

## MMORPGing, Law and Lingo\*

*Keywords:* Language, online games, accuracy, terminology

*Abstract:*

The use of language in law can have a range of different implications on the outcome of legislation and case law. Additionally, for emerging issues of law, accuracy and definitions are important. Online gaming is one area of emerging law filled with challenging issues; one of which is terminology. The use of general and vague terms adds to complexities; cyberspace, virtual worlds and avatars are all seemingly specific terms, yet on closer examination are applicable to more than one entity. This paper explores these terms and more, exemplifying the need for accuracy and specificity in the use of terms, and the legal consequences of inaccuracy in such terminology.

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*Introduction:*

As Brian Bix states categorically, "Language is the medium through which law acts."<sup>1</sup> Law and language are therefore intertwined; law relies upon wording to regulate various aspects of our existence; the wording of contracts sets out the obligations of each party; the wording of a statutory provision lays down the intent of parliament; questions of law hang on the interpretation and definitions given to single words and phrases by esteemed judges. Definitions appear prominently, yet are not always ready for deployment in a manner that would provide adequate and acceptable solutions to difficulties surrounding terminology and interpretation.

Whilst language is the medium, and law is the message, the message is not always assembled correctly. There are three essential elements involved in the dissemination of the legal message:

1. Language – as the medium
2. Law – as the message
3. Interpretation – as definition

Many different areas of life have their own particular terms and language; law is no exception. Massively Multiplayer Online Role Playing Games<sup>2</sup> and Online Games also have their own distinct phrases, terms and meanings. At present however, there is little cohesion between the language and terms used in online games, and acceptance or understanding of them by the legal system. Equally, gaming phraseology is still somewhat of a niche area when compared to mainstream language. Whilst the linguistic and interpretative elements of online gaming pose potential challenges to dispute resolution, a little more context clarifies the nature of the difficulties.

Typically, a virtual world resident or online game user is required to agree to a contractual agreement with the developer or platform provider of the online environment. Dannenberg highlights the all-

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<sup>1</sup> B Bix, *Law, Language and Legal Determinacy* (Clarendon Press, Oxford 1993) 1

<sup>2</sup> i.e. MMORPGs

encompassing nature of the End User License Agreement<sup>3</sup> used in regulating online interactive spaces:

“In the landscape of the virtual world, however, life is ubiquitously but not exclusively governed by contract law. Speech, conduct and existence – in fact, everything that a virtual world [or online game] resident does or says – is supposedly constrained by a contract.”<sup>4</sup>

End User License Agreements are standard-form adhesion contracts, and typically a potential user of an online game or virtual world is left with little choice as to whether or not he or she accepts the terms offered.<sup>5</sup> If he or she wishes to partake in the online interactive environment, he or she must accept the EULA on the terms offered. If this is not done, a user will be limited as to what he or she is able to access. Whilst this is not necessarily a legal difficulty in itself, it has provided a great deal of academic comment,<sup>6</sup> particularly in relation to the rights of the weaker party. More specifically, the terms of a EULA have a profound effect on the property rights and intellectual property rights that a user is entitled to benefit from. The contentious nature of these clauses suggests that disputes relating to which party benefits from certain rights are likely to occur in England and Wales, much like their appearance in other jurisdictions such as the USA and across Europe.<sup>7</sup> The use of contract law as a governing mechanism for online interactive spaces has several significant implications; not only does every aspect of online interaction and activity have to be contained within various contractual clauses but the contract has to be specific and as wide-ranging as possible whilst still being certain enough to be valid. This creates a need for medium-specific terms to be understood by the mainstream reader of the EULA. Consequently, given the lack of online-environment regulation, there is scope for disputes to reach an unprepared legal system. As such, language and the law must work together in this area.

### 1.1 “Law as Communication; Language as Medium”<sup>8</sup>

Law is arguably communication in itself.<sup>9</sup> As a form of communication it relies – according to Bix – upon the medium of language<sup>10</sup> to disseminate its many – and varied – messages. However, if McLuhan’s theory is applied, there are two elements to the medium adopted by law. McLuhan states that, “in operational and practical fact, the medium is the message.”<sup>11</sup> Language is the medium upon which law relies; both oral and written. As McLuhan points out, in the world of electronic communication, visual media is not sufficient, “At the high speeds of electric communication, purely visual means of apprehending the world are no longer possible; they are just too slow to be relevant or effective.”<sup>12</sup> Law is concerned with language, precise meanings and interpretations of wording. Tiersma highlights that law and language are interdependent on one another, “it is utterly impossible to conceive of law without language.”<sup>13</sup> Nelken<sup>14</sup> appears to disagree with this, advocating that law is, in itself, communication. However, law cannot be

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<sup>3</sup> Hereafter EULAs

<sup>4</sup> R Dannenberg et al, *Computer Games and Virtual Worlds: A New Frontier in Intellectual Property Law* (ABA Publishing, Chicago 2010) 6

<sup>5</sup> J T Kunze, ‘Regulating Virtual Worlds Optimally: The Model EULA’ (2008-2009) *N.W. J Tech & Intell. Prop* 102, 110

<sup>6</sup> See for example; A Jankowich, ‘EULaw: The Complex Web of Corporate Rule-Making in Virtual Worlds’ (2006) 8 *Tul. J Tech & Intell. Prop* 2; J J Kayser, ‘The New New-World: Virtual Property and the EULA’ (2006-2007) *Loy L A Ent L Rev* 60; F G Lastowka and D Hunter, ‘The Laws of Virtual Worlds’ [2004] 92 *Cal L Rev* 1

<sup>7</sup> B Johnson, ‘Virtual Theft on the Rise’ (*The Guardian*, London, 20 November 2008) available online at: <<http://www.guardian.co.uk/technology/2008/nov/20/theft-in-virtual-worlds>> accessed 31 September 2011;

<sup>8</sup> K Barker, ‘Medium as Message’ unpublished, 2010. (Notes held on file with the author.)

<sup>9</sup> D Nelken (eds), *Law As Communication* (Dartmouth Publishing Company Ltd, Aldershot 1996) 45

<sup>10</sup> N. 1, above, 1

<sup>11</sup> M McLuhan, *Understanding Media – The Extensions of Man* (Routledge, London 1995) 7

<sup>12</sup> M McLuhan and Q Fiore, *Medium is the Message: An Inventory of Effects* (Gingko Press, Corte Madera, California 2001) 63

<sup>13</sup> P Tiersma, ‘What is Language and Law? And Does Anyone Care?’ (2009) *Loyola L-A Legal Studies Paper*, No 11 available at: <<http://ssm.com/abstract=1352075>> accessed 30 November 2010, 10

<sup>14</sup> N. 9, above, 45

communication; it deploys content and communication media to convey its messages and such methods of communicating determine the messages that different readerships receive.

