VIRTUAL WORLDS, REAL LAW

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INTRODUCTION

• UNLIKE PRETTY WELL EVERYONE ELSE HERE, I CAN HONESTLY SAY IANAL
  – I'M A COMPUTER GAMES DESIGNER

• MY SPECIALIST FIELD IS VIRTUAL WORLDS
  – DON'T WORRY, I SHALL EXPLAIN WHAT THESE ARE

• RIGHT NOW, VIRTUAL WORLDS ARE AT THE CUTTING EDGE OF INTERNET LAW

• THIS IS BECAUSE THERE IS NO PRECEDENT WHATSOEVER FOR THEM
  – OR THERE IS, BUT IT DENIES ITS OWN VALIDITY...!

• YOUR CHANCE TO AFFECT LAW-MAKING FOREVER!
**HISTORY**

- **VIRTUAL WORLDS BEGAN WITH MUD1 IN 1978**

  Narrow road between lands.
  
  You are stood on a narrow road between The Land and whence you came. To the north and south are the small foothills of a pair of majestic mountains, with a large wall running round. To the west the road continues, where in the distance you can see a thatched cottage opposite an ancient cemetery. The way out is to the east, where a shroud of mist covers the secret pass by which you entered The Land. It is raining.

  Narrow road.
  
  You are on a narrow east-west road with a forest to the north and gorse scrub to the south. It is raining. A splendid necklace lies on the ground.

  Text-based, up to **36 PLAYERS SIMULTANEOUSLY**

  Created **RIGHT HERE AT ESSEX UNIVERSITY**
  
  – Roy Trubshaw and Richard Bartle (that’s me)

**ASCII GRAPHICS**

- **GAMES SOON APPEARED WITH PRIMITIVE GRAPHICS**

  Swing hits with moderate damage
  Skeleton is slain
  Orc is blocked by your armour
  Troll: Kia ardata luuppatar ne

  >throw bottle at troll
  R mace Hits Hits On Stamina Exper. M. Pnts.
  L bottle 35 5 10 6523 9

  **ISLAND OF KESMAI, 1981**
**2D Graphics**

- 2D graphical games showed up in the early 1990s
  - *Kingdom of Drakkar, 1992*
  - But in 1994 (immediately pre-WWW), **10% of all internet traffic belonged to text MUDS**

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**Ultima Online**

- Things changed with *Ultima Online, 1997*
STATS

- People pay a monthly fee to play Ultima Online
  - $12.99 a month at the moment
- It garnered 100,000 subscribers within a year
- Now, 8 years later, it has something like 170,000 subscribers
  - After peaking at 250,000 in 2003
- It still takes over $2,000,000 a month
  - And it’s been running for nearly 100 months!
- UO made regular computer gamers notice virtual worlds
  - And regular computer game developers...

EVERQUEST

- Ultima Online ruled until Everquest, Spring 1999
**Stats**

- **Everquest** has around **420,000 subscribers**
  - That's more people than **Iceland**!
- Over **$5,000,000** a month in subscriptions
- Supports **action figures and comics**

**New releases are challenging its crown**
- Wow 350k, SWG 275k, EQ2 310k, DAOC 250k, ...

**But elsewhere...**

- **EQ** is just a pipsqueak compared to **Lineage**
- **Lineage** (1997) has over **2 million** players
**STATS**

- **LINEAGE AND LINEAGE 2 HAVE A COMBINED POPULATION GREATER THAN THAT OF EIRE**
  - 2.1 million each
- **50% OF THE POPULATION OF SOUTH KOREA HAVE TRIED LINEAGE AT LEAST ONCE**
  - Population of S. Korea is ~48 million
- **OTHER >1 MILLION FAR EASTERN VIRTUAL WORLDS:**
  - Legend of Mir
  - Final Fantasy XI
  - MU Online
  - Ragnarok Online
  - Kingdom of the Winds

**ARCHITECTURE**

- **ONE FINAL THING I NEED TO EXPLAIN IS HOW THESE “GAMES” ARE IMPLEMENTED**
- **THE GAME WORLD IS RUN ON COMPUTERS OWNED AND OPERATED BY THE DEVELOPER**
  - The developer runs many such “servers”
  - Large games have 40-50, each made up of 4-10 computers, often partitioned **GEOGRAPHICALLY**
- **THE SERVER TALKS TO THE CLIENT SOFTWARE THAT RUNS ON EACH PLAYER’S PC**
  - Accepts the player’s **COMMANDS**
  - Draws what the server **TELLS IT TO DRAW**
OK, SO THE LAW...

