Cyberspace self-governance and its role and limits in regulating virtual world property relationships

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ABSTRACT

The purpose of this paper is to explore the limits of cyberspace self-governance in governing property relationships in the virtual world. First this paper will explore what constitutes a virtual world and the theory of cyberspace self-rule within a virtual world. Next this paper will explore the four common types of property relationships originating from a virtual world. Then this paper will explore the concept of cyberspace self-rule as it is applied in virtual worlds, drawing on current academic literature covering this topic. Finally, this paper will demonstrate the limitations of self-determination in adequately governing these property relationships.
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Chapter 1: Introduction

In 2004, Julian Dibbell, a technology journalist in the United States, demonstrated that he could earn 47,000 US dollars annually through engaging solely in the trade of virtual world property.\(^1\) In the USA, this income surpassed that of the average earnings fro school teachers (46,000 USD) and firefighters (38,000 USD). In 2003 in China’s Chaoyang District people’s Court, users successfully sued the company Arctic Ice for loss of virtual property.\(^2\) Users accused Arctic Ice of not sufficiently securing its systems from hacking.

Virtual property is increasingly important to the participants in a virtual world, who invest time, money and effort in creating, establishing, accumulating, trading, and protecting what each member perceives to be his or her virtual property. This paper will discuss the role that cyberspace self-governance plays in regulating virtual property relationships derived from virtual worlds. This paper argues that cyberspace, while helpful in defining property relationships within a virtual world, is not sufficient in and of itself as a means of legislating virtual world property.

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\(^1\) Dibbell, Julian. 'The Unreal Estate Boom, Wired, January 2003, accessed 12 February 2011 at \url{http://www.wired.com/wired/archive/11.01/gaming.html}.

**Structure of the paper**

This paper will review the history of the cases to be used in this argument. Then there will describe the theory of cyberspace self-governance as a form of cyberlaw and position this paper’s definition of a virtual world in relation to cyberspace in order to illustrate how cyberspace self-governance used as a rule of law framework differs if practiced within the context of a virtual world rather than throughout cyberspace. This paper will then define the essential relationships revolving around property found in a virtual world and illustrate why these relationships are important when it comes to virtual property disputes. The paper will then return to the cases to demonstrate how cyberspace self-governance, while helpful in defining the property relationships found within the context of a virtual world, is not sufficient in and of its self in regulating these relationships and requires a rule of law framework external to the virtual world.

**Methodology**

After defining essential terms, this paper takes legal cases that illustrate four essential property relationships within the context of a virtual world. After reviewing these cases, cyberspace self-governance is introduced and applied to virtual worlds including those found in the cases described in an effort to better understand these property relationships. In discussing the arguments found in these cases, this paper demonstrates how a form of cyberspace self-governance implemented within the virtual world is involved in defining the property
relationships found in each case. However this cyberspace self-governance proves insufficient in regulating these relationships when certain conflicts arise.

The cases considered are rooted in North America, where early discussions proposing cyberspace self-governance as a legal framework first arose. In identifying how the use of cyberspace self-governance applied to property relationships within the context of a virtual world fails to sufficiently regulate virtual world property and resolve relevant conflicts, this paper aims to contribute to a better understanding of virtual world property law.

**Definition of a virtual world**

Prior to beginning this discussion, it is important to establish what a virtual world is. In general, virtual worlds are online communities that share common resources. In just over thirty years of existence, virtual worlds already vary extensively in their purposes and capacities, and they continue to evolve. There are virtual worlds that exist as online gaming communities, such as Dark Age of Camelot and World of Warcraft (known among gamers as WoW). There are virtual worlds that more strongly resemble the real world in graphics and many available functions, such as Second Life and The Sims. There are also virtual communities, such as Facebook, that many users embrace as a means of maintaining and extending real world networks and relationships through sharing online media and user-generated content. These virtual worlds and communities are each unique yet still share similarities in their applications and significance to participants.

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3 User-generated content (UGC), also known as user-created content or consumer-generated media, is publically available content that is created by an end-user.
Given the variety of virtual worlds and the fluid nature of their construction and evolution, a virtual world must be more clearly defined for the purposes of this paper. In this paper, a virtual world is defined as a distinct online community in which participants have access to unique in-world resources that are common only to members of the same virtual world. In-world resources thus derive all value from their use as resources within the virtual world. In this definition, because a virtual world is unique and cannot be merged with another virtual world, resources cannot be transferred between virtual worlds. For example, WoW uses a currency and a series of virtual items that are common to WoW users. WoW currency cannot be used to purchase a good that is unrelated to WoW and WoW currency is not recognised as a legal means of exchange outside of WoW. All WoW items obtained via the currency or other means are created for use purely within WoW and derive all their value from how they can be applied within WoW. Moreover, while members of, for instance, the Dark Age of Camelot virtual world are not excluded from playing WoW, they are unable to use Dark Age items and currency within the WoW virtual world and vice versa.

While Second Life is porous in permitting external content to be brought into the Second Life virtual world, Second Life property and resources cannot be accessed by individuals that are not participants of the Second Life virtual world and Second Life resources independent of the Second Life environment have no value. For a counter-example, a virtual community like Facebook is not perceived as a virtual world in this paper according to this definition. Facebook requires no payment to join and Facebook does not necessarily limit access to its resources and content to
participants alone.⁴ As a social network and virtual community, Facebook has extended its resources via applications to encompass a much wider swath of assets that have value independent of their use in Facebook. The same is true for similar virtual communities such as Hyves, Nasza klasa, and LinkedIn, each of which aggregate content with value that is independent of the network itself but which may obtain added value as a result of its use by the network (e.g. more people will share, contribute to, or see the content).

In sum, a virtual world as understood in this paper is a self-enclosed online world where an individual user can create an account or accounts in order to participate in the virtual world environment via an avatar(s). An avatar is an online representation of a user herself in a character that she has invented within the established rules of the virtual world using tools of the virtual world crafted and maintained by that virtual world’s service provider. While a user can create more than one avatar to participate in a virtual world, it is not possible for a user to merge the assets or property accumulated by one avatar with another, even if the user is in fact the ‘owner’ of both avatars. This point will be reviewed later in this paper’s discussion.

**Definition of essential participants in property relationships in the virtual**

It is also important to define two essential participants in a virtual world, at least one of which is found in any virtual world property relationship. As this paper will later describe, at the moment property relationships rooted within a virtual world

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⁴ Facebook users can choose from a variety of privacy settings to determine how much of their preferred content non-Facebook members and Facebook members outside their immediate networks are able to view.
fall into four general categories. Each category of property relationships includes at least one user in a virtual world or at least one service provider of a virtual world or both. Users, as virtual world participants, and service providers, as the firms that make the existence of a virtual world technically possible, are two central participants in any virtual world. Without someone to plan, code, and maintain the virtual world, the virtual world cannot exist. Without individuals willing to make use of and fund the virtual world through payments permitting access to the world, there is little incentive for anyone to create and maintain it.

A user in a virtual world is an individual or individuals that create(s) accounts by which they access the virtual world, frequently for purposes of entertainment. As described earlier, users participate in a virtual world by means of one or more virtual world avatar(s). Users of a virtual world fund the production and maintenance of virtual worlds through financial contributions to the service provider of the virtual world. These payments permit the user access to the world and the resources and property rooted in the virtual world.

Service providers in a virtual world have the central purpose of creating and maintaining a virtual world, usually out of economic interest. The service provider of a virtual world is made up of individuals that are employed for the purpose of maintaining and, when necessary, evolving the virtual world environment and overseeing the technical and legal rules of user interaction utilised by users’ avatars within the virtual world. The individuals employed by a service provider can alter as individuals are hired or let go by the management-level employees of the service provider. Yet, despite changes in personnel, the service provider as a whole does not
greatly change in its original purpose. A virtual world service provider creates and, if a service provider so desires, evolves the virtual world environment itself in addition to determining and occasionally enforcing the virtual world’s established rules of interaction between different avatars within the virtual world. A service provider of a virtual world has the technical capacity to add, alter, and/or delete elements or regulations that make up one or more aspects of a virtual world through altering the digital code of the virtual world. The service provider also produces any legal agreements or texts advising as to the rules of the virtual world that are not ‘written into’ the code, such as an End User License Agreement (EULA) or a Terms of Service (ToS).

A virtual world provides an online environment where these users usually pay to play in an world made possible via the skills and work of the service provider – skills which, one can argue, are employed in a certain fashion by the service provider as a result of user financial support and interest. Users employ tools provided by the service provider in order to construct an avatar to interact with the avatars of other users within the virtual world.

**Theoretical approach: Cyberspace self-governance as a legal framework for governing virtual world property relationships**

Cyberspace self-governance proposes that virtual worlds are capable of evolving their own forms of governance and suggests that this self-governance is more legitimate and more reflective of virtual world community norms than other forms of governance.
‘The claim...that government [can] not regulate cyberspace, that cyberspace [is] essentially, and unavoidably free. Governments [can] threaten, but behaviour [can] not be controlled; laws [can] be passed, but they would be meaningless.’

The cyberspace self-governance claim is rooted in the origins of the early Internet and its constitutive users, who, for the most part, operated without the need for a formal government. This theory was (and in some cases still is) very popular among cyberlibertarians, such as members of the Electronic Frontier Foundation, in the early days of Internet communities and virtual worlds. At first, cyberspace self-governance seems a good fit for virtual world governance, and thus the related property issues, given both the similarities shared by a virtual world and cyberspace and the differences between a virtual world and cyberspace. However, this paper will demonstrate that this is not the case given the nature of the property relationships resulting from a virtual world.

