

# User Perspectives on Terms and Conditions in Virtual Worlds<sup>1</sup>

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## Abstract:

This Article explores terms and conditions (T&Cs) for virtual worlds through the lens of user perspectives. The original, qualitative empirical research via 22 semi-structured interviews and 124 survey responses explores topics including digital terms and conditions, copyright and creativity, loot boxes, and online cultures. This first Article based on this data examines users' understanding, motivation, and compliance with T&Cs in a persistent online community. Although it is well established that users largely do not read online T&Cs prior to acceptance, complex online social spaces, such as Massively Multiplayer Online Games (MMOs), necessitate equally complex legal and technological dynamics. These virtual worlds can be difficult to infiltrate and analyse without active participation and a deeper understanding of the social mores and technical tools of the specific space. Therefore, obtaining valuable data from users in this context is a rare resource for law and industry. This Article and the following series provide some insight into user understanding of the law in these areas.

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## I. Introduction

Both mundane and important daily social and cultural activities increasingly take place online on private, corporately owned platforms. In addition to statutory law and regulation,<sup>2</sup> users are ever more governed by their contractual assent to adhesive terms and conditions ('T&Cs'). Valid contractual agreements, including these T&Cs, traditionally and technically require a full understanding and assent to the terms. As technology evolved, so did the substance and delivery of valid T&Cs.<sup>3</sup> To ensure continued validity and enforceability, T&Cs must still consider user understanding contractual capability, bargaining power, technological and legal literacy, and overall fairness.

The user perspectives in a society that is highly digital are essential to communicating the T&Cs clearly but also to allow informed decision making in virtual worlds, which can model sites with wider social uptake that serve a broad range of societal and cultural functions. This study focusses on the user perspectives directly. As a general note, the legal and scholarly sources throughout will be broadly common law based and focussed in the jurisdictions of the majority of the study respondents to contextualise the empirical data and global nature of the platform, rather than focussed on one specific jurisdiction's deeper nuanced structure. Even in the context of varying legal systems, user perspectives and concerns regarding virtual spaces have demonstrated a degree of perspective commonalities amongst users.

In one type of virtual space, massive multi-player online gaming (MMOs) platforms, communities have experienced significant growth over the past decades as access to technology and the sophistication of MMOs have evolved. These spaces facilitate communication, support, and collaborative creative works globally. These endeavours would not have been possible

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<sup>2</sup> *E.g.*, the UK Copyright, Designs & Patents Act 1988 ('CDPA') and the UK and EU General Data Protection Regulation 2016 ('GDPR');

<sup>3</sup> Michael Karanicolas, 'Too Long; Didn't Read: Finding Meaning in Platforms' Terms of Service Agreements', 52 U. TOL. L. REV. 1 (2021).

without advanced creative tools that allow users to contribute and communicate to these virtual spaces. Users can create community structures, events, character features, and even modifications to the gaming platform itself. However, these collaborative creative contributions do not always fit into the traditional statutory definition of an artistic or literary work due to the nature and magnitude of the contributions, as well as to the evolving landscape of virtual spaces. This Article is based upon empirical data gathered on user perspectives, which are important to the law, digital companies, and user experiences on myriad fronts, based on the MMO Elder Scrolls Online (ESO). The ESO player base reached a total of 21,139,304 million players, with 401,650 daily players.<sup>4</sup> ESO owes its success in part to an established audience. The first Elder Scrolls game launched in 1994 and was followed by four additional editions of the single-player roleplaying game.<sup>5</sup> The game series was a relatively early entrant into the arena of PC roleplaying games and formative in the industry. The creators continued to be dedicated to lore and ongoing development of games, carrying their building player base. ESO, like other MMOs, depends on user investment other than monetary: emotional, intellectual, and temporal; this virtual world and game series developed a unique relationship with consumers over time. ESO was owned and was run by ZeniMax (ZOS) and was purchased by Microsoft in 2021.<sup>6</sup> The MMO has retained many original features although has increased the amount of in-game purchasing and had assured users of a persistent experience after the sale.<sup>7</sup>

As with any digital platform, myriad legal structures apply. The statutory governance of creative production and consumer protection attaches automatically here, but users also agree to Terms of Service (ToS), End User Licence Agreements (EULAs), and various other forms of

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<sup>4</sup> 'The Elder Scrolls Online Current Player Count,' MMO Populations, <https://mmo-population.com/r/elderscrollsonline>, accessed 22 Jul. 2022.

<sup>5</sup> 'List of Elder Scrolls games' [https://en.wikipedia.org/wiki/List\\_of\\_The\\_Elder\\_Scrolls\\_video\\_games#](https://en.wikipedia.org/wiki/List_of_The_Elder_Scrolls_video_games#)

<sup>6</sup> Bethesda Softworks is the parent company of ZeniMax, and in 2020, Microsoft acquired Bethesda, along with ZeniMax. <https://www.geekwire.com/2020/microsoft-acquire-elder-scrolls-fallout-hit-games-7-5b-deal-bethesda-softworks/> ZOS made assurances that ESO would continue as normal <https://twitter.com/TESOnline/status/1308029914768117760/photo/1>.

<sup>7</sup>

contractual instruments that bind users' activities and contributions whilst using the platform (collectively the 'terms and conditions [T&Cs]' for purposes of this Article). These contracts are generally in 'click-wrap' format, lengthy, and technical to the lay user. The contracts are unilateral, adhesive, and offered at the outset before the user can access the MMO. Whilst it is logical to ensure a user agrees to T&Cs prior to use of a platform, the manner in which the T&Cs are presented – as a condition to accessing a product new to the user – may result in user non-engagement with the T&Cs in order to gain access to the product more quickly, especially as many games take hours to download due to their size.<sup>8</sup> Statutory law applies regardless of an individual's assent; contractual agreement requires assent and understanding. Considering the importance of mutual assent in contractual agreement, more evidence is needed regarding the comprehension and engagement of the user with the T&Cs in this form of contract. These terms, although agreed to by the user through a 'clickwrap' contract executed prior to accessing any content, are generally weighted strongly in favour of the company and may differ from the user's perception of the terms of ownership governing digital content from their subscription fees or in-game purchases, which could conceivably invalidate some or all of the terms in a contract due to lack of informed consent. However, as even 'notice of notice'—a sufficient notification that the terms are available to read without notification of the T&C substance—of the terms may fulfil the legal requirement here.<sup>9</sup> The T&Cs have further consequences in impacting online behaviours and litigation and related legal precedent; '[P]eople may assume that a contract is enforceable even when it is not. Consequently, contract formation often means submission to the terms even if the terms could be successfully challenged.'<sup>10</sup>

User perspectives based on a gaming environment can be prescient for wider social implications as more mainstream social and cultural activities take place virtually. The user perspectives contribute to knowledge about culture and community practice with evolving technology and

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<sup>8</sup> Empirical user data *infra*.

<sup>9</sup> Nancy Kim, 'Adhesive Terms and Reasonable Notice,' 53 SETON HALL L. REV. 85, 131 and 139 (2022).

<sup>10</sup> *Id.* at 88.

demonstrate how commercialisation can strive to optimally perform alongside collaborative creation. This performance, however, is not reflected in the content of the T&Cs nor in copyright law protections.

Despite many user outputs potentially meeting copyright standards, users are restricted from realizing authorship or ownership rights—aside from narrow User-Generated Content (“UGC”), as varying defined in the T&Cs--by protectionist EULAs with highly unequal bargaining power, which, as is common in MMO environments, is rarely enforced. Companies receive great benefit from user creation, interaction, and adaptation. Even if contributions do not meet the current framework for copyright protection, the construction of copyright law is not fit for the level of collaborate creativity that shapes contemporary virtual worlds.<sup>11</sup>

On a practical front, empirical data from end users could influence findings about conscionability and enforceability of contracts and whether copyright is serving its purpose in an interactive gaming environment.<sup>12</sup> Virtual spaces as platforms for creativity and community are reaching wider audiences. Social media platforms expanded reach exponentially over the past several decades and it is highly likely that aspects of interactive gaming will continue to be adapted and adopted into mainstream virtual platforms. The virtual environment will look more like an MMO and less like current mainstream social media platforms. Therefore, these perspectives can influence statutory change through evidence-based policy and inform findings of unconscionability or unenforceability, particularly in contracts of adhesion or click-wrap with dramatic power imbalances. If the contracts are found to be enforceable and conscionable, the crucial role ongoing community engagement means companies and users would benefit from clearer communication and what will actually be enforced and where all parties agree.

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<sup>11</sup> A close examination of the traditional elements of copyright law and modern creativity and technology is beyond the scope this article but will be explored in future work, also based on empirical data from users.

<sup>12</sup> See Casey Feisler *et al.*, ‘Reality and Perception of Copyright Terms of Service for Online Content Creation’, available at [https://cmci.colorado.edu/~cafi5706/CSCW2016\\_Fiesler.pdf](https://cmci.colorado.edu/~cafi5706/CSCW2016_Fiesler.pdf).

