



Queen Mary  
University of London

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Centre for Commercial Law Studies

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# MORE THAN JUST A GAME

**Games and Interactive Entertainment Law**

**International Conference**

**Third Edition**

**6 - 7 APRIL 2017**

**STATIONERS' HALL**

9.15 -10.00

REGISTRATION & TEA/COFFEE

10.00-10.20

OPENING SPEECHES

**DR GAETANO DIMITA, LECTURER IN INTERNATIONAL INTELLECTUAL PROPERTY LAW, CCLS**



Gaetano is the lead organizer of this conference, and the Editor-in-Chief of the soon to be launched 'Interactive Entertainment Law Review', Edward Elgar. He is the Director of Taught Programmes, CCLS; the Director of the Flexible Part-Time LLM; the Director of the LLM in Intellectual Property Law, and the co-director of the Queen Mary Intellectual Property Research Institute. He is a member of Executive Committee Member of the British Literary and Artistic Copyright Association, the UK national group of the Association Litteraire et Artistique Internationale; a member of the BCC Copyright and Technology Working Group, and the Editor of the Queen Mary School of Law SSRN series.

Gaetano teaches International and Comparative Law of Copyright and Related Rights; Global Intellectual Property Law; Art and Intellectual Property Law and Interactive Entertainment Law. Gaetano is also a qualified Avvocato in Italy (Italian Bar Association – Rome).

**PROFESSOR SPYROS MANIATIS, PROFESSOR OF INTELLECTUAL PROPERTY LAW AND HEAD OF CCLS**



Spyros M. Maniatis is Professor of Intellectual Property Law and Head of the Centre for Commercial Law Studies, Queen Mary University of London. His expertise and research interests cover trademark and unfair competition law as well as the interaction between intellectual property and competition law. His work Trade Marks in Europe: A Practical Jurisprudence (now co-authored with Dimitris Botis, Alexander von Mülhendahl, and Imogen Wiseman) reached its third edition with OUP in 2016.

**TREVOR FENWICK, EXECUTIVE CHAIRMAN, EUROMONITOR INTERNATIONAL LTD, AND COURT ASSISTANT, THE WORSHIPFUL COMPANY OF STATIONERS AND NEWSPAPER MAKERS**



Mr Fenwick is a co-founder and Executive Chairman of Euromonitor International Ltd, the international publisher of market research analysis and data. Since 1972 Euromonitor has transformed from a print publisher to an online data provider providing content and analytics from 12 global locations. He is Board Member of the Professional Publishers Association and past Chairman of the Data Publishers Association and European Association of Database Publishers.

Mr Fenwick is a member of the Joint Committee on Legal Deposit advising publishers and legal deposit libraries on the collection and archiving of non-print publications. He is a past member of the Cabinet Office's Advisory Panel on Public Sector Information which advises on access and reuse of government held data. As a publisher of statistical data, he has focused on the IP and copyright

issues of the making available of and reuse of data for commercial and academic use. He was involved in representing the UK publishing sector to UK and European government on the Database Directive.

He is an investor in early stage and startup businesses with a focus on media, education and technology.

A graduate of Essex University with a BA in Economics and Government, he holds postgraduate qualifications in marketing. He is a Fellow of the Chartered Institute of Marketing and received an Honorary Fellowship from Ravensbourne where he sponsors and mentors postgraduate students. He is a Governor of the Stationers' Crown Woods Academy and a Trustee of the Stationers' Foundation where he works on awarding postgraduate bursaries to students studying on digital and IP related courses wishing to enter the UK media sector.

10.20-11.50

## VIRTUAL AND AUGMENTED REALITY

**CHAIR: PROFESSOR SPYROS MANIATIS, PROFESSOR OF INTELLECTUAL PROPERTY LAW  
AND HEAD OF CCLS**

### 'CURRENT STATE OF VR/AR DEVELOPMENT (AND PREDICTIONS FOR THE FUTURE)'

An overview of the current state of the art and trends in the VR and AR industry from the perspective of a leading VR/AR content creation software developer, as well as discussion of immediate market challenges, the looming threat of regulatory oversight, and where the industry may be leading in the future.

**CANON PENCE, GENERAL COUNSEL, EPIC GAMES**



Canon Pence is General Counsel for Epic Games, a leading video game and game engine developer. Mr. Pence has worked with the games industry for a decade, having been a video game litigation and IP associate for the law firm Hunton & Williams prior to going in-house at Epic. Mr. Pence is a graduate of University of North Carolina at Chapel Hill and received his JD from University of North Carolina School of Law. In 2014, Mr. Pence was named a Corporate Counsel of the Year by the Triangle Business Journal.

### 'VR AND THE LAW'

An overview of the current and future legal and regulatory challenges in relation to VR hardware and software.

**ALEXANDRE RUDONI, PARTNER, ALLEN & OVERY**

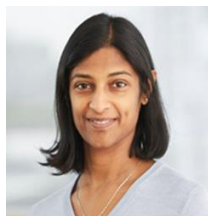


Alexandre is a Partner in the Intellectual Property and Litigation department at Allen & Overy Paris. He heads Allen & Overy's global 'Gaming, Interactive & Entertainment Group' which comprises a group of specialists across our network. Alexandre has developed a solid practice advising companies in the hi-tech, media and entertainment industries. In particular, he has built a strong client base in the video game sector and durable relationships with some of the biggest brands on the market.

This talk is a high-level introduction to the world of augmented reality. This new environment will result in new IP challenges (and, hopefully, IP opportunities). This talk will look at some of those and consider whether our IP system in the UK is ready to handle the exciting times ahead.

