

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

DAVID ALLISON, doing business as)	
CHEAT CODE CENTRAL, a sole)	
proprietorship,)	
)	
Plaintiff,)	Case No. 2:08-cv-00157-MHW-MRA
)	
vs.)	
)	
JEREMY N. WISE, an individual, and)	
WISE BUY NOW LLC, an Ohio Corporation)	
)	
Defendant.)	

**AFFIDAVIT OF DAVID ALLISON IN SUPPORT OF RESPONSE
TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

I, David Allison, do swear and affirm as follows:

1. I am a resident of Broomfield, Colorado and the Plaintiff in this matter.
2. This affidavit is submitted in support of Plaintiff's Response to Defendants'

Motion for Summary Judgment.

3. I am the owner and sole proprietor of the website www.cheatcc.com. My website is the largest independently owned site that caters to videogame players looking for cheat codes, hints and tips.¹ According to the independent third-party website www.compete.com, my site received almost 4 million visitors in February 2010. Attached as *Exhibit 1* is a printout made on March 19, 2010 from this website in which it compares the traffic for my site to the traffic for two of my competitors: www.gamewinners.com and www.cheatmasters.com. The latter site is

¹ There are two corporate-owned sites that receive more traffic than I do: www.IGN.com, owned by Fox, and www.Gamespot.com, owned by CBS. These sites focus on many aspects of video-gaming, one part of which is to provide cheat codes, hints and tricks.

owned by Defendants and is the largest of their many websites. According to this printout, my site is visited more than twice as often as gamewinners.com, and four and a half times more often than cheatmasters.com.

4. Defendants also own and operate, among others, the following websites: www.playstaion2-cheats.co.uk, www.Xbox-cheats-codes.com, www.cheatdemon.com, and www.Cheats2k.net.

5. When I create charts or tables for my site, or lists of hints and tips, I pull the underlying factual information from various sources, including developers, programmers, and publishers of the games, visitors to my site who submit the hints, codes and tips to me by email, message boards and forums throughout the Internet,² playing the games and finding the hints, codes and tips myself, magazine articles, and other websites.

6. When I receive information from other sources, I customize it for my website's viewers. For charts and tables such as Game Shark Codes, I combine the various codes I've culled into an original chart of my own by organizing it according to my personal belief as to the relative importance of each item. Most of my competitors list codes in alphabetical order, or by sub-categories such as character names, and then alphabetically within those sub-categories. While some other sites may also list their codes in an order they consider to be of relative importance, that determination is a subjective one. As such, mine will always be unique because it is based solely on my opinion.

7. The same holds true for the way I organize other types of hints and tips. Again, I gather the underlying factual information from the variety of sources noted above. I then take the information for a given game and write or revise the hints and tips to match the consistent

² Game companies often post a lot of cheats, hints, tips, tricks and unlockables on their own message boards and forums to get more people to visit their website.

style I've developed over the years for my site. I then create the organization for the various hints and tips based upon my subjective belief as to the relative importance of each based upon my personal, subjective opinion.

8. I received a Copyright Certificate of Registration, number TX 6-162-180, on May 12, 2005 from the United States Copyright Office ("2005 Copyright"). A copy of this certificate is attached as *Exhibit 2*. In describing the nature of my authorship on my registration form, I stated the following, "Revised text & compilation of website, excluding any third party banner ads." *Exhibit 2*, Section 2. I also filled in section 6 of the registration materials, which relate to derivative and compilation works. In that section I noted that some of the content that appeared on my site in 2005 was derived from my previously published book, "The Ultimate Code Book." I had previously received a Copyright Certificate of Registration, number TX 5-116-527, on January 5, 2000 from the United States Copyright Office for this book ("Book"). The Book was published in August 1999. In section 6 of the registration materials for the 2005 Copyright, I once again referred to the elements of my website that I was seeking to protect as "revised text & compilation of website." *Exhibit 2*, Section 6b.

