

Cultural Studies Review
volume 20 number 1 March 2014
<http://epress.lib.uts.edu.au/journals/index.php/csrj/index>
pp. 77–99
© Melissa de Zwart and Sal Humphreys 2014

The Lawless Frontier of Deep Space

Code as Law in EVE Online

MELISSA DE ZWART

UNIVERSITY OF ADELAIDE

AND

SAL HUMPHREYS

UNIVERSITY OF ADELAIDE

Ten people explode every minute in Eve Online. 604 people explode every hour. 14,502 people explode every day ... 'you people really do love blowing up spaceships'.¹

Online multiplayer games are exemplary cases of the overlapping rule sets that are negotiated in the digital era. Game rules are used to establish a field of interaction at once familiar and strange, a deliberately differentiated site for competitive, social, cultural and commercial exchange. Game rules created by developers in the establishment of an online digital game space intersect and overlap with rules created socially by players, with cultural norms emerging from within the game space and from the contexts of play, with legal rules developed by lawyers managing the interests of publishers and with laws and values originating in the real world contexts of players in whichever legal jurisdiction they are located. These heterotopian spaces are sites of negotiation and conflict on a number of levels.²

EVE Online, a space-themed massively multiplayer online game (MMOG), with over half a million subscribers, actively encourages player participation in game

management, with a player council, the Council of Stellar Management (CSM), and active fan forums. The CSM is a unique management strategy not generally found in other MMOGs. It affords players a channel of communication with the developers and managers of the game and, at least in theory, an avenue for negotiation and some say in management decisions and the directions in which the game develops. The engagement of players in this system could be characterised as labour, in that they spend many hours working in the CSM—to the benefit of the publisher, but also to the benefit of the player population. As with most participatory media, there is a commodification of player engagement, but this should not necessarily be read as exploitation. The willing engagement of players in this representative body results in community status, intrinsic rewards and instrumental outcomes such as seeing the game develop in particular directions or ensuring management adopts particular policies.

EVE is a game that prides itself on its aggressive and piratical game play and has attracted a number of scams and scandals over the past few years, including fraud, ponzi schemes, corporate raiding and theft.³ Recently, it suspended a key member of the CSM (a player known as The Mittani) from the game and excluded him from the CSM for comments he made outside the game environment about another player. The suspension of the player for thirty days was justified on the basis that he had breached the terms of service. The repercussions of the ban are still playing out within the game and in player forums and have generated significant controversy in the associated game media.

In this article we explore the CSM as an example of the relationship between players and platform managers, and the negotiations around the Mittani scandal, in *EVE Online* to consider how 'gamespace' is constituted and redefined by the two groups. This discussion is used as a lens through which to better understand the relations of power generated in such spaces as players, developers, publishers, lawyers and entrepreneurs seek to advance their own differing agendas.

—CONTRACTUAL SPACE

Online environments, such as MMOGs, are often described as contractual environments, with the rules and limits of conduct being determined by the one-sided end user licence agreement (EULA) the player must accept to access the game

platform. Assumptions are made that all disputes should therefore be able to be settled by recourse to the contract. However, this reflects a very limited understanding of the effective governance mechanisms that operate within such environments and, indeed, of the power of contracts generally.⁴

Contracts are binding between the platform provider and the player and while many purport to set standards of players' behaviour towards one another, they are enforceable only by the parties to the contract. As an interplayer regulatory mechanism, this requires the platform provider to be prepared to become involved in player-to-player disputes and to enforce the EULA directly against the player it determines to be in breach of the contract. In most game worlds, platform providers have neither the resources nor the inclination to become involved in such disputes. Further, most EULAs do not descend to the level of specificity relevant to most player versus player disputes (although they may to some, such as allegations of copyright infringement). Therefore, the EULA only pertains to certain kinds of conflict with and surrounding the game and is not relevant to disputes regarding many aspects of gameplay.

How then are such disputes to be managed? How are other players able to punish, prevent or exclude a bad actor? If we accept the practical realities of the limited involvement of the platform provider, how complete is the EULA as a descriptor of governance? In particular we are interested in marginal player behaviour, conduct that pushes the boundaries of the rules as prescribed by the EULA, such as modding, griefing and cheating, which we have called 'disruptive practices'.⁵ In this context, we are concerned with the relationship between rules and social norms, noting that both of these have an impact upon, and undermine the realities of, the contractual space of the game.

—THE GAME RULES

A typical MMOG such as *EVE* will involve layers of overlapping and potentially conflicting rule sets.⁶ In his book *Code and Other Laws of Cyberspace*, Lessig explained that four factors affect regulation on a given point: law, norms, architecture and the market.⁷ All these factors are present in the governance of *EVE*. However, as Lessig went on to elaborate in the software and online context, law and architecture function through the underlying code. Lessig's concern was that this

code, unlike most laws, does not operate transparently and is not subject to judicial or public scrutiny or review. Players learn to play with and against the code, and it is this tension between control and creativity that keeps the game space interesting.⁸

The platform developers will have coded certain rules into the game environment. For example, *EVE* is unusual in the game field because the main focus of the player's game play is on space ships and big picture action, rather than on an individual avatar.⁹ This influences the player's perspective and involvement in the game play. Other coded rules may relate to how goods may be transported, how transactions may be effected, the nature and features of various categories of spaceships, the strength of certain items and zoning of regions of play.

The EULA (or terms of service) is the mechanism that authorises platform managers to control and run the environment (law and architecture as code, reinforced by the EULA). Players must accept this contract and the terms of service or use in order to join and remain in the game. There are also additional layers of rules regarding use of the website, player forums and chat channels, a privacy policy, a reimbursement policy and a ban policy (another layer of law).¹⁰

Players may develop their own codes of conduct or social norms which impact on game play, and in some instances these may be inconsistent with the game rules in the EULA, Code of Conduct or Acceptable Use Policy. To give one example the conduct of players during any regular period of game play would usually violate rules such as points one and two of the *EVE Online* terms of use: 'You may not abuse, harass or threaten another player or authorized representative of CCP, including customer service personnel and volunteers' and 'You may not use any abusive, defamatory, ethnically or racially offensive, harassing, harmful, hateful, obscene, offensive, sexually explicit, threatening or vulgar language.'¹¹ Abuse and threatening language are among the tactics regularly used in the game, as players harass other players to give up and cede regions to the dominant alliance.

