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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

MDY INDUSTRIES, LLC,)	
)	
Plaintiff,)	CV 06-02555-PHX-DGC
)	
vs)	Phoenix, Arizona
)	January 8, 2009
BLIZZARD ENTERTAINMENT, INC., et al.,)	
)	
Defendants.)	
)	

BEFORE: THE HONORABLE DAVID G. CAMPBELL, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BENCH TRIAL - DAY 1

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A P P E A R A N C E S

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1 P R O C E E D I N G S

2
3 THE COURTROOM DEPUTY: Civil case 06-2555, MDY
4 Industries, LLC, versus Blizzard Entertainment Incorporated and
09:04:28 5 others. This is the time set for bench trial.

6 Counsel, please announce your presence for the
7 record.

8 MR. VENABLE: Yes, thank you, Your Honor. Lance
9 Venable and my partner Joseph Meaney for the plaintiff, MDY
09:04:46 10 Industries and Michael Donnelly.

11 THE COURT: Good morning.

12 MR. VENABLE: Good morning.

13 MR. GENETSKI: Morning, Your Honor. I'm Christian
14 Genetski from Sonnenaschein Nath & Rosenthal on behalf of
09:04:57 15 Blizzard Entertainment. I have with me my colleagues Shane
16 McGee, also from Sonnenaschein, and Jacob Sommer from
17 Sonnenaschein. And from Blizzard Entertainment, Greg Ashe,
18 who's the manager of business intelligence. And also present
19 in the courtroom is Robert Oley who's the director of global
09:05:13 20 legal affairs.

21 THE COURT: All right. Good morning.

22 Our purpose today is for a bench trial in this
23 matter. We previously had a final pretrial conference and I
24 issued an order setting trial which stated that we would
09:05:38 25 devote about seven hours of trial time to this case, with the

09:05:41 1 plaintiff being allotted 2.5 hours and the defendants being
2 allotted 4.5 hours. The parties have provided me with a joint
3 proposed final pretrial order with proposed findings of fact
4 and conclusions of law and a joint supplemental proposed
09:06:02 5 findings of fact and conclusions of law regarding injunctive
6 relief.

7 Counsel, what I have done to prepare for this morning
8 is I have gone back and reread the order that I entered on
9 summary judgment, and the one that I entered when I denied
09:06:17 10 injunctive relief. I have gone back and reread the final
11 pretrial order.

12 I had hoped to, but have not had time, to go through
13 your findings of fact and conclusions of law in detail. I've
14 scanned them. But I don't want you to assume that I have
09:06:34 15 digested those yet because I just haven't had the time. I had
16 hoped to go through all of those.

17 My understanding is there are basically three
18 categories of issues we're going to be talking about. The
19 DMCA claim, which is the Digital Millennium Copyright Act; the
09:06:51 20 liability of Mr. Donnelly for the various claims Blizzard has
21 asserted; and the appropriateness of permanent injunctive
22 relief.

23 Are those the three general issues we're going to be
24 addressing?

09:07:05 25 MR. VENABLE: Correct, Your Honor.

09:07:06 1

MR. GENETSKI: Yes.

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THE COURT: All right. I think what I would like to do to start before we get into your presentations is have you identify for me precisely what issues I need to decide in each of those three categories so from the start I'm focused on what is the matter in dispute.

So Mr. Venable, if you could take a minute and tell me exactly what you think the issues are in each of those three categories. Then I'll hear from Mr. Genetski or counsel -- other counsel for each party.

MR. VENABLE: Just so I can clarify, is this an opening statement or is this --

THE COURT: No. No. I'm not counting your time yet. I just want to make sure I've got my eye on the ball. I want you to tell me exactly what the issues are that you think I'm going to need to be deciding.

MR. VENABLE: Okay. Your Honor -- should I go to the podium?

THE COURT: Yeah. Please.

MR. VENABLE: Your Honor, I think what I tried to do in preparing for this today was to focus on what you had basically stated in your summary judgment order that you had already made a determination of and then what was still left to be determined.

And from what I gathered, with regard to the DMCA

09:08:22 1 claims, under Section 1201(a)(2) the Court ruled that there
2 was summary judgment in favor of MDY Industries for the
3 question of whether the literal elements were in fact
4 violating the DMCA claim. And so I don't believe that we'll
09:08:44 5 have to do that today. I think the only issue that is left is
6 whether or not the nonliteral elements that are at issue would
7 violate the DMCA and whether or not my client's use of his
8 program would be a violation of the DMCA under 1201(a)(2) with
9 regard to nonliteral elements that Blizzard creates for its
09:09:09 10 World of Warcraft program.

11 With regard to section 1201(b)(1), I believe the
12 issue is yet to be decided for both the literal and the
13 nonliteral elements in terms of whether or not the -- well,
14 first of all, whether or not these elements are going to be
09:09:27 15 found to be protected rights that Blizzard has in these
16 elements and whether or not they're actually being protected
17 by Warden in an effective manner.

18 And with regard to personal liability --

19 THE COURT: Let's not go there for a minute. Let me
09:09:44 20 ask you a couple questions on the DMCA claim.

21 When I granted summary judgment with respect to the
22 game client code on the 1201(a)(2) claim, it was on the basis
23 of my conclusion that somebody who purchases the software has
24 full access to it, whether on the CD or on their hard drive,
09:10:05 25 and they don't need to go through Warden to gain access and

09:10:09 1 therefore Warden doesn't effectively control access to that
2 code.

3 With respect to the nonliteral elements of the game,
4 my memory is that in the papers Blizzard argued that you can't
09:10:29 5 have access to the nonliteral aspects without passing by
6 Warden. And you argued at oral argument that you could have
7 access to those nonliteral elements because there's other
8 programs you could use to look at the code that's on your CD
9 or your hard drive and see the graphics, et cetera.

09:10:50 10 MR. VENABLE: That is correct.

11 THE COURT: And so my problem was that that hadn't
12 been spelled out very thoroughly in the factual statements so I
13 didn't know who was right. Is that going to be the issue
14 that's addressed on the nonliteral aspects in the 1201(a)(2)
09:11:06 15 claim?

16 MR. VENABLE: That is correct, Your Honor.

17 THE COURT: Whether or not you have to get by Warden
18 to get access to the nonliteral aspects of the game?

19 MR. VENABLE: That is correct.

09:11:15 20 THE COURT: Okay.

21 Another issue that I raised in my motion that I don't
22 believe the parties had raised was whether Warden fit the
23 definition in 1201(a)(3)(B) of a method of controlling access.
24 Because arguably Warden doesn't require the user to apply
09:11:37 25 information or to use a process to get past it. Warden

09:11:42 1 affirmatively comes searching for the problem. Is that going
2 to be an issue?

3 MR. VENABLE: That is also correct. We were going to
4 clarify that in our testimony.

09:11:50 5 THE COURT: Okay. So both of those, then, will be
6 issues to be decided on the 1201(a)(2) claim with respect to
7 the nonliteral elements.

8 MR. VENABLE: Yes.

9 THE COURT: Okay. On the 1201(b)(1) claim, which
09:12:03 10 concerns a technological measure to protect copyright rights,
11 with respect to the game client code, it seemed to me -- or it
12 seems to me today that the dispute that I couldn't resolve at
13 summary judgment was whether or not game client code is written
14 to RAM after somebody gets by Warden.

09:12:30 15 And my memory is that you said no, that doesn't
16 happen. It all gets written to RAM, there's therefore no
17 copying of the game client code after you get by Warden and so
18 Warden isn't in effect preventing that copy.

19 And Blizzard was saying, no, as you play the game
09:12:48 20 there's more code written to RAM and therefore every time you
21 get by Warden you are enabled to do more copying and therefore
22 the 1201(b)(1) provision is violated.

23 Is that an issue?

24 MR. VENABLE: Well, I think I need to clarify it
09:13:03 25 because perhaps what was said at the summary judgment oral

09:13:06 1 argument isn't exactly what we're going to show here today.
2 And maybe I misspoke, I'll take responsibility for that.

3 We do not dispute that there is additional code that
4 is loaded into RAM. In terms of what the nonliteral
09:13:24 5 elements -- like the code that contains World of Warcraft
6 executable is loaded into RAM first. And then when the game
7 is being played there are nonliteral elements that are
8 embodied in certain files that sit on your hard drive that are
9 then also loaded into RAM. These are loaded during the game.

09:13:46 10 We don't dispute that. So there is -- there are additional
11 elements that are loaded.

12 I think the issue is, is that these nonliteral
13 elements are not restricted from being loaded into RAM because
14 of -- because of Warden. That these nonliteral elements can
09:14:05 15 be perceived when Warden is running. There's no -- there's
16 no -- there is no protection that is being afforded by Warden
17 to stop these nonliteral element files from being copied.

18 Which I think is a protected right that they're claiming, that
19 they're protecting with Warden that the actual reproduction of
09:14:24 20 the nonliteral element files from the hard drive to the RAM
21 will happen -- or can happen whether or not World of Warcraft
22 is running and Warden is active or not.

23 And as I read 1201(b)(1), the issue is whether or not
24 the protected right of copying is protected by a technological
09:14:50 25 measure that prevents -- or that helps protect a protected

09:14:54 1 right.

2 Our position is that despite the fact there are
3 additional nonliteral elements, I can, while World of Warcraft
4 is playing or even if they cut off access to their server and
09:15:05 5 prevent us -- from me being able to play the game any further,
6 that doesn't stop the nonliteral elements from being able to
7 be perceived and continued to be loaded in the RAM despite
8 their ability to disconnect you from their server.

9 I don't think there's a limitation in terms of what
09:15:21 10 the 1201(b)(1) says in terms of it has to be a particular
11 copy. It could be -- I think we're referring to the files
12 themselves. And because the files can be loaded into RAM, the
13 DMCA doesn't specify whether or not it has to be a particular
14 copy.

09:15:39 15 THE COURT: Okay. Let me just take a minute and look
16 at (b)(1) again in light of that.

17 Mr. Venable, if I understand what you're saying, you
18 agree that if a Glider user effectively circumvents Warden,
19 then after that circumvention has occurred, there will be code
09:16:25 20 on a hard drive that is written to RAM.

21 MR. VENABLE: Which code are you referring to? The
22 nonliteral element files?

23 THE COURT: Both. In (b)(1) I haven't ruled on either
24 one. So in (b)(1), both code and nonliteral elements will
09:16:43 25 be -- well, let's put focus on the code for a minute.

09:16:49 1 MR. VENABLE: Okay.

2 THE COURT: Once you circumvent Warden and continue to
3 play the game, there will be code written from your hard drive
4 to RAM. Agreed?

09:16:56 5 MR. VENABLE: Yes. That is true from what I've seen.

6 THE COURT: And the writing of that code from hard
7 drive to RAM is copying under Ninth Circuit law. Correct?

8 MR. VENABLE: And the law of this case I would
9 imagine, too.

09:17:08 10 THE COURT: Right. Right. So haven't you
11 circumvented a technological measure that if effective would
12 have prevented you from copying within the meaning of the
13 copyright act?

14 MR. VENABLE: If by definition you mean that the
09:17:26 15 particular copy that they use in terms of the order that
16 Blizzard software directs the code to be loaded into RAM, that
17 particular copy, yes, will be effectively prevented from RAM.
18 In other words, World of Warcraft, I think it is called
19 WoW.exe, is a tool that is ordered by commands from Blizzard's
09:17:51 20 server to say, here, take this particular file and move it from
21 the hard drive into RAM while the game is being played. And if
22 that is cut off, WorldofWarcraft.exe will no longer move that
23 file from the hard drive to the RAM.

24 But that doesn't mean that even while -- even whether
09:18:11 25 or not we circumvent the Warden or not, that if I'm playing

09:18:15 1 the game legitimately, let's say, and then all of a sudden we
2 load Glider, and I think this is what we're going to show in
3 the presentation, that the movement of the data, both the
4 literal and the nonliteral elements, from the hard drive into
09:18:30 5 RAM can continue. Warden doesn't stop that. And that the
6 abusive third-party software or anything -- you don't really
7 need third-party software to move the files from the hard
8 drive into RAM -- that the files would continue to be loaded
9 despite whether or not Warden has been circumvented or whether
09:18:50 10 it had not been circumvented.

11 Even if they cut off access to their server and say,
12 server, you no longer instruct WoW.exe to load a particular
13 file from the hard drive into RAM, the files can still be
14 loaded into RAM. So they haven't effectively stopped under
09:19:05 15 1201(b)(1) the protected memory. The protected right is in
16 the ability to copy. That is their protected rights. What
17 Warden does is seeks out a third-party software program and
18 says, okay, if we find it we will no longer allow you access
19 to our server. And if we don't allow you access to our
09:19:26 20 server, our server doesn't command WoW to load that file into
21 RAM.

22 But that doesn't mean that the actual thing that is
23 protected, which is the right to copy, doesn't still occur.
24 It still can occur. In fact, Warden does nothing to protect
09:19:43 25 that at all. So effectively Warden is not doing anything to

09:19:48 1 stop -- to protect the protected right of copying. And we
2 read (b)(1) to say that just because they're stopping one
3 particular copy doesn't mean they're stopping -- preventing
4 the right to copy or the ability to copy.

09:20:05 5 And in many cases I think there's a little -- the
6 issue of access I think kind of plays in here. But I do
7 believe that if we're talking about what Warden is doing, this
8 is not like in the DVD cases where the code was -- if the code
9 were encrypted and you couldn't actually get access to it to
09:20:24 10 make a copy to actually move it from the hard drive to RAM,
11 because you can't. There's no ability to move it from the
12 hard drive to RAM even if there's been a cutoff of the WoW.exe
13 file and ability to move it, it still means you can move it
14 from the hard drive to RAM.

09:20:43 15 And going back to what we said before, that Warden is
16 not designed as some protection measure under 12(b)(1). It is
17 designed to basically enforce its agreement to find
18 third-party software that it doesn't want to play. It's not
19 there to try to prevent copies from being made of nonliteral
09:21:03 20 elements or even literal elements.

21 THE COURT: Okay. So if I understand your position
22 under 1201(b)(1), it is that the statute doesn't apply to a
23 measure that may prevent a particular instance of copying. It
24 applies to a measure that prevents copying. And because you
09:21:20 25 can copy the code regardless of whether or not you get past

09:21:25 1 Warden, Warden isn't the kind of measure that's addressed by
2 the statute?

3 MR. VENABLE: Yes, that's true. And also one other
4 thing, Your Honor. To the extent there is some finding that
09:21:34 5 this is a protected right that they have, the other thing that
6 we were going to show today is that to the extent there is
7 anything loaded into RAM in terms of the code for nonliteral
8 elements, that within the nonliteral elements that are being
9 loaded, there still has to be some authorship, some creative
09:22:00 10 element that is embodied within a protected right that Blizzard
11 claims it has.

12 And to the extent that whatever is actually loaded,
13 which is being directed by the server, the server itself is
14 actually being directed by movements and decisions that are
09:22:15 15 being made by the user, and any number of other users that are
16 playing the game at the same time, to determine what actually
17 appears on the player's screen. Blizzard doesn't control
18 that. And I don't think you'll -- I don't think they'll say
19 that Blizzard -- to the extent that Blizzard has any input
09:22:32 20 into that, it is just sending down facts from the server which
21 are unprotected elements. And they're not being directed at
22 all by Blizzard, they're being directed by what the user of
23 the game is actually doing along with other users who are
24 creatively deciding whether or not they want to move their
09:22:56 25 character to the right or they decide what their characters

09:23:00 1 will look like. Blizzard has no input into those decisions.

2 So these nonliteral elements that appear on the
3 screen as a result of the loading from the hard drive into RAM
4 are not protected rights. They're not rights that Blizzard
09:23:13 5 has established. They're rights that the user is actually
6 involved in creating.

7 So when they cut that off, the only difference
8 between that copy that's being made by Blizzard is that the
9 server is directing it. A third-party software can easily
09:23:30 10 direct, and you'll see today when we present this, that you
11 can see all the same things that you see in playing World of
12 Warcraft except you just don't see them in the order that they
13 are told to display by Blizzard.

14 So the only difference between WoW.exe loading the
09:23:49 15 RAM -- or loading the nonliteral element files into RAM and a
16 third-party software is just the order in which they're
17 loaded. That's it. And to the extent that the order is
18 generated by WoW.exe, it is only being generated as a result
19 of things the player and third parties are doing. So hence,
09:24:14 20 there would be no -- Blizzard would have to make a stretch to
21 argue that even that the right itself of the copying is fully
22 theirs. If at all.

23 THE COURT: Is copying the only issue in terms of
24 copyright rights when it comes to the nonliteral elements under
09:24:35 25 1201(b)(1)?

09:24:37 1 MR. VENABLE: As far as I know, Your Honor, I've had
2 one discussion with Mr. Genetski, I think that was what he was
3 alluding to. I don't think I've ever heard a mention of a
4 violation under 106 because there was a derivative working
09:24:49 5 being created that was unauthorized or that this was a public
6 performance right that was being violated and protected. I
7 don't think that the public display right or -- I think it is
8 just about the copying. As far as I know.

9 THE COURT: Okay. All right. You were going to talk
09:25:10 10 for a minute about the personal liability issues.

11 MR. VENABLE: Yes. Your Honor, basically what I think
12 needs to be decided today is the issue of whether or not
13 Michael Donnelly personally has -- whether or not he's done
14 anything by -- as a software developer by creating software and
09:25:34 15 selling it, in terms of whether or not that behavior itself has
16 arisen to something that is inherently unlawful that would
17 justify whether or not he should be personal -- whether or not
18 he should be found personally liable and not his corporate
19 forum.

09:25:52 20 The cases that the other side cited in terms of
21 liability, they talk about in general that corporate
22 liability, the president of his company can be held, an
23 officer of the company can in general be held liable for
24 tortious activity. But there are -- there's a sub -- there's
09:26:15 25 a subcategory of what you would have to -- you can say in

09:26:19 1 general that's true, but there are certain instances in which
2 that would not be true. And all of the cases that the -- that
3 Blizzard cites to you in terms of determining personal
4 liability, all go to the issue of examples of people who were
09:26:33 5 clearly going across the line in terms of doing something
6 inherently unlawful.

7 And what we're going to establish today is that
8 Michael Donnelly, in terms of when he started developing his
9 software, when he was selling his software, could have never
09:26:49 10 known under any circumstances at the time that he would have
11 ever been sued for copyright infringement when he in fact
12 wasn't copying anything. That he would have been held in
13 violation of the DMCA because, again, his readings of it did
14 not lead him to believe that.

09:27:10 15 And also whether or not he would have been a tortious
16 interferer with a contract. He always felt that what he was
17 doing, while Blizzard ultimately -- he realized ultimately may
18 not have liked it, never arose to the issue of whether or not
19 it was something that was inherently lawful.

09:27:27 20 And I think what we'll also point out is that there
21 are numerous people who have commented on this case who even
22 today say that we still don't even know what the answer is
23 here. With all due respect to your opinion, Your Honor, that
24 you issued on the summary judgment, it was something that it's
09:27:48 25 not apparent on its face. It's just not -- it may ultimately

09:27:52 1 come to the fact that he is a copyright infringer or he is
2 tortiously interfering with a contract. But a person who is
3 acting within the scope of his business, which is to create
4 software and sell it, he never in fact understood that what he
09:28:10 5 was doing was inherently unlawful. He didn't go to the copy
6 machine and make a copy that was unlawful that he knew he
7 shouldn't have made. He wasn't pressing illegal DVDs. He
8 wasn't doing anything that would have arisen.

9 So that's the evidence that we're going to show. We
09:28:27 10 think that is the real issue. It's not just a question of in
11 general. We understand certainly a person can be held
12 personally responsible. But it takes more than just
13 personal -- it takes more than just a general act by a
14 president of a company. And there's cases out there that show
09:28:45 15 that somebody was actually willfully infringing a patent, that
16 they knew would have infringed a patent, the Court still found
17 that there was no personal liability because at the time the
18 person didn't know it was inherently unlawful. We'll talk
19 about that as well.

09:29:00 20 So that's really I think what the issue is today.
21 You'll hear a lot of that from Mr. Donnelly today.

22 THE COURT: All right. And the third category.

23 MR. VENABLE: With regard to the injunctive relief,
24 Your Honor, we think that we're going to present some very
09:29:13 25 simple evidence. I think most of it is undisputed. That to

09:29:18 1 request a permanent injunction at this point would be
2 premature. And not to say that it would technically be
3 inappropriate, but it may be -- it just may put Mr. Donnelly
4 and his company in a position that if we are enjoined pending
09:29:35 5 the outcome of what we intend to appeal Your Honor's decision
6 to see whether the Ninth Circuit ultimately decides whether or
7 not he was a copyright infringer or whether or not he
8 tortiously interfered with his contract, that to get to that
9 date, when the Ninth Circuit ultimately makes that decision, it
09:29:51 10 may be an additional 8 to 12 months. We don't know exactly how
11 many; it could be longer, could be shorter.

12 But that there is no doubt that to the extent
13 Blizzard has known for the better part of three years when
14 they first learned that Mr. Donnelly began selling his
09:30:09 15 software, that it took them an additional year and some time
16 to file a lawsuit against him. When they filed the lawsuit,
17 they didn't ask for an injunction. It took them two years
18 after the lawsuit was filed to finally request an injunction.
19 And during that time they did a lot of personal -- what's the
09:30:30 20 word I'm looking for here -- self-help to try to stop what he
21 was doing by banning many of his customers. But they never
22 asked for an injunction.

23 All along during the time period this has been going
24 on, Blizzard's business has flourished. They have gone from
09:30:46 25 5 million customers roughly now to 11 and a half million

09:30:49 1 customers. To go an additional 8 or 12 months to allow the
2 status quo to be maintained is not going to harm them in the
3 same way that it would certainly harm Mr. Donnelly or his
4 company, for the very reason that if he goes out of business
09:31:01 5 there will -- it's not going to solve the bot problem. There
6 will be many, many other people ready to jump right in his
7 place to sell similar software, probably outside of the
8 jurisdiction of the United States which will make it very
9 difficult for Blizzard to stop it.

09:31:20 10 What that will do is effectively eliminate him from
11 being able to come back if the Ninth Circuit Court of Appeals
12 ultimately overturns the decision. I think all we're asking
13 here is not in terms of what would happen after the Ninth
14 Circuit, but at least until then, that to grant him the
09:31:36 15 opportunity to continue his business. Certainly we don't
16 believe it's hurt them to the extent that it would basically
17 put him out of business. If he wins on appeal, there would be
18 nothing left. So you will hear evidence about that today. We
19 think that's the issue.

09:31:54 20 THE COURT: Okay. Thanks.

21 Mr. Genetski. And I'm going to give you a chance to
22 argue. I'm not really looking for argument now, I just want
23 to make sure I understood the issues.

24 MR. GENETSKI: Yes, Your Honor. I think generally I
09:32:09 25 agree with the formulation that Mr. Venable presented and that

09:32:16 1 Your Honor walked him through on the three issues. Just to
2 briefly state how we would frame the issues, under the DMCA
3 under the 1201(b)(1) point, we did -- we did view the issue
4 that was reserved from your summary judgment order as the
09:32:33 5 narrow dispute of fact about whether additional code is loaded
6 into RAM after a user running Glider bypasses Warden.

7 As Mr. Venable pointed out, it's developing our
8 stipulated fact there was no dispute as to that fact.
9 Whatever confusion there was at summary judgment stage, it is
09:32:52 10 undisputed that that code does load. In our view that compels
11 the conclusion in Blizzard's favor under the 1201(b)(1) and
12 the law of the case that the copying of WOW into RAM with
13 Glider is an infringement. And Warden is a technological
14 measure designed to prevent that very unauthorized copying.

09:33:16 15 And there was some discussion, I don't want to go too
16 far into argument, but I think there are two quick points to
17 address what Mr. Venable said. I believe he said it has to
18 prevent any and all copying for all time to qualify under the
19 DMCA. And I think the *Lexmark* case, which cites the *Real*
09:33:36 20 *Player* case, which these cites are in the proposed conclusions
21 of law, explicitly states that the DMCA does not require a
22 copyright owner to prevent all forms of copying.

23 A copyright owner can prevent -- can protect some of
24 its rights in a copyright or it cannot others. You can allow
09:33:55 25 music to stream but prevent the downloading of the music.

09:33:59 1 And here, Blizzard allows users -- what Blizzard
2 protects against is an infringing copy in excess of the
3 license. The same user can load -- make a copy of WoW into
4 RAM playing the game. If they're not running Glider, they're
09:34:15 5 in conformity with the license. Warden is not going to bar
6 their entry. Warden is there to safeguard against the
7 infringing copy. And we believe that the correct
8 interpretation of 1201(b)(1), those facts coupled with the
9 ruling that that is an infringing copy, compel the conclusion
09:34:32 10 as to the code, at a minimum, on the 1201(b)(1) claim.

11 The one other --

12 THE COURT: Let me ask you a question on that as long
13 as we're on that point.

14 If I understand you, Mr. Genetski, even though a
09:34:53 15 purchaser of the World of Warcraft CD could perhaps improperly
16 reproduce it 100 times, copy it, and copy everything on it,
17 all of which would be copying in violation of your copyright
18 acts, if Warden prevented that user while playing the game
19 from copying portions into RAM, then Warden falls within the
09:35:21 20 DMCA.

21 MR. GENETSKI: Yes.

22 THE COURT: I haven't gone back and reread it, but I'm
23 remembering, I think, a statement from the Sixth Circuit in the
24 *Lexmark* case where they said a lock on the back door of the
09:35:35 25 house doesn't prevent access to the house if there's no lock on

09:35:40 1 the front door. Does that analysis apply to (b)(1)? Namely,
2 prevention of a single copy really isn't prevention of copying
3 if the user can copy freely in 100 other ways?

4 MR. GENETSKI: I don't believe it does. I think that
09:35:54 5 *Lexmark* gives that example to draw the very distinction between
6 (a)(2) and (b)(1). (a)(2) is access. You can get in your
7 house if you don't put a lock on the door. You can't then
8 complain about what happens.

9 (b)(1) applies to copyright owners protecting their
09:36:12 10 rights and explicitly applies to their rights in the work or a
11 portion thereof. Here Blizzard is protecting a portion of WoW
12 that is loaded into the RAM with Glider when you're connected
13 to the server. It is protecting against that code. It is
14 cutting off the further infringing copying.

09:36:31 15 I think the streaming media cases are another good
16 example. There are lots of uses of copyrighted works where
17 it's the right, the right to exclude infringing copies that's
18 being protected. I think if you don't draw that distinction
19 then there is no meaningful distinction between (a)(2) and
09:36:50 20 (b)(1). And I believe that the cases, including some that are
21 cited in the conclusions of law and in our summary judgment
22 briefing, discuss those differences.

23 THE COURT: Okay.

24 MR. GENETSKI: The secondary point, which is very
09:37:08 25 closely related to that, is a copying of the nonliteral

09:37:12 1 elements under (b)(1) into RAM. Our argument there is similar
2 to our (a)(2) argument. It is just a copy of those elements.
3 For the (a)(2) argument I believe --

4 THE COURT: Hold on before you leave (b)(1). It is
09:37:25 5 really exactly the same argument, isn't it?

6 MR. GENETSKI: I think they rise and fall -- I believe
7 they rise and fall together, yeah.

8 THE COURT: You're saying that even though they may
9 view or use or access the nonliteral elements on their own, if
09:37:37 10 Warden prevents them from doing it in World of Warcraft, then
11 Warden is preventing them from violating one of your rights and
12 therefore falls within (b)(1).

13 MR. GENETSKI: Yes, Your Honor.

14 THE COURT: Okay.

09:37:51 15 MR. GENETSKI: For (a)(2) the point is a bit different
16 as to the nonliteral elements. In summary judgment the Court
17 ruled that the literal code is there and can be fully accessed
18 and anything can be done with it. But as the order recognized,
19 and *Lexmark* talks about this, as do a number of copyright
09:38:08 20 cases, when you're talking about computer software there is the
21 literal code and then what we keep referring to is the
22 nonliteral elements, which are the expressive elements, the
23 audiovisual manifestation that that code generates.

24 And I don't believe that -- in many respects it's
09:38:23 25 not -- it will not be a dispute of fact as to what's happened,

09:38:28 1 what can be done with the literal code to generate the
2 nonliteral elements between the two parties. At the margins,
3 some differences. But the primary distinction is a
4 disagreement over -- in the context of World of Warcraft, the
09:38:46 5 copyrighted work world of Warcraft, what constitutes the
6 protected nonliteral elements. And it will be our position
7 that the literal code only generates the audiovisual
8 manifestation that constitutes Blizzard's copyrighted work
9 when it's connected to the server.

09:39:08 10 Because it relies on that interaction with the server
11 and the choreography that the server -- the code from the
12 server, which we're not asserting the code from the server is
13 protected, Mr. Venable is right, but the interaction with that
14 code brings to life the expressive elements, character
09:39:27 15 interactions, the sound effects in combination with those
16 interactions. The story lines. The quests that users go on.
17 The mobs that take place. All of that arc in combination only
18 happens when you're connected to the Blizzard server.

19 And we believe that the proper definition of
09:39:45 20 nonliteral elements for a computer game is that manifestation
21 of the code. We do not dispute, we will not dispute, that you
22 can -- outside of the context of the World of Warcraft
23 servers, you can take the code on the client and, through what
24 are unauthorized third-party viewers, some of which work, some
09:40:08 25 of which don't work any more, but people have created programs

09:40:12 1 to allow you to extract the individual literal pieces of
2 literal code that generate these expressive elements. But you
3 cannot recreate the elements as they're created in the game.
4 And I believe that we'll see, if we do the demonstrations
09:40:31 5 today, the difference between a sound effect in isolation or a
6 static representation of a character or a map in World of
7 Warcraft and what those elements look like in combination on
8 the game.

9 It's a question for the Court to decide whether the
09:40:52 10 mere ability to take the literal code and generate snippets,
11 that those individual snippets mean that the nonliteral
12 elements are unprotected or whether, as we assert, the
13 nonliteral elements are protected because you can only get the
14 meaningful manifestation of that literal code on the server in
09:41:10 15 the game. And Warden does, there's no dispute, protect their
16 access to that portion. And so that is our (a)(2) access
17 argument.

18 THE COURT: Okay.

19 MR. GENETSKI: On the issue of Mr. Donnelly's personal
09:41:29 20 liability, Mr. Venable said -- mentioned the cases that we
21 cited and said that people were all well over the line in those
22 cases. I think the cases are clear that the line is drawn at
23 whether the officer or director performed or directed the act
24 that give rise to liability.

09:41:49 25 Irrespective of his intent, although I would say the

09:41:52 1 law of the case in the summary judgment order makes it clear
2 that MDY acted with intent, and I believe we can demonstrate
3 at trial that every action that was significant that gave rise
4 to MDY's liability was performed or directed by Mr. Donnelly.
09:42:07 5 He was the only person involved in most instances.

6 So we believe that that is a relatively simple issue
7 and there really is no countervailing authority offered by MDY
8 or Mr. Donnelly in the proposed conclusions of law to dispute
9 the legal authority we provided.

09:42:29 10 The final issue is injunctive relief. As I
11 understood Mr. Venable's presentation of the issues, I think
12 the words he used was he's not arguing a permanent injunction
13 would be inappropriate on resolution of the case, but that it
14 would be premature. We're not at a preliminary injunction
09:42:51 15 stage here where those sorts of arguments typically apply.
16 We've reached the end of the case. We have a judgment entered
17 on copyright tortious interference. The case will presumably
18 come to a close today or tomorrow and end with an order. If
19 MDY can perhaps seek a stay of a permanent injunction if they
09:43:12 20 want to make the argument that they need to be able to pursue
21 their appeal and with a posting of a proper bond try to stay
22 an injunction.

23 But the law, as we read it, is clear that in cases
24 where someone has been found to be committing unlawful
09:43:27 25 violations and has continued to commit them and stated an

09:43:33 1 intent to continue them past the case, that permanent
2 injunctive relief is really the only way to give Blizzard
3 relief barring -- we've reached a stipulated money judgment
4 damages on the past activity, unless we're going to be coming
09:43:48 5 back to the Court for accountings of profits, and we'll assert
6 and put on evidence that even doing that would not satisfy the
7 harm because it' is impossible for us to quantify the full
8 effect of Glider on our game.

9 So we believe that this is the proper stage of the
09:44:03 10 case at which to enter permanent injunctive relief. And the
11 arguments of MDY that they didn't intend to do harm and that
12 the case -- the issues are unclear, the case law, even in a
13 preliminary injunction context, when you're still awaiting a
14 trial, those cases are very clear that someone deemed to be an
09:44:27 15 infringer doesn't have a legitimate interest in being able to
16 keep their business afloat. Even during the pendency of the
17 case that's not final. I think those arguments have even more
18 force at this stage of a permanent injunction in connection
19 with a final judgment.

09:44:44 20 THE COURT: Okay. Thanks.

21 All right. That was helpful. You may well have
22 covered some of the ground that you intended to cover in your
23 openings. But what I would like to do is go ahead and start,
24 and I'm going to now start counting your time, and anything
09:45:00 25 you wish to say in openings, I'm happy to hear.

09:45:03 1 We'll go ahead and start with you, Mr. Venable. Go
2 ahead.

3 MR. GENETSKI: Your Honor, we did have a couple of
4 housekeeping issues.

09:45:12 5 THE COURT: Okay.

6 MR. GENETSKI: Mr. Venable has one and I do too.

7 THE COURT: That's fine. Go ahead.

8 MR. GENETSKI: One I think will be the order of the
9 presentation of the evidence. I think since we bear the burden
09:45:22 10 on all three of the issues --

11 THE COURT: You go first.

12 MR. GENETSKI: -- that we would go first.

13 THE COURT: All right.

14 MR. VENABLE: Your Honor, the other thing, hopefully
09:45:28 15 it won't be too much trouble for the Court, but the two
16 presentations that we were looking to give were -- we need to
17 use a computer and I understand that you can't technically sit
18 at the witness stand and have a computer where our witnesses
19 can guide the computer. We were hopeful that maybe at least on
09:45:47 20 direct examination when I question the witness or at least put
21 on the presentation they can do it from here. And then if need
22 be, when we're done with that, they can move then to the
23 witness stand for further direct or cross-examination.

24 THE COURT: Yeah, that's fine. However you want to do
09:46:02 25 it so they can make the presentation you want them to is fine.

09:46:06 1 We don't have the same kind of concerns we have in a jury
2 trial.

3 MR. GENETSKI: The one other point I want to raise,
4 Your Honor, Mr. Venable and I spoke about the ordering of the
09:46:15 5 witnesses and trying to proceed as efficiently as possible.
6 We're going to call Greg Ashe as our primary witness in our
7 case in chief. There are certain -- there's certain evidence
8 that we want to bring out in Mr. Donnelly's testimony as to his
9 personal liability. However, he's obviously -- he's going to
09:46:34 10 be Mr. Venable's principal witness.

