

## Player Generated Content – End-User Licence Agreements – The Evolving Dynamic

### *A discussion on how contracts control virtual worlds and particularly intellectual property rights in player generated content.*

Intellectual property rights in massive multiplayer on-line role-playing games (MMORPGs) are fast becoming a greater concern to game developers, end users, the courts and even the police.

Arrests have been made for the stealing of virtual property and Linden Lab has been sued over its acquisition of virtual land in *Second Life*. In each instance the issue of ownership would have required a consideration of the end user licence agreement (EULA). And I'm sure IBM spent more than a glancing moment considering the *Second Life* EULA before embarking on its purported US\$100m investment in its virtual archipelago.

### **The Player/Developer Relationship**

The EULA allows the developer to play God in its virtual world; it defines the legal relationship between player and developer. How that divine power is wielded will impact on how the game is played and how much time (and money) players will invest. It can play a key role in the long-term success of an immersive MMORPG.

Almost all EULAs vary the default position of copyright law; a default position that strives to seek a balance between those who wish to protect and commercialise their creations and the wider needs of society to utilise those creations.

### **Intellectual Property Ownership**

There are two main camps in the way developers deal with intellectual property (IP) ownership created by the player within the game: those who let players own IP and those who don't.

Sony Online Entertainment takes the second approach and makes the users promise that they *"have not and will not acquire or obtain any intellectual property or other rights...[in] the Game...any artwork, music, characters item(s), coin(s) or other material or property..."*. The EULA further clarifies *"that all such property, material, items and Rights are exclusively owned by [SOE]..."* Arguably harsh on the user, given the amount of time, money and effort that some users devote to the game.

Furthermore, SOE specifically retains the right to *"modify its games...all aspects of characters, items and coin...features, functions or abilities of any element of the game or any Virtual Goods..."* Basically, SOE has the power to change lives, move mountains, take property, devalue currency and kill the user's avatar with the flick of a switch.

This is legally and commercially sensible given the financial investment and economic risk of the developer. After all, its purpose is to turn a profit and to do so the developer would argue it requires ultimate control.

However, increasingly, users expect to be rewarded for their contribution. SOE eventually learnt from its mistake in trying to ban the sale of virtual goods. They set up Sony Exchange and took advantage of a lucrative market that had expanded and was looking to explode.

In the meantime, Linden Lab had taken a whole new approach in its dealing with IP rights in its virtual world, *Second Life*. Its EULA states that the user: *"...retain[s] copyright and other intellectual property rights with respect to Content [the user] create[s] in Second Life"*.

This is a considerable leap from the conceptual framework adopted by SOE. It acknowledges and fosters the incentives that exist in our copyright laws knowing that such ownership and rights it gives encourage investment in

the game. Despite this development, Linden Lab, like SOE, retains the power to eradicate a player's (second) life. This remains a threat to consumer confidence in their virtual assets.

### **User's Expectations**

If developers do not provide greater certainty and security, the market will seek to adjust and go where there is – or balance the investment by reducing it in proportion to the risk. Ultimately, the issue of IP ownership may well be resolved by market demand or by the courts.

The more games and EULAs reflect real world expectations of security and reward, the more “immersive” the experience can be. The potential lack of security and stability within these virtual worlds will hamper their growth in real world dollar value.

In its role as God, overseer or benevolent dictator, the developer has the power to offer the same security and incentives that exist in the *real* world – they also have the power to go further. The EULA will be its prime mechanism. It is the social contract that binds the virtual world. The developer could create a world in which intellectual property rights are more clearly defined, and better encourage creation and the exchange of ideas to provide an ever more immersive virtual world. And slowly, they are.

**This article is derived from a paper given by Adam Simpson and Christopher Chow of Simpsons Solicitors. Simpsons is a specialist entertainment law firm that acts for some of Australia's most exciting and well-known developers.**