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and Blizzard Entertainment, Inc.

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

MDY INDUSTRIES, LLC,)

Case No.: CV06-02555-PHX-DGC

)
Plaintiff and Counter-Claim)

)
Defendant)

)
vs.)

**BLIZZARD ENTERTAINMENT,
INC. AND VIVENDI GAMES,
INC. RESPONSES TO
MDY'S STATEMENT OF
DISPUTED FACTS IN RESPONSE
TO BLIZZARD'S MOTION FOR
SUMMARY JUDGMENT**

)
BLIZZARD ENTERTAINMENT, INC.,)

)
and VIVENDI GAMES, INC.)

)
Defendants and)

)
Counter-Claim Plaintiffs.)

)
BLIZZARD ENTERTAINMENT, INC.,)

)
and VIVENDI GAMES, INC.)

)
Third-Party Plaintiffs,)

)
vs.)

)
MICHAEL DONNELLY,)

)
Third-Party Defendant.)

The Honorable David G. Campbell

Pursuant to Local Rule 56.1 and Federal Rule of Civil Procedure 56, Blizzard Entertainment, Inc. and Vivendi Games, Inc. (together, "Blizzard") hereby submit the following response to Defendants' Statement of Disputed Facts in Response to Blizzard's Motion for Summary Judgment.

1 132. Warden is a mechanism Blizzard uses to detect the presence of third-party
2 software that Blizzard deems is unauthorized under its EULA or TOS. See
3 **Exhibit V** (Bates No. BLIZZM00335490, BLIZZM00335507).

4 RESPONSE:

5 This statement is identical to Plaintiff's original Statement of Fact 22. Blizzard
6 renews its objection and response, and incorporates that objection and response by this
7 reference.

8 133. When a licensee is running the WoW game client, Warden detects changes to the
9 licensee's computer memory (RAM) and reports any changes back to Blizzard.
10 Blizzard then compares the changes in the licensee's RAM for known patterns of
11 code that indicate that an unauthorized third-party software program is running.
12 Once Blizzard confirms the licensee's use of an "unauthorized" third-party
13 program, such as a bot program, Blizzard decides whether it will ban the
14 licensee's account. See Exhibit W (Deposition of Matthew Versluys), at 18-22.

15 RESPONSE:

16 This statement is identical to MDY's original SOF 23. Blizzard renews its
17 objection and response, and incorporates that objection and response by this reference.

18 134. Blizzard does not ban, nor has it ever banned the licensee itself. If Blizzard bans a
19 licensee's account, the licensee may immediately sign up for a new account using
20 the licensee's name and same credit card number that it previously used for the
21 banned account. See Exhibit A (Deposition of Greg Ashe), at 254.

22 RESPONSE:

23 This statement is identical to MDY's original SOF 24. Blizzard renews its
24 objection and response, and incorporates that objection and response by this reference.

25 135. Warden is not a copy protection program in that it cannot:

- 26 a. Prevent a person from accessing the WoW game client software code;
- 27 b. Prevent a person from copying the WoW game client software from a compact
28 disc or DVD to another form of storage medium;
- c. Prevent a person from copying a downloaded version of the WoW game client
obtained from Blizzard's server to another form of storage medium;

- 1 d. Prevent a person from distributing copies of the WoW game client software;
2 e. Prevent a person from making derivative works of the WoW game client
3 software. See Exhibit A, at 43-44.

4 RESPONSE:

5 This statement is identical to MDY's original SOF 25. Blizzard renews its
6 objection and response, and incorporates that objection and response by this reference.

7 136. Scan.dll is the second element of Warden's cheat detection system. Scan.dll is a
8 dynamic link library file that is part of the WoW game client. After the WoW
9 game client is loaded into a licensee's RAM, the computer executes the Scan.dll
10 file. The file scans the inside of the licensee's RAM and WoW game data files and
11 checks for changes or modifications to the WoW game client code and game files
12 to determine whether the licensee has loaded any "unauthorized" third-party
13 programs. If Scan.dll detects an unauthorized program, the WoW game client will
14 present an error message and will not allow the licensee to log onto WoW server
15 to play WoW. See Exhibit A, at 53-56, 63.

