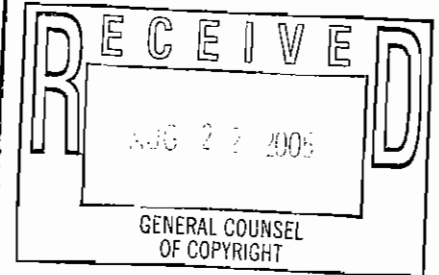
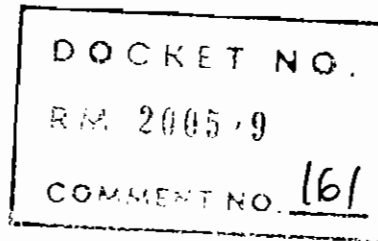




August 22, 2005

**David O. Carson**  
**General Counsel**  
Copyright Office LM-403  
James Madison Memorial Building  
101 Independence Avenue, SE  
Washington, DC 20559-6000



**Re: Docket No. RM 2005-9**  
**Comments of the Entertainment Software Association**

**Dear Mr. Carson:**

Attached are the Comments submitted on behalf of the Entertainment Software Association (ESA) and its members in the above-referenced proceeding pursuant to the Notice of Proposed Rulemaking concerning Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 42287 (July 22, 2005).

The ESA is U.S. association dedicated to serving the business and public affairs needs of companies that publish interactive games for video game consoles, handheld devices, personal computers and the Internet. ESA members collectively account for more than 90 percent of the more than \$7.3 billion in entertainment software sold in the United States in 2004, and billions more in export sales of American-made entertainment software.

We thank the Copyright Office for giving us the opportunity to provide our comments. Should the Office have any questions or require clarification regarding our submission, we would be pleased to provide additional information as necessary.

Sincerely,

Stevan Mitchell  
Vice President,  
Intellectual Property Policy



entertainment  
software  
association

## **Rulemaking on Preregistration of Certain Unpublished Copyright Claims**

### **Comments of the Entertainment Software Association**

**August 22, 2005**

The Entertainment Software Association (ESA) submits the following comment in response to the Notice of Proposed Rulemaking (Docket No. RM 2005-9), dated July 22, 2005, on Preregistration of Certain Unpublished Copyright Claims.

The ESA is the U.S. association dedicated to serving the business and public affairs needs of companies publishing interactive games for video game consoles, handheld devices, personal computers and the Internet. ESA members collectively account for more than 90 percent of the more than \$7.3 billion in entertainment software sold in the United States in 2004, and billions more in export sales of American-made entertainment software.

It is our intention through this filing to demonstrate that entertainment software has historically been subject to substantial pre-release infringement, and because of the frequency, severity, and continuing nature of such infringement, should qualify as a class of works eligible for the Copyright Office's preregistration procedures. It is also our intention to demonstrate that, because the entertainment software industry's distribution practices can be significantly different from those of the music and filmed entertainment industries, allowances should be made in defining a suitable class of entertainment software products eligible for these preregistration procedures.

#### **I. Proposed Class**

The ESA proposes that the Copyright Office amend its proposed rulemaking and add to the classes of works eligible for preregistration under Title I of the Family Entertainment and Copyright Act (FECA) the following:

Entertainment software being prepared for commercial or mass market distribution, demonstrable through contractual arrangements with developers, distributors, retailers, or through prior course of dealing with parties or predecessors in interest.

This class should be understood to extend to works of entertainment software across the range of available platforms for which they are published, including for online play and/or through personal computers, dedicated videogame consoles, handheld or wireless devices. We believe such a formulation is essential because of the many ways that entertainment software products are brought to market, including through traditional relationships with third-party distributors, through distribution and sales agreements negotiated directly with retailers, and absent agreements for advanced distribution or sales, through long-standing relationships with retailers whose consistent practice has been to buy product from a publisher through a

standard Purchase Order. Additional rationale for this formulation is further conveyed below in our discussion of industry distribution practices.

## II. Eligibility for Preregistration

The Notice of Proposed Rulemaking identified three elements that must be fulfilled for a work to qualify for preregistration under the Copyright Office's proposed procedure: 1) the work must be unpublished; 2) the work must be in the process of being prepared for commercial distribution; and 3) the work must fall within a class of works determined by the Register of Copyrights to have had a history of infringement prior to authorized commercial distribution. Notice of Proposed Rulemaking, 70 Fed. Reg. 42287 (July 22, 2005) (hereinafter "Notice"). We discuss each of these elements in turn, indicating where the assumptions made by the Copyright Office as they pertain to music and filmed entertainment products may or may not be suitably applicable to entertainment software or video game products, and where requirements for preregistration of the latter should accordingly differ.<sup>1</sup>

### A. History of Pre-release Infringement and Resulting Harm

The entertainment software industry has had a long history of pre-release infringement, dating back to the earliest days of the industry. ESA's own involvement in combating pre-release infringement dates back to 1999.

In 1993, for example, id Software, an ESA member, fueled the world's appetite for downloadable PC games with Doom, downloaded by more than 6 million people worldwide. The next year's sequel, Doom II, was pirated several weeks before its intended release date. A review copy, shared with a British PC games magazine, was compromised and reproduced and full retail versions of the game were also made available on Usenet, IRC and through numerous FTP sites. This had the effect of further delaying the authorized release of the game until May 1994, as it had to be recoded to ensure that future patches and upgrades would not work on the pirated version. (This is not the earliest instance of pre-release piracy of entertainment software, but remains one of the most widely publicized. It was featured prominently, for example, in Wired Magazine's cover story on software piracy in April 1997 (attached as Appendix 1)).

Another highly anticipated PC game that was released without authorization to the public prior to its official release was World of WarCraft III. The final version of the game first appeared on the Internet on June 14, 2002, two and half weeks before its authorized retail launch on July 3. [News article available at <http://www.wired.com/news/print/0,1294,53454,00.html> ; attached as Appendix 2.] Unauthorized (i.e., "cracked") copies of the game first appeared on private File Transfer Protocol ("FTP") sites and Internet Relay Chat (IRC) channels. Within hours, the game was widely available on the Internet through public IRC channels. On the same day, pirated versions of the game spread to Internet servers outside the U.S. Although actual damages in the form of lost profits are difficult to quantify, the fact that a final version of the game was leaked two and half weeks prior to its official release in stores undoubtedly caused significant

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<sup>1</sup> We do not believe that such differences would lead to dramatic increases in the overall number of entertainment software works for which preregistration would be sought on an annual basis. Rather, such adjustments would help to ensure that certain high-risk works are not arbitrarily excluded from eligibility.

harm to the publisher's sales and revenue. Given the high research and development costs, the harm caused by pre-release infringement to a company's ability to recoup such investment is significant.

In fact, it is precisely because of incidents like this that some publishers have moved the development and distribution of their products into their companies, thereby reducing reliance on third parties and third-party contracts. In this context, it seems incongruous to require entertainment software publishers to demonstrate eligibility for preregistration through the existence of such third-party agreements. This issue is discussed in greater detail in subsequent portions of this filing.

Various additional examples of pre-release piracy and the need for preregistration practices are provided in this section and the relevant appendices. Like the movie and music industry, this phenomenon has become far more prevalent with the advent of file-sharing technologies on the Internet which has greatly facilitated the ease with which cracked video game software is routinely distributed to the public, without authorization of the copyright owners.

In determining the specific definitions and requirements to meet the three criteria for preregistration enumerated in the Notice of Proposed Rulemaking, it is clear that the Copyright Office relied on the language of the FECA statute itself, as well as discussion from the legislative history. It is instructive to view FECA Section 103 (Criminal Infringement of a Work Being Prepared for Commercial Distribution), and Section 104 (Civil Remedies for Infringement of a Work Being Prepared for Commercial Distribution) as interconnected law enforcement and civil tools to address the wrongs suffered through copyright infringement of pre-release works. To the extent Congress clearly expressed its intent with regard to certain definitions of types of works for which infringement should result in criminal sanctions under Section 103, such statutory language represents the clearest guide for the Copyright Office in creating rules to enable civil remedies for infringement of those types of works under Section 104.

FECA Section 103 creates the concept that willful infringement of a "work being prepared for commercial distribution" is a criminal act, **and defines what constitutes such a work for those purposes**. FECA Section 103 , in relevant part, states:

"103(a)(3) Definition. – In this subsection, the term 'work being prepared for commercial distribution' means—

**(A) a computer program**, a musical work, a motion picture or other audiovisual work, or a sound recording, if at the time of unauthorized distribution –

(i) the copyright owner has a reasonable expectation of commercial distribution; and

(ii) the copies or phonorecords of the work have not been commercially distributed; or

(B) a motion picture...." (Emphasis supplied)

**Thus in Section 103(a)(3), Congress singles out and enumerates as the first example of a pre-release work for which criminal sanctions for willful infringement would apply, "a computer program".** Further, we think it necessary to point out that the

ranking Member of the House Subcommittee on Courts, the Internet and Intellectual Property, Representative Howard Berman, noted in the Congressional Record that the video game industry suffers pre-release infringement in the same manner as movies and music. As quoted in the Office's notice of proposed rulemaking, Mr. Berman's Prepared Statement noted that: "Pirates will always seek treasure, and where they have truly found gold is in obtaining a pre-released copy of a movie, sound recording or *video game*." (Emphasis supplied.) Notice at 42287.

It does not follow that Congress would intend that the willful infringer of a pre-release work of a computer program might be imprisoned for a number of years, but that the infringed copyright owner of that pre-release work could not pursue the civil remedies under section 104, predicated by preregistration. Rather, we would argue that the opposite correlation between the definitions of qualifying works under Section 103 and 104 was intended. However, the proposed rules do not identify any type of computer program as a class of work appropriate for preregistration.

Although entertainment software products were not expressly recognized by the Copyright Office in its Proposed Rulemaking, as required by the notice, we set out below additional instances in which entertainment software products have been the subject of pre-release infringement.<sup>2</sup>

- The French language version of Microsoft Xbox's "Halo 2" game began circulating on the Internet (made available through newsgroups and "warez" sites) on October 14, 2004, 26 days before its official release date of November 9, 2004. [News article available at [http://news.com.com/2102-1043\\_3-5409959.html?tag=st.util.print](http://news.com.com/2102-1043_3-5409959.html?tag=st.util.print); attached as Appendix 3.] In fact, a significant number of Microsoft's video games have been the subject of pre-release infringement. Recent examples include MechAssault 2 (compromised three weeks before planned release date of January 21, 2005); Jade Empire (compromised 10 days before planned release date of April 22, 2005); Forza Motorsports (compromised two weeks before planned release date of May 13, 2005); Conker (compromised six days before planned release date of June 21, 2005); and Dungeon Siege 2 (compromised five days before planned release date of August 16, 2005).
- For the period between August 1, 2004 and August 17, 2005, 145 pre-release versions of 104 Xbox games were made available by 45 different "cracker" groups.
- By the October 26, 2004 release date of the Grand Theft Auto: San Andreas game, a pirated version had already been available on the Internet for approximately one week, along with manuals and images of the packaging. [News articles available at [http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/20041104/piracy\\_video\\_games\\_041104/SciTech?s\\_name=&no\\_ads](http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/20041104/piracy_video_games_041104/SciTech?s_name=&no_ads) and [<sup>2</sup> This enumeration is not purported to reflect a complete accounting of all or even most of the instances of prerelease piracy to have affected the industry, but rather a sampling that has been assembled primarily by reference to publicly available sources. Not unlike the case with films and musical works, it has been our experience that it is the more anticipated and highly-marketed titles that are and will continue to be the most likely candidates for prerelease piracy. If, in reviewing this matter, the Copyright Office were to conclude that the examples presented do not satisfy the requisite showing of a "history of infringement," we would welcome an opportunity to submit accounts of additional instances on a business confidential basis.](http://news.com.com/2102-1043_3-</a></li>
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[5421159.html?tag=st.util.print](#); attached as Appendices 4 & 5.] In June 2005, the Department of Justice announced that a production plant worker had pleaded guilty to criminal copyright infringement for reproducing and distributing copyrighted images from the packaging of the video game over the Internet. A copy of the government's press release is available at <http://www.usdoj.gov/criminal/cybercrime/dottoliPlea.htm> (attached as Appendix 6). Grand Theft Auto: Vice City (for Playstation2) and Midnight Club 2 (for Playstation2 and Xbox) are also believed to have been compromised at least several days in advance of their planned release in those formats.

- Several widely-anticipated video game releases from publisher Capcom have been the subject of pre-release infringement, including as far back as 1996 with Star Gladiator, which was compromised several months in advance of its October 1996 release date. Other examples include Resident Evil 2 (compromised two months prior to January 1998 planned release); Breath of Fire 3 (one month prior to April 1998 planned release); and Devil May Cry 3 (one month prior to March 2005 planned release).
- Games for personal computers are similarly targeted by warez community participants who race to provide a cracked copy of the game before its official release date. One of the more prominent examples of recent pre-release infringements of PC games was "Doom 3," an instance in which pirated copies were available on newsgroups and peer-to-peer networks two days before the game's scheduled August 3, 2004 release in retail stores. The British Broadcasting Corporation (BBC) reported that on August 1, 2004, more than 50,000 copies (about 1.5 gigabytes) of the game were being downloaded. Assuming that all those who had downloaded the game had instead bought the game in stores, the lost sales would have amounted to US\$2.7 million. [News article available at <http://internetgames.about.com/gi/dynamic/offsite.htm?zi=1/XJ&sdn=internetgames&z=1&zu=http%3A%2F%2Fnews.bbc.co.uk%2F2%2Fhi%2Ftechnology%2F3527332.stm>; attached as Appendix 7.] The cost to game developers of a video game like Doom ranges between US\$15-20 million, and as such, pre-release piracy of such games causes significant economic harm to developers and/or publishers.
- Over the past five years, many other video game titles have also fallen prey to pre-release infringement. Another prominent ESA member publisher confirms that five of its titles released over the past two years had been pirated prior to their official release. In four of those instances, the pirated pre-release versions were available two weeks in advance of the release date into stores, and in one, the game appeared online six weeks before the actual planned release date.
- In early August 2005 a suit was filed in the Central District of California in which plaintiff, Disney Enterprises, Inc., alleges that defendants posted on their website unauthorized camcorder excerpts from the sequel Kingdom Hearts 2, release of which is expected in 2006. (See Complaint, attached as Appendix 8).

