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**Piracy and Copyright Issues in the Computer Games Industry: A Review**



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# Introduction

Imagine if you are writing a program, putting it on our website with no copyright, few months later you find someone has published your own program under their own name and received a tremendous financial gain for your work. There is virtually nothing you could do about it, there is no proof as to sole ownership that however could have been avoided entirely if you had taken preliminary action in gaining a copyright on your poem… and this sort of thing happens all the time. In this article, we would talk about couple things first we would talk about why is important to protect your own work, Secondly why privacy is horrible in game industry and what did the game companies have been doing the lower the privacy, lastly , we will give some solution that how can the game companies do better.

# Copyright and privacy

## What is copyright

**(Smartcopying , 1968)**Copyright a bunch of right in certain creative works such as text , artistic works , music , computer programs , sound and films . Copyright owners can prevent others from reproducing or communicating their work without their permission or may sell these rights to someone else.

However the copyright does not protect ideas , concepts , style or techniques . For example , the copyright will not protect an idea for a game or the style of the game , but it can protect a script for the game they made and the material that the game has.

In Australia , copyright protection is automatic . There is no need for copyright registration in australia , nor is there a legal requirment to publish the work or to put a copyright notice on it. A work will be protected as soon as it is put into material form, such as being written down or recorded in some way.

To make a clear understanding of what is copyright and privacy in game industry we would have a look at a game which is called GTA5(Grand Theift Auto 5) which this game is below the (ROCKSTAR GAMES END USER LICENSE AGREEMENT) . The agreement will be launch before you install the game, once you accept this agreement is means you argree with the following points :

YOU ARE NOT AGREE TOO

* Commercially exploit the Software;
* Distribute, lease, license, sell, rent, convert into convertible currency, or otherwise transfer or assign the Software, or any copies of the Software, including but not limited to Virtual Goods or Virtual Currency (defined below) without the express prior written consent of Licensor or as expressly set forth in this Agreement;
* Make a copy of the Software or any part thereof (other than as set forth herein);
* Make a copy of the Software available on a network for use or download by multiple users;
* Except as otherwise specifically provided by the Software or this Agreement, use or install the Software (or permit others to do same) on a network, for on-line use, or on more than one computer or gaming unit at the same time;
* Copy the Software onto a hard drive or other storage device in order to bypass the requirement to run the Software from the included CD-ROM or DVD-ROM (this prohibition does not apply to copies in whole or in part that may be made by the Software itself during installation in order to run more efficiently);
* Use or copy the Software at a computer gaming center or any other location-based site;
* Provided, that Licensor may offer you a separate license agreement to make the Software available for commercial use;
* Reverse engineer, decompile, disassemble, display, perform, prepare derivative works based on, or otherwise modify the Software, in whole or in part; remove or modify any proprietary notices, marks, or labels contained on or within the Software; restrict or inhibit any other user from using and enjoying any online features of the Software;
* Cheat or utilize any unauthorized robot, spider, or other program in connection with any online features of the Software;
* Violate any terms, policies, licenses, or code of conduct for any online features of the Software; or transport, export, or re-export (directly or indirectly) into any country forbidden to receive the Software by any U.S. export laws or regulations or U.S. economic sanctions or otherwise violate any laws or regulations, or the laws of the country in which the Software was obtained, which may be amended from time to time.

So if you did something above you are either it is illegal or privating the software.

## So Is my artwork copyrightable

Yes**. (newmediarights)**. For example if a video game has a mushroom and it looks like Toad(Mario character ). That could be in violation of Nintendo’s copyright(unless it obtanined a license or a good reason of using it). But if your mushroom was of your own creation then it should be fine.

Similarly , certain artwork in video games falls under the doctrine of scenes a faire. This references particular artwork and elements of a video game that are necessary to execute a particular idea are NOT copyrightable. That includes things like scoring system , the lives , the coins , and the sky/ground .Scenes a faire also applies to certain genres of games .For example if you have a golfing game , you would include certain design elements like holes , golf balls , golf clubs , golfers , grass , trees and water. While you can’t copy these elements verbatim form another golfing game , you have the right to include such elements in your games because otherwise no one else could create a golfing game.

