale University Press 2011 – Creative Commons License)

<http://www.chaihana.com/virtualjustice.pdf>

Electronic Reserve Materials:

To have access to the course materials on-line please make sure you have access to UBC Connect. Then at <http://elearning.ubc.ca/connect/>, first, login to Connect, then in the menu bar as the top click on the "Library" header. On the right hand side, there should be the header "My Course Reserves", under which is a search box, beneath which is a "Browse my courses" link. Click on "Browse my courses" and you should have access under 2012W2-LAW450A-001-Topics in Sports, Media, Entertainment or Communications Law – TPCS
SPT/MED/ENT-Festinger, Jon

C. Perspective:

1. Ten Rules for Students, Teachers and Life by John Cage and Sister Corita Kent

<http://www.brainpickings.org/index.php/2012/08/10/10-rules-for-students-and-teachers-john-cage-corita-kent/>

"RULE ONE: Find a place you trust, and then try trusting it for awhile.

RULE TWO: General duties of a student — pull everything out of your teacher; pull everything out of your fellow students.

RULE THREE: General duties of a teacher — pull everything out of your students.

RULE FOUR: Consider everything an experiment.

RULE FIVE: Be self-disciplined — this means finding someone wise or smart and choosing to follow them. To be disciplined is to follow in a good way. To be self-disciplined is to follow in a better way.

RULE SIX: Nothing is a mistake. There's no win and no fail, there's only make.

RULE SEVEN: The only rule is work. If you work it will lead to something. It's the people who do all of the work all of the time who eventually catch on to things.

RULE EIGHT: Don't try to create and analyze at the same time. They're different processes.

RULE NINE: Be happy whenever you can manage it. Enjoy yourself. It's lighter than you think.

RULE TEN: "We're breaking all the rules. Even our own rules. And how do we do that? By leaving plenty of room for X quantities." (John Cage)

HINTS: Always be around. Come or go to everything. Always go to classes. Read anything you can get your hands on. Look at movies carefully, often. Save everything — it might come in handy later.”

D. Syllabus:

Introduction to the Course

Class 1: January 2, 2013

Overview of 1st class

Objectives of the course

Adjunct Bio's

Adjunct biases

Student Bio's, interests, biases & objectives

Media-capture/iTunes U plans

Releases

Evaluation

Course themes

Course flow & topics

Discussion Hour structure

News of the Week + “What is Your Take?”

Discussion Hour speakers + questions/conundrums

Continuing Weblog

Open input/comments/reactions

Invited Guests for “Discussion Hours”:

Recurring Themes:

Double Standards test (Digital Ethics).

Legal constraints on digital creativity.

The Post IP World – contract or?

Right to create/Right to Mod (Right to Inter-Op too)? – Un-enumerated rights of Freedom of Expression meets Freedom of Thought. Your creation is protected, but not your right to create?

Four memes: Creating, Connecting, Controlling, Conciliation.

Part A. Creating

Class 2: January 9, 2013

Jon's Talk – “If Picasso had painted a round object...”:

What is a game? The roots of video games in play (fun) + creativity. How different/same as other media?

Are video-games a “media”? D.L. Shaw, “ The Rise and Fall of American Mass Media: Roles of Technology and Leadership”; April, 1991 “Roy W. Howard Lecture” Indiana University.

From ‘documents to data’ – how comic books, pinball machines and Dungeons & Dragons became videogames. Why the transformation to digital matters legally, psychologically and philosophically. Main metaphor: initiating content rather than receiving content (Television as “transmitter” to gamer as “transmitter”).

Catalogue of firsts & barriers broken by video games: interactivity, voice over IP, open world, social, avatars (zeitgeist, memes, identity & equality).

How & why did video gaming crack the difficult code of community building so easily? Consequences.

Video games as the return of the oral narrative (Conrad Leibel).

The application of real world laws to virtual environments. Is there a virtual world? Is WoW its own country? (Duranske)

What are the threshold legal/structural issues for transformative media?

The road from disrespect to eventual acceptance of games by courts (& the censoriously inclined). Introduction to the possible irony of that result.