## B. Work Prepared for Commercial Distribution

The notice indicates that to qualify for preregistration, the work must be in the "process of being prepared for commercial distribution." Notice at 42287. But rather than follow the statutorily-provided definition of the same term ("work being prepared for commercial distribution") in the adjacent section of the same Act – a section targeting the very same problem of addressing problems raised by pre-release infringement - the Copyright Office proposes to tailor a more stringent test based on the substantiality of steps taken preparatory to distribution to the public. The statutory definition provides simply that a work is being prepared for commercial distribution if, at the time of unauthorized distribution, the copyright owner has a reasonable expectation of commercial distribution and copies or phonorecords of the work have not yet been commercially distributed. The Copyright Office proposal rejects the notion that mere subjective intent (coupled with a significant, though not unreasonable, preregistration fee) should be sufficient to qualify a work for preregistration, proposing instead to look to works for which arrangements to distribute have been completed at the time of preregistration.

We believe this requirement to be unnecessarily stringent, and while we support the Copyright Office's desire to avoid fraudulent applications, we believe those concerns likely overstated in this case given the seemingly low risk of their occurrence. We propose instead that the Office rely on an acknowledgement or certification that a given work was being prepared for commercial distribution, coupled with the present or even a more substantial preregistration fee. Such requirements standing alone should effectively immunize against fraudulent claims. We further posit that the various limitations that the Copyright Office proposes on what constitutes indicia of steps taken to commercially distribute motion pictures, sound recordings and musical compositions are not similarly appropriate indicia in the context of entertainment software.

### **Distribution agreements for entertainment software are often qualitatively different than those considered by the Copyright Office with respect to films, musical works and musical compositions.**

According to the requirements of the notice set forth thus far for preregistrants of motion pictures, sound recordings and musical compositions, the creator of a work must have taken some significant action to place the work in the stream of commerce. In addition, the notice identifies two requirements to meet the test of whether "some significant action to place the work in the stream of commerce" has taken place: 1) preparation of the work must have commenced; and 2) a contract must have been entered into for distribution of the work.

For entertainment software, the first requirement is rather straight forward. When a game is in development, "some portion of the work" will necessarily have been fixed in a "tangible medium of expression" by the mere writing of the game code, whether on paper, a computer disk or other medium. A particular example cited in the notice was the possible release of "dailies" on the Internet before principal filming is completed on a movie. Notice at 42288. In the video game context, such an event would be akin to the partial release of a game's source code while the full game is still being completed. In September 2003, the computer source code for "Half-Life 2" was stolen and later released on the Internet. The game's developer and publisher, Valve, indicated that the source code was stolen by hackers

who broke into the company's computer systems. [News articles available at <http://www.pcworld.com/news/article/0,aid,116483,00.asp> and <http://www.cdfreaks.com/news/10896>; attached as Appendices 9 & 10.] Thus, the entertainment software industry is victim to the same pre-release problem of portions of a work being released to the public without authorization, as are other industries.

The distribution model described by the Copyright Office in the notice as the norm for distribution of movies and music, however, is far less clearly the norm for the entertainment software industry. Significant differences emerge when considering the nature of distribution agreements prevalent in this industry as between publishers, distributors, and leading retailers of entertainment software products. Distribution agreements for entertainment software, when they exist, are rarely title-specific, but more often take the form of "master agreements" related to the sales terms and all possible video game titles a company will publish over a year, the titles of which may be known or unknown to the distributor or retailer at the time the agreement is struck. In other instances distribution of video game titles is done by standard purchase orders, which, as discussed further below, are not entered into in many cases until after a work has been completed. What is clear, however, is that the company's titles will be distributed to the general public. For this reason, the requirement that a particular distribution agreement be in existence, specific to the work being preregistered, is too restrictive and is unnecessary to the purpose of weeding out fraudulent preregistration claims.

One general industry practice is for publishers or distributors to enter into distribution contracts with retailers for a specified period (typically a year), with self-renewal clauses subject to a limited period within which modifications to the contract may be made. As stated above, these distribution contracts are typically general agreements that allow a retailer to distribute the various titles an entertainment software company will publish within a year, and in almost all cases, an addendum is typically *not* executed to cover a specific new title when it is actually released. Thus, for those engaged in this practice, a distribution agreement will always be in place for the video game titles a video game publisher may release in a given year, yet the existence of such an agreement does not say a great deal about the anticipated publication status of any particular title. Given that the majority of video game titles are typically distributed through large retail outlets like Best Buy, Wal-Mart, K-Mart and the like, these entities obviously qualify, or should qualify, as "established distributors" as defined by the Copyright Office (i.e. "an entity that is actually in the business of commercial distribution of the class of works and that has actually engaged in commercial distribution of several such works in the past year"). Notice at 42289. The Copyright Office should amend its proposal to allow for inclusion of these works, distributed under these well-established practices, for preregistration.

**Reference should be permitted to a wide range of agreements governing the relationships of developers, publishers, distributors and retailers with respect to a particular work.**

Thus, reliance solely or even in substantial part on the existence of a distribution agreement provides little guidance as to the titles that may be intended for distribution under such an ongoing arrangement. Sole reliance on the existence of a distribution agreement, or any single type of agreement, for that matter, does not permit recognition of other industry practices, both prevalent and in constant flux, such as when a game developer chooses to self-



publish a game, when a publisher elects to develop a game "in-house," or when either a publisher or developer elect to undertake their own distribution of a particular title.

Instead, ESA recommends that with respect to entertainment software, the Copyright Office include for preregistration works that are "intended for commercial distribution" as could be demonstrated by the existence of some form of relevant documentation, including agreements in place with developers, publishers, distributors, retailers, and even other publishers.

**Allowances should also be made for applicants capable of demonstrating intent to distribute commercially through the prior dealings of relevant parties.**

ESA member companies accomplish distribution either through relationships with third-party distributors or (increasingly) through vertical distribution, by establishing direct relationships, or relationships through internal distribution divisions, with major retailers. In these latter instances the relationship may or may not be governed by formal master agreements. In instances where master agreements are in place, they tend not to be product-specific. Nor are they necessarily limited in duration, and can remain in place until one side terminates. In addition, several large publishers report having maintained successful, mutually beneficial and long-standing relationships with retailers without having in place any form of master agreement, where product purchases are accomplished through standard purchase order.

To avoid prejudicing in a seemingly arbitrary way publishers and retailers who prefer to manage their relationships in such a manner, the Copyright Office should also permit preregistration of entertainment software products for which plans for commercial or mass market distribution can be demonstrated through prior course of dealing. In addition, owing to the possibility that the parties to such relationships, whether publishers, distributors, or retailers, may from time to time alter their corporate identity, the ability to demonstrate prior relationships with such a party's predecessor in interest or a corporate relationship with an established publisher or distributor (such as in the case of the formation of new subsidiary publishing company) should satisfy this requirement.

**Arrangements and agreements for online development, publication or distribution should not be excluded from this determination.**

In the notice, the Copyright Office also sought to narrow the eligible classes of works by reference to the nature of the distribution agreements, specifically by proposing to exclude from the proposed class of movies or sound recordings those agreements contemplating online distribution. Excluding online distribution agreements from consideration is unnecessarily restrictive and unwittingly short-sighted in view of how entertainment software is and has in the past been distributed and how other forms of entertainment are to be delivered in the future.

For the entertainment software industry, online distribution is much more than a mere experiment, and for some publishers/developers, it is becoming as much a source of revenue as distribution through existing retail channels. While it is true that online distribution still occurs simultaneously with distribution through retail outlets, the fact that a game is planned primarily

for online distribution (and even if solely intended for online distribution) should not be a factor to militate against recognizing online distribution as a reliable indicator of consumer demand for entertainment software products. If the purpose of the preregistration practices is to help copyright owners battle against piracy of works that have a history of pre-release infringement, then the practices that are adopted must recognize that online distribution of entertainment software is a mature and important part of the entertainment software distribution model.

A particularly good example of this type of piracy pertains to the PC game Half Life 2 which was developed and is being distributed by Valve directly through "Steam", its online delivery system (site available at <http://www.steampowered.com>). Half Life 2 was both a highly anticipated game, and remains one of the most popular games on the market. Merely because it was also intended for online distribution is no indication of either expectation or demand surrounding the game.

Some in the industry predict that online distribution will become an increasingly popular choice for smaller developers who, operating closer to margins, can also be particularly susceptible to the effects of pre-release piracy. Yet it is precisely the works of these publishers that could be excluded from pre-registration eligibility were the Copyright Office to decline to give weight to the existence of online distribution agreements.

### C. Work Must Be Unpublished

The short discussion in the Notice of Proposed Rulemaking of what constitutes "unpublished" works qualifying for preregistration is limited to quotation of a portion of 17 U.S.C. Section 101:

"Publication in the copyright sense means 'the distribution of copies or phonorecords of a work to the public by sale or other ownership, or by rental, lease or lending ...the offering to distribute copies or phonorecords to a group or persons for purposes of further distribution, public performance or display constitutes publication'". Notice at 42287 (Emphasis supplied)

We would argue strongly that this definition of "publication" for purposes of preregistration is neither in keeping with the intent of the statute to extend the civil remedies of Section 411 and 412 of the Copyright Act to protect pre-release works, nor does it reflect the common forms of pre-release promotion of many forms of works that, if this rule were applied, would be disqualified from preregistration. It is quite common for publishers of video games to promote titles for future release by exhibiting at trade shows, on websites and through other channels, both "stills" and snippets of action from the still incomplete title. This is directly akin to the long-standing practice of the producers of motion pictures to run "trailers" in movie theaters (and increasingly on websites) of forthcoming motion pictures, often times many months prior to the motion picture being complete and ready for public release.

The primary purpose of any such pre-release promotion might be said to build interest amongst both "end-user" consumers for the work, and potential distributors for the work. The Notice of Proposed Rulemaking's position with regard to publication could be interpreted as applying to all of these sorts of common, and in fact necessary, pre-release promotional activities by the copyright owners of entertainment software programs, and yet, all of these

works may be (and are) pirated long before they are in a form appropriate to actually "publish" in the form that they will finally be used or consumed by the public.

It cannot be the intent of Section 104 to provide a safe harbor for all those pre-release pirates, but that is the potential effect of the current reading of "publication" of works for purposes of the first criteria, as expressed in the Notice of Proposed Rulemaking. Therefore, we would request that the final Rule clarify that a work of entertainment software, as a class of pre-release work falling under FECA Section 104 remains "unpublished" and thus meets the first prerequisite for preregistration, until that work achieves the final form in which the copyright owner will make it available for sale, use and distribution to the public and to distributors. An entertainment software program could not be deemed published for these purposes until the work is complete and in the form offered for distribution, in common software industry parlance, the work's "public release version".

### III. Comments on the Procedures for Preregistration

In response to the query posed in the Supplemental Notice dated August 4, 2005, ESA member companies do not believe that the interim requirement of filing online applications for preregistration only through Microsoft Internet Explorer will present an insurmountable burden for them, at least until the Office puts in place similar functionality for other web browsers.

The ESA and its members would like to comment specifically on the maintenance of searchable online records of completed preregistrations under Section IV of the notice. The procedure as contemplated provides that:

(a) All completed preregistrations will be accessible through the Copyright Office's online database by title, author and claimant. Therefore, a search of preregistration records should enable discovery of the registration record for the same work.

Notice at 42290. ESA members do not believe that preregistration applications need be made publicly available particularly as the purpose of such preregistration is primarily to allow the copyright owner to file an infringement suit and obtain relief in pre-release infringement cases.

The ESA and its members propose that the option be provided for business confidential preregistration applications, for all or part of the preregistration applications. A business confidential application would essentially be the same as a public filing but would allow a copyright owner the added benefit of continuing to protect other critical aspects of a working title until actual publication. For instance, ESA members have concerns regarding a public application as it would essentially announce to the world the probable title of a work and may thus cause problems with respect to the domain name registration of that title. One ESA member company, Capcom, notes that just this month, a cyber-squatter registered the domain name for an upcoming game titled "Phoenix Wright" – the development of which was announced by the company at the industry's trade show (the Electronic Entertainment Expo) in May 2005.

Understanding that facilitating a business confidential filing may entail additional costs for the Copyright Office, the ESA suggests that an additional fee might be charged for availing of this option, sufficient to cover such additional costs to the Copyright Office.

#### IV. Conclusion

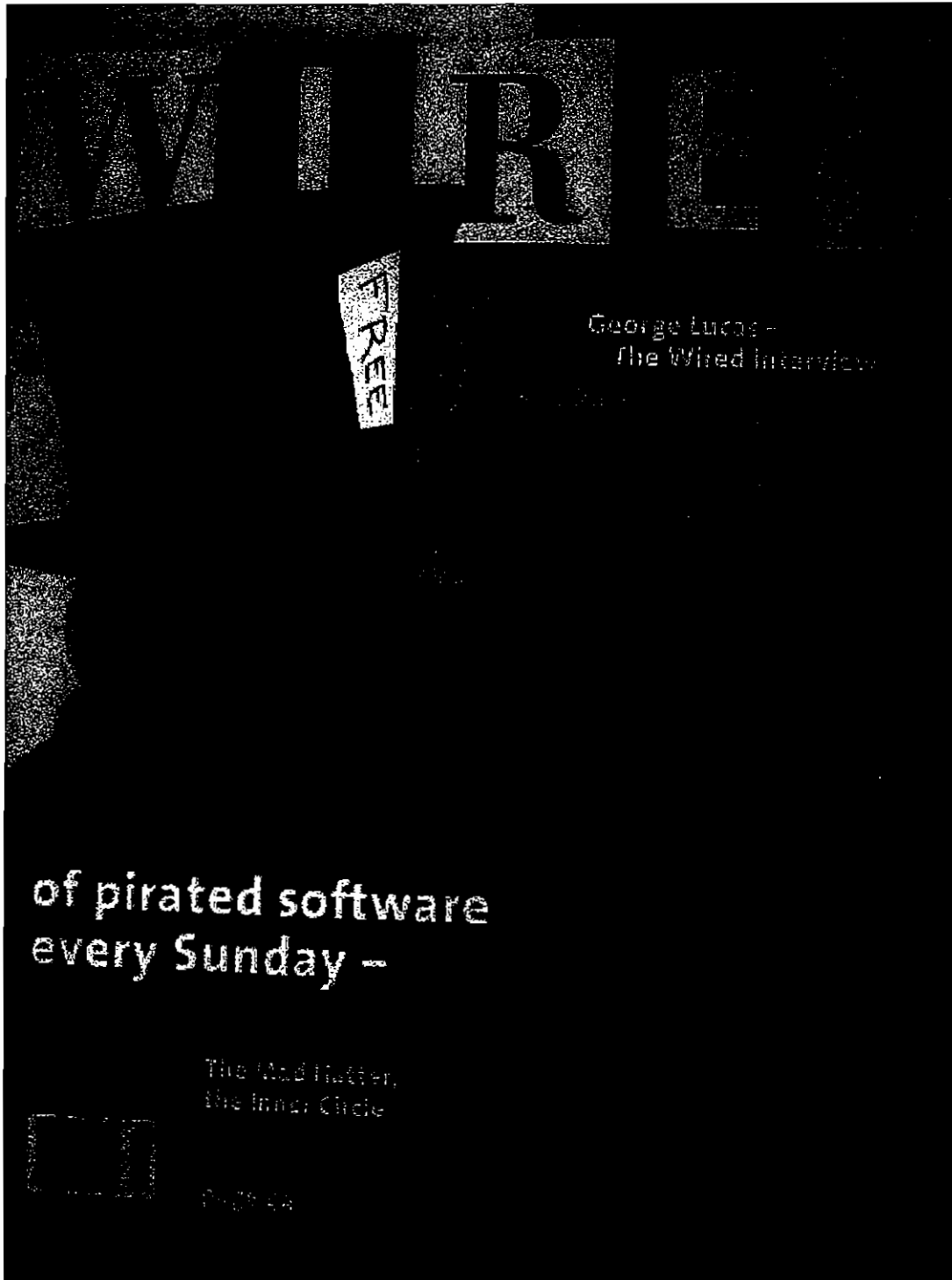
The ESA appreciates the opportunity to provide comments to the Copyright Office on preregistration practices, an important anti-piracy tool.

