

Commonising The Enclosure: Online Games And Reforming Intellectual Property Regimes

Christopher Moore is a PhD candidate in the School of Social Sciences, Media and Communication at the University of Wollongong.

Abstract

Online computer gamers are a creative bunch, from the mayhem of first-person shooters (FPS) to the more social experiences of massive multiplayer online role-playing games (MMORPG), gamers are producing new content for their favourite titles at an amazing rate. This paper explores the rewriting of the boundaries in the production and ownership of intellectual property in the computer games industry. The purpose is to examine the potential for computer game studies to contribute to an understanding of an alternative intellectual property regime known as the commons. This paper will explore how computer games users establish commons-like formations, specific to the digital environment, that extend the confines of current intellectual property rights. It will argue that the productive activities of online gamers are not motivated by the traditional logic of market-based incentives. This represents a new condition which may contribute to a reformation of the privatising enclosure of the intellectual property system.

Keywords: massive multiplayer online role-playing games, intellectual property, commons

The success of the MMORPG genre indicates a new phase for the PC games industry.

Games publishers, owners of exceptionally valuable intellectual properties, have been habitually preoccupied with concerns over how gamers acquire their products and are now being confronted with new social behaviours and productive consumer activities enabled by the technologies and content of their products. What makes MMORPGs and other computer games related practices so interesting is the different treatment they receive in comparison to the fan communities of other media. Many fandoms have faced 'cease-and-desist' orders banning them from the creation of transcripts for *Buffy The Vampire Slayer* (Burke 2000), the posting of images, sounds and video clips from *The Simpsons* on fan websites (Powers 2000) or providing amateur subtitles for Japanese animation films (Jenkins 2005). The users of the MMORPG, *World of Warcraft*, on the other hand, have enjoyed a notably relaxed attitude from the publisher, Blizzard Entertainment, towards their direct appropriation of game content for creative and productive purposes. They have been able to harness the game's software to create digital movies, stories and other artworks, publishing them online. A blind-eye has been turned to the massive copyright infringement of game content posted on information portals that host details from within the game.

This paper examines why PC games companies have not enforced their rights quite so belligerently as other major media content owners. It will explore instances in which games publishing companies have encouraged the productive capacities of gamers as well as those episodes where they have pursued legal measures to control, but not suppress, their customers' more enterprising activities. In this paper I will argue that these culturally productive and socially constructive activities have generated an opportunity for engaging with the incentive argument used to justify the expansion of intellectual property rights. This will demonstrate how the social formations and productive capacities of MMORPG players contribute to the counter argument that new creative works will be produced without the need for proprietary ownership. This material will be examined here through a discussion of the global expansion of intellectual property rights, characterised as 'the digital enclosure'. The argument will employ the metaphor of the commons, and commons-like formations, in order to contribute to a dialogue for engaging with issues of intellectual property in the digital environment.

The State of Play

Following the November 2004 launch of the MMORPG, *World of Warcraft*, the substantial network of US based game servers buckled under unprecedented demand. For the first time MMORPG users were forced to queue in their thousands, not to purchase the title, but to actually play the game once it was installed on the home PC. By July 2005 more than 2,000,000 gamers in the US, Europe and Australia, had signed up for the US\$15 monthly subscription, on top of the retail price, to participate in the adventures of this online world (Blizzard.com 2005). One month later another 500,000 players were added in the first week of the game's launch in China. The global subscription figures reached more than 4,000,000 in the first twelve months of the game's release completely rewriting assumptions about the potential size of the MMORPG market (Schiesel, 2005). In comparison, *Everquest*, the previous major MMORPG title subscription peaked at just over 460,000 subscribers in 2004 and *Everquest 2*, one of the direct competitors to *World of Warcraft*, is reported to have 278,000 current subscribers (Woodcock, 2005).

The MMORPG computer games genre is descendent from the pen-and-paper style table top role-playing game, *Dungeons and Dragons*, and its many iterations on the PC as a single-player experience. MMORPGs developed from the text-based multiple user domains (MUDs)

in which thousands of users are simultaneously able to log in, create their personal avatar and explore a virtual world together. Progress in any MMORPG is achieved by completing quests, conquering monsters, defeating villains and gaining experience, thus enabling players to regularly upgrade their hero's abilities. The *World of Warcraft* supplies its players with a range of fantasy-based ethnicities to choose from, including the Human, Elf, Dwarf and Halfling of the Alliance faction and the Orc, Troll, Undead and Tauren races of the Horde faction. Users can then select one of the archetypal hero classes to play, choosing to be a Warrior, Mage, Hunter, Rogue, Priest or Druid, among others, which all have specific in-game talents, abilities and combat specialisations. The player's avatar can be graphically tailored with facial features, hair colour, and other distinguishing characteristics to individualise the character's appearance in the game.

