

CHAPTER 13

Virtual World Law

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Virtual worlds are different. If you are making a single-player game, most of your work is done when the game ships. If you are making a virtual world, the work has barely begun. As Jessica Mulligan and others have emphasized, creating a virtual world involves running a *service*. That means taking responsibility for a large piece of server software. It means having an ongoing daily relationship with your players. And it means dealing with players' attempts to abuse the service. In this chapter, we explore the legal side of these issues by taking a close tour of the End User License Agreement (or EULA) that players agree to as a condition of being allowed to play.

Perhaps you are saying, "But I am not planning on having any legal problems with my virtual world!" Congratulations. You have put your finger on the best reason to read this chapter. *It is better to avoid legal problems than to have to deal with them.* This chapter will help you take concrete steps now so you will not have legal problems later.

Perhaps you are saying, "But I just want to focus on making my great design!" Congratulations again. You have put your finger on the second-best reason to read this chapter. *Design decisions have legal consequences, and vice versa.* As you make choices about how to make and run your world, those choices will shape your legal strategies. Moreover, legal problems are often just one symptom of design or customer-service problems that cause you all sorts of other trouble. Doing a legal audit, like doing a security audit, can help you flush out and fix small problems before they become big problems.

Perhaps you are saying, "But a EULA is an incomprehensible piece of legalese!" Again, congratulations. You have put your finger on the third-best reason to read this chapter. *The EULA is one piece of legalese it pays to understand.* Legalese can be like a new computer language: precise, powerful, and easier to learn than you would think. Because the EULA is the operative legal document that governs your relationship with your players, it is relevant to everything that happens in your world. This chapter will give you the basics you need to understand your own EULA and participate intelligently in drafting it.

After discussing some basics of how law fits into a world's various kinds of rules and of the drafting process, we will take a tour of the most common kinds of terms one sees in virtual world EULAs. Those terms will serve as an index to a great many of the design issues you will confront. For each term, we will try to identify three things. What potential problem does this term try to resolve? How does the new rule created by the term respond to the problem? And what spillover consequences can the rule have? You and your lawyer may or may not decide that this rule is the right way of dealing with the problem. But you deserve to make that decision consciously and with all the information you can accumulate.

When it comes time to talk about particular EULA terms, I am not going to give you specific legal language that would be usable in a real EULA. But as a way of anchoring the examples in reality, I will write out some legal pseudocode in a distinctive typeface, like so:

Author herein demonstrates the typeface for EULA terms.

Virtual Worlds Have Five Kinds of Rules

In games and in law, it is important to get the rules right. The choice of rules makes the game what it is. With different rules, chess would be dominoes. You as a designer are trying to make a game with satisfying rules, ones players enjoy. The key thing to understand here is that there are *different kinds of rules* in virtual worlds, and part of being a good designer is knowing how to use these different kinds of rules well together. We like to think of five kinds:

- The world's *software* establishes a baseline of what is and what is not *possible*. They are rules in the same way that the rules of physics are in the offline world.
- The *rules of conduct* tell players that some things, while possible, are still not *allowed*. These rules are enforced by your ability to punish players' avatars or to kick them out of the world.
- *Policies* are rules you *impose on yourself*. Doing things according to a consistent playbook makes life in-world more predictable for players.
- The *EULA* says that some things are forbidden in an even stronger sense. As a legal agreement between you and your players, it creates rules enforced by the *real legal system*.
- *Social norms* are the rules that *players create and enforce* against each other on their own. These rules are often not written down anywhere; they are just what players know about how to play well with others.

These five kinds of rules are your toolbox for keeping players in line and for protecting them from each other. If you understand their relationships to each other, you will understand which tool to pick up and when. Let us go through them in a little more detail.

Software

Most obviously, there are the rules of the software. Some virtual worlds are graphical; some are not. Some allow player killing; some do not. Some allow players to upload content; others do not. These design decisions are all decisions about the rules of the world. They are choices about what the software will allow players to do and what it will not. If the server software will not let your avatar walk through a wall or kill another avatar, that is a rule; it changes how you live in the world.

These rules of software are the basic substrate on which everything else builds. When players say that a world is or is not satisfying, they are thinking mostly of its software rules and its social norms. You need the other kinds of rules to fill in the gaps. But when the rules of conduct, the policies, and the EULA are working correctly, they should fade into the background, letting your perfect software-based world design shine in all its glory. Almost no one joins a virtual world because it has a fun EULA.

Rules of Conduct

Every virtual world—even the sadistically sexual *Sociolotron*—has some rules of conduct. These are rules, announced by the designers to the players, that forbid certain kinds of actions. What these rules have in common is that none of them can be enforced by the software alone. Take, for example, a rule against foul language. Anyone who has tried to write a spam filter knows that human *cre-8-ivitee* can always find a way past any given filter.

When players push too hard against the limits of what they can do and threaten to break your software or to ruin the experience for others, you have a reason to exercise your omnipotent powers over the virtual world to punish the evildoers. Your announced rules of conduct tell your players what behavior will make them in your eyes as “evildoers.” Writing down the rules puts players on notice; with any luck, a few of them will be scared straight.

Something we will see repeatedly as we tour the EULA is that given the complexity of life in-world, you cannot hope to detail every last possible offense. Indeed, going into too much detail listing the kinds of griefing or exploiting that are forbidden will only cause some impressionable souls to start getting nefarious ideas. Two kinds of solutions come up again and again:

Fencepost rules: Sometimes, it makes sense to forbid more conduct than actually causes trouble. It is easier to enforce a rule against crossing the fence into the garden than to enforce one against picking flowers—even if all you object to is the flower picking. Fencepost rules keep people safely away from dangerous conduct.

General and specific prohibitions: It is common to give both a general prohibition on certain kinds of conduct (“No griefing.”) and more specific examples of prohibited conduct (“No using sexually offensive terms.”). The specific rules make it abundantly clear that certain core kinds of conduct are out

of bounds; the general rule deals with loopholers trying to find something bad they can do that has not been explicitly forbidden. The specific rules make clear that the general rule does include certain important cases; the general rule makes it clear that the specific rules are not an exhaustive list. This combination also hedges your bets in case some court decides that the general version is not an enforceable term. This kind of cautious drafting is sometimes called “belt and suspenders” work, because careful lawyers do not take any chances that your pants could fall down.

Policies

The flipside of setting rules of conduct for your players is setting policies for yourself. The idea that you should write rules constraining yourself may sound silly, even paradoxical. But you are going to be writing these rules anyway, whether or not you show them to the players. If you get 10 complaints of griefing a day, you will probably start following a consistent response pattern based on some mixture of habit and fairness. If you get 1,000 complaints a day, you are going to write that pattern down so your customer support staff has a consistent set of operating procedures. As your world and your staff grow, following consistent policies becomes not just sensible design practice but a business necessity.

Once you have a set of policies, the operative question is how many of them to explain to your players. This general problem of *transparency* is a recurring design issue. There are good reasons to be open or closed, depending on the context. Some reasons to explain policies include:

- It can save you customer-support work. Players will not come to you with problems that you have sworn you will not deal with, and they will come to you with issues you want to know about because you will respond quickly.
- It makes the world seem more understandable to players.
- It reduces players' suspicions about your motivations, because actions that might otherwise seem arbitrary are less objectionable if you are merely applying a well-known policy. If you suspend a player's account for a week for a specific violation such as corpse-camping, it is nice to be able to point to the section of your policies that says you suspend accounts for a week for corpse-camping.

Some reasons to keep policies secret include:

- It increases your flexibility. Some wiggle room can be useful in dealing with players who are determined to skirt repeatedly the edge of the impermissible.
- It avoids giving away the store. Policies that reflect details of your internal corporate structure or secrets of your operations are good candidates to keep under wraps.

The EULA

The job of the EULA is to make sure everything goes smoothly when the legal system interacts with your virtual world. The main way the EULA helps you is by putting legal muscle behind your world's *other* rules. A good EULA protects your world's rules in three ways:

It makes some violations of the other rules punishable with legal action. You want to be very serious about players not breaking certain rules. Yes, you can pretty much deal with foul language on your own. But if someone breaks into your servers, crashes the world, and starts deleting content, suspending that person's account is not going to cut it. You will want the Cyber Division of the FBI on the scene; you will want that perp behind bars; you will want a multimillion-dollar lawsuit to recover your damages. You should not expect to get all or even part of this list, but it helps to have an avenue that makes these consequences a possibility. When all your other rules fail, you want the law on your side.

It gives you the legal right to set the other rules. The last thing you need is some twerp telling you he has a First Amendment right to spam your chat channels with ads for discount OEM software and across-the-border prescription drugs, or some yokel suing you for nerfing her Sword of Infinite Pain into a Sword of Large but Finite Pain. The EULA makes clear that you run your virtual world, not the players—so they cannot go run and get legal intervention if they do not like the way you are running things.

It heads off legal issues that could threaten your entire world. The EULA can help you avoid getting dragged into legal trouble by your players. Governments do not like it when young kids play online games without their parents' consent. Copyright holders do not like it when people meet online to swap their copyrighted content. The EULA, together with appropriate policies and other design decisions, can help you keep third parties from getting angry—*lawsuit* angry—with you.

Social Norms

Social norms are a little different from the other four kinds of rules, because you as a designer have no direct control over them. They range from a guild's internal rules on sharing raid loot, to self-created "kid friendly" play areas, to saying "hi" back when another player says "hi" to you. They can be incredibly complex and can change over time and from place to place in your world. They are rarely written down and new players learn them by example and experimentation.

You as a designer have no direct control over social norms. In fact, it would be a living nightmare if you did, if you could reach out into players' minds and *make* them behave the "right" way all the time. Instead, social norms are part of the natural and healthy life of a world. So, although some designs can encourage, discourage, or try to direct certain types of behaviors, your players will remain independent-minded and

generally do what they want. Players interact with your four kinds of rules and with each other and they develop a sense of who they are and how they relate to each other. Their social norms are a major part of what the world means to them. Designing and running your world in a way that helps foster your players' creation of thriving and fulfilling social norms is a difficult job.

For present purposes, just keep in mind that social norms are a key part of any virtual world. You will only confuse yourself if you try to understand the effects of other rules changes without accounting for the feedback effects of social norms. Sometimes, players solve their own problems through social norms that teach other players not to be jerks. To the extent that you can, you should make design decisions that help players create healthy and considerate norms.

How to Write a EULA

Do not even think about it.

Seriously. Do not write your own EULA. Find someone else—a lawyer—to do it for you. There are many jobs best done by trained professionals, and legal drafting is one of them. If you do it all by yourself, you are asking for 16 kinds of trouble. That does not mean you should not be involved. Your lawyer needs to understand what work your EULA will need to do, which means understanding the design and business model of your virtual world. And face it—the best person to explain your virtual world is you.

The rest of this chapter is a kind of checklist for you and your lawyer, with a list of topics the two of you should discuss. Your lawyer needs to ask you about them to understand what virtual worldly problems the EULA will have to solve. And you should know about them so you can understand the implications of the legal solutions your lawyer comes up with. You know virtual worlds; your lawyer knows law. If you are very lucky, your lawyer knows a little about virtual worlds and might even play in one. The two of you have to have a conversation in which you are absolutely certain that you understand each other's language well enough to know that you have come to agreement.

This advice is particularly important for certain particular topics, the ones that don't fit under the blanket one-size-fits-all advice because the details are too technical or situation-dependent. Lawyers have different ways of drafting particular clauses; virtual worlds have different issues. These are the topics on which you and your lawyer may have something important to tell each other—and are flagged here by “consult your lawyer.”

Lawyers tend by nature to be fairly conservative. When it comes to drafting, conservative is good. If an issue could result in someone suing you, but the problem could be avoided by including a clause in the EULA, include it. You would feel incredibly stupid later if the absence of that clause were to come back and bite you hard. Lawyers are not cheap, but it is better to pay through the nose for a good EULA now than pay through the nose, mouth, ears, and tear ducts for a good litigator later.

Many clauses in a typical EULA are there to cover contingencies that might seem unlikely up front. They may give you rights you cannot imagine exercising all that often, even rights that may seem awfully overreaching. You can and should be much nicer to most of your players than the EULA, standing alone, would require of you. But the EULA is not there to protect you from your typical customer. It is there to protect you from your nightmare customer, the one who abuses everyone else, tries to crash the server, and then signs up again with a different name within minutes of being banned and starts the cycle of hate all over again.

On the other hand, more is not always better. Paradoxically, terms that seem too aggressive can be harder to enforce. Thus, for example, if your EULA says that you can repossess players' cars at will, well, good luck getting a court to enforce that one. It can also be bad business to have an overreaching EULA. Not that many players really join or quit a world because of its EULA. (Their concerns are more likely with play quality, community, and your customer-service.) But a EULA with clauses that stick in players' craws can become a lightning rod for other discontents. (And players, being players, can usually find something to be discontented about.) Put on your player hat when you look over a EULA and ask yourself whether anything in it would make you outraged. (As we go along, we'll flag areas of particular concern.)

EULAs as Contracts

We begin with basic considerations. What does the legal system see when it looks at a EULA? The short answer is that it sees a contract between you and your players. We therefore begin by running through the contractual terms that help the legal system recognize your EULA and deal with disputes that arise under it.

Why EULAs Are Enforceable

Knowing why EULAs are enforceable gives us important information about what they can and cannot be used to do.

This Agreement shall bind the Company and the Player.