If the T&Cs are not enforced with users, do not reflect the expectations of the company and the users do not read or meaningfully consent to the T&C, then what is the function of the T&C in this context? The claims in this article are twofold: that current standard unilateral, adhesive, and overly protective T&Cs are not useful for contemporary virtual spaces like MMOs; and that these contractual agreements are exploitive towards users in relation to creative and cultural inputs. In addition to these claims, it is worthwhile to consider the high level – and potential future— impact that these restrictive terms might have on overall cultural participation and production. The question is not new but has not been resolved and nor, perhaps, even entirely properly addressed.<sup>13</sup>

Based on the analysis and user perspectives provided, the current construction of T&Cs in its current form is not useful for virtual worlds. This is not to represent that contractual terms have no or minimal place in these virtual spaces: rather that legal instruments should reflect the contributions, expectations, and practical agreements amongst parties. Thus the arguments put forth here in regard to contemporary, evolving social practices and technology are rooted in a strikingly traditional legal concept. A greater understanding of all parties and the technology will assist with ensuring the law appropriately progresses.

## I. Methodology

This study adopted both a legal analytical stance and a qualitative approach, involving semi-structured interviews with 22 users and a survey of 124 users of ESO.<sup>14</sup> Recruitment of participants with a diversity of perspectives garnered careful consideration. Especially in relation to the semi-structured interview, efforts were made to recruit players who would have not only the sufficient amount of investment in ESO but also would be demographically diverse and

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<sup>13</sup> ‘The question that I ask is not whether cultural and creative industries are goodies or baddies, but rather, if copyright law overprotects these kinds of cultural products by limiting the uses that others can make of them, does the law do damage to culture itself?’ Frankel, S., *Digital Copyright and Culture*, 40(2) J of Arts, Mgmt & Cult. 140 (Apr-Jun 2010).

<sup>14</sup> Edited raw empirical data and full questionnaires from the entire study can be found at Megan Rae Blakely, ‘Research Data,’ <https://copyrightcult.wordpress.com/research-data/>, last accessed 29 Sep.2025.

diverse in play style engagement in order to avoid exclusion of viewpoints.<sup>15</sup> Participants were recruited through ESO-relevant platforms, personal and professional networks (e.g., the author's Twitter), and through snowballing. Respondents came from the following countries: England, Scotland, Wales, Ireland, Germany, France, Portugal, Finland, Hungary, Canada, Romania, USA, Sweden, Russia, Switzerland, Netherlands, Czech Republic, Poland, Denmark, Lebanon, Spain, Holland, Norway, Belgium, South Africa, and Latvia. Age ranges were reported from 18 to early 60s.<sup>16</sup>

The data-gathering methods were chosen to cast as wide as possible net with available time and resources. The semi-structured interview allowed for deeper interrogation and user-led substance. The survey required limited time commitment to data gather but also have more time for respondents to think through written answers. The interviewees were not precluded from responding to the survey but were also not invited. It is possible some overlap in response is present in the data, and questions were similar; however, numerically, a significant number of responses were received above the interviewee number, and the written response format may elicit varied or further developed responses. The two methods together give a fuller picture of the community.

The legal analysis included traditional legal research as well as engagement with public-facing sources such as gaming websites, blogs, and statistics from publicly available usage data on gaming platforms such as Steam. A qualitative approach was deemed most appropriate because little information exists on this topic, subsequently the analysis allowed 'for an increasingly better and deeper knowledge and understanding of the objects of reasoning and recognition of emerging patterns'.<sup>17</sup>

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<sup>15</sup> Thomas Diefenbach, (2009) *Are Case Studies More Sophisticated Than Storytelling?: Methodological Problems of Qualitative Empirical Research Mainly Based on Semi-structured Interviews*, 43 *Qual Quant* 875, 879-80.

<sup>16</sup> This study did not include gender or gender identification as a relevant measure for outcomes.

<sup>17</sup> Diefenbach, note 15, at 877.

As this study is interdisciplinary in nature, the author sought guidance from literature on grounded theory.<sup>18</sup> Although there is no ‘straightforward test’ for qualitative research validity, there is guidance which was incorporated into this work:

...rigor in sampling, data collection, and analysis; triangulation of data sources, methods, investigators, and theories; the need to search for negative cases; and the use of “thick description”(Geertz, 1973) and detailed reporting in writing up our accounts. Qualitative researchers are also advised to adopt strategies of honesty, openness, and reflexivity (Hagey, 1997; Marshall, 1990).<sup>19</sup>

The author also engaged in the recommended continuous ‘reflexivity and self-scrutiny.’<sup>20</sup> With these guidelines in place the interviews revealed ‘reliable, comparable qualitative data.’<sup>21</sup> The semi-structured interviews and many of the survey questions were open-ended, allowing for new opportunities to understand perspectives that may not have been originally projected.<sup>22</sup> The format additionally provided freedom for the interviewee to lead the conversation in ways that were important to them.<sup>23</sup> The survey was issued and analysed through Qualtrics, and the interviews were coded in Nvivo. The responses were coded in accordance with the chapters in this article: Play Style and Engagement; Virtual Relationships and Trust Structure; Terms and Conditions; Copyright and Creativity; In-Game Currency and Loot Boxes; Beta and Miscellaneous. This article will focus on the Terms and Conditions alongside a light touch on the Copyright and Creativity responses, with more in-depth treatment to come in future work. Researcher bias was an issue for awareness in this process, particularly exploring within the community for which an author is an active, long term participant and as a legal researcher.<sup>24</sup> Thus the research included triangulation via two methods, the survey and semi-structured

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<sup>18</sup> ‘...conducting qualitative research that focuses on creating conceptual frameworks or theories through building inductive analysis from the data’ Charmaz, K. (2014). *Constructing grounded theory*. (Sage 2014) 187.

<sup>19</sup> Pyett, P., *Validation of Quantitative Research in the ‘Real World’*, 13(8) Qual Health Res 1170 (Oct. 2003), 1171.

<sup>20</sup> *Id.*

<sup>21</sup> Deborah Cohen and Benjamin Crabtree, *Qualitative Research Guidelines Project*, Jul. 2006, <http://www.qualres.org/HomeSemi-3629.html>, 1-2.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Diefenbach, n. 15, at 891.

interview, to assist with validity.<sup>25</sup> The author's own experience and involvement with the platform, as well as the motivation and objectives for the study and how the data would be used was provided to the participants in order 'cope with the possible downsides of subjectivity'.<sup>26</sup> These virtual communities are typified by continuous, symbiotic evolution of technologies and user interactions. The findings are meant to contribute insights into the perspectives of users and their motivations and understandings of aspects of these virtual worlds, including contractual understanding, which can vary greatly, rather than to claim a statistically significant omnibus representation of the vast body of the entire gaming community. However, the qualitative original data gathering validity was further demonstrated as "it represents accurately those features of the phenomena that it is intended to describe, explain or theorise".<sup>27</sup> The results *infra* represent understanding and knowledge of these understudied and less known user perspectives and offer valuable insights into communities that are not largely addressed in academia and that are heavily relied upon by creative tech companies.

## II. Terms and Conditions: the Users' Perspectives

Agreeing to the T&Cs for a virtual platform is a prerequisite to access nearly all sites. Contracts have been traditionally based upon offer, acceptance, and consideration, with voluntary assent, but over time, boilerplate contracts of adhesion have risen in prominence, between parties of unequal sophistication.<sup>28</sup> Digital products brought new challenges in this arena, in the form of 'shrinkwrap,' 'clickwrap,' and 'browsewrap' binding agreements, which affected the ability of users to view or access the terms, via physical, temporal, or literacy barriers, whilst still being

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<sup>25</sup> Paulien Meijer *et al.*, 'Multi-Method triangulation in a qualitative study on teachers' practical knowledge: an attempt to increase internal validity,' (2002) 36 *Qual. Quant.* 145.

<sup>26</sup> Diefenbach, note 15 at 877; and in accordance with the Ethics Committee approvals at Lancaster University.

<sup>27</sup> Martyn Hammersley (1987). 'Some notes on the terms "validity" and "reliability"' 13 *British Ed. Res. J.* 73.

