

Why



isn't a rip-off after all?

An in-depth article by Sapphire1X7

# DISCLAIMER

The entire report was based upon facts given by both sides of the case, including information and stories from both the Game and the Comics as they are involved in the case. To ensure a clear report, this report is done in the most accurate way we can find, and most importantly, free from any bias on both sides. **I am not a copyright lawyer and because of this, I cannot give out any legal advice.** However, I have used the games as well as the comics for the purpose of this analysis. I've done a lot of research to create this report on why *Sonic Chronicles: The Dark Brotherhood* is not considered a rip-off, and because of this, there are spoilers from both mediums. In addition, there's also some analysis from my perspective that also reflects this as well as fact checking to claim if Penders' claims were considered true or false as well as looking into elements of copyright laws. All research is COMPLETELY my own and without any assistance from any outside party.

## Introduction

On September 2008, *Sonic Chronicles: The Dark Brotherhood* was released, opening the door to Sonic into the RPG world in its only RPG Game. It was considered a milestone for the Sonic the Hedgehog Franchise as they began to embark on a new era for Sonic in this spin-off. Despite some somewhat mediocre reviews, it was a decent game to many, however, the lore caught many people's interests. However, Sadly, as Kenneth Penders, former writer of Archie Comic's *Sonic the Hedgehog*, left Sonic 2 years before the game came out, he prepared to file lawsuits against SEGA, Bioware, and Bioware's Parent Company, Electronic Arts (which the company Acquired as the game was in Development).

The Purpose of this research is to know how *Sonic Chronicles* did not infringed the work of Kenneth Pender's work for Archie Sonic and how they in any such way, and how it was considered more of an inspiration instead of a true rip off.

## About the Lawsuit

On May 31, 2011, Kenneth Penders filed a lawsuit against SEGA, Bioware, and its parent company, Electronic Arts, for copyright infringement of the game, *Sonic Chronicles: The Dark Brotherhood*. Mr. Penders made a statement). He did file Copyright applications to the US Copyright Office back in January 2009 and had filed nearly 200 copyrights mostly characters that appeared in Archie's Sonic the Hedgehog, which had a license at the time. Those applications were approved in 2010. However, after doing some searching in the U.S. Copyright Office's Database, **no copyrights were filed by Ken Penders for *Sonic Chronicles: The Dark Brotherhood*, *Shade the Echidna* nor were made for any characters from the game, although SEGA has copyrighted the game in 2006.**

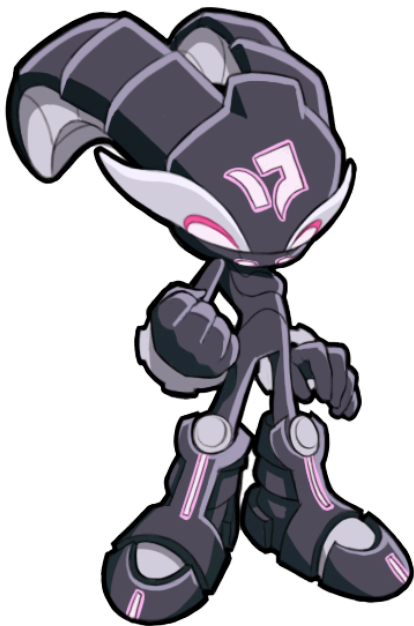
On September 26, 2011, exactly 3 years after the game was released in Europe, the case was dismissed after the Judge order Penders that he must work on the Lawsuit with Archie Comics, which the company sued him for a breach of contract. Four days later, he re-filed the lawsuit but that same it was dismissed again by the same judge for the same reason. However, it was about to be too late for case to continue as Penders's council appeal for a dismissal of the case. This was because there was a 3-year statue of limitations for U.S. copyright claims where there is a time limit for the evidence to be fresh. Since the case was dismissed 3 years later, it was already not going to go anyway.

On October 11, 2013, Pender's appeal was heard; and while they did agree that the timeline was relevant, although Penders could lose compensation. However, the Court rejected his appeal, and the dismissal was upheld. Although Penders can re-file, its too old for it to continue. However, any new usage of any characters from *Sonic Chronicles* that do appearing any way could possibly cause a potential lawsuit from Penders. Even Penders said that the case "may yet end up in the US Supreme Court if a resolution isn't found prior to that". Sadly, SEGA had not continued to use any of these characters due to a possible concern that Penders could sue them for such reason.