## So Is my Program/Code copyrightable

Yes. **(joystiq)** there are actually a lot of elements that are being protected. First and foremost, the code itself is protected. This is often the stumbling block that trips a lot of people up. The code is protected as a whole, and using a part of it can be infringement. Think of the complete body of code like a book. A book is protected by copyright, but the individual words are not. If someone happens to write the same sentence somewhere, it's not necessarily copyright infringement, but if two chapters appear in another work, it's very likely it is infringement. So, if someone uses the same expression or a few lines of code in another piece of software, that's not likely infringement, but if the entire physics engine appears line for line in another game, it's very likely infringement.

## Is my Design copyrightable

**No.** Since the copyright does not protect ideas, concepts, style or techniques.

## How long does copyright last?

(elearn) Until 1 January 2005, copyright generally lasted for the life of the relevant creator plus 50 years. There were various exceptions to this rule, including:

* Where a work was not published, performed or broadcast during a creator’s lifetime; and
* Where something was published anonymously or under a pseudonym, and the identity of the creator couldn’t reasonably be ascertained.(In each of these cases, copyright lasted for 50 years from the end of the year the work was, with permission, first published, performed or broadcast.)Under the Free Trade Agreement with the United States, Australia agreed to extend the general duration of copyright. As a result, the rules now are that copyright generally lasts for the life of the creator plus 70 years and where duration depends on year of publication, it lasts until 70 years after it is first published.

## What is fair use?

**(gbgames)**Fair use means the idea is that the copyright owner does not always have exclusive rights to the copyright. Sometimes the public might be able to do certain things that do not require the permission of the copyright owner. There are certain factors that need to be considered when determining if an infringement is actually fair use. Educational purposes and a lack of an impact on the market value of the work are a few things that might indicate that the infringement is fair use and therefore valid.

# the resons of piracy

## Gamers

The first reason of piracy are heavy according to **(gameskinny)** are

* “Games cost too much!”

The first complaint many gamers will use in their defense against piracy is that PC games are overpriced. But the fact of it is, PC games are generally cheaper than console versions. A really good example is An Xbox 360 copy of [Metro: Last Night](http://www.gamespot.com/metro-last-light/platform/pc/) (released in May) will cost you a hefty $65, a PS3 version will cost $59, and a PC version costs $48. This is not an exception. Yet sales of console games are miles ahead of their PC counterparts.

* "It promotes the game!"

There is absolutely no way to tell whether the buzz created by word-of-mouth and pirated games will result in increased sales or increased piracy. In some cases, it may actually be [damaging](http://www.gamespot.com/news/ubisoft-sues-over-assassins-creed-leak-6195570). Some companies have [leaked DRM-addled copies of a game pre-release](http://www.cracked.com/article_19162_6-hilarious-ways-game-designers-are-screwing-with-pirates.html), just to ward off pirates and protect day one sales. These copies provided intentionally terrible gameplay, but the attempt backfired as devs faced a backlash of poor user reviews on Metacritic and deliberate down-rating once word of the DRM measures got out.

* "I wanna try a game before I buy!"

Its human nature behavior: why spend money if you can get something for free?

* "People Will Pay for Good Games!"

An oft-touted defense from righteous gamers is that a good game sells itself. This is untrue. The most popular pirated games every year are all big titles, known by general consensus as “good games”. Crysis 2 sold only [486,943 copies](http://www.vgchartz.com/game/35003/crysis-2/Global/) that year. There is no evidence that a good game will indeed “sell itself”.

**PC**  
1. Crysis 2 (3,920,000 downloads)  
2. Call of Duty: Modern Warfare 3 (3,650,000 downloads)  
3. Battlefield 3 (3,510,000 downloads)  
4. FIFA '12 (3,339,000 downloads)  
5. Portal 2 (3,240,000 downloads)

* "PC games sell less because more people have consoles!"

Though not a direct defense against piracy, this is used to justify why poor PC game sales can't be blamed on piracy. It’s hard to pin down a figure for how many gaming-capable PCs exist. Many PC aficionados buy components separately and so sales of pre-built PCs do not accurately reflect the number of gaming PCs.

* "DRM causes piracy. Removing it will mean more sales."

