

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

- - - - -x

ACCELERATION BAY, LLC,

Plaintiff,

v.

C.A. No. 16-455 (RGA)

TAKE-TWO INTERACTIVE

SOFTWARE, INC., et al.,

Defendants.

- - - - -x

CONFIDENTIAL - OUTSIDE COUNSEL ONLY

Videotaped deposition of Michael Mitzenmacher, Ph.D.

Boston, Massachusetts

July 27, 2018

9:01 a.m.

Job No.: 710962

Pages: 1 - 266

Reported By: Alan H. Brock, RDR, CRR

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1 discussed, for any of the -- at any time for any of
2 the games that are at issue in your reports in this
3 case?
4 A. No, I don't believe so.
5 Q. So if we could go to Page 63 of your
6 opening report. Do you see that?
7 A. Yes.
8 Q. At the bottom of Page 63 and the top of
9 Page 64 there are some annotations and a screenshot
10 of what appears to be a Grand Theft Auto Online game
11 session. Is that a fair characterization of what's
12 shown here?
13 MR. FRANKEL: Hold on, please, before
14 you answer.
15 The reason I asked to hold on, it
16 doesn't look to me like that figure printed
17 properly. I'm referring to the figure at the bottom
18 of 63. Is that relevant to what you're going to ask
19 the witness?
20 MR. TOMASULO: Well, what I think
21 happened is that it didn't come to us properly. It
22 may have been something that didn't --
23 May I ask a few more questions, and then
24 we'll see if we can get to the bottom of this?
25 MR. FRANKEL: Sure. You're representing

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1 that you endeavored to print this as it came to you,
2 and your understanding is that the copy of the
3 report you were served on had the image like that?
4 Is that correct?
5 MR. TOMASULO: That is correct. I'll
6 see if I can pull up my copy and just confirm.
7 That is correct. The electronic copy --
8 this isn't a printing error. This would be -- if
9 there's an error, which there certainly appears to
10 be, it would not have been associated with us having
11 a printing problem.
12 MR. FRANKEL: It's not you, it's us.
13 MR. TOMASULO: It might not be you. It
14 might be the Internet.
15 MR. SOMMER: We'll blame it on Adobe.
16 MR. FRANKEL: I'm sorry, counsel, just
17 before we go on: Do you have a copy of Dr.
18 Medvidovic's report?
19 MR. TOMASULO: Yes, so I have the
20 printout from that, which is better.
21 Can we mark this as the next exhibit,
22 please.
23 (Exhibit 6 marked for identification.)
24 A. Oh, yeah. Somehow the red looks as if it's
25 supposed to be overlaid there.

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1 Q. Am I correct that Exhibit 6 is what the
2 figure at the bottom of 63 and the top of 64 should
3 look like?
4 A. That's my recollection.
5 Q. That there was some kind of an error that
6 has separated the red overlays from the actual
7 screenshot; is that right?
8 A. Yeah. Maybe a picture got moved and only
9 one of the pictures got moved and not the overlay in
10 the final printing.
11 Q. Assuming that Exhibit -- are we correct in
12 assuming that Exhibit 6 is what this is supposed to
13 look like?
14 A. Let me just do a quick check, but I believe
15 so, or that's my recollection.
16 MR. FRANKEL: Doctor, you can take your
17 time to confirm that.
18 A. That looks correct.
19 Q. So with respect to this figure, this
20 Exhibit 6, what's the intention of what's being
21 depicted here? That's kind of a crummy question.
22 Let me ask you a different question.
23 Did you create this Figure 6 that's
24 shown in Exhibit 6?
25 A. I'd say I can't recall. I know the

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1 screenshot was not mine. That came from somewhere.
2 To be honest, I don't think I created the overlay,
3 but I -- I'd say I can't recall.
4 Q. So the screenshot was not something coming
5 from something you personally observed?
6 MR. FRANKEL: Objection to form.
7 A. The screenshot was not something that I
8 personally developed.
9 Q. Is it possible that this was generated by
10 Dr. Medvidovic?
11 A. I'd say it's possible, and again, this may
12 have been something that came to me or suggested by
13 counsel as we were working through examples to show
14 or demonstrate.
15 Q. But to be clear, this isn't a depiction of
16 gameplay that you personally observed.
17 A. It's not a depiction that I personally
18 played, right, and I didn't observe it in the course
19 of it being played. This is like a screenshot, and
20 I believe the description at Paragraph 129 of the
21 report describes or discusses the framing of the
22 screenshot and what it represents.
23 Q. So there's some annotations added to the
24 screenshot; correct?
25 A. Yes. That would be the stuff that sort of

