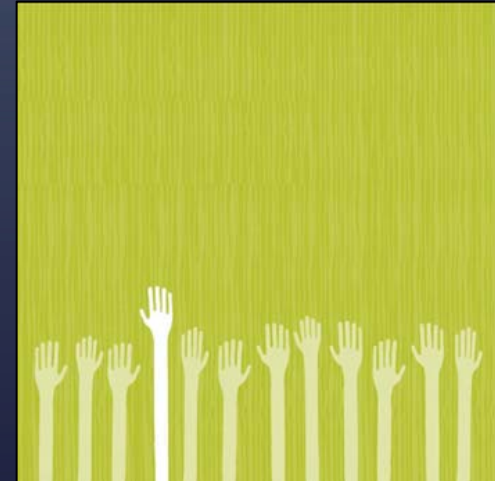


Social Media for Nonprofits: **Leveraging the Opportunities and** **Avoiding the Legal Pitfalls**

April 14, 2011

*Presented By James Gatto, Partner and Leader of the
Social Media, Entertainment and Technology Team*



Overview

- Who is Using Social Media?
- Social Media Landscape
 - Applications
 - Technologies
 - Business Models
- How Are Nonprofits Using Social Media?
- Why Social Media Creates Unique Legal Issues
- Overview of Select Legal Issues
- Questions



Who is Using Social Media?



Social Media Landscape

Applications

- Social Media applications
- Location-based services
- Mobile applications
- Online/social games
- Mirror worlds
- Blogs
- Consumer reviews & recommendations sites

Technologies

- Social networking platforms
- Location-aware devices
- Smartphones
- Augmented reality
- Content authorizing tools
- Broadband
- Wireless

Business Models

- Micro-transactions
- “Freemium” models
- Virtual goods
- Virtual currencies
- Mobile payments
- Gamification (use of game mechanics for non-game purposes)
- User-generated content-based models

Nonprofit-ing From Social Media

Fundraising / Microfunding



Allows social media users to donate small amounts while working together towards a larger goal.

Increasing Audience Interaction



Social media allows for two-way communication on blogs, webcasts, and community networks, enabling volunteers to feel and become more involved.

Volunteer Recruitment



Idealist.org & VolunteerMatch.org provide location-specific opportunities to volunteer and connect.

Education



Multiple touch points, such as Twitter, Facebook, and blogs enable organizations to inform and educate a variety of users.

Facebook/Gift App



- "Do Good" gifts
- Rob Thomas the Diamond selling (10 million) pop artist (Matchbox 20) and his charity "Sidewalk Angels"
- Gifts are free for users to send to each other and are animated at no charge to the non-profit/charity.
- Gift contains a custom message that the recipient and their friends see on their walls.
- Message contains a call to action and a URL.

