

Teaching Law with Online Role-Playing Simulations

***Ira S. Nathenson, Associate Professor of Law
St. Thomas University School of Law***

Table of Contents

| | | |
|-------|--|---|
| I. | Role-playing simulations on the live internet..... | 1 |
| II. | Tools for building an online role-playing simulation | 3 |
| III. | Memorandum from Senior Partner to Junior Associates | 4 |
| IV. | Samples of client’s and defendant’s 2010 websites | 5 |
| V. | Prior correspondence between client and defendant..... | 7 |
| VI. | Components of the required case file..... | 8 |
| VII. | Methods of formative and summative evaluation..... | 8 |
| VIII. | Score sheet incorporating all MacCrate factors | 9 |

I. Role-playing simulations on the live internet

Summary.

Live websites provide a dynamic “sandbox” for role-playing simulations that cast students as “lawyers” acting for fictional clients. Such simulations, initially crafted for a Cyberlaw class, can also be used in a wide variety of other courses. This provides a highly configurable platform for the immersive and holistic learning of knowledge, skills, and professional identity, including realistic fact-finding, advocacy, negotiation, ethical traps, and much more. The workshop will first provide background on relevant technology and methodology. Second will be a mini role-playing exercise using the live internet. Last will be a discussion of the benefits and challenges of online simulations.

Background.

The internet is more than a place where the Millennial Generation communicates, shops, and plays. It’s also a medium that implicates every field of legal doctrine, whether basic (such as torts, property, or contracts) or advanced (such as intellectual property, criminal procedure, or securities regulation). This creates tremendous opportunities for legal educators interested in using the live internet for experiential learning.

The simulations at hand were created for a Cyberlaw class, but were also easily incorporated into the creator’s Civil Procedure and Intellectual Property classes. Considering that Cyberlaw itself is arguably an amalgam of other doctrines (such as torts, contracts, property, free speech, and more), the session will explore how online role-playing simulations may be useful for a wide variety of classes. These simulations can be built easily using simple tools, many of which are free or inexpensive.

Contents of Workshop.

The session will include descriptive, interactive, and prescriptive elements. First will be a short narrative regarding how to build online simulations. The session will also address easy-to-use tools that can be used to create such simulations. All of those tools are either free or inexpensive. (See Part II of handout.)

Second, we will do a mini case study using the provided handouts and the live internet. (See Parts III through VIII of handout.) Attendees will be asked to play the role of law students a/k/a junior associates, and to consider the legal doctrine, underlying theory, lawyering skills, and professional values needed to meet the client's needs in a professional manner. The goal will be to provide a miniature version of the simulated role-playing experience as well as to consider useful methods of student evaluation. Attendees should feel completely free to examine the simulation sites at the links provided in this handout prior to the time of the June 3 session. However, absolutely no prior "homework" is necessary, and the session will provide all needed background.

The final segment will be a discussion of the benefits and challenges of role-playing simulations teaching for students, instructors, and institutions. Considering that proposed ABA Standard 303 might mandate a massive expansion of simulations teaching, it is crucial to consider developing new simulations teaching methods, as well as how an expansion of experiential learning may impact our roles as teacher-scholars.

Upcoming article.

Simulations teaching is also the topic of an article that I am currently finishing tentatively titled *Best Practices for the Law of the Horse: Teaching Cyberlaw through Online Role-Playing Simulations*. I expect to upload it to SSRN in May prior to the ILTL conference. If interested, you can find my SSRN page at <http://ssrn.com/author=109749>, or you can contact me directly at inathenson@stu.edu.

II. Tools for building an online role-playing simulation

This page provides information on tools that may be used to create online role-playing simulations. Some of these tools will be discussed in more detail during the session.

Websites used for simulation (free or inexpensive):

- Iphattitudez.com (2010 client site: publicly accessible)
- Iphattitudes.com (2010 defendant site: publicly accessible)
- Cafepress (to generate products to be “sold” through website)

Issues of note: Taking care that online simulations do not step on real-world rights.

Authoring tools (free, inexpensive, or already on your computer):

- HTML editor + website templates (to create basic webpages)
- Blogging software such as Wordpress (as blog or site content management system)

Issues of note: Basic HTML editing is not difficult, and tools exist to do the work for you.

