

# VIRTUAL WORLDS, REAL LAW

EYE-POPPING STUFF FOR LAWYERS

UNIVERSITY OF TEESSIDE

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## INTRODUCTION

- IN ORDER THAT YOU CAN'T **SUE** ME FOR GIVING **BAD ADVICE**, I'D LIKE TO POINT OUT THAT **I'ANAL**
  - 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...!
- ANY LAW STUDENTS OUT THERE, THIS IS YOUR CHANCE!

## 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.
*w
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 AT ESSEX UNIVERSITY
  - ROY TRUBSHAW AND RICHARD BARTLE (THAT'S ME)

## ASCII GRAPHICS

- GAMES SOON APPEARED WITH primitive GRAPHICS

```
[ ][ ][ ][ ]- -[ ] orc sword shield chain
[ ] A      S [ ] A Jennie,c
/ >  ++++ [ ] A 2 skeletons
[ ]      ++++ [ ] B trolls
[ ] B      dn [ ]
[ ][ ][ ][ ][ ][ ]

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 MUDDS**

## 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, **10 YEARS LATER**, IT HAS SOMETHING LIKE **130,000** SUBSCRIBERS
  - AFTER PEAKING AT 250,000 IN 2003
- IT **STILL** TAKES AROUND **\$1,700,000** A MONTH
  - AND IT'S BEEN RUNNING FOR AROUND **120 MONTHS!**
- **UO** MADE REGULAR COMPUTER GAMERS **NOTICE** VIRTUAL WORLDS
  - AND REGULAR COMPUTER GAME **DEVELOPERS...**

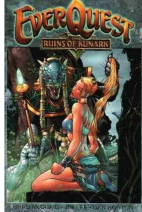
## EVERQUEST

- *ULTIMA ONLINE* RULED UNTIL *EVERQUEST*, SPRING 1999



#### STATS

- *EVERQUEST* PEAKED AT ~**420,000** SUBSCRIBERS
  - THAT'S MORE PEOPLE THAN **ICELAND!**
- OVER **\$5,000,000** A MONTH IN SUBSCRIPTIONS
- SUPPORTS **ACTION FIGURES** AND **COMICS**



- WE THOUGHT *EQ* WAS **BIG** UNTIL WE HEARD ABOUT *LINEAGE*

#### BUT ELSEWHERE...

- *LINEAGE* (1997) PEAKED AT OVER 4 **MILLION** PLAYERS



- **50%** OF THE POPULATION OF SOUTH KOREA HAVE TRIED *LINEAGE* AT LEAST **ONCE**
- AND YET *LINEAGE* IS THE **PIPSQUEAK** NOW...

## WOW

- *WORLD OF WARCRAFT, 2004*



## STATS

- *WORLD OF WARCRAFT HAS AROUND **8,500,000** PLAYERS WORLDWIDE*
  - MORE THAN LIVE IN DENMARK, ISRAEL, AUSTRIA, EIRE AND ABOUT 140 **OTHER** COUNTRIES...
- *PLAYERS PAY **\$15** A **MONTH** TO PLAY*
  - LESS IN CHINA
- *THERE WAS A **SOUTH PARK** EPISODE ABOUT IT LAST YEAR!*
- *BUT **WOW** **ISN'T** WHAT'S GETTING THE **MEDIA** ATTENTION*

## SECOND LIFE

- THE MEDIA IS ALL OVER *SECOND LIFE* (2003)



## STATS

- *SECOND LIFE* HAS **3,791,081** RESIDENTS
  - AT THE TIME OF WRITING ON TUESDAY...
- THIS **RESIDENTS** FIGURE IS OFTEN REPORTED AS IF IT WERE THE SAME AS **SUBSCRIBERS**
- IT'S **NOT**: SL ONLY HAS AROUND 35,000 ACTUAL SUBSCRIBERS
  - AND SIMILAR NUMBERS OF SIMULTANEOUS LOGINS
- "RESIDENTS" MEANS "PEOPLE WHO DOWNLOADED THE SOFTWARE AND MANAGED TO ENTER THE VIRTUAL WORLD"

#### NEVERTHELESS

- NEVERTHELESS, *SECOND LIFE* IS **IMPORTANT** BECAUSE IT'S PUSHING AT THE **BOUNDARIES** OF THE LAW
  - AND LAW IS WHAT I'M (SHORTLY!) GOING TO **TALK** ABOUT HERE TODAY
- NOTE: *SECOND LIFE* IS NOT A GAME
- IT'S A PLACE – A **VIRTUAL WORLD** – BUT IT'S NOT A GAME
- BEAR THIS IN **MIND** IN WHAT FOLLOWS...