Chapter 2: Summary of cases considered in this paper

Case law related to virtual world property is growing. This paper will examine three cases often cited in legal discussions concerning virtual property related to virtual worlds. These cases are Bragg v Linden Research, Inc., MDY Industries, LLC v. Blizzard Entertainment, Inc. et al., and Black Snow Interactive, et al. v. Mythic Entertainment, Inc.

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6 For example, see ‘A declaration of the independence of cyberspace’, by John Barlow, 1996, Davos, Switzerland, accessible at https://projects.eff.org/~barlow/Declaration-Final.html.
**Bragg v. Linden Research**

Linden Research Inc. (hereafter referred to as Linden) operates a multiplayer role-playing game set in a virtual world known as ‘Second Life,’ launched in June 2003. Participants in Second Life use avatars to participate in transactions and activities of various kinds in Second Life. Many of these activities resemble real world activities, from building houses to clubbing to getting married and more. Second Life participants are referred to as Residents within the game and interact with each other through the use of avatars. In 2007, Second Life claimed 10.5 million Residents.

Both Second Life the virtual world itself and the Second Life virtual world economy are significant. The value of Second Life’s service provider in August 2010 was estimated at 271 million USD, a 21 percent decrease from 2009. In the first financial quarter of 2010, transactions between users on Second Life totaled 160 million USD, a 30% annual increase and all-time high for the virtual world. A total of 31 million USD was exchanged within the virtual world currency, a 9% increase from 2009.

In 2003, while still in its first year of operation, Second Life decided to recognise certain virtual property within Second Life as belonging to users. At that time, the Chief executive officer of Linden Research, Inc., Philip Rosedale, began marketing

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Second Life as the first virtual world to acknowledge the virtual world property rights of its participants. Second Life users were now fully recognised by Linden and Rosedale as the owners of their Second Life properties ‘from cars to homes to slot machines’. Company press releases announced the opportunity:

‘Until now, any content created by users for persistent [virtual] worlds, such as Everquest® or Star Wars Galaxies™, has essentially become the property of the company developing and hosting the world. . . . We believe our new policy recognizes the fact that persistent world users are making significant contributions to building these worlds and should be able to both own the content they create and share in the value that is created. The preservation of users’ property rights is a necessary step toward the emergence of genuinely real online worlds.’

In interviews between 2004 and 2007, Rosedale himself stated that, ‘[t]he idea of land ownership [on Second Life] and the ease with which you can own land and do something with it... is intoxicating...Land ownership feels important and tangible’ and ‘What you have in Second Life is real and it is yours. It doesn’t belong to us. You can make money.’ Also, as part of the company’s marketing campaign, Rosedale campaigned within the virtual world of Second Life, organising virtual town hall meetings where his avatar appeared to discuss the new policy.

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Marc Bragg was a user of Second Life. He paid to participate in Second Life. Through his avatar, Bragg attended Rosedale’s town hall meetings in Second Life and paid close attention. He soon began investing in virtual land on Second Life via his avatar, converting dollars to ‘Linden dollars’, Second Life’s virtual currency, in order to take advantage of what he believed Rosedale and Second Life presented as an opportunity to make real profit, not only in Linden dollars but, once converted, in real world money.

As part of his participation, Bragg paid the requisite taxes to Linden in real world currency on the land that he purchased in Second Life.\(^\text{13}\) Bragg not only bought and sold land in Second Life, he eventually also created digital fireworks that he would then sell to other avatars for a profit as well.\(^\text{14}\) As a user, Bragg profited from Second Life while also generating profit for Second Life.

In April 2006, Bragg acquired ‘Taessot’, a package of virtual land, valued at 300 US (as opposed to Linden) dollars. In an email, Linden advised Bragg that his acquisition was the result of an ‘exploit.’ Linden took Taessot from Bragg and froze Bragg’s account in Second Life, ‘effectively confiscating all of the virtual property and currency that he maintained on his account with Second Life,’\(^\text{15}\) an amount that totalled approximately 8,000 US dollars. The virtual property confiscated by Linden

\(^{13}\) In June 2004, Linden reported that its ‘real estate tax revenue on land sold to the participants exceeded the amount the company was generating in subscriptions.’ For more, please see ‘Virtual Inheritance: Assigning More Virtual Property Rights’ by Olivia Y. Truong in the Fall 2009 Syracuse Science & Technology Law Review No. 57.

\(^{14}\) Bragg v. Linden Research 487 F. Supp. 2D 593 (E.D. Pa. 2007), Background, Plaintiff’s participation in Second Life.

\(^{15}\) Ibid.
included Bragg’s assets accumulated prior to his purchase of Taessot in addition to assets he had earned in exchange for his trade in digital fireworks.\(^{16}\)

A lawyer, Bragg brought suit against Rosedale and Linden in the Court of Common Pleas of Chester County, Pennsylvania in October 2006. Under the Second Life terms of service, which compel arbitration, Linden made a motion to stop the suit. The US District Court for the Eastern District of Pennsylvania refused, determining that the dispute resolution policies were procedurally and substantively unconscionable. The Court ruled that the terms of service (TOS) of Second Life were ‘a contract of adhesion.’\(^{17}\) With the motion for arbitration denied, Linden settled with Bragg on undisclosed terms and Bragg had all his Second Life property restored to him.\(^{18}\)

**MDY Industries, LLC v. Blizzard Entertainment, Inc. and Vivendi Games**

Blizzard Entertainment created World of Warcraft (WoW) in November 2004. WoW is a massively multiplayer online role-playing game that allows users to create avatars and participate in one of several virtual fantasy realms. Players can choose to play against a realm’s environment or other players, and they can interact with the world from the point of view of their avatar or observe their avatar from a third-person viewpoint. Blizzard has released several versions of the successful game. By

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\(^{17}\) Bragg v. Linden Research 487 F. Supp. 2D 593 (E.D. Pa. 2007), Motion to Compell Arbitration, Application, Unconscionabilty of the Arbitration Agreement.

2008, WoW overall had 1.5 billion US dollars in assets and ten million subscribers, two and a half million of which were located in North America.¹⁹

In WoW, ‘[as] players succeed, they acquire in-game assets, experience, and power. Players can advance from level 1 to level 60 with the basic game, and through level 70 with an expansion module.’²⁰ Via their avatars, WoW players invest both money and time in accumulating WoW virtual property through fighting virtual monsters, participating in quests and interactions with other online WoW players, and building skills. Users access WoW through purchasing a ‘game client’ software and then using this software to access the ‘game server software’ online. Users must pay a monthly fee to gain access to the game server software. Both types of software are owned by Blizzard, and Blizzard binds players to the rules of play through an End User License Agreement (EULA) and Terms of Use (ToU), which users must click to agree prior to being permitted to play the game.²¹ In addition, Blizzard claims control and ownership of the code that is used to make up WoW.

Michael Donnelly is the founder of MDY Industries. A WoW player and software programmer himself, Donnelly developed Glider, originally called WoWGlider, to aid him in his participation in WoW. Glider is a software ‘bot’²² that automates the early

²⁰ MDY Industries, LLC v. Blizzard Entertainment, Inc. et al., para. 1, lines 1-5.
²² ‘Bot’ is short for robot.
levels of WoW play. If Glider is implemented, a user does not have to be present at
his or her computer while playing WoW, saving the user time and helping him or her
to accumulate WoW virtual property such as WoW gold without the usually required
‘in-person’ effort:

‘Glider…moves the mouse around and pushes keys on the keyboard. You tell it about your [avatar], where you want to kill things, and when you want to kill. Then it kills for you, automatically. You can do something else, like eat dinner or go to a movie, and when you return, you’ll have a lot more experience and loot.’\textsuperscript{23}

While Donnelly developed Glider initially for personal use, he made it publically available and began to make a profit from the bot’s sales. Glider was sold for 25 dollars with a more expensive elite version of Glider made available to those WoW users willing to pay a monthly subscription.\textsuperscript{24}

Glider has no commercial use that is independent of Blizzard’s WoW. Many users purchased Glider. However, many other users found the bot’s existence unfair in that it allowed users to circumvent the usual rules of the WoW environment. Users that did not employ Glider found that those that did unjustly accumulated in world property that they did not ‘earn.’\textsuperscript{25}

WoW’s service provider Blizzard found the use of Glider to be disruptive to the virtual world as a whole. Glider allowed users to automate a repetitive aspect of the

WoW game called ‘grinding’, a capability that many users in addition to the service provider Blizzard considered cheating and a source of in-world ‘gold farming’, a cause of in-world economic inflation.

Blizzard (and its parent company Vivendi) sued MDY Industries and Donnelly for copyright infringement and won under the USA’s Digital Millennium Copyright Act. The United States District Court of Arizona ruled that Donnelly himself, as the owner of MDY Industries, was personally liable for secondary copyright infringement because each time a user employed Glider, users exceeded the scope of their WoW license. Users exceeded their license because the use of Glider required that the WoW game software be copied to the user’s RAM. In so copying the WoW software, the user violated copyright as laid out by the ToU that they agreed to when they signed up to play WoW. In providing users with the means to do so, Donnelly and MDY Industries aided copyright infringement.

The 25th of October 2006 MDY filed a complaint seeking a Declaratory Judgment rejecting Blizzard’s claims in the U.S. District Court of Arizona. MDY was unsuccessful in its complaint. In responding to MDY’s complaint, Blizzard stated,

‘Donnelly is an individual responsible for the development and sale of ‘WoWGlider,’ a software program that enables users to circumvent Blizzard’s security measures and infringe Blizzard’s intellectual property rights in its World of Warcraft® (‘WoW’ ) software. WoWGlider’s unauthorized code then enables its users to cheat fellow players by completing in-game tasks and building characters with little or no human participation, thereby giving WoWGlider users significant unfair and contractually prohibited advantages over legitimate players. Via the website wowglider.com, MDY actively markets and promotes WoWGlider with knowledge that they are encouraging and enabling WoWGlider users to breach their contracts.