**ARTY RAJENDRA, PARTNER, OSBORNE CLARKE**

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Arty is a Partner in the Intellectual Property Group at Osborne Clarke. She focuses primarily on litigation and has acted in several leading High Court, Court of Appeal and CJEU cases. She advises market-leading video and online gaming companies. In 2014, she acted for a well-known console maker in patent litigation involving motion sensing, virtual reality and user interface technology. Arty is featured in Chambers and Legal 500, and in 2015 was listed in MCV's top 100 Women in Games. Arty sits on the committee of the Intellectual Property Lawyers' Association (IPLA) and chairs its Brexit working group for trade marks and designs.

**12.00-13.30**

**CROSSOVERS**

**CHAIR: DR ANDREAS LOBER, PARTNER, BEITEN BURKHARDT**

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Dr. Andreas Lober is Partner at BEITEN BURKHARDT's Frankfurt office. Being a gamer since 8-bit times, an Internet native since the 1990's and a lawyer since 2001, he advises national and international companies in the media and technology sector. He works on virtual items since 2006, won the first European court decision against cheat bots 10 years ago, followed by presumably the first European court decision against gold-sellers. Other landmark cases include a judgement awarding damages to a games publisher against a file hosting service, lifting the de-facto ban of "Doom", "Quake", and other infamous games, a series of cases against PEGI games being imported to Germany, getting an age rating for "Dead Rising 4", and cross-border seizures of servers for cheat bots.

Andreas Lober studied law at the University of Tübingen and the University of Aix-en-Provence (France). He earned his doctoral degree from the University of Tübingen with a dissertation in the context of media law. He was admitted to the German Bar in 2001. Since 2015 he has been working with BEITEN BURKHARDT as Partner. Prior to joining BEITEN BURKHARDT, he was a partner at another law firm and held a senior position at an Internet company.

**'DIGITAL STORYTELLING THROUGH IMMERSIVE TECHNOLOGIES: MANAGING THE DYNAMICS OF CONTENT CREATION, CURATION AND CONSUMPTION'**

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Following a brief outline of what it means to be a Digital Storyteller, we will set out the legal and business challenges facing the BBC as a Public Service broadcaster and explain how those have been managed across a number of recent projects related to Object Based Broadcasting and Immersive Technologies such as VR and AR before exploring how our business models and processes will change when these new technologies become "Business as Usual", exploring the impact on licensing, remuneration and exploitation models, ending the presentation with a glimpse of the Future our Research & Development Teams are currently working on.

## FELICIA STREHMEL, EXECUTIVE PROJECT MANAGER & STRATEGY LEAD, BBC

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Felicia Strehmel is a legal practitioner and strategist working for the BBC's Rights, Legal and Business Affairs Team. Originally from Berlin, she graduated from SOAS in 2004 and has been working for the BBC since 2005. Felicia specialises in the assessment of new media developments, market trends and opportunities and manages their impact on the BBC's Rights agreements, frameworks and collective licenses. She also co-leads the BBC's Copyright Awareness Campaign and has produced a series of videos and web content on the subject.

## WILLIAM HAYES, SENIOR TECHNOLOGY LAWYER, LEGAL & BUSINESS AFFAIRS, BBC

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William Hayes heads up the legal group within BBC R&D and Innovation. Bill is involved in the BBC developing new audience experiences through its Connected Studio, News Labs and Digital Guerrilla innovation programmes, focusing on creating new technologies and digital storytelling projects. Bill has worked recently on BBC VR launches for BBC Taster website, festivals worldwide, and third-party platforms.

### 'HEY . . . ISN'T THAT MY BUILDING?' THE LEGALITY OF REPRESENTING REAL BUILDINGS IN AR AND VR SPACES'

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With the rise of Augmented Reality and Virtual Reality experiences there is a growing concern about the depiction of real world spaces. In the US, games like Pokemon GO have already started to raise concerns about whether legal lines have been crossed by the inclusion of privately owned properties in the game. This session will summarize the current state of US law as it relates to the use of buildings and other real world spaces in AR and VR experiences. The session will also discuss some best practices that can be used to mitigate potential exposure and risks from the use of such places.

## SEAN F. KANE, PARTNER, FRANKFURT KURNIT & SELZ

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Sean F. Kane is co-Chair of the Interactive Entertainment Group at Frankfurt Kurnit, where he represents a variety of companies in the video game and social media industries. Mr. Kane's clients often are on the cutting-edge of media, content and technology creation where rapid innovation is leading to the birth of new products, companies and industries. He has considerable experience negotiating licenses, developer and publisher agreements, and in protecting the intellectual property rights of video games and related social media applications, including trademark and copyright protection, clearance and enforcement.

**'MIXED REALITY AESTHETICS:  
THE IMPORTANCE OF DESIGN PATENTS AND INDUSTRIAL DESIGNS IN AR/VR'**

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Design patents and industrial designs are an often overlooked form of intellectual property. Their importance for both hardware and software has recently been highlighted by the ongoing smartphone dispute between Apple and Samsung. This presentation will explore the state of design patent law in the United States, as well as ways to incorporate design patents into your overall IP strategy for protecting software-implemented designs in games, virtual reality, and augmented reality applications.

**ROSS DANNENBERG, SENIOR PARTNER, BANNER & WITCOFF**

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Ross Dannenberg handles a wide-range of intellectual property issues, with experience in Internet, video game, telecommunications, and computer software-related issues. With a background in computer science, Ross has prepared and prosecuted hundreds of patent applications in a variety of technical fields, and has been involved in numerous patent, copyright, and trademark enforcement lawsuits. He has considerable experience with intellectual property protection of video games, including patent, trademark and copyright protection, copyright clearance, licensing, and enforcement of intellectual property rights.

