

EXHIBIT H

(MDY's SDF)

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Page 1

UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

MDY Industries, LLC,)	
)	
Plaintiff and Counter-Claim)	
Defendant,)	
)	
vs.)	Case No.
)	CV 06-2555 PHX DGC
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.)	
)	

VIDEOTAPED DEPOSITION OF MICHAEL M. DONNELLY
VOLUME I

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Phoenix, Arizona
September 25, 2007
10:04 a.m.

REPORTED BY:
MARTA M. RICE, CSR, RPR
Certified Reporter
Certificate No. 50746

1 question. Vague and ambiguous.

2 MR. GENETSKI: Let me -- I'll ask it again.

3

4 BY MR. GENETSKI:

5 Q. So the first sale was in June 2005?

6 A. Yes.

7 Q. Okay. And do you recall approximately how many
8 -- how many programs you sold in the first month that it
9 was offered?

10 A. I would guess 20.

11 Q. Okay. Do you have -- do you have a rough sense
12 of how many programs you've sold all told to date?

13 A. Yes.

14 Q. And what's that number?

15 A. Around 72,000.

16 Q. Okay. Have your sales reached a point now where
17 let's say the monthly sales of the program have -- are
18 more less stable month to month or is there a lot of
19 fluctuation?

20 A. There's a fair amount of fluctuation. It's
21 fairly stable, but it does fluctuate.

22 Q. Can you -- can you give me an approximate range?
23 And I know you've produced documents and we can get this,
24 but just -- just for a general sense. A -- a rough range
25 of where that fluctuation is now in total sales of the

1 which would let me find the bug in Glider.

2 Q. Okay. So in that context would you ask them for
3 their user name and password and ask to be able to log
4 into their account?

5 A. Yes.

6 Q. Okay. And -- but beyond those specific
7 situations to remedy a certain Glider issue for the
8 accounts that other -- are there other existing accounts
9 that you regularly test Glider on that belong to somebody
10 besides you?

11 A. No.

12 Q. Okay. All right. So we -- I think you said it
13 was September '05 when you first became aware that
14 Blizzard was attempting to -- was -- had detected Glider?

15 A. Yes.

16 Q. Okay. How -- do you recall how you reached the
17 conclusion that the users had actually been banned for use
18 of the Glider program and not for another reason?

19 A. I reached that conclusion from reading actually
20 the WoWSharp board.

21 Q. Okay. And what was said on that board that led
22 you to the conclusion?

23 A. There was a discussion about Warden -- this is
24 the first I'd heard of Warden -- that said Warden is
25 looking for programs with a certain window title. And in

1 -- what are the basic components of that functionality?

2 A. Well, they're listed here. Glider tries to
3 appear as human as possible. It jumps, it pauses moving
4 around in the game. Periodically it pauses in response to
5 input from another player. So when a player attempts to
6 duel you or trade you, it will -- instead of just
7 instantly dismissing the window, it will stop what it's
8 doing, wait a second, dismiss the window to appear human.
9 That's the first prong.

10 The other prong is detecting other players,
11 which is, ironically, the best way of avoiding players
12 detecting you.

13 Q. Okay. And -- and why -- why do you need to avoid
14 being seen by other players?

15 A. Well, if another player suspects that the game
16 play is automated, they'll report that character to the
17 in-game staff.

18 Q. And why -- why would they do that?

19 MR. VENABLE: Objection. Calls for
20 speculation.

21 THE WITNESS: I'm not sure if they
22 understand why they would do it. They would do it because
23 they don't like it.

24 BY MR. GENETSKI:

25 Q. So you -- you've built the -- the -- this

1 not able to see Glider running?

2 A. Right. The software didn't detect it, yeah. I
3 don't think it bans, but it definitely detects.

4 Q. Right. Okay. When -- so when the November 2006
5 detection occurred, did Blizzard -- were a number of
6 accounts running WoWGlider banned?

7 A. Yes.

8 Q. Okay. And was that the biggest ban wave to date?

9 A. I believe so. I can't tell for sure, since I
10 don't know. I have to measure it from responses on the
11 forums. I believe that was the biggest ban wave.

12 Q. And what -- what actions did you take when you
13 became aware that Glider users were getting their accounts
14 banned?

