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‘World of Warcraft is My Home From Home’:¹ An Argument for the Protection of Virtual Worlds

Abstract

Virtual worlds have taken on a renewed significance in our contemporary world of social distancing and isolation. Virtual worlds exist independently of the physical world yet allow individuals a degree of verisimilitude of the physical world; including attachment to that world and others in it. This phenomenon is present in Massively Multiplayer Online Roleplaying Games which are the primary focus of this work. How the law ought to approach such virtual worlds has been contested since the early days of the internet. Much of the literature in the area looks to utilise established areas of law such as property law, contract law, or intellectual property to solve the novel problems created by virtual worlds. It is perhaps understandable that scholars and judges would opt for established areas of law in light of their knowledge and trust in the same. This traditional approach understands virtual worlds and the items therein as the property of the developer thereby eroding users’ trust in the long term existence of virtual worlds. This article takes a novel and previously unexplored view as to how virtual worlds should be protected in light of the attachment an individual may feel towards virtual worlds irrespective of ownership. It will be established that this attachment is akin to the connection a person may feel towards their home in the physical world. This paper utilises these similarities to question why legal protections are not afforded to individuals and the virtual worlds to which they are connected. In arguing to secure this protection the article draws inspiration from the community

¹ J Allen, 'World of Warcraft is my Home from Home at Christmas' (*Eurogamer*, 19 December 2018) <<https://www.eurogamer.net/articles/2018-12-19-world-of-warcraft-is-my-home-from-home-at-christmas>> accessed 15 April 2020.

empowerment principles of the Localism Act 2011 which allows for land and buildings to be protected as Assets of Community Value.

Introduction

Do you know that feeling of coming home after being away for a long time? When you're sitting on a train or the bus, watching familiar sights pass by, to eventually open your front door to settle back into a home that feels both comforting and yet somehow new after your trip? It's a curious, and special, part of the human experience... But physical travel isn't the only time I've experienced that feeling; the emotion can also be inspired by certain games.²

Home is a tricky concept. Lawyers are remarkably comfortable talking about property and ownership which are themselves complicated abstract ideas.³ Yet while the home in English law is something that is to be acknowledged and respected⁴ it is not directly protected. The home is instead protected through reverence for private property.⁵ Perhaps this dichotomy arises because a person may make a place their home without having any legal (or equitable) interest in that place.⁶ This article looks to highlight the same phenomenon in relation to virtual worlds, that is worlds which do not exist in a physical space and yet offer a distinct sense of immersion for those who inhabit them.

² A Johnson, 'The Psychological Reasons Certain Games Feel Like Coming Home' (*Polygon*, 16 July 2019) <polygon.com/2019/7/16/20694585/zelda-breath-of-the-wild-wind-waker-travel-nostalgia> accessed 7 November 2019.

³ J W Singer, *Entitlement: The Paradoxes of Property* (Yale University Press 2001); J A Fairfield, *Owned: Property, Privacy, and the New Digital Serfdom* (Cambridge University Press 2017); J Penner and M Otsuka (eds), *Property Theory: Legal and Political Perspectives* (Cambridge University Press 2018).

⁴ European Convention on Human Rights art.8; Insolvency Act 1986 s.335A; *Stack v Dowden* [2007] UKHL 17, [2007] 2 AC 432.

⁵ See generally, J Penner and M Otsuka (eds), *Property Theory: Legal and Political Perspectives* (Cambridge University Press 2018); L Fox O'Mahony, 'The Meaning of Home: From Theory to Practice' (2013) 5 *International Journal of Law in the Built Environment* 156; L Fox, *Conceptualising Home: Theories, Law, and Policies* (Hart 2006).

⁶ J Waldron, 'Homelessness and the Issue of Freedom' (1991) 31 *UCLA Law Review* 295; K Dovey, 'Home and Homelessness' in Irwin Altman and Carol M Werner (eds), *Home Environments: Human Behaviour and Environment Advances in Theory and Research*, vol 8 (Springer 1985).

This research is timely as the number of people involved with virtual worlds continues to be significant. It is difficult to estimate the number of users across all virtual worlds. However, some of the most popular virtual worlds have populations comfortably in the millions.⁷ Moreover, the denizens of these virtual worlds share the same precarity and lack of trust in the owners of virtual worlds as many in the physical world such as tenants and landlords respectively.⁸ The standing of a tenant in the physical world is rooted in their status as the holder of a leasehold estate.⁹ Whilst this gives them the advantages of an estate holder generally, for example the ability to exclude others from the property,¹⁰ a tenant is still ultimately at the mercy of a landlord as to whether they can continue to reside in their home.¹¹ This situation is similar to that of an individual in a virtual world. Those in a virtual world enjoy the limited permission of the developer to enjoy the world per an End User Licence Agreement (EULA), akin to a lease in a landlord and tenant relationship, which outlines the legal relationship between the user and the developer. The virtual world typically remains the intellectual property of the developer and so if a developer chooses to close the virtual world the user has little recourse to resist.

⁷ See for example, D Takahashi, 'How Eve Online is Adapting to Higher Demand and Complicated Game Development during the Pandemic' (*VentureBeat*, 26 March 2020) <

⁸ See generally S Nield and E Laurie, 'The Public-Private Divide and Horizontality in the English Rental Sector' (2019) Public Law 724.

⁹ Law of Property Act 1925 s.1.

¹⁰ *Street v Mountford* [1985] AC 809.

¹¹ Housing Act 1988 s.21; D S K Maxwell, 'The End of the Road for Proportionality Review When Hearing Claims for Possession by Private Sector Landlords?' (2019) *Journal of Planning & Environment Law* 435. Note that there are indications from the UK Government that the ease with which a landlord may recover possession may be shortly curtailed, K Symons and A Hindle, 'Housing Act 1988 - The End of Section 21 Possession and Assured Shorthold Tenancies' (2019) 23 *Landlord and Tenant Law Review* 179.

In addition to the practical similarities between the position of a tenant and an individual in a virtual world there are also similarities in the feelings of attachment that emerge in each of these groups. The argument made here is that due to these feelings those who have a deep personal connection to virtual worlds ought to be able to rely on some legal protection in the event that that world is to be shut down. In pursuit of this the article looks to the protection available for Assets of Community Value (ACVs) via the Localism Act 2011. In making the case for similar protections in relation to virtual worlds the article proceeds in four parts.

Part 1 explores the nature of virtual worlds and the avatars that serve as a representation of the individual in the world. Part 2 considers the similarities between the attachment one may feel towards a virtual world and their home in the physical world. Part 3 then moves to discuss the legal protections which exist to protect an individual's home in the physical world. Part 4 explores the legal safeguards that exist to protect community assets and asks whether a similar framework could be used for virtual worlds.

1. Virtual Worlds and Avatars

A question I keep having, locked inside and isolated [during the COVID-19 pandemic], is who I am without the connections that normally define me, and to what extent this sense of self I'm accessing in [a virtual world] is a viable substitute.¹²

Virtual Worlds

A broad definition of virtual worlds is perhaps most illuminating at this stage:

¹² C D'Anastasio, 'The Party Goes on in Massive Online Worlds' (*Ars Technica*, 4 April 2020) <<https://arstechnica.com/gaming/2020/04/the-party-goes-on-in-massive-online-worlds/>> accessed 7 April 2020.

[V]irtual worlds encompass imaginary spaces that may be described by words or projected through images and which are so realistic that individuals may feel as if they were immersed in them.¹³

There are a range of online spaces that may match this definition of virtual worlds. For example, some worlds might focus on content creation (*Second Life* or *Minecraft*) and some take the form of social networks (such as Facebook or Twitter).¹⁴ This article is concerned with a particular kind of virtual world, Massively Multiplayer Online Roleplaying Games (MMOs) for two reasons. Firstly, players of these games do not usually enjoy ownership of their world, their avatars, or the goods their avatars virtually carry.¹⁵ This makes players in MMOs vulnerable to the decisions of the developers and publishers who own and manage these virtual worlds.¹⁶ In turn there is perhaps little trust that virtual worlds will continue for long periods of time due to their reliance upon their creators. Secondly, modern MMOs typically involve a 3D world that shares characteristics with the physical world in having regions, cities, and social areas. This sets them apart from virtual worlds which are largely text based such as social networks and the precursor worlds to the modern 3D spaces found in contemporary MMOs.¹⁷

¹³ P Nagy and B Koles, 'The Digital Transformation of Human Identity: Towards a Conceptual Model of Virtual Identity in Virtual Worlds' (2014) 20 *Convergence: The International Journal of Research and New Media Technologies* 276, 277; B Damer, 'Meeting in the Ether: A Brief History of Virtual Worlds as a Medium for User-Created Events' (2008) II *Artifact* 94.