## Why Penders thinks about this problem?

The real problem was that Ken Penders lacked any evidence or anything to back that Shade the Echidna or even the game itself was in fact, in any such way, a carbon copy of his work or was considered a total rip-off. He never worked with Bioware during the game's development, nor was any evidence given into this lawsuit was given toward the lawsuit was sufficient enough for it to win in his favor. In addition, none of the characters are too similar enough for U.S. Copyright laws to be **"Substantially similar"** Neither Shade nor Julie-Su, apart from gender and species, are similar; and even with all connections to Sonic removed when it comes to Julie-Su, they would not be similar at all.

## Comparing Shade and Julie-Su



While Penders kept saying they are ripped off, they are considerably not. Shade and Julie-Su are Echidnas who were once villains but later became allies in the process. However, being just the Anti-Hero is still a common story concept used in many stories, which happens all the time. Shadow and Knuckles were kind of like Anti-heroes but they can start becoming Allies in the process. Designs are very different, especially when considering what they look like. While Shade uses a suit of armor, Julie-Su also wears a small set of clothes while also having robotic limbs and body parts, making her a cyborg. Other elements also made them different to each other as well, including their personalities, traits, appearances, and others as well, making Shade to be more of an original concept compared to others.

TL;DR: In Short, here's how they stack up

	Shade	Julie Su
Gender	Female	
Species	Echidnas	
Allegiance	Nocturnus Clan (formely)	Dark Legion (formely) Chantox
Personality	Quiet, Tough, Disciplined, Loyal, helpful, believes in what is right.	Stubborn, and Temperamental; "Girl Power" type of personality, Traitor to the Dark Legion
Appearance	Suit of Armor with an insignia	Cybernetic Dreadlock, purple hair, & enhancements with Teal boots and Teal/Black sleeveless Shirt
Cyborg?	No; Organic Being	Yes; Slightly
Relationships	None	Knuckles (Girlfriend)
Backstory	<ul style="list-style-type: none"> <li>Lived for 4,000 Years</li> <li>Severed as Ix's Righthand</li> </ul>	<ul style="list-style-type: none"> <li>Born to a family and later ended up with a Dark Legion Couple</li> <li>She left the Legion and joined in the Chaotix</li> </ul>
Created by	Bioware; Coordinated and Supervised by SEGA	Ken Penders

## Comparing the Nocturnus Clan and the Dark Legion

While both organizations have echidnas as the dominant leading force, they don't have similar concerns, backstories, and interests. The Nocturnus Clan dated back nearly 4,000 years from the Events of Sonic Adventure while the Dark Legion started 400 years in the Archie Sonic Continuity. The Dark Legion was a completely different Concept that Penders made whereas the Nocturnus Clan used the continuity found in the games with Sonic Adventure, so its very unlikely the game used a continuity that used Comic Characters as no work was Penders was used beyond the Comics. Not much was known about how the Nocturnus Clan started, although in the comics, according to what Ian Flynn conceptualized, the Nocturnus Clan [????]. However, as Ix came to power, both Clans were much more power hungry in favor of consequence and empire. They don't have most of the technological standards they have like the Dark Legion, but

Penders on the other hand, used a very odd form on how the Echidna race was established but it didn't used anything from *Sonic Adventure* at that time as both the Comics and Video game continuity are very different. This is where it leads to the Dark Legion, an organization going against the Brotherhood of Guardians. Penders's Concept was very different to the ones Sonic Team originally made. Unlike the Nocturnus Clan, the Dark Legion created a Civil War within the Island, causing a much more violent bloodshed because of the ban of technological advancement, acting in a way that is like a terrorist organization. On the Nocturnus Clan, it expanded, but like any empire, raged into war with the Knuckles Clan.

TL;DR: In short:

	Nocturnus Clan	Dark Legion/Dark Egg Legion
Formed	4000 Years Ago	400 Years Ago (Archie Sonic)

Founders	Unknown	Menniker
Reason for Formation	Unknown in the Games. In the Comics, it was to create a colony. Done Peacefully. Eventually went to war against the Knuckles Empire	Renunciation of the Technology by the Echidna Society.
Objectives	<ul style="list-style-type: none"> <li>• Colonization</li> <li>• Domination of Sonic's home world</li> </ul>	<ul style="list-style-type: none"> <li>• Technological Advancements and possibly Power hunger</li> </ul>
Allies	<ul style="list-style-type: none"> <li>• The Kron</li> <li>• The Voxai</li> <li>• The Zoah</li> <li>• The N'rrgal</li> </ul>	<ul style="list-style-type: none"> <li>• Eggman Empire</li> <li>• Iron Dominion</li> </ul>
Technology	<ul style="list-style-type: none"> <li>• Energy Draining weapons (such as the Leech Blade)</li> <li>• Suit of Armor</li> <li>• Gizoids</li> </ul>	<ul style="list-style-type: none"> <li>• Implants</li> <li>• Mechanauts</li> <li>• Energy Blasters (including guns)</li> </ul>
Inspirations	<ul style="list-style-type: none"> <li>• Mostly Greek Mythology and similar mythologies within Europe and the Middle East.</li> <li>• The lore of <i>Sonic Adventure</i></li> </ul>	<ul style="list-style-type: none"> <li>• Possibly Real-life mythos and events.</li> </ul>