From no copyright in card games, sports, leisure as the starting point to the idea/expression dichotomy in the digital age.

Comparing game related censorship to censorship of other kinds of information/entertainment. Blaming technology. Legal implementations of content neutrality (& not).

(Hook to next talk in terms of why expression/speech are not paramount and that the real censors are legal concepts we might not at all expect....)

Materials:

1. Text, pp. 1-7; Text, pp. 5-40, 213-231
2. Donald Lewis Shaw – “ The Rise and Fall of American Mass Media: Roles of Technology and Leadership” (April, 1991 “Roy W. Howard Lecture” Indiana University)
3. History of video games interactive timeline: <http://timeline.computerspielemuseum.de/>
4. IGN’s 25 Greatest Breakthroughs in Video Game History:
<http://ca.ign.com/articles/2012/01/30/the-25-greatest-breakthroughs-in-video-game-history>

5. IGN's list of Culturally Censored Games: <http://ca.ign.com/articles/2012/04/17/culturally-censored-games>

6. Stern Electronics v. Oman, 669 F.2d 852 (2nd Cir. 1982)

7. Atari v. Oman, 888 F.2nd 878 (D.C. Cir. 1989)

Discussion Hour:

Student group sign-ups

Course & digital pedagogy logistics

News of the Week

Class 3: January 16, 2013

Jon's Talk – John Milton Plays Grand Prix Legends:

An analysis of freedom of expression/speech versus... 1. Privacy; 2. Contracts; 3. IP; 4. Negligence.

Impacts & perspectives on the idea/expression dichotomy.

ISP distributors immunity v. publisher's expressive freedom protections: the devils choice – mutually exclusive or reconcilable?

Fundamentals or Fundamentalism: Privacy literalism and IP literalism – exploring the positional paradoxes and political excesses of anti-piracy and pro-privacy in a video gaming context. Evolving a single standard for creators as users & users as creators.

Correlating economic growth, Rule of Law Index & I.P. stringency.

(Hook to next talk – now that we have creativity, content and contradictions accounted for, what is the next horizon? Remixing in games...next week...)

Materials:

1. Text, pp. 183-211

2. Winters v. New York, 68 S. Ct. 665 (U.S. 1948)

3. Interstate Circuit, Inc. v. Dallas, 88 S. Ct. 1298 (U.S. 1968)

4. Brown v. Entertainment Merchants Association, 131 S. Ct. 2729 (2011)

5. Montreal v. Arcade Amusements Inc., [1985] 1 SCR 368

6. R. v. Towne Cinema Theatres Ltd., [1986] S.C.J. No. 24 (SCC)

Discussion Hour:

Roch Ripley will speak on how the evolution of IP Law has affected users and rights- holders.

Additional Materials:

1) Michael Geist Blog Posting: Why Canada is Keeping the Flawed Digital Lock Rules
(<http://www.michaelgeist.ca/content/view/6033/125/>)

2) Dr. Mihaly Fiscor, “MINIMUM OBLIGATIONS UNDER THE WIPO ‘INTERNET TREATIES’ TO PROVIDE ADEQUATE PROTECTION FOR TECHNOLOGICAL MEASURES WHICH CANNOT BE DISREGARDED IN THE NAME OF ‘FLEXIBILITIES’”:

<http://www.copyrightseesaw.net/data/documents/documents/a/4/a/a4a58eb56f54e896cff4e6d6e123ac04.doc>

3) Parliament’s Legislative Summary of Bill C-11: An Act to amend the Copyright Act:
http://www.parl.gc.ca/About/Parliament/LegislativeSummaries/bills_ls.asp?ls=c11&Parl=41&Ses=1&Language=E

Class 4: January 23, 2013:

Jon’s Talk – Right to CREATE or Rights of Creation:

The Right to Mod? Is content original? Is “authorship” a fiction? The Right to Create?

The importance of Minecraft.

Modalities, histories and choices in reconciling IP & Freedom of Expression. Distinguishing the “Duke Nukem” & “iRacing” cases. Distinguishing GPL (community) & MS Flight Simulator SDK.

