



**International Gaming: Laws and Regulations around  
Games in the Digital Era**

September 8-9 2022

**Conference Proceedings**

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## Introduction

Games have a complicated relationship with the law and with the globalization of the gaming market in the digital era, legality is something that must be considered in the development, publication, playing and moderation of games. Games have been and continue to be regulated around the globe, and issues arise at different times in a games life cycle: intellectual property (IP), including patent and copyright protection, must be considered from the initial development of the game; International legality, age ratings, and infringement must be considered in the publication of the game; and players must consider the legality of their manner of obtaining the game and whether or not that game is even legal in the country they are playing in. In addition to this, there are legal issues surrounding abuse and harassment in games, leading several developers to implement moderation and other safety regulations internally in order to pass risk assessments from international regulations. In this way, the laws and regulations around games and gaming in the digital era need to be scrutinized.

The theme of **this** conference **was** to explore the dynamic of gaming and the legal/regulatory framework at both national and international levels, from an interdisciplinary perspective.

This conference **aimed** to bring in and curate talks from researchers and law experts in China, the UK/Europe, and beyond, with a focus on research into the laws and regulations involved with international gaming. **Our aspiration has been** to bring together researchers from different regions to build a better understanding of the opportunities and barriers to academic and industry collaboration.

## About Durham Law School, Durham University

Durham Law School is a world leader in legal education and research. Its award-winning academic staff produce ground-breaking research with impact. Durham Law School is in the QS World Rankings top 50 law schools and its research was ranked 3rd best in the Research Excellence Framework in 2014. Durham University is one of the world's leading universities, with excellence in teaching, and world-leading research.

The conference organisers wish to express their thanks to Durham Law School which provided financial support.

## About InGAME International

InGAME International is an international consortium of games industry stakeholders brought together from industry, agencies and universities to investigate the challenges to, and deliver solutions that support, international collaboration between the videogames sectors in the UK and China.

InGAME International will develop a transnational community of industrial and academic partners to provide a platform for UK-China partnership growth. We will foster this community through four interconnected mechanisms: Partnership Events - to stimulate new interactions between UK and China organisations; Partnership Support - to reduce barriers of regulatory, cultural and technical risk; Investor Forums - R&D led products and services can be showcased to potential investors in a supportive environment; and Development Activities - that will deepen links in the longer term by providing in-depth training to industry and academia in person and online.

InGAME International is funded by the Arts and Humanities Research council (Grant reference: AH/T011491/1)

## Conference Organisers

### Dr Angelia Wang

Dr Angelia Jia Wang is an Assistant Professor at the Law School, Durham University. Prior to joining Durham Law School, she was a Teaching Fellow at the Faculty of Business, Hong Kong Polytechnic University. She has been a Research Fellow at the Berkman Centre for Internet and Society (now the Berkman Klein Centre), Harvard University and a Research Fellow at Law School, Singapore Management University. Her research interests lie in the areas of intellectual property law, technology, law and sustainability. She publishes with European Intellectual Property Review, Hong Kong Law Journal, European Review of Private Law, Asia Pacific Law Review and a monograph with Springer.

### Dr Hailey Austin

Hailey Austin is a research and development fellow in transnational creative industries in the InGAME International team. Her current research focuses on identifying the challenges and opportunities for collaboration between the UK and Chinese games industries.

She also gives guest lectures for Abertay students on game studies, incorporating comics in game design, and caricatures and misrepresentations in games and comics.

She received her PhD in comics studies from the University of Dundee. Her personal research focuses on the intersection of games and comics, games as art, transmedia, female agency, and genre in comics and games. On top of academic publications, she is also an accomplished comics creator, having written Commando comics for DC Thomson and several public information comics that available for free online.

### Dr Robin Sloan

Robin Sloan is a Senior Lecturer in Computer Arts at Abertay University in Dundee, Scotland. He was previously a game development professional with experience in both Game Art and Post-Production, and has 11+ years postdoctoral experience as a games academic. As an educator he specialises in teaching visual design for games. This includes 3D modelling, 2D image creation, and development in game engines. At Abertay, his primary teaching role involves leading final year Game Design and Computer Arts projects.

As a researcher and practitioner his main areas of interest are gaming nostalgia, visual design for games, and character design and development. In addition to being the Principal Investigator of InGAME International, he is also a Co-I on the main InGAME Creative Industries Cluster and is currently undertaking research on three other funded projects.

## Conference Schedule

### Day 1: September 8<sup>th</sup>

**09:00 Coffee and registration (Hogan Lovells Hall, Entrance of Durham Law School)**

**09:30 Introduction**

*Welcome address*

Dean and Dr Angelia Jia Wang and (Durham University)

*Introduction to InGAME International*

Dr Robin Sloan (Abertay University), Dr Fiona Dakin (AHRC)

**10:00 Panel 1 - Games and culture**

István Harkai - *Preservation of videogames*

Clare McGlynn - *Sexual harassment in the metaverse: what role for criminal law and regulation?*

Yin Harn Lee (virtual) - *Videogame preservation, exhibition and copyright*

Questions (15 minutes)

**Chair:** Dr Hailey Austin

**11:00 15-minute coffee break (in conference room)**

**11:15 Panel 2 - Competition law and the regulatory framework of games**

Shubha Ghosh (virtual) - *Platforms, Game Development, and Competition Law*

Lukas Ruther Goncalves (virtual) - *Games, music and copyright*

BJ Ard - *Creativity without IP? Vindication and challenges in the video game industry*

Questions (15 minutes)

**Chair:** Dr Hailey Austin

**12:15 Lunch break (Common Room, 1st floor)**

**13.30 Panel 3 - New technologies, platforms and games (virtual)**

Feng Zhang - *The impact of blockchain and NFTs*

Haijun Jin - *Intellectual property disputes on video games live streaming in China and beyond*

Jyh-An Lee - *Livestreaming and licensing in China*

Questions (15 minutes)

**Chair:** Dr Robin Sloan

**14:30 Coffee break (in conference room)**

**14:45 Panel 4 - International law**

Eugene Low (virtual) - *IP protection from an Asian perspective*

Naama Daniel - *Change the game, not the player – how enforcement of foreign copyright judgments can create a unified gaming law*

Leon Y. Xiao (virtual) - *A public health ladder approach to loot box regulation*

Questions (15 minutes)

**Chair:** Dr Fiona Dakin

**16:00 Tour of Durham**

**19:00 Dinner at Hotel Indigo**

**Day 2: September 9<sup>th</sup>**

**10:00 Coffee and registration (Hogan Lovells Hall, Entrance of Durham Law School)**

**10:30 Panel 5 – IP session 1**

Ying Ye - *Copyright and AI-generated content in games*

Qinqing Xu - *Whose Mario is it? Copyright of the works created by players*

Surasing Phukhae - *Intellectual property infringement and the right to object to automated decision making in the online board game Colonist.io.*

