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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

MDY INDUSTRIES, LLC,
Plaintiff and Counterdefendant,

vs.

**BLIZZARD ENTERTAINMENT, INC.,
and VIVENDI GAMES, INC.,**
Defendants and Counterclaim
Plaintiffs.

**BLIZZARD ENTERTAINMENT, INC.,
and VIVENDI GAMES, INC.,**

Third-Party Plaintiffs,

vs.

MICHAEL DONNELLY, an individual
Third-Party Defendant

Case No.: CV06-02555-PHX-DGC

**PLAINTIFF MDY INDUSTRIES, LLC,
AND THIRD PARTY DEFENDANT
MICHAEL DONNELLY'S
STATEMENT OF FACTS IN
SUPPORT OF THEIR MOTION FOR
SUMMARY JUDGMENT**

The Honorable David G. Campbell

World of Warcraft - History

1. World of Warcraft is a massive multi-player online roll playing game (MMORPG). Blizzard Entertainment developed the game and distributes the game through various retail stores where it can be purchased on compact disc and installed to a computer. Blizzard also distributes the game through its internet website where it can be freely downloaded and installed directly to a hard drive. Blizzard first released WOW to

the public on November 23, 2004. *See generally*, **Exhibit A** (Wikipedia entry); **Exhibit B** (Deposition of Greg Ashe pp 15-23).

2. Since its initial release, Blizzard has steadily increased the number of active subscriptions of its game. On average, Blizzard has increased its total number of active subscriptions by one million every three to four months. In June, 2005, Blizzard's active subscription total was approximately three million and has steadily increased to a total of ten million as of January 22, 2008. *See* **Exhibit B** (Deposition of Greg Ashe, pp 211-222); **Exhibit C** (Blizzard Press Release dated January 22, 2008).

3. Each active subscription account requires that a user pay a monthly fee to play the game. In the U.S., the monthly cost is fifteen dollars per month. **Exhibit B**, at 218.

World of Warcraft Game Play

4. In the WoW game, a person controls a character avatar within a persistent game world, exploring the landscape, fighting monsters, performing quests, building skills, and interacting with computer-generated characters, as well as other players. The game rewards success with in-game currency (gold), items, experience and reputation, which in turn allow players to improve their skill and power. A player begins the game at level 1. Players can raise their characters from level one to level 60 without an expansion module, and level 70 if they have purchased an expansion module of the World of Warcraft game entitled, "The Burning Crusade." Additionally, players may opt to take part in battles against other players of an enemy faction, in player vs. player battlegrounds or in normal world zones subject to the rules in place on the particular server. Duels can also be fought between members of the same or opposing factions, although these do not provide rewards. Many players also choose to join guilds. Short term parties and raid groups can be formed to conduct raids against enemy territories. *See* **Exhibit A**, at 2; **Exhibit B**, pp 19-20.

5. While players play the game for many reasons, one of the primary reasons to play the game is to reach level 70. **Exhibit B**, at 19.

6. When a player reaches level 70, the player no longer accumulates experience, but can still accumulate in-game wealth. *Id.* at 21.

7. At level 70, the player has access to WoW's high end content such as an "epic mount" and an "epic flying mount", which are considered the two most prized possessions in the game. In fact, according to Blizzard, many people feel the game does not really begin until one reaches level 60 because of that. *Id.*

8. Even if a player reaches the highest level (60 or 70) in the game, there is plenty of other content to explore within the game and one can continue playing the game indefinitely. *Id.* at 24.

**Blizzard's World of Warcraft End User License Agreement ("EULA")
and Terms of Use Agreement ("TOU")**

9. Prior to installing the game on a computer hard drive, Blizzard requests that the account holder agree to the terms of Blizzard's EULA and TOU. Generally, the agreements grant the end user a non-exclusive license to operate the WoW game client software by installing it on an unlimited number of computers that the user owns, as well as the right to make one archival copy of the compact discs containing the game client software. See **Exhibit D** (Blizzard's current EULA updated February 2, 2007, Paragraph 1).

