A Study on MMO Game Legalities for Creators

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I - My Project

In the (relatively) near future I plan on making an MMO game. An MMO (Massive Multiplayer Online) game is one where many players gather together and participate in a game world together over the internet. I plan on making the game free to play, since it is mostly a project focusing on me learning more about programming, but I also plan on having an item shop where player can buy items with real money that I would deliver to them in-game.

While the programming of this venture is certainly attainable through my field of study, the fields of politics and law are even more foreign to me than the Chinese language. There is so much that I could do wrong without even knowing it, and get in trouble with an over-zealous player. Thus, I have decided to write this paper. While it will be focusing on my personal project, it should be applicable to anyone writing an MMO who wants to keep themselves protected for legal difficulties, and also those who simply want to make sure that their hard work stays as their own through proper legal procedures.

The main things that I would like to focus on deal with player information, players that pay for longer term services, what I can legally do to players that break game rules, using information provided by players, what happens if the game is sold, and how to be secure within copyright law and other similar laws.

II - EULA and Terms of Service

II a - Why have a EULA

Each fixed work automatically has a copyright attached to it. Obviously, any game that is going to be played will need to be in a fixed situation, and thus will be copyrighted. Copyright law has some problems when it comes to having an end-user owning the software. If the end-user actually owned the software, they would have the legal rights to First Sale and being able to make back-up copies, among other rights. The first sale right is of particular interest, since the owner could make lawful copies and sell them. With the ease of making software copies, the owner can actually rival the company that sold the original software. There are some difficulties with doing this, especially knowing exactly what methods of copying the software is legal. In any case, some of the copyright privileges for users can make it rather unfair for the ones who put out the copyrighted work. In order to not make the users of the software actual owners of the software, the users must agree to a license before using the software. Thus the end-users become licensees of the software, and not owners.

The more that I researched into what is legal in a game and what is not legal, the more obvious it was that the information must be included in the end-user license agreement (EULA). Just about all of the games out there have a EULA. Since I'm planning on writing a game, I should take some more interest in protecting my work. Why would I works for months on a project only to have people steal it or use it in ways that I find very inappropriate, yet leave me with no way to do anything about it? These kind of concerns are what lead me to take this digital intellectual property law class. SO now it is time to put the knowledge that I have learned into action and learn how to write an EULA and find out just what they can do and what they can't do.

III - Dealing with Player Information

III a – The Private Information You May Store

Playing a multiplayer online game has some basic requirements of the players. One of the most basic requirements includes having login information to be able to join the game. Though this may not seem like much, this is personal data. Even with an extremely simple login system which only requires the username of the player (which is a terrible idea for numerous reasons) the server still needs to store that information or make everyone start from scratch every time that they start playing the game. Now we move on to even more personal information – the password. Without a secret password, how can the player feel safe in his gaming? How will he know that he won't log on one day to find that he gave all of his items away while he was gone? This data has to be protected.

And that is not the only reason for protecting the password. While digital property may be a bit of a hot topic right now, the more important reason for protecting the passwords to game accounts is the fact that humans cannot remember hundreds of

different passwords for the hundreds of different places that they log into. With that combination of username and password, it is possible for a determined person to gain access to various sites, including perhaps email and bank accounts. Of course, there's always the hope that a player would be wise enough to use different passwords for very sensitive personal information, but then again there are a lot of non-intelligent people out there.

But that's not all. If all that is stored in the database is the username and password, there is no state of the player's character. This may work fine for a game for strictly role-players (those who mostly want to act out their role and not worry so much about gaining levels or goods) but most people won't enjoy it anymore than being in a chat room. For most games you would also need to store any in-game information about the player; such as their statistics, digital property, event tags, etc. These would all need to be stored in the database. And when I refer to database, I do not mean only the traditional database, but any method of storing that data. If a game designer is feeling adventurous (and quite stupid) he is free to handwrite all of the information. The fact that the information of others is being stored has not changed, despite its medium. To save space and mindless repetition I will simply refer to any storage medium as a database in this paper.

Besides the in-game statistics, there are other things that you might wish to store. Any game that requires monthly payment will most likely have a credit card number stored to make the transition of money from the player to the owner smoother. This kind of data is extremely sensitive. If that sort of information was leaked out, you can bet that that player would be suing you very soon. Even for those games that do not require payment a current email account is very valuable to those running the server. A current trend with online games is to send you your lost information to the email address that you specified. While a player may try to access another players data in this manner, the data is sent to the email address of the actual owner of the information.

While having the email address is very useful information, it is also very valuable information to the scum of the internet: spammers, phishers and hackers. This information should not be given out. At this point, I would like to cover some of the laws regarding personal information.

III b – The Privacy Act of 1974

The most relevant would be The Privacy Act of 1974. It was designed at the time to protect citizens from a powerful government that had the potential to be very intrusive into peoples personal information. The Privacy Act puts forth a "Code of Fair Information Practices" to be followed by all federal agencies. The principles of the code are as follows.