¹⁴ A Karapatakis, 'Virtual Worlds and Money Laundering under EU Law: The Inadquacy of the Existing Legal Framework and the Challenges of Regulation' (2019) 10 *New Journal of European Criminal Law* 128, 130.

¹⁵ A notable exception to this is Linden Lab's *Second Life*.

¹⁶ Y-S Tseng, 'Governing Virtual Worlds: Interration 2.0' (2011) 35 *Washington University Journal of Law Policy* 547.

¹⁷ S Turkle, 'Constructions and Reconstructions of Self in Virtual Reality: Playing in the MUDs' (1994) 1 *Mind, Culture, and Activity* 158.

When participating in virtual worlds players 'form realistic connections to the environment as well as to other inhabitants'.¹⁸ These connections to the environment are made all the stronger by the rich geographical variety of virtual worlds, for example, Azeroth, the fictional world in *World of Warcraft (WoW)*, like many MMOs, features 'cities, deserts, mountains, hills, rivers, swamps, caverns, and of course, other players.'¹⁹ Such rich features lead one to be immersed in the world.²⁰ This immersion fosters a connection to the world and creates a 'self-confirming social consensus'.²¹ This consensus sees objects, places, and networks as accruing value or importance because of the wider community's feelings towards that thing.²² Objects, places, and events take on meaningfulness 'only because society thinks [they are] meaningful'.²³ Therefore, if cooperating, communicating, and progressing in an MMO are meaningful to an individual and the other users they associate with in-game then those same things are likely meaningful to a large section of users in the virtual world. Moment to moment goals of players in virtual worlds may seem trivial to those not engaged in the same but for those in the world these endeavours create and strengthen 'the social bonds... among players'.²⁴ This collective feeling amongst the community in a virtual world reinforces the sensation that the world is real and indivisible from the physical world.²⁵

¹⁸ P Nagy and B Koles, 'The Digital Transformation of Human Identity: Towards a Conceptual Model of Virtual Identity in Virtual Worlds' (2014) 20 *Convergence: The International Journal of Research and New Media Technologies* 276, 277.

¹⁹ B Patridge, 'The Play's the Thing: World of Warcraft and Legal Philosophy' (2010) 3 *Phoenix Law Review* 769, 776.

²⁰ U Schultze and M M Leahy, 'The Avatar-Self Relationship: Enacting Presence in Second Life' (International Conference on Information Systems, Phoenix, 15-18 December 2009)

²¹ E Castronova, 'The Right to Play' (2004) 49 *New York Law School Law Review* 185, 190.

²² *Ibid.*, 190.

²³ *Ibid.*, 190.

²⁴ F G Lastowka and D Hunter, 'The Law of the Virtual Worlds' (2004) 92 *California Law Review* 1, 29; D Smahel, L Blinka and O Ledabyl, 'Playing MMORPGs: Connections between Addiction and Identifying with a Character' (2008) 11 *Cyber Psychology and Behaviour* 715, 715.

²⁵ A Golub, 'Being in the World (of Warcraft): Realism, Raiding, and Knowledge Production in a Massively Online Game' (2010) 83 *Anthropological Quarterly* 17, 39.

Individuals in virtual worlds freely ‘blur the line between game and not-game’.²⁶ In this, players draw no distinction between their connections in the real world versus the game world. This pursuit of meaningfulness and realness is a key objective for the developers of virtual worlds.²⁷ Taylor conceptualises this phenomenon as ‘presence’:

Presence... goes to the heart of what feels ‘real’ and creates the quality of experience that signals to us ‘I am here’. Users do not simply roam through space as ‘mind’, but find themselves grounded in the *practice* of the body, and thus in the world. Much like offline life, our sense of self, other, and space is constantly reinscribing itself as structures and relationships change. In virtual worlds, this same dynamic process occurs – but with a twist... In multi-user worlds it is not just through the inclusion of a representation of self that presence is built. It is instead through the use of a body as material in the dynamic performance of identity and social life that users come to be ‘made real’ – that they come to experience immersion.²⁸

Clearly one’s presence in a virtual world has equivalence with a feeling of being in a place in the physical world. For instance, when a player chats with other users in the game world they do not say ‘My avatar will meet you in the tavern’ they say ‘I will meet you in the tavern’. This sense of presence in a virtual world is significant due to presence indicating a sensitivity to the ‘structures and relationships’ within that world and how they change over time. Therefore, an individual’s feelings and sensations

²⁶ E Castronova, 'The Right to Play' (2004) 49 New York Law School Law Review 185, 195.

²⁷ M Peterson, 'Fan Fair Use: The Right to Participate in Culture' (2017) 17 UC Davis Business Law Journal 217, 220-221. See also D A F Gui, 'Virtual Sense of Community in a World of Warcraft® Storytelling Open Forum Thread' Journal of Virtual Worlds Research <<https://jvwr-ojs-utexas.tdl.org/jvwr/index.php/jvwr/article/view/7281>> accessed 29 April 2020.

²⁸ T Taylor, 'Living Digitally: Embodiment in Virtual Worlds' in R Schroeder (ed), *The Social Life of Avatars: Presence and Interaction in Shared Virtual Environments* (Springer-Verlag 2002) 42.

which flow from a virtual world are dynamically influenced by that world and any changes to it.

Player responses to changes in virtual worlds have been explored by Banks and Martey.²⁹ Changes in a person's physical environment have 'cognitive, affective, and behavioural effects' and these same effects are visible in players of MMOs when the game world sees the same changes.³⁰ This may be explained with what Klastrup calls 'worldness'³¹ that overall sense of place when the virtual world's environment, systems, and the social relationships built in that world are taken together. As in the real world the geography and systems of a virtual world may give rise to feelings of unity among players.³² With this in mind Banks and Marter analysed the social responses of players to significant changes made to Azeroth in *WoW*. Their research determined that players responded to these changes with 'public expressions of vulnerability and resilience', and in a similar fashion to that which would be expected from those who experience radical changes to their physical environment.³³ This response demonstrates the sameness of the physical world and the virtual world for players. In view of this sameness it should be asked why it is that virtual worlds do not enjoy some level of protection as is the case where these phenomena occur in the physical world particularly in light of potential for one's avatar to be an indivisible part of the self.

²⁹ J Banks and R M Marter, 'Coping with [R]evolution in Online Games: Vulnerability and Resilience Responses to Change in MMO Game Expansions' (2018) 62 *Journal of Broadcasting & Electronic Media* 269.

³⁰ *Ibid*, 270.

³¹ L Klastrup, 'The Worldness of EverQuest: Exploring a 21st Century Fiction' *Game Studies* <<http://gamestudies.org/0901/articles/klastrup>> accessed 28 April 2020.

³² J Banks and R M Marter, 'Coping with [R]evolution in Online Games: Vulnerability and Resilience Responses to Change in MMO Game Expansions' (2018) 62 *Journal of Broadcasting & Electronic Media* 269, 272.

³³ *Ibid*, 283.

Avatars

The experiences of players in MMOs are mediated through an avatar which the player must create before entering the virtual world. A person's avatar exists in correlation with the configuration of the virtual world.³⁴ Avatars are the instrument through which an individual experiences a virtual world and has been variously described as a possession,³⁵ an extension of the real world self,³⁶ or a sanctuary.³⁷ There are also those players who see their avatar as a distinct creation³⁸ or a truer version of their real life self.³⁹ For these individuals the virtual world and their ability to construct their appearance in that world allows for a 'better version' of their physical self that is free from the corruption mandated upon them by the real world.⁴⁰ A version of themselves which they can trust is authentic.