Service and E-Commerce Providers (free or inexpensive):

- Hosting service for websites (numerous available, \$15 a month or less)
- Email accounts for “defendant,” “opposing counsel,” others (free)
- Domain name anonymization service (Domains by Proxy, less than \$10 a year)
- Database of demand letters (Chilling Effects Clearinghouse, free)
- Ecommerce provider (Cafepress, for products “sold” through website(s), free)

Issues of note: Students must be warned not make direct contact with any real-world entity. All correspondence must be sent to email addresses pre-cleared by instructor.

Fictional parties & lawyers:

- Client (via website, documentation, and professor role-playing via email)
- Senior Partner (role-play by professor)
- Junior Associates (role-play by students)
- Defendant (role-play by professor acting solely via website and email)
- Intermediaries (real-world service providers treated as characters in narrative)
- Opposing counsel (role-play by professor acting solely via email)

Issues of note: Because each student approaches enforcement differently, this creates opportunities for individually tailored responses by the professor/defendant. This permits the introduction of extra issues that can be discussed by the entire group.

III. Memorandum from Senior Partner to Junior Associates

MEMORANDUM

Confidential – Privileged and/or attorney work product

FROM: Ira Nathenson, Managing Partner
TO: Summer 2011 ILTL Associate Class
RE: Domain name IPHATTITUDES.COM
DATE: June 1, 2011

Our long-standing client, Izzatz International (“Izzatz”), is a shoe and garment designer/manufacturer based in Coral Gables, Florida. Its website is located at <http://www.iphattitudez.com>. Izzatz has contacted me to complain about a website located at <http://www.iphattitudes.com>. Izzatz has also provided us with prior correspondence between itself and a person who may be behind the offending website. **You are permitted to go online prior to our meeting to review the two websites.** (After July of 2011, access to the current sites will be disabled from the root domains, but will be archived at <http://www.iphattitudez.com/2010> and <http://www.iphattitudes.com/2010>.)

I have been authorized by Izzatz to explore its rights in this matter. Izzatz would like to obtain the IPHATTITUDES.COM domain name, either by negotiation or, if necessary, by legal process. I need you to investigate the matter and to formulate initial strategies.

We will meet Friday, June 3, at 1:00 PM in our assigned conference room to discuss the matter further. This time is billable and you should record it as such. In the meantime, please start to consider strategies. Some of the questions you might consider may include:

- Who owns IPHATTITUDES.COM? For that matter, how do we find out who owns a website? How might we contact that person? Does the owner have deep pockets or is the owner judgment proof?
- Should we offer to buy IPHATTITUDES.COM? Should we send a cease-and-desist letter? Should we file a lawsuit? If so, where? Do we have any other options?
- What kind of liability might the defendant face? Tort? Intellectual Property? Criminal? Might the defendant have any kind of defense or legal justification?
- Besides threatening the operator of IPHATTITUDES.COM, can we contact anyone else, such as an online service provider? Might any of them be liable?
- Who *is* our client? Can we represent both Izzatz and its general counsel, L. Hutz? Should we?

IV. Samples of client's and defendant's 2010 websites

Screen cap of top of client's homepage. More at <http://www.iphattitudez.com/2010>

I-P/H Attitudez: Shooz for Generation Z

How many times PER HOUR can YOU put the "I" into "ATTITUDEZ"?



Coming zoon...!

I-P/H Attitudez is proud to announce its Fall 2010 lineup of quality athletic footwear.

Want a "sneaker" peek?

Screen cap of top of defendant's homepage. More at <http://www.iphattitudes.com/2010>

I.P.H. sucks dot com

None! So let's battle shoez that bruize!



Coming zoon...!

I-P/H Attitudez is proud to announce its Fall 2010 lineup of quality athletic footwear.

Right up to the point where M.C. Ari shows them what happenzz with shoezz that bruize.

Want a "sneaker" peek? *No!*

Below is a [blog posting](#) made by the defendant, along with comments from fictional site “visitors.” The blog posting and comments permit the incorporation of additional legal issues. Also note the “poll” on the right.

Got any dirt on IPH Attitudez?

Posted on [October 6, 2010](#) by [ari](#)

I've had it with their shoes. I've had it with their lawyers. And I won't take it anymore!

If you've been abused by these guys or their employees, contact me. Let's get them!

This entry was posted in [Uncategorized](#). Bookmark the [permalink](#)

← [Help me!](#)

5 Responses to Got any dirt on IPH Attitudez?



Peter says:

October 8, 2010 at 4:59 pm

Here's some proof that should help your case. My son hacked into their computer system. Here's an email that proves they know that their shoes are defective:

From: Stewie
Sent: Friday, Oct. 8, 2010 12:38 PM
To: Peter
Subject: Re: you promised me an uzi

I was able to hack into their computer servers. A rather unextraordinary stretch of my talents, to say the least.