## There's NO Brotherhood of Guardians in *Sonic Chronicles*

As mentioned before, there were concerns that the Brotherhood of Guardians were part of the lawsuit. Despite something with "The Dark Brotherhood" in the title of the game, no one from the Brotherhood of Guardians appeared in *Sonic Chronicles* because the Brotherhood of Guardians only appeared in the Archie Sonic Comic series and were never used in the game at all. As mentioned before, *Chronicles* used the *Sonic Adventure* Series Continuity with *Sonic Adventure* and its highly unlikely nothing related to the Brotherhood of Guardians were used in the game. In addition. There's no Dark Brotherhood within the Brotherhood of Guardians. And while the title of the game was trademark, it only protected the title of the game. The "Brotherhood of Guardians" were not trademarked, and it was very likely that these works were indeed under a copyright instead. The name of the organization was also not violating any trademarks.

In addition, there was no mention of the "Brotherhood of Guardians" as all its surviving members of clan kept in guard of the Master Emerald to prevent Chaos from not coming out, and it was all done by anonymous members of the former clan, including Knuckles. The Clan, of course, went into terminal

decline and Knuckles was the last one who left behind; especially after the Argus Events and the problems that went around with the Knuckles Clan. The Brotherhood of Guardians has a similar purpose, but its only protection was the entire Island, Mobius, and the Emerald, including the Master Emerald. It only existed in the comics and this organization isn't the ones that were found in the game.

## Was Penders asked by Bioware for their help?

In June 3, 2011, TSSZ News report Tristan Oliver (the Website was closed down since 2019 from the owner/reporter Tristan himself) made an article on an 18 page complain that concerns that how the game infringed the works of Ken Penders. Paragraph 41 shows what the Attorneys for Penders claimed about this infringement:

*"Employees of EA's BioWare division approached Penders during development of the Infringing Game and inquired of Penders whether he might be available to assist them in the development of the Infringing Game."*

However, there was little to no evidence or resources that Bioware was approached to Penders, despite giving them a side-by-side comparison about these characters, comparisons, and copyrights, were given; which may make the courts skeptic that Penders didn't provide enough evidence to back the claim. There was no word on what conventions (i.e. E3 or San Diego Comic-Con) he was involved in, despite the fact he was also working with other projects at the time the game was in development. The research I did made regarding to the game also bears little to no resemblance to these characters. In addition, there's more analysis on Pender's lack of involvement with Sonic Chronicles. Another TSSZ report made in July 7, 2010, another report also included a statement that concerns Pender's motives to filing the lawsuit against Bioware; and later on, Archie's actions against Penders.

*"I initially took the action of reclaiming my work when I was contacted by many SONIC fans asking me if I had contributed in any way to the development of the video game SONIC CHRONICLES: THE DARK BROTHERHOOD. I was then startled to learn how many characters and concepts from the KNUCKLES series I created were adapted within the framework of the game's storyline. It was clearly obvious why suddenly so many fans sat up and took notice."*

- Ken Penders, April 2010, via Penders  
Forums

The Problem was that Mr. Penders at that time the game was made did NOT have any involvement in the development of the game despite his claims that he'll take any development if he was responsible for any such development of the game in any way. Another problem was that some of the *Sonic* fans, most likely one of Ken's supporters, was spreading misinformation and possibly failed to know the difference

between his works and those of *Sonic Chronicles*. However, BobR, one of the moderators of the Pender's forms also suggested why Penders wasn't involved in the Development of the game. BobR said this in the Penders forms on June 20, 2009:

*"SEGA had nothing about Knuckle's background or history when he was introduced in Sonic & Knuckles. Just the he was a guardian of the Floating Island, had a group called the Chaotix that worked with him, and that he was the last of his kind. Period. All of Knuckles history, who and what he is, what happened to the others that made him the last of his kind, etc., was created by Ken [Penders]."*

- BobR (6.20.2009; Penders Forums)

He also said in the same topic another thing related to the history of the Knuckles Clan and what Bioware knew about how they were asked about it.

