

Authorship and Copyright in Virtual Worlds – From the Death of the Author and the Disempowerment of User to the Revival of Rights?

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Abstract

In Massively Multiplayer Online games (MMOs) and Virtual Worlds, the idea of authors seems to have 'died' or been 'wiped out' at least from the perspective of users. The concept of authorship is something that does not receive adequate attention or recognition in MMOs. In fact, online games in particular appear to deprive authors of their rights, both legally and morally. Users of MMOs are required to consent to the deprivation of rights in both authorship and intellectual property before they can access multi-user environments. This inherently deprives users of their rights as authors. This paper will show that currently acceptable practice is problematic and leads to a decrease of innovation. Furthermore, it will consider a fresh approach to such issues, particularly in light of the idea of authors as producers and a vivid force for innovation. In addition to this, consideration will be given to the ideas of collective authorship. Rather than a strictly legal analysis, this paper will explore a legal and media approach to authorship in MMOs.

The concept of authorship will be considered initially from the vantage points of Barthes "Death of the author," and Foucault's idea of the author as a function as well as von Hippel's concept of democratic innovation. These considerations will be developed to present our perspective that the author goes beyond the producing subject to become a function of a process of collective construction. The function of the author within an MMO follows the process the author assumes in this virtual world. Hence, the moral rights upon the creative production remain with every author, whereas the collective compilation becomes an untraceable product, which dissolves within the collective process of production itself. As such, authorship, once collective, cannot be disentangled into specific parts of the whole. Copyright and moral rights in Virtual Worlds and MMOs must reflect this - otherwise what is the underlying purpose of copyright? At the very least, the notion of authorship ought to be acknowledged and rights attributed to those who are responsible for the creativity.

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Furthermore acknowledgement of the author is necessary to signal to other potential authors to distribute their ideas to these virtual worlds and thereby share innovational ideas within the virtual world. The motivation to contribute ideas is linked with any form of recognition for the work. After all, these online spaces are persistent and ever developing, and this cannot happen without the user base, or as we argue, the authors.

Introduction

At any one moment hundreds, even thousands, of people worldwide are engaging in the production of content within the virtual worlds and MMOs. They create their own character gear, devise some indefinable contraptions, and participate in trade within those virtual spaces. Yet, although others enjoy their content production, even if solely on the base of the visual pleasure other players derive from watching and engaging with the characters of fellow gamers, they receive no official recognition for their creations. Are they being denied their right to authorship, or is it simply the operation of modern copyright?

In order to answer this question we begin by wondering what authorship means and what it entails. If authorship is anything beyond a marketing title, or a remnant from a pre-convergent view upon audiovisual creations, then copyright must change into a dynamic recognition, rather than a static – and years-on-end-long – creativity-stifling mechanism. Or should we overhaul the copyright system completely?. One possible way to address it is through democratic innovation (von Hippel, 2005), which rightly values the collective collaboration present in MMOs and virtual worlds. Furthermore there is the necessity of approaching content creation within virtual worlds differently than in the real world. Due to influences like the Hacker Ethics (Himanen, 2001) or the pursuit of open information, copyright seems to be an obsolete form of usage in virtual worlds.

We take a specific case study, that of the UK, to exemplify the problems and highlight the potentials of such a change in perspective. It prompts us to understand the clear and present need for a change in the copyright definitions for MMOs and virtual worlds. If so-called modern democracies, such as the UK, still attach copyright

to a clearly interactive audiovisual product as if it were unchangeable written material, we wonder if that might be putting a massive hurdle on one of the potentially strongest waves of international creativity.

Finally, we conclude the discussion by pondering what the best way to proceed would be. Although we are certain that a democratization of innovation is key to a new form of author-developer, and that dynamic recognition, rather than monetary compensation, should be the first step, we wonder how the creative power could be further fostered economically. We leave this question unanswered, but by engaging with it collectively, we are certain we can achieve an appropriate answer. How else would any of us hope to do it?

The Author is dead! Long lives the author!

Is it possible to write two different books, which match letter-to-letter, word-to-word, and paragraph-to-paragraph? Is it possible, in other words, to write two books in which syntax is but one and the same?