Questions (15 minutes)

**Chair:** Dr Angelia Wang

**11:30 Coffee break (in conference room)**

**11:45 Panel 6 - IP session 2**

Qiang Yu (virtual) - *Video game reskinning under China's copyright law*

Haifeng Huang (virtual) - *Reskinning of videogames in China*

Angelia Wang - *Copyrightability of gameplay – a novel analytical framework from a game development perspective*

Questions (15 minutes)

**Chair:** Dr Hailey Austin

**12:45 Lunch break (Common Room, 1st floor)**

**14:00 Panel 7 - Games and society**

Kieran Fernandes - *Digital games in society*

Pratiksha Ashok - *Game localisation: a comparative case study of PUBG mobile in India and China*

Robin Sloan - *Navigating regulations and restrictions in game design teams*

Questions (15 minutes)

**Chair:** Qinqing Xu

**15:00 Coffee break (in conference room)**

**15:15 Panel 8 - IP session 3**

Ge Jiang (virtual) - *Are rules of computer games copyrightable? Lessons from China*

Johanna Gibson - *The authorship in play*

Eleonora Rosati (virtual) - *The protection of videogame characters under copyright law*

Questions (15 minutes)

**Chair:** Ge Chen

**16:15 Thank you and closing of conference**



## Abstracts: Panel 1 – Games and culture

### Preservation of videogames

**Dr István Harkai, University of Szeged, Hungary**

Video games are complex, intricate works of art that include computer program creations, i.e., software, graphical elements, musical compositions, sound recordings, and other copyright-protected subject matters, and sometimes performances by artists. As we are talking about one of the most important entertainment products of our time, it is perhaps not surprising that our first thought is not to preserve games and the elements linked to their development and the gaming experience. It is perhaps not too much of an exaggeration to say that we might not think of video games primarily as cultural heritage. Yet, if we consider the complex inner world of games and the social groups that play them, it is quite appropriate to examine whether these entertainment software can be subject to the limitations and exceptions laid down in the CDSM Directive, whether they are worthy of preservation, and whether there are institutions whose activities are aimed at collecting, organising, archiving, and making them available for cultural purposes. Not only are video games worthy of preservation, but there are also institutions that systematically collect them. In fact, to turn the question around, video games themselves can play an important role in the preservation and conservation of cultural heritage. In my study, I will take stock of the arguments for the preservation of video games as complex works forming part of the digital cultural heritage, in particular with regard to the new exception in Article 6 of the CDSM Directive

#### Speaker biography:

István Harkai, I am a senior lecturer at the University of Szeged Faculty of Law and Political Sciences Institute of Comparative Law and Legal Theory. The research, serving as a basis for my presentation, was conducted within the framework of the H2020 ReCreating Europe research project and bears the title of Preservation of Video Games as Cultural Heritage in the Light of the CDSM Directive.

### Sexual harassment in the metaverse: what role for criminal law and regulation?

**Prof Clare McGlynn, Durham University**

This presentation will consider the possible role of the criminal law and related regulation in challenging acts of sexual violence and harassment in the metaverse, including in gaming. Women and girls experience exceptionally high levels of abuse and harassment online, and there are indications that such trends are being replicated in the metaverse. While the criminal law applies to some forms of online abuse, it is less clear what its application is or will be to immersive experiences such as the metaverse. This paper considers the possible distinctive nature of the harms experienced in the metaverse and raises questions about the role of the criminal law.

#### Speaker biography:

Professor Clare McGlynn QC (Hon) is an expert on the legal regulation of online abuse, including image-based sexual abuse, and sexual violence. She has worked closely with politicians and voluntary organisations to improve legal responses to abuse and has addressed policy audiences across the world. She is the co-author of 'Cyberflashing: recognising harms, reforming laws' (2021) and 'Image-Based Sexual Abuse: a study on the causes and consequences of non-consensual sexual imagery' (2021).

## Videogame preservation, exhibition and copyright

**Dr Yin Harn Lee, University of Bristol**

Videogames have a profound impact on culture and society. While the UK boasts an enviable heritage in videogame development, it risks losing a major part of its cultural output through an inability to preserve them. A persistent problem is the challenge that copyright law presents for videogame preservation. The long duration of copyright protection and the youth of the medium mean that all videogames are still protected by copyright, and the existing copyright limitations and exceptions cover very few of the activities cultural heritage institutions need to carry out to preserve and exhibit videogames. This means that the vast majority of preservation and exhibition activities potentially infringe copyright if done without the permission of the relevant rightholders. However, cultural heritage institutions wishing to engage in preservation activities often face difficulties in identifying and locating rightholders and in securing licences. Even when rightholders are willing to have their creations preserved, negotiating these licenses is not straightforward and involves substantial transaction costs for both parties. Reforms are urgently needed to enable preservation activities.

This paper will outline the videogame preservation and exhibition activities commonly carried out by cultural heritage institutions and identify their copyright implications. It will then highlight the idiosyncrasies of the videogame industry which make it particularly difficult for cultural heritage institutions to trace and contact relevant rightholders. It then proposes a three-pronged solution to these difficulties. The first is a template licensing agreement that cultural heritage institutions can use in negotiating licences with rightholders who are willing to grant permission for certain types of exhibition and preservation activities. The second is a set of guidelines that will enable cultural heritage institutions to take advantage of the existing orphan works regime in order to engage in the preservation and exhibition of videogames whose rightholders are unknown or cannot be found. The third is a new copyright exception that will accommodate preservation and exhibition activities more effectively.

### **Speaker biography:**

Dr Yin Harn Lee is a Senior Lecturer at the University of Bristol and an editor of the Interactive Entertainment Law Review. Her research focus lies primarily in the area of copyright law. She is currently completing a monograph on copyright and videogame modifications, and is working on a project about videogames and cultural preservation in conjunction with colleagues at the Centre for Commercial Law Studies, Queen Mary University of London and the National Videogame Museum.

## Abstracts: Panel 2 – Competition law and the regulatory framework of games

### Platforms, game development, and competition law

#### **Prof Shubha Ghosh, Syracuse University**

The ongoing antitrust dispute between Apple and Epic Games highlights critical issues in game development and dissemination. Contractual restrictions that prevent game developers from distributing their games through direct dissemination to users raise questions of limits on competition. Although these restrictions are justified through the risk taken by platform creators (such as Apple through its App Store), this business justification ignores other aspects of the market for games: the needs of end users and the talents of programmers. This presentation will analyze the dispute between Apple and Epic and the district court's decision in favor of Apple, currently on appeal.