The maturity factor: Minecraft/Tekkit. “Garry’s mod”, COD &... (1. GTA – Hot Coffee; 2. Dead or Alive: XBV). MS Flight Simulator SDK (as it then was)...

Moral rights & an evolving “CreatorRight”. The evolving reinterpretations of fair dealing/fair use as applied through principles of technological and content neutrality.

Non Fair Use/Dealing defenses – what copyright does not protect: ideas, genres, scenes a faire, stock characters, ideas merged with expression (?)

Free expression/speech & copyright: Is Fair Use/Dealing wholly within copyright or a speech right? – An analysis of the implications of the statutory history leading to “The Statute of Anne”.

Step 1: Games as uncopyrightable systems? – Step 2: Is “fashion” relevant?

The SCC “penatology”. Redefinitions of fair dealing/use or steps to a new “right”.

(Cliffhanger to next four talks – re “connecting through games”....How do we connect today?...Mostly through technology. How does the law mediate our connections? Mostly

through contract being paramount to everything else... & the confusion of different technologies attracting different regulatory/legal responses. Stay tuned...)

Materials:

1. Text, pp. 29-41, 55-105, 112-113
2. Jack M. Balkin, Virtual Liberty: Freedom to Design and Freedom to Play in Virtual Worlds 90 Virginia L. Rev. 2043 (2004)
3. F. Gregory Lastowka & Dan Hunter, The Law of Virtual Worlds 92 Calif. L. Rev. 1 (2004)
4. Bruce E. Boyden, Games and Other Uncopyrightable Systems, 18 Geo. Mason L. Rev. 439 (2011)
5. Johanna Blakley: Lessons from fashion's free culture, TedX 2010
http://www.ted.com/talks/johanna_blakley_lessons_from_fashion_s_free_culture.html
6. Micro Star v. FormGen Inc., 154 F.3d 1107 (9th Cir. 1998)
7. iRacing Motorsport Simulations, LLC v. Robinson, No. 05-11639 NG (D. Mass. May 28, 2009)

Discussion Hour:

Guest Speaker: Ian Verchere

Founder & Chief Creative of Roadhouse Interactive

<http://ca.linkedin.com/in/ianverchere>

Student Group: Geoff Pedlow, Brendan Craig.

Part B. Connecting

Class 5: January 30, 2013:

Jon's Talk – Creators, Consumers & Users:

Should all IP be “use it or lose it”?

Why don't CD's have an End User License Agreement while games do? Software development & the evolution of licensing.

Legal fictions: EULA's; TOS' & the consumer instinct for expediency – click-wrap cases and content ownership issues.

The first sale doctrine & EULA restrictions (Redigi case).

Piracy versus user rights.

Jurisdictional issues and keeping sane in a borderless world with borders.

...the chasm of contracting out: Remind me again, why is the prevalent regime that of millions of very similar yet (fictionally) individual contracts? The potential impact of consumer protection laws internationally on the “standard” of “standard form” contracts.

Trick or treaty – alternate visions for interactive rights.

(Hook to next talk – so what sense can we make of the significant underlying role of contract law in the video game relationships)

Materials:

1. Text, pp. pp. 93-97, 104-105, 171-175. 231-237, 243-291 (model Agreements)
2. Christina J. Hayes, Changing the Rules of the Game: How Video Game Publishers are Embracing User-Generated Derivative Worlds 21 Harvard J.L. & Tech. 567 (2008)
3. Blizzard v. BnetD, 422 F.3d 630 (8th Cir. 2005)
4. MDY Industries, LLC v. Blizzard Entertainment, Inc., 2008 U.S. Dist. LEXIS 53988

Discussion Hour:

Guest Speaker: : Jas Purewal Lawyer, Osborne Clarke, London UK

<http://www.osborneclarke.co.uk/contact-us/people-finder/people/pqr/p/purewal-jas.aspx> (by video-conference). Student Group: Will Shaw, Brendan DePoe.