10. The current version of the TOU (last updated January 11, 2007) also includes many restrictions on the licensee. Pertinent to this case, the TOS in Paragraph 4(B) states:

"You agree that you will not (i) modify or cause to be modified any files that are a part of the Program or the Service; (ii) create or use cheats, bots, "mods", and/or hacks, or any other third-party software designed to modify the World of Warcraft experience; or (iii) use any third-party software that intercepts, "mines", or otherwise collects information from or through the Program or the Service. Notwithstanding the foregoing, you may update the Program with authorized patches and updates distributed by Blizzard, and Blizzard may, at its sole and absolute discretion, allow the use of certain third party user interfaces." See **Exhibit E** (Blizzard's current TOU, Paragraph 4(B)).

11. Regarding termination of the TOU, Paragraph 10 of the TOU states: “This Agreement is effective until terminated.” Blizzard does not provide a basis in the TOU that terminates the TOU upon violating paragraph 4(B). *See Id.*

12. The current version of Blizzard’s EULA also includes many restrictions on the licensee. Pertinent to this case, regarding the responsibilities of the end user, the EULA in Paragraph 4 states:

A. Subject to the license granted hereunder, you may not, in whole or in part, copy, photocopy, reproduce, translate, reverse engineer, derive source code from, modify, disassemble, decompile, or create derivative works based on the Game, or remove any proprietary notices or labels on the Game. Failure to comply with the restrictions and limitations contained in this Section 4 shall result in the immediate, automatic termination of the license granted hereunder and may subject you to civil and/or criminal liability. Notwithstanding the foregoing, you may make one (1) copy of the Game Client and the Manuals for archival purposes only.”

B. You agree that you shall not, under any circumstances,

(i) sell, grant a security interest in or transfer reproductions of the Game to other parties in any way not expressly authorized herein, nor shall you rent, lease or license the Game to others;

(ii) exploit the Game or any of its parts, including without limitation the Game Client, for any commercial purpose, including without limitation use at a cyber cafe, computer gaming center or any other location-based site without the express written consent of Blizzard;

(iii) host, provide or develop matchmaking services for the Game or intercept, emulate or redirect the communication protocols used by Blizzard in any way, including without limitation through protocol emulation, tunneling, packet sniffing, modifying or adding components to the Game, use of a utility program or any other techniques now known or hereafter developed, for any purpose, including without limitation unauthorized network play over the Internet, network play utilizing commercial or non-commercial gaming networks, or as part of content aggregation networks; or

(iv) facilitate, create or maintain any unauthorized connection to the Game or the Service, including without limitation any connection to any unauthorized server that emulates, or attempts to emulate, the

Service. All connections to the Game and/or the Service, whether created by the Game Client or by other tools and utilities, may only be made through methods and means expressly approved by Blizzard. Under no circumstances may you connect, or create tools that allow you or others to connect, to the Game's proprietary interface other than those expressly provided by Blizzard for public use. *Id.*

13. Paragraph 5 of the EULA also includes specific language that allows Blizzard to monitor the licensee's computer to detect if the licensee is violating the EULA. Specifically, paragraph 5 states:

5. Consent to Monitor. WHEN RUNNING, THE GAME MAY MONITOR YOUR COMPUTER'S RANDOM ACCESS MEMORY (RAM) FOR UNAUTHORIZED THIRD PARTY PROGRAMS RUNNING CONCURRENTLY WITH THE GAME. AN "UNAUTHORIZED THIRD PARTY PROGRAM" AS USED HEREIN SHALL BE DEFINED AS ANY THIRD PARTY SOFTWARE, INCLUDING WITHOUT LIMITATION ANY "ADDON," "MOD," "HACK," "TRAINER," OR "CHEAT," THAT IN BLIZZARD'S SOLE DETERMINATION: (i) ENABLES OR FACILITATES CHEATING OF ANY TYPE; (ii) ALLOWS USERS TO MODIFY OR HACK THE GAME INTERFACE, ENVIRONMENT, AND/OR EXPERIENCE IN ANY WAY NOT EXPRESSLY AUTHORIZED BY BLIZZARD; OR (iii) INTERCEPTS, "MINES," OR OTHERWISE COLLECTS INFORMATION FROM OR THROUGH THE GAME. IN THE EVENT THAT THE GAME DETECTS AN UNAUTHORIZED THIRD PARTY PROGRAM, THE GAME MAY (a) COMMUNICATE INFORMATION BACK TO BLIZZARD, INCLUDING WITHOUT LIMITATION YOUR ACCOUNT NAME, DETAILS ABOUT THE UNAUTHORIZED THIRD PARTY PROGRAM DETECTED, AND THE TIME AND DATE THE UNAUTHORIZED THIRD PARTY PROGRAM WAS DETECTED; AND/OR (b) EXERCISE ANY OR ALL OF ITS RIGHTS UNDER THIS AGREEMENT, WITH OR WITHOUT PRIOR NOTICE TO THE USER. **(Exhibit D).**

