

Online Role Play Games – The Legal Response

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As the Internet continues to grow, so also do the arenas of social interaction. A very surreal form of contemporary social interaction can be found amongst a novel phenomenon known as Massively Multiplayer Online Role Play Games (MMORPG's). Numerous MMORPG's boast of freedom of contract within their virtual borders. These games, though ostensibly created for juvenile purposes, have engrossed enterprising individuals and even businesses, to engage in them. Not for their prime facie entertainment value, but to pursue pecuniary interests. It is therefore, as Virtual Property (VP) crosses the virtual borders, impossible for these MMOG's to directly divorce themselves from real legal consequences. This essay will briefly consider the numerous problems caused by this international phenomenon, concentrating on debatably the biggest problem, virtual property rights. There are two main arguments in relation to this matter. One school of thought understandably argues that the game users are entitled to own the virtual property. However the game producer's dissent claiming that the virtual property is their property as terms they state as much in the End User Licence Agreement (EULA). What will be determined is which of the arguments the UK courts would follow if a legal dispute was to arise on the matter.

Though often forgotten it is important to bear in mind that MMORPG's are merely computer games, created for entertainment purposes. MMORPGS do however, move away from the conventional view of what computer games actually are. MMORPG's do share several common elements, which deviate from other computer games. What MMOG's presently offer, which is so unique and revolutionary, is a Virtual Community (VC) that consists of real people from all over the world, united in virtual entertainment. A VC is a computer-simulated environment intended for its users to inhabit and interact via virtual characters:

“Every day worldwide, one hundred million users log into an online game...US citizens make up about half of the MMORPG subscribers. One fifth are from South Korea, where 38 per cent of the population plays online games, and where, every night, more people play the MMORPG Lineage than watch TV.”¹

MMORPG's usually consists of enthralling, persistently developing story lines. The average MMORPG player spends twenty hours a week playing these games². In order to play a MMORPG an original copy of the game must be purchased on CD from a local shop, after which a subscription fee is to be paid monthly. This monthly subscription entitles the player to an online account, which they can use to play within the VC.

¹Mimi Luse, The McGill Daily, *Forget fun People are earning real dollars selling imaginary items in online games – and rewriting the law in the process*
<http://www.mcgilldaily.com/view.php?aid=2635>

² Dibbell, Juliam. “Play Money”, Available at <http://www.juliandibell.com/playmoney/index.html>, 2003

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To some the games are not just about entertainment, they form an integral part of their lives and provide both emotional and social support. It is for this reason they have been criticised for being addictive in nature.³ A player of an MMOG takes the role of a virtual character, which is an icon representing the user within the VC. On successful completion of various tasks the Virtual Character earns VP and currency, these items are intangible. The virtual character in the course of unrelenting game play develops in several ability areas, which give the character advantages in the VC. Such advantages include a popular status amongst other gamers and a stronger propensity to win fictional battles. Sole game play though possible, is discouraged when playing the games. It would appear de facto that players are encouraged to work together and interact in order to develop their characters more rapidly. The further developed a character is the more access it has to story line within the game.

People are therefore constantly trying to develop their characters and will go to extreme lengths to accumulate valuable VP. The process of character development is never ending and is accompanied with a ceaseless supply of VP. Character development and property accrual is the most motivating element of the games and for some is so captivating it has become their sole purpose of playing. Accumulated VP can be traded directly with other members of the VC in return for other VP or sold for virtual currency. Therefore contracts are made all the time within the borders of the virtual communities, in regard the trade of this VP. There exists a perfect freedom of contract within the VC borders, so there is no limit to the bargains that can be made on the MMOG's. This is a laudable concept never achieved, though often sought after, perfectly in the UK legal system or in numerous other countries. It therefore contributes to the fun of the game encouraging astute trading.