In practice the individual's avatar is both an expression of the user but also a vessel for the player – in other words a 'mirror'.⁴¹ This mirror is projected upon by the individual but is then reflected outwards towards other inhabitants of the world. This is visible in the 'tug of war' a player experiences between self and other when talking about their avatar, with the avatar being simultaneously self and other.⁴² Yet an avatar may have

³⁴ T Taylor, 'Living Digitally: Embodiment in Virtual Worlds' in Schroeder (ed), *The Social Life of Avatars: Presence and Interaction in Shared Virtual Environments* (Springer-Verlag 2002) 44.

³⁵ C J Cifrino, 'Virtual Property, Virtual Rights: Why Contract Law, Not Property Law, Must Be the Governing Paradigm in the Law of Virtual Worlds' (2014) 55 Boston College Law Review 235.

³⁶ T Taylor, 'Living Digitally: Embodiment in Virtual Worlds' in Schroeder (ed), *The Social Life of Avatars: Presence and Interaction in Shared Virtual Environments* (Springer-Verlag 2002).

³⁷ J M Ackerman, 'An Online Gamer's Manifesto: Recognising Virtual Property Rights by Replacing End User Licensing Agreements in Virtual Worlds' (2012) 6 Phoenix Law Review 137.

³⁸ J Banks, 'Object, Me, Symbiote, Other: A Social Typology of Player-Avatar Relationships' First Monday <<https://journals.uic.edu/ojs/index.php/fm/article/view/5433>> accessed 20 April 2020.

³⁹ P Nagy and B Koles, 'The Digital Transformation of Human Identity: Towards a Conceptual Model of Virtual Identity in Virtual Worlds' (2014) 20 Convergence: The International Journal of Research and New Media Technologies 276, 282-283; T Taylor, 'Living Digitally: Embodiment in Virtual Worlds' in Schroeder (ed), *The Social Life of Avatars: Presence and Interaction in Shared Virtual Environments* (Springer-Verlag 2002); K Bessière, A F Seay and S Kiesler, 'The Ideal Elf: Identity Exploration in World of Warcraft' (2007) 10 Cyber Psychology and Behaviour 530.

⁴⁰ K Bessière, A F Seay and S Kiesler, 'The Ideal Elf: Identity Exploration in World of Warcraft' (2007) 10 Cyber Psychology and Behaviour 530.

⁴¹ T Taylor, 'Living Digitally: Embodiment in Virtual Worlds' in Schroeder (ed), *The Social Life of Avatars: Presence and Interaction in Shared Virtual Environments* (Springer-Verlag 2002) 51.

⁴² Ibid 57.

real importance in an individual's sense of self.⁴³ In addition to projecting oneself on to the avatar or creating the avatar in one's (idealised) image the end creation will shine back upon the human participant who will through exposure to that avatar adopt 'the perceived identity of the target character.'⁴⁴ The avatar may then be a 'merger' between the user and the avatar.⁴⁵ In being so merged the offline and online self cannot be separated in the mind of the user.⁴⁶ Therefore, if these two selves cannot be separated one can imagine a great deal of distress when they are separated by force, for example, where the virtual world is closed.

There are scholars who are sceptical of the long term beneficial nature of virtual worlds.⁴⁷ It is not doubted that, like some physical environments and pastimes therein, virtual worlds may exacerbate existing personal issues for users typically in the form of poor mental health or addiction.⁴⁸ However, this does not undermine the positive experiences of many other individuals. For instance, rather than seeing virtual worlds as inherently addictive or manipulative of human psychology it is possible to instead accept that life in a virtual world may be 'more fulfilling' than a range of real world activities, including some occupations.⁴⁹ McGonigal has gone further by suggesting

⁴³ Ibid 57.

⁴⁴ C Klimmt, D Hefner and P Vorderer, 'The Video Game Experience as "True" Identification: A Theory of Enjoyable Alterations of Players' Self-Perception' (2009) 19 *Communication Theory* 351, 356; J Cohen, 'Defining Identification: A Theoretical Look at the Identification of Audiences with Media Characters' (2001) 4 *Mass Communication & Society* 245.

⁴⁵ C Klimmt, D Hefner and P Vorderer, 'The Video Game Experience as "True" Identification: A Theory of Enjoyable Alterations of Players' Self-Perception' (2009) 19 *Communication Theory* 351, 357.

⁴⁶ U Schultze, 'Performing Embodied Identity in Virtual Worlds' (2014) 23 *European Journal of Information Systems* 84, 94.

⁴⁷ S Turkle, *Alone Together: Why We Expect More from Technology and Less from Each Other* (3rd edn, Basic Books 2017); S Turkle, *The Second Self: Computers and the Human Spirit* (The MIT Press 2005); S Turkle, *Life on the Screen: Identity in the Life of the Internet* (Simon & Shuster 1995); C Newport, *Digital Minimalism: Choosing a Focused Life in a Noisy World* (Penguin Business 2020); D Smahel, L Blinka and O Ledabyl, 'Playing MMORPGs: Connections between Addiction and Identifying with a Character' (2008) 11 *Cyber Psychology and Behaviour* 715.

⁴⁸ C J Cifrino, 'Virtual Property, Virtual Rights: Why Contract Law, Not Property Law, Must Be the Governing Paradigm in the Law of Virtual Worlds' (2014) 55 *Boston College Law Review* 235

⁴⁹ B Nardi, *My Life as a Night Elf Priest: An Anthropological Account of World of Warcraft* (University of Michigan 2010) 124-126.

that addiction is not the correct description for the large number of individuals who spend a great deal of time in virtual worlds.⁵⁰ For these individuals online life is instead ‘genuinely more fulfilling than much of contemporary life’.⁵¹

The focus of this paper is on the attachments that may develop through activity in a virtual world, including; identity realisation, community, and belonging. It is these emotional and psychological connections which are the starting point for calls for greater protections of virtual worlds. The attachments one may have to a virtual world are reminiscent of the feelings that occur towards objects and places in the physical world such as an individual’s home. In the next section the attachment one has to their home and the mutually informing relationship between self and home will be explored alongside links to virtual worlds.

2. The (Virtual) Home Away from (the Physical) Home

This section will move to a discussion of the idea of the home in the physical world together with the unique and powerful connections a person may have to their home. In this discussion it will be shown that there is a normative argument for the legal protection of the home due to these powerful connections. Following this submission, the same normative basis for protecting one’s home may then be used to anchor legal protection for virtual worlds.

The importance of the home is ‘widely accepted as a universal human experience by Western philosophers and writers’.⁵² The idea of the home is seen to be so central to the human experience that it transcends legal ownership.⁵³ The home exists apart from

⁵⁰ J McGonigal, *Reality is Broken: Why Games Make Us Better and How They Can Change the World* (Vintage 2012).

⁵¹ A Golub, 'The Anthropology of Virtual Worlds: World of Warcraft' (2014) 43 *Reviews in Anthropology* 135, 139.

⁵² S Smith, 'The Essential Qualities of a Home' (1994) 14 *Journal of Environmental Psychology* 31, 31.

⁵³ *Niemietz v Germany* (1993) 16 EHRR 97.

the physical structure of the house despite the two terms often being used interchangeably with one another.⁵⁴ The form of a home is sociocultural with infinite variations based upon the neighbourhood, the town, and surrounding area.⁵⁵ The activities that one may engage with whilst in the place they call home can bolster the strength of the attachment one has and may yet be entirely different from what another does in their home. For instance, playing a musical instrument, cooking, or gardening, and other activities that an individual might find pleasure in all elevate the importance of the home.⁵⁶

The intertwining of the physical self and the virtual self has been referred to above with support from Schultze.⁵⁷ It will be demonstrated here that this intertwining is equivalent to a home which forms part of a person's identity. In considering this it is useful to borrow from the work of Fox who conceptualises the home as an aspect of a person's identity in two ways: 1) 'the home as a symbol of one's self' or the psycho-analytical perspective which sees the home as 'the most powerful extension of the psyche'⁵⁸ and 2) the socio-psychological aspect which sees the home as an integral aspect of a person's social identity.⁵⁹

Recognising the 'home as a symbol of one's self' understands that the home is intimately linked with an individual's sense of identity.⁶⁰ With the relationship

⁵⁴ I Loveland, 'When is a House Not a Home under Article 8 ECHR' (2002) PL 221.

⁵⁵ K Dovey, 'Home and Homelessness' in Altman and Werner (eds), *Home Environments: Human Behaviour and Environment Advances in Theory and Research*, vol 8 (Springer 1985) 36.

⁵⁶ Ibid 39-40.