Class 6: February 6, 2013:

Jon’s Talk – 10 Clauses – 10 Cases – 10 Contexts:

“10 contractual clauses – 10 video game law cases”. Tracking the evolution of legal thinking about contracts in the digital space.

Fictions & Frictions: Click wrapping, minors and the real meaning of adventure games.

(Hook to next talk – looking beyond the law of contracts, what are the legal/regulatory regimes that can apply to game technology and content?)

Materials:

1. Text, pp. 243 – 290
2. Atari v. Nintendo, 975 F.2d 832 (Fed. Cir. 1992)
3. Sega v. Accolade, 977 F.2d 1510 (9th Cir. 1992)
4. Sony v. Connectix, 203 F.3d 596 (9th Cir. 2000)

5. Sony v. Bleem, 214 F.3d 1022 (9th Cir. 2000)

6. Davidson & Associates v. Internet Gateway, 334 F. Supp. 2d 1164 (E.D. Mo. 2004);
Blizzard v. BnetD, 422 F.3d 630 (8th Cir. 2005)

7. Vernor v. Autodesk, 621 F.3d 1102 (9th Cir. 2010)

Discussion Hour:

Guest Speaker: Howard Donaldson President, DigiBC. <http://digibc.org/profiles/howard-donaldson>
Student Group: Patrick Williams & Andrew Dilts.

Class 7: February 13, 2013

Jon's Talk – What's it all about...Alpha? – An early stage assessment of the utility of EULA's (etc.):

Continuing with the fundamentals of EULA's, ToS', Tou's & the like:

Creating tends to go with Copyright, which in turn comes with Constraints/Coercion.

Connecting tends to go with Contracts, which in turn comes with Restraints/Control. How logical is this really?

The problem with drafting (EULA's etc.). The re-emergence of User Rights in a contractual context? Applying the Double Standards Test to EULA's, ToS' and those who impose them. The need for consumer agreements for the "bad stuff": Interpreting the case evidence. What about Notices?

Censoring creative expression through contract terms. How important?

What the cases and pleadings imply about the need for consumer contracts like EULA's & ToS' as remedies: A review of the 10 cases from the previous class.

Are we parties to hundreds (thousands?) of "active" contracts that we don't use? Does it matter? A Common Law chasm if only form matters?

If video game consumer contracts didn't exist would the gaps be otherwise filled in?

Technology, legislation and consumer protest: the future of video game contracts?

Materials:

1. Bragg v. Linden Research, Inc., 487 F.Supp. 2d 593 (E.D. Pa. 2007)

2. MDY Industries, LLC v. Blizzard Entertainment, Inc., 2008 U.S. Dist. LEXIS 53988

3. Susan H. Abramovitch and David L. Cummings, "Virtual Property, Real Law: The Regulation of Property in Video Games", http://cjlt.dal.ca/vol6_no2/abramovitch.pdf

Discussion Hour:

Guest Speaker: Patrick Sweeney Counsel, Reed Smith, Century City California
(http://www.reedsmith.com/patrick_sweeney/ (by video-conference). Student Group: Jess Johnson, Zoe Si, Aaron Oh.

-----Spring Break-----

Class 8: February 27, 2013

Jon's talk – From Wheelbarrows to Holodecks:

Evolution of consumers as creators.

PC v. Consoles v. Mobile (parallels Eula's v. ToS v. Crowd/Open source). Evolution of various technologies, products, content & consumers. Evolution of differing legal/regulatory regimes relating to various combinations of the above list including legal treatments, distinctions, questions & problems.

The living room war: a report from the frontlines.

Cataloguing complexities of the "cloud". Evolving legal concepts of technological neutrality. Net neutrality. "Interop" rights?

Theme of film treatment of games: Tron(s); Gamer; Surrogates; Wreck-it Ralph.

Interactivity, immersion & virtual realities in games; legal issues/ethical conundrums. Live remixing of the real, the virtual and the fully interconnected – IP, contractual and regulatory choices, problems and dead-ends. The further issues and consequences of twisting realities through mobile, AR games, bots, augmented reality games, simulations & Kinect-ing – living inside your own massively multiplayer 3D copier built world while wearing Google Glass. Virtual currencies, real money.

