



Allmighty Ban-Hammer!
What Are Your Rights - and Obligations - as a Community
Manager

Kai Bodensiek – Cologne, August 17, 2011



Every Community has its „legal experts“

- **„My cousin knows someone who is specialized in copyright law and he said....“**
- **„My sisters boyfriend is at law school and he told me“**
- **„I am not a lawyer but....“**
- **„EULA are not necessary valid...“**
- **„I had law classed in college and....“**



Every Community has its „legal experts“

- **Deleting postings is censorship and violates my constitutional rights!**
- **It is my account and I can do with it what I want! So try and stop me from selling it. I do not sell my account anyway but I am just offering a leveling service!**
- **FreeShards are legal as long as they are free.**
- **Ingame captures are free of copyright and pictures posted on the internet are public domain!**



Ban-Hammer? Legally speaking...

- **banning a user is the termination or suspension in case of a temporary ban of the agreement between the user and the operator of the online game, forum or chat service.**
- **Such a ban may be based grounds for termination expressly stated in the underlying user agreement (EULA/CoC etc...). Often harassment, hate speech, or breach of contract is expressly listed as grounds for termination. Many countries do accept a general termination due to reason in addition to any listed grounds for termination, which are usually any reasons that would make it unreasonable for the terminating party to continue the providing the services.**
- **When you ban a user in most countries, e.g. in Germany or England, you do not have provide any more details but the general grounds for the termination, e.g. “use of third party tools” rather than “ you used the XY-tool on Tuesday, 11:20pm and we found out about this because.....”. Proof only has to be provided in a court of law, so in case of a ban, at least keep you logfiles for a reasonable time as allowed by local data protection laws.**



Freedom of Speech - Censorship

- **Freedom of Speech is legal principle that protects the expression of opinions by a citizen against limitations by the state**
- **In most western democracies Freedom of Speech is a constitutional right and limitations to the Freedom of Speech are rare. Most of such limitations are based on the moral rights of other citizens.**
- **However, Freedom of Speech – with just some rare exceptions that are not applicable here – does protect against the limitations from other parties than the state, e.g. private landowners may limit expression of speech on the property.**
- **The same is applicable for the operators of online games, chats or forums. The operator may in its own discretion limit the topics to be discussed or remove individual postings – within the scope of the underlying agreement with the consumer.**



Virtual Items / Goldselling / Account trade

- **The sale of virtual items and gold has been subject to intensive legal discussions in many jurisdictions. Up until today there are no specific laws for virtual goods neither in Europe nor in North America.**
- **While the anglo-american legal system approaches this matter from a copyright and trademark perspective in Germany and France the approach is rather contractual.**
- **If you believe that virtual items or ingame currency is protected under copyright, than any sale of those would constitute an infringement of copyright of the respective rights owner.**
- **Otherwise you will need to forbid sale of virtual items or ingame currency in the EULA or any other legally binding document with the user. Under the European directive concerning the use of general terms and conditions such EULA need to be expressly accepted by user when the account is set up.**



Virtual Items / Goldselling / Account trade

- **Until today we are still waiting for a national high court to address the matter of the sale of virtual items or ingame currency. Legal literature believes that terms that limit or forbid the sale of virtual items or ingame currency for real money are valid, since the publisher shall be entitled to exploit its own investment without allowing any third party to do so too and because there are strong arguments that item sale may overturn the balance of a game and risk the publisher's investment.**
- **The sale of an user account is usually already blocked by law, since the transfer of an user account is nothing but the transfer of a contract from one contractual party (the user) to new contractual party. All western legal systems require the approval of the exchange of contractual partners by the remaining contractual partner. Therefore, any account trade without the consent of the publisher is void or at least unlawful.**
- **Some legal systems may require to enable the account transfer in non-commercial scenarios, e.g. transfer between family members.**



Free Shards / P-Server

- **Computer games are protected under copyright, e.g. in Germany as a cinematographic work.**
- **Only the owner of the respective copyright is entitled to make the game available to the public.**
- **Use of the server software is an infringement of copyright and usually a criminal act.**
- **Even if the server is only emulated in most cases such emulation will constitute an adaption of the original software. Furthermore, most jurisdictions will ban those emulators as an unfair trade practice.**
- **It does NOT matter for a copyright infringement if the operator of the free shard offers the use for free or if he requires a payment. It only makes the infringement worse.**



Graphics / Movies

- **Pictures and graphics that are displayed on the internet are always protected under copyright. In rare cases and only if expressly indicated so by the author a picture may be available for free use. Also note that the use of a picture requires not only the consent of the photographer but also of the people or the works protected under copyright that are displayed on the picture.**
- **Simply publishing content on the internet is not a waiver of any copyright.**
- **The use of ingame content – pictures, sound or recordings – is always subject to the approval of the rights owner, which is usually the publisher of the game. Clear rules for the use of ingame content would help in supporting the community, but it might limit the publisher's options to intervene against the individual use of ingame content.**



Thanks for listening!

Questions?

Comments?

Ideas?

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