These choices are strategic in nature, and different selections will structure diverse styles of game play, but they also position the user within explicit social spheres. The primary social division for players is between the two factions, who exist in a post-war state of animosity that frequently spills over into game world conflict. The factions are separated by a language barrier, and each holds contested territories as well as native lands where, at the beginning of the game, each race is given a culturally specific starting location. The *World of Warcraft* is a highly sophisticated and detailed creation, featuring realistic geography, diverse climates and complex histories, which the player can explore at leisure, adding to the immersive quality of the game. The variety of sound effects and the quality of music, textual narratives, character animations, environmental design and other sophisticated visual elements in the game represent a significant involvement of creative talent, and an impressive measure of intellectual property investment.

The record numbers of users for *World of Warcraft* emphasises the "volatile dynamic" of the computer games industry, described by Kline, Dyer-Whitford and De Peuter (2003) as one of the major driving forces of economic growth and cultural change. Users of *World of Warcraft* are ongoing customers for Blizzard, and as such they engage in numerous behaviors which feed directly back into the production of content. The *World of Warcraft* official forums are densely populated by vocal and determined users, demanding better customer services, greater rules balance, extended game content and the elimination of wait times and server delays, called 'lag' or 'latency', which can dramatically interrupt play. At times customer demands have manifested inside the game as sit-in protests and disgruntled players have forced server shutdowns by bombarding the system with chatter and requests in lag-prone online cities. Almost certainly to protect its revenue stream, Blizzard has reacted to meet many such requests, although certainly not all. Yet despite these conflicts, there has been little demonstrated resistance by the publisher to activities engaged in by its users that appropriate intellectual properties in ways that would horrify other forms of media content owners and have lawyers scurrying into action.

Advances in computer game technologies have facilitated a complex range of new productive practices challenging the traditional model of intellectual property regulation. An entire new subculture of amateur film making, called 'machinima', has emerged, based on the use of computer games as digital set, crew, camera and even production facility. The short film series *Red vs. Blue*, for example, was constructed or 'filmed' using the Microsoft X-Box game console and characters from the game *Halo*. By recording the footage generated by manipulating the player's controls inside the game, editing the production with simple digital film editing software and hosting the result via the web for free distribution, *Red vs. Blue* and other machinima titles have disrupted the conventions of computer game production and consumption. This kind of activity is indicative of a general principle of

productivity in the digital environment expressed by communities of creators, who may be fans of these games, but whose fandom is not necessarily their primary motivation in creating these works.

This new capacity for amateur productivity is significant, but more astounding is the response from the intellectual property owner of the X-box and the *Halo* game. Microsoft, usually one of the most zealous enforcers of intellectual property rights, sanctioned the filmmaking by permitting the commercial sale of *Red vs. Blue* on DVD. Machinima has become a popular form of expression amongst users of MMORPGs: the improving quality of the game graphics; the availability of players to operate characters in game as actors; the genuinely innovative use of game tool sets to replicate cinema styles; the creativity and maturity of scripts; and the abilities of amateur directors have combined to produce sophisticated productions and generate new audiences. Movies, short clips and serialised projects featuring the *World of Warcraft* are hosted by websites, such as *Warcraftmovies.com*, without any hint of dissatisfaction from the publisher, Blizzard. This use of privately owned content would traditionally be considered a complete violation of intellectual property rights in other media forms and would be legally prosecuted: for example, a short film based on the remixing of episodes of *Friends* or *The Simpsons* would be vigorously pursued as a complete copyright infringement, regardless of any creative or innovative merits.

The MMORPG genre has further disrupted the conventions of consumerism in the computer games industry by encouraging complex community formations and dynamic social activities that lead to creative innovations that also challenge the traditional management of intellectual property. Computer game players contest the notion of game content ownership through very simple acts such as the process of making screenshots. *World of Warcraft*, like other PC games, includes the 'print screen' feature used to capture what the screen displays in a digital picture format. These user-captured images are often displayed by on websites, in online forums and computer games magazines. Many *Warcraft* websites feature competitions for the best screenshot of the week and similar events based on these visually engaging, creative and popular forms of expression.



Reproduction of these images is permitted under the fair dealing provisions of the Australian Copyright Act (1968) but permission was also sought from the copyright owner.

Figure 1. (images 1 and 2) Example of *World of Warcraft* screenshot – these images show the onscreen action and surrounding user interface.

Despite the simplicity involved in the creation of these images, they should be considered as important artefacts of individual and social expression among MMORPG users. Screenshots

are significant communicative acts; they are a consistent feature on official and unofficial games websites, as common as reviews, news articles, and discussion boards. Screenshots are a very effective method for MMORPG users to share moments of their experiences, record their adventures together and build social bonds by recalling humorous moments or impressive victories.



Reproduction of these images is permitted under the fair dealing provisions of the Australian Copyright Act (1968) but permission was also sought from the copyright owner.

Figure 2. (images 3 and 4). Two examples of *World of Warcraft* screenshots – both have hidden the user interface, which allows a more postcard or composed photographic style of image.

