

# **Leave Those Orcs Alone: Property Rights in Virtual Worlds**

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## **I. Summary**

Over the past decade new societies built by millions of people have sprung up in the online world. Their inhabitants buy goods, trade with each other, and form complex self-regulating organizations and economic systems. Many of the academics who observed these new societies argued for treating their virtual acquisitions and disputes as subject to a real world legal system. However, the companies who create and run these worlds have already evolved a sophisticated quasi-legal system through the use of the End-User License Agreement and informal mechanisms of negotiation. In addition, the role that virtual property plays in an online world differs substantially from the role of real world property. Players and their characters earn virtual property to socialize, for fun, or for status, not for protection or investment. Shoehorning in a legal system that protects investment and ignores the value of fun and communality would do terrible violence to these societies. Far better utility results from allowing users and developers to continue elaborating on their quasi-legal systems in peace.

## **II. Virtual Worlds and the Property Problem**

Virtual Worlds have gradually evolved from technical advances in networking technology to full-fledged replications of the works of JRR Tolkien and games like Dungeons and Dragons.<sup>1</sup> In the late 1970s, innovators in computer technology made possible shared virtual spaces, where more than one player could interact with the online world and with each other.<sup>2</sup> Eventually, programmers took the next step from text-only spaces to the development of an “avatar,” a graphical icon under their control.<sup>3</sup> As

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computer hardware improved, these avatars would grow in complexity from tiny bits to reasonably realistic human replicas. After a series of experimental, small-scale communities, the potential of the field caught the attention of major corporations.<sup>4</sup> Developers were highly attracted to the idea of a video game where users paid \$15, every month, for years.<sup>5</sup> In the mid-90s, Sony released Everquest and Origin Systems released Ultima Online, and the genre exploded in popularity.<sup>6</sup>

Modern Virtual Worlds are graphical, persistent, digital universes with populations per server often numbering in the tens of thousands.<sup>7</sup> Depending on what counts as a "Virtual World," tens of millions of accounts populate the various Virtual Worlds.<sup>8</sup> Players control an avatar able to interact with thousands of others in the shared game-space.<sup>9</sup> The Company supplies the game code that mediates the environment and the servers that give it persistence and a sort of physical reality.<sup>10</sup> Since the early experiments, improvements in graphics and virtual physics have led to increasingly persuasive worlds.<sup>11</sup> New characters follow a similar route of gradual property acquisition and statistical improvement.<sup>12</sup> New avatars are relative weaklings barely able to hold their own against pigs and rats of unusual size.<sup>13</sup> As they fight more monsters, their underlying power statistics improve -- a form of virtual muscle-building that increases their relative stamina and strength.<sup>14</sup> The game typically tracks this development as "levels" of power.<sup>15</sup> In World of Warcraft, for instance, characters start at level 1, and with considerable effort, can reach level 70, at which point they're ready to take on the most difficult challenges.

Virtual Property is a fundamental part of these virtual worlds, and is key to a character's development and success. Most virtual property is similar to personal property; the clothes the character wears, the armor they acquire, and the sword they use to fight with.<sup>16</sup> These kinds of personal property, while often decorative, also improve the character's abilities, strengths, and relative power. Alongside these practical items are decorative or socially-oriented property. Some worlds allow characters to acquire real estate. For instance, in Ultima Online or Second Life, characters can create homes and acquire virtual real estate.<sup>17</sup> Not only can they "buy" homes, they can populate them with an extensive array of furniture, trophies, and other personal effects.<sup>18</sup> Virtual property varies, however, in execution. In World of Warcraft, for example, property ranges from the "solid" to the relatively ephemeral. Some items, such as potions, can be freely traded with no restrictions on time.<sup>19</sup> However, they disappear after

a single “use” and are simple items with low value.<sup>20</sup> Other items, like the most powerful armor and swords, have high player value but cannot be traded -- they are “bound” to the acquiring player as soon as they “loot” it off the monster that carries it.<sup>21</sup> The only way to trade the item is to trade the entire avatar. Less powerful weapons can be traded after acquisition, but again bind to the player as soon as they are used.<sup>22</sup> Still other items are bound to particular times or places. The holiday season lets players bound around on their own reindeer -- but it disappears around New Year’s.<sup>23</sup> In addition, players must periodically “repair” their weapons and armor with the virtual currency they acquire, or it becomes completely unusable and depreciated.<sup>24</sup>

Virtual property markets have become highly liquid trading systems.<sup>25</sup> Virtual World developers consciously emulate systems of property ownership and economics by giving users the ability to hold exchangeable items and land.<sup>26</sup> Inside the World, players can use auction houses, bazaars, or trade informally with other players.<sup>27</sup> Where the company does not implement its own trading program, players have persistently invented their own, developing markets in dozens of goods that are essential to player improvement, having fun, or for resale.<sup>28</sup> Many websites track the current prices of common goods like they were any real-world commodity market. Virtual Worlds also typically use a shared currency system that gives players a simple way to purchase goods and services.<sup>29</sup>

Reputation and social capital are more intangible than virtual property, but also vital to a player’s success.<sup>30</sup> Players forge social bonds and become part of the wider community, with all the benefits resulting from reputation and connections.<sup>31</sup> For example, success in EVE Online is not tied to a single player’s accomplishments, but is imputed to the massive joint efforts of the “Corporation” they belong to.<sup>32</sup> An officer position in a well-run Corporation is profitable and powerful.<sup>33</sup> Battles for control of a single system require the coordinated activity of hundreds of players. Carefully sacrificing lower level players in a sort of pawn’s gambit is a popular strategy. In general, access to the best items and property is usually dependent not just on the player’s ability and time input, but on their ability to work together with other players and network.<sup>34</sup>

Overseeing the world of avatars and their societies is the omnipresent Developer, who takes a very active hand in the evolution and balance of their Virtual World. Developers have the ability,

frequently exercised, to change or even take away items already in the player's possession. Most Virtual Worlds release free "patches" every few months, which include a raft of modifications to gameplay, new content, and new items.<sup>35</sup> Every new patch in Everquest II or Vanguard features substantial modifications to items considered unbalanced.<sup>36</sup> Companies even meddle with the most treasured possession of the player -- his own avatar. Changes to basic abilities strengthen or weaken the player in relation to other players.<sup>37</sup> A substantial "nerf," in game parlance, greatly diminishes the entire account's market value and its value to the player.<sup>38</sup> In extreme cases, Developers can modify game code or remove certain "overpowered" items overnight.<sup>39</sup>

These Virtual Worlds have extensive ties to the real world through exchanges of real money for virtual cash, property, and accounts.<sup>40</sup> Although Virtual World Developers nearly uniformly ban and prohibit real world transactions, entrepreneurs prosper through sales of in-game currency for dollars.<sup>41</sup> "Gold-farming," or the practice of hiring low-wage overseas workers to accumulate gold for sale to players with money, recently entered the lexicon.<sup>42</sup> Alongside straightforward exchanges of virtual coin for dollars, players often sell their accounts -- the accumulated inventory and skill that comprises a character -- on the open market.<sup>43</sup> Highly developed characters can auction for thousands of dollars. One recent sale in World of Warcraft went for 7000 Euro, or approximately \$9400.<sup>44</sup> These sales take place on any number of Internet sites, whether general secondary markets like Craigslist or specialized Virtual World markets.

Largely as a result of these real world markets for virtual gold, Virtual Worlds have a real albeit small economic impact on the actual world. Economist Edward Castronova has estimated that the untapped GDP of virtual worlds exceeded seven billion dollars in 2006.<sup>45</sup> World of Warcraft avatars, representing hundreds of hours of effort and in the most popular Virtual World, sell for between \$300 and \$500.<sup>46</sup> On Everquest II, on the company's exchanges, prices run about \$400 to \$500 for the highest-level characters.<sup>47</sup> Sweatshops in low-wage nations have been able to turn Virtual Worlds into a profitable job.<sup>48</sup> In Everquest II, active sellers are able to make approximately between \$200 and \$500 a month out of 5 to 6 hours of "work" a night.<sup>49</sup> In 2001, Professor Castronova calculated the hourly wage of Everquest players as approximately \$3.42/hour, should they seek to convert their activities into real

money.<sup>50</sup> The finished picture of these Virtual Worlds is of two societies, one real and one virtual, with a constant flow of real money and virtual currency between the two. The parallels between the real and the virtual, and their interface, has led to considerable academic commentary.

#### **a. Academic Treatment of Virtual Worlds**

The rapid evolution of Virtual Worlds has exciting implications for a study of the ongoing growth of their associated property systems.<sup>51</sup> Entire societies, subcultures, and property systems have grown from nothing in the space of under a decade.<sup>52</sup> Lastowka and Hunter trail blazed analysis of these property systems in 2004.<sup>53</sup> They concluded that Virtual Worlds, up until then largely considered a mere video game, were prime candidates for real world legal protections.<sup>54</sup> After all, they wrote, “perhaps the most striking feature of the property systems of the virtual worlds is how closely they mirror the real world.”<sup>55</sup> Swords act like swords, armor acts like armor, and budding real estate tycoons can develop land. They followed this observation with a survey of theories that would justify extending real world protection to virtual worlds. “Since millions of people,” they wrote, “labor to create objects of value in virtual worlds, there are utilitarian grounds for granting property rights based on the value of the transactions to individual users.”<sup>56</sup> Since property rights in the real world enhance property value through, among other things, reducing risk and transaction costs, the same could be true of Virtual Property.<sup>57</sup>

The literature on Virtual Worlds subsequently exploded with a slew of theories expanding the real world into the virtual one. Many felt that, as these accounts and property had real world value, allowing developers to destroy them was tantamount to theft.<sup>58</sup> Theodore Westbrook built on Lastowka and Hunter’s work to argue that players and developers would gain in utility from imposing legal rights in Virtual Worlds due in part to the dangers of chasing legitimate currency sales to the grey market.<sup>59</sup> Back-alley grey markets change legitimate market exchanges into breeding grounds for thieves and exploiters.<sup>60</sup> Thus, “the failure to recognize any property interest in virtual goods could result in the unjust enrichment of hackers and imposters.”<sup>61</sup> Bobby Glushko and Andrew Jankowich concluded that

the unconscionability of the governing EULA, granting Developers all the rights in the game, greatly impairs player's utility by allowing developers to destroy valuable property.<sup>62</sup> As Glushko wrote, the "EULAs allow too much developer discretion in enforcing their terms, preventing players from predicting what they can and cannot do and endangering player investments in time and money."<sup>63</sup> Bettina Chin argued that the growing size and power of these Virtual Worlds makes the imposition of legal rights an inevitability.<sup>64</sup> Daniel Miller examined applying intellectual property and copyright law to Virtual Worlds.<sup>65</sup> Cory Ondrejka argued that property rights stem from player-built content using in-game tools.<sup>66</sup> His theory is that real world legal rights encourages player creativity; indeed, Second Life is built on this concept.<sup>67</sup>

Jamie Keyser likened the Developer to a governing authority, but without the fundamental restrictions on that authority such as in the US Constitution.<sup>68</sup> As Keyser writes, "the asymmetrical balance of bargaining power between billion-dollar corporations and disenfranchised... individuals is striking, and the contracts between these parties reflect that asymmetry."<sup>69</sup> Jack Balkin analogized the developer/user relationship to the abusive corporate-run company town.<sup>70</sup> Lastowka and Hunter examined the popular theory that grey market auctions do not represent a sale of the avatar or his items, but a sale of the player's time and effort.<sup>71</sup> In fact, this claim has become a talismanic facet of online sales, placed in many auctions to give a thin gloss of legality to the transaction. Presumably it arises from a dimly felt version of a Lockean theory of "desert from labor," that is, the person who created a valuable thing should profit from it.<sup>72</sup>

Despite the prolific commentary, the meaning of "legal protection in Virtual Worlds" has not been well-defined; different writers use it in substantially different contexts. Generally all refer to allowing users to utilize American courts and the American body of law to protect an economic interest in a Virtual World context. Ondrejka uses it in the Second Life context, where players retain the intellectual property they would have in an offline context.<sup>73</sup> In that sense, it is not about extending legal protection so much as not taking protection away.<sup>74</sup> Jankowich uses it in a limited sense, identifying specific instances of developer abuse that should be curtailed, such as when developers ban players who engage in sales on the grey market.<sup>75</sup> In that view, players who sell on the real world market should be sheltered from the

developer's wrath.<sup>76</sup> Westbrook and Balkin have examined a unified system of legal rights, where even concepts like defamation, criminal law, and certain torts are introduced into the Virtual World.<sup>77</sup> Regardless, the consensus in favor of legal rights in the Virtual Worlds has been impressively well-developed.