<sup>28</sup> Mark Lemley, 'The Benefit of the Bargain (2022). Stanford L. & Econ. Olin Working Paper No. 575, Available at SSRN: <https://ssrn.com/abstract=4184946>.

bound.<sup>29</sup> One of the more notorious examples of this was this paragraph, added to T&Cs for an April Fool's joke:

By placing an order via this web site on the first day of the fourth month of the year 2010 Anno Domini, you agree to grant Us a non transferable option to claim, for now and for ever more, your immortal soul...Should We wish to exercise this option, you agree to surrender your immortal soul, and any claim you may have on it, within 5 (five) working days of receiving written notification from gamestation.co.uk or one of its duly authorised minions. We reserve the right to serve such notice in 6 (six) foot high letters of fire, however we can accept no liability for any loss or damage caused by such an act... If you a) do not believe you have an immortal soul, b) have already given it to another party, or c) do not wish to grant Us such a license, please click the link below to nullify this sub-clause and proceed with your transaction.<sup>30</sup>

Evidencing a lack of engagement with the terms, 7,500 people agreed that day; Game Station publicly asserted their nonenforcement intentions.<sup>31</sup> Conversely, some T&Cs (and even syllabi) will provide reward for fully reading, even cash prizes.<sup>32</sup>

Leaving aside potential soul stealing or cash incentives, users are generally trained to accept T&Cs across virtual platforms and products regardless.<sup>33</sup> These contracts purportedly form a legally binding agreement, but users largely do not read them.<sup>34</sup> Courts have also found that, so long as the opportunity for reading the contract is offered, then '[f]ailure to read a contract before agreement to its terms does not retrieve a party of its obligations under the contract.'<sup>35</sup>

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<sup>29</sup> *Id.*

<sup>30</sup> Joe Martin, 'Game Station: 'We Own Your Soul,' Bit-Gamer (15 Apr. 2010), <https://bit-tech.net/news/gaming/pc/gamestation-we-own-your-soul/1/>.

<sup>31</sup> *Id.*

<sup>32</sup> 'How a Georgia Teacher Won \$10,000 by Reading the Fine Print, NPR (10 Mar. 2019); <https://www.npr.org/2019/03/10/701987056/how-a-georgia-teacher-won-10-000-by-reading-the-fine-print>; Tennessee Professor Hid a Cash Prize on Campus. The Clue Was in the Syllabus,' NPR (20 Dec. 2021), <https://www.npr.org/2021/12/20/1065723014/tennessee-professor-hid-a-cash-prize-on-campus-the-clue-was-in-the-syllabus>

<sup>33</sup> A consent dialog experiment involving 80,000 users found '[P]articipants seem to be habituated to coercive interception dialogs---presumably due to ubiquitous EULAs---and blindly accept terms the more their presentation resembles a EULA.' Rainer Bohme & Stefan Kopsell, 'Trained to Accept?: a field experiment on consent dialogs' CHI '10: Proceedings of the SIGCHI Conference on Human Factors in Computing Systems, 2403 – 2406, available at <https://dl.acm.org/doi/10.1145/1753326.1753689>.

<sup>34</sup> Jeff Sauro, Do Users Read License Agreements?, MEASURINGU (Jan. 11, 2011) <https://measuringu.com/eula/>

<sup>35</sup> *Fteja v. Facebook, Inc.*, F41 F. Supp. 2d 829 (US).

Despite concerns related to games as a service rather than a good and with digital exhaustion, largely this seems settled at the moment, as reinforced with the T&Cs.<sup>36</sup>

However, contemporary game users may differ from the general population, given the level of financial and social engagement with virtual worlds. ESO is estimated to have 21,332,466 user accounts, all of whom will have agreed to their T&Cs.<sup>37</sup> The T&Cs are updated periodically although not necessarily all at once.<sup>38</sup> Some notable aspects of the ESO contractual instruments users must agree to before accessing the game follow. The EULA requires that users agree to all the terms to use the game and access following first assent is ongoing assent:

EACH TIME YOU USE THE GAME AND RELATED SOFTWARE (INCLUDING AS IT MAY BE UPDATED, UPGRADED OR EXPANDED BY ZENIMAX), YOU WILL BE DEEMED TO HAVE ACCEPTED THE TERMS OF THIS AGREEMENT (INCLUDING ANY AMENDMENTS OR UPDATES THAT MAY HAVE BEEN MADE FROM TIME TO TIME IN ACCORDANCE WITH SECTION 11 BELOW).<sup>39</sup>

Contract law often requires that any terms waiving the liability must be ‘conspicuous’, hence the bold lettering.<sup>40</sup> Nonetheless, any contractual arrangement will be overridden by statutory protections, and varying levels of consumer protection in each jurisdiction. Although it may be burdensome to a company to address each country’s specific legislative protections, there are clauses that specifically exclude or modify certain jurisdictions:

**ZeniMax does not guarantee that any Services will be accessible or available at all times, in all countries and/or all geographic locations, at any given time, or that ZeniMax will continue to offer any particular Services for any particular length of time.** Except as prohibited by applicable law and subject to the Statutory Obligations (as defined in Section 1), ZeniMax reserves the right to change and/or update Content without notice to You. ZeniMax also reserves the right to refuse Your request(s) to

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<sup>36</sup> Alina Trapova & Emanuele Fava, ‘Aren't We All Exhausted Already? EU copyright exhaustion and video game resales in the Games-as-a-Service era’ (2020) 3 Interactive Entertainment L. Rev 77.

<sup>37</sup> The Elder Scrolls Online Player Count, MMO Populations, <https://mmo-population.com/t/elderscrollsonline>, last accessed 2 Sept. 2022. MMO Populations estimates there are 202,658 daily log ins.

<sup>38</sup> EULA, 17 March 2015; ToS, 13 Dec. 2021 as of 25 Jul 2022.

<sup>39</sup> Preamble, EULA.

<sup>40</sup> Certain terms may need to be made sufficiently conspicuous for enforcement; yet empirical work has found that all caps text can be harder, not easier to read: Yonathan Arbel & Andrew Toler, (2020) ALL-CAPS, 17 J. EMPIRICAL L. STUD. 862, 886–88.

acquire Content, and to limit or block any request to acquire Content, including, but not limited to, Downloadable Content and Game Mods, for any reason.<sup>41</sup>

On the face of this section, users would conceivably be deterred from purchasing at all. However, the actual behaviour of the company has proved that these T&Cs are rarely exercised to the extent allowed contractually and therefore are not of concern or subjective detriment to the average user.<sup>42</sup> This follows the notion of contracts as a ‘social process,’ also recognizing actual or implied agreements.<sup>43</sup> Certainly, companies will wish to protect their interests in this area, and limited case law exists on the enforceability of the extensive terms and conditions due to arbitration and community management. As demonstrated in the following sections, users have learned to rely upon the actions rather than the words of companies with high levels of interactivity, community management. Companies still reserve certain highly protectionist legal rights in these T&Cs with little evidence of active use.<sup>44</sup> The placidity of the users with high investment in virtual worlds facilitates mounting terms upon boilerplate contracts, and these users likely have very little legal protection in relation to their intangible investments while continuing to enrich developers and hosts of virtual worlds.

#### A. Self-reported Engagement with Terms and Conditions

Participant users reported varying engagement with T&Cs, citing reasons including finding terms inapplicable or irrelevant to their own gameplay, finding them ‘boring,’ and trusting the company or consumer law over private contracts to resolve any disputes. Several users also cited the deployment time – right after download and preventing the first play through – influencing their low engagement with the text.

**S14:** Too long, and most are legal bullshit. These terms usually have the same content, like ‘don't cheat/exploit, your account isn't really yours, but ours. You're just borrowing it.’ As long as I play without doing any sketchy things, I'm probably fine. Also, exceptional terms of use are usually stated at some other places, so even if I don't read these conditions, I'll probably know them.’

**P11:** Wouldn't that come under customer protection?

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<sup>41</sup> S. 6.

<sup>42</sup> See e.g., *Bragg v Linden Labs* 487 F. Supp. 2d 593 (E.D. Pa. 2007) (US): The Court refused to enforce Second Life's mandatory arbitration provision, but the parties later settled out of court, restoring Bragg's virtual property. Second Life may be distinguishable as users may own ‘property’ on the platform, and the decision did not have the overarching rectification effect on the power imbalance in T&Cs expected.

<sup>43</sup> Lemley, note 28, at 240-42.

<sup>44</sup> Potentially some T&Cs may fall afoul of various statutory consumer protection for unfair contracts, such as the EU COUNCIL DIRECTIVE 93/13/EEC on unfair terms in consumer contracts, Art. 3 and Annex s. 1. For reasons discussed throughout, the T&Cs persist.

**S25:** Too long, I'm confident in ZOS/ Bethesda.

**P1:** It's relatively understandable, essentially. They have all the rights, and you have nothing.

**P18:** It's too much legalese. That would be one aspect of it. Another would be-- look, I know who I am. I know I'm not going to exploit or cheat in the game, so I don't really need to know anything about that. That's pretty much it really.

**S94:** It's basically all the same stuff in every game, so I do not bother reading it all over again. If it's a game/publisher I trust, I don't feel the need to read the ToS and other small print.

**P15:** No, not really. I haven't got the capabilities to cheat. I don't know enough about computers. I'm not after stealing any secrets. No one tells me any secrets. [laughs] I suppose it is foolish-- I've thought about this many times about many things, many T&Cs, that you should read it, but then most of it's very legal-speak. You can work it out, but if they want to fool you, they will. You're fighting from a very weak position. I don't have the background in law to understand things to a high enough level to know if there is anything in there that I should be concerned about, really.

Not all users self-reported neglecting the T&Cs. Some users reported greater engagement with the T&Cs:

**S23:** You should read any form of contract that you sign. If you do not know what you agree on, you are at a loss as the customer.