The legal message is conveyed in various ways but the content will differ depending on the exact form of media that is employed. Statute is one example of a legal communication medium. The content medium will be embodied within that statute (as the communication medium) but will need analysing and interpreting. Regardless of whether the issue is one regulated by statute or precedent, there will always be a matter of interpretation. This is why the terminology used in specific areas needs to be readily accessible across all generations, and uniformly understood, especially in the growing area of online games.

### 1.2. Law as a Message

Whilst language may prove to be the dominant medium through which law dissipates its message, the law employs various media to spread such messages. Language provides the message but media convey it, and different media place different emphases on different elements of messages. Nelken points out that it is important for law to interact with social constructs; “The message of law in terms of law, legal doctrine and legal procedure must meet the demands of communication as a factor in general social life and in culture.”<sup>15</sup> In communicating, the law must ensure that the choice of media that is made accurately reflects the kind of message and the audience that will be provided by the chosen media outlet. For example, there is no benefit in publishing in a virtual world, information about a new regulatory framework for a precise element of life in the UK.<sup>16</sup>

### 1.3. Interpretation as definition

Law, as it rests on language, is dependent upon interpretation to accurately set precedent. Moreover, precedent needs precise application to ensure justice is delivered. This cannot fail to be important in the often changing, and constantly developing area of Virtual Worlds and Online Games. Interpretation, and its precise nature have not been easy to reconcile, but this is perhaps related to the view that law and language are often treated as two distinct entities.<sup>17</sup> The role of interpretation and its deployment by various parties involved in the legal system is something that has sparked debate itself.<sup>18</sup> Nevertheless, there is some solid agreement amongst commentators that identifies – and accepts – that there is a role to be played by interpretation in the law. As Mootz states, “Interpretation is Janus - faced. It preserves and innovates; it recovers and projects; it acknowledges and creates. As a result, legal interpretation unavoidably is a high-wire without a safety net.”<sup>19</sup>

The justice system in England and Wales has developed several approaches<sup>20</sup> to deal with the potential pitfalls and difficulties thrown-up by statutes and potential gaps in the legal provisions. Those approaches reflect the ways in which the judiciary look at the wording and interpret it in situations where it is found to be problematic. The law of contract is just one area where the case law is littered with examples of judges stating that the wording in the statute is, “to be given its ordinary and natural meaning.”<sup>21</sup>

The judiciary is not designed to play the role of sole lawmaker; it is designed to apply the law<sup>22</sup> alongside the law enforcement bodies which seek to uphold the law. Nevertheless, when dealing with legal issues

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<sup>15</sup> N. 9, above, 57.

<sup>16</sup> N. 8, above

<sup>17</sup> P Pether, 'Language' in A Sarat et al (eds), *Law & The Humanities: An Introduction* (CUP, New York 2010) 314

<sup>18</sup> F J Mootz III, 'Interpretation' in A Sarat et al (eds), *Law & The Humanities: An Introduction* (CUP, New York 2010) 347

<sup>19</sup> N. 18, above, 394

<sup>20</sup> Approaches to interpretation include the literal rule, the golden rule and the mischief rule.

<sup>21</sup> *Fisher v Bell* [1961] 1 QB 394; *Duport Steel v Sirs* [1980] 1 All ER 529

<sup>22</sup> G Slapper and D Kelly, *The English Legal System* (9<sup>th</sup> edn, Routledge Cavendish, Abingdon 2009) 78

that refer to specific things, be it vague statutory provisions, a non-specific contractual clause or precedent from previous cases, the judiciary have the authority and ability to examine the relevant document and consider both its meaning and the intention behind it, be that parliamentary intention or otherwise.<sup>23</sup> In doing so, the judiciary effectively has the power to make law; case law.<sup>24</sup>

Whilst judges have the authority and ability to make law, parliament – and the Government of the day – ought to fulfil its role as lawmaker.<sup>25</sup> Law is traditionally reactive<sup>26</sup> rather than proactive, and it is therefore essential for the development of online games and associated property rights that there is a specific gaming terminology. In order for the law to be applied, the law must have an idea of what it is dealing with. Given that the courts in England and Wales have just recognised for the first time that virtual property can exist,<sup>27</sup> it is important that there are some basic terms that are understood in a mainstream context. Courts and practitioners need to know what they are talking about to ensure that the law develops appropriately, and that cases are decided accordingly, and therefore, terminology plays a pivotal role in interpretation.

## 2. Games

Virtual Worlds and Massively Multiplayer Online Role Playing Games are the online interactive environments under consideration here.<sup>28</sup> The worldwide gaming industry is not only highly-value, reportedly generating \$50 billion annually, but is the “largest entertainment industry in the world and continues to grow.”<sup>29</sup> There is a prediction that the annual revenue it generates will almost double by 2014.<sup>30</sup> The UK video game sector is larger and more valuable than either the film or music industry, generating £2 billion in worldwide sales in 2008,<sup>31</sup> with the software and electronic publishing industries accounting for the greatest contribution to the economy out of all of the creative industries.<sup>32</sup> At present, around 70 percent of the population in the UK plays games.<sup>33</sup> The UK has enjoyed great success with creations such as *Tomb Raider* and *Grand Theft Auto*, followed by *Fable* and *Runescape* more recently.<sup>34</sup> As such, the gaming industry is not something to be ignored, brushed aside or taken lightly, which suggests significant attention ought to be directed to understanding the terminology it employs.

### 2.1. What are ‘games’?

There is, as yet, no commonly agreed upon definition of online games.<sup>35</sup> An agreed definition of online games and virtual worlds is something that evades commentators. At present, each commentator sets out what he or she means by online games, and that leads to a common group of characteristics rather than a

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<sup>23</sup> N. 22, above, 78

<sup>24</sup> M Zander, *The Law Making Process* (CUP, Cambridge 2004) 423

<sup>25</sup> N.22, above, 78

<sup>26</sup> R Feldman, *The Role of Science in Law* (OUP, Oxford 2009) 94

<sup>27</sup> ‘Zynga hacker faces jail for \$12 million theft’ (unreported) available online: <<http://www.thisissouthdevon.co.uk/news/HACKER-ADMITS-STEALING-12m-POKER-CHIPS/article-3170994-detail/article.html>> accessed 20 February 2011.

<sup>28</sup> For the purposes of this discussion, online interactive environments will be split into these categories. This is not by any means an agreed upon split, with other commentators making distinctions in different ways; *ENISA Position Paper*, ‘Virtual Worlds, Real Money – Security and Privacy in Massively Multiplayer Online Games and Social and Corporate Virtual Worlds’ (November 2008), available online at: <<http://www.enisa.europa.eu>> accessed 1 August 2011.

<sup>29</sup> I Livingstone and A Hope (*NESTA*), ‘Next Gen’ (February 2011), 11 available online: <<http://www.nesta.org.uk/library/documents/NextGenv32.pdf>> accessed 1 August 2011.