**13.30-14.30 LUNCH**

**14.30-16.00 LICENSING**

**CHAIR: PROFESSOR UMA SUTHERSANEN, PROFESSOR OF INTERNATIONAL INTELLECTUAL  
PROPERTY LAW, CCLS**

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Dr Uma Suthersanen holds a Chair in International Intellectual Property Law at the Centre for Commercial Law Studies (CCLS), Queen Mary University of London (QMUL). She is the Academic Co-Director of the London LLM in Intellectual Property Law programme, as well as one of the Co-Directors of the Queen Mary Intellectual Property Research Institute. She is the current editor of Sweet & Maxwell's European Copyright and Design Reports, and a founding/current editor of Queen Mary Studies in Intellectual Property. She has served as a consultant and/or given evidence to UNCTAD, UNESCO, WIPO, the European Parliament, the European Commission, the Governments of Israel and Singapore. She is a Visiting Overseas Fellow of the Intellectual Property Academy of Singapore.

**'THE EVOLUTION OF LICENSING'**

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The evolution of sports licensing illustrated with video game clips from EA FIFA football games, the #1 sports selling franchise in the world, from 1993 to the present. With significant improvements in technology, licensing has become an essential part in game development bringing incredible realism to the screen from player's likeness to team logos and uniforms to the venues and announcers in the booth.

## DAVID GREENSPAN, ADJUNCT PROFESSOR, SANTA CLARA UNIVERSITY SCHOOL OF LAW

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David Greenspan has been involved in the video game business for over 20 years working in Business and Legal Affairs for some of the most significant video game publishers at the time in the industry, including Sony/989 Studios, THQ Inc., Lucas Arts and Midway Games. He most recently worked as the Sr. Director of Legal and Business Affairs for BANDAI NAMCO Entertainment America, the creators of *Pac-Man* and *Tekken*. He has worked on the day-to-day business and legal issues on more than 100 video games and has been involved in all aspects of video game development, publishing, licensing, distribution, and marketing. Mr. Greenspan was the lead author of the WIPO publication entitled *Mastering The Game: Business and Legal Issues for Video Game Developers*.

## 'LICENSING RIGHTS IN THE GAMES INDUSTRY: CHALLENGES AND SOLUTIONS'

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The operation of the games industry involves numerous licence agreements and also a variety of licence arrangements. These arrangements include licences to develop a game based on an existing work such as a book or a film, licences to use different forms of content within a game such as cars in a racing game, and licences to publish and distribute finished games

Any licence needs to make clear what intellectual property rights are being granted and how those rights may be used. A licensee needs to ensure that the licence includes all necessary rights, while a licensor will not want the licence to be wider than necessary, as this may prevent or restrict other forms of exploitation. However, the nature of the games industry and the way in which it continues to evolve, means that constructing a licence so that it properly balances these objectives can sometimes be difficult.

This presentation will outline some of the challenges that arise in drafting and negotiating licences in the games industry and the ways in which these can be addressed.

## PAUL GARDNER, PARTNER, OSBORNE CLARKE

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When Paul qualified as a solicitor in 1988, the computer games industry was still in its infancy and seemed an unlikely foundation on which to build a career in the law.

However, shortly after qualifying, Paul happened to start working with one of the UK's first computer games publishers. He quickly discovered that the crossover of publishing, entertainment and technology involved with this industry presented a host of interesting legal issues. Over the intervening years, with rapid developments in technology and business models, these issues have become increasingly interesting and

challenging. At the same time, the computer games industry has grown to become one of the biggest entertainment industries in the world.

Paul is a commercial Partner and specialises in commercial transactions relating to the production, financing and exploitation of interactive entertainment products and services. He also advises on the various regulatory issues that this involves, including laws and regulations relating to age ratings, virtual currencies, broadcasting and telecoms, collecting societies, data privacy, e-commerce and betting and gaming.

Paul works with companies of all sizes, from start-ups to multi-nationals and with games for all platforms, from mobile to MMOGs. Clients he works with include Dovetail Games, GREE, Konami, Koch Media, Nintendo, Ninja Theory, Square Enix and Wargaming.net.

Paul joined Osborne Clarke as a Partner in 1998. He is a member of the Video Game Bar Association and is named by the legal directories as one of the UK's leading lawyers in the computer games industry.

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### 'WHO IS MERCHANDISING WHO?'

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Merchandising today is no one-way street. The visual design of a character, costume or prop may begin life as a toy, or in a comic-book, an animated cartoon, a video game or a film. Wherever it begins, the reality is that a successful property is likely to end up being exploited as all of the above. At present, however, the fate of its protection may be by the circumstances of its birth.

#### PROFESSOR DAVID MUSKER, PROFESSOR OF INTERNATIONAL DESIGN LAW, CCLS

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David Musker Professor of International Design Law at the Centre for Commercial Law Studies (CCLS). He is the founder of the "Class 99" International Design Law blog, a founder Editor of the Community Design Handbook, and a member of the Editorial Boards of the Journal of Intellectual Property Law & Practice (JIPLP) and European Copyright and Design Reports (ECDR). His book Community Design Law: Principles and Practice has been cited with approval by the High Court of England and Wales, the courts of Poland and the Netherlands and OHIM's Boards of Appeal. For his work in relation to the IP education and training on the Community Design, he received a Worldleaders European IP Award in 2004.

He lectures, or has lectured, at the Universities of Alicante, Bristol and Oxford, at ETH in Zurich and at CEIPI in Strasbourg.

A patent and trade mark attorney, he is a member (and former Chair) of the Designs and Copyright Committee and the Higher Education Committee of the Chartered Institute of Patent Attorneys (CIPA), a member (and former President) of the Designs Commission of the Union of European Practitioners in Intellectual Property (UNION) and a member of the Design Working Group of the Institute of Trade Mark Attorneys (ITMA). He also sits as a Board Member of the Intellectual Property Regulation Board (IPReg), the body which regulates patent and trade mark attorneys in the UK, and the Marks and Designs Forum of the UK Intellectual Property Office. In the past he has sat on OHIM's User Group and the UK Intellectual Property Office former Trade Marks and Design Rights Research Expert Advisory Group.

