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# Copyright in the Digital Age: The Importance of Transformative Use in Video Game Streaming

Michael J. Schwartz

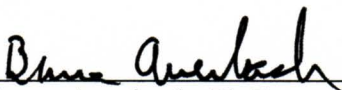
Candidate for the degree


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Departmental Distinction in Political Science

  
Bruce Auerbach, Ph.D.

  
Theresa Smith, Ph.D.

  
Suzanne Palmer, J.D., L.L.M.

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Date: 9-22-14

Printed Name of Author: Michael J. Schwartz

Street Address: 22 Isabelle Dr

City, State, Zip Code: Lakewood CO 80201

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## **I. Acknowledgements**

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## **II. Abstract**

Video game streaming exists in a particularly uncertain area of copyright law; it combines two original authorial sources into one medium, which is delivered to the public for entertainment. As both streamers and video game companies vie for exclusive rights under copyright law, a tension forms between the rights granted to the game developer and the exceptions allowed under the fair use doctrine for streamers. While the issues between streamers and gaming companies have only come in isolated incidences, the potential threats to streamers and streaming companies on a wider scale must be addressed in order to protect the video game streaming industry. This paper seeks to address that tension by analyzing the history of copyright as applied to video games and commercial media by focusing on the shift towards the transformative use standard, creation of safe harbor provisions for online providers and theory of interactive authorship as it applies to playing video games. Taking this three factor analysis in combination with previous court decisions would provide a clearer outline as to the rights of all parties and the future of fair use for video game streaming.

## **III. Introduction**

In July of 2013, the gaming community received a blindside when the world's largest video game company asked an annual eSports tournament to shut down the streaming portion of a particular game, owned by said company. During the Evolution Championship Series ("EVO"), Nintendo had quietly asked founders of the tournament to shut down the live stream of Super Smash Bros. Melee, a popular Nintendo fighting title. While the founders complied with the request, Nintendo shortly thereafter rescinded its decision – speculatively because of the negative feedback from the eSports community, but for reasons officially unknown. Although this incident may seem isolated in the grand scheme of streaming video game content, it marked the second time in a two-month window when the gaming giant expressed displeasure with the use of its content via

streaming. Earlier in June of 2013, Nintendo began forcing advertisements on their intellectual property on YouTube, which caused user-run ads to cease – cutting off the stream of revenue for content partners. In a similar fashion to the July incident, Nintendo eventually backed off the forced advertisements – but it raises two very important questions: when do other companies start following Nintendo’s approach to vehemently enforce copyright and how will that affect the future development of copyright law?

Since their inception, video games have always held the potential for competitiveness and entertainment on a level comparable to that of other professional sports;<sup>1</sup> however they were restrained because technology did not lend itself to a practical method of broadcasting. Although the early stages of ‘eSports’ were limited to LAN connections, viewable only by those who were physically present at an event, the past decade has given rise to a new method of broadcasting: live streaming. Beginning with the creation of YouTube in early 2005, the ability to create and share user-generated content (UGC) with the world has become one of the trademarks of the digital age. As technology facilitated the growth of UGC, many gamers, previously isolated in their experiences, were able to share content across platforms like YouTube, and later gaming niche networks like own3d.tv and Twitch.tv. The pivotal shift for UGC came when live streaming became more widespread; no longer were videos limited to prerecorded content – a user could now share his or her experiences in near real time, providing an interactive dynamic between the viewer and the streamer.

If there was any doubt as to the breadth of this phenomenon, one would only have to look to the numbers to see the meteoric rise in viewership of video gaming. Twitch.tv, one of the most popular websites for streamers, is the holder of the #4 position in U.S. web traffic by company,

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<sup>1</sup> For a look at the sociological divide between games and sports, in addition to early historical perspectives, I would recommend T.L. Taylor’s *Raising the Stakes: E-sports and the Professionalization of Computer Gaming* (2012).



according to a recent Wall Street Journal report, with 1.8% of peak web traffic, just ahead of Hulu (1.7%) and Facebook (1.5%). Looking further into the numbers, a report in early January 2014 reveals:

[...] 12,000,000,000 minutes watched per month, over 45 million unique viewers per month, 900,000 broadcasters per month, and 6,000,000 total videos broadcast per month. 5,100 of those broadcasters are partners, and minutes watched and videos broadcast have doubled since 2012, with unique viewers up from 20 million in 2012. Twitch users watch on average 106 minutes of content per day. League of Legends, Dota 2, and StarCraft 2 were the three most watched games on Twitch in 2013. League of Legends and Dota 2 are up 258% and 508%, respectively, in average monthly minutes watched compared to 2012. (Breslau and Connors)

As the numbers show, video game streaming has become one of the most popular forms of internet-based entertainment in just the past several years. The ability to not only play a game, but to watch and interact with others from anywhere else in the world, using only an internet connection, has become the linchpin that holds digital gaming communities together. While the realm of potential disaster is always great for any burgeoning business, this analytical frame is concerned with the legal issues that may arise out of streaming content that is not owned or generated wholly by the user, as was the case with Nintendo. This analysis will be focusing on the very popular gaming title League of Legends; however, I will draw in other popular titles to see how other companies view their content being used to generate revenue for players.

### **A. League of Legends**

League of Legends (“LoL”) was released by Riot Games on October 27, 2009 as the company’s sole title and free-to-play. The game itself is a multiplayer online battle arena (“MOBA”),

where the player controls a singular ‘hero’ unit, using abilities to battle against other heroes to complete an objective, with the first one to complete it winning the game (generally destroying a base – or along those lines) (“What is League of Legends”). In less than five years after its initial debut, LoL has become the most popular game in the world, boasting 67 million players every month, and at peak hours, 7.5 million players concurrently. To put these numbers in perspective, Blizzard’s *World of Warcraft* subscription base reached only 12 million subscribers and the *Call of Duty* franchise reached only 40 million players across all platforms. In terms of hours played, a survey from July of 2011 to June of 2012 listed League of Legends as having nearly twice as many hours played as *World of Warcraft*; a staggering 1.3 billion hours versus Warcraft’s approximately 700 million (Gaudiosi). This rise in popularity prompted Chinese telecommunications giant Tencent to make an estimated \$350 million<sup>2</sup> dollar buyout of existing investors for a majority stake in Riot Games in 2011 (Reuters). As of early 2014, Riot Games employs over 1,000 people worldwide, with offices and services across North and South America, Europe, Australia and Asia (Snider).

## **B. Twitch.tv**

What started as a one-man live-streaming project for Justin Kan soon evolved into the largest eSports streaming website. Originally founded as Justin.tv with Kan’s singular channel, streaming everyday life via a baseball hat webcam and laptop backpack, Kan opted, in 2007, to rework the website into a YouTube-esque format where others could upload user-generated live streams (Kochanov). As the success of Justin.tv continued, Kan launched the subsidiary Twitch.tv (paralleling the rise of eSports), catering exclusively to video game streaming (Wilhelm). In the past three years, Twitch.tv has grown into the fourth most visited website in the world. As of 2014, due to the success of Twitch.tv, Justin.tv rebranded as Twitch Interactive (Breslau, “Twitch”).

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<sup>2</sup> Actual amount undisclosed.

### C. Partners Programs

As the forerunner of UGC, YouTube defined the playing field for other companies involved in UGC with the addition of its Partner Program in May of 2007. This program allows users to generate revenue based on advertisements that play over their content (YouTube). While the revenue per ad may seem infinitesimal, the potential of any video to go viral can cause content to potentially be worth hundreds of thousands in ad revenue. For example, the internet famous “David after dentist,” which depicts a young child having an experience with Novocain after a dental appointment, was worth approximately \$100,000 in ad revenue alone, according to Reelseo.com (Atkinson). In addition to the video gaining significant attention, it provided a viral effect<sup>3</sup> for the original user, due to other users wanting to view more content from said user (subsequently generating more ad revenue in the process). Taking this even further, a select few may merchandize or create apparel to sell, due to the popularity of their channel. With the success of YouTube’s Partner Program for both the company and its users, other players in the UGC market followed suit. While some of these websites have faded in the growth of YouTube and Twitch Interactive, the partner program remains a cornerstone in the streaming industry both for the users and companies.

With the rise in popularity of UGC and Twitch.tv as a popular alternative for gamers, players have begun making a career out of full time video game streaming. Famous Starcraft 2 player, Steven “Destiny” Bonnell, stated in a late 2011 article in Forbes, that he could easily make “4 to 5 times the amount of a typical service job, per hour,” with approximately 5,000 concurrent viewers (Tassi). With the ability of players to generate significant revenue from streaming, many professionals took advantage of their community fame and began streaming, with some reaching over 40,000 viewers during peak hours. In terms of payout from Twitch.tv, the generally accepted rate for advertisements

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<sup>3</sup> Refers to internet sharing of a video that rapidly increases popularity in a short timeframe. The user’s channel, which is home to other content also receives a boost in viewership due to the nature of the viral video and the curiosity of others in viewing more content, in the hopes that it is in line with the original viral video.

would be \$2 per thousand<sup>4</sup> that watched an ad (Romaine). In this model, someone streaming with 10,000 concurrent viewers would generate \$20 to \$30 per advertisement played; assuming one ad per hour for eight hours (as a typical workday), streamers could generate between \$160 and \$240 per day, or anywhere from \$4800 to \$7200 a month.<sup>5</sup>

While these numbers may seem high for simply playing (or commenting on) a video game, one must keep in mind several barriers to entry. First, only a small percentage of the user base attains and manages to keep the status of partner, which enables monetization. As of July 2011, only 4,000 members of Twitch.tv were partners, or 0.004% of those broadcasting actively (Lawler). Secondly, the viewer base required for generating significant revenues leaves streaming on par with a typical job, leaving professionals or celebrities to reap the benefits of monetized ads. However, the potential does exist for almost anyone to generate significant revenue, if they are skilled and liked by the community at large, in addition to dedicating the time to build viewership.

#### **D. Summary**

From a lay understanding of the partner program, it would seem as though companies not offering express permission to utilize their content would be hunting down those doing so illegally. In the music and film industry, this happens often, however; the eSports community seems to have developed immunity from companies pursuing infringement action against them and their users. While this is good news to those who enjoy viewing video game streams and also for those who play them for a living – there is a shadow of uncertainty that sits on the horizon, it is unknown of how long companies will continue this goodwill. The hope is to simultaneously facilitate user-generated content and increase revenue for the companies that provide for the content, however, both of these concepts have become commercialized over the past decade, which may lead to conflicts that could

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<sup>4</sup> While ad revenues per streaming website vary, the accepted rate for most calculations is approximately \$2.

<sup>5</sup> Numbers are purely hypothetical to demonstrate a point about the possibility to generate substantial income based on streaming video game content.

have been remedied by examining current copyright law and facilitating changes in the law, rather than litigating costly intellectual property disputes.

As copyright law is increasingly called upon to defend the distribution and display rights of video game copyright holders – it creates tensions within copyright law and erodes the original intentions of fair use. In order to maintain the balance of creative freedom and protection of intellectual property, streaming video game content requires a unique approach to fair use by focusing on transformative use of the content itself, as opposed to the potential commercial gains of the user.

#### **IV. Copyright Law in the United States**

While the concept of intellectual property is something thought of as recent development in the law, this is not the case. Intellectual property (“IP”) actually draws its roots from the Statute of Anne in 1710, the first statute in Great Britain to address the increased circulation of printed works at the time. Provisions of the Statute ultimately found their way into the United States Constitution, under Article I, §8, Clause 8 (“The Copyright Clause”), which allows Congress “to 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” (National Archives). Although the power to grant copyright (to authors) and patents (to inventors) is outlined in the Constitution, it does so in two meager lines – not nearly enough to handle the enormous amount complexities in modern IP law. In response to these needs, Congress has passed four Copyright Acts in 1790, 1831, 1909 and 1976 – over the course of nearly two centuries. Herein lies part of the problem; copyright law has not been a major focal point of the judiciary nor the legislator. As technology evolves, so must the law that governs it, and with revisions occurring once every half century, it is no surprise that the problems outgrow the solutions. While later in this paper I will address potential remedies

for updating copyright law – I will focus my analysis on the Act of 1976, specifically Title 17, §106, 107 and 504, and the Digital Millennium Copyright Act (DMCA – Title 17 §512 and 1201) (U.S. Copyright Office).<sup>6</sup>

The Copyright Act of 1976 is the most recent incarnation of the Copyright Act, and carries with it provisions to apply to the following forms:

(1) literary works; (2) musical works, including any accompanying words; (3) dramatic works, including any accompanying music; (4) pantomimes and choreographic works; (5) pictorial, graphic, and sculptural works; (6) motion pictures and other audiovisual works; (7) sound recordings; and (8) architectural works (U.S. Copyright Office)

Within the scope of these works, the copyright owner is granted exclusive rights under §106, which read as the rights to:

(1) [...] **reproduce** the copyrighted work in copies or phonorecords; (2) to prepare **derivative** works based upon the copyrighted work; (3) to **distribute** copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending; (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to **perform** the copyrighted work publicly; (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to **display the copyrighted work publicly**; and (6) in the case of sound recordings, to **perform the copyrighted work publicly** by means of a digital audio transmission (U.S. Copyright Office)

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<sup>6</sup> Refer to Appendix B

In the negative sense of the exclusive rights, copyright owners may also deny the rights afforded to them in §106, to others (indeed this is the case outlined in §106A). However, there are certain exceptions to 106 and 106A, which become the subject matter of §107, known as the “fair use doctrine”:

Notwithstanding the provisions of §106 and 106A, the **fair use** of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, **for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.** In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors (U.S. Copyright Office).

While the Act of 1976 served as a starting point for the modern copyright code, it was subsequently amended in the form of the DMCA in 1998 to further protect intellectual property rights and determine liability for infringing content, with the explosion of online service providers (OSPs). Primarily, I am concerned with Title II of the DMCA which outlines the safe harbor provisions for OSPs. The safe harbor provisions, created under Title II (§512, accordingly), create a conditional test for determining if an OSP is liable for hosting copyrighted material. The provider must receive (1) a direct financial benefit from the material, (2) must have knowledge of the material

and (3) upon notice from the copyright owner, remove the material in question. Although the DMCA intended to protect OSPs and copyright holders, it created a storm in which copyright holders scrambled to remove any unauthorized works in order to protect their property (Legal Information Institute).

### A. Origin of Fair Use

The fair use doctrine, like the Copyright Code, finds its roots in early American history, from the case *Folsom v. Marsh* in 1841 (Peterson). While the facts of the case are unimportant for this analysis, Justice Story's holding does provide the primitive and limited framework for a fair use provision, although it would not be formally adopted until the 1976 Act. The passage of interest reads as follows:

Thus, for example, no one can doubt that a reviewer may fairly cite largely from the original work, if his design be really and truly to use the passages for the purposes of fair and reasonable criticism...In short, we must often ... look to the **nature and objects** of the selections made, the **quantity and value** of the materials used, and the **degree** in which the use may **prejudice the sale**, or **diminish the profits**, or **supersede the objects**, of the original work (*Folsom*).

As the passage indicates, §107 of the 1976 Act reads almost verbatim from the decision in *Folsom*, and indeed, many cases do not question the criteria for determining fair use (that seems to have been widely accepted since the decision); rather, issues arise under the scope of the individual components, listed in §106. While the origins of fair use are antiquated, for the issues of software and streaming content via the internet, relevant cases in this area of law do not arise until the late



20<sup>th</sup> century, beginning with *Stern Electronics Inc. v. Kaufman*, *Apple Computer Corp. v. Franklin Computer Corp.*<sup>7</sup> and *Williams Electronics v. Artic International* in 1982.

## B. Copyrightability in Video Games

Before addressing the application of fair use for video games, it must be determined if games are copyrightable at all. There has been some scholarly work which addresses the nature of uncopyrightable systems, notably from Bruce Boyden who asserted that the elements of a video game; “software, audiovisual [components], plots, graphics and characters” all share a common “uncopyrightable core: the actual gameplay” (Boyden, Lastowka). While Boyden supports his theory of denying video game copyright through applications of §102b of Title 17,<sup>8</sup> precedent shows that historically, video games are protected as copyrighted works.

*Stern* was, for all intents and purposes, the first case to consider games for copyrightability in the 1980s, and dealt with “knockoff” copies of popular games created by utilizing the underlying code. Although *Stern* merely structures the framework for video games being protected as audiovisual works<sup>9</sup> under the 1976 Act; it will act as the basis for video games being considered copyrightable, contrary to Boyden, and therefore protected under §106. Shortly thereafter, *Apple v. Franklin* expanded upon *Stern* by allowing the underlying code of a software program to be protected by copyright. Subsequently, *Williams* goes further and affirms that the scope of copyrightability in regards to videogames extends past the code itself into the “structure, sequence and organization”.<sup>10</sup> The extended scope of copyright that occurs in *Williams* (and later *Whelan v. Jaslow*) intended to

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<sup>7</sup> *Apple v. Franklin* was originally argued in 1982, however, on appeal the Third Circuit expanded the scope of copyright protection used in *Williams*.

<sup>8</sup> Expression/Idea divide; see Appendix B.

<sup>9</sup> Game developers at the time believed that attempting to copyright the code as a literary work would not be as effective as copyrighting the entirety of the work as audiovisual.

<sup>10</sup> Terminology established in *Whelan v. Jaslow* (1986), but fundamentally set forth through *Williams*.

prevent not just exact replicas, but also allow for the courts to exercise flexibility in determining the degree to which a game represents the look and feel of another in regards to overall similarity.<sup>11</sup>

### C. Streaming Copyrighted Content

As video games have been established to be subject to copyright protection, and have been for the past thirty or so years, they are protected under the 1976 Act, with the authors able to invoke §106A to protect their works. Indeed, it is improbable to envision a profitable and successful video game company<sup>12</sup> like Nintendo or Riot Games, without copyright law protecting against infringing competitors. While the discussion later in this paper will address the theories for protecting streaming and user generated content, this section (and the following) will be dedicated to the problems that arise when utilizing copyrighted video game content.

The user agreements of both YouTube and Twitch.tv contain multiple sections regarding use of third-party content,<sup>13</sup> and both require that the user owns or has license to use content which they are uploading to the website:

Further, BY USING THE TWITCH SERVICE, INCLUDING THE INTERACTIVE AREAS YOU AGREE NOT TO post, upload to, transmit, distribute, store, create or otherwise publish through the Twitch Service any of the following: (b) Content that may infringe any patent, trademark, trade secret, copyright or other intellectual or proprietary right of any party. **By posting any Content, you represent and warrant that you have the lawful right to distribute and reproduce such Content**<sup>14</sup>[...] (Twitch.tv “Legal”)

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<sup>11</sup> Substantiability under the fair use assessment is an interpretation of SSO.

<sup>12</sup> There are a multitude of open-source video games available; however, ‘success’ is a variable term. For purposes of this paper, success is defined as mainstream coverage and a large player base (exceeding 1 million active players in the past year)

<sup>13</sup> See Appendix A.

<sup>14</sup> Emphasis added.

You shall be solely responsible for your own Content and the consequences of submitting and publishing your Content on the Service. You affirm, represent, and warrant that **you own or have the necessary licenses, rights, consents, and permissions to publish Content you submit**<sup>15</sup>; and you license to YouTube all patent, trademark, trade secret, copyright or other proprietary rights in and to such Content for publication on the Service pursuant to these Terms of Service (YouTube “Terms of Service”)

The terms of service go more in depth with the minutiae of copyright infringement; however, for purposes of this analysis, these statements summarize the agreements a user enters into with the third-party streaming website. In order to play a game, the user generally agrees to the terms of service of the video game company (and/or the End-User License Agreement). Under the end user licensing agreements (EULAs) and terms of use (or service; (ToU/ToS), various companies outline the specific ownership of the content of their product. Many video games companies employ the limited licensing grant, which reads as follows:

Riot Games [The Company] hereby grants to you [the User] and you hereby accept a limited, non-exclusive, non-transferable license to internally install and execute solely as a component of the Game (i) the Software and related explanatory materials (“Documentation”); and (ii) any Software upgrades, patches, subsequent versions, and updates (collectively, “Updates”) licensed to you by Riot Games. The Software and the Game are provided for **your individual, non-commercial, entertainment purposes only**. Except as may be expressly permitted by Riot Games, **you may not sell, copy, exchange, transfer, publish, assign or otherwise distribute anything you copy or derive from the Software or the Game**<sup>16</sup> (Riot EULA).

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<sup>15</sup> Emphasis added.

<sup>16</sup> Emphasis added.

Clearly, there is a conflict between the user, the game developer and the OSP regarding the use of content. As stipulated in the agreement to play the game, the user agrees that all rights pertaining to §106 are retained by the game developer and that there is no ownership at all, hence the licensing grant. The user then proceeds to sign the streaming agreement in complete contradiction to the terms set forth by the video game agreement, evident above. Why then, are there so few cases of streaming copyright infringement?

The key to the analysis in this section comes from the last two lines of the EULA from Riot, which details the use of League of Legends from an end-user standpoint. Riot Games may engage in these practices due to the exclusive rights conferred upon it by §106, and may seek remedy for any violation under the agreement (EULA) under §106A or 504. The last sentence, however, allows use of League of Legends content for streaming – so long as express permission is granted by the company. One of the reasons League of Legends provides a solid focus for an analysis is because Riot as a company provides a summary page which outlines all acceptable policies under the EULA, but explicitly addresses the issue of live streaming content:

No Licensing. Generally, you cannot license your videos to any third party for a fee or other value without our approval. However, there are important exceptions: Partner programs with YouTube or the following streaming websites: own3D.tv, Ustream.tv, Twitch.tv, Justin.tv, Blip.tv (no prior permission from us required). For any other licensing of videos by you (such as film festivals, contests or third party broadcasts), express written permission from us is required (Riot).

While many companies employ the limited license agreement, the approach of expressly giving permission is a novel concept intended to both (a) facilitate streaming of content and (b) minimizing requests for streaming. This particular method of express permission became a favorite of new

gaming developers, who enjoy free press and advertising of their products. Although the current state of streaming seems rather undisturbed by the laissez-faire approach of video game companies, Nintendo's attacks on streaming signal a need to protect users from abusing intellectual property law.

