

**Gaming & The Law**

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**I. BOOKS**

Mandatory:

THE STATE OF PLAY: LAW, GAMES, AND VIRTUAL WORLDS, Jack Balkin & Beth Noveck, eds. (2006)

BUSINESS AND LEGAL PRIMER FOR GAME DEVELOPMENT, S. Gregory Boyd & Brian Green, eds. (2006)

The mandatory books can be bought online for about \$25 and \$30, respectively.

Optional (on reserve in library):

VIDEO GAME LAW, Jonathan Festinger (2005)

INTERNET GAMBLING LAW, I. Nelson Rose & Martin D. Owens, Jr. (2005)

There is no need to buy the optional books. If you wish to buy a copy of the Festinger book, it is out of print and difficult to find. The best place to find a copy is the Canadian Lexis Nexis website for about \$60.

**II. SYLLABUS**

Week 1

**Introduction**

*PGA Tour, Inc. v. Martin*, 532 U.S. 661 (2001)

*State of Play*, Introduction & Primer on Virtual Worlds, pp. 1-28

Rick Nathan & Trevor Fencott, "Emerging Financial Opportunities in the Interactive Industry" (2003) (skim), available at:

<http://web.archive.org/web/20050519052105/www.goodmansventuregroup.com/PDFs/Interactive+Media.pdf>

(originally posted at [http://www.goodmansventuregroup.com/interactive\\_media\\_initiatives.htm](http://www.goodmansventuregroup.com/interactive_media_initiatives.htm))

Texas Lottery Business Plan, 2008-2011, pp. 11-17, 26-35: available at

<http://www.txlottery.org/export/sites/default/Documents/Business-plan-2008-2011.pdf>

Optional (read if you want more information about the topics in this week's reading):

Texas Lottery Demographic Analysis 2007, at <http://www.txlottery.org/export/sites/default/Documents/demographicreport2007.pdf>

James Grimmelman, *Regulation by Software*, 114 Yale L.J. 1719 (2005)

*Business & Legal Primer*, Chapter 2, So You Want to Start a Game Company?

Martin Owens, *Placing Your Bets in a Galaxy Far, Far Away*, 10 GAMLRL 453 (2006)

## Week 2

### **Virtual Worlds and Virtual Property Rights**

Business & Legal Primer, Chapter 13, Virtual World Law

State of Play, Chapters 5, 7, 9, 10

F. Gregory Lastowka & Dan Hunter, "The Laws of the Virtual Worlds" 92 Calif. L. Rev. 1 (2004)

*Anshe Chung: First Virtual Millionaire*, CNNMoney.com,

<http://legalpad.blogs.fortune.cnn.com/2006/11/27/anshe-chung-first-virtual-millionaire/>

Optional: Jack M. Balkin, "Virtual Liberty" Freedom to Design and Freedom to Play in Virtual Worlds" (2004) 90 Virginia L. Rev. 2043

Molly Stephens, "Sales of In-Game Assets: An Illustration of the Continuing Failure of Intellectual Property Law to Protect Digital Content Creators" 80 Tex. L.R. 1513 (2002)

Ethan E. White, Note, Massively Multi-Player Online Fraud, 6 Nw. J. Tech. & Intell. Prop. 228 (2008)

State of Play, Chapter 11

## Week 3

### **Basic Intellectual Property**

Business and Legal Primer, Chapter 7: Intellectual Property, pp. 161-191

Crittenden, Real IP, Virtual Worlds, SN053 ALI-ABA 239 (2008) (on West) excerpts, Ultimate History of Video Games

Data East v. Epyx, 862 F.2d 204 (9th Cir. 1988)

Alpex v. Nintendo, 102 F.3d 1214 (Fed. Cir. 1996)

Optional: Christina J. Hayes, Changing the Rules of the Game: How Video Game Publishers are Embracing User-Generated Derivative Works, 21 Harvard J.L. & Tech. 567 (2008)

Business and Legal Primer, Chapters 8, 9

W. Joss Nichols, Painting Through Pixels, 30 Colum L.J. & Arts 101 (2007) (arguing for copyright protection for play of videogames)

Alpex v. Nintendo, 770 F. Supp. 161 (S.D.N.Y. 1991)

## Week 4

### **EULAs & Reverse Engineering**

Atari v. Nintendo, 975 F.2d 832 (Fed. Cir. 1992)

Sega v. Accolade, 977 F.2d 1510 (9th Cir. 1992)

Sony v. Connectix, 203 F.3d 596 (9th Cir. 2000)

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

Blizzard v. BnetD, 422 F.3d 630 (8th Cir. 2005)

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

Second Life's current Terms of Service,  
<http://secondlife.com/corporate/tos.php>

## Week 5

### **Real World Liabilities**

Watters v. TSR, Inc, 904 F.2d 378 (6th Cir. 1990)  
Sanders v. Acclaim Entertainment, 188 F. Supp. 2d 1264 (D. Colo. 2002)  
Roxanne Christ & Farnaz Alemi, Clean Games, 31-MAY LALAW 42 (2008)  
Wilson v. Midway Games, 198 F. Supp. 2d 167 (D. Conn 2002)  
Roccaforte v. Nintendo of America, 802 So. 2d 764 (La. Ct. App. 2001)