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26 MDY Industries, LLC v. Blizzard Entertainment, Inc. et al., lines 1-9, p. 17.
27 Random Access Memory, a form of computer data storage.
with Blizzard. MDY’s actions have unjustly profited Michael Donnelly while negatively impacting the experience of millions of legitimate WoW gamers and causing significant damage to Blizzard. The acts of MDY, described in more detail below, constitute tortuous interference with the contracts between Blizzard and WoW users; contributory and vicarious infringement of registered copyrights in violation of the Copyright Act, as amended, 17 U.S.C. § 501; trafficking in technology designed for the purpose of circumventing copyright protection systems in violation of the Digital Millennium Copyright Act, as amended, 17 U.S.C. § 1201(a)(2) and (b)(1); trademark infringement in violation of Section 43(a) of the Lanham Act; and unfair competition and unjust enrichment under the laws of the State of Arizona.”

Glider or bots similar to Glider in different versions continue to be available online. Users continue to download and employ these bots to accumulate virtual property in WoW, despite the ruling in favour of Blizzard. In fact, user communities discussing how to most effectively use Glider have grown up around the new website.

Black Snow Interactive, et al. v. Mythic Entertainment, Inc.

Mythic Entertainment is the company that created and continues to develop the virtual world the Dark Age of Camelot, at one time one of the most popular virtual worlds online. The virtual world is a chaotic imaginary realm known as the Kingdom of Albion, set in the years just after the death of the mythical King Arthur. The game’s biggest challenge is not only the digital monsters but also other users. Users

29 For more, please see the mmoglider.com website at http://www.mmoglider.com/default.aspx.
have to choose one of three competing realms and then strive as a member of that realm against other realms, made up of other users, for mastery of the virtual world. As with WoW, individuals via their avatars spend a significant amount of time and money (paying a monthly subscription) in developing and strengthening their avatars and thus their ‘realms’.

In early 2002, a California-based company called Black Snow hired unskilled workers in Tijuana, Mexico to play the games Dark Age of Camelot and Ultima Online, two of the most popular online virtual world games in North America at the time. Black Snow paid the workers low wages. Black Snow arranged for three shifts of workers to come and play the games throughout their shifts. Through their different game avatars, the workers accumulated vast amounts virtual property from both games including digital items ranging from gold to weapons and other artefacts attached to the virtual worlds.

Black Snow then sold these digital items (including workers’ avatars, attached to specific game accounts) as virtual property to other Dark Age and Ultima Online players via eBay and other third-party platforms for a profit in real world currency. Black Snow allegedly accumulated significant profit with this enterprise. For example, a grand-master dragon tamer account attached to Ultima Online avatar could go for as much as 200 US dollars on eBay and the Dark Age currency traded for the same price as a Russian rouble. Black Snow had established what the technology journalist Julian Dibbell called the ‘World’s first virtual sweatshop’.

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30 Julian Dibbell, ‘Serfing the web: Black Snow Interactive and the World’s First Virtual Sweat Shop,’ originally published (in edited form) as a sidebar to ‘Unreal Estate Boom, or, The 79th Richest Nation on Earth Doesn’t Exist’ in Wired, January
Mythic Entertainment discovered Black Snow’s enterprise. Mythic suspended all Black Snow accounts and had eBay ban the Dark Age virtual property listings of Black Snow for violation of intellectual property. Mythic Entertainment did this because Mythic claimed that it legally restricted the sale of characters and items related to Dark Age in its EULA and ToS.\(^{31}\)

Black Snow challenged by Mythic Entertainment with unfair business practices and ‘various anti-trust, copyright and anti-competitive issues.’\(^{32}\) Black Snow argued that Black Snow sold time and effort and not just virtual world property when it sold virtual items accumulated within the game Dark Age. Black Snow's Director of sales, Lee Caldwell, asked, 'What it comes down to is, does a MMORPG player have rights to his time, or does Mythic own that player’s time?’\(^{33}\)

Black Snow pursued the suit until the company founders were questioned for allegedly illegal practices committed while involved in a former business, after which they disappeared and their law firm dropped the suit.\(^{34}\) Mythic Entertainment has not significantly altered the EULA or ToS. However, as of the writing of this paper, it was still possible to purchase Dark Age currency and avatars


\(^{32}\) 'Mythic sued over EULA: If I could turn back Time', The Register, 12 February 2002, accessed 19 February 2011 at http://www.theregister.co.uk/2002/02/12/mythic_sued_over_eula/.

\(^{33}\) Ibid.

with their accounts via third-party forums though none of these appear to be sold by an enterprise using Black Snow's business model.35

**Chapter 3: Cyberspace and self-governance**

Cyberspace encompasses the whole of the Internet. In the 1990s, an early cyberlibertarian, John Perry Barlow, began writing a series of articles explaining the Internet and its wonders to the uninitiated. Within these articles is the idea of a ‘cyberspace with its own rules’.36 In introducing the Internet as a place or space separate from the physical world, Barlow wrote,

‘Imagine...discovering a continent so vast that it may have no end to its dimensions. Imagine a new world with more resources than all our future greed might exhaust, more opportunities than there will ever be entrepreneurs enough to exploit, and a peculiar kind of real estate that expands with development...where goods can be stolen an infinite number of times and yet remain in the possession of their original owners...’37

Barlow’s rhetoric spoke of the Internet as the rhetoric of pioneering Americans in the 1800s spoke of the American frontier. This new Wild West, in Barlow’s opinion, would never be fully conquered by anyone, much less state governments with laws rooted in territorial sovereignty. Barlow considered this ‘cyberspace’ to be under

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the control of the growing numbers of users and the ‘sysops’ or service providers that exploited an ever expanding ‘continent’ online.

In a less favourable review of cyberspace self rule, Lawrence Lessig, an legal academic studying the Internet, noted that cyberlibertarians and other supporters of cyberspace self-governance like Barlow think,

‘Cyberspace is unavoidable, and yet cyberspace is unregulable. No nation can live without it, yet no nation will be able to control behaviour in it. Cyberspace is that place where individuals are, inherently, free from the control of real space sovereigns. It is, in the words of James Boyle, the great technogotcha — nations of the world, you can’t live with out it, but nations of the world, when you’ve got it, you won’t live long with it.’

Lessig argued that this was not the case and that in fact territorial governments and their laws have a great impact on cyberspace. In his literature, Lessig notes that these governments and their laws shape the values and the capacities of the individuals that code cyberspace as well as the actions and reactions of the individuals that use cyberspace.

Two wealthy technological libertarians that shared Barlow’s ideals, the founder of Lotus 1-2-3 Mitch Kapor and the first programmer at Sun Microsystems John Gilmore, joined Barlow in founding the Electronic Frontier Foundation (EFF). The EFF aimed to develop the legal understanding of cyberspace as separate ‘space’ to what has been previously known and thus inviolable to legal intrusion from

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terrestrial governments. In promoting cyberspace as its own location and its own sphere of legal influence, the EFF became one of the first organisations to advocate cyberspace self-governance.

Cyberspace self-governance claims that the separate self-governance of the Internet by those using it is both the most effective and the most ‘natural’ form of regulation on the Internet. Cyberlibertarians in support of cyberspace self-governance claim that cyberspace self-governance is capable of maximising welfare for the individuals in cyberspace, that any outside attempt to regulate cyberspace is futile, and that cyberspace self-governance more fully realises liberal democratic ideals than even regulation by a liberal and democratic territorial state. All these ideas were widely dispersed by eager cyberlibertarians like Barlow throughout the 1990s.

However, since then the arguments of Lessig and others like him have successfully critiqued cyberspace self-governance. Cyberspace self-governance has been largely criticised and often disproved as legal cases argued in territorial states demonstrate that state control over the Internet can and does impact cyberspace governance every day. First, it is not easy for cyberspace to regulate itself. The most effective

40 In ‘A declaration of the independence of cyberspace,’ John Perry Barlow wrote ‘Governments derive their just powers from the consent of the governed. You have neither solicited nor received ours. We did not invite you. You do not know us, nor do you know our world. Cyberspace does not lie within your borders. Do not think that you can build it, as though it were a public construction project. You cannot. It is an act of nature and it grows itself through our collective actions,’ accessed 15 February at http://w2.eff.org/Censorship/Internet_censorship_bills/barlow_0296.declaration.
means of regulation is to refuse access to the Internet for an individual that violates the rules made up by the rest of the cyberspace community. But this is almost impossible, as a user can enter and leave cyberspace through various channels and using various identities.

Moreover, if there is an entity capable of regulating the Internet, it has been proven that the most effective entity may in fact be the territorial state and its laws. Relevant state laws impact the use of cyberspace throughout the world, especially given the technology that now allows Internet providers to target specific audiences through geo-location and other types of technology that allow companies, countries, and internet service providers to effectively regulate who sees what on the Internet. An often-cited early case is that in which the French League against racism and anti-Semitism successfully established in both French and US courts that Yahoo could sufficiently technically control its portal search engine enough to prevent the trafficking of certain illegal materials to Yahoo users located in the territorial state of France without impacting access to the same materials for users of the portal located in the USA, for whom the traffic of said materials was not illegal. This and many other similar cases have proven that territorial laws do and will continue to impact cyberspace governance despite cyberlibertarian claims.