Who owns these acts of digital creation is a matter of debate over interpretations of copyright law: does the user own the products of their playing, when it is produced on the player's computer and captured via the player's actions? Or is the material encompassed within the copyrights of the images, software and other elements of the digital world initially created by Blizzard employees the property of Blizzard? When Blizzard ran a competition for vintage poster artwork based on screenshots, but modified by the user to look like classic advertising posters, it claimed copyright over all entries as part of the entry regulations (WorldofWarcraft.com 2005). This suggests that the company did not view its copyright over the original screenshots, or over new works based on the screenshots, as an entirely exclusive claim to ownership.

The Mod Squad: incentive and user innovation

A more technically demanding creative gaming practice is the creation of ancillary software known as 'mods'. The production of mods, or 'modding', is an example of the important but legally tenuous relationship between players and the game's intellectual property owners. Mod authors appropriate software code and other digital materials from within a PC game title in order to create new content for the same game. Modding communities flourish using internet technologies to coordinate efforts in the hacking of the copyrighted code, and they organise complex social hierarchies to direct the fashioning of new materials, including images, sounds, and alternative playable options for the game, usually without seeking legal permission first.

Modding is not a new gaming practice. The first mod was a variant of a text-based role-playing game called *Adventure* in 1976 and Ms. Pac-Man was the first mod to receive a retail release in 1981 (Kushner 2004). The practice of modding has become an extension of game play for many gamers. Alexander (2000) notes that modding provides a sense of accomplishment, triumph and reward, reflecting the emotions that occur while actually

playing the game. Famous mods include *Counter Strike* for the *Half Life* game and the *Desert Combat* mod for the *Battlefield* series. These mods are entirely dependent on the commercial release to function, and therefore the popularity of mods usually increases the retail sales of the original title. Gabe Newell, managing director of Valve software (the producers of *Half Life 1* and *2*), reports that the benefits of mods were “enormous” for game companies like Valve, and suggests that mods extended the shelf life of games considerably (Newell in Kushner 2004).

The motivations behind this prodigious level of user production certainly fits within the profile of fan-based activities, and the creation of new content based on the subject of fan interests is a well-regarded aspect of consumer appropriation, or fan ‘poaching’, as described by Jenkins (1992). However, for most modders, their interest in the subject matter is specifically transformative. Modders may be fans of the original game, but they are more keenly interested in seeing what can be done with its technology and discovering what potential the software has for the creation of new works. In this way modding practices challenge the most common economic justification behind the expansion of intellectual property rights: the incentive to create. The incentive argument holds that copyrights and other intellectual property rights provide incentive for artists, scientists and other producers to create new works (Raven 2005). This argument is based on the economic principles of restricting access to copies of a work to increase demand and value through scarcity. Copyright protects the market value of works by enforcing the right to copy as a private property right. If copyright protection did not exist, unregulated copying would increase and unauthorised access would diminish the value of the copies to the point where the owner of the work would be unable to recover the “cost of expression” and would lack the incentive to create new works (Landes 2005).

Modders, however, rarely profit from the direct sale of their own work and have very few tangible rights over their creations. Occasionally, high profile members of the modding communities will secure investment to create new works, or find employment within the industry, but generally mods are created by gamers with programming or design skills who are interested in developing their abilities. Mods are rarely ‘owned’ by individuals: contributors may own copyright over specific contributed elements, such as images or sounds, but the mods themselves are not usually privately owned properties and are managed by the community of contributors. Involvement within modding groups cannot then be said to be motivated by the prospects of propriety ownership or profit. The popularity and economic benefits of modding to intellectual property owners, therefore, provide a significant point from which to renegotiate the restrictions to intellectual property appropriation by non-owners.

While some games companies do little to support modding and others occasionally discourage it (Carnell, 2002), the majority of publishers in the PC games industry have been exceptionally supportive of modding practices. Many games producers now include modding suites with their game’s retail release so that users can create new content for the game without requiring any software programming skills. Games companies have proven to be particularly receptive to this freely provided labor. Legally speaking, modders have very few rights over their creations, and are frequently subjected to the institutional poaching practices of the games companies themselves. In 2004 a conglomerate of gaming software producers, distribution agencies and PC hardware companies ran a competition offering a \$1,000,000 prize pool for the best mod package designed using the game *Unreal Tournament*. Epic Games, the game’s intellectual property owners, ensured the mods submitted in the contest were made available to download for free, but also reserved the right to use the entrants’

materials for “any business purpose, including for promotional purposes in any media” (Epic Games 2004).