9. Defendant Wise admits in his affidavit that he used my site as a source for cheats in 2006 (Doc.#64-7, ¶15), but claims he did not copy my selection and arrangement of those cheats. This is untrue. The charts and tables I attached as exhibits to my Original Affidavit, filed in conjunction with my Motion for Partial Summary Judgment [Doc. #59, Exhibits B-I], show only several of the many examples of original charts and tables that he copied in which the various codes they contain were replicated on his site in the identical order as mine.

10. I made a copy of significant portions of Defendants' various websites on January 15 and 16, 2007 to preserve their content as of that time in anticipation of this lawsuit. On two

separate occasions we have provided a copy of this preserved content to Defendants. I am attaching a copy of all the files I preserved on January 15 and 16, 2007 as *Exhibit 3*.³

11. All exhibits attached to this affidavit that come from any of Defendants' websites were taken from this copy that I made on January 15 and 16, 2007. In other words, when I reference any of Defendants' web pages, the content I reference is the content that existed as of January 15 or 16, 2007. Comparative exhibits attached to this affidavit that are from my website have been taken from a copy of the CD that I submitted to the U.S. Copyright Office when I sent in a copy of my entire site as part of my copyright registration materials in 2005. A copy of this CD was entered into evidence by Defendants as Exhibit B to their Motion [Motion is Doc. #63, Exhibit B was filed manually as Doc. #67].

12. In addition to the examples of infringement detailed in and attached to my Original Affidavit [Doc. #59], I have found numerous examples in which Defendants posted content that contains both my particular wording and my choice of organization.

13. Attached as *Exhibit 4* is a copy of my webpage as it appeared in 2005 for the game "The Simpsons: Road Rage," followed by a copy of Defendants' webpage for the same game from their website www.Xbox-cheat-codes.com. The two pages contain identical content in the exact same order. The content that appears on my website for this game originally appeared in the Book.

14. Attached as *Exhibit 5* is a copy of my webpage as it appeared in 2005 for the game "TMNT Mutant Melee," followed by a copy of Defendants' webpage for the same game from their website www.Xbox-cheat-codes.com. The two pages contain identical content in the exact same order.

³ Due to the size of this document, Plaintiff is seeking leave to manually file Exhibit 3 separately with the Court. As such, it is not actually attached to this affidavit.

15. Attached as *Exhibit 6* is a copy of my webpage as it appeared in 2005 for the game “Star Wars Jedi Knight – Jedi Academy,” followed by a copy of Defendants’ webpage for the same game from their website www.Xbox-cheat-codes.com. The two pages contain identical content in the exact same order.

16. Attached as *Exhibit 7* is a copy of my webpage as it appeared in 2005 for the game “Tiger Woods PGA Tour 2003,” followed by a copy of Defendants’ webpage for the same game from their website www.Xbox-cheat-codes.com. The two pages contain identical content in the exact same order.

17. Attached as *Exhibit 8* is a copy of my webpage as it appeared in 2005 for the game “Tiger Woods PGA Tour 2004,” followed by a copy of Defendants’ webpage for the same game from their website www.Xbox-cheat-codes.com. The two pages contain identical content in the exact same order.

18. Attached as *Exhibit 9* is a copy of my webpage as it appeared in 2005 for the game “Wakeboarding Unleashed,” followed by a copy of Defendants’ webpage for the same game from their website www.Xbox-cheat-codes.com. The two pages contain identical content in the exact same order.

19. Attached as *Exhibit 10* is a copy of my webpage as it appeared in 2005 for the game “The Lord of the Rings: The Fellowship of the Ring,” followed by a copy of Defendants’ webpage for the same game from their website www.Xbox-cheat-codes.com. The two pages contain identical content in the exact same order.

20. Attached as *Exhibit 11* is a copy of my webpage as it appeared in 2005 for the game “Tenchu: Return from Darkness,” followed by a copy of Defendants’ webpage for the

same game from their website www.Xbox-cheat-codes.com. The two pages contain identical content in the exact same order.

21. Attached as *Exhibit 12* is a copy of my webpage as it appeared in 2005 for the game "Soldier of Fortune 2: Double Helix," followed by a copy of Defendants' webpage for the same game from their website www.Xbox-cheat-codes.com. The two pages contain identical content in the exact same order.

