

Owned!

Intellectual Property in the Age of Dupers, Gold Farmers, eBayers, and
Other Enemies of the Virtual State

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ABSTRACT

Who owns the virtual products of online game economies -- the companies that create the games, or the players who produce the economies? This, in a nutshell, is the vexed question of virtual property, and it is the subject of this paper, considered in relation to existing notions of intellectual and physical property and illustrated with examples of gamers who have tested the limits of the question. The argument takes the form of an intellectual journey, narrating the author's own gradual movement away from a position advocating legal recognition of player property rights toward a more sympathetic view of the end user license agreement (or EULA) as a tool of virtual governance. The rise of digital commerce has made the EULA a familiar arbiter of relations between businesses and consumers, useful in theory for sorting out the novel ambiguities of the digital; but too often, it's true, EULAs exploit those ambiguities to claim unprecedented and questionable degrees of control for the businesses that write them. In the highly politicized context of multiplayer online games, however, where customers constantly and actively question the rules of the game, EULAs are perhaps better understood as a working embodiment of the social contract idealized by Rousseau, Locke, and other theorists of democracy. The failings of both player and company claims to own "their" virtual items, therefore, lie not so much in the claims themselves (indeed, as the paper takes time to argue, the players' claims to conventional property rights have much to recommend them and are certainly stronger, both morally and logically, than the companies' claims to intellectual property rights) as in their failure to respect the sovereignty of the local social contract, appealing instead to a legal system whose systemic commitments to a much vaster social contract make it a very blunt instrument indeed when applied to the bodies politic of these tiny worlds.