### **b. Developer Response and the Governing EULA**

The academic consensus in favor of real world legal rights is in stark contrast to the legal reality of most Virtual Worlds. Corporations and developers have, in general, reacted with horror at the idea of a court dictating the form their worlds will assume.<sup>78</sup> They argue that the profitability and long-term evolution of their games can only be achieved through maximum flexibility.<sup>79</sup> As Professor Richard Bartle writes, "The game conceit, freedom to evolve, and support of a hero's journey -- without all three of these fundamental characteristics, a virtual world is greatly diminished if not mortally wounded."<sup>80</sup> They wonder if Developers could lower the value of an item of inventory, even if doing so would increase the overall utility to players stemming from a balanced game.<sup>81</sup> Could Developers add other items that reduced the value of the item? Would offline property values have to be factored into balancing considerations? What happens if the game shuts down?<sup>82</sup>

This terror is reflected in the resulting contracts between Developers and Players. Developers primarily shield their internal workings from court manipulation through the End-User License Agreement. The End-User License Agreement is the governing contract between user and Developer.<sup>83</sup> In procedure they follow a common form. Users are confronted with a long legal document prior to entering the Virtual World for the first time.<sup>84</sup> In order to obtain access, they must scroll to the bottom and click "I agree," to the legal terms and conditions enclosed.<sup>85</sup> After the initial consent, most Virtual Worlds periodically require the same scroll-and-click procedure, typically on installation of a major game update.<sup>86</sup> This meets the standard definition of "clickwrap," or a standardized, boilerplate set of take-it-or-leave terms.<sup>87</sup> There is near-uniform agreement in the courts that this procedure creates a valid contract.<sup>88</sup> Most of their substantive provisions have been confirmed through reams of legal precedent.<sup>89</sup>

Courts have shown deference to EULAs in part because of their inevitability and in part because of their efficiency.<sup>90</sup> Technically, clicking “agree” constitutes a valid acceptance of the company’s offer, because the agreement is conspicuous and the user has the ability to reject.<sup>91</sup>

Virtual World EULAs are similar in substance. Most contain a choice of law provision.<sup>92</sup> Many to most contain an arbitration provision.<sup>93</sup> In terms of property, the two most relevant clauses allow the company to, first, terminate a user account for any reason at any time, and second, immunize the company from liability.<sup>94</sup> Other clauses allow modification to the EULA at any time, and permit the company to selectively enforce the EULA.<sup>95</sup> For example, Blizzard Entertainment “reserves the right to terminate this agreement without notice, if, in Blizzard Entertainments sole and absolute discretion, you fail to comply with any terms contained in these Terms of Use.”<sup>96</sup> Similarly, Sony Entertainment forces players to disclaim any suit against Sony based on a claim that the player “owns” any virtual goods in the game.<sup>97</sup> Other clauses immunize developers against suit and deal with the ownership of intellectual property.<sup>98</sup> Another common term is the regulation of morals and standards, often included as an ancillary document in the Terms of Service.<sup>99</sup> For example, World of Warcraft forbids language that “is deemed to be offensive, including without limitation content or language that is unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, hateful, sexually explicit, or racially, ethnically or otherwise objectionable”<sup>100</sup> EVE Online prohibits “any corporation or group within EVE Online that is based on or advocates any anti-ethnic, anti-gay, anti-religious, racist, sexist, or other hate-mongering philosophy.”<sup>101</sup>

The sum total of their reserved powers in the EULA gives Developers nearly unlimited legal power with respect to their users. The emphasis on “offensive” and “hateful” behavior in the terms of service gives developers considerable leeway to remove players based on their own subjective standards. Even the most powerful dragon-slayer can be removed from the game at any time, no reason given, no appeal allowed. When a player is banned, they are summarily booted from the game, and must contact the customer service department to plead their case. Developers routinely manipulate player’s property, enhancing or removing valuable properties of an item in pursuit of game play. They are also merciless in pursuit of players deemed to be exploiting bugs in the game or purchasing items for cash on the grey



market. These offenders are usually banned for life regardless of the subjective or objective value of their accounts.

## 1. Mechanisms of Negotiation

However, despite the overwhelming discretion Developers hold, users are far from powerless when it comes to affecting their virtual property. In the word of mouth driven marketplace for Virtual Worlds, criticism hits Developers in the pocketbook, and they have refused to listen to customers at their peril. Considering especially the long-term relationship Virtual Worlds seek to have with their customers, the reputation the company has for honesty and responsiveness is an important asset.<sup>102</sup> Players need to trust that the game will evolve in a fun and reasonable way.<sup>103</sup> As a result, the desires of companies and players are mediated through several avenues. A major, if indirect, method is simply market pressure. A second, more direct method is the feedback Developers get from the aggregated complaints and concerns of the playerbase.<sup>104</sup>

Community forums give players a tremendous resource to put pressure on Developers over decisions they disagree with. They have a long tradition of forcing changes to the World.<sup>105</sup> The Warden controversy in the privacy context is characteristic.<sup>106</sup> Warden is an anti-cheating tool Blizzard Entertainment runs on the user's computer while the player uses World of Warcraft.<sup>107</sup> Privacy advocates argued that there was no evidence Warden could not be used to sniff out credit card numbers and other non-game private information stored on the user's computer.<sup>108</sup> After the forums exploded with complaints, Blizzard was forced to release a statement "clarifying" that the scanning program "does not review or retrieve anything that's personally identifiable."<sup>109</sup> After Blizzard redefined their objective as fighting cheating, the BBC noted, "many gamers seem happy to tolerate The Warden even though they acknowledged that it eroded their privacy to an extent."<sup>110</sup>

Abuse of the paid server transfer functionality resulted in a similar furor with respect to a small group of players.<sup>111</sup> In World of Warcraft, players are allowed to "transfer servers," taking with them anything in their possession to an entirely new community.<sup>112</sup> A few Warcraft players noticed a group of

characters on their server that, despite having amazing gear, had never been seen before.<sup>113</sup> It quickly became clear that only a server transfer that violated the official terms of service could explain their presence.<sup>114</sup> The new presence of heavily-gearred and wealthy outsiders upset the social system, economy, and morals of the established players.<sup>115</sup> Once again the forums exploded with complaints over favoritism.<sup>116</sup> This time Blizzard attempted to respond with heavy-handed repression, banning from the forums the rabble-rousers and deleting threads.<sup>117</sup> This only fanned the flames. Eventually, Blizzard released a statement in which they “apologize[d] to the players on Eldre'Thalas for having disrupted the current state of their realm with this issue.”<sup>118</sup> The traveling players were transferred back, and Blizzard promised a review of policies to prevent the same from happening again.<sup>119</sup>

Online forums also give Developers guidelines for what best benefits the playerbase when there is no obvious answer as to what is the most efficient outcome. Is it good policy to erase someone’s expensive account because they moved a Virtual Floor a few feet?<sup>120</sup> A guild named “Overrated” changed the game’s code in order to skip hours of tedious “clearing” of minor monsters to get right to the Boss with the loot.<sup>121</sup> Numerous users on the Warcraft forums attacked the guild in question for violating notions of fair play, and exulted in their eventual bans.<sup>122</sup> Even one of the hackers admitted that “we had it coming.”<sup>123</sup> Is it reasonable to ban a player for running a program that automates his avatar’s actions, letting him to walk away from the keyboard while his character mindlessly hacks and slashes at monsters?<sup>124</sup> After all, he could do the exact same thing legally -- if he was at his keyboard. However, “botting” is a common complaint in many game experiences, and World of Warcraft ended up implementing a “vote” system that allowed players to collectively “kick” from the battleground players they suspected were not at their keyboards.<sup>125</sup>

User desires have even forced game companies to restrict player mobility and ownership where it is in the developer’s direct financial interest to expand player rights. There is no cost to Blizzard Entertainment from a paid server transfer, and they charge a hefty fee for the service.<sup>126</sup> However, other players typically suffer when a player transfers. Often, transferring players steal their guild’s entire bank, or incur big loans from friends, secure in the knowledge that they will be skipping towns.<sup>127</sup> It is difficult to enforce reputation systems when players know they can act selfishly or fraudulently, then simply

transfer to greener pastures. Therefore, players can only transfer once every three months, and they are not permitted to bring more than a certain amount of gold.<sup>128</sup> Nor are they allowed to transfer to overcrowded servers that have substantial wait times.<sup>129</sup>

In addition to these intra-world mechanisms, inter-world market pressure pushes developers towards favorable property decisions. The Virtual World sphere is a competitive marketplace with numerous new entrants under development.<sup>130</sup> Along with the heavy-hitters like World of Warcraft, Everquest II, and Lineage, there are plenty of small-scale MMOs that can experiment with property systems without risking losing large amounts of subscribers.<sup>131</sup> Many new entrants are waiting in the wings, seeking out new market niches should any present themselves.<sup>132</sup>

Competitive flux has changed the Virtual World marketplace numerous times over its short history. For a long period, Everquest and Ultima Online had the space virtually to themselves.<sup>133</sup> Gradually, new entrants like Dark Age of Camelot and Star Wars Galaxies carved out their own territory, each including variants on the property acquisition models first seen in early Virtual Worlds.<sup>134</sup> Around 2004, the tremendous success of World of Warcraft induced a great deal of interest in the Virtual World niche. The field was significantly broadened by new genres like the Social world, including Second Life, There.com, and Sims Online, as well as genres like the first-person shooter MMO that de-emphasized property acquisition in favor of raw combat, child-friendly games like Club Penguin, and easy-to-enter social meetingplaces like Habbo Hotel.<sup>135</sup> In sum, despite the lock-in effects that would seem to follow from time in a Virtual World, players have been willing to switch and new users have entered the market.

In fact, inter-game competition has shown that the trend of successful games in the marketplace has been away from games that analogize too strongly to real-world property systems. World of Warcraft, by far the market leader, is in many ways a regression from the property systems of earlier games like Ultima Online. A sharply limited set of goods can be traded, and the highest value goods are typically kept off the marketplace.<sup>136</sup> There is no real estate, and personal property is usually whatever can be plausibly carried in a player's virtual backpack.<sup>137</sup> By contrast, Ultima Online players could place furniture in their own highly realized, personalized houses.<sup>138</sup> In Lord of the Rings Online, one of the

newest games, player accomplishments are not reflected just in property, but in accomplishments like “Slaughterer of Numerous Sheep” that appear as titles over the player’s head.<sup>139</sup> Titles perform the same function as much personal property, as a visible record of player achievement, but are nontradable and entirely personal.<sup>140</sup>

Using player feedback and market pressure to effect change has advantages over traditional legal protections. They correspond to the collective utility of all players, not just one or some of the total playerbase. They only work when the desires of the players are aggregated to the extent that Developers can be reasonably sure they represent the majority of the playerbase. In a complicated economy, it’s not easy to tell when satisfying one customer’s demands is at the expense of game balance, other players, developer flexibility, and other legitimate concerns. They are more susceptible to incremental change, allowing Developers to focus on exactly what is bothering players, rather than imposing rigid rules out of necessity. These mechanisms, taken together, show how games can evolve a quasi-legal structure with efficient property values even where there is no legal recourse for players and under the aegis of a powerful EULA.<sup>141</sup> They also reveal how the EULA, so often demonized, is really just a front for the daily renegotiation of player rights that takes place under its protection. As Julian Dibbell notes<sup>142</sup>,

“And lo and behold, the end-user license agreement - that egregious tool of corporate tyranny over the defenseless, voiceless customer (or so I had painted it) - starts to look more like the place where a complicated give and take between designers and players is finally ratified, transformed from a murky power struggle into the legally binding rules of the game. The EULA starts to look less like a contract of adhesion, in other words, than like a social contract.”

The EVE Online Pyramid Scheme is a prime example of how developers and users negotiate towards mutual solutions. An EVE player starts his career not as a weakling with a sword, but as a captain of a space ship.<sup>143</sup> Players can mine asteroids for ore and battle space pirates, but player against

player battle is the heart of the game.<sup>144</sup> “Corporations” composed of hundreds, if not thousands, of associates battle for valuable territory throughout space.<sup>145</sup> In a game architecture sense, EVE does not use a distributed server system where players are fragmented into small communities. Instead, the over one hundred thousand EVE players co-exist in a single shared Universe.<sup>146</sup>

Many players had large liquid balances; recognizing a need, a player by the name of Cally invented the Eve Investment Bank.<sup>147</sup> The bank took deposits of EVE’s currency, ISK, and paid interest rates of up to 9%.<sup>148</sup> The bank took in approximately \$125,000 during its lifetime.<sup>149</sup> Eventually, the scheme came crashing down, and Cally ran off with the investor’s money.<sup>150</sup> After considerable uproar, the developers released a statement that they would not be sanctioning Cally’s account, although they would attempt to prevent him from selling his ill-gotten gains on the grey market.<sup>151</sup>

Although sometimes presented as a prime example of the need for real world legal protection, the practical consequences of legal action would be troubling. If the developer could prevent such fraud through simply changing the game’s code, then they probably would.<sup>152</sup> If banning the player responsible would aid the player base and the game, then such an action would only be a few clicks away. But banking is inherently a risky process; victims of pyramid schemes or simply creditors of the bankrupt in the real world rarely get their money back.<sup>153</sup> It also encourages moral hazard. Users should not invest blithely in banks, secure in the knowledge that the developer will bail out investors. The efficient result was, in all probability, to take no action against the scammer as the least-bad alternative.