This was the question posited by Jorge Luis Borges (1999) in 1944 when he began the adventure of cataloguing the work by Pierre Menard, the deceased symbolist poet, who had tried - and partially achieved - to write his own Don Quixote. The most extraordinary part of his enterprise was, perhaps, that as he progressed in his endeavor he slowly began to write a Don Quixote, which so closely resembled that of Cervantes, that at some point they matched letter-to-letter, word-to-word, and paragraph-to-paragraph. However, Borges argued, it was not the same text; it was an altogether different Don Quixote, written in the XIX century and, as described by that imaginary archivist, "the Cervantes text and the Menard text are verbally identical, yet the second is almost infinitely richer" (p. 50).

It is, of course, fiction; a fiction in which Borges tests our modern logic, our ideas about the text itself, our ideas about what or who the author is. He challenges us, a couple of lines ahead of the idea just transcribed, when he states that:

It is a revelation to compare the *Don Quixote* of Pierre Menard with that of Miguel de Cervantes.

Cervantes, for example, wrote the following (Part I, Chapter IX):

... truth, whose mother is history, rival of time, depository of deeds, witness of the past, exemplar and adviser to the present, and the future's counselor.

This catalog of attributes, written in the seventeenth century, and written by the "ingenious layman" Miguel de Cervantes, is mere rhetorical praise of history.

Menard, on the other hand, writes:

... truth, whose mother is history, rival of time, depository of deeds, witness of the past, exemplar and adviser to the present, and the future's counselor.

History, the *mother* of truth!—the idea is staggering. Menard, a contemporary of William James, defines history not as *adverting into* reality but as the very *fount* of reality. Historical truth, for Menard, is not "what happened"; it is what we *believe* happened. The final phrases—*exemplar and adviser to the present, and the future's counselor*—are brazenly pragmatic. (pp. 50-51)

Once more, this is but fiction. However, Borges re-inscribes in the text a fundamental element and the non-static aspect of the written work, which, little by little, becomes a certain sign that fills up with the passage of history itself. It becomes quite unsettling that, although it is a text by Borges, the figure of the author seems to have an unexpected relevance – stemming from the title itself –, when we appear to be facing its disappearance. Already in 1967, Barthes (1977) reminded us that the figure of the author is nothing but a modern construct which comes out of a triple root arising from the English empiricism, the French rationalism, and the personal faith of the protestant reform movement; their discovery is the *prestige of the individual*. No doubt, this notion is the one, which, more often than not, we ascribe to our common sense of the author: a subject, endowed with a particular creative genius, who conjures it upon a distinctive piece of work (of art or science). But what happens when we assume, as Borges did, that the creative power lies elsewhere?

Creative power, the capability to create, conceived almost fully in terms of *genius*, is one of the main pillars of the modern concept of the author. Barthes highlights this issue, when he proposes the need to bury the notion of *author*. In fact, the pre-existence of the person – the mediator so to speak –, upon the sign itself, is one of the main points which modern tradition has woven when thinking of the author as an *efficient cause* of the work. If we remember Heidegger's (1977) interpretation of Aristotle's four-fold causality, we could rediscover the privileged place of the *efficient cause* upon the other three. The silversmith, so Heidegger, - the author, we would deem – has the role of gatherer of the other three causes, he is responsible for the order of all things. The idea of the *efficient cause*, translated into the concepts of author and its work becomes, then, particularly risky, since it places the creative act in the hands of the emitter – taking the old terminology from communication – and would seem to place the receptor in the status of a passive observer. Although the typology we present from the standpoint of the *efficient cause* allows us to take to the extreme the modern concept of author, the fact that the same figure has been re-signified under ideas of idolatry leads us to the same place. This is the point, which Borges desecrates in his tale, opening up Pandora's Box upon a question about what it means *to be* an author.