1. There should be no records whose very existence is private;
2. An individual must be able to discover what information is contained in his or her record and how it is used;

3. An individual must be able to prevent information collected for one purpose from being used for another purpose without consent;
4. An individual must be able to correct or amend erroneous information; and
5. Any organization creating, maintaining, using or disseminating records of identifiable personal data must assure the reliability of the data for its intended purpose and must take precautions to prevent misuse.(III-1)

While these principles are mainly for federal, state and local governments, they are very good rules to follow, especially if you want to stay out of a lawsuit. Number one, don't keep any secret data. Every player should know by default that you need to keep the data that you asked for and data relevant to their characters on the database. If someone wants to know what is being kept in the database, and can verify that they are who they say they are, hey should have access to that information. Part three specifies that they have every right to stop you from using their information in any way unrelated to the game. They should also be able to correct anything in their record that is wrong, and the database holder is essentially responsible for anything that might happen to the data.

III c – Privacy and Information Collecting Statements in Licenses

Now, let's take a look at what some of the MMOs out there specify in their license when it comes to player information. We'll start off with World of Warcraft, since it had the least to say out of the group of licenses that I am working with.

> NEITHER LICENSOR NOR ITS PARENT, SUBSIDIARIES OR AFFILIATES SHALL BE LIABLE IN ANY WAY FOR LOSS OR DAMAGE OF ANY KIND RESULTING FROM THE USE OF THE GAME, INCLUDING, BUT NOT LIMITED TO, *LOSS OF DATA* . . .

Which basically says, "Hey, not our fault if anything goes wrong." It's also very broad. The loss of data statement could refer to data on the server which relates to your character or data on your computer that gets corrupted as a result of playing the game. Whether such a statement is all that it needs to be protected against a lawsuit has yet to be determined however. In Diablo II it goes into much more detail about the data being stored on their system. That section of their license is as follows.

> You hereby acknowledge (i) that certain games
> played on Battle.net require electronic files, including, but not limited to, player characters, accounts, statistics, user profiles, weapons, armor, quests, and maps ("Online Data"), be stored upon Battle.net for Your use when utilizing Battle.net to play these games online, You hereby agree and acknowledge that Blizzard shall not have any liability to You for the loss of Online Data for any reason whatsoever, including, but not limited to server failure, telephonic interruptions of any kind, defects, viruses or other

harmful components

While this is much more detailed and complex than the World of Warcraft license, it still boils down to the same thing. At least it is more specific about which data might be lost. In Eternal Lands they claim no legal fault, and warns players that their information is not encrypted in any way and to not use existing passwords.

> 9. This software, and the web page doesn't store the login information in an encrypted way. Also, the login information should be regarded as non secure. That is, do NOT use any already existing password, like, say, your e-mail, ICQ, bank account, etc. password. If we get hacked, and/or if someone intercepts your password, we have no fault. I mean, ok, we do have a morale fault, but no legal fault, so you can't sue us. . . .

Lastly, in Final Fantasy XI they take a more severe approach. In all the rest there was a general feeling of apology but no responsibility. In Final Fantasy XI they go so far as to tell the player that it can delete their character or any other data whenever they darn well please.

> Article 2: Data Collection and Privacy
> In the course of your playing the Game and using the PlayOnline Service, you may accumulate certain usage statistics, score information, character traits, performance records and other Game-related data that are stored for you in the Game and on PlayOnline servers (collectively, your "Player Data"). SEI makes no assurances, representations or warranties whatsoever about the accuracy, currency or continuing availability of this Player Data at any time and *reserves its right, at any time and from time to time, without notice to you, to delete all or any part of your Player Data*. SEI shall have no liability to you or to any third party for any such deletion, and further shall not be held responsible for any complete or partial deletion done or caused by you, any third party, or other act or occurrence beyond SEI's reasonable control, such as a fire, power outage, natural disaster, terrorist act, equipment failure or any other such act or occurrence, whether or not similar to the foregoing.

Without a statement in your license, you could be liable for any data lost whether it was your fault or not. Having a statement like the ones above in your game license are not simply stingy, they are an important way of keeping you safe from irate gamers when an accident occurs.

III d – The Children's Online Privacy Protection Act of 1998

There are, however, further considerations depending on your target audience. While many games out there target mostly teens and young adults (seeing as how that

group seems to have the most disposable income), there are games out there geared for younger children. As a society, we are very protective of our children, and we definitely don't want to have their personal information compromised. Imagine if you were holding onto children's email address and decided to sell the children's email addresses to a spammer. Now imagine that you never told the spammer that they were children, or imagine that the spammer didn't care (which is very likely), and children on your list ended up with spam advertisements of pornography in their mailboxes. Now imagine the parents finding out that the spammer got the email from you. You can stop imagining now, you might have nightmares if you take it too far.

To protect children from these kinds of things, The Children's Online Privacy Protection Act of 1998 (III-2) was passed. While The Privacy Act above was written for government entities, The Children's Online Privacy Protection Act of 1998 (COPPA from this point on) is written for anyone with a commercial purpose in their site gathering personal information. Most MMO games have some sort of commercial purpose. Even all of the free games that I know of (that are any good) have some sort of shop to buy items so they can pay for server costs and such. Also, as stated in Section III of this paper the information that you will be gathering in order to allow players to log in will be personal information. Thus most any one in charge of a game server and the data therein will be liable for this act. To make sure that you don't step over any bounds, let's cover what exactly goes into the COPPA.

First off, what exactly is a child? As a teacher I get the feeling that anyone from birth up to age eighteen should be labeled a child. If that was the case, every game company out there would have to follow COPPA since teens are usually the target audience. The COPPA is a little stricter on the age, declaring that "The term "child" means an individual under the age of 13".