⁵⁷ U Schultze, 'Performing Embodied Identity in Virtual Worlds' (2014) 23 *European Journal of Information Systems* 84.

⁵⁸ L Fox, 'The Meaning of Home: A Chimerical Concept or a Legal Challenge' (2002) 29 *Journal of Law and Society* 580, 598; C Després, 'The Meaning of the Home: Literature Review and Directions for Future Research and Theoretical Development' (1991) 8 *Journal of Architectural and Planning Research* 96, 100; L Fox, *Conceptualising Home: Theories, Law, and Policies* (Hart 2006) 170.

⁵⁹ L Fox, 'The Meaning of Home: A Chimerical Concept or a Legal Challenge' (2002) 29 *Journal of Law and Society* 580, 599; L Fox, *Conceptualising Home: Theories, Law, and Policies* (Hart 2006) 171.

⁶⁰ K Dovey, 'Home and Homelessness' in Altman and Werner (eds), *Home Environments: Human Behaviour and Environment Advances in Theory and Research*, vol 8 (Springer 1985) 40.

between the home being at once something to identify with and impose its identity upon the individual, much in the way a user may do with their avatar or a virtual world. A home is more than a physical space and attaches to a person's identity and wellbeing by providing a secure private place for an individual or group of people to retreat.⁶¹ In this place of retreat, the home is 'both a "statement" and a "mirror," developing both socially and individually, reflecting both collective ideology and authentic personal experience'.⁶² The home projects itself on to the individual as much as the individual expresses themselves upon the place.⁶³ Within this phenomenon is a strong attachment to the past which is continually evoked.⁶⁴ This same feeling is evident in virtual worlds where players yearn for their past experiences and for a world that has gradually disappeared in much the same way that the physical world changes over time.⁶⁵

The home also serves as a symbol of one's self in that it acts as an 'identity shell' which provides the physical and metaphorical space for autonomy allowing for incubation of the self.⁶⁶ Therefore, the home is symbiotic with the occupier who is able to express themselves fully within their home with the home concurrently becoming the canvas for that expression.⁶⁷ The same is true for the individual in a virtual world where one's

⁶¹ R Hiscock and others, 'Ontological Security and Psycho-Social Benefits from the Home: Qualitative Evidence on Issues of Tenure' (2001) 18 *Housing, Theory and Society* 50, 50.

⁶² K Dovey, 'Home and Homelessness' in Altman and Werner (eds), *Home Environments: Human Behaviour and Environment Advances in Theory and Research*, vol 8 (Springer 1985) 40.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ R Fahey, 'WoW Classic Reminds Us of All We've Lost' (*Gamesindustry.biz*, 6 September 2019) <<https://www.gamesindustry.biz/articles/2019-09-06-wow-classic-reminds-us-of-all-weve-lost-opinion>> accessed 22 April 2020; C Carden, 'Living (In) Cities of the Past: Time Travel in Second Life' (2019) 23 *Rethinking History* 324; B Nardi, *My Life as a Night Elf Priest: An Anthropological Account of World of Warcraft* (University of Michigan 2010) 63.

⁶⁶ H Dittmar, *The Social Psychology of Material Possessions: To Have is to Be* (Harvester Wheatsheaf 1992) 113; L Fox, 'The Meaning of Home: A Chimerical Concept or a Legal Challenge' (2002) 29 *Journal of Law and Society* 580, 598; C Cooper, 'The House as a Symbol of the Self' in Jon T Lang (ed), *Designing for Human Behaviour: Architecture and the Behavioral Sciences*, vol 6 (5th edn, Dowden, Hutchinson & Ross 1974) 144.

⁶⁷ K Dovey, 'Home and Homelessness' in I Altman and CM Werner (eds), *Home Environments* (Plenum Press 1985) 14; J Tognoli, 'Residential Environments' in Daniel Stokols and Irwin Altman (eds),

avatar can 'provide a vehicle for... experimentation, self-expression, and social-wish fulfilment.'⁶⁸ In pursuit of this the physical self and the virtual self amount to a 'single social unit'.⁶⁹

The second plank of Fox's exploration of home and identity comes from socio-psychological theory which supposes that a person's home is integral to their outward social identity.⁷⁰ Under this lens, it is the social stigma or the social esteem created by a person's home which suggests that the home is 'a statement and a mirror'.⁷¹ This is evident in the styles that people pursue in decorating their homes.⁷² The concurrent inward and outward nature of the home continues the idea that the home acts as an 'identity shell'⁷³ or garment.⁷⁴

These same observations can be readily made with respect to virtual worlds and the avatars that inhabit them. Avatars in the virtual world simultaneously reflect the self of the player outwardly to other players in the game world but also mirror back the player.⁷⁵ Avatars are the representation of identity in virtual worlds.⁷⁶ With regard to the outward statement made by one decorating their home, this same phenomenon is visible in avatar creation with users constructing their avatar's body, selecting their

Handbook of Environmental Psychology, vol 1 (Wiley 1987) 661; P Saunders, *A Nation of Home Owners* (Unwin Hyman 1990) 270-271.

⁶⁸ F G Lastowka and D Hunter, 'The Law of the Virtual Worlds' (2004) 92 *California Law Review* 1, 63.

⁶⁹ Ibid; H Perkins and D Thorns, 'House and Home and their Interaction with Changes in New Zealand's Urban System, Households and Family Structures' (1999) 16 *Housing, Theory and Society* 124, 125.

⁷⁰ L Fox, 'The Meaning of Home: A Chimerical Concept or a Legal Challenge' (2002) 29 *Journal of Law and Society* 580, 599; K Dovey, 'Home and Homelessness' in Altman and Werner (eds), *Home Environments* (Plenum Press 1985) 40; J Ford, R Burrows and S Nettleton, *Home Ownership in a Risk Society: A Social Analysis of Mortgage Arrears and Possessions* (Policy Press 2001).

⁷¹ K Dovey, 'Home and Homelessness' in Altman and Werner (eds), *Home Environments* (Plenum Press 1985) 40.

⁷² C Cooper, 'The House as a Symbol of the Self' in Lang (ed), *Designing for Human Behaviour: Architecture and the Behavioral Sciences*, vol 6 (5th edn, Dowden, Hutchinson & Ross 1974) 136.

⁷³ L Fox, *Conceptualising Home: Theories, Law, and Policies* (Hart 2006) 136.

⁷⁴ J Malpas, *Place and Experience: A Philosophical Topography* (Cambridge University Press 1999) 176.

⁷⁵ T Taylor, 'Living Digitally: Embodiment in Virtual Worlds' in Schroeder (ed), *The Social Life of Avatars: Presence and Interaction in Shared Virtual Environments* (Springer-Verlag 2002) 44.

⁷⁶ J Wolfendale, 'My Avatar, My Self: Virtual Harm and Attachment' (2007) 9 *Ethics and Information Technology* 111, 114.

race, class, and profession within the world's narrative.⁷⁷ These attributes cloak the player in the virtual world. The avatar therefore becomes an integral aspect of a person's social identity.

When a person loses their home they are 'de-robed' thereby losing their ability to project onto the outside world.⁷⁸ On that basis the home could be said to be essential to a person's inward and outward self-identity allowing for individuals to fully interact with the world outside of their home.⁷⁹ This identity is the product of human beings being 'thinking, remembering, experiencing' creatures.⁸⁰ This is analogous to the situation users of virtual worlds find themselves. Their participation in the world through an avatar is an expression of their inward self-identity whilst at the same time being an outward statement of how they wish to be seen and how they may interact with the virtual world.

Property and Personhood

If it is accepted that one may have comparable feelings towards their home and a virtual world it must be asked how these things can be separated from other objects that are not bound up with the self. Radin seeks to explain this phenomenon through her theory of property and personhood⁸¹ in which she argues that a person's attachment to an object may be placed on a spectrum of two diametric types of relationship with that object; personal property and fungible property.⁸² This

⁷⁷ P Nagy and B Koles, 'The Digital Transformation of Human Identity: Towards a Conceptual Model of Virtual Identity in Virtual Worlds' (2014) 20 *Convergence: The International Journal of Research and New Media Technologies* 276, 281-283.

⁷⁸ L Fox, *Conceptualising Home: Theories, Law, and Policies* (Hart 2006) 136.