In sum, the ESA proposes the addition of the following class of works among those eligible for preregistration under these new rules:

Entertainment software being prepared for commercial or mass market distribution, demonstrable through contractual arrangements with developers, distributors, retailers, or through prior course of dealing with parties or predecessors in interest.

As shown through the recitation above, entertainment software products or video games in all formats have had a substantial history of pre-release infringement, much of which has been actively documented by both the trade press and general news outlets.

In addition to the need to include entertainment software for preregistration, the ESA recommends a necessary broadening of the definition of commercially distributed materials as well to better comport with the industry's product development and distribution practices. The nature of the industry's highly successful distribution models provides ample indication that it is not essential for specific distribution agreements to be in place by the time a title is ready for commercial release, and even when they are, they are rarely so title-specific as to be dispositive of an intent to engage in commercial or mass market distribution of any particular title. Given that the entertainment software industry suffers from pre-release infringement to similar degrees as the music and filmed entertainment industries, there is no rationale why the benefits of preregistration as intended by the FECA should not be similarly extended to this industry's products to help these copyright owners fight pre-release infringement.



FEATURES | Wired Magazine Issue 5.04 - April 1997

## Warez Wars

For the Inner Circle, cracking software is a challenge. For the wannabe



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**Issue 5.04** - Apr 1997

## Warez Wars

By David McCandless

**For the Inner Circle, cracking software is a challenge. For the wannabe underground, collecting it is an obsession. For the software industry, it's a billion-dollar nightmare.**

Sunday morning, 7 a.m., somewhere in US Eastern Standard Time: Mad Hatter gets up, has a glass of Seagram's Ginger Ale and a cigarette, and checks his machine, which has been running automated scripts all night. He looks for errors and then reads his email. He has 30 messages from all over the world: some fan mail, a couple of flames, a few snippets of interesting information, three or four requests - some clear, some PGP-encoded. After a quick espresso and another cigarette, he surveys the contents of a few private FTP sites, filters through a bunch of new files, and then reroutes the good stuff to his newsreader. After breakfast with the family, another wave of automated scripts kicks in. The ISDN connection hums to life. A steady stream of bytes departs his machine 128 Kbps and vanishes into the ether. By the end of the day Mad Hatter, a ringleader of the software piracy group called the Inner Circle, will have poured 300 Mbytes of illegal "warez" onto the Internet.

Monday morning, 9 a.m., Greenwich Mean Time: Phil arrives for work in Bracknell, England, in a suit and tie, just back from a few days in Switzerland. Inside Novell UK's glossy five-story headquarters, he lets himself into his office. It looks like a mad, bad bedroom - shiny desktops and derelict ones, disemboweled minitowers and battered servers, every last expansion slot distended with DAT machines, CD-ROM burners, extra hard drives. A metal shelf unit contains a rack of monitors, some video equipment, spare keyboards. Everything is wired insanely to a single ISDN line. After a coffee, Phil boots up and skims his email. Twenty minutes later he has ceased to be Phil. For the next week, he will pretend to be a trader, a courier, a cracker, a newbie, a lamer, a lurker, a leecher. He is an undercover Internet detective, a "technical investigator." He spends his days roving the Net, finding people like Mad Hatter - and busting them.

This is a story about a universe with two parallel, overlapping worlds. One is the familiar, dull world of the software industry, with its development costs, marketing teams, profit, and loss. Phil's world, at least part of the day.

And then there is warez world, the Mad Hatter's world, a strange place of IRC channels and Usenet groups, of thrills, prestige, and fear. A world of expert crackers who strip the protection from expensive new software and upload copies onto the Net within days of its release. A world of wannabes and collectors, whose hard drives are stuffed like stamp albums, with programs they'll never use. And a world of profit pirates, who do exactly what the software makers say: rip off other people's stuff and sell it for their own benefit.

In Phil's world, software is a valuable tool that commands high prices - programs like QuarkXPress, Windows NT, and AutoCAD, costing thousands of dollars a shot. But in Mad Hatter's world, those sticker prices means nothing - except inasmuch as more expensive programs are harder to crack, and that makes them the most desirable, spectacular trophies of all.

In Phil's world, warez are a menace. In warez world, Phil is.

### **Filthy lucre**

Phil's world is full of nasty numbers. Antipiracy organizations like the Software Publishers Association and Business Software Alliance estimate that more than US\$5 million worth of software is cracked and uploaded daily to the Net, where anyone can download it free of charge. A running scoreboard on the BSA Web site charts the industry's losses to piracy: \$482 a second, \$28,900 a minute, \$1.7 million an hour, \$41.6 million a day, \$291.5 million a week. A lot of that is garden-variety unlicensed copying and Far East-style counterfeiting. But an estimated one-third leaks out through warez world, which can be anywhere there's a computer, a phone, and a modem.

This is bad news for the business. Think of the lost revenue! The lost customers! "It's a frightening scenario out there," says Martin Smith, Novell's product-licensing manager for Europe, the Middle East, and Africa. "We are seeing a very, very rapid development of crime on the Internet."

He's not being paranoid: look at the thousands of messages that pour through alt.binaries.warez.ibm-pc and the other Usenet sites that are the warez world's pulsing heart. In a typical week, you'll see Microsoft Office Pro and Visual C++, Autodesk 3D Studio MAX, SoftImage 3D, SoundForge, Cakewalk Pro Audio, WordPerfect, Adobe Photoshop 4.0 - virtually every high-end package in existence. All this plus impossibly early betas and alphas. Add a smattering of mundane Web tools, Net apps, registered shareware, games, and utilities, and you have everything for the forward-looking computer user.

Warez world's volumes are impressive, too - a good 65 Mbytes a day of freshly cracked, quality new releases, chopped into disk-sized portions (to make it from one hop to the next without clogging the servers), compressed, and uploaded. Postings can vary from a few bytes (for a crack) to hundreds of megabytes. The nine main warez sites alone account for 30 to 40 percent of the traffic on Usenet, an average of more than 500 Mbytes in downloads every 24 hours, according to OpNet.

Bad news indeed for Phil and his friends, gazing at those endless dollar signs. But warez world's leading citizens say that filthy lucre is beside the point - at least for them and the hungry collectors they supply.

"No money ever exchanges hands in our forum," says California Red, one of a half dozen of the Mad Hatter's Inner Circle colleagues gathered for an IRC chat.

"We're on the nonprofit side of the warez feeding chain," insists another, TAG (The Analog Guy).

"It's a trade. You give what you have, get something you need. No money needed," adds Clickety.

"We're not in it for the money. I would never sell something I got from warez," California Red reiterates.

"Never made a dime," says Mad Hatter.

Even Phil admits these are not the people responsible - not directly, anyhow - for the 500-Mbyte, \$50 bundled software CD-ROMs from Asia that are the industry's most prominent nightmare. Warez

crackers, traders, and collectors don't pirate software to make a living: they pirate software because they can. The more the manufacturers harden a product, with tricky serial numbers and anticopy systems, the more fun it becomes to break. Theft? No: it's a game, a pissing contest; a bunch of dicks and a ruler. It's a hobby, an act of bloodless terrorism. It's "Fuck you, Microsoft." It's about having something the other guy doesn't. It's about telling him that you have something he doesn't and forcing him to trade something he has for something you don't.

In other words, it's an addiction. Listen to a typical dialog on an IRC warez trading channel:

"What you got?"

"Cubase three."

"What's that?"

"A music program."

"I got it. What else?"

"No, but it's Cubase three-oh-three - the latest bugfix."

"Shit. Gimme."

"It's not a patch. It's another seven meg download."

"Don't care. I want it."

Warez traders scour the newsgroups every night, planting requests, downloading file parts they don't need. Wareheads feel unfulfilled unless they've swelled their coffers by at least one application a day. They don't need this Java Development Kit tool, or that Photoshop plug-in - the thrill is in creating the new subdirectory and placing the tightly packed and zipped file cleanly, reverently, into the collection. They may even install it. Then toy absentmindedly with its toolbars and palettes before tucking it away and never running it again.

Look at Michael, an 18-year-old warez junkie who's also into weight lifting. In the evenings, while his friends pursue women, he's either at the gym or home at his machine, combing the planet for the latest dot releases of 3D Studio MAX. "I bought a Zip drive so I could store it all. The SoftImage rip is 20 disks. It took me three months to get the entire set." A directory called WAREZ on his D:/ drive has \$50,000 worth of cracked software, more than any one person could ever use, ludicrous amounts of applications. The more high-end and toolbar-tastic the app, the better. Without technical support or manuals, he hasn't a clue how to use most of it. But it's there and will stay there. "Warez give you a weird kind of feeling," he says. "You end up collecting programs you don't need and never use. Just so you can say, 'I've got this or I've got that.' Or 'My version of Photoshop is higher than yours.'"

Mad Hatter knows the feeling. "It's an obsessive game. We see it every day - people begging for something to 'finish their collection.'" He's not much better himself. "When I was out of work on disability, I was totally motivated by the thrill of massive uploads, uploading at least 40 Mbytes a day for four months straight." Fellow Inner Circle member Clickety used to spend 12 hours a day online until college got "awful heavy." Another, Abraxas, spends 6 to 10 hours online on weekdays, 12 to 16 on weekends. But Mad Hatter - who runs the semi-tongue-in-cheek, semi-poker-faced discussion group alt.support.warez.recovery - is making progress: he's down to 30 Mbytes a day. "My computer is online 24 hours a day," he says. "A warez pirate is always online."

### **As gods**

For Joe Warez Addict at the end of the cracked software food chain, membership in a group like the Inner Circle is the ultimate collectible. A way to legitimize their addiction, work for the common good, and, of course, get a nice fresh supply of warez. The drug addict becomes dealer. A sizable



chunk of Mad Hatter's daily mail is begging letters.

"I hope that if I ask this question, you will not be offended in any way. But can I join the Inner Circle? I mean, I respect the Inner Circle ... but never got a chance to join it. I was just wondering, can I? Please mail me back ASAP."

Needless to say, this lone obsessive didn't get his chance. Joining the Inner Circle is nigh on impossible. Reaching its members, though, is easy enough. They keep a high profile, both in posting files on Usenet and flaming lamers. When I first tried to contact them I thought that they weren't so good at answering email, but it turned out their provider had just been taken offline for illegal spamming. They relocated en masse, and my mail had been lost in transit. So I posted a message to one of their newsgroups, made sure it was correctly labeled, politely worded, and not crossposted (a cardinal sin anywhere on Usenet). A reply arrived within eight hours. Mad Hatter was more than happy to talk, but not on the phone, not in person, and not on conventional IRC. "It has a bit of a habit of advertising my IP address," he said. He and six other Inner Circle members set up their own IRC server, configured a secret channel, and arranged a mutually convenient time for a live interview. We met and talked for nine hours, in the bizarre overlapping conversational style of IRC. They were frank and open, friendly and articulate - and, like any new start-up, flattered by the attention.

A 17-strong force, the Inner Circle has its own iconography and its own ideals. Its members are warez gods. They preach, police, advise, flame. Their commandments? Good manners, good use of bandwidth, and good warez. Give unto others as you would have them give unto you. When the Inner Circle is not sourcing warez from secret sites, its members are hunting and gathering from more conventional sources. Clickety borrows fresh stuff from his clients. A few have attended Microsoft Solution seminars. "Some of us are actual beta testers, too," says Mad Hatter. "That's got to be scary for the developers." One way or another, they help maintain the steady flow of warez onto Usenet. From there, various wannabes, lamers, and aspirants copy their work to countless BBSes, FTP sites, and Web pages.

These are not pimply teenagers devoid of social life and graces, little ferrets who talk in bIFF text and make napalm out of soap and lightbulbs; they're not downloading porn or being careful not to wake their parents or spelling "cool" as "kewl." According to the interviews I conducted, not one member is younger than 20; Clickety-Clack is the youngest at 23. Most are 30-plus. Champion uploader Digital has been happily married for 22 of his 46 years. Most are well-adjusted white males with day jobs and thoroughly nuclear families. Founding member Abraxas has three kids, one over 18. Mad Hatter runs a small business from home. Technical guru TAG is a computer animator. Irrelevant maintains commercial real estate. They're spread all over the United States. A few are concentrated around Orlando, Florida. Two or three others are California-based. For obvious reasons, that's as precise as they like to get.

The Inner Circle was born of a sense of outrage that their beloved pirate-ware newsgroups were going to pot. Warez had been around for more than a decade, but the growth of the Internet was bringing clueless newbies onto the boards. Warez needed a code of ethics and a group of leaders to set some examples. The leaders would be the best crackers - some of whom became the Inner Circle.

"We took over alt.binaries.pictures.leek in early '96," explains Abraxas, "and then leaked the first Nashville [Windows 97] beta. The groups were being overrun by clueless people. They needed help. They were wasting Internet resources. Perhaps if we could encourage responsible use of the available bandwidth, the whole Usenet warez 'scene' might last a while longer. Warez was around before we were, and will be after, but we wanted to help people and preserve resources using common sense."