It is important to notice how Borges' question touches on the need to comprehend the idea of authorship in the concepts that we were taught by the likes of Brecht and Duchamp. Barthes (1977) provides us with a useful way out:

We know now that a text is not a line of words releasing a single 'theological' meaning (the 'message' of the Author-God) but a multi-dimensional space in which a variety of writings, none of them original, blend and clash. The text is a tissue of quotations drawn from the innumerable centres of culture. (p. 146)

What would have been Menard's creation? If creation presupposes a bringing-into-presence or making-something-appear-out-of-thin-air, from a modern and enlightened perspective, Menard has created nothing, he is no author. However,

Borges turns to him and reinstates upon the reader the creative power, twisting the poiesis in a dual game between the two ends of the communicative relationship inherent to the work, in which they appear transductively united. In other words, both Barthes and Borges set the ground to discuss different levels of authorship. There is no Author-God, and we agree in this appreciation with Barthes, but rather a series of vectors of creation, which provide material for the polysemic meaning of each work of art. This is not limited to aesthetics, but also addresses other areas of human collective construction of meaning. Let us think, for instance, about the concept of *dwelling* that has been recorded by Heidegger (2001) in *Building, dwelling, thinking* as the main form of being human on Earth; that is, we dwell in our own surroundings and this means, to Heidegger, thinking in the way itself in which we construct the space surrounding our home:

To be a human being means to be on the earth as a mortal. it means to dwell. The old word *bauen*, which says that man is insofar as he *dwells*, this word *barren* however also means at the same time to cherish and protect, to preserve and care for, specifically to till the soil, to cultivate the vine. Such building only takes care- it tends the growth that ripens into its fruit of its own accord. (p. 145)

This apparently abstract reflection shows the way in which humans poetically endeavor to create their dwellings, taking control upon space, shaping it, and *cultivating* it. The idea of authorship would not rest exclusively upon the making-appear, it has to deal with the way in which objects, spaces, meanings are re-constructed and are made evident from their own polysemy. After all, as Foucault (1986) would also argue, the concept itself of *author* is but a function. Maybe this is the last path we need to cover to understand that it is possible to de-centre the modern notion of the author, which now seems to have faced its final crisis.

In the same way that in the place of dwelling there rests a trace of whomever built it, and said trace would seem to depend on the ways in which the given construction was *cultivated* by the dweller, Foucault recovers the figure of the author from the idea of a function, setting apart the real individual – who can be situated

historically and biographically – from the author-function. This latter idea takes upon a good deal of his ponderings. Giorgio Agamben (2007) explains this point in length and clarifies that Foucault's analysis:

is based on the distinction between two notions that are often confused: the author as a real individual who remains rigorously out of the picture, and the author-function, on which Foucault focuses his analysis. The name of an author is not simply a proper name like any other, neither at the level of description nor at the level of designation. If I learn, for example, that Pierre Dupont does not have blue eyes, or that he was not born in Paris, or that he is not a doctor as I believed, for one reason or another, the proper name Pierre Dupont nonetheless does not cease referring to the same person. But if I discover that Shakespeare did not write the tragedies attributed to him and that instead he wrote Francis Bacon's *Novum Organum*, then it cannot be said that the function of the name Shakespeare has not changed. The author's name does not refer simply to civil status; "it does not pass from the interior of a discourse to the real and exterior individual who produced it"; instead, it is located "at the edges of the text," whose status and regime of circulation it defines within a given society. (p. 62)

From this perspective emerges a fundamental issue: the de-personalization of the figure of the author into a concept further anchored on the semiotic machines. The same machines whose structure of the sign paradigms act and define the social networks we live in. This implies that, when we approach the notion of author as presented by Foucault (1986), what we face is a cog inserted in the mechanics of discourse. It is both a cog which is constituted by and constitutes discourse. It is constituted by it, since it defines a function that has been socially accepted and defined as part of the structure. It constitutes it, because it becomes a fundamental part that enables the whole structure to remain held together.

Thus, the idea of author separates itself from an objective presence and becomes a way of defining a role, an indicator of discursive practices. We could then distance ourselves from the idea of an author as a subject-creator and slide our thoughts in a different direction. Leaving the Author-God (creator) idea behind, we

may begin to take the concept of a *demiurge*. If we think not only of the possibility of multi-level creation-authorship, but also in modes of collective production or re-signification, it becomes clear that the *person*-author, the *proper name* that Foucault mentions, takes a background role and other modes of the function-author come to the foreground. These new modes also take their position in the social network of meanings.