*"I'm sorry, but the meager history of Knuckles supplied by SEGA in Sonic Adventure is like a candle against Ken's 10,000W quartz halogen lamp. They gave enough for the game to make sense, and that's about it. Even the guys at Bioware claimed in an interview they were given copies of the comic by SEGA when they asked about Knuckles' history."*

- Bob R (7.1.2009; Penders Forums)

It was very likely that the game didn't use any elements or backstories from Ken Pender's stories in Archie Sonic, and Bioware was using *Sonic Adventure* as a basis for creating the entire *Chronicles* Story, where the history of the Knuckles Clan was made by Sega and Sonic Team themselves, despite Bioware also using the comics as part of looking deeper into the source material, which is what Bioware was able to obtain during the development process. Nothing related to the Dark Legion, or the Brotherhood of Guardians, was ever used in the process and it was very unlikely any of these characters were used. However, while a few concepts are similar, most of the concepts were very different and were rather used as an inspiration but not in a way where such of the concepts were used explicitly. The character design for Shade is completely different and having her as an Echidnia for this story is completely normal. But *Chronicles* was considered an Alternative story within the *Sonic Adventure* timeline that led to such events.

Ironically, the case was nearly too late to continue because, as mentioned before, the 3-year limitations statute only allows any evidence that is still "fresh" for 3 years after the release to be used in the case. Because of that, Penders was aware that he may lose the lawsuit. It is very unlikely that Ken Penders

worked for Bioware during the development of Sonic Chronicles, nor was he involved in any part of the video game in any such way.

## The Twilight Cage vs. The Twilight Zone

The Twilight Cage and The Twilight Zone are similar in name, but they both have different purposes. The Twilight Zone was where the Dark Legion became trapped. Same applies to the Twilight Cage for the Nocturnus Clan however, the reason for beginning there was very different. This was done through the Argus Events. The only difference was that the Legion lived for Centuries but the clan lived for nearly a Millenia. The only additional difference was that the Ultimate Annihilator, which caused the dimensional barriers to be weakened, causing the Legion to escape. Ix was responsible for creating a Wormhole with the Master Emerald, however, the cage has aliens. Its Is likely, however, that they were sent to another location in the space-time continuum.

While both have similarities, especially in name, technology wise, getting there wasn't the same as what led them to enter and exit the dimension. Instead, while it is understandable to use different dimensions like the Sol Dimension, it truly doesn't count as being the same. In addition, Ian Flynn was also responsible for merging the two into the Twilight Cage in one edit of the Archie Sonic Continuity.

## But should it really be considered "Copyright Infringement"?

To be considered copyright infringement, the characters and game in question would need to be "embodying elements" of Ken Penders's works without permission or a license. However, his works were registered with the copyright office **AFTER** the game was released, making it questionable to how he eventually made them into copyright after its release. They never asked for anything.

It's clear that Shade and Julie-Su are not a rip-off after all. While they are considered the same species, they don't have a lot in common when compared directly between the two. While Shade is not into Knuckles romantically as Shade wasn't very aware of the Current State of Affairs that play a role in the Continuity Chronicles is in, the personalities these of two don't found.

However, Ian Flynn, writer for IDW Sonic and one of the writers for Archie Sonic, was also responsible for integrating the continuities of both Sonic Chronicles and Pre-SGW continuities together, which possibly hinted the lawsuit that Penders made. Nevertheless, Penders was indeed lying about the Brotherhood of Guardians as no character from the organization were used in *Sonic Chronicles*. In addition, barely anything from the Nocturnus Clan bears any resemblance to those of the Dark Legion, despite some inspiration made in it.

The problem was that there was a lack of constructive knowledge for Mr. Penders to deliberately prove that Sonic Chronicles ripped or infringed of his works as the case he faced need to be considered under U.S. Copyright Law to be "substantially similar". Even with all the evidence, it was clear that Bioware did not infringed Ken Penders works as there's barely any similarities that comes to play in the two aside from Species and Dimensions. In addition, with the lack of evidence that Bioware asked for any of his help, it is likely that Penders was not involved in the game on any shape or form, although only using the comics as part of the story's inspiration. Should the case continued before it passed the 3-year clause, SEGA, Bioware, and EA would have won the lawsuit and would be able to get another sequel. However, the lawsuit paved the way for a domino effect that would later give Ken Penders the right to use all his

characters for his own works, reboot Archie Sonic (and end the partnership with SEGA) and ultimately, not allow Sonic Chronicles to get another remake in the future.

