

THE LEGAL DEPARTMENT

## Websites And Wizards

"ALOHOMORA!" IF YOU DON'T immediately recognize this as a magical charm to open locked doors, then you are likely one of the few who are unfamiliar with the world of Harry Potter. J.K. Rowling's book series has not only captured the imagination of readers around the world, it has spurred a secondary market of related materials. Websites provide an abundance of commentary, analysis and fan fiction for followers to digest when they have finished reading the seven Potter novels. The legal limits of what that secondary market may reproduce was the subject of a recent copyright clash between Rowling and a long-time fan.

The Harry Potter Lexicon is a long-running website that collects and organizes information from the series' books into one central source for fans. Created by librarian Steven Jan Vander Ark, the site seeks to be a comprehensive source of all things from the wizarding world, including characters, spells, creatures and magical objects. It effectively acts as an electronic encyclopedia for fans. Rowling herself reportedly used and praised the site. But problems began in 2007 when a publisher became interested in transforming the website into a book.

It did not take long for the news to spread that the Lexicon would become the first paper encyclopedia about Harry Potter. After a series of letters, Rowling and movie rights owner Warner Bros. sued for copyright infringement, pointing to the large amount of original creative materials from the books that were reproduced in the Lexicon. In response, Vander Ark and his publisher admitted the obvious—that the Lexicon copied some material from the books. But they still had a defense, arguing that the Lexicon is a protected "fair use" of Rowling's writings about Harry Potter.

As a work that collects, synthesizes and organizes information about Potter and his world, the defendants asserted that they were entitled to borrow enough of the original expression from the books to create their encyclopedia. The judge agreed, but concluded that the Lexicon took more than was reasonably necessary. One example the court pointed to was the entry for Professor Trelawney. Not only does the Lexicon entry discuss the Divination Professor and reproduce her prophecies, it also explains how the prophecies are fulfilled, including events having nothing to do with Trelawney.

Copyright law can be tricky. It encourages the use of others' works, but only to a point. Don't get caught under the same spell and take more than your fair share.

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# A 'To Do' List

Toy experts outline areas for improvement

By Richard Gottlieb

**T**he Building Our Future Toy Conference that took place in early October ended up offering more than a look at where the toy industry is heading in the future. The participants also had a great deal to say about where it is going right now.

I held the conference as a means of looking around the corner and seeing what the toy business will be facing in the next five to 10 years. The event was attended by a select and highly diverse group of children's entertainment industry players. We wanted to know what they saw coming for Toy Nation. We got some fantastic results; I wrote about them in last month's issue of PLAYTHINGS.

Participants did not, however, just stop with looking

*"The toy business has adhered for too long to products, techniques and attitudes that are out of date."*

at the future. They also had some very strong opinions on what the toy industry needs to do right now to make it a better future for everyone.

### Spend more on R&D

The attendees felt that the toy industry needed to take a hard look at the business models that make the electronic gaming industry so successful and, if not exactly emulate them, be inspired by them. In particular, attendees felt that much of the gaming industry's success is based upon its heavy investment in research and development. This means that even though their products take longer to get to market and cost more when they get there, they are far more profitable than toy industry products as they provide consumers with games they want to play and are excited about.

Attendees noted that, unlike the electronic gaming industry, the toy business puts its money not in R&D, but in marketing. This means we are spending more and more to sell toys that people want less and less. In fact, one attendee noted that the concept of age compression is just the toy industry's way of explaining to itself why kids no longer want what it makes.

### Engage in pre-marketing

Attendees again looked to the electronic gaming industry as they noted that industry's success with product previews. Unlike the toy industry, which keeps its products under wraps until they start to ship, the electronics industry does a great job of creating consumer excitement long before the product hits. By using "teasers" on the Internet (think YouTube) and other media formats, they create excitement and buzz. Those efforts succeed in creating interest in products long before they hit the market at a far lower cost than Toy Nation's TV advertising.

It was also noted that the toy industry, with its history of intellectual property theft and subsequent

paranoia, keeps its products well under wraps until very late in the process, one notable exception being Fisher-Price's Elmo products, which get lots of buzz long before they come to market.

Attendees felt that toymakers need to rethink their caution about revealing product details and do a better job of "teasing" the consumer so that shoppers are ready to buy a toy long before it hits the shelves.

### Replace the term 'traditional toy'

Attendees expressed concern that we are categorized by a term, "toy," whose meaning has become corrupted. It has either had its meaning smeared through the term, "adult toy," to describe various sexual aids, or has become stodgy though the appellation "tradi-

tional toy," which makes it sound like "fun's" maiden aunt. Either way, the term no longer clearly conveys the innocent pleasure that comes from our industry's cutting-edge products.

In the end, there was no consensus for what our products should be called, but there seemed to be agreement that the name must convey what toys provide: joy, fun, excitement and pleasure. As a consumer, could you see yourself visiting a Fun Store or shopping in the Joy Department?

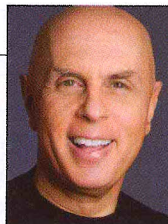
### Better understand today's kids

Though we historically have been the best intellectual property creators in the world, there was a sense that the toy industry no longer understand today's children and their parents. Why? Because kids and their parents are dramatically different today.

Attendees again pointed to the electronic gaming industry as a role model. They noted the financial grants that industry gives to educators and psychologists in order to study children and how they are entertained. There was a sense that the toy industry needs to do the same. We should bring in specialists to help us better understand what types of play most appeal to the 21st century children and then provide those children with the toys they actually want and need.

The consensus seemed to be that the toy business has adhered too long to products, techniques and attitudes that are out of date. The solution is to change how we think about ourselves, our competitors, our products and our end users in order to better compete today and in the near future.

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Year-to-date through October 2008, estimated sales at U.S. hobby, toy and game stores were up 9.1 percent to \$12.57 billion following 10 months of year-over-year monthly sales increases. —U.S. Census Bureau's Monthly Retail Trade Survey