As enforcers of the warez code, the Inner Circle can be swift and sure. In April 1996, a pirate gang called Nomad, convinced that posts to warez groups were being suppressed, decided to get themselves some unsupervised elbow room. They selected an antiwork newsgroup - alt.binaries.slack, relatively empty and off the beaten track - where software could be slipped past news providers who had firewalled the usual warez forums. Within 24 hours, the forum was flooded

with the latest releases. The slackers bestirred themselves from their apathy and fought back, posting files that told the pirates politely to push off. The warez kept coming. Then the Inner Circle waded in on the slackers' side and castigated the invaders for their poor manners. The pirates left meekly - though as a parting gift, one of them posted Microsoft NT, Beta 3, all 48 Mbytes of it, in 5,734 parts. The slackers' newsfeed was clogged for days.

A slightly disturbing revelation came out of the slacker invasion. "After the first attempted takeover, we discovered just how scary search engines like Deja News and AltaVista were," explains TAG. "You could dig up real email addresses pretty easy on about 75 percent of people posting warez." A worried TAG hacked into the code of Forte Agent, an industry standard newsreader already cracked to bypass the shareware cripples, and stripped away the X-newsreader header, giving posters far greater anonymity. As a side effect, the patch also reduced email spams by two-thirds. "The hack went over so well with even nonwarez people that Forte eventually incorporated it into Agent as a feature," TAG says proudly, "although I don't think they'll be giving us credit."

By mid-'96, Mad Hatter decided that police work was getting to be too much of a chore. The newsfeed was being clogged by lamers, requesters, and partials posters with "room-temperature IQs." Those genuinely into warez were seeing less and less complete software uploaded; in its place were hundreds of stray disks and clammy begging posts. In a rare fit of pique, Mad Hatter took his revenge.

"If I continue to see the 'here's what I have' threads," he wrote, "I will stop uploading here. I will not help and will laugh my ass off that everyone is suffering. If for some reason you doubt that I make a difference, it's your loss, as I personally have uploaded 85 percent of all the shit that's getting posted now when it was zero day or still fresh. Keep fighting over stale shit - I like to watch; keep posting partials, and I'll stop upping my 100 to 300 Mbytes a week. In fact, I think I'll stop now."

And stop the Inner Circle did. "We became burnt out on educating the masses," Mad Hatter says. Instead, a range of guaranteed lamer-free encrypted newsgroups was created for posting PGP-encoded warez, for Inner Circle-approved members only. Those on the select interested-parties list are given the codes to unlock the software, and anyone can apply to join. Requirement: a reasonable knowledge of PGP. "Hopefully this is a sign you won't be totally incompetent if you choose to post," says TAG. At the last count, the IPL had 500 subscribers, happily trading warez under the protection of the latest in antilamer technology.

### **New economy**

Warez on Usenet are basically gifts - testimony to the power and stature of the giver. Files are posted for all to download, free. Just fire up your newsreader, point it at an appropriate forum, and a list like a home-shopping catalog of the latest software spills down your screen. There is no pressure, but if you download and you like the vibe, you are expected to join the community and contribute uploads whenever possible.

On the freewheeling IRC chat forums, warez are no longer gifts - they're trade goods. The rewards are greater, but you've got to work for them. The IRC channels are 24-hour stock exchanges cum street markets: FreeWarez, Warez96, Warez4Free, WarezSitez, WarezAppz, and WarezGamez. There are private channels, hidden areas, and invite-only piracy parties. And there are no free lunches - every piece of software has to be paid for, in software. The more recent the application, the higher its value. The ultimate bartering tools are zero-day warez - software released by a commercial house in the last 24 hours, cracked if necessary and uploaded. The prizes for good zero-day warez vary; you may get instant download status on a particular server, logins and passwords for exclusive FTP sites, or admission to the ranks of a powerful cartel like the Inner Circle.

"Zero-day sites are very élite stuff," explains paid-up élitist TAG. "People can get access only if they can move a few hundred Mbytes a day. Most are invite only. The average IRC warez trader doesn't get that kind of access unless he puts a lot of effort into it." Zero-day warez trading is a fraught business; competition between groups often leads to malpractice. "You get a lot of first releases with bad cracks," says TAG, "just so someone can say they released first. Then two days later, you get a

working crack. We get most of our freshest stuff from private FTP and courier drop sites."

If your software collection is more mundane, you can trade one piece directly for another. But with so many unpoliced egos in one place, this can be risky. People will often welsh on deals, allowing you to pass them a file and then disappearing into the ether. Cunning traders will barter with "trojans" - zipped-up files of gunk, realistic enough to carry out half the transaction. In extreme cases, someone may feed you a virus.

A step down from zero-day warez are drop sites, where fresh cracks can be found for the cost of a download. Some drop sites run on the trader's own machine; others piggyback on government or corporate mainframes, shareware mirrors, and university networks. Often they're only in existence for 24 hours, or on weekends when the sysops are at home.

Wherever you end up, you'll be struck by the extreme politesse and measured courtesy, united by a common language. "Greets m8. Have appz, gamez and crackz on 129.102.1.3. Looking for Pshop 4.0 beta. L8ter." "Have 1.5 gigs of warez on anonymous T1. Upload for leech access. /msg me for more info. No lamers."

### Real money

Back in Phil's world, they can't quite cope with the idea of this ferocious brag-driven barter economy cloaked in courtesy. The SPA and the BSA just don't believe it. "Considering the amount of time they dedicate, they must be making a return to justify it," says Phil.

Casual observers of the BSA's Web site may well be convinced, if only because they're stunned by the money that's involved - or seems to be. Fifteen point five billion dollars a year! But those figures are based on the assumption that if piracy were stopped, someone would be willing to pay for every pirated copy in circulation.

"Billions of dollars?" scoffs East London BBS operator Time Bandit. "I know guys who have thousands and thousands of pounds worth of software, but the values are meaningless. Win95 may cost, like, £75 in the shops, but in warez, it's worthless. It's just another file that you might swap for another program, which might cost four grand. How much it costs in real money is meaningless."

How do you ram home sales figures and quarterly losses to a bunch of teenagers who see warez trading as their passport to acceptance on the scurrilous side of a brave new world? How do you convince middle-aged men who see incandescently expensive software as monopoly money in a vast, global boardgame that what they're doing is "harmful"? In the software industry's latest campaign, you scare them - or try. The BSA's mandate used to be "not to capture pirates, but to eradicate piracy." Now exemplary punishment is the big thing.

To do that, the BSA and the SPA are willing to push the law to its limits. Prosecuting clear offenders - warez-vending BBS operators and FTP-site pirates, for instance - is one thing; suing ISPs for carrying Web pages containing pirate links and cracks is another. A typical case was against C2Net, a Buffalo, New York-based ISP that the SPA sued for doing just that. In what smacked of a token prosecution - or, in the words of C2Net's president, Sameer Parekh, "legal terrorism" - the action by Adobe, Claris, and Traveling Software, under the aegis of the SPA, held the provider responsible as "publishers" for the contents of its server, and for the activities of individual account holders. The SPA eventually backed off but threatens to revive the suit if C2Net and other ISPs don't agree to monitor their users for copyright infringement. C2Net says it will not give in to litigious "bullying."

And then there are straightforward busts. On January 12, 1996, Microsoft and Novell jointly announced a settlement with Scott W. Morris, who was "doing business as the Assassin's Guild BBS ... billed ... as the worldwide headquarters for two large pirate groups, Pirates With Attitude (PWA) and Razor 1911." According to the statement, "marshals seized 13 computers, 11 modems, a satellite dish, 9 gigabytes of online data, and over 40 gigabytes of offline data storage dating back to 1992.... Mr. Morris agrees to assist Microsoft and Novell in their continuing BBS investigations."

Phil, our undercover Internet detective, wasn't responsible for that particular drama, but he's been integral to others. His latest victory was in Zürich - "a landmark case against individuals and

organizations distributing unlicensed software on the Internet," he calls it. A 27-year-old computer technician who helpfully called himself "The Pirate" was running an FTP site filled to the brim with warez, including US\$60,000 worth of unlicensed Novell software. Phil, impersonating a trader, infiltrated the site (admittedly no great feat), collected evidence, then handed it over to the Swiss police. He accompanied them on the raid to ensure no evidence was damaged. "He was one of a new breed who advertise on the Internet," says Phil. "He made his files available via email requests and telnet." Swiss police also raided the home of a BBS called M-E-M-O, run by "The Shadow," a friend of The Pirate. Unfortunately, The Shadow was on holiday with his parents. The family returned two weeks later to find their front door broken down; the son was arrested. If convicted, the young pirates face up to three years in jail and possible \$80,000 fines.

The Pirate's mistake - aside from his suicidal choice of nickname - was to plant himself geographically. Phil, a former corporate network manager, was able to trace him through his FTP site's IP address. Phil knows his networks; this makes him the perfect undercover agent - and one of Novell UK's most envied employees. "I play on the Net all day," he says, "and get paid for it."

There's a bit more to it than that. Phil and his counterparts in Asia and the US are deployed to infiltrate pirate groups; to study IRC; to get under the skin of the lamers, the dabblers, and the professionals; to chat, seduce, charm, and interact with the denizens of this bizarre over-underworld. Phil talks to traders in their own language, understands the tricks and traps. After busting The Pirate, he says, "we were talking and he was moaning about the sluggishness of his network. I pointed out that, aside from using LANtastic, he was using a 75-ohm terminator on the back of his file server, slowing the whole thing down."

Now that he's back from Zürich, Phil will be getting some new toys: the spoils of war. In many jurisdictions, any hardware deemed to be part of an illegal setup can be taken by investigators and - if part of a civil prosecution - can be worked in as part of the settlement. Once sucked dry of evidence and incriminating data, the cannibalized machines are moved to Bracknell and hooked up to the network.

But despite the resources at his disposal and his status as a network ninja, Phil doesn't always get his man. "If there's a person out there who has a decent level of technological awareness of the ways he can be located, it's quite true to say he could successfully hide himself, or use a system where it would be impossible to track him. It's technically possible for them to bounce their messages all around the world and have us running around like blue-arsed flies." It's a reluctant admission, but then Phil is one person pitted against thousands.

Successful prosecutions aren't always that easy either. Take David LaMacchia, an MIT engineering student who turned two of the school's servers into drop sites and downloaded an estimated \$1 million worth of pirated software. LaMacchia was arrested in 1995, only to have the case thrown out by a judge who ruled that no "commercial motive" was involved. Prosecutors tried charging him with wire fraud, but this was ruled an unacceptable stretching of the law. LaMacchia walked free. "Bringing Internet cases through the judicial system is a nightmare," says Novell's Martin Smith. "Try talking to a judge about 'dynamically allocated IP addresses.' We don't have a chance."

Tell that to the former warez traders of America Online, which had a meteoric history as a pirate mecca. For years, instructions on how to crack AOL's security and obtain free accounts were a Usenet staple. Online, "freeware" chat rooms were packed with traders, 24 hours a day. Megabytes of warez were kept in permanent circulation.

Then came the crackdown of 1996, a dark period in warez history. Goaded by software-industry watchdogs, AOL introduced countermeasures to disinfect its system; alt.binaries.warez was removed from the Internet newsgroup. CATwatch automated sentinels were placed on AOL's warez chat channels, logging off anyone who entered. "Free" accounts were traced and nuked. Michael, the weight-lifting trader and also an AOL veteran, says everyone thought that "the FBI had infiltrated the warez groups, and we were all going to get busted." On the cusp of the big time - a top pirate outfit named Hybrid had a position open - Michael had been hoping to prove himself by doing a CD rip of the soccer game *Euro 96*. "I was halfway through removing the FMV and CD audio. I reckon I

could've got it down from 58 disks to 9. But then everything went haywire."

Profit-driven crackers are actually the easiest to catch: they have links to the real world, starting with the money trail from credit cards. And the easiest prey of all are BBSes, with their telltale telephone connections. In January, FBI agents led by the bureau's San Francisco-based International Computer Crime Squad raided homes and businesses in California and half a dozen other states. They seized computers, hard drives, and modems, though no arrests were made. Along with Adobe, Autodesk, and other BSA stalwarts, the list of software companies involved included Sega and Sony - a hint that the targets included gold-disk dupers who counterfeit mass-market videogames.

Mad Hatter was not impressed. "Wow, I'm in hiding," he cracked the day after the raids. But "Cyber Strike" was, as BSA vice president Bob Kruger said later in a statement, "the most ambitious law enforcement action to date against Internet piracy" - specifically, the first US case in which the FBI, rather than local police, took the lead. And that can't help but augment the BSA's number-one antipiracy tactic for 1997: creating the "perception of threat." And even warez gods don't necessarily want the FBI on their case.

But bluster aside, people like Mad Hatter *are* intrinsically - and deliberately - much harder to catch. The most prestigious pirate groups - Razor 1911, DOD, Pirates With Attitude, the Inner Circle - are tightly knit clubs whose members have known each other for years and call each other "good friends" - though they rarely, if ever, meet. Joining is no easy task. Positions become vacant only when members quit or are busted, or a vote is taken to expand operations. Kudos and reputation are everything. Unofficial homepages can be found here and there, constructed by acolytes who celebrate the groups' best releases and victories. These are often padded out with cryptic biographies and obituaries for those busted by the cops ("We feel for ya!"). Despite the boasting, and the draping of their releases with corporate motifs - logos, front ends, graphics, even signature tunes and Java applets - crackers' true identities typically remain secret, even to one another.

The anonymity, however, works both ways. Cloaked in his own secret identity, Phil says he has managed to get deep within several major groups in the past 18 months and is skimming the surface of several others. He can convincingly portray himself as a caring, sharing warez god. "You make some good friends," he says with a smile. And, it seems, you can end up pretty impressed. "Some of these people are incredibly talented. The logic and programming behind their setups are just amazing." Or maybe he's just bluffing?

### **Warez and whyfores**

In Phil's world, warez dealers are thieves. In warez world, the software companies are the criminals.

"Most products you buy from a store can be returned if you are unsatisfied," reads the beautifully crafted Warez FAQ, on the Inner Circle's Web site. "Software cannot." The Inner Circle thus can claim to have a practical motivation - providing "a place to find something you might want to evaluate before purchasing." All right. "I personally have bought progs that I demo'd first from warez," declares Clickety. "I have more warez than I could ever hope to install on my poor drives. Tested a lot of crap also that I was glad I didn't pay for - deleted it right off the bat. I have recommended software to clients based upon using a pirate version at home."

"Software developers have families, and should be able to support them," reads the Warez FAQ. "We do advocate buying your own software if you really like it and use it heavily," adds Mad Hatter.

As Phil and his friends are well aware, the line between piracy and ownership is very blurred. For example, it's commonplace for 3-D animators and modelers to use pirated, cracked, or at least unlicensed copies of their office software at home, for overtime or experimentation. In some minds, it's even a "necessary evil," a slightly arcane marketing strategy, a rather reckless approach to branding - look at Netscape. Indeed, many software executives privately acknowledge that piracy - especially the attention it brings to new releases - can be a valuable way to develop markets.

