



<http://howtonotsuckatgamedesign.com/?p=3346> , August 12, 2011

<http://howtonotsuckatgamedesign.com/?p=3346> by Anjin Anhut.

This article is filed under [game criticism](#).

Bethesda VS Mojang Aftermath

Yeah, it's a blog post about reactions to a blog post. But my article [Bethesda Is Not The Problem And Notch Is Not Helping](#), posted on sunday has now been read way more than twenty thousand times and sparked tons of interesting feedback, enlightening feedback and spectacular insults.

Let's me address some of it.

Whoa, thanks!

First I'd like to give a shout out to my readers here on howtonotsuckatgamedesign.com, the community over at reddit.com/r/Minecraft/, the twitteristas and all the voices in forums an blogs all over the web sharing and discussing my article. Monday was a fucking blast. Thanks, boys and girls. Yeah, I got all sorts of dismissive feedback, but the overall resonance was very good. Or at least way better than expected.

Even the negative responses are very welcome. I am generally really supportive of people voicing their opinion no matter how justified or stupid I find it to be. There was one single exception though. You know, all comments on my blog need to be personally approved by me (I'm the admin after all) before they are publicly visible. You can see I approved the release of some quite insulting stuff, but there was one comment I did not publish.

The commenter in question used anti-gay slurs to describe his disapproval of Bethesda's law suit. [Howtonotsuckatgamedesign.com](http://howtonotsuckatgamedesign.com) is not the place for homophobic bullshit, where the discussion itself has nothing to do with gay issues at all. Or racist bullshit or sexist bullshit. Freedom of speech is all nice and fine. But this is my house. I invited him to resubmit his opinion without resorting to anti-gay language, he hasn't replied yet.

Criticism

I was pointed to a few things that were wrong in the article like me describing *Scrolls* as an RPG or my wrong use of the term "reactionary", so I corrected them. I love being corrected, it makes me smarter and improves my work. So keep that coming.

There was also some criticism of my tone in the article. Some of the criticism was just used to discredit the whole post, others were actually quite reasonable. I know that my tone could be seen as condescending, offensive or willfully controversial. To make it clear, nothing I wrote is an attack on Notch as a person or on the people with pitchforks and torches I referred to. But it damn well is an attack on certain ideas and behavior. The smartest people do the stupidest stuff sometimes. And stupid behavior and ideas need to be called out, no matter who the person behind the stupidity is.

Thanks to the honest feedback regarding my tone though. It will be factor in picking language for future articles. To all those who stop considering opinions because they come with strong language and honest emotional use of words, Æö/Ñ-ð that's your problem.

Better Speakers

I'm very grateful for some people, who actually work in the field of trademark rights, chiming in. It seems like my understanding of the trademark situation, the justifiable law suit, the necessity to sue and my concerns with Notch's public testimonies were generally shared by those guys. Though I freely admit that those commenters made a way better case for the situation, did use better terminology and of course had a lot of information to add to give a better understanding.

I attached some of my favorite comments below, so you can read up on the matter of things from people who are better equipped than I am to talk about it.

Where Is The Years Long Legal Battle Between Star Trek And Star Wars?

Now on to the chunk of feedback that probably makes up more than two thirds of expressed opinions. I'm talking about the uninformed rejection of the premise of Bethesda being able and being required to sue Mojang. If you doubt that this is the state of the law, fine, but that's only because you don't know trademark law. It's as simple as that. There nothing

wrong with not knowing trademark law unless you are going to work with trademarks (Mojang, wink, wink) and I myself also don't read up on all blog post's facts. But I also don't use my lack of knowledge to stay proudly unconvinced.

There were some opinions expressed, acknowledging the state of the law, while still calling the law out for being "nonsense", "stupid" and "just plain wrong". I'm with you guys. Though I appreciate the protective qualities of the laws, I myself find them to be worth debating and changing.

To all the guys who dismiss articles like mine on the basis of "doesn't make sense to me", "if it's true, why don't we see this all the time?" "i don't believe you, where is the proof?" and all that, you are arguing from ignorance. You aren't pointing at a hole in my argument, you are just pointing at a hole in your knowledge. You actually overwhelmingly confirmed, how important and justified it was to write my article in the first place. So thanks, I guess?

Favorite Insults

Below you find my personal pics for the most gratifying insults and dismissals. Enjoy.

I find it truly surprising that a site named [howtonotsuckatgamedesign](#) is run by a condescending asshole, HUGE surprise.

People may take your OPINION more seriously if you could be bothered to check your grammar and spelling before posting a bunch of [you should have known better](#) rhetoric.

What successful games have you designed again?

That's a long and unprofessional rant if I ever saw one.

Looking at [anjinanhut's](#) (the author of this article) submitted entries and the comments section of other pages on his blog this appears to be a failed or struggling blogger being bombastic and childish to garner attention for his blog instead of providing original & genuinely interesting content.