#### **D. *Campbell* and Beyond**

Although the licensing agreements explain the “what,” that is – the state of affairs among users, video game companies and streaming companies, it does not offer any insight into the “why” this tension exists at all. As established in Section III-B, video games had become increasingly protected under the interpretation of copyright law, from their underlying code to non-exact copies bearing substantial similarities in the late 1980s. While these protections fall in line with the original goals of copyright, which are maintaining innovation and technological advancement, they also run the risk of stifling user-end innovation specifically utilizing copyrighted material to create a secondary market for the work. As copyright law expanded to protect video games as a popular form of entertainment in the 1980s – interpretations of copyright law the 1990s would substantially curtail the ability of video game companies to invoke copyright as an absolute barrier to ‘derivative’ works.

As complete knock-off video game copies fell out of favor due to copyright enforcement, users turned to creating their own content or modifying existing content for personal use. In *Lewis Galoob Toys, Inc. v. Nintendo of America, Inc.* (1992) the latter issue came into play; the unauthorized modification of Nintendo games via Game Genie, which provided ‘cheat codes’ for certain games released on the Nintendo Entertainment System (NES). While Nintendo relied on the 1980s precedents, notably the arguments in *Midway Manufacturing Co. v. Artic International, Inc.* and *Midway*

*Manufacturing Co. v. Strobom*<sup>17</sup>— the court agreed with *Galoob* that modification for personal use did not constitute creation of a derivative work.

While *Galoob* is important for the personal use and modification it has little application to streaming content, because users do not stream for themselves. It does, however subtly, bring up the issue of commercialization based on modification. While the substance of the case dealt with the actual modification, it was brought for legal remedy because *Galoob* profited from selling its Game Genie modifications to the users in the first place, otherwise Nintendo would not have been able to claim damages for infringement. Inevitably, the issue of commercialization had to be addressed, and in the landmark case of *Campbell v. Acuff-Rose Music* (1994), the U.S. Supreme Court addressed the commercialization of content under the fair use doctrine.

Although *Campbell* was decided over twenty years ago, its significance for shifting the focus of fair use to transformative standard cannot be overstated. The facts of the case are fairly straightforward and seemingly universal; musical group (2 Live Crew in this case) parodies a song without license and becomes successful – so successful that the record company, holding copyright to the original song, decided to sue for copyright infringement. Fair use, at least as utilized as a defense until *Campbell*, generally relied on the noncommercial nature of the work to be considered; even in *Galoob* the court addressed only the personal use of the product.

Justice Souter, writing for a unanimous Court, outlined what is arguably the most important tenant of the fair use doctrine: that while nature of the work might be commercial – its purpose may also be transformative; and the more transformative the work, the less important the other factors of fair use. In addition, Justice Souter also addressed the amount of the copied material – which was deemed to be in excess by Acuff-Rose:

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<sup>17</sup> Both cases dealt with a separate ROM chip that modified the game code for various purposes. See Barbara B. Caretto, *Copyright Infringement of Video Games: When the Chips Are Down*, 5 Loy. L.A. Ent. L. Rev. 132 (1985).

Even if 2 Live Crew's copying of the original's first line of lyrics and characteristic opening bass riff may be said to go to the original's "heart," that heart is what most readily conjures up the song for parody, and it is the heart at which parody takes aim. Moreover, 2 Live Crew thereafter departed markedly from the Orbison lyrics and produced otherwise distinctive music. **As to the lyrics, the copying was not excessive in relation to the song's parodic purpose.**<sup>18</sup>

Even though the *Campbell* decision arguably did more for parodists, the importance of transformation over commerciality created a wedge for others who engaged in similar practices. Ten years after *Campbell*, the category of transformative use broadened with respect to the internet in *Kelly v. Arriba Soft Corporation* (2003). In *Kelly*, the issue at hand was the use of images (thumbnails that appeared in results) from the plaintiff in a search engine operated by the defendant. The analysis used by the 9<sup>th</sup> Circuit was the four-factor test to define fair use, but for this analysis the two important factors are the first, the purpose and character of the work and the fourth, the market effect of the use itself. With respect to both factors, the court found in Arriba Soft's favor due to the benefits conferred upon the public. The work was deemed both commercial and transformative and the use of the images in the search engine would not harm, (rather, it would help), the market share for the images sold by Kelly.<sup>19</sup>

## V. Defending Fair Use

As United States case law became increasingly convoluted in regards to the ownership of intellectual property, it became harder to invoke the defense of fair use to justify utilization of another's work, especially for commercial gain. A reason for this tension, especially in the video game streaming community, revolves around the issues of 'transformative' nature of subject matter

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<sup>18</sup> Emphasis added.

<sup>19</sup> Similarly see *Perfect 10 v. Google* (2006)

against the commercial nature covered under §107. As stated above in *Campbell*, transformation generally supersedes commerciality – a huge step for protecting the interests in streaming from game developing companies that would attempt to follow Nintendo’s more draconian, 1980s style of copyright enforcement. In light of *Campbell*, there are two potential ways streamers might protect themselves under transformation: commentary and interactive authorship.

### **A. Transformation Theories**

Commentary encompasses a large part of the analysis surrounding transformative use and streaming. Many streamers offer commentary while they play, whether being critical of the game itself, discussing particular strategies or thought processes or simply interacting with fans. This content is wholly user generated, although it relies on playing the game itself to create the content,<sup>20</sup> the UGC would fall under the fair use exceptions of §107 as commentary, criticism and/or teaching, depending on the substance of the commentary itself. The other aspect of commentary that would qualify it under the fair use standard would be its effect on the market share of the game itself. The streaming industry is wholly separate, yet completely reliant upon gaming companies, especially in the case of Twitch.tv. While almost every game played on Twitch has some form of copyright to protect the games themselves, one could advance the argument that each of those streamers providing a walkthrough, or parody, or strategic analysis is creating a new niche market, further separated from the actual game itself.

This is what makes the commentary transformation argument one of the strongest protections for streamers under fair use, even when generating direct and indirect commercial gains. In conjunction with the fact that streamers are only reliant on the game (regardless of the substantiality) to illustrate their protected rights under §107 – they are actually creating their own

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<sup>20</sup> This use of the game content for personal use and subsequently providing an analysis in the form of a commentary is perfectly acceptable under the Riot EULA. See Appendix A.



markets and fan bases that exist arguably to benefit the gaming companies. Referring back to the example of Nintendo in Section II, the discussion of strategy by the commentators should have been classified as transformative, as the discussion of the interaction between players, even while showing Nintendo's content – superseded the original work, outweighing both the commercial and market share factors of §107, in accordance of *Campbell* and to a lesser degree, *Kelly v. Arriba Soft Corporation*.

Although attaching commentary might seem like a more effective solution when defending fair use, some players might not be able to, nor want to have that level of interaction – they simply want to project their experience to others. This method is referred to as 'interactive authorship' and it relies on the theory advanced by Greg Lastowka and Bruce Boyden – that the experience of a player and his or her interaction within the environment of the game itself warrant copyright protection, as traditional copyright law may “be insufficiently protective of player authorship by channeling the economic benefits of player authorship towards platform owners.” What Lastowka raises is that a player's gameplay may constitute protective expression under copyright and therefore undermine the original authorship of the game creator, allowing the unique experience of a player to be subject to copyright protection (Lastowka).

Even though the argument for uncopyrightability of games as systems had been dismissed by the courts in the 1980s, Boyden's theory on the underlying player-system relationship still provides an argument for the defense of interactivity (Boyden). As pointed out by Lastowka, there have been a limited number of arguments advanced for the interactive authorship theory in court; and they have generally been unsuccessful. For example, the 7th Circuit in *Midway v. Artic* held that:

Playing a video game is more like changing channels on a television than it is like writing a novel or painting a picture. The player of a video game does not have control over the

sequence of images that appears on the video game screen. He cannot create any sequence he wants out of the images stored on the game's circuit boards. The most he can do is choose one of the limited number[s] of sequences the game allows him to choose. He is unlike a writer or a painter because the video game in effect writes the sentences and paints the painting for him; he merely chooses one of the sentences stored in its memory, one of the paintings stored in its collection (Lastowka).

In the 1980s, this argument may have had some validity, but in the past thirty years since the *Midway* case, there have been leaps in regards to technology that undermine the foundation of this reasoning. Relying on Boyden's argument that video games are not analogous to other forms of media, although comprised of similar elements (audiovisual, graphics, plot etc.), I contend that the court erred both in its interpretation of gaming systems and its analogy to television. While the court was correct in respect to the aspect of creation, that is, the user cannot do more than is limited by the game's rules – it does so by relying on the lack of control by a player to conclude that there are only a limited number of possibilities.

As games have evolved, the amount of choices for a user to make has increased exponentially, to the point where they are nearly immeasurable. While the game may have the possibility of actions A – Z in its underlying code, by no means are players today constrained by executing one sequence of those actions. There is no possibility of players today executing the exact same sequence unless they are wholly bound by a specific instance of code to perform a certain action. In regards to this understanding, the player has an increasing level of control over what he or she experiences, they are not limited by a linear storyline or plot.

Using League of Legends as the example; there are a possible 118 champions to choose from, any ten of whom may be interacting at a given time. Each champion has four abilities, which

means in a single match, of ten champions, there is a possibility of 40 different abilities that can be utilized.<sup>21</sup> In regards to the map itself, it is 19,000 units in diameter<sup>22</sup> (approximately), which means that the area would be  $\approx 1.8 \times 10^8$  units – upon which ten champions may exist, using any one of 40 abilities, on any piece of the map. While there may be an unknown, finite limit – by no means does it constitute the same limitation as was implied by the 7<sup>th</sup> circuit, and it serves only as an indicator that the court's do not want to deal with (or may not understand) the complexities of interactivity. As Boyden correctly concludes in his essay; “systems are shells into which users pour meaning [...] while they may contain expression themselves, that expression is there merely to facilitate the meaning added by the user”(Boyden).

While reliance on transformative use may seem like the best way to defend fair use, one must consider that there are three other factors in §107 by which fair use could possibly fail. The exclusive rights guaranteed under §106 allow for the creator of the game (the original author) to control the distribution and public display of works and derivative works. Until a court addresses a more recent case of interactivity and commentary, it is questionable at best whether this dual application of transformative use would stand against the rights guaranteed for the game developer under the 1976 Act and as later discussed, the Digital Millennium Copyright Act.

## **B. Safe Harbors**

While transformative use is the crutch that users may invoke, streaming companies rely on a different aspect of the law to shield themselves from infringement claims. Title II of the Digital Millennium Copyright Act (DMCA)<sup>23</sup> provides an out for the streaming companies in the situation that content in the above section is still deemed to be infringing, known as the “safe harbor provision”:

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<sup>21</sup> While I could go on ad infinitum about the champion statistics, these are the most basic that illustrate the point.

<sup>22</sup> Unofficial measurements.

<sup>23</sup> See Appendix B; codified as Title 17 S512

(1) Limitation on liability.— A service provider **shall not be liable** for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the intermediate and temporary storage of material on a system or network controlled or operated by or for the service provider in a case in which—

**(A) the material is made available online by a person other than the service provider**<sup>24</sup>

If the analysis of transformative use from the user standpoints holds true, gaming companies' only choice for litigation would have to fall upon the shoulders of the streaming companies for hosting the alleged content. This, however, was summarily dismissed by the court in the *Viacom v. YouTube* case, where Viacom alleged massive amounts of copyright infringement that YouTube had known about and failed to take action against. In the district court, it was determined that although YouTube arguably would have known about some infringement – it would be wholly against the provisions of the DMCA, which does not require the service provider to monitor its content, but does require the copyright holder to prove infringement. Although Viacom expressed interest in appealing the 2013 decision, it recently settled with Google, which owns YouTube, ending by far one of the largest copyright infringement lawsuits of the 21<sup>st</sup> century and preserving the streaming industry via safe harbor.

## VI. Threats to Fair Use

As alluded to section 3C, streaming a game can generate positive effects for the developer, because more people willing to try the game after seeing someone else play it. While this effect is beneficial if the streamer is praising the game, the opposite must be true as well. What happens if a game is played on stream and subject to harsh criticism? Clearly, a gaming company would want to minimize the amount of negative press that its product receives, and herein lies one of the major

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<sup>24</sup> Emphasis added.

hurdles even if content is clearly fair use. If companies cannot argue against the fair use defense, they turn to the next best thing: censorship.

### A. Takedown Notices

John Bain, also known by his username Totalbiscuit, is a very popular game critic and commentator, who runs a YouTube channel with over one million subscribers. One million people who receive content updates and most likely take his advice seriously on the topic of video games. When Bain took to playing and subsequently reviewing the indie game known as *Day One: Garry's Incident*, one could only envision the amount of popularity the small company might receive if it met his standards of a “good game”. It did not. In a scathing review – Bain blasted everything from the graphics and sound to the plot development, leading to an exuberant number of negative reviews on the game in a short amount of time, however the video vanished after topping search results on YouTube (Bain).

How is it that an extremely popular piece of content on YouTube can just be removed in an instant? The answer lies within the same statutory provisions that protect companies like YouTube and Twitch.tv. While the DMCA's safe harbor provisions give providers protection against being wholly liable for hosting the copyright infringement, it also provides copyright holders with the ability to submit claims of infringement (YouTube Copyright Center). The claims themselves are handled by automated software that will remove the video until such a time a dispute is filed, contesting the takedown notice. Although a user might be able to prove that he or she was in the right in using certain content,<sup>25</sup> the DMCA takedown notice will have already removed the video to prevent liability of the OSP under Title II.

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<sup>25</sup> In the case of Bain and Wild Games Studio, Bain was given express permission from the developer to comment on his game, yet when the unfavorable reviews were released, an automated takedown was issued and his video removed. Although the action was later retracted, this action still cost Bain any ad revenue from his video in addition to having his

What is even more striking about the takedown of the review is that it falls under the classical definition of fair use, explicitly stated in §107:

The fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as **criticism, comment**, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.

There is actually no need to discuss the transformative nature of the review because it is explicitly defensible as fair use, most definitely as a criticism – however, the DMCA takedown process is eerily similar to the “shoot first, ask questions later” idiom.. Contrary to the Nintendo incident described in the introduction, these takedown notices are not isolated – they occur by the thousands daily. Many popular streamers have received these notices for the minutest instances of copyrighted content within a video, only to be deemed frivolous by an actual review later on. The ability for a copyright holder to submit requests (frivolous or genuine) without preliminary review is quite dangerous to the OSP and its users, striking without warning as evident with this particular review, and it signals a need for deeper analysis and revitalization of copyright law and its exceptions.

## **B. Other Implications**

While the most prevalent issue with current technology is the automated takedown notice as described above, other issues still challenge the streaming industry and its users. In the past few years, several pieces of legislation have been proposed that would severely restrict the ability of someone to stream content – the Stop Online Piracy Act (SOPA), the Protect IP Act (PIPA) and bill S.978 (Commercial Felony Streaming Act). In 2011, SOPA and PIPA generated a firestorm when they were proposed, essentially eliminating the safe harbor provisions of the DMCA and

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account subject to ‘strikes.’ Multiple strikes on an account can lead to a permanent ban when deemed to be repeated infringement.

forcing OSPs to actively hunt copyright infringement on their websites. The aim of the legislation was to stop piracy and counterfeit goods from entering the stream of commerce; however, the bills were too ambiguously worded and would have afforded major companies (not just game developers, but multimedia conglomerates) the luxury of not having the burden in proving a video was infringing copyright. In short, both bills would have eliminated the safe harbor as an affirmative defense and destroyed the streaming industry.

S.978 was also proposed in 2011 (not along with SOPA and PIPA) differs slightly in the respect that it sought only to amend one particular section of Title 18, which deals with the penalties of infringement. The bill would have made any commercial streaming of copyrighted content a felony, punishable by jail time and potentially \$2,500 for each infringement (Engleman). Although not as overreaching as its predecessors, this bill would have outright destroyed the streaming industry, since it effectively ignores the fair use standard that has been defined over the past thirty years. While there are always legal threats to industries, those that deal in copyright and intellectual property as a whole tend to be most vulnerable to federal action for a multitude of reasons, including lobbying pressure from major media outlets and general misconceptions about how the internet works. On the judicial front, judges traditionally accept the transformation argument from *Campbell*, yet they do not press deeper for cases that advance an interactivity theory because of how complex the issue becomes, and as a result, many potential streamers may suffer at the hands of shoddily crafted law due to judges that do not put attempt to understand the needs of advancing technology.

## **VII. Conclusion**

As streaming and internet based entertainment begin to outpace traditional models of entertainment, gaming companies will place a stronger grip on content usage in order to protect

profits, only allowing for fair use in a stricter, more traditional interpretation. This however, creates great uncertainty for streaming companies and users who depend upon the power of transformation as a foundation to their argument in fair use. Indeed, should the courts or legislature opt to emphasize the commerciality over transformation, as was the case in the 1980s, – the results could spell disaster for the entire video game streaming industry. In order to resolve tension between copyright holders and streamers seeking to utilize said content, transformative use needs to transcend *Campbell* and take a stronger stance against gaming companies still clinging to the commercial purpose argument.

While interactivity may breathe life into transformative use as a viable defense for streamers in the future, there are still threats posed by both the Digital Millennium Copyright Act and other pieces of legislation. Although these act to the self-purported benefit of game developers, by increasing their power to remove infringing content, they may ultimately suffer the same fate as Nintendo: negative press and a stronger public backing for the streaming community. As it currently stands, fair use is a battle between the “two potentially conflicting [functions of copyright law;] protection of new works and protection of the property rights of original works.” (Parchomovsky and Goldman). The importance of properly defining the boundaries of copyright and its exceptions becomes tantamount to preserving not just the video game streaming industry, but the doctrine of fair use itself.



## Appendix A: Legal Agreements

### END USER LICENSE AGREEMENT (EULA)

#### LEAGUE OF LEGENDS®

Last Modified: October 23, 2012

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#### III. ADDITIONAL LICENSE LIMITATIONS

The limited license granted to you in Section I is subject to the additional limitations set forth below in this Section III. Any use of the Software in violation of the license limitations set forth below is an unauthorized use of the Software outside of the license granted to you in Section I, and will be regarded as an infringement of the copyrights Riot Games holds in and to the Software and the Game. You agree that you will not, under any circumstances:

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files solely for personal, not for profit use pursuant to the [Terms of Use](#) and any applicable Riot Games policies pertaining to audio or video creation;

C. Modify or cause to be modified any files that are part of the Software in any way not expressly authorized by Riot Games;

D. Make use of, or cause any other person or entity to make use of, the Software or the Game for any commercial purpose, including but not limited to (i) participating in the Game in exchange for payment (e.g. “leveling” services); or (ii) selling in-Game items outside of the Game, or selling Game Accounts, except such transactions as may be authorized by Riot Games and conducted via services provided by Riot Games; or

E. Use any unauthorized third-party programs that interact with the Software in any way, including but not limited to, “mods,” “hacks,” “cheats,” “scripts,” “bots,” “trainers,” or automation programs, or any third-party programs that intercept, emulate or redirect any communication between the Software and Riot Games, or that collect information about the Game by reading areas of memory used by the Software to store information about the Game.

#### **IV. OWNERSHIP**

All rights and title in and to the Software and the Game, and all content included therein (including, without limitation, Accounts, computer code, titles, objects, artifacts, characters, character names, locations, location names, stories, story lines, dialog, catch phrases, artwork, graphics, structural or landscape designs, animations, sounds, musical compositions and recordings, Riot Points, audio-visual works, character likenesses, and methods of operation) are owned by Riot Games or its licensors. The Software and the Game and all content therein are protected by United States and other international intellectual property laws. Riot Games and its licensors reserve all rights in connection with the Software and the Game, including, without limitation, the exclusive right to create derivative works therefrom, and you agree that you will not create any work of authorship based on the Game except as expressly permitted by Riot Games. You acknowledge and agree that you have no interest, monetary or otherwise, in any feature or content contained in the Game. You further acknowledge and agree that you shall have no ownership or other property interest in your Account, and you acknowledge and agree that all rights in and to the Account are and shall forever be owned by and inure to the benefit of Riot Games. Please see the [Terms of Use](#) for a complete espousal of all of Riot Games ownership rights.

#### **V. CODE OF CONDUCT**

While using the Software and playing the Game, you agree to comply with all applicable laws, rules and regulations. You also agree to comply with certain additional rules that govern your use of the Game (the “**Code of Conduct**”). The Code of Conduct is not meant to be exhaustive, and Riot Games reserves the right to modify this Code of Conduct at any time, as well as take any appropriate disciplinary measures including Account termination and deletion to protect the integrity and spirit of the Game, regardless of whether a specific behavior is listed here as prohibited. In addition to this Code of Conduct, please see the [Summoner's Code](#) for additional guidance on exemplary game-play behavior. The following are examples of behavior that warrant disciplinary measures:

A. Impersonating any person, business, or entity, including an employee of Riot Games, or communicating in any way that makes it appear that the communication originates from Riot Games;

B. Posting identifying information about yourself, or any other user, in the Game;

C. Harassing, stalking, or threatening any other users in the Game;

D. Removing, altering or concealing any copyright, trademark, patent or other proprietary rights notices of Riot Games contained in the Game and/or the Software. You also may not transmit content that violates or infringes the rights of others, including without limitation, patent, trademark, trade secret, copyright, publicity, personal rights or other proprietary or non-proprietary rights;

E. Transmitting or communicating any content which, in the sole and exclusive discretion of Riot Games, is deemed offensive, including, but not limited to, language that is unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, sexually explicit, or racially, ethnically, or otherwise objectionable;

F. Transmitting or facilitating the transmission of any content that contains a virus, corrupted data, trojan horse, bot keystroke logger, worm, time bomb, cancelbot or other computer programming routines that are intended to and/or actually damage, detrimentally interfere with, surreptitiously intercept or mine, scrape or expropriate any system, data or personal information;

G. Spamming chat, whether for personal or commercial purposes, by disrupting the flow of conversation with repeated postings of a similar nature;

- H. Participating in any action which, in the sole and exclusive judgment of Riot Games, “exploits” an undocumented aspect of the Game in order to secure an unfair advantage over other users;
- I. Participating in any action which, in the sole and exclusive judgment of Riot Games, defrauds any other user of the Game, including, but not limited to, by “scamming” or “social engineering.”
- J. Accessing or attempting to access areas of the Game or Game servers that have not been made available to the public;
- K. Logging out, disconnecting or exiting the Game during live game-play. Riot Games’ automated **Leaverbuster®** system tracks this data and may issue temporary bans to users who frequently leave during live game-play. The length of the temporary ban will increase over time if a particular Account continues to leave during live game-play; or
- L. Selecting a Summoner name that is falsely indicative of an association with Riot Games, contains personally identifying information, infringes on the proprietary or non-proprietary rights of third parties, or that is offensive, defamatory, vulgar, obscene, sexually explicit, racially, ethnically, or otherwise objectionable. You may not use a misspelling or an alternative spelling to circumvent this restriction on Summoner name choices. Riot Games may modify any name which, in the sole and exclusive judgment of Riot Games, violates this provision without further notification to you, and may take further disciplinary measures, including Account termination, for repeated violations.