"Remember kids, get your parents permission before going online!" COPPA's focus is to keep kids information private. They way that it is accomplished is by requiring commercial Web sites and other online services directed at children 12 and under to provide parents with notice of their information practices and obtain parental consent prior to the collection of personal information from children. The Act further requires such sites to provide parents with the ability to review and correct information about their children collected by such services. COPPA was designed to ensure that children's ability to speak, seek out information, and publish would not be adversely affected.

So for any of you out there who want to make a children's MMO, be sure to play it safe. Make sure that children are not allowed to create a character without a parent's approval (perhaps through the use of a page telling the child in big letters to have their parent read this part) and always leave a method for the parents to use to contact you, correct their child's information, and to review your privacy policies.

III e – Keeping Virtual Property

Aside from the personal, private information, you will most likely also be storing any information about what the player owns in the game. This data is referred to as virtual property, and is covered in more detail in section 5. The reason that this is a concern is that law concerning virtual property has not been established, and if it was physical property there are already well-developed laws. It is quite possible that when the virtual property laws do get established, they could be similar to those of the physical property. Since you would be storing their property, perhaps for a fee, it would be "bailment for hire". In this case, you would be required to keep that virtual property in your possession and not use someone else's server for storing that data, or temporarily let someone else take care of it for a while. This is good practice in any case, as it makes it less likely that something will happen to the property.

IV - Paying Players

IV a – Why Pay for a Free Game?

While the main purpose of me making this game is to learn more about programming, I would still like to get some money out of it. If there is absolutely no income from the game, then I feel that I must be making a mistake. Without any income, then I am losing money simply to make it available to the public. For any such MMO a server is needed, as well as an internet connection. Last I checked, the server faerie does not fly down in the middle of the night to give free servers and internet connections to game developers.

So, while the game will be free to play there will be options to pay money for extra items or services. These come in two types. 1. The one-time payment for an item that would otherwise be difficult to obtain in the game. 2. A service-based payment where the player can purchase a temporary home or other storage location. This is paid by the month.

IV b – The Legalities of Selling Items and Services

For the one-time payment types, is that okay for me to do? Under copyright law is that first sale? Well, the whole game is under copyright. If I pull a diamond breastplate of shadows out of the code and give it to another player, that's still part of the game and under the same copyright laws and license agreements. Thus, even though a player has paid money for a specific item, it is no different than if that player had played the game and earned the item themselves. Also, it is not first sale under copyright law either because the particular item itself is not under copyright. The whole program containing that item is under the copyright. In any case, one of the main reasons for having a license is to remove the first sale limitations on the copyright. Thus the item that they have purchased is under the same license as the software they are running. This means that they do not own the item, but are only licensed to use the item.

Do the same patterns follow for special services such as owning a home for a set amount of time? Yes, they are still a part of the game that is being licensed. It might be

wise to add a section in the license that describes any liabilities you are willing to take for any such purchases. However, that being said, neither of the games that get all their money from their item shops have a section describing those events.

IV c – Eternal Lands

In another MMO that I have played in the past, there was a problem where a player got banned from the game for threatening to hack the server (IV-1). After he was banned he started trolling the forums demanding his money back for the guild map that had been placed in the game for $300. He felt that he should get that money because he was the head of that guild at the time, even though he was not the original purchaser. Since he had only inherited it, and the map had been used for quite some time, and the guild that the map belonged to was still active, his request was denied.

However, in the case that it was a valid request, that he had actually been the one to pay the $300 to get a new map, would the creator of the game (who was the one who received said payment) have had to do anything? The banning was, I believe, correct. He had broken one of the rules that everyone has to agree to in order to run the game and thus had broken the license agreement. The guild map had been used, and it was still being used. Would Entropy (creator and owner) have had to do anything in another circumstance?

No. The map was a service sold under the license agreement. Since the player had broken that agreement he had no rights to expect to continue with any of the benefits that were under the license.

IV d - Data Loss

Getting banned is not the only way to lose access to items that you have paid real money for. Servers are usually powerful machines, but it's only too possible for a hacker, a virus, or any other failure (yes, I consider hackers to be failures) to manipulate and destroy the data there. This is, understandably, upsetting to the players. Many of the players have most likely put dozens, if not hundreds of hours into a character. To have that all disappear is a cause for great concern and anger. Without a license, you may be considered liable for that loss.

Thus, in most of the licenses that I have read, there is a "save our butt" clause which basically says that the owner or the company is not at fault for any loss of information or any damage to your machine through the software. First off is a section from MapleStory. This one is particularly interesting because it does mention items bought for real money in the item shop.

> 6.2 Limitation of Liability. NEITHER WIZET NOR ANY OF ITS AFFILIATES, . . . OR OTHER REPRESENTATIVES, ARE RESPONSIBLE OR LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE OR OTHER DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR

> LOSS OF BUSINESS, LOSS OF DATA OR LOST PROFITS), UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY ARISING OUT OF OR RELATING IN ANY WAY TO THE SOFTWARE, EVEN IF WIZET (OR SUCH OTHER ENTITIES OR PERSONS) HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOUR SOLE REMEDY FOR DISSATISFACTION WITH THE SOFTWARE, OR ANY PART THEREOF, IS TO STOP USING THE SOFTWARE. *THE SOLE AND EXCLUSIVE MAXIMUM LIABILITY TO WIZET FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE) OR OTHERWISE, SHALL BE A MAXIMUM OF THE LESSER OF TWENTY U.S. DOLLARS OR THE TOTAL CUMULATIVE AMOUNT PAID BY YOU TO PURCHASE CASH ITEMS AS SUCH IS DESCRIBED IN THE TERMS OF USE.*

Here Wizet is being very nice about lost items that have been paid for, they're even willing to pay a player back up to $20 for the loss of the items. I find that rather impressive, since that is their only form of income and if all their servers manage to crash and lose all of the information they could be in real trouble. Unless you're feeling rich and lucky, I personally wouldn't advise putting something like this in your software. The Eternal Lands license is much easier to read, and much easier to fulfill. This basic section says that they'll try their best to fix it, but have no obligation to.