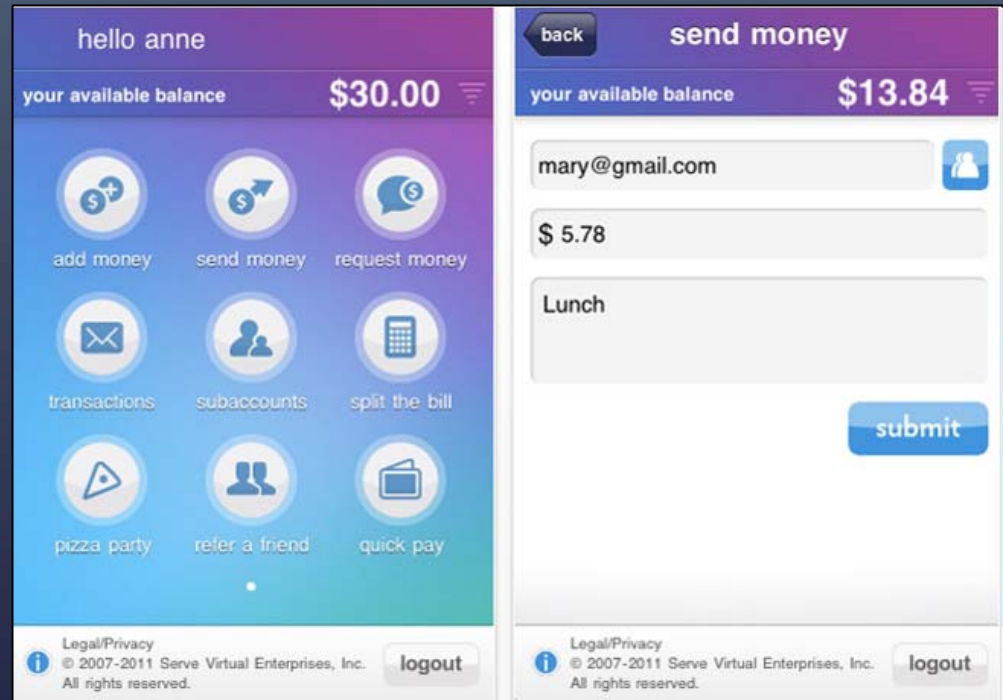
Digital Donations



- Consumers can make purchases online and via mobile phones
- Unifies multiple payment options into a single account

Partnering with five major charities, including *Autism Speaks*, to enable donations via a widget.

Widget can be shared on other Web sites, like Facebook, to encourage donations.

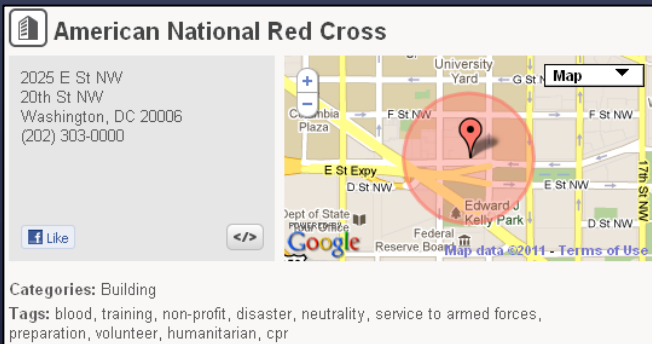


Gamification



- Location-based social networking site, game and city guide
- Users awarded points for checking-in via mobile phones

Enhance Branding



American National Red Cross

2025 E St NW
20th St NW
Washington, DC 20006
(202) 303-0000

Categories: Building
Tags: blood, training, non-profit, disaster, neutrality, service to armed forces, preparation, volunteer, humanitarian, cpr

- Geo-location

Event Promotion / Management / Fundraising



**DON'T JUST STAND THERE.
STAND THERE AND HELP KEEP
TAHOE'S WATER CLEAN.**

- 1 Check in now on [foursquare](#) at "Earthjustice Ad"
- 2 Every time you check in, an Earthjustice donor will donate \$10 to protect Tahoe's water quality

EARTHJUSTICE
Because the earth needs a good lawyer

- Know attendance
- Send instructions and updates
- "Check-in for charity" partnerships with local retailers

Virtual Goods



- Zynga is a social gaming company that owns the popular Farmville internet-based game
- Farmville users can buy virtual goods that are used in-game
- Zynga is currently partnering with numerous nonprofits to support social initiatives around the world, donating money received from virtual good purchases
- Zynga created an in-game mechanism for social participation – users were doubly incentivized to purchase virtual goods because doing so helped their in-game farms while also providing disaster relief in Haiti

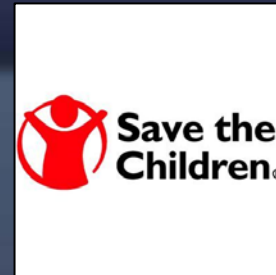
Haiti Earthquake Rehabilitation Project



To date, virtual goods sales have raised over \$2 million for these nonprofits



Virtual Goods



- Zynga is partnering with Save the Children to support relief efforts in Japan
- New virtual goods, such as Kobe cows and Japanese-style furniture, are available across seven social games, including CityVille, FarmVille, FrontierVille, and Zynga Poker
- Having worked together previously, the speed at which money was raised was unprecedented. In two weeks, players bought over \$2.5M worth of virtual goods



Virtual Currency



- Facebook Credits are a virtual currency you can use you buy virtual goods in many games and apps on the Facebook platform
- Facebook has partnered with *Stand Up to Cancer* (SU2C) and other nonprofits to try out Facebook Credits for donations