16 Blizzard's entire argument pertaining to Scan.dll is moot. Since January of 2008,
17 MDY's Glider software no longer needs to launch the WoW software client
18 program to work with WoW. (Donnelly Aff. ¶ 40.) Glider users are now able to
19 load the WoW software first, and then load Glider. Id. Because Scan.dll can only
20 detect third-party software when a user first loads WoW, when a user loads Glider,
21 Scan.dll is not even active. Thus, Glider does not circumvent Scan.dll at all. If
22 anything, this demonstrates how ineffective Scan.dll is as an access control means,
23 as well as proving that MDY could not be liable under the DMCA as it pertains to
24 Scan.dll since Glider does not circumvent Scan.dll.

25 OBJECTION AND RESPONSE:

26 FIRST PARAGRAPH: The first paragraph of this statement is identical to
27 MDY's original SOF 26. Blizzard renews its objection and response, and incorporates
28 that objection and response by this reference.

SECOND PARAGRAPH: Blizzard objects to the compound nature of the
statements in the second paragraph; they do not comply with Local Rule 56.1.

Moreover, MDY's long series of statements is purely argumentative and belongs in its
brief instead of its statements of fact.

1 Blizzard does not dispute that MDY has recently added a new feature to Glider
2 that permits users to load WoW before loading Glider, but disputes the legal inference
3 MDY draws from this feature. By changing Glider to allow it to load after scan.dll has
4 already performed its scan, MDY has again demonstrated the lengths to which it will
5 go to circumvent Blizzard's access controls. This new "feature" is itself an attempt to
6 circumvent scan.dll.
7

8 Even with this new "feature," Glider users are not *required* to load Glider after
9 loading WoW. (Blizzard's Second Supplemental Statement of Facts ("SOF 2nd
10 Supp.") ¶ 314). For those users that choose to load Glider first, Glider continues to
11 circumvent scan.dll. (SOF 2nd Supp. 315).
12

13 137. If any of the three tests fail, then the WoW game client will present an error
14 message and will not allow the licensee to log into the WoW game client to play
WoW. See *id.*

15 RESPONSE:

16 This statement is identical to MDY's original SOF 27. Blizzard renews its
17 objection and response, and incorporates that objection and response by this reference.
18

19 138. Like Warden, Scan.dll is not a copy protection program in that it cannot:

- 20 a. Prevent a person from accessing the WoW game client software code;
- 21 b. Prevent a person from copying the WoW game client software from a compact
22 disc or DVD to another form of storage medium;
- 23 c. Prevent a person from copying a downloaded version of the WoW game client
24 obtained from Blizzard's server to another form of storage medium;
- 25 d. Prevent a person from distributing copies of the WoW game client software;
- 26 e. Prevent a person from making derivative works of the WoW game client
27 software. See Exhibit A, at 43-44.

28 RESPONSE:

1 This statement is identical to MDY's original SOF 28. Blizzard renews its
2 objection and response, and incorporates that objection and response by this reference.

3 139. Scan.dll's only function is to detect third-party software when WoW is first loaded
4 into RAM. (Donnelly Aff. ¶ 37.) After a user loads the WoW game code into
5 RAM, Scan.dll stops functioning. Id. Although Scan.dll can control whether a
6 licensee can access the WoW game client software to play the WoW game during
7 the initial loading of the WoW game client, Scan.dll cannot control whether a
8 licensee can access the WoW game client software code for the purpose of
9 examining, copying, making derivative works or distributing copies of WoW. Id.
10 In fact, Scan.dll cannot prevent the licensee from manually loading the game client
11 into RAM. Id. Even if Scan.dll detects prohibited software code – it can only stop
the licensee from playing, not copying, the WoW software code. Id. Any person
can manually copy the game client into RAM by using any file viewer, such as
Notepad, to open individual WoW software files from a person's hard drive. When
this is done, the files are loaded into RAM. All Scan.dll can do is prevent a person
from playing the game.