14. The EULA and TOU have evolved from when the World of Warcraft software first became available in November 2004. In the current version of the TOU, Blizzard restricts the use of certain types of third party software that can be used with the WoW software. One type of prohibited software is a "bot" program. See **Exhibit E**, at Paragraph 4(B).

15. A bot program is a software program that enables a person to run another software program on auto-pilot with minimal assistance from the person.

16. Blizzard did not explicitly prohibit “bot” programs until it modified its EULA on December 11, 2006. Blizzard modified its EULA and TOU several times from November, 2004 to December, 2006. *See e.g.* **Exhibit F** (Copy of original Blizzard TOU, Paragraph 4(c)).

17. Blizzard used the word “bot” in its earliest version of its TOU (6/2/2005). Blizzard explicitly prohibited the use of “bots” in 3(B)(vi) “to collect information from World of Warcraft or any forum or website owned or administered by Blizzard...”. In Paragraph 2(C) of the same agreement, Blizzard did not, however, list “bots” as one of its prohibited third-party software programs. *See Exhibit F.*

18. On December 11, 2006 Blizzard added the word “bots” as a prohibited program. Of note, Blizzard did not add the provision until nearly two months after Blizzard first appeared at Donnelly’s home on October 25, 2008 (also the day Donnelly filed suit). *Compare Exhibit F, Paragraph 2(c) with Exhibit G, Paragraph 4(c).*

Blizzard’s Unauthorized Software Detection Systems – Warden and Scan.dll

19. Blizzard does not utilize any access or copy protection measures to prevent the copying of its WoW Game Client Software. Blizzard uses no form of copy protection for the compact discs that contain the WoW game client software. *See Exhibit B*, at 38-44.

20. Despite the prohibition from making more than one archival copy of the software in the EULA, the compact discs may be easily copied or installed to an unlimited number of computer hard drives. *Id.*

21. Moreover, despite the prohibition of making unauthorized copies, Blizzard makes its WoW software freely available for downloading from its website and to anyone who creates a user account. *See Exhibit B*, at 293.

Blizzard's Warden Program

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

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

24. Blizzard does not ban, nor has it ever banned the licensee itself. If Blizzard bans a licensee's account, the licensee may immediately sign up for a new account using the licensee's name and same credit card number that it previously used for the banned account. See **Exhibit B**, at 254.

25. Warden is not a copy protection program in that it cannot:
- a. prevent a person from accessing the WoW game client software code;
 - b. Prevent a person from copying the WoW game client software from a compact disc or DVD to another form of storage medium;
 - c. Prevent a person from copying a downloaded version of the WoW game client obtained from Blizzard's server to another form of storage medium;
 - d. Prevent a person from distributing copies of the WoW game client software;
 - e. Prevent a person from making derivative works of the WoW game client software. See **Exhibit B**, at 43-44.

Blizzard's Scan.dll Program

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

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

28. Like Warden, Scan.dll is not a copy protection program in that it cannot:
- a. Prevent a person from accessing the WoW game client software code;
 - b. Prevent a person from copying the WoW game client software from a compact disc or DVD to another form of storage medium;
 - c. Prevent a person from copying a downloaded version of the WoW game client obtained from Blizzard's server to another form of storage medium;
 - d. Prevent a person from distributing copies of the WoW game client software;
 - e. Prevent a person from making derivative works of the WoW game client software. *See Exhibit B*, at 43-44.

MDY Industries, LLC

29. MDY Industries LLC is an Arizona Limited Liability Company that was formed on December 6, 2004. *See Exhibit J* (Affidavit of Michael M. Donnelly), at ¶1.