Instead, EVE took a unique route towards resolving tension with the playerbase.<sup>154</sup> Player allegations that EVE developers were using their considerable powers to aid certain Corporations over others created a second scandal.<sup>155</sup> The company offered to allow the playerbase to elect nine representatives to act as an independent auditor over the company, forming an oversight committee over EVE’s policies.<sup>156</sup> The result is not a step towards property rights, but towards a greater co-involvement of players and developers in developing a working relationship.<sup>157</sup>

### **c. Second Life and the Bragg Lawsuit**

The Bragg lawsuit in Second Life is emblematic of the problem of virtual property rights, the push for real world protections, and the defensive corporate response. Second Life represents a high point in giving property rights to players.<sup>158</sup> Second Life grants -- or allows -- players to retain the intellectual property rights in the items they create with the company's coding system.<sup>159</sup> Second Life advertising emphasizes its value as an investment -- and exults in providing players with legally enforceable property.<sup>160</sup> Some players have made fortunes by selling items from clothes to functioning genitalia.<sup>161</sup> Land speculation is viable, and space next to or in heavily-trafficked areas can produce profits.<sup>162</sup> An island sells for \$1695; rentals are available in virtual apartment buildings.<sup>163</sup>

Mark Bragg, an attorney, was an active speculator in Second Life real estate.<sup>164</sup> Second Life uses an online auction system to parcel out new plots of land to users.<sup>165</sup> Bragg discovered a method that allowed users to start a land auction invisible to competing bidders; he took advantage of this exploit to purchase "Taessot," a virtual land parcel, for three hundred dollars.<sup>166</sup> Linden Labs, Second Life's developer, quickly took action.<sup>167</sup> They froze his account, deleted his avatar, and took his name off title to all of the property he had, including, controversially, property earned legitimately before the Taessot transaction.<sup>168</sup>

Bragg sued Linden Labs in Pennsylvania state court for fraud, breach of contract, and breach of state consumer protection statutes.<sup>169</sup> Underlying these claims was a theory of reasonable reliance; Bragg claimed that he relied on Linden Labs' frequent press releases touting their unique intellectual property right system.<sup>170</sup> Indeed, Linden Labs has gone out of its way to promote itself as uninvolved with a user's legal rights, and to pitch Second Life as a money-making venture.<sup>171</sup> The company has encouraged books like the "Entrepreneur's Guide to Second Life: Making Money in the Metaverse," and major US Corporations, such as Coke and Toyota, have set up expansive pavilions.<sup>172</sup>

But while the terms of service permits users to retain the intellectual property rights in content they create, the rest of the document is a more standard Virtual World EULA.<sup>173</sup> In essence, Linden Labs tried to have it both ways -- embracing the academic consensus for virtual rights while retaining dictatorial power over their servers. Linden Labs retains the right to "manage, regulate, control, modify and/or eliminate" the currency system that allows players to turn virtual profits into real dollars.<sup>174</sup>

Currency exchange transactions can be halted, suspended, discontinued, or reversed for suspected fraud or other "violations of other laws or regulations."<sup>175</sup> There are required arbitration and attorney fee provisions.<sup>176</sup> Most tellingly:

"Linden Lab has the right at any time for any reason or no reason to suspend or terminate your Account, terminate this Agreement, and/or refuse any and all current or future use of the Service without notice or liability to you. In the event that Linden Lab suspends or terminates your Account or this Agreement, you understand and agree that you shall receive no refund or exchange for any unused time on a subscription, any license or subscription fees, any content or data associated with your Account, or for anything else."<sup>177</sup>

Linden Labs paid a high legal price for their bifurcated strategy.<sup>178</sup> First, the case was removed to District Court. In a motion to compel arbitration, the District Court strongly indicated that Linden Lab's many public pronouncements of real legal ownership of virtual property was inconsistent with their action against Bragg.<sup>179</sup> The court refused to enforce the arbitration agreement as unconscionable against public policy.<sup>180</sup> The court also found the terms of service to be a contract of adhesion without market alternatives.<sup>181</sup> On the substantive prong of unconscionability, the court faulted the TOSs' numerous reservations of authority in Linden Labs.<sup>182</sup> Arbitration was denied.<sup>183</sup> A Harvard Evidence class, sitting as a hypothetical jury, recognized Bragg's property interest based primarily on Linden Lab's public pronouncements and reasonable reliance on them.<sup>184</sup> Linden Labs ended up settling for an undisclosed sum, and one of the first forays into the real world ended without establishing precedent but with many unsettled issues.<sup>185</sup>

## **II. Rejecting Legal Rights in Virtual Worlds**

The legal and equitable confusion of the Bragg suit and the Developer and academic furor surrounding it results from a fundamental misunderstanding about Virtual Property. Virtual Property

looks like real property. To the extent the code can manage it, it acts like real property. But its users extract fundamentally different types of utility from their items and acquisitions. The communal, social atmosphere of virtual worlds has little in common with a system aimed at encouraging investment. Users care far more about relative status and fair play than about security and fixed values. The goal is fun and entertainment, not work and profit. Real world legal protections do nothing to vindicate these interests; indeed, they probably hinder it through misplaced doctrines with no virtual analogue. These separate goals explain why gold selling and account selling, both positive, value-building activities from a traditional context, are highly negative irritants to most players. Real world legal rights would protect the gold farmers, exploiters, and account sellers that have a negative impact on the overall worlds. Developers require the flexibility that comes from a strong EULA in order to fight their influence and other real problems in the virtual context, and are rightly afraid of the transaction costs associated with real world courts.

Virtual property accomplishes three major goals for users. First, it serves as a measure of status; greater investment in the game and greater skill leads to a visual recognition of the user's importance through the online equivalent of flashy cars and massive mansions.<sup>186</sup> Second, virtual property is a form of entertainment. It captures the warm glow of acquisition and accomplishment -- the tangible "reward" of achievement.<sup>187</sup> Finally, it is an aid to socializing.<sup>188</sup> Much virtual property can only be earned through shared work, through trading with others, or through working within the world's trade skill system. These facets generally fit into the framework identified by Richard Bartle and Nicholas Yee in their work on player motivations.<sup>189</sup> Yee identified three components of Virtual World players.<sup>190</sup> Achievers focus on status and advancement.<sup>191</sup> Socializers focus on forming relationships and teamwork.<sup>192</sup> Immersive players enjoy discovery and customization.<sup>193</sup>

In most Virtual Worlds, time spent in the world results in more status through the acquisition of more powerful property and the building of virtual muscles. The best armor and weapons have showy particle effects, or coordinated armor patterns, and easily differentiate the character from low-status players with mismatched armor. High-status characters ride dragons instead of horses, or massive spaceships instead of tiny passenger shuttles. High-time players are the experienced veterans, worthy of



respect, who can conquer obstacles the low-timers cannot. Many users play specifically because their real lives are stuck in low-status or low-income positions, escaping to a world where skill and time are sufficient for success. One player wrote<sup>194</sup>:

Have you ever woken up from a dream that was so much more pleasant than real life that you wish you could fall back to sleep and return to the dream? Unfortunately (or maybe fortunately) this never works, and you start your day off with a touch of sadness that the wonders of the dream can't be realized. For some, World of Warcraft is like a dream they don't have to wake up from, a world better than the real world because their efforts are actually rewarded with increased status.

In World of Warcraft, the obsession with status manifests itself in websites like Wowjutsu, which ranks guilds according to the collective high-quality property of their members. Take also, for example, the neverending battle for territory in games like EVE Online. Territory with no real-world value other than the pleasure of "owning" cannot be explained without reference to bragging rights. World of Warcraft originally rewarded the most dedicated player-against-player users with special titles, powerful and showy property, and an ongoing scoreboard of the server leaders. In these situations the resulting property does not have any special value except as a record of achievement and symbol of accomplishment.<sup>195</sup> The value to players is not in the trophy but what the trophy represents.

Once they've bought into the existing status system, players strongly approve of efforts to restrict or shut down "gold-farming" players who play primarily to sell their items on the secondary market.<sup>196</sup> Buying gold on the secondary market shifts possession of the status symbols from those who invest time and build skill to those who happen to have money.<sup>197</sup> Users who do not or cannot buy their way to power are once again have-nots in a world they often entered to escape money-driven status. Even of those players who purchase gold on real world exchanges, the prime motivation is status, not to resell at profit or for other investment purposes.<sup>198</sup> Richard Bartle suggests that players either purchase

high-level characters to “catch up” with friends who are already at a greater power level, or to instantly move to the top of a social hierarchy that prioritizes those with the best loot.<sup>199</sup>

Players also approve when developers adjust the strength of inventory items and avatar abilities in order to let all users earn status at a constant rate.<sup>200</sup> Maintaining a level playing field helps keep the “winners” to those with real skill and time to invest in the game, rather than those who are “lucky” enough to possess unbalanced items and characters.<sup>201</sup> For example, a recent bug in World of Warcraft allowed some, but not all, characters to purchase superpowered armor for free. Allowing the players to keep their cheaply-won gains would disrupt the existing mechanisms for status gain -- making hollow the efforts of all the players who acquired their armor the honest way. By contrast, real world legal systems do not protect relative status, just property. The Bragg lawsuit had no room for the effect on third parties from exploiting, or otherwise breaking the World for a particular user’s gain. The dispute was entirely between the developer and the single user; such an analysis leaves out the effect on utility for the rest of the world.

The emphasis on status systems also explain facets of virtual worlds that fly fundamentally against real-world laws.<sup>202</sup> Killing others is good.<sup>203</sup> War is encouraged; perpetual warfare is not some Orwellian nightmare, but the ordinary state of affairs.<sup>204</sup> Death is, at worst, a nuisance. Revenge killings are exalted. While this precept underpins western law, battles and wars in virtual worlds determine status without any of the bloody side-effects. They are also highly entertaining; as Lastowka notes, “Violence, anarchy, warfare, and destruction are all great fun to have with your pals in Norrath -- God forbid that anyone try to turn them into a blueprint for real society, though.”<sup>205</sup>

The status-driven nature of Virtual Property goes hand-in-hand with an emphasis on socialization and community. The role of virtual property tilts strongly in favor of the communal rather than the private property of western legal systems.<sup>206</sup> This is especially clear with the role of virtual real estate. The most popular Virtual Worlds feature, not self-contained pieces of real property, but extensive communal spaces where players are able to collaborate.<sup>207</sup> Most Virtual Worlds feature centralized areas for characters to congregate, socialize, and relax.<sup>208</sup> In World of Warcraft, the game launched with three “Capital Cities,” with the expectation that players would spread out according to their preferences. It

quickly became clear that all players wanted to be in the same place as their friends; the other two cities were nearly abandoned. In the expansion, Blizzard put everyone in the same City. Another complaint about Virtual Worlds is when they “feel empty,” and the player is essentially paying a monthly fee for a virtually empty game.<sup>209</sup> Acknowledging these concerns, Vanguard recently merged entire servers together to create an acceptable population level.<sup>210</sup> Walling off shared spaces for private real estate had a well-recognized negative effect on Ultima Online, resulting in virtual land rushes that quickly paved over available land and led to numerous player complaints.<sup>211</sup> In some games like Sims Online, players only earn gold and reputation by opening up their homes and virtual real estate to visitors.<sup>212</sup> Avatars in Sims Online receive bonus money from the game based on the amount of players using their space.<sup>213</sup> The resulting cash can be used to upgrade the house, thereby attracting more visitors. Protecting the privacy of the home makes little sense in Sims Online.<sup>214</sup>

Guilds, or cooperative organizations of players, also demonstrate the community orientation of most Virtual Worlds. As James Grimmelmann writes, even though “the powers granted to them by the games are very weak,” almost all Virtual Worlds feature guilds, and they are “key to the social energy of a virtual world.”<sup>215</sup> These fluid, communal organizations have little in common, in the real world, with group constructs like Corporations. Players voluntarily give up their own property to accomplish shared goals through guilds and other cooperative arrangements.<sup>216</sup> Guilds depend on the pooling of time and inventory to complete shared goals. A well-functioning guild assigns players to needed trade skills, pools resources to purchase raw materials, and uses the “finished goods” to defeat the latest and greatest monster.<sup>217</sup> An efficient use of shared inventory is important for the guild’s success.<sup>218</sup> In World of Warcraft, the major accomplishments are on a guild-by-guild basis, rather than any individual player. Many World of Warcraft players can name the top worldwide guilds and their accomplishments, but they would be hard-pressed to name any of the individual players.

Maintaining a communal system when the players are anonymous masks is challenging. As a result, buying and selling Avatars is socially taboo.<sup>219</sup> Many players find it chilling that a friend or trading partner, who they have shared hundreds of hours with, could be abruptly replaced with a stranger wearing the same face.<sup>220</sup> Selling and trading avatars plays havoc with reputational and networking

systems.<sup>221</sup> It adds uncertainty and risk even to transactions with characters the player has spent years working with. Many Virtual Worlds have horror stories of the guild's bank manager selling off, and the new account owner stealing guild money. Given this, extending legal protection to players who sell their accounts flies directly in the face of a social system that needs trust and long-term reputation systems to grow and prosper.

Instead, users and Developers implement strategies and technologies to encourage communal property and exchange. Most guilds set up "Banks" comprised of the joint effort of many different players with different skill sets.<sup>222</sup> These banks are jointly controlled by members of the organization, typically organized along hierarchical lines, but committed to communal goals like beating a large-scale boss.<sup>223</sup> Access to the items in the bank can be Each According to their Need, or based on a formula relating to who adds to the bank, or so on. Developers have begun to formalize and empower communal decision-making. Already, EVE Online Corporations own vast portions of space, ruling them as absolute entities with their own power to set rules. Companies have encouraged this behavior by creating in-world tools for guild management, rewarding cooperatives with the best and most rare items, and even inviting certain powerful guilds to beta-test their latest content.