His research interests include comparative and international design law, Unitary Patents, Intellectual Property professionals (in particular regulation and legal professional privilege), and Intellectual Property procedural law.

He has practised patent and design law for thirty years, during the course of which he filed the first Registered Community Design and appeared as advocate in the last trial before the Registered Designs Appeal Tribunal. He is of Counsel to R G C Jenkins & Co.



**CHAIR: PROFESSOR CHRIS REED, PROFESSOR OF E-COMMERCE LAW, CCLS**

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Chris Reed is a member of the CCLS. He joined the Centre in 1987 and is responsible for the University of London LLM courses in Information Technology Law, Internet Law, Electronic Banking Law and Telecommunications Law. Chris has published widely on many aspects of computer law and research in which he was involved led to the EU directives on electronic signatures and on electronic commerce. From 1997-2000, Chris was Joint Chairman of the Society for Computers and Law, and in 1997-8 he acted as Specialist Adviser to the House of Lords Select Committee on Science and Technology. Chris participated as an Expert at the European Commission/Danish Government Copenhagen Hearing on Digital Signatures, represented the UK Government at the Hague Conference on Private International Law and has been an invited speaker at OECD and G8 international conferences. He is a former Director of CCLS, and from 2004 to 2009 was Academic Dean of the Faculty of Law & Social Sciences.

**'HOW THE BRAIN WORKS IN VR'**

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With the goal to transport users to alternate realities, virtual reality (VR) raises the question of what does it meant to be, well, anywhere? In this talk I'll discuss how our brains behave in VR, how we define and impact presence, and the various ways in which the design and execution of experiences can interfere with or enhance believability.

**DR KIMBERLY VOLL, SENIOR TECHNICAL DESIGNER, RIOT GAMES**

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Kimberly Voll specializes in the science of interaction, holding a PhD in computer science and an honours degree in cognitive science. She has spent considerable time creating and helping others bring experiences to the latest-generation VR hardware, and recently shipped *Fantastic Contraption* for VR (Vive, Oculus Touch, and soon PSVR) as an independent developer. Currently a senior technical designer at Riot Games working on *League of Legends*, Kim's work has also spanned companies like Microsoft, Relic Entertainment, EA, Google, and more. Prior to moving into industry full time, Kim was also a professor of computer science (and cognitive science) at the University of British Columbia, and later the Centre for Digital Media. She also specializes in design and artificial intelligence.

**'HACKING THE BRAIN: NEUROVR & HOW TO HARNESS BODY-VIRTUAL OWNERSHIP FOR REAL CHANGE'**

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Can immersive reality actually help us better understand each other? Understand ourselves? How does human cognitive processing change, or become enhanced, once VR and AR are added to the mix? What does that mean for our (future) sense of self? What is the impact of literally 'putting oneself in somebody else's shoes' and what that means for human empathy? Exploring recent findings on the treatment of phobias, PTSD and mental health issues using VR, and theories around the virtual-physical illusion of presence, this talk asks how neuroscience has been affected and/or advanced by the development of immersive tech.



Learner, maker, systems thinker, innovator and tech evangelist, Luciana splits her time between growing the Realities Centre London — a new innovation space, incubator and academy for B2B/enterprise VR, AR, MR and AI — and Unfold UK, promoting women/diversity in future in the UK. Passionate about VR and tech for good, she carries ongoing research on the possibilities and challenges immersive tech presents as re neuroscience, empathy and female empowerment.

With a combined 5+ years' experience in award-winning startups such as Racefully, UniPlaces, Import.io — on both the technical and creative side -- she is driven by big ideas, a global mindset & empowering tech entrepreneurs, especially next generation #ladyhackers. She is an ambassador and mentor for Code First Girls, Business Rocks and 3Structured Women in Leadership, and also co-leads the VRAR Tech London Advocates group, as well as monthly Series Q and VR Manchester meet-ups.

She was elected one of Code First Girls '25 Ones to Watch', 'Top 5 Female Role Models in the Tech Industry', and Virtual Perceptions' 'Heroes of VR' in 2016, and regularly speaks about her journey and current work at secondary schools, conferences & companies, highlights include VRAR World, WOW Talks, Geek Girls UK and CFG Annual Conferences, WATC Women in Tech, Hult MBA Alumni, Bloomberg Breakfast Brief and Fintech Security Summit. She has also hosted and continues to host webinars on neuroVR and women in tech with BrightTALK and BeMyApp.

Luciana has lived in Brazil, Portugal, England and the US and has a MA & BA Law degree from Cambridge, Leadership and Systems Thinking certificates from Harvard Extension School, and an MA (Distinction) in International Business from Hult Business School. She has recently launched a solo venture SE3 Solutions -- currently in stealth mode -- seeking to accelerate new and emerging tech's voice in the e-health/digital education space.

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### 'TRUSTING OURSELVES: FREEDOM OF THOUGHT IN VIRTUAL REALITY'

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Virtual Reality in games is becoming less virtual and more real. At some point, not far away technology may produce fidelity so convincing to our brains that the terms "Alternative Reality", and eventually "Replacement Reality", could become more apt than "Virtual Reality". Could human freedom of thought itself be challenged in such circumstances? If so what role should law play? This paper will address the following questions:

1. What is freedom of thought in today's world?
2. How should we understand and characterize harms relating to freedom of thought arising from virtual experiences?
3. For what legitimate purposes might the law intervene to protect an individual from the consequences of virtual world experiences affecting freedom of thought, including the potential of being manipulated, compelled or other diminishment of free will?
4. What legal principles and remedies could we apply to protect individuals from such harms?
5. How might we determine the point at which free will is endangered so as to require legal intervention?
6. What are the implications for technology and game companies?



