



entertainment
software
association

575 7th Street, NW
Suite 300
Washington, D.C. 20004

ph 202.223.2400
fx 202.223.2401
www.theESA.com

CLERK'S OFFICE U.S. DIST. COURT
AT BIG STONE GAP, VA
FILED

AUG 11 2008

JOHN F. CORCORAN, CLERK
BY: *[Signature]*
DEPUTY CLERK

July 30, 2008

The Honorable James P. Jones
United States District Court
Western District of Virginia
322 East Wood Avenue, Room 204
Big Stone Gap, VA 24219

Re: U.S. v. Daniel Dove: Case No. 2:07CR15

Dear Judge Jones:

The Entertainment Software Association ("ESA") submits this letter as a victim impact statement on behalf of those of its members that have suffered harm from the illegal activities of defendant Daniel Dove. The members of ESA very much welcome the opportunity to have their concerns and views heard in connection with the sentencing phase of this case.

The ESA represents the intellectual property interests of twenty-three companies that publish interactive games for video game consoles, personal computers, handheld game devices and Internet game devices in the United States. ESA members' products represented more than 90% of all US sales of interactive game software in 2007. The ESA hereby affirms that it is authorized to act on behalf of the ESA members at this time regarding the criminal infringement of their rights under US copyright law connected with this case.

The last few years have seen an enormous surge in the popularity of game consoles, PCs and in the games produced for such platforms. Much of this growth is attributable to the significant investments that game developers and publishers have made in producing faster and more captivating games, with graphic details and action features designed to take advantage of the new game platforms' faster data-processing power. Many game development enterprises are small studios that invest substantial amounts of capital in developing one or two games for release every few years. Design, development and production costs for an interactive game usually amount to several million dollars, representing a huge investment for these companies. Game publishers are increasingly dependent on their game releases for the growth of their businesses. The entertainment software market has become increasingly competitive, as developers and publishers need to spend more on programming and development to pack their games with cutting-edge content to attract the evermore demanding population of game players.

Unfortunately, the risks for the interactive game industry have increased as the availability of pirate copies impedes new game releases from maximizing their performance in the marketplace and thereby threatens their producing a viable return on the sizable investments made in their development and production, ultimately undermining the ability of game developers and publishers to create new games. The crippled capacity to earn back these capital investments

results in business failures and the loss of jobs. In addition, other businesses tied to the marketing, distribution and retailing of game product are also adversely affected by piracy and the diminishing returns that it inflicts on sales of legitimate games.

Internet piracy helps to fuel hard goods piracy by serving as an early source of the "cracked" version of game titles. Internet pirates generally obtain legitimate copies of games on the day of release or, in some cases; they may procure a "beta" (test) copy prior to the legitimate release of a game title. These copies are then subjected to the work of "crackers," technically sophisticated pirates who within 12-24 hours are able to bypass the access and copy protection technologies included in the game software and produce a "cracked" version of the game, i.e., one stripped of these protection technologies. These "cracked" versions are immediately made available throughout the Internet and often are sold directly to different criminal organizations which dominate the global trade in pirate entertainment software through a network of replication facilities in Southeast Asia and Eastern Europe.

These organized crime syndicates are able to use these "cracked" versions of game software obtained illegally from the Internet (including some that pre-date official release of the legitimate product) to manufacture and sell pirated games on the streets, either in competition with legitimate versions or, as in most countries around the world, two to three weeks in advance of the time that legitimate goods are available.

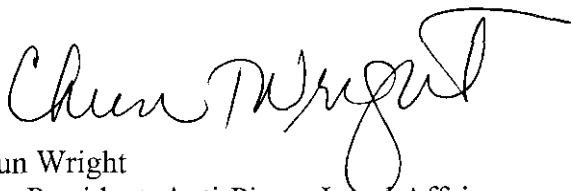
The pirate game distribution channels, which do not share the legitimate channels' worries about quality control, shipping delays, and customs processes, function efficiently to get game product into markets earlier and at lower cost, as they do not have to pay royalties to game developers, marketing costs to promote the titles nor the normal taxes and duties that legitimate publishers and distributors pay. In addition to abetting the pirate replication facilities of organized crime groups, game pirates, such as this defendant, help effectively preempt the ability of legitimate products to ever fulfill their sales potential. Thus, ESA members' annual losses attributable to the global piracy of their games in hard-good form have been conservatively estimated to exceed \$3 billion.

In view of the harm that the sale of pirate entertainment software products ultimately inflicts on legitimate US businesses, as in this case, this Court is presented with an important opportunity to impose a significant criminal sentence on the defendant as a member of a distinct class of criminals. This is not a prosecution involving an "isolated crime" committed with limited reflection or deliberation. Defendant Dove's actions contributed materially to the increased availability of pirated interactive game products in the United States over a substantial period of time, resulting in untold quantities of lost sales and other harms to ESA members.

Although there are some who portray game piracy as harmless, recreational activity by teenagers who can not afford to purchase games, we trust that the Court's review of the facts in this case will demonstrate the serious and widespread harm caused by defendant Dove. We believe the Court should impose such a sentence that justly punishes defendant Dove for his actions and sends a message to others who may be interested in the illegal activities that enable the widespread piracy of game software. Accordingly, ESA and its members request that the Court impose the strongest sentence, to include jail time, and fine possible under these circumstances.

Thank you for allowing us to express our concerns about this crime and its impact on our industry.

Sincerely,

A handwritten signature in black ink, appearing to read "Chun Wright". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

Chun Wright
Vice President, Anti-Piracy Legal Affairs

cc: Thomas V. H. O'Neill, U.S. Probation Officer
Jay Prabhu, Assistant U.S. Attorney