<sup>30</sup> N.29, above, 11

<sup>31</sup> N. 29, above, 11

<sup>32</sup> DCMS, ‘Creative Industries Economic Estimates – Headline Findings’ (9 December 2010) available online: <[http://www.culture.gov.uk/images/research/CIEE\\_Headline-Findings\\_Dec2010.pdf](http://www.culture.gov.uk/images/research/CIEE_Headline-Findings_Dec2010.pdf)> accessed 1 August 2011.

<sup>33</sup> N. 29, above, 11

<sup>34</sup> N. 29, above, 11

<sup>35</sup> M Bell, ‘Toward a Definition of “Virtual Worlds” (2008) JVRResearch 1(1), 2

definition. Kennedy for example proposes that online games and virtual worlds have a number of shared characteristics including persistence.<sup>36</sup> Bell has considered this further, developing a definition, which he suggests is suitable for virtual worlds and which identifies the most the dominant characteristics of online interactive spaces. According to Bell's definition, a virtual world is, "Asynchronous, persistent network of people, represented as avatars, facilitated by networked computers."<sup>37</sup> The Virtual Worlds Review offers a different perspective, suggesting that virtual worlds vary in style, content and theme, but have certain characteristics in common. This suggestion, is not dissimilar to that of Bell, however, it does state that there are six common characteristics rather than four; a shared space with a graphical user interface, immediacy, interactivity, persistence and socialization.<sup>38</sup> This definition shares some of the suggestions put forward by Bell, but adds to his definition to offer a fuller, more detailed version. This again highlights the lack of a widely used, uniform definition.

The lack of a widely accepted definition of online games and virtual worlds is indicative of their problematic nature. Difficulties in defining the entity can make it equally challenging to determine rights and responsibilities in the event of a disagreement. However, the lack of definition also highlights how the terminology of online gaming can cause difficulties for mainstream bodies to deal with games. If experts cannot agree on a definition, this can perhaps make life less-straightforward for those adjudicating on disputes if they are unfamiliar with the entity, the elements of it and its functionality. The definition, much like the terminology is essential to an understanding of what exactly an online game is, and what it involves. This is especially the case when dealing with MMORPGs because simply referring to them as games is misleading. At a very basic and simple level, they are games, but they are not games in the sense that *Monopoly* or *Scrabble* are games. There are more aspects and more complexities to the function, operation and creation of MMORPGs than there are to the traditional portrayal of a game, such as a board game for example. Even referring to them as computer games, whilst more accurate, still fails to convey their nature. A computer game can refer to a range of things, from a CD-ROM based game, to a card game played on a PC to an online game on a website such as *Miniclip.com*. Each of these, whilst computer games, is different to a MMORPG because each one has different characteristics. As such, accuracy is important when dealing with MMORPGs and Virtual Worlds. Accuracy is not the only linguistic prerequisite when dealing with online gaming issues, but for the purposes of this discussion, it is the most important. Costikyan suggests that to define what a game is, it is necessary to consider what constitutes a good game; especially, which experiences a user desires and would like to repeat.<sup>39</sup> Such a supposition offers one method of defining a game and much like the range of definitions on offer, there are a range of methods for determining them.

## 2.2. Types of Game

The difficulties present in attempting to define a virtual world or online game are replicable when it comes to distinguishing between the types of online space. Once again, the need for accuracy is critical in determining which category a particular online entity falls into. Language has an important role to play in this as well as in regulating game items, objects, characters and contracts. The use of language is essential to our descriptions of items, events and occurrences. As such, it is important to be able to distinguish between different categories of online interactive environment. In the physical world, language is used to distinguish between different leagues in sport,<sup>40</sup> between different degrees of relationship, between

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<sup>36</sup> R Kennedy, 'Virtual Rights? Property in Online Game objects and Characters' (June 2008) Information & Communication Technology Law Vol 17(2), 95

<sup>37</sup> N. 35, above, 2

<sup>38</sup> Virtual Worlds Review, 'What Is A Virtual World?' <<http://www.virtualworldsreview.com/info/whatis.shtml>> accessed 1 August 2011.

<sup>39</sup> G Costikyan, 'I Have No Words & I Must Design: Toward a Critical Vocabulary for Games' CGDC Conference (2002), 33, available online: <<http://www.digra.org/dl/db/05164.51146.pdf>> accessed 1 August 2011.

<sup>40</sup> For example, in football and rugby, the highest league is referred to as the premiership.

different classes of competitors and almost everything else that forms an essential part of life. It is much the same in the virtual environment; language is essential to distinguish one game from another, one category of online environment from another, and games from worlds.

However, unlike sports leagues, degrees of relationship and classes of competitor, the language that would distinguish different categories of game and world is not yet commonly agreed upon. Neither is it widely used or commonplace. At present, different commentators categorize different online games and worlds in different ways, and use different rationales. Reynolds for example, splits the types of MMORPG and Virtual World into four categories; civic worlds, game worlds, social worlds and corporate worlds.<sup>41</sup> Sheldon however, retains a greater degree of simplicity and divides online environments into just two categories; virtual worlds and online games.<sup>42</sup> Duranske appears to follow this distinction of world and game but in some specific instances appears to remain undecided how to classify a particular online environment. This is evident from the categorisation of *World of Warcraft* and *EverQuest II* which he suggests can be both worlds and games.<sup>43</sup> Whilst this may be true, it does appear to defeat the object of categorising online environments and is therefore less than helpful. If however, worlds and games can be classed as one and the same depending on their characteristics, then terminology will be even more important when it comes to separating the categories. Terminology will also be important for explaining why a particular environment falls into a particular category. If worlds and games can be the same, then an agreed set of terminology is even more important for the distinctions between games, worlds, and combinations of the two.

Other commentators adapt different methods of distinction, with Alemi categorising online games and virtual worlds according to whether or not they are scripted or unscripted environments.<sup>44</sup> Alemi explains this distinction in terms of whether or not the games require users to follow a certain pathway of levels, completing set tasks and challenges as they progress through the ranks in order to reach the highest level, gain the greatest gold or defeat the ultimate opponent in achieving an ultimate goal of the game. In this way, the distinction is based on freedom. In a scripted environment,<sup>45</sup> according to Alemi's distinction, a user will have very little freedom to do as they please, and will be confined to certain activities at certain times. Conversely, in an unscripted environment,<sup>46</sup> a user will have significantly more freedom to do as he or she pleases, because there will be no set tasks, challenges or achievements in order to reflect status or progress. Unscripted environments allow users to develop their online persona at a pace that suits them. It also allows them to complete various stages of their online experience in the order which they so choose (within reason). An unscripted environment would be more reflective of a virtual world such as *Second Life* where users do not have to *do* anything other than exist and explore, if that is what they choose to do. Therefore, based on Alemi's categorisation, a scripted environment would be typically reflective of an online game i.e. *World of Warcraft* or *EverQuest II* for example, where a user is required to meet certain challenges in order to 'level up' and progress.