Finally, there are external rules or laws, such as laws relating to harassment or vilification. Players from one jurisdiction may carry with them certain expectations regarding the enforcement of these laws. Other players may expect that such laws are suspended within the game space. These external rules are also reflected in the terms of use; for example, through banning harassment and sexual and racial vilification. Regulators are becoming more interested in virtual environments such

as MMOGs as their popularity and net dollar value increase, and in recent years we have seen an increase in virtual world related litigation which attempts to consider how far domestic laws can apply to the global environment of the MMOG.

To this nest of rules, code, norms and law we want to add a way to understand how players negotiate the complex space of the MMOG. Goffman suggested in his book *Frame Analysis* that we often experience and negotiate life through a series of 'frames' in which we present different aspects of ourselves and perform different roles to different audiences.¹² Thus we may move from the role of teacher to commuter to cook in the space of a day spent travelling to work and home again, alternately teaching classes, sitting on a bus and cooking dinner. We move between these different frames easily and slip into our different roles without even noticing. Pargman and Jakobsson, in an argument against understanding games as played within a hard and impermeable boundary of the 'magic circle', suggest instead that online game players negotiate a series of frames as they play.¹³ They can move from their primary frame of embodied person, to the role of player, to the role of character inside the game in quite a seamless fashion. Thus in a conversation with other players, a player may ask for help in how to do something in the game ('How do I get around the boulder in this zone?'), excuse herself to get something to eat, and return to cast fairy dust through a meadow to grow the special flowers needed to make the elixir of defence in her alchemist's hut on the great plains of Suntopia. She occupies roles of a player (asking for assistance in gameplay), embodied person (attending to everyday needs) and character (fantasy role of witch in a role-playing game). As Pargman and Jakobsson note:

Misunderstandings about which frame is being invoked can generate mirth but people are surprisingly adept at grasping where we are in frame space at any specific moment ... the boundaries between the different frames are permeable and it is possible (but not necessary) to move between them effortlessly.¹⁴

Thus we suggest that not only do people negotiate a number of levels of rules, norms and laws, but as they play they are also negotiating a number of different 'frames' and roles within those frames. Recognising these overlapping frames may help develop insights into the function of *EVE* as a multifaceted site of player experiences.

As the quote at the start of this article indicates, *EVE* is deliberately designed as a lawless frontier. Players are rewarded for ruthless gameplay, including murder, sabotage and piracy. Thus conduct which may not be seen as broadly 'acceptable' or 'ethical' in some other MMOG environments is encouraged by the game structure of *EVE*.

EVE Online is owned and managed by Icelandic company CCP (somewhat ironically this stands for Crowd Control Productions). It was originally released in 2003 and now has over half a million subscribers.¹⁵ In addition to the usual array of active fan forums, including a number of magazines and its own 'university', *EVE* also has a formalised avenue for player participation in game management, which will be discussed below.

EVE also has a history of scams and scandals. In February 2009 the balance of power in *EVE* was drastically altered by a major scam that saw the destruction of the Band of Brothers alliance due to the defection of a director to rival alliance Goonswarm. Rather than open warfare and firepower, this was akin to a hostile corporate defection, with the director taking money, resources, equipment and personnel with him.¹⁶ In July 2009 the CEO of an in-world bank, Ebank, removed two hundred billion Interstellar Credits (ISK) from the bank, causing a run on the in-world bank. It is possible he would have got away with the theft if he had not attempted to trade them for real world currency, which is banned by the EULA.¹⁷ The Mittani, the player at the centre of our case study below, has a history of run-ins with the game management, having been involved with the Band of Brothers scandal in 2009 and a number of other controversial incidents.

Notably, CCP warns players that it is 'a tough galaxy out there, and anyone could betray you'.¹⁸ The same applies to griefing: 'The *EVE* universe is a harsh universe largely driven by such conflict and notice must be taken of the fact that nonconsensual combat alone is not considered to be grief play per the above definition [consistent malicious interference with the game experience].'¹⁹

How do players negotiate rules and norms of behaviour within such a consciously amoral context? How can CCP regulate player behaviour to any extent within these parameters? (In fact, *EVE* has many parallels to ruthless corporate behaviour, including a preoccupation with complicated spreadsheets.) *EVE* also has

a player base which engages in extensive and public reflection and analysis of its own behaviour, which provides a rich source for academic analysis.²⁰

—THE COUNCIL OF STELLAR MANAGEMENT

The nature and role of the Council of Stellar Management (CSM) was established in 2008 and has evolved alongside the game. It is primarily intended to function as a player representative body.²¹ Members are expected to have some engagement with players' attitudes and expectations and to report those trends to CCP, but they have no official powers within CCP. In this regard they function much like a community engagement team.