The guy who wrote this article sounds like a real asshole.

The article is clearly sensationalist junk.

No, [anjinanhut](#). First off, fuck you.

Second, fuck you for being part of the problem.

This bullshit about "Hate the game, not the player" is just that, bullshit. You only perpetuate this stupid system of copywriting "words" and sounds and fuck all else. This isn't even a phrase, its just a word that is unlikely to actually be confusing between these two games. Bethesda should go fuck themselves for perpetuating this system.

This whole post is full of crap. I stopped reading here:

[Get over the narrative, folks and focus your anger on the actual target: Copyright laws.](#)

Not only are you not a lawyer, but you don't know the difference between trademark and copyright either. Here's a hint: They're totally different things. They may both come under the banner of IP but the purpose and enforcement of them is not the same in any way.

what is this? longest hate-post i've read before!

at least try to be neutral..

all i can read in this article is [i hate notch, minecraft and everything connected to mojang](#)

Oh my god, you need an editor. I could not read this article with the number of errors within it.

you seem like such a pretentious person. this article screams douchebag. this is your opinion, not fact.

Go fuck yourself kthxbai

Maybe you should start the blog called [how not to suck at giving constructive criticism](#), with the first entry about not assuming a condescending holier than thou attitude even when one is technically correct.

Bottom line is that your article does nothing but deflect and provide cover. You don't advance the discussion, you don't adequately address the international nature of the case, and you don't provide a meaningful solution for the non-problem you posit. Although, nice job in scamming up some traffic for your blog by being [controversial](#). So I suppose you win that way.

Knowing what they are talking 'bout.

A few people who took the time to bring more light and understanding. Thanks for almost writing full length articles on the matter yourself.

Starky says:

August 9, 2011 at 12:36 am (Edit)

I think this boils down to the fact that most people don't understand trademarks at all* and think that [scrolls](#) is different enough from [The Elder Scrolls](#), or that most people call the games [Oblivion](#) etc, and assume Bethesda are in the wrong.

They are wrong, and so is Notch.

Trademarks are all about strength. Strength is gained from uniqueness (that is the more generic the term the weaker any claim for trademark becomes. "Trademarks have actually been lost due to becoming generic terms), market share and finally chronology (who applied for, and used the TM first).

In "Big Mac" "Mac" is the strongest term, in "Mickey Mouse" it is clearly Mickey. Companies could get away with calling a burger "Something" say the "Big Beefer", Just like you could name a character "Something" Mouse. So long as it didn't sound like Mac or Mickey. John Mouse would be fine, Michael Mouse wouldn't.

In "The Elder Scrolls" that defining term is clearly Scrolls.

Pre-notch, any mention of Scrolls + Game would automatically associate with Bethesda products, and I can only find 1 game that is not an Elder Scrolls game with scroll/s in the title, a small word/puzzle game, and I seriously doubt they applied to gain a trademark for it.

So the second issue is market share, or brand/company association. Simply put courts have been known to grant usage to a company who came second to market (as in another company trademarked a name first) but became the clear market leader, due to the sheer weight of association with that company and their products. A fictional example (though not totally fictional in the case of gmail in the UK) is if someone had a business called "google" that pre-dated Google. One involved in computing and the internet somehow, but relatively unknown. a court may rule that this little unknown brand would suffer no harm from having to change name and grant rights to big G, Google. no matter which came first.

So in this case, Bethesda came first, have the stronger brand (notch has zero brand strength yet) and market share. They clearly should be the ones to own "scrolls" in the video game market.

Seriously, this is a trademark that is literally worth hundreds of millions (if not a billion plus) to Bethesda, and worth literally fuck-all to Notch/Mojave. they are not going to have a sense of humour about this kind of thing (when it can actually destroy their Elder Scrolls trademark. Notch is an idiot if he doesn't immediately realize he's been a fool and withdraw and and all claim to the term "scrolls", if he somehow gained the trademark in Sweden he should give it up to Bethesda, relinquish all claim to it. Best he can do is maybe bargain usage of the term for his game (and any directly related products), but he can't win.

If Notch does win in Sweden due to some odd non-EU conforming laws, or a stupid judge, then you can be almost sure that Bethesda will win in European court, it will cost both of them millions. millions that Bethesda will happily risk for their billion dollar TM. Will Notch? I doubt it.

*Disclaimer, I'm not a IP lawyer, just a Engineer who deals quite a lot with patent and trademark issues for my company. A company that would challenge any lawn cutting product with "hover" in the name (and before anyone googles, "challenge" are a licensed rebadge).

[theony 34 points 5 hours ago

Hi Notch! First off, IAAL, and an IP lawyer at that, but not in the relevant jurisdiction. Further, IANYL. TINLA.

OK then.