## **VI. CONSENT TO MONITORING**

When you are using the Software, the Software may monitor your computer's random access memory (RAM) for unauthorized third party programs prohibited by Section III.E that interact with the Software and/or the Game. In the event that the Software detects such an unauthorized third party program, information may be communicated back to Riot Games, including the name of your Account, your internet protocol (IP) address, details about the unauthorized third party program detected, and the time and date that the unauthorized third party program was detected, along with the hardware specs and performance characteristics of your computer, with or without additional notice to you. No other information about you or your computer will be communicated to Riot Games with the Software. If the Software detects the use of an unauthorized third party program, your access to the Game may be terminated with or without additional notice to you.

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**A. The Software and the Game.** Riot Games may provide Updates to the Software that must be installed for you to continue to play the Game. Each time you launch the Software to play the Game, you hereby give your consent to Riot Games to remotely install any Updates to the Software that resides on your computer, with or without additional notification to you.

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The Game is an “on-line” game that must be played over the internet through a service provided by or on behalf of Riot Games. You acknowledge and agree that Riot Games, in its sole and absolute discretion, may stop providing support for or access to the Game at any time, for any reason or no reason. You also agree that Riot Games may change, modify,

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YOU HEREBY AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS RIOT GAMES FROM AND AGAINST ANY AND ALL CLAIMS, LAWSUITS, DAMAGES, LOSSES, LIABILITIES AND COSTS (INCLUDING ATTORNEYS' FEES) THAT DIRECTLY OR INDIRECTLY ARISE OR RESULT FROM YOUR USE OR MISUSE OF THE GAME AND/OR THE SOFTWARE, OR ANY VIOLATION BY YOU OF ANY OF THE PROVISIONS OF THIS LICENSE AGREEMENT. Riot Games reserves the right, at its own expense and in its sole and absolute discretion, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will cooperate with Riot Games in asserting any available defenses.

## **XIII. LIMITATION OF LIABILITY**

UNDER NO CIRCUMSTANCES, AND UNDER NO LEGAL THEORY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL RIOT GAMES BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF DATA, LOSS OF GOOD WILL, OR LOST PROFITS), OR ANY DAMAGES FOR GROSS NEGLIGENCE OF ANY KIND (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES) ARISING FROM YOUR USE OR MISUSE OF THE SOFTWARE AND/OR THE GAME, EVEN IF RIOT GAMES KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, RIOT GAMES SHALL NOT BE LIABLE IN ANY WAY FOR ANY LOSS OR DAMAGE TO PLAYER CHARACTERS, VIRTUAL GOODS (E.G., WEAPONS, SPELLS, ARMOR, SKINS, ETC.) OR VIRTUAL CURRENCY, RIOT POINTS, ACCOUNTS, STATISTICS, OR USER STANDINGS, RANKS, OR PROFILE INFORMATION STORED BY THE GAME. RIOT GAMES SHALL NOT BE RESPONSIBLE FOR ANY INTERRUPTIONS OF SERVICE, INCLUDING WITHOUT LIMITATION ISP

DISRUPTIONS, SOFTWARE OR HARDWARE FAILURES, OR ANY OTHER EVENT WHICH MAY RESULT IN A LOSS OF DATA OR DISRUPTION OF SERVICE. IN NO EVENT SHALL RIOT GAMES BE LIABLE FOR ANY DAMAGES IN EXCESS OF ANY AMOUNT YOU HAVE PAID TO RIOT GAMES FOR GAME-RELATED TRANSACTIONS, IF ANY, DURING THE SIX (6) MONTHS IMMEDIATELY PRIOR TO THE TIME YOUR CAUSE OF ACTION AROSE.

Because some states or jurisdictions do not allow the exclusion or the limitation of liability for consequential or incidental damages, in such states or jurisdictions, the liability of Riot Games shall be limited to the fullest extent permitted by applicable law.

#### **XIV. EQUITABLE REMEDIES**

You hereby acknowledge and agree that Riot Games would suffer irreparable harm if this License Agreement were not specifically enforced. Consequently, in addition to such monetary and other relief as may be recoverable at law, you agree that Riot Games shall be entitled to specific performance or other injunctive relief, without bond, other security, or proof of damages, as remedy for any breach or threatened breach of this License Agreement. Additionally, in the event any legal or administrative action or proceeding is brought by either party in connection with this License Agreement and consistent with Section XV below, the prevailing party in such action or proceeding shall be entitled to recover from the other party all the costs, attorneys' fees and other expenses incurred by such prevailing party as the result of the action or proceeding.

#### **XV. NEGOTIATIONS, BINDING ARBITRATION AND GOVERNING LAW**

**A. Negotiations.** Disputes can be expensive and time consuming for both parties. In an effort to accelerate resolution and reduce the cost of any dispute or claim related to this License Agreement ("**Claim**"), you and Riot Games agree to first attempt to informally negotiate any Claim for at least thirty (30) days (except those Claims expressly excluded in Section XV.F below). Riot Games will send its notice to the address it has on file to the extent that you have provided additional contact information to Riot Games (e.g. by participating in a promotion or survey, or contacting a customer services representative). Otherwise, Riot Games will send its notice to the email address associated with your Account. You will send your notice to Riot Games, Inc., 10736 Jefferson Blvd., #622, Culver City, CA 90230, Attn: Legal Department. Please note that this informal resolution procedure does not suspend any statutory limitation periods applicable to the bringing of a Claim.

**B. Binding Arbitration.** If the parties fail to resolve a Claim through negotiations, within such thirty (30)-day period, either you or Riot Games may elect to have the Claim (except as otherwise provided in Section XV.F) finally and exclusively resolved by binding arbitration by sending a written notice requesting arbitration to the other party. Any election to arbitrate by one party shall be final and binding on the other. The arbitration will be conducted under the Commercial Arbitration Rules of the American Arbitration Association ("AAA Rules") and, where appropriate, the AAA's Supplementary Procedures for Consumer Related Disputes ("AAA Consumer Rules") that are in effect at the time the arbitration is initiated and under the terms set forth in this License Agreement. Both the AAA Rules and the AAA Consumer Rules can be found at the AAA website, [www.adr.org](http://www.adr.org). In the event of a conflict between the terms set forth in this Section XV.B and either the AAA Rules or the AAA Consumer Rules, the terms in this Section XV.B will control and prevail.

Except as otherwise set forth in Section XV.F, you may seek any remedies available to you under federal, state or local laws in an arbitration action. As part of the arbitration, both you and Riot Games will have the opportunity for discovery of non-privileged information that is relevant to the Claim. The arbitrator will provide a written statement of the arbitrator's decision regarding the Claim, the award given and the arbitrator's findings and conclusions on which the arbitrator's decision is based. The determination of whether a Claim is subject to arbitration shall be governed by the Federal Arbitration Act and determined by a court rather than an arbitrator. Except as otherwise provided in this License Agreement, (i) you and Riot Games may litigate in court to compel arbitration, stay proceedings pending arbitration, or confirm, modify, vacate or enter judgment on the award entered by the arbitrator; and (ii) the arbitrator's decision is final, binding on all parties and enforceable in any court that has jurisdiction, provided that any award may be challenged if the arbitrator fails to follow applicable law.

**BY AGREEING TO THIS ARBITRATION PROVISION, YOU UNDERSTAND THAT YOU AND RIOT GAMES ARE WAIVING THE RIGHT TO SUE IN COURT AND HAVE A JURY TRIAL.**

**C. Arbitration Fees.** If we are initiating arbitration for a Claim, we will pay all costs charged by the AAA Rules for initiating the arbitration. Your share of all other fees and costs of the arbitration, including your share of arbitrator compensation, will be charged pursuant to the AAA Rules, and where appropriate, limited by the AAA Consumer Rules.



Where your share of the costs is deemed to be excessive by the arbitrator, Riot Games will pay all arbitration fees and expenses.

**D. Location.** The arbitration will take place in your hometown area if you so notify Riot Games in your notice of arbitration or within ten (10) days following receipt of Riot Games' arbitration notice. In the absence of a notice to conduct the arbitration in your hometown area, the arbitration will be conducted in Los Angeles, California, unless the parties agree to video, phone and/or internet connection appearances. Any Claim not subject to arbitration (other than claims proceeding in any small claims court), or where no election to arbitrate has been made, shall be decided exclusively by a court of competent jurisdiction in Los Angeles, California, United States of America, and you and Riot Games agree to submit to the personal jurisdiction of that court.

**E. Limitations.** You and Riot Games agree that any arbitration shall be limited to the Claim between Riot Games and you individually. YOU AND RIOT GAMES AGREE THAT (A) THERE IS NO RIGHT OR AUTHORITY FOR ANY DISPUTE TO BE ARBITRATED ON A CLASS-ACTION BASIS OR TO UTILIZE CLASS ACTION PROCEDURES; (B) THERE IS NO RIGHT OR AUTHORITY FOR ANY DISPUTE TO BE BROUGHT IN A PURPORTED REPRESENTATIVE CAPACITY OR AS A PRIVATE ATTORNEY GENERAL; AND (C) NO ARBITRATION SHALL BE JOINED WITH ANY OTHER.

**F. Exceptions to Negotiations and Arbitration.** You and Riot Games agree that the following Claims are not subject to the above provisions concerning negotiations and binding arbitration: (i) any Claims seeking to enforce or protect, or concerning the validity of, any of your or Riot Games' intellectual property rights; (ii) any Claim related to, or arising from, allegations of theft, piracy, invasion of privacy or unauthorized use; and (iii) any claim for equitable relief. In addition to the foregoing, either party may assert an individual action in small claims court for Claims that are within the scope of such courts' jurisdiction in lieu of arbitration.

**G. Governing Law.** Except as otherwise provided in this License Agreement, this License Agreement shall be governed by, and will be construed under, the laws of the United States of America and the laws of the State of California, without regard to conflict of law principles. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. Other laws may apply if you choose to access the Game from outside of the United States. In such an event, those local laws shall affect this License Agreement only to the extent necessary in that jurisdiction, and this License Agreement shall be interpreted to give maximum effect to the terms and conditions in this License Agreement. You are responsible for compliance with all local laws if and to the extent local laws are applicable. The New Zealand Consumer Guarantees Act of 1993 (the "Act") may apply to the Game if you access the Game from, and are a resident of, New Zealand. Notwithstanding anything to the contrary in this License Agreement, if the Act applies then you may have other rights or remedies as set out in the Act which may apply in addition to or instead of those set out in this License Agreement.

**H. Severability.** You and Riot Games agree that if any portion this Section XV is found illegal or unenforceable (except any portion of Section XV.F), that portion shall be severed and the remainder of the Section shall be given full force and effect. If Section XV.F is found to be illegal or unenforceable then neither you nor Riot Games will elect to arbitrate any Claim falling within that portion of Section XV.F found to be illegal or unenforceable and such Claim shall be exclusively decided by a court of competent jurisdiction within Los Angeles, State of California, United States of America, and you and Riot Games agree to submit to the personal jurisdiction of that court.

## **XVI. MISCELLANEOUS**

This License Agreement represents the complete agreement between you and Riot Games with respect to the subject matter hereof, and supersedes any prior or contemporaneous agreements between you and Riot Games; provided however that this License Agreement shall coexist with, and shall not supersede, the Terms of Use or the Privacy Policy. To the extent that the provisions of this License Agreement conflict with the Terms of Use, the conflicting provisions in the Terms of Use shall govern. The Game is operated by Riot Games in the United States. Those who choose to access the Game from locations outside the United States do so on their own initiative and are responsible for compliance with applicable local laws. Riot Games' failure to enforce any provision of this License Agreement shall in no way be construed to be a present or future waiver of such provision, nor in any way affect the right of any party to enforce each and every such provision thereafter. The express waiver by Riot Games of any provision, condition or requirement of this License Agreement shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement. If any provision of this License Agreement is held to be invalid or unenforceable for any reason, such provision shall be reformed to the extent necessary to make it enforceable to the maximum extent permissible so as to affect the intent of the parties, and the remainder of this License Agreement shall continue in full force and effect. If, however, it is determined that such provision cannot be reformed, then that provision shall be deemed severable from

these terms and shall not affect the validity and enforceability of any remaining provisions. The provisions of Sections IV, and X through XVI shall survive any termination of this License Agreement. If you have any questions concerning these terms and conditions, or if you would like to contact Riot Games for any other reason, please contact Riot Games support at [support@riotgames.com](mailto:support@riotgames.com).

**YOU HEREBY ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THE FOREGOING END USER LICENSE AGREEMENT AND AGREE THAT BY CLICKING “ACCEPT” AND/OR INSTALLING THE SOFTWARE AND PLAYING THE GAME, YOU ARE ACKNOWLEDGING YOUR AGREEMENT TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT.**

## **TERMS OF USE AGREEMENT (TOU)**

### **LEAGUE OF LEGENDS®**

Last Modified: October 23, 2012

League of Legends® (the “**Game**”) is a free-to-play, session-based, multiplayer online battle-arena computer game developed and operated by Riot Games, Inc., a Delaware Corporation (“**Riot Games**”). For purposes of this Agreement (defined below), “**you**” and “**your**” mean the user of the computer on which the Game will be or has been installed.

PLEASE READ THIS TERMS OF USE AGREEMENT (THIS “**TERMS OF USE**” OR “**AGREEMENT**”) CAREFULLY. BY CLICKING THE “ACCEPT” BUTTON BELOW, OR BY PARTICIPATING IN THE GAME, OR BY USING THE [HTTP://NA.LEAGUEOFLEGENDS.COM](http://na.leagueoflegends.com) WEBSITE AND RELATED WEBPAGES (THE “**SITE**”), YOU AGREE THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN CONTRACT SIGNED BY YOU. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, CLICK ON THE BUTTON THAT INDICATES THAT YOU DO NOT AGREE TO ACCEPT THE TERMS OF THIS AGREEMENT (IF APPLICABLE) AND DO NOT PARTICIPATE IN THE GAME OR USE THE SITE.

Please note that in using the Site and/or the Game, you may be required to provide Riot Games with certain personally identifiable information, retention and use of which are subject to the Riot Games Privacy Policy (the “**Privacy Policy**”) (<http://na.leagueoflegends.com/legal/privacy>), incorporated herein by reference. Your use of the Site and/or the Game signifies that you have read, understand and agree with the terms of the Privacy Policy.

### **I. LIMITED USE LICENSE**

The Site and the Game are available for use only by authorized end users in accordance with the terms and conditions set forth in this Agreement. Your rights to use the Game software (the “**Software**”) are defined in and subject to the terms and conditions of the Game End User License Agreement (the “**EULA**”) (<http://na.leagueoflegends.com/legal/eula>), which is incorporated herein by reference, in addition to this Agreement. The Site, the Game, the Software and “fan kits,” if any are made available (collectively, the “**Properties**”) are provided for your individual, non-commercial, entertainment purposes only. Except as may be expressly permitted by Riot Games, you may not sell, copy, exchange, transfer, publish, assign or otherwise distribute anything you copy or derive from the Properties.

### **II. REQUIREMENTS**

In using the Site, and/or by clicking “accept” when you install the Software, you acknowledge that you have read, understand and agree with the terms of this Agreement. In order to participate in the Game, you must also: (i) read, understand and agree to the EULA; (ii) install a valid copy of the Software; (iii) register for an account in the Game (an “**Account**”); and (iv) meet the hardware and connection requirements published on the Site. These requirements may change as the Game evolves. You are wholly responsible for the cost of all internet connection fees, along with all equipment, servicing, or repair costs necessary to allow you access to the Game.

### **III. ACCOUNT INFORMATION**

**A. General.** While some elements of the Site may be generally accessed by the public, certain aspects of the Site (e.g. posting in the Forums, as defined below) as well as participation in the Game requires you to create an Account by providing Riot Games with certain personal information, specifically, your email address and date of birth. You agree that you will supply accurate and complete information to Riot Games, and that you will update that information promptly after it changes. All of the information you provide to Riot Games will be governed by the terms and conditions of this Agreement and the Privacy Policy. The information will be used by Riot Games for a variety of

internal purposes, including without limitation, to maintain the Account, to ensure that your Account is unique, to deal with security, debugging and technical support issues, and for possible payment-related issues. You acknowledge that, if any information provided by you is untrue, inaccurate, not current or incomplete, Riot Games reserves the right to terminate this Agreement, your Account, and/or your use of the Game. Please note that in utilizing certain areas of the Site (e.g. purchasing merchandise) or the Game (e.g. purchasing Riot Points (defined below)), you will be requested to provide additional information in order to complete a purchase, such as your name, full address, credit card information or other payment information as appropriate to the selected payment method.

**B. Eligibility.** Only “natural persons,” as opposed to any kinds of legal entities (e.g., corporations, limited liability companies, and/or partnerships), shall have the privilege of establishing an Account. By entering into this Agreement and creating an Account, you represent that you are an adult and have the legal capacity to enter into a contract in the jurisdiction where you reside. You agree to comply with this Agreement on behalf of yourself and, at your discretion, any minor children for whom you are the parent or legal guardian and whom you have authorized to play the Game using your Account. You further agree that you are entirely liable for all activities conducted through your Account, and are responsible for ensuring that you and/or your child is aware of, understands, and complies with the terms of this Agreement and any and all other Riot Games rules, policies, notices and/or agreements.

THE SITE AND THE GAME ARE NOT DIRECTED AT CHILDREN UNDER 13 YEARS OF AGE, NOR DOES RIOT GAMES KNOWINGLY COLLECT INFORMATION FROM CHILDREN UNDER 13. IF YOU ARE UNDER 13, PLEASE DO NOT SUBMIT ANY PERSONALLY IDENTIFIABLE INFORMATION TO RIOT GAMES.

**C. Login Credentials.** In creating an Account, you will be required to select a unique username and password (collectively, “**Login Credentials**”), which you will use each time you access the Game. You may not share your Account with anyone other than as expressly set forth herein, and you are entirely responsible for maintaining the confidentiality of your Login Credentials and for any and all activities (including purchases and charges, as applicable) that are conducted through your Account. Please notify Riot Games immediately if you become aware of any breach of security, including any loss, theft or unauthorized disclosure of your Login Credentials.

**D. Account Sales.** The Account supplied to you is personal to you, and Riot Games does not recognize and expressly forbids the transfer of user Accounts. You shall not purchase, sell, gift or trade any Account, or make any such offer, and any attempt shall be null and void. Any distribution by you of your Account and/or your Login Credentials (except as expressly provided herein or otherwise explicitly approved of by Riot Games) may result in suspension or termination of your Account.

**E. Suspension/Termination.**

1. **By Riot Games.** RIOT GAMES RESERVES THE RIGHT TO SUSPEND, TERMINATE, MODIFY OR DELETE YOUR ACCOUNT AT ANY TIME FOR ANY REASON OR NO REASON, WITH OR WITHOUT NOTICE TO YOU, AND WITH NO LIABILITY OF ANY KIND TO YOU. Additionally, Riot Games may stop offering and/or supporting the Game at any time. For purposes of explanation and not limitation, most Account suspensions, terminations and/or deletions are the result of violation of this Agreement, the EULA, the Privacy Policy, or the Summoner's Code (defined below). Accounts terminated by Riot Games shall not be reinstated under any conditions whatsoever.
2. **By You.** You may terminate your Account at any time, for any reason or no reason, by contacting Riot Games at [support@riotgames.com](mailto:support@riotgames.com).
3. **By the Community via Crowd Sourcing.** Riot Games has empowered its community of users (the “**Community**”) to police the compliance of other users with the “**Summoner's Code**” ([http://na.leagueoflegends.com/articles/The\\_Summoners\\_Code](http://na.leagueoflegends.com/articles/The_Summoners_Code)), which outlines the principles of ideal game play behavior, as well as with other Riot Games policies. Consistent with the guidelines found at <http://na.leagueoflegends.com/legal/tribunal>, Community members, including you as a user, are allowed to submit descriptions of activity and actions of certain users within the Game, and collectively determine if that particular user was in compliance with the Riot Games policies relating to user conduct, including, but not limited to, the Summoner's Code and the Code of Conduct (defined below). This system of allowing the Community to review user behavior in the Game is called **The Tribunal®**. Should The Tribunal determine that you have acted in contravention of any one of the Riot Games policies, Riot Games may, in its sole and absolute discretion, ban your use of the Game and suspend, terminate and/or delete your Account.

**IV. OWNERSHIP**



**A. Intellectual Property.** All rights and title in and to the Properties, and all content included therein (including, without limitation, user Accounts, computer code, titles, objects, artifacts, characters, character names, locations, location names, stories, story lines, dialog, catch phrases, artwork, graphics, structural or landscape designs, animations, sounds, musical compositions and recordings, Riot Points (defined below), audio-visual effects, character likenesses, and methods of operation) are owned by Riot Games or its licensors. The Properties, and all content therein are protected by United States and other international intellectual property laws. Riot Games and its licensors reserve all rights in connection with the Properties, including, without limitation, the exclusive right to create derivative works therefrom. You agree that you will not create any work of authorship based on the Properties except as expressly permitted by Riot Games. Additionally, except as otherwise set forth in this Section IV.A, Riot Games does not authorize you to make any use whatsoever of any Riot Games trademarks, service marks, trade names, logos, domain names, taglines, and/or trade dress (collectively, the "**Riot Games Marks**") under any circumstances without a written license agreement. Any reproduction, redistribution, or modification of the Properties, or use of the Properties not in accordance with the EULA or this Agreement, is expressly prohibited by law and may result in severe civil and criminal penalties.