The most pirated game of 2008, has SecuROM protection (a DRM measure). DRM in a game is no deterrent to piracy. And games didn't start off with DRM. Piracy caused it. Game devs know pirates will get around security measures. DRM aims to prevent Day 0 or Day 1 piracy. It is not meant to eradicate piracy. So if a well-intentioned developers remove DRM altogether what happens? When the Witcher 2 launched, a well-made PC exclusive free of DRM. Instead of selling well, CD Projekt found that more than 80% of its players used a pirated copy.

## Government and bsaa

The second reason privacy is high because it is hard for the government and BSAA (we will talk more in the next chapter about BSAA) to clearly define software piracy in video games some examples are comes with the (Laws of Software Piracy).

* Is it illegal to download a game off the Internet if have a CD of the game?
* Can you lend a friend your copy of a video game?

These legal gray areas confuse the general public and politicians. The best definition of software piracy is the "unauthorized use of software" which includes making copies of software for other computers in your office and handing a copy to a friend. The rule of thumb is, it is illegal to use if you did not buy it. Most software only allows one installation per computer for this reason.

## How Games are pirated

The cause if privacy is also because it is easy to upload and download game from the internet, suppose that for this example from (**gearnuke.** **2014**)

* One person uploads it to another torrent site www.torrentsite2.com
* The second person uploads it to a FTP server
* The third uploads it on a file-sharing site and posts the download links on a forum
* The fourth shares the game with his friends via USB
* And the fifth person burns the game to a DVD and sells it in his shop

According to this case, I would say 10 people have pirated the game but infect, the number would be way higher because we didn’t include the number of times the game has been obtained from the above five people and the people download it may upload it to a third site and thus this sharing-chain is continued.

* On the internet, there are even several source that tells us how we can go around privacy without getting caught.
* In US and UK the government tried hard to block the websites but the private always have a situation to solve the problem, one of a really good example has been showed by (pcadvisor. 2014.) , which teaches you how to go around the UK proxy or the ISP filters.

# Impact of piracy

## What the Developers say:

According to **(GameSkinny)** developing a video game isn't cheap. According to industry analysts, GTA V is estimated to have cost around $137 million to develop. Game development costs are increasing across the board, but consumers expect more with each new release. If enough people pirate this game, Rockstar will have to rely on console sales to make a profit. There is increasingly less incentive to develop PC-exclusive titles when a developer sees little chance of breaking even. Since piracy is such a big issue in the gaming industry, many devs have publicly said something about it. Let’s take a look at what some leading game developers had to say on this topic.

John Carmack, the founder of ID Software, [stated in 2008](http://www.tomshardware.com/news/john-carmack-rage,6074.html)

“It’s hard to second guess exactly what the reasons are. You can say piracy. You can say user migration, but the ground truth is just that the sales numbers on the PC are not what they used to be and are not what they are on the consoles.”

Cliffy B, Lead creator at Epic Games [stated](http://www.totalvideogames.com/Gears-of-War-2/feature-13270.htm)

“A person who is savvy enough to want to have a good PC to upgrade their video card, is a person who is savvy enough to know bit torrent to know all the elements so they can pirate software. Therefore, high-end videogames are suffering very much on the PC. Right now, it makes sense for us to focus on Xbox 360 for a number of reasons”

Stanislas Mettra of Ubisoft. When asked about the console exclusive game (at that time) I Am Alive, [was rather straight-forward](http://kotaku.com/5862433/i-am-alives-creator-does-just-about-everything-he-can-to-piss-off-pc-gamers-in-explaining-why-they-dont-get-a-version-of-the-game). It seemed that his tone was saying “You deserve it PC gamers”

“We’ve heard loud and clear that PC gamers are bitching about there being no version for them.

……It’s hard because there’s so much piracy and so few people are paying for PC games that we have to precisely weigh it up against the cost of making it

Are these people just making noise just because there’s no version or because it’s a game they actually want to play? Would they buy it if we made it?” Mettra says sales of 50,000 copies on the PC wouldn’t be enough to justify a dozen guys doing a three-month port job”

However, not all developers believe that piracy is to be blamed for the decline in computer gamesMarkus Persson, an indie game developer [quoted](http://notch.tumblr.com/post/1121596044/how-piracy-works)

“If someone pirates Minecraft instead of buying it, it means I’ve lost some “potential” revenue. Not actual revenue, as I can never go into debt by people pirating the game too much, but I might’ve made even more if that person had bought the game instead. But what if that person likes that game, talks about it to his or her friends, and then I manage to convince three of them to buy the game? I’d make three actual sales instead of blocking out the potentially missed sale of the original person which never cost me any money in the first case.”