Stand Up To Cancer 

Wall Info **Donate Now** Livestream Causes Photos >>

SU2C™
SU2C.ORG/CHANGETHEODDS

 **Donate with Facebook Credits**
100% of your donation benefits cutting-edge cancer research · [Learn More](#)

Donate \$5.00  Pay Now Donate \$15.00  Pay Now Donate \$25.00  Pay Now

ODDS OF BECOMING AN ASTRONAUT:
1 IN 13,200,000

ODDS OF GETTING CANCER IN YOUR LIFETIME:
1 IN 2 MEN
1 IN 3 WOMEN

IT'S UP TO US TO



Brand-Sponsored Promotional Campaigns



- Coke asked football fans to visit the website www.cokecheers.com and send a “virtual cheers” to the team they supported in the Super Bowl
- For each “cheers” submitted, Coke donated \$1 to Boys & Girls Clubs of America’s Triple Play program
- Fans who participated were also treated to a sneak peak at one of the ads that would air during the Super Bowl broadcast
- The user benefit coupled with the donation tie-in resulted in 150,000 participants.
- As a brand, Coke accomplished user-engagement, goodwill, and increased brand awareness. As participants, users felt good about being part of noble cause and being given a sneak-peak at a Super Bowl commercial

User-Generated Content

5th Annual
DoGooder
NONPROFIT VIDEO AWARDS
Celebrating the Best in Nonprofit Video

Presented By
YouTube & See3 Communications

Supporting Sponsors
THE CASE FOUNDATION Flip N10EN

Home Gallery Results

DGTV_2011_Awards.mp4
by see3

5th Annual
DoGooder
NONPROFIT VIDEO AWARDS
Celebrating the Best in Nonprofit Video

YouTube

0:02 / 2:25 360p

Congratulations to our **WINNERS!**

- BEST Small Org Video** "300 Years of Fossil Fuels in 300 Seconds" by the Post Carbon Institute
- BEST Medium Org Video** "Meet the Digits" by Ronald McDonald House Austin
- BEST Large Org Video** "A Public Service Announcement Not Approved by AJWS" by the American Jewish World Service
- BEST Thrifty Video** "It's In Your Hands" by Watershed Management Group

Thank you to all those who submitted videos and voted.
We hope to see you next year!

- \$2,500 grants are awarded to four nonprofits
- Allows nonprofits to tell their story using sight, sound, and motion
- 2010 videos have received over 1 million views

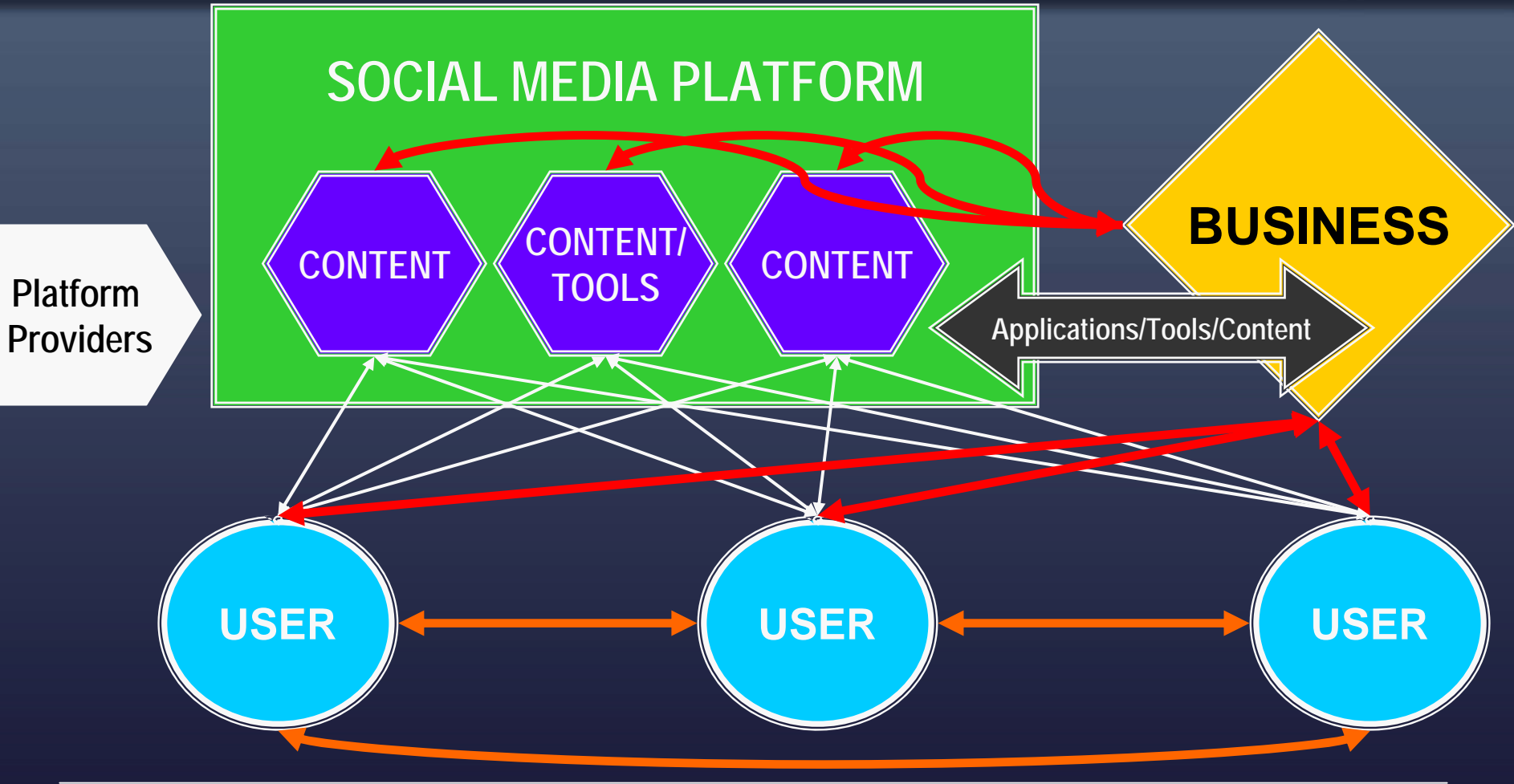
Traditional Website: One-to-One Platform