> 13. If something happenes with your account (some accident, haxx0r, punishment, etc.) we have no obligation to restore it. If such thing does happen, however, we will try our best to fix the problem, but we are only humans, so you agree NOT to sue us, or demand anything from us.

The bigger games out there also have these sections, and they follow a very similar thread. The basic idea behind these have no nice feel behind them where they says they will refund you some of the money you spent, and they also don't bother to tell you whether they will try to restore it or not. This is the basis behind the "save our butt" clause which only focuses on the fact that if the players data is gone, the company is at no fault, regardless of the reason that it is gone. In the Final Fantasy XI license it also makes a rather well used claim that the company can delete your data without any prior warning. The Final Fantasy XI section of license covering this topic is as follows.

> SEI makes no assurances, representations or warranties whatsoever about the accuracy, currency or continuing availability of this Player Data at any time and *reserves its right, at any time and from time to time, without notice to you, to delete all or any part of your Player Data*. SEI shall have no liability to you or to any third party for any such deletion, and further *shall not be held responsible for any complete or partial deletion* done or caused by you, any third party, or other act or occurrence beyond SEI's reasonable control, such as a fire, power outage, natural disaster, terrorist act, equipment

failure or any other such act or occurrence, whether or not similar to the foregoing.

IV e – Limits on the License

These clauses would most likely would not hold in the case that you put out some software knowing that your software has issues that can seriously mess with a players system. This would definitely not hold if you knowingly wrote a function to purposely attack a players system. This is true even if they are acting against the license agreement.

For example, a game-maker had decided that no player may use macros to play the game. The game-maker wrote a section of it in his license, expressly forbidding the use of macros in the game. Then, to make sure that no one did, he made a function to detect is the player was using a macro. He decided that if they were using a macro, he'd install a few viruses on their computer. That would teach them to cheat! As time goes on a macro-user shows up and uses macros in the game. His computer gets corrupted and he sues. While it is not 100% clear what will happen (at least to me, I'm no judge and no lawyer), it is very likely that the game maker is in a lot of trouble. The reason for this is not only that the fact that you would be infected by a virus if you break the license agreement not written in the agreement. Even if you did write in the license that you would infect someone with a virus if they broke the license, it would only serve as proof of what you've done in a court case. The reason for this is that license is a type of contract, which in turn is a private law between those using the contract. In this case, the game maker and the player. This private law is only so powerful, and cannot overcome federal law. If, for example, you said that not upholding your part of the license agreement meant that I could cut off your finger and sell it on ebay . . . well, that wouldn't hold at all.

V - Selling of Virtual Property

V a – Virtual Property

Virtual property is becoming more and more of a buzzword as time goes on. Virtual property is property that is connected with a player's virtual character. In other words, it's the things that a player has in the game. Although technically the players are not owners of the game, and thus not the owners of anything in the game, there is a strong feel for what they have spent time on in the game to earn. To most players, many of which do not have any sort of background in digital intellectual property law, those are their items. Even though by copyright law they do not own the items, it is very important to stress that in your license.

In the past few years, there has been rampant selling of in-game items by the players of the game. Usually, the player plays the game to the point where they get a good item, and then sells that item to another player for real-life money. Before jumping into just what that would mean, and just what can be legally done about it, I'd like to look at some of the larger games out there and what they are doing about it.

V b – Diablo II

In other games, such as Diablo II created by Blizzard Entertainment, there has been rampant selling of in-game items for real money by players. A quick look at Ebay had 4,376 different items/characters for sale across the different servers, called 'realms'. This also included offers to take your character and level it up. Ebay isn't the only place that such things are occurring. An attempt to find sites that sold Diablo II items came up with a number of missing links and false sites. It also came up with a few sites that were quite large and sold all sorts of Diablo II items and other services (V-1). As to the large number of missing sites, it is quite possible that they were selling hacked items. Most of these hacked items were removed from the game during a rather large upgrade. The sites selling items that were not originally in the game went out of business since their items were worthless. So what are the owners of Diablo II doing about this? In their license, there are two statements that seem to be somewhat related. One stating the ownership of the program and many things inside of it by Blizzard, and another that states that the use of duplicated items and characters are against the EULA.

> 2. Ownership. *All title, ownership, and intellectual property rights in and to the Program and any and all copies thereof* (including, *but not limited to*, any titles, computer code, themes, *objects*, characters, character names, stories, dialog, catch phrases, locations, concepts, artwork, animations, sounds, musical compositions, audio-visual effects, methods of operation, moral rights, any related documentation, and "applets" incorporated into the Program) *are owned by Blizzard Entertainment or its licensors*. The Program is protected by the copyright laws of the United States, international copyright treaties and conventions, and other laws. All rights are reserved. The Program contains certain licensed materials, and Blizzard's licensors may protect their rights in the event of any violation of this Agreement.