A EULA is a contract. Because your players freely agreed to its terms when they signed up to play, you can hold them to that agreement. In exchange, you give them the super-spectacular experience of playing in your virtual world. As a practical matter, you cannot actually *promise* that their experience will be super-spectacular. You will certainly try to make your world enjoyable, but legally guaranteeing that players will have the time of their lives would be arrogance verging on hubris. Instead, a typical EULA gives players more modest rights in return. Legally speaking, there are two sorts of rights involved.

Company grants to Player a limited license to copy the Software and Content.

First, players are using software you wrote to interact with a world you designed containing content you created. The software, the world, and the content are all protected by your intellectual property (IP) rights, especially copyright (see Chapters 6 and 7 for more). Without some kind of license from the copyright holder (you), players would have little right to run the software. Thus, the name, “End User *License* Agreement.”

Company grants to Player a limited license to connect to the Service.

Second, players are using your servers. The servers are your property. If you flip the power switch, the world goes away. And when the servers are on, no one can legally connect to them without your permission. Players need some kind of consent from you to make use of the service you provide by supplying the servers on which your world runs. Thus, the other frequent name: “Terms of *Service*” (ToS).

A EULA or ToS, therefore, consists of a bunch of restrictions you ask players to accept in exchange for certain specified rights to use your copyright-protected content or to access your service, respectively. The rights they give players are limited, but sufficient to participate in the world. These two perspectives are not mutually exclusive; some worlds have a EULA, some have a ToS, some have both, some have one document that uses both theories. Depending on your business model, one or the other may be more appropriate. Consult your lawyer.

In the absence of some kind of license, it is *illegal* for a player to copy your software or create an account on your servers. Such copying would constitute copyright infringement or a violation of the Computer Fraud and Abuse Act. These are serious, no-joking legal rules. They put a lot of muscle behind a EULA/ToS. The actual terms are contractual, but truly blatant EULA/ToS violators can be flirting with much more severe penalties. This legal force is something to help you sleep at night.

These harsh legal defaults, paradoxically, also provide a very good reason to have a EULA/ToS in the first place. You should not just assume that you can declare any player who displeases you a copyright infringer and ask the law to come down on him like a ton of bricks. A court is unlikely to decide that someone who just wanted to play in your world and would have agreed to any reasonable EULA is a copyright infringer just because you did not have a EULA for him to agree to. The court, instead, would probably find an “implied license.” That means that the court will in effect *make up a EULA for you*, something that sounds reasonable to all concerned. That hypothetical EULA is likely not particularly sensitive to your concerns. In particular, it is not likely to include the swift justice you might have hoped for. If you have a clear EULA up front, everyone is happier. You can move quickly to fix problems, and players can be confident that they are on safe legal ground if they connect to your world and play nicely.

Finally, be warned that it is unclear exactly to what precise extent EULAs are enforceable. They are, in general, fairly enforceable. For example, clauses saying that you can exclude anyone for any reason are no problem. Similarly, clauses that prohibit

players from hacking in to or reverse engineering your servers have been doing well in court. Ditto for clauses saying that anyone who wants to sue you must do so in your home state. But no one thinks that *every* clause in a EULA would necessarily stand up in court. A clause forbidding Italian-Americans from playing would probably be struck down as against “public policy.” Similarly, a clause that you could demand \$10,000 from any player who fails to log in for a week could be deemed an unenforceable “penalty clause.” It feels a little, well, *harsh* to the player, and that kind of gut feeling should signal to you that you might be getting onto shaky ground.

All in all, anything in a EULA that is genuinely important to your ability to create and market a successful world is highly likely to stand up in court. That category includes the vast majority of terms we will meet in this chapter. But it is only a matter of time before *some* term in *some* world’s EULA is declared unenforceable. You may want to think a little bit about contingency plans for your more exotic terms. If you absolutely had to live without them, what would that do to your business model?

Terms Relating to Legal Process

Every EULA contains a few terms to make matters go smoothly in case the courts get involved. Because these terms deal with the legal process itself, they are not necessarily unique to games. They affect how and where you can sue and be sued, they deal with the interpretation of the EULA itself, and they affect what remedies a court could award. Use of them is part of a sensible strategy of legal risk management.

All suits under this EULA will be governed by the law of California and heard in a California court.

We begin with two clauses that travel hand in hand in many contracts: *choice of law* and *forum selection*. Legal systems differ from place to place, both in terms of their procedure and in terms of the actual rules of law. These clauses manage the risk of being subjected to surprising law in an unexpected place by specifying what location’s law will apply and where any suits must be brought.

Choice of law clauses are typically enforceable, as long as there is some not obviously strained reason to choose the place you do. The goal is more to select a particular, known, stable source of law than it is to select the absolutely most advantageous law. It could be that some particularly egregious piece of doctrine would force you to choose the law of a different place, but more often, choosing the law of the state in which your offices are located is the most reasonable choice. Having your offices there is the textbook example of a nonstrained connection. Choosing your own state will also likely harmonize with your other legal connections to your home state, meaning that your lawyer will not need to worry much about multiple states’ laws.

Because states themselves apply “conflicts of law” principles to figure out which state’s law ought to apply in a given lawsuit, a clever subtlety seen in a number of EULAs is to insist that you are actually choosing *that place’s* law, not the law that place

would choose to apply if it thought about it. (The possibility of infinite recursion, in which state A thinks that state B's law would apply but state B thinks that state A's law would apply, is called *renvoi* and is highly amusing to a small number of lawyers.) You will also occasionally see a EULA specifically exclude the application of a particular place's law, or of certain international sources of law (such as the Convention on Contracts for the International Sale of Goods).

Forum selection is slightly different—it involves choosing which court will hear the case. A federal court in state A, a state court in state A, and a state court in state B could all plausibly apply state A's law. The forum selection clause picks, in essence, which courthouse the lawyers will have to go to. Technically, “jurisdiction” only gets you down to the state level, and *venue* involves selecting a particular district within the state. Also be aware that federal and state courts use different districting systems.

Picking your home state is almost always a good idea; in case of a suit, it saves on travel costs, means not having to hire a local lawyer in addition to your own, and forces the other guy to come to you. It is important to get the wording of this clause right; you want the jurisdiction to be *exclusive*, so that your local court and *only* your local court can hear the case. You want to force them to have to sue you where you choose, not just give yourself the option to sue there. Forum selection clauses are also generally enforceable as long as the forum is not an unreasonable one. Choosing to be a “stay at home” litigant is usually reasonable.

If you elect this route, one legal subtlety that may be worth inserting is that the players waive any “personal jurisdiction” objection they may have to your chosen forum. That is another way of saying that they are not allowed to claim that they have so little connection to the place you have chosen that it would be unfair for them to have to be in a lawsuit there. This conclusion might be implicit in their agreeing to a EULA with you, or in their agreement to an exclusive forum, but it probably does not hurt to spell it out.

An important alternative—or perhaps, “qualification”—to a choice of forum is to select arbitration. Agreements to arbitrate are enforceable under the Federal Arbitration Act. Indeed, one of the rare pieces of virtual world litigation involved a virtual world EULA's arbitration clause being held enforceable.¹ Some virtual worlds choose arbitration in their EULAs; others do not. Arbitration is usually faster, cheaper, and probably more deferential to your EULA terms. Faster and cheaper could be good, or it could be bad (e.g., if you are relying on the high cost of litigation to deter suits). Consult your lawyer. The right answer may depend on the types of legal problems you deem most probable.

This EULA constitutes the entire agreement between Player and Company.

An *integration clause* basically says that the EULA means what it says, that there are not secret terms hidden in some other side agreement that isn't mentioned in the EULA itself. The *parol evidence rule* (nit-pickers be aware—the word is indeed “parol,” not “parole”) tells a court not to look beyond the EULA itself in determining

what terms the parties agreed to. Anything not in the EULA does not exist. Including an integration clause is smart practice in drafting. It makes it more likely that the terms you inserted in the EULA will be upheld (by making it harder for someone challenging the terms to find a different “agreement” between the parties). It also reduces the cost of litigation (by narrowing the set of evidence relevant to interpreting the EULA). Similarly, another sensible term is one that dictates that only a written agreement may modify the EULA.

If any term of this EULA is held unenforceable, the remainder shall remain in effect.

A *severability clause* tells a court what to do if some term in the EULA fails. Think of it as an exception handler that catches problems from other parts of the EULA. Good programs recover from the occasional memory allocation failure; good contracts recover from the occasional unenforceable term. The severability clause says that the loss of one term does not doom the EULA and that the rest should continue doing what it was doing before. Your lawyer will have the right wording.

Company will not be liable to Player for more than \$100.

An award of money damages is the normal remedy for breach of contract. Capping damage awards against you is one example of a limit on the *remedies* a player could obtain against you. “Remedies” is the term used to describe what things a court can and cannot do to set things right once it finds that someone has won a lawsuit. We will discuss this clause again in more detail later, when we take up the question of what harms your world could cause to a player.

Any breach of this EULA will cause irreparable harm, entitling Company to injunctive relief.

There are also terms that affect the remedies you could obtain against players. This one is the most important; it appears in some EULAs. An injunction is a court order telling the losing party to do something *or else*. As discussed earlier, court orders are serious business, and getting an injunction can be much more effective than a damages award. That is especially true against people who may not have much money with which to pay an award. Against them, an injunction may be your only effective remedy. The part about “irreparable harm” is there so you will be able to satisfy the usual legal test for awarding an injunction. Courts are not supposed to award injunctions unless not awarding one would cause irreparable harm. Since proving irreparable harm can be difficult, getting players to stipulate to it might get you over a significant legal hurdle.

In any litigation under this EULA, the prevailing party shall be entitled to an award of attorneys’ fees.

In the United States, the normal rule for financing lawsuits is that each side pays its own lawyers. This rule can be modified by agreement. Some EULAs opt into the “English rule,” in which the loser must pay for both sides’ lawyers. This approach is designed to deter speculative lawsuits that have a small probability of success. These lawsuits against you (especially class actions) might be handled by lawyers on a contingent-fee basis—the lawyer will split any award with the clients, but take nothing if you win. Forcing the other side to pay for your lawyers is a way of creating potential downside for them and requiring them to take the risk of losing seriously. It can therefore deter some lawsuits. Of course, choosing the English rule also raises the stakes for you—if someone brings a successful suit against you, you could be on the hook for his or her legal fees.

Terms Ensuring that Players Play by the Rules

Now that we know why EULAs work at all, we can turn to the work they do. We start our tour with some basic “thou shalt nots.” These are the terms governing what players will and will not do when they take part in your world. Most of them are essential to a virtual world’s vitality. They keep players from acting in a way that could cause your world serious trouble. Here, the EULA is making absolutely sure that players have no legal right to do things that would destroy your world.

We slice those rules up into three categories. There are *ground rules* that make sure your players are real people who pay their bills and can be held accountable if they do something wrong. There are *game rules* that protect the world’s software from being hacked or exploited. And there are *community rules* that make sure players play nicely enough not to ruin the experience for everyone else.

Ground Rules: Billing and Accounts

Even before players can enter the world, you need to make accounts for them. Assuming you charge your players at all, you only want to make accounts for properly behaved paying customers.

Player agrees to pay.

The term that confirms that players are obligated to play to pay may be the single most important term in your EULA. It can get quite complex in practice, because it is typically closely tailored to your billing model. If you sell monthly subscriptions, this term will explain that the payment is due every month on the same day. If you give out three months’ access with the purchase of a starter kit, this term will explain that regular monthly billing will start for the fourth month. If you charge extra for access to additional in-world content, this term will explain the basics of your micropayment system.

Most EULAs do not specify the actual monthly fee or other prices; instead, they contain references to some other document containing the actual current rates you charge or some other clear description of “current prices.” It is good enough if the

EULA explains the billing structure in enough detail that those who cared could easily find out how much playing will cost them. Whether you give refunds or not, your refund policy also typically goes in here.

Player authorizes Company to bill his/her credit card.

Something else you see in all EULAs is a term walking through the actual payment mechanics. Credit card is overwhelmingly the most common method of payment in the United States because of the good infrastructure and because it gives you some real-life information on your players to promote accountability. (With credit card information on file, you can, for example, reject registrations from a card associated with a known griefer, or more easily call the FBI on a hacker.) Thus, the most common payment mechanic term in an American EULA authorizes you to bill players' credit cards in accordance with the fees you have just explained. (Different systems, such as bank debits, are more prevalent abroad; this clause is regularly tailored to local conditions.)

This authorization is really important—consumers have extremely strong rights to reverse the charges on any payment they did not authorize, even if there is no dispute that they owe the underlying debt. Reversed charges suck for you, since dunning your customers individually is an enormous hassle, and exactly what using credit-card billing is supposed to help you avoid. Ringing up “unauthorized” charges is also likely to violate your contract with the credit-card empire.

If you read a lot of EULAs, you will often see a term that players are liable for any usage fees run up by their account, whether authorized or not. In addition to the accountability reasons for this term, it takes away some of the incentive for sneaky players to make false claims that “someone else” purchased all those elite items. As part of the basic mechanics of billing and making sure monthly charges go through properly, you will almost always see a term requiring that players keep their account information up to date and notify you promptly with any changes.

Player will keep his/her account secure.

It is hard to force user security. That is not to say you cannot try. EULAs regularly instruct players to follow basic security practices. Do not choose a weak password, do not reveal your password to someone else, and do not let someone else use your account. Reminding players that you and your employees will *never* ask for their password is, in this age of phishing, a sensible precaution. (That is a customer-service commandment, too. Never ask your players for their passwords.) Interestingly, some EULAs actually warn players against using company-supplied features (such as password caching). This is not quite as crazy as it sounds; the idea is to emphasize that using features known to be riskier than normal is even *more* at the player's own risk than normal.