**P10:** I actually did read them in 2014 once fully, and I obviously completely forgot about 90 percent of everything again. And from time to time, you have to agree again.

**P16:** I will not pretend that I have read the terms of service and end-user license agreement and code of conduct of the Elder Scrolls. I got invited to the closed beta. I read it back then. I think I also read it on launch. Since then, I haven't read it, and that's what, five years ago. I will not pretend I'm overly familiar with it, but at least I recall that it was very similar to the one that we had in the previous game.

Although these were a minority of responses, this original data, as well as numerous topical forum posts, found on platforms such as the Elder Scrolls Online Forums and Reddit, indicate more engagement than with the general population. They also reported returning to the T&Cs or reading T&Cs updates with a higher frequency than the general population. Even those who reported low engagement with the T&Cs provided responses reflecting concern, interest, and engagement with the T&Cs through other means. Users also rely highly on the general gaming community for this information, such as from forums or fellow guild members. Their reliance

extends to other users flagging any changes or any terms that might be harmful for the general community.<sup>45</sup>

**P1:** You can't change the game. Even if you say no, they're not going to let you play the game. So it's literally pointless...I didn't feel I even need to read the T&Cs because they're all going to be similar. If it wasn't similar, it would be all over the forums because somebody somewhere will have read it and would have pointed it out... I'm relying on the community.

Ultimately, the responses indicated a more technologically literate and legally curious population. A large number also reflected the responses above: awareness of lack of bargaining power, reliance collective knowledge in a sophisticated community for any detriment, and trust in developers.

#### B. Virtual Worlds and Digital Goods as Content and Services

Outside of statutory protection, the T&Cs state purchases are 'not refundable in whole or in part.'<sup>46</sup> It is relevant that the product is governed by consumer protection as a service or content rather than a good, which provide a lower level of protection and ownership interests for a consumer.<sup>47</sup> Jurisdictional variations mean T&C variations as well, sometimes significantly; however, in the EU, for instance, whether the product is classed as digital content or digital service is most important when determining whether the consumer has a right to withdrawal, rather providing greater rights to a user.<sup>48</sup> The UK Consumer Rights Act on digital content requires delivery of satisfactory content, safe and free from defects, and reinforces that users may have action for breach of contract.<sup>49</sup> But the governing contract states:

Subject to the Statutory Obligations (as defined in Section 1 of the ZeniMax Terms of Service), this Agreement does not give you any right to obtain reissues or replacements of the software at any time and ZeniMax is not obliged to supply software updates,

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<sup>45</sup> [deleted user], 'Hi, I am that one person that reads the Terms of Service,' (2019) Reddit, [https://www.reddit.com/r/elderscrollsonline/comments/c1w9j1/summary\\_hi\\_i\\_am\\_that\\_one\\_person\\_that\\_reads\\_the/](https://www.reddit.com/r/elderscrollsonline/comments/c1w9j1/summary_hi_i_am_that_one_person_that_reads_the/); interview and survey data.

<sup>46</sup> S 5.

<sup>47</sup> Eg, The Consumer Rights Act (2015), Ch. 3 (UK); Consumer Rights Directive 2019/261 (EU).

<sup>48</sup> Commission notice Guidance on the interpretation and application of Directive 2011/83/EU of the European Parliament and of the Council on consumer rights (Text with EEA relevance) 2021/C 525/01.

<sup>49</sup> The Consumer Rights Act (2015), Ch. 3.

upgrades or expansions, or even to operate or continue support the Game or software, for an indefinite period.<sup>50</sup>

So although statutory interventions for consumers of intangibles, contractual freedom and assent often negate protections that consumers generally expect in transactions. Further, developers may use the legally operative term ‘Service’ as an overarching qualifier:

Downloadable Content (as defined below) and other digital items, (iii) software, including, but not limited to, third-party software and small amounts of code that might be necessary to facilitate playing online Games that are provided by ZeniMax as a service offering (collectively, "**Software**"), and (iv) related services, such as Membership programs that include special benefits for members, downloading and uploading media, forums, and additional features (together with Content, Games and Software collectively referred to as "**Services**")<sup>51</sup>

By creating an Account, You agree that You do not own the Account, any user names created on the Account, any Content stored or associated with an Account (such as digital and/or virtual assets, achievements, virtual currency, and other Downloadable Content), or related data associated with the Account.<sup>52</sup>

...ZeniMax reserves the right to restrict, suspend or terminate these Terms of Service and Your Account as provided in these Terms of Service including without limitation restricting, suspending or terminating any licenses, and/or access to or receipt, play, or use of one or more of the Services.

In addition, ZeniMax reserves the right to restrict, suspend or terminate these Terms of Service and Your Account immediately and without notice to You if (i) You breach these Terms of Service, (ii) infringe or violate any third-party rights, including without limitation third-party intellectual rights, (iii) if ZeniMax is unable to verify or authenticate any information You provide to ZeniMax, or (iv) upon Your access to or Your play, receipt or use of Services, for any other activity whatsoever that is, in ZeniMax's sole discretion, unlawful, inappropriate, and/or in violation of the spirit of these Terms of Service or a Service, including without limitation Your actions in a Game(s) or forums.<sup>53</sup>

Despite not fully engaging with the T&Cs, the majority (but not all) of participant users reported that they were aware that they possessed only a license to play the game and that it was represented by the company as a service whilst still acknowledging statutory restrictions—now a common contractual representation by game developers.<sup>54</sup> Some users did share their

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<sup>50</sup> EULA, *Elder Scrolls Online*, accessed 29 Sep. 2025.

<sup>51</sup> S. 1. <https://account.elderscrollsonline.com/terms-of-service>, accessed 29 Sep. 2025.

<sup>52</sup> *Id.*

<sup>53</sup> S 14.

<sup>54</sup> The users who participated in this study were heavier, longer term users and thus may be distinguishable from casual or newer users.

experiences discussing ownership and interests in the game itself over the years and how this has evolved. They also offered some perspectives on where they understand that ownership does or should vary:

**P2:** I think what is important is the level of misunderstanding. A lot of people think they own their characters, they are their characters, this is their game. I find it quite interesting when people say, 'It's not your game.' 'But I bought it.' You try to explain that people at ZeniMax, whatever hedge funds and profit managers, they're the people that own this. People that have never sat down with a headset in their lives, own it. There's a lot of misunderstanding, and I think that comes back to the level of emotional engagement people have. That's the main thing, and I think more people definitely need to learn to read the T&Cs.

**P13:** If you buy a book, you don't buy the book for the physical presence. You buy the book for the time of entertainment... It's basically the same for this. If I could pay out the money I spend on the game with the hours of fun I have had in the game, that's like one cent per hour, something very cheap.

**P11:** It is purchasing and memories, basically. I'm renting out memories of a good social aspect to my life. Instead of me going down to the pub and just drinking a lot of beer to be with mates because that you spend 60 pretty easily, whereas 9 on this game? I wouldn't spend 60 on membership every six months. I'm just getting more memories for the money. And if they want to kill their game, well, there's plenty of other games out there... Discord<sup>55</sup> friends of ours that don't play the game anymore. For that, so you can keep in touch with your friends you've made in game on Discord, which is a separate program, and you can say I'm playing this game.

**P15:** They've made something; they've made this game. They've invested in it and everything else. They would consider everything to do with it their intellectual property, even the characters I've made, in much the same way as Apple when, who was it? Bruce Willis, said, 'I bought all these songs. I'm going to give them to my kids.' And he was told, 'Oh no, they're not yours.'<sup>56</sup>

**P10:** In my opinion, I should be able to play the game because I really bought it, and I spent money for it. And therefore, they should keep the servers up. But, sure, it's very unlikely that the game will still be able to still be here for in 20 years and people will still be able to play it.

In addition to purchasing the game and an optional subscription, there are items that can be

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<sup>55</sup> Discord is an independent messaging application that many game players use to communicate whilst playing the game and, as this research indicates, to communicate outside of gaming time or even to stay in touch with friends made in game who do not play on that particular platform anymore.