Notwithstanding the above, Riot Games may make a "fan kit" available to you (which may be located on the Site) that includes a limited license to use certain Riot Games Marks and other proprietary material. Except for the license expressly granted with the "fan kit," Riot Games reserves all rights, title, and interest in Riot Games Marks and all other intellectual property, and does not authorize you to display or use such in any manner, including but not limited to use on websites, on blogs, in forums, in signatures, on products, or in printed or electronic publications.

**B. Game Assets, Riot Points and Virtual Items.** When using the Game, you may accumulate in-Game assets associated with your Account, including, without limitation, objects, artifacts, currency, items, equipment, and/or other value or status indicators ("**Game Assets**") that reside on servers operated by Riot Games as data. You acknowledge and agree that such Game Assets are accumulated as part of your Account and therefore you shall have no ownership or other property interest in any of those Game Assets. You further acknowledge and agree that Riot Games has the right, but not the obligation, to delete, alter, move, remove, or transfer any and all Game Assets, in whole or in part, at any time and for any reason, with or without notice to you, and with no liability of any kind to you. Riot Games does not provide or guarantee, and expressly disclaims any value, cash or otherwise, attributed to any data residing on servers operated by Riot Games, including without limitation the Game Assets associated with your Account.

If you have a valid, active Account, you may participate in our Riot Points service offering, which is a redeemable point system that operates like virtual currency ("**Riot Points**") used to license certain Game Assets that can be used while playing the Game, including, without limitation, special champions, champion "skins," and boosts ("**Virtual Items**"). Riot Points can be purchased online through the in-Game store or at retail in the form of a prepaid Riot Games Game Card. Please note that you must register your Riot Games Game Card in the in-Game store in order to access the Riot Points the card contains. Riot Points might also be provided to you by Riot Games as part of a promotion, or through other means, such as completing certain quests or achievements in the Game, or through Riot Games-sponsored contests or sweepstakes. You agree that you will be solely responsible for paying any applicable taxes related to the acquisition of, use of or access to Riot Points. Riot Points are sold or issued in bundles and the price may vary depending on the amount you purchase and where you are purchasing. As Riot Games feels necessary, in its sole and absolute discretion, Riot Games may limit the total amount of Riot Points that may be purchased at any one time, and/or limit the total Riot Points that may be held in your Account in the aggregate. Riot Games will notify you in the event that you near any such limit. Additionally, price and availability of Riot Points and/or Virtual Items are subject to change without notice.

You are solely responsible for verifying that the proper amount of Riot Points has been added to or deducted from your Account during any given transaction, so please notify Riot Games immediately should you believe that a mistake has been made with respect to your Riot Points balance. Riot Games will investigate your claim, and in doing so, may request some additional information and/or documentation to verify your claim. Riot Games will let you know the results of the investigation, however, you acknowledge and agree that Riot Games has sole and absolute discretion in determining whether or not your claim is valid, and if so, the appropriate remedy.

YOU FURTHER ACKNOWLEDGE AND AGREE THAT THE RIOT POINTS SYSTEM AND THE VIRTUAL ITEMS YOU ACQUIRE HAVE NO MONETARY VALUE AND CANNOT BE REDEEMED FOR CASH. NO REFUNDS WILL BE MADE FOR THE PURCHASE OF RIOT POINTS OR FOR VIRTUAL ITEMS OBTAINED USING RIOT POINTS. Some Virtual Items you obtain may have expiration dates while others do not, and each Virtual Item you obtain using Riot Points will be included in your Account until the earlier of that Virtual Item's expiration date, or your Account's expiration or termination date, or such date when Riot Games ceases to offer or support the Game.

The sale or transfer of Virtual Items or Riot Points between users may only be conducted via services approved of and provided by Riot Games, if any, and Riot Games may terminate any Account that acts in contravention of this prohibition.

NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, YOU ACKNOWLEDGE AND AGREE THAT YOU SHALL HAVE NO OWNERSHIP OR OTHER PROPERTY INTEREST IN YOUR ACCOUNT, AND YOU FURTHER ACKNOWLEDGE AND AGREE THAT ALL RIGHTS IN AND TO THE ACCOUNT ARE AND SHALL FOREVER BE OWNED BY AND INURE TO THE BENEFIT OF RIOT GAMES. YOU ACKNOWLEDGE AND AGREE THAT YOU HAVE NO CLAIM, RIGHT, TITLE, OWNERSHIP OR OTHER PROPRIETARY INTEREST IN THE GAME ASSETS, VIRTUAL ITEMS OR RIOT POINTS THAT YOU ACQUIRE, REGARDLESS OF THE CONSIDERATION OFFERED OR PAID IN EXCHANGE FOR RIOT POINTS OR VIRTUAL ITEMS. FURTHERMORE, RIOT GAMES SHALL NOT BE LIABLE IN ANY MANNER FOR THE DESTRUCTION, DELETION, MODIFICATION, IMPAIRMENT, "HACKING," OR ANY OTHER DAMAGE OR LOSS OF ANY KIND CAUSED TO THE GAME ASSETS, VIRTUAL ITEMS OR RIOT POINTS, INCLUDING BUT NOT LIMITED TO THE DELETION OF GAME ASSETS, VIRTUAL ITEMS OR RIOT POINTS UPON THE TERMINATION OR EXPIRATION OF YOUR ACCOUNT.

**C. Unsolicited Idea Submissions.** Riot Games values your feedback on its services and products, but please do not submit any creative ideas, suggestions or materials. Neither Riot Games nor any of its employees and/or contractors accept or consider unsolicited ideas, original creative artwork or other works, including, without limitation, ideas or suggestions for new or improved games or technologies, game or product enhancements, marketing plans or names for new games (collectively "**Unsolicited Ideas**"). Please do not send your Unsolicited Ideas to Riot Games or its employees and/or contractors. This policy is aimed at avoiding potential misunderstandings or disputes when Riot Games' products or services might seem similar to Unsolicited Ideas that are submitted. If you do submit your Unsolicited Ideas to Riot Games or to any of its employees and/or contractors despite this policy, then you hereby acknowledge and agree that, from the time of transmission or dispatch, you grant Riot Games and its designees a worldwide, perpetual, irrevocable, sublicenseable, transferable, assignable, non-exclusive and royalty-free right and license to use, reproduce, distribute, adapt, modify, translate, create derivative works of, publicly perform, publicly display, digitally perform, make, have made, sell, offer for sale and import your Unsolicited Ideas, including, without limitation, all copyrights, trademarks, trade secrets, patents, industrial rights and all other intellectual and proprietary rights related thereto, in any media now known or hereafter developed, for any purpose whatsoever, commercial or otherwise, including, without limitation, giving the Unsolicited Ideas to others, without any compensation to you. To the extent necessary, you agree that you undertake to execute and deliver any and all documents and perform any and all actions necessary or desirable to ensure that the rights to use the Unsolicited Ideas granted to Riot Games as specified above are valid, effective and enforceable. You also give up any claim that any use by Riot Games and/or its licensees of your Unsolicited Ideas violates any of your rights, including but not limited to moral rights, privacy rights, rights to publicity, proprietary or other rights, and/or rights to credit for the material or ideas set for therein.

## **V. CODE OF CONDUCT**

While using any of the Properties, you agree to comply with all applicable laws, rules and regulations. You also agree to comply with certain additional rules that govern your use of the Properties (the "**Code of Conduct**"). The Code of Conduct is not meant to be exhaustive, and Riot Games reserves the right to modify this Code of Conduct at any time, as well as take appropriate disciplinary measures including Account termination and deletion to protect the integrity and spirit of the Properties, regardless of whether a specific behavior is listed here as prohibited. In addition to this Code of Conduct, please see the Summoner's Code for additional guidance on exemplary game-play behavior. The following are examples of behavior that warrant disciplinary measures:

- A. Impersonating any person, business, or entity, including an employee of Riot Games, or communicating in any way that makes it appear that the communication originates from Riot Games;
- B. Posting identifying information about yourself, or any other user, to the Site or within the Game;
- C. Harassing, stalking, or threatening any other users in the Game;
- D. Removing, altering or concealing any copyright, trademark, patent or other proprietary rights notices of Riot Games contained in the Site, the Game and/or the Software. You also may not transmit content that violates or infringes the rights of others, including without limitation, patent, trademark, trade secret, copyright, publicity, personal rights or other proprietary or non-proprietary rights;

- E. Transmitting or communicating any content which, in the sole and exclusive discretion of Riot Games, is deemed offensive, including, but not limited to, language that is unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, sexually explicit, or racially, ethnically, or otherwise objectionable;
- F. Transmitting or facilitating the transmission of any content that contains a virus, corrupted data, trojan horse, bot, keystroke logger, worm, time bomb, cancelbot or other computer programming routines that are intended to and/or actually damage, detrimentally interfere with, surreptitiously intercept or mine, scrape or expropriate any system, data or personal information;
- G. Spamming chat, whether for personal or commercial purposes, by disrupting the flow of conversation with repeated postings of a similar nature;
- H. Participating in any action which, in the sole and exclusive judgment of Riot Games, "exploits" an undocumented aspect of the Game in order to secure an unfair advantage over other users;
- I. Participating in any action which, in the sole and exclusive judgment of Riot Games, defrauds any other user of the Game, including, but not limited to, by "scamming" or "social engineering;"
- J. Using any unauthorized third party programs, including but not limited to "mods," "hacks," "cheats," "scripts," "bots," "trainers," and automation programs, that interact with the Software in any way, for any purpose, including, without limitation, any unauthorized third party programs that intercept, emulate, or redirect any communication between the Software and Riot Games and any unauthorized third party programs that collect information about the Game by reading areas of memory used by the Software to store information;
- K. Accessing or attempting to access areas of the Game or Game servers that have not been made available to the public;
- L. Selecting a Summoner name that is falsely indicative of an association with Riot Games, contains personally identifying information, infringes on the proprietary or non-proprietary rights of third parties, or that is offensive, defamatory, vulgar, obscene, sexually explicit, racially, ethnically, or otherwise objectionable. You may not use a misspelling or an alternative spelling to circumvent this restriction on Summoner name choices. Riot Games may modify any name which, in the sole and exclusive judgment of Riot Games, violates this provision without further notification to you, and may take further disciplinary measures, including Account termination, for repeated violations; or
- M. Logging out or exiting the Game during live game-play. Riot Games' automated **Leaverbuster®** system tracks this data overtime and issues a temporary ban when a user is determined to have left mid-game too many times. The length of the temporary ban will increase over time if a particular Account continues to leave live game play.

## VI. USER CONTENT

**A. Ownership.** "Content" means any communications, images, sounds, and all the material and information that you upload or transmit through the Site or the Game, or that other users upload or transmit, including, without limitation, any Forum (defined below) postings and/or the in-Game real-time interactive chat text ("Chat").

You hereby acknowledge and agree that you remain fully responsible for and are the owner of any and all Content. However, you grant Riot Games from the time of uploading or transmission of the Content, non-exclusively, all now known or hereafter existing copyrights and all other intellectual property rights to all Content of every kind and nature, in perpetuity (or for the maximum duration of protection afforded by applicable law), throughout the universe and you hereby grant Riot Games as a present non-exclusive license of future rights all such intellectual property rights to the extent owned by you. In the event that any of the Content is not licensable, you hereby grant to Riot Games and its licensors, including, without limitation, its respective successors and assigns, a perpetual, irrevocable, sublicensable, transferable, worldwide, paid-up right to reproduce, fix, adapt, modify, translate, reformat, transmit, or provide access to electronically, broadcast, communicate to the public by telecommunication, display, perform, enter into computer memory, and use and practice such Content as well as all modified and derivative works thereof, without compensation to you. To the extent necessary, you agree that you will undertake to execute and deliver any and all documents and perform any and all actions necessary or desirable to ensure that the rights to use the Content granted to Riot Games as specified above are valid, effective and enforceable. You also hereby waive any moral rights you may have in such Content under the laws of any jurisdiction to the maximum extent permitted by the laws of your jurisdiction. You represent, warrant and agree that none of the Content will be subject to any obligation, whether of confidentiality, attribution or otherwise, on the part of Riot Games and Riot Games will not be liable for any use or disclosure of any Content. You further acknowledge and agree that you shall not upload or otherwise transmit on or through the Site or the Game any Content that is subject to any third-party rights.

**B. Consent to Monitoring.** Riot Games does not, and cannot, pre-screen or monitor all Content. However, its representatives may monitor and/or record your communications (including, without limitation, Forum postings and/or Chat) when you are playing the Game or using the Site, and you hereby provide your irrevocable consent to such monitoring and recording. You acknowledge and agree that you have no expectation of privacy concerning the submission of any Content, and you further acknowledge and agree that your Chat may be used as part of The Tribunal proceedings as more specifically set forth in Section VI.C below. Riot Games does not assume any responsibility or liability for Content that is generated by users of the Site and/or Game. Riot Games has the right but not the obligation, in its sole discretion, to edit, refuse to post, or remove any Content. Furthermore, Riot Games also reserves the right, at all times and in its sole discretion, to disclose any Content for any reason, including, without limitation (i) to satisfy any applicable law, regulation, legal process or governmental request; (ii) to enforce the terms of this Agreement or any other agreement; (iii) to protect the legal rights and remedies of Riot Games; (iv) where someone's health or safety may be threatened; (v) to report a crime or other offensive behavior; or (vi) as part of The Tribunal proceedings. Please take care to not provide any personally identifiable information in the Chat or the Forums and to abide by the Code of Conduct, understanding that you do not have an expectation of privacy in the Content you provide in the Chat or Forums, and that members of Riot Games and the Community, outside of those you play directly with or against in the Game, might have access to the information in the Chat or the Forums at any time.

**C. The Tribunal.** All Chat will be recorded by Riot Games and stored for a period determined by Riot Games in its sole discretion, which period Riot Games may change from time to time in accordance with the terms of The Tribunal policy. Should your in-Game actions or conduct be reported by another user as being in contravention of the Summoner's Code, in violation of this Agreement or outside the scope of any one of Riot Games' policies, and should your case come before The Tribunal, the entire Chat log from that particular reported Game session will be included in The Tribunal report and available for viewing by randomly selected members of the Community who are eligible and opt to participate in The Tribunal.

**D. Forums.** If you have a valid and active Account, you may post communications and other content to the "forums" section of the Site (the "**Forums**"). You agree to abide by the Code of Conduct, as well as the policy concerning Links (found below) while participating in the Forums. You understand that much of the information included in the Forums is from other players who are not employed by or under the control of Riot Games. You further acknowledge that a large volume of information is available in the Forums and that people participating in such Forums may occasionally post messages or make statements, whether intentionally or unintentionally, that are inaccurate, misleading, deceptive, abusive or even unlawful. Riot Games neither endorses nor is responsible for such messages or statements, or for any opinion, advice, information or other utterance made or displayed in the Forums by you or the other users. The opinions expressed in the Forums reflect solely the opinions of you and/or the other users and may not reflect the opinions of Riot Games. Riot Games is not responsible for any errors or omissions in postings, for hyperlinks embedded in messages or for any results obtained from the use of the information contained in the Forums. Under no circumstances will Riot Games be liable for any loss or damage caused by your reliance on the information in the Forums or your use of the Forums. You should be aware that, when you disclose information about yourself in a Forum, the information is being made publicly available and may be collected and used by other users. When you disclose any information in a Forum, you do so at your own risk. Riot Games reserves the right to, but has no obligation to, monitor the Forums, or any postings or other materials that you or other players transmit or post on the Forums, to alter or remove any such materials, and to disclose such materials and the circumstances surrounding their transmission to any third party in order to operate the Site properly or to comply with legal obligations or governmental requests.

## VII. UPDATES AND MODIFICATIONS

**A. Agreement.** Riot Games reserves the right, in its sole and absolute discretion, to revise, update, change, modify, add to, supplement, or delete certain terms of this Agreement as the Properties evolve; provided, however, that material changes to this Agreement will not be applied retroactively. Such changes will be effective with or without prior notice to you. You can review the most current version of this Agreement by clicking on the "Terms of Use" link located at the bottom of the Site. You are responsible for checking this Agreement periodically for changes. If any future changes to this Agreement are unacceptable to you or cause you to no longer be in agreement or compliance with this Agreement, you must terminate this Agreement and immediately stop using the Properties. Your continued use of any of the Properties following any revision to this Agreement constitutes your complete and irrevocable acceptance of any and all such changes. Please note that Riot Games may also revise other policies, including the EULA and Privacy Policy, at any time, and the new versions will be available on the Site. If at any time you do not agree with any portion of the then-current version of a particular Riot Games policy, including but not limited to this Agreement, you must immediately stop using the Properties.

**B. The Properties.** In an effort to improve the Properties, you agree that Riot Games may change, modify, update, suspend, “nerf,” or restrict your access to any features or parts of the Properties, and may require that you download and install updates to the Software, at any time without notice or liability to you. You also understand and agree that any such changes or updates to the Properties might change the system specifications necessary to play the Game, and in such a case, you, and not Riot Games, are responsible for purchasing any necessary additional software and/or hardware in order to access and play the Game.

## **VIII. LINKS**

The Site may contain links to websites operated by other parties. Riot Games provides these links to you as a convenience, or other users might be posting these links as user-provided Content. Use of these links and the external websites are at your own risk. The linked sites are not under the control of Riot Games, and Riot Games is not responsible for the content available on the other sites. Such links do not imply endorsement by Riot Games of information or material on any other site, and Riot Games disclaims all liability with regard to your access to and use of such linked websites.

Should you choose to provide a link on the Site or within the Game (e.g., on the Forums or via Chat) to an external website, unless otherwise set forth in a written agreement between you and Riot Games, you acknowledge and agree to the following: (i) the appearance, position and other aspects of the link may not be such as to damage or dilute the goodwill associated with Riot Games’ and/or its licensors’ names and trademarks; (ii) the appearance, position and other attributes of the link may not create the false appearance that your organization or entity is sponsored by, affiliated with, or associated with Riot Games; (iii) when selected by a user, the link must display the external website on full-screen and not within a “frame” on the linking Site; and (iv) Riot Games reserves the right to revoke its consent to the link at any time and in its sole discretion.

## **IX. FEES**

Some aspects of the Game may require you to pay a fee, and you agree that you will provide accurate and complete payment information to the third-party payment provider used by Riot Games. You further agree to pay all fees and applicable taxes incurred by you or anyone using an Account registered to you. Riot Games may revise the pricing for the Game or any item associated therewith at any time. All fees and charges are payable in accordance with payment terms in effect at the time the fee or the charge becomes due and payable. Riot Games may, from time to time, modify, amend, or supplement its fees and fee-billing methods, and such changes shall be effective immediately upon posting in this Agreement or elsewhere on the Site or in the Game. If there is a dispute regarding payment of fees to Riot Games, your Account may be closed without warning or notice at the sole discretion of Riot Games.

YOU ACKNOWLEDGE AND AGREE THAT ANY APPLICABLE FEES AND OTHER CHARGES FOR FEE-BASED SERVICES (INCLUDING WITHOUT LIMITATION RIOT POINTS) ARE PAYABLE IN ADVANCE AND NOT REFUNDABLE IN WHOLE OR IN PART. YOU ARE FULLY LIABLE FOR ALL CHARGES TO YOUR ACCOUNT, INCLUDING ANY UNAUTHORIZED CHARGES.

## **X. NOTICE AND PROCEDURE FOR CLAIMS OF COPYRIGHT INFRINGEMENT (DMCA)**

If you are a copyright owner or agent thereof and believe that content posted on the Site by a Riot Games user infringes upon your copyright, please submit notice pursuant to the Digital Millennium Copyright Act (17 U.S.C. § 512(c)) to the Riot Games Copyright Agent with the following information:

- A. An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright;
- B. A description of the copyrighted work that you claim has been infringed;
- C. The URL of the location on the Riot Games Site containing the material that you claim is infringing;
- D. Your address, telephone number, and email address;
- E. A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and
- F. A statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

Riot Games’ Copyright Agent can be reached by mail at: Riot Games, Inc., 10736 Jefferson Blvd., #622, Culver City, CA 90230 ATTN: Copyright Agent; or by email at: [copyright@riotgames.com](mailto:copyright@riotgames.com). This email address is intended solely for the



receipt of said notices and not for general inquiries or requests of Riot Games. Attachments cannot be accepted at the email address for security reasons. Accordingly, any notification of infringement submitted electronically with an attachment will not be received or processed. Please note that these notifications are legal notices, and that Riot Games may provide copies of such notices to the participants in the dispute or to third parties, at its discretion or as required by law. The Privacy Policy does not protect information provided in these notices.

#### **XI. WARRANTY DISCLAIMER**

THE PROPERTIES ARE PROVIDED TO YOU ON AN “AS IS” AND “AS AVAILABLE” BASIS WITHOUT WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, RIOT GAMES DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WHICH MIGHT APPLY TO THE PROPERTIES, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE, AND ANY WARRANTIES AS TO THE ACCURACY, RELIABILITY OR QUALITY OF ANY CONTENT OR INFORMATION CONTAINED WITHIN THE PROPERTIES. RIOT GAMES DOES NOT WARRANT THAT THE PROPERTIES WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE PROPERTIES ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. YOU ASSUME ALL RESPONSIBILITY FOR SELECTING THE PROPERTIES TO ACHIEVE YOUR INTENDED RESULTS, AND FOR THE INSTALLATION OF, USE OF, AND RESULTS OBTAINED FROM THE PROPERTIES.

Because some states or jurisdictions do not allow the disclaimer of implied warranties, the forgoing disclaimer may, in whole or in part, not apply to you.