Why Social Media is Unique

- **Business and Technology Overview**
 - **The internet, user generated content, location-based services and social networks** are:
 - causing a societal shift in the way consumers interact
 - changing the way business is being done
 - driving new business models (“freemium,” **virtual goods, virtual currencies, gamification**)

Social Media: Dynamic Platform



Why Social Media Creates Unique Legal Issues

- Not just user/website interaction
 - Platforms/third parties/users
 - Multiple interactions
 - Platform providers need to protect business/third parties/users
 - Businesses leveraging platforms need to understand platform rules and ensure that uses of platform do not create a liability (platforms/partners are getting sued together)

Why Social Media Creates Unique Legal Issues

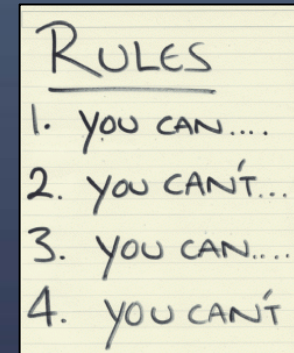
- Companies and organizations need a digital media strategy:
 - Cannot simply digitize existing content
 - Cannot just create a Twitter or Facebook account
 - Need to adapt to changing business models
- Unique Business Models Drive Unique Legal Issues
 - UGC – DMCA issues
 - Points/Currencies – regulatory and property rights issues
 - Location-based - privacy issues
- Greater Interplay Between Business/Technology/Law

Why Social Media Creates Unique Legal Issues

- Legal Landscape
 - Legal component is critical to business issues/strategy
 - The law is lagging behind business models/technology
 - Legal landscape is rapidly changing, but many issues not yet addressed
 - Enforcements/litigation are starting
 - Staying up to date is necessary
 - Staying ahead of the curve is better
 - Our team of 35 attorneys is focused on this

Overview of Some Unique Legal Issues

- Gamification
- FTC Endorsement Guidelines
- Virtual Goods and Virtual Currency
- Federal Card Act
- Terms of Service/EULA
- Intellectual Property
 - Copyrights
 - DMCA
 - Trademarks



Gamification

- Definition: Use of game mechanics for non-game purposes
 - leader boards
 - points
 - status (expert)
 - badges
- Legal Issues
 - FTC Guidelines on Endorsements
 - Enforcements

