

September 15, 2009

Copyright Consultation - Submission

I have already posted a personal submission to the Government's Copyright Consultation, however I felt it would also be of interest for me to submit a copy of a letter addressed to Danielle Parr of the Entertainment Software Association of Canada, in response to her comments to the Consultation and her submission to the Vancouver Round-table.

I would particularly like point out that, as a successful and independent Canadian game software developer, the ESA certainly does **not** represent my company or that of many other small and mid-size Canadian developers.

There is a strong belief by many who work in this industry that it is essential to treat customers fairly and with respect in order to be successful, and that extends to fairness and balance in copyright legislation and the rights that consumers have for the personal uses of the products they buy. Anti-circumvention regulations are an assault on the legal uses a customer should remain entitled to after they purchase a product.

-- *George Geczy, Ancaster, Ontario, Canada.*

Danielle Parr
Entertainment Software Association of Canada
130 Spadina Avenue, Suite 408
Toronto, Ontario M5V 2L4

September 12, 2009

RE: Canadian Copyright Consultation

Dear Ms Parr:

As a Canadian game software developer, I felt that I should take a moment to write you in response to your submissions to the Canadian Copyright Consultation. In particular, I feel the need to point out that the ESA certainly does not represent my company's views of copyright and the game development industry.

Your comments and proposals completely disregard the final consumer – the video game purchaser and player – and the fact that they, too, deserve certain rights in a fair system. Rights such as the ability to continue to play a game after a user's system has been upgraded or replaced; the ability to backup a PC game to protect from system failure; the ability to continue playing a legally purchased game after a publisher goes out of business and the 'authentication' server is taken off line; and so on. Your insistence on anti-circumvention legislation for Canada is a direct assault on the very customers who buy video game products.

I understand that the PC games produced by my company are not in the same league as a title from EA or Ubisoft, instead we make much smaller titles for a smaller niche audience. However the basic principles remain the same – treat customers fairly and produce a good product with good support.

As you know, earlier this year EA released *Spore* with significant DRM protections and infuriated players turned it into the most pirated game of all time. EA more recently released *Sims 3* without those same draconian DRM measures, and EA has declared the launch their "*most successful PC game launch ever*". Your focus on anti-circumvention rules is misguided and in many cases counter-productive.

As well, I found many of your comments in the Vancouver Round-table to be unusual. For instance, you ask for "notice and takedown" rules due to the time-sensitivity of new software releases. I'm sure you must be aware that very few pirate software releases are 'posted' in Canada, and if a site did do so then there are many legal tools available today to drive such a site out of business. You also quote some strange statistics in your comments – the source of these statistics seems dubious at best, and your extrapolations don't make sense.

You claim that video games are not yet affected by piracy "*perhaps as music and movies have, in part because of our file size, they're massive*"; however video games are *smaller* than movies in file size. You claim that DRM is a requirement for parental controls of time limitations and rating restrictions; this is in fact an operating system feature that has nothing to do with DRM in any way. As a software developer that makes games that work with parental controls, I assure you that we in no way used any form of DRM to accomplish this. Though if we did extrapolate your thought that DRM helped to "facilitate" parental controls, then what you are suggesting with your anti-circumvention proposal is that it should be illegal for a child to "circumvent" the "parental control DRM" on his game, and that child should be exposed to charges under your vision of a copyright act.

To maintain fairness and balance in copyright legislation means allowing consumers circumvention of TPMs for legal and permissible uses. There will always be piracy, and in the US with its DMCA anti-circumvention rules there continues to be piracy; but unlike what your statistics say, every pirated copy is *not* a "lost sale". DRM does far more to inconvenience legal customers than it does to discourage hard core "pirates". Treating our customers fairly and with some respect, and in particular respecting those that are law-abiding paying customers, is the first step towards ensuring that those fans of entertainment software keep purchasing legal product.

It is unfortunate that the ESA continues to take such an anti-consumer approach in your lobbying for copyright changes. There are certainly some major issues (off-shore counterfeiting, for instance) that I think need far more attention; however the solution for such problems does not lie in punitive restrictions against balance and fairness between the rights-holders and the end-consumer's personal and legitimate uses.

Sincerely,

*George Geczy,
Co-Founder,
BattleGoat Studios.*