Stewie

P.S. – You better keep your promise. I know where you live.

—Original Message—

From: lhutz@iphattitudez.com
Sent: Friday, September 4, 2009 4:38 PM
To: ceo@iphattitudez.com
Subject: Re: You owe me \$\$\$

Boss, I did as you asked. I sent him a coupon, hopefully he'll go away. But if he pushes this, we could end up with some real PR problems. This is the third complaint we've had this week about product falling apart during normal use. Maybe it was a bad idea to switch adhesive suppliers after all.

LH

[Reply](#)

Get goodz, feel good!

Polls

What is the problem with I-P/H and their shoos?

- Nothing. Love 'em!
- Bad shoe glue.
- Lionel is a liar, a cheat, has B.O., and got his law degree via mail order.
- IPH = "Indisputably Paranoid Hackers"

[View Results](#)

Recent Comments

- [Lionel](#) on [Got any dirt on IPH Attitudez?](#)
- [Stewie](#) on [Got any dirt on IPH Attitudez?](#)
- [Peter](#) on [Got any dirt on IPH Attitudez?](#)
- [Lois](#) on [Got any dirt on IPH Attitudez?](#)
- [Peter](#) on [Got any dirt on IPH Attitudez?](#)

V. Prior correspondence between client and defendant

Hutz, L.

From: gotbillstopay@gmail.com
Sent: Saturday, Sept. 5, 2009 2:53 AM
To: Hutz, L.
Subject: Re: You owe me \$\$\$ -- I MEAN IT!

I do not like being called a liar. You and your evil empire death-star Borg lying Klingon dirtbags will pay, now or later. And Uncle Denny will hear all about this.

Phat Ari

-----Original Message-----

From: Hutz, L.
Sent: Friday, September 4, 2009 4:31 PM
To: gotbillstopay@gmail.com
Attached: Coupon.bmp
Subject: Re: You owe me \$\$\$

Dear Mr. Nosnehtan,

Please be assured that our footwear is of the highest quality. However, I'm sure you recognize that even the best shoes can't guarantee a gold medal.

Regarding your claim, would you kindly explain the nature of the alleged defect, providing documentation of how any such defect caused your claimed losses?

Attached is a coupon for \$20 off a new pair of our shoes, sent as a courtesy to you, a loyal and passionate I-P/H customer. That's the best kind of customer and we want to keep you. As a lawyer, however, I must be clear that this coupon is only a courtesy and is not an admission of any defect or liability. Sorry about the legal disclaimer, but that's part of my job and I have to be clear. ;-)

Thanks again, and I wish you the very best luck and happiness in your future endeavors.

Best regards,

L. Hutz
Senior Vice-President and General Counsel, Izzatz International

-----Original Message-----

From: gotbillstopay@gmail.com
Sent: Tuesday, September 1, 2009 4:32 AM
To: Hutz, L.
Subject: You owe me \$\$\$

Your shoes made me lose a track meet, and I lost my scholarship. I'm holding you people responsible.

Ari Nosnehtan

VI. Components of the required case file

The ultimate goal of the students' work (after several weeks) will be a case file containing:

1. **Documentation.** All relevant site documentation, including printouts, records of domain ownership, etc.
2. **Correspondence.** All relevant correspondence, including to and from the domain name registrant, client, and Senior Partner.
3. **Draft of civil or UDRP complaint.** Draft of complaint for a court, or for an arbitration panel under the Uniform Domain Name Dispute Resolution Policy.
4. **Memo-to-file on ethical compliance.** [Per separate instruction.]
5. **Source list & copies.** Copies of all sample letters or complaints that you use.
6. **Timesheet.** Your timesheet. This is intended to make you think about how you structure your time and is not intended as a way to impress me. You should consider class time devoted to discussing the project as billable time.
7. **Other.** Any other relevant information that you would like to include.