What we believe to be a particularly interesting aspect of this Foucaultian view is that it enables us to rethink the idea of authorship, not only in terms of a de-personalization of the concept, but it also fosters new concepts, such as collective authorship. Foucault reminds us from his spatial metaphor in which the space of the work is the space where the author disappears, that the concept itself of function-author could also be conceptualized as emerging in as much as it would work as a cog that replaces the work by the author: Marx, Freud, Degas. The name thus encompasses more than the work, more than the creator and, in and of itself, becomes a meaning. It would seem that the substitution would then eclipse and overshadow the work. Textual spaces would become, then, spaces for author appearance-disappearance striving between the ambivalence of the romantic appreciation of the author-genius and the market-value of the author-product as merchandise (commoditization).

Guertin (2012) addresses this issue by providing a new look at Foucault and stating that the strategies of the capitalistic system recover the idea of author, even if just as a function, with the intention of justifying power and control discourses. Copyright laws, for example, are not created as ways of protecting the author's livelihood – the situated biographical human being –, but rather as ways to define, direct and assign the rules for the exchange of merchandise within a given economic model. The author is then an added value, a trademark or a patented value. Guertin thus brings back the debate to the de-personalization of the idea of the author, when he states that

Authorship is a collaborative act ... Compare the literary author model to a film production crew or to the creators of a medieval cathedral or a video jockey at a rave, and we can see how the whole idea of true collaboration becomes impossible within the confines of the literary volume as we have known it ... It

is in the postmodern world that this Romantic construct becomes troubled. (p. 2)

Who is, then, the *author* in a virtually constructed space? The programmer? The coder? The user, who reconstructs the cogs available, those indefinable bits of code, which would be nothing but loose algorithms without her input? What happens when the algorithm remains as static? Who is the creator? Who does Copyright protect, then? Are we about to experience a generation of authors whose main inspiration could be no other than Pierre Menard?

Law seems to have already defined author by the function, as Foucault foresaw, and the Pierre Menard's of our age seem to be the only ones reaping the benefits. However, if copyright is the current solution to the problem of the author, it has been shaken by the increased of creative collaboration in modern world products. Virtual worlds thereby are not on massive multiplayer games but they are in fact massive collaboration of authorships. There is a need to reconfigure the logic of the author in the current interconnectedness, or lack thereof, between content creation in virtual worlds and copyright attribution in the *real* world.

How to overcome the limitations of Copyright?

In a world of progressing digitization and openness, corporations are still the "primary gatekeepers of cyberspace" (Grimes, 2006, p. 970). Copyright mainly lies with the organization, which has the means to distribute the product (Bettig, 1996), the owners of the author-function structure. However, collaboration and participation becomes increasingly simple through technological progress (Lee, Nystén-Haarala, & Huhtilainen, 2010). MMOs and Virtual Worlds, as defined by Bell (2008), encompass more than a handful of players; typical environments have subscriber bases numbering the hundreds of thousands, if not millions. These environments are widely understood to have a number of shared characteristics such as persistency, networking, worldwide, interactivity and being massively multiplayer. *World of*

Warcraft, for example, has recorded the highest ever subscriber base of 12 million users (Blizzard Entertainment, 2010). The creation and constant refinement of these environments is essential to ensure that the customer base is satisfied, as stated above. The customer base also adds to these environments. In this sense, the customers are also creative contributors, and under copyright law could - and perhaps should - be construed as authors. Leading to a system of constant massive collaboration on several levels. However it seems to be problematic to entangle the contribution of everybody involved, in order to attribute it correctly.

Virtual Worlds are thereby an extreme environment, where the publisher owns everything of the game, whilst the user freely agrees to yield the “rights to own the fruits of labor, rights to assemble, rights to free speech” (Castronova, 2004, p. 196). It seems that their sole interest is in a utilitarian sense to make the virtual world a better place and thereby make this world fitting for their own interests. Though the users participate actively within the game and create user-generated content, which would be attributed authorship and copyright in the real world, current laws disentitle the user within virtual worlds of all rights and thereby annul the basic concept of authorship and copyright legislation - to promote and protect creative individuals. Only because they are not claiming their rights, a change becomes evident, as misuse of copyright claims is not prohibited. Current copyright laws massively favor the producer of video games. Consequently, virtual worlds are a good environment to analyze the potential changes within the authorship and copyright system.