12 **OBJECTION:**

13
14 Blizzard objects to the compound nature of these statements; they do not
15 comply with Local Rule 56.1. Moreover, MDY's long series of statements is
16 argumentative and belongs in its brief instead of its statements of fact.

17 **RESPONSE:**

18
19 Blizzard *does not* dispute that "Scan.dll can control whether a licensee can
20 access the WoW game client software..." Blizzard *does not* dispute that "Scan.dll
21 can...prevent a person from playing the game." Blizzard *does* dispute that Scan.dll
22 cannot prevent the WoW software code from being copied; scan.dll is designed and
23 functions as an access control to prevent WoW from being loaded into RAM, a process
24 that constitutes copying under well established Ninth Circuit law. (SOF ¶¶ 109-11).

25 140. MDY continuously updates Glider's ability to avoid detection from Warden only
26 because MDY must maintain Glider's interoperability with WoW. (Donnelly Aff.
27 ¶ 38).

28 **OBJECTION:**

1 Blizzard objects to this self-serving statement. This statement is not
2 corroborated by any evidence in the record.

3 RESPONSE:

4 Blizzard disputes this statement. Glider continuously update's Glider's ability
5 to avoid detection from Warden so that Glider can continue to circumvent Warden's
6 access controls.

7
8 141. When MDY started selling Glider, Glider did not originally avoid detection. MDY
9 did not originally include detection avoidance as a feature of Glider because
10 Donnelly never believed that Blizzard would object to the use of Glider with
11 WoW. MDY added this feature to Glider solely as a countermeasure to Blizzard's
unilateral attempt to take away what Donnelly believed was a rightful software
business. (Donnelly Aff. ¶ 39).

12 OBJECTION:

13 Blizzard objects to these self-serving statements. An uncorroborated description
14 of a party's state of mind is not appropriate for an SOF. Other than the first sentence,
15 these statements are not corroborated by any evidence in the record.

16 RESPONSE:

17 Blizzard disputes this statement. The EULA and TOU prohibited unauthorized
18 third party programs, including bots like Glider, prior to September 2005. (Blizzard's
19 Original Statement of Fact "SOF" ¶ 99; MDY's Exhibit F sec. 2(C) (June 2005 TOU)
20 ("You agree that you will not...create or use cheats, 'mods' and/or hacks, or any other
21 third-party software designed to modify the World of Warcraft experience [or] use any
22 third-party software that intercepts, 'mines', or otherwise collects information from or
23 through World of Warcraft...."). Donnelly admits to having read and agreed to the
24 TOU and the EULA several times, having seen a prohibition on the use of
25
26
27
28

1 unauthorized third-party programs with WoW, and further admits he never sought nor
2 received such authorization for Glider. (SOF ¶¶ 179-80; SOF Supp. ¶ 282).

3 142. MDY's expert witness, Mr. Joseph Calandrino, has offered his opinion that that
4 computer experts distinguish between copying software code from an external
5 source such as a compact disc to an internal hard drive, and moving software code
6 from a hard drive to RAM in terms of copyright infringement. See Exhibit C. Mr.
7 Calandrino proffers the opinion that because the hard drive and RAM are
8 technically connected to each other as part of one system, once a copy of machine
9 readable code is fixed to a computer's hard drive, simply moving the code to
10 RAM is not copying, but rather it serves to enable the CPU to execute the code
11 faster than if it remained on the hard drive (Calandrino Dep at 49:6). In other
12 words, he notes that a computer's CPU can execute WoW's software code directly
13 from either a user's hard drive or RAM. The program, however, would execute
14 much slower from a hard drive than if it was able to execute the instructions from
15 RAM memory (Id at 68). Mr. Calandrino's opinion demonstrates that MAI is
16 distinguishable to the present case because the "copying" in MAI pertained to the
17 loading of code from an external source into RAM, whereas here the computer
18 merely moves the data from a hard drive to a more convenient location to be
19 executed by the CPU (Id at 54:17).

