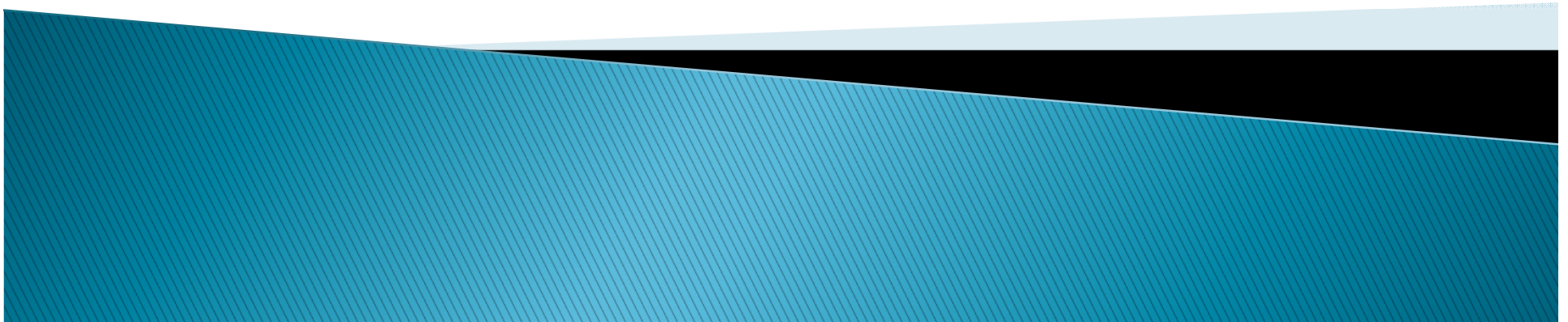
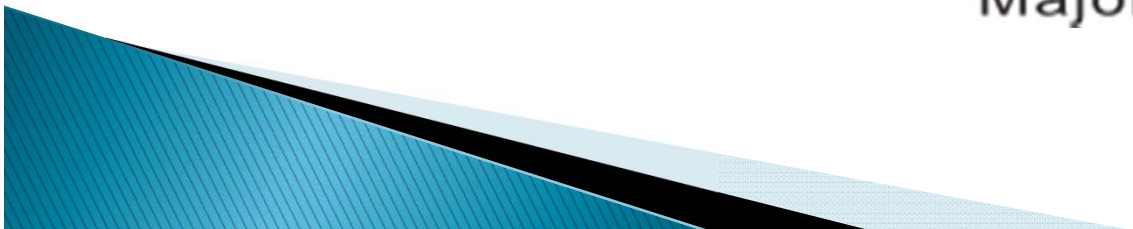


Who Owns e-Sports Performances?

Dan L. Burk
Chancellor's Professor
University of California, Irvine



E-Sports



Tournament Play



CounterStrike



Starcraft



FIFA



Cyberathletes



South Korea

- ▶ Pervasive Game Culture
 - High participation
 - Game café “bangs”
 - Infrastructure
 - Industrial policy
- ▶ Professional Play
 - Player celebrity
 - 24-hour channel



KeSPA

- ▶ Korean e-Sports Players Association
 - Quasi-official organization
 - Ministry of Culture & Tourism
 - e-Sports governance
- ▶ Blizzard Incident
 - *Starcraft* tournaments
 - Broadcast rights
 - Intellectual property dispute



Copyright

- ▶ Game Platform
 - Graphics library
 - Software
 - Database
 - Audiovisual output
- ▶ Selection and Arrangement
 - Player manipulation
 - Original combinations



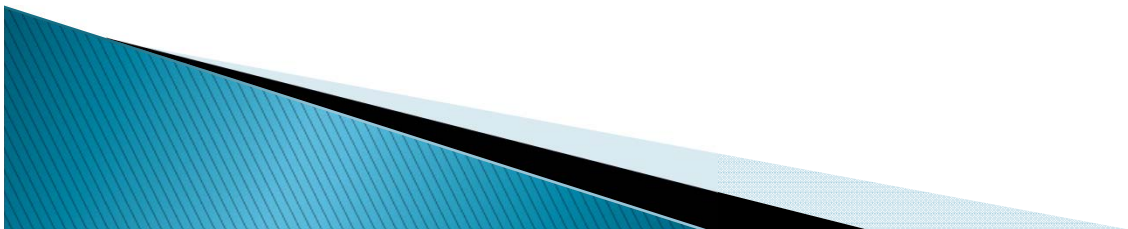
Authorship

- ▶ **Player Contribution**
 - Joint authorship
 - Derivative works
 - Collective works
- ▶ **Video game cases**
 - Stern v. Kaufman
 - Microstar v. Formgen



Material Constraints

- ▶ Layers of Rules
 - Physical game rules
 - Embedded rules
 - Simulated physics
 - Actual physics
 - Tournament regulations
- ▶ Game Equipment
- ▶ Copyright Functionality



Copyright in Games

- ▶ Generally Disfavored
 - Per se rule
 - Protected components
 - Objective
- ▶ Systems or Methods
 - Functionality
- ▶ Schools or Genres
- ▶ Given Sequences?



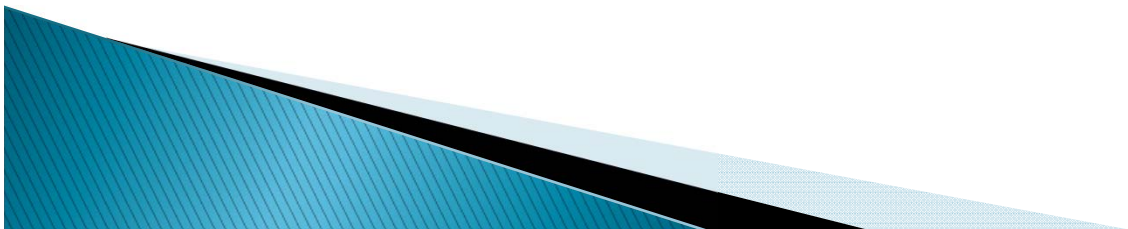
Copyright in Sports

- ▶ *Baltimore Orioles*
 - Broadcast protected
 - Player action unprotected
 - “Unscripted”
- ▶ CJEU: *Football Association Premier League*
- ▶ Improvisational Works
 - Dance, theater
 - Audiovisual



Rights of Publicity

- ▶ Distinctive Characteristics
 - Name
 - Image
 - Voice
- ▶ e-Sports Characteristics
 - Screen name
 - Distinctive style



Rights of Publicity

- ▶ Fantasy Sports
 - Player statistics
- ▶ Professional Wrestling
 - Character ownership
- ▶ *Madden* litigation
 - Historical characteristics
- ▶ e-Sports Inversion



Neighboring Rights

- ▶ Beijing Audiovisual Performance Treaty

Performers are actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore

It is understood that the definition of “performers” includes those who perform a literary or artistic work that is created or first fixed in the course of a performance.



Neighboring Rights

- ▶ Performers Exclusive Rights
 - Broadcast opt-out
 - Article 10: Performers shall enjoy the exclusive right of authorizing the making available to the public of their performances fixed in audiovisual fixations, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.
- ▶ e-Sports Transfers



Thank You

Questions Welcome