15 A. At that time I was -- I was going to leave the
16 country on personal vacation and, of course, the -- the
17 ban wave took place right before that -- and I was not
18 aware of what was being used.

19 So since I didn't know the detection method
20 involved, I temporarily stopped sales of Glider, but then
21 I resumed them with a warning message saying that there
22 may be detection in progress, we're not aware of what's
23 going on yet. That was my immediate response.

24 Q. Okay. So you advised users, basically, not to --
25 to not use the program for now if they wanted to avoid

1 that it would prevent Warden from detecting Glider. I
2 don't know if it blocks per se. That's a -- the -- the
3 terminology is sticky. But the -- the idea would be that
4 if WardenNet was integrated into Glider, then Warden would
5 not be able to detect Glider anymore.

6 Q. Okay. And the current version -- in the current
7 version of Glider, Tripwire performs that function
8 instead?

9 A. No. Kind of. The -- the WardenNet tool, or his
10 ISX Warden performs two main functions. It knows when
11 Warden changes, which is very similar to what Tripwire
12 does. And it directly alters Warden or alters Warden's
13 behavior to prevent it from detecting things. I don't --
14 I don't know how it works. I know it's different than how
15 I work.

16 Q. And where did these discussions with Lax that are
17 reflected in Exhibit 9, where did those lead?

18 A. Well, we agreed on a fee. We agreed on a -- a
19 price for his product that I would charge Glider
20 customers. I don't know if you have that. If it was in
21 IM.

22 Q. I think we got -- what was -- what was the price,
23 if you can remember?

24 A. Well, we had two models. We had a -- a \$5 up
25 front or \$1 per month.

MDY v. Blizzard

From: [REDACTED]
Sent: Friday, December 08, 2006 11:07 PM
To: miked@mikedyo.com
Subject: Re: Warden stuff.

Hey, your email got caught by the spam filter, my partner had to pass it through manually after he saw it tonight.

But yeah, I'm going to have to play hardball on this one to keep my bargaining position, as no guarantees are in place at this point.

Nothing personal, purely business. I have a lot of work to finish up between Lavish and my full time job, but I should be able to get a prototype ready for you within a few days to a week.

[REDACTED]

> Date: Wed, 6 Dec 2006 08:43:07 -0700
> From: Michael Donnelly <miked@mikedyo.com>
> To: [REDACTED]
> Subject: Warden stuff.

>
> Hey, [REDACTED], is there any chance you can toss me a bone on the existing
> Warden method? Assuming it's something I can defeat with a kernel
> hook, I can just throw that in my driver as a temporary workaround.
> By the time Blizzard gets to checking the service table or another
> workaround, the ISXWarden structure will be in place and I won't be
> hooking any more. If we go with the basic idea kicked around
> yesterday, I'll be building an upgrade path to allow existing
> customers to purchase the add-in, so every lost sale now is a lost
> upgrade. At the old sales volume, that's a pretty hefty amount
> slipping by both of us on a daily basis.

>
> I understand if you're hesitant to pass anything valuable along
> without any kind of assurance or plan in place. Obviously, my plan
> going forward is to work with ISXWarden, so let me know what makes
> sense to you to ensure that's earnest and we can try to gain some more
> mutual trust that way.

>
> Good luck with the 2.0.1 stuff - I'm finding a lot of annoying small
> structural changes so far.

>
> - M
>
>
>



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MDY 07129

1 A. It's in -- yeah. It's an encrypted dump of
2 memory.

3 Q. Okay. And then do you decrypt that dump of
4 memory to analyze it?

5 A. Typically, no. I -- I will run -- in that case I
6 would run Glider in Tripwire myself to get that and then
7 it's -- my Tripwire is not encrypted, so I don't have to
8 decrypt it.

9 Q. Okay. But on a user's version of Glider,
10 Tripwire would encrypt?

11 A. Correct. The file saved by Tripwire is
12 encrypted.

13 Q. Okay. Is Tripwire encrypting it or is Blizzard
14 encrypting it?

15 A. Trip wire's encrypting it --

16 Q. Okay.

17 A. -- with my private key.

18 Q. Okay. And so then you would have a user send
19 that into you and you would have the key to decrypt that
20 if you wanted to analyze it?