#### ARCHITECTURE

- OH, ALSO BEFORE I START ON THE LAW STUFF...
- HOW ARE VIRTUAL WORLDS **IMPLEMENTED**?
- WELL, THEY'RE RUN ON COMPUTERS OWNED AND OPERATED BY THE **DEVELOPER**
  - THE DEVELOPER MAY HAVE MANY SUCH "SERVERS"
  - *WOW* HAS 222 REALMS IN THE USA ALONE
- THE **SERVER** TALKS TO THE **CLIENT** SOFTWARE THAT RUNS ON **EACH** PLAYER'S PC
  - CLIENT 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
  - GOVERNANCE
- 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

#### STARTING POINT

- REALITY **ALWAYS WINS**
  - REALITY CAN **SWITCH OFF** HARDWARE
  - VIRTUALITY CAN DO **NOTHING** TO REALITY
- THE QUESTION IS, HOW MUCH IS REALITY WILLING TO **CONCEDE** TO VIRTUALITY (I.E. TO VIRTUAL WORLDS)?
- UP UNTIL NOW, VW DEVELOPERS HAVE HAD THE **WHIP HAND**
  - THEY CONTROL THE **ON/OFF** SWITCH AND THE **COMPUTER CODE**
- HOWEVER, NOT ALL PLAYERS ARE **HAPPY** WITH THIS
  - RESORTING TO **LEGAL CODE** FOR REDRESS

#### HOW THINGS STAND NOW

- AT THE MOMENT, COMMERCIAL VWS MAKE PLAYERS SIGN THEIR **EULA**
  - "END USER LICENCE AGREEMENT"
  - ALSO KNOWN AS **TOS**, "TERMS OF SERVICE"
  - MAY HAVE TO SIGN IT **EVERY TIME** YOU PLAY!
- EULA IS A **CONTRACT** BETWEEN VW & PLAYER
  - **HEAVILY** FAVOURS THE DEVELOPER
- NOT **YET** FULLY TESTED IN COURT
  - SO IT MAY BE OVERTURNED BY **SUPERIOR LAW**
  - EG. **HUMAN RIGHTS** LEGISLATION

## JURISDICTION

- THE FIRST THORNY PROBLEM IS **WHICH IS THE GOVERNING LAW?**
  - A PLAYER IN **ENGLAND** RACIALLY ABUSES A PLAYER IN **AMERICA** WHILE PLAYING A GAME RUNNING ON SERVERS IN **CANADA**
  - WHAT ABOUT **DISTRIBUTED** SERVERS?
- THE EULA ESTABLISHES A GOVERNING LAW, BUT IT **ONLY** ARBITRATES BETWEEN **DEVELOPER** AND **PLAYERS**
  - IT DOESN'T - INDEED, **CAN'T** - ARBITRATE **INTER-PLAYER** DISPUTES
- OTHER COURTS MAY **CLAIM** AN INTEREST ANYWAY
  - HOME LAWS CAN APPLY EVEN WHEN YOU'RE ABROAD

## DECISIONS

- MOST OF THE DISCUSSION IS IN THE **USA**
  - AND **NOT** JUST BECAUSE THE LITIGATION CULTURE
- GENERAL PRINCIPLES (**VERY** GENERAL!):
  - **COMMON LAW**: EVERYTHING NOT ILLEGAL IS LEGAL
    - LAW CATCHES UP WITH NEW EVENTS
    - USA, ENGLAND, COMMONWEALTH
  - **NAPOLEONIC CODE**: EVERYTHING NOT LEGAL IS ILLEGAL
    - NEW EVENTS WAIT ON LEGAL CLEARANCE
    - EUROPE, SCOTLAND, EVERYWHERE ELSE
- THERE'S EVEN **MORE** TO IT, THOUGH!
- IN PARTICULAR, THERE'S AN ARGUMENT THAT RL LAWS HAVE **NO JURISDICTION** AT ALL OVER VIRTUAL WORLDS!