The role of the CSM was originally articulated in a paper called 'The Council of Stellar Management: Implementation of Deliberative, Democratically Elected, Council in EVE' by Pétur Jóhannes Óskarsson.²² That document begins by briefly outlining the evolution of EVE society, from a hunter gatherer society in beta stage where players scavenged for any data or information resources they could find about this new environment, to a tribal society based around corporations, to stratified structures which enhanced the overall strength of the corporation and finally to a civilisation, where complex alliances were formed to provide organised governing structures. Reflecting on this evolution, Óskarsson suggests that it occurred within the framework provided by CCP with no ability for direct governance to be exercised by the players. Any influence they had was due to market considerations; that is, response to customer demand. Óskarsson concludes that in order to continue to evolve 'EVE's society must be granted a larger role in exerting influence on the legislative powers of CCP'. Interestingly, it is recognised that because of the particular nature of the *EVE* universe, CCP is not concerned with crimes committed in-world, such as murder, fraud or destruction of property, provided play remains within the scope of the EULA. Thus an attempt is made to draw a dividing line between real life actions and virtual ones as part of a 'non-negotiable social contract'.²³

Members of the CSM are elected by the players and serve a twelve-month term (extended from the original six-month term). There are nine delegates and five alternates and they are expected to attend a minimum number of meetings of the CSM. Seven members of the CSM are also flown to CCP's headquarters in Iceland

several times each year to meet with game developers and provide feedback on gameplay and proposed changes. The CSM is responsible for identifying issues that are important to players and escalating the most important of these to CCP. CCP examines these issues and determines whether it will support or deny the proposed issues or topics. Thus the involvement of the CSM functions at both developer and management levels. Clearly such a process involves significant effort and expenditure from the members of CSM and CCP. In reality, this system operates as a formalised version of the practice used in many other MMOG environments where the development team seeks guidance and feedback from guilds they identify as influential. This is usually done to formulate future directions, particularly when proposed developments constitute a significant change in gameplay environment. One key difference is the process where members of the CSM are elected by the player base. This gives formality to the process and implies player buy-in to the process, as suggested by Óskarsson's definition of the CSM as a 'deliberative democracy': 'a hybrid governance solution which combines consensus decree with representative authority'.²⁴

Of course, this is simply an illusion. The engagement of the CSM is in reality a consultative committee with no formal democratic power or accountability by CCP to their requests. Its power rests in the informal domain of accountability through publicity and community mobilisation rather than a formal power structure. The nature of the elected CSM is made possible by the specific structures of the game—its evolution into a hierarchically structured system with formalised conventions of play. Therefore, it may be extremely difficult to extrapolate any general lessons or outcomes for other platforms from the operation of the CSM, as the in-game structures of *EVE* facilitate and support these voting mechanisms. As we will discuss, the relationship between these in game alliances and the functioning of the CSM is also unclear. CSM members are designated as 'representatives' of the players, but this implies that such interests are homogenous. Further, representatives are 'expected to uphold the social contract that all society members are held accountable to, but should also set a behaviour standard for everyone else to follow'.²⁵

Changes to the CSM election system have recently been implemented in the election of CSM8 in 2013. Candidates are now required to enter into a pre-election

ballot, with the top twenty-one of these candidates able to enter the final ballot. Players may then vote, ranking the candidates one to fourteen, with fourteen members elected in this fashion. In addition, the five delegates to the summit will be chosen by CCP and the CSM on the basis of their contribution and hard work, with a further two delegates chosen by player vote.²⁶ How this will affect the operation and accountability of the CSM remains to be seen.

—EFFECTIVENESS OF THE CSM?

Given the novelty of the CSM as a governance mechanism there has been academic and industry analysis of its effectiveness and performance, as well as more anecdotal but nonetheless relevant observations and feedback provided by *EVE* players, including current and former members of the CSM. The operation of the CSM has not been without controversy.

Because their role may expose them to discussion of proprietary or pre-public release information, participants in the CSM are required by CCP to sign a non-disclosure agreement. Members of the CSM have been expelled for breaching this agreement. Of course, such an agreement is slightly at odds with CSM members' role as go-betweens for the players and the management. Information may flow upwards from the player base, but CCP retains absolute control of information flow in the opposite direction.

Further, there are some questions regarding how the CSM operates as a governance body. In particular, to what extent is CCP obliged either contractually or morally to respond to the dictates of the CSM? Reflecting on this, The Mittani has argued that despite these limitations the CSM performs a valuable role, providing useful and relevant feedback to CCP.²⁷ It could also be argued that membership amounts to a significant investment of time and energy from an elite group of players, with the reward being a personal sense of achievement or possibly status (clearly an aspect of the corporatised nature of *EVE* and reflected in events such as the *EVE* Fan Fest). A more cynical analysis may also conclude that membership represents a contribution from the player participants on the basis of a slim undertaking from CCP that they may listen to some of the suggestions for game design and may (or may not) implement them. It constitutes a clear investment by CCP in ensuring ongoing player engagement premised upon free labour. The idea

that a games company might use the activities of its players as labour that contributes to the development and maintenance of the game and its community is not new and not unique to CCP.²⁸ Whether this is exploitation is a matter of opinion. The boundary between work and play is increasingly blurring in many aspects of networked digital activities. Players variously engage in huge amounts of work-like activities as a hobby, a leisure-time pursuit, a means of participation in community, a pathway into industry and paid work, or some combination of these. They are often quite strategic and knowing in this engagement (not duped into it) and thus the question of whether this is exploitative on the part of the company is somewhat vexed. It is indeed free labour, but often freely given as well. As Banks and Humphreys suggest, players will often withdraw when they perceive the activity to have crossed the line into being work.²⁹

We will now consider two recent controversies that highlight the role of the CSM and the tensions and issues that can arise in the context of players' various roles within the CSM, as individuals, representatives, characters and go-betweens.

—'MONOCLEGATE'

With the launch of the *Incarna* expansion in 2011, CCP introduced real money microtransactions for vanity items. All these items were priced at levels the players considered excessive, with the poster child of this vanity store being a monocle, selling for \$70. The suggestion was that CCP were looking to wring extra money out of players, especially the high-end, dedicated players who had already invested significant time and money in the game. Several internal CCP memos were leaked which dismissed player concerns and indicated that further transaction costs were to come.