⁷⁹ Support for this view comes from K D Ewing, 'Social Rights and Constitutional Law' (1999) PL 104, 116-118.

⁸⁰ J Malpas, *Place and Experience: A Philosophical Topography* (Cambridge University Press 1999) 177.

⁸¹ M J Radin, 'Property and Personhood' (1982) 34 *Stanford Law Review* 957; M J Radin, *Reinterpreting Property* (University of Chicago Press 2009). For a recent reconsideration of Radin's work see also J D Jones, 'Property and Personhood Revisited' (2011) *Wake Forest Journal of Law and Policy* 93.

⁸² M J Radin, 'Property and Personhood' (1982) 34 *Stanford Law Review* 957, 959.

approach rests upon the proposition that ‘most people possess certain objects they feel are almost part of themselves’.⁸³ This is significant for virtual worlds and the avatars that inhabit them with players feeling that each of these things are part of their holistic self. Radin uses the example of a wedding ring to demonstrate the differing personal attachments a person may exhibit:

One may gauge the strength or significance of someone’s relationship with an object by the kind of pain that would be occasioned by its loss. On this view, an object is closely related to one’s personhood if its loss causes pain that cannot be relieved by the object’s replacement... For instance, if a wedding ring is stolen from a jeweller, insurance proceeds can reimburse the jeweller [fungible property], but if a wedding ring is stolen from a loving wearer, the price of a replacement will not restore the status quo – perhaps no amount of money can do so [personal property].⁸⁴

Radin makes the same claim in relation to a person’s home by using the example of a landlord who will undoubtedly have a different attachment and feeling towards her property than the tenant who calls that property their home.⁸⁵ The key is determining whether the property is personal or fungible for the relevant party.⁸⁶ The landlord and tenant example given by Radin is analogous to the player in a virtual world owned and operated by a game developer or publisher. For the player in a virtual world their relationship to that world may be personal rather than fungible due to the ‘kind of pain that would be occasioned by’⁸⁷ a loss of that world taken together with all of those

⁸³ Ibid, 960.

⁸⁴ Ibid, 959.

⁸⁵ Ibid, 960.

⁸⁶ L Fox, *Conceptualising Home: Theories, Law, and Policies* (Hart 2006) 300-301.

⁸⁷ M J Radin, 'Property and Personhood' (1982) 34 *Stanford Law Review* 957, 959.

connections to everything therein.⁸⁸ If that player is unable to take part in the virtual world they lose their connection to the place, the community, and their history in that place. This experience results in distress and pain due to the acute loss of the things that tie them to the digital world.⁸⁹ This community experience is equivalent to the incommensurable loss an individual would feel when they are dispossessed of their home and in turn excluded from their community which informs an individual's spatial identity. That is an identity that is based upon the memories, images, and ideals that are triggered and developed by a physical space, whether this is the home itself or the local area.⁹⁰ This attachment to one's community, which of course the home will form a part, leads to severe distress when that community is not accessible, be it in person or through a virtual world.⁹¹ Therefore, protection of the home in the physical implicitly protects one's place in a community.

On the other side of Radin's spectrum, the developer of a virtual world will see the virtual world as fungible – a package of intellectual property to be exploited for profit. Reference here to the developer of a virtual world is to the organisation, typically a corporation, that develops, maintains, and owns a virtual world. These organisations are of course made up of individuals who have worked on virtual worlds whose connection to the same may be personal per Radin's definition. Unfortunately, these

⁸⁸ W S Bainbridge, 'The Death of Digital Worlds' in Christopher M Moreman and A David Lewis (eds), *Digital Death: Mortality and Beyond in the Online Age* (Praeger 2014); B Nardi, *My Life as a Night Elf Priest: An Anthropological Account of World of Warcraft* (University of Michigan 2010)

⁸⁹ M S Boone, 'Virtual Property and Personhood' (2007) 24 Santa Clara Computer and High Technology Law Journal 715; G Lastowka, 'User-Generated Content and Virtual Worlds' (2008) 10 Vanderbilt Journal of Entertainment and Technology Law 893; F G Lastowka and D Hunter, 'The Law of the Virtual Worlds' (2004) 92 California Law Review 1; J A Fairfield, 'Virtual Property' (2005) 85 Boston University Law Review 1047; A V Fritzsche, 'Trepas to (Virtual) Chattels: Assessing Online Gamers' Authority to Sell In-Game Assets Where Adhesive Contracts Prohibit Such Activity' (2007) 8 UC Davis Business Law Journal 234.

⁹⁰ M Fried, 'Grieving for a Lost Home' in Leonard J Duhl (ed), *The Urban Condition: People and Policy in the Metropolis* (Basic Books 1963) 156.

⁹¹ Ibid, 156-157; J Banks and R M Marter, 'Coping with [R]evolution in Online Games: Vulnerability and Resilience Responses to Change in MMO Game Expansions' (2018) 62 Journal of Broadcasting & Electronic Media 269, 272.

individuals will not own these virtual worlds with the products of their labour being the property of their employer.

Radin's approach to personhood presents a theoretical grounding for consideration of an individual's feelings towards a place including those places that exist virtually. This is not a novel submission, with a number of commentators in this area referring to Radin's work.⁹² However, the existing consideration of Radin's work in relation to virtual worlds is limited to specific objects such as a rare sword or a piece of clothing in the game world.⁹³ This approach misses a key part of Radin's contribution. Of course Radin refers to specific items such as a piece of jewellery that may have personal or fungible qualities to particular individuals but she also refers to places. It is in this that virtual worlds might holistically be considered personal on Radin's spectrum due to the pain one might feel upon losing access to that world.

In utilising Radin's approach to property and personhood it should be noted that personal property will never be monolithic. For instance as much as a home or a virtual world may be seen as a sanctuary these places can also be the location of great pain.⁹⁴ This is why harm suffered by an avatar may be experienced by the user in the physical world. Wolfendale has discussed this in relation to emotional trauma suffered by individuals after their avatars had been sexually assaulted in *LambdaMOO*, a text

⁹² M S Boone, 'Virtual Property and Personhood' (2007) 24 Santa Clara Computer and High Technology Law Journal 715; C J Cifrino, 'Virtual Property, Virtual Rights: Why Contract Law, Not Property Law, Must Be the Governing Paradigm in the Law of Virtual Worlds' (2014) 55 Boston College Law Review 235.

⁹³ M S Boone, 'Virtual Property and Personhood' (2007) 24 Santa Clara Computer and High Technology Law Journal 715.

⁹⁴ L Fox O'Mahony, 'The Meaning of Home: From Theory to Practice' (2013) 5 International Journal of Law in the Built Environment 156, 165; L Fox, *Conceptualising Home: Theories, Law, and Policies* (Hart 2006) 106-107; J Dibbell, 'A Rape in Cyberspace; or, How an Evil Clown, a Haitian Trickster Spirit, Two Wizards, and a Cast of Dozens Turned a Database into a Society' in Mark Dery (ed), *Flame Wars: The Discourse of Cyberculture* (Duke University Press 1994); G Hallevy, 'Criminal Liability for Intellectual Property Offences of Artificially Intelligent Entities in Virtual and Augmented Reality Environments' in Woodrow Barfield and Marc Jonathan Blitz (eds), *Research Handbook on the Law of Virtual and Augmented Reality* (Edward Elgar Publishing 2018).

based online game.⁹⁵ *LambdaMOO* is notable for the purposes of this work as the game has no 3D world for avatars to populate and yet users still display a strong connection to their avatars. In 1992 a *LambdaMOO* user called Mr Bungle took advantage of an in-game exploit that allowed him to broadcast to all participants of the game whilst falsely making it appear that he was involved in sexual acts with two other players, legba and Starsinger. Mr Bungle's exploit made it seem as if legba and Starsinger were involved in 'brutal and sexually explicit acts'⁹⁶ although neither legba or Starsinger had consented to being represented in this way. In recounting the experience legba described 'posttraumatic tears... streaming down her face.'⁹⁷ This deep connection one feels towards their avatar is seen in other virtual worlds with players experiencing emotional responses to things that happen to their avatar.⁹⁸ Clearly legba's avatar and the avatar's representation in the world was so bound up in her sense of self it could be considered personal property within Radin's theory.

