September 25th, 2009

You Bought It, You Own It: MDY v. Blizzard Appealed

Legal Analysis by *Fred von Lohmann*

When you buy World of Warcraft (WoW) in a retail box, do you *own* the copy of the software you bought? That's the critical legal question facing the Ninth Circuit Court of Appeals in a pending appeal in MDY v. Blizzard, and the question that Public Knowledge took on in an excellent amicus brief filed with the court earlier this week.

If you *own* your software, you have the right to resell it and the right to make copies and adaptations as necessary to use it. If you don't, well, then you face a possible copyright lawsuit for transgressing any limitations the vendor puts in the license agreement.

The case (which we've covered previously) pits Blizzard, the maker of WoW, against MDY, the maker of a program called Glider that lets you play WoW on "auto-pilot" (what Blizzard calls a "bot"). Blizzard won in the district court, successfully arguing that WoW purchasers do not "own" their software, but merely "license" it. On this view, Blizzard owns every WoW DVD ever shipped for all eternity (there's a Lich King joke in here somewhere), and may be able to use copyright law to punish WoW players who use the software in any manner not authorized by the "license" (like using Glider). The district court agreed, and now MDY has appealed.

Ownership matters, because otherwise Blizzard and other software vendors can wipe away important consumer rights with legalese contained in license agreements. For example, in Section 117 of the Copyright Act, Congress gave owners of computer software the right to *use* their legitimately purchased software without having to rely on permissions in license agreements. Blizzard and other software vendors are arguing that customers are not owners, but mere licensees, in an effort to eliminate our rights under Section 117.

This "owner-versus-licensee" trick is not just an end-run on Section 117, it's inconsistent with the law in other areas—the courts and Congress have long rejected efforts by copyright and patent owners to impose all kinds of post-sale use restrictions on books, patented machines, and compact discs. Why should software be different? Just as with those other copyrighted works, if you bought the disc that the software comes on outright (as opposed to leasing it, for example), you should get the privileges of an owner (i.e., the right to resell and the right to make copies and adaptations as necessary to use software).

In short, Blizzard's legal arguments here are all about using copyright law to take away consumers' rights in the software they purchased. We hope the Ninth Circuit rejects this attemped end-run around Section 117, for the benefit of all software users.