Jon Festinger, Q.C. is a Vancouver, British Columbia based counsel and educator. He is Honourary Industry Professor in Centre for Commercial Law Studies working collaboratively with Professor Gaetano Dimita on a series of teaching, research, conference and journal projects. He is also a Professor of Professional Practice at Simon Fraser University and a faculty member of the Centre for Digital Media. Professor Festinger has taught a wide variety of law courses relating to intellectual property, communications, journalism, sports and business over almost 25 years at the law school at UBC, now known as the Allard School of Law, as well as teaching at various times at the UBC Graduate School of Journalism, the Thompson Rivers University Faculty of Law and the University of Victoria Faculty of Law. He is the author of the first edition of Video Game Law published by LexisNexis in 2005, and co-author

of the second edition published in 2012. Professor Festinger is a graduate of McGill University's Faculty of Law. While at McGill, Professor Festinger received a Scarlet Key (awarded to outstanding students who have demonstrated distinction and leadership) and also was a Director of the McGill Legal Aid Clinic.

Professor Festinger practices law and consults through Festinger Law & Strategy and is Media & Copyright Counsel to Broadband TV. He is Past Chair of Ronald McDonald House British Columbia, a Director of viasport B.C., and a member of the Law Society of British Columbia's Rule of Law and Lawyer Independence Advisory Committee. Professor Festinger began his legal career in private practice with an emphasis on matters relating to freedom of expression. In turn, he became a partner in the Vancouver firm of Owen Bird, General Counsel of WIC (Western International Communications) Ltd., Senior Vice President of the CTV Television Network and Executive Vice President, Business & General Counsel of the Vancouver Canucks of the NHL and the arena in which they played, General Motors Place. While at CTV he helped launch VTV (Vancouver Television) and was the station's first General Manager.

Professor Festinger's current research interests relate to the relationship between concepts of justice and evolving technologies. In particular, the impact of law and regulation on creative endeavours; intersections of copyright fair dealing with freedom of expression particularly regarding video game "mods"; the right to freedom of thought in virtually real environments; and digital ethics. He is also actively committed to open and distance education through the web.

**18.00-18.15**

**PRE-LAUNCH OF THE INTERACTIVE ENTERTAINMENT LAW REVIEW**

**18.15-19.30**

**DRINK RECEPTION**

09.30-10.00

TEA/COFFEE

10.00-11.50

USERS &amp; CONSUMERS

**CHAIR: PROFESSOR ANNE FLANAGAN, PROFESSOR OF COMMUNICATIONS LAW, CCLS,**

Anne is a member of CCLS. She lectures on the University of London's traditional LLM courses in IT Law, Internet Law and Telecommunications Law as well as teaching distance learning courses in Privacy and Data Protection Law and European Communications Law. She is a New York State licensed attorney. Before coming to Queen Mary, she practiced law for sixteen years as an associate with the law firm of Wilson, Elser, Moskowitz, Edelman & Dicker in New York and in the U.S. financial services industry. Her experience includes insurance regulatory compliance, appellate litigation and state government relations for providers of life, health and property/casualty insurance and pension products. Among her varied functions as Senior Counsel at TIAA-CREF, the world's largest private pension system, where she worked for seven years, Anne served as counsel to the IT divisions.

### 'AR AND PRIVACY LAW IN OPEN SPACES'

AR and VR give rise to new legal issues in personal privacy and in the control and allocation of both public and private spaces. Consider how representations of people are used as willing, passive, or even unwilling participants in AR/VR environments. Being on the street, or in a park makes one susceptible to becoming a non-player character in an AR/VR experience. Second, how many companies collect, use, and re-use representations of people captured in public places in AR/VR environments? Lastly, how do we consider private or even public property when they are part of an AR/VR environment? Some cities in the United States now demand licensing fees and registrations for companies creating AR/VR experiences in public parks or on public land. We will touch on these questions and more in this short discussion on new privacy issues created by this technology.

**GREGORY BOYD, PARTNER, FRANKFURT KURNIT & KLEIN**

S. Gregory Boyd is a partner, Co-Chair of the Privacy & Data Security Group and Co-Chair of the Interactive Entertainment Group at Frankfurt Kurnit. Mr. Boyd has extensive experience negotiating and drafting software (SaaS), technology, and game development agreements across all platforms. He also advises brands, media companies, and advertising agencies on a large variety of digital matters, including the creation, implementation, and management of privacy and data security programs.

In his practice, Mr. Boyd negotiates, structures, and drafts IP licensing, development, and employment agreements for multiple game and high technology media publishers and developers. Mr. Boyd also drafts privacy policies and terms of use, and has experience with all legal documents associated with the ongoing operations of healthcare, online games, social networks, branded entertainment, and media outlets.

Mr. Boyd is often quoted on technology and privacy issues in Mashable, Gamasutra, Edge-Online, CNN, Fortune, Forbes, and the New York Law Journal. The Legal 500 and Super Lawyers Magazine have praised Mr. Boyd for his work with media and technology companies.

