

WHY IS THIS LEGAL?

WHY THE *FREE* PROMOTIONAL GAME CONDUCTED AT THIS LOCATION IS LEGAL.¹

This is a Store.

This store carries a supply of tangible merchandise for sale.

This store also provides access to fully-functional computer work stations and services as well as other amenities related to using them for a small rental fee.

All products and services are priced competitively and are comparable to goods and services that are commonly sold without the benefit of a free game promotion, game of chance or sweepstakes.

The Store Promotes Legitimate Products.

This store is a legitimate business, and sells legitimate items & services.

At the store, in addition to other products and services, you can rent the use of a computer work station for \$_____ per hour and receive staff assistance in using it and learning the skills to use it. The work station has a full complement of applications, is broadband connected. Staff can provide assistance with the printing of documents.

FedEx-Kinko's charges \$21 +/-hour for the same service, and they do not provide staff assistance or free computer skills tutorials.

Rental of computer work stations in public space is a valuable service that serves a significant, defined market. Businesses that provide computer work station rental have been with us for many years. In 1990 it was not difficult to find an Internet café in almost any major city in America. This form of retail service provided many Americans access to a broadband connection, as well as staff with the knowledge and skills necessary to explain the many uses of the Internet and other computer applications.

Today there are many Internet cafes and commercial computer centers in operation in the United States.²

According to recent Federal Census Bureau reports, more than

1CHECK WITH YOUR OWN LAWYER! THE COMMENTS AND OPINIONS SHOWN HERE AND BELOW ARE ONLY PROVIDED AS A COURTESY FOR INFORMATION AND DISCUSSION PURPOSES. THEY ARE NOT AND SHOULD NOT IN ANY WAY BE CONSIDERED LEGAL ADVICE.

²See for example: <http://www.howies.com>

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thirty percent of American households do not have a computer with an Internet connection.³

This implies that a significant part of our demographic - over ninety million of us - are being left behind by the cultural and business changes produced by the rapidly growing broadband-connected PC and mobile device market.

One of the points in President Obama's 2008 and 2012 election campaigns was the vision that every American should have computer and Internet access. On President Obama's 2008 campaign website the following objective was stated.

"Barak Obama believes that America should lead the world in broadband and Internet access. As a country we have ensured that every American has access to telephone service and electricity, regardless of economic status, and Obama will do likewise for broadband Internet access."

Despite this worthy goal, according to a 2008 Nielsen study⁴, the reality is that many millions of Americans have no access to a computer in the home and/or have no high-speed Internet connection in the home, even if they have a computer. As well as lacking access to other functions such as printing documents, scanning or faxing documents from home.

WHO IS MOST AFFECTED?

The sad fact is, the majority of the ninety million citizens of our country who lack this essential tool for growth and commerce comprise the most disadvantaged portions of our society, namely the POOR!

□ In 2008, more than 36% of households in which the head of household had no more than a high school education had no Internet access in the home.

□ During the same year, more than 25% of households with an income of less than \$50 thousand had no Internet access in the home. This comp-

³ U.S. Census Bureau, Current Population Survey, 2009 (Internet Release Date, February, 2010).

⁴ See: *An Overview of Home Internet Access in the U.S.*, Nielsen Company (Dec. 2008), available at <http://www.blog.nielsen.com/nielsenwire/wp-content/uploads/2009/03/0verview-of-home-internet-access-in-the-us-jan-6.pdf>

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areas with less than 7% of households without Internet access in the income group of over \$75 thousand.

□ Even in the major metropolitan areas (where broadband access is readily accessible) the percentage of households that were found to have no broadband access was high. Trends to reduce the numbers of households without access indicated very slow progress. According to the Pew Research Center, as of April, 2012, 33% of Americans of age eighteen years and older do not have broadband access at home. This is about the same rate of non-utilization as was found as of April 2009.⁵

This clearly establishes a market need for the services of businesses that offer computer work station rental in public space.

According to the New York Times,⁶

An estimated one in five adults in California do not use the Internet, and 30 percent do not have broadband access at home - about the same as the national average. Those left behind are increasingly isolated and disadvantaged as more of life's basic information, like vital community news and transit schedules or job listings, have moved online. The divide is most severe in California's Latino community, where 35 percent of adults do not use the Internet at all, and only 50 percent have broadband access at home. ...

Grandiose plans announced by some cities (like San Francisco in 2004) to help close the gap with citywide wireless Internet access have mostly fizzled due to political disputes and lack of financing.