Sarvas *et al.* (2005) report on the user creation of content for the PC role-playing game *Neverwinter Nights*, a title explicitly designed to aid players in publishing new content online for other users to download. The game’s producer, BioWare, attempted to capitalise on the potential value of this material by restricting users with an End User License Agreement (EULA) banning the users from privately selling their work. Coupled within this contract was the caveat that by distributing the home-made content to other players, these creators gave BioWare the right to use and distribute the materials themselves for commercial purposes (Sarvas *et al.* 2005). Notably, these clauses were not a disincentive to users, who, regardless of their absent ownership rights, created many thousands of hours of new content. It is these types of episodes within the games industry that complicate de Certeau’s (1998) observations on consumption, which note the divide between content owners and consumers is marked by their capacity to produce. This divide is altered here through the permissions of intellectual property ownership that allow consumers to become content producers themselves, without legitimising them as independent market actors or legally recognised owners.

Trading identities

The absence of gamers’ legal rights to own the product of their play has been an intriguing focus in a number of recent contributions to computer games theory. In the analysis of MMORPG avatars, the in-game “digital manifestation” of the player, Klang (2004) critiques the current direction of intellectual property law, examining the legal reality of the situation while providing valuable insight into the vast potential of what the law could be. Klang examines the issue of selling avatars through online auction houses, such as Ebay. Trading in avatars is a direct violation of the EULA of many MMORPGs, and can result in both suspension of accounts and banning of users. The avatar is central to the identity of the online self in the MMORPG world and many gamers are surprised to discover that after hundreds of hours of play, and substantial financial investment, they have no legal rights over their avatar. Users have the freedom to sell items belonging to the avatar in the game, even delete their character entirely, but they are not invested with total control over their in-game ‘selves’. The EULA is a contractual agreement, employed by publisher to force its customers to disavow the traditional property rights to be found in the consumption of other media, such as the right to second-hand sales of goods. It is a legal device designed to limit the gamers’ capacity for legitimate ownership when playing the game, but because installation of the game on the player’s computer requires acknowledgement of the contract’s terms, players are powerless to object.

The refusal to give individual gamers complete autonomy over their characters reflects an advanced form of consumerism, designed to limit the user’s ability to negotiate their own terms of existence and experience, and ensures a strategic dominance over the activities of the player. Klang considers the right to own game avatars as personal property, parallel with the right to speech and free expression:

The right to one’s own avatar should be an absolute right for a human person since any interference with the right will quickly limit the efficiency with which the avatar can be used in exercising these rights. Therefore, the rights should include a full right to dispose of one’s avatar as one feels fit (Klang 2004, p. 398).

Given the growing popularity of these MMORPGS as a forms of communication and social interaction, the restrictions on user freedoms and the lack of proprietary control over their personal avatars demonstrates the disempowered status of the user in the commercial arrangement between intellectual property owners and game players. Klang argues that, as online games become more sophisticated and habitual, we will become more dependent on avatars as a natural extension of the individual in the digital environment and integral to the manner in which we express ourselves and perceive others. Hence, protecting the rights of such embodiments becomes crucial.

Humphries (2005) argues that the MMORPGs are a new media form, generating new relationships between developers and players that do not replicate the same conditions of author/publisher and audience. The MMORPG genre, in her argument, therefore represents a convergence of new media forms in which the relationships between consumer/producer and publisher sustain a level of creativity and social productivity with unpredictable outcomes that have not been adequately addressed within intellectual property policy or its legal doctrines. One of the key issues of these new, dynamically productive relationships, characterised by the restrictions on user ownership, is outlined by Humphries (2005, p. 42) as “the ‘enclosure’ of symbolic space by corporations as they increasingly control access to community spaces and cultural capital”.

The Digital Enclosure

The term ‘enclosure’ here refers to the intensification of intellectual property rights as monopolistic controls over cultural production and access to knowledge and innovation in the digital environment. Boyle (2003, p.37) characterises the expansion of intellectual property rights, featured in legislation including the 1998 Digital Millennium Copyright Act (DMCA) and the 1998 Sonny Bono Copyright Extension Act in the United States, and the bilateral intellectual property reforms contained within the Australia and the United States Free Trade Agreement, as “the enclosure of the intangible properties of the mind”. The metaphor of the enclosure has become an important tool in the process of understanding the political, economic and cultural changes at work in what Bollier (2003, p.136) refers to as the ‘rampant propertisation of knowledge’.

The first enclosure movement began in England at the start of the seventeenth century and continued into the start of the twentieth. Five thousand parliamentary acts privatised more than six million acres of English lands that were previously designated as commons (Turner 1980). The commons were mostly open fields mutually managed by villagers, but the term commons also referred to important community resources and areas including rivers, marshes, fens, lakes and forests. The enclosure movement privatised the land, establishing physical boundaries and legal titles over the land for private ownership. It transformed vast tracks of uncultivated areas, also called ‘wastes’, into lands suitable for the plough and greatly increased the national agriculture production of food and sheep (Mingay 1968).