11 If the Court doesn't object, Mr. Venable has informed
12 me he'll stipulate that we can conditionally rest after Greg
13 Ashe's testimony and then handle -- he won't move for a
14 judgment as a matter of law at that point and then we can
09:46:51 15 handle the point we need to make on the one cross of
16 Mr. Donnelly so he only takes the stand once.

17 THE COURT: That's fine. Yeah. All right.

18 So I think we're starting with you, Mr. Genetski.

19 MR. GENETSKI: Thank you, Your Honor. Mr. Venable.

09:47:09 20 As the Court knows, this case concerns my client,
21 Blizzard Entertainment and its online computer game World of
22 Warcraft. And it's significant that World of Warcraft is an
23 online game where millions of players worldwide interact and
24 immerse themselves in an online virtual world that is richly
09:47:32 25 detailed and vivid. And it is choreographed by Blizzard's

09:47:37 1 artists and programmers. It is the art and code that
2 generates this world.

3 Opposing parties, Mr. Donnelly and MDY Industries,
4 also are the creator of a software program. The program the
09:47:50 5 Court has found exploitative of Blizzard's World of Warcraft
6 already in a summary judgment context.

7 We've talked about the three issues that we'll talk
8 about today: The DMCA, Mr. Donnelly's personal liability, and
9 Blizzard's entitlement to a permanent injunction.

09:48:05 10 Your Honor said you briefly reviewed the proposed
11 findings of fact. I would just submit that I believe the
12 parties did a good job in trying to cover as much as possible
13 in the stipulated facts. The operation of World of Warcraft
14 generally, the operation of Warden, which I'll use
09:48:25 15 collectively to mean scan.dll and the resident component,
16 except where we're talking about a meaningful distinction.

17 The operation of that software is covered. The
18 operation of Glider including its circumvention functionality
19 and the value of that functionality to Glider are covered.
09:48:44 20 The terms of use and the EULA, their terms and the effect, as
21 well as the law of the case on the copyright copying into RAM
22 issue.

23 So I do believe that the factual issues are very
24 limited that we're going to talk about here today. And
09:49:00 25 largely I believe you'll see a disagreement in the parties

09:49:03 1 about the meaning of those facts. The legal import that the
2 different ways in which nonliteral elements are displayed
3 bears on the DMCA issues.

4 So we'll be addressing the 1201(b)(1) issue, and
09:49:20 5 we'll limit our proof on that given Mr. Venable's statements
6 prior about not contesting the fact that code is loaded into
7 RAM. I believe that can be a point we can cover quickly, and
8 it is covered to a large extent in the stipulated facts.

9 On the 1201(a)(2) claim, you'll hear from Mr. Ashe
09:49:44 10 and he will describe the particular way in which the literal
11 code generates the multimedia content when a user is connected
12 to World of Warcraft servers. So he'll talk about how those
13 servers work, how that interaction with the code works, and
14 why it is significant and why Blizzard chooses to protect
09:50:03 15 those nonliteral elements with its technological measures.
16 Why that's the priority.

17 We'll also address the Court's question on 1201(a)(2)
18 as to whether Warden meets the definition on 1201(a)(3)(B) of
19 a measure that protects copyright. I believe that we'll show
09:50:25 20 that that's largely an issue of semantics and perhaps sloppy
21 drafting on counsel's part in the summary judgment case.

22 Mr. Ashe will testify about how scan.dll and Warden
23 work. And I believe what you'll hear is that they thought
24 they work in a very similar manner to all authentication
09:50:47 25 sequences in that they send -- the server sends requests in

09:50:51 1 the case of the resident component to a portion of the client.
2 And it asks -- it's a challenged response, it asks the client
3 to feed back information, to report back on what a certain
4 defined segment of memory says. If it gives the right answer,
09:51:06 5 and the right answer in this case means a value that
6 represents a client free of cheats, then it's allowed access.
7 If it gives the wrong answer, when it gives that information
8 back its access is blocked. And Mr. Ashe will explain and
9 will certainly take questions from the Court, of course, as to
09:51:25 10 how that works.

11 We will touch on some evidence briefly. I think
12 largely the remaining portions of our DMCA claim are largely
13 undisputed. Either covered in summary judgment stage or not
14 disputed in terms of the fact that MDY and Donnelly traffic in
09:51:47 15 Glider, that they developed it, that they sell it. And that
16 Glider is designed primarily to circumvent Warden. Has
17 limited commercial use outside the ability to circumvent
18 Warden. And certainly at a bare minimum is marketed and sold
19 by MDY with knowledge that it's used for circumvention.

09:52:09 20 Evidence is clear that MDY routinely searches for updates on
21 Warden to make sure that Glider can constantly evade Warden.
22 We're aware that it's used for that purpose.

23 Last two issues, again I'll be very brief. We
24 touched on Mr. Donnelly's personal liability. I think we will
09:52:32 25 hear from Mr. Donnelly that he didn't have bad intent when he

09:52:37 1 started his business and that he thinks these issues are
2 difficult and that that exonerates the actions he's taken.
3 We'll submit that that is not the proper test under the law,
4 one. And, two, that the evidence will be very clear that
09:52:54 5 Mr. Donnelly was aware as of September 2005 when Blizzard
6 first banned Glider, that Glider was objected to by Blizzard
7 and Blizzard was taking extreme measures to prevent it.

8 And Mr. Donnelly's response wasn't to stop
9 production. It was to redouble his efforts to thwart
09:53:16 10 Blizzard's attempt to block access to Glider. He continued
11 that after Blizzard asserted claims to him personally asking
12 him to cease his activity. He continued it after Blizzard
13 asserted the claims in a lawsuit. And he's continued, and
14 it's Michael Donnelly making the decision for MDY to continue
09:53:34 15 its operation after the Court has issued a thorough order
16 deeming those actions infringing and tortious.

17 We believe his personal involvement in those actions,
18 his knowing personal involvement in those actions, makes him
19 personally liable. Despite the fact that he may have
09:53:53 20 committed many of these acts in his capacity as a member of
21 MDY.

22 Finally, on the injunctive relief, I think both
23 parties agree in the conclusions of law that the eBay case
24 from the Supreme Court sets out a four-part standard for
09:54:11 25 proving injunctive relief: The irreparable injury and

09:54:15 1 inadequate remedies of law, which are generally considered two
2 sides of a coin; the balance of hardships between the parties;
3 and that the public interest would not be disserved by an
4 injunction.

09:54:27 5 *We've also cited cases, many of them -- most of the*
6 *pre-eBay, finding that generally speaking where liability has*
7 *been established and there's a threat of continuing violation,*
8 *that suffices for an injunction. I'll discuss in more detail*
9 *in closing a recent District Court of Arizona case post-eBay*
09:54:49 10 *in the copyright infringement context that discusses how those*
11 *two factors, liability and continued threat of continued*
12 *violations, may very well suffice to prove the irreparable*
13 *harm that you now under eBay do have to show, that that may be*
14 *sufficient to make the showing.*

09:55:06 15 Mr. Ashe is also going to talk about a number of
16 factors. Why Blizzard is harmed. Why it needs Glider to be
17 enjoined. The diversion of resources that Glider requires
18 that could be reallocated to revenue-generating activities if
19 Glider ceased to exist. The euphoria with which the player
09:55:28 20 base would greet knowledge that the Glider is out of the game.
21 The continuing complaints that Blizzard received that would
22 cover these in detailed summary judgment stage. Those
23 complaints are all ongoing.

09:55:44 24 Mr. Ashe can speak better than I, obviously, to the
25 extent of the harm that this causes Blizzard and the fact that

09:55:48 1 it really does not and cannot have an adequate remedy outside
2 of having Glider shut down. I think I covered all the other
3 points.

4 THE COURT: Okay. Thanks.

09:56:01 5 Mr. Venable.

6 MR. VENABLE: Thank you, again, Your Honor. At the
7 expense of not being extremely repetitive, I would just like to
8 say that in terms of our case that we'll be presenting today,
9 we'll show that Blizzard under 1201(a)(2) and 1201(b)(1) does
09:56:30 10 not protect the nonliteral elements of the World of Warcraft
11 game since the World of Warcraft software is installed on a
12 person's computer hard drive.

13 You're going to hear from our expert witness,
14 Mr. Joseph Calandrino, and from Mr. Michael Donnelly, who will
09:56:48 15 demonstrate to the Court that under no circumstances does
16 Blizzard protect a person from accessing the nonliteral
17 multimedia content that Blizzard claims that is -- ultimately
18 appears on the screen.

19 To the point that Mr. Genetski was making about the
09:57:04 20 issue of protecting this, quote/unquote, infringing copy, I
21 think it goes hand in hand with what you'll see today that
22 this -- what they're saying is that these nonliteral element
23 files when they're loaded into RAM are infringing copies, then
24 to the extent that they're infringing copies they can still be
09:57:26 25 loaded. And it's not just a simple copyright claim that's

09:57:30 1 being made here. There's no doubt that, as the law of the
2 case says, that the copyright protects the unlawful copying,
3 then it is an unlawful copy under copyright law. But the DMCA
4 requires more. The DMCA requires that that actually be
09:57:45 5 protected from being loaded into RAM.

6 And, again, what we'll see from Mr. Calandrino and
7 Mr. Donnelly is that these, quote/unquote, infringing copies
8 of the nonliteral element files can still be readily loaded
9 into RAM. And to the extent that you will hear evidence and
09:58:04 10 see evidence about how the things that appear on the screen
11 which they say are things you couldn't see but for the loading
12 of this non- -- of this infringing copy, that's simply not
13 true. You can still see those and perceive those in the same
14 way that you can. They can be recreated, they can be
09:58:20 15 generated on the screen. I think it just goes to the question
16 what ultimately becomes the protected right, because certainly
17 everything that is there would be -- can be loaded in the RAM.
18 And you'll be able to see that from the evidence presented
19 today.

09:58:33 20 So you'll also hear -- you'll also hear evidence that
21 the two technological measures, scan.dll and Warden, that
22 allegedly protect the software, do not require any additional
23 process or input from any third party to be able to avoid
24 the -- avoid detection of Warden and to gain access to both
09:58:57 25 the literal and the nonliteral elements of the code.

09:59:01 1 Second, the evidence will also show that to the
2 extent that Blizzard has protected --

3 THE COURT: Mr. -- excuse me, Mr. Venable, I didn't
4 understand that last point you made. Were you talking, the one
09:59:12 5 you just made about --

6 MR. VENABLE: 1201(a)(2) --

7 THE COURT: -- not requiring input from any third
8 party. Are you talking about that definitional issue that I
9 raised --

09:59:23 10 MR. VENABLE: Yes.

11 THE COURT: -- the (a)(b)(3) definition?

12 MR. VENABLE: Yes. That there is no evidence that
13 there's any additional process that needs to be run in order to
14 avoid that. There's nothing there. I think Your Honor pointed
09:59:35 15 that out in his ruling.

16 The evidence will also show, Your Honor, that to the
17 extent Blizzard has a protected right in preventing the
18 copying of its software code from a player's hard drive to RAM
19 memory that neither scan.dll or Warden protect it.

09:59:53 20 And I think just for the sake of argument here -- not
21 really argument -- but the scan.dll portion, I don't think
22 it's disputed by either party that scan.dll only works when
23 World of Warcraft is loaded the first time into RAM, the
24 actual executable file. And when it -- it only checks at that
10:00:12 25 particular time whether there's any unauthorized third-party

10:00:15 1 software. Mr. Donnelly would confirm that. Mr. Calandrino
2 would confirm that. After that it is completely -- it doesn't
3 do anything after that point. So if my client's software is
4 loaded into RAM after that point, scan.dll does nothing. It
10:00:32 5 has no ability to detect any third-party software.

6 To the extent that Warden does, you'll hear evidence
7 that Blizzard leaves all the files that contain the code, both
8 the literal and the nonliteral elements, sitting on the
9 player's hard drive, unprotected. The evidence will also show
10:00:49 10 that these files can easily be copied from the player's hard
11 drive into RAM at any time. That they can be copied into RAM
12 whether a player is actually involved in playing World of
13 Warcraft with scan.dll or Warden actively seeking out
14 third-party software or whether Warden has effectively shut
10:01:08 15 off access to the server if they detected, let's say, Glider
16 being used or whether the World of Warcraft game is actually
17 being played.

18 The evidence will also further show that any files
19 that contain the nonliteral elements that can be perceived
10:01:22 20 using any freely available software, that enables a user to be
21 able to see all the graphic animations and sounds and graphics
22 and whatever that you can see within a game. And those are in
23 fact created whether you're playing in World of Warcraft or
24 whether you're using a third-party software by the user or by
10:01:44 25 third parties. In other words, a human is actually doing

10:01:48 1 this, not Blizzard.

2 The third thing the evidence will show, Your Honor,
3 is that Michael Donnelly is not personally liable under the
4 law of determining personal liability to Blizzard for the acts
10:02:00 5 that he does in selling Glider, the third-party software.

6 The evidence will establish that at no time did
7 Mr. Donnelly reasonably believe that when he created Glider
8 and sold it through MDY that he was doing inherently --
9 anything inherently unlawful and he -- although he had an idea
10:02:19 10 of what he was actually doing in terms of selling the game, he
11 had no idea that it was actually -- he had no intent to
12 actually infringe. He had no intent to actually cause any --
13 to do anything that would have been inherently unlawful. And
14 that's the difference between what the cases that Blizzard
10:02:38 15 cites and the ones that we have that we can show that simply
16 do not apply.

17 Blizzard is likely to present evidence that e-mails
18 and quotes from Mr. Donnelly stated publicly he knew that they
19 did not -- that they did not like what Blizzard was doing, and
10:02:52 20 of course they banned his customers and things of that sort.
21 But none of this evidence can show that at any time that
22 Mr. Donnelly knew that his actions would violate federal
23 copyright laws or state law.

24 If anything, Mr. Donnelly's testimony will establish
10:03:07 25 that even today, after two years of being involved in this

10:03:09 1 case, there are numerous discussions from highly respected
2 experts in these fields, Your Honor, that still say that it's
3 not -- this is not a clear issue of whether or not somebody
4 has committed copyright infringement. I think Blizzard will
10:03:27 5 even admit they've had -- this is not a simple case. They've
6 had to argue a couple different levels to get to the point
7 where they allege that Mr. Donnelly is actually infringing
8 someone's copyright. Certainly not being done directly. And
9 the evidence will show, you'll hear from him today, that he
10:03:45 10 did not know that. Certainly not thinking he was violating
11 the DMCA and acting personally outside of the corporate forum
12 to do that.

13 Finally, Your Honor, the evidence will show that MDY
14 Industries, if it's forced to cease its business operations as
10:04:00 15 a result of the court ruling pending the outcome of appeal,
16 MDY will unequivocally have to cease to exist, and thereby
17 making a potential of reversal on appeal a moot issue.

18 Blizzard undisputedly knew for over three years, Your
19 Honor, that Glider existed, and Blizzard never sought this
10:04:20 20 Court's authority to enjoin him from stopping the use of
21 Glider. And all the while, the evidence will show that Glider
22 existed and was being played by many people. That Blizzard's
23 customer base went from over 5 million to now over 11 and a
24 half million today. And those numbers have never declined.

10:04:39 25 And it is essentially disingenuous for Blizzard to

10:04:43 1 argue that somehow they're being irreparably harmed in
2 comparison to what this would do if he's enjoined to have to
3 stop using World of Warcraft -- or to stop selling his Glider
4 program. It is essentially a balancing test, Your Honor.

10:04:57 5 What we feel is that while there are cases that show there can
6 be an injunction, in the case where there -- in this case
7 where we believe that the -- this is not a clear case of
8 copyright law. But there is a realistic possibility that we
9 could go up to the Ninth Circuit and actually have this
10:05:18 10 decision found in a different manner, that this falls more in
11 line of what happened during the Napster case back in 2000.

12 The courts were very concerned that even though they
13 found there was an infringement, that they understood that if
14 they shut this program down there would be nothing left.

10:05:34 15 There would be nothing left at the end of the day. And since
16 Blizzard has allowed them to go three years without ever
17 requesting, it seems like they weren't very concerned about it
18 then. And allowing another 8 to 12 months of the status quo
19 is not going to irreparably harm them, but it will destroy
10:05:52 20 MDY.

21 Thank you, Your Honor.

22 THE COURT: Mr. Venable, when you say it is a
23 balancing test, are you talking about the third element of the
24 eBay case?

10:06:00 25 MR. VENABLE: Yes. Yes, I am.

10:06:02 1 THE COURT: Okay. Mr. Genetski, your first witness.

2 MR. GENETSKI: Your Honor, Mr. McGee will --

3 THE COURT: Okay.

4 MR. MCGEE: May it please the Court, I'd like to call

10:06:19 5 Greg Ashe.

6 THE COURT: All right. Mr. Ashe, would you come right
7 here to the front of the court and be sworn as a witness.

8 Mr. McGee, is Mr. Ashe a witness who needs to use a
9 computer?

10:06:29 10 MR. MCGEE: No, he's not.

11 THE COURT: Let's just have you come here, Mr. Ashe.

12 THE COURTROOM DEPUTY: Please state your name and
13 spell your last name for the record.

14 THE WITNESS: Gregory Michael Ashe. G-R-E-G-O-R-Y,
10:06:40 15 M-I-C-H-A-E-L, A-S-H-E.

16 MR. MCGEE: May I proceed, Your Honor?

17 THE COURT: You may.

18 **GREGORY ASHE,**

19 called as a witness herein, after having been first duly sworn
20 or affirmed, was examined and testified as follows:

21 D I R E C T E X A M I N A T I O N

22 BY MR. MCGEE:

23 Q Good morning, Mr. Ashe.

24 A Morning.

10:07:16 25 Q Do you mind if I call you Greg?

DIRECT EXAMINATION - GREGORY ASHE

10:07:18 1 A That's fine.

2 Q Greg, can you tell us, who is your employer?

3 A I work for Blizzard Entertainment.

4 Q And what is currently -- what does Blizzard Entertainment

10:07:29 5 do?

6 A We make video games, primarily focusing on online video

7 games.

8 Q What is Blizzard Entertainment's most popular product?

9 A World of Warcraft.

10:07:40 10 Q What kind of game is World of Warcraft?

11 A It's what is called a massively multiplayer online

12 role-playing game.

13 Q What does that mean to nongamers?

14 A It's essentially we create a universe. In this case it is

10:07:54 15 a series of parallel universes because the hardware capacity

16 doesn't handle the number of players that we have. But we have

17 a universe where we let thousands of players play together in

18 immersive persistent world, where their character develops over

19 time. They interact with other players. Essentially it's a

10:08:14 20 microcosm of sorts.

21 Q Can you tell us a little bit more about what you mean when

22 you say it is -- that the characters progress in a persistent

23 manner.

24 A Yeah. So the first thing a character does when they enter

10:08:28 25 a game is create a character. This is their avatar that

DIRECT EXAMINATION - GREGORY ASHE

10:08:32 1 they're going to adventure throughout the world with. Over
2 time that character grows. It gains experience. It becomes
3 stronger. It can fight stronger monsters. It gains additional
4 skills and abilities. It gains a reputation with different
10:08:49 5 factions within the game, different groups within the game. So
6 the character really develops over a timeline as part of the
7 game experience.

8 Q Okay. Can you tell me, what is your position at Blizzard?

9 A I manage our business intelligence team.

10:09:05 10 Q And does your business intelligence team consist of
11 different parts?

12 A Yeah. There's two main parts to the business intelligence
13 team. There's a research team, which is kind of a hack side,
14 and there's a traditional business intelligence side.

10:09:20 15 The research side focuses on maintaining game
16 integrity for all of Blizzard's online games. We feel that is
17 very important. As an extent to that, it is about protecting
18 the online game experience that we've designed for our players
19 to partake in.

10:09:38 20 Q Is that the hacks team that you're talking about --

21 A Yes.

22 Q -- that does these two things?

23 Until recently were your job responsibilities
24 different than they are now?

10:09:48 25 A Yeah. Previously, until late last year, my job focused

DIRECT EXAMINATION - GREGORY ASHE

10:09:53 1 solely on the first team, the hacks research side of things,
2 which is the operational and development team that goes through
3 and maintains the game integrity and protects the game
4 environment.

10:10:06 5 Q Can you tell me why it is called the hacks team?

6 A One of the main things that we deal with is hacks for World
7 of Warcraft. Whether that is a player teleporting, whether
8 that is a player using a speed hack which allows that player to
9 run around the world significantly faster, or just a magnitude
10:10:25 10 faster than a player can normally move. Obviously that gives
11 them an advantage when they're in combat with another player or
12 creature in the game. One of the biggest problems that we have
13 is with bots on automated game play, such as WoW Glider, MMO
14 Glider.

10:10:49 15 Q Why is it so important to protect the game experience?

16 A Blizzard invests a large amount of time in developing a
17 very specific game experience for our players to have online.
18 You know, our -- we're notorious for having what would be --
19 most companies would consider a complete product that could be
10:11:09 20 released years before we actually release the game. And the
21 extra years of work, which is significant cost to us, goes into
22 fine-tuning that experience. Every little detail is
23 fine-tuned.

24 And so maintaining that experience and making sure
10:11:29 25 that players are playing the experience that we've designed

DIRECT EXAMINATION - GREGORY ASHE

10:11:33 1 and that we feel is up to Blizzard's standard, is very
2 important to the company, both from a reputational standpoint
3 and just from our desire for people to play an awesome game.

4 Q Why would you dedicate a whole team to protecting the
10:11:46 5 integrity of the game?

6 A It is that important to us. And we have 13 people
7 worldwide that are working on this stuff right now that are
8 dedicated to this. We bring in other staff as needed. We have
9 additional programmers that we use as needed. We have
10:12:04 10 additional design changes. We have customer support staff that
11 works on this stuff. But this is one of the most important
12 things to us, is that game experience is what we're selling.

13 Without that game experience, we feel it is a subpar product.

14 Q When you talk about integrity in the game experience, are
10:12:21 15 you talking about merely Blizzard's relationship with each
16 individual player or the relationships and interactions between
17 players as well?

18 A Absolutely. Interaction between players is the key. We
19 talked a little bit earlier about how it's a massively
10:12:36 20 multiplayer online role-playing game. What we're presenting to
21 a player there is that you're going to go venture in this world
22 and there will be characters that are crafted by us and have
23 artificial intelligence and they're very carefully designed,
24 and then there's other players.

10:12:49 25 Those other players, there's some expectation of

DIRECT EXAMINATION - GREGORY ASHE

10:12:52 1 social interaction with those players. To complete large
2 parts of the game, you have to group together, you have to
3 work with other players. Players can only develop a certain
4 number of trade skills so there's interdependence where
10:13:06 5 players have to work together to really achieve things in the
6 game. So there's a lot of interplay there. And that social
7 aspect is key to the game experience.

8 Q So does the conduct and advancement of a particular player
9 inside the game impact other players?

10:13:22 10 A Absolutely. On many levels. There's the psychological
11 level of, you know, you put in work to develop your character
12 and if someone's trivializing that, that is obviously quite
13 frustrating. And there's also just the basic material gains.
14 You know, a player can spend two hours of time collecting ore
10:13:47 15 from mining throughout the world, and that ore has a certain
16 value when they go back into the world and they can trade that.
17 And if other players are collecting that ore and it's excess
18 rate, obviously they're not going to get the same return on
19 their money there. So their hour played is worth less to them
10:14:09 20 at that point.

21 Q Can you tell me a little bit about your daily
22 responsibilities in connection with the hacks team?

23 A Yes. I manage the -- what we do as far as policy,
24 development and operations. And probably should talk about
10:14:27 25 operations first since that is kind of a key part. That is

DIRECT EXAMINATION - GREGORY ASHE

10:14:31 1 where we do all of our analytics on what malicious player
2 behavior would be, cheating, et cetera, in the game. We
3 actually take action on those players. We monitor the game for
4 stuff like that popping up. And that's primarily what the
10:14:50 5 research operation side does. They do a lot of investigation,
6 trying to figure out how stuff works, how people are cheating.
7 If players are playing legitimately. If it is negatively
8 impacting other players when someone is performing a certain
9 action.

10:15:10 10 There's also the development side. They're mainly
11 there where we support the operational side. We're developing
12 the right tool sets for them to aggregate data, analyze it in
13 an efficient manner. We develop the tools for them to take
14 action in an efficient manner on these accounts in an
10:15:29 15 automated manner so it can happen quickly and protect the game
16 environment in a 24/7 setting versus, you know, just when
17 someone's in the office to look at it.

18 Q You said you had a team of people. How many people did you
19 say were on the hacks team?

10:15:47 20 A 13, and then we pull in a couple of programming resources
21 regularly to work on Warden and other things as well.

22 Q Are each of the 13 members you're talking about, are those
23 full-time employees of Blizzard Entertainment?

24 A Yes. The 13 are full-time dedicated to that.

10:16:07 25 Q If -- if Warden were -- if Glider weren't an issue, if

DIRECT EXAMINATION - GREGORY ASHE

10:16:13 1 Glider were enjoined here, would you be able to reallocate some
2 of those people to different jobs within Blizzard?

3 A Absolutely. With their experience in analytics, I probably
4 would move them back to traditional business intelligence role
10:16:29 5 which would be analyzing the design of the game, what players
6 like, and figuring out how we can get more of that into the
7 game and improve the experience for the players going forward.

8 Q So they would be put in roles where they can make your
9 current products better --

10:16:43 10 A Absolutely.

11 Q -- if they weren't looking for Glider?

12 A Yes.

13 Q Thank you.

14 MR. MCGEE: Your Honor, at this point I would like to
10:16:51 15 play a short World of Warcraft introductory video, it's about
16 four minutes long. I have spoken with opposing counsel. We
17 would like for Greg Ashe to narrate that for us.

18 THE COURT: Does the video have sound?

19 MR. MCGEE: The video has sound but we'd like to mute
10:17:06 20 it and instead have Greg narrate it.

21 THE COURT: All right. So the court reporter will
22 just take down the narration?

23 MR. MCGEE: Yes. That would be --

24 THE COURT: All right.

10:17:16 25 Any objection, Mr. Venable?

DIRECT EXAMINATION - GREGORY ASHE

10:17:18 1 MR. VENABLE: None whatsoever.

2 THE COURT: Okay. Go ahead.

3 MR. McGEE: Thank you. And this is Exhibit 21?

4 MR. OLEY: I think our Exhibit 20. No. 21.

10:17:29 5 MR. McGEE: This is Exhibit 21. We supplied it to

6 you, Mr. Venable, and we also supplied it to the Court.

7 BY MR. McGEE:

8 Q Mr. Ashe, do you recall seeing the WoW introductory video

9 that is the exhibit -- that is the first part of Exhibit 21?

10:17:53 10 A Yes.

11 Q Do you have knowledge of how this video was created?

12 A I do.

13 Q Was this video created by Blizzard?

14 A Yes, it was.

10:18:06 15 MR. OLEY: Is my screen on?

16 THE COURTROOM DEPUTY: I think so.

17 MR. OLEY: Oh, this one over here. That's that one.

18 THE COURTROOM DEPUTY: Okay. It was on, then.

19 MR. McGEE: Apologies, Your Honor. We had this up

10:19:10 20 before.

21 MR. OLEY: I've got it on this one.

22 MR. McGEE: Okay.

23 THE WITNESS: Do I need to do anything to make it

24 appear here?

10:19:35 25 THE COURT: Would you display it to the witness,

DIRECT EXAMINATION - GREGORY ASHE

10:19:38 1 please, Lisa.

2 (Video playing.)

3 BY MR. MCGEE:

4 Q Greg, what I'd like is for you to just talk about what this
10:19:44 5 video is showing. If you'd like it to be paused at any point,
6 please let us know.

7 A Okay.

8 So we've talked a little bit about World of Warcraft,
9 but this is the screen that a player sees when they first log
10:20:01 10 into the game. This is the character creation screen. As you
11 see here, they're going through a wide variety of character
12 models, male/female, different races, that's a gnome right
13 there. There's also different classes as well.

14 All these are done to give the player a lot of
10:20:21 15 different options. They can change the face on their
16 character or the body. The point of this is to create a
17 character that a player is comfortable with and that they can
18 play an immersive experience with.

19 And then the class comes in, whether or not the
10:20:38 20 player wants to play a warrior or a mage using magic or a
21 stealthy rogue or something along those lines. At the end of
22 this the player will name their character, and hopefully
23 they'll have something that they're ready to have a good
24 gaming experience with and they're comfortable that this is
10:20:55 25 going to be a unique play style for them.

DIRECT EXAMINATION - GREGORY ASHE

10:21:08 1 Q Are these just some of the different types of races that
2 can be chosen?

3 A Yes, they are. There's a wide variety of different races,
4 and we continue to add new character creation content as
10:21:20 5 players -- or as we release expansions to the game.

6 So the first thing that happens to a player when they
7 enter a game is they're going to see a short in-game cinematic
8 and then they'll appear in game and they'll find their first
9 nonplayer character. And this player is going to give them
10:21:40 10 their first quest, which is the stories of World of Warcraft.

11 The player's going to take this story and go out and
12 venture the world. So they're helping this nonplayer
13 character with a series of tasks throughout the world. And
14 that is the mechanism we use to tell stories in World of
10:21:58 15 Warcraft and provide that experience.

16 Q Greg, can you tell me, where does the text in that story
17 you're talking about, where does that text come from?

18 A It comes from the server.

19 Q So that text is not present on the game client.

10:22:09 20 A Yes.

21 Q Thank you.

22 A So as part of this quest, the player can receive different
23 rewards. Those rewards can be monetary, they can be an item in
24 the game, or they can be experience that helps their character
10:22:31 25 advance in levels faster.

DIRECT EXAMINATION - GREGORY ASHE

10:22:34 1 So this character is going out and he's killed a
2 man-o-worm there. The quest was to kill eight of those. That
3 video skips through that, but after killing eight, the
4 character returns to the quest giver and claims the reward.

10:22:52 5 Q What about this text that we're seeing here, is this the
6 follow-up text to the quest?

7 A Yes.

8 Q And did this also originate from the server?

9 A It does.

10:23:01 10 Q Is this present on the game client at all?

11 A It is cached after it's loaded the first time.

12 Q Okay. Thank you.

13 Greg, can you tell us, what happened right there?

14 A The player completed the quest, the game experience, and
15 they received their reward.

16 Q What was that bright flash that we saw?

17 A The character leveled up.

18 Q When does a character level up within World of Warcraft?

19 A Characters have an experience bar which represents their
10:23:30 20 progression throughout a level. And as they fight different
21 monsters or complete different quests or tasks throughout the
22 game, they gain experience. As soon as they fill that bar they
23 gain a new level.

24 When they gain a new level in some cases they'll
10:23:45 25 receive new abilities, new skills, and the character typically

DIRECT EXAMINATION - GREGORY ASHE

10:23:49 1 just becomes more powerful overall. They develop more hit
2 points, which allows them to survive fights and take on
3 stronger creatures.

4 Q Do additional levels also allow characters to see other
10:24:04 5 geographic areas that otherwise would not be available to them?

6 A Yes. There's various dungeons in the game that actually
7 have a minimum level requirement, so you to have advance to a
8 certain level to even experience that content.

9 Q Okay. Thank you.

10:24:19 10 A What we're seeing here is no longer the brand new
11 character. These are more advanced characters. As you can
12 see, they have more interesting and intricate-looking equipment
13 and weapons. They're fighting much stronger-looking mobs here.

14 They look like demons of some sort here. And they're also
10:24:41 15 fighting in a group. This kind of comes back to the social
16 aspect of the game. There are points in the game where you're
17 not going to be able to fight a certain monster or complete a
18 certain quest by yourself. You need help. And so that's what
19 we're seeing there.

10:24:55 20 Q So how many players did we see there?

21 A I believe we saw three players fighting there.

22 Q And these are all presumably human beings playing their
23 characters?

24 A Yes. Presumably.

10:25:07 25 Q Thank you.

DIRECT EXAMINATION - GREGORY ASHE

10:25:08 1 A So this is an example of 25 players working together to
2 complete much more advanced content. This is a very strong
3 monster. No player by themselves would be able to take something
4 like this on at an appropriate level. And so we're seeing here
10:25:24 5 a lot of the social interaction and kind of a lot of
6 choreography that goes into the World of Warcraft experience
7 that all these players fighting together around this monster in
8 the game.

9 Q You said there are 25 human players fighting this monster
10:25:39 10 right here?

11 A Yes.

12 Q Okay.

13 A And we're going to go through a series of scenes right now
14 that show some other advanced monsters in the game that a large
10:25:51 15 number of players might take on or boss creatures or boss
16 nonplayer characters. So there's a wide variety in the game.
17 There's a lot of diversity. But there's some pretty epic
18 experiences that players can have in groups fighting some of
19 these creatures.

10:26:12 20 Q Let's just take the last couple of seconds or any point in
21 here, and can you tell me how many different artistic elements
22 are rendered and displayed there to the user?

23 A A lot. There are a ton in World of Warcraft. Yeah. I
24 mean there's -- there's no way of me being able to right here
10:26:34 25 tell you how many different ones are rendered there.

DIRECT EXAMINATION - GREGORY ASHE

10:26:37 1 Q Are there, for example, these lights you see in here, are
2 those separate visual elements that are rendered by World of
3 Warcraft in addition to everything else you see on the screen?

4 A Yeah.

10:26:51 5 Q Are there different monsters -- if you could rewind just a
6 couple seconds and sort of replay that. Are the different
7 monsters, are those each at least one visual element rendered
8 simultaneously with all the others and presented to the user?

9 A Yes, they're all at least one.

10:27:07 10 Q I know we don't have sound, but are there also -- when a
11 user is experiencing, for example, this scene, are there also
12 environmental sounds?

13 A Yes. There's environmental sounds. There's combat sounds.
14 There's sounds generated by the characters themselves and the
15 other players that they're with. It is a live universe and
16 every sense that we can touch, we do, with this.

10:27:22 17 Q Is there also music in addition to all the ambient and
18 other sounds?

19 A Yes, there is.

10:27:41 20 Q Can you pause here.

21 Can you tell us, what character is this?

22 A This is Illidan. He was the epic kind of centerpiece
23 character of our Burning Crusade expansion, which was our first
24 expansion pack.

10:28:06 25 Q All these elements, it is a little bit hectic, I know. How

DIRECT EXAMINATION - GREGORY ASHE

10:28:09 1 many players generally does it take to battle --

2 A 25 men.

3 Q What are some of the other things we're seeing on this very
4 brief screen shot here?

10:28:18 5 A We're seeing lots of players fighting him. There's also
6 nonplayer characters that assist in the battle. There's a lot
7 of artistic elements from spell effects to environmental art to
8 different static objects throughout the game. There's also the
9 weapon models with Illidan and Illidan himself.

10:28:41 10 Q Okay. I'd like to go ahead and terminate this video here.

