




一、文獻評析(50%)

Court Upholds Ban on *World of Warcraft* Bot

- By [David Kravets](#) 
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A federal appeals panel on Tuesday upheld a lower court's 2009 injunction barring the distribution of a computer program that automatically plays the lower levels of *World of Warcraft*, sparing a gamer the tedium of their character's experience.

The 9th U.S. Circuit Court of Appeals said the Glider bot, which automatically kills enemies and performs other *Warcraft* functions while you're away from your computer, is a violation of the Digital Millennium Copyright Act provision banning the marketing of products that circumvent a technological measure that "effectively controls access to a copyrighted work."

Glider, in short, hides itself from the Warden software that scans the machines of *Warcraft*'s 10 million players for bots, thus allowing Glider license holders to play *Warcraft* while taking a shower in violation of *Warcraft*'s terms of service that prohibit bot use.

"Indeed, Glider has no function other than to facilitate the playing of WoW," (.pdf) the San Francisco-based 9th U.S. Circuit Court of Appeals wrote in a 3-0 decision.

The attorney for Glider's maker, Michael Donnelly, decried the decision, saying he may ask the Supreme Court to review it.

"It just opens the door to too much protection. This says if you circumvent detection you are violating the DMCA," attorney Joseph Meaney said in a telephone interview.

Under the DMCA of 1998, it is a crime or civil violation to offer a product or service that circumvents a technological measure designed to protect copyright material. That law was recently used to block RealNetworks from distributing DVD-copying software as well as to



criminally charge a Southern California man on allegations of running an Xbox-modding business.

At the same time, however, the law offers websites effective immunity from civil copyright liability for user content, provided they promptly remove infringing material at the request of a rights holder.

Blizzard Entertainment, the maker of *World of Warcraft*, maintained that it lost monthly subscription fees from Glider users who were able reach Warcraft's highest levels in fewer weeks than players manually playing.

Donnelly's company, MDY Industries, had gross revenues of \$3.5 million based on 120,000 Glider license sales as of 2008, the San Francisco-based appeals court said.

After a bench trial last year in Arizona, a federal judge ordered Donnelly and MDY Industries to pay \$6.5 million (.pdf), and barred distribution of the bot.

Donnelly appealed.

The appeals court Tuesday also reversed one of two DMCA violations and, among other things, ordered the lower court to reconsider how much MDY and Donnelly should pay.

Representatives for Blizzard did not immediately respond for comment.

<http://www.wired.com/threatlevel/2010/12/warcraft-bot-ban/>

請閱讀上面報導後，以中文回答下列問題(答案請註明所用字數):

1. 請於 100 字內，簡要說明上面報導之內容要旨。(占總分 15%)
2. 請參閱上面報導，於 600 字內，就此一案例簡要提出您個人之評析與看法。(請分點論述，能就正反兩面論點分析，並佐以法律、科



技或其他觀點、立法例及實際案例等，說明論點，並援以提出自己之

觀點及結論者尤佳。(占總分 35%)

(本題提示:著作權反規避(反盜拷)措施、著作權利人與使用者之利益衡平(遊戲外掛程式是否影響正版遊戲之銷售市場?)、合理使用、著作權擴張等。前揭關鍵字僅供參考。)

我國相關法條摘錄如下:

著作權法

第 1 條 為保障著作人著作權益，調和社會公共利益，促進國家文化發展，特制定本法。本法未規定者，適用其他法律之規定。

第 65 條 著作之合理使用，不構成著作財產權之侵害。
著作之利用是否合於第四十四條至第六十三條規定或其他合理使用之情形，應審酌一切情狀，尤應注意下列事項，以為判斷之基準：
一、利用之目的及性質，包括係為商業目的或非營利教育目的。
二、著作之性質。
三、所利用之質量及其在整個著作所占之比例。
四、利用結果對著作潛在市場與現在價值之影響。
著作權人團體與利用人團體就著作之合理使用範圍達成協議者，得為前項判斷之參考。
前項協議過程中，得諮詢著作權專責機關之意見。

第 80-2 條 著作權人所採取禁止或限制他人擅自進入著作之防盜拷措施，未經合法授權不得予以破解、破壞或以其他方式規避之。
破解、破壞或規避防盜拷措施之設備、器材、零件、技術或資訊，未經合法授權不得製造、輸入、提供公眾使用或為公眾提供服務。
前二項規定，於下列情形不適用之：
一、為維護國家安全者。



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100 學年度碩士班暨碩士在職專班招生考試試題

系所：科法所

科目：法學概論與文獻評析

- 二、中央或地方機關所為者。
 - 三、檔案保存機構、教育機構或供公眾使用之圖書館，為評估是否取得資料所為者。
 - 四、為保護未成年人者。
 - 五、為保護個人資料者。
 - 六、為電腦或網路進行安全測試者。
 - 七、為進行加密研究者。
 - 八、為進行還原工程者。
 - 九、其他經主管機關所定情形。
- 前項各款之內容，由主管機關定之，並定期檢討。

二、您對我國司法院法官適用法律之原則有何認知？(50%)



本試題共二題，每題 50 分，共計 100 分，請依題號作答並將答案寫在答案卷上，違者不予記分。

壹、甲男與乙女於民國八十年十月十九日結婚，後因雙方個性不合，乙女在八十五年間離家不回。因此二人間早已分居二地，徒具婚姻之形式，亦無婚姻之實質。且甲男結婚後亦經診斷因精蟲稀少無法生育，乙女無法自甲男受孕。乙女離家與甲男分居期間，認識丙男友並與其同居，於八十六年十一月十二日生下一名丁小女孩。不久乙女與丙男友分手，不知去向，未再聯絡。然丁小女孩之母乙女則遲至同年同月二十五日始與甲男協同至戶政機關辦妥離婚登記。而丙男一直與丁小女孩相依為命，丙男撫養丁小女孩長大，將至就學年齡，入學在即，故丙男前往戶政機關，欲申請登記自己為丁小女孩之父於戶口名簿，但為戶政機關所拒絕之。請您回答下列之問題：(共 50 分)

1. 戶政機關之拒絕有無理由？(25 分)
2. 您認為應該採取如何法律主張，丙男與丁小女孩始產生法律親子關係？(25 分)

貳、試回答民法總則之相關問題：(共 50 分)

1. 民法總則是否完全適用於財產行為與身分行為？其理由為何。(25 分)
2. 請您分別列出有哪些相關之規定？(25 分)