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14 Attorneys for  
15 *AMICI CURIAE* LEGAL AND  
16 CULTURAL STUDIES SCHOLARS

17 **IN THE UNITED STATES DISTRICT COURT**  
18 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

19 **MARVEL ENTERPRISES, INC.** ) Case No. CV 04-9253 RGK (PLAx)  
20 **AND MARVEL CHARACTERS, INC.,** )  
21 ) **NOTICE OF MOTION AND**  
22 ) **MOTION OF *AMICI CURIAE***  
23 ) **LEGAL AND CULTURAL STUDIES**  
24 ) **SCHOLARS TO SUBMIT A**  
25 ) **MEMORANDUM OF POINTS AND**  
26 ) **AUTHORITIES; MEMORANDUM**  
27 ) **OF POINTS AND AUTHORITIES**  
28 )  
29 ) Date: December 19, 2005  
30 ) Time: 9:00 a.m.  
31 ) Judge: The Hon. R. Gary Klausner  
32 ) Courtroom: 850 (Roybal)

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1           **TO: ALL PARTIES AND THEIR COUNSEL OF RECORD HEREIN**

2           PLEASE TAKE NOTICE that, on December 19, 2005, at 9:00 a.m., or at such  
3 other time as the Court may designate beforehand, in the courtroom of the  
4 Honorable Hon. R. Gary Klausner, 312 N. Spring Street, Los Angeles, California  
5 90012, the above-listed *Amici Curiae* will move the Court to accept a Memorandum  
6 of Points and Authorities of *Amici Curiae* in support of Defendants' Motion for  
7 Summary Judgment with regards to Counts II and III of the Second Amended  
8 Complaint in Case No. 04CV9253 RGK (PLAx) pursuant to this Court's  
9 discretionary powers and F.R.Civ.P. 7, and for the reasons more fully set forth in the  
10 following and attached Memoranda of Points and Authorities.

11           **LEGAL AND CULTURAL STUDIES SCHOLARS** listed herein ("*Amici*  
12 *Curiae*") respectfully request leave to file a Memorandum of Points and Authorities  
13 in Support of Defendants' Motion for Summary Judgment in the above styled action.  
14 Pursuant to Fed R. Civ. P. 7 and the discretionary powers of this court. *Amici's*  
15 proposed Memorandum of Points and Authorities is being submitted for filing  
16 simultaneously with this Motion.

17           This Motion is based upon this Notice, the accompanying Memorandum of  
18 Points and Authorities, the record of this case as made available to the public, and  
19 such other matters as the Court may elect to consider.

20           The undersigned counsel of record certifies that the following listed persons  
21 have an interest in the outcome of this case. These representations are made in order  
22 that the Judges of this Court may evaluate possible disqualification or recusal.

- 23  
24           1) Edward Castronova, Ph.D.  
25           Associate Professor and Director of Graduate Studies  
26           Department of Telecommunications  
27           Indiana University  
28

- 1 2) Mia Consalvo, Ph.D.  
2 Assistant Professor  
3 School of Telecommunications  
4 Ohio University  
5  
6 3) Julian Dibbell  
7 Author, My Tiny Life  
8  
9 4) Joshua Fairfield  
10 Associate Professor of Law  
11 Indiana University School of Law  
12  
13 5) James Gee, Ph.D.  
14 Professor  
15 Department of Educational Psychology  
16 University of Wisconsin-Madison  
17  
18 6) Dan Hunter, Ph. D.  
19 Assistant Professor  
20 Department of Legal Studies and Business Ethics  
21 Wharton School of Business, University of Pennsylvania  
22  
23 7) Henry Jenkins, Ph.D.  
24 Professor and Director of the Comparative Media Studies Graduate Program  
25 Department of Humanities  
26 Massachusetts Institute of Technology  
27  
28 8) Thomas Malaby, Ph.D.

1 Associate Professor of Anthropology  
2 College of Letters & Science  
3 University of Wisconsin-Milwaukee  
4

5 9) Beth Simone Noveck, Ph. D.  
6 Associate Professor of Law, Director of the Institute for Information Law and  
7 Policy and Director of the Democracy Design Workshop  
8 New York Law School  
9

10 10) Kurt Squire  
11 Assistant Professor  
12 Educational Communications and Technology Division  
13 University of Wisconsin-Madison  
14

15 11) Constance Steinkuehler, Ph.D.  
16 Assistant Professor, School of Education  
17 University of Wisconsin-Madison  
18

19 12) T.L. Taylor, Ph.D.  
20 Associate Professor  
21 Department of Digital Aesthetics and Communication  
22 IT University of Copenhagen  
23

24 13) Rebecca Tushnet  
25 Associate Professor of Law  
26 Georgetown Law School  
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1                                   **MEMORANDUM OF POINTS OF AUTHORITIES**  
2                   **IN SUPPORT OF MOTION OF *AMICI CURIAE* LEGAL AND CULTURAL**  
3                                   **STUDIES SCHOLARS FOR LEAVE TO**  
4                   **SUBMIT AN MEMORANDUM OF POINTS AND AUTHORITIES**

5           This case is a civil lawsuit alleging, *inter alia*, contributory and vicarious  
6 liability for the violation of intellectual property rights by third parties. This brief is  
7 submitted on behalf of *Amici Curiae* who study the legal and cultural dimensions of  
8 the newly emergent phenomenon of virtual environments.<sup>1</sup> *Amici* conduct research  
9 in the fields of sociology, education, history, economics, literature, and law with  
10 regard to online social environments and have published books, articles, and  
11 research findings on this topic. While their disciplinary fields of expertise with  
12 regard to these environments vary, *Amici* share a common interest in ensuring that  
13 emergent online environments reflect the same commitments to robust community  
14 dialogue and individual creative freedoms safeguarded by constitutional protections  
15 that are found offline. Several of the *Amici* are also familiar with Defendants’ game,  
16 *City of Heroes*, as players of the game and as users of the game’s Creation Engine.

17           *Amici*, through scholarship and practice, have contributed to the development  
18 of jurisprudence and empirical knowledge on various questions related to the  
19 pending matter. *Amici* therefore seek leave to present their views to the United  
20 States District Court for the Central District of California concerning the appropriate  
21 scope of copyright in the context of Case No. CV 04-9253 and in support of  
22 Defendants’ Motion for Summary Judgment with respect to Counts II and III of the  
23 Second Amended Complaint.

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27 <sup>1</sup> See, e.g., Jack M. Balkin, *Virtual Liberty: Freedom to Design and Freedom to Play*  
28 *in Virtual Worlds*, 90 VA. L. REV. 2043 (2004); Edward Castronova, *The Right to Play*, 49  
N.Y.L.S. L. REV. 185 (2004); JULIAN DIBBELL, MY TINY LIFE (1998); JAMES GEE, WHAT  
VIDEOGAMES HAVE TO TEACH US ABOUT LITERACY AND LEARNING (2003).