#### LET'S PLAY A GAME!

- I'M GOING TO NEED **TWO** PLAYERS
  - DON'T WORRY, YOU **WON'T** BE HUMILIATED ... MUCH
- **1**: PLAYERS TAKE IT IN TURN TO SAY WORDS
  - IF YOU SAY A WORD THAT ENDS IN **Y** OR **M** YOU **LOSE**
- **2**: PLAYERS TAKE IT IN TURN TO SAY WORDS FROM THE SAME TOPIC (SAY, ANIMALS)
  - IF YOU SAY A WORD THAT ENDS IN **Y** OR **M** YOU **LOSE**
- **3**: PLAYERS TAKE IT IN TURN TO SAY WORDS FROM THE SAME TOPIC (SAY, **CITY** NAMES) WHERE EACH WORD **STARTS** WITH THE LETTER THAT **ENDED** THE PREVIOUS WORD
  - IF YOU SAY A WORD THAT ENDS IN **Y** OR **M** YOU **LOSE**

#### PLAY

- WHAT THIS SHOWS IS A **PARADOX** ABOUT GAMES
- YOU **COULD** HAVE PLAYED THE 3<sup>RD</sup> GAME UNDER THE 1<sup>ST</sup> OR 2<sup>ND</sup> 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, LAW PEOPLE?

## 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!**

### 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 "THEIR" **CHARACTERS?**
- AT THE TIME OF WRITING, THERE'S A LEVEL 121 OSA FROM *DOFUS* FOR SALE ON EBAY FOR **€910**
  - AFTER 9 BIDS
  - NO, I DON'T KNOW WHAT AN OSA IS, EITHER

### WIDESPREAD

- **ALSO** ON EBAY:
  - *LINEAGE 2* LEVEL 78 GHOST SENTINEL **€2,500**
  - *WOW* LEVEL 70 MAGE **€2,000**
  - *FFXI* LEVEL 75 BEASTMAN **€1,000**
  - *GEMSTONE IV* LEVEL 52 PALADIN **€900**
  - AND **HUNDREDS** MORE
- IN-GAME CURRENCY ALSO FOR SALE
  - *EVE ONLINE* 1 BILLION ISK **€102.50** (€183 2006, €267 2005)
  - *KAL ONLINE* 100M GEONS **€175**
- THOSE ARE **CURRENT** BIDS - THEY'LL ACTUALLY **SELL** FOR **MORE**

## OTHER SALES

- THINK ABOUT THIS A MOMENT: PEOPLE ARE PAYING **REAL** MONEY TO BUY **IMAGINARY** MONEY
- ALSO IMAGINARY **PROPERTY**:
  - *GEMSTONE IV IORAKE CLAIHMORE* \$1,000
  - *KINGDOM OF LOATHING* 100,000,000 MEAT \$189
  - *RUNESCAPE SCYTHE* \$150
- AND IMAGINARY **REAL ESTATE**:
  - *ULTIMA ONLINE* VENDOR PROPERTY NEXT TO BANK \$450
- IN **DECEMBER 2004** AN ISLAND FOR SALE IN *PROJECT ENTROPIA* SOLD FOR \$26,500
  - THAT'S \$26,500
    - BUT IT'S **ALSO** *PROJECT ENTROPIA*..

## ANALYSIS

- 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** AND **JAMAICA**
- *GDP PER CAPITA* IS ON A PAR WITH THAT OF **RUSSIA**

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!

ASIDE...

- SO **WHY** DO PEOPLE DO IT?
  - "I WANTED TO KEEP UP WITH MY **FRIENDS**"
  - "MY GUILD NEEDED ANOTHER **MAGE**"
  - "I DON'T HAVE **TIME** TO GRIND MY WAY THROUGH TO THE FUN CONTENT"
- THESE ARE PRETTY WELL **SMOKESCREENS**
- THE **ACTUAL** REASON IS BECAUSE THEY WANT PEOPLE TO THINK THEY'RE **BETTER** PLAYERS THAN THEY REALLY ARE
  - IN OTHER WORDS, TO **CHEAT**...



#### REALITY

- ACTUALLY, **FEWER** PEOPLE DO THIS THAN THE HUGE SUMS INVOLVED **SUGGEST**
- A 2004 SURVEY OF 1,247 **KOREAN** GAMERS FOUND THE SPEND PER YEAR PER PLAYER WAS:

- \$0	851
- \$1-\$99	70
- \$100-\$499	12
- \$500-\$999	1
- \$1,000-\$9,999	300
- \$10,000-\$20,000	2
- >\$20,000	1 (\$86,764)

#### COMMODIFICATION

- IS A BAN ON VIRTUAL OBJECT TRADE **LEGAL**?