11 I'd like to move on to the second part of the WoW
12 intro, which is the Illidan battle.

13 MR. MCGEE: Your Honor, if I could have about 30
14 seconds, we need to switch an audio cable over to the computer.

10:28:59 15 (Video playing.)

16 BY MR. MCGEE:

17 Q Greg, do you recognize this video?

18 A Yes. This is the same fight we were just talking about.
19 This is the Illidan encounter in Burning Crusade.

10:30:08 20 THE COURT: Mr. McGee, is this still Exhibit 21?

21 MR. MCGEE: Yes, it is.

22 THE COURT: All right.

23 BY MR. MCGEE:

24 Q So this is an Illidan fight. Do you know how this video
10:30:17 25 was created?

DIRECT EXAMINATION - GREGORY ASHE

10:30:18 1 A Yeah. We had our QA team make this on Tuesday.

2 Q Okay. Is this the view and the sound a player would
3 generally see when they were battling Illidan?

4 A Yes, it is.

10:30:34 5 Q Can you tell me, are there any differences between this and
6 a regular Illidan fight?

7 A Yeah. See, in this case we have only five players
8 participating in the encounter. This was done for a few
9 reasons, primarily just staffing available. So in this case,
10:30:51 10 we made the player characters stronger so that they could
11 actually survive the fight long enough, because five normal
12 players would not last very long against Illidan. So we've
13 buffed up their characters to be a little bit stronger and so
14 that they could actually make the video. And so that the scene
10:31:11 15 is going to be a little bit less epic than you normally see.
16 Normally you see 25 players with all their spell effects going,
17 here we're going to see five players doing that.

18 Q Okay. Thank you.

19 (Video continues.)

10:31:48 20 BY MR. MCGEE:

21 Q These are nonplayer characters talking, correct?

22 A Yes.

23 Q Are all those players in between the nonplayer characters
24 real people?

10:31:56 25 A Yes.

DIRECT EXAMINATION - GREGORY ASHE

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(Video continues.)

BY MR. MCGEE:

Q Is this a normal part of the Illidan fight?

A Yes, it is.

Q Are each of the players that are battling Illidan and his spawn here, are they interacting with this fight or merely watching it?

A They are all interacting. In this type of fight positioning and spell order and ability use is crucial, down to where each person stands.

Q What happens if somebody does something incorrect during this fight?

A They can cause the entire raid group to be killed.

Q How long does the Illidan fight generally take -- or how long did it take when Illidan was the most difficult character in the game?

A A good estimate for during Burning Crusade, the expansion pack that came out, would be about 17-minute fight. With Wrath of the Lich King, characters are stronger now, it is probably down to under ten minutes.

Q And this fight is shorter because you used stronger --

A Yes.

Q -- GM characters from Blizzard, correct?

A These characters are significantly stronger than the player character.

DIRECT EXAMINATION - GREGORY ASHE

10:34:49 1 Q And how many players does it generally take fighting
2 together perfectly to kill Illidan in this game?

3 A It is a full raid group, which is 25 players.

4 Q I'm sorry, 25?

10:35:01 5 A 25.

6 Q Are each of these players seeing the exact same thing on
7 the screen as they fight?

8 A They are seeing a different viewpoint but they're all
9 witnessing the same scene.

10:35:24 10 Q Thank you.

11 It appears that another nonplayer character entered
12 the game here; is that correct?

13 A Yes. Maiev Shadowsong.

14 Q What prompted that nonplayer character to appear and
15 interact in this fight?

16 A The server.

17 Q So but for the server, part of this story line would not be
18 played out?

19 A That is correct.

10:36:17 20 (Video concluded.)

21 BY MR. GENETSKI:

22 Q So was that the Illidan fight from start to finish?

23 A Yes, it was.

24 Q Thank you.

10:36:24 25 THE COURT: Mr. McGee, we need to take a break for the

DIRECT EXAMINATION - GREGORY ASHE

10:36:26 1 benefit of the court reporter. So we're going to take a
2 15-minute break. We'll resume at ten minutes to the hour.

3 MR. MCGEE: That's fine. Can I move to have
4 Exhibit 21 entered into evidence before the break?

10:36:40 5 THE COURT: Any objection, Mr. Venable?

6 MR. VENABLE: Yes, that's fine.

7 THE COURT: Any objection to Exhibit 21 being
8 admitted?

9 MR. VENABLE: Oh. No. No. No objection.

10:36:47 10 THE COURT: All right. Exhibit 21 will be admitted.

11 MR. MCGEE: Thank you, Your Honor.

12 (Exhibit 21 admitted.)

13 THE COURT: We'll resume at ten minutes to the hour.

14 (Recess taken from 10:37 to 10:57.)

10:56:56 15 THE COURT: Please be seated.

16 You may continue, Mr. McGee.

17 MR. MCGEE: Thank you, Your Honor.

18 BY MR. MCGEE:

19 Q Greg, you spoke earlier about character growth. Can you
10:57:06 20 please tell me the particular attributes or achievements that a
21 character can accumulate as he or she progresses through the
22 game?

23 A Yeah. There's experience points, which lead to gaining
24 levels for your character. Your character can have a max of 80
10:57:24 25 levels now with our Wrath of the Lich King expansion.

DIRECT EXAMINATION - GREGORY ASHE

10:57:28 1 Characters can gain reputation with different factions and
2 groups throughout the game so they can ally with factions, go
3 to war with factions, and that develops on a linear scale.
4 They can gain access to new spells, abilities, attacks. The
10:57:45 5 character can gain new equipment. The character can learn new
6 trade skills such as mining, or engineering, blacksmithing,
7 they can even specialize those skills further into
8 armorsmithing, weaponsmithing, et cetera.

9 Q You said there's a level cap currently of 80; is that
10:58:09 10 correct?

11 A Yes.

12 Q Can any of these attributes or achievements continue
13 progressing after a character hits level 80?

14 A Absolutely. Pretty much all the ones we mentioned, players
10:58:26 15 can continue to advance their trade skills after they have
16 reached level 80. They can continue to work on their factions
17 and reputations after level 80. They can continue to obtain
18 new equipment. They can continue to -- even if they haven't
19 purchased all their spells or skills, they can continue to
10:58:46 20 purchase those after they're at the level 80 cap as well.

21 Q Generally speaking, do these progressions make a character
22 more powerful within the game?

23 A Yes. They make them more powerful or more renounced or
24 just more utilitarian.

10:59:07 25 Q Does that mean the characters can fight stronger and

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10:59:10 1 stronger monsters as they continue through the game even after
2 level 80?

3 A Yes. Not even just stronger and stronger monsters, but
4 they can make nicer equipment also, if they're like an
10:59:20 5 armorsmith, for example. They can make better weapons if
6 they're a weaponsmith. The growth still continues and is part
7 of the progression past the level cap.

8 Q And they can battle more and more powerful player
9 characters, characters that belong to other live players within
10:59:40 10 the game?

11 A Absolutely.

12 Q How long does it generally take an average player to go
13 from level 1 to the level cap of level 80?

14 A It's on the order of months.

10:59:50 15 Q Why is the game designed such that it takes so long to get
16 to that level cap?

17 A Well, the experience for the game is very carefully
18 designed. The game starts from the instant you log in until
19 whenever you decide that you no longer want to be in World of
11:00:07 20 Warcraft. As such, the leveling curve and the growth of your
21 character is part of the story that we're telling. And it is
22 very important that we feel that to gain full immersiveness
23 with your character that you grow with your character and you
24 learn more about the game. And if you're playing an advanced
11:00:28 25 character, you have a pretty advanced knowledge of the game as

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11:00:31 1 well. The way we've designed the game is to give you that
2 experience.

3 Q Greg, can you tell me, what is botting?

4 A Botting is using a third-party program to automate the game
11:00:42 5 play of your character.

6 Q Why do they call it botting?

7 A It is essentially a robot and it's been truncated down.

8 Q Is botting an exploitative behavior as defined by the hacks
9 team at Blizzard?

11:00:57 10 A Yeah, it is exploitative as defined by us and by our EULA
11 and TOU.

12 Q Why do you define botting as exploitative?

13 A It gives players unfair advantage. It degrades the game
14 environment. We're selling a game where the player characters
11:01:17 15 are social, or at least have some expectation of being social,
16 and a bot is anything but. They ruin the economy of the game
17 in a variety of ways. Or at the very least negatively impact
18 the economy and can have a direct negative impact on other
19 players playing the game since they are all sharing the world
11:01:36 20 together.

21 Q I want to focus on one thing you said. You said it gives
22 players -- or botting or using bots give players an unfair
23 advantage. Is that true?

24 A Yeah.

11:01:48 25 Q Why and how?

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11:01:50 1 A The bot can play even when the player is not there. It
2 requires no human supervision beyond setting up the bot and --
3 not even logging into the game. You essentially have to set up
4 the bot and download a profile in the case of a bot like a
11:02:04 5 Glider and the bot plays for you. It can play longer than a
6 human can play. It can continue to play until essentially we
7 take a server down.

8 Q And why does that give the player that's botting an unfair
9 advantage?

11:02:19 10 A They accumulate more wealth from the game. Their character
11 progresses faster throughout the game. They obtain more items
12 in the game. Essentially all the things of character
13 progression, the bot can help with those.

14 Q Have you ever seen a program called Glider or MMO Glider?

11:02:38 15 A Yes, I have.

16 Q Did you or someone at Blizzard purchase a license to use
17 Glider?

18 A Yes.

19 Q Did you or someone at Blizzard install a copy of Glider on
11:02:48 20 a computer?

21 A Yes.

22 Q Where did you obtain the copy of Glider that you installed?

23 A We obtained it from at the time WoWGlider.com website.

24 Q Is Glider or a license for Glider available for purchase to
11:03:07 25 anyone at that site?

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11:03:08 1 A Yes.

2 Q Can anyone, once they purchase Glider, can they download it
3 from that website?

4 A Yes. You can even download it before you purchase. The
11:03:18 5 purchase gives you a key to enable a non-trial version of the
6 Glider.

7 Q Thank you.

8 Can you tell me, what is the current URL for the site
9 that Glider is downloaded from?

11:03:37 10 A Mmoglider.com.

11 Q Is Glider a bot?

12 A Yes. It's the most popular bot.

13 Q Is it anything other than a bot?

14 A Yeah. It's a few other things. It is a root kit and
11:03:50 15 anti-Warden system. Those go hand in hand.

16 Q For now, can you please explain how Glider automates game
17 play.

18 A Yeah. Essentially it performs all the actions that your
19 character would normally perform. It reads out a profile and
11:04:10 20 it can fight monsters for you. It can mine minerals. It can
21 collect herbs. It can sell items to vendor. It can loot items
22 from creatures it kills. It can skin different animals it
23 kills throughout the game. It can fish for you. It can even
24 keep you from going what we call in the game AFK. That means
11:04:39 25 away from keyboard.

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11:04:40 1 Why that is important is we have our battle grounds,
2 which are player-versus-player experience where you
3 essentially do a team fight against another team of players.
4 And there's a given number of slots available. And the bot
11:04:53 5 can just -- and one of the things we do is if players go away
6 from keyboard we detect that and remove that player so you're
7 not playing with man down, essentially, in a team fight. And
8 the bot will keep the player -- or keep the character from
9 appearing as if it's gone, as AFK, and by such it can reap the
11:05:18 10 rewards of fighting in a battleground without actually
11 participating. And this is to the detriment of their team.

12 Q Can they do all these things -- I'm sorry, strike that.

13 Can Glider do all these things while the player is not
14 present at the computer?

11:05:38 15 A Absolutely.

16 Q So Glider could do these things for me, for example, while
17 I was asleep?

18 A Yeah. I guess another important thing I should mention is
19 it can also repair your gear. One of the things that we built
11:05:51 20 into the game is your gear gets damaged over time and you have
21 to return to town to fix it. And there's a variety of reasons
22 that we've implemented that in the game, but Glider actually
23 takes you to town and repairs the gear for you so you can
24 continue fighting.

11:06:07 25 Q So is there any limit on the amount of time that Glider can

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11:06:11 1 play continuously?

2 A Just how long we keep our server up.

3 MR. MCGEE: Your Honor, at this time I'd like to play
4 a video that is part of or is all of Exhibit 20. It is a
11:06:25 5 demonstration of MMO Glider.

6 THE COURT: Is there audio on this video?

7 MR. MCGEE: We're going to mute the audio, Your Honor,
8 and I'd like to ask the witness to do the same thing he did
9 before, and that is explain what's happening in the video.

11:06:38 10 THE COURT: Any objection, Mr. Venable?

11 MR. VENABLE: No, Your Honor.

12 THE COURT: All right.

13 You may go ahead, Mr. McGee.

14 MR. MCGEE: Thank you.

11:06:46 15 BY MR. MCGEE:

16 Q Greg, are you familiar with the Glider demonstration video
17 marked as Exhibit 20?

18 A Yes.

19 Q Are you familiar with how it was made?

11:06:53 20 A Yes.

21 Q Is it an accurate representation, with the one exception in
22 the video that is labeled, of a WoW character being controlled
23 by Glider?

24 A Yes. It represents a lot of the activities that you can do
11:07:07 25 with Glider. But not all of them.

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11:07:11 1 Q Thank you. As we -- as we hit play on this video, if you
2 could, go ahead and narrate and tell us what is happening, I
3 would appreciate it.

4 (Video playing.)

11:07:37 5 THE WITNESS: So what you're going to see here is our
6 log-in screen. This is the first thing you see when you launch
7 the WoW executable.

8 BY MR. MCGEE:

9 Q Is Glider entering the user name and the password there?

11:07:48 10 A Yes, it is. Glider entered those.

11 Next screen you're going to see is our character
12 selection list. This follows that character creation window
13 we saw earlier. Glider is selecting the character here to
14 enter the game.

11:08:11 15 Q Greg, was there any human intervention at that point?

16 A No.

17 So protective spells and enhancements are, depending
18 on what class your character is, you can receive what are
19 referred to by gamers as buff spells. These might increase
11:08:31 20 your stats, they might provide a damage shield where if
21 something attacks you it does damage back to that creature.
22 It might increase a certain stat of yours which allows you to
23 have higher critical strike chance or a higher base attack
24 damage.

11:08:48 25 A rogue can apply poisons to their weapons so that

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11:08:52 1 they can either slow a creature or they can do damage over
2 time slowly to that creature or even direct damage instantly
3 to that creature. So Glider can apply these to your character
4 and on an as-needed basis. And that's what we're seeing right
11:09:12 5 here. And we talked about this a little bit earlier, but
6 Glider can go to town and repair degraded equipment for you
7 automatically.

8 Q Does it do that by talking to -- or by navigating to and
9 talking to and then repairing the equipment with a nonplayer
11:09:31 10 character?

11 A Yes, it does.

12 Q Is this cat we're seeing, is that our character in another
13 form?

14 A Yes. It's a druid character. Druids have the ability to
11:09:44 15 shape-shift into different forms. And this is a cat form right
16 here that we're seeing.

17 So Glider can loot creatures throughout the world and
18 then in a similar process it can go to a vendor and --
19 navigate all the way to a vendor from where it was fighting
11:10:03 20 and then sell all those items to the vendor. It is important
21 to note here that you can filter it so that it only sells
22 specific type of items and keeps items that would be more
23 desirable to keep.

24 Q Why would a Glider user want to program Glider to sell
11:10:18 25 items?

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11:10:18 1 A There's two reasons. One is to maximize profit. But the
2 underlying cause is you have a limited number of inventory
3 slots to carry equipment on your character at any given time.
4 So as you're fighting, those slots fill up and you eventually
11:10:31 5 have to return to town or you can't continue to reap some of
6 the material gains from using a bot.

7 By doing this they can go to town and continue --
8 return to combat with empty slots so they can continue looting
9 and reaping the benefits of having the Glider bot.

11:10:54 10 So next we're going to see Glider can mail items to
11 another character either on your account or someone else's
12 account. It can write the subject to that mail and then
13 attach several items to that mail. The reason you'd want to
14 do this is often your character might find a rare item or a
11:11:10 15 specific item that sells for good value on the auction house.
16 And you have Glider keep that item and then mail that to your
17 character rather than selling it to a vendor at a lower price.

18 So if something has a higher value on the player
19 market than just selling it to one of our noncharacter player
11:11:28 20 vendors, you can use this kind of functionality to maximize
21 your profits.

22 Q Can you explain very briefly what the auction house is?

23 A Yeah. We have an auction house that's in the game which is
24 essentially like an eBay system in the game for items. Players
11:11:42 25 can list items to other players of their faction throughout the

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11:11:45 1 world. Players can travel to the main cities where we have
2 these auction houses and view those items. We also do have,
3 since I specified factions, we do have our players between
4 factions can also trade through an auction house. So
11:12:00 5 essentially players can bid or buyout a item that is placed on
6 the auction house.

7 Q Is the auction house controlled and coordinated by the
8 server?

9 A Yes.

11:12:22 10 So what you're seeing here, this isn't actually
11 Glider doing this. This is the recipient of those mails
12 retrieving them from the mail and placing them on the auction
13 house. This is again just demonstrating how one would
14 maximize profits from using a bot like Glider with a carefully
11:12:40 15 setup profile.

16 Q Other than this limited clip that's labeled "manually
17 controlled for demonstration," is anything else in this video
18 controlled manually?

19 A No. Nothing requires human interaction beyond this.

11:12:55 20 Q So everything else in the video is controlled by Glider?

21 A Yes.

22 So Glider can also go to a vendor and purchase
23 different consumables. These have different effects on your
24 character. These are items that your character would click on
11:13:14 25 and would give some sort of benefit to your character. Food

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11:13:17 1 in the game restores your health points so you can return to
2 fighting faster. Water restores mana points for those
3 characters that have mana, M-A-N-A, and the mana is used by
4 spell casters to power their spells.

11:13:37 5 And then there's other consumables as well that
6 provide different benefits, such as potions, or can restore an
7 instant amount of health and a variety of other type of
8 consumables.

9 So what we're going to see now is Glider going out
11:13:55 10 and doing what probably should be considered Glider's main
11 functionality. Going out and fighting creatures. It is going
12 along a path that Glider controls and it is going to attack a
13 creature and defeat the creature. This is actually
14 compressed, this is not the entire fight. The fight probably
11:14:13 15 lasted about 30 seconds roughly. So it is a nontrivial type
16 of action. And then Glider can then loot this corpse and
17 obtain goods from it which it would then either sell to a
18 vendor or on the auction house as we previously viewed.

19 They also are rewarded with experience points and
11:14:34 20 gold for the kills. And in some cases they're also rewarded
21 with reputation or faction. They can also be rewarded with a
22 quest advancement as well.

23 Glider can also be used to harvest mining nodes and
24 minerals throughout the game. Glider can also heal during
11:14:59 25 battle or after battle using a variety of the consumables we

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11:15:04 1 talked about that you can purchase at the vendor earlier.

2 This is the Glider healing itself.

3 And when a character dies in WoW, they come back as a
4 ghost. They have a couple different options. The most

11:15:25 5 popular one to get back into the game is to return to their
6 corpse and resurrect at the corpse. And so the character just
7 navigates back. And Glider does that for you. It actually
8 navigates back to the corpse and will resurrect the character
9 there so it can continue gliding. So even the character dying

11:15:44 10 is not an impediment to Glider continuing to bot through the
11 game.

12 And, again, you see Glider once again healing and it
13 returns to its normal botting path as it advances throughout
14 the game. And continues until the Glider user decides to turn
11:16:13 15 it off or we bring down the server for maintenance.

16 Q Again, each one of these battles is compressed, correct?

17 A Yes.

18 So, again, you know, you sometimes again need to
19 repair gear or need to purchase consumables again, and Glider
11:16:41 20 can return to town and do those as needed, as discussed
21 earlier in the video. And again, mail away the valuable loot
22 and sell the less valuable.

23 Q And this process can repeat itself until Blizzard takes the
24 server offline?

11:16:59 25 A Yes.

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11:17:05 1 Q Thank you.

2 MR. MCGEE: Your Honor, I'd like to move Exhibit 20
3 into evidence.

4 THE COURT: Any objection?

11:17:10 5 MR. VENABLE: No, Your Honor.

6 THE COURT: 20 is admitted.

7 (Exhibit 20 admitted.)

8 BY MR. MCGEE:

9 Q Greg, I want to try to make one distinction between the
11:17:20 10 Illidan fight that we saw and the Glider video that we saw. I
11 didn't see in the Glider video any epic encounters with 25
12 players killing monsters like Illidan. Can you tell me why
13 that is?

14 A Glider lacks a lot of the coordination to -- and the player
11:17:42 15 experience to do that. Glider is simply going around and
16 completing some of the more trivial tasks in the game, but it
17 can do so infinitely to great value.

18 Q And while it's doing so it increases the character's levels
19 and experience?

11:17:58 20 A Yes.

21 Q Do those levels and experience at some point allow
22 characters to enter and be involved in fights like the Illidan
23 fight?

24 A Absolutely. Yeah. If a character's low level, it can
11:18:14 25 level them above the minimal level requirement to experience

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11:18:17 1 certain content.

2 Q Okay. Just so I understand, Glider can help a user get to
3 the level where it can battle someone like Illidan but it
4 cannot battle someone like Illidan itself; is that correct?

11:18:32 5 A It can try but I don't think it would have a very good
6 chance of success.

7 Q Thank you.

8 As Glider is moving through the world and doing the
9 things that we saw in the video, if the real player isn't at
11:18:48 10 the screen, does that mean that the real player is bypassing
11 that content that Glider is navigating?

12 A Absolutely.

13 Q And what is the impact of a player bypassing content in the
14 game?

11:19:05 15 A Well, it impacts on several levels. One, psychologically
16 it affects other players who see someone getting ahead. Your
17 average player might have a full-time job, comes home and plays
18 for an hour or two a day, and he's constantly being outdone by
19 someone's automated robot. And not only that, the value of
11:19:27 20 what he does during that day can also be less because of what
21 that bot has brought into the game.

22 And then there's the direct economic impact, which I
23 was just discussing of the bot degrading the value of certain
24 items in the game and increasing the amount of money in the
11:19:45 25 game also.

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11:19:46 1 Q And that impacts other players in the game, you said?

2 A Yes. It directly impacts them.

3 Q Can you give us an example of how that would happen?

4 A Yeah. We can take any of the minerals -- any of the
11:19:58 5 gathering skills, for example. If Glider goes around and mines
6 a certain ore, that ore has a certain demand on the server and
7 Glider is directly increasing the supply of that item on the
8 server. So anyone else who participates in that same gathering
9 skill is going against that increased supply.

11:20:18 10 And the problem comes into play where Glider can do
11 this in excess of what a normal human player can do. It can
12 do it 24 hours a day, seven days a week if it wanted to,
13 except for the time when our service is down. So in that
14 situation, a Glider can significantly devalue a specific item
11:20:37 15 in the game.

16 Q Can it also lead to an inflationary pressure on gold, which
17 is the game currency?

18 A Gold is essentially an item in the game and it increases
19 the quantity and supplies of that significantly.

11:20:54 20 Q What kind of impact does the resulting devaluation of items
21 or inflationary pressures of gold, how can that impact other
22 players?

23 A So the play experience is very carefully designed and
24 there's certain items in the game that are -- range from
11:21:10 25 utility items to status symbols. I'll use an example of what

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11:21:15 1 we call an epic flying mount in the game. And this is a flying
2 creature that your character can purchase to essentially ride
3 around the game so you can purchase like a Griffin or a Drake
4 to actually ride throughout the World of Warcraft world. And
11:21:37 5 this increases your mobility, allows you access to additional
6 areas. And this as a set price. Blizzard sets the price on
7 this as a certain amount of gold.

8 And what happens here is we've designed the play
9 experience so when you get to level 70, you can get your epic
11:21:56 10 flying mount. We've designed it so, and this is very
11 carefully done, the character should have roughly the amount
12 of money on hand where they can purchase their epic flying
13 mount. They might have to go out and do a little bit of extra
14 work in the game, maybe sell a few of their trade skill items
11:22:13 15 or go fight some more monsters with their friends or sell a
16 rare item that they found. But they should be able to
17 essentially purchase this status and utility item in the game.
18 This is a very important and central aspect of the game,
19 getting a flying mount like this to experience content.

11:22:29 20 And what we find with Glider is, because the value of
21 some of the items that the players would normally earn and
22 then sell has been decreased, they're no longer getting that.
23 So we've deviated from the intended design of the game because
24 it is not being played in the way that a human player would
11:22:51 25 play it. This can lead to a player hitting level 70 and

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11:22:54 1 waiting an extended period and working -- you know, investing
2 hours of their time and days of their time in some cases, to
3 working on getting this material for their epic flying mount
4 so that they can partake in content that by design they should
11:23:11 5 have access to relatively close to when they level up.

6 Q Can that lead to dissatisfaction among other players in the
7 game?

8 A Absolutely. I mean it can be a very frustrating experience
9 in some cases. It is on a per player basis, but that can be
11:23:29 10 extremely negative impact and it's not really the way the game
11 was designed.

12 Q And do players understand that bots are responsible for
13 that impact?

14 MR. VENABLE: Objection, Your Honor, that calls for
11:23:40 15 speculation.

16 THE COURT: Overruled.

17 THE WITNESS: Some players have expressed direct
18 dissatisfaction with bots because of that. There's a lot of
19 players that don't know that bots have this effect on the game.
11:23:55 20 They are kind of unknowing victims of this effect because of
21 the increase of certain items into the game like that.

22 BY MR. MCGEE:

23 Q Does the fact that those players don't know that bots or
24 Gliders specifically are the cause of those problems, does that
11:24:13 25 somehow assuage their dissatisfaction?

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11:24:17 1 A No. It is a harm to Blizzard either way.

2 Q Can one WoW player identify another character as being
3 controlled by Glider?

4 A Any experienced WoW player can make a pretty good call on
11:24:40 5 that. It's fairly obvious for someone who's played the game
6 what's being played by a bot versus not playing by a bot. Bots
7 typically have very robotic movements, they don't socially
8 interact with you. They get stuck a lot of time. It will get
9 stuck running into a tree or on the side of a cliff, trying to
11:25:03 10 path the character up that cliff.

11 Glider's put in a lot of things to make it appear
12 more human like. It deviates from its normal pathing by
13 default. It has the ability to back away and turn or try and
14 stretch around an object, but it doesn't always work. If you
11:25:21 15 come across a character that's just running into a wall, it's
16 obviously breaking a little bit of immersion for you and
17 you're wondering what that is doing. It is pretty obvious
18 that it's not a player doing that.

19 Q What do you mean breaking immersion?

11:25:38 20 A It is not part of a role-playing experience to see
21 something trying to run into a tree.

22 Q Can a bot like Glider have an effect on the resources
23 available to players within a certain area in the game?

24 A Yeah. It can monopolize those resources in many cases.
11:25:59 25 That's a big problem on several levels. I mean, WoW is a big

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11:26:03 1 world but it is finite. Players do constantly share the world
2 with each other, and in this case also bots. But the bot can
3 kill very efficiently. It can continue to kill and it can
4 monopolize that area.

11:26:18 5 And why that's a problem is those creatures might be
6 necessary for a quest that this player is working on. You
7 might have to kill those creatures. You might have to obtain
8 an item from those creatures. You might need faction from
9 those creatures. But if they are being monopolized by the
11:26:36 10 bot, he can't participate in that content or he has to fight
11 with the bot to gain access to that content.

12 Q So is the normal operation of the bot, can that contribute
13 to a less than perfect game experience for other players?

14 A Absolutely. It can extremely -- it can degrade the
11:26:53 15 experience extremely.

16 Q Does Blizzard allocate resources to detecting bots and
17 removing them from the game?

18 A Yeah. My team, and then the programmers we dedicate. We
19 also dedicate various other customer service and development
11:27:16 20 resources as necessary.

21 Q Have you done any calculations to determine the direct
22 costs to Blizzard of bot detection and removal?

23 A Yeah, we've done some calculations. They are very low ball
24 and the reason why is the only thing we've taken into account
11:27:35 25 here is the salary of the employees working on this

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11:27:38 1 proportional to the amount of time they're spending on it, and
2 that comes out to almost a million dollars a year. That is not
3 fully paid down for, you know, IT, the buildings and desks that
4 we house all these people in, benefits, or anything else. That
11:27:53 5 is strictly just salary.

6 Q When did you generate those calculations?

7 A Generated them last year as part of the preparation for
8 this case.

9 Q And does Blizzard continue to incur this cost of at least a
11:28:09 10 million dollars a year?

11 A Yeah. Absolutely.

12 Q Does the average WoW player know that Glider is a problem
13 in the game as you've described it?

14 MR. VENABLE: Objection, Your Honor. That is vague
11:28:26 15 and ambiguous as to what an average player is.

16 THE COURT: Overruled.

17 THE WITNESS: Many players do. Glider is very
18 well-known as a popular bot. But not every player that is
19 negatively impacted by a bot or by Glider knows that it is
11:28:41 20 Glider doing so.

21 BY MR. MCGEE:

22 Q Do you see complaints about bots?

23 A Absolutely.

24 Q Where do you see those complaints?

11:28:48 25 A We get them on our customer service forums where players

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11:28:51 1 are extremely vocal. We get them in in-game petitions. We get
2 them in direct e-mails from customers and, you know, a variety
3 of other sources. Even non-Blizzard sources we see complaints
4 about Blizzard not doing enough about botting in the game.

11:29:09 5 Q Do these complaints include the types of problems you've
6 already discussed?

7 A Absolutely.

8 Q Does every player that's impacted by bots in the game take
9 the time to send you an e-mail or make a written complaint?

11:29:24 10 A Definitely not. We know it's a vocal minority that contact
11 us about any problems in the game and that includes bots.

12 Q Did you ever calculate how many complaints Blizzard
13 received about bots between December 2004 and March 2008?

14 A Yeah. It is about a half million.

11:29:48 15 Q Half a million complaints about bots?

16 A About bots, yes.

17 Q Did any of those complaints mention Glider specifically?

18 A Yeah. Several thousand.

19 Q Aren't there currently over 11 million active subscribers
11:30:02 20 in the World of Warcraft?

21 A Yes.

22 Q So doesn't several thousand mentioning Glider or even half
23 a million complaints about bots generally sound like a
24 relatively small number when compared to your user base?

11:30:16 25 A No. Taken in comparison with other complaints and, you

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11:30:18 1 know, specifically bots, we know it is a vocal minority that's
2 complaining about it even though a large group of other players
3 are negatively impacted by it. They just don't take the time
4 to write a petition.

11:30:29 5 We also know that a lot of players don't know they're
6 being negatively impacted by a bot. The effects we talked
7 about earlier, not being able to obtain their epic flying
8 mount, for example, in kind of the designed character arc.

9 And there's a lot of people -- a lot of negative effect that
11:30:47 10 can leave a bad taste for the players towards Blizzard and our
11 reputation about the game experience we're delivering, but
12 also just ruins the game experience for the player.

13 Ultimately that's what we're out there to protect.

14 Q So, many complaints that don't mention bots or Glider could
11:31:04 15 be about problems that you've mentioned that are in fact
16 attributable to Glider?

17 A Yes.

18 Q Do players leave the game because of Glider or other bots?

19 A Yes.

11:31:20 20 Q Do you have any idea how many people have left World of
21 Warcraft and stopped paying their subscription fee because of
22 Glider?

23 A There's no way to calculate that for the reasons we
24 mentioned above. Not everyone who's negatively impacted by it
11:31:33 25 knows it. Knows to tell us that they were negatively impacted

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11:31:37 1 by that. But even so, a small minority of players leaving our
2 game tell us why they're leaving. We do have an exit survey
3 process but not every player has to go through it to cancel out
4 to leave the game. There's just no way of calculating how much
11:31:54 5 harm has been done.

6 Q You mentioned earlier that Glider was a root kit. Can you
7 explain more about that.

8 A Yeah. I guess a root kit can be -- a root kit's a software
9 tool that is designed to hide itself and the presence,
11:32:11 10 typically the presence of some other software or process.
11 Typically we see this -- the typical use of a root kit might be
12 copy protection. Sony uses it to hide a copy protection
13 program on some of their music CDs. The other popular use is
14 for viruses. A virus wants to hide itself from your computer
11:32:37 15 and from your antivirus software so it will use a root kit to
16 hide its presence from the user and the antivirus software.

17 Q Is the root kit that comes as a part of Glider trying to
18 conceal something?

19 A Yes. The root kit that comes with Glider conceals Glider
11:32:55 20 from World of Warcraft and specifically Warden.

21 Q Does it do so successfully?

22 A Yes, it does.

23 Q You also mentioned that Glider contained anti-cheat
24 software. What were you talking about when you mentioned
11:33:09 25 anti-cheat software?

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11:33:12 1 A Well, the root kit portion of Glider would qualify as that.
2 But also there's a Tripwire functionality in Glider. This is a
3 more recent addition to Glider. It's fairly mature at this
4 time. It came around as part of the last group of bans we did
11:33:30 5 on Glider, ban wave on Glider. What this does is it monitors
6 for change in Warden and specific areas of the game client to
7 look for something that would be indicative of us putting in a
8 detection major for Glider. And if it detects something that
9 could be a suspected change, it unloads Glider for that user so
11:33:53 10 they can no longer be detected and presumably banned by the
11 theoretical detection that was implemented.

12 Q So does Tripwire have to detect a change in Warden
13 immediately to be effective?

14 A Yes.

11:34:11 15 Q What does Tripwire do when it detects Blizzard updating
16 Warden?

17 A It unloads Glider for that user.

18 Q Why would it want to unload Glider for that user at that
19 point?

11:34:22 20 A So the user doesn't get banned.

21 Q Why would a user get banned?

22 A Because we've identified them cheating in the game and
23 violating the terms of use and EULA.

24 Q Does Blizzard ban an account if it detects Glider being
11:34:39 25 used by a character on that account?

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11:34:40 1 A I'm sorry. Could you repeat the question.

2 Q Does Blizzard ban an account if it detects Glider being
3 used?

4 A Yes. Absolutely.

11:34:47 5 Q And specifically, does Warden detect and ban an account if
6 it can detect Glider being used?

7 A Yes, it does.

8 Q Can Warden detect the current version of Glider?

9 A No, it cannot.

11:35:02 10 Q Why not?

11 A MDY has been successful in circumventing Warden's
12 detection.

13 Q Has your team ever created a measure capable of detecting
14 Warden?

11:35:15 15 A Yeah. Several occasions.

16 Q How many?

17 THE COURT: Did you mean detecting Glider?

18 MR. McGEE: I'm sorry. Yes, Your Honor, by detecting
19 Glider.

11:35:22 20 THE WITNESS: Several occasions. Three main ones.
21 Three successful ones come to mind.

22 BY MR. McGEE:

23 Q What did you do with the measures for detecting Glider that
24 you created?

11:35:37 25 A We banned all the accounts.