Novell's Martin Smith might disagree. He spends "99.9 percent" of his time fighting piracy, and he worries that the next generation of browsers will seamlessly marry the Web with Usenet. "The



newsgroups will be a lot more accessible," he says, with something close to resignation, "which is going to make the whole thing a lot more widespread and give these guys a much bigger market. There's not much we can do, other than encourage ISPs not to take them."

The difficulty is that, once it's up, a Usenet post can generally be canceled only by the author or a sysop from the post's point of origin, "server zero." Even if a cancel is issued, it takes time to ripple across the network. A warez regular would be able to grab the file before it was vaped. Some servers refuse on principle to honor cancels. "Even the most diehard warez hater in news.admin.hierarchy would defend your right to be safe from cancels," claims TAG. Many commercial ISPs have taken the industry's encouragement and dropped the warez groups, but lots of free servers are carrying on. And things aren't helped by the lack of a clear legal framework. Imagine the scenario: a program that belongs to a US company is uploaded via a router in Canada to a server in South Africa, where it is downloaded by a Norwegian operating out of Germany using a US-based anonymous remailer, then burnt onto a CD in the UK and sold in Bulgaria. "How would you prosecute that mess?" asks Smith. "It's a jurisdictional nightmare."

And the profit pirates are getting more creative. Smith cites the Web page of one warez guru, offering a premium-line phone number: for \$3 a minute, you can listen to details about the best warez FTP sites, their addresses, and their login passwords. "Updated every three days for your convenience," it declares. It also makes provisions for those dialing from outside the US. The selling of information that leads to illegal use of information - a difficult case to prosecute.

"Our strategy is to bring a critical mass of prosecutions," says Smith. "We'll take out some people who're downloading this material - the gnats - and then we'll take out some of the larger, more organized guys. The people who are packaging it up and zipping it onto CD-ROMs." Which might work in a world where software was always bought on CD-ROM. But in pushing ever deeper into electronic commerce, where more and more real commercial software (browsers, little applets) is being given out for free, where the Internet is the ultimate distribution network, this looks a little ropey. Friction-free markets and friction-free piracy run in tandem. The Inner Circle already has its PGP-encoded giveaway mall in place.

Smith knows all this. There's just not much he can do about it. "All it needs is one server in one country where there are no laws to counter copyright theft, and there are plenty who will - the likes of Libya, Bulgaria, and Iran. One country with a decent enough telephone infrastructure is enough to undo a hundred busts in the West." Even if laws are constitutional or enforced, larger biases come into play. "Try asking a Saudi policeman to arrest a Saudi software pirate on behalf of an American company. Forget it."

### **Dingle my dongle**

The alternative to policing is burglar-proofing: making things harder to crack. In principle, you might think that the gazillion-dollar software industry would be able to produce uncrackable software. In practice, it can't, although it certainly keeps trying.

Take the dongle, for example. It is the summit of copy protection, an explicit melding of software and hardware. Without the right hardware key - the dongle - plugged into the machine's parallel port, the software won't run. And without the right software, the dongle is a mindless doorstop. Calls to the dongle are woven into the code at the lowest level. "The program may call the dongle every 150 mouseclicks, or every time you print, or every time you select flesh tones as your desktop color scheme," says one dongle expert. If the response to the call is false or not forthcoming, the program shuts down. All communications between the two are encrypted by uncrackable algorithms. Internal security fuses ensure that any attempt to hack the dongle mechanically will cause it to self-destruct. "Nothing short of an electron microscope," says the expert, "could extract the algorithm from that mess."

The biggest player in the dongle market is Rainbow Technologies, whose Sentinel hardware keys are used by 55 percent of all protected software. There are 8 million Sentinel keys attached to 8 million printer ports the world over. The company calls it "the world's most effective way to stop piracy" - a

clarion call to crackers if ever there was.

The logical approach to cracking a hardware key is to create a "pseudodongle" - a chunk of code that sits in memory, giving the correct answers to any query. To do this, a cracker would have to monitor and trap traffic to-ing and fro-ing across the parallel port, then use this information to build an infallible query/response table. Unfortunately, if the query is, say, six characters long, it can have more than 280 trillion responses (281,474,976,710,700 to be exact). With the speed of modern machines, this would take approximately 44,627 years to collate. With the SentinelSuperPro dongle ("the most secure and flexible protection available") the query length can be 56 characters - requiring a mere 10 125 years (in theory) for a complete table. However, the dongle in SentinelSuperPro for Autodesk 3D Studio MAX was cracked in just under seven days of its retail release - substantially less than the 44 millennia emblazoned on the sales brochures. Other expensive high-end applications that use Sentinel - including NewTek's LightWave 5 and Microsoft's SoftImage - have ended up the same way: cracked, repackaged, and redistributed to every corner of the Internet within weeks of their release. How? Instead of attempting to simulate the dongle, expert crackers simply remove its tendrils from the program code, unraveling the relationship skein by skein, function by function, call by call, until the application ceases to need the dongle to function. Then it's ready for anyone and everyone to use - or, more likely, gawk at.

Nobody says this is easy. There may be only three or four crackers in the world who could manage such an opus. But with the Internet to transmit the result, only one needs to succeed.

With the latest wave of dongles, warez world looked to Russia to get the job done - and a shadowy group called DOD "won" the contract. The self-styled "Warez Bearz of Russia and Beyond," DOD appears to have arms throughout Europe, Asia, and the US. It undid Microsoft SoftImage's dongle protection in two weeks, which wasn't easy. The crew riotously celebrated in their "NFO" file: "Totally awesome work of glorious DOD cracker - Replicator after five other crackers gave up! We decided not a do a crack patch 'coz it will take too much time to code it ... you ask why? 'Coz there are only 72 (!!!) EXEs patched. All options now work 100%!"

NFO files do more than brag or supply installation instructions; they testify that the ware is a bona fide release, guaranteed to work. And this is more than just posturing; a group's reputation is paramount. Each release is painstakingly beta-tested. These are their products now, their labors of love. Nobody wants to find a "bad crack" in his hands after a seven-hour download. Nobody wants to be accused of being "unprofessional." Nobody wants the ignominy of anything like the bad crack for Autodesk's 3D Studio that made the rounds in 1992. For all intents and purposes it ran correctly, all features seemed 100 percent functional. Except that the dedongled program slowly and subtly corrupted any 3-D model built with it. After a few hours of use, a mesh would become a crumpled mass of broken triangles, irrevocably damaged. Cleverly, Autodesk had used the dongle to create a dynamic vector table within the program. Without the table, the program struggled to create mathematically accurate geometry - and eventually failed. Many a dodgy CAD house saw its cost-cutting measures end in ruin. Autodesk support forums and newsgroups were flooded with strangely unregistered users moaning about the "bug in their version of 3D Studio." A rectified "100 percent cracked" version appeared soon after, but the damage was done. The Myth of the Bad Crack was born, and the pirate groups' reputations tarnished.

But the pirates bounced back. They always do. And there's no reason to think that there's any way to stop them. Software security people are at an intrinsic disadvantage. Compare their job to that of securing something in the real world that's valuable and under threat - a bank, say. Typically, only one set of armed robbers will hold up a bank at a time, and they'll get only one crack at it. Imagine an army of robbers, all in different parts of the world, all attacking the same bank at the same time. And in the comfort of their own homes. Not just once, but over and over again. Imagine that each set of robbers is competing against every other, racing to be first in. Imagine, too, that some of the robbers are so technically adept that they could have built the alarms, the safe, and even the jewels themselves. And that they have cracked more than 30 banks with the same protection system. And that they're learning from all their failures, because they're never caught. No security could realistically resist such an onslaught. It may be that the only way to avoid having your software cracked is to put no protection whatsoever on it. No challenge, no crack.

Popularity only feeds the frenzy. *Doom* is a good example. In 1993, id Software distributed the original shareware version of its nasty-guns-in-nasty-dungeons masterpiece on bulletin boards, CompuServe, and a then-little-known system called the Internet. Downloaded by more than 6 million people worldwide, *Doom* was a trailblazer in the world of modem marketing. The shareware gave you a third of the game: if you liked it, you had to buy the rest on disks. Millions did.

*Doom* and its makers became a dream target. Weeks before *Doom II*'s release, the sequel was available on the Internet - not as shareware, but warez. And not just as a teaser, but the whole damn thing. "Yeah, that was leaked," says Mike Wilson, id's then-vice president of marketing, now CEO at Ion Storm. "Can't tell you how much that hurt." The leaked copy was rapidly traced - rumors abounded that the version was a review copy fingerprinted to a British PC games magazine - but too late. It was already on Usenet, doing the rounds on IRC, filling up FTP sites. The pirates were in ecstasy and id was left with recoding the final retail release, to ensure future patches and upgrades would not work on the pirated version. Then they shut the stable door. No more external beta testing; no more prelaunch reviews. "We assured ourselves it would never happen again," says Wilson. "No copy of our games would leave the building."

Nice try. *Quake*, *Doom*'s much-anticipated follow-up, turned up on an FTP server in Finland three days before the shareware come-on was due to be released. The pirate version was a final beta of the full game - complete with eerily empty unfinished levels and bare, unartworked walls. Within hours, it had been funneled to sites all over the globe. IRC was swamped with traders and couriers desperate to download.

"Somebody actually broke into our then poorly secured network and started to download it right before our eyes," Wilson recalls. "We managed to stop the transfer before he got all of it. We traced the call, got his name and address. He was pretty scared, but, of course, it was some kid. We didn't pursue that one. It hurt, but not enough to put some little kid in jail."

When the legitimate *Quake* hit the stores last year, it was initially in the form of an encrypted CD, which let you play a shareware version for free but would only unlock the rest on receipt of a password, available for purchase by phone. The encryption scheme, an industry standard called TestDrive, was eventually cracked by a lone European pirate called Agony. And id's crown jewel was now available, courtesy a 29K program. "In order to unlock the full version, you are supposed to call 1-800-IDGAMES," Agony gloated in a posting. "Hahahahahah."

"We knew it was going to be hacked," says Wilson. "We of all people knew. But we thought it was safe enough, certainly safer than *Doom II*." And, truth to tell, it didn't matter too much. The gap between the game's release and the warez version becoming widespread was enough for id to sell the copies they expected. "Copy-protection schemes are just speed bumps," laments Wilson.

Nobody really knows how much actual damage cracking does to the software companies. But as the industry rolls apprehensively toward the uncertain future of an ever-more frictionless electronic marketplace, almost everyone thinks piracy will increase. "The level of activity out there is overwhelming. We know that we have to take action to take control of it. We will continue to bring a critical mass of prosecutions," says Novell UK's Smith. He doesn't sound all that convinced.

Somewhere back on the US East Coast, Mad Hatter has a final swig of ginger ale and settles down to bed with his wife, White Rabbit. She thinks his obsession is a wasted resource, but didn't complain when he installed the latest version of Quicken on *her* computer - a cracked copy, of course. "We are all family men, married with children, day jobs, dedicated accounts, and multiple phone lines," Mad Hatter says. "Our kids have been looking over our shoulders for years. They will be the next couriers, the next warez gods."

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*David McCandless (dmacca@cix.compulink.co.uk), a London-based writer, musician, and film editor, is still bitter about being dethroned as UK Doom champion.*



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## APPENDIX 2



TextSize: A A A A

## Game Pirates Rule the Seize By Brad King

Story location: <http://www.wired.com/news/games/0,2101,53454,00.html>

02:00 AM Jun. 28, 2002 PT

Warcraft III, the much-anticipated sequel from Blizzard Entertainment, hits store shelves on July 3. The series, which is the company's most recognizable franchise, hoped its rollout would create a big splash in an industry that thrives on glitz and glamour.

That wasn't to be. While designers rushed to complete the game, groups of crackers around the world were trying to get their hands on Warcraft III before it was released. It's a regular dance between game companies and pirate groups. The bigger the game, the more intense the pressure on both sides. In this battle, the game companies almost never win.

Three weeks before Warcraft III hit stores, it was cracked.

"As of Monday, June 17, you can download the full version (of Warcraft) on the Web," the note on Germany's Shortnews.com said. "It has been pirated by people within the company that are affiliated with various Web piracy groups. It seems that the various software protection groups have failed yet again, not that they will ever be able to quash piracy in any form, anyhow."

Shortnews.com removed the message minutes after it went live, but by then, it was too late. Class, one of the hundreds of piracy rings operating around the world that has been targeted by the video-game industry for prosecution, had announced its victory in the race to crack the game.

Breaking pre-released games is dicey work, though. While anti-piracy groups hunt them down, organizations like Class have to recruit new members.

"The people in the companies are usually suppliers," a member of Class, who spoke with Wired News on the condition of anonymity, said in an e-mail. "In exchange for whatever software or movies, etc., they receive access to the private groups FTPs."

Top members of Class, along with dozens of other members of pirate organizations, make up a network called The Faction, which is a series of private networks around the globe where these groups store the cracked games. Unlike file-trading applications like Gnutella, which allow anyone to join, these FTP sites are usually run out of private residences and require people to dial directly into the network.

To gain access to those servers, crackers need to have access to another member of the group. Just joining a public chat room or bringing a new game to the group won't cut it. Strangers are not readily welcomed.

However, once people get in, they have access to a goldmine of content. Individuals get points for each crack they bring. The more desirable the game, the more points it's worth. Rankings then determine how much access people have to content on these private networks.

Nabbing the latest Warcraft game was a coup because it was so eagerly anticipated.

Warcraft : Orcs and Humans was one of the early real-time strategy games, where moves occur instantaneously, as opposed to traditional role-playing games where each player has time to consider their options before deciding what to do next.

The game sold over 100,000 copies, which helped put Blizzard Entertainment on the map. The sequel sold over a million copies, which, along with the company's wildly successful game Diablo, helped it launch an

online gaming server operation called Battle.Net. Throughout the late '90s, Battle.Net helped propel sales of Diablo, Warcraft and its spinoff Starcraft, into millions of dollars.

That success, which is fueled by demand from gamers anxious to get their hands on the latest copy, also works against companies like Blizzard since so many people want to get their hands on first versions of the game, stripped of any copy protection.

"It frustrates us, and it's of great concern to us that it's out on the Internet for those who choose to download it," said Paul Sams, Blizzard's senior vice president of business development. "At the same time, I think the number of people downloading it and playing through prior to the launch will be a reasonable-size number, but in the scope of the first day sales, this won't cause us a big hit."