Ex-CEO of EA games, John Riccitiello said

“By the way, if there are any pirates you’re writing for, please encourage them to pirate FIFA Online, NBA Street Online, Battleforge, Battlefield Heroes… if they would just pirate lots of it I’d love them. [laughs] Because what’s in the middle of the game is an opportunity to buy stuff.

…….While we don’t want to see people pirate Warhammer Online, if they’re going to give us a year’s subscription it’s not exactly a total loss,”

* According to the above information we know that piracy is a major issue in PC games it has impact a lot the game companies.
* The impact made the game companies lost a lot of money , as we can see the money that they lost can do coupoile of thing such as
* The game componies can hire more poeple so they can make more games for the customers
* The money can be back to the empoyees so that can have more power the work with the game
* The money can give back to the customer because it can lower the price since there are no pricay
* Indie games will be hard to grow since indie games compies do not have a not of money to protect their game for example DRM, so a lot of people will steal the game if the game is good.
* Another reseach which comes with (techcrunch) shows that the Association of UK Interactive Entertainment (UKIE) Video game piracy [cost some £1.45 billion ($2.31 billion) in lost sales last year](http://www.bbc.co.uk/newsbeat/12248010), as well as around 1,000 lost jobs.

# current practices

## Game Compines

* Games having be moving onto Consoles (XBOX ONE , PS4 , Wii) and phones

Developers decide to move the game in to console is because

1. It is easy to control, because they have the same spec. So it decreases the development time.
2. The privacy are lower since by the following point.
3. You can still download games XBOX360 from computer but it is takes more steps for example

* Modify your Xbox so that it can play pirated games
* Download the game
* Buy a DVD-9 and burn the game
* Have a machine that allow the burn DVD-9 and know how to use the software
* Play

But for PC users just need to

* Download the game
* Install
* Crack and play
* You can play some Free games for a limited of time showed by the following image :
* You can buy games for free showed by the following image:
* Launch console version first and PC version later
* Create some bugs after the hacker crack the game. We can have a look at a recent example which released on September 2(The sims4) showed by the following image



## government and bsaa

*Early case law has suggested that video game design, to the extent it is not traditionally authorial, is not fully protected by copyright law. However recent years the* government and BSAA *tried to setup some laws for video games*

*The BSAA full name called The Business Software Association of Australia is to promote a long-term legislative and legal environment in which the industry can prosper and to provide a unified voice for its members around the world.*

*The information from if (computerworld) has showed BSAA have tried to:*

* has called for government to create specialized cyber cops who would track down software pirates and bring them to justice
* Create law enforcement units that specialize in intellectual property — local and national
* Step up cooperation with international border security and law enforcement agencies
* Provide technical education of enforcement personal to ensure they were equipped with the right tools
* Work closer with technology organizations, such as the BSAA , to make Australian individuals and businesses aware of the risks of software piracy “Everyone has a role to play in reducing piracy, including industry stakeholders and the government, to ensure consumers are protected. Piracy does not just represent losses to industry and lost revenue for Government, but increasingly it poses an issue of security for businesses and consumers,” said Hutley.

Also according to (BSA, 2005)

* Unlicensed Software Use by Businesses Now a Criminal Offence after 5 April 2005

## USER GENERATED CONTENT IN VIDEO GAMES

“User-generated content” has been defined in a number of ways (Burri-Nenova, 2010). so we will take an often-cited definition (Gervais, 2009) is from the OECD’s 2007 Report entitled “Participative Web: User-Created Content.” That report, while acknowledging the variable uses of the term, defined “user-created content” (a synonym of “user-generated content”) as

1) Content made publicly available over the Internet,

2) Which reflects a certain amount of creative effort, and which is

3) Created outside of professional routines and practices.

Clearly, this OECD definition is a broad one -- it essentially include all noncommercial

Internet-based creative content. This definition join with copyright law, it will re-define “a certain amount of creative work,” to denote such creative work that rises to the level of originality necessary for copyright protection. To understand this definition, we would use the following example

“Player” is a term that defines an individual in relation to a game,

“User” is a term that defines an individual in relation to a technology (the Internet) rather than highlighting the individual’s role as an author (Lastowka, 2008).