#### **XII. INDEMNIFICATION**

YOU HEREBY AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS RIOT GAMES FROM AND AGAINST ANY AND ALL CLAIMS, LAWSUITS, DAMAGES, LOSSES, LIABILITIES AND COSTS (INCLUDING ATTORNEYS’ FEES) THAT DIRECTLY OR INDIRECTLY ARISE OR RESULT FROM YOUR USE OR MISUSE OF THE PROPERTIES, OR ANY VIOLATION BY YOU OF ANY OF THE PROVISIONS OF THIS AGREEMENT, THE EULA OR THE PRIVACY POLICY. Riot Games reserves the right, at its own expense and in its sole and absolute discretion, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will cooperate with Riot Games in asserting any available defenses.

#### **XIII. LIMITATION OF LIABILITY**

UNDER NO CIRCUMSTANCES, AND UNDER NO LEGAL THEORY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL RIOT GAMES BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF DATA, LOSS OF GOOD WILL, OR LOST PROFITS), OR ANY DAMAGES FOR GROSS NEGLIGENCE OF ANY KIND (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES) ARISING FROM YOUR USE OR MISUSE OF THE PROPERTIES, EVEN IF RIOT GAMES KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL RIOT GAMES BE LIABLE FOR ANY DAMAGES IN EXCESS OF ANY AMOUNT YOU HAVE PAID TO RIOT GAMES FOR GAME-RELATED TRANSACTIONS, IF ANY, DURING THE SIX (6) MONTHS IMMEDIATELY PRIOR TO THE TIME YOUR CAUSE OF ACTION AROSE.

Because some states or jurisdictions do not allow the exclusion or the limitation of liability for consequential or incidental damages, in such states or jurisdictions, the liability of Riot Games shall be limited to the fullest extent permitted by applicable law.

#### **XIV. EQUITABLE REMEDIES**

You hereby acknowledge and agree that Riot Games would suffer irreparable harm if this Agreement were not specifically enforced. Consequently, in addition to such monetary and other relief as may be recoverable at law, you agree that Riot Games shall be entitled to specific performance or other injunctive relief, without bond, other security, or proof of damages, as remedy for any breach or threatened breach of this Agreement. Additionally, in the event any legal or administrative action or proceeding is brought by either party in connection with this Agreement and consistent with

Section XV below, the prevailing party in such action or proceeding shall be entitled to recover from the other party all the costs, attorneys' fees and other expenses incurred by such prevailing party as the result of the action or proceeding.

## **XV. NEGOTIATIONS, BINDING ARBITRATION AND GOVERNING LAW**

**A. Negotiations.** Disputes can be expensive and time consuming for both parties. In an effort to accelerate resolution and reduce the cost of any dispute or claim related to this Agreement ("**Claim**"), you and Riot Games agree to first attempt to informally negotiate any Claim for at least thirty (30) days (except those Claims expressly excluded in Section XV.F below). Riot Games will send its notice to the address it has on file to the extent that you have provided additional contact information to Riot Games (e.g. by participating in a promotion or survey, or contacting a customer services representative). Otherwise, Riot Games will send its notice to the email address associated with your Account. You will send your notice to Riot Games, Inc., 10736 Jefferson Blvd., #622, Culver City, CA 90230, Attn: Legal Department. Please note that this informal resolution procedure does not suspend any statutory limitation periods applicable to the bringing of a Claim.

**B. Binding Arbitration.** If the parties fail to resolve a Claim through negotiations, within such thirty (30)-day period, either you or Riot Games may elect to have the Claim (except as otherwise provided in Section XV.F) finally and exclusively resolved by binding arbitration by sending a written notice requesting arbitration to the other party. Any election to arbitrate by one party shall be final and binding on the other. The arbitration will be conducted under the Commercial Arbitration Rules of the American Arbitration Association ("AAA Rules") and, where appropriate, the AAA's Supplementary Procedures for Consumer Related Disputes ("AAA Consumer Rules") that are in effect at the time the arbitration is initiated and under the terms set forth in this Agreement. Both the AAA Rules and the AAA Consumer Rules can be found at the AAA website, [www.adr.org](http://www.adr.org). In the event of a conflict between the terms set forth in this Section XV.B and either the AAA Rules or the AAA Consumer Rules, the terms in this Section XV.B will control and prevail.

Except as otherwise set forth in Section XV.F, you may seek any remedies available to you under federal, state or local laws in an arbitration action. As part of the arbitration, both you and Riot Games will have the opportunity for discovery of non-privileged information that is relevant to the Claim. The arbitrator will provide a written statement of the arbitrator's decision regarding the Claim, the award given and the arbitrator's findings and conclusions on which the arbitrator's decision is based. The determination of whether a Claim is subject to arbitration shall be governed by the Federal Arbitration Act and determined by a court rather than an arbitrator. Except as otherwise provided in this Agreement, (i) you and Riot Games may litigate in court to compel arbitration, stay proceedings pending arbitration, or confirm, modify, vacate or enter judgment on the award entered by the arbitrator; and (ii) the arbitrator's decision is final, binding on all parties and enforceable in any court that has jurisdiction, provided that any award may be challenged if the arbitrator fails to follow applicable law.

**BY AGREEING TO THIS ARBITRATION PROVISION, YOU UNDERSTAND THAT YOU AND RIOT GAMES ARE WAIVING THE RIGHT TO SUE IN COURT AND HAVE A JURY TRIAL.**

**C. Arbitration Fees.** If we are initiating arbitration for a Claim, we will pay all costs charged by the AAA Rules for initiating the arbitration. Your share of all other fees and costs of the arbitration, including your share of arbitrator compensation, will be charged pursuant to the AAA Rules, and where appropriate, limited by the AAA Consumer Rules. Where your share of the costs is deemed to be excessive by the arbitrator, Riot Games will pay all arbitration fees and expenses.

**D. Location.** The arbitration will take place in your hometown area if you so notify Riot Games in your notice of arbitration or within ten (10) days following receipt of Riot Games' arbitration notice. In the absence of a notice to conduct the arbitration in your hometown area, the arbitration will be conducted in Los Angeles, California, unless the parties agree to video, phone and/or internet connection appearances. Any Claim not subject to arbitration (other than claims proceeding in any small claims court), or where no election to arbitrate has been made, shall be decided exclusively by a court of competent jurisdiction in Los Angeles, California, United States of America, and you and Riot Games agree to submit to the personal jurisdiction of that court.

**E. Limitations.** You and Riot Games agree that any arbitration shall be limited to the Claim between Riot Games and you individually. YOU AND RIOT GAMES AGREE THAT (A) THERE IS NO RIGHT OR AUTHORITY FOR ANY DISPUTE TO BE ARBITRATED ON A CLASS-ACTION BASIS OR TO UTILIZE CLASS ACTION PROCEDURES; (B) THERE IS NO RIGHT OR AUTHORITY FOR ANY DISPUTE TO BE BROUGHT IN A PURPORTED REPRESENTATIVE CAPACITY OR AS A PRIVATE ATTORNEY GENERAL; AND (C) NO ARBITRATION SHALL BE JOINED WITH ANY OTHER.

**F. Exceptions to Negotiations and Arbitration.** You and Riot Games agree that the following Claims are not subject to the above provisions concerning negotiations and binding arbitration: (i) any Claims seeking to enforce or protect, or concerning the validity of, any of your or Riot Games' intellectual property rights; (ii) any Claim related to, or arising from, allegations of theft, piracy, invasion of privacy or unauthorized use; and (iii) any claim for equitable relief. In addition to the foregoing, either party may assert an individual action in small claims court for Claims that are within the scope of such courts' jurisdiction in lieu of arbitration.

**G. Governing Law.** Except as otherwise provided in this Agreement, this Agreement shall be governed by, and will be construed under, the laws of the United States of America and the law of the State of California, without regard to conflict of law principles. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. Other laws may apply if you choose to access the Game from outside of the United States. In such an event, those local laws shall affect this Agreement only to the extent necessary in that jurisdiction, and this Agreement shall be interpreted to give maximum effect to the terms and conditions in this Agreement. You are responsible for compliance with all local laws if and to the extent local laws are applicable. The New Zealand Consumer Guarantees Act of 1993 (the "**Act**") may apply to the Game if you access the Game from, and are a resident of, New Zealand. Notwithstanding anything to the contrary in this Agreement, if the Act applies then you may have other rights or remedies as set out in the Act which may apply in addition to or instead of those set out in this Agreement.

**H. Severability.** You and Riot Games agree that if any portion this Section XV is found illegal or unenforceable (except any portion of Section XV.F), that portion shall be severed and the remainder of the Section shall be given full force and effect. If Section XV.F is found to be illegal or unenforceable then neither you nor Riot Games will elect to arbitrate any Claim falling within that portion of Section XV.F found to be illegal or unenforceable and such Claim shall be exclusively decided by a court of competent jurisdiction within Los Angeles, State of California, United States of America, and you and Riot Games agree to submit to the personal jurisdiction of that court.

## **XVI. TERMINATION**

This Agreement (and all subsequent modifications, if any) shall remain effective until terminated. Both you and Riot Games may terminate this Agreement at any time for any reason or for no reason. Termination by Riot Games will be effective upon notice to you, termination or deletion of your Account, or its decision to permanently discontinue offering and/or supporting the Game, which it may do at any time in its sole discretion. You may terminate this Agreement at any time simply by not using the Site or the Game. If, however, you wish to terminate your Account, you must affirmatively do so by notifying Riot Games at [support@riotgames.com](mailto:support@riotgames.com) as stated above. Upon termination of this Agreement, your right to use the Properties shall immediately cease.

## **XVII. MISCELLANEOUS**

**A. Assignment.** Riot Games may assign this Agreement, in whole or in part, to any person or entity at any time with or without your consent. You may not assign the Agreement without Riot Games' prior written consent, and any unauthorized assignment by you shall be null and void.

**B. Customer Contact.** If you have any questions concerning these terms and conditions, or if you would like to contact Riot Games for any other reason, please contact Riot Games support at [support@riotgames.com](mailto:support@riotgames.com), or visit the "support" tab on the Site.

**C. Entire Agreement.** This Agreement represents the complete agreement between you and Riot Games concerning the Site, the Game, and the subject matter of the Agreement, and supersedes any prior or contemporaneous agreements between you and Riot Games; provided however that this Agreement shall coexist with, and shall not supersede, the [EULA](#) or the [Privacy Policy](#).

**D. Force Majeure.** Riot Games shall not be liable for any delay or failure to perform resulting from causes outside the reasonable control of Riot Games, including, without limitation, any failure to perform hereunder due to unforeseen circumstances or cause beyond Riot Games' control such as acts of god, war, terrorism, riots, embargoes, acts of civil or military authorities, fire, floods, accidents, strikes, or shortages of transportation facilities, fuel, energy, labor or materials.

**E. Location.** The Site and the Game are operated by Riot Games in the United States. Those who choose to access the Site and/or the Game from locations outside the United States do so on their own initiative and are responsible for compliance with applicable local laws. The Software is subject to United States export controls as set forth in the [EULA](#).

**F. No Partnership.** You agree that no joint venture, partnership, employment, or agency relationship exists between you and Riot Games as a result of this Agreement or your use of the Site or the Game.



**G. No Waiver.** Riot Games' failure to enforce any provision of this Agreement shall in no way be construed to be a present or future waiver of such provision, nor in any way affect the right of any party to enforce each and every such provision thereafter. The express waiver by Riot Games of any provision, condition or requirement of this Agreement shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement.

**H. Notices.** Except as otherwise expressly provided herein, all notices given by you or required under this Agreement shall be in writing and addressed to: Riot Games, Inc., 10736 Jefferson Blvd., #622, Culver City, CA 90230.

**I. Reform and Severability.** If any provision of this Agreement is held to be invalid or unenforceable for any reason, such provision shall be reformed to the extent necessary to make it enforceable to the maximum extent permissible so as to affect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect. If, however, it is determined that such provision cannot be reformed, then that provision shall be deemed severable from these terms and shall not affect the validity and enforceability of any remaining provisions.

**J. Section Headings.** The section headings used herein are for convenience only and shall not affect the interpretation of this Agreement or have any other legal effect.

**K. Survival.** The provisions of Sections IV, VI.A, IX, XI-XV, and XVII shall survive any termination of this Agreement.

**YOU HEREBY ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THE FOREGOING TERMS OF USE AGREEMENT AND AGREE THAT SELECTING THE "ACCEPT" BUTTON BELOW AND/OR YOUR USE OF ANY OF THE PROPERTIES IS AN ACKNOWLEDGMENT OF YOUR AGREEMENT TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT.**

**Twitch.tv**

**Terms of Service**

Last modified on 7/30/13

## **1. Introduction; Your Agreement to these Terms of Service.**

PLEASE READ THESE TERMS OF SERVICE CAREFULLY, INCLUDING THE MANDATORY ARBITRATION PROVISION WHICH REQUIRES THAT DISPUTES ARE RESOLVED BY FINAL AND BINDING ARBITRATION ON AN INDIVIDUAL AND NOT A CLASS-WIDE OR CONSOLIDATED BASIS.

Welcome to the game video management and streaming platform operated by Justin.tv, Inc. dba Twitch ("Twitch") consisting of the web site available at the URL <http://www.twitch.tv> and all related services, software applications and networks that allow for the authorized streaming and distribution of game video content over the internet (the "Twitch Service"). The Twitch Service also includes any other sites or services that link to these terms of service (the "Terms of Service"). Other services offered by Twitch may be subject to separate terms.

The following Terms of Service for the Twitch Service is a legal contract between you, an individual user of at least 13 years of age or a single entity ("you"), and Twitch regarding your use of the Twitch Service.

Twitch may offer certain additional services for which you agree to pay fees to Twitch. The applicable terms will be made available on the applicable Twitch web page and will supplement these Terms of Service. If you register and/or use any such paid fee services, you are also bound by the Twitch Terms of Sale. The Twitch Terms of Sale is hereby incorporated by reference.

PLEASE READ THESE TERMS OF SERVICE CAREFULLY. BY REGISTERING FOR, ACCESSING, BROWSING, DOWNLOADING FROM OR USING THE TWITCH SERVICE, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THESE TERMS OF SERVICE. IF AT ANY TIME YOU DO NOT AGREE TO THESE TERMS OF SERVICE, PLEASE IMMEDIATELY TERMINATE YOUR USE OF THE TWITCH SERVICE.

IF YOU ARE USING OR OPENING AN ACCOUNT WITH TWITCH ON BEHALF OF A COMPANY, ENTITY, OR ORGANIZATION (COLLECTIVELY, A "SUBSCRIBING ORGANIZATION") THEN YOU REPRESENT AND WARRANT THAT YOU: (I) ARE AN AUTHORIZED REPRESENTATIVE OF THAT SUBSCRIBING ORGANIZATION WITH THE AUTHORITY TO BIND SUCH ORGANIZATION TO THESE TERMS OF SERVICE; (II) HAVE READ THE FOREGOING TERMS; (III) UNDERSTAND THESE TERMS OF

SERVICE, AND (IV) AGREE TO THESE TERMS OF SERVICE ON BEHALF OF SUCH SUBSCRIBING ORGANIZATION.

## **2. Eligibility.**

The Twitch Service is not available to persons under the age of 13 or to any users previously suspended or removed from the Twitch Service by Twitch. In addition, if you are between the ages of 13 and 18 (or between 13 and the age of legal majority under applicable law), you may only use the Twitch Service under the supervision of a parent or legal guardian who agrees to be bound by these Terms of Service. BY DOWNLOADING, INSTALLING OR OTHERWISE USING THE TWITCH SERVICE, YOU REPRESENT THAT YOU ARE AT LEAST 13 YEARS OF AGE AND HAVE NOT BEEN PREVIOUSLY SUSPENDED OR REMOVED FROM THE TWITCH SERVICE.

## **3. Privacy Policy.**

Your privacy is important to Twitch. Please see our [Privacy Policy](#) for information relating to how we collect, use, and disclose your personal information.

## **4. License**

The Twitch Service is owned and operated by Twitch. Unless otherwise indicated, all Content and other materials on the Twitch Services, including, without limitation, Twitch's logos, the visual interfaces, graphics, design, compilation, information, software, computer code (including source code or object code), services, text, pictures, information, data, sound files, other files and the selection and arrangement thereof (collectively, the “**Materials**”) are protected by United States copyright, trade dress, patent, and trademark laws, international conventions, and all other relevant intellectual property and proprietary rights, and applicable laws. All Materials contained on the Twitch Service are the proprietary property of Twitch or its subsidiaries or affiliated companies and/or third-party licensors. All trademarks, service marks, and trade names are proprietary to Twitch or its affiliates and/or third-party licensors. Twitch reserves all rights not expressly granted in these Terms of Service.

Unless otherwise expressly stated in writing by Twitch, you are granted a limited, non-sublicensable license to access and use the Twitch Service for your personal or internal business use only. Such license is subject to these Terms of Service and does not include: (a) any resale or commercial use of the Twitch Service or the Materials therein; (b) the distribution, public performance or public display of any Materials (except for Broadcaster Content (as defined below) by the Broadcaster (as defined below) posting the Broadcaster Content); (c) modifying or otherwise making any derivative uses of the Twitch Service or the Materials, or any portion thereof; (d) use of any data mining, robots or similar data gathering or extraction methods; (e) downloading (other than the page caching) of any portion of the Twitch Service, the Materials or any information contained therein, except as expressly permitted on the Twitch Service; or (f) any use of the Twitch Service or the Materials other than for their intended purposes. Any use of the Twitch Service or the Materials other than as specifically authorized herein, without the prior written permission of Twitch, is strictly prohibited and will terminate the license granted herein. Such unauthorized use may also violate applicable laws, including without limitation copyright and trademark laws and applicable communications regulations and statutes. Unless explicitly stated herein, nothing in these Terms of Service shall be construed as conferring any license to intellectual property rights, whether by estoppel, implication or otherwise. This license is revocable at any time.

## **5. Individual Features and Services.**

When using the Twitch Service, you will be subject to any additional posted guidelines or rules applicable to specific services and features which may be posted from time to time (the “**Guidelines**”). All such Guidelines are hereby incorporated by reference into these Terms of Service.

## **6. Modification of these Terms of Service.**

Twitch reserves the right, at our discretion, to change, modify, add, or remove portions of these Terms of Service at any time. If Twitch changes these Terms of Service, we will provide notice of such changes, such as by sending an email, posting a notice on the Twitch Service or updating the “Last Updated” date above. Please check these Terms of Service and any Guidelines periodically for those changes. Your continued use of the Twitch Service after the posting of changes constitutes your binding acceptance of such changes. For any material changes to these Terms of Service, such amended terms will automatically be effective thirty days after they are initially posted on the Twitch Service. We will always make a reasonable effort to notify you if we do change these Terms of Service.

## **7. Digital Millennium Copyright Act.**

Please note that since we respect game designer, game publisher and other Content (as defined below) owner rights, it is Twitch's policy to respond to notices of alleged infringement that comply with the Digital Millennium Copyright Act (the "**DMCA**"). If you believe that anything in the Twitch Services infringes upon any copyright that you own or control, you may file a notification of such infringement with our Designated Agent as set forth below.

Name of Designated Agent: Elizabeth Baker - General Counsel Address of Designated Agent: 225 Bush Street, 6th Floor, San Francisco, CA 94104 E-mail Address of Designated Agent: dmca@twitch.tv.

Please see [17 U.S.C. §512\(c\)\(3\)](#) for the requirements of a proper notification. You should note that if you knowingly misrepresent in your notification that the material or activity is infringing, you will be liable for any damages, including costs and attorneys' fees, incurred by us or the alleged infringer as the result of our relying upon such misrepresentation in removing or disabling access to the material or activity claimed to be infringing.

## **8. Repeat Infringer Policy.**

In accordance with the DMCA and other applicable law, Twitch has adopted a policy that it will promptly terminate without notice any user's access to the Twitch Service if that user is determined by Twitch to be a "repeat infringer." A repeat infringer includes, without limitation a user who has been notified by Twitch of infringing activity violations more than twice and/or who has had their Broadcaster Content or any other user-submitted content removed from the Twitch Service more than twice. Twitch may also at our sole discretion limit access to the Twitch Service and/or terminate the accounts of any users who infringe any intellectual property rights of others, whether or not there is any repeat infringement.

In addition, Twitch accommodates and does not interfere with standard technical measures used by copyright owners to protect their materials.

## **9. Trademarks.**

TWITCH, TwitchTV, the Twitch logos and any other product or service name or slogan contained in the Twitch Service are trademarks of Twitch or our suppliers or licensors and may not be copied, imitated or used, in whole or in part, without the prior written permission of Twitch or the applicable trademark holder. Any authorized use of these trademarks must be in accordance with guidelines that Twitch may provide you from time to time.

You may not use any metatags or any other hidden text utilizing "Twitch" or any other name, trademark or product or service name of Twitch without our prior written permission. In addition, the look and feel of the Twitch Service, including all page headers, custom graphics, button icons and scripts, is the service mark, trademark and/or trade dress of Twitch and may not be copied, imitated or used, in whole or in part, without our prior written permission. All other trademarks, registered trademarks, product names and company names or logos mentioned in the Twitch Service are the property of their respective owners. Reference to any products, services, processes or other information, by trade name, trademark, manufacturer, supplier or otherwise does not constitute or imply endorsement, sponsorship or recommendation thereof by us or any other affiliation.

## **10. Broadcasters.**

Twitch allows certain users ("**Broadcaster**") to distribute streaming live and pre-recorded videos of video game related activities.

### **1. License From Twitch.**

If you sign up for an account as a Broadcaster, subject to your compliance with these Terms of Service, Twitch hereby grants to you a personal, limited, non-exclusive, non-transferable, freely revocable license to use the Twitch Service for the uploading and distributing of authorized digital content, including videos ("**Broadcaster Content**").

### **2. License to Twitch**

Unless otherwise agreed to in a written agreement between you and Twitch that was signed by an authorized representative of Twitch:

1. By distributing or disseminating Broadcaster Content through the Twitch Service, you hereby grant to Twitch a worldwide, nonexclusive, royalty-free, perpetual, transferable and fully sublicensable right to use, host, convert for streaming, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, perform, display and otherwise exploit your Broadcaster Content, in any form, format, media or media channels now known

or hereafter developed or discovered. You grant Twitch and our sublicensees the right to use the name that you submit in connection with such content, if we or they choose.