> 3. Responsibilities of End User.
> C. You are entitled to use the Program for your own use, but ***you are not entitled to:***
> (v) *utilize "Duplicated Characters" and/or "Duplicated Items"* on Battle.net, including, but not limited to, weapons, armor, rings, amulets, stones, staves, etc., that were created by exploiting a slow connection or "lag," programming error, or any other manner that allows You to utilize "Duplicate Characters" and/or "Duplicate Items" on the Battle.net service. *In the event that Blizzard discovers that You are utilizing such characters and/or items on Battle.net, You hereby acknowledge that Blizzard may, at its sole discretion, delete such characters and/or items from your account on Battle.net.*

This doesn't seem to explicitly say that the selling of actual, legitimate, in-game items for real cash is a wrong thing to do. Objects is a vague term, and could be taken to mean the objects in object-oriented programming. The extra term stating that what is owned by Blizzard Entertainment is not limited to the list that follows is the only thing that really makes it all unclear as to whether such an object or character is considered to be belonging to the player. The very fact that there are so many people out there still selling Diablo II items seems to indicate that whether these items are considered the players items, or the companies items is a moot point. Blizzard is not acting against these people that are selling items that they have earned through game play. It is also not rare for a bot (computer-controlled player) to sift through current games and spam all of the players, telling them to buy Diablo II items from their stores.

V c – Final Fantasy XI

In comparison, we now take a look at Final Fantasy XI. Item selling was also rampant in this game, but the owners (Square-Enix) eventually told the players that nothing that they had in the game was truly theirs, but was all owned by Square-Enix, and that they couldn't sell anything for real money (V-4). Of course, in order to make it legal, the EULA had to be changed (V-2). Here is a section from the most recent EULA (V-3) (last updated October 2006) covering the actual ownership of in-game items and other goods.

Article 3: Prohibited Activities and Indemnification

3.1 Prohibited Activities.

You may not use the Game or PlayOnline for any activities that are illegal, fraudulent, or a violation of the rights of any third party. Without limiting the generality of the foregoing, the following acts and activities are strictly prohibited and shall, without prejudice to any other rights or remedies that SEI may have, be cause for immediate termination of your PlayOnline account and your right to play the Game (or any other services) in connection therewith:

(a) Any activities consisting of selling, offering to sell, purchasing, agreeing to purchase, exchanging, or agreeing to exchange "gil" (or any other currency that may be used in the Game from time to time), characters, or Game items for value (including, but not limited to, any payment in kind and any payment in any currency recognized as legal tender in any country, state, territory or other jurisdiction anywhere in the world) through any means or venue, including, without limitation, Internet auctions or other online exchanges;

The result? Looking for anything resulting in Final Fantasy XI in Ebay only gave me 462 items. That's a pretty big change right there, but that's not all of the changes. Where Diablo II had quite a number of items and gold for sale, most of the Final Fantasy XI items for sale were physical items. Mostly books and plush toys, but there were a few people selling in-game money for real life money. Most of them seemed very similar, and with great deals like one million gil (Final Fantasy money) for only 2-6 cents, I can't help but think that it might not be legitimate. Diablo II, on the other hand, had different

sections on Ebay for the different servers that were available, since so much selling of in-game items was taking place.

V d – Eternal Lands

Lastly, I would like to look at the example of a game that is not pay-to-play. The name of this game is Eternal Lands, and it is not owned by a company, but by it's creator who goes by the name Entropy. Being a free game, there are more cheapskates playing it (such as myself) who would probably not pay too much for an in-game item. It does happen, however. Being more low-profile, a search on Ebay turned up nothing, but it is a commonly known fact among the players that some players will sell items, or more specifically, high level characters to other players for real money. Interestingly enough, the Eternal Lands EULA says absolutely nothing along those lines. However, they have a 'secondary' EULA in the form of the game rules. Rule 10 is as follows.

> **10: Sell and Trade At Your Own Risk**
> Eternal Lands will not be held responsible for any transactions dealing with real monetary currency/items or in game money/items. No selling of character accounts or guilds, or advertising of them, is to be made in any in game public chat channels. You take full responsibility for your actions and their consequences. Eternal Lands will assume none of that responsibility.

Basically, it says that they don't care if you do try to sell items or whatnot just so long as you don't do it publicly, and don't whine to the creators of the game if someone rips you off.

V e – Everquest II

Lastly, in Everquest II the owners have recently set up an ebay like system for players to safely sell their virtual property (limited to characters, money and items) to other players for a small fee (V-5). They are quite clear that allowing the players to sell their virtual property for real money does not mean that the player is the actual owner of that property, but can merely buy or sell a limited license right. Their statement is as follows.

> The User Agreement and Software License, to which you agreed when you installed the game and to which you agree every time you launch the game, makes it clear that you have no ownership rights in characters, items and coin -- what you have is the right to use them in accordance with the license agreement, the rules of conduct of the game, and SOE's terms of service. When SOE launches Station Exchange, SOE will permit you to "sell" and "buy" that right to use characters, items and coin. In "lawyerese," you will be

buying and/or selling a limited license right, not an ownership right.