Microtransactions and the introduction of real money trade are seen by many players as destroying the game balance, with players being able to buy their way into positions of advantage within the game, rather than achieving those positions through skill. Although the items for sale in this instance were 'vanity' and did not give gameplay advantage, they were seen to be opening the door to this possibility. In response players used one of their few bargaining powers—exit—and began unsubscribing from the game. During this crisis, 8 per cent of subscriptions were

cancelled and CCP began laying off staff. An emergency meeting of the CSM was called.³⁰

The CSM provided feedback to CCP on the problems with the new initiatives and on why players were leaving in droves, thus illustrating the role of the CSM as a consultative and communication channel from the player base to CCP. The CSM was able to assist CCP to restore player faith with a declaration that further microtransactions would not be implemented, thus limiting further damage to the game.

—THE MITTANI CROSSES THE LINE

The Mittani, a key member of the powerful Goonswarm Alliance, has been a member of a number of iterations of the CSM. He has a long history of scams, scandals and sabotage, most notably the destruction in 2009 of the Band of Brothers Alliance, the long term rivals of Goonswarm. The long-term high-level involvement of The Mittani with *EVE* and his significant influence among the player base might suggest some reasons regarding why his actions, discussed below, attracted such rapid and public attention from CCP. Another player making a similar comment may have been dismissed as a bad joke at the wrong time.

At the Alliance Panel of the EVE Fanfest in March 2012, The Mittani, as the leader of the Goonswarm Alliance, made a presentation that was streamed live on the internet.³¹ As part of that presentation he showed a number of slides quoting in-game chat or posts from players who had been defeated or defrauded by Goonswarm. Inevitably, in keeping with the reputation of Goonswarm, these slides were presented in a humorous and derogatory tone, the message being that Goonswarm plays without mercy or scruples. One of the slides depicted a lament from an (at that point) anonymous player about being repeatedly ganked (harassed and/or killed) in the game, even by members of his own alliance, and includes the words: ‘Since my divorce all I want to do is die, and I have been doing that allot [sic] in this game.’ The Mittani explained that the player had been scammed out of a large amount of ISK (in-game currency) by promises of being included on a ‘protection list’ which would ensure he was not hassled by the alliance in the future. The player had posted the message after discovering he had been scammed and resigning himself to cease mining in that area of the game. The Mittani, who had been drinking

throughout the presentation, similarly ridiculed a number of other players' posts. At the end of the session the audience were invited to participate in a question and answer session. In response to the audience, The Mittani made a number of comments that identified the player, exhorting those who had issues with that player's comments, 'if you want to make the guy kill himself, his [in game] name is [xxxx]'.³² The Mittani later apologised and offered to resign from his position on the CSM. However, this response was not enough for CCP who issued a statement on the EVE Insider Dev Blog:

As some of you might have heard, one of the Alliance leaders speaking at the Alliance Panel during EVE Fanfest 2012 breached our EULA/TOS with some ill-advised remarks about a fellow EVE player. It goes without saying that CCP deeply regrets this incident and will work towards reducing any possibility of this happening again in the future.

CCP requested that all panel PowerPoint presentations and discussion topics be handed in beforehand for approval. Regrettably, the offending comments were made during an unscripted Q&A session after the main presentation.

Following a thorough internal review CCP has decided to respond to this clear violation of our Terms of Service and wholly inappropriate use of the Alliance Panel. According to our existing policies, we have issued a 30-day ban from *EVE Online* to the panel speaker.³³

The announcement went on to note that although the policy of CCP was to not discuss individual bans and warnings, this situation was 'unique, because the panel was displayed via CCP's Fanfest video stream, a platform analogous to our forums'.³⁴ This is interesting for the ways it highlights how out-of-game behavior can be punished through in-game sanctions, but also for the ways various web-based media allows material to be spread and de-contextualised. Had the Q&A session not been streamed, saved, archived and made searchable, it is doubtful the comments would have received much attention.

Of course, there is a clear question of whether such conduct was in fact a breach of the EULA as it did not occur within the game itself, but rather at an official event associated with the game and hosted by CCP. A secondary question is the social acceptance or resonance of such punishment among the player group, given the

game prides itself on bad behaviour and The Mittani, as a leader of the Goonswarm Alliance, has become influential within the game because he is an exemplar of that bad behaviour. It is apparent that out-of-game cultural norms held sway here over in-game norms. Follow up posts from CCP attempted to clarify the decision to suspend The Mittani on the basis of a breach of the EULA, noting that directly calling for people to pressure someone to commit suicide ‘crosses the line of acceptable player conduct and breaks the Terms of Service’. Further, CCP noted that while it acknowledged it could not realistically contain all interactions between *EVE* players, it took harassment of players, particularly those who suffered from depression or suicidal tendencies, extremely seriously. Indeed, the post claims CCP goes so far as to offer players a suicide hotline. In the light of these concerns, CCP would therefore be reviewing its communication strategies.³⁵ This prompted concerns from some players, such as Liang Nuren, who commented: ‘This is almost disturbing. While I believe I have a pretty solid handle on the social contracts in Eve, I’m concerned what formalizing them is going to do to the game and its culture.’³⁶

There is also an interesting question regarding the merger of The Mittani as an in-game character and the individual player who is The Mittani and how this individual acts outside the game in his role as a member of the CSM. If we think through the lens of Goffman’s frame analysis, the frames of player, character and person have slipped in this case. There is confusion about whether it is the character or the player who was on stage at the panel session. Later, The Mittani was to reflect on this issue, acknowledging the difficulty of acting as a player representative on the CSM and fulfilling his duties for Goonswarm:

I feel absolutely ashamed of my behavior at the Alliance Panel. It’s one thing to play a villain in an online roleplaying game—when I post on these forums or on twitter, I usually do so as ‘The Mittani’, and do my level best to convince everyone that I’m an unrepentant space villain, as that kind of facade provides an in game advantage to me and my alliance. But I am not that character in real life, as anyone who has met me can attest. I went way, way, /way/ past the line on Thursday night by mocking the Mackinaw miner at a real-life event. I, as a person, am not the entity that I play in EVE; I am not actually a sociopath or a sadist, and I certainly don’t want people to kill themselves in real life over an internet spaceship game,

no matter what I may say or do within the game itself. CCP may say 'EVE is Real', but EVE is not real—and the line between the game and reality should not be overstepped.