## 'INCREASED PROCESSING OF PERSONAL DATA MEETS STRICTER REGULATION WITHIN THE EU: WHY PRIVACY COMPLIANCE MATTERS MORE THAN EVER'

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We believe that VR and AR technologies present new challenges in relation to data protection and privacy for three reasons. First, these technologies involve the processing of new types of personal data, such as head and hand tracking. Second, the immersive nature of VR may come to increase the perceived importance of privacy in the virtual realm. Third, these technologies have great potential and are already in use beyond gaming, and in particular, in relation to healthcare applications (which may include gaming aspects) the question of data protection is of paramount importance. The mainstream adoption of these technologies coincides with the adoption of the EU General Data Protection Regulation, which notably includes sanctions that may amount to the greater of EUR 20 million or four per cent of annual worldwide turnover. Further, the new regulation brings with it an uncertainty as to how specific provisions will apply, and practices might continue to diverge between the member states. In our presentation, we will try to provide some guidance on how to manage this triumvirate of increased processing of personal data, uncertain legal requirements for such processing, and much stricter sanctions for non-compliance.

### EMIL ALBIHN HENRIKSSON, SENIOR ASSOCIATE, MANNHEIMER SWARTLING

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Emil Albihn Henriksson is a Senior Associate in the Intellectual Property, Marketing and Media department of Mannheimer Swartling and is a member of the Swedish Bar Association. Emil was seconded for 6 months in the Intellectual Property and Litigation department at Allen & Overy Paris.

Emil assists clients on the entire spectra of contentious and non-contentious intellectual property matters. Emil's key areas of expertise include patent and trademark litigation, transactional IP and licensing. He further assists clients with marketing and data protection matters.

## 'NEW CONSUMER PROTECTION RIGHTS IN THE DIGITAL WORLD'

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Digital platforms have created unprecedented new opportunities for consumers to access and play a huge range of games and use various services. Legislators around the globe have been trying to determine how to balance the need to protect consumers without hampering innovation. We will discuss recent changes in consumer laws and some ground-breaking court decisions.

### KONSTANTIN EWALD, PARTNER, OSBORNE CLARKE

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Konstantin Ewald is a Partner and Head of Digital Business at Osborne Clarke, Germany. He advises leaders in the digital media and software industry throughout Europe and the US on all matters of digital media and IT law as well as IP/technology-related transactions.

Konstantin's practice focuses on advising on technology related matters with a particular emphasis on SaaS and PaaS cloud deployment models, complex software implementation and licensing projects, distribution agreements and white labelling strategies that safeguard IP.

He is a specialist in E- and M-commerce law, as well as data protection issues. A large part of his practice is working with clients in the digital media/video game/mobile sector. Konstantin regularly acts for major computer and mobile games developers and publishers as well as other rights owners who are licensing rights for use in interactive software products. He regularly counsels clients during the product

development phase, providing advice about how to design games/apps and other digital media products to avoid claims for infringement and to comply with privacy and youth protection regulations. Konstantin has published the first legal handbook on mobile apps and is editor-in-chief of Germany's leading blog about legal aspects of games [www.onlinegameslaw.com](http://www.onlinegameslaw.com).

### 'ADVERTISING REGULATION & VR: LIKELY CHALLENGES AHEAD'

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The momentum behind VR/AR technology has arguably reached critical mass, which means that its mainstream adoption is now a question of 'when' and not 'if'.

The use of VR/AR as an advertising medium presents an exciting new way to interact with consumers, because it involves unprecedented levels of immersion. In the context of games, it also opens up opportunities for studios to find new ways to monetise their content – which is in itself something that can fall within the remit of advertising regulation.

History has shown that the rise of any new technology (whether it's e-mails or e-cigarettes) is a disruptive force which causes regulatory upheaval. The rise of VR tech will be no different and is sure to bring new issues to the surface, particularly as the regulation of marketing communications in and around games has long been a focal point for the UK's Advertising Standards Authority.

In this session, we will consider:

- The scope of the UK's advertising self-regulatory regime
- The opportunities and challenges of using VR/AR as an advertising medium
- Particular risk areas in the context of games, and how they can be avoided
- Predictions for the future - what changes can we expect in the regulatory landscape?

### KOSTYANTYN LOBOV, ASSOCIATE, HARBOTTLE & LEWIS

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Kostyantyn advises predominantly on Intellectual Property and Advertising matters. The core of his practice includes advising on disputes involving IP and related rights (ranging from takedowns of content online, to substantive High Court litigation), brand and IP protection strategy, pre-clearance of advertising campaigns, and dealing with investigations by the Advertising Standards Authority. Having been a prolific gamer himself for many years (and somehow found the time to keep up the habit), Kostyantyn brings useful insider knowledge to the firm's Interactive Entertainment group, particularly in the exciting growth area of eSports,

and in understanding the subtleties and challenges of owning/enforcing IP rights in the gaming community. In the context of games, Kostyantyn's recent highlights include working with leading developers/publishers on various matters concerning their AAA titles.

11.50-12.00

COMFORT BREAK

**CHAIR: PROFESSOR UMA SUTHERSANEN**, PROFESSOR OF INTERNATIONAL INTELLECTUAL PROPERTY LAW, CCLS

### 'ARE THE RULES OF A GAME NOW COPYRIGHTABLE? THE IMPACT MOBILE GAME CLONE CASES ARE HAVING ON US COPYRIGHT LAW'

A pair of U.S. district court cases, Tetris Holding v. XIO Interactive (D.C. N.J. 2012) and Spry Fox v. LOLApps (W.D. Wash. 2012), found that video game mechanics or “rules” (such as the dimensions of the playing field in a puzzle game or the “object hierarchy” in a match three game) constitute protectable copyright expression. More recently the court in DaVinci Editrice v. Ziko Games (S.D. Tex. 2016) initially embraced this same logic in finding that the publisher of the tabletop game *Bang!* could proceed in a copyright infringement claim against *Legends of the Three Kingdoms*. *Legends* shares none of *Bang!*’s expression but (almost) all of its underlying rules. The DaVinci court later reversed itself and found non-infringement, but not before flirting with the expansion of copyright presaged by Tetris and Spry Fox. We will review all three cases and the lessons they offer for video game publishers moving forward.