<sup>56</sup> 'Actor Bruce Willis Won't Sue Apple over iTunes Music Ownership', Apple Insider (2013), [https://appleinsider.com/articles/12/09/03/actor\\_bruce\\_willis\\_may\\_sue\\_apple\\_over\\_itunes\\_music\\_ownership\\_report](https://appleinsider.com/articles/12/09/03/actor_bruce_willis_may_sue_apple_over_itunes_music_ownership_report)

purchased with different types of currency. One type of currency, gold, is earned entirely in game. Another type 'Crowns' are purchased with real money. Even currency purchased with real money is severely restricted in similar ways to the rest of the game material:<sup>57</sup>

#### A. Downloadable Content, Achievements, and Other Virtual Items

Content also includes Content that is downloaded or downloadable from any website authorized by or under ZeniMax's control ("**Downloadable Content**"), provided that the term Downloadable Content does not include Game Mods (as defined below). Downloadable Content includes, but is not limited to, licensed rights granted, awarded, and/or provided to You to access and/or use online or off-line elements or features of certain Services as well as Game updates, unlockable Content, digital and/or virtual assets, rights of use tied to unlock keys or codes, merchandise redemption codes, serial codes and/or online authentication of any kind, in-game achievements, video trailers, Game screenshots, and/or Game-related wallpapers. Downloadable Content also includes Virtual Currency, and Virtual Currency is subject to additional terms and restrictions specific to Virtual Currency as set forth below in Section 2(E), which additional terms and restrictions supersede any inconsistent terms and restrictions applicable to Downloadable Content generally. Downloadable Content may be free, redeemable, and/or purchased, and ZeniMax reserves the right to change the price of Downloadable Content at any time, without notice. Downloadable Content may only be held in Accounts or on devices belonging to legal residents of countries where access to and receipt, play, or use of the Services and Downloadable Content are permitted. Except as granted in a Game's EULA, ZeniMax hereby grants to You a limited, non-exclusive, personal, non-transferable license to use, view, and display Downloadable Content that You have lawfully downloaded.

**Once You have redeemed Downloadable Content, that Content is not returnable, exchangeable, or refundable for other Content or for cash, or other goods or services** unless approved by ZeniMax or required by applicable law and subject to the Statutory Obligations...

**You agree that You have no ownership right or title in or to any such Downloadable Content, including, but not limited to, the virtual goods appearing or originating in the Services (such as a Game) or any other attributes associated with any Account or Services. ZeniMax does not recognize any purported transfers of virtual property executed outside of the Game, or the purported sale, gift, or trade in the "real world" of anything that appears or originates in a Service or a Game.** Accordingly, You may not sell, and You may not assist others in selling, Service(s) or in-Game items for real currency, or exchange those items for value outside of the Services. Evidence of any attempt to redeem Downloadable Content for a purported exchange, sale, gift, or trade in the "real world" will result in the immediate suspension or termination of Your Account or Membership.<sup>58</sup>

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<sup>57</sup> Longer excerpts of the T&Cs are provided throughout to provide the legally technical readership with a fuller picture of the legal effects and also to best contextualize the user responses in that virtual environment.

<sup>58</sup> Future research will include user responses in relation to virtual currency markets and loot boxes.

You acknowledge and agree that all virtual items represent a limited license right for Your personal, private, non-commercial, non-transferable, and limited use governed by these Terms of Service and are not redeemable for any sum of money or monetary value from ZeniMax at any time. ZeniMax reserves the right to refuse Your request(s) to acquire Downloadable Content, and reserves the right to limit or block any request to acquire Downloadable Content for any or no reason.<sup>59</sup>

The T&Cs are set out here to demonstrate the contractually imposed restrictions and attempts to privately regulate the evolving virtual worlds. Many users shared they viewed their engagement with the virtual world as an experience rather than an ownership right, reflecting the evolution of the social and cultural sphere. It is notable that few users reported losing access to intangible items nor the closure of a long-term game where a significant financial and temporal investment was taken away with no recourse.<sup>60</sup> It is therefore unclear if this would impact users' perceptions of trust and ownership.

### C. Termination of Access and Ongoing Rights

In addition to contractual obligations and rights for users on a platform, strict terms for terminating access or availability of the online platforms often provide that the company can the service at any time with no recourse the user regardless of social and cultural functioning of the platform or of the users' financial investment:

...ZeniMax reserves the right to restrict, suspend or terminate these Terms of Service and Your Account as provided in these Terms of Service including without limitation restricting, suspending or terminating any licenses, and/or access to or receipt, play, or use of one or more of the Services...

ZeniMax may terminate Your access to and/or receipt, play or use of the Services (i) for violating these Terms of Service; (ii) if ZeniMax, **in its sole discretion**, deems that Your information is untrue, inaccurate, or incomplete; (iii) if Your access to or receipt, play or use of such Services infringes, or is suspected of infringing, another's rights or any intellectual property; or (iv) if You or Your Account reflects inappropriate Content and/or violates these Terms of Service. **Any and all Content (including, but not limited to, Software, Content, and Virtual Currency, and Downloadable Content)**

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<sup>59</sup> S. 2C, excluding game mods, addressed in S. 2D

<sup>60</sup> Two users reported the following: the closure of versions of the game 'Need for Speed' (P13, see *infra*) and a temporary ban for selling in-game currency off platform (P8). Users are reluctant (and often will not without strict confidentiality) admit to ban for selling currency due to reputational harm in-game. Further, ZOS does not publish the internal procedure for issuing and lifting bans. For heavy platform users who also spend substantial money in game, ZOS would certainly see an advantage in not imposing a permanent ban.

**will be considered forfeit immediately in the event of any cancellation, closure, or termination of Your Account by ZeniMax.** [bold emphasis added]<sup>61</sup>

In light of these T&Cs, users reflected on what their rights would be if the game were entirely cancelled by ZOS:

**P13:** If ZOS goes away, the game you buy isn't usable anymore, basically.

**P16:** If I remember correctly, it is entirely up to the discretion of ZOS to revoke any content provided on the service, regardless of whether you have paid extra for it or not. If the content of everyone's craft bag [in-game items] or the content of everyone's crafting materials, regardless if they had it in their backpacks or in their craft bags, let's just remove a lot of that, it will be entirely in within ZOS's power. Whether it will be a smart business move is another question. There would be a fallout or meltdown, and there would be lots of kicking and screaming, but ultimately useless because, if that's the decision ZOS makes, that's a decision ZOS makes. I don't know if they would shoot themselves in the foot like that...

Companies as such aren't moral. Unless it is part of their concept, they aren't really morally required to do things. They could, of course, do it [keep servers up] out to the good of their hearts, the management and everyone, but we cannot expect it, unfortunately. Companies would never be done with things, if that was the case. Who would be in charge of the museum pieces, so to speak?

**P2:** I don't have a say basically. Well, it's a bit problematic because as I said to you, people spend effort, time, money, whatever it is they spend on the game, or they choose to spend on the game because it is a choice we do. It is problematic that someone can come and take that away from you, and you don't actually have a say in it. You can moan away and write them all you want, but if they were to close the service, you wouldn't have a choice. So it's a little bit problematic. I think there is an increasing awareness that people actually sort of connect or feels connected to whatever they do online. So they would be taking away a part of me in some sense. I'm not going to fall over and die here. I'm very realistic, but there should probably be some awareness, more so than there is.

**P14:** I suppose I would say none; I don't own any of it. I might argue that some of the content I've created for the website has-- ZOS wouldn't be able to make a claim on that. Then again, I don't know if I would, because I don't agree with me owning any of it. It's more I built it specifically to enhance the guild rather than because I own it. In terms of crowns or anything I've purchased for money, again, if the game didn't exist, they wouldn't exist, so I wouldn't consider me having owned that. If I say, for example, left the game after having purchased £100 worth of crown-- What do they call them? Crowns. I wouldn't feel like I had the right to be able to convert those crowns back into £100 that I could then reclaim from ZOS.

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<sup>61</sup> S 6.

Users tended to distinguish between paying for the game and only a subscription fee and paying additional costs for in-game items or Crown Crates:

**P11:** I didn't pay real money into it, except for just for the game. So it's not really mine. I can't decide I'm going to take 50,000 gold coins out for my real-life pocket. It does not exist. That's just fictional. It's just pixels at the end of the day. It's nothing to get worked up over. If anything was truly yours, it's the experience, memories, and most importantly the social aspect of it all. With friends we left, new friends we make. That's 100 percent yours. They can't touch that.

Statutory and case law is evolving in relation to rights around digital goods and service.<sup>62</sup> Highly engaged users of digital platforms, such as these MMO players, involving virtual currencies and intangible items are one of the more literate groups in relation to their rights or lack thereof. As more mainstream activities and users begin to encounter challenges around intangible goods and services such as music streaming and subscription libraries and NFTs, it is likely more legal challenges will arise. But much of the understanding and precedent around T&Cs will have been formed by then around virtual worlds such as ESO, emphasising the importance of the platform, users, and developing law.

#### D. Copyright, Creativity, and Community

Comparably rapid technological advancements over the past decades have allowed for increased user participation in the creative shaping of virtual worlds. Particularly in the realm of MMOs, users have increasing opportunities within the games to contribute creatively. In ESO, user creative contributions are varied. In-game creative contributions include guild names and structures, user names, and appearances. Users can also modify code to change certain aspects of the game, such as gameplay and creative choices. These sorts of code modifications, also known as 'mods,' have been longer recognised as copyrightable and are governed by separate

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<sup>62</sup> *E.g.*, Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services (Text with EEA relevance.); *Osbourne v Persons Unknown & Ors* [2023] EWHC 340 (KB); Property (Digital Assets etc) Bill [HL]: HL Bill 31 of 2024–25 [draft]. The EU Commission has also launched a Public Consultation on the Digital Fairness Act, closing 24 Oct. 2025, [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14622-Digital-Fairness-Act\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14622-Digital-Fairness-Act_en), last accessed 29 Sep. 2025.