The feelings and attachment a person may have towards their home or a virtual world are analogous. Per Radin's property and personhood theory it is clear that one's self and a virtual world may be deeply enmeshed. The result of this, if a person was to be excluded from the world, would be a great sense of pain and distress. This provides a normative basis for the legal protection of virtual worlds. In assessing how best this might be developed it is sensible to first assess the legal methods through which a

⁹⁵ J Dibbell, 'A Rape in Cyberspace; or, How an Evil Clown, a Haitian Trickster Spirit, Two Wizards, and a Cast of Dozens Turned a Database into a Society' in Dery (ed), *Flame Wars: The Discourse of Cyberculture* (Duke University Press 1994).

⁹⁶ J Wolfendale, 'My Avatar, My Self: Virtual Harm and Attachment' (2007) 9 *Ethics and Information Technology* 111, 112.

⁹⁷ J Dibbell, 'A Rape in Cyberspace; or, How an Evil Clown, a Haitian Trickster Spirit, Two Wizards, and a Cast of Dozens Turned a Database into a Society' in Dery (ed), *Flame Wars: The Discourse of Cyberculture* (Duke University Press 1994).

⁹⁸ L Whang and G Chang, 'Lifestyles of Virtual World Residents: Living in the On-Line Game "Lineage"' (2004) 7 *Cyber Psychology and Behaviour* 592; M Luck, 'Crashing a Virtual Funeral: Morality in MMORPGs' (2009) 7 *Journal of Information, Communication, and Ethics in Society* 280; O Servais, 'Funerals in the 'World of Warcraft': Religion, Polemic, and Styles of Play in a Videogame Universe' (2015) 62 *Social Compass* 362.

person's physical home is protected and ask if any of these protections might be replicated in the protection of virtual worlds.

3. Legal Protections for the Home

The methods through which the law protects one's home are bound up with idea of private ownership. Full consideration of private ownership is beyond the scope of this work⁹⁹ but there are broadly two situations in which the law through some means seeks to mitigate or prevent the loss of one's home, either in the case of a mortgagee seeking possession or a tenant resisting a landlord's recovery of possession. When each of these situations is analysed it is clear that these protections are not particularly robust and moreover they do not readily account for the unique nature of virtual worlds, in spite of the similarity of feelings for the home and virtual worlds explored above.

Mortgagor Protections

Where a mortgagee looks to take possession of mortgaged property this is frequently the mortgagor's home and the mortgagor may resist a possession order. To reflect this the law seeks to balance the conflicting interests of mortgagor and mortgagee. For example, the mortgagee cannot recover possession of an occupied residential property without a court order.¹⁰⁰ Moreover, the court may allow for a 'reasonable period' for the mortgagor to pay 'any sums due' in lieu of making a possession order.¹⁰¹ Where a mortgagee is granted a possession order and moves to sell the property then they must 'take all reasonable steps' to secure the market value for the property over simply looking to recover unpaid sums.¹⁰²

⁹⁹ See J Penner and M Otsuka (eds), *Property Theory: Legal and Political Perspectives* (Cambridge University Press 2018) for an overview of contemporary property theory.

¹⁰⁰ Protection from Eviction Act 1977 s.1; Criminal Law Act 1977 s.6.

¹⁰¹ Administration of Justice Act 1970 s.36.

¹⁰² *Cheltenham & Gloucester Building Society v Norgan* [1996] 1 WLR 343.

The position of a mortgagor echoes that of an individual who takes part in a virtual world in that they are each likely to resist efforts to have them removed from the property or the world. However, the possible comparisons cease when the typical lack of ownership enjoyed by the individual in a virtual world is noted. Moreover, where a mortgagor is unsuccessful in resisting the recovery of possession by the mortgagee they will be removed from their home but they will still receive money from the sale of the property less outstanding sums owed arising out of respect for the value of private property.

It is not possible to replicate this protection in virtual worlds due to their reliance upon other users. For example, if a world was to close and a single user was to succeed in resisting the closure then the single user would find themselves in a very different situation to that before. It is not possible to separate an individual avatar from the wider world – they are indivisible. And so existing legal protections for mortgagors which seek to protect the home in the physical world do not adequately reflect the unique nature of virtual worlds. **Any protection for virtual worlds must be holistic and take account of the fact that the key part of one's attachment to a virtual world the community within that world.**

Landlord and Tenant Law

The position of a tenant is in some ways analogous to that of an individual in a virtual world. The tenant is able to access and use the property for a defined period for the payment of fee.¹⁰³ This is similar to the position of those in virtual worlds who may access the virtual world for a defined period for the payment of a subscription fee. However, the law governing residential leaseholds largely suffers from the same shortcomings that emerge in relation to mortgagor protections in that the traditional

¹⁰³ *Street v Mountford* [1985] AC 809.

understandings of ownership only account for the protection of a small piece of land that is the absolute dominion of an individual or a small group. This focus on the individual's ownership of a particular place, over that place's part in a larger community, does not account for one's connection to a virtual world.

Moreover, the protections afforded to tenants in the physical world are largely procedural rather than substantive. The majority of residential tenants are in assured shorthold tenancies and so while there are other forms of tenure available, usually with greater security,¹⁰⁴ it is perhaps best to consider assured shortholds given their ubiquity in the rented sector.¹⁰⁵ The landlord of an assured shorthold tenant need only correctly serve a notice pursuant to s.21 of the Housing Act 1988 in order to recover possession. This protection has been criticised in the academic literature for its paucity of protection¹⁰⁶ and is subject to repeal.¹⁰⁷ If the submissions made in Parts 1 and 2 above are accepted it is unwise to suggest that the same protections which have been regularly criticised in one area ought to be replicated in another.

It is clear from the above that traditional legal protections which exist to protect property, and indirectly a person's home, are unfit for protecting a virtual world. The reasons for this are threefold. Firstly, there is a focus on the idea of ownership running through property theory, this focus overshadows the non-proprietary feelings one has towards places which may be present irrespective of ownership. Secondly, this focus on ownership does not account for the importance of what is not and cannot be owned

¹⁰⁴ Secure tenancies regulated by the Rent Act 1977 and assured tenancies regulated by the Housing Act 1988 for example.

¹⁰⁵ Ministry of Housing Communities and Local Government, 'English Housing Survey: Privacy Rented Sector, 2017-18' <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817630/EHS_2017-18_PRS_Report.pdf> accessed 22 June 2020.

¹⁰⁶ S Nield and E Laurie, 'The Public-Private Divide and Horizontality in the English Rental Sector' (2019) Public Law 724.

¹⁰⁷ K Symons and A Hindle, 'Housing Act 1988 - The End of Section 21 Possession and Assured Shorthold Tenancies' (2019) 23 Landlord and Tenant Law Review 179.

in the sense recognised by traditional property theory, this includes attachment to one's community, personal property such as in-game items which exist only in the virtual world, and the wider 3D world which is very much a part of an individual's personhood. Thirdly, it is improbable that the physical world humans inhabit will come to a definitive end in the near future.¹⁰⁸ This is starkly different from the situation users of virtual worlds find themselves when the virtual world is shut down:

... MMOs and other online virtual worlds are ephemeral, and no practical way currently exists to revive one once it has been terminated... [There are] major ramifications of this situation, especially the fact that the avatars who dwell in these worlds 'die' when the cataclysm strikes.¹⁰⁹

In light of these shortcomings it must be asked if there are instead other methods of protecting virtual worlds which account for their unique nature.

4. Protecting Virtual Worlds through Community Empowerment

The foregoing parts of this article have highlighted the importance of virtual worlds to the individuals that inhabit those worlds. The analogy that has been made is that the experience one has of a virtual world is akin to the attachment to a home one feels in the physical world. These connections to a virtual world provide a normative basis for the protection of virtual worlds. However, the question remains precisely how this might be achieved. This is particularly so following the experiences of the Nostralius team, discussed below, and the subsequent lack of trust between the users of virtual worlds and their owners. There is a tendency in legal scholarship to grasp for

¹⁰⁸ This is stated with an awareness of the Anthropocene age humanity finds itself in, see generally D Wallace-Wells, *The Uninhabitable Earth: A Story of the Future* (Penguin Books 2019).