The digital enclosure replicates this privatisation of public goods, and can be interpreted as one of the characteristics of the network society (Castells 1998), in which greater private property rights have been demanded by intellectual property owners and provided by governments in order to limit the efficiency and ease of unauthorised digital copying practices. Unlike the historical enclosure of physical lands, however, the digital enclosure does not cause a loss of something that was once present; the metaphor has its limitation. Previously public goods have not become privatised, although goods due to become public have been delayed through the extension of copyright duration. Instead, the new enclosure attempts to counter the non-rivalrous nature of information in the digital environment by

greatly extending the protection and enforcements of rights over intellectual properties (Boyle, 2003).

Because digital information can be infinitely copied without loss of quality, it is not naturally rivalrous: which means that one individual's possession or access to a digital text does not preclude another individual from accessing or even distributing multiple copies of the same text (Boyle 2003, Bollier 2003). Copyright and other intellectual property laws are designed to overcome these non-rivalrous characteristics and establish proprietary regulation. The digital enclosure is concerned with extending the rights of properties owners in the digital environment and restricting access to cultural materials such as books, movies and music and enforcing artificial scarcity over other kinds of information. This enclosure is carried out through lobbying governments for greater rights and enforcement measures: extending copyright duration; increasing legal prosecution of copyright infringements occurring on peer-to-peer networks; and by introducing digital tools, commonly called digital rights management technologies, to limit and control access to digital texts. The new enclosure is focused on the expansion of intellectual property laws to ensure that knowledge, information and innovation is protected against general and unpaid access and maintains strict monopolistic digital property rights. Just as the English enclosure movement increased productivity on the privatised lands, the digital enclosure seeks to maximise the market potential for intellectual property in the digital environment and eliminate non-authorized access to privately owned works.

The Commons

The special feature of the enclosure is the accompanying metaphor of the commons. Much of the interdisciplinary literature on commons theory deals with the controversial treatment of the commons by biologist Garrett Hardin. Hardin's 1968 analysis, entitled *The Tragedy of the Commons*, argued that all physical commons were destined to be over-used, over-populated and inevitably polluted by individual actors all working in their own best interest. The type of commons Hardin was concerned with is more accurately described by Hess and Ostrom (2003) as an open-access regime, in which there is no governance or management regulating access or mitigating the impact of individuals. In the digital environment, however, information and cultural products are not restricted by physical scarcity or reduced by overuse. Digital materials can be infinitely copied and distributed without loss to the original author or degradation of quality, and therefore the potential for productive and self-sustaining commons institutions is much greater than in the physical world.

In overcoming the perception of the commons as an unregulated wasteland or some new variant of communism, the work of Yochai Benkler has proven crucial. Benkler (2001; 2003a; 2003b; 2004) has developed a style of commons theory to support and encourage the rise of internet-based peer production, in which ownership of resources involved in the commons is not the motivation or incentive behind the creation of cultural products. The success of community managed and shared resource production, evidenced by the Open Source and Free Software movements, has shattered the myth that information and innovation will only be generated by the lure of financial returns on the investment of time and energy. The work of Lawrence Lessig (2001; 2004), James Boyle (2002; 2003), David Bollier (2003) and many others, have also enlivened a new discourse of the commons. They have helped organise a vibrant movement around the practical reformation of copyright doctrine, with the goal of re-establishing balance, compromise and moderation within the law.

The commons is defined as an institutional space where individuals are free from the constraints of the marketplace and resources are governed without exclusive control being invested in any one individual:

What the commons makes possible is an environment in which individuals and groups can produce information and culture for their own sake. It allows for the development of a substantially more expansive role both for nonmarket production and for radically decentralised production (Benkler 2003a, p. 8).

Commons theory offers a tactical position to re-engage issues of intellectual property ownership and management, outside of the market economics that have driven the regulation of private property and physical goods. Commons theory has developed a discourse for engagement beyond the legal, political and economic framework of intellectual property theory that has proved negligent to the needs and productive capacities of individuals who choose to collaborate on cultural productions, disinterested in the incentives provided by private ownership.

The commons movement is not without its critics, Kathy Bowrey argues that a commons culture is made possible only through the creative use of the law that is "linked to the flexing of autonomy grounded in a private property power" (Bowrey 2005, p. 100). This reminder of the true locale of the power of the commons is important, but, as Jenkins argues in his consideration of Pierre Levy's theories of collective intelligence, emergent knowledge cultures never fully escape the influence of the commodity culture. Jenkins highlights Levy's crucial point that knowledge cultures, in which knowledge is deterritorialised as in commons formation, gradually transforms the ways in which commodity cultures act (Jenkins 2002). The commons as productive and socially managed communities, in which all individuals have free access to knowledge and information, have a fundamental dependence on intellectual property law but may also be able to transform it. The key potential for the commons is the degree to which it can reconfigure the relationships between producers, owners and users as they are regulated by the law. The aim is not to overthrow, but to reform the intellectual property regime, which is a particularly useful legal doctrine but one that has been hijacked by private interests.

