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 PUBLIC SUBMISSION

## Class\_08\_Reply\_Sheridan

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Comment by Clifford Sheridan,

In response to the defense testimony given by The Entertainment Software Association, who argued that running a server for a discontinued and no longer running title would create competition with the existing titles, I respond:

1: An Intellectual Property cannot be used to protect a different unrelated Intellectual Property from competition, irregardless if it is properties of the same company, including that an Intellectual Property cannot be used to protect other intellectual properties from competition from itself. In regards to City Of Heroes/Villains, there is no official successor and even the registered Intellectual Property for "City of Heroes 2" is a different Intellectual Property and thus not under protections from the Intellectual Property from "City of Heroes". City of Heroes/Villains can only protect City of Heroes/ Villains against competition, it cannot be used to protect "Guild Wars"1 or 2, and not "MasterXMaster" even when featuring City of Heroes/Villains Characters and not even City of Heroes 2, it can only protect itself (an IP can only protect it's own product/service from competition, NOT "existing titles" of that company).

2: You cannot compete with something that is itself not competing. A game that is shut down with no voiced intent to run it, and a voiced intent to stop sales of it, for X period of time is not competing in it's own market (where X is the amount of time it is not active).

3: Players of online games spent time and money in purchase of methods to obtain easier enjoyment, this is the goal of every gamer for any game, to obtain enjoyment and to make that process more streamlined and quickly obtainable after trial and hardships and money spent. In shutting down an online game server all of the customers paid-for and hard-earned work to procure this enjoyment is erased without permission or consent and forever locked away (Seized) without an ability to reclaim it.

4: Damages for loss (Seizure) of social and emotional products, such as player created content (by self or others (some of whom may now be deceased and unable to recreate their content)), friends and social/emotional networks, and procured abilities for obtaining enjoyment.

5: The "Gamer's Trust" was broken by online games, when video games were first created we were under

the assumption that once we buy a copy, we would always be able to play the content of that copy from that day forwards. To have the content we played ripped away (Seized) from us via shutdown, forever, without possibility of rebuttal, was a violation of our trust as gamers.

6: Player Created Content was not nor can be owned by the company that runs the game (it would be dangerous and a direct liability to do so because of possible player infringement on other existing Intellectual Properties, causing a company that claims ownership thereof to be liable.) in shutting down the game and not giving players a way to maintain their own content created in the game (in example: Player characters, costume combinations, character upgrade combinations, player created stories, missions and groups such as in City of Heroes; Architect Entertainment and Super Groups) online game companies have in effect illegally seized these properties which they do not own from the players who own them. And have illegally kept players from using their own created content for X time (where X is the time since shutdown). It is also possible that the online game companies destroyed these player files without permission during the shutdown, and players may be due legal damages.

I move to suggest the court allow the Museum of Art and Digital Entertainment and other online game preservation institutes/groups etc. To host previously "sunset", abandoned, permanently shutdown, non-competing etc. online game servers according to the comments listed above.

Thank you,  
Sincerely,  
Clifford Sheridan

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