Journal of
Virtual Worlds Research
jvwresearch.org ISSN: 1941-8477

Volume 2, Number 3
Technology, Economy, and Standards.

Volume 2, Number 3
Technology, Economy, and Standards
October 2009

Sponsored in part by:

TEXAS DIGITAL LIBRARY

department of RADIOTELEVISIONFILM UNIVERSITY OF TEXAS AT AUSTIN

SIRC THE SINGAPORE INTERNET RESEARCH CENTRE

The Journal of Virtual Worlds Research is owned and published by:

virtual worlds research consortium

Journal of Virtual Worlds Research
jvwresearch.org ISSN: 1941-8477

Volume 2, Number 3
Technology, Economy, and Standards
October 2009

Piracy vs. Control: *Models of Virtual World Governance and Their Impact on Player and User Experience*

Melissa de Zwart, University of South Australia

Abstract

Current models of governance of virtual worlds evolved from the Terms of Service developed by the virtual world content creators based upon intellectual property license models. Increasingly, however virtual world providers now seek to accommodate both the needs and interests of owners and users in order to respond to the evolving needs of the virtual world. However, domestic governments are also now taking greater interest in the activities within virtual communities. This article explores a range of governance models, and the competing interests at play within the virtual communities managed by such models, in order to consider whether there is a universally adaptable governance model. In particular it analyses the role and effectiveness of the Council of Stellar Management, the player representative committee in EVE. The article concludes that national governments should not impose significant regulation upon virtual communities, but rather should encourage the development and growth of such communities by prescribing minimum standards, such as standardisation and transparency of Terms of Service. Matters occurring within the virtual world environment should be dealt with in accordance with the established community norms and rules. Therefore, role play environments such as EVE should be allowed to encourage piratical and outlaw behaviour without offending domestic laws.

Keywords: governance; virtual worlds; regulation; laws; standards.

Piracy vs. Control: *Models of Virtual World Governance and Their Impact on Player and User Experience*

Melissa de Zwart, University of South Australia

In February 2009 the region of Delve, long a bastion of relative peace and prosperity, became a savage battleground, as its sovereignty holders, the KenZoku alliance, struggled to restore order and authority following near disaster when their alliance was sabotaged from within. This sabotage occurred due to the defection of one of the most senior members of the Band of Brothers alliance, arguably the most powerful alliance in EVE Online, and the predecessors of KenZoku. The Band of Brothers alliance (BoB), consisting of an alliance of multiple corporations and involving thousands of players, held significant power in the EVE environment. Yet BoB was effectively destroyed when a director of BoB defected to Goon Swarm, the arch rival of BoB, taking with him resources, money, and equipment, and crucially, the ability to renew the alliance name, 'Band of Brothers,' which disbanded the alliance under the rules of the game. BoB reformed as the KenZoku alliance, but its long-held sovereignty over Delve was threatened and ultimately diminished, losing thousands of hours of player time and money invested in the alliance and the region. As devastating as this was for the members of BoB, these events were legal, in the sense that they were not in breach of the rules of EVE Online. In fact, the operators of EVE Online, CCP Games (CCP), celebrated the shakeup in territorial sovereignty, so much so that some suspected them of engineering it to disturb the entrenched balance of power.

People unfamiliar with the EVE environment questioned why CCP Games did not step in to restore the alliance name and undo the damage caused by the defector. However, duplicitous, underhand practices are celebrated and rewarded in EVE. Among the various game play activities available in EVE are opportunities for corporations to engage in theft, assassination, ransom and piracy.[1] While piracy is deemed 'criminal,' leading to negative personal security status, as the EVElopedia notes, "the criminal nature of the pirate is fully supported by CCP and the in-game mechanics." (EVElopedia, http://wiki.eveonline.com/wiki)

EVE hit the headlines again in July 2009, following the theft of 200 billion Interstellar Kredits (ISK) from Ebank (a major in-world bank holding at that time 8.9 Trillion ISK in deposits) by its CEO, causing a run on the in-world bank. (Thompson, 2009) Again, many asked how this could have been allowed to happen, although similar things seemed to be reported daily in the news regarding real life investment scams. Ricdic, the perpetrator of the theft, was banned from EVE for trading in-game currency for real world currency in breach of the EVE Online Terms of Service.

This type of disruptive behaviour is unlikely to occur in a MMORPG such as World of Warcraft, where the operators of the environment maintain a much tighter control on game developments and story integrity. However, EVE's owners deliberately foster a player-run universe where almost anything goes. Had Ricdic not sold the ISK outside of EVE, he would not have had his account cancelled and punishment for the theft would have been left to his fellow players.

These events serve to highlight the difficulty in drawing clear line rules regarding what sort of conduct should be acceptable within virtual worlds, even with respect to conduct that in the offline world is plainly unacceptable, such as murder, theft, and embezzlement. It also highlights the difficulty of applying objective standards of conduct within online communities, which may have vastly different concepts of acceptable behaviour. CCP has deliberately created and sought to maintain an environment that fosters brilliant, yet underhanded and immoral, game tactics. Players who are not happy with this

[1] See, for example, the September 2005 assassination of Mirial, CEO of the Ubiqua Seraph corporation, 'Murder Incorporated', *PC Gamer*, 29 January 2008, http://www.computerandvideogames.com/article.php?id=180867&site=pcg, accessed 14 July 2009. This act included the capture of 20 Billion ISK (Interstellar Kredits) of assets and destruction of assets worth a further 10 Billion ISK, at the time calculated at approximately $16,500 US.

degree of lawlessness are forced to ply their galactic trade elsewhere. However, as will be discussed below, CCP still draws a clear distinction between in-world lawlessness and real world governance through a rigorous enforcement of the Terms of Service.