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1 fell off onto the side, for instance.
2 Q. Can you explain what's originally in the
3 screenshot, as opposed to what was added in the
4 image?
5 A. What is added to the image is the red lines
6 and arrows and the numbers 1 through 6 and the
7 corresponding boxes.
8 Q. And then the rest of it is, to your
9 knowledge, an accurate screenshot?
10 A. Yes.
11 Q. You say that there are two players, 5 and
12 6, that were not on the screen. Is that what you're
13 showing by the screen squares with the arrows
14 pointing to them?
15 A. Yes, and I believe that's also represented
16 in Paragraph 130.
17 Q. How do you know those players were there?
18 A. Again, so I think maybe you're missing the
19 point of the picture, and I think this is discussed
20 in Paragraph 131. You know, this is meant to be an
21 illustration of the four-by-four Deathmatch and how
22 it works. There are other players, and they exist
23 in the game because it's a four-by-four Deathmatch.
24 You know, their location as shown in Figure 130
25 could be set up to have those locations simply by

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1 positioning the player. To be clear, as stated in
2 131, the image is for illustration purposes.
3 Q. Did you add or direct the addition of
4 Players 5 and 6 to this screenshot?
5 A. I'm not clear what you're asking.
6 Q. I think what you're saying -- well, there's
7 a 5 and a 6 with those arrows; correct?
8 A. Yes.
9 Q. Were those Players 5 and 6, those green
10 boxes and those red arrows to the boxes of 5 and 6,
11 were those added to this at your direction?
12 A. It's a -- or, yes, that it matches the
13 explanation that I've provided in Paragraph 129,
14 that Player 5 has a line of sight with Player 2 and
15 two other players not shown in the illustration
16 below. That's what that arrow to 5 is meant to
17 represent. Again, that's also depicted in a
18 different form in Paragraph 130.
19 Q. How do you know this is from a four-on-four
20 Deathmatch?
21 A. This picture I think is for illustrative
22 purposes. It's a screenshot we were using to do it.
23 I don't think the intention of this is to say I was
24 playing a four-by-four Deathmatch and this is the
25 setting that was -- This to say this is a setting

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1 that can arise during a four-by-four Deathmatch game
2 under the following conditions that are expressed in
3 129 to 131.
4 Q. And just to be clear, those conditions
5 aren't something you personally observed which led
6 to this figure; right?
7 MR. FRANKEL: Objection to form.
8 A. I did not personally observe this picture,
9 but I've seen the, you know -- in playing the game I
10 have seen situations like this where you can see or
11 not see other players; and similarly in my general
12 viewing of, you know, online videos of people
13 playing the games, this matches my understanding of
14 how the game is played.
15 Q. Is this something that you tried to
16 recreate from your memory?
17 MR. FRANKEL: Objection to form.
18 A. Recreate from my memory? I mean, again,
19 maybe I'm not clear on the question. Could you
20 explain what you mean?
21 Q. Well, you said you played the games.
22 A. Yes.
23 Q. So is this some scenario that you recall
24 happening in a game and that you instructed whoever
25 prepared this to recreate it because you remembered

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1 it?
2 A. No, I don't think I set it up that way,
3 although I could set it up that way.
4 Q. Do you recall ever playing in a four-on-
5 four Deathmatch?
6 A. I believe I've played in a four-on-four
7 Deathmatch. I'm not sure, but I believe I have.
8 Q. So how do you know -- what data do you have
9 to show that Players 5 and 6 would be visible to
10 Players 2 and 4 but not 1 and 3?
11 A. That -- again, so part of it would be just
12 the visibility on the screen. But in terms of --
13 particularly with Grand Theft Auto, as I referred to
14 in Paragraph 161, this is illustrating the issue of
15 proximity rules for data exchange, which is
16 described both in my report and also in Mr. Conlin's
17 testing report.
18 MR. FRANKEL: Counsel, just a second: I
19 believe for clarity of the record that the witness
20 gestured to Paragraph 131, not 161.
21 THE WITNESS: Oh, did I say 161? Sorry.
22 MR. FRANKEL: I believe you did.
23 A. 133.
24 MR. TOMASULO: Whatever, that's fine.
25 Q. You did say 161