Much like the situation with the definition of online games and virtual worlds, the categorization is also problematic. It is possible that the categorization of games will also be determined by reference to characteristics of each type of game. Costikyan believes that the meaning of a game can be determined

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<sup>41</sup> R Reynolds, 'The Four Worlds Theory' (August 2005) available online:

<[http://terranova.blogs.com/terra\\_nova/2005/08/the\\_four\\_worlds.html](http://terranova.blogs.com/terra_nova/2005/08/the_four_worlds.html)> accessed 1 August 2011; N. 29, above, 11

<sup>42</sup> D P Sheldon, 'Claiming Ownership But Getting Owned: Contractual Limitations on Asserting Property Interests in Virtual Goods' (2006-2007) 54 *UCLA L Rev* 751 at 757

<sup>43</sup> B T Duranske, *Virtual Law: Navigating the Legal Landscape of Virtual Worlds* (ABA, Chicago 2008) 6

<sup>44</sup> F Alemi, 'An Avatar's Day In Court: A Proposal for Obtaining Relief and Resolving Disputes in Virtual World Games' [2007] *UCLA J.L. & Tech* 6 [20]

<sup>45</sup> N. 44, above, 20

<sup>46</sup> N. 44, above, 26

from its arrangement, “A game’s structure creates its own meanings.”<sup>47</sup> This is an important point when dealing with terminology of a niche area. Whilst the language and terms in this paper have thus far been discussed in a vacuum, Costikyan highlights that it is necessary to add context to the terms in order to derive meaning. He also provides the perfect example of meaning, using monopoly money to demonstrate his point; giving someone monopoly money outside of a game of monopoly is meaningless. As soon as the gesture is repeated within the game of monopoly however, it derives meaning and value. The context is arguably critical. This point is also reiterated by Steinkuehler, who suggests that language is about more than words, it is about literacy in online interactive environments.<sup>48</sup>

### 2.3. *The Challenges*

The challenges posed by online games and virtual worlds do not solely relate to the concepts of intellectual property, virtual property, privacy and technology. There are other issues that are related to the language, and interpretation of both gaminology and gaming practices.

In complex areas of the law, such as contract, the courts tend to adopt the principle of “ordinary and natural meaning” when interpreting statutes. Adopting the principle of “ordinary meaning”<sup>49</sup> will be of limited use – if any at all – in gaming disputes, especially for terms such as nerfing, wizarding and kill-stealing.<sup>50</sup> These are not words that are used in everyday situations. Nor are they words commonly read in contracts or particulars of claim. These and other words are part of a niche language where words have specific meanings and specific connotations for behaviour and actions in games and virtual worlds. If an “everyday ordinary meaning”<sup>51</sup> was given to wizarding, one could suppose it refers to the act of being a wizard, or the act of practising magic. In fact, in a gaming context it refers to acts of punishment and discipline that are carried out by characters of a certain rank or standing in the gaming environment.<sup>52</sup> The “ordinary” meaning as interpreted in the real world bears no resemblance to the natural meaning in a game context. This sole example serves to highlight the potential dangers and difficulties that lie ahead for game-related disputes that appear before the judiciary. And this is just one of the terms.

Alongside the challenges online games pose to the traditional applications of intellectual property and property rights, online games are now beginning to challenge the long-established approaches to legal interpretation. The terminology of MMORPGing is concerned with language, law and how it is interpreted. Law as a reactive force<sup>53</sup> responds to challenges or difficulties and the area of gaming is one such force for which a response is awaited. Both Parliament and the courts need to be prepared to meet the challenge and all of the aspects that present potential areas of difficulty. Reports suggest that the UK is rapidly becoming a highly involved gaming society in terms of play, with the emphasis shifting somewhat from development to play.<sup>54</sup> This arguably represents a shift from 2008 when the UK was one of the leading developers and producers of games; it has fallen from third to sixth in the world league table of developers.<sup>55</sup> Such developments will more than likely lead to a range of gaming disputes, especially if more people are becoming involved in gaming, and others have greater expectations of their rights in online environments. The shift from developer-led to player-led was set by South Korea and reports suggest that the UK is following their example.<sup>56</sup> Accordingly therefore, the courts should be prepared for

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<sup>47</sup> N.39, above

<sup>48</sup> C Steinkuehler, ‘Massively Multiplayer Online Gaming as a Constellation of Literacy Practices’ [2007] E-Learning 4(3) 297, 300, available online: <<http://dx.doi.org/10.2304/elea.2007.4.3.297>> accessed 1 August 2011.

<sup>49</sup> See below at ‘Language & Law’

<sup>50</sup> See below at Terminology

<sup>51</sup> N. 21, above

<sup>52</sup> See below at Terminology

<sup>53</sup> N.26, above

<sup>54</sup> Jeremy Vine, BBC Panorama, ‘Addicted to Games?’ First broadcast 6 December 2010.

<sup>55</sup> N. 29, above

<sup>56</sup> N. 54, above

the challenges facing them, and learn from South Korea rather than being caught unaware and unprepared.

### 3. Interpretation, gaming and the law

Law is concerned with many things; and one of those concerns relates to the interpretation of specific wording in statutes.<sup>57</sup> The interpretation of statutory wording is one critical function of the judiciary.<sup>58</sup> As such, it is important that the correct interpretation is reached otherwise it could potentially lead to a disastrous result for individuals, larger groups and even society as a whole. When judges are faced with interpretation or disputes over language, there are different approaches that can be adopted: literal rule,<sup>59</sup> golden rule<sup>60</sup> and mischief rule.<sup>61</sup> Each rule or approach to interpretation rests on some understanding of terminology and what it refers to. Attempting to interpret things which are not understood – as is the situation in online interactive environments – is a highly undesirable position for the judiciary as they are essentially giving effect to parliamentary intent<sup>62</sup> and filling the gaps in that intent. By doing so, the judiciary are creating law.<sup>63</sup> If there are gaps in the terminology, this could lead to a body of law which is fundamentally flawed and even incompatible with that which it seeks to regulate.