30. Michael Donnelly is the sole member of MDY. *Id.*, at 2.

31. Donnelly formed MDY solely for the purpose of keeping his computer contract work that he had been doing separate from his personal finances. *Id.*, at 3.

32. At the time Donnelly formed MDY, he had not yet begun creating the Glider software. *Id.* at 4.

33. When Donnelly formed MDY, he had no intention of creating the Glider software and then using MDY as a shield against potential creditors if Blizzard ever filed a lawsuit against him for creating Glider. *Id.* at 5.

The Glider Software - Background

34. When Blizzard released WoW in late 2004, Donnelly became an avid player of WoW. Like many others who play WoW, Donnelly became frustrated with the amount of time it took to advance his character in WoW. *Id.* at 6.

35. Inspired by his desire to advance his character's level to the same level several of his friends had reached, Donnelly searched online for any available programs that would help him speed up the time it took to level his character up to where his friends were. *Id.* at 7.

36. After searching and being unsuccessful in locating a software program to meet his needs, Donnelly decided to write software code to assist him in catching up with his friends in the game without having to be physically playing WoW. *Id.* at 8.

37. Between March 2005 and May, 2005, Donnelly went through several iterations in the development of a software program that became known as WoWGlider ("Glider"). *Id.* at 9.

Functionality as to WoW

38. Generally, Glider allows a person to play a piece of software on autopilot by automating the keystrokes that are necessary to play the game. *Id.* at 10.

39. A Glider user must be an active, paying customer of Blizzard in order to use the Glider program with WoW. *Id.* at 11.

40. MDY has since developed several current and potential uses for Glider with other software programs. *Id.* at 12.

41. Under certain conditions, Glider can help a WoW player raise the level of his character to level 60 or 70 by playing the character when the customer is idle or absent from his computer. *Id.* at 13.

42. Once a player reaches the highest level in the game, however, Glider does not allow the player to accumulate any more experience points in the game and its utility is drastically reduced. *Id.* at 14.

43. Glider can also assist handicapped persons with limited use of their limbs by minimizing the need to use the keyboard to play WoW. *Id.* at 15.

44. Glider can be loaded either before or after WoW is loaded into the user's RAM memory. *Id.* at 16.

45. Glider works by reading the player's state information (character health, nearby monsters, nearby chests and mines, the character's spells) from the user's RAM memory. It then sends keystrokes into the WoW client software on behalf of the user to try to kill the monsters and do other repetitive tasks such as collecting loot from killed monsters and harvestable objects. Under no circumstances can Glider:

- a. alter the WoW client game software in anyway;
- b. give the WoW player the ability to do anything that a human player could not already do;
- c. give the WoW player additional power, wealth, or in-game advantage over any player other than allowing the player not to be present when playing the game;
- d. give the WoW player the ability to make any copies of, make derivative works of, or publicly distribute copies of the WoW client software. *Id.* at 17.

46. A Glider user must actively manage the program on regular intervals or the program will not provide any additional experience points that increase the level of the player toward 60 or 70. *Id.* at 18.

Marketing of Glider

47. MDY has only marketed the game as an alternate method to reduce the time it takes to level a character to 60 or 70. *Id.* at 19.

48. Based upon Donnelly's personal success using Glider, Donnelly decided to see if he could sell the Glider software for profit. In June, 2005 Donnelly began selling the Glider software through MDY. *Id.* at 20.

49. Since its release, MDY has made the program available solely by downloading it from MDY's website located at www.mmoglider.com at a cost of \$15.00 per license. Moreover, MDY has increased its sales from approximately twenty in the first month, to over 100,000 as of February, 2008 (although only approximately 30,000 are active accounts). *Id.* at 21.

50. In November, 2005, Donnelly raised the price of a Glider license from \$15.00 to \$25.00. *Id.* at 22.

51. Glider is inefficient as a gold farming tool, and many other programs are available that do a much better job at gold farming than Glider does or can. *Id.* at 23.

52. MDY utilizes Google AdWords to draw traffic to its website and to advertise the availability of the program. MDY also markets the program using an affiliate structure whereby third-parties can post ads for the Glider program on their website and are compensated if a Glider sale originates from the advertisement. *Id.* at 24.

53. MDY has only marketed the game as an alternate method to reduce the time it takes to level a character to 60 or 70. *Id.* at 25.