The country China is one of the most ubiquitous and widely known regulators of the Internet, using specific technology to daily and allegedly even hourly determine what users located in China can and will have access to. Through control of the Internet infrastructure, careful filtering systems, and pressure on both service providers and users, China is able to effectively limit what users located in China are capable of accessing and therefore owning online. Moreover, China is not unlike a number of corporations that ensure users on computers within the corporation cannot access specific websites or social networks during work hours. Cyberspace is, after all, used by many people to complete activities that they carry out off the Internet as well on, from communication to commercial transactions, and there is nothing new about multinational business or international information-sharing so it is not unexpected that territorial law effectively impacts cyberspace.

A final and lasting example of the failure of cyberspace self-governance is the rush for domain names. As websites grew increasingly important, recognised domain names became increasingly valuable, and sometimes a well-known name was registered by a ‘domain grabber’ in order to sell the domain back to the company or individual with the well-known name for a profit, proving that not all cyberspace property was ‘a peculiar kind of real estate that expands with development…where goods can be stolen an infinite number of times and yet remain in the possession of their original owners…’ As a result, Network Solutions Inc., the corporation that

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43 Jack Goldsmith and Tim Wu, pp. 87-103.
acted as the Internet’s first registrar of domain names, created an offline Domain Name Dispute Policy to arbitrate disputes. The NSI, an offline authoritative body located in the USA and supported by US territorial law, had the capacity and the authority to distribute virtual property in cyberspace through issuing domain names.\(^{45}\) Cyberspace is far from immune when it comes to the impact of territorial law.

The concept of the Internet or cyberspace as a place persists. This concept ‘has led some...courts to treat the Internet as a property-based regime and therefore subject to legal doctrines...based on real property,’ as found in the cases described earlier, which involve confiscation of virtual assets, copyright concerns, and an argument over user investment in the accumulation of virtual property.\(^{46}\) Moreover, within this territorial intervention in the laws applied to cyberspace, there is still some room for some self-governance on the Internet.\(^{47}\) Some of the most effective examples of this self-governance can be found in virtual worlds. A virtual differs from cyberspace in a number of important ways that permit a higher level of self-governance at least within the virtual world than that which might be found in the cyberspace within which the virtual world is established.

http://w2.eff.org/Misc/Publications/John_Perry_Barlow/HTML/complete_acm_columns.html#coming.


\(^{46}\) Kathleen K. Olson, ‘Cyberspace as place and the limits of metaphor,’ Convergence, Vol. 11, No. 1, 2005, p. 10.

\(^{47}\) Netanel, p. 399.
Chapter 4: A virtual world and its position in cyberspace

Virtual worlds have certain key similarities with cyberspace that resemble the reasons offered by cyberlibertarians in support of cyberspace self-governance. At the same time, virtual worlds differ significantly from cyberspace as a result of boundaries imposed on a virtual world that do not exist in the rest of cyberspace. These boundaries, while limiting, can also make cyberspace self-governance more effective when applied within a virtual world. The combination of these differences and similarities suggest that the theory of cyberspace self-governance could possibly be successfully applied within a virtual world, thus defining and potentially regulating virtual world property relationships related to the virtual world. This paper will now discuss how a certain amount of cyberspace self-governance can be applied within a virtual world as a result of a virtual world's significant similarities and differences with cyberspace.

Virtual worlds are similar to cyberspace in ways that permit self-governance within the virtual world

The definition of a virtual world described earlier in this paper is important when considering cyberspace self-governance as it can be applied within a virtual world. Virtual worlds are online communities that share common resources that derive value from their use within the virtual world. In applying the theory of cyberspace self-governance to virtual worlds, it is proposed that virtual worlds are capable of evolving their own forms of governance and as a part of that overseeing any
property relationships or related disputes. This theory also suggests that this self-governance is more legitimate and more reflective of virtual world community norms than other forms of governance, thus more accurately defining and when necessary enforcing these property relationships.

The theory of cyberspace self-governance recognises several characteristics of virtual worlds that are also found in cyberspace. A single territorial government in membership or in infrastructure does not necessarily bind virtual worlds. While members of a virtual world may hail from specific territories, together they make up and interact within a single virtual world. The hardware and software used to support the virtual world, like that used support cyberspace in general – the servers, coding, and computers through which virtual world members interact with the virtual world – can be spread throughout the globe and thus also are not physically aggregated under the rule of a single territorial government.

Moreover, in certain virtual worlds as in cyberspace, for many users a central purpose for participation may be to escape regulations found in the ‘real world’ for a variety of reasons ranging from profit to play. For example, in virtual gaming worlds where players compete against each other, violence and even the murder of a competitor is an acceptable practice. In cyberspace, individuals create Internet identities for themselves that may not represent their real world actualities. While not necessarily encouraged, especially when engaging in real world transactions via cyberspace, this misrepresentation of reality has come to be expected in certain cyberspace forums, chat rooms, and other areas of user interaction. This ability to escape the rules of the real world is, certain academics propose, a fundamental right
of participants in a virtual world.\textsuperscript{48} While the right may be disputable, the reality is that cyberspace and the virtual world offer the user the ability to do so.

Given that the scattered reality of a single virtual world reflects the scattered reality of cyberspace, the academic Dan Hunter argued that it is useful to ‘determine first what sort of online environment that we want, and then, and only then, choose a legal regime to achieve it’.\textsuperscript{49} This is very true in virtual worlds where users and service providers are engaged in creating and evolving the virtual world. Second Life, for example, saw that the most valuable users, those that returned regularly to Second Life, engaged in property transactions. Thus Second Life recognised and created policies that encouraged these transactions.

As with cyberspace, there is a certain amount of room for private ordering within a virtual world given that territorial legal jurisdiction is not always obvious to the individuals engaged online. David Johnson and David Post suggested that ‘the fundamental principle’ of governance on the Internet needs to recognise that members of the virtual worlds found online may be uniquely qualified to determine how best to apply law and what rules are most relevant to their use of cyberspace or the virtual world. This suggests in the absence of an obvious territorial jurisdiction that

\begin{quote}
‘the sysops and users who collectively inhabit and control a particular area of the Net want to establish special rules to govern conduct there, and if that rule set does not fundamentally impinge
\end{quote}


upon the vital interests of others who never visit this new space, then the law of sovereigns in the physical world should defer to this new form of self-government’. Virtual worlds do not use the territorial laws of a state in the physical world to determine what the world will look like or how it will be run. In the Dark Age of Camelot, users can defeat and steel property from weaker users and be rewarded for this. Neither the other users nor the service provider find this to be unfair or illegal and no physical state seeks to interfere to alter this form of property governance.

In cyberspace, vital interests of the real world are increasingly impacted by online activity, especially in the realm of property. Online disputes over copyrighted material and ecommerce involve ‘the laws of sovereigns in the physical world’ more and more. However, this is not the case in a virtual world. In a virtual world, the service provider and users have established a ‘particular area of the Net’ where the rules are unique to that space. This is in part due to the ‘boundaries’ of a virtual world, which set it apart from the rest of cyberspace. These boundaries limit but also enable a certain amount of self-governance within the virtual world.

Virtual worlds differ from cyberspace by providing boundaries that limit but also enable self-governance

A virtual differs from cyberspace. Like cyberspace in general, a virtual world runs on code, but a virtual world has more defined boundaries when it comes to what a user can do and where a user can go. While cyberspace continues to evolve, accumulate, and generate ever more material, a virtual world’s capacity to do this is limited by the control of a service provider. Through its control of the virtual world, a service provider can also limit the users of the world. Yet a certain amount of control retained by the users, who can indirectly influence other users and the service providers through in-world preferences and social relations. These preferences and relations, while they do not extend into the rest of cyberspace, do permit the users and the service providers a certain amount of cyberspace self-governance within the virtual world that is not possible in the rest of cyberspace.

Like a video game, virtual world may include advanced physics, artificial intelligence, 3D graphics, digitised sound, an original musical score, complex strategy and may use several input devices (such as mice, keyboards, gamepads and joysticks). Much of this is enabled if not selected and controlled by the service provider of the virtual world, with the users having limited input through forums and available game applications that allow users to suggest or prefer or sometimes import certain content, such as specific music. The service provider also determines

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the parameters within which activities within the virtual world can occur, e.g. how an avatar can obtain additional digital items, resources, or power within the virtual world. While activities such as grinding still persist, service providers like Blizzard are capable of determining that the grinding must end and, if they are technically capable, they can code to exclude the unwanted activity. If this is not possible of if such coding can have a negative impact on the virtual world overall, the service provider can even go so far as to exclude the offending user by eliminating his or her avatar, usually after issuing the user a warning. This is what happened to Bragg in Second Life when Linden perceived a problem in how Bragg conducted his activities. He was first warned and then his assets were frozen and his avatar was effectively banned from Second Life.

This is an obvious difference between a virtual world and cyberspace. A virtual world has boundaries from which a user can be expelled and this can cause the user to experience a sense of property loss when he or she can no longer access the value of accumulated virtual property attached to the virtual world from which he or she has been expelled. Julian Dibbell noted in one of his early articles, in which he explored user violation in a multiplayer user dungeon (MUD), a precursor to today's virtual worlds, that the virtual world community first admonished, then criticised, and finally convinced an administrator of the MUD’s service provider to outlaw a user, or at least the user’s avatar, from the virtual world. This reaction set up a precedent within the MUD demonstrating that similar behaviour would not be tolerated within the virtual world and that a user engaging in such behaviour could lose all that he or she had accumulated in the MUD if such behaviour occurred.
It is the service provider’s power of exile combined with a user's investment in a virtual world that heightens the impact of the virtual world's self-governance. The MUD's self-governance in legislating what was permitted and was not permitted in the MUD went like so: the problem was identified by users of the MUD, flagged by the users to a service provider, and then dealt with by the service provider. In line with the theory of cyberspace self-governance described by Johnson and Post, this decision of exile required no external intervention by any territorial government and deferred to the preferences of the group involved. It was a demonstration of the self-governance of that particular MUD, a nascent virtual world.52

In cyberspace, stripping a user of all his or her assets in cyberspace cannot be used to punish unwanted behaviour. Assets in general cyberspace can be duplicated, downloaded, copied, stored elsewhere, etc. Property in a virtual world is centrally controlled by the service provider and thus fixed, unlike the property in cyberspace that can be copied and shared by decentralised users throughout cyberspace, sometimes without the original developer's permission or knowledge. In addition, the asset’s value is not necessarily attached to its use in cyberspace. If downloaded to an individual’s personal computer, a piece of virtual property like a picture can maintain its original value despite no longer being 'located' in cyberspace. It is also logistically difficult to ban an individual user from all access to cyberspace. Users access cyberspace from a number of different devices and users can find a number

of different means, including anonymous means, of interacting with the rest of cyberspace.