As the size of online communities within gaming spaces continues to grow and the size of investment in such spaces grows with it, there will be increased interest from domestic governments in how best to regulate such spaces. This move toward regulation may not always take account of the needs or interests of the participants in such environments. In fact, there may be little understanding of the varying cultures of different MMORPGs and virtual social platforms, such as Second Life, and the in-world regulation that already occurs within such spaces.

This article will examine the important influence of game design and game governance on the nature of the player's experience. It will identify and analyze current governance structures and the interests of key governance stakeholders. Recognizing the increased call for in-world regulation and the impact that this may have on the player experience, it will conclude that any default rules developed for governance of virtual worlds will need to be sensitive to the community norms at play within that environment, reflecting the needs of all governance stakeholders. Drawing upon a number of examples, it will explore the need to acknowledge the particular nature of the world under consideration and discuss ways in which this may be respected and protected by particular governance arrangements. While this article will focus predominantly on online gaming environments, particularly MMORPGs, it will also draw comparisons with how governance issues will affect social virtual worlds like Second Life. It will consider the relationship between real world laws, inbuilt game standards, and the players' own negotiated understanding of the world with which they are engaged and how this may change over time, according to gaming experiences and investment in the game world. This article will conclude with a reflection upon the relationship between the underlying governance structures of the virtual world and the developing nature of that world and make recommendations regarding the future pathway of law reform in this area.

Governance Structures

Currently, the key tool for governance of MMORPGs is the End User License Agreement (EULA) or Terms of Service (TOS). This mode of governance derives from the fact that online environments are essentially creations of intellectual property and thus, are the copyright of the game designer. The clickwrap license, now the ubiquitous online contracting mechanism, evolved from the shrink-wrap license, used to facilitate software licenses in the days of off the shelf purchases of software. A clickwrap license enables the owner of the intellectual property product to license a user without individual negotiation of the terms. It is also an extremely powerful mechanism, as breach of the terms of the license may leave the person in breach liable for infringement of copyright as well as breach of contract. See, for example, the recent litigation between Blizzard, the owners and operators of World of Warcraft, and MDY Industries, the creators and distributors of Glider, a program which when used in conjunction with WoW facilitated automated play. The US District Court, District of Arizona held that use of Glider was outside the scope of the copyright license granted to users by the WoW Terms of Use, leading to the conclusion that use of Glider was a breach of copyright by end users and a breach of the license. This case will be discussed further below.

Thus the key influences in governance of virtual worlds to date have been contract, largely based on issues of intellectual property ownership and use and content regulation, as governments seek to restrict content which is overtly sexual or violent (particularly in the US) or in breach of Human Rights guidelines as racist or demeaning (Europe). These are two important, but quite narrow, dimensions of community law making. As communities have become more complex, the TOS have been supplemented by a range of other policies and rules. In Second Life, for example, members are required to abide by the Terms of Service and Community Guidelines as well as various Linden Lab decrees which are issued from time to time in response to particular issues. For example, the ban on "broadly offensive content"

and the ban on in-world banks were originally promulgated via the Second Life blog.[2] These two changes were contrary to what many of the residents considered was the unfettered freedom that Linden Lab had originally promised them. This tension between community and controller is common as the platform matures and the developer seeks to accommodate the interests of the largest number of users (or possibly potential users) sometimes at the expense of the early adopters. Second Life had a flourishing community of role-players involved in a range of lifestyle and sexual practices, some of which would be considered offensive by many, such as the Gorean community, which bases itself on the writings of John Norman, and in which women are slaves. Such users felt they were free to explore their sexuality in the 18+ world of Second Life. However, the open display of such content and practices was not desirable in the more commercialized world of Second Life seeking to attract corporate sims.

Rules can be implemented and enforced by the code of the gaming experience by, for example, prohibiting the player from engaging in certain activities. These have been described as the physics of the environment (Bartle, 2006). The game narrative can also shape the rules of the game. For example, in EVE, each race is imbued with certain qualities not possessed, or possessed to different levels, by the other races. These limitations are also coded into the gaming environment. Most rules are coded into the gaming environment to make the gaming environment more pleasurable to the player. A game that is too easy quickly loses its appeal. Richard Bartle, in particular, has argued for the rights of the game designer to retain a god-like authority over the environment in order to ensure that the integrity and hence the enjoyment of the gaming experience is maintained (2006).

Of course, defining the precise scope of the rules of the game can mean different things to different people. As Mia Consalvo has analyzed at length, players define the gaming environment on a broad spectrum and therefore, the range of activities considered acceptable within that environment is equally diverse (Consalvo, 2007). Cheating has different meanings for different players. For some players, rules are only rules where they are enforced by code, meaning that circumvention of any rule that it is possible to break should not be considered a breach of the game rules. For others, the gaming environment and the code merely provide a platform for the exploration of functionality. As most MMORPGs and particularly social virtual worlds are designed to expand, there may be gaps left in the program design. These gaps are areas for exploration and creativity for those players so inclined. For players with a hacker orientation, exploitation of these spaces is part of the game.