I'm relieved to discover that the Mackinaw miner is doing fine and mining away, despite being blown up by Goonswarm in-game. He deserves, and he has, my heartfelt apologies—here in public as well as a private apology. There's no excuse for what I did—while some might try to use my inebriation as a mitigating factor, I put myself in that compromised mental state, and the guilt of that is entirely mine.

If I could go back in time and not have included the slide mentioning the miner, I would do so. While the Eve Online character 'The Mittani' would never apologize for any sort of villainy in game, I myself, as Alex Gianturco, feel utterly ashamed and sickened by my behavior.³⁷

The Mittani was later to elaborate on these thoughts in his announcement that he was formally declining the position of chairman of CSM 7:

I have come to the conclusion that my two roles in EVE—that of the Chairman of the CSM as Alexander Gianturco, and the leader of Goonswarm as 'The Mittani' are increasingly incompatible. It is, fundamentally, a problem of hats.

As the leader of Goonswarm I must be willing to make ruthless decisions and take actions that many players find objectionable—griefing, ganking, scamming, 'dishonorable' fleet tactics, espionage, metagaming, blowing up everyone who tries to mine Gallente Ice, sponsoring Hulkageddon, et cetera—whatever it takes to defend my people in this, the most exceedingly hostile galaxy to grace the internet. As Darius JOHNSON, the previous Goonswarm leader once said, '[Goonswarm] is not here to destroy /the/ game, but /your/ game.'

Yet as Chairman of the CSM and Alexander Gianturco, I need to put a good face on CCP's experimental player democracy and keep my nose clean. Inevitably, these two roles conflict with one another; when Goonswarm does what it does in EVE, this reflects on the CSM as a whole, purely due to my position as both Chairman and alliance leader. If I abandon the brutalist tactics of an alliance leader in hopes of keeping the

CSM's image pristine, I hamstringing my people ingame and do a disservice to the line members who rely on me. In addition, the enemies of Goonswarm assault the CSM and CCP itself unfairly due to the in-game actions of our alliance.³⁸

Here The Mittani's own analysis invokes Goffman's frames. He points to the conflicting nature of the different roles and his inability to create coherence between them he could live with.

The post by CCP announcing the imposition of a thirty-day ban on The Mittani also noted: 'Although council members may represent the players in any manner they choose, being a council member does not permit actions or playstyles that violate our policies.'³⁹ There were of course many who doubted the sincerity of The Mittani's apology and characterised it as yet another form of trolling or at least a cynical attempt to reduce the fallout from the scandal in the mainstream media.⁴⁰ However, this response overlooks the complexity of overlapping interests articulated by Gianturco/The Mittani above.

Other players have questioned the implications of this outcome for related instances where someone's real-life name has been used in contexts outside, but connected with, the game. For example, following an Eve Radio session which brought together The Mittani and the player he named, someone posted The Mittani's address and another poster claimed they were headed to the house to rape The Mittani's wife. This has led to calls for tighter controls by CCP over the real life names and location information of future candidates for the CSM. 'We as a player community have proven that we are not responsible enough, not mature enough, and not sane enough to be trusted with this information.'⁴¹

This point neatly illustrates the complexities of regulation, highlighting the clear limitations of the magic circle analysis. The magic circle is a commonly held theory about games, first suggested by Huizinga in 1938, that proposes all activity within a game is quarantined from the 'real world', cordoned off by a magic circle which allows for the change of everyday rules and the transformation of acceptable behaviour rules.⁴² The key point is that in-game activities are inconsequential and removed from everyday life. There have been many critiques of this idea of separation.⁴³ As Consalvo suggests 'the concept of the magic circle seems static and overly formalist. Structures may be necessary to begin gameplay, but we cannot stop

at structures as a way of understanding the gameplay experience.⁴⁴ Those who argue for the magic circle are, in some ways, arguing for a separate jurisdiction in which the state should have no role, and in which game owners and providers should hold the power to determine the conduct of the game. While such schemas seem neat in their delineation of powers, they tend to ignore the agency and power of associated communities and players as well as the introjections of the non-game world into the game world, despite cries for adherence to the separation.

The situation discussed here demonstrates that governance by code alone will not satisfy player or provider expectations.⁴⁵ Surprisingly, CCP raised the spectre of the magic circle in a GM response to a post on the EVE general discussion forum seeking clarification of the EVE policy on harassment. The player questioned whether targeting players for various reasons, particularly in the context of that player threatening to harm himself, would now be recognised as a EULA violation.⁴⁶ CCP responded:

What happens inside the The Magic Circle is allowed as long as it abides by the rules of The Magic Circle (this is why you are allowed to hit someone in a boxing match, but not outside the ring). However, as soon as any action steps outside The Magic Circle and threatens harm to anyone in real life in any way shape or form, or when you incite others to do so (or when your in game actions are specifically geared towards that, joke or no joke), you break the EULA/ToS; even if you are only stating intent.

Any GM will always take immediate action when this is done.