If indeed virtual characters and VP have a value within the virtual borders of the game then they will also have worth within the real world. Game users are currently selling virtual items at online auctions, or private websites for real money. In the opening two weeks of April 2004 MMORPG's moved into a whole new dimension when \$156 857 was traded on Ebay for the MMORPG "Ultima Online" alone⁴. The BBC wrote an astonishing article⁵ on this matter were the MMORPG named "Everquest"⁶ was labelled a "virtual country"⁷ and was compared to the real countries throughout the world. It was established that "Everquest" was the seventy seventh affluent country in the world, so is therefore richer than Bulgaria:

"People are putting hundreds of hours a year into these characters and you can tell how valuable that is in terms of money by looking at how much these characters sell on open markets such as auction sites like Ebay where they can fetch hundreds of US Dollars. In terms of the monetary input and the hours input the things that people are creating are very valuable, And that's how I got

³ There are several interesting articles on the matter. One of the most interesting can be found at:
http://www.nickyee.com/daedalus/gateway_addiction.html

⁴ Dibbell, Julian. *Play Money*, <http://www.juliandibbell.com/playmoney/index.html>, 2003

⁵ Ania Lichtarowicz, BBC science reporter, *Virtual kingdom richer than Bulgaria*
<http://news.bbc.co.uk/2/hi/science/nature/1899420.stm>

⁶ <http://escapetonorrath.station.sony.com/>

⁷ *Supra*, n.1

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to this figure that the production of value per capita in these economies is somewhere between Bulgaria's and Russia's."⁸

MMORPG users (MU) and MMORPG's producers (MPr), waited apprehensively for the outcome of the case of Blacksnow interactive v Mythic Entertainment.⁹ The facts of the case were astonishing and show a clear distinction between the two conflicting views of VP rights. Blacksnow, an enterprising company saw a clear business opportunity available to them in the borders of the virtual worlds. What Blacksnow did was hire a work force, or 'Virtual sweat shop'¹⁰ to ironically play the MMORPG "Ultima Online"¹¹ on a minimum rate. Blacksnow would then sell the VP and characters, which their workforce had accumulated via Ebay. Blacksnow would then keep the ample profit.

When mythic, the creators of *Ultima Online* were made aware of the venture, they removed all accounts, which Blacksnow had set up with them and had its Ebay listings banned. In response to this Blacksnow sued Mythic for unfair business practices and took mythic to court on the matter. The argument brought by Blacksnow was that the VP was their possession and they had a right to sell it. They had earned the property through playing the game and not accumulating property by unscrupulous means. Blacksnow had also paid a great deal of money for the game plus numerous online accounts. Mythic's dissenting argument was that they had no right to sell the VP as it belonged to Mythic, as stated in the EULA. The game was not created for commercial purposes it was simply made for wholesome entertainment.

Disappointingly Blacksnow did not have the funding to see the case through the courts and have a judicial decision made on the matter. The decision would have no doubt set a good framework for how matters of this type are to be controlled. So unavoidably, as cases of this nature begin to arise, the UK along with other countries will have to legislate or develop common law in order to deal with the problem of VP ownership. Though virtual communities have for a long time enjoyed freedom of trade within their virtual borders, with the patent involvement of real life economies across the world, the MMORPG's cannot prevent the intervention of real life law. The conflict of interests between the parties involved is clear "*The extensive trade shows that many players treat their VP as if it were their private property at the same time EULA explicitly state that he property belongs to the game developers.*"¹²

The argument that the rights and ownership belong to the MU is understandable when the MU is putting in hours of game play every day and is paying money to win the VP and develop their character. If they then wish to sell their hard earned virtual assets

⁸ Professor Edward Castronova, California State University at Fullerton, <http://news.bbc.co.uk/2/hi/science/nature/1899420.stm>

⁹ The case was *Blacksnow Interactive v. Mythic Entertainment, Inc.*, No. 02-cv-00112 (C.D. Cal. 2002). An interesting report can be found in Julian Dibbell, "Surfing the Web: Black Snow Interactive and the World's First Virtual Sweat Shop," *Wired*, volume 11, issue 1, at <http://www.juliandibbell.com/texts/blacksnow.html>.

¹⁰ Ibid

¹¹ <http://www.uo.com/>

¹² Kalle Grill and Anders Eriksson, *who owns my avatar? – Rights in virtual property* <http://ir.lib.sfu.ca/handle/1892/1573>

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perhaps they should be able to do so without intervention. This to the casual observer seems to cause no detriment to the MPr who still benefits from money collected over the months of game play and original game purchase.