**TODD SMITHLINE**, MANAGING PRINCIPAL, SMITHLINE PC & LECTURER, UC BERKELEY SCHOOL OF LAW



Todd Smithline is the Managing Principal of Smithline PC, a one-of-a-kind San Francisco law firm focusing exclusively on technology transactions, product legal review and open source advising. As Managing Principal, Todd oversees the seven-attorney firm’s representation of leading Internet, SaaS/software, device and video game clients. Smithline PC provides its services on a fixed-fee subscription basis. Prior to founding the firm in 2004, Todd was General Counsel of Marimba, Inc. (NASDAQ: MRBA, later acquired by BMC Software, Inc.) and Vice President of Business Affairs & Legal for Shockwave.com.

Todd is a Lecturer at UC Berkeley School of Law where he teaches Video Game Law. Intellectual Asset Management (IAM) Magazine has twice included Todd in its list of the 250 “World’s Leading IP Strategists.” Todd is also the President of Smithline Training, a next-generation, interactive online legal training platform launched in 2017.

### 'DON'T SELL MY KEY, PLEASE!'

Selling download keys at discount prices is popular amongst players, and less so amongst games publishers. Keys can come from various sources – typically, they come from low price/low income countries, or promotional activities. But what does this mean from a legal perspective? In this session, we will discuss why several court decisions have found key selling to be a copyright infringement despite the fact that the Court of Justice of the European Union says that reselling used software is legal. We will also discuss what this topic has to do with the European Commission's view on the digital single market.

**DR ANDREAS LOBER**, PARTNER, BEITEN BURKHARDT

## 'CHASING INTELLECTUAL PROPERTY RIGHTS IN THE GAMING CONTEXT: U.S. COPYRIGHT, TRADEMARK, RIGHTS OF PUBLICITY AND FAIR USE CONCEPTS'

The presentation will include a survey of selected intellectual property issues that arise in the development and licensing of game technology and content for use in video games. The survey will include, e.g., cases and principles concerning patents, copyrights, trademarks and rights of publicity.

**GARY J. RINKERMAN, PARTNER, DRINKER BIDDLE**



Gary Rinkerman, a frequent lecturer on Intellectual Property topics, has over 35 years of experience in intellectual property law and focuses his practice on transactions, counseling, clearance opinion work, enforcement, defense, and dispute resolution, including litigation in the judiciary, at the U.S. International Trade Commission (where he served as a Senior Investigative Attorney) and at the U.S. Patent & Trademark Office. His experience in the area of digital media and intellectual property includes video game development agreements, distribution agreements, rights clearances, licensing, best practices, enforcement of rights, and defense against claims, regarding content, data

rights, PII, software and other aspects of gaming, including in interactive amusement and virtual casino contexts. In merging the areas of advanced technologies and entertainment, he has also produced audio works and has worked on recording and distribution agreements, music video production, documentary film production, and agreements for large-scale audio and audiovisual content distribution technologies for an international network of rock music themed cafes and hotels. He has worked on recording and distribution terms for exclusive content by one of the bestselling rock groups, and his work in establishing a new business model for recording companies resulted in what Billboard Magazine called "the anti-360" deal. Gary has also worked with and provided training for major international companies with regard to clearance processes and best practices in, e.g., digital technologies, including video games and "software as a service," fashion, consumer products, packaging and entertainment services. He also leads his firm's Copyright Team and has testified before the U.S. Copyright Office on topics concerning, e.g., digital media and licensing transactions.

**13.30-14.30**

**LUNCH**

**14.30-16.00**

**INTELLECTUAL PROPERTY II**

**CHAIR: GWILYM ROBERTS, PARTNER & CHAIRMAN, KILBURN & STRODE**



Arguably the highest profile patent attorney in Europe, Gwilym advises clients on all aspects of the patent process including IP audit and capture, IP filing strategies and patent portfolio management techniques. He acts for a range of clients including individuals, SMEs, Universities, and spin outs through to multi-nationals and handles a broad and diverse range of cases before the UK Patent Office, EPO and WIPO.



## 'TRADE MARK ISSUES IN INTERACTIVE TECHNOLOGIES: ARE VR AND AR A NEW FRONTIER OR JUST A SECOND LIFE?'

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The "reality" of virtual and augmented reality includes representations of many well-known brands. Does this raise any new legal issues and how can Brands and platforms avoid disputes? And as brands embrace AR/VR as new ways to get their messages across what risks do they face?

### MARK OWEN, PARTNER, TAYLOR WESSING

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Mark leads Taylor Wessing's IP and Media Group and Technology, Media and Communications sector group in the UK. He has specialised in intellectual property law for over 25 years, both in the UK and the US (he is a member of the California Bar as well as an English solicitor). He counsels and represents clients from a broad range of sectors but with a particular emphasis on technology, media and entertainment, hospitality and travel, and life sciences clients, under both UK and EU laws.

## 'PATENT AND TRADE SECRETS ISSUES IN VR'

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Trade secrets and patent protection in Gaming – a new battle line? High-profile trade secrets litigation between ZeniMax and Oculus VR has raised awareness of IP issues in the gaming sector. When do such IP rights arise, and when might disputes arise? More importantly, when might hiring a developer from a competitor result in a lawsuit? Our speakers examine these issues from both a common law and civil law perspective, considering the scope of potential patent and trade secret protection for gaming technology in the EU.

### DAVID POR, PARTNER, ALLEN & OVERY

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David is a partner in the Intellectual Property and Litigation department of Allen & Overy Paris. He is an experienced litigator specialised in all areas of intellectual property. His practice concentrates primarily on complex and cross-border intellectual property disputes, with a particular focus on patent cases, in which he also advises on validity and freedom to operate issues. David has notably represented leading actors in the patent wars of the hi-tech sector and has become a specialist of the interplay between intellectual property and competition law, notably in the field of standardised technologies.