And for those who think they can force an in-game situation out of The Magic Circle to avoid in game consequences by threatening with suicide; the GM department has a strict policy of informing local and international law enforcement agencies of any suicide threats issued **NO MATTER THE CONTEXT**. In other words, do **NOT** joke about that. When a RL life is threatened we do not take any risks, ever.⁴⁷

EVE appears to be an exemplar of Vanacker and Heider's 'loosely governed communities' that rely 'on self-restraint and self-policing rather than built-in limitations on behaviours and policing by administrators'. Vanacker and Heider argue that such communities 'are more significant from an ethical perspective as they leave the possibility for unethical behaviour open'.⁴⁸

It is recognised that such behaviour is valid and valuable, but there is also recognition of the limits of such behaviour. The question for regulators is how to identify where that boundary is and how it may be effectively drawn. There is also some disagreement about whether this is a legal or moral boundary; in other words, whether CCP needs to go so far as to ban a player who engages in such conduct. Liang Nuren argues that players in *EVE* are clearly able to distinguish between real life and life in *EVE*. Nuren refers to the social contract in *EVE* requiring the ability to follow both real and in-game laws, and then when real life laws are broken there will be consequences. However, Nuren also observes that in game dynamics and practices, such as the mobilisation of outrage against The Mittani's comments, may also influence out-of-game dynamics; thus politics and propaganda played a role in the vilification of The Mittani.⁴⁹

One of the things illustrated by these cases is that all players are embedded in external cultures from which they derive their moral code. Different cultures and different external factors tend to generate a diversity of understandings about where to 'draw the line' about acceptable behaviour. Every player brings with them to a game a set of expectations about acceptable behaviour within the game. This will to some extent be determined by their cultural background, their education levels, their gender, their age and their own individual moral compass. These expectations are tacit. Games are also often understood as spaces of inversion, where the ordinary rules of life are suspended, where players can explore taboos and experiment with alternative behaviours or identities. MMOGs, with their massive populations are clearly going to have players who come to the game with a multitude of different expectations regarding this aspect of gaming. Who should ultimately draw the line about acceptable behaviour in this messy assemblage of rules, norms and expectations? Conflict over crossing the line is often negotiated socially between players without ever coming to the attention of more formalised

structures of governance. Given the CSM is more of an advisory or consultative body that wields social power rather than exercises formal sanctions, CCP is the more obvious body to draw a formal line and define what constitutes 'play' and what constitutes rule-breaking. In this case the rule breaking is actually norm-breaking and the decision to formalise the norm into a rule serves a number of functions. It is in some ways a demonstration of power and authority by CCP—an indication that the carnivalesque behaviour of players in this space of inversion happens at CCP's leisure. CCP can tighten its regime of control if it decides to. The risk in doing so, firstly, is that the rigidity of formalised codes often sits abrasively with more dynamic socially formed codes. Second, CCP is always ultimately dependent on the goodwill of its player population. So the balance between stepping in and exerting power and alienating its player population is a delicate one and one which players are aware of. The CSM is an attempt to collaborate in governance with the player population. Imposing a rule like this is more an attempt to enforce sovereignty.

Rule-breakers may also use strategies that emanate from outside the game (such as mobilising the media, mounting law suits, or invoking government regulation), depending on the nature of the transgression. CCP itself is subject to legal constraints and must act with an eye to its responsibilities within the broader regulatory system. What is notable is the very contingent and historically specific nature of these breaches, and that a universalised solution in a global environment with wildly varying games (and game rules) is no solution at all.

—CONCLUSIONS

What lessons can be learnt from recent controversies involving the CSM for *EVE* and other online communities? *EVE* consciously and deliberately sets itself apart from other game worlds. As noted above, in the past CCP has chosen quite deliberately when to intervene in scams and controversies and when to abstain, clearly having decided that some bad behaviour is play enhancing and some damaging. It has also worked hard to establish and maintain the CSM and is currently reviewing and revising the body's role. It should be noted, however, that we are not suggesting *EVE* is a democracy or that it should be.⁵⁰

EVE is a carefully constructed and maintained game environment, and the players accept the conceit that they operate in a lawless future of space piracy and

sabotage. In fact, CCP prescribes the limits of player behaviour but attempts to do so with a nearly invisible regulatory hand. The CSM, as a clearly recognisable player consultative committee drawn from the elite ranks of players, assists CCP in this charade, while also helping developers and managers recognise and respond to player norms. The difficulty for the CSM and CCP is negotiating what roles managers and players are performing at any given time. The events discussed above highlight the limitations of the magic circle analogy to describe the application of external rules to a MMOG context. Rather, the boundaries of such environments are becoming increasingly fluid as players extend the game through social media, fan forums, modding, fan fiction, conventions and cosplay. Therefore, identity issues and applicable rules need to be negotiated across boundaries. Framing enables us to recognise that multiple roles may be performed by one person at one time, and generally players are able to shift seamlessly across these boundaries without fear of transgression. But where boundaries are not clearly defined, problems may arise that require the regulator, in this case CCP, to step in.

—

Melissa de Zwart is Associate Professor in the Adelaide Law School and a member of the Commonwealth Government Classification Review Board. She teaches and researches in the areas of intellectual property and media law. She has published widely on topics including virtual worlds, internet governance, content regulation, copyright and the digital environment, and surveillance and privacy.

Sal Humphreys researches and teaches in Media Studies at the University of Adelaide, with a focus on digital games, social networking media, surveillance and online governance. She has published in journals such as the *European Journal of Cultural Studies*, *Convergence*, *Journal of Communication and Critical/Cultural Studies*, *The international Journal of Media and Cultural politics* and *Media International Australia*.

—NOTES

¹ Tom Senior, 'Eve Online stats: 10 players explode every minute, 21 million players exploded since 2007', *PC Gamer*, 7 December 2011, <<http://www.pcgamer.com/2011/12/07/eve-online-stats-10-players-explode-every-minute-21-million-players-exploded-since-2007/>>.

² Michel Foucault, 'Of Other Spaces', *Diacritics*, vol. 16, no. 1, 1986, pp. 22–7.

³ 'EVE Online is a game about groups of bastards competing to be the biggest bastard in a battle for money and power ... and we're running a charity' (the motto of EVE University), see Alliance Panel @Fanfest 2012, <http://www.youtube.com/watch?v=gvo08_uYjHI>. For a discussion of EVE gameplay, see Melissa de Zwart, 'Piracy vs Control: Various Models of Virtual World Governance and their Impact on Player Experience', *Journal of Virtual Worlds Research*, vol. 2, no. 3, 2009, <<http://journals.tdl.org/jvwr/index.php/jvwr/article/view/663>>.