One of the most successful levels of governance in online communities is the observation of rules imposed by the community. In fact, the most influential rules may be those developed and enforced by the social contract of the community itself. This may be at a meta level or rules that are imposed and observed by smaller communities. As Humphreys (2008) has observed, game developers will frequently encourage players to self-regulate within the gaming world, coding the game in a way that trains and rewards players to engage in certain behaviour. Players who are disruptive to the established social norm are treated as outcasts and encouraged to leave the game world.

A recent example of this is provided by the controversy unleashed by the "study" conducted in City of Heroes by David Myers, whose avatar Twixt, was ostracised by the City of Heroes community for a range of behaviour that was considered in breach of game etiquette. According to Myers (2008), Twixt engaged in three types of behaviour, which whilst legal under the rules of the game, were deemed unacceptable by the gaming community: teleporting enemy characters into a group of hostile non-player-characters whereby the opponent is attacked by the drones and destroyed ("droned"); refusing to co-operate with players engaged in farming by engaging them in pvp combat; and refusing to participate in the social engagement of the game by engaging in solo play. All of these behaviours were the subject of

[2] Second Life Blog 'Keeping Second Life Safe, Together', https://blogs.secondlife.com/community/features/blog/2007/06/01/keeping-second-life-safe-together, 1 June 2007, accessed 16 July 2009 and 'New Policy Regarding In-World "Banks"', https://blogs.secondlife.com/community/features/blog/2008/01/08/new-policy-regarding-in-world-banks, 8 January 2008, accessed 16 July 2009.

extensive discussions on the public forums and the subject of personal abuse on the open channel. Myers' paper has generated a great deal of controversy regarding his methodology; however, it does neatly demonstrate the potential consequences for a player whose view of the rules diverges from that of the majority and where the physics and indeed laws (in the guise of the EULA) leave scope for different interpretations, Myers' main point is that he was playing in accordance with the rules of City of Heroes, while being punished by other players for not abiding by their gloss on these rules. As Fairfield (2008b) observes, "in player versus player actions in which norms conflict with EULA provisions, the norms often prevail."

For fear of regulatory intervention that may change the nature of the playing experience, virtual world inhabitants have generally been keen to insulate their worlds against regulation by domestic governments. However, this scenario changes when the virtual world operators themselves are at odds with their citizens. This can happen due to a shift in attitudes of either the community or the operators. For example, as noted above, Linden Lab, concerned about the negative press it was attracting and conscious of its desire to appear consumer friendly changed (or "clarified") its policy regarding offensive content in the face of extensive media coverage focusing upon age-play within Second Life.[3] This led to avatar campaigns for free speech in Second Life, drawing upon rights protected under the US Constitution, but clearly at odds with the commercial relationship created by the TOS which provides only a limited , fully revocable license to use Second Life while in compliance with the TOS. Whilst users of Second Life may view it as a "community," it remains a commercial platform provided by a corporation that can prescribe the rules for the use of the platform.

Another example is the promulgation in March 2009 of the 'World of Warcraft User Interface Add-On Development Policy' by Blizzard. (http://www.worldofwarcraft.com/policy/ui.html) After years of an ambivalent attitude towards add-ons and other mods, Blizzard announced that add-ons must be distributed completely free of charge and the programming code of add-ons must be publicly viewable. Again, this generated debate among the user community, some viewing it as perfectly reasonable, others as an infringement of their rights in terms of how to play the game. Of course, this tension reflects the long history of interplay between game developers and modders (Postigo, 2008).

The problem for many game designers and operators is adjusting to the role of managers of a community rather than merely providers of content (Humphreys, 2008). The relationship between developers and users becomes a long-term one to be negotiated and managed, further complicated when users contribute to the virtual world environment through creation and investment of time and money. Virtual world owners may find they develop a troubled relationship with their players/ citizens who are of course, also their customers. That relationship ranges from elements of love and adulation for the gaming environment itself, to contempt and loathing, for their management style. This is an attitude common to many creative industries, for example, creators like George Lucas and Stephenie Meyer are equally adored for their creation of much loved characters and reviled for their subsequent development and treatment of those characters.

What can be derived from this survey of governance structures? First, that the main tool of governance of these environments remains the EULA or Terms of Service, consented to in full, without modification, and generally without being read, by all users. While early adopters saw great promise in the ability to rule by contract, insulated from external laws, we can see that as a community evolves, tensions and disputes arise between the owner and the users, and between the users themselves. This leads to a desire to call upon external authorities, to, for example, settle a dispute with the service provider, when the EULA proclaims that the provider is god, such as litigation between Bragg and Linden, or between users, such as the copyright disputes that have plagued Second Life. Marc Bragg brought an

[3] Second Life Blog, 'Clarification of Policy Disallowing "Ageplay"', https://blogs.secondlife.com/community/features/blog/2007/11/14/clarification-of-policy-disallowing-ageplay, 14 November 2007, accessed 16 July 2009.

action against Linden following the termination of his Second Life account and confiscation of his entire inventory, on the grounds that he had purchased an area of land in breach of the Second Life Terms of Service. Bragg alleged that he had been led to believe that in Second Life he would own all of the property he created and therefore those assets could not be confiscated by Linden without compensation. The case was settled without resolution of this issue. (*Bragg v Linden Research, Inc*, Memorandum and Order Denying Motion to Dismiss, Robreno J, 30 May 2007.) Several cases have been filed relating to allegations of copyright infringement between users of Second Life, see for example, *Eros, LLC v John Doe* and *Eros LLC v Thomas Simon a/k/a Rase Kenzo*.