20 OBJECTION:

21 Blizzard objects to the compound nature of these statements; they do not
22 comply with Local Rule 56.1. Moreover, MDY's long series of statements is
23 argumentative and belongs in its brief instead of its statements of fact.

24 RESPONSE:

25 Blizzard does not dispute that MDY's expert witness disagrees with the Ninth
26 Circuit's decision in MAI Systems Corp. V. Peak Computer, Inc., 991 F.2d 511 (9th
27 Cir. 1993). Blizzard does dispute, however, that the copying in this case is
28 distinguishable from the copying in MAI. The MAI decision expressly covers the
loading of copyrighted computer software from a hard disk into memory -- the same
process at issue here. *Id.* at 518. The MAI court does not distinguish between an
internal vs. external "permanent storage device." *Id.* SOF 2nd Supp. ¶ 316.

1 143. In November, 2005, Blizzard tried shutdown a business where the owner did
2 nothing more than sell a book that provided extensive details in how to level a
3 WoW character to level 70 in as little as eight days. The owner of the business,
Brian Kopp, sold his books through eBay.

4 RESPONSE:

5 Blizzard disputes these statements. Brian Kopp distributed a cheat program with
6 his book. (SOF 2nd Supp. ¶ 309). Mr. Kopp's distribution of a cheat program, not his
7 book sales, is what caused Blizzard the most concern. (SOF 2nd Supp. ¶ 310). Mr.
8 Kopp no longer distributes a cheat program with his book, and Blizzard no longer
9 sends takedown notices to eBay asking eBay to remove his auctions. (SOF 2nd Supp.
10 ¶ 311-12) Additional details are confidential pursuant to the terms of a settlement
11 agreement between Blizzard and Mr. Kopp. (SOF 2nd Supp. ¶ 313).

13 144. Over a period of two months, Blizzard filed several requests with eBay demanding
14 that eBay remove Kopp's auctions selling his book. Blizzard asserted the identical
15 bases for terminating Mr. Kopp's auctions as Blizzard asserts against MDY – that
16 Kopp's book sales violated Blizzard's EULA/TOU by (1) infringing Blizzard's
17 copyrights, (2) using WoW software for commercial purposes, and (3) trading off
18 of Blizzard's good will by selling an unauthorized leveling guide to WoW.
Because of Blizzard's demands to eBay, eBay removed Kopp's auctions and
ultimately terminated his eBay user account. Blizzard threatened Kopp that if he
continued to sell his unauthorized book, Blizzard would sue him.

19 RESPONSE:

20
21 Blizzard disputes these statements. Brian Kopp distributed a cheat program with
22 his book. (SOF 2nd Supp. ¶ 309). Mr. Kopp's distribution of a cheat program, not his
23 book sales, is what caused Blizzard the most concern. (SOF 2nd Supp. ¶ 310). Mr.
24 Kopp no longer distributes a cheat program with his book, and Blizzard no longer
25 sends takedown notices to eBay asking eBay to remove his auctions. (SOF 2nd Supp.
26 ¶ 311-12) Additional details are confidential pursuant to the terms of a settlement
27 agreement between Blizzard and Mr. Kopp. (SOF 2nd Supp. ¶ 313).

1 145. Reacting to Blizzard's threats, Kopp filed suit against Blizzard in early 2006
2 alleging various causes of action including tortious interference with contracts and
3 copyright misuse (See Exhibit X). Shortly thereafter, Blizzard settled with Kopp.
4 Blizzard, however, did allow Kopp to continue selling his book, and Kopp
5 continues to sell his book even today. Blizzard's acts raise two important issues.
6 First, Blizzard asserted the same liability theories against Kopp as it does with
7 MDY. Blizzard used its breach of its EULA as a basis for alleging copyright
8 infringement to stop the sale of an independently created literary work that
9 effected WoW. Second, MDY should have as much right to sell its literary work (a
10 software program) as Kopp should have to sell his literary work (a book). Clearly,
11 Blizzard's acts demonstrate a pattern and practice of misusing its EULA and its
12 copyright in WoW in ways that the copyright laws do not apply.