Everyone hates unauthorized account use, except for the blackguards who steal accounts; innocent players lose their stuff, their reputation, and sometimes their entire character. But, without this restriction, you lose a lot of accountability. People

called out for griefing can claim that their kid brother was using the account without permission. Are they lying? Telling the truth? You may have no way of knowing. When the line from avatar to player is muddled, it is hard to hold people responsible for the things they do in the world. It is hard for you, and it is hard for other players. Not that you or other players need to know who the actual player behind the avatar is; you just want to know that it is *consistently* the same person.

If you cannot actually make people keep their accounts to themselves, the next best thing is to make players responsible for *any* use of their account, whether it was them or not. Some EULAs explicitly state that players are responsible for any use of their account; some state that players are responsible for any harm flowing from various poor security practices on their part. Players who stand to lose out if they are bad about security might be scared into being maybe only mediocre about security. Good security happens only when the people with the power to undermine security have the right incentives not to.

A few types of account security breaches are worrisome enough that they often get their own terms. Sharing accounts with players who have been booted from the world is often a no-no. When you drop the banhammer, it should stay dropped. Helping a banned player back into the world is, for obvious reasons, itself a bannable offense. (Remember, on the Internet, you cannot easily tell if it is a friend helping Jack the Griefer get back in or just Jack himself with a different credit card.) This principle of collective responsibility often also extends to “related” accounts—if you ban someone, you may ban everyone using that name, credit card, IP address, or other specific information with them. Thus, many EULAs explicitly explain that all related accounts may be terminated for the sins of any. A clever little technique you see here and there is to cap the number of accounts per credit card or per person. The former is very easy for you to check—and few legitimate players need 20 accounts. If your world really does need players with that many alts, you should be billing them one large amount rather than in 20 small chunks.

Company or Player may terminate the account at any time.

All good things must come to an end. Sooner or later, your relationship with each of your players will end. A few terms in the EULA help you manage the breakup gracefully. As with a relationship, it is best if you can stay friends, but if they go crazy on you it is good to be able change the locks. Therefore, essentially all EULAs state that the company can end the relationship and terminate a player’s account at any time, for any reason or for no reason at all. As a business matter, some of your customers will cost you more than they bring in. As a design matter, some players make the world worse. You want them out.

It is good practice to spell this possibility out in some detail. You should warn players both that you can terminate accounts at your unfettered discretion and about the consequences of termination. These warnings are aimed at heading off trouble from the “naïve” player who claims that she would not have cheated if she had known

that you would wipe out her accomplishments and not refund the last two years of monthly fees. This section may also be a good place to state (or restate) your policy against using other accounts to regain access after being kicked out.

In addition to the general rule, you may also want to note some of the specific reasons why you can terminate an account. Violation of the EULA is A-number-1. Disruptive or illegal behavior is often worth a mention, too. In fact, you may see scattered throughout a EULA any number of clauses pointing out that such-and-such misbehavior is grounds for account termination, precisely because termination (or the threat of termination) is so often your best remedy for all kinds of trouble.

Your players have the right to go home, too. Some EULAs leave this possibility implicit, simply through the absence of terms requiring the players to keep playing. Other EULAs bring it up obliquely—they tell the players what to do if they no longer agree to the EULA (surprise, surprise: it involves not playing any more). Both are common enough that they are defensible, but you might want to be a little more explicit. Tell your players that they have the option to cancel their account and explain how. Remind them of the consequences of closing the account (the rules of conduct sometimes contain the appropriate warnings)—or tell them about a grace period within which they can change their minds and come back to the fold. A term pointing out a right that players enjoy is good for an overall tone of reasonableness.

Accounts are not transferable except as provided herein.

You may not want to allow truly unfettered account transfers. Front men opening accounts for other players create anonymity issues. If players can change accounts without warning, you will have people saying it was the *old* account holder going around being a jerk. Or, as mentioned before, you want to close off potential avenues for previously banned players to enter your game again. You may also want to avoid having players license out some of their rights to others; it may not be healthy for your business model or your design to have account brokers renting accounts out by the hour.

In general, you want to know whom you are dealing with. There are ugly contractual problems when third parties get involved—especially when some shyster of a player tries to give a third party more rights than she herself enjoys under the EULA. This kind of mess tends to cause trouble both for you and the third party, who may not have realized that the shyster was promising more than he could legally give. A EULA that clearly says “no assignment of rights” and “no transfer of accounts” can cut some of those issues off at the pass. As EULA violations go, unauthorized transfers are usually fairly harmless; banning them just gives you a foot in the door dealing with the small fraction of transfers that are troublesome.

That said, there are often very good reasons to allow transfers of accounts. If your world has a robust commercial economy and you look kindly on investors buffing up characters for sale, then you may not mind transfers. Allowing a transfer may also be a way of keeping a subscription even when the original player has had enough. Your best recruiters of new players, after all, are your current players. If a player’s sister

wants to step into his shoes, that might not be a bad thing from your perspective. Note that assignments of players' contractual rights that are not connected to an account transfer are almost invariably bad news. There has not been a compelling case for ever allowing them.

Thus, once you have set up a baseline of no transfers, you may want to insert a clause allowing *certain* transfers. You will probably want to set some limits on what kinds of transfers are allowed, based on your business and design objectives. For example: no transfers for any kind of compensation, or no more than one transfer per player, or no transfers of accounts to players formerly terminated by you, and so on and so forth. Consult your lawyer. You should not expect to get full compliance with whatever limits you set, but then again, you should not expect to get full compliance with anything in your EULA.

You will also need to set some procedural rules for transfers. A one-fell-swoop rule is typical and sensible. That is, the whole account, software, and password must be given from A to B in a single transaction that gives B everything and leaves A with nothing. Such a rule ensures that players do not use transfers as a backdoor to account sharing or account renting or other violations of the one-account-to-a-customer principle.

It is also a good idea to require players to tell you they are transferring an account. If nothing else, you probably need to update your billing records. It also gives you some ability to monitor the transaction to make sure things are on the up-and-up with respect to the things you care about. You should probably also require A to make sure B sees the EULA and notifies B that B must agree to it to play. That is mostly just another way of showing everyone that you take the EULA seriously. Further procedural mechanics of transfers are a good issue for you to consult your lawyer.

Game Rules: Permissible Uses of the Software

Once you have the basics of account creation and maintenance down, you need to make sure an account can only be used in accordance with your overall design. Put another way, you need to guarantee the integrity of your software. Players should not be allowed to take unfair advantage of bugs in the software—and they certainly should not be allowed to introduce bugs deliberately.

Player will not hack or disable the servers.

Hacking is illegal. (Yes, the proper term for malicious hacking is supposed to be *cracking*. That linguistic war has been lost, and “hacking” is in more common use.) Even if you do not put a term in the EULA forbidding players from breaking in to your servers, the federal Computer Fraud and Abuse Act and various state laws forbid hacking. Violations of these laws can be punished with serious fines and even more serious jail time. That noted, your EULA still probably ought to say that hacking is forbidden and explain a bit what you consider hacking. Why? Because these laws generally punish the use of a computer system “without authorization.” It is often up to

you to spell out what uses of your service are and are not authorized. A good EULA here makes it crystal clear that no one is permitted to log on as an administrator except you.

Thus, you probably want to forbid breaking into the servers to change data or alter the nature of play. The definitions here can be a bit fiddly, so consult closely with your lawyer. Some EULAs try to define authorized access by requiring that players access the world only through the official client, which is not a bad way of excluding many different attack vectors. The prototypical offender here is the one who finds a security hole and starts teleporting everyone to the bottom of the ocean (as actually happened in *Shadowbane*[®]).

A EULA can (and probably should) also forbid denial-of-service (DoS) attacks on the world itself. The DoS offender is more often a script kiddie, acting out of sheer bored malice and trying to overwhelm your servers using standard tools. You may occasionally have to deal with more sophisticated attackers who craft attacks specifically at your world. (*Second Life*[®]'s scripting system has proven irresistibly attractive to attackers of this sort). Your first line of defense has to be technical—there is no time to run and get the law when the servers are crashing. But once the floodwaters are contained, you probably want the law to come down hard on the perps responsible.

Again, these things are often illegal even on their own, but it does not hurt you to be explicit that such attacks will not be tolerated. Many DoS attacks consist of taking something that would be legitimate if done once and doing it millions of times. Thus, it may be easiest to describe the forbidden conduct in terms of its scale or its effects on your service. “Unreasonable load” is a nice phrase you see in a number of EULAs—it captures the idea that no one should be doing anything that takes up far more than his or her fair share of your system resources.

Player will not hack the client software.

Well, that's half of the software out of the way. But the server is the easy half. There is still the client. You should, by the time you are drafting a EULA, have carried out a careful soup-to-nuts security review of your client-server architecture. That review will tell you how secure the client needs to be. Those needs, in turn, will dictate what your EULA should say.

At one extreme, you may not have any client security problems. If the integrity of your world does not depend on players using a particular client, then you can probably omit any discussion of hacking the client. Think of a game of online chess; it does not matter what board-visualization software the two players use to look at the pieces, because all they are sending back and forth are simple move notations and it is trivially easy to detect an illegal move. Similarly, in some text-based worlds, there is no client-side security issue because there is no possible way for anyone to gain an unfair advantage just by using a “hacked” piece of client software.

At the other extreme, you may be utterly dependent on having an honest client because the server completely relies on clients to keep track of state for it. If so, that is

a bad place to be, because it is extremely hard to prevent someone determined from hacking a piece of software on a machine he controls. If you trust clients to keep secrets from a player, do not be surprised that some players can find out the secrets. ShowEQ is the classic example of modded client-side software; it displayed information the player was not intended to see. The Quake wallhack may be the best known.

Most worlds have requirements that lie somewhere in between. You should expect that some players will circumvent any expectations you make about using your client and only your client. Technical countermeasures remain your first line of defense. But for everything else, there is the EULA.

A few rules cover most of the common cases; select the ones that are appropriate to your world and your security model. You can require players to access your world using only your client software (this can be a good idea as a defense against incompetence and malice, as custom clients may well expose server issues). You can forbid players from modifying the client software. (A fencepost rule for this one is to forbid players from reverse engineering the client software.) If you are worried about interface overlays that reveal secret information to players, you can forbid players from monitoring or adjusting the flow of network traffic between the client and the server. If you are worried about gold farmers, you can forbid players from using “macro” programs that automate the actions their avatar takes. Having a term forbidding modified clients does not guaranteed that you will be able to recognize when a modded client connects—but if you do recognize a modified client you do not want to allow, it is better to have this term than not to have it.

There can be tricky complications here, depending on your design and your business model. If you want to allow clients modified in certain ways—perhaps to take advantage of your players’ creativity in creating more usable interfaces or prettier skins—you do not want to forbid these particular modifications in your EULA. Note also that if your client includes open source software, you may not be legally allowed to restrict players from modifying it (only from accessing your servers using modified versions). This is one of the many reasons to be very careful about any use of open source software in a commercial game.

Player will not take advantage of exploits.

Hacking the software is not the only way for a player to get an unfair advantage. The sad truth is that there will be bugs in your design and implementation. A certain spell-weapon combo might one-hit-kill anything; a certain sequence of drops and trades might duplicate an item. The former bug can make a player unfairly powerful; the latter can make a player unfairly rich. Players taking advantage of these exploits can make the world quite unpleasant for everyone else—it is not much fun when jerks are strutting around ganking everyone in sight or when the economy is completely out of whack because of the influx of duplicated gold. Therefore, in much the same way that EULAs forbid hacking, they regularly forbid exploiting.

Anti-exploiting clauses are difficult because exploiting occupies a conceptual middle ground—it is somewhere between in-world griefing-style misconduct and out-of-world hacking-style misconduct. This straddling makes it hard to draft these clauses precisely. Because an exploit is something that is allowed by the software, you cannot just define exploiting in terms of breaking or altering the software. Because if you knew what the exploit was, you would close it off in the software; you also cannot just define exploiting by specifying what exactly players should not do. The latest exploit will always be a moving target.

This is an area in which prohibitions that are too specific can backfire. Describing exploits in too much detail just encourages players to look for them and provides a helpful list of things to try. Since the main use of an anti-exploiting clause is to shield you from trouble if you close the accounts of exploiters, it should generally suffice if the clause is phrased in a way that puts players on fair notice of what they should not do. Telling them they should not use features of the world that obviously were not intentional is probably good enough.

You will also have to make difficult decisions about what to do with players who profit from exploits but do not take advantage of them. Simply deleting items you can trace back to a duplication bug may cause innocent players far downstream from the exploit to lose items they paid good in-game money for. On the other hand, there may be players closer to the exploit who were clearly complicit in it—they may have been gifted huge sums of cash for money-laundering purposes by the player who actually used the exploit. Distinguishing between innocent victims and conniving knaves is part of your customer service job (and one that comes up again and again). There is a lot of accumulated folk wisdom in the industry on how to do it, but you will still have to figure many of these issues out for yourself.

Finally, some—by no means all, but some—worlds' rules of conduct explicitly require players to tell the company if they find something they think might be an exploit. Now, yes, it would be great if all your players gave you that kind of feedback, but no, most of them will not. This rule is not there to punish everyone who never reported what might have been an exploit. It is there to provide a very easy-to-apply fencepost rule in case you know that a player was in on the exploit and helped keep it secret but did not actually *use* it personally.

Community Rules: Playing Well with Others

Now we cross from the technical to the social. The preceding rules might suffice for a contest or a single-player game—each player against the world. But since you are making a virtual world, you care about the interactions your players have with each other. You would like those interactions to be positive. So would your players. Most EULAs, therefore, contain a few terms specifically directed at reducing griefing.