The original game that is bought is undisputedly the property of the MU. The MU is given permission to sell the game, if they so wish. A typical MMORPG EULA¹³ provides that:

“You may permanently transfer ownership of the Game and all parts thereof, and all of your rights and obligations under the License Agreement, to another by physically transferring the CD-ROM, all original packaging, and all Manuals or other documentation associated with the Game, and by removing from all of your home or personal computers and destroying any remaining materials concerning the Game in your possession or control, provided the recipient agrees to the terms of this License Agreement.”¹⁴

So being established that the original game can legally be sold perhaps game users should also be able to sell with it the online account they made with the gaming company and any virtual characters or property they have attained. Removing property rights from a MU may seem ethically morally erroneous. If to gamers VP has the same sentiment as tangible property then it would seem inequitable to not allow them to keep this property. Especially if the MU have formed this sentimental attachment under the assumption that the property is their own. This may encourage the courts to take a sympathetic view towards the issue.

This argument is understandable, but is not uncontroversial. There are problems, which arise following this reasoning. By allowing MU the rights and ownership of VP, floodgates are opened to business and other commercial based individuals to unreservedly dominate the virtual economy. Playing the games in order to generate money alone, making the games no longer a platform of virtual entertainment but a cash cow.

With VP invested in the VC, Game producers will be under legal obligation to keep their games running ad infinitum. If for whatever reason the VC ceases to operate, whether by problems in the programming or another unforeseeable intervention. Then the game producers could seemingly be taken to court and be ordered to pay compensation to all businesses or individuals claiming a loss. With the literally millions of people who now profess to play these games, this would seem technically impossible.

A related case¹⁵ was recently heard in the Beijing Chaoyang District Peoples Court in China. The Chinese judiciary were asked to review the first VP rights dispute case.

¹³ This EULA is taken from one of the most popular MMORPG's at the moment called "World of Warcraft" on examining numerous EULA's of MMORPG's they have expressed this point the same, however is worded differently. <http://www.worldofwarcraft.com/legal/>

¹⁴ EULA, 3.ownership (B)
http://www.worldofwarcraft.com/legal/eula.html;jsessionid=ECC51AB145CD234F5A425653C11D9C9A.08_app01

¹⁵ Li Hongchen v Beijing Artic Ice Technology Development
<http://www.technewsworld.com/story.32441.html>.

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This intriguing case involved a 24-year-old man named Li Hongchen who was a dedicated player of a MMORPG called “Redmoon”¹⁶. Through Mr Hongchen’s time, effort and money, he had managed to accumulate, inter alia, virtual biochemical weapons. The virtual weapons formed an integral part of the game play and had extreme value to Mr Hongchen. Not only were the virtual items of great sentimental value to Mr Hongchen but he had also spent money to gain them. Mr Hongchen’s VP was stolen by a hacker and he wanted remedy for his loss.

The judge made an interesting decision. “Blaming security holes in the servers of online gaming company Beijing Arctic Ice Technology Development Company, the court held the company liable for the theft of the Hongchen’s hard-earned game items and status. In addition to rearming the gamer, who unsuccessfully lobbied the company and even police in the matter, it is not clear whether or not Arctic Ice also will have to pay damages claimed by LI.”¹⁷

It can be argued that the judge’s decision to replace the VP that Mr Hongchen lost was a comprehensible indication that the property was de facto owned by Mr Hongchen the MU and was not the property of the MPr. This argument would be further established if Mr Hongchen is also awarded damages. However it can be more strongly argued that there was no need to make a distinction in this case of who owned the VP. Mr Hongchen had suffered a patent loss but this does not mean that he needed to own the property to incur this loss. When a car is rented for a period of time and then breaks during that time the party which rented the car has suffered a loss and is entitled to remedy however still does not own the car. Though not addressing the issue of VP directly, this may still give a good indication of how the courts could handle a complaint of this nature.

The argument that the MU should be the rightful owners of his respective VP is not only put forth by the MU alone, but is also shared by certain MPr’s who feel that by not allowing the MU’s to own VP they are in effect pushing them away from the VC and will in the long term lose revenue for the MPr. Likewise the contrasting view that the rights belong to the MPr is commonly shared. There are certain MU and authoritarian MPr’s who take a domineering view towards the VP rights and ownership. What the producers argue is certainly the original game has been purchased and is, therefore the property of the MU, which he is legally entitled to sell. However the VP forms part of an online VC supervised and controlled by the game creators. It is therefore not given to the MU as a possession but is on loan for temporary use and can therefore be retracted at any time. Indisputably:

“One can rent a house, decorate it with the full permission of the owner, live in it for five years, fill the garden with flowers, insulate the loft, do a whole bunch of other things, without acquiring the right to sell the house.”¹⁸

¹⁶ www.redmoon.com

¹⁷ Lywan, Jay, *Gamer wins lawsuit in Chinese court over stolen Virtual Winnings*, TechNewsWorld, <http://www.technewsworld.com/story.32441.html>.