- Now that I’ve given a brief overview of what virtual worlds are, and why they’re becoming noticeable, am I at last going to get onto some law stuff?
- Yes!
  - Jurisdiction
  - Property
  - Commodification
  - Intellectual property
  - Player rights
- Well, almost yes...

ONE LAST THING...

- This should be obvious, but just in case it isn’t...
- Virtual worlds are not the real world
- Things illegal in the real world may be ok in the virtual world
- It’s illegal for people to murder people
  - but it may be fine for a character to murder a character
- Any real-world illegal thing you can suggest, I can counter with a reason why it might be valid in a virtual world
I know what you’re thinking…

- If someone is in America and they blaspheme at someone in England on a server in Canada, which national law applies?

This is relatively old hat, yes

- As is the fact that the server could be distributed across several computers in several countries, such that you don’t even know where the code is being executed.

There’s more to it, though!

- In particular, there’s an argument that RL laws have no jurisdiction at all!

Let’s play a game…

- I need two volunteers
- 1) Take it in turn to say words
- 2) Take it in turn to say words on the same subject (e.g. UK city names)
- 3) Take it in turn to say words on the same subject (UK city names), where:
  - You can’t repeat words
  - Each word must start with the same letter that ended the previous word
  - Your opponent wins if you can’t think of a name
  - Or if you say a name ending in M, R or Y
Play

- What this shows is a paradox about games
- You could have played the 3rd game under the 1st or 2nd set of rules, but you didn’t
- Only when additional rules were introduced did your imagination let rip
  - The extra rules made it more fun
- Too many rules would make it unfun, though
- When they play games, players agree to restrict their behaviour in order to gain freedoms they didn’t have when not restricted!
- Does this ring any bells?

Rules

- Games, like legal systems, operate using rules
- While everyone obeys the rules, the game works
  - Technical term is “magic circle”
- When you break the rules, that’s cheating
- But who has the authority to make the rules?
  - Real life: “We, the people”
  - Games: “We, the players”
- Games players obey rules for the same reason citizens do – because they set the rules
  - And they don’t have an army to enforce them
JURISDICTION?

- RW: WE DON'T LIKE WHAT YOU'RE DOING, STOP IT
- VW: WELL WE DO LIKE IT, SO WHY SHOULD WE?
- RW: YOU'RE BREAKING THE LAW
- VW: WHY DO WE HAVE TO FOLLOW YOUR LAWS?
- RW: BECAUSE THIS IS A DEMOCRACY
- VW: SO'S THIS, AND WITH 100% SUPPORT
- RW: IF YOU DON'T OBEY THE LAW, WE'LL LOCK YOU UP
- VW: THAT'S TYRANNY, NOT DEMOCRACY!
- RW: GUARDS! OFF WITH THEIR HEADS!
- [MORE ON THIS LATER]

PROPERTY

- NOW FOR SOMETHING RATHER MORE CONCRETE
- CHARACTERS IN VIRTUAL WORLDS OWN THINGS WITHIN THE CONTEXT OF THE VIRTUAL WORLD
  - SWORDS, HOUSES, MAGIC WANDS, ...
- DO THE PLAYERS OWN THESE THINGS
- DO THE PLAYERS OWN THE CHARACTERS?
- AT THE TIME OF WRITING, THERE'S A CHARACTER FROM STAR WARS: GALAXIES FOR SALE ON EBAY FOR $2,000
  - THIS IS ACTUALLY ABOUT $500 MORE THAN THE GOING RATE
• Also on eBay:
  - Gemstone IV level 96 ranger $911
  - World of Warcraft level 60 rogue $899
  - Dark Age of Camelot level 50 cleric $800
  - Anarchy Online 220 fixer $540
  - And hundreds more
• In-game currency also for sale
  - Eve Online 3 billion ISK $800
  - Shadowbane 100 million gold $700
• Those are current bids – they’ll actually sell for more