In cyberspace, self-definition is more fluid as a user’s name and image can change in different online interactions, either altered by the user him or herself or by the means of interaction (e.g. from a public or a personal computer). In a virtual world, once a user establishes an identity as an avatar, that identity is fixed. The user can establish a second avatar in the same virtual world and begin anew with this other fixed identity. However, unlike in cyberspace, a user has no direct control over the alteration of his or her identity within the virtual world and can only change the avatar according to the established rules of the virtual world. That is, a user cannot merge or easily link one fixed avatar with another unless the rules of the virtual world permit it.

In a virtual world, the property attached to the world is only valuable when it can be used in the virtual world, so exile of the user completely devalues the property of the exiled user. Moreover, while the user can, if he or she so chooses, create a new avatar and rejoin the virtual world, the user can’t reclaim the property they had obtained prior to their earlier exile. This is why exile from the MUD was significant, and this is also why Bragg in Bragg v Linden Research, Inc. sued to re-claim his exiled assets and avatar rather than constructing a new avatar and accumulating new property.

Users are free to choose to enter a number of different virtual worlds. In a selection of one virtual world over another, a user can be said to be ‘voting’ for the virtual environment or rules he or she prefers. Yet, once selected, a user is subject to the
rules of that virtual world. As a user invests time and money in the creation of an avatar, the subsequent accumulation of virtual world property adds to the wealth, strength, and power of that avatar. Exile of the avatar by the virtual world for breaking the rules equals the destruction of the user’s investment. If the user wishes to re-enter the virtual world, he or she must create a new avatar and begin again in the accumulation of virtual property.

User involvement is also key to the virtual world and its rules, and service providers realise this. Users have a variety of virtual worlds to choose from, and the options continue to grow. Users pay a service provider to participate in a virtual world, incentivising service providers to give users input into the virtual world. After all, the in-world system, arbitrated by the service provider and with exile being the ultimate penalty, is not always well executed by the service provider in the eyes of the users. In 2009, a WoW guild accidentally received a developer item that gave them unparallel virtual powers within the virtual world, allowing the members of the guild to easily defeat the most difficult challenges in the game. As punishment for what was perceived as cheating, the service provider deleted all of the guild members’ accounts.

However, self-governance does involve the users, who cannot only choose to enter and thus to support a virtual world but can also impact the evolution and rules of their selected virtual world through pressuring the service provider. After the users complained to the WoW service provider about having inadvertently been provided the tool and then having been unfairly punished, the accounts and all the WoW virtual property of the users were reinstated without the need for intervention from
legal actors outside WoW.53 The WoW users and the service provider successfully regulated their own dispute.

Virtual world self-governance impacts virtual world property relationships

Because of the boundaries of a virtual world, the virtual world can more effectively implement a form of cyberspace self-governance than the rest of cyberspace. Within a virtual world, property relationships are confined to the property as it is exercised within the virtual world. Within a virtual world, property relationships are fixed. The virtual property offered within the virtual world escapes the problems found in, for example, the creation and exchange of domain names in cyberspace. In a virtual world, the service provider-controlled software determines what is and what is not possible for the user, presenting a predictable if somewhat limited array of options. The service provider controls the in world economy, creating items and generating potential wealth for users within a controlled environment. Users have access to the same pool of common resources, overseen by the service provider. Users can accumulate but not duplicate virtual property, and the service provider prescribes the means of in-world accumulation of property that users can impact through petitioning the service provider. Thus, if the software permits an action such as obtaining a piece of virtual world real estate or creating and naming an establishment in the virtual world, it is usually not ‘illegal’ within the virtual world or it would not be offered as a possibility to the user. In cyberspace, virtual property is not centrally controlled and not uniformly distributed, sometimes leading to

multiple claims to the same ‘piece’ of valuable virtual property, such as a domain name or a piece of content like a movie or image. As there is no central arbiter online to determine ownership, in cyberspace such cases can spill over into the real world where a legal authority backed by a territorial state intervenes, as was the case with domain names, and as is the case with certain copyrighted material such as films and songs.

In virtual worlds, the virtual world’s boundaries permit fixed relationships between avatars. Not found in cyberspace, these fixed relationships help to regulate property relationships within the virtual world without requiring interference from external actors. In a virtual world, how users interact with or relate to one another are subject to certain design decisions made by the service provider and implicitly accepted and agreed to by the users. Designers for the service provider can implement ‘a right of visit...consider whether there needs to be some way to drop an item, even if it is only in [an avatar’s virtual] home, while retaining enough ownership to stop anyone else from picking it up.’

These capabilities are either coded into the user’s avatar or offered as part of a selection of possibilities to the user. In Mythic’s Dark Age of Camelot, in addition to the status of Owner, there are the following available statuses: Guest, Resident, Visitor, Tenant, Acquaintance, Associate, Ally, Friend, and Partner. Each status comes with the permissions and capacities given to the avatar once a status is assigned, with some room for customisation on the part of the ‘owner’ avatar.

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assigning a status. Without disrupting the code of the game through hacking, these permissions are fixed unless altered by the owner of an avatar within the options presented by the service provider.

The service provider, after all, as the virtual world creator and developer, is the only actor with the capacity to alter the code that makes up the game. ‘Real crimes’ occur only when users violate the EULA or the ToS, by committing, for example, gold farming when it is explicitly forbidden, as in the case of Black Snow vs. Mythic Entertainment. In addition, real crimes by users, as mentioned, can be punished with the loss of all of the user’s virtual property through exiling the user’s avatar from the virtual world.

Property relationships within the virtual world are thus fixed in a way that they cannot be in the rest of cyberspace. ‘[B]ecause software operates by itself: the only human in a position to determine its decisions is its programmer [hired by the service provider].’ Given this fixed point of control and the clear rules that code creates when it comes to what is possible in the virtual world, ‘[e]ven as code-based property rights become increasingly complex, with more exceptions and special cases, they never become any less hard-nosed in their application.’ Users and service providers thus agree to certain defined property relationships within the virtual world. Users invest time, money and energy in exploiting these property

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relationships, and service providers invest time, money, and energy in maintaining these relationships.

Unlike in cyberspace, in a virtual world, the service provider that creates the virtual world has direct oversight within the virtual world as to how the world functions and, among the users, who gets in, who gets what in the world, who stays, and how they accumulate property within the virtual world. Within the digital code that makes up the virtual world, service providers are assigned (indeed, they assign themselves) certain powers. Service providers have the power\(^{58}\) to change that code and thus the rules at any time and without warning to the users of the virtual world. Service providers tend to avoid using this power unpredictably as this generates frustration among virtual world users that are essential to the survival of the virtual world. If a service provider acts regularly in a way that diminishes the user’s investment of time and money in creating an avatar and accumulating virtual property in the form of wealth, power, and strength for that avatar, a user has less incentive to remain in the virtual world. Users influence other users through their behaviour and discussions within the virtual world.

If enough disgruntled users threaten to leave a virtual world, a service provider stands to loss significant profit from the users’ subscription fees and the fees of any potential users dissuaded from using the virtual world as a result. At the same time, if enough users become frustrated with the actions of a specific user and complain about the action and/or the user to the service provider, both the action and the user can be punished by the service provider through a change in the rules or the

\(^{58}\) If not the authority. This will be discussed later in this paper.
issuance of a warning. This capacity of users points to the fact that the users have a sense of entitlement towards their virtual property for which the service providers have a certain amount of respect.

The service provider of the virtual world usually creates boundaries in a virtual world. However, users give a financial incentive to the service providers to provide the virtual world, and thus users have influence over these boundaries. As a result of the virtual world’s boundaries, users are also more likely to become uniquely invested in the virtual world and thus more likely to take the rules and potential punishments of the service providers of the virtual world more seriously.

The similarities shared by a virtual world and cyberspace in addition to the differences between the two suggest that cyberspace self-governance can be applied within the limits of a virtual world. Cyberspace self-governance within the virtual world impacts the relationships developed around virtual world property.

**Chapter 5: Important definitions in virtual world property**

To explore the role that cyberspace self-governance has on virtual world property relationships, it is important to first define the relationships important to this discussion of virtual property relationships. In this section, this paper discusses the four general categories of property relationships established around a virtual world. These property relationships are very important in defining property rights in a virtual world, and these relationships are determined by the individuals that take on selected roles within the virtual world – the form of cyberspace self-governance limited by the boundaries of the virtual world discussed above. Disputes over
property rights that arise in the virtual world are rooted in these relationships and impacted by the specific rules of each individual virtual world.\textsuperscript{59}

As noted above, while code and the service provider can provide consistent and predictable parameters within which users can act in a virtual world, software and the service provider can still be blind to certain virtual world social relations that give significance and value to virtual property. Users can let the service provider know about these relationships (e.g. by complaining about another user’s grieving tendencies); however, it is possible that the service provider and the code remain ignorant regarding the significance of the relationships around the virtual property.