  - EVERY PLAYER SIGNED AN **EULA** ACCEPTING THE BAN
  - THE PLAYERS **DON'T OWN** WHAT THEY'RE SELLING ANYWAY
- OR **DO** THEY?
- 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

#### RATIONALE

- "I OWN THIS VIRTUAL OBJECT BECAUSE":
  - "I BOUGHT IT IN GOOD FAITH"
  - "I STOLE IT" (SQUATTER ARGUMENT)
  - "I BOUGHT TIME, NOT THE ITEM"
  - "YOU YOUR BAD GAMEPLAY MADE ME BUY IT"
  - "I MADE IT"
- "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 15<sup>TH</sup> 2004, EBAY USER SHAKTI\_122 PAID **\$3,000** FOR AN ACCOUNT ON **EARTH AND BEYOND**
- ON MARCH 16<sup>TH</sup> 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"
- IT WOULD **ROB** DESIGNERS OF ARTISTIC FREEDOM
  - J. K. ROWLING COULD **LEGALLY** DISTRESS **MILLIONS** BY KILLING OFF MISERABLE WHINER **HARRY POTTER**
  - WHY CAN'T VIRTUAL WORLD DESIGNERS UPSET A **FEW** PLAYERS WHO BUILT THEIR VIRTUAL HOUSES ON THE SLOPES OF A **VOLCANO**?
- IT 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** UNDER **RESTRAINT OF TRADE** LAWS FOR BANNING ACCOUNTS RUN BY **BLACK SNOW**
  - A COMPANY RUNNING A GOLD FARM OUT OF **TIJUANA**
  - NEVER WENT TO COURT
    - BLACK SNOW **DIDN'T PAY THEIR LAWYERS...**

#### COTTAGE INDUSTRY

- FOR SALE A COUPLE OF YEARS AGO ON EBAY:  
ONE *10* GOLD FARM!



#### LEGITIMISING RMT

- MOST VIRTUAL OBJECT SALES ARE **NOT** SANCTIONED BY DEVELOPERS
- HOWEVER, SONY SET UP TWO OF ITS *EVERQUEST 2* SERVERS TO **ALLOW** OBJECT SALES FOR REAL MONEY
- **MOST** PLAYERS PREFERRED **NORMAL** SERVERS
  - BUT RMT **STILL** WENT ON THERE!
- THE **MAIN** GAIN WAS IN REDUCED **CUSTOMER SERVICE** COSTS (40% DOWN TO 10%)
- **BUT** IT ESTABLISHED THAT PLAYERS **DO** OWN THEIR CHARACTERS' PROPERTY IN *EQ2*
  - A VERY **DANGEROUS** PRECEDENT!

#### TAX LAWS

- IF I BUY A **SKATEBOARD** FROM YOU, YOU SHOULD SEND **17½%** OF THE MONEY TO **HM CUSTOMS AS VAT**
- IF I BUY A **VIRTUAL** SKATEBOARD, DITTO
- IF I PAY FOR IT IN **TINS OF BEANS** INSTEAD OF POUNDS, SOMEONE **STILL** HAS TO PAY **17½%** VAT
- WHAT IF I PAY FOR IT IN **LINDEN DOLLARS** IN *SECOND LIFE*?
- OR IF I BUY A SWORD WITH GOLD IN *WOW*?

#### OR INCOME TAX?

- ANSHE CHUNG IN *SECOND LIFE* OWNS PROPERTY THAT, IF SHE SOLD IT AT **CURRENT** PRICES, WOULD FETCH MORE THAN **\$1,000,000**
- IF SHE DID, SHOULD SHE PAY **INCOME TAX**?
- WHAT IF SHE SOLD IT FOR LINDEN DOLLARS?
- WHAT IF SHE BOUGHT A **REAL HOUSE** WITH LINDEN DOLLARS?
- WHEN **YOU** BUY STUFF IN *WOW*, YOU GET GOLD THAT HAS **REAL-LIFE** VALUE
- SHOULD YOU PAY **INCOME TAX** ON IT?