13 RESPONSE:

14 Blizzard disputes these statements. Brian Kopp distributed a cheat program with
15 his book. (SOF 2nd Supp. ¶ 309). Mr. Kopp's distribution of a cheat program, not his
16 book sales, is what caused Blizzard the most concern. (SOF 2nd Supp. ¶ 310). Mr.
17 Kopp no longer distributes a cheat program with his book, and Blizzard no longer
18 sends takedown notices to eBay asking eBay to remove his auctions. (SOF 2nd Supp.
19 ¶ 311-12) Additional details are confidential pursuant to the terms of a settlement
20 agreement between Blizzard and Mr. Kopp. (SOF 2nd Supp. ¶ 313).

21 146. Kopp's book and Glider have nearly identical purposes. The only difference is that
22 the book describes how a WoW player can save time by getting to level 70 faster
23 than a normal user, while Glider uses software to accomplish the leveling task.
24 More importantly, the book advertises a person can get to level 70 in eight days,
25 while under normal circumstances, Glider requires a minimum of one to two
26 months.

27 RESPONSE:

28 Glider violates license restrictions and interacts and disrupts the WoW gaming
environment, while Kopp instructs human players on how to play the game to their
advantage within confines of the EULA and TOU. (SOF 2nd Supp. ¶ 308). Kopp's
distribution of links to a cheat program, which were akin to Glider, ceased following
settlement of that action. (SOF 2nd Supp. ¶ 309-11).

1 147. MDY's damages expert witness, Dr. Koleman Strumpf ("Strumpf") categorically
2 rejects all of Blizzard's damage calculations cited by Blizzard's expert, Edward
3 Castronova (Strumpf Rep. at 31-32, Exhibit E). Strumpf, in his expert report,
4 supplemental report, and his deposition, provided concrete evidence that exposed
Castronova's calculations as entirely speculative (Id. at 7-8,) and wholly
unsupported by any controlled economic study.

5 **OBJECTIONS:**

6 Blizzard objects to the compound nature of these statements; they do not
7
8 comply with Local Rule 56.1. Moreover, MDY's statement is purely argumentative
9 and belongs in its brief instead of its statements of fact.

10 **RESPONSE:**

11 Blizzard disputes these statements as mischaracterizations of Blizzard's
12 calculation of damages as reflected in Dr. Castranova's reports. (SOF Exhibits 7, 13).
13 Dr. Castranova's reports speak for themselves. (SOF Exhibits 7,13). Moreover, while
14 Castranova and MDY's expert disagree on the amount that Blizzard is financially
15 damaged by Glider as a result of decreased user demand and other factors incorporated
16 into Dr. Castranova's damages model, they do not disagree that Blizzard is in fact
17 harmed. MDY's expert Dr. Strumpf critiqued the numbers used by Dr. Castranova as
18 underlying assumptions in his damages model, and offered what he deemed to be more
19 realistic numbers. Even when using Strumpf's numbers, quantifiable harm to Blizzard
20 results. (SOF Supp. ¶ 288-89). ("The rebuttal expert and I can disagree about, it's high,
21 it's low, but zero is not in there."). In fact, Strumpf's figures indicate that Blizzard's
22 damages reach five million dollars per year. *Id.*

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24
25 148. Strumpf demonstrated that Castranova's opinions that Glider adversely affected
26 WoW's in-game economy were not only offered without Castranova conducting a
27 single economic study (Strumpf Dep. 94:5-95:21, 310:1-13, Exhibit G), but
28 Castranova never interviewed one WoW player or Glider user (Castranova at Dep.
66:4-5, 111:1-23) in arriving at his conclusions.