‘The gaming conception of ‘possession-as-property’ depends fundamentally on players having a meaningful social understanding of property.’\textsuperscript{60}

\textbf{Four common types of property relationships originating from a virtual world}

There are four general categories of relationships in property exchanges that are derived from a virtual world. Each of these relationships involves at least one user and/or at least one service provider. The categories are first listed below and then described in further detail.

User to user

User to service provider

User to third party


\textsuperscript{60} Grimmelmann, ‘Virtual worlds as comparative law,’ p. 158.
Service provider to third party

**User to User property relationships**
User to user property relationships in a virtual world encompass property accumulated within a specific virtual world (in-world) by users of the virtual world. This property can be anything from virtual world currency to avatars to weaponry to virtual world real estate, etc. Users can exchange this property strictly in world or via third party platforms, where one user in a game can buy the property of another user for real currency rather than the virtual world currency. In Second Life, for example, users have the opportunity to purchase and sell Second Life property in world using Linden Dollars or L$, a ‘limited licence right’⁶¹, treated as in-world currency by Second Life users.

Alternatively, users can purchase and sell in world property but use a third party platform, either offline or online, to arrange the trade. Julian Dibbell, an active virtual world user and technology journalist, maintained as his central source of income for some time the sale of virtual world items to other virtual world users via third party platforms. Dibbell observed in his blog Play Money that, as of the 14th of April 2004, when he left the market, the market volume of virtual goods from just one virtual world, the virtual world Ultima Online was 156,857 US dollars.⁶²

Moreover, since Dibbell’s experience, this user-to-user market has continued to grow. In November 2010 in one of the highest ever single transactions of virtual property, Jon Jacobs, aka ‘Neverdie’ in the virtual world Entropia, sold shares in a

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virtual asteroid for 635,000 dollars, four times what the online market of a single virtual world was worth just six years prior to the transaction.63

Edward Castronova calls this user-to-user property relationship via third party platforms, either online or in the real world, ‘foreign trade’. He writes that

‘foreign trade is...the common practice of selling in-game items for real money in out-of-game markets. This trade is simple to conduct and hard to detect. [For example] If Castronova has an avatar that owns a Flowing Black Silk Sash in [the virtual world of] EverQuest, he may go to his [real world] neighbour Bird and sell the sash to him for $100. Bird simply gives $100 to Castronova, and then both return to their computer rooms, launch their avatars in EverQuest, and meet at some pre-assigned place in the virtual world. Once there, Castronova’s avatar gives Bird’s avatar the sash, completing the transaction."64

User to service provider property relationships
The next relationship revolving around property is the user-to-service provider property relationship. This relationship is overall beneficial to both parties as no virtual world as defined by this paper would exist without the successful interaction of both the virtual world service provider and the virtual world user. However, user-to-service provider property relationships are not always straightforward. These relationships can experience tension arising from Castronova’s ‘foreign trade’, complicated by what, at first glance, appears to be the contractual nature of the user to service provider relationship.

Contractual nature of the virtual property relationship between the user and the service provider

The contractual nature of the service-provider-to-user relationship is misleading. When it comes to the user-to-service provider property relationship, the service provider perspective on virtual world property may be enshrined in a virtual world’s End User License Agreement (EULA), which users must click-to-agree in order to set up a virtual world presence via an account and avatar. This perspective may be further understood by the service provider to be a technical fact (and thus not open to interpretation) given that a service provider has the capacity to alter the very code that is used to fabricate the virtual world and all the virtual property assets found within it.

According to a virtual world service provider, for example, the EULA is often formulated as a contract that the user ‘signs’ by ‘clicking to agree’, which can suggest that any property the user accumulates in-world is possessed by the user only within the bounds of the EULA, and that user property is, to an extent, ‘rented’ under contract with the service provider. In addition, as noted earlier, creation and control over the virtual world code does equal a limited control of the virtual world itself, as it is through the creation and the command of the code that the service provider enables the user to collect and utilise virtual world property, e.g. as with the different statuses available to the avatars in the Dark Age of Camelot. Between the EULA and majority of power that the service provider has over a virtual world’s code, the service provider may feel that the service provider has not only legal basis
but also the technical capability to determine the ultimate use and value of the user’s virtual world ‘property’.

However, as noted above, code is insensitive to the social relationships that users develop within the context of the virtual world. Code does not register events nor is code or the service provider aware of all the social interactions between users in the virtual world. Contracts necessitate ‘a social understanding of the parties involved’. It is important, according to the doctrine of misunderstanding in contract law, to at least inquire into each party’s subjective understanding of a contract, and this does not occur when a user merely clicks to agree. Dissatisfaction can thus arise for users as a result of a service provider’s lack of recognition of certain user-to-user social relationships involving property in addition to service providers’ hindrance of the user management of what the user perceives as his or her virtual world property.

This dissatisfaction if shared by multiple users can impact the service provider’s interpretation of a EULA, as the service provider does not want to lose the users, which provide a valuable source of income as a result of their attachment to the virtual world. As noted in the discussion concerning cyberspace self-governance within a virtual world, users have a sense of entitlement to their virtual world property that service providers tend to respect and to an extent encourage. This is not only the case in Second Life, where users were actively invited to engage in lucrative property relationships, but also in WoW and Dark Age, in which service

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65 Grimmelmann, ‘Virtual worlds as comparative law,’ p. 159.
providers responded to user complaints of unfair property distribution as a result of gold farming.

The code over which the service provider has direct control can further weaken the validity of a EULA’s stated contract. As James Grimmelmann notes,

> ‘There is comparatively little practical use to contracts for sales at some later time because game worlds are highly predictable. The harvests are reliable, monsters appear in set locations and on set schedules, there are no natural disasters, and no political turmoil ever threatens property or closes off the main roads.... Nor, for that matter, do we see family-relations contracts... The dissatisfied spouse declares himself ‘divorced,’ the dissatisfied guild expels an unruly member, and the game does not negotiate at all with the dissatisfied farmer.’

In fact, Grimmelmann continues, given the extensive amount of service-provider produced coding that pre-determines many contractual arrangements between the user and the service provider, such as the status of avatars and the function and power of the objects that these avatars accumulate, combined with the number of extra-contractual and frequently code-evasive agreements that a game evolves both in-world and off-world, from being nice to newbies in the virtual environment to in-world group ostracism for a player accused of ‘griefing’ to selling in-world property via off-world third-party platforms, a ‘model, then, would be that games represent worlds that are relational rather than contractual.’

The virtual world’s self-governance enhances this sense of property relationships that trump click-to-agree contracts. For example, the virtual world EverQuest awards experience to a team of users that does the most damage in killing a virtual

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67 Griefing is a term used to describe players who purposely harass and irritate other players.
68 Grimmelmann, ‘Virtual worlds as comparative law’, p. 162
monster, turning the kill into virtual treasure (treasure that can equal additional power within the world for a user’s avatar). However, within the world it is possible to ‘steal the kill’ if a user that is not overly involved in vanquishing the monster grabs the treasure first. For obvious reasons, users feel that ‘stealing a kill’ constitutes griefing. If enough users complain about a user that ‘grieves’, EverQuest will suspend the offending user’s account.69

Interests and internal politics influenced by external social relations related to the virtual world can to a large extent influence decisions made about ownership of virtual property within the virtual world by both service provider and user.70 For example, what Castronova categorises as ‘foreign trade’, can cause frustration for users when a service provider ‘disrupts the market’ in world through decreasing or otherwise altering the in-world value of a piece of virtual property.71 If, to continue Castronova’s earlier example, EverQuest decides to create and give away several Flowing Black Silk Sashes to every user, then the user that purchased the Flowing Black Silk Sash for $100 may regret his purchase. The former value of the user-to-user property relationship is destroyed.

This example demonstrates how service providers may also suddenly change the rules of a virtual world through altering the virtual world’s code, thus potentially

diminishing or even completely dissolving a virtual world economy that, up to the unilateral change in code, was actively recognised and adhered to by both users and service providers. An often-cited ‘real world’ example is from 2007, when the US Federal Bureau of Investigation investigated the practice of gambling in Second Life. Linden Lab, creator of Second Life, introduced a rule/code change that prohibited outright gambling.\textsuperscript{72} The ban caused a loss in revenue to users who had invested real currency (via the purchase of Linden Dollars) into the creation of casinos in Second Life. Some casino owners and casino players situated outside the USA and thus outside the jurisdiction of the FBI complained to Linden Lab, based in the USA, but to no avail. This reality also points back to the point that contracts are drafted to avoid certain common unforeseen events such as defective products or hidden complications. In this case, if by clicking to agree to the EULA and the ToS users of Second Life agreed to participate by the rules thus described, the contract did not protect the users at all from the damages that they may have suffered due to Linden’s sudden changes to the virtual world’s rules and capacities, which many users may have perceived as an unexpected and damaging defect.