#### **Speaker biography:**

Crandall Melvin Professor of Law and Director, Technology Commercialization Law Program; PhD(Economics), Michigan; JD, Stanford

### Games, music and copyright

#### **Lukas Ruthes Gonçalves, American University Washington College of Law**

According to the US Constitution, Congress has the power "[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries". However, what can be done when the author's right is at risk of being lost even before the 'limited times' have ended? Videogames have accrued great importance culturally, but are at an increasingly greater risk of vanishing, due to being locked to a certain hardware. The continued accessibility of older videogames is threatened both by the rapid obsolescence of the hardware and software platforms on which they depend and the gradual degradation of the physical media on which they are stored, also known as 'bit rot'.

In addition to that, Videogame IP holders have proven to be less than forthcoming in allowing their older creations to be freely shared to the public. How, then, do we prevent the loss of such cultural items, and assure their continued accessibility to the public? Section 1201 exemptions already allow for the preservation of videogames no longer supported by their creators, but do not allow for the sharing of the end result on the internet. Other authors, when commenting the subject, limit their analysis to game modifications or emulation programs.

However, a more general answer for the whole industry is necessary. This article intends to answer this question by applying to the videogame industry the same compulsory license scheme used nowadays by the music industry. Allowing fans and other creators to utilize mechanical licenses to remake their favorite games would help preservation efforts and serve as a reliable income stream for its original publisher. They allow anyone who seek to make a phonorecord to do so without the consent of a copyright owner, provided that the person serves a notice of intent on the owner, pays a statutory prescribed royalty, and adheres to other provisions set forth in the Copyright Act.

Furthermore, the mechanical license includes the privilege to make a musical arrangement of the song as long as the user does not change the basic melody or fundamental character

of the work. This paper argues that, conceptually, musical works and videogames are similar enough to allow for the mechanical license scheme to be applied to the latter without many alterations to the law being needed. Both types of works are composed by many elements that are protected by copyright and that can be executed in different ways whilst maintaining the same overall look and feel of the original. Therefore, the cover version of a videogame would be able to pass the same type of ‘vibe check’ a new sound recording to a musical work has to, in order to be authorized by section 115 of the Copyright Act of 1976.

### **Speaker biography:**

Lukas studies the field of Intellectual Property Law since the beginning of his Bachelor of Laws (LL.B) at the Brazilian Federal University of Santa Catarina (UFSC) in 2011. He had a visiting scholar period during his LL.B studies at University of Lisbon's school of law, where he had the chance to study under Professor José de Oliveira Ascensão. Back in Brazil, he now holds a Master's Degree (M.Sc.) from the Federal University of Paraná (UFPR), due to his studies on AI Authorship under Professor Marcos Wachowicz and is now a Doctorate Candidate at the same institution. Lukas is also a member of the Study Group on Copyright and Industrial Rights (GEDAI/UFPR), headed by Professor Marcos Wachowicz, and a Law Clerk at the Computer & Communications Industry Association.

## **Creativity without IP? vindication and challenges in the video game industry**

### **Dr BJ Ard, University of Wisconsin**

This Article intervenes in the longstanding debate over whether creative production is possible without copyright. IP scholars have identified “negative spaces” like comedy and tattoo art where creativity thrives without IP, but critics dismiss these examples as niche. The video-game industry allows for fresh headway. It is now the largest sector in entertainment—with revenues greater than Hollywood, streaming, and music combined—yet IP does not protect key game elements from duplication. Participants navigate this absence using non-IP strategies like those identified in negative-space industries: AAA developers invest in features not easily copied while indie game developers rely on community norms. The answer to whether creative production is possible in a major industry without reliance on copyright is thus a decisive yes.

Studying this industry also compels us to go beyond surface-level questions of whether creative production is possible to grapple with how the configuration of IP and non-IP protections shapes what is produced and how this configuration favors some creators over others. The industry likewise pushes us to recognize the stability of these regimes is contingent on broader features of technology, the economy, and society at large—the industry has come full circle from a sector where copying was rampant, to one where it nearly disappeared, to one where it has reemerged in mobile gaming.

The video-game industry is also crucial for study because it embodies the state of creative production in the information age. Legal scholars have focused too long on legacy industries like Hollywood and music without acknowledging the complex realities of modern creative production and the importance of going beyond IP to understand how these industries work. It is time we moved past the conceptual divide between “full IP” and negative space to acknowledge the overlapping but partial legal protections across both sides of the line.

### **Speaker biography:**

BJ Ard teaches and writes on intellectual property, privacy, and the intersections of law and technology. His work appears in *Emory Law Journal*, *Maryland Law Review*, and *Yale Law Journal*, among other distinguished journals. He has also co-authored the discussion of the

Supreme Court's 2021 Google v. Oracle decision in the leading copyright treatise Nimmer on Copyright. Professor Ard completed his J.D. and Ph.D. at Yale Law School, where he was recognized for his leadership in the Community and Economic Development Clinic and served as Managing Editor of Yale Law Journal. After law school, clerked for Judge R. Lanier Anderson III on the Eleventh Circuit. Prior to joining the UW faculty, Professor Ard taught at the University of Arizona James E. Rogers College of Law. He also worked as a research fellow at the Yale Information Society Project and in private practice at Irell & Manella LLP in Los Angeles.

## Abstracts: Panel 3 – New technologies, platforms and games

### The impact of blockchain and NFTs

Feng Zhang, V&T Law Firm (Shanghai Office)

This paper summarizes the impact of blockchain technology application on the game industry, the new operation modes of games produced in the digital era, and the three main legal problems of these modes, including data security, intellectual property utilization and protection, and asset trading and security, and puts forward some regulatory ideas.

The legal issues I mainly discuss include:

- How to treat the legal nature of NFT products?
- How to deal with data security, protocol security, equity security, asset security and governance security issues related to it?
- Should NFT product transactions be regarded as asset transfer, and what are the regulatory requirements involved?
- How should NFT platform undertake its regulatory obligations?

We provide NFT product compliance services to many institutions in China, including Tencent and Shanghai Automobile Group. We hope to share our relevant experiences in this field with people and get some valuable guidance.