FTC Endorsement Guidelines

- Covers “consumer” testimonials (e.g., reviews/recommendations) endorsing a product or service on any social media site, not just blogs
- The guidelines cover any advertising message
- Need to disclose any connection between endorser and advertiser - anything of value (specific example includes points)
- Advertisers
 - Need to **advise the consumer** giving the testimonial that this connection needs to be disclosed
 - have procedures in place to try to **monitor the consumer's postings** for compliance
 - emerging best practices for simplifying compliance
- Advertisers are subject to liability for false statements or for failing to disclose material connections between themselves and their endorsers
- Other issues with experts/celebrity endorsements

([Link to blog post](#))

FTC Endorsement Guidelines - Enforcement

- Recent actions show that the FTC and other regulatory authorities are getting serious about enforcement ([Link to blog post](#))
- **Examples:**
 - In March 2011, a company selling a popular series of guitar-lesson DVDs agreed to \$250,000 to settle FTC charges that it deceptively advertised its products through online affiliate marketers who falsely posed as ordinary consumers or independent reviewers
 - In August 2010, a public relations agency hired by video game developers agreed to pay \$250,000 to settle FTC charges that it engaged in deceptive advertising
 - In 2009 Lifestyle Lift, a cosmetic surgery company, paid \$300,000 to settle with the State of New York over its attempts to fake positive consumer reviews on the Web regarding the results of face-lift procedures.
- It is important to ensure that your use, and your employee's use, of social media is done in way that does not create legal liability

Virtual Goods and Virtual Currency

- Virtual Currency – Federal regulation considerations
- Terms of service issues are critical
- e.g. – Linden Labs cases

Federal Card Act

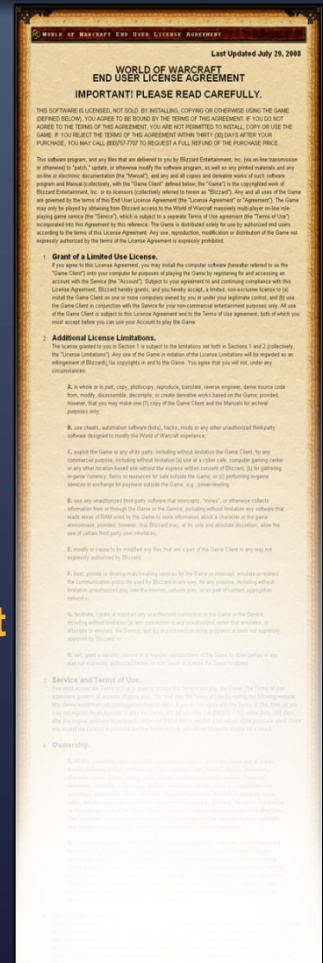
- Expiration of Points/Virtual Currency/Gift Cards
 - Some aspects require 5 year minimum expiry date (subject to exceptions)
- Service Fees
- Disclosure to Consumers
- Enforcements are Starting - against providers and partners!

The CARD Act – Litigation

- First class action under the CARD Act filed on January 21, 2011
- *Ferreira v. Groupon, Inc., Nordstrom, Inc.*, U.S. District Court, Southern District of California
 - “Plaintiff Class” – All persons who purchased or acquired a “groupon” gift certificate from Groupon with an expiration date of less than five years from the date of purchase
 - Nationwide class
 - “Defendant Retail Class” – **All persons or entities that contract and/or partner with Groupon** to promote their products and/or services using “groupon” gift certificates with expiration dates
 - Alleges violations of CARD Act, and California’s unfair competition law, false advertising law and Consumers Legal Remedies Act
 - Seeks declaratory and injunctive relief, restitution, compensatory and punitive damages, prejudgment and post-judgment interest, and attorney fees and costs