¹⁰⁹ W S Bainbridge, 'The Death of Digital Worlds' in Moreman and David Lewis (eds), *Digital Death: Mortality and Beyond in the Online Age* (Praeger 2014) 216.

established corpora of law to conceptualise novel developments in society.¹¹⁰ In the literature discussing virtual worlds and other digital innovations of the past 30 years this has typically led scholars to drink at the wells of property law and contract law.¹¹¹ This is understandable given the common lawyer's yearning for precedent that may in principle align with whichever novel question being considered.¹¹² Lawyers trust their familiar tools and intellectual schema. However, for the reasons discussed above in Part 3 the protections afforded in property for titleholders are largely unhelpful here given the lack of ownership typically afforded to those who inhabit virtual worlds. Equally contract law provides little comfort due to the unequal bargaining positions of game developers and users, the restrictive terms contained in EULAs,¹¹³ and, again, the lack of private ownership which users in virtual worlds typically enjoy.¹¹⁴

Any protection introduced for virtual worlds needs to pay mind to the communitarian nature of the world and its inhabitants. It would be little solace to a single user if only she was able to continue using the world whilst her friends had been excluded. Concomitantly the commercial interests of the game developer or publisher in protecting and exploiting their intellectual property should not be unfairly curtailed. Developers should not feel penalised for their successful works. In taking this holistic view of competing interests it should be remembered that:

¹¹⁰ J A Fairfield, *Owned: Property, Privacy, and the New Digital Serfdom* (Cambridge University Press 2017).

¹¹¹ P Brown and R Raysman, 'Property Rights in Cyberspace Games and other Novel Legal Issues in Virtual Property' (2006) 2 *Indian Journal of Law and Technology* 87; C J Cifrino, 'Virtual Property, Virtual Rights: Why Contract Law, Not Property Law, Must Be the Governing Paradigm in the Law of Virtual Worlds' (2014) 55 *Boston College Law Review* 235.

¹¹² R Unger, 'The Reliance Interest in Property' (1988) 40 *Stanford Law Review* 611.

¹¹³ J M Ackerman, 'An Online Gamer's Manifesto: Recognising Virtual Property Rights by Replacing End User Licensing Agreements in Virtual Worlds' (2012) 6 *Phoenix Law Review* 137

¹¹⁴ See generally J A Fairfield, *Owned: Property, Privacy, and the New Digital Serfdom* (Cambridge University Press 2017).

If the creators of an MMO are willing, or the entity currently holding the intellectual property rights [for the MMO] agrees, a small-but-dedicated group of users could sustain a virtual world, so long as there was no need to add new computer program code or other features.¹¹⁵

In taking account of this the solution to the problem faced by those who inhabit virtual worlds rests in community involvement and a feeling of trust between developer and user. The two parties ought to act in good faith towards one another. An example of the lack of trust and good faith between game developers and users is the experience of the Nostralius team.

WoW launched in 2004, the period following the game's release up to the launch of its first expansion pack in 2007 is commonly seen within the *WoW* community as a golden age.¹¹⁶ As with any golden age, this time passed as the game was updated. The Nostralius team acknowledged this issue and reverse engineered a version of the game from 22 August 2006 that was playable in a 'legacy server'. The Nostralius project only lasted a short time, due to threats of legal action from *WoW*'s developer, Blizzard. **It is perhaps understandable that Blizzard would threaten legal action in this case given the incentive to secure intellectual property that may be used in later virtual worlds. However, this forces rightsholders to view their works as objects which are to be owned and exploited in an all or nothing fashion. This view echoes traditional legal understandings of property¹¹⁷ which are suspicious of collaboration and requires trust in third parties not to overstep the bounds of one another's understandings of private**

¹¹⁵ W S Bainbridge, 'The Death of Digital Worlds' in Moreman and David Lewis (eds), *Digital Death: Mortality and Beyond in the Online Age* (Praeger 2014) 226.

¹¹⁶ R Fahey, 'WoW Classic Reminds Us of All We've Lost' (*Gamesindustry.biz*, 6 September 2019) <<https://www.gamesindustry.biz/articles/2019-09-06-wow-classic-reminds-us-of-all-weve-lost-opinion>> accessed 22 April 2020.

¹¹⁷ *Semayne's Case* 5 Co Rep 91 a; *Entick v Carrington* (1765) 19 Howell's State Trials 1029; 2 Bl Comm ch 1.

property. This is evident in Honoré's theory of property which recognises that the foundational understanding of property in Western thought is the respect for another's property on the ground that trust in another's observance of the same will ensure private enjoyment of one's own property.¹¹⁸ This is visible in what Locke considers to be the essential reason for entering civil society, the protection of private property.¹¹⁹ This trust in one another's respect for property requires reciprocity on a level playing field – I will respect your private property because you respect mine. In the case of virtual worlds this reciprocity of trust is absent. The developers of virtual worlds are unable to trust that the denizens of their worlds will not exploit virtual worlds for profit or in the least preclude the exploitation of virtual worlds by their developers. Likewise, individuals inhabiting virtual worlds have no reason to trust that game developers will continue to operate virtual worlds into the future. There is no reciprocity required in the relationship between the developer and user of a virtual world and without that reciprocity there can be no trust between the parties that each will act fairly towards the other.

In spite of the lack of trust between Blizzard and the Nostralius team, the Nostralius project's greatest achievement is perhaps providing the proof of concept for *WoW Classic*, an official release that emulates *WoW* around 2006. Following the announcement of *WoW Classic* one of the leaders of the Nostralius team stated that:

After 13 years, we now have to wait a little longer before we can go back home... Thanks Blizzard for bringing this part of your community back home.¹²⁰

¹¹⁸ J E Penner, 'The "Bundle of Rights" Picture of Property' (1996) 43 UCLA Law Review 711, 712-730; A J MacLeod, 'Bridging the Gaps in Property Theory' (2014) 77 MLR 1009, 1010.

¹¹⁹ J Locke, *The Second Treatise of Civil Government* (Project Gutenberg edn, 1690) ch VII.

¹²⁰ Viper, 'Blizzcon 2017 and WoW Classic Announcement' (*Nostralius Forum*, 8 November 2017) <<https://forum.nostalrius.org/viewtopic.php?f=2&t=45663>> accessed 14 June 2020.

The Nostralius team demonstrated that it is possible for relatively small groups to keep virtual worlds alive without the involvement of their creators.¹²¹ It is this kind of community involvement that must be in place for a virtual world to continue running in the event that the world's owner wishes to close that world.

Focusing on the importance of community involvement in the protection of virtual worlds moves attention away from property law and contract law towards schemes in the physical world which recognise the importance of places to their communities. 'Community empowerment'¹²² is one of the themes which animates the Localism Act 2011. In the spirit of community empowerment the Localism Act 2011 allows for an individual or group 'with a local connection'¹²³ to nominate land as an 'asset of community value'¹²⁴ (ACV). In assessing whether land has community value a local authority will consider whether the land 'furthers the social wellbeing or social interests of the local community' and whether it is realistic to think that continued use of the land will further these community interests.¹²⁵

Land being designated an ACV limits the scope for disposal or development. The owner of an ACV may only dispose of the land where the following conditions have been met:

- A. the owner has notified the relevant local authority of their intention to dispose of the land;
- B. a moratorium period arising out of the land being an AVC has ended; and
- C. the 'protected period' has not ended.¹²⁶

¹²¹ Nostralius Team, 'Nostralius Vanilla Legacy Server: Post Mortem 2015-2016' <<http://docdro.id/flUbn6G>> accessed 14 June 2020.

¹²² Localism Act 2011 ss.72-108.

¹²³ Ibid s.89(2).

¹²⁴ Ibid s.89(1).

¹²⁵ Ibid s.88(1).

¹²⁶ Ibid s.95.

The effect of Condition A is straightforward. After being notified of the ACV owner's intention to sell the ACV, the local authority must give notice to the group that nominated the land for ACV status and must publicise the proposed disposal in the area around the ACV.¹²⁷ Conditions B and C are more noteworthy. Condition B has two effects, the first is the creation of an 'interim moratorium period' lasting for 6 weeks from the date that the local authority receives notice of a proposed disposal. Where, in this 6 weeks, the local authority receives an expression of interest from an interested party that wishes to be 'treated as a potential bidder' then a 'full moratorium' period of 6 months starting from the date of the notification of the intention to dispose will begin.¹²⁸ The intention of this moratorium period is to allow a community group time to 'raise the money so as to be able to outbid anyone else interested in acquiring the land'.¹²⁹ The 'protected period' referred to in condition C refers to the 18 month period following any moratorium in which the registered owner of the ACV is free to dispose of the asset. If this 18 month period has ended then the intention to dispose of the ACV will trigger another requirement for notice to be given to the local authority and therefore the group that registered the property as an ACV.