#### Speaker biography:

Partner of V&T Law Firm, director of the digital law professional committee of V&T Law Firm, think tank expert of Shanghai blockchain Technology Association, visiting professor and part-time master tutor of the Research Center of Environmental Resources and Energy law of Shanghai University of Political science and Law, standing member of Metaverse Industry Committee of China Mobile Communications Association , and member of the Cultural Media Business research committee of Shanghai Lawyers Association

### Intellectual property disputes on video games live streaming in China and beyond

#### Prof Haijun Jin, Renmin University of China Law School

As an important part of entertainment and creative industry, video games have shown their role on the social, economic and technological aspects around the world. With the biggest population and internet users, China provides a huge market and playground for video games, and also witnesses the growth of online games players and their live streaming with the emerging technology and business models. Meanwhile, the legal system, especially intellectual property laws have increasingly become the institutional basis. The Chinese Copyright Law has been amended in the end of 2020, though there are many challenges in this field, such as the copyright eligibility for live streaming of game players, the category of copyrighted work, the exclusive rights and their limitations. Before the legislative amendment, the Chinese courts actually have taken steps to deal with these problems when they tried to decide the cases on online game live streaming. The Chinese Unfair Competition Law is also employed by the courts as the alternative regime to adjudicate the disputes. It's therefore very helpful to make a survey on these disputes, debates and solutions in the last decade and review what has been done in legislation or adjudication, or kept controversial. The purpose of this study is to figure out if there are any possible

approaches to meet the challenges during the further development of the video games in digital age.

**Speaker biography:**

Haijun Jin, professor of law at Renmin University of China Law School. He has joined the faculty of Renmin University in 2001 when he received his Ph. D degree in Civil and Business Laws there. Before that, he has practiced the law in a private law firm for two years since he obtained his LL.B degree from the Southwest University of Political Science and Law and passed the Chinese Bar Exam in 1993. His two more LL.M degrees are from Renmin University and the University of Washington in Seattle respectively. He also studied and worked in the foreign institutions for the last decade, among others, including being visiting professor at the University of Frankfurt am Main and the University of Washington, and being visiting scholar at Harvard Law School and Max-Planck Institute for Intellectual Property and Competition Law in Munich. His research covers various aspects in the field of intellectual property law and civil law. He is the Standing Council Member of the China Intellectual Property Law Society.

## Livestreaming and licensing in China

**Prof Jyh-An Lee, The Chinese University of Hong Kong Faculty of Law**

Live game streaming depends on the use of audiovisual images of the games play, which may infringe the copyright of game developers. In recent years, there has been a surge in copyright litigation initiated by game developers against players/streamers in China. The courts needed to resolve several fundamental copyright issues in these cases, such as those pertaining to copyright subject matter, economic right, and copyright limitation. This article provides an in-depth exploration on copyright doctrines relevant to live game streaming industry, following by a proposal of new statutory licensing mechanism specifically for live game streaming. We argue that the proposal can properly balance various interests of different stakeholders in the game industry, such as incentive and proper reasonable compensation for developers, platforms' dissemination of entertaining information to the audiences, and gamers' development of professional skills. Under this mechanism, streamers would be allowed to stream games without permission and streaming platform operators would be automatically licensed for game streaming and obliged to remunerate game developers. Compared to the traditional "one-to-one" licensing, the proposed licensing scheme would effectively reduce transaction costs and improve licensing efficiency.

**Speaker biography:**

Jyh-An Lee is a Professor and Executive Director of the Centre for Legal Innovation and Digital Society (CLINDS) at The Chinese University of Hong Kong Faculty of Law. Professor Lee holds a J.S.D. from Stanford Law School and an LL.M from Harvard Law School. He has published on various aspects of intellectual property and Internet law. Professor Lee has been featured on ABC News, BBC News, Bloomberg News, Financial Times, Fortune, and South China Morning Post as an expert on intellectual property and Internet law. His works have been cited by the US Court of Appeals for the Fifth Circuit, UK High Court of Justice, and the US International Trade Commission. Before starting his academic career, he was a practicing lawyer in Taiwan, specializing in technology and business transactions.

## Abstracts: Panel 4 – International law

### IP protection from an Asian perspective

#### Eugene Low, Hogan Lovells, Hong Kong

- IP protection of video games from an Asian perspective, with a particular focus on copyright protection.
- Discuss the copyrightable subject matters in video games.
- Discuss the protection of "look-and-feel" of video games, and emerging features such as gameplay, skins, etc.
- Discuss some relevant case law in Asia.
- Discuss the availability of copyright registration in some jurisdictions.
- Interaction of copyright with other IP laws in the video games field.
- Practicalities of enforcing IP, e.g. urgency, costs, publicity...

#### Speaker biography:

Eugene is a partner at the international law firm Hogan Lovells, where he heads the IP practice in Hong Kong. Eugene is also the co-head of Hogan Lovells' video games and esports focus group. Eugene has practised both contentious and non-contentious IP matters for over 16 years and has substantial experience advising clients in the gaming industry.

### Change the game, not the player – how enforcement of foreign copyright judgments can create a unified gaming law

#### Naama Daniel, University of Jerusalem

This paper examines the possibility of the de-facto creation of an international gaming law as a result of strategic enforcement of foreign copyright judgments. In the globalized, digital age, players all over the world play the same games, using and generating content by utilizing the same tools and codes. Yet different copyright rules may apply to each player, resulting in a differentiation between uses they may undertake, and limiting their potential of doing so in practice. The paper analyzes thoroughly, for the first time, the threats and opportunities posed to copyright-related gaming law, both national and international, by private international law instruments on recognition and enforcement of foreign copyright judgments. The paper demonstrates that since the copyright laws pertaining to gaming differ from state to state, they are especially vulnerable at the transnational level and are thus susceptible to abusive use of strategic foreign judgment enforcement proceedings – a vulnerability that justifies serious consideration in light of recent efforts to negotiate international instruments on the enforcement of foreign copyright judgments. The paper argues that enforcement of foreign copyright judgments may restrict players' opportunities and rights, and on a larger scale may even create "a race to the bottom" resulting in a unified and restrictive international gaming law. This is because enforcement of foreign copyright judgments will generally and usually benefit right holders (game owners) while downplaying, and at times ignoring, players' rights, due to an inherent bias of the private international law paradigm towards right holders, intensified by a certain bias of the copyright regime towards them. For example, games preservation, modding, machinima, and Let's Play videos may be considered by certain jurisdictions to be permitted uses in copyright (for example, since they are considered to be fair use), while in other jurisdictions they may



constitute copyright infringement. In such cases, especially considering the globalization of the gaming market in the digital era, the risk of enforcement of foreign copyright judgments is clear, as the right holder may embark upon strategic litigation and seek to enforce the most restrictive judgments in as many jurisdictions as possible, creating the aforementioned race to the bottom towards a restrictive international gaming law. This risk will be especially severe if an international instrument regulating and obligating the enforcement of copyright judgments is established, as was the proposal regarding a Convention that was recently concluded in 2019. As the paper demonstrates, this issue is not off the national and international agendas, and thus requires debate and consideration with regard to copyright-related gaming law. The paper then outlines possible policy solutions to address these threats both on the national and international levels. Most importantly, it proposes that while enforcement of foreign judgments may restrict players' opportunities, the participation of players in the legal game could be used to change the legal outcomes in their favor, enabling them to keep using and generating game-related content.