22. Attached as *Exhibit 13* is a copy of my webpage as it appeared in 2005 for the game "ShellShock: Nam '67," followed by a copy of Defendants' webpage for the same game from their website www.Xbox-cheat-codes.com. The two pages contain identical content in the exact same order.

23. Attached as *Exhibit 14* is a copy of my webpage as it appeared in 2005 for the game "Mario Kart 64," followed by a copy of Defendants' webpage for the same game from their website www.cheatdemon.com. The two pages contain identical content in the exact same order. The content that appears on my website for this game originally appeared in the Book.

24. Attached as *Exhibit 15* is a copy of my webpage as it appeared in 2005 for the game "3Xtreme," followed by a copy of Defendants' webpage for the same game from their website www.cheatdemon.com. The two pages contain identical content in the exact same order. The content that appears on my website for this game originally appeared in the Book.

25. Attached as *Exhibit 16* is a copy of my webpage as it appeared in 2005 for the game "Armored Core: Project Phantasma," followed by a copy of Defendants' webpage for the same game from their website www.cheatdemon.com. The two pages contain identical content in the exact same order. The content that appears on my website for this game originally appeared in the Book.

26. Attached as *Exhibit 17* is a copy of my webpage as it appeared in 2005 for the game "C: The Contra Adventure," followed by a copy of Defendants' webpage for the same game from their website www.cheatdemon.com. The two pages contain identical content in the exact same order. The content that appears on my website for this game originally appeared in the Book.

27. Attached as *Exhibit 18* is a copy of my webpage as it appeared in 2005 for the game "Capcom Generations Volume 4," followed by a copy of Defendants' webpage for the same game from their website www.cheatdemon.com. The two pages contain identical content in the exact same order.

28. Attached as *Exhibit 19* is a copy of my webpage as it appeared in 2005 for the game "Rayman 2: The Great Escape," followed by a copy of Defendants' webpage for the same game from their website www.Cheats2k.net. The two pages contain identical content in the exact same order.

29. Attached as *Exhibit 20* is a copy of my webpage as it appeared in 2005 for the game "Star Fox 64," followed by a copy of Defendants' webpage for the same game from their website www.Cheats2k.net. The two pages contain identical content in the exact same order. The content that appears on my website for this game originally appeared in the Book.

30. Attached as *Exhibit 21* is a copy of my webpage as it appeared in 2005 for the game "San Francisco Rush," followed by a copy of Defendants' webpage for the same game from their website www.Cheats2k.net. The two pages contain identical content in the exact same order. The content that appears on my website for this game originally appeared in the Book.

31. Defendants, in an ongoing effort to draw attention away from their overt infringement of my copyrighted works, have accused me of copying content for my site from the third-party site www.gamewinners.com. I do not copy content from that website.

32. Similarly, the factually unsupported affidavits belatedly submitted by Defendants to allegedly “prove” I stole content from gamewinners do not prove any such thing. These affidavits do not detail precisely when these alleged submissions were made to gamewinners, or precisely when the content was posted.

33. In attempting to differentiate his “Gears of War” pages from mine for the same game, Defendant Wise notes that several of his titles for cheats differ from the ones I used. The version of his site he uses to compare to mine is not the one that existed at the time of infringement. I am attaching as *Exhibit 22* the version of this game from www.cheatmasters.com that I saved in January 2007.⁴ As this exhibit shows, Defendants did list “Defeating Berserkers” as “Defeating Berserkers,” not as “Berserkers,” as he alleges in his affidavit [Doc. 64-7, ¶19]. Likewise, he listed “Easy Clusterluck” as “Easy Clusterluck,” not as “Clusterluck Achievement,” as he alleges in his affidavit [Doc. 64-7, ¶19]. And he listed “Defeating Corpser” as “Defeating Corpser,” not as “Corpser,” as he alleges in his affidavit [Doc. 64-7, ¶19].