The digital commons is not a straight forward proposition. The materials that would form the resources to be governed in a digital commons style are usually constrained by private intellectual property ownership: for example, online fan communities might be considered as commons institutions were it not for the resources at the centre of their activity, which are usually copyrighted. Gamers who participate in mod communities, but who do not necessarily fit the various categories of fandom (Hills 2002), might be considered as commoners dedicated to the peer-production of resources free to be appropriated by anyone, were it not for the private ownership of the materials they harness. Unlike the Open Source Software movement, for example, games modders do not have the legal contracts or institutional organisations which work to maintain the free and open access to their products. It is difficult to reconcile the capacities for peer-production with the market driven priorities of owners whose intellectual property is at the core of these activities.

The compromise then is a discourse of commons-like formations, which serve as a basis for reclaiming productive and legally recognised spaces for individuals whose productive cultural and social activities can be institutionally organised, but which are not viewed as market competitors. This kind of approach enables a redrawing of the lines as they are inscribed by the current intellectual property regime: for example, the practice of modding takes extreme liberties with privately owned proprieties but, instead of prosecuting modders, the games publishers in this case have loosened the control over their software code and increased the

efficiency of innovation in the technology and the design of their games by encouraging the decentralised production capacities of the mod communities. The PC games industry as a whole has benefited from practices which other software companies would consider as free-riding (Biddle et al. 2002). The problem for modding communities is that these practices have no legal guarantee against prosecution; modders are armed only with the knowledge that to do so would jeopardise the lucrative free labor arrangement. This tenuous relationship, however, does demonstrate that the new processes of consumption and production, enabled by digital communications technologies, can have commonising effects on the enclosure.

Commons-like formations are not fully realised commons institutions. They lack the full freedoms and access to resources and legal protections that organisations, such as the Open Source and Free Software movements, have developed. Commons-like formations, however, are indicated by key features, such as social sharing, peer production activities, and a modality of organisation and cooperation that operates beyond the constraints of the market: they indicate a significant cultural identity. Commons-like formations are part of an ongoing social transformation, in which production and consumption are highly integrated and no longer concerned with the reception of finished goods. As a result of this, commons-like formations have serious potential for the reform of global intellectual property policy and management regimes. The MMORPG genre is filled with a multiplicity of potential commons-like formations contributing to a dialogue for engaging with intellectual property reform outside of the typical political or legal forums, in which these dynamic and productive social relationships have a potential to influence, or 'commonise', the digital enclosure.

Guilds are possibly one of the strongest commons-like formations in the MMORPG genre; they are a nexus for social activities, both inside and outside the game. Guilds are typically organised around a hierarchy of long-term members, and facilitated by an online presence, such as a guild website. Play within MMORPGs is often dependent on accomplishing quests or missions with small, ad-hoc and short-term groups, usually around five players. Guilds offer a long term community life within the game. They enable players to accomplish these quests with familiar friends, and result in complex social identities. As Humphries (2005, p.41) notes, the structure of the game, and its integrated features, such as the support of guilds, leads directly to profound economic benefits for the publisher, it can be argued that this also leads to the relaxation of controls over intellectual properties featured in the game. This relaxation of control is particularly demonstrated by the activities involved in the collection, storing and presentation on online community knowledge resources.

Community knowledge is one of the most important resources that guilds enjoy. It is the kind of resource that is not dominated by either a price system or managerial hierarchy, and is produced purely through the mechanisms of game play. Taylor (2003) notes that community knowledge is a kind of collective collaboration in the creation of valuable game resources at the centre of the production and maintenance of social relationships. Community knowledge is also a perfect example of the way productive play outstrips the legal boundaries of intellectual property regimes such as copyright law. Community knowledge is expressed in MMORPGs via guild chat channels in the game. Community knowledge is also shared within social conversations, through the open discussion of tactics, tips, general information and answers to guild members' questions. Guild members with extensive community knowledge are highly valued participants of these groups.

Community knowledge also continues outside of the game world as players upload maps, information, and excerpts of game content to guild websites. There are also major community knowledge portals, such as Thottbot.com and Allakhazam.com which host exhaustive databases filled with details gained directly from the online game worlds,

including detailed player-submitted descriptions of the puzzles and challenges within the game. Interestingly, these sites are not considered game 'cheats', but part of the ongoing dialogue of freely shared social resources that enhance rather than detract from the games' enjoyment. Given the volume and verbatim nature of the copied games materials made available on sites such as Thottbot, this kind of extensive copyright infringement is presumably not protected under the legal defense of fair use, and therefore enjoys a similar unprosecuted status as modding. The line of intellectual property enforcement in these cases seems to be accurately described as commonised.