Notable assets that have been protected as ACVs are football stadiums such as Anfield in Liverpool and Old Trafford in Manchester.¹³⁰ In support of registering Anfield as an ACV, Liverpool Supporters' Union made the following remarks:

Much more than a building, far bigger than any asset value that is assigned on a global hedge fund's balance sheet. Anfield stadium is the heart of a community; a neighbouring community of residents and

¹²⁷ Ibid s.97.

¹²⁸ Ibid s.95.

¹²⁹ A Samuels, 'Assets of Community Value' (2017) *Journal of Planning & Environment Law* 482, 485.

¹³⁰ A Southern, 'Something is Stirring in Anfield: Elite Premier League Football and Localism' (2014) 29 *Local Economy: The Journal of the Local Economy Policy Unit* 195.

business and a global community that has spread far and wide since Liverpool FC was formed and took over residency of the stadium from Everton in 1892. Anfield Stadium is a community asset that looms large in the lives of its neighbours and of the people across the world... Anfield Stadium is an asset of community value.¹³¹

Clearly there is an acknowledgement here that a community asset is worth much more to its community than its economic value suggests.

There is little judicial consideration of the ACV provisions of the Localism Act 2011 with the only case heard by the appellate courts being *Banner Homes Ltd v St Albans City and District Council*.¹³² The case concerned a piece of greenbelt land that had been informally utilised for 40 years by residents who lived nearby. Banner Homes, who bought the land in 1996, was aware of this use and did nothing to discourage it but did not give explicit permission. One resident commented that the land had:

... been an inspiration and a joy for [our family]. We have spent at least an hour each day almost every day—in total amounting to more than 10,000 hours—enjoying the enchanting environment and diverse and rich flora and fauna. We use it for walking our dog, for playing with our grandchildren, and our children before that. More recently, for the perfect tranquillity it affords, whilst I have been convalescing after a life-threatening illness.¹³³

¹³¹ Ibid, 205.

¹³² *Banner Homes Ltd v St Albans City and District Council* [2018] EWCA Civ 1187, [2019] 1 P & CR 13 [7].

¹³³ Ibid [42].

In keeping with the recreational use of the land the residents also trimmed overgrown vegetation to ensure that the public footpaths across the land were accessible.¹³⁴ To reflect the importance of the land to the local community a residents' association applied to have the land registered as an ACV. On learning of the residents' association's intentions Banner Homes erected fences on the land preventing any use beyond access to the public footpaths. Banner Homes then resisted the land's inclusion on the local authority's register of ACVs due to the meaning that Banner Homes said should be attributed to the words 'actual use' in s.88 of the Localism Act 2011. Briefly put s.88 of the 2011 Act allows land and buildings to be considered an ACV where actual use, or actual use in the recent past, furthers social wellbeing or social interests, social interests being cultural interests, recreational interests, and sporting interests.

Banner Homes' position was that the actual use in the recent past was unlawful as without permission to be on the land the local residents were trespassing. Therefore, allowing the site to be made an ACV would offend the *in bonam partem* doctrine which presumes against a party benefiting from statute through their unlawful conduct. Nevertheless, the court found that the recreational use of the land discussed in the terms above could amount to actual use for the purposes of s.88 due to the positive approach taken to the land by the residents and the modest interference caused by an ACV listing on the freeholder.

The approach of the court in *Banner Homes* is noteworthy for the purposes of this article as comparisons can be made between the positions of the residents' association and Banner Homes on the one hand and the Nostralius development team and Blizzard, the developers of *WoW*, on the other. Imagine for a moment that Azeroth, the world in *WoW*, was not virtual and therefore physical and so was no longer

¹³⁴ Ibid [43].

governed by intellectual property and instead fell within the sight of the Localism Act 2011. Say Blizzard, the owner and manager of outdoor parks, disregards a small tract of land, the Eastern Kingdoms and Kalimdor, whilst it develops other parts of its large estate, Azeroth, with a view to encourage people to spend time in the other parts of the estate which are more profitable. The Eastern Kingdoms and Kalimdor have disused buildings and wild areas that are maintained by the Nostralius team, a small group of individuals, who do this for free for the benefit of the wider community. To reflect the importance of the Eastern Kingdoms and Kalimdor to the local community Nostralius applies to have the land registered as an ACV. Blizzard resists this on the basis that Nostralius and the community spending time on the land were there without permission and so were trespassers. Following the view of the Court of Appeal in *Banner Homes* it seems unlikely that a court would find against Nostralius in this hypothetical.

Of course this avenue would be unsuccessful for virtual worlds as they are currently understood by the law; an amalgam of contract and intellectual property law. Nevertheless, the ability for communities to register ACVs in the physical world gives something of a model to work towards for virtual worlds. If such a framework existed, upon being notified that a virtual world was going to be shut down the community around that game could petition the developer to have the world protected as a 'Virtual Asset of Community Value' (VACV). **The challenge here is the lack of an equivalent to a local authority in relation to virtual worlds. This no simple solution to this issue given the unregulated transborder nature of virtual worlds. The best solution to such issues may be to have a national body similar to for example the Charity Commission which is required to hold a register of virtual assets. The Charity Commission is required to ensure organisations registering as charities fulfil the requirements for charitable**

status and so it is not unreasonable to assert that a similar body could exist to assess whether a virtual world furthered the social wellbeing or social interests of the virtual community and whether it is realistic to think that continued use of the virtual world will further those community interests. This is much the same exercise as that carried out by a local authority under the Localism Act 2011.¹³⁵

Following a notice, the community could be granted 6 months to assemble a team that could take on the running of the world, on demonstrating this the developer ought not be able to unreasonably withhold permission to freely licence the intellectual property necessary for the continuation of the world unless the developer is able to make the case that such licencing would amount to a significant reduction in their ability to exploit their intellectual property. This same approach could be taken to legacy virtual worlds that have been resurrected without the approval of their developers as such activities are not dissimilar to the trespassing that occurred in *Banner Homes*. However, when the connections individuals have towards virtual worlds are understood as being similar to those we experience in the physical world the question must be asked how those feelings can justify protection of physical assets but not virtual assets.

It may be thought that the absence of institutions to protect virtual worlds such as those which exist in relation to physical assets, for example, the National Trust or National Parks England, may make the task of protecting virtual worlds through the methods outlined above difficult. It would certainly of course be helpful for equivalent organisations to exist for virtual worlds. However, the absence of such organisations is clearly not critical for the ongoing protection and running of virtual worlds. The achievements of the Nostralius team are demonstrative of the wealth of talent that

¹³⁵ Localism Act 2011 s.88(1).

exists in communities that coalesce around virtual worlds. On that basis there is no reason to doubt that virtual worlds with large communities would be able to navigate whatever legal framework might be introduced for the protection of virtual worlds in much the same those same communities have skilfully reverse engineered virtual worlds to allow for their continued existence.

Conclusion

Participation in a virtual world may positively contribute towards an individual's identity realisation, sense of community, privacy, and belonging. These positive attributes provide the normative basis for greater protection of virtual worlds much like similar feelings provide the basis for legal protection of the home in the physical world. It is clear that one's connections to a virtual world and all it encompasses (places, objects, and friendships) are deeply enmeshed with the self.

This piece is not intended to be the jumping off point for the immediate introduction of frameworks that may protect virtual worlds rather the intention here is to shift the legal scholarship in this area away from the focus on property and contract. The same reasons for protecting one's home and community animate the argument for the protection of virtual worlds and so we should instead focus on these areas when looking to protect virtual worlds. Assets of Community Value and the idea of 'community empowerment' go some way in assisting with this goal and may neatly sidestep the issues that have dogged such arguments to date. Now is the time for efforts to be focussed on this area of research before more virtual worlds are 'permanently lost'.¹³⁶

¹³⁶ W S Bainbridge, 'The Death of Digital Worlds' in Moreman and David Lewis (eds), *Digital Death: Mortality and Beyond in the Online Age* (Praeger 2014) 220.