Finally, many players simply resist the imposition of real-world economics and money-driven decisions in a world designed primarily for relaxation and fun.<sup>224</sup> As Economist Edward Castronova writes, "Without the EULA, Dark Age of Camelot is not a play space, it is a suburb of Newark — a place that used to be swampland, but now has houses, businesses, and athletic fields, all of which are utterly indistinguishable under law from the house, businesses and athletic fields of Newark itself."<sup>225</sup> They resent that the special nature of Virtual Worlds has fallen prey to commodification, transforming non-commercial relationships into market exchanges.<sup>226</sup> Extensive gold-farming promotes hyperinflation, devaluing player's property until "there was no way for anyone, time-rich or time-poor, to keep up with the rising cost of living except by resorting to the same very effective but not very playful methods that made the gold farmers rich."<sup>227</sup> That is, just to stay level with everyone else, players were forced to intensively kill monsters rather than relax, socialize, and have fun.<sup>228</sup>

Entertainment value explains why many players want their hard-won virtual items to continually lose value on the grey market. Many Virtual Worlds create systems of planned obsolescence in order to challenge players to keep playing the game.<sup>229</sup> For example, Everquest II releases a steady stream of “expansions” that include a massive new armory of improved weapons and armor.<sup>230</sup> These items not only require conquering new challenges, they make obsolete and worthless almost all of the inventory a player has already accumulated.<sup>231</sup> World of Warcraft implements slow inflation in their economy in order to discourage gold-hoarding.<sup>232</sup> These implementations come at the cost of investment in property, but they change up the gameplay and are necessary to encourage players to keep playing.<sup>233</sup> Players, in fact, complain when the gap between expansions is too long -- clamoring for their own hard-won items to be rendered valueless(!)<sup>234</sup>

Everquest II’s Station Exchange is a good example of the questionable relation of virtual property to entertainment value.<sup>235</sup> Station Exchange is the only company-designed and approved interface for real-world sales of virtual property. At launch, in 2005, it took in \$180,000 worth of transactions over the first month.<sup>236</sup> However, even two years later, the program has not been expanded beyond its initial two servers -- out of thirty total.<sup>237</sup> There has been no rush to join that server open to the real world; in fact, the two initial open-market servers were merged together to increase player population.<sup>238</sup> Even of those players who purchased goods, the rationale was typically not out of an absolute utility from the goods, but to keep up with highly-powered friends.<sup>239</sup> The same analysis showed that “active sellers are not gaming Station Exchange (i.e. buying low and selling high). Rather, they are playing the game, questing or crafting objects of value, and selling them at auction.”<sup>240</sup>

## **b. Goals of Companies**

Developers have sought to implement user goals through win-win situations that make both developers and users happy.<sup>241</sup> As Grimmelman has noted, Virtual Worlds are unique in that their system of laws is hard-coded into the very physical world.<sup>242</sup> When theft is no longer a gameplay feature, the very ability to steal is simply removed.<sup>243</sup> When long-term real estate becomes a problem, it

disappears. When new problems loom, both developers and players seek to diminish them by lowering transaction costs, rather than adding laws.

Virtual Worlds have sought to minimize the transaction costs associated with market transactions through restricting the ways they can arise.<sup>244</sup> In particular, the setup of auction houses and other trading system removes the possibility of nonperformance.<sup>245</sup> The game itself checks that both parties have the requisite gold and items before allowing the transaction, which is instantaneous.<sup>246</sup> Warranties, returns, and other legal features have no place, because all property is exactly as offered, no more and no less.<sup>247</sup> Game mechanisms that allow for “cheating” by tricking click-happy, unwary customers are swiftly replaced with dialog boxes that ensure the player is making an informed decision.<sup>248</sup> In a world with no theft, foolproof locks, and where killing each other is for fun, the chance of user-on-user property disputes is unlikely.<sup>249</sup> Real legal protections are, after all, a form of transaction cost to guard against fraud, nonperformance, and other failures of the market system.<sup>250</sup> Where the market system itself is built to prevent the need for such intervention, the need for legal intervention is minimal.<sup>251</sup>

At the same time, companies are extremely leery of granting property rights to players that hold any relevance in the outside world. The costs associated with enforcement could be prohibitive.<sup>252</sup> Developers would face considerable uncertainty as to what property they could manipulate without warning.<sup>253</sup> Open questions raised by granting property rights include the type of damages a player could seek, the extent to which corporations would be responsible for maintaining the value of the property, and the corporation's freedom to terminate a relationship with the player when that player holds legal property on the company's servers.<sup>254</sup> What happens if the player cannot pay the monthly fee for membership? At what point would the property interest become legally cognizable -- upon signup, or only after a period of time?<sup>255</sup>

Transaction costs would also be substantial. If a Player sues a different Player, Corporations could be forced to submit to costly discovery requests, including the personal financial information of customers.<sup>256</sup> Otherwise, there would be no method of discovering who was behind Sephroth776 when he scammed AngelEyes out of a Bow +10. The same would be true if the Player sued the Corporation on any number of equitable theories, except the corporation would also incur the cost of defense.<sup>257</sup>

Considering that Virtual Worlds prosper through millions of user accounts using the same legal scheme, and that World of Warcraft banned over 30,000 accounts for various violations of terms of service in May 2006 alone, legal contests could become very costly very quickly.<sup>258</sup> Expanding property rights is not necessarily possible or desirable for companies even when there is no real legal threat. The transaction costs and tremendous complexity associated with expanding property rights have prevented game companies from setting up systems like banking and finance, even in the face of consumer demand.<sup>259</sup>

Rather than exulting in their ultimate power, Developers view acting as God as an expense, a problem that they have to resolve. Even the in-game customer service department, judge and jury in charge of enforcing the TOS, was an unexpected expense for developers. In Ultima Online, at the outset of Virtual Worlds,<sup>260</sup>

Running the game masters' room is a big expense for Origin and, to a large degree, an unanticipated one. Britannia was supposed to be self-policing, but instead it kept veering toward anarchy. Early on, more experienced players figured out how to identify new characters, or, as they are called, "newbies." Some players were luring newbies out into the woods, beyond the protection of the town guards, and killing them; others were encouraging newbies to commit crimes, and then letting the guards kill them. The result was a lot of players whose experience of the game consisted mostly of being dead, a condition that discouraged them from continuing to pay their monthly fees.

### **c. The Failure of Real World Legal Systems**

Even where Developers struggle, there is no evidence that real world courts would do a substantially better job. Property rights in the real world often protect interests with no virtual analogue. Users do not need food, housing, or any other of the necessities that are important to survival.<sup>261</sup> Safety and security is another relative nonissue; while players can be harassed, property has nothing to do with creating safe spaces or sanctuaries.<sup>262</sup> Contracts and risk-transference devices are largely unnecessary;

as Grimmelmann notes, “we might plausibly ask how much practical difference rich contractual protection would make.”<sup>263</sup> Grimmelmann writes that “the single most important commercial transaction -- the present sale of goods -- can be handled without formal contracts... the common contingencies many contracts are drafted to avoid are simply not possibilities. There is no danger of defective goods because items in games typically don’t have hidden attributes.”<sup>264</sup> Investment opportunities are also rare. There are no “mines, factories, aqueducts, or other capital intensive projects” that require large contractual borrowing.<sup>265</sup> In sum, huge swathes of the goals of the American property system are simply inapplicable.

There is no evidence that real world courts would manage virtual world lawsuits in an efficient and economically effective manner.<sup>266</sup> Just in terms of time, the Bragg lawsuit took nearly a year to evolve, an eternity in Virtual World time and a substantial fraction of Second Life’s lifespan to date. On a theoretical level, Courts would be at sea attempting to understand the most efficient rule. The litigants with the most incentive to sue, and thus to have their interest recognized, are typically those whose role in Virtual Worlds is considered negative by wide swathes of the playerbase: gold farmers, account sellers, and exploiters. In fact, as Julian Dibbell writes, “Ruling the EULA to be a valid contract..would have sent the question back where it belonged - into the much more finely tuned evaluative process that is the ceaseless, grinding struggle between players and designers over the shape of the game.”<sup>267</sup>

Permitting the intrusion of real world legal protections into the Virtual World context would do considerable violence to the existing EULA-based regime. End-User License Agreements are not only the preferred legal authority for the Virtual World context, they constitute the governing contracts for millions of people in both the online and offline context.<sup>268</sup> While some limited authority suggests that severe unconscionability will be prohibited, particularly in the forced arbitration and forum selection contexts, thousands of companies depend on the enforceability of their substantive clauses.<sup>269</sup> Carving out a haven of legal authority from their aegis would call into doubt all of the dependence that corporations place on the EULA. Although “the process of assuming the unenforceability of the EULA is necessary to analyze... virtual rights,” the secondary effects of this assumption are properly part of the cost-benefit analysis.<sup>270</sup>



If the EULA is overruled due to problems of formation or unconscionability, then the very basis of the EULA-contracting context would be called into question. EULAs have come under considerable academic attack for calling into question the traditional contracting methodology of offer-acceptance-formation. Many have noted that the idea of an objective meeting of the minds is very questionable when customers never read the EULA, companies don't want them to read it, and the opportunity to negotiate is virtually nonexistent. Many writers have supported a movement to a subjective intent standard that depends primarily on the expectations of the consumer.<sup>271</sup> Implicit in such critiques is the idea that the average form contract will be subjected to the uncertainty of subjective-intent analysis.<sup>272</sup> Others have created Bills of Rights broadly applicable to computer EULAs.<sup>273</sup>

Regardless, EULAs have been upheld for decades because they are necessary and heavily used to correspond to the realities of mass-consumer contracting.<sup>274</sup> Nor do Virtual Worlds represent an unusually good opportunity for overruling. The EULAs are typically presented to customers on the entire computer screen, in bright lettering, and at regular intervals. Players have explicitly agreed not to engage in market transactions outside of the game, and have disclaimed any property rights in their characters.<sup>275</sup> Instead, consumer competition and criticism ensures that the actual treatment of players is "reasonable" according to the vast majority of consumers, and punishes companies that refuse to bow to these standards.

A prime example of the superiority of the quasi-legal Virtual World system to the real world legal system is the most efficient treatment of the shadowy Virtual World grey market.<sup>276</sup> The grey market comprises the interface between the virtual world and the real, where players exchange avatars and items for cash.<sup>277</sup> Almost all corporations running a Virtual World have expressed official disapproval of it, and have chased buyers and sellers off traditional exchange sites like eBay onto less scrupulous meetingplaces.<sup>278</sup> Players found to have purchased grey market gold, items, or characters are typically banned.<sup>279</sup> Others are scammed out of their accounts by unscrupulous buyers and sellers.<sup>280</sup> Commentators criticize the inefficiency of chasing a fully-developed market to the shadows, and the resulting inequity inherent in the fraud and scamming involved in an unregulated grey market.<sup>281</sup>

However, when users widely disapprove of real market transactions because they violate notions of fairness and socialization, a grey market becomes a very reasonable solution.<sup>282</sup> It gives the selling users a “safety valve,” letting them leave a Virtual World with a satisfying level of profit. Purchasing players can gain access to the Virtual World without going through the usual path, but without gaining access to the status and reputation accrued from playing in an “honest” way. In terms of just the grey market transaction, the real risk of being banned is relatively small, and can be priced in as part of the risk of business.<sup>283</sup> Overall, the grey market bows to the demands of the vast majority of players who disapprove of online gold sales and avatar trading as outside the acceptable norms of the Virtual World.<sup>284</sup> Developers, through underenforcement, can satisfy both parties. They can and do allow an acceptable level of market trading for those users who wish to leave while stemming anything that offends the user base or threatens the overall economy.

On the other hand, should a property right arise in grey market sales, it seems starkly unlikely that the volume of resulting trade would be so high, or the growth in sales value so extreme, as to outweigh the substantial harm to the many consumers who see grey market sales as a persistent MMO evil.<sup>285</sup> The only losers under the present system are the few that are scammed or banned for illegal activity.<sup>286</sup> It is difficult to see the gains in overall utility stemming from the legal recognition of such trades.<sup>287</sup> The experience of Sony's Station Exchange is telling. Sony touts as a primary feature the safety of their system.<sup>288</sup> The front page talks about removing old problems like scamming passwords, bait-and-switch over the character's inventory, and the risk of non-delivery.<sup>289</sup> However, analysis of the program's success revealed that prices on Station Exchange and prices on unregulated secondary sites were “essentially the same.”<sup>290</sup> In addition, of the roughly 40,000 players on the two servers covered by the Station Exchange program, only around 1,500 participated in Station Exchange in some way.<sup>291</sup>

The Bragg lawsuit also demonstrated the problems of extending real world legal protections to Virtual Worlds.<sup>292</sup> It seems beyond a doubt that Linden Lab's actions were in the best interest of both the company and the playerbase. Bragg attempted to manipulate the economy, took advantage of flaws in the company's code, and damaged a stable market system.<sup>293</sup> The Judge's proposed treatment would have, as many recognized, eviscerated EULAs not only in Second Life, but around the entire Virtual

World sphere.<sup>294</sup> Raph Koster, a Virtual World theorist, noted that the ruling put all Virtual World terms of service in trouble.<sup>295</sup> Linden Lab's quasi-legal mechanisms, as imperfect as they may be, would be replaced by year-long legal processes resulting in substantial uncertainty on all sides of transactions. Bragg is now attempting to interest Second Life residents in a class action suit against Linden Labs.<sup>296</sup>

### **III. Conclusion**

In all, Virtual Worlds may have increasingly become analogues to the Real World. But they have not lost enough "game" attributes like status-seeking, socialization, and entertainment to justify bringing in real world legal rights. Virtual Worlds contain strong economic systems, coherent communities, and a system of property values that closely mimic a real-world system of legal protections.<sup>297</sup> Communication between developers and players has resulted in a pattern of gradual change to create an efficient outcome.<sup>298</sup> The resulting property system will emphasize communal activities, entertainment, and other "fun" oriented activities like competitive status-seeking. Developers will probably continue to encourage these fundamental facets as they continue to build property systems. The future of this system could prove to be remarkably different from typical western notions of property and exchange. It is not yet time, if it ever will be, to bring in the majesty of the law.