### **Speaker biography:**

Naama is a research fellow at the Federmann Cyber Security Research Center – Cyber Law Program, the Hebrew University of Jerusalem. She has been working in the Israeli public sector since 2010, specializing in IP, technology, and the intersection between IP and private international law. She worked as a legal advisor in the IP law department in the Israeli Ministry of Justice (2010-2017), and as a legal advisor to the Economy Committee in the Israeli Parliament (since 2017; currently on sabbatical for relocation). She managed numerous policy and legislation projects and advised government offices on IP and technology-related subjects. She is a guest lecturer and an invited speaker at academic courses and conferences on IP and cyber. Naama represented Israel in various international forums discussing IP and emerging technologies, including WIPO and the WTO. She holds an LL.B (magna cum laude) and an LL.M (summa cum laude) from Tel-Aviv University.

## **A public health ladder approach to loot box regulation**

### **Leon Y. Xiao, IT Uni Copenhagen**

Loot boxes are gambling-like monetisation mechanics in video games that are purchased to obtain randomised rewards. Gambling regulation is increasingly being informed by insights from public health. Despite conceptual similarities between loot boxes and gambling, there is much less international consensus on loot box regulation. Various approaches to regulating loot boxes (both adopted and proposed) are reviewed and mapped onto the Nuffield public health intervention ladder, which highlights various trade-offs between individual liberties and harm prevention. An extended translation, discussion and analysis of the Spanish loot box law proposed in July 2022 (which seeks to ban loot box purchase ban children and requires a wide range of harm minimisation measures to be implemented in relation to adults) is also provided. Many countries have considered regulation, but as yet only a few countries have taken tangible actions. Existing regulatory approaches vary greatly. More restrictively, Belgium has effectively 'banned' paid loot boxes and prohibits their sale to both children and adults. In contrast, more liberally, China only requires disclosure of the probabilities of obtaining potential rewards to provide transparency and perhaps help players to make more informed purchasing decisions. Most other countries (e.g., the UK) have adopted a 'wait-and-watch' approach by neither regulating loot box sales nor providing any dedicated consumer protection response. Industry self-regulation has also been adopted, although this appears to elicit lower rates of compliance than comparable national legal regulation. Many potential public health approaches to loot box regulation, such as expenditure limits or harm-reducing modifications to loot box design, deserve further

attention. The benefits of existing interventions (including regulation in different countries and industry self-regulation) should be further assessed. The current international variation in loot box regulation presents opportunities to compare the merits of different approaches over time.

**Speaker biography:**

Hi, I'm Leon, a PhD Fellow at the IT University of Copenhagen and a Visiting Scholar in the School of Law at Queen Mary University of London. I research video game law, particularly the regulation of loot boxes, a quasi-gambling monetisation mechanic in video games. I have appeared before the Law Commission of England and Wales and the Belgian Gaming Commission, and submitted policy recommendations to the Spanish, Singaporean, and UK Governments.

## Abstracts: Panel 5 – IP session 1

### Copyright and AI-generated content in games

**Ying Ye, Durham Uni**

The content creation of games requires a lot of effort from art design and project planning. Content creation is also one of the major costs of developing a game. Procedural Content Generation (PCG) is a popular approach to improve the production efficiency of developing games. PCG is based on limited or indirect user input, generating content independently or with human players or designers. The contents generated by PCG include game levels, maps, game rules, stories, items, missions, music, weapons, vehicles, characters, etc. In recent years, the development of games applied AI to improve content generation algorithmically. Deep learning and reinforcement learning in AI enable games to dynamically change the level design based on player actions, improving the fun of gameplay and enriching categories and qualities of game content. As the copyright issue of AI-generated works becomes more heated, we are also concerned about whether the content generated through PCG in games using AI can be protected by copyright law. This research explores what PCG is in game development and how AI techniques, such as deep learning and reinforcement learning, are used in promoting PCG. Then this research further launches the discussion on copyright issues of AI-generated content in games, particularly focusing on the copyrightability and ownership issues. This research refers to two typical judicial cases about the copyright issues of works generated automatically by computers in China and analyzes the legal status of AI-generated content in games under the framework of Chinese copyright law. The discussion in this research also provides a possible approach for the international community to address the challenges of AI creations and related copyright issues in games.

#### **Speaker biography:**

Ying Ye is a Ph.D candidate at Faculty of Law, Durham University, UK, with a research focus on Artificial Intelligence and Copyright system.

### Whose Mario is it? copyright of the works created by players

**Dr Qinqin Xu, Durham University**

Video games have been a growing part of social culture. In the early stages, games were played locally by a single person or two team players or opponents. Both technological and aesthetic capabilities were limited for games. Over the last two decades, digital games have emerged and developed significantly along with the technical progress of hardware, including game consoles, and the popularity of information technology that makes online joint-play possible. More and more games provide flexible playing modes, and users are able to create unique content. The wide use of social media has also promoted the global spread of different games. Although the software and the trademarks belong to game companies, the legal status of player-generated content remains uncertain.

This article looks into the copyright issues of the works created by game users, including maps, descriptive guidelines, explanations of the products in the games and various designs. It uses two well-known games developed by Nintendo, one of the giant game companies around the world, as case studies: the Legend of Zelda: Breath of the Wild and Animal Crossing. These two games have been popular in many countries and attracted a huge number of users. Fans of the games have actively uploaded various kinds of tricks and

art designs on social media. Some of them even make profits from publishing creative designs and sharing experience online. The contents published online are internationally accessible on the internet.

This article first reviews the regulations involved with international gaming and the practice. It particularly discusses the ownership of the copyright in user-generated content. It examines whether player-generated content is original enough to warrant copyright protection and if the end-user licence agreement can override the rights that would otherwise belong to the player. For example, players share their experience online, including how to complete challenges and puzzles in *Zelda Shrines* and how to design a beautiful island on *Animal Crossing*. The article also explores the balance of rights of users and the copyright of the game held by game companies. The findings would help to clarify copyright rules in the gaming industry and ensure users' interests. The research would also contribute to further discussion on the interaction between copyright and games.