All this confusion is evidence that to perceive the user-to-service provider property relationship as contractual is misleading and harmful to both users and service providers as a result of this perception’s ignorance of the social relationships impacting virtual property. As discussed, when it comes to ‘foreign trade’, not all service providers recognise user claims to certain virtual items such as those items

that users choose to sell to other users via third party platforms, and not all service providers recognise virtual world investments made by users into virtual real estate, etc. as representing user investment in the user’s virtual property. Rather, service providers choose to ignore ‘foreign trade’ or to actively attempt to shut it down, and service providers consider a user’s investment of time and money in the virtual world to be part of the ‘play’ that the user pays to experience in the virtual world. Yet this lack of recognition does not effectively deter user-to-user property relationships, which as this paper noted have only increased in value over the last few years. In fact, a service provider’s lack of interest in the user-to-user property relationships revolving around the virtual world sustained by the service provider can promote these lucrative relationships, a reality which calls into question the perceived contractual nature of a user-to-service provider property relationship. That is, while some service providers perceive property accumulated by users’ avatars and even users’ avatars themselves as ultimately the service provider’s property, users successfully subvert this perception through sustaining profitable, user-controlled markets permitting external property exchanges with one another involving what the service provider perceives as the service provider’s property. As Casanova noted, the users simply avoid the service provider by meeting off-world, bargain over the price of the virtual world property, come to an agreement, exchange real money, and meet up in the virtual world to make the property exchange. In this not abnormal situation, whatever the contractual nature of the EULA, the service provider is not much more than a forum of exchange providing products the price of which is determined by the users (though this price is, as
noted, not inviolate to actions of the service provider.) By not recognising these markets, the service provider is effectively removing itself from the virtual world property exchanges that the users sustain, making the service provider’s EULA and control over the virtual world code largely symbolic.

To perceive a strict contractual relationship between users and service providers is to misinterpret the full scope of the relationship between the two essential virtual world participants. Contracts, despite their potential use, are formal tools imported from the real world into the virtual. Contracts like many virtual world EULAs do not reflect the reality of the way that relationships around the virtual world function.

This paper thus focuses on the property relationship between user and service provider rather than dwells on the formal contractual relationship that, as noted, appears in regard to many virtual worlds to be largely a formality rather than a reality.

**Users, service providers and third party platforms in property relationships**

Users and service providers from a variety of different virtual worlds have engaged in property relationships with third parties not directly involved in the virtual world. These platforms provide a means of exchange and a source of conflict. Users have sold and purchased (and continue to sell and purchase) in-world property via third party platforms, either engaging with other users via the platform or simply purchasing items directly from the platform itself. It is estimated that users are
trading over 200 million dollars in virtual items on web platforms external to the virtual world.\textsuperscript{73}

Professional ‘middle men’ exchange platforms have begun to profit from this lucrative trade without actually participating in any virtual world. For example, the platform Internet Gaming Entertainment (IGE) makes money from collecting and selling a variety of ‘massively multiplayer online game (MMOG) virtual currency and assets’.\textsuperscript{74} As this type of commerce is not overseen directly by users, it avoids any recognition and therefore may also avoid any potential infringement of EULA contractual agreements. Because the user-to-third-party property relationship bypasses if not inhibits the tension found in service-provider-to-user property relationships, it is an ideal relationship for users that want to accumulate in-world property off-world or for users that want to make real world money off a piece of in-world property. A good example comes from the service provider Webzen that, in 2003, attempted to stop Itembay from buying and selling MU-Online items from the virtual world. However, Itembay, being an intermediary for rather than of users, had never played the game and was therefore unbound by the contract of the EULA and could not be sued.\textsuperscript{75}

The property relationship between users and third-party platforms is generally positive for both. Users can engage with these third-party sites to establish accounts

\textsuperscript{74} Internet Gaming Entertainment, ‘About us’, accessed 5 October 2010 at \url{http://www.ige.com/about.html}.
and reputations as vendors and sellers of virtual property, and then users can sell their virtual property to or through these platforms to other users, with the platforms collecting some profit in the form of a commission or marketing fee. Service providers and third-party platforms have less profitable property relationships. Service providers often engage with these third party sites to ask that these sites cease or limit their commercial activities involving virtual world property. As noted in the Webzen example, service providers go so far as to attempt to shut down these third party sites altogether. Service providers cite a variety reasons for wanting to end third-party platforms involved in virtual world property exchanges, from arguments for fair play (e.g. in selling high-level avatars to users, the virtual world game puts less financially well-off users at a disadvantage in-world) to more technical arguments over ownership of code and access to it. For instance, Blizzard, makers of WoW, discovered that the third-party MDY created and sold a programme called Glider.

In conclusion, there are four general categories of property relationships that can be derived from a virtual world. Each of these categories involves users and/or service providers from the virtual world. The categories are user to user property relationships, user to service provider property relationships, user to third party and service provider to third party property relationships.
Chapter 4: The cases and the conflicts

Case law demonstrates that there are a number of conflicts that have and that can arise between different virtual world participants engaged in different virtual property relationships derived from the virtual world. While cyberspace self-rule helps to define these property relationships within the virtual world, it is not sufficient to solve the conflicts over property that arises within these relationships.

Bragg v. Linden Research

In *Bragg v. Linden Research*, the ruling recognises the rules of the virtual world Second Life. These, the ruling notes, are not necessarily the rules listed in the Second Life Terms of Service. Instead, the ruling recognises that the ToS are a contract of adhesion and do not accurately represent the interests of the user Marc Bragg. This ruling underlines the important property relationship that exists between user and service provider, and how it is both the user and the service provider that determine the rules of this relationship within the virtual world. When the service provider fails to consider the user in a property conflict, the court recognises and reinforces the user’s rights within the virtual world, pointing out in its reasoning how the world’s own self-governance supports this assertion and committing the court’s support as an external actor. Thus this case recognises the ability of the virtual world to determine its own rules of property relationships but also is required to step in and reinforce these rules when the service provider threatens to disregard them.
Marc Bragg contributed to the Second Life economy, buying and selling land along with his digital fireworks to other Second Life participants, paying a tax on certain properties directly to Linden Research and thus generating profit for both himself and Linden. In fact, ‘real estate tax revenue on land sold to the participants exceeded the amount [that Linden] was generating in subscriptions.’\textsuperscript{76} Bragg’s behaviour was in line with Linden’s press release noting ‘the fact that persistent world users are making significant contributions to building these worlds,’\textsuperscript{77} and as such, Bragg felt he ‘should be able to both own the content [he] create[d] and share in the value that [was] created.’\textsuperscript{78}

Linden took all of Bragg’s assets on Second Life away from the user after accusing Bragg of an ‘exploit.’ The exploit was the purchase of Second Life real estate at an undervalued price. Whether the result of Bragg’s cleverness or a technical error, the service provider Linden made the decision that Bragg had engaged in activity that violated the virtual world’s rules enough to effectively exile Bragg from the world, causing Bragg to lose not only all his in world assets but also a significant amount of real world money attached to those assets. According to Bragg, Linden’s actions against him went against Linden and Rosedale’s widely hawked invalidated that

\textsuperscript{76} Bragg v Linden Research, Inc. 487 F. Supp. 2D 593 (E.D. Pa. 2007), accessed 10 February 2011 at http://scholar.google.co.uk/scholar_case?case=5834340332892222111&q=Bragg+v.+Linden&hl=en&as_sdt=2,5#7, Background, p. 2.


\textsuperscript{78} Ibid.
‘[t]he preservation of users’ property rights is a necessary step toward the emergence of genuinely real online worlds.’

It is important to point out that both the service provider and the user recognise the value that the user brings to the virtual world, a value that Rosedale and Linden sought to encourage. Bragg and Linden are not alone in their assertions that argue for the value that a user brings to a virtual world and, as a result, to the service providers supporting the virtual world for a profit. As Linden and Rosedale officially noted, the more that a user in a virtual world creates, improves, and contributes items to a virtual world, the more the virtual world grows in size and value to the service provider and to the other users. User creation is also related to further commoditisation not just of individual virtual items related to the virtual world, but to the increasing modification of the virtual world itself. The more users arrive that participate in paying to play in the virtual world and the more that they are willing to spend on the virtual world overall (virtual items bought and sold via third parties included) the more valuable the virtual world becomes to users. The more valuable the worlds to the users, the more profit that service providers can potentially make.

Linden did not deny Bragg’s claim outright. Instead, Linden sought to arbitrate the claim in its preferred jurisdiction. Linden’s ToS, which all users must click to agree prior to participation in Second Life, state that users in conflict with Second Life’s

79 Ibid.
service provider are compelled to submit their claims to arbitration according to the Rules of the International Chamber of Commerce (ICC):

‘Any dispute or claim arising out of or in connection with this Agreement or the performance, breach or termination thereof, shall be finally settled by binding arbitration in San Francisco, California under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with said rules. . . Notwithstanding the foregoing, either party may apply to any court of competent jurisdiction for injunctive relief or enforcement of this arbitration provision without breach of this arbitration provision.’

Thus Linden’s ToS demanded that Bragg submit to what could prove to be an expensive and protracted arbitration with Linden. This is where cyberspace self-governance, which up to that point had defined the Second Life user to service provider property relationship, failed. Bragg refused and brought Linden before a local court.

The Court reviewed the case and determined that Linden’s demands requiring arbitration were unfair and amounted to a ‘contract of adhesion.’ According to the court, a contract of adhesion is a ‘standardised contract, which, imposed and drafted by the party of superior bargaining strength,’ in this case the service provider, ‘relegates to the subscribing party only the opportunity to adhere to the contract or reject it.’ The Court continued that ‘the critical factor in procedural unconscionability analysis is the manner in which the contract or the disputed clause was presented and negotiated.’ In the case of Bragg, he was ‘the weaker

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82 Bragg v Linden Research, Inc., Motion to dismiss for lack of personal jurisdiction, p. 4.
party’ and he was ‘presented the clause and told to ’take it or leave it’ without the opportunity for meaningful negotiation, oppression, and therefore procedural unconscionability.’

The Court formally recognised that the contract was not relevant. The user and the service provider were not equitably represented, and Linden as the service provider had no right to dictate terms such as these to a user. Thus the service provider cannot expect the ToS to be recognised as the reality of how property relationships exercised within the virtual world between user and service provider to be recognised in a property dispute. In this case, the Court was not required to go further. Threatened with external interference in a property dispute, Linden settled with Bragg and restored all his virtual property.

