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terminal

Toywars

Fences in
Cyberspace

The Toy War Escalates

Felix Stalder 13.12.1999

RTMark invites you for a multi-user Internet game whose goal is to damage (or possibly even destroy) the eToys company.

After winning the first round of the toy war, Etoys.com now seems to be on the defensive. On November 29, 1999 a L.A. judge, apparently impressed by eToys's clever mix of accusations -- ranging from child abuse, to communication indecency and securities fraud -- issued a preliminary injunction against etoy which mandated, among others, that etoy shut down immediately its contested etoy.com domain.

The reaction on the net has been furious. Almost overnight, anti-eToys sites have sprung up, with the "official" toywar.com as the central hub. eToys' board is being flooded with hundreds of protest emails, and calls to boycott eToys.com are circulating broadly on the Internet. These protests denounce what is perceived as foul play by the retail giant and support the artists in their legal and very public fight.

Now, it seems, the goals of the self-declared toywars.COMMUNITY have been raised considerably. RTMark, one of the groups behind the toywar site, has released a new weapon in the info war: "a multi-user Internet game whose goal is to damage (or possibly even destroy) the [eToys] company" (RTMark press release, 12.12.1999).

The game takes the form of a RTMark "mutual fund," or list of sabotage projects, and is managed by Mark Pauline, from the San Francisco-based art's collective Survival Research Laboratories. The various projects which make up the "etoy Fund", aim to lower the eToys stock market value as much as possible. One of the projects is a "virtual sit-in" which hopes to coordinate efforts of thousands of individual internet users to bring down eToys' servers by overloading them with thousands of simultaneous page request. This tactic was successfully used by a group called "electro hippies" against the WTO server during the protests in Seattle. RTMark's goal is "to cripple the eToys servers during the ten days leading to Christmas" (RTMark press release, 12.12.1999).

According to the toy warriors the campaign, which has received major coverage in the US media, has been extremely successful. To bolster their claims, they point at the fact that since the campaign started eToys' stock price has come down dramatically, from \$67 per share to \$45 per share, nearly 33%. Referring to the ease of simply shopping at the competition, which makes boycotts

quasi effortless of the consumers, analyst Ted Byfield writes:

"Not for one moment do I doubt that there's a nearly mechanical cause-and-effect relationship here", i.e. between the anti-eToys campaign and the price drop.

However, despite the exuberant claims of the toy warriors, it is less than clear how much of this fall is indeed related to their campaign. Share prices reflect the totality of information available about a company's current and future performance and it is usually difficult to isolate any single influence. Particularly since the toy war was not the only recent bad news for eToys.com. According to the Internet rating company Media Metrix, eToys has been surpassed, in the number of visitors, by its direct competitor: toysrus.com, which has grown 355 percent from last year as opposed to eToys' 52 percent. Furthermore, as Wired News' Declan McCullagh reported, eToys insiders have stated that they were selling off a million of their shares. Consequently, only one of 12 NASDAQ analysts evaluating eToys stock rates it a "strong buy".

The market for Internet stock is, though bullish, hyper sensitive and extremely volatile. The current drop is not unprecedented for eToys shares which went from \$84 to \$51 between October, 11 and November, 16. Furthermore, popular wisdom about the "new economy" suggests that Internet retailing is a winner-takes-all market, where only one giant can survive. This is thought to be the case because the dynamics of economies of scale tend to be self reinforcing, or as Kevin Kelly put it in his 12 Rules For A New Economy, "[t]hem that's got shall get." This adds to the volatility, since all speculators try to anticipate small differences that will turn into the big differences, or so they hope. And the Media Metrix data may be perceived as the point where the curve tips.

No matter what the relationship between the wider stock market reasoning and the toywar campaign is, additional negative publicity is the last thing eToys needs in such a unstable situation. Worse than that only, of course, would be an effective "virtual sit-in" just before Christmas. If that happens, we are likely to see a more direct relationship between online-protest and stock market performance. And even more certainly, a new law suit, this time against RTMark.

eToys vs etoy

The giant American toy retailer has forced a group of electronic artists to give up their domain name. But now they're fighting back

By Iain Aitch

13 December 1999

In the run-up to Christmas, one online retailer seems to have suffered from a festive spirit bypass. eToys, which operates from the etoys.com domain, has taken exception to the activities of its close neighbour etoy.com -- home to a group of European electronic artists based in Zurich. But rather than banging on the fire wall and asking it to keep the noise down, eToys has taken etoy to court for dilution and infringement of its trademark as well as unfair competition.

eToys was concerned that careless customers were missing the "s" from the end of its name and ending up in the confusing virtual world of etoy, which, it claims, contained "hateful rhetoric and obscene images", and even "hardcore pornography". etoy claims that the only obscenity on its website was an order on one of the pages to "get the fucking Flash plugin" -- visible for a number of weeks before being replaced with a censored version.

"They say that we are domain-name squatters and that we try to increase our profit from their increased holiday traffic," says Zai, of etoy. "If people forget the 's' at the end of eToys, that is not our problem. It's their problem that they didn't pay enough attention to this problem before they built up this huge company."