1 RESPONSE:

2 Blizzard disputes any implication that Dr. Castronova's findings are not
3 supported. Specific studies are not necessary where existing data and accepted
4 economic theories come together to point to a conclusion. (SOF 2nd Supp. ¶ 307).
5 Dr. Castronova's reports speak for themselves. (SOF Exhibits 7,13).
6

7 Blizzard disputes that Dr. Castronova never interviewed WoW players. In fact,
8 according to his own testimony, Dr. Castronova spoke to thousands of WoW players.
9 (SOF 2nd Supp. ¶ 307).
10

11 149. Furthermore, Strumpf provided concrete evidence that Glider likely helped
12 Blizzard increase its revenues (Strumpf Rep. at 10-11, Strumpf Supp. at 4, Exhibit
13 K). Most importantly, Strumpf demonstrated that whatever revenues Blizzard may
14 have lost as a result of bots, Castronova provided no evidence to determine
15 whether Blizzard's alleged lost revenues originated from the literally thousands of
various bots and human gold farmers that play WoW and exploit WoW's
resources, and WoW users who use Glider (Strumpf Rep. at 12-14; Strumpf Dep.
140:1-10).

16 OBJECTIONS:

17 Blizzard objects to the compound nature of these statements; they do not
18 comply with Local Rule 56.1. Moreover, MDY's statement is purely argumentative
19 and belongs in its brief instead of its statements of fact.
20

21 RESPONSE:

22 Blizzard disputes these statements as mischaracterizations of Dr. Castranova's
23 reports. (SOF Exhibits 7, 13). Moreover, far from "concrete evidence," Strumpf
24 provided no evidence for the self-serving and audacious proposition that Glider leads
25 to increased revenue for Blizzard. Many banned Glider users would have continued to
26 play WoW absent Glider. (SOF ¶¶ 227-228).
27

28 150. Strumpf also presented the most obvious evidence that Blizzard has suffered no
harm - that being the fact that since MDY introduced Glider in June, 2005, MDY

1 has sold over 100,000 Glider keys, yet Blizzard's active WoW subscription total
2 increased from 3.3 Million to well over 10 Million in the same time period
3 (Strumpf Rep. at 3-5). During that time, Blizzard has steadily experienced an
4 increase in WoW subscribers at a rate of approximately one million every 3.5 to 4
months – a rate that has never been seen before by a computer game by a factor of
twenty.

5 **OBJECTIONS:**

6 Blizzard objects to the compound nature of these statements; they do not
7 comply with Local Rule 56.1. Moreover, MDY's statement is purely argumentative
8 and belongs in its brief instead of its statements of fact.
9

10 **RESPONSE:**

11 Blizzard disputes these statements insofar as they imply that a profitable
12 company can suffer no damage. Glider clearly harms Blizzard, and Blizzard's success
13 would be considerably greater in the absence of MDY's infringing and tortious
14 conduct. (SOF ¶¶ 198-230).
15

16 151. Additionally, Strumpf presented evidence in his Supplemental Report that a
17 survey of over 6,200 Glider users that MDY conducted indicated that the majority
18 of Glider users purchased multiple WoW accounts, several even purchase three or
19 more accounts (Strumpf Supp. Rep. at 1-3). The survey demonstrated that Glider
20 users, on average, purchase one additional WoW account (Strumpf Supp. at 3).
21 The survey also demonstrated that a substantial majority of Glider users indicated
they played WoW much longer with Glider once they reached level 70 than if they
had spent a substantial period of time grinding through the repetitive tasks in
levels 1-70 without Glider. Id.

22 **OBJECTION:**

23 Blizzard objects to this self-serving statement, and renews its objections to the
24 admission of the survey Strumpf mentioned for the first time during his deposition.
25 There is no indication anywhere in the record that survey referenced here was
26 conducted according to scientific principals, or that it satisfies any of the tests
27 necessary to be admissible in this case.
28

1 RESPONSE:

2 Blizzard disputes these statements as unfounded and entirely unsupported by the
3 evidence. To the extent that MDY conducted an informal poll of its own users --
4 people who have a vested interest in their continuing ability to cheat -- the results of
5 that poll are clearly biased and cannot be relied upon in this case. Moreover, the
6 survey did not inquire how many Glider users run the additional accounts to farm gold
7 for sale in real dollars. (Strumpf Supp. Rep. at 1-3). MDY's own forum moderator
8 testified, however, that he instructs Glider users on how to use Glider to farm gold and
9 himself uses multiple Glider bots to do the same. (SOF ¶¶ 131, 157, 197). Castronova
10 also demonstrated how financial and reputational harm to Blizzard from the presence
11 of bots and gold farming far outweighs any benefit it may have received from Gliders,
12 as evidenced by the measures Blizzard devotes to combating Glider. (SOF ¶¶ 198-
13 230).