## What if Penders re-files again in the future?

Like I said before, he can re-file, although assuming *Chronicles* is safe to remake, it can lead to a potential lawsuit. Since Penders is creating another story known as *The Lara-Su Chronicles*, should he be to re-file, he could lose the lawsuit as barley anything is copied directly to a remake/sequel of *Sonic Chronicles*. However, any illegal action made by Penders against SEGA (such as using SEGA's characters with their authorization) could lead to legal action against him.

Ironically, since the Lara-Su Chronicles is yet to be released, there is rumors that the series contains plagiarized works, and even the use of Kunckles or other characters from the Sonic franchise without any authorization from SEGA, which can also lead to a counter-lawsuit against Penders himself. If not, SEGA may sue him for Copyright infringement, even though ironically, he has fought for the rights of these characters. And it's not just SEGA as well, other people may file for the same exact reason against Ken as well.

While using this works, however there could be minor adjustments to avoid a potential lawsuit such as renaming "The Twilight Cage" with something else. They can keep the aliens. And most likely Echidnas, but they'll end up with going through a long hearing process over it.

## Pender's Disputed Claims over ownership of Shade and the Nocturnus Clan

On December 30, 2020, Ken Penders made a tweet suggesting that Shade was in fact Julie-Su.

*I'm resolving a certain topic in THE LARA-SU CHRONICLES. I'm definitely establishing that Shade was Julie-Su's deep cover name while on assignments for Cyberdark Colony prior to meeting K'Nox. And yes, she did wear the armor depicted in the SONIC CHRONICLES game at times.*

- Ken Penders (12.30.2020; Via [Twitter](#))

After looking into all the entries of the U.S. Copyright Office, NO works with Shade the Echidna, the Nocturnus Clan, nor the game itself was registered with the Copyright Office under Ken Penders's name. However, the Sonic franchise is still under copyright by SEGA. Copyrights for the game was registered around in 2006, around the same time Mr. Penders left Archie. Claiming for Copyrights over a game that he was never involved with would potentially lead to legal action as he was never involved in the game as such; and due to the statute of limitations, he may not be able to win the case as its past three years since its release; all of his previous lawsuits against SEGA and EA/Bioware were dismissed twice.

Regardless, Ken Penders is more likely to lose the case due to the many reasons:

1. Aside from species and genders, none of the characters are completely the same or to be considered a full "carbon-copy" of one another. Even if Ken Penders were to adjust Julie-Su or any of his characters in the Lara-Su Chronicles and have all connections to Sonic removed, it would be completely different. If there were a Jury, many would have to deeply analyze the character and without any bias, would declare if it really considered as copyright infringement or not. However, the jury could know it would have been a different concept. Julie-Su and many of

his characters were already made before Sonic Chronicles was made and were involved with the Comics, while Shade was a uniquely different concept. Even if any connections to Sonic were removed from Julie-Su, it would not be considered “substantially similar”, making SEGA and EA/Bioware to win the case.

2. Because he filed for copyright infringement AFTER the game was released and after he filed for copyrights for his characters in Archie, it is likely that he may have not realized that his characters were not considered to be, in part, copyrighted by Ken Penders.
3. He falsely claimed ownership to Shade the Echidna and claimed to be as one whole character to Julie-Su despite not being involved in the game in any part whatsoever. Staff members at Bioware were involved in character design and were part of the process and not Ken Penders. Having Penders to falsely claim ownership to Shade the Echidna and/or one of the assets to Sonic Chronicles is considered as **COPYRIGHT INFRINGEMENT AGAINST SEGA**. Using assets from *Sonic Chronicles* as well as any asset from SEGA's *Sonic the Hedgehog* (including Knuckles) in *The Lara-Su Chronicles* can also lead to a cease-and-desist order from SEGA and his use for profit could stir additional legal trouble against Mr. Penders. It's likely that SEGA and EA could pursue a class action lawsuit against him should his work gets noticed by many fans.

## Conclusion

The entire game is not a rip-off of the Dark Legion, nor any of Pender's works, even if Penders removed any connections to Sonic in his characters. Although it was inspired in a few characteristics, its very vague to declare it a “Substantial Similarity” as many of its Characters, Backstories, and even the organization of the groups are different. While they are both technologically advanced, and came from different dimensions, some of the similarities may be common factors in Sci-Fi but they're still not considered to be in part of any evidence in concluding that it is a rip-off

Should this lawsuit ever continued, he would have lost the lawsuit not just because of the lack of evidence that he worked with Bioware, but also, the Judges will feel that there's barley any resemblance to the Dark Legion; even though technology, and dimensional differences are, of course, common. However, it is likely that SEGA may consider filing a lawsuit if Ken Penders were to use any assets from SEGA in his work for profit, especially with *The Lara-Su Chronicles*.

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