V f – How to Go About It

Clearly there is no set way of doing this. It all depends on how much you feel that outside selling if affecting your game. In Eternal Lands you can buy most items safely from the owner-run item shop, and there aren't too many who are buying items from other people. Also, if some people quit it's no big deal since no one is paying to play the game anyways. In Diablo II there is a similar situation. You pay once to play and never have to pay again. They don't lose anything from the items being sold because they don't have a legitimate item shop for players to shop through. Final Fantasy XI is in a situation where if a lot of players stop playing they can lose a lot of money. Banning those who are trying to make money off of their work, especially those who were using illegal clients to amass tons of money, is a way to defend their source of income. If you are making a free game, there most likely will not be a reason, besides the principle of it, to try to keep players from selling your items. This section of the license can be written to your liking. Just be aware that the most that you could probably do is to ban the player that does sell items, and that is if you can catch them. Trying to press charges would be very difficult to do, and even more difficult to win your case.

VI - Player Malpractice

VI a – The Rule-Breakers

Now, I'd like to imagine that everyone who plays my game will just have fun, spend a little cash and be good member or the game society in general. I also thought before I started teaching Japanese at a secondary school that the kids would pay attention and actually do their homework. Also, I thought that I wouldn't have to worry about special cases where I have to put a lot more work in after hours to make sure that they can do the homework. Life is full of little surprises. I was wrong there, and I wouldn't be surprised at all if I was wrong about this too. Many feel that the only good part of playing a game is getting to break the rules of the game. While they are an unsavory group, there is no doubt in my mind by this point that I will have to deal with those kind of unruly players.

So what of those who break rules? Of course, a big part of that is what rule was broken and how serious that rule is. I can't imagine that having a 'jail' for minor infractions in a game would violate any type of US law. It would be something simple, like them getting sent to a prison area where they cannot do anything until they have served their in-game prison time. Apparently this sort of thing was used quite often in Ultima Online.

VI b – Ending of the Agreement

So what can I do with those who have done things really wrong, like try to hack me or steal others passwords? I would like to ban them from entering the game. This is more than simply locking a character, I would need to ban the entire IP address from accessing the server to prevent them from simply making new characters. This kicks back to the problem of me holding personal player information (section III), which isn't much of a problem if it is handled correctly. In the end, a banning is me taking action over the broken agreement. The basic license states that as long as certain rules are followed the user will be allowed to use the software. After a player has stopped agreeing to the contract, they no longer have the right to play the game. Let's take a look at how some of the companies out there explain this in their licenses. With MapleStory they are clear in what they are allowing the user to do, and thus if the user breaks the contract they lose any right to continue using the software.

> 2.1 Limited Grant of License/Terms of Use. Subject to the terms and conditions of this Agreement, Wizet hereby grants you a non-exclusive, nontransferable, nonsublicensable, limited right and license, during the Term, *to access and use the Software, solely in accordance with the Documentation and solely for your own personal use*. Except as set forth in this Section 2.1, no other right or license of any kind is granted by Wizet to you hereunder with respect to the Software. In order to use the Software and the Service, you must register for an account and otherwise agree to terms and conditions of the Terms of Use, which are incorporated herein by this reference.

Seeing as how this is a simple thing, I'm going to just leave it at one example.

VII - Using Information or Resources from Others

VII a – What Information May be Used

While I plan on being the only programmer on the project (yes, crazy. I know.), I do plan on getting some help from my players. This is not to say that I will ask them to code out a function. What I mean by this is that I would ask them for things that they would like to see in the game and take the suggestions that seem good.

VII b – Player-Made Maps

This also includes maps for the world, places that the players can go and do things in. I am planning on making a map-maker for the game. This is practically a necessity for making maps of a decent size, as I have found from hand-programming in dozens on maps in the alpha version. I am also planning on making that map creator available to the players. At times they would submit their maps to me to see if they qualify for making the game world larger. Of course, it will be my final word as to whether any such maps actually make it into my game. There are so many things to be considered, such as if the maps are unequal to each other. Will all of the players end up in certain maps because of

an easier way to get money? Does the submitted map even seem to fit into the game world? These are all things that I will need to look at, but there is another more pressing worry on my mind.

It is simple enough to look at something and say 'Sure, it looks good. I like it," and then put the map into my game. Then I look at what I have, and it is no longer all me. Have I lost some of the rights to my own game? I now have not only my work in the game, but also the work from some players in my game. So what is it now? Is it a joint work? A joint work is defined in the copyright law as "a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole." (VII-1) This doesn't seem to fit exactly. Adding a map into a game is not making them inseparable (unless the code is pretty poor), but they would be interdependent in that once the map is in the server would use that map.

While a "work made for hire" might seem to fit the situation better, it does not quite fit the two specifications necessary to be a work made for hire. I am not paying the gamers to make maps, thus the first point, that it must be "a work prepared by an employee within the scope of his or her employment", does not apply. The second point states that the work is "a work specially ordered or commissioned for use as a contribution to a collective work, . . . if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire." (VII-2) I have no plans to specially order gamers to make fan-maps to add into the game. Thus, a statement in the license stating that any map made for use of the game is considered a work for hire, and thus under my copyright, would not stand.

So what is there for me to do? It is important to realize that the maps will probably not be included in the actual game code. The game will load and display the maps for others to play. The maps and the game are separate sections of code. I own the copyright on my game and all maps that I have made. The player that made a map owns the copyright on his map and nothing else. This is only slightly different from Adobe worrying about people who make PDF files taking away from Adobe's copyright because those files are read with Adobe's PDF reader.