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11:35:39 1 Q Specifically what did you do with the measures? What
2 program did you use to scan for and ban those accounts?

3 A We used Warden and we used parts of the game client.

4 Q Are each of these three events you refer to where you've
11:35:54 5 banned Glider users, are they referred to as ban waves?

6 A Yes.

7 Q Why are they referred to as ban waves?

8 A Because when we detect Glider, there's a large number of
9 Glider users. We can't quantify exactly how many. But
11:36:12 10 everyone who logs in during that time period using Glider will
11 be detected and we'll catch a large group and then ban them all
12 together. The reason we do them together is if we did it
13 immediately one person would get banned and they would be able
14 to notify Glider to update.

11:36:29 15 Q How many people -- how many accounts have you banned in
16 those ban waves?

17 A About 55,000.

18 Q And that is specifically for Glider use?

19 A Yes.

11:36:44 20 Q Was Glider updated each time to circumvent the detection
21 that you implemented?

22 A Yes. It was updated to circumvent in days in most cases,
23 sometimes less.

24 Q And how would Glider be updated to circumvent the new
11:37:04 25 detection?

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11:37:05 1 A A new build would be pushed out that no longer would
2 register a valid hit for whatever Warden's signature had
3 detected -- or been used for the detection.

4 Q Why haven't you implemented more than three detections?

11:37:24 5 A Given the security scheme that Glider uses to hide itself
6 from Warden, it is very difficult to detect it. We mainly have
7 succeeded in detecting it by finding small errors in the way
8 that the program is hidden rather than, you know, any direct
9 detection process.

11:37:50 10 Q So throughout the existence of Glider have you searched for
11 and tried to develop other detection measures?

12 A Yes. Continually.

13 Q Are you continually -- are you currently looking for
14 detection measures to --

11:38:04 15 A Yeah.

16 Q -- to detect Glider?

17 A Yeah. We're always looking.

18 Q And you currently have no measure that will detect Glider?

19 A We do not.

11:38:16 20 Q Tell me, is World of Warcraft a stand-alone game or does it
21 require an active connection with Blizzard's server to run?

22 A It requires a connection with our server to play.

23 Q Is a portion of World of Warcraft installed on a user's
24 computer?

11:38:31 25 A Yes, it is.

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11:38:33 1 Q Is that portion installed on the user's computer, the
2 software installed on the user's computer, called the game
3 client?

4 A Yes.

11:38:42 5 Q Without getting too technical, what does the game client
6 consist of?

7 A There's two main parts. There's the WoW executable and
8 then there's the creative content, which includes everything
9 from cinematics and animations, character models, character
10 textures, sounds. All sorts of multimedia content.

11 Q Musical scores?

12 A It does.

13 Q In terms of size, how much of the game client is comprised
14 by the executable?

11:39:20 15 A Less than ten percent.

16 Q So does that mean most of the game clients, the vast
17 majority of the game client is this creative content you're
18 describing?

19 A Yeah, the vast majority.

11:39:36 20 Q How many individual different creative elements are
21 included in the game client?

22 A With Wrath of the Lich King now, I think we're over
23 400,000.

24 Q So over 400,000 artistic renderings, sound effects, musical
11:39:52 25 scores, animations --

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11:39:54 1 A Yeah.

2 Q And that's enough that you -- you need those 400,000
3 elements to create the WoW universe?

4 A Yes.

11:40:06 5 Q That's a lot of creative elements. Can you load them all
6 into a computer's RAM at the same time?

7 A No. They're done on an as-needed basis.

8 Q What do you mean on an as-needed basis?

9 A You know, as the character ventures out in the world, the
11:40:21 10 character -- or the server is choreographing the environment
11 around them. And whatever the server decides to present to
12 that character in some cases or based off the character's
13 movement in some cases, art is displayed to them.

14 Q And what happens when art or a sound or music is displayed
11:40:43 15 or presented to the user? What's the process?

16 A It's copied into their RAM.

17 Q Copied into the RAM by the game client?

18 A Yes.

19 Q Does it have to be copied into RAM to be displayed to the
11:40:55 20 user?

21 A Yes.

22 Q So if I as a WoW player navigate my character from one area
23 to another or involve myself in some activity, will the assets
24 that the server says make up the surrounding view -- and when I
11:41:18 25 say assets I mean creative content -- will those be copied from

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11:41:22 1 my hard drive into my RAM?

2 A Yes.

3 Q So the player's movements can cause creative content to be
4 copied from the hard drive to the RAM?

11:41:35 5 A Yes.

6 Q If the player's movements then are controlled by Glider, is
7 it Glider that's causing those creative elements to be copied
8 into RAM?

9 A Yes, it is.

11:41:54 10 Q Let's assume for a moment that you can pull your hard
11 drive, the hard drive that contains your game client, out of
12 your computer without -- while you're playing World of Warcraft
13 without crashing the game or without crashing your computer. I
14 know that's not possible, but assume that you can. If you
11:42:10 15 could do that, what would the expression of World of Warcraft
16 be without the ability to continue copying that creative code
17 into RAM?

18 A Well, you would be in a world with what was already loaded
19 into RAM. So what you already saw would be your world. And as
11:42:33 20 you ventured further, you would go into a void. The world
21 would be empty and lifeless around you.

22 Q And is that consistent with the World of Warcraft
23 expression --

24 A No.

11:42:43 25 Q -- and experience that you have?

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11:42:45 1 A No. Definitely not.

2 Q Are you familiar with a program called WoW Model Viewer?

3 A Yes, I am.

4 Q Have you ever seen WoW Model Viewer used?

11:43:00 5 A I have, yes.

6 Q Is WoW Model Viewer developed, distributed, or authorized

7 by Blizzard?

8 A No, it's not.

9 Q What does WoW Model Viewer do?

11:43:14 10 A You can load different models from the game, different

11 creature or player models from the game into it and view them.

12 You can put different armor and items on those characters -- or

13 on those models. You can animate them. Like, for example, you

14 could make a character do an emote like a slash rude or a slash

11:43:39 15 silly where it might do some little joking thing along those

16 lines and animate the character through those motions.

17 Q When you say animate the character, what type of

18 environment does it render the character to the user?

19 A The character is essentially in like a vacuum or a void.

11:43:59 20 Q So I can use WoW Model Viewer to extract and display any of

21 the visual elements from the game client in a void. Is that

22 what you're saying?

23 A Yeah.

24 Q If WoW Model Viewer can pull visual elements and other

11:44:20 25 creative content from the game client and display it, what

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11:44:25 1 distinguishes WoW Model Viewer from World of Warcraft?

2 A Well, our server is what makes -- what drives the game.

3 The game -- the art content is not the game without the server.

4 The server plays an integral part. It's probably, you know,

11:44:45 5 best described, a good analogy would be a symphony, for

6 example. So you have these different art assets throughout the

7 game and the server is the one directing how those assets are

8 used. Where the creatures appear, how those creatures path

9 throughout the game, move throughout the game. Even what state

11:45:08 10 the world is in. Whether it is raining, is controlled by the

11 server. The server provides the ability for you to interact

12 with other players. And so it's like a symphony.

13 We have 400,000 pieces of part or multimedia in the

14 game. And the server is like the conductor and the sheet

11:45:33 15 music that the symphony is using. Without that, the game

16 doesn't exist. It is just art models. We're not selling art

17 models we're selling a game. So the server breathes that life

18 into the game. It's what allows you to have the World of

19 Warcraft experience.

11:45:51 20 And I guess that's kind of the expression of our

21 design team and development team is, you know, they have made

22 this pallet. This is the world that you're in. It is a

23 multimedia world. It's sounds, it's terrain, it's creatures

24 fighting around you, other players interacting without you.

11:46:10 25 And every time it is different because players impact that

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11:46:13 1 world. Players change. A creature might not be there. We
2 might change where a creature spawns. All of that is outside
3 of the control of the player itself. That's other players or
4 the server dictating how that world forms.

11:46:27 5 Q To borrow your analogy for a second. If World of
6 Warcraft's expressive experience, interactive experience is the
7 symphony, what is WoW Model Viewer doing when it pulls out a
8 single element and renders it?

9 A It would be like a solo instrument playing. I mean it
11:46:48 10 might be cool. You know, the models are cool. We like to
11 think they're cool at least. They're interesting. We are very
12 proud of them. But that it is not our game and not what we're
13 selling.

14 Q You mentioned the server. I think you said it breathes
11:47:05 15 life into these artistic -- this artistic content. Can you
16 tell us about other things that the server does specifically?
17 What does the server do to direct or choreograph the WoW game?

18 A Yeah. The server is responsible for world states.
19 Everything from weather to whether the gates of Ahn'Qirag are
11:47:32 20 open on the server. It's not -- that sounds like nothing, but
21 it is essentially the world changes. It is a permanent change
22 in this case. We also have stuff like a winter festival around
23 the winter holidays where there's Christmas trees in the main
24 cities and there's the grinch out fighting people and stuff
11:47:55 25 like that. And that is obviously a temporary change, but the

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11:47:58 1 server controls all that.

2 Server also controls all combat, which in a game
3 where warcraft is part of the title, obviously plays a fairly
4 big role. No combat can take place without the server
11:48:12 5 handling that. And it also controls all the creatures and
6 nonplayer characters throughout the World of Warcraft. This
7 server is what is generating and controlling those characters.
8 It tells them where to appear. And lastly, the server
9 provides all the quest information, which is essentially the
11:48:31 10 story of the World of Warcraft.

11 Q Is that what we saw in one of the characters getting a
12 quest in the first video we saw? Was that receiving a quest?

13 A Yeah. Each quest is like an individual story or chapter.
14 Another thing that the server controls is how those quests link
11:48:49 15 together. We use quests to kind of form chains and they form
16 story arc for that character. The first quest might be to go
17 kill some creature or some evil lieutenant, but then you come
18 back to the quest and the server tells him to give you a new
19 quest, which may be go fight the commander now. You've
11:49:12 20 defeated his under boss, go fight the boss. So we tell a story
21 and Blizzard has written a story but the player chooses to
22 experience it in this way and the server provides that story
23 arc for that character to experience.

24 Q So the stories or the story lines of World of Warcraft are
11:49:28 25 prewritten by Blizzard?

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11:49:30 1 A Yes.

2 Q Explain to us how much of this quest text in the story
3 lines, how much is there? Could you fill a novel with all
4 this?

11:49:45 5 A You could fill several novels. There's a lot. Tons.

6 Q And, again, the quest text is not available on the game
7 client, correct?

8 A No. It has to be uploaded from the server on the first
9 use.

11:50:08 10 Q You did say that the art, the sounds, the animation, those
11 are all available on the game client, though; is that correct?

12 A Yeah. The only thing that's not available would be the
13 quest text from the creative side.

14 Q And other than the quest text itself, why else would a
11:50:28 15 player need to connect to a server to play the World of
16 Warcraft?

17 A Well, you know, the server provides the experience. It's
18 what makes all those things come to life. It's directing them.
19 Without that they're a bunch of models and voids. You can play
11:50:45 20 a sound on your iPod if you want to but it's not playing World
21 of Warcraft, you know. It is one of our sounds. Our game is
22 the experience that we've designed and the orchestration of all
23 those events together.

24 Q Let's do the same thing we did with the game client. I
11:51:04 25 said we pull out the hard drive, the game client, you said,

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11:51:07 1 appears what happened to the game, you told us that. What
2 happens if a player is playing World of Warcraft and the server
3 stops responding?

4 A Slowly everything starts to -- all the life in the world
11:51:18 5 starts to disappear. First they see all the creatures around
6 them disappear and the players around them disappear. They'd
7 be left in an empty terrain. It would be -- they would see the
8 landscape and that would be it. Boats in the world stop
9 working. The Zeppelin stops working. The tram stops working.

11:51:41 10 The -- if they're on a flight path, it would no longer
11 function. The world essentially dies around them. And they're
12 just in a moonscape.

13 Q Other things a player could access stop functioning such as
14 the auction house or vendors within the game?

11:51:57 15 A Yes, vendors would be gone, auction system would be gone.

16 Q Can a player continue to play World of Warcraft without the
17 server?

18 A It's not playing the World of Warcraft. They could walk
19 around in the world geometry if they wanted to.

11:52:11 20 Q Basically an empty universe. Is that what you're saying?

21 A Yeah.

22 Q So the server is responsible for the functioning of all
23 these different elements we've been talking about?

24 A Yeah.

11:52:22 25 Q Don't the players themselves have a role in determining the

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11:52:25 1 direction of the game?

2 A Yeah. They choose partially, you know, what quests they
3 want to choose. They can, you know, change the rate at which
4 permanent changes into the world occur. Something like opening
11:52:42 5 the gates of Ahn'Qirag. It is dependent on how fast people on
6 that server collect war materials to fund the Armies that meet
7 at the gates and culminate with opening of the gates of
8 Ahn'Qirag. So, you know, there is a lot of player interaction
9 but the story is largely written by Blizzard and it's just how
11:53:06 10 the players choose to experience it.

11 Q Let's talk about Warden. Does Warden consist of more than
12 one component?

13 A Yeah. There's, you know, several different components.
14 Typically when we specifically talk about Warden we're usually
11:53:25 15 referring to a Warden client, which is often referred to as a
16 resident client. There is also scan.dll. And then there's the
17 Warden server which talks with the Warden client.

18 Q Let's start with scan.dll. Can you tell me what scan.dll
19 does?

11:53:39 20 A Yeah. Scan.dll resides on a player's computer and as they
21 start up World of Warcraft, it's one of the first things that
22 they get to run, and this is before a user authenticates to our
23 server. And it has several different functions. One is
24 looking for malicious programs like key loggers that might
11:53:59 25 steal a customer's user name and password so someone else can

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11:54:03 1 take their account away from them. And it might also look for
2 other programs that might be undesirable. And, you know, one
3 of the things we use it for is to block people from entering
4 the game with cheats.

11:54:20 5 Q Does scan.dll, has it in the past looked for Glider?

6 A Yes, it has.

7 Q In the past has it been able to detect Glider?

8 A Yes. And when it did so it would block a user from
9 entering the game.

11:54:33 10 Q So it would prevent the user -- you said it loaded before
11 the authentication, before you could log into the server,
12 correct?

13 A Yeah.

14 Q So scan.dll if it detected Glider, when it could detect
11:54:44 15 Glider, would prevent the user from logging into the server?

16 A Yeah.

17 Q Would that in turn prevent the user from accessing the
18 expressive World of Warcraft experience?

19 A Yes.

11:54:55 20 Q And would that in turn block the user from copying the game
21 content into RAM?

22 A Yes.

23 Q Does scan.dll currently detect Glider?

24 A No, it does not.

11:55:14 25 Q Why not?

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11:55:15 1 A It's been circumvented. Glider updated to get around the
2 detection.

3 Q You mentioned the resident component, the other portion of
4 Warden. Can you tell us what that is and what it does?

11:55:28 5 A Yeah. Warden is our -- the client is our main anti-cheat
6 functionality in the game. What it does is it queries a user's
7 client for different memory values and it compares the -- at a
8 specific location. And it compares those values to what the
9 value should be from a non-cheating WoW player. And then it
11:55:57 10 gives us a response. The response that, yes, this is a clean,
11 you know, WoW player. It does nothing. Player continues to
12 play the game.

13 If the response is this is a cheat, you know, either
14 a specific cheat we know about or possibly one that we don't
11:56:14 15 know about, it handles that differently. In the case of a
16 cheat that we know about it bans the user from the game and
17 kicks them offline.

18 Q So does Warden request this value from memory space from
19 the game client?

11:56:28 20 A Yes.

21 Q And does the particular piece of memory space being
22 evaluated change over time?

23 A Yeah.

24 Q You can program Warden from the Blizzard side to request
11:56:44 25 different pieces of memory?

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11:56:46 1 A Yes.

2 Q And you said that it compares that memory against what now?

3 A Hashing values. A list of values that we know either to be

4 good, bad, or questionable, or indicative of different types of

11:57:03 5 cheats.

6 Q So you compare that memory space or the hash value of that

7 memory space to a known universe of other hash values?

8 A Yes.

9 Q What happens if the hash value is what you expect it to be,

11:57:17 10 what would exist in a normal clean World of Warcraft

11 installation?

12 A Nothing. User continues to play.

13 Q What happens if you take that information from the hash

14 value and compare it and find that it applies to the hash value

11:57:37 15 that is consistent with Glider?

16 A It would ban the user and take them offline.

17 Q Is that hash value that Warden is asking for from the game

18 client, is that akin to a key of some sorts?

19 A Yeah. It's an identifier.

11:57:57 20 Q And do you have to have the correct identifier to get past

21 that point at which Warden is checking for things like Glider?

22 A Yes.

23 Q And what happens if Warden compares that identifier, finds

24 that it is consistent with Glider, what does it do then?

11:58:22 25 A If it finds it is consistent with Glider it would ban the

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11:58:25 1 user. It would send a message back to the server telling it to
2 kick the user offline and close their account.

3 Q So at that point would the user's game terminate?

4 A Yes.

11:58:36 5 Q What would happen when they tried to log back in?

6 A It wouldn't let them.

7 Q So at that point, if Warden is detecting Glider and
8 ordering the game client to terminate, is Warden preventing the
9 user from accessing the expressive World of Warcraft

11:58:54 10 experience?

11 A Yeah.

12 Q Is it also preventing the user from loading additional
13 content from the game client on the hard drive into RAM?

14 A Yeah.

11:59:20 15 Q Is Warden designed to protect individual artistic elements
16 in the game client apart from what we've talked about?

17 A No.

18 Q Why not?

19 A That's not World of Warcraft. I mean it's art. It's
11:59:42 20 irrelevant I would say almost. The individual pieces are cool,
21 but what we're selling is World of Warcraft. It's a gaming
22 experience. It is an experience on our server that is
23 orchestrated by the server for the player. It is very
24 carefully designed. Our teams invest a ton of time getting it
12:00:01 25 right and that experience is what Blizzard feels is

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12:00:04 1 appropriate.

2 Q So Warden, other than the fact it cannot detect Glider, is
3 protecting what it is designed to protect?

4 A Yes.

12:00:16 5 Q Can Warden currently detect Glider?

6 A No.

7 Q Why not?

8 A MDY's been successful in circumventing it.

9 Q Do you continue to look for ways to detect Glider?

12:00:27 10 A Yeah.

11 Q Let's go back to these individual artistic elements in the
12 game client.

13 THE COURT: Mr. McGee, rather than going there now,
14 we're at the noon hour. We'll go ahead and take a break and
15 resume at 1 o'clock.

16 MR. GENETSKI: Yes, Your Honor.

17 THE COURT: Thanks.

18 (Recess taken from 12:00 to 1:02.)

19 THE COURT: Counsel, for your information, Blizzard
13:02:22 20 has used an hour and 45 minutes of its time. MDY has used ten
21 minutes.

22 Mr. McGee, you may continue.

23 MR. MCGEE: Your Honor, I consulted my notes over
24 lunch and I have no more questions for the witness at this
13:02:34 25 time.

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13:02:35 1 THE COURT: All right.

2 Cross-examination.

3 C R O S S - E X A M I N A T I O N

4 BY MR. VENABLE:

13:02:43 5 Q Good afternoon, Mr. Ashe.

6 A Afternoon.

7 Q As you know, I'm Lance Venable and I represent MDY and
8 Mr. Donnelly.

9 I'd like to ask you just a few questions about some of
13:03:01 10 the things you talked about during your direct examination with
11 Mr. McGee. You had mentioned -- you showed the video of the --
12 two videos actually, but there was the video showing the World
13 of Warcraft as it was being played and some of the features of
14 how it works and so on and so forth. I think what you had said
15 was toward the end of your direct examination that what
16 essentially was going on was kind of like a symphony.

17 A Yes.

18 Q Can you explain that one more time what you meant by
19 symphony?

13:03:42 20 A Yeah. We have 400,000 plus pieces of creative content now
21 with the Wrath of the Lich King expansion. And the game is
22 kind of the coming together of all those things. And certain
23 of those objects, like the world geometry, for example, is
24 client side and the player as they walk around determines where
13:04:37 25 in the world geometry they go. Other parts are orchestrated --

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13:04:44 1 other parts are orchestrated by the server. Should I continue?

2 MR. VENABLE: I can hear him.

3 THE COURT: Hold on. I'm not sure everybody can. Can
4 you all hear him without the mike? All right. Let's go ahead
13:05:04 5 and continue. We'll try to get him back on as we can.

6 THE WITNESS: So those other parts are orchestrated by
7 the server. Stuff like creatures, where they spawn, when they
8 spawn, whether a quest is given, whether a quest is linked with
9 another quest, where those creatures are going to appear as
13:05:27 10 you're going around the world is controlled by the server.

11 The server is orchestrating how that world is
12 presented to you. It's not just that. It's kind of also --
13 it's kind of conducting it in a sense or it's directing it,
14 saying it's raining in this world, you're going to experience
13:05:43 15 rain here. It's also, you know, the sheet music, the quest.

16 It's what is the story of WoW. How are we going to tell that
17 story. It's presenting that all to you. The server is
18 controlling all of that. So there is both. There are things
19 that a player dictates I'm going to go to this area and I'm
13:06:02 20 going to see it and it is loaded into RAM. And there are
21 things that the server controls and says, okay, these things
22 are going to be there if you go there or these things are not
23 going to be there.

24 BY MR. VENABLE:

13:06:12 25 Q So the game experience, we can analogize that to being the

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13:06:16 1 symphony, in other words?

2 A Yes.

3 Q So where is it?

4 A The symphony is on -- it's a server-generated symphony that
13:06:30 5 can be experienced through a client.

6 Q But where is the actual game experience? Is it fixed
7 anywhere?

8 A The game experience for an individual user would be with
9 them at their computer through their client.

13:06:44 10 Q Okay. And is it -- I assume you say symphony, you're
11 talking about this game experience. This game experience is
12 never actually fixed anywhere, is it? It's never the same --
13 it's never the same, is it?

14 MR. MCGEE: Object, Your Honor, calling for a legal
13:07:00 15 conclusion.

16 THE COURT: Overruled.

17 THE WITNESS: So I'm not sure if I understand the
18 question entirely. But I'll give an answer and you can clarify
19 if I'm not going down the right road with it.

13:07:16 20 The server, and regardless if there's a player on
21 there are not, there are creatures in certain areas, there are
22 certain quests available for a player. So there is a world
23 and it exists within the server. The client is able to
24 experience that world and view that world through the server
13:07:34 25 as they travel out. And the expression of those elements as

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13:07:39 1 designed by us is experienced by that user as they go around
2 the world in the client.

3 BY MR. VENABLE:

4 Q Okay. So you say like a symphony. I would imagine like a
13:07:49 5 conductor, the server would be sort of a conductor, correct?

6 A Yes.

7 Q So the conductor during the symphony has to look down and
8 see what it is that it wants to be able to tell the orchestra
9 to play; is that correct?

13:08:03 10 A Um-hmm.

11 Q But what it is that appears on the sheet music, for
12 instance, that is never the same, is it?

13 A The world can be different every time you travel to a
14 certain area. Things can change. We could have changed what's
15 on the server. We make changes to the actual content on the
16 server more than 30 times a week on average. I'm taking the
17 average over the last couple months. It's probably changed
18 over the life cycle of WoW. But we're constantly changing how
19 content is available and to be experienced, but there are
13:08:21 20 general themes that may be the same over time.

21 Q But the experience itself, because my understanding from
22 what your counsel has said in its complaint is they're saying
23 the World of Warcraft's game experience is what's actually
24 being protected by Warden.

13:09:02 25 A Um-hmm.

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13:09:02 1 Q Okay? What I'm trying to figure out here is in terms of
2 this, quote/unquote, game experience, does Blizzard ever record
3 it?

4 A We record instances of it. This comes back to kind of the
13:09:17 5 genre of an MMORPG. Part of the experience is the social and
6 dynamic aspect of this world. This world is persistent but it
7 grows, it changes. There are changes over time. Some of those
8 changes are permanent, some are temporary. And we're
9 delivering content. I mean akin to almost episodic content in
13:09:39 10 some cases, which, you know, we fine-tune, but it's going to
11 change over time. And we're changing it to how we feel the
12 design experience should become.

13 Q Okay. But once again what I'm not really sure is when you
14 say that we're talking about the game experience, I just want
13:09:56 15 to know, it's a very simple question, does Blizzard have any
16 way that it puts in some permanent form the game experience? I
17 mean doesn't the game experience essentially change every time
18 I log in and play Blizzard?

19 A That's part of the game. That is part of the game
13:10:22 20 experience. There is a dynamic component to it.

21 Q Okay. And where is it?

22 A The dynamic component? It's all around when you're playing
23 World of Warcraft. It is the elements that we present that
24 provide this experience.

13:10:37 25 Q Okay. And that experience is provided through the files

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13:10:41 1 that are sitting on the hard drive that ultimately get loaded
2 into RAM, correct?

3 A And how those files interplay with each other and what
4 order.

13:10:52 5 Q Let's talk about the order for a second. The order in
6 which this thing gets put together is never the same, correct?

7 A I wouldn't be able to say whether it's ever the same or
8 not.

9 Q Let's say I'm sitting at my computer and I'm playing World
13:11:06 10 of Warcraft. I've logged in. Let's ignore the Glider aspect
11 of it for a second. Let's just say I'm legitimately playing
12 World of Warcraft. So I'm experiencing the game. I'm playing
13 it today on Thursday. Now, tomorrow I'll log in and I may want
14 to do a different quest. I don't know what that quest is yet
15 but I may want to do it. So tomorrow I'll do something
16 different. And essentially I'm experiencing the game.

17 So what I'm experiencing again, what I'm saying, does
18 Blizzard -- is there a record somewhere I can look to in
19 Blizzard's files that feed me -- that shows where it feeds me
13:11:40 20 this game experience?

21 A There's representations of that. I don't know what you're
22 exactly looking for. I mean there's data which represents
23 player behavior and how the world interacted with them.

24 There's recordings of players going through the world. But in
13:12:04 25 the same sense, yeah, I'm not sure exactly what we're driving

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13:12:09 1 at here.

2 Q Okay. I'll let that go for now.

3 THE COURT: All right. Let's try the mike again,
4 Mr. Venable.

13:12:17 5 Lisa, what is it you want to do?

6 (The Court and the courtroom deputy confer.)

7 THE COURT: Do you have a cell phone or anything with
8 you, Mr. Venable?

9 MR. VENABLE: No, I do not.

13:12:38 10 THE COURT: She thinks you might be the electric
11 personality here.

12 Why don't you push the mike away from you, Mr. Ashe,
13 and let's try again and see if we have the same problem.

14 BY MR. VENABLE:

13:13:01 15 Q Couple more quick questions on that game experience. Is
16 the game experience on the client computer?

17 A The game is experienced through the client.

18 Q But is it -- is it -- is the experience on the client
19 computer itself?

13:13:20 20 A The game can be experienced through the client, yeah. I'm
21 not sure how else to answer that specific question.

22 Q Let me maybe just put it to you in one different way. What
23 I see on the screen, the game experience, right, that's what
24 I'm -- I'm experiencing the game through what I see on the
13:13:41 25 screen?

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13:13:41 1 A It is expression of the game, yeah.

2 Q Okay. And where is that? Is it on the server? Is it on
3 my computer? Is it somewhere?

4 MR. MCGEE: Objection, Your Honor, asked and answered.

13:13:53 5 THE COURT: Overruled.

6 THE WITNESS: The expression is viewed for an
7 individual player on their client. Though the way those things
8 interplay, many of them is directed by the server.

9 BY MR. VENABLE:

13:14:16 10 Q But it's different every time, correct?

11 A I wouldn't say it is absolutely different every time, but
12 small perturbations would make things for the most part
13 different every time you play.

14 Q Okay. That video that you showed, that was showed here
13:14:35 15 through the computer that we saw on the screen, that is on a CD
16 somewhere, right?

17 A I believe we have it on a CD and probably the hard drive
18 somewhere else.

19 Q Where was it before it was on the CD?

13:14:48 20 A The movie itself?

21 Q Yeah.

22 A Well, the movie is the recording of an experience.

23 Q Ah. So where was the experience before you put it on CD?

24 A The experience was what the user had who was playing that.

13:15:02 25 Q Okay. Was it recorded before it was on the CD?

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13:15:10 1 A I'm -- it was -- I guess the -- I'm not sure exactly what
2 we're going for here. I'll try to answer this. The elements
3 that were recorded on the computer while someone was making
4 that film were expressed through the client with direction from
13:15:33 5 the server and a program was used to capture those images as
6 they were displayed. And then it was converted into movie file
7 format.

8 Q But before it was captured, that whole experience, what you
9 saw didn't exist, did it?

13:15:52 10 A The nonliteral expression of it did not, no.

11 Q Okay. Let's talk about when you start playing the game.
12 Now, let's say I'm a new user and I want to play World of
13 Warcraft. When I log in for the first time, I think you went
14 through this on the video, I just want to make sure, me as the
13:16:22 15 user, I select the faction which I want to participate in; is
16 that correct? Either the horde or the alliance?

17 A Yes.

18 Q And then I choose a race of character, correct?

19 A Yes.

13:16:35 20 Q Then I choose the gender of my character, correct?

21 A Yes. These steps can be done in any order but, yeah,
22 they're all steps that are taken.

23 Q Okay, any order. But then I choose the class of character
24 that I want, correct?

13:16:47 25 A Um-hmm.

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13:16:48 1 Q And then I also assign various aspects of what I want my
2 character to look like, right?

3 A Yes.

4 Q Like the way my hair looks, the way my -- the hair color,
13:16:57 5 my skin color.

6 A Um-hmm.

7 Q Right?

8 And then I choose a name for my character, right?

9 A Yes.

13:17:04 10 Q So what part does Blizzard play in choosing all these
11 aspects of my character?

12 A We provide all the different elements for a player to
13 create that character.

14 Q But in terms of the actual character, the way it ultimately
13:17:17 15 looks, how I have chosen the various aspects of my character,
16 does Blizzard participate in that at all?

17 A Yes, we determine what set of components you can create
18 your character from.

19 Q Okay. But did you tell me how to arrange those components?

13:17:34 20 A We've given rules by which the components can be arranged.

21 Q But the ultimate picture is what I'm talking about here.

22 Did you --

23 A The individual manifestation is the user's choice.

24 Q Okay. And where does Blizzard store this information? Or
13:17:49 25 do they store this information?

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13:17:55 1 A I'm actually not specifically sure on that. I believe it's
2 stored on the client.

3 Q Okay.

4 A But I -- that's not something that I'm 100 percent sure on.

13:18:08 5 Q Okay. But it is stored somewhere, right?

6 A Yeah.

7 Q Okay. In terms of how other players would create their --
8 the way their characters look, I assume they go through a
9 similar process, correct?

13:18:20 10 A Were you referring to how the character is stored after
11 it's been selected or --

12 Q Yes.

13 A Okay. Once it's been selected that is stored in the
14 database.

13:18:29 15 Q And the database is where?

16 A It's part of the server infrastructure.

17 Q Part of the server. Okay. So the other characters that
18 are within the game that other human players choose, they go
19 through a similar process, correct?

13:18:43 20 A Yes.

21 Q Their character information is also stored in the database
22 on the server, correct?

23 A Yes. I should also probably point out that players also
24 have the option to have the game randomly create a character
13:18:57 25 for them with no additional input.

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13:18:59 1 Q Okay. But let's say that I create my own. That's not the
2 case, right?

3 A Yeah.

4 Q Okay. So, so far all the aspects of what my character
13:19:10 5 ultimately looked like, as what you said, were all chosen by me
6 or the other players, correct?

7 A Um-hmm.

8 Q And the graphics files and related animation files that
9 apply to my character were created by Blizzard, right?

13:19:24 10 A Yes.

11 Q But these files were all sitting on my hard drive, right?

12 A Yes.

13 Q So these are the nonliteral elements that we're talking
14 about that are stored on the hard drive that the server tells
13:19:34 15 to render -- the server tells the WoW executable file to render
16 on the screen, correct?

17 A Yes.

18 Q And just so that I understand, although that they own --
19 although Blizzard has created these nonelement files, they were
13:19:51 20 not involved in the selection and arrangement how my character
21 ultimately looks or other characters as well, correct?

22 A I don't know if I would describe it that way. Because,
23 like, I couldn't put a gnome female's head on an orc male. We
24 have done it in a way where the experience is consistent with
13:20:09 25 how we intend the game to be played. Yes, we provide art

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13:20:13 1 files, but we also put them in a way where they can only be
2 expressed in a way consistent with our design.

3 Q I understand. Okay. Now, within the World of Warcraft
4 universe, let's say, there are literally hundreds of characters
13:20:27 5 or monsters that Blizzard -- that Blizzard has created,
6 correct?

7 A Yeah.

8 Q And these characters are all designed by Blizzard?

9 A Yes, that's correct.

13:20:38 10 Q Okay. And, again, these files that are used to create -- I
11 should say the nonliteral element files that are used to render
12 these characters or monsters that appear on the screen are all
13 sitting on my hard drive as I play the game, correct?

14 A The files that create the individual model and textures
13:21:02 15 would be, yes.

16 Q Okay. And isn't it also true that if -- oh, and I just
17 want to back up one second. The -- when I create a character
18 or when Blizzard has its characters created, these characters
19 are -- they have a location that they occupy in the game,
13:21:23 20 correct?

21 A Are you talking about like in the actual game world itself?

22 Q Yes.

23 A Okay. Yeah.

24 Q So there's like an XYZ coordinate that sits -- that
13:21:34 25 describes where they're located in the game?

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13:21:37 1 A Yeah.

2 Q I assume that XYZ coordination is also sitting up on
3 Blizzard's server, correct?

4 A Yes.

13:21:46 5 Q And the same would also apply for the XYZ coordinate of
6 where my character would be located, correct?

7 A I'm sorry?

8 Q My character. The one I created.

9 A Okay. Yes.

13:21:57 10 Q So within the world I'm standing, here in this world, it
11 would be represented by an XYZ coordinate, correct?

12 A Yeah.

13 Q And that coordinate is stored on the server on Blizzard's
14 side, correct?

13:22:08 15 A Yes.

16 Q And that also applies to all the other characters as well,
17 right?

18 A Yes.

19 Q So if I understand how this works now, when I'm playing
13:22:21 20 within the World of Warcraft universe and I'm seeing my
21 character on the screen, when I decide to make a movement of my
22 character -- and I assume by doing that I use the arrow keys on
23 the computer? Is that how it's done?

24 A That's one way to do it, yes.

13:22:41 25 Q Let's just say for the sake of argument -- sake of this

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13:22:43 1 discussion that's what it is. So I move my character using the
2 arrow keys. And then let's say I want to move it to the right,
3 now, what ultimately happens here, correct me if I'm wrong, is
4 that Blizzard's server gets sent -- gets sent something from
13:23:08 5 the WoW executable that tells the server that I have moved from
6 XYZ to some other XYZ prime location; is that correct?