• Think about this a moment: people are paying real money to buy imaginary money
• Also imaginary property:
  - Mu Online the 2 best excellent rings $450
  - Anarchy Online robust backpack $172.50
  - Ultima Online hat of the magi $164.99
• And imaginary real estate:
  - Ultima Online vendor property next to bank $450
• In December an island for sale in Project Entropia sold for $26,500
  - That’s $26,500
• **EBAY IS NOT THE MAIN MARKETPLACE**

• **IGE HAS 100 PEOPLE IN CUSTOMER SERVICE ALONE**

• **ITEMBAY MAKES MORE MONEY IN COMMISSIONS THAN ALL THE VIRTUAL WORLDS IT SERVICES DO IN SUBSCRIPTIONS – COMBINED!**

• **IF YOU ADD UP ALL THESE SALES OF VIRTUAL GOODS, THEY MAKE FOR A COMBINED GDP THAN THAT OF NAMIBIA**
  – THEY’LL OVERTAKE JAMAICA SOMETIME THIS YEAR

• **GDP PER CAPITA IS ON A PAR WITH THAT OF RUSSIA**

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**ANALYSIS**

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**BUT**

• **THE THING IS, MOST VIRTUAL WORLDS BAN VIRTUAL OBJECT SALES**

• **MAIN REASON: IT’S CHEATING**
  – THE MONOPOLY EXAMPLE

• **“I WANT TO TRADE, YOU WANT TO TRADE, WE BOTH GAIN. WHAT’S NOT TO LOVE?”**

• **IT RUINS THE GAME FOR THE 90% OF PLAYERS WHO DON’T TRADE IN VIRTUAL GOODS, THAT’S WHAT!**

• **BUT IS SUCH A BAN LEGAL?**
  – EVERY PLAYER SIGNED AN EULA ACCEPTING THE BAN
  – THE PLAYERS DON’T OWN WHAT THEY’RE SELLING ANYWAY

• **OR DO THEY?**
COMMORIFICATION

- As far as some people are concerned, if it looks like a duck, walks like a duck and quacks like a duck, it's a DUCK.
- Virtual goods look like real goods, are traded like real goods, so real property laws should apply.
  - And real tax laws?
- "There wasn't a level 50 Battlemage in the box when I bought it. I made it, so it's mine."
- Unfortunately, if this were TRUE then virtual worlds would DIE.

IMPLICATIONS

- If I bought a unique magic sword for $1,000 and the next day the developer created 20,000 identiCAL swords, could I SUE?
- If I have inventory I could sell for $250,000 and the developer announces they're going to close the game, can I force them to STOP?
  - On March 15th 2004, eBay user Shakti_122 paid $3,000 for an account on Earth and Beyond.
  - On March 16th 2004, Electronic Arts announced they were CLOSING Earth & Beyond.
  - EA ALSO announced they would NOT be licensing the software to ANYONE.
WHY WOULD THIS BE BAD?

- IF PLAYERS COULD SUE IF THEY LOST SOME OF THEIR INVESTMENT, VIRTUAL WORLDS COULD NEVER EVOLVE
  - EVERY CHANGE AFFECTS SOMEONE ADVERSELY
  - “NERFING”
- WOULD ROB DESIGNERS OF ARTISTIC FREEDOM
  - J. K. ROWLING COULD LEGALLY DISTRESS MILLIONS BY KILLING OFF HARRY POTTER
  - WHY CAN’T VIRTUAL WORLD DESIGNERS UPSET A FEW PLAYERS WHO BUILT THEIR VIRTUAL HOUSES ON THE SLOPES OF A VOLCANO?
- WOULD BE IMPOSSIBLE TO DEVELOP A GAME WITH A THEME SUCH AS “ESCAPE FROM COLDITZ”

IT GETS WORSE

- SOME PLAYERS WHO “FARM” GOLD OR OBJECTS CAN TIE UP THE MARKET
  - IF YOU WANT SOMETHING, THE ONLY WAY TO GET IT IS FROM ANOTHER PLAYER WHO HAS A PROGRAM RUNNING THE WHOLE TIME GETTING IT AUTOMATICALLY
- PLAYERS WANT THESE PEOPLE BANNED
  - CHINESE ADENA FARMERS IN LINEAGE 2
- YET DARK AGE OF CAMELOT WAS SUED FOR BANNING ACCOUNTS RUN BY BLACK SNOW
  - A COMPANY RUNNING A GOLD FARM OUT OF TJUANA
  - NEVER WENT TO COURT
  - BLACK SNOW DIDN’T PAY THEIR LAWYERS...
COTTAGE INDUSTRY

• For sale recently on eBay: One UO Gold Farm!