#### TWO KINDS OF VW

- SO SOME VWS **EMBRACE** OBJECT TRADE
  - *THERE, SECOND LIFE, PROJECT ENTROPIA, SOME UO & EQ2, ...*
- AND SOME **DON'T**
  - PRETTY WELL ALL THE REST...
- WE THUS HAVE **TWO KINDS** OF VW
  - THOSE THAT STRIVE TO KEEP REALITY **OUT**
  - THOSE THAT **INTEGRATE** WITH REALITY
- THE FORMER WOULD BE COMPLETELY **UNDERMINED** IF REALITY INTRUDED
- THE LATTER WERE DESIGNED TO BE **COMFORTABLE** WITH REALITY

#### VIRTUAL PROPERTY

- AS WE'VE SEEN, INTEGRATING WITH REALITY COMES WITH REALITY'S **PROBLEMS**, THOUGH
  - IF YOU PAY REAL MONEY FOR **VIRTUAL** PROPERTY, IT BECOMES **REAL** PROPERTY
  - THE LAW **PROTECTS** REAL PROPERTY
  - SO CAN YOU EVER **SHUT DOWN** YOUR SERVERS?
    - AND IF YOU **DID**, MIGHT THE LAW **RE-OPEN** THEM?
- ALSO, DOES HOLDING VIRTUAL OBJECTS WORTH REAL MONEY IN TRUST MAKE YOU A **BANK**?
  - FINANCIAL LAWS ARE VERY, **VERY** STRICT...

#### BLURRING THE BOUNDARIES

- FROM THIS, IT'S OBVIOUS WHY MOST VIRTUAL WORLDS WANT TO **REMAIN** VIRTUAL
  - THEY DON'T WANT TO TAKE THE PATH TO **COMMODIFICATION**
- HOWEVER, WHAT IF THE **PLAYERS** TAKE IT, WHETHER THE DEVELOPERS LIKE IT OR NOT?
- IF EBAYERS PAY **REAL** MONEY FOR VIRTUAL PROPERTY, THAT MAKES THE **PROPERTY** REAL
  - YES, EXCEPT THE SELLER DIDN'T OWN IT IN THE **REAL** WORLD, JUST IN THE **VIRTUAL** ONE!

#### THE NEED FOR INTERRATION?

- HOW THINGS PROCEED WILL DEPEND A LOT ON THE DECISIONS OF **U.S. COURTS**
- A DECISION BASED ON *SECOND LIFE* COULD **SERIOUSLY** HURT *WORLD OF WARCRAFT*
  - AND *VICE VERSA*
- IT **MAY** BE THAT VWS WILL NEED TO BECOME FORMAL LEGAL ENTITIES TO KEEP THEIR INTEGRITY
  - COMPANIES ARE **INCORPORATED**
  - VWS ARE **INTERRATED** (TED CASTRONOVA)
- HOPEFULLY IT WON'T COME TO THAT
  - BUT IF THE EULAS FAIL..?

#### MORE PROPERTY - 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**
  - SO **YOU** CAN'T SHOW **MY** CHARACTER IN **YOUR** **SCREENSHOTS**
  - YOU CAN'T **DELETE** MY CHARACTER EVEN THOUGH I **STOPPED** PAYING MY **SUBSCRIPTION**
  - THAT **ADVERT FOR MY CAR** I PUT ON MY **SHIELD** IS MY IP AND YOU'VE **NO RIGHT** TO **DEFACE** IT
  - HEY! PAY ME A **ROYALTY** FOR RENDERING MY CHARACTER!
- DID I **MENTION** THAT PLAYERS CAN ADD **CODE** AND OBJECTS TO VIRTUAL WORLDS SUCH AS *SECOND LIFE*?
- DID I MENTION THAT *SECOND LIFE* **DOES** LET PLAYERS RETAIN THEIR IP RIGHTS?



### 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, EG. 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!

#### DUMB 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



#### 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**
- **NCSOFT** HAS WON FIRST 2 ROUNDS IN COURT

#### RIGHTS OF THE AVATAR 1

- 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](http://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

#### GOVERNANCE

- "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!**"
- BUT IF THE DEVELOPERS CREATE THEIR **OWN** LAWS IN CODE LIKE THIS, THAT MAKES THEM **GOVERNMENTS**, DOESN'T IT?
- SHOULDN'T THEY THEREFORE BE OBLIGED TO FOLLOW **DEMOCRATIC** STANDARDS?