Conclusion

This paper has not attempted to give a full account of commons theory, but has demonstrated the tactical potential of engaging with a theoretical framework that examines the appropriation of privately owned cultural materials as the basis for peer-production and social collaboration in the digital environment. It has argued that the socially productive activities driven by incentives beyond private ownership and market opportunities are capable of sustaining vibrant commons-like formations that have significant value for exploring issues of intellectual property. Much could still be contributed, and there are promising opportunities for expanding the concept of the commons within a discussion of game studies, fan theory and other issues of intellectual property reform. Intellectual property rights are the ideological linchpin for the private ownership and restrictions on access and use of non-rivalrous cultural goods. It is crucial to engage with this potent force, which currently privileges the private interest over the public benefit, as it continues to be at the centre of conflicts over production and consumption in the digital environment. The discourse of the commons offers a significant conceptual framework for reforming the worst indulgences in the global expansion of intellectual property rights.

Commons theory is neither utopian philosophy nor anti-commercial in nature, but can be extremely relevant in advocating a balanced model of intellectual property ownership. The potential of commons theory, and commons-like formations, demonstrates that, while copyright laws and other intellectual property regimes are being enhanced to deal with the challenges of the network society, they remain rooted in the political, legal and economic demands of the physical. Most importantly it shows that intellectual property reform does not have to be political or legal in origin, and that cultural activities, even those with existences in the online worlds of computer games, can contribute to rebalancing the system without making anarchic threats to the market position of intellectual property owners.

Reference List

- Allakhazam.com (2005) Allakhazam's Magic Realm, date accessed 14th August 2005.
<<http://wow.allakhazam.com/db/quest.html?qquest=5930>>
- Alexander, J. (2000) 'Is "Modding Really Just Meta-Gameplay?', *International Game Developer Association Forums*, date accessed 14th August 2005.
<<http://www.igda.org/Forums/showthread.php?postid=46456>>
- Benkler, Y. (2001) 'The Battle Over the Institutional Ecosystem in the Digital Environment', *Communications of the ACM*, Vol. 44, No. 2, pp. 84 - 90.
- Benkler, Y. (2003a) 'The Political Economy of Commons', *Upgrade*, Vol. IV, No. 3, pp. 6 - 10. Date accessed 14th August 2005.
<<http://www.benkler.org/UpgradeNovatica%20Commons.pdf>>
- Benkler, Y. (2003b) 'Freedom in the Commons, Towards a Political Economy of Information', *Duke Law Journal*. Vol. 52, No. 1245, date accessed 14th August 2005.
<<http://www.law.duke.edu/shell/cite.pl?52+Duke+L.+J.+1245>>
- Benkler, Y. (2004) "'Sharing Nicely": On Shareable Goods and the Emergence of Sharing as a Modality of Economic Production', *Yale Law Journal*, Vol. 114, No. 273, pp. 273 - 330.
- Biddle, P., England, P., Peinado, M., Willman, B., (2002). *The Darknet and the Future of Content Distribution*. Microsoft Corporation, date accessed 8th August 2005.
<<http://crypto.stanford.edu/DRM2002/darknet5.doc>>
- Blizzard.com (2005), 'World of Warcraft Achieves New Milestone with Two Million Paying Subscribers Worldwide', *Blizzard.com*, June 14th 2005, date accessed 14th August 2005.
<<http://www.blizzard.com/press/050614-2million.shtml>>
- Bollier, D. (2003) *Silent Theft: The Private Plunder of our Common Wealth*, Routledge, London.
- Boyle, J. (2002) 'Fencing off ideas: Enclosure & the disappearance of the public domain', *Daedalus*, Vol. 131, No. 2, pp. 13 - 25.
- Boyle, J. (2003) 'The Second Enclosure Movement and the Construction of the Public Domain', *Law & Contemporary Problems*, Vol. 66, No. 33, pp. 33 - 74
- Bowrey, K. (2005) *Law & Internet Culture*, Cambridge University Press, Cambridge.
- Burke, L. (2000) 'Fox Wants *Buffy* Fan Sites Slain', *Wired*, date accessed 8th August 2005.
<<http://www.wired.com/news/print/0,1294,34563,00.html>>
- Cahir, J. (2004) 'The Withering Away of Property: The Rise of the Internet Information Commons', *Oxford Journal of Legal Studies*, Vol. 24, No. 4, pp. 619 - 641.
- Carnell, B. (2002) 'The Mod Culture: Game Mods, Fan Fiction, and Chaucer.' *Brian.Carnell.Com*, date accessed 14th August 2005.
<<http://brian.carnell.com/articles/2002/07/000023.html>>
- Castells, M. (1998) *The Information Age: Economy, Society and Culture*, Blackwell, Massachusetts.
- de Certeau, M. (1984) *The Practice of Everyday Life*, University of California Press, London.

