

# LEGAL ISSUES FOR IN-GAME ADVERTISING

Prepared by Daniel O'Connell Offner, Esq.  
Offner & Anderson, P.C.  
[www.offneranderson.com](http://www.offneranderson.com)

## A BRIEF PERSONAL HISTORY

- 2003 A MADE UP URL IS PUT INTO A XBOX LIVE GAME AND IS BOUGHT BY CYBER SQUATTER
- CYBER SQUATTER TURNS THE URL INTO A LINK TO A PORN SITE
- CYBER SQUATTER SELLS URL TO PUBLISHER END OF 2003

## A PERSONAL HISTORY CONTINUED

- A PROMOTIONS AGENCY 2004 DOES AN IN-GAME STATIC AD DEAL WITH A VIDEOGAME PUBLISHER TO FEATURE ROCKSTAR ENERGY DRINKS ON BILLBOARDS IN THE GAME.
- TAKE 2 SUES PUBLISHER FOR INFRINGEMENT OF ITS ROCKSTAR GAMES TRADEMARK
- WHO IS LIABLE: PUBLISHER, AGENCY, ADVERTISER?
- TAKE 2 SETTLES LAWSUIT WITH PUBLISHER.

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- MASSIVE, DOUBLE FUSION, IGN, AND OTHERS AGGRESSIVELY SEEK TO EXPLOIT THE **DYNAMIC** IN-GAME ADVERTISING MARKET.
- THREE KEY COMMERCIAL ELEMENTS:
  - TECHNOLOGY
  - BROKERING THE INVENTORY OF IN-GAME ADVERTISING SPACE
  - WHAT GAME PLATFORM WILL WORK IN THE COMING CONSOLE TRANSITION: SONY PS3, XBOX 360, NINTENDO REVOLUTION, PC, HANDHELD, WIRELESS, MMO, OR CASUAL?

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## LEGAL AGREEMENTS FOR IN-GAME ADVERTISING

- PUBLISHER AGREEMENTS
  - CONSOLE
  - PC
  - MMO
  - CASUAL
  - MOBILE
  - KEY COMMERCIAL TERMS
    - STATIC VS DYNAMIC
    - REVENUE SPLIT FROM STATIC OR DYNAMIC AD SALES, GUARANTEES
    - IN-GAME INVENTORY
    - PUBLISHER COMMITMENTS
    - IN-GAME ADVERTISER COMMITMENTS

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## Legal Agreements for In-Game Advertising Publisher Agreements cont.

- KEY LEGAL TERMS
  - INTEGRATION
  - APPROVAL OF AD DEALS & CONTENT
  - WHO IS RESPONSIBLE FOR THE COPYRIGHT, TRADEMARK OR URL, I.E., REPS, WARRANTIES & INDEMNIFICATIONS
  - TERMINATION

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## PUBLISHER AGREEMENTS

- SDK AGREEMENT FOR THIRD PARTY DEVELOPERS
- CONFIDENTIALITY AGREEMENTS

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## ADVERTISING AGENCY & ADVERTISER AGREEMENTS

- Insertion Order Specific Terms
- Insertion Order Standard Terms and Conditions
- IAB – Becomes a default standard for better or worse.
  - <http://www.iab.net/>
  - <http://www.iab.net/standards/termsandcond2.pdf>

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## Conclusion

- Economics remain to be seen as console transition is underway with Sony, Microsoft & Nintendo and the rise of other platforms.
- Will the console manufacturers allow dynamic in-game advertising?
- Demand seems to be there on the advertiser side with ad dollars leaving television.
- The result for lawyers is that they are at the intersection of Advertising Law & Videogame Law
  - Many of the same issues and many new issues depending on which side you are coming from.
  - Much like wireless games in 2000 (wireless data services vs. videogames) or the emergence of CD based console games in the 1990s (publishing vs. toys).

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## Dan Offner Bio

**DAN OFFNER** is the founder of and a partner in the law firm of Offner & Anderson, P.C. in Los Angeles, California. Offner & Anderson is a five attorney intellectual property corporate boutique law firm that firm represents videogame publishers, videogame developers, wireless content publishers, toy companies, internet companies, wireless and videogame advertising companies, and others in the content creation, development, and distribution businesses. Representative clients include THQ Inc., Ubisoft S.A., Webzen, SouthPeak, Gameloft, Endless Mobile, Playmates Toys and Double Fusion, Inc. Mr. Offner is a graduate of Yale University with a BA in History. He earned a JD/MBA from Boston University and is a member of the California and Massachusetts State Bars.

Dan Offner's contact information is:

[doffner@offneranderson.com](mailto:doffner@offneranderson.com)

310-226-2420 Ext. 243

Offner & Anderson, P.C.

1900 Avenue of the Stars

Suite 975

Los Angeles, CA 90067

More information on the firm can be found at [www.offneranderson.com](http://www.offneranderson.com)

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