### **Speaker biography:**

Dr Qinqing Xu is a lecturer in Intellectual Property Law in the Law School at Durham University. Qinqing has been studying intellectual property for more than ten years. Her research focuses on music copyright, and her monograph on this topic is about the collective management of music copyright in China, the United States and Australia. She is working on topics about intellectual property related to renewable energy, gaming and intangible cultural heritages. Qinqing's research interests also include comparative law, business law and international law.

## **Intellectual property infringement and the right to object to automated decision making in the online board game *Colonist.io*.**

### **Surasing Phukhae, Durham University**

Online games have adopted the same rules as their original boardgames, but they have avoided infringing on both the intellectual property (IP) of rightsholders and the data protection of individuals, specifically the right not to be subject to an automated decision under Article 22 of the General Data Protection Regulation (GDPR). It is vital to investigate whether the present legal system in the United Kingdom can adequately safeguard IP rightsholders and individuals.

In this study, *Colonist.io* was chosen as a case study to illustrate potential violations of UK laws due to its business strategy, specifically its statement that it is an "Online Strategy Game alternative to *Settlers of Catan*" and its privacy policy that collects information in various ways to "personalise, and expand our website." Even if such a case was partially examined by U.S. researchers in terms of IP protection, the study aptly demonstrates how IP and data protection laws are enforced in the United Kingdom.

After reviewing IP law in the United Kingdom, it was determined that although *Catan GmbH* has registered its world and figurative trademarks in the UK since 1998, *Colonist.io* has avoided confusion by describing itself as a "free online alternative to the challenging social and strategy board game *Settlers of Catan*." Moreover, it has circumvented copyright protection by producing artworks distinct from the original game. It also paraphrases the instructions for how to play the game in order to avoid using the exact wording. These issues hinder the IP owner or *Catan GmbH* from protecting their online works.

The *Colonist.io* Privacy Policy specifically recognises a variety of individual rights, including access, correction, erasure, restriction of processing, objection to processing, and data portability, but not the right to object to automated decision-making. This right based on

automated processing and output has a substantial impact on the person. In fact, Colonist.io has entirely automated the processing of a person's personal information, including their interests, behaviour, and location. Its karma system is based purely on automatic decision making devoid of human interaction, despite the fact that such a process may not have had a substantial impact on the person.

Clearly, colonist.io has avoided infringing on the rights of Catan GmbH and individuals under UK law. Consequently, individuals and holders of intellectual property rights must be aware of the limitations of their legal safeguards.

**Speaker biography:**

Surasing Phukhae is a PhD candidate at the Durham Law School. He is exploring the potential and difficulties of intellectual property protection in technology innovations.

## Abstracts: Panel 6 – IP session 2

### Video game reskinning under China's copyright law

**Dr Qiang Yu & Tanya Ren, Shandong University of Science and Technology, National Research University Higher School of Economics; China Jiliang University**

Litigations concerning video game reskinning have sprung up in China since 2018. The decisions show that the common and central issue is whether the gameplay of a video game can be protected under China's copyright law. Scholars express divided ideas on the issue, some believe that the gameplay of a video game is the core link of the development of a video game, it embodies a large amount of intellectual work and is characterized with high degree of originality, and copyright law protection is therefore deserved. Other believe that, the gameplay of a video game is not a type of work stipulated in China's copyright law; the gameplay of a video game features technical functions and does not fall within the category of literary work protected by copyright law; if the gameplay of video games were brought into the scope of the object of copyright, the cost in game development and management will increase, and rent-seeking behavior will expand, which are not conducive to stimulating innovation in the field of video games.

This article investigates the legal status of video game reskinning, with the focus on the copyright protection of the gameplay of video games in China. After reviewing relevant scholarly ideas, it analyses a number of recent decisions, namely: Yiqu Technology v Shanghai Zhitian & Beijing Xinyu Network Technology, Enlight Pictures v Electronic Soul Interactive Technology & Beijing Wali Network Technology, Taiji Panda v. Hua Qian Gu, and etc., among which whether the gameplay of a video game is copyrightable is controversial. It identified that, most video game works are treated by courts as audio-visual works; in practice, the courts have basically reached a consensus that video game programs are audio-visual works, either through live or on-demand play.

The investigation indicates that although the gameplay of a game as a whole is unlikely to be protected under copyright law because the law protects the specific expression of ideas rather than ideas, however when certain part of the gameplay is deeply incorporated into an interface of a video game and enables players to perceive clearly in the process of operating the game and to carry out interactive operation accordingly, then this part of gameplay is an expression of the video game; when the detailed gameplay was built in the design of the interface of a video game, the gameplay became a specific presentation of the video game, which is a fully described structure and(or) is an expression of a video game. Under either of the circumstances the involved gameplay are copyrightable, this in turn makes certain types of video game reskinning illegal under copyright law.

#### **Speaker biography:**

**Affiliations:** BRICS Competition Law and Policy Centre, National Research University Higher School of Economics; College of Humanities and Law, Shandong University of Science and Technology. **Scholarship:** Qiang Yu is an experienced expert on Chinese law in the field of intellectual property rights and antitrust regulation. He has published widely on legal and economic issues of regulating information goods market in peer-reviewed journals in China and Western academia. He often presents his scholarly works at international conferences and seminars. Qiang has broad interests in intellectual property law, competition law, the intersection of competition law and intellectual property and economic analysis of law.

## Reskinning of videogames in China

### Haifeng Huang, Jones Day

I would like to provide a short presentation on legal protections and enforcement mechanisms against re-skinning of video games in China. This will cover some recent cases in China, including Hearthstone and Taiji Panda and discuss how game rules and gameplay can be protected, either under copyright law or by anti-unfair competition law. It will also address some key issues and challenges that are faced by the gaming industry and propose possible solutions/paths moving forward.

#### Speaker biography:

Haifeng Huang leads Jones Day's China intellectual property practice. He is regularly called on to lead teams and advise clients on their complex disputes and intellectual property matters. He has a broad practice covering disputes and transactions, particularly those involving patents, trademarks, copyrights, trade secrets, unfair competition, antitrust, and technology licenses.

## Copyrightability of gameplay – a novel analytical framework from a game development perspective

### Dr Angelia Wang, Durham University

Copyright law upholds the 'idea/expression' dichotomy that only provides protection for expressive and original elements of works and precludes abstract ideas from being protected. However, with the advancement of game design technologies and the 4G/5G networks, video games can be played on various platforms and devices with an increasing level of interaction. The complexity of the game rules, the user experience and human-computer interaction have rendered a strict application of the dichotomy between ideas and expressions insufficient to address the copyrightability issues involving gameplay and game rules.

