User-Generated Content (UGC) in Your Games
Guitar Hero World Tour
Music Studio

Write and Share a Guitar Hero Hit
Compose, record, edit, and share your own music online. Download and play community-created content for free.

Music Studio
- Compose original music for the hit title using 8 different instruments.
- Create music with composer tools using a DMD technology.
- Record drum kits, guitar loops,ocity, and keyboard arpeggios.

Game Modes
- GHMix™
- GHtunes™

Share Online
- Share music online
- Download music for free

Customizations
- Customize game settings
- Share achievements on social media

Community
- Connect with other Guitar Hero fans
- Participate in forums and discussions

Music Studio
- Compose original music for the hit title using 8 different instruments.
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World Tour lets you become the rock star in every way possible - from...
Xbox Live Community Games
iPhone Apps Store

Applications unlike anything you’ve seen on a phone before.

Applications designed for iPhone are nothing short of amazing. That’s because they leverage the groundbreaking technology in iPhone — like the Multi-Touch interface, the accelerometer, GPS, real-time 3D graphics, and 3D positional audio. Just tap into the App Store and choose from thousands of applications ready to download now.

Browse the App Store in iTunes →
User-Generated Content (UGC)

- UGC in games often appears in one of four ways:
  - Allowing users to create or upload content in a game
  - Providing a marketplace for user created games
  - Providing user communities or other interactive areas
  - Unintended UGC
Agenda

- Enforcement
- Privacy
- Statutory protections and its limitations
- How courts view (or might view) UGC in games

Joe Cutler  Susan Lyon  Lisa Oratz  Will Rava
Protecting Against Abuse and Cybercrime

- Evolving World of Cybercrime
  - Hacking
  - Spamming
- Child-Related Crimes (pedophilia, kidnapping, exposure to extreme content)
Preparing to Respond to Platform Abuse

- Consider the interaction between computer and console
- Consider the logs you create and maintain
  - Mac Addresses
  - IP Addresses
  - Logs of UGC Activity
  - Filter Logs
  - Location Logs
Preparing to Respond to Platform Abuse

- Consider the danger of console hijacking (botnets)
- Consider design and protections for location-based services (handheld devices and proximate messaging)
Responding to Law Enforcement Requests

- Review and understand the nature of your platform features under ECPA
- Create and maintain a program for responding to law enforcement requests
- Don't assume the "official" requests are "legal" requests
- Maintain relationships with key law enforcement agencies
Be Prepared

- Take time to anticipate attacks
- Create and keep appropriate log files
- Create a standard procedure for responding to law enforcement requests
  - Have counsel on-hand that understands your business to challenge burdensome requests
- Stay abreast of evolving threats
Images and Likeness

- US – Right of Publicity/Invasion of Privacy
- EU – EU Directive on Data Protection
- Canada – PIPEDA
- Australia – Privacy Act
Chang v. Virgin Mobile, USA
Google on Trial: Privacy, Italian Style

Criminal charges against four Google executives over an allegedly offensive video posting raise troubling questions about the liabilities of Web companies.

By Mark Scott

Who's responsible for the mountain of user-generated content uploaded onto the Internet every day? That's the crucial question being asked at a trial set to begin on Feb. 18 in Milan, Italy, involving four Google (GOOG) executives.
Children's Privacy & Safety

- COPPA
- Child Porn Reporting
- State Child Safety Laws
Canada Regulates Second Life?