Optional: Gregory Kenyota, Thinking of the Children: The Failure of Violent Video Game Laws, 18 Forham Intellectual Prop. Media & Ent. L.J. 785 (2008)  
Susan Minamizono, 9 San Diego Int'l L.J. 135 (2007) (discussing Japanese regulations of violent games)  
Festinger, Video Game Law (on reserve), pp. 129-138 (discussing international regulations on video games)  
James v. Meow Media, 300 F.3d 696 (6th Cir. 2002) (product liability)

## Week 6

### **Freedom of Speech**

ALL:

State of Play, Chapters 6, 17

(My) Left:

Jack Balkin, Law and Liberty in Virtual Worlds, 49 N.Y.L. Sch. L. Rev. 63 (2004), at <http://www.nyls.edu/pdfs/v49n1p63-80.pdf>

(My) Right:

[Yochai Benkler, Property, Commons, and the First Amendment: Towards a Core Common Infrastructure \(Brennan Center White Paper, March 2001\)](http://www.benkler.org/WhitePaper.pdf)  
<http://www.benkler.org/WhitePaper.pdf>

Center:

[T.L. Taylor, Beyond Management: Considering Participatory Design and Governance in Player Culture](http://firstmonday.org/issues/special11_9/taylor/)  
[http://firstmonday.org/issues/special11\\_9/taylor/](http://firstmonday.org/issues/special11_9/taylor/)  
[Clay Shirky, A Group is its Own Worst Enemy](http://shirky.com/writings/group_enemy.html)  
[http://shirky.com/writings/group\\_enemy.html](http://shirky.com/writings/group_enemy.html)

Optional:

Jack Balkin, Digital Speech & Democratic Culture  
<http://www.yale.edu/lawweb/jbalkin/telecom/digitalspeechanddemocraticculture.pdf>

Niva Elkin-Koren, It's All About Control

<http://www.yale.edu/lawweb/jbalkin/telecom/elkinkorenallaboutcontrol.pdf>

Person v. Google Inc., 2006 WL 2884444 (S.D.N.Y. Oct. 11, 2006).

### **PAPER TOPICS DUE**

All students must have submitted an approved proposed paper topic by the sixth week of class. I will help students struggling with a paper topic. I highly recommend that you meet or talk with me about your topic.

Week 7

#### **Avatar's Bill of Rights**

Center:

State of Play, Chapter 11, Benkler

State of Play, Chapter 16, Johnson

Michael Zenke, On Avatar Rights and Virtual Property

<http://www.massively.com/2008/09/15/agdc08-on-avatar-rights-and-virtual-property/>

Tony Walsh, Data Bill of Rights vs. Avatar Bill of Rights

[http://www.secretlair.com/index.php?/clickableculture/entry/data\\_bill\\_of\\_rights\\_vs\\_avatar\\_bill\\_of\\_rights/](http://www.secretlair.com/index.php?/clickableculture/entry/data_bill_of_rights_vs_avatar_bill_of_rights/)

(My) Right:

Stephen Mortinger, An Avatar's Bill of Rights

online version:

<http://www.law.com/jsp/legaltechnology/pubArticleLT.jsp?id=1202424841784>

State of Play, Chapter 5, Castronova

(My) Left:

State of Play, Chapter 4, Ralph Koster

Ralph Koster, Declaring the Rights of Players

<http://www.raphkoster.com/gaming/playerrights.shtml>

State of Play, Chapter 14, Zarsky

Optional:

Business & Legal Primer, Chapter 13, Virtual World Law (previously assigned)

State of Play, Chapter 3 (previously assigned)

Castronova, The Right to Play,

[http://www.nyls.edu/user\\_files/1/3/4/17/49/v49n1p185-210.pdf](http://www.nyls.edu/user_files/1/3/4/17/49/v49n1p185-210.pdf)

Week 8

#### **Censorship & Rating Systems**

All:

Clean Games, previously assigned

Andrew Jankowich, EULAW: THE COMPLEX WEB OF CORPORATE RULE-  
MAKING IN VIRTUAL WORLDS, 8 Tul. J. Tech. & Intell. Prop. 1, Section IV, 28-43

ACLU, Fahrenheit 451.2, Is Cyberspace Burning?

<http://www.aclu.org/privacy/speech/15145pub20020317.html>

Center:

Reno v. A CLU, 200 US 321 (1997) (CDA)

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=000&invol=96-511>

(My) Left:

Ashcroft v. ACLU, 124 S.Ct 2783 (2004) (COPA)

<http://www.yale.edu/lawweb/jbalkin/telecom/ashcroftvaclusct2004.pdf>

(My) Right:

*U.S. v. ALA*, 123 S.Ct. 2297 (2003) (CIPA) (excerpt)

[http://www.yale.edu/lawweb/jbalkin/telecom/us\\_v\\_ala.pdf](http://www.yale.edu/lawweb/jbalkin/telecom/us_v_ala.pdf)

*American Amusement Machine Ass'n v. Kendrick*, 244 F.3d 572 (7th Cir. 2001) (Posner)

Week 9

### **Advertising**

Center:

Irwin Toy v. Quebec, Section VII (do not get bogged down in Canadian law!)