T&Cs to create and use. However, mods are a limited and technical type of contribution to platforms, with most users' contributions falling outside of scope of a mod. The creative contributions extend outside the platform as well, such as with guild websites, merchandise, or digital fan art.

Law and economics offers a logical justification for the encouraged infringement within limits, framed as a decision to 'to facilitate or acquire.'<sup>63</sup> User collaborative creativity is operating essentially in a 'grey market,' not fully authorised but not a forbidden black market.<sup>64</sup> In virtual worlds, prohibiting users, especially high profile users, from modifying, performing, and creating derivative works can lead to loss of engagement and user base.<sup>65</sup> Companies also protect their own intellectual property, but the virtual world structure with persistent communities necessitates flexibility and understanding of these dynamics, without compromising profitability. With the extensive technological creative tools and heightened personal interaction of these environments, the balance struck eludes traditional legal understanding and enforcement. Strict legal interpretation of the T&Cs result in an adhesive contract to which a receiving party with any bargaining power would be highly unlikely to agree.

The T&Cs do extensively cover user creative contributions, for example:

To the fullest extent permitted by law, You hereby expressly grant (or You warrant that the owner of Your UGC has expressly granted) to ZeniMax and its licensors, licensees, and designees a perpetual, irrevocable, worldwide, paid-up, non-exclusive, royalty-free, transferable, sublicensable (through multiple tiers of sublicensees) right and license to exercise all rights of any kind or nature associated with Your UGC in all formats and media, whether existing now or in the future, and You agree not to assert or enforce any moral rights or similar rights<sup>66</sup>

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<sup>63</sup> Robert Conan Ryan, 'The Facilitate or Acquire Decision', in *The Invisible Hand in Virtual Worlds : The Economic Order of Video Games.*, ed. Matthew McCaffery, 2021.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> S. 2B, distinguishing 'Your UGC' as opposed to what users might consider to be their UGC.

Although many users rely on implicit consent through tolerated or encouraged infringement, the T&Cs require explicit permission in writing:

Any use, reproduction, modification, or distribution of Services, including, but not limited to, Games, Content, Software, or any other intellectual property not expressly authorized by these Terms of Service or by an authorized representative of ZeniMax in writing is strictly prohibited.<sup>67</sup>

Except as necessary to use the Services in compliance with these Terms of Services, You may not copy, use or download any Content from a Service unless You are expressly authorized to do so by ZeniMax in writing. You acknowledge and agree that **You shall not reproduce, prepare derivative works based upon, distribute, publicly perform, or transmit any Content for commercial uses unless You obtained the express written consent** of an authorized representative of ZeniMax. For clarification purposes, **"derivative works based upon" Services and/or Content are works that are substantially similar, both in ideas and expression, to Services and/or Content. Therefore, if You or someone else creates a work and it is likely to bring to mind either or both Services (such as a Game) and Content, then it is likely that such work is a derivative work and as such may not be used for commercial purposes.** [bold emphasis added]<sup>68</sup>

Th terminology is particularly notable here as the language of copyright with the idea-expression dichotomy is leveraged to expand the rights far beyond what could be statutorily enforceable.<sup>69</sup>

The T&C claim that, if a work ‘brings to mind’ either or both the services content, it is likely a derivative work is unsupported by law. As discussed, it is similarly unlikely that this language would be litigated as 1) a potential finding of unenforceability, due to statutory incompatibility or unconscionability, for example, against a company’s T&C language will be avoided; 2) the binding arbitration clauses have been treated as valid thus far and 3) users take the EULA as correct and can be community managed with in-game items or rewards. Users also are aware it is not negotiable:

**P15:** Anything I take from this game in any way, shape, or form is owned by someone else because that's the way the world works. Do I think it should be? No. I think if you create something independently within this, then I think that there should be an element of it which is yours and you should be able to argue that point. However, I am absolutely

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<sup>67</sup> S. 1, ToS

<sup>68</sup> S. 2A

<sup>69</sup> Copyright protects expression not ideas. Art. 2, Berne Convention for the Protection of Artistic and Literary Works (1886).

sure that written in there means anything whatsoever to do with it is theirs even if you dream about it at night, technically, if they could, they would charge you for it

**P11:** I would always assume on the basis of-- If someone puts a doodle on a wall, it is their work. They are not going to necessarily trademark [sic] it unless they're particularly able. However, if you spend a lot of money, if there's time and cash invested in something, it is in the interests of the individual, the author, to thereby protect that. I can understand it, and I can respect that. Again, I don't agree with the fact if I've made a character and named it and I've spent all this time and effort into it – I don't think morally, it's theirs. As I say, morals don't come into it. This is about law and business.

**Interviewer:** Even as far as your character design and the creative choices you've made around that, you feel like ownership with that, even though you may be aware that that's not how it functions.<sup>70</sup>

**P11:** I feel ownership to it. It's something I had made. That character has a certain reputation within the game, which has to do with me. I'm not saying it's a good one; I'm saying it's got one. You've got to see these things from the big picture, really. They're providing a game. If you bought a ball, would you expect the person who's got the ball to send you the rules of all the games and everything else you can do with it? You do with it what you want to do with it, and that's exactly what we're doing in here. They're providing the toys, and we're deciding how to play with them.

**P2:** So there's a lot of what we put on the website is not a lot, as in lots of what the members tend to talk about the site and put pictures of a sort of screenshots. We have our profile pictures and screenshots. So I got to consider that stuff to belong partly to the game, but also the way we've had discussion of things. That's kind of something that we've created.

**P3:** Yeah, if I take a screenshot of my character because I've created my character, I guess I see that I can use that screenshot where I want. Because I took it out, made it. But I'm aware that I made it in the game with the game features... I would kind of feel that they had ownership of it as well as me.

- **P13:** Well, I haven't created any of the contents in the game myself. If I remember correctly, part of the terms of service I read, that's all. Everything you have in the game is still their intellectual property. There's also a test. I'm not entirely sure, but that just tells you that you basically, if the game shuts down, you don't have any compensation. I've experienced the same thing basically with Need for Speed awhile before. I played the game for a few years. And there was also this currency called Speed Boost, which was just the equivalent of Crowns that you had to pay real money to get this in-game currency. There were a lot of elite items in the game which could only be bought with that. So I've spent about 200 euros in total on the game. The game itself was free to play. So in the end, if you compare it to a typical new game, I've paid 70 euros when it released, including the season pass. So it's not like I'm spending 10 times the amount or something like that on the game, which I'm not trying to say that there are no people and

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<sup>70</sup> Tyler Ochoa and Jaime Banks, 'Licensing & Law Who Owns an Avatar?' (2018) Santa Clara Law Digital Commons, *available at* <https://digitalcommons.law.scu.edu/facpubs/960>.

go online who are not spending like the law a thousand euros on the game. I'm sure there are people that already did that.

Especially in relation to live streaming gameplay on platforms such as Twitch or providing video guides on YouTube, user activities breach these terms. Some users have monetised channels as well, so there is a commercial aspect to the activity as well. None of the interviewees who perform these activities reported receiving the requisite express permission. In fact, particularly successful – in relation to viewers or subscribers – infringements were rewarded with codes to give away or offers to join a ‘stream team’ in very successful cases.<sup>71</sup>

**P2:** Yes, exactly, ZOS would say they own it, but Discord would say they own [screenshot of a character posted in chat]. I can tell you this: I do not own the image that I put up, and I am aware of that. However, if I did a watercolor of my characters, I've done that painting and because it's probably different enough, it's not the full graphic representation. Whether it's ZOS who think they had any level of ownership. I could argue it's actually not my characters. They just happen to look a bit like them. Then you get into all these semantics, but I certainly do not think I own my characters. I use their character creating structures to make them. The way I understand it is I am paying to get access to my leisure time.

**Interviewer:** Good. When you were doing things like using the logo or posting things on the website, you feel, obviously, you're doing it to make the guild better, to make the community stronger, and you don't feel like that is something that is going to be violating anything as far as ZOS goes [as discussed previously]?

**P2:** Yes. It's advertising and supporting the game, right?

Motivating and even ensuring communities consider advertising and supporting a platform whilst also paying for the game promises a successful business and has been honed in MMOs. ZOS invites and features user contributions in multiple ways. Fan art is encouraged and even featured on social media platforms.

- **P15:** I know I've nothing on there that I think I would own or anyone owns, apart from them, that would be tied up with a huge bow. I think if you are investing time into something, I think you do have a controlling interest in it morally, but we all know the law is not moral.

**P6:** I have actually looked to what the UK law position is with create recreating patterns and creating patterns for knitting and sewing because what I was looking at doing that in

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<sup>71</sup> Streaming community and copyright issues, including additional empirical data, will be addressed separately in an upcoming work.

general. They have said, if you are going to be making money off it, then you need full consent from the person who has the original design. So if I was going to cross stitch something for me, to make money from it, then I would definitely need sources for permission from that because of the artist at the very least, who created that character or that scene or something. But if it's just for a gift or to express my love of the game again, if I give full credit to whoever, then I feel like ZOS is okay with that, the way that the community is managed.