Currently no major city has a concrete plan in place to overcome this technology gap.

LEARNING COMPUTER SKILLS BY HAVING FUN!

At the same time, the Internet has blossomed with numerous free entertainment applications!

A documentary published by the International Association of Amusement Parks and Attractions shows convincingly that throughout our lives, much of what we learn comes not from work or study, but from play.

⁵ [Http://pewinternet.org/Trend-Data-\(Adults\)/Home-Broadband-Adoption.aspx](http://pewinternet.org/Trend-Data-(Adults)/Home-Broadband-Adoption.aspx).

⁶ Article: *Hispanics Rank High on Digital Divide*, available at <http://www.nytimes.com/2011/06017/us/17bcjames.html>.

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What better way, then, to learn computer skills, than in a comfortable, socially-friendly, hospitable environment? A place where the skills needed for both work and play in the computer world are present, functional and made available at a reasonable charge. A place where the staff will gladly share their knowledgeable at no extra charge. There are many video skill games available on the Internet. Some require payment while others are totally free. People in general are social and they often prefer to enjoy video games not in the solitude of their bedrooms or the sterile atmosphere of a public library, but in a public area with other likeminded people, in order to interact personally with their friends, including friendships formed at the location itself.

This is the market gap which this establishment serves. The same can be said of taverns, where people congregate and spend money to watch for example the Super Bowl, despite the fact that the Super Bowl is available to them for free on their home televisions.

Some observers have asked:

"But aren't public libraries and commercial copy centers enough?"

If you just mean another place to spend your money, there are many locations that offer computers available for hire, with various levels of functionality. Places like commercial copy centers, hotel business centers and kiosks at airports. There are also computers with internet access, for free sometimes, in limited quantities at public libraries. FedEx-Kinko's, and more recently FedEx Office, often charges \$21per hour or more to use their work stations and associated printing and communications facilities.

Some public libraries provide basic computer tools; others can provide much more than basic. The hindrance to public library usage is often the number of stations available, the hours of service, and the amenities provide are often limited.

In addition, sharing social media information with your friends is often discouraged in an environment where noise above a whisper is frowned upon! Sharing and viewing of videos and pictures of family and friends, activities and achievements is a commonplace occurrence in most Internet Café's. Noise from conversation and laughter is inherent with this type activity and is not allowed in libraries, as well as in some other businesses who sell computer workstation time.

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What is a reasonable charge for computer time in public space?

A survey conducted by the United Nations in 2005⁷, showed that in regards to public access type Internet café, the typical usage charges for Internet access only, with no free access to any other accessories or tools, public venues normally charge the following rates for an hour's worth of use:

- United Kingdom: \$7.00
- Japan: \$7.50
- United States: \$5.00

In the U.S., if you compare the normal Internet café that does not combine business services and computer services, nor offer a free promotional game, you will find that they normally charge in the neighborhood of \$4 - \$8 per hour to rent a work station. Possibly more if you have access to a large screen monitor or other upscale amenities.

At _____ dollars per hour, the rate for workstation terminal usage at this location is comparable to the charges of Internet cafes that are only places of amusement⁸ and will substantially underprice the competition from commercial copy centers.

A fast FACT CHECK of other businesses in the area that sell work station time will show the rate charged at this store is significantly lower than their non-promotional game using competitors!

In this way, this location provides the underserved segment of our society with a social environment equipped to foster new skills and relationships, as well as provide access to the internet for job hunting, business functions and communication.

Based On This Information, It Is Easily Understood How Someone Who Takes The Time To Fairly And Impartially Examine The Facts Many Find That WORK STATION RENTAL Is Truly A Legitimate Service To Sell!

Ask the Store attendant for a Competitor Comparison chart that shows the rates and services available from local competitors!

⁷Foreign Policy Magazine, July 2005 issue.

⁸See for example, the Southern California chain, Howie's Game Shack, <http://www.howies.com> and Article: "The next-Generation Arcade (Think PC Players Want to Play at Home? Think Again!) Replay Magazine, June 22, 2002.

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Free Game of Chance Promotions.

(NOTE: Even though the free game promotion offered at this store *is not a game of chance*, as we will discuss later, it is appropriate to show how games of chance are used legally, and thereby show how much further away from crossing the line the games offered here are!)