VII c – Implementing Ideas

And what about those ideas that players submit to me about things they want to see in my game? They had the original idea, and most likely wrote about it in a forum to let me know about it. First of all, it's questionable as to whether that blurb in the forum could even be considered to be under copyright law, especially since a forum may not be the most fixed of mediums. But even in the case that the statement containing the idea was under copyright, it would still be no problem to implement the idea into the game. Sure, they gave me the original idea, but I'm the one who did all the programming. Also, in the copyright law it is very clear about the copyright-ability of ideas in Section 102 b. (VII-3)

> In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

Thus, no one claiming that I used their idea and put it in the game can try to sue me. Well, they can try, but they will lose, no question. Such an idea may seem odd, but I can guarantee that some kid out there will try to pull it at some time or another, whether they are trying to get some quick cash or they just want to be "cool".

VII d – Based on Real People

For some friends and family, I have promised them some part in the game. For my sister Michelle, I'm adding a town called Chelleville, and for my main tester in the alpha version of the game I'll probably be adding a statue or something. I've noticed in some works, like the G.I. Joe of old, that it would start with something to let viewer know that it's all fictional and all likenesses to living people are coincidental. I assume there is a very good reason for connecting that to something like a Saturday morning cartoon. Am I making a big mistake here? Most likely not for such simple things like naming a town after someone with a common name, but it's probably for the best that this gets decided. In the further future, I also plan on making a side-scrolling game where I use my brother as the main character and his friend as a nemesis? If it gets sold, do they get a cut? Can they sue? What kinds of paperwork do I need to do in order to keep myself from getting in potential trouble in the future?

There is law out there governing such things. They are referred to as the Right to Privacy and the Right of Publicity, or collectively as Personality Rights. These give the right to keep one's image and likeness from being commercially exploited without permission or contractual compensation, and the right to be left alone and not represent one's personality publicly without permission. The difficult thing about this is that there is no federal law, it is decided by state. And the different states do things differently. For example, in some states they protect one's name and likeness, and some others are much more specific, protecting such things as voice and signature. In order to get the right to use their name and likeness, there would need to be a release form signed by the person that you want to use their likeness.

VIII - Beyond Copyright and EULA

While this paper up until now has focused mainly on the rights and responsibilities of licensing, there are many more different ways to protect specific sections of a project such as an MMO game. In this section I will cover the use of a number of those methods as well as how to get started on using them for yourself and how to protect yourself from infringing.

VIII a – Copyright

While I have been using copyright law throughout this paper as an example of what would happen if there was no license, I have not yet explained how to go about getting a copyright or how to deal with legal issues pertaining to copyright. First off, you need to do almost nothing to get your work copyrighted. All that you need to do is to put the work into a fixed format. If you want to be able to be able to sue infringers, you will need to register the copyright with the copyright office.

As opposed to having a copyright of the work, if you sell it off to someone they will own that copy of the work. This can lead to a few problems and is a big part of why nearly all software is licensed nowadays. There are two main sections in the Copyright laws that gives rights to an owner of a copy that would be a problem for many software developers.

An owner of a copyright can make as many copies as possible and sell them. In Section 109 it states that an owner of a copy can sell that copy to someone else. They can also make a backup copy. They still cannot rent out computer programs or CDs, however, for any sort of 'commercial advantage'. If the software has been licensed out to the user, they are not the owner and as such cannot sell that software.

In Section 117 it further states that it is alright for an owner of a copy (not a copyright) can make copies for archival purposes. It also states that "Any exact copies prepared in accordance with the provisions of this section may be leased, sold, or otherwise transferred, along with the copy from which such copies were prepared." With computer programs in particular it is extremely easy to make exact copies.

Also, there is a way to get around being able to make a program that has been copyrighted. If you get some programmers and you detail what features a program has that you want to copy, as long as they never see the original program or code thereof there is no possible way that they can make an actual copy of the original program. This method is called "clean room". To defend your program from this, you need something that gives a different type of defense. That is called a patent.

VIII b – Patent

For many years, it was difficult to get a patent on software inventions. Nowadays it is much easier to obtain a patent. This is a very good thing for software inventors, seeing as how it allows the patent holder to keep any one else from using their invention. This provides more protection than that of a copyright, since someone could still put out a similar program that works the same way by using the closed room method described above. A patent works in the opposite of a trade secret, which gets its value from not being known. When applying for a patent, all the steps of how to recreate the process or invention must be written out so that anyone with general knowledge in that field can recreate it.

So what can be patented? You cannot patent a whole piece of software. There are plenty of functions in any software that are well-known. Can you really claim that the for loop in your code is your own invention? Only new inventions can be patented, not whole programs that have one invented process in them. In Section 101 of the Patent Act it describes what kind of invention can be patented.

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title [35 USCS Sects. 1 et seq.].

Therefore, there are two important components towards making an invention that can be patented. It needs to be new. If it's been done before, even if no one has put a patent in for it, it cannot be patented. New, however, does not mean that it cannot be based off of another invention. I'll use television as an example. When someone invented television they went out and got a patent for it. Later, someone invented color television and also got a patent for it. Even though the owner of the television patent could stop the holder of the color television patent from building his invention (since it was based off of his patent) when the patent ran out the patent holder of the original television still could not make color televisions, while the other could make color and also black and white if he wanted since the patent on television itself had expired. The newness also implies that it is not obvious. Trying to get a patent for television with a smiley face drawn on the side will not get you a patent.

The second thing that an invention must be is useful. This may be difficult to gauge in many situations, but in the case of getting a patent, it is very straightforward. It simply means that the invention must do something desirable.