7 A Um-hmm.

8 Q And then that XYZ prime location is now stored in the
9 database; is that correct?

13:23:26 10 A Yeah. The -- at any given time the coordinate isn't
11 necessarily saved to a database somewhere but it would be in
12 memory on the server somewhere.

13 Q What I'm getting at here is something very simple. I'm
14 just saying that when I move the character, what happens is
13:23:44 15 Blizzard's server responds to my movement by telling the
16 WoW.exe file to render different nonliteral elements that are
17 stored on my hard drive to generate what it should look like on
18 the screen; is that correct?

19 A That's true. But the opposite is also true. If you're
13:24:04 20 standing still, the world can change around you. Other players
21 may come into view. Other creatures may path into view.

22 Q Okay. Let's talk about that. Let's talk about the other
23 characters. The other characters, in order for them to be near
24 my viewpoint on the screen, they have to physically move their
13:24:19 25 character near where my viewpoint is, correct?

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13:24:22 1 A Yeah.

2 Q So Blizzard didn't tell them to move their character in
3 front of my screen, right?

4 A I hope not. No.

13:24:31 5 Q When I decided to move myself, I didn't -- Blizzard didn't
6 tell me to do that, I told the computer to do that, right? So
7 I was technically telling Blizzard's server to move my
8 character in a different direction, correct?

9 A Yes.

13:24:46 10 Q Now, you talked about the Blizzard characters. Now, the
11 world around me, if it changes, if these Blizzard characters
12 are within my view, they will walk in front of me, correct?

13 A Yeah.

14 Q But in order for me to get there, or in order for me to see
15 this, I have to be in a place where I can see them. Correct?

16 A You may not have been in one originally. Like, say you're
17 standing on a road somewhere. There may be a creature that
18 travels up and down that road and that road may be very long
19 and it may be in a different part of its journey and eventually
20 make its way back to you and come on to your screen. And

21 that -- then that would be regardless if you're standing still
22 or anything else.

23 Q The character that Blizzard creates that may have walked in
24 front of me, does it follow the same path all the time?

13:25:36 25 A It has a path. I mean, there are deviations from it, but,

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13:25:39 1 yeah.

2 Q The path, let's say it's a circle, and it walks in a circle
3 of about, I don't know how to measure length within the game,
4 let's say it walks in a ten-foot radius, in a circle. So in
13:25:53 5 order for me to be able to see that character walk in a
6 ten-foot radius, I would have to be somewhere on my screen
7 close enough to be able to see that character walk by, correct?
8 If I was away from him, I wouldn't be able to see him.

9 A You have to be somewhere on that path. Maybe not seeing it
13:26:12 10 initially but at some point near that path. Now, those paths
11 do change and they change regularly.

12 Q They change regularly.

13 A Yes.

14 Q Okay. And the image that I see on my screen also changes
13:26:26 15 regularly, correct?

16 A Yes.

17 Q And that image is not a permanent image, is it?

18 A No. It could start raining one day.

19 Q And it's not like in any permanent form when I see -- it is
13:26:39 20 constantly changing, right, it's dynamic?

21 A Yes.

22 Q Okay. I want to talk to you a little bit about scan.dll.

23 A Sure.

24 Q Very briefly. Scan.dll, I heard you mention on direct
13:27:14 25 examination, that scan.dll is a program that loads when

CROSS-EXAMINATION - GREGORY ASHE

13:27:19 1 Warden -- sorry -- WorldofWarcraft.exe, the executable, loads.
2 Correct?

3 A Yes, that's one time when it will load. It will also load
4 when the launcher executes, but the launcher is optional.

13:27:33 5 Q I guess what I'm trying get at is that it works basically
6 when the program is executed, right?

7 A When the executable is launched.

8 Q Right. And if it doesn't find anything that it doesn't
9 like, let's say Glider, it doesn't do anything else while you
13:27:48 10 are playing within the game; is that correct?

11 A It is simply an area of entry.

12 Q Okay. That makes it really simple.

13 So if it doesn't work anymore, it is basically
14 incapable of detecting Glider from after the time that the
13:28:07 15 point that World of Warcraft has been loaded; is that correct?

16 A In the case of scan.dll, if a user launches WoW and then
17 launches Glider, scan.dll wouldn't be able to detect it,
18 correct.

19 Q Okay. But after that point, no more, right?

13:28:24 20 A Scan.dll would not, no. But Warden would.

21 Q I'm talking about -- okay. Let's get to Warden.

22 I think it's been made pretty apparent that what
23 Warden's purpose is is to go out and find unauthorized
24 software that Blizzard deems a violation of its EULA or terms
13:28:42 25 of use.

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13:28:43 1 A Yes, that's one of the purposes.

2 Q And it does that during the time the player is actually
3 playing the game, right?

4 A It does it after they have logged into the game. They
13:28:51 5 don't necessarily have to be there. If they leave their
6 computer at the character select screen it would run, for
7 example.

8 Q Okay. Once they type in a valid password that allows you
9 to play the game as one would normally play the game, that's
13:29:06 10 when Warden goes to work, right?

11 A Yes.

12 Q Now, as Warden is searching out any third-party software,
13 does it require -- does it require anything from something
14 external to Warden to do its job?

13:29:29 15 A Yes. It requires looking at memory from the World of
16 Warcraft space.

17 Q Okay. But is there anything beyond that that it needs to
18 work?

19 A It needs -- it needs the memory values off the user's
13:29:47 20 computer. There's certain times it may try to use other
21 functions. There's a wide variety of things it has done at one
22 time or another. But it is mainly limited to using different
23 functions on a computer or looking at memory on a computer.

24 Q Okay. So let's say -- you said you're familiar with
13:30:05 25 Glider?

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13:30:06 1 A Yeah.

2 Q Does Glider have to provide Warden any information to allow
3 it to detect Glider -- to allow Warden to detect Glider?

4 A I'm not sure. Provide it information?

13:30:26 5 Q Does it have to do anything affirmatively to tell Warden,
6 hey, here I am, I'm not in memory.

7 A Is this in a world where it's not using a root kit to hide
8 the program to begin with or is it in its current state?

9 Q Let's say that it is not using a root kit.

13:30:48 10 A In that case, it would be a simple cross process scan from
11 Warden that would be able to detect it.

12 Q So it is Warden that is looking for Glider. Correct?

13 A In that particular case, in that particular style of
14 detection I described, yes. There are other scenarios where it
15 would not necessarily be true.

16 Q Because essentially Warden is examining memory -- is
17 examining pages of memory; is that correct?

18 A Yeah. I mean it -- that is its primary function.

19 Q And then it compares that memory that its examining to
20 something known back on the server; is that correct?

21 A Yeah. The comparison's done on the client but it gets
22 those values to compare against the server. It's a fair
23 characterization.

24 Q Okay. Okay.

13:31:44 25 Now, you talked a little bit about Glider. I assume

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13:32:00 1 from your direct examination that Mr. McGee gave of you that
2 Glider is not looked upon too favorably at Blizzard; is that
3 correct?

4 A Cheat programs which damage our games are obviously not
13:32:16 5 welcome.

6 Q And this is something that I heard you say, it damages you
7 to the tune of about a million dollars a year in actual
8 monetary --

9 A That's just salaries. That is the conservative estimate
13:32:29 10 that we did. That is just salaries and the time that people
11 spend on there. And, you know, again, that is not accounting
12 for anything else that we pay out related to that.

13 Q I'm not looking for an exact figure, I'm just saying in
14 general. What I'm trying to get at here is that Blizzard has a
13:32:48 15 big problem with Glider, right?

16 A Absolutely.

17 Q Okay. And more so even not just Glider but all bots in
18 general; is that correct?

19 A Botting's a problem, but most bots don't have sophisticated
13:33:07 20 anti-detection so they're fairly easy for us to eradicate.

21 Q But botting in general is a problem for playing World of
22 Warcraft; is that correct?

23 A Botting that cannot be detected is the problem.

24 Q Okay. And the reason why the botting that can be detected
13:33:25 25 isn't much of a problem is that because you can just eradicate

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13:33:29 1 the problem?

2 A Yeah. It essentially doesn't exist because we can get rid
3 of it immediately.

4 Q Okay. I have a question for you then. I know the -- you
13:33:40 5 are familiar with your EULA and your terms of use for blizzard;
6 is that correct?

7 A I'm familiar, I'm not an expert.

8 Q I'm not asking you any --

9 A No quotes.

13:33:52 10 Q No legal questions with regard to your contracts. I do
11 want to know one thing just so I'm certain. Blizzard did not
12 explicitly list, quote/unquote, bots in its list of programs
13 that were considered unauthorized third-party programs until
14 after this lawsuit was filed; is that correct?

13:34:14 15 A I'm not sure on the exact date. I know that we've
16 discussed this before. But I know there were early revisions
17 of the TOU and EULA that did not include the word "bot" in
18 them.

19 Q Okay. And when --

13:34:27 20 A They included references to bots and third-party programs,
21 et cetera. But the word "bot" was not included.

22 Q Okay. Let's just talk about that timeframe when you first
23 became aware of my client's program. Is it true that it was
24 around mid-September of 2005 that Blizzard first banned -- had
13:34:56 25 its first ban wave of several hundred Glider customers? Do you

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13:35:03 1 remember that?

2 A I don't remember the exact timing on it but it sounds
3 correct, but I don't have the timeline committed to memory on
4 that.

13:35:11 5 Q If I showed you something that would refresh your memory,
6 would that help?

7 A Yeah.

8 Q Okay. Just one second. I'll come back to that. I just
9 wanted to get a general timeframe. Do you recall when you

13:35:54 10 became aware of my client's software program?

11 A I don't, but the timing sounds similar to what you're
12 describing.

13 Q So in the September 2005 area; is that correct?

14 A Yeah.

13:36:05 15 Q Okay. And that it was approximately -- I think it was
16 exactly October 25th, 2006, when some representatives of
17 Blizzard showed up at my client's home to let him know that
18 they were -- that Blizzard was interested in filing a lawsuit?

19 A I'm not familiar with the exact circumstances of any of
20 that.

21 Q Are you aware of the incident?

22 A I know there were discussions but I'm not sure what the
23 details of it are.

24 Q Okay. And --

13:36:49 25 A I wasn't present in any of that.

CROSS-EXAMINATION - GREGORY ASHE

13:36:51 1 Q That's fair enough. Did anybody ever tell you?

2 A No, none of the details of any of that.

3 Q Okay. But you're aware that a lawsuit was filed in October
4 of 2006 first by my firm; is that correct?

13:37:06 5 A Yeah.

6 Q And then I believe it was in November of 2006 that Blizzard
7 issued a second ban wave that banned literally thousands of
8 Glider customers; is that correct?

9 A Yes.

13:37:23 10 Q And that it was in approximately January of 2007 when at
11 that point Blizzard first explicitly put the word "bot" in its
12 list of programs that were considered unauthorized; is that
13 correct?

14 A Again, I'm not sure. I'm familiar that we did add the word
13:37:45 15 "bot" into the documentation at some point, into the agreements
16 at some point around that timeframe, but that was not my -- I
17 didn't add it and I'm not familiar with the exact timing of it.

18 Q Okay. And then in June of 2007, isn't it true that
19 Blizzard issued a third ban wave that effectively banned
13:38:07 20 thousands more customers?

21 A Yes.

22 Q And then in May of 2008 Blizzard issued another ban that
23 banned tens of thousands of Glider customers?

24 A That's correct.

13:38:21 25 Q And then it was in August of 2008 during the pendency of

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13:38:24 1 this lawsuit that Blizzard at that point filed a motion with
2 this court to request a permanent injunction.

3 A Yes.

4 Q I believe that the request for the injunction effectively
13:38:42 5 requested that Blizzard -- that MDY Industries and Mr. Donnelly
6 stop selling Glider; is that correct?

7 A That's my interpretation of it. I'm not a lawyer.

8 Q I'm not asking you to interpret it. Just in general.

9 That's when they asked for the injunction; is that correct?

13:38:58 10 A I believe so.

11 Q Okay. And in the September to December of 2005 timeframe,
12 do you recall how many WoW subscribers were -- worldwide had --
13 Blizzard had at that point?

14 A I don't require -- I don't recall how our population growth
15 matches up against the timeline.

16 Q Does 5 million sound correct?

17 A It sounds like a reasonable -- yeah. Sounds reasonable for
18 that timeline.

19 Q Do you know how many there are today?

13:39:34 20 A A little over 11 and a half million.

21 Q Okay. Couple more questions, Mr. Ashe. When you were
22 showing your video of what World of Warcraft was doing, and I'm
23 not sure if this was in the first video or the video with
24 Glider, but you mentioned something about there was -- that
13:40:08 25 there are quests within the game.

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13:40:11 1 A Yes.

2 Q And just really quick, explain to me what a quest is.

3 A A quest is like a little story. That's what I would say
4 it's analogous to. You might also refer to it as a task. So
13:40:28 5 essentially there's some role play text. A character in the
6 game will ask you to complete a certain task, whether that's
7 killing a certain enemy or looting a certain item or collecting
8 bundles of wood to burn in a fire somewhere or something, and
9 then you perform that task and return and you receive award for
13:40:49 10 that quest.

11 Q You also mentioned that there was -- there were elements of
12 text. These elements of text are resident on the server
13 program, correct?

14 A Initially. Then they're cached out to the client.

13:41:08 15 Q So they are sent down from the server to the client's hard
16 drive; is that correct? Or cached, I should say.

17 A Yes.

18 Q Cache memory, can you explain that to me?

19 A It is cached on the drive. The reasons why is performance
13:41:24 20 reasons. So that, you know, once the player has read a quest
21 text, they don't need to recall to the database. So it's just
22 stored on their client and it references that instead.

23 Q Okay. And this text that comes down, this only occurs
24 during the time you're actually doing the quest; is that
13:41:41 25 correct?

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13:41:42 1 A When you start a quest or read a quest for the first time.

2 Q Okay. Are you aware that Glider does not do quests?

3 A I'm -- I didn't know either way on that. Yeah, I didn't
4 have an opinion either way.

13:41:58 5 Q So you didn't know that Glider is not capable of actually
6 performing a quest?

7 A A quest can be done while Glider is loaded, by all means.
8 Yeah.

9 Q Perhaps. I'm sure. If a human does it, correct?

13:42:11 10 A Well, a Glider could complete part of the quest for sure.
11 The player to accept the quest, Glider could go and kill the
12 requisite MPC for that quest, and then it can be turned in.

13 Q But glider doesn't initiate a quest, right? Or do you
14 know?

13:42:30 15 A I don't know.

16 Q Okay. So if Glider is incapable of doing a quest, I guess
17 it would follow that the text that's sitting on the server
18 cannot come down to the hard drive; is that correct?

19 A I'm not following.

13:42:47 20 Q Well, you said that only -- the text only comes from the
21 server to the hard drive during a quest, right?

22 A It is pulled down when a quest is initiated.

23 Q Right. So if we're not initiating a quest, if Glider
24 didn't do that, then the text doesn't come down from the
13:43:12 25 server, correct?

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13:43:13 1 A The bot itself I can't comment on. But I can comment that
2 the bot could be running and that could happen.

3 Q In the instance where -- well, never mind.

4 The text that is sitting on the server, how is that --
13:43:45 5 never mind. I'll skip that.

6 The nonliteral elements that are sitting on the hard
7 drive -- which I think you mentioned there were over 400,000
8 roughly?

9 A Yeah.

13:44:14 10 Q Are these files encrypted?

11 A I wouldn't call them encrypted in the classical sense.

12 Q Is there anything that you need to decrypt these files to
13 be able to either load them or open them?

14 A You need to reverse engineer a proprietary format for
13:44:38 15 storing those files, but it is analogous to like the
16 compression in a zip file where it makes a library of files.
17 That's how I best describe it. It is similar to a zip file.

18 Q Okay. But a zip file I can open without having to decrypt
19 anything, correct?

13:44:54 20 A You'd have to have a special program to open it. I
21 wouldn't call it encryption in the classical sense.

22 Q Something like Model Viewer, right?

23 A Yeah. Model Viewer has ability to decrypt MPQs, or at
24 least they did until recently.

13:45:10 25 Q Okay. You had also mentioned there's something called --

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13:45:13 1 when you were showing this video -- that there could be
2 player-versus-player battles; is that correct?

3 A Yes.

4 Q Are you aware that Glider does not do player-versus-player
13:45:26 5 battles?

6 A Yeah. Glider can defend itself against another player.
7 That is an option for Glider. Though it admittedly does warn
8 you that it is very poor at doing so. However, Glider can keep
9 you from going away from the keyboard. It can keep you from
13:45:48 10 going away from keyboard, which has the side effect of taking
11 up slots in a player-versus-player battle. Specifically in a
12 team-versus-team battle in a battleground, which has a direct
13 negative impact on the users and is extremely common -- and was
14 extremely common for a long while and still common to have
13:46:09 15 Glider used in that sense.

16 Q Okay. But Glider does not initiate a battle against
17 another player; is that correct?

18 A In a player-versus-player combat, I'm not aware of Glider
19 having the ability to initiate a PVP fight. But Glider can,
13:46:32 20 with the use of one of the custom classes available for it, can
21 be used to queue for a battleground and join that battleground
22 automatically.

23 THE COURT: Mr. Venable, we're going to pause for just
24 a minute and adjust this mike.

13:46:47 25 MR. VENABLE: Sure.

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13:58:09 1 Excuse me, Your Honor, how are we doing on time?

2 THE COURT: You had used 43 minutes when we started
3 playing with the mikes, plus ten this morning, so 53 total.
4 I'm not counting this time against you if that's what you're
13:58:26 5 asking.

6 MR. VENABLE: Thank you, appreciate that.

7 (Pause in the proceedings.)

8 THE COURT: Okay. Let's try again, if you would,
9 Mr. Venable.

14:02:17 10 BY MR. VENABLE:

11 Q Mr. Ashe, I'm going to try to wrap this up. Just five or
12 six more questions here.

13 You were discussing bots in your direct testimony. A
14 bot -- is it true that a bot by definition basically acts as a
14:02:41 15 robot, correct?

16 A Yeah.

17 Q So it basically replaces the human from sitting in front of
18 playing the computer, correct?

19 A Yes.

14:02:51 20 Q So the only difference between the bot and the human is
21 that the bot is doing what the human would normally do,
22 correct?

23 A It doesn't behave like a human in every way. And I think
24 we talked a little bit later in that testimony about how an
14:03:05 25 average player can tell whether someone's botting or not. It

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14:03:09 1 is the social aspect of it. The bot has little to no social
2 interaction. It does repetitive movements. Even an advanced
3 bot like Glider has a lot of stuff built into it to make it
4 look a little more human. It deviates from its path. It will
14:03:30 5 skip wave points at some path at certain times. But it is
6 still robotic. It's still going around the same circuit for an
7 extended period.

8 Q And if I'm right, I think you said on direct that the main
9 difference between what it can do and what a human can do is
14:03:46 10 that the bot can essentially play for 24 hours at a time,
11 correct?

12 A It can play like a bot for 24 hours at time. If the owner
13 wants it to.

14 Q Right. So the human could actually mimic what the bot is
14:03:59 15 doing; is that correct?

16 A It wouldn't be very healthy and I doubt they would make it
17 the seven days before we restarted our servers, but potentially
18 someone could try to do that.

19 Q Didn't they make a South Park episode as sort of a --

14:04:13 20 A I think there is South Park episode that is almost exactly
21 along those lines.

22 Q Those guys could have used a bot, right?

23 A Those guys just needed to take a little break from the
24 game, that's all.

14:04:26 25 Q Okay. Now, you also mentioned on your direct examination

CROSS-EXAMINATION - GREGORY ASHE

14:04:30 1 that there are many, many people who play World of Warcraft or
2 who have a strong objection to people playing with bots; is
3 that correct?

4 A Could you repeat the question.

14:04:42 5 Q You said on your direct examination that there are many
6 people who play World of Warcraft who have a strong objection
7 to people using bots to play the game; is that correct?

8 A Yes.

9 Q I would imagine that that also includes my client's
14:04:58 10 program, Glider, correct?

11 A Yeah.

12 Q But is it also a fair statement to say that there's also a
13 number of people who have no objection in allowing bots to be
14 played in terms of the players? Not people that work at
14:05:11 15 Blizzard, I understand that.

16 A I imagine most of the people who bought a bot feel that
17 way.

18 Q And would you say there are maybe a lot of other people who
19 have no opinion as to whether or not a bot is a good or a bad
14:05:22 20 thing?

21 A There may be some. I can't speak for everybody.

22 Q Okay. But you did say that you only got I think it was
23 half a million complaints, correct?

24 A Yeah.

14:05:32 25 Q Those were all about bots in general?

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14:05:33 1 A And that was -- I don't have the exact period at hand, but
2 that was during a finite snapshot of our customer complaint
3 survey.

4 Q Well, it was over time, correct?

14:05:45 5 A Yeah.

6 Q I mean, it wasn't one day?

7 A No. It was not the entire day, but it was not over the
8 existence of WoW by any means.

9 Q The number of complaints relative to the number of people,
14:06:00 10 if I recall right, I'll just see if you can agree with me, I
11 think that at the time that was being done was that you had
12 roughly 7 to 8 million subscribers at that time?

13 A Probably during most of that survey. The population
14 obviously changed over when we collected that data, but, yeah.
14:06:19 15 It's an accurate figure towards the end of that cycle.

16 Q But you never asked the question whether or not during your
17 customer survey whether or not there was no objection to bots,
18 correct?

19 A This wasn't a survey. I probably mischaracterized it.

14:06:33 20 This was people who went out of their way to submit in-game
21 petitions citing a bot as a problem.

22 Q Have you ever conducted an in-game survey that asked people
23 whether or not they have no opinion as to the botting issue?

24 A No, we haven't. And I imagine we probably would avoid
14:06:51 25 doing that for a lot of reasons. Number one being public

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14:06:53 1 relations. We don't want to give people the impression that
2 we're considering allowing people to bot in the game.

3 Q Understood. Now, when a person uses my client's software,
4 Glider, it doesn't allow them to play World of Warcraft for
14:07:11 5 free, does it?

6 A Sorry. Could you repeat the question?

7 Q Let me ask it a different way. When my client's software
8 is being used by a particular player, in order to play World of
9 Warcraft with the -- with the Glider program, that player still
14:07:31 10 has to pay Glider [sic] the monthly subscription fee; isn't
11 that correct?

12 A Pay us the monthly subscription --

13 Q Yes.

14 A Oh. Okay. If they're at that part of their contract, yes.
14:07:42 15 If they're still in their free 30 days, yes. By and large most
16 bots who last more than 30 days or the account is older than 30
17 days will be on a paying subscription of some sort.

18 Q You're also aware that many people who use Glider also
19 use -- also play World of Warcraft with multiple accounts.
14:08:02 20 Isn't that correct?

21 A Yes. Some of them bot with multiple accounts. Some people
22 bot with one account and take those gains and move them to a
23 play account that they don't bot so that their main characters
24 don't get banned, which is something we're looking at in
14:08:17 25 different ways right now, but -- yeah.

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14:08:19 1 Q So in many instances --

2 A There are people who have multiple accounts for a variety
3 of reasons.

4 Q And they have to pay -- they don't pay just one
14:08:28 5 subscription fee to do that, correct?

6 A No. They would pay as appropriate. They would pay a
7 subscription fee for each of those.

8 Q For each of the accounts. So if they have eight accounts
9 they have to pay eight times -- is it still \$15 a month?

14:08:40 10 A For most regions, yeah.

11 Q You also mentioned about the need to -- you have to be able
12 to access the server in order to be able to play World of
13 Warcraft. Correct?

14 A That's correct.

14:08:58 15 Q But you've heard what are called emulated servers, correct?

16 A I'm very familiar with emulated server, yes.

17 Q An emulated server doesn't require that anybody who wants
18 to play World of Warcraft using the software that is provided
19 by Blizzard to actually log in to Blizzard's server; is that
14:09:16 20 correct?

21 A I think it's important here to again draw the distinction
22 between what is WoW and the expression that our designers and
23 artists have put forward versus not WoW. I'm not aware of any
24 emulated servers that are completely up to date. They don't
14:09:32 25 have the exact same content that is on the live servers. They

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14:09:36 1 don't house as many players as on our live service. Their
2 quality of service is not the same as us. It's not an analog
3 of the WoW experience. It's a different game. It's a poorer
4 product. Most of the servers have different rule sets. But
14:09:51 5 I'm not going to say all. I'm sure that there are some that
6 use something similar to the vanilla WoW rule set. But even
7 though they're not up to date, they don't have whatever hot fix
8 we put in yesterday much less the last couple patches, in most
9 cases.

14:10:09 10 Q Okay. And of course what you're saying is the game
11 experience would be different, correct?

12 A The game experience that we're selling right now is what is
13 on our servers.

14 Q Okay. You also mentioned how you ban someone. You are
14:10:26 15 technically not actually banning the user, correct, you're just
16 use banning the user's account, correct?

17 A We ban on a per account basis, that's correct.

18 Q In other words, if I'm playing World of Warcraft and World
19 of Warcraft's Warden program detects Glider, and let's just say
14:10:44 20 that I'm not part of a ban wave. Let's say that it immediately
21 bans my account and I'm no longer able to play with that
22 account. I could, within a matter of minutes, open up another
23 account with Blizzard using the same credit card and the same
24 name in order to be able to play World of Warcraft. Is that
14:11:04 25 correct?

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14:11:05 1 A That's correct. And as part of that process you would
2 again agree to our terms of use and EULA.

3 Q Absolutely. One final question, Mr. Ashe. The information
4 that is coming from the server down to the user's computer, is
14:11:30 5 that information made up of -- let me ask you the question.
6 What is that information that's coming down from the server to
7 the user's computer?

8 A I'm not sure if I understand you.

9 Q Let me back up. I'm sorry. Maybe I'll ask it a different
14:11:50 10 way.

11 Are the -- is the information coming from the server
12 simply just a series of commands that are instructing the
13 WoW.exe file to render whatever it needs to render on the
14 screen of the computer?

14:12:14 15 A I characterize it as the choreography that brings the WoW
16 world to life as what the servers directed.

17 Q When you say choreography, what do you mean?

18 A Whether creatures respond, whether the world should be
19 night or day, whether it is raining, whether certain quests are
14:12:32 20 available, whether certain creatures even exist, whether the
21 winter festival is going. All that stuff is directed by the
22 server.

23 Q Let me take a couple of those. Where the creature is
24 located, that's essentially they're sending down the new XYZ
14:12:47 25 coordinate of where the creature should be, correct?

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14:12:51 1 A And which creature it is specific that we should use and
2 how the creature's AI should behave.

3 Q And basically those are all considered to be factual
4 information about where these characters are supposed to be; is
14:13:05 5 that correct?

6 A Again, I would liken it to choreography. That's how all
7 these things should interplay with each other.

8 Q And where was that before it came down from the server?
9 Where was the choreography at?

14:13:18 10 A The choreography would be largely in the server code before
11 that, before it's executed. And the choreography takes place
12 in the server and then the client takes a representation of
13 that.

14 Q So, again, we're talking about the game experience, right?

14:13:33 15 A We're talking about -- specifically in what case are we
16 talking about the game experience? I just want to make sure
17 I'm answering the correct question.

18 Q I was going back to what I was getting at earlier, that the
19 game experience you're talking about is like a symphony,
14:13:50 20 correct?

21 A The game experience a user should experience is like a
22 symphony. It's an orchestration. And the server is what
23 conducts that. It's what's driving that.

24 Q Okay.

14:14:04 25 MR. VENABLE: No further questions.

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14:14:07 1 THE COURT: Any redirect, Mr. McGee?

2 MR. MCGEE: Yes, Your Honor.

3 R E D I R E C T E X A M I N A T I O N

4 BY MR. MCGEE:

14:14:19 5 Q Greg, this WoW experience or this game experience that
6 you're talking about, is this what you're talking about earlier
7 when you talk about the multimedia interactive content that is
8 expressed to a user when they play World of Warcraft?

9 A Yes.

14:14:36 10 Q Doesn't that -- or does that content, does that, the
11 expression of the universe, have to exist in a user's RAM
12 before they can perceive it?

13 A Yes.

14 Q So at any point when you're experiencing the WoW universe,
14:15:00 15 when you're perceiving the visuals, hearing the sounds and the
16 music, what you're perceiving, what you're hearing is fixed in
17 your RAM at that point?

18 A Yeah.

19 Q Could what is fixed in the RAM at that point, at any given
14:15:21 20 point throughout your World of Warcraft experience, could that
21 have been created or displayed to the user without the
22 direction and the choreography of the server?

23 A I'm sorry. Could you repeat the question.

24 Q Yeah. Sure. Could this image in RAM, could this
14:15:37 25 experience that exists in RAM, as we just discussed, could that

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14:15:41 1 be created or displayed to the user without input from the
2 server?

3 A Pieces could be. But the expressions as a whole could not.

4 Q So the expression that we've been talking about that
14:15:54 5 Blizzard is trying to protect, could that exist in RAM without
6 the choreography or the direction of the server?

7 A No, it could not.

8 Q Thank you.

9 Greg, can you tell me why Blizzard doesn't encrypt the
14:16:12 10 creative content on the game client?

11 A On that one there's a couple reasons. The obvious one that
12 jumps out to most people would be performance. Obviously you
13 take a performance cost hit every time you encrypt something
14 and has to constantly be decrypted.

14:16:28 15 Q I'm sorry to interrupt. Does that mean that the game would
16 slow down, that the experience would suffer if you encrypted
17 that?

18 A Yeah. People on lower-end computers would definitely
19 notice. And potentially higher-end computers, too, depending
14:16:41 20 how we encrypted it.

21 And then there's the other one, which is we're not
22 selling those individual assets. We're selling the game, and
23 the assets by themselves are not World of Warcraft. They're
24 just creative content.

14:16:56 25 Q Are you saying that to Blizzard those individual assets are

REDIRECT EXAMINATION - GREGORY ASHE

14:17:00 1 worth less to the World of Warcraft experience than what we've
2 been talking about as the multimedia creative expression that
3 is the --

4 A Absolutely. World of Warcraft is the expression of all
14:17:12 5 those things together, not the individual pieces.

6 Q Mr. Venable addressed Warden. I just wanted to make sure
7 we have a clear understanding of how Warden works. How does
8 Warden know what memory to scan and what to look for?

9 A The server tells it.

14:17:38 10 Q So Warden receives instructions from the server?

11 A Yes.

12 Q And does Warden take those instructions and request memory
13 space from the client?

14 A Yes.

14:17:51 15 Q What does the client report back to Warden?

16 A It reports back what is in that -- whether or not that
17 memory space matches a list of values. And if that value is
18 associated with a clean version of WoW with no cheats,
19 nothing's done. In the other scenario where there is a cheat
14:18:14 20 found, the user is banned and moved offline.

21 Q So the game client -- strike that.

22 Based on what the game client reports back to Warden,
23 Warden will then either continue running, looking for -- tell
24 me what happens. What does Warden do once it receives
14:18:41 25 information back from the game client?

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14:18:44 1 A Makes determination whether that information warrants -- it
2 was -- if it's a cheat it goes ahead and takes action against
3 that account.

4 Q Does it apply the information it receives from the game
14:18:56 5 client to those preexisting figures or hashes it receives from
6 the server?

7 A Yes.

8 Q Are you familiar with the basic challenge/response
9 authentication process?

14:19:11 10 A Yeah.

11 Q Can you explain to us what that is?

12 A Challenge/response, I'll use the OTP token, the one-time
13 password token, as an example. It is a fairly popular
14 mechanism used for those. Essentially a user generates a code
14:19:32 15 and sends that to a server. The server takes that, manipulates
16 it, and sends that back and then that is a passcode.

17 Q Okay. Is a more basic type of challenge/response system
18 simply a password?

19 A Yeah.

14:19:54 20 Q Is the sequence of events that we've described and talked
21 about here with the Warden receiving instructions, requesting
22 information from the WoW client in terms of the memory space
23 and then acting -- comparing that information and acting on it,
24 is that similar to a basic challenge/response authentication
14:20:19 25 process?

REDIRECT EXAMINATION - GREGORY ASHE

14:20:20 1 A Right. Yeah.

2 Q Mr. Venable pointed out that after one of your ban waves,
3 and I don't think it matters which, Blizzard had about 5
4 million active subscribers, and I think currently you told him
14:20:39 5 Blizzard has 11.5 million active subscribers. Based on your
6 review of the forums and the customer complaints, do you
7 believe WoW or Blizzard would have more subscribers now in the
8 absence of Glider?

9 MR. VENABLE: Objection, Your Honor, that calls for
14:20:57 10 speculation. There's no foundation to make that answer.

11 THE COURT: Sustained.

12 If you can lay foundation, go ahead. I don't think
13 there's foundation for that at this point.

14 MR. MCGEE: Okay. Strike that. I'll withdraw it.

14:21:08 15 BY MR. MCGEE:

16 Q Finally, you talked about quests. Do many of the quests in
17 World of Warcraft require a player to gather resources or kill
18 monsters?

19 A Yeah. The majority.

14:21:26 20 Q Is the -- I'm sorry.

21 A Majority do.

22 Q Is Glider capable of gathering resources and killing
23 monsters?

24 A Yes. It does both those things.

14:21:36 25 MR. MCGEE: Thank you. That's all I have.

REDIRECT EXAMINATION - GREGORY ASHE

14:21:37 1 THE COURT: Thank you. Mr. Ashe, you can step down.
2 (Brief interruption regarding the microphones.)

3 THE COURT: All right. Mr. Genetski or Mr. McGee, do
4 you have any additional witnesses you wish to call?

14:22:19 5 MR. GENETSKI: Your Honor, as we stated this morning
6 when we -- before we started, we will conditionally rest at
7 this point so that we can -- we'll cross Mr. Donnelly during
8 Mr. Venable's case and we can proceed.

9 THE COURT: Okay.

14:22:33 10 MR. VENABLE: Your Honor, would it be okay if we take
11 a five-minute break? We need to set up the computer
12 demonstration.

13 THE COURT: Sure, yeah, let's go ahead and do that.
14 (Recess taken.)

14:31:02 15 THE COURT: You have used one hour and six minutes of
16 your time and Blizzard has used one hour and 52 minutes.

17 MR. VENABLE: Cutting it close.

18 THE COURT: Well, I'm not going to hold you to the
19 minute. I mean, if you run over by 10 or 15 minutes --

14:31:17 20 MR. VENABLE: That's good to know, Your Honor.

21 THE COURT: I don't do that in jury trials, but we
22 have room in this case.

23 All right, your next witness.

24 MR. VENABLE: Yes, Your Honor, I like to call
14:31:27 25 Mr. Joseph Calandrino to the stand.

14:31:29 1 THE COURT: All right. Would you come here to be
2 sworn as a witness. Is he going to testify from there?

3 MR. VENABLE: Initially he's going to give some
4 preliminary answers to questions to qualify him as an expert
14:31:40 5 witness. And then after that I was going to have him come back
6 and sit down.