In this case, Bragg and Linden determined the property relationship between user and service provider without the need to involve an external actor. Yet this self-governance of property relationships between user and service provider within the virtual world Second Life proved insufficient as a conflict arose and Bragg sought support outside of Second Life to validate his rights as a user and property owner. The property relationship determined by Second Life’s users and service providers framed the context in which Bragg’s claim was validated by the Pennsylvania Court but was in of itself insufficient to protect Bragg without the Court’s assistance.

In their literature, Ralph Koster and Edward Castronova explore the position and the rights of users in a virtual world environment. They propose that limiting the rights of the service provider is an effective means by which to effectively regulate

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83 Ibid.
the virtual environment. Castronova goes so far as to suggest the creation of some kind of ‘interration’ statutes for virtual worlds that resemble incorporation statutes, granting specific legal status to virtual worlds and more clearly defining the gaming experience based upon the sort of statute chosen.84

In this case, cyberspace self-governance within the virtual world failed when the service provider failed to respect the user in their property relationship. Users also impact a virtual world via creating norms of behaviour that may or may not be reflected in the rules of the game, the EULA or the ToS written by the service provider, as will be explored in the property conflicts related to the next case.

**MDY Indus., LLC v. Blizzard Entm't, Inc.**

As noted, service providers can also engage with third party sites in property relationships, often to ask that these sites cease or limit their commercial activities involving virtual world property. Sometimes, service providers go so far as to attempt to shut down these third party sites altogether for a variety reasons, from arguments for fair play (e.g. in selling high-level avatars to users, the virtual world game puts less financially well-off users at a disadvantage in-world) to more technical arguments over ownership of code and access to it.

In this case, Blizzard won such a case by charging MDY with copyright violation. However Blizzard’s goal in the case was to end the harm that Glider was causing to the virtual world property relationships sustained between users on the virtual world. The use of Glider violated these relationships, causing in world inflation and

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upset users to complain regularly to Blizzard, the service provider, for failing to protect their property interests.

Blizzard won its case partially due to the fact that Glider bypassed the security measures found in WoW’s Warden, which controlled user access to WoW sounds and graphics, ‘real-time experience of travelling through different worlds, hearing their sounds, viewing their structures, encountering their inhabitants and monsters, and encountering other players’. The judge in the case commented that

‘WoW is a carefully balanced competitive environment where players compete against each other and the game to advance through the game’s various levels and acquire game assets. Glider upsets this balance by enabling some players to advance more quickly, diminishing the game experience for other players. Glider also enables its users to acquire an inordinate number of game assets -- sometimes referred to as ‘mining’ or ‘farming’ the game. The acquisition of these assets upsets the game’s economy, diminishing the value of assets acquired by regular game users.’

The act of automating the acquisition of property in world is called ‘grinding’.

Grinding does more than frustrate a service provider like Blizzard. Grinding, griefing, and similar actions are often perceived by other users of the virtual world as unfair and outside the laws of the virtual world. ‘There is excellent evidence from a significant number’ of virtual worlds depicting how users ‘shape their norms around the software rules that are given to them, and on how these norms then feed

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87 Grimmelmann, ‘Virtual worlds as comparative law’, p. 154.
back into the decisions made by game designers." These norms can then find their way into the service provider's decisions regarding the evolution of the virtual world, whether by being written into the code or into the EULA.

This feedback loop is a good example of a limited virtual world self-governance when it is followed by those involved in the virtual world. However, as in the case of Blizzard and MDY Industries, this does not always happen. Service providers and users have also interacted with public and private legal representatives in disputes over virtual property. In this case, the judge recognised that both the service providers and some users experienced a threat to their virtual world property as the result of a third party that sought to profit from users that do not abide by the internal rules of the virtual world.

Blizzard noted that between December 2004 and March 2008, the service provider received 465,000 complaints about WoW bots, most of which named Glider. Blizzard had attempted to technically exclude Glider but found that a technical solution employed in the code of the virtual world that 'could risk banning or crashing innocent customers.' Blizzard noted that it had a finite amount of resources with which to deal with these complaints and that, with its legal case in the court of a territorial government, it sought to 'make it bad business' to implement Glider. The service provider needed external support in achieving this aim without causing a significant technical threat to WoW users.

In this case, self-governance within the virtual world defined the use of Glider to be unfair and not in line with the established in world property relationships. Yet, this

88 Ibid.
self-governance was not sufficient enough to end the use of Glider. Exile was not an option as it was technically difficult to exile only the users employing Glider. To do so would be costly and Blizzard would risk harming other innocent users.

Glider was only useful within WoW and could not be applied in any other virtual world. Yet its use was harmful to the world as a whole and outraged the users. The service provider had to spend resources encompassing both time and money in responding to user complaints and in isolating and attempting to expel Glider. Yet Glider continued to make money from the minority of users that purchased and implemented it.

In this case, self-governance inside the world defined the relationships and their relevant responsibilities, and according to these rules Glider permitted the unfair accumulation of virtual property at the expense of others in the virtual world. The WoW economy was inflating and users and the service provider recognised that the virtual world as a whole suffered. For this reason, Blizzard sought external aid in outlawing Glider. The Court obliged with a ruling on copyright infringement that made it ‘bad business’ for users to employ Glider and for Glider to be made available to users.

**Black Snow Interactive, et al. v. Mythic Entertainment, Inc.**

In the disputes brought by Blizzard, the service provider was responding to active complaints sent to the service provider by users regarding violations of user property. In the case of *Black Snow Interactive, et al. v. Mythic Entertainment*, the case was brought by a third party that claimed the service provider was infringing on the property rights of the third party.
The game Dark Age requires players to spend a long time building up strong avatars within the game. Black Snow (and other private individuals and groups of individuals) sold ready-made Dark Age items online at sites like CamelotExchange and eBay, where a strong Dark Age character could sell for as much as 300 USD. To build the characters sold, Black Snow was accused of hiring employees in Mexico to ‘farm’, that is create and collect, virtual items that Black Snow then sold to Dark Age players via third-party sites, forbidden in the EULA of the Dark Age virtual world. After Mythic Entertainment banned Black Snow from the game, Black Snow sued Mythic and argued that Black Snow had the right to sell the time and effort invested in creating the value attached to the virtual objects that Black Snow put up for sale.90

While copyright is mentioned, in this case as in the case against Glider, copyright was not the essential concern:

‘What mattered here wasn’t whether Black Snow had or had not violated Mythic’s copyrights. What mattered, rather-and mattered indeed-was whether Black Snow had or had not done harm to the community of which their subscriptions to Dark Age of Camelot made them members.’91

The virtual world had a set of property relationships that in the terms of service and in the understanding of Mythic, Black Snow’s enterprise threatened. Yet, as noted in the case of Bragg v. Linden, the ToS and the EULA are not necessarily binding on the user. Users have more rights to virtual property than they are necessarily awarded in the contracts created by a service provider.

Mythic began to shut down Black Snow accounts in Dark Age, effectively exiling Black Snow from the virtual world. Black Snow, like Bragg, felt that this was unfair and took Mythic to court to argue for the right to their virtual property in Dark Age.

If users invest time and energy and generate value for the virtual world in the creation and accumulation of in world assets, the user can in fact sell these assets easily via a third party platform. This occurred with Dark Age assets prior to the appearance of Black Snow. Black Snow merely aggregated users and expanded the business model. Unlike Glider, Black Snow dealt in the assets or more than one virtual world and employed time and labour rather than code to accumulate in world assets.

Black Snow acted as a third party employing users to accumulate in world property to sell to other users. Mythic as a service provider outlawed this in its EULA. Moreover, Mythic acted to shut down the sale of Dark Age property via third party platforms, which Black Snow used to sell its virtual property to other Dark Age users. All the essential virtual world property relationships were present in this dispute. Users purchased virtual property accumulated by other users employed by a third party that capitalised on the user-to-user trade. The service provider attempted to settle the dispute through shutting down the third party, and the third party brought suit in an external court.

The suit was dropped before the case was finished. In this suit, it is obvious that the third party felt that, in employing users to accumulate virtual property, the third party engaged in property relationships within the boundaries of the virtual world’s own rules. The service provider disagreed and sought to shut down the exchange of
user property supported by the third party. The case remains a good example of how self-governance within the virtual world set up a property relationship between the service provider and the third party but failed to resolve a resulting property dispute. In light of Bragg v. Linden, Inc., the EULA would not necessarily have offered the service provider a strong defence of its actions. Moreover, unlike in Blizzard vs. MDY Industries, Black Snow employed users that accumulated property according to the rules of the virtual world and did not automate accumulation in a way that inflated the economy or posed any interference to the code of the virtual world.

Chapter 7

Jack Balkin in his essay ‘Law and liberty in virtual worlds’ promotes balancing the interests of users and service providers. He points out that not all virtual worlds are the same and thus it seems unlikely that a universal law will accurately and effectively legislate conflicts over such issues as virtual property.\(^{92}\) Cyberspace self-governance is insufficient in accurately regulating certain aspects of virtual property relationships. While cyberspace self-governance is not itself completely capable of resolving all property disputes that arise from these relationships, it is helpful to the court in defining how the different virtual world participants perceive virtual property. Courts thus take into account the virtual world’s self-governance when considering the disputes. Cyberspace self-governance, while insufficient in fully

regulating and resolving virtual property relationships in a virtual world, still plays a role in interpreting virtual property relationships and thus in resolving related disputes.
Works Cited


Black Snow Interactive, et al. v. Mythic Entertainment, Inc.

Bragg v Linden Research, Inc. 487 F. Supp. 2D 593 (E.D. Pa. 2007), accessed 10 February 2011 at http://scholar.google.co.uk/scholar_case?case=583434033289222111&q=Bragg+v.+Linden&hl=en&as_sdt=2,5#[7].