I feel like they've embraced the community because they want to see the creativity, how far they can go with it and how far the funds are going to go with it. And they do embrace that quite a lot. So I feel comfortable in producing something. I'm posting on Twitter and tucking them in and saying I've made this cushion for myself because I just love this game so much. But then if somebody was to say, oh, could you make that for me? And I'll give you some cash for it, then I've been I have I wouldn't be able to do that. I think I'd still need permission from ZOS to do that.

**Interviewer:** Do you think you would get it?

**P6:** I don't know. I think I might. I think because—I've thought quite a lot about this that having made pieces of art and craft stuff based on the game, overall that I am purchasing experiences which I'm happy to purchase because in life, experiences are more valuable than objects in my existence. They probably are in everybody's existence actually.

Despite clear unilateral advantages in the T&Cs, nearly all the written terms and conditions built upon and expanded from boilerplates and are thus familiar. Users do not seem to necessarily consider that agreeing to these T&Cs, similar to most other service subscription media now, is detrimental to them financially or creatively. In fact, extensive community management and messaging from ESO and many other MMO companies has created an environment in which users see and understand their creative and financial labour and time as a part of the culture and community of virtual platforms. These perspectives also raise questions around incentivization, creativity and copyright:

**P7:** I wanted to have a piece of [the game] in my actual physical world when I'm not playing the game. One day when the game ends and is a reminder of something that will continue on when this game isn't here anymore. That's my motivation too for making the art. They're different things.

**P11:** [on user ownership] To a certain point, yes, if it's my idea. ZOS probably sees you playing the game, so see how we make a game ours. And they'll play with something as simple as that. But I'm not too heartbroken over things. I have e-mailed them on many occasions to suggest better ideas for doing things. I'm not bothered to do it either; I can do it or don't. don't do it. They might think he's doing great. He improves the game, which is my sense touch, because I'm playing the game. So I want to improve it. If I get

recognized for the idea, that's even better. Probably I wouldn't be the only person thinking of the idea. The amount of people playing this game is millions. So I'm not the only person thinking of ideas. And I'm sure they'll have for the people with the same sort of ideas, so I wouldn't be let bother me as such. But as long as it gets done. And ask for a name check name where it has to be one of a kind, with your account name. That is an idea which you create and which you will be using. So how can it be theirs?

The theme of copyright and creativity ran through the interviews, with users having quite sophisticated perspectives on their online culture and interactions and motivations for art and creativity—even those who claimed to not fully understand the T&Cs and legal framework. The extent to which users considered any potential exploitation or power and financial imbalance varied. Some took longer to ponder the issue and had not thought about it too extensively before. Some considered it part of the community online experience and felt it a fair exchange. Further, some users considered the arrangement to be imbalanced and unfair but were aware of the non-negotiability and reluctantly accepted the legal and corporate structure as an inevitable feature of contemporary society.

### III. Meaningful Reform Based on User Perspectives

Based on the previous responses describing user experiences with the T&Cs, it follows that many users did not have suggestions that would allow them to better engage with T&Cs, given the online community and ubiquity of the current lengthy, adhesive structure and deployment. Some users did provide some recommendations to improve engagement:

**P14:** Maybe if it was all much shorter and just bullet point the actual issues, what are the rules, similar to our guild rules layout. There's a heading, and bullet points that follow that, which dictate what those rules are, rather than huge paragraphs just describing what they mean by intellectual property.

**P15:** Everyone knows to go to the T&Cs, whether they can find it or not. I understand that a contract is a two-way contract, obviously. Even though we're going, "Are we being screwed over with this thing?" They're going, "God, can we be screwed over by this thing?" It is a two-way worry. I just think having that just tagged on to the front-- Just use a bit of plain speak but have-- This is not the actual wording of the conditions. However, this is the general gist, but we do recommend that you read the things in the entirety. At least, you've got a chance of someone reading the basic idea of what you're trying to get over. Always have that addendum at the bottom just saying. We do

recommend you read them in detail and get a good lawyer to take you through it sort of thing.

**P16:** For most people, they can't be asked to sit down and through something that will take you, if you're going to read it properly, will have to spend at least half an hour. If you're going to understand it as well, you will have to start looking up some extra stuff et cetera. I think it wouldn't hurt if there was a too long didn't read version, that basically just listed the points very briefly on a single page and if you want to read more extensively about what this means, click here. Of course, if you don't, then you have pretty much waived any rights. Basically, if you click on 'okay' regardless, you will have waived any protestations that you had... I don't see how the actual terms of service and that stuff can be made brief because there are so many legal points that need to be covered, and they have to be covered, and so and they have to be done so in the legalese, in order to cover the company. That's just how it is, but it should be simpler to just get to the highlights. Then again, if people start reading the highlights written in a way that is easily accessible, they might go 'What?'

**P18:** It's like when I want my iPhone updated, Apple pop the terms and conditions. You click agree, update my software. Thank you. I have no idea what they're collecting... In the past I've seen a thing on products kind of a plain English, Endorsement on a project to say that yes, this is an easily understandable thing. I'm not sure if it's in the UK. I've definitely seen it over here [Ireland] that there's a label on this. I don't know what the exact phrase is - plain English. We endorsed this as being easily understood.

These responses demonstrate some of the thought processes of users deeply invested in virtual worlds. Even for users with self-reported lower literacy or engagement with T&Cs, their sentiments echo the ideas reflected in policy, law, and scholarly work around plain legal language.

ESO does email and post bullet points on updates to the T&Cs. But of course, quite a lot of these updates will be clarifications on a jurisdictional requirement, for example, or technical compliance issues with which users overall may not be specifically concerned. Even with a push in the past decades for more use of plain language,<sup>72</sup> users often found the plain language updates irrelevant; treating users as a valid contracting party may well look different than plain language.

User suggestions also included a video explanation, rather than written, or a walkthrough of the specific meaning and relevance of the T&Cs. Users suggested a Q&A with a ZOS community manager or legal representative, especially when major modifications occur within the game.

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<sup>72</sup> See, eg, Christopher Williams, *The Impact of Plain Language on Legal English in the United Kingdom* (2023 Routledge), Ch. 5.

Although civil contracts are ideally non-adversarial, legally literate employees, if not the legal department themselves, should still be representing the best interests of the company. So ultimately it would not be reasonable to expect that the community management system and trust relationship that users expect with developers to persist into this area. Onerous terms aside, vague representations within the T&Cs may well be intentionally so, and overstepping or imprecise representations in this area could potentially expose the company's liability or generate negative publicity.

Although a more thorough examination of practical options to address the issues is beyond the scope of this work, some scholarly work is progressing in this area, even if not specific to virtual worlds. A viable future proposal may encompass some of these aspects.

A legal design approach might suggest more visual, interactive representations of the legal obligations and terms and a design-oriented consideration of the user interface.<sup>73</sup> This might improve some of the delivery and engagement, but not the power imbalance, adhesion, and substantive concerns.

To address the substantive issues, introducing actual option selection for consumers could address this adhesive snowballing of boilerplate T&Cs. Various legal default options could be presented in addition to a companies', without penalty for choice.<sup>74</sup> A return to actual choice and requiring actual negotiation and assent for deviation from standard contractual terms would return to contractual intention to agree, resulting in more beneficial terms.<sup>75</sup>

T&Cs for gaming cultures and communities have not always been protectionist and copyright maximalist and have a history of collaborative innovation, especially compared to large,

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<sup>73</sup> Legal design is 'a movement to make the legal system work better for people... developed out of work in human-centered and visual design, civic technology, and participatory policymaking.' Marcelo Corrales, Helena Haapio, Margaret Hagan and Michael Doherty (eds), *Legal Design: Integrating Business, Design, & Legal Thinking with Technology* (Edward Elgar, 2021), 1, 3.

<sup>74</sup> Lemley, note 28, at 268, 278-79.

<sup>75</sup> *Id.*

traditional media industries. Dungeons & Dragons (D&D) is a notorious example for incorporating contracts into content and for their Open Gaming Licence (OGL).<sup>76</sup> The D&D OGL is the common ancestor of many contemporary MMOs and roleplaying games with an open source world. The game and OGL facilitated sharing and community adaptation and creation.<sup>77</sup> Baldur's Gate III, released in 2023, is also largely based on D&D mechanics.<sup>78</sup> Their T&Cs incorporate game lore:

##### 5. ADDITIONAL OBLIGATIONS UNDER ELDRITCH LAW

Time for a pause, as We understand by now your mind is longing for respite, having endured the numerous provisions of legal jargon.