¹⁸ Bartle, Richard. “Pitfalls Of Virtual Property”, Themis Group, 2004

This argument is essentially a valid one. The courts would not give full property rights to a tenant of a rented house just because they had put effort into the house and therefore added value. However it is still not certain that VP possession can be equated with the well-grounded rules of tenancy.

MPr's have taken steps to legally retain possession of all VP, with the use of EULA. When a MMORPG is purchased and the purchaser wishes to play the game online within the VC, they must agree to the terms and conditions displayed on their screen. In order to proceed to the game play they must click the "I Accept" button. A typical EULA will give a clear warning at the beginning of the game stating something similar to "*You should carefully read the following end user license agreement before installing this software program. By installing, copying or otherwise using the software program, you agree to be bound by the terms of this agreement.*"¹⁹ It seems that EULA's are to be enforced by the courts:

"The action of clicking the icon...can be construed as demonstrating the intent to enter the contact with the retailer. In itself, this has the effect of satisfying the function of a signature."²⁰

The Law Commission also take an interesting view comparing the electronic signature to one done on a manuscript using a cross.²¹ So seemingly clicking the "I Accept" button is the same as signing a contract and therefore will follow the same rules this would mean that it does not matter if the contract terms have been read and understood, the game users are still legally bound to them.²²

The terms the Game producers put into their EULA to protect virtual property rights will state "All title, ownership rights and intellectual property rights in and to the Game and all copies thereof (including, but not limited to, any titles, computer code, themes, objects, characters, character names, stories, dialog, catch phrases, locations, concepts, artwork, character inventories, structural or landscape designs, animations, sounds, musical compositions, audio-visual effects, storylines, character likenesses, methods of operation, moral rights, any related documentation, and "applets" incorporated into the Game) are owned or expressly licensed by Licensor."²³

So following this line of reasoning the courts would find that the terms, the MPr's have incorporated into the EULA, are valid and therefore the VP belongs indisputably to the MPr's. The MU's accepted these terms with an electronic signature. Though legally coherent this line of reasoning is not unproblematic. In contrast, it can be argued that the courts will not be prepared to enforce the EULA in all their terms and situations. The courts do seem to recognise these licences as they do generally reflect valid trade practices. However if the need arises, courts still have the power to interpret them in favour of the MU.

¹⁹ This EULA is taken from a very popular MMOG at the moment called *World of Warcraft*. The full EULA and other legal documentation in relation to this MMOG may be found at: <http://www.worldofwarcraft.com/legal/>

²⁰ Stephen Mason, *Electronic Signature in Law* p.81 s.3.14

²¹ Law commission 'electronic commerce: Formal Requirements in commercial transactions advice from the law commission', December 2001, para 3.37; see also paras 3.36 and 3.38.

²² Paul Todd, *E-Commerce Law*. P.185

²³ *Supra* n.19

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An interesting dilemma also arises in regard to the EULA. If a prospective MU purchases an MMORPG then takes it home, opens the product and attempts to install it. The MMORPG then loads and the prospective MU is presented with the EULA on the screen, which demands an acceptance to the terms before the game can be played. The prospective game user subsequently realises that he will not be entitled to own the virtual property within the game. On realising this, the prospective MU loses interest in playing the game and due to an increase in recent times of game piracy is not allowed to return it once the package is opened. Therefore the prospective MU has incurred a loss as the original game, which he has purchased, is of no use to him.

The injustice of the situation is that the EULA terms are not made clear to the prospective MU until after the games have been purchased. Therefore the prospective MU has no way of knowing that the terms of the MMORPG without a great exertion. It is established in the common law and shown in several cases including *Olley v Marlborough Court Hotel*²⁴ and *Chapleton v Barry*²⁵ that terms must be brought to the attention of the contracting party prior to the time the contract is being made. Therefore the EULA should not be produced as the game is being installed but should be clearly identified to the purchaser at the time of purchasing. So arguably the courts will not enforce the terms of EULA as they have not satisfied this condition.