Player-created UGC can be divided into **three** general **categories**.

**1**, player UGC might include video game “fan works” that are not directly incorporated into the video game experiences. Many video game players create stories, artwork, costumes, videos, walkthroughs, fan websites, and other works of authorship which do not directly borrow audiovisual assets from the video game. The copyright implications of these sorts of fan works are largely indistinguishable from the copyright implications of fan works based on other popular media (Wirman, 2009).

A **2nd** category of fan works includes traditional works of authorship (e.g. songs, or paintings) that are authored outside the context of the video game and then inserted into game play in some manner (Reuveni, 2007). For example, APB(a online multi – player game) a player might compose a music and then sing it to other player. In such a case, At least initially the player clearly own the copyright to the poem. After the player included the music in the game, ownership and licensing would depend on the game’s contract and one’s interpretation of applicable copyright doctrines. Most online games that permit players to upload new content generally demand that players license the platform owners to make use of those works. Some even demand an assignment of the uploaded content to the game company.

**3rd**, and most confusing, situation is where players create works of authorship that directly incorporate and depend upon the software of the video game, either with or without permission of the game developer (Scacchi, 2010). This differs from the second situation insofar as the player works are not first created independently of the video game, but are reliant on the video game’s software or audiovisual presentation for their creation. As Ochoa and Burk both acknowledge, the application of copyright law to player authorship presents difficult questions for copyright. These new questions may take some time to reach courts, if they are litigated at all. As numerous game studies scholars have noted, technological powers and click-through contracts have already proven to be effective mechanisms enabling game companies to monetize various forms of player productivity. Whether copyright law theoretically protects specific forms of player creativity may not be as important as more pragmatic questions about the likely assertion and enforcement of player copyright interests. Even if we conclude that video game players should hold copyright in particular recorded play performances, the majority of recorded performances will be of low value. Only those who seek to monetize expert performances (e.g. e-sports leagues) will have the commercial motivation to enforce their copyrights, provided they have power to do so under contract law. Like the early video game pioneers, these e-sports innovators may lack the funds to pursue expensive litigation in order to enforce uncertain rights.

## Digital Millenium Copyright Act?

The DMCA was signed into law in 1998, and it changed copyright law in a fundamental way. Specifically, it made circumventing copy protection into a felony. In fact, simply owning the means to circumvent copy protection was a felony. It did not matter if there was an infringing use of the copyrighted material.

## Are there concerns about the DMCA?

*WARNING: I tried to figure out how to write the following without going into rant mode, but I believe I failed at the attempt. I am not a fan of the DMCA or so-called digital rights management, and the following makes my position clear.*

The Electronic Frontier Foundation’s attorneys argue that it is too easy for someone to send takedown notices, which essentially allows for a chilling effect on free speech. A few years ago, FatWallet.com received takedown notices from Best Buy and Wal-mart, among other companies. FatWallet.com, which allows users to post deals at various stores, had a few price lists for Black Friday sales that were not supposed to be published. Somehow the prices leaked, and someone posted them on the website. As far as I know, a price list isn’t something that can be copyrighted, and I doubt copy protection was involved in any way, but since it is in FatWallet’s best interest to comply with the demands of the corporations, they took down the price lists. The next year the same thing happened, and this time Best Buy and Wal-mart asked for the names of the people posting the price lists. FatWallet.com refused, and a lawsuit was pending. It seemed like nothing more than a scare tactic since the suit was dropped after Black Friday passed. The companies had succeeded in preventing the prices from being listed before the sale.

A more recent example: Viacom sent out takedown notices for a large number of videos on YouTube. Over 100,000 videos had to be removed from the website. It turned out that at least a few of those videos were not owned by Viacom and so should not have been taken down. YouTube, and Google as the parent company, clearly have a good incentive to comply with Viacom’s demands, regardless if those demands are valid. If you were to try to find one of these videos that were not owned by Viacom, you might have instead found a message from YouTube explaining that the video was taken down for a violation of copyright infringement. They have since changed the wording in such messages to make it clear that there are merely claims of copyright infringement.