Although companies like Blizzard try to keep tabs on crackers, tracking piracy is primarily the job of the Interactive Digital Software Association, the video-game trade association. Like the recording industry, the biggest threat to the economic security comes in Southeast Asia where technology has allowed rogue manufacturers to move CD burning and selling operations into private homes.

Unlike music piracy, which can be easily accomplished by anyone with a computer, a CD drive and an Internet connection, game piracy is much more limited in scope right now because of the security on game systems and the enormous size of the files. Still, the easiest groups to find are the careless groups.

"It's easy to sit in on a public piracy channel and show the goods (to a group of pirates), telling them you can get a copy of a game to them," said Jason Allen, intellectual property enforcement associate with IDSA. "We've seen a game company tag one of the releases and put the name of the reviewer in the game. When the pirated version showed up, this game reviewer's name appeared in the game."

The IDSA, along with six large game developers, sued three pirate rings including Class in 1999, claiming racketeering and trademark infringement. The suit, obviously, did little to slow Class.

The Utopia group, which broke games for the Sega Dreamcast home console, was shut down after its crackers imbedded photos of themselves within the pirated software just one year later.

The highest-profile busts occurred last December. Law enforcement agencies around the world issued 100 search warrants in the United States, Australia, England, Finland and Norway in an attempt to dismantle a long-time cracker organization called DrinkorDie, which formed in Russia in 1993. Since the bust, members Nathan Hunt and Barry Erickson pleaded guilty to copyright infringement and received jail terms. Six other members have also pleaded guilty.

Erickson, like those in Class, worked for a technology company. He had been the systems engineer at the security firm Symantec.



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## Stolen 'Halo 2' hits pirate sites

By David Becker

[http://news.com.com/Stolen+Halo+2+hits+pirate+sites/2100-1043\\_3-5409959.html](http://news.com.com/Stolen+Halo+2+hits+pirate+sites/2100-1043_3-5409959.html)

Story last modified Thu Oct 14 11:44:00 PDT 2004

**Microsoft threatened severe penalties Thursday for those who circulate a stolen copy of "Halo 2," the hotly anticipated Xbox game set to go on sale next month.**

Microsoft representatives confirmed that a pirated copy of "Halo 2"--in the French language and the PAL video format used by European television sets--began circulating on the Internet late Wednesday via newsgroups and "warez" sites for swapping pirated software.

"We consider downloading this code, or making it available for others to download, as theft," the company said in a statement. "We are currently investigating the source of this leak with the appropriate authorities. Microsoft takes the integrity of its intellectual property extremely seriously, and we are aggressively pursuing the source of this illegal act."

The original "Halo"--created by Microsoft acquisition Bungie Studios--has been by far the biggest-selling title for the company's Xbox video game console. The sequel to the shooting game is one of the most anticipated game releases of the year and is expected to help cement customer loyalty to the Xbox as Microsoft prepares a new version of the game machine.

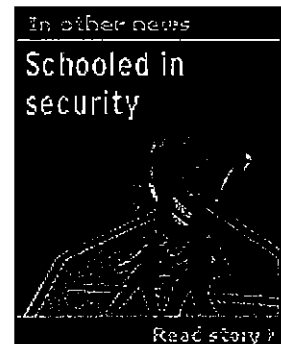
Microsoft announced earlier this week that "Halo 2" had "gone gold," meaning the final code was ready to ship to disc manufacturers in advance of the game's scheduled Nov. 9 release.

Microsoft representatives said the emergence of a pirated copy would not change the release date.

Media giant Vivendi Universal was forced to delay release of its highly anticipated PC game "Half-Life 2" last year, after the source code was stolen.

The "Halo 2" theft--which likely occurred at the European manufacturing plant used to press game discs--is considered far less serious, as security systems built into the Xbox prevent loading of unauthorized software. Pirates would need to have an Xbox outfitted with a grey-market "mod chip" to load a copy of the stolen game.

A Microsoft representative urged anyone with information on the source of the pirated game to contact the company's antipiracy division at 800-RULEGIT or [piracy@microsoft.com](mailto:piracy@microsoft.com).



## APPENDIX 4



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## Sci-Tech

Thu. Nov. 4 2004 8:35 PM ET



This is a screen image from 'Grand Theft Auto: San Andreas' video game from Rockstar Games.

### Hot new games victimized by piracy

Associated Press

DALLAS — A month before the video game's scheduled release this coming Tuesday, illegal copies of the hot sci-fi action title "Halo 2" were already circulating on the Internet. It's had a lot of company lately.

Several highly anticipated games, such as "Grand Theft Auto: San Andreas" and "Half-Life 2," have fallen victim to copyright theft. Illegal, often incomplete versions have appeared on file-sharing networks, news groups and Web

sites.

"You spend three years of your life pouring everything you have into this project, and then somebody gets their hands on the game and gives it away to the world for free," said Brian Jarrard of Microsoft Corp.'s Bungie Studios, maker of "Halo 2." "We made this, and these guys had no right to give it out to the public."

High-profile titles are commonly pirated before they are released, certainly within days after they arrive in stores, said Douglas Lowenstein, president of the Entertainment Software Association.

In the case of "Halo 2," the French-language version appeared on file-sharing networks and news groups in October.

Microsoft said it was still investigating, working with authorities to track down those responsible. It remains unclear how the leak occurred, but it did not affect the game's release date.

That wasn't the case for "Half-Life 2."

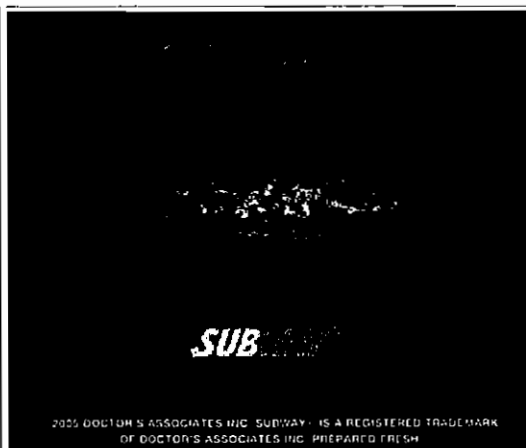
Fans were waiting last fall for the imminent arrival of the sequel to the popular "Half-Life" when unplayable source code from the personal computer game was stolen from developer Valve Corp. and circulated over the Internet. The investigation has led to one arrest so far. FBI agent Ray Lauer in Seattle identified the suspect as a male from Germany but had no other details.

"Half-Life 2" developer Valve Corp. said the game will arrive in store shelves on Nov. 16.

By the time New York-based Rockstar Games, a division of Take-Two Interactive Software Inc., released its PlayStation 2 crime saga "Grand Theft Auto: San Andreas" on Oct. 26, an illegally obtained version as well pictures of the game and the instruction manual had been on the Internet for a week.

A spokesman said Rockstar is investigating. No one has been charged or arrested thus far.

While Lowenstein of the ESA said it can be difficult to pin the leaks on a



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single cause, he blamed multinational crime syndicates for much of the theft. Security experts, meanwhile, say the problem often stems from employees involved in game creation.

Gabe Zichermann, vice president of strategy and communications of security company Trymedia Systems, said video games are particularly vulnerable because so many people handle the games — from artists and programmers to workers who package the final product.

He said 70 percent of corporate security breakdowns are caused by insiders.

Many consumers, meanwhile, said they'd never consider pirated versions. Not only would it spoil the surprise, gamers tend to be devoted followers of game creators.

Soon after the "Halo 2" leak, the forums at halo.bungie.org were closed so the experience wouldn't be ruined come November.

"I was expecting to get all sorts of hate mail, but instead I've had hundreds of letters from people saying thank you, you've helped keep us pure," said Claude Errera, a 38-year-old from Bethany, Conn., who runs the popular fan site.

Fans helped track and curb the spread of the pirated versions of "Half-Life 2" and "Halo 2."

Jarrard credited incensed fans and community policing efforts for informing Bungie about Web sites hosting the illegal "Halo 2." The leak certainly hasn't affected sales — Microsoft said more than 1.5 million copies of the Xbox exclusive have been pre-ordered.

And Valve, based in the Seattle suburb of Kirkland, Wash., said its legions of devoted gamers provided thousands of tips that helped lead to the arrest.

There are many obstacles to snaring the thieves, much less prosecuting them. Many are based overseas, protected by a patchwork of law enforcement and copyright laws.

Efforts to stop the piracy include the ESA's Online Enforcement Program, which claims to have shut down more than 35,000 sites dealing with pirated games since 1998.

Lowenstein conceded that piracy will be tough to stamp out.

"The problem and challenge with piracy is that there are people out there on a worldwide basis who've identified piracy as a very profitable enterprise," he said. "You don't end this problem overnight."

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## APPENDIX 5

 **NEWS.COM** <http://www.news.com/>

### 'Grand Theft' of intellectual property

By David Becker

[http://news.com.com/Grand+Theft+of+intellectual+property/2100-1043\\_3-5421159.html](http://news.com.com/Grand+Theft+of+intellectual+property/2100-1043_3-5421159.html)

Story last modified Thu Oct 21 10:50:00 PDT 2004

**A stolen copy of the latest sequel in one of the top-selling video game series of all time began circulating on the Web late Wednesday, the second high-profile game theft in a week.**

Game publisher Take-Two Interactive Software confirmed that a purloined copy of "Grand Theft Auto: San Andreas," set for commercial release next week, is making the rounds of "warez" sites used to swap pirated software.

The publisher vowed in a statement to track down the thieves but said the piracy wouldn't affect the game's Oct. 26 retail debut.

"The proper authorities are investigating the theft and are continuing to investigate all possible leads to ensure there is no further dissemination of our creative content," according to the statement.

"Downloading, possession and distribution of 'Grand Theft Auto: San Andreas,' including making the game available on the Internet, is theft. We take the theft of our intellectual property very seriously, and we are and will continue to diligently and aggressively pursue this matter."

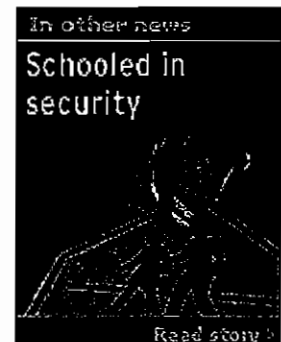
The "Grand Theft Auto" franchise has spawned four games, the most recent of which, "Grand Theft Auto: Vice City," has sold more than 12 million copies and attracted ongoing criticism for its graphic portrayals of street crime and violence.

The new installment is expected to be one of the year's biggest game releases and a sorely needed cash cow for Take-Two, which has reported growing quarterly losses this year.

The theft isn't expected to affect sales significantly. Copies of the pirated game could only be run on a PlayStation 2 game console equipped with a "mod chip," a gray-market add-on that defeats copy protection circuitry in the machine.

Microsoft faced a similar theft last week, when a purloined French copy of "Halo 2," a sequel to the top-selling game for its Xbox console, showed up on warez sites.

Because of the mod chip issue, neither heist is likely to have anywhere near the effect of last year's theft of the source code for PC game "Half-Life 2," which forced a lengthy delay in the game's release to rework the code.





**APPENDIX 6**

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**Department Of Justice  
U.S. Attorney**

**District of New Jersey**

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*Christopher J. Christie, U.S. Attorney*

*Assistant U.S. Attorney*

**R. STEPHEN STIGALL**

*856-757-5031*

*Greg Reinert , PAO : 856-757-5233*

*Public Affairs: 973-645-2888*

*<http://www.usdoj.gov/usao/nj/>*

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**June 13, 2005**

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**Worker Admits Stealing Pre-Release Copies of Grand Theft Auto: San Andreas and  
Transmitting Copies of Game Artwork over the Internet**

CAMDEN - Christopher J. Christie, the United States Attorney for the District of New Jersey, and Acting Assistant Attorney General John C. Richter of the Justice Department's Criminal Division, announced that a production plant worker pleaded guilty today to criminal copyright infringement for reproducing and distributing copyrighted images from the packaging of the video game "Grand Theft Auto: San Andreas" over the Internet in federal district court.

Stephen Dottoli, 24, of Gloucester Twp., entered his plea before U.S. District Judge Robert B. Kugler. Sentencing is scheduled for Sept. 22 at 9:30 A.M.

In October 2004, Dottoli worked at a production plant in Pitman, Gloucester County that was producing copies of "Grand Theft Auto: San Andreas"(GTA:SA). The game was scheduled for release on Oct. 26, 2004.

At his plea hearing, Dottoli admitted that on Oct. 12 he took copies of GTA:SA, including retail packaging (in particular, the manual, a promotional poster, and a map) for the game from the production plant.

Dottoli admitted he took digital photographs of the game materials and loaded them onto his computer. Dottoli subsequently e-mailed a number of individuals in the computer gaming community that GTA:SA had "gone gold," which meant that the development of the game was complete and it would soon be ready for commercial release. To support his claim, he e-mailed these persons pictures of the copyrighted GTA:SA packaging. One of the individuals that received an e-mail of the pictures informed Rockstar Games, Inc., the maker of GTA:SA, and was able to identify Dottoli as the source of the materials. Dottoli subsequently admitted that he had taken the materials from work and provided written confessions to both private investigators and the local police.

According to the Information, Rockstar Games, Inc., a unit of Take Two Interactive, Inc., had spent millions of dollars in the production of GTA:SA, including significant spending on security measures meant to stop the release of information about the game prior to the Oct. 26, 2004 official release.

As part of the plea agreement, the United States and Dottoli agreed that Dottoli illegally reproduced and distributed copyrighted images valued at between \$5,000 and \$10,000.

The Philadelphia Field Office of the Federal Bureau of Investigation investigated the case after receiving a referral from Rockstar Games. The investigation resulted in execution of a search warrant on Mr. Dottoli's residence in October 2004.

The defendant faces a maximum penalty of five years in prison and a \$250,000 on the one count to which he pleaded guilty.

In determining an actual sentence, Judge Kugler will consult the U.S. Sentencing Guidelines, which provide appropriate sentencing ranges that take into account the severity and characteristics of the offense, the defendant's criminal history, if any, and other factors. The judge, however, is not bound by those guidelines in determining a sentence.

Parole has been abolished in the federal system. Defendants who are given custodial terms must serve nearly all that time.

Christie and Richter credited Special Agents of the FBI's Philadelphia Field Office, under the direction of Special Agent in Charge John C. Eckenrode, with investigation of the case.

The government was represented by Assistant U.S. Attorney R. Stephen Stigall of the U.S. Attorney's Office Criminal Division, in Camden, and Trial Attorney Jay V. Prabhu, of the U.S. Department of Justice, Computer Crime and Intellectual Property Section.

