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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

MDY INDUSTRIES, LLC, )  
)  
Plaintiff/Counterdefendant )

**Case No.:** CV06-02555-PHX-DGC

**ORDER AND STIPULATED  
JUDGMENT**

vs. )

BLIZZARD ENTERTAINMENT, INC., )  
and VIVENDI GAMES, INC. )  
)  
Defendants/Counterclaimants )

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

Third-Party Plaintiffs, )

vs. )

MICHAEL DONNELLY, )  
)  
Third-Party Defendant. )

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In this Court’s July 14, 2008 Order, the Court granted summary judgment in favor of Blizzard with respect to MDY’s liability for tortious interference (Count I) and contributory and vicarious copyright infringement (Counts II-III). That Order also granted summary judgment in favor of MDY on a portion of the DMCA claim (Count IV) and the unfair competition claim (Count VI) and contemplated that trial would follow

1 on damages for Counts I, II and III as well as on the claims, or portions thereof, that  
2 remained unresolved -- portions of the DMCA claim, the trademark claim, and the unjust  
3 enrichment claim.

4  
5 In support of the judgment on damages the parties wish the Court to enter, the  
6 parties jointly submit that the following **undisputed facts** would have been presented to  
7 the jury if trial proceeded on the damages claim:

8 1. MDY began selling Glider on June 14, 2005. Through September 10, 2008,  
9 MDY has sold approximately 120,000 licenses for Glider. The amount of gross revenues  
10 received by MDY from the sale of Glider from June 14, 2005 through September 10,  
11 2008 is approximately \$3.5 million dollars.

12  
13 2. Blizzard spends at least \$942,614.57 per year responding to customer  
14 complaints as to bots generally and implementing a bot enforcement program to decrease  
15 the number of bots in the game. Glider represents the large majority of bots used in  
16 connection with World of Warcraft.

17  
18 3. Between December 22, 2004 and March 18, 2008, Blizzard received more than  
19 465,000 in-game petitions from users complaining about bots. Several thousand of these  
20 petitions mention Glider by name. Blizzard has continued to receive complaints about  
21 bots generally, and Glider specifically, after March 18, 2008.

22  
23 In addition, the parties agree that if this matter proceeded to a trial on damages,  
24 Blizzard would assert and introduce evidence in an attempt to prove the following  
25 **disputed** facts and legal conclusions:

1           1. That MDY and/or Donnelly's conduct caused harm to Blizzard both in the form  
2 of the direct expenses used to combat Glider use and infringement, as well as in the form  
3 of lost subscription revenue, lost profits, and harm to Blizzard's goodwill and reputation.  
4

5           2. That Blizzard's damages expert would testify that the lost subscription revenue  
6 and harm to Blizzard's goodwill and reputation can be quantified to exceed \$20 million  
7 dollars.  
8

9           3. That MDY and/or Donnelly's conduct was willful and wanton and an award of  
10 the highest amount of statutory damages--\$2,500 per sale of the Glider software--would  
11 be appropriate.

12           4. That Blizzard is entitled to an award of punitive damages against MDY and  
13 Donnelly for their intent to cause injury to Blizzard or because they were motivated by  
14 spite or ill will or because MDY and Donnelly acted to serve their own interests, having  
15 reason to know and consciously disregarding a substantial risk that their conduct might  
16 significantly injure Blizzard.  
17

18           Although MDY and Blizzard would contest these disputed facts and conclusions  
19 of law, the parties have agreed that given the likelihood that some amount of damages  
20 would be awarded, a stipulated judgment for the amount of damages to which Blizzard is  
21 entitled to recover on Counts I, II and III of its Counterclaims and Third Party Complaint  
22 (the "Complaint") is an appropriate method to resolve the issue of damages.  
23

24           The parties agree and understand that this stipulated judgment will be the final  
25 word on Blizzard's right to recover damages on Counts I, II and III of the Complaint.  
26 That is, the parties knowingly waive their right to argue in any future proceeding that the  
27 damages that Blizzard is entitled to receive on Counts I, II and III of the Complaint for  
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1 conduct from June 14, 2005 through September 1, 2008 should be more or less than the  
2 damages specified herein. Furthermore, even if the determinations of summary judgment  
3 are appealed and reversed or modified on appeal, this stipulated judgment as to damages  
4 shall remain in effect as a stipulation as to the agreed-upon amount of damages related to  
5 each of Counts I, II and III of the Complaint so long as liability on any of those counts is  
6 affirmed, or is subsequently proven to a jury.  
7

8           WHEREFORE, based upon the disputed and undisputed facts and the agreement  
9 of the parties, **IT IS ORDERED:**  
10

11           1. Blizzard shall be entitled to recover the total sum of \$6,000,000 as monetary  
12 damages for counts I, II and III of its Counterclaims and Third Party Complaint related to  
13 the sale of Glider up through and including September 1, 2008.

14           2. Blizzard shall not be entitled to double or triple recovery for counts I, II and III.  
15 That is, Blizzard shall be entitled to receive a total of \$6,000,000 in damages for counts I,  
16 II and III. However, should liability on any one or two of the counts be reversed on  
17 appeal, any one of these counts independently supports the \$6,000,000 award.  
18

19           3. In the event that the Court determines that Michael Donnelly is personally  
20 liable, either individually or jointly and severally, under counts I, II, or III, this stipulation  
21 shall extend to him.  
22

23           4. The parties shall submit their disputed and undisputed statements of facts and  
24 law related to the DMCA claim on September 10, 2008.

25           5. Counts V and VII of Blizzard's Counterclaims and Third Party Complaint  
26 alleging trademark infringement and unjust enrichment are hereby dismissed by  
27 stipulation of the parties.  
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1 Dated this 26th day of September, 2008.

2  
3 *David G. Campbell*

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6 David G. Campbell  
7 United States District Judge  
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