⁴ Joshua Fairfield, 'Anti-Social Contracts: The Contractual Governance of Virtual Worlds', *McGill Law Journal*, vol. 53, 2008, pp. 427–75; Melissa de Zwart, 'Contractual Communities: Effective Governance of Virtual Worlds', *UNSW Law Journal*, vol. 33, no. 2, 2010, pp. 605–27; Nicholas Suzor, 'Order Supported by Law: The Enforcement of Rules in Online Communities', *Mercer Law Review*, vol. 63, 2012, pp. 523–96.

⁵ Sal Humphreys and Melissa de Zwart, 'Griefing, Massacres, Discrimination, and Art: The Limits of Overlapping Rules Sets in Online Games', *UC Irvine Law Review*, vol. 2, 2012, pp. 507–36.

⁶ Greg Lastowka, *Virtual Justice: The New Laws of Online Worlds*, Yale University Press, Yale and London, 2010, p. 156.

⁷ Lawrence Lessig, *Code: Version 2.0*, Basic Books, New York, 2006, pp. 120–5: Lessig acknowledges this framework builds on the work of William Mitchell, *City of Bits, Space, Place and the Infobahn*, MIT Press, Cambridge, MA, 1996. See further Lastowka, *Virtual Justice*, p. 149 and Viktor Mayer-Schoenberger 'Demystifying Lessig', *Wisconsin Law Review*, 2008, pp. 713, 716–20.

⁸ See Sarah Coleman and Nick Dyer-Witheford, 'Playing on the Digital Commons: Collectivities, Capital and Contestation in Videogame Culture', *Media, Culture, Society*, vol. 29, 2007, p. 934 and Hector Postigo, 'Modding to the Big Leagues: Exploring the Space between Modders and the Game Industry', *First Monday*, vol. 15, no. 5, 2010, <<http://firstmonday.org/htbin/cgiwrap/bin/ojs/index.php/fm/article/view/2972/2530>>, for a discussion of how this is manifested in hacking and modding practices.

⁹ This has been modified to some extent by recent changes to the game interface and the introduction of Dust 514, a customisable first person shooter.

¹⁰ EVE Policies, <<http://community.eveonline.com/pnp/>>.

¹¹ <<http://community.eveonline.com/pnp/terms.asp>>.

¹² Erving Goffman, *Frame Analysis*, Harvard University Press, Cambridge, MA, 1974.

¹³ Daniel Pargman and Mikael Jakobsson, 'Do you Believe in Magic? Computer Games in Everyday Life', *European Journal of Cultural Studies*, vol. 11, 2008, pp. 225, 237.

¹⁴ Pargman and Jakobsson, p. 238.

¹⁵ Brendan Drain, 'EVE Online hits 500,000 Subscribers, Heads into Second Decade', *Massively*, 28 February 2013, <<http://massively.joystiq.com/2013/02/28/eve-online-hits-500-000-subscribers-heads-into-second-decade/>>.

¹⁶ de Zwart, 'Piracy vs Control'.

¹⁷ Ibid. See also Brendan Drain, 'Biggest EVE Online Scam Ever Recorded Nets Over a Trillion ISK', *Massively*, 12 August 2011, <<http://massively.joystiq.com/2011/08/12/biggest-eve-online-scam-ever-recorded-nets-over-a-trillion-isk/>>, regarding a ponzi scheme that netted 1,034 billion ISK for the perpetrators in August 2011.

¹⁸ EVE Online, 'Scams and Exploits', <<http://support.eveonline.com/pages/kb/article.aspx?id=34>>.

¹⁹ EVE Online, 'Grief Play: What is Grief Play?', <<http://support.eveonline.com/Pages/KB/Article.aspx?id=336>>.

²⁰ There are many bloggers and reporters who discuss in-game developments, including The Mittani and Liang Nuren, whose observations and analysis are discussed below. There is also a large body of academic research now devoted to *EVE*. For a list of publications, see <<http://eveonline.gamescholarship.org/eve-online-literature/>>.

²¹ The CSM replaced a system of consultation with player representatives with a community manager via in-game text messages, Marc Scaurus, 'The Case for the CSM', *The Mittani*, 20 September 2012, <<http://themittani.com/features/case-csm>>.

²² Pétur Jóhannes Óskarsson, The Council of Stellar Management: Implementation of Deliberative, Democratically Elected, Council in EVE, <<http://www.nytimes.com/packages/pdf/arts/PlayerCouncil.pdf>>, p. 6.

²³ Ibid., p. 7.

²⁴ Ibid., p. 12.

²⁵ Ibid., p. 20.

²⁶ CCP Dolan, *CSM8 Election Schedule and Election Process*, 21 February 2013, <<http://community.eveonline.com/devblog.asp?a=blog&nbid=74283>>.

²⁷ Alexander Gianturco, 'Giving Your Players a Voice: Lessons from EVE Online', *Gamasutra*, 15 March 2012, <http://www.gamasutra.com/view/feature/165825/giving_your_players_a_voice_php>.