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<sup>1</sup> This is a gross simplification; Virtual Worlds are variously defined and their genesis is hardly clear. But it's helpful to see their philosophical underpinnings in the world-building of authors and in the games that provided a system of uniform rules for interacting in them. JRR TOLKIEN, *THE HOBBIT* (Houghton Mifflin 2002) (1937)

<sup>2</sup> Early MUD History, <http://www.ludd.luth.se/mud/aber/articles/history.html> (last visited September 23, 2007)

<sup>3</sup> Gregory Lastowka & Dan Hunter, *The Laws of Virtual Worlds*, 92 CAL. L. REV. 1, 14-28 (2004).

<sup>4</sup> The MUD Timeline, <http://www.linnaean.org/~lpb/muddex/mudline.html> (last visited September 23, 2007) (Surveying the earliest-known multi-user dungeons, or MUDs. These MUDs formed the basis for later, broader commercial ventures.) See also Early MUD History, <http://www.ludd.luth.se/mud/aber/articles/history.html> (last visited September 23, 2007)

<sup>5</sup> Id.

<sup>6</sup> This analysis leaves out the East Asian Virtual World market. In many ways it is more complex and more integrated with the real world than its western counterpart. However, as the question presented is the extension of the American property system to those living in American jurisdiction, it's too much of a complication to include. Legal theorists may want to ask themselves how a player in Finland should inexpensively sue a player in Texas for fraud. Elizabeth Kolbert, *Pimps and Dragons: How an Online World Survived a Social Breakdown*, THE NEW YORKER, May 28, 2001, available at <http://www.btinternet.com/~braxfield/blogimages/UltimaOnline.htm> (last visited December 12, 2007)

<sup>7</sup> See generally World of Warcraft, [www.worldofwarcraft.com](http://www.worldofwarcraft.com) (last visited September 23, 2007); Second Life, [www.secondlife.com](http://www.secondlife.com) (last visited September 23, 2007); Everquest 2, [www.everquest2.com](http://www.everquest2.com) (last visited September 23, 2007); EVE Online, [www.eveonline.com](http://www.eveonline.com) (last visited September 23, 2007); See also Andrew Jankowich, *EULaw: The Complex Web of Corporate Rule-Making in Virtual Worlds*, 8 TUL. J. TECH. & INTELL. PROP. 1, 4 (2006)

<sup>8</sup> See Bruce Woodcock, Total MMOG Subscribers, [http://www.mmogchart.com/Chart4\\_files/Subscriptions\\_21524\\_image001.gif](http://www.mmogchart.com/Chart4_files/Subscriptions_21524_image001.gif) (last visited September 20, 2007); The task of tabulating the number of Virtual Worlds is complicated by their imprecise definition, lackluster census-taking, and number-fudging by major World developers.

<sup>9</sup> See Avatar (icon), [http://en.wikipedia.org/wiki/Avatar\\_%28icon%29](http://en.wikipedia.org/wiki/Avatar_%28icon%29) (last visited September 23, 2007) (overviewing the various graphical avatars used to represent players in video games). Of course, not all Virtual Worlds use graphical avatars; there are thriving textual worlds that pre-date the entire corporate-driven gold rush.

<sup>10</sup> Lastowka & Hunter, *supra* note 3 at 26.

<sup>11</sup> Compare Everquest, <http://pacificrimx.files.wordpress.com/2006/11/everquest.jpg> (last visited September 23, 2007) with recent game Vanguard, <http://www.gameogre.com/vanguard7.jpg> (last visited September 23, 2007).

<sup>12</sup> Of course, this is a restrictive definition of Virtual Worlds -- expanding it to include more "casual" worlds like Habbo Hotel changes the story entirely. Fortunately, these "established" Virtual Worlds are the most relevant to a study of Virtual law. See generally Lastowka & Hunter, *supra* note 3 at 26-28; Dr. Richard A. Bartle, *Virtual Worldliness: What the Imaginary Asks of the Real*, 49 N.Y.L. Sch. L. Rev. 19, 30-31 (2004).

<sup>13</sup> See Lizard, *Kill Bunnies, Sell Meat, Kill More Bunnies*, WIRED 6.05, May 1998, available at <http://www.wired.com/wired/archive/6.05/bunnies.html> (last visited December 12, 2007).

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<sup>14</sup> World of Warcraft: First Few Levels, <http://www.worldofwarcraft.com/info/basics/firstfewlevels.html> (last visited December 12, 2007).

<sup>15</sup> *Id.*

<sup>16</sup> *See generally* Allakhazam's Magical Realm, an item database for many of the virtual worlds. Allakhazam's Magical Realm, <http://eq2.allakhazam.com/> (last visited December 12, 2007).

<sup>17</sup> *See* Ultima Online: Purchasing and Owning a House, [http://guide.uo.com/house\\_1.html](http://guide.uo.com/house_1.html); Bobby Glushko, *Tales of the (Virtual) City: Governing Property Disputes in Virtual Worlds*, Note, 22 BERKELEY TECH. L.J. 507, 524.

<sup>18</sup> *Id.*

<sup>19</sup> *See generally* Minor Healing Potion, <http://wow.allakhazam.com/db/item.html?witem=118&locale=enUS;source=live> (last visited December 12, 2007).

<sup>20</sup> *Id.*

<sup>21</sup> *See* World of Warcraft, <http://worldofwarcraft.com/info/items/basics.html> ("Many items, particularly magic items, are Soulbound. An item that is soulbound is permanently bound to a specific player and cannot be transferred to another character in any way. A player can vendor, disenchant, or destroy his soulbound item, but cannot trade or sell it to another player. Items become soulbound in a variety of ways: on pickup, on creation, or when equipped. You will receive an alert indicating that the item will become soulbound by performing the relevant action.") (last visited December 12, 2007).

<sup>22</sup> *Id.*

<sup>23</sup> Fresh Holly, *available at* <http://wow.allakhazam.com/db/item.html?witem=21212&locale=enUS;source=live> (last visited December 12, 2007).

<sup>24</sup> World of Warcraft, <http://worldofwarcraft.com/info/items/basics.html> ("When an item reaches zero durability, it no longer gives the player any benefit; it acts as though it does not exist until repaired.") (last visited December 12, 2007).

<sup>25</sup> *See generally* Glushko, *supra* note 17, at 509.

<sup>26</sup> *See generally* Glusko, *supra* note 17, at FN2; Jankowich, *supra* note 7 at 39; Edward Castronova, *Virtual Worlds: First-Hand Account of Market and Society on the Cyberian Frontier 2* (Ind. Univ. Bloomington, Dept. of Telecomms, CESifo Working Paper Series No. 618, 2001), *available at* <http://ssrn.com/abstract=294828> (last visited December 12, 2007).

<sup>27</sup> World of Warcraft, <http://worldofwarcraft.com/info/basics/auctionhouses.html> (Description of World of Warcraft's auction house) (last visited December 12, 2007).

<sup>28</sup> Escrow Guide, <http://www.eve-online.com/guide/en/g15.asp> ("The Escrow system is used for 2 things: 1) Trading and 2) Item Exchange. You might find it odd that it is located under the mission category, but the fact is that the EVE community invented the use of the Escrow system for selling and exchanging items, as it was not the intended usage, showing how ingenious our users can be.") (last visited December 12, 2007).

<sup>29</sup> *See generally* Second Life: The Market; <http://secondlife.com/whatis/marketplace.php>. (Currency exchange between real dollars and virtual Linden Dollars) (last visited December 12, 2007)

<sup>30</sup> *Cf.* Nicholas Yee, *Psychology of MMORPGs: Emotional Investment, Motivations, Relationship Formation, and Problematic Usage*, In R. Schroeder & A. Axelsson (Eds.), *available at* [http://www.nickyee.com/pubs/Yee%20-%20MMORPG%20Psychology%20\(2006\).pdf](http://www.nickyee.com/pubs/Yee%20-%20MMORPG%20Psychology%20(2006).pdf) (last visited December 12, 2007).

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- <sup>31</sup> Wowjutsu, a World of Warcraft guild tracker, tracked some 32,000 guilds as of October 29, 2007. Wowjutsu, <http://wowjutsu.com/world/> (last visited December 12, 2007).
- <sup>32</sup> See EVE Online: Alliances, <http://www.eve-online.com/alliances/> (last visited December 12, 2007).
- <sup>33</sup> *Id.*
- <sup>34</sup> Cf. Nicholas Yee, *Life as a Guild Leader*, available at <http://www.nickyee.com/daedalus/archives/001516.php> (last visited December 12, 2007).
- <sup>35</sup> World of Warcraft's most recent patch is instructive as to these patches' length and depth. See generally World of Warcraft: Patch Notes, <http://worldofwarcraft.com/patchnotes/> (last visited December 12, 2007).
- <sup>36</sup> Game Updates, Everquest II; [http://eq2players.station.sony.com/en/game\\_updates\\_details.vm?id=37](http://eq2players.station.sony.com/en/game_updates_details.vm?id=37), (last visited September 23, 2007).
- <sup>37</sup> *Id.*
- <sup>38</sup> See generally Nerf (Computer gaming), [http://en.wikipedia.org/wiki/Nerf\\_\(computer\\_gaming\)](http://en.wikipedia.org/wiki/Nerf_(computer_gaming)) (last visited September 23, 2007).
- <sup>39</sup> These "hot fixes," are typically portrayed as bug fixes or essential fixes to underlying game architecture. However, on occasion unintended mechanics have made certain items or characters so unbalanced compared to their surroundings that a change is rushed.
- <sup>40</sup> See Julian Dibbell, *Dragon Slayers or Tax Evaders?*, LEGAL AFFAIRS 47 (Jan-Feb. 2006)
- <sup>41</sup> See IGE.com, [www.ige.com](http://www.ige.com) (last visited September 23, 2007); WoW Gold Price Research: A World of Warcraft Economic Study, available at <http://gamerprice.com/wow-gold-study.html> (last visited September 23, 2007)
- <sup>42</sup> See David Barboza, *Ogre to Slay? Outsource it to the Chinese*, N.Y. TIMES, Dec. 9, 2005.
- <sup>43</sup> See generally The New Account Sales Thread, <http://forums.somethingawful.com/showthread.php?threadid=2552107> (Organized market for account sales.) (last visited September 23, 2007).
- <sup>44</sup> SK Gaming: WoW Account Sold for 7000 Euro, <http://www.sk-gaming.com/scene/13220/> (last visited December 12, 2007).
- <sup>45</sup> See Julian Dibble, MMO GDP, QED (WTF?), [http://www.terranoa.blogs.com/terra\\_nova/2005/04/h1mmo\\_gdp\\_qed\\_w.html](http://www.terranoa.blogs.com/terra_nova/2005/04/h1mmo_gdp_qed_w.html) (last visited September 23, 2007); Edward Castronova, Virtual World Economy: It's Namibia, Basically, [http://terranoa.blogs.com/terra\\_nova/2004/08/virtual\\_world\\_e.html](http://terranoa.blogs.com/terra_nova/2004/08/virtual_world_e.html) (last visited September 23, 2007) Keep in mind, however, that this is only 1/5th of what Americans spent on their pets last year. American Pet Products Manufacturers, *2006/2007 National Pet Owners Survey*, available at [http://www.appma.org/press\\_industrytrends.asp](http://www.appma.org/press_industrytrends.asp) (last visited December 12, 2007)
- <sup>46</sup> For a rough guide to market prices, go to Craigslist.org and search for "Warcraft." Craigslist.org, <http://sfbay.craigslist.org/search/sss?query=warcraft>, last visited September 23, 2007).
- <sup>47</sup> Everquest II: Station Exchange, <http://eq2.stationexchange.com/Search.m?as=The+Bazaar&ac=character&sort=price&dir=d> (last visited December 12, 2007).
- <sup>48</sup> Barboza, *supra* note 42.
- <sup>49</sup> See generally Station Exchange: Year One, available at [www.gamasutra.com/features/20070207/SOE%20Station%20Exchange%20White%20Paper%201.19.doc](http://www.gamasutra.com/features/20070207/SOE%20Station%20Exchange%20White%20Paper%201.19.doc) (last visited September 23, 2007)