The End User License Agreements (EULAs) are pre-requisites for users, make it abundantly clear that the intellectual property rights rest solely with the game developers. (*World of Warcraft EULA, Clause 8*). There is no possibility of any user or user-contributor benefitting from any form of property right arising out of creativity and interactivity in online games. There is a sole exception to this, and it falls in *Second Life* - a virtual world rather than an online game. Nevertheless, whilst the usual approach rests with contractual assertion and allocation of potentially valuable intellectual property rights - including moral rights such as the right to paternity - the

governing law of such contractual agreements is usually the State of California (see for example, *World of Warcraft Terms of Use, Clause 15E*). This is but one example of the manner in which users potentially valuable rights claims are discredited. There is a further flaw with these contractual agreements concerning their enforcement – these contracts tend to act as almost constitutional documents, meaning that it is critical there is an enforcement body. With no enforcement, the clauses and provisions contained within them are hollow. As such, it is possible for users to assert that they do in fact have rights in property and creative endeavours contributing to the virtual worlds and online games. However, when this is challenged, the contract provides the default position and this situation therefore results in legal challenges such as *Bragg v Linden Research Inc* (2007) whereby a *Second Life* user successfully challenged the platform providers assertion that they are the sole rights-holder.

Delving on philosophical discourse about property rights and the structure of virtual worlds, it seems that the developer of the game could be compared to a national power and the user to a citizen. And both, developer and user, are embedded within the real world legal framework. Based on that construct of a virtual world system it becomes evident that a standardized End-User License Agreement (EULA) does not fit specifications for a solid stipulation, and the needs for a revival of rights could be further supported by the following argumentation of Bentham (1839):

[T]hat which one man has invented, all the world can imitate. Without the assistance of the laws, the inventor would almost always be driven out of the market by his rival, who finding himself, without any expense, in possession of a discovery which has cost the inventor much time and expense, would be able to deprive him of all his deserved advantages, by selling at a lower price. (p. 71)

Even though Bentham describes the necessity of laws in 1839, it becomes more problematic in the modern world. Digital copying becomes nearly at no charge (Stöcker, 2011) and within a virtual world everything is only code or a database entry (Stephens, 2002). Still, is there not a virtual claim, in this imaginary world, to the given nature right of property as Aristotle (1999) claimed? Affirmation can be found by Thomas Aquinas (von Aquin, 1985) who states that property rights are necessary to

improve diligences for those items, regulate competence and lead to legal certainty. In the case of virtual worlds,

it takes a player to create a character and it takes the time of the player to develop the character. Through their labor they imbue it with qualities, status, accomplishments. Indeed, while the owners of a game provide the raw materials through which users can participate in a space, it is in large part only through the labor of the players that dynamic identities and characters are created, that culture and community come to grow. (Taylor, 2002, p. 232)

It is a conscious decision to play a game and, therefore, to accept the rules of that virtual world also implies that in the end the user believes that this government can preserve their work, their achievements and, finally, their property. This preservation idea is the single target for people to follow a distinct form of government (Locke, 1823), furthermore leading to the necessity within the virtual worlds of a social contract (Rousseau, 1848), and thus developer and user have to formulate a fitting agreement where users are granted a voice within those virtual worlds. In the real world this has been proven to be effective and it has led to democracy, but virtual worlds are different. The Council of Stellar Management in *Eve Online* is an example of a player-elected representative system that communicates with the developer on a regular basis. It exemplifies that within virtual worlds the rights of people can be allocated with the systems of the real world and it is through a social contract that this may be performed effectively. Even though developer think of their work as their own copyright, recent history revealed that player are claiming their rights and their interest in changing the virtual worlds. Take the example of the ending of *Mass Effect 3*.

But we didn't do it on our own. Over the course of the series, *Mass Effect* has been a shared experience between the development team and our fans—not just a shared experience in playing the games, but in designing and developing them. (Hudson, 2012)

The problematic part is the step from the virtual world to the real world. In this hybridization exchange between the worlds, property of a user suddenly becomes intellectual property of the developer. Worsening the situation for developers is the question: How to harness creativity of the user without losing focus on shareholder interests? It is like walking a tightrope. As Lessig (2004, p. 199) states: "Overregulation stifles creativity. It smothers innovation. It gives dinosaurs a veto over the future. It wastes the extraordinary opportunity for a democratic creativity that digital technology enables."