21 A. Yeah. If the user wanted to send it in, and sent
22 it, then I could decrypt it.

23 Q. What's the purpose of encrypting it in user
24 versions of Glider.

25 A. The primary purpose is to not leave an analyzable

1 copy of Warden laying around, either for the user to
2 analyze, or for Blizzard.

3 Q. Why would it matter if Blizzard had a copy of the
4 Warden code they could analyze?

5 A. They would understand more of Tripwire.

6 Q. Because of the -- because it's a -- well, the
7 Warden code is written by Blizzard. Right?

8 A. Yes.

9 Q. And that's the code you're capturing?

10 A. Yes.

11 Q. So is it -- what is it in the -- the
12 functionality of Tripwire catching it that would provide
13 information to Blizzard if it weren't encrypted?

14 A. It would provide a method for Blizzard to examine
15 and test Tripwire and see what it's doing. So it's there
16 to provide a -- a nuisance to analyzing the behavior of
17 Tripwire.

18 Q. Why do you want to prevent other users from being
19 able to analyze it?

20 A. The -- there's no particular reason that I could
21 think of. The -- the main deterrent would be I wouldn't
22 want a competitor to create a -- a product similar to
23 Glider and then be able to analyze his own Warden.

24 Q. And I think you said that that -- the primary
25 purpose for the encryption was to prevent Blizzard or a

1 of Warcraft users whose accounts were banned because they
2 were running the Kaspersky software?

3 A. None personally.

4 Q. Okay. Did you have any users send you any
5 information that would indicate that they were running
6 that software, not running Glider, and were banned?

7 A. No.

8 Q. Is your -- the -- the last sentence here of that
9 paragraph where you say, "If you feel your account was
10 unfairly closed, that is, you didn't have Glider up on
11 those days and your contact info was valid, I'd suggest
12 dealing straight with their admin people and tell them
13 what's what."

14 What are you suggesting those people tell
15 Blizzard when you say, "tell them what's what"?

16 A. Well, tell them they were not running Glider.

17 Q. Is it your opinion that if they were running
18 Glider, even though it's possible Blizzard picked up other
19 systems, that it's then a proper result for their account
20 to be banned?

21 A. Well, I knew at this point that Blizzard felt
22 Glider was against the terms, so I guess the answer would
23 be yes.

24 Q. Okay.

25 (Discussion off the written record.)

1 Q. Strong in the market of people who would be
2 interested in using a site like IGE?

3 A. Probably.

4 Q. Okay.

5 MR. GENETSKI: We can take the break now is
6 probably better.

7 THE VIDEOGRAPHER: Okay. We are going off
8 the record at 4:43 p.m. Here marks the end of videotape
9 number three in the deposition of Michael M. Donnelly.

10 (Recess.)

11 THE VIDEOGRAPHER: We are going back on the
12 record at 4:44 p.m. Here marks the beginning of videotape
13 number four in the deposition of Michael M. Donnelly.

14 BY MR. GENETSKI:

15 Q. Okay. One last reminder for the day, Mr.
16 Donnelly, that you're still under oath.

17 We were discussing right before the break
18 some e-mail overtures you'd gotten from sites involved in
19 other gold selling or gold farming about potential joint
20 business opportunities.

21 Have you received other similar overtures
22 from other sites affiliated with World of Warcraft related
23 services or products?

24 A. I -- I'm sure I have.

25 Q. Okay.

1 A. Could you be more specific on what product you're
2 looking for?

3 Q. Yeah. I mean, do you -- have you -- have -- are
4 those isolated instances, the couple of e-mails we looked
5 at, or have you received a number of inquiries from gold
6 farming or gold selling sites wanting to align themselves
7 in some relationship with Glider?

8 A. I've received a few. I wouldn't say they're
9 isolated. They don't happen very often. I may have
10 received a dozen over the lifetime of the business so far,
11 so they're not rare.

12 Q. Okay. And what -- what's the -- what's the
13 general nature of those sorts of communications? Is it
14 always them reaching out to you?

15 A. Yes. I'm not interested in -- in selling gold or
16 positioning Glider as a tool to sell gold. So it's --
17 it's either someone that wants to sell gold and leverage
18 the Glider name, or it's someone that wants to use Glider
19 to farm gold.

