

Contracts in the MMO world

More than 100 million gamers play Massively Multiplayer Online (MMO) games each month, generating more than \$4 billion per year in subscription revenue for game companies. The user base of *World of Warcraft* alone is at least 8 million, grossing hundreds of millions of dollars per year for Blizzard/Vivendi.

It's not just the gaming companies who are profiting from MMO games. Plenty of MMO gamers make significant incomes from MMO games by buying and selling in-game property. For example, last year a gamer spent US\$100,000 to buy a space station with its very own nightclub in *Project Entropia* (now *Entropia Universe*). He thought it was a great investment because he taxed anyone who hunted on his land, and he claimed these taxes generated up to \$500 per hour for him. More recently, Entropia's competitor *Second Life* has produced its first virtual millionaire.

But what would happen if someone hacked into the gamer's account and stole the space station? What if the operator decided to shut down the gamer's account, or even the entire game? Would the gamer have any remedies?

VIRTUAL PROPERTY

At least one court has treated in-game items as property. A few years ago a Chinese court ordered a gaming company (Beijing Arctic Ice) to return a stockpile of virtual weapons to a gamer whose *Hongyue* account had been hacked. The court found the gaming company liable for security vulnerabilities in its software.

Early issues regarding virtual property usually focused on Intellectual Property (IP) and ownership. The general consensus now is that the IP (if any) in MMO virtual property is owned by game's creators. In games where the player has great freedom to create IP, such as *Second Life*, the player may own the IP in some or all of the work the player creates.

But even if the game's creators own the IP, players may have claims against the game's creators or operators, or against other players. That's where contracts fit in.

CONTRACTS

There are several potential contracts in the MMO world. For example, gamers enter into End User License Agreements (EULAs) with gaming companies before getting access to an MMO game. These contracts limit what a gamer can do in the game, and they often prohibit gamers from selling virtual property in the games.

There can also be contracts between gamers. For example, two gamers who want to buy and sell virtual property to each other are entering into a contract when they agree to the deal.

Are these contracts enforceable?

ENFORCEABILITY

A contract between the gamer seller and purchaser is probably enforceable. The tougher question is whether the contract between the gaming company and the gamer can negate the gamer's rights in what is clearly valuable online property. Gaming companies generally try to do this in their EULAs.

Some courts won't hesitate to ignore licence agreements and online terms that are unexpectedly harsh or onerous. In Europe, there are even special laws declaring unexpectedly harsh or onerous terms in EULA's void. These laws contain an extensive list of clauses which are always considered void and other clauses which usually but not always are considered void.

The easy way to reduce this risk is to avoid putting harsh and onerous terms in agreements. But that's hardly any fun, so another option is to notify customers of the harsh and onerous terms. This will increase the chances that the terms will survive a judge's scrutiny. However, in many countries timing is important. European courts, for example, often refuse to enforce terms which were not brought to the customer's attention *before* the customer bought the game.

As for online terms, it's probably not good enough to make them available through a link buried at the bottom of a website. It's much better to require gamers to click "I agree" after giving them the opportunity to read the full terms.

GAME OVER

What if the game company shuts down game? Gamers spent time and money to acquire in-game property, and might sue a gaming company that shuts down the game. The easiest way for a game company to limit its risk is to clearly advise gamers that the MMO portion of the game might be discontinued, or that the contract with the gamer might be terminated.

CHEATING

Cheating is always a problem in MMO games. Cheating destroys the fun for other gamers, and it can drive people away from a game if it's not stopped.

Most game companies rely on their EULAs to stop cheating. For example, Electronic Arts recently confiscated 15 trillion gold pieces and shut down 200 *Ultima Online* accounts for cheating, and Blizzard recently banned 5000 players for violating the *WOW* terms of use. But this is sometimes easier said than done, especially if an EULA is not extremely comprehensive.

For example, *Second Life* publisher Linden Labs recently terminated a gamer's account after the gamer manipulate web addresses to buy land before it got released into the game. The gamer is now suing Lind Labs for breach of contract and violation of consumer protection laws. The gamer says his activities weren't prohibited by the EULA, so his account should not have been terminated. The lawsuit is still pending at the time of going to print.

OTHER MMO LEGAL ISSUES

There are plenty of other legal issues that arise from MMO games. For example, what legal remedies does a player have if another player hacks into his account and trashes his account? What can games companies do legally to combat gold farming? Is virtual property taxable? How does human rights legislation protect gamers from discrimination in the online world? We'll save these and other topics for a future article.

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