2. Except for Broadcaster Content already downloaded by users, the foregoing license granted by you terminates as to a specific piece of Broadcaster Content once you remove or delete such Broadcaster Content from the Twitch Service.

### **3. Broadcaster Content Representations and Warranties.**

You are solely responsible for your Broadcaster Content and the consequences of posting or publishing it. By uploading and publishing your Broadcaster Content, you represent, and warrant that: (1) you are the creator and owner of the Broadcaster Content or otherwise have sufficient rights and authority to grant the rights granted herein; (2) your Broadcaster Content does not and will not (a) infringe, violate, or misappropriate any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right or (b) slander, defame, or libel any other person; (3) your Broadcaster Content does not contain any viruses, adware, spyware, worms, or other harmful or malicious code or (4) unless you have received prior written authorization, your Broadcaster Content specifically does not contain any prerelease or nonpublic beta software or game content or any confidential information of Twitch or third parties. Twitch reserves all rights and remedies against any Broadcasters who breach these representations and warranties.

### **4. Content is Uploaded at Your Own Risk.**

Notwithstanding any obligations hereunder of Twitch to protect Broadcaster Content, Twitch cannot guarantee that there will be no unauthorized copying or distribution of Broadcaster Content nor will Twitch be liable for any copying or usage of the Broadcaster Content not authorized by Twitch. You hereby release and forever waive any claims you may have against Twitch for any such unauthorized copying or usage of the Broadcaster Content, under any theory. THE SECURITY MEASURES TO PROTECT BROADCASTER CONTENT USED BY TWITCH HEREIN ARE PROVIDED AND USED “AS-IS” AND WITH NO WARRANTIES OR ASSURANCES THAT SUCH SECURITY MEASURES WILL WITHSTAND ATTEMPTS TO EVADE SECURITY MECHANISMS OR THAT THERE WILL BE NO CRACKS, DISABLEMENTS OR OTHER CIRCUMVENTION OF SUCH SECURITY MEASURES.

### **5. Prevention of Unauthorized Use.**

Unless expressly permitted in writing by Twitch, you may not sell, rent, lease, share or provide access to your Broadcaster account to any third party, including without limitation charging any remuneration to any third party for access to administrative rights on your Broadcaster account. Twitch reserves the right to exercise whatever lawful means it deems necessary to prevent unauthorized use of the Twitch Service, including, but not limited to, technological barriers, IP mapping, and directly contacting your Internet Service Provider (ISP) regarding such unauthorized use.

### **6. Promotions**

Broadcasters may promote, administer or conduct a promotion on, through or utilizing Twitch (a “Promotion”). If you are a Broadcaster and you choose to promote, administer or conduct a Promotion, you must follow the following rules:

1. You may not conduct a Promotion if the aggregate value of all prizes awarded in the Promotion exceeds \$5,000;
2. Your Promotion may not require the entrant to submit any User Content(as defined below);
3. Your Promotion may only be open to residents of the fifty (50) United States (including Washington D.C.);
4. Entrants must be 18 or older, or the age of majority under applicable law.
5. Your Promotion must be free to enter.
6. Generally, your Promotion should not require entrants to endorse a product or otherwise comment or provide an opinion on a product in such a way that a reasonable person may believe the endorsement, comment or opinion is from the entrant. If it is possible that you may be asking an entrant to make such an endorsement, comment or opinion, you must require the entrant to disclose that he or she receives a promotion entry in exchange for such endorsement, comment or opinion;
7. You may not indicate that Twitch is a sponsor or co-sponsor of the Promotion.

8. Your Promotion must have a set of Official Rules that contain all details, disclosures and other information required by applicable law and that otherwise comply with law.
9. Your Promotion must be conducted, and prizes awarded, as described in your Official Rules.
10. You must comply with all applicable laws, rules, and regulations in your execution of the Promotion.
11. There are a number of laws and requirements associated with promotions, so ask an expert if you have questions or concerns.

You, at your expense, will be solely responsible for all aspects of your Promotion, including, without limitation, the execution, administration, and operation of the Promotion; drafting and posting the Official Rules; selecting winners; issuing prizes; and obtaining all necessary third-party permissions and approvals, including, without limitation, filing any and all necessary registrations and bonds. Twitch has the right to remove your Promotion from the Twitch Service for any reason.

#### 11. Third Party Content.

In addition to the Broadcaster Content, Twitch may provide other third party content on the Twitch Services and may provide links to Web pages and content of third parties (collectively the “**Third-Party Content**”) as a service to those interested in this information. Twitch does not control, endorse or adopt any Third-Party Content and makes no representation or warranties of any kind regarding the Third-Party Content, including without limitation regarding its accuracy or completeness. You acknowledge and agree that Twitch is not responsible or liable in any manner for any Third-Party Content and undertakes no responsibility to update or review any Third-Party Content. Users use such Third-Party Content contained therein at their own risk.

The Twitch Service may include links or references to other web sites or services solely as a convenience to Users (“**Reference Sites**”). Twitch does not endorse any such Reference Sites or the information, materials, products, or services contained on or accessible through Reference Sites. In addition, your correspondence or business dealings with, or participation in promotions of, advertisers found on or through the Twitch Service are solely between you and such advertiser. Access and use of Reference Sites, including the information, materials, products, and services on or available through Reference Sites is solely at your own risk.

#### 12. Prohibited Conduct.

The Twitch Services may include interactive areas or services (“**Interactive Areas**”) in which you or other users may create, post or store content, messages, materials, data, information, text, music, sound, photos, video, graphics, applications, code or other items or materials on the Twitch Services (“**User Content**” and collectively with Broadcaster Content, “**Content**”). You are solely responsible for your use of such Interactive Areas and use them at your own risk. BY USING THE TWITCH SERVICE, INCLUDING THE INTERACTIVE AREAS, YOU AGREE NOT TO violate any law, contract, intellectual property or other third-party right or commit a tort, and that you are solely responsible for your conduct while on the Twitch Service. You agree that you will abide by these Terms of Service and will not:

1. use the Twitch Service for any purposes other than to disseminate or receive original or appropriately licensed content and/or to access the Twitch Service as such services are offered by Twitch;
2. rent, lease, loan, sell, resell, sublicense, distribute or otherwise transfer the licenses granted herein or any Materials (as defined in section 16, below);
3. post, upload, or distribute any defamatory, libelous, or inaccurate Content;
4. impersonate any person or entity, falsely claim an affiliation with any person or entity, or access the Twitch Service accounts of others without permission, forge another persons’ digital signature, misrepresent the source, identity, or content of information transmitted via the Twitch Service, or perform any other similar fraudulent activity;
5. delete the copyright or other proprietary rights notices on the Twitch Service or Content;
6. make unsolicited offers, advertisements, proposals, or send junk mail or spam to other Users of the Twitch Service, including, without limitation, unsolicited advertising, promotional materials, or other solicitation material, bulk mailing of commercial advertising, chain mail, informational



announcements, charity requests, petitions for signatures, or any of the foregoing related to promotional giveaways (such as raffles and contests), and other similar activities;

7. harvest or collect the email addresses or other contact information of other users from the Twitch Service for the purpose of sending spam or other commercial messages;
8. use the Twitch Service for any illegal purpose, or in violation of any local, state, national, or international law, including, without limitation, laws governing intellectual property and other proprietary rights, and data protection and privacy;
9. defame, harass, abuse, threaten or defraud Users of the Twitch Service, or collect, or attempt to collect, personal information about Users or third parties without their consent;
10. remove, circumvent, disable, damage or otherwise interfere with security-related features of the Twitch Service or Content, features that prevent or restrict use or copying of any content accessible through the Twitch Service, or features that enforce limitations on the use of the Twitch Service or Content;
11. reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Twitch Service or any part thereof, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation;
12. modify, adapt, translate or create derivative works based upon the Twitch Service or any part thereof, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation;
13. intentionally interfere with or damage operation of the Twitch Service or any user's enjoyment of them, by any means, including uploading or otherwise disseminating viruses, adware, spyware, worms, or other malicious code;
14. relay email from a third party's mail servers without the permission of that third party;
15. use any robot, spider, scraper, crawler or other automated means to access the Twitch Service for any purpose or bypass any measures Twitch may use to prevent or restrict access to the Twitch Service;
16. manipulate identifiers in order to disguise the origin of any Content transmitted through the Twitch Service;
17. interfere with or disrupt the Twitch Service or servers or networks connected to the Twitch Service, or disobey any requirements, procedures, policies or regulations of networks connected to the Twitch Service; use the Twitch Service in any manner that could interfere with, disrupt, negatively affect or inhibit other users from fully enjoying the Twitch Service, or that could damage, disable, overburden or impair the functioning of the Twitch Service in any manner;
18. use or attempt to use another user's account without authorization from such user and Twitch;
19. attempt to circumvent any content filtering techniques we employ, or attempt to access any service or area of the Twitch Service that you are not authorized to access; or
20. attempt to indicate in any manner that you have a relationship with us or that we have endorsed you or any products or services for any purpose.

Further, BY USING THE TWITCH SERVICE, INCLUDING THE INTERACTIVE AREAS YOU AGREE NOT TO post, upload to, transmit, distribute, store, create or otherwise publish through the Twitch Service any of the following:

21. Content that would constitute, encourage or provide instructions for a criminal offense, violate the rights of any party, or that would otherwise create liability or violate any local, state, national or international law or regulation;
22. Content that may infringe any patent, trademark, trade secret, copyright or other intellectual or proprietary right of any party. By posting any Content, you represent and warrant that you have the lawful right to distribute and reproduce such Content;

23. Content that is unlawful, libelous, defamatory, obscene, pornographic, indecent, lewd, suggestive, harassing, threatening, invasive of privacy or publicity rights, abusive, inflammatory, fraudulent or otherwise objectionable;
24. Content that impersonates any person or entity or otherwise misrepresents your affiliation with a person or entity;
25. private information of any third party, including, without limitation, addresses, phone numbers, email addresses, Social Security numbers and credit card numbers;
26. viruses, corrupted data or other harmful, disruptive or destructive files; and
27. Content that, in the sole judgment of Twitch, is objectionable or which restricts or inhibits any other person from using or enjoying the Interactive Areas or the Twitch Service, or which may expose Twitch or our users to any harm or liability of any type.

Twitch takes no responsibility and assumes no liability for any Content posted, stored or uploaded by you or any third party, or for any loss or damage thereto, nor is Twitch liable for any mistakes, defamation, slander, libel, omissions, falsehoods, obscenity, pornography or profanity you may encounter. Your use of the Twitch Service is at your own risk. Enforcement of the user content or conduct rules set forth in these Terms of Service is solely at Twitch's discretion, and failure to enforce such rules in some instances does not constitute a waiver of our right to enforce such rules in other instances. In addition, these rules do not create any private right of action on the part of any third party or any reasonable expectation that the Twitch Service will not contain any content that is prohibited by such rules. As a provider of interactive services, Twitch is not liable for any statements, representations or Content provided by our users in any public forum, personal home page or other Interactive Area. Twitch does not endorse any Content or any opinion, recommendation or advice expressed therein, and Twitch expressly disclaims any and all liability in connection with Content. Although Twitch has no obligation to screen, edit or monitor any of the Content posted in any Interactive Area, Twitch reserves the right, and has absolute discretion, to remove, screen or edit any Content posted or stored on the Twitch Service at any time and for any reason without notice, and you are solely responsible for creating backup copies of and replacing any Content you post or store on the Twitch Service at your sole cost and expense. Any use of the Interactive Areas or other portions of the Twitch Service in violation of the foregoing violates these Terms and may result in, among other things, termination or suspension of your rights to use the Interactive Areas and/or the Twitch Service.

### **13. Rights in User Content.**

If you submit or post User Content to the Twitch Service you grant Twitch a worldwide, nonexclusive, royalty-free, perpetual, irrevocable and fully sublicensable right to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, perform and display such User Content in any form, format, media or media channels now known or hereafter developed or discovered. You grant Twitch and our sublicensees the right to use the name that you submit in connection with such content, if we or they choose.

By submitting or posting User Content to the Twitch Service, you represent and warrant that: (a) such User Content is non-confidential; (b) you own and control all of the rights to the User Content that you post or you otherwise have all necessary rights to post such User Content to the Twitch Service; (c) the User Content is accurate and not misleading or harmful in any manner; and (d) the User Content, and your use and posting thereof in connection with the Twitch Service, does not and will not violate these Terms of Service or any applicable law, rule or regulation.

### **14. Account**

#### **1. Account and Password.**

When you use the Twitch Service to upload and/or download or purchase content or any products, services, or information from Twitch, you may be asked to provide a password. You are solely responsible for maintaining the confidentiality of your account and password and for restricting access to your computer, and you agree to accept responsibility for all activities that occur under your account or password. You agree that the information you provide to Twitch on registration and at all other times will be true, accurate, current, and complete. You also agree that you will ensure that this information is kept accurate and up-to-date at all times. If you have reason to believe that your account is no longer secure (e.g., in the event of a loss, theft or unauthorized disclosure or use of your account ID, password, or any credit, debit or charge card number, if applicable), then you agree to immediately notify Twitch. You may be liable for the losses incurred by Twitch or others due to any unauthorized use of your Twitch Service account.

#### **2. Third Party Accounts.**

Twitch may permit you to register for and log onto the Twitch Service via certain third party social networks, such as by using Facebook Connect. If you log in via such social networks, the profile information connected to the account you use to log into the Twitch Service, including your name, may be used by Twitch in order to provide and support your account. You also acknowledge and agree that Twitch may publish information regarding your use of the Twitch Service to and in connection with any such third party social network with which you use the Twitch Service.

## **15. Termination.**

### **1. Twitch.**

Twitch reserves the right, without notice and in our sole discretion, to terminate your license to use the Twitch Service (including to post Broadcaster Content), and to block or prevent your future access to and use of the Twitch Service.

### **2. You.**

Your only remedy with respect to any dissatisfaction with (i) the Twitch Service, (ii) any term of these Terms of Service, (iii) any policy or practice of Twitch in operating the Twitch Service, or (iv) any content or information transmitted through the Twitch Service, is to terminate your account and discontinuing use of any and all parts of the Twitch Service.

## **16. Indemnification.**

You agree to indemnify, defend, and hold harmless Twitch, its affiliated companies, contractors, employees, agents and its third-party suppliers, licensors, and partners from any claims, losses, damages, liabilities, including legal fees and expenses, arising out of your use or misuse of the Twitch Service, any Content you post, store or otherwise transmit in or through the Twitch Service, your violation of the rights of any third party, any violation by you of these Terms of Service, or any breach of the representations, warranties, and covenants made by you herein. Twitch reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify Twitch, and you agree to cooperate with Twitch's defense of these claims. Twitch will use reasonable efforts to notify you of any such claim, action, or proceeding upon becoming aware of it. If you are a Broadcaster, the forgoing indemnity includes, without limitation, any claims, losses, damages, liabilities, including legal fees and expenses, arising out of your Promotions or Broadcaster Content.

## **17. Disclaimers; No Warranties.**

### **1. No warranties.**

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW: (A) THE TWITCH SERVICE AND THE CONTENT AND MATERIALS CONTAINED THEREIN ARE PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, EXCEPT AS EXPRESSLY PROVIDED TO THE CONTRARY IN A WRITING BY TWITCH; (B) TWITCH, AND ITS AFFILIATES, PARTNERS, AND SUPPLIERS (" **TWITCH PARTIES** ") DISCLAIM ALL OTHER WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT AS TO THE TWITCH SERVICE, INCLUDING ANY INFORMATION, CONTENT OR MATERIALS CONTAINED THEREIN; (C) TWITCH DOES NOT REPRESENT OR WARRANT THAT CONTENT OR MATERIALS ON THE TWITCH SERVICE ARE ACCURATE, COMPLETE, RELIABLE, CURRENT OR ERROR-FREE; (D) TWITCH IS NOT RESPONSIBLE FOR TYPOGRAPHICAL ERRORS OR OMISSIONS RELATING TO TEXT OR PHOTOGRAPHY; AND (E) WHILE TWITCH ATTEMPTS TO MAKE YOUR ACCESS AND USE OF THE TWITCH SERVICE SAFE, TWITCH CANNOT AND DOES NOT REPRESENT OR WARRANT THAT THE TWITCH SERVICE OR OUR SERVER(S) ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, AND THEREFORE, YOU SHOULD USE INDUSTRY-RECOGNIZED SOFTWARE TO DETECT AND DISINFECT VIRUSES FROM ANY DOWNLOAD. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM TWITCH OR THROUGH THE TWITCH SERVICE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN. YOU EXPRESSLY ACKNOWLEDGE THAT AS USED IN THIS SECTION 17, THE TERM "TWITCH" INCLUDES TWITCH'S OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS, LICENSORS AND SUBCONTRACTORS.

## **18. Limitation of Liability and Damages.**

### **1. Limitation of Liability.**



TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW: (A) IN NO EVENT SHALL TWITCH OR THE TWITCH PARTIES BE LIABLE FOR ANY DIRECT, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, OR ANY OTHER DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF PROFITS OR LOSS OF DATA, WHETHER IN AN ACTION IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE) OR OTHERWISE, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF OR INABILITY TO USE THE TWITCH SERVICE, THE CONTENT OR THE MATERIALS, INCLUDING WITHOUT LIMITATION ANY DAMAGES CAUSED BY OR RESULTING FROM RELIANCE BY USER ON ANY INFORMATION OBTAINED FROM TWITCH, OR THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES OR EMAIL, ERRORS, DEFECTS, VIRUSES, DELAYS IN OPERATION OR TRANSMISSION OR ANY FAILURE OF PERFORMANCE, WHETHER OR NOT RESULTING FROM ACTS OF GOD, COMMUNICATIONS FAILURE, THEFT, DESTRUCTION OR UNAUTHORIZED ACCESS TO TWITCH'S RECORDS, PROGRAMS OR SERVICES; AND (B) IN NO EVENT SHALL THE AGGREGATE LIABILITY OF TWITCH, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, WHETHER ACTIVE, PASSIVE OR IMPUTED), PRODUCT LIABILITY, STRICT LIABILITY OR OTHER THEORY, ARISING OUT OF OR RELATING TO THE USE OF OR INABILITY TO USE THE TWITCH SERVICE EXCEED THE AMOUNT PAID BY YOU, IF ANY, FOR ACCESSING THE TWITCH SERVICE DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE OF THE CLAIM OR ONE HUNDRED DOLLARS, WHICHEVER IS GREATER.

## **2. Reference Sites.**

THESE LIMITATIONS OF LIABILITY ALSO APPLY WITH RESPECT TO DAMAGES INCURRED BY YOU BY REASON OF ANY PRODUCTS OR SERVICES SOLD OR PROVIDED ON ANY REFERENCE SITES OR OTHERWISE BY THIRD PARTIES OTHER THAN TWITCH AND RECEIVED THROUGH OR ADVERTISED ON THE TWITCH SERVICE OR RECEIVED THROUGH ANY REFERENCE SITES.

## **3. Basis of the Bargain.**

YOU ACKNOWLEDGE AND AGREE THAT TWITCH HAS OFFERED THE TWITCH SERVICES, BROADCASTER CONTENT, MATERIALS AND OTHER CONTENT AND INFORMATION, SET ITS PRICES, AND ENTERED INTO THESE TERMS OF SERVICE IN RELIANCE UPON THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN, THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN REFLECT A REASONABLE AND FAIR ALLOCATION OF RISK BETWEEN YOU AND TWITCH, AND THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN YOU AND TWITCH. TWITCH WOULD NOT BE ABLE TO PROVIDE THE TWITCH SERVICE TO YOU ON AN ECONOMICALLY REASONABLE BASIS WITHOUT THESE LIMITATIONS.

## **19. Applicable Law and Venue**

PLEASE READ THE FOLLOWING PARAGRAPH CAREFULLY BECAUSE IT REQUIRES YOU TO ARBITRATE DISPUTES WITH TWITCH AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM TWITCH.

You and Twitch agree to arbitrate any dispute arising from these Terms of Service or your use of the Twitch Service, except that you and Twitch are not required to arbitrate any dispute in which either party seeks equitable and other relief for the alleged unlawful use of copyrights, trademarks, trade names, logos, trade secrets, or patents. ARBITRATION PREVENTS YOU FROM SUING IN COURT OR FROM HAVING A JURY TRIAL. You and Twitch agree that you will notify each other in writing of any dispute within thirty (30) days of when it arises. Notice to Twitch shall be sent to Justin.tv, Inc. dba Twitch, Attn: Legal, 225 Bush Street, 6th Floor, San Francisco, CA 94104. You and Twitch further agree: to attempt informal resolution prior to any demand for arbitration; that any arbitration will occur in Santa Clara County, California; that arbitration will be conducted confidentially by a single arbitrator in accordance with the rules of JAMS; and that the state or federal courts in Santa Clara County, California have exclusive jurisdiction over any appeals of an arbitration award and over any suit between the parties not subject to arbitration. Other than class procedures and remedies discussed below, the arbitrator has the authority to grant any remedy that would otherwise be available in court. Any dispute between the parties will be governed by this Agreement and the laws of the State of California and applicable United States law, without giving effect to any conflict of laws principles that may provide for

the application of the law of another jurisdiction. Whether the dispute is heard in arbitration or in court, you and Twitch will not commence against the other a class action, class arbitration or other representative action or proceeding.

## **20. Miscellaneous.**

### **1. Notice.**

Twitch may provide you with notices, including those regarding changes to Twitch's terms and conditions, by email, regular mail or postings on the Twitch Service. Notice will be deemed given twenty-four hours after email is sent, unless Twitch is notified that the email address is invalid. Alternatively, we may give you legal notice by mail to a postal address, if provided by you through the Twitch Service. In such case, notice will be deemed given three days after the date of mailing. Notice posted on the Twitch Service is deemed given 30 days following the initial posting.