IP

• Virtual characters and objects are just collections of bits in a database
• But a painting is just a collection of atoms on a canvas
• If I, as a player, create a character, do I own its image?
• No, because I signed the EULA saying I didn’t
• Yes, because I have moral rights to my IP that I can’t sign away
  – At least under EU law – I can in the USA
• “Microsoft doesn’t own stuff I write in Word”
WHY NOT LET PLAYERS KEEP IP?

- If players keep IP, they can control its **use**
  - You can't show my character in your **screenshots**
  - Don't remove my character even though I stopped paying my **subscription**
  - That **advert for my car** is my IP and you've no right to deface it
  - Pay me a **royalty** for rendering my character!
  - Remove this **whole area** and all this **functionality** I created
- (Did I mention that players can add programming code and objects to some virtual worlds?)

AN ACTUAL CASE!

- **NcSoft (who developed Lineage) have a 2004 game called City of Heroes**
- Set in a **home-grown comic book universe**
Character Creation

Coh has a powerful character creation system...

But...

But Marvel Comics have sued NCsoft!

Reason: It's possible to create characters that look like Marvel characters.

- NCsoft doesn't automatically filter them out
- (although it does filter out names, e.g. Wolverine)

Very hard to filter by appearance

- Marvel have over 4,000 registered characters

Has to be done manually

- NCsoft found 11 violations from their 125k players
  - and 5 of those were created by Marvel themselves...

But NCsoft claims copyright on user creations!
DUMBB MARVEL?

• If Marvel win, they establish that meaningful IP can be held in virtual characters.
• So the next character that Marvel creates had better not match any of COH's 125,000?
  - Times up to 8, because each player gets 8 slots.
• But why don't they sue KIDS for dressing up as Spiderman? Or for drawing the Incredible Hulk?
• It's not like NCSoft are SELLING these characters.
  - It's more like they're selling a big box of CRAYONS.

ALSO

• City of Heroes isn't the ONLY game with a powerful character creation system.
• Star Spangled Kid (DC Comics):
  - DC  COH  SECOND LIFE
LONG STANDING

• THIS SORT OF THING HAS BEEN GOING ON FOR DECADES
  – NEARLY EVERY TEXT MUD HAS SOME CHARACTER CALLED GANDALF
• IF MARVEL WIN, WHAT OTHER DOORS WILL OPEN?
  – THERE’S A CHARACTER IN MORROWIND WHO LOOKS JUST LIKE MY NIECE NICOLA
• YET NCSOFT IS CLAIMING COPYRIGHT ON IMAGES CREATED BY THEIR PLAYERS
  – EVEN THOUGH CREATING COPIES OF COPYRIGHT CHARACTERS IS AGAINST NCSOFT’S EULA
• OK, THAT’S ENOUGH ABOUT PROPERTY...

RIGHTS OF THE AVATAR I

• RAPH KOSTER’S THOUGHT EXPERIMENT:
  – WHAT IF AVATARS (CHARACTERS) HAD RIGHTS?
• REDRAFTED U.S. BILL OF RIGHTS AND FRANCE’S DECLARATION OF THE RIGHTS OF MAN IN TERMS OF AVATARS
  – WWW.LEGENDMUD.ORG/RAPH/PLAYERRIGHTS.HTML
• ACTUALLY, AVATARS HAVE NO RIGHTS
  – KOSTER WAS USING THE THOUGHT EXPERIMENT TO SEE WHAT RIGHTS PLAYERS HAD
  • THIS IS THEREFORE AN OFT-MISUNDERSTOOD PAPER!
Rights of the Avatar 2