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1 A. I apologize.
2 Q. Well, what is the small box at the lower-
3 left part of the screen?
4 A. This looks like a variety of the maps, so I
5 believe it's showing your visibility box and players
6 outside the visibility box.
7 Q. Do you know if this is an accurate
8 representation of the screen grab or whether this
9 has been modified?
10 A. I can't recall for that red box if that was
11 there or added.
12 Q. What red box are you talking about?
13 A. The box I believe you're referring to in
14 the left corner.
15 MR. FRANKEL: Counsel, do you want to
16 have the witness circle it on the exhibit? Would
17 that be helpful? Use a different-colored pen or
18 something?
19 Q. Yeah, I think it's better if you do it --
20 MR. FRANKEL: Exhibit 6.
21 Q. Exhibit 6 is bigger. I'm a little unclear
22 what we're talking about here.
23 MR. FRANKEL: Whatever it is you want
24 the witness to talk about, why don't we circle that
25 on the exhibit.

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1 Q. There's a map -- in the lower left hand
2 there's a box; correct?
3 A. Yes.
4 Q. And then in the box there's three blueish
5 figures; correct?
6 A. Yes.
7 Q. And then below each of those blueish
8 figures there's some other kind of box as well;
9 correct?
10 A. It's a bit hard to make out, but there
11 seems to be -- like you're saying there's some
12 little red dot below them?
13 Q. Something like that. And then outside the
14 box, on the top, there's two more of those figures,
15 which have both the blue and whatever the red thing
16 is underneath it; right?
17 A. Yes.
18 Q. Here's a magnifying glass, if that's of
19 help for either counsel or the witness.
20 MR. FRANKEL: Counsel, do you want the
21 witness to just maybe annotate Exhibit --
22 MR. TOMASULO: I have some questions.
23 Let's see if I can do it my way here.
24 Q. So there's five of these combo boxes of the
25 blue and red, correct?

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1 A. Yes.
2 Q. And do you know what those five boxes are
3 supposed to represent?
4 A. Not offhand.
5 Q. And do you know if all -- so there's two
6 boxes that are outside the -- if you -- I'm going
7 to --
8 You see the two boxes that are at the
9 top of the field map?
10 A. Yes.
11 Q. And there are two that are outside of
12 there; right? Do you see that?
13 A. I believe I know what you're referring to.
14 Q. So I'm going to circle them on mine, and
15 I'd ask you to do the same. So I've circled these
16 two. Do you see?
17 A. Okay.
18 Q. You can circle the same two at the top.
19 And do you know why those two that have
20 been circled are outside of this box?
21 A. I'm not sure. It may be expressing that
22 they're outside the visibility range.
23 Q. So do you know if those were added or
24 whether those are part of the screen grab?
25 A. I am not sure.

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1 Q. And in playing the game, did you ever come
2 to see a field-of-view map or something like that,
3 expressed down at the bottom left?
4 A. Yes, I recall field-of-view maps in the
5 bottom left, but I can't recall the specific shapes
6 or pictures.
7 Q. So you don't know whether this is an
8 accurate field-of-view map or whether it's been
9 annotated?
10 A. I would say I would have to go back and
11 check. I'm not sure.
12 Q. What would you check?
13 A. Again, I'd start by asking counsel to find
14 the provenance of the screenshot.
15 Q. As you sit here now, you just don't know if
16 this is accurate or not; right?
17 MR. FRANKEL: Objection to form.
18 A. I guess I'm not clear on what you mean by
19 "is accurate or not." Accurate in what sense;
20 right? I mean, like I've explained the image is for
21 illustrative purposes and the context in which one
22 would understand the illustration in Paragraphs 129
23 to 131.
24 Q. What do you mean, "for illustration
25 purposes"?

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