As Fairfield (2008a) has recently argued, the halcyon days of appeal to rule by contract are well behind us. Fairfield observes that contract is an incomplete mechanism for creating rights and obligations between members of online communities and that such communities will only reach their full potential when courts are prepared to read into such relationships default legal rules, such as those recognised by property and torts law. Contracts cannot anticipate and regulate all issues that may arise within the virtual community.

Second, however, just as there is ambivalence towards the dictatorship of the service provider, so too is there ambivalence to allowing or inviting interference from real world laws. While real world laws such as those relating to free speech, discrimination, theft, and fraud may provide the promise of dealing with problems that arise in-world in a manner that is consistent and familiar to residents of the relevant jurisdiction, they are greatly disruptive to in-world events and practices. Real world laws bring with them a need to comply with constraints that the virtual world is ideally designed to avoid. The player created world of EVE could not exist if everyone had to observe the real world laws of whatever jurisdiction may be deemed to apply. So how may this be resolved? First, we should consider the stakeholders in this debate.

Governance Stakeholders

Key stakeholders in the governance debate are real world governments, game or platform developers, and players or citizens.

As in-world populations increase, domestic governments are developing a greater interest in regulation of virtual worlds. This interest stems from a number of grounds including taxation, money laundering, content regulation, and crime. Recent initiatives in this area include the *Council of Europe Human Rights Guidelines for online games providers* (2008) which outline standard guidelines to be taken into account by game designers and publishers in developing game content. These guidelines emphasize the need to take account of the impact on children of certain content, with particular reference to gratuitous portrayals of violence, content advocating criminal, or harmful behaviour and content conveying messages of aggressive nationalism, ethnocentrism, xenophobia, and racism. Interestingly, the guidelines specifically exclude social virtual worlds, such as Second Life. As Ren Reynolds (2009) has commented, the Guidelines reflect the common attitudes to these environments adopted by many real world governments: that the users of such environments are predominantly children who need to be protected against inappropriate content and that the users of such environments are essentially passive. Both of these assumptions are wrong and while these types of assumptions continue to reflect the understanding of real world governments and underpin their attitude to regulation of virtual spaces, there will be major difficulties for game providers.

There is a need for education of governments regarding the true nature and diversity of these environments. Some recent work has been done in order to generate a better understanding of virtual worlds by governments. This includes the ENISA Position Paper *Virtual Worlds, Real Money Security and Privacy in Massively-Multiplayer Online Games and Social and Corporate Virtual Worlds* (2008), and the UK-OECD Workshop on Innovation and Policy for Virtual Worlds (March, 2009). While work thus far has been useful in awareness raising, further work is needed as there remains a lack of

understanding of key differences between various gaming platforms and social virtual worlds, such as the suggestion, for example, that Second Life is a game.[4] Not all virtual world environments are alike. Again, one of the key problems with adopting a clear and reasonable position on suitable forms of governance is that virtual worlds are very unalike. The interests of the citizens of Norrath are quite distinct from those of Second Life, Habbo Hotel, or EVE, but this very diversity must be respected by any attempts to regulate such environments. Some greater coordination may be needed between virtual social world and MMORPG providers in order to get key messages across.

The second category of governance stakeholders is the game or virtual world providers. While developers and operators may be different with respect to some platforms, this discussion will adopt the term "platform provider" to refer to the entity in charge of managing the game or virtual environment.

Gaming worlds generally reflect a much higher level of control than social virtual environments. For example, Blizzard claims copyright in all aspects of the World of Warcraft gaming environment. It maintains strict control over the range of characters that can be created, avatar names, and storylines. As noted above, it has tightened up its attitude towards mods and add-ons and recently won its long-running legal dispute regarding the use of Glider. Blizzard brought action against MDY, the creators and distributors of Glider, a program which facilitates automated play of World of Warcraft, alleging that MDY encouraged users to breach the Terms of Use, infringement of copyright and other breaches of the Digital Millennium Copyright Act (US). The Court held that the license granted to users by Blizzard to use the game software while playing World of Warcraft was limited by the other provisions of the Terms of Use and the EULA and that use of Glider in conjunction with the game software was a breach of that license. MDY was therefore liable as the party who had authorized or facilitated such breaches.[5] Blizzard deliberately and consciously moderates and controls the World of Warcraft domain and despite many criticisms of the limitations of the interface, graphics, and roles, World of Warcraft remains the most successful MMORPGs in the English-speaking world. (Blizzard, 2008)

City of Heroes is a gaming environment that is exploring greater player input to content creation. In February 2009 it announced that players would be able to create their own in-game stories and missions. (City of Heroes, 2009) However, the EULA provides that NC Interactive retains all intellectual property in such creations, "By submitting Member Content to or creating Member Content on any area of the Service, you acknowledge and agree that such Member Content is the sole property of NC Interactive." Granting users the ability to contribute content to the gaming world also gives rise to questions of how to monitor and remove offensive and inappropriate content. This will be monitored and filtered by NC Interactive in a number of ways, reflecting the ongoing responsibilities of NC Interactive as a community manager (Morrissey, 2009). Therefore, in granting scope for user generated content, NC Interactive must assume greater monitoring responsibilities.