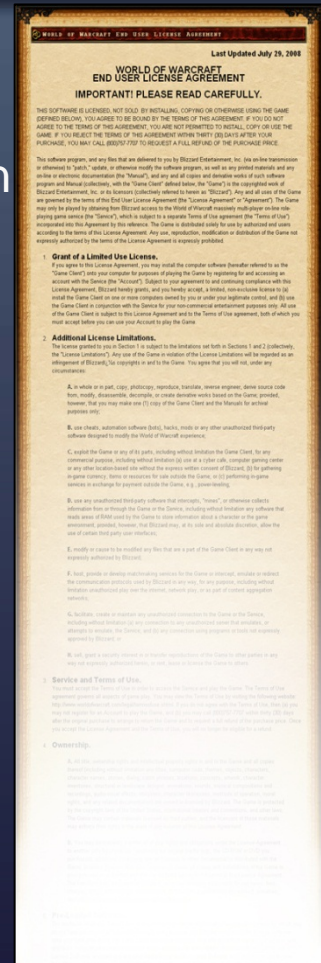
Terms of Service Agreements

- TOS critically important for all websites ... but there are some unique issues for Social Networks, Virtual Goods, Virtual Currency, User Generated Content, Location-based service, etc.
- **One size does not fit all – need careful consideration and customization**
- Points/Virtual Goods/Virtual Currency
 - Ownership v. license
 - Right language to avoid liability if user account terminated
 - Qualify scope of licenses/conditions - **to get copyright infringement instead of breach of contract (MDY v. Blizzard)**
 - ([Link to Case Advisory](#))



Terms of Service Agreements

- Example: Bragg v. Linden Lab
 - Dispute over right to virtual property upon account termination
 - Court informally acknowledged a right to virtual property
- Class Action
 - Conflict between TOS/Advertising
 - need to coordinate business/legal strategy



Terms of Service Agreements

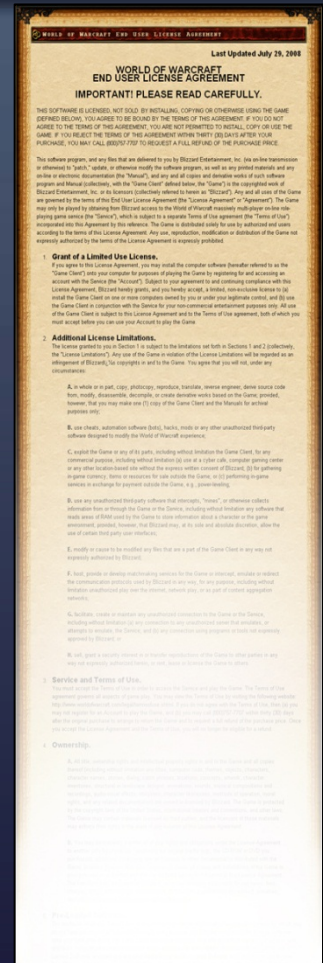
- Impact on Those Not Bound by Terms

- DMCA
- Gmail litigation

- Modifications

- Draft carefully – you can write anything, but may not be enforceable
- *Harris v. Blockbuster* - if you go too far, courts will not enforce

- Other issues



Need Comprehensive Social Media-Focused IP Strategy

Copyrights

- Timely Filings
- Work for Hire
- DMCA



Patents

- Many patents being filed
- Many misperceptions about patentability (e.g., business methods)

Trademarks



- New Trademark Office Class Descriptions relating to virtual goods/currency
- Trademarking avatars
- Policing/Enforcement strategies

Copyright

User Uploaded Content

- Many services enable users to upload content
- Hosting infringing copyrighted content can create liability for contributory infringement
- Digital Millennium Copyright Act provides some protections – if you fully comply!
 - ([Link to Advisory](#))
 - ([Link to Advisory](#))

DMCA – User Uploaded Content

Service Providers

Limit liability

Must strictly comply

Content Creators

Facilitates Take
Downs

Must strictly comply

Misuse liability

DMCA – User Uploaded Content

- Need to register agent with Copyright Office – Name, all URLs
- Make agent info available through service, in location accessible to the public
 - In TOS?
- Policy to Terminate Repeat Infringers – adopt, reasonably implement, inform subscribers and account holders of policy for termination of repeat infringers
- Other Key Issues
 - Polices for handling notices – non compliant notices
 - Automated notices
 - No direct financial gain
 - Accommodation/n interference with technological measures 512(i)(2)