Multiple contemporaneous screens/devices – sometimes linked, sometimes not = natural fragmentation/diversity of experience. Consequences?

For example, the screen merger/multiple input dilemma: what legal standard applies when different laws, rules and regimes apply to each of the individual components onscreen? For example where a crowd-sourced defamation appears on-screen as part of a group on-line sports viewing experience, will the service provider be seen as an ISP with no liability or a publisher with liability? In other words, which screen within a screen will the Court choose as paramount; or more to the point does the combination of services within a single screen alter the legal analysis?

The not so surprising research results on the consequences of avatar choice – is virtual reality more fair and more equal than reality?

(Cliffhanger – now that we are completely out of control, inebriated on visions of a crazy sci-fi future, we come to the next group of three talks – on Control. We have almost come full circle, from transforming old technologies to a new one, creating with it and connecting through it. We now arrive at the human instinct for order – how we control and consequently are controlled...stay tuned)

Materials

1. Text, pp. 51-55, 157-175, 213-231
2. E.S.S. Entertainment 2000 v. Rock Star Video, 444 F.Supp. 2nd 1012 (C.D. Ca. 2006)
3. Bragg v. Linden Research, Inc., 487 F.Supp. 2d 593 (E.D. Pa. 2007)
4. MDY Industries, LLC v. Blizzard Entertainment, Inc., 2008 U.S. Dist. LEXIS 53988
5. Will Knight, "Gamer Wins Back Virtual Booty in Court Battle", <http://www.newscientist.com/article/dn4510-gamer-wins-back-virtual-booty-in-court-battle.html>
6. R. v. McSorely, [2000] B.C.J. No. 1993 (B.C. Prov. Ct.) re: real-world sports violence as part of the game
7. Court documents in Hernandez v. Internet Gaming Entertainment, Ltd., United States District Court for S.D. Fla., Case No. 1:07-CIV-21403-JIC, Filed May 31, 2007.

Discussion Hour:

Guest Speaker: Roxanne Christ (tbc), Partner Latham & Watkins LLP on "On-line gaming meets on-line gambling" <http://www.lw.com/people/RoxanneEChrist>.

Student Group: Arshana Lalani, Merrick Cohen, Jacob Todd.

Part C. Controlling

Class 9: March 6, 2013

Jon's talk – Controlling Originality:

"Creationism"; the legal version – exploding a few fictions & myths about originality. Devices, franchises & anti-trust/competition law responses. Reverse engineering, emulations, chipping.

The Clone Wars: deconstructing genres, technology and identity uniqueness through EA v. Zynga – Sim Social v. The Ville; Incredible Technologies v. Virtual Technologies – Golden Tee/PGA Tour Golf; Textron v. EA – Battlefield 3 Bell helicopter; and right of publicity (as opposed to copyright) cases – e.g. the retired NFL players & active college players v. EA Madden/NCAA Football cases; No Doubt v. Rockband (Activision).

The vexing problem of software patents.

Trolling for dollars? – Patents as swords in Immersion v. Sony, & the X-Plane case. “Ghost-car” patent. Feedback controllers. Are these constrictions on user rights? Should they be seen to be?

Free Expression/1st Amendment defences?

(Hook to next talk– Is virtual sex, sex? Is virtual violence, violence? Next week...)

Materials:

1. Text, 7-41, 62-104
2. Incredible Technologies, Inc. v. Virtual Technologies, Inc., 2003 U.S. Dist. LEXIS 16816, 284 F. Supp. 2d 1069 (N.D. Ill. 2003)
3. Electronic Arts, Inc. v. Textron, Inc. et al, California Northern District Court, Case No. 5:2012cv00118, Filed January 6, 2012.
<http://dockets.justia.com/docket/california/candce/5:2012cv00118/249983/>
4. Mike Williams, “EA Sues Zynga Over Sims Social Copyright Infringement”,
<http://www.gamesindustry.biz/articles/2012-08-03-ea-sues-zynga-over-sims-social-copyright-infringement>
5. Steve Peterson, “Zynga Slams EA in Court Filing, Calls them ‘Desperate’”,
<http://www.gamesindustry.biz/articles/2012-09-14-zynga-slams-ea-in-court-filing-calls-them-desperate>
6. Kain Erik, “Clone Wars: Zynga Vs. EA and The Baffling Laziness of Copycat Games”,
<http://www.forbes.com/sites/erikkain/2012/08/10/clone-wars-zynga-vs-ea-and-the-baffling-laziness-of-copycat-games/>
7. Electronic Arts, Inc. v. Zynga, Inc., California Northern District Court, Case No. 3:2012cv04099, Filed August 3, 2012:
<http://dockets.justia.com/docket/california/candce/3:2012cv04099/257843/>
8. Full EA Complaint here: <http://www.scribd.com/doc/101954002/EA-v-Zynga-Complaint-Final>
9. Samuel Michael Keller v. Electronic Arts, Inc. et al, 2010 U.S. Dist. LEXIS 10719 (N.D. Cal. 2010)
10. Tetris Holding, LLC v. Xio Interactive, Inc., 863 F. Supp. 2d 394, 397 (D.N.J. 2012):
http://www.tetris.com/_Asset-Library/Files/Press/ECF61_Tetris-Opinion.aspx

http://www.tetris.com/_Asset-Library/Files/Press/Consent-Order-and-Permanent-Injunction.aspx

Discussion Hour

Guest Speaker: Jennifer Lloyd Kelly Partner, Fenwick & West LLP (San Francisco) on imitation, originality & genres in video games.

<http://www.fenwick.com/professionals/Pages/jenniferkelly.aspx>

Student Group: Alex Evans, Chen Zhao.

Class 10: March 13, 2013

Jon's talk – “Mass Effect-s”:

Sex and sexism in games & gaming.

Kids & games – secrets of contractual immunity.

Addiction & health issues/evidence.

A history of legal reactions to (video game) violence highlighted by the Dungeons & Dragons (Waters v. TSR) and Columbine High School (Sanders v. Acclaim) cases. “ What is a deviant violent videogame....as opposed to a normal violent videogame?”

The evolving role of cultural/societal memes in legal decision making as seen through Re Alberta Legislation (Alberta Press Act – 1938 SCC), Irwin Toy (advertising directed towards children – SCC 1989), R. v Butler (pornography – SCC 1992), Dagenais v. CBC access – SCC1994), Crookes v. Newton (hyperlinking – SCC 2011), & ESA v. SOCAN (tech neutral fair use – SCC 2012). Left to do: privacy; remixing; interoperability/connectivity/net neutrality???

(Hook to next talk, so freedom has become a stronger meme than causality, but can't we regulate “the industry”?)

Materials:

1. Text, pp. 143-157, 190-211
2. Irwin Toy Ltd. V. Quebec (Attorney General), [1989] 1 S.C.R. 927
3. James v. Meow Media Inc., 2002 U.S. App LEXIS 16185, 300 F.3d 683 (6th Cir. 2002)
4. Sanders v. Acclaim Entertainment Inc., 2002 U.S. Dist. LEXIS 3997, 188 F. Supp. 2s 1264 (D. Colo. 2002)
5. Watters v. TSR, Inc., 1990 U.S. App. LEXIS 8827, 904 F.2d 378 (6th Cir. 1990)

6. Dagenais v. Canadian Broadcasting Corp., [1994] 3 S.C.R. 835

7. R. v. Butler, [1992] 1 S.C.R. 452

8. Entertainment Software Association v. Society of Composers, Authors and Music Publishers of Canada, 2012 SCC 34

9. Crookes v. Newton, 2011 SCC 47

Discussion Hour:

Guest Speakers: Chris Bennett, Partner Davis LLP on personal information flow and games.
<http://www.davis.ca/en/lawyer/Chris-Bennett/> Student Group: Michela Fiorido, Tyler Dennis.

Class 11: March 20, 2013

Jon's talk – Controlling the Controllers:

Privacy “The Sequel”: scalability not waiver-ability. Contrast with – information gathering through games for state purposes.