### MARK RIDGWAY, PARTNER, ALLEN & OVERY

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Mark is an intellectual property litigator in Allen & Overy LLP's London office. Mark has particular experience in patents and trade secrets litigation, advising clients from the technology, life sciences sectors and financial services sectors. His experience in the area of trade secrets has included leading a committee of the IP Federation (a major UK trade body) in its legislative reform efforts relating to the proposed EU Trade Secret Directive. He has also acted in a number of significant breach of confidence disputes, including two extremely high-value and long-running disputes in the financial services sector.

## 'REAL INFRINGEMENT OF VIRTUAL INVENTIONS: CROSSOVER AND TECHNOLOGICAL CONVERGENCE'

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Video games have always put us in futuristic scenarios, allowing game designers to predict and imagine what the technology of tomorrow may look like. And user interfaces in video games have presented challenges not previously encountered with real-world systems, requiring the development and design of novel user interfaces. However, modern technology has begun to catch up and many video game features are appearing in other applications. For example, cars may now offer heads-up displays with turn-by-turn navigation – a feature made popular in early driving games. This talk will explore the convergence of video game user interface technologies with those in other areas, with a focus on the issues raised by patents on these technologies. We will explore how game patents might apply to real life situations, and vice versa.

### SCOTT M. KELLY, ATTORNEY, BANNER & WITCOFF

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Scott M. Kelly is an intellectual property attorney and partner with Banner & Witcoff in the United States, and is a former USPTO patent examiner specializing in computer software. Scott helps large and small game studios protect their intellectual property by applying for patents, registering copyrights, and assessing risks presented by asserted IP rights. He also works with clients to develop effective responses to patent assertions, avoiding or reducing the cost of litigation through use of Inter Partes Reviews (IPRs) and Ex Parte Reexaminations at the USPTO. Scott has helped protect games such as Wargaming's World of Tanks and Techland's Dying Light. He is an assistant editor at PatentArcade.com and a contributing author to the ABA Legal Guide to Video Game Development, 2nd Edition (2016).

**16.00-16.30**      **TEA/COFFEE**

**16.30-17.30**      **PANEL DISCUSSION: ASK THE JUDGES**

### PROFESSOR SIR ROBIN JACOB, SIR HUGH LADDIE CHAIR OF INTELLECTUAL PROPERTY LAW, UCL

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Sir Robin joined the Faculty of Laws in May 2011 leaving the Court of Appeal of England and Wales to do so. Having read Natural Sciences at Cambridge, Sir Robin then read for the Bar (Grays Inn). He started practice at the Intellectual Property Bar in 1967. From 1976 to 1981 he was the Junior Counsel for the Comptroller of Patents and for all Government departments in intellectual property. He was made a Queen's Counsel in 1981. His practice took him abroad often (Hong Kong, Singapore, Europe, USA, and Australia). He was appointed a High Court Judge (Chancery Division) in 1993.

From 1997 to 2001 he was Supervising Chancery Judge for Birmingham, Bristol and Cardiff. He was appointed a Lord Justice of Appeal in October 2003. He was

Treasurer of Grays Inn in 2007. He continues to sit from time to time in the Court of Appeal and will sometimes act as an arbitrator or mediator.

He has written extensively on all forms of intellectual property. He often lectures, mainly but not only on IP topics, both in the UK and abroad.

## SIR RICHARD ARNOLD, JUDGE OF THE HIGH COURT OF ENGLAND AND WALES – CHANCERY DIVISION

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Sir Richard Arnold was called to the Bar of England and Wales in 1985 and became a QC in 2000. He was Chairman of the Code of Practice for the Promotion of Animal Medicines Committee from 2002 to 2008, an Appointed Person hearing trade mark appeals from 2003 to 2008 and a Deputy High Court Judge from 2004 to 2008. He was appointed to the High Court, Chancery Division in October 2008 and was appointed to be Judge in Charge of the Patents Court in April 2013. He was appointed as an External Member of the Enlarged Board of Appeal of the European Patent Office in March 2016. He is the author of *Performers' Rights* (5<sup>th</sup> ed, Sweet & Maxwell, 2015), the editor of the *Halsbury's Laws of England* title Trade Marks and Trade Names (5<sup>th</sup> ed, Butterworths, 2014), was editor of *Entertainment and Media Law Reports* from 1993 to 2004 inclusive and has published numerous articles in legal journals.

## PROFESSOR LORD HOFFMANN, HONORARY PROFESSOR OF INTELLECTUAL PROPERTY LAW, CCLS, QMUL

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Lord Hoffmann joined Queen Mary in June 2009 as Honorary Professor of Intellectual Property Law, following his retirement as a Lord of Appeal in Ordinary.

The last fourteen years of his judicial career were spent as a Law Lord, prior to which he was a member of the Court of Appeal between 1992 and 1995 and a High Court Judge in the Chancery Division between 1985-1992. He remains an active arbitrator and mediator and continues to be a non-permanent judge of the Court of Final Appeal of Hong Kong.

He attended the University of Cape Town and then Queen's College, Oxford, as a Rhodes scholar and won the Vinerian Scholarship. He was called to the bar by Gray's Inn in 1964 and became Queen's Counsel in 1977.

In his judicial career he gave judgments which have shaped modern English law, ranging from the reading of arbitration clauses and patent specifications to the scope of the Convention rights under the Human Rights Act. His unrivalled knowledge and experience of law means that his contribution is felt across the whole of the School of Law.

17.30-17.45

CLOSING REMARKS - DR GAETANO DIMITA

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