Player will not engage in griefing.

As with exploiting, there is no single all-encompassing definition of griefing. In general, any feature you include that lets players interact provides a possible avenue for griefing. Players can grief by filling a chat channel with obscenity. They can grief by camping in fun spots and blocking anyone else from entering. They can grief by healing monsters other players are trying to fight. They can grief by cornering the market on particular items and refusing to sell at any price. They can grief by following other players around all the time, silently, just *looking* menacing. Things that are normal social interaction in one world may be griefing in another.

Therefore, a typical EULA contains a general-purpose anti-griefing provision. Sometimes this provision is folded in with other “you will not” rules; sometimes it is broken out as its own play-nicely-with-others rules. The rules of conduct or the EULA itself will frequently define many specific forms of griefing, too, but the general anti-griefing EULA term almost always reserves to the company complete discretion to define what is and what is not griefing.

You will also probably want to break out the details of some more specific forms of griefing in your rules of conduct or your policies. In some cases, clear and simple rules will work—for example, “Do *not* use language not suitable for a PG-13 movie.” Simple rules are easy for your customer service reps to implement—there is little to argue about if they catch a player using slightly misspelled cusswords. (Where these rules are especially simple, you can even put them into your software.) Using software to screen offensive language can lead to unintentional, even amusing results. In some MMOs, the common “bastard sword” (a sword that can be wielded with one hand or with two) becomes the “@%\$^&! sword.” For other cases, you will have to use vaguer standards—for example, “Do *not* ruin other groups’ raids.”

Your sense of what is and what is not griefing should be responsive to your player community’s sense of what is and what is not griefing. If they honestly do not care about something, then ask yourself whether it is something you should care about. (Of course, if 35% of your players love a particular behavior that the other 65% abhor, it is not easy to say that the “community” does or does not approve of the behavior.) The stream of complaints to customer service will give you a good snapshot of what is bothering players inordinately.

Your players may also care vehemently about something you do not want to or cannot easily police. Players can be surprisingly effective in suppressing some kinds of unwanted behavior. (Check out the codes of conduct of some high-level guilds, for example. Chivalry is not dead.) With this possibility in mind, some worlds have tried to take a completely hands-off policy and let players sort out everything on their own. It rarely works. Players need to have substantial power over each other to deter griefing; but if they have that sort of power, your world may well be in the hands of vigilante mobs. *EVE-Online* and *A Tale in the Desert* have each gone some distance toward true community enforcement, but neither has been free from serious issues. The *Sims Online* remains legendary for the sociopathic chaos created by lax enforcement of anti-griefing rules.

Player will not cause grief by . . .

Several classes of griefing are serious enough that they regularly merit mentions in the EULA or rules of conduct of almost every world. For the most part, these types of griefing are serious enough to be causing a player real harm, not just the frustration of having a playing session spoiled.

Offensive statements: People who make offensive statements, such as those against a certain race, are abhorrent whether in the offline world or the virtual world. You probably do not want loudmouthed bigots in your world, and neither do your players. The same goes for statements insulting players for their religion, gender, sexual orientation, nationality, and so on.

Harassment: Sometimes, people want to be offensive to a group consisting of one person. That is pretty odious, too. There are jerks who will wage total and unceasing war on some innocent schmoe for the sheer jollies of it. These jerks are griefers.

Espousing evil: What should you do if you see a guild calling itself the “Mudville Anti-Semites?” Many European countries outlaw “hate groups” and do not draw much of a distinction between online and offline ones. Even if the Mudville Anti-Semites have not yet gone out and picked on any avatars with Jewish-sounding names, many Europeans would have a strong gut reaction that your world should not be endorsing a group like that. Some EULAs therefore forbid membership in hate-mongering groups.

Stalking: Not cool in offline life; not cool in virtual worlds. The creepiness of being followed and watched can be deeply disturbing—especially to players who have had prior bad experiences with unwanted attention. What is more, it is a distinct possibility that an in-world stalker may be looking to learn enough personally identifying details to become a stalker in the offline world as well.

Outing: As the stalking example indicates, linking up an avatar to an individual can cause serious trouble. In most worlds, players join with an expectation of privacy; they want to be free to take on a new character in-world, and they *do not want* someone they met online showing up on their doorstep or calling their employer to complain about what a jerk they are. Some worlds that are otherwise extremely tolerant of player conduct treat outing another player’s real identity as a bannable offense.

Sexual abuse: Cybersex, like sex in the offline world, should be consensual. Unwanted in-world sexual advances can be highly unpleasant. The greatest piece of virtual world journalism ever, Julian Dibbell’s article “A Rape in Cyberspace,” detailed the degrading consequences of an in-world description of a rape and the degree to which the rape was a blow against the world’s entire community. Your world can and probably should be a safe space.²

Denial of service: Perhaps the most childish kind of griefing is slamming an open palm on the keyboard and filling everyone else’s chat window with junk repeatedly. The same pettiness causes players to make thousands of the same item to slow down the server, to stand in doorways, to send unwanted party

invites, to throw up the largest possible buildings to block views, and make any number of other pure peeing-in-the-swimming-pool moves. If its only purpose is to ruin things for others, it is griefing.

There is, it should be noted, such a thing as going too far. If you stamp too hard on “griefing,” you start stamping on fun, too. Blizzard was so zealous about its anti-harassment policies, for example, that it took action against a guild that had the temerity to call itself “GLBT-friendly.” Why? The explanation Blizzard provided was that homophobes might have been so outraged by such a guild that they would go out and commit acts of harassment. The move was counterproductive—it made *World of Warcraft* less tolerant, not more, and made the world a worse place. Blizzard backed off once public attention shone on the incident. If you take your anti-griefing policies too far, you just wind up helping the griefers.

Player will behave honestly in all dealings with the Company.

If your world is like most worlds, you need to keep the lines of authority in-world clear. You are in charge and you will fix things if there is trouble. Players are not in charge, but they can come to you if there is trouble. Many EULAs and rules of conduct contain clauses designed to keep players from subverting that relationship through dishonesty. Here are four forms of subversion to watch out for:

- A player could lie to you during an investigation.** There is usually no good reason for a player to lie to you during an investigation of a legitimate misconduct issue. If you are investigating a possible duping bug or a harassment claim, you expect players to tell you honestly what they were doing.³ Of course, you have records of everything (and you *do* have records of everything, right?), but it is typically going to be easier and faster to interview the witnesses. Lying to you is like punching a crossing guard.
- A player could lie to you about another player’s activities.** That is like falsely telling the crossing guard that someone else is breaking into cars. At best, it is a waste of your time. At worst, if you did not properly check the reports against your records (and you *do* properly check reports against your records, right?), innocent players get punished for things they did not do. Lodging false accusations is a griefing issue—players who do it are using the complaint system as a griefing tool.
- A player could impersonate you.** That is like putting on a crossing guard uniform and luring kids into traffic. Jerks who do this cause other players fear and confusion. They also make it harder for people to come to you with legitimate customer-service issues because they are less sure who is the real you. You do not want players impersonating you, your customer service, or your in-world characters. (Related terms sometimes forbid players from falsely claiming that they have your endorsement or protection, and forbid players from naming their characters with names that would suggest some official connection.)

You could impersonate a player. No, seriously. To the extent that you have your employees running around in the world with alternate characters, players may be suspicious that the employees are rigging things to favor their own characters. That makes them treat you with more suspicion, which undermines the trusting friendly relationships that make things run smoothly. It can be good practice not to let your customer service people play characters on the servers they administer. There is a more general rule of thumb here: have policies in place so that people with positions of power over the world do not abuse that power.

Business Rules: Not Competing with You

A few miscellaneous “I promise not to” terms involve things players should not do because they threaten your ability to run the world successfully. We will talk about three:

You retain the IP rights beyond the ones players need to use the world at all. It is a EULA violation for a player to use your artwork and plot elements in a movie without permission, for example.

Similarly, you retain the IP rights over your software. It is a EULA violation for players to set up their own server and hack your client into connecting to it.

Players agree that you are not their employer. It is a EULA violation for them to claim that you owe them minimum wage for their many hours of play.

What do these terms have in common? Loosely speaking, they are all about what lawyers might call “unfair competition.” When you invite players into your world, you are showering favors on them—giving them access to pretty pictures, space-age software, and unforgettable experiences. You are not inviting them to grab those resources and run to set up their own competing world, or to do something that would destroy your business. If they want to compete with you, they will need to put in the honest effort to create their own game assets, software, and customer support.

You neither can nor should forbid players from doing absolutely everything that might cause you trouble. *Project Entropia* has a term in its EULA forbidding players from spreading rumors about it. That is just plain wrong to require. If you are receiving criticism, stop it by fixing the problem or counter it by explaining your side of matters. The same game made headlines in 2006 by publicly and repeatedly accusing a respected Wharton Business School professor of slander for posting criticisms that questioned the newsworthiness of *Project Entropia*'s projects. Trying to silence your critics just creates even bigger PR problems.

Company retains all IP rights not expressly granted to Player.

How would you like it if someone opened up a virtual world that copied your artwork, your geography, and your physics down to the last detail? Unless your goal was to build an open-source free software world, you would probably be pretty ticked off. You spent a lot of time creating those resources, and the law recognizes that effort and

the substantial originality of your creations by giving you a copyright for them. Indeed, it gives you a copyright precisely so you can sue thieving scum who just copy everything you make wholesale and do not create anything original of their own. Just to make things clear, your EULA can explain that you will use that power of copyright to go after outright plagiarists among your players.

Similarly, players who use your trademarks on their own goods may not be doing you any favors. If another world starts up with the same name, new subscribers may get tricked into playing the wrong one. (That is called “infringement.”) If the Internet is filled with sites that use that name to sell cars, t-shirts, discount Canadian pharmaceuticals, and other random junk, the virtual world at the core of it may get pushed aside in people’s minds. (That is called “dilution.”) And if that random junk is really terrible, people may start thinking that your world itself is shoddy. (That is called “tarnishment.”) Your EULA can *remind* players that your trademarks are yours and that it is not cool to slap those trademarks all over the place without permission.

There are two distinct scenarios you should be thinking about here. First, there is the *competing world*: a world that tries to free-ride on your creativity and work. Now, as a designer, you would love nothing better than for hundreds of your players to be so inspired by your monumental achievement that they go out and pour their hearts into making virtual worlds—and in every interview, saying it was your brilliant design that inspired them. That is the community of designers building on its past successes with fresh innovation. That is a big part of how you are working, too—learning from past worlds, both what they did right and what they did wrong.

Now, legally ideas are not copyrightable, even if they copy many ideas from you. And even if their world copies a bunch of mechanics from yours, honestly, it is probably not hurting you that much. The reviewers will still say, “This has been done better before. Go play INSERT YOUR WORLD HERE instead.” Your IP protection is a nuclear weapon, best dropped only in cases of obvious plagiarism with no offsetting creativity whatsoever. Like nuclear weapons, it can also be expensive to employ (as explained in the IP litigation chapter). But it is not one you should generally plan to be without, even if you have little expectation of needing to drop it.

The second core scenario is *merchandising*. You know: T-shirts with your world’s logo. Action figures. Novels explaining the world’s mythology. The movie tie-in. The breakfast cereal. Unlicensed merchandise siphons off a revenue stream you could profit from, and can seriously hurt your reputation—or even your ability to protect your trademarks at all.

Once again, however, you need to be careful about overplaying your hand. Some merchandise is good merchandise; good licensing can pay you with publicity, not just with cash. If your world does not have an extensive network of fan sites, you are at a serious marketing disadvantage. Fan sites are a sign of deep engagement with the world; they allow players to create rich communities that build on their presence in the world. People wondering if they should join your world may judge it by the information they glean from fan sites.

One approach some EULAs take is specifically to create a “fan license” that lets players use your copyrights and trademarks for fan-like noncommercial purposes. It is generally better for people to be doing something with permission—from your perspective, there are trademark reasons why turning a blind eye to infringing uses is a bad strategy; from players’ perspective, it is more secure to know that you approve of what they are doing and will not get angry.

One last note about writing EULA terms that allow or forbid various out-of-world uses of your IP: This may be the touchiest subject of anything in your EULA. You are dealing with people’s creative engagement with something that is emotionally important to them. That means that they can get deeply, almost irrationally upset if their connection to it is threatened. Going after fan fiction is a surefire way to profoundly alienate some of your best players. Spelling out what players can and cannot do with your content in too much detail is also risky—you may come across as too corporate and legalistic. Again, there is potential PR trouble lurking. (More on these types of issues can be found under “contingency planning” in Chapter 6, “PR Plans and Programs for the Game Developer.”)

It takes a deft touch to write these terms properly. Consult your lawyer, and your marketing and customer service gurus. Listening sensitively to player feedback, while always important, is also especially critical here. How you frame and phrase your policy matters as much as the rules of the policy itself.

Player will not misuse the client software.

Everything mentioned previously about unfair plagiarism of the world’s content also applies to the world’s software. In practice, you probably do not need to worry much about players ripping off your server software; they just do not have access to it. Players ripping off your client software, though, is another matter. What might they do on their own with the client that you would not like? They could *hack the client so it connects to their own private server*. If you are running on subscriptions, that is a direct attack on your business model.

How much you should worry about private servers depends on the nature of your world. The more content you supply, the harder it is for private servers to compete. The more stuff you automatically download to your client, the richer the experience that client-modders may be able to create on their own. The more that players depend on you and your top-notch community-building skills to create a fun and rich shared environment, the less attractive private servers become.

