

# The view online

## When the games end

**With addressing every instance of online infringement an impossible task, Electronic Arts has forged a three-pronged approach to online monitoring**

Tackling online IP infringement can be a daunting task. Infringers are becoming more common, more sophisticated and harder to track. It can sometimes feel like a game of 'whack-a-mole' – where the prize at the end of the game is, invariably, more moles. However, even as the moles multiply, a well-crafted, well-executed trademark enforcement strategy can allow you to address the most pernicious issues in a timely and effective manner.

At Electronic Arts, (EA) we maintain a broad portfolio of popular game franchises, from first-person shooters and role-playing games to EA SPORTS branded sports games to casual games developed by our Playfish Studio. We need to protect the good will in more than a dozen well-known game franchises and several famous house marks, and protect consumers from confusion and fraud. To address these needs, we have implemented an enforcement strategy that targets the most egregious forms of trademark infringement online. At the same time, we realise that our strategy cannot be set in stone. It has to be flexible enough to move with rapidly changing technology.

Based on my experience in enforcing EA's trademarks, I would suggest the following guidelines to brand owners that wish to create an effective online enforcement strategy:

- Choose your battles wisely.
- Broaden your toolkit.
- Keep your eyes on the horizon.

No brand owner has the resources to fight every last instance of online trademark infringement. At EA, we action the truly serious problems and grab as much of the low-hanging fruit as we can, accepting that there will still be a lot of infringement that we are unable to address fully. At EA, we generally take action against matters that fall into at least one of two categories:

- products or services that directly compete with or harm EA's business; and
- sites that could harm consumers.

Deciding which matters to pursue is not always easy. Theoretically, every instance of online infringement harms EA's business, if by nothing else than diluting our trademarks. So we systematically evaluate the size and scope of the infringing operation, the territories where it occurs, the strength of our legal position, the cost of action and the direct financial impact on our business. We also partner with business owners to understand their business priorities, set expectations and explain our enforcement decisions. This allows us to prioritise tasks when faced with a flood of infringement and address the most urgent matters first.

The second element is broadening your toolkit. Online trademark infringement takes many shapes and forms. The range of infringement seems almost infinite, encompassing cybersquatting, meta tags used for keyword advertising, online sales of counterfeit products, nefarious 'fan' sites, phishing attacks and virtual asset sales – just to name a few. In order to combat this diverse set of problems, trademark owners need to expand beyond their historic monitoring and enforcement methods.

New tools are available to help you address these new means of infringement. On the monitoring front, we choose to monitor manually the most important infringement channels. However, many trademark management companies provide social media watch services and domain watch services in addition to traditional trademark register watch services.

On the enforcement front, our IP team is intimately familiar with the systems and policies of more than a dozen of the most popular social networking sites, online marketplaces, auction sites and popular internet service providers (ISPs). We quickly remove infringing content by leveraging the online trademark complaint forms available for Google search and keyword advertising services, Facebook pages and eBay auctions. We send repeat infringer claims to ISPs to ban users who post infringing content frequently. Similarly, there are many quick methods to counter domain infringement, such as filing Uniform Domain Name Dispute Resolution Policy complaints or filing *in rem* actions with civil courts to recover domains.

We use these complaint procedures to remove 80% to 90% of problematic infringing content in the channels that matter most to our business. We have often found these official channels more effective than sending cease and desist letters to anonymous individuals residing in unfriendly jurisdictions (some of whom are likely to react by posting the letter online, mocking our enforcement efforts and generating ill will against our brand.)

The third element is keeping your eyes on the horizon. Rapidly evolving technologies create new avenues for trademark infringement every year. Three years ago, the top-of-mind infringement channels for us were inappropriate fan sites, flash games and skill-gaming sites. Facebook was a non-issue for most of our product and marketing teams. Today, the recent explosion of social games applications requires our IP team to commit to heavy monitoring of Facebook. In the last year we have also had to combat the rampant proliferation of phishing sites that steal our users' virtual assets in order to resell them on eBay. Three years from now, Gumtree, Four Square or some other yet-to-be-invented online business may require the same level of diligence. As a result, our IP team has to be flexible. We make changes quickly to adapt our internal policies and enforcement strategies to new problems posed by emerging technologies and businesses. We are in constant touch with our business teams in order to hear what new issues concern them most and learn what new business models they are working on.

We must also stay abreast of changes in the law and changing policies and procedures on the platforms that we monitor. Google has changed its AdWords trademark policy at least twice in the last two years. A year ago, a brand owner could submit an AdWords trademark claim to Google in many territories, but based on recent legal rulings, Google will no longer block trademarks purchased as keywords. Similarly, Facebook has changed its policy regarding official 'brand' pages, 'fan' pages and 'community' pages numerous times in the past two years. While it can be frustrating to learn new processes and procedures every six months, that is unfortunately what is required.

Every business will have its own specific IP enforcement needs. However, I believe that most trademark holders would be well served by the three simple guidelines I have outlined. [WTR](#)

**Vineeta Gajwani** is IP legal counsel at **Electronic Arts Inc**