I suggest you don't comment publicly on this. In common law jurisdictions, "open" comments such as this can and will be used in cross-examination against you. It will happen, despite hearsay or other evidentiary issues, and it will not be pleasant. I know you may not have said much, and you may not be able to think of a way it can be put to use during a hearing, but lawyers will try everything within reason to win. We have to; it is our job.

I understand that Swedish law may be different in that a civil law judge tends to be more truth-seeker than arbiter. But if this conflict leaks over to common law jurisdictions, this is something you will want to keep an eye out for. Trust me, it sucks being cross-examined. Everything you say is looked over and mined for inconsistencies and what not. A good cross-examination can make an honest man with nothing to hide look like a pathological liar desperately trying to avoid liability.

I'm pretty sure the Swedish proceedings are just a way to exert additional pressure on Mojang, possibly to have an additional bargaining chip in the ongoing negotiations. Whether or not they have a case, Bethesda has probably budgeted \$X to commence that case, and may well consider it money well spent if it can be used to get one or two better terms in the negotiations.

Unfortunately, this is how the game is played. I'm not sure how it can be fixed, if at all. IIRC, it's pretty hard to argue that such economic pressure amounts to an abuse of process.

On a separate and more philosophical note, while I agree with TM laws in general do have a consumer protection angle (i.e. to stop confusion as to the origin of the goods or services provided under the trade mark), they also protect IP owners from others freeloading off of their good name. The issue is balance, and balance costs money.

[theony 2 points 36 minutes ago

OK, so I see a few people throwing this idea around. I agree with you in a sense that it is good to keep your consumers updated. But let's read through Notch's post and see what I can come up with as an example as to how to whack Notch during cross-ex. Bear in mind this is a hypothetical, and it will be a contrived example as a result. I am also trying to simplify the horrific cludge that is procedure, I don't know the full details behind the case, I don't know how Notch will react under cross-ex, and I don't know many, many other relevant things.

Quote:

About half a year ago, our lawyers recommended us to register "Minecraft" as a trademark, so we did. I had voted against it initially, but we did it anyway. Better safe than sorry, and all that. At the same time, we also applied for "Scrolls", the new game we're working on. We knew of no similarly named games, and we had even googled it to make sure. I'm not even sure if you CAN trademark individual words, like "Scrolls", but we sent in the application anyway.

Plaintiff lawyer ("PF"): Mr P, before Mojang applied for "Scrolls" as a trade mark, had anyone checked if there were any similar trade marks?

Notch: Yes.

PF: How did you check, Mr P?

Notch: We did google searches for "scrolls".

PF: Thank you, Mr P. I did some google searches myself. Here is page 1 of the search results.¹ Would you please read to the Court the 9th entry?

Notch: The Elder Scrolls Official Site | Home.²

PF: Thank you, Mr P. You are obviously aware of my client's role-playing video game series, marketed under The Elder Scrolls?

Notch: Yes. I'm a big fan, actually-

PF: Thank you, Mr P. A yes or no answer will suffice.³ Mr P, you would agree with me that if you did a google search for "Scrolls", you would definitely have encountered my client's web site?

Notch: Yes.⁴

PF: Then, Mr P, how is it that you can claim that you knew of no similarly named games?⁵

Notch: I don't think "Scrolls" is similar to "The Elder Scrolls"-

At this point, there are a few branching paths. One, Notch shouldn't be making legal arguments, so that line will get shot down pretty quick by PF if Notch tries it. Two, PF may go down the path of "Are you legally trained?" to which Notch would have to say "no". If Notch adds a "but I did some research etc.", then PF would use that as an opening to use the statement "I'm not even sure if you CAN trademark individual words, like "Scrolls", ...", because you absolutely can trade mark individual words, with the goal of showing that Notch has no legal knowledge whatsoever.

The ultimate goal is to show that he has no legal knowledge, made a decision that "Scrolls" was not similar to "The Elder Scrolls", did some "google searches" to satisfy himself that no other similarly named trade marks for video games existed, and seriously Your Honour, can you believe this guy who didn't even do due diligence prior to using a new trade mark? He is not a credible witness.

Again, the above is just a contrived hypothetical. What I'm trying to say is that what he can say will most definitely be sifted through and used against him in Court, if it comes to that, and Notch will not enjoy it. Most likely, it will not come to that, and Mojang will settle.

This is how lawyers work in an adversarial system.

I hope that helps clarify why we don't like putting our clients in this kind of position and how bad things can happen.

That having been said, legal advice is just that – legal advice. Notch can go and do whatever he wants! I sincerely hope it doesn't bite him in the arse.

Footnotes:

Super truncating procedure, sorry.

That's what it is right now.

Witnesses on cross examination don't usually get to go very far off track; the lawyer will try to rein him in and control him. Having an intimidating presence helps, ofc.

He can't say no. If he says no, PF would jump on him for being blind, and maybe a smidgen of "are you seriously trying to tell this court that you would not have seen one of the top ten hits in a google search?"

Yes, yes, open ended question, it is late RAWR.