This paper aims to provide a novel explanatory framework for gameplay and game rules under copyright law by employing a game development perspective. It uses a comparative approach, selecting cases from the UK and China to achieve a common understanding of the copyrightability issue given cross-border trade. It demonstrates that commonalities can be identified even between different legal systems. First, it conceptualises 'gameplay' and the relating concept of 'game rules', concepts that are amphibious in legal practice. It introduces the MDA framework (standing for Mechanics, Dynamics, and Aesthetics), a formal approach to understanding games that attempts to bridge the gap between game design and development, game criticism, and technical game research. Following the introduction of the MDA framework, it selects a few representative cases involving copyrightability issues of games and analyses the disputable elements of the games with the MDA framework. It argues that gameplay and game rules are copyrightable, subject to a few conditions. To give appropriate incentives to developers and game companies and maintain a fine balance between open access for innovation and exclusive protection for IP rights, it concludes that copyright law should extend protection for gameplay.

**Speaker biography:**

Dr Angelia Jia Wang is an Assistant Professor at the Law School, Durham University. Prior to joining Durham Law School, she was a Teaching Fellow at the Faculty of Business, Hong Kong Polytechnic University. She has been a Research Fellow at the Berkman Centre for Internet and Society (now the Berkman Klein Centre), Harvard University and a Research Fellow at Law School, Singapore Management University. Her research interests lie in the areas of intellectual property law, technology, law and sustainability. She publishes with European Intellectual Property Review, Hong Kong Law Journal, European Review of Private Law, Asia Pacific Law Review and a monograph with Springer.



## Abstracts: Panel 7 – Games and society

### Digital games in society

#### Prof Kieran Fernandes, Durham University

The digital games market is an enormous and fast-growing industry with extraordinary impact, particularly on young people and increasingly on other segments of the population. The importance of the UK games industry (3rd largest in the world) was underlined in the Chancellor's Autumn statement, which confirmed the importance of the digital games industry to the UK. Enthusiasm for digital games is underlined by a Forbes magazine article suggesting that, by the age of 21, the typical child has played 10,000 hours of digital games.

How can we harness widespread enthusiasm for digital games to contribute to advances in society and science in addition to economic impacts? For example, we can test economic theories by analysing the artificial economies in online games, or we can improve the motor skills of recovering stroke patients by using games based on motion detection devices such as the Wii controller, Kinect or simply the mobile phone.

Over the last few years, we have been researching under the auspices of a EPSRC funded project to bring the UK digital games industry closer to scientists and healthcare workers to unlock the potential for scientific and social benefits in digital games. The numbers of games sold and the numbers of game hours played mean that we only need to persuade a small fraction of the games industry to consider the potential for social and scientific benefit to achieve a massive benefit for society, and potentially start a movement that will lead to the mainstream distribution of games aimed at scientific and social benefits. My presentation will highlight some of the findings from this research.

#### Speaker biography:

Professor Kieran Jude Fernandes is the Associate Dean for Internationalisation (since 2017) having served as the Head of Department and Professor of Operations Management from 2013 to 2017. Professor Fernandes is also the Executive Director of the NELEP Innovation Observatory, Fellow of University College Durham and the Wolfson Research Institute. He held academic positions at the Universities of Warwick and York and is a Professeur Invité at EMLyon (France) and was a Special Advisor and Consulting Professor at the Cabinet Office's Civil Contingencies Secretariat. He was appointed by the UK Secretary of State for International Development as a Non-Executive Director of the UK National Commission (UKNC) for UNESCO with special responsibility for Higher Education, and in 2017 was elected vice-chair of the UKNC. He currently sits on a range of advisory panels covering various aspects of Operations and Innovation Management, Academic Advisory Council member of the Chartered Management Institute, and is member of a variety of editorial boards.

### Game localisation: a comparative case study of PUBG mobile in India and China

#### Pratiksha Ashok, UCLouvain, Belgium

As a worried mother complained to Prime Minister Narendra Modi regarding exam issues, that her son was avoiding studies and was addicted to online games, PM Modi replied: "PUBG-wala hai kya?" (is he a PUBG gamer?) leaving the audience in splits. As of 2019, PUBG Mobile has 555 million downloads, with India accounting for 116 million (21%) and China with 108 million (19%) global downloads.

PlayerUnknownBattleground (PUBG), currently known as PUBG: Battleground, is a battle royale game that blends last man standing gameplay with elements of scavenging, survival and exploration. PUBG was created by Krafton, a South Korean game distribution company and Tencent Games, a video game division of Tencent Holdings, a Chinese technology and entertainment company. PUBG Mobile is a mobile version of the game, released on Android and iOS.

In September 2020, the Ministry of Electronics and Information Technology of the Government of India banned PUBG Mobile, citing prejudicial activities and a threat to India's sovereignty, integrity, defence, state security, and public order under Section 69A of the Information Technology Act, 2000. In November 2020, PUBG Mobile registered PUBG India Private Limited, a registered company in India and released Battlegrounds Mobile India (BGMI) exclusively for players in India. BGMI differences between PUBG and BGMI are in terms of ownership of the game, but the gameplay is similar.

In comparison, in China, PUBG Mobile had been awaiting approval by the government for an authorised release since February 2018. This was delayed due to an approvals freeze by a reorganisation of China's State Administration of Radio and Television. In May 2019, Tencent announced it would no longer seek to publish PUBG Mobile in China but would re-release the game under the title, Game for Peace, exclusively for users in China, meeting China's content restrictions, such as eliminating blood and gore. In 2020, Game for Peace was renamed Peacekeeper Elite.

Game localisation refers to modifying the game software or hardware for sale in a specific jurisdiction based on local needs. The paper investigates whether game localisation has occurred by registering PUBG India Private limited in India, releasing BGMI exclusively for players in India, and pulling back PUBG Mobile and releasing Game for Peace in China. The paper examines the causes and the impacts of game localisation in India and China.

These two examples of game localisation highlight companies' interest in localising their games to enter and retain market share. This paper uses conceptual research methodology and analyses the concept of game localisation and comparative methodology to compare game localisation strategies, in light of governmental regulation, adopted to release PUBG Mobile in India and China. This paper uses PUBG as a case study to understand the concepts of game localisation and the social and political aspects of game regulation in India and China.

### **Speaker biography:**

Pratiksha is a PhD researcher at UC Louvain, Belgium. Her PhD is on 'Consumer Protection on Collaborative Economy Platforms- A Comparative Analysis between EU and India'. She is a researcher for the Platform Regulation and Operations in the Sharing Economy Project- PROSEco, Project. > She completed her Bachelor's in Business Administration and Law in 2017 at Christ University, India where she continued to pursue her LLM in Corporate and Commercial Laws. She has written two dissertational theses on "A Paradox between Party Autonomy and Public Policy" and "Corporate Criminal Liability". She is also a member of the Karnataka State Bar Council, India 2017, and the Bar Council of India, 2018. In July 2019, she graduated from The University of Cambridge with a Master of Corporate Law.