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- <sup>50</sup> Castronova, *supra* note 26.
- <sup>51</sup> See Robert Shapiro, *Fantasy Economics: Why Economists are Obsessed with Role-Playing Games*, SLATE, available at <http://www.slate.com/id/2078053/> (last visited December 12, 2007)
- <sup>52</sup> See generally Lastowka & Hunter, *supra* note 3, at 34-36.
- <sup>53</sup> *Id.* at 43-50.
- <sup>54</sup> *Id.*
- <sup>55</sup> *Id.* at 30.
- <sup>56</sup> *Id.* at 45.
- <sup>57</sup> *Id.*
- <sup>58</sup> *Id.* at 45.
- <sup>59</sup> Cf. Theodore Westbrook, *Owned: Finding a Place for Virtual World Property Rights*, Note, 2006 Mich. St. L. Rev. 779 at 796-97 (2006). Charles Blazer, *The Five Indicia of Virtual Property*, Note, 5 Pierce L. Rev. 137 at 157 (2006)
- <sup>60</sup> Westbrook, *supra* note 59, at 802.
- <sup>61</sup> *Id.*
- <sup>62</sup> Glushko, *supra* note 17, at 527; Jankowich, *supra* note 7, at 52-53.
- <sup>63</sup> Glushko, *supra* note 17, at 530.
- <sup>64</sup> Bettina Chin, *Regulating Your Second Life*, Note, 72 BKNLR 1303, 1349 (Summer 2007)
- <sup>65</sup> Daniel Miller, *Determining Ownership in Virtual Worlds: Copyright and License Agreements*, 22 REVLITIG 435 (2003).
- <sup>66</sup> Cory Ondrejka, *Escaping the Guided Cage: User Created Content and Building the Metaverse*, 49 N.Y.L. SCH. L. REV. 81 at 95 (2004)
- <sup>67</sup> Cory Ondrejka, *Living on the Edge: Digital Worlds Which Embrace the Real World*, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=555661](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=555661) (available at September 23, 2007)
- <sup>68</sup> Jamie Kayser, *The New New-World: Virtual Property and the End User License Agreement*, 27 LOY. L.A. ENT. L. REV. 59 at 64 (2007).
- <sup>69</sup> *Id.* at 63.
- <sup>70</sup> Jack M. Balkin, *Virtual Liberty: Freedom to Design and Freedom to Play in Virtual Worlds*, 90 VA. L. REV. 2043 at 2043 n.1 (2004).
- <sup>71</sup> *Everquest Class Action Threat Over Auction Spat*, THE REGISTER, Jan. 25, 2001, available at [http://www.theregister.co.uk/2001/01/25/everquest\\_class\\_action\\_threat\\_over/](http://www.theregister.co.uk/2001/01/25/everquest_class_action_threat_over/) (Proposed class action suit against Everquest for banning eBay auctions. The class action claimed "people organizing these sales are in fact "selling the time spent building the status of an Everquest character" or "selling the time spent obtaining the item".") Lastowka & Hunter, *supra* note 3, at 48.
- <sup>72</sup> Lastowka & Hunter, *supra* note 3, at 47.
- <sup>73</sup> Ondrejka, *supra* note 66, at 94.
- <sup>74</sup> *Id.*
- <sup>75</sup> Jankowich, *supra* 7, at 42
- <sup>76</sup> *Id.*

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<sup>77</sup> Westbrook, *supra* note 59, at 806; Balkin, *supra* note 70, at 68.

<sup>78</sup> See generally Symposium, *Rules & Borders -- Regulating Digital Environments*, 21 SANTA CLARA COMPUTER & HIGH TECH L.J. 807 (2005)

<sup>79</sup> Bartle, *supra* note 12 at 33-34.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at 41

<sup>82</sup> See *Id.* at 2070. ("If virtual items have real-world equivalent values, though, the game designer may be destroying a considerable amount of value by turning off the game.")

<sup>83</sup> See generally Jankowich, *supra* note 7 at 37.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> This process is so engrained that, after installing a new game for the sole reason of collecting its EULA, I absent-mindedly clicked my consent for whatever terms were embodied in it.

<sup>87</sup> Rachel Cormier Anderson, *Enforcement of Contractual Terms in Clickwrap Agreements: Courts Refusing to Enforce Forum Selection and Binding Arbitration Clauses*, 3 SHIDLER J.L. COM. & TECH. 11, 1 (2007)

<sup>88</sup> *Id.*

<sup>89</sup> See, e.g., Nathan Davis, *Presumed Assent: The Judicial Acceptance of Clickwrap*, 22 BERKELEY TECH. L.J. 577, 589-598 (2007); Note that Game World EULAs do not always contain certain terms heavily criticized as abusive, such as prohibitions on criticism. See Lydia Pallas Loren, *Slaying the Leather-Winged Demons in the Night: Reforming Copyright Owner Contracting with Clickwrap Misuse*, 30 OHIO N.U. L. REV. 495, 501 (2004). *But see* Jankowich, *supra* note 7 at 28. (Suggesting that restrictions on obscenity are used to prohibit political speech)

<sup>90</sup> See Robert Hillman, *Standard-Form Contracting in the Electronic Age*, 77 N.Y.U. L. Rev. 429, 432 (2002).

<sup>91</sup> See Robert Lee Dickens, *Finding Common Ground in the World of Electronic Contracts: the Consistency of Legal Reasoning in Clickwrap Cases*, 11 MARQ. INTELL. PROP. L. REV. 379, 385-87 (2007)

<sup>92</sup> See generally World of Warcraft: Terms of Use Agreement, <http://www.worldofwarcraft.com/legal/termsofuse.html> (last visited October 19, 2007).

<sup>93</sup> But note the trouble this caused Second Life in the Bragg lawsuit. See Second Life: Terms of Service, <http://secondlife.com/corporate/tos.php> ("Any dispute or claim arising out of or in connection with this Agreement or the performance, breach or termination thereof, shall be finally settled by binding arbitration in San Francisco, California under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with said rules.") (last visited December 12, 2007).

<sup>94</sup> See Jankowich, *supra* note 7, at 44; World of Warcraft: Terms of Use Agreement, available at <http://www.worldofwarcraft.com/legal/termsofuse.html> (last visited October 19, 2007). ("BLIZZARD MAY SUSPEND, TERMINATE, MODIFY, OR DELETE THE ACCOUNT AT ANY TIME WITH ANY REASON OR NO REASON, WITH OR WITHOUT NOTICE. For purposes of explanation and not limitation, most account suspensions, terminations and/or deletions are the result of violations of this Terms of Use or the EULA.")

<sup>95</sup> See generally Jankowich, *supra* note 7, at 44.



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- <sup>96</sup> World of Warcraft: Terms of Use Agreement, <http://www.worldofwarcraft.com/legal/termsofuse.html> (last visited October 19, 2007).
- <sup>97</sup> Sony Online Entertainment, EQ II UASL, [http://eq2players.station.sony.com/en/support/support\\_article.vm?label=EQIIEULA](http://eq2players.station.sony.com/en/support/support_article.vm?label=EQIIEULA) (last visited December 12, 2007).
- <sup>98</sup> See Glushko, *supra* note 17, at 516-57.
- <sup>99</sup> See Jankowich, *supra* note 7, at 47. See generally J.R. Suler & W. Phillips, *The Bad Boys of Cyberspace: Deviant Behavior in Online Multimedia Communities and Strategies for Managing It*, available at <http://www-usr.rider.edu/~suler/psyber/badboys.html> (Sept. 1997)
- <sup>100</sup> World of Warcraft: Terms of Use Agreement, <http://www.worldofwarcraft.com/legal/termsofuse.html> (last visited October 19, 2007).
- <sup>101</sup> EVE Online: Terms of Service, <http://www.eve-online.com/pmp/terms.asp> (last visited December 12, 2007)
- <sup>102</sup> Cf. Jankowich, *supra* note 7, at 33
- <sup>103</sup> *Id.*
- <sup>104</sup> *Id.*
- <sup>105</sup> Jack M. Balkin, *Law and Liberty in Virtual Worlds*, 49 N.Y.L. SCH. L. REV. 63 at 65 (2004).
- <sup>106</sup> Mark Ward, *Warcraft Game Maker in Spying Row*, BBC NEWS, Oct 31, 2005, available at <http://news.bbc.co.uk/1/hi/technology/4385050.stm>
- <sup>107</sup> Corynne McSherry, *A New Gaming Feature? Spyware*, <http://www.eff.org/deeplinks/2005/10/new-gaming-feature-spyware> (last visited December 12, 2007).
- <sup>108</sup> See *Id.*
- <sup>109</sup> World of Warcraft: A Statement on our Hack-Scanning Process, available at <http://blue.cardplace.com/cache/wow-general/4471677.htm> (last visited September 23, 2007).
- <sup>110</sup> Ward, *supra* note 106
- <sup>111</sup> See Eldre'thalas Guild Transfer, <http://www.blue.cardplace.com/cache/wow-general/2971123.htm> (last visited September 23, 2007).
- <sup>112</sup> World of Warcraft: Paid Character Transfer FAQ, <http://us.blizzard.com/support/article.xml?articleId=20558> (last visited September 23, 2007).
- <sup>113</sup> See Ceejbot, *More Inadvertent Entertainment from Blizzard*, <http://snippy.ceejbot.com/wiki/show/start/2005/05/04/002> (last visited September 23, 2007); See also Sprawl's Scrawl, <http://wowvault.ign.com/View.php?view=Columns.Detail&id=85> ("This last week the Community was in an uproar over what appeared to be preferential treatment given a guild from Uther. One morning last week, the players on Eldre'Thalas, a relatively young server, woke up to find an influx of high level players in an unrecognized guild on their server. Some players were angry and rumors flared to the point that Blizzard was heavily moderating their forums. Players were repeatedly risking bans in order to make demands for an explanation. It is Blizzard's policy to protect one's privacy, but in this case, the public outcry was so loud, they could ignore it no longer.") (last visited September 23, 2007).
- <sup>114</sup> Ceejbot, *supra* note 113.

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- <sup>115</sup> Cf. Timothy Burke, Reputation Capital, [http://terranova.blogs.com/terra\\_nova/2005/05/reputation\\_capi.html#more](http://terranova.blogs.com/terra_nova/2005/05/reputation_capi.html#more) (last visited December 12, 2007).
- <sup>116</sup> Ceejbot, *supra* note 113.
- <sup>117</sup> *Id.*
- <sup>118</sup> Eldre'thalas Guild Transfer, *supra* note 111.
- <sup>119</sup> *Id.*
- <sup>120</sup> Emma Boyes, *WoW Guild Banned*, GAMESPOT, available at <http://www.gamespot.com/pc/rpg/worldofwarcraft/news.html?sid=6160983> (last visited December 12, 2007).
- <sup>121</sup> *Id.*
- <sup>122</sup> *Id.*
- <sup>123</sup> *Id.*
- <sup>124</sup> See generally Glider, <http://mmoglider.com/> (Typical "glider" program.) (last visited December 12, 2007).
- <sup>125</sup> See World of Warcraft Bots - Welcome To The Darkside, <http://ezinearticles.com/?World-of-Warcraft-Bots---Welcome-To-The-Darkside&id=608074> ("According to World of Warcraft Gamers, there is nothing they dislike more than an online gamer who resorts to using cheats and cheat codes. Their intent is to find a way to beat the game or beat a specific level, without putting in the time or hard work that everyone else has.") (last visited December 12, 2007).
- <sup>126</sup> See World of Warcraft: Paid Character Transfers, <http://us.blizzard.com/support/article.xml?articleId=20558> (last visited December 12, 2007)
- <sup>127</sup> See AFKGamer, <http://afkgamer.com/archives/2007/07/10/the-school-of-hard-knocks-in-session/> ("Briefly, this rogue kept applying to join our guild and we kept denying him, so he formed his own guild out of the server's unguildable players — those prone to drama or ninja'ing — then he did a late-night server transfer with the guild bank.") (last visited September 23, 2007).
- <sup>128</sup> See World of Warcraft: Paid Character Transfers, *supra* note 126.
- <sup>129</sup> *Id.*
- <sup>130</sup> See generally Bruce Woodcock, MMOG Active Subscriptions, [http://mmogchart.com/Chart1\\_files/Subscriptions\\_8846\\_image001.gif](http://mmogchart.com/Chart1_files/Subscriptions_8846_image001.gif) (last visited September 20, 2007).
- <sup>131</sup> *Id.*
- <sup>132</sup> One to watch may be Areae's Metaplace, which seeks to give users the tools to create their own Virtual Worlds, breaking down the traditional Developer - Player relationship into a third level of abstraction. Metaplace, <http://www.metaplace.com/> (last visited December 12, 2007).
- <sup>133</sup> See Bruce Woodcock, Total MMOG Subscribers, [http://www.mmogchart.com/Chart4\\_files/Subscriptions\\_21524\\_image001.gif](http://www.mmogchart.com/Chart4_files/Subscriptions_21524_image001.gif) (last visited September 20, 2007).
- <sup>134</sup> See Bruce Woodcock, Total MMOG Subscribers, 70000 - 700000, [http://mmogchart.com/Chart2\\_files/Subscriptions\\_11327\\_image001.gif](http://mmogchart.com/Chart2_files/Subscriptions_11327_image001.gif) (last visited September 20, 2007).

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<sup>135</sup> See Bruce Woodcock, Total MMOG Active Subscriptions - Relative Contribution, [http://mmogchart.com/Chart6\\_files/Subscriptions\\_22726\\_image001.gif](http://mmogchart.com/Chart6_files/Subscriptions_22726_image001.gif) (last visited September 20, 2007).

<sup>136</sup> See World of Warcraft: Item Basics, <http://worldofwarcraft.com/info/items/basics.html> (last visited September 23, 2007).

<sup>137</sup> *Id.*

<sup>138</sup> Lastowka & Hunter, *supra* note 3, at 38.

<sup>139</sup> Lord of the Rings Online: Titles, <http://www.lotro.com/article/286> (last visited December 12, 2007). "Slaughterer of Numerous Sheep" is not a real example -- although perhaps it will be, someday.

<sup>140</sup> *Id.*

<sup>141</sup> See Jullian Dibbell, *OWNED! Intellectual Property in the Age of eBayers, Gold Farmers, and Other Enemies of the Virtual State*, available at <http://www.juliandibbell.com/texts/owned.html> ("Caught between the demands of a not entirely captive customer base and the inefficiencies of trying to single-handedly manipulate a large, complex society, they were doing what governments of large, complex societies have a strong tendency to do: outsource decisionmaking to the people.") (last visited December 12, 2007).

<sup>142</sup> *Id.*

<sup>143</sup> See *generally* EVE Online: Player Guide, <http://www.eve-online.com/guide/en/> (last visited December 12, 2007).