34. Defendant Wise has introduced allegations that I copied content from gamewinners.com pertaining to the game Bioshock 2. These defensive allegations are both factually incorrect and irrelevant to the case at hand, since this material did not even come into existence *until 2010*—more than three years after the time of infringement occurred. In other

⁴ I realize the version Defendant refers to in his affidavit is a version we produced in discovery, which must have been a print out made by my prior attorney. That printout is dated March 27, 2007. Defendant apparently changed his content subsequent to the filing of this lawsuit, because, as the attached exhibit shows, it was different on January 15, 2007 from what appears on the March 27, 2007 printout.

words, they constitute nothing more than yet another red herring thrown up by Defendant Wise in an effort to draw attention away from his own infringing actions. Moreover, contrary to Defendant's allegations, I came up with much of the content on my site for this game by playing the game myself and then writing up my discoveries. Even those codes and tips that I did not discover myself I was able to embellish due to my familiarity with the game after playing it extensively.

35. I received an advance copy of BioShock 2 from its publisher, 2K games. I discovered the following cheats myself: "Easy health," "Easy Security Research," and "Defeating Rumlbers." I wrote the "Cheat Codes," "Alternate Endings," "Free Telekinesis," "Door Codes," "Multiplayer Unlockables," "Power to the People Weapon Upgrade Station Locations," and "Easy 9-Irony Achievement" codes/tips myself after obtaining the underlying factual information from either watching one of several available videos on YouTube of people describing how to conduct the specific cheats, or from various message boards on the Internet. In sum, contrary to the affidavit of Mr. Wise and the alleged supporting documents provided there with, gamewinners cannot have posted my BioShock 2 content "first," because I wrote and posted all of the above-stated content myself.

36. Upon close examination of the printouts submitted by Defendant Wise attached to his Affidavit [Doc. #64-7] as Exhibit 2 and as discussed by him in paragraphs 24 through 28, I realized he must have doctored his printouts in some way because of an inconsistency that I discovered between them. In the screen shot of my site that was allegedly captured on 2/11/10 at 10:17 p.m., there is a cheat hint called "Defeating Rumlbers." [Doc #64-7, pp. 47-49.] This same hint is then missing from my site in the screen shot allegedly captured on 2/12/10 at 1:47 p.m. [Doc. 64-7, pp. 54-55.] The hint then reappears in the final screen shot of my site,

allegedly captured on 2/17/10 at 11:39 a.m. [Doc. #64-7, pp.56-59.] I cannot recall a single time when I posted something to my site, removed it the following day, and then reposted it a few days later. There would simply be no reason to do such a thing. As such, the dating of the exhibits referred to by Defendant Wise is seriously suspect.

37. With respect to Assassin's Creed and Defendant Wise's allegations that I copied content for this game from his site and that of gamewinners.com, it is first important to state that, yet again, such allegations are completely irrelevant in light of the timeframe in which these hints and tips appeared, which was late 2009—more than three years after the time of the infringement alleged in this lawsuit. Furthermore, even if this allegation were relevant, it is false on its face. I obtained much of the factual content for the cheats under the heading "Glyph Locations and Puzzle Solutions" from the multiple YouTube videos and player comments available online that provided detailed open-source descriptions regarding this cheat, as well as from strategy guides for the game, and then wrote the content myself.

38. I authored what Defendant Wise refers to as the "Combat Tips" cheats myself because I remember playing the game and discovering them. These particular hints were ones that were relatively easy to discover, and were necessary in order to progress in the game play. While the specific "Combat Tips" hints set forth on our web pages are similar, mine are not grouped under that heading, use different sub-headings and wording, and are organized in a different fashion. The obvious reason for this difference is that I came to my wording and organization on my own, after discovering the cheats, and unilaterally chose how to prepare and organize these factual written works for publication. It defies logic to think I would be copying from the party I am currently suing for infringement.⁵ I wrote the rest of the content for this

⁵ While Defendants compare virtually everything to the content on gamewinners.com, they do not do so for these combat tips in the "Assassin's Creed 2" game. A review of that content, found at

game based either upon my own game play experiences, YouTube videos, strategy guides, or Internet message boards.