#### A PROBLEM

- THERE **IS** AN ISSUE HERE
- VIRTUAL WORLD DEVELOPERS **ROUTINELY**:
  - **PUNISH** PLAYERS WITHOUT **TRIAL**
  - **EXILE** THEM
  - **RESTRICT** FREEDOM OF SPEECH
  - **DESTROY** PROPERTY
  - **INFRINGE** PRIVACY
- SOMETIMES THEY SEEK TO **JUSTIFY** THIS IN TERMS OF **SAFEGUARDING** THE WORLD'S **FUTURE**
  - OTHER TIMES THEY JUST DO IT ON A **WHIM**
- SHOULD **GOVERNMENTS** BEHAVE THIS WAY?!



#### A DEFLECTION

- NO, GOVERNMENTS SHOULD **NOT** BEHAVE THIS WAY
- IF A **LOWER**-TIER GOVERNMENT **DOES** BEHAVE THIS WAY, THEN A **HIGHER**-TIER GOVERNMENT WITH **AUTHORITY** OVER IT SHOULD **INTERVENE**
- DEVELOPERS, AS THE **GOVERNMENTS** OF THEIR VIRTUAL WORLDS, SHOULD THEREFORE ADHERE TO THE **SAME** STANDARDS AS THE **REAL-WORLD** GOVERNMENTS THAT CLAIM **JURISDICTION**
- WELL, **ALMOST**
- THE THING IS, VIRTUAL WORLD DEVELOPERS ARE **NOT GOVERNMENTS**, THEY'RE -

#### GODS

- **GODS!**

#### RULE

- THE DIFFERENCE:
  - **GODS** OPERATE BY **CHANGING** THE LAWS OF **PHYSICS**
  - **GOVERNMENTS** OPERATE BY JUDICIOUS **APPLICATION** OF THE LAWS OF PHYSICS THAT PERTAIN TO THEIR WORLD
- I **CAN'T** DISOBEY THE LAWS OF **PHYSICS**
- I **CAN** DISOBEY THE LAWS OF **THE LAND**
  - EVADE DETECTION, EVADE OR DEFEAT THE FORCES OF LAW...

#### KEY FEATURES

- THERE ARE TWO **KEY FEATURES** OF DEITIES THAT **TOGETHER** UNDERMINE **ANY** ATTEMPTS TO CONSIDER **GODS** AS **GOVERNMENTS**
- 1) GOVERNMENTS CAN BE **DEPOSED** BY THOSE THEY GOVERN; GODS CAN'T
- 2) GOVERNMENTS CAN **RELINQUISH** POWERS; GODS CAN'T
- THE **FIRST** SAYS THAT DEVELOPERS CAN DO *whatever they wish* IN THEIR VIRTUAL WORLDS
- THE **SECOND** SAYS THAT THIS IS TRUE **WHETHER THE DEVELOPER LIKES IT OR NOT**

#### WRAPPING UP

- 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

- 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 INTRODUCED A **RATING** SYSTEM FOR VIRTUAL WORLDS, AND CONSIDERS **PKING** AS A FACTOR

#### SUMMARY

- THIS IS MY **71st** 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
- IT'S ONLY POSSIBLE TO DRAW **ONE** CONCLUSION RIGHT NOW:
  - IT'S A **GOOD TIME** TO BE A **LAWYER!**

#### SOME REFERENCES

- CLASSIC PAPER IS **LASTOWKA & HUNTER**
  - [HTTP://PAPERS.SSRN.COM/SOL3/PAPERS.CFM?ABSTRACT\\_ID=402860](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=402860)
  - YES, **ALL** LAW PAPERS ARE 50% OR MORE FOOTNOTES...
- **STATE OF PLAY** CONFERENCES
  - [HTTP://WWW.NYLS.EDU/PAGES/2396.ASP](http://www.nyls.edu/pages/2396.asp)
- **TERRA NOVA** BLOG
  - [HTTP://TERRANOVA.BLOGS.COM/](http://terranova.blogs.com/)
- **SONY EXCHANGE** WHITE PAPER
  - [HTTP://WWW.GAMASUTRA.COM/FEATURES/20070207/SOE%20S-TATION%20EXCHANGE%20WHITE%20PAPER%201.19.DOC](http://www.gamasutra.com/features/20070207/soe%20s-tation%20exchange%20white%20paper%201.19.doc)