<sup>144</sup> *Id.*

<sup>145</sup> See EVE Online: Alliances, <http://www.eve-online.com/alliances/> (last visited December 12, 2007); See also Mark Wallace, *EVE Online Mega-Corporation Goes Public*, 3POINTD.COM, available at <http://www.3pointd.com/20061214/eve-online-mega-corporation-goes-public/#more-962> (last visited December 12, 2007).

<sup>146</sup> See *generally* EVE Online: Frequently Asked Questions, [http://www.eve-online.com/faq/faq\\_01.asp](http://www.eve-online.com/faq/faq_01.asp) (last visited December 12, 2007).

<sup>147</sup> See Glushko, *supra* note 17, at 522; Peter Pollack, *Online "Banker" Runs Off With Cash, Avatars Cry Foul*, ARS TECHNICA, August 28, 2006, available at <http://arstechnica.com/news.ars/post/20060828-7605.html> (last visited December 12, 2007).

<sup>148</sup> Pollack, *supra* note 147.

<sup>149</sup> Glushko, *supra* note 17, at 523.

<sup>150</sup> Pollack, *supra* note 147.

<sup>151</sup> *Id.*; See also Don't Bank On It!, *TenTonHammer*, <http://eve.tentonhammer.com/index.php?module=ContentExpress&func=print&ceid=11> (last visited December 12, 2007).

<sup>152</sup> Players are not without recourse. In Star Wars Galaxies, players could place "bounties" on each other for trained bounty hunters to collect on. More informally, players often propagate "kill on sight" lists that turn disliked players into marked men. See Symposia, *supra* note 78.

<sup>153</sup> See Federal Trade Commission v. Affordable Media, LLC, 179 F.3d 1228 (9th Cir. 1999) (Pyramid scheme involving selling late-night as-seen-on-TV products. Investors only got back six cents on the dollar.)

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<sup>154</sup> See Seth Schiesel, *In a Virtual Universe, the Politics Turn Real*, N.Y. TIMES, June 7, 2007, available at [http://www.nytimes.com/2007/06/07/arts/07eve.html?\\_r=2&em&ex=1181361600&en=f44648ba2af4b2a1&ei=5087%0A&oref=slogin&oref=slogin](http://www.nytimes.com/2007/06/07/arts/07eve.html?_r=2&em&ex=1181361600&en=f44648ba2af4b2a1&ei=5087%0A&oref=slogin&oref=slogin) (last visited December 12, 2007).

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> See generally What is Second Life?, <http://secondlife.com/whatis/> (last visited December 12, 2007).

<sup>159</sup> Ondrejka, *supra* note 67.

<sup>160</sup> See Robert D. Hof, *My Virtual Life*, BUSINESSWEEK, May 1 2006, available at [http://www.businessweek.com/magazine/content/06\\_18/b3982001.htm](http://www.businessweek.com/magazine/content/06_18/b3982001.htm) (last visited December 12, 2007).

<sup>161</sup> Perhaps unsurprisingly, the sex industry has led the way in virtual property innovation. See *Cyberporn Sells in Virtual World*, WIRED, available at <http://www.wired.com/culture/lifestyle/news/2005/12/69878> (last visited December 12, 2007).

<sup>162</sup> See Robert D. Hof, *My Virtual Life*, BUSINESSWEEK, May 1 2006, available at [http://www.businessweek.com/magazine/content/06\\_18/b3982001.htm](http://www.businessweek.com/magazine/content/06_18/b3982001.htm) ("IGE Ltd., an independent online gaming services firm, estimates that players spent about \$1 billion in real money last year on virtual goods and services at all these games combined, and predicts that could rise to \$1.5 billion this year. One brave (or crazy) player in the online game Project Entropia last fall paid \$100,000 in real money for a virtual space station, from which he hopes to earn money charging other players rent and taxes. In January inside Second Life alone, people spent nearly \$5 million in some 4.2 million transactions buying or selling clothes, buildings, and the like.") (last visited December 12, 2007).

<sup>163</sup> Shira Boss, *Even in a Virtual World, 'Stuff' Matters*, N.Y. TIMES, Sep. 9, 2007, available at <http://www.nytimes.com/2007/09/09/business/yourmoney/09second.html?pagewanted=2&ei=5070&en=d52d87315ae315b6&ex=1190174400>; See also Robert D. Hof, *My Virtual Life*, BUSINESSWEEK ONLINE, May 1, 2006, [http://www.businessweek.com/magazine/content/06\\_18/b3982001.htm](http://www.businessweek.com/magazine/content/06_18/b3982001.htm) (last visited December 12, 2007).

<sup>164</sup> See generally Glushko, *supra* note 17, at 525-526.

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> See Virtually Blind, *Bragg v. Linden Lab*, <http://virtuallyblind.com/category/archived-lawsuits/bragg-v-linden-lab/> (last visited December 12, 2007).

<sup>168</sup> See Glushko, *supra* note 17, at 525-526; See also Kathleen Craig, *Second Life Land Deal Goes Sour*, WIRED NEWS, May 18, 2006, <http://www.wired.com/news/culture/0,70909-0.html> (last visited December 12, 2007).

<sup>169</sup> Complaint, *Bragg v. Linden Res., Inc.*, No. 06-08711 (Pa. Ct. Com. Pl. 2006)

<sup>170</sup> *Id.* at 7-8.

<sup>171</sup> See Linden Labs: Press Release, *Second Life Residents to Own Digital Creations*, Nov. 14, 2003, available at [http://lindenlab.com/press/releases/03\\_1\\_14](http://lindenlab.com/press/releases/03_1_14) (last visited December 12, 2007).

<sup>172</sup> See generally DANIEL TERDIMAN, *ENTREPRENEUR'S GUIDE TO SECOND LIFE: MAKING MONEY IN THE METAVERSE*, (Sybex 2007)

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<sup>173</sup> Second Life: Terms of Service, <http://secondlife.com/corporate/tos.php> (last visited December 12, 2007).

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> See generally Balkin, *supra* note 105, at 74. (“If a platform owner allows the players to hold copyrights in their own designs, the game owner is inviting the law into the game space and the problems of enforcing intellectual property rights are greatly multiplied.”); See also Court Order Finding Arbitration Provision Unconsonable & Rosedale stays in suit - Bragg v. Linden Lawsuit, available at [http://secondlife.typepad.com/second\\_life\\_lawsuit\\_bragg/court\\_order\\_finding\\_arbitration\\_provision\\_unconsonable\\_rosedale\\_stays\\_in\\_suit\\_bragg\\_v\\_linden\\_l/index.html](http://secondlife.typepad.com/second_life_lawsuit_bragg/court_order_finding_arbitration_provision_unconsonable_rosedale_stays_in_suit_bragg_v_linden_l/index.html) (last visited December 12, 2007)

<sup>179</sup> See Memorandum, Bragg v. Linden Res., Inc., No. 06-4925 (Pa. D. & C. 2006) available at <http://www.paed.uscourts.gov/documents/opinions/07D0658P.pdf> (last visited December 12, 2007).

<sup>180</sup> *Id.* at 4.

<sup>181</sup> *Id.* at 45.

<sup>182</sup> *Id.* at 25.

<sup>183</sup> *Id.* at 45.

<sup>184</sup> See Jury Deliberation Transcript, [http://cyber.law.harvard.edu/cyberone/wiki/Jury\\_deliberation\\_Transcript](http://cyber.law.harvard.edu/cyberone/wiki/Jury_deliberation_Transcript) (last visited December 12, 2007).

<sup>185</sup> See Virtually Blind: Bragg and Linden Lab Settlement, <http://virtuallyblind.com/2007/10/04/bragg-linden-lab-settlement/> (last visited December 12, 2007)

<sup>186</sup> See James Grimmelmann, *Virtual Worlds as Comparative Law*, 49 N.Y.L. SCH. L. REV. 147 at 162 (2004) (“It is at least plausible to claim that these games are worlds of status, and not of contract.” quoting Henry Maine, *Ancient Law* (1861).)

<sup>187</sup> Cf. Nick Yee, *Motivations of Play in MMORPGs*, <http://www.nickyee.com/daedalus/motivations.pdf> (last visited December 12, 2007).

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*; See also Richard Bartle, *Hearts, Clubs, Diamonds, Spades: Players Who Suit MUDS*, <http://www.mud.co.uk/richard/hclds.htm> (last visited December 12, 2007); Nicholas Ducheneaut, et al., *Alone Together? Exploring the Social Dynamics of Massively Multiplayer Online Games*, Conference on Human Factors in Computing Systems, at 1 (2006), available at <http://www.parc.com/research/publications/files/5599.pdf>. (last visited December 12, 2007).

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> See Status, Masturbation, Wasted Time, and WoW, [http://www.halfsigma.com/2006/10/status\\_masturba.html](http://www.halfsigma.com/2006/10/status_masturba.html) (last visited December 12, 2007).

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<sup>195</sup> See Edward Castronova, *On Virtual Economies*, GAME STUDIES VO. 3, NO. 2 (Dec. 2003), available at <http://www.gamestudies.org/0302/castronova> ("In a normal market the demanders are willing to pay money to have constraints imposed, but in a games market they will pay money to have constraints imposed.") (last visited December 12, 2007).

<sup>196</sup> See Edward Castronova, *A Cost-Benefit Analysis of Real-Money Trade in the Products of Synthetic Economics*, 8 INFO 51, at 64 (2006). ("Anecdotal evidence suggests that while about one-third of the player base pursues RMT as part of their game play, just as many players actively desire that RMT be curtailed or completely eliminated."); See also Richard Bartle, *Pitfalls of Virtual Property*, <http://www.themis-group.com/uploads/Pitfalls%20of%20Virtual%20Property.pdf> (last visited December 12, 2007).

<sup>197</sup> See Interview with Raph Koster, <http://f13.net/index.php?itemid=595#more> ("I think there is that sense of "Oh, here's an arena I was good in, I was proving myself, and here comes the rich brat who can buy their way to the top,") But see Ondrejka, *supra* note 66, at 97.

<sup>198</sup> Bartle, *supra* note 12, at 39

<sup>199</sup> *Id.*; see also Bartle, *supra* note 196, at 12.

<sup>200</sup> See Bartle, *supra* note 12, at 27.

<sup>201</sup> *Id.*

<sup>202</sup> See Daniel Etherington, *Video games Revel in War*, BBC NEWS, Oct. 11, 2003, available at <http://news.bbc.co.uk/2/hi/technology/3181934.stm> (last visited December 12, 2007).

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> Greg Lastowka, *Maslow Short-Circuited*, [http://terranova.blogs.com/terra\\_nova/2003/10/maslow\\_shortcir.html](http://terranova.blogs.com/terra_nova/2003/10/maslow_shortcir.html) (last visited December 12, 2007).

<sup>206</sup> In fact, there are several virtual words that cater mainly to pre-teens and teenagers. See Michael Agger, *An "Adult" Joins Club Penguin*, SLATE, available at <http://www.slate.com/id/2173910/pagenum/2>. (last visited December 12, 2007).

<sup>207</sup> Cf. Jen Dornan, *MMO as Ritual?*, [http://terranova.blogs.com/terra\\_nova/2007/02/mmo\\_as\\_ritual.html](http://terranova.blogs.com/terra_nova/2007/02/mmo_as_ritual.html) (last visited December 12, 2007).

<sup>208</sup> See *World of Warcraft: Major Cities*, <http://www.worldofwarcraft.com/info/basics/cities.html> (last visited December 12, 2007).

<sup>209</sup> See *The Server Merge Q and A*, <http://vgplayers.station.sony.com/newsArchive.vm?id=141&month=062007&section=News> (last visited December 12, 2007).

<sup>210</sup> *Server Merge*, <http://vgplayers.station.sony.com/newsArchive.vm?id=170&month=072007&section=News> (last visited December 12, 2007).

<sup>211</sup> See *Housing Issues in the Virtual Gaming World*, <http://mmorpg.qj.net/Housing-Issues-In-The-Virtual-Gaming-World/pg/49/aid/53469> ("I remember being on a server when housing was introduced, and the day before I had been hunting seal and walrus on an icy island. The day after the island suddenly was a big city, because it had so much flat ground, and the seal and walrus were running around in the streets. And when I some time later wanted to build a house, I searched for two weeks all over the world and couldn't find a flat spot left to place my house deed.") (last visited December 12, 2007). Real Estate also forces Developers to make a tricky balance between the basically private nature of real estate, and players' desire to share and collaborate with others. See Grimmelmann, *supra* note

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186 at 152 (“For example, Dark Age of Camelot defines ten separate estates: Visitor, Guest, Resident, Tenant, Acquittance, Associate, Friend, Ally, and Partner”) *See also* Kolbert, *supra* note 6 (“The game's achievers, for their part, have managed to produce an overheated, almost Hamptons-esque real-estate market. Buildable lots are scarce in some areas unobtainable and such is the demand for maisonettes that it has spilled out of Britannia. On any given day, eBay has a couple of thousand auctions running of U.O. homes and other paraphernalia. Recently, I saw on the auction site an enormous castle for sale in Trammel that had received twenty-two bids and was going for eight hundred dollars.”)

<sup>212</sup> Lastowka & Hunter, *supra* note 3, at 30-31.

<sup>213</sup> *Id.*

<sup>214</sup> *Id.*

<sup>215</sup> Grimmelmann, *supra* note 186, at 171.