Now, a lot of companies out there (especially the big ones like Microsoft) keep a large supply of patents mainly so that they can protect themselves if they start making something that someone else has a patent for. In cases like those, the companies will usually have a patent that the other wants to take advantage of, and a deal is made instead of a lawsuit. As a small company, or a company of one, if can be very difficult to get any number of patents that a big company might be interested in. If you do find yourself infringing on someone else's patent, there are a few things you can do. You can try to get a license with the other company. You can look at their patent and what it claims to see if you can change your product so it is different enough to not be infringing. You can also try to prove that their patent is no good, but this is quite difficult. Lastly, you can just give up. Quitter.

So, do you think you have what it takes to get your invention patented? There are a number of things that you need to do in order to get a patent, and this paper cannot cover all of the details. There are a few sites (IX-1, IX-2) that you may find useful in building your own patent. A few things that I want to point out is that you should apply within a year of completion of the invention, or within a year of when it hits the market

(preorders and such may make this earlier than the completion of the invention). Also, a patent will usually last 17 years after it has been granted.

VIII c – Trademark

When I was younger, there was a game that I had been working on for quite some time. I was quite proud of it, and I really liked the name. However, it never failed that when I started talking about it to a group of people, there would always be some jerk that thought they had found a gold mine. They would threaten to trademark the name and make me pay them a lot of money to get it back from them. Eventually, I got sick of it. I decided to get my own trademark.

Without really understanding what a trademark is I got some paper work, filled it out, and sent it to the government. They sent it back because there were typos. This bothered me because the typos were on a part that I had not been working on. They had sent it back to me because they had misspelled some words. I fixed their mistake and sent it back. Soon, I had (what I thought was) a trademark on the name. I was safe! Nearly a year later I got a letter from the government telling me that I could either start using my trademark in commerce, pay them some more money, or just give it up. I was in another country at the time, and couldn't imagine me getting the game out in any reasonable amount of time, so I let it go.

What I had had during that time was a registered trademark. This would be the little R in the circle that you see sometimes. This is different from a regular trademark in one important point, but to fully understand that I'd like to go over regular trademarks first.

A trademark is a mark of your trade, and as such can only be used in commerce. No matter how long I had that game, as long as it was just something that I had put years of work into and not something that was sold or used for money in any way, I could never get a regular trademark for it. On the bright side, trademark, like copyright, comes into place without the need of informing the government. If I had started selling that game, the name would have been automatically trademarked. It would remain trademarked as long as it remained in commerce. If I stopped selling it and took it off the market, someone else could use that name with impunity.

In order to explain why you would want to get a registered trademark, we first need to go over who gets to use a trademark in more difficult situations. Say there was a chain of stores called "Bird Scouts". One day they decide they want to move into another city. When they go in to check it out, they find another store of the same type also named "Bird Scouts". So who gets to use that name? The general rule is first come, first served. The shop that was in that area first gets to use it first. So what can a larger company do to prevent smaller companies from keeping them out of cities where they want to plant down?

The answer to that question is the registered trademark. By registering with the United States government it basically places you everywhere. This does not mean that if another shop of the same name and similar type had been around earlier you can get rid of them. You cannot move into their territory, but they cannot expand to lock you out either. Also, no new companies of similar type and same name can be built up.

IX – Conclusion

While there is a lot to absorb in this paper, it may be only the tip of the iceberg. You see, all of the laws covered here are specifically American laws. While many countries follow a similar set of laws under the Berne Convention, there are also a great deal that don't. Therein lies the problem. A MMO is run strictly on the internet, and the internet is world-wide. What may be illegal for a player to do in your country may be legal in another country. You will need to be careful about how the laws run in other parts of the world. Also, privacy laws are more strict in countries, so you may need to put more effort into making their personal information more secure.

I hope this paper has been helpful to any out there who want to learn more about how to protect themselves while making an MMO game. This paper has been invaluable to at least me, which has made it very worth writing. If you have any comments or questions, or you would like to host this paper on your site, you may contact the author at mirci@cs.utah.edu.

Note:
All italicizing of legal documents and other quotations done by the author of this paper for emphasis.

III-1: The link used for The Privacy Act of 1974 was http://www.usdoj.gov/oip/privstat.htm
III-2: The COPPA is located at http://www.ftc.gov/ogc/coppa1.htm

IV-1: The argument (7 pages worth) found here http://www.eternal-lands.com/forum/index.php?showtopic=24841&hl=

V-1: The two main sites found were http://www.d2items.com/ and http://www.d2legit.com/.
V-2: This can be seen at http://www.playonline.com/ff11us/polnews/news8888.shtml
V-3: The Final Fantasy XI licenses can be found at https://secure.playonline.com/supportus/index03.html
V-4: Their statement to the players can be found here. http://www.playonline.com/ff11us/polnews/news3374.shtml
V-5: The site can be located from http://stationexchange.station.sony.com/

VII-1: Joint work information found at http://www.copyright.gov/title17/circ92.pdf pp 111 Section 302 b
VII-2: Work made for hire information found at http://www.copyright.gov/circs/circ09.pdf pp 1, Section 101
VII-3: Copyright protection limitations found at http://www.copyright.gov/title17/circ92.pdf pp 8, Section 102 b

VIII-1: One place for how to get a utility patent. http://inventors.about.com/od/selfpatenting/a/Filing_Utility.htm
VIII-2: Another site on how to get a patent. http://www.aplegal.com/practice-patents1.html