

# What Every Librarian Needs to Know about Videogames and the Law

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# Brief Background

Mark Methenitis:

- Attorney with The Vernon Law Group, PLLC in Dallas, TX
- Editor in Chief and Sole Author of Law of the Game blog
  - Named one of the American Bar Association Journal's Top 100 Legal Blogs in 2007
- Columnist for Joystiq
- Gamer

# Outline

- Copyright Basics
- Video Game Tournaments in the Library
- Machinima in the Library
  - Machinima Contests
  - Machinima Showings

# Copyright Basics

- Copyright, at its core, is a bundle of rights.
- Those rights are:
  - To Produce Copies/Reproductions
  - Import/Export the Work
  - Perform or Publicly Display the Work
  - Transmit or Display Through a Broadcast
  - Create Derivative Works from the Original Work
  - Sell or Assign These Rights

# Copyright Basics

- Books, Movies and Music operate under pretty well established copyright regimes.
  - Buying a copy gives you the right to use the work for personal use.
  - Reproducing the work, creating a derivative work, or displaying/broadcasting the work require permission from the rights holder in the form of a license.

# Copyright Basics

- Games, however, are the ‘oddball.’
- Games are packaged and distributed according to the End User License Agreement (“EULA”), an actual contract that accompanies the product.
- So, games are subject to both copyright and EULA restrictions.
- EULAs have been both held enforceable and unenforceable in the US, but it is best to assume they are enforceable.

# Fair Use?

- Three common sources of copyright limitations:
- 17 USC § 107 – The ‘Fair Use’ Provisions
  - Generally, “criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.”
  - Not unlimited; There are specific rules for classroom use, for example.
  - Infringement determined by looking to four factors:
    - Purpose and character of use (Commercial? Nonprofit?)
    - Nature of the work
    - Amount and substantiality of the portion used
    - Effect on the potential market for or value of the work

# Fair Use?

- 17 USC § 108 – The ‘Library Reproduction’ Provisions
  - Allows for reproductions of certain works by libraries in certain circumstances
- 17 USC § 110 – The ‘Exemption’ Provisions
  - Long list of performances or displays that are not an infringement of copyright.
  - Many provisions specific to teaching and the classroom setting
  - Allows for many works to be displayed/performed in stores that sell the product

# A Caveat

- This discussion doesn't apply universally, and what I've generally thought of is an actual event where the library supplies a few TVs with connected games that are played by many in some form.
- What isn't included?
  - Events such as a 'bring your own DS' Pokemon event where the kids bring the system and game and the library is merely a forum
  - Events utilizing board or card games

# Gaming Events in the Library

- Movies and music have long established rules for licensing of public displays, but games do not.
- There are two potential sources of restriction to gaming events in the library: copyright law and the EULA.
- Both can be overcome with permission.
- Copyright's restriction in this case is the 'right of performance'
- Most game EULAs have some clause limiting the use of the game to 'personal' or 'home' use.

# Right of Performance

- 17 U.S.C. § 166
  - (4)
    - “in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;”
  - (5)
    - in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly;”
  - “Other audiovisual works” includes games.
  - There is some question whether a tournament is a ‘performance’ or a ‘display,’ but this is semantics.

# Exemptions to Copyright

- None of the traditional exemptions apply to game tournaments in the library.
- Even if a fair use or other exemption did apply, the EULA may still govern or have associated penalties for the use.
- If the EULA grants a display/performance right on the user, then that governs and there's no restriction.

# Library Tournaments: Best Practices

- The 'Better Safe Than Sorry' Approach:
  - One simple rule: Get approval in writing.
  - Approval needs to be in the affirmative.
  - The writing doesn't have to be overly formal, fancy, or signed; e-mail will suffice.
  - Plan Ahead!
  - Have Fun!

# A Machinima Mini-Primer

- What is Machinima?
  - ‘Digital Puppetry’
  - Often uses games or programs specifically designed for machinima
  - Notable Machinima
    - Red vs. Blue
    - This Spartan Life
    - The Strangerhood
    - Bloodspell
    - Neverending Nights
    - ‘Decisive Battles’ on The History Channel
    - South Park ‘Make Love Not WarCraft’ episode

# Machinima



*Red vs. Blue*  
*PSA - Thanksgiving*

Created By  
Rooster Teeth  
Productions  
<http://www.roosterteeth.com>

Created Using Halo  
(Microsoft, Bungie)

Video ©2004 Rooster Teeth  
Productions



# Machinima and Copyright

- Machinima is, generally, a derivative of the original work the machinima is made from.
- Because machnima is a popular way to encourage creativity in the fan community, some developers have actually posted 'machinima guidelines' that allow the creation of these derivative works within certain boundaries:
  - Microsoft
    - <http://www.xbox.com/en-US/community/developer/rules.htm>
  - Blizzard
    - <http://www.worldofwarcraft.com/community/machinima/letter.html>
- There are also a number of software platforms made specifically for machinima: Moviestorm, Antics3d, ZenCub3d, Dakine Wave, etc., many of which contain no restrictions on the movies created with those applications.
- Open source games also often have permissions for use in machinima, generally with attribution to the original game.

# Machinima and Copyright

- Beyond the software used to create the video, there are other copyright concerns:
  - Use of unlicensed music
  - Use of unlicensed audio
  - Use of unlicensed photos
- Even though it's entirely possible no one will ever pursue any sort of action, it's better to be safe than sorry.

# Machinima in the Library

- Librarians can make 2 uses of machinima:
  - Machinima Contests
  - Machinima 'Film Festivals' or Screenings
- Both can act to get people into the library
- Screenings can follow a contest, increasing participation
- Machinima can be an ongoing community within the library

# Machinima Contests: Best Practices

- The 'Better Safe Than Sorry' Approach:
  - Stick to titles that have definitive rules.
    - Microsoft's Designated Titles
    - World of Warcraft
    - Open Source Projects
    - Machinima specific software
  - Stick to non-copyrighted elements
    - Music
  - Follow the usage rules.
  - Have fun!

# Showing Machinima: Best Practices

- The 'Better Safe Than Sorry' Approach:
  - Treat Machinima works just like any other movie or TV show.
  - Get approval from the machinimist before any sort of screening.
  - If in conjunction with a contest, make the screening a condition of the contest.
  - Have Fun!

# Questions?

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