<sup>216</sup> *See* David Johnson, *How Online Games may Change the Law and Legally Significant Institutions*, 49 N.Y.L. SCH. L. REV. 51, 57 (2004) (Discussing emergent management of jointly owned assets through decentralized decisionmaking.)

<sup>217</sup> *See* D. Williams, N. Ducheneaut, X. Li, Y. Zhang., Nick Yee, E. Nickell, *From Tree House to Barracks: The Social Life of Guilds in World of Warcraft*. GAMES AND CULTURE, 1, 338-361 (2006)

<sup>218</sup> *Id.* (Arguing that guilds may be both natural social organizations, and hardwired institutions required to complete the game's challenges.)

<sup>219</sup> Tobold's MMORPG Blog, *Buying Nothing for \$10,000*, <http://tobolds.blogspot.com/2007/09/buying-nothing-for-10000.html> (“Usually in an mmorpg you sort of develop a bond between yourself and the character you play / have created . Thats why i totally dont understand buying someone else's character.”) (last visited December 12, 2007).

<sup>220</sup> *Id.*

<sup>221</sup> *See* Mikael Jakobsson & T.L. Taylor, *The Sopranos Meets Everquest: Social Networking in Massively Multiplayer Online Games*, FINEART FORUM 17:8 (2003)

<sup>222</sup> *See generally* Wowwiki: Guild Banks, [http://www.wowwiki.com/Guild\\_bank](http://www.wowwiki.com/Guild_bank) (last visited December 12, 2007).

<sup>223</sup> *Id.*

<sup>224</sup> *See* Bartle, *supra* note 196, at 12. *See also* *Playing Warcraft Around the World*, <http://afkgamer.com/archives/2007/01/25/playing-warcraft-around-the-world/> (last visited December 12, 2007).

<sup>225</sup> Edward Castronova, *The Right to Play*, 49 NEW YORK LAW SCHOOL LAW REVIEW, 185, 201 (2004); *See also* Nick Yee, *The Labor of Fun, How Video Games Blur the Boundaries of Work and Play*, 1 GAMES AND CULTURE (2006).

<sup>226</sup> *See* Bartle, *supra* note 12, at 35. *See also* Balkin, *supra*, at 79.

<sup>227</sup> Dibbell, *supra* note 141.

<sup>228</sup> *Id.*

<sup>229</sup> *See* Grimmelmann, *supra* note 186 at 165.

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*; *See also* Tom Chick, *MMOs: Building Whole Societies*, GAMESPY, available at <http://www.gamespy.com/amdmmog/week5/index2.shtml> (last visited September 12, 2007).

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<sup>232</sup> See Grimmelmann, *supra* note 186, at 164 (2004); Edward Castronova, New Bout of Inflation in Everquest, [http://terranova.blogs.com/terra\\_nova/2003/12/new\\_bout\\_of\\_inf.html](http://terranova.blogs.com/terra_nova/2003/12/new_bout_of_inf.html) (last visited September 12, 2007).

<sup>233</sup> *Id.*

<sup>234</sup> *Id.*

<sup>235</sup> See Sony: Station Exchange, <http://stationexchange.station.sony.com/> (last visited December 12, 2007).

<sup>236</sup> Daniel Terdiman, *Sony scores with Station Exchange*, CNET, Aug. 25, 2005, [http://www.news.com/Sony-scores-with-Station-Exchange/2100-1043\\_3-5842791.html](http://www.news.com/Sony-scores-with-Station-Exchange/2100-1043_3-5842791.html) (last visited December 12, 2007).

<sup>237</sup> Station Exchange: Year One, [www.gamasutra.com/features/20070207/SOE%20Station%20Exchange%20White%20Paper%201.19.doc](http://www.gamasutra.com/features/20070207/SOE%20Station%20Exchange%20White%20Paper%201.19.doc) (last visited December 12, 2007).

<sup>238</sup> See *Id.* See also Terdiman, *supra* note 236 ("We know that there's a pretty good chunk of our player base opposed to the idea of people buying their way up the ladder," Kramer said. "That's why Station Exchange is enabled only on the two new servers.")

<sup>239</sup> *Id.* "Players are making purchases to stay aligned with friends who are spending more time playing the game."

<sup>240</sup> *Id.*

<sup>241</sup> See Bartle, *supra* note 196.

<sup>242</sup> Grimmelmann, *supra* note 186, at 150

<sup>243</sup> See LAWRENCE LESSIG, CODE AND OTHER LAWS OF CYBERSPACE 6 (Basic Books 1999).

<sup>244</sup> See Grimmelmann, *supra* note 186, at 150

<sup>245</sup> See Grimmelmann, *supra* note 186, at 160.

<sup>246</sup> *Id.*

<sup>247</sup> *Id.*

<sup>248</sup> *Id.*

<sup>249</sup> *Id.*

<sup>250</sup> *Id.*

<sup>251</sup> See Symposia, *supra* note 78, at 832. ("And the way that our games are designed, in the game environment itself, characters can't steal from other characters within the context of the game. The real live person behind the keyboard has to get ahold, in some way, shape, or form, of the other player's account. So, if your character and my character are playing in any one of our games, and I can be as powerful as all heck, I still can't do anything--I can't kill you and take all of your stuff. That's not the way it works.")

<sup>252</sup> See Bartle, *supra* note 12, at 41.

<sup>253</sup> *Id.*

<sup>254</sup> See Balkin, *supra* note 70, at 67 (2004)

<sup>255</sup> See Bartle, *supra* note 196.



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<sup>256</sup> See Complaint, Eros et. al. v. Simon, *available at* [http://www.virtuallyblind.com/files/07\\_10\\_24\\_eros\\_et\\_al\\_v\\_simon\\_complaint.pdf](http://www.virtuallyblind.com/files/07_10_24_eros_et_al_v_simon_complaint.pdf). ("Six major Second Life content creators have filed a lawsuit (.pdf) in the Eastern District of New York claiming copyright and trademark infringement against Second Life user Thomas Simon, who allegedly exploited a flaw in the Second Life software to duplicate thousands of copies of the creators' products. Simon allegedly sold these products to other Second Life users as Second Life avatar 'Rase Kenzo.'")

<sup>257</sup> The Bragg Lawsuit may be a trailblazer here.

<sup>258</sup> World of Warcraft: World of Warcraft Accounts Closed, <http://www.worldofwarcraft.com/news/wow-news-06-2006.html>. ("In keeping with Blizzard's aggressive stance against cheating in World of Warcraft, we banned over 30,000 accounts in the month of May, and with that removed well over 30 million gold from the economy across all realms.") (last visited December 12, 2007).

<sup>259</sup> See Grimmelmann, *supra* note 186, at 158 ("Most games have no way to draft any contract more complex than an immediate sale of goods for cash.")

<sup>260</sup> See Kolbert, *supra* note 6. ("Finally, last year, U.O. gave up on the notion of self-policing. Britannia these days exists in two parallel versions, or "facets". Felucca, where killing other players is O.K., and Trammel, where, except under very limited circumstances, it is not. Four-fifths of all players choose Trammel.")

<sup>261</sup> See Grimmelmann, *supra* note 186, at 163; See also Lastowka, *supra* note 205.

<sup>262</sup> However, harassment is a real problem. See Julian Dibbell, *a Rape in Cyberspace*, THE VILLAGE VOICE, Dec. 1993, *available at* <http://www.juliandibbell.com/texts/bungle.html> (last visited December 12, 2007).

<sup>263</sup> See Grimmelmann, *supra* note 186, at 160.

<sup>264</sup> *Id.*

<sup>265</sup> *Id.*

<sup>266</sup> Many have pointed to a Chinese court's recognition of virtual property as a milestone in virtual property rights. See Online Gamer Wins Lawsuit for Virtual Damage, <http://mmorpg.qj.net/tags/legend-of-mir-ii/11441> (last visited December 12, 2007). However, it is unclear what interest was served. Two players disputed a transaction; the company made a good faith determination of what happened, and moved on. Imposing damages for making the decision merely incentivizes corporations to avoid making them.

<sup>267</sup> Dibbell, *supra* note 141.

<sup>268</sup> Lastowka & Hunter, *supra* note 3, at 50.

<sup>269</sup> *But see* Kayser, *supra* note 68, at 72.

<sup>270</sup> *Id.*

<sup>271</sup> *Id.*

<sup>272</sup> *Id.*

<sup>273</sup> Robert Oakley, *Fairness in Electronic Contracting: Minimum Standards for Non-Negotiated Contracts*, Symposium, 42 Hous. L. Rev. 1041, 1073-1100 (2005).

<sup>274</sup> See Robert W. Gomulkiewicz & Mary L. Williamson, *A Brief Defense of Mass Market Software License Agreements*, 22 RUTGERS COMPUTER & TECH. L.J. 335, 343 (1996).

<sup>275</sup> World of Warcraft: Terms of Use Agreement, <http://www.worldofwarcraft.com/legal/termsofuse.html> (last visited December 12, 2007).

<sup>276</sup> Ondrejka, *supra* note 67.

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<sup>277</sup> See, e.g., IGE.com

<sup>278</sup> See Daniel Terdiman, *eBay Bans Auctions of Virtual Goods*, CNET, Jan. 29, 2007, available at [http://www.news.com/eBay-bans-auctions-of-virtual-goods/2100-1043\\_3-6154372.html?tag=item](http://www.news.com/eBay-bans-auctions-of-virtual-goods/2100-1043_3-6154372.html?tag=item) (last visited December 12, 2007).

<sup>279</sup> See generally Robert X. Cringely, *PayAcquaintance: When It Comes to Selling Virtual Property, PayPal Isn't Always Your Pal*, PBS, available at [http://www.pbs.org/cringely/pulpit/2004/pulpit\\_20040506\\_000811.html](http://www.pbs.org/cringely/pulpit/2004/pulpit_20040506_000811.html) (last visited December 12, 2007).

<sup>280</sup> See generally, LawGuru, <http://lawguru.com/cgi/bbs/message.php?i=90544755&view=q> ("There is a popular game Called World Of Warcraft. I made a trade over AIM of the accounts that it states in the EULA that it belongs to blizzard and not me thus we both broke the rules. It the EULA it states that trading is breaking the rules. I took back what i had traded and he is wanting to hit me with fraud because i broke an agreement we made. I was wondering if this is considered fraud. I think breaking the rules there is a chance you will get scammed. He took this chance and got screwed.") (last visited December 12, 2007).

<sup>281</sup> See Westbrook, *supra* note 59, at 790.

<sup>282</sup> See Symposia, *supra* note 78, at 828.

<sup>283</sup> See <http://forums.patchtimer.org/v2/viewtopic.php?id=6083> ("last bit of warning: if you use paypal, the buyer can retract the payment after you give him the info and paypal wont do anything about it since the item is an "immaterial good". i had this happen with an eq1 sale once. if you are selling for any kind of significant money, make them send you a money order") (last visited December 12, 2007).

<sup>284</sup> But see Westbrook, *supra* note 59, at 788.; see also Mimi Luse, *More Than a Game*, E.PEAK, July 19, 2004, available at <http://www.peak.sfu.ca/the-peak/2004-2/issue12/fe-online.html>. (last visited December 12, 2007).

<sup>285</sup> See Symposia, *supra* note 78, at 830. ("Just as an interesting sidebar, the community tends to be somewhat self-censuring as well. When the community discovers a newbie that doesn't know what the heck he or she is doing that has this level 65 character or 70 character now in EverQuest and doesn't know the geography or doesn't know how to get from point A to point B, it's immediate ostracism, and so it's kind of interesting how that works.")

<sup>286</sup> Caveat Emptor.

<sup>287</sup> See Virtual Currency and RMT Provisions in Virtual Worlds and MMO Games, <http://virtuallyblind.com/2007/10/31/click-to-agree-currency/> ("After all, if you're having to go to the last resort to sue a game company to play their game a certain way, by the time the court decides, it may not seem like a fun game to play anyway.") (last visited December 12, 2007).

<sup>288</sup> Everquest II: Station Exchange, *supra* note 47.

<sup>289</sup> *Id.*

<sup>290</sup> Station Exchange: Year One, *supra* note 49.

<sup>291</sup> *Id.*

<sup>292</sup> See generally Balkin, *supra* note 70 at 78 (2004) ("Platform owners, however, cannot have it both ways. They cannot simultaneously encourage the purchase and sale of virtual items and then write the EULA so that all virtual items remain the property of the platform owner.")

<sup>293</sup> Cf. Glushko, *supra* note 17 at 525.

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<sup>294</sup> See Memorandum, Bragg v. Linden Res., Inc., No. 06-4925 (Pa. D. & C. 2006) *available at* <http://www.paed.uscourts.gov/documents/opinions/07D0658P.pdf> (last visited December 12, 2007).; see also TOSes in Trouble, <http://www.raphkoster.com/2007/05/31/toses-in-trouble> (last visited December 12, 2007).

<sup>295</sup> Interview with Raph Koster, *supra* note 197.

<sup>296</sup> See Marc Bragg, Stop the Land Bots!, [http://secondlife.typepad.com/second\\_life\\_lawsuit\\_bragg/2007/10/stop-the-land-b.html](http://secondlife.typepad.com/second_life_lawsuit_bragg/2007/10/stop-the-land-b.html) (last visited December 12, 2007).

<sup>297</sup> See Shapiro, *supra* note 51.

<sup>298</sup> See Dibbell, *supra* note 141 ("Common principles of game design ("keeping it fun," "maintaining game balance") start to sound suspiciously like certain founding axioms of classic liberal political theory ("pursuit of happiness," "the greatest good for the greatest number").