²⁸ See John Banks and Sal Humphreys, 'The Labour of User Co-Creation: Emerging Social Network Markets?', *Convergence*, vol. 14, no. 4, 2008, pp. 401–18; John Banks, 'Co-creative Expertise: Auran Games and Fury—A Case Study', *Media International Australia*, vol. 130, 2008, pp. 77–89; Matt Garite, 'The Ideology of Interactivity or, Video Games and the Taylorization of Leisure', paper presented at the Level Up, Digital Games Research Association Conference, Utrecht, 4–6 November 2003; Julian

Kucklich, 'Precarious Playbour: Modders and the Digital Games Industry', *Fibreculture*, vol. 5, 2005, <<http://five.fibreculturejournal.org/fcj-025-precious-playbour-modders-and-the-digital-games-industry/>>; David Neiborg and Shenja Van der Graaf, 'The Mod Industries? The Industrial Logic of Non-market Ggame Production', *European Journal of Cultural Studies*, vol. 11, no. 2, 2008, pp. 177–95; Hector Postigo, 'Of Mods and Modders: Chasing Down the Value of Fan Based Digital Game Modifications', *Games and Culture*, vol. 2, no. 4, 2007, pp. 300–13; Tiziana Terranova, 'Free Labor: Producing Culture for the Digital Economy', *Social Text*, vol. 18, no. 2, 2000, 33–57; Tiziana Terranova, *Network Culture: Politics for the Information Age*, Pluto Press, London, 2004; Nick Yee, 'The Labor of Fun', *Games and Culture*, vol. 1, no. 1, 2006, pp. 68–71.

²⁹ Banks and Humphreys, pp. 401–18.

³⁰ Brendan Drain, 'Nine Years of EVE Online', *EVE Evolved*, *Massively*, 6 May 2012, <<http://massively.joystiq.com/2012/05/06/eve-evolved-nine-years-of-eve-online/>>. See also Gianturco, 'Giving Your Players a Voice'.

³¹ Alliance Panel @ CCP Fanfest 2012 in FULL in HD, <http://www.youtube.com/watch?v=gvo08_uYjHI>.

³² Brendan Drain, 'EVE Evolved: Setting the Record Straight', *Massively*, 1 April 2012, <<http://massively.joystiq.com/2012/04/01/eve-evolved-setting-the-record-straight/>> ; Edward Castronova 'Oh EVE, Of Course you're not a Freeman's Paradise' *Terra Nova*, 5 April 2012, <http://terranova.blogs.com/terra_nova/2012/04/oh-eve-of-course-youre-not-a-freemans-paradise.html>.

³³ GM Salmon, 'Alliance Panel at Fanfest 2012: The Conclusion', *EVE Online*, *EVE Insider*, *Dev Blog*, 28 March 2012, <<http://community.eveonline.com/devblog.asp?a=blog&nbid=28576>>.

³⁴ GM Salmon, 'Alliance Panel'.

³⁵ CCP Navigator, 'Dev Blog: The 2012 Alliance Panel at FanFest', *EveSwarm*, 28 March 2012, <<http://eveswarm.com/2012/03/dev-blog-the-2012-alliance-panel-at-fanfest/>>.

³⁶ Alliance Panel @ CCP Fanfest 2012 in FULL in HD, <http://www.youtube.com/watch?v=gvo08_uYjHI>.

³⁷ The Mittani, 'My Apology', *EVE Online Forums*, 27 March 2012, <<https://forums.eveonline.com/default.aspx?g=posts&t=86980>>.

³⁸ The Mittani, 'Regarding the CSM7 Chairmanship', *Eve Online Forums*, 28 March 2012, <<https://forums.eveonline.com/default.aspx?g=posts&m=1027874#post1027874>>.

³⁹ GM Salmon, 'Alliance Panel'.

⁴⁰ 'His apology isn't a troll, but it's not sincere either. The initial reaction of "deal with it" was much more in line with what he'd like to say. He didn't realize how far this would blow up in terms of it being covered by mainstream gaming sites and figures this meandering apology will preserve his chairmanship and his account. Knowing how CCP loves to cover for their golden boys, he's probably

right.' XavierVE, 27 March 2012, *EVE General Discussion Forums*,

<<https://forums.eveonline.com/default.aspx?g=posts&t=86980&find=unread>>.

⁴¹ Liang Nuren, 'A Modest Proposal for the CSM', *Failing in So Many Ways*, 31 March 2012,

<<http://liangnuren.wordpress.com/tag/eve-online>>.

⁴² Johan Huizinga, *Homo Ludens: A Study of the Play-element in Culture*, Beacon Press, Boston, 1950 [1938].

⁴³ See Rebecca Farley, 'Game', *M/C: A Journal of Media and Culture*, vol. 3, no. 5, 2000, <<http://www.apinetwork.com/mc/0010/game.php>>; Mia Consalvo 'There is no Magic Circle', *Games and Culture*, vol. 4, no. 4, p. 408; 2009, Daniel Pargman and Peter Jakobsson, 'Do You Believe in Magic? Computer Games in Everyday Life', *European Journal of Cultural Studies*, vol. 11, no. 2, 2008, pp. 225–44, for examples of critiques of the magic circle.

⁴⁴ Consalvo.

⁴⁵ Vili Lehdonvirta, 'Virtual Worlds Don't Exist: Questioning the Dichotomous Approach in MMO Studies', *Game Studies*, vol. 10, issue 1, 2010, <<http://gamestudies.org/1001/articles/lehdonvirta>>; Eric Zimmerman, 'Jerked Around by the Magic Circle—Clearing the Air Ten Years Later', *Gamasutra*, 7 February 2012,

<http://www.gamasutra.com/view/feature/6696/jerked_around_by_the_magic_circle_php>.

⁴⁶ Tei Lin, 'Request for Clarification on Harassment Policy', 29 March 2012,

<<https://forums.eveonline.com/default.aspx?g=posts&m=1034909#post1034909>>.

⁴⁷ GM Homonoia, 'Request for Clarification on Harassment Policy' 29 March 2012,

<<https://forums.eveonline.com/default.aspx?g=posts&m=1034909#post1034909>>.

⁴⁸ Bastiaan Vanacker and Don Heider, 'Ethical Harm in Virtual Communities', *Convergence*, vol. 18, 2012, p. 73.

⁴⁹ Liang Nuren, 'Social Contract and Political Maneuvering [*sic*] in Eve Online', *Failing in So Many Ways*, 26 March 2012, <<http://liangnuren.wordpress.com/tag/eve-online>>.

⁵⁰ Edward Castronova, 'Oh EVE, Of Course You're Not a Freeman's Paradise'.