7 THE COURT: All right. That's fine. Let's have you
8 come forward and be sworn, if you would, Mr. Calandrino.

9 THE COURTROOM DEPUTY: Please state your name and
10 spell your last name for the record.

11 THE WITNESS: Joseph A. Calandrino. J-O-S-E-P-H, A,
12 C-A-L-A-N-D-R-I-N-O.

13 THE COURTROOM DEPUTY: Thank you.

14 **JOSEPH CALANDRINO,**

15 called as a witness herein, after having been first duly sworn
16 or affirmed, was examined and testified as follows:

17 D I R E C T E X A M I N A T I O N

18 BY MR. VENABLE:

19 Q Good afternoon, Mr. Calandrino.

14:32:34 20 A Good afternoon.

21 Q Can you tell us your full name for the record, please.

22 A My full name is Joseph Anthony Calandrino.

23 Q Okay. And before I ask you any relevant questions as to
24 why you're here today and what you'll talk about, I want to
14:32:50 25 talk a little bit about your background. Where do you live?

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14:32:55 1 A My permanent residence is in Virginia, but I live in New
2 Jersey for much of the year as I'm a graduate student in that
3 state.

4 Q What is your occupation?

14:33:04 5 A I'm a Ph.D student.

6 Q Okay. So what do you do as a graduate student? First let
7 me ask you: Where are you a Ph.D student at?

8 A I'm a Ph.D student at Computer Science at Princeton
9 University.

14:33:21 10 Q What do you do as a graduate student at Princeton?

11 A There are a number of components of what graduate education
12 entails. One of them is course work, so you complete a number
13 of courses to add to your degree. Another one of the
14 components tends to be a teaching component. This can vary
15 from school to school. Normally you might lead classroom
16 discussion or assist in -- assist a professor in leading a
17 classroom.

18 THE COURT: Mr. Calandrino, can you speak up a little
19 bit, please, so everybody can hear you.

14:33:50 20 THE WITNESS: Certainly. Let me move this a little
21 bit closer.

22 And the final component tends to be a research
23 component. So you actually are doing research in a certain
24 relevant area. My relevant area is computer security. You're
14:34:02 25 publishing papers in that area working towards a final

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14:34:04 1 dissertation, which is a large document essentially telling a
2 fairly narrow area of research that is supposed to be novel,
3 and there tends to be a little test you have to pass along the
4 way. For instance, there's a general exam at Princeton that
14:34:17 5 you have to pass that allows you to advance to Ph.D candidacy
6 where you present some of your research and you have to pass
7 certain courses before.

8 Q And so I understand your Ph.D that you're looking to
9 obtain, in what area is that?

14:34:30 10 A It's in computer science.

11 Q Okay. And do you work for anyone in particular at
12 Princeton as a graduate student?

13 A Yes. My advisor is Ed Felton. He's one of the more
14 prominent computer science researchers and probably would be
14:34:44 15 considered to be a foremost expert in computer security.

16 Q Does your relationship with Mr. Felton provide you with any
17 added benefits in your line of study?

18 A Certainly. Ed tends to have a number of fantastic ideas
19 and he's a great person to be able to bounce ideas off of. If
14:35:02 20 there's an area in which I'm gaining additional understanding,
21 I would be able to discuss it with him and it will be sort
22 of -- he can help to clarify my logic in certain areas.

23 Q And where did you receive your undergraduate education?

24 A Undergraduate education from University of Virginia.

14:35:19 25 Q That is in Charlottesville?

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14:35:21 1 A Yes. That's in Charlottesville, Virginia.

2 Q What year did you graduate?

3 A Graduated in 2004.

4 Q What did you receive?

14:35:30 5 A I received a bachelor of science with highest distinction
6 double majoring in computer science and mathematics.

7 Q Okay. And are there any other degrees that you've obtained
8 besides your undergraduate degree?

9 A Yes, there are. The following year after I graduated from
14:35:47 10 University of Virginia in 2005, I received a master's of
11 computer science degree from that institution. And also in
12 early 2008 I was awarded a master's degree from Princeton
13 University in computer science.

14 Q And what types of formal course work have you had as it
14:36:05 15 pertains to computers?

16 A Okay. Computer science is oftentimes divided into a number
17 of areas. Pretty much the highest level areas are known as
18 theory and systems. Theory tends to be kind of the mathematics
19 that's seen behind computer science. I've taken a number of
14:36:19 20 courses in that area. Also there is systems which tends to
21 include things like how an actual computer system works, so
22 things like how an operating system works, how databases work.

23 Q I just want to say, just slow down just a little bit for
24 the court reporter.

14:36:35 25 A Okay. I'm sorry. I originally come from New York so I

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14:36:38 1 think I picked up that fast-speaking habit.

2 And it would also include in there things like, to a
3 certain extent, what the architecture of a computer is, as in
4 what sorts of hardware are actually in that machine to the
14:36:51 5 extent that it interacts with the software in that machine.

6 There also tends to be a number of other courses
7 like, I may have mentioned earlier, security courses, and then
8 even things along the lines of graphics courses. And pretty
9 much you end up covering the whole gamut of what you would
14:37:09 10 associate with computer science along the way.

11 Q Okay. Have you had the opportunity to play the game called
12 World of Warcraft?

13 A Yes, I have.

14 Q And have you also had the chance to examine how the World
14:37:20 15 of Warcraft software structure works?

16 A I've had the opportunity to examine it, to an extent,
17 through playing the game and seeing what sort of interactions
18 you would gather as a player, through viewing actual documents
19 relating to this court case, through speaking to Mr. Donnelly
14:37:39 20 and others, and that's where I've actually built up my
21 knowledge of how this system works.

22 Q Okay. Do you think the combination of your computer
23 science background and your personal examination of how the
24 World of Warcraft software works gives you the necessary
14:37:56 25 knowledge to answer questions as an expert witness in this

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14:37:59 1 case?

2 A Yes, I believe that as it relates to the technical matters
3 of this case I'm able to answer questions.

4 Q And have you had an opportunity to use the Glider software?

14:38:10 5 A I have loaded it to my machine. I have not used it within
6 the game environment but I've sat beside Mr. Donnelly while he
7 has had it loaded on his machine and observed him playing it
8 and talked to him about exactly what it was doing as that was
9 occurring.

14:38:24 10 Q Are you afraid of the wrath of Blizzard?

11 A Early on, yes, I was.

12 Q Okay. Have you ever been an expert witness before in a
13 trial?

14 A No, I have not.

14:38:34 15 Q Okay. Are you being paid to act as an expert in this case?

16 A Yes, I am.

17 Q How much are you being compensated to act as an expert
18 witness in this trial?

19 A I'm being paid at a rate of \$275 an hour.

14:38:48 20 Q Are you being paid to appear and testify in court today?

21 A Yes, I am.

22 MR. VENABLE: Your Honor, I would like to move to have
23 Mr. Calandrino accepted as an expert witness in this case with
24 regard to matters pertaining to computer science and anything
14:39:03 25 related to the structure of how World of Warcraft works.

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14:39:08 1 THE COURT: Well, as you know, that's not necessary in
2 federal court. We don't have to certify experts. I understand
3 that's how you're going to be presenting him.

4 If Blizzard has any objection to any responses he's
14:39:20 5 going to give I'll hear those objections at the time.

6 MR. VENABLE: Okay, very good.

7 BY MR. VENABLE:

8 Q Mr. Calandrino, do you have any bias in this case?

9 A I will admit that initially when I heard about the case I'm
14:39:34 10 a little bit favorable towards Mike Donnelly's view, or I'm a
11 little bit favorable towards MDY's side in terms of the
12 copyright law just based upon the fact from the technical
13 perspective some of the claims being made seemed a little
14 counterintuitive. But that said, I have no objection at all to
14:39:54 15 the law being interpreted as is appropriate. And also I will
16 be presenting, I believe, purely factual matters during my
17 testimony.

18 Q Now, as a follow up, do you think that any bias you may
19 have will affect your ability to testify to what you're going
14:40:09 20 to discuss today?

21 A No, I do not.

22 Q Now, I understand that you have a demonstrative PowerPoint
23 exhibit that you would like to be able to present to the Court.
24 Would you be willing to do that now?

14:40:21 25 A Yes, I would.

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14:40:22 1 Q Okay.

2 MR. VENABLE: Your Honor, we're going to have to move
3 him back to this seat.

4 THE COURT: All right, that's fine.

14:40:27 5 MR. VENABLE: And it will be a little awkward because
6 I'll be turning this way.

7 THE COURT: I don't mind you having your back to me.
8 Why don't you just come around this side of lecturn so you can
9 look at him, if that's easier.

14:40:43 10 MR. VENABLE: I need to be able to see what he's doing
11 on the screen.

12 THE COURT: All right.

13 MR. VENABLE: Unless I can see it up there, I suppose.

14 THE COURT: We can display it there.

14:41:07 15 But, yeah, you need to pull the mike up, if you
16 would.

17 MR. VENABLE: Is that okay? Everybody hear me?

18 THE COURT: Yeah.

19 BY MR. VENABLE:

14:41:18 20 Q Okay. Mr. Calandrino, I would like to ask you, this
21 PowerPoint presentation that you're going to give, have you --
22 do you know who exactly created this PowerPoint presentation?

23 A Yes, I was the one that created it during discussions with
24 Mr. Venable and Mr. Donnelly, as well as Jimmy.

14:41:41 25 Q So you're the author of the presentation essentially?

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14:41:44 1 A Yes, I am.

2 MR. VENABLE: Your Honor, I'd like to have this
3 presentation that's been prepared admitted into evidence as
4 Exhibit Number 7 for the plaintiff.

14:41:55 5 THE COURT: Any objection?

6 MR. GENETSKI: No objection.

7 THE COURT: All right. Exhibit 7 will be admitted.

8 (Exhibit 7 admitted.)

9 BY MR. VENABLE:

14:42:02 10 Q What I'll do, Mr. Calandrino, I'll just have you begin
11 because I think it is mostly to be narrated by you. So I'll
12 just let you begin and explain what it is we're looking at
13 here.

14 A Okay. So if you look at this slide there are several
15 components that are being shown that are actually within a
16 computer system. The top blue box represents a computer's
17 random access memory. The bottom blue box represents a
18 computer's hard drive. This intermediate layer represents a
19 computer's operating system. This would typically be the
14:42:32 20 Microsoft Windows that we're talking about for most people's
21 machines. And this will actually -- this actually operates
22 between -- or it actually intermediate -- it actually controls
23 what goes back and forth between a computer's hard drive and
24 its random access memory.

14:42:52 25 Now, within your hard drive you might have several

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14:42:55 1 items. You might have, for instance, an executable that's
2 called WoW.exe representing the World of Warcraft executable.
3 You might also have the nonliteral elements of the World of
4 Warcraft game. So this would include things like the
14:43:07 5 graphics, any sorts of sounds you would hear, anything at all
6 that would be considered the basic nonliteral elements.
7 Pretty much those 400,000 items that were discussed earlier.

8 Then you might also have Glider.exe. This is just an
9 example name for the Glider program.

14:43:26 10 And finally you might have, say, some sort of generic
11 model viewer. And this might just be something that would
12 allow you to observe the nonliteral elements and experience
13 them and perceive them in some manner.

14 So now let's assume that nothing has been loaded to
14:43:42 15 the computer's random access memory yet. The computer, say,
16 has just been turned on. Now, the user can click on the World
17 of Warcraft icon to try to load that program. When it's
18 supposed to be loading, what the operating system will do is
19 it will pull the executable from the user's hard drive into
14:43:59 20 the user's random access memory.

21 Now, I included in here Warden because Warden is a
22 component of the WoW executable or the WoW instructions
23 overall. And at this point scan.dll would be running, but
24 Glider or no other programs that Blizzard has determined to be
14:44:20 25 unauthorized have been loaded through RAM yet, so pretty much

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14:44:22 1 it's not a relevant point at this time.

2 So now let's say that the user has already opened the
3 program and now they would like to log into the World of
4 Warcraft game. To do so there is a server that Glider --
14:44:40 5 there's a server that Blizzard has and this log-in is going to
6 occur through a series of interactions between the user's
7 computer and the server. And it is important to note here
8 that the server is external to the user's computer.

9 So the user might enter a user name and password and
14:44:58 10 other things like that. And eventually the server is going to
11 say, okay, I trust that you're a user who has paid all of its
12 bills, this is a valid account, everything else along those
13 lines. And it might just, say, pass back a series of things
14 saying like this is your location within the world you're in
14:45:12 15 right now, load up the nonliteral elements as is appropriate
16 for that.

17 So based upon that, WoW.exe will request that the
18 nonliteral elements be loaded and it's making this request
19 through the operating system which is going to pull whatever
14:45:32 20 nonliteral elements are necessary out of the computer's hard
21 drive and load this up to RAM.

22 So these interactions continue as long as the user
23 remains logged in. The user might see new nonliteral elements
24 as they move around the world and the server might tell them,
14:45:48 25 okay, now you're moving within the vicinity of this, say,

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14:45:50 1 monster, so the nonliteral elements relating to that monster's
2 appearance, for example, might be loaded into that random
3 access memory.

4 The user puts on this model viewer icon. It's
14:46:07 5 important to note I'm speaking about a generic model viewer
6 not any one in particular. And I believe that also Mike
7 Donnelly during his testimony will speak a little bit more
8 about particular ones.

9 So this will also get pulled up into the user's
14:46:19 10 random access memory by the operating system just as the World
11 of Warcraft executable was. Now, the model viewer also allows
12 you to perceive elements of the World of Warcraft environment.
13 And to do so, what it needs to do is load up data also from
14 this -- from these nonliteral elements that are stored on a
14:46:40 15 user's hard drive. So to do so it makes requests through the
16 operating system and these items are loaded from the
17 computer's hard drive to its random access memory. So, going
18 to make the request and those items are going to get pulled
19 in. And these interactions will continue so long as the model
14:46:58 20 viewer remains open.

21 Now let's assume that the user clicks on the Glider
22 icon and they want to load up this Glider software. It also
23 will get pulled into the computer's random access memory.

24 Let's assume that the World of Warcraft through Warden,
14:47:19 25 through its series of interactions with the server and

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14:47:24 1 everything else, manages to successfully detect the Glider
2 executable being loaded into that computer's RAM.

3 Okay. So the server at this point has the option of
4 either cutting the user off immediately, perhaps cutting them
14:47:37 5 off later in one of these waves of cutoffs that they sometimes
6 have. At this point the server is going to stop telling the
7 user, okay, this enemy is entering your general location, or
8 this other user is passing by you, things along those lines.
9 As a result, the World of Warcraft executable is going to stop
14:47:55 10 needing to load data from nonliteral elements in the hard
11 drive into random access memory. So those items are all going
12 to disappear.

13 At this point, however, the model viewer can still
14 continue loading data, making the same types of request to the
14:48:13 15 operating system that the World of Warcraft executable would
16 be making to the operating system. There is no difference at
17 all from the model viewer's perspective.

18 Now, even if World of Warcraft closes, I just assume
19 that World of Warcraft doesn't necessarily close when the
14:48:28 20 user's cut off. It might eventually disappear from the user's
21 random access memory along with any nonliteral elements that
22 were loaded, but everything else still -- but model viewer
23 still operate as it did before. It can still continue loading
24 data. There's no interaction that would prevent it from doing
14:48:47 25 so.

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14:48:49 1 This same thing would apply if the user closes
2 Glider. Glider has no interaction whatsoever with these
3 nonliteral elements or with the model viewer. So it doesn't
4 prevent in any manner that would prevent the model viewer from
14:49:01 5 continuing to load these nonliteral elements from the hard
6 drive into random access memory.

7 Okay. So given all this, let's go back a little bit
8 and let's consider what actually is happening on the server.
9 So we're -- let's focus a little bit more on the server, which
14:49:20 10 has now been darkened into gray, and we can see the operating
11 system and hard drive and things like that.

12 So I've moved the random access memory over to the
13 right. This is still as it was before the WoW executable is
14 loaded, including its Warden component. And I've represented
14:49:45 15 the server as a white box. And one thing that is important to
16 note here is that the server -- I'm drawing sort of an
17 educated guess of what might be within the server, and this is
18 base upon what's been revealed in public documents and what
19 would be necessary just for the game to operate.

14:50:07 20 So I'm going to show what types of data would be
21 absolutely necessary for this game just to run to begin with.
22 So for instance, on the server they might have a list of names
23 and identifiers and locations relating to various users of the
24 game. This might be represented in a slightly different
14:50:27 25 manner. It may not be exactly this data stored in this

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14:50:31 1 manner. But they have to store some data about the users of
2 the game. If they don't store any data then there's no way
3 for them to tell users that other users are logged into the
4 game or where other users are located within the game. So I
14:50:42 5 emphasize that this might actually look somewhat different on
6 the actual server. But overall this is kind of the basic
7 idea.

8 Now, you also might have information about
9 computer-controlled monsters in some manner. So as I
14:50:58 10 mentioned earlier -- I hadn't mentioned this earlier, but not
11 all monsters are controlled -- not all characters are
12 controlled by users within the game. Some of them are also
13 controlled by the system itself. And these would just be
14 general data about those characters.

14:51:19 15 Now, also you need a set of safe server rules and
16 logic and this is going to determine how the World of Warcraft
17 and game environment operates and how people log in and things
18 along those lines.

19 So each user that is logged into a specific server
14:51:37 20 would have presumably some sort of row in a table that's on
21 that server. So for instance I might have a row saying that I
22 have an ID of 2. My name might be Me. I might have a
23 location, just say an XY coordinate. There might be a Z
24 coordinate as well. And it may say that I'm not logged in at
14:51:54 25 this time.

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14:51:56 1 Let's assume that I log in to the server. So I own
2 this random access memory over to the right. Or that is
3 within my machine. So I perform a series of interactions with
4 the server. The server rules and logic authenticate that I'm
14:52:13 5 a valid user and that I'm allowed within the system.

6 And based upon doing so, it is going to eventually
7 change -- it eventually is going to store something indicating
8 that I'm now logged in. And say that my action at this time
9 might be standing still, and it's going to pass back to my
14:52:33 10 machine anything and all that's necessary for me to load up
11 the world around me when I first log in. So it's going to say
12 perhaps there's another user that's nearby me and then my
13 machine knows that it needs to load the nonliteral elements
14 necessary to perceive that other user on my machine.

14:52:51 15 So other users are also interacting with the server
16 as well. These other users correspond to these other names
17 and items within the server. So we would have a number of
18 other arrows pointing from this server to the other computers
19 belonging to these other users.

14:53:09 20 Now, over time this server will have to update its
21 information based upon user interactions. So if I move in a
22 certain direction it's going to need to update my location.
23 If I cast a spell, it's going to need to change my action to
24 be casting a spell. So now my location has been updated.

14:53:29 25 I've casted a spell. And other users might be changing their

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14:53:33 1 locations and actions as well.

2 Now, the computer-controlled monsters are also
3 affected by user actions and vice versa. So if I attack a
4 monster, it might cause that monster to no longer exist within
14:53:49 5 the game environment. If the monster attacks me, it may cause
6 me to die and move to a graveyard or something like that
7 within the game.

8 Now, the monster actions and location points are
9 going to be fairly simple. And this was brought up during
14:54:05 10 Mr. Ashe's testimony. Essentially you might be seeing
11 movements in certain locations to be loaded in a certain area
12 with a certain probability.

13 So ultimately a user's location and actions actually
14 determine the nonliteral elements that a user can perceive.
14:54:23 15 If I'm near a tree, that will determine that I can actually
16 perceive that tree on my machine. If I step near another
17 user, that will determine that I can actually perceive that
18 other user. If another user comes near me, that determines I
19 can perceive that other user.

14:54:38 20 So ultimately this information that the server's
21 passing me back about other users' locations, which is
22 determined by my own location, will determine what the
23 server's telling me is nearby me, which will determine what my
24 computer chooses to load from its hard drive into the
14:54:54 25 computer's random access memory.

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14:54:59 1 And that concludes my presentation.

2 Q Okay. Mr. Calandrino, I'd like you to go back to the slide
3 that shows the RAM and the hard drive blocks with all the
4 elements loaded in the RAM, if you could.

14:55:15 5 A Certainly.

6 Q That's fine right there.

7 A Okay.

8 Q Is there any difference in the way that model viewer, that
9 generic model viewer program that you have there, is there any
14:55:33 10 difference physically in the way that it loads the
11 nonliteral -- or requests to have the nonliteral elements moved
12 from the hard drive to RAM than what WoW.exe does?

13 A So there are a number of different commands that you can
14 use for opening up a file and loading contents of it, but there
14:55:53 15 is nothing that would prevent a model viewer from having those
16 exact same sequence of interactions with the operating system
17 that would cause a specific nonliteral element to be loaded
18 from the hard drive into the random access memory.

19 Q So in other words, if the model viewer program was
14:56:07 20 receiving the exact same commands it could load the exact same
21 nonliteral elements in the exact same order if it -- than if it
22 was doing it with WoW.exe, correct?

23 A Yes, it could choose to do so.

24 Q Okay. And just so I'm clear, the information that is
14:56:25 25 loaded in terms of the nonliteral elements from the hard drive

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14:56:31 1 into RAM from model viewer and WoW.exe, who controls that?

2 A Wait. What's the --

3 Q Maybe I should ask --

4 A If you can clarify.

14:56:45 5 Q Clarify the question. Model viewer, when it loads
6 something in terms of a nonliteral element into RAM, that is --
7 who controls model viewer and tells it to move the nonliteral
8 element into RAM?

9 A Um, so that would typically be a user with most existing
14:57:05 10 model viewers. Like you would choose to move into a certain
11 location and then the model viewer, based upon its information
12 about how the world is laid out, may choose to pull other items
13 in there. You could also as a user choose to say I would like
14 for you to load up this image of this enemy and show it to me
14:57:20 15 on the screen. So it could be the user or the model viewer
16 choosing those actions.

17 Q When WoW.exe loads the nonliteral elements into RAM, what
18 tells it to do that?

19 A Okay, so the server's going to tell it what's nearby, which
14:57:40 20 is going to determine on the WoW executable what to load from
21 RAM based -- and the server determinations are going to be
22 based upon where the user's located within the game and what
23 the user and other users are doing within that game.

24 Q Okay. So the server is telling it to move nonliteral
14:57:57 25 elements in the RAM, correct?

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14:57:58 1 A So the server -- I don't know exactly what is going on
2 between these two -- between these two elements, but either it
3 could be telling it this item is right here, so you need to
4 load that from your hard drive into RAM, or it could tell you
14:58:12 5 that, say, this enemy is nearby and the WoW.exe can make the
6 determination that based upon that item being nearby it now
7 needs to load the corresponding nonliteral elements from the
8 hard drive into the random access memory.

9 Q Okay. Can you go back to the slide that shows just the
10 server. The one I think was one of the very last ones.

11 A Wait. Am I going -- Okay. So one of the last ones?

12 Q Yeah. I just want to be able to see the table --

13 A Okay. Let's go to the last one. Okay.

14 Q The table of data that you're showing there, I understand
14:58:55 15 this is not exactly -- this is not an exact replica of what
16 might be on the World of Warcraft server, correct?

17 A Yes. If I were to design this myself, I would make it look
18 very different from how this necessarily looks. This is just
19 to capture the basic idea. I'm going to -- also I would assume
14:59:12 20 Blizzard has it look very different from how this actually
21 looks.

22 Q Okay. But all the information you're showing in this
23 table, is that factual information related to the particular
24 player, where he's located, and what his name is, and what he
14:59:26 25 looks like?

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14:59:26 1 A Yes. There might be additional information that's in that
2 table which I'm unaware of, but --

3 Q It's the factual information that ultimately determines
4 what gets sent down from the server to the user's hard drive,
14:59:44 5 correct? I'm sorry, I shouldn't say user's hard drive. Gets
6 sent to the WoW.exe file, correct?

7 A Yes. It would be a product of your location and what
8 actions you're taking and what other users perhaps are doing as
9 well.

14:59:57 10 Q Okay. And who controls that?

11 A That would presumably be the user. That would have to be
12 the user themselves.

13 Q So if you were playing, it would be you --

14 A Yes.

15:00:08 15 Q -- correct?

16 And if there were other players that were playing, it
17 would be other players, correct?

18 A That is correct.

19 Q Okay. You're familiar with the Warden software; is that
15:00:18 20 correct?

21 A Yes, I have some familiarity with it.

22 Q Okay. And rather than getting into the details of what
23 Warden specifically does, I would just ask you a couple very
24 specific questions. Does Warden have any effect on a player's
15:00:34 25 ability to physically move the nonliteral element files that

DIRECT EXAMINATION - JOSEPH CALANDRINO

15:00:38 1 are on the hard drive from the hard drive to the RAM?

2 A None whatsoever as far as I can see.

3 Q Is it true that even if Warden takes the formal step of
4 cutting off your access to Blizzard's server by detecting

15:00:53 5 Glider, let's say, is that also true as well? Can you still

6 physically load the nonliteral elements in the same way from

7 the hard drive to the RAM with model viewer as you could with

8 WoW.exe?

9 A Yes, that's correct. Unless some change is made to these

15:01:13 10 nonliteral elements or some change is made to prevent the

11 operating system from loading these nonliteral elements in the

12 same manner for the -- for this other model viewer as it does

13 for World of Warcraft, then there would be no difference.

14 Q Okay. And is the only difference between WoW.exe and model

15:01:30 15 viewer's loading of the nonliteral elements is that the WoW --

16 is that World of Warcraft directs what nonliteral elements are

17 being loaded from the server command?

18 A Yes, as far as I can tell. I mean there is also this other

19 information that the server is maintaining about the

15:01:48 20 computer-controlled monsters and things like that. But that's

21 specific to the instantiation of the game.

22 Q But the WoW.exe physically moves the nonliteral elements

23 from the hard drive and the RAM in the same fashion the model

24 viewer does?

15:02:03 25 A It's the one that actually makes the request to the

DIRECT EXAMINATION - JOSEPH CALANDRINO

15:02:07 1 operating system that prompts this to occur.

2 MR. VENABLE: Okay. No further questions.

3 THE COURT: Cross-examination?

4 THE WITNESS: I'd be happy to go to the stand --

15:02:19 5 MR. GENETSKI: I have a couple questions about a
6 couple of the slides.

7 THE COURT: Let's have you do it right there.

8 C R O S S - E X A M I N A T I O N

9 BY MR. GENETSKI:

15:02:23 10 Q Mr. Calandrino, if you could, direct to the slide showing
11 the layout of the RAM.

12 A Okay, certainly.

13 THE COURT: Let's have you come around to this side,
14 if you would, please, Mr. Genetski, so you're speaking into
15:02:41 15 this mike.

16 MR. GENETSKI: I apologize.

17 THE WITNESS: Okay.

18 BY MR. GENETSKI:

19 Q Okay.

15:02:49 20 A Let me put it back this way, everything showing. Okay.

21 Q Mr. Calandrino, you're not an attorney, correct?

22 A No, I'm not.

23 Q You're not opining in this case on the meaning of the
24 Digital Millennium Copyright Act, correct?

15:03:08 25 A No, I'm not.

CROSS-EXAMINATION - JOSEPH CALANDRINO

15:03:09 1 Q You're not opining on the meaning of copyright or what is
2 protected by copyright?

3 A I believe that up on the stand I said that from a technical
4 perspective there's certain things that you might do different
15:03:18 5 from how the Court has interpreted it, but I'm not going to try
6 to pretend to be a lawyer.

7 Q You provided an expert report in this case. Correct?

8 A That is correct.

9 Q And in that report did you state the opinion that users who
15:03:32 10 load World of Warcraft into RAM are not making a copy of World
11 of Warcraft?

12 A I indicated that from a technical perspective that seemed
13 it was a bit -- it seemed it would be misleading without
14 further clarification.

15:03:50 15 Q If I can direct your attention to the slide that's on the
16 screen. In the bottom portion of the slide, the green box on
17 the hard drive, says in there "nonliteral elements," and then
18 underneath has graphics, et cetera. Is nonliteral elements a
19 term you're familiar with in your work as -- in computer
15:04:09 20 science?

21 A I wouldn't say I use it regularly. It's been explained to
22 me exactly what this means by legal counsel for Mr. Donnelly
23 and MDY.

24 Q So is your understanding of what "nonliteral elements"
15:04:21 25 means something that was explained to you by counsel for MDY?

CROSS-EXAMINATION - JOSEPH CALANDRINO

15:04:23 1 A As something which they helped to clarify for me. Based
2 upon also reading the Court's ruling it would appear as though
3 the literal elements entail sort of the code itself, which I'm
4 capable of interpreting what the code itself means based upon
15:04:35 5 my expertise, and leaving the nonliteral elements to be the
6 things -- sort of the feel of the game itself and what you can
7 see and interact with.

8 Q So you had no understanding prior to preparing your work on
9 this case of the difference between literal elements and
15:04:50 10 nonliteral elements in software code?

11 A I was not aware of those definitions prior to this case.

12 Q In this slide on the bottom in the green box on the hard
13 drive, is it -- isn't the content of that green box as you
14 depict it, shouldn't that actually be literal software code
15:05:15 15 when it is resident in the hard drive at that time?

16 A No, I'm presuming that this is actually -- so there are
17 actually separate files that contain items that would be the
18 look and feel of the game that are separate from the WoW.exe
19 executable itself. There might be certain things in there that
15:05:32 20 include information about the models you could technically term
21 to be code, but essentially it's things determining how the
22 game -- how things are going to appear within the game.

23 Q The actual graphics themselves, the expressive elements,
24 landmarks in the game, images, those are not rendered in
15:05:51 25 anything other than ones and zeros code on the hard drive,

CROSS-EXAMINATION - JOSEPH CALANDRINO

15:05:55 1 correct?

2 A That is correct.

3 Q In your slide, when the code in the green box on the hard
4 drive is transferred or loaded into RAM, it's at that moment
15:06:18 5 that the code stored on the hard drive generates graphical
6 elements. Isn't that correct?

7 A So you're saying that at this point the WoW.exe executable
8 uses the nonliteral elements to actually display graphics on
9 the screen or, say, generate sounds?

15:06:37 10 Q You can answer that question.

11 A Okay. So it technically would be -- usually would be when
12 it's loaded into higher levels of memory hierarchy. There are
13 things above this. You have the hard drive, and you have RAM,
14 then you have the cache and then have register, so typically
15:06:51 15 things would actually be loaded even higher up. But it would
16 be correct to say that it would be -- you're closer to this
17 being perceived when you are at this level than you are when
18 you are at this level.

19 THE COURT: Excuse me. What do you mean by "this
15:07:06 20 level" and "this level"?

21 THE WITNESS: I'm sorry. You're closer when you're at
22 the level of the random access memory than when you're at the
23 lower level of the hard drive.

24 BY MR. GENETSKI:

15:07:18 25 Q When you're at the level of the hard drive, the contents of

CROSS-EXAMINATION - JOSEPH CALANDRINO

15:07:21 1 the green box are software code at that point. They're not
2 images, graphics, sound effects. It is when it is loaded into
3 RAM and move up in the hierarchy that they become -- that they
4 become able to be perceived by the user?

15:07:38 5 A They become able to be perceived but it's important to note
6 here it is still a sequence of ones and zeros within the random
7 access memory. There's no tree being drawn in your computer.

8 Q Understood. But for them to be displayed to the use they
9 must be moved to the RAM level of hierarchy?

15:07:56 10 A That's correct.

11 Q When the code it moves -- loads into RAM and generates,
12 that code generates the, what we're calling the nonliteral
13 elements, the graphics, at that point, that expression is fixed
14 in RAM; is that right?

15:08:16 15 A Yes, at this point it is fixed in RAM.

16 Q If you could advance the slide to where the red box pops
17 up, Warden detects Glider. Forward a little bit.

18 A Okay. Here we go.

19 Q In this example Warden detects Glider and at that point it
15:08:47 20 disabled the user's access to the WoW server; is that correct?

21 A Yes. In this example you technically have a ban wave where
22 you see that in the future, but for this example I just
23 simplified that.

24 Q And you agree but for Glider's ability to circumvent
15:09:02 25 Warden, so in this instance where Glider can't circumvent

CROSS-EXAMINATION - JOSEPH CALANDRINO

15:09:07 1 Warden, a user cannot continue to load World of Warcraft code
2 into memory while connected during WoW game play?

3 A Yes, it will no longer do so in the underlying -- as a part
4 of the user's experience in the WoW gaming environment online.

15:09:24 5 Q You would agree that if Glider were able to bypass Warden,
6 that additional World of Warcraft code would be loaded into
7 RAM, into the user's RAM as they continue to progress in the
8 game after they bypass Warden?

9 A Yes. The user would continue to move around the world and
15:09:41 10 they would continue viewing items or, say, entering portions of
11 the world where different songs, say, might be heard, and the
12 server would pass information that would cause additional
13 elements to be loaded from the hard drive into the random
14 access memory.

15:10:00 15 Q I believe you testified that as part of your preparation to
16 render an opinion in this case that you played World of
17 Warcraft on the Blizzard servers; is that correct?

18 A Yes, that is correct.

19 Q I believe you said you sat beside Mr. Donnelly while he ran
15:10:15 20 the Glider program but you didn't actually play Glider?

21 A That is also correct.

22 Q Did you personally play WoW Glider in connection with the
23 model viewer?

24 A WoW Glider in connection with model viewer? I'm sorry, are
15:10:30 25 you asking whether I had Glider loaded at the same time as I

CROSS-EXAMINATION - JOSEPH CALANDRINO

15:10:33 1 had the model viewer loaded?

2 Q Yes.

3 A No, I've never done that before.

4 Q Did you sit beside Mr. Donnelly as he did that?

15:10:42 5 A I don't believe that I have. It's possible that he had
6 both of them open at the same time when I was sitting beside
7 him.

8 Q Glider doesn't have any utility or function in connection
9 with the WoW viewer to your knowledge, does it?

15:10:56 10 A Not to the best of my knowledge. There's no interaction
11 between Glider and any model viewers that are popularly
12 available or any that I know of to begin with.

13 Q Have you worked with model viewers?

14 A Yes. I've worked with three popular ones before.

15:11:14 15 Q So you've actually loaded World of Warcraft code into RAM
16 using a model viewer when not connected to the WoW servers?

17 A Yes, I have.

18 Q So you've been able to perceive the graphics, the
19 nonliteral elements, the graphics, the musical arrangements,
15:11:35 20 the text of World of Warcraft both in the World of Warcraft
21 server environment and you've tried to -- you've examined those
22 elements through a model viewer?

23 A Yes, that's correct.

24 Q And you'd agree that in this example if you're connected to
15:11:55 25 a WoW server, the code from the hard drive that generates the

CROSS-EXAMINATION - JOSEPH CALANDRINO

15:12:01 1 landscapes and the characters and the sound effects is loaded
2 into RAM so the user can perceive those graphical elements
3 while they're playing the game?