Given that there are potential options open to the law to correct itself, it may not seem significant to accurately define objects, items and rights when afforded the opportunity to do so. Currently, there are no dedicated bodies of law that relate specifically to online games, gaming properties or the protection of intangible property developed through interaction in a multi-user space. Despite this, intellectual property through copyrights and trademarks does attempt to provide regulation, albeit to a limited extent. Due to this situation, and the novelty of gaming in the eyes of the law, it is even more important that there is a recognised – and accepted – set of definitions relating to online games and gaming terminology. Such a recognition could potentially reduce the disparity in dispute resolution and also provide a general level of understanding amongst those dealing with the issues that have started to arise before the courts in the UK this year.<sup>64</sup>

The distinctions between games<sup>65</sup> and worlds,<sup>66</sup> and scripted<sup>67</sup> and unscripted<sup>68</sup> probably mean very little to the vast majority of people. However, if these terms are explained, they have a significant impact upon potential property – and other – rights that may accrue to users. The lack of a set of uniform terms in this area provides even greater challenges, and also suggests that there is a crucial demand for an agreed and recognised set of definitions. There is an emerging body of literature and commentary<sup>69</sup> in this field, and given this, there appears to be no agreed uniform terminology. Although unsurprising, the lack of terminology is also unhelpful, especially when the more detailed aspects of these online spaces are examined and subjected to scrutiny because a lack of standard terminology means that each commentator sets out to explain what is meant by a particular phrase or term.<sup>70</sup> This may seem like an insignificant

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<sup>57</sup> N. 22, above, 78

<sup>58</sup> N. 22, above, 78

<sup>59</sup> *R v Goodwin* (2005) EWCA Crim 3184

<sup>60</sup> *River Wear Commissioners v Adamson* (1877) 2 App Cas 743

<sup>61</sup> *Heydon's Case* (1584) 76 ER 637

<sup>62</sup> N. 24, above, 166

<sup>63</sup> N. 24, above, 166

<sup>64</sup> N. 27, above

<sup>65</sup> e.g. *EverQuest II*, *World of Warcraft*, and *Lineage II* are just some games available.

<sup>66</sup> e.g. *The Sims Online*, *Habbo Hotel*, *Club Penguin* and *Second Life* are just some of the virtual worlds available.

<sup>67</sup> N. 44, above, 20

<sup>68</sup> N. 44, above, 20

<sup>69</sup> See for example, G Lastowka, *Virtual Justice: The New Laws of Online Worlds* (Yale University Press, 2010)

<sup>70</sup> See for example, SJ Horowitz, 'Competing Lockean Claims to Virtual Property' (2007) 20 *Harv J.L. & Tech* 443; T Westbrook, 'Owned: Finding A Place for Virtual World Property Rights' (2006) *Mich St L Rev* 779

point. However, given that the law is concerned with precision drafting and detailed arguments hinging on the minutest of details – especially in contractual disputes – it seems desirable that there should be an adoption of standard terminology. This is arguably more important given that virtual worlds and massively multi-player games are regulated by EULAs, which are contractual documents.

At present this may seem like a high demand given that the law in the UK has had few dealings with virtual property disputes. However, there is a growing trend both in the West<sup>71</sup> and in Asia of virtual disputes reaching real world courts. In fact, the very first recognition by a UK court of a game-related virtual property occurred in February 2011 - when a judge at Exeter Crown Court convicted a man of computer misuse in hacking into game accounts with the purpose of stealing virtual currency then exchanging it into real currency for his own, illegitimate benefit. The judgement handed down expressly referred to virtual gaming property and assets for the very first time in the UK.<sup>72</sup> This is a significant development despite the fact that it was not a judgement by the higher courts; the UK courts have expressly recognised that virtual gaming property not only exists, but that rights can attach to it. Whilst it is true that virtual property has been recognised by statute through copyright law from its initial inception in the 1700s,<sup>73</sup> and digital property is also widely recognised through online downloads, the recognition of property in a gaming context is significant. Such a judgement is likely to be only the first of many if the example of South Korea is to be followed. South Korea not only deals with hundreds of virtual disputes each year, but even has its own dedicated team of police officers to investigate such disagreements<sup>74</sup> and a special committee to examine the contracts that govern online gaming.<sup>75</sup> This judgement is also significant because it relates to the ongoing debate concerning who has the rights to gaming property.

This all suggests that online gaming and online social spaces are proving to be more valuable to users than just an escape from reality.<sup>76</sup> Users are beginning to realise that they have rights in such virtual spaces, and are willing to go to court to prove this.<sup>77</sup> This in turn suggests that the legislature and the judiciary need to be prepared. However, this is one area where the law has the potential to be proactive and not be caught on the 'back foot'!

#### 4. Language & Law

The 1975 Renton Committee on the Preparation of Legislation<sup>78</sup> outlined four main categories relating to complaints about statutes. Two of these were the obscurity of language, and the over-elaborated provisions.<sup>79</sup> The obscurity of language and the over-elaboration of statutory provisions suggests that legislation was more concerned with artfulness than accuracy and user-friendliness. This highlighted 36 years ago that problems can arise where legislation and terminology interact but do so without a adequate understanding of each other. This suggests that there have been long-standing tensions between the two separate disciplines of language and law, which reflects the tensions between the contemporary debates in law and language. It is possible to see that these two categories of complaint about statutes can be applied to online games; the language used is obscure to many who are not experts or even gamers, and is

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<sup>71</sup> In the USA cases concerning *Second Life* and *World of Warcraft* have been commenced: *Hernandez v Internet Gaming Entertainment*, U.S. Dist. Ct. Southern District of Florida, Case No:07-CIV-21403-COHN/SELTZER; *Blizzard Entertainment Inc., v In Game Dollar, LLC*, US Dist. Ct. Central District of California, Case No: 8:07-cv-00589-JVS-AN; *Bragg v Linden Research Inc.* (487 F.Supp 2d 593 E.D. Penn) [2007]

<sup>72</sup> N. 27, above

<sup>73</sup> Statute of Anne, 1710

<sup>74</sup> Ung-Gi Yoon, 'Real Money Trading in MMORPG Items From a Legal and Policy Perspective' *Journal of Korean Judicature*, Vol. 1, pp. 418, 2008

<sup>75</sup> N. 74, Above, 418

<sup>76</sup> DM Koo et al, 'Experimental Motives for Playing Online Games' *Journal of Convergence Information Technology* (2007) 2(2) 37, 40

<sup>77</sup> N. 71, above

<sup>78</sup> N. 22, above, 75

<sup>79</sup> N. 22, above, 75

not found in mainstream terminology. In addition to this, where there is an attempt to define something accurately, there is often little or no agreement between commentators about the definitions, and as such, they tend to become over-elaborate. It is easy to foresee that there could be serious difficulties with the workability of any statute that could be presented in order to address issues relating to online games and virtual worlds.

Whilst a statutory instrument relating solely to issues raised by online games and virtual worlds is unlikely to be produced, the dangers associated with any form of regulation remain prominent. It is more likely that online games and virtual worlds will be dealt with through some form of independent governing body, similar to that of the Football Association.<sup>80</sup> Nevertheless, there must still be an appreciation of the problems associated with the language and terminology of online games and virtual worlds, and the potential dangers of inaccuracies.

Legislation is drafted by Parliamentary counsel.<sup>81</sup> Despite the numerous pressures that are placed on counsel, "if one principle is to be pursued above all others, it is surely the need for clarity of expression and meaning."<sup>82</sup> Such a conclusive statement by Slapper and Kelly reflects what the predominant aim of all legislative drafting should be, especially in technical or technological areas of the law. Clarity of expression is needed, but so too is clarity of meaning or definition. It is unlikely that there will be clarity of expression until there is also clarity of meaning. Just like law and language, clarity of expression and definitional clarity are inter-reliant too. Of course, before drafting can be completed, there needs to be a level of understanding and acceptance of terminology relating to that which is the subject of legislative drafting. Without an accepted and accurate set of terminology, it is futile to draft legislation because the legislation could prove inaccurate and unworkable. If this were to be the outcome then there would be a greater burden placed on the judiciary to almost "correct" the law, compounding the reactive nature of law. However again, without an understanding and working knowledge of specific terms, this would be unlikely and could even result in substantial unfairness in the law, which is undoubtedly an undesirable outcome.