What at first sight looks like a straightforward case of domain-name piracy by a group of art pranksters is, in fact, far more complex. etoy and its supporters are saying that the company existed for three years before the conception of eToys and had an online presence at etoy.com for two years before the arrival of Etoys.com. eToys registered its trademark in the US first, though, etoy doing so only after hearing that a large company was setting up with a similar name.

A California Superior Court judge granted a preliminary injunction against etoy on 29 November and ordered that etoy.com be closed down. One major factor in the decision was the claim by eToys' legal team that etoy was engaged in illegal stock-trading through its website. This is a claim denied by the artists. They acknowledge that they offer "etoy shares" for sale, but say these are merely pieces of art and in no way could be mistaken for real shares.

"It is not illegal," claims Zai. "They speculate on the idea that the judge is sensitive to those topics. So if he hears the words "investment security fraud", they can say that people buy these shares because they think it is [eToys] stock. They try to make us look like criminals."

If etoy is unable to gain the rights to resurrect its domain through the US courts, then it may well bring a case in Europe. Etoys has recently set up an online branch in the UK that may become the focus of any future legal action, etoy claims

For the outsider it is sometimes difficult to see what etoy's art consists of. This is largely because the group itself is the product. It acts like a cross between a gang, a cult and a corporation and claims to work from cargo containers that can be moved across continents, allowing it to plug in and go at any location with a power supply. Its most famous work to date has been a "digital hijack" in which it claims to have hijacked more than a million Web surfers. By intensive investigation of the workings of search engines, it managed to place its own Web pages high up in results for common search terms and then redirected users to a page that informed them they had been hijacked. But the group does not fit the image of the subversive hacker that eToys is trying to project; it has received awards at the Ars Electronica festival for electronic art. It has also had official backing in Austria, where the first holder of an etoy share was the chancellor, Victor Klima.

EToys did try to avoid adverse publicity by offering to buy etoy.com before the case came to court. But, even after an offer worth \$500,000-plus, etoy still felt that the domain name was essential to the international nature of its work and could not be given up.

eToys, a relative newcomer to the Web, may have bitten off more than it can chew by choosing to pursue etoy. It may seem a small, powerless group of artists but, despite its involvement in fairly harmless media stunts, it can call upon a large community of activists who are willing to take on eToys on the Web. Several new domains such as toywar.com and eviltoy.com have already appeared, to spread the message and garner support for etoy.

Backing has also come from RTMark – another group with a corporate façade, which has made a name by funding sabotage in the workplace for political ends. It recently upset the Republican presidential candidate George Bush Jnr with its gwobush.com site, and the gatt.org site has drawn a broadside from the much-maligned World Trade Organisation. The site was a subversive mirror of the WTO's wto.org website and links led visitors to activists involved in the Seattle protests.

RTMark is now turning its attention to eToys: "We're creating an etoy mutual fund that is very different from our other mutual funds," says a spokesman. "Most of our projects don't target specific companies. But these will all have the purpose of destroying or punishing eToys as a company and making an example of it."

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EToys wins court freeze on
Etoy site

DOMAIN NAMES by KATE CRAWFORD

The supporters of a group of digital artists have mounted an online campaign against leading Net retailer eToys after the toy seller won an court injunction to have the artists' Web site shut down because it had a similar-sounding Internet address.

EToys, the world's leading online toy retailer, was founded in 1996, registered the name etoys.com in 1997 and owns the trademark. The artists group, Etoy, bought the domain name etoy.com in 1995 to establish an art site for its community, founded the year before.

However, eToys decided the similar Web address operated by the artists group was causing confusion in the minds of toy customers, according to Mr Ken Ross, vice president of corporate communications for eToys.

An LA Superior Court agreed with the toy retailer and issued a preliminary injunction to close the Etoy site on the grounds that it had infringed the eToys trademark.

While the opposing sides must wait for the final judgement on December 27, Internet users have sprung into action, with several protest and parody Web sites springing up last week from supporters who are urging a boycott of eToys.

EvilToy, eToy Sucks and Toywar are just a few of the products of angry Net users, with another art group, Violent Nation, designing an elaborate replica of the eToys Web site but with new corporate slogans such as "where great domains are blocked all for the sake of the dollar".

Local Internet analyst with www.consult, Mr Ian Webster, said concern was mounting among active Internet users that court systems were favouring large corporations over smaller players who operate Web sites with long-held Internet domains names.

"The court cases that we've seen internationally

used to operate on a 'first come, first served' basis," he said. "However, there is a recent trend of big companies in court closing down domains that challenge their trademarks even when they are coming to the Web late in the game."

Last week also saw one of the first successful injunctions in Australia against domain name cybersquatting.

Bartercard Ltd, a exchange trading organisation, took Ashton Hall to the Supreme Court of Queensland over its use of the bartercard.org domain.

Justice Ambrose granted an injunction pending trial against Ashton Hall's site for substantially reproducing specific member details and displaying company information without authorisation.

The chief executive of Bartercard, Mr Wayne Sharpe, said: "Australian courts will act to protect the intellectual property rights of any organisation or individual when those rights have been infringed on the Internet."

Mr Brook Bourke, a solicitor with Bartercard, described the case as "fairly clear cut". He said Ashton Hall had been claiming that it was representing Bartercard.

"This site was produced by a former member who thought they'd found an opportunity," he said.