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16 152. Strumpf's evidence proves that Glider users provide, on average, twice as much
17 subscription revenue as non-Glider users and the evidence also rebuts
18 Castronova's meritless opinion that Glider users deprive Blizzard of revenues
19 from levels 1-70 because they play faster than normal. Strumpf's evidence
20 demonstrates that whatever revenue Blizzard might lose by Glider user leveling
21 faster than normal prior to level 70, Blizzard is more likely to make up that
22 revenue after a Glider user reaches level 70 because the Glider user will likely
23 play WoW longer once he reaches level 70 Id.

24 OBJECTION:

25 Blizzard objects to this self-serving, unsupported mischaracterization of the
26 evidence, and renews its objections to the admission of the Strumpf "survey." There is
27 no indication anywhere in the record that survey referenced here was conducted
28 according to scientific principals, or that it satisfies any of the tests necessary to be
admissible in this case.

1 RESPONSE:

2 Blizzard disputes these statements as unfounded and entirely unsupported by the
3 evidence. To the extent that MDY conducted an informal poll of its own users --
4 people who have a vested interest in their continuing ability to cheat -- the results of
5 that poll are clearly biased and cannot be relied upon in this case. Moreover, the
6 survey did not inquire how many Glider users run the additional accounts to farm gold
7 for sale in real dollars. (Strumpf Supp. Rep. at 1-3). MDY's own forum moderator
8 testified, however, that he instructs Glider users on how to use Glider to farm gold and
9 himself uses multiple Glider bots to do the same. (SOF ¶¶ 131, 157, 197). Castronova
10 also demonstrated how financial and reputational harm to Blizzard from the presence
11 of bots and gold farming far outweighs any benefit it may have received from Gliders,
12 as evidenced by the measures Blizzard devotes to combating Glider. (SOF ¶¶ 198-
13 230).

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18 153. Furthermore, MDY regularly receives unsolicited comments in its Glider Forum
19 from Glider users who state that were it not for Glider, the user would have either
20 quit playing WoW or would have never begun playing WoW at all. (See Exhibit
21 M).

22 OBJECTION:

23 Blizzard objects to this self-serving statement. These messages are taken from
24 MDY's own forums, and many relate directly to this litigation.

25 RESPONSE:

26 Blizzard disputes these statements as unfounded and entirely unsupported by the
27 evidence. These messages come from MDY's own forums – forums frequented by
28 Glider customers with a vested interest in their continuing ability to cheat. In fact,

1 some of MDY's users acknowledge their bias in very the messages produced by MDY.
2 (Exhibit M to MDY's Reply pg. 3) ("Of course, my bias is in favor of MDY and I wish
3 you good luck...").
4

5 154. MDY's Glider does not modify or change any WoW software or coding. MDY
6 independently created Glider as an aftermarket software application that permits
its users to play WoW on auto-pilot. (Donnelly Dep. at 286:4-8).

7 **OBJECTION:**

8 Blizzard objects to the compound nature of these statements; they do not
9 comply with Local Rule 56.1.
10

11 **RESPONSE:**

12 Blizzard disputes this statement. Glider may not modify the WoW software, but
13 it drastically modifies the game environment and the content that users experience
14 when they play the game. Glider gives Glider users a tremendous advantage over
15 players that do not cheat, by allowing those players to accumulate more experience,
16 reputation points, in-game items and gold than players that follow the rules. (SOF ¶¶
17 56-57). From a simple game-play perspective, Glider allows its users several obvious
18 advantages, including the ability to "see" through walls and other terrain, and the
19 ability to react to situations with the speed and reliability of a computer instead of
20 using human judgment and human reflexes. (SOF Supp. ¶ 277).
21
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23