But, is the sole aim for users to have copyright of their work? Probably not - they seek to contribute to the virtual world and thereby becoming contributing authors but without the associated rights of paternity contained in UK law in the Copyright Designs and Patents Act 1988, and in international law through the Berne Convention. Users - and contributors - are willingly spending time within the world and they offer their innovational power. They want to add value to the virtual worlds and seek not to be shortchanged. At the end they become collaborative authors (Grimes, 2006) with the copyright owners. In order to make it work, it is crucial that the "perception of fairness" (Lessig, 2008, p. 231) is a main criterion for developers and users. Both are collectively contributing to create the virtual world and thereby defining culture and continuance of it. By a fair agreement it could partly "mediate the hybrid relationship between sharing and commercial economies" (Lessig, 2008, p. 231). One-sided exploitation could eventually lead to a breakdown of the virtual world.

If we look at the patterns emerging on these peripheries, we begin to see a new way of organizing and managing open innovation. Hundreds and, in many cases, thousands of participants are coming together in distributed creation nets assembled by network organizers. These network organizers use a distinctive set of management techniques to ensure focus and value creation. (Hagel & Brown, 2008, p. 28)

This line of argument however shows that the potential for innovation outweighs the risks and, especially in virtual worlds, it evidences that collaboration is essential for its success. This would lead to a "leveling [of] the playing field" (Cullen, 2006, p. 1711).

The construct of democratic innovation (von Hippel, 2005) could thereby be a solution and a foundation for an extension of the social contract stated earlier. Through democratic innovation the knot of authorship between property rights within the virtual world, collaborative authorship and copyright law could be disentangled. This would lead to recognition of the copyright of the developer but would also allow the user to contribute and modify their world. Both sides could thereby tackle the common goal: Making the game, a better game.

Notwithstanding, this democratization is a major change and is currently solely based on the perception of fairness. However, as von Hippel (2005, p. 177) states: "This welfare enhancing shift is forcing major changes in user and manufacturer innovation practices, and is creating the need for change in government policies." In the end the aim for everybody (developer and user) is to create something bigger and only by "standing on the shoulders of giants" (Newton, 1959, p. 416) is that possible. With a standing contract and with fairness this is possible and will maximize the interests even for the shareholder. And the cases of *Eve Online* or *Mass Effect* reveal that the economic interest in the real world is an interest for the user within the virtual world. Similar to the producer, as long as the state can maintain the virtual world, uphold the fairness and not capitalize the user, the user will contribute freely and utilitarian towards this virtual world.

Copyright is currently a way to attribute the necessary rights towards the authors legally, however it is only compromise. As we saw the question of contributing rights is also a governmental issue and it should be in virtual worlds, too. Copyright can lead to more stability within the game but looking at flourishing virtual worlds it becomes evident that there is one common (un)written law. The developer allows the unlimited contributions from the participants. Furthermore authors can claim their authorship as long as it not conflicts with other copyright interests and in the case of Blizzard doesn't make a profit with the contribution. World of Warcraft is therefore an interesting example as it flourishes over a long period and reveals innovational potential through the authors. Somehow copyright could be seen as a way to secure the virtual world from the real world. But it becomes evident that the

social contract is not implicit like the case of *Mass Effect*, but explicit like the case of *Eve Online*.

Democratic innovation implies a conception of copyright, which accepts change through time or dynamic authorship. Collaborators help by bringing their innovation power to a developing virtual world. The author-creator dies in order for the author-developer to arise.

In order to support this rise of author-developer both sides have to have a set of rules that could be used towards this social contract. If we look at the example of Council of Stellar Management and its scope it reveals that there is a level agreement between the author and the developers:

The purpose of the CSM is to represent society interests to CCP. This requires active engagement with the player community to master *EVE* issue awareness, understanding, and evaluation in the context of the “greatest good for the greater player base”. The scope of issues is restricted only to *EVE*, its ongoing development, and limited meta (out-of-game) issues which have direct relevance to the *EVE* universe. It is important to keep in mind that the CSM will not have formal powers within CCP, they will have a voice inside CCP. (Óskarsson, 2013)

Depicting on that one rule is that this group has **a voice inside the developers** and thereby reveals the first and important step. Both sides are on the same table and try to solve problems of their own virtual world. Another rule is that as long as nobody makes an illegal profit (e.g. gold farming) and **follows the idea of fair use** of the virtual world, the developer will not use the rights within the real world. Furthermore the user will not thump on their own rights as long as **ideas from the community are recognized and implemented**. A good example is Breanni a user who built up a database for pets within *World of Warcraft* and became a Non-Player Character (NPC) within the game.