<http://scc.lexum.umontreal.ca/en/1989/1989rcs1-927/1989rcs1-927.html>

Are Kids Ready For Ads in Virtual Worlds? (2007)

[http://news.cnet.com/Are-kids-ready-for-ads-in-virtual-worlds/2009-1024\\_3-6213661.html](http://news.cnet.com/Are-kids-ready-for-ads-in-virtual-worlds/2009-1024_3-6213661.html)

Advertising is Kids' Play

<http://www.commercialfreechildhood.org/news/advertisingischildsplay.htm>

(My) Left:

Neilsen Study, In-game Advertising, (2005)

<http://prnewswire.com/cgi-bin/stories.pl?ACCT=104&STORY=/www/story/12-05-2005/0004227505&EDATE=>

Neilsen Study, In-Game Advertising (2008)

<http://www.reuters.com/article/pressRelease/idUS119137+17-Jun-2008+PRN20080617>

Sports and In-Game Advertising

[http://www.businessweek.com/innovate/content/feb2007/id20070222\\_572137.htm](http://www.businessweek.com/innovate/content/feb2007/id20070222_572137.htm)

Obama's In-Game Advertising, Media Coverage

[http://www.dallasnews.com/sharedcontent/dws/news/politics/national/stories/DN-gameads\\_17pol.ART.State.Edition1.4ac50d2.html](http://www.dallasnews.com/sharedcontent/dws/news/politics/national/stories/DN-gameads_17pol.ART.State.Edition1.4ac50d2.html)

<http://www.sfgate.com/cgi-bin/article.cgi?f=/n/a/2008/10/14/politics/p122935D97.DTL>

<http://www.chicagotribune.com/news/nationworld/chi-talk-obama-videogameoct16,0,7899243.story>

Screenshots:

<http://www.joystiq.com/2008/10/16/obama-ads-not-just-in-burnout-paradise/>

<http://www.geeksugar.com/2367583>

(My) Right:

Seth Grossman, Grand Theft Oreo, 115 Yale L.J. 227 (2005)

Week 10

### **Internet Gambling: The Recent Past & The Present**

ALL:

Internet Gambling, Chapters 1-4

UIGEA (in the SAFE Port Act), **31 U.S.C. §§ 5361-5366** (2006)

UIGEA Analyzed, I Nelson Rose (2006)

Special Focus on UIGEA (Regulators Punt), I Nelson Rose (2008)

Center:

Internet Gambling: An Overview of the Issues, GAO (2002) at

<http://www.gao.gov/new.items/d0389.pdf>

Right:

Internet Gambling: Preliminary Results of the First UK Prevalence Study (1999)

Goldman Response to UIGEA

[http://blog.ericgoldman.org/archives/2006/12/unlawful\\_intern.htm](http://blog.ericgoldman.org/archives/2006/12/unlawful_intern.htm)

Left:

How To Get Arrested, I. Nelson Rose (2007)

Optional:

Internet Gambling Law, Chapter 5, Is There a Right to Gamble?

Week 11

### **Internet Gambling: The Future?**

ALL:

Internet Gambling, Chapter 9

HR 2046 (2007)

<http://www.govtrack.us/congress/bill.xpd?bill=h110-2046>

Testimony of Jon Prideaux Hearing on H.R. 2046 at

[http://www.house.gov/apps/list/hearing/financialsvcs\\_dem/htprideaux060807.pdf](http://www.house.gov/apps/list/hearing/financialsvcs_dem/htprideaux060807.pdf)

Optional:

For other points of view, read the other testimony or prepared documents:

[http://www.house.gov/apps/list/hearing/financialsvcs\\_dem/ht060807.shtml](http://www.house.gov/apps/list/hearing/financialsvcs_dem/ht060807.shtml)

Center:

“Gambling in the Golden State,” California Research Bureau (2006) at

<http://ag.ca.gov/gambling/pdfs/GS98.pdf>

Right:

Internet Gambling: Popular, Inexorable, and (Eventually) Legal, Cato Institute (1999)

2006 Study on Compulsive Gambling for Family Medicine

Left:

Internet Gambling, Chapter 10

The Ongoing Mess with the WTO, I. Nelson Rose (2008)

Week 12, 11/18/08

In-class presentation of paper topics.

Week 13, 11/25/08

In-class presentation of paper topics.

Week 14, 12/2/08

Last day of class, in-class presentation of paper topics.

12/10/08-12/19/08 – Final Exams

### **III. GRADING**

20% attendance and participation

20% preparation for in-class presentation

60% paper:

60% novel thought and creativity

20% thoroughness and research

20% grammar, form, presentation

#### **Paper Guidelines**

\* The paper is due at midnight on the last day of exams as a Word file by email to me. Papers may be submitted as early as the first day of final exams. I will also accept optional hardcopies, in addition to Word copies.

\* 15-20 pages, excluding footnotes/endnotes

\* double-spaced, reasonable margins & fonts