It would therefore seem that both drafting and interpretation are critical elements for the sphere of online gaming and its legal presence. It is undesirable to attempt regulation through the law until there is recognition and acceptance of how games work, and the game meaning attributed to everyday words. The different meanings for phrases when they are applied to online gaming are a crucial part of gaming terminology. This general principle is accepted by commentators who recognise that legislation is a method of communication that includes language and the inherent complexities associated with language. The most complex attribute being the one that could cause a number of difficulties for the law in relation to online gaming; "words can have more than one meaning and ... the meaning of a word can change depending on its context."<sup>83</sup>

There are several approaches to statutory interpretation<sup>84</sup> that are available to judges and the courts in England and Wales to assist them in making the correct decisions and interpreting relevant legal documents accurately. The approaches to statutory interpretation include the golden rule, the literal rule and the mischief rule. The most alarming approach to statutory interpretation for online games would be the literal rule, largely due to the disparity between the meaning of terms in the physical non-gaming world and their differentiation in the gaming sphere. The use of the literal rule could provide some interesting if strange judgements, which is why it is a relief that the literal rule is balanced by the golden rule where necessary.<sup>85</sup> Depending on which approach is adopted, the potential outcome of a case can be

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<sup>80</sup> Credit for this example must be passed on to those present at the conference presentation of this primitive work.

<sup>81</sup> N. 22, above, 75

<sup>82</sup> N. 22, above, 77

<sup>83</sup> N. 22, above, 79

<sup>84</sup> See above at 3, 'Interpretation, Gaming and Law.'

<sup>85</sup> N. 22, above, 86

affected. Consequently, it would be interesting to critique a particular phrase and scenario deployed in an online gaming situation and determine what the outcome would be depending on which approach to interpretation is adopted. However, there is no statute relating to online games as yet in England and Wales so such an exercise cannot be completed.

Given the potential for different outcomes, and even potentially unfair outcomes, it is apparent that there is a need to ensure the correct definition of gaming phraseology is used. Failure to do so could result in an incorrect and inaccurate approach to legal disputes over online gaming.

## 5. Terminology:

Niche areas of interest often have their own specific terms and language. Property law for example uses terms such as lessee and lessor, covenant and easement. This is just one area of law that has its own distinct set of terms, as does the law of contract, and the criminal law in England and Wales. Equally, the law relating to online gaming could also benefit from acceptance of its own distinct terms. Online gaming has a host of different terms relating to specific aspects of online interaction and precise elements of interaction with a specific online space. Within the broad category of online gaming, there are various subcategories, and in addition to this, there are even platform-specific terms too; certain games or worlds have specific characteristics and therefore have specific language relating to them. It is therefore inappropriate and ill-advised to use general terms instead of the correct term when referring to such things. Referring to a game item or aspect from one game and applying that to other games could prove to be disastrous, not to mention incorrect. In an area where precision is required, accuracy is also advocated in dealing with the terminology surrounding online interactive spaces.

### 5.1. *The problem with 'MMOG' and 'MMORPG:' distinctions between games and worlds*

The use of the generic terms (or perhaps, more accurately acronyms) MMOG – Massively Multiplayer Online Game - and MMORPG – Massively Multiplayer Online Role Playing Game – highlight the predominant issue in this emerging area of law, and exemplify the difficulties with generalisations in relation to specific terms. MMOG and MMORPG refer to a broad categorisation of online spaces and interactive environments. Both terms equally fail to differentiate a particular category from others. Equally, neither term seeks distinction from virtual worlds. This in itself is difficult because there are different characteristics and implications that arise depending on which category the online space falls into. Moreover, no single acronym can suffice to apply to each type of game. Different groups of games have different categories and within those categories there are distinguishing characteristics for different groups. It is important to understand the differences because they can help us to accurately define these different groupings.

The generic phrase of “gaming” covers a multitude of categories, the components of which all have different characteristics. That these different categories are distinct from each other is unsurprising. What is surprising is the range of differences and the attributes that coincide with each of the categories. On a simplistic level for example, there is a need to split online games into two main groups: MMOGs and Virtual Worlds. However, these categories can then also be further split. Each of the subcategories also have defining characteristics too. These different groupings may seem somewhat trivial and minor but the characteristics relate to the terminology, and if some categories of game do not have the same characteristics as others, treating them as though they do could cause problems.

### 5.2. *Scripted, unscripted and scripting*

Alemi points out that there are sub-categories that also need distinguishing from the main gaming classifications. There is also a need to distinguish between scripted environments and unscripted

environments.<sup>86</sup> Scripted environments refer predominantly to games. Games are said to be scripted because they require users to complete certain tasks and challenges and meet certain objectives in order to be able to progress to the next level and finish the game. Within traditional MMORPGS, which are scripted environments, there is less potential for individual users to engage in the process of scripting. Scripting refers to the activity of writing program code in order to generate objects and items within the game. Scripting is not to be confused with scripted and unscripted games; scripting is a process whereas scripted and unscripted are descriptors of game type.<sup>87</sup>

The use of scripted and unscripted as terms to describe game categories, grows in complexity when it is considered that due to the size of virtual worlds and online games. There is the potential for a virtual world – which is an unscripted platform – to contain a scripted game i.e. within *Second Life* there are a number of scripted role-playing games and a number of non-role-playing games for users to interact with. Consequently, if it is accepted that virtual worlds are usually unscripted and role playing games are usually scripted, it is entirely possible that an unscripted environment can contain scripted elements.

These distinctions may seem unimportant. However, when it is considered that the different categories of game have different EULAs and differing contractual clauses relating to property rights and intellectual property rights, the situation suddenly seems slightly less trivial. Given that most scripted environments tend to be games, the EULAs of these games tend to stipulate that the developers are the owners of all the property rights.<sup>88</sup> Moreover, if unscripted environments are generally virtual worlds, the EULAs of these environments tend to stipulate that users are entitled to property rights.<sup>89</sup> This is a crucial difference and one that could have significant implications in court disputes, which is why it is important that the correct terminology is used in a specific way.

## 6. Gaming terms

This paper has explored the differences between the categories of online games and virtual worlds and how they differ. It has also set out why the distinction is important, and stated that there is a need to recognise this area as having its own distinct set of terminology. Equally, what this paper does not seek to do is to act as a dictionary for gaminology – the terms are far too varied and numerous for that to be possible. However, it is necessary to discuss a few choice examples to illustrate the demand for understanding and acceptance of gaming terminology and the role it will undoubtedly play in the legal system in due course.