24 **BLIZZARD'S SECOND SUPPLEMENTAL STATEMENT OF FACTS**

25 Pursuant to Local Rule 56.1, the following facts preclude summary judgment in
26 favor of MDY. These facts are in addition to those set forth in Blizzard Entertainment,
27 Inc. and Vivendi Games, Inc. Statement of Facts In Support of Their Motion for
28

1 Summary Judgment numbered 1 through 264, and in addition to those set forth in
2 Blizzard Entertainment, Inc. and Vivendi Games, Inc. Responses to MDY's Statement
3 of Facts in Support of Summary Judgment numbered 265 through 303. Accordingly,
4 the numbering for these additional facts will begin at 304.
5

6
7 304. Dr. Castronova testified that the model he used to establish and quantify
8 damages uses established and recognized methods for conducting an appropriate
9 simulation study. (Castronova Dep., Ex. 59 to SOF 2nd Supp. at 106:12-24).

10 305. Dr. Castronova further testified that:
11 [T]he literature on cost/benefit analysis, it is very common,
12 normal, and accepted scientific procedure to develop a
13 compelling model, simulate that model with plausible
(Castronova Dep., Ex. 59 to to SOF 2nd Supp. at 108:5-10).

14 306. Dr. Castronova testified that he talked to thousands of WoW players
15 prior to giving his opinion in this case. (Castronova Dep., Ex. 59 to SOF 2nd Supp. at
16 109:13-110:13, 110:22-25).

17 307. Dr. Castronova testified that data and accepted economic theories were
18 available to come to a conclusion as to why people left World of Warcraft without the
19 need for specific studies. (Castronova Dep., Ex. 59 to to SOF 2nd Supp. at 101:12-
20 102:14).

21 308. Brian Kopp distributes a book that instructs WoW players on how to
22 play the game to their advantage within confines of the EULA and TOU. (May 12,
23 2008, Third Aff. of Greg Ashe ("Ashe Third Aff."), Ex. 60 to SOF 2nd Supp. ¶ 3).

24 309. Brian Kopp previously distributed a direct link to cheat program with his
25 book. (Ashe Third Aff., Ex. 60 to SOF 2nd Supp. ¶ 4).

26 310. Brian Kopp's distribution of a cheat program is what caused Blizzard the
27 most concern. (Ashe Third Aff., Ex. 60 to SOF 2nd Supp. ¶ 5).
28

1 311. Brian Kopp no longer distributes a cheat program with his book. (Ashe
2 Third Aff., Ex. 60 to SOF 2nd Supp. ¶ 6).

3 312. Blizzard no longer sends takedown notices to eBay asking eBay to
4 remove his auctions. (Ashe Third Aff., Ex. 60 to SOF 2nd Supp. ¶ 7).

5 313. Additional details are confidential pursuant to the terms of a settlement
6 agreement between Blizzard and Brian Kopp. (Ashe Third Aff., Ex. 60 to SOF 2nd
7 Supp. ¶ 8).

8 314. Glider users can still load Glider before loading WoW. (Ashe Third
9 Aff., Ex. 60 to SOF 2nd Supp. ¶ 9).

10 315. For those users that choose to load Glider before loading WoW, Glider
11 continues to successfully circumvent scan.dll. (Ashe Third Aff., Ex. 60 to SOF 2nd
12 Supp. ¶ 10).

13 316. At his deposition, MDY's expert testified that the basis for his opinion
14 that no "copying for purposes of the Copyright Act" occurs when WoW is loaded into
15 RAM was based on his disagreement with a verbatim recitation of the holding in *MAI*.
16 (Calandrino Dep., Ex. 61 to SOF 2nd Supp. at 50:16-51:12).

17
18 Dated: May 12, 2008

Respectfully submitted,

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CERTIFICATE OF SERVICE

☒ I hereby certify that on May 12, 2008, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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