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Last updated June 16, 2005  
usdoj-crm/mis/sj

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## Long-awaited Doom 3 leaked online

By Alfred Hermida  
BBC News Online technology editor

**The eagerly awaited blockbuster computer game, Doom 3, has been leaked on the internet.**

Copies of the game on file-sharing networks and newsgroups are being downloaded by thousands of people.

The cost to the game's makers, id Software, could run into hundreds of thousands of pounds in lost sales.

The sci-fi horror title has been four years in the making and is due to go on sale in the US on Tuesday and next week in the UK.

### **Widely downloaded**

Doom 3 is the second follow-up to the 1993 first-person shooting classic.

Developing a game like it can cost game developers like id Software in the region of \$15m (£8.3m) to \$20m (£11.1m).

Its release is the gaming equivalent of the third film in the Lord of the Rings trilogy.

In the US, the game is expected to retail for \$54.99 and is expected to sell in the millions.

Some US stores are planning to officially start selling the game on Tuesday, but copies are reported to have appeared in a few shops over the weekend.

Potential sales could be hit by the extent of online piracy of the game.

Copies of it appeared on newsgroups and peer-to-peer networks over the weekend.

At one point on Sunday, more than 50,000 copies of the game, which weighs in at more than 1.5 gigabytes, were being downloaded.

Translated in lost sales, this amounts to \$2.7m (£1.5m), if all these people instead bought the game.

"Despite the relatively low price of PC games, many gamers are still choosing to resort to piracy rather than pay for legitimate boxed copies," said Matt Pierce, publisher of the computer games magazine, PC Gamer.

"Since Doom 3 is one of the most eagerly awaited PC games ever, it was almost inevitable that it was going to be leaked online following its US release.

"Whereas in the case of Doom 3, it almost certainly won't prevent the game being a massive seller, it will still cost both the publishers and developers of the game millions of dollars in lost revenue, an outcome that can only serve to harm future game development on the PC," he told BBC News Online.

At the time of publication, no one was available to comment from the game's publishers, Activision.

### **Ferocious trip**

In Doom 3, gamers play the part of a marine on Mars, facing a horde of demons released from hell by scientific experiments.

"Doom 3 is a video game experience unlike any before it," said Todd Hollenshead, head of id Software ahead of the game's release.

"From the cinema quality visuals and the incredible 5.1 sound, to the terrifying atmosphere and hyper-realistic environments, the whole game screams 'interactive horror film'.

"Add in the most ferocious line-up of demons hell has ever brought to bear, and you have an experience so intense that you'll need to keep your heart medicine handy."

The original was a ground-breaking game. Doom drew players into a three-dimensional virtual world where they had to battle monsters.

It helped to establish the concept of the first-person shooter, in which gamers see the world through the perspective of the lead character.

The PC version of the game goes on sale in the US on Tuesday and on 13 August in the UK.

A version for Microsoft's Xbox is due later in the year.

Story from BBC NEWS:

<http://news.bbc.co.uk/go/pr/fr/-/2/hi/technology/3527332.stm>

Published: 2004/08/02 12:12:05 GMT

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APPENDIX 8

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5 Attorneys for Plaintiff Disney  
 Enterprises, Inc.

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 CENTRAL DISTRICT OF CALIFORNIA

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 8 UNITED STATES DISTRICT COURT  
 9 CENTRAL DISTRICT OF CALIFORNIA

Disney Enterprises, Inc.,  
 Plaintiff,  
 v.  
 Deven Thrivikraman, and Does 1 - 10,  
 inclusive,  
 Defendants.

CV85-5836 PA VBKX  
 Case No.

COMPLAINT FOR COPYRIGHT  
 INFRINGEMENT; TRADEMARK  
 INFRINGEMENT; CYBER-  
 SQUATTING AND UNFAIR  
 COMPETITION

DEMAND FOR A JURY TRIAL

Plaintiff Disney Enterprises, Inc. ("Disney") for its Complaint alleges as follows:

A. Jurisdiction and Venue

1. Disney brings this action pursuant to 15 U.S.C. §§ 1051, *et seq.* and 17 U.S.C. §§ 101, *et seq.* The Court has jurisdiction over the subject matter pursuant to 28 U.S.C. § 1331 and § 1338(a).

2. The events giving rise to the claim alleged herein occurred, among other places, within this judicial district. Venue in the Central District of California is proper pursuant to 28 U.S.C. § 1391(b) and § 1400(a).

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COPY

1 **B. Introduction**

2 3. Disney produces and owns various copyrights in a wide array of  
3 properties, including many based on world famous standard characters including  
4 MICKEY MOUSE, DONALD DUCK and GOOFY (the "Disney Works") which are  
5 entitled to copyright protection. Defendants, through online venues, some of which  
6 operate using domain names which infringe registered trademarks owned by Disney,  
7 distribute, and promote, unauthorized copies of the Disney Works (the  
8 "Unauthorized Media Product"). This infringement activity is systematic and  
9 willful. Disney asks that this Court enjoin that activity and order Defendants to pay  
10 damages pursuant to the Trademark Act, the Anti-Cybersquatting Consumer  
11 Protection Act and the Copyright Act.

12 **C. Plaintiff, Disney**

13 4. Disney is a corporation duly organized and existing under the laws of  
14 the State of Delaware, having its principal place of business in Burbank, California.

15 5. Disney or one of its wholly-owned subsidiaries is engaged in a variety  
16 of businesses including, without limitation, the production and distribution of motion  
17 pictures and television programs, the operation of theme parks and the development  
18 and distribution of interactive educational and/or entertainment software.

19 6. Among the Disney Works in which Disney owns exclusive rights under  
20 the Copyright Act are the computer games entitled *Kingdom Hearts* and *Kingdom*  
21 *Hearts 2* (the "Disney Games"). The Disney Games incorporate and are, in part,  
22 derived from pre-existing works, including the world famous animated character  
23 MICKEY MOUSE, DONALD DUCK and GOOFY (the "Disney Characters"). The  
24 game *Kingdom Hearts* achieved such a degree of success and popularity that Disney  
25 developed and will soon release a sequel entitled *Kingdom Hearts 2*. Select  
26 copyright registrations evidencing Disney's ownership of copyright in these Disney  
27 Works are listed below:  
28

Registration	Title of Work	Type of Work
VA 58 937	Mickey - 1 (Mickey Mouse)	Model Sheet
Gp 80 184	Donald Duck	Publications Model Sheet
VA 58 936	Goofy -1 (Goofy)	Model Sheet
PA 1-207-178	Kingdom Hearts	Videogame
Pending	Kingdom Hearts 2	Videogame

7. The expression and other distinctive features of the Disney Works, specifically including the Disney Characters and the Disney Games, are wholly original with Disney and, as fixed in various tangible media, are copyrightable subject matter under the Copyright Act.

8. Disney, or any predecessor in interest has complied in all respects with the laws governing copyright and has secured the exclusive rights and privileges in and to the Disney Works, and Disney owns certificates of registration for the Disney Works, except for the sequel title *Kingdom Hearts 2* which has not yet been released and for which copyright registration is pending.

9. The Disney Works, except for *Kingdom Hearts 2* which has not yet been released, have been manufactured, sold and/or otherwise distributed in conformity with the provisions of the copyright laws. Disney and those acting under its authority have complied with their obligations under the copyright laws and Disney, in its own right or as successor-in-interest, has at all times been and still is the sole proprietor or otherwise authorized to enforce all right, title and interest in and to the copyrights in each of the Disney Works.

10. Disney is the owner of world famous registered marks which serve to distinguish the Disney Works, specifically including the Disney Games. Disney enjoys considerable goodwill in its trademarks and in its reputation for high quality. Among the trademarks owned and registered by Disney are the word marks

1 KINGDOM HEARTS, including registration numbered 2,845, 582 issued on May  
2 25, 2004 in International Class 16 for video and computer game strategy guidebooks  
3 and registration numbered 2,776,499 issued on October 21, 2003 in International  
4 Class 9 for video and computer game software (collectively the “Disney  
5 Trademarks”).

6 11. The Disney Trademarks are valid, extant and in full force and effect.  
7 The Disney Trademarks are exclusively owned by Disney. Disney has continuously  
8 used each of the Disney Trademarks from the registration date, or earlier, until the  
9 present and at all times relevant to the claims alleged in this Complaint.

12. As a result of advertising and sales, together with longstanding  
consumer acceptance, the Disney Trademarks identify Disney’s products and  
authorized sales of these products. The Disney Trademarks have each acquired  
secondary meaning in the minds of consumers throughout the United States and the  
world. The Disney Characters, the Disney Games, the Disney Trademarks and the  
Disney Works are collectively referred to herein as the “Disney Properties”.

**D. Defendants**

13. Defendant Deven Thrivikraman is an individual. Plaintiff is informed  
and believes that Mr. Thrivikraman is a resident of the City of Carrollton and the  
State of Texas. Plaintiff is further informed and believes, and upon that basis  
alleges, that Mr. Thrivikraman does business under the name “Khinsider.com.” Mr.  
Thrivikraman is subject to the jurisdiction of this Court insofar as elements of the  
infringing material posted by Mr. Thrivikraman (which is accessible to and copied  
by users located in this judicial district) were – as alleged herein below – obtained at  
conferences held in Los Angeles and San Diego, California.

14. Upon information and belief, Does 1 – 10 are either entities or  
individuals who are residents of or present in this judicial district, and are subject to  
the jurisdiction of this Court. Upon information and belief, Does 1 – 10 are



1 principals, supervisory employees, or suppliers of one or other of the named  
2 defendants. The identities of the various Does are unknown to Disney at this time.  
3 The Complaint will be amended to include the names of such individuals when  
4 identified. Deven Thrivikraman and Does 1 – 10 are collectively referred to herein  
5 as “Defendants.”

6 **E. Defendants’ Infringing Activities**

7 15. Defendants operate a website (the “Website”) which Internet users can  
8 reach using alternate domain names, specifically including kingdomhearts2.com (the  
9 “Infringing Domain Name”). The Website contains a wide range of information  
about the Disney Games, including unauthorized reproduction of promotional  
material surrounding the game. Among other things, Defendants have posted files  
which consist of unauthorized camcorded excerpts from the Disney Games,  
specifically including images from the still unreleased sequel, *Kingdom Hearts 2*.  
Disney is informed and believes and based thereupon alleges that certain of these  
camcorded versions were obtained at videogame conventions, including E3 which  
was held by the Entertainment Software Association in Los Angeles, in May, 2005  
and at Comic-Con which was held in San Diego in July, 2005.

21 16. Disney has demanded that the infringing reproduction, distribution and  
22 display of camcorded versions of the still unreleased *Kingdom Hearts 2* be  
23 discontinued and the domain name registration kingdomhearts2.net be transferred to  
24 Disney. When Defendants failed to comply with any of Disney’s demands and  
25 continued to post the infringing material, Disney caused a notice to be sent to  
26 defendants Internet Service Provider pursuant to Section 512 of the Copyright Act  
27 demanding that access to the infringing material be discontinued. Although  
28 defendants’ Internet Service Provider complied with Disney’s demand, defendants  
supplied a purported counter-notice, the result of which is access to the infringing

1 content will be restored if notice of this action is not provided to the Internet Service  
2 provider on a timely basis.

3 17. Defendants have not been authorized by Disney to reproduce, distribute  
4 display or otherwise use any of the Disney Works. By engaging in this conduct,  
5 Defendants have acted in willful disregard of laws protecting Disney's intellectual  
6 property rights. Disney has sustained and will continue to sustain substantial damage  
7 to the value of the Disney Games.

8 **FIRST CLAIM FOR RELIEF**

9 **(Copyright Infringement)**

10 18. Disney repeats and realleges of all of the allegations in contained in  
11 paragraphs 1 through 17, inclusive, as though set forth herein in full.

12 19. Disney is informed and believes, and upon that basis alleges, that the  
13 Defendants have each obtained gains, profits and advantages as a result of their  
14 infringing activity in amounts within the jurisdiction of the Court.

15 20. Disney is informed and believes, and upon that basis alleges, that it has  
16 suffered and continues to suffer direct and actual damages as a result of Defendants'  
17 infringing conduct, in amounts within the jurisdiction of this Court. In order to  
18 determine the full extent of such damages, including such profits as may be  
19 recoverable under 17 U.S.C. § 504, Disney will require an accounting from each  
20 Defendant of all monies generated from the promotion, display, sale and offer for  
21 sale of the Defendants' goods and services using the Disney Works. In the  
22 alternative, Disney may elect to recover statutory damages pursuant to 17 U.S.C. §  
23 504 (c) for each Disney Work infringed.

24 21. Disney has no other adequate remedy at law and has suffered and  
25 continues to suffer irreparable harm and damage as a result of the above-described  
26 acts. Disney is informed and believes, and upon that basis alleges, that, unless  
27 enjoined by the Court, Defendants' infringing activity will continue, with attendant  
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1 irreparable harm to Disney. Accordingly, Disney seeks preliminary and permanent  
2 injunctive relief pursuant to 17 U.S.C § 502 and seizure of the Unauthorized Media  
3 Product, including the means of production as provided by 17 U.S.C. § 503.

4 22. By reason of the foregoing, Disney has incurred and will continue to  
5 incur attorneys' fees and other costs in connection with the prosecution of its claims,  
6 which attorneys' fees and costs Disney is entitled to recover from the Defendants,  
7 and each of them, pursuant to 17 U.S.C. § 505.

8 23. Disney is without an adequate remedy at law in that damages are  
9 difficult to ascertain and, unless the Defendants' acts are enjoined, Disney will be  
irreparably harmed by Defendants' deliberate and systematic infringement of its  
rights.

### **SECOND CLAIM FOR RELIEF**

#### **(Trademark Infringement)**

24. Disney repeats and realleges all of the allegations contained in  
paragraphs 1 through 23, inclusive, as though set forth herein in full.

25. Defendants' advertisement, display, promotion, marketing and  
distribution of unauthorized excerpts from the Disney Games and using the Disney  
Trademarks is likely to cause confusion or to cause mistake or to deceive the  
relevant public and trade regarding the affiliation, sponsorship, endorsement or  
approval of the Website by Disney. Such confusion, mistake and deception is  
aggravated by the confusing similarity between the Disney Works and the use of  
substantially identical likenesses of those elements as they appear on the on the  
Website.

26. Disney is informed and believe and, upon that basis allege, that  
Defendants, and each of them, acted with knowledge of the federally registered  
trademarks alleged herein and of the valuable goodwill Disney enjoys in connection  
therewith, with intent to confuse, mislead and deceive the public into believing that

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1 the Website were developed and promoted by Disney, or are in some other manner,  
2 approved or endorsed by Disney.