DMCA – User Uploaded Content

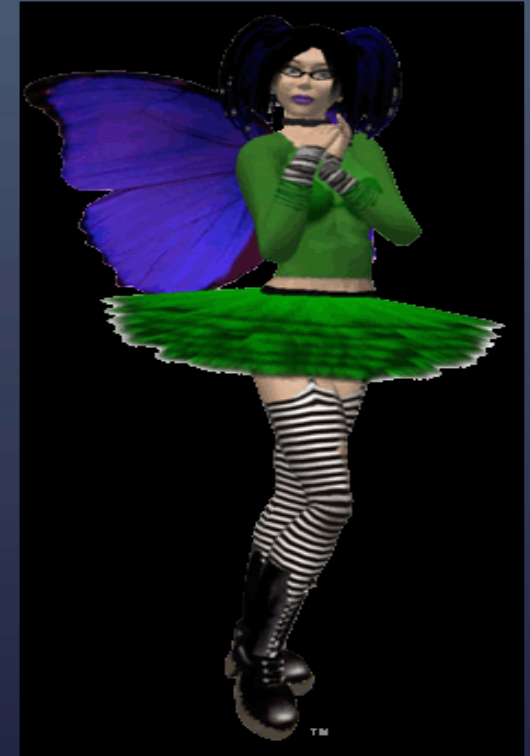
- Notices
 - Requirements of proper notice by content owner – to trigger obligation for takedown
 - Liability for notice without good faith basis for copyright infringement
 - need to consider fair use
 - ([Link to Case Advisory](#))

Copyrights

- Timely Filings - many companies overlook the value of timely filing copyright registrations
 - statutory damages
 - attorneys' fees
 - ([Link to Advisory](#))
- Work for Hire – if you rely solely on work for hire, you may not own the IP that you think you do
 - ([Link to Advisory](#))

Trademarks

- Should your trademark registrations cover digital goods?
 - Does description of goods/services for real world items cover virtual goods/services?
 - Trademark Classes
 - Class 9 - Downloadable virtual goods, namely, computer programs featuring {specify nature, type, e.g., articles of clothing} for use in online virtual worlds
 - Class 35 - Retail store services featuring virtual goods, namely, {specify type, e.g., clothing} for use in online virtual worlds
- Trademark for Avatars



TM litigation - Likeness of Real World Business

- Recent case involving alleged TM infringement for use of likeness of real business in virtual world game:


E.S.S. Entertainment 2000 v. Rock Star Video, ___ F.3d ___ (9th Cir. 2008)

([Link to Case](#))



Pillsbury's Social Media, Entertainment & Technology Team

10
Frequently
Asked Questions
About
Virtual Worlds



Social Media, Entertainment & Technology

A confluence of factors is radically transforming the way that people interact socially, the way businesses develop and maintain relationships, the power that individuals have to impact consumer and business decisions, and the value users add to the contents of websites and other online services. A number of social media technologies and platforms are maturing simultaneously, creating a seismic shift in online social and commercial activity.

These are some of the applications, technologies and business models behind the social media revolution that are transforming the ways people interact and how business is being conducted:

- Applications**
 - Social media applications
 - Location-based services
 - Mobile applications
 - Online/social games
 - Virtual worlds
 - Minor worlds
 - Blogs
 - Consumer review/recommendation sites
- Technologies**
 - Social networking platforms
 - Location-aware devices
 - Smartphones
 - Augmented reality
 - Content authoring tools
 - Broadband
 - Wireless
- Business Models**
 - Micro-transactions
 - "Freemium" models
 - Virtual goods
 - Virtual currencies
 - Mobile payments
 - Gamification (use of game mechanics for non-game purposes)
 - User-generated content-based models

Pillsbury Winthrop Shaw Pittman LLP www.pillsbury.com

- Regular Client Alerts
- Studying/Following Emerging Issues
- Industry Specific Fact Sheets

Virtual World Law Blog <http://www.virtualworldlaw.com/>

Pillsbury's Social Media Team

- Pillsbury is one of the largest, full-service US law firms, with market-leading strengths in the energy, financial services, real estate and **technology** sectors, with nearly 800 attorneys, in 14 offices in the US and abroad
- We are the first major law firm to offer a **Social Media, Entertainment & Technology Group and Virtual Worlds and Video Games Team**
- Our multidisciplinary team includes over 35 lawyers who have hands-on experience with social media, virtual worlds and games and a broad array of legal backgrounds
- Our team understands the business and technology issues involved with social media – we conduct regular and extensive internal training to all team members to stay abreast of cutting edge legal and business issues in the industry
- Pillsbury's team includes attorneys who are at the forefront of issues central to the social media, virtual worlds and video games industry
- We **proactively** advise clients – we anticipate trends and offer a 360-degree perspective on business and legal issues—helping you take greater advantage of opportunities and better mitigate risk.