20 Q. Okay. And have you -- have you considered at any
21 point, you know, potentially in the future either
22 expanding in to those business areas yourself or engaging
23 in one of those sort of partnerships?

24 A. I considered it, but it's not something I'm going
25 to be doing any time soon.

1 Q. And prior to that was he sort of just acting as
2 an affiliate of yours, rather than managing the affiliate
3 network?

4 A. Correct.

5 Q. And how far back does that relationship go?

6 A. That goes very far back. He was the first
7 affiliate I signed up when I created my affiliate system.
8 So December of '05, maybe even November.

9 Q. Okay. Do you -- are you involved with Marcus in
10 any activities other than the Glider affiliate
11 relationship?

12 A. No.

13 Q. Okay. Did you have any involvement with him
14 historically with a program called K-a-m?

15 A. Yes, we worked on that.

16 Q. Okay. And what was the nature of that work?

17 A. That was a -- a tool that would show state
18 information from the game in a visible window.

19 Q. And was that program sold?

20 A. Yes.

21 Q. And how was it sold?

22 A. The -- markee managed the sale of it himself. I
23 believe he sold it through PayPal.

24 Q. Okay. And were you a beneficiary of the sales?

25 A. Yes.

1 BY MR. VENABLE:

2 Q. Have you ever tried to market or sell a license
3 of Glider in an attempt to hurt any third parties who play
4 the game?

5 MR. GENETSKI: Object to the form.

6 THE WITNESS: No, definitely not.

7 BY MR. VENABLE:

8 Q. Is Glider, as a program, able to do battle with
9 other players in the game? Noncomputer characters, but
10 other -- other human characters in the game?

11 A. The current version of Glider cannot fight other
12 players. A Glider customer would potentially be able to
13 build that, but we don't include that as a feature. We
14 don't want Glider killing other players. We mentioned as
15 much in our FAQ; it's something I consider to be
16 inappropriate for a tool to attempt to fight another
17 player.

18 Q. Are there certain features that you have ever
19 left out of the Glider program for any particular reason?

20 A. Yes. There are features that I believe if added
21 to Glider would detract from other players' enjoyment of
22 the game, such as automation of battlegrounds, which is
23 player versus player feature of the game.

24 So those features are specifically not built
25 because I believe they would directly make other players

1 enjoy the game less.

2 Q. So is -- is it -- is it fair to say that
3 you're -- you leave those features out because you want to
4 maintain the program specifically as an autopilot?

5 A. That's correct. There's a great deal of demand
6 for these features, but we don't put them in because
7 we're -- want to focus on Glider specifically being
8 autopilot and we don't want it to disrupt other players.

9 Q. And what other features could you put in the
10 program that you would feel would disrupt game play?

11 A. We could put in features for the battlegrounds
12 that I mentioned or just general player versus player
13 combat. We could also put in features to enable Glider to
14 be used in large groups to monopolize an area of the game,
15 or to keep players out of an area, to secure a resource in
16 the game, but we don't do that.

17 Q. And, again, why not?

18 A. It would disrupt other players' enjoyment of the
19 game. And we don't want to hurt any other players.

20 Q. Okay. Now MDY, the company, MDY Industries, or
21 let's say, for instance, even MDY Racing, these are
22 businesses. Correct?

23 A. Yes.

24 Q. And what are the goals of your businesses?

25 A. I imagine the same as any other business. The

1 FAQ, such as a -- a person that's wanting to start a new
2 character that's already played all of the content, so the
3 person wants to get the new character up to level cap to
4 play with his friends and doesn't want to play by hand.

5 So in a lot of situations that player is
6 forced to either play a lot by hand or not create the
7 second character. They will chose that, "oh, it's too
8 much work. I choose not do this." And such a player
9 might even quit playing.

10 The goal with Glider is, we sell that person
11 Glider and then they can use Glider to level the character
12 up and continue playing with his friends.

13 Q. Okay. Just a few more ques -- just two or three
14 more questions, Mr. Donnelly.

15 When you originally started preparing the
16 development of the Glider program, at this -- I assume
17 this was back in late 2000 -- or I'm sorry -- mid-2005,
18 was it?

19 A. Yeah. Yeah.

20 Q. At that time do you recall whether you considered
21 the use of the Glider program in connection with the World
22 of Warcraft program to be a violation of the terms of
23 service or the end user license agreement by Blizzard?