Second Life styles itself as "an online, 3-D virtual world imagined and created by its Residents." (http://secondlife.com/) Pursuant to its TOS, it purports to grant users intellectual property rights over their creations and relies upon users to create the environment and sustain the in-world economy through trade in goods and services. Second Life has its own currency exchange and permits the trade of items in and out of world. However, as noted above, it must still exercise some controls over content and conduct in order to maintain an environment which it can market to potential users. Some of the most flourishing areas of Second Life, however, take place behind closed doors, such as Gorean and other role-playing sims.

[4] Second Life is not a game because it has no gaming object, no levelling up and no mandatory gaming narrative or role playing. However, many games do take place within Second Life.

[5] *MDY Industries LLC v Blizzard Entertainment, Inc*, Order, Campbell J, US District Court, District of Arizona, No. CV-06-2555-PHX-DGC, 14 July 2008, and Order, Campbell J, US District Court, District of Arizona, CV-06-2555-PHX-DGC, 28 January 2009. Note that this decision is currently on appeal.

Clearly, each of these worlds would be attractive to different users, although one should not over-simplify the classification of environments, even along the spectrum of those permitting user-created content. While World of Warcraft does not facilitate user generated content, it is always possible to interact with and alter the playing environment, such as through the manipulation of in-world items. Further, World of Warcraft has attracted a thriving community of machinima creators.

The main cause of dispute and disengagement between the users of the virtual environment and the providers is most likely a lack of transparency regarding the values sought to be protected and promoted by the platform provider. Of course, these can change over time. Burke (2004) discusses the tension that can arise from trying to serve the different needs of the 'dedicated core of heavily-involved players or a wider array of more "casual" players." He continues:

> Contradictory or at least divergent conceptions of the "public interest" in any given MMOG are promulgated by developer-sovereigns largely as marketing rhetoric and are thrown like scraps to antagonistic communities of citizens who then fight with each other to determine the "true" foundational principles of the gameworld (2004).

A successful platform provider must provide continuity and consistency in terms of game or virtual world ethos and philosophy. If they adopt a "hands-off" attitude, sudden intervention and rule making (or changing) will disrupt the user community and lead to disengagement. Those communities who have always lived under strict rules of the platform provider will likely feel less empowered to complain. Users who have invested the most time and effort in the environment, in particular through the generation of content, will feel that they have a particular investment in the community. Therefore, those environments that allow user generated content will need to take particular care in changing the rules and norms of that environment. The contribution of users to the development of the virtual world is therefore disruptive to traditional governance models (Humphreys, 2009). The continued creative efforts of both users and designers, within and outside the platform, mean that the scope of what is being governed is fluid, as Humphreys observes, the 'text is never finished' (Humphreys, 2008). Further, the assessment of the relative contribution of the users to the environment is also very difficult to measure.

Greg Lastowka (2009) has recently undertaken an analysis of Norrath, the fantasy world where EverQuest is experienced, for the purposes of developing an understanding of its nature as a subject of legal regulation. He observes that like most MMORPGs, whilst Norrath provides an essential context for the narrative of the gaming experience, it lacks an end. The territory of Norrath is perpetually subject to war, with no overarching ruler. This context serves as a background for stories developed and experienced by the players' own creativity. Added to this is the social dimension of the gaming experience, such as raiding, which is event rather than narrative. Clearly the players' contribution to the world of Norrath is vital. But their contribution remains limited to the locations, creatures and narrative context created by SOE, the game provider.

The final group to be considered in the governance triangle is the users themselves, again reflecting a diverse range of interests. This group will often feel a strong sense of "ownership" over the game or environment, having spent many years in some cases and a considerable sum of money as a subscriber. In those environments that permit user-generated content there may be an even stronger sense of ownership and entitlement. As Lastowka (2009) observes the law has "struggled to determine whether players are, in some sense, the "authors" of computer games." This question remains unresolved, even in those virtual worlds which purport to give some rights of intellectual property ownership to residents, such as Second Life.

It should also be recognized that the universe of the virtual worlds does not stop at the boundary of the game or universe itself. It is frequently expanded by fansites, blogs, fan fiction, discussion lists and websites, extending even to t-shirts, merchandise, and conventions. It is this engagement with the game or virtual world experience that enhances the sense of community and involvement. Again, most platform providers will encourage and support such activities, although many may restrict uses that are

controversial. For example, Blizzard has developed a Fair Use Guide for machinima developers. How far the influence and control of the platform provider extends outside of the game or virtual world environment are dictated largely by the laws of intellectual property, regarding use of copyrights and trade marks. The extent of control exercised by the platform provider may be both a commercial and a legal one, and again must reflect careful relationship management between the owners and the fans.

Players or avatars acquire rights only pursuant to the one-sided terms of use. Generally then they have no rights other than to use the platform whilst in compliance with the terms of service. A good governance structure should consider allocation of some rights to users that reflects their investment in the game or platform. Such a model is provided by Raph Koster (2000) in his "Declaration of the Rights of Avatars." Koster's Declaration explicitly recognizes, for example, that every member of the virtual community has the right to contribute to the shaping of the community's code of conduct "as the culture of the virtual space evolves, particularly as it evolves in directions that the administrator did not predict." Further, the administrator has a duty "to work with the community to arrive at a code of conduct that is shaped by the input of the community." Koster has put these rights into practice in the Terms of Service of Metaplace. These provide users with rights including freedom of speech, reasonable processes to resolve grievances, and ownership of their intellectual property. However, even this model recognizes that these TOS do not suit all environments and a context-specific assessment must be made regarding the appropriateness of granting extensive rights to users.[6] The next section will consider a governance model seeking to grant users a voice within the virtual world or gaming universe, and compare this with other approaches.