In addition to this, the process of clicking the “I accept” button may be seen similar to a signature²⁶ or even a cross²⁷, however there are still several important factors, which distinguish them. A written signature is “your name written by yourself, always in the same way, usually to show that something has been written or agreed by you”²⁸. This definition of a signature is fundamentally different from what is presented by an EULA. The point that the signature “is always in the same way” is a security measure, which, though not perfect, can help to ensure that the person signing is who they claim to be. By having a button, which just says, “I accept” there is a clear opportunity for people to misrepresent who they are. It also provides an easy way for juveniles to accept, which are incapable of understanding the EULA.

Another problem which arises with the use of “I accept” buttons is that many people have spent a lot of time shopping online and using software all of which require the “I accept” button to be clicked. It has therefore become such a common thing to some, to just skip past the “I accept” button without paying any regard for the terms which are contained on the EULA.

Perhaps in this case it would be better to not compare the “I accept” button with a signature but to compare it with an everyday transaction, for example buying goods from a store. When goods are purchased from a store it is not expected that a signature be placed on every transaction. If this reasoning is accurate the clicking of the “I accept” button will not follow the harsh rule of *L'Estrange v Graucob*²⁹, which on signing binds the parties by the contract terms regardless of if they are read or not.

²⁴ *Olley v Marlborough Court Hotel* [1949] 1 KB 532

²⁵ *Chapleton v Barry* UDC [1940] 1 KB 532

²⁶ *Supra* n.20

²⁷ *Supra* n.21

²⁸ Cambridge online dictionary definition

²⁹ *L'Estrange v Graucob* [1934] 2 KB 394

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If VP belongs to the MPr, this would mean that there are currently thousands of illegal transaction taking place everyday across the world. People are selling VP, which is not theirs to sell. As demonstrated in the Blacksnow case³⁰ there are some people who are prevented from trade, however there are still a large number who aren't.

Not all MMORPG have a EULA that explicitly states that the virtual property belongs to the game producer. Recently a MMORPG named "Project Entropia" has been released which encourages the trade of VP with Real money trade this is clearly stated on the website "The client software is free to download over the Internet and there are no subscription fees associated whatsoever. The real cash economy means that the internal Project Entropia economy is linked to the real world economy, by using a currency called the Project Entropia Dollar (PED), which has a fixed exchange rate linked to the US Dollar (10 PED equals 1 USD). As a participant, you use PED to acquire virtual land and equipment in Project Entropia, thereby investing in your *avatar's* (Participant representation in the virtual universe) growth and abilities. A unique aspect of Project Entropia is that a player may elect to transfer PED back into real life currency, thereby enabling them to earn real money while participating in the online virtual universe of Project Entropia."³¹

This astonishing point of the game is arguably the key to this problem of Virtual property rights. This game has clearly notified the user that virtual property obtained is the possession of the user. It is not an onerous term hidden in EULA but is clear. Once this has been read the prospective MU can then download the game. So he is aware of whom the VP belongs before the contract is formed. Therefore if a case is to come to court in regards to Project Entropia on the point of VP rights it is clear that the judges will know to whom the property belongs.

In regards to all other MMORPG,s as they currently stand the UK courts will not be sympathetic to them and give them complete ownership of the VP. The EULA's make it clear to whom the property belongs however by the MPr's failure to notify the MU of the terms, before the products bought. The courts will not enforce the term.

The MPr's can prevent this from happening by making the point clear before the game is purchased clear immediately and not after the game has been purchased. This would call for several points of reform in the current system. If made clear before the game is purchased this. Then prospective MU's will have an opportunity to decide whether or not the game satisfies their requirements. It will then be a lot harder for them to claim that they were not made aware of the term.

A business or enterprising individual who has pecuniary interests in the game can then use the games to generate money. As it will be clearly distinguishable which games allow this and which don't. This has been achieved in the game "Project Entropia" They can take the opportunity to play the games for the sole purpose of generating money without having their account removed.

The MU which has interests in owning his own VP due to sentiment will also be satisfied by this. They will have the opportunity to keep any virtual property

³⁰ Supra, n.9

³¹ <http://www.project-entropia.com/about/Index.ajp>

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accumulated. Likewise the MU who believes that the game should enjoy an independent environment free from real life economies will be satisfied.

There are still numerous interesting problems brought about by MMORPGs only the surface has been scratched. These may include several problems involved with the uncensored speech that goes on within the game borders as the game is played internationally, each country having different laws in relation to freedom of speech. Also taxation problems associated with transfer of VP. Certainly as the industry continues to grow the virtual borders separating MMORPG's from the real world continues to be crossed. Laws will inevitably have to be created to control the VP trade.