54. Although Glider can be used as a tool to help WoW licensees to "farm gold" within the WoW game, MDY has never marketed the program for that purpose and actively discourages persons from using Glider as a gold farming tool. *Id.* at 26.

55. In fact, MDY actively discourages persons from using Glider as a gold farming tool. *Id.* at 27.

56. MDY also actively discourages Glider users from skipping the game content. *Id.* at 28.

Glider's Detection Avoidance Development

57. Prior to September, 2005, Donnelly was unaware that Blizzard would object to anyone using Glider with WoW. Donnelly did not become aware that Blizzard was attempting to detect the use of Glider until September, 2005 when Blizzard banned certain Glider customers' accounts. *Id.* at 29; *See Exhibit K* at 54-55.

58. Prior to that time, Donnelly had not developed any software component that would avoid detection by Blizzard. *See Exhibit J* at ¶30; *Exhibit K* at 55.

59. Donnelly responded to Blizzard's efforts to detect and ban Glider users by developing software counter-measures to avoid being detected by either Blizzard's Warden or Scan.dll programs. In late September, 2005, Glider began avoiding detection by Warden and Scan.dll so that Blizzard's licensees could use Glider with the WoW game client software without interference from Blizzard. *See Exhibit J* at ¶31. *See Exhibit J* at ¶76.

60. Glider, however, cannot circumvent Warden or Scan.dll for the purpose of allowing a person to:

- a. make an unauthorized copy of the WoW game client software;
- b. make an unauthorized derivative work of the WoW game client software; or
- c. make an unauthorized distribution of the WoW game client software.

See Exhibit J at ¶32.

61. Although Blizzard's acts of detecting Glider and banning Glider users' accounts led Donnelly to believe that Blizzard considered Glider an unauthorized third-party software program under its EULA and TOU, Donnelly did not agree with Blizzard's interpretation of its agreements. Donnelly believed that Blizzard had no right

to control MDY's ability to sell Glider because he had no contractual relationship with Blizzard. *Id.* at 33. **Exhibit K** at 293-94.

62. Prior to September, 2005, Donnelly was unaware that Blizzard would object to anyone using Glider with WoW. *See* **Exhibit J** at ¶33; **Exhibit K** at 76.

63. In September, 2007, MDY began developing functionality in the Glider software to allow it to work with other games besides WoW including both non MMORPG and non-MMORPG games. *See* **Exhibit J** at ¶34.

Blizzard visits Donnelly

64. MDY continued to sell Glider for several months. On the early morning of October 25, 2006 and without any prior notice, the defendants' counsel Shane McGee, an officer of Vivendi Games Fritz Kryman, and an unidentified private investigator appeared at Donnelly's home. When they arrived, they presented Donnelly with a copy of a complaint that they indicated they would file the next day in the U.S. District Court for the Central District of California if Donnelly did not immediately agree to stop selling Glider and return all profits that he made from Glider sales. *Id.* at 35; **Exhibit K** at 283-84.

65. Donnelly was offended by the audacious threats Blizzard's representatives made. **Exhibit J** at ¶36; **Exhibit K** at 283.

66. Donnelly immediately contacted his current counsel, who later that day, filed a declaratory judgment action in this court. The defendants filed counterclaims against Donnelly and MDY for contributory and vicarious copyright infringement, violation of the Digital Millennium Copyright Act (17 U.S.C. §§ 1201(a)(2) and (b)(1)) and tortious interference with Blizzard's contractual relations with its licensees. **Exhibit J** at ¶37.

67. On the early morning of October 25, 2006 and without any prior notice, Blizzard and Vivendi's counsel, Shane McGee, an officer of Vivendi Games, Fritz Kryman, and an unidentified private investigator appeared at Donnelly's home. *See* **Exhibit J** at ¶36; **Exhibit K** at 283.