3 27. Disney has suffered and continues to suffer irreparable harm and  
4 damage as a result of Defendants' acts of trademark infringement in amounts thus far  
5 not determined but within the jurisdiction of this Court, which amounts should each  
6 be trebled pursuant to 15 U.S.C. § 1117. In order to determine the full extent of such  
7 damages, including such profits as may be recoverable under 15 U.S.C. § 1117,  
Disney will require an accounting from each Defendant of all monies generated from  
the advertisement, display, promotion, marketing and distribution of the Website. In  
the alternative, Disney may elect to recover statutory damages pursuant to 15 U.S.C.  
§ 1117 (c).

28. Disney has no other adequate remedy at law and has each suffered and  
continues to suffer irreparable harm and damage as a result of the above-described  
acts of infringement. Disney is informed and believe, and upon that basis allege,  
that, unless enjoined by the Court, the unlawful infringement will continue with  
irreparable harm and damage to Disney. Accordingly, Disney seeks and requests  
preliminary and permanent injunctive relief pursuant to 15 U.S.C § 1116.

29. By reason of the foregoing, Disney has incurred and will continue to  
incur attorneys' fees and other costs in connection with the prosecution of  
their claims herein, which attorneys' fees and costs Disney is entitled to recover from  
Defendants, and each of them, pursuant to 15 U.S.C. § 1117 (c).

### **THIRD CLAIM FOR RELIEF**

#### **(For Unfair Competition)**

23 30. Disney repeats and realleges all of the allegations contained in  
24 paragraphs 1 through 29, inclusive, as though set forth herein in full.  
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26 31. As alleged above, Defendants' willful activities infringe valid and  
27 effective copyrights registered by Disney. Disney owns all rights, title and interest in  
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and to the trademarks, trade names, service marks, artwork, characters and other distinctive elements for and incorporating the Disney Works, specifically including the Disney Games.

32. The Disney Works have each acquired a secondary and distinctive meaning among the public, which has come to identify the Disney Works, and each of them, through various media, including films, books, television, theme parks, magazines and other sources, and through the distribution and sale of authorized merchandise, and the distinctive features of each of, as designating products associated with Disney. As a result of the extensive advertising, media exposure, sales and public recognition of the Disney Works, combined with the positive experiences of the public in its relationship with Disney, the Disney Works are each symbolic of Disney, and representative of the image which the public has of Disney

33. Disney is informed and believes, and upon that basis alleges, that Defendants, and each of them, have, without permission, authority or license from Disney, or their licensees, affixed, applied and/or used in connection with the advertisement, display, promotion, marketing and distribution of their Website, false descriptions and representations including words or other symbols which tend falsely to describe or represent such goods as Disney's and/or affiliated with Disney, and have caused the entry of such goods into interstate commerce with full knowledge of the falsity of such designations of origin and such descriptions and representations, all to the detriment of Disney. Defendants, and each of them, by misappropriating and using one or more of the Disney Works, have misrepresented and falsely described to the general public the origin, source, association, affiliation or sponsorship of their goods so as to create the likelihood of confusion by the ultimate purchaser as to both the source and sponsorship of said goods.

34. Disney is informed and believes, and upon that basis alleges, that the Website being advertised, marketed, displayed and/or distributed by Defendants, and

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1 each of them, are of inferior quality and that the sale and/or offer for sale thereof will  
2 be damaging to and dilute the goodwill and reputation of Disney.

3 35. Defendants' acts and conduct, as alleged herein, including, without  
4 limitation the Defendants' duplication and imitation of the Disney Works, are  
5 business practices likely to deceive or confuse the purchasing public and trade upon  
6 Disney's reputation, both as to the source, origin, sponsorship and approval of the  
7 goods provided and as to the affiliation, connection or association of Defendants, and  
8 each of them, with Disney, and constitute acts of unfair competition, false  
9 designation of origin and false representation of affiliation, all in violation of 15  
U.S.C. § 1125 (a). Disney is informed and believes, and upon that basis alleges, that  
each of Defendants' respective acts of reputation appropriation and unfair  
competition was willful.

36. Disney has no adequate remedy at law and has suffered and continues to  
suffer irreparable harm and damage as a result of Defendants' respective acts of  
unfair competition in amounts thus far not determined but within the jurisdiction of  
this Court, which amounts should each be trebled pursuant to 15 U.S.C. § 1117.

37. Disney is informed and believes, and upon that basis alleges, that unless  
enjoined by the Court, the confusion and deception alleged above and the likelihood  
thereof will continue with irreparable harm and damage to Disney. Accordingly,  
Disney seeks and requests preliminary and permanent injunctive relief pursuant to 15  
U.S.C. § 1116.

38. Disney is informed and believes, and upon that basis alleges, that  
Defendants have each obtained gains, profits and advantages as a result of their  
wrongful acts of unfair competition in amounts not thus far determined but within  
the jurisdiction of this Court, which amounts should each be trebled, pursuant to 15  
U.S.C. § 1117.

1 39. In order to determine the full extent of such damages, including such  
2 profits as may be recoverable; Disney will require an accounting from each  
3 Defendant of all monies generated from the Website.

4 40. By reason of the foregoing, Disney has incurred and will continue to  
5 incur attorneys' fees and other costs in connection with the prosecution of their  
6 claims herein, which attorneys' fees and costs Disney is entitled to recover from the  
7 Defendants, and each of them, pursuant to 15 U.S.C. § 1117.

8 **FOURTH CLAIM FOR RELIEF**

9 **(Cybersquatting)**

41. Disney repeats and realleges all of the allegations contained in  
paragraphs 1 through 40, inclusive, as though set forth herein in full.

42. Defendants are liable for registering, trafficking and/or using domain  
names which are confusingly similar to the Disney Trademarks with a bad faith  
intent to profit from the mark pursuant to 15 U.S.C. § 1125 (d).

43. The Disney Trademarks are distinctive and famous and the infringing  
domain name kingdomhearts2.net (the "Infringing Domain Name") is confusingly  
similar to the Disney Trademarks.

22 44. Disney is informed and believes, and upon that basis alleges, that  
23 Defendants acted with bad faith intent to profit from the Disney Trademarks when  
24 they registered and/or used the Infringing Domain Name. This bad faith intent to  
25 profit is demonstrated by (i) registration of multiple domain names; (ii) intending to  
26 divert consumers from Disney's online locations to a site that could harm the  
27 goodwill represented by the Disney Trademarks for commercial gain; and (iii) by  
28 creating a likelihood of confusion as to source sponsorship, affiliation or  
endorsement of the site.

45. Disney has suffered and continues to suffer irreparable harm and  
damage as a result of Defendants' cyber-squatting in amounts thus far not

1 determined but within the jurisdiction of this Court. In order to determine the full  
2 extent of such damages, including such profits as may be recoverable under 15  
3 U.S.C. § 1117, Disney will require an accounting from each Defendant of all monies  
4 generated from or in connection with the Infringing Domain Name as alleged herein.  
5 In the alternative, Disney may elect to recover statutory damages pursuant to 15  
6 U.S.C § 1117(d).

7 46. Disney is entitled to transfer of the Infringing Disney Domain Names as  
8 provided in 15 U.S.C. § 1125(d)(1)(C).

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Disney asks this Court to order that:

11 A. That the Defendants, their agents, servants, employees, representatives,  
12 successor and assigns, and all persons, firms, corporations or other entities in active  
13 concert or participation with any of the said Defendants, be immediately and  
14 permanently enjoined from:

15 1. Directly or indirectly infringing the Disney Works in any manner,  
16 including generally, but not limited to, advertisement, promotion,  
17 reproduction, display or distribution of the Disney Works, specifically  
18 including the Disney Games;

19 2. Directly or indirectly infringing the Disney Works in any manner,  
20 including generally, but not limited to, registration, use, selling and/or offering  
21 for sale any domain names which infringes the Disney Trademarks:

22 3. Engaging in any conduct that tends falsely to represent that, or is  
23 likely to confuse, mislead or deceive purchasers, Defendants' customers  
24 and/or members of the public to believe, the actions of Defendants, the domain  
25 names registered by Defendants, or Defendants themselves are connected with  
26 Disney, are sponsored, approved or licensed by Disney, or are in some way  
27 affiliated with Disney; or  
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4. Otherwise competing unfairly with Disney in any manner.

B. That Defendants be required to pay actual damages increased to the maximum extent permitted by law and/or statutory damages at Disney's election;

C. That Defendants account for and pay over to Disney all damages sustained by Disney and profits realized by Defendants by reason of Defendants' unlawful acts herein alleged and that those profits be increased as provided by law;

D. That the Infringing Domain Name be transferred to Disney;

E. That Disney recovers from Defendants their costs of this action and reasonable attorneys' fees.

F. That Disney recovers treble damages pursuant to 15 U.S.C. § 1117.

H. That Disney has all other and further relief as the Court may deem just and proper under the circumstances.

Dated: August 10, 2005

J. ANDREW COOMBS, A Professional Corp.



By: J. Andrew Coombs  
Attorneys for Disney Enterprises, Inc.

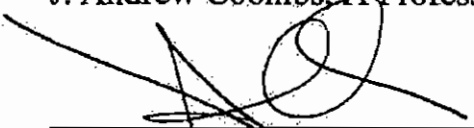
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DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Disney Enterprises, Inc. hereby demands a trial by jury of all issues so triable.

DATED: August 10, 2005

J. Andrew Coombs, A Professional Corp.



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J. Andrew Coombs  
Attorneys for Disney Enterprises, Inc.

TECHNOLOGY ADVICE YOU CAN TRUST

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## Who Stole the Half-Life Source Code?

**Gamers may have helped the FBI locate the suspected thieves.**

**Paul Roberts, IDG News Service**

Friday, June 11, 2004

Arrests have been made in several countries stemming from the October 2003 theft of computer source code for a Half-Life 2, a much-anticipated sequel to the popular computer game Half-Life.

Tips from an online gaming community led to the arrests after an eight-month investigation by the U.S. Federal Bureau of Investigation into the theft, according to a statement released this week by Valve of Bellevue, Washington, which makes the game.

"Within a few days of the announcement of the break-in, the online gaming community had tracked down those involved," says Gabe Newell, Valve's chief executive officer, in a statement. "It was extraordinary to watch how quickly and how cleverly gamers were able to unravel what are traditionally unsolvable problems for law enforcement related to this kind of cybercrime."

Valve did not reveal details about the arrests and referred questions to the FBI's Northwest Cyber Crime Task Force. The FBI did not immediately respond to requests for comment.

### Game Details

Half-Life is a popular computer game in which players take on the role of Gordon Freeman, a scientist at the fictional Black Mesa Federal Research Facility. After an experiment goes awry, a doorway into another dimension is accidentally opened and Freeman is called on to rescue the facility from a horde of unearthly beasts.

Originally released in November 1998, Half-Life won awards from computer game aficionados and the gaming press and spawned a popular online version, Counter-Strike, that allows multiple players to compete against each other on the Internet.

The sequel to the original game, Half-Life 2, was scheduled for release in September 2003, but then delayed under mysterious circumstances. The company has still not set a date for the release of the game.

### Hackers Attack?

While few details of the theft have emerged since October, Newell said at the time that the source code was stolen in September by hackers who systematically compromised the company's computer systems by exploiting a vulnerability in Microsoft's Outlook e-mail client on Newell's

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computer, installing key stroke capture software to acquire passwords and other security credentials, then stealing a copy of the Half-Life 2 source code.

Unconfirmed reports last month suggested that a German man recently charged with creating a ubiquitous Trojan horse program named "Agobot" or "Phatbot" may have been behind the Valve code theft as well.

Horst Haug, a spokesperson for the State Bureau of Investigation in Baden-Wurttemberg, Germany, declined to comment on a link between the two cases this week.

Related Topics: [Games](#), [Hackers](#)

Article available at: <http://www.cdfreaks.com/news/10896>

Half-Life 2 goes to the extreme to prevent pre-release piracy

Posted by [Seán Byrne](#) on 13 November 2004 - 00:59 - Source: [The Inquirer](#)

Like movie industry, the game industry has its own major piracy issue of games getting leaked before their official release. Either games get leaked out during the Journalist review stage or get distributed online as soon as the game becomes available in at least one part of the world.

With the world now eagerly waiting for Half-life 2's release date and the [previous concern about the half-life 2 code leak](#), Valve has really put on their thinking caps this time to prevent anyone from running a pirate copy before its official retail release date - Tuesday 16th.

To combat leaking during the Journalist review stage, they have decided not to release any previews to Journalists but instead fly them to their offices to test their game. To avoid a released game in one part of the world reaching another part where the game has a later release date, Valve has decided on a worldwide single release date. Finally as the game media must be distributed to retail stores prior to the release date in order to allow them to make it available on the official release date, Valve has implemented online product authorisation and activation and Valve will not allow its system to process any authorisations until the official release date. [GristyMcFisty](#) used our [news submit](#) to send in the following news:



*The gap between those who have the game and those who don't have it yet is part of what drives people to pirate games. This week, Halo 2 was released two days earlier in the US than in the UK. With the worldwide community created by the net - indeed, by Microsoft's own Xbox Live - having a bunch of your friends play a game 2 days before you can is unacceptable to many. Companies don't appear to understand that staggered worldwide releases aren't conducive to their anti-piracy cause - either give gamers the game at the same time, or put up with the fact that people will get it elsewhere. Companies can't create the amount of hype that they do then expect gamers to sit back while other people play games they can't get their hands on yet.*

*Which is why Valve's anti-piracy plan is such genius. I mean, it's utter, simple, calculated, but undoubted genius. Valve decided that the best way to stop piracy was simply to give everyone in the world the game at the same time. Early code to journalists? Fat chance. If journalists wanted to play the game early for reviews, Valve flew them to their offices in Seattle so they didn't have to send out copies. Online media won't get copies until the day before release to prevent leakage. But - and this is the kicker - US, UK, Italy, China, France, Germany - they all get localised versions on the same day, Tuesday the 16th, next week.*

*Not only that, but to beat those tricky retail staff that pinch from the stockroom when the game arrives, they have added in an online authorisation system which means that no-one can play the game until*

*Valve has hit an online switch that says the time is right. Whilst reports have been showing up across the net of gamers having boxed copies in their hands, no-one can play them because Valve hasn't bodged the switch-on. Perfect.*

*Read the [full article here](#).*

Well, let's see if their anti-piracy measures turn out as planned. Unlike Music CD and Video-DVD releases, a software anti-piracy measure can be improved version after version making it possible for the company to get the maximum sales during the peak sales period in the few weeks following the release. By the time someone develops a way to copy their CD or circumvent its anti-piracy measure; the sales would be down to the point where piracy will no longer have much of an effect.