24 A. At that time I did not believe Glider was a
25 violation.

1 Q. And why was that?

2 A. I read the EULA and the specific terms indicated
3 to me that the programs that modified or hacked the game
4 or otherwise made changes to the game files were against
5 the terms. But nothing that I could read pointed out that
6 Glider would be a violation because it's an autopilot and
7 it's outside of the game. It doesn't modify anything.

8 Q. Do you recall when you first saw that -- or let
9 me ask you this.

10 Do you recall reading the -- the terms of
11 use and the end user license agreement back in early 2005?

12 A. Yeah, I recall.

13 Q. Do you remember if there was any language in
14 there that referred to the use of any specific program
15 being a violation of the terms of service or end user
16 license agreement?

17 A. No. There were no programs listed at the time.

18 Q. Was there ever any mention of using what's been
19 defined as a bot as being a violation of the end user
20 license agreement or the terms of service?

21 A. Not in 2005.

22 Q. When you say, "not in 2005," what do you mean?

23 A. The -- I believe the term "bot" was added to the
24 terms of service in late 2006, probably November or
25 December. The one that --

1 Q. Was that -- was that after the commencement of
2 this litigation?

3 A. Yes.

4 Q. And at any time from the time that you've started
5 selling your program through the present, I assume you've
6 con -- you have, at least a few times, reviewed the terms
7 of service and end user license agreement?

8 A. Yes. I've read them many times.

9 Q. And you've read them as they've been updated by
10 Blizzard. Is that correct?

11 A. Usually, yes.

12 Q. Okay. Has there ever been anything in the
13 agreement that has specifically said that Glider is a
14 violation of the terms of service or end user license
15 agreement?

16 MR. GENETSKI: Object to the form. You can
17 answer.

18 THE WITNESS: No. Glider's never been
19 mentioned in the terms or the EULA.

20 BY MR. VENABLE:

21 Q. Are there any programs that Blizzard lists in its
22 terms of service or end user license agreement that they
23 have stated violate the terms of service or end user
24 license agreement?

25 A. No program has been named in the EULA or the TOS,

1 or anywhere for that matter.

2 Q. Okay. I wanted to refer really quickly to
3 Defendant's Exhibit Number 4. And I wanted -- I want to
4 refer specifically to the third question down on page 2
5 where it starts, "Is using Glider cause for suspension or
6 ban?"

7 Now, the first sentence -- your response
8 says that, "Yes. Glider is against the terms of service
9 as provided by Blizzard for World of Warcraft."

10 What did you mean by that?

11 A. I assumed that Blizzard found Glider to be a
12 violation of the terms after Glider customers were banned.
13 So --

14 Q. Now -- now, when you say that, do you mean that
15 it is your belief that you believe Glider is a violation
16 of the terms of service or end user license agreement?

17 MR. GENETSKI: Object to the form.

18 THE WITNESS: No. I -- I still don't think
19 anything in the agreement specifically indicates Glider,
20 but Blizzard's actions made me think that they believe
21 it's a violation, obviously.

22 BY MR. VENABLE:

23 Q. So just so that I understand. You do not believe
24 that the use of Glider with World of Warcraft is a
25 violation of the end user license agreement or terms of

1 service?

2 MR. GENETSKI: Object to the form.

3 THE WITNESS: No. Well, as of 2005 the
4 agreements been up -- updated to --

5 BY MR. VENABLE:

6 Q. Okay. Well, at --

7 A. Okay.

8 Q. -- any time between 2005 and 2007?

9 A. No, definitely not.

10 Q. Have you ever actually encouraged anyone to try
11 to violate the terms of use or end user license agreement
12 by using Glider?

13 MR. GENETSKI: Object to the form.

14 THE WITNESS: No. We -- I discourage --
15 well, I don't discourage. I warn potential customers that
16 Blizzard may believe it's a violation of the terms as
17 mentioned in the FAQ to --

18 BY MR. VENABLE:

19 Q. And why do you warn them?

20 A. I don't want to have someone lose their account
21 for something where they may have been mislead on -- on
22 whether Blizzard would consider it a violation.

23 Q. Have you ever tried to mislead anyone into
24 thinking that they may be in violation of the end user
25 license agreement or terms of service by using the Glider