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# Real Jail for WoW-Crimes?

BY [SAM CASTREE](#) / ON SEPTEMBER 13, 2014

Recently, a British politician suggested that [theft of virtual items in online games should be punished like real theft](#). Mike Weatherley – by day the chief adviser on intellectual property to the Prime Minister, by night a mighty hero of Azeroth in the MMORPG World of Warcraft – [asked](#) the British Minister of State for Justice to propose legislation “to ensure that cyber criminals who steal online items in video games with a real-world monetary value received the same sentences as criminals who steal real-world items of the same monetary value.” So if you steal an in-game magic item worth a real-life \$100 (or £50, since we’re talking about England), you would get charged with theft of £50. (If this does become a real thing, I’d like to propose that this area of law be dubbed “WoW-Crimes.” “World of WarCrimes” has a clever ring to it, but it also sounds too much like a Rwandan genocide simulator, and the world really doesn’t need that to exist.)

Mr. Weatherley tells it like this, “The perception from some people is that if you steal online it’s less of a crime than if you steal physically.” I imagine that most of us would agree that such a perception is a faulty one. As in-game purchases become a bigger and bigger thing, there might be a need for these kind of law. Heck, the amount of *time* that my 3-year-old son and I spent playing Pokémon Y together is staggering (and well worth it). I’d be furious and heartbroken if someone robbed the Pokémon Bank.

But, like just about everything to do with computers, the law is not well equipped to deal with these issues.

First of all, virtual property doesn’t fit well within traditional laws against things like theft. Do you really own the Dragonfire Orb that your character uses? In reality, it’s bits of data stored on Blizzard servers, and subject to an end-user license agreement (EULA). So, do you even have the legal right to complain? Do we need to get Blizzard involved to press charges on behalf of every aggrieved player? However, a well-written law should deal with these issues. If Parliament is going to write a new law, they can tweak it however they want. So let’s put aside the technical issues and follow this train of thought to the end of the line.

If players suddenly have some sort of property right in their in-game gear (and in their characters, for that matter), what does the resulting legal landscape look like? If you stop paying the subscription fee, Blizzard will shut down your account, and therefore your character, and you lose your gear. It’s very easy to imagine some players suing or trying to press charges over the valuable “property” Blizzard just deprived them of. And although it’s hard to imagine the players *succeeding* in these lawsuits (EULAs, other contracts, and a dash of common sense will probably cover this), the company will still be out lots of money in court costs and legal fees.

And how far are we willing to take this? For example, EVE Online is well known for giant space battles that destroy players' resources, and also well known for having resources that cost real money. If I blow up your Titan battleship, might I end up in a WoW-Crimes prosecution for criminal property destruction? Or could you sue me for property damage (the technical term would be "tortious conversion")? What about an MMO where killing other players' characters, looting their bodies, sneak-thievery, and the like are a big part of the game? Let's say you make a game about thieves' guilds, in which players go around stealing from each other to get better loot and bigger turf. If you're actively promoting this as a game for players to steal stuff from each other, if you're even *encouraging* players to steal from each other or break each other's stuff, might you suddenly become a criminal accomplice? Might you be liable for civil damages for encouraging this sort of behavior?

I'd like to think that the answer is no. For example, if two people start punching each other on the street in real-life, they are committing a crime (even if it's entirely consensual). However, put those same people in a boxing ring, and the illegality disappears, even though the point is still to pummel the other man until he can't stand up. Call it hypocrisy if you will, but there are rules that both fighters are expected to follow. Even if each one intends not to get hit, he still accepts the consequences when he enters the ring that he *will* almost certainly get punched.

On the other hand, if a boxer violates the rules of boxing, (say, by repeatedly kicking an opponent in the head when he's on the ground, or pulling out a knife), then the law might get involved. And if the officials in charge of boxing were to encourage this behavior, there would be big trouble for everyone. So as long as WoW and EVE and other MMOs have clear rules laid out, they might be fine. Players know what they're getting into when they sign up for the game. Plus, killing a virtual character doesn't have any of the nasty consequences that real-life murder does. On the other hand, this might be the start of real legal regulation of MMO games. The law tolerates punching with padded gloves, but it wouldn't tolerate similarly-institutionalized knife fights. Similarly, the law accepts gamers throwing fireballs at each others' elf wizards when the players are only out a bit of time and some health potions. But after a couple more [Bloodbath of B-R5RB](#) incidents (which cost EVE Online players a total of around [\\$330,000 of real money](#) in destroyed virtual resources), maybe legislators will decide to take action.

There are also jurisdictional issues to worry about. If a player in the U.S. steals from a player who just happens to live in Liverpool, might that American suddenly find himself in trouble with the British authorities? Thanks to the ubiquity and universality of the Internet, England is already known for having a problem with [libel tourism](#), in which foreigners would sue in British courts because an allegedly defamatory statement was accessible on the Internet from a British computer, regardless of whether anything in the case has any actual connection to the U.K. Might London become a center for irate gamers suing each other?

And another thing: If a lot of countries decide to make WoW-Crimes laws, they are *very unlikely* to all make the exact same law. So, doing 'X' to a British player might be perfectly allowed in England, but doing the same thing to an Italian player might be a felony in Italy. Perhaps these issues are best left to Blizzard and their ilk who run the games, who can at least be consistent and universal with their rule-making. But corporations are much less accountable than governments, who are typically bound by constitutional measures and the pressures of re-election. If game companies are in charge, they are much less accountable. Moreover, a single rule for everyone is bound to make everyone at least slightly unhappy. When each country makes its own laws, those laws can be better tailored to local interests.

Of course, this is all purely speculative at the moment, based on one *request* for a *proposal* for legislation in a single country. Still, it's not an unrealistic scenario. Those who want to start an MMO should be on the lookout for these and other issues to develop in the coming years.

*Sam Castree, III is a practicing lawyer in Illinois. The majority of his clients are small video game developers. He also is a leading contributor to the legal blog [GameDevLaw.org](http://GameDevLaw.org).*