Those three simple rules already give both sides an attribution of commitment towards the virtual world and furthermore allow them to perceive fairness within the virtual world.

Case study: UK Copyright Debates in Virtual Worlds?

Creative works in the UK have been subject to the benefit of copyright protection since the introduction of the Statute of Anne, which is widely credited as being the first copyright statute in the world ("Statute of Anne," 1710). Computer programs and software are protected under the Copyright, Designs and Patents Act as literary works in the UK ("S3(1)(b) Copyright, Designs and Patents Act [CDPA]," 1988). Under the statutory copyright system, computer programs and software are therefore considered in written and literary format, rather than in terms of appearance. Accordingly, virtual worlds and online games benefit from copyright protection as computer software. It is also probable that there are other copyrights which subsist in these multimedia works at the same time, - there would also be copyright protection for video sequences and music tracks, to name but two examples. The protection of the literary code of software does not necessarily exclude other copyrights from subsisting, such as the graphic user interface which could also be protected albeit; under a different categorization of copyright work. This is however, subject to the contractual provisions for allocating rights which are found in EULAs. The EULA is the standard governing mechanism for online games and virtual worlds. However, within this, contracts determine copyright (and other rights) and associated ownership. This is a relationship which has attracted some significant criticism in the past – most notably with the Strategic Advisory Board on Intellectual Property highlighting in 2010 that the contractual-copyright interdependence is one which requires urgent reconsideration.

The copyright system in the UK is vastly different to that of some alternative European states, and has a different underlying rationale. Under the CDPA, the predominant concern is with economic rights. In continental Europe – as in Latin American states – however, the approach is one of moral rights (Rosen, 1983). This is a critical divergence between the two systems, and is perhaps one explanation for the difficulties associated with harmonization attempts (EC, 2001). Nevertheless, in the

current context, authorship in the UK does not necessarily fit well with concurrent moral rights.

Moral rights in the UK feature in the dominant protective legislation as almost an afterthought. The chapter on moral rights (Chapter IV) within the CDPA 1988 contains merely 10 sections of a statute which in total numbers over 200. The predominant aim of the relevant parts dealing with moral rights focuses on the rights of attribution and the prevention of derogatory treatment.

The so-called attribution right ("[2005] EWCA Civ 565," 2005; "S3(1)(b) Copyright, Designs and Patents Act [CDPA]," 1988, S77) is essentially a right of authorship; there is a right to have your name attached to the work you have created. In essence, this makes perfect sense; without it, journalism and publishing as creative industries simply would not function. However, in our digital, networked environment, there are examples of works where such attributions **are not made**. MMOs are one. It is arguable that the attribution right is a hollow one, especially in light of anonymity online - anonymous bloggers, anonymous tweeters and citizen journalism (York, 2012). However, all of these contributors have an identity; a persona and a name which attaches to their work. The *Nightjack* case is one example of anonymity but attribution (Green, 2012) - despite the fact that the privacy shield was prized away in this example. The situation in MMOs is not so different and yet vastly different at the same time; with users requiring user names to access their gaming environment of choice, and becoming known within the community under a certain name. Why then, is it seemingly impossible to allow some form of attribution for the work done by users in these environments?

Under the CDPA 1988, in the UK there is a right to attribution in some works (S77). However, this right does not apply to eight types of work, including computer programs; computer generated content and collective works of reference (S79-2). This, therefore, removes any recognition of authorship or contribution from the very users who contribute to their online environments. In theory, this would seemingly also prevent attribution in collective or collaborative computer generated works. Such

protection for moral rights in this instance is more indicative of 'unprotection,' or rights erosion.