39. Defendant's exhibits which claim to be conducting a comparison of Assassin's Creed cheats exclude any timestamp on all of the printouts that compare content as of the same day across the three sites, yet the timestamp appears on days in which only my site is examined. As I have not copied any content from either cheatmasters.com or gamewinners.com, it is likely that the content in question was posted by me on the day it appeared on these other sites, but that Defendant Wise took a screen shot of my site before the content was posted rather than after, and then took screen shots of the other sites after they posted the same content. Unlike the examples I discussed above comparing content on my site to that on various websites owned and managed by Defendants, the content for the game "Assassin's Creed 2" is neither verbatim nor organized in the same order on my site, gamewinners.com and cheatmasters.com.

40. Defendant Wise references several affidavits in an effort to draw attention away from his substantive infringement. All but two of the affidavits submitted by Mr. Wise are irrelevant to the present case, as I am seeking statutory damages relative to my 2005 and 2000 copyright filings. The remaining allegations pertain to just several paragraphs, and demonstrate nothing about the selection and organization of the content that appears on my site.

41. As previously stated, I have at no time copied content from the gamewinners website, as alleged by Defendant. On the other hand, content from my website has appeared on the gamewinners site. For example, my "Easy Health," "Easy Security Research," and "Defeating Rumlbers" cheats from BioShock 2, which I created and wrote myself immediately after playing an early-release version of that game, are now on that website. The same is the

www.gamewinners.com/Cheats/index.php/Assassin%27s_Creed_2_%28PlayStation3%29, shows that the gamewinners' site uses the identical wording and a similar order for the several cheats in question as that found on Defendants' site. The attribution for the hints is simply listed as "Trade."

case with regards to a very long list of cheats with the heading “Intel Locations” for the game “Call of Duty: Modern Warfare 2”

(<http://www.cheatcc.com/xbox360/mordernwarfare2cheatscodes.html>). I discovered these locations myself from playing the game back in November 2009, immediately after the game was released. I then wrote them up in my own words and posted them on my site. A couple of weeks later, this same content appeared on the gamewinners’ site, but instead of using numbered paragraphs as on my site, the cheats were posted with bullet points under each sub-heading. The content appears at:

http://www.gamewinners.com/Cheats/index.php/Call_of_Duty:_Modern_Warfare_2_%28Xbox_360%29. I cannot speak to how gamewinners obtained the content, but the content clearly originated from my site because, in addition to having the identical wording and order, there is a tell-tale typo that appears on the gamewinners’ site. On my site, there are four paragraphs numbered seven through ten under the sub-heading “Act 1: Takedown.” Paragraph 9 looks like this: “9. Directly across from the previous Intel...” The same paragraph on the gamewinners site looks like this: “▪ .Directly across from the previous Intel...” In other words, when my numbering format was removed and bullet points were put in place instead, the period following the number nine was not deleted, and still appears immediately before the first word of text in the paragraph.

42. The videogame Blazblue: Calamity Trigger for X-Box 360 was released in June 2009. The videogame Dynasty Warriors 6: Empires for X-Box 360 was released in June 2009. The videogame Overlord 2 for X-Box 360 was in June 2009.

43. The videogame BioShock 2 for PC was released in February 2010. The videogame Assassin’s Creed 2 was released in November 2009.

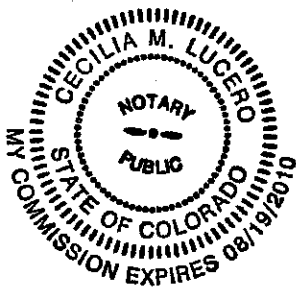
44. In the past I have sued other infringers of my website to protect its content, including the owner of the website www.Ps3cheats.com, Crave Online Media, LLC and Andrew Simon; Jupiter Electric, X Productions, Russell Zohoor and Hooman Zohoor; and Thomas Carroll. Defendants have included copies of these complaints in their Exhibit G [Doc. #64-6]. These matters were all resolved short of trial. In other words, none of these cases proceeded to the point of judicial determination.

FURTHER AFFLIANT SAYETH NOT.

Dated: March 29, 2010

By: *David Allison*
David Allison

Subscribed and affirmed to before me on this 29th day of March, 2010 by David Allison.



Cecilia M Lucero
Notary Public

My commission expires: 8/19/2010