### **2. Waiver.**

The failure of Twitch to exercise or enforce any right or provision of these Terms of Service will not constitute a waiver of such right or provision. Any waiver of any provision of these Terms of Service will be effective only if in writing and signed by Twitch.

### **3. Severability.**

If any provision of these Terms of Service or any guidelines is held to be unlawful, void, or for any reason unenforceable, then that provision will be limited or eliminated from these Terms of Service to the minimum extent necessary and will not affect the validity and enforceability of any remaining provisions.

### **4. Assignment.**

These Terms of Service and related Guidelines, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by Twitch without restriction. Any assignment attempted to be made in violation of this Terms of Service shall be void.

### **5. Survival.**

Upon termination of these Terms of Service, any provision which, by its nature or express terms should survive, will survive such termination or expiration, including, but not limited to, Sections 7, 8, 10(b)(2), 10(c), 10(d), 12, 16-20.

### **6. Headings.**

The heading references herein are for convenience purposes only, do not constitute a part of these Terms of Service, and will not be deemed to limit or affect any of the provisions hereof.

### **7. Entire Agreement.**

This is the entire agreement between you and Twitch relating to the subject matter herein and will not be modified except in writing, signed by both parties, or by a change to these Terms of Service or Guidelines made by Twitch as set forth in Section 6 above.

### **8. Claims.**

YOU AND TWITCH AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE TWITCH SERVICE MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

### **9. Disclosures.**

The Twitch Service are offered by Justin.tv, Inc. dba Twitch, located at: 225 Bush Street, 6th Floor, San Francisco, CA 94104 and email: [help@twitch.tv](mailto:help@twitch.tv). If you are a California resident, you may have this same information emailed to you by sending a letter to the foregoing address with your email address and a request for this information.

## **YouTube Terms of Service**

### **1. Your Acceptance**

1. By using or visiting the YouTube website or any YouTube products, software, data feeds, and services provided to you on, from, or through the YouTube website (collectively the "Service") you signify your agreement to (1) these terms and conditions (the "Terms of Service"), (2) Google's Privacy Policy, found at

<http://www.youtube.com/t/privacy> and incorporated herein by reference, and (3) YouTube's Community Guidelines, found at [http://www.youtube.com/t/community\\_guidelines](http://www.youtube.com/t/community_guidelines) and also incorporated herein by reference. If you do not agree to any of these terms, the Google Privacy Policy, or the Community Guidelines, please do not use the Service.

2. Although we may attempt to notify you when major changes are made to these Terms of Service, you should periodically review the most up-to-date version <http://www.youtube.com/t/terms>. YouTube may, in its sole discretion, modify or revise these Terms of Service and policies at any time, and you agree to be bound by such modifications or revisions. Nothing in these Terms of Service shall be deemed to confer any third-party rights or benefits.

## **2. Service**

1. These Terms of Service apply to all users of the Service, including users who are also contributors of Content on the Service. "Content" includes the text, software, scripts, graphics, photos, sounds, music, videos, audiovisual combinations, interactive features and other materials you may view on, access through, or contribute to the Service. The Service includes all aspects of YouTube, including but not limited to all products, software and services offered via the YouTube website, such as the YouTube channels, the YouTube "Embeddable Player," the YouTube "Uploader" and other applications.
2. The Service may contain links to third party websites that are not owned or controlled by YouTube. YouTube has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third party websites. In addition, YouTube will not and cannot censor or edit the content of any third-party site. By using the Service, you expressly relieve YouTube from any and all liability arising from your use of any third-party website.
3. Accordingly, we encourage you to be aware when you leave the Service and to read the terms and conditions and privacy policy of each other website that you visit.

## **3. YouTube Accounts**

1. In order to access some features of the Service, you will have to create a YouTube or Google Account. You may never use another's account without permission. When creating your account, you must provide accurate and complete information. You are solely responsible for the activity that occurs on your account, and you must keep your account password secure. You must notify YouTube immediately of any breach of security or unauthorized use of your account.
2. Although YouTube will not be liable for your losses caused by any unauthorized use of your account, you may be liable for the losses of YouTube or others due to such unauthorized use.

## **4. General Use of the Service—Permissions and Restrictions**

YouTube hereby grants you permission to access and use the Service as set forth in these Terms of Service, provided that:

1. You agree not to distribute in any medium any part of the Service or the Content without YouTube's prior written authorization, unless YouTube makes available the means for such distribution through functionality offered by the Service (such as the Embeddable Player).
2. You agree not to alter or modify any part of the Service.
3. You agree not to access Content through any technology or means other than the video playback pages of the Service itself, the Embeddable Player, or other explicitly authorized means YouTube may designate.
4. You agree not to use the Service for any of the following commercial uses unless you obtain YouTube's prior written approval:
  - o the sale of access to the Service;
  - o the sale of advertising, sponsorships, or promotions placed on or within the Service or Content; or
  - o the sale of advertising, sponsorships, or promotions on any page of an ad-enabled blog or website containing Content delivered via the Service, unless other material not obtained from YouTube appears on the same page and is of sufficient value to be the basis for such sales.
5. Prohibited commercial uses do not include:

- uploading an original video to YouTube, or maintaining an original channel on YouTube, to promote your business or artistic enterprise;
- showing YouTube videos through the Embeddable Player on an ad-enabled blog or website, subject to the advertising restrictions set forth above in Section 4.D; or
- any use that YouTube expressly authorizes in writing.

(For more information about what constitutes a prohibited commercial use, see our FAQ.)

6. If you use the Embeddable Player on your website, you may not modify, build upon, or block any portion or functionality of the Embeddable Player, including but not limited to links back to the YouTube website.
7. If you use the YouTube Uploader, you agree that it may automatically download and install updates from time to time from YouTube. These updates are designed to improve, enhance and further develop the Uploader and may take the form of bug fixes, enhanced functions, new software modules and completely new versions. You agree to receive such updates (and permit YouTube to deliver these to you) as part of your use of the Uploader.
8. You agree not to use or launch any automated system, including without limitation, "robots," "spiders," or "offline readers," that accesses the Service in a manner that sends more request messages to the YouTube servers in a given period of time than a human can reasonably produce in the same period by using a conventional on-line web browser. Notwithstanding the foregoing, YouTube grants the operators of public search engines permission to use spiders to copy materials from the site for the sole purpose of and solely to the extent necessary for creating publicly available searchable indices of the materials, but not caches or archives of such materials. YouTube reserves the right to revoke these exceptions either generally or in specific cases. You agree not to collect or harvest any personally identifiable information, including account names, from the Service, nor to use the communication systems provided by the Service (e.g., comments, email) for any commercial solicitation purposes. You agree not to solicit, for commercial purposes, any users of the Service with respect to their Content.
9. In your use of the Service, you will comply with all applicable laws.
10. YouTube reserves the right to discontinue any aspect of the Service at any time.

## 5. Your Use of Content

In addition to the general restrictions above, the following restrictions and conditions apply specifically to your use of Content.

1. The Content on the Service, and the trademarks, service marks and logos ("Marks") on the Service, are owned by or licensed to YouTube, subject to copyright and other intellectual property rights under the law.
2. Content is provided to you AS IS. You may access Content for your information and personal use solely as intended through the provided functionality of the Service and as permitted under these Terms of Service. You shall not download any Content unless you see a "download" or similar link displayed by YouTube on the Service for that Content. You shall not copy, reproduce, distribute, transmit, broadcast, display, sell, license, or otherwise exploit any Content for any other purposes without the prior written consent of YouTube or the respective licensors of the Content. YouTube and its licensors reserve all rights not expressly granted in and to the Service and the Content.
3. You agree not to circumvent, disable or otherwise interfere with security-related features of the Service or features that prevent or restrict use or copying of any Content or enforce limitations on use of the Service or the Content therein.
4. You understand that when using the Service, you will be exposed to Content from a variety of sources, and that YouTube is not responsible for the accuracy, usefulness, safety, or intellectual property rights of or relating to such Content. You further understand and acknowledge that you may be exposed to Content that is inaccurate, offensive, indecent, or objectionable, and you agree to waive, and hereby do waive, any legal or equitable rights or remedies you have or may have against YouTube with respect thereto, and, to the extent permitted by applicable law, agree to indemnify and hold harmless YouTube, its owners, operators, affiliates, licensors, and licensees to the fullest extent allowed by law regarding all matters related to your use of the Service.

## 6. Your Content and Conduct

1. As a YouTube account holder you may submit Content to the Service, including videos and user comments. You understand that YouTube does not guarantee any confidentiality with respect to any Content you submit.
2. You shall be solely responsible for your own Content and the consequences of submitting and publishing your Content on the Service. You affirm, represent, and warrant that you own or have the necessary licenses, rights, consents, and permissions to publish Content you submit; and you license to YouTube all patent, trademark, trade secret, copyright or other proprietary rights in and to such Content for publication on the Service pursuant to these Terms of Service.
3. For clarity, you retain all of your ownership rights in your Content. However, by submitting Content to YouTube, you hereby grant YouTube a worldwide, non-exclusive, royalty-free, sublicenseable and transferable license to use, reproduce, distribute, prepare derivative works of, display, and perform the Content in connection with the Service and YouTube's (and its successors' and affiliates') business, including without limitation for promoting and redistributing part or all of the Service (and derivative works thereof) in any media formats and through any media channels. You also hereby grant each user of the Service a non-exclusive license to access your Content through the Service, and to use, reproduce, distribute, display and perform such Content as permitted through the functionality of the Service and under these Terms of Service. The above licenses granted by you in video Content you submit to the Service terminate within a commercially reasonable time after you remove or delete your videos from the Service. You understand and agree, however, that YouTube may retain, but not display, distribute, or perform, server copies of your videos that have been removed or deleted. The above licenses granted by you in user comments you submit are perpetual and irrevocable.
4. You further agree that Content you submit to the Service will not contain third party copyrighted material, or material that is subject to other third party proprietary rights, unless you have permission from the rightful owner of the material or you are otherwise legally entitled to post the material and to grant YouTube all of the license rights granted herein.
5. You further agree that you will not submit to the Service any Content or other material that is contrary to the YouTube Community Guidelines, currently found at [http://www.youtube.com/t/community\\_guidelines](http://www.youtube.com/t/community_guidelines), which may be updated from time to time, or contrary to applicable local, national, and international laws and regulations.
6. YouTube does not endorse any Content submitted to the Service by any user or other licensor, or any opinion, recommendation, or advice expressed therein, and YouTube expressly disclaims any and all liability in connection with Content. YouTube does not permit copyright infringing activities and infringement of intellectual property rights on the Service, and YouTube will remove all Content if properly notified that such Content infringes on another's intellectual property rights. YouTube reserves the right to remove Content without prior notice.

## **7. Account Termination Policy**

1. YouTube will terminate a user's access to the Service if, under appropriate circumstances, the user is determined to be a repeat infringer.
2. YouTube reserves the right to decide whether Content violates these Terms of Service for reasons other than copyright infringement, such as, but not limited to, pornography, obscenity, or excessive length. YouTube may at any time, without prior notice and in its sole discretion, remove such Content and/or terminate a user's account for submitting such material in violation of these Terms of Service.

## **8. Digital Millennium Copyright Act**

1. If you are a copyright owner or an agent thereof and believe that any Content infringes upon your copyrights, you may submit a notification pursuant to the Digital Millennium Copyright Act ("DMCA") by providing our Copyright Agent with the following information in writing (see 17 U.S.C 512(c)(3) for further detail):
  - A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
  - Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;



- Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled and information reasonably sufficient to permit the service provider to locate the material;
- Information reasonably sufficient to permit the service provider to contact you, such as an address, telephone number, and, if available, an electronic mail;
- A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

YouTube's designated Copyright Agent to receive notifications of claimed infringement is Shadie Farazian, 901 Cherry Ave., San Bruno, CA 94066, email: [copyright@youtube.com](mailto:copyright@youtube.com), fax: 650-872-8513. For clarity, only DMCA notices should go to the Copyright Agent; any other feedback, comments, requests for technical support, and other communications should be directed to YouTube customer service through <http://www.google.com/support/youtube>. You acknowledge that if you fail to comply with all of the requirements of this Section 5(D), your DMCA notice may not be valid.

2. Counter-Notice. If you believe that your Content that was removed (or to which access was disabled) is not infringing, or that you have the authorization from the copyright owner, the copyright owner's agent, or pursuant to the law, to post and use the material in your Content, you may send a counter-notice containing the following information to the Copyright Agent:
  - Your physical or electronic signature;
  - Identification of the Content that has been removed or to which access has been disabled and the location at which the Content appeared before it was removed or disabled;
  - A statement that you have a good faith belief that the Content was removed or disabled as a result of mistake or a misidentification of the Content; and
  - Your name, address, telephone number, and e-mail address, a statement that you consent to the jurisdiction of the federal court in San Francisco, California, and a statement that you will accept service of process from the person who provided notification of the alleged infringement.

If a counter-notice is received by the Copyright Agent, YouTube may send a copy of the counter-notice to the original complaining party informing that person that it may replace the removed Content or cease disabling it in 10 business days. Unless the copyright owner files an action seeking a court order against the Content provider, member or user, the removed Content may be replaced, or access to it restored, in 10 to 14 business days or more after receipt of the counter-notice, at YouTube's sole discretion.

## 9. Warranty Disclaimer

YOU AGREE THAT YOUR USE OF THE SERVICES SHALL BE AT YOUR SOLE RISK. TO THE FULLEST EXTENT PERMITTED BY LAW, YOUTUBE, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THE SERVICES AND YOUR USE THEREOF. YOUTUBE MAKES NO WARRANTIES OR REPRESENTATIONS ABOUT THE ACCURACY OR COMPLETENESS OF THIS SITE'S CONTENT OR THE CONTENT OF ANY SITES LINKED TO THIS SITE AND ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT, (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF OUR SERVICES, (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN, (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM OUR SERVICES, (V) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE WHICH MAY BE TRANSMITTED TO OR THROUGH OUR SERVICES BY ANY THIRD PARTY, AND/OR (VI) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE SERVICES. YOUTUBE DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE SERVICES OR ANY HYPERLINKED SERVICES OR FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND YOUTUBE WILL NOT BE A PARTY TO OR IN ANY WAY BE RESPONSIBLE FOR MONITORING ANY

TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES. AS WITH THE PURCHASE OF A PRODUCT OR SERVICE THROUGH ANY MEDIUM OR IN ANY ENVIRONMENT, YOU SHOULD USE YOUR BEST JUDGMENT AND EXERCISE CAUTION WHERE APPROPRIATE.

#### **10. Limitation of Liability**

IN NO EVENT SHALL YOUTUBE, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS, BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER RESULTING FROM ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT, (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF OUR SERVICES, (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN, (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM OUR SERVICES, (V) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE, WHICH MAY BE TRANSMITTED TO OR THROUGH OUR SERVICES BY ANY THIRD PARTY, AND/OR (VI) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF YOUR USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT THE COMPANY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

YOU SPECIFICALLY ACKNOWLEDGE THAT YOUTUBE SHALL NOT BE LIABLE FOR CONTENT OR THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY THIRD PARTY AND THAT THE RISK OF HARM OR DAMAGE FROM THE FOREGOING RESTS ENTIRELY WITH YOU.

The Service is controlled and offered by YouTube from its facilities in the United States of America. YouTube makes no representations that the Service is appropriate or available for use in other locations. Those who access or use the Service from other jurisdictions do so at their own volition and are responsible for compliance with local law.

#### **11. Indemnity**

To the extent permitted by applicable law, you agree to defend, indemnify and hold harmless YouTube, its parent corporation, officers, directors, employees and agents, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) your use of and access to the Service; (ii) your violation of any term of these Terms of Service; (iii) your violation of any third party right, including without limitation any copyright, property, or privacy right; or (iv) any claim that your Content caused damage to a third party. This defense and indemnification obligation will survive these Terms of Service and your use of the Service.

#### **12. Ability to Accept Terms of Service**

You affirm that you are either more than 18 years of age, or an emancipated minor, or possess legal parental or guardian consent, and are fully able and competent to enter into the terms, conditions, obligations, affirmations, representations, and warranties set forth in these Terms of Service, and to abide by and comply with these Terms of Service. In any case, you affirm that you are over the age of 13, as the Service is not intended for children under 13. If you are under 13 years of age, then please do not use the Service. There are lots of other great web sites for you. Talk to your parents about what sites are appropriate for you.

#### **13. Assignment**

These Terms of Service, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by YouTube without restriction.

#### **14. General**

You agree that: (i) the Service shall be deemed solely based in California; and (ii) the Service shall be deemed a passive website that does not give rise to personal jurisdiction over YouTube, either specific or general, in jurisdictions other than California. These Terms of Service shall be governed by the internal substantive laws of the State of California, without respect to its conflict of laws principles. Any claim or dispute between you and YouTube that arises in whole or in part from the Service shall be decided exclusively by a court of competent jurisdiction located in Santa Clara County,

California. These Terms of Service, together with the Privacy Notice at <http://www.youtube.com/t/privacy> and any other legal notices published by YouTube on the Service, shall constitute the entire agreement between you and YouTube concerning the Service. If any provision of these Terms of Service is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of these Terms of Service, which shall remain in full force and effect. No waiver of any term of this these Terms of Service shall be deemed a further or continuing waiver of such term or any other term, and YouTube's failure to assert any right or provision under these Terms of Service shall not constitute a waiver of such right or provision. YouTube reserves the right to amend these Terms of Service at any time and without notice, and it is your responsibility to review these Terms of Service for any changes. Your use of the Service following any amendment of these Terms of Service will signify your assent to and acceptance of its revised terms. YOU AND YOUTUBE AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE SERVICES MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

**Dated: June 9, 2010**

Albright College Gingrich Library



## Appendix B: Statutes

### 17 U.S. Code § 102 - Subject matter of copyright: In general

(a) Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

- (1) literary works;
- (2) musical works, including any accompanying words;
- (3) dramatic works, including any accompanying music;
- (4) pantomimes and choreographic works;
- (5) pictorial, graphic, and sculptural works;
- (6) motion pictures and other audiovisual works;
- (7) sound recordings; and
- (8) architectural works.

(b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

### 17 U.S. Code § 106 - Exclusive rights in copyrighted works

Subject to sections 107 through 122, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

- (1) to reproduce the copyrighted work in copies or phonorecords;
- (2) to prepare derivative works based upon the copyrighted work;
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
- (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

### 17 U.S. Code § 106A - Rights of certain authors to attribution and integrity

(a) Rights of Attribution and Integrity.— Subject to section 107 and independent of the exclusive rights provided in section 106, the author of a work of visual art—

- (1) shall have the right—
  - (A) to claim authorship of that work, and
  - (B) to prevent the use of his or her name as the author of any work of visual art which he or she did not create;
- (2) shall have the right to prevent the use of his or her name as the author of the work of visual art in the event of a distortion, mutilation, or other modification of the work which would be prejudicial to his or her honor or reputation; and
- (3) subject to the limitations set forth in section 113 (d), shall have the right—
  - (A) to prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation, and any intentional distortion, mutilation, or modification of that work is a violation of that right, and

(B) to prevent any destruction of a work of recognized stature, and any intentional or grossly negligent destruction of that work is a violation of that right.

(b) Scope and Exercise of Rights.— Only the author of a work of visual art has the rights conferred by subsection (a) in that work, whether or not the author is the copyright owner. The authors of a joint work of visual art are coowners of the rights conferred by subsection (a) in that work.

(c) Exceptions.—

(1) The modification of a work of visual art which is a result of the passage of time or the inherent nature of the materials is not a distortion, mutilation, or other modification described in subsection (a)(3)(A).

(2) The modification of a work of visual art which is the result of conservation, or of the public presentation, including lighting and placement, of the work is not a destruction, distortion, mutilation, or other modification described in subsection (a)(3) unless the modification is caused by gross negligence.

(3) The rights described in paragraphs (1) and (2) of subsection (a) shall not apply to any reproduction, depiction, portrayal, or other use of a work in, upon, or in any connection with any item described in subparagraph (A) or (B) of the definition of “work of visual art” in section 101, and any such reproduction, depiction, portrayal, or other use of a work is not a destruction, distortion, mutilation, or other modification described in paragraph (3) of subsection (a).

(d) Duration of Rights.—

(1) With respect to works of visual art created on or after the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, the rights conferred by subsection (a) shall endure for a term consisting of the life of the author.

(2) With respect to works of visual art created before the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, but title to which has not, as of such effective date, been transferred from the author, the rights conferred by subsection (a) shall be coextensive with, and shall expire at the same time as, the rights conferred by section 106.

(3) In the case of a joint work prepared by two or more authors, the rights conferred by subsection (a) shall endure for a term consisting of the life of the last surviving author.

(4) All terms of the rights conferred by subsection (a) run to the end of the calendar year in which they would otherwise expire.

(e) Transfer and Waiver.—

(1) The rights conferred by subsection (a) may not be transferred, but those rights may be waived if the author expressly agrees to such waiver in a written instrument signed by the author. Such instrument shall specifically identify the work, and uses of that work, to which the waiver applies, and the waiver shall apply only to the work and uses so identified. In the case of a joint work prepared by two or more authors, a waiver of rights under this paragraph made by one such author waives such rights for all such authors.

(2) Ownership of the rights conferred by subsection (a) with respect to a work of visual art is distinct from ownership of any copy of that work, or of a copyright or any exclusive right under a copyright in that work. Transfer of ownership of any copy of a work of visual art, or of a copyright or any exclusive right under a copyright, shall not constitute a waiver of the rights conferred by subsection (a). Except as may otherwise be agreed by the author in a written instrument signed by the author, a waiver of the rights conferred by subsection (a) with respect to a work of visual art shall not constitute a transfer of ownership of any copy of that work, or of ownership of a copyright or of any exclusive right under a copyright in that work.

## **17 U.S. Code § 107 - Limitations on exclusive rights: Fair use**

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors

#### **17 U.S. Code § 501 - Infringement of copyright**

(a) Anyone who violates any of the exclusive rights of the copyright owner as provided by sections 106 through 122 or of the author as provided in section 106A (a), or who imports copies or phonorecords into the United States in violation of section 602, is an infringer of the copyright or right of the author, as the case may be. For purposes of this chapter (other than section 506), any reference to copyright shall be deemed to include the rights conferred by section 106A (a). As used in this subsection, the term “anyone” includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this title in the same manner and to the same extent as any nongovernmental entity.