This end-run around your servers has a lot in common with other hacking-based techniques. It also involves modifying the software, but can be even more undetectable than other client modifications because the private-server user may never connect again to your servers. It also triggers similar legal countermeasures on your end. There are copyright laws you might be able to invoke; there are aspects of the DMCA you might be able to invoke. Putting a term in the EULA lets you invoke contract law, which is a more direct route to the same end.

This happens to be one of the few litigated EULA issues for virtual worlds. A group of fans of Blizzard's computer games created their own server software, called "bnetd," to be compatible with Blizzard's own matchmaking service, Battle.net. (This was in the days of *Diablo* and *Warcraft*, before Blizzard's fabulously successful foray into true virtual worlds with *World of Warcraft*.) Blizzard sued the open source hackers behind bnetd and won.⁴

This also happens to be one of the most politicized issues in virtual world law. The bnetd hackers *loved* Blizzard's games and wanted to make the games even better. They just did not want to have their entire online experience with the games be entirely at Blizzard's discretion. They were not in it for profit, just for fun. And, all in all, they only made small modifications to the client software. All of these factors made them quite attractive to those people who think that companies have too much power over virtual worlds and that players should have more explicit rights. Being able to take characters and status and go off to another server would provide players with a major counter to developer control.

On the other hand, developers were almost uniformly equally strongly on Blizzard's side. If players can mod the client software in this way, the whole subscription business model could be in danger. It also reduces developers' control over their worlds when players have other ways to play in the "same" world. (Why should a player behave nicely when the developer can only kick them out of one instance, not from all versions of the world?) And this vision of an "open source" virtual world that steals assets from an existing game can also be seen as an attack on the work of professional developers who get paid to create and run worlds. Little wonder why professional developers often do not like it.

This remains a complicated subject capable of arousing high passions. The relevant EULA terms, for now, are usually folded in with other anti-hacking provisions. You should be able to look at a term and know what kinds of hacking it prohibits—and you should be choosing to prohibit those that genuinely concern you. Even before you consult your lawyer, you need to think carefully through how your world works and what kinds of uses of the software are incompatible with your vision.

Player is not an employee of Company.

If you have employees, you probably already know about labor law. (If you do not—run, do not walk, to educate yourself about it. Read Chapter 11, "Taxation," to learn more as well. You can worry about your EULA later. Your employees are your first responsibility in development.) You have to pay your employees at least minimum wage; you may need to give benefits to full-timers; you have to allow them to unionize if they wish; and so on. Now ask yourself, what if your players were your employees? And you had to pay them, give them health coverage and workers' comp, and suchlike. Unless you are creating a very particular kind of virtual world (e.g., a virtual union hall), it would probably destroy your world.

Thus, it is essential that your players not be treated as your employees, legally. Throwing a term in your EULA that they are not is a useful first step. But you also have to act like you mean it. You cannot treat your players—or even just some of them—like employees unless you mean it.

Back in 1999, a group of former AOL chatroom-monitor volunteers sued AOL, claiming that they had been *de facto* employees and were owed back pay. A few years later, some Ultima Online guides did the same to Electronic Arts. In each case, the former volunteers claimed that they were acting as junior customer service representatives, doing the work that would be done by employees, with the kind of supervision used for employees... but without the pay that would go to employees.

Both lawsuits settled, and the lesson for the industry was clear: volunteers are not substitutes for customer service staff. It is okay to give particularly enthusiastic and committed players some perks for being nice and good. (And it is okay to make the full leap and hire them on as real employees.) But you cannot turn around and start assigning them particular tasks with guidelines on how the tasks are to be done, schedules, and supervision. That could make them employees under federal law (or enough like employees to bring a very annoying class action lawsuit). Consult your lawyer on where to draw the line safely.

Terms Giving You the Power to Set the Rules

It is time to change gears. So far, we have been discussing all of the “thou shalt not” terms in the EULA. These terms are directed at players; they tell players what to do and what not to do. Now we are going to swing the camera around and look at *your* side of the picture. We are going to talk about what the EULA has to say about what *you* can and cannot do. Unsurprisingly, a typical EULA does not contain too many substantive limits on your actions. Instead, just as the previous terms were about keeping your players from ruining your world with actions, the terms here are about keeping them from ruining your world with lawsuits.

These terms are divided into three general categories. First, the EULA explains that there are *no warranties* with your world; you do not guarantee players that everything will always work as they expect. Second, it makes sure you have the power to *enforce your rules* against violators. Third, it protects your power to *make changes*.

You Are Not Required to Be Perfect

We begin with a family of terms that are genuinely universal in EULAs. Toward the tail end of almost every EULA, you will find two paragraphs mostly in all caps. The first is usually titled “DISCLAIMER OF WARRANTIES” or some such; the second is usually something like “LIMITATION ON LIABILITY.” Together, these paragraphs stand for the proposition that players cannot sue you if something goes wrong with the world. Or, to put matters another way, you are allowed to screw up in your administration of the world without it being grounds for a lawsuit.

The language in these passages is generally extremely standardized. You are not likely to find a more stylized piece of legalese anywhere else in a EULA. Why? Because these terms have been battle-tested. Many businesses besides virtual worlds have needed to limit their liability with respect to the services they provide. These phrases have been carefully worked out by lawyers over the course of decades. Lawyers do not like to mess with success.

In part because these clauses are so standardized, you do not need to worry too much about the inner workings of them. If you want to start in on to *how this affects me*, just skip the next two paragraphs. If you are curious about the law involved, read them.

A “warranty” is a promise you make to someone buying something from you that the thing has a particular property. You could, for example, “warrant” that it will work, that it is been manufactured properly, or that it will not bring all life in the universe to a catastrophic end. Even if you do not explicitly make these promises, the law sometimes treats you as having implicitly made certain particular warranties merely through the act of selling. The DISCLAIMER OF WARRANTIES section runs through all of these warranties that lawyers can imagine, both explicit and implicit, and says that you *do not* make them. You are trying to supply a virtual world with the absolutely minimal set of warranties the law will let you supply.

Instead of talking about *causes* of trouble, the LIMITATION OF LIABILITIES talks about *results*. It states that you are not responsible for certain kinds of “damages,” *damages* being the law’s word for bad stuff that happens as a consequence of someone else’s actions. As with warranties, there are many kinds of damages the law lets you say “not my problem” to. Thus, for example, you are not responsible for “lost profits”—the money someone lost when his business did not do as well as he’d hoped. As a backup in case a particular limitation does not hold up in court, these clauses also set a specific dollar limit—for example, \$100, or maybe the amount a player has paid for the world in the last six months.

In addition to these fairly boilerplate cores, EULAs often provide additional specific disclaimers and warnings. These provisions tend to be scattered around a EULA, depending on the organizational choices its drafters made. But they share a common structure. The EULA points out something that could happen, something a player might consider bad. The EULA then says that it is *not your fault* if that bad thing happens. The player will not be allowed to bring a lawsuit against you on account of that bad thing.

Consult your lawyer to pick the exact list of things to warn about and deny responsibility for. In the rest of this section, we will catalog the most common specific bad things that EULAs flag.

Company does not provide all resources required to use the Service.

You would be amazed at what some people fail to understand about computers. In this age, as the popularity of virtual worlds explodes, the left tail of the normal dis-

tribution of cluefulness among players slides farther and farther to the left. Some of your players will be so unfamiliar with virtual worlds that they think that all they need to play in your world is to buy the software. They will forget about the part where they need to own a computer and connect it to the Internet. They will forget that they need to install the software. They will forget that you are not the same people as the retail store where they bought the software.

Thankfully, very few people are that clueless. Their numbers are probably greatly exceeded by the number of people who would be willing to claim they are that clueless for the sake of a good lawsuit. Therefore, EULAs regularly contain warnings about these basic facts. The point is not so much that you expect the clueless to read the EULA and suddenly become clued in. No, you are just putting a warning in a document they are legally presumed to have read, so they cannot later sue you on the grounds that you should have realized you would have players who did not understand aspects of virtual worlds that seem utterly obvious to you.

One warning that is more or less universal is that players need to supply their own Internet connectivity, and that such connectivity may cost them over and above your subscription fees. For people who are familiar with single-player games, the entire “online world” phenomenon *is* a bit of a mental shift. That is part of what makes virtual worlds special; it is what sets them apart. If you had never used a virtual world before, you might perhaps be forgiven for assuming that the virtual world subscription included the costs of the dial-up involved in playing. (That was, after all, how an older generation of gaming networks worked.)

Company does not guarantee that the Service will be error-free.

Among the more flattering of the naïve assumptions players may make is that you are infallible. They expect your world to function perfectly, to be utterly bug free, and to be accessible at all times without interruption. When this assumption breaks down, players can get incredibly frustrated. They *need* their fix of your world, and they *need* it now. A 10-minute outage is a disaster; a 10-hour outage is like unto a living death.

You therefore have a very good business reason not to make coding mistakes and not to let your server crash. Doing so frustrates players, breaks the sense of immersion, and can drive off happy customers. On the other hand, bugs and crashes are pretty much inevitable. The world will go down at times, and you will need to take it offline to patch severe server issues.

Thus, you hardly need a legal incentive to keep your world running well, and you do not want legal trouble when the bugs do hit you. These motives combine in the EULA term that warns players that the world may have bugs and may not always be available. You can warn them that the service may not always be available. You can warn them over and above that first warning that circumstances outside your control may make it impossible for you to keep the world running. The legal term for this is *force majeure*—some outside force that would overwhelm anything anyone could do.⁵ You can reiterate that in neither case will you be legally liable for anything. Consult

your lawyer on how strong and how unconditional the terms ought to be—some EULAs promise that you will take reasonable care, some promise nothing.

Typically, these clauses emphasize that you will not pay refunds for any periods when the world is inaccessible. Given your business model, you might also agree to a pro-rated rebate for extended interruptions. Other worlds have been known to grant membership extensions for substantial interruptions. For example, eBay® extends auctions by the length of any outage—there might be an appropriate analogue for some virtual worlds. A few worlds do actually warrant that the software will meet users' needs to use the world. If you limit your liability to giving refunds, this can actually be a perfectly reasonable thing to do. (Note that these warranties still exclude cases in which the software has been hacked or modified between the company and the player.)

Sometimes, the outage clause also explains that you do not guarantee that the world will be bug free. Sometimes, it is a separate clause. Either way, EULAs typically warn players that bugs happen, and that players' status, achievements, and in-world property may be affected or erased as a result. The details of such a term may, of course, need to be tailored to the types of stuff in your world.

Company does not guarantee that the Service will not harm Player's computer.

Software can fail in worse ways than simply not working. In light of the security problems in modern computers, it is entirely possible for a bug to cause system-wide instability, erase valuable data, or leave a computer vulnerable to hackers. You may not intend any of these results, but it is possible that they might happen. Let us not forget that your client software probably automatically downloads updates. Just contemplate for a moment what could happen if a hacker were able to sneak his own code into one of your updates.

Actually, the more common danger is not that your software *actually* damages some player's computer, but that a player *thinks* your software damaged her computer. Especially when the relevant computer is, by hypothesis, damaged, it can be quite difficult to reconstruct what caused a problem. Either complex software interactions among other stuff running on the computer or plain old user error could cause trouble for which you are (possibly unfairly) blamed. A EULA clause explaining that you are not responsible for damage to computers does the trick. Typically, this clause is folded in with your general disclaimer that you do not guarantee that the software will be error free.

Three particular issues here deserve at least passing mention. First, "virus free" is an increasingly common phrase in EULAs. That is a fairly sensible way of recognizing one common bug scenario—your software may be infected with a virus or backdoor of unknown provenance. A virus might sneak into your software via the reuse of bad code under license from someone else, a malicious employee, incomplete secured distribution servers, or rogue third-party sites distributing modified binaries. It is worth pointing out that you cannot 100% guarantee it will not happen. Any time users

install any software at all on their computer, they need to evaluate the risk of malware. Virtual worlds are no exception.

Second, some kinds of software are riskier than others. *World of Warcraft*, for example, uses a client that aggressively scans the computer on which it is installed for evidence of cheating utilities. Some activists call the client “spyware” for its surveillance; be alert, however, that this kind of aggressive scanning is also riskier in a software-stability sense. If you try to take out cheat programs, you may take out legitimate ones as well. For this reason, Blizzard specifically discloses that its client software engages in this scanning and specifically disclaims any legal responsibility for its consequences. This is smart; if your software poses special risks, you should disclose those risks. Failure to do so can have serious legal consequences; just ask Sony/BMG, which was forced to settle a lawsuit after it installed software on users’ computers to keep them from listening to its CDs using a music player of their choice. The techniques the software used to keep users from uninstalling it created security holes that made the computers more susceptible to viruses and other malware.

Finally, note that these disclaimers are closer to the fringe of enforceability than many EULA terms are. If your software completely toasts players’ computers, you will be an unsympathetic defendant. (You will also have a massive public relations problem and will probably be having business issues attracting players anyway.) If it can be shown that you knew of the risk, or worse, knew but did not care that it would toast some players’ computers, you may have an especially hard time. Some states simply do not allow you to disclaim responsibility under those circumstances at all. Consult your lawyer to understand how much protection the EULA buys you here.

Company does not guarantee that the Service will not harm Player.

For similar reasons, EULAs typically explain that you will not be responsible for harm that players themselves suffer as a result of playing. The issues are mostly the same as those posed by harm to computers, but since it may not be immediately obvious how a world could harm its players, a little discussion of some potential scenarios is in order.

One significant cause of harm—and one that many worlds warn players about in a dedicated clause—is that some players may be jerks. As jerks are wont to do, they may harass, defame, stalk, or grieve other players. (In general, they may do any of the things you tell players not to do in a EULA.) Some of these forms of harm would be grounds for a real lawsuit, so it makes sense to tell players not to engage in them and to warn other players that some players may be jerks.