- Epic Games, (2004) 'Make Something Unreal Contest', *Legal Terms and Conditions*, Epic Games, date accessed 8th August 2005.
<http://www.unrealtournament.com/ut2003/contest_legal.php>
- Hardin, G. (1968) 'The Tragedy of the Commons', *Science*, No. 162, pp.1243 - 1248, date accessed 8th August 2005.
<http://www.garretthardinsociety.org/articles/art_tragedy_of_the_commons.html>
- Hess, C. and Ostrom, E. (2003) 'Ideas, Artifacts, and Facilities: Information as a Common-Pool Resource'. *Law and Contemporary Problems*. Vol. 66. No. 112, pp. 111 - 145
- Hills, M. (2002) *Fan Cultures*, Routledge, London.
- Humphries, S. (2005) 'Productive Players: Online Computer Games' Challenge to Conventional Media Forms', *Communication and Critical/Cultural Studies*, Vol. 2, No. 1, pp. 37 - 51.
- Jenkins, H. (1992) *Textual Poachers: Television Fans and Participatory Cultures*, Routledge, London.
- Jenkins, H. (2002) 'Interactive Audiences?: The 'Collective Intelligence' of Media Fans', in Harries, D. (ed) *The New Media Book*, British Film Institute, London, date accessed 8th August 2005.
<<http://web.mit.edu/21fms/www/faculty/henry3/collective%20intelligence.html>>
- Jenkins, H. (2005) 'Henry Jenkins Blog: When Piracy Becomes Promotion Part 2', *Technology Review.com*, date accessed 8th August 2005.
<<http://www.technologyreview.com/blog/blog.asp?byAuthor=3>>
- Klang, M. (2004) 'Avatar: From Deity to Corporate Property: A Philosophical Inquiry into Digital Property in Online Games', *Information, Communication & Society*, Vol. 7, No. 3, pp. 389 - 402.
- Kline, S., Dyer-Whitford, N., De Peuter, G., (2003) *Digital Play: The Interaction of Technology Culture, and Marketing*, McGills-Queen's University Press, London.
- Kushner, D. (2004) 'The Mod Squad', *Popular Science*, July, date accessed 8th August 2005.
<<http://www.popsci.com/popsci/computerselec/0678d4d03cb84010vgnvcm1000004e ECBCCDRCD.html>>
- Landes, W. (2005) 'Copyright Protection and Appropriation Art', *The Arts and Humanities in Public Life*, University of Chicago Cultural Policy Center, date accessed 8th August 2005.
<<http://culturalpolicy.uchicago.edu/conf1999/landes.html>>
- Lessig, L. (2001) *The Future of Ideas: the Fate of the Commons in a Connected World*, Random House, New York.
- Lessig, L. (2004), *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity*, Penguin, New York.
- Mingay, G. (1968), *English Landed Society in the Eighteenth Century*. Routledge, London.
- Powers, (2000) 'Fans Go Interactive, and Popular Culture Feels the Tremors', *New York Times*, September 20, date accessed 8th August 2005.
<<http://partners.nytimes.com/library/tech/00/09/biztech/technology/20powers.html>>

- Raven, F. (2005) 'Copyright and Public Goods: An Argument for Thin Copyright Protection', *M/C Journal*, Vol. 8, No.3, date accessed 8th August 2005.
<<http://journal.media-culture.org.au/0507/06-raven.php>>
- Red vs Blue.com (2005) *Red vs. Blue*, Rooster Teeth, date accessed 8th August, 2005.
<www.redvsblue.com/>
- Sarvas, R., Turpeinen, M., Virtanen, P., Hietanen, H., Herrera, F., (2005) 'Legal and Organizational Issues in Collaborative User-Created Content', Proceedings of DiGRA 2005 Conference: Changing Views – Worlds in Play June 16-20, 2005, date accessed 8th August, 2005.
<<http://www.gamesconference.org/digra2005/viewabstract.php?id=169>>
- Schiesel, S. (2005) 'Conqueror in a War of Virtual Worlds', *The New York Times*, September 6th 2005, date accessed 19th September, 2005.
<<http://www.nytimes.com/2005/09/06/arts/design/06worl.html?ex=1283659200&en=7053c2e95380c600&ei=5088&partner=rssnyt&emc=rss>>
- Taylor, T. (2003) 'Power Gamers Just Want To Have Fun? Instrumental Play in MMOG', 1st *Digra Conference: Level Up*, The University of Utrecht. November 2003, date accessed 8th August 2005.
<www.itu.dk/~tltaylor/papers/Taylor-Powergamers.pdf>
- Thottbot.com (2005) *Thottbot World of Warcraft Database*, date accessed 8th August 2005.
<<http://www.thottbot.com/>>
- Turner, M. (1980) *English Parliamentary Enclosure: its Historical Geography and Economic History*, Folkestone, Dawson.
- Warcraftmovies.com (2005), *Massive Online Entertainment Network*, date accessed 8th August 2005.
<<http://warcraftmovies.com/>>
- WorldofWarcraft.com (2005), *World of Warcraft Vintage Poster Competition*, WorldofWarcraft.com, August 7th 2005, date accessed 8th August 2005.
<<http://worldofwarcraft.com/contests/index.html>>
- Woodcock, B. (2005), 'An Analysis of MMOG Subscription Growth – Version 18.0', *MMOGCHART.COM*, date accessed 8th August 2005.
<<http://www.mmogchart.com/Analysis.html>>