- The original draft of the paper went down like a Lead Zeppelin
- Koster rewrote it as “advice to admins”
  - Someone’s finger is on the power button
  - What this someone says goes
  - If this someone doesn’t provide a code of conduct, their players deserve all they get
  - Players should be consulted over changes to the code of conduct, but can be ignored
  - Codes of conduct should be fair and should be applied fairly

Rights of the Avatar 3

- So what does this mean in terms of actual rights of players?
  - Players have rights in the real world, of which the VW is a part
  - In considering rights, VWs should only be thought of in terms of being part of the real world (so in-game stealing etc. can be ok)
  - Developers can take their ball home if they like
  - Players don’t have to play ball if they don’t want to
**Freedom of Speech 1**

- **Player rights can thus be summarised as** "If you don’t like it, **leave**"  
- **But what if they can’t leave?**  
  - “Hey, **you** addicted me, you have to accept your **responsibilities**”  
- **Well tough luck! Freedom of speech laws **protect** developers here**  
  - But only in countries that **have** them  
- **And what about real-world harm?**  
  - “A rape in cyberspace”

**Freedom of Speech 2**

- **If a VW developer deliberately killed a character so as to **traumatise** its player, **that** would be wrong**  
- **Unexpected context shifts can also fall foul of the law**  
  - Readers of Harry Potter have expectations  
  - Harry **doesn’t** get to smoke dope and shag Hermione (or vice versa)  
  - But if the book **warned** you on its cover that it was **X-rated**, it **would** be OK?
**COMMON CARRIER**

- **Players** also have freedom of speech  
  - Unfortunately, they can be rather **too** free...
- **Common Carrier** laws protect media owners from the words of their users  
  - BT isn’t liable if you slander someone by phone
- **But what if you abuse** people in a VW?
  - VW will **want** to get rid of you **asap**
  - But **that** means there’s an **editing** process
  - **Which in turn** means common carrier laws **don’t apply**...

**PLAYER RIGHTS**

- Some suggestion that **Social Capital** makes virtual worlds like a **Company Town**
- This would mean developers can’t evict players for **what they say**
- Players could therefore:
  - Spoil the game’s **setting**
    - Shout out soccer scores in a **Tolkien** world
  - **Advertise** other games
    - Or, more likely, **porn** sites
  - **Picket newbie** areas
  - Solicit **votes** for real-world elections
• “Code is law”
  - Lawrence Lessig
    - Actually quoting William J. Mitchell
• The kind of law is “law of nature”, though, not “law of the land”
• Some players feel that if the virtual world doesn’t stop them from doing something, it must be allowed
  - Because otherwise the developers could code it out, right?
• No, they couldn’t. Trivial example: profanity

Solution?
• Developers handle this by coding extra powers to themselves
  - “Sure the code lets you do that, but you might like to reconsider because it also lets me do this!”
  - Therefore they’re more like gods than governments
    - Important: this is whether they like it or not!
• Moves to democratise virtual worlds are therefore doomed
  - Someone is always a god
• But the real world is a stake-holder
  - Players live in both the real and the virtual world
ELSEWHERE 1

- There’s **no case law in the EU or USA yet**
- There **is some in China and Korea**
  - One guy **successfully sued to get his stuff back after his account was hacked**
    - £780 in compensation plus £780 for mental anguish
  - A woman **deleted her ex-boyfriend’s character**
    - “I did it as revenge for breaking up with me”
  - Sophos caught a **Virus written specifically to snaffle Lineage Passwords**
  - Server software stolen and cloned in China

ELSEWHERE 2

- Other **near law suits**
  - **Custody** battles for virtual property
  - **Guilds ripping off** their members
  - **Customer service reps selling stuff they had the powers to create from thin air**
- Some specific-to-games **legislation**
  - Thailand banned virtual world servers from operating between 22:00 and 06:00
  - Korea introduces **rating system for virtual worlds, and considers PKing as a factor**
SUMMARY

• This is my 49th slide, and I've barely 
  scratched the surface.

• There's a lot of work going on right now 
  in this area.
  - Legal scholars have embraced the study of virtual 
    worlds like no other field has.
    • Psychology, AI, gender studies, drama studies, sociology, ...
  - Actually, the geographers weren't so bad.
  - Annual State of Play conference at NYLS.

• As always, it's a good time to be a 
  lawyer!