Another troubling issue is addiction. There are reported cases of virtual world players who have died during extended playing sessions without proper nutrition and rest. Some players may spend too much time in-world, to the detriment of their relationships with other people, their health, and their livelihood. No company has yet been held legally responsible for such addiction, but there are some rumblings suggesting it might some day happen. Designers do often deliberately try to make their

games very engrossing—after all, “addictive” is generally a synonym for “fun” in game reviews. The moral responsibilities of developers (and other players) who make virtual worlds that are not just compelling but *too* compelling are still being worked out. Legal shifts may follow.

Virtual worlds, like other forms of entertainment, might occasionally cause health problems directly. Epileptics have had problems with rapid flashing graphics, and other neurological disorders may be triggered by the illusion of rapid motion through a 3D world. Heavy computer users have wrist and arm problems; also, the eyestrain of looking too long at a monitor is well documented. You are probably not at too much risk unless you have done something specifically and deliberately to exacerbate these problems. And you would not do that, would you?

Company does not guarantee that other players will not harm Player.

An especially important special case of the harm a virtual world may cause a player is the harm inflicted by other players. This possibility, sadly, is inherent in the nature of a shared virtual world. The best you can do is to remind/warn players that other players may be jerks.

There are many variations on the same basic idea; you often see many of them in the same EULA. Thus, anything a player does is that player’s “sole responsibility.” You are not obligated to “supervise” what they do, or to “screen” what they say before they say it. (There are many synonyms. You do not “monitor,” “censor,” “filter,” or “inspect,” for example.) You do not guarantee that what players say is truthful, or that it is not offensive. Even though you are not obligated to monitor what players say, you may remove anything you find objectionable. (But removing something you find objectionable once does not obligate you to do so in the future.) These clauses together stand for the proposition that you can screen or not screen content at your discretion, and that whatever you do, none of the other players can complain to you.

Keep in mind that this does not guarantee that your players will not be doing things that could give them valid lawsuits against each other. Truly and profoundly offensive comments about a player’s offline disability designed to make him or her collapse in tears could make the jerk liable for intentional infliction of emotional distress. The typical EULA is silent about this kind of lawsuit; it is purely between your players.

You May Take Action to Enforce Your Rules

If players do what they ought not, you need to be able to make the punishment fit the crime—both in the sense of giving players who misbehave what they deserve and in the sense of adopting the most cost-effective strategy to deter wrongdoing. The EULA does not sit in judgment of whether a particular reply is the most appropriate one; it just makes sure you have the full range to choose from.

There are three kinds of responses you might want to use. You will want to have the freedom to use at least some responses of all three kinds, even if you do not need

the most severe from any category. In your privileged position running the world, you have the ability to take *in-world actions* against players—up to and including expulsion from the world. You also have the ability to design the world's *software* to your advantage—so that the server (or the client!) automatically takes action against jerks. In extreme cases, you may want to turn to the *legal system* to protect your rights and your powers as a developer. The job of the EULA is to protect you from legal trouble if you choose in-world or software responses, and to make sure the legal system will do what you need it to if you ask.

Company may take in-world action against Player up to and including expulsion.

If someone is a being a jerk, you can warn him, discipline him in-world, suspend him, or expel him. Your rules of conduct and EULA will lay out what kinds of actions are grounds for discipline; your policies will give some sense of what punishment will apply to what kind of wrongdoing. Your EULA should then contain a term making sure players have no legal recourse against you if and when you mete out those punishments.

Which term? It varies. This power is so central that EULAs have developed a handful of different ways to protect it. Many EULAs contain more than one. The EULA may, as suggested earlier, state that you may terminate an account at any time in your discretion. That discretion then obviously includes the choice to terminate accounts as punishment for violations of the rules. The EULA may also more specifically state that you reserve the right to punish violations of the rules (as determined solely by you) with termination. The EULA may state that players have no legal right to continue playing in defiance of your wishes. It may also imply that they have no such right by listing what rights the players *do* have and then stating that players have no rights beyond those stated. Reasonable lawyers may choose different solutions. For present purposes, though, remember this: *No court has ever forced a virtual world to continue providing service to a rule-breaking player.*

Company may use technical measures to enforce this EULA and the Rules of Conduct.

Some classes of jerks can be dealt with automatically. For starters, you have enormous design freedom to make a world that encourages or discourages griefing. If your world gives players good tools to avoid or deal with jerks, jerks may not flock to your world in such numbers in the first place. Similarly, you could try to write software that makes some kinds of jerky behavior impossible. Well-enough run servers will not be hacked. Cleverly designed chat systems can minimize harassment; Disney's *Toon-Town*[™], for example, uses identity-management techniques to make sure players cannot spew their mouths at strangers in order to protect their younger audience.

These basic design freedoms are so fundamental that you rarely see EULA terms protecting them. Instead, they are treated as natural implications of other terms. If you can

ban players for any reason, if players are free to quit at any time, if playing other than allowed by the software is forbidden, if you do not promise that the software will work, if players do not have any ownership rights in the world . . . all of these ifs naturally imply that players have no legal right to complain about your design decisions. Once again, reasonable lawyers will lean on different supports. Occasionally, a well-written EULA will make this freedom explicit, but many other well-written ones do not.

Technical measures that involve surveillance function a little differently. You could program your server software to monitor actions in-world and alert you to troubling conditions. Thus, you might keep track of players whose wealth suddenly spikes, as such spikes suggest the use of exploits. You might also keep track of players who are repeatedly triggering profanity filters (which would suggest they are looking for misspellings that will slip by). By simply detecting the wrongdoing at first instead of automatically disallowing it, you can gather more evidence of what they are up to, and perhaps avoid letting players know exactly what you can and cannot monitor. You might even wire this monitoring up to automated responses—for example, after 10 unprovoked attacks, you will automatically suspend an account for unwanted PvP as soon as *any* other player complains about them. These techniques can involve interesting blends of human and automated response. They also may raise privacy concerns, so you should think about them in relation to your privacy policies.

You could also use your client software to monitor what else is running on the player's computer. Some call it "spyware," but it can also be a form of "digital rights management" if you are trying to prevent your software from being used in unauthorized ways. This kind of technical measure—especially if it takes automated action against players whom it catches using forbidden software—raises several issues. First, it risks damage to the player's computer, as mentioned previously. Second, it raises privacy concerns as discussed later. Third, it can be deeply unpopular with some of your players. Because of these issues, client-side technical responses virtually demand their own EULA term that discloses the issues and requires that players consent to such software's use.

Company may take legal action to enforce this EULA.

For the truly obnoxious jerks who cannot be dealt with any other way, there is legal action—or, at least, the threat of legal action. Lawsuits should not be anything but your absolute last resort. They are slow, risky, unpopular, and shockingly expensive. The process of going through one will probably be bad for business and worse for development and morale—it is *not fun* going through the discovery phase of a lawsuit and it is *not fun* doing the things your lawyer will tell you to do if you want to look sympathetic in court. In Charles Dickens' words, "Suffer any wrong that can be done you rather than come here!"

Still, sometimes there is no choice, and at least most jerks are not anymore eager for a lawsuit than you are. You *must* have the option to call on the legal system for aid, and thus your EULA *must* make sure you have that option. Fortunately, this is not

that hard. Most of the really important reasons for a lawsuit are either inherent in the nature of a virtual world or inherent in the nature of a EULA. Indeed, some EULAs do not contain any clauses specifically giving you the right to bring appropriate lawsuits. Some EULAs do; these clauses are often in the nature of warnings that particular violations could have particularly drastic consequences.

For misconduct that you need to stop immediately or has a demonstrably high price tag for you, a *civil lawsuit* is one possibility. This would be a “you vs. them” suit against the jerks. Picking your targets carefully is essential. As an example, the RIAA’s lawsuits against file-sharing companies are much easier than its lawsuits against individual file-sharers; there are far fewer defendants, each of whom is more vulnerable to legal action, and each lawsuit produces more tangible results. If you have a problem that can only be solved through litigation, try to make sure you really are suing the jerk causing *the most* trouble. Finally, keep in mind that suing your customers may hurt your reputation, even if you are doing it to improve the overall quality of play.

For a few particular kinds of misbehavior, *criminal prosecution* is also a possibility. The FBI takes a keen interest in hacking and other computer crimes where substantial losses or national security are involved. The Secret Service and other federal agencies may also be involved. State law enforcement arms will also be attentive to large-scale fraud. Your lawyer will know whether particular misbehavior is potentially criminal and which agencies would be worth contacting.

Note that a criminal prosecution is under the government’s control, not yours. That means that they will make the decision whether the case is worth pursuing; if they decide to let a case go because a particular jerk is small fry, that is the end of the matter. (They will not look kindly upon your wasting their time if the fry is obviously small.) That also means that the actual control of the case will be out of your hands once they decide to pursue it. Your cooperation may be essential (and necessary to convince them to file charges), but they will drive it, not you. Their top priority will be punishing your jerks to send a signal to other potential cyber-perps, not ensuring the maximum success of your world.

We will return later to further terms of the EULA that affect procedural details of the actual litigation process.

You May Make Changes

A virtual world is a service, not a product. The operations work is never done, and neither is the programming work. As your players’ needs and business realities change, so too will your design. You will always be learning new things that can improve your world; you will always be making tweaks. Your EULA *must* preserve your freedom of action to modify your operations. That means you must be free both to make changes to the world and to the EULA itself.

Company may modify the Service at will.

Your right to make changes to the world resembles your right to use in-world punishments and technical measures to deal with misbehavior. Indeed, it could be considered the general principle from which those more specific rights are derived. The critical distinction is that you will need to be able to make changes even when no player has done anything “wrong.” Making design changes and fixing bugs is a normal feature of running a virtual world, even when everything is healthy and thriving. The right to make changes also includes the right *not* to make changes. A player may be upset that his character has lost key assets, or may just think that some other character class should be nerfed. You can refuse.

Most EULAs give you this right by way of a double negative; they *do not* give players the power to *stop* you from making changes. If players do not like the new shape of the world, they should stop paying and stop playing. Many common EULA terms are, however, relevant to your right to change the world. Your right to terminate access for any reason suggests that you have the right to change what players have access *to*. Explicit disclaimers of any player ownership over the world or its contents also imply that players have no right to stop you from making changes.

In some countries, designers’ absolute control over their worlds is under assault. Chinese and Taiwanese courts have ordered virtual world designers to restore to players items lost through fraud or the designers’ negligence. These rights, however, have tended to be quite particular—and aimed at restoring a player to the position he was in before some wrong was done him. So far, there has been no suggestion that a designer would not be free to remove certain content from a world entirely.

You should be careful with changes to the world that could lead to accusations of insider trading. Regardless of your legal rights, any suggestion of impropriety is bad for morale. If you buy and sell assets within the world to your players, changes that affect the value of those assets may alienate players. If you sell a player expensive content and then significantly change it, be prepared for claims that you deliberately concealed your plans to extract a premium from unsuspecting players. The more transparent your trading practices, the less the danger.

Company may make changes to this EULA.

EULAs need to change, too. New court rulings and laws will require new terms. Old terms may need to be updated with new terminology. Changes to your design and business practices may require modifying terms to track what you actually do. You may discover a bug in the legalese. Your EULA *must* allow you to change the EULA itself. Most EULAs therefore contain a term giving the developers the supposedly absolute right to make any changes they want to the EULA.

There are, however, some qualifications to this “absolute” right. A truly open-ended right to change would be both morally and legally problematic. A change to the EULA stating, “Player shall pay the Company \$1,000,000 per second of playing time,” would bankrupt some players if enforceable. Thus, all EULA-change clauses

contain some provision giving players notice of any changes and an opportunity to opt out.

First, notice. Any changes to the EULA should be posted to the EULA itself. (And the EULA should explain that any changes will be posted there.) To make sure players read it, in theory if not in fact, the EULA will then require players to check the EULA periodically for any changes. A change log of modifications to the EULA is a sensible idea. More aggressively, it can be a good idea to email players that the EULA has changed, and tell them in what ways. You can even show players the new EULA when they log in again and require them to click on “I Agree” again.

Second, opportunity to opt out. You are not currently required to give players who do not want to play under a revised EULA anything more than the opportunity to stop playing. Many EULAs quite sensibly explain that players who do not like the new EULA can and should go through the normal account cancellation process. Another normal practice is to state that continued play after a revision constitutes consent to the new terms. The technique of showing players the new EULA and requiring them to click on “I Agree” has the advantage of getting players to agree directly to the new terms, instead of bootstrapping through the old ones.

Some major commercial institutions follow an even more cautious policy. They tell their users well in advance of upcoming changes—as much as 90 days in some cases. They then require the users to give affirmative consent to the new terms before the end of that period, or else their accounts will be automatically closed when the new terms take effect. These rollouts are often accompanied by FAQs that carefully explain the changes. If your world invites significant investment, you may want to consider this kind of deliberate, careful transition.

Terms Staving Off Legal Trouble from Third Parties

We come now to terms that do not directly deal with the relationship between you and your players. We have talked about duties you do or do not owe your players, and duties they do or do not owe you. The duties in this section are different—they are duties that you and your players may or may not owe to third parties. Failing to honor those duties could cause legal problems for you. Thus, the EULA will contain provisions that try to head off these third-party problems early. First, we will talk about what your players need to do to avoid trouble; then we will talk about what you need to do. As a finale, we will talk a bit about privacy issues—governments are taking an increasing interest in online privacy issues, so that your treatment of your players’ personal information can have significant consequences.