### 6.1. Farming

Other terms are used to refer to specific entities within games and gaming activities. The terms used are sometimes terms used in the real world and whilst they may have some similarity, the overriding meaning is different in cyberspace to that in the physical world. One example of this is “farming.” If this phrase were to be given its ordinary meaning, most likely this would be interpreted as working the land or caring for the animals so as to generate a living.<sup>90</sup> However, in an online gaming context, farming refers to something with potentially similar attributes but removed from the ‘manual labour’ and ‘living off the land’ stereotypes. Farming in an online gaming context refers to the practice whereby people are employed to repeatedly carry out menial tasks in a game so as to generate amounts of game wealth. By repeatedly

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<sup>86</sup> N. 44, above, 20

<sup>87</sup> Second Life, ‘LSL Portal’ (18 March 2011) available online: <[http://wiki.secondlife.com/wiki/LSL\\_Portal](http://wiki.secondlife.com/wiki/LSL_Portal)> accessed 1 August 2011.

<sup>88</sup> World of Warcraft EULA, 9 December 2010, available online: <[http://us.blizzard.com/en-us/company/legal/wow\\_tou.html](http://us.blizzard.com/en-us/company/legal/wow_tou.html)> accessed 1 August 2011

<sup>89</sup> Second Life Terms of Service, Clause 7.1. 15 December 2010, available online: <<http://secondlife.com/corporate/tos.php#tos12>> accessed 1 August 2011

<sup>90</sup> *Collins English Dictionary* (HarperCollins, Glasgow 2006) 306

performing this task, substantial reserves can be acquired, which can then be sold to other users who do not wish to perform menial tasks themselves. This process is repeated around the clock to amass the greatest possible return. 'Farming' in online games therefore refers to in-game repetitive actions rather than traditional arable or mixed farming operations.

Gold farming is a controversial aspect of online gaming enterprises, and is conducted on a far larger scale than farming. Gold-farming refers to the large-scale systems aimed at amassing large amounts of wealth by carrying out repetitive actions. Such activities can be carried out on a professional scale.<sup>91</sup> In some extreme instances, gold farming relates to an extreme form of labour. In some Chinese Prisons, prisoners are forced to engage in gold farming so as to generate a profit for their guards.<sup>92</sup> This controversial and contentious area of online gaming has been the subject of litigation in the USA in the case of *Hernandez v IGE*.<sup>93</sup>

In *Hernandez*, the claimant alleged that *IGE* were in contravention of the EULA of *World of Warcraft* because *IGE* were engaged in collecting and selling game items and currency for real currency, thereby allowing other users to circumvent the lower levels of the game and time-consuming activities. *Hernandez* also alleged that this was devaluing the currency, as well as the efforts employed by genuine users to work through the game. A similar issue was raised in the case of *Blizzard Entertainment Inc v In Game Dollar LLC*.<sup>94</sup> In this case, the developers of *World of Warcraft* (Blizzard Entertainment) issued proceedings against the defendant because the defendant was allegedly involved in assisting users to improve their level within the game in exchange for real currency. Whilst the focus of this case was ultimately on matters under fraud legislation in the USA,<sup>95</sup> *In Game Dollar LLC* was also involved in collecting items and currency and re-selling it to other users.

## 6.2. Griefing

A griefer is an avatar that sets out to cause chaos and upset throughout the game. Grieferers bend the rules, cause damage and destruction, and generally disrupt ordinary game activity. Griefing is the activity carried out by a game character within a specific game. These characters are known as grieferers, and whilst they are also avatars, they receive special distinction due to their erroneous behaviour. Commentators have already highlighted the distinction between the activities of ordinary avatars and the activities of grieferers.<sup>96</sup> Given that MMORPGs and Virtual Worlds rely heavily on the notion of scarcity<sup>97</sup> – that some items are rare creates a demand for the item and therefore interest in the game – the activities of grieferers can be even more distasteful.

Foo and Koivisto have explored the idea and activity of griefing, and outline three elements to define griefing: "The griefer's act is intentional; it causes other players to enjoy the game less; the griefer enjoys the act."<sup>98</sup> This implies a significant difference in activity between grieferers and ordinary 'law-abiding' virtual actors. Foo and Koivisto also suggest that this broad category of grieferers can be further divided, into

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<sup>91</sup> N. 28, above, 3.2.3.3 - Gold farming by humans

<sup>92</sup> D Vincent, 'China Used Prisoners in Lucrative Internet Gaming Work' (*The Guardian*, 25 May 2011) available online: <<http://www.guardian.co.uk/world/2011/may/25/china-prisoners-internet-gaming-scam>> accessed 25 May 2011

<sup>93</sup> *Hernandez v Internet Gaming Entertainment*, U.S. Dist. Ct. Southern District of Florida, Case No:07-CIV-21403-COHN/SELTZER [2007]

<sup>94</sup> *Blizzard Entertainment Inc v In Game Dollar LLC* (US Disc. Ct. Central District of California, Case No: 8:07-cv-00589-JVS-AN [2007])

<sup>95</sup> C Renaud and S F Kane, 'Virtual World Industry Outlook 2008-2009' (*Technology Intelligence Group*, 25 August 2008) <[http://blog.techintelgroup.com/files/virtual\\_world\\_outlook\\_20082009.pdf](http://blog.techintelgroup.com/files/virtual_world_outlook_20082009.pdf)> accessed 1 August 2011.

<sup>96</sup> C Y Foo and E M I Koivisto, 'Defining Grief Play in MMORPGs: Player and Developer Perceptions' *Proceedings of the 2004 ACM SIGCHI International Conference on Advances in Computer Entertainment Technology* (ACM, New York, 2004) available online: <<http://doi.acm.org/10.1145/1067343.1067375>> accessed 1 August 2011

<sup>97</sup> N. 36, above, 95

<sup>98</sup> N. 96, above

those who grief for the sake of grieving, and those who grief for the sake of greed, i.e. 'greed play,' which is defined as an, "act...not specifically intended to disrupt and yet the actor is the sole beneficiary, it is greed play, a subtle form of grief play."<sup>99</sup>

Such activity, alongside the lack of a contractual relationship – and therefore remedy – with other users compounds the difficulties griefers pose. If users have no way of enforcing rights and little degree of fairness in a game, griefers are essentially empowered to cause chaos at will without risk of punishment or reprisals. This example shows just how extreme the situation can be for users when they are required to waive their property rights and they have very few methods of redress.

However, the situation with grieving in a virtual world may differ. If there is a system of grieving ongoing in a virtual world, it is entirely possible that there could be a system of social norms that are deployed against the griefer. Equally, with the users of virtual worlds engaging in the process of scripting and engaging in setting locks on created items, the power of a griefer to disrupt and upset may be somewhat more limited. Again though, the EULAs are the same as those for MMORPGs in relation to user-relationships, there is still no express contractual relationship between users. However, there are property rights for users and consequently, they may be relied upon in order to take action against a grieving character. One potential option would be to commence an action for something similar to nuisance in tort.