Regulation of the video game “medium”. Ratings, regulation and industry self-regulation.
Discussion: Is multiplayer gaming “broadcasting”? Should it be? Could it be? (See: “Why Johnny can't stream” – James Grimmelmann). Telecommunications as vehicle of regulation?

Taxation as vehicle for regulation? Consumer protection and discontinued services.

(Cliffhanger to final two talks. The media born of transforming other media itself comes full circle, preparing itself to be transformed...stay tuned)

Materials:

1. Text, pp. 186-190, 213-231

2. B.C. Motion Picture Act, R.S.B.C. 1996 c. 314

3. Ontario, Film Classification Act, S.O. 2005, c. 17

4. James Grimmelmann, “Why Johnny Can't Stream: How Video Copyright Went Insane”,
<http://arstechnica.com/tech-policy/2012/08/why-johnny-cant-stream-how-video-copyright-went-insane/>

5. CBC News, “CRTC Opts Not To Regulate Netflix”,
<http://www.cbc.ca/news/technology/story/2011/10/05/technology-crtc-netflix-online-video.html>

Discussion Hour:

Guest Speaker: Alan Bruggeman, Attorney Microsoft Entertainment & Devices Group (privacy and on-line safety).

Part D. Conciliation

Class 12: March 27, 2013

Jon's talk – The Terminator & the Orc; a tale of two cases:

Schwarzenegger v. ESA; Davidson & Associates v. Internet Gateway (Blizzard). Want some Hot Coffee: The GTA effect as conscious trigger. The creative effect as subconscious rationale. In turn providing the legal vessel for apotheosis...content lives, technology dies and the law follows...

(Hook....(finally)...Are video games ethical?)

Materials:

1. Text, pp. 93-97, 190-211
2. Oral argument in Blizzard v. BnetD,
<http://archive.org/details/EighthCircuitCourtofAppeals>
3. Oral arguments in Brown v. Entertainment Merchants Association (U.S. Supreme Court)
http://www.oyez.org/cases/2010-2019/2010/2010_08_1448

Discussion Hour:

Guest Speaker: Brian Dartnell, Senior Counsel & Anoop Desai, Director, Business Affairs/Development Electronic Arts Inc. – Student Group: Dianna Robertson

April 3, 2013

Jon's talk – The Ethical Underpinnings of Videogames:

“When I changed my view, the walls of my glass tunnel disappeared” – Derek Parfit. Access, community, real world impacts and despicable behavior: a case study of Eve Online at its worst – or is that best? A right to play? A right to cheat? The gamification of existence.

Materials:

1. Bruce Springsteen's SXSW 2012 keynote
2. Jonathan Zittrain keynote at ROFLCon111 on Memes & Society
3. Everything is a Remix by Kirby Ferguson

Discussion Hour:

Guest Speaker: Steve Rechtschaffner, Executive Creative Director WYLEY Interactive on the future of video games and the video game industry.

GOOD LUCK WITH YOUR PAPERS & EXAMS.

Evaluation:

Attendance and participation (including preparation for one class seminar): 30%

Term Paper/Major Project (18 to 20 pages or equivalent): 70%

Note with respect to class participation: Factors taken into consideration are attendance, level of engagement in course related discussions & activities, evidence of preparation for class, contribution as part of a group stewarding a "Discussion Hour" with a guest speaker, evidence of attention to the analysis of others and consideration of how such analysis might affect one's own.

Note with respect to term paper/major project: Given the emergent nature of the subject matter, the opportunities for scholarship are vast. Cases and previous legal academic contributions have almost exclusively been non-Canadian and have generally not focused on how court decision in other jurisdictions might be resolved under Canadian law. That said you are not limited to such topics or perspectives. As well, large territories of legal interest have simply gone unexplored and even undiscovered. Grading will reward thoughtfulness, incisiveness, originality and depth of research, potential for publication/public availability as well as rigorousness of analysis and clarity of presentation. Term paper is due in hard copy form (with digital copy if convenient) by 4 P.M. on April 24, 2013.