Governance Models

In-world governance models reflect deliberate choices made by the game or virtual world designers regarding how the environment will evolve. As discussed above, the world of EVE is largely player driven and the governance choices made by CCP reflect and support this policy. The introductory paragraph of the EVE Online "Suspension and Ban Policy" provides:

> Though we have made every effort to anticipate all the possible circumstances we may encounter as caretakers of the persistent world of EVE Online, there [sic] issues may arise that we had not foreseen. Our players are free-thinking, creative and sometimes crafty individuals who possess the ability to enter into situations or create scenarios unexpectedly. Therefore, this document should not be seen as all-inclusive, but rather to give our players a general idea of the guidelines we follow in dealing with these or similar cases. (EVE Online, Rules & Policies, http://www.eveonline.com/pnp/banning.asp)

This paragraph provides some insight into the way in which CCP is attempting to style both the nature of EVE and its relationship with the players. CCP describes itself merely as a caretaker, thus purportedly distancing itself from true power over the EVE environment. Players are recognized as having a significant degree of autonomy and are crafty – again endorsing the nature of EVE as a world that encourages marginal behaviour. That said, there is a long list of conduct that will result in a player having their account suspended or permanently banned. These include: using an exploit tactic which has been publicly banned; duping, creation and distribution of an illegal third party program that disrupts

[6] Metaplace, Terms of Service, https://www.metaplace.com/information/terms_service, accessed 14 September 2009. Metaplace is a platform for developing user-generated virtual worlds. Note that Metaplace also have a License Agreement, https://www.metaplace.com/information/beta_agreement, accessed 14 September 2009. See also Raph Koster 'Declaring the Rights of Metaplace Users' 15 September 2008, http://www.raphkoster.com/2008/09/15/declaring-the-rights-of_-metaplace-users/, accessed 14 September 2009. Note, however, Koster's own disclaimer that the rights will be followed unless 'the fabric of the virtual space is threatened and so long as world creators and users are not in violation of the EULA or relevant national or local law.'

game mechanics or gives an unfair advantage; and hacking the EVE servers or account of another player. Interestingly, the Policy also states that an immediate permanent ban of a player may be imposed for organizing or participating in a "corporation or group that is based on or advocates any anti-ethnic, anti-gay, anti-religious, racist, sexist or other hate-mongering philosophies." This statement is somewhat at odds with the savage piratical world of war within EVE but reflects the need for CCP to be seen as a responsible corporate citizen

CCP has taken the step of establishing the Council of Stellar Management, a committee of nine elected player representatives. The purpose of the CSM is to provide players with "societal governance rights." The CSM is elected by player vote, one active account-one vote, with the candidates receiving the highest votes winning. The CSM is then empowered to identify the issues of concern to players and to pass them on to CCP (via the CCP Council) for resolution. Topics are raised by players through discussion threads. If a topic receives sufficient support it must be considered by the CSM. CSM members are instructed that in casting their vote regarding whether a matter should be brought before the CCP Council, they should consider whether the issue would benefit EVE society as a whole, rather than merely a select group within that society. The CCP Council is then obliged to consider and respond to as many issues put to it by the CSM as possible in person at a meeting in Reykjavik, Iceland (the headquarters of CCP). Each member of the CSM serves a term of six months and is only allowed to serve two terms (consecutive or non-consecutive).

The background to the formation of the CSM is explained in the official EVE Online document, "The Council of Stellar Management," which considers the evolution of society within EVE and attempts to place CCP within that framework. It concludes that:

> But since this entire socioeconomic dynamic must exist within the technical framework provided by CCP, it must have also evolved in part because of CCP. In that sense, the inhabitants of EVE could view their society as a dictatorship, since they have had little direct say in how it has been governed. Any influence citizens may have exerted was more a consequence of the vendor-customer relationship, as expressed in the business terms of growth projections and client relations.
>
> Yet feedback between CCP and its customers – or members of the society- was always present in the interest of adapting the product to meet consumer demands. In examining this with a political view, describing the relationship as a "dictatorship" would be inaccurate, since it implies absolute control over the society with little regard to the opinion of those residing within it. On the contrary, constructive interaction and open dialogue between the legislator - CCP- and society members took place with the mutual aim of improving the society as much as possible. To the extent that the success of this arrangement can be measured, consider that as of the time of this writing, EVE's society has grown from approximately 30,000 in 2003 to more than 300,000 in 2009.[7]

Therefore, CCP made the decision to specifically include player influence in the governance of EVE. This model was based on three core principles: all players would begin on an equal footing, all players must agree to the EULA (termed the social contract), and CCP would not interfere in individual player interaction in the virtual world, provided there is compliance with the EULA and TOS. The TOS and EULA are expressed to define the boundary which separates the real life and the virtual.