In the real world, grieving is not something that is recognised. Instead, criminal activity would be the generic heading. At best, an everyday use of the word grief would refer to upset or emotional distress.<sup>100</sup> The specific activity of grieving would not be recognised in the off-line world. Consequently, whilst the term grieving indicates that it may be something to do with suffering upset, it does not indicate the precise nature or extent of such activity, and is therefore another example of why there ought to be an understanding given to the language of gaming.

### *6.3. Kill Stealing*

Kill stealing in the real world is a concept that has little meaning. Such a phrase could be interpreted to mean stealing the kill of someone or something. However, even then it is of limited use. In the virtual online environments such a phrase is used to describe the activity whereby the hard work of User A is stolen by User B. In a typical situation involving kill stealing, User A will have tracked down an enemy beast or some such character and will be nearing completion of killing the character. Once the kill has been completed, User A will be rewarded with experience points and perhaps even virtual gold or other such rewards.<sup>101</sup> However, User B will come along just before User A has finished the killing process, and User B will 'jump in' at the last moment and finish the kill, thereby stealing both the kill, and the rewards. This process is known as kill stealing.

Whilst such activity is not necessarily outlawed in the terms and conditions of games, it is generally frowned upon. It could be the type of activity that a griefer would engage in for example. In the physical world, such situations are highly unlikely to occur, and even if they did, it is highly unlikely that such a term would be used to describe the event. In this sense, the need to understand gaming terminology is critical, especially where there is no offline term that means the same thing.

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<sup>99</sup> N.96, above

<sup>100</sup> N. 89, above, 373

<sup>101</sup> WoW Wiki, '*Kill Steal*' (World of Warcraft Wiki) available online: <[http://www.wowwiki.com/Kill\\_steal](http://www.wowwiki.com/Kill_steal)> accessed 25 May 2011.

#### 6.4. Wizards<sup>102</sup>

Wizards are a form of avatar – the graphical representation of a game character - in the same way that grievers are avatars. Again, similarly to grievers, wizards are avatars that perform special or distinct functions within a particular game or world. However, even within gaming circles, the term ‘wizards’ tends to be used in niche areas, and is not in any sense, mainstream. Wizards are generally accepted to be those of high skill or respected social standing within the virtual environment. However, wizards are not present in all games and worlds. Where wizards are present, they tend to be involved in handing out community punishment demanded by their peers. This was the situation in the world of *LambdaMOO* where Mr Bungle – a *LambdaMOO* – resident was accused of committing a sexual offence. The community demanded punishment and it was so carried out. After the punishment was carried out, a wizard then banished Mr Bungle from the world,<sup>103</sup> punishing the character twice. It is therefore apparent that wizards have specific duties to perform within online environments where they are present.

In the physical, offline world, a wizard is generally accepted to be a magical character who is capable of performing spells or magic tricks.<sup>104</sup> Wizards in the offline sense are commonly accepted as characters not unlike Albus Dumbledore who appears as headmaster of Hogwarts School of Witchcraft and Wizardry in the Harry Potter series written by J.K Rowling.<sup>105</sup> It is doubtful whether the gaming definition of a wizard would be used as the most common reference to a wizard. It is therefore apparent that whilst the word wizard appears in both the physical offline and virtual online worlds, it has different connotations in each. This could prove to be problematic for the legislators or the courts if the gaming definition of wizards is not understood correctly.

#### 7. Conclusion

Whilst online gaming is a mainstream form of entertainment,<sup>106</sup> the legal system has yet to accept that this is so. Equally, the legal system has yet to accept that there can be disputes arising out of such interaction. This is an important step to take because once there has been recognition of the activity, there can be recognition of everything associated with it. If there are to be problems with gaming activity – as there have been in the USA, South Korea, Holland and China to date – then the English legal system needs to accept that this challenge is en route. The area of gaming is something that will pose a challenge to the law, not just because it is something relatively new, but because it is something abstract that cannot be touched, is highly technological and rapidly changing. Gaming – and its associated terminology – cannot be treated as though it is part of computer software or part of information technology. Whilst it does form part of these,<sup>107</sup> it is more than that, and the terminology that accompanies it is also something the law needs to prepare itself to accept.

It is not just strictly language that needs to be considered with online games and virtual worlds. Whilst this is one critical element, it is also important to consider the impact of online gaming on literacy generally. Involvement with an online interactive space involves reading in more than one way. There is obviously the reading of commands and communications, but there is a quite different kind of reading too; the

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<sup>102</sup> Wizards tend to appear in Multi-User Dungeons; a niche form of virtual world and it is therefore a relatively rare term.

Nevertheless, it serves to illustrate that there are a wide range of terms that are used and regardless of where they are used, there is a need to incorporate them into mainstream understanding.

<sup>103</sup> J Dibbell, *My Tiny Life* (Fourth Estate Ltd, London 1998) 21

<sup>104</sup> N.89, above, 1025

<sup>105</sup> J K Rowling, *The Harry Potter Series* (Bloomsbury, London 1997-2010)

<sup>106</sup> L A Lievrouw and S M Livingstone, *Handbook of New Media: Social Shaping and Social Consequences of ICTs* (SAGE, London 2006) 79

<sup>107</sup> For example, software is the platform through which games are operable, and software is protected by copyright law under s3(1)(b) of the Copyright, Designs and Patents Act 1988.

reading of the screen with which you control your contributions. The 'reading' of the screen is a different language that very few who have never engaged with an online game or online interactive environment will be able to successfully master, interpret or even understand.<sup>108</sup> It is this, alongside the precise and distinct terminology that poses potential problems for those faced with adjudicating over disputes relating to online games and virtual worlds. It is therefore necessary to appreciate that it takes a distinct linguistic ability to engage effectively with online games, and a failure to appreciate their delicacies could lead to courts missing the point of the dispute in search of an accurate definition. A lack of understanding of the language and terminology now could prevent problems in the not too distant future.

Gaming terminology is different for a reason – as is gaming. The interpretation of specific gaming terms is also important to ensure a just outcome based upon the common understanding of the terms in a gaming context. That means that the law needs to make accommodation for it and become familiar with its 'quirks'. It needs to accept that there is a gulf between the use of terms in the physical world and the use of the same terms in the gaming world. The issues of interpretation, whilst spread throughout the legal system, are in this instance, subject and medium specific. To date, there have been very few issues of gaming terminology and interpretation, but this is due to the lack of court-based disputes. The terms are critical to understand the occurrences and activities within online environments. A correct understanding and use of those terms will shed light on what could potentially be complex legal problems. Accurate language is therefore a prerequisite, and a prerequisite that should be understood in context of virtual worlds or online games. Legal inaccuracies may be different, but as equally damaging as gaming linguistic inaccuracies.

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<sup>108</sup> N. 48, above, 300