(b) The legal or beneficial owner of an exclusive right under a copyright is entitled, subject to the requirements of section 411, to institute an action for any infringement of that particular right committed while he or she is the owner of it. The court may require such owner to serve written notice of the action with a copy of the complaint upon any person shown, by the records of the Copyright Office or otherwise, to have or claim an interest in the copyright, and shall require that such notice be served upon any person whose interest is likely to be affected by a decision in the case. The court may require the joinder, and shall permit the intervention, of any person having or claiming an interest in the copyright.

(c) For any secondary transmission by a cable system that embodies a performance or a display of a work which is actionable as an act of infringement under subsection (c) of section 111, a television broadcast station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that television station.

(d) For any secondary transmission by a cable system that is actionable as an act of infringement pursuant to section 111 (c)(3), the following shall also have standing to sue:

- (i) the primary transmitter whose transmission has been altered by the cable system; and
- (ii) any broadcast station within whose local service area the secondary transmission occurs.

(e) With respect to any secondary transmission that is made by a satellite carrier of a performance or display of a work embodied in a primary transmission and is actionable as an act of infringement under section 119 (a)(5), [1] a network station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that station.

(f)

(1) With respect to any secondary transmission that is made by a satellite carrier of a performance or display of a work embodied in a primary transmission and is actionable as an act of infringement under section 122, a television broadcast station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local market of that station.

(2) A television broadcast station may file a civil action against any satellite carrier that has refused to carry television broadcast signals, as required under section 122 (a)(2), to enforce that television broadcast station’s rights under section 338(a) of the Communications Act of 1934.

#### **17 U.S. Code § 504 - Remedies for infringement: Damages and profits**

(a) In General.— Except as otherwise provided by this title, an infringer of copyright is liable for either—

- (1) the copyright owner's actual damages and any additional profits of the infringer, as provided by subsection (b); or
- (2) statutory damages, as provided by subsection (c).

(b) Actual Damages and Profits.— The copyright owner is entitled to recover the actual damages suffered by him or her as a result of the infringement, and any profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages. In establishing the infringer's profits, the copyright owner is required to present proof only of the infringer's gross revenue, and the infringer is required to prove his or her deductible expenses and the elements of profit attributable to factors other than the copyrighted work.

(c) Statutory Damages.—

(1) Except as provided by clause (2) of this subsection, the copyright owner may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to any one work, for which any one infringer is liable individually, or for which any two or more infringers are liable jointly and severally, in a sum of not less than \$750 or more than \$30,000 as the court considers just. For the purposes of this subsection, all the parts of a compilation or derivative work constitute one work.

(2) In a case where the copyright owner sustains the burden of proving, and the court finds, that infringement was committed willfully, the court in its discretion may increase the award of statutory damages to a sum of not more than \$150,000. In a case where the infringer sustains the burden of proving, and the court finds, that such infringer was not aware and had no reason to believe that his or her acts constituted an infringement of copyright, the court in its discretion may reduce the award of statutory damages to a sum of not less than \$200. The court shall remit statutory damages in any case where an infringer believed and had reasonable grounds for believing that his or her use of the copyrighted work was a fair use under section 107, if the infringer was:

(i) an employee or agent of a nonprofit educational institution, library, or archives acting within the scope of his or her employment who, or such institution, library, or archives itself, which infringed by reproducing the work in copies or phonorecords; or

(ii) a public broadcasting entity which or a person who, as a regular part of the nonprofit activities of a public broadcasting entity (as defined in section 118 (f)) infringed by performing a published nondramatic literary work or by reproducing a transmission program embodying a performance of such a work.

(3)

(A) In a case of infringement, it shall be a rebuttable presumption that the infringement was committed willfully for purposes of determining relief if the violator, or a person acting in concert with the violator, knowingly provided or knowingly caused to be provided materially false contact information to a domain name registrar, domain name registry, or other domain name registration authority in registering, maintaining, or renewing a domain name used in connection with the infringement.

(B) Nothing in this paragraph limits what may be considered willful infringement under this subsection.

(C) For purposes of this paragraph, the term "domain name" has the meaning given that term in section 45 of the Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes," approved July 5, 1946 (commonly referred to as the "Trademark Act of 1946"; 15 U.S.C. 1127).

(d) Additional Damages in Certain Cases.— In any case in which the court finds that a defendant proprietor of an establishment who claims as a defense that its activities were exempt under section 110 (5) did not have reasonable grounds to believe that its use of a copyrighted work was exempt under such section, the plaintiff shall be entitled to, in addition to any award of damages under this section, an additional award of two times the amount of the license fee that the proprietor of the establishment concerned should have paid the plaintiff for such use during the preceding period of up to 3 years.

## **17 U.S. Code § 512 - Limitations on liability relating to material online**

(a) Transitory Digital Network Communications.— A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the provider's transmitting, routing, or providing connections for, material through a system or network controlled or

operated by or for the service provider, or by reason of the intermediate and transient storage of that material in the course of such transmitting, routing, or providing connections, if—

- (1) the transmission of the material was initiated by or at the direction of a person other than the service provider;
- (2) the transmission, routing, provision of connections, or storage is carried out through an automatic technical process without selection of the material by the service provider;
- (3) the service provider does not select the recipients of the material except as an automatic response to the request of another person;
- (4) no copy of the material made by the service provider in the course of such intermediate or transient storage is maintained on the system or network in a manner ordinarily accessible to anyone other than anticipated recipients, and no such copy is maintained on the system or network in a manner ordinarily accessible to such anticipated recipients for a longer period than is reasonably necessary for the transmission, routing, or provision of connections; and
- (5) the material is transmitted through the system or network without modification of its content.

(b) System Caching.—

(1) Limitation on liability.— A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the intermediate and temporary storage of material on a system or network controlled or operated by or for the service provider in a case in which—

- (A) the material is made available online by a person other than the service provider;
- (B) the material is transmitted from the person described in subparagraph (A) through the system or network to a person other than the person described in subparagraph (A) at the direction of that other person; and
- (C) the storage is carried out through an automatic technical process for the purpose of making the material available to users of the system or network who, after the material is transmitted as described in subparagraph (B), request access to the material from the person described in subparagraph (A),

if the conditions set forth in paragraph (2) are met.

(2) Conditions.— The conditions referred to in paragraph (1) are that—

- (A) the material described in paragraph (1) is transmitted to the subsequent users described in paragraph (1)(C) without modification to its content from the manner in which the material was transmitted from the person described in paragraph (1)(A);
- (B) the service provider described in paragraph (1) complies with rules concerning the refreshing, reloading, or other updating of the material when specified by the person making the material available online in accordance with a generally accepted industry standard data communications protocol for the system or network through which that person makes the material available, except that this subparagraph applies only if those rules are not used by the person described in paragraph (1)(A) to prevent or unreasonably impair the intermediate storage to which this subsection applies;
- (C) the service provider does not interfere with the ability of technology associated with the material to return to the person described in paragraph (1)(A) the information that would have been available to that person if the material had been obtained by the subsequent users described in paragraph (1)(C) directly from that person, except that this subparagraph applies only if that technology—
  - (i) does not significantly interfere with the performance of the provider's system or network or with the intermediate storage of the material;
  - (ii) is consistent with generally accepted industry standard communications protocols; and
  - (iii) does not extract information from the provider's system or network other than the information that would have been available to the person described in paragraph (1)(A) if the subsequent users had gained access to the material directly from that person;
- (D) if the person described in paragraph (1)(A) has in effect a condition that a person must meet prior to having access to the material, such as a condition based on payment of a fee or provision of a password or other information, the service provider permits access to the stored material in significant part only to users of its system or network that have met those conditions and only in accordance with those conditions; and

(E) if the person described in paragraph (1)(A) makes that material available online without the authorization of the copyright owner of the material, the service provider responds expeditiously to remove, or disable access to, the material that is claimed to be infringing upon notification of claimed infringement as described in subsection (c)(3), except that this subparagraph applies only if—

(i) the material has previously been removed from the originating site or access to it has been disabled, or a court has ordered that the material be removed from the originating site or that access to the material on the originating site be disabled; and

(ii) the party giving the notification includes in the notification a statement confirming that the material has been removed from the originating site or access to it has been disabled or that a court has ordered that the material be removed from the originating site or that access to the material on the originating site be disabled.

(c) Information Residing on Systems or Networks At Direction of Users.—

(1) In general.— A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the storage at the direction of a user of material that resides on a system or network controlled or operated by or for the service provider, if the service provider—

(A)

(i) does not have actual knowledge that the material or an activity using the material on the system or network is infringing;

(ii) in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent; or

(iii) upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material;

(B) does not receive a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity; and

(C) upon notification of claimed infringement as described in paragraph (3), responds expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity.

(2) Designated agent.— The limitations on liability established in this subsection apply to a service provider only if the service provider has designated an agent to receive notifications of claimed infringement described in paragraph (3), by making available through its service, including on its website in a location accessible to the public, and by providing to the Copyright Office, substantially the following information:

(A) the name, address, phone number, and electronic mail address of the agent.

(B) other contact information which the Register of Copyrights may deem appropriate.

The Register of Copyrights shall maintain a current directory of agents available to the public for inspection, including through the Internet, and may require payment of a fee by service providers to cover the costs of maintaining the directory.

(3) Elements of notification.—

(A) To be effective under this subsection, a notification of claimed infringement must be a written communication provided to the designated agent of a service provider that includes substantially the following:

(i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

(ii) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.

(iii) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material.



(iv) Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted.

(v) A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.

(vi) A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

(B)

(i) Subject to clause (ii), a notification from a copyright owner or from a person authorized to act on behalf of the copyright owner that fails to comply substantially with the provisions of subparagraph (A) shall not be considered under paragraph (1)(A) in determining whether a service provider has actual knowledge or is aware of facts or circumstances from which infringing activity is apparent.

(ii) In a case in which the notification that is provided to the service provider's designated agent fails to comply substantially with all the provisions of subparagraph (A) but substantially complies with clauses (ii), (iii), and (iv) of subparagraph (A), clause (i) of this subparagraph applies only if the service provider promptly attempts to contact the person making the notification or takes other reasonable steps to assist in the receipt of notification that substantially complies with all the provisions of subparagraph (A).

(d) Information Location Tools.— A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the provider referring or linking users to an online location containing infringing material or infringing activity, by using information location tools, including a directory, index, reference, pointer, or hypertext link, if the service provider—

(1)

(A) does not have actual knowledge that the material or activity is infringing;

(B) in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent; or

(C) upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material;

(2) does not receive a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity; and

(3) upon notification of claimed infringement as described in subsection (c)(3), responds expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity, except that, for purposes of this paragraph, the information described in subsection (c)(3)(A)(iii) shall be identification of the reference or link, to material or activity claimed to be infringing, that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate that reference or link.

(e) Limitation on Liability of Nonprofit Educational Institutions.—

(1) When a public or other nonprofit institution of higher education is a service provider, and when a faculty member or graduate student who is an employee of such institution is performing a teaching or research function, for the purposes of subsections (a) and (b) such faculty member or graduate student shall be considered to be a person other than the institution, and for the purposes of subsections (c) and (d) such faculty member's or graduate student's knowledge or awareness of his or her infringing activities shall not be attributed to the institution, if—

(A) such faculty member's or graduate student's infringing activities do not involve the provision of online access to instructional materials that are or were required or recommended, within the preceding 3-year period, for a course taught at the institution by such faculty member or graduate student;

(B) the institution has not, within the preceding 3-year period, received more than two notifications described in subsection (c)(3) of claimed infringement by such faculty member or graduate student, and such notifications of claimed infringement were not actionable under subsection (f); and

(C) the institution provides to all users of its system or network informational materials that accurately describe, and promote compliance with, the laws of the United States relating to copyright.

(2) For the purposes of this subsection, the limitations on injunctive relief contained in subsections (j)(2) and (j)(3), but not those in (j)(1), shall apply.

(f) Misrepresentations.— Any person who knowingly materially misrepresents under this section—

(1) that material or activity is infringing, or

(2) that material or activity was removed or disabled by mistake or misidentification,

shall be liable for any damages, including costs and attorneys' fees, incurred by the alleged infringer, by any copyright owner or copyright owner's authorized licensee, or by a service provider, who is injured by such misrepresentation, as the result of the service provider relying upon such misrepresentation in removing or disabling access to the material or activity claimed to be infringing, or in replacing the removed material or ceasing to disable access to it.

(g) Replacement of Removed or Disabled Material and Limitation on Other Liability.—

(1) No liability for taking down generally.— Subject to paragraph (2), a service provider shall not be liable to any person for any claim based on the service provider's good faith disabling of access to, or removal of, material or activity claimed to be infringing or based on facts or circumstances from which infringing activity is apparent, regardless of whether the material or activity is ultimately determined to be infringing.

(2) Exception.— Paragraph (1) shall not apply with respect to material residing at the direction of a subscriber of the service provider on a system or network controlled or operated by or for the service provider that is removed, or to which access is disabled by the service provider, pursuant to a notice provided under subsection (c)(1)(C), unless the service provider—

(A) takes reasonable steps promptly to notify the subscriber that it has removed or disabled access to the material;

(B) upon receipt of a counter notification described in paragraph (3), promptly provides the person who provided the notification under subsection (c)(1)(C) with a copy of the counter notification, and informs that person that it will replace the removed material or cease disabling access to it in 10 business days; and

(C) replaces the removed material and ceases disabling access to it not less than 10, nor more than 14, business days following receipt of the counter notice, unless its designated agent first receives notice from the person who submitted the notification under subsection (c)(1)(C) that such person has filed an action seeking a court order to restrain the subscriber from engaging in infringing activity relating to the material on the service provider's system or network.

(3) Contents of counter notification.— To be effective under this subsection, a counter notification must be a written communication provided to the service provider's designated agent that includes substantially the following:

(A) A physical or electronic signature of the subscriber.

(B) Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled.

(C) A statement under penalty of perjury that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled.

(D) The subscriber's name, address, and telephone number, and a statement that the subscriber consents to the jurisdiction of Federal District Court for the judicial district in which the address is located, or if the subscriber's address is outside of the United States, for any judicial district in which the service provider may be found, and that the subscriber will accept service of process from the person who provided notification under subsection (c)(1)(C) or an agent of such person.

(4) Limitation on other liability.— A service provider's compliance with paragraph (2) shall not subject the service provider to liability for copyright infringement with respect to the material identified in the notice provided under subsection (c)(1)(C).

(h) Subpoena To Identify Infringer.—

(1) Request.— A copyright owner or a person authorized to act on the owner's behalf may request the clerk of any United States district court to issue a subpoena to a service provider for identification of an alleged infringer in accordance with this subsection.

(2) Contents of request.— The request may be made by filing with the clerk—



(A) a copy of a notification described in subsection (c)(3)(A);

(B) a proposed subpoena; and

(C) a sworn declaration to the effect that the purpose for which the subpoena is sought is to obtain the identity of an alleged infringer and that such information will only be used for the purpose of protecting rights under this title.

(3) Contents of subpoena.— The subpoena shall authorize and order the service provider receiving the notification and the subpoena to expeditiously disclose to the copyright owner or person authorized by the copyright owner information sufficient to identify the alleged infringer of the material described in the notification to the extent such information is available to the service provider.

(4) Basis for granting subpoena.— If the notification filed satisfies the provisions of subsection (c)(3)(A), the proposed subpoena is in proper form, and the accompanying declaration is properly executed, the clerk shall expeditiously issue and sign the proposed subpoena and return it to the requester for delivery to the service provider.

(5) Actions of service provider receiving subpoena.— Upon receipt of the issued subpoena, either accompanying or subsequent to the receipt of a notification described in subsection (c)(3)(A), the service provider shall expeditiously disclose to the copyright owner or person authorized by the copyright owner the information required by the subpoena, notwithstanding any other provision of law and regardless of whether the service provider responds to the notification.

(6) Rules applicable to subpoena.— Unless otherwise provided by this section or by applicable rules of the court, the procedure for issuance and delivery of the subpoena, and the remedies for noncompliance with the subpoena, shall be governed to the greatest extent practicable by those provisions of the Federal Rules of Civil Procedure governing the issuance, service, and enforcement of a subpoena duces tecum.

(i) Conditions for Eligibility.—

(1) Accommodation of technology.— The limitations on liability established by this section shall apply to a service provider only if the service provider—

(A) has adopted and reasonably implemented, and informs subscribers and account holders of the service provider's system or network of, a policy that provides for the termination in appropriate circumstances of subscribers and account holders of the service provider's system or network who are repeat infringers; and

(B) accommodates and does not interfere with standard technical measures.

(2) Definition.— As used in this subsection, the term “standard technical measures” means technical measures that are used by copyright owners to identify or protect copyrighted works and—

(A) have been developed pursuant to a broad consensus of copyright owners and service providers in an open, fair, voluntary, multi-industry standards process;

(B) are available to any person on reasonable and nondiscriminatory terms; and

(C) do not impose substantial costs on service providers or substantial burdens on their systems or networks.

(j) Injunctions.— The following rules shall apply in the case of any application for an injunction under section 502 against a service provider that is not subject to monetary remedies under this section:

(1) Scope of relief.—

(A) With respect to conduct other than that which qualifies for the limitation on remedies set forth in subsection (a), the court may grant injunctive relief with respect to a service provider only in one or more of the following forms:

(i) An order restraining the service provider from providing access to infringing material or activity residing at a particular online site on the provider's system or network.

(ii) An order restraining the service provider from providing access to a subscriber or account holder of the service provider's system or network who is engaging in infringing activity and is identified in the order, by terminating the accounts of the subscriber or account holder that are specified in the order.

(iii) Such other injunctive relief as the court may consider necessary to prevent or restrain infringement of copyrighted material specified in the order of the court at a particular online location, if such relief is the least burdensome to the service provider among the forms of relief comparably effective for that purpose.

(B) If the service provider qualifies for the limitation on remedies described in subsection (a), the court may only grant injunctive relief in one or both of the following forms:

(i) An order restraining the service provider from providing access to a subscriber or account holder of the service provider's system or network who is using the provider's service to engage in infringing activity and is identified in the order, by terminating the accounts of the subscriber or account holder that are specified in the order.

(ii) An order restraining the service provider from providing access, by taking reasonable steps specified in the order to block access, to a specific, identified, online location outside the United States.

(2) Considerations.— The court, in considering the relevant criteria for injunctive relief under applicable law, shall consider—

(A) whether such an injunction, either alone or in combination with other such injunctions issued against the same service provider under this subsection, would significantly burden either the provider or the operation of the provider's system or network;

(B) the magnitude of the harm likely to be suffered by the copyright owner in the digital network environment if steps are not taken to prevent or restrain the infringement;

(C) whether implementation of such an injunction would be technically feasible and effective, and would not interfere with access to noninfringing material at other online locations; and

(D) whether other less burdensome and comparably effective means of preventing or restraining access to the infringing material are available.

(3) Notice and ex parte orders.— Injunctive relief under this subsection shall be available only after notice to the service provider and an opportunity for the service provider to appear are provided, except for orders ensuring the preservation of evidence or other orders having no material adverse effect on the operation of the service provider's communications network.

(k) Definitions.—

(1) Service provider.—

(A) As used in subsection (a), the term “service provider” means an entity offering the transmission, routing, or providing of connections for digital online communications, between or among points specified by a user, of material of the user's choosing, without modification to the content of the material as sent or received.

(B) As used in this section, other than subsection (a), the term “service provider” means a provider of online services or network access, or the operator of facilities therefor, and includes an entity described in subparagraph (A).

(2) Monetary relief.— As used in this section, the term “monetary relief” means damages, costs, attorneys' fees, and any other form of monetary payment.

(l) Other Defenses Not Affected.— The failure of a service provider's conduct to qualify for limitation of liability under this section shall not bear adversely upon the consideration of a defense by the service provider that the service provider's conduct is not infringing under this title or any other defense.

(m) Protection of Privacy.— Nothing in this section shall be construed to condition the applicability of subsections (a) through (d) on—

(1) a service provider monitoring its service or affirmatively seeking facts indicating infringing activity, except to the extent consistent with a standard technical measure complying with the provisions of subsection (i); or

(2) a service provider gaining access to, removing, or disabling access to material in cases in which such conduct is prohibited by law.

(n) Construction.— Subsections (a), (b), (c), and (d) describe separate and distinct functions for purposes of applying this section. Whether a service provider qualifies for the limitation on liability in any one of those subsections shall be based solely on the criteria in that subsection, and shall not affect a determination of whether that service provider qualifies for the limitations on liability under any other such subsection.

## Appendix C: Cases

*Folsom v. Marsh*, 9 F. Cas. 342, No. 4,901 (C.C.D. Mass. 1841)

*Stern Electronics Inc. v. Kaufman*, 669 F.2d 852 (2d Cir. 1982)

*Midway Manufacturing Co. v. Artic International, Inc.*, 547 F. Supp. 999 (N.D. Ill. 1982)

*Williams Electronics, Inc. v. Arctic International, Inc.* 685 F.2d 870 (3d Cir. 1982)

*Midway Manufacturing Co. v. Strobotron* 564 F.Supp. 741 (N.D. Ill. 1983)

*Apple Computer, Inc. v. Franklin Computer Corp.*, 714 F.2d 1240 (3d Cir. 1983)

*Whelan Assocs., Inc. v. Jaslow Dental Laboratory, Inc.* 797 F.2d 1222; 1240 (3d Cir. 1986)

*Lewis Galoob Toys, Inc. v. Nintendo of America, Inc.* 964 F.2d 965 (9th Cir. 1992)

*Campbell v. Acuff-Rose Music*, 510 U.S. 569 (1994)

*Kelly v. Arriba Soft Corporation*, 280 F.3d 934 (9th Cir. 2002)

*Viacom International, Inc. v. YouTube, Inc.*, No. 07 Civ. 2103 (S.D.N.Y. 2010)

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