Name brand companies of all kinds and sizes advertise and promote the sale of their products and services by chance promotions. These promotional games distribute value by chance. They are not lotteries. The machines used to participate (that now include mobile devices as well as personal computers at home) are not gambling devices or slot machines. One state has existing statutes, namely those from the California appellate courts, which show this matter as decided. The primary reason behind these decisions is that the game promotions are free and the games promote the sale of legitimate services and goods.

A game promotion would never be considered "free" if the only way a person could be eligible to win were through buying a product. Long ago, advertisers and courts learned that in situations where there are promotional games that the public can participate in without buying or paying, then the game is considered free. Even if customers can receive more entries into the game by purchasing something. In a milestone decision the **California Supreme Court** put it this way:

" Those who purchased admission tickets and then registered while they were at the theater as patrons, cannot be said to have paid a consideration for the privilege of registering, as they could have done so without buying an admission ticket... "⁹

It is notable that nothing in this statutory law makes it criminal to conduct a free game of chance promotion because participants are interested in winning the prize.

- Nothing renders it criminal because of the artwork, "flash" or attractiveness of the promotional game.
- No prohibition on how the game was shared, or played, no mention of equipment used or restricted.

Other Objections Sometimes Raised:

But, the game promotion at this store is displayed to the customers on computers!

Yes, so is *My Coke Rewards*. Yes, this store's game promotion offers

http://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1012&context=carter_opinions

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vivid, flashy artwork. So does *My Coke Rewards*. The *My Coke Rewards* promotional game promotes the sale of a legitimate product. This store promotes the sale of legitimate products and services.

There is one true difference in the presentation of the free promotional game...the free promotional game offered by this location allows no-purchase participation in **unlimited amounts**. *My Coke Rewards* does not!

It Is True:

Some states have statutes or ordinances which forbid the conduct of a sweepstakes game promotion with video monitor displays that "simulate gambling or play gambling-themed games."

BUT...

One of the reasons this store's video displays cannot be considered to be simulating gambling is because they are free to play. We will get to the primary reason last!

In addition, because they are readily distinguishable from casino type games, the displays are not simulating the play of gambling-themed games. On top of that, the requirement of substantial skill to achieve an optimum prize is another facet that makes this free game promotion readily distinguishable from casino type games.

But Slot Machines Are Illegal Here!

Some statute also specifically forbid the use of slot machines. The problem is that in most cases, the courts have scarcely spoken to explain whether a free game delivered via a machine can ever be a slot machine.

A requirement that participants *must* **pay to play** is the basic standard in most states. In one case, the courts have explained that if a machine itself does not produce random outcomes, it is not a slot machine, regardless of what its use might be.

In this store, a "deal", or complete set, of electronic tickets is uploaded before the promotion begins. The computer system in the store does nothing more than distribute the electronic tickets in the same order they were in when uploaded. Thus, the store's computer system cannot be a "slot machine" as defined in that court case.

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ALL OF THE ABOVE ASIDE:

The *primary* compliance features of this free game promotion system is that because of the FULL DISCLOSURE FEATURE¹⁰, this software allows each participant the ability to preview before playing, the win values of all future draws of electronic game pieces!

Not just one future play, or two or ten... ALL FUTURE PLAYS!
Access to this feature is prominently displayed in the rules as well as in the game itself!

Customers can CHOOSE not to view the FULL DISCLOSURE FEATURE, but that is their choice. And it is this choice that changes the whole nature of the game from "chance"¹¹ to "choice"!

With the FULL DISCLOSURE FEATURE, the participant (entering the promotional game by free entry or by purchase) can know with certainty what the outcome will be, before risking anything whatsoever, whether or not the participant draws just one electronic ticket or all electronic tickets.

In addition to everything else, this one feature alone means that the free promotional game offered at this store is *categorically* different from all lotteries, or simulated gambling games or a gambling theme type sweepstakes, because winner determination is **NOT A MATTER OF CHANCE** from the participant's point of view!

NO UNITED STATES COURT HAS EVER DECLARED OTHERWISE!

ASK YOUR LAWYER IF SHE/HE AGREES WITH THIS STATEMENT OF COMPLIANCE!

⁹ "FULL DISCLOSURE" is a patent pending feature found exclusively in the Gold Fusion Promotional Game Software Suite. All Rights Reserved.

¹⁰ **Supreme Court Justice Holmes** :Dillingham v. McLaughlin, [264 U.S. 370](#), 373, 44 S. Ct. 362, 363, 68 L. Ed. 742 (1924), "What a man **does not know** and **cannot find out** is chance as to him, and is recognized as chance by the law."

Emphasis added