4 A Okay, so let me make sure I'm being totally clear in my
15:12:13 5 answer. Yes, so if you receive back information about what the
6 world looks like around you or what's nearby you, WoW will load
7 up elements from nonliteral elements so that you can actually
8 perceive them and interact with them in the game environment.

9 Q You would agree that when you disconnect from the WoW
15:12:32 10 server, and then you then attempt to load the code from the
11 hard drive that generates graphics and other nonliteral
12 elements, that you cannot replicate the same user experience
13 with that content that you can on the World of Warcraft
14 servers?

15:12:50 15 A No, it would not be precisely the same user experience.
16 You would be lacking other users and things along those lines.

17 MR. GENETSKI: Nothing further.

18 THE COURT: Any redirect, Mr. Venable?

19 MR. VENABLE: No, Your Honor.

15:13:02 20 THE COURT: Okay. Thank you, Mr. Calandrino.

21 THE WITNESS: Thank you.

22 THE COURT: Your next witness.

23 MR. VENABLE: Can I have another five minutes, Your
24 Honor, to set up the next --

15:13:11 25 THE COURT: I'll tell you what, we need to take a

CROSS-EXAMINATION - JOSEPH CALANDRINO

15:13:13 1 break for the court reporter's sake. Let's do this. Let's
2 take 15-minute break, we'll then come back and go until 5 and
3 conclude for the day.

4 MR. VENABLE: Five?

15:13:21 5 THE COURT: Yeah. We'll conclude at five. But if we
6 come back in 15 minutes we should be able to get a good hour
7 and a half in before we have to break for the day.

8 MR. VENABLE: Okay.

9 THE COURT: Okay. Thanks.

10 (Recess taken from 3:13 to 3:32.)

11 THE COURT: All right. Mr. Venable, your next
12 witness.

13 MR. VENABLE: Your Honor, I call Mr. Michael Donnelly.

14 THE COURT: All right. Would you come forward to be
15 sworn, Mr. Donnelly.

16 THE COURTROOM DEPUTY: Please state your name and
17 spell your last name for the record.

18 THE WITNESS: Michael Maclean Donnelly.

19 M-I-C-H-A-E-L. M-A-C-L-E-A-N. D-O-N-N-E-L-L-Y.

15:32:54 20 THE COURT: All right. Thanks.

21 MR. VENABLE: He's going to be there for --

22 THE COURT: That's fine.

23 Lisa, I see we've got yet another sound coming from
24 our system.

15:33:05 25 THE WITNESS: I have my PC plugged in it but only for

CROSS-EXAMINATION - JOSEPH CALANDRINO

15:33:09 1 the beginning.

2 THE COURT: Is that the PC picked up by the mike?

3 Okay, that's fine.

4 THE WITNESS: I'll unplug it as soon as we --

15:33:18 5 THE COURT: That's fine.

6 **MICHAEL DONNELLY,**

7 called as a witness herein, after having been first duly sworn
8 or affirmed, was examined and testified as follows:

9 D I R E C T E X A M I N A T I O N

15:33:18 10 BY MR. VENABLE:

11 Q Mr. Donnelly, would you state your full name for the
12 record.

13 A Michael Maclean Donnelly.

14 Q I'm going to ask a couple preliminary questions. I know
15:33:29 15 you have a presentation that we're going to show here. What is
16 your -- what is your occupation?

17 A I'm a developer and the president of MDY Industries.

18 Q Okay. And what is MDY Industries?

19 A Oh, I'm sorry, I thought you were going to finish the
15:33:49 20 question. MDY Industries is an LLC that sells a product known
21 as MMO Glider.

22 Q Let me ask you this: Did you form the LLC yourself?

23 A Yes, I filed it.

24 Q Do you recall when you did that?

15:34:01 25 A I believe it was around November of 2004.

DIRECT EXAMINATION - MICHAEL DONNELLY

15:34:07 1 Q Okay. And you ultimately, if I remember, you were telling
2 me that you were doing something at that time when you formed
3 MDY Industries; is that correct?

4 A Yes, I was doing contract for -- contract work on an hourly
15:34:26 5 basis, so I was working at different client sites or at home
6 doing Web development and database development.

7 Q Okay. You're familiar with a program Glider; is that
8 correct?

9 A Yes.

15:34:40 10 Q You're also familiar with the program World of Warcraft; is
11 that correct?

12 A Yes.

13 Q Okay. When did you first begin developing the program
14 Glider?

15:34:53 15 A The program Glider I didn't begin development until
16 probably May of 2005.

17 Q Okay. Had you been playing World of Warcraft prior to
18 that?

19 A Yes, I had.

15:35:06 20 Q When did you first start playing World of Warcraft?

21 A I think I started playing in December or January. So
22 either December 2004 or might have been January.

23 Q Is that after the time you formed your LLC?

24 A Yes.

15:35:20 25 Q And at the time you began playing World of Warcraft --

DIRECT EXAMINATION - MICHAEL DONNELLY

15:35:25 1 which I think you said in January of 2005?

2 A January or December of the previous year.

3 Q Okay. Did you enjoy playing the game?

4 A Oh, yes. It's a great game.

15:35:40 5 Q And let me ask you this: What happened between January of
6 2005 and May of 2005 when you first began developing the Glider
7 program?

8 A Are you talking about in World of Warcraft?

9 Q Yes.

15:35:56 10 A I began leveling a character with friends of mine that I
11 had met online. I played with several guys that I had met and
12 we formed a guild. I was a little behind the other players, so
13 I played with them as much as possible but the way the game is
14 designed, if your character is of a lower level than other
15:36:18 15 characters you can't group together. The instances and game
16 design requires all the participants be of the same level.

17 Q And is that a problem?

18 A Well, in my case it was because I couldn't play with my
19 friends.

15:36:31 20 Q Okay. And so you wanted to play with your friends and did
21 you do anything to try to fix that problem?

22 A Well, I really had not many options if I wanted to play
23 with my friends. I could play World of Warcraft more and sink
24 more time into it, which wasn't a viable option at that time.

15:36:52 25 I met a new girlfriend and she wasn't real keen on playing a

DIRECT EXAMINATION - MICHAEL DONNELLY

15:36:56 1 lot of Warcraft. So the other option that I considered was to
2 find a way to automate my character because at that point I had
3 already noticed that gaining levels was very repetitive.

4 Q Okay. And is that what -- so you -- is that what caused
15:37:13 5 you to want to create the Glider program?

6 A Yes. I created a program that you could call a predecessor
7 to Glider, to do that for myself.

8 Q Okay. And what exactly does Glider do?

9 A Glider automates playing World of Warcraft. You tell it an
15:37:34 10 area of the game you want to patrol and you give it some
11 information on your class and what options you want it to use
12 and then you start it and it plays on your behalf.

13 Q Okay. And did this help alleviate your problem with being
14 able to play with your friends in a guild?

15:37:55 15 A Yes. I caught up to them at level 60.

16 Q Did that make your girlfriend happier?

17 A Hopefully.

18 Q Okay. Now, I understand that you wanted to show us a
19 demonstration today. I'll come back to some of these other
15:38:10 20 questions related to Glider and World of Warcraft, but I
21 wanted, just so I can get you back up on the witness stand and
22 not have to have my back to the judge here, I'd like to just
23 sort of have you explain to me what you're going to show me
24 today.

15:38:28 25 A Okay. What I'm going to show are three different programs

DIRECT EXAMINATION - MICHAEL DONNELLY

15:38:31 1 that access the WoW data files to display the graphics and
2 sound on your screen without using WoW.

3 Q Okay. And the demonstration that you're going to show me,
4 does it basically mirror the demonstration that you prepared
15:38:50 5 that's part of I believe Exhibit Number 6, is it? Okay,
6 Exhibit Number 6.

7 A If that's the right exhibit number, yes. I have the same
8 script that I'll be following that is in those movies.

9 Q And Exhibit Number 6, is that something that you authored?

15:39:08 10 A Yes.

11 Q So you're obviously familiar with its content?

12 A Yes.

13 Q And the presentation that you're going to give is just
14 going to follow along with what Exhibit 6 is?

15:39:19 15 A Yeah, I'll do my best to follow the script exactly.

16 MR. VENABLE: Your Honor, I'd like to move to have
17 Exhibit 6 admitted into evidence.

18 THE COURT: Any objection?

19 MR. GENETSKI: Provided it's the same content, no. No
15:39:30 20 objection, Your Honor.

21 THE COURT: Exhibit 6 will be admitted.

22 (Exhibit 6 admitted.)

23 BY MR. VENABLE:

24 Q Okay. Are you prepared to start the demonstration at this
15:39:37 25 point?

DIRECT EXAMINATION - MICHAEL DONNELLY

15:39:38 1 A Yes, I am.

2 Q So I believe the first tool that you'll be starting with is

3 a tool called MPQ Editor. What does this tool do?

4 A MPQ Editor is a tool that allows you to read the WoW data

15:39:55 5 files that contain graphics, sound, music, animations and

6 extract their contents into your RAM or to another file on your

7 hard disk.

8 Q Okay. And before we get too far along, can you describe

9 what these data files are? Are they sent down from the server?

10 A No. These are the data files that are installed when you

11 install the game from the CDs.

12 Q Are the contents of the WoW data files encrypted?

13 A No, they're not encrypted.

14 Q Is there any copy protection on the data files?

15:40:34 15 A No. The data files are regular Windows files that can be

16 copied with a single click of the mouse.

17 Q If you were running this software in World of Warcraft, and

18 I'm sure you heard earlier today about Warden and scan.dll, if

19 Warden and scan.dll were running in the background would they

15:40:56 20 prevent you from copying anything from the hard drive to the

21 RAM in any way?

22 A No.

23 Q Okay. So -- I'm sorry, did I ask you how MPQ Editor works?

24 A I don't think you did.

15:41:11 25 Q Okay. How does MPQ Editor work?

DIRECT EXAMINATION - MICHAEL DONNELLY

15:41:14 1 A It works by opening the WoW data file and examining its
2 contents. The author of MPQ Editor knows the file format that
3 MPQ Editor uses. So it opens the files and then copies the
4 list of files within the WoW data file into RAM.

15:41:30 5 Q Who makes MPQ Editor?

6 A I believe MPQ editor is open source, meaning it's a
7 collaboration from any number of developers.

8 Q Okay. Feel free to begin your demonstration.

9 A Okay. I'm going to go ahead and open up MPQ Editor on the
15:41:51 10 demo PC here. When MPQ Editor starts I have to select which of
11 the WoW data files I want to browse. So in this case I'm going
12 to go ahead and open patch.mpq. It's in the Recent Files list
13 right here.

14 Q I'm sorry, before you go forward, just so that I'm clear.
15:42:10 15 These files that you're going to be looking at are the --
16 they're all the files that are present on the World of Warcraft
17 game CDs, correct?

18 A These files get installed by the CDs, correct.

19 Q Okay. So this is a list of all the files that would
15:42:31 20 normally be on a hard drive that had World of Warcraft
21 previously installed on it, correct?

22 A Yes. There are multiple MPQ data files but I picked one.

23 Q Okay. Very good. Continue.

24 A So once MPQ Editor opens you can see the contents of this
15:42:53 25 data file. It is arranged in folders. That is how Blizzard

DIRECT EXAMINATION - MICHAEL DONNELLY

15:42:57 1 chooses to arrange it. It makes sense. What I'm going to go
2 ahead and do is scroll down to the sound folder and open it up.
3 And as you can see there are subfolders for the different
4 sounds. So I'll also go ahead and open up the creature folder.

15:43:15 5 I'm going to scroll down through this list of creatures to
6 Illidan, who seemed to be featured prominently in earlier
7 testimony today.

8 When I select Illidan, MPQ Editor extracts a list of
9 the files associated with Illidan and shows them on my screen.

15:43:35 10 As a test sound I will select Illidan's transform clip. This
11 is normally only played during the game in the process of
12 battling Illidan, which we saw earlier today. This requires a
13 25-man raid group inside the game to experience, but I can
14 simply open MPQ Editor here in this case, double-click and it
15 will play (grunting sound). I'll go ahead and play one more
16 of Illidan's sounds (grunting sound).

17 MR. VENABLE: Did the court reporter get that?

18 THE COURT REPORTER: I wrote "grunting."

19 THE WITNESS: When I double-click that file in MPQ
15:44:37 20 Editor, what it does is it extracts the file out of the WoW
21 data file and saves it to disk. And then it launches Windows
22 Media Player to play the file, which of course involves copying
23 the contents into RAM so that it be can heard through the
24 speaker.

25

DIRECT EXAMINATION - MICHAEL DONNELLY

15:44:49 1 BY MR. VENABLE:

2 Q Is this the same process that would normally happen if the
3 WoW.exe file was looking to load that file into RAM?

4 A Yes.

15:44:56 5 Q Okay. And it also would make the same sound; is that
6 correct?

7 A Yes.

8 Q Okay. Does Warden or scan.dll limit the files you can
9 extract with the MPQ Editor?

15:45:10 10 A No, it does not.

11 Q So does the MPQ Editor use Blizzard's code to open the
12 files?

13 A No. It contains its own code to open the files. It's
14 similar to how you might use Microsoft Word to open a .pdf or
15:45:24 15 you can use Adobe Acrobat to open a .pdf. You have two

16 different programs capable of reading from the same file.

17 Q So could Warden be updated to detect MPQ Editor and ban
18 people who use it?

19 A Yes, you could update Warden to ban people that use MPQ
15:45:43 20 Editor but it wouldn't stop MPQ Editor from working. It would
21 still have access to the data, it would just terminate your WoW
22 account.

23 Q Do you need to have a WoW account to use MPQ Editor at all?

24 A No. All you need is a copy of the data files.

15:46:00 25 Q Okay. And can you use that MPQ Editor to see the graphics

DIRECT EXAMINATION - MICHAEL DONNELLY

15:46:03 1 in the game?

2 A No, that's a different tool.

3 Q If I wanted to see some of the graphics in the game, what
4 would I use?

15:46:13 5 A The other tool that I'll be demonstrating to see the
6 graphics in the game is called WoW Model Viewer. WoW Model
7 Viewer is similar to MPQ Editor in that it reads WoW data files
8 but it also possesses intelligence to display the models. When
9 I say model, what I mean is 3D graphical appearance of

15:46:36 10 something, whether that's a tree or a dragon. So the model
11 viewer can be used to view these images -- view these models,
12 I'm sorry, and even transform them into other types of files,
13 such as movie clips and animated .gifs.

14 Q Okay. Can you give me a demonstration of it?

15:46:58 15 A So I'm going to go ahead and open the model viewer. When
16 model viewer starts, it shows a list of all the models found in
17 the WoW data files.

18 So similar to the previous demonstration, I'll open
19 the Creature folder, and you can see the list of all the
15:47:15 20 creatures that have models. And I'll scroll down to, you
21 guessed it, Illidan. So when I click on Illidan, the WoW
22 Model Viewer copies the texture data, animation data, quite a
23 bit of data into RAM in order to render it on the screen. So
24 I can actually see Illidan as he would appear in the game. I
15:47:41 25 can even move around a virtual camera to see him from

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15:47:46 1 different angles.

2 Now, like every other creature in the game, Illidan
3 can do a lot of different things. So in this demonstration
4 I'll go to the animation box and I will select "run." And
15:48:03 5 Illidan runs. All of the scripting and the animation for this
6 run is already contained in the WoW data files. It does not
7 come down from the server. The model viewer simply reads the
8 data and draws the animation as present in the data files.

9 Q Let me just ask you a brief question about this now. If
15:48:23 10 you are -- if this were actually someone playing World of
11 Warcraft using the WoW.exe file to load these elements into
12 RAM, presumably the command "run" would be issued as a result
13 of you holding your arrow key down in a direction -- holding it
14 down instead of just going one click at a time; is that
15:48:53 15 correct?

16 A For a player, yes. In this case this is Illidan running,
17 so he might run at you if you approached him. The player
18 doesn't control Illidan. But if it was, say, a human or an
19 elf, then, yes, the player would simply hold the key down to
15:49:14 20 run.

21 Q Okay. So in other words, the holding of the key down is
22 what tells the server on Blizzard's side to issue the commands
23 to come back down to the WoW.exe file to load the run command
24 into RAM from the hard drive, correct?

15:49:29 25 A I believe so. The client may do it on its own but nothing

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15:49:32 1 is going to happen until you push that key.

2 Q So it is dependent upon what the user does, correct?

3 A Yes.

4 Q So you wouldn't see that on the screen showing Illidan
15:49:41 5 running if this is your character, let's say, unless the user
6 actually hit the key, right?

7 A Correct. If I was Illidan I wouldn't see that until I
8 started running.

9 Q But if you got close to Illidan and let's say this is a
15:49:53 10 Blizzard character, if he got close to you, if he started
11 running, that would still -- you wouldn't see that on the
12 screen unless the player who's playing World of Warcraft
13 himself got close enough to Illidan, right?

14 A Right. I would have to trigger that action. If I sat in
15:50:10 15 town I would never, ever see this.

16 Q Okay. Is there any other character that you would like to
17 show?

18 A Well, let me finish my demo.

19 Q I'm sorry.

15:50:24 20 A I don't want to go off the script of the exhibit. For the
21 final experience for Illidan what I wanted to show was his
22 death animation, which we saw earlier inside the game. Most
23 people don't see this because Illidan is very difficult to
24 kill. But I can simply load a model viewer and make his death
15:50:41 25 animation go.

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15:50:43 1 Q Is that death animation that we're seeing on the screen
2 here the same death animation that appeared in the earlier
3 demonstration using World of Warcraft?

4 A Yes. It's the same animation.

15:50:54 5 Q Okay.

6 A Now, in addition to models of 3D characters, the model
7 viewer can also show environments and screen backgrounds. So
8 for my last demonstration with model viewer -- I'm sorry
9 there's one more. For my next demonstration with model viewer

15:51:13 10 I will go to the Environments folder and open it up, and it
11 contains a folder named Stars. Inside this folder is all the
12 different backgrounds that are rendered during the game. When
13 I say "background," I mean the sky.

14 So I'll go ahead and click the Nether Storm Sky box,
15 and now I can see what the sky looks like in Nether Storm,
16 which is a zone in the game. So a model viewer can read all
17 this data out and render the background exactly like a player
18 would see it.

19 Q So this would be the same background if you were in that
15:51:48 20 location that you would see if you were playing World of
21 Warcraft?

22 A Correct. Here in Nether Storm you would see this
23 background.

24 Q As you're moving -- as you're moving your arrow keys there,
15:52:01 25 I assume this would be the same thing -- if you made the same

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15:52:04 1 movements with your arrow keys on your computer here using
2 model -- this is modeling, right, you would see the same screen
3 in terms of the Nether -- I'm sorry, what was it?

4 A The Nether Storm.

15:52:19 5 Q -- the Nether Storm as you would in World of Warcraft,
6 correct?

7 A Correct. All I'm doing here is moving the camera around by
8 holding the mouse button and moving the mouse, and the same
9 thing occurs inside WoW. If you hold the mouse button and move
10 the mouse, the viewpoint changes just like this.

11 Q In other words, you use the same key strokes in one
12 program, being the model viewer, and doing the same key strokes
13 in World of Warcraft and the same thing would happen on the
14 screen; is that correct?

15:52:46 15 A Yes. The model viewer developers chose that for
16 familiarity, I'm sure.

17 Q Is there anything else you want to show in this
18 demonstration?

19 A I do have one more thing in the model viewer.

15:52:58 20 Q Okay.

21 A I wanted to show a playable character. So far we've only
22 seen monsters and backgrounds. So to show a playable character
23 I'll select the Character folder, which contains a list of all
24 the different playable races. We saw earlier from the video
15:53:14 25 where the player creates a new character and he can select from

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15:53:19 1 a gnome or night elf.

2 These are the options you have. So I'll go ahead and
3 select night elf. And I'll click on night elf male.

4 Now, when a player creates night elf character, he
15:53:37 5 can choose from a lot of different hair styles, color, skins.
6 You can customize your character in many different ways.
7 World of Warcraft provides you with probably eight or ten
8 options per feature. So I can have any type of hair I want.
9 I can change my skin color. There's limitations, but of
10 course the choice is mine.

11 Similar to Illidan, the night elf character has a
12 bunch of different animations he can do. He can dance. He
13 can run.

14 Q So that would be the Michael Jackson night elf dance?

15:54:27 15 A Yeah. Hopefully he's not filing anything in response to
16 this. And of course they can run. He can sneak around and do
17 a lot of different animations.

18 Now, in the case of a playable race -- let me stop
19 him. He's going a little too fast. You can equip the
15:54:47 20 character with different items. So I can choose any armor or
21 any weapons that I want him to have. Normally in the game you
22 would have to craft or loot or buy or otherwise acquire these
23 items. With model viewer I can simply select anything I want
24 and equip it wherever I want.

15:55:14 25 So in this demo I will click the right hand, I'll

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15:55:19 1 give him a one-handed sword, which of course draws from
2 Illidan. As you can see, model viewer has rendered my night
3 elf with this one-handed sword. So I'll go ahead and give him
4 a few more pieces of armor so he doesn't get cold.

15:56:04 5 And now that he's actually equipped, we'll go ahead
6 and change his animation to something more fitting the cool
7 weapon he's got. So now my night elf is swinging his sword.

8 Q So just so that I'm clear again, these animations, these
9 characteristics that you've given your night elf, these are all
10 things that you can do in World of Warcraft; is that correct?

11 A Yes. It might be harder for me to obtain some of these
12 items, but in theory I could get them all to do the same thing.

13 Q So in order to put these animations and things on the
14 screen, the model viewer is just loading those files, those
15 graphics and animations files that are sitting on your hard
16 drive right there on your computer into your computer's RAM; is
17 that correct?

18 A Yes. It has to load the textures and animation data into
19 memory so that it can be rendered.

15:57:01 20 Q And that is done in the same way that WorldofWarcraft.exe
21 would do it as well, correct?

22 A Yes. It just makes a request of the operating system and
23 the operating system does the physical copying.

24 Q And that's what Mr. Calandrino showed earlier, correct?

15:57:18 25 A Yes.

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15:57:19 1 Q Do Warden or scan.dll limit what model viewer can do?

2 A No, they don't.

3 Q Does model viewer use Blizzard's code to copy the files
4 from the hard drive to RAM?

15:57:29 5 A No, it's similar to MPQ Editor, it's coded by folks other
6 than Blizzard.

7 Q Okay. Now, I can see what these characters and the
8 monsters look like and I can hear them, but what if I wanted to
9 see what the world itself looks like?

15:57:44 10 A I skipped a step in my demo.

11 Q I'm sorry.

12 A I skipped a step on the demo. I wanted to show one more
13 thing before we go to map viewer. The last thing I wanted to
14 show with model viewer is simply I can transform this animation
15 into anything I want. So I can select to save the animation as

16 an animated .gif. In this demo I'll save it into a folder and
17 I'll call it nightelf.gif.

18 Q So what are you doing right now?

19 A I'm instructing Model Viewer to make a copy of this
15:58:22 20 animation that I can play without the game. So Model Viewer
21 saved it. I'm going to go ahead and close the model viewer now
22 and open the animation that I just created.

23 It's not as good, but you'll notice that the
24 animation has -- is opened in Internet Explorer. So the
15:58:38 25 animation of the night elf swinging that sword is now a

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15:58:42 1 stand-alone file that can be shipped over e-mail or deployed
2 on the Internet.

3 Q Let me ask you a question. Are you aware if Blizzard
4 during World of Warcraft, does it ever save these animations on
15:58:54 5 the hard drive anywhere in an animated .gif form?

6 A No, the game client never does that.

7 Q So these animations that appear on the screen during World
8 of Warcraft, they are not -- they're not put on the hard drive
9 anywhere?

15:59:08 10 A No. They just render on the screen and when you go
11 somewhere else they're gone.

12 Q Okay.

13 Okay, now, back to the script. What if I want to see
14 what the worlds look like?

15:59:24 15 A Okay. The last tool I'll demonstrate is called WoW Map
16 Viewer, which is another open-source tool that reads the WoW
17 data files. Unlike model editor and MPQ Editor, map viewer
18 shows the terrain that's inside World of Warcraft.

19 Q Would you go ahead and show that?

15:59:44 20 A Sure. Now, once I start map viewer it reads all of the
21 maps out of the WoW data files and shows their names on the
22 screen. So to view a map I can simply click it. And when I
23 do, map viewer renders a very simple top-down view of the
24 world.

16:00:04 25 So I can click anywhere on this map to begin. In

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16:00:06 1 this demo I'll click somewhere near Stranglethorn Vale. Now,
2 as can you see, map viewer has rendered the terrain where I
3 clicked, but I can fly around in this area as I see fit.
4 Similar to the game client, as I'm moving around, the map
16:00:40 5 viewer is fetching more information from the hard disk. So
6 you can see those pauses.

7 As I approach something not in memory, the map viewer
8 loads it from the hard disk to RAM. So for example this
9 windmill that I'm approaching wasn't in memory when I
16:00:58 10 originally entered the area. But after I approached it, the
11 map viewer pulled it into memory because it knew I was going
12 to be close enough to see it.

13 Q Is that much in the same way that would happen if you were
14 near a character that Blizzard had created?

16:01:14 15 A Correct. If I was playing WoW and I approached another
16 player.

17 Q I notice that there was a bird that flew by a couple
18 seconds -- there we go. I just saw it. Is that one of those
19 characters that we're talking about that's made by Blizzard?

16:01:30 20 A No. That's just part of the client data file. I don't
21 know if that even exists on the server.

22 Q Okay. But if you move your screen away from where you're
23 looking right now, would you still be able to see that bird?

24 A No, of course not. If I go somewhere else, like looking
16:01:51 25 down straight at the ground, I'm not going to see that bird.

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16:01:56 1 Q Okay. Anything else you want to say about this?
2 A No. I think this is fine for a map viewer. I'll leave it
3 at this.
4 Q Do Warden or scan.dll limit what map viewer can do if you
16:02:11 5 were to use this during a World of Warcraft game?
6 A No. Warden and scan don't look for this tool. They don't
7 care about it.
8 Q Okay. But could it -- does it have any limiting effect on
9 what you can see on the screen using it?
16:02:27 10 A No.
11 Q Okay. And has Blizzard ever attempted to prevent the use
12 of model viewer, map viewer, or MPQ Editor?
13 A Not that I know of. At least for looking at the data and
14 copying the data. I know you can use MPQ Editor to cheat by
16:02:44 15 altering the data files. They do look for that. But they
16 never go after people just viewing the data.
17 Q Anything else you want to show?
18 A No, I think I'm good.
19 Q Okay.
16:02:54 20 MR. VENABLE: Your Honor, at this point Mr. Donnelly
21 can move to the witness stand.
22 THE COURT: All right, that's fine.
23 BY MR. VENABLE:
24 Q Thank you for that presentation, Mr. Donnelly.
16:03:33 25 I want to shift gears a little bit and talk a little

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16:03:36 1 bit about what we started talking about, which was your
2 personal involvement and a little background about MDY.

3 How did you get your start in software?

4 A I started -- I started a small company. I Started a small
16:03:57 5 company out of high school writing add-ons for a bulletin board
6 software.

7 Q So you've been writing add-on software for several years;
8 is that correct?

9 A Yes, that's correct.

16:04:09 10 Q And can you tell me like what type of programs you've been
11 using add-on software for?

12 A Well, my first company was Anti-Velocity Software. It was
13 started in 1993. And we wrote add-on software for a bulletin
14 board, which was games, utilities, other things that would
16:04:29 15 alter the functionality of the bulletin board software. And
16 then we sold that software to people that owned the bulletin
17 board.

18 Q So I'm clear, just explain what an add-on is for the Court.

19 A Sure. An add-on, at least my understanding of an add-on,
16:04:45 20 is a piece of software that inter-operates with another piece
21 of software to control it or alter it or otherwise manipulate
22 it.

23 Q Okay. And what were you doing just before you formed MDY
24 Industries as we talked about earlier?

16:05:04 25 A I was doing contract work for hire.

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16:05:09 1 Q What was the specific reason why you formed MDY Industries?

2 A Well, I had left my previous full-time job to begin
3 contracting, and it's hard to directly bill another company as
4 an individual, so for -- it helps for credibility, it also
16:05:22 5 helps to separate your finances. I can keep all my company
6 stuff separate. So I formed MDY Industries as an entity so I
7 could bill my customers.

8 Q Okay. And this again was about what time?

9 A It was late 2004. I think I filed in November. It may
16:05:41 10 have been October. May have been December. If you show me the
11 Articles of Incorporation I can tell you for sure.

12 Q Okay. I remember you mentioned earlier that you had said
13 you started working on Glider around I think it was May of
14 2005?

16:05:59 15 A Yeah, that sounds about right.

16 Q So this was about how many months after you formed MDY
17 Industries?

18 A Yeah, six or seven.

19 Q Okay. And did you ever form MDY Industries for the
16:06:13 20 specific purpose of creating Glider?

21 A No.

22 Q Okay. So you mentioned that you had developed -- could you
23 tell me a little bit about the development of Glider?

24 A Sure. I developed the predecessor to Glider for my own
16:06:31 25 use, as I said a few moments ago. And after I used Glider or

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16:06:38 1 the prototype of Glider, I caught up to my friends in the game
2 and one of them suggested that I sell it. Which I originally
3 had not planned to do. I wasn't sure there would be any
4 demand. Obviously I was very wrong about that. I didn't think
16:06:53 5 there would be demand for the software. One of my friends that
6 I play online with convinced me to sell it. So I took a few
7 weeks to polish it and turn it from a prototype into what was
8 hopefully commercial-grade software or something that could
9 pass as good software.

16:07:12 10 Q Now, when you first started thinking about creating this
11 Glider program, did you ever -- did it ever occur to you that
12 the use of this Glider program might be a problem with using it
13 to play World of Warcraft?

14 A No. I certainly never expected I'd wind up being sued or
16:07:34 15 testifying over it.

16 Q Okay. So at the time you created it in the beginning, what
17 did you think it was just going to do for you?

18 A Well, when I created it for my own use I figured I would
19 just use it and once I reached level 60, throw it away.

16:07:52 20 Obviously once I started selling it I had to determine if it
21 would turn into a successful product or not.

22 Q So the purpose -- the reason why you wanted to make Glider,
23 if I understand you right, was to help you level your character
24 up to 60, correct?

16:08:05 25 A That's correct. I had looked at the other -- to see if

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16:08:07 1 there was any tool on the market that could help me do what I
2 wanted to do and there wasn't. So I made Glider.

3 Q Okay. Was there ever any other intent that you used to
4 create -- ever -- I'm sorry. Was there ever any other intent
16:08:21 5 that you had other than trying to level your character to 60 as
6 the purpose for creating Glider?

7 A No. I didn't even attempt to sell it when I created it.

8 Q Okay. So you talked about you started thinking about
9 selling it. How did you come to sell Glider?

16:08:36 10 A Once I decided to sell it and I had done the work to make
11 it sellable, I went ahead and registered WoWGlider.com. That
12 was the name I chose. I set up a PayPal account for MDY
13 Industries so I could collect payment. Then I put Glider up on
14 the website so that you could download a demonstration copy and
16:09:00 15 if you paid \$15 you would get a key that enabled full
16 functionality.

17 Q Okay. And just so that I'm clear, because I think -- I
18 think I kind of asked the question last time, I don't think I
19 asked it in full. When you began looking to sell the program,
16:09:23 20 did you ever think that the sale of your software would be
21 considered a copyright infringement?

22 A No. It seemed as likely as turning me into an arsonist. I
23 created the code for Glider myself. I didn't copy anyone's
24 code, and Glider doesn't copy anything. It's an auto pilot.

16:09:46 25 So I mean to me I don't -- copyright infringement doesn't make

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16:09:50 1 any sense.

2 Q Did you ever think that it would be a violation of the
3 DMCA?

4 A No. I didn't think it would be a violation of the DMCA
16:09:58 5 because you still have to pay to play Warcraft.

6 Q Had you ever heard of DMCA at that point?

7 A I heard of it because I knew of the BnetD case. I remember
8 reading about that. That these guys had software that would
9 let you play Warcraft -- not World of Warcraft, a different
16:10:19 10 game, the actual original Warcraft -- without paying for it.

11 Q Did you ever think that somehow by selling the program that
12 you would be tortiously interfering with anyone's contractual
13 relationship?

14 A I didn't even know what that meant until you told me.

16:10:33 15 Q Okay. Well, don't listen to me next time.

16 At the point that you were considering selling Glider,
17 did you do anything to confirm your belief that selling Glider
18 that it would, you know, cause you any problems? Did you -- I
19 don't believe I'm asking the question right.

16:10:59 20 A I'm not sure I understand. I certainly had never even
21 dreamt that there would be a legal issue with Glider.

22 Q Did you have an opportunity to read the end user license
23 agreement or terms of use that World of Warcraft shows you when
24 you play the game?

16:11:15 25 A Yeah, I read through the EULA a couple times. It is a

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16:11:20 1 little hard to understand but there's nothing in the EULA that
2 said you can't run software that controls your character. It's
3 not a hack or a cheat or anything that modifies the game. The
4 other thing I looked at is the client server manipulation
16:11:35 5 policy, which is, at least for me, a lot easier to understand.
6 It's a Web page on Blizzard's site that I reference in my FAQ,
7 and they list out what is --

8 Q Back up just a bit. When you say FAQ, what is that?

9 A Oh, I'm sorry. The FAQ is a frequently asked questions.
16:11:52 10 It's a page on the Glider website.

11 So I looked at the client server manipulation policy
12 and everything that's said in there didn't sound like anything
13 that Glider would be in violation of.

14 Q So now you said you started selling your software. How did
16:12:10 15 that go?

16 A It sold very slowly at first. So my initial intent was to
17 at least sell it on the side and maybe make enough for a
18 mortgage payment or a car payment.

19 Q Okay. So this, I assume, is in the timeframe of the summer
16:12:28 20 of 2005?

21 A Yeah. This would be like June or July.

22 Q Okay. So you were selling your Glider software and then
23 did anything happen that was out of the ordinary with your
24 sales of your Glider software?

16:12:45 25 A Well, the sales picked up quite a bit as time went by. I

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16:12:50 1 think by the end of September I was nearing a thousand copies
2 sold. Which is decent software.

3 Q Let me ask you one thing so we're clear here. At this
4 particular time, after you first started selling the Glider
16:13:07 5 software, did Glider have any software embedded within it that
6 would be used to avoid the detection of any software to detect
7 its presence, let's say?

8 A No. Definitely not. Glider has grown quite a bit. The
9 original version of Glider up to September of 2005 did not
16:13:31 10 feature any software to evade Warden or anything. I didn't
11 even really know Warden existed.

12 Q Did you know scan.dll existed?

13 A No.

14 Q Okay. So, again, just so I'm clear, there's nothing -- it
16:13:46 15 was just a program that was being run as an add-on to World of
16 Warcraft; is that correct?