All UBC law students are subject to the University's rules on Academic Misconduct (<http://vpacademic.ubc.ca/integrity/ubc-regulation-on-plagiarism/>), and are expected to act with academic integrity at all times. Students should be especially aware of the University's rules in relation to plagiarism. Plagiarism includes: copying the work of another student; copying or paraphrasing from a textbook or reference book, journal article, case or electronic source without proper footnoting; copying your own work that has already been submitted for another course in this degree or another degree, passing off the ideas of another person as your own. If you plagiarize, you will be subject to penalties set out in the UBC calendar (<http://www.calendar.ubc.ca/vancouver/index.cfm?tree=3,54,111,959>)

Appendix 1: Digital Repurposing Outline (iTunes U etc.)

Concept: Cinema verite. Edited at end of semester at The Centre for Digital Media ("TheCDM"). Captured audio, video, and note-taking (visual and textual) through as many video and audio sources as may be available including the potential for on-line engagement. Potential innovation in crowd-sourcing student non-linear input and further elaborative materials resulting from that input – creating through the editing process the feeling of a

digital age crowd-sourced version of Socratic dialogue and its related educational progression. Though a fiction of sorts the goal is to accurately mirror the legal learning process. T

Lectures: 12 approximately forty five to fifty minute lectures will be captured by Professors and others assisting with course. Students may voluntarily use their smartphones to capture the class and download to a central storage site (UBC CTLT evaluating best options). Using video -conference classroom as such classroom will provide at least one capture stream. Stream can be set up to stream directly to TheCDM for storage. The live-stream can also be available to the students in the class to help those who were sick or away for a particular class, as well as to aid student review.

CTLT also recommends that a professional videographer also capture the 12 in-class lectures so that there is a high-quality baseline video for each lecture to be used for post-production of the final video product.

The 12 lectures themselves will also be re-recorded by Jon Festinger in a formal studio environment (without students). This serves many purposes including providing a contrast to the less formal classroom with useful raw material which can be used creatively by the editors yielding additional editing and presentation options. As well, continuity and technical problems can much more easily be dealt with through the implementation of this stylistic mode. The formal re-recording will happen through at UBC or otherwise at TheCDM depending on availability of studio space.

Discussion Hour: The second hour of the class is generally comprised of student stewarded guest speaker sessions and related activities including “News of the Week”, “Questions & Conundrums” and “What is your take?” These segments will provide a basis for a continuing course weblog. In particular during this second hour, capturing as many video and audio streams as possible will be critical to the creative vision of the digital manifestation. Student involvement in the process though not mandatory should contribute to a heightened and more interesting and involved learning environment. Again audio and video captures will be downloaded to the central site. The process will also allow for the potential of ongoing and updated engagement with experts whether they were guest speakers or even other academic leaders.

Appendix 2: Digital Repurposing Consent Form

Recording Consent and Release

For value received, I hereby give my consent for my image, likeness, voice, and contributions, including any presentations I give and my contributions to any discussions in which I participate, to be recorded, such as by way of digital recording, videotape, audiotape, or photograph, for use in the development and distribution of educational media for one or

both of the University of British Columbia of 2329 West Mall, Vancouver, BC V6T 1Z4 & The Centre for Digital Media of 685 Great Northern Way, Vancouver, BC V5T 0C6 in educational projects related to Law 450A.001 – Video Game Law taught during Spring semester, 2013 at Allard Hall. Any use, copying, or distribution that one or both of the University of British Columbia & The Centre for Digital Media make of any recordings made (“Recordings”), such as publicly distributing the Recordings via iTunes U, will be for educational purposes only.

For value received, I hereby release the University of British Columbia & The Centre for Digital Media and their directors, officers, employees, representatives, shareholders, and agents from any claims of any kind that I or my heirs, executors, administrators, legal representatives, successors and assigns ever had, now have, or may in the future have, whether known or unknown, that could result from the use, copying, or distribution of these Recordings for educational purposes.

Name (please print) _____

Address _____

Signature _____

Date _____