VII. Methods of formative and summative evaluation

Formative (ongoing) and summative (at the end) evaluation may be accomplished through:

- **“Practice group” meetings.** Class is often treated as a practice group meeting, where we discuss tactics and strategies regarding fact-finding, documentation, problem-solving, negotiation, counseling, and ethical matters. The baseline value of the class is that we all share and discuss – in a respectful and collaborative manner – associate successes as well as associate missteps. Anything that happens is treated as a learning opportunity.
- **Responses by “defendant” to cease and desist (“C&D”) letters.** Students are instructed to draft C&D letters and send them to the “defendant” (the professor) via email. Each letter receives a different response, permitting individualized learning moments that can then be shared with the entire group via practice group meetings (as noted above).
- **“Partner” meetings.** Associates are expected to meet with the senior partner individually to discuss strategy and for counseling.
- **Written evaluation of work product.** Students receive written evaluation in multiple ways, including: 1) the “defendant’s” response to C&D letters, which permits a vehicle for pointing out any flaws in law, tactics, or facts; 2) written comments to the case file; and 3) the project score sheet (see below and Part VIII).
- **“Scoring” but not grading.** See Part VIII, which provides the actual score sheet used for a cybersquatting project from Fall 2010.

VIII. Score sheet incorporating all MacCrate factors

The score sheet incorporates the entire skill set from the MacCrate Report. It is written using a 5-point scale, to shift focus away from “grades” in favor of more meaningful feedback.

CYBERLAW – SCORE SHEET, PROJECT ONE

STUDENT NAME:

Explanation of point scale:

- 5 – Exceptional quality
- 4 – Better than average quality
- 3 – Generally meets expectations
- 2 – Some quality but needs improvement
- 1 – Unacceptable quality

Project 1 – up to five points per category times indicated multiplication factor, then divided to obtain ultimate project score based on five-point scale. See work product for further comments.

| Matter & Factors | Comments | Score | Points |
|--|-------------------------------|-------|--------|
| <p>Correspondence (Points x 4, max 20):</p> <p>Complete & organized Grammar/spelling Accuracy of facts Argumentation Tactics/strategy</p> <p>(MacCrate # 1-9)</p> | To be inserted by instructor. | | |
| <p>Meeting (Points x 2, max 10):</p> <p>Preparation & plan</p> <p>(MacCrate # 1-7, 9)</p> | | | |
| <p>Draft (civil or UDRP) (Points x 6, max 30):</p> <p>Organization Grammar/spelling Compliance with Rules Accuracy of facts Argumentation</p> <p>(MacCrate # 1-4, 8, 9)</p> | | | |
| <p>Site documentation (Points x 2, max 10):</p> <p>WHOIS & printouts Complete & organized</p> <p>(MacCrate # 1, 4, 9)</p> | | | |
| <p>Source list (Points x 1, max 5):</p> <p>(MacCrate # 3, 9, 10)</p> | | | |

| | | | |
|---|--|--|--|
| Timesheet (Points x 1, max 5): (MacCrate # 5, 9, 10) | | | |
| Professionalism (Max 15): Correspondence (5 pt) Memo to file (2x5 pt) (MacCrate # 10) | | | |
| Miscellaneous (Points x 4, max 20): Overall organization Exceptional diligence Other relevant info Other matters (MacCrate # 9, others as applicable) | | | |
| TOTAL POINTS (add points, max 115) | | | |
| PROJECT SCORE (Points / 23, max 5) | | | |

MACCRATE SKILLS ADDRESSED IN SCORE SHEET:

- (1) Problem solving (MacCrate # 1).** Including how to handle alleged infringement.
- (2) Legal analysis & reasoning (MacCrate # 2).** Including discerning the prevailing law (such as federal cybersquatting law and contract-based arbitration procedures), and determining likelihood of success on merits.
- (3) Legal research (MacCrate # 3).** Including reading cases, statutes, and dispute-resolution rules.
- (4) Factual investigation (MacCrate # 4).** Including determining ownership and content of infringing website, and documenting ongoing and changing infringement.
- (5) Communication (MacCrate # 5).** Including writing infringer to cease and desist cybersquatting, and meeting with the “senior partner” to discuss cost-effective and meritorious legal strategy for client.
- (6) Counseling (MacCrate # 6).** Including developing cost-effective strategy for client needs, particularly for a client who may turn out to be unrealistic in its expectations in terms of time, cost, and results.
- (7) Negotiation (MacCrate # 7).** Including attempting to obtain compliance from the infringer.
- (8) Litigation procedures (MacCrate # 8).** Including drafting a court or arbitration complaint.
- (9) Organization and management of legal work (MacCrate # 9).** Including building a case file and keeping time sheets.
- (10) Professionalism (MacCrate # 10).** Includes how student handled various ethical dilemmas (writing to children, unrepresented persons, obstinate lawyers, persons requesting legal advice). Consideration of Florida Rules of Professional Conduct 4-4.1 through 4-4.4, and short memo-to-file.