Commissioned Report

- Volume of information available to host
- Ability of host to misuse the collected information
- Lack of privacy protections within virtual world
- Potential for government and private party in-world surveillance
Key Privacy Takeaways

- Make clear what is anonymous v. Limited v. Public
- Terms of use – rep and warrant model releases obtained
- Consider monitoring or offering self reporting for privacy sensitive content
- Consider blocking children
- Set up processes to comply with child porn reporting requirements
Statutory Protections and their Limitations

Lisa Oratz
Content Liability for UGC

- Allowing UGC creates a risk of liability for that content
- In the US, certain statutory protections are available
  - DMCA Safe Harbor
  - Section 230 of Communications Decency Act
- Subject to many limitations
- Law is still developing in this area – lots of uncertainty
Digital Millennium Copyright Act (DMCA)

- Passed in 1998 - One section creates "safe harbor" for certain activities by online "service provider"

- Covers four types of activities
  - Includes information residing on system or network at direction of users (i.e. passive hosting)
  - Other activities are transitory communications, system caching and information location tools

- Must meet specified conditions
DMCA
Safe Harbor

Conditions:
- Repeat infringer policy
- Accommodate "standard technical measures"
- Activity-specific conditions – for certain activities:
  - Designate an agent
  - Follow "take down" rules
  - Remove knowing or apparent infringement
  - No right and ability to control + direct financial benefit
**DMCA Safe Harbor**

- What is "Right and Ability to Control Infringement?"
  - Not much law on this
  - Ability to terminate and delete postings probably ok
  - Screening of site - may depend on what and how
  - Only an issue if you also have direct financial benefit
DMCA Safe Harbor

- What is a "Direct Financial Benefit?"
  - Not much law on this
  - Direct fee for use of infringing content is clear benefit
  - Advertising on site?
  - Attracting more users?
  - Only an issue if you also have right and ability to control
**DMCA Safe Harbor**

- Will the DMCA protect you from liability?
  - Answer: Maybe
    - Not if doing more than just hosting content
      - Converting formats may be ok
      - Distributing content probably not covered
    - Not if have knowledge/notice and fail to act
    - Not if have right and ability to control + direct financial benefit
    - Not for anything other than copyright (e.g. trademark)
Section 230 of the Communications Decency Act

- No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider
Section 230

Three requirements for immunity:

- The defendant must be a "provider or user" of an "interactive computer service"
- The cause of action asserted by the plaintiff must "treat" the defendant "as the publisher or speaker" of the harmful information at issue
- The information must be "provided by another information content provider"

Exception: IP and federal criminal liability
The information must be "provided by another information content provider"

- Does not apply to content provided by defendant
- May not apply if defendant contributes to or is responsible for the development of the content
- Selecting or screening content or merely providing tools or minor editing should not be a problem
Section 230

- What is too much involvement in content?
  - Providing questionnaires?
  - Soliciting content?
  - Paying for content?
  - Agency?
Best Practices

- Comply with all DMCA safe harbor requirements
- Take down anything you know is infringing or illegal
- Promptly comply with take down notices
- Avoid any financial benefits tied to infringing material
- Avoid any manual screening of the site
- Consider using automated filtering tools
- Minimize handling of or interaction with content
Best Practices

- Avoid participating in the development of content the user is posting.
- When creating a questionnaire, use free-form responses rather than prescribed choices or anything that channels or directs user responses.
- Avoid encouraging or instructing users to post specific information.
- Develop policy for dealing with illegal content and reporting child porn.
How Courts View (or Might View) UGC in Games

Will Rava
Microstar v. Formgen, Inc.,
Lewis Galoob Toys, Inc. v. Nintendo of America Inc.,
964 F.2d 965 (9th Cir. 1992)
Davidson & Assoc. v. Jung,
422 F.3d 630 (8th Cir. 2005)

Hernandez v. Internet Gaming Entertainment, Case No. 07-21403-Civ-Cohn/Snow (S.D. Fla.)
Lessons Learned?

- Your customers will always want something more or different
- They will create and distribute it
- They may not want to pay for it (or get paid for it)
- You will have to deal with your customers about it
Questions?

- Kirk Soderquist  
  - ksoderquist@perkinscoie.com
- Joe Cutler  
  - jcutler@perkinscoie.com
- Susan Lyon  
  - slyon@perkinscoie.com
- Lisa Oratz  
  - loratz@perkinscoie.com
- Will Rava  
  - wrava@perkinscoie.com