## Navigating regulations and restrictions in game design teams

### **Dr Robin Sloan, Abertay University**

Games industry professionals are increasingly required to demonstrate an awareness of regulation and legal restrictions that apply to games and media products. In part this is because digital games have become more complex, distributed to consumers as both products and services across myriad technological platforms and digital stores and with a range of applications. More pressingly, the broadening of the globalised games marketplace and the resultant exposure to divergent geographic regulations on game content is often cited in games industry circles as challenge.

In this talk, I will present recent research we conducted into game design practice involving five multicultural game development teams, all of which were tasked with exploring the complexity of reconciling the impacts of both UK and China gaming regulations on the design work. Three themes emerged from analysis of the data: production practices and transnational working, navigating regulations and restrictions, and market and cultural differences

### **Speaker biography:**

Robin Sloan is a Senior Lecturer in Computer Arts at Abertay University in Dundee, Scotland. He was previously a game development professional with experience in both Game Art and Post-Production, and has 11+ years postdoctoral experience as a games academic. As an educator he specialises in teaching visual design for games. This includes 3D modelling, 2D image creation, and development in game engines. At Abertay, his primary teaching role involves leading final year Game Design and Computer Arts projects.

As a researcher and practitioner his main areas of interest are gaming nostalgia, visual design for games, and character design and development. In addition to being the Principal Investigator of InGAME International, he is also a Co-I on the main InGAME Creative Industries Cluster and is currently undertaking research on three other funded projects

## Abstracts: Panel 8 – IP session 3

### Are rules of computer games copyrightable? lessons from China

**Dr Ge Jiang, Tsinghua University**

Different Chinese courts hold different opinions regarding copyrightability of game rules. As late as 2015, rules of computer games were always denied copyrightability. They were simply categorized as “ideas” without much discussion. With the rise of the game industry, the impact of imitation of successful games also rose. Imitators often change the audio-visual effect of a game while retaining the its core set of rules. This can be deemed as a new example of the “copy me” culture (shan zhai culture). Many courts began to recognize the copyrightability of game rules in order to prevent imitation, but not all courts. Meanwhile, discussion among scholars has become more intense. Neither side seems to be able to persuade the other.

The presentation argues that game rules are copyrightable. Recognizing the copyrightability of game rules will do no harm to copyright doctrines such as “idea-expression” dichotomy. What’s more, copyright law offers the most useful analytical tools to draw the boundaries between creator and user in the copyright industry. Balance of interest for information is a highly complicated issue, which can not be done with moral instinct. Only by accommodating the non-typical subject matter into mature analytical framework such as copyright law can the challenging task for balance of interest be accomplished. The rigid interpretation of “work” by some Chinese courts and scholars will not lead copyright law to keep pace with the development of technology. A flexible interpretative approach of copyright law is preferred.

#### **Speaker biography:**

Ge JIANG is an associate professor at Tsinghua Law School. She obtained her LLB and LLM from Wuhan University, China, and her LLM and Ph.D from University of Saarland, Germany. Her interest of research covers many IP law issues, including misappropriation doctrine, employee inventions, platform liability, damages etc. She writes in Chinese, German and English. Some of her articles were published in the most prominent Chinese law journals.

### The authorship in play

Prof Johanna Gibson, Queen Mary University of London

There has been considerable scholarly interest in videogame play as performance, and the potential of performers' rights in play. Videogames present some challenges to notions of the work and the "object" of intellectual property, as well as the authorship of the work and the creative value at stake. This paper seeks to examine in more detail the nature of videogame play as performance, drawing upon ethological approaches to play in order to consider the creative agency of players and the possible authorship in play. This paper will consider the legal and intellectual challenges to authorship presented by videogames, and the significance for the author construct in copyright more widely, both in play and in performance.

#### **Speaker biography:**

Johanna Gibson is Herchel Smith Professor of Intellectual Property Law in the Centre for Commercial Law Studies (CCLS), Queen Mary, University of London, where she teaches

and researches in intellectual property, legal theory and philosophy, with a current focus on film, fashion and nonhuman legal subjects (animals and technology). Gibson also researches and publishes on the intersection between law and ethology, most recently developing a theory of ethological jurisprudence in relation to property and intellectual property in *Owned, An Ethological Jurisprudence of Property* (2020) with two forthcoming titles developing this theory further in relation to authorship and inventorship (*Wanted, More Than Human Intellectual Property*) and objects and artefacts (*Made, The Nature of Intellectual Property*), both forthcoming with Routledge. Gibson is also the author of *Community Resources* (2005), *Creating Selves* (2006), *Intellectual Property, Medicine and Health* (2009/2017 2nd ed), and *The Logic of Innovation* (2014), as well as editor of the collection, *Patenting Lives: Life Patents, Culture and Development* (2008). Gibson is Editor-In-Chief of the *Queen Mary Journal of Intellectual Property*, series editor for *Intellectual Property, Theory, Culture* (Routledge), and series co-editor (with Trevor Cook) of *Intellectual Property: Law and Practice* (Edward Elgar).

## The protection of videogame characters under copyright law

### Prof Eleonora Rosati, Stockholm University

A videogame can be protected by copyright law, but what about the characters that appear in it? Recently, the Intellectual Property Enterprise Court held that a fictional character is in principle eligible for copyright protection. Such a conclusion might appear rather straightforward, at least under EU copyright law. But what is the test to be employed and what elements of a fictional character would be protectable? By reviewing relevant principles and case law, this talk will be discussing the scope of protection available to videogame characters under EU and UK copyright law.

### Speaker biography:

Dr Eleonora Rosati is Full Professor of Intellectual Property Law and Director of the Institute for Intellectual Property and Market Law (IFIM) at Stockholm University. She is also Of Counsel at Bird & Bird and holds visiting/guest professorships at Católica in Lisbon and CEIPI in Strasbourg. A long-standing contributor to *The IPKat* and an Editor of the *Journal of Intellectual Property Law & Practice* (Oxford University Press), Eleonora is the author of several articles and books on IP issues, including – most recently – *Copyright and the Court of Justice of the European Union* (Oxford University Press:2019) and *Copyright in the Digital Single Market - Article-by-Article Commentary to the Provisions of Directive 2019/790* (Oxford University Press:2021). In 2018, *Managing Intellectual Property* included her among the '50 Most Influential People in IP'; in 2020, *World Intellectual Property Review* listed Eleonora among its 'Influential Women in IP'.



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