While it is not without its critics and sceptics amongst the player base, the CSM is now in its third iteration and it provides an interesting working model of how governance can work in a gaming

[7] See Oskarsson, The Council of Stellar Management (undated). This document was written by Peter Johannes Oskarsson, a researcher at CCP, pursuing a Masters in Philosophy. This is evident in the drafting of the document which has an extensive bibliography, including references to Rousseau, Kant, Habermas and Rawls.

environment.[8] The particular nature of the model chosen by CCP reflects well the nature of the game they are trying to foster. They support a hands-off approach and allow player disputes to be sorted out between players themselves. It provides players with a sense of consultation, a mechanism for carrying forward issues and grievances, and contains this within a strict timeline. It also provides a filtering mechanism as topics must receive a prescribed level of support in order to be taken forward. It will be interesting to see how the role of the CSM may evolve. Issues discussed by the CSM thus far range from technical matters, such as account security and real money trade (following on from the Ricdic fraud); procedural matters, such as the right of the CSM to vote for its own Chair and the number of votes needed to require the CSM to consider an issue; and game issues, such as eligibility to receive medals for in-game accomplishments and data shown on pod killmails. The records of meetings and issues raised at the CSM, including discussion, voting and outcomes, is publicly available on the EVElopedia (http://wiki.eveonline.com/wiki). Not surprisingly, CCP has hailed the CSM as a great success. (Garratt, 2008)

This model may not be suitable for other gaming environments or social virtual worlds, where there is not such a cohesive user base with a dedicated commitment to the gaming world or virtual environment. It is unlikely, for example, that the residents of Second Life could develop a short list of issues for resolution by Linden Lab, which could command 25% of the votes of the discussion list participants. Many other environments have a broad player or user base, reflecting people of diverse ages, who drop in and out of the game or environment as it suits them. This suggests that the in-world governance mechanism must be tailored to reflect the nature of that particular virtual world.

At minimum, it is suggested that in-world governance mechanisms should reflect the nature of the virtual world itself. It should be designed to seek user input in a manner that is consistent with any hierarchy or institutions existing within that world and it should be broadly based. No significant changes to the game philosophy or environment should be made without consulting that group. For example, a gaming world that does not espouse values of democracy would not be suited to a governance model based on democratic principles. These would need to be modified to suit the underpinning philosophy of the world itself.

Users will generally accept and abide by the clearly articulated rules of the game or environment. Around the margins of those rules will be the areas for debate, such as where the rule is not supported by underlying code. However, in determining what is acceptable or not within an online community, the appropriate starting place will be the rules and norms of the community itself.

Joshua Fairfield (2008b) has argued for recognition of community standards and in-world social norms by courts and real world lawmakers in the resolution of conflicts between players. In determining what conduct should be sanctioned by real world laws, courts should consider the scope of consent given by users with respect to their engagement with the online community. He recasts the 'magic circle' so that it defines the boundary created by consent between laws that have effect within the game space and real world laws. Players consent to the EULA which defines the top level laws and governs the relationship between the game owners and the players. Operating within that space are also the community norms which dictate what layers understand as the rules operating within the game, rules which may be enforced by real world laws. Fairfield also argues that courts should interpret EULAs in the light of recognised community norms and practice, noting that 'community-defined norms often more accurately reflect the "social contact" between members of the community than do the EULAs' (Fairfield, 2008a). In spaces

[8] See CCP Xhagen's dev blog for statistics regarding votes cast in the election, notably there was a 9.74% voter turnout for the election for CSM3, compared to 11.08% for CSM1 and 8.61% for CSM2, see http://www.eveonline.com/devblog.asp?a=blog&bid=664, accessed 16 July 2009.

such as EVE where it is the general consensus that theft is part of the game play, no real world sanctions should lie. [9]

As Fairfield acknowledges, this does not address the situation where "the creator-made rules conflict with community norms." Nor does it address the consequences where real world laws or norms are contrary to behaviour and norms agreed to by the online such as slavery, exploitation and harassment. It is in this area that virtual worlds may need some insulation from real world laws.[10]

Conclusions

Virtual worlds are currently predominantly created and owned by commercial enterprises. Regardless of the feeling of community that exists within them and the feeling of ownership that users derive from building creations in-world and cementing relationships there, that experience is essentially owned by a third party. Autonomy from real world laws is accepted and effective when the interests of the owner and the users coincide. However, where there is a divergence of interest as Lastowka (2009) points out, "Both game 'owners' and players may feel the temptation to invoke the power of the state when conflicts arise." In the event of such a conflict, it is likely that the user will lose out, with their only option effectively the less than satisfying option of exit.

At the moment, the cost of exit to users is extremely high, as they will lose their accumulated inventory, in-world money, and avatar, only to have to start anew in their new environment. Although initiatives are underway to facilitate the transfer of content between virtual worlds, such as the MPEG-V "Information Exchange with Virtual Worlds" project, until interoperable standards are developed and adopted by virtual world developers, users will lose their investment on exit.[11]

It is suggested that national governments should facilitate the development of virtual worlds by creating consistent and supportive legal frameworks prescribing a *minimum* level of regulation. Any laws implemented by domestic governments should avoid the disruption and fragmentation of the users' in-world experience as a consequence of the implementation of different laws for the same platform across national boundaries.

Therefore, aspects of virtual worlds that might be appropriate for real world regulation would include the standardization of the basic terms of service, so that users could become familiar with the core aspects of such documents. Any deviation from the standard terms and conditions would have to be specifically brought to the user's attention. It may also be appropriate to have regulation regarding how changes to the terms of service must be brought to the user's attention.