17 A That's correct.

18 Q And it had nothing in there that could prevent it from
19 being detected?

16:13:59 20 A Right. There were no software countermeasures to avoid
21 being hashed or picked up by Warden.

22 Q Speaking of being picked up by Warden, are you aware of
23 when -- if Warden did anything to detect Glider at some point?

24 A Yeah. I found out in September Warden was updated to
16:14:23 25 detect Glider. It looked for the title of a window so that if

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16:14:28 1 you were running software on your PC and it had a window
2 containing the word "Glider," I believe, maybe WoWGlider, as
3 the title, then your account was flagged and eventually you
4 were banned.

16:14:42 5 Q How did you know this?

6 A Well, at the time I was not reversing Warden. I actually
7 picked that up from reading other message boards. I was
8 reading a WoW Sharp message board, which is a competitor to
9 Glider at the time, and some of the people there, who I now
16:14:58 10 understand are Greg Hoglund and company, were analyzing Warden.
11 And they said Warden appears to be looking for a window title
12 named Glider and -- among other things. I believe they were
13 banned as well.

14 Q And just briefly you mentioned in that last answer that you
16:15:17 15 were reversing Warden. Or is that what you said?

16 A I was not at the time. I was not yet reversing Warden.
17 Correct.

18 Q Okay. Okay. So how -- I'll get back to that in a second.
19 Can you explain how Blizzard was able to actually ban the
16:15:36 20 Glider users? You mentioned something related to this, I
21 think, detecting the name.

22 A Yeah. Well, the Warden software would look for a window
23 title of a certain name and if it found that title it would
24 send a message back up to the WoW server. I don't know if
16:15:53 25 there was a ban wave as has been described earlier or if the

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16:16:00 1 accounts were instantly terminated in that situation but I know
2 the flag went up from Warden and eventually the accounts were
3 terminated.

4 Q Do you know when this was? When this first happened?

16:16:12 5 A I believe it was late in September. I would guess sometime
6 between like September 20th and end of month of 2005.

7 Q 2005. Okay. And in order to have detected Glider, how
8 would Blizzard have known that you were there with the Glider
9 program?

16:16:31 10 A Well, all they would have to do is buy a copy of Glider for
11 \$15 or maybe even use the demo version and then just examine it
12 to determine what to look for. In this case they, I assume,
13 examined Glider and noted the title of the window so they could
14 take that title and put it in Warden and detect Glider users.

16:16:53 15 Q So in order to ban your customers, which I think that's
16 what you said --

17 A Yes.

18 Q -- developed as a result of their detection of Glider the
19 first time, they had -- I assume they had to know about Glider,
16:17:06 20 correct?

21 A Yes. I think they had a copy of Glider. I don't think it
22 would have been possible to do it without downloading it at the
23 very least.

24 Q Okay. At the time that they first banned some of your
16:17:19 25 customers, did Blizzard ever tell you Glider infringed their

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16:17:22 1 copyrights, infringed its copyrights?
2 A No. Blizzard didn't communicate with me at all.
3 Q Did they ever say that you had violated the DMCA to you?
4 A No. I received nothing from Blizzard.
16:17:33 5 Q Did they ever send a letter saying that you had tortiously
6 interfered with any of their contracts?
7 A No, they did not.
8 Q Did they send you a cease and desist letter?
9 A No.
16:17:45 10 Q Phone call?
11 A No.
12 Q E-mail?
13 A No.
14 Q Show up at your house?
16:17:49 15 A Later.
16 Q Okay. So after the first ban -- after they started banning
17 some of your customers, did you then think that selling Glider
18 was unlawful?
19 A No. I have never thought that selling Glider was unlawful.
16:18:10 20 I started to get an inkling that Blizzard did not like Glider.
21 But I didn't think Glider was unlawful by any means.
22 Q So what did you do after the first ban?
23 A I decided to continue the Glider business by changing
24 Glider to evade Warden.
16:18:28 25 Q Okay. And why did you do that?

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16:18:32 1 A I didn't think -- I didn't think Blizzard could tell me to
2 shut my business down. I believe that I had a right to sell
3 that software. They certainly have the right to attempt to
4 detect it. And so I would change Glider to avoid the detection
16:18:52 5 and continue the business.

6 Q Okay. So would you classify this as a reactionary measure
7 to protect your business?

8 A Oh, absolutely.

9 Q Okay. So what happened next after you changed the software
16:19:10 10 to avoid detection?

11 A After I changed Glider to use a different window title and
12 evade the detection, nothing really happened for probably eight
13 months. Nothing happened until August of 2006. So I continued
14 to sell Glider. There were no changes made to detect Glider so
16:19:36 15 no countermeasures were deployed or anything happened, it just
16 continued to sell and run fine until August of 2006.

17 Q Okay. So you never heard anything from Blizzard with
18 regard to your sales of Glider?

19 A No. I never heard anything.

16:19:54 20 Q They didn't object to it?

21 A They didn't seem to object to it. I mean --

22 Q Let me -- strike that last question.

23 I would assume that there was still -- were they still
24 banning some of your customers?

16:20:09 25 A Yes. They will occasionally ban a customer if they believe

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16:20:15 1 the player is a bot, without necessarily software detection. A
2 player may report another player, you know, from monitoring as
3 we discussed. The player may be stuck on a tree or trying to
4 get up a cliff, exhibiting bot-like behavior. And then in that
16:20:32 5 case the player sometimes is banned. So during that time,
6 occasional Glider customers were being banned but not as a
7 result of software detection. And nothing else was happening.
8 Warden wasn't doing anything, to the best of my ability. I
9 wasn't very good at analyzing Warden at the time. And I
16:20:51 10 certainly didn't get any contact from Blizzard.

11 Q So there were no communications from Blizzard telling you
12 explicitly that they objected to you selling Warden -- or
13 selling Glider?

14 A No, there was no communication from Blizzard at all. I
16:21:05 15 mean, I knew about -- I know they like to sue people, you know,
16 but they hadn't done anything with me.

17 Q Okay. So you -- you were aware, though, that they were
18 banning your customers?

19 A That's right. Yes. They were occasionally banning Glider
16:21:23 20 customers.

21 Q Did that make you think that this -- that this may have
22 been considered something that Blizzard did not want you to do?

23 A Oh, yeah. Absolutely. I understood that Blizzard did not
24 want Glider to be around for sure.

16:21:41 25 Q But did that ever give you the feeling that because

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16:21:45 1 Blizzard didn't like what you were doing that there was some
2 basis for them to be able to stop you legally from selling your
3 software?

4 A No, I didn't think it was illegal. In fact, it seemed at
16:21:58 5 the time, obviously I was very wrong, that there was kind of a
6 status quo where Glider would run and they would occasionally
7 ban Glider customers and nothing else happened. Because
8 nothing else did happen for almost a year.

9 Q Okay. So in other words -- let me just back up. What did
16:22:15 10 you perceive to be the significance of Blizzard's silence?

11 A Well, I assumed if they objected to Glider more they would
12 either update Warden or contact me and tell me to stop selling
13 Glider or threaten me or even send to my host a DMCA takedown.
14 The Glider servers are hosted in Texas so they could be DMCA'd
16:22:41 15 very easily.

16 Q So did it make you think that the sale, these sales of
17 Glider were harming them?

18 A No, I didn't think they were being harmed at all. I didn't
19 think that even they thought they were being harmed that much
16:22:55 20 because there was no update to Warden and nobody was telling me
21 to do anything.

22 Q So what would you have done if you had sent -- if they had
23 sent you a letter complaining about infringement that was being
24 caused by Glider?

16:23:09 25 A Well, I'm sure I would have retained a lawyer. I would

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16:23:13 1 have read the letter and seen if it made sense and, you know,
2 if I was -- if I thought I was infringing Blizzard's copyright
3 I would have of course stopped.

4 Q So would you have taken the letter or the -- would you have
16:23:28 5 taken the letter seriously?
6 A Oh, absolutely.

7 MR. GENETSKI: Objection. Calls for speculation.
8 THE COURT: Overruled.

9 BY MR. VENABLE:

16:23:42 10 Q Would you have contacted a lawyer -- I'm sorry. Did you
11 say that you would contact a lawyer?
12 A Yeah, I would have contacted a lawyer.

13 Q Isn't it a little convenient to say that now, as
14 Mr. Genetski just raised his speculation objection?
16:23:58 15 A Yeah. I never could have known, I never would have guessed
16 that somehow selling Glider that automates a video game is a
17 copyright infringement when there is no copying going on.

18 Q Did you ever receive a cease and desist letter from
19 Blizzard?
16:24:16 20 A Yes, eventually I did receive a cease and desist letter
21 from Blizzard.

22 Q What was the nature of that cease and desist letter?
23 A That was in August of 2005. I got a letter from Blizzard
24 saying that I had files on my Web server that contained their
16:24:31 25 intellectual property. It listed five files. Four of the

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16:24:34 1 files were screen shots that I had. So as part of selling
2 Glider I took a screen shot from the game. Such as a character
3 fishing or on a horse. And I had four of those screen shots on
4 the Glider home page. The fifth file was Launchpad. Which is
16:24:50 5 a component of Glider.

6 So what I did in response to that was -- I mean I
7 believed the screen shots were fair use, but I'm not a lawyer,
8 so I took the screen shots down and -- because I didn't want
9 to mess with that. And then I replied to the e-mail and I
16:25:07 10 said, okay, I complied, I took the screen shots down, but I
11 don't know what of Blizzard's intellectual property is inside
12 Launchpad because I made it, so please let me know.

13 Q Did you ever hear back from Blizzard?

14 A No, I did not.

16:25:24 15 Q So this letter, was there ever any mention of Glider?

16 A There was a reference of a component of Glider, but it
17 was -- it was a form letter and then it contained the five URLs
18 for the files that they said they objected to. But there was
19 no -- it looked like a boilerplate letter to me.

16:25:40 20 Q Was there ever any allegation that you were infringing of
21 copyrights?

22 A Other than -- not that I can imagine, no.

23 Q Mention that you were violating the DMCA?

24 A No, definitely not.

16:25:55 25 Q Any allegations that you were tortiously interfering with

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16:25:58 1 contractual relations that they had with their customers?

2 A No.

3 Q So you said that you responded by basically complying with
4 their requests; is that correct?

16:26:09 5 A As much as I could. I didn't understand the objection to
6 Launchpad so I asked for more information. But I took the
7 pictures down.

8 Q Okay. Now you said that this was back in August of 2005?

9 A No. It would be August of 2006.

16:26:26 10 Q August 2006. Okay. So other than that cease and desist
11 letter -- and by the way I just thought I'd clarify this.
12 August of 2006, that was over a year after -- a year and three
13 months after you started selling Glider, correct?

14 A That's right.

16:26:39 15 Q And numerous of your customers had been banned by Blizzard
16 as a result of using Glider, correct, during that time?

17 A Yes, unfortunately.

18 Q So other than the one cease and desist letter that you
19 received, did Blizzard ever communicate with you prior to the
16:26:55 20 time that they showed up to your house with their lawyer, and I
21 believe Mr. McGee was there, in October of -- in October of
22 2006?

23 A No. That was the next communication that I had.

24 Q Okay. Was there ever anything that was embedded in the
16:27:17 25 code that you learned about that was -- let me just ask you.

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16:27:24 1 Is there anything else that gave you the indication
2 that Blizzard knew about you and your sales of Glider?

3 A Well, there was a joke that was embedded in Warden at one
4 point right around there, I don't remember the exact date. But
16:27:43 5 there was a hidden string inside Warden that could only be
6 found through disassembling it or running a debugger because it
7 wasn't visible to the user, and that string was a link to a
8 funny wikipedia entry. So it was very obviously a joke from
9 the Warden team to whoever happened to be analyzing Warden.

16:28:02 10 Q So from your understanding, what was the significance of
11 that joke?

12 A It almost seemed like a message from the other side or from
13 the Warden team, you know, we know you're there, here's a
14 little joke, we know you're going to find this. And it was
16:28:17 15 very funny.

16 Q So what was the joke?

17 A It was a reference to a Rick Astley music video, which is a
18 subculture of jokes based on linking people to a video that
19 they're not supposed to see or not expecting to see. It's a
16:28:36 20 World of Warcraft thing. I don't think I could really explain
21 it here.

22 Q Is there a term that they refer to it?

23 A Yes. The term is being Rick rolled.

24 Q Okay. Did you think that this was a way to let you know
16:28:49 25 that they -- that they -- that they thought you were their

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16:28:53 1 enemy?

2 A No. I don't think they would get me with that if they
3 hated me.

4 Q Okay. So what was -- so what was your impression of that?

16:29:09 5 Did you think that they would ever try to, as a result of
6 sending this joke, try to stop you from selling your program?

7 A No. I expected them to continue to update Warden, of
8 course, but I certainly didn't expect it to escalate to the
9 point of legal action.

16:29:27 10 Q So if I can just sort of maybe summarize. Were your
11 feelings sort of like that this was sort of a game of spy
12 versus spy, that you would make an update to your Glider
13 software and they would try to see if they could detect it, and
14 if they could detect it they would ban the customers. Is this
16:29:48 15 what you thought?

16 A Exactly. It was kind of a cloak and dagger or a spy versus
17 spy kind of thing where a lot of activity was taking place that
18 isn't visible to anyone else.

19 Q Do you recall what happened next?

16:30:03 20 A Next would be the visit in October of 2006 from Blizzard,
21 who showed up at my house.

22 Q So talk a little bit about that.

23 A Okay. Well, I had breakfast that day and then I got a call
24 from my lobby. And they said they were Blizzard, and so I had
16:30:25 25 no idea what to expect. I didn't know if they had come to make

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16:30:29 1 me a job offer or -- obviously I learned a lot more about what
2 Blizzard thinks of me. But at the time I had no idea.

3 So I let them in and I was greeted by Mr. McGee, I
4 believe Mr. Fritzcrimen, and I think a private investigator.
16:30:49 5 I'm not sure what his function was and I don't have his name.
6 So I let them in. Offered them some drinks. And they said
7 that I had to cease operation of Glider and sign an agreement
8 by 5 p.m. that day, including turning over all my profits, or
9 they would file suit in California the next day. And

16:31:15 10 Mr. McGee had a draft complaint that I got to look at briefly
11 but I didn't get to keep it.

12 Q So when you looked at that draft complaint, what did it
13 say?

14 A Well, I don't understand the legal argument. I leafed
16:31:34 15 through it but Mr. McGee said, you know, I'm being accused of
16 copyright infringement, creating derivative work, DMCA
17 violation. I'm not sure, I think he mentioned the tortious
18 interference verbally at that time and probably a few other
19 claims that were going to be filed against me if I didn't sign
16:31:56 20 over all my profits by 5 p.m.

21 Q And how much money had you made in profit by that time?

22 A I was sitting on around \$300,000 in profit.

23 Q Okay. So after they showed up, I assume they eventually
24 left?

16:32:15 25 A Yes.

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16:32:16 1 Q What did you tell them before they left?

2 A I told them I needed to speak with an attorney before I
3 made any decisions.

4 Q Okay. And what did you do after that?

16:32:27 5 A Well, I called you. I had been referred to your firm by a
6 company that -- or a friend of my accountant, Christopher
7 Wooten. He referred me to you in case I ever needed you for
8 copyright -- he assumed copyrighting my own software. So I had
9 your business card. So I called you and made an introduction
16:32:50 10 and went to your office a few hours later.

11 Q Okay. And what happened after that?

12 A Well, we discussed this situation and we -- you advised me
13 that we didn't have enough information to determine if this was
14 a wise move to make, if it would be prudent as a business to
16:33:15 15 shut down and turn over all my profit without analyzing the
16 legal aspects. So you called Mr. McGee and asked for more
17 time. I believe you asked until Friday. This was on a
18 Wednesday.

19 MR. GENETSKI: Objection, Your Honor. Hearsay.

16:33:33 20 THE COURT: Technically it's hearsay but I don't think
21 it is particularly consequential, so I'm going to overrule the
22 objection. I would sustain it in a jury trial. Go ahead.

23 THE WITNESS: Okay.

24 Yeah, you called Mr. McGee to ask for more time. He
16:33:49 25 declined. So rather than face being sued in California

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16:33:55 1 immediately the next day, we filed a declaratory action.

2 BY MR. VENABLE:

3 Q Okay. And then what happened after that?

4 A Well, obviously a lot of legal wrangling. At the time
16:34:13 5 you -- we spoke to determine what the likelihood of being sued
6 was and what our options were. And I do believe we offered to
7 shut the business down and walk away to avoid any legal mess.
8 We weren't sure what the merits were going to be so we said
9 maybe we'll just -- because I don't really want to get into a
16:34:35 10 big lawsuit.

11 Q Just so I'm clear, because I sense the judge doesn't really
12 want to go down this path here.

13 A I'm sorry.

14 Q I just want to -- for the sake of this discussion here, was
16:34:48 15 it your understanding at any point in time during our
16 discussions that there was -- that there was a clear-cut issue
17 as to whether or not you were doing anything inherently
18 unlawful?

19 A Oh, no. That was -- that was the big question, because we
16:35:04 20 didn't understand -- I certainly didn't understand what the
21 illegal activity could possibly be. So, yeah, if there was any
22 illegal activity I certainly even at that point would have not
23 known what I was doing to break the law.

24 Q Okay. And did you seek any other legal counsel?

16:35:26 25 A No.

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16:35:27 1 Q Okay. So at this point you received your first -- was this
2 your first notice on October 25th of 2006 that Blizzard had
3 ever accused you of being a copyright infringer or a DMCA
4 violator or tortious interferer with a contract?

16:35:53 5 A Yes, that's right.

6 Q And just so that I can also clarify, you did not agree to
7 sign the agreement that Mr. Genet-- or Mr. McGee had offered
8 you because you weren't sure that this was actually wrong, what
9 you were doing; is that correct?

16:36:12 10 A That's right. I mean, any possible illegal activity, at
11 least to me, seemed to be so complicated and so farfetched that
12 there's no way that you could just come and say you're a
13 copyright infringer. I mean, if I was burning DVDs out of the
14 back of a truck and selling them on the street and someone came
16:36:32 15 to me and said, hey, you're a copyright infringer, knock it
16 off, obviously that's a littler easier. I would know that in
17 that case I'm a copyright infringer.

18 In case of selling a piece of software that automates
19 a video game, it seemed foolish and extreme to shut a business
16:36:51 20 down and write a check for \$300,000 when I don't believe I'm
21 doing anything wrong.

22 Q So your DVD example, would you have known at that point
23 that you were a copyright infringer if you were pressing DVDs?

24 A Yeah, I would know before I even started.

16:37:06 25 Q You stayed pretty involved in the litigation with our firm,

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16:37:10 1 correct?

2 A Yes, that's right.

3 Q In the course of -- in the course of the last two and a

4 half years during the time we've been involved in this

16:37:18 5 litigation, have you ever read anything regarding this case?

6 A Yeah, I've read a lot of discussion on the Internet, a lot

7 of it by nonlawyers and a fair amount by legal professionals or

8 lawyers that are talking about the case. So, yeah, I've seen a

9 lot of people talk about the case. And even the lawyers and

16:37:39 10 the expert legal professionals say the case is really complex

11 and hard to understand. They don't -- it's an interesting case

12 to talk about because it's so complicated and nobody really

13 knows how it's going to end. So it's discussed frequently on

14 the Internet by legal blogs and lawyers.

16:38:02 15 Q Like who?

16 A I know --

17 MR. GENETSKI: Object, Your Honor, to the relevance of

18 this testimony.

19 THE COURT: What's the relevance?

16:38:11 20 MR. VENABLE: The relevance is, Your Honor, that the

21 people that he was looking to outside of his own counsel,

22 people who he read who had discussed this case were very

23 respected people in the profession and that he could have used

24 that to sort of determine whether or not he thought he was

16:38:25 25 doing anything wrong.

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16:38:27 1 THE COURT: So you're saying this goes to his state of
2 mind?

3 MR. VENABLE: His state of mind.

4 THE COURT: Through the course of the lawsuit.

16:38:32 5 MR. VENABLE: Yes.

6 THE COURT: Objection is overruled.

7 THE WITNESS: Okay. One of the people is Bill Patry
8 who has a copyright blog. He commented on the case and he said
9 he didn't understand it and he disagreed with it.

16:38:49 10 BY MR. VENABLE:

11 Q When you say disagreed with it --

12 MR. GENETSKI: Object on hearsay as to the comments of
13 someone made on the Internet.

14 THE COURT: Well, I'm not going to consider them for
15 the truth of the matter asserted but simply as they reflect
16 Mr. Donnelly's state of mind.

17 THE WITNESS: Okay. Um, yeah, Mr. Patry said that he
18 didn't understand the decision or how it was reached. And, you
19 know, many other -- two other law journals, other groups, said
16:39:20 20 that, you know, this is confusing or this may not be right. So
21 I mean that certainly helps me feel like what I'm doing is not
22 against the law. It's not just, you know, my legal team
23 telling me that.

24 BY MR. VENABLE:

16:39:33 25 Q In fact, there was -- there was -- there's an amicus brief

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16:39:39 1 filed in this case, correct?

2 A Yes, there was.

3 Q That was filed by I believe it was Public Citizen?

4 A Public Knowledge.

16:39:46 5 Q Public Knowledge. And what is your understanding of what
6 they were saying in their brief to the Court?

7 A Well, I'm not a lawyer. I think they were arguing -- they
8 were arguing the ownership right of a WoW customer, whether he
9 owned his software or not.

16:40:03 10 Q Did you understand that to mean that your sales of Glider
11 did not violate the copyright law?

12 A Yes. I understood that if WoW customers owned their
13 software then there wouldn't be an infringing copy made when
14 you ran with Glider.

16:40:22 15 Q Have you spoken with other software writers?

16 A Yes, I have.

17 Q Okay. And to the extent that you have discussed with them,
18 not in terms of the truth of what they said, but what's your
19 discussions with them lead you to believe about this case?

16:40:36 20 A Well, the software developers I speak to are my friends.
21 Some people that I previously billed for MDY Industries when I
22 was contracting. They say -- obviously they're sympathetic.
23 They're very concerned about selling any kind of add-on
24 software. There's kind of a fear that if you write a piece of
16:40:57 25 add-on software that the developer -- the developer of the

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16:41:02 1 original software does not like, then you can wind up as a
2 copyright infringer just by the person changing the license
3 agreement. And there's nothing you can do to prevent it. So
4 you're at the mercy of the original software developer to
16:41:15 5 determine if you're going to suddenly wind up in court or not.
6 And there's no way to really mitigate that risk. So nobody
7 wants to write any add-ons.

8 Q And you're of course aware that there are numerous add-on
9 software programs that are created for other software all the
16:41:33 10 time, correct?

11 A Oh, absolutely. There's -- it's a thriving market. Any
12 big piece of software can attract customers that want to
13 customize it or use it in a way that the original developer
14 didn't think of. So you can write an add-on. In the case of
16:41:51 15 Glider it automates the game. Or you can write an add-on to do
16 anything you want and sell it to the customers of the original
17 software. It's a very big market.

18 Q Just so I'm clear, Glider, the program Glider itself, you
19 have written that software yourself, right?

16:42:07 20 A That's correct. I wrote all of Glider. Well, my employees
21 since then recently have been contributing to that, but I made
22 all of Glider. MDY Industries specifically made all of Glider.
23 Not all of Glider is my work any more.

24 Q And that's also something to mention. You have as a result
16:42:24 25 of your success with the sales in Glider, you have also hired

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16:42:29 1 additional employees at your company, correct?

2 A That's right. I initially hired the person I met at WoW
3 that suggested I sell it, Travis.

4 Q Okay. So the Glider software itself, does it actually
16:42:46 5 interfere with World of Warcraft at all?

6 A No. Glider tries be as invisible as possible. Both on the
7 software side, in terms of trying not to be seen by Warden, and
8 on the -- in the game play. When I say in the game play, I
9 mean features of Glider that will try to make it not noticed by
16:43:12 10 other players.

11 For instance, Glider can be configured and comes by
12 default, I believe, to hide if other players are nearby and
13 you're playing the right class. So in Mr. Ashe's video of
14 that -- remember that person that turned into a cat? That cat
16:43:30 15 can hide from other players. And by default, when Glider is
16 playing with one of those cats, if it sees another player it
17 will stop. And so instead of coming out of stealth and
18 becoming visible, it will stay hidden and wait for the player
19 to leave.

16:43:44 20 Q Okay.

21 A We do that to avoid players reporting Glider to keep the
22 number of complaints down because we don't want Glider
23 customers to be banned.

24 Q Now, with regard to your website where you sell Glider
16:43:57 25 software, do you ever, at least after you were first made known

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16:44:04 1 from Glider -- or from World of Warcraft and Blizzard that they
2 started banning your customers, have you ever tried to mislead
3 anybody into thinking that Glider may be objected to by
4 Blizzard?

16:44:17 5 A No. I'm very direct that I believe Blizzard does not like
6 Glider and I warn customers that there's a chance they can lose
7 their account because Blizzard really does not like Glider.

8 Q Okay. You have also made some public statements, I
9 believe, in some blog entries or interviews regarding one in
16:44:45 10 particular where it said you wanted to make it bad business for
11 Blizzard to detect Glider. Can you explain that statement.

12 A Yes. I made that statement in an interview with Tom's
13 Hardware Guide, a popular Internet website for hardware fans
14 and game fans, in response to an interview question.

16:45:06 15 I need to clarify my position that what I'm trying to
16 do is make Blizzard not detect my customers. So the two ways
17 to do that are the hard work, of course, of trying to make
18 Glider avoid Warden or make Glider avoid other players to
19 lower the number of complaints, but also by making Glider less
16:45:27 20 offensive to Blizzard. So there are features in Glider --
21 rather there are not features in Glider that there is a lot of
22 demand for. Glider will not do play arenas. Glider will not
23 play a battleground without a custom class that we don't sell.
24 People can certainly make a custom class for Glider, but we
16:45:49 25 don't endorse Glider in battlegrounds. We won't sell it; it

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16:45:53 1 won't do it by default.

2 So there's a lot of features that we could add to
3 Glider. We could allow it to advertise in the game. We could
4 allow it to work with 24 other players and kill Illidan, if we
16:46:05 5 put the effort into it, and we could sell it for a lot of
6 money. But I want to avoid making Blizzard mad. I want them
7 to think, let's not waste a lot of money on Glider, this is a
8 bad business decision because it is not that bad and it's too
9 much work to go after him so let's go after someone else.

16:46:26 10 That's what I meant by making it bad business to go after
11 Glider.

12 Q You said earlier that you enjoy playing the game. Do you
13 still play World of Warcraft?

14 A Yes. I'm a very active WoW player. I probably average
16:46:37 15 about 90 minutes a day, although I haven't played in three days
16 for this trial preparation. I have a level 80 death knight. I
17 group, I tank. Death knights can tank. I DPS. I help other
18 players when they need help. I play the game quite a bit. I
19 play the game more than the other MDY Industries employees do.

16:47:01 20 Q Is this your first time ever selling an add-on software
21 program?

22 A No. As I mentioned, my first business was selling add-ons
23 to a package known as the Major BBS. So that was my first
24 business, and ironically that business was killed by the
16:47:24 25 Internet.

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16:47:29 1 Q Is this the first time you've been sued or threatened with
2 a lawsuit?

3 A Yes. I've never been sued or threatened with a lawsuit or
4 even got one of those letters from the record industry.

16:47:39 5 Q Hopefully not. That's not a good thing.

6 What about other markets that you could make an add-on
7 for?

8 A We looked at other options. Either in the game industry
9 or, you know, other automation. We made a demonstration of
16:47:57 10 Glider that automates solitaire. So Glider can automate
11 anything. But there's two problems. The first problem of
12 course is the WoW is such a dominant game that there's no other
13 game we could automate and sell to profit. I believe the next
14 largest MMO is maybe a tenth of the subscriber base, which is a
16:48:17 15 tenth of the customer base, as far as we're concerned.

16 And secondarily, we're more than a little bit leary
17 to get into selling add-ons because if you don't have the
18 blessing of the original software developer, or you lose that
19 blessing for whatever reason, you're instantly in a world of
16:48:36 20 hurt.

21 Q Do you know what the program XFire is?

22 A Yes. XFire is instant messaging clients that works with
23 games. It is an add-on that integrates with a lot of different
24 games. So what happens is a lot of people will have friends
16:48:55 25 that have XFire and you can see where your friends are.

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16:48:58 1 For instance, I might log in and say, oh, Jay is
2 playing Counter-Strike and Travis is playing World of Warcraft
3 and he's in Kalimdor. So the XFire client actually reads data
4 from the WoW client to tell you where your friends are.

16:49:18 5 Now, XFire has a marketing agreement with Blizzard.
6 But if they didn't have that, it would almost certainly be an
7 unapproved third-party application because it reads from the
8 client and it gets data out of the client that they might not
9 want to give up.

16:49:34 10 So if I had the idea to compete with XFire. Let's
11 say I wanted to make YFire, I really couldn't do it without
12 Blizzard's blessing. As soon as I release the product and
13 started reading data from the game I run the enormous risk
14 that I'll get another visit or a letter and I'll be told I'm a
16:49:54 15 copyright infringer. So the competition in that add-on market
16 is completely controlled by Blizzard. So if you want to
17 compete with XFire, or worse yet you are XFire and Blizzard
18 wants to change the marketing split, you are out of luck.

19 Q I'm going to just sum up with a couple more questions,
16:50:16 20 Mr. Donnelly.

21 Being involved in this lawsuit you're aware that the
22 Court has ruled that -- ruled against you on the issue of
23 copyright infringement and tortious interference of contract.
24 There's also a possibility that you could be enjoined from
16:50:33 25 further selling -- that your company could be enjoined and

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16:50:36 1 yourself personally could be enjoined from selling Glider.

2 What happens to MDY industries if you stop selling Glider?

3 A We'll obviously have to close down the office. Our primary
4 revenue stream is Glider. We haven't -- there's really nothing

16:50:52 5 else we're selling at the moment. So we'd have to close the
6 office. And myself, Jay and Travis would have to get new jobs.

7 Q So MDY Industries has an office?

8 A Yeah. We have an office. We've been in the office for a
9 year and a half. We've got a water cooler and microwave oven

16:51:12 10 and we work next to a marketing agency. So, yeah, we're a real
11 company.

12 Q Where is your office located?

13 A It's approximately 20th Street and Highland in a medical
14 complex by LA Fitness.

16:51:24 15 Q Okay. So let's just say for the sake of argument that MDY
16 appeals this case and overturns Judge Campbell's ruling, what
17 would happen then?

18 A Well, we certainly wouldn't be selling Glider any more.
19 There's -- as everyone said, Glider's the primary public bot
16:51:50 20 that is available. We have the most market share.

21 Q Let me clarify. This is assuming you've been enjoined
22 already, right?

23 A Oh, yeah. We can't sell Glider of course. If we stop
24 selling Glider for any amount of time, over say a week or two,
16:52:06 25 we really won't be able to recover. We'll obviously lose our

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16:52:12 1 market position and I'll lose my staff. So I don't know what
2 they'll be doing, if I can go hire them or not. But the
3 biggest problem is the market position. There's a Chinese
4 product called WoW Mimic, which is easily detectable, and we
16:52:26 5 see you guys when you detect it. They're advertising on their
6 website that they expect us to be enjoined, and when we are
7 they'll keep selling. So they're advertising already saying,
8 hey, if you're using Glider, you can come use WoW Mimic once
9 they're enjoined. And of course once they have that much money
16:52:44 10 coming in, I'm sure they'll be able to do a much better job
11 than they are with Warden because they're doing a bad job at
12 the moment.

13 If we lose that market position, especially if we
14 lose it to a company that's outside the court's jurisdiction
16:52:57 15 and can't be stopped with Warden, which means they can't be
16 stopped at all, that market share will be gone. Plus you're
17 also looking at a limited life span of WoW. It's a great game
18 but in another five or six or seven years, it will be replaced
19 by another game. And I don't know if another game would have
16:53:16 20 the same demand for Glider. So if we lose a year of that life
21 span of WoW, there's no way to get that back.

22 Q Okay. Thank you, Mr. Donnelly.

23 MR. VENABLE: I have no further questions.

24 THE COURT: All right. We are at seven minutes to
16:53:28 25 five. Why don't we start with the cross-examination tomorrow.

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16:53:31 1 You can go ahead and step down, Mr. Donnelly.
2 Let me just look at our total time here for a minute.
3 All right. By my count, Blizzard's used two hours
4 and nine minutes and MDY's used two hours and 43 minutes. I'm
16:55:14 5 assuming you're closing in on the end of your evidence. And
6 you'll have some redirect, perhaps.
7 MR. VENABLE: Not much, Your Honor.
8 THE COURT: Will you have any other witnesses?
9 MR. VENABLE: No, Your Honor, we're out of witnesses,
16:55:26 10 Your Honor.
11 THE COURT: All right. What's your best guess,
12 Mr. Genetski, as to the amount of cross you're going to have?
13 MR. GENETSKI: I would think 30 minutes at the
14 outside.
16:55:35 15 THE COURT: All right. Do you all have planes to
16 catch tomorrow?
17 MR. GENETSKI: We've been sort of trying to keep
18 flexible in changing them. I think we're early afternoon. But
19 we can take late afternoon.
16:55:52 20 THE COURT: The reason I ask is there's other matters
21 that I need to attend to and it would help me if we started at
22 10:00. I think we'd still be done well before noon. Would
23 that cause you a problem?
24 MR. GENETSKI: No, that's fine.
16:56:03 25 THE COURT: Does that cause you any problems,

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16:56:04 1 Mr. Venable?

2 MR. VENABLE: Not at all.

3 THE COURT: That would give me some time in the
4 morning as well as tonight to get these other things taken care
16:56:12 5 of. So why don't we start at 10:00. We'll do the cross, any
6 brief redirect, and I'll hear arguments. I don't know if
7 you'll have rebuttal evidence.

8 MR. GENETSKI: We don't anticipate any at this point.

9 THE COURT: All right. Why don't we plan then to
16:56:22 10 start at 10 o'clock tomorrow. Thanks.

11 (End of transcript.)

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C E R T I F I C A T E

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2
3 I, PATRICIA LYONS, do hereby certify that I am duly
4 appointed and qualified to act as Official Court Reporter for
16:56:27 5 the United States District Court for the District of Arizona.
6

7 I FURTHER CERTIFY that the foregoing pages constitute
8 a full, true, and accurate transcript of all of that portion
9 of the proceedings contained herein, had in the above-entitled
16:56:27 10 cause on the date specified therein, and that said transcript
11 was prepared under my direction and control, and to the best
12 of my ability.
13

14 DATED at Phoenix, Arizona, this 1st day of may, 2009.
16:56:27 15
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19 s/ Patricia Lyons, RPR, CRR
16:56:27 20 Official Court Reporter
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