Blizzard Cannot Prove Damages

68. Blizzard has offered its damages expert witness' report in support of Blizzard's argument that it has suffered monetary harm. A copy of Dr. Edward Castronova's report is attached as **Exhibit L**. A thorough review of the report demonstrates that Blizzard has offered nothing more than speculative opinions of how Glider use harms Blizzard. Specifically, Blizzard's expert argues that:

- a) Because Glider can help advance a character's level faster, Blizzard loses revenue from a licensee who uses Glider because of a shortened monthly subscription time;
- b) Because a portion of Blizzard's licensee's oppose the use of botting programs such as Glider, many people quit in frustration thereby causing Blizzard to lose revenue;
- c) Because the gaming world perceives people who use Glider as having an unfair advantage, many potential WoW players choose not to play WoW thereby causing Blizzard to lose revenue;
- d) Glider users can use the software to "farm gold" in WoW, which damages the WoW game economy thereby causing people to quit the game;
- e) Blizzard must pay employees to deal with complaints about bot programs; and
- f) Blizzard must pay employees to locate Glider users in the WoW game environment and verify Glider detections from Warden so Blizzard can ban such accounts.

Id. at 25-28.

69. Castronova argued that these bases damage Blizzard in the amount of twenty million dollars per year. *Id.* at 28. MDY disputes every aspect of Castronova's conclusions. MDY's damages expert, Dr. Koleman Strumpf summarily dismissed

Castronova's conclusions in his rebuttal report. Castronova even admitted as much in his report. Castronova stated on the issue of the points listed above:

“[I]s it (sic) difficult for another user to confirm that the players gaining levels at an accelerated pace are botting, so the average player concludes that either he must be an incompetent player or the system is balanced against them. Either way, he may quit the game and encourage others not to purchase it. The more than 300,000 botting complaints that Blizzard has received does not include complaints lodged by the many current and former players whose game experience was adversely impacted by bots, but did not know the reason for their less-than-perfect gaming experience. Unfortunately, *there is no way to ascertain this number or to quantify these damages.*” (emphasis ours).

Id at 6.

70. Simply stated, Castronova cannot quantify any alleged damages because Castronova can provide no proof, just speculation, as to damages. In his deposition, Castronova admitted that he had never conducted a single scientific or economic study to support his conclusions. See **Exhibit N** (Deposition of Edward Castronova) at 49-52, 55, 65-66, 74-75, 84-87, 101-02, 105-13, 123-24, 140-46, 173-74, 178-80, 203-05, 238-40, 293-95. He admitted that he had never interviewed a single WoW player to support his conclusions. *Id.*

71. For example, Castronova could not rebut the fact that if a person used Glider to arrive at level 70 quicker than normal, that the person was just as likely to play WoW for a longer period of time than a player who played WoW longer to reach level 70, but quit shortly after reaching level 70 out of frustration. *Id.* at 49-50. In fact, Blizzard itself has unilaterally reduced the time it takes to level a character to Level 70 by as much as 15% to 30%. **Exhibit M** (WoW Patch Notes; Exhibit 7 to Castronova Depo.). Castronova provided no evidence, nor has Blizzard, that despite receiving 300,000 complaints about bot programs, one person ever quit WoW because of people using Glider in WoW. **Exhibit N** at 85-87. Castronova provided no evidence, nor did Blizzard that one person who was a potential WoW player, ever chose not to play WoW because he perceived people having an unfair advantage using Glider. *Id.* at 109-11.

Castronova, at best, speculated that Glider damages the WoW economy when people use it to farm gold in WoW, but never offered any evidence that one WoW user has ever used Glider to farm gold, nor did he provide evidence that one WoW player ever terminated his account because of people who use Glider to farm gold in WoW. Thus, Blizzard can provide no factual evidence to support its damages claim.

72. Blizzard's employees enforce its EULA and TOU not just against Glider users, but all potential bot and other "unauthorized third-party" software. Blizzard provided no evidence, other than speculation, what portion of Blizzard's salaries pertains to Glider.

73. Finally, and perhaps most obviously, since MDY first released Glider, Blizzard's total amount of active WoW subscription accounts has risen from approximately three million to over ten million as of January, 2008. *See Exhibit C.* Blizzard has offered no evidence whatsoever to show that Glider has caused an overall negative effect on subscriptions. Blizzard also acknowledges that many Glider users will actually purchase two or more WoW accounts that they would not have purchased had they not used Glider. **Exhibit B** at 234-235. Thus, Glider has actually increased Blizzard's WoW subscription revenue in many cases.

74. Blizzard does not dispute that MDY is only one of many "botters."

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