Keen (2008) explores the ideas that blogging and content creation are eroding the culture we have developed on, amongst other things, quality levels. The copyright protection pays little attention to the idea of quality - and is more concerned with the requirements of originality and fixation; if works meet these requirements they benefit from copyright protection without any reference or consideration of quality. Whilst Keen's argument is interesting, and not without some merit, it serves only to enhance a compelling argument for stronger moral protections, and for a digi-friendly system of rights protection. With more and more content being produced, copyright needs to pay due attention to the growing body of creative output regardless of the precise digital source.

Castronova (2012) explores the ideas of morality in online games and comes to a realization that is perhaps also applicable to a wider realm. For him, "the actions players take... are not that different from the actions people take in the offline world" (para. 5). This is but one view of the design of games. Applied more broadly, there is a stark realization; the actions taken in non-digital copyright are not that different to the actions taken and protection granted in digital copyright. For example, contributors to an edited collection receive attribution rights. Comments on a discussion page are usually attributable in some way. Why should contributions to game environments, game items, or even game code be treated any differently and expressly unprotected save for the all-encompassing rights of game developers? In other words, why is authorship only evidenced to some, but not all, those responsible for the virtual world collectively shared?

Returning to the definition of these online spaces, Bell (2008) states they are persistent and this is an opinion shared by Kennedy (2008) also. This is one of the dominating and differentiating characteristics of MMOs. In this respect at least, there is reliance upon users, and user-contributors to spot flaws, highlight areas for

development and even add to the commons and the experience of other gamers. Copyright, as presented above, seems to only concern itself with attributable authorship as long as it is fixed. Once the work is dynamic, non-static, and in constant alteration, new participants in the collective creative process are ignored. Thus, whilst copyright remains the stalwart of protection for computer software and computer-generated content, moral rights and authorship in particular need a radical rethink, especially in light of movements such as the Creative Commons (www.creativecommons.org).

The copyright system - at least in the UK - has lost its focus in the advent of digital works, especially in light of the EULA regimes. Copyright needs to refocus on the elements of moral rights and authorship rather than the economic aspect. In this at least, copyright may be able to combat its critics and embrace the idea of largely collective creativity. In this manner, the contract-copyright interdependence, and the dominance of the EULA provisions would be reconsidered, with the aim of promoting the rights for user-contributors and realigning the allocation in accordance with theories of creativity and property.

Discussion

This paper was written in three different countries, by four people who speak three-different languages as their mother tongues. Three out of the four authors have never met in person, and the discussion for this paper actually begun in a coffee shop with Welsh-language signage and staff in a remote University town on the Western shore of Great Britain. Although this may sound as some pointless anecdote, it is the fundamental structure of our argument. The four people who worked together to write this paper engaged in a collective creation, which could have not worked without them. A XXII century Menard could re-write our article, and the social value it may develop might give a completely different experience and reception to the words herein presented than the one this article had in the XXI century.

Despite the fact that the idea was conceived by two of the authors, and that it could only have existed thanks to a call for papers where it found a place to flourish, it could not have been created, at least not as you are reading it, without those four

people each providing a, now fuzzily mixed and integrated, part of the text. Translation, modification, correction, and alteration were all part of the collective process. As such, all four authors deserve recognition – as will those who evaluate it and provide valuable input, especially in a double open review we commend -, and it might actually evolve into something else. Granting absolute authorship of this article to one of the authors, or denying the input of the many works cited, would be considerably derided in our academic circuits.

Yet, in virtual worlds and MMOs that is what happens. Had we created a virtual world, rather than an article, the two of us who had a cup of coffee and scribbled a couple of notes to define the scope of the article would have demanded we remain sole authors and maybe even collected dividends from the other two, whilst having to pay all the others we have so diligently cited. Needless to say, this is not the case. We understand our democratic innovation as a process of mutual benefit, recognition and knowledge-production.

As this article receives a double-open evaluation, and further comments and debates, those other participants should be acknowledged, if just as constant elements highlighting their participation. The article does not end when we stop checking spelling, consistency and accurate citation. It continues to thrive in the academic debate.

That is our idea, one that still needs further development, of dynamic recognition. The author-developer overcomes the author-function/author-creator paradigm. How could that, later, be turned into an economically viable way of recognizing authorship remains to be defined. But the first step towards a new copyright perspective has been taken. Paraphrasing Neil Armstrong, this may just be a tiny step for a virtual character, but it is a giant leap for our human legal copyright system.

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