In addition to standardized or transparent terms of service, regulation imposed external to the virtual world environment should relate to key issues such as ownership of intellectual property, privacy, surveillance, and age appropriate content. Other matters occurring within the game or role play environment should be dealt with on the basis of established community norms and enforcement mechanisms, such as banning, expulsion, suspension, or a reduction in status or powers. Above all, any regulation of virtual worlds should be sensitive to the particular needs of the relevant virtual world community and respect the diversity of individual users and their need to explore individual experiences. It should therefore avoid regulation of online behaviour where the community accepts certain conduct as part of the game play or environment space. This is why stealing a ship and podding your enemy's avatar is perfectly acceptable in EVE.

[9] It may be appropriate for the terms of the TOS or EULA to also operate as a contract between members, similar to the operation of a Company's Constitution under Corporations Law, this aspect of virtual worlds governance will be the subject of further study by the author.

[10] Further work is also needed on this issue and on the issue of the potential consequences of the online behaviour.

[11] See Summary of the MPEG-V Project on Information Exchange with virtual worlds, available at http://www.chiariglione.org/mpeg/working_documents.htm#MPEG-V, accessed 23 July 2009.

Bibliography

Bartle, R. (2006). Why Governments aren't gods and gods aren't governments. *First Monday*, *7*. Retrieved from: http://firstmonday.org/issues/issue11_9/bartle/index.html.

Blizzard. (2008) *World Of Warcraft® Surpasses 11 Million Subscribers Worldwide*. October 28, 2008. Retrieved from: http://www.blizzard.com/us/press/081028.html.

Burke, T. (2004). Play of state: Sovereignty and governance in MMOGS. Unpublished manuscript, retrieved from: http://www.swarthmore.edu/SocSci/tburke1/The%20MMOG%20State.pdf.

City of Heroes. (2009). Issue 14: Mission Architect, FAQ. Retrieved from: http://boards.cityofheroes.com/showflat.php?Cat=0&Number=13119948.

Consalvo, M. (2007). *Cheating: Gaining Advantage in Videogames*. Cambridge: MIT Press.

Council of Europe. (2008). Human Rights Guidelines for online games providers. Developed by the Council of Europe in co-operation with the Interactive Software Federation of Europe.

ENISA (2008). *Virtual Worlds, Real Money Security and Privacy in Massively-Multiplayer Online Games and Social and Corporate Virtual Worlds*. Retrieved from: http://www.enisa.europa.eu/pages/02_01_press_2008_11_20_online_gaming.html.

Fairfield, J. (2008a). Anti-social contracts: The contractual governance of virtual worlds. *McGill Law Journal*, *53*, 427.

Fairfield, J. (2008b). The magic circle. Washington & Lee Public Legal Studies Research Paper Series, Working Paper No 2008-45. Retrieved from: http://ssrn.com/abstract=1304234.

Garratt, P. (2008) EVE player council "pleased" with first CCP summit. *VG247*. Retrieved from http://www.vg247.com/2008/06/26/eve-player-council-pleased-with-first-ccp-summit.

Humphreys, S. (2008). Ruling the virtual world: Governance in massively multiplayer online game. *European Journal of Cultural Studies*, *11*, 149.

Humphreys, S. (2009). Discursive constructions of MMOGs and some implications for policy and regulation. *Media International Australia, 130,* 53.

Koster, R. (2000). A declaration of the rights of avatars. Retrieved from: http://www.raphkoster.com/gaming/playerrights.shtml.

Lastowka, G. (2009). Planes of power: EverQuest as text, game, and community. *Game Studies, 9* (1). Retrieved from: http://gamestudies.org/0901/articles/lastowka.

Morrissey, J. (2009). Mission architect: How are you going to manage *that*? *Gamasutra*. Retrieved from: http://www.gamasutra.com/view/feature/3995/mission_architect_how_are_you_.php.

Myers, D. (2008). Play and punishment: The sad and curious case of twixt. Unpublished manuscript, retrieved from: http://www.masscomm.loyno.edu/~dmyers/F99%20classes/Myers_PlayPunishment_031508.doc.

Oskarsson, Petur Johannes *The Council of Stellar Management: Implementation of Deliberative, Democratically Elected, Council in EVE*, CCP, undated, available from: http://wiki.eveonline.com/wiki/What_is_the_CSM accessed 14 July 2009

Oskarsson, P. J. *The CSM: A Summary Explanation of the Council of Stellar Management.* CCP. Retrieved from http://wiki.eveonline.com/wiki/What_is_the_CSM.

Postigo, H. (2008). Video game appropriation through modifications: Attitudes concerning intellectual property among modders and fans. *Convergence, 14,* 59.

Reynolds, R. (2009). Human rights & the 'online game provider'. *Terra Nova*. Retrieved from: http://terranova.blogs.com/terra_nova/2009/04/human-rights-the-online-game –provider.html.

Rossignol, J. (2009). Ragdoll metaphysics: Good grief, the victory of Eve's space goons. *Offworld*. Retrieved from: http://www.offworld.com/2009/02/ragdoll-metaphyscs-good-grief.html.

Thompson, M. (2009). Virtual Theft in EVE online creates run on bank. *Ars Technica*. Retrieved from: http://arstechnica.com/gaming/news/2009/07/virtual-theft-in-eve-online-creates-run-on-bank.ars.

UK-OECD Workshop on Innovation and Policy for Virtual Worlds (2009). Retrieved from: http://www.oecd.org/document/61/0,3343,en_2649_34223_42316797_1_1_1_1,00.html.