Players Are Required to Respect Third-Party Rights

Many laws that apply to conduct in the offline world apply to conduct online. Many of the things your players could do to harm others offline they can also do online. And some of the things your players could do online could open you up to liability from nonplayers seeking to hold you responsible for the misdeeds of jerks.

Now, there is some bad news and some good news here. The bad news is that nonplayers, by definition, are not parties to your EULA. They did not agree to take the risk that something bad would happen to them from playing in your world. They were just minding their own business when the world and its players came out of the blue and hurt them.

The good news is that because nonplayers, by definition, are not in-world, it is not usually as easy for players to do harmful things to them. Many of the obvious categories of harms are already prohibited by the terms in your EULA that keep players from doing harmful things to each other. (Thus, for example, telling players that they are not allowed to defame people includes defamation against both other players and nonplayers.) There is no particular reason to keep these EULA terms restricted so that they only protect other players.

In this section, we will talk about a few particular nonplayer issues in more depth:

Defamation: What are your responsibilities when your players insult or lie about nonplayers in-world?

Intellectual property: What are your responsibilities when your players violate third-party IP rights?

Criminal laws: What are your responsibilities when your players do things that could get them fined or jailed?

Indemnification: What can you do to recoup your losses if one of your players does cause you third-party legal trouble?

All communications are made solely by players and are not the position of the Company.

You do not generally need to worry that nonplayers will be insulted, defamed, offended, distressed, or freaked out by things your players write in-world. It is not that your players will not sometimes try to insult, defame, offend, distress, and freak out nonplayers. No, it is just that legally speaking, such things are not your problem.

Thank Congress. *Section 230 of the Communications Decency Act of 1996* says that you will not be treated as the “speaker or publisher” of any information provided by an “information content provider.” In effect, it means that when information flows through your system because someone else provided it, you will not be treated as having said it. That protects you from liability for “saying” the things your players say. But wait, there is more! The next part of Section 230 *also* immunizes you for any “good faith” censorship of objectionable material. Thus, you cannot be held liable for deciding to go ahead and remove pornography and harassing messages from your world. Thus, Section 230 protects you from liability both for too little screening and too much.

Section 230 could, however, fail you when *you* actually originated the objectionable content or when your filtering was actually in bad faith. If you republish the objectionable content yourself—say by quoting it in your monthly best-of-world

newsletter—you could also be held liable. Avoiding such situations is mostly a matter of using basic good judgment (e.g., do not send broadcast messages to all players saying nasty, hateful things you know to be false) and having good supervision (e.g., do not let your employees broadcast these messages, either).

Player will not upload content that Player does not have permission to upload.

Welcome to the ugly world of IP infringement. (Section 230 is, by its own terms, inapplicable here.) Napster had to deal with it and failed. Google and Yahoo! have to deal with it on a daily basis. Now you have to deal with it. If your world has any facilities for content upload or player communication *at all*, you will have to deal with the possibility that players could upload or communicate something protected by IP. They could create IP issues by making their costume look like a trademarked logo, typing the text of a novel in as dialogue, or uploading a billboard texture that looks exactly like a copyrighted painting. If your world has rich multimedia, they could be introducing someone else's audio and video and thus infringing copyright, and so on.

The first thing you should do is tell your players not to infringe others' IP rights. A "do not upload infringing content" clause is standard, and it generally belongs with other "do not be a jerk" clauses. Indeed, it is sometimes phrased as a "do not infringe IP or other third-party rights" instruction.

Beyond that, the rules of IP liability are complex and shifting. They probably have changed in some respect between when this chapter was written and now. Realistically, you need to be prepared to deal with copyright and trademark issues. Of the two, copyright is far and away the more significant.

The Company will respond to DMCA takedown notifications as follows . . .

The Digital Millennium Copyright Act, or DMCA, contains a complex and interlocking set of immunities and rules dealing with the copyright responsibilities of online services. These "Section 512" rules provide, in effect, that you are guaranteed not to be considered a copyright infringer yourself as long as you follow certain "safe harbor" procedures. If you do not follow the procedures, you might or might not be liable, depending on the specific facts. It is much safer to follow the safe harbor procedures. Follow them.⁶

You have basically no copyright liability for anything that merely passes automatically through your systems and does not stay there (with the exception of some cached copies to transmit the content to all the users requesting it). The rules are that the transmission has to be automatic and you cannot modify the content. Thus, for chat channels, you are usually in the clear. The actual statute⁷ is quite technical, so you should clear the exact details of your architecture with your lawyer.

Things are trickier when it comes to content that is stored on your systems. That category would include pretty much any "uploaded" content—something that becomes part of the virtual world, is stored on your servers, and can be accessed by other players.

Here, once again, you are generally not liable, but now the conditions are much more stringent.

First, as soon as you find out that uploaded content is infringing, you need to shut off access to it “expeditiously.” Second, you need to pass the vicarious infringement standard—see the next section to understand what that means. Third, you need to have a policy for dealing with “repeat infringers.” That means if you find out that someone is infringing copyrights repeatedly, you need to terminate his or her accounts (and you need to inform your players that you have such a policy).

The most important of the conditions is the notice-and-takedown rule. It requires you to maintain an address—both physical and electronic—at which copyright holders can send you notices of infringing content in your world. The address should be prominently displayed on your site, either in the EULA itself or in a corresponding DMCA page. You *must* actively monitor that address and act promptly if you receive a notification at it. (AOL lost the protection of the DMCA safe harbor in a copyright lawsuit brought against it by the author Harlan Ellison, in part because it let messages to its DMCA address pile up without paying attention to them.)

Loosely speaking, a valid takedown notice must contain enough information to find the content and a sworn statement that the content actually is infringing. Once you get a properly detailed notice, if you want to retain your safe harbor, you *must* disable access to the content. Leave the content up, and you are taking your chances with a copyright infringement suit.

At this point, you are also safe from a lawsuit by the uploader. To preserve that safety, you need to tell the uploader what you have done. The uploader now gets a chance to submit a counter-notification—basically a sworn statement that the content is *not* infringing. You then need to take *that* notification back to the original complainer. If the complainer does nothing, you put the content back online. If the complainer tells you that he, she, or it has filed suit against the uploader, you leave the content offline. (The DMCA has the full grisly details.)

What this process does is get the complainer and the uploader to play a game of chicken. If one of them backs down, you can do what the winner says to do. If neither of them backs down, the whole thing ends up in a lawsuit between the two of them, who are really the parties with something at stake. Either way, you are out of the picture. Play by the safe harbor rules and you will not get hurt.

Secondary Liability

Unfortunately for you, playing by the DMCA rules is not enough to shield you completely from IP trouble. That is because of something called “secondary liability,” which is a legal term for what happens when you are not the one directly doing something wrong, but you are closely enough involved with it that the legal system will hold you accountable for it. Thus, for example, if a store clerk hits you, the store itself obviously did not hit you, but might be secondarily liable for employing the clerk, for having a policy encouraging clerks to hit customers, and so on.

You do not need to worry too much about most kinds of secondary liability. Secondary liability for defamation, for example, would require that you have acted to encouraged a player to speak falsely or that you have directly profited from the defamation. Unless your customer service guides have decided to foment chaos, neither is particularly likely. The usual wrongs that could be committed in-world are so obvious that you will typically be trying to stop them, rather than encourage them.

Intellectual property is different. Infringement can be loads of fun (and profit) for the people doing the infringement. Communities dedicated to lots of infringement can be very popular. In the early days, Napster was *busy*—people regularly left nice messages for the people whose MP3s they copied. If your world were to get a reputation as a place where players can just scoop up tons of great (if infringing) content, that would probably draw more players. It is not at all implausible that some virtual world would actively encourage players to infringe third parties' IP. That is exactly what happened to Napster and Aimster and Grokster—they were not copyright infringers themselves, but they got hit on *secondary* liability because their systems were designed and marketed to encourage copyright infringement. Some virtual worlds have relatively lax policies about IP infringement and may be next to fall under similar circumstances.

Copyright

There are two kinds of secondary copyright liability. The first is called *vicarious* copyright infringement. A vicarious infringer has (1) the *right and ability* to control users, and (2) a *direct financial benefit* from the infringement. The dangerous part about vicarious liability, from your perspective, is that you do not need to know about a specific act of infringement. The second kind is *contributory* copyright infringement. A contributory infringer (1) *knows* of the infringement, and (2) either *induced* the infringer or provided *actual assistance*. These are both high hurdles.

Two Supreme Court decisions, *Sony Corporation v. Universal City Studios*⁸ and *MGM v. Grokster*⁹, have provided further guidance on these standards as they apply to businesses like yours—those who make technologies that could be or are used by others to commit infringements. *Sony* created a test of “capable of substantial non-infringing use”—that is, if your technology can be used for things other than infringement, you cannot be held liable for secondary copyright infringement.

Grokster, however, indicates that this is not the end of the matter. First, the opinions in *Grokster* were multiple and murky; it is not clear how much non-infringing use is “substantial” and whether the technology must *actually* be used for such purposes or merely be *capable* of such uses. Second, there is another analytical prong, which makes liable “one who distributes a device with the object of promoting its use to infringe copyright, as shown by clear expression or other affirmative steps taken to foster infringement.”

Where does this leave you? Consult your lawyer. In general, you should do your best to make sure of two things. First, you should protect yourself under *Sony* by making your world fun and useful for things that are not copyright infringement. That

should not be too hard; presumably, that is why you are making a virtual world and not, say, a peer-to-peer file-sharing system. Second, you should protect yourself under *Grokster* by not encouraging your users to use the world to infringe copyrights. That means not marketing it in terms that even indirectly suggest infringement and not giving them easy instructions for committing infringement. Any further advice would have to depend on what your world actually enables.

Trademark

If you yourself do not put known trademarks in your world, you are probably not a direct trademark infringer. There have been attempts to argue that some features can amount to direct trademark infringement if they direct users to create characters or other content that resemble trademarks from outside the game. So far, however, these attempts have been defeated by lawyers representing developers of virtual worlds. The makers of *City of Heroes*[™] won a judicial ruling that their character creation system—which could be used to create characters resembling familiar superheroes, among many others—did not infringe on trademarks held by Marvel Comics. For the time being, you are on generally safe ground as long the content you put in yourself does not itself come close to existing trademarks.

Trademark infringement also comes in secondary flavors, just as copyright infringement does. Honestly, however, you do not have as much to worry about here. The biggest direct trademark infringers are people who make counterfeit goods. The biggest secondary infringers are people who close their eyes to massive trademark piracy or actively encourage it; for example, the operators of swap meets at which many goods with counterfeit trademarks are openly and brazenly bought and sold have been held liable as secondary infringers. Without the massive direct trademark infringement of the sort that counterfeiters engage in, the danger of secondary infringement does not loom as large.

The most important thing for you to do is to respond appropriately if you receive reliable evidence that some player is infringing a trademark in-world. Opening a “McDonald’s[®]” food stand in-world might be kind of cute, but when a player is using it to draw in other players as customers, and cashing in the profits for real money, then you are creeping into infringement territory. The blatant commercial for-profit trademark-infringing player should be stopped.

The legalities of other scenarios are not well defined. Players may or may not be committing trademark infringement if they use trademarks in-world but do not “cash out” any profits. Lawyers have varying opinions. It is probably safer on your part to stop them, but that would also constitute appeasement toward trademark holders, whose demands will only increase. Consult your lawyer if the issue arises.

Player will not violate any criminal laws.

This rule, like most other anti-jerking rules, is obvious as a condition imposed on players. The complications arise because being a jerk to the government is different from being a jerk to J. Random Bystander. The government is not a good third party

to tick off. The government can squash you like a bug if there are criminal violations involved. Thus, in addition to this fairly basic EULA term, you should be careful not to get swept up in any criminal activity taken part in by your players.

Most of this should be complete common sense. If you find out that your players are conspiring to do something seriously illegal such as murder someone in the offline world or swap child pornography, you have a moral obligation not to turn a blind eye. Whether you should go to the authorities, disable their accounts, or take some other action depends on what they are doing, how dangerous they are, and whether you would be tipping them off. Absolutely, under no circumstances, should you *help* your players commit crimes.

You should also sanity-check your operations against several important classes of criminal laws:

Gambling is against most states' laws; precise definitions vary. Cautious evaluation may be necessary where your world contains both clear games of chance and the possibility of cashing out in items of real-life value.

Anti-pornography and anti-obscenity laws—although strongly hemmed in by the United States by the First Amendment—do have some bite. If you find out about obscene content uploaded by players, you may have affirmative obligations to remove it, depending on the details.

Stalking, harassment, and fraud are plausible player-to-player crimes, but it is hard to see how a company could be implicated in them without some significant wrongdoing by its employees. For privacy reasons as well as criminal ones, you should be careful with players' personal information; do not be an unwitting accomplice to stalkers and identity thieves, and especially do not let your employees turn into them, either.

Player will indemnify Company.

Your ace-in-the-hole countermeasure against players who get you into legal trouble is the indemnification clause. "Indemnification" means paying someone else's legal liabilities. Your car insurance company indemnifies you if another driver sues you. You require players to indemnify you for the lawsuits against you that they cause.

In an indemnification clause, the player promises to pay you back for anything you lose as a result of being sued because of the player's misconduct. Breach of the EULA is often one condition—if the player's breach causes you legal trouble, indemnification kicks in. But "use" (or "use or misuse") of the service is also a common trigger. That means *anything* caused by the players' conduct in the world that causes you legal trouble requires them to pay to fix the trouble.