So setting aside the weighty tomes of somber legality, embracing a lighter path of ancient customs and mystical decrees that governed the fair folk, please be wary that in accepting this Pact, you agree to refrain from striking a deal with another creature of Fey, Infernal, or otherwise Eldritch origin. Should you nonetheless not be able to withstand the seductive melody whispered by their malevolent terms, we Reserve the right to sever all ties professional or social with the end user and seek appropriate remedy from the Morninglord.<sup>79</sup>

Keeping with the user practice of looking to community for highlights or warnings on the T&Cs, a user posted the above passage to Reddit, receiving comments such as "The whole document has little tidbits like this. Well done, Larian; you made me actually read the whole terms and conditions."<sup>80</sup> As one example in a sea of similar reactions to similar T&Cs, companies could take this on board as a worthy practice for not only generating interest but also for boosting attention to important T&Cs.

Perhaps the call for a re-examination of T&Cs can be spurred as an opportunity for contract as art, not just by design. This approach reflects evolving communication methods facilitated by

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<sup>76</sup> Benjamin Abbot, 'D&D OGL controversy, explained - all the drama explained, and why you should care' Games Radar (30 Jan. 2023)

<https://www.gamesradar.com/dandds-licensing-controversy-explained-heres-why-you-should-care/>

<sup>77</sup> 'OGL 1.0a Systems Reference Document,' D&D Beyond (30 Jan. 2023) <https://www.dndbeyond.com/srd>.

<sup>78</sup> About, Baldur's Gate 3, Larian Studios (2025) <https://baldursgate3.game/about#story>.

<sup>79</sup> S. 5, Terms of Service, Baldur's Gate 3, Larian Studios (2025).

<sup>80</sup> Reddit

[https://www.reddit.com/r/BaldursGate3/comments/15hgbu0/be\\_sure\\_to\\_read\\_the\\_terms\\_and\\_conditions/](https://www.reddit.com/r/BaldursGate3/comments/15hgbu0/be_sure_to_read_the_terms_and_conditions/)

more accessible technological and virtual space. However, it is crucial to retain the legal effect with the artistry. Speaking of malevolent terms referenced in s. 5 on Eldritch Law *supra*, surely modified by: license.

... an additional quest to submit to Larian one (1) recording of a chant, song, text, poem or interpretative dance performed by you and extolling your interest in the Forgotten Realms.<sup>81</sup>

Surely this clause is modified by the terms governing any material submitted to ZOS, granting the company a nonexclusive, perpetual, royalty free, worldwide license.<sup>82</sup> Therefore, the creative contract/contract as art approach could equally facilitate exploitive structures through entertainment as an accessible format. The most innovative, creative, and understandable delivery will not fix problematic legal substance.

Working on the presumption that current structure of T&Cs is enforceable with ‘notice of notice,’<sup>83</sup> it is still essential to ‘restore actual agreement.’<sup>84</sup> If users are treated as collaborators, then they should also be so legally. The norm should not be to rely on encouraged or tolerated infringement. Users’ weaker interest of ‘ownership’ as an evolving conceptual shift, conditioned through existing structures and an online environment, emphasising reputational attribution and intangible rewards within the platform itself is being successfully normalised. User expectations are capitalised upon by existing legal structures, and boilerplate T&Cs that do not reflect the current mores and standards of creativity and community in virtual spaces. It is not that no one is owning intangible assets supported with collaborative contributions but that increasingly centralised platforms are absorbing cultural collaborative efforts, largely through T&Cs and community management, a phenomenon also extremely common in social media platforms. Extrapolating to wider social media platforms demonstrates the implications of creating and maintaining these standards for more mainstream spaces, creators, artists and freedom of

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<sup>81</sup> Early Access EULA, Baldur’s Gate 3 (Larian Studios 2023).

<sup>82</sup> S. 2B

<sup>83</sup> Kim, note9.

<sup>84</sup> Lemley, note 28 at 268.

expression. The MMO virtual world platform offers a prescient look into how the legal structures function and have impact for the future with more advanced, visual shared spaces for users to exist and interact for broader social groups.

#### IV. Conclusion

The user interviews and surveys forming the basis for this article indicate a strong reliance on community, and this shaped their interactions and perspectives on the T&Cs. Although highly engaged MMO users are likely to be more technically savvy, there is no indication of demonstrably higher legal fluency or bargaining power. Like the general population they seem to accept the T&Cs are valid and enforceable. Recourse will also be likely disproportionately subject to the home jurisdiction laws for the location of the centralized platform hosts and developers. Underlying all is that the community mores and relations with companies facilitate successful resolution of complaints through non-legal means, and sophisticated community management results in a user population that generally is not bringing legal challenges. Even if the dispute is not satisfactory to the user, other factors discussed throughout this Article could still mean no precedential or effective legal challenge to T&Cs will arise, such as user and community engagement, varied understanding, satisfaction with the product overall, knowledge of adhesiveness, and simply time and financial cost. Regardless of the actual jurisdiction and variations of standards, if no viable challenges or complaints are brought forth, then balanced change reflecting user contribution and understanding is unlikely.

However, MMO users demonstrated substantial interest in these matters and shared sophisticated reflections on the nature of their own interactions and contributions to virtual worlds. Due to the greater investment in the platform and community, users also seem to strive to comply with the T&Cs as they understand them but are still subject to the increasing complexity and obtuseness of the evolution of adhesive T&C deployment.

The users largely have an awareness of the importance of community in their game experience and are conscientious about ensuring they are complying with the T&Cs in a way that does not harm or hinder further development. Game developers are increasingly reliant upon their users'

content and engagement to continue. The outward-facing representation is that of valuing community and encouraging user creative input; however, the T&Cs do not reflect this approach. As many users noted, significant amounts of existing creative community engagement would technically constitute violations of the T&Cs, particularly copyright infringement, but that type of engagement is not just tolerated but largely encouraged, barring large scale commercial use. This exceeds what might be considered implied permission as the T&Cs state that works must receive written consent.

Thus modern virtual environments, cultures and creativity can be clearly incoherent with the legal instruments. Boilerplate, bloated T&Cs are not fit for contemporary purposes for virtual worlds and may even be incompatible with consumer fairness laws in some jurisdictions, substantiating the first claim in the article. The second claim regarding the exploitative nature of the substance of T&Cs in virtual worlds, including MMOs, and the impact on culture and creativity through copyright and like contractual terms presents a deeper quandary. No single reform would fully address all obstacles here; thus a deeper reframing may be necessary given the legal skeleton of copyright that gives shape to virtual worlds. Copyright construed as a property right leads to as ‘...whenever we have significant disparities, in wealth and bargaining power, the distribution of freely alienable property rights is almost always going to mirror and will often exacerbate those disparities.’<sup>85</sup>

Certainly, users want game developers to be able to continue to create these products, and interviewees indicated this emphatically. However, the value of the user input and creation was often not even considered by those putting in vast amounts of skill and labour that ensures the success of the platform.

During interviews, many users expressed that they had not thought about this particular aspect to their relationship with ZOS. This in itself is noteworthy in that the mechanism of

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<sup>85</sup> Jessica Litman, ‘What We Don’t See When We See Copyright As Property’ (Nov. 2018) 77 CLJ 536, 555-56.

communication from a company has moulded a subscription-paying user base through community management into a community that self-generates incentives for continued social and creative engagement whilst reserving all rights not only to the service but also the related content that would otherwise be copyright protectable in many instances.

The interest of the users appears dichotomous to that of the company, based on the T&Cs. Conversely, looking solely on the outward facing messaging, the two are symbiotic. This leaves the law out of step with practice and agreed optimal performance within the community and platform. Companies will consider that T&Cs provide necessary safeguards in order to sustainable platforms. But this harmony must not be built on unequal bargaining power and the impression of trust, goodwill. Here, the goodwill, benefits, and financial profits go the company on the back of the skill and financial and temporal resources of their community.

This arrangement raises concerns of the suitability of copyright law in this sort of virtual world. Beyond copyright concerns of literary and artistic works and collective creativity, users reported increasingly relying upon virtual worlds as sources social and emotional support and as creative cultural outlets. The reserved rights in the T&Cs continue to expand and without properly considering the contract contents – and with no option to negotiate terms. Thus it is crucial to consider the future impact of the precedent of law and virtual worlds more widely in terms of creativity, culture, and social structure, especially as platforms are more centralised sources of power than ever before: ‘Oppressive terms harm most those who lack market power, media savvy, language fluency, or time to interact with or manoeuvre around legal departments and customer service representatives.’<sup>86</sup>

Multifaceted considerations impact how these spaces function and attempt to persist in grafting traditional copyright and contractual regimes onto a virtual world, such as a contemporary MMO, is not only ineffective but undesirable. The evidence can be found with the application:

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<sup>86</sup> Kim, note 9, at 88.

the T&Cs are regularly overrun by the game developers in copyright and related terms and largely unenforced. Streaming, fan art, spotlights on content creators—as well as building the virtual world environment on collaborative, ongoing user creativity and resources—all demonstrate that the T&Cs which forbid such use of materials to be archaic, overly protective, and unneeded.

The law and private legal instruments should be more realistic, fair, and unconscionable in relation to what parties expect and how much knowledge the users have in order to form meaningful consent. Users should be clearer on what their participation contributes so that this is provided more willingly with an awareness of the perpetuated legal imbalances.