Can a political organization send takedown notices to censor an opponent’s message? Can someone’s reputation get tarnished if their work is replaced with a message from the ISP regarding the violation that may never have happened? These are all very real concerns. There are reforms currently under way, and laws such as the Digital Media Consumersâ€™ Rights Act are being proposed to return the balance of copyright to favor the public again.

There is also a concern that the DMCA actually reduces competition by restricting the options customers have. The DMCA made it easier to create proprietary platforms that are difficult for competitors to work with. Imagine if the telephone companies created separate networks, and people in one network couldn’t talk to people in another unless there was some way to interoperate. Some companies make it incredibly difficult to do so, cutting competitors off from potential customers. For instance, Apple’s so-called DRM, FairPlay, allows you to play the music on your iPod that you purchase from iTunes, but you can’t play it on another company’s player unless Apple licensed the technology to that company. If you decide to purchase NewMusicPlayer Plus, and Apple didn’t license this company to use FairPlay, you won’t be able to play the music you purchased from iTunes on your new device. What incentive do you have to purchase NewMusicPlayer Plus, then? It is not a real option, especially if you have purchased a lot of your music from iTunes. All of those songs would have to be repurchased simply because Apple has a proprietary lock on the data.

Microsoft recently got around this barrier to market by essentially repurchasing all of the music on your iPod for its Zune product. You get a new player and still get to keep the music you purchased. As far as the customer knows, the music was “transferred” from one device to the other, but it is not likely that such a transfer would work as well in the other direction. Of course, not everyone can afford to create a new product AND pay for the rights to all of the music for millions of customers, and to do so would simply create yet another proprietary, locked down platform. DRM, and the DMCA that provides the legal threat for non-compliance, restrict customer choices and reduces competition.

DRM becomes an inconvenience or a hassle for legitimate customers while doing nothing to prevent those who would illegally copy the floppy, CD, or DVD from actually doing so. DVD “pirates” simply make bit-for-bit copies of DVDs that work exactly the same as the original, DRM and all. Meanwhile, it is a felony for someone to watch a DVD on a free operating system? There seems to be some disconnect about who the criminal is.

# ways to prevent piracy

To improve the PIRACY, I will recommend the follow points

* As soon as more people buy the game the cost will decrease, for example, if the game only cost AUD 1 to 2 dollars who will wait the pirate to crack the game, since it will take a while.
* The governments should help the setup clearly define UAC
* BSAA should also make responsibility to
* Track down the people upload the seed, and calculate the total download of the game.
* Activating the software through the Internet or by phone before users actually can use the software. This involves a unique code that you only can get by purchasing the software legally.
* Game companies can create a team to send these sites a cease and desist letter, asking them to remove your listing. Some will be more responsive than others. You constantly will have to monitor file sharing sites for this type of activity
* More discount can be proved to the non-piracy gamers
* More education.
* Also after the game has been cracked the game can generate a file or add some line to the existing file and send the IP address to the game company so they we know where and how did the person crack the game.
* Australia can learn US and UK to block the Torrents Cites the example of UK is showed in (wiki , 2014)

And some images

And the UGC

# Conclusion

In Australia privacy are still high, however to avoid game companies to lose more money they have been trying the gives some discount and a limit time for players to play other games, as we can see the government and BSAA are still trying to setup some laws to balance between the player and companies , setting up laws can only treat the symptoms but not the root cause so only way is to educate the people.

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Under this definition, a mundane tweet might not amount to UGC (since it would not be protected by copyright), but a series of lengthy tweets might cross the UGC threshold. This definition would make UGC a subset of copyright-protected works generally. Defined this way, video game UGC is both familiar and novel. It is familiar because

there is no requirement that authorial works should be professional in order to be protected

by copyright. Under contemporary copyright law, copyright subsists in original works upon

their fixation, regardless of their authorship or their authorial motivations. Copyright law, in

theory, subsists in the billions of new amateur works created online every day, including

amateur stories, photographs, journalism, videos, music and software. The term “user-generated” arguably adds nothing new to traditional copyright law,

given that, historically, almost all authors (e.g. poets, painters, musicians, sculptors) have

“used” particular technologies as part of their artistic practices. Given the OECD’s broad

definition, any non-professional author, artist, or musician uploading a text, image, or song

to the Internet would be characterized not as an author but as a “user” -- a somewhat

strange substitution.