Most indemnity clauses require the player to "defend, indemnify, and hold harmless" (in some order). "Defend" is the word with a surprising meaning—this means that the player will not just pay what you are ordered to pay by the court, but also pay for your lawyers, and even find and hire one for you.

For all of this, while a EULA indemnification clause is a sensible piece of good planning, it is more likely than not to be useless in practical terms. Like it or not, your company is richer than the average player. If a player who causes you legal trouble with a third party is rich enough to make good on the indemnification, well, you are exceedingly lucky. In fact, you will be lucky to recover enough from your average player to make it worth your while even to invoke the indemnification clause. Only in rare circumstances will the clause make a difference.

Company Is Required to Respect Third-Party Rights

You have an obligation to respect third parties' legal rights at all times. You cannot (usually) eliminate this obligation through the EULA. The point of dealing with your third-party obligations in a EULA is to make sure you are *able* to respect third parties' rights. You do not want to get caught between a rock and hard place, forced to choose between violating your obligation to your players and your obligation to third parties. EULAs typically contain several clauses warning players that you will do what you must to avoid infringing third parties' rights and requiring players to consent that anything you do for them is subject to those rights.

Many kinds of these third-party rights are folded in with your own rights. Thus, for example, if you have licensed IP to use in your software or your content, you will probably have had to agree to take reasonable measures to keep others who receive it from you from using it in unlicensed ways. The same clauses that require players to recognize your IP rights will also require them to recognize the IP rights of your licensors.

Some third-party rights, however, are not matters you would much concern yourself with were it just you. These rights impose more intrusive duties on you, duties that can affect your relationship with your players. In addition to a general statement, often implicit, that you will comply with all applicable laws, EULAs regularly contain specific statements about a few common cases. The most common come from those third parties par excellence, governments. In this section, we will talk about two of the most common: court orders and access restrictions.

Company will comply with court orders.

When a court orders you to do something, you *must* comply. (You can appeal, but unless you get a "stay" of the order, something you are not guaranteed to get, you must comply with the order while the appeal is pending.) Disobeying a court order is contempt of court, and the court will do whatever it takes to make continued disobedience less attractive than falling into line. That could include large and exponentially increasing fines, shutting down your world, and even jailing you until you obey. There are many procedural protections to make sure court orders are not entered lightly, but when the gavel falls, it *falls*. EULAs therefore regularly contain clauses indicating that the company will obey court orders. Players are on notice that their (limited) rights under the EULA are subject to court override.

While court orders could conceivably cover any topic in this chapter (or still others), the most likely scenario (and one frequently mentioned in EULAs) is an order demanding that the company turn over information about a player. That could include information about the player's offline identity or information about the player's in-world activities. These orders could be part of a criminal investigation, an outgrowth from a civil lawsuit, or an administrative procedure. Whichever they are, your privacy policy will have to yield to these orders.

This is not to say that you cannot protect players' privacy (or other rights) in the face of outside demands. The procedural protections involved depend on the sort of court order involved. Sometimes, you can tell the player about the order, sometimes you must, and sometimes you must not. Sometimes, a player can intervene to block the order; sometimes you can intervene on your players' behalf if you like; sometimes neither of you can. If and when you get notice of a search warrant, subpoena, or other such order, always consult your lawyer.

You can, in theory, choose to have your EULA commit you to taking steps to protect your players' rights to the extent you can. This tactic is not currently used by any major virtual worlds. It is much more common to remain safe by stating that you retain the unrestricted right to give information about players to any governmental agency or third party as necessary to resolve problems.

These are matters of choice. The ethics of when you should protect your players and when you should rat on them (or otherwise abandon them to their fate) are complicated. In many cases, protecting them is both the right thing to do and an attractive business move. In others—especially where they have been willfully abusing their place in your world to commit crimes or harm others in breach of the EULA—you do not owe them anything. Whatever your policy, you should set it at the highest level. This is not a matter to be decided by whomever opens the mail.

Company will respect local rules on access to the Service.

Governments, national and local, in the United States and around the world, have all sorts of different laws about access to certain kinds of content. It may be illegal for certain residents of certain places to access your world (or parts of it); it may be illegal for you to allow them to access it. Your EULA will contain several clauses telling these people to go away, that they are never licensed to enter your world.

The extent to which you must actually follow up on that restriction varies. You might just be required to ask players questions about their age, location, and so on. If they lie to you, it is not your problem. On the other hand, sometimes you might be expected to be more aggressive in using technical measures to check up on their answers—for example, to supplement an age question with proof of a credit card, or to supplement a location question with screening based on IP address. Consult your lawyer for details.

Here are the most common forms of governmentally mandated restrictions:

Age: In the United States, the Children's Online Privacy Protection Act (COPPA) generally makes it illegal to collect personal information from children under 13 without their parents' permission. In practice, this means that you will probably want to bar all players under 13 from signing up; if children want to play, their parents must open the account. Similar, although sometimes less completely restrictive, rules may often apply to children under 18, especially if parts of your world are zoned as unsuitable for children.

Location: You may make a world that is either entirely or partially illegal to play in some countries. Dr. Richard Bartle's examples of educational virtual worlds—worlds that force players to confront some of the great horrors of history to learn not to repeat them—although well-intentioned, might run afoul of some countries' hate speech laws. Adult-themed, sexually oriented worlds would not pass muster with official censors in other countries. You may not need to call out the particulars in your EULA, but you should include a clause stating that players cannot play if it is illegal to do so in their jurisdiction.

Export restrictions: Some countries go even further and make it illegal to join a virtual world from *other* countries. The United States, for example, currently designates Cuba, Iran, Libya, North Korea, Sudan, and Syria as state sponsors of terrorism and forbids exports to those countries of "dual-use items" that have both military and civilian applications. And yes, the advanced technology in a virtual world could sometimes be considered a dual-use item—typically, such technologies include strong cryptographic components. Certain EULAs, therefore, flatly forbid nationals of those countries from using the world or downloading the software (and forbid anyone else from doing it for them).

Privacy Policies

Information privacy law is a subject unto itself. There are entire *books* on it. It would be impossible to get into all of the relevant details here. Instead, we will focus on a few salient points:

- The sources of law are many.
- You should have an explicit privacy policy.
- Your privacy policy should cover certain standard subjects.
- Your privacy policy should adhere to certain standard best practices.
- You should comply with your privacy policy.

Information privacy is covered by a tangled web of laws. In Europe, the EU Data Protection Directive requires that individuals be able to access personal data you hold about them and that your use of the data complies with principles. The national legislation implementing the directive varies from country to country. In the United States, there is no overarching single piece of privacy legislation. Federal laws cover the use of

personal information about children (COPPA), health care (HIPAA), financial services (GLBA), and other specific subjects. Some states have laws that penalize violations of stated privacy policies. California has a law requiring that you disclose privacy breaches affecting personal information. Your obligations under these laws vary based on what kind of information you collect and where you do business. This is absolutely a situation in which to consult your lawyer.

A prominent privacy policy is sometimes a legal requirement but always a good idea. It increases player confidence to have one. It gives you a head start in case of privacy trouble. It forces you to model your use of data, to audit your actual handling of personal information, and to figure out your company policies on how you will work with player-provided information. All of these exercises are prudent system design points, will improve your security, and will help you understand your business better. The policy should be in clear English, not legalese. A number of organizations will certify members' privacy policies and privacy practices. The Entertainment Software Ratings Board's Privacy Online Program is designed for online game Web sites. Unfortunately, there are not yet any similar organizations specifically focused on virtual worlds.

Your privacy policy should discuss a standard basic set of issues. You should distinguish between personal information, nonpersonal information about a particular player, and aggregate information about players in general. You should discuss what information you collect about players, when you collect it, how you use that data, with whom (if anyone) you share the data, and how you protect the data. You should discuss players' ability to review and change personal information and what happens to their data when they quit. You should tell players what their options are (if any) to control how you use their information. You should tell players how to contact you with questions.

Some basic good practices are either required by most certifying organizations or are matters of respect for your customers. You should not collect information you will not reasonably use, and you should not use information you do not really need to. If you want to send marketing emails to players or to provide their contact information to third parties, you should give players the choice of whether to be contacted or to allow third parties to receive their information. Choices should be opt-in, not opt-out. You should have an employee whose job includes watching for privacy issues and responding to player privacy concerns. You should store personal information in a way that prevents your employees from accessing it without a valid business reason. You should audit your use of player information regularly to make sure you really are complying with what you think your privacy practices are.

Finally, if your privacy policy threatens to get out of sync with your business needs, look closely at the divergence. Perhaps your business "need" is less urgent than you think and you can keep yourself in full compliance. If that is not the case, then change your privacy policy to reflect the new needs. Be as open and candid about the change as you can. Do not, repeat, do not simply ignore your privacy policy. If you are caught breaching your own privacy policy, the PR fallout will not be pleasant.

Further Horizons

You should now be able to recognize about 95% of the terms in a standard virtual world EULA, understand approximately what they do, and know why they are there. This section is about the remaining 5%.

Some virtual worlds are pushing outward the frontiers of design possibilities. Innovative design decisions often require innovative EULA terms. Experiments in redefining the relationships through which a company and players create the shared social space that is a virtual world often require new terms that lay out the legal baseline for new kinds of interaction.

Unfortunately, to discuss the issues raised by these terms in anything approaching the level of detail we have used for the common-case 95% terms would require another chapter as long as this one. The issues are often complex, controversial, and open ended; there are often many different legal answers (with different design consequences) to any given question. Moreover, these terms are less common and less uniform. Everything written here would pertain to fewer virtual worlds than the previous discussion.

Therefore, instead of going into the details of these active frontiers, this will be a brief overview of them. At the moment, four kinds of design questions can require new and innovative EULA terms, depending on the answers. If you are reading a EULA and you see a term you do not recognize, ask whether it maps onto one of these questions. If you are building a world that explores one or more of these questions, you are definitely in consult-your-lawyer territory.

First, there is *player-created content*. How, if at all, does the world deal with the problem of players creating content that is of low quality? How, if at all, does it deal with the problem of players creating content that is harmful to the world or to other players? Can players create content complex enough to qualify for IP protection? If so, what happens to the IP rights? Are players required to assign some or all of those rights to the company? Are players allowed to use IP rights to prevent other players from using the content in-world or in certain ways? If the players leave, what rights do they have to the content they created? Does the world contain an in-world IP system that uses different rules from would apply outside?

Second, there is *virtual liberty*. How does the company reassure players that its power over the world will be exercised fairly? How does the company deal with criticism, both in-world and outside of the world? How, if at all, does the company help players resolve their disputes with one another? How does the company keep dispute-resolution mechanisms themselves from being used as griefing tools? What mechanisms does the world provide for players to form healthy communities and manage their own affairs? What control, if, any, do players have to shape the world itself? Do players have any legal or technical control over the actual running of the world and the actions of the company? Is there even a company at all, or just a distributed group of players?

Third, there is what game designers call the *magic circle*. Virtual worlds are always partly connected to the offline world and partly distinct from it, but does this world emphasize the connection or the distinction? How, if at all, does the world encourage or require players to role-play? Does the world contain safe spaces? Does the world contain features designed to mirror certain aspects of the offline world? How does the world ask or tell players to manage the relationship between their real identity and their in-world character? To what extent does the world's internal economy resemble the offline world's economy?

Fourth, there is *virtual property*. What kinds of in-world resources can players' characters gain control over? What guarantees, if any, does the world provide that those resources will not be altered or deleted? How does the world encourage or discourage players from transferring or trading these resources in-world? How does the world encourage or discourage players from transferring or trading these resources for real-life money? Does the world have institutions that assist in trading in-world resources? Does it attempt to prevent the formation of such institutions? Are any of these attempts backed up by legal action, or just by in-world sanctions? How, if at all, does the world respond to disputes between players over particular trades gone wrong? How, if at all, does the world respond to differing player attitudes toward play driven by profit-making?

Conclusion

If this all seems like a lot, it is. There are many details to virtual world law, and it is all remarkably interconnected. Your consultation with the lawyer who drafts your EULA is going to have to touch on many topics. With any luck, though, thinking through the legal issues will help you clarify your world's design and your business plan. If you and your lawyer do your jobs well, your relationship should be a long, calm, profitable, and peaceful one.

Endnotes

1. *Blacksnow Interactive v. Mythic Entertainment, Inc.*, No. 02-cv-00112 (C.D. Cal. 2002). Mythic's ability to force the case into arbitration was sufficient to cause Blacksnow to drop the suit.
2. Adult-themed worlds, of course, may be another matter. The list of things that might happen to players is longer and more inclusive for some worlds than for others. That said, do not be a weissenheimer about treating players' willingness to join your world as "consent" to absolutely anything that happens in-world. Every world has some boundaries.
3. A nice consequence of such a term is that merely requiring players to *respond* when asked a question is a useful test for "players" who are in fact using automated scripts. Expecting players not to go AFK for too long while playing is an occasional rules of conduct device.
4. *Davidson & Assocs v. Jung*, 422 F.3d 630 (8th Cir. 2005).

5. “Act of God” is another common term for such things (although it seems unfair to attribute only the tornado to God and not all of the little things that go right). Why have both kinds of clauses? Belt and suspenders.
6. Actually, because the safe harbor errs on the side of being overly censorious, there is a good ethical case that you *should not* always follow them. If you believe that you want to push back against overreaching copyright holders, consult your lawyer, and figure out exactly how and when you will stray from the safe harbor. But this is not a path for the timid or the unadvised.
7. 17 U.S.C. 512(a)-(b), for the lawyerly types in the audience.
8. 464 U.S. 417 (1984).
9. 125 S. Ct. 2764 (2005).