

# Exhibit D

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13 **UNITED STATES DISTRICT COURT**  
14 **DISTRICT OF NEVADA**

15 RIGHTHAVEN, LLC,

16 Plaintiff,

17 v.

18 GARRY NEWMAN,

19 Defendant.  
20

Case No.: **2:10-cv-01762-JCM -PAL**

**SECOND DECLARATION OF  
GARRY NEWMAN IN SUPPORT OF  
DEFENDANT'S MOTION TO DISMISS**

21 **SECOND DECLARATION OF GARRY NEWMAN IN SUPPORT OF**  
22 **DEFENDANT'S MOTION TO DISMISS**

23 I, GARRY NEWMAN, declare until penalty of perjury under the laws of the United States of  
24 America that the following is true and correct:

- 25 1. I am over the age of eighteen (18) and make this Declaration based on my personal  
26 knowledge.  
27 2. As I explained in my Declaration dated June 28, 2011, I am one of two directors of  
28 Facepunch Studios Ltd., which owns and controls facepunch.com, a website forum for  
online game users and enthusiasts.


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- 3. The forum began in approximately 2005 or 2006. From inception through today, approximately 14.6 million posts have been posted to the website. The website receives approximately 18,000 posts a day. It has approximately 167,000 registered users, and approximately 43,000 users logged onto the forum within the past week.
- 4. In my official capacity as a director of Facepunch Studios Ltd., I have the ability to ban a user from the forum. However, unless notified of allegations of infringement or other misconduct, there is no way to monitor each of the posts.
- 5. Neither Facepunch Studios Ltd. nor I have ever been accused of copyright infringement except in this lawsuit.
- 6. Facepunch.com lacks the ability to analyze every post on the forum, compare each post to all other copyrighted material that exists in the world, and determine whether a certain post on the forum infringes someone's copyright.
- 7. As I referenced in my original declaration of June 28, 2011, Facepunch Studios Ltd. has no employees, and has only two directors, including myself. The company lacks the practical ability to police the infringing activities that may take place on the forum.
- 8. Since Righthaven never informed me of the allegedly infringing post, there was no way for me to know that any post should be removed from the forum until we were served with a copy of the Complaint, at which time I immediately disabled the thread to the allegedly infringing post.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, pursuant to Section 1746